



Florida

PEER

Public Employees for Environmental Responsibility

P.O. Box 14463 • Tallahassee, FL 32317-4463 • **Phone:** 850-877-8097 • **Fax:** 850-942-5264
E-mail: flpeer@peer.org • **Web:** www.peer.org

REPORT ON ENFORCEMENT EFFORTS BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2018

Headquarters: 962 Wayne Ave. • Suite 610 • Silver Spring, MD 20910
Phone: (202) 265-PEER • **Fax:** (202) 265-4192 • **E-mail:** info@peer.org • **Web:** www.peer.org

PRELIMINARY STATEMENT

This report addresses the compliance and enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2018. The information provided herein was obtained from raw data provided to Florida PEER by the FDEP in response to a public records request made to the FDEP by Florida PEER under Chapter 119, Florida Statutes.

Table of Contents

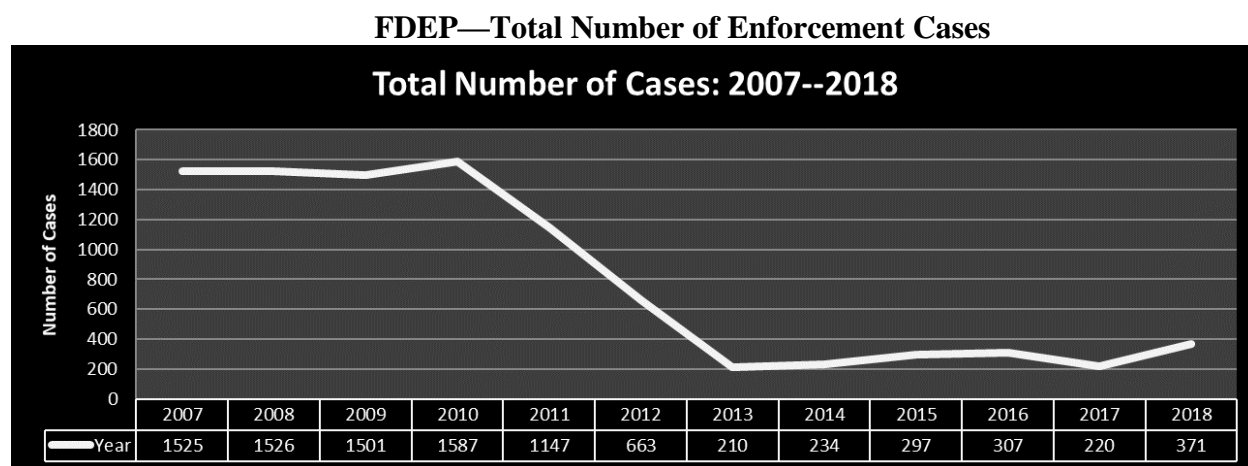
<i>EXECUTIVE SUMMARY</i>	<i>1</i>
A. Statewide Results.....	1
B. District Results	3
<i>STATEWIDE ENFORCEMENT RESULTS.....</i>	<i>4</i>
A. Compliance and Inspection Considerations.....	4
B. Compliance and the Number and Types of Enforcement Actions Taken—Statewide Results.....	7
C. Statewide Civil Penalty Assessments	8
1. The Department’s Highest Assessments.....	9
D. Statewide Civil Penalty Collections	9
E. Statewide Program Performance.....	11
1. Compliance Rates Among the Programs	11
2. The Number of Enforcement Cases Opened in each Program and the Resulting Enforcement Rates.....	12
3. Assessments in Each Program.....	14
4. Collections in Each Program.....	21
<i>DISTRICT ENFORCEMENT RESULTS.....</i>	<i>23</i>
A. Compliance Rates—District Results	23
B. Number and Types of Enforcement Actions Taken—District Results	25
1. Consent Orders – District Comparisons	28
a. Model Consent Orders.....	28
b. Amended Consent Orders.....	29
c. Long-Form Consent Orders.....	30
d. Short-Form Consent Orders	31
C. Overall Assessments in Each District	34

D.	Overall Collections in Each District	37
E.	Program Performance in each District	38
1.	Northwest District.....	38
2.	Northeast District.....	40
3.	Central District	42
4.	Southeast District.....	44
5.	South District.....	46
6.	Southwest District.....	48
7.	Multi-District Category.....	50
CONCLUSION		53
APPENDIX.....		55

EXECUTIVE SUMMARY

A. Statewide Results

FDEP's enforcement program is a fraction of what it was just eight years ago. The number of new cases opened in 2018 were 371, far below the 1,587 cases opened in 2010. In addition, the number of enforcement actions action facilities known to be in non-compliance was only 16 percent. The graph below shows the number of new enforcement cases opened for the years from 2007 and 2018.



In previous years we would have necessarily been limited into looking at the above data and concluding that it represented a positive improvement in the enforcement picture at the FDEP. However, in June of this year, for the first time, we were able to obtain compliance data from the FDEP that began to shed light on the number of inspections that were being conducted and the extent to which many of those inspections revealed permit violations. We [reported](#) on those results and noted that over the past 3 fiscal years the FDEP had taken enforcement against a minimal number of the noncompliant facilities. On a statewide basis, the percentage of cases in which enforcement was taken had dropped from 14% in 2015 to 10% in 2017.¹ (See, [report](#) at page 15) The compliance data for fiscal year 2018/2019 (the latest data then available) showed that the FDEP inspectors found violations in 2,298 facilities (329 of those were deemed to be “significant”). Thus, the 371 enforcement actions taken by the FDEP represents a 16% enforcement rate, a 6% improvement compared to the previous year.

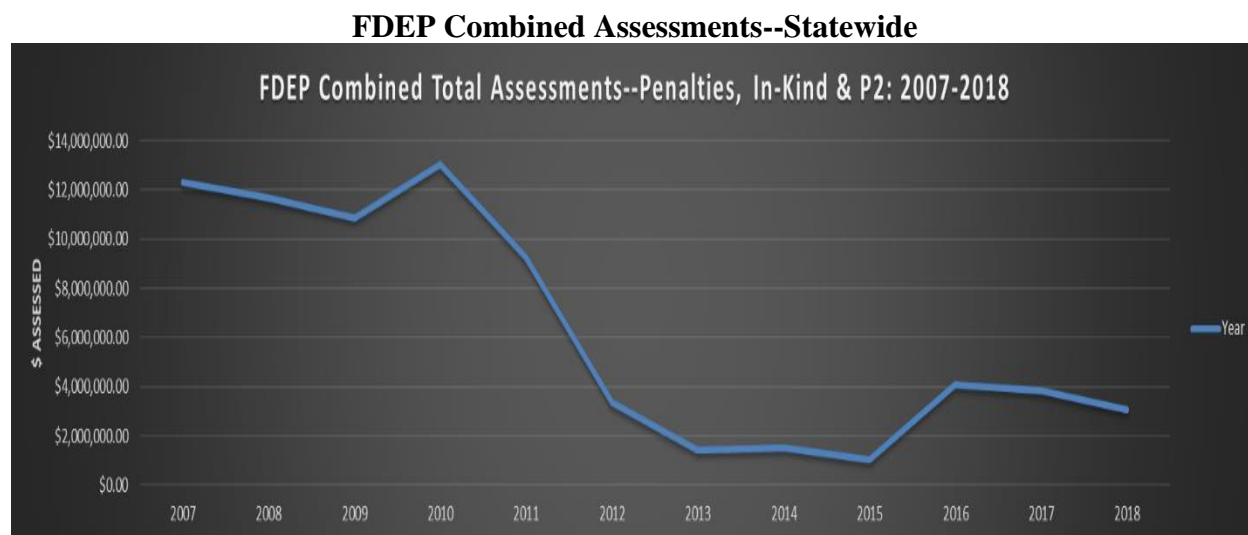
When we focused on the overall number of inspections, the number of inspections in which noncompliance was found and the rate of enforcement, we found that noncompliance has [risen](#) when fewer inspections were conducted. In other words, when the FDEP has a reduced

¹ It should be noted that the compliance data supplied to us by the FDEP is based upon fiscal, not calendar, year reporting. Consequently, the comparisons between the compliance and enforcement data are not direct. Nevertheless, the comparisons are useful in looking at trends, particularly when more annual compliance data becomes available.

presence at the facilities, there appears to be a corresponding decrease in the rate of compliance. Additionally, in 3 of the past 4 years in which the number of enforcement actions has dropped, there has also been a corresponding increase in the number of noncompliant facilities.

262 of the 371 new cases resulted in the assessment of civil penalties. In other words, the FDEP assessed penalties in 71% of the cases in which it deemed it necessary to initiate formal enforcement proceedings. This is a slight improvement over the 67% rate in which new enforcement cases resulted in penalties in 2017.

While there were more penalty assessments in 2018, the FDEP actually assessed far fewer penalty dollars than it did in 2017. The 262 assessments resulted in a total dollar assessment of \$1,665,376.56. In addition, the value of in-kind assessments was \$1,240,810.72, and pollution prevention projects were valued at \$155,596.00.² The combined total for these three areas was \$3,061,783.28. While these numbers appear impressive at first glance, the reality is that the total penalty dollars assessed in 2018 were substantially lower than 2017's \$2,057,542.31. Further, in looking at the results over time we see that the numbers have been in decline since 2016:



The 19% decline in 2018's penalty assessment dollars is also somewhat unusual, because the median penalty assessments rose 29 % from \$1,775.00 in 2017 to \$2,500.00 in 2018. This 29% increase in medians would typically signal a rise the dollars assessed in each penalty assessment, and therefore a more serious overall approach to each enforcement case.

The highest penalty assessment in 2018 was against the *Jacksonville Electric Authority (JEA)* in OGC case number 061796. This was a domestic wastewater case that levied \$303,000.00 in stipulated penalties against the utility, i.e. penalties were levied because *JEA* violated the terms of a prior consent order(s). In lieu of paying the fine, *JEA* elected to undertake an in-kind penalty project valued by the FDEP at \$454,500.00. There were no other penalty assessments in 2018 that exceeded \$100,000.00.

² Throughout this report these projects will be described as in-kind and pollution prevention (P2) projects.

Collections were also up in 2018, with a total of \$901,266.23 in civil penalties being collected. In addition, the FDEP recorded \$209,026.63 in completed in-kind and/or pollution prevention projects. The combined total is thus \$1,110,292.86. Both the total dollar value of collected penalties and in-kind/pollution prevention projects were improvements over the performance turned in by the FDEP in 2017. The FDEP collected a total of 54% of the penalty assessments in 2018, a 20% improvement over 2017.

Turning to the individual programs we found that the highest enforcement rate was in the air program (54%) while the lowest enforcement rate was in the potable water program (3%). Both results represent improvements. The air program saw a 29% jump in enforcement, while the potable water's increase was only 1%. While most of the other programs also saw increased enforcement, 3 programs (industrial waste, solid waste and petroleum storage tanks) saw less enforcement. In addition, both the number of inspections and compliance rates fell in the industrial waste and petroleum storage tanks programs at the same time that enforcement also dropped.

The number of enforcement cases increased in all but the solid waste program, which saw 3 fewer cases than in the previous year. And when compared with 2017's results, penalty dollars assessed also rose in all but the domestic waste, industrial waste, state lands, tanks and underground injection control programs.

B. District Results

In 2018, every district opened more formal enforcement cases, unlike 2017, when the districts all opened fewer cases than they did in the previous year. This turnaround was also seen in both long-form and short-form consent orders, both of which saw increases in every district. Unfortunately, three districts, the Northeast, Southeast and Southwest each increased the percentage of cases that they resolved through short-form consent orders, while the Southwest District also resolved a lower percentage of its cases via the long-form consent order route.

For years, the FDEP has claimed that it would improve enforcement by working with facilities, rather than taking formal enforcement against them. The data that we now have, however, shows that this is not what has happened. Over the past 4 years, the Central District had the lowest enforcement rate (8%) of all of the districts, while at the same time, its inspections showed that the overall compliance rate (54.95%) was also the lowest in the state. At the same time, the Northwest District had the highest enforcement rate (17%) and the second-highest compliance rate (81.67%).³ In addition, over that same period, the Central District had the highest percentage of facilities in significant noncompliance (5.79%), while the Northwest District had the lowest percentage of significantly noncomplying facilities (2.30%)

Every district also assessed penalties in more cases in 2018 than they did the year before. Regardless of whether in-kind and pollution prevention projects are considered, assessments rose

³ The Southeast District had the highest compliance rate (82.95%) and an enforcement rate of 12%.

in the Northwest, Northeast, Central and South Districts, but the dollar value of penalty assessments fell in the Southeast and Southwest Districts. In-kind and pollution prevention projects rose in value in every district in 2018.

In general, penalty assessments were more severe in 2018, but this was not universally the case. When only civil penalties are considered, the median assessments fell in the Southeast and South Districts but rose in the other four. Including in-kind and pollution prevention projects yields somewhat different results, inasmuch as median penalty assessments rose in all but the Southeast and Southwest Districts. In sum, therefore, medians fell across the board in only the Southeast District.

The rate of collections of civil penalty assessments (excluding in-kind & pollution prevention projects) varied significantly from district to district. The Southeast District collected 105% of its assessments (meaning that it also collected penalties from previous years), while the lowest performing district was the Northeast District, which only collected 25% of its assessments. The next lowest performing district was the Central District, which collected only 28% of its assessments. The Southwest, South and Northwest Districts collected 73%, 62% and 72% of their assessments respectively. In terms of the sheer volume of collected penalty dollars, the Northeast District collected the most, with a total of \$521,773.50, while the South District collected the fewest dollars, \$137,436.02.

STATEWIDE ENFORCEMENT RESULTS⁴

A. Compliance and Inspection Considerations

In our June 2019, [report](#) concerning the FDEP's compliance in previous years we noted that, since 2012, the number of inspections had dropped by 46%. In addition, we found that the agency had repeatedly inflated its compliance numbers, considering only those facilities found to be in significant non-compliance (SNC), and that there had been little improvement in reducing the number of facilities that the FDEP considered to be in SNC. See, pages 2-3 of report. The following table presents the FDEP's data for the 3 years from 2015 to 2017, and shows that the number of inspections varied little over the period, while the compliance rate was steadily dropping:

Fiscal Year	Total Number of Inspections	% Compliance Rate ⁵
2015/2016	8519	74.40
2016/2017	8303	72.59
2017/2018	8431	72.78

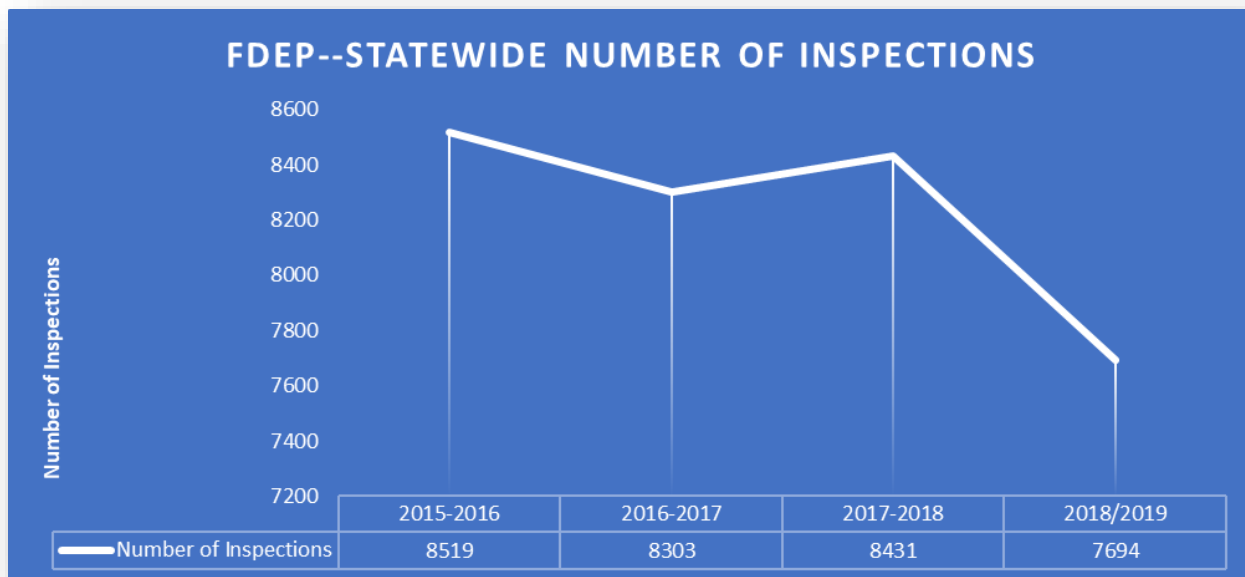
⁴ The FDEP's prior performance can be seen in our report that covers 1988 through 2007, see http://www.peer.org/assets/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf.

⁵ Based upon the total number of facilities found to be in general noncompliance and SNC.

The results for the most recent fiscal year, 2018/2019 also show a significant downward trend in the total number of inspections. There were 7,694 inspections in that year, which represents a 9% decline from the previous year. By the same token, the compliance rate dropped to 70.13% (a 2.65% decline).

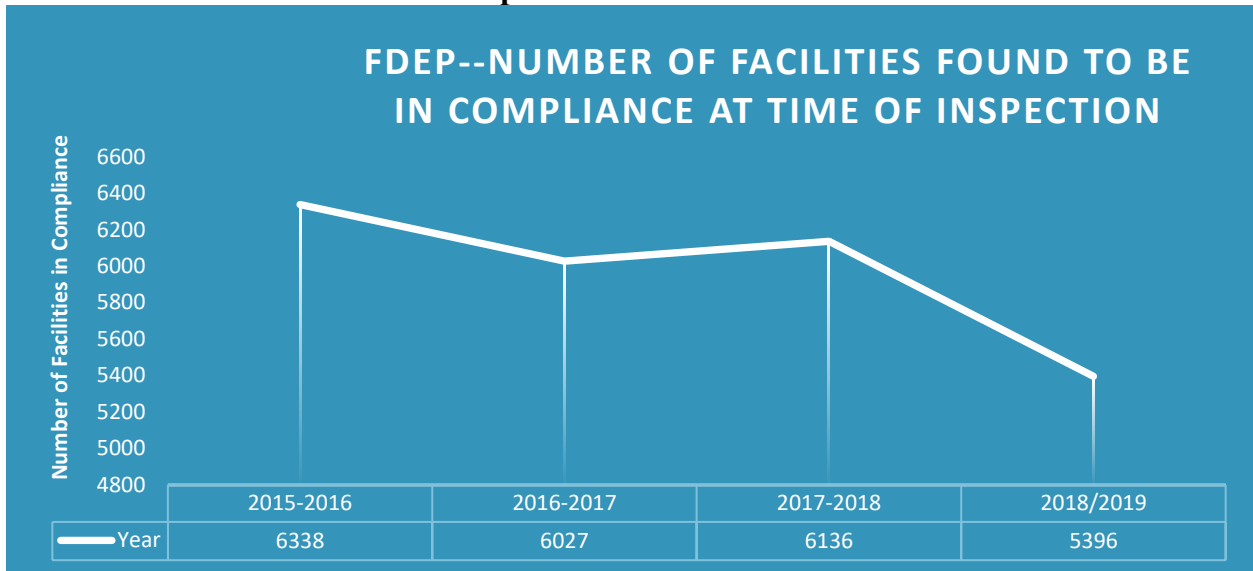
The overall trend in the diminishing number of inspections is shown in the following chart:

Number of Inspections: 2015-2018



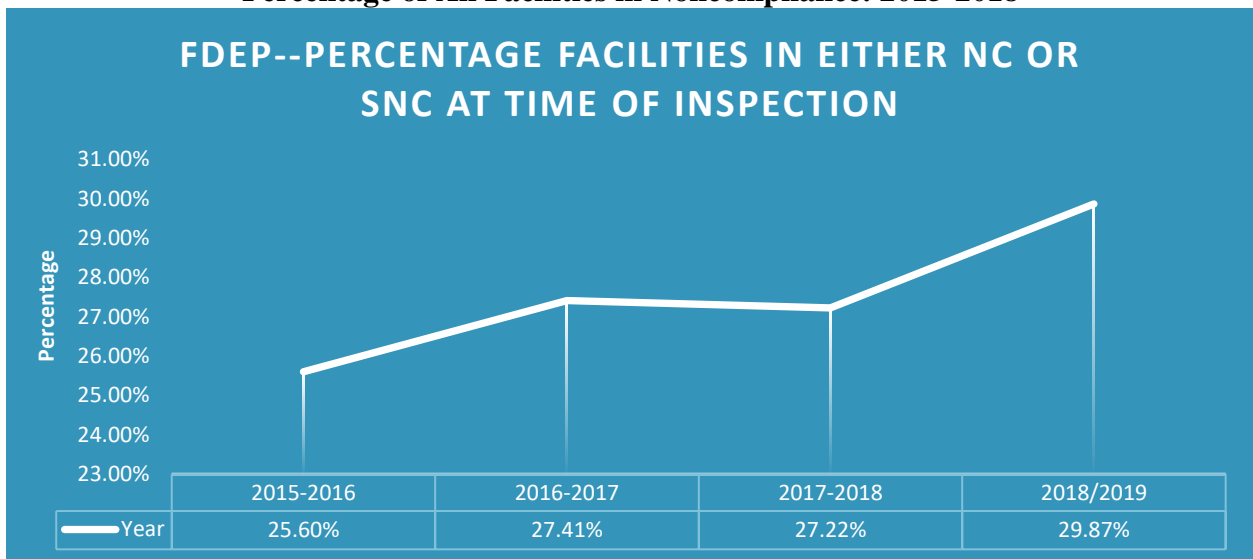
By the same token, the number of facilities found to be in compliance at the time of inspection also dropped over the same period:

Compliance Rate: 2015-2018



Meanwhile, the percentage of facilities found to be in noncompliance has steadily risen:

Percentage of All Facilities in Noncompliance: 2015-2018



Consequently, the data is clear that, over the past 4 years, there is a clear trend towards a reduction in the compliance rate when the number of inspections drops.

***B. Compliance and the Number and Types of Enforcement Actions Taken—Statewide Results*⁶**

Over the years we have come to expect that more enforcement cases would be opened in the final year of a governor’s 4-year term. That is what happened in 2018, the final year of the Scott administration. The Department began enforcement in 371 cases in 2018. This represents a significant increase over the 220 cases that were opened in 2017. In 2016 the Department opened 307 cases. In 2010, the year before Governor Scott took office, the Department opened 1,587 new cases.

Since we now have compliance data against which to compare the FDEP’s enforcement efforts over the course of the past 4 years, we can now begin to consider the percentage of cases in which the FDEP has taken formal enforcement. Our [report](#) on the FDEP’s compliance rates provided the data for 2015 through 2017. (See, page 14, report) In looking at the most recent data provided by the FDEP for the latest fiscal year, 2018/2019, we found that the FDEP had initiated formal enforcement in 16.14% of the 2298 cases in which the facilities were found to be in noncompliance.⁷ This represents a 6.55% increase compared to last year’s results, and the best result of the past 3 years.

The following table sets forth the data for each of the past 4 years. If we narrow the focus to the overall number of inspections, the number of inspections in which noncompliance was found and the rate of enforcement, it is apparent that noncompliance has risen when fewer inspections were conducted. In other words, when the FDEP has a reduced presence at the facilities, there appears to be a corresponding decrease in the rate of compliance. Additionally, in 3 of the past 4 years in which the number of enforcement actions has dropped, there has also been a corresponding increase in the number of noncompliant facilities.

Comparison of Inspections, Compliance Status & Enforcement Rates

Year	Total Number of Inspections Showing NC	Total Number of Inspections Showing SNC	Total Number of Facilities in Noncompliance	Total Number of Enforcement Actions	Enforcement Rate
2015-2016	1854	327	2181	297	13.62%
2016-2017	1944	332	2276	307	13.49%
2017-2018	2047	248	2295	220	9.59%
2018-2019	1969	329	2298	371	16.14%

On a percentage basis, the early data also suggests that a reduction in the rate of formal enforcement does not necessarily result in positive changes in the overall compliance rates.

⁶ For an overview of the various enforcement tools, as well as the historical averages for the various program areas please see the Appendix to this report.

⁷ As we noted above, there is a mismatch in the data because the compliance data is reported in fiscal years that end on June 30 each year and the enforcement data on which we report based on a calendar year ending on December 31 each year. We hope to be able to align this data in the future if the FDEP begins providing more detailed compliance data from this point forward. For now, however, we are providing the results received to date in an effort to show general trends in the FDEP’s enforcement results.

Percentage Changes in Inspections and Noncompliance

Year	Total Number of Inspections	% Change	Total Number of Facilities in Noncompliance	% Change	Total Number of Enforcement Actions	Enforcement Rate
2015-2016	8519	N/A	2181	N/A	297	13.62%
2016-2017	8303	(3)	2276	4	307	13.49%
2017-2018	8431	2	2295	1	220	9.59%
2018-2019	7694	(9)	2298	1	371	16.14%

Once the FDEP elects to initiate formal enforcement against a violator, it has multiple enforcement tools at its disposal. Those tools include administrative Notices of Violation (NOVs), Final Orders, Consent Orders, and Case Reports that are sent from the districts to the Office of General Counsel (OGC) asking for more serious enforcement by way of circuit court litigation. The number of cases initiated in 2018 was divided as follows:

Number of Cases of Each Enforcement Mechanism

Type of Enforcement	Number of Cases Opened Statewide in 2018
NOVs	26
Final Orders	16
Long-form Consent Orders	70
Model Consent Orders	102
Amended Consent Orders	17
Short-form Consent Orders	126
Case Reports	14

There were improvements in every enforcement mechanism, except for amended consent orders, which fell slightly (3 fewer than in 2017). The total number of consent orders increased from 176 in 2017 to 315 in 2018, a 179% improvement!

C. Statewide Civil Penalty Assessments

The Department assessed penalties in 262 cases in 2018, and these cases generated 51 in-kind projects and 5 pollution prevention projects. In 2017, there were a total of only 148 penalty assessments, so the increase in 2018 is a welcome change.

While the 262 cases in which assessments were levied represented an improvement over 2017's disastrous performance, they still accounted for only 71% of all the cases in which formal assessment cases were opened. This is a modest improvement over the 67% rate of assessments in 2017.

The 262 assessments resulted in a total dollar assessment of \$1,665,376.56. In addition, the value of in-kind assessments was \$155,596.00, and pollution prevention projects were valued at \$1,240,810.72.⁸ The three areas combined totaled \$3,061,783.28. *While these numbers appear impressive at first glance, the reality is that the total penalty dollars assessed in 2018 were substantially lower than 2017's \$2,057,542.31.*

Despite the fact that the total penalty dollars assessed in 2018 were lower than the previous year, the median assessments for the Department rose to \$2,500.00 from the \$1,775.00 medians that we saw in 2017. When we factored in all aspects of assessments, i.e. include in-kind and pollution prevention projects, we found that the median for 2018 rose to \$3,460.00, compared to \$2,000.00 in 2017.

1. The Department's Highest Assessments

The Department had one assessment that exceeded \$100,000 in 2018 (2017 had three). That case was a domestic wastewater case out of the Northeast District. It was against *Jacksonville Electric Authority* (JEA) and was assigned OGC case number 061796. The civil penalty assessment was \$303,000.00. In addition, there was an in-kind project valued at \$454,500.00.

The next highest assessment was a hazardous waste case out of the Central District. It was against *Constant Aviation LLC*. and the penalty assessment was \$95,194.00. There was an additional pollution prevention project undertaken by the violator in the same amount, i.e. \$95,194.00.

As noted above, the total dollar value of assessed penalties in Florida in 2018 was \$1,665,376.56, an amount that was lower than the penalty assessments in 2017. However, if we subtract the two top assessments listed above, the total 2018 penalty assessments drops to \$1,267,182.56.

D. Statewide Civil Penalty Collections

Collections were also up in 2018, with a total of \$901,266.23 in civil penalties being collected. In addition, the FDEP recorded \$209,026.63 in completed in-kind and/or pollution prevention projects. The combined total is thus \$1,110,292.86.

We should point out that, when looking at collections for this report, we concentrate upon only the collection of penalty assessments that are collected. The reason for not including in-kind

⁸ Throughout this report these projects will be described as in-kind and pollution prevention projects.

& pollution prevention project fulfillments in these numbers is that, even when approved by the Department, the expenditures for such fulfillments can vary, depending upon the situation encountered when the project is actually undertaken. Furthermore, some of these projects can take years to complete, and thus not be a true indicator of the Department's performance. These variables make year-to-year comparisons more unreliable, whereas looking strictly at penalty dollars assessed versus penalty dollars collected is quite straightforward. Consequently, unless otherwise indicated, the data that we report in this section is limited to actual penalty dollars collected.

Looking at the percentage of civil penalties collected each year we see that there was an increase in the percentage of penalties collected in 2018. The 54% of civil penalties that were collected is still a bit low, but more in line with the results over the past decade. The following table shows the percentage of penalty assessments (absent in-kind and pollution prevention projects) that were collected each year from 2007 to the present:

Annual Percentage of Collected Penalty Assessments

<i>Year</i>	<i>Assessments</i>	<i>Collections</i>	<i>% Assessments Collected</i>
2007	\$9,079,363.10	\$6,083,693.04	67%
2008	\$7,597,011.98	\$5,484,480.00	72%
2009	\$8,370,981.04	\$4,842,642.95	58%
2010	\$10,310,833.83	\$7,077,687.19	69%
2011	\$8,333,933.39	\$3,037,727.79	36%
2012	\$2,796,447.01	\$1,589,724.69	57%
2013	\$1,017,405.30	\$687,777.69	68%
2014	\$1,515,020.45	\$932,998.94	62%
2015	\$1,016,674.79	\$792,914.23	78%
2016	\$2,496,366.00	\$2,211,826.55	89%
2017	\$2,057,542.31	\$705,891.90	34%
2018	\$1,665,376.56	\$901,266.23	54%

E. Statewide Program Performance

1. Compliance Rates Among the Programs

Not all the programs that we track for enforcement have corresponding compliance data. However, the FDEP has provided us with compliance data for the majority of the programs, and the following tables lists each program and the compliance results for each of the past 4 years.

The number of inspections conducted in each program is shown below. The data generally shows an overall decline in the number of inspections in all but the industrial waste (IW) and solid waste (SW) programs:

Number of Inspections in Program Areas: 2015-2018

Program	2015/2016	2016/2017	2017/2018	2018/2019
Air	327	307	284	246
Beaches	1024	963	1015	1115
DF-ERP	2266	2068	2240	2011
DW & NPDES	1633	1503	1574	1357
HW	485	587	432	420
IW	271	475	910	307
PW	1193	1065	993	1039
SW	615	960	1152	771
Tanks	452	381	352	331
UIC	189	181	135	97

The number of inspections in which noncompliance was identified is shown below:

Number of Facilities Found to be in Noncompliance: 2015-2018

Program	2015/2016	2016/2017	2017/2018	2018/2019
Air	50	33	36	41
Beaches	1	5	4	2
DF-ERP	266	325	356	276
DW & NPDES	784	717	874	828
HW	188	257	166	188
IW	24	45	87	129
PW	622	662	614	592

SW	50	97	70	96
Tanks	95	91	76	140
UIC	24	23	11	6

The compliance rate for each program, based upon the number of inspections conducted in which noncompliance was identified is shown below. Compliance rates have clearly fallen significantly in the domestic wastewater (DW & NPDES), industrial waste and tanks programs. Compliance in the potable water program, while improving slightly in the last year, has generally been the worst of all of the major programs.

Compliance Rates by Program: 2015-2018

Program	2015/2016	2016/2017	2017/2018	2018/2019
Air	85%	89%	87%	83%
Beaches	100%	99%	100%	100%
DF-ERP	88%	84%	84%	86%
DW & NPDES	52%	52%	45%	39%
HW	61%	56%	62%	55%
IW	91%	91%	90%	58%
PW	48%	38%	38%	43%
SW	92%	90%	94%	88%
Tanks	79%	76%	78%	58%
UIC	87%	87%	92%	94%

2. The Number of Enforcement Cases Opened in each Program and the Resulting Enforcement Rates

Looking first at the overall number of enforcement cases opened in each program we found improvement in each program except for solid waste. The following table sets out the number of enforcement cases⁹ brought in each key program area over the past 5 years:

Historical View of Number of Enforcement Cases by Program: 2014-2018

Program Area	Total No. of Enforcement Cases-- 2014	Total No. of Enforcement Cases-- 2015	Total No. of Enforcement Cases-- 2016	Total No. of Enforcement Cases-- 2017	Total No. of Enforcement Cases-- 2018

⁹ Defined as the sum of case reports, all consent orders, NOV's and final orders.

Asbestos	1	0	0	0	1
Air (Excluding Asbestos)	11	18	17	9	22
Beaches/Coastal	8¹⁰	7	4	4	10
Waste Cleanup	12	8	9	5	7
Dredge & Fill¹¹	41	54	63	54	99
Domestic Waste	29	34	44	34	77
Hazardous Waste	21	43	35	19	34
Industrial Waste	7	7	11	12	13
Mangrove Alterations	3	11	8	12	21
Mining/Phospho-Gypsum	2	2	0	0	0
Potable Water	13	6	15	15	17
State Lands	23	29	16	7	10
Stormwater Discharge	20	22	23	14	16
Solid Waste	9	19	31	18	15
Tanks	20	25	11	15	25
Underground Injection Control	1	0	1	1	2

All the major programs in the Department opened more cases in 2018, with the sole exception of the solid waste program (which has now declined for two straight years). For the first time in 4 years the asbestos program opened a new case.

The compliance data produced by the Department also sheds light on the rate at which known violations are enforced in each program. The following table shows the enforcement rates for the major programs for which we have compliance data.

Compliance Rates in Each Program: 2015-2018

Program	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate
	2015	2016	2017	2018
Air	36%	52%	25%	54%
Beaches	700%	80%	100%	500%

¹⁰ Throughout this report, numbers reported in **red** will indicate declines in performance from the previous year.

¹¹ This includes Environmental Resource Permitting.

DF-ERP	20%	19%	15%	47%
Domestic Waste	4%	6%	4%	11%
Hazardous Waste	23%	14%	11%	19%
Industrial Waste	29%	24%	14%	10%
Potable Water	1%	2%	2%	3%
Solid Waste	38%	32%	26%	16%
Tanks	26%	12%	20%	18%
Underground Injection Control	0%	4%	9%	33%

The data in the above table indicates moderate improvement in enforcement rates for most programs, however, there were decreases in industrial waste, solid waste and the tanks programs. Enforcement rates have dropped for each of the 4 past years in the industrial waste and solid waste programs. While the rate improved in the potable water program, the improvement was minimal, and remains unacceptable for a program that oversees Floridians' drinking water supplies. Likewise, an 11% enforcement rate in the domestic wastewater program should not be considered acceptable by any member of the public, or by the EPA, which oversees the administration of both the potable water and domestic wastewater programs.

3. Assessments in Each Program

The new enforcement cases translated into civil penalties being levied in each program area. Not every new enforcement case resulted in civil penalty assessments, however. And in some instances, including in-kind and pollution prevention projects can result in a less than optimal comparison, because the decision of whether to engage in these projects is up to the violator. Including these projects in a review that looks solely at the number of instances in which penalties were assessed would often result in some cases being counted twice, thereby inflating the Department's performance in the program area involved. Consequently, when considering the rate of assessment, we first look to the number of cases in which only civil penalties are assessed.

The following table lists each program and the percentage of cases that actually resulted in civil penalties (excluding in-kind and pollution prevention projects) being assessed.

Percentage of Cases Resulting in Civil Penalty Assessments

Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
---------------------	---	---	---

Asbestos	1	1	100%
Air (Excluding Asbestos)	22	19	86%
Beaches/Coastal	10	5	50%
Waste Cleanup	7	2	29%
Dredge & Fill ¹²	99	81	82%
Domestic Waste	77	55	71%
Hazardous Waste	34	30	88%
Industrial Waste	13	10	77%
Mangrove Alterations	21	15	71%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	17	8	47%
State Lands	10	2	20%
Stormwater Discharge	16	16	100%
Solid Waste	15	8	53%
Tanks	25	9	36%
Underground Injection Control	2	1	50%

As the above table demonstrates, not every case in which formal enforcement was taken resulted in civil penalties being assessed. It is also evident that the rate of civil penalty assessment varies across the programs. Interestingly, one of the lowest rates of penalty assessment is found in the potable water program, which, as we pointed out in our report, [*Compliance Results at Rick Scott's Florida Department of Environmental Protection*](#), has the lowest compliance rate of all of the programs in Florida.

Looking solely at the dollar value of civil penalty assessments, we found that the levied penalties for 2018 was higher for each program than it was in the previous year, with the exception of the domestic waste, industrial waste, state lands, tanks and underground injection control programs.

¹² This includes Environmental Resource Permitting.

Dollar Value of Civil Penalty Assessments

Program Area	\$ Value of Penalties Assessed in 2017	\$ Value of Penalties Assessed in 2018
Asbestos	\$0.00	\$500.00
Air (Excluding Asbestos)	\$28,450.00	\$76,137.00
Beaches/Coastal	\$4,750.00	\$36,500.00
Waste Cleanup	\$1,000.00	\$2,500.00
Dredge & Fill ¹³	\$57,179.00	\$98,779.00
Domestic Waste	\$1,516,447.00	\$765,857.27
Hazardous Waste	\$202,652.75	\$375,507.50
Industrial Waste	\$123,457.00	\$103,100.33
Mangrove Alterations	\$9,179.00	\$34,480.00
Mining/Phospho-Gypsum	\$0.00	\$0.00
Potable Water	\$5,021.00	\$18,325.00
State Lands	\$3,000.00	\$840.00
Stormwater Discharge	\$52,268.00	\$97,950.46
Solid Waste	\$15,100.00	\$31,900.00
Tanks	\$28,000.00	\$22,500.00
Underground Injection Control	\$4,038.56	\$500.00

In some instances, the violator will choose to pay some or none of the penalty assessment, electing instead to engage in an in-kind or pollution prevention project. This is a choice that the Department almost always gives to the violator. It is up to the violator to propose a project, which the Department must then approve if it is to move forward. According to the Department's guidelines, these projects must be valued at a minimum of 1.5 times the amount of the assessed civil penalty. For example, an in-kind or pollution prevention project chosen to satisfy a penalty of \$100 would need to be valued at a minimum of \$150. In programs in which such projects were undertaken to satisfy a civil penalty assessment, the total value of assessments in the affected program areas typically increases, sometimes significantly.

The following table shows total number of new enforcement cases, followed by the number of assessments for each program, followed by the total dollar value of the civil penalties assessed and including in-kind projects and pollution prevention projects that arose out of those

¹³ This includes Environmental Resource Permitting.

assessments. As can be seen when comparing the following results with those above that only consider assessed civil penalties, the affect on both a count of the number of cases and the dollars assessed is substantial.

Assessments Including Penalties, In-Kind and Pollution Prevention Projects

Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments, including Penalties, In-Kind and Pollution Prevention Projects in 2018	\$ Value of Penalties, In-Kind and Pollution Prevention Projects Assessed in 2018
Asbestos	1	1	\$500.00
Air (Excluding Asbestos)	22	19	\$76,137.00
Beaches/Coastal	10	5	\$36,500.00
Waste Cleanup	7	2	\$2,500.00
Dredge & Fill ¹⁴	99	81	\$98,779.00
Domestic Waste	77	105	\$1,922,858.99
Hazardous Waste	34	35	\$544,232.50
Industrial Waste	13	11	\$173,780.33
Mangrove Alterations	21	15	\$34,480.00
Mining/Phospho-Gypsum	0	0	\$0.00
Potable Water	17	8	\$18,325.00
State Lands	10	2	\$15,000.00
Stormwater Discharge	16	16	\$97,950.46
Solid Waste	15	8	\$31,900.00
Tanks	25	9	\$22,500.00
Underground Injection Control	2	1	\$500.00

A comparison of penalty assessments (including in-kind and pollution prevention projects) from 2017 to 2018 shows that only three programs, domestic waste, state lands and tanks, assessed fewer penalty dollars in 2018 than in the previous year.

¹⁴ This includes Environmental Resource Permitting.

Comparison of Penalty Assessments from 2017 to 2018

Program Area	\$ Value of Penalties Assessed in 2017 (Including In-Kind & Pollution Prevention Projects)	\$ Value of Penalties Assessed in 2018 (Including In-Kind & Pollution Prevention Projects)
Asbestos	\$0.00	\$500.00
Air (Excluding Asbestos)	\$28,450.00	\$76,137.00
Beaches/Coastal	\$4,750.00	\$36,500.00
Waste Cleanup	\$1,000.00	\$2,500.00
Dredge & Fill ¹⁵	\$57,179.00	\$98,779.00
Domestic Waste	\$3,209,687.50	\$1,922,858.99
Hazardous Waste	\$250,339.50	\$544,232.50
Industrial Waste	\$144,457.00	\$173,780.33
Mangrove Alterations	\$18,250.00	\$34,480.00
Mining/Phospho-Gypsum	\$0.00	\$0.00
Potable Water	\$9,521.00	\$18,325.00
State Lands	\$3,000.00	\$840.00
Stormwater Discharge	\$52,268.00	\$97,950.46
Solid Waste	\$15,100.00	\$31,900.00
Tanks	\$28,000.00	\$22,500.00
Underground Injection Control	\$4,038.56	\$500.00

The next issue that we reviewed was the actual severity of the assessments in each program. In order to do that we looked at the median value of the assessments, and then compared those medians with the medians from the previous year. By doing so we can tell whether enforcement is becoming harsher or lighter, e.g. if medians rise it is an indication that more of the civil penalties that were levied were higher than the previous year. As the table below indicates, penalty assessments in the hazardous waste, industrial waste, state lands, tanks and underground injection control programs were less severe in 2018 than in the previous year.

¹⁵ This includes Environmental Resource Permitting.

Comparison of Penalty Assessment Medians from 2017 to 2018

Program Area	2017 Medians ¹⁶	2018 Medians
Asbestos	\$0.00	\$500.00
Air (Excluding Asbestos)	\$3,000.00 ¹⁷	\$3,500.00
Beaches/Coastal	\$875.00	\$2,500.00
Waste Cleanup	\$1,000.00	\$1,250.00
Dredge & Fill	\$420.00	\$420.00
Domestic Waste	\$5,500.00	\$7,500.00
Hazardous Waste	\$6,104.75	\$5,639.50
Industrial Waste	\$4,500.00	\$2,500.00
Mangrove Alteration	\$830.00	\$830.00
Mining/Phospho-Gypsum	\$0.00	\$0.00
Potable Water	\$1,260.50	\$1,550.00
State Lands	\$3,000.00	\$420.00
Stormwater Discharge	\$3,500.00	\$4,000.00
Solid Waste	\$2,500.00	\$3,500.00
Tanks	\$7,500.00	\$500.00
Underground Injection Control	\$4,038.56	\$500.00

The results for the asbestos and underground injection control programs are each based upon only 1 case. The results in the waste cleanup and state lands programs are each based upon only 2 cases.

We also considered the medians when in-kind and pollution prevention projects were included in the calculations. The following table shows the results (including all penalties, in-kind projects and P2 projects) for each program, according to year.

Comparison of Penalty Assessment Medians (Including In-Kind and Pollution Prevention Projects) from 2017 to 2018

Program Area	2017 Medians ¹⁸	2018 Medians
Asbestos	\$0.00	\$500.00

¹⁶ The results in the waste cleanup, state lands and underground injection control programs are each based upon only one (1) case.

¹⁷ Throughout this report numbers in **orange** will indicate that the result represents lower performance than in the previous year.

¹⁸ The results in the waste cleanup, state lands and underground injection control programs are each based upon only one (1) case.

Air (Excluding Asbestos)	\$3,000.00	\$3,500.00
Beaches/Coastal	\$875.00	\$2,500.00
Waste Cleanup	\$1,000.00	\$1,250.00
Dredge & Fill	\$420.00	\$420.00
Domestic Waste	\$8,850.00	\$8,000.00
Hazardous Waste	\$6,529.50	\$6,457.00
Industrial Waste	\$4,500.00	\$2,500.00
Mangrove Alteration	\$830.00	\$830.00
Mining/Phospho-Gypsum	\$0.00	\$0.00
Potable Water	\$1,550.00	\$1,550.00
State Lands	\$3,000.00	\$420.00
Stormwater Discharge	\$3,500.00	\$4,000.00
Solid Waste	\$2,500.00	\$3,500.00
Tanks	\$7,500.00	\$500.00
Underground Injection Control	\$4,038.56	\$500.00

As can be seen from the above results, the historically high median of \$8,850.00 that was seen in 2017 in the domestic waste program was not maintained in 2018. Meanwhile the median value of penalties assessed in the hazardous waste, industrial waste, state lands, tanks and underground injection programs all fell in 2018, compared with the results in 2017. The median value of assessments in the tanks program is the lowest in the Department's history. Medians fell in the underground injection control program for the second year in a row. The low median of \$420.00 in the dredge and fill program is the same as it was in 2017. Both are the lowest in the Department's history. The median in the state lands program is the lowest since 1997, and the second lowest in the Department's history.

The following table provides the highest civil penalty assessment in 2018 for each of the indicated programs,¹⁹ as well as the district in which each assessment was made.

¹⁹ The abbreviations are as follows: AB = Asbestos; AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AM = Air Resource Management; AS = Air Permitted Source; AV = Air Title 5; AW = Aquatic Weed; BS = Beaches and Shores; CC = Collections Case; CM—Coastal & Aquatic Managed Area; CR = Coral Reef; CU = Waste Cleanup; CZ=Coastal Zone Management; DA = Disciplinary Action; DF = Dredge and Fill; DR= Dry Cleaners; DW = Domestic Waste; EP = Environmental Resource Permitting (Dredge & Fill); ES = ERP Stormwater; EW = ERP Wetlands / Surface Waters; HW = Hazardous Waste; IW = Industrial Waste; MA = Mangrove Alteration; MN = Mining Operations; MR= Marine Resources; OC = Operator Certification; OG = Oil & Gas; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Discharge; S1 = Untreated Domestic Waste Spills; S3 =Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection; WW = Water Well Contractors.

Highest Single Assessment in Each Program

District	Program	OGC#	Case Style	Assessed Amount
2	AB	180216	FLAGLER COUNTY BOCC; DEP V.	\$500.00
1	AP	181106	ENVIVA PELLETS COTTONDALE, LLC; DEP VS.	\$10,000.00
1	AP	181218	COASTAL FOREST RESOURCES COMPANY; DEP VS.	\$10,000.00
2	BS	180977	MUNOZ, CATHERIN A.; DEP VS.	\$24,000.00
2	CU	180173	PUTNAM COUNTY PUBLIC WORKS; DEP VS.	\$2,000.00
1	DF	181248	BIG LAGOON JET SKI RENTAL, LLC; DEP VS.	\$10,000.00
2	DW	061796	JEA; DEP VS.	\$303,000.00
1	ES	140417	CLASSIC HOMEBUILDERS INC; DEP VS.	\$4,500.00
1	EW	181174	FLYNN BUILDING SPECIALIST, LLC; DEP VS.	\$5,000.00
3	HW	181325	CONSTANT AVIATION LLC; DEP VS.	\$95,194.00
4	IW	170225	JUPITER ISLAND, FLORIDA, TOWN OF; DEP VS.	\$47,120.00
5	MA	170932	EYES OF THE EVERGLADES, LLC, SAMMY HAMILTON, JR., CARTER DOCK ET AL; DEP V.	\$14,000.00
5	PW	172065	RED APPLE AT COLLIER, LLC & RYAN COMPANIES US, INC; DEP VS.	\$9,000.00
1	RO	171133	PRINCE CONTRACTING, LLC; DEP VS.	\$17,800.00
6	S1	181217	CITY OF LAKELAND; DEP VS.	\$11,000.00
6	S2	180075	HILLSBOROUGH COUNTY PUBLIC UTILITIES DEPARTMENT	\$14,242.83
6	S3	180106	CITY OF ST PETERBURG	\$6,000.00
5	SL	180243	PELICAN CAY RV PARK LLC; DEP VS.	\$420.00
5	SL	181400	MARRKEY LLC; DEP VS.	\$420.00
5	SW	181055	MARATHON TRANSFER STATION INC.; DEP VS.	\$6,900.00
1	TK	180242	DUKE, PHILLIP A. AND JENA L.; DEP VS.	\$10,000.00
4	UC	181208	JAFFER WELL DRILLING; DEP VS.	\$500.00

4. Collections in Each Program

The assessment of civil penalties is authorized by statute. However, once assessed, it is incumbent upon the Department to collect those penalties. Otherwise, the entire process will, over time, fail to act as the deterrent that the Legislature intended when it passed the statutory scheme that exists today. As we stated above, in 2018, the Department collected 54% of total dollar value of all the penalties that it assessed. With that in mind, we have listed below the dollar value of the civil penalties (excluding in-kind and pollution prevention projects) that were collected in each program.

Program Area Collections

Program Area	\$ Value of Assessed Civil Penalties--2018	\$ Value of Civil Penalties Collected-- 2018	% Civil Penalties Collected—2018
Asbestos	\$500.00	\$500.00	100%
Air (Excluding Asbestos)	\$76,137.00	\$73,750.00	97%
Beaches/Coastal	\$36,500.00	\$36,000.00	99%
Waste Cleanup	\$2,500.00	\$0.00	0%
Dredge & Fill ²⁰	\$98,779.00	\$87,162.06	88%
Domestic Waste	\$765,857.27	\$148,717.83	19%
Hazardous Waste	\$375,507.50	\$226,379.50	60%
Industrial Waste	\$103,100.33	\$58,080.33	56%
Mangrove Alterations	\$34,480.00	\$30,400.00	88%
Mining/Phospho-Gypsum	\$0.00	\$0.00	0%
Potable Water	\$18,325.00	\$13,300.00	73%
State Lands	\$840.00	\$420.00	50%
Stormwater Discharge	\$97,950.46	\$83,450.46	85%
Solid Waste	\$31,900.00	\$31,900.00	100%
Tanks	\$22,500.00	\$76,706.05	341%
Underground Injection Control	\$500.00	\$500.00	100%

In addition to civil penalties that were collected, several in-kind and pollution prevention projects were completed in 2018. These projects originated in the domestic waste, hazardous waste and industrial waste programs. The total value of those projects for each program area in which they originated is listed below.

Dollar Value of In-Kind and Pollution Prevention Projects

Program Area	Total No. of In-Kind and P2 Projects Completed--2018	\$ Value of In-Kind and P2 Projects Completed-- 2018
Domestic Waste	8	\$122,141.63
Hazardous Waste	5	\$85,385.00
Industrial Waste	1	\$1,500.00

²⁰ This includes Environmental Resource Permitting.

DISTRICT ENFORCEMENT RESULTS

A. Compliance Rates—District Results

The first consideration in evaluating district performance is the extent to which the inspectors are actually in the field, conducting inspections. Fortunately, the FDEP has now provided us with that data. The following table shows the total number of inspections conducted by each district over the past 4 fiscal years.

Total Number of Inspections Conducted by Each District: 2015-2018

District	2015/2016	2016/2017	2017/2018	2018/2019
Northwest	1237	1159	1416	1141
Northeast	1092	1189	1290	1178
Central	1309	1237	1300	1228
Southeast	1366	1666	1168	1074
South	2211	1890	2027	1966
Southwest	1304	1162	1230	1107

The number of inspections conducted by each district obviously varies each year. What we did find, however, was that the Northeast District conducted the fewest number of inspections over the past 4 years, while the South District conducted the most.

Average Number of Inspections Conducted Each Year: 2015-2018

District	Average Number of Inspections
Northwest	1,238
Northeast	1,187
Central	1,269
Southeast	1,319
South	2,024
Southwest	1,201

We also evaluated the average number of facilities that were found to be in noncompliance in each district over the same 4-year period.

Average Number of Facilities Found to be in Noncompliance: 2015-2018

District	Average Number of Facilities in Noncompliance
Northwest	227
Northeast	386
Central	572
Southeast	225
South	447
Southwest	407

The above numbers are interesting inasmuch as there does not appear to be a correlation between the average number of inspections conducted in each district and the average number of facilities found to be in noncompliance. Neither does the average number of noncompliant facilities appear to be dependent upon the population of the respective districts.

Compliance rates among the districts vary widely. The following table shows the compliance rates for each of the 6 districts over the course of the past 4 fiscal years.

Percentage of Facilities in Compliance by District

District	2015/2016	2016/2017	2017/2018	2018/2019
Northwest	80.60%	79.72%	83.90%	82.03%
Northeast	66.48%	64.51%	72.87%	65.70%
Central	60.05%	56.99%	56.54%	45.77%
Southeast	84.85%	86.37%	82.19%	76.07%
South	80.82%	74.97%	74.94%	80.57%
Southwest	67.71%	66.70%	64.55%	65.31%

Over the course of these four years there is a clear upward trend towards noncompliance in the Central and Southeast Districts. Both of these districts also show a more pronounced trend towards fewer inspections over those same 4 years.

The combined 4-year compliance rate for each of the above districts is shown below.

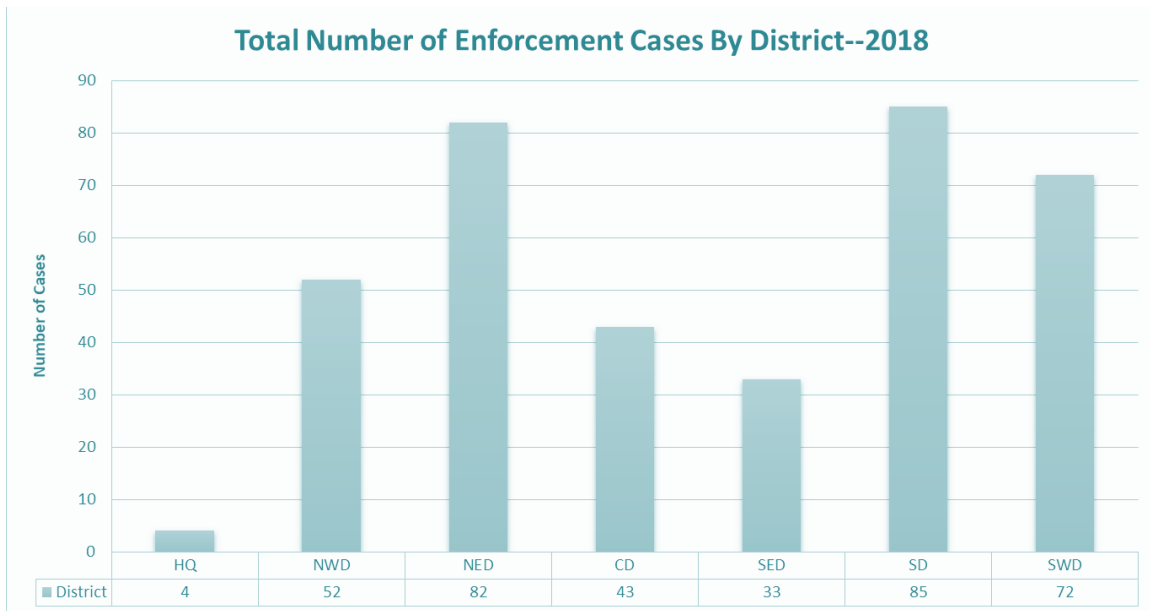
District Compliance Rate Over 4 Years: 2015-2018

District	Compliance Rate
Northwest	81.67%
Northeast	67.53%
Central	54.95%
Southeast	82.95%
South	77.92%
Southwest	66.10%

B. Number and Types of Enforcement Actions Taken—District Results

The data provided by the FDEP allows us to determine the extent to which new cases were opened in each district. Overall, enforcement was divided between the Department's district offices as follows.

Number of Enforcement Cases by District in 2018



Except for the FDEP's Headquarters, every district improved upon their 2017 performance. The results for the Northwest and Northeast Districts are the best since 2012, while the South District's results are the best since 2011. As the following table shows, however, none of the districts are performing at anywhere near 2010 levels.

Historical Results of Number of Enforcement Cases by District

District	2010	2011	2012	2013	2014	2015	2016	2017	2018
Headquarters	134	67	88	15	28	28	29	7	4
Northwest	167	156	60	37	37	35	32	33	52
Northeast	230	133	116	41	39	54	62	47	82
Central	208	161	109	32	26	44	52	36	43
Southeast	206	128	56	18	28	38	22	18	33
South	187	145	70	33	38	46	47	33	85
Southwest	455	357	164	34	38	52	63	46	72

The next question that we addressed was the enforcement rate in each of the 6 districts. This rate is the percentage of those facilities that were subjected to formal enforcement when they were deemed to be in noncompliance. Prior to this annual report we have been unable to evaluate this issue, because until now we have not had the compliance data maintained by the Department. The results of our analysis are shown below.

Enforcement Rate in Each District for Fiscal Years 2015 – 2018

District	2015/2016	2016/2017	2017/2018	2018/2019
Northwest	15%	14%	14%	25%
Northeast	15%	15%	13%	20%
Central	8%	10%	6%	6%
Southeast	18%	10%	9%	13%
South	11%	10%	6%	22%
Southwest	12%	16%	11%	19%

The 4-year enforcement rate for each of the 6 districts is shown below.

District Enforcement Rate Over 4 Years: 2015-2018

District	Compliance Rate
Northwest	17%
Northeast	16%
Central	8%
Southeast	12%
South	12%
Southwest	14%

The final consideration is to compare the compliance rates among the districts to the enforcement rates. This 4-year comparison is shown below.

Comparison of District Compliance and Enforcement Rates Over 4 Years: 2015-2018

District	Compliance Rate	Enforcement Rate
Northwest	81.67%	17%
Northeast	67.53%	16%
Central	54.95%	8%
Southeast	82.95%	12%
South	77.92%	12%
Southwest	66.10%	14%

The above results indicate that, in this 4-year period at least, the district with the lowest enforcement rate, the Central District, also had the lowest overall compliance rate. Of the 6 districts, we found that the Central District also had the highest percentage of facilities in significant noncompliance (5.79%) and the highest percentage of facilities that were otherwise in noncompliance (39.26%). The Northwest District, which had the highest enforcement rate, also

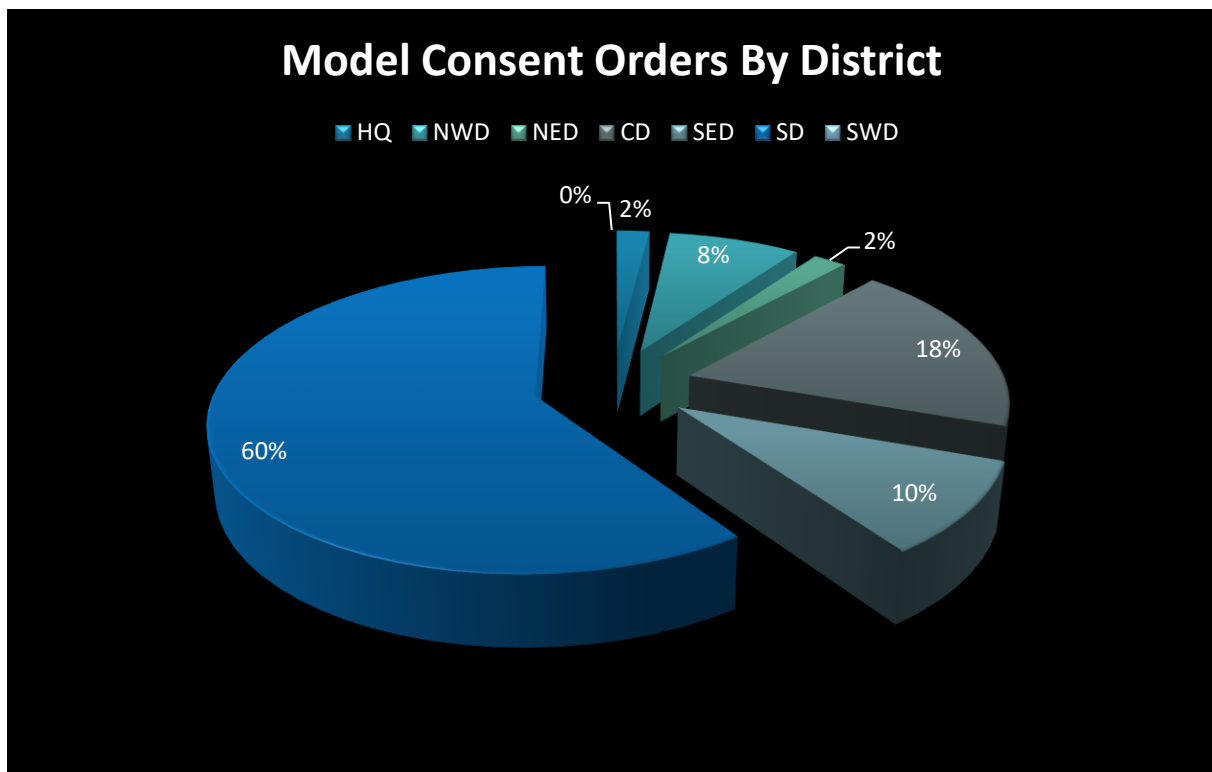
had the lowest percentage of facilities in significant noncompliance (2.30%) and the second²¹ lowest percentage of facilities that were otherwise in noncompliance (16.03%).

1. Consent Orders – District Comparisons

The Department's use of consent orders varied with each district and type of consent order issued:

a. Model Consent Orders

Model Consent Orders--2018

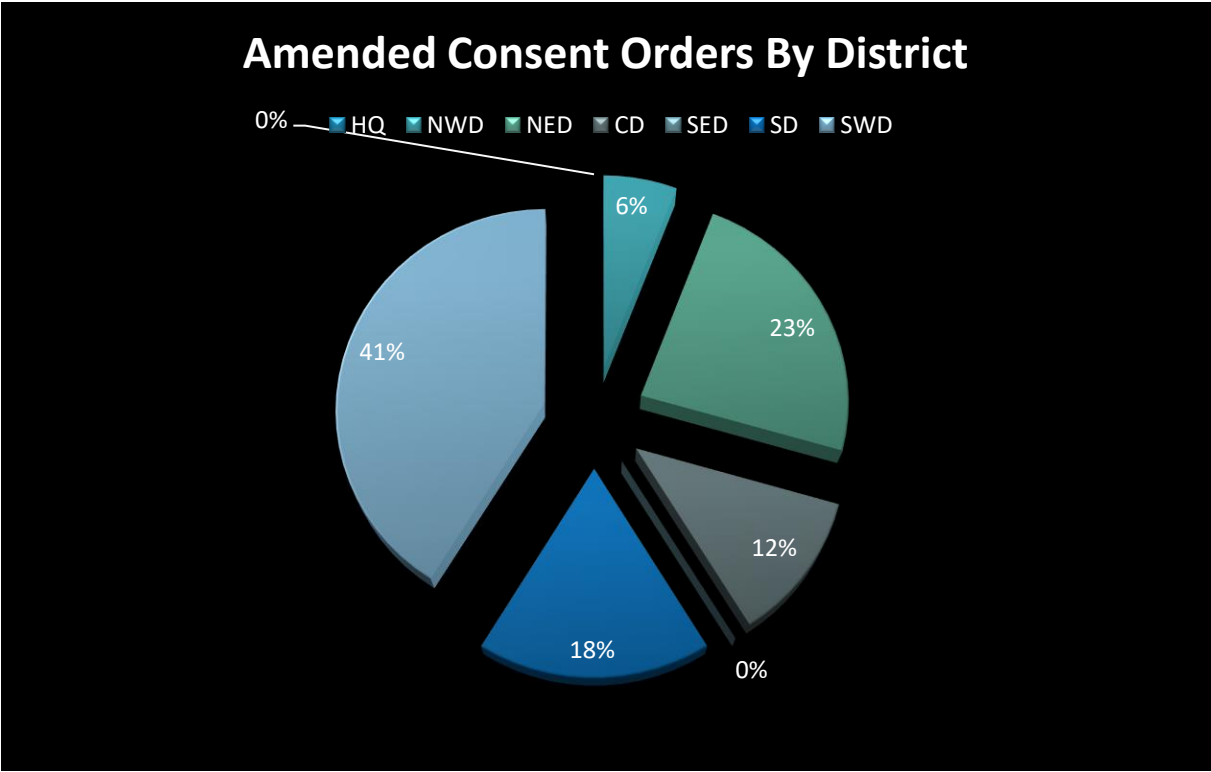


102 model consent orders were issued in 2018, twice the amount issued in 2017. Every district but the Northwest and Southwest improvement.

²¹ The Southeast District had the lowest percentage (13.88%) of facilities that were in noncompliance (excluding significant noncompliance).

b. Amended Consent Orders

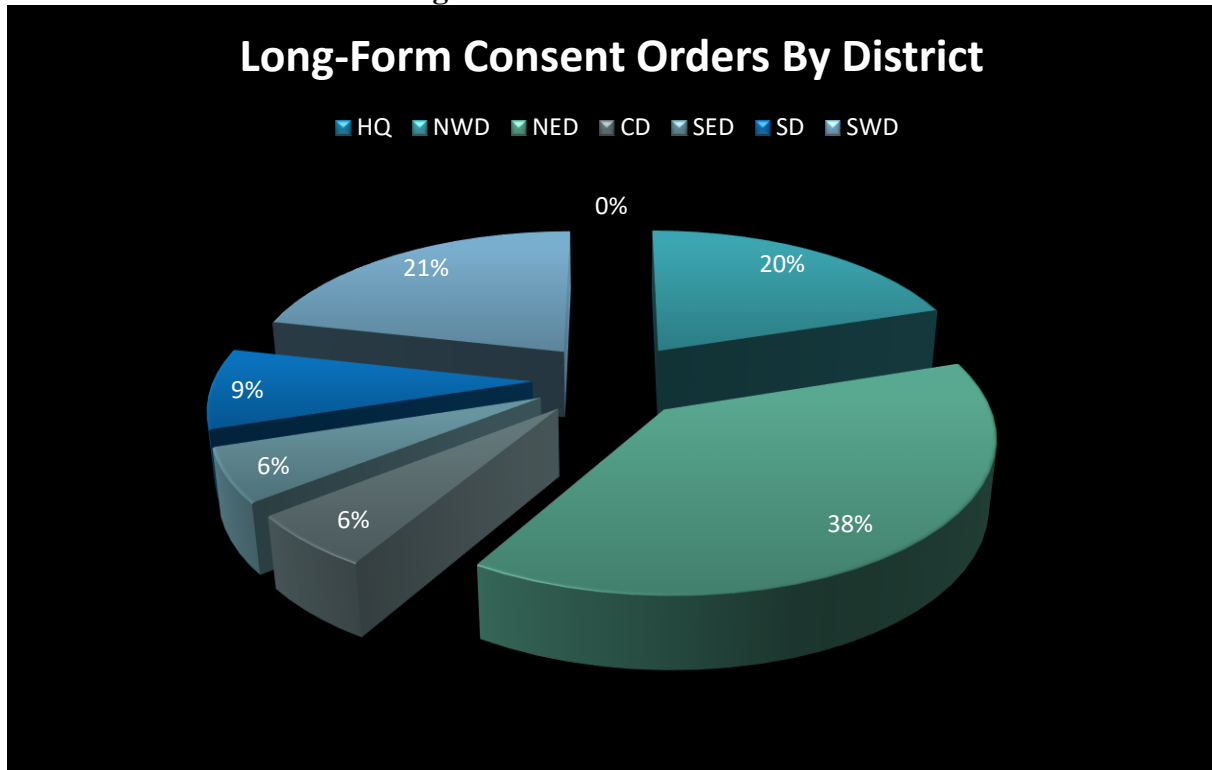
Amended Consent Orders—2018



The number of amended consent orders fell slightly in 2018, due to lower numbers in the Northwest, Northeast and Central Districts. 17 were issued statewide.

c. Long-Form Consent Orders

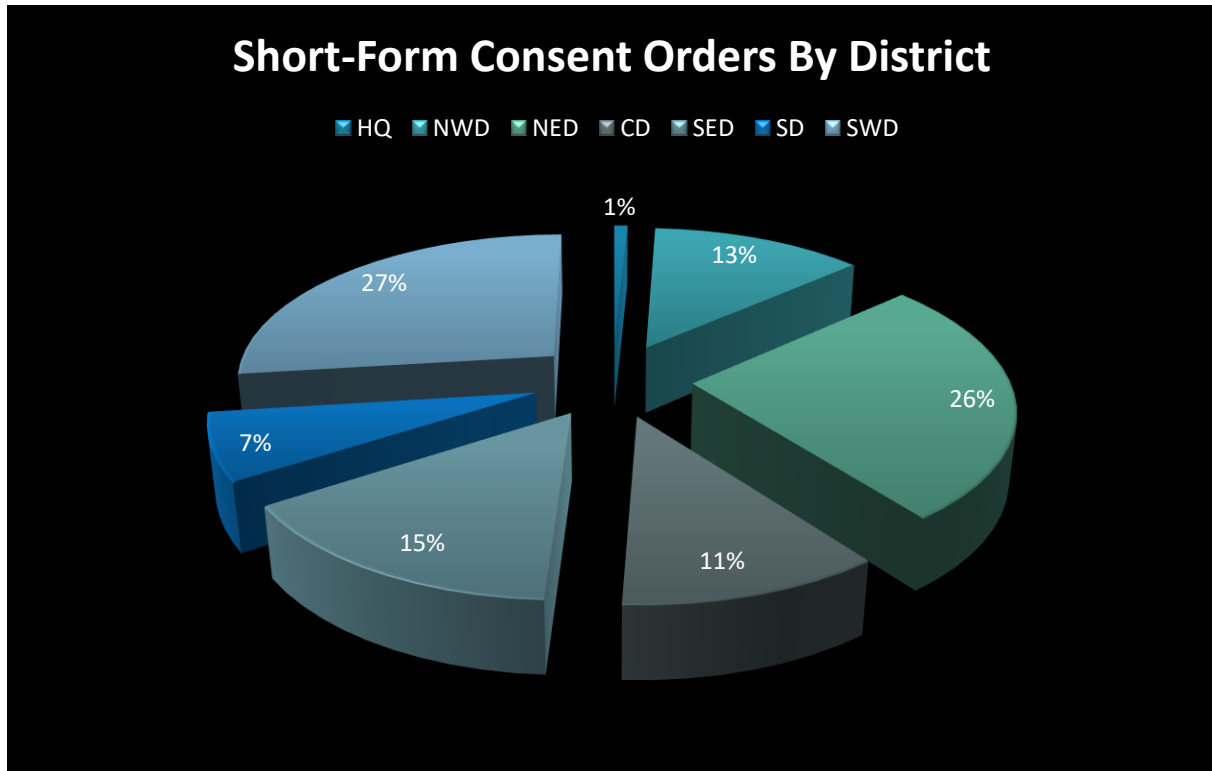
Long-Form Consent Orders--2018



The number of long-form consent orders rose from 39 in 2017 to 70 in 2018. Improvements were seen in all districts with the highest percentage coming out of the Northeast District.

d. Short-Form Consent Orders

Short-Form Consent Orders--2018



126 short-form consent orders were issued in 2018, The number of short-form consent orders rose in 2018, almost double the 66 that were issued in 2017. This is the highest total for this enforcement mechanism since 2012, when 276 were issued.

The increase in the number of short-form consent orders issued marks the first year since 2015, in which their use as a percentage of all enforcement cases has increased. Nevertheless, this rate is still significantly lower than what we've seen through much of the FDEP's history.

The following table demonstrates the history of the use of these enforcement mechanisms from 1988 to the present by showing the percentage of all enforcement cases each year that were resolved via short-form consent orders.

Historical Overview of Percentage Usage of Short-Form Consent Orders

Year	% Short-Form Consent Orders
1988	0.00%
1989	0.00%

1990	24.13%
1991	38.74%
1992	36.32%
1993	46.84%
1994	47.73%
1995	52.60%
1996	49.39%
1997	48.29%
1998	50.05%
1999	48.90%
2000	54.77%
2001	56.38%
2002	55.67%
2003	58.46%
2004	55.23%
2005	60.20%
2006	60.41%
2007	62.23%
2008	58.13%
2009	54.03%
2010	45.68%
2011	46.29%
2012	41.63%
2013	20.48%
2014	21.79%
2015	34.01%
2016	28.99%
2017	30.00%
2018	33.96%

Three of the districts, the Northeast, Southeast, and Southwest, increased the percentage of cases resolved via this mechanism. The Southeast District uses this mechanism more than the other districts. The following table, which compares the use of short-form consent orders to all

other enforcement tools, gives the actual percentages for the current and immediately preceding year.

Percentage of Cases Settled with Short-Form Consent Orders

<i>District</i>	<i>% Cases Settled Through SF Cos-2017</i>	<i>% Cases Settled Through SF Cos-2018</i>
<i>Central</i>	38.89%	32.56%
<i>Northeast</i>	23.40%	40.24%
<i>Multi-District</i>	28.57%	25.00%
<i>Northwest</i>	36.36%	30.77%
<i>Southeast</i>	44.44%	57.58%
<i>South</i>	12.12%	10.59%
<i>Southwest</i>	32.61%	47.22%

We also looked at the use of short-form consent orders solely as a part of the consent order enforcement tool. In other words, once the decision had been made to settle a case through a consent order, how likely was the resolution to be via a short-form consent order, as opposed to a long-form or model consent order that would require more oversight over the violator. Overall, the Department chose short-form consent orders in 40.00% of the cases in which a consent order was deemed the appropriate enforcement mechanism, a slight increase compared to 2017. However, what is noteworthy is that the districts that saw the highest use of short-form consent orders overall, also saw significant increases in their usage from 2017. The South District, meanwhile, clearly views short-form consent orders as the mechanism of last resort.

Usage of Short-Form Consent Orders Compared to Other Consent Orders

<i>District</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2014</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2015</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2016</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2017</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders—2018</i>
<i>Central</i>	52.94%	58.33%	44.68%	40.00%	35.90%
<i>Northeast</i>	26.67%	47.06%	34.69%	30.56%	50.00%
<i>Multi-District</i>	54.17%	44.00%	26.09%	33.33%	33.33%
<i>Northwest</i>	33.33%	37.04%	50.00%	50.00%	41.03%

<i>Southeast</i>	30.00%	62.16%	63.16%	47.06%	57.58%
<i>South</i>	18.18%	10.34%	14.29%	14.29%	11.39%
<i>Southwest</i>	11.54%	45.95%	28.85%	50.00%	60.71%

C. Overall Assessments in Each District

The Department does not assess penalties in every case in which a formal enforcement case is opened. The rates at which penalties are assessed always varies from district to district. In 2018 the districts assessed penalties as follows.

Percentage of Cases in which Penalties were Assessed—By District--2018

District	Number of Cases opened in 2018	Number of Assessments in 2018 (Excluding In-Kind & Pollution Prevention Projects)	Percentage of Cases in which Penalties were Assessed
Headquarters	4	3	75%
Northwest	52	42	81%
Northeast	82	68	83%
Central	43	23	53%
Southeast	33	23	70%
South	85	58	68%
Southwest	72	45	63%

A comparison with the results from 2017 shows that the Northwest, Northeast and Southwest Districts all assessed penalties at a higher rate in 2018 than they did in 2017. Each of the three remaining districts assessed fewer civil penalties. The Southeast District's assessment rate fell by a significant 19% in 2018.

Percentage Assessment Rate by District

District	Number of Cases opened in 2017	Number of Assessments in 2017 (Excluding In-Kind & Pollution Prevention Projects)	Percentage of Cases in which Penalties were Assessed in 2017	Number of Cases opened in 2018	Number of Assessments in 2018 (Excluding In-Kind & Pollution Prevention Projects)	Percentage of Cases in which Penalties were Assessed in 2018
Headquarters	7	7	100%	4	3	75%
Northwest	33	23	70%	52	42	81%
Northeast	47	30	64%	82	68	83%
Central	36	20	56%	43	23	53%
Southeast	18	16	89%	33	23	70%
South	33	28	85%	85	58	68%
Southwest	46	24	52%	72	45	63%

Turning to the dollar value of the penalties that were assessed, the Districts' performance in the area of penalty assessments (including in-kind and pollution prevention projects) was as follows.

Dollar Value of Penalty Assessments by District

DISTRICT	NO. OF ASSESSMENTS IN 2017	TOTAL \$ ASSESSED IN 2017	NO. OF ASSESSMENTS IN 2018	TOTAL \$ ASSESSED IN 2018	% OF STATE TOTAL
Multi-District	7	\$43,788.00	3	\$3,086.00	0.10%
NWD	24	\$98,925.00	46	\$293,626.38	9.59%
NED	34	\$400,181.00	82	\$1,113,182.50	36.36%
CEN	24	\$127,323.00	29	\$427,234.46	13.95%
SED	20	\$1,056,584.56	26	\$282,412.50	9.22%
SD	28	\$56,436.00	69	\$308,474.14	10.07%
SWD	16	\$2,040,732.00	64	\$633,767.30	20.70%

With the exception of cases handled out of the headquarters, none of the districts saw back-to-back losses in 2017 and 2018. Moreover, the Northwest, Northeast, Central, and South Districts all saw increased penalty assessments in 2018.

Two of the four of the districts, the Southeast and Southwest, saw decreases in the dollars assessed in civil penalties (excluding in-kind and pollution prevention projects); the rest saw increases in 2018.

In looking at the median assessments for each district we found a similar pattern, i.e. the districts that increased the dollars penalized also saw higher medians in 2018. The comparison of median assessments (each of which includes in-kind and/or pollution prevention projects) from 2016 to 2018 among the districts is as follows.

Median Assessments by District

DISTRICT	2016 MEDIAN ASSESSMENTS	2017 MEDIAN ASSESSMENTS	2018 MEDIAN ASSESSMENTS
Multi-District	\$370.00	\$500.00	\$310.00
NWD	\$5,000.00	\$3,000.00	\$4,500.00
NED	\$3,200.00	\$1,310.00	\$2,500.00
CEN District	\$4,000.00	\$3,000.00	\$3,500.00
SED	\$1,727.00	\$6,104.75	\$3,917.00
SD	\$2,000.00	\$830.00	\$830.00
SWD	\$4,000.00	\$2,600.00	\$2,000.00

We also looked at the issue of where the median penalty assessments were highest in the state, i.e. which district had the highest median penalty assessments in each program area. Those results are shown below, and each result excludes in-kind and pollution prevention projects.

Median Assessments by Program

Program Area	District with Highest Median Assessment Value	Median Assessment in District	Based Upon District's Total Number of Penalty Assessments
Asbestos	Northeast	\$500.00	1
Air (Excluding Asbestos)	Northeast	\$4,000.00	6
Beaches/Coastal	Northeast	\$7,000.00	3
Waste Cleanup	Northeast	\$2,000.00	1
Dredge & Fill ²²	Central	\$2,410.00	10
Domestic Waste	Central	\$14,992.50	4

²² This includes Environmental Resource Permitting.

Hazardous Waste	Central	\$52,082.00	2
Industrial Waste	Southeast	\$47,120.00	1
Mangrove Alterations	Southeast	\$4,100.00	2
Mining/Phospho-Gypsum	No Assessments in Florida	\$0.00	0
Potable Water	South	\$9,000.00	1
State Lands	South	\$420.00	2
Stormwater Discharge	Northwest	\$9,000.00	7
Solid Waste	South	\$6,200.00	2
Tanks	Northwest	\$5,000.00	3
Underground Injection Control	Southeast	\$500.00	1

D. Overall Collections in Each District

The following chart shows the total collections reported by each district, itemized by the total penalty dollars collected and the total dollar value of in-kind and pollution prevention project closures.

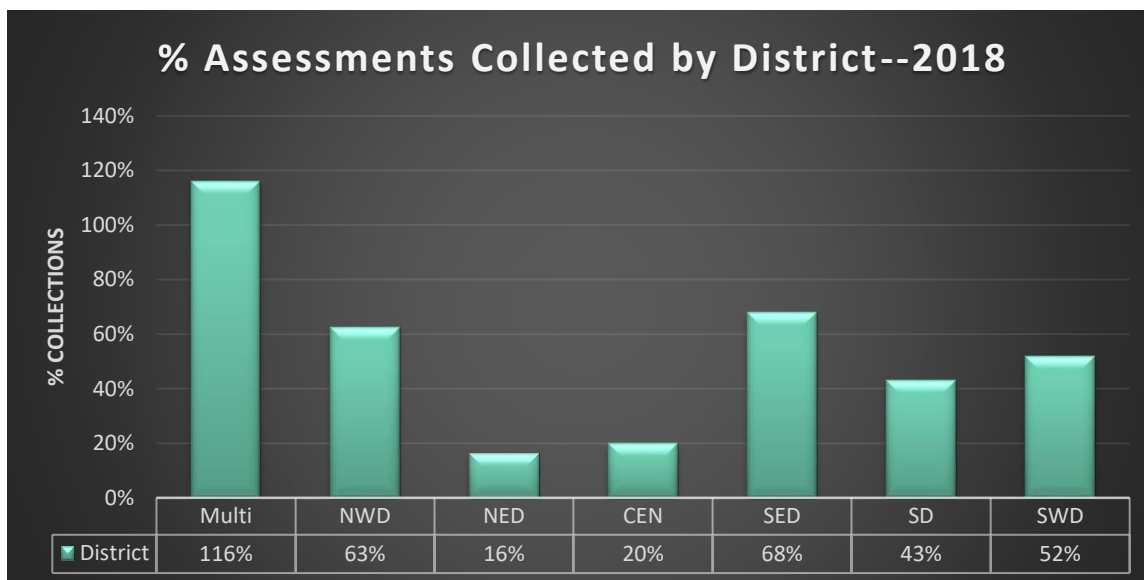
Collections by District--2018

District	Total Penalty \$ Collected	Total Value of In-Kind and Pollution Prevention Project Closures	Cumulative Total of Penalties, In-Kind and Pollution Prevention Project Closures
Multi-District	\$3,586.00	\$0.00	\$3,586.00
NWD	\$183,870.00	\$0.00	\$183,870.00
NED	\$128,175.50	\$54,485.00	\$182,660.50
CEN	\$65,254.46	\$20,550.00	\$85,804.46
SED	\$191,690.00	\$0.00	\$191,690.00
SD	\$85,187.39	\$48,277.88	\$133,465.27
SWD	\$243,502.88	\$85,713.75	\$329,216.63

Based upon the above cumulative collection totals, we found that, compared with the other districts, the Southeast District collected the highest percentage of its assessments. The Northeast District collected the lowest percentage of its assessments. The following graph shows

the percentage of assessments (including in-kind and pollution prevention projects) that were collected in each district.

% Assessments Collected by District--2018



When only collected penalties are considered, the results are bit different. The rate of collections of civil penalty assessments varied significantly from district to district. The Southeast District collected 105% of its assessments (meaning that it also collected penalties from previous years), while the lowest performing district was the Northeast District, which only collected 25% of its assessments. The next lowest performing district was the Central District, which collected only 28% of its assessments. The Southwest, South and Northwest Districts collected 73%, 62% and 72% of their assessments respectively. In terms of the sheer volume of collected penalty dollars, the Northeast District collected the most, with a total of \$521,773.50, while the South District collected the fewest dollars, \$137,436.02.

E. Program Performance in each District

This section addresses the performance of the major program areas in each district. Our review of the FDEP's programs included the number of assessments in each program area, the total penalty dollars assessed, and the median dollar value of the penalty assessments in each program. Unless stated otherwise, the results that follow exclude in-kind and pollution prevention project data.

1. Northwest District

The Northwest District's programs generally assessed penalties in a high rate of cases in which formal enforcement cases were opened. The exceptions were the potable water and solid waste programs.

NWD—Enforcement Cases and Assessments--2018

Northwest District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	0	N/A
Air (Excluding Asbestos)	8	8	100%
Beaches/Coastal	0	0	N/A
Waste Cleanup	1	0	0%
Dredge & Fill²³	15	13	87%
Domestic Waste	7	8	114% ²⁴
Hazardous Waste	1	0	0%
Industrial Waste	2	1	50%
Mangrove Alterations	0	0	N/A
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	3	1	33%
State Lands	1	0	0%
Stormwater Discharge	7	4	57%
Solid Waste	3	1	33%
Tanks	4	3	75%
Underground Injection Control	0	0	N/A

The table below shows the same programs, the penalty dollars assessed, the dollar value of in-kind and pollution prevention projects, and the median assessments (excluding in-kind and pollution prevention projects).

NWD—Assessments and Medians--2018

Northwest District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$40,887.00	\$0.00	\$40,887.00	\$3,750.00
Beaches/Coastal	\$0.00	\$0.00	\$0.00	\$0.00
Waste Cleanup	\$0.00	\$0.00	\$0.00	\$0.00
Dredge & Fill²⁵	\$30,070.00	\$0.00	\$30,070.00	\$1,000.00
Domestic Waste	\$79,247.75	\$37,121.63	\$116,369.38	\$8,875.00
Hazardous Waste	\$0.00	\$0.00	\$0.00	\$0.00
Industrial Waste	\$30,000.00	\$0.00	\$30,000.00	\$30,000.00
Mangrove Alterations	\$0.00	\$0.00	\$0.00	\$0.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00

²³ This includes Environmental Resource Permitting.

²⁴ This unusual result is due to the NWD reporting an assessment against the City of Tallahassee in OGC Case #082519, for which the FDEP's data shows no enforcement case having been opened.

²⁵ This includes Environmental Resource Permitting.

Potable Water	\$1,500.00	\$0.00	\$1,500.00	\$1,500.00
State Lands	\$0.00	\$0.00	\$0.00	\$0.00
Stormwater Discharge	\$54,800.00	\$0.00	\$54,800.00	\$9,000.00
Solid Waste	\$4,500.00	\$0.00	\$4,500.00	\$4,500.00
Tanks	\$15,500.00	\$0.00	\$15,500.00	\$5,000.00
Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00

Our final look at the Northwest District lists the penalty dollars actually collected, the in-kind and pollution projects that were completed, and the percentage of assessed penalty dollars that were actually collected.

NWD—Collections--2018

Northwest District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	0%
Air (Excluding Asbestos)	\$0.00	\$38,500.00	\$40,887.00	94%
Beaches/Coastal	\$0.00	\$0.00	\$0.00	0%
Waste Cleanup	\$0.00	\$0.00	\$0.00	0%
Dredge & Fill²⁶	\$0.00	\$20,070.00	\$30,070.00	67%
Domestic Waste	\$0.00	\$40,000.00	\$79,247.75	50%
Hazardous Waste	\$0.00	\$0.00	\$0.00	0%
Industrial Waste	\$0.00	\$30,000.00	\$30,000.00	100%
Mangrove Alterations	\$0.00	\$0.00	\$0.00	0%
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	0%
Potable Water	\$0.00	\$0.00	\$1,500.00	0%
State Lands	\$0.00	\$0.00	\$0.00	100%
Stormwater Discharge	\$0.00	\$40,300.00	\$54,800.00	74%
Solid Waste	\$0.00	\$4,500.00	\$4,500.00	100%
Tanks	\$0.00	\$10,500.00	\$15,500.00	68%
Underground Injection Control	\$0.00	\$0.00	\$0.00	0%

2. Northeast District

The Northeast District's programs generally assessed penalties in a high rate of cases in which formal enforcement cases were opened. But this was not true across the board. There were low rates of penalty assessments in the beaches and coastal, potable water, solid waste and tanks programs.

²⁶ This includes Environmental Resource Permitting.

NED—Enforcement Cases and Assessments--2018

Northeast District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	1	100%
Air (Excluding Asbestos)	7	6	86%
Beaches/Coastal	6	3	50%
Waste Cleanup	1	1	100%
Dredge & Fill ²⁷	22	24	109%
Domestic Waste	17	15	88%
Hazardous Waste	5	4	80%
Industrial Waste	4	5	125%
Mangrove Alterations	1	1	100%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	2	1	50%
State Lands	0	0	N/A
Stormwater Discharge	0	0	N/A
Solid Waste	3	2	67%
Tanks	13	5	38%
Underground Injection Control	0	0	N/A

The median penalty assessments for each program are shown below.

NED--Assessments and Medians--2018

Northeast District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$500.00	\$0.00	\$500.00	\$500.00
Air (Excluding Asbestos)	\$22,000.00	\$0.00	\$22,000.00	\$4,000.00
Beaches/Coastal	\$32,000.00	\$0.00	\$32,000.00	\$7,000.00
Waste Cleanup	\$2,000.00	\$0.00	\$2,000.00	\$2,000.00
Dredge & Fill ²⁸	\$20,550.00	\$0.00	\$20,550.00	\$420.00
Domestic Waste	\$394,740.00	\$587,735.00	\$982,475.00	\$3,599.40
Hazardous Waste	\$19,983.50	\$3,674.00	\$23,657.50	\$4,955.00
Industrial Waste	\$14,200.00	\$0.00	\$14,200.00	\$2,000.00
Mangrove Alterations	\$3,200.00	\$0.00	\$3,200.00	\$3,200.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00
Potable Water	\$1,600.00	\$0.00	\$1,600.00	\$1,600.00
State Lands	\$0.00	\$0.00	\$0.00	\$0.00

²⁷ This includes Environmental Resource Permitting.

²⁸ This includes Environmental Resource Permitting.

Stormwater Discharge	\$0.00	\$0.00	\$0.00	\$0.00
Solid Waste	\$6,000.00	\$0.00	\$6,000.00	\$3,000.00
Tanks	\$5,000.00	\$0.00	\$5,000.00	\$500.00
Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00

Notable problems with the collection of civil penalties in this district were seen in the domestic waste and potable water programs, although low rates were also seen in the solid waste and tanks programs.

NED—Collections--2018

Northeast District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$500.00	\$500.00	100%
Air (Excluding Asbestos)	\$0.00	\$22,000.00	\$22,000.00	100%
Beaches/Coastal	\$0.00	\$31,000.00	\$32,000.00	97%
Waste Cleanup	\$0.00	\$0.00	\$2,000.00	0%
Dredge & Fill²⁹	\$0.00	\$17,630.00	\$20,550.00	86%
Domestic Waste	\$11,250.00	\$12,250.00	\$394,740.00	3%
Hazardous Waste	\$41,735.00	\$22,295.50	\$19,983.50	112%
Industrial Waste	\$1,500.00	\$14,300.00	\$14,200.00	101%
Mangrove Alterations	\$0.00	\$3,200.00	\$3,200.00	100%
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$0.00	\$1,600.00	0%
State Lands	\$0.00	\$0.00	\$0.00	N/A
Stormwater Discharge	\$0.00	\$0.00	\$0.00	N/A
Solid Waste	\$0.00	\$3,000.00	\$6,000.00	50%
Tanks	\$0.00	\$2,000.00	\$5,000.00	40%
Underground Injection Control	\$0.00	\$0.00	\$0.00	N/A

3. Central District

The Central District's programs assessed penalties in a reasonably high rate of cases in most programs, the exceptions being the air, potable water and tanks programs.

CD—Enforcement Cases and Assessments--2018

Central District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
--------------------------------------	---	---	---

²⁹ This includes Environmental Resource Permitting.

Asbestos	0	0	N/A
Air (Excluding Asbestos)	2	0	0%
Beaches/Coastal	0	0	N/A
Waste Cleanup	1	0	0%
Dredge & Fill³⁰	14	10	71%
Domestic Waste	9	4	44%
Hazardous Waste	2	2	100%
Industrial Waste	0	0	N/A
Mangrove Alterations	1	0	0%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	4	2	50%
State Lands	1	0	0%
Stormwater Discharge	4	4	100%
Solid Waste	1	1	100%
Tanks	4	0	0%
Underground Injection Control	0	0	N/A

The table below shows the penalty dollars assessed, the dollar value of in-kind and pollution prevention projects, and the median assessments (excluding in-kind and pollution prevention projects) for each program.

CD--Assessments and Medians--2018

Central District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	\$0.00
Beaches/Coastal	\$0.00	\$0.00	\$0.00	\$0.00
Waste Cleanup	\$0.00	\$0.00	\$0.00	\$0.00
Dredge & Fill³¹	\$28,989.00	\$0.00	\$28,989.00	\$2,410.00
Domestic Waste	\$63,184.00	\$94,776.00	\$157,960.00	\$14,992.50
Hazardous Waste	\$104,164.00	\$101,832.00	\$205,996.00	\$52,082.00
Industrial Waste	\$0.00	\$0.00	\$0.00	\$0.00
Mangrove Alterations	\$0.00	\$0.00	\$0.00	\$0.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00
Potable Water	\$2,625.00	\$0.00	\$2,625.00	\$1,312.50
State Lands	\$0.00	\$0.00	\$0.00	\$0.00
Stormwater Discharge	\$28,164.46	\$0.00	\$28,164.46	\$4,000.00
Solid Waste	\$3,500.00	\$0.00	\$3,500.00	\$3,500.00
Tanks	\$0.00	\$0.00	\$0.00	\$0.00

³⁰ This includes Environmental Resource Permitting.

³¹ This includes Environmental Resource Permitting.

Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00
--------------------------------------	--------	--------	--------	--------

Except for the potable water program, the district performed reasonably well in collecting the civil penalties that it assessed in each program.

CD—Collections--2018

Central District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	N/A
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	N/A
Beaches/Coastal	\$0.00	\$0.00	\$0.00	N/A
Waste Cleanup	\$0.00	\$0.00	\$0.00	N/A
Dredge & Fill³²	\$0.00	\$22,890.00	\$28,989.00	79%
Domestic Waste	\$0.00	\$0.00	\$63,184.00	0%
Hazardous Waste	\$20,550.00	\$0.00	\$104,164.00	0%
Industrial Waste	\$0.00	\$0.00	\$0.00	N/A
Mangrove Alterations	\$0.00	\$0.00	\$0.00	N/A
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$700.00	\$2,625.00	27%
State Lands	\$0.00	\$0.00	\$0.00	N/A
Stormwater Discharge	\$0.00	\$28,164.46	\$28,164.46	100%
Solid Waste	\$0.00	\$3,500.00	\$3,500.00	100%
Tanks	\$0.00	\$0.00	\$0.00	N/A
Underground Injection Control	\$0.00	\$0.00	\$0.00	N/A

4. Southeast District

The mangrove alteration program stands out as the program with the lowest rate of penalty assessments in the Southeast District. For example, the underground storage program had two only cases, though it did assess penalties in one of the two. Otherwise, the programs performed well in terms of assessing penalties in those cases in which enforcement actions were taken.

³² This includes Environmental Resource Permitting.

SED—Enforcement Cases and Assessments--2018

Southeast District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	0	N/A
Air (Excluding Asbestos)	0	0	N/A
Beaches/Coastal	1	1	100%
Waste Cleanup	0	0	N/A
Dredge & Fill³³	4	3	75%
Domestic Waste	2	1	50%
Hazardous Waste	12	11	92%
Industrial Waste	1	1	100%
Mangrove Alterations	7	2	29%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	2	2	100%
State Lands	0	0	N/A
Stormwater Discharge	1	1	100%
Solid Waste	0	0	N/A
Tanks	0	0	N/A
Underground Injection Control	2	1	50%

The median penalty assessments for the Southeast District are shown below.

SED--Assessments and Medians--2018

Southeast District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	\$0.00
Beaches/Coastal	\$2,000.00	\$0.00	\$2,000.00	\$2,000.00
Waste Cleanup	\$0.00	\$0.00	\$0.00	\$0.00
Dredge & Fill³⁴	\$920.00	\$0.00	\$920.00	\$250.00
Domestic Waste	\$10,000.00	\$29,692.50	\$39,692.50	\$10,000.00
Hazardous Waste	\$107,700.00	\$0.00	\$107,700.00	\$4,190.00
Industrial Waste	\$47,120.00	\$70,680.00	\$117,800.00	\$47,120.00
Mangrove Alterations	\$8,200.00	\$0.00	\$8,200.00	\$4,100.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00
Potable Water	\$1,600.00	\$0.00	\$1,600.00	\$800.00
State Lands	\$0.00	\$0.00	\$0.00	\$0.00

³³ This includes Environmental Resource Permitting.

³⁴ This includes Environmental Resource Permitting.

Stormwater Discharge	\$4,000.00	\$0.00	\$4,000.00	\$4,000.00
Solid Waste	\$0.00	\$0.00	\$0.00	\$0.00
Tanks	\$0.00	\$0.00	\$0.00	\$0.00
Underground Injection Control	\$500.00	\$0.00	\$500.00	\$500.00

Compared to the other districts, the Southeast District has respectable rates of collecting its civil penalty assessments in all the program areas. Collections in the mangrove alterations program did trail others in the district, and this program is also the lowest in terms of assessing civil penalties against violators.

SED—Collections--2018

Southeast District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	N/A
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	N/A
Beaches/Coastal	\$0.00	\$2,000.00	\$2,000.00	100%
Waste Cleanup	\$0.00	\$0.00	\$0.00	N/A
Dredge & Fill³⁵	\$0.00	\$6,340.00	\$920.00	689%
Domestic Waste	\$0.00	\$64,850.00	\$10,000.00	649%
Hazardous Waste	\$0.00	\$108,200.00	\$107,700.00	100%
Industrial Waste	\$0.00	\$0.00	\$47,120.00	0%
Mangrove Alterations	\$0.00	\$4,200.00	\$8,200.00	51%
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$1,600.00	\$1,600.00	100%
State Lands	\$0.00	\$0.00	\$0.00	N/A
Stormwater Discharge	\$0.00	\$4,000.00	\$4,000.00	100%
Solid Waste	\$0.00	\$0.00	\$0.00	N/A
Tanks	\$0.00	\$0.00	\$0.00	N/A
Underground Injection Control	\$0.00	\$500.00	\$500.00	100%

5. South District

The South District assessed penalties in a high rate of cases in the domestic waste, hazardous waste and mangrove alteration programs. The other side of the coin is that only 20% of the enforcement cases in potable water included a penalty assessment. Other low rates were found in the industrial waste, state lands and sold waste programs.

³⁵ This includes Environmental Resource Permitting.

SD—Enforcement Cases and Assessments--2018

South District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	0	N/A
Air (Excluding Asbestos)	0	0	N/A
Beaches/Coastal	1	0	0%
Waste Cleanup	0	0	N/A
Dredge & Fill ³⁶	39	29	74%
Domestic Waste	15	9	60%
Hazardous Waste	3	3	100%
Industrial Waste	2	1	50%
Mangrove Alterations	11	11	100%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	5	1	20%
State Lands	5	2	40%
Stormwater Discharge	0	0	N/A
Solid Waste	4	2	50%
Tanks	0	0	N/A
Underground Injection Control	0	0	N/A

The median penalty assessments for the programs in the South District are shown below, as are the total dollar value of penalty assessments and projects.

SD--Assessments and Medians--2018

South District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	\$0.00
Beaches/Coastal	\$0.00	\$0.00	\$0.00	\$0.00
Waste Cleanup	\$0.00	\$0.00	\$0.00	\$0.00
Dredge & Fill ³⁷	\$15,250.00	\$0.00	\$15,250.00	\$420.00
Domestic Waste	\$68,105.69	\$171,038.12	\$239,143.81	\$6,500.00
Hazardous Waste	\$8,980.00	\$0.00	\$8,980.00	\$2,580.00
Industrial Waste	\$1,280.33	\$0.00	\$1,280.33	\$1,280.33
Mangrove Alterations	\$21,580.00	\$0.00	\$21,580.00	\$830.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00
Potable Water	\$9,000.00	\$0.00	\$9,000.00	\$9,000.00

³⁶ This includes Environmental Resource Permitting.

³⁷ This includes Environmental Resource Permitting.

State Lands	\$840.00	\$0.00	\$840.00	\$420.00
Stormwater Discharge	\$0.00	\$0.00	\$0.00	\$0.00
Solid Waste	\$12,400.00	\$0.00	\$12,400.00	\$6,200.00
Tanks	\$0.00	\$0.00	\$0.00	\$0.00
Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00

While the South District did quite well in collecting many of its assessed penalties, most notably in the dredge and fill, hazardous waste and industrial waste programs, there were glaring issues in the domestic wastewater program. This program collected only 14% of its penalty assessments in 2018.

SD—Collections--2018

South District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	N/A
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	N/A
Beaches/Coastal	\$0.00	\$0.00	\$0.00	N/A
Waste Cleanup	\$0.00	\$0.00	\$0.00	N/A
Dredge & Fill³⁸	\$0.00	\$18,232.06	\$15,250.00	120%
Domestic Waste	\$48,277.88	\$9,375.00	\$68,105.69	14%
Hazardous Waste	\$0.00	\$8,980.00	\$8,980.00	100%
Industrial Waste	\$0.00	\$3,280.33	\$1,280.33	256%
Mangrove Alterations	\$0.00	\$21,500.00	\$21,580.00	100%
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$9,000.00	\$9,000.00	100%
State Lands	\$0.00	\$420.00	\$840.00	50%
Stormwater Discharge	\$0.00	\$0.00	\$0.00	N/A
Solid Waste	\$0.00	\$14,400.00	\$12,400.00	116%
Tanks	\$0.00	\$0.00	\$0.00	N/A
Underground Injection Control	\$0.00	\$0.00	\$0.00	N/A

6. Southwest District

The Southwest District's programs generally assessed penalties in a high rate of cases when formal enforcement cases were opened. However, there were significantly low rates in the dredge and fill, tanks, industrial waste and solid waste programs. On the bright side, penalties were assessed in all the cases involving stormwater, mangrove alteration and potable water violations.

³⁸ This includes Environmental Resource Permitting.

SWD—Enforcement Cases and Assessments--2018

Southwest District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	0	N/A
Air (Excluding Asbestos)	6	5	83%
Beaches/Coastal	0	0	N/A
Waste Cleanup	4	1	25%
Dredge & Fill ³⁹	5	2	40%
Domestic Waste	27	18	67%
Hazardous Waste	11	10	91%
Industrial Waste	4	2	50%
Mangrove Alterations	1	1	100%
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	1	1	100%
State Lands	3	0	0%
Stormwater Discharge	2	2	100%
Solid Waste	4	2	50%
Tanks	4	1	25%
Underground Injection Control	0	0	N/A

The penalty dollars assessed, the dollar value of in-kind and pollution prevention projects, and the median assessments (excluding in-kind and pollution prevention projects) are shown in the table below.

SWD--Assessments and Medians--2018

Southwest District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$13,250.00	\$0.00	\$13,250.00	\$2,250.00
Beaches/Coastal	\$0.00	\$0.00	\$0.00	\$0.00
Waste Cleanup	\$500.00	\$0.00	\$500.00	\$500.00
Dredge & Fill ⁴⁰	\$3,000.00	\$0.00	\$3,000.00	\$1,500.00
Domestic Waste	\$150,579.83	\$236,638.47	387,218.30	\$7,000.00
Hazardous Waste	\$134,680.00	\$63,219.00	\$197,899.00	\$8,985.00
Industrial Waste	\$10,500.00	\$0.00	\$10,500.00	\$5,250.00
Mangrove Alterations	\$1,500.00	\$0.00	\$1,500.00	\$1,500.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00

³⁹ This includes Environmental Resource Permitting.

⁴⁰ This includes Environmental Resource Permitting.

Potable Water	\$2,000.00	\$0.00	\$2,000.00	\$2,000.00
State Lands	\$0.00	\$0.00	\$0.00	\$0.00
Stormwater Discharge	\$10,400.00	\$0.00	\$10,400.00	\$5,200.00
Solid Waste	\$5,500.00	\$0.00	\$5,500.00	\$2,750.00
Tanks	\$2,000.00	\$0.00	\$2,000.00	\$2,000.00
Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00

Collections in the Southwest District were generally strong. The hazardous waste and dredge & fill programs collected 65 and 67 percent of their assessments respectively. Collections in the domestic wastewater program were quite low, however, at 37%.

SWD—Collections--2018

Southwest District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	N/A
Air (Excluding Asbestos)	\$0.00	\$13,250.00	\$13,250.00	100%
Beaches/Coastal	\$0.00	\$0.00	\$0.00	N/A
Waste Cleanup	\$0.00	\$0.00	\$500.00	0%
Dredge & Fill⁴¹	\$0.00	\$2,000.00	\$3,000.00	67%
Domestic Waste	\$62,613.75	\$56,242.83	\$150,579.83	37%
Hazardous Waste	\$23,100.00	\$86,904.00	\$134,680.00	65%
Industrial Waste	\$0.00	\$10,500.00	\$10,500.00	100%
Mangrove Alterations	\$0.00	\$1,500.00	\$1,500.00	100%
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$2,000.00	\$2,000.00	100%
State Lands	\$0.00	\$0.00	\$0.00	N/A
Stormwater Discharge	\$0.00	\$10,400.00	\$10,400.00	100%
Solid Waste	\$0.00	\$6,500.00	\$5,500.00	118%
Tanks	\$0.00	\$54,206.05	\$2,000.00	2710%
Underground Injection Control	\$0.00	\$0.00	\$0.00	N/A

7. Multi-District Category

The Department's headquarters in Tallahassee handles some cases, most of them being stormwater discharge cases associated with the National Pollutant Discharge Elimination (NPDES) Program, a federally delegated program. Other types of cases, such as the beaches and coastal systems program and mining cases are also typically handled out of Tallahassee. The cases that are not handled directly by the districts are cumulatively referred to as the "Multi-

⁴¹ This includes Environmental Resource Permitting.

District” category. This category assessed civil penalties in all of the stormwater cases that it opened and half of the beaches and coastal systems cases for which it was responsible.

Multi-District—Enforcement Cases and Assessments--2018

Multi-District Program Area	Total No. of Enforcement Cases--2018	Total No. of Assessments in 2018	% of Cases Resulting in Civil Penalty Assessment--2018
Asbestos	0	0	N/A
Air (Excluding Asbestos)	0	0	N/A
Beaches/Coastal	2	1	50%
Waste Cleanup	0	0	N/A
Dredge & Fill⁴²	0	0	N/A
Domestic Waste	0	0	N/A
Hazardous Waste	0	0	N/A
Industrial Waste	0	0	N/A
Mangrove Alterations	0	0	N/A
Mining/Phospho-Gypsum	0	0	N/A
Potable Water	0	0	N/A
State Lands	0	0	N/A
Stormwater Discharge	2	2	100%
Solid Waste	0	0	N/A
Tanks	0	0	N/A
Underground Injection Control	0	0	N/A

The median assessments shown below are based upon a total of only 2 stormwater cases and 2 beaches and coastal systems cases. Therefore, they are not terribly representative of the programs as a whole from a statistical standpoint.

Multi-District—Assessments and Medians--2018

Multi-District Program Area	Total Penalty Dollars Assessed	Total Dollar Value of In-Kind/P2 Projects	Combined Penalty, In-Kind and P2 Assessments	Medians (Based on Penalties Only)
Asbestos	\$0.00	\$0.00	\$0.00	\$0.00
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	\$0.00
Beaches/Coastal	\$2,500.00	\$0.00	\$2,500.00	\$2,500.00
Waste Cleanup	\$0.00	\$0.00	\$0.00	\$0.00
Dredge & Fill⁴³	\$0.00	\$0.00	\$0.00	\$0.00
Domestic Waste	\$0.00	\$0.00	\$0.00	\$0.00
Hazardous Waste	\$0.00	\$0.00	\$0.00	\$0.00

⁴² This includes Environmental Resource Permitting.

⁴³ This includes Environmental Resource Permitting.

Industrial Waste	\$0.00	\$0.00	\$0.00	\$0.00
Mangrove Alterations	\$0.00	\$0.00	\$0.00	\$0.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	\$0.00
Potable Water	\$0.00	\$0.00	\$0.00	\$0.00
State Lands	\$0.00	\$0.00	\$0.00	\$0.00
Stormwater Discharge	\$586.00	\$0.00	\$586.00	\$293.00
Solid Waste	\$0.00	\$0.00	\$0.00	\$0.00
Tanks	\$0.00	\$0.00	\$0.00	\$0.00
Underground Injection Control	\$0.00	\$0.00	\$0.00	\$0.00

In 2018, all the penalties assessed in this category were collected.

Multi-District—Collections--2018

Multi-District Program Area	Value of In-Kind and P/2 Projects Completed	Penalty Dollars Collected	Total Penalty Dollars Assessed	% of Assessed Penalties Actually Collected
Asbestos	\$0.00	\$0.00	\$0.00	N/A
Air (Excluding Asbestos)	\$0.00	\$0.00	\$0.00	N/A
Beaches/Coastal	\$0.00	\$3,000.00	\$2,500.00	120%
Waste Cleanup	\$0.00	\$0.00	\$0.00	N/A
Dredge & Fill⁴⁴	\$0.00	\$0.00	\$0.00	N/A
Domestic Waste	\$0.00	\$0.00	\$0.00	N/A
Hazardous Waste	\$0.00	\$0.00	\$0.00	N/A
Industrial Waste	\$0.00	\$0.00	\$0.00	N/A
Mangrove Alterations	\$0.00	\$0.00	\$0.00	N/A
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$0.00	N/A
Potable Water	\$0.00	\$0.00	\$0.00	N/A
State Lands	\$0.00	\$0.00	\$0.00	N/A
Stormwater Discharge	\$0.00	\$586.00	\$586.00	100%
Solid Waste	\$0.00	\$0.00	\$0.00	N/A
Tanks	\$0.00	\$0.00	\$0.00	N/A
Underground Injection Control	\$0.00	\$0.00	\$0.00	N/A

⁴⁴ This includes Environmental Resource Permitting.

CONCLUSION

2018 was the year that stopped what was fast becoming the relegation of enforcement at the FDEP to little more than an afterthought. It remains to be seen whether the positive results in 2018 were an anomaly or whether they ultimately signal the beginning of a genuine turnaround. If past is prologue it would be a foolish mistake to assume that we are witnessing a true, lasting uptick in enforcement.

This is the first time that we have been able to report on the compliance rates within the FDEP and compare them with the rates of enforcement within each program. That comparison is sobering, because it shows us that even with better enforcement numbers the fact is that permittees face very few significant repercussions if they violate the terms of their permits. For too long the FDEP has lied to the public and the press when it claimed that compliance was at an all-time high under the Scott administration. When the compliance records were finally revealed, however, we learned that the FDEP had no data upon which to base those claims, and that the agency's data showed compliance rates that were roughly 25% lower than claimed. Some programs such as the potable water and domestic waste programs had the lowest compliance rates, even though those programs have significant impacts to both the environment and the public's health. In addition, we learned that the overall number of inspections continues to drop throughout the Department.

The key to reversing the disastrous eight years of former Governor Scott's administration of the FDEP will, we suspect, hinge on two fundamental things. First, Governor DeSantis will obviously set the tone for how the FDEP administers the numerous programs over which it has authority. If the governor is serious about wanting to protect Florida's environment, then one of the most significant ways to realize that policy will be to allow the FDEP to do its job, including the realistic enforcement of Florida's environmental laws. While he began his term stressing that he wanted to be a [staunch defender and protector of Florida's environment](#), what we have witnessed lately is a decision to [sign](#) a highway bill that is generally seen as one of the worst environmental bills in over 40 years. Over time the real Governor DeSantis will be revealed to Floridians. The question is what we'll see.

The second impediment to a durable reversal of former Governor Scott's policies is the management structure within the FDEP. While Scott and his administration were responsible for setting the overall tone of the FDEP's approach towards environmental protection, the fact remains that it was the FDEP management that put those policies in place and saw to it that they were carried out. Those policies were disastrous for Florida's environment, and they were also disastrous for the rank and file employees who work at the FDEP. All too often the employees were placed in positions of knowing what steps they should take to enforce the law, only to have to forego those steps if they wanted to keep their jobs. Neither the environment nor the public benefit in that setting, and Governor DeSantis would go a long way towards setting the FDEP on a better course if he ordered, and conducted, an honest and full review of the management structure within the FDEP and replaced those managers who were willing participants in the prior administration's efforts to avoid protecting Florida's environment.

In our last enforcement report we stated that, "[i]n the final analysis, it continues to be the case that polluters have little to fear by breaking Florida's environmental laws. It is the rare case that is prosecuted nowadays, and most polluters can unfortunately be assured that they will not be penalized, unless they happen to have a token case that can be used by the Department as an

example of their “tough on polluters” policy.” While 2018 thankfully saw some improvements that suggest more of a willingness to enforce Florida’s environmental laws, it is still early in the DeSantis administration. Consequently, it remains to be seen whether these improvements, welcome as they are, will be continued and improved upon, or abandoned once the new administration feels that little is to be feared by reverting to the old posture of wholesale appeasement of businesses and municipalities in Florida.

APPENDIX

ENFORCEMENT HISTORICAL OVERVIEW

FDEP has long used an approach to enforcement that included a strong emphasis on the use of civil litigation in the state's circuit courts. This approach provided the FDEP with the ability to seek hefty civil penalty assessments against violators, while simultaneously sending a message to the community that environmental violations would not be taken lightly. The filing of such lawsuits was initiated by the filing of case reports that originated in the district offices and went to the FDEP's Office of General Counsel (OGC). OGC would then evaluate such cases and decide upon the appropriate course of action. Often, OGC would file a circuit court case. However, in the late 1990s, the filing of lawsuits lost favor politically. The result was a consistent decrease in the number of civil circuit court filings each year. Consequently, the OGC has often elected to issue a Notice of Violation, or to embark upon negotiations to resolve a case through entry of a consent order.

In January 2011, the Scott Administration took over the Department through its new Secretary, Herschel Vinyard. Vinyard revised the agency's *Enforcement Manual* to include the use of what is known as *compliance assistance offers* as a means of settling enforcement cases. These offers enable the violator to avoid formal enforcement if the violator does one of three things: (1) tells the Department what the violator has done to resolve the violation, (2) provides information to show the FDEP that the violation either didn't exist or wasn't that serious (a largely subjective determination), or (3) arranges for a Department inspector to visit the facility and show the violator how to return to compliance. If a compliance assistance offer is used the ultimate result is that there is no formal enforcement. The matter is resolved and the file closed.

The use of a compliance assistance offer does more than just resolve the immediate case, however. By using this mechanism and thereby avoiding the execution of a consent order to resolve the case the violator is also protected in the event of future violations. The protection is furnished for future administrative actions involving the violator because under Florida law the Department is only allowed to increase civil penalties in cases involving subsequent violations if the prior violations resulted in the entry of a consent order. The limitation upon the Department's enforcement options arises in these cases since no consent order is issued when a compliance assistance offer is issued—it is as if the violator has no history of violations. In such cases the only arguable approach that the Department can take is thus foregoing administrative actions and resorting to the more severe route of circuit court action.

Historically, the FDEP's next strongest enforcement tool has been the issuance of Notices of Violation (NOVs). NOVs are also initiated in the district offices and are filed by the OGC. Once filed they are similar to circuit court lawsuits, though they are brought before an administrative law judge (ALJ) at the Division of Administrative Hearings. Until 2001, ALJs were unable to levy civil penalties in these cases. Thus, the NOVs were used by the Department to bring about direct environmental improvements—both long and short term. After implementation of legislation in 2001, the FDEP was authorized to seek civil penalty assessments via the issuance of NOVs and the ALJs were given statutory authority to impose

assessments where warranted. This change in law stopped what had been a general decline in the issuance of NOVs. 2002 saw the first dramatic increase in their usage.

Historically, the most frequently used enforcement tool has, without question, been the use of consent orders, both long-form and short-form. Consent orders (COs) are negotiated agreements between the FDEP and the violator wherein the violator agrees to undertake certain actions to reverse environmental damage caused by the violator's actions. In addition, COs most often require the payment of civil penalties. Consent orders typically take the following form:

- Long-form COs are used to require corrective actions on the part of the violator, as well as to require increased monitoring of the violator's future activities. They also typically require the payment of civil penalties.
- Model COs are essentially long-form COs that have been pre-approved by the OGC, thus allowing the individual districts to issue the Model CO without prior consultation with the OGC. They also provide for the assessment of civil penalties.
- Short-form COs are, according to the FDEP "Enforcement Manual" to be used only in those cases in which the violations have ceased and no further follow-up is required by the Department. Thus, these COs only require the payment of civil penalties.

Historically, the FDEP relied heavily upon long-form COs and Model COs in its enforcement cases. Thus, there was a demonstrable and measurable showing of its efforts to not only require environmental remediation, but to also require increased monitoring of known violators. However, as was pointed out in [Florida PEER's 2007 report](#) on the FDEP's history over the past 20 years, the use of long-form COs began waning in the 1990s. There was also a sharp increase in the number of Short-form COs.

The Department also tracks the number of final orders that it issues each year. These are administrative orders akin to the final orders issued by judges in state circuit courts. These final orders are binding upon the Department and the violators. They are enforceable in circuit court.