

Kentucky Division of Enforcement Annual Report Fiscal Year 2010



Energy and Environment Cabinet
Department for Environmental Protection
Division of Enforcement
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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 Environmental and Public Protection Cabinet. Several of the changes involved the Department for Environmental Protection, one of which was the creation of a new Division of Enforcement. The new Division of Enforcement combined the staff and most of the activities previously included in the enforcement branches of the Division for Air Quality, the Division of Waste Management and the Division of Water. 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.

The objective of the Division of Enforcement is reflected in its mission statement:

"To use a clear and consistent approach in bringing about and maintaining compliance with the Department for Environmental Protection's air, waste, and water environmental regulatory programs by using appropriate and reasonable measures to resolve cases in a timely manner."

ORGANIZATION

The Division of Enforcement consists of 3 units: the Director's Office, the Civil Enforcement Branch, and the Compliance and Operations Branch. Each of these units performs a distinct 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 DEP and the Cabinet. The Director's Office consists of a Director, currently vacant, an Assistant Director, who serves as the acting Director, and an Administrative Specialist, currently vacant.

The Civil Enforcement Branch (CEB) negotiates civil settlements to resolve environmental violations. There are three sections within the Civil Enforcement Branch: the Case Resolution Section East, the Case Resolution Section West, and the Special Programs Section. Cases for all media (air, waste, water) are assigned to either of the two Case Resolution Sections based on geographical location. The Special Programs Section is responsible for the resolution of cases for specific initiatives, including the open dump initiative. In addition, the Special Programs Section manages programs with high volumes of enforcement cases, such as the underground storage tank program. The Civil Enforcement Branch consists of a branch manager (currently vacant) three section supervisors, and twelve Environmental Enforcement Specialists.

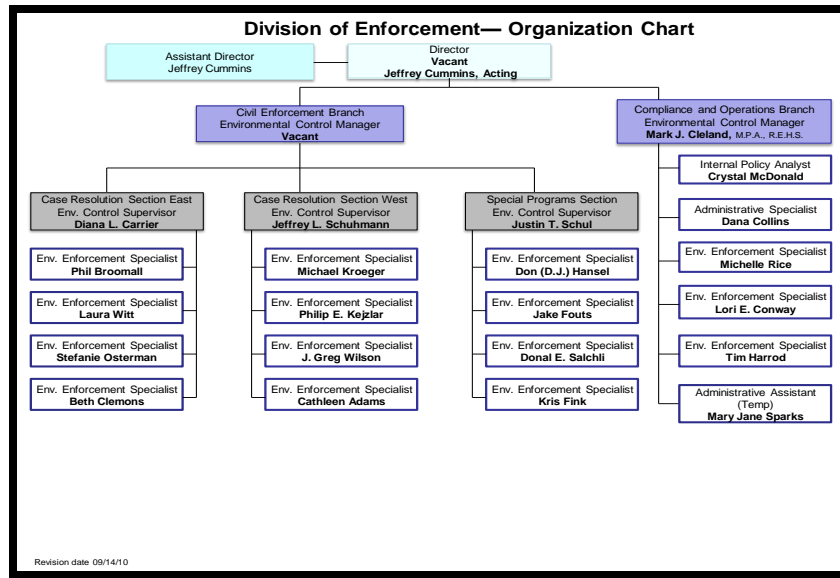


Figure 1 – Division of Enforcement organization chart

The Compliance and Operations Branch (COB) has two distinct 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. The Compliance and Operations Branch may refer cases to the Civil Enforcement Branch for formal enforcement action. Administrative support includes those functions necessary for the day-to-day operation of the Division: budget, accounts payable, supplies, inventory, vehicle maintenance, training, travel, personnel actions, etc. The Compliance and Operations Branch consists of a branch manager, three Environmental Enforcement Specialists, an Administrative Specialist, an Internal Policy Analyst, and a half-time temporary administrative employee.

Staffing

The Division of Enforcement’s staffing was stable in FY2010. The Assistant Director position was filled by Jeffrey Cummins, who was previously the Environmental Control Manager for the CEB. The CEB Manager position remained vacant for the remainder of the fiscal year. Two Environmental Enforcement Specialists were hired to fill vacant positions, one in the Case Resolution Section –East and one in the Special Programs Section. One Environmental Enforcement Specialist position was transferred from the Case Resolution Section – West to the Compliance and Operations Branch.

CIVIL ENFORCEMENT BRANCH

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.

Enforcement Process

The Civil Enforcement Branch receives case referrals from the three program divisions (Division for Air Quality, Division of Waste Management, and Division of Water) and from the Division of Enforcement's Compliance and Operations Branch. An enforcement specialist is assigned to the case and proceeds to research the history and nature of the violations, as well as relevant information about the responsible party. The enforcement specialist then develops a resolution strategy and documents that strategy in a case resolution proposal. The case resolution proposal includes corrective actions that are required to return the responsible party to compliance and a proposed civil penalty for the violations.

The case resolution proposal is submitted for review at the section and branch level and is approved by the director of DENF. Upon approval of the case resolution proposal, the enforcement specialist schedules an administrative conference with the responsible party. This administrative conference is typically held in person at the DENF offices, but may be held telephonically based upon the circumstances of the case.

The administrative conference allows the DEP representatives and the responsible party to discuss the facts of the case. The enforcement specialist determines whether any information revealed during the administrative conference changes the basis of the case resolution proposal and if so, discusses those changes with Division management. The enforcement specialist then makes an initial settlement proposal to the responsible party, if appropriate. 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.

Upon reaching an agreement-in-principle, the enforcement specialist drafts a written document to formalize an agreement. Demand letters, which are unilateral orders, are often used when required corrective actions can be completed in relatively short timeframes or when no specific actions are required. Demand letters are formalized by the signature of the Director of DENF. Demand letters are not final orders of the Cabinet, and as such are not enforceable in Franklin Circuit Court. Agreed Orders, which are bi-lateral agreements, are used for more complicated or time-dependent agreements. Agreed Orders are formalized by the signature of the Cabinet Secretary and filed with the Cabinet's Office of Administrative Hearings. Agreed Orders are one form of a final order of the Cabinet, and as such are enforceable in Franklin Circuit Court.

The responsible party and the Department may not reach an agreement-in-principle in some cases. These cases are referred to the Environmental Protection Legal

Division (EPLD), a Cabinet attorney is assigned to the case, and a complaint is filed with the Office of Administrative Hearings (OAH). These cases may be resolved through further negotiation, or may proceed to a formal hearing. Upon referral of a case to EPLD, the enforcement specialist assumes the role of client contact and assists the attorney as necessary in the development of the case. When a case goes to formal administrative hearing, 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.

The assigned enforcement specialist is responsible for monitoring compliance with any agreement that resolves a case, whether it is a demand letter, agreed order, or Secretary's Order. Compliance with the agreement leads to the closure of the case. Failing to comply with the 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 enforcement of the order.

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. Alternately, U.S. EPA may overfile on an enforcement settlement previously reached between the Cabinet and the responsible party and proceed with a federal enforcement action.

ENFORCEMENT CASE REFERRAL SOURCES

The Division of Enforcement receives case referrals from all three of the media divisions (Air Quality, Waste Management, Water), as well as internal referrals from the Compliance and Operations Branch. Figure 2 shows the breakdown of the new cases referred in FY2010 by division. Of 458 new cases referred to the Division in FY2010, 220 (48%) were referred from the Division for Waste Management, 123 (27%) were referred from the Division of Water, 84 (18%) were referred from the Division for Air Quality, and 31 (7%) were referred from within the Division of Enforcement.

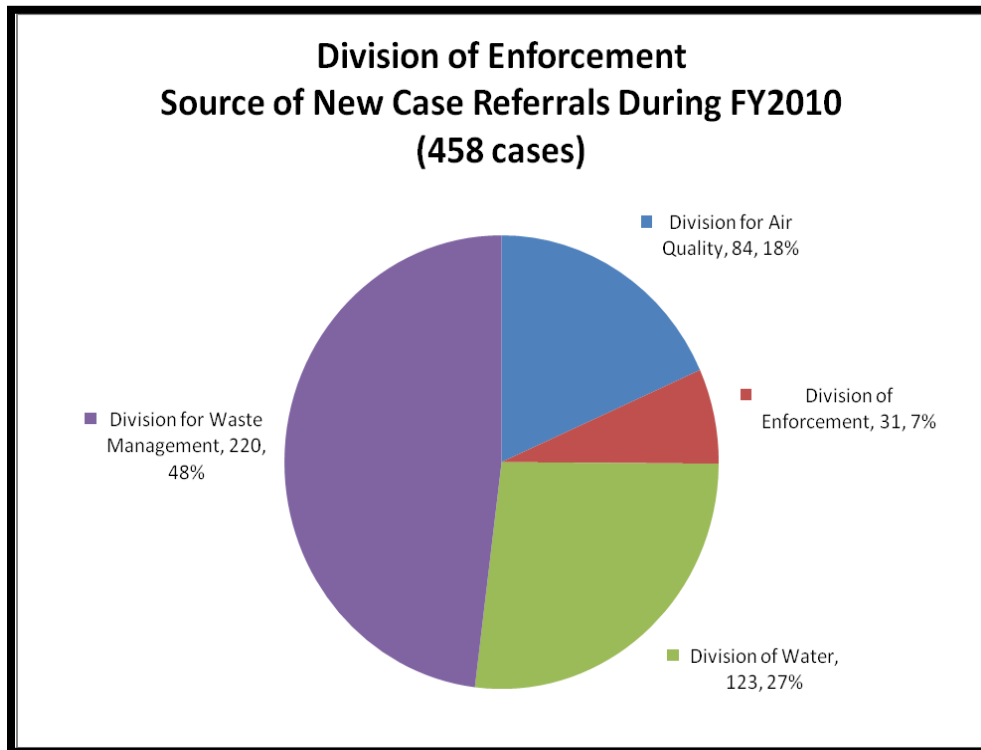


Figure 2 – Source of new enforcement cases by division in FY2010.

The Division of Enforcement received new case referrals in FY2010 in 8 of the 12 program areas. Of the 458 new case referrals, the underground storage tank (UST) program accounted for 143 cases (31%). The Division received 128 (28%) wastewater cases, 84 (18%) air cases, and 54 (12%) solid waste cases. The remaining 49 cases were from the hazardous waste, drinking water, water resources, and water quality programs. The Division did not receive any referrals under the environmental protection (Environmental Response Team), groundwater, asbestos (AHERA), and recycling and local assistance (RLA) programs.

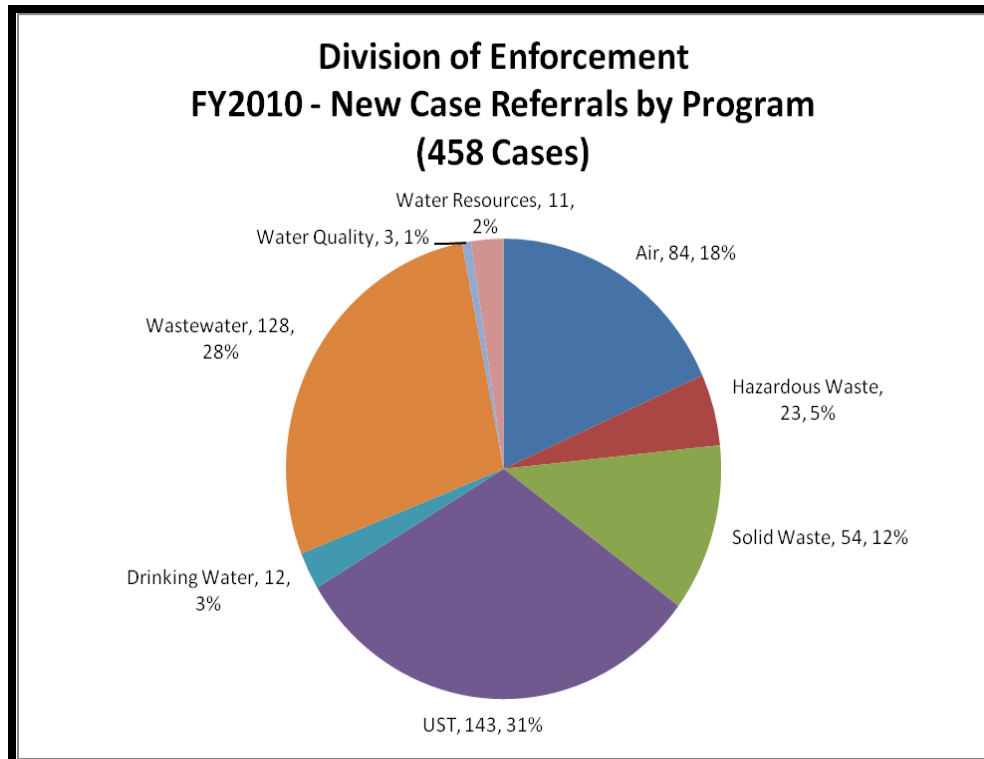


Figure 3 – Source of new enforcement cases by program in FY2010.

The Division of Enforcement receives its cases from the twelve regional offices, the Department’s central office programs, and the Division’s Compliance and Operations Branch. 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 offices include 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 Division for Air Quality referred 84 new enforcement cases to the Division of Enforcement in FY2010. The Paducah R.O. referred 25 cases (30%) in FY2010 and was the largest source for air enforcement cases. The Frankfort R.O. referred 20 enforcement cases (24%) in FY2010. The Bowling Green R.O., London R.O., and Owensboro R.O. each referred 9 cases (11% each). All eight of DAQ’s regional office referred new cases to the Division in FY2010 (see Figure 4). DAQ’s central office programs refer issues they discover to the regional offices for investigation and compliance determinations and do not refer cases directly to the Division.

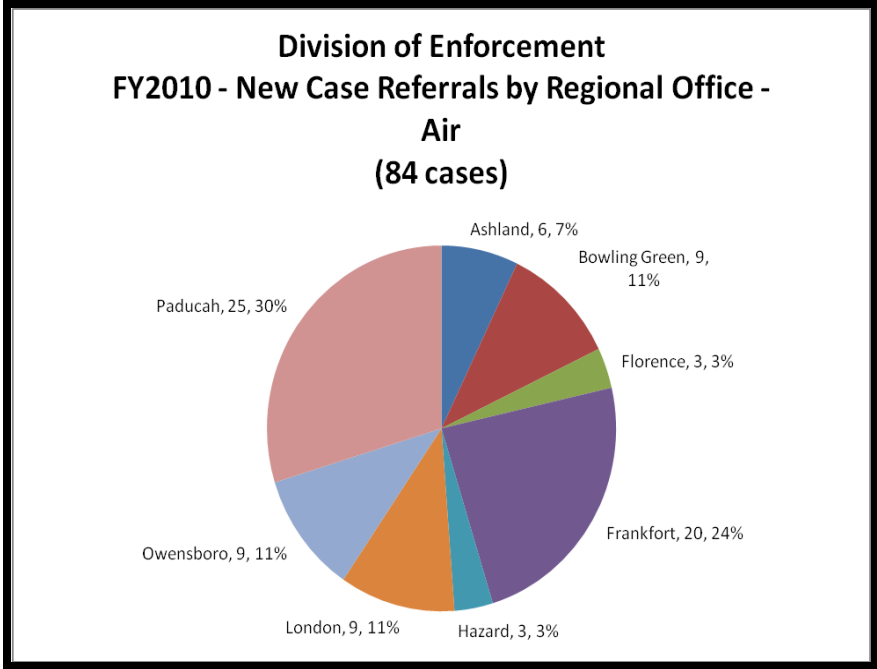


Figure 4 – FY2010 new case referrals from the Division for Air Quality by regional office.

All ten of the Division for Waste Management’s regional offices referred enforcement cases to the Division in FY2010. The 220 cases referred by DWM show a surprisingly even split, ranging from 11 cases (5%) to 35 cases (16%). The Hazard R.O. referred the most cases in FY2010, with 35 new case referrals (16%). The Frankfort R.O. (28 cases), London R.O. (29 cases), and Louisville R.O. (29 cases) were each responsible for 13% of the case referrals. DWM’s central office programs did not refer any cases in FY2010.

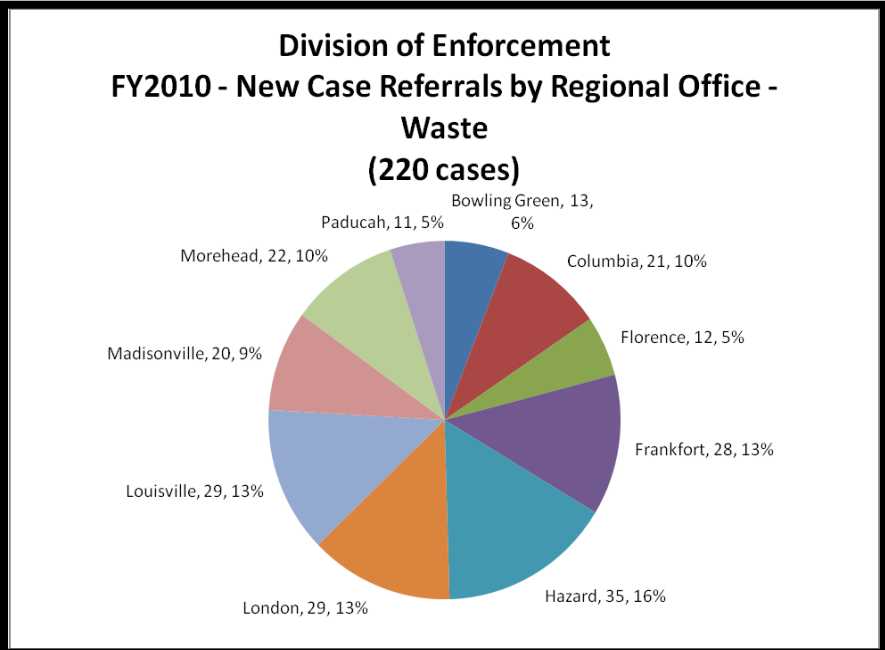


Figure 5 – FY2010 new case referrals from the Division for Waste Management by regional office.

All 10 of the Division of Water’s regional office referred cases to the Division of Enforcement in FY2010. Of the 123 water cases referred by DOW, the number of

regional office case referrals ranged from 2 cases (1%) to 37 cases (30%). DOW's central office programs referred 18 cases (15%), which is a larger number of referrals than all but one of the regional offices. The Hazard R.O. was the source of 37 cases (30%) and the largest source of case referrals from DOW. The Frankfort R.O. referred 14 new cases (11%), the London R.O. referred 12 cases (10%), and the Columbia R.O. office referred 11 cases (9%),

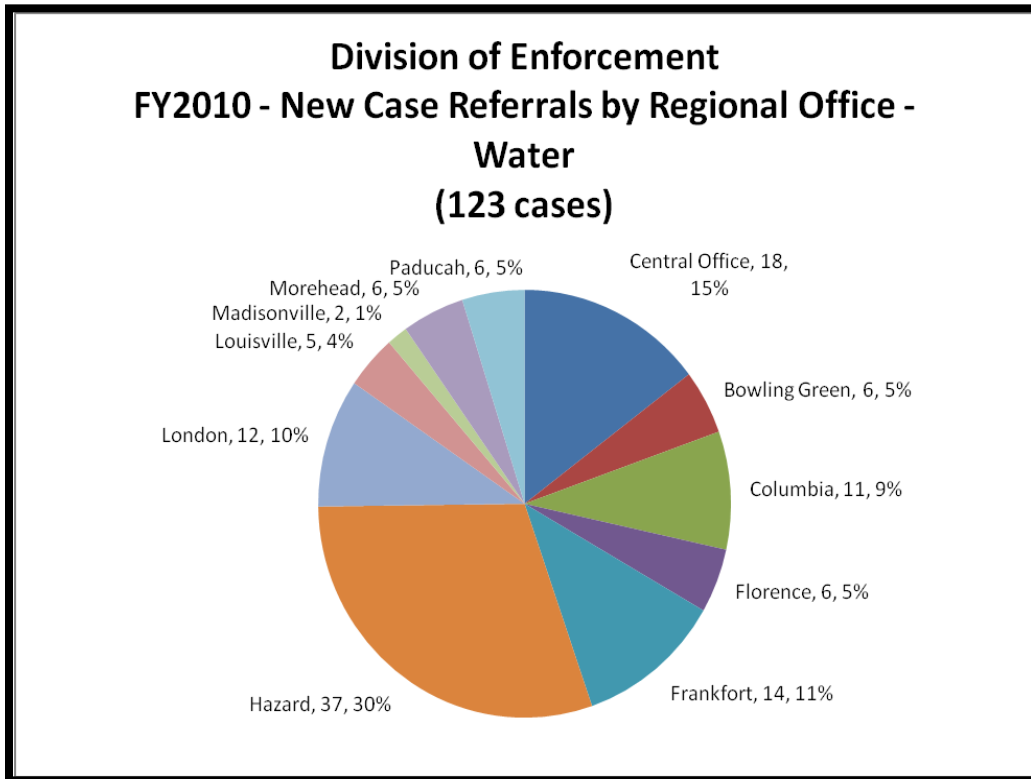


Figure 6 - FY2010 new case referrals from the Division of water by regional office.

In FY2010, the Division of Enforcement's Compliance and Operations Branch (COB) referred 31 new cases for formal enforcement actions. All of these cases were for the wastewater program. In FY2010, the Division's COB was the second largest source for new water cases in the Department.

ENFORCEMENT CASE ACTIVITY

The Division of Enforcement's active cases in FY2010 consisted of a consistent mix of programs throughout the fiscal year. The largest number of cases were for the wastewater program, followed by the underground storage tank program, the solid waste program, and the air program.

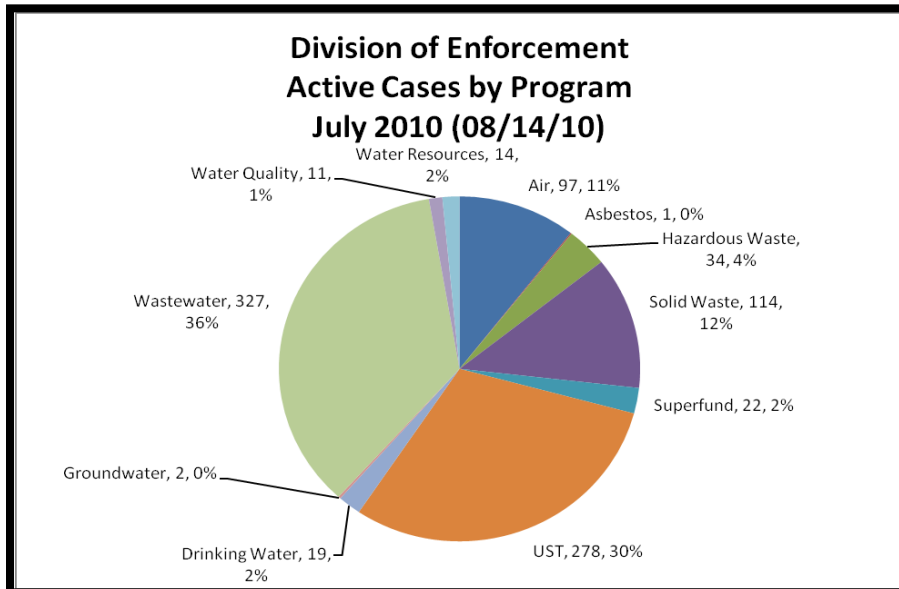


Figure 7 – Active cases by program at the beginning of FY2010

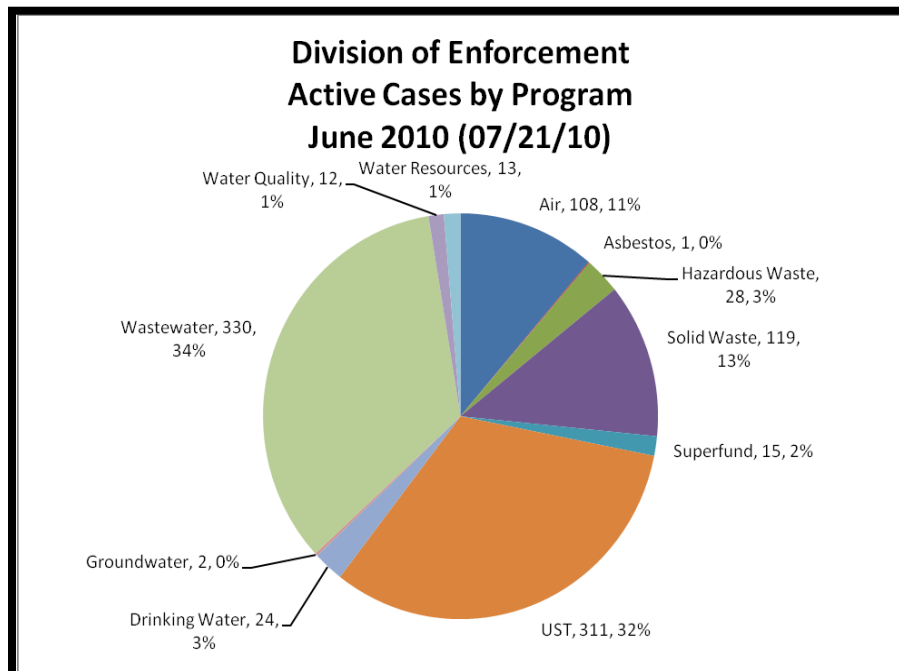


Figure 8 – Active cases by program at the end of FY2010

In FY2010, the Division of Enforcement had an average of 952 active enforcement cases throughout the fiscal year. The number of active enforcement cases

ranged from 915 in October 2009 to 1012 in April 2010. Of the 952 average of active enforcement cases, an average of 239 of these cases were open for monitoring of executed settlement documents.

The average of 952 active cases translated to an average work load of 79 enforcement cases per environmental enforcement specialist (EES). The ideal number of assigned cases per EES is 60 to 65 cases. Three additional EESs would need to be hired to return the Division to an optimal case load per EES.

The Division averaged 7 unassigned cases throughout FY2010, which represents a vast improvement from the peak of 186 unassigned cases in November 2007. In FY2010, the number of unassigned cases in any given month ranged from 2 to 24.

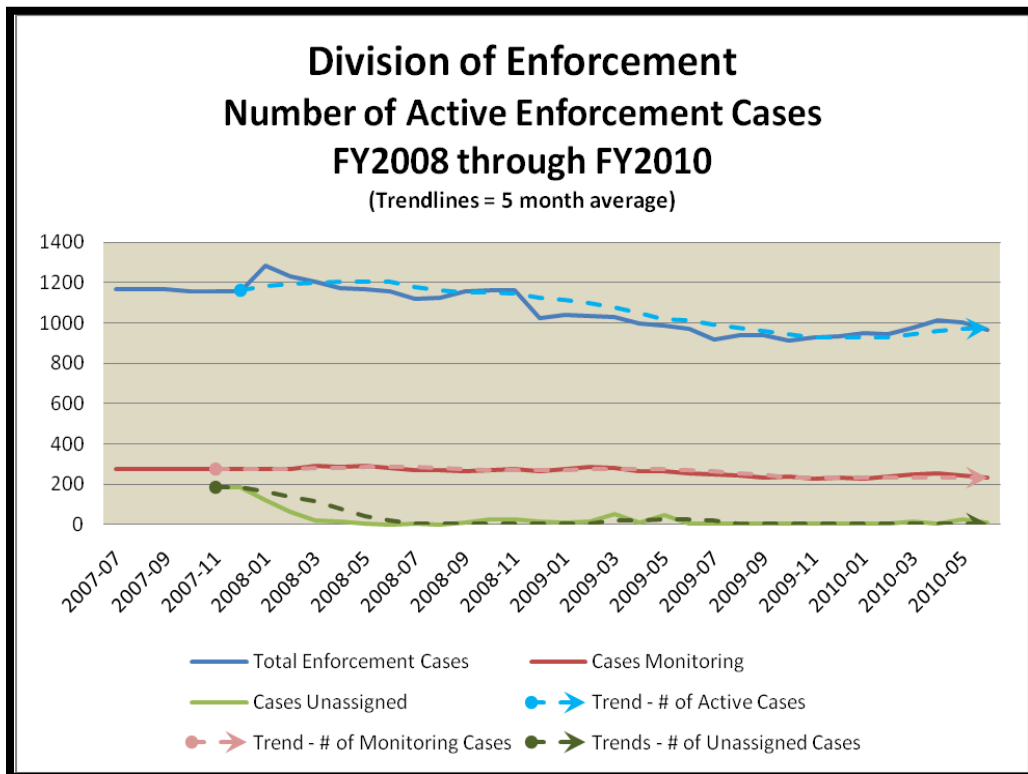


Figure 8 – Data and trends for # of active cases, # of monitoring cases, and # of unassigned cases

The number of new cases to the number of cases closed (see Figure 9) show that the two statistics were relatively equal in FY2010. As a result, the number of active cases has remained between 900 and 1000.

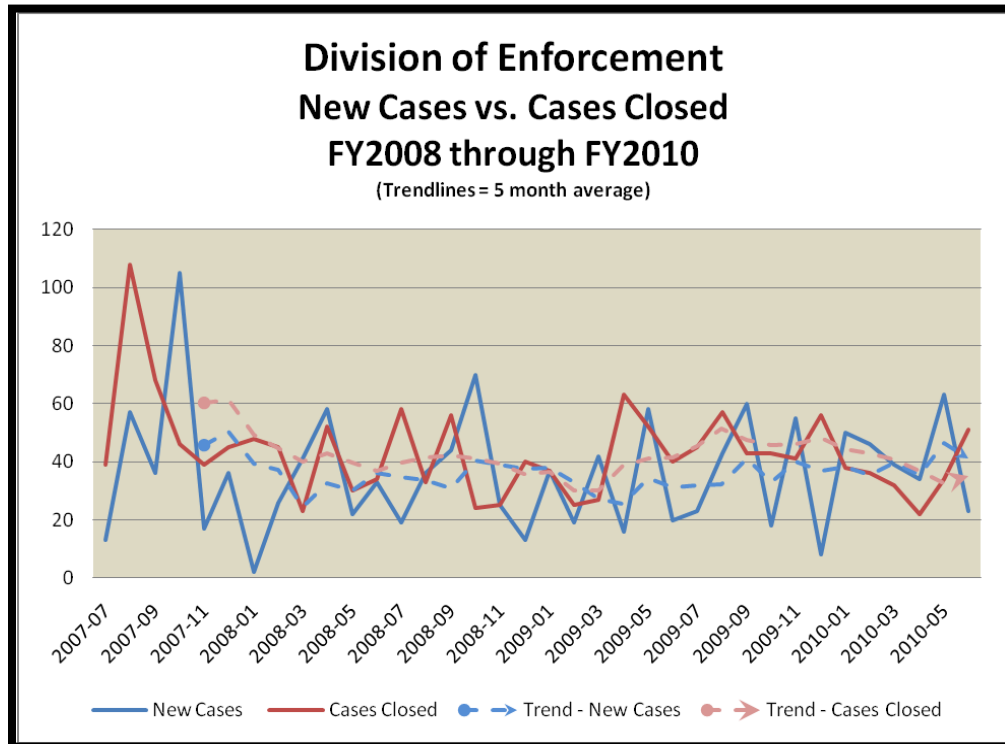


Figure 9 – Comparison of new cases and cases closed from FY2008 through FY2010

In February 2008, the Division of Enforcement reinstated the use of demand letters as the settlement document for penalty-only cases and cases with relatively simple remedial measures. The use of demand letters resulted in an increase in the number of case settlement executed. The data for FY2010 shows that the number of executed case settlements has been relatively stable. The use of agreed orders and demand letters has been relatively equal.

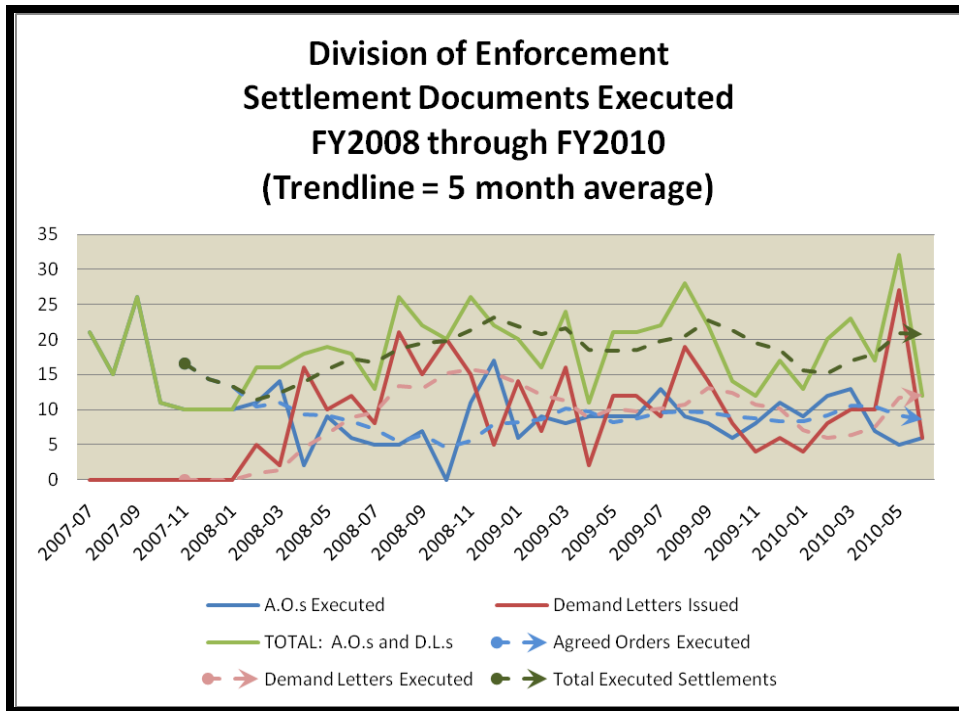


Figure 10 – Enforcement actions executed, broken out by total, agreed orders, and demand letters.

Data shows that the number of agreements-in-principle that have been reached and the number of agreed orders signed by the responsible party and routed for execution has remained stable.

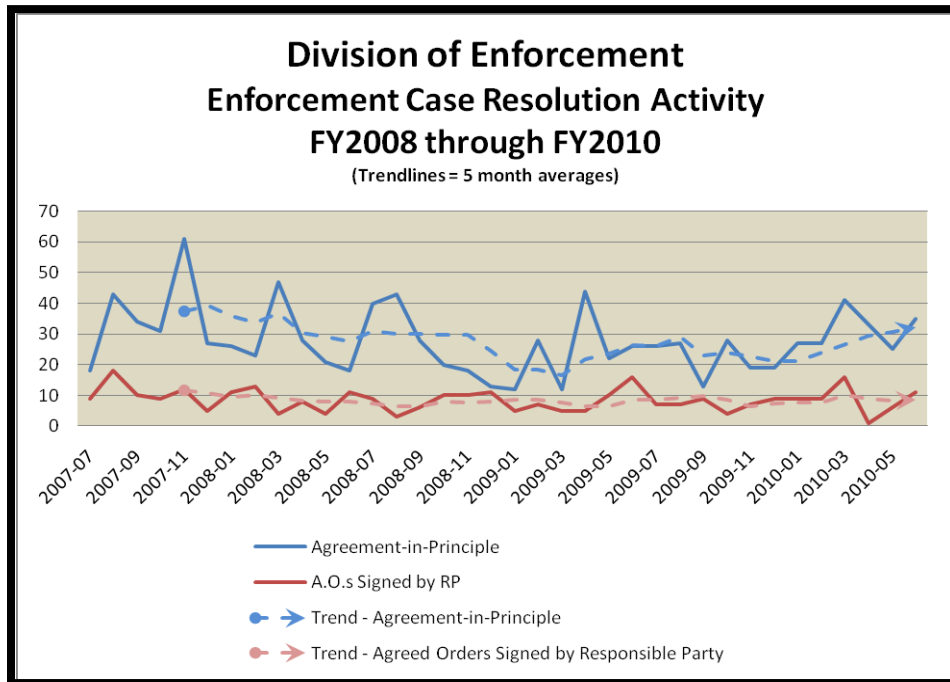


Figure 11 – Data trends for agreements-in-principle and agreed orders signed by the responsible party.

Civil penalty collections for FY2010 increased 39% from FY2009. Civil penalty collections for FY2010 were 24% below the average civil penalty collected from FY2000 through FY2010.

From FY2009 to FY2010, penalty collections were up 103% for air cases, up 124% for waste cases, up 2% for water cases, and down 34% for underground storage tank cases. Based on the media-specific averages for FY2000 through FY2010, civil penalty collections were up 15% for air cases, down 35% for waste cases, down 51% for water cases, and up 41% for underground storage tank cases.

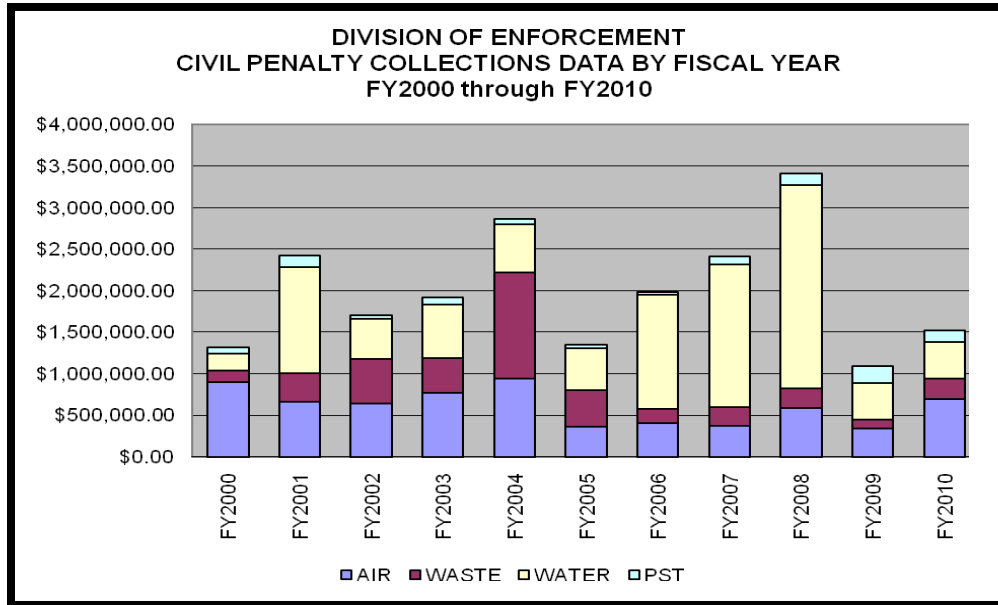


Figure 12 – Civil penalty collections for FY2000 through FY2010


SELECTED ENFORCEMENT CASES

- **Elizabethtown Laundry Company (ELC)**, in Elizabethtown, Kentucky, had a detergent release into Valley Creek. During the investigation into the incident, the owner of the laundry company explained that a 2-inch hose from a 1,000-gallon tank was not hung up the previous evening and approximately 250 gallons of detergent



was released. A fish kill associated with the release extended distance of approximately 8 miles and it was estimated that 17,342 fish were killed. ELC paid \$11,110.80 to the Kentucky Department for Fish and Wildlife for the fish kill, a \$9,000 civil penalty for the violations cited, and a \$453.95 to recover the cost incurred by the Environmental Response Team.

- **Abrapower** is a privately held corporation located in Florence, Kentucky, and is a minor air source. It manufactures abrasive coated-foam products used in automotive, furniture, and home improvement industries. Because of a change in its manufacturing process, a new baghouse and a second production line were constructed, although Abrapower did not apply for a new permit. Abrapower was cited for construction of an air contaminate source without a permit. An administrative conference was held on January 21, 2010. Abrapower had already remediated the violation and was issued a Demand for Civil Penalty letter for \$11,000.00.
- **Blaze Products** produces chafing dish fuel at their Shelbyville site. DWM conducted an inspection on July 16, 2009 and determined that that Blaze had no hazardous waste registration and nearly 106 drums of waste including flammable liquids (methanol/acetone), printing ink, and adhesives accumulated on-site. They had failed to make a waste determination, failed to have any of the drums labeled with accumulation dates, and failed to maintain records. Blaze attended an enforcement conference on November 23, 2009 and indicated that all violations had been corrected and provided receipts to verify proper disposal of all waste. An inspection on January 12, 2010 verified that all remedial measures were completed and the facility was in compliance. Blaze was assessed a penalty of \$12,000 or was given the option to perform a supplemental environmental project. Blaze successfully completed the SEP and a Demand Letter was issued to summarize and formally resolve the matter.
- Cabinet entered into an AO with the **City of Bardstown** to address daily wet and dry weather overflows occurring in Bardstown at Town Creek. This project gained statewide media attention as well as several hundred posts of regular sewer overflows on YouTube. The AO gave the city one year to complete overhaul of the Town Creek Interceptor Project. Following completion within the required timelines the project eliminated dry-weather overflows and limited overflows to large wet-weather events.

- **LWD a/k/a Bluegrass Incineration Services** is located in Calvert City, Marshall County, Kentucky. Notices of Violation were issued to LWD in 2004, 2005 and 2006 for poor maintenance of drums containing hazardous waste. Bluegrass Incineration Services was administratively dissolved in 2006 and the cleanup at the site was being conducted by a group of principle responsible parties under EPA oversight. All contained waste has been removed and the incineration facility demolished. The case was closed in DENF on July 17, 2009.
- **Carmeuse Lime & Stone, LLC** is located in Pendleton County and operates a limestone mine and manufacturing plant. Carmeuse attended an administrative conference at DENF on May 15, 2008 in response to fugitive emissions violations. The terms of an agreed order were developed and executed on June 24, 2009. In addition, Carmeuse was under an agreed order from December 20, 2004 and both agreed orders were resolved & closed, including the payment of a \$70,000 civil penalty (2009 AO) and a \$75,000 civil penalty (2004 AO).
- **Route 32 BP** was out of compliance with release detection, corrosion protection issues, and overfill protection. The responsible party agreed to settle the case through an Agreed Order for a civil penalty in the amount of eight thousand dollars (\$8,000).
- **EQT** owns a drill rig site in Combs Branch near Dwarf in Perry County. The DOW Hazard regional office investigated a complaint on September 20, 2009 and found large amounts of soap (about a foot or more of suds in some areas) in a small tributary of Combs Branch. The incident resulted in a fish kill. Both EQT and contractor J&M Monitoring responded to the incident, placing hay bales in the tributary, and had the site remediated by the 1p.m. the next day. EQT attended an Enforcement conference on March 10, 2010 and agreed to pay a \$10,000 penalty plus \$732.95 in ERT response costs.
 
- Bledsoe Coal operates mining in Leslie County. They have had two releases that each impacted Greasy Creek for approximately 9 miles. Bledsoe attended a conference with the DENF on July 8, 2009. They submitted an SPCC plan on July 22, 2009, and agreed to train all relevant employees with regard to the SPCC. Verification of said training was received on July 30, 2009. They paid a \$15,000 penalty on September 21, 2009.
- **Freeman Corp.** is located at 415 Magnolia Street in Winchester, Clark County. They are a wood veneer manufacturing facility. This is a multi-media case involving air quality and water quality violations. Air issues involve opacity problems from 3 wood fired boilers. As a result of this enforcement action, Freeman conducted a stack test at the directive of the DAQ and was found to be in compliance with particulate limits. Water issues involve improper maintenance of the physical site and a sediment pond which is inadequate to settle solids. As a result the facility has been

exceeding the total suspended solids limit in their KPDES permit. The facility completed a SEP in June 2009 which involved installing a pump and piping system in order to re-use wastewater from the sediment pond in their log cooking process. In addition, they increased the depth and capacity of the pond and improved the log yard drainage system. The SEP eliminated discharges from the pond, and reduced the use of treated potable water in the log cooking process. The SEP offset a \$40,000 penalty at a ratio of 2:1. The terms and conditions of the agreed order, executed July 27, 2009, have been fulfilled.

- Kentucky Utilities operates the Tyrone Power Generating Station at US 62 in Woodford County. They are a Title V source for PM, SO₂, NO_x, CO, and HCl. They have four diesel fuel fired boilers and one coal fired boiler (unit 3, EP 05). An electrostatic precipitator and a low NO_x burner is the control device for EP 05. KU failed a required stack test for particulate matter on this unit. The facility retested and passed on the second stack test. This is a high priority violation (HPV). KU paid a \$20,000 penalty on October 2, 2009, fulfilling all the terms and conditions of the Agreed Order executed on September 23, 2009.
- **Collett's Grocery** is an underground storage tank site which was out of compliance with release detection and corrosion protection requirements. During an administrative conference the responsible party stated the site was out of compliance due to his negligence. The responsible party agreed to settle this case through an Agreed Order, which detailed the remedial requirements and assessed a civil penalty of \$6,000 in installments. The requirements of the Agreed Order were fulfilled and this case was closed on 10/12/09.
- DENF negotiated the terms of an Agreed Order to establish a Kentucky Intersystem Operation Permit (KISOP) between the Cities of **Lloyd** and **Greenup** to transfer their wastewater for treatment at the City of Wurtland WWTP. This agreement established timelines for each entity to complete their portion of the project independent of the requirements of the other partnering entities. This project will eliminate two outdated and inefficient plants, remove Infiltration and Inflow water, maintain and expand their current collection systems, and provide the residents of all three communities cost effective and reliable treatment of their sanitary waste.
- DENF negotiated the terms of an Agreed Order to establish a KISOP between **Estill County WWTP** and **Irvine Municipal Utilities**. The AO will allow Estill County to connect to Irvine's new regional WWTP while allowing Estill County to continue to operate their collection system. This AO also makes each project independent but through the AO process provides timelines for each project to be completed enabling both entities to secure funding and provide reliable assurances that service to their customers will not be interrupted.
- **Smithfield Packing Company, Incorporated** is a meat processing plant where various cured and or smoked hams, ham products, and other pork products are produced. Notices of Violation were issued for violating the Ambient Air Quality Secondary Standard for odors. The specific odor source at the facility has not been identified. An agreed order was executed on May 26, 2010 requiring Smithfield to

operate the facility in compliance with the secondary air quality standard for odors and maintain regular operation and maintenance records. They were also required to submit a revised minor source registration. Smithfield complied with the requirements of the Agreed Order and paid a civil penalty in the amount of \$7,500.

- **Curry Expressmart No. 6** is an underground storage tank site in London, KY. A technical compliance inspection was conducted at the facility and the site was determined to be out of compliance with release detection and corrosion protection requirements. After participating in an administrative conference, the Cabinet assessed a twelve thousand dollar (\$12,000) civil penalty through a demand letter issued on August 6, 2009. Curry Oil paid the civil penalty as assessed and performed all outstanding remedial measures at the site, which were completed in April 2010.
- **Lees Food Mart No. 3** is located in Middlesboro, KY. The facility did not have adequate corrosion protection on the UST systems and failed to properly remove piping in accordance with 401 KAR 42:070. Lee Oil Company Inc. submitted a corrosion protection test. However, the Division determined that the test was invalid. The corrosion protection test submitted was identical to a 2004 corrosion protection test, except the dates were altered. After discovering the possible forged test results, the Division contacted the corrosion protection tester of record. The tester had no knowledge of a test being performed on the date in question. The Cabinet assessed an eleven thousand dollar (\$11,000) civil penalty through an agreed order.
- **Patricia Jackson** is the owner of two underground storage tank facilities located in Tompkinsville, KY. The sites were out of compliance with release detection and corrosion protection requirements. Ms. Jackson agreed to terms of an agreed order in April, 2010. All remedial measures have been performed and Mrs. Jackson paid a civil penalty in the amount of four thousand dollars (\$4,000).
- **Pilot Travel Centers LLC** is the owner of four underground storage tank facilities located throughout Kentucky. Technical Compliance Inspections (TCI) were conducted at the facilities and the sites was found to be out of compliance. Pilot Travel Centers LLC met with DENF staff and negotiated terms of settlement to be incorporated into an agreed order, which was executed on November 16, 2009. Pilot Travel Centers has submitted documentation demonstrating that all remedial measures were completed and the UST facilities are now in compliance. In lieu of a civil penalty, a Supplemental Environmental Project (SEP) was performed in the form of a seventy-five thousand dollar (\$75,000) donation to the Southern Environmental Enforcement Network (SEEN).
- **Triple "M" Land Farm, Inc. (TMLF)** is a bio-remediation operation, located in Simpson County, Kentucky. The facility had received numerous Notices of Violation from July of 2007 to May of 2009, for violations cited by the Division of Waste Management, the Division of Water, and the Division for Air Quality. Some of TMLF's violations over the two year period consisted of failing to comply with their permit, open burning of solid waste, maintaining an unpermitted waste site, improper disposal of waste, improper acceptance of hazardous waste, and improper training



and maintenance at the facility to list a few. In April of 2010, TMLF agreed to pay a civil penalty of \$30,000 to resolve the numerous Notices of Violation.

- A Notice of Violation was issued to **Dow Corning** for “Failure to conduct permit-required testing” and “Failure to comply with required testing procedures”. The permit-required performance test on the thermal oxidizer had not been conducted and improper seal-gas measurements had been conducted. An NOV for these violations was issued on December 17, 2008 and compliance with their permit requirements was met in August, 2009. On May 11, 2010 Dow Corning was issued a demand letter for a civil penalty in the amount of \$12,000.
- **ICG-East Kentucky** and **Kentucky Oil & Refining Company Inc. (KORC)** violated Kentucky statutes and regulations by degrading the waters of the Commonwealth and failing to report a diesel fuel release. KORC provides fuel service to ICG’s mine site. A fuel delivery truck from KORC had been filling an above ground storage tanks during which the fuel hose disconnected and approximately 142 gallons of diesel was released before the emergency shutoff could be activated. The fuel ran off site into a creek which ultimately affected 14 miles of the Tug Fork River. ICG deployed absorbent booms thought out the waterway. ICG paid \$8,000 in civil penalties. KORC paid \$6,000 in civil penalties, \$5926.23 for soil remediation, and constructed a bulk fueling station on the mine site with adequate spill containment.

COMPLIANCE ACTIVITIES

The Division of Enforcement's Compliance and Operations Branch issues Notices of Violation and Letters of Warning for violations discovered through review of Discharge Monitoring Reports submitted by facilities with KPDES permits and for violations discovered by DEP Central Office program staff. In FY2010, the Division of Enforcement issued 251 notifications, which represents 6% of the total notifications issued by the Department for Environmental Protection. The Division of Enforcement accomplishes this with 0.3% of total DEP staffing dedicated to compliance activities.

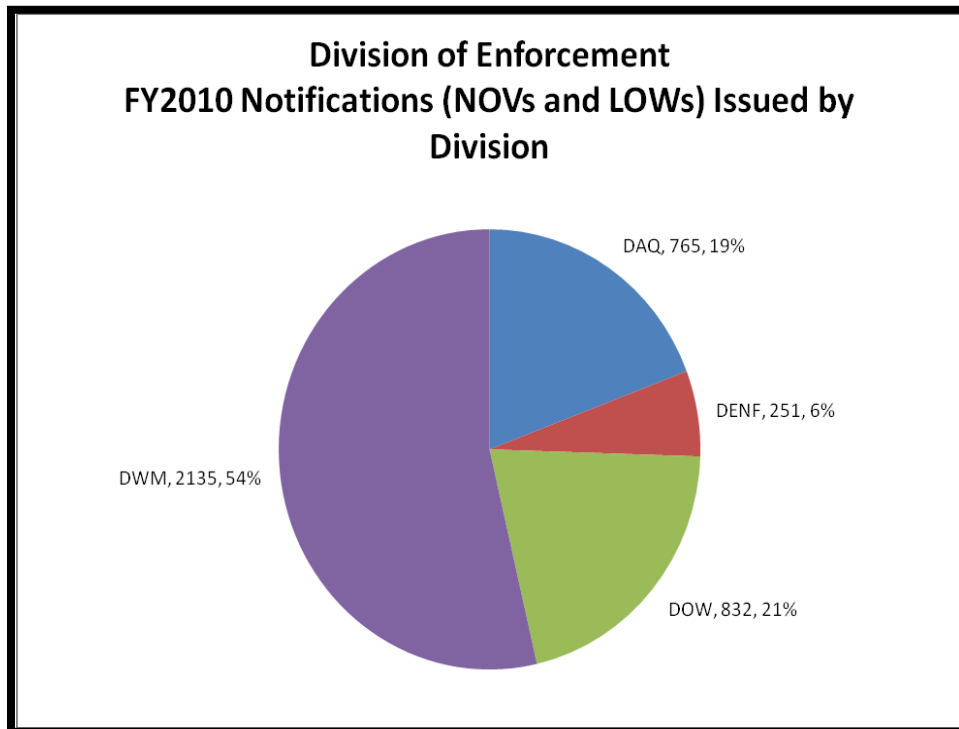


Figure 13 – FY2010 notifications issued (NOVs and LOWs) by Division

The largest number of notifications issued by DEP are in the underground storage tank program, where 1609 notifications (40%) were issued in FY2010. DEP issued 927 notifications (23%) on the wastewater program, 765 notifications (19%) for the air quality program, and 376 notifications (10%) for the solid waste program. The remaining 8% of notifications were issued under the hazardous waste, drinking water, groundwater, water quality, and water resources programs. These statistics exclude the notifications issued by the Division of Water's Compliance and Technical Assistance Branch (CTAB).

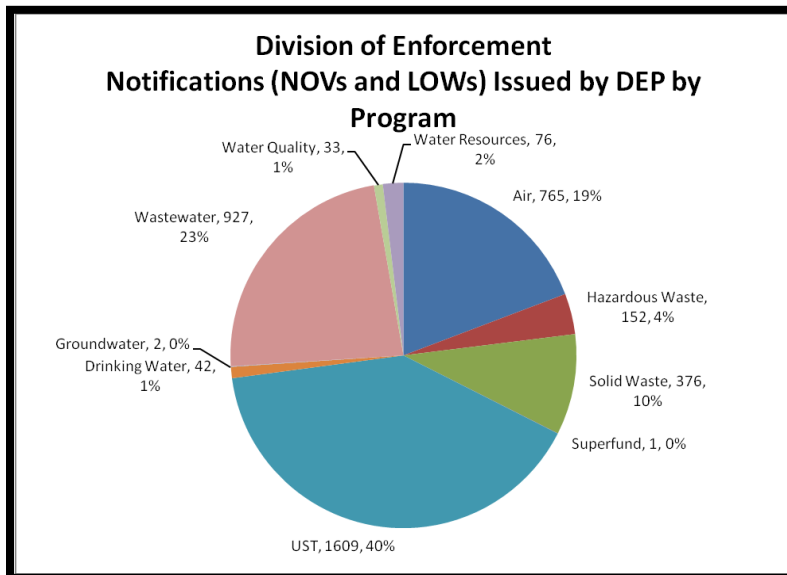


Figure 14 – FY2010 notifications issued by DEP by program (excluding drinking water compliance).

The majority (93%) of notices of violations (NOVs) were issued by DEP’s field inspectors. The Division of Enforcement issued 202 NOVs (6%) in FY2010 through review of Discharge Monitoring Reports submitted by KPDES permitted facilities. The Division also issued 76 NOVs based on referrals from the Central Office programs, most of these for Whole Effluent Toxicity violations.

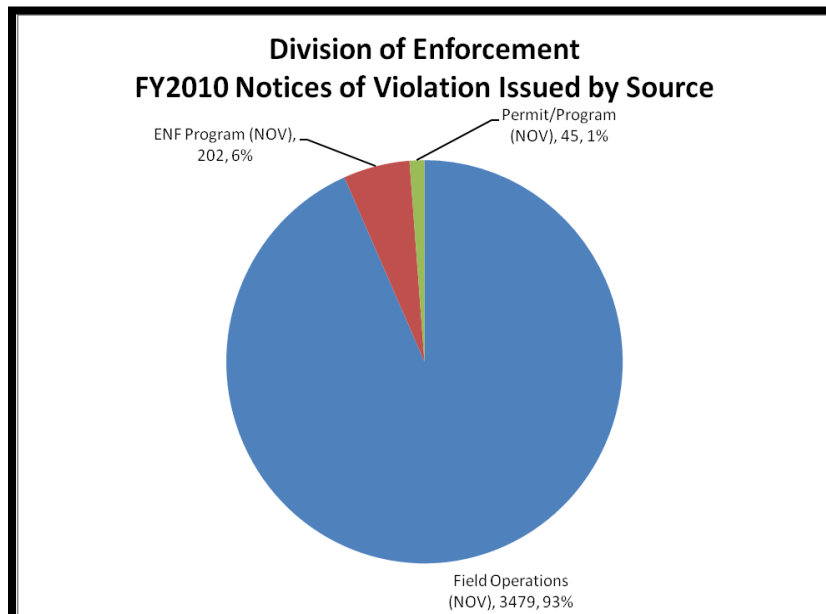


Figure 15 – FY2010 notices of violations issued by source.

The Division of Enforcement has had a steady, but cyclical trend in issuing notifications. Production peaks in February, May, August, and November of each year as

the DMRs submitted by major KPDES facilities are reviewed for the Quarterly Non-Compliance Report (QNCR) and the CWA Facilities Watch List. During the remaining 8 months, focus shifts to issuing notifications for violations referred by the DEP Central Office programs, coal facility DMR violations referred by the Division for Mine Reclamation and Enforcement (DMRE), and non-major KPDES permitted facilities.

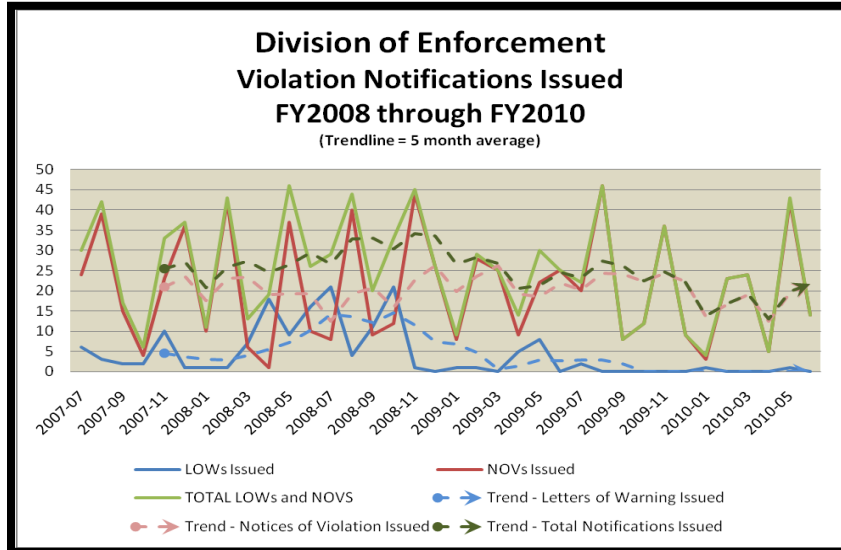


Figure 16 – Division of Enforcement data and trends for issuing notifications for FY2008 through FY2010.

The Division mostly issues notices of violation, and usually issues letters of warning only upon request of a DEP Central Office program through one of their referrals. In FY2010, the Division issued 247 notices of violations (98%) and 4 letters of warning (2%) (see Figure 16).

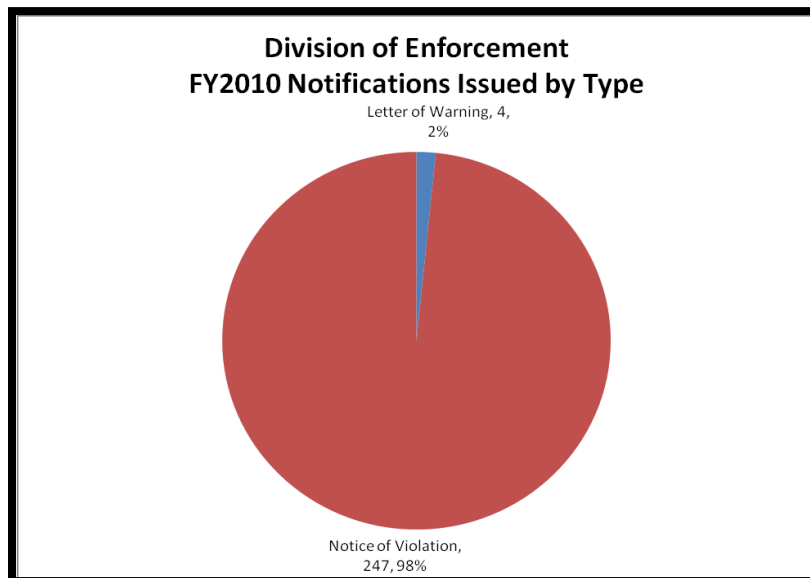


Figure 17 – FY2010 Division of Enforcement notifications issued by type.

In FY2010, the Division issued notifications for a very limited number of programs. The wastewater program accounted for 99% of the notifications issued by the Division, with a very small number of notifications being referred from the hazardous waste and groundwater programs.

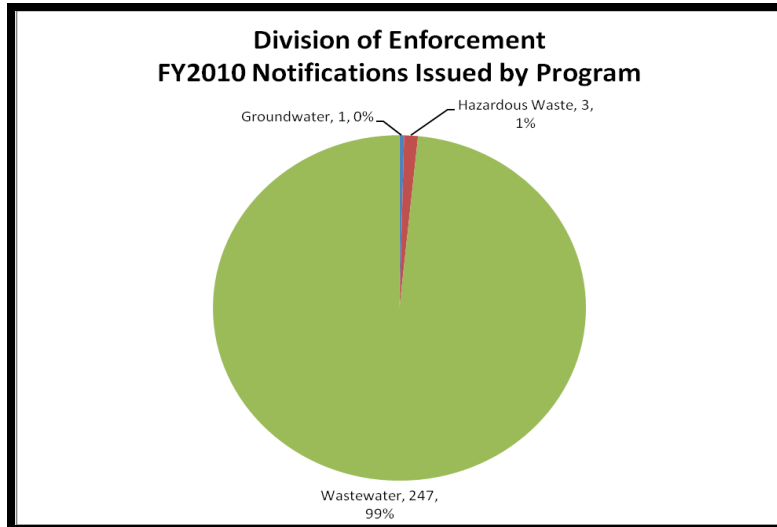


Figure 18 – FY2010 Division of Enforcement notifications issued by program.

In FY2010, the Division of Enforcement issued 81% of its notifications based on the delegated activity of conducting compliance reviews of Discharge Monitoring Reports. The remaining 19% of notifications resulted from DEP Central Office program referrals, the majority of which relate to Whole Effluent Toxicity violations and failing to renew KPDES permits.

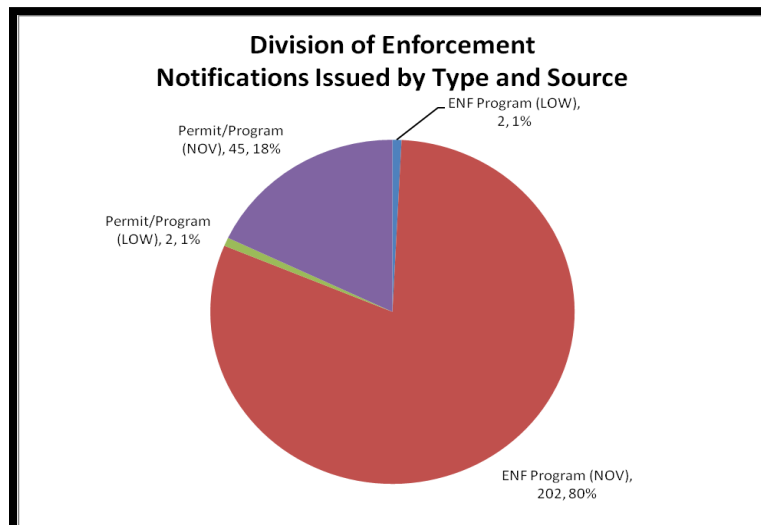


Figure 19 – FY2010 Division of Enforcement notifications issued by type and source.

OTHER DIVISION ACTIVITIES

The Division of Enforcement fulfilled a number of other functions during FY2010. It coordinated the drafting of an Enforcement Management System for the drinking water program. It coordinated preparations for the U.S. EPA State Review Framework audit scheduled for FY2011. It took the lead in updating the 2007 Memorandum of Understanding between the Department for Natural Resource and the Department for Environmental Protection for KPDES compliance and enforcement at surface coal mining facilities.

The Division of Enforcement has also made efforts to improve communications with the regional offices. Division management has met with the field operations branch managers for DAQ, DWM, and DOW and have worked through numerous issues to improve communications and working relationships with the inspection staff.