



Common APSA Violations Resulting in Formal Enforcement

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Overview

- History
- Define violations and enforcement
- APSA by the numbers
- Violations resulting in formal enforcement
- How to prevent violations & enforcement
- Summary

History

- 1989 – State and Regional Water Board Authority
- 2008 – Authority transferred to UPAs
- 2011 – Laird Letter
- 2012 – Office of State Fire Marshal Authority
- 2012 – 1st APSA violation cited by UPA that led to enforcement action
- 2013 – Requirement for CERS

Minor Violations – HSC 25404(a)(3)

- Notice to Comply
- Violation that is not or does not:
 - ✓ Result in injury to person or property
 - ✓ Pose significant threat to health or environment
 - ✓ Knowing, willful, or intentional
 - ✓ Chronic or recalcitrant
 - ✓ Result in an emergency response
 - ✓ Enable violator to benefit economically
 - ✓ Hinder UPA ability to determine compliance with other rules, regulations, or permits

Minor Violation Examples

- Not including the cross reference – 112.7
- Inaccurate facility description – 112.7(a)(3)
- Failure to maintain drainage records – 112.8(c)(3)(iv)
- Failure to inspect for integrity – 112.8(c)(6)
- Failure to test liquid level sensing device – 112.8(c)(8)(v)

Class 2 Violation – HSC 25117.6

- ✓ Not a Class 1
- ✓ Not a Minor
- ✓ Chronic or recalcitrant
- ✓ Pattern of neglect or disregard with respect to the requirements

Class II Violation Examples

- Failure to implement the SPCC Plan – 112.3
- Failure to provide general containment – 112.7(c)
- Failure to implement security measures – 112.7(g)
- Failure to use containers w/material & construction compatible with use (UST used as AST) – 112.8(c)(1)
- Failure to implement overfill prevention – 112.8(c)(8)

Class I Violations

- Notice of Violation
- Example:
 - Failure to prepare an SPCC Plan
- SPCC Plan requirement is not new
 - UPAs conducting inspections since 2008
- 112.3(a)(1) requires facility to prepare & implement SPCC Plan before beginning operations

Determining Violation Classification

- Hazard/risk by non-compliance
- Deviation from requirement
- Intent – inadvertent or knowingly non-compliant
- # of violations noted during inspection
- History of disregard for requirements
- Volume of petroleum

What citation? Which Classification?

It has not rained in 3 weeks (note dry soil, concrete pad, etc.). No sheen observed on water.

Secondary containment is sufficiently impervious, but is there sized secondary containment capacity?

The monthly inspection, which was completed after the last rain event, did not note the liquid in the containment.

There is a drain outside the view of the photo that leads to onsite wastewater treatment.

Is there a violation?



What citation? Which Classification?



Manifolded drums are on a pallet that has less than 55 gallons capacity. SPCC Plan does not include building as part of secondary containment.

The piping and drums are not inspected according to monthly inspection log.

Drums are reused, but SPCC Plan does not include overfill prevention procedures for drums.

What citation? Which Classification?



Monthly & annual visual inspections are documented.

No formal integrity testing records.

When testing is completed, STI SPO01 certified inspector concludes tank is designed for use as UST.

What citation? Which Classification?

- Would your determination on classification of violation be effected if the previous 3 photos were from the same facility observed on the same day?
 - ❖ Hazard/risk by non-compliance
 - ❖ Deviation from requirement
 - ❖ Intent – inadvertent or knowingly non-compliant
 - ❖ # of violations noted during inspection

Round 2 – Citation? Classification?



If this is a loading rack -
112.7(h)

Drains are gravity flow
to one end where it is
then pumped to a
transmix tank

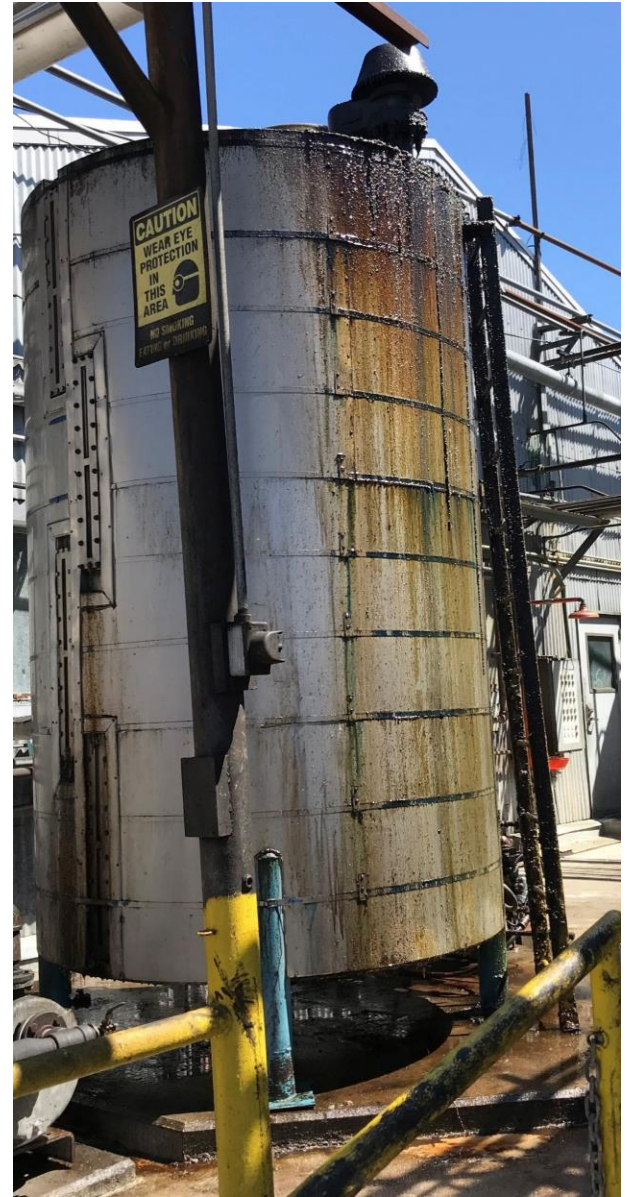
Calculations were not
available for secondary
containment. Loading
rack containment not in
the SPCC Plan

No interlock system,
barrier, or warning signs

In the background is
navigable water







What if....

- The violation observed resulted in this?



Potential Enforcement Actions

- Informal
- Formal
 - Referral to prosecuting agency
 - Multi-jurisdictional action
 - Civil
 - Administrative

Enforcement Action Factors

- Extent of deviation from legal requirements;
- Potential for harm/threat to human health and safety and the environment;
- Violator's compliance history;
- Violator's good faith efforts to comply;
- Deterrent effect on the violator and on the regulated community; and
- Unusual circumstances and/or mitigating factors

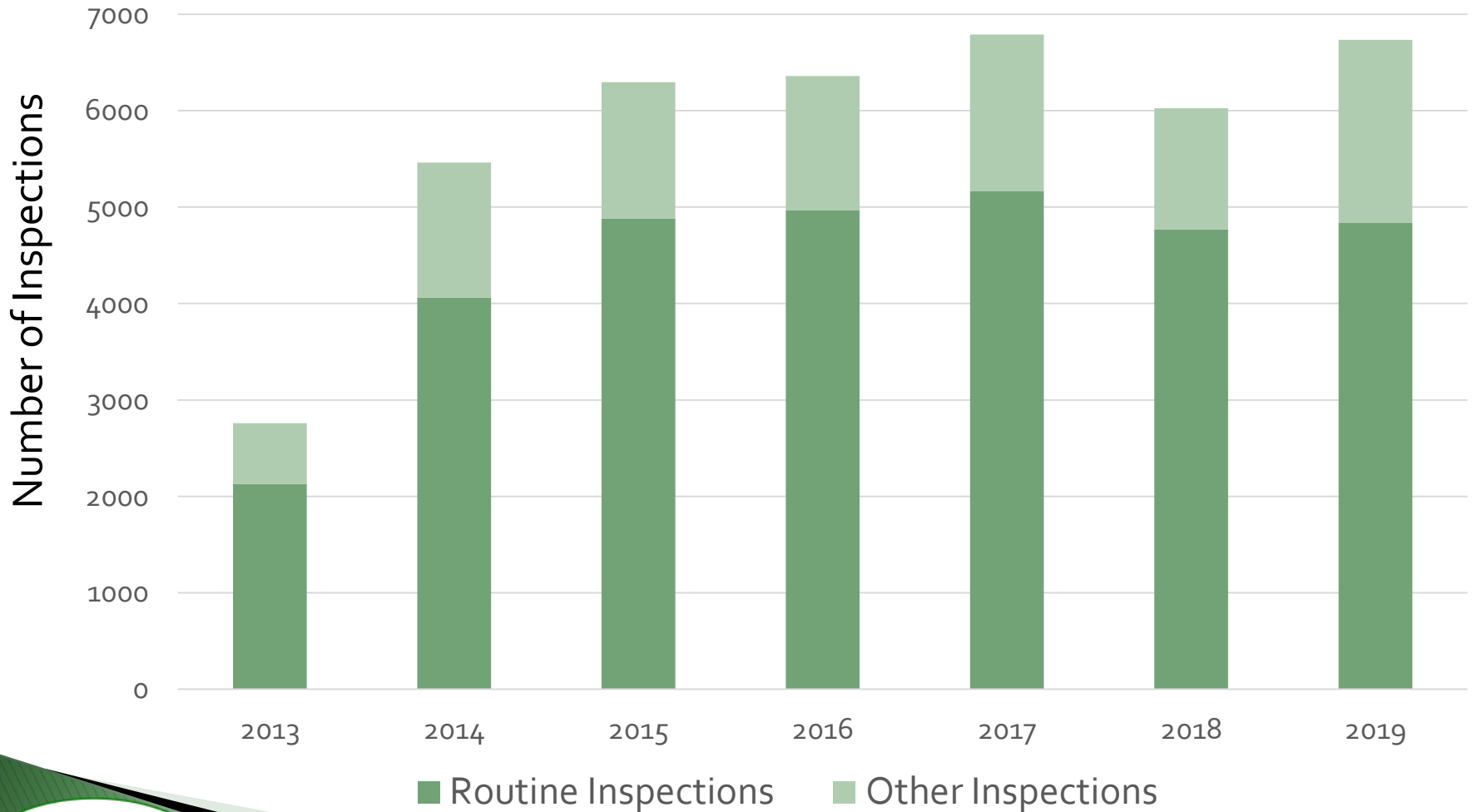
Violation Class Translates to Enforcement

- Formal enforcement actions can occur for either Class 1 or Class 2 violations
- Class 1 violations require formal enforcement

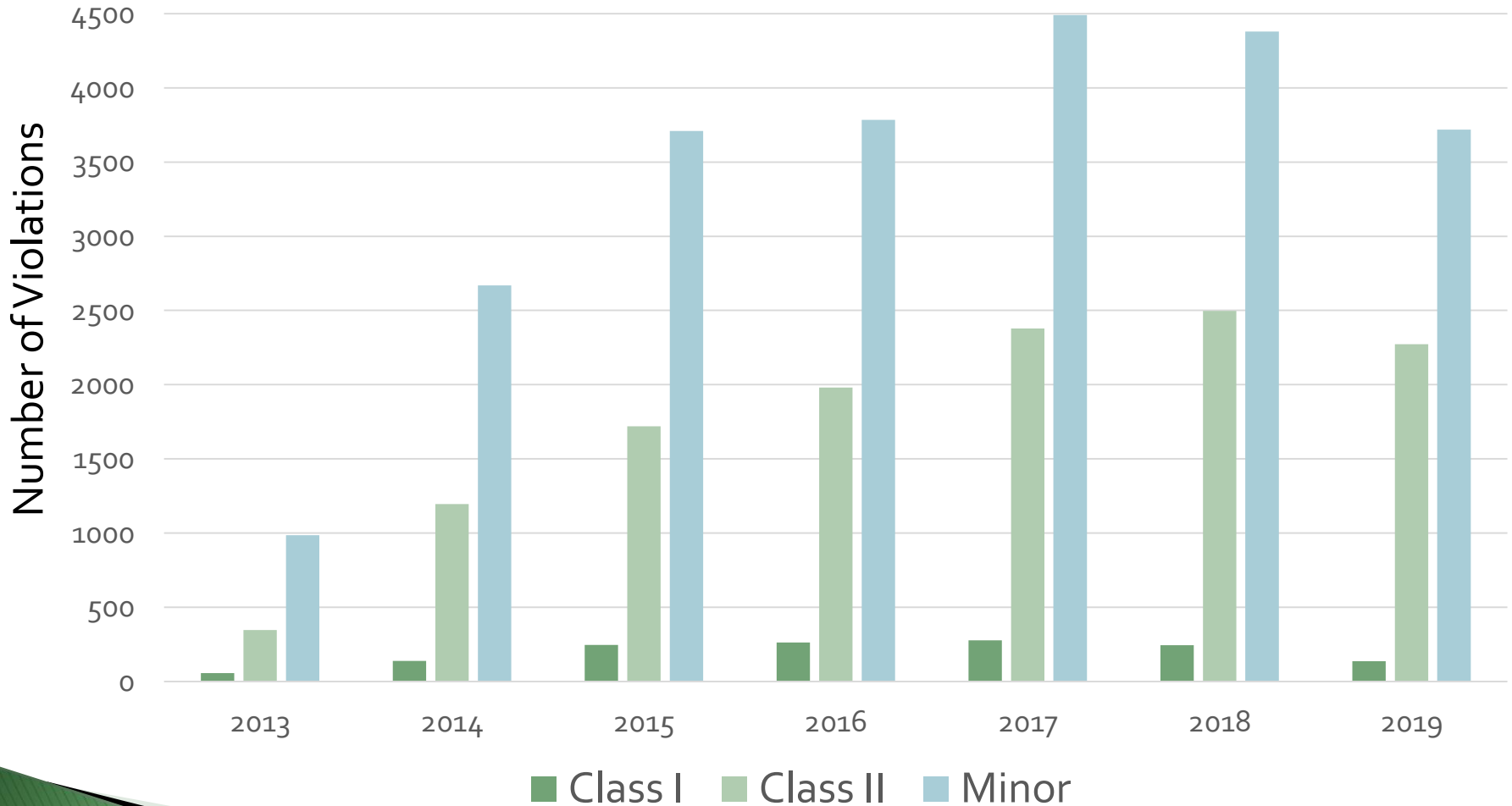
Trends

- Numbers of inspections are consistent
 - Routine and follow up
- Minor violations have increased since 2017
- Number of Class 1 violations consistent
- No SPCC Plan still cause of most enforcement actions

Number of APSA Inspections



APSA Violations Cited

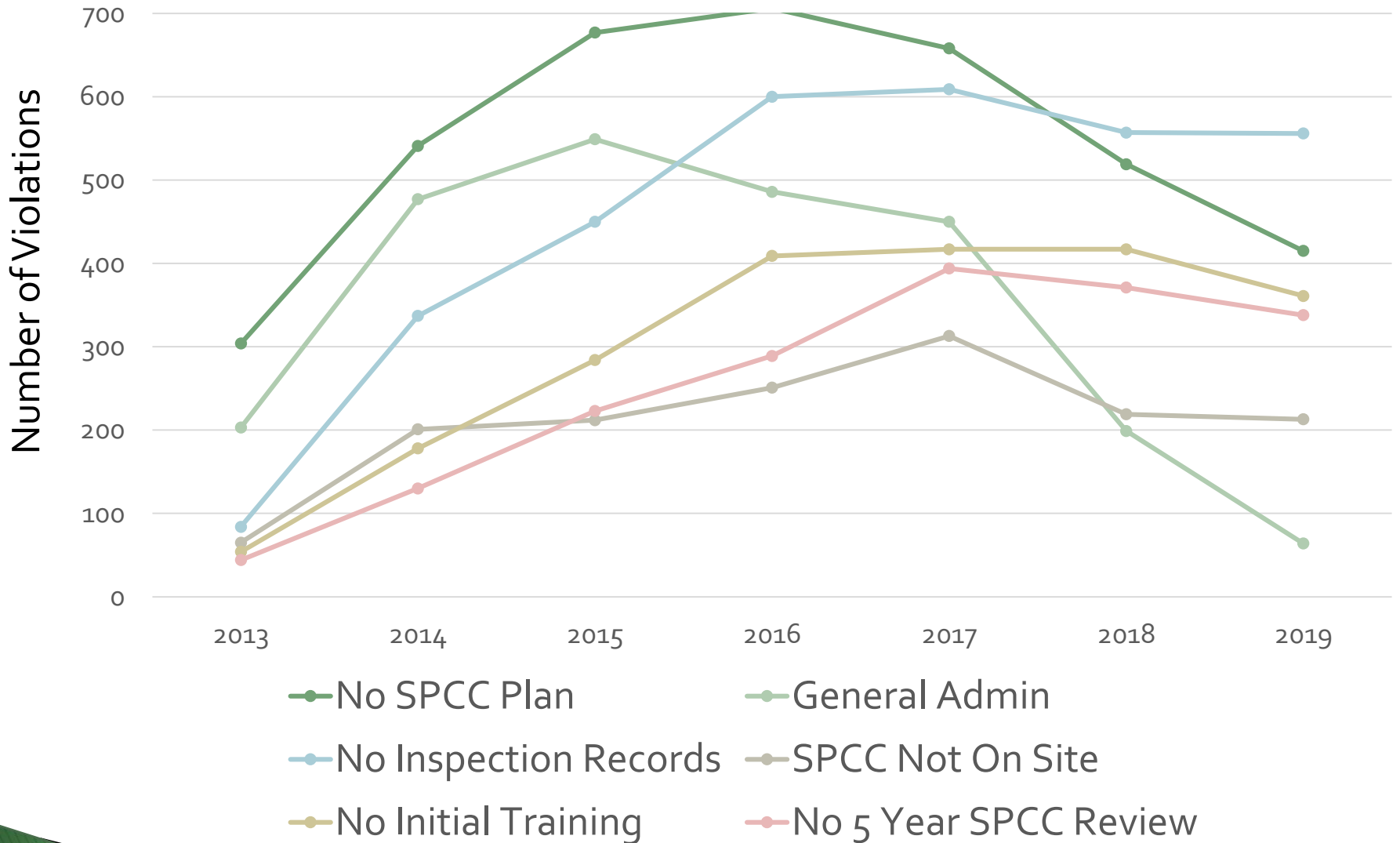


2013	2014	2015	2016	2017	2018	2019
No SPCC Plan (21.9%)	No SPCC Plan (13.5%)	No SPCC Plan (11.9%)	No SPCC Plan (11.7%)	No SPCC Plan (9.2%)	No Inspection Records (7.9%)	No Inspection Records (9.1%)
General Admin (14.6%)	General Admin (11.9%)	General Admin (9.7%)	No Inspection Records (9.9%)	No Inspection Records (8.5%)	No SPCC Plan (7.3%)	No SPCC Plan (6.8%)
No Inspection Records (6.1%)	No Inspection Records (8.4%)	No Inspection Records (7.9%)	General Admin (8.1%)	General Admin (6.3%)	No Initial Training (5.9%)	No Initial Training (5.9%)
SPCC Not on Site (4.7%)	SPCC Not on Site (5.0%)	SPCC Not on Site (5.0%)	No Initial Training (6.8%)	No Initial Training (5.9%)	No 5-Year SPCC Review (5.2%)	No 5-Year SPCC Review (5.5%)
General Op/Maint (4.7%)	No Initial Training (4.5%)	Training Not in SPCC Plan (4.1%)	No 5-Year SPCC Review (4.8%)	No 5-Year SPCC Review (5.5%)	No Annual Training (3.5%)	No Integrity Testing (4.7%)

➤ Top 5 cited APSA violations by year

- # represents the percent that violation was cited for all APSA violations cited that year

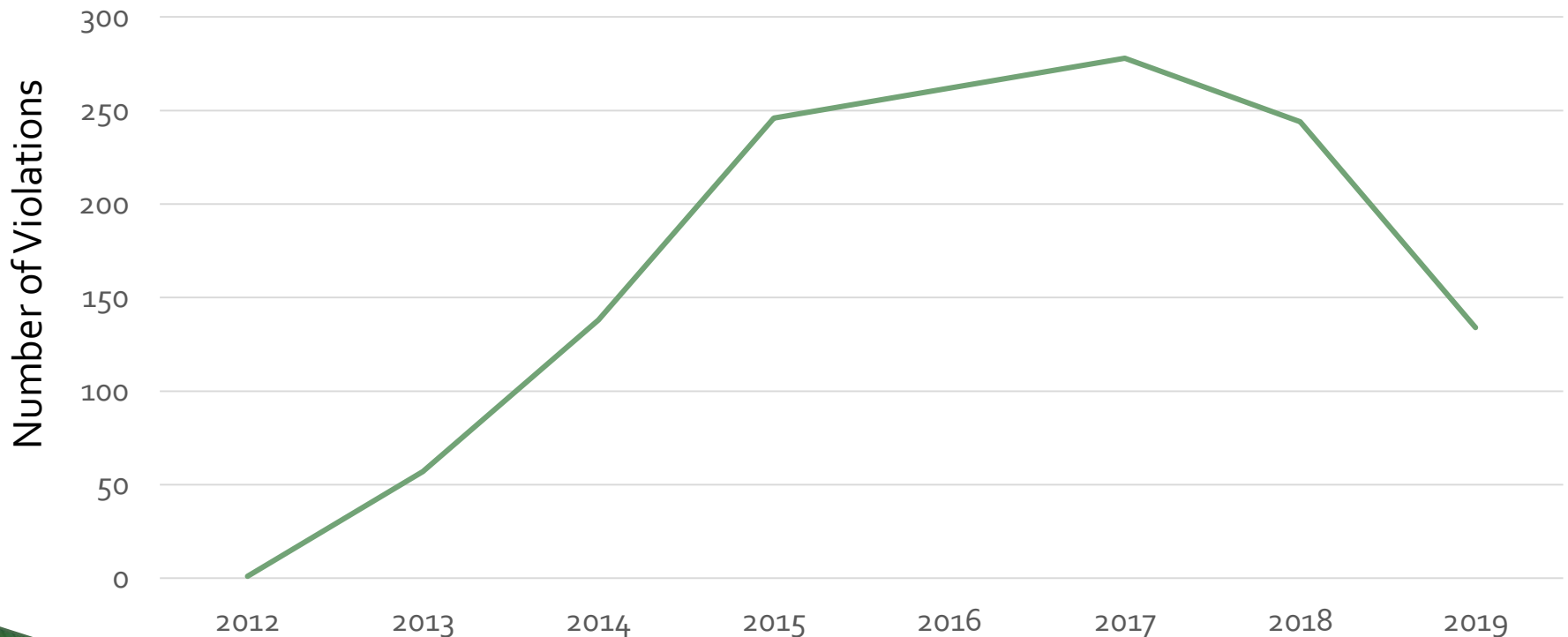
Top 5 Cited APSCA Violations



APSA Class 1 Violations Cited

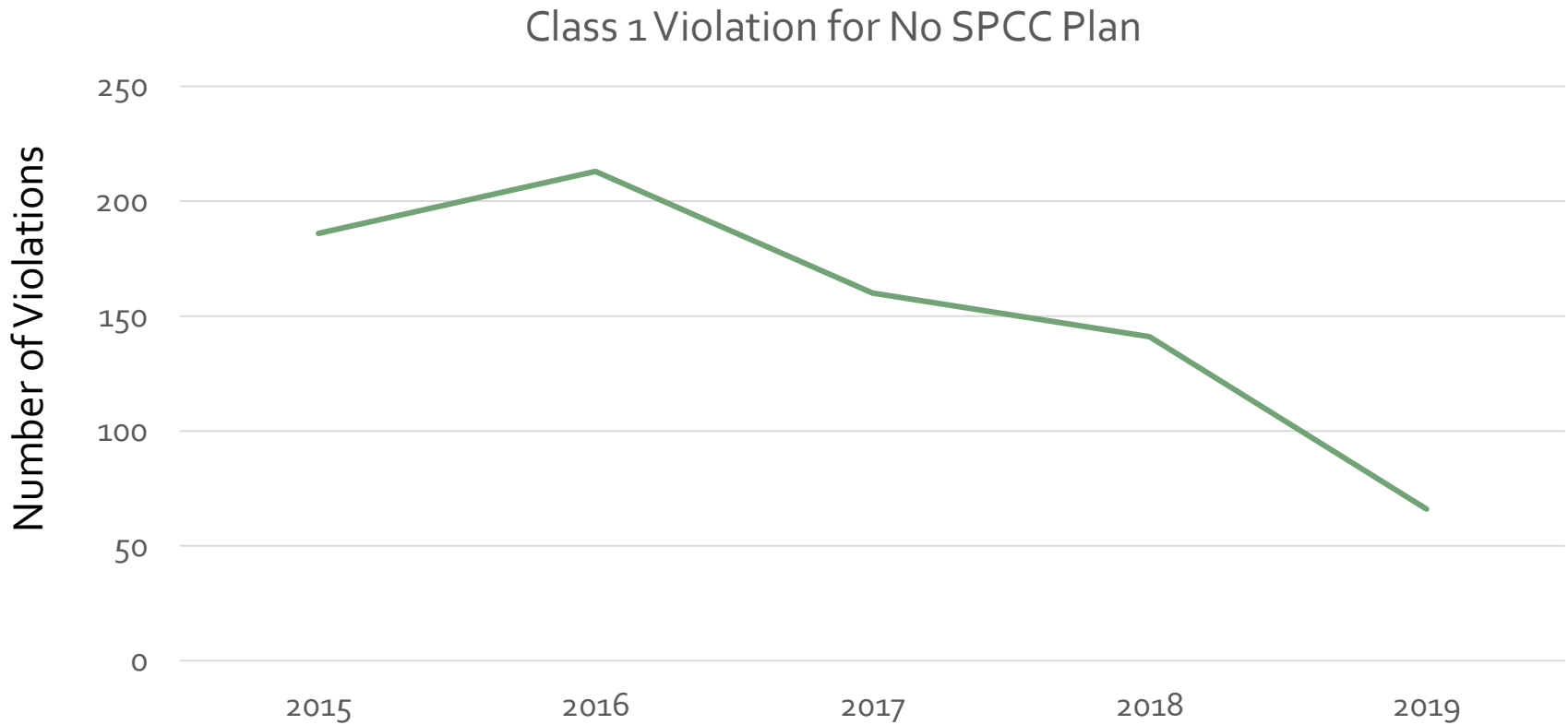
- First APSA Class 1 violation was issued December 2012

of all APSA Class 1 Violations Cited



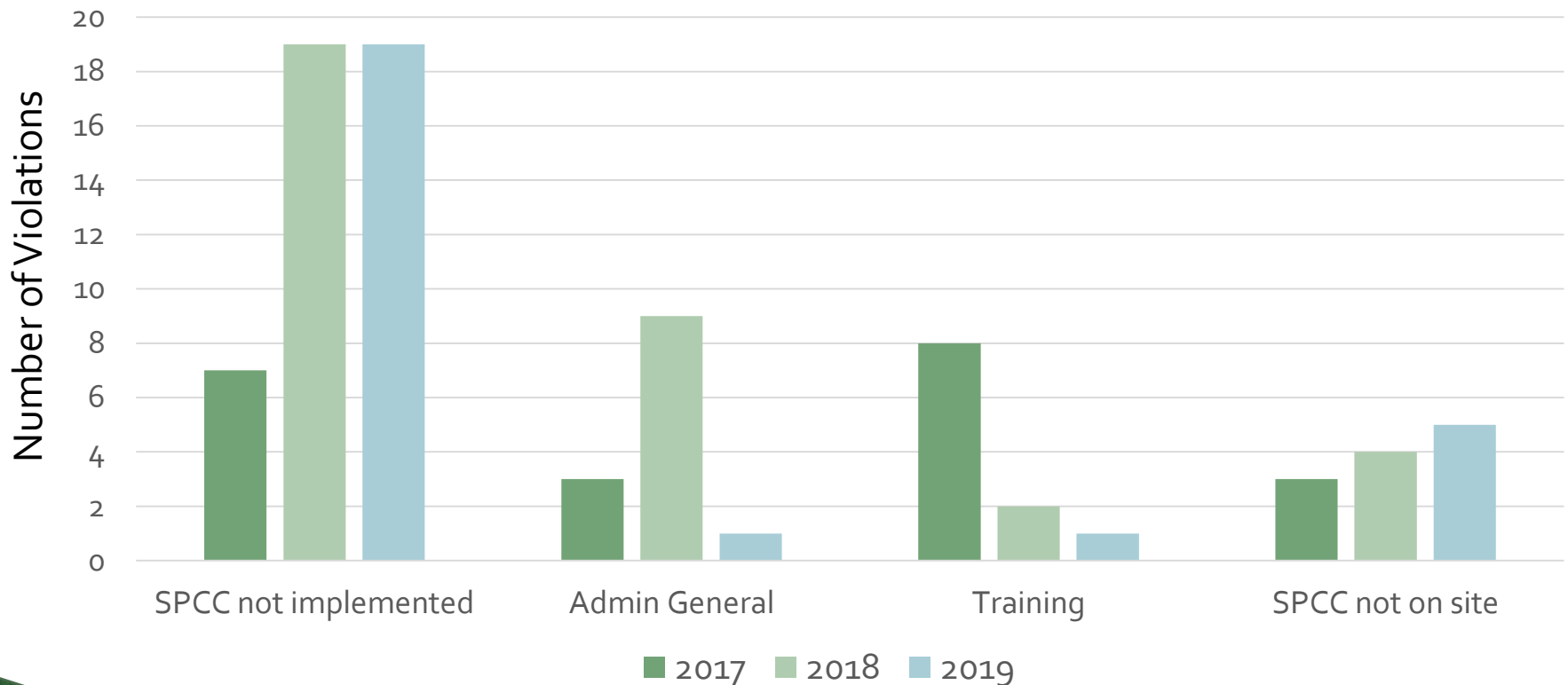
Most Common Class 1 Violation

➤ Failing to prepare an SPCC Plan



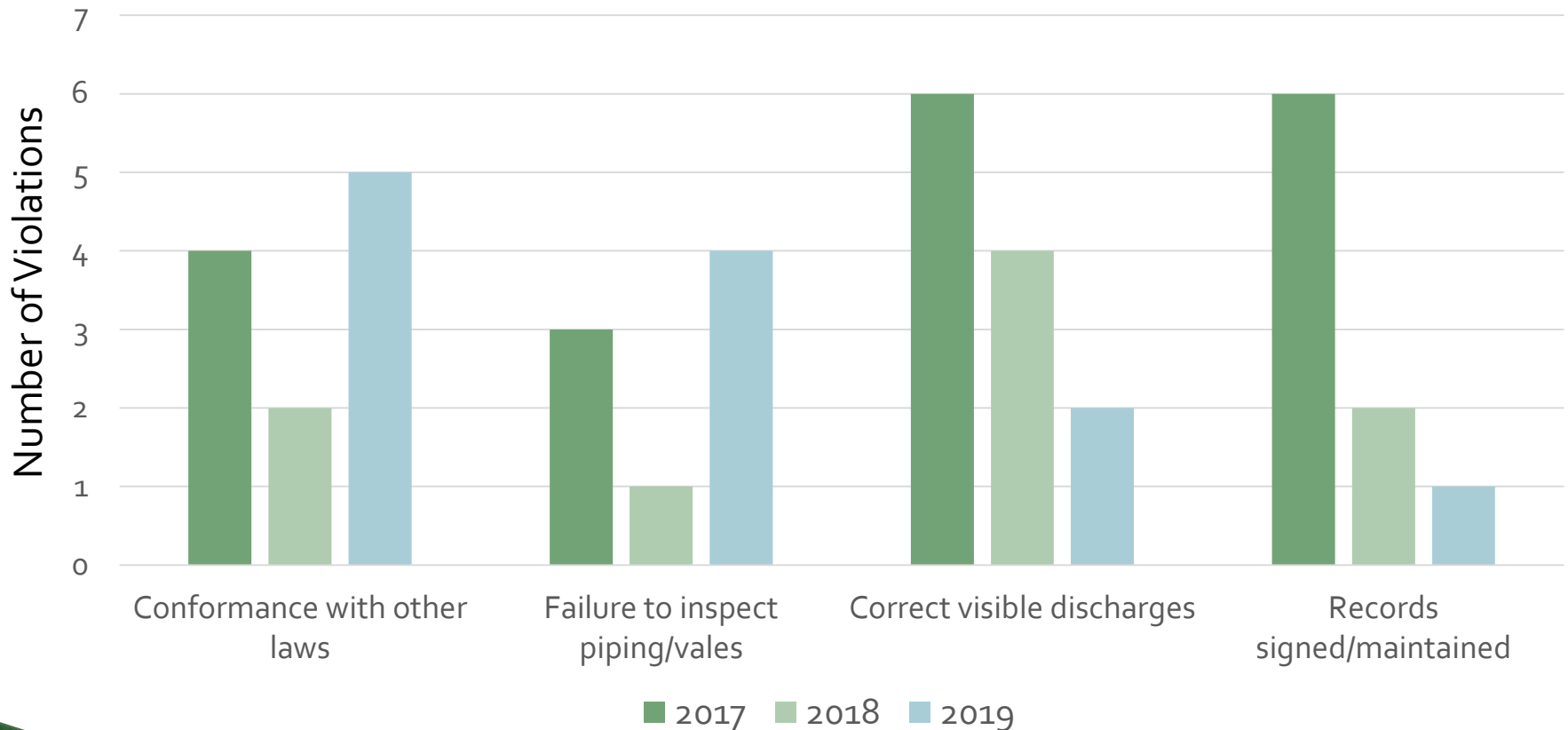
Other Common Class 1 Violations

Most Common Class 1 Violations
(that are not failure to prepare SPCC Plan)



Other Common Class 1 Violations

Other Common Class 1 APSA Violations



Class 1 Violation – Now What?

➤ 2017

- 1 Criminal enforcement action
- 5 Administrative Enforcement Orders (AEOs)

➤ 2018

- 1 Civil enforcement action
- 2 referred to DA & 3 referred to other agencies
- 6 AEOs

➤ 2019

- 2 Criminal enforcement actions
- 3 Civil enforcement actions
- 8 AEOs

Enforcement Example

- 2017 – Facility cited 14 Class 1 APSA violations
- Class 1 Violations were:
 - Training – not in SPCC Plan, no initial or ongoing
 - Not all petroleum accounted for in SPCC Plan
 - SPCC Plan did not include release countermeasures
 - Loading rack had insufficient secondary containment
 - Tanks did not have overfill prevention devices or procedures
 - Failed to immediately clean up visible discharges

2017

- Five facilities cited with 7 or more Class 1 violations
 - Most common violations for these 5 facilities
 - Training
 - Test/inspect for integrity not described in SPCC Plan
 - Test/inspect for integrity not conducted
 - Inspections not documented, signed, or kept for 3 years

Enforcement Example

- 2018 – Facility cited 5 Class 1 APSA violations
- Class 1 Violations were:
 - SPCC Plan did not follow order of Part 112, include a cross reference, have management approval, etc.
 - SPCC Plan did not include procedures for integrity testing
 - PE attestations section in plan was incomplete
 - Overfill prevention device/procedures not included
 - SPCC Plan was not being implemented

2018

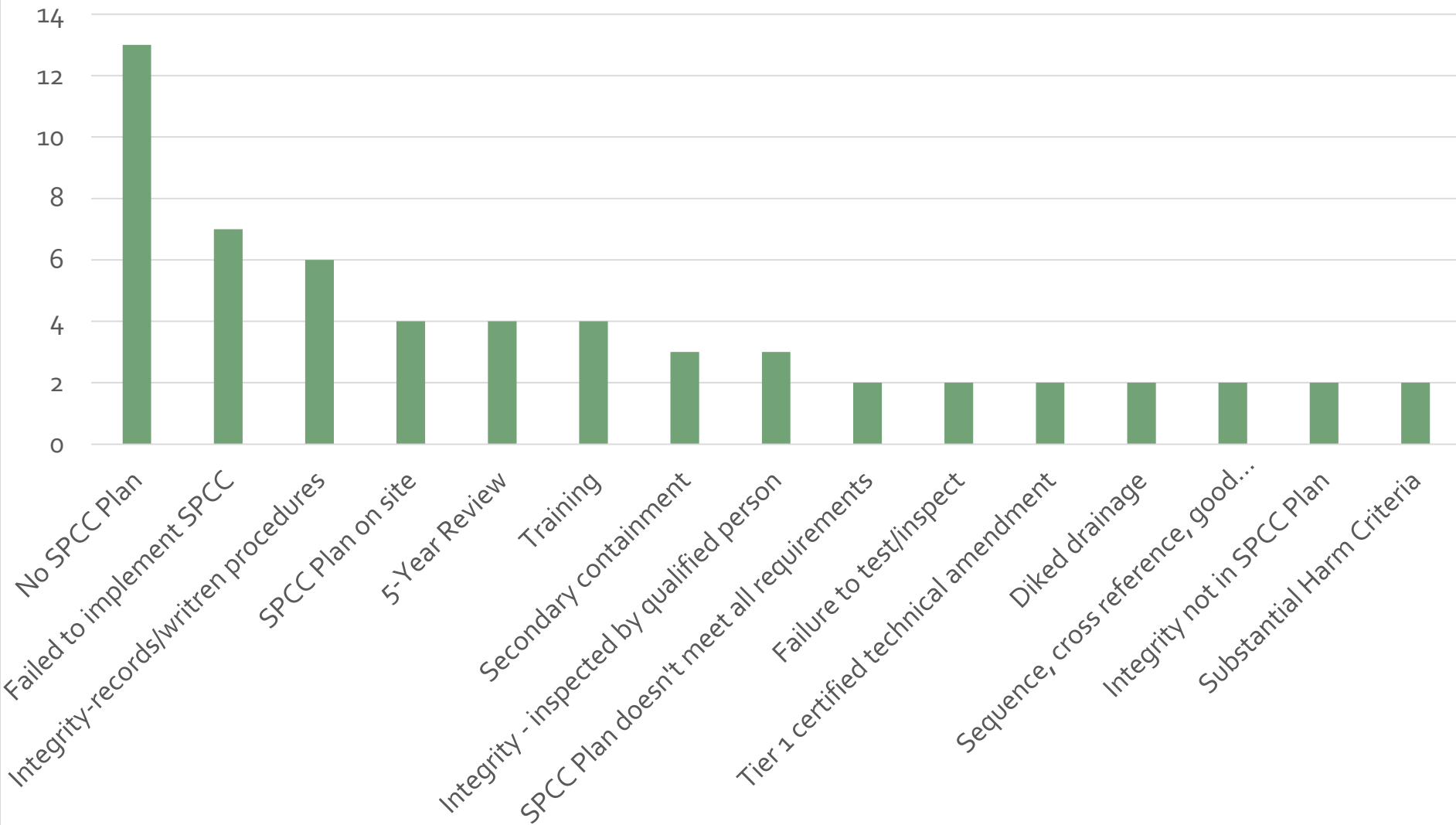
- Three facilities cited with 5 or more Class 1 violations
 - Most common violations for these 3 facilities
 - SPCC Plan not on site
 - Failed to conduct 5 Year review of SPCC Plan after cited previously
 - SPCC Plan does not follow order of Part 112, include a cross reference, have management approval, etc.
 - SPCC Plan does not include procedures for integrity testing

2019

- 13 facilities with 3 Class 1 violations cited
 - Most common violations cited for these 13 facilities:
 - Failing to implement SPCC Plan
 - Failed to have a PE-certified SPCC Plan
 - SPCC Plan not on site
 - Failure to inspect aboveground piping, valves, etc.

Violations Cited in Enforcement Actions

2017 - 2019



Trends 2017 - 2019

- Class 1 violations have decreased
- No inspection records violation is #1 cited violation
 - Replaced no SPCC Plan in 2018
- No SPCC Plan violations have decreased
- Training violations cited have increased
- Integrity testing and container compatible violations have increased
- Mostly administrative violations, not implementation
- Formal enforcement actions have remained consistent

How to prevent violations

- Ensure HMBP inventory in CERS is consistent with petroleum storage information in the SPCC Plan
- Carefully review SPCC Plan and any comments, elements or recommendations made by PE
- Request PE to review requirements with you
- Make a list of requirements after you complete Tier I/II
- Schedule annual spill prevention briefings
- Ensure robust monthly inspections signed by a supervisor or manager

Summary

- Not having an SPCC Plan still #1 violation resulting in enforcement action
- #s of violations per enforcement action are decreasing
- Cited violation doesn't have to result in enforcement
 - Prompt attention and follow up can prevent enforcement
- Enforcement actions will include all CUPA Programs

Thank you!

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