



**Jonathan Robinson, Legal Director**

**Anne Brosnan, Chief Prosecutor**

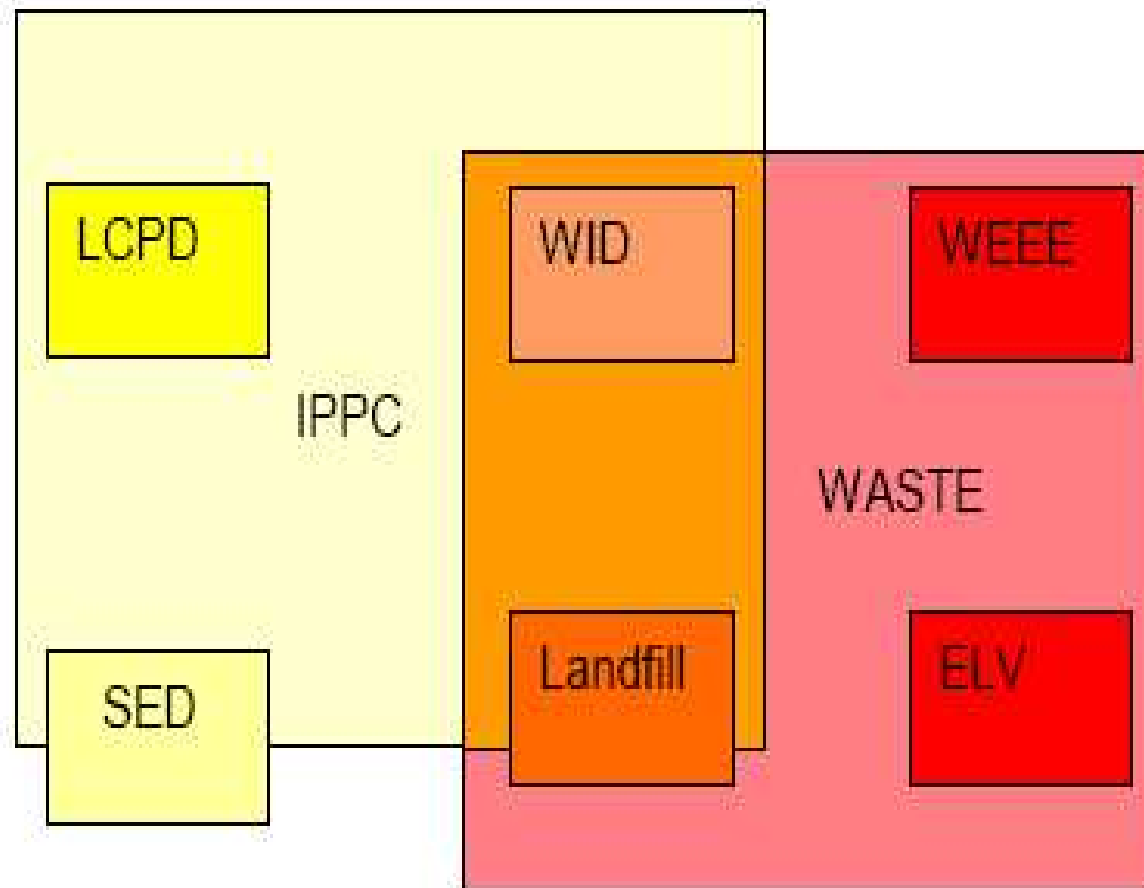
**Environment Agency of England and Wales**

**EUFJE Conference, Brussels, 19 October 2010**

# What we will cover

- ➔ Environmental Permitting Regulations 2010
- ➔ Recent compliance and enforcement data
- ➔ New administrative sanctions

# Illustration of overlapping permitting requirements in some European Directives



## Key:

SED - Solvent Emissions Directive

LCPD - Large Combustion Plant Directive

IPPC - Integrated Pollution Prevention and Control Directive

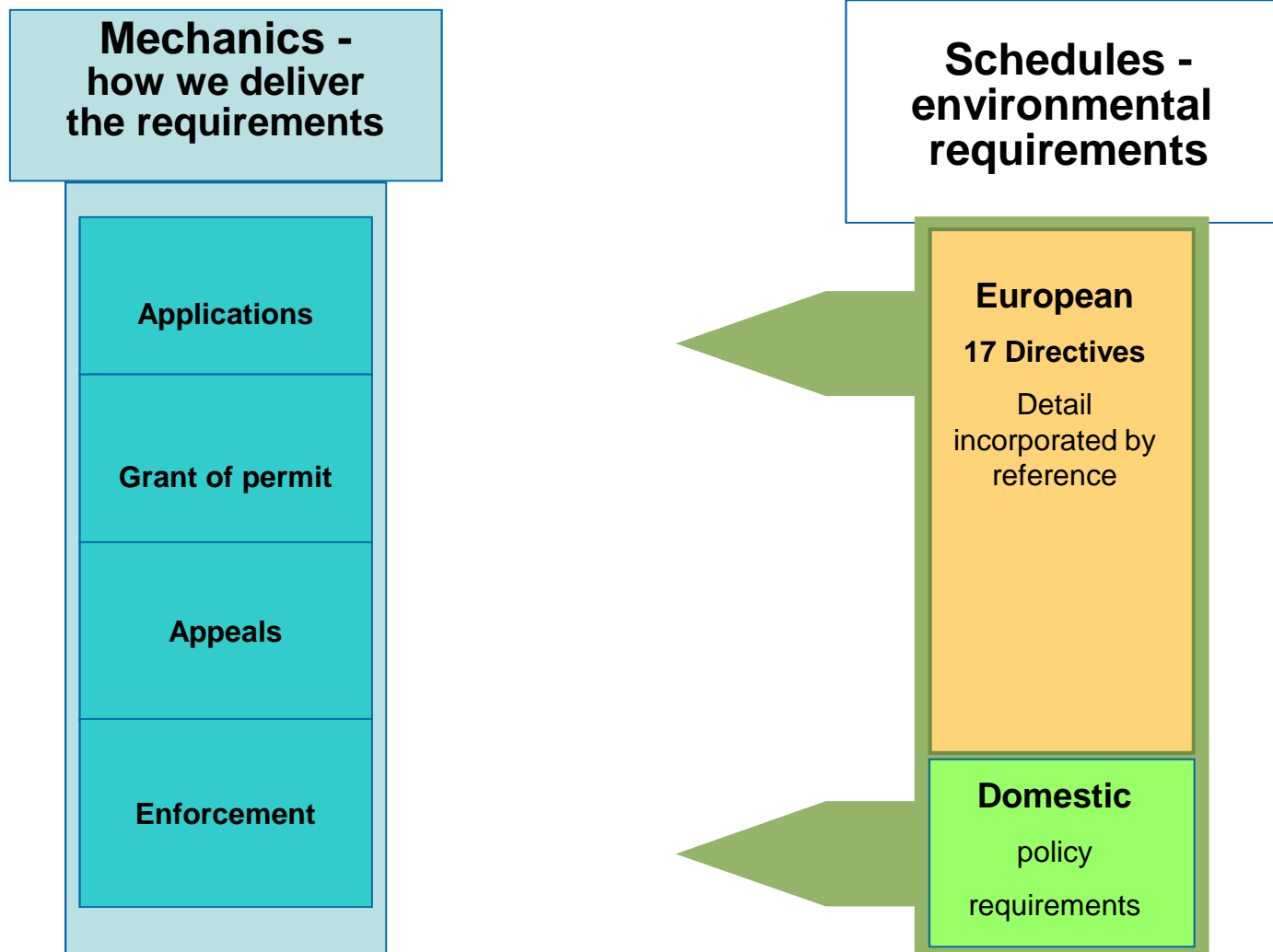
Waste - Waste Framework Directive

WID - Waste Incineration Directive

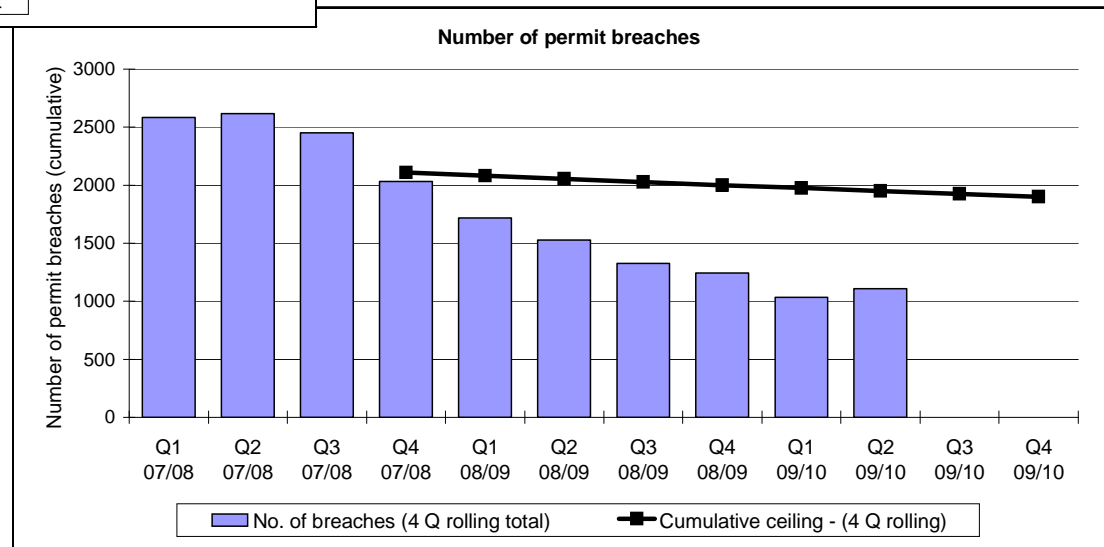
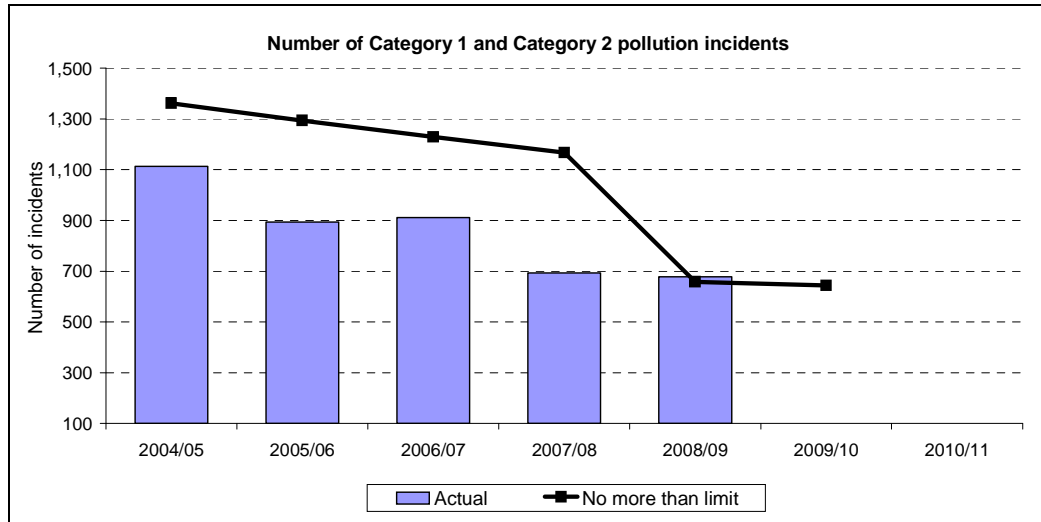
WEEE - Waste Electrical and Electronic Equipment; Directive

ELV - End-of Life Vehicles Directive

# The Environmental Permitting Regulations 2010

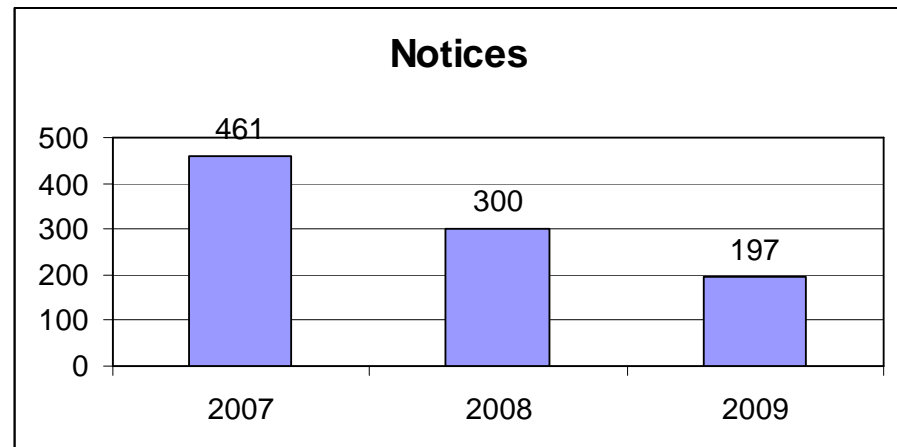
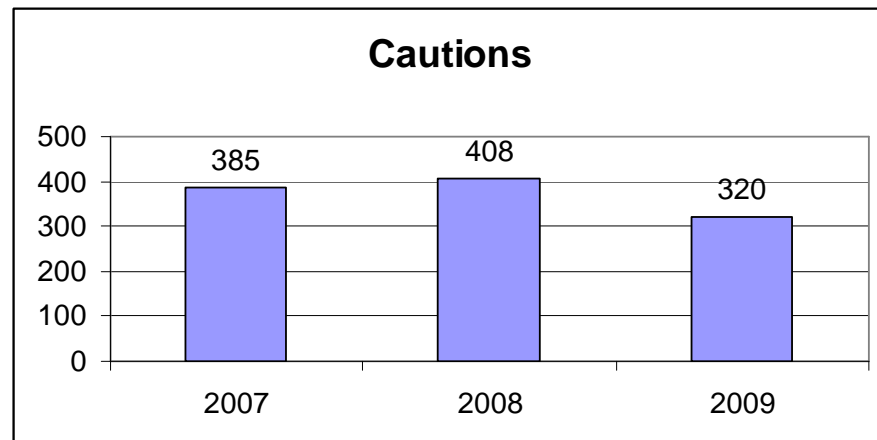
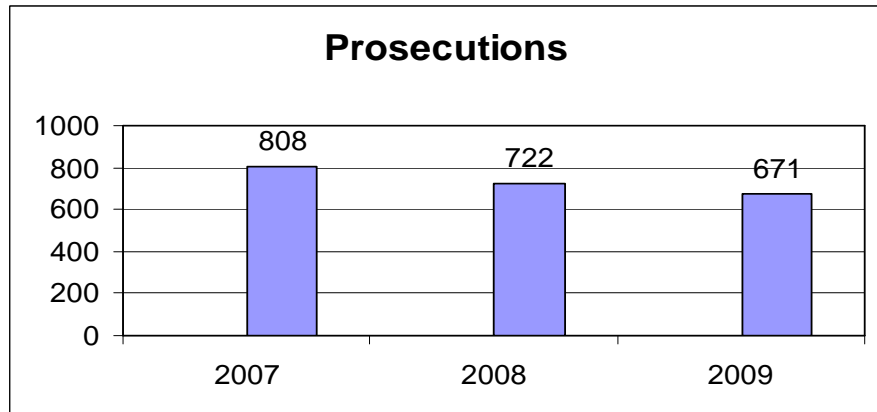


# Performance – Incidents & Compliance



# National Enforcement Results

2006, 2007, 2009



# Further detail on prosecutions

- ➔ Prosecutions 2009, of 674...
  - ➔ waste 320
  - ➔ water pollution 140
  - ➔ packaging producer responsibility 70
  - ➔ remainder IPPC, water resources, fisheries
- ➔ Highest fine 2010, £450,000
- ➔ Imprisonment
- ➔ Confiscation of proceeds of crime
- ➔ Also local authority and Natural England

# The Administrative Sanctions Story



Richard Macrory Report



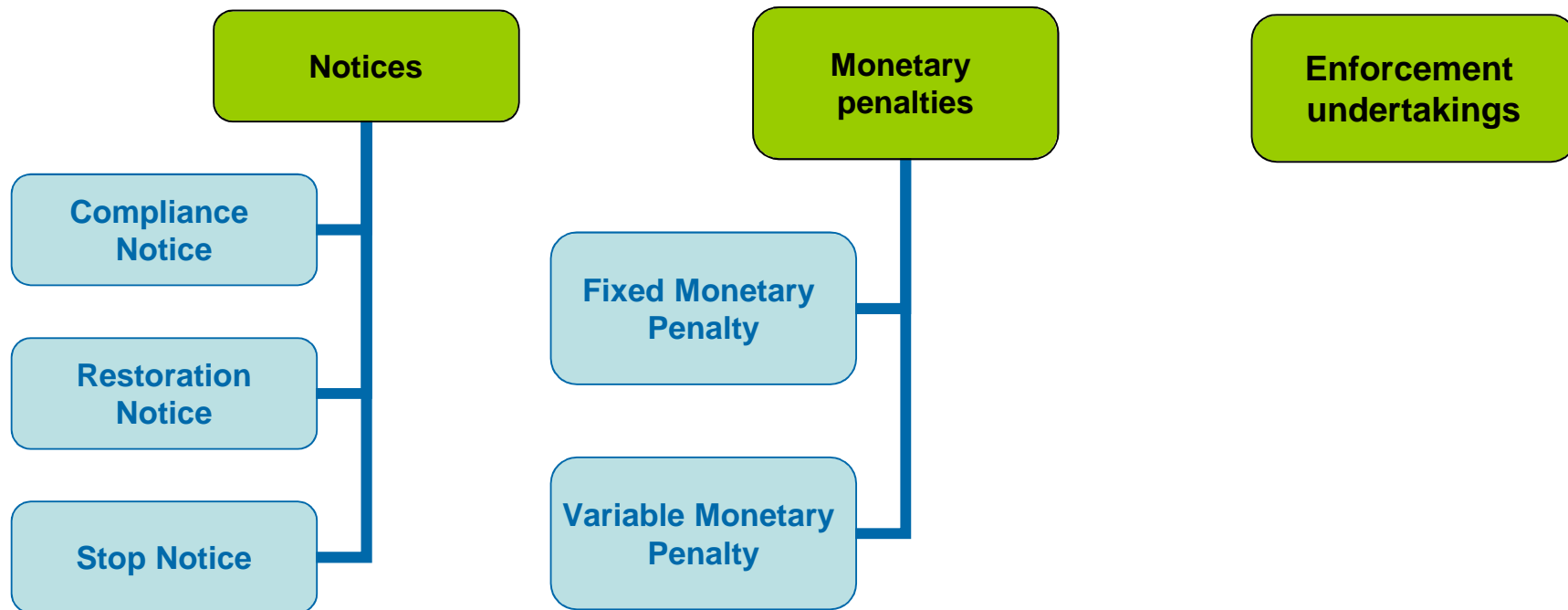
Regulatory Enforcement And Sanctions Act 2008



Implementing Regulations 2010, use from 2011



# The 'Macrory' Sanctions



# Standard of Proof

Monetary Penalty

Compliance Notice

Restoration Notice

Regulator must be satisfied **beyond reasonable doubt** that an offence has been committed.

# Compliance and Restoration Notices

## Compliance Notice

- ⇒ Specified steps to *come back into compliance*
- ⇒ Third party undertaking
- ⇒ Can prosecute for original offence if fail

## Restoration Notice

- ⇒ Specified steps to *restore harm*
- ⇒ Third party undertaking
- ⇒ Can prosecute for original offence if fail

# Stop Notices

- ⇒ Offence actual *or likely*
- ⇒ *and* serious harm, or risk of serious harm
- ⇒ Offence if breached
- ⇒ Compensation provisions

# Fixed Monetary Penalties

## Fixed Monetary Penalty

- ➔ Minor offence committed
- ➔ £300 for companies
- ➔ £100 for individual

# Variable Monetary Penalties

- ⇒ Imposed and determined by Environment Agency
- ⇒ £250,000 cap
- ⇒ No prosecution for failure to pay
- ⇒ Non compliance penalty
- ⇒ Calculation criteria...

# Setting a Variable Monetary Penalty

➔ Remove Financial Benefit *plus*

➔ Deterrent

➔ Starting points -

- Maximum Magistrates Court fine (e.g. £20,000) *or*
- Financial Benefit *or*
- Restoration costs

➔ Aggravating and Mitigating factors (0.1 – 4) ***minus***

➔ Deductions -

- ➔ Third party undertakings
- ➔ Cost of coming into compliance

# Enforcement Undertaking

⇒ Offered by the offender

⇒ Must specify actions to:

- ⇒ secure that offence does not continue or recur
- ⇒ secure the position is “so far as possible” restored to what it would have been if the offence had not been committed
- ⇒ benefit any person affected by the offence (including payment of a sum of money)

⇒ No appeal



# The Benefits

- ⇒ Incentive to remediate
- ⇒ Incentive to compensate third parties
- ⇒ Incentive to self report and offer undertakings
- ⇒ More proportionate use of criminal law
- ⇒ Offending stopped more quickly

# Thank you