



**NC AWWA / WEA
Regulatory 101 Seminar
Compliance and Enforcement
McKimmon Center • Raleigh, NC
August 20, 2003**





Compliance Programs in DENR

- Air Quality
 - Coastal Management
 - Environmental Health
 - Land Resources
 - Waste Management
 - Water Quality
- Air Quality • Coastal Management
• Food, Lodging & Institutional Sanitation • Mammography • On-Site Wastewater • Public Water Supply • Radioactive Materials • Shellfish Sanitation • Sleep Products • Tanning • X-Ray • Dam Safety • Erosion and Sedimentation Control • Mining • Solid Waste • Hazardous Waste • Underground Storage Tanks • Groundwater • National Pollutant Discharge Elimination System (NPDES) • Non-Discharge



Regional Offices

Winston-Salem

585 Waughtown Street
Winston-Salem, NC 27107
336/771-4600
Main FAX 336/771-4631

Raleigh

3800 Barrett Drive
Raleigh, NC 27609
919/571-4700
FAX 919/571-4718

Washington

943 Washington Square Mall
Washington, NC 27889
252/946-6481
FAX 252/975-3716

Asheville

Interchange Building
59 Woodfin Place
Asheville, NC 28801-2482
828/251-6208
FAX 828/251-6452



Mooresville

919 North Main Street
Mooresville, NC 28115
704/663-1699
FAX 704/663-6040

Fayetteville

Systel Building,
225 Green St., Suite 714
Fayetteville, NC 28301-5094
910/486-1541
FAX 910/486-0707

Wilmington

127 Cardinal Drive Ext.
Wilmington, NC 28405
910/395-3900
FAX 910/350-2004

- ▶ Ensuring sustainable marine and estuarine fisheries.
- ▶ Jurisdiction: all coastal waters to 3 miles offshore.
- ▶ Sixty-one officers monitor 2.5 million acres of water and over 4,000 miles of coastline.
- ▶ 8,000 commercial fishermen and 1.5 million recreational anglers enjoy the the state's marine resources.



(Other responsibilities beyond traditional civil environmental enforcement)



Baseline Assumptions

- ▶ Compliance is a regulatory expectation
- ▶ There is no single compliance profile in DENR
- ▶ Enforcement is a tool that can achieve compliance
- ▶ There are other tools (e.g. education, technical assistance, positive or negative performance incentives)



Enforcement Principles

- ▶ Compliance is the first step toward the ultimate goal of stewardship.
- ▶ Enforcement will be balanced with education, technical assistance, and incentives to achieve compliance and encourage stewardship.
- ▶ Enforcement will be an effective deterrent against future violations.



Enforcement Principles

- ▶ Enforcement actions will increase in severity for regulated entities with poor compliance histories.
- ▶ The cost of non-compliance should be greater than the cost of compliance.
- ▶ Resources will be used proportional to the potential impact on human health and the environment and in keeping with statutory responsibilities.



Enforcement Principles

- ▶ DENR will support the development and use of alternative tools to traditional enforcement that achieve compliance and encourage going beyond compliance.
- ▶ DENR will trust, empower, and support its employees to make enforcement decisions and use enforcement discretion where appropriate.
- ▶ DENR will ensure that its employees are well trained and informed to make enforcement decisions which are measurably consistent.



Enforcement Principles

- ▶ Enforcement policies, procedures, pertinent data, and other critical information will be accessible to any interested party.
- ▶ Enforcement decisions will be defensible, documented, and proportional to the degree of potential harm.
- ▶ DENR will foster partnerships internally and externally to realize shared responsibilities in environmental stewardship.



Enforcement Strategy

Encourage responsible environmental behavior through enforcement programs that are strong, fair, and effective.

- ▶ **Strong** - meet serious violations with serious consequences.
- ▶ **Fair** - consistently assess and collect civil penalties.
- ▶ **Effective** - link actions with results and give the public a measure of confidence in environmental enforcement.



Enforcement Strategy

STRONG: Meet serious violations with serious consequences.

- ▶ Assess Maximum penalties for willful, repeat and serious violations that impact the environment or public health
- ▶ Pursue criminal prosecution authorities where appropriate and when civil enforcement has proven ineffective



Maximum Penalties

- **Air Quality** – \$10,000 per day per violation
- **Coastal Management** – \$250 per day (minor development),
\$2500 per day (major development)
- **Erosion and Sediment Control** – \$5,000 per day
- **Dam Safety** – \$500 per day for each day of willful violation
 - **Hazardous Waste** – \$25,000 per day
- **Mining** – \$500 per day; Mining without a permit \$5,000 per day



Maximum Penalties

- **Non-Discharge** – \$10,000 per violation per day;
\$25,000 if assessed in the past five years
- **NPDES** – \$10,000 per violation per day; \$25,000 if assessed in
the past five years
- **Solid Waste** – \$5,000 per day; \$25,000 per day for medical
waste disposed on water first violation, \$50,000 per day for
subsequent violations; \$50 per violation per tire improperly
disposed; \$50 per violation for improper disposal of lead-acid
batteries; \$100 for improper disposal of white goods or failure
to remove refrigerants



Maximum Penalties

- **Oil Pollution/Hazardous Substance Control** – \$5,000 per day
- **On-Site Wastewater** – \$50 per day (\leq 480 gallon systems);
\$300 per day ($>$ 480 gallon systems)
 - **Public Water Supply** – \$25,000 per day
 - **Radiation Protection** – \$10,000 per day, with each day of continuing violation a separate violation
- **Underground Storage Tanks** – \$10,000 per day per violation
 - **Well Construction** – \$100 per day per violation



Enforcement Strategy

FAIR: Vigorously assess and collect penalties in a consistent manner.

- ▶ Report the amount of civil penalty assessment attributable to willful and intentional acts, repeat violations or violations that pose a serious threat to the environment
- ▶ Standardize and strengthen the appeals process
- ▶ Identify and close the gap between the amount of penalty assessed and the amount of penalty collected
- ▶ Delegate civil penalty authority in each division to allow timely enforcement



How are penalties assessed?

Most programs are bound by statute or regulation to consider the following factors in determining the amount of a penalty:

- ▶ Degree and extent of harm;
- ▶ Duration and gravity of the violation;
- ▶ Effect on media (air, water, land);
- ▶ Effect on public health;
- ▶ Cost of rectifying the damage;
- ▶ Any money saved by noncompliance;
- ▶ Cause (i.e. whether the violation resulted from negligent, reckless, willful, or intentional act or omission);
- ▶ Compliance history (prior record) of the violator.



How are penalties assessed?

Penalty Matrix:

- ▶ Relationship between the degree of harm and the extent of deviation from the rules

Penalty Tree:

- ▶ Used to guide decision-making.
- ▶ Base penalty amount - increased or decreased based on aggravating or mitigating factors

Degree of Harm			
<input type="checkbox"/> Potential <input type="checkbox"/> Actual	Degree of Deviation from Requirement		
	MAJOR	MODERATE	MINOR
MAJOR	80 – 100%	60 – 80%	44 – 60%
MODERATE	32 – 44%	20 – 32%	12 – 20%
MINOR	6 – 12%	2 – 6%	1 – 2%
Degree of Harm Factors:		Degree of Deviation Factors:	
<input type="checkbox"/> Duration of Violation <input type="checkbox"/> Area of Impact (size) <input type="checkbox"/> Proximity to receptors <input type="checkbox"/> Sector impacts (air, land, water) <input type="checkbox"/> Health Impacts		<input type="checkbox"/> Administrative / Record Keeping <input type="checkbox"/> Indirect sector impact <input type="checkbox"/> Direct sector impact <input type="checkbox"/> Undermines statute / regulation	
Degree of Harm			

Generic Penalty Matrix Worksheet



2.0 NON-PERMITTED ACTIVITY

Class	Violation	Amount
2.1	operating without a permit	\$4,000
2.2	failure to submit reports	\$500

Generic Penalty Tree



Enforcement Strategy

EFFECTIVE: Link actions with results.

Provide the public reason for confidence.

- ▶ Make the enforcement process clear to the public
- ▶ Install a departmental information management system that shares data across media programs and with the public for use in monitoring activities and decision-making
- ▶ Produce an annual compliance report
- ▶ Increase the publicity of significant enforcement actions



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DENR Information

BUSINESS

EDUCATOR

EMPLOYEE

LOCAL GOVERNMENT

PUBLIC

Data, Statistics, Reports and Maps

Ozone Forecast, Maps, Wetlands Data, Pollution Prevention, Museum Research, DENR Documents, more...

Enforcement

Environmental Enforcement, Vehicle Inspections, Stage 1 Vapor Recovery, CAMA Violators, more...

Environmental Education

DENR Library, Adult, EE Clearinghouse, Kids, Environmental Info, Other Resources, more...

Financial Assistance and Tax Credits

Beach Access, Soil and Water, Solid Waste, Brownfields, Conservation Tax Credit, more...

News and Events

DENR News Releases, Air Quality Events, CAMA Newsletter, Pollution Prevention, more...

Permits, Licenses and Certifications

One Stop Permit Assistance, Air Quality Permits, CAMA, Mining Permit Fees, more...

Rules, Policies, and Regulations

Dam Safety, Mining Laws, Air Quality Rules, Soil Erosion Law, DENR Laws and Regulations, more...

Technical Assistance

Pollution Prevention, Small Business Assistance, Energy Conservation, Air Modeling and Meteorology, more...

DENR Destinations

NC Aquariums, NC Zoo, State Parks, NC Museum, Educational Forests, NC Natural Attractions, more...

Things to Buy

Maps, Seedings, NC Wildlife, NC Stores

Special Report

DENR Library Database, Hurricane Preparedness, Environmental Steward Named, Ozone Forecast Season, Stormwater Pollution, more...





Home About DENR Divisions and Contacts Customer Service FAQs Jobs Related Links NCGov.com

Enforcement

Departmental Enforcement

Enforcement Principles
Enforcement Assessment 2000
Penalty Policy for Self-Reported Violations
DENR Compliance Report 2000
DENR Compliance Report 2001
Flowcharts

Air

Civil penalty assessments
Special Orders by Consent
Stage I vapor recovery compliance
Smoking vehicle complaint form
Vehicle inspection and maintenance program

Coast/Fisheries

List of CAMA violators
Bycatch Reduction Devices
Polluted Area Proclamations
Fisheries Proclamations

Land Resources

Report a possible violation to the Sedimentation Pollution Control Act

Waste Management

Underground storage tank civil penalties
Hazardous waste civil penalties
Solid waste civil penalties
Enforcement

Water

Groundwater Enforcement Actions
Water Quality Enforcement Actions

Environmental Regulatory Compliance Activity in Calendar Year 2001

Readers are invited to send comments, questions and suggestions for improvements.

Contact:
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1601 Mail Service Center
Raleigh, NC 27699-1601
(919) 715-4193
Kari.Barsness@ncmail.net

February 12, 2003



The screenshot shows the website's navigation menu with links for Home, About DENR, Divisions and Contacts, Customer Service, and FAQs. The Enforcement section is highlighted in green and contains the following links:

- Departmental Enforcement**
 - Enforcement Principles
 - Enforcement Assessment 2000
 - Penalty Policy for Self-Reported Violations
 - DENR Compliance Report 2000
 - DENR Compliance Report 2001
 - Flowcharts
- Air**
 - Civil penalty assessments
 - Special Orders by Consent
 - Stage I vapor recovery compliance
 - Smoking vehicle complaint form
 - Vehicle inspection and maintenance program
- Coast/Fisheries**
 - List of CAMA violators
 - Bycatch Reduction Devices
 - Polluted Area Proclamations
 - Fisheries Proclamations
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- Water**
 - Groundw
 - Actions
 - Water Q
 - Actions



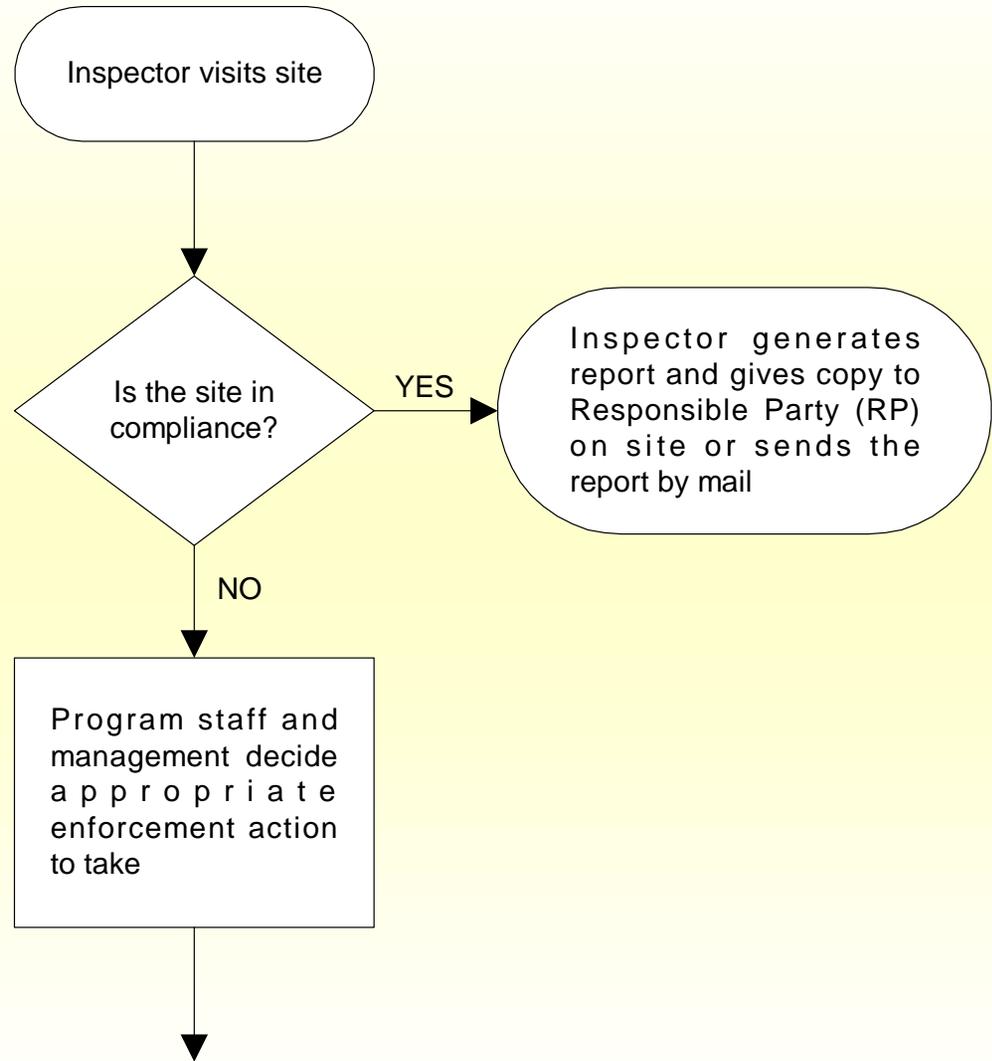
Enforcement Process

- ▶ Inspection
- ▶ Violation discovered
- ▶ Responsible Party notified
- ▶ Re-inspection (If site had not returned to compliance...)
- ▶ Enforcement decided
- ▶ Responsible Party pays, asks for reduced penalty, or appeals to higher authority

PHASE 1 - VIOLATION DISCOVERY

1. Enforcement process begins with the discovery of a violation. This discovery may be through an inspection, a complaint by a concerned citizen or routine monitoring reports that the responsible party (RP) is required to submit.

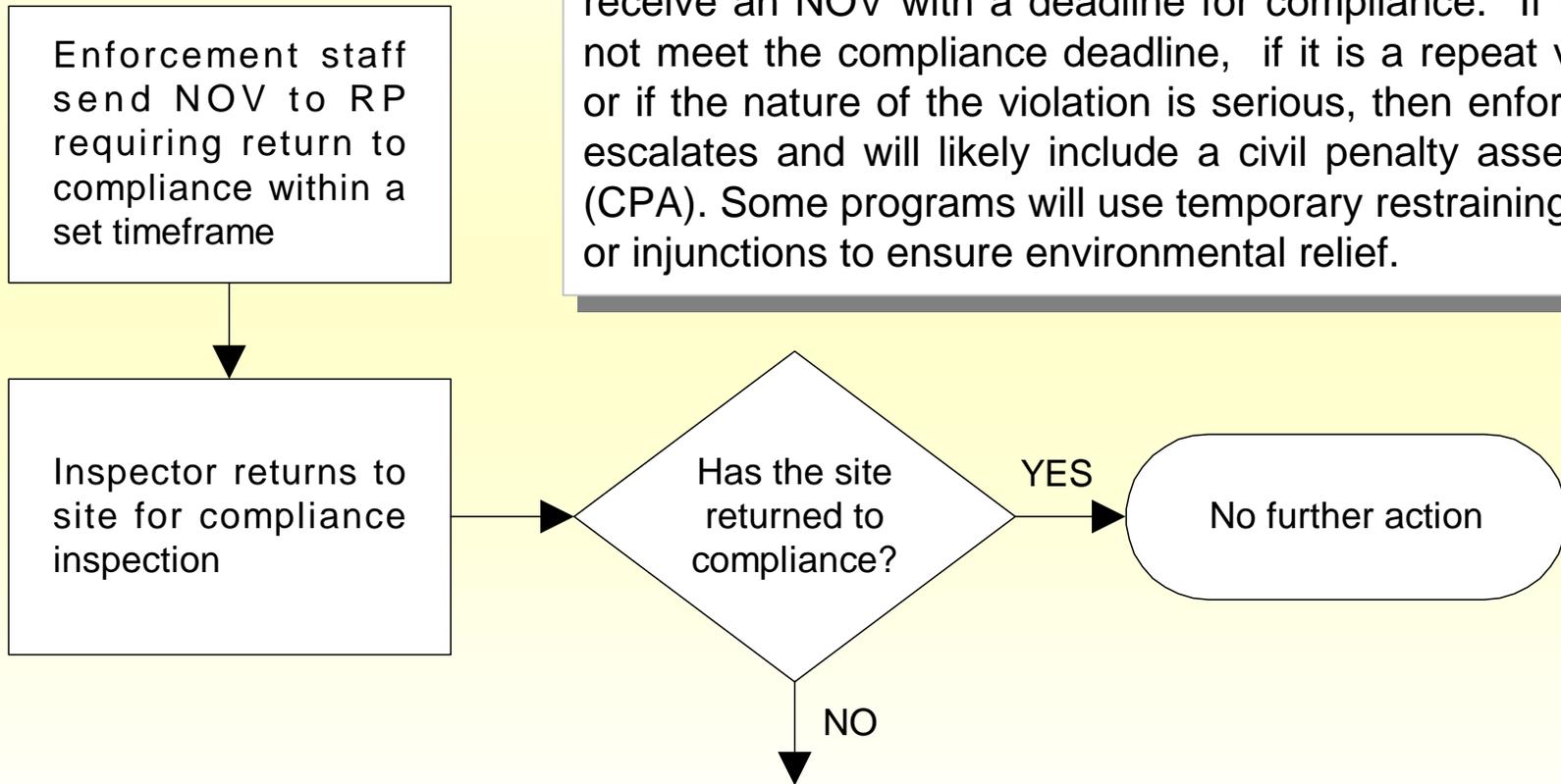
When a violation is discovered, the inspector will consult with the supervisor to decide the next step of enforcement. Most programs have an enforcement coordinator in the central office who will work with the regional office staff to begin the enforcement process.



Next Page...

PHASE 2 - VIOLATOR NOTIFICATION

2. Depending on the nature of the violation, enforcement options may include a notice of deficiency (NOD), notice of violation (NOV), administrative order on consent (AOC), or a unilateral compliance order. First time violators usually receive an NOV with a deadline for compliance. If they do not meet the compliance deadline, if it is a repeat violator, or if the nature of the violation is serious, then enforcement escalates and will likely include a civil penalty assessment (CPA). Some programs will use temporary restraining orders or injunctions to ensure environmental relief.



Next Page...

PHASE 3 - AGENCY ASSESSMENT

3.

If a CPA is to be issued, enforcement staff will prepare an enforcement package that includes the inspection report, lab reports, photographs and any other information that supports the case. The enforcement package will be reviewed by internal staff and may be reviewed by the Attorney General's Office (AGO). Once the review is complete, division management (usually the division director) will assess a civil penalty.

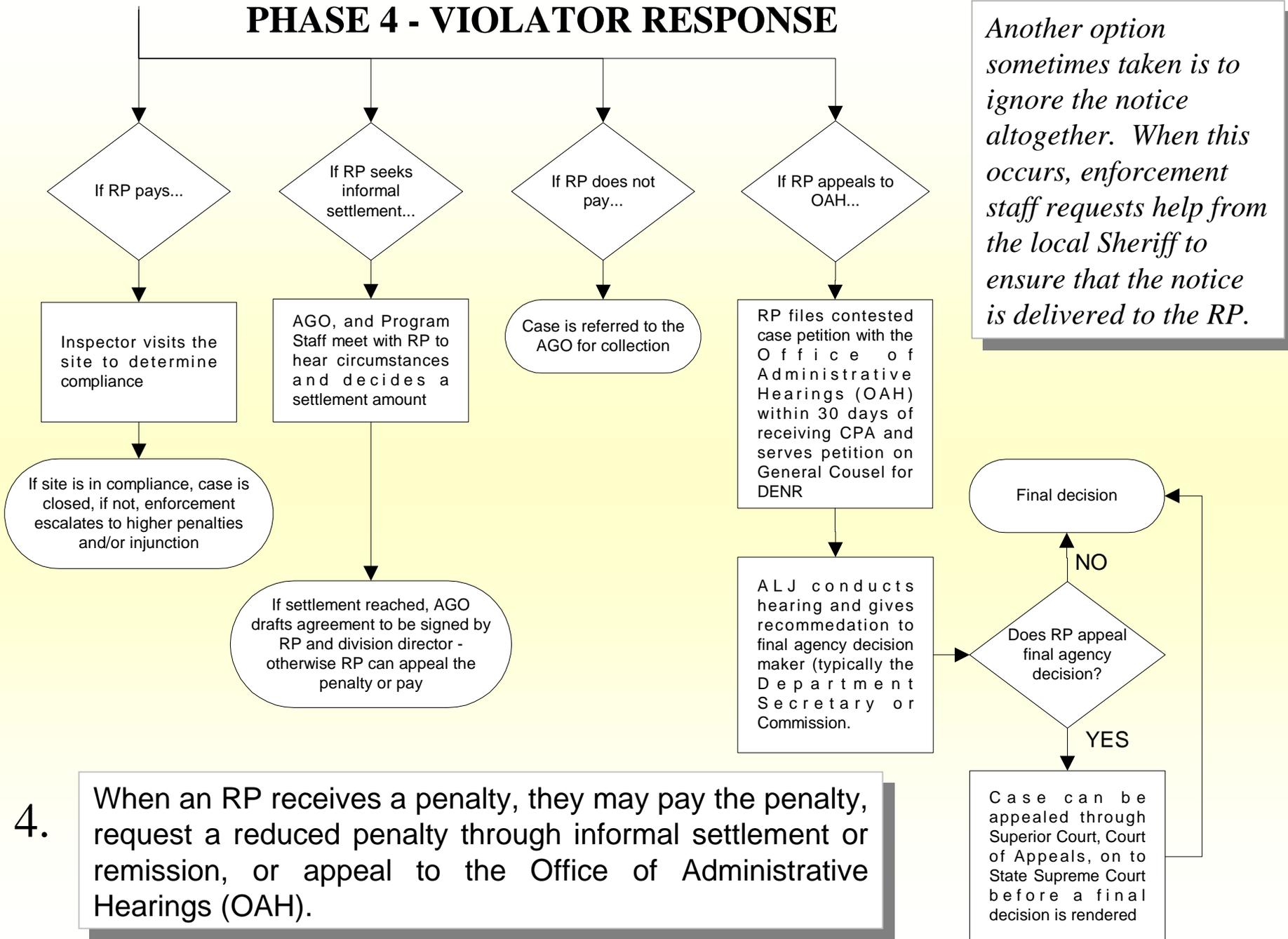
Enforcement staff
prepare enforcement
package

Enforcement
package goes
through agency
review including
Attorney General's
Office (AGO)

Penalty is assessed,
usually by the
Division Director -
CPA is sent to RP

Next Page...

PHASE 4 - VIOLATOR RESPONSE



Another option sometimes taken is to ignore the notice altogether. When this occurs, enforcement staff requests help from the local Sheriff to ensure that the notice is delivered to the RP.

4.

When an RP receives a penalty, they may pay the penalty, request a reduced penalty through informal settlement or remission, or appeal to the Office of Administrative Hearings (OAH).



Measuring Compliance

- ▶ Timeliness
- ▶ Penalty Assessments and Collections
- ▶ Uncollectible Penalties
- ▶ Compliance Rates
- ▶ Return to Compliance Rates
- ▶ Repeat Violations

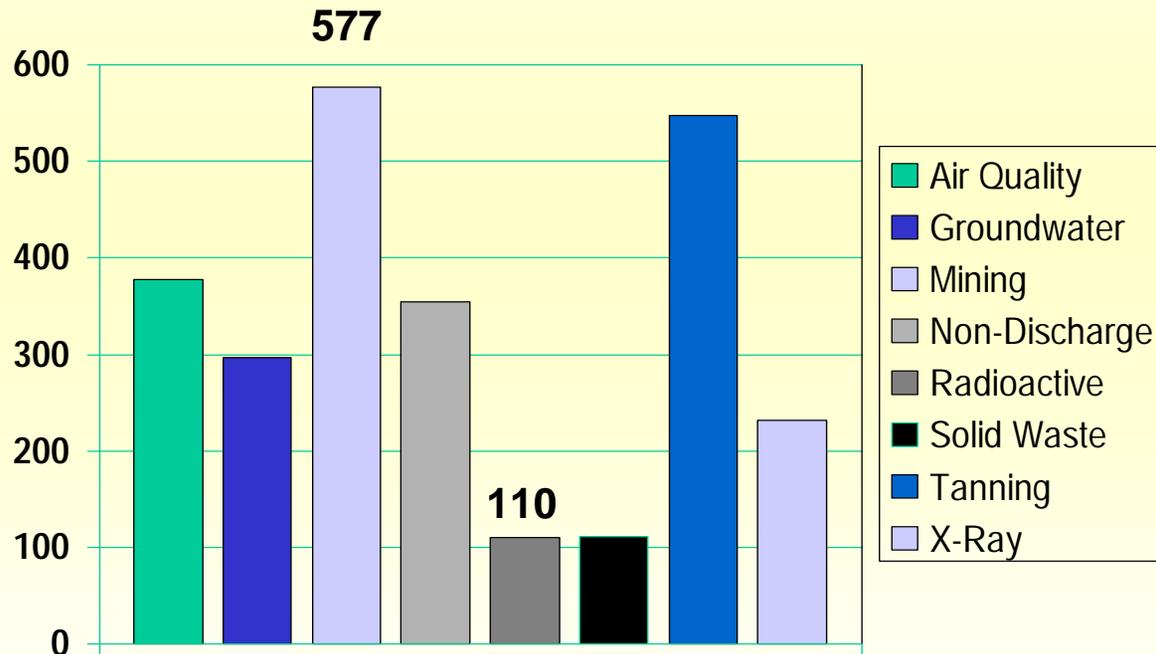


Measuring Compliance

- ▶ 116,991 regulated entities
- ▶ 62,026 Inspections per year
- ▶ 219.2 Inspection FTEs*

*FTE = Full-Time Equivalent
based on a 40-hour work week

Timeliness



Number of days from discovery of violation to penalty paid in full



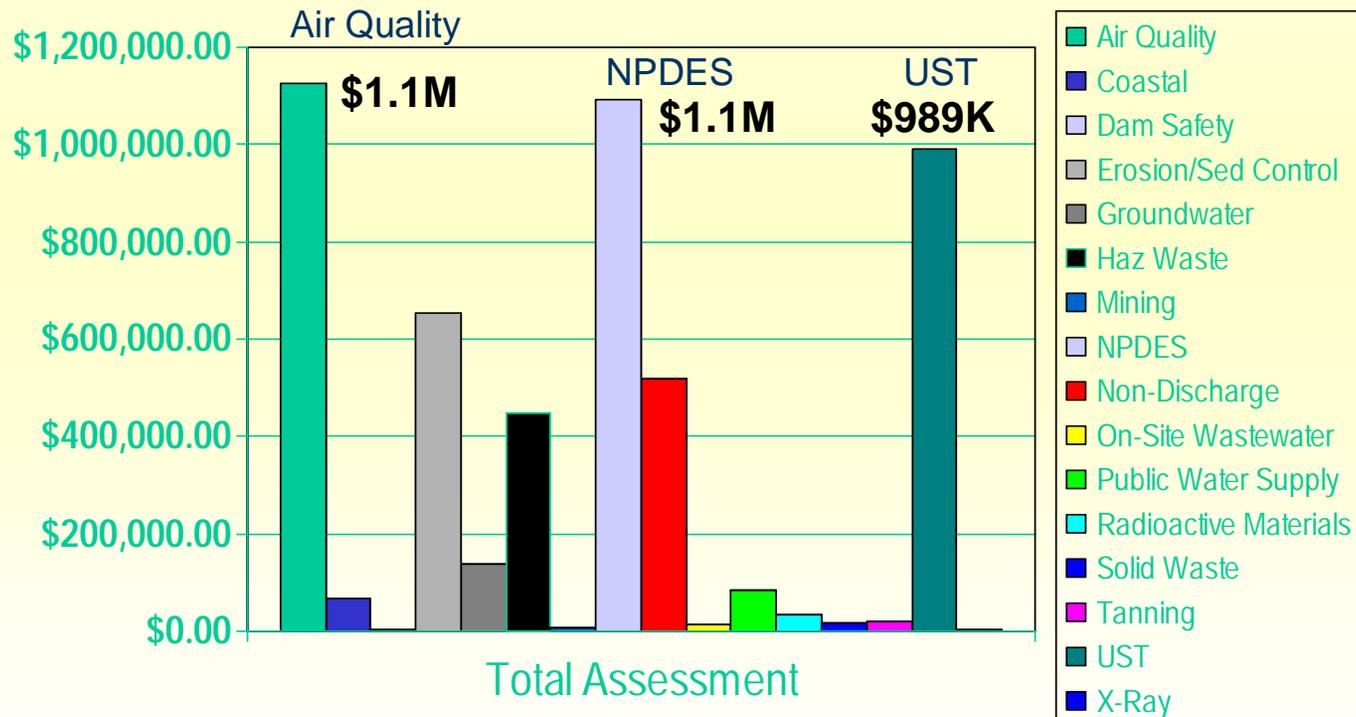
Penalty Assessments

- ▶ 1,509 Penalties Assessed
- ▶ \$5.2 Million Assessed
- ▶ \$2.1 Collected

Collection rate expected to be much higher. It takes several years to fully collect penalties

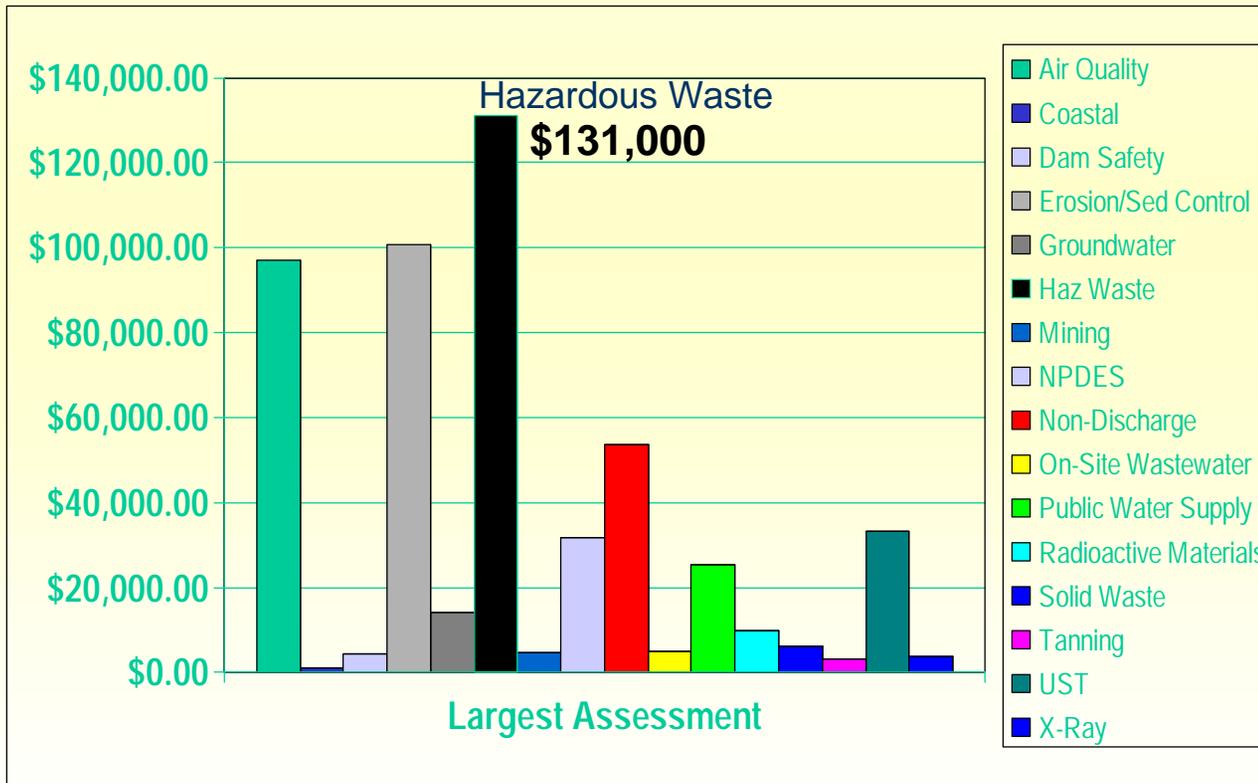


Penalty Assessments



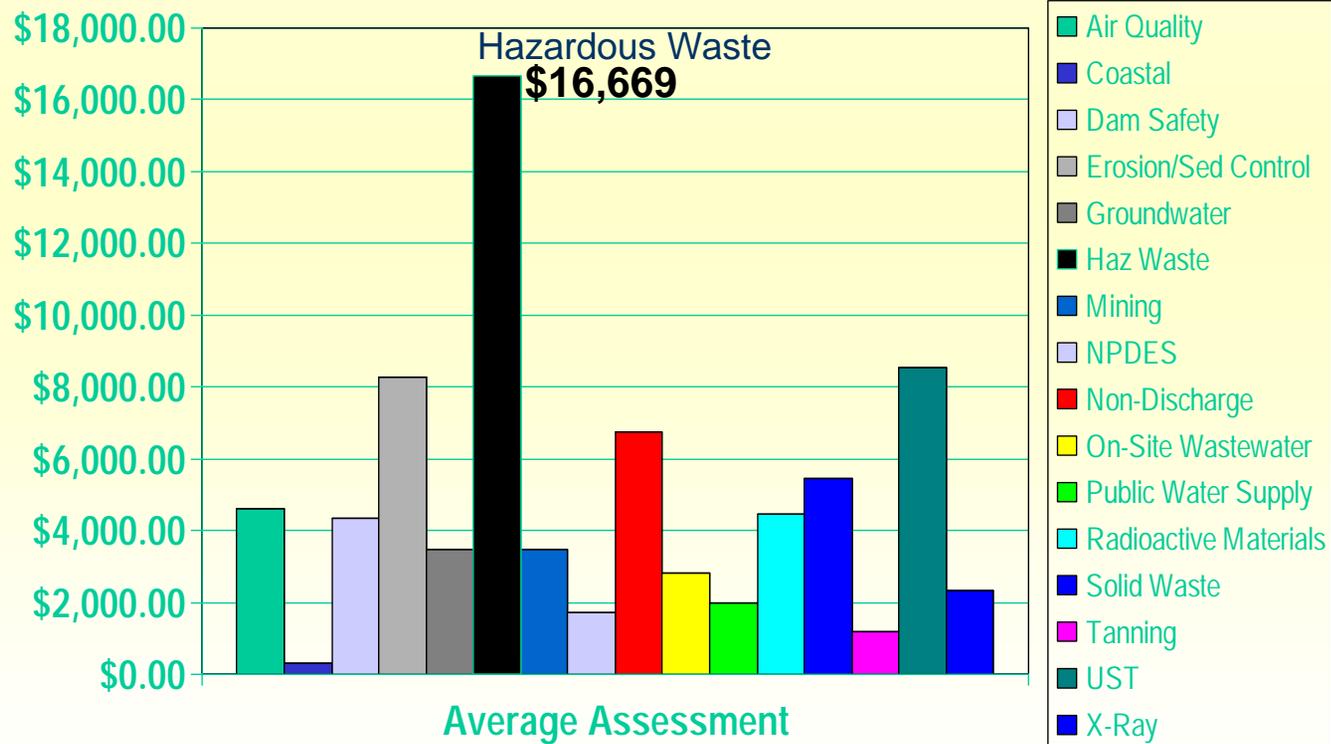


Penalty Assessments



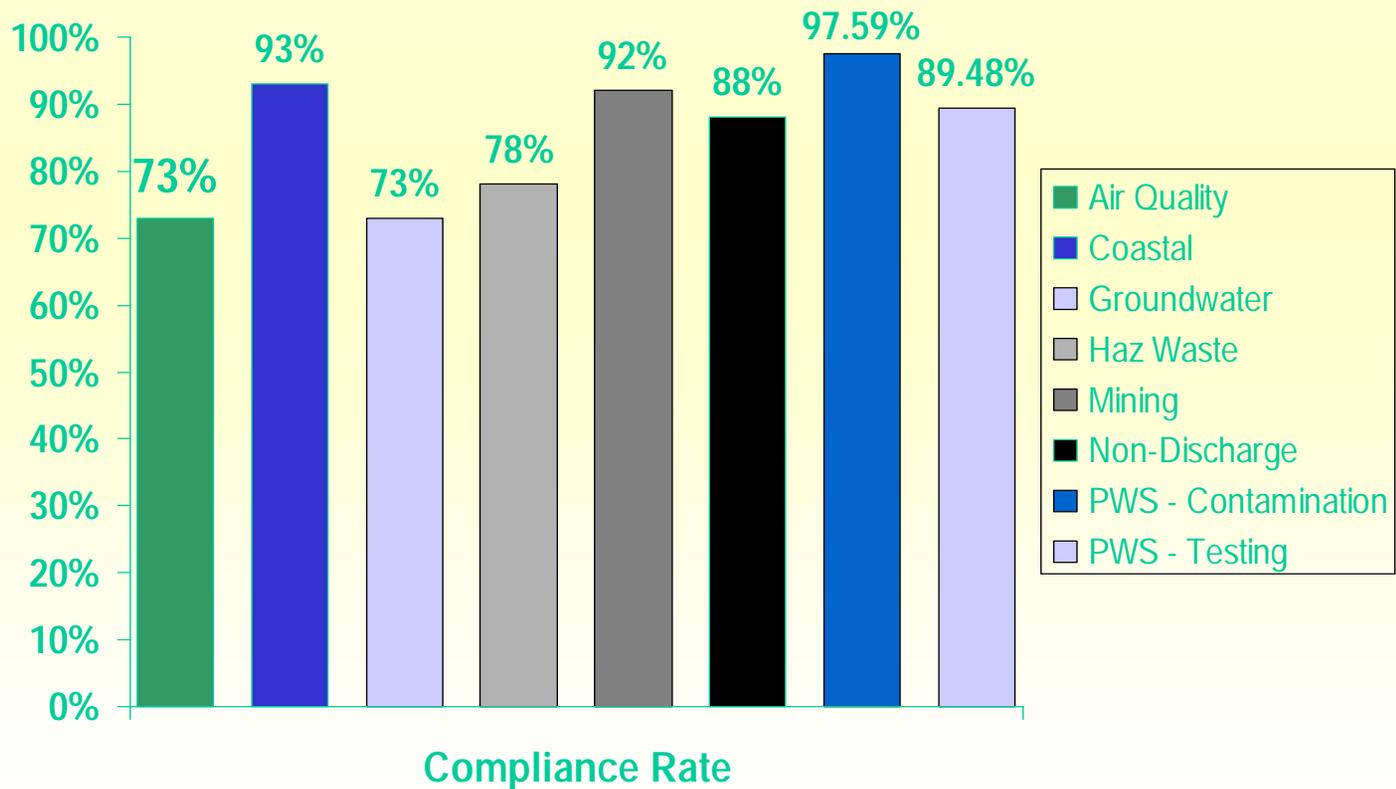


Penalty Assessments



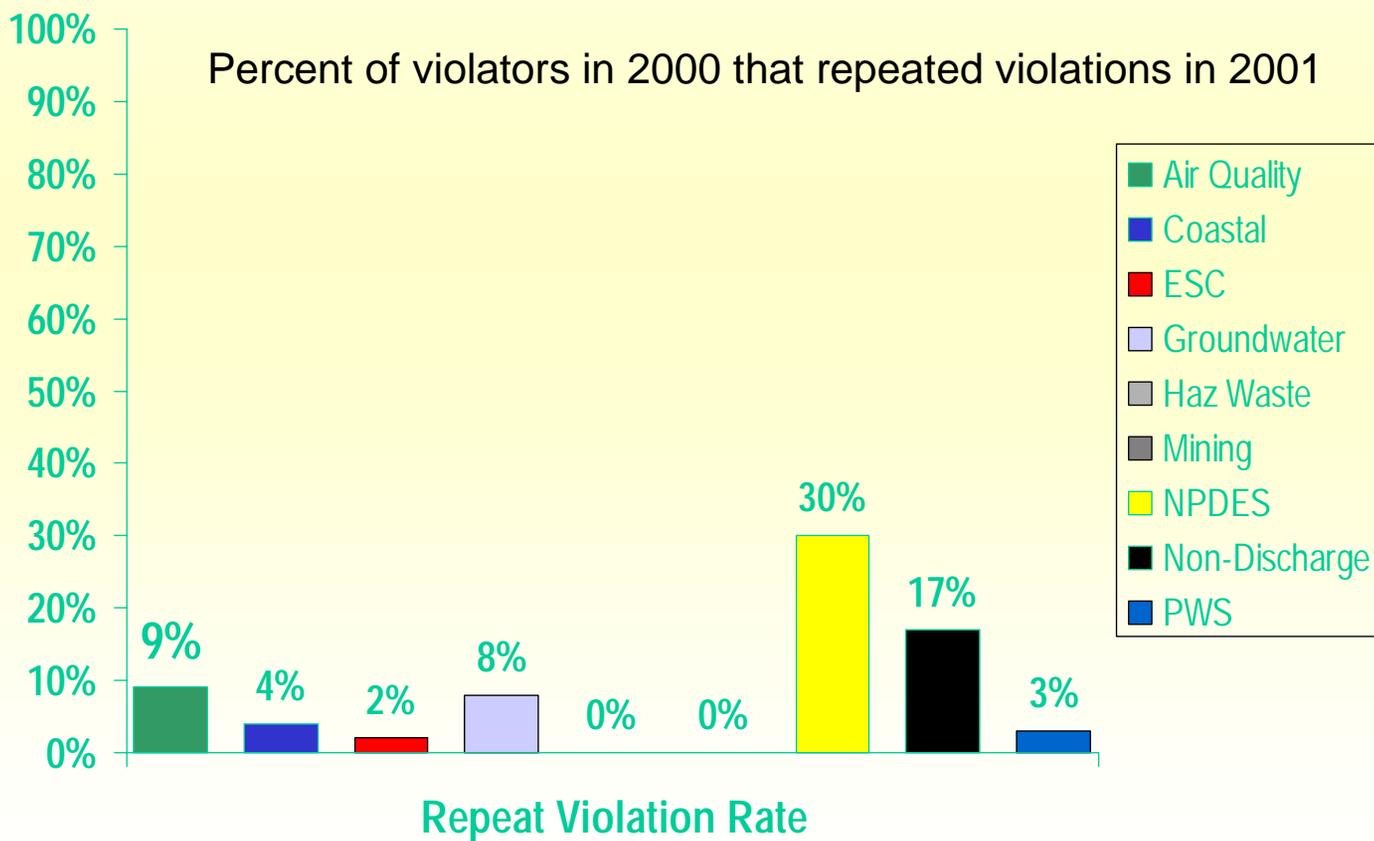


Compliance Rates



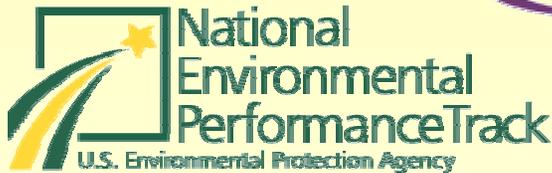


Compliance Rates





State incentive programs



Green Zia Environmental Excellence Program



ESI Tiers

Tier one:
**Environmental
Partner**

Tier two:
**Environmental
Steward**



ESI = Environmental Stewardship Initiative



Tier one: *Environmental Partner*

Organizations that
are beginning to
develop an EMS

American & Efird Inc.
Hunter Farms Dairy
Highland Industries Inc.
Baker Furniture
Duke University

Flextronics International NC Inc.

North Carolina Natural Gas Corporation

N.C. Zoological Park, Horticulture Section

City of Shelby First Broad River WWTP

Camp Lejeune Marine Corps Base

Fort Bragg – 18th Airborne Corps

Smithfield Packing Company, Tar Heel Division

Engineered Sintered Components Company

City of Gastonia Wastewater Treatment Plant





What do Environmental Partners have to do?

- ▶ Document commitment to compliance
- ▶ Set environmental performance goals
- ▶ Commit to implementing and maintaining an EMS
- ▶ Report annually

EMS = Environmental Management System



Wait a minute, what was that about reporting?

- ▶ Progress toward goals
- ▶ net reductions of releases, emissions and disposal
- ▶ Net reductions in the use of energy and water
- ▶ Any reportable non-compliance events



What's in it for a Partner?

- ▶ Technical assistance and training.
- ▶ Networking opportunities.
- ▶ Mentoring
- ▶ Recognition
- ▶ Single point of contact within DENR.
- ▶ Benefits deemed appropriate by the Secretary based on recommendations from the advisory workgroup



Tier two: *Environmental Steward*

Organizations that have an EMS and are committed to exemplary environmental performance.





What do Environmental Stewards have to do?

- ▶ Set aggressive environmental performance goals
- ▶ Commit to exceed compliance
- ▶ Functional EMS certified by third party or reviewed by DENR staff
- ▶ No significant violations for two years
- ▶ Report annually
- ▶ Be a mentor to partners
- ▶ Inter-active communication with community
- ▶ EMS integrated into core business



What's in it for a Steward?

- ▶ Recognition
- ▶ Member of Environmental Stewardship Forum
- ▶ Priority membership on the advisory workgroup.
- ▶ Established time frames for permit decisions.
- ▶ Consideration for regulatory innovations



Advisory Workgroup Members

- ▶ Carolyn Anderson ————— Progress Energy
- ▶ Dr. Richard Andrews ————— UNC-Chapel Hill
- ▶ Alan Briggs ————— Save Our State
- ▶ Jimmy Carter (chair) ————— DENR
- ▶ Preston Howard Jr. ————— MCIC
- ▶ Matt Jordan ————— City of Gastonia
- ▶ Maj. Gen. David Mize ————— MCB Camp Lejeune
- ▶ Jane Preyer ————— Environmental Defense
- ▶ Larry Spence ————— Ready Mixed Concrete
- ▶ Steve Wall ————— Conservation Council of N.C.

N.C. Department of Environment and Natural Resources - Division of Pollution Prevention and Env - Microsoft Internet Explorer

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Address <http://www.p2pays.org/> Go

North Carolina Department of Environment and Natural Resources

DIVISION OF POLLUTION PREVENTION AND ENVIRONMENTAL ASSISTANCE

About DPPEA Contacts Need Help? Site Map Search

NEW AND BIG HOT TOPICS

- Organics Recycling & Composting
- Conservation in State Government (pdf)
- Electronics Management (pdf)
- Sustainability in State Government
- Food Service Industry



Find out more about recycling

DEIR Customer Service
NCGov.com
[Privacy Policy / Disclaimer](#)



North Carolina Department of Environment and Natural Resources

Industries

Technical documents, Industry-specific pollution prevention techniques, On-site waste assessments, Waste Reduction Partners, more...

Small Businesses

Restaurants, Metal finishing, Hotels, Offices, Auto repair, Dental offices, Water conservation (web), more...

Government & Institutions

Solid waste reduction grants, Prevention of sewer overflows, Recycling markets, Pay-As-You-Throw programs, more...

Recycling Businesses

Services, Recycling markets; Financial assistance links, Recycling Works newsletter, Markets assessment, more...

Recycling Information

Recycle Guys, Buy Recycled, Recycle at home, Fun stuff for kids, Resources for teachers, Local program contacts, more...

Environmental Management Systems

Introduction, Design tools, Sector-specific information, EMS for agriculture, Hot topics, Case studies, more...

Technical Resources

Industry-specific pollution prevention techniques, Technical documents, Pollution prevention case studies, more...

News/Information

Division calendar, News releases, Newsletters, Publications, About DPPEA, Performance measures, Employee intranet, more...

North Carolina Division of Pollution Prevention and Environmental Assistance (DPPEA)
 1639 Mail Service Center • Raleigh NC 27695-1639 • (919) 715-6500 • (800) 763-0136

Done Internet

Gary Hunt · 919-715-6508 · gary.hunt@ncmail.net

Customer Service Center

Single source of information for all of DENR's programs.

(877) 623-6748

Or visit our website:

www.enr.state.nc.us



North Carolina Department of Environment and Natural Resources