

Division of Enforcement

Kentucky Department of Environmental Protection



Annual Report
Fiscal Year 2014

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Division of Enforcement

A Message From the Director's Office

The end of FY 2014 marked the tenth anniversary of the Division of Enforcement. In passing this significant milestone, this is a good opportunity to look back on some of what the division staff has achieved. Some of our accomplishments over the past ten years include:

- *Development and implementation of standard operating procedures to ensure consistent resolution of enforcement cases across all program media;*
- *Issuance of over 4,500 Notices of Violation and Letters of Warning;*
- *Execution of approximately 1,800 case settlements;*
- *Implementation of action on over 3,800 new case referrals;*
- *Closure of approximately 3,700 enforcement cases;*
- *Elimination of a significant backlog of unresolved cases in the UST program;*
- *Collection of approximately \$20,000,000 in civil penalties.*



Despite our accomplishments, the Division of Enforcement staff face many new and existing challenges. Staff working to resolve coal water quality issues in the coal mining industry have reviewed over 173,000 discharge monitoring reports and have taken enforcement actions involving 39 coal companies to date. The first of seventeen communities with combined sewers completed the work necessary to resolve its Consent Judgment with the Cabinet in FY 2014. The remaining sixteen CSO communities continue to make progress toward resolution of their consent orders with oversight by the Division of Water and the Division of Enforcement.

Although the number of active underground storage tanks in Kentucky has been significantly reduced, serious compliance issues remain in the UST program and enforcement of UST statutes and regulations remains a large part to the division's overall caseload. Maintaining compliance with environmental statutes and regulations will be a growing challenge for many small and mid-sized communities as they are faced with aging infrastructure and limited budgets.

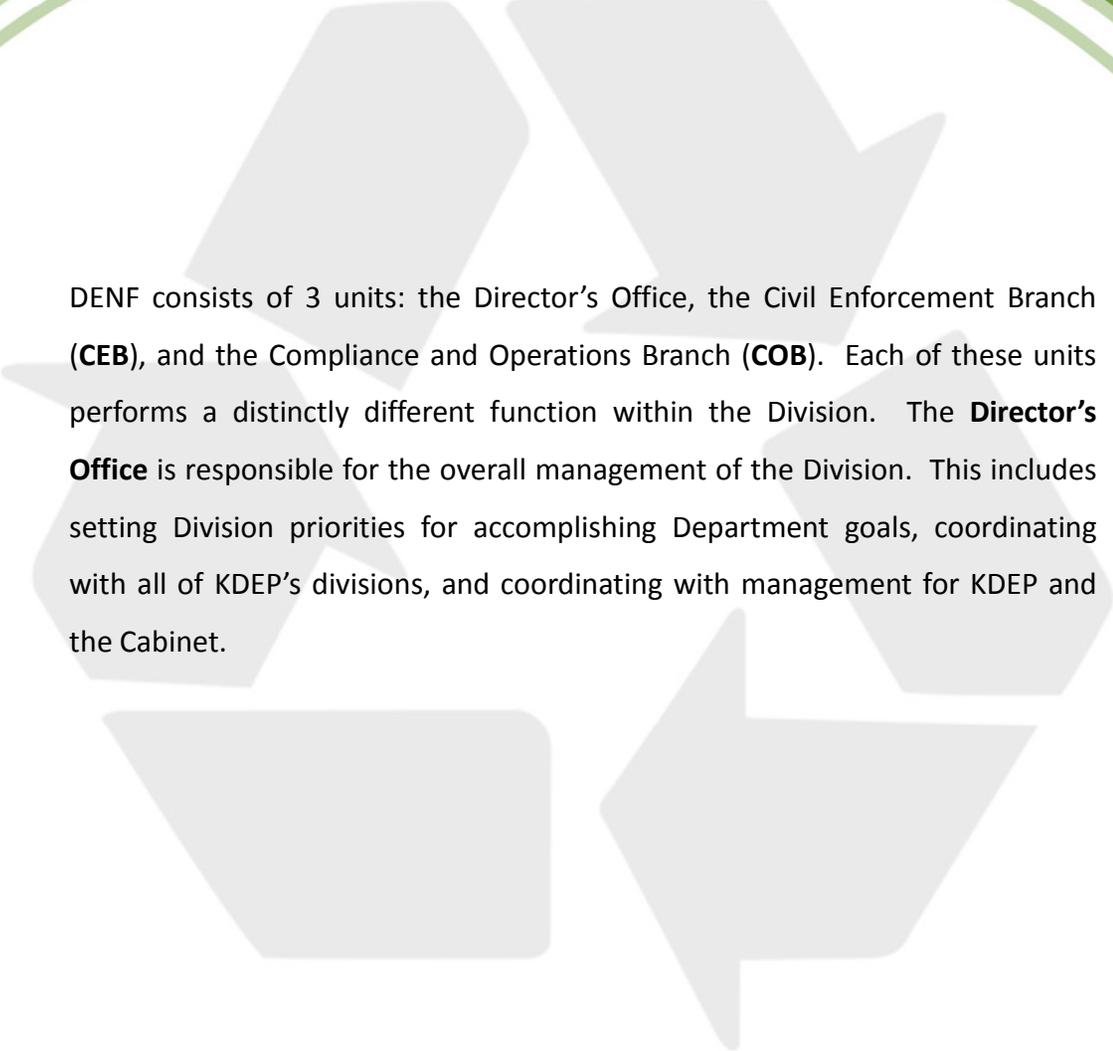
In all, FY 2014 was a busy and productive year and the past ten years have been remarkable. We are looking forward to the next ten years and what they might bring.

Jeffrey A. Cummins
Division Director

Introduction



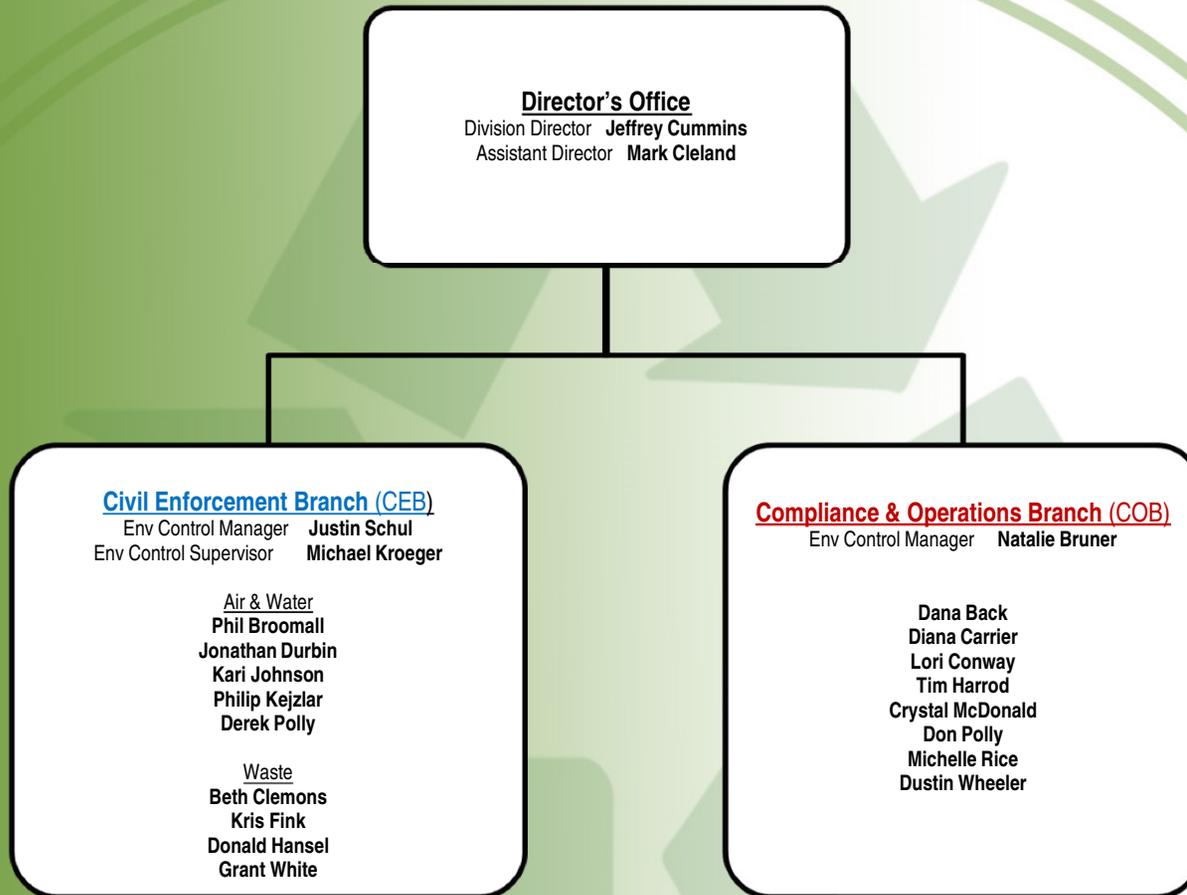
On July 9, 2004, the Governor issued Executive Order 2004-731 making significant revisions in the organizational structure of the Cabinet. Several of the changes involved the Kentucky Department for Environmental Protection (**KDEP**), one of which was the creation of a new Division of Enforcement (**DENF**). 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.



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 Organization

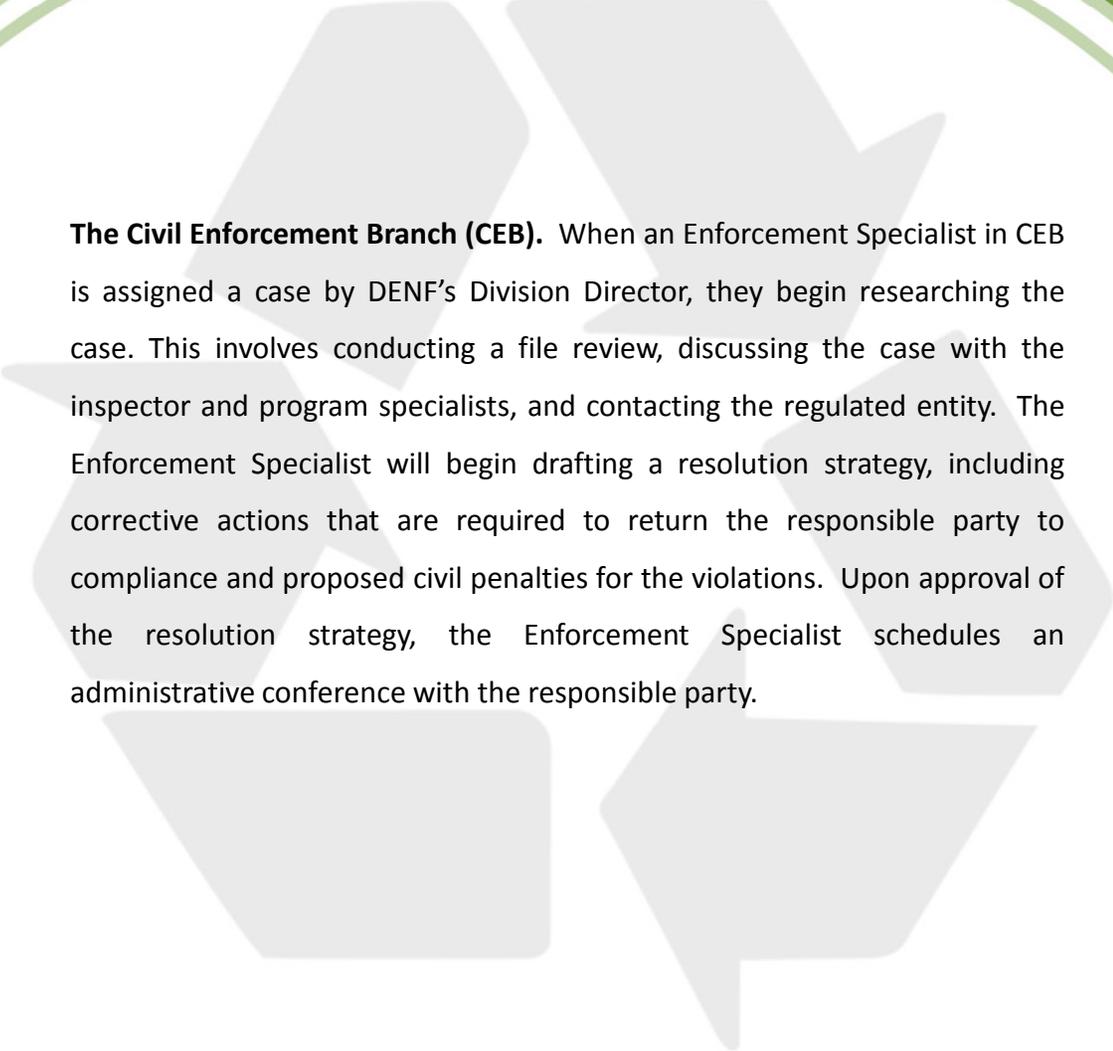


Division of Enforcement

Civil Enforcement Branch (CEB)

The Civil Enforcement Branch (CEB) negotiates civil settlements for violations cited by the Kentucky 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.





The Civil Enforcement Branch (CEB). When an Enforcement Specialist 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.





Agreement-in-Principle. Upon conclusion of the negotiations, our Enforcement Specialist will draft a written document to formalize the agreement between the Division and the regulated entity. “Agreement-in-Principle” states what remedial measures will be completed and the amount of penalties to be assessed.

In FY2014, DENF negotiated 153 agreements-in-principle, an average of 13 per month.



Demand letters, which are unilateral orders, are often used when the regulated entity has already returned to compliance. Demand letters are formalized by the signature of the Director of DENF. Demand letters are not final orders of the Cabinet and are not enforceable in Franklin Circuit Court.

Agreed Orders, which are bi-lateral agreements, are used for more complex 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 final orders of the Cabinet, and as such are enforceable in Franklin Circuit Court.

DENF executed 52 demand letters for resolution of an enforcement case, an average of 4 per month.

DENF also received 83 agreed orders signed by a responsible party and executed 98 agreed orders for resolution of an enforcement case, an average of 8 executed documents per month.

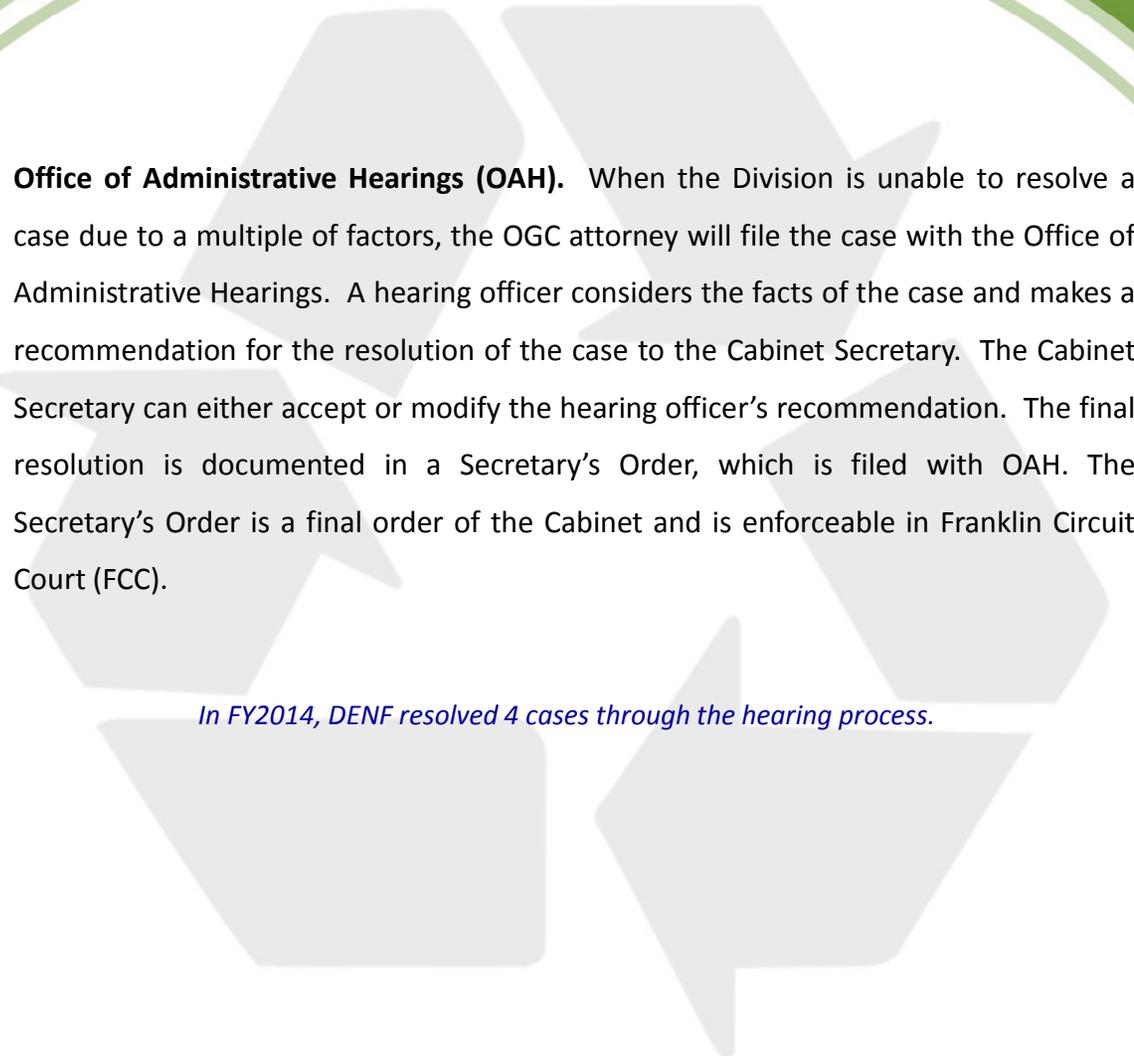


Monitoring. The assigned Enforcement Specialist is responsible for monitoring compliance with executed demand letters, agreed orders, or Secretary's Orders. Cases will be closed upon compliance with the executed agreement. Failing to comply with the executed agreement can result in the resumption of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

Office of General Counsel (OGC). Should the regulated entity and the Division not reach an agreement-in-principle the case is referred to the Cabinet's OGC 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 FY2014, DENF monitored an average of 205 enforcement settlements at any one time.

In FY2014, DENF referred 65 enforcement cases to OGC for further enforcement action, an average of 5 per month.



Office of Administrative Hearings (OAH). When the Division is unable to resolve a case due to a multiple of factors, the OGC 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 FY2014, DENF resolved 4 cases through the hearing process.





Environmental Protection Agency (Federal) 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 over file on an enforcement settlement previously reached between the Cabinet and the responsible party and proceed with a federal enforcement action.

DENF is working jointly with the U.S. EPA on 6 enforcement cases.



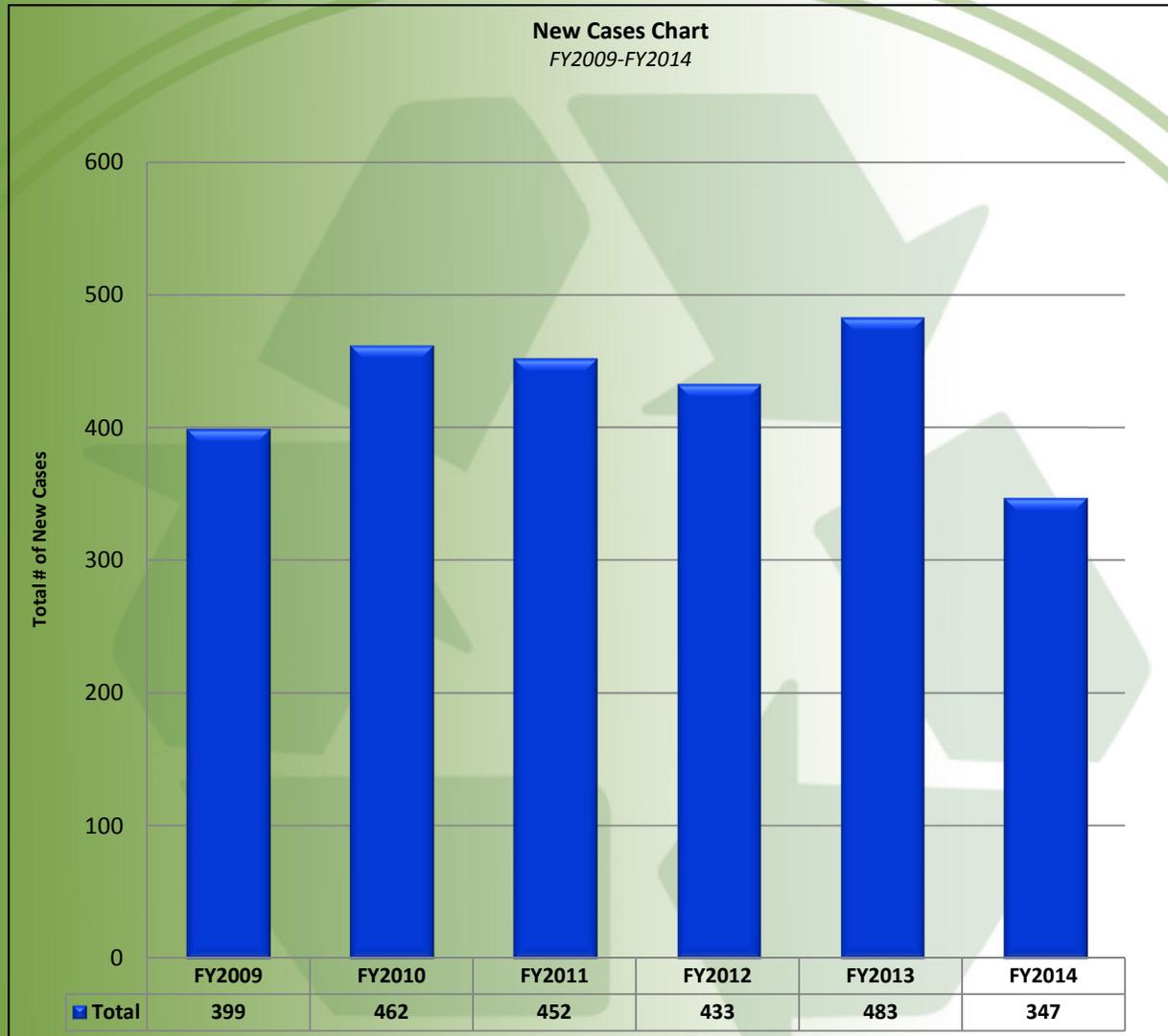
Division of Enforcement

Case Referral Data

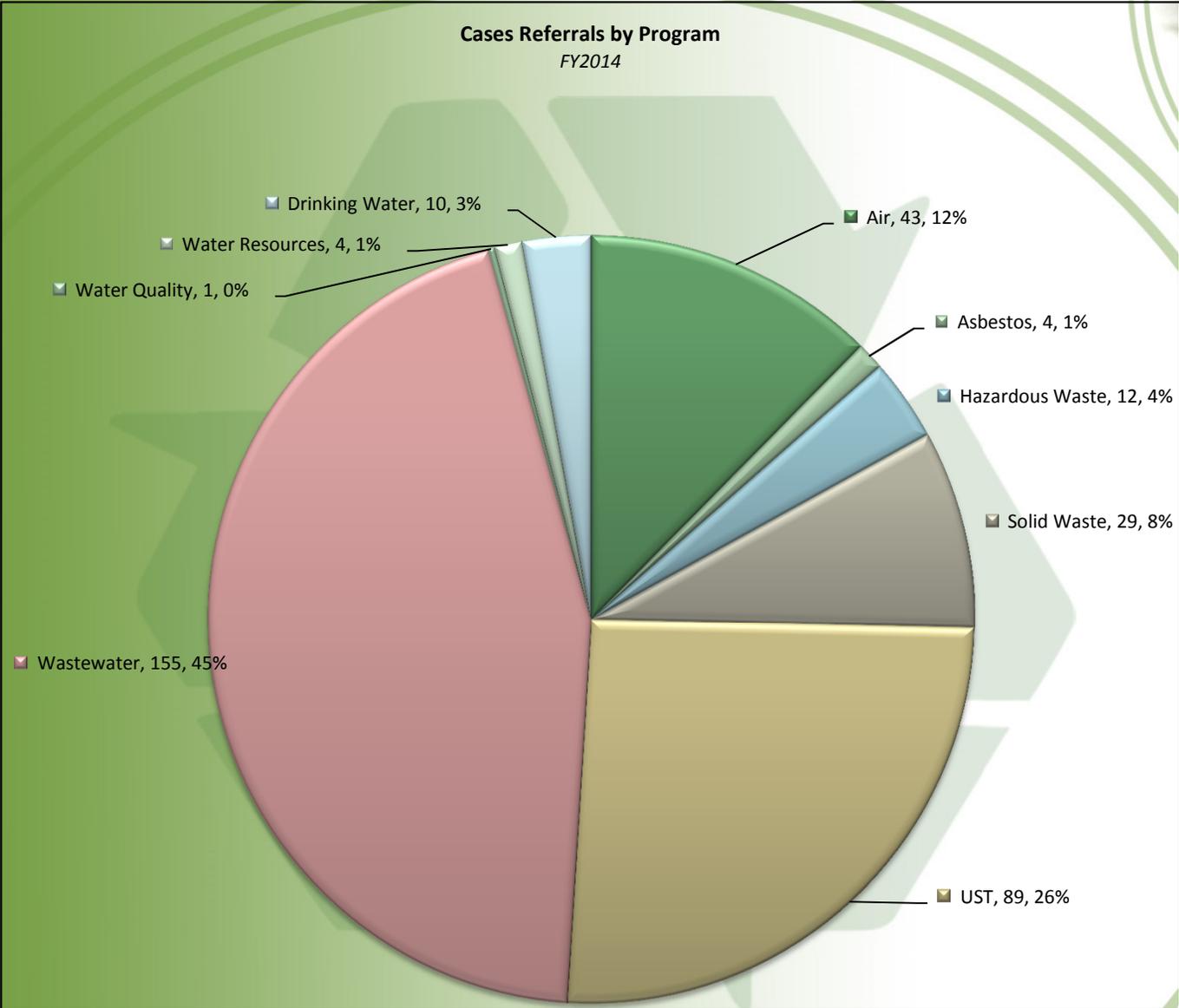
The Kentucky Division of Enforcement receives case referrals from all twelve regional offices, the Department's central office programs, and the Division's Compliance and Operations Branch.



New Cases. The Division of Enforcement received a total of 347 new cases in FY2014.



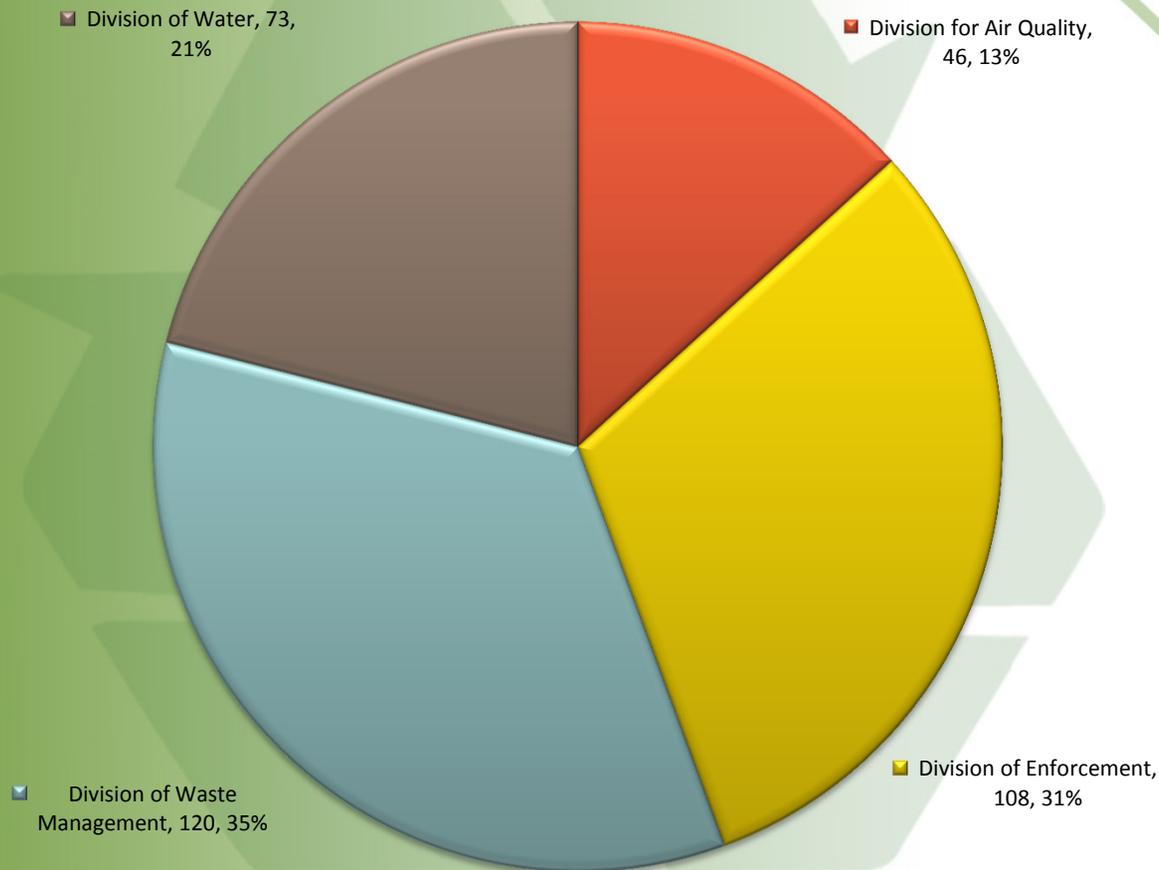
Case Referrals by Program. The Division of Enforcement received case referrals from 9 of the 12 program areas. Of the 347 referrals, the highest number remains the wastewater program with 155 (45%) followed by the UST program with 89 (26%) case referrals in FY2014.



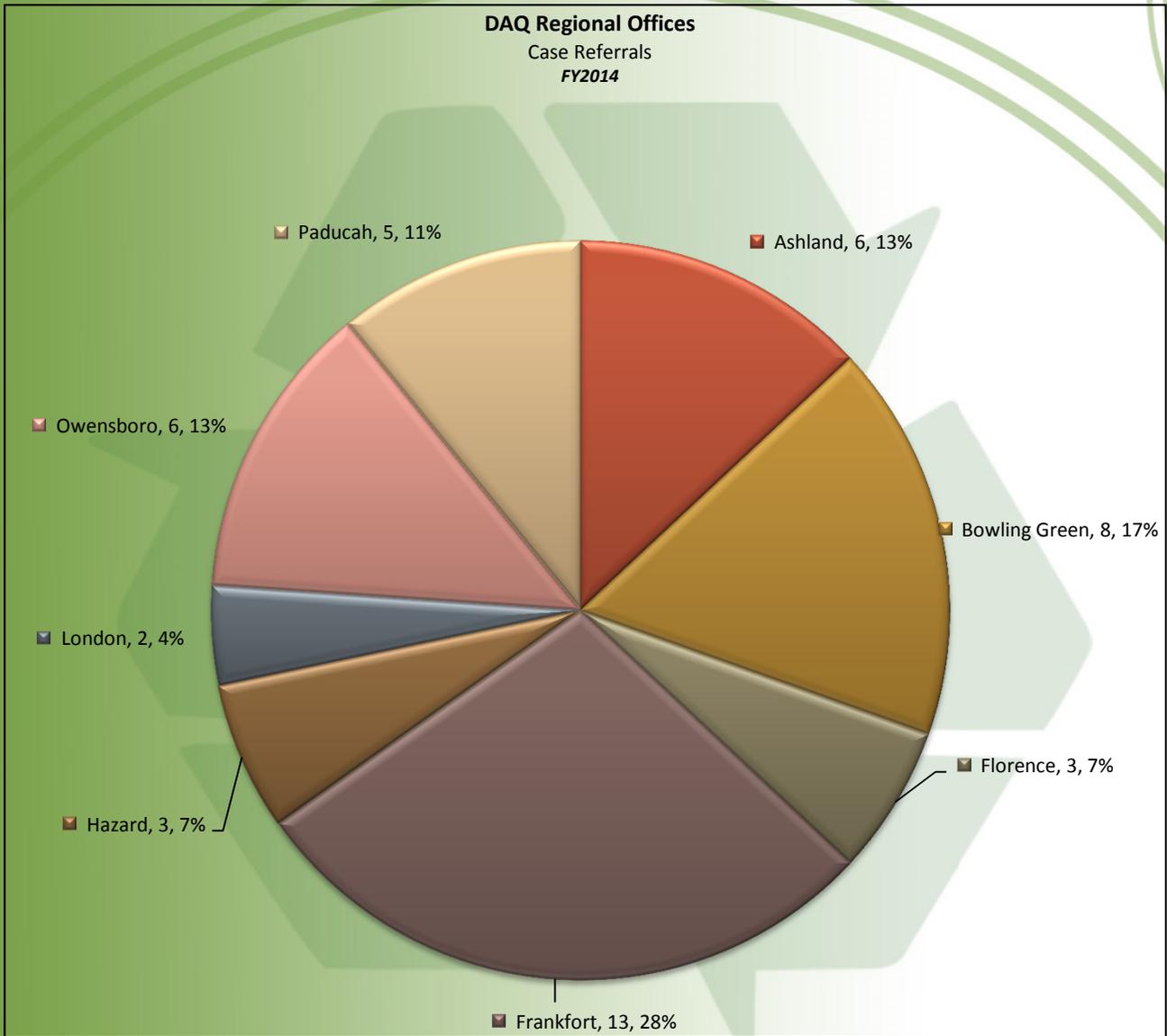
Division for Enforcement (DENF). The Division of Enforcement receives case referrals from all three media divisions: Air Quality, Waste Management and Water. Internal referrals from the Operations and Compliance Branch within DENF make up 31% of the referrals to the **Civil Enforcement Branch**.



Case Referrals by Division
FY2014



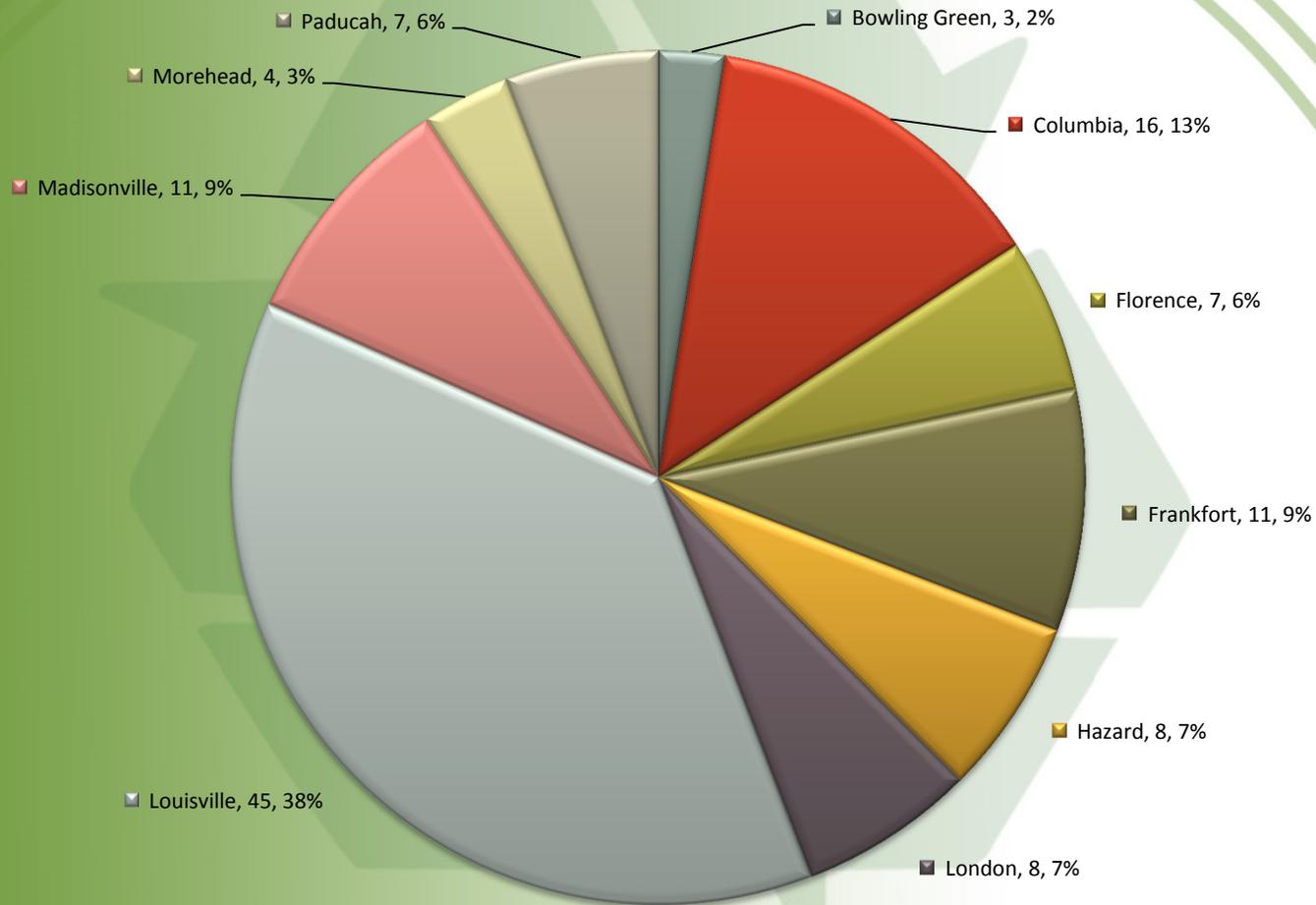
Division for Air Quality (DAQ). The Division of Enforcement received 46 new case referrals in FY2014 from the eight DAQ regional offices. Of the 46 case referrals, the highest number came from the Frankfort Regional Office (13 cases, 28%).



Division of Waste Management (DWM). The Division of Enforcement received the greatest percentage of referrals from the DWM Louisville Regional Office with 45 cases (38%) in FY2014.



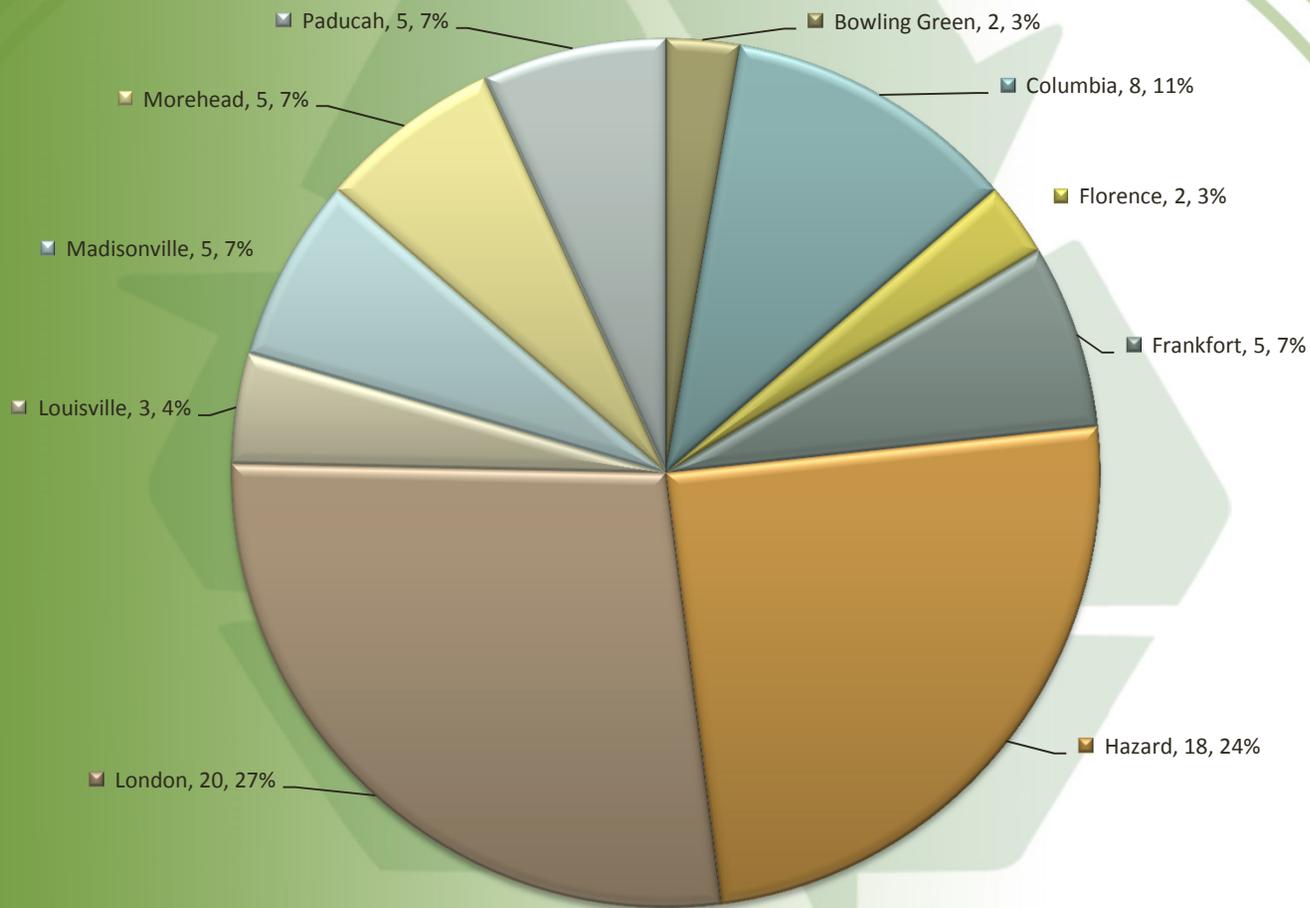
DWM Regional Office
Case Referrals
FY2014



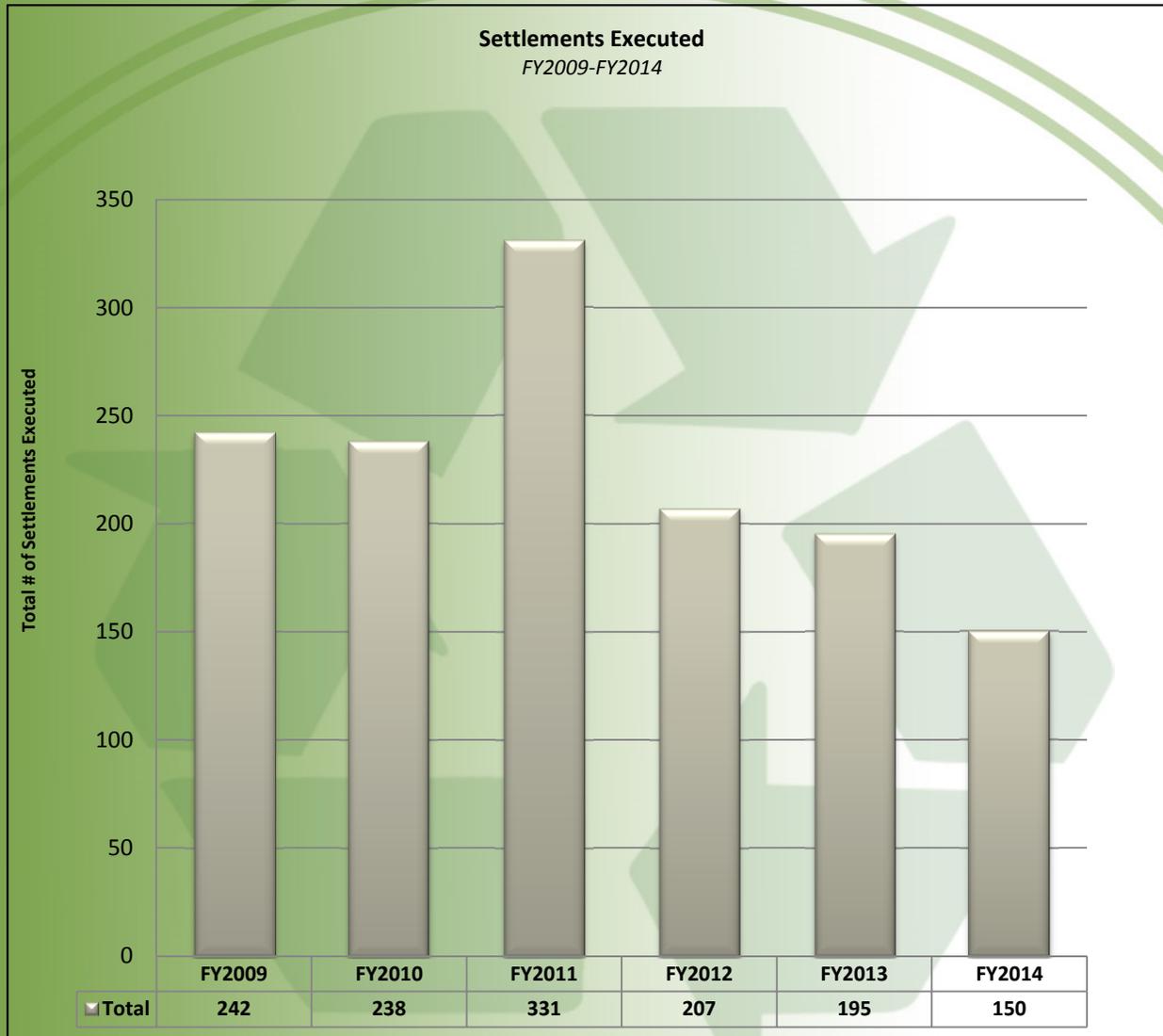
Division of Water (DOW). The Division of Enforcement received the greatest percentage of new case referrals from the London Regional Office (27%) followed by the Hazard Regional Office (24%) in FY2014.



DOW Regional Offices
Case Referrals
FY2014



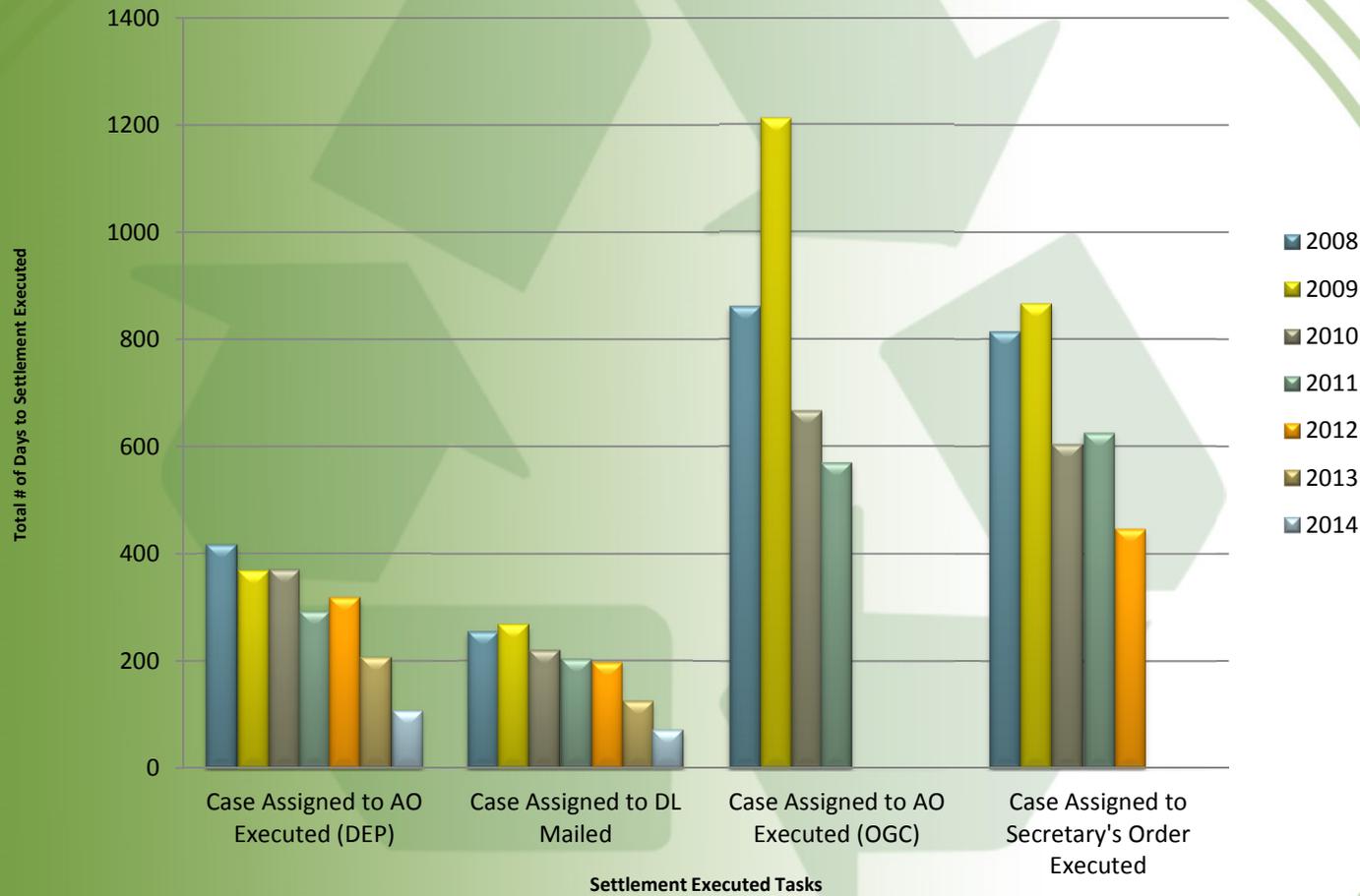
Settlements Executed. The Division of Enforcement executed a total of 150 Agreed Orders and Demand Letters in FY2014.



Executed Settlements. The Division of Enforcement uses Agreed Orders (AO), Demand Letters (DL), Office of Administrative Hearings (OAH) Agreed Orders and Secretary Orders (SO) to settle enforcement cases. The chart below shows the average number of days to reach an executed task.



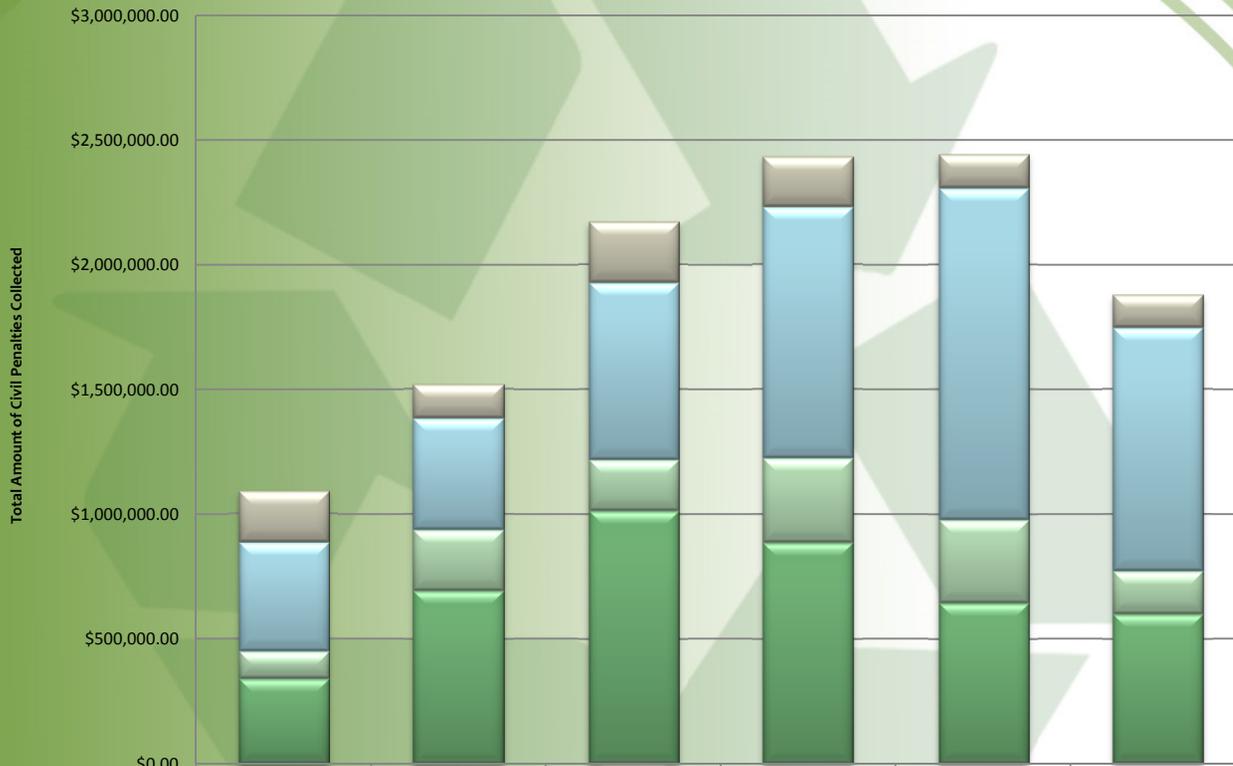
Average # of Days to Settlement Executed
Calendar year 2008-2014



Civil Penalties. The Division of Enforcement collected civil penalties for the following departmental programs in FY2009 through FY2014.

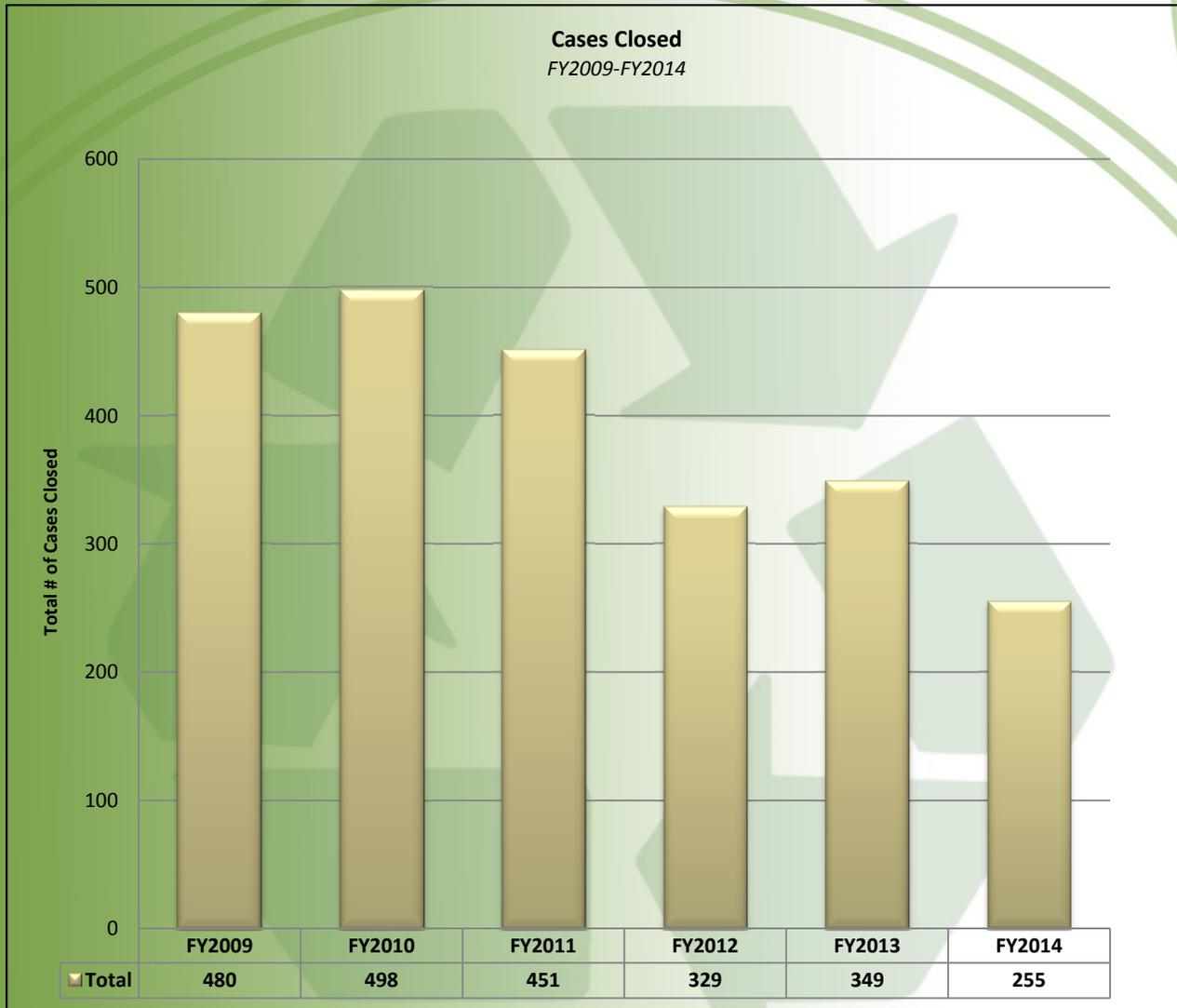


Civil Penalties Collected
FY2009-FY2014



	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014
UST	\$203,512.41	\$134,821.28	\$244,089.70	\$200,765.63	\$134,846.31	\$131,712.86
WATER	\$435,101.00	\$445,532.33	\$708,298.00	\$1,005,317.12	\$1,328,618.48	\$973,872.66
WASTE	\$109,226.23	\$244,540.39	\$204,574.37	\$337,416.63	\$332,823.77	\$171,224.50
AIR	\$341,403.98	\$693,639.11	\$1,014,009.04	\$887,039.60	\$645,423.37	\$601,016.47

Closed Cases. The Division of Enforcement closed a total of 255 cases in FY2014.



Division of Enforcement

Compliance and Operations Branch

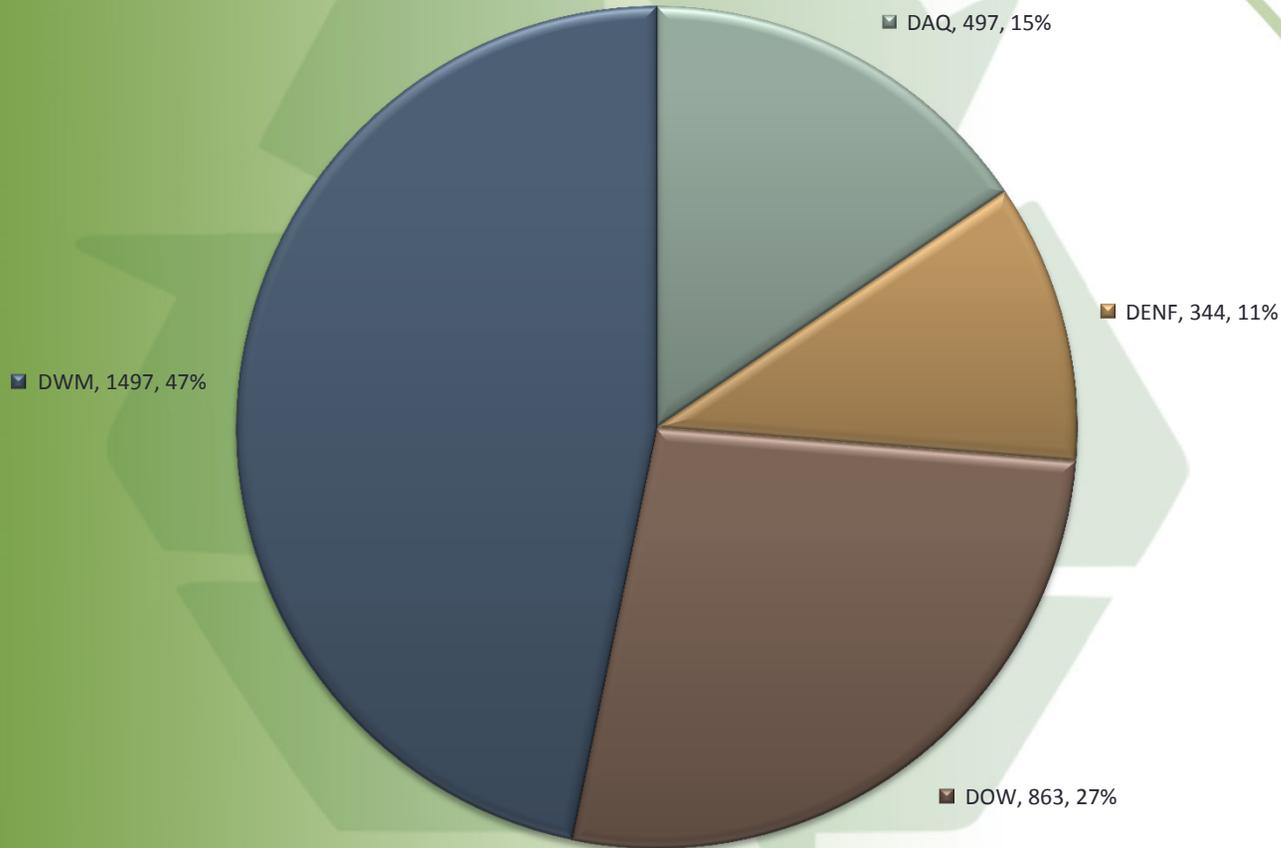
The Compliance and Operations Branch (COB) has two functions: *regulatory compliance* and *administrative support*. Regulatory compliance involves citing environmental violations identified by either the COB or KDEP's central office programs; Administrative support includes functions necessary for the day-to-day operation of the Division: budget, accounts payable, supplies, inventory, training, travel, and personnel actions.



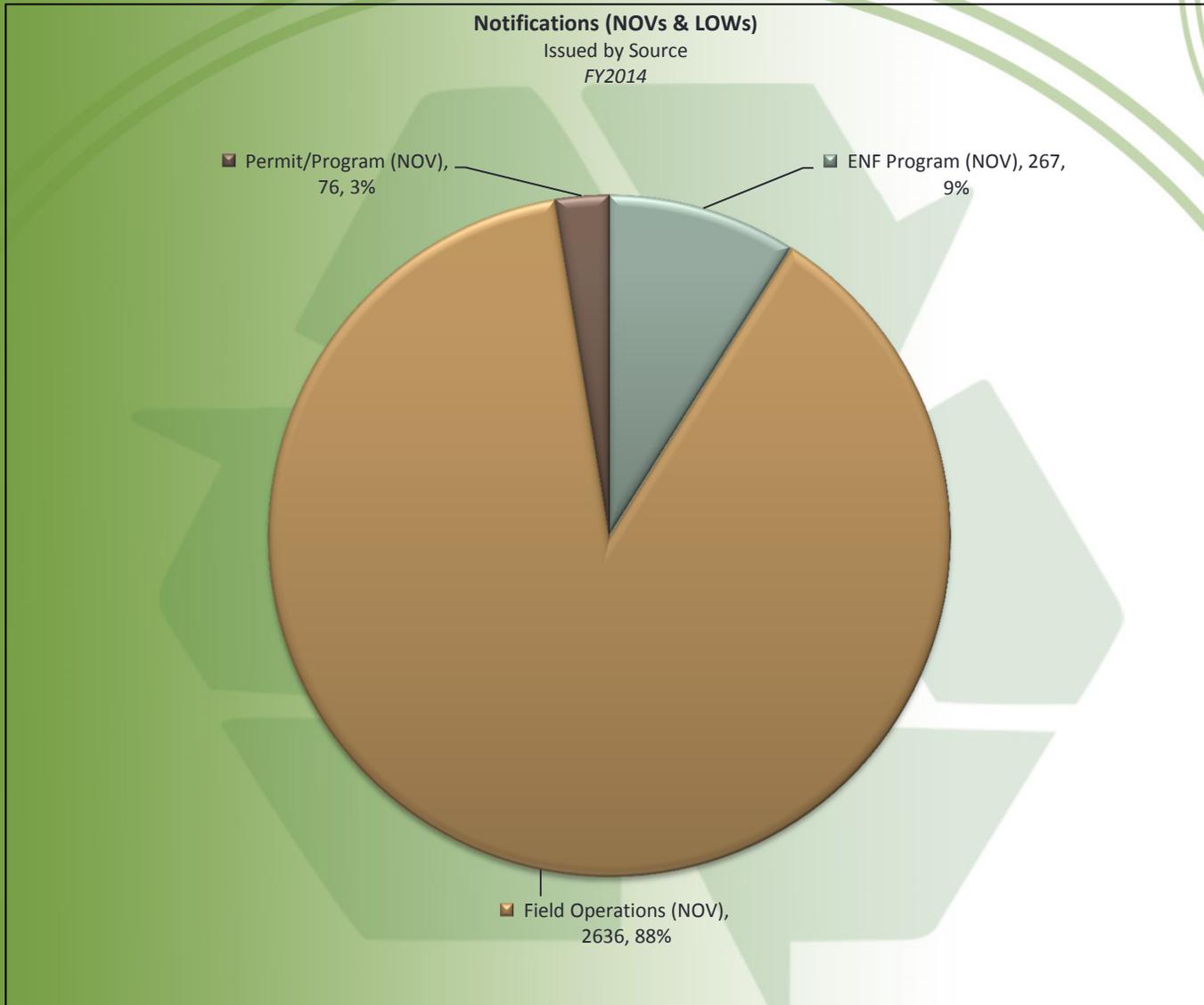
Compliance Activity. The Division's Compliance and Operations Branch issues Notices of Violation (NOVs), or "Notifications", for violations discovered through review of Discharge Monitoring Reports (DMRs) submitted by facilities with KPDES permits and for violations cited by Central Office program staff. Letters of Warning (LOWs) may also be issued by the program. In FY2014, COB issued 344 NOVs, representing 11% of the notifications issued.



Notifications (NOVs & LOWs)
Issued by Division
FY2014



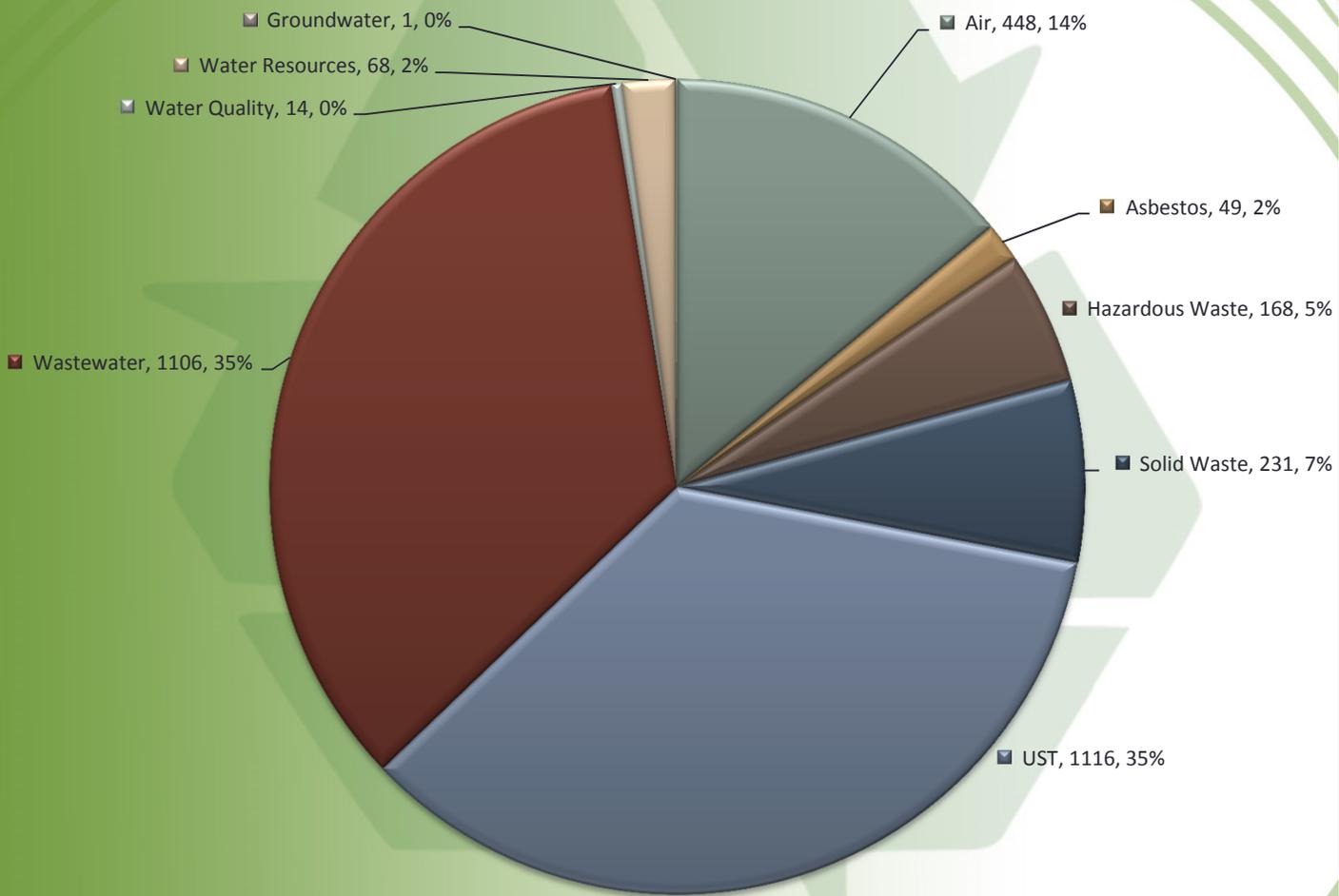
Notification by Source. The Compliance and Operations Branch issued the 3% of *Permit/Program* NOVs upon referral from the central office programs. The *ENF Program* NOVs were issued by COB after the review of DMRs submitted by KPDES permitted facilities. The remaining *Field Operations* NOVs were issued by KDEP's regional offices.



Notifications issued by KDEP Programs. In FY2014, the largest number of notifications issued by KDEP was in the UST program with 1116 (35%) notifications issued and followed by the Wastewater program with 1106 (35%).



Notifications (NOVs & LOWs)
By KDEP Program
FY2014



Division of Enforcement

“Success in the Bluegrass”



- **Energys Inc.** is a lead acid battery manufacturing facility that was referred to enforcement for multiple air violations. An administrative conference was held in November 2012 and an agreed order drafted and executed in March 2013. Energys was required to complete an “*Action Plan*” for maintaining compliance and paid a civil penalty in the amount of \$225,000.00. The case was closed, once all requirements were met, on May 14, 2014.
- **Mac’s Convenience Stores, LLC.** The Louisville Regional Office referred two UST sites with violations that included failing to report two suspected releases and failure to repair a spill bucket. The responsible party elected to settle the case with a Demand Letter, which implemented remediation and payment of a \$23,000.00 civil penalty. The Cabinet confirmed completion of both, and the case was closed on April 25, 2014.
- **Young Sawmill Inc.** This case was referred to the DENF for an illegal burn that occurred at their property; the burn consisted of paint cans, aerosol cans, plastics, mattresses, filters, anti-freeze and brake fluid bottles, florescent light bulbs, and other household trash. The site was cleaned of all burned materials and disposal receipts were submitted to the Division of Air Quality. The case was settled through a demand letter, and the responsible party paid a civil penalty in the amount of \$5,000. The case was closed on April 24, 2014.
- **The Pantry Inc.** is a large company that owns and operates multiple retail gas stations throughout Kentucky. Two of these facilities were referred to DENF for failure to report suspected releases. The Pantry Inc. installed Automatic Tank Gauging Machines at five problem locations to ensure future compliance. Additionally, The Pantry Inc. paid a civil penalty in the amount of \$20,000. After confirmation the upgrades were completed and the penalty had been paid, DENF closed the case on March 6, 2014.

Division of Enforcement

“Success in the Bluegrass”



- **The Inn at Oneonta (David Hosea).** Mr. Hosea was cited several times between 2010-2011 for placing construction debris in a flood plain and creating a solid waste site without a permit. The case was referred to OGC when an agreed order was executed. Mr. Hosea submitted a water quality certification application, a Section 404 application, and disposal receipts from a permitted waste facility. Once the \$25,000.00 civil penalty was paid, the case was closed December 17, 2013.
- **Pine Branch Mining LLC.** Two of Pine Branch Mining LLC, facilities had effluent limit violations and numbering issues of their outfalls. An administrative conference was held in September of 2013. Pine Branch Mining LLC, agreed to a Demand Letter, issued in November 2013, which required the correction of the outfall numbering system for DMR's and the payment of an \$8,500.00 civil penalty, which have been completed. The Cabinet closed the case December 12, 2013.
- **Hearthside Food Solutions LLC** was cited multiple times for substandard discharges for poor housekeeping at the facility, for inadequate Best Management Practices, and possible fish kills. A Demand Letter was issued that required all future spills and bypasses be reported and issued a \$12,500.00 civil penalty. The remedial measures and civil penalty were completed and the case was closed on November 18, 2013.
- **Marathon Ashland Pipeline, LLC** was referred to DENF for a crude oil spill resulting from a ruptured pipeline in Clark County, Kentucky. After the \$170,000.00 civil penalty and the \$131,000.00 cost recovery were paid in full, the Superfund Branch confirmed that corrective action had been completed at the spill site. The case was closed October 21, 2013.

Division of Enforcement
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Energy and Environment Cabinet

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