



**DEM**  
RHODE ISLAND



BUREAU OF ENVIRONMENTAL PROTECTION

# SUMMARY OF COMPLIANCE ASSISTANCE, EMERGENCY RESPONSE & ENFORCEMENT ACTIVITIES



BUREAU OF ENVIRONMENTAL PROTECTION

# 2017 Summary of Compliance Assistance, Emergency Response & Enforcement Activities

**3** ABOUT THE BUREAU OF ENVIRONMENTAL PROTECTION

**4** OVERVIEW

**6** COMPLIANCE ASSISTANCE

**8** SPOTLIGHT: EVIDENCE-BASED COMPLIANCE ASSISTANCE

**9** SPOTLIGHT: WASTEWATER TREATMENT FACILITY OPERATOR TRAINING

**11** RESPONDING TO COMPLAINTS AND EMERGENCIES AND CONDUCTING INSPECTIONS

**14** ADDRESSING NON-COMPLIANCE THROUGH INFORMAL ENFORCEMENT

**16** ADDRESSING NON-COMPLIANCE THROUGH FORMAL ENFORCEMENT

**19** SETTLEMENTS AND APPEALS

**21** SUPERIOR COURT ACTIVITY

**21** SUPPLEMENTAL ENVIRONMENTAL PROJECTS

**23** SPOTLIGHT: SETTLEMENT OF FORMAL ENFORCEMENT CASE



## About Rhode Island DEM's Bureau of Environmental Protection

The Rhode Island Department of Environmental Management (DEM) Bureau of Environmental Protection is responsible for preventing and minimizing pollution to, monitoring the quality, and overseeing the restoration of, water, air, and land. The Bureau includes six regulatory offices:

- The Offices of Water Resources (OWR), Air Resources (OAR), and Waste Management (OWM) evaluate applications, issue permits that meet state and federal requirements, and oversee permit compliance.
- The Office of Compliance and Inspection (OC&I) investigates citizen complaints that are within the Bureau's responsibility and is the centralized administrative office for enforcement.
- The Office of Customer and Technical Assistance (OCTA) provides customer services including assistance with permit applications, compliance assistance and public records requests.
- The Office of Emergency Response (OER) provides Rhode Island's first line of defense by responding to spills of oil and chemicals to protect public health and environmental quality.

The DEM's efforts to ensure compliance with State environmental laws, rules, regulations, and policies are fundamental to fulfilling the public health and environmental protection mission of the Department.

Responding to, and acting to correct, instances of non-compliance protects the environment from degradation, protects public health, leads to the restoration of degraded areas, and, through communication, helps show the impacts of activities undertaken outside the framework of Rhode Island's laws and regulations. That communication can help instill an environmental ethic and support future compliance.

The objectives of the DEM's compliance efforts are to:

- Bring about environmental protection through compliance with State and Federal environmental laws and requirements and to address past, present, and future threats to public health and the environment;
- Maximize compliance through enforcement and deterrence, publicizing cases, and support of effective efforts by citizens and all levels of government; and,
- Be accountable to the public and regularly report on the enforcement and compliance assistance activities undertaken and measure the results of those activities.

To effectively implement a program to meet these objectives, the DEM recognizes that:

- *Our response to violations must be timely, fair, predictable and proportionate to the scope, duration, significance, willfulness and economic advantage gained by violators;*
- We must clearly articulate statutory and regulatory requirements, and ensure that they are widely known and understood within the regulated community; and,
- We ensure that there is no economic advantage for violators compared to those who timely comply; there is a "level playing field" and it does not pay to violate.



## Overview: 2017 Summary of Compliance Assistance, Emergency Response And Enforcement Activities

We are pleased to publish the 2017 Summary of Compliance Assistance, Emergency Response, and Enforcement Activities. This report presents information on important work undertaken by the Rhode Island Department of Environmental Management (DEM), including the status and trends of actions taken by the staff within the Bureau of Environmental Protection. The Bureau investigates and inspects sites and operations to determine compliance with environmental laws and regulations, responds to instances of non-compliance to address the issues, and directs a return to compliance. DEM's 2018-2022 strategic plan identified compliance assistance, compliance monitoring and inspections, and efficient and effective enforcement as central to our mission: to protect, restore, and promote Rhode Island's environmental and natural resources to preserve and improve our quality of life.

In 2017, the DEM effectively used its resources to make headway toward each aspect of our mission, completing 3,875 compliance monitoring inspections and conducting an additional 791 investigations, continuing active compliance assistance through review of 134 self-certification checklists and 53 return-to-compliance plans, and improving our internal enforcement processes.

Rhode Islanders count on the DEM to safeguard the air, land and water and to protect public health. Our Ocean State has many habitats and natural communities, including significant rivers, hundreds of lakes, productive coastal lagoons, fresh- and saltwater wetlands, rocky and sandy beaches, and estuarine environments, dominated by Narragansett Bay. The citizens of Rhode Island count on DEM to implement and enforce federal and state environmental laws, and this important work is handled by all six of the offices within our Bureau of Environmental Protection: Compliance and Inspection, Customer and Technical Assistance, Air Resources, Waste Management, Water

Resources, and Emergency Response. Ensuring that municipalities, businesses and citizens achieve compliance with the requirements of state and federal environmental laws and regulations is a core part of the Bureau's goals, central to achieving DEM's mission. Monitoring compliance of regulated entities and activities is a critical function for each office. Enforcement is centralized in the Office of Compliance and Inspection. Importantly, the Bureau works in close collaboration with our federal partner, the U.S. Environmental Protection Agency.

Compliance takes many forms, and over the years, DEM has sought to increase the tools and approaches to this work. While our success is about outcomes – clean air, safe water, healthy communities – we have developed indicators around our activities and outputs that help the Bureau track progress and success. Keep in mind that success is about protecting the environment. Our goal is to work towards compliance and protection, which involves many approaches, including technical assistance, warnings, citations, notices of violation, lawsuits and emergency clean ups and response. From addressing failed septic systems and illegal discharges of pollutants into our waters, to responding to odors or emergency chemical spills, our staff are engaged in important work that affects our communities. Given the workload, we strive to be consistent and efficient, improve systems and customer service, and prioritize the issues and cases that are most consequential. The results of our efforts support the quality of life and health of Rhode Islanders.

We believe effective compliance starts with “eyes and ears in the field.” DEM has established a key performance indicator (KPI) for this, setting an annual goal of conducting at least 5,000 inspections, investigations, or response actions. We have exceeded this goal for each of the past three years. We are using business process improvement tools, including our Lean Government Initiative, to maximize limited staff resources so this number can continue to increase.

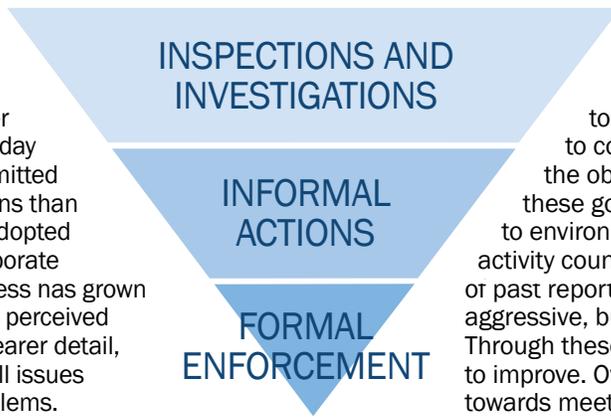
The experience and observations of our field staff have confirmed that the face of our regulated community has changed over time. Typically, companies today are more aware of and committed to their compliance obligations than previously, and many have adopted environmental ethics as corporate policies. Also, public awareness has grown with time. The public reports perceived problems earlier and with clearer detail, which helps us address small issues before they become big problems.

Our tools have evolved as well. Experience in the field has helped us develop responses to achieve compliance, or to put an alleged violator on a solid path to compliance, using our resources efficiently. Advanced compliance assistance programs developed by the Office of Customer and Technical Assistance for the auto body, auto salvage, and underground storage tank sectors have greatly improved awareness and compliance, which can be shown through statistical analysis. Training and professional development programs developed for the operators of wastewater treatment facilities and underground storage tank programs also have shown big benefits. Case studies delving deeper into these approaches are included in this report.

Enforcement tools such as warning letters, informal enforcement actions, and expedited citation notices have helped at identifying problems quickly and facilitating a return to compliance, thus preserving enforcement resources for the most serious cases. Created by statute in 2013, the expedited citation notice is a particularly productive tool. It has resulted in over 80% of entities cited returning to compliance and paying an administrative penalty within 60 days.

Instances of serious non-compliance, however, remain. In these cases, we use all the resources at our disposal to correct problems, protect human health and the environment, and assess penalties for flagrant conditions. When it's quantifiable, we assess the economic benefit realized by violating a law and incorporate it into the penalty that's ultimately charged. These cases are complex and resource-intensive, and often take months to years to resolve through the court systems. In one notably egregious case, our staff, attorneys, and our partners in the Attorney General's Office have made more than 40 appearances in RI Superior Court; that case is still ongoing. In other complex cases, we have worked with municipalities to settle violations of stormwater requirements in a way that forces progress, guarantees investments and makes a difference on this widespread impact on our waters. For these large cases, the investment in staff resources to reach the right outcomes can be immense<sup>1</sup>.

Finally, DEM has developed several KPIs in various aspects of our operations, including compliance and



enforcement. Much of the data presented in this report reflects these KPIs. Indicators have been set related to the time elapsed until a return to compliance, which is, of course, the objective. We are emphasizing these goals, which are directly related to environmental results, over the simple activity counts that have been the focus or past reports. In these areas, we have set aggressive, but we believe achievable, goals. Through these goals, we challenge ourselves to improve. Overall, we are making progress towards meeting these goals; this report

offers more detail on our progress. We are confident in our practices and protocols and that with our commitment to continuous improvement, the Bureau of Environmental Protection is showing quantifiable and tangible achievements toward protecting public health and the environment each year.

DEM's programs touch every Rhode Islander. We collaborate with many partners, stakeholders and individuals in our efforts to protect, restore and promote our rich array of natural resources and the places that sustain us. This report provides information on several important aspects of that work. For more information about the Department, please visit our website at [www.dem.gov](http://www.dem.gov).

**In 2017, the Bureau:**

- 1,026 complaints received**  
OF ALLEGED ENVIRONMENTAL VIOLATIONS
- 791 investigations**  
PERFORMED IN RESPONSE TO COMPLAINTS
- 3,875 inspections performed**  
OF REGULATED FACILITIES TO DETERMINE COMPLIANCE
- 644 emergency response**  
ACTIONS PERFORMED
- 17 auto-salvage inspections**  
PERFORMED OF AUTO SALVAGE FACILITIES FOR EVIDENCE-BASED COMPLIANCE ASSISTANCE
- 134 self-certification checklists**  
RECEIVED OF AUTO BODY FACILITIES FOR EVIDENCE-BASED COMPLIANCE ASSISTANCE
- 53 return-to-compliance plans**  
RECEIVED FOR AUTO BODY FACILITIES FOR EVIDENCE-BASED COMPLIANCE ASSISTANCE
- 313 informal**  
ENFORCEMENT ACTIONS ISSUED
- 67 formal**  
ENFORCEMENT ACTIONS ISSUED

<sup>1</sup> Exemplified by DEM's enforcement effort against Pond View-TLA-RES; see page 23



## Assistance For Environmental Law And Regulation Compliance

Whenever possible, the DEM offers compliance assistance to correct problems and help companies or individuals meet the requirements of environmental laws and regulations. The Office of Customer and Technical Assistance (OCTA) is the lead office to provide compliance assistance; however, all the offices within the Bureau provide some level of compliance assistance. For example, the Office of Waste Management does significant outreach to drive compliance rates for the required replacement of single-wall tanks.

Environmental laws and regulations can be complex and confusing. Staff assist members of the public, businesses, and other customers to understand and meet the requirements. Compliance assistance is not a substitute for the regulated entity's responsibility to learn and comply with laws and regulations.

However, helping companies and others to follow environmental protection laws is a positive first step toward building relationships, establishing trust, and educating our constituencies to the point where they report problems before the problems become violations. Of course, as the number of investigations, inspections, and enforcement actions listed on page 7 indicates, compliance assistance does not replace enforcement when appropriate.

### EVIDENCE-BASED COMPLIANCE ASSISTANCE

One program that has been developed within OCTA to assist companies and facilities attain and maintain compliance with the environmental laws and regulations is the evidence-based Compliance Assistance program.

The program is an integrated, "evidence-based" approach to environmental compliance and performance measurement. It is based on the idea that most companies and individuals will comply with environmental laws and regulations if they are provided with appropriate information and compliance assistance. Facility owners/operators certify to DEM that they are complying with best management practices and regulatory requirements. Following self-certification, a statistically valid number of inspections are conducted to verify compliance among a subset of regulated facilities to determine overall sector performance.

The program has been developed for three regulated sectors—automotive refinishers, auto salvage facilities and underground storage tanks, or USTs, that are used to store petroleum products. DEM has found this approach to be effective.

### AUTO BODY FACILITIES

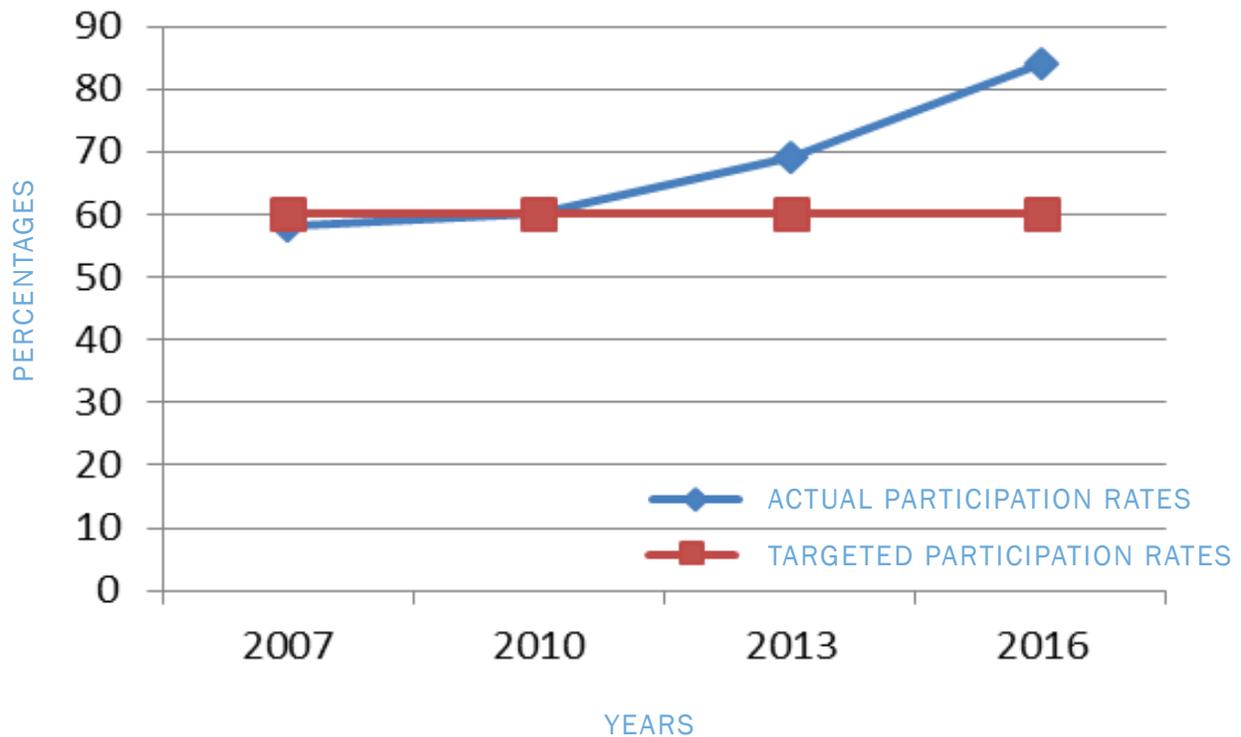
As of December 2017, 134 auto body self-certification checklists were received from 250 licensed facilities. Also, 53 return-to-compliance plans were submitted from 14 auto body facilities. The date for submission of the checklists and return-to-compliance plans was extended to January 20, 2018, and the office continues to receive more checklists and plans.



### AUTO SALVAGE FACILITIES

In 2016, over 80% of the auto salvage facilities in Rhode Island participated in the program by conducting and submitting results of their own self-inspections and, where appropriate, return to compliance plans. In 2017, OCTA verified the information from those self-inspection forms by conducting inspections at 17 facilities, which represented a statistically valid sample from this industry sector.

## Auto Salvage Participation Rates 2007-2016





## SPOTLIGHT: Evidence-Based Compliance Assistance

With a grant from the Environmental Protection Agency National Center for Environmental Innovation, Rhode Island almost 15 years ago became the first state to apply the evidence-based compliance assistance program to regulation of underground storage tanks, or USTs, that are used to store petroleum products.

The program is mandatory and requires facilities to self-certify to compliance standards using a comprehensive checklist and workbook developed by the U.S. EPA, DEM, and a group of external stakeholders. At baseline in 2004, there were 1,910 federally-regulated tanks at 608 facilities regulated in Rhode Island.

For the first round of the program, the DEM performed 96 baseline inspections from April through September 2004 using the comprehensive checklist. A total of 593 self-certification booklets were submitted to the DEM. In total, 283 facilities submitted return-to-compliance plans. The DEM performed 93 post-intervention inspections, for statistical comparison with baseline data, from May 2007 through August 2008. Data resulting from the inspections—consisting of 41 measurable indicators — were tabulated for analysis. The objective was to determine whether “improvement” over baseline conditions occurred in the post-intervention setting for each compliance variable. Statistically significant improvements in performance among 41 “individual compliance indicators” were found subsequent to program implementation.

For the second round of the program, the DEM performed 602 inspections from August 2008 through August 2011. A random sample of 100 facilities (17% of the total) was selected for statistical comparison to baseline compliance levels in 2004. Comparison to baseline data showed significant performance improvements across four major compliance categories.



THE GREATEST THREAT FROM LEAKING UNDERGROUND STORAGE TANKS IS THAT ITS CONTENTS CAN SEEP INTO THE SOIL AND CONTAMINATE GROUNDWATER, THE SOURCE OF DRINKING WATER FOR NEARLY HALF OF ALL AMERICANS.

For the third round of the program, the DEM performed inspections of approximately 600 facilities from August 2011 to August 2014. A random sample of 100 facilities was selected for statistical comparison to baseline compliance levels in 2004. Comparison to baseline data showed significant performance improvements across four major compliance categories.

For the fourth round of the program, the DEM achieved a 97% participation rate among 573 regulated UST facilities. By the June 30, 2016 initial mail-in deadline, only 70% of the 573 facilities submitted self-certification checklists. Due to extensive outreach/assistance, the 97% compliance rate was achieved by January 2017. The 18 facilities that did not participate were referred to the Office of Compliance and Inspection for formal enforcement action—most of these, however, were either abandoned facilities or had an ongoing enforcement action. The office received return to compliance plans from 55 UST facilities during this round.



## SPOTLIGHT: Wastewater Treatment Facility Operator Training

Rhode Island has 19 wastewater treatment facilities that treat, on average, approximately 120 million gallons of wastewater from residences, commercial businesses and industry each day. Failure of any of these facilities for even a short duration can result in the release of millions of gallons of untreated or poorly treated wastewater to our rivers and Narragansett Bay and result in the closure of shellfish grounds and restrictions on swimming and fishing to protect public health.

DEM has long recognized that proper operation and maintenance of these facilities is key to maintaining and improving water quality, and that proactively training and developing professional wastewater operators helps to achieve this goal.

The Office of Water Resources had historically benefited from federal training funds to support operator training and municipal assistance. With the termination of that federal money, the office retooled its training program to meet the training needs of the 21st century—including training in new, advanced process control techniques, climate change, cyber security, and succession management. In 2007, the office implemented a program to train emergent leaders and existing and up-and-coming managers at the state’s wastewater treatment facilities. The year-long program, “Wastewater Operator Boot Camp,” has held five classes with a total of 61 participants since its inception. A sixth program is currently underway with 20 participants—the largest class to date. Besides technical training, the goals of the program include:

- Encouraging networking among the facilities, communities, and staff;
- Offering the participants a holistic view



DEM’S WASTEWATER OPERATOR BOOT CAMP IN ACTION AT WOONSOCKET REGIONAL WASTEWATER TREATMENT PLANT IN DECEMBER 2017

of their clean-water profession and their individual role in protecting the health and welfare of their fellow Rhode Islanders; and

- *Bringing together State agencies, local communities, the private sector, environmental advocates, and the entire wastewater community to benefit from each other’s strengths and knowledge base.*



Of the first class of 12 candidates (2007-2008), four participants are now in upper management positions, and one of those managers now serves as the president of the New England Water Environment Association. In total, 11 of the participants achieved the position of superintendent or assistant superintendent, or a similar upper-level position, with others achieving various mid-level management positions.

In 2017, Rhode Island had four facilities that won U.S. EPA Operations and maintenance awards. Each has strong Boot Camp ties:

- Town of Jamestown—all three staff members
- Town of West Warwick—the assistant superintendent and several mid-level managers
- Narragansett Bay Commission Fields Point—numerous mid-level managers
- Town of Narragansett—the superintendent

DEM recently completed its annual inspection of the Narragansett Bay Commission Bucklin Point facility and found no deficiencies. Bucklin Point's superintendent is a 2009 graduate of Boot Camp, three of their operations supervisors are graduates, and an operations supervisor and the assistant superintendent are in the current class.

Through this program, Rhode Island has become a leader in wastewater treatment facility training, as every New England state has adopted DEM's Boot Camp program. DEM runs the program at no charge to the participants or their communities.



DEM'S WASTEWATER OPERATOR BOOT CAMP IN ACTION AT WOONSOCKET REGIONAL WASTEWATER TREATMENT PLANT IN DECEMBER 2017

The New England Interstate Water Pollution Control Commission and the Narragansett Water Pollution Control Association (NWPCA) pay for one professional development trainer and for the participants' lunches.

In addition to Boot Camp, DEM, in coordination with the Rhode Island Board of Certification of Operators of Wastewater Treatment Facilities, coordinates entry-level training and supports training programs offered by NWPCA. DEM also provides one-on-one training on math and process control for operators studying for their wastewater certifications, and will occasionally use routine facility inspections as opportunities to provide training and assistance.

DEM has supported this program without additional funds because it fosters compliance, helps develop the next generation of wastewater treatment operators, and leads directly to improving water quality in our rivers and Narragansett Bay.



## Responding To Complaints And Emergencies, and Conducting Inspections

Investigation of environmental conditions, including potential violations of environmental laws and regulations, is initiated either after a complaint has been filed by a citizen, company or group, or through a planned compliance monitoring inspection of a regulated entity. Office of Compliance and Inspection investigates most complaints, although complaints involving permitted facilities or sites are often referred to the permitting office.

Planned compliance monitoring inspections check closely regulated businesses and facilities and permitted sites. In many cases, State laws require businesses and facilities to be licensed by the DEM or to obtain specific detailed conditional approvals. Such businesses and facilities are not allowed to operate unless they obtain these licenses or approvals in advance. In other cases, businesses and facilities may operate provided they are in compliance with specific regulations that set forth criteria that must be met. These businesses and facilities are not generally required to obtain a permit or license to operate. Since the DEM is delegated regulatory authority and given grant money by the U.S. EPA for air pollution, hazardous waste management, water pollution, and UST/LUST facilities, the DEM and the EPA coordinate efforts regarding types and numbers of inspections to be conducted. In many cases, EPA provides federal



guidance for such inspections and for appropriate and timely enforcement response if compliance is not being met.

DEM's goal is to respond to all complaints in a timely manner, preferably within days of receiving the complaint. However, recognizing the limitations sometimes created by availability of staff or other supporting resources, priority will be assigned to complaints according to the severity of the alleged impact to public health and the environment. Furthermore, complaints involving "real time" or ongoing events will obtain priority investigation when significant environmental problems are alleged or past violations or problems experienced. Multiple complaints on the same problem or continued complaints over time involving the same issue will also obtain priority investigation.

Each DEM employee is trained to conduct professional inspections, following the guidelines described in the DEM's Administrative Inspection Guidelines,<sup>3</sup> to collect complete and accurate information about conditions in the field. The information collected is evaluated to determine if problems exist in the field and is the basis for the decision as to the appropriate Department response.

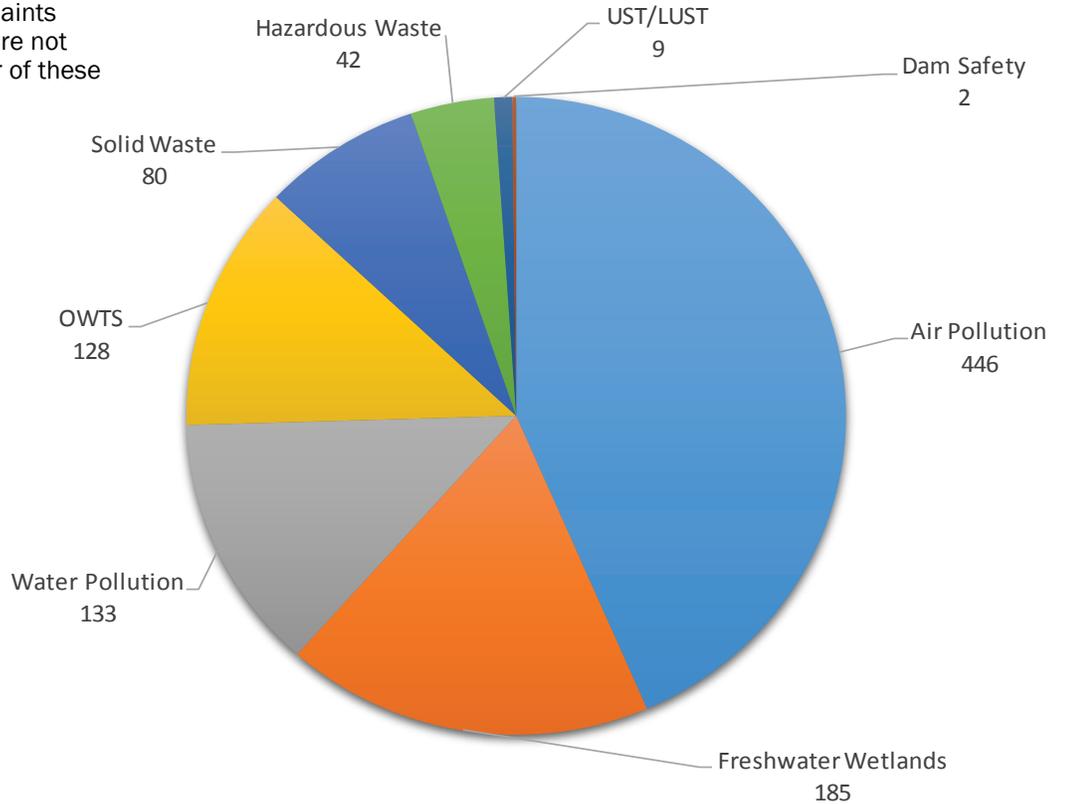
<sup>3</sup> The Guidelines can be found at <http://sos.ri.gov/documents/archives/regdocs/released/pdf/DEM/8741.pdf>.

## RESULTS

As noted earlier, the Office of Compliance and Inspection responds to the majority of complaints received. In 2017, the office received 1,026 citizen complaints. The complaints received in the other offices are not tracked; however, the number of these complaints is relatively small.

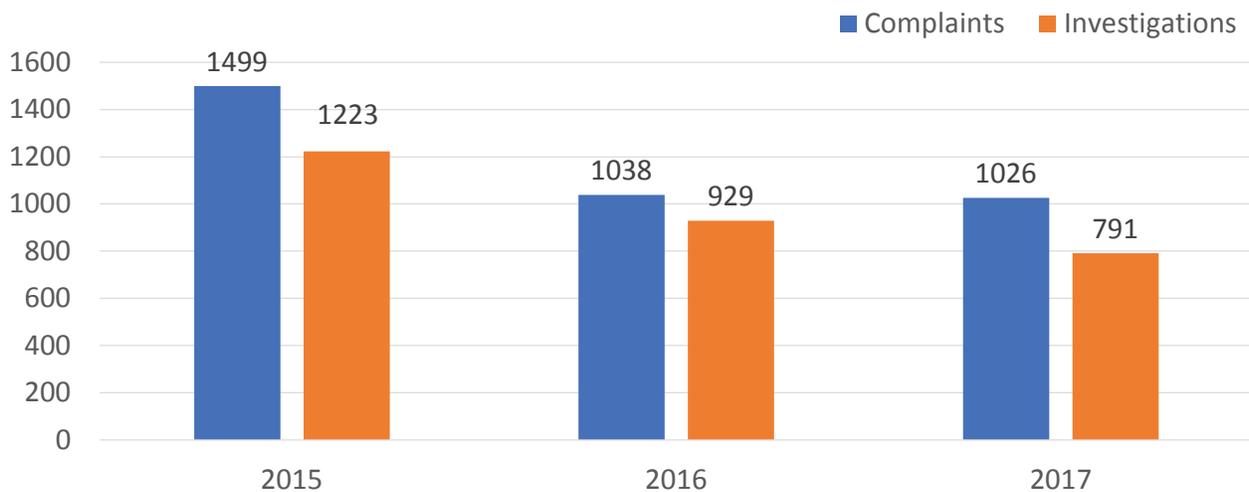
# Complaints Received

THE NUMBER OF COMPLAINTS RECEIVED BY EACH PROGRAM IN OC&I IN 2017



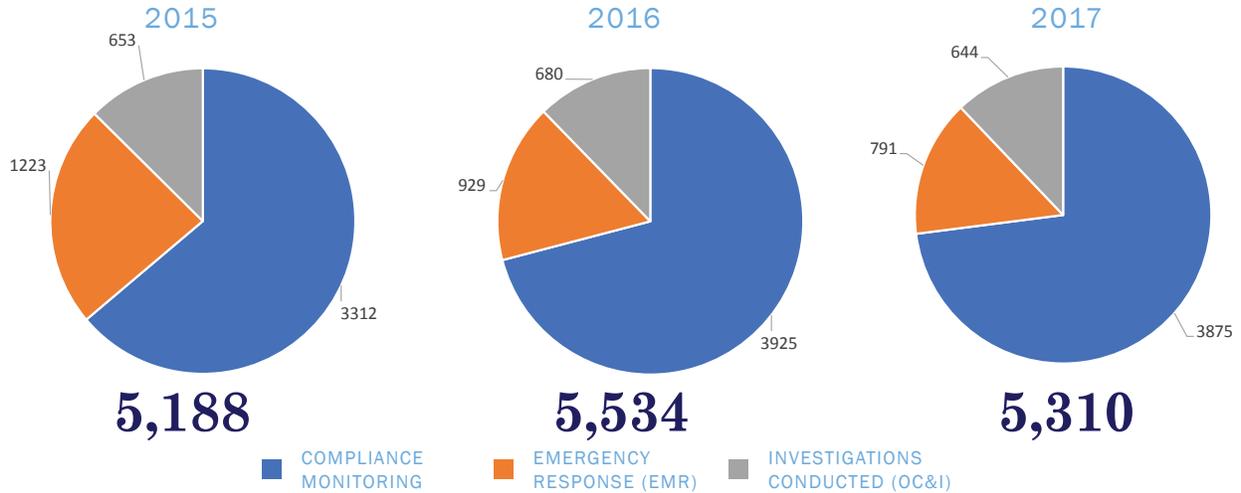
# Complaints And Investigations

THE COMPLAINTS RECEIVED AND INVESTIGATIONS PERFORMED ON THOSE COMPLAINTS FROM 2015 THROUGH 2017



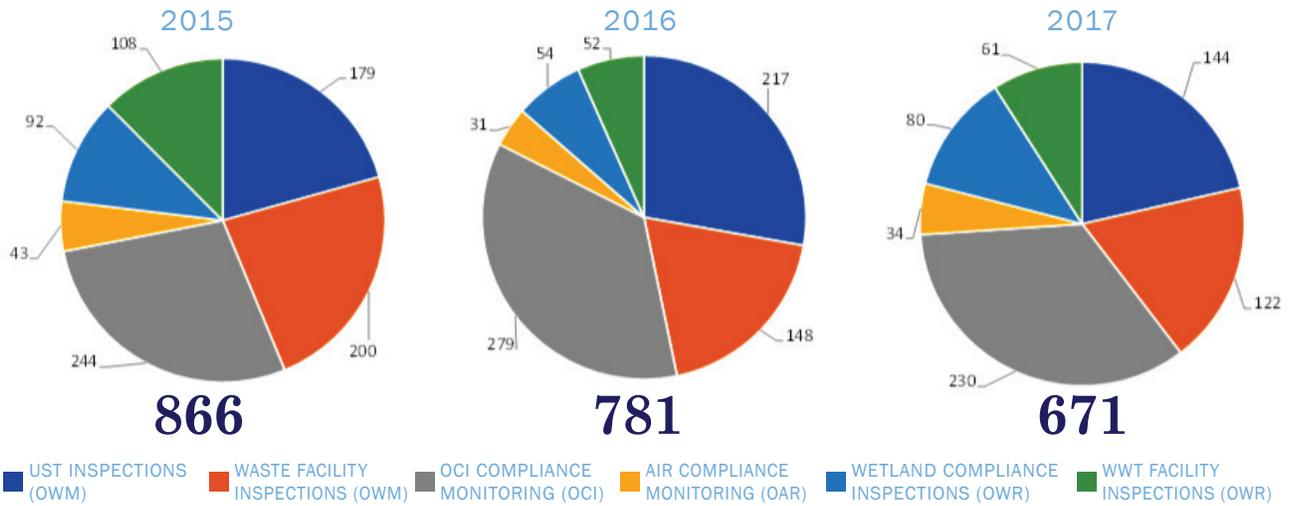
The main difference between the number of complaints filed and the number of investigations conducted reflects situations where DEM receives multiple complaints on the same incident and consolidates them into a single investigation. For example, multiple complaints may be filed around a facility when an odor problem occurs impacting the surrounding community, but DEM will conduct a single investigation of that facility.

# Inspections, Investigations And Response Actions



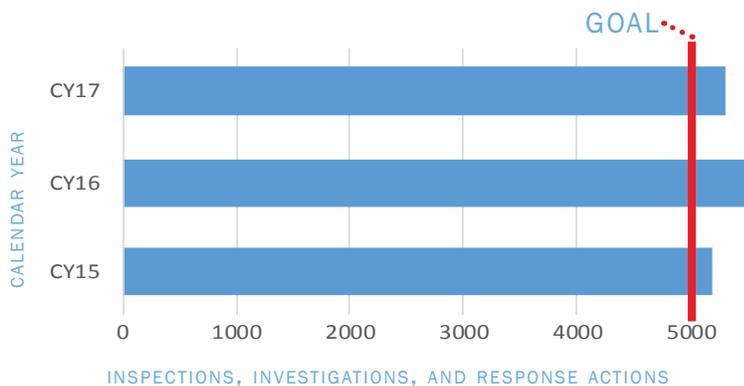
## Compliance Monitoring

(NON-OWTS - ONSITE WASTEWATER TREATMENT SYSTEMS)



## KEY PERFORMANCE INDICATOR

THE NUMBER OF INSPECTIONS, INVESTIGATIONS, AND RESPONSE ACTIONS



## 2017 Inspections Performed By Office

- 1,020 .....OFFICE OF COMPLIANCE AND INSPECTION
- 644 .....OFFICE OF EMERGENCY RESPONSE
- 34 .....OFFICE OF AIR RESOURCES
- 266 .....OFFICE OF WASTE MANAGEMENT
- 3,205 ....WATER RESOURCES: OWTS PROGRAM
- 141 .....WATER RESOURCES: WWT & FFW PROGRAMS

Reports on the activities of OC&I Dam Safety Program can be found at [www.dem.ri.gov/programs/complianceandinspection/dam-safety.php](http://www.dem.ri.gov/programs/complianceandinspection/dam-safety.php).

For the Office of Emergency Response these are response actions. The activities of OER are summarized in the Oil Spill Prevention, Administration and Response, or OSPAR, reports and can be found at [www.dem.ri.gov/programs/emergencyresponse/ospar-reports.php](http://www.dem.ri.gov/programs/emergencyresponse/ospar-reports.php).



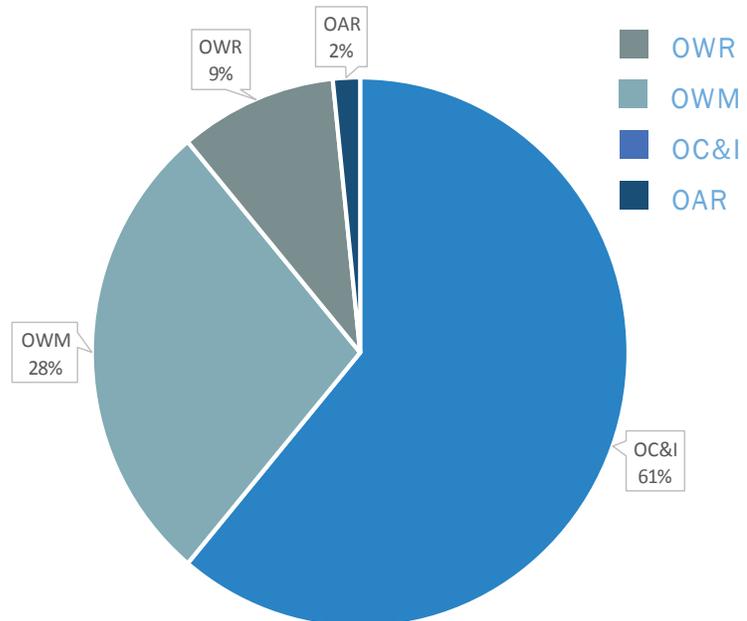
## Addressing Non-Compliance Through Informal Enforcement

Most instances of non-compliance can be corrected, and historically have been corrected, through the issuance of informal enforcement actions such as letters of non-compliance, warning letters, and notices of intent to enforce.

It is the DEM's policy to provide responsible parties opportunities to correct their problems and come into compliance under the terms of an informal enforcement action unless criminal conduct is suspected, circumstances justify an immediate compliance order, or conditions are met that justify immediate escalation to a formal enforcement action.

Absent these exceptions, we issue an informal enforcement action. To set a desired pace towards compliance, it is the goal that resolution of informal enforcement actions be completed **no later than 120 days from the date of issuance** except in wetland restoration cases where planting seasons limit full compliance in 120 days.

## Informal Enforcement Actions Issued



### Actions Issued By Office

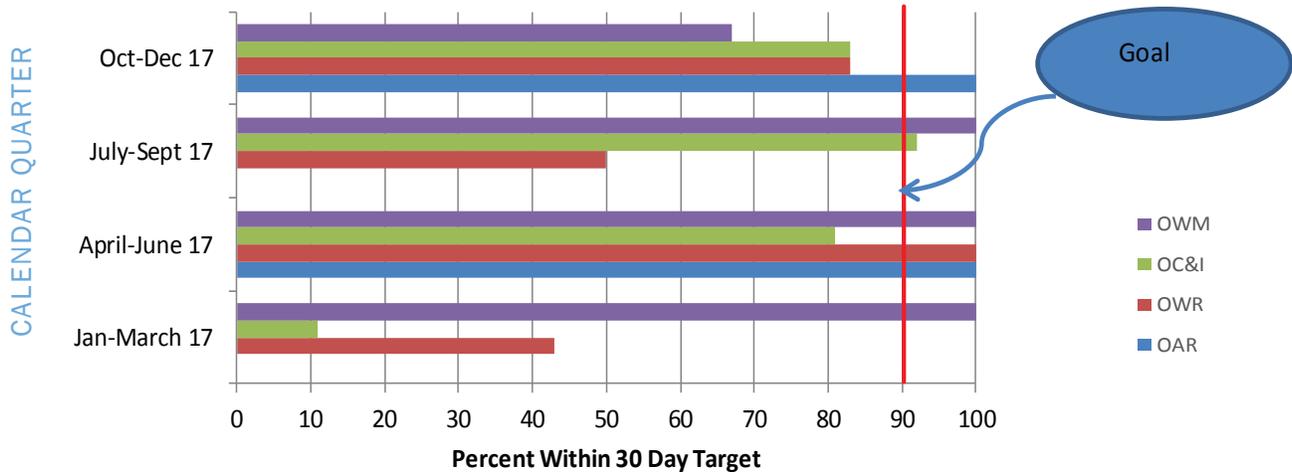
187 issued  
COMPLIANCE AND INSPECTION

34 issued  
OFFICE OF WATER RESOURCES

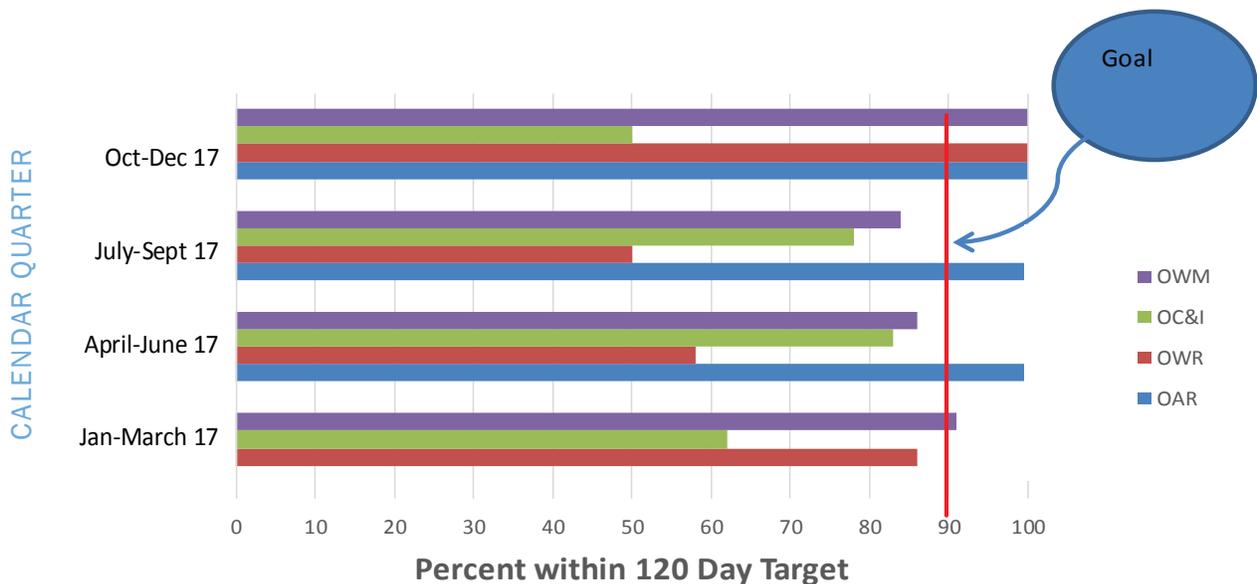
87 issued  
OFFICE OF WASTE MANAGEMENT

5 issued  
OFFICE OF AIR RESOURCES

## Key Performance Indicator TIME TO ISSUE INFORMAL ACTION



## Key Performance Indicator INFORMAL NOTICE ISSUED-COMPLIANCE MET



Except in cases of suspected criminal conduct, circumstances justifying an immediate compliance order, or immediate escalation to a formal enforcement action, DEM can typically correct non-compliance through informal enforcement actions against responsible parties. Our goals are to issue an informal action, such as a warning letter, within 30 days 90 percent of the time, and for non-compliance to be corrected within 120 days of the issuance of the action 90 percent of the time.



## Addressing Non-Compliance Through Formal Enforcement

When formal enforcement is the appropriate next step, the OC&I begins formulating an action. The target for issuance of high priority formal enforcement actions is 45 days or less with a target for actions of less priority of no more than 90 days from the date OC&I decides to issue a formal enforcement action or the date a case is referred to OC&I from one of the other offices. OC&I coordinates its efforts with other DEM offices and where applicable, the U.S. EPA.

The most common form of formal enforcement action issued by DEM is a Notice of Violation (NOV).

The Notice of Violation cites the law, rule, regulation, license, permit and/or order alleged violated, states the facts which form the basis for the Department's assertion that a violation has occurred, and assesses an administrative penalty and other relief deemed appropriate. The NOV specifies a reasonable deadline or deadlines for the person to come into compliance with the requirements in the NOV. An NOV may allow a person to submit a written proposal setting forth how and when that person proposes to achieve compliance. An NOV informs the person of his or her right to file a timely written request for an adjudicatory hearing on either the alleged violation or the penalty, remedy imposed, or both.

A Notice of Violation is as important for the alleged violator as it is for DEM. It is through the NOV that DEM ensures that the alleged violator can exercise their due process rights.

As noted previously, in 2013, legislation was enacted to allow the DEM to issue an Expedited Citation Notice (ECN). An ECN is similar to an NOV in that it advises the party/parties of the alleged facts that support the violation and the statutes and regulations that are alleged to have been violated. It can include



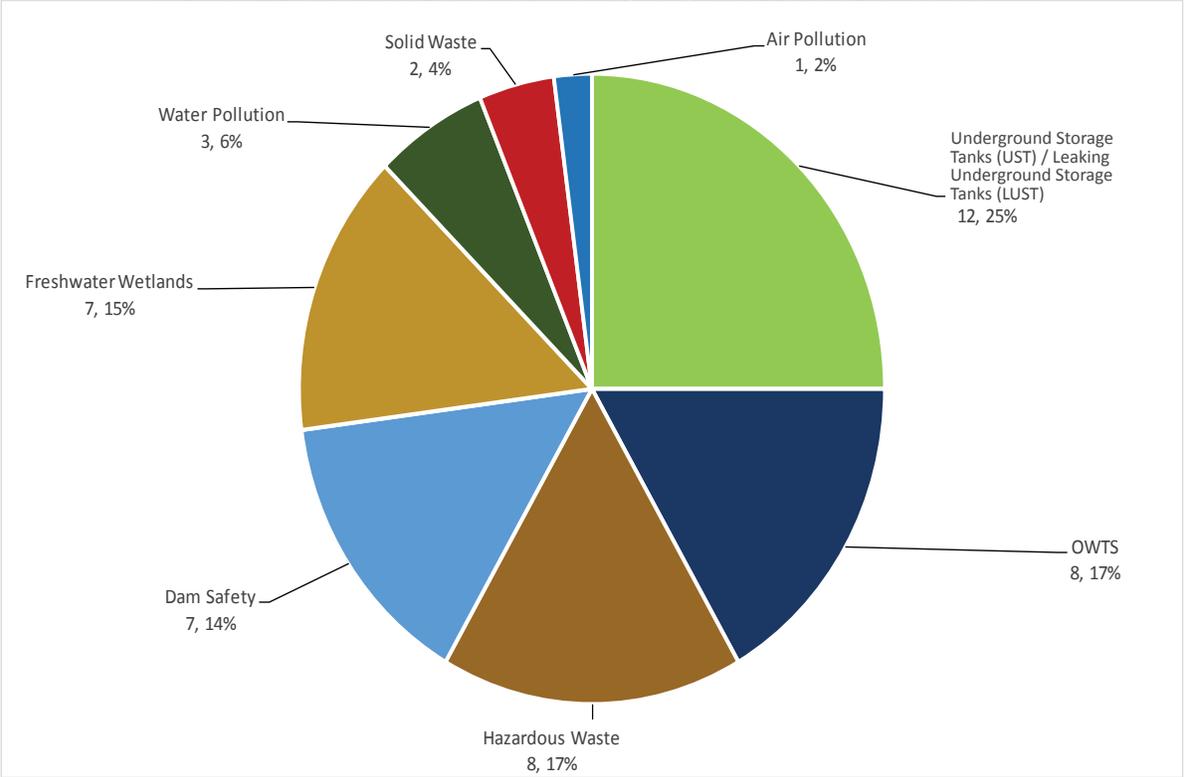
requirements to meet compliance, but it cannot order corrective action. It always includes an administrative penalty, which is developed in accordance with the RIDEM's Rules and Regulations for the Assessment of Administrative Penalties. Unlike an NOV, the party/parties do not have a right of appeal; however, the ECN cannot be recorded on the title for the property and the ECN expires after 60 days. After that time, if the party/parties have not complied with the ECN, the DEM can issue an NOV. In 2017, the law was amended to allow the DEM to issue an ECN with penalties up to \$5,000.

## RESULTS

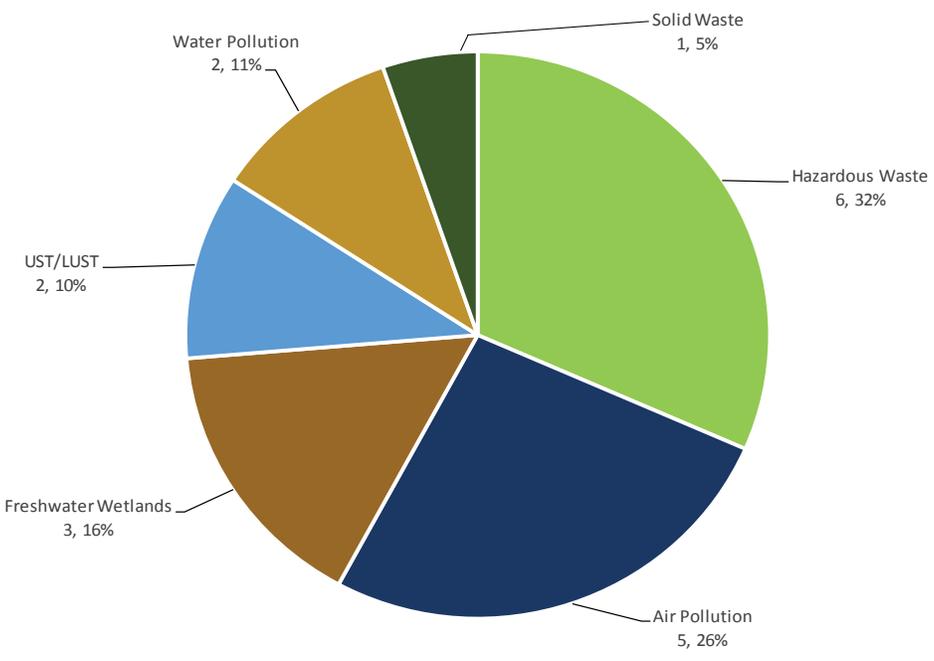
In 2017, OC&I issued 48 NOVs. Each NOV can involve more than one program. Overall, 12 were for underground storage tank violations, eight were for septic system (OWTS), violations, eight were for hazardous waste violations (which include site remediation and commercial oil pollution violations), seven were for dam safety violations, seven were for freshwater wetland violations, three were for water pollution violations, two were for solid waste violations, and one was for an air pollution violation.

In 2017, the Office of Compliance and Inspection issued 19 Expediated Citation Notices (ECNs). Of the ECNs issued, six were for hazardous waste violations (which includes site remediation and commercial oil pollution violations), five were for air pollution violations, three were for freshwater wetland violations, two were for water pollution violations, two were for Underground Storage Tank (UST) violations, and one was for a solid waste violation. As its name suggests, the ECN expedites the process of correcting and enforcing non-compliance. It's an important tool leading to a timely, fair, and proportional result in certain cases.

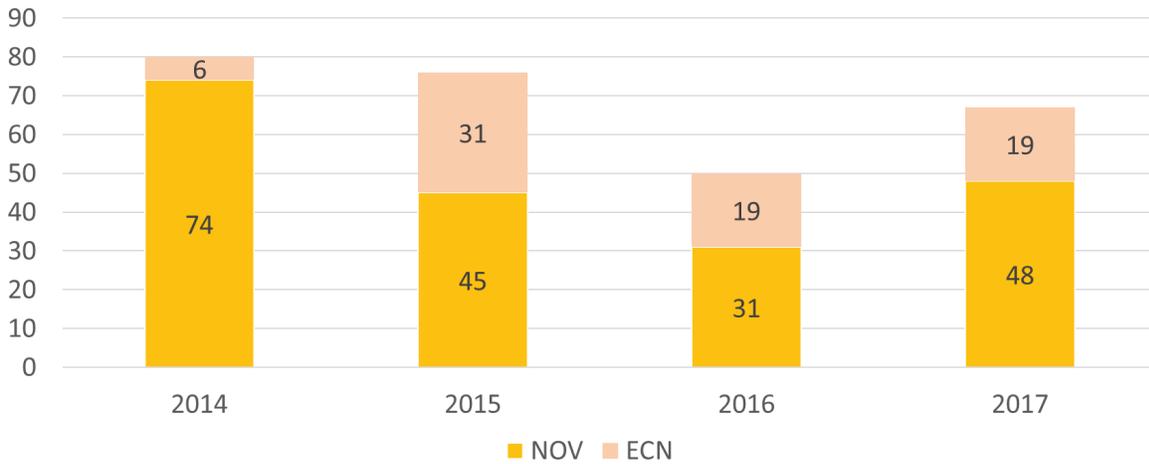
THE NUMBER OF NOTICE OF VIOLATIONS (NOV) ISSUED FOR EACH PROGRAM



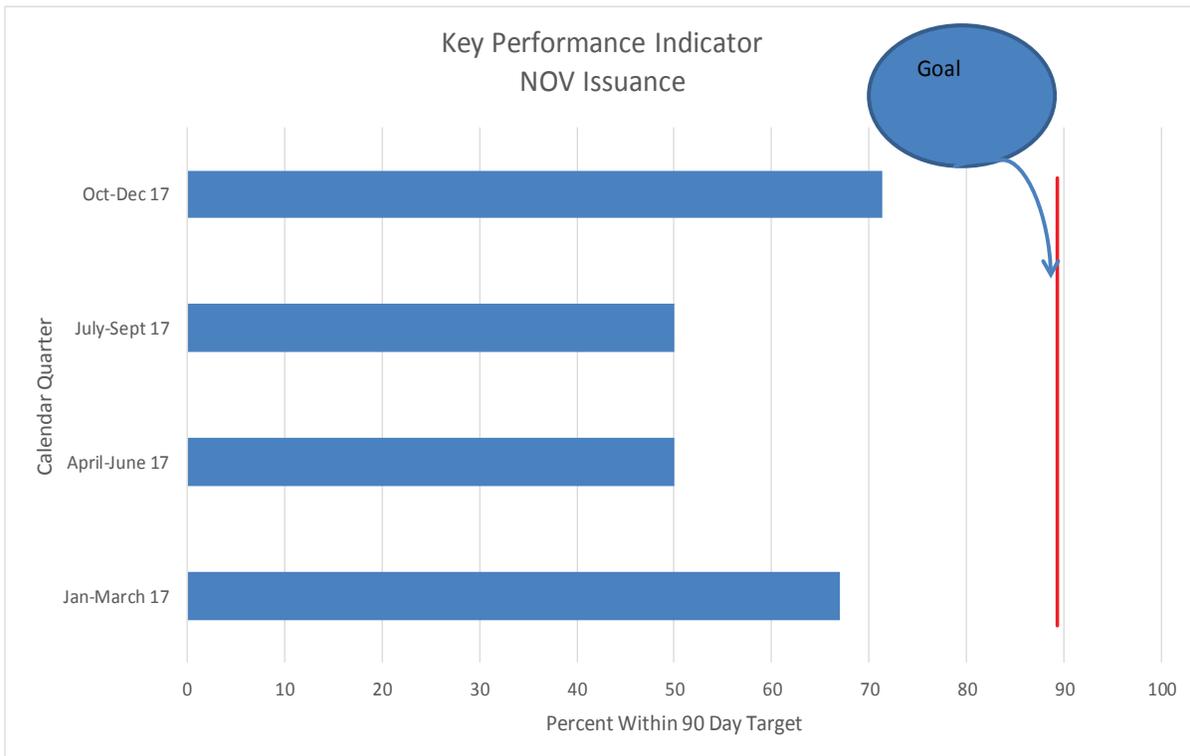
THE NUMBER OF EXPEDITED CITATION NOTICES (ECN) ISSUED FOR EACH PROGRAM



Notice Of Violations (NOVs) and Expediated Citation Notices (ECNs) are DEM's two formal enforcement actions. The NOVs and ECNs issued from 2014 through 2017 are shown in the chart below. The number of enforcement actions issued is a function of complaints received and investigations conducted in a given year.



DEM started tracking five new Key Performance Indicators (KPIs) in 2017. One KPI is issuing an NOV with 90 days 90 percent of the time, shown below. Having done the essential but time consuming work of building the systems and processes to track the KPIs in 2017, DEM anticipates steady improvement toward meeting them in coming years





## Settlements And Appeals

Once a Notice of Violation (NOV) is issued, the parties typically enter negotiations to correct and settle the violations and come to an agreement on the penalty. These discussions may occur regardless of whether the parties file an appeal. It is the DEM's goal that compliance with the law will be achieved no later than 150 days from the date of issuance of the NOV.

If the violations, or remedial actions, are complex or the party/parties in receipt of the NOV adequately demonstrate a good faith effort to come into compliance as determined by the Chief of the Office of Compliance and Inspection, the Chief may consent to extend the control date on the hearing and extend the time requirement for resolution of the violations.

The settlement of an NOV is documented in a consent agreement, unless the party cited comes into compliance quickly and the penalty is resolved without the need for a consent agreement. Once settlement has been reached, a consent agreement is prepared that cites the law, rule, regulation, license, permit and/or order allegedly violated; the facts which form the basis for the violation that occurred; and the amount of the final administrative penalty and any agreed upon payment schedule or allowances.

The consent agreement specifies a reasonable deadline or deadlines for the party to come into compliance with the requirements described in the NOV. A consent agreement may allow a party to submit a written proposal under an enforceable schedule setting forth how and when that party proposes to achieve compliance. The consent agreement settles an appeal of the NOV and is filed with DEM's **Office of Administrative Adjudication (AAD)**, to negate the need for an adjudicatory hearing.



THE MOST COMMON LEAD EXPOSURE IN RHODE ISLAND COMES FROM LEAD-BASED PAINT AND LEAD DUST FOUND IN HOMES BUILT BEFORE 1978

AAD is the administrative court for all environmental matters originating from DEM. The AAD plays an integral role in environmental protection and restoration by providing impartial and timely adjudication of administrative enforcement actions initiated by the Department. Efficient and uniform hearings and timely final administrative action contribute substantially to the Department's overall goal of fair and effective enforcement of environmental laws and regulations. Uniform rules of practice and procedure and even-handed adjudications serve to enhance environmental equity and provide a strong deterrent to potential violators.

Absent a mutual request for additional time, an adjudicatory hearing for an enforcement matter is heard within 90 days of the request for hearing. AAD rules provide for expedited hearings in appropriate cases.

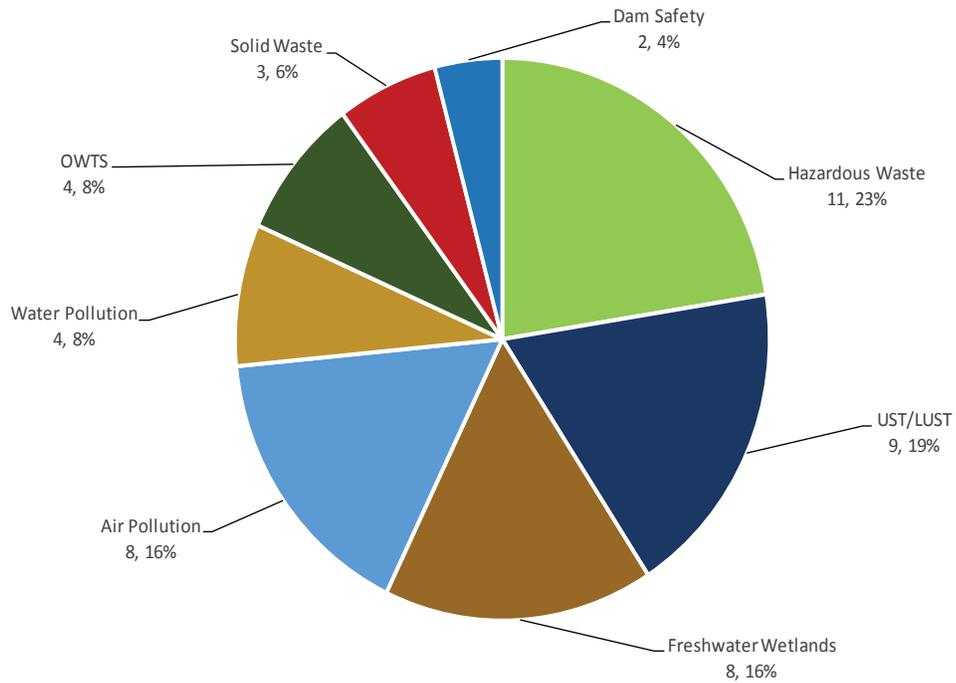
## RESULTS

In 2017, OC&I executed 14 consent agreements and issued 35 letters of compliance for NOV's and Expedited Citation Notices.<sup>4,5</sup>

- 4 IN 2012, BASED ON AN OPINION FROM THE DEM'S OFFICE OF LEGAL SERVICES, OC&I BEGAN SETTling NOV'S THROUGH ISSUANCE OF A LETTER OF COMPLIANCE WHEN ALL OF THE ISSUES ASSOCIATED WITH THE VIOLATION WERE RESOLVED, INCLUDING PAYMENT OF ALL PENALTIES OWED.

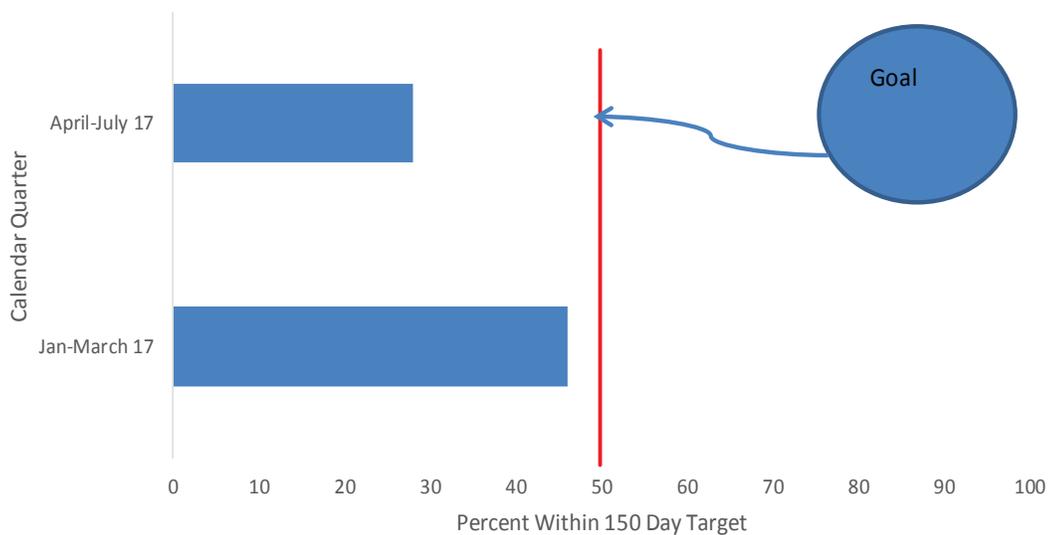
- 5 ONE ECN ISSUED ON DECEMBER 1, 2017 WAS STILL OPEN AT THE END OF THE YEAR.

The chart presents the enforcement actions settled, by number and percentage, for each regulatory program within the Bureau of Environmental Protection. The formal enforcement actions settled through either execution of a Consent Agreement (14 total agreements) or issuance of a Letter Of Compliance (35 Letters of Compliance in all).



## Key Performance Indicator

TIME TO ATTAIN COMPLIANCE AFTER NOV ISSUED



A summary of each NOV issued or resolved since April 2000 can be found at <http://www.dem.ri.gov/programs/benviron/compinsp/enfact/index.htm>.



## Superior Court Activity

The final determination whether a case is eligible for Rhode Island Superior Court is made by the DEM's Office of Legal Services (OLS). Cases may not be eligible for Superior Court for a number of reasons. Examples could include a change in corporate status, change in ownership, or bankruptcy or receivership. The attorneys within the Environmental Advocacy Unit of the Office of Attorney General (RIAG) provide assistance to the DEM to address these cases. OC&I reviews and determines suitability for court action with OLS and RIAG.

A summary of each Superior Court case issued or resolved since April 2000 is available at [www.dem.ri.gov/programs/benviron/compinsp/enfact](http://www.dem.ri.gov/programs/benviron/compinsp/enfact)

## ADMINISTRATIVE PENALTIES

As part of the formal enforcement actions issued in 2017, OC&I proposed total penalties of \$851,545.

## SUPPLEMENTAL ENVIRONMENTAL PROJECTS

OC&I also agreed to settle two formal enforcement actions by having the violator conduct **Supplemental Environmental Projects, or SEPs.**

Supplemental Environmental Projects (SEPs) are environmentally-beneficial projects that a violator proposes to undertake in settlement of an enforcement action that it is not otherwise legally required to perform.



In 2017, OC&I agreed to five SEPs that had an estimated value of \$316,000. The SEPs agreed to in 2017 are described on the following page.

For more details regarding SEPs, refer to the DEM's Policy on Supplemental Environmental Projects in effect since April 5, 1996 and revised on July 15, 2004 at [www.dem.ri.gov/programs/benviron/compinsp/pdf/seppolcy.pdf](http://www.dem.ri.gov/programs/benviron/compinsp/pdf/seppolcy.pdf).



### CITY OF PROVIDENCE: WATER POLLUTION VIOLATION ASSOCIATED WITH MS4 PERMIT

SEP #1—Installation of educational signage at current green infrastructure projects to build public understanding of the importance of storm water management, build momentum for sustainable solutions, and meet education requirements. The estimated cost is \$10,000. This amount was offset against the assessed penalty.

SEP #2—Mitigation of storm water runoff on Irving Avenue. Storm water runoff from Irving Avenue is currently causing significant erosion of infrastructure on the south side of Irving Avenue and, most significantly, at River Drive, and is damaging the shoreline itself. The estimated cost is \$68,000 to \$150,000. This amount was offset against the assessed penalty.

SEP #3—Installation of storm water treatment controls associated with the restoration of a site of a recently demolished mill located within Riverside Park on Aleppo Street that would be used for passive recreation. The park is bounded by Aleppo Street on the north and east, and the Woonasquatucket River and the Woonasquatucket River Greenway on the south and north, and is considered an environmental justice area. The estimated cost is \$55,000. This amount was offset against the assessed penalty.

### TOWN OF CUMBERLAND: WATER POLLUTION VIOLATION ASSOCIATED WITH MS4 PERMIT

SEP #4—Purchase and put into use a mini-excavator to access areas that would otherwise only be accessible with hand tools, such as replacement of drainage pipes in wooded areas or areas where buildings are too close to allow for bigger equipment. The mini-excavator will also be used to clear debris from wetlands and outfalls. The estimated cost is approximately \$55,000. This amount was offset against the assessed penalty.

SEP #5—Purchase and put into use a camera system to check on the condition of drainage pipes. The estimated cost is approximately \$46,000. This amount was offset against the assessed penalty.



## Spotlight: Settlement Of A Formal Enforcement Case

Enforcement cases vary by fact, evidence, and complexity. The case against an East Providence-based construction and demolition processing facility shows the difficulty of achieving compliance in a timely way. At the same time, though, it spotlights that DEM will persist until the end to negate an economic advantage gained by violations.

Pond View Recycling, a construction and demolition (C&D) debris processing facility located on the western shore of Omega Pond in East Providence, had been a focus of enforcement efforts for over six years. Actions were taken against the property owner, Kenlin Properties, LLC (Kenlin), and the companies that operated the C&D facility, Pond View Recycling (Pond View), TLA-Providence (TLA), and RES Environmental Services, Inc. (RES). The case was resolved in December 2017 with the closure and final cleanup of the C&D waste and the agreement by Kenlin and RES to pay a significant administrative penalty.

### FACTS AND TRAVEL

On February 6, 2003, DEM granted Pond View a license to process up to 500 tons per day of C&D waste — waste generated from construction and building demolitions— for the purpose of sorting and recycling the C&D. TLA purchased the business from Pond View, and on May 2, 2011, DEM granted TLA a license to process up to 1,500 tons per day. On May 11, 2011, the City of East Providence issued a Notice of Violation to Kenlin for violations of the conditions of its 1998 approval. Shortly thereafter, on July 1, 2011, a new law was enacted that required an operator of a C&D facility to obtain a letter of compliance from the host community as a condition of DEM's license.

On October 26, 2011, the City of East Providence issued a letter of non-compliance. On December 4, 2011, DEM issued a letter to TLA of its intent to suspend the license. TLA entered in receivership in March 2012, and ceased all solid waste activities as of September 10, 2012. DEM negotiated with the receiver and the bond company to clean up the waste, and the DEM reached an agreement on May 9, 2013 with the parties to remove all the waste. Over the course of four months, 12,524 tons of waste was removed. On September 6, 2013, the last of the waste was removed.

On or about October 7, 2013, DEM received an application and operating plan from RES to accept and process no more than 50 tons per day of C&D. On October 29, 2013, DEM issued a registration to RES. The registration required RES to comply with its operating plan at all times, receive only C&D, receive no more than 50 tons per day of C&D, and maintain a maximum of 597 cubic yards (CY) of C&D in four separate piles. On December 17, 2013, DEM received complaints from residents of dust from the C&D facility affecting the pond and their residences. DEM's inspection did not identify a violation; however, DEM continued to receive periodic complaints throughout the winter. On April 3, 2014, DEM inspected the facility and documented substantial non-compliance with the approval. 15,888 CY of C&D and non-C&D waste was present, including trash.

On August 22, 2014, DEM issued a Notice of Violation (NOV) against RES and Kenlin. The NOV ordered the companies to cease receiving solid waste other than C&D debris, cease receiving more than 50 tons per day of C&D, and to come into full compliance with the DEM's approval within 90 days. The NOV included an administrative penalty of \$18,750 against RES and Kenlin and \$66,877 against RES. Kenlin appealed



the NOV to the DEM's AAD, and, by statute, the Order and penalty were automatically stayed pending a final decision on the appeal by Kenlin. RES did not file an appeal of the NOV.

In July 2014, a new law was enacted. The law required that all facilities engaged in C&D processing obtain a license from DEM and that facilities located within 1,000 feet of a residential zone conduct all activities within an enclosed building. The law also required that the owner/operator request a determination of zoning compliance for their proposed operation and configuration (as reflected in the license application) and that the municipality provide such a letter as a condition of the issuance of a license from DEM. The law provides the owner/operator with the appropriate appeals if the municipality does not respond or denies the request. As a result of the new law, DEM issued a letter to the facility's operator, RES, on September 3, 2014 notifying the company of this new law and giving them 90 days to apply for the required license. On December 8, 2014, RES submitted an application for a license for a facility to process up to 750 tons per day of C&D debris.

Subsequently, an administrative review of the application was conducted and it was determined that there was no evidence that RES engaged in the process of obtaining a letter from the City of East Providence, as required. Given this, the application was determined to be administratively incomplete and was returned to the applicant on January 30, 2015. On February 5, 2015, DEM issued a Notice of Revocation of Registration to RES. RES appealed the revocation to the AAD.

From July 2015 through October 2017, DEM engaged in numerous hearings to resolve the pending appeals at the AAD and in Superior Court.

On July 9, 2015, the AAD hearing officer issued a decision upholding the Notice of Revocation of the registration and dismissing and denying the appeal by

Kenlin. On July 15, 2015, the DEM issued a letter to Kenlin requiring the company to cease accepting C&D and to begin immediately to remove the waste and close the facility. On July 30, 2015, RES filed an appeal in Superior Court.

On November 23, 2015, as part of settlement negotiations on the NOV, Kenlin entered into a Consent Order with DEM. Kenlin agreed to remove all solid waste, including wood piles, from the property by December 10, 2015 and remove all C&D fines, or screenings, from the property by February 1, 2016. Kenlin failed to comply with the deadline for the fines.

On January 7, 2016, the Superior Court denied RES's appeal of the Notice of Revocation.

On March 11, 2016, DEM filed a complaint in Superior Court to enforce the Consent Order for removal of waste from the property.

On May 10, 2016 and July 26, 2016, an administrative hearing was held on the administrative penalty assessed in the NOV.

On June 16, 2016, the Superior Court entered a Court Order agreed to by the parties regarding the complaint DEM filed to enforce the Consent Order. The Order required Kenlin to remove all the C&D and other solid waste by July 5, 2016; otherwise, penalties of \$250 per day would accrue beginning on July 6, 2016.

On May 5, 2017, the AAD hearing officer issued a decision upholding the NOV and dismissing and denying the appeal by Kenlin.

On August 2, 2017, an inspection by DEM revealed that all the solid waste was removed from the property.

In October 2017, DEM and Kenlin reached an agreement on the outstanding penalties owed. Kenlin agreed to pay \$75,000 in monthly installments over 2 years.