



Florida

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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 2020

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 2020. The information provided herein was derived 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.

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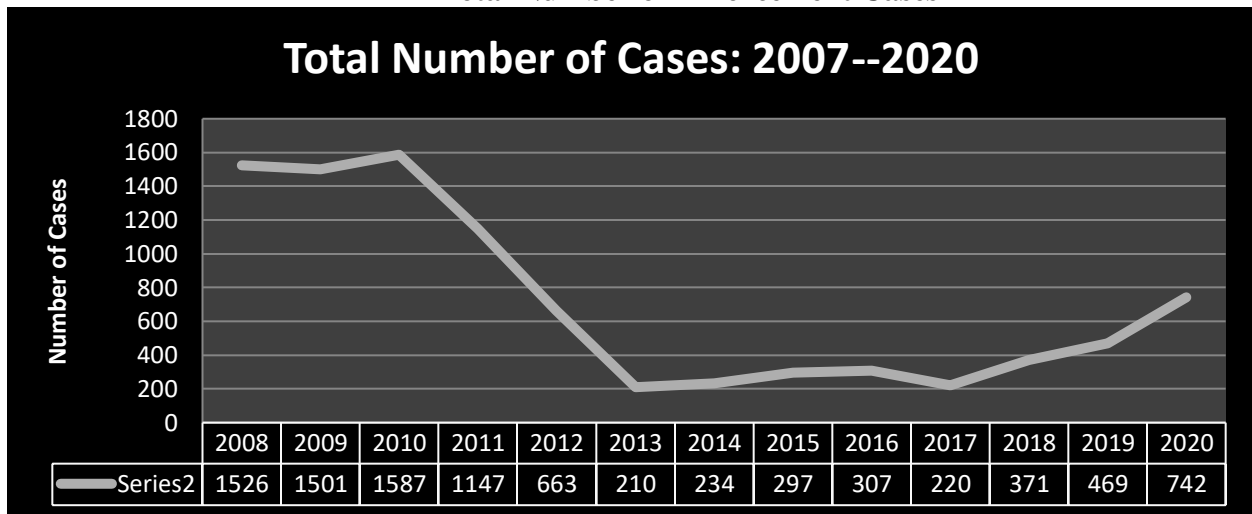
EXECUTIVE SUMMARY

A. Statewide Results

This is the third consecutive year in which we have been able to report on both the FDEP's enforcement program and the compliance data associated with that program. This allows for a more holistic review of the agency's performance because the compliance data allows us to evaluate how the agency responds to inspections that show regulated entities to be functioning out of compliance. The data from 2020 confirm that last year there was a significant increase in both the number of new cases opened and the total penalty dollars assessed. There was also a significant 13% increase in the rate of enforcement, i.e., the percentage of cases in which the FDEP initiated formal enforcement when it identified violations. However, it also continues to show that, despite the increases, the agency has a long way to go before Floridians can be assured that it will actually take environmental protection seriously.

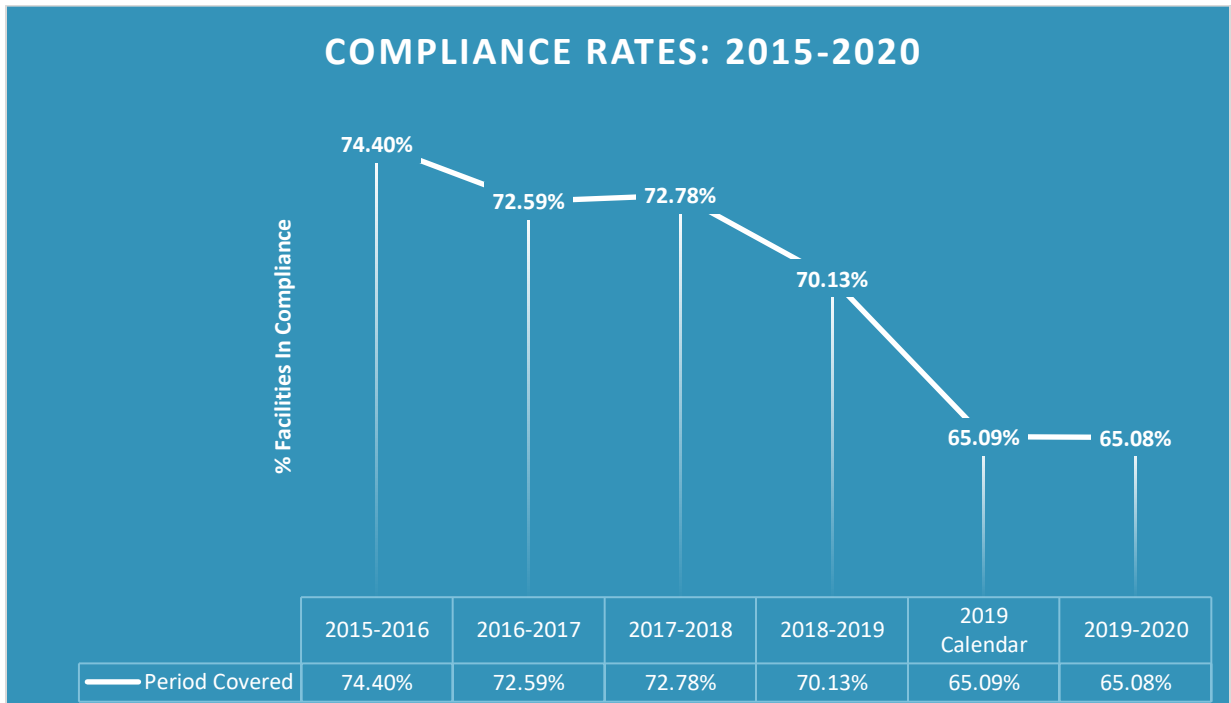
742 new cases were opened in 2020, compared to 469 cases in 2019, and 371 new cases opened in 2018. To be sure, the result is encouraging; however, 2020's performance is still 47% lower than the 1,587 cases that were opened a decade ago, in 2010. The graph below shows the number of new enforcement cases opened for the years from 2007 through 2020.

FDEP—Total Number of Enforcement Cases



The total number of cases does not tell the whole story concerning the agency's enforcement performance. **While the number of cases rose, we also found that the number of inspections conducted by the FDEP actually fell, as did the number of facilities found to be**

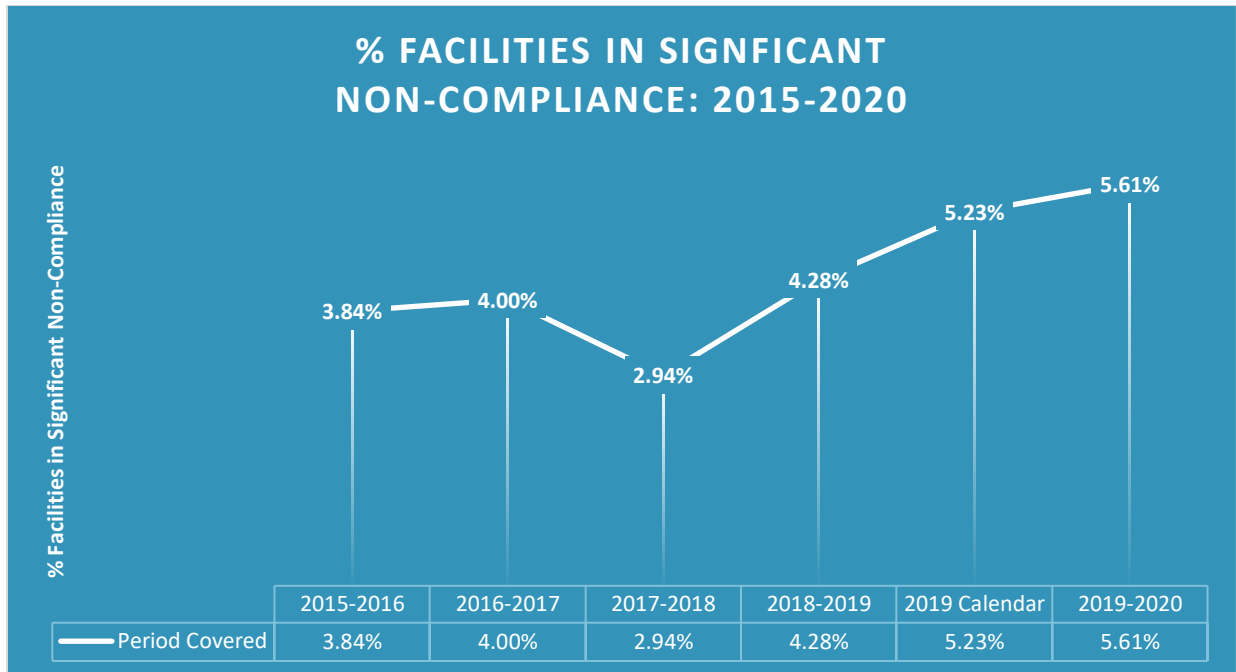
in compliance.¹ 2,887 facilities were found to be in non-compliance,² leading to an overall compliance rate of 65.08%, essentially the same as we found in 2019.



We also found that the percentage of facilities that the inspectors concluded were in significant non-compliance (SNC) with the FDEP’s environmental rules rose over the last 12-month period. 5.61% of the facilities that were inspected and rated were found to be in SNC. The following graph shows the steady increase in this metric over the past 4 years.

¹ It should be noted that the compliance data typically provided by the FDEP has not been on a calendar year basis, but rather on a fiscal year that ends on June 30th of each year. We have tried to account for this discrepancy to the extent possible in our evaluation of the compliance data. Regardless, at the end of the day the data is useful in showing overall trends concerning compliance rates in the state.

² We suspect that this number is actually low, because in some situations, predominately in dredge and fill cases and state lands cases, inspectors gave no rating after their inspections. If those inspections are not considered, the percentage of facilities in non-compliance rose from 34.92% to 37.37% and the percentage of facilities in SNC rose from 5.61% to 6.01%.



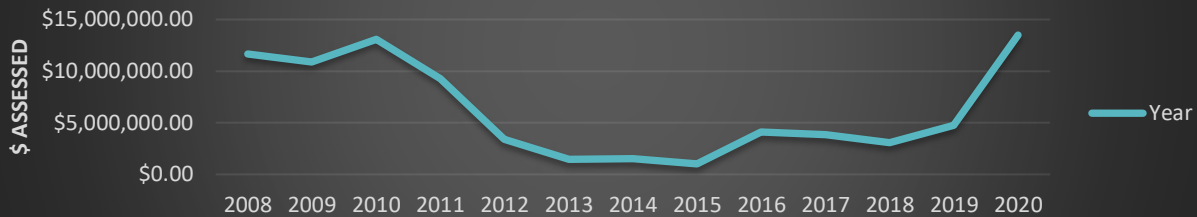
Overall, it would appear that the increase in the number of enforcement cases can be attributed to the drop in compliance seen in 2020.

The increase in the penalty dollars assessed rose dramatically in 2020. The agency assessed, \$6,168,791.94 last year, compared to \$2,811,615.43 in 2019. The dramatic rise in total penalty assessments does not, however, mean that assessments were uniformly increased. Over 50% of the \$6,168,791.94 in assessments were attributed to just 5 cases. The penalty assessments in those 8 cases totaled \$3,227,633.90. Moreover, the median penalty assessments across all program areas fell from \$2,500.00 in 2019 to \$2,000.00 in 2020.

The decline in the value of median penalty assessments was accompanied by a sharp increase in the number and percentage of short-form consent orders, i.e., enforcement cases that were resolved simply with the payment of a penalty and no additional FDEP oversight. This is the 5th straight year that the number of short-form consent orders has increased. At the same time, the number and percentage of long-form consent orders (which require increased oversight) fell in 2020. The Department did, however, more than double the number of new administrative petitions that were filed with the Department of Administrative Hearings.

As with the increased number of new enforcement cases, there was also an increase in the number of cases in which civil penalties were assessed. When considering just the number of cases in which penalty assessments were made (as opposed to looking at a combination of penalties, in-kind and pollution-prevention assessments) the FDEP assessed penalties in 88% of its cases, a 6% improvement over 2019, and equal to the percentage of assessments in 2018. There were 651 penalty assessments in 2020. They resulted in penalty assessments totaling \$6,168,791.94 and a combined in-kind and pollution-prevention assessment of \$7,324,203.23. The combined total, therefore, was \$13,492,995.17, a substantial gain over 2019's \$4,770,043.35.

FDEP Combined Total Assessments--Penalties, In-Kind & P2: 2008-2020



However, the increase in penalties did **not** mean that the assessments were harsher. When including all types of assessments, i.e., penalties, in-kind and pollution-prevention assessments, the median for the Department as a whole fell from \$3,000 in 2019, to \$2,500 in 2020.³ This is the third straight year in which medians have fallen.

An explanation for the drop in medians can be found in the number of high-assessment cases. As noted above, over 50% of the \$6,168,791.94 in assessments were attributed to just 5 cases. The penalty assessments in those 5 cases totaled \$3,126,582.36. The Department had three assessments that exceeded \$100,000 in 2019, and 2018 had only one.

The five assessments (including only penalty dollars and not including in-kind and pollution-prevention assessments) were:

- \$100,000.00 was assessed against *Automated Petroleum and Energy Co., Inc.* in an underground storage tanks case that arose in the Southwest District.
- \$112,974.00 was assessed against *Southeastern Grocers, Inc.* by the Southeast District in a hazardous waste case.
- \$136,000.00 was assessed against the *City of Bradenton* by the Southwest District in a domestic wastewater case.
- \$136,531.36 was assessed against *Charlotte County Utilities* by the South District. This was a domestic wastewater case.
- \$190,000.00 was assessed by the Northwest District Office against the *International Paper Company* in a combined industrial wastewater and domestic wastewater case.
- \$2,451,077.00 was assessed against the *City of Fort Lauderdale* in a domestic wastewater case. The Southeast District Office brought the case.

The FDEP also collected more penalty dollars in 2020. This is to be expected, given the increase in the number and volume of penalty assessments. Total penalty collections were \$2,196,972.42, compared to a total collection of \$1,227,530.76 in 2019. While this would appear to be a positive result, we found that the actual percentage of penalty dollars collected fell to 35.61% in 2020. This is an 8.05% decline from the performance in 2019, and it marks the third straight year in which the percentage of penalty dollars collected has fallen.

³ When looking at just penalty assessments, there was also a decline, from \$2,500 in 2019, to \$2,000 in 2020.

Looking at the number of inspections, conducted by the FDEP on a program-by-program basis, we found that the number of inspections fell in every major program, except for beaches and coastal systems, which saw a modest increase. Most alarming was a decrease in the number of inspections in the dredge and fill, domestic wastewater, and potable water programs. The potable water program only performed 185 inspections for the period, down from 785 the year before.

The overall compliance rate among all the programs fell from 64% in 2019 to 59% in 2020. The percentage of facilities found to be in significant noncompliance rose just of 0.5% in 2020. That said, it is also clear that most of the violations (29%) were deemed by the agency to be minor. We continued to find that the domestic wastewater and potable water programs had the lowest overall compliance rate. This was the same situation as in 2019. The percentage of domestic wastewater facilities found to be complying fell from 37% in 2019 to 34% in 2020, while the percentage found to be in significant noncompliance rose by 1%. The situation was no better in the potable water program where only 36% were found to be complying, compared to 43% in 2019. The number of potable water facilities in significant noncompliance rose just over 1%. Compliance rates also fell sharply in the dredge and fill, hazardous waste and solid waste programs. The beaches and coastal systems program once again reported that roughly 100% of its inspections found no violations, the highest in the state of all the programs.

Given the significant issues in the phospho-gypsum program we looked at those numbers. What we found were that there was no data supplied to us that showed that any inspections were conducted on phospho-gypsum facilities in 2020. Among the mining facilities, 96% were listed as being in compliance with their permits.

Of the major programs, we found that the mining program had the lowest enforcement rate in 2020. No cases were brought in this program. The underground injection program was the next lowest with a 7% enforcement rate, followed closely behind by the domestic wastewater program, in which only 8% of the violations saw formal enforcement. The one bright spot was in the potable water program, which saw enforcement in 40% of its cases, a sharp increase from 2019. That said, except for the mining program, all three of the above-mentioned programs in which violations were found saw lower median penalty assessments than they had in 2019.

Another area that we reviewed was sewage overflows. In 2020, we tracked sewage overflows for 12 of Florida's 67 counties. What we found was staggering, in that in these 12 counties alone, there were 856 reported unpermitted discharges of wastewater, totaling 126,302,622 gallons. Of that, the reported gallons recovered were just 25,627,210. Of the more than 126 million gallons illegally discharged, 109,966,487 were discharged in waterbodies throughout Florida.

B. District Results

Every district conducted fewer inspections in 2020 than it did the year before. The Central District overall number of inspections (944). The most inspections were conducted by

the South District. That district had 1,831 inspections, followed by the Southeast District with 1,375.

The Central District also had the lowest overall compliance rate, with inspections showing that only 49% of the facilities inspected were in compliance. On the opposite end, the Southeast District lead the state with inspectors finding that 78% of their facilities were in compliance. The South District reported the highest percentage (11%) of facilities that were in significant noncompliance, and the Northwest District had the lowest rate (just less than 4%) of significant noncompliance.

All the districts opened a higher number of enforcement cases in 2020 than they did in the previous year. The results for the Northeast, Central and Southwest Districts are the best since 2012, while the South District's results are the best since 2011. Remarkably, the Northwest District took enforcement in 96% of its cases in which noncompliance was found, while the South District took enforcement in only 20% of its cases. The remaining districts took enforcement in a range of 29% to 34% of their cases.

In terms of the types of enforcement used by the districts, the South District used long-form consent orders to settle their cases at a far higher rate (82%) than the rest, followed by the Northeast District, which used this mechanism in 44% of its cases. On the opposite end, the Northwest District settled 69% of its cases with the use of short-form consent orders, and the South District used short-form consent orders the least (15%). The results from the South District are interesting inasmuch as its inspectors found the highest percentage of facilities in significant noncompliance when compared to the rest of the state, thus, the high use of long-form consent orders is a welcomed sign.

The number of times in which the districts included penalty assessments in their formal enforcement cases varied, but unlike 2019, 80% or more of the cases saw penalties being assessed in every district. The highest rate was in the Northeast District (98%), which was closely followed by the Southwest District (90%). The South District, which took enforcement the least, also assessed penalties at the lowest rate, yet still respectable 80%. In terms of pure penalty dollar assessments, the Southeast District lead the state with \$3,061,506.16; however, \$2.5 million of that total was the result of one wastewater case against Fort Lauderdale. Once again, the South District's total penalty assessments were \$370,736.36, the lowest total of all the districts. Even when in-kind and pollution prevention projects are added into the totals, the South District had the lowest overall total in the state.

The median value of assessments tells us the harshness of the civil penalties that were imposed. In that regard, the medians in the Southeast District were the highest by far, at \$6,750.00, followed closely by the Southwest District (\$6,500.00), while the lowest median penalties came out of the South District--\$500.00. The Northwest and Central Districts were the only 2 districts in the state to show lower median payment averages in 2020, than they did in 2019.

The collection of civil penalty dollars is also a parameter that we track. In 2020, just as in 2019, the Central District collected the highest percentage of its civil penalty assessments when compared to the remaining districts. Its rate was 85%, lower than 2019, but still healthy. By

contrast, the Southeast District, which assessed the highest dollar amount of penalties, also collected the lowest, a meager 6%.

STATEWIDE ENFORCEMENT RESULTS⁴

A. Compliance and Inspection Considerations

The fundamental question in evaluating the success that regulatory agencies have in fulfilling their mission is the extent to which the regulated public is complying with their legal requirements. It is for that reason that we wanted data showing the number of inspections conducted by the FDEP and the extent to which the inspections documented the compliance status of its permittees. Consequently, the agency's provision of that data dating back to 2015, while less than perfect, has now enabled the public to determine both the current status of compliance and the extent to which this metric is improving or worsening.

We reported in [last year's report](#) that, except for 2019, the FDEP was generally inspecting fewer facilities each year. While the number of inspections increased significantly in 2019, what the inspectors found was that fewer of the facilities were complying with their permits. The low compliance rate was hardly a surprise, given the historical trend showing an agency that was increasingly taking a hands-off approach to regulation.

Given Governor DeSantis' rhetoric, we expected that 2020 would show a continued increase in inspections. This did not happen. Instead, the number of inspections dropped in 2020, to a total of 8,267—down from 10,812 in 2019.

There is one anomaly in the data, however. The agency maintains and produces its compliance data on a fiscal, rather than calendar basis. In 2020, the FDEP produced all the data for calendar year 2019, excluding data from 2018. This year, however, the FDEP produced the 2020 data based upon a fiscal year. Though it is difficult to see how the results for 2019 could have been impacted so heavily, it is noteworthy that the 2020 results are more in line with the results from 2015 through 2018 fiscal years. That said, one other issue that may well have impacted the number of inspections was the Covid-19 pandemic that was prevalent in 2020. Consequently, the drop in the number of inspections may be a single-year factor.

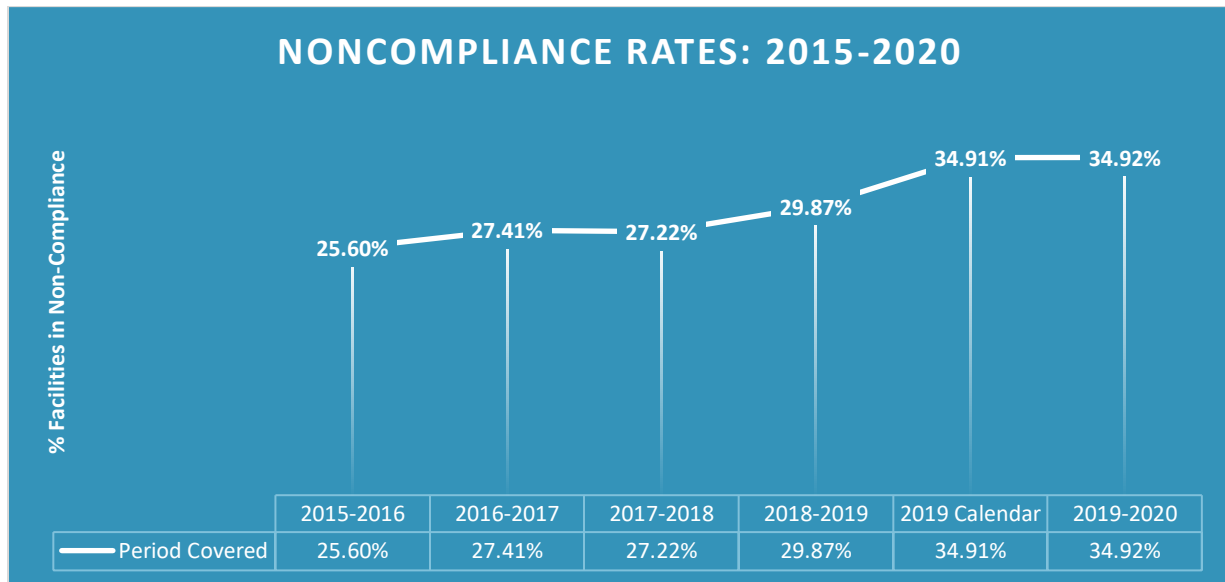
Regardless, based upon the data provided by the FDEP, there was no improvement in the compliance rate in 2020. The current rate stands at 65.08%, compared to 65.09% in 2019.

⁴ The FDEP's prior performance from a historical perspective 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.

Inspections and Compliance Rates

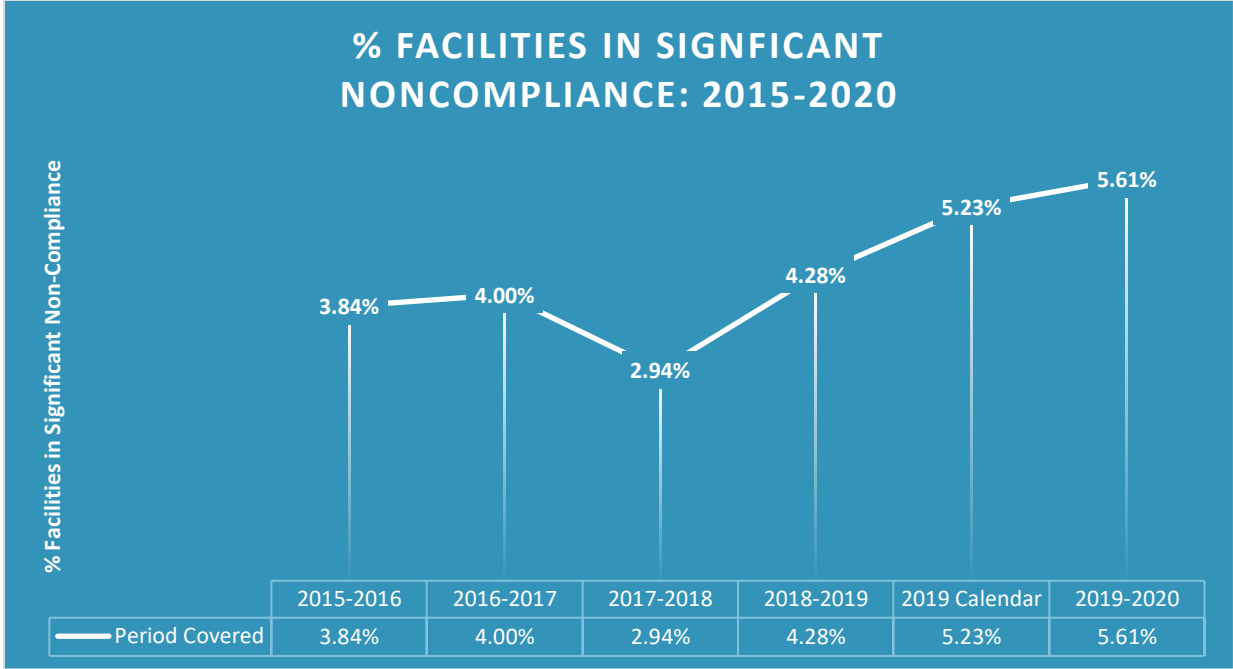
<i>Fiscal Year and Calendar Year</i>	<i>Total Number of Inspections</i>	<i>% Compliance Rate⁵</i>
2015/2016	8,519	74.40
2016/2017	8,303	72.59
2017/2018	8,431	72.78
2018/2019	7694	70.13
2019	10,812	65.09
2019/2020	8267	65.08

If we look at the data from the perspective of noncompliance, the rates are as follows:

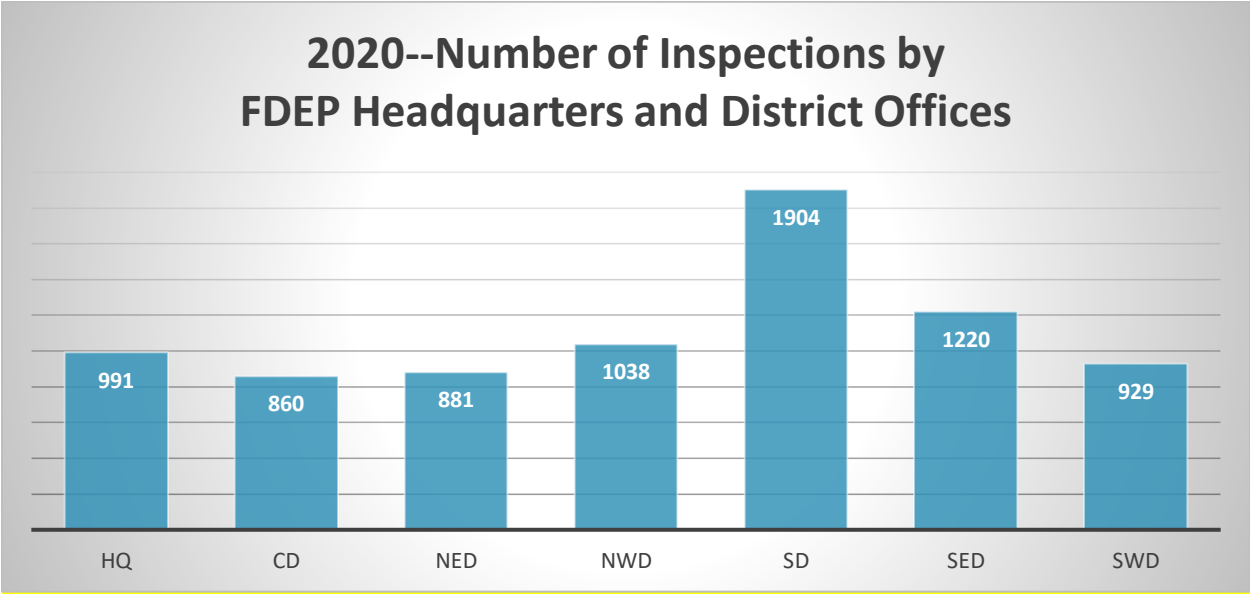


Further, the number of facilities that the inspectors found to be in major, i.e., significant, non-compliance actually rose to 5.61% in 2020, up from 5.23% in the previous year.

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



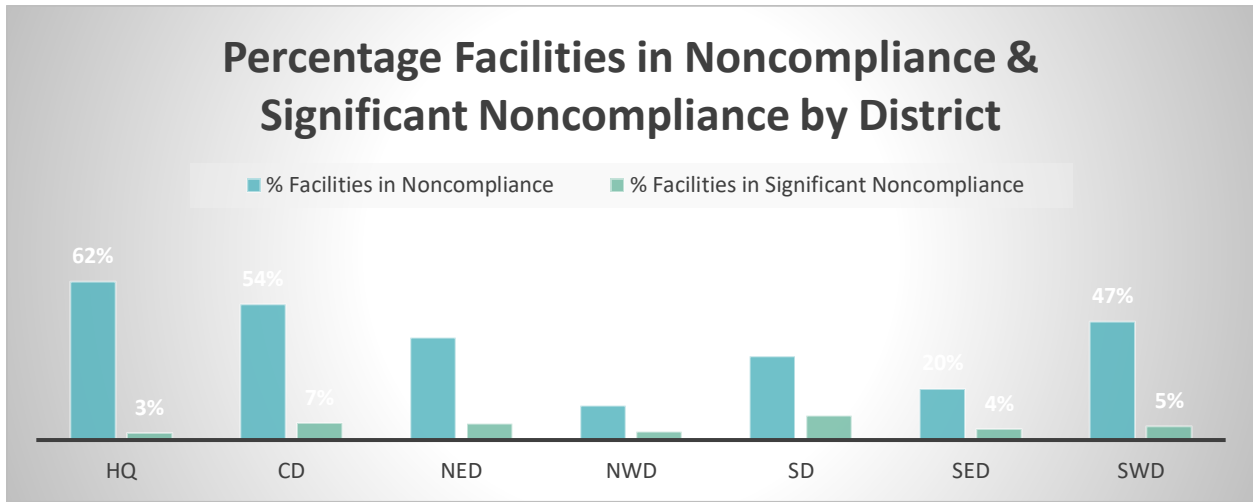
We also looked at the number of inspections conducted by each district. Those inspections are reflected in the following chart, but the data is limited to the inspections considered to the major program areas.⁶



⁶ The numbers shown are for the cumulative totals of the major program areas: air, beaches and coastal systems, dredge and fill (ERP), domestic wastewater, hazardous waste, industrial waste, mangrove alteration, mining, potable water, state lands, stormwater, solid waste, petroleum storage tanks, and underground injection wells. The remaining inspections in other programs were de minimis.

The number of inspections fell in every district in 2020.

If we factor in the noncompliance⁷ and significant noncompliance rates of each district, compared with the number of inspections in the major program areas, we find the following results.



The data seem rather clear that under Governor DeSantis, the FDEP is exhibiting a reduced presence in the field which is leading to an overall reduction in compliance rates across the state. The curious aspect of this is the agency's response to 2019's data, which clearly showed a drop in overall compliance in Florida. One would have expected that the agency reaction would have been to increase, rather than decrease, the number of inspections with the expectation being that the increased presence in the field would have resulted in greater compliance. Instead, the agency withdrew, and, as the data clearly indicates, decided to increase the number of formal enforcement actions.

B. Compliance and the Number and Types of Enforcement Actions Taken—Statewide Results⁸

As we noted last year, over the course of 8 years, Governor Scott's argument was that the FDEP would only take enforcement in the worst cases and that this would bring about more universal compliance because the FDEP would be working with the facilities to show them how to comply. This argument was nothing other an excuse for the governor and senior management

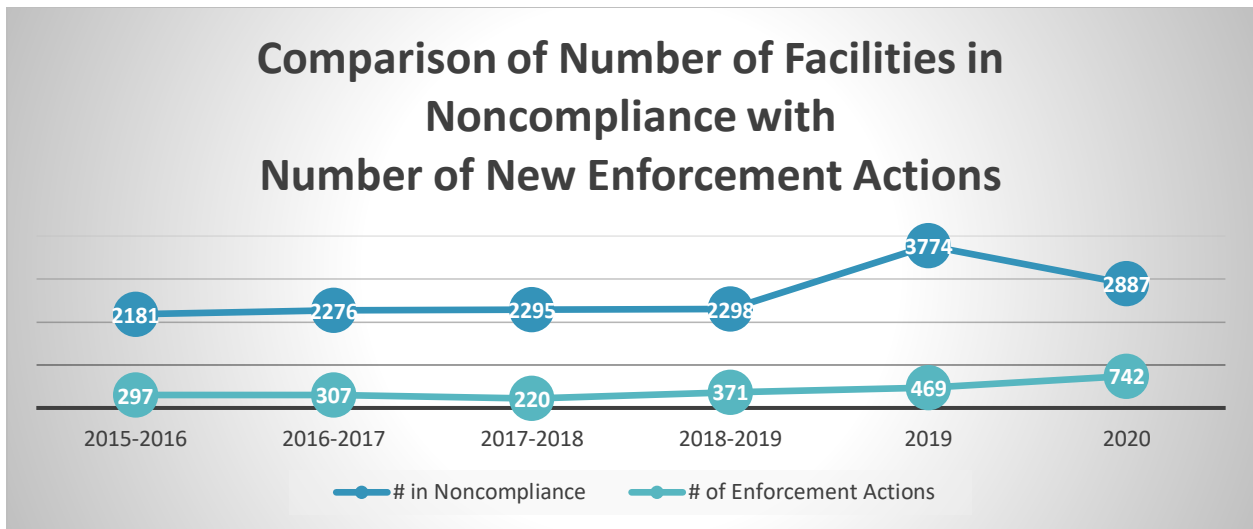
⁷ Overall noncompliance data is the combination of facilities in minor noncompliance and major noncompliance.

⁸ 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.

at the FDEP to allow polluters to slide. The data continues to indicate the fallacy of their approach.

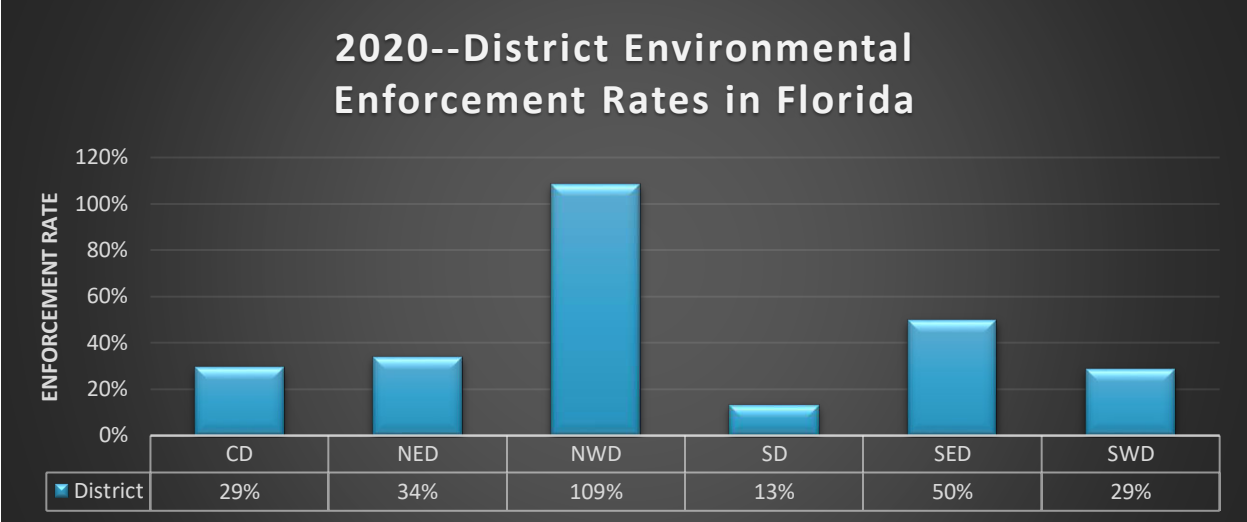
In 2020, senior management at the FDEP clearly decided to respond to the low statewide compliance rate by initiating an increased number of formal enforcement actions. There were 742 new enforcement actions in 2020, up from 469 in 2019. This is the 3rd straight year in which the number of enforcement actions has increased.

The increased number of enforcement cases, coupled with the proportional drop in the number (as opposed to percentage) of facilities in noncompliance resulted in an increase in the enforcement rate in 2020. The new rate is 25.70%, more than twice the result for 2019. Historically, the trend is clear:

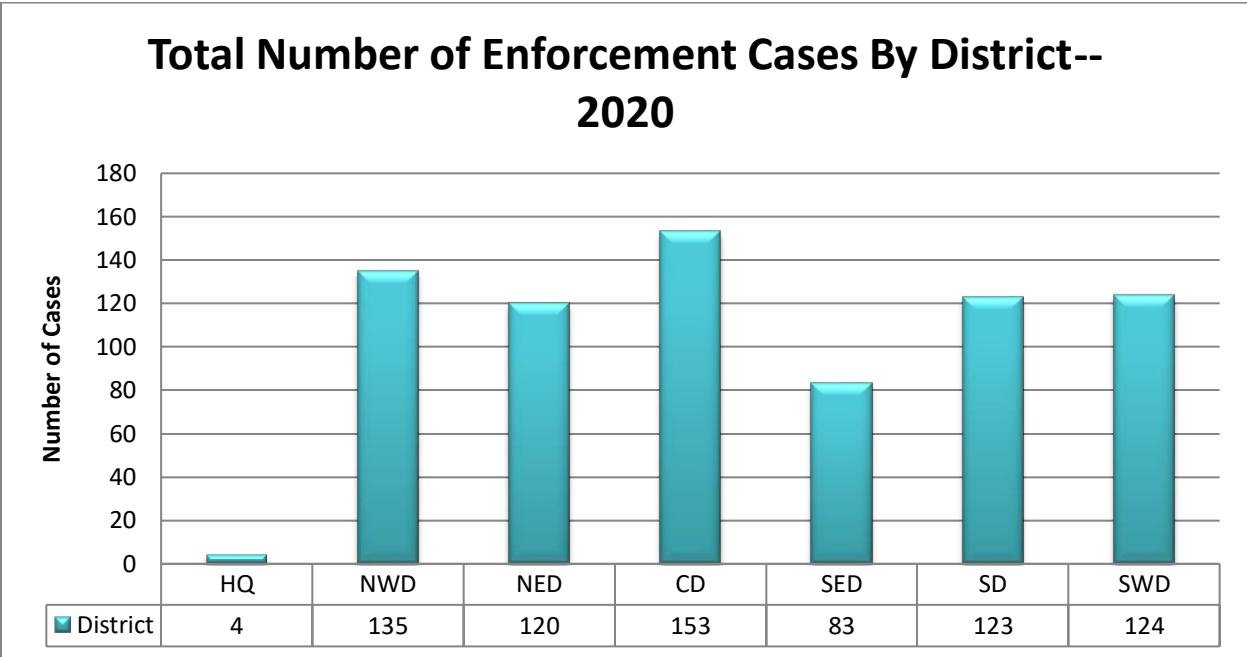


Looking at the individual districts, we found that the Northwest District, which had the lowest overall noncompliance and significant noncompliance rates, also had the highest enforcement rate in 2020. Further, the South District had the lowest enforcement rate in 2020 and also had the highest number of noncompliant facilities and the highest percentage of facilities in significant noncompliance of all the 6 districts.⁹

⁹ The headquarters opened only 4 new enforcement cases in 2020, despite 619 facilities in noncompliance.



If we just look at raw numbers, we see that, except for the Southeast District, the number of new cases was rather uniformly spread across the state.



While there were 742 new cases in 2020, it will take more than one year of stricter enforcement for the FDEP to be viewed as an agency that will not be hesitant to take enforcement against polluters. By way of comparison, in 2010, the year before Governor Scott took office, the Department opened 1,587 new cases. Thus, the 742 new cases in 2020, while a start, is still far from the level at which the agency performed prior to the assumption of control by the Scott and DeSantis administrations.

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 2020 was divided as follows:

Number of Cases of Each Enforcement Mechanism

Type of Enforcement	Number of Cases Opened Statewide in 2020
NOVs	73
Final Orders	39
Long-form Consent Orders	84
Model Consent Orders	136
Amended Consent Orders	25
Short-form Consent Orders	353
Case Reports	32

Long-form consent orders fell slightly (1 less than in 2019). Otherwise, every enforcement mechanism saw higher results in 2020, than in the previous year.

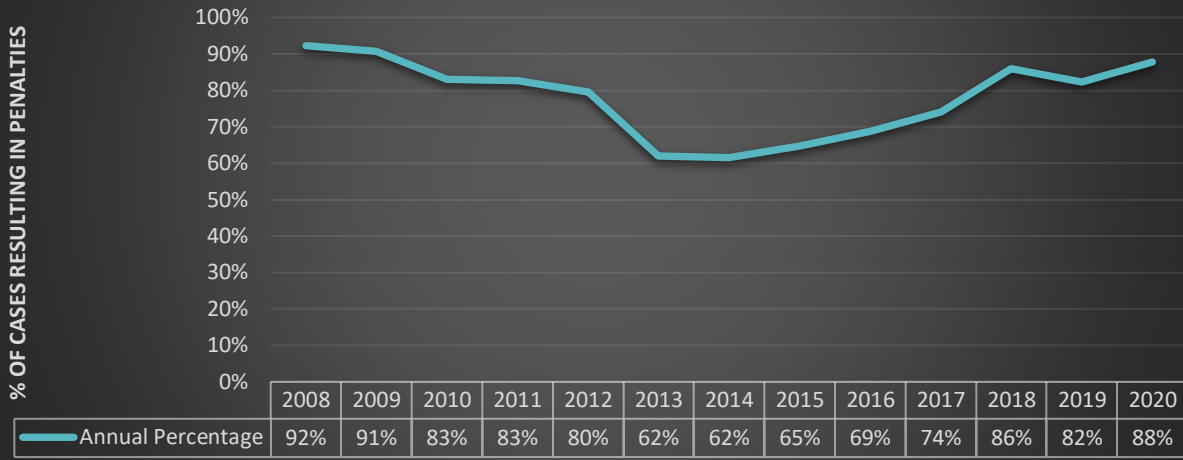
The use of consent orders continues to be the preferred method of enforcement used by the FDEP. The troubling aspect of the new enforcement data, however, is that the number of short-form consent orders, i.e., the consent orders that only require the payment of a fine, is the highest since 2012 and almost double the number issued in 2019. By the same token, long-form consent orders, which require greater department oversight, were used in 11% of the new enforcement cases, and this is the lowest percentage since 2012.

C. Statewide Civil Penalty Assessments

The Department assessed penalties in 582 cases in 2020, significantly more than the number of cases that we saw in 2019, and more than double the 262 penalty assessments in 2018. There were also 21 pollution prevention projects and 48 in-kind projects that were initiated as a result of the penalty assessments. This makes three straight years of increases in penalty assessments.

Overall, it appears that the FDEP is slowly regaining a rate of enforcement seen in the agency before Rick Scott became governor in 2011.

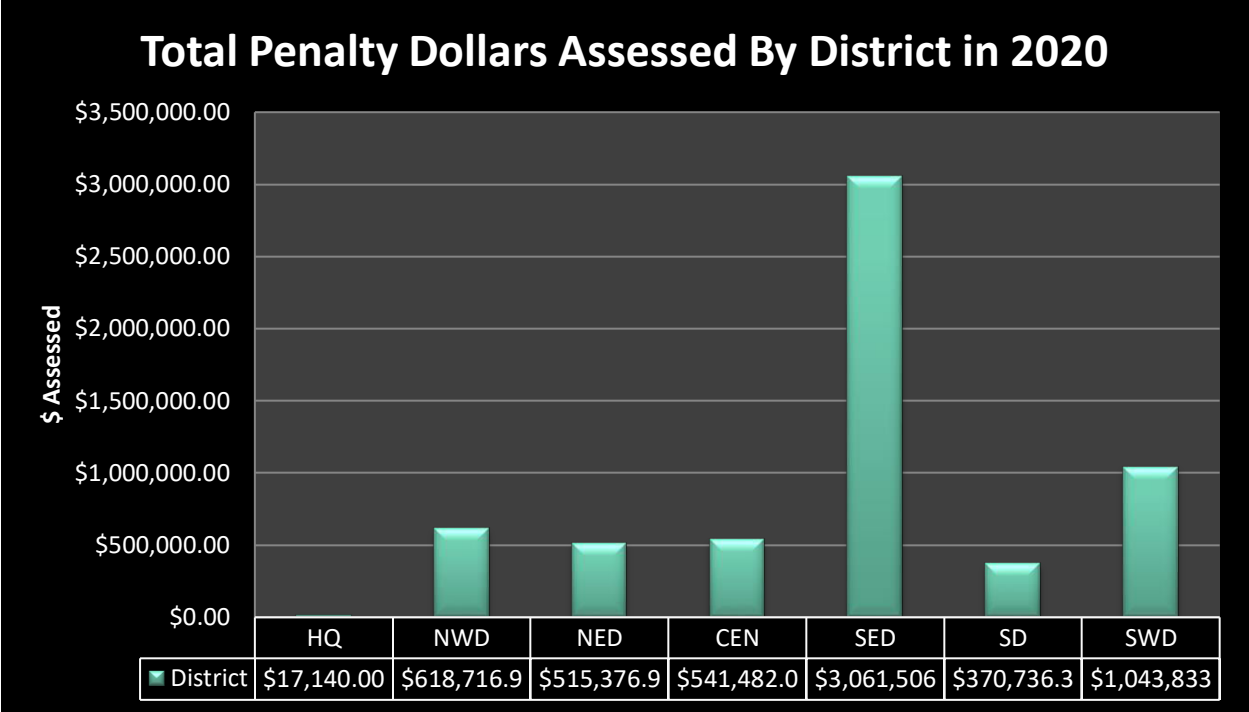
Annual % OF CASES RESULTING IN PENALTIES 2008-2020



The 582 assessments resulted in a total dollar assessment of \$6,168,791.94, a significant increase from the \$2,811,615.43 assessed in 2019. In addition, the value of in-kind assessments was \$5,919,438.73, and pollution prevention projects were valued at \$1,404,764.50. Both results were substantial increases from 2019.¹⁰ In 2020, the three areas combined totaled \$13,492,995.17, a significant increase over the \$4,770,043.35 assessed in 2019.

Looking solely at the penalty dollars assessed in each district, we see that the districts assessed penalties at pretty much uniform rates. The high return in the Southeast District is due to one wastewater case against the City of Fort Lauderdale.

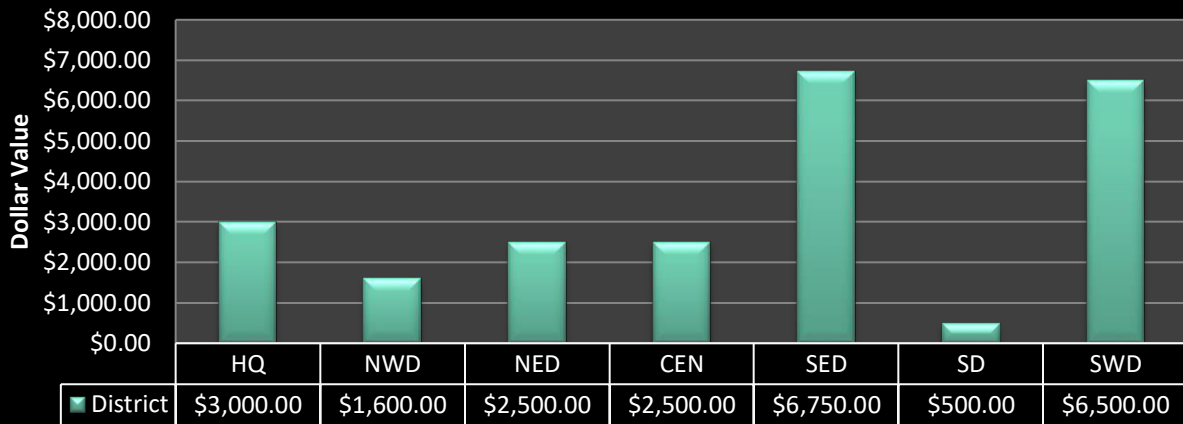
¹⁰ Throughout this report these projects will be described as in-kind and pollution prevention projects, or P2 Projects.



The problem with just looking at the dollar value of assessments is that it only tells part of the story. **Despite the increase in the total penalty dollars assessed, the median assessments fell from \$2,500.00 in 2019 to \$2,000.00 in 2020.** When we factored in all aspects of 2020’s assessments, i.e., include in-kind and pollution prevention projects, we found that the median fell to \$2,500.00, compared to \$3,000.00 in 2019 and \$3,460.00 in 2018.

There was more divergence among the districts in terms of median assessments, with the Southeast District again being a bit of an outlier. The most notable takeaway from the results shown in the table below is that the lowest median assessment was in the South District, which also had the highest rate of significant noncompliance in the state.

Median Civil Penalty Assessments By District in 2020 (Including In-Kind and P2 Assessments)



1. The Department's Highest Assessments

When the statewide median assessment declines despite an increase in the dollar value of assessments the typical reason is that there were some disproportionately large assessments included in the overall results. This is true of 2020, where over 50% of the \$6,168,791.94 in assessments were attributed to just 5 cases. Those 5 cases totaled \$3,126,582.36. The Department had three assessments that exceeded \$100,000 in 2019, and 2018 had only one.

The five assessments (including only penalty dollars and not including in-kind and pollution-prevention assessments) were:

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- \$2,451,077.00 was assessed against the *City of Fort Lauderdale* in a domestic wastewater case. The Southeast District Office brought the case.

D. Statewide Civil Penalty Collections

2020’s increase in penalty assessments resulted in a similar increase in collections. Total penalty collections were \$2,196,972.42, compared to a total collection of \$1,227,530.76 in 2019, and a total collection of \$901,266.23 in 2018.¹¹ In addition, in 2020 the FDEP recorded \$795,784.89 in in-kind and/or pollution prevention projects, compared to \$488,309.25 in 2019.

Once again, looking at overall totals doesn’t give an accurate picture of the agency’s performance. The FDEP **collected** fewer civil penalties in 2020 than it did in 2019. 36% of the civil penalties assessed in 2020 were collected, making this the worst result since 2017. The next lowest result was 2011, which also had a 36% recovery. 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:

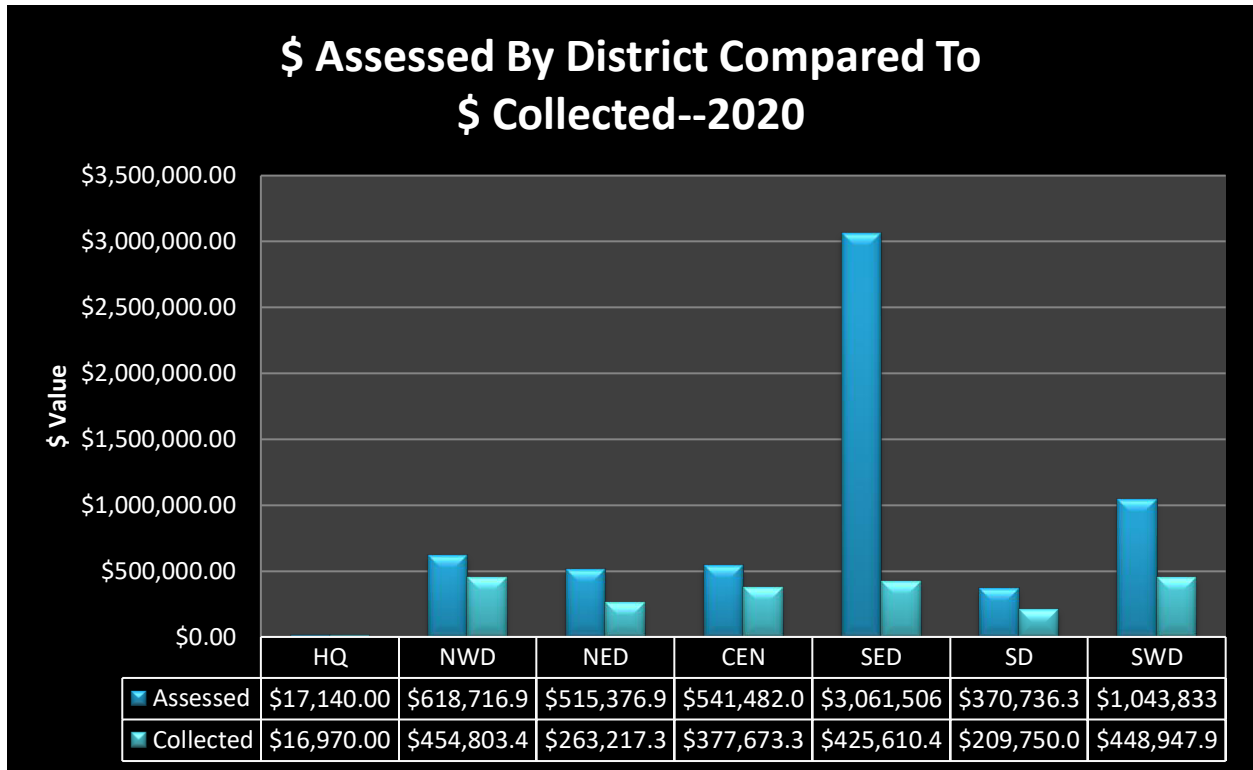
Annual Percentage of Collected Penalty Assessments

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

¹¹ 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 & 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 current 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.

2018	\$1,665,376.56	\$901,266.23	54%
2019	\$2,811,615.43	\$1,227,530.76	44%
2020	\$6,168,791.94	\$2,196,972.42	36%

The individual districts turned in predominantly uniform results, the Southeast District being the sole exception.



The bottom line to all this data is that it is well and good to assess penalties when violations are found. But if the penalties are not collected it is largely nothing more than an academic exercise.

E. Statewide Program Performance

1. Compliance Rates Among the Programs

The FDEP has provided us with compliance data for the major programs, and the following tables list each program and the compliance results for each of the past 5 years.

The number of inspections conducted in each program is shown below. The number of inspections fell in every major program, except for beaches and coastal systems, which saw a

modest increase. Most alarming was the decrease in the number of inspections in the dredge and fill, domestic wastewater, and potable water programs. The potable water program only performed 185 inspections for the period, down from 785 the year before:

Number of Inspections in Program Areas: 2015-2020

Program¹²	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019	2019/2020
Air	327	307	284	246	832	685
Beaches	1024	963	1015	1115	1117	1247
DF-ERP	2266	2068	2240	2011	2184	912
DW & NPDES	1633	1503	1574	1357	3600	2593
HW	485	587	432	420	438	309
IW	271	475	910	307	381	241
PW	1193	1065	993	1039	785	185
SW	615	960	1152	771	900	621
Tanks	452	381	352	331	336	226
UIC	189	181	135	97	239	157

The number of inspections in which noncompliance was identified is shown below. The data in this chart is not necessarily indicative of noncompliance trends on an annual basis, particularly in the current year, because of the fluctuation in the number of inspections that the FDEP conducted in each program in any given year. In 2020, the number of inspections fell in every program, except for the beaches and coastal systems program. Consequently, it is expected that the number of facilities in noncompliance will generally be lower.

¹² 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; OT=Other; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Discharge; S1 = Untreated Domestic Waste Spills; S2= Untreated DW Spills Plus Other; S3 =Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection; WW = Water Well Contractors.

Number of Facilities Found to be in Noncompliance: 2015-2020

Program	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019	2019/2020
Air	50	33	36	41	79	60
Beaches	1	5	4	2	3	6
DF-ERP	266	325	356	276	342	207
DW & NPDES	784	717	874	828	2231	1664
HW	188	257	166	188	215	171
IW	24	45	87	129	184	122
PW	622	662	614	592	447	119
SW	50	97	70	96	104	92
Tanks	95	91	76	140	125	79
UIC	24	23	11	6	44	41

We now have 3 consecutive years of data setting out the number of facilities in significant noncompliance. And the number of programs for which this data is available has increased such that we have data available for the past 2 years. Consequently, we can provide the following information for the past 3 years:

Number of Facilities in Significant Noncompliance: 2018-2020

Program	Fiscal 2018/2019 Number of Facilities in SNC	Calendar 2019 Number of Facilities in SNC	Fiscal 2019/2020 Number of Facilities in SNC
Air	10	24	19
Beaches	2	3	6
DF-ERP	19	85	66
DW&NPDES ¹³	90	248	203
HW	17	18	24
IW	8	28	27
MA	Not Available	13	13
MN	Not Available	0	1

¹³ Combined Domestic Wastewater and NPDES Wastewater

PW	90	70	18
SL	Not Available	15	16
RO	Not Available	4	11
SW	1	1	4
Tanks	92	85	53
UIC	0	3	3

The percentage of facilities in significant noncompliance fell in the air, beaches, mangrove alterations, mining, stormwater discharge, and tanks programs. However, significant noncompliance rates rose in every remaining program.

Percentage of Facilities in Significant Noncompliance: 2018-2020

Program	Fiscal 2018/2019 Percentage of Facilities in SNC	Calendar 2019 Percentage of Facilities in SNC	Fiscal 2019/2020 Percentage of Facilities in SNC
Air	4%	3%	3%
Beaches	0%	0%	0%
DF-ERP	14%	4%	7%
DW&NPDES ¹⁴	7%	7%	8%
HW	4%	4%	8%
IW	3%	7%	11%
MA	Not Available	15%	10%
MN	Not Available	1%	1%
PW	9%	9%	10%
SL	Not Available	3%	4%
RO	Not Available	6%	3%
SW	0%	0%	1%
Tanks	28%	25%	23%
UIC	0%	1%	2%

Turning to the overall compliance rates in each program, we found that compliance improved in only one program, the petroleum storage tanks program, while it stayed the same in

¹⁴ Combined Domestic Wastewater and NPDES Wastewater

the air, beaches, mangrove alterations, mining, and state lands programs. **All other programs saw declining performance.** Performance in the domestic wastewater program has now fallen 18% over the course of the past 6 years, while the dredge and fill program has fallen 33%. The lowest compliance rate is in the potable water program.

Overall Compliance Rates by Program: 2015-2020

Program	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019¹⁵	2019/2020
Air	85%	89%	87%	83%	91%	91%
Beaches	100%	99%	100%	100%	100%	100%
DF-ERP	88%	84%	84%	86%	75%	55%
DW & NPDES ¹⁶	52%	52%	45%	39%	36%	34%
HW	61%	56%	62%	55%	41%	37%
IW	91%	91%	90%	58%	51%	49%
MA	Not Available	Not Available	Not Available	Not Available	42%	42%
MN	Not Available	Not Available	Not Available	Not Available	96%	96%
PW	48%	38%	38%	43%	43%	36%
SL	Not Available	Not Available	Not Available	Not Available	48%	48%
RO	Not Available	Not Available	Not Available	Not Available	79%	52%
SW	92%	90%	94%	88%	82%	78%
Tanks	79%	76%	78%	58%	51%	53%
UIC	87%	87%	92%	94%	82%	74%

2. Sewage Overflows in 2020

¹⁵ The results for the DF, HW, SW, and Tanks programs have been adjusted after considering the inspections that resulted in no rating being given.

¹⁶ Combined Domestic Wastewater and NPDES Wastewater

Throughout 2020, we monitored emergency alerts that are provided to the state whenever sewage overflows are occurring. The State of Florida requires this information to be provided for all parts of the state.

There are some caveats to the following data provided: First, while the notifications are supposed to include the number of gallons discharged, as well as the number of gallons recovered, this does not always occur, and it means that the gallons discharged are likely to be much higher and the gallons recovered is also likely to be higher than reported. Second, the notices are supposed to include whether the discharged material impacted surface waters, but again, they do not always do so. Third, the types of discharges are overwhelmingly raw sewage, however, there are other types of discharges, including reclaimed water, diesel fuel, gasoline etc.

Even with the uncertainties in the data provided by local officials and the public, it is clear that the number of such alerts is significant. Consequently, we have only monitored alerts coming from 12 counties in Florida. Those counties are Bay, Brevard, Broward, Duval, Escambia, Hillsborough, Leon, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Wakulla. **What we found was that in 2020, in these 12 counties alone, there were 856 reported unpermitted discharges of wastewater, totaling 126,302,622 gallons. Of that, the reported gallons recovered were just 25,627,210.** Further, based upon what was reported the discharges to surface waters were at least **109,966,487 gallons from these 12 jurisdictions alone.**

The breakdown for each county follows:

County	Number of Discharges	Total Gallons Discharged	Number of Discharges Affecting Surface Waters ¹⁷	Number of Gallons to Surface Waters
Bay	65	798,843	32	652,343
Brevard	38	552,040	9	216,200
Broward	134	102,470,218	48	100,131,255
Duval	118	6,932,278	80	877,202
Escambia	40	1,240,894	18	1,156,395
Hillsborough	90	6,792,422	54	3,692,931
Leon	8	42,915	2	41,500
Miami-Dade	84	3,721,111	14	1,458,193
Palm Beach	123	711,952	25	67,344
Pinellas	89	1,730,439	36	647,884
Sarasota	57	1,285,510	24	1,014,240

¹⁷ For purposes of this category, the term “surface waters” is based upon 62-302.200 (38), F.A.C. which states that surface waters are defined as “. . . water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth’s surface.”

Wakulla	6	24,000	2	11,000
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As noted above, the number of gallons discharged is largely incomplete for both the total number of gallons and the gallons discharged to surface waters. The reason is that the reporting authorities did not always report the number of gallons discharged. For example, Leon County reported 8 separate discharges, but reported the actual gallons discharged in only 3 of the 8 events.

The bottom line to this is that these discharges, whether to surface waters, or to streets, parking lots or yards, are adversely affecting the environment and cause risks of harm to the public health, safety and welfare. The sheer number and volume of the discharges plainly suggests that the infrastructure is in bad need of repair and upgrades throughout the state.

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

Except for the beaches and coastal systems, and the mining and phospho-gypsum programs every program saw an increase in the number of enforcement actions in 2020. There were no cases opened in the mining and phosphogypsum program over the course of the year. The following table sets out the number of enforcement cases¹⁸ brought in each key program area over the past 5 years:

Historical View of Number of Enforcement Cases by Program: 2016-2020

Program Area	Total No. of Enforcement Cases--2016	Total No. of Enforcement Cases--2017	Total No. of Enforcement Cases--2018	Total No. of Enforcement Cases--2019	Total No. of Enforcement Cases--2020
Asbestos	0¹⁹	0	1	3	11
Air (Excluding Asbestos)	17	9	22	38	43
Beaches/Coastal	4	4	10	9	6
Waste Cleanup	9	5	7	8	7
Dredge & Fill²⁰	63	54	99	123	154
Domestic Waste	44	34	77	62	125
Hazardous Waste	35	19	34	40	48
Industrial Waste	11	12	13	18	33
Mangrove Alterations	8	12	21	22	32

¹⁸ Defined as the sum of case reports, all consent orders, NOVs and final orders.

¹⁹ Throughout this report, numbers reported in **red** will indicate declines in performance from the previous year.

²⁰ This includes Environmental Resource Permitting.

Mining/Phospho-Gypsum	0	0	0	3	0
Potable Water	15	15	17	27	48
State Lands	16	7	10	18	19
Stormwater Discharge	23	14	16	24	26
Solid Waste	31	18	15	36	40
Tanks	11	15	25	26	140
Underground Injection Control	1	1	2	3	3

The asbestos program saw a significant jump in the number of new enforcement cases. The 11 new cases opened in 2020 represent the largest total in years for this beleaguered program.

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.

Enforcement Rates in Each Program: 2016-2020

Program	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate
	2015	2016	2017	2018	2019	2020
Air	36%	52%	25%	54%	48%	72%
Beaches	700%	80%	100%	500%	300%	100%
DF-ERP	20%	19%	15%	47%	36%	74%
Domestic Waste	4%	6%	4%	11%	3%	8%
Hazardous Waste	23%	14%	11%	19%	19%	28%
Industrial Waste	29%	24%	14%	10%	10%	27%
Mangrove Alteration	Not Available	Not Available	Not Available	Not Available	157%	76%
Mining	Not Available	Not Available	Not Available	Not Available	75%	0%
Potable Water	1%	2%	2%	3%	6%	40%
Solid Waste	38%	32%	26%	16%	35%	43%
Stormwater Discharge	Not Available	Not Available	Not Available	Not Available	171%	14%
Tanks	26%	12%	20%	18%	21%	177%
Underground Injection Control	0%	4%	9%	33%	7%	7%

Other than the mining program, which enforced no cases, the enforcement rate continued to be the lowest in the underground injection control and domestic wastewater programs, which had enforcement rates of 7% and 8% respectively. The domestic wastewater program also had the **lowest compliance rate among all the programs**, and 8% of its facilities were in significant noncompliance. Meanwhile, the potable water program had the second-lowest compliance rate (36%), and 10% of its facilities were in significant noncompliance, but the FDEP took enforcement in 40% of those cases.

4. Assessments in Each Program

The new enforcement cases translated into civil penalties being levied in each program area. The table below looks only at cases in which civil penalties were assessed and does not take into consideration the cases in which there were in-kind or pollution prevention projects. 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 resulted in civil penalties (excluding in-kind and pollution prevention projects) being assessed. As can be seen below, not every new enforcement case resulted in civil penalty assessments.

Percentage of Cases Resulting in Civil Penalty Assessments

Program Area	Total No. of Enforcement Cases--2020	Total No. of Assessments in 2020	% Cases Resulting in Civil Penalty Assessments--2020
Asbestos	11	1	9%
Air (Excluding Asbestos)	43	40	93%
Beaches/Coastal	6	4	67%
Waste Cleanup	7	0	0%
Dredge & Fill ²¹	154	135	88%
Domestic Waste	125	100	80%
Hazardous Waste	48	38	79%

²¹ This includes Environmental Resource Permitting.

Industrial Waste	33	27	82%
Mangrove Alterations	32	28	87%
Mining/Phospho-Gypsum	0	0	0%
Potable Water	48	38	79%
State Lands	19	7	85%
Stormwater Discharge	26	22	85%
Solid Waste	40	23	57%
Tanks	140	111	79%
Underground Injection Control	3	3	100%

The rate of assessing civil penalties was generally solid across all program areas, the exceptions being asbestos, beaches and coastal systems, mining, and solid waste. Nevertheless, it is also disturbing that the rate at which the FDEP assessed civil penalties declined when compared to 2019, particularly in the waste programs.

Looking solely at the dollar value of civil penalty assessments, we found that the penalties for 2020 were higher for each program than they were in the previous year in the major programs, except for dredge & fill. Total penalties in the asbestos, beaches and coastal, waste cleanup, mining/phosphogypsum, state lands, stormwater discharge, and underground injection control programs were all lower. This is the fourth straight year of increasing penalty assessments in the air, domestic wastewater, hazardous waste, potable water, and solid waste programs.

Dollar Value of Civil Penalty Assessments

Program Area	\$ Value of Penalties Assessed in 2017	\$ Value of Penalties Assessed in 2018	\$ Value of Penalties Assessed in 2019	\$ Value of Penalties Assessed in 2020
Asbestos	\$0.00	\$500.00	\$158,000.00	\$4,500.00
Air (Excluding Asbestos)	\$28,450.00	\$76,137.00	\$121,975.00	\$183,950.00
Beaches/Coastal	\$4,750.00	\$36,500.00	\$19,250.00	\$17,200.00
Waste Cleanup	\$1,000.00	\$2,500.00	\$24,500.00	\$0.00
Dredge & Fill ²²	\$57,179.00	\$98,779.00	\$196,824.00	\$163,960.00

²² This includes Environmental Resource Permitting.

Domestic Waste	\$1,516,447.00	\$765,857.27	\$1,239,333.16	\$3,677,712.96
Hazardous Waste	\$202,652.75	\$375,507.50	\$394,799.00	\$695,853.54
Industrial Waste	\$123,457.00	\$103,100.33	\$90,968.00	\$326,444.75
Mangrove Alterations	\$9,179.00	\$34,480.00	\$24,180.00	\$48,925.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$11,025.00	\$0.00
Potable Water	\$5,021.00	\$18,325.00	\$74,015.00	\$161,365.65
State Lands	\$3,000.00	\$840.00	\$8,940.00	\$8,000.00
Stormwater Discharge	\$52,268.00	\$97,950.46	\$265,806.27	\$264,827.17
Solid Waste	\$15,100.00	\$31,900.00	\$71,000.00	\$124,204.00
Tanks	\$28,000.00	\$22,500.00	\$46,500.00	\$428,098.87
Underground Injection Control	\$4,038.56	\$500.00	\$10,600.00	\$8,500.00

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 the 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, including in-kind projects and pollution prevention projects that arose out of those assessments. As can be seen when comparing the following results with those above that only consider assessed civil penalties, the effect 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--2020	Total No. of Assessments, including	\$ Value of Penalties, In-Kind and
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		Penalties, In-Kind and Pollution Prevention Projects in 2020	Pollution Prevention Projects Assessed in 2020
Asbestos	11	1	\$4,500.00
Air (Excluding Asbestos)	43	41	\$191,950.00
Beaches/Coastal	6	5	\$29,200.00
Waste Cleanup	7	0	\$0.00
Dredge & Fill ²³	154	135	\$163,960.00
Domestic Waste	125	138	\$8,576,998.12
Hazardous Waste	48	48	\$1,139,602.89
Industrial Waste	33	31	\$1,373,261.07
Mangrove Alterations	32	29	\$57,175.00
Mining/Phospho-Gypsum	0	0	\$0.00
Potable Water	48	46	\$929,199.40
State Lands	19	7	\$8,000.00
Stormwater Discharge	26	25	\$333,884.32
Solid Waste	40	26	\$193,415.50
Tanks	140	111	\$428,098.87
Underground Injection Control	3	3	\$8,500.00

A comparison of penalty assessments (including in-kind and pollution prevention projects) from 2019 to 2020 shows that six programs, asbestos, waste cleanup, dredge & fill, mining/phospho-gypsum, state lands, and underground injection control assessed fewer penalty dollars in 2020 than in the previous year. There have now been four straight years of improvements in the stormwater discharge, and solid waste programs.

Comparison of Penalty Assessments from 2017 to 2020

²³ This includes Environmental Resource Permitting.

Program Area	\$ Value of Penalties Assessed in 2018 (Including In-Kind & Pollution Prevention Projects)	\$ Value of Penalties Assessed in 2019 (Including In-Kind & Pollution Prevention Projects)	\$ Value of Penalties Assessed in 2020 (Including In-Kind & Pollution Prevention Projects)
Asbestos	\$500.00	\$158,000.00	\$4,500.00
Air (Excluding Asbestos)	\$76,137.00	\$160,400.00	\$191,950.00
Beaches/Coastal	\$36,500.00	\$19,250.00	\$29,200.00
Waste Cleanup	\$2,500.00	\$24,500.00	\$0.00
Dredge & Fill ²⁴	\$98,779.00	\$211,824.00	\$163,960.00
Domestic Waste	\$1,922,858.99	\$2,755,123.03	\$8,576,998.12
Hazardous Waste	\$544,232.50	\$681,616.00	\$1,139,602.89
Industrial Waste	\$173,780.33	\$159,815.00	\$1,373,261.07
Mangrove Alterations	\$34,480.00	\$24,180.00	\$57,175.00
Mining/Phospho-Gypsum	\$0.00	\$11,025.00	\$0.00
Potable Water	\$18,325.00	\$76,265.00	\$929,199.40
State Lands	\$840.00	\$8,940.00	\$8,000.00
Stormwater Discharge	\$97,950.46	\$280,705.32	\$333,884.32
Solid Waste	\$31,900.00	\$71,000.00	\$193,415.50
Tanks	\$22,500.00	\$46,500.00	\$428,098.87
Underground Injection Control	\$500.00	\$18,100.00	\$8,500.00

We also considered 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 fell in numerous programs, including asbestos, air, waste cleanup, domestic wastewater, mining/phospho-gypsum, potable water, state lands, solid waste, tanks, and underground injection control.

²⁴ This includes Environmental Resource Permitting.

Comparison of Penalty Assessment Medians from 2018 to 2020

Program Area	2018 Medians	2019 Medians	2020 Medians
Asbestos	\$500.00	\$9,000.00	\$4,500.00
Air (Excluding Asbestos)	\$3,500.00	\$3,000.00	\$2,375.00
Beaches/Coastal	\$2,500.00	\$875.00	\$4,500.00
Waste Cleanup	\$1,250.00	\$12,250.00	\$0.00
Dredge & Fill	\$420.00	\$420.00	\$420.00
Domestic Waste	\$7,500.00	\$5,250.00	\$4,024.83
Hazardous Waste	\$5,639.50	\$8,520.00	\$11,330.00
Industrial Waste	\$2,500.00	\$5,000.00	\$5,000.00
Mangrove Alteration	\$830.00	\$830.00	\$830.00
Mining/Phospho-Gypsum	\$0.00	\$3,375.00	\$0.00
Potable Water	\$1,550.00	\$2,052.50	\$1,450.00
State Lands	\$420.00	\$1,460.00	\$420.00
Stormwater Discharge	\$4,000.00	\$6,480.78	\$9,382.42
Solid Waste	\$3,500.00	\$3,000.00	\$2,700.00
Tanks	\$500.00	\$3,000.00	\$2,000.00
Underground Injection Control	\$500.00	\$4,500.00	\$2,000.00

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 2019 to 2020

Program Area	2019 Medians	2020 Medians
Asbestos	\$4,750.00	\$4,500.00
Air (Excluding Asbestos)	\$3,100.00	\$2,500.00
Beaches/Coastal	\$875.00	\$7,000.00
Waste Cleanup	\$12,250.00	\$0.00
Dredge & Fill	\$420.00	\$420.00
Domestic Waste	\$7,000.00	\$6,457.21
Hazardous Waste	\$13,000.00	\$15,128.50

Industrial Waste	\$7,300.00	\$5,500.00
Mangrove Alteration	\$830.00	\$830.00
Mining/Phospho-Gypsum	\$3,375.00	\$0.00
Potable Water	\$2,105.00	\$1,937.50
State Lands	\$1,460.00	\$420.00
Stormwater Discharge	\$6,480.78	\$9,613.40
Solid Waste	\$3,000.00	\$3,127.50
Tanks	\$3,000.00	\$2,000.00
Underground Injection Control	\$4,750.00	\$2,000.00

2020 saw yet more declines in medians in the domestic wastewater program, as well as the underground injection control program. Moreover, medians also fell in the asbestos, air, waste cleanup, industrial waste, mining/phospho-gypsum, potable water, state lands, stormwater discharge, and petroleum storage tanks programs.

The following table provides the highest civil penalty assessment in 2020 for each of the indicated programs, as well as the district in which each assessment was made.

Highest Single Assessment in Each Program

District	Program	OGC#	Case Style	Assessed Amount
1	AB	200769	<i>SIKES CONCRETE & THE CITY OF PANAMA CITY.</i>	\$4,500.00
3	AP	191790	<i>SUWANNEE AMERICAN CEMENT COMPANY</i>	\$51,350.00
5	BS	191803	<i>MONTE CHRISTO CONDOMINIUM ASSOC. & MARATHON SEAWALLS & DOCKS</i>	\$8,000.00
6	CM	191721	<i>HOLCOMB, GARY LEE</i>	\$250.00
	CU		<i>NONE</i>	
5	DF	190341	<i>GEORGE, VICTOR THOMAS AND IRGANG, MARK</i>	\$10,000.00
4	DW	161487	<i>CITY OF FORT LAUDERDALE</i>	\$2,451,077.00
2	ES	200194	<i>LANDSOUTH CONSTRUCTION, LLC</i>	\$9,750.00
2	EW	201073	<i>BUCKLES, LEON</i>	\$8,000.00
4	HW	201133	<i>SOUTHEASTERN GROCERS, INC.</i>	\$112,974.00
1	IW	191453	<i>INTERNATIONAL PAPER COMPANY</i>	\$190,000.00
5	MA	191848	<i>CITY OF CAPE CORAL & RIPPLE LAKE LLC</i>	\$5,500.00
1	MN		<i>NONE</i>	

0	OG	201574	BREITBURN OPERATING, LP	\$11,000.00
3	OT		NONE	
1	PW	111557	CITY OF APALACHICOLA	\$63,400.00
5	RO	201241	CITY WALK FORT MYERS LLC	\$42,597.00
6	S1	200100	CITY OF CLEARWATER PUBLIC UTILITIES	\$53,592.64
	S2		NONE	
4	S3	191310	ST. LUCIE MOBILE VILLAGE	\$28,428.92
3	SL	191317	CLERMONT, CITY OF	\$3,500.00
	ST		NONE	
6	SW	200992	ANGELO'S AGGREGATE MATERIALS LTD	\$31,141.00
6	TK	190008	AUTOMATED PETROLEUM AND ENERGY CO., INC. (APEC)	\$100,000.00
4	UC	200809	700 EDGEWATER DEVELOPMENT, LLC	\$5,500.00
2	WW	200768	MAYPORT PARTNERS 2, LLC	\$40,000.00

5. Collections in Each Program

Motorists have long accepted the fact that they are required to either challenge a traffic ticket and its fine in court or pay it up front. Such is simply not the case when considering the assessment of civil penalties in environmental cases. The vast majority of penalties assessed by the FDEP are agreed to by the violators via the consent order mechanism. Often, these penalties are used to fund environmental programs meant to protect Florida's environment. And they are also used, along with other revenues, to pay the salaries of FDEP employees. Yet, these same penalties often go unpaid. The rate at which the penalties are collected varies from year to year and from program to program. As we stated above, in 2020, the Department collected 36% of total dollar value of all the penalties that it assessed, a 12% decline from 2019's performance, and the **3rd straight year of declining collections**. The following table lists the dollar value of the civil penalties (excluding in-kind and pollution prevention projects) that were collected in each program. Values in red in the % Collected column indicate results that are below the results recorded for 2020.

Program Area Collections

Program Area	\$ Value of Penalties Assessed in 2020	\$ Value of Civil Penalties Collected—2020	% Civil Penalties Collected—2020
Asbestos	\$4,500.00	\$4,500.00	100%
Air (Excluding Asbestos)	\$183,950.00	\$171,300.00	93%
Beaches/Coastal	\$17,200.00	\$17,200.00	100%
Waste Cleanup	\$0.00	\$4,500.00	0%
Dredge & Fill ²⁵	\$163,960.00	\$136,312.50	83%
Domestic Waste	\$3,677,712.96	\$535,252.73	15%
Hazardous Waste	\$695,853.54	\$286,711.31	41%
Industrial Waste	\$326,444.75	\$288,533.87	88%
Mangrove Alterations	\$48,925.00	\$37,359.00	76%
Mining/Phospho-Gypsum	\$0.00	\$730.00	0%
Potable Water	\$161,365.65	\$38,326.08	24%
State Lands	\$8,000.00	\$5,500.00	69%
Stormwater Discharge	\$264,827.17	\$264,265.59	100%
Solid Waste	\$124,204.00	\$83,146.32	67%
Tanks	\$428,098.87	\$301,585.02	70%
Underground Injection Control	\$8,500.00	\$7,500.00	88%

In addition to civil penalties that were collected, several in-kind and pollution prevention projects were completed in 2020. These projects originated in the air, beaches & coastal systems, dredge & fill, domestic wastewater, hazardous waste, industrial waste, potable water, and stormwater discharge programs. The total value of those projects for each program area in which they originated is listed below.

Dollar Value of Completed In-Kind and Pollution Prevention Projects

Program Area	Total No. of In-Kind and P2 Projects Completed—2020	\$ Value of In-Kind and P2 Projects Completed-- 2020
Air	1	\$9,750.00
Beaches & Coastal Systems	1	\$12,000.00
Dredge & Fill	2	\$15,000
Domestic Wastewater	17	\$606,406.59
Hazardous Waste	1	\$36,599.00
Industrial Waste	2	\$57,897.00

²⁵ This includes Environmental Resource Permitting.

Potable Water	2	\$42,420.75
Stormwater Discharge	2	\$15,711.55

CONCLUSION

At the conclusion of last year’s report, we revisited a statement that we made in 2018. The statement was that:

“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.”

In 2019, we concluded that the 2018 results were, in fact, an anomaly. Although the FDEP had “inspected more facilities, opened more enforcement cases, and assessed more civil penalty dollars in 2019, the unfortunate reality [was] that the good news ends there. When the FDEP inspectors were sent back into the field what they found was that years of neglect had resulted in fewer facilities being in compliance with their permits. This should have resulted in a higher percentage of enforcement cases being opened. Instead, the enforcement rates fell.”

This brings us to 2020, and just as in 2019, the results are very mixed. Yes, in 2020, the agency significantly increased the number of enforcement actions that it took, the dollar value of penalty assessments, and the dollar value of collected penalty dollars. But, just as in 2019, that is where the good news basically ends.

The reality is that the FDEP conducted fewer inspections in 2020. The idea is simple—if you conduct fewer inspections, you find fewer violations. Yet, the inspections that were conducted found that the compliance rate was not better than it was in 2019. Significant noncompliance is, in fact, higher. The agency’s response was to open more enforcement actions. Admirably, the FDEP doubled the rate at which the agency took enforcement, compared to 2019. However, the severity of the fines that were levied actually dropped. And the enforcement actions used by the FDEP were largely short-form consent orders that required nothing more than paying a penalty, i.e., the traffic ticket approach. This resulted in higher overall assessment dollars, but then the rate at which the assessments were collected also fell, when compared to 2019.

The other very troubling aspect of the state of compliance in Florida is the high noncompliance rate found in the domestic wastewater, potable water, hazardous waste, and industrial waste programs. This comes at a time when the administration is telling people that it is razor-focused on protecting Florida’s waters. Meanwhile, the enforcement rate in the domestic wastewater and underground injection programs were the lowest in the state, and, when compared to 2019, the percentage of cases fell 20% in the domestic wastewater program, while staying the same in the underground injection program.

In addition to falling enforcement rates, it now appears that the agency is reverting to its old ways of using the simplest means of enforcement when formal enforcement is deemed necessary. The traffic-ticket approach of issuing short-form consent orders is now on the increase, while the more detailed oversight required in long-form consent orders is declining.

The other concern is that even as the FDEP crows about assessing higher penalty dollars in 2020, the reality is that the median penalty assessments levied by the Department have declined. This is particularly troubling in the domestic wastewater program and potable water programs, both of which have seen both their compliance rates and median assessments decline in 2020. Consequently, for all the administration's talk about protecting Florida's waterways, the reality is that it continues to be just talk. The bottom line is that polluters in Florida know that, even if caught, their punishment is likely to be minimal—unless the agency decides to showcase a particular violation. Meanwhile, the continued failure to enforce potable water laws also shows the administration's callous disregard for the drinking water that is supplied to the residents and tourists in this state.

We stated in last year's report that, "[t]he data clearly show that polluters in Florida have little to fear from this governor or the FDEP that he and Secretary Valenstein lead." The data from 2020 shows that very little has changed. To the contrary, this is an administration that seems to be big on showcasing a few big cases, while pretty much downplaying the remaining violations that it identifies. In short, the FDEP continues to be an agency that essentially exists to please industry, while leaving Florida's residents and tourists to deal with the decaying environment that is left behind.

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.