

APPENDIX

Assessment of Complaints Received FY 2003 - FY 2004

Each year, the Texas Commission on Environmental Quality receives thousands of complaints from Texans concerned about various environmental matters. In these communications, the complainant relates a situation or event in which a possible environmental, health, or regulatory violation has occurred. Typically, complaints come to the TCEQ's 16 regional offices by phone, e-mail, or letter. The agency maintains a 24-hour, toll-free hot line, which is 1-888-777-3186, for receiving such calls.

In 2001, the Legislature directed the TCEQ to conduct an analysis of the complaints it receives each year. The analysis is to include the following categories:

- Air
- Water
- Waste
- Priority classification
- Region
- Commission response
- Enforcement action
- Trends by complaint type

The legislation also directed the agency to assess the impact of changes made in the commission's complaint policy. These requirements were contained in Article 1, Section 1.17 of House Bill 2912, 77th Legislature, which amended Section 5.1773, Subchapter E, Chapter 5, of the Texas Water Code. In addition, the legislation amended Section 5.178 of the Texas Water Code to require that a summary of these analyses be published biennially, as part of the reports required by Section 26.0134 of the Water Code.

Complaint Data Collection and Reporting

By September 2002, the TCEQ regional offices had fully implemented the Consolidated Compliance and Enforcement Data System (CCEDS), which became the mechanism for collecting and reporting complaints data, as well as all data related to the compliance of entities regulated by TCEQ rules.

Regional management then assign the complaint to an investigator, who is responsible for investigating the complaint and entering all resulting data into CCEDS. Review,

approval, and closure of complaint investigations are performed by management, and all additional data are entered into the system.

All of the data reviewed and summarized for this report were extracted from CCEDS. The analysis reflects activity that occurred in the TCEQ regions in fiscal year 2003 (September 1, 2002, to August 31, 2003) and fiscal year 2004 (September 1, 2003, to August 31, 2004). The data are presented in a series of charts (Figures A-2 to A-9).

Complaints by Region

In fiscal year 2003, the TCEQ regional offices received a total of 7,426 complaints. The total declined in fiscal year 2004 to 7,232. Figures A-2 and A-3 show the complaints received by each of the TCEQ regional offices. These include complaints in all priority classifications (see below), including complaints that were received but were not eligible for investigation by this agency.

The annual regional data show that the number of complaints received varies generally by regional population. For example, the Region 12 office in Houston received the most complaints, followed by Region 4 in Dallas-Fort Worth.

Because this report contains the first complete set of complaints data for a biennium, as recorded in CCEDS, no conclusions can be drawn regarding trends. In future biennial reports issued by this agency, the total complaints received will be compared to the previous two-year period, and trends will be evaluated.

Complaints by Media (Air, Waste, and Water)

For both fiscal years, total complaints received can be analyzed by environmental media—on a statewide basis and by regions. As seen in Figure A-4, the largest number of complaints received statewide were those pertaining to air.

Regional data in Figures A-5 and A-6 show that the large number of air complaints in the heavily populated Houston and Dallas-Fort Worth areas account for most of the complaints in this media type.

Otherwise, there is a wide variation among regions as to which media type received more complaints.

Complaints by Priority Classification

Complaints received by the regional offices are prioritized in one of the following categories, based on their relative threat to public health, safety, or the environment. Each priority level has a prescribed response time, as follows:

Priority 0. Other specified time frame. This classification is for special projects that are not anticipated but occur on demand. Response time is based on management's evaluation of the project and workload.

Priority 1. Immediate Response. As soon as possible, but no later than 24 hours from receipt.

Priority 2. Respond within 1 working day. As soon as possible, but no later than 1 working day from receipt.

Priority 3. Respond within 14 calendar days. As soon as possible, but no later than 14 calendar days from receipt.

Priority 4. Respond within 30 calendar days. As soon as possible, but no later than 30 calendar days from receipt.

Priority 5. Respond within 45 calendar days. As soon as possible, but no later than 45 calendar days from receipt.

Priority 6. Respond within 60 calendar days. As soon as possible, but no later than 60 calendar days from receipt.

Priority 7. Refer or do not respond. Complaints the TCEQ does not routinely investigate, but that need to be tracked. This priority level is also used for referrals to other government entities for investigation due to jurisdictional issues.

For this report, the distribution of complaints is shown by priority classification statewide (Figure A-7). About 80 percent of all complaints each year were classified as Priorities 1 to 4, meaning they were scheduled for investigation within 30 calendar days. About 10 percent of complaints received were classified as Priority 7 and were not investigated by this agency—typically because they were not within the TCEQ's jurisdiction. In most cases, these complaints are referred to another governmental entity.

Complaints That Trigger Enforcement Action

All complaints received by the TCEQ are investigated according to the priority levels, as indicated above. Subsequent action depends on the results of each investigation. For the majority of complaints received, no specific enforcement action is necessary to resolve the complainant's allegation. In some

cases, however, the agency must take enforcement action in the form of a Notice of Violation or a Notice of Enforcement.

Issuance of a Notice of Violation (NOV) indicates that TCEQ rules have been violated, but the violation is not considered serious enough to require an enforcement order, and is expected to be resolved quickly within a time frame specified by the investigating regional office.

A Notice of Enforcement (NOE) occurs when a substantial violation of TCEQ rules has been documented and some formal action is required. Often, an NOE leads to the assessment of administrative penalties.

In fiscal year 2003, the agency issued 1,287 NOVs and 203 NOEs as a result of complaint investigations; in fiscal year 2004, the totals were 1,208 NOVs and 196 NOEs (Figure A-8).

About 20 percent of all the complaints received resulted in an NOV or an NOE. Only about 3 percent required a formal NOE from the agency; 17 percent were handled with NOVs.

Complaints Investigated by Program Type

Another way of analyzing complaints is by the type of investigation conducted to address each complaint—in other words, the program type. Air complaints in CCEDS are not usually subdivided by program type, but waste and water each have several subcategories of programs.

Waste program types include: petroleum storage tanks, industrial and hazardous waste, municipal solid waste, and Stage II vapor recovery.

Water program types include: animal feeding operations, dam safety, Edwards Aquifer, on-site sewage facility, public water supply, sludge transporters and land application, storm water, water rights, and wastewater.

Figure A-9 shows the number of complaint investigations that were conducted in each program type. Air complaints represented 49.6 percent of complaints investigated in fiscal year 2003 and 52 percent in fiscal year 2004. Waste programs amounted to 21.3 percent in fiscal year 2003 and 21 percent in fiscal year 2004. Water programs were the basis of 29 percent in fiscal year 2003 and 27.3 percent in fiscal year 2004.

Summary

A direct comparison of this analysis to previous years' complaints is not possible due to the 2002 changeover to the Consolidated Compliance and Enforcement Data System. But generally, the complaint data presented in this report are typical of the complaints received in previous fiscal years.

Whether counting the complaints received or the complaints investigated (regardless of the data system in use), the air program usually accounts for about 50 percent of com-

plaints; waste programs, about 20 percent; and water programs, about 30 percent.

The agency investigates all complaints that are within its jurisdiction and that meet the criteria for opening an investigation. The vast majority of complaints received met these standards and were investigated (about 90 percent in fiscal year 2003 and 88 percent in fiscal year 2004).

About 80 percent of the complaints were prioritized at Levels 1 to 4, resulting in an investigation within 30 days or sooner.

Consistent with the agency’s goal to achieve voluntary compliance with its rules, about 80 percent of the complaints

received by the regional offices were resolved with no commission action.

As indicated in this analysis, about 17 percent of the complaints received result in NOVs, which typically are resolved based on corrective actions by the facility or individual being regulated. About 3 percent of the complaints received resulted in more formal enforcement action, including agreed orders, contested case hearings, and referrals to the Texas Attorney General for legal action.

Note: This report was prepared by the TCEQ’s Field Operations Division.

List of Figures

| | | |
|------------|--|----|
| Figure A-1 | TCEQ Regional Offices | 25 |
| Figure A-2 | Complaints by Region, FY 2003 | 26 |
| Figure A-3 | Complaints by Region, FY 2004 | 27 |
| Figure A-4 | Complaints by Media Type Statewide, FY 2003 - FY 2004 | 29 |
| Figure A-5 | Complaints by Region and Media Type, FY 2003 | 30 |
| Figure A-6 | Complaints by Region and Media Type, FY 2004 | 31 |
| Figure A-7 | Complaints by Priority Level Statewide, FY 2003 - FY 2004 | 32 |
| Figure A-8 | Complaints Resulting in NOVs and NOEs Statewide, FY 2003 - FY 2004 | 33 |
| Figure A-9 | Complaint Investigations by Program Type, FY 2003 - FY 2004 | 34 |

Figure A-1

TCEQ REGIONAL OFFICES

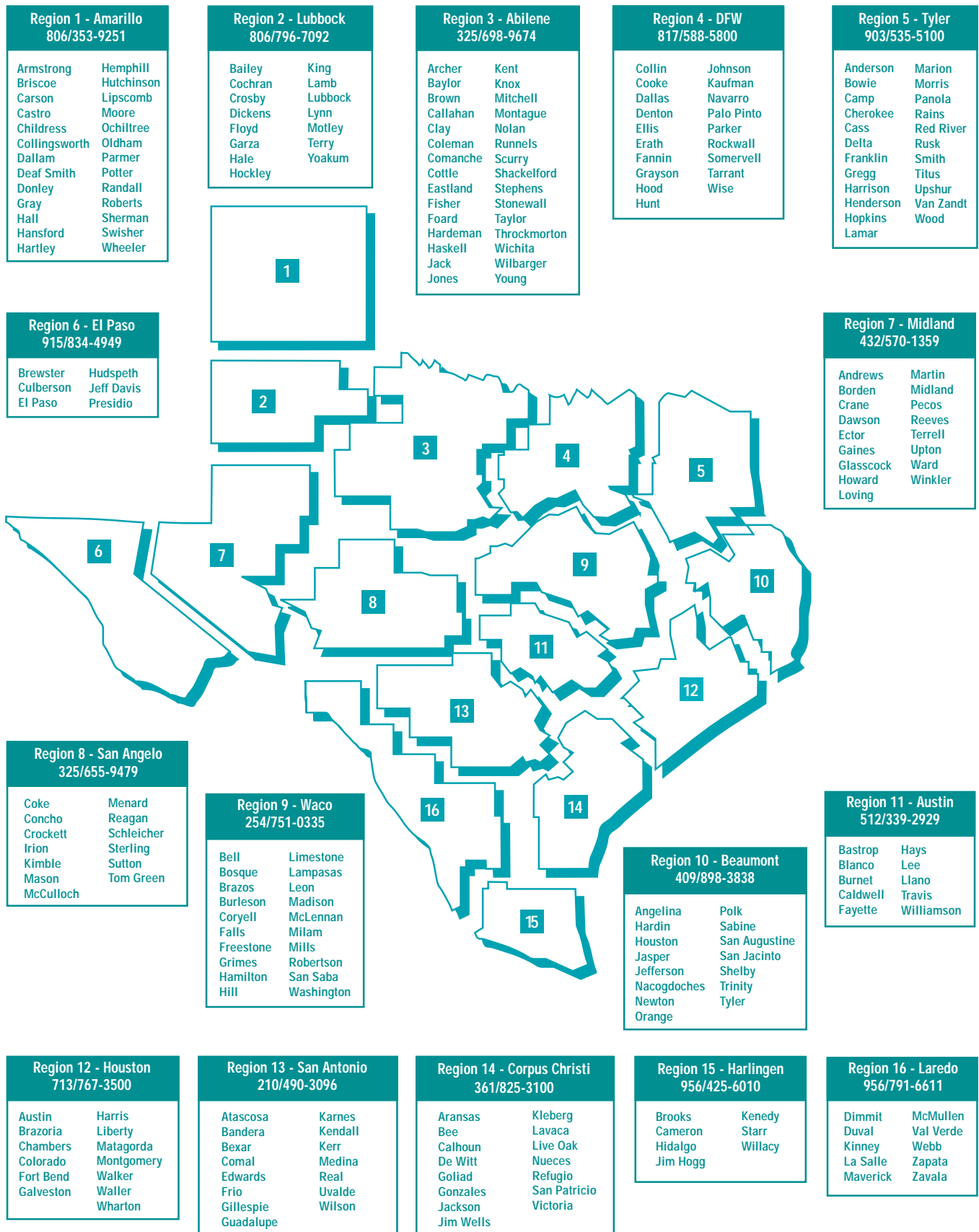


Figure A-2

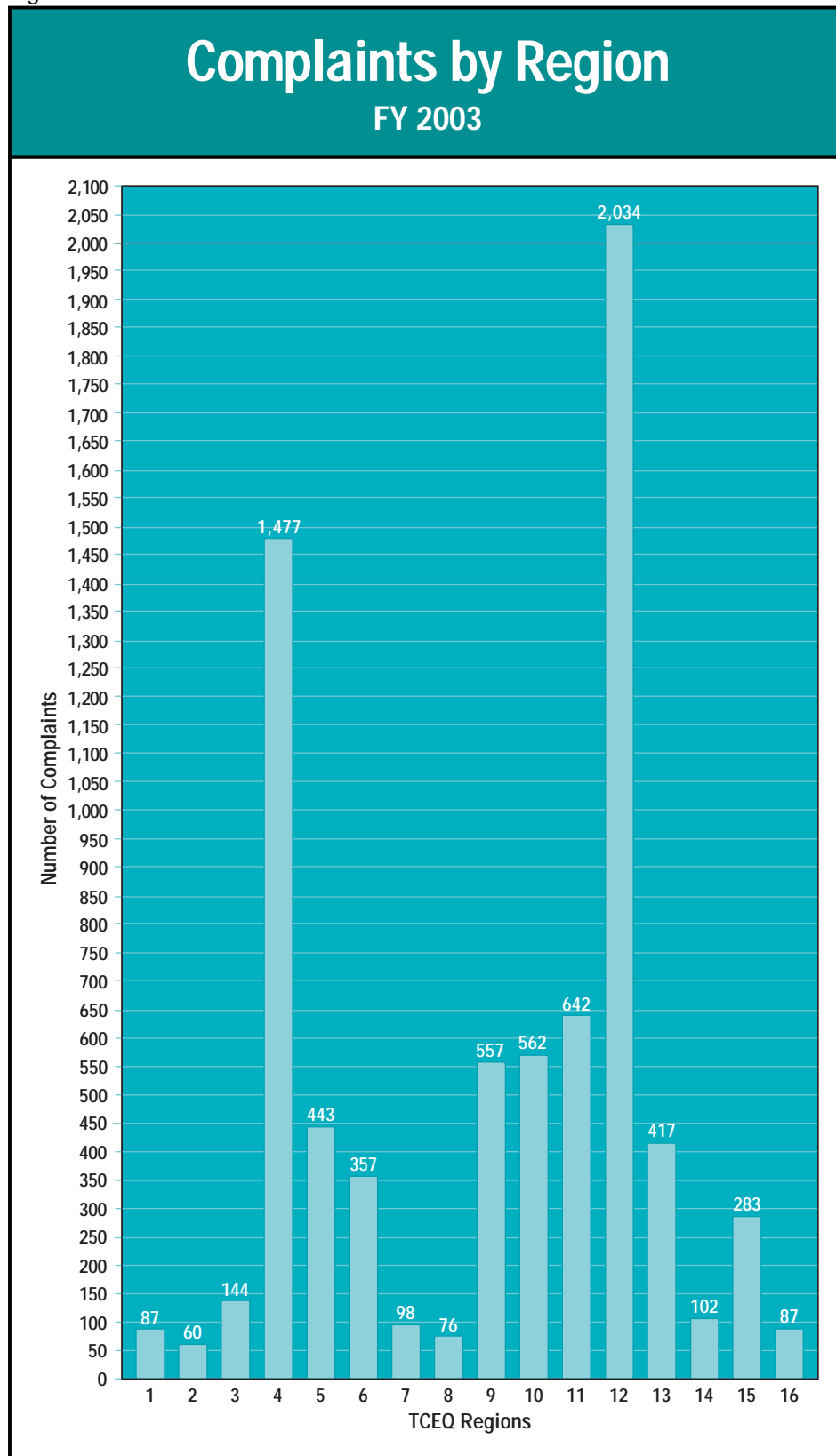
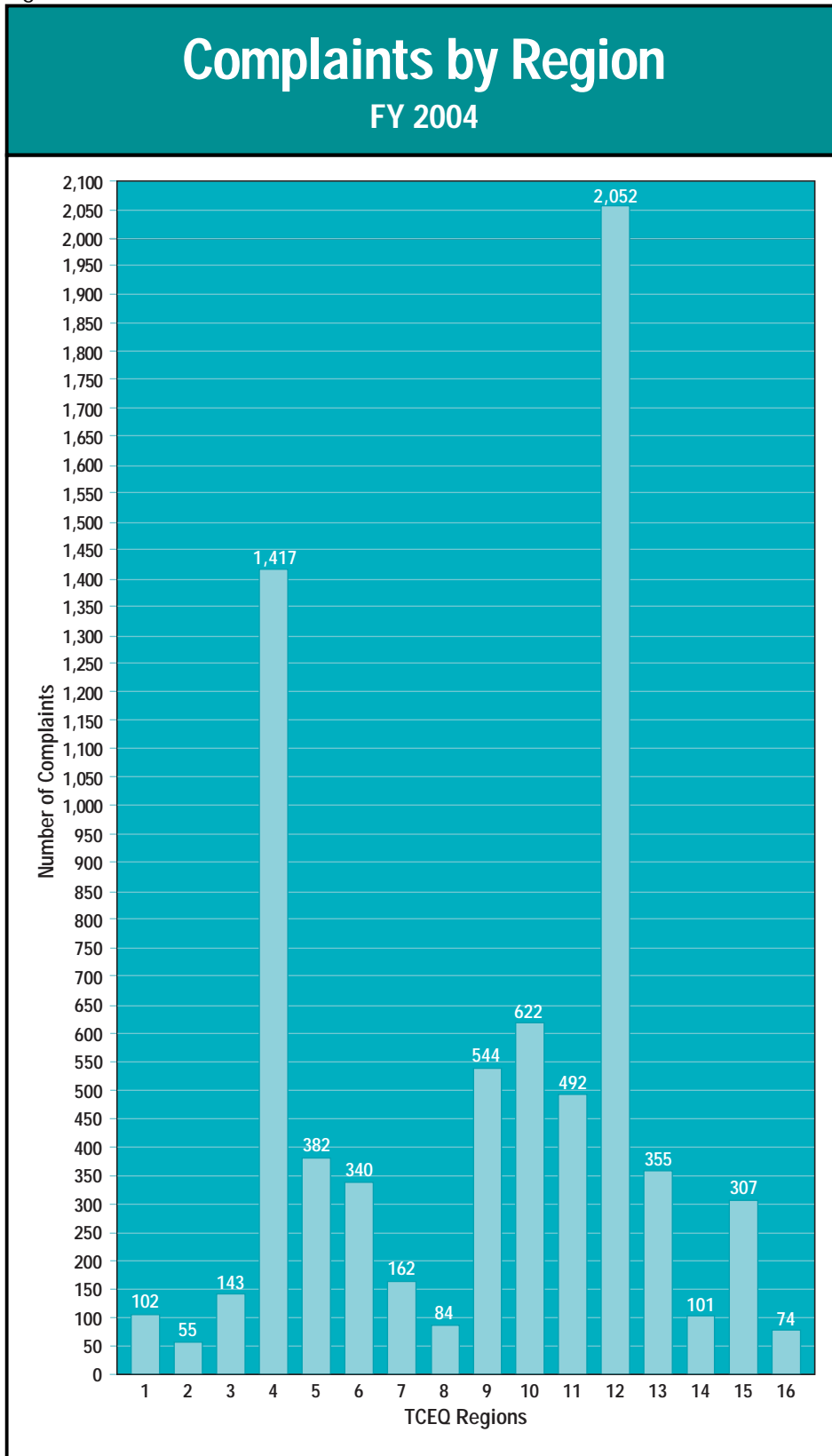
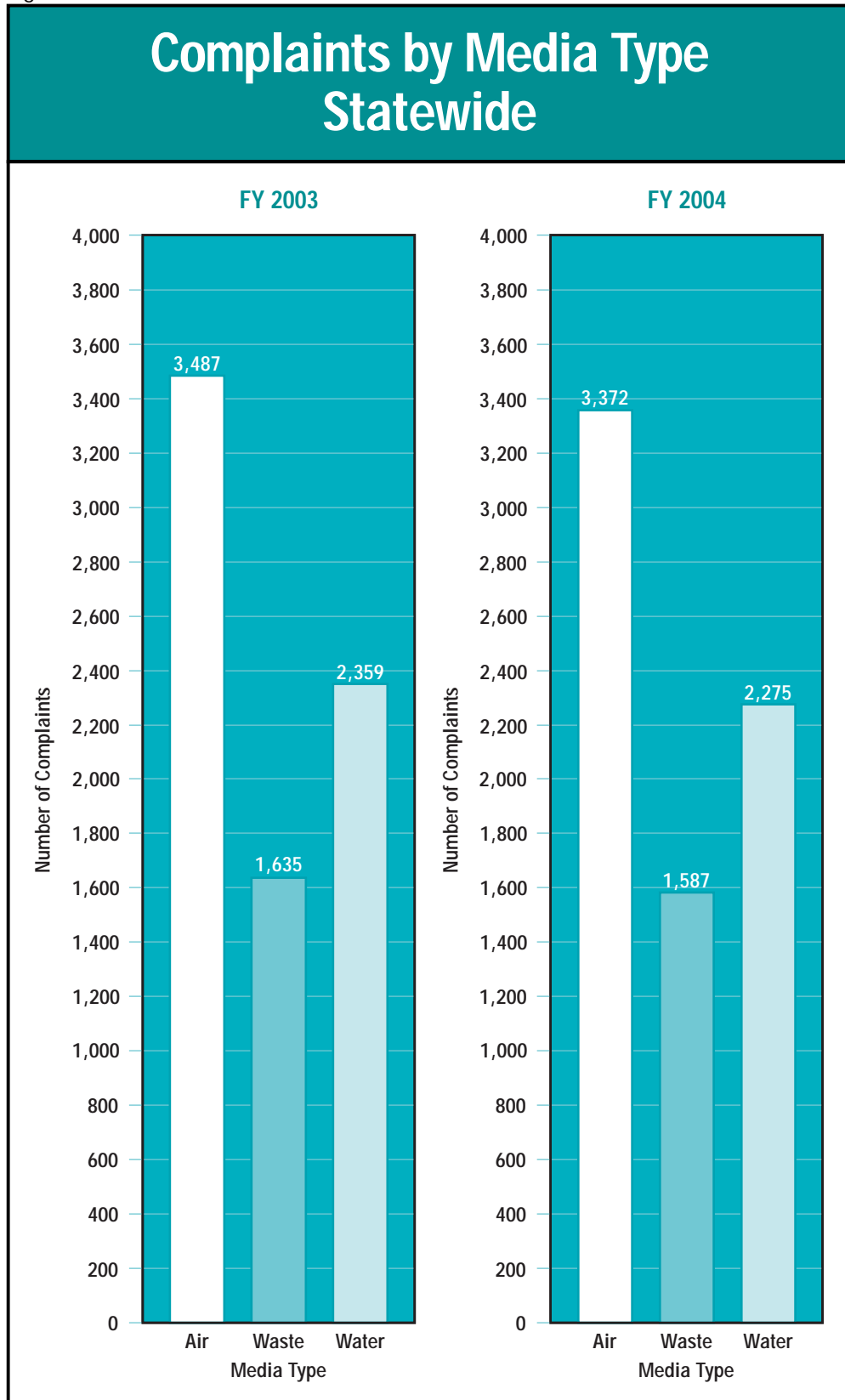


Figure A-3



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Figure A-4



Note: Some complaints are assigned to more than one medium, and some are not assigned to any. Therefore, totals vary from total complaints received.

Figure A-5

Complaints by Region and Media Type

FY 2003

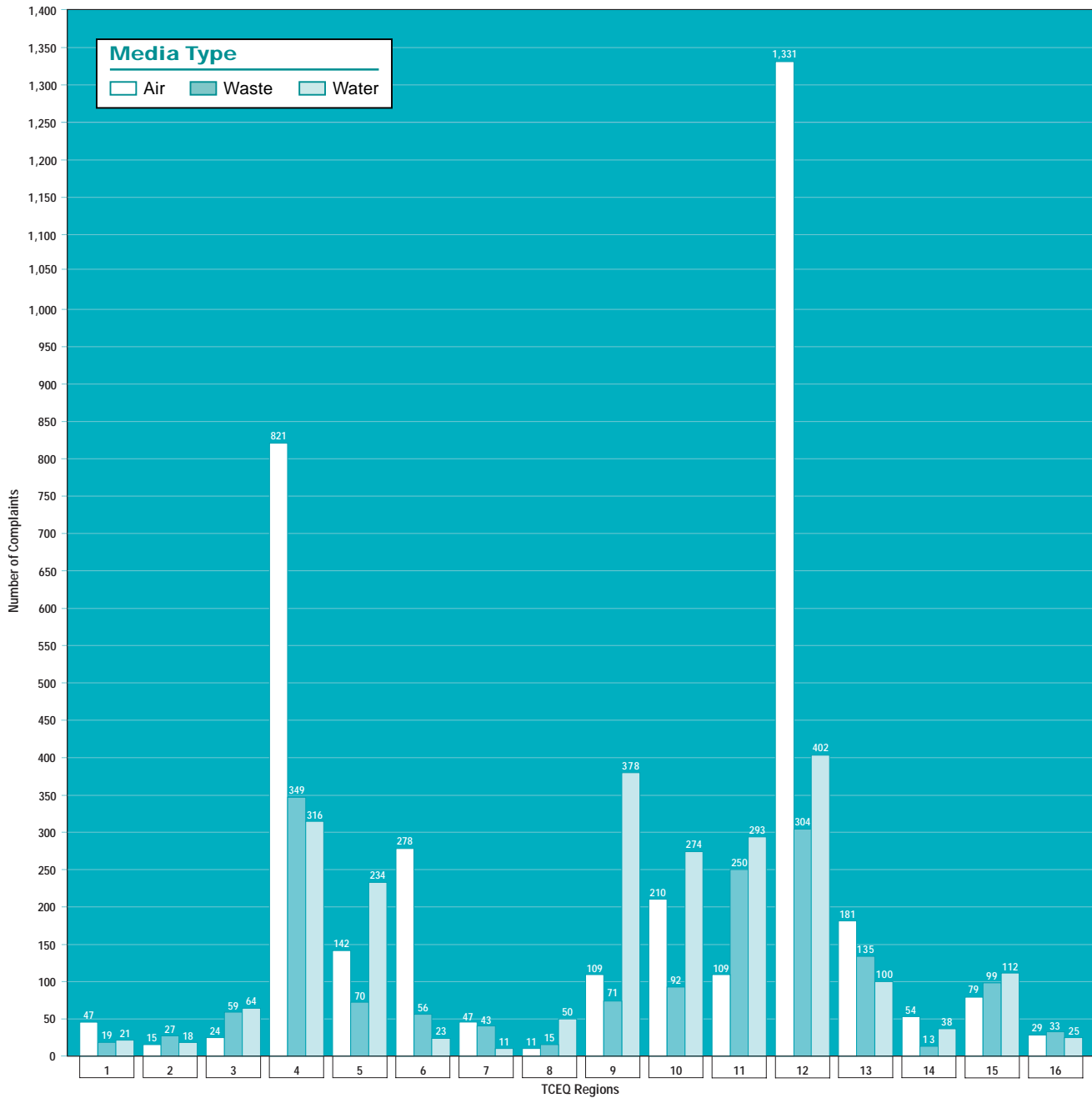


Figure A-6

Complaints by Region and Media Type

FY 2004

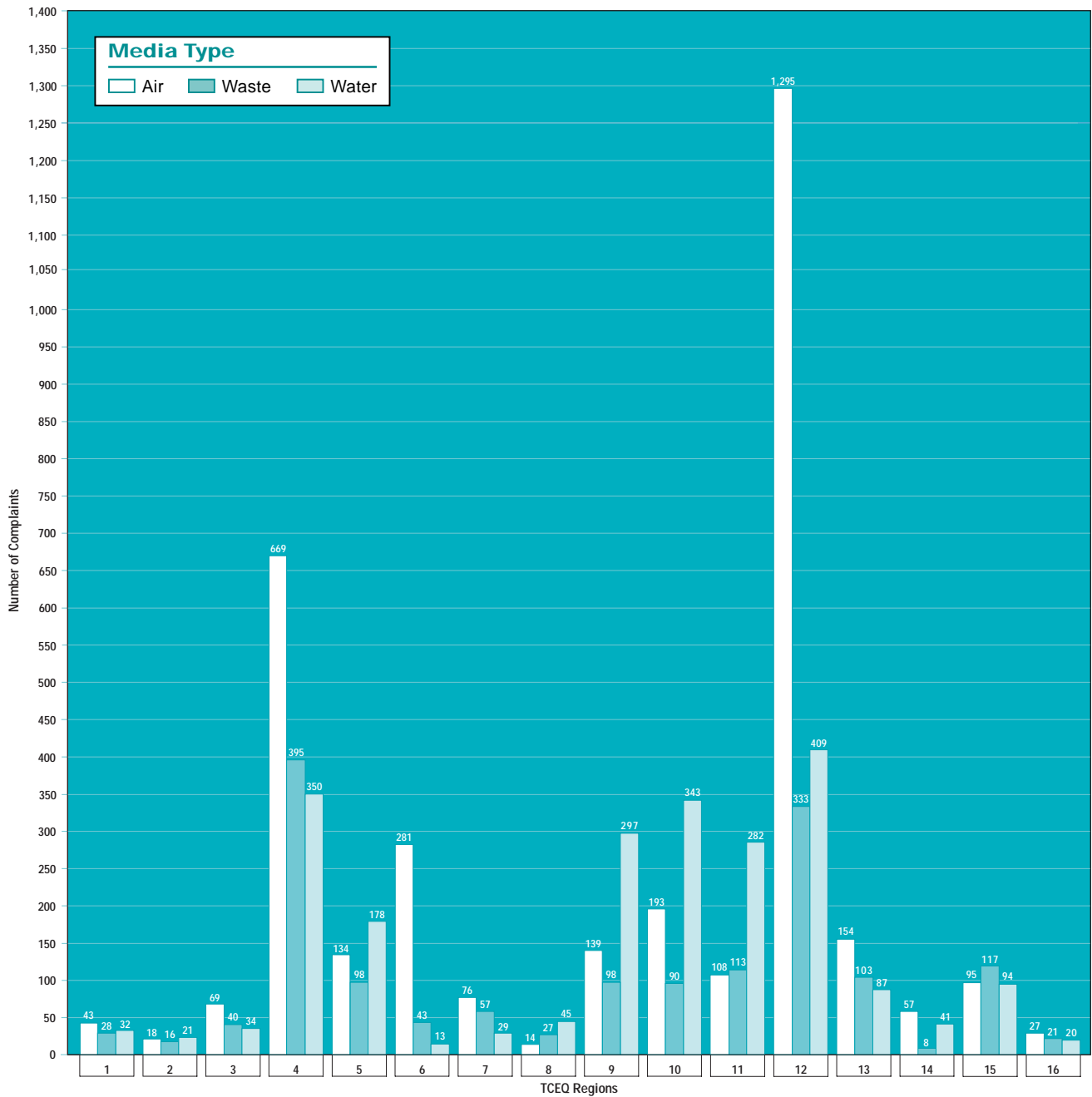


Figure A-7

| Complaints by Priority Level Statewide | | | |
|---|---------------------------------|---------------------------|---------------------------------|
| FY 2003 | | FY 2004 | |
| Priority Level | Number of Complaints | Priority Level | Number of Complaints |
| 0 | 54 | 0 | 73 |
| 1 | 314 | 1 | 165 |
| 2 | 1,450 | 2 | 1,285 |
| 3 | 1,174 | 3 | 1,113 |
| 4 | 3,062 | 4 | 3,184 |
| 5 | 396 | 5 | 395 |
| 6 | 195 | 6 | 180 |
| 7 | 781 | 7 | 837 |

Note: For an explanation of priority levels, see "Complaints by Priority Classification" on page 22.

Figure A-8

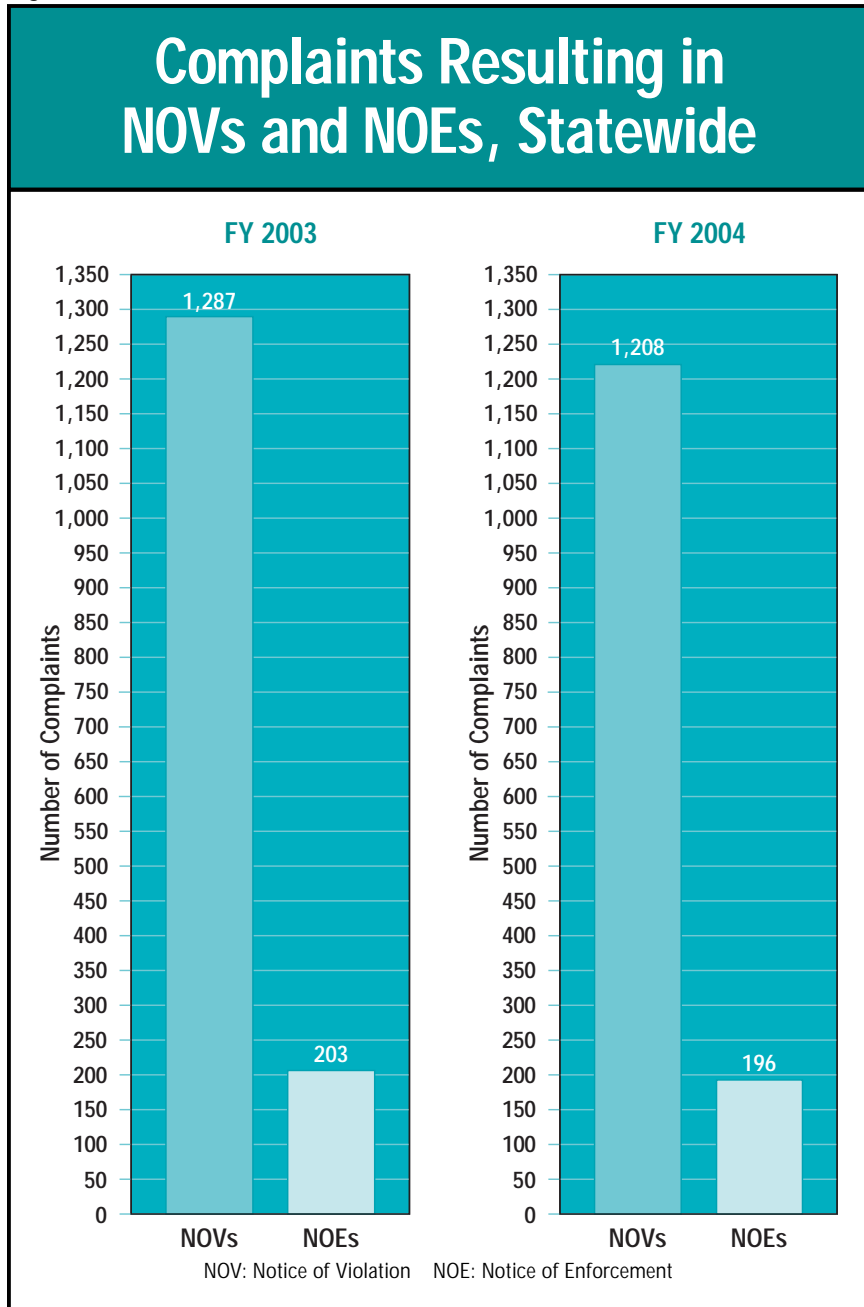


Figure A-9

| Complaint Investigations by Program Type | | |
|---|---------|---------|
| Program Type | FY 2003 | FY 2004 |
| Animal Feeding Operations | 79 | 64 |
| Air | 3,295 | 3,121 |
| Petroleum Storage Tanks | 294 | 266 |
| Dam Safety | 4 | 0 |
| Edwards Aquifer | 31 | 27 |
| Industrial and Hazardous Waste | 333 | 309 |
| Municipal Solid Waste | 701 | 604 |
| On-Site Sewage Facilities | 354 | 296 |
| Public Water Supply | 596 | 406 |
| Sludge | 56 | 65 |
| Stage II Vapor Recovery | 88 | 74 |
| Storm Water | 223 | 347 |
| Water Rights | 44 | 55 |
| Wastewater | 540 | 380 |