

Responsibility for Reporting of Emissions & Discharges Under the Drilling Contract – The Customer or the Contractor?

IADC Contracts Committee Meeting

Gerald Baca and Janet Resseguie

July 27, 2023

EMISSIONS REPORTING, AIR AND WATER

- Significant new legislation around the world relating to greenhouse gas emissions reporting
 - Driven by ESG concerns including a movement for increased tracking and reporting of greenhouse gas emissions
 - Primarily concerned with reporting fuel consumption, energy efficiency and emission of greenhouse gases to drive goals of reducing emissions
 - Legislative language does not clearly state that Drilling Contractors have the obligation to report emissions
 - Recent legislation in Australia, Norway, Canada



SAMPLE OF RELEVANT STATUTES

Air Emissions

- National Greenhouse and Energy Reporting Act 2007 (Australia)
- Canadian Environmental Protection Act and Greenhouse Gas Reporting Program
- Clean Air Act and associated guidance for Green House Gas Emissions

Water Emissions

- Clean Water Act – National Pollutant Discharge Elimination System (NPDES general permit)
- MARPOL convention
- 33 CFR Part 151- - Ballast Water
- EPA and USCG are apparently expanding jurisdictional reach to Drilling Contractors and their offshore operations

EMISSIONS REPORTING, AIR AND WATER

Increased enforcement of legislation relating to offshore operations in the US Gulf of Mexico for discharges into water

Clean Water Act prohibits anybody from discharging “pollutants” into a “water of the United States” unless they have a NPDES permit.

Section 403 of Clean Water Act requires NPDES permits in offshore waters

The Customer’s offshore operations must be conducted under the NPDES permit

EPA and USCG appear to be expanding jurisdictional reach to Drilling Contractors and their offshore operations

Regulatory language does not clearly state that Drilling Contractors are primarily responsible for reporting under the NPDES permit

RESPONSIBILITY FOR REPORTING EMISSIONS

Statutory language is very broad and generally requires reporting for drilling related discharges within the geographic limits provided for in the statute.

As part of licensing and permitting it is generally assumed that the Customer will have the responsibility for reporting in the first instance under the general permit.

The statutes do not specifically require Drilling Contractors to take on reporting responsibilities. However, if not under contract, Drilling Contractors may have reporting obligations.

Customers have recently been asking that Drilling Contractors contractually assume the obligation to report emissions into the air and water.

If the Drilling Contractor does take on the responsibility of reporting emissions to governmental authorities, the statutes generally require accurate reporting.



REASONS FOR CONTRACTOR TO DECLINE TO ASSUME REPORTING OBLIGATIONS

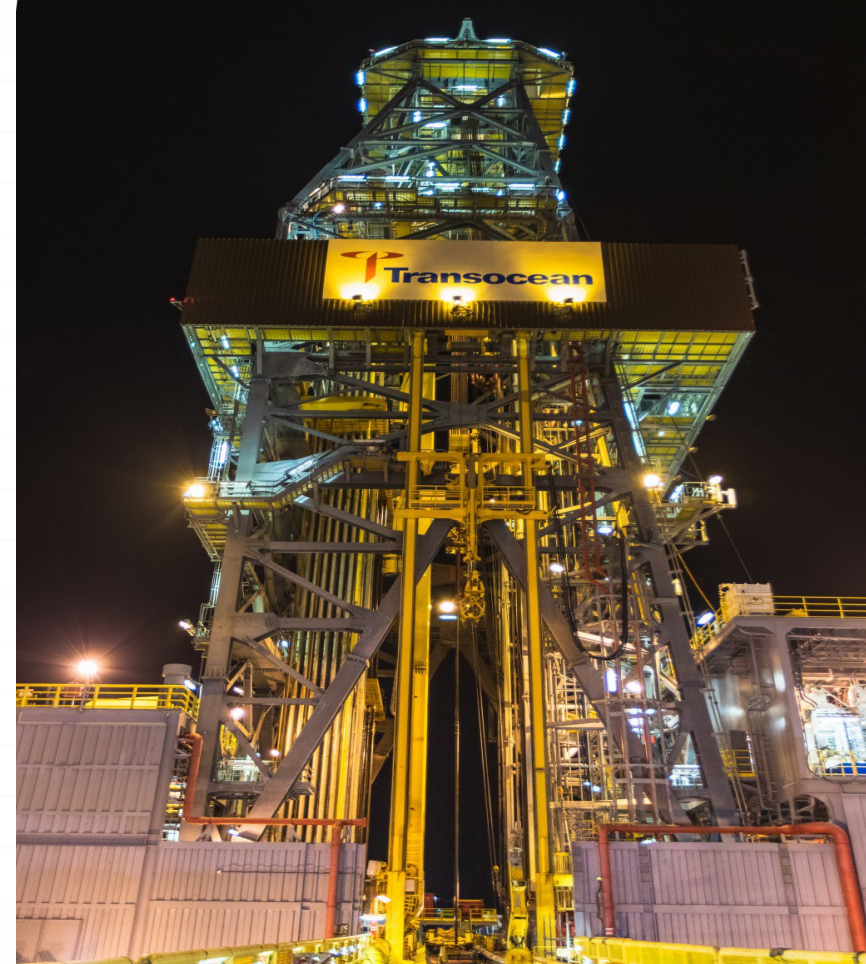
Generally, regulations do not specifically place the obligation on the Drilling Contractor to report emissions.

It is not clear that various governmental agencies have jurisdiction over the relevant emissions from the drilling units.

If the Drilling Contractor assumes reporting obligations, it will bear the expense of hiring personnel to perform the reporting and follow the relevant regulations.

If the information reported to the regulators is inaccurate, inconsistent, or deficient, the Drilling Contractor will be liable for reporting deficiencies.

The drilling contract may place indemnity obligations on the Drilling Contractor for failing to accurately report emissions under the applicable statutes.



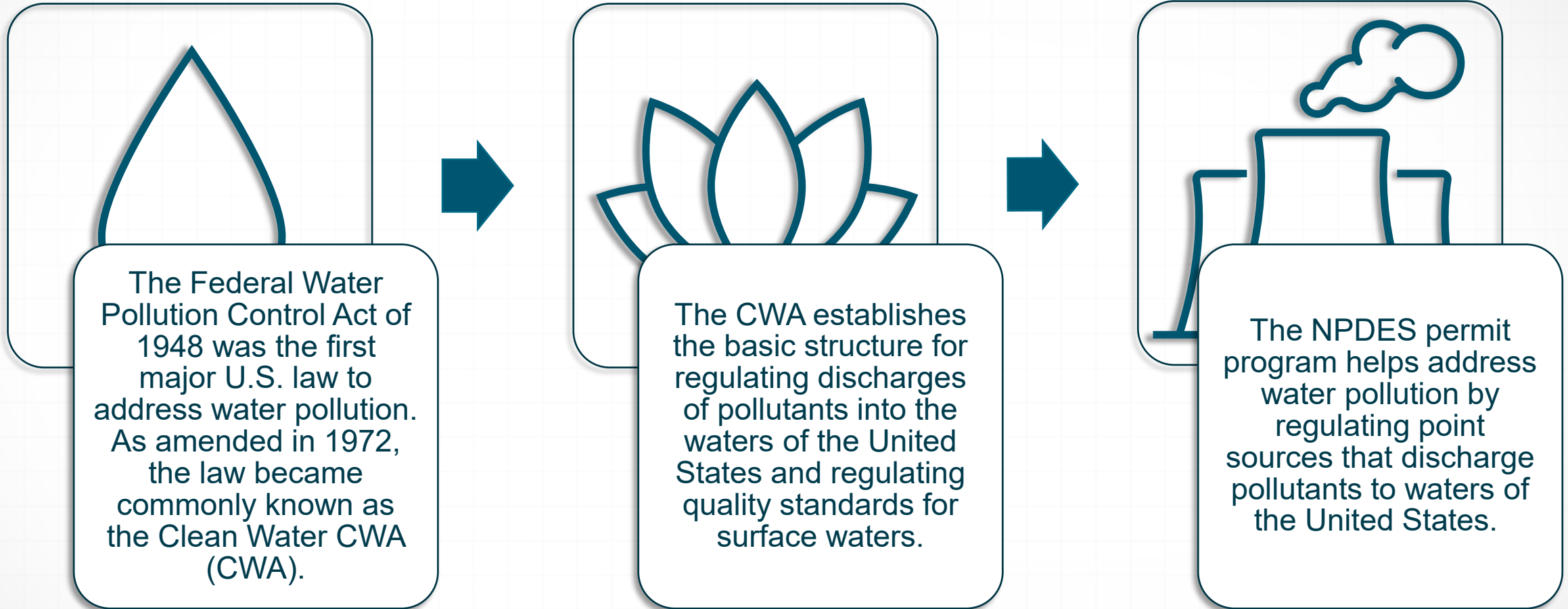
Clean Water Act – NPDES- ENOI

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NPDES PROGRAM OVERVIEW

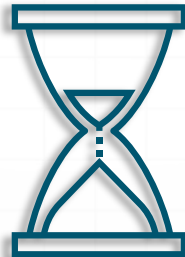


NPDES GENERAL PERMIT NO. GMG290000



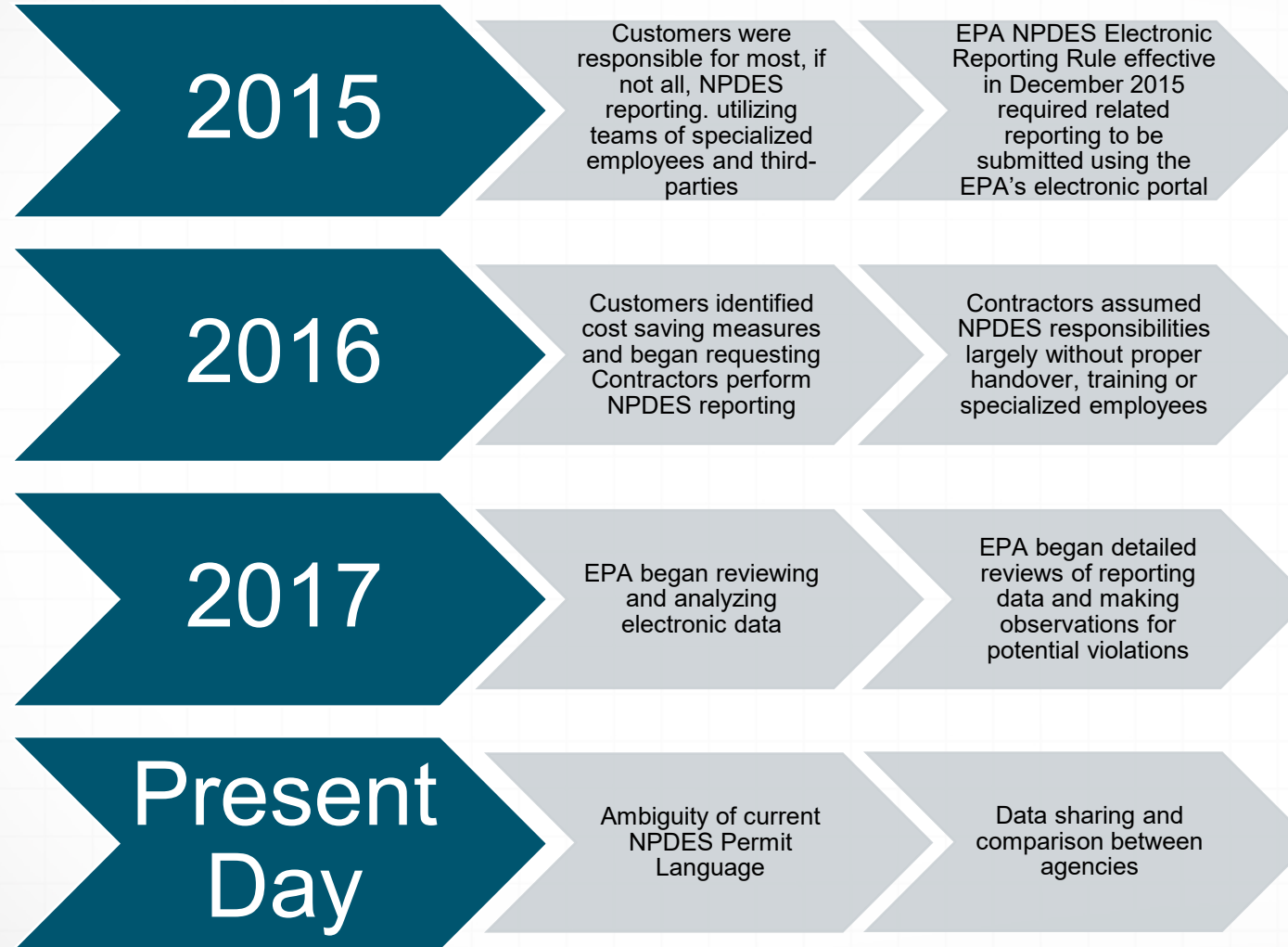
The NPDES General Permit No. GMG290000 is for dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in and discharging to the Outer Continental Shelf offshore of Louisiana and Texas.

The permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities, and supporting pipeline facilities, engaged in production, field exploration, developmental drilling, facility installation, well completion, well treatment, well workover, and abandonment/decommissioning operations.



The new permit became effective at midnight, CST, May 11, 2023, and shall expire at midnight, CST, May 10, 2028. The permit incorporates by reference all conditions and requirements applicable to NPDES permits set forth in the CWA.

NPDES PERMIT INDUSTRY TRENDS 2015 – PRESENT DAY



ENOI – ELECTRONIC NOTICE OF INTENT TO DISCHARGE

Any entity intending to discharge into the water must file an eNOI discharge under the NPDES general permit.

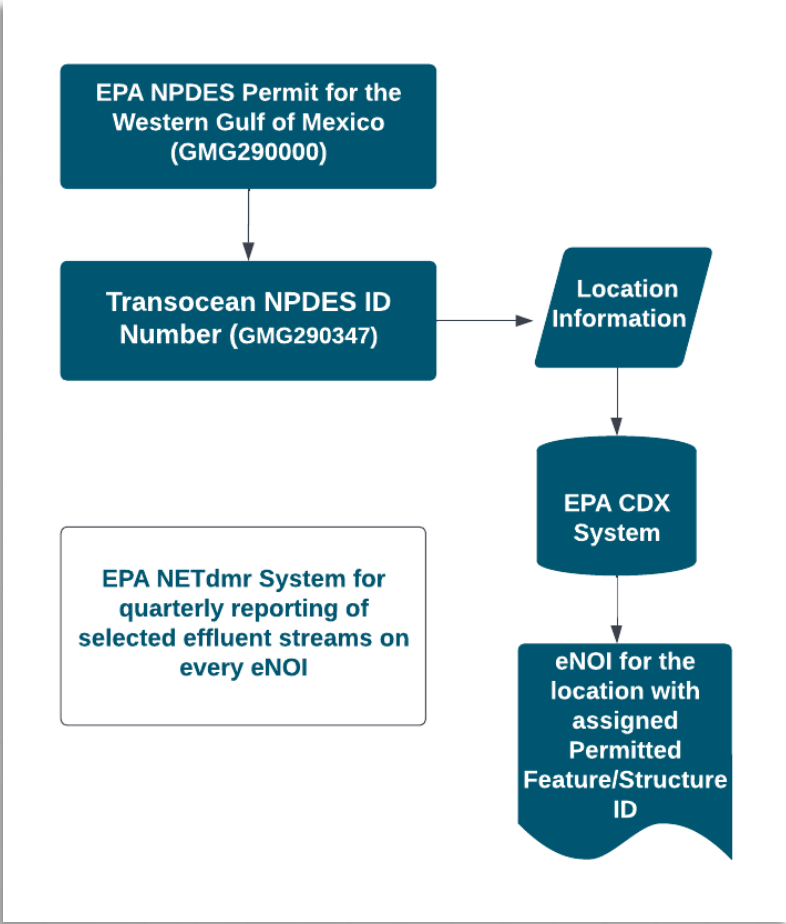
Customer or Contractor must file an eNOI before any discharge.

If drilling unit is not under contract, the Contractor must ensure such eNOI is in place before discharging.

It is important to terminate an eNOI if not operating at a location because the reporting obligation remains, even if reporting no discharge.



PROCESS FOR ELECTRONIC NOTICE OF INTENT



	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 NOTICE OF TERMINATION (NOT) FOR THE 2017 GMG PERMIT	FORM Approved OMB No. 2040-0004
Archived		
The below is an Terminated version of Permitted Feature ID 0106; a draft was created on 10/01/2020 9:18 AM.		
Permitted Feature Information		
Permitted Feature ID: <u>0106</u>	Permitted Feature Name / Description: <u>Deepwater Invictus (DVS)</u>	NPDES ID: <u>GMG290347</u>
Type: <u>MODU</u>	BSEE Rig ID: <u>51290</u>	
Lease Area Block Name: <u>Grand Isle</u>	Lease Block Code: <u>62</u>	BOEM Lease Block Number: <u>0</u>
Latitude: <u>28.8335 degrees N</u>	Longitude: <u>90.116778 degrees W</u>	
Water Depth (in feet): <u>100</u>	Water Sensitivity: <u>Non-Sensitive</u>	
Effluent Limitations and Monitoring Requirements: <u>Chemically Treated Waters (CT)</u> <u>Cooling Water Intake Structure Requirements for New Facilities For Which Construction Was Commenced After July 17, 2006 (CW)</u> <u>Deck Drainage (DD)</u> <u>Domestic Waste (DW)</u> <u>Miscellaneous Discharges (Includes Packer Fluids & Pipeline Brine) (MD)</u> <u>Sanitary Waste (SW)</u> <u>Maintenance BMP (WM)</u>		
Is this a new facility (defined as facilities for which construction was commenced after July 17, 2006)? <u>No</u>		
Designated Operator Details:		Permitted Feature Contact Information:

WHAT YOU ARE AGREEING TO REPORT: MISC. DISCHARGES

Filtered and Sand Slurry:

- Desalinization Unit Discharge
- Diatomaceous Earth Filter Media
- Mud, Cuttings, and Cement (including cement tracer) at the Seafloor
- Excess Cement Slurry

Uncontaminated Waters:

- Uncontaminated Ballast Water
- Uncontaminated Bilge Water
- Uncontaminated Freshwater
- Uncontaminated Seawater
- Boiler Blowdown
- Source Water and Sand
- Hydrate Control Fluids

Subsea Discharges:

- Subsea Wellhead Preservation Fluid
- Subsea Cleaning Fluids
- Subsea Production Control Fluid
- Umbilical Steel Tube Storage Fluid
- Leak Tracer Fluid
- Riser Tensioner Fluid
- Pipeline Brine
- Brine and Water-based Mud

Blowout Preventer Control Fluid

Firefighting discharges:

- Aqueous Film Forming Foam (AFFF)
- Waters used for fire-fighter's training or fire incidents

Bulk Transfer Operations Powder

Non-specified Discharges

STEPS TO TAKE TO MITIGATE

Endeavor to have Customer perform reporting obligations.

If Customer requires that Contractor be responsible for reporting:

- Clearly delineate reporting responsibilities in the contract
- Ensure reporting responsibilities in the bridging document do not conflict with the contract and create exposure
- Communicate and coordinate reporting with Customers to ensure accuracy and consistency when reporting to agencies
- Ensure adequate staffing to perform robust reporting
- Allocate cost of reporting and liabilities for reporting
- Any emissions reported by Customer should be shared with Contractor
- Contractually agree in the contract that Customers have the obligation to share

EPA OPTIONS FOR ENFORCEMENT ACTIONS

The EPA District 6 held training on the NPDES permit for the Western Gulf of Mexico on July 17th and 18th. One topic discussed were actions available to the EPA should suspected permit violations exist which include:

Email Warnings

EPA Administrative Order

EPA investigation into non-compliances (in coordination with the NRC and BSEE)

Settlement at District level without judicial court process

Referral to the US Department of Justice for civil judicial actions

Criminal Actions for most serious violations that are willful or knowingly committed

THREE KEY TAKE AWAYS

Anticipate that air emissions will require reporting and those obligation should be allocated between Customer and Contractor in the contract.

Government agencies are now electronically sharing data and checking for consistency. This will require Customer and Contractor to share data to ensure consistent reporting across all reporting platforms.

Increased chance of enforcement actions as a result of electronic data analysis between agencies.



