

KENTUCKY DIVISION OF ENFORCEMENT ANNUAL REPORT

STATE FISCAL YEAR 2021



**Commonwealth of Kentucky
Energy and Environment Cabinet
Department for Environmental
Protection
Division of Enforcement
dep-enforcement.ky.gov**



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Message from the Director's Office

The Covid-19 pandemic continued to change the way the Division of Enforcement accomplished its mission in SFY 2021. Adjustments made in late SFY 2020 continued for all of SFY 2021, with most employees working from home and limited in office business for critical needs. The Division continued to succeed while working from home, and has proved to be just as productive. The success of the Division during this challenging time can be directly attributed to the dedicated and hardworking staff that make up the Division. The Division continues to rely heavily on seasoned staff to develop newer team members, and has dealt well with losing three employees to the Office of Unemployment Insurance for most of SFY 2021.

The Division of Enforcement continued to work some very high profile environmental cases in SFY 2021, including settlements with Waste Services of the Bluegrass, AGC Flatglass, Barton Brands of KY, General Electric, and Walgreens. In SFY 2021, the Division saw a 27% decrease in the number of new cases, with 265 new referrals, compared to 365 the previous year. The decrease is most likely attributed to the pandemic. As in previous years, the wastewater program accounted for the largest number of new referrals to the Division, with 63%. The Division received 58 new cases from the Division of Waste Management, which is 22% of all new cases. The Division continued to monitor over 200 executed settlements, ensuring the regulated entities return to compliance with Kentucky's environmental regulations and statutes.

In SFY 2021, the Compliance and Operations Branch continued to make advances in the automation of Discharge Monitoring Report (DMR) reviews. The Division has reviewed both "Major" and "Minor Individual Permit" (Minor IP) facilities through automated reviews for all of SFY 2021, and in November of 2020, started to implement automated reviews with general permits. The additional use of automation equated into increase in the number of Notices of Violation issued by the Compliance and Operations Branch. During the fiscal year, the Division issued 2,396 Notices of Violation, 200 more than SFY 2020 and nearly 1,000 more than SFY 2019.

While Covid-19 has taken us away from our 'normal' work from the office environment, it has forced us to evolve the way we conduct business and accomplish our goals. TEAMs meetings and increased phone calls continue to be the regular. As we transition back to working from the office 3 days a week, we continue to use the tools we adapted to when the pandemic forced us out of the office. The 'new normal' continues to promise increases in efficiencies and decreased waste, and help staff maintain a healthy work/life balance. Division reporting shows high productivity in both Branches while telecommuting. As we move into SFY 2022 and continue to adapt to Covid-19 and the Delta Variant, the Division will continue to seek more productive ways to accomplish its mission and fulfill its service to the citizens of the Commonwealth.

Michael B. Kroeger
Assistant 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. The 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 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 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.

Introduction

The Civil Enforcement Branch negotiates civil settlements for violations cited by the Kentucky Department for Environmental Protection. These cases include all media: air, waste, and water. The Civil Enforcement Branch continues to emphasize multi-media negotiations in order to efficiently and effectively address environmental violations.

The Compliance and Operations Branch has two functions: regulatory compliance and administrative support. Regulatory compliance involves citing environmental violations identified by either the Compliance and Operations Branch 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, and travel.



Figure 1

Director's Office

Our Mission:

"To use a clear and consistent approach in bringing about and maintaining compliance with the Cabinet's regulatory programs by using appropriate and reasonable measures to resolve cases in a timely manner."

The Director's Office consists of the Division Director, the Assistant Director, and an Environmental Scientists Consultant Senior. To complete the Division's "Mission", the Director's Office provides direction and support to the staff, while creating a work atmosphere that promotes productivity.

In addition to the overall management of the Division, the Director is responsible for the development and implementation of division-level policy involving operations and administration; is the Department's lead settlement negotiator for the resolution of environmental violations; and is the face of the Division when dealing with Cabinet and Department level management, as well as the regulated community in high-profile cases.

Other duties tasked to the Director's Office include the development and implementation of new Department procedures; coordinating efforts to satisfy the reporting requirements for programs with federal oversight, such as the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act; quantifying and compiling Division metrics for internal and external reports; organizing enforcement efforts on special projects or program specific cases; and consistently looking for more efficient ways to achieve Division goals and objectives.

Case Referral Data

Case Referral Data: The Division of Enforcement receives new cases in the form of referrals. In SFY 2021, the Division received case referrals from all twelve Regional Offices, the Department’s Central Office Programs, and internally from the Compliance and Operations Branch. Before a referral can become a case, it must be approved by the Division Director.

New Cases: The Division of Enforcement received a total of 265 new case referrals in SFY 2021. This was a decrease of 27%, as compared to the number of new case referrals in SFY 2020 (365). Over the past ten years, the Division has received, on average, 400 new cases annually.

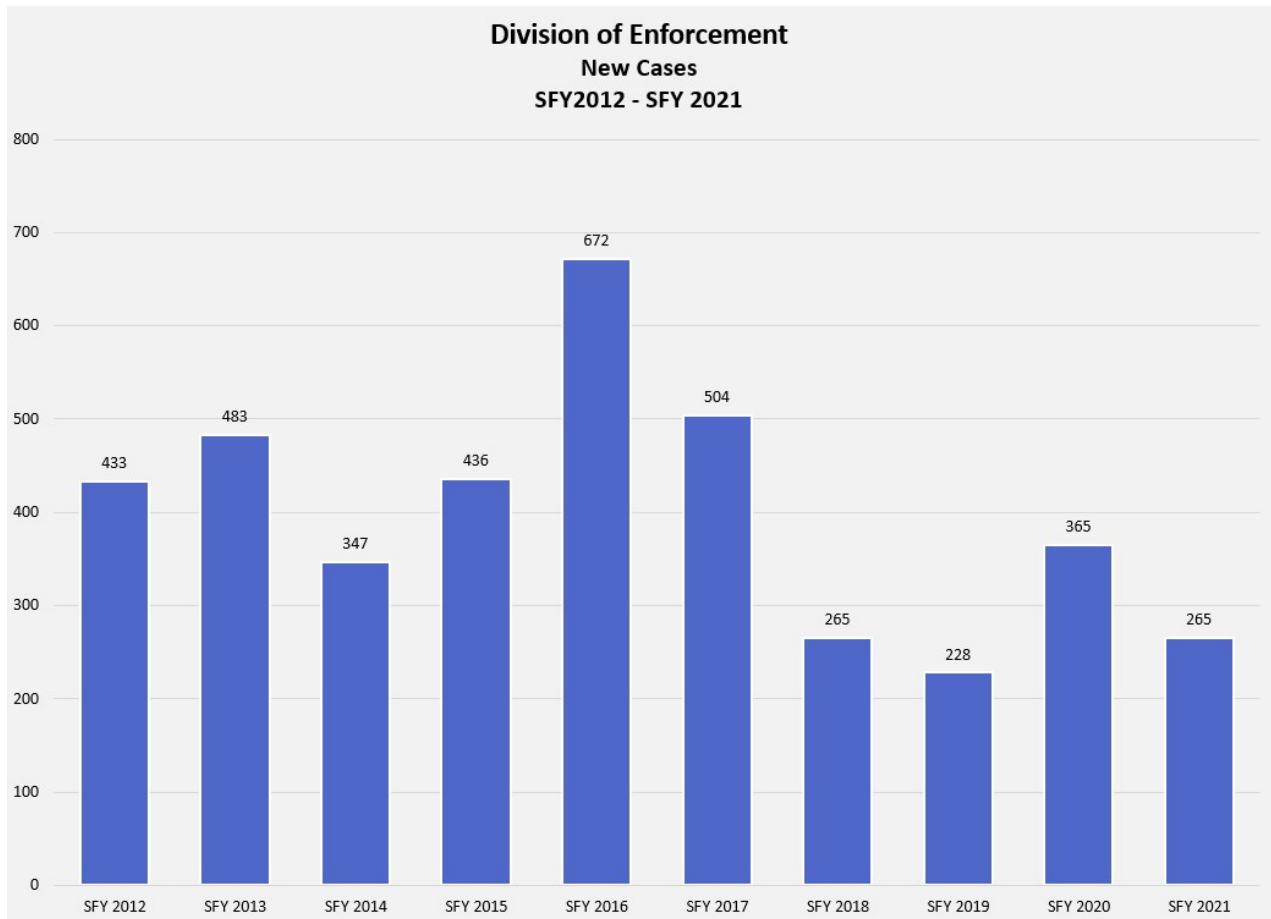


Figure 2

Case Referral Data

Case Referrals by Program: The Division of Enforcement received case referrals from eight different program areas in SFY 2021. Of those referrals, the highest number involved the wastewater program with 168 referrals (63%), followed by the UST program with 35 (13%).

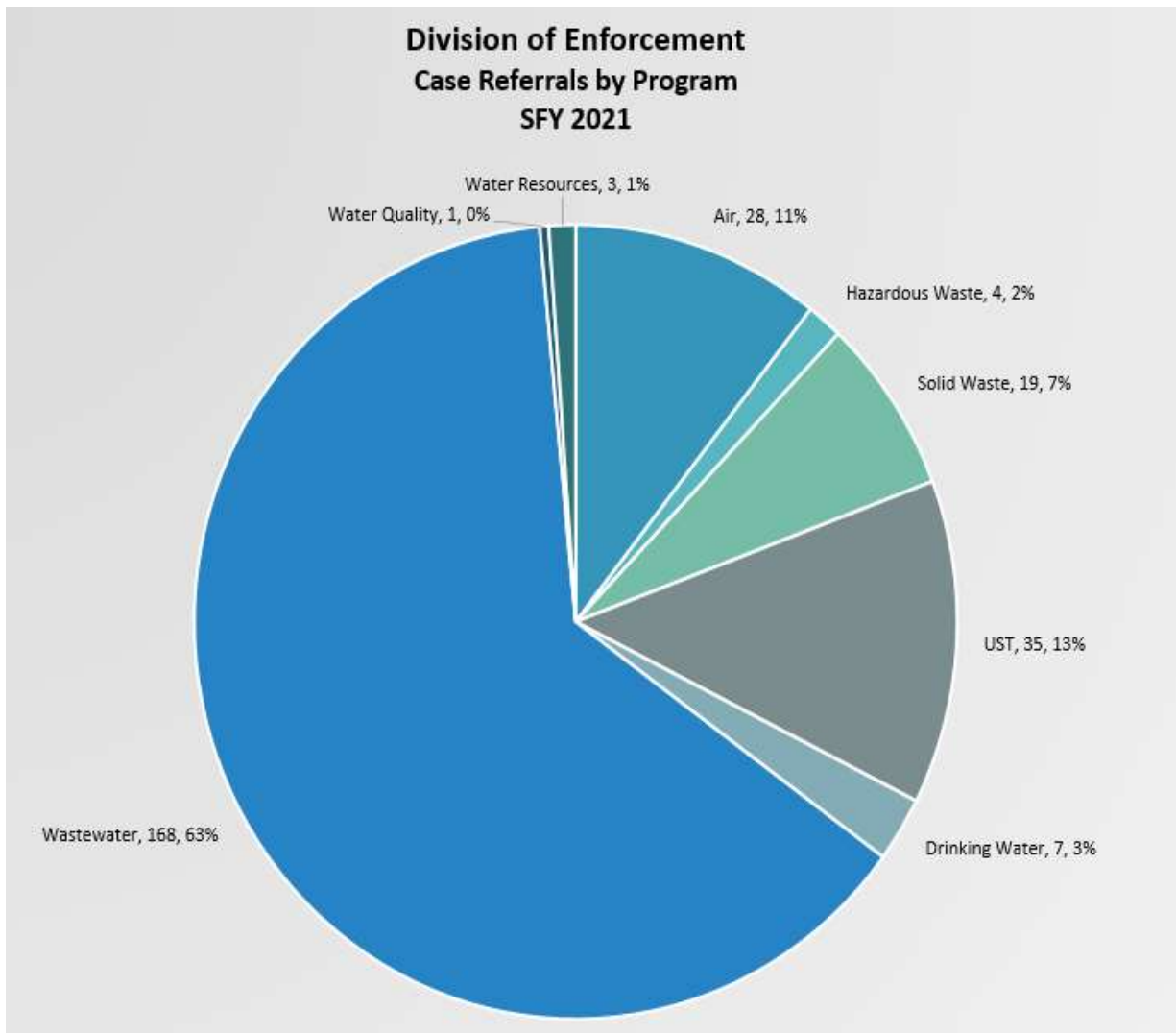


Figure 3

Case Referral Data

Case Referrals by Division: The Division of Enforcement received case referrals from all three media Divisions, Division for Air Quality (DAQ), Division of Waste Management (DWM), and Division of Water (DOW), as well as the Division's Compliance and Operations Branch (COB) in SFY 2021. The Division's Compliance and Operations Branch had the most referrals with 129 (49%). Referrals from the Division of Waste Management accounted for the second most, with 58 (22%).

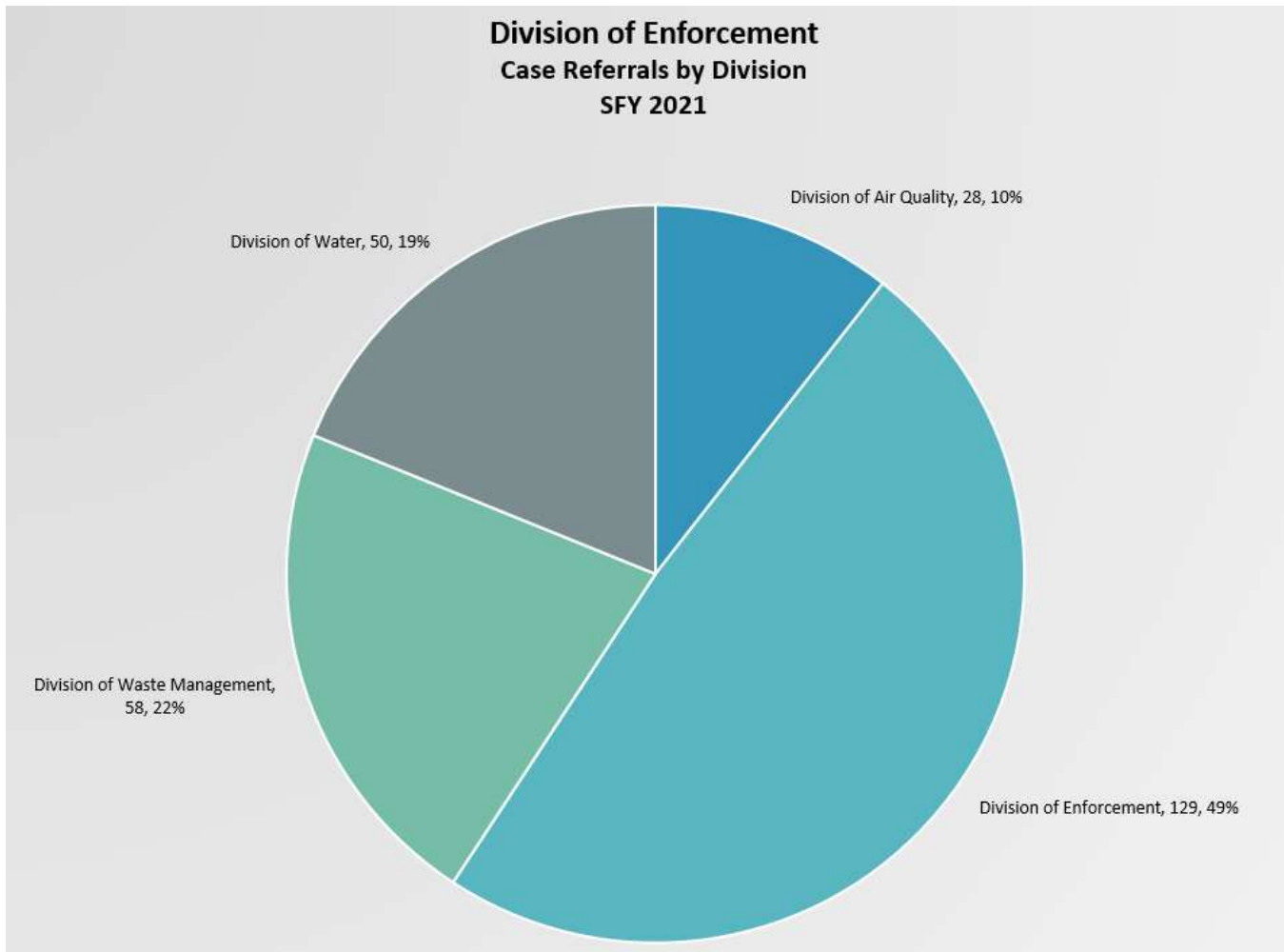


Figure 4

Case Referral Data

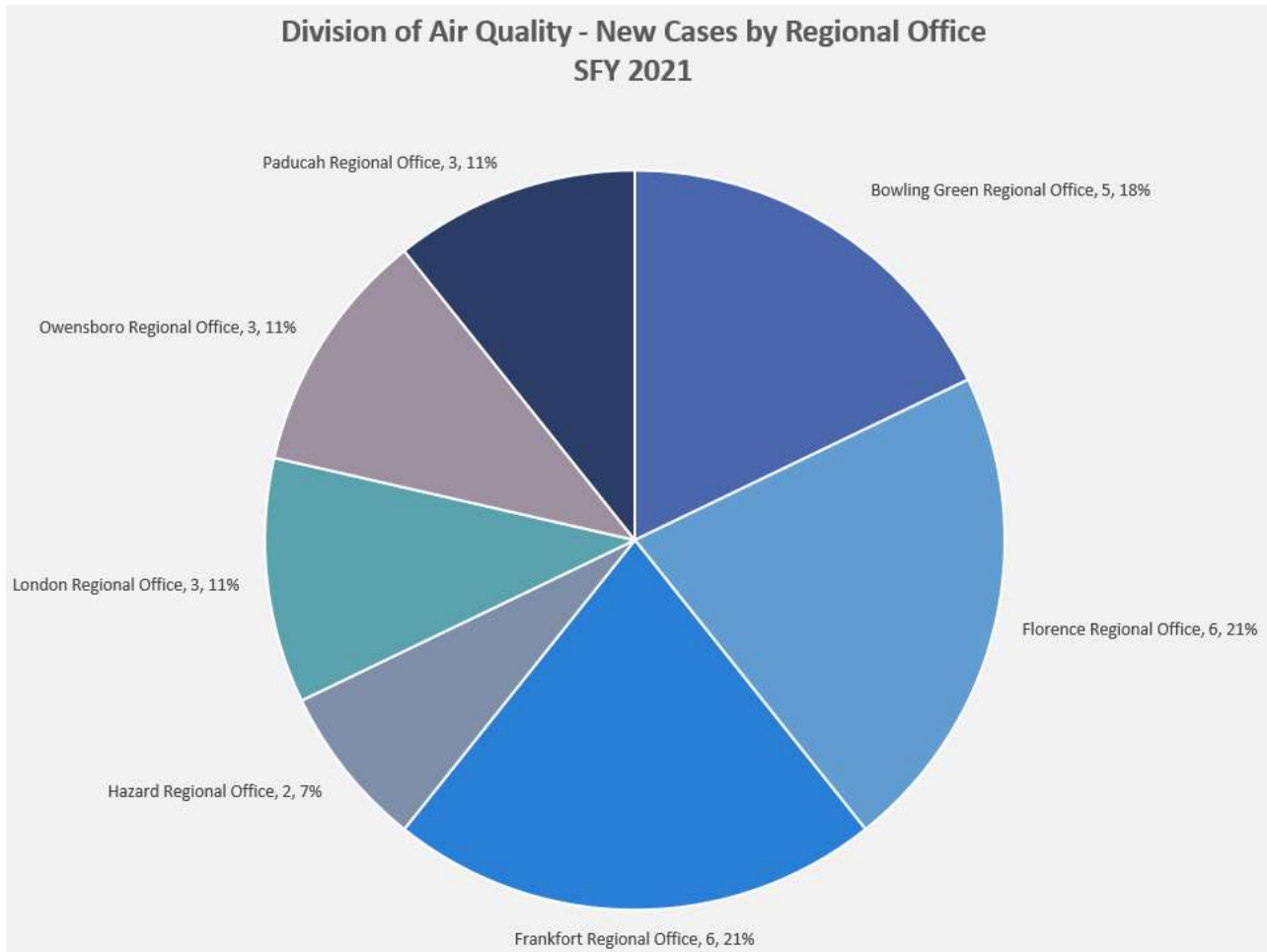


Figure 5

Case Referrals from the Division for Air Quality: The Division of Enforcement received 28 new case referrals from the Division for Air Quality in SFY 2021. Of the 28 referrals, the highest numbers came from the Frankfort and Florence Regional Offices with 6 (21%), followed by the Bowling Green Regional Office with 5 (18%).

Case Referral Data

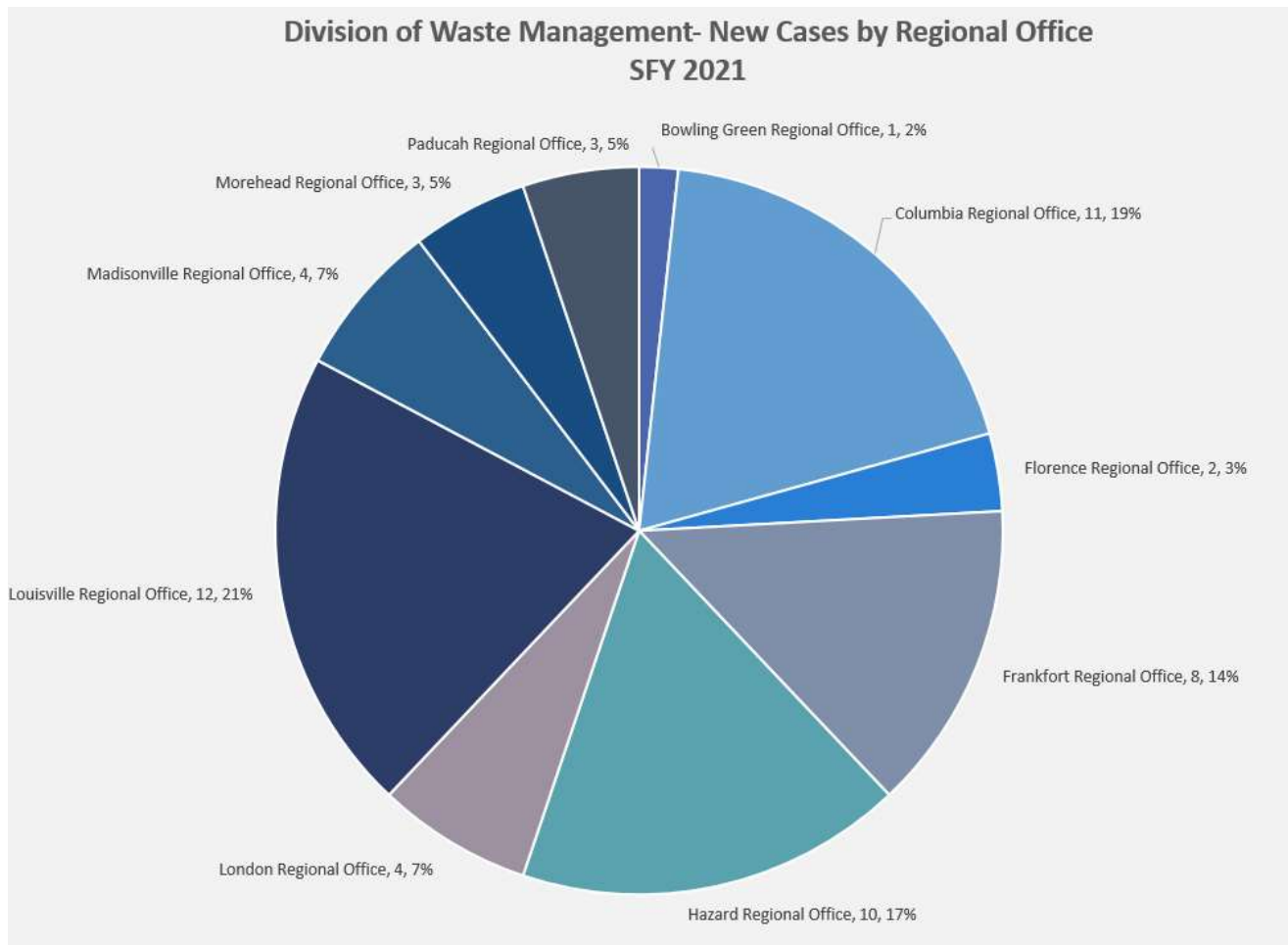


Figure 6

Case Referrals from the Division of Waste Management: The Division of Enforcement received 58 new case referrals from the Division of Waste Management in SFY 2021. Of the 58 referrals, the highest number came from the Louisville Regional Office with 12 (21%), followed by the Columbia Regional Offices with 11 (19%).

Case Referral Data

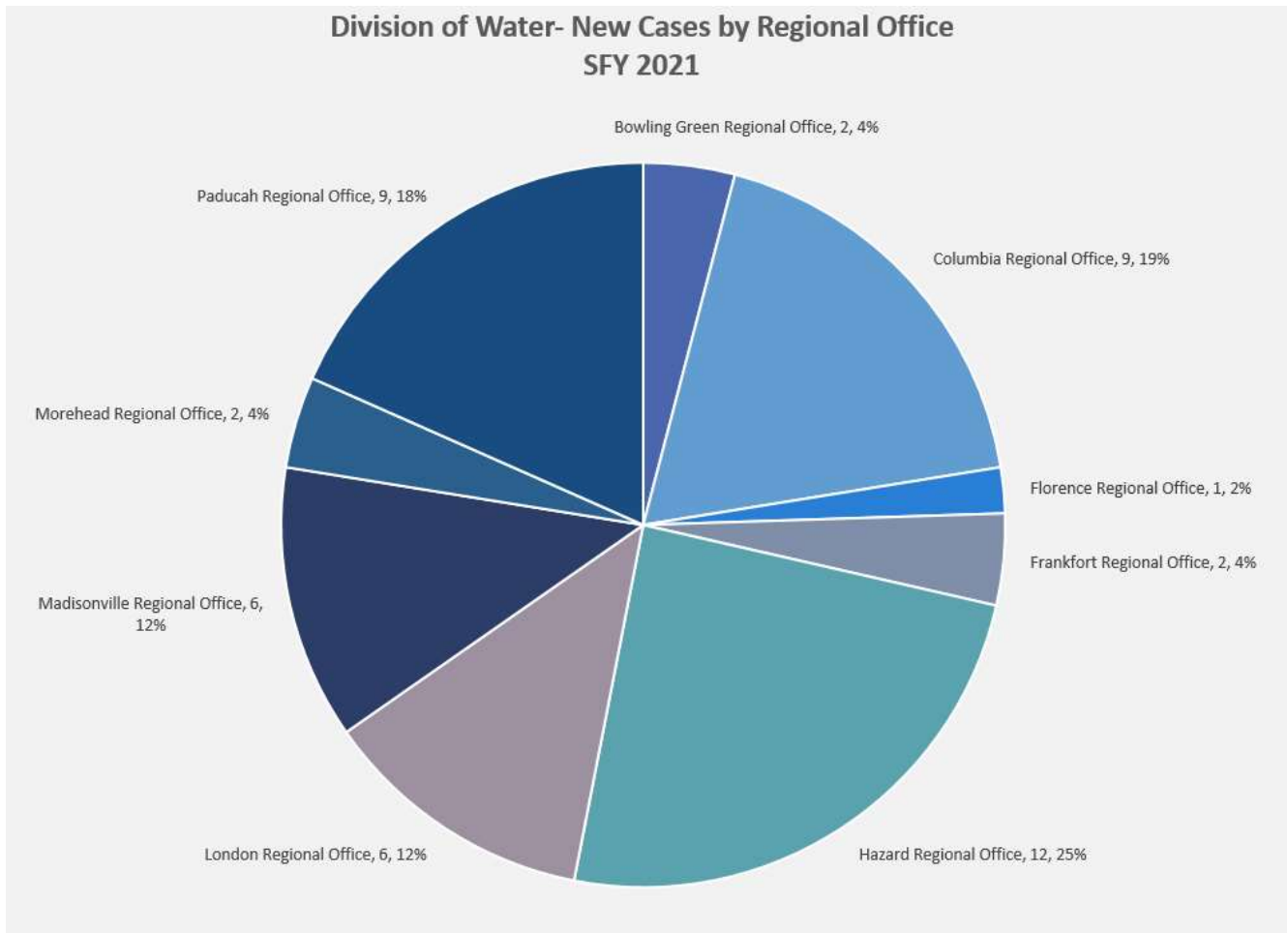


Figure 7

Case Referrals from the Division of Water: The Division of Enforcement received 49 new case referrals from the Division of Water in SFY 2021. Of the 49 referrals, the highest numbers came from the Hazard Regional Office with 12 referrals (25%), followed by the Columbia Regional Office with 9 (19%).

Civil Enforcement Branch

The Civil Enforcement Branch (CEB). When an Enforcement Specialist in CEB is assigned a case by the Branch Manager, they first 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, called a Case Resolution Proposal (CRP), which includes corrective actions that are required to return the responsible party to compliance and proposed civil penalties for the violations. Upon approval of the CRP, the Enforcement Specialist schedules an administrative conference with the responsible party to discuss the steps necessary to resolve the violations and return the entity to compliance.



Civil Enforcement Branch

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 CRP and if so, discusses those changes with Division management. The Enforcement Specialist will make an initial settlement proposal to the responsible party during the Administrative Conference. 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 meetings over a period of months.

The Civil Enforcement Branch conducted 167 Administrative Conferences in SFY 2021, for an average of 14 per month.

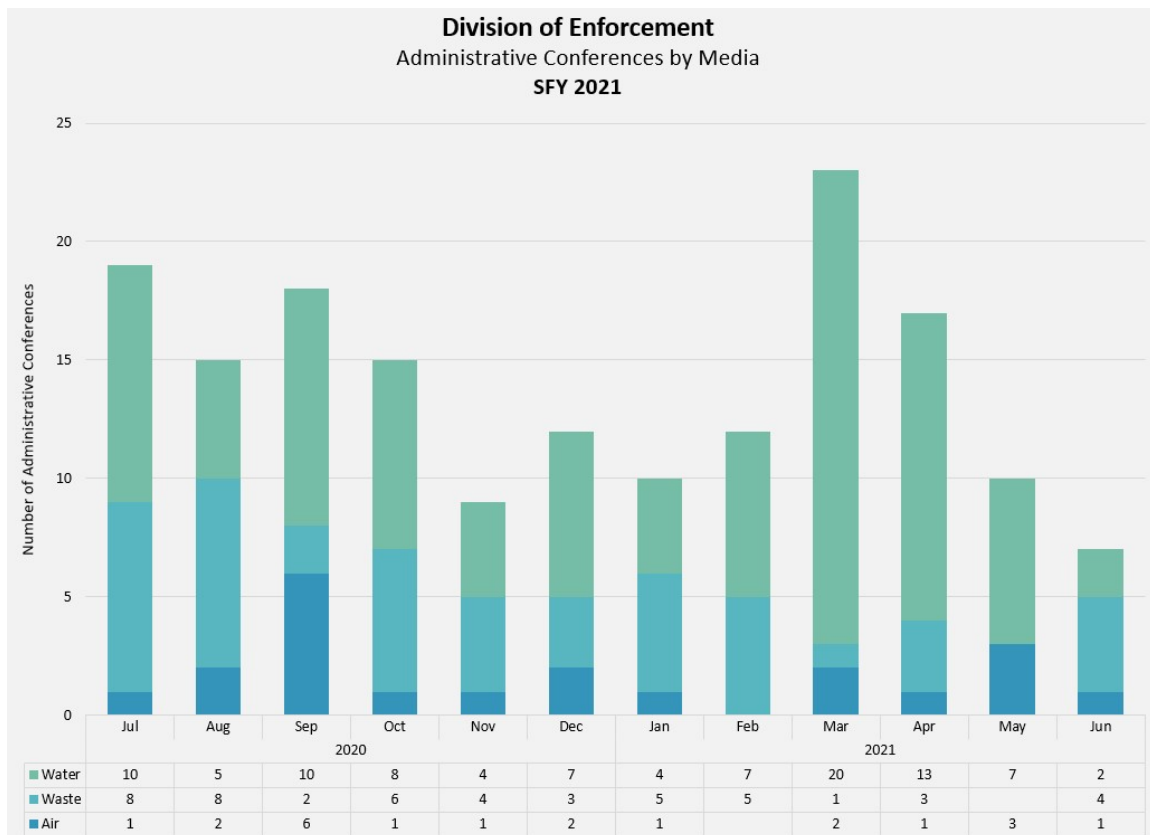


Figure 8

Civil Enforcement Branch

Agreement-in-Principle. If negotiations are successful and the Division reaches an agreement on the terms of settlement with a responsible party, the Enforcement Specialist will draft a written document to formalize the agreement. The case is given an “Agreement-in-Principle” status, and the formal resolution document, which contains remedial measures and the amount of penalty to be assessed, is routed for approval.

In SFY 2021, DENF reached 126 Agreements-in-Principle, an average of 11 per month.



Civil Enforcement Branch

Demand Letters, which are unilateral agreements, are often used when the regulated entity has already completed the remedial measures required to return it to compliance. Demand Letters are formalized by the signature of the Director of the Division. Demand Letters are not final orders of the Cabinet and are not enforceable in Franklin Circuit Court. A Demand Letter may also be utilized when calling in stipulated penalties pursuant to executed Agreed Orders.

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.

The Division issued a total of 58 Demand Letters in SFY 2021, an average of 5 per month. In SFY 2021, Agreed Orders were used to resolve 80 cases in the Division, an average of 7 per month.

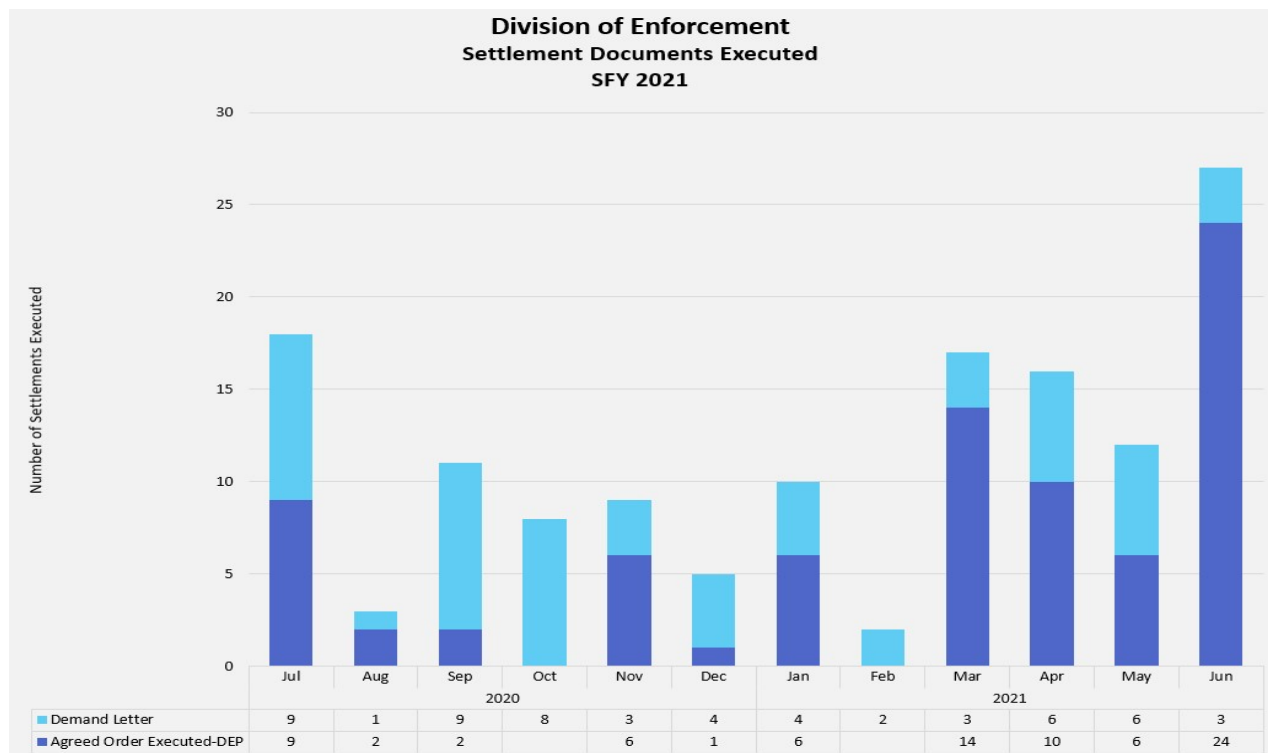


Figure 9

Civil Enforcement Branch

Monitoring. The Enforcement Specialist assigned to a case 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.

In SFY 2021, DENF monitored an average of 201 executed settlement documents each month.

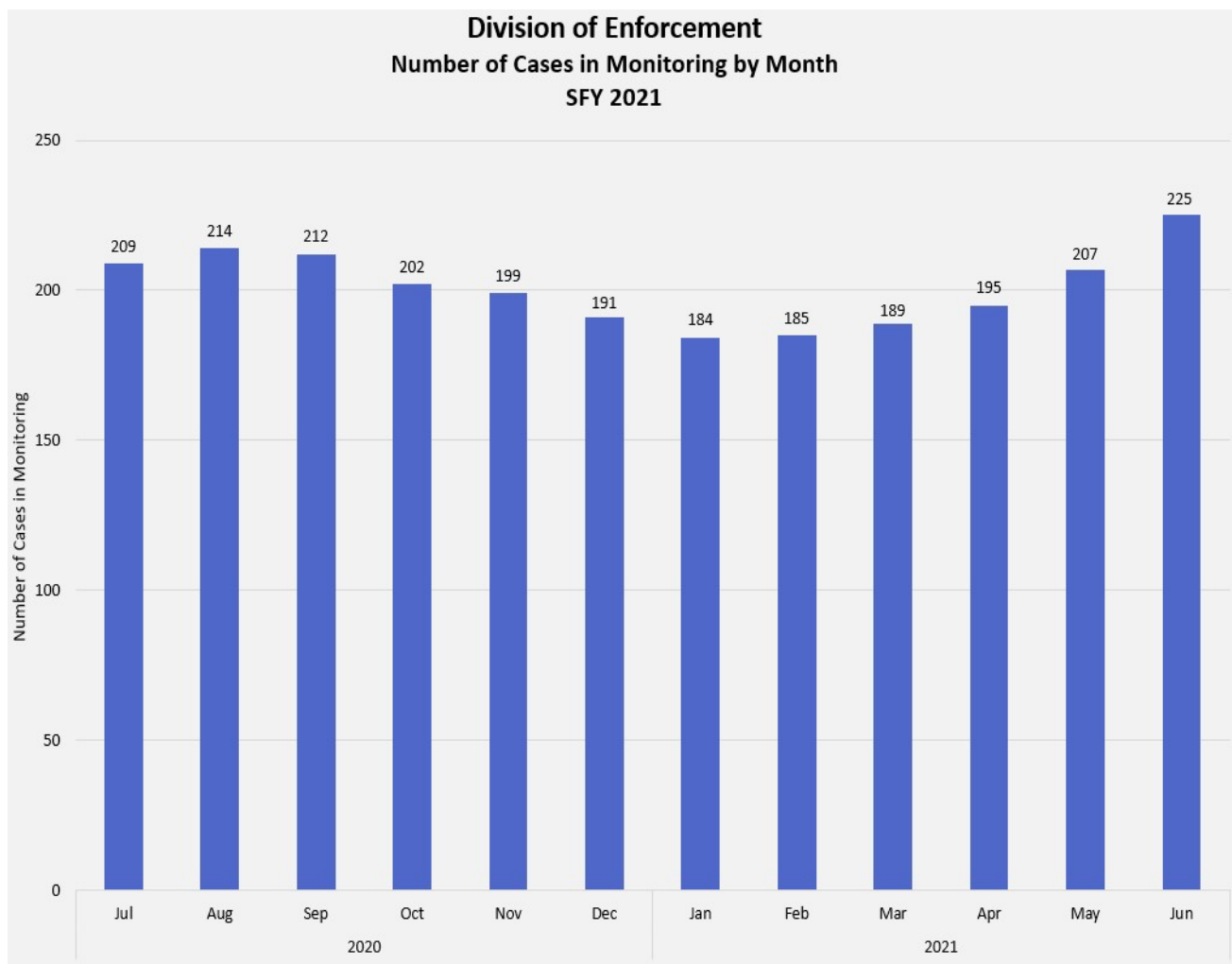


Figure 10

Civil Enforcement Branch

Office of Legal Services (OLS). Should the regulated entity and the Division not reach an Agreement-in-Principle, the case is referred to the Cabinet’s OLS where a Cabinet attorney is assigned to the case. These cases may be resolved through further negotiation, or may proceed to a formal hearing at the Office of Administrative Hearings.

Office of Administrative Hearings (OAH). When the Division is unable to resolve a case due to a multiple of factors, the OLS 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 SFY 2021, The Division referred 18 enforcement cases to the Cabinet’s Office of Legal Services for further enforcement action, an average of 1 per month.

In SFY 2021, DENF resolved a total of 18 cases through the Office of Legal Services (12 Agreed Orders, 3 Secretary’s Order, and 3 Franklin Circuit Court Decision).



Civil Enforcement Branch

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

Based on historical averages, once a case is referred to the Division, it takes 174 days to issue a Demand Letter, 327 days to execute an Agreed Order, 801 days to execute an OLS Agreed Order, and 973 days to execute a Secretary's Order.

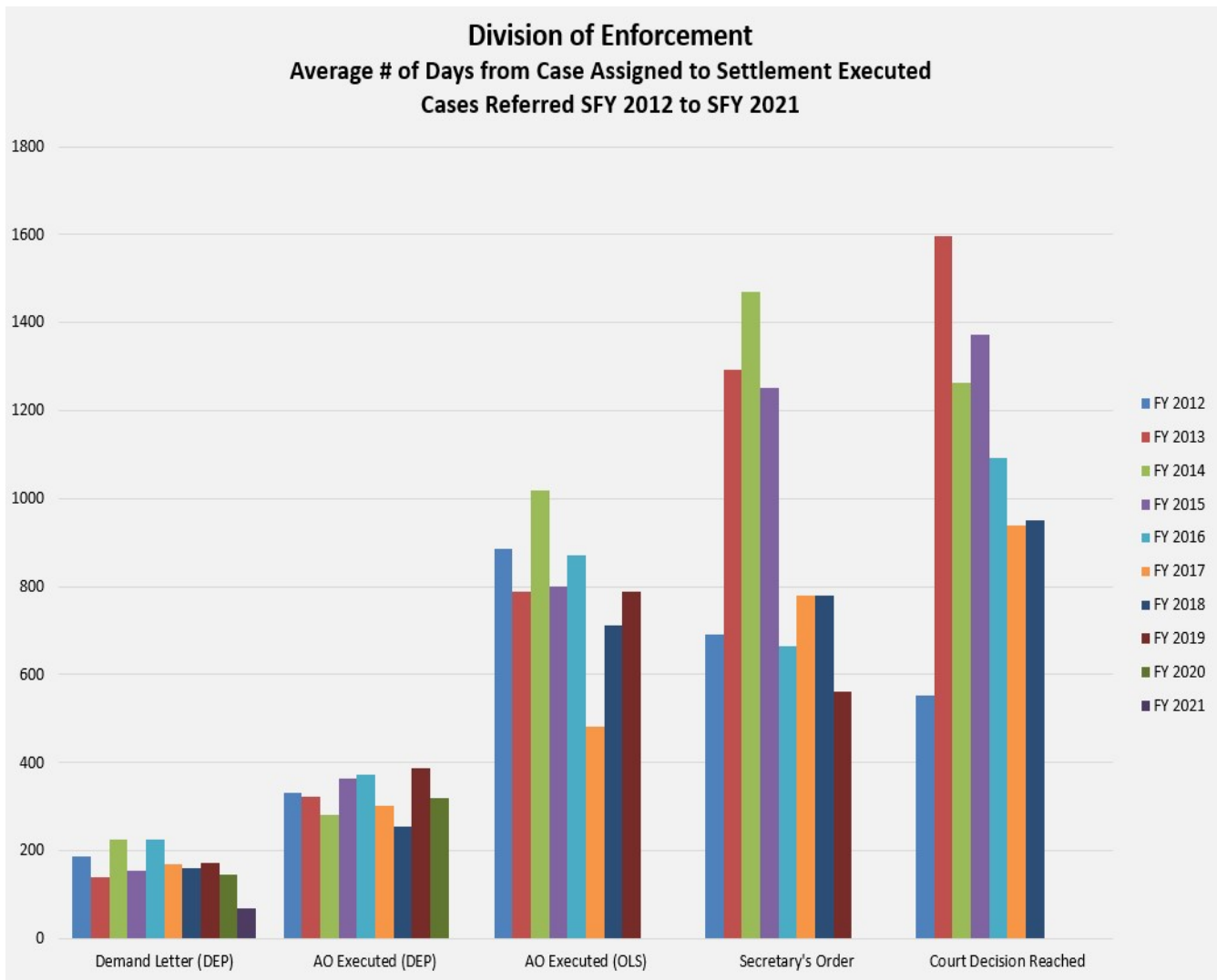


Figure 11

Civil Enforcement Branch



Environmental Protection Agency (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 to overfile on an enforcement settlement previously reached between the Cabinet and the responsible party and proceed with a federal enforcement action.

At the end of SFY 2021, one enforcement case was being worked with EPA as the lead agency. There are currently several Consent Degrees being monitored for compliance, where Kentucky's Department for Environmental Protection and the United States Environmental Protection Agency have taken a joint action.

Civil Enforcement Branch

Penalties Collected: In most enforcement cases, the Division of Enforcement assesses civil penalties for documented violations of Kentucky’s environmental laws. The Division may also use stipulated and performance penalties to encourage future compliance and to ensure that remedial measures or other requirements of an Agreed Order are completed. Penalty collections are tracked by the Office of Administrative Hearings and categorized by media type (UST, Water, Waste, and Air).

In SFY 2021, the Division of Enforcement collected \$1,160,993.54 in civil and stipulated penalties. \$827,447 of penalties collected involved cases from the Water media.

**DIVISION OF ENFORCEMENT
CIVIL PENALTY COLLECTIONS DATA BY FISCAL YEAR
July 1999 through June 2021**

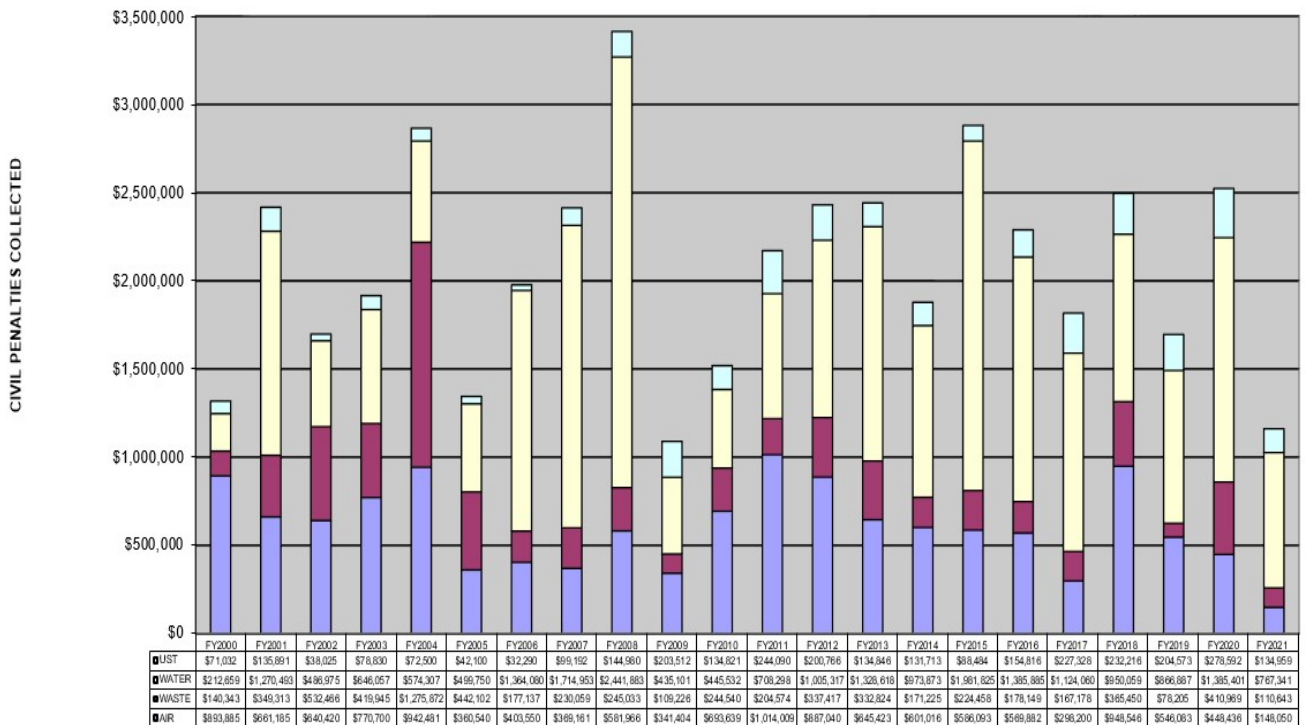


Figure 12

Civil Enforcement Branch

Total Settlement Documents: In SFY 2021, 161 settlement documents were executed. 143 of the settlements were negotiated in the Division of Enforcement, and 18 of the settlements came from cases that were referred to the Office of Legal Services.

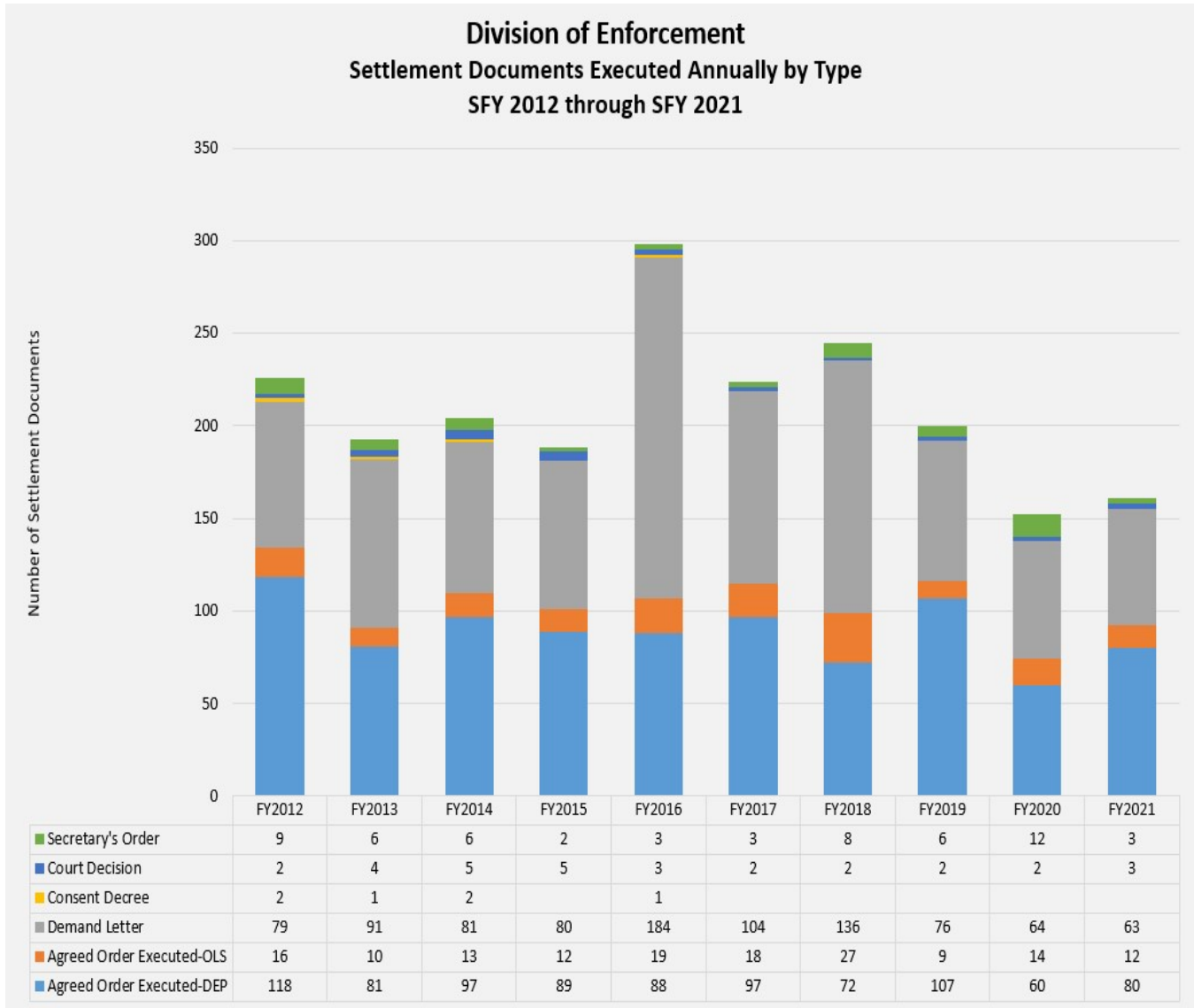


Figure 13

Civil Enforcement Branch

Closed Cases: From SFY 2012 to SFY 2021, an average of 311 cases have been closed annually. The Division of Enforcement closed a total of 187 enforcement cases in SFY 2021.

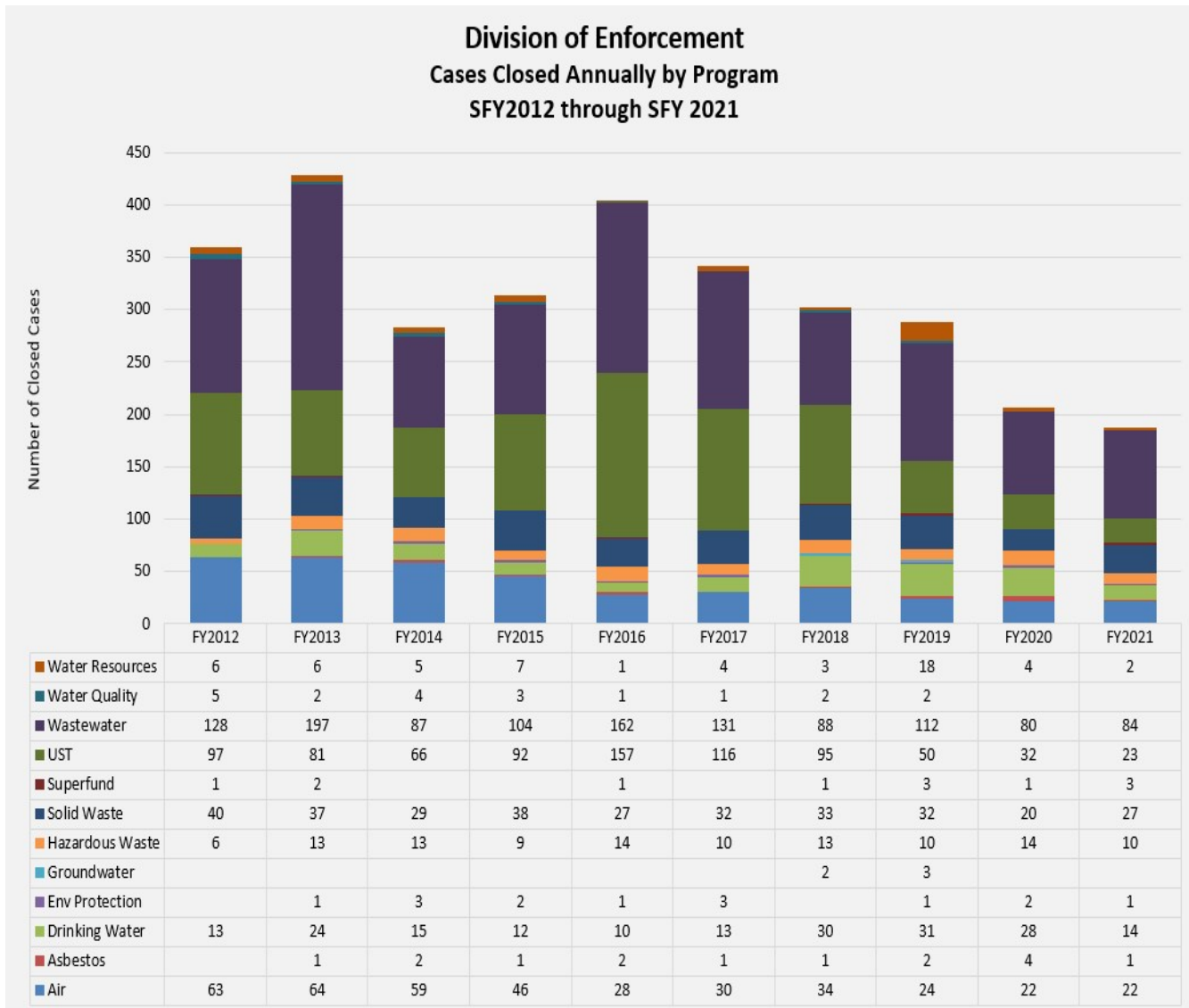


Figure 14

Compliance & Operations Branch

The Compliance and Operations Branch (COB): The primary duty of an Enforcement Specialist in the Compliance and Operations Branch is to determine compliance with Kentucky's environmental regulations and cite violations through the issuance of Notices of Violation (NOVs).

In SFY 2021, ninety-seven percent (97%) of the NOVs generated by the Compliance and Operations Branch were for violations of the Kentucky Pollutant Discharge Elimination System (KPDES) permits issued by the Division of Water. KPDES permits include effluent limitations and require the regular submittal of Discharge Monitoring Reports to demonstrate compliance. Discharge Monitoring Reports are analyzed on a monthly/quarterly basis to ensure compliance with the KPDES Permit. The majority of the compliance reviews completed in SFY 2021 were of coal facilities and municipal and non-municipal major/minor wastewater facilities.

Three percent (3%) of the NOVs issued by the COB in SFY 2021 were for violations referred by Central Office Programs from the Division of Waste Management and the Division of Water. Violations were referred from Superfund, Pretreatment, Whole Effluent Toxicity (WET), and Water Resources Programs.

If a regulated entity fails to comply with the remedial measures contained in a NOV issued by the COB or the violations documented require further enforcement action the violations may be referred to the Division's Civil Enforcement Branch (CEB) for a formal enforcement action.

COB has issued 2,396 Notices of Violation and sent 192 Enforcement Referrals to CEB in SFY 2021.

Compliance & Operations Branch

Coal Compliance Reviews: Surface Mining Control and Reclamation Act (SMCRA) permits issued to coal facilities by the Cabinet's Department for Natural Resources (DNR) require that permittees also obtain a KPDES permit from the Division of Water. An Enforcement Specialist in the Compliance and Operations Branch conducts reviews of these coal facilities that typically cover the previous calendar year, but can cover as many as 5 years based on the statute of limitations. During reviews, a specialist researches KPDES Permits, DMRs, SMCRA Permits, facility maps, and bench and lab analysis sheets to determine violations. The specialist also coordinates with DOW and DNR staff, as well as the regulated entities. In SFY 2021, the Branch reviewed coal companies for the monitoring period of calendar year 2019 and 2020. Many of those violations have resulted in referrals to the Civil Enforcement Branch for formal enforcement action.

In SFY 2021, Coal Compliance Reviews have resulted in 449 Notices of Violation being issued and 70 referrals to the Civil Enforcement Branch.



Compliance & Operations Branch



Major and Minor Wastewater Compliance Reviews: For municipalities, facilities with a design capacity over one million gallons per day (1.000 MGD) are considered “Majors”, and those under this threshold are considered “Minors”. Other criteria may be used to place an industrial facility on the “Major” or “Minor” list. Major facilities are reviewed every quarter for compliance. These reviews look at the data submitted for the previous 3 months. Since the start of DMR Automation, the Minor IP reviews are conducted quarterly. In the review of both Major and Minor facilities, the Enforcement Specialist researches KPDES permits, DMRs, Inspection Reports from the Program Regional Offices, and past enforcement actions to determine compliance. The Specialist also develops and monitors facility-specific remedial measures when issuing NOVs. Violations that are noted in reviews are then incorporated into regular reporting which is submitted to the Environmental Protection Agency. Facilities that fail to comply with the remedial measure requirements of a NOV or have Significant Non-Compliance (SNC) violations may be referred to the Civil Enforcement Branch for formal enforcement action.

In SFY 2021, Major/Minor Compliance Reviews have resulted in 1,883 Notices of Violation issued and 121 referrals to the Civil Enforcement Branch.

Compliance & Operations Branch

Permit Program Compliance Reviews: The Enforcement Specialist tasked with these duties researches and evaluates violations referred from specific programs within the DAQ, DWM, and DOW. The Specialist researches referred violations and reviews previous enforcement history before determining remedial measures and issuing NOVs. The specialist works in conjunction with staff from the Program Divisions to ensure accuracy with the NOVs that are issued.

In SFY 2021, Permit Program Compliance Reviews have resulted in 64 Notices of Violation issued and 1 referral to the Civil Enforcement Branch.

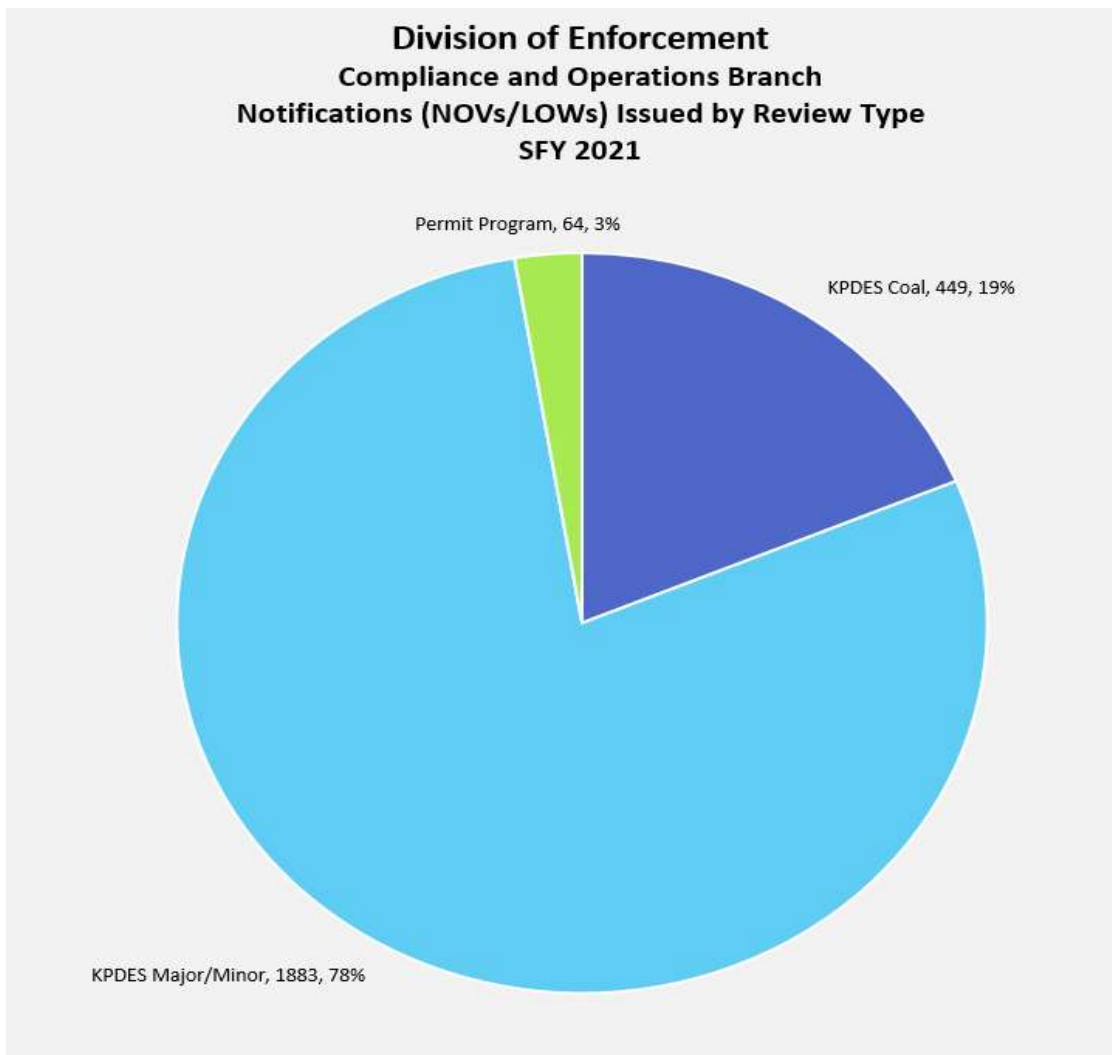


Figure 15

Compliance & Operations Branch

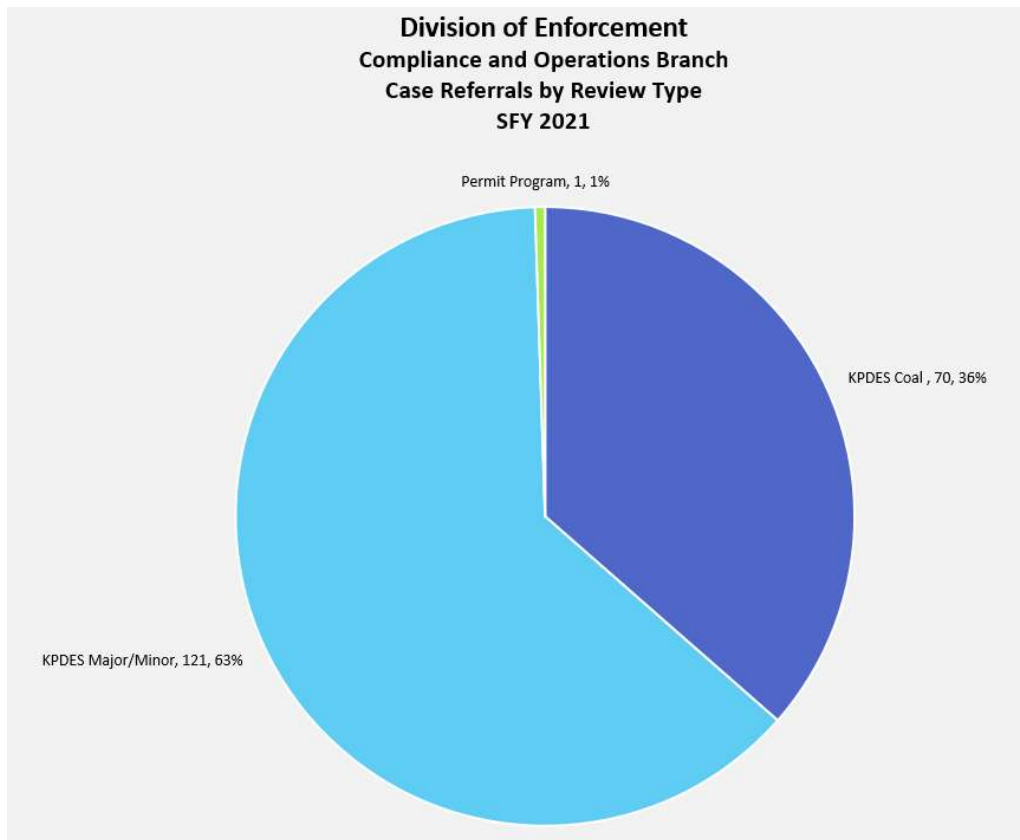


Figure 16

Referrals to the Civil Enforcement Branch: In SFY 2021, the Compliance and Operation Branch sent 192 referrals from Coal, Major and Minors, and Permit Program Reviews to the Civil Enforcement Branch. Each referral then becomes a case, or is consolidated into a larger case, and is assigned to an Enforcement Specialist in the Civil Enforcement Branch for further enforcement action. During the formal enforcement process, Compliance and Operations Branch staff complete up-to-date compliance reviews and serve as technical experts for the Division in settlement negotiations. The Enforcement Specialist will coordinate with Civil Enforcement Branch staff, the Director's and Commissioner's Office staff, the Office of Legal Services attorneys, and company representatives until final resolution is reached.

Compliance & Operations Branch

Administrative Duties: The COB has one staff member that is responsible for the administrative day-to-day operation of the Division. These duties include, but are not limited to: the entry and auditing of data in Integrated Compliance Information System (ICIS); the processing of civil penalties, stipulated penalties, and cost recovery payments; maintaining Division record keeping and databases; coordinating work flow through the Director's office; and providing administrative support for all staff.

In SFY 2021, Administrative Support Staff logged and processed 501 incoming correspondences and 268 penalty payments.



<https://www.fiverr.com/frensiskonomi/be-your-virtual-administrative-assistant-and-support>

Compliance Notification Data

Notices of Violation Issued by Division: The Department as a whole issued 4,770 compliance notifications, in the form of Notices of Violation and Letters of Warning, in SFY 2021. Notices of Violation from the Division of Enforcement made up 50% of all notices issued.

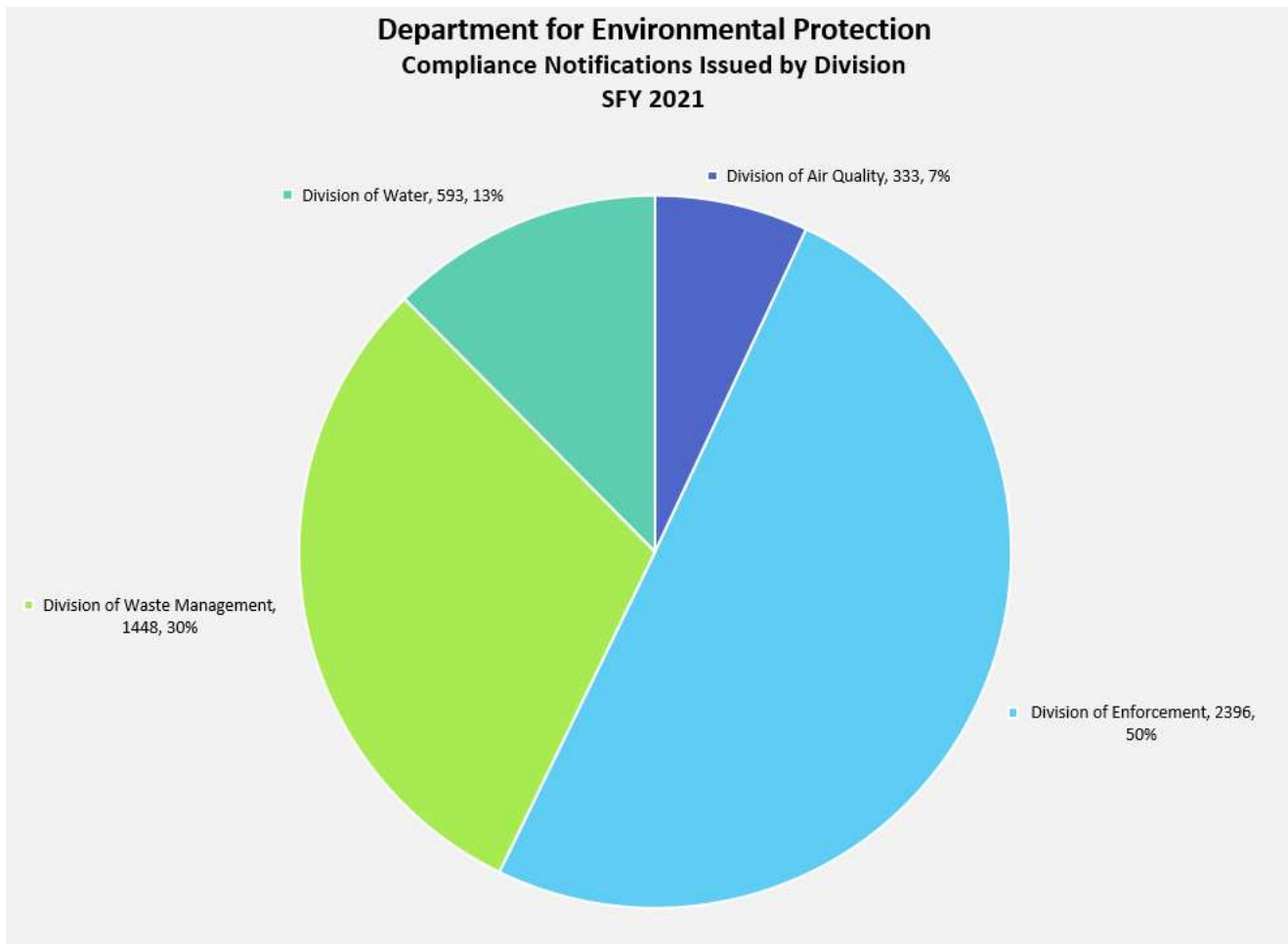


Figure 17

Compliance Notification Data

Compliance Notifications Issued by Activity Type: 49% of the Notices of Violation and Letters of Warning issued in SFY 2021 came from the Division of Enforcement ENF Program. The second highest contribution was from Field Operations with 45%.

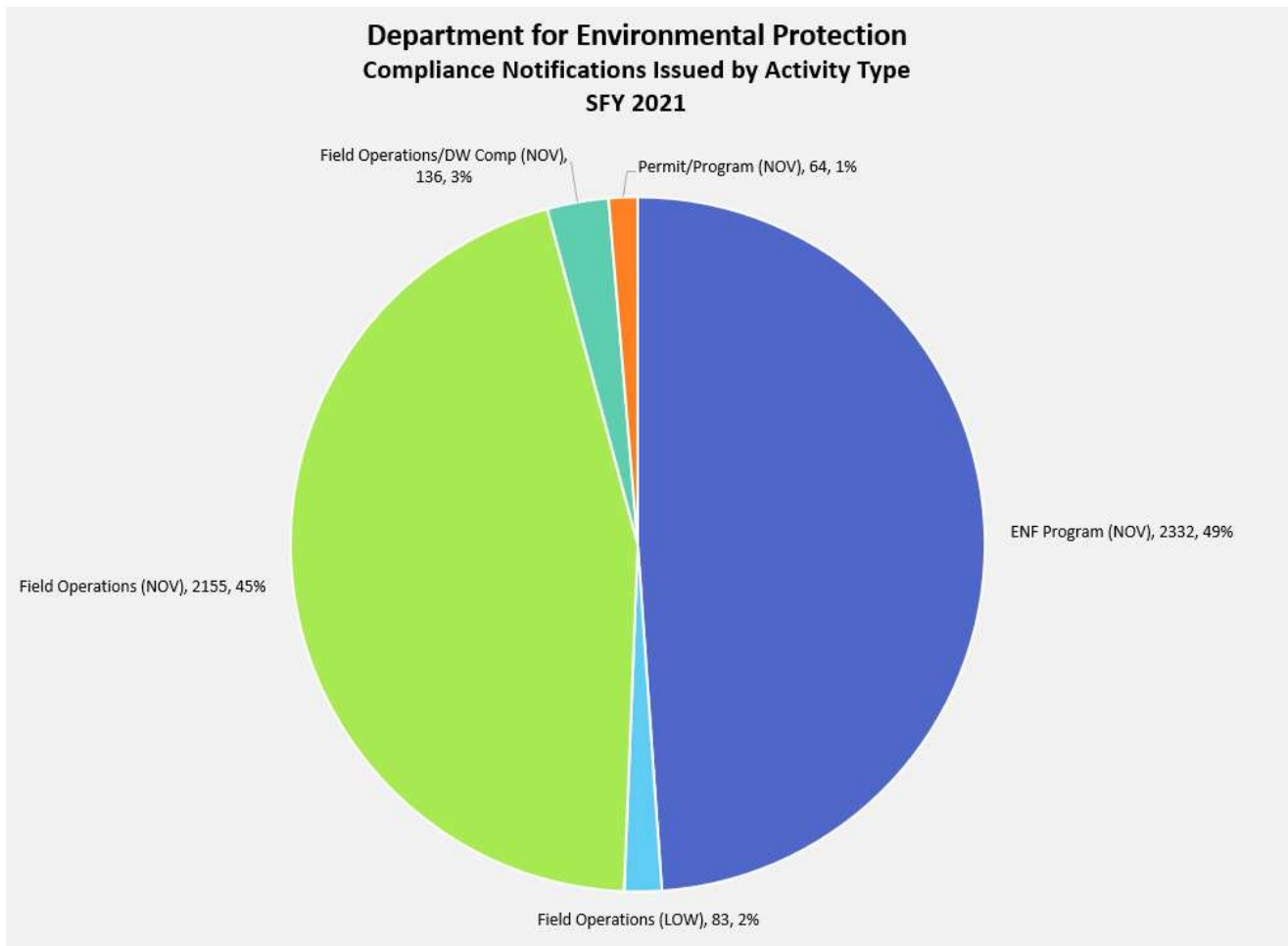


Figure 18

Compliance Notification Data

Compliance Notifications Issued by Program: In SFY 2021, the largest number of notifications issued by KDEP was in the Wastewater program with 2,765 (58%), followed by the UST program with 1,084 (23%), and the Air program with 314 (7%).

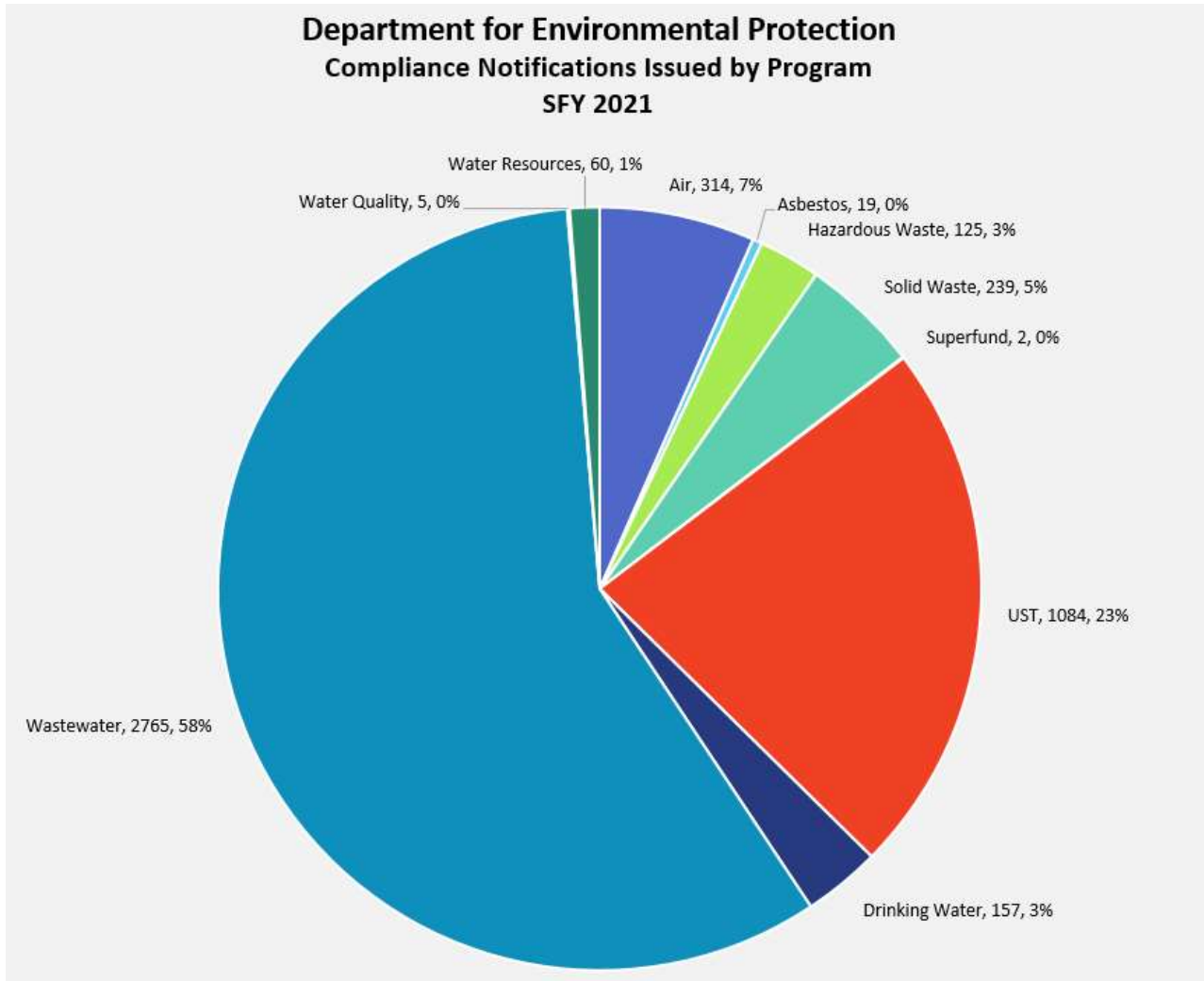


Figure 19

SFY 2021 Accomplishments

- **Barton Brands of Kentucky:** On June 22nd, 2018, a report of a warehouse collapse was made to the Department for Environmental Protection, Emergency Response Team (ERT) hotline by the Nelson County Emergency Management System. Approximately one half of a 100ft x 200ft x 80ft rack house collapsed. An undetermined number of the 9,000 barrels were leaking or destroyed, allowing a discharge of alcohol into Withrow Creek and into Beech Fork. Columbia Regional Office issued violations for failure to immediately notify Division of Water (DOW) of a spill or discharge, as well as pollution and degradation of waters of the Commonwealth.

On July 4, 2018, DOW Louisville Regional Office personnel, responded after the second half of the rackhouse collapsed. Barton did contact the DOWs 24-hour Emergency Hotline. Product was contained in the previous constructed containment area, so there was no impact to the streams. The Division of Enforcement held an administrative conference with Barton Brands of Kentucky on October 25, 2018. Several members from both Barton and the Cabinet were in attendance.

On March 5, 2019, the Barton notified the Cabinet of a spill of mash from their “beer well”, which is a 55,000 gallon tank that contained 10% alcohol. The spill was due to the tank being elevated on legs, and one of the legs gave way, causing the tank to overturn. When the tank overturned, it struck and punctured three other fermenter tanks. The Columbia Regional Office issued violations for contributing to the pollution and degrading waters of the Commonwealth.

On March 29, 2019, the DOW Columbia Regional Office received notification from Barton that an unattended pump, wasting from the clarifier to Lagoon #3, was left on overnight allowing the lagoon to release contents to Beech Fork. The Columbia Regional Office issued violations for discharging without a permit, contributing to pollution and degrading waters of the Commonwealth.

After negotiations, an Agreed Order was executed on January 21, 2021. A \$60,000 civil penalty was assessed with the offset of \$30,000 through a Supplemental Environmental Project and \$8,139.83 in response costs. Furthermore, all required remedial measures were completed and the Barton Brands of Kentucky Agreed Order was closed on May 5, 2021.

SFY 2021 Accomplishments

- **Elmo Petty Lease/Sim Bowling:** Sim Bowling owned an oil tank battery located at South Burkesville Road in Flatwood, KY. A citizen complaint tipped off local authorities to an oil spill from the tanks that impacted Brushy Creek. Approximately 100 barrels of oil were released, and 2 miles of stream were affected. The Sheriff's office reported the release to the DOW Columbia regional office. ERT responded and took over the cleanup after Mr. Bowling and the tank operator, Josh Franklin, failed to properly remediate the release. The Cabinet spent \$8,715.42 cleaning the site. EPA was also advised of the release, along with KY Fish & Wildlife, and both were on site. EPA also expended money cleaning the site. Several crayfish and a turtle perished due to the release, but KY Fish & Wildlife did not issue a bill for fish loss to the responsible parties. The cleanup was completed by August 30, 2018. It was alleged that Mr. Franklin purposely opened a valve on the tanks to drain brine water. He then left the site and forgot that the valve was open, thus draining the tank's oil contents along with brine water. A pipe had been run from the tanks directly to the creek, bypassing the secondary containment area. The Environmental Protection Agency Criminal Investigation Division (EPA CID) is investigating the case as a possible criminal matter. Josh Franklin and Sim Bowling have agreed to split the cost recovery amount. Mr. Bowling will pay \$4,357.71, and Mr. Franklin will pay the other half under a separate agreed order. Mr. Bowling agreed to pay a \$15,000 civil penalty. Mr. Franklin submitted tax records which showed some financial hardship, and has agreed to pay \$7,500 in 12 monthly payments. Mr. Franklin's attorney has advised him not to sign the agreed order yet, due to the pending criminal investigation. Mr. Franklin's case was referred to the Office of Legal Services. Mr. Bowling's attorney indicated that he is selling the tank battery, thus no remedial measures beyond cleanup are required. The agreed order for Mr. Bowling was executed on January 25, 2021. Mr. Bowling paid his portion of the cost recovery (\$4,357.71) in full on 2/4/21. He paid his civil penalty in full (\$15,000) on 3/1/21. Sim Bowling has complied with the terms of his agreed order; the case is being closed for Mr. Bowling's portion.
- **ERI Dumpsters LLC:** ERI Dumpsters was referred to DENF after the Lexington Fayette County Urban Government reached out to the Division of Waste Management (DWM) about the property possibly being used as an illegal waste disposal site. DWM Inspector conducted an inspection in October of 2019, confirming that the property was being used as a large unpermitted waste transfer station. The Owner Jim McGee had suffered a stroke, and while he was out dealing with his ailment, an employee stole a very large sum of cash, over \$200,000, which hindered his efforts in disposing of the debris on the property. Mr. McGee was later awarded his stolen funds by the courts in 2021, and is now collaborating with Diversify Demolition to remedy the site. An Agreed Order was executed on July 12, 2021, requiring ERI to finish disposing of the waste on the property, and pay a civil penalty of \$2,500.

SFY 2021 Accomplishments

- **Discharge Monitoring Report (DMR) Compliance Automation:** The Division of Enforcement continues to automate compliance reviews of Discharge Monitoring Reports (DMRs). The Division, through DMR Compliance Automation, is working to be able to address non-compliance with NPDES effluent violations and monitoring and reporting violations comprehensively throughout the Commonwealth. The Division has divided the KPDES universe into five groups. It has been using automation to determine DMR non-compliance for major KPDES permits for several years. In February 2019, the Division added the compliance review for DMR monitoring and reporting violations for non-major individual KPDES permits. In August 2019, the Division automated the review of effluent violations for non-major individual KPDES permits. Beginning July 2020, the Division began running DMR Compliance Automation for the “Other Permits” category, which encompasses general permits except for coal (KYGE4 and KYGW4) and “storm water associated with industrial activities” (KYR00). Storm water discharges associated with industrial activities and coal general permits are the remaining permit groups for which the Division will implement DMR Compliance Automation in the future. In Federal Fiscal Year (FFY) 2020, Kentucky had 138 KPDES major individual permits, 1,168 non-major individual KPDES permits, and 5,785 general permits. Kentucky had 10 major permits (7.3%) in Category I non-compliance, 399 non-major individual permits (34.2%), and 613 general permits (10.2%) in Category 1 non-compliance. The aggregate is 409 of 1,306 individual permits (31.3%) in Category 1 non-compliance. Since FFY 2012, Kentucky has made major strides in addressing KPDES non-compliance. Kentucky has reduced the number of KPDES permits in Category 1 non-compliance from 2,611 in FFY2012 to 1,022 in FFY2020. Kentucky has been one of the leading states in NetDMR implementation. Kentucky has made major efforts to improve KPDES compliance in the surface coal mining industry, including annual DMR compliance reviews of all coal permits and the initiation and resolution of formal enforcement actions for KPDES non-compliance. The Division will continue to implement DMR Compliance Automation to further improve compliance rates at KPDES permitted facilities and to improve surface water quality in the Commonwealth.

SFY 2021 Accomplishment

- **Permit Program Violations:** The Compliance and Operations Branch has seen an increase in permit program violation referrals from the media divisions. In SFY 2017, COB experienced an influx of Whole Effluent Toxicity violation referrals from the Division of Water's Surface Water Permits Branch. Thus prompting the Compliance and Operations Branch to cross-train additional staff. This Permit Program employee still remains the reviewer on all his previous coal permits but now also oversees the Permit Program referrals as well. This employee is now training another staff member to aid in the issuance of these NOV's. For SFY 2021, the violation referrals were from the Division of Waste Management's Superfund and Division of Water's Water Resources, and Wastewater. 64 Notices of Violation were issued by one employee in the Branch and programmatic distributions are as follows: Superfund 2, Water Resources 19 and Wastewater with 43.
- **Largest Coal Company:** Once again the Compliance and Operation Branch continues to provide excellent reviews of coal discharge monitoring reports. In SFY 2021, one Branch staff member reviewed the largest coal company in Kentucky. During calendar year 2020 DMR review, this company held 232 DNR permits that were covered by 76 separate KPDES permits. The DMR review yielded an additional 15,961 violations for the 2020 calendar year. These additional violations were referred and added to the current case in the Civil Enforcement Branch.

Contact Information

Division of Enforcement
Kentucky Department for Environmental Protection
Energy and Environment Cabinet

300 Sower Boulevard, 3rd Floor
Frankfort, KY 40601
(502) 564-2150 Telephone
(502) 564-4245 Fax

Director's Office

Michael Kroeger, Assistant Director, (502) 782-6866,
Michael.Kroeger@ky.gov

Mark Cleland, Environmental Scientist Consultant Senior,
(502)782-6856, Mark.Cleland@ky.gov

Civil Enforcement Branch

- **Justin Schul**, Environmental Control Manager, (502) 782-6870,
Justin.Schul@ky.gov

Compliance and Operations Branch

- **Natalie Bruner**, Environmental Control Manager, (502) 782-6861,
Natalie.Bruner@ky.gov

