



Report on Enforcement Efforts by the Florida Department of Environmental Protection



January-December 2021

Public Employees for Environmental Responsibility

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PRELIMINARY STATEMENT

This report addresses compliance and enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2021. 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.

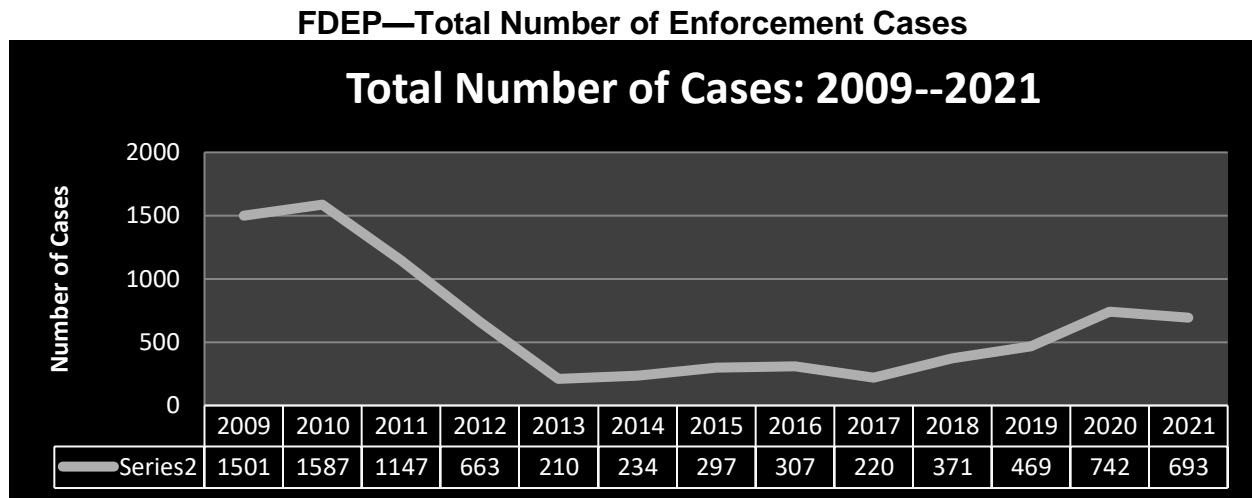
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EXECUTIVE SUMMARY

A. Statewide Results

There were fewer new cases opened in 2021. 693 new cases were opened in 2021, compared to 742 cases in 2020. While the number of cases fell in 2021, the basic parameter of the number of new cases, judged by itself, was still significantly better than each of the years from 2012 through 2019. 2021's performance is still only 44% of cases turned in by the agency in 2010. The graph below shows the number of new enforcement cases opened for the years from 2009 through 2021.



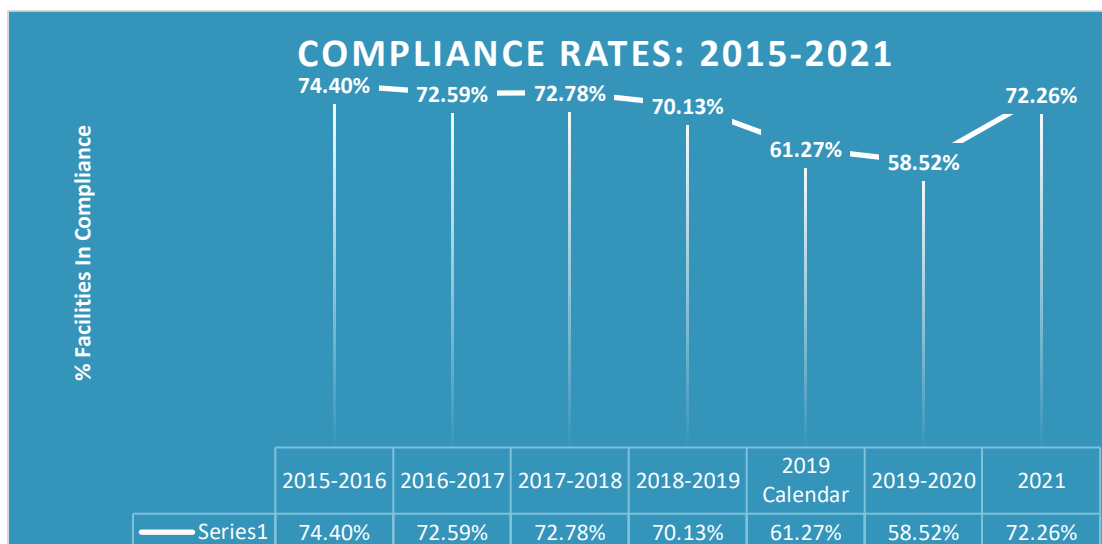
The total number of cases does not tell the whole story concerning the agency's enforcement performance. This is the fourth consecutive year in which we have been able to report on both the FDEP's enforcement program and the compliance data associated with that program. This allows for a more holistic 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. 2021's performance was mixed, as compared to the previous year.

For example, even though the number of new cases fell in 2021, the number of inspections rose significantly. In 2021, there were 28,886 inspections conducted, compared to 8,267 conducted in the previous year. Of the 28,886 inspections in 2021, 6,902 identified violations.¹ Consequently, even though there were significantly more inspections, there were also significantly more violations, making this the worst result in terms of raw numbers that we have found since we have been able to evaluate inspection results. On the positive side, when looked at on a percentage basis, the actual percentage of facilities in noncompliance as

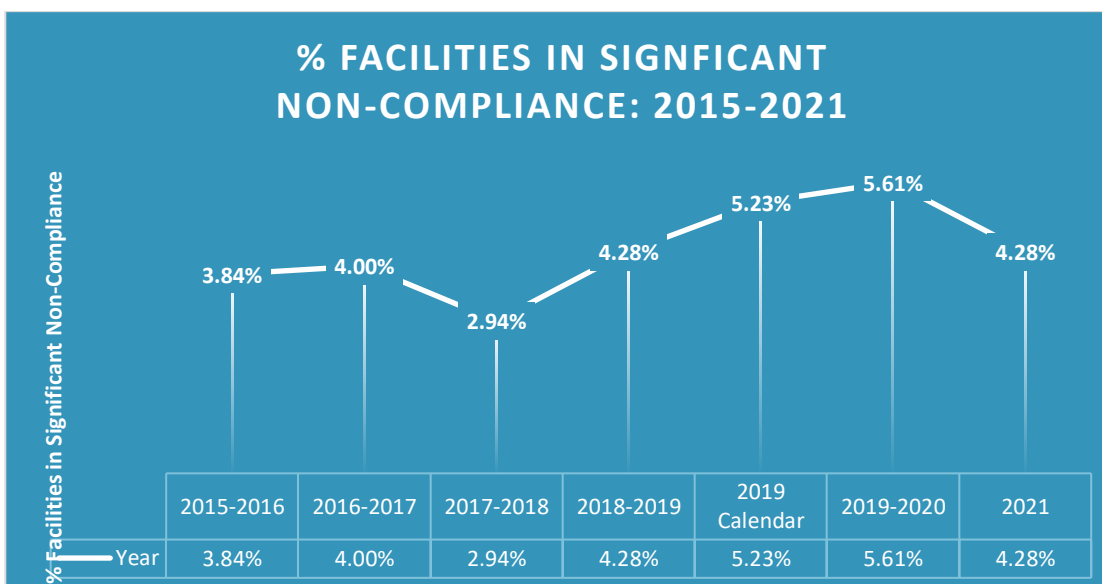
¹ It should be noted that the compliance data typically provided by the FDEP has not been on a calendar year basis, but rather on a fiscal year that ends on June 30th of each year. We have tried to account for this discrepancy to the extent possible in our evaluation of the compliance data. Regardless,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

reported by the FDEP, fell in 2021, when compared with previous years.² This led to an overall compliance rate of 72.26%, much higher than the results for 2020.

FDEP Compliance Rates: 2015-2021



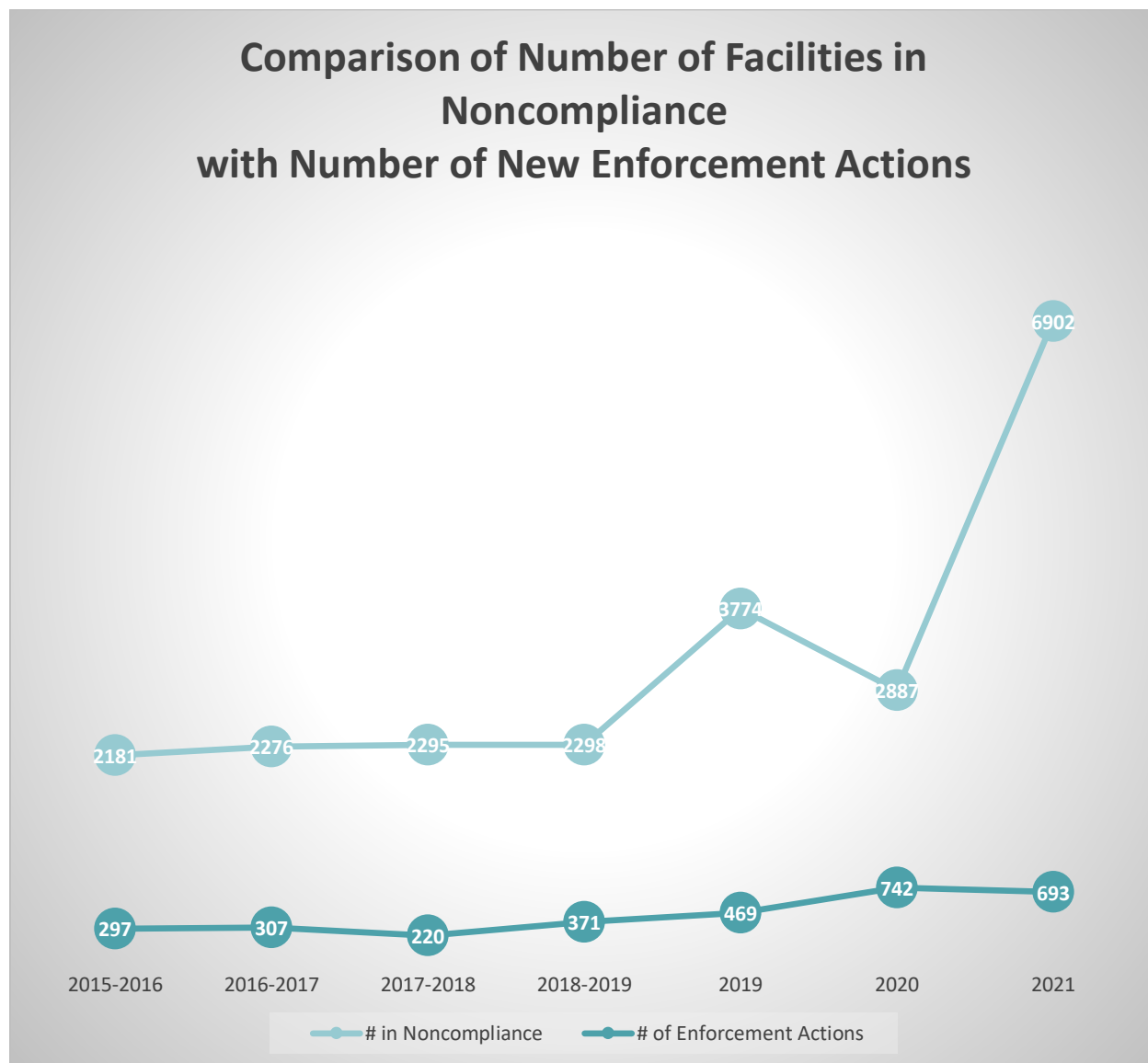
We also found that the percentage of facilities that the inspectors concluded were in significant non-compliance (SNC) with the FDEP's environmental rules fell over the last 12-month period. 4.28% of the facilities that were inspected and rated were found to be in SNC.



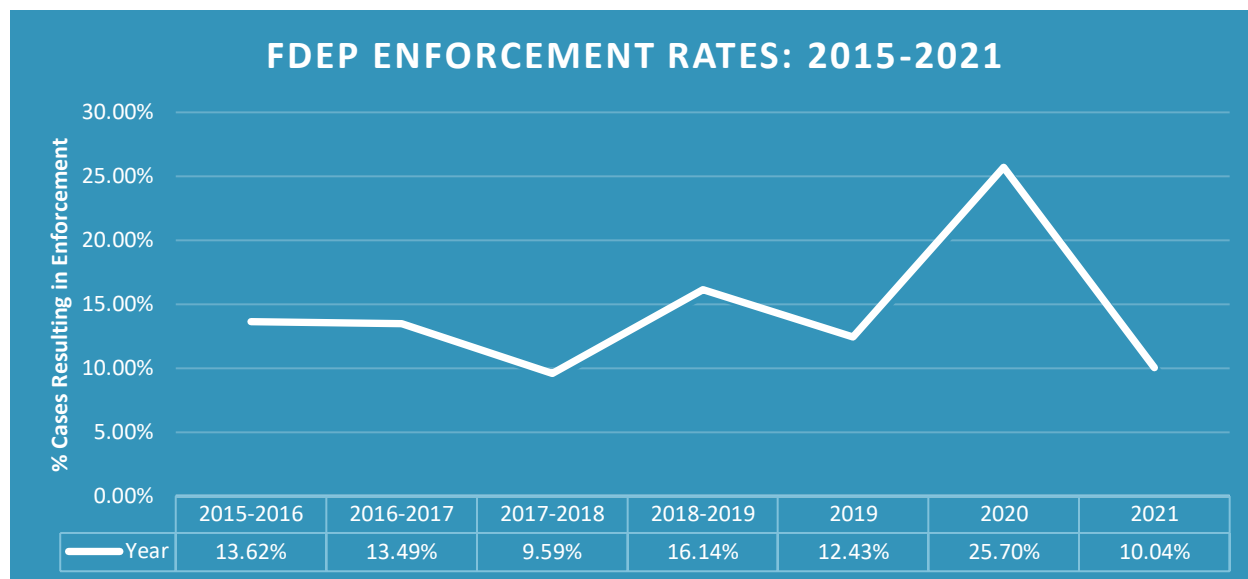
² As we suspected last year, the noncompliance results for 2020, were somewhat underreported. Part of the reason for this is that in some situations, predominately in dredge and fill cases and state lands cases, inspectors gave no rating after their inspections. If those numbers are included in the overall results, they tend to skew the results. For example, 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%.

Faced with significantly higher noncompliance numbers, the FDEP chose to open fifty-one fewer cases in 2021 than it did in 2020. The following graph shows the disparity.

Comparison of Noncompliance to Enforcement



FDEP Enforcement Rates: 2015-2021



Overall, it would appear that in 2021, the FDEP inspectors were told to significantly increase the number of facilities that they inspected, which they obviously did. However, those inspections revealed an equally significant raw number of facilities that were in noncompliance. The number was so high that the FDEP was not up to the challenge of opening cases to fully address the problem. The result was a lower number of cases, rather than the opposite. This result did not serve the environment or taxpayers well.

In 2021, the agency took enforcement in only 10% of the cases in which it identified noncompliance, a 15% decline from 2020. Interestingly, we also found that the South district had the highest noncompliance rates, while also having the lowest enforcement rates. This is the second straight year that the South District has had the highest noncompliance rates coupled with the lowest enforcement rates in the state, an interesting fact that strongly suggests a linkage between the lack of enforcement and a corresponding failure of polluters to comply with their permits. Last year we said 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. 2021's performance makes that public perception even more problematic.

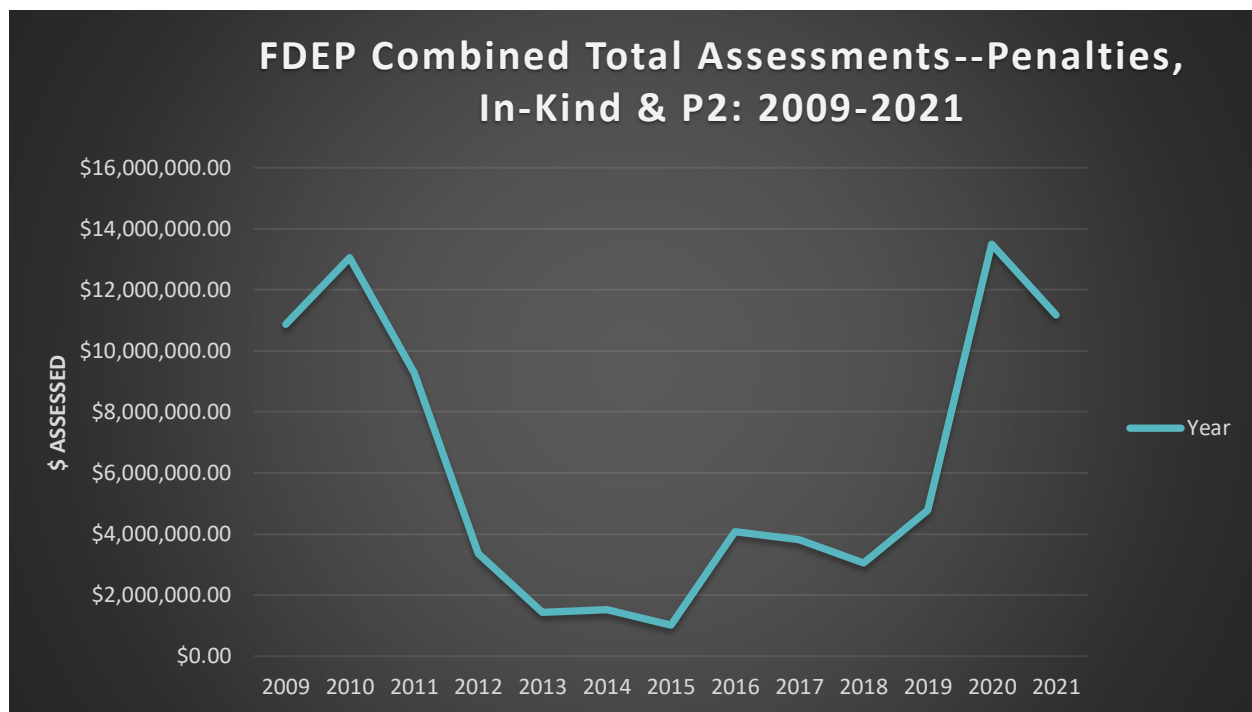
While the overall number of enforcement cases fell in 2021, there were some bright spots. The number of long-form consent orders increased slightly, as did model consent orders. At the same time, the number of short-form consent orders fell. While these are good signs, the number of case reports that were sent to the Office of General Counsel (OGC) fell, a troublesome sign, because as a category, case reports signal the agency's willingness to take on serious enforcement against significant violations.

Historically, the FDEP does not assess civil penalties in every case in which it takes formal enforcement. The Department assessed penalties in 570 cases in 2021,³ a slight drop from the 582 assessments levied in 2020, but significantly more than the number of cases

³ There were also 41 pollution prevention projects and 47 in-kind projects that were initiated because of the penalty assessments.

seen in 2019 and 2018. Looked at on a percentage basis, 82% of the cases assessed civil penalties (excluding in-kind and pollution-prevention assessments), a 6% decline from 2020's performance.

The assessments in these cases totaled \$6,069,696.05, a slight decrease from the \$6,168,791.94 that was assessed in 2020. In addition, the value of in-kind assessments was \$3,979,205.30, considerably lower than the \$5,919,438.73 that was assessed in 2020. Pollution prevention projects were valued at \$1,121,702.44, lower than the \$1,404,764.50 assessed in 2020.⁴ In 2021, the three areas combined totaled \$11,170,603.79, significantly lower than the \$13,492,995.17 that was levied in 2020, yet still a significant increase over the \$4,770,043.35 assessed in 2019. In general, over the course of the past 12 years, it is clear that the act of assessing civil penalties has significantly improved over the past few years when compared to eight years under the Scott administration.



In-kind and pollution prevention projects have long been used by the FDEP as part of the enforcement process. Their usage is governed by a Secretarial Directive known as Directive 923, the latest of which was [issued in July 2020](#) and is part of the formal Enforcement Manual. These enforcement mechanisms, when first made a part of the process, were designed to encourage polluters to offset their violations by undertaking environmentally friendly policies to benefit the public writ large. They have since devolved to a process in which municipalities in particular, submit proposals to upgrade their facilities to bring them into permit compliance—actions that they should have done anyway—while at the same time using those projects to offset the payment of civil penalties. This is particularly true of in-kind projects to the point that the approach is almost always found in proposals submitted by polluters and approved by the Department as a means of resolving the resolution of penalty assessments.

⁴ Throughout this report these projects will be described as in-kind and pollution prevention projects, or P2 Projects.

While the cumulative dollar value of penalty assessments fell in 2021, the median of those assessments rose significantly from \$2,000.00 in 2020 to \$3,000.00 in 2021. 2021's performance ended what had been a 3-year slide in median assessments—a welcome improvement. When we factored in all aspects of 2021's assessments, i.e., including in-kind and pollution prevention projects, we found that the median rose to \$3,500.00, compared to \$2,500.00 in 2020 and \$3,000.00 in 2019. The combined median in 2018 was \$3,460.00.

The increase in medians is reflected in a similar increase in the number of high value assessments of \$100,000 or more. Whereas 2020 saw five high-value assessments, 2021 had eleven. These eleven cases accounted for \$2,535,854.17 (42%) of the \$6,069,696.05 in total penalty assessments. All but two of the assessments were due to domestic wastewater/NPDES violations. The eleven cases also accounted for a smaller percentage of the overall dollar value of penalty assessments in 2021 than was the case in 2020. It should also be noted that the Department had three assessments that exceeded \$100,000 in 2019, and 2018 had only one.

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

- \$100,000.00 assessed against *Crooked Lake Park Sewerage Company* in a domestic wastewater/NPDES case that arose in the Southwest District.
- \$115,430.00 was assessed against *The Chemours Company FC, LLC* in a mining case managed out of the FDEP headquarters.
- \$139,000.00 was assessed by the Southeast District against the *Miami-Dade Water & Sewer Department* in a domestic wastewater/NPDES case.
- \$202,750.00 was assessed against the *City of Titusville* in a domestic wastewater/NPDES case out of the Central District.
- \$149,417.65 was assessed by the Central District against the *City of Winter Springs*, in a domestic wastewater/NPDES case.
- \$257,978.00 was assessed against *J.A Croson LLC* in a domestic wastewater/NPDES case in the Central District.
- \$187,382.00 was assessed against the *Town of Longboat Key Utilities* in a domestic wastewater/NPDES case out of the Southwest District.
- \$189,000.00 was assessed against the *City of Haines City* in a domestic wastewater/NPDES case out of the Southwest District.
- \$393,858.00 was assessed against *FedEx Ground Package System, Inc.* This was a hazardous waste case out of the Central District.
- \$288,588.52 was assessed against the *City of Wilton Manors* in a domestic wastewater/NPDES case filed in the Southeast District.
- \$512,450.00 was assessed against the *City of Fort Myers* in a domestic wastewater/NPDES case out of the South District.

2021's drop in penalty assessments nevertheless resulted in an increase in collections. Further, the FDEP collected 43% of its assessments in 2021, a 7% improvement over the previous year. Total penalty collections were \$2,596,806.96, compared to a total collection of \$2,196,972.42 in 2020—essentially an 18% increase. The FDEP collected

\$1,227,530.76 in 2019, and \$901,266.23 in 2018.⁵ In addition, in 2021 the FDEP recorded \$1,048,057.62 in completed in-kind and/or pollution prevention projects, compared to \$795,784.89 in 2020 and \$488,309.25 in 2019.

Turning to individual programs, we found that the agency conducted more inspections in every program area. There were sizable gains made in the of dredge and fill, mining, potable water, stormwater discharge, solid waste, tanks, and underground injection control programs. However, fewer inspections were conducted in the beaches and coastal systems, domestic wastewater/NPDES, and mangrove alteration. The drop in inspections in the mangrove alteration program represents the second year in a row in which inspections have fallen.

The overall compliance rate among all the programs rose from 59% in 2020 to 72% in 2021, a significant improvement. The percentage of facilities found to be in significant noncompliance fell from 5.61% to 4.28% in 2021, another improvement. That said, it is also clear that most of the violations (24%) were deemed by the agency to be “minor.” The highest rate of noncompliance was found in the mangrove alteration program, followed by the hazardous waste and stormwater discharge programs. The domestic wastewater/NPDES program continued to show very poor compliance results, with 49% of the facilities inspected found to be in noncompliance. Numerous programs have a significant percentage of their facilities in significant noncompliance. Those include air (9%), dredge and fill (9%), domestic wastewater/NPDES (5%), hazardous waste (7%), industrial waste (8%), mangrove alteration (30%), mining (8%), tanks (15%), and underground injection control (6%). It should be noted that last year, the agency reported that 96% of the mining facilities were in compliance; however, in 2021, the compliance rate fell to 59%.

The potable water and stormwater discharge programs had equal enforcement rates of just 3%, making them the lowest among all the programs. Those results were followed by the underground injection control (9%) and domestic wastewater/NPDES (9%) programs. Each of the remaining programs produced enforcement rates of 11% or higher.

We continue to monitor sewage overflows in twelve counties in Florida. Those counties are Bay, Brevard, Broward, Duval, Escambia, Hillsborough, Leon, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Wakulla (part of the greater Tallahassee metro area). What we found was that in 2021, the number of gallons discharged was significantly lower than the 126,302,622 gallons discharged in 2020; however, that is largely because Broward County alone discharged over 100,000,000 gallons into the environment in 2020. Nevertheless, in the twelve counties that we monitored, there were roughly 900 reported unpermitted discharges of wastewater/NPDES, totaling 29,992,877 gallons. Of that, the

⁵ We should point out that, when looking at collections for this report, we primarily 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. Further, 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.

reported gallons recovered were just 2,227,661. 409 of the 900 discharges were to surface waters. Those 409 discharges accounted for 16,259,874 gallons.⁶

B. District Results

Every district conducted more inspections in 2021 than in 2020. The number of inspections conducted by some districts were the most inspections conducted on an annual basis over the course of the past five years. The greatest number of inspections were conducted by the Southwest District. That district had 8,058 inspections, followed by the South District with 6,169. The Northwest District conducted the fewest inspections (2,405).

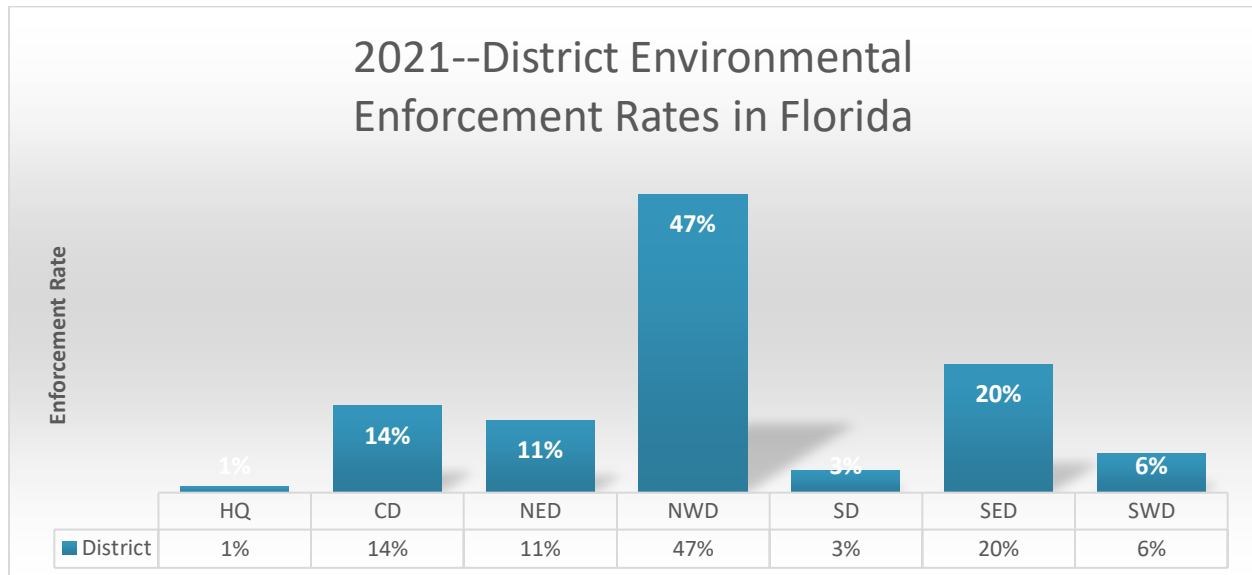
Compliance rates in the districts were generally better than in the previous year. They were highest in the Southwest District (80%) and lowest in the South District (61%). The Northeast District had the highest rate (8%) of facilities that were in significant non-compliance.

The districts were split evenly when comparing the number of new cases in 2021, with those opened in the previous year. The Northwest, Central and South Districts each opened more cases in 2021, whereas the Northeast, Southeast and Southwest Districts each saw declines. Given that the Southwest and Southeast Districts reported the highest compliance rates in 2021, their opening of fewer cases is understandable. However, when the number of new cases is compared to the number of inspections that identified noncompliance, we found that the Southwest District had the second-lowest enforcement rate in the state. Only the South District, which also had the highest noncompliance rate, was lower.

The following table displays the results of enforcement rates for comparison purposes:

⁶ The number of gallons discharged to surface waters is likely significantly higher than reported, because 60 of the known surface water discharges did not report the volume of sewage discharged.

District Enforcement Rates in Florida by District



The districts continue to assess civil penalties in a higher percentage of cases in which formal enforcement is used to resolve violations. Every district except for the Northwest District assessed civil penalties in at least 85% of its cases, while the Northwest District trailed with 78%. Considered together, the districts sought civil penalties in 95% of their cases in 2021, compared to 88% in 2020.

Median assessment values varied significantly by district. The Southeast District continues to have the highest median assessments, whereas the South District (which also had the lowest enforcement rate and highest noncompliance rate) continues to be the lowest by far. In 2021, the results for the South District were even lower than its performance in 2020.

In 2021, the Northeast District collected the highest percentage of its penalty assessments, and the South District collected the lowest percentage.

STATEWIDE ENFORCEMENT RESULTS⁷

A. Compliance and Inspection Considerations

In evaluating the general status of Florida's environment, we typically look at the extent to which regulated interests are complying with permits, as well as the number of other (non-permit based) violations found by the FDEP. From that point we look at the number and types of enforcement cases that the FDEP opened to address those violations. As we noted in 2016, after years of claiming that compliance data was not available, the FDEP finally began producing the requested reports, beginning with 2015's data. The provision of this data

⁷ 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.

has enabled us to put into perspective the FDEP's performance vis-à-vis its enforcement efforts.

2021 brought about a marked turnaround from the previous year. According to data supplied by the FDEP, the agency conducted 28,886 inspections in 2021⁸—3.5 times as many inspections as the 8,267 that were conducted in 2020. We do not know why there was such a dramatic spike in inspections in 2021; however, it could have been the result of a different tone being set by senior management, or the result of efforts to make up for the reduction of inspections caused by the Covid-19 pandemic. Regardless, the increase is a welcome change, and we hope that it will continue into the years ahead.

The following table lists the inspections and compliance rate for each of the years since 2015. It should be noted that each year the FDEP inspectors conduct inspections, and for various reasons do not give a compliance rating for a small percentage of those inspections. In comparing the results derived from including and excluding those inspections we have found that including the "no rating" inspections does not significantly change the overall compliance results (although including the "no rating" inspections does slightly increase the compliance rates). Consequently, we have opted to include those inspections in the overall totals each year. That said, the data showed that compliance rates increased in 2021, to an overall rate of 72.26%, up 13.74% from 2020's results. The current rate is also the highest recorded since 2017.

Inspections and Compliance Rates

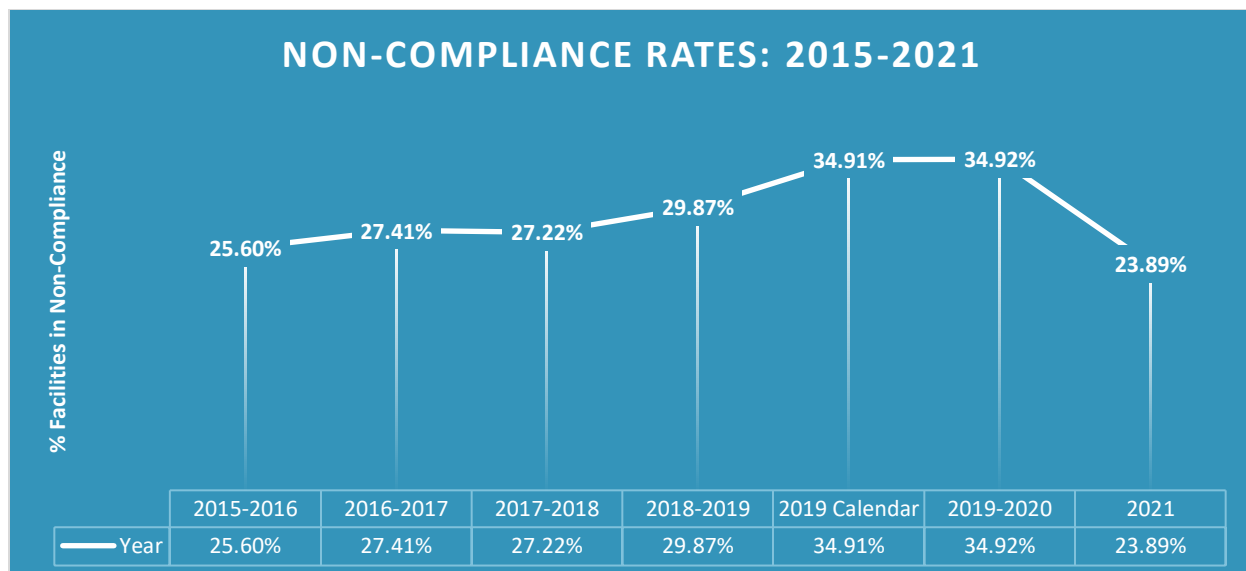
<i>Fiscal Year and Calendar Year</i>	<i>Total Number of Inspections</i>	<i>% Compliance Rate⁹</i>
2015/2016	8,519	74.40
2016/2017	8,303	72.59
2017/2018	8,431	72.78
2018/2019	7694	70.13
2019	10,812	61.27
2019/2020	8267	58.52
2021	29084	72.26

⁸ The data produced by the FDEP for 2021 covered January through December 2021, as opposed to the latest complete fiscal year, the latter of which would have included data from 2020.

⁹ Based upon the total number of facilities found to be in general noncompliance and SNC.

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

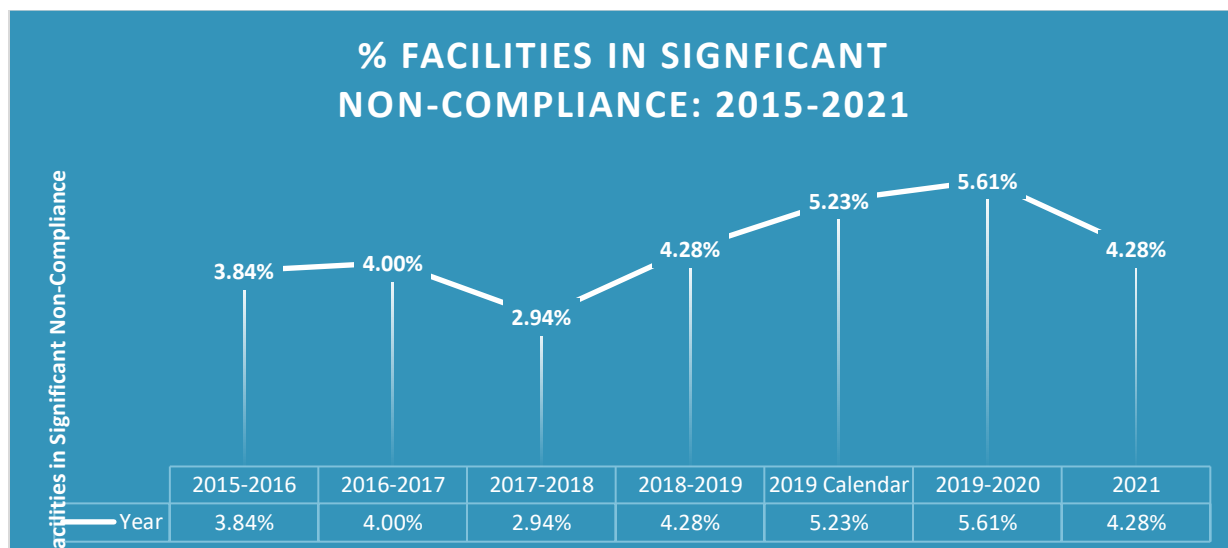
Non-Compliance Rates



Further, the number of facilities that the inspectors found to be in major, i.e., significant, non-compliance fell to 4.28% in 2021, down from 5.61% in the previous year. This is the lowest rate of significant non-compliance since 2018.

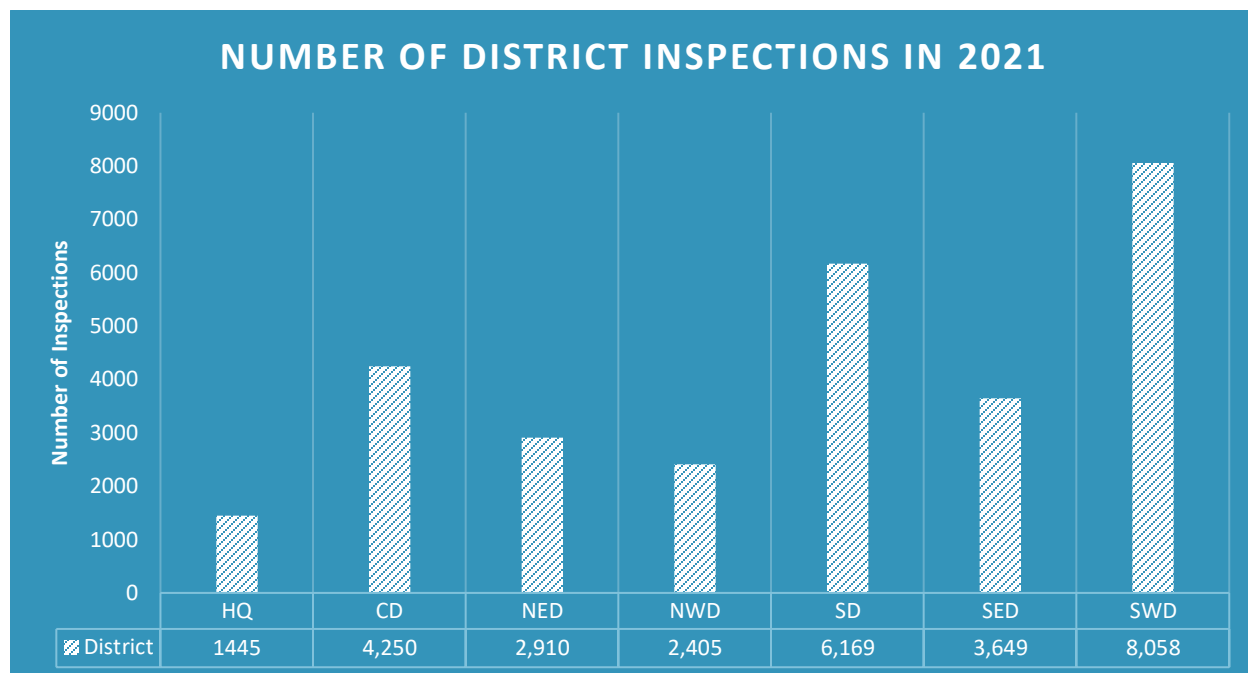
While the reduction in non-compliance percentages, including significant non-compliance, is a positive result, we should not lose sight of the raw data. That data tells us that a total of **6,902** separate instances of non-compliance were identified, and that in **1,235** of those cases the non-compliance was significant (typically meaning that formal enforcement was warranted. Those numbers are the FDEP inspectors' own assessments. Further, out of all those cases, the FDEP still only took formal enforcement in **693** cases, giving **542** significant non-compliance cases a free pass.

Percentage of Facilities in Significant Non-compliance



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.¹⁰

District Inspections in 2021



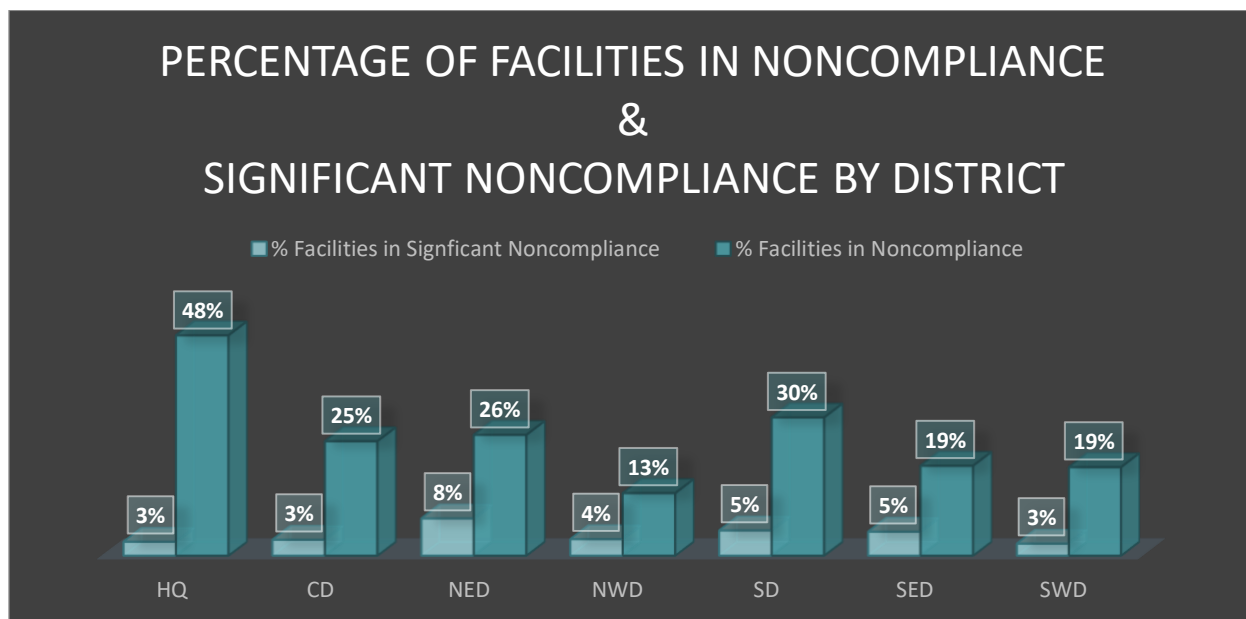
The number of inspections increased in every district in 2021.

If we factor in the overall noncompliance,¹¹ and then separate out of that number the significant noncompliance rates of each district, compared with the total number of inspections in the major program areas, we find the following results.

¹⁰ The numbers shown are for the cumulative totals of the major program areas: air, beaches and coastal systems, dredge and fill (ERP), domestic wastewater/NPDES, 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.

¹¹ Overall noncompliance data is the combination of facilities in minor noncompliance and major noncompliance.

Percentage of Non-Compliance and Significant Non-Compliance by District



We did find that the percentage of facilities in significant noncompliance rose in the Northwest, Northeast, and Southeast districts. However, the compliance data supplied by the FDEP shows that, on the whole, there is a fairly consistent percentage of facilities across Florida that are rated by the inspectors as being in significant noncompliance with their permits.

When looking at the combined result of all the facilities that are in either “routine” or significant noncompliance we found that the overall percentages of total noncompliance fell in every district in 2021, a decidedly good result.

B. Compliance and the Number and Types of Enforcement Actions Taken—Statewide Results¹²

While the number of inspections, coupled with the overall compliance results were positive in 2021, the same cannot be said for the FDEP’s response to those facilities that the FDEP found to be in noncompliance. **The agency took formal enforcement against just 10% of the noncompliant facilities—a level that tied with 2017 as the lowest rate since 2015.**¹³

The logical question to ask is why the Department is taking enforcement in so few cases. Part of the reason for this approach is that the Department, under Governor Scott, initiated a process whereby formal enforcement would be avoided if the polluter would agree to take certain action(s) to address the violations. This approach was initiated by sending the polluter

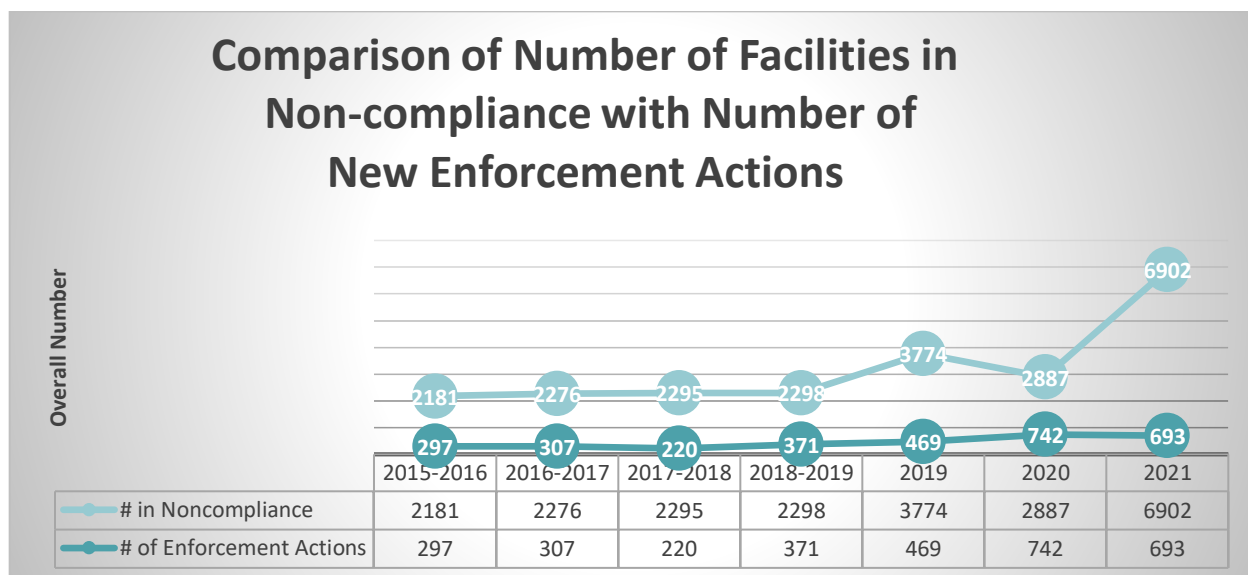
¹² For an overview of the various enforcement tools, as well as the historical averages for the various program areas please see the Appendix to this report.

¹³ How this result compares with years prior to 2015, is unknown because the FDEP claimed at that time that the compliance data did not exist.

a letter called a Compliance Assistance Offer (CAO).^{14, 15} This CAO offered the polluter the opportunity to avoid formal enforcement if one of three responses were initiated (1) tell the Department what was¹⁶ being done to resolve the violation(s), (2) provide any missing information to the Department and/or (3) allow the Department's case manager to visit the facility to discuss the violations.¹⁶ If the polluter agrees to any one of the three options, the Department then foregoes any formal enforcement and the entire episode is "forgiven" in the sense that the polluter's file shows no enforcement. Not surprisingly, most polluters, if given this opportunity, seize upon it as an effort to avoid any confrontation with the Department. Further, there is no limitation upon the number of CAOs that the Department can issue to a single polluter, meaning that years of violations can go unenforced. For example, in a report that we issued last year, we noted that the Clearwater area has been the recipient of these lenient policies on multiple occasions and that the City of Largo received at least 3 CAOs, even though the city was already under formal enforcement. With these types of policies and practices it is easy to see why the FDEP's data shows such great discrepancies between the inspection results and the lack of formal enforcement actions.

What is clear from the data is that in 2021, the FDEP's approach was to back off from taking formal enforcement wherever possible. In 2021, there were 693 new enforcement cases in the FDEP, compared with 742 in the previous year. The results in 2021 ended what had been a steady increase in the number of cases over a three-year period. The historic trend can be seen in the chart below:

Comparison of Facilities in Non-Compliance to Enforcement Actions



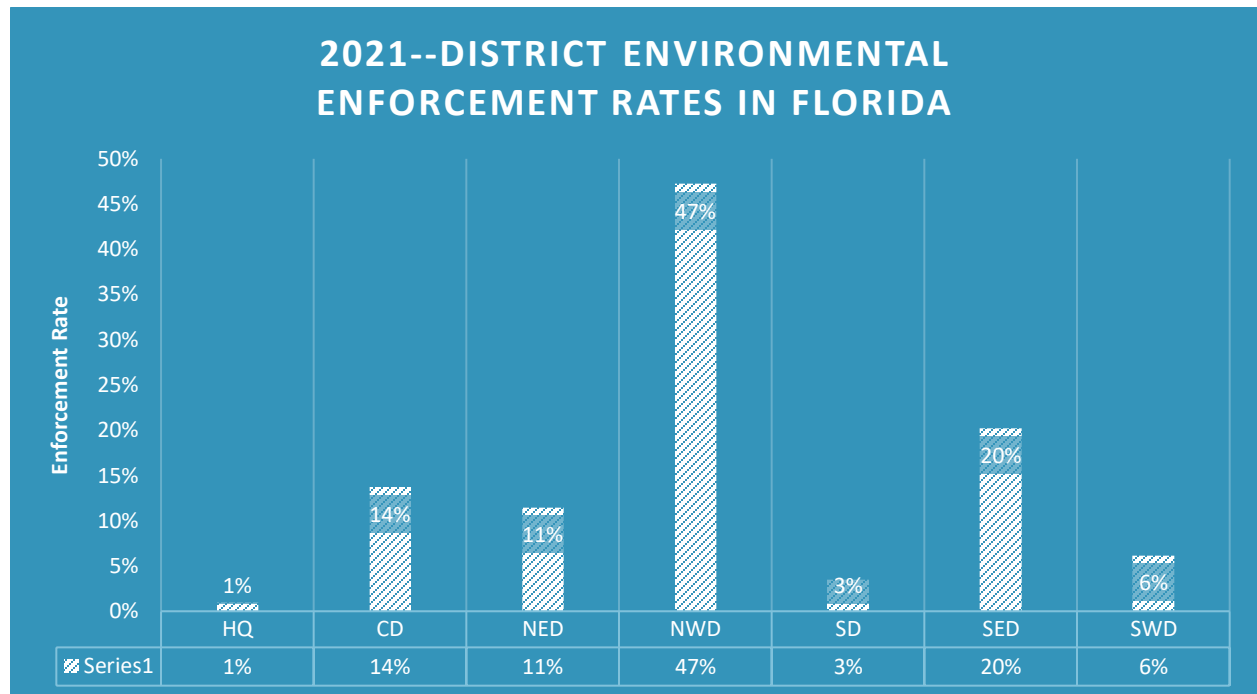
¹⁴ The CAO process has been appended to the Department's Enforcement Manual and was [last updated](#) in 2017. It remains a part of the enforcement process.

¹⁵ When the FDEP acknowledged that it maintained records/reports of inspections we began asking for reports identifying the number of CAOs issued each year. At first, the Department supplied us with that information; however, since bringing these practices to the public's attention the agency has continually failed to supply the data to us, even though we have requested them each year.

¹⁶ Interestingly, options 2 and 3 are merely actions that the polluter, as a permit holder, would be required to undertake anyway under the terms of the permit, e.g., wastewater/NPDES permits already give the Department the right to access the permit holder's property, and also require the permit holder to submit all relevant documentation to the Department.

By comparing the number of cases of noncompliance with the number of known new enforcement cases opened in 2021, we were able to ascertain the enforcement rate for each district. Those rates are shown below:

Enforcement Rates by District for 2021



The above results represent staggering declines in enforcement rates from 2020, as can be seen in the chart below:

Comparison of Enforcement Rates by District

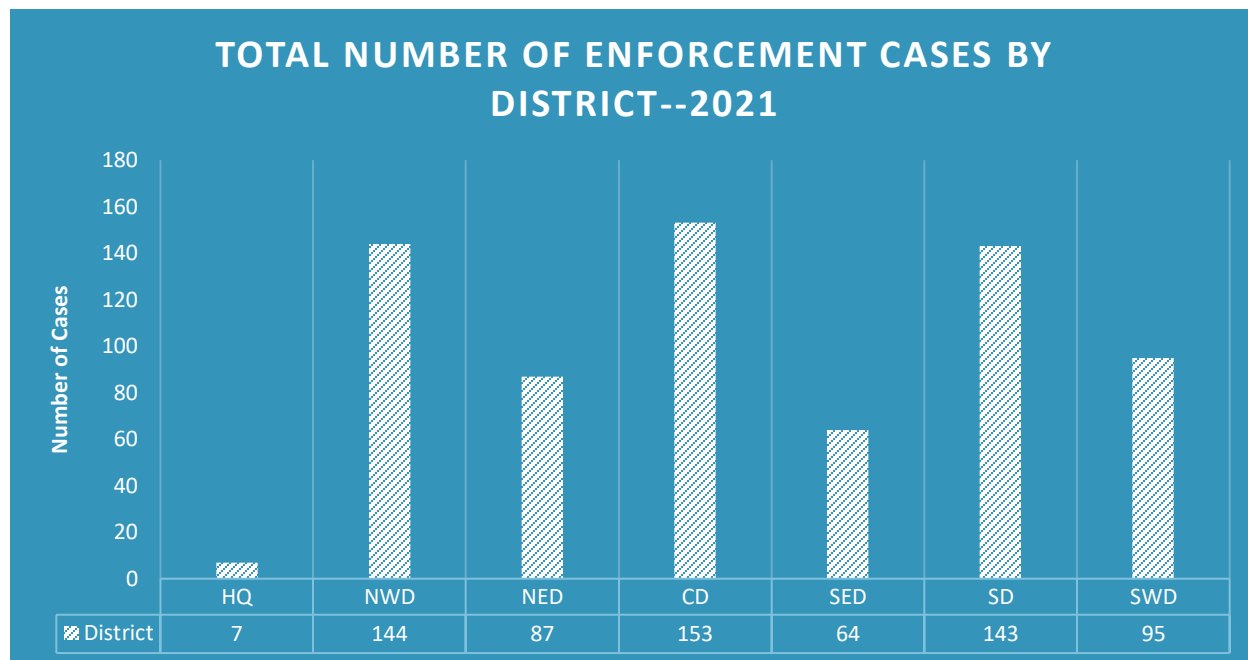
<i>District</i>	<i>2020 Enforcement Rate</i>	<i>2021 Enforcement Rate</i>
Central	29%	14%
Northeast	34%	11%
Northwest	109%	47%
South	13%	3%
Southeast	50%	20%
Southwest	29%	6%

Delving deeper, we found what appears to be an interesting correlation between noncompliance and enforcement. **The South District, which had the lowest enforcement rate, also had the highest number of noncompliant facilities in Florida. This was the same result in 2020. Meanwhile, the Southwest District, which had the second-highest**

number of noncompliant facilities, also had the second lowest enforcement rate. At the other end of the scale, the Northwest District had the fewest number of noncompliant facilities, and also had the highest enforcement rate in the state.

If we just look at raw numbers, we see that, except for the Southeast District, in 2021, the number of new cases was rather uniformly spread across the state. The same was true in 2020.

Number of Enforcement Cases by District



In 2010, the year before Governor Scott took office, the Department opened 1,587 new cases. Thus, 2021's 693 new cases is far from the level at which the agency performed prior to the assumption of control by the Scott and DeSantis administrations. And, as we noted previously, 2021's result is worse than the result of 742 new cases just one year ago. There is a seemingly constant fluctuation in these numbers from year to year, and it means that ultimately the FDEP will continue having a difficult time being viewed as an agency that takes environmental enforcement seriously.

The next issue is the type of enforcement that the FDEP takes once it decides to open an enforcement case. 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 2021 was divided as follows:

Number of Cases of Each Enforcement Mechanism

Type of Enforcement	Number of Cases Opened Statewide in 2020
NOVs	67
Final Orders	43
Long-form Consent Orders	89
Model Consent Orders	143
Amended Consent Orders	9
Short-form Consent Orders	317
Case Reports	25

While the overall number of enforcement cases fell in 2021, there were some bright spots. Long-form consent orders increased slightly, as did model consent orders. At the same time, the number of short-form consent orders fell. On a more troublesome note, the number of case reports that were sent to OGC also fell, signaling a lower intent to engage in significant enforcement by the agency when significant violations are found.

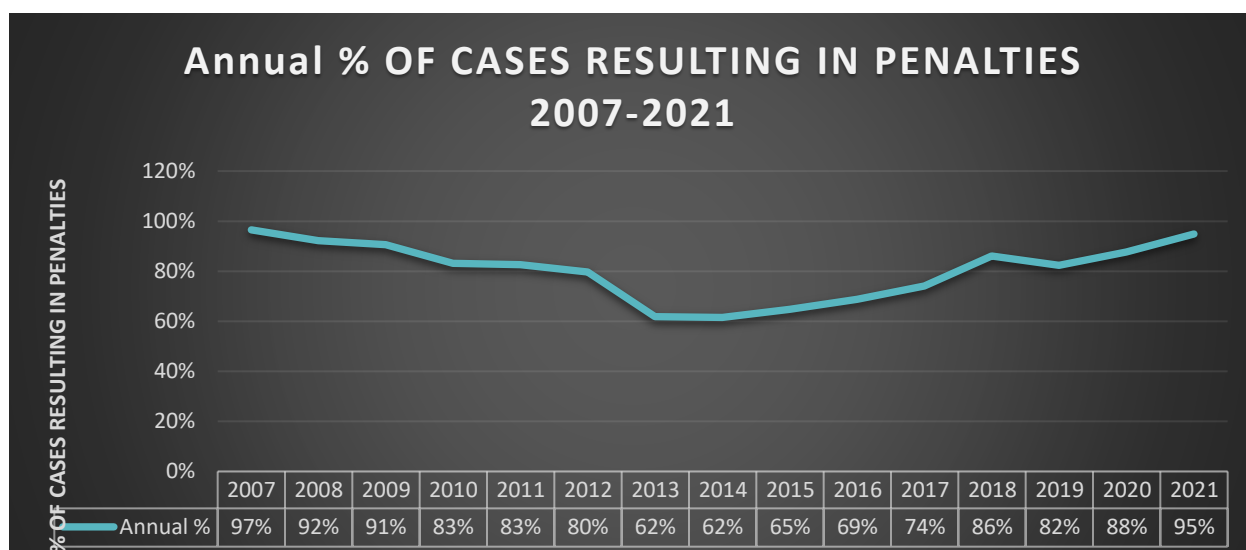
The use of consent orders continues to be the preferred method of enforcement used by the FDEP. In 2021, it appears that the agency decided to pull back somewhat from its reliance upon short-form consent orders, i.e., the consent orders that only require the payment of a fine. However, long-form consent orders, which require greater department oversight, were used in 16% of the new enforcement cases, an improvement over the previous year.

C. Statewide Civil Penalty Assessments

The Department assessed penalties in 570 cases in 2021, a slight drop from the 582 assessments levied in 2020, but significantly more than the number of cases that we saw in 2019 and 2018. There were also forty-one pollution prevention projects and forty-seven in-kind projects that were initiated as a result of the penalty assessments.

In the previous section we discussed the enforcement rate in terms of the percentage of cases that received formal enforcement once the FDEP concluded that violations had occurred. This rate was a dismal 10% in 2021. There is, however, a second consideration, that being the rate at which civil penalties were assessed in the 10% of cases in which the FDEP chose to bring formal enforcement. In that second type of analysis, it appears that the FDEP is slowly regaining a rate of penalty assessment seen in the agency before Rick Scott became governor in 2011. The table below shows the percentage of cases in which the FDEP assessed civil penalties once the agency decided to initiate formal enforcement.

Percentage of Enforcement Cases Resulting in Civil Penalties

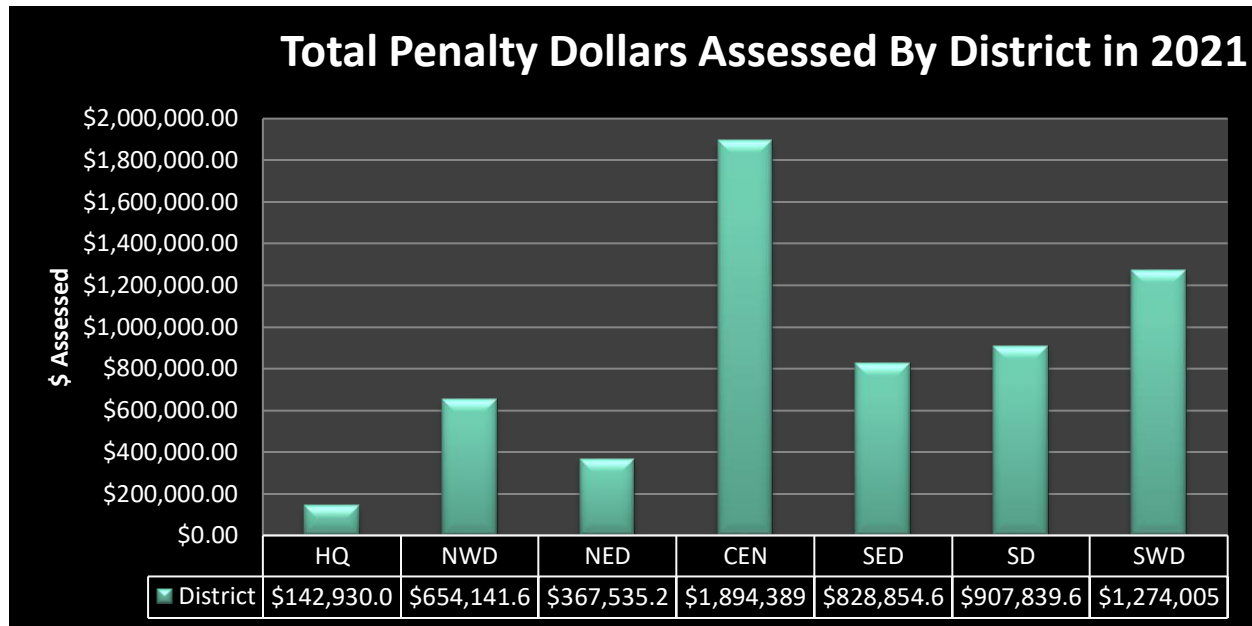


The 570 assessments resulted in a total dollar assessment of \$6,069,696.05, a slight decrease from the \$6,168,791.94 that was assessed in 2020. In addition, the value of in-kind assessments was \$3,979,205.30, considerably lower than the \$5,919,438.73 that was assessed in 2020. Pollution prevention projects were valued at \$1,121,702.44, lower than the \$1,404,764.50 assessed in 2020. In 2021, the three areas combined totaled \$11,170,603.79, significantly lower than the \$13,492,995.17 that was levied in 2020, yet still a significant increase over the \$4,770,043.35 assessed in 2019.

In-kind and pollution prevention projects have long been used by the FDEP as part of the enforcement process. Their usage is governed by a Secretarial Directive known as Directive 923, the latest of which was [issued in July 2020](#) and is part of the formal Enforcement Manual. These enforcement mechanisms, when first made a part of the process, were designed to encourage polluters to offset their violations by undertaking environmentally friendly policies to benefit the public writ large. They have since devolved to a process in which, municipalities in particular, submit proposals to upgrade their own facilities to bring them into permit compliance—actions that they should have undertaken anyway—while at the same time using those projects to offset the payment of civil penalties. This is particularly true of in-kind projects to the point that the approach is almost always found in proposals submitted by polluters and approved by the Department as a means of resolving the resolution of penalty assessments.

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 Central District is due to a series of large wastewater/NPDES assessments, three of which were over \$149,000. The Southwest District also had three cases, each of which equaled or exceeded \$100,000.

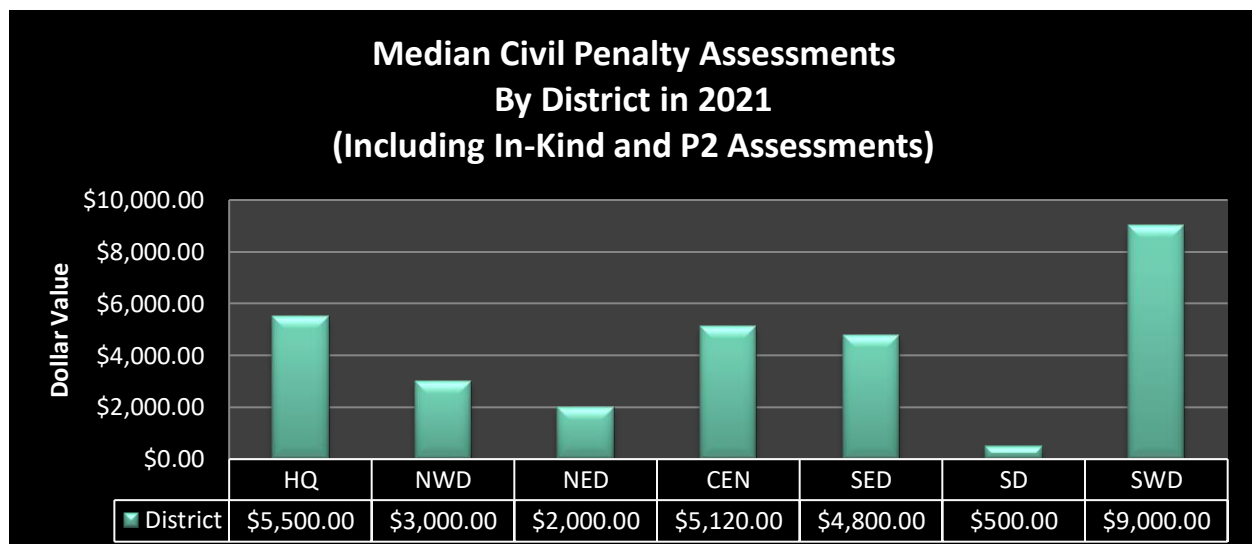
Penalties Assessed by District



While the cumulative dollar value of penalty assessments fell in 2021, the median of those assessments rose significantly from \$2,000.00 in 2020 to \$3,000.00 in 2021. When we factored in all aspects of 2021's assessments, i.e., include in-kind and pollution prevention projects, we found that the median rose to \$3,500.00, compared to \$2,500.00 in 2020 and \$3,000.00 in 2019. The combined median in 2018 was \$3,460.00.

There continues to be a split among the districts in terms of median assessments. The highest medians were recorded in the Central, Southeast and Southwest Districts, while the South District was markedly lower. The Northeast District was the only district to register lower medians in 2021 than in the previous year. And just as in 2020, the South District had the distinction of having the highest non-compliance rate in the state, coupled with the lowest median assessments in the state. Medians in the South District were unchanged at just \$500.00.

Median Civil Penalty Assessments by District



1. The Department's Highest Assessments

Of the \$6,069,696.05 that the FDEP assessed in 2021, the assessments that exceeded \$100,000 totaled \$2,535,854.17, or 42% of the total. There were eleven of these assessments and all but two were domestic wastewater/NPDES cases. Four of the eleven assessments came out of the Central District, while the largest was assessed in the South District. A hazardous waste case and a mining case made up the remaining two. By way of comparison, in 2020 there were just five cases that exceeded \$100,000, while 2019 had just three and 2018 had only one.

All but three of the violators in these cases chose to split up their penalties by way of utilizing either an in-kind or pollution prevention project. When those projects are added to the total these cases (and one other case against *Manatee County Utilities* that was purely an in-kind assessment of \$121,500.00) accounted for \$6,955,521.85 (62%) of the \$11,170,603.79 in penalty, in-kind and pollution prevention projects assessed by the FDEP in 2021.

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

- \$512,450.00 assessed against the *City of Fort Myers* in a domestic wastewater/NPDES case out of the South District.
- \$288,588.52 assessed against the *City of Wilton Manors* in a domestic wastewater/NPDES case arising in the Southeast District.
- \$257,978.00 assessed against *J.A. Croson LLC* in a domestic wastewater/NPDES case out of the Central District.
- \$202,750.00 assessed against the *City of Titusville* in a domestic wastewater/NPDES case out of the Central District.
- \$189,000.00 assessed against the *City of Haines City*, in a domestic wastewater/NPDES case in the Southwest District.
- \$187,382.00 assessed against the *Town of Longboat Key Utilities Department* by the Southwest District in a domestic wastewater/NPDES case.
- \$149,417.65 assessed against the *City of Winter Springs* in a domestic wastewater/NPDES case brought by the Central District.
- \$139,000.00 assessed against the *Miami-Dade Water & Sewer Department* in a domestic wastewater/NPDES case in the Southeast District.
- \$100,000.00 assessed against the *Crooked Lake Park Sewerage Company* in a domestic wastewater/NPDES case out of the Southwest District.
- \$393,858.00 assessed against *Fed Ex Ground Package System, Inc.* in a hazardous waste case in the Central District.
- \$115,430.00 assessed against the *Chemours Company FC, LLC* in a mining case out of the FDEP Headquarters.

D. Statewide Civil Penalty Collections

Despite the drop in penalty assessments the FDEP still managed an increase in the collection of penalty dollars. Total penalty collections were \$2,596,806.96, compared to a total collection of \$2,196,972.42 in 2020—essentially an 18% increase. The FDEP collected

\$1,227,530.76 in 2019, and \$901,266.23 in 2018.¹⁷ In addition, in 2021 the FDEP recorded \$1,048,057.62 in completed in-kind and/or pollution prevention projects, compared to \$795,784.89 in 2020 and \$488,309.25 in 2019.

As we have stated many times, it is not enough to assess civil penalties if those penalties are not collected. Unfortunately, the past few years have seen a marked decline in the rate at which those assessments were collected. However, there was a noteworthy turnaround in 2021. The FDEP collected 43% of its assessments in 2021, a 7% improvement over the previous year. But this is still the second worst year since 2017, when only 34% of assessments were collected. 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

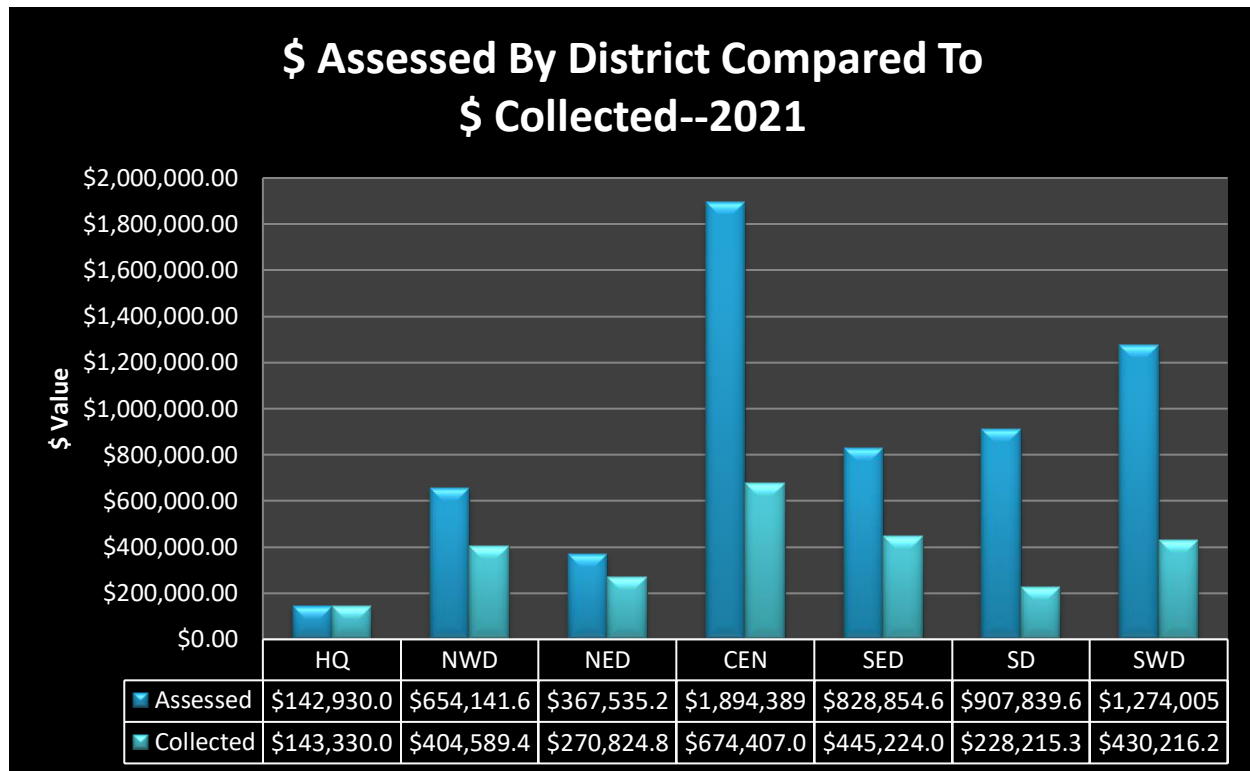
<i>Year</i>	<i>Assessments</i>	<i>Collections</i>	<i>% Assessments Collected</i>
2007	\$9,079,363.10	\$6,083,693.04	67%
2008	\$7,597,011.98	\$5,484,480.00	72%
2009	\$8,370,981.04	\$4,842,642.95	58%
2010	\$10,310,833.83	\$7,077,687.19	69%
2011	\$8,333,933.39	\$3,037,727.79	36%
2012	\$2,796,447.01	\$1,589,724.69	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%
2019	\$2,811,615.43	\$1,227,530.76	44%

¹⁷ 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.

2020	\$6,168,791.94	\$2,196,972.42	36%
2021	\$6,069,696.05	\$2,596,806.96	43%

The individual districts continue to produce largely uniform results, although this year the Northeast District recovered the highest percentage (74%) of its assessments.

Comparison of Assessments to Collections by District



E. Statewide Program Performance

1. Compliance Rates Among the Programs

The compliance data supplied by the FDEP includes compliance data for the major programs, and the following tables list each program and the compliance results for each of the past 6 years.

The number of inspections conducted in each program is shown below. The number of inspections rose in every major program, except for beaches and coastal systems, mangrove alteration and domestic wastewater/NPDES, the latter of which saw a 16% decrease in the number of inspections. The FDEP clearly gave more attention to the potable water program, as shown by the 13,710 inspections that were conducted, the highest number of inspections during the timeframe for which we have data.

Number of Inspections in Program Areas: 2015-2021

Program ¹⁸	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019	2019/2020	Calendar 2021
Air	327	307	284	246	832	685	1286
Beaches	1024	963	1015	1115	1117	1247	1149
DF-ERP	2266	2068	2240	2011	2184	912	3163
DW & NPDES	1633	1503	1574	1357	3600	2593	2176
HW	485	587	432	420	438	309	434
IW	271	475	910	307	381	241	358
PW	1193	1065	993	1039	785	185	13710
SW	615	960	1152	771	900	621	812
Tanks	452	381	352	331	336	226	439
UIC	189	181	135	97	239	157	253

The number of inspections in which noncompliance was identified is shown below. As can be seen in the table, except for the beaches and coastal and the domestic wastewater/NPDES programs, in 2021 the number of facilities found to be in noncompliance by the FDEP inspectors increased in every major program.

Number of Facilities Found to be in Noncompliance: 2015-2021

Program	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019	2019/2020	Calendar 2021
Air	50	33	36	41	79	60	177
Beaches	1	5	4	2	3	6	3
DF-ERP	266	325	356	276	342	207	1196
DW & NPDES	784	717	874	828	2231	1664	1034
HW	188	257	166	188	215	171	237
IW	24	45	87	129	184	122	129
PW	622	662	614	592	447	119	2014
SW	50	97	70	96	104	92	106
Tanks	95	91	76	140	125	79	128
UIC	24	23	11	6	44	41	60

¹⁸ 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/NPDES; 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.

We now have four 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 4 years. The data that we have for 2021 shows that there were increases in the number of facilities in significant non-compliance in most of the FDEP's program areas, with the air, dredge and fill, mangrove alteration, mining, potable water, and underground injection programs being the least compliant. The table below compares the results for the past 4 years:

Number of Facilities in Significant Noncompliance: 2018-2021

Program	Fiscal 2018/2019 Number of Facilities in SNC	Calendar 2019 Number of Facilities in SNC	Fiscal 2019/2020 Number of Facilities in SNC	Calendar 2021 Number of Facilities in SNC
Air	10	24	19	101
Beaches	2	3	6	3
DF-ERP	19	85	66	299
DW&NPDES ¹⁹	90	248	203	115
HW	17	18	24	29
IW	8	28	27	26
MA	Not Available	13	13	35
MN	Not Available	0	1	245
PW	90	70	18	264
SL	Not Available	15	16	Not Available
RO	Not Available	4	11	38
SW	1	1	4	3
Tanks	92	85	53	61
UIC	0	3	3	16

As shown below, the percentage of facilities in significant noncompliance fell in the domestic wastewater/NPDES, hazardous waste, industrial waste, potable water, solid waste, and tanks programs. There were sizeable increases in significant noncompliance in the mangrove alterations, mining, and underground injection programs.

Percentage of Facilities in Significant Noncompliance: 2018-2021

¹⁹ Combined Domestic Wastewater and NPDES Wastewater

Program	Fiscal 2018/2019 Percentage of Facilities in SNC	Calendar 2019 Percentage of Facilities in SNC	Fiscal 2019/2020 Percentage of Facilities in SNC	Calendar 2021 Percentage of Facilities in SNC
Air	4%	3%	3%	9%
Beaches	0%	0%	0%	0%
DF-ERP	14%	4%	7%	9%
DW&NPDES ²⁰	7%	7%	8%	6%
HW	4%	4%	8%	7%
IW	3%	7%	11%	8%
MA	Not Available	15%	10%	30%
MN	Not Available	1%	1%	8%
PW	9%	9%	10%	2%
SL	Not Available	3%	4%	Not Available
RO	Not Available	6%	3%	3%
SW	0%	0%	1%	0%
Tanks	28%	25%	23%	15%
UIC	0%	1%	2%	6%

Turning to the overall compliance rates in each program, we found that compliance improved in a number of programs. Overall, the results were significantly better than we saw in 2020, particularly in the domestic wastewater/NPDES and potable water programs. The mining program had the largest drop in compliance of all the programs.

Overall Compliance Rates by Program: 2015-2021

Program	2015/2016	2016/2017	2017/2018	2018/2019	Calendar 2019 ²¹	2019/2020	Calendar 2021
Air	85%	89%	87%	83%	91%	91%	86%
Beaches	100%	99%	100%	100%	100%	100%	100%
DF-ERP	88%	84%	84%	86%	75%	55%	66%
DW & NPDES ²²	52%	52%	45%	39%	36%	34%	52%
HW	61%	56%	62%	55%	41%	37%	45%
IW	91%	91%	90%	58%	51%	49%	64%

²⁰ Combined Domestic Wastewater and NPDES Wastewater

²¹ The results for the DF, HW, SW, and Tanks programs have been adjusted after considering the inspections that resulted in no rating being given.

²² Combined Domestic Wastewater and NPDES Wastewater

MA	Not Available	Not Available	Not Available	Not Available	42%	42%	100%
MN	Not Available	Not Available	Not Available	Not Available	96%	96%	70%
PW	48%	38%	38%	43%	43%	36%	85%
SL	Not Available	Not Available	Not Available	Not Available	48%	48%	Not Available
RO	Not Available	Not Available	Not Available	Not Available	79%	52%	45%
SW	92%	90%	94%	88%	82%	78%	87%
Tanks	79%	76%	78%	58%	51%	53%	71%
UIC	87%	87%	92%	94%	82%	74%	76%

2. Sewage Overflows in 2021

Sewage overflows are a significant source of pollution that harm Florida's environment and the public. These discharges typically occur because of blockages that form in sewage lines, and other breakdowns in the piping and machinery used to move raw sewage from homes and businesses to sewage treatment plants for processing. These discharges can also occur because of heavy rainfall events that result in heavy loading of water into systems that are not designed to handle such loads. Regardless of the cause, the typical effect of sewage overflows is to send varying amounts of raw sewage into nearby surface waters and/or streets and property in the vicinity of the system failure.

Throughout 2021, we monitored emergency alerts that are provided to the state whenever sewage overflows are occurring. These notices must be provided by both governmental and private entities. The State of Florida requires this information to be provided for all counties in 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 both the gallons discharged and the gallons recovered are 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, and it appears that the state is not forcefully requiring the entities to improve upon their reporting on this metric. Third, the types of discharges are overwhelmingly raw sewage, however, there are typically a few other types of illegal 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. We have focused on those areas with the highest populations, and consequently, we have only monitored alerts coming from twelve counties in Florida. Those counties are Bay, Brevard, Broward, Duval, Escambia, Hillsborough, Leon, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Wakulla (part of the greater Tallahassee metro area). **What we found was that in 2021, in these twelve counties alone, there were 900 reported unpermitted discharges of wastewater, totaling 29,992,877 gallons and 409 of those discharges were to surface waters. Of that, the reported gallons recovered were just 2,227,661. Further, based upon what was**

reported, the discharges to surface waters were at least 16,259,874 gallons from these twelve counties alone.

The total discharge for 2021 is significantly lower than the 126,302,622 gallons discharged in 2020; however, that is largely because Broward County, in a somewhat unusual series of events, was responsible for discharging over 100,000,000 gallons into the environment in 2020. Therefore, if the results from Broward County were removed from the total discharges in 2020, the total discharges from the rest of the monitored counties actually increased from 2020 to 2021.

The breakdown for each county follows:

Sewage Overflows in 2021

County	Number of Discharges	Total Gallons Discharged	Number of Discharges Affecting Surface Waters²³	Number of Gallons to Surface Waters
Bay	215	13,553,837	149	3,759,372
Brevard	48	579,329	10	212,101
Broward	84	2,151,059	28	2,013,312
Duval	100	500,003	63	398,095
Escambia	29	6,117,270	17	6,010,150
Hillsborough	112	1,301,595	40	359,324
Leon	10	532,080	3	501,200
Miami-Dade	42	891,684	13	741,914
Palm Beach	129	792,464	28	350,573
Pinellas	93	2,001,281	45	1,746,963
Sarasota	33	1,565,375	13	166,870
Wakulla	4	6,900	0	N/A

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, the number of gallons discharged to surface waters is likely significantly higher than reported, because 60 of the known surface water discharges did not report the volume of sewage discharged.

²³ 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.”

What stands out in the above data for 2021, is the number of discharges in Bay County where it was initially reported that 13,553,837 gallons of raw sewage was illegally discharged. When we delved deeper into the reporting, however, we found that after the initial reports were submitted the wastewater/NPDES facilities amended their initial reports to show higher amounts. In total we found that 6,988,051 gallons were discharged from just three wastewater/NPDES plants, and 4,931,164 gallons of that went into surface waters. In March 2022 we issued a [report](#) on the situation in Bay County and discussed the FDEP's response to the discharges.

The data from 2021 plainly shows that what we saw in 2020 was not a fluke. There continue to be an outrageous number of sewage overflows across Florida, and the data suggests that the FDEP is doing little to aggressively enforce what are significant permit violations. It is further obvious 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

Comparatively, the results in 2021 are not tremendously different than what we saw in 2020. Both increases and decreases in the number of new enforcement cases were moderate. The exceptions were the dredge and fill, potable water, and state lands programs, each of which saw comparatively higher increases, while the domestic waste, industrial waste, mangrove alterations and solid waste programs each saw sizable decreases in performance. The following table sets out the number of enforcement cases brought in each key program area over the past 6 years:²⁴

Historical View of Number of Enforcement Cases by Program: 2016-2021

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	Total No. of Enforcement Cases-- 2021
Asbestos	0²⁵	0	1	3	11	3
Air (Excluding Asbestos)	17	9	22	38	43	39
Beaches/Coastal	4	4	10	9	6	4
Waste Cleanup	9	5	7	8	7	14
Dredge & Fill²⁶	63	54	99	123	154	171
Domestic Waste	44	34	77	62	125	95
Hazardous Waste	35	19	34	40	48	40
Industrial Waste	11	12	13	18	33	14

²⁴ Defined as the sum of case reports, all consent orders, NOVs and final orders.

²⁵ Throughout this report, numbers reported in **red** will indicate declines in performance from the previous year.

²⁶ This includes Environmental Resource Permitting.

Mangrove Alterations	8	12	21	22	32	14
Mining/Phospho-Gypsum	0	0	0	3	0	5
Potable Water	15	15	17	27	48	69
State Lands	16	7	10	18	19	30
Stormwater Discharge	23	14	16	24	26	23
Solid Waste	31	18	15	36	40	19
Tanks	11	15	25	26	140	148
Underground Injection Control	1	1	2	3	3	5

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: 2016-2021

Program	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate	Enforcement Rate
	2015	2016	2017	2018	2019	2020	2021
Air	36%	52%	25%	54%	48%	72%	22%
Beaches	700%	80%	100%	500%	300%	100%	133%
DF-ERP	20%	19%	15%	47%	36%	74%	14%
Domestic Waste	4%	6%	4%	11%	3%	8%	9%
Hazardous Waste	23%	14%	11%	19%	19%	28%	17%
Industrial Waste	29%	24%	14%	10%	10%	27%	11%
Mangrove Alteration	Not Available	Not Available	Not Available	Not Available	157%	76%	12%
Mining	Not Available	Not Available	Not Available	Not Available	75%	0%	0%
Potable Water	1%	2%	2%	3%	6%	40%	3%
Solid Waste	38%	32%	26%	16%	35%	43%	18%
Stormwater Discharge	Not Available	Not Available	Not Available	Not Available	171%	14%	3%
Tanks	26%	12%	20%	18%	21%	177%	116%
Underground Injection Control	0%	4%	9%	33%	7%	7%	8%

The rate of enforcement in 2021 was particularly troublesome in a majority of the programs. Let us be clear: the above data shows the number of facilities and/or incidences in which the FDEP inspectors found violations of Florida's environmental laws and then the percentage of times in which the agency took formal enforcement to address those violations. For example, in the mining program the inspectors found 1,024 instances of violations when they inspected the facilities. Yet, they only took enforcement in five cases, a de minimis result. In the potable water program, there were 2,014 inspections that showed violations, yet

only sixty-nine cases were opened. The domestic wastewater/NPDES program continues to languish with a 9% enforcement rate, even though that program is responsible for limiting the discharge of pollutants into Florida's surface waters that are already known to be highly polluted. Indeed, [a recently released study](#) found that Florida topped the list of all states in the number of polluted waterways.

4. Assessments in Each Program

When a new enforcement case is opened, the FDEP typically, but not always, assesses civil penalties to be paid by the polluter. After the assessment, the polluter usually has the option of foregoing payment of the civil penalty by means of electing to engage in what is known as an in-kind or pollution prevention project. These projects must be approved by the Department and must have a value of at least 1.5 times the civil penalty assessment. 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 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 also often result in some cases being counted twice, thereby artificially 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--2021 ²⁷	Total No. of Assessments in 2021	% Cases Resulting in Civil Penalty Assessments--2021
Asbestos	3	2	67%
Air (Excluding Asbestos)	39	29	74%
Beaches/Coastal	4	5	125%
Waste Cleanup	14	0	0%
Dredge & Fill ²⁸	171	150	88%
Domestic Waste	95	95	100%
Hazardous Waste	40	32	80%
Industrial Waste	14	9	64%
Mangrove Alterations	14	11	79%
Mining/Phospho-Gypsum	5	5	100%
Potable Water	69	56	81%
State Lands	30	13	43%
Stormwater Discharge	23	18	78%
Solid Waste	19	23	121%
Tanks	148	118	80%
Underground Injection Control	5	4	80%

The rate of assessing civil penalties was generally solid across all program areas, however, seven programs did see drop-offs from 2020: air (19% decline), industrial waste (18% decline), mangrove alteration (8% decline), state lands (42% decline), stormwater discharge (7% decline), and underground injection control (20% decline).

Looking solely at the dollar value of civil penalty assessments, we found that the penalties for 2021 **fell** in key program areas, those being domestic wastewater/NPDES, industrial wastewater, mangrove alterations, potable water, stormwater discharge, and solid waste. Conversely, this is the fifth straight year of increasing penalty assessments in the air and hazardous waste programs.

²⁷ Throughout this report, highlighted results in red indicate declining performance.

²⁸ 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	\$ Value of Penalties Assessed in 2019	\$ Value of Penalties Assessed in 2020	\$ Value of Penalties Assessed in 2021
Asbestos	\$0.00	\$500.00	\$158,000.00	\$4,500.00	\$4,889.00
Air (Excluding Asbestos)	\$28,450.00	\$76,137.00	\$121,975.00	\$183,950.00	\$185,608.00
Beaches/Coastal	\$4,750.00	\$36,500.00	\$19,250.00	\$17,200.00	\$18,500.00
Waste Cleanup	\$1,000.00	\$2,500.00	\$24,500.00	\$0.00	\$0.00
Dredge & Fill ²⁹	\$57,179.00	\$98,779.00	\$196,824.00	\$163,960.00	\$275,985.00
Domestic Waste	\$1,516,447.00	\$765,857.27	\$1,239,333.16	\$3,677,712.96	\$3,522,676.28
Hazardous Waste	\$202,652.75	\$375,507.50	\$394,799.00	\$695,853.54	\$787,841.75
Industrial Waste	\$123,457.00	\$103,100.33	\$90,968.00	\$326,444.75	\$134,518.00
Mangrove Alterations	\$9,179.00	\$34,480.00	\$24,180.00	\$48,925.00	\$22,730.00
Mining/Phospho-Gypsum	\$0.00	\$0.00	\$11,025.00	\$0.00	\$147,430.00
Potable Water	\$5,021.00	\$18,325.00	\$74,015.00	\$161,365.65	\$145,769.00
State Lands	\$3,000.00	\$840.00	\$8,940.00	\$8,000.00	\$37,391.00
Stormwater Discharge	\$52,268.00	\$97,950.46	\$265,806.27	\$264,827.17	\$198,140.57
Solid Waste	\$15,100.00	\$31,900.00	\$71,000.00	\$124,204.00	\$102,600.00
Tanks	\$28,000.00	\$22,500.00	\$46,500.00	\$428,098.87	\$429,354.25
Underground Injection Control	\$4,038.56	\$500.00	\$10,600.00	\$8,500.00	\$33,238.20

As noted above, 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. The following table shows the impact of these projects by listing 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 the number of cases and the dollars assessed is substantial.

²⁹ This includes Environmental Resource Permitting.

Current Year Assessments Including Penalties, In-Kind and Pollution Prevention Projects

Program Area	Total No. of Enforcement Cases—2021	Total No. of Assessments, including Penalties, In-Kind and Pollution Prevention Projects in 2021	\$ Value of Penalties, In-Kind and Pollution Prevention Projects Assessed in 2021
Asbestos	3	2	\$4,889.00
Air (Excluding Asbestos)	39	34	\$219,008.00
Beaches/Coastal	4	5	\$18,500.00
Waste Cleanup	14	0	\$0.00
Dredge & Fill ³⁰	171	150	\$275,085.00
Domestic Waste	95	161	\$7,948,632.02
Hazardous Waste	40	35	\$1,271,591.75
Industrial Waste	14	13	\$226,170.00
Mangrove Alterations	14	11	\$22,730.00
Mining/Phospho-Gypsum	5	5	\$147,430.00
Potable Water	69	63	\$185,919.00
State Lands	30	13	\$37,391.00
Stormwater Discharge	23	18	\$198,140.57
Solid Waste	19	19	\$115,350.00
Tanks	148	119	\$438,354.25
Underground Injection Control	5	5	\$37,488.20

A comparison of penalty assessments (including in-kind and pollution prevention projects) from 2020 to 2021 shows that seven programs, domestic wastewater/NPDES, industrial waste, mangrove alterations, potable water, stormwater discharge and solid waste, saw their total assessments fall in 2021, even when in-kind and pollution prevention projects are included. The air, hazardous waste, and underground storage tanks programs have seen four straight years of increasing assessments. However, this is the second year in a row in which there were no waste cleanup assessments.

³⁰ This includes Environmental Resource Permitting.

Comparison of Assessments from 2017 to 2021

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)	\$ Value of Penalties Assessed in 2021 (Including In-Kind & Pollution Prevention Projects)
Asbestos	\$500.00	\$158,000.00	\$4,500.00	\$4,889.00
Air (Excluding Asbestos)	\$76,137.00	\$160,400.00	\$191,950.00	\$219,008.00
Beaches/Coastal	\$36,500.00	\$19,250.00	\$29,200.00	\$18,500.00
Waste Cleanup	\$2,500.00	\$24,500.00	\$0.00	\$0.00
Dredge & Fill³¹	\$98,779.00	\$211,824.00	\$163,960.00	\$275,085.00
Domestic Waste	\$1,922,858.99	\$2,755,123.03	\$8,576,998.12	\$7,948,632.02
Hazardous Waste	\$544,232.50	\$681,616.00	\$1,139,602.89	\$1,271,591.75
Industrial Waste	\$173,780.33	\$159,815.00	\$1,373,261.07	\$226,170.00
Mangrove Alterations	\$34,480.00	\$24,180.00	\$57,175.00	\$22,730.00
Mining/Phospho-Gypsum	\$0.00	\$11,025.00	\$0.00	\$147,430.00
Potable Water	\$18,325.00	\$76,265.00	\$929,199.40	\$185,919.00
State Lands	\$840.00	\$8,940.00	\$8,000.00	\$37,391.00
Stormwater Discharge	\$97,950.46	\$280,705.32	\$333,884.32	\$198,140.57
Solid Waste	\$31,900.00	\$71,000.00	\$193,415.50	\$115,350.00
Tanks	\$22,500.00	\$46,500.00	\$428,098.87	\$438,354.25
Underground Injection Control	\$500.00	\$18,100.00	\$8,500.00	\$37,488.20

We also considered the actual severity of the penalty assessments in each program (excluding in-kind and pollution prevention projects). 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, median penalty assessments

³¹ This includes Environmental Resource Permitting.

rose in all but four programs, asbestos, beaches and coastal, hazardous waste and underground injection control. In terms of median penalty assessments, the domestic wastewater/NPDES and industrial waste programs saw significant improvement in 2021.

Comparison of Penalty Assessment Medians from 2018 to 2021

Program Area	2018 Medians	2019 Medians	2020 Medians	2021 Medians
Asbestos	\$500.00	\$9,000.00	\$4,500.00	\$2,444.50
Air (Excluding Asbestos)	\$3,500.00	\$3,000.00	\$2,375.00	\$3,750.00
Beaches/Coastal	\$2,500.00	\$875.00	\$4,500.00	\$3,000.00
Waste Cleanup	\$1,250.00	\$12,250.00	\$0.00	\$0.00
Dredge & Fill	\$420.00	\$420.00	\$420.00	\$420.00
Domestic Waste	\$7,500.00	\$5,250.00	\$4,024.83	\$10,000.00
Hazardous Waste	\$5,639.50	\$8,520.00	\$11,330.00	\$10,720.00
Industrial Waste	\$2,500.00	\$5,000.00	\$5,000.00	\$10,000.00
Mangrove Alteration	\$830.00	\$830.00	\$830.00	\$1,000.00
Mining/Phospho-Gypsum	\$0.00	\$3,375.00	\$0.00	\$7,500.00
Potable Water	\$1,550.00	\$2,052.50	\$1,450.00	\$2,325.00
State Lands	\$420.00	\$1,460.00	\$420.00	\$2,500.00
Stormwater Discharge	\$4,000.00	\$6,480.78	\$9,382.42	\$10,595.15
Solid Waste	\$3,500.00	\$3,000.00	\$2,700.00	\$3,750.00
Tanks	\$500.00	\$3,000.00	\$2,000.00	\$2,000.00
Underground Injection Control	\$500.00	\$4,500.00	\$2,000.00	\$1,800.00

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 2021

Program Area	2019 Medians	2020 Medians	2021 Medians
Asbestos	\$4,750.00	\$4,500.00	\$2,444.50
Air (Excluding Asbestos)	\$3,100.00	\$2,500.00	\$5,000.00
Beaches/Coastal	\$875.00	\$7,000.00	\$3,000.00
Waste Cleanup	\$12,250.00	\$0.00	\$0.00
Dredge & Fill	\$420.00	\$420.00	\$420.00
Domestic Waste	\$7,000.00	\$6,457.21	\$13,351.91
Hazardous Waste	\$13,000.00	\$15,128.50	\$11,333.00

Industrial Waste	\$7,300.00	\$5,500.00	\$12,500.00
Mangrove Alteration	\$830.00	\$830.00	\$1,000.00
Mining/Phospho-Gypsum	\$3,375.00	\$0.00	\$7,500.00
Potable Water	\$2,105.00	\$1,937.50	\$3,000.00
State Lands	\$1,460.00	\$420.00	\$2,500.00
Stormwater Discharge	\$6,480.78	\$9,613.40	\$10,595.15
Solid Waste	\$3,000.00	\$3,127.50	\$4,500.00
Tanks	\$3,000.00	\$2,000.00	\$2,000.00
Underground Injection Control	\$4,750.00	\$2,000.00	\$2,700.00

The inclusion of in-kind and pollution prevention projects had little effect on medians in 2021, except for the underground injection control program which saw its medians rise as a result of the inclusion of those projects. However, there were only five assessments in the entire state in that program, so the results are not statistically significant.

The following table provides the highest civil penalty assessment in 2021 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
3	AB	200836	MARVIN CONSTRUCTION, LLC	\$3,889.00
6	AP	211021	LHOIST NORTH AMERICA OF ALABAMA, LLC	\$45,270.00
0	BS	210552	BROWN, NANCY	\$10,000.00
1	CW	210325	WILLIAMSON, BO & HEATHER	\$6,425.00
3	DF	201410	ELLIS, CODY & GRETTE ELLIS	\$10,000.00
5	DW	200851	FORT MYERS, CITY OF	\$512,450.00
2	ES	210490	PIPELINE CONTRACTORS, INC.	\$15,800.00
2	EW	211009	DANN OCEAN TOWING, INC.	\$37,500.00
3	HW	181015	FEDEX GROUND PACKAGE SYSTEM, INC.	\$393,858.00
1	IW	191453	INTERNATIONAL PAPER COMPANY	\$50,000.00
4	MA	210528	PROCK HOMES, LLC	\$4,800.00
4	MA	210828	SAMPSON TREE SERVICE, CO	\$4,800.00
4	MA	211122	RODRIGUEZ-TORRES, RAUL & ZINEB	\$4,800.00

0	MN	21028 8	THE CHEMOURS COMPANY FC, LLC	\$115,430.00
5	OG	21026 7	BREITBURN OPERATING, L.P.	\$5,500.00
6	OT	21026 0	DUKE ENERGY FLORIDA LLC	\$1,500.00
2	PW	21051 7	PUTNAM COUNTY PUBLIC WORKS	\$10,000.00
6	PW	20123 0	EDSA, INC.	\$10,000.00
6	RO	20167 4	KEARNEY COMPANIES LLC	\$26,144.00
6	S1	21106 3	PASCO COUNTY UTILITIES; DEP VS	\$59,898.10
6	S3	21066 3	UTILITIES INC OF FLORIDA	\$28,886.94
2	SL	20110 0	THE FISHERMAN'S MARINA, LLC	\$13,000.00
3	SW	20002 7	AGRICULTURAL FUELS INC.	\$25,000.00
1	TK	21024 2	S FOOD MART SEVEN LLC	\$22,500.00
4	UC	20134 1	CITY OF SUNRISE	\$28,738.20

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. In 2020, the agency collected \$2,196,972.42. The FDEP collected \$2,596,806.96 in civil penalties in 2021. Consequently, there have now been five straight years of improving collections results. As we stated above, in 2021, the Department collected 43% of the total dollar value of all the penalties that it assessed, a 7% improvement over 2020's performance. This reverses what had been five straight years 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 2021.

Program Area Collections

Program Area	\$ Value of Penalties Assessed in 2021	\$ Value of Civil Penalties Collected—2021	% Civil Penalties Collected—2021
Asbestos	\$4,889.00	\$2,098.50	42.92%
Air (Excluding Asbestos)	\$185,608.00	\$70,738.00	38.11%
Beaches/Coastal	\$18,500.00	\$7,000.00	37.84%
Waste Cleanup	\$0.00	\$0.00	0.00%
Dredge & Fill ³²	\$275,985.00	\$145,285.00	52.64%
Domestic Waste	\$3,522,676.28	\$803,727.39	22.82%
Hazardous Waste	\$787,841.75	\$351,040.06	44.56%
Industrial Waste	\$134,518.00	\$96,750.00	71.92%
Mangrove Alterations	\$22,730.00	\$22,730.00	128.72%
Mining/Phospho-Gypsum	\$147,430.00	\$147,430.00	100.00%
Potable Water	\$145,769.00	\$88,239.42	60.53%
State Lands	\$37,391.00	\$32,641.00	87.30%
Stormwater Discharge	\$198,140.57	\$162,664.29	82.10%
Solid Waste	\$102,600.00	\$68,100.00	66.37%
Tanks	\$429,354.25	\$350,368.10	81.60%
Underground Injection Control	\$33,238.20	\$38,738.20	116.55%

In addition to civil penalties that were collected, several in-kind and pollution prevention projects were completed in 2021. These projects originated in the air, domestic wastewater/NPDES, hazardous waste, potable water, stormwater discharge, solid waste, and underground injection control 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—2021	\$ Value of In-Kind and P2 Projects Completed-- 2021
Air	2	\$16,900.00
Domestic Wastewater/NPDES	23	\$709,231.18
Hazardous Waste	5	\$210,218.50
Potable Water	4	\$25,563.00
Stormwater Discharge	1	\$33,353.40
Solid Waste	1	\$9,000.00
Underground Injection Control	2	\$43,791.54

³² This includes Environmental Resource Permitting.

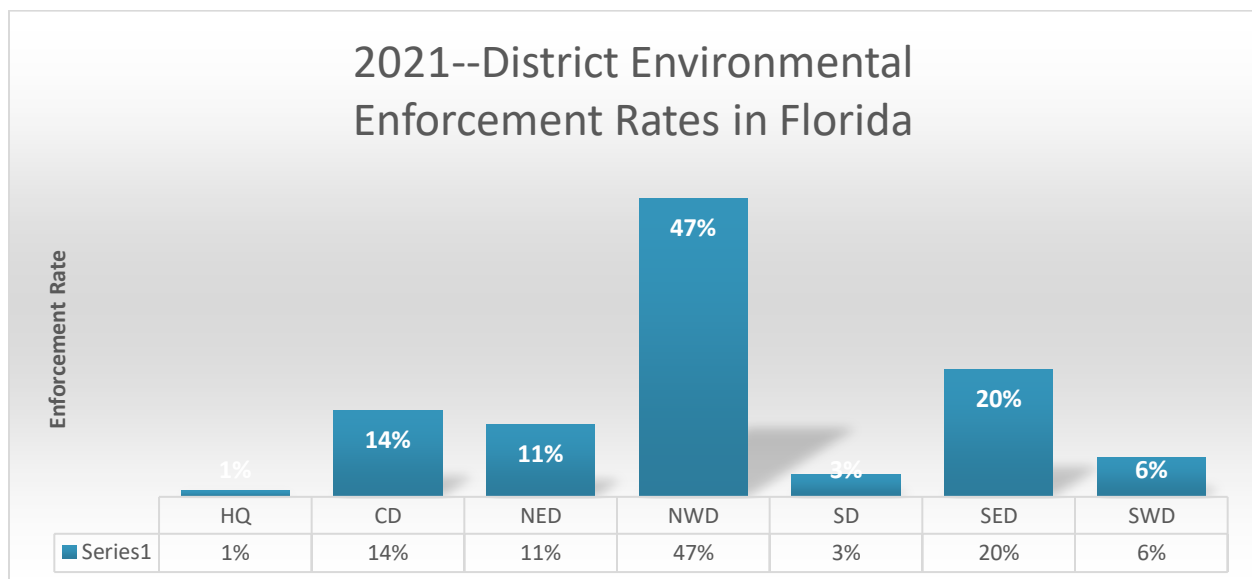
DISTRICT ENFORCEMENT RESULTS

Every district conducted more inspections in 2021 than in 2020. In fact, 2021 saw historical highs for the number of inspections conducted in each district. The most inspections were conducted by the Southwest District. That district had 8,058 inspections, followed by the South District with 6,169. The Northwest District conducted the fewest inspections (2,405).

The South District had the lowest overall compliance rate, with inspections showing that only 61% of the facilities inspected were in compliance. On the opposite end, the Southwest District led the state with inspectors finding that 80% of their facilities were in compliance. The Northeast District reported the highest percentage (8%) of facilities that were in significant noncompliance, and the Southwest District had the lowest rate (less than 3%) of significant noncompliance.

The districts were split evenly when comparing the number of new cases in 2021 with those opened in the previous year. The Northwest, Central and South Districts each opened more cases in 2021, whereas the Northeast, Southeast, and Southwest Districts each saw declines. The Northwest District took enforcement in 47% of its cases in which noncompliance was found, making it the district with the highest enforcement rate in the state. On the other end, the South District took enforcement in only 3% of its cases, which is markedly lower than the already low 20% result for 2020. The remaining districts took enforcement in a range of 6 to 20% of their cases. The following table displays the results for comparison purposes:

District Enforcement Rates in Florida



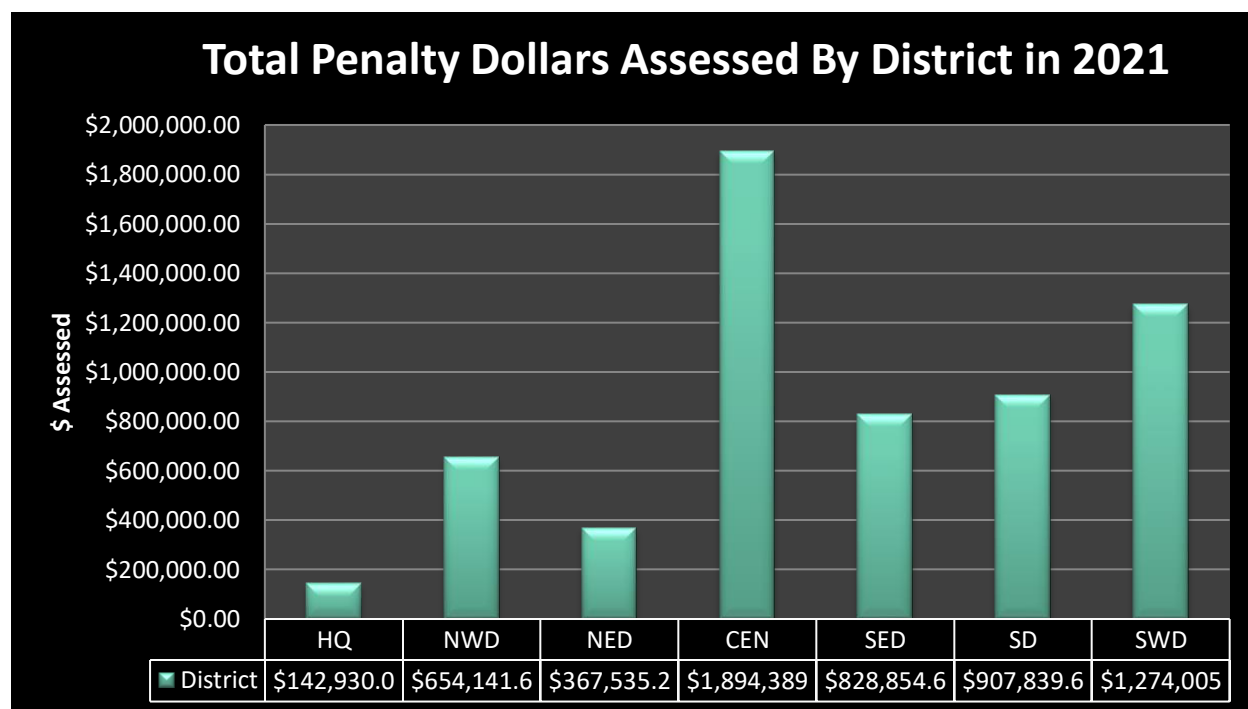
The district most likely to settle its cases using long-form (more involved) consent orders was the Southwest District (34%). At the other end of the spectrum, the Southeast District used short-form consent orders in 67% of its cases. Short-form consent orders require the violator to pay a penalty to the FDEP to settle the case, and there are no other requirements, e.g., performance of studies and submission of reports, placed upon the violator.

As indicated above, the South District had the lowest overall enforcement rate. However, it also sent more case reports to the Office of General Counsel, indicating that it

pursued more stringent enforcement more often than the other districts. That said, it only sent 6.29% of its cases to OGC, just barely edging out the Southeast District, which sent 6.25% of its cases.

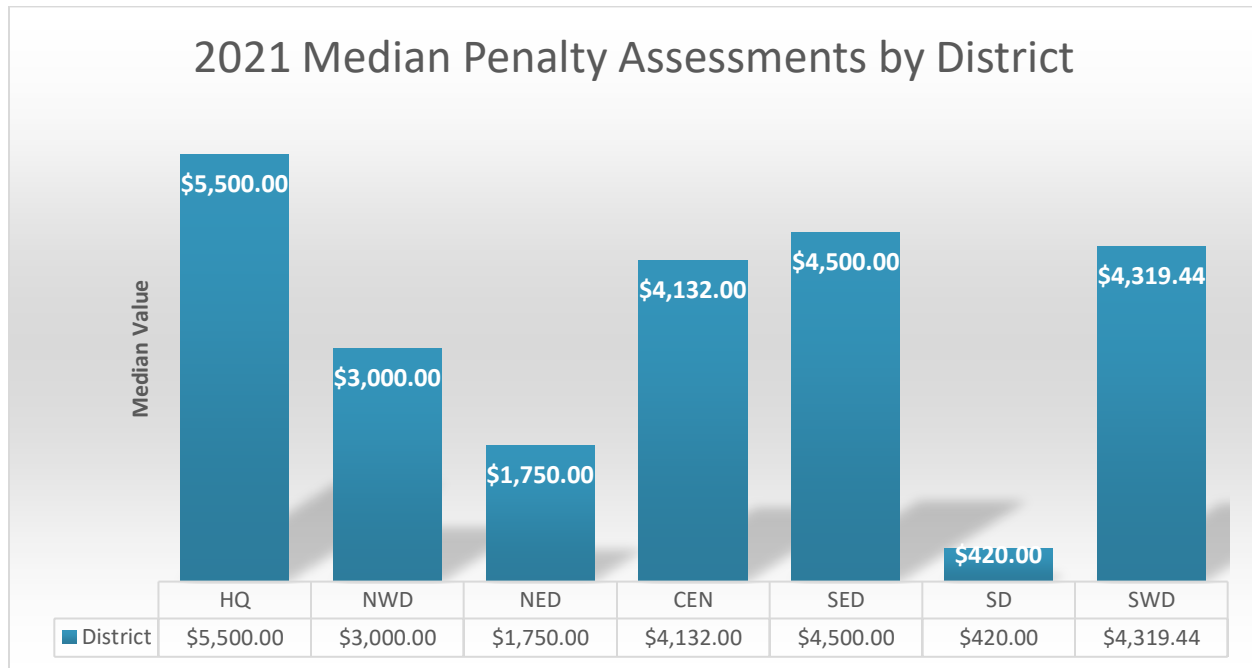
The districts continue to assess civil penalties in a higher percentage of cases in which formal enforcement is used to resolve violations. Every district except for the Northwest District assessed civil penalties in at least 85% of its cases, while the Northwest District trailed with 78%. Considered together, the districts sought civil penalties in 95% of their cases in 2021, compared to 88% in 2020. The South District, which took enforcement the least, assessed penalties in 85% of its cases, an improvement over the 80% result in 2020. In terms of pure penalty dollar assessments, the Southwest District led the state with \$1,274,005.64 in total. The lowest dollar value of assessments was seen in the Northwest District, which had \$142,930.00. The comparison for the districts is shown below:

Penalty Dollars Assessed in 2021



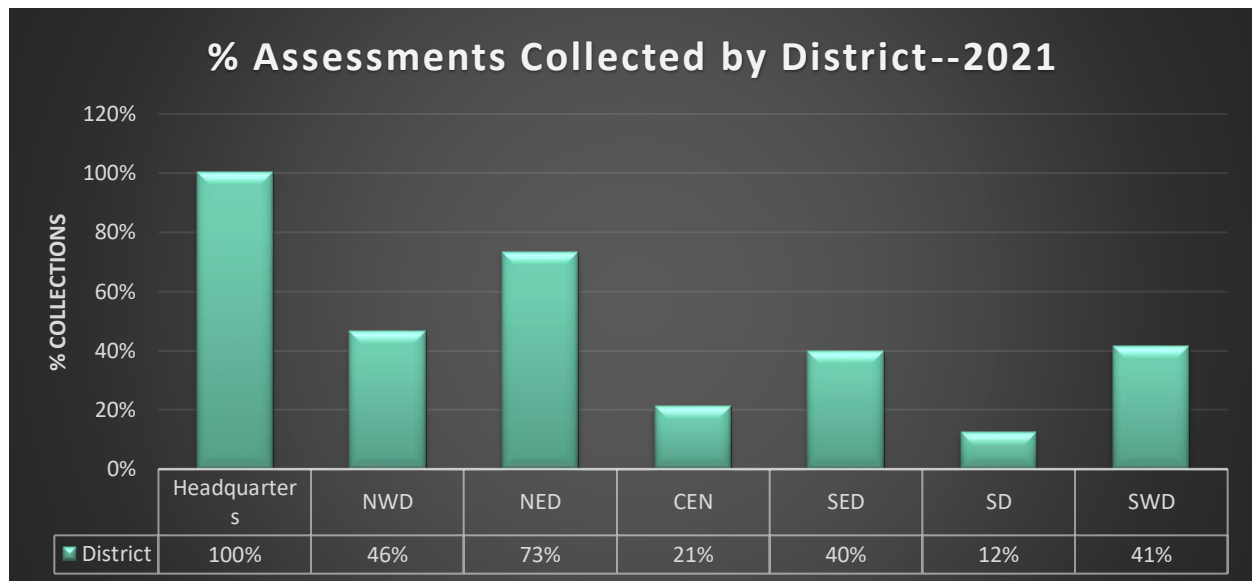
The median value of assessments tells us the harshness of the civil penalties that were imposed. In that regard, the medians varied significantly by District. The Southeast District continues to have the highest median assessments, whereas the South District continues to be the lowest. The results for the South District were even lower than its performance in 2020. The medians by district are shown below:

Median Penalty Assessments by District



The individual districts' collection of civil penalty dollars is also a parameter that we track. In 2021, the Northeast District collected the highest percentage of its penalty assessments, and the South District collected the lowest percentage.

% Penalty Assessments Collected by District



The table below displays the actual dollars collected in each district in 2021, based upon the penalty dollars collected, the value of in-kind and/or pollution prevention projects completed, and the combined value of penalty dollars and projects completed in each district.

2021 District Penalty and Project Collections

District	Total Penalty \$ Collected	Total \$ of In-Kind/P2 Closures	Cumulative \$ Totals-- Collections
Headquarters	\$143,330.00	\$0.00	\$143,330.00
NWD	\$404,589.43	\$0.00	\$404,589.43
NED	\$270,824.85	\$76,109.00	\$346,933.85
CEN	\$674,407.00	\$40,983.03	\$715,390.03
SED	\$445,224.05	\$238,089.19	\$683,313.24
SD	\$228,215.36	\$6,000.00	\$234,215.36
SWD	\$430,216.27	\$686,876.40	\$1,117,092.67

A LOOK BACK

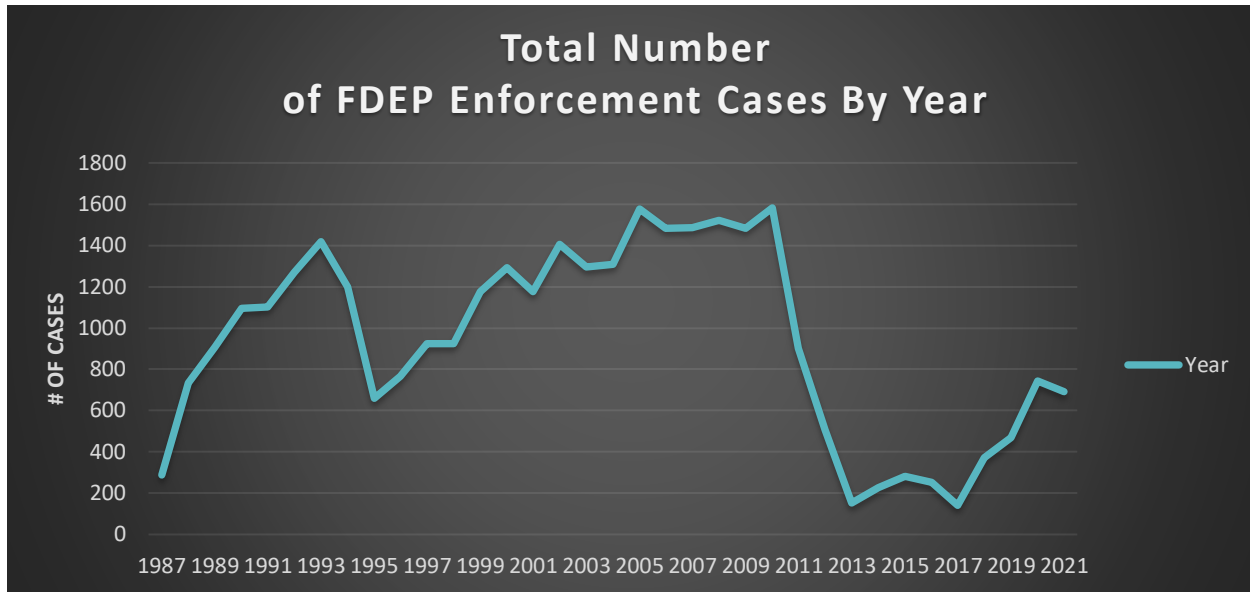
This is the eighteenth annual report that we have issued covering the FDEP's enforcement efforts over the [past nineteen years](#).³³ In 2008, we issued a [comprehensive report](#) looking at the previous twenty-year performance of the FDEP and noted that, when adjusted for inflation, the size of civil penalty assessments over the period had actually declined, and that the percentage of penalty dollars collected had also declined. With this report we will briefly look at the results from approximately 1987 through 2021, so that the public can decide whether environmental oversight and stewardship in Florida is on the right trajectory.

1. Numbers and Types of Cases—1987-2021

We begin our look at the FDEP's performance by first considering the overall number of formal enforcement actions, i.e., cases, brought by the Department from 1987 through 2021. The following chart shows that the agency's early years demonstrated a capacity for an increasing number of cases designed to protect Florida's environment. At that time, the agency was known as the Florida, Department of Environmental Regulation (FDER). However, when then-Governor Chiles (D) merged the FDER with the Florida, Department of Natural Resources (FDNR), and created the FDEP, the new agency took a decidedly different approach to enforcement. The result was a steep decline in enforcement that was not reversed until Jeb Bush became governor. The number of new cases that were opened then essentially remained stable until Rick Scott became governor. The numbers convincingly show the steep cuts in the number of new actions throughout his tenure. While Governor DeSantis has improved upon these numbers somewhat, the overall performance is markedly lower than it was prior to Scott's time in office.

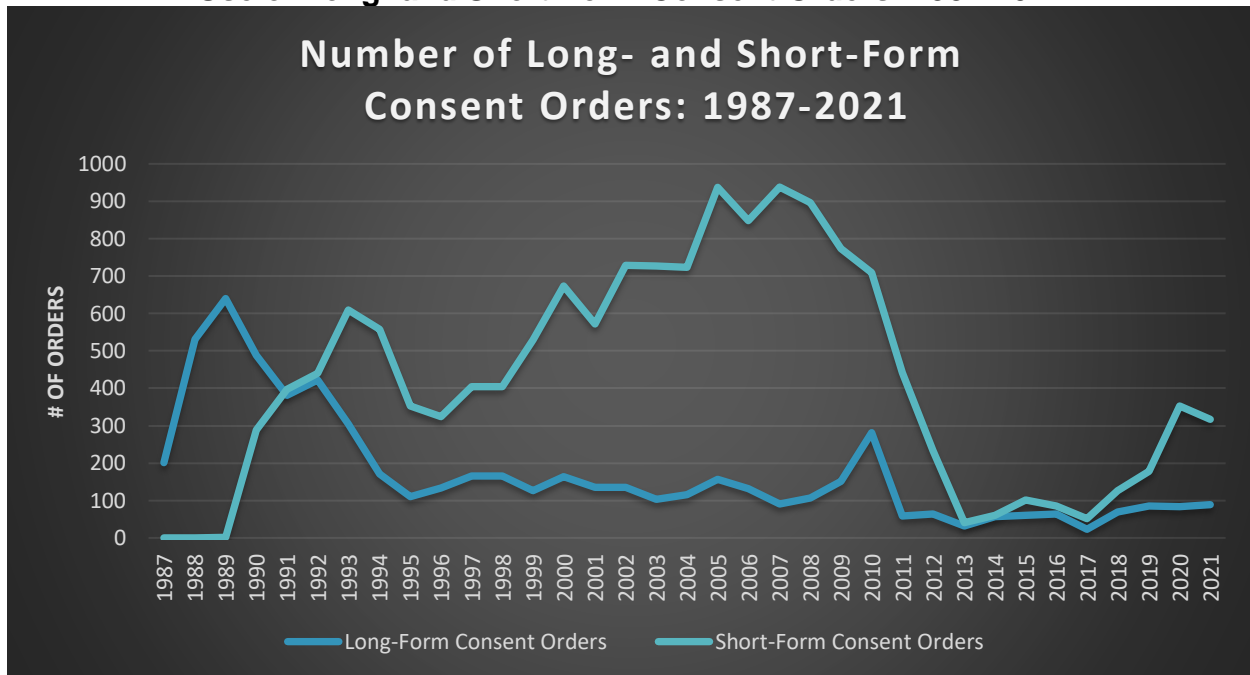
³³ Our first report covered both 2003 and 2004 enforcement efforts.

Total Number of Formal Enforcement Actions: 1987-2021



Turning our attention to the specific types of cases, we found that the combined number of long-form, model and amended consent orders has fallen precipitously since 2011. However, when the number of short-form consent orders is juxtaposed with the former, we see significant differences in the FDEP's overall approach to enforcement.

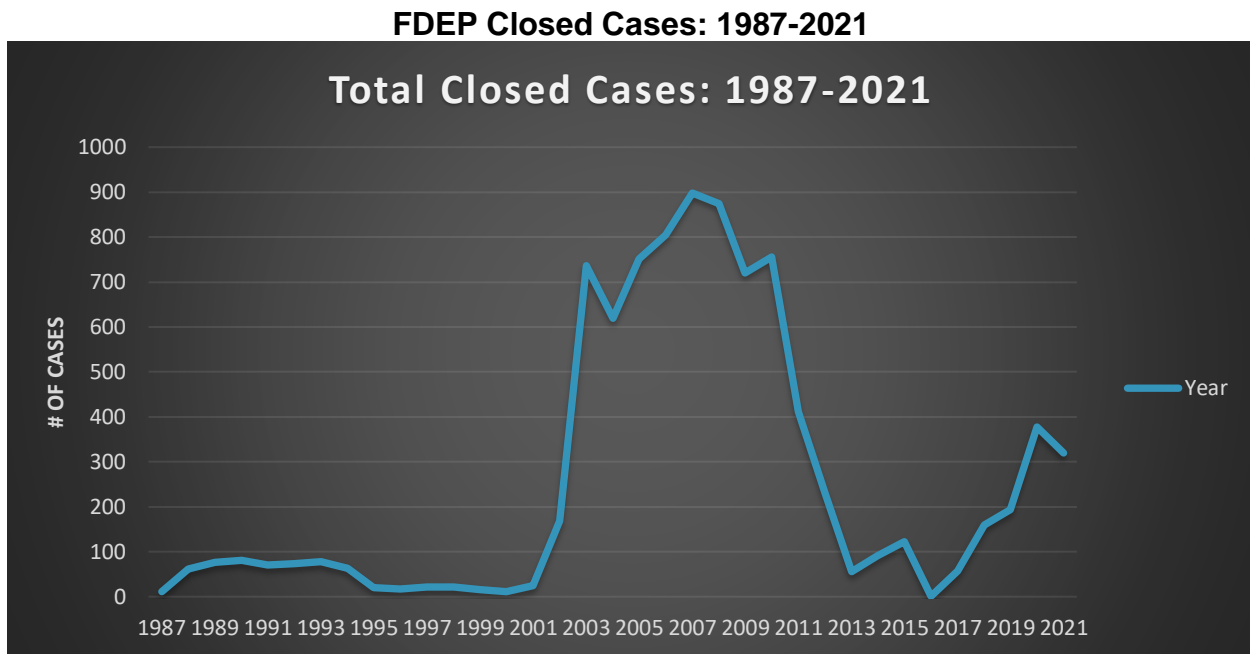
Use of Long- and Short-Form Consent Orders: 1987-2021



The above chart shows that the drop in the FDEP's more involved approach to overseeing enforcement essentially began as soon as short-form consent orders were introduced as a mechanism to resolve environmental violations. In short, the FDEP introduced a "traffic ticket" method to case resolution and has maintained it ever since. Both mechanisms fell during the Scott administration; however, it is now clear that the DeSantis

administration is well on the way to widening the gap between the two, with an increased emphasis on quick case resolution.

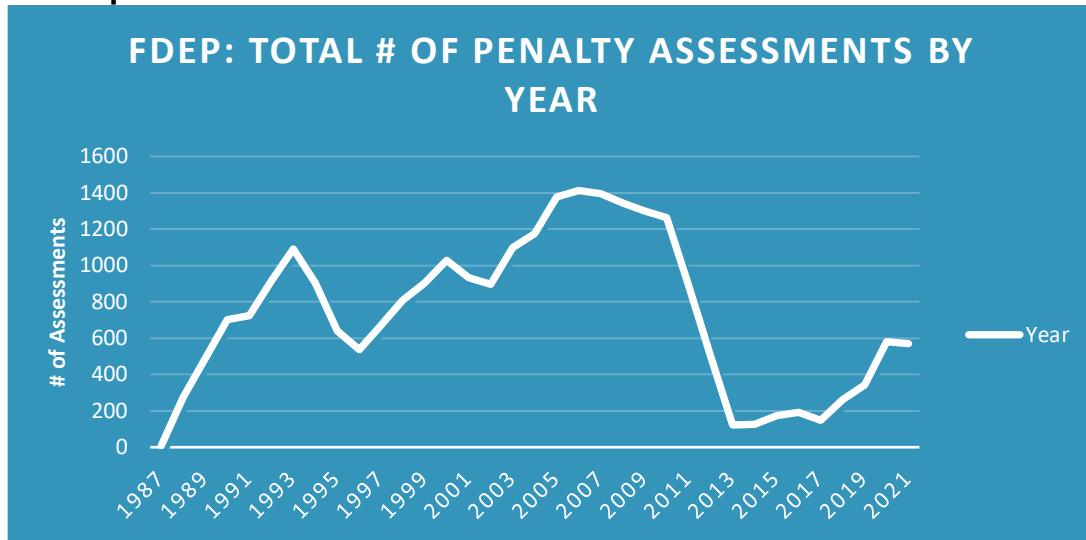
The number of cases that the FDEP closes each year has also varied, but what is surprising is that beginning in 2001 and lasting through the Bush and Crist administrations, the FDEP placed a decided emphasis upon closing cases. This change in approach could have been the logical result of relying more heavily upon short-form consent orders to resolve cases during that time. But whatever the reason, the data shows that the closure of cases has resumed again during the DeSantis administration.



2. Assessments—1987-2021

As noted above, not every formal enforcement action results in a civil penalty assessment. But in conducting an overall review of the FDEP's enforcement activities it is nevertheless helpful to consider the number of penalty assessments that are recorded each year. Those assessments from 1987 through 2021 are shown below.

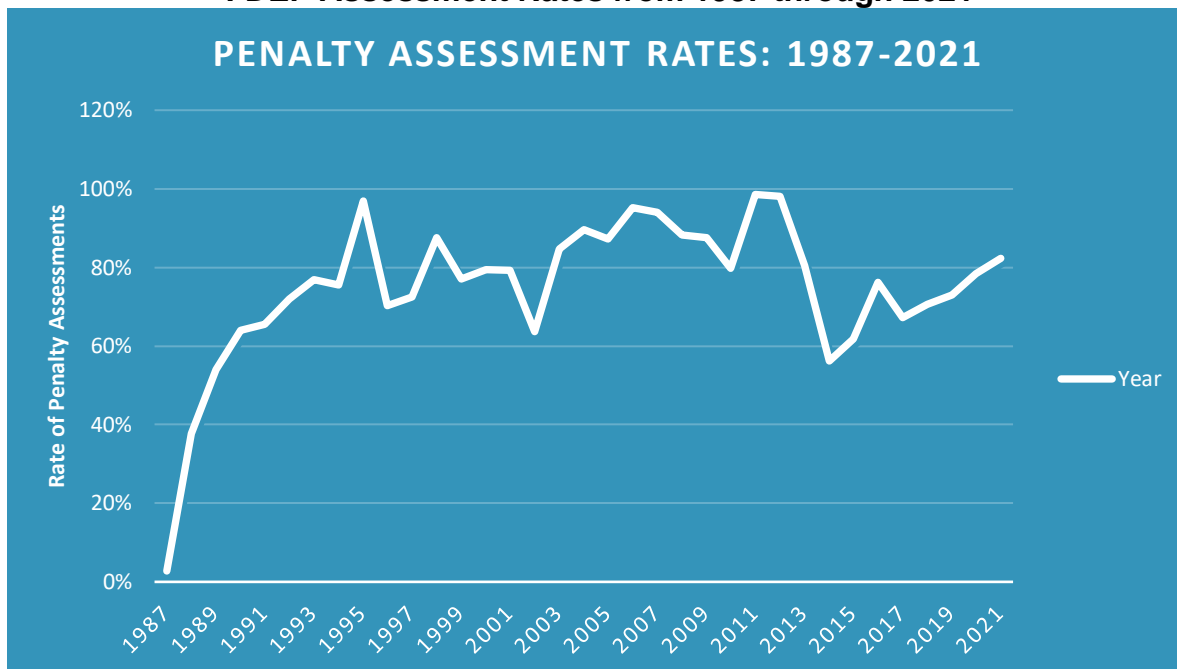
Department-wide Total Number of Assessments from 1987-2021



Without question, the period during which the FDEP assessed the fewest number of penalties occurred during Governor Scott's tenure. While the numbers are beginning to rise again, it is evident that the FDEP has a long way to go before it regains the levels that it enjoyed under the administrations of Governors Bush and Crist.

The next issue is the rate of assessments levied by the FDEP. In other words, how often are penalty assessments levied when the FDEP initiates an enforcement action. What we have found in looking at the data is that generally the rates of enforcement have fluctuated little over the past 34 years.

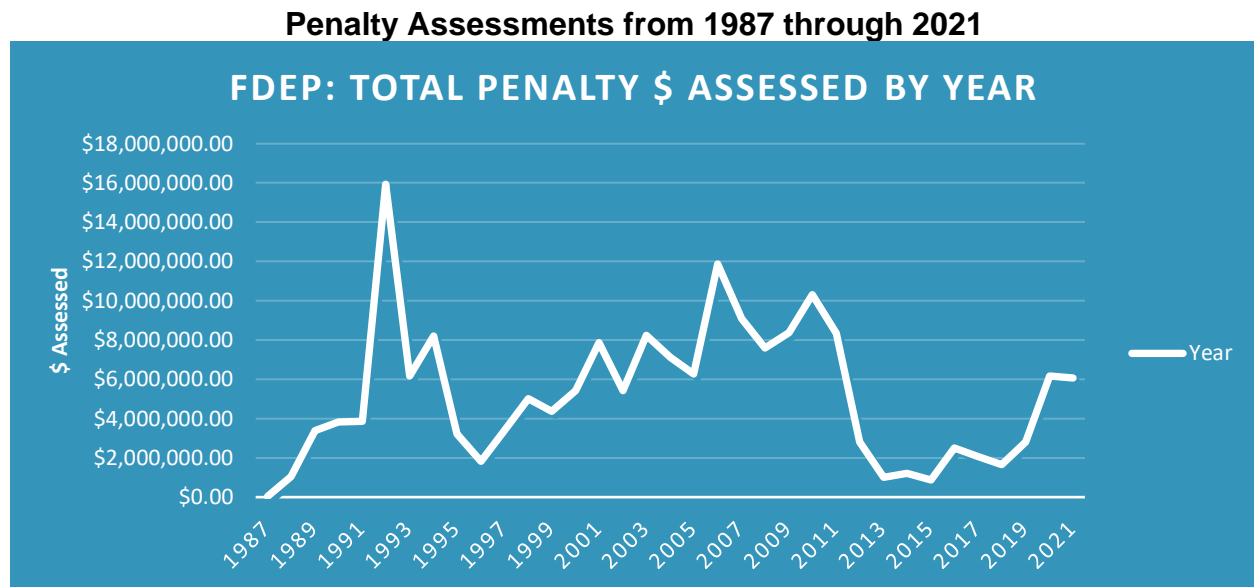
FDEP Assessment Rates from 1987 through 2021



Other than the time when the agency was just coming into its own, we see that the lowest rate of assessments occurred during Governor Scott's tenure. That rate was 56%, in

2014. Over the 34-year period, the FDEP has cumulatively assessed penalties in 78% of its cases, which is close to the current rate at which the Department is performing.

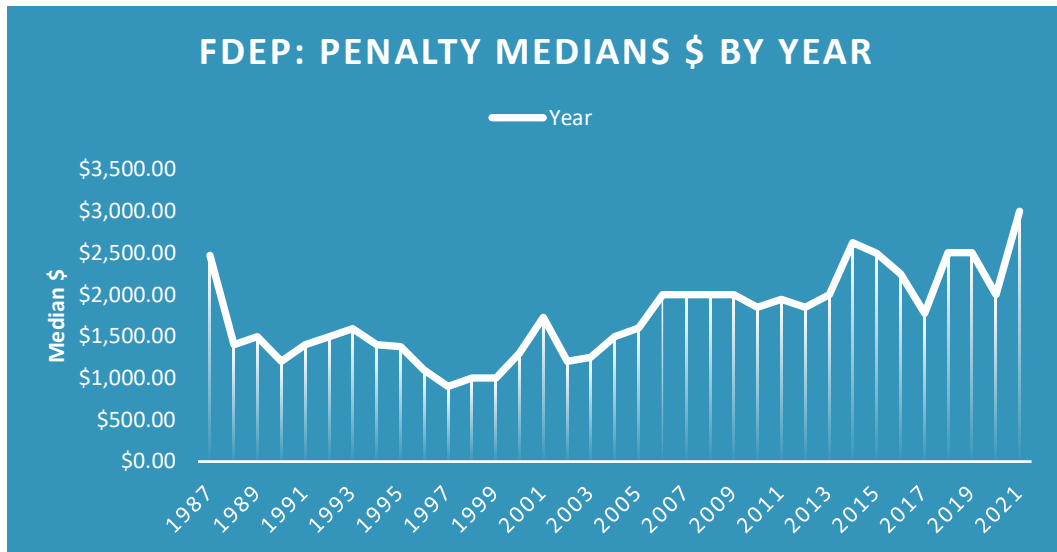
The analysis of assessments over the FDEP's history is easiest understood by looking exclusively at the penalty dollars assessed, absent the pollution prevention and in-kind projects that derive from those assessments. The reason is that the penalty assessments serve as the basis for setting the value of the other projects. FDEP guidelines require that those projects each be worth at least 1.5 times the penalty assessment, although the projects can, of course, be of a higher value. With that in mind, the following chart shows the penalty dollars assessed each year.



The above chart aptly demonstrates the two lowest periods in the FDEP's history to date. The first, from 1994-1997, occurred when the new agency was being formed and a new senior leadership imposed its policies upon the agency. Those policies, established under Governor Chiles, dramatically curtailed enforcement of the new agency's regulations. They also brought about a significant exodus from the agency of a lot of the agency's top scientists. The second period began in 2011 and continued through 2019 during the administration of Governor Scott. During that period, the vast majority of the FDEP's programs saw drastic cuts to their enforcement, and the agency, as a whole, saw its lowest performance to date. Few, if any, of the programs have fully recovered.

The other metric that we consider is the median penalty assessments. The medians tell us how harsh the penalties are, and when viewed on an annual basis, they enable us to compare the ebb and flow of the effects that an administration's policies are having on those assessments. The following chart presents the median assessments for each year.

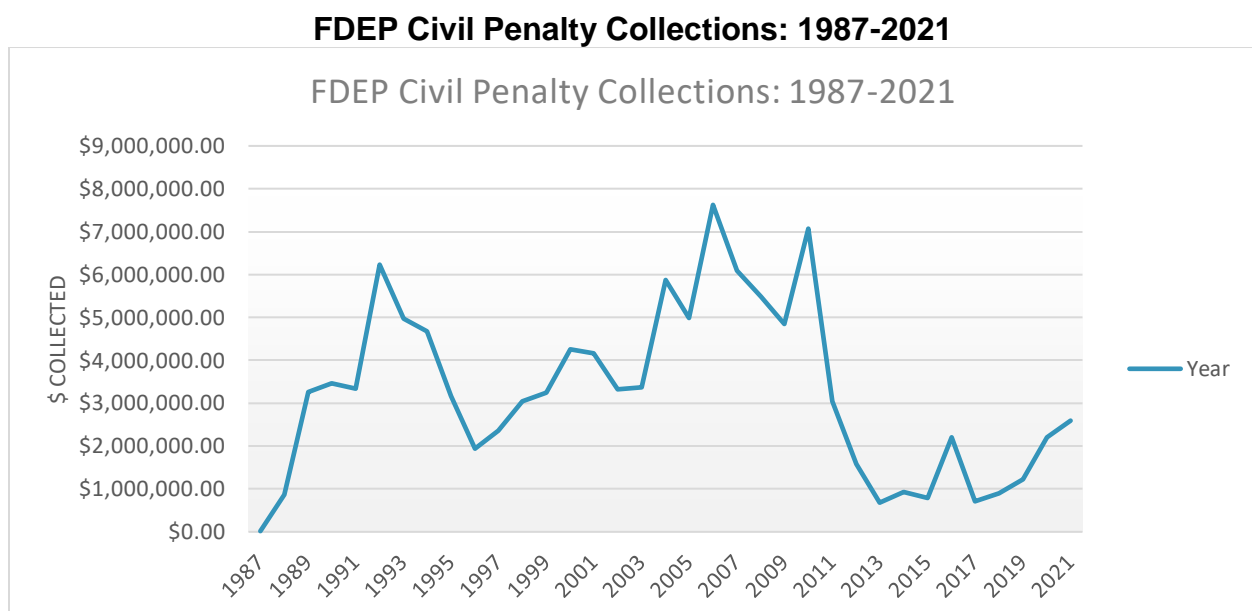
Historical Median Penalty Assessments by Year



As can be seen from the above data, while Governor Scott's administration brought about a massive cut in the total penalty dollars assessed, it did not result in dramatically lower penalties on a case-by-case basis. Indeed, for the Department as a whole there were increases in the severity of penalties during that time. Instead, the lowest median penalty assessments occurred during the Chiles administration, when the new Department was created.

3. Collections—1987-2021

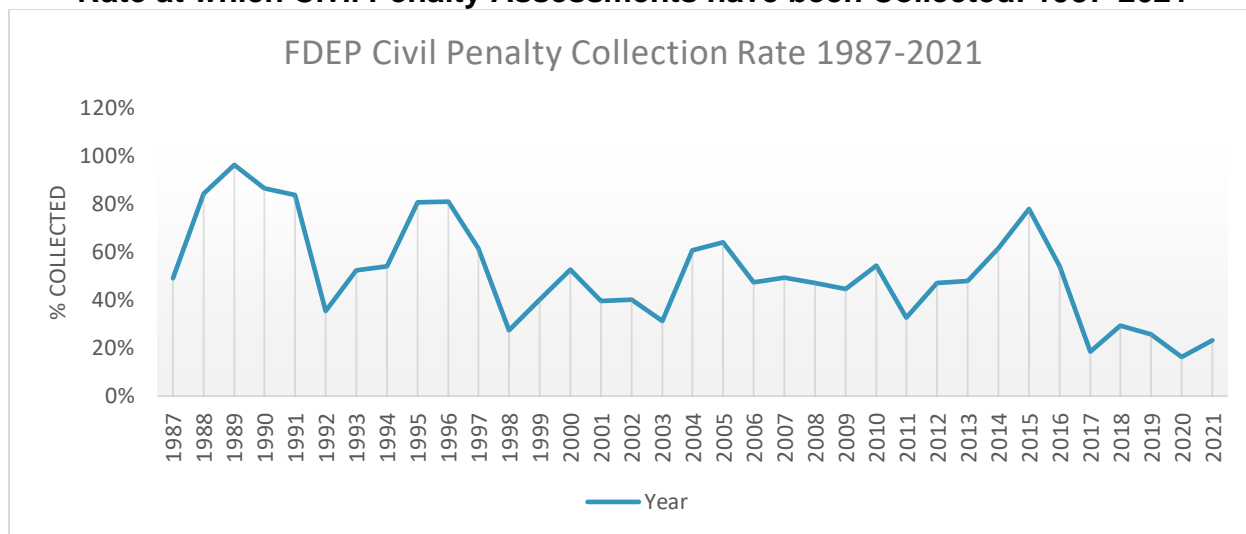
In comparing the dollar value of penalty assessments collected over the FDEP's past we found that the same pattern as that which we found in assessments.



These results are hardly surprising, inasmuch as they essentially mirror the penalty assessments levied by the Department during this time period.

We do get a somewhat different picture, however, when we compare the rate at which civil penalty assessments have been collected during this period. What we found when comparing just the civil penalty collections to the civil penalty assessments (excluding pollution prevention and in-kind projects) was that the general trend towards collection of civil penalties is on a rather clear decline.

Rate at which Civil Penalty Assessments have been Collected: 1987-2021



Overall, since 2017, the Department has assessed \$253,838,148.97 in civil penalties statewide. During the same period, it collected \$114,562,242.92. In other words, since 1987, the Department has collected just 45% of the penalties that it has assessed.

4. A Brief Look at Two Programs—Dredge and Fill and Domestic Wastewater/NPDES

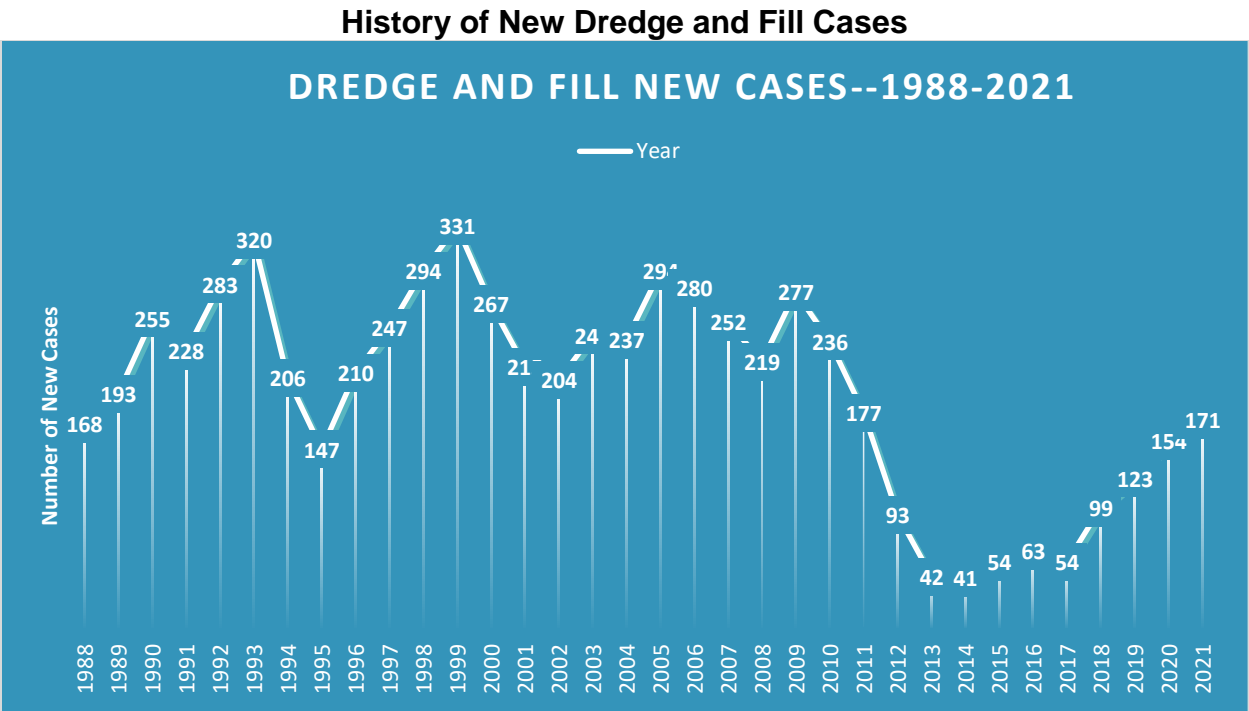
The two largest programs, and arguably the most well-known, in the FDEP are the dredge and fill and the domestic wastewater/NPDES programs. We felt that it would be helpful to look at these two programs to see how they have fared over the Department's history.

i. Dredge and Fill

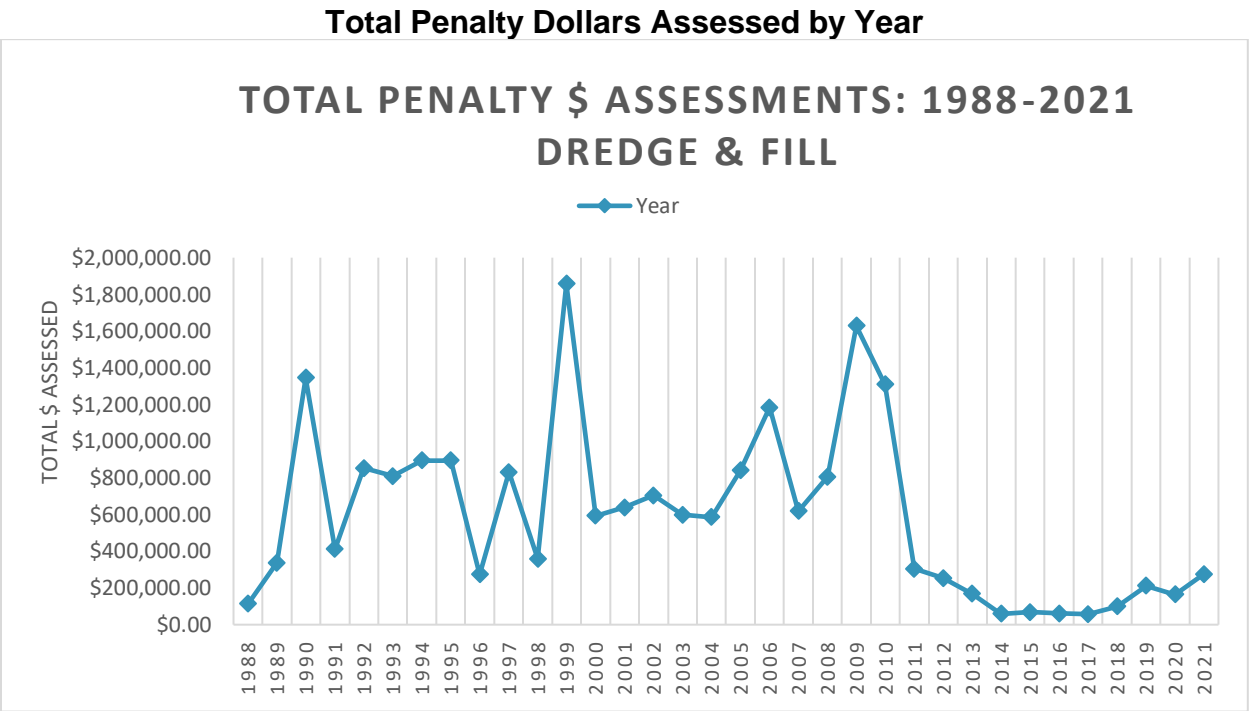
As the following graph shows, until 2010,³⁴ the dredge and fill program reliably initiated a minimum of two hundred cases each year. However, that changed when Governor Scott took office, at which point the number of new cases plummeted. Perhaps in homage to developers, the number of new cases steadily declined from 177 in 2011 to 41 in 2014, which marked the lowest point in the agency's history. There was only minimal improvement

³⁴ Except for 1995-1996, when the FDEP was first formed.

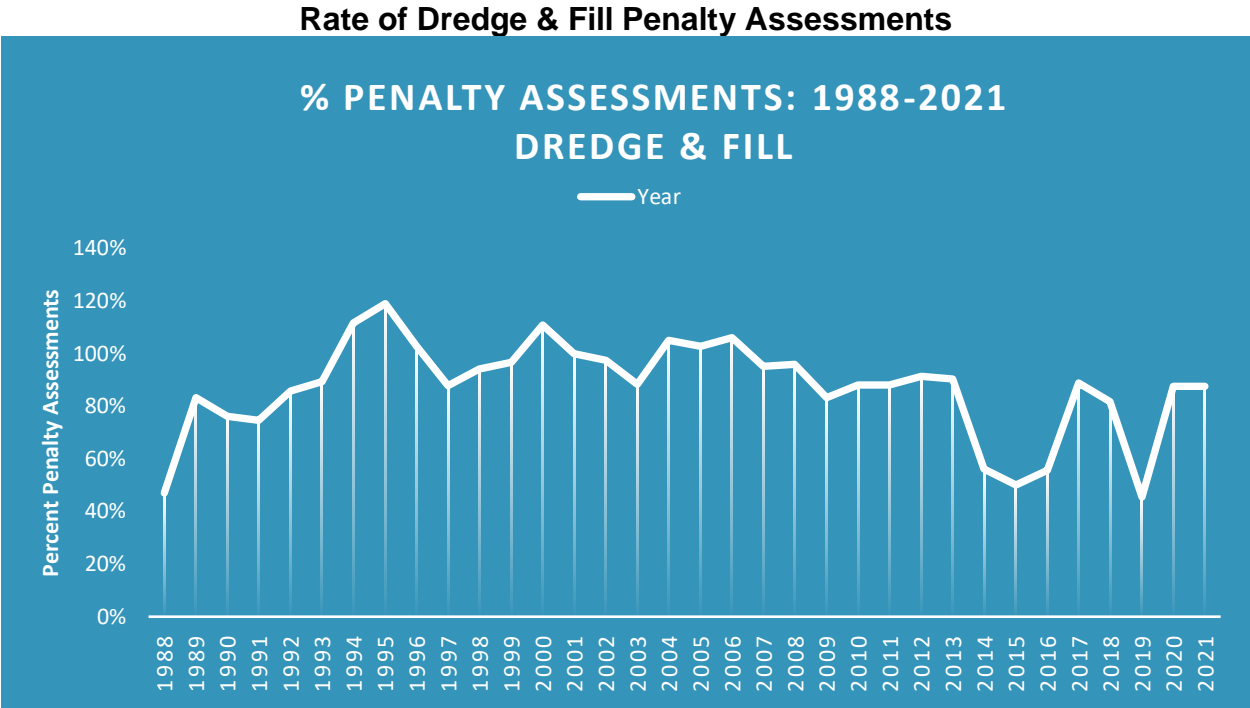
through the remainder of Scott's tenure. The program is making a bit of a comeback at this point, but it is still significantly below what it was a decade ago.



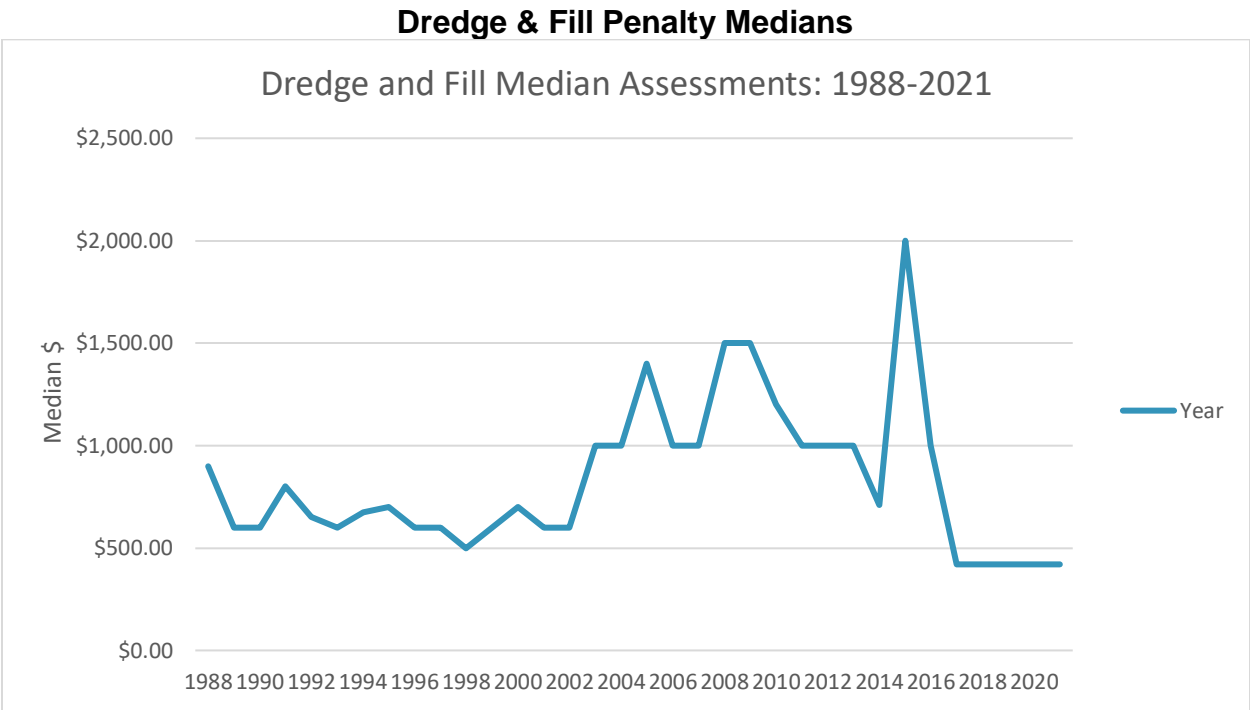
Assessments in this program were also noticeably targeted during the Scott administration, and they continue to struggle to recover.



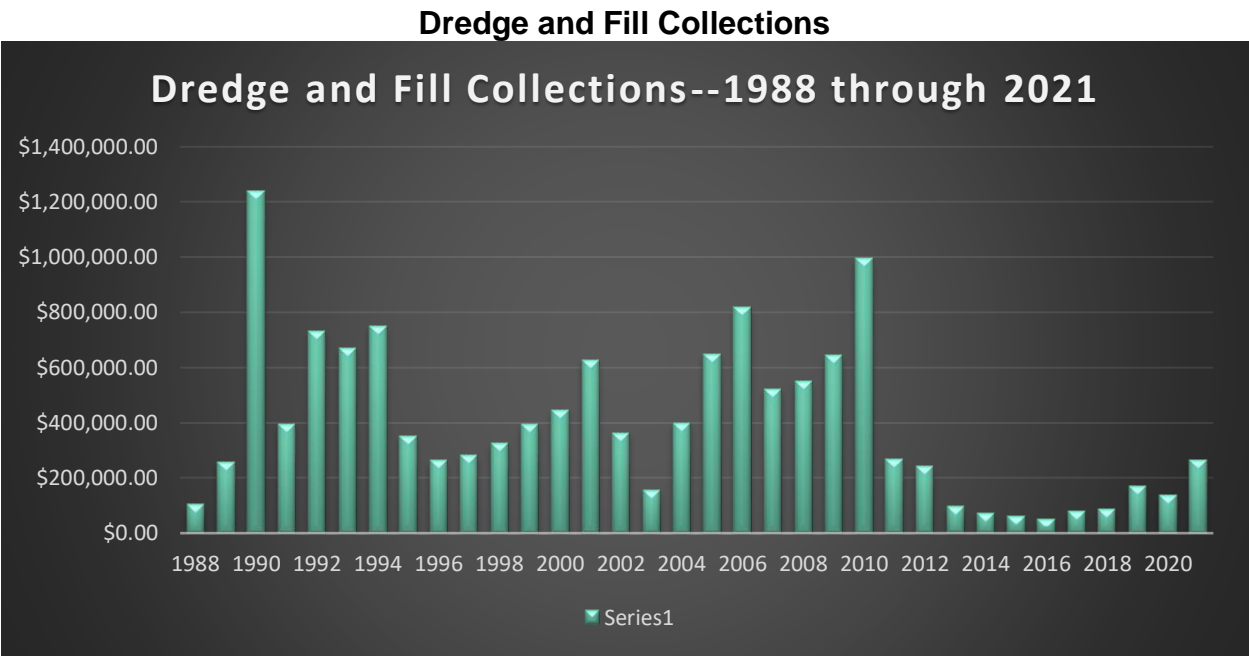
We found that the rate at which penalties were assessed in this program has remained relatively stable, except, again, for the years in which the Scott administration oversaw the program. That said, 2019's performance was the lowest since 1988.



Median assessments for this program have clearly been falling since 2013, the single exception being in 2015, which saw the highest median value since 1987. The cause of the otherwise steep decline is unknown.

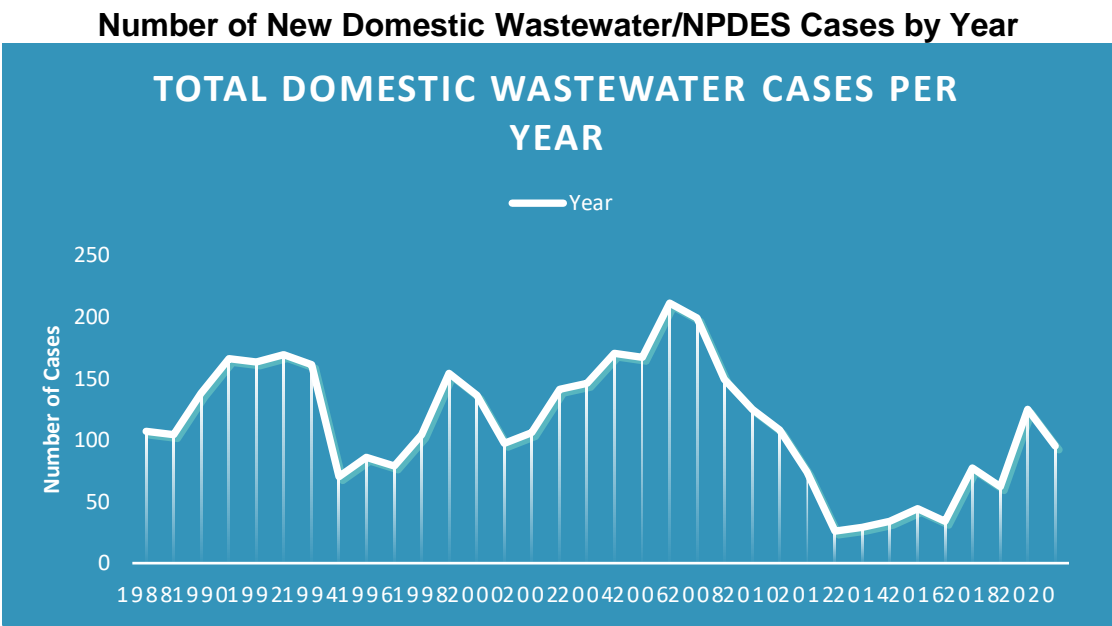


As expected, penalty collections have generally followed assessments in this program. While there is currently some improvement, the program is still far from replicating its past performance.

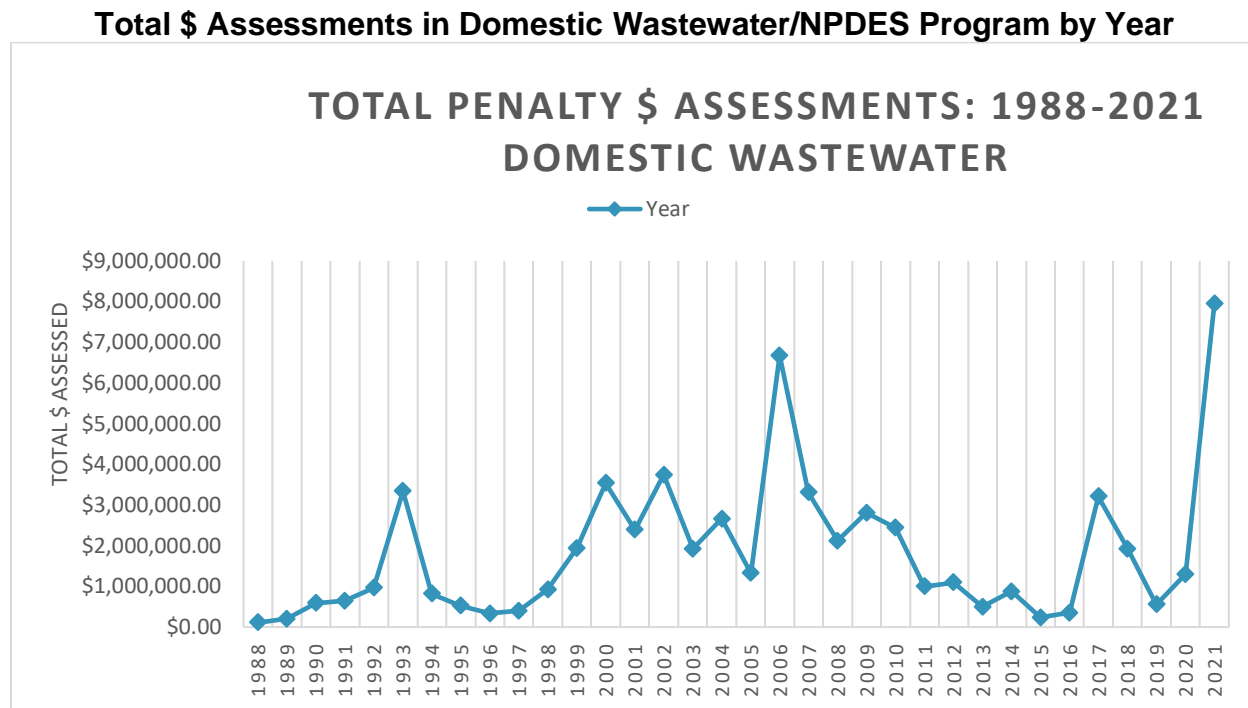


ii. Domestic Wastewater/NPDES

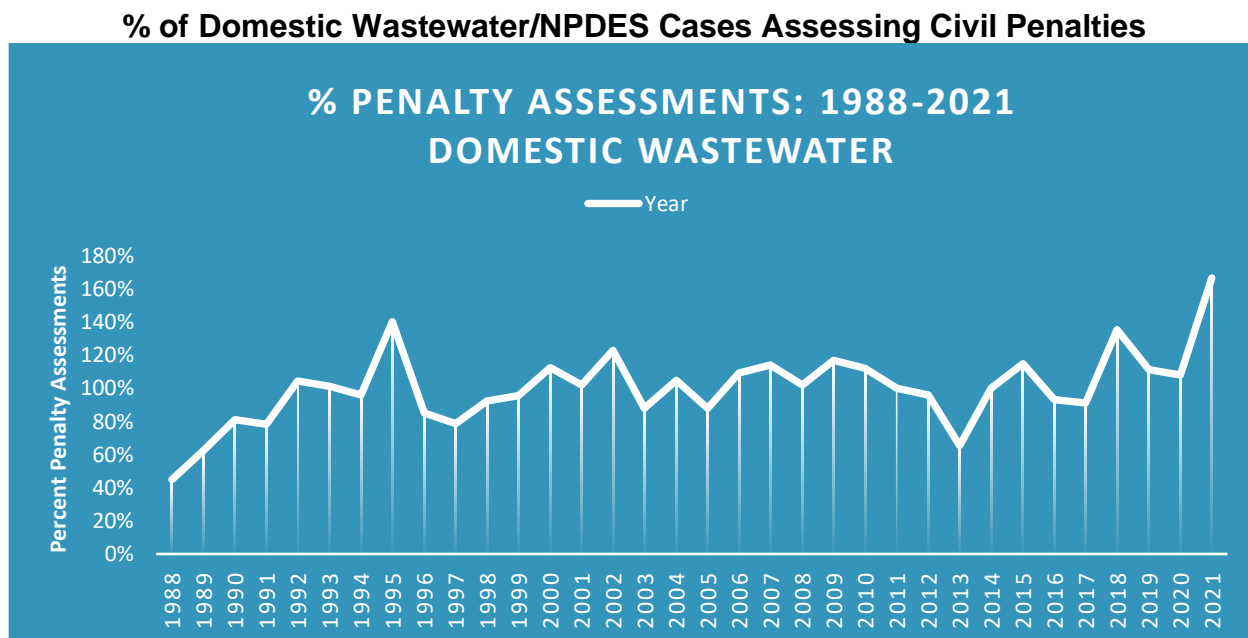
The domestic wastewater/NPDES program, not unlike the other programs, saw a significant drop in new cases during the Scott administration. Its poorest performance historically occurred during those years. While it is now seeing a bit of an improvement, 2021 is alarming because the improvement seems to have stalled.



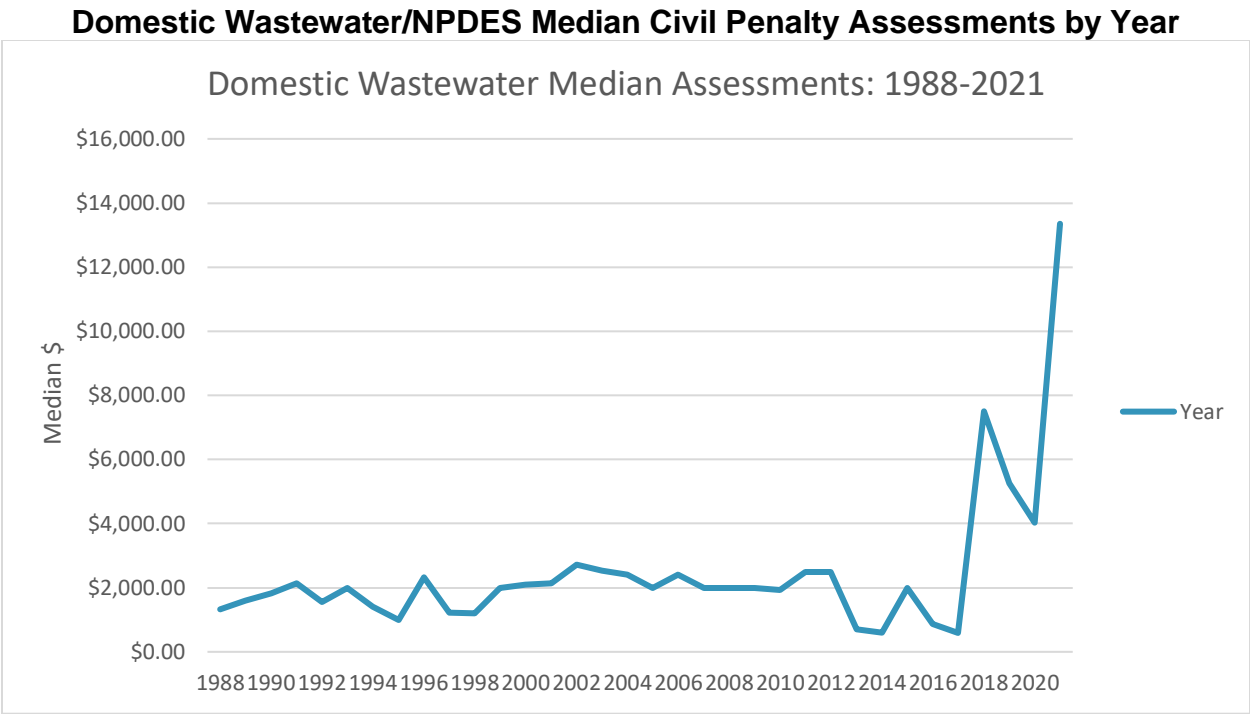
Penalty dollar assessments rose significantly in 2021. However, as the historical results show, this is a program that has generally seen only marginal improvement over the years.



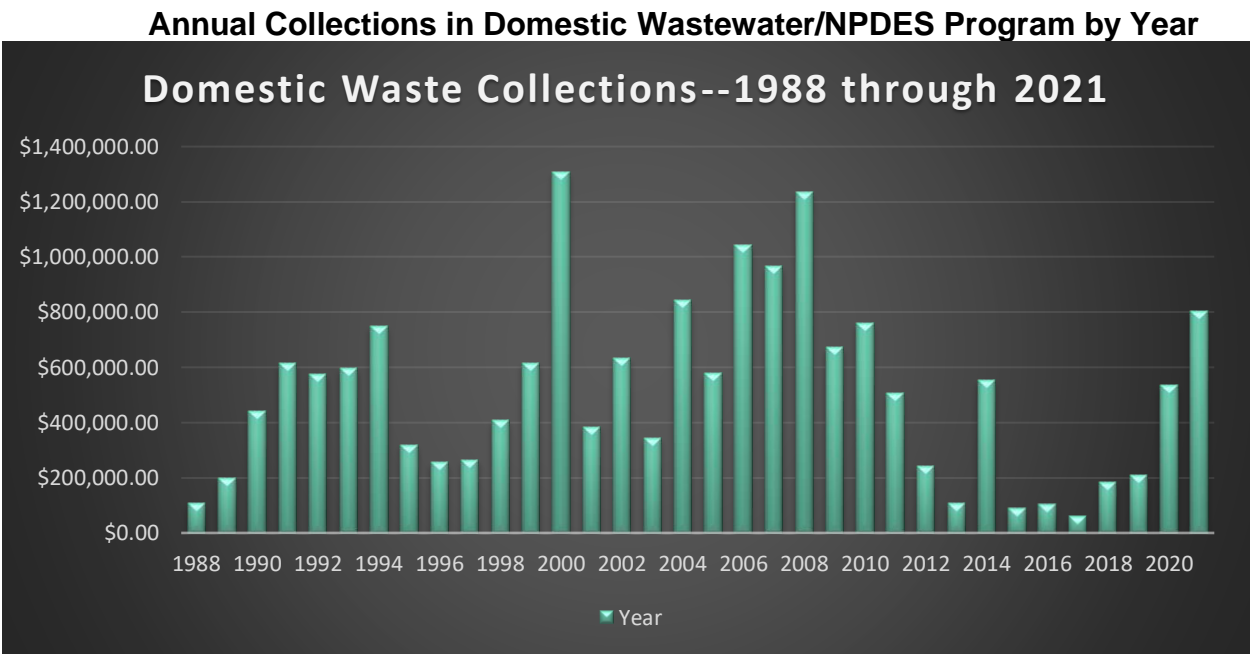
Another interesting development is that the program has been assessing penalties in a higher percentage of cases over the past decade. This is a program that historically has had rather high assessment rates, so it is expected that this will continue.



Perhaps the single biggest cause for optimism in this program is the clear trend of increasing penalty medians since 2017. This means that enforcement actions, when taken, are stricter. If this continues, it could result in better compliance rates in the program down the road.



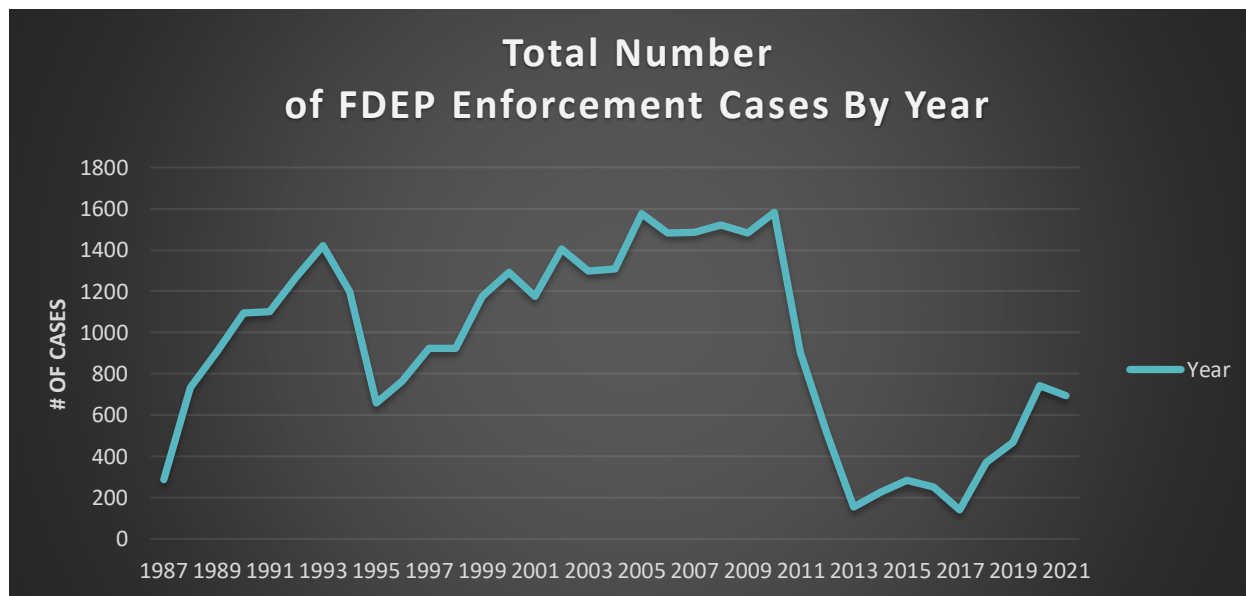
Penalty collections have essentially been on the same trajectory as assessments over the program's history.



CONCLUSION

2021's performance was a mixed bag with little evidence to suggest that the agency's leadership has committed to adopting policies that will ultimately serve to stop what has become a routine assault on Florida's environment. To be sure, there was significant improvement in the assessment of stricter penalties levied against polluters and that was also evident in the number and size of major assessments, particularly in the domestic wastewater/NPDES program. For that, the agency deserves to be commended. But the analysis does not end there—nor should it—because to do so would ignore the other aspects of the Department's enforcement program that are equally troubling. This is an agency that conducted significantly more inspections in 2021, only to find a significantly higher number of facilities that were in noncompliance with their permits. That finding resulted in an even lower, not higher, rate of enforcement than we have seen in years past. Indeed, there were fewer new formal enforcement actions in 2021 than in the previous year when total inspections fell. Civil penalty assessments were also lower. And while the declines were not terribly significant, when so many more violations were found in the field than was the case in previous years, no one would have been faulted for expecting significant increases in both the number of new cases and the penalties that were assessed. Consequently, it isn't unfair to ask why management even sent the agency's inspectors into the field if the ultimate result would be to effectively ignore their findings.

It the final analysis it seems that the explanation for what seems to be diametrically opposite performance results is simple—it's all about appearances. By sending inspectors into the field the Department gets to appear as though it is changing into an agency that takes environmental protection seriously. And increasing penalties on a statistically smaller group of polluters furthers the meme that the current administration is tough on polluters. Meanwhile, when the curtain is pulled back we see that, from an historical perspective, there is no significant change that would bring the Department back to the level that we saw under Governors Bush and Crist. The graph depicting the number of new cases over the past 34 years warrants a second look:



When viewed historically, it is easy to see that the FDEP's most recent performance was at its highest in 2020. And, while it looks impressive in the short-term, the data shows that at this "improved level" the agency was only performing at the same level as it did in 1995-1996 when it was first created by the Legislature—and in those years it was common knowledge among the employees and environmentalists that enforcement was seriously frowned upon. Indeed, until Governor Scott's years in office, those years were the worst in the Department's history. So now we have reached the point at which our elected officials and senior managers use this level of performance to suggest that they are serious about enforcement.

On a programmatic level we see that the enforcement rate in the potable water program, the program charged with protecting our drinking water, stands at a mere three percent. And while the domestic wastewater/NPDES program has shown admirable increases in its median penalty assessments, the reality is that it takes enforcement against only nine percent of those cases in which it finds violations. Both programs (along with the underground injection program) are at the bottom of all programs when it comes to enforcing Florida's environmental regulations. Meanwhile, developers have been given what amounts to a free pass to develop wherever and whenever they want, with the assurance that any penalties that they might have to pay will be minimal, as is evidenced by the fact that median assessments for dredge and fill violations have remained flat for the past six years at historically low levels that are even lower than those seen in 1995-1996.

Finally, it should not be forgotten that in 2021, over sixteen million gallons of sewage was discharged into the Florida's waterbodies, including the Atlantic Ocean, the Gulf of Mexico and numerous rivers, lakes, and streams. These discharges emanated from just twelve of Florida's 67 counties. Those counties also discharged an additional 13.7 million gallons of sewage onto Florida's streets and properties. The discharges are becoming increasingly frequent, particularly during and after tropical systems, as well as daily thunderstorm events. Sadly, these discharges have become a way of life under the FDEP's watch and it is because many, if not most, of the state's wastewater treatment facilities are not designed to handle the inflow of sewage and rainfall that has become common in the state. When challenged, more often than not, the excuse is that such events are an Act of God, which is disingenuous inasmuch as living in Florida means dealing with such events on a regular basis. The fact that the FDEP accepts such excuses says much about the agency's true lack of willingness to protect Florida's residents and tourists, as well as the environment. While failing to enforce regulations violated when these events occur may enable the agency to seem "reasonable" with the public—since enforcement and penalties would impact taxpayers—ultimately the approach is myopic. Because, at the end of the day, it is incumbent upon Florida's residents to accept that significant investments need to be made in these systems and that taxes will have to be increased to pay for them. The alternative is to live with ever increasing raw sewage in neighborhoods and waterways.

Realistically, little has changed at the FDEP. It continues to be an agency that is beholden to developers and industry while relying upon photo-ops to showcase the governor's alleged (and fictitious) bona fides as an environmental steward. We see little evidence to suggest meaningful changes are on the horizon unless and until the public writ large demands in no uncertain terms that the Department use its statutory authority to actually enforce Florida's environmental regulations. But until that happens, the FDEP will continue to stand for "Don't Expect Protection."

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 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.