



Kentucky Division of Enforcement

Annual Report

Fiscal Year 2013

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INTRODUCTION

On July 9, 2004, the Governor issued Executive Order 2004-731 making significant revisions in the organizational structure of the Cabinet. Several of the changes involved the Kentucky Department for Environmental Protection (**KDEP**), one of which was the creation of a new Division of Enforcement (**DENF**). The Division of Enforcement combined the staff and most of the activities previously included in the enforcement branches of the Division for Air Quality (**DAQ**), the Division of Waste Management (**DWM**) and the Division of Water (**DOW**). The primary purpose of the organization of the Division of Enforcement was to promote a fair, firm, and consistent approach to gaining compliance through the resolution of enforcement cases.

ORGANIZATION

The Division of Enforcement (DENF) consists of 3 units: the Director's Office, the Civil Enforcement Branch (**CEB**), and the Compliance and Operations Branch (**COB**). Each of these units performs a distinctly different function within the Division. The Director's Office is responsible for the overall management of the Division. This includes setting Division priorities for accomplishing Department goals, coordinating with all of KDEP's divisions, and coordinating with management for KDEP and the Cabinet.

Division of Enforcement Director's Office



Jeffrey A. Cummins
Division Director



Mark J. Cleland
Assistant Director

A Message from the Director

The Division of Enforcement has made significant accomplishments in FY 2013. Although the number of new case referrals into the Division has remained consistent, the overall active case load has decreased over recent years. The Division is gaining efficiency in case resolution as we approach parity between cases referred and cases completed. One of the key areas of effort within the Division in 2013 was in the resolution of enforcement cases in the coal mining industry. As part of the ongoing coal water quality initiative, Division staff members conducted compliance determinations through the review of over 74,000 discharge monitoring reports during FY 2013. These compliance determinations led to the referral of 180 new enforcement cases involving 22 coal companies. At the same time, the remaining obligations of the Division were met as staff members provided courteous and professional-level service to the program divisions and the regulated community. I am pleased to be a part of and proud to have the opportunity to lead the staff of the Division of Enforcement.

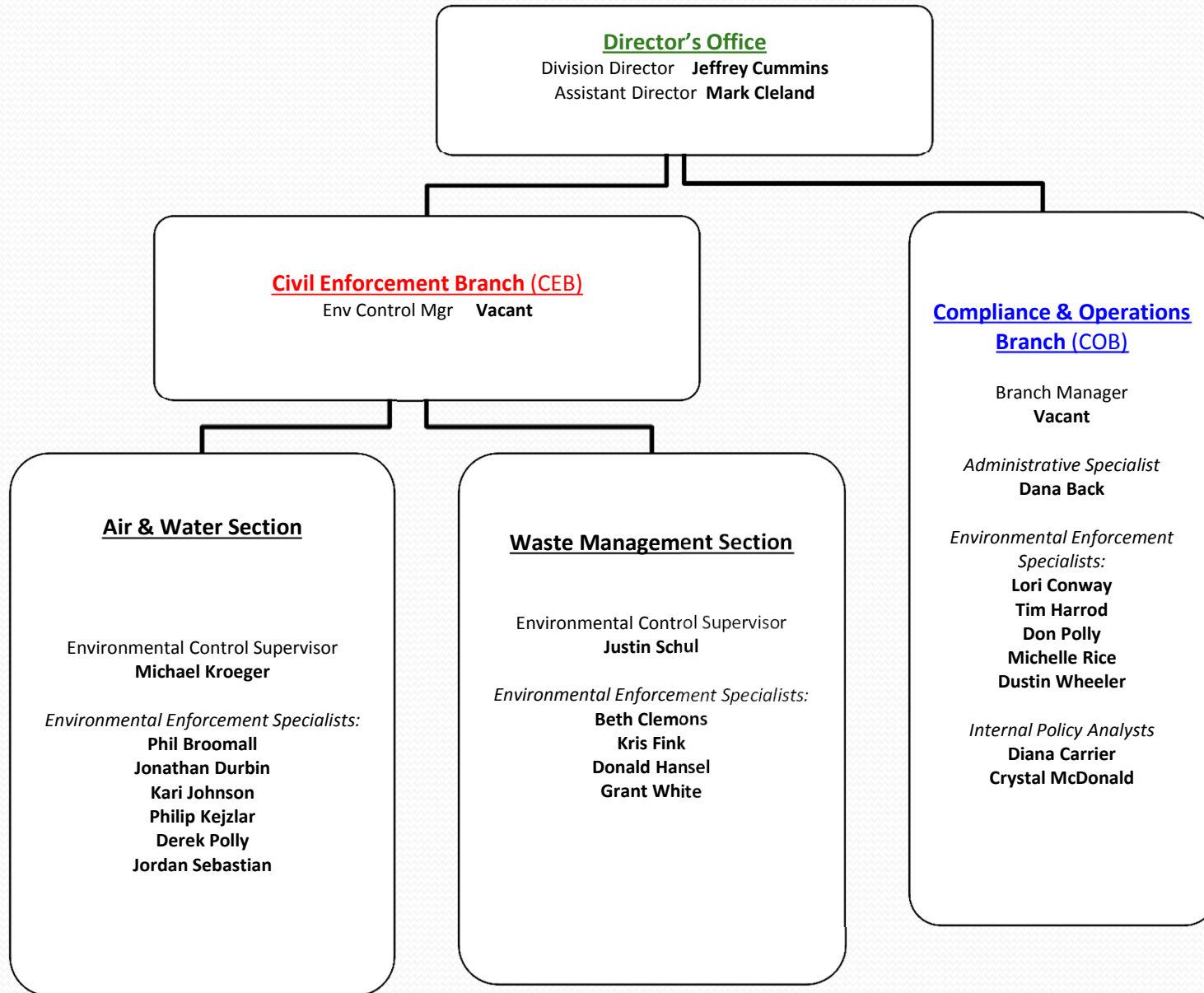
The Division of Enforcement



The Civil Enforcement Branch (CEB) negotiates civil settlements for violations cited by the Department for Environmental Protection. These cases include all media: air, waste, and water. The CEB continues to emphasize multi-media negotiations in order to efficiently and effectively address environmental violations. Currently, there are 10 Environmental Enforcement Specialists (EES) in CEB.

The Compliance and Operations Branch (COB) has two functions: *regulatory compliance* and *administrative support*. Regulatory compliance involves citing environmental violations identified by either the COB or KDEP's central office programs and then attempting to return regulated entities to compliance through the implementation of remedial measures. COB may also refer cases to the Civil Enforcement Branch (CEB) for formal enforcement action. Administrative Support includes functions necessary for the day-to-day operation of the Division: budget, accounts payable, supplies, inventory, training, travel, personnel actions, etc. As of July 2013, there are 5 Environmental Enforcement Specialists (EES), 1 Administrative Specialist, 2 Internal Policy Analysts, and 2 temporary administrative employee in COB.

The Division of Enforcement



The Enforcement Process

The Civil Enforcement Branch

The Civil Enforcement Branch (CEB). When an Environmental Enforcement Specialist (EES) in CEB is assigned a case by DENF's Division Director, they begin researching the case. This involves conducting a file review, discussing the case with the inspector and program specialists, and contacting the regulated entity. The enforcement specialist will begin drafting a resolution strategy, including corrective actions that are required to return the responsible party to compliance and proposed civil penalties for the violations. Upon approval of the resolution strategy, the enforcement specialist schedules an administrative conference with the responsible party.

The Administrative Conference allows the KDEP representatives and the regulated entity to discuss the facts of the case. The enforcement specialist determines whether any information presented during the administrative conference changes the basis of the case resolution proposal and if so, discusses those changes with Division management. The enforcement specialist makes an initial settlement proposal to the responsible party. Negotiations continue until an agreement-in-principle is reached between the Department and the responsible party or until the determination is made that the parties cannot reach a negotiated settlement. The negotiation process can be lengthy, in some cases requiring multiple sessions.

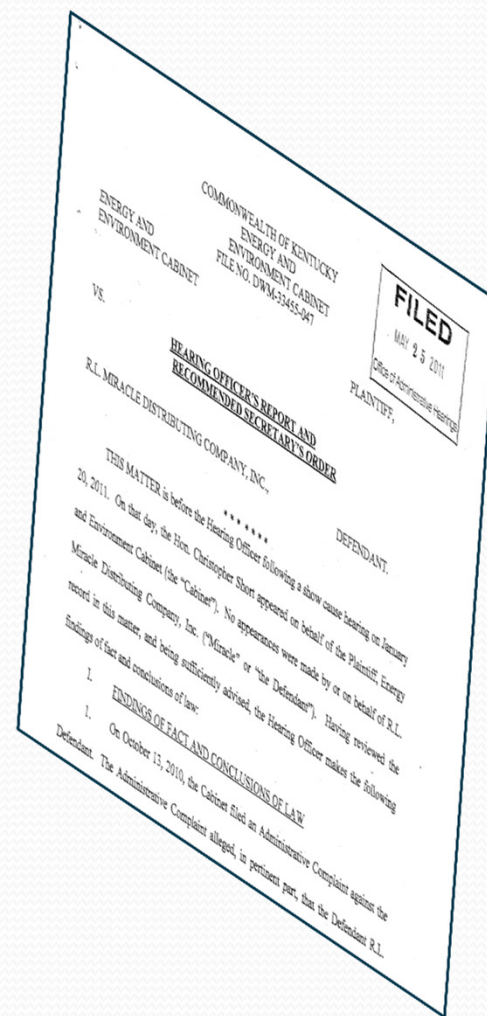


The Enforcement Process

The Civil Enforcement Branch

Environmental Protection Legal Division (EPLD). Should the regulated entity and the Division not reach an agreement-in-principle the case is referred to the Cabinet's EPLD where a Cabinet attorney is assigned to the case. These cases may be resolved through further negotiation, or may proceed to a formal hearing. **In FY2013, DENF referred 158 enforcement cases to EPLD for further action; an average of 13 per month.**

Office of Administrative Hearings (OAH). When the Division is unable to resolve a case due to a multiple of factors, the EPLD attorney will file the case with the Office of Administrative Hearings. A hearing officer considers the facts of the case and makes a recommendation for the resolution of the case to the Cabinet Secretary. The Cabinet Secretary can either accept or modify the hearing officer's recommendation. The final resolution is documented in a Secretary's Order, which is filed with OAH. The Secretary's Order is a final order of the Cabinet and is enforceable in Franklin Circuit Court (FCC). **In FY2013, 18 enforcement cases were resolved through the hearing process, an average of 2 per month.**



The Enforcement Process

The Civil Enforcement Branch

U.S. EPA can become involved in cases involving delegated authority for the state enforcement of federal programs. Examples of delegated programs include the Clean Air Act, the Clean Water Act, elements of the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. The Cabinet will under certain circumstances refer a case to EPA for a federal enforcement action. In some cases, the Cabinet may negotiate an enforcement settlement jointly with U.S. EPA; U.S. EPA has the ability overfile on an enforcement settlement previously reached between the Cabinet and the responsible party and proceed with a federal enforcement action. **Currently, DENF has 5 cases involving U.S. EPA.**

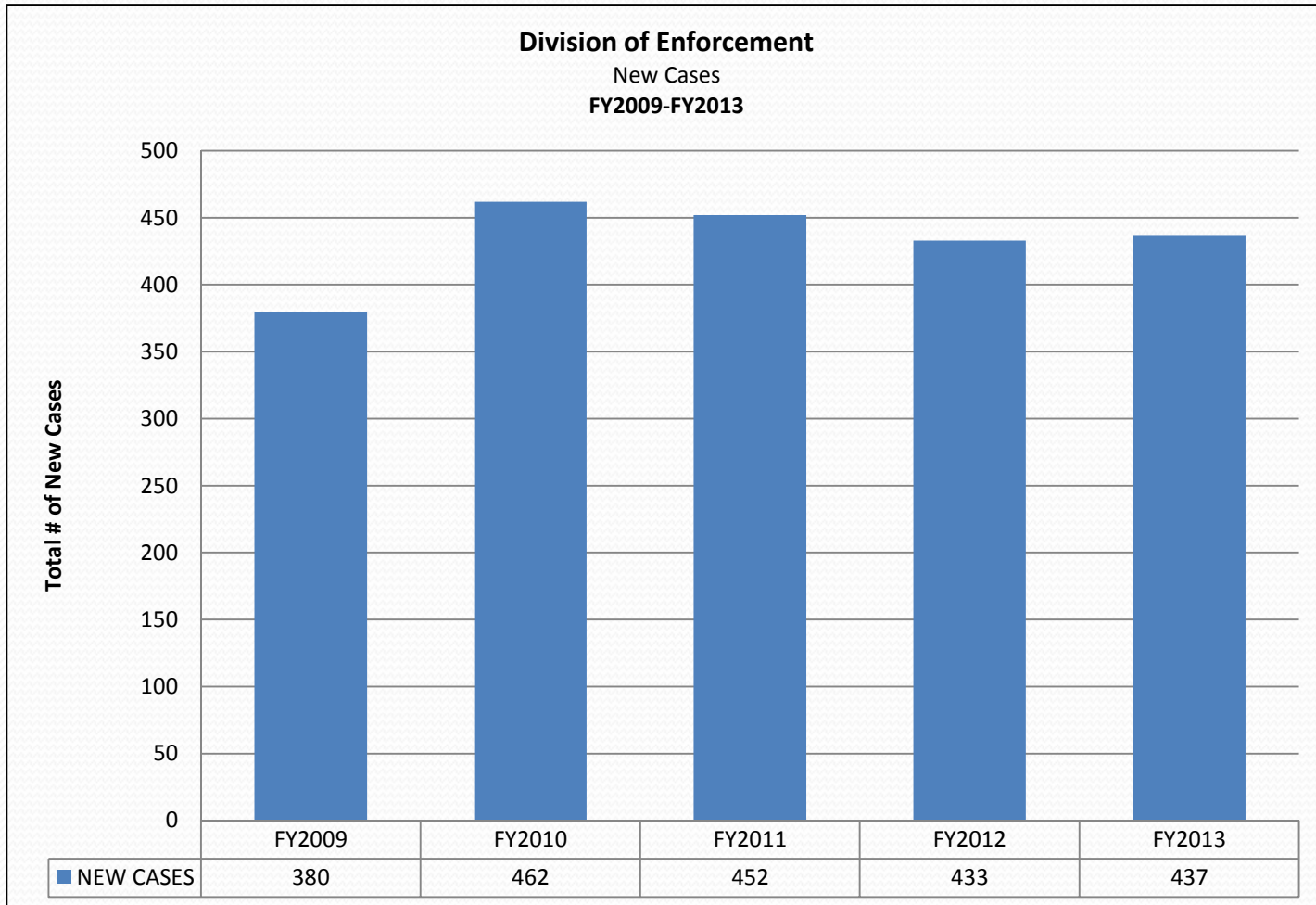


Monitoring. The assigned EES is responsible for monitoring compliance with executed demand letters, agreed orders, or Secretary's Orders. Cases will be closed upon compliance with the executed agreement. Failing to comply with the executed agreement can result in the resumption of settlement negotiations, initiation of a separate enforcement action, or with the Cabinet filing a complaint in Franklin Circuit Court seeking injunctive relief. **At anytime in FY2013, DENF was monitoring an average of 222 cases.**

The Enforcement Process

The Civil Enforcement Branch

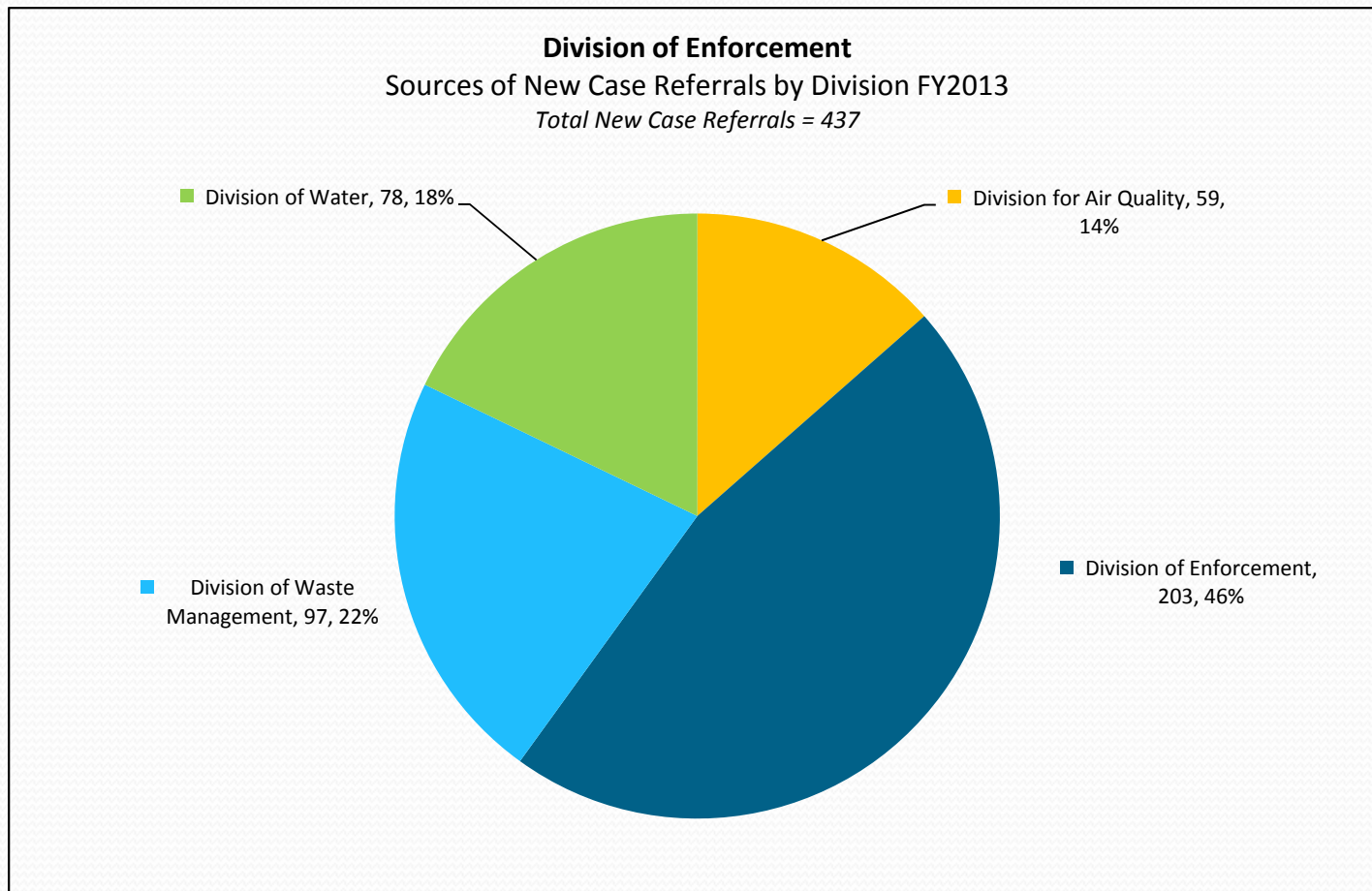
New Cases. In FY2013, the Division of Enforcement received a total of 437 new cases.



The Enforcement Process

The Civil Enforcement Branch

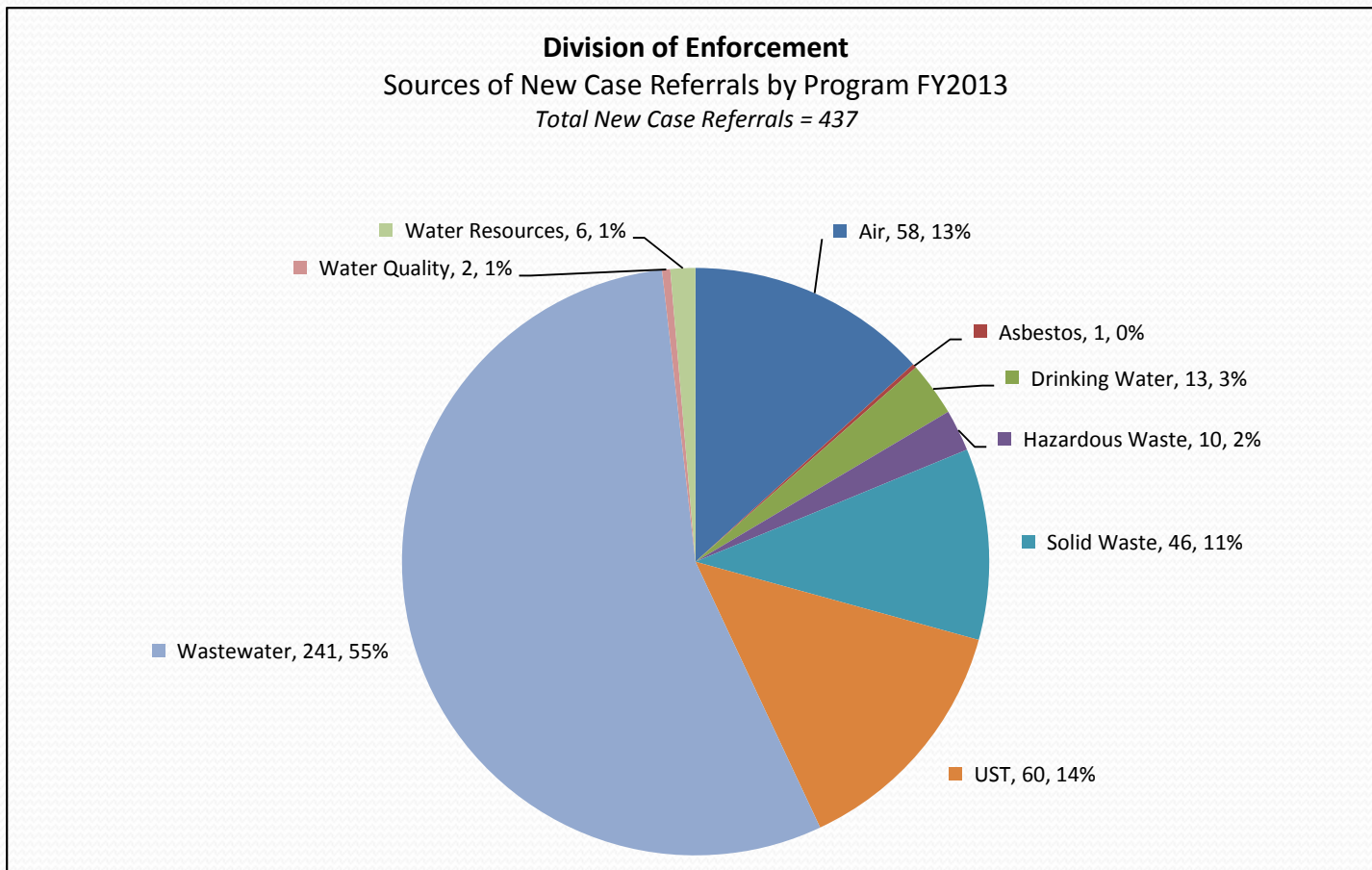
Sources of New Case Referrals. The Division of Enforcement receives case referrals from all three of the media divisions: Air Quality, Waste Management and Water. Internal referrals from the Compliance and Operations Branch within the Division of Enforcement make up 46% of the referrals.



The Enforcement Process

The Civil Enforcement Branch

New Case Referrals by Program. The Division of Enforcement received 437 new case referrals in FY2013 from 9 of the 12 program areas. Of the 437 new case referrals, the highest number came from the wastewater program with 241 (55%) referrals. The Division did not receive any referrals under the groundwater or the recycling and local assistance (RLA) programs in FY2013.



The Enforcement Process

The Civil Enforcement Branch

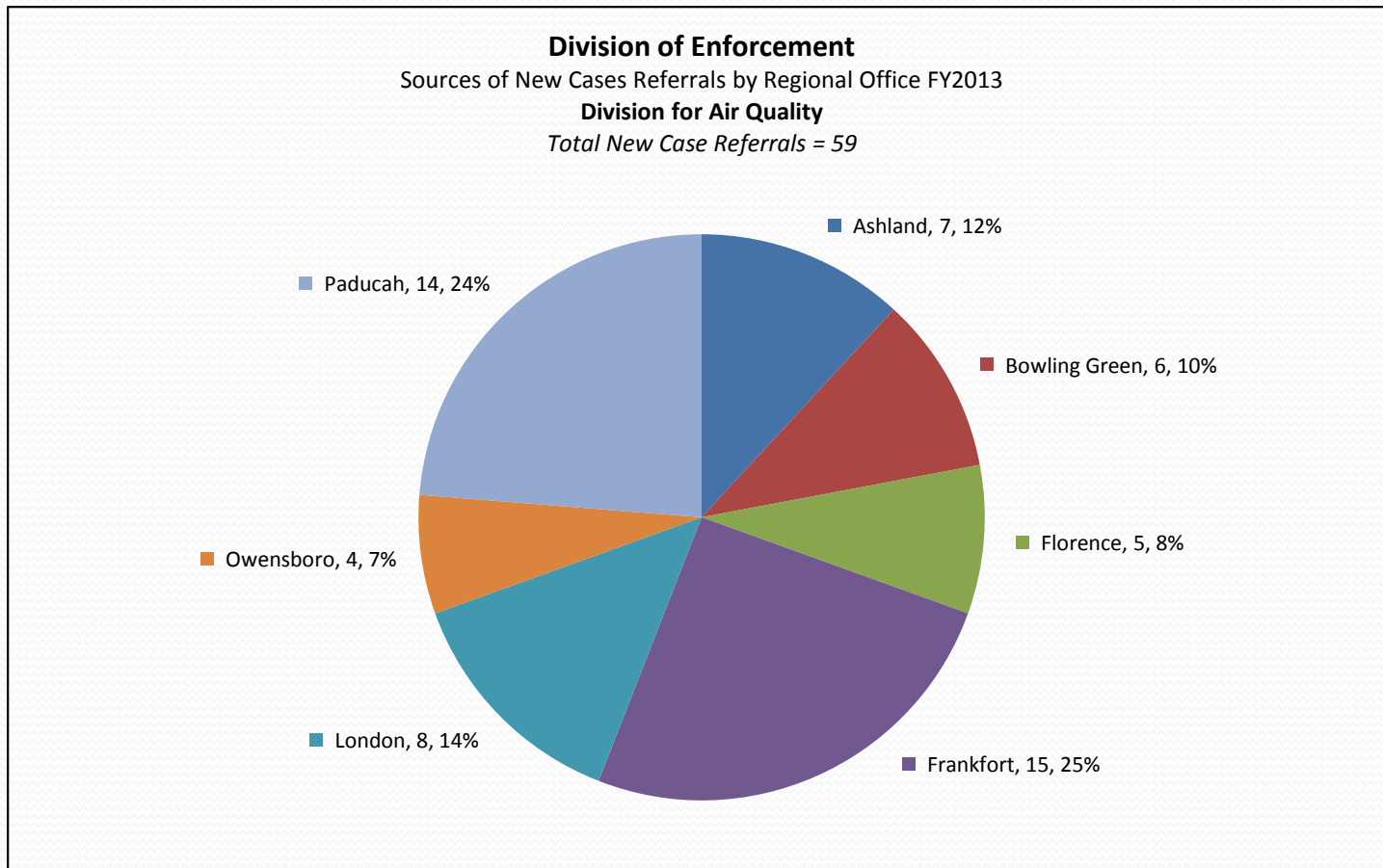
New Case Referrals by Regional Office. The Division of Enforcement receives case referrals from all twelve regional offices, the Department's central office programs, and the Division's COB. Eight of the regional offices include inspectors from all three of the media divisions. Three of the regional offices include inspectors only from DWM and DOW (Columbia R.O., Louisville R.O., and Morehead R.O.). Two of the regional office includes only DAQ inspectors (Ashland R.O. and Owensboro R.O.). The counties covered by each regional office do not coincide among DAQ, DWM, and DOW. The following charts represent the new case referrals from each regional office and division in FY2013.



The Enforcement Process

The Civil Enforcement Branch

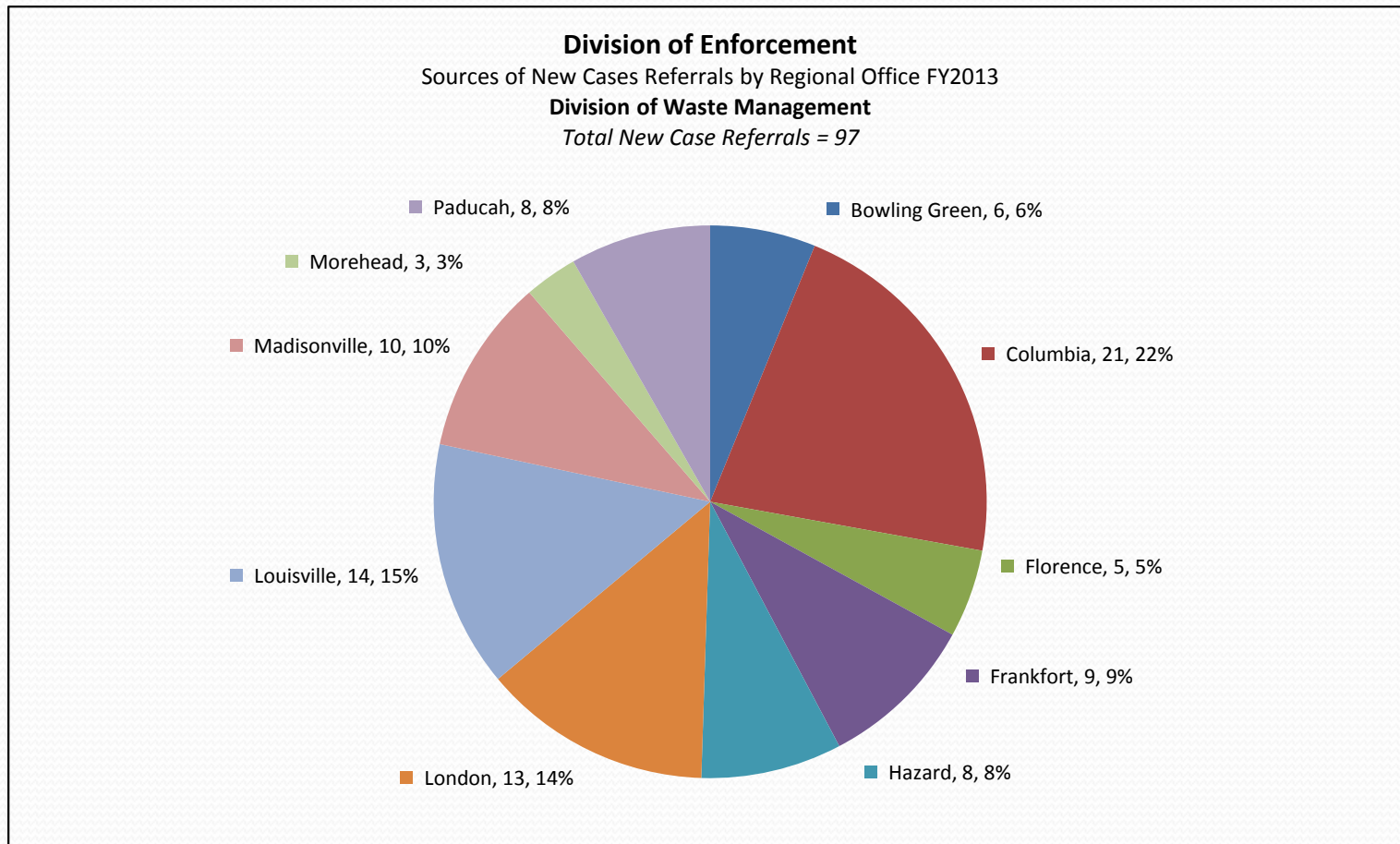
Division for Air Quality. The Division of Enforcement received 59 new case referrals in FY2013 from 7 out of 8 of the Division for Air Quality Regional Offices. Of the 59 case referrals, the highest number came from the Frankfort (15 cases, 25%) and Paducah (14 cases, 24%) Regional Offices. The Division did not receive any air case referrals from the Hazard Regional Office.



The Enforcement Process

The Civil Enforcement Branch

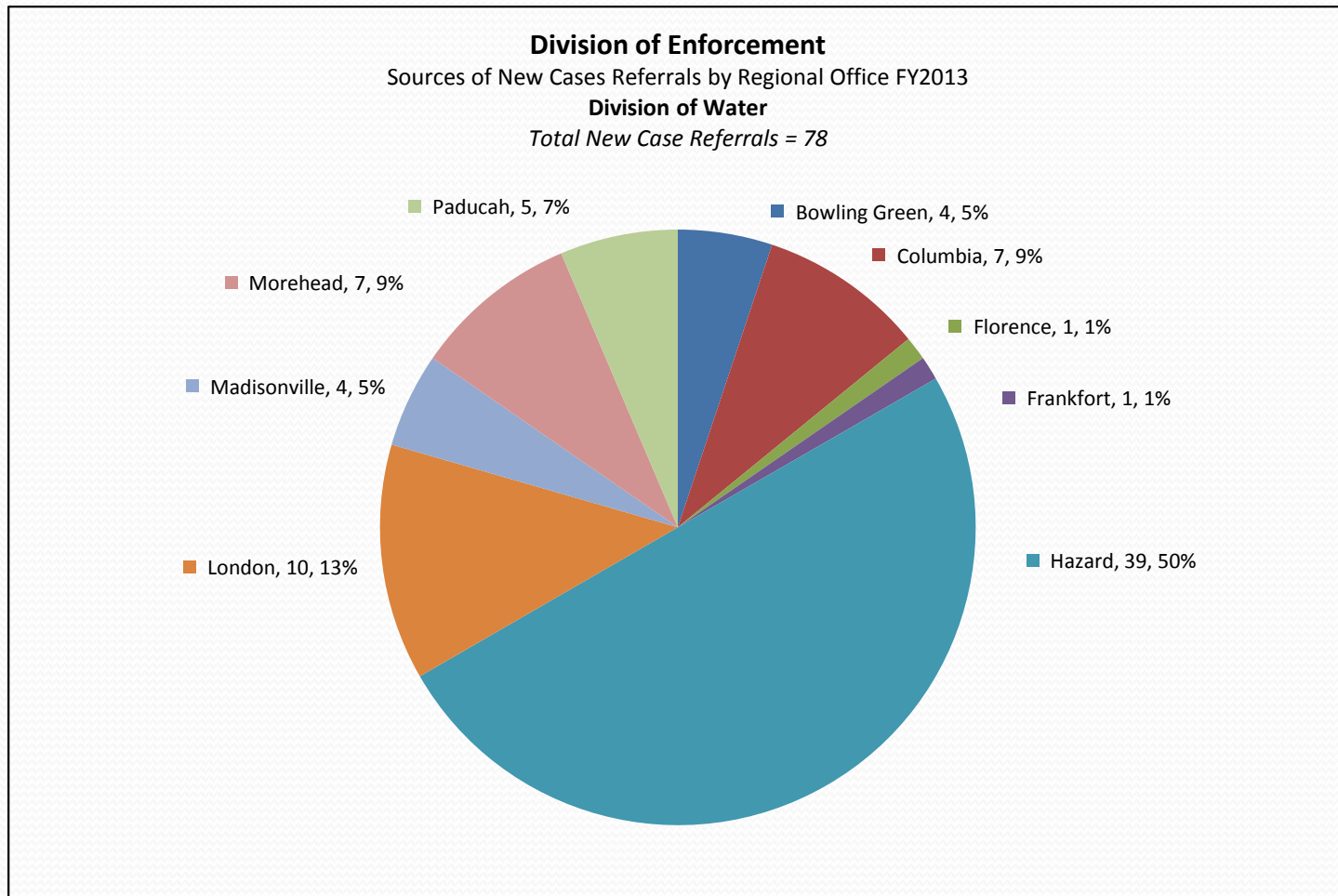
Division of Waste Management. The Division of Enforcement received 97 new case referrals in FY2013 from all 10 of the Division of Waste Management Regional Offices. Of the 97 case referrals, the highest number came from the Columbia (21 cases, 22%) Regional Office followed by the Louisville (14 cases, 15%) and London (13 cases, 14%) Regional Offices.



The Enforcement Process

The Civil Enforcement Branch

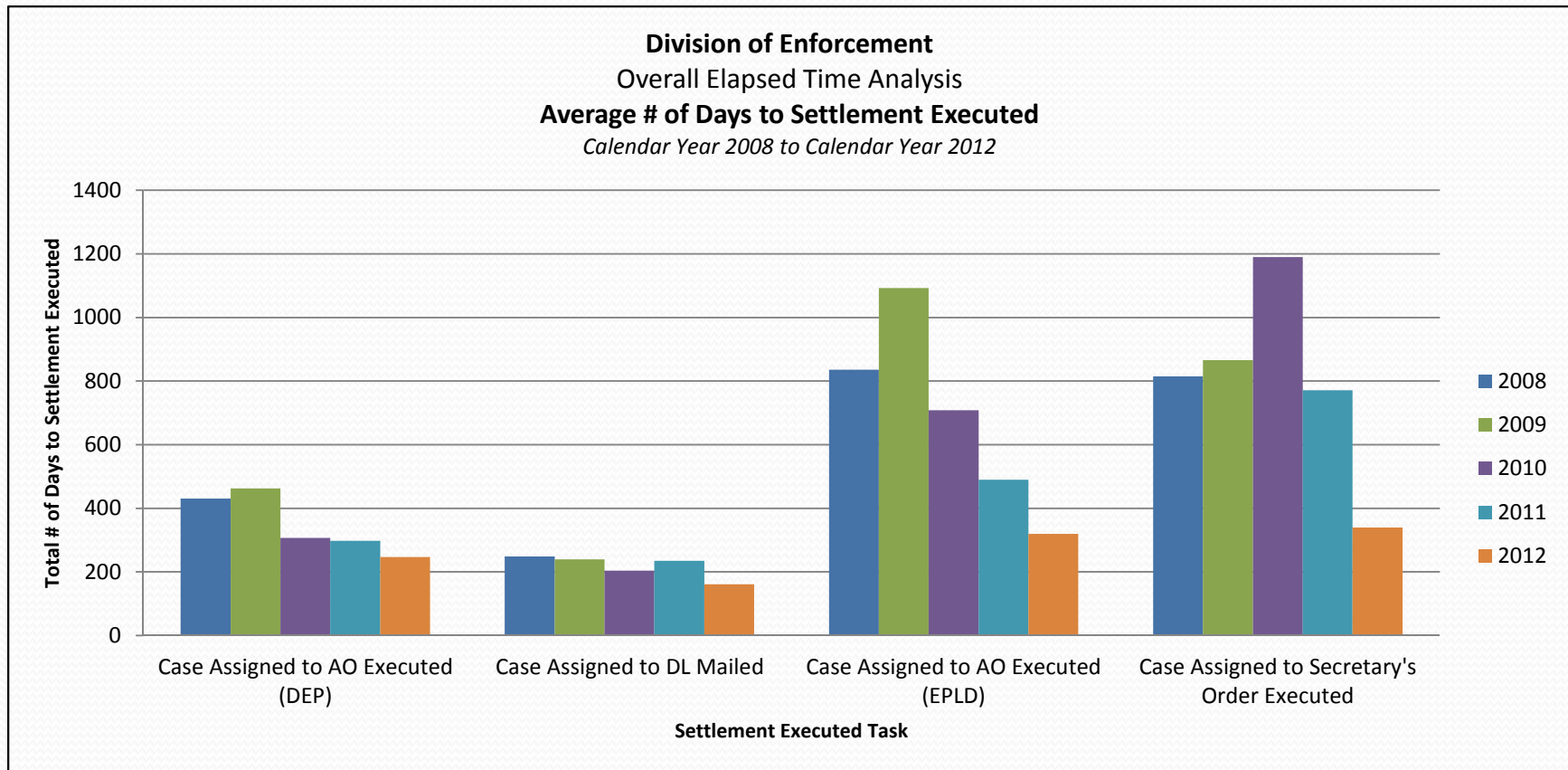
Division of Water. The Division of Enforcement received 78 new case referrals in FY2013 from 9 out of the 10 Division of Water Regional Offices. Of the 78 case referrals, the highest number came from the Hazard (39 cases, 50%) Regional Office which accounted for more than half of the caseload. The Louisville Regional Office did not refer any water cases.



The Enforcement Process

The Civil Enforcement Branch

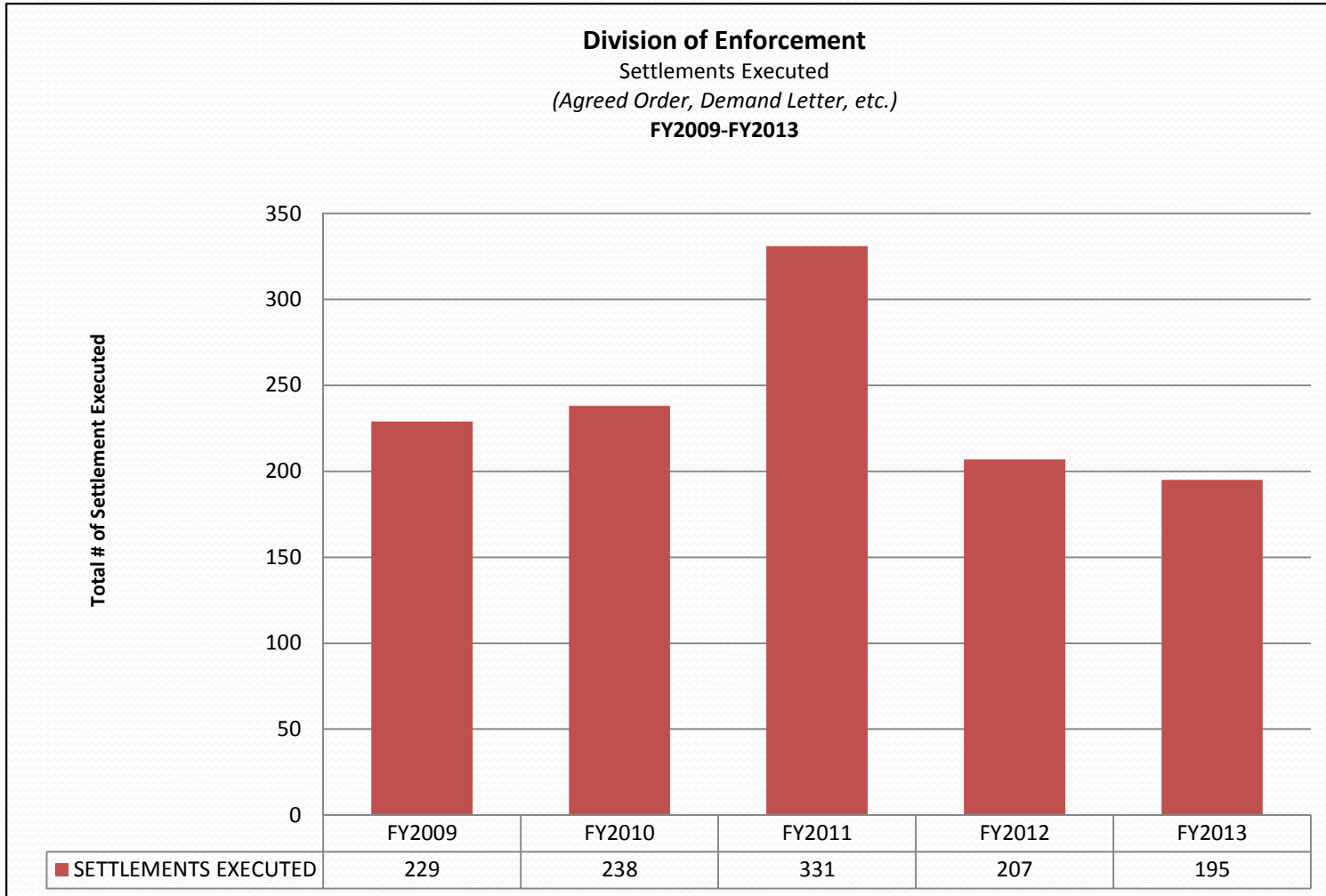
Executed Settlements. The Division of Enforcement uses Agreed Orders (AO), Demand Letters (DL), Environmental Protection Legal Division (EPLD) Agreed Orders and Secretary Orders (SO) to settle enforcement cases. The chart below shows the average number of days to reach each executed task to settle an enforcement case.



The Enforcement Process

The Civil Enforcement Branch

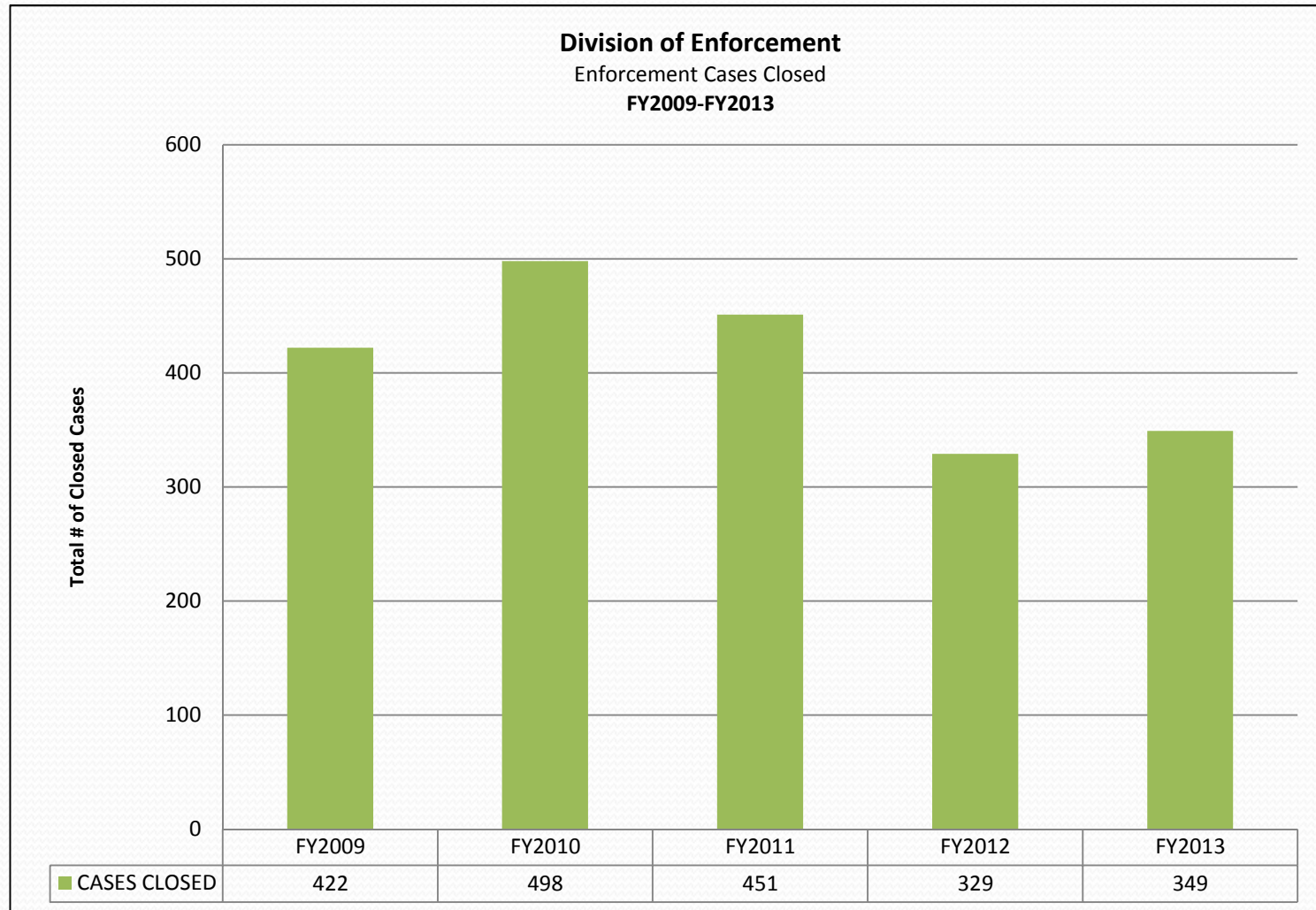
Executed Settlement Documents. In FY2013, the Division of Enforcement executed 195 Agreed Orders and Demand Letters .



The Enforcement Process

The Civil Enforcement Branch

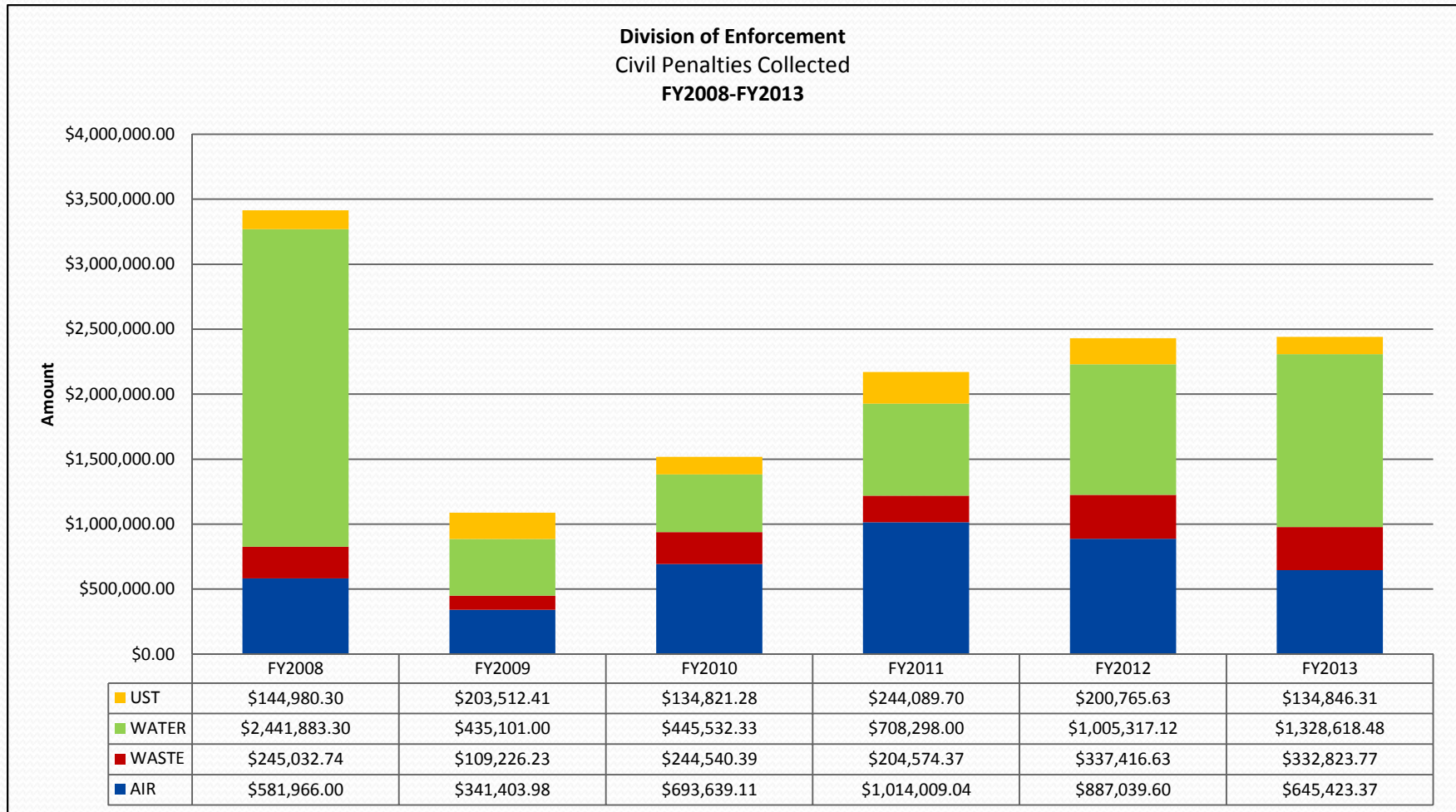
Closed Cases. The Division of Enforcement closed 349 cases in FY2013.



The Enforcement Process

Civil Penalties

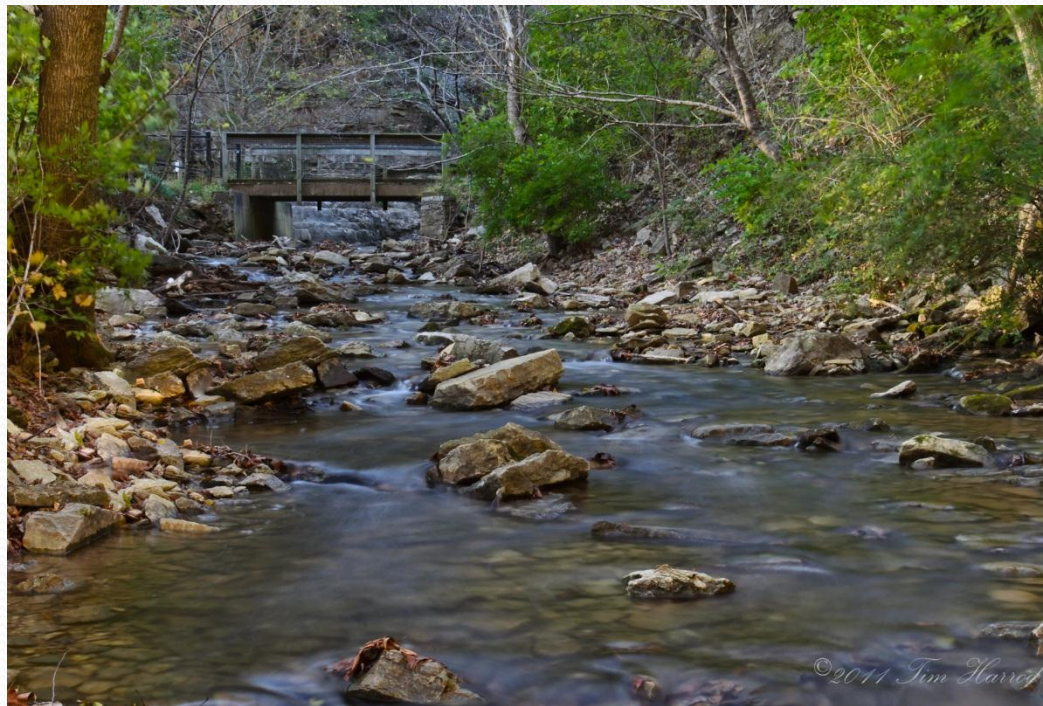
Civil Penalties. The following grid shows the amount of civil penalties collected by the Division of Enforcement for the last five fiscal years and to which program they benefited.



The Division of Enforcement

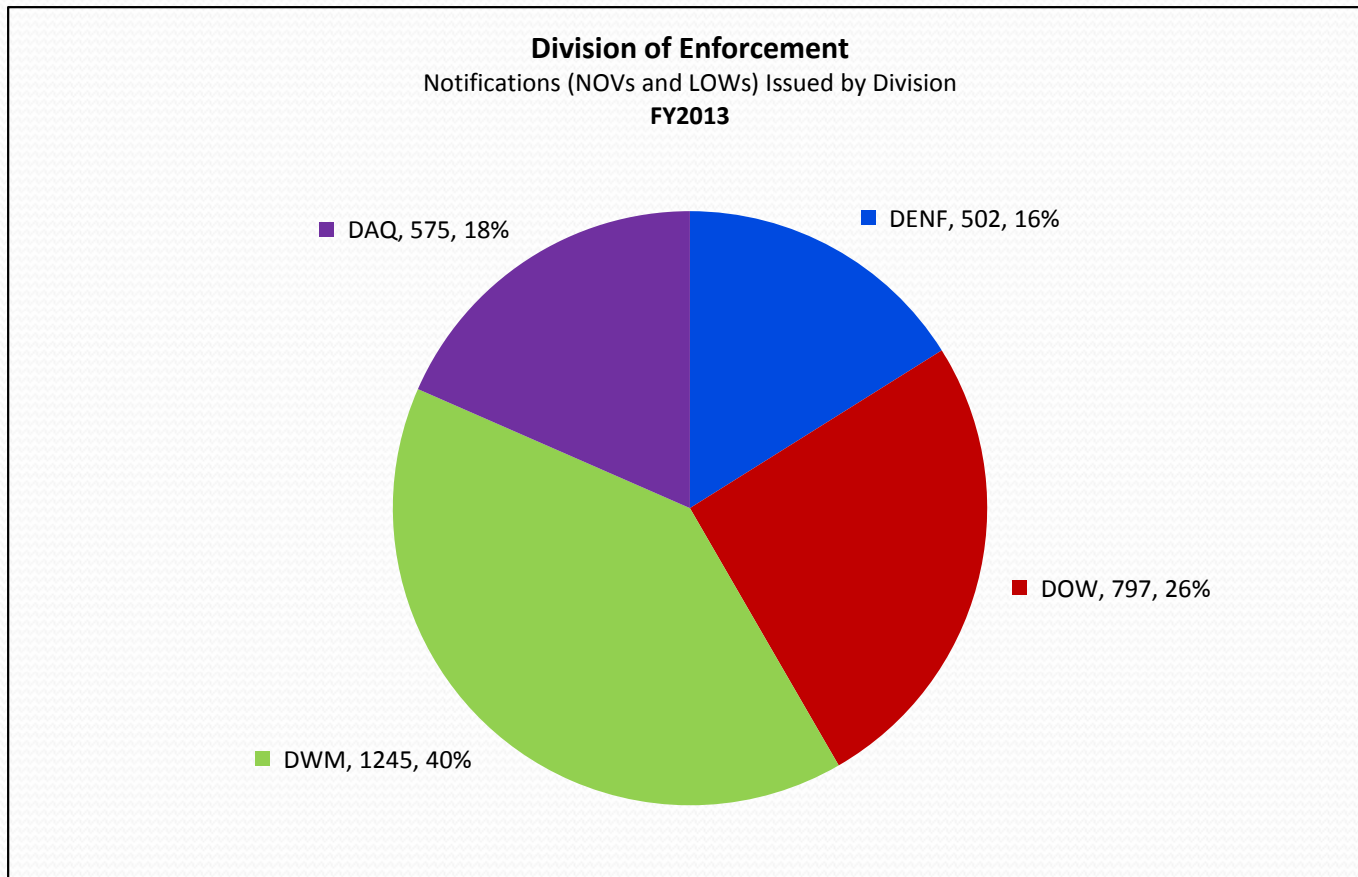
The Compliance and Operations Branch

Compliance Activity. The Division of Enforcement's Compliance and Operations Branch issues Notices of Violation (**NOVs**) and Letters of Warning (**LOWs**) ("*Notifications*") for violations discovered through review of Discharge Monitoring Reports submitted by facilities with KPDES permits and for violations discovered by KDEP Central Office program staff.



The Division of Enforcement The Compliance and Operations Branch

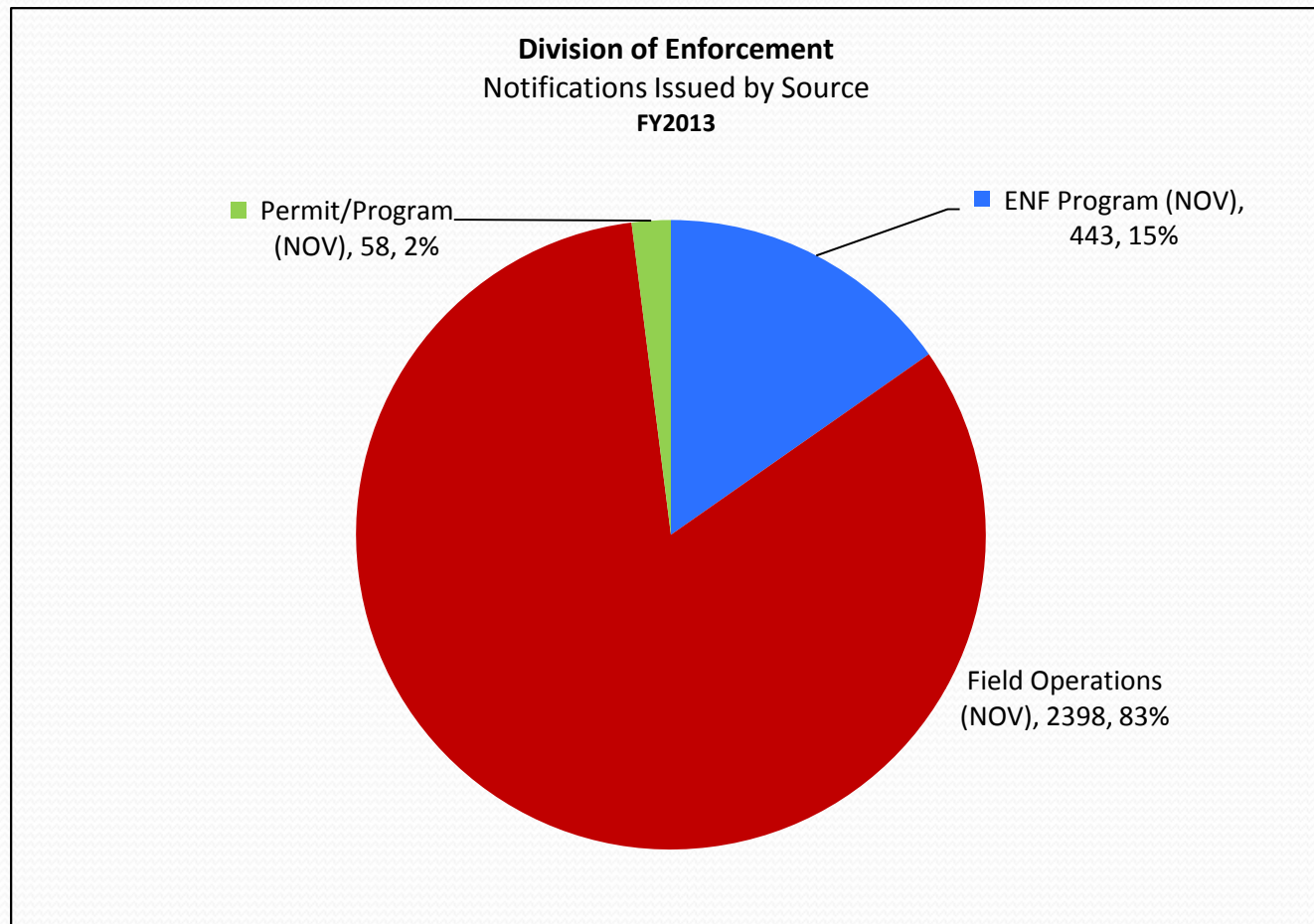
Notifications Issued by Division. In FY2013, the Division of Enforcement issued a total of 502 notifications, representing 16% of the total notifications issued by the Department for Environmental Protection. The most notifications come from the Division of Waste Management with 1245 with a total of 3,119 notifications being issued in FY2013.*



**This does not include NOVs for the Drinking Water Program issued by DOW.*

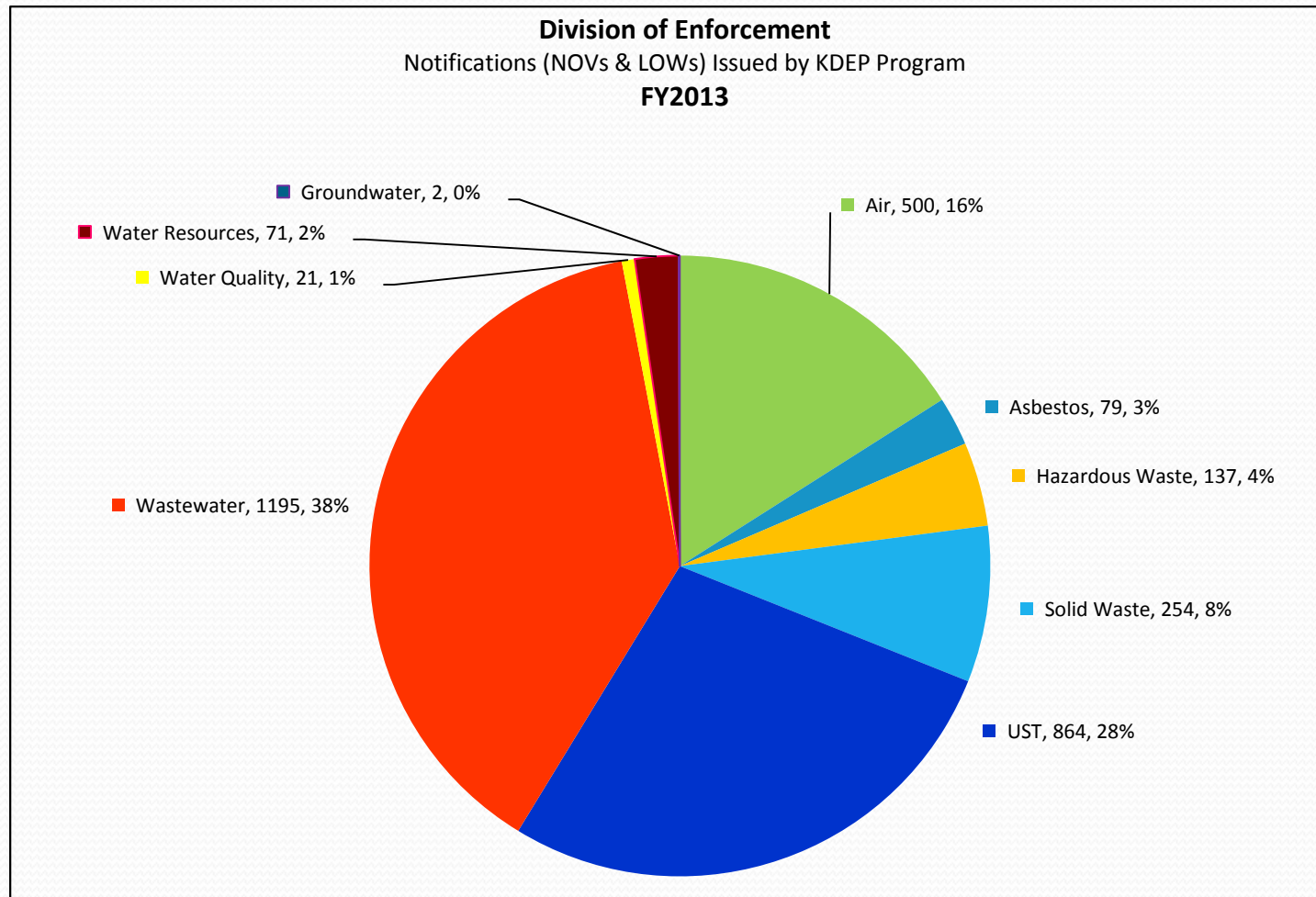
The Division of Enforcement The Compliance and Operations Branch

Notifications by Source. The majority of the NOVs were issued by KDEP's *Field Operations* with a count of 2,398 (83%). The Division of Enforcement (*ENF Program*) Issued 15% of the NOVs through review of Discharge Monitoring Reports (DMRs) submitted by KPDES permitted facilities. The remaining Permit/Program NOVs were issued by DENF upon referral from the Central Office programs.



The Division of Enforcement The Compliance and Operations Branch

Notifications Issued by DEP Program. In FY2013, the largest number of notifications issued by KDEP was in the wastewater program with 1,195 (38%) notifications issued, followed by the UST program with 864 (28%). The air and solid waste programs follow for the most notifications in FY2013, for a total of 3,123 for the fiscal year from all programs.





“Success in the Commonwealth”

Successfully resolved enforcement cases in FY13

AK Steel Corporation

The United States and the Commonwealth of Kentucky have reached a settlement with the AK Steel Corporation (AK Steel) in Ashland, Ky., resolving alleged violations of the Clean Air Act, AK Steel’s title V permit, and the Kentucky State Implementation Plan. Under the terms of settlement, AK Steel will pay a civil penalty of \$1.65 million, of which \$25,000 will be paid to the Commonwealth of Kentucky, for the alleged violations that occurred at AK Steel’s former coke production facility in Ashland. AK Steel shut down the coke plant on June 21, 2011. Coke is used as a carbon source and as a fuel to heat and melt iron ore at steel making facilities. Although AK Steel closed the plant involved in this enforcement action, AK Steel is currently operating the Ashland West Works facility a few miles away from the former coke plant. Under the agreement, AK Steel has agreed to spend at least \$2 million on state projects to reduce particulate matter emissions at the Ashland West Works facility.

Eastern Kentucky University (EKU)

Eastern Kentucky University was cited for dumping illegal materials, including fluorescent light bulbs, trash, and construction demolition debris, at a site adjacent to their main campus. Groundwater samples taken at the site exceeded the maximum contaminant levels for Cadmium, Chromium, and Lead. EKU conducted cleanup and monitoring, with oversight by the DWM Superfund Branch. Based on compiled groundwater sampling data, Superfund issued a letter of completion to EKU on August 12, 2012. A Demand Letter was issued on August 31, 2012 and EKU paid a \$5,000 civil penalty.

Esta Walters Lease/Gibraltar Kentucky Development LLC

Gibraltar Development operated a crude oil tank battery in Lawrence County. A release of crude oil impacted Sugar Tree Branch creek around November 2011. The Cabinet’s *Environmental Response Team* (ERT) responded and hired a contractor to conduct cleanup. The Division of Waste Management issued an NOV on January 19, 2012. The case was referred to Superfund for oversight and Gibraltar finished the remaining cleanup at the site. Superfund deemed the site remediated on January 24, 2013. Gibraltar went into bankruptcy, the case was referred to OLS, and the Cabinet received a cost recovery settlement in the amount of \$137,088.63.

Ohio Valley Aluminum

Ohio Valley Aluminum is a secondary aluminum recycling facility located in Shelby County. They were issued multiple NOVs by the Division for Air Quality from 2006 through 2011 for violations of secondary aluminum MACT standard. Subpart RRR facilities were an EPA national priority and the case had a high degree of federal oversight. Ohio Valley developed a scrap monitoring plan, the first of its kind in the nation, and conducted a stack test to demonstrate compliance with dioxin/furan limits in November 2011. An Agreed Order, executed on June 19, 2012, assessed a civil penalty of \$125,000 that was paid.

Superway Inc.

This case included nine (9) facilities cited for a wide range of underground storage tank violations. In 2009, the responsible party violated the terms of the Secretary’s Order. In February 2011, the Cabinet was awarded a Default Judgment in Franklin Circuit Court. In October 2011, the Cabinet was awarded a Contempt Order allowing DEP to chain the dispensers with the assistance of the Kentucky State Police. The chains remained on the pump nozzles until the responsible party corrected specified violations.

In June 2013, the Division of Enforcement was able to negotiate a final settlement with the responsible party resulting in a Second Amended Contempt Order filed in Franklin Circuit Court. The Order stated that the regulated entity shall pay (\$65,000) in civil penalty and immediately remit (\$6,290) in back tank fees. Additionally, should the responsible party fail to return the facilities to compliance, and remain compliant for a period of (3) years, the Cabinet will have the on-going authority to chain and lock the dispensers and remove all of the product from all of the regulated entity’s active tank systems until all of the violations have been corrected.



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Energy and Environment Cabinet

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