



Enforcement Efforts by the Florida Department of Environmental Protection



2022 REPORT

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Preface

Florida is an abundant state which encompasses 25,949 miles of rivers, 30,000 lakes, 1,300 miles of coastline and one of the largest aquifers in the United States. With its subtropical climate and spectacular array of wildlife, water resources, and marine life, it's a magnificent place to call home. Not surprisingly, this beautiful state has drawn millions of people to settle over the past century. Now among the 10 most populated states in the United States, the quickly rising population is building up our states agricultural, tourist, and industrial economies.



With this success have come serious existential environmental threats to our state's well-being, such as the growing menace of toxic water pollution, and climate change, to name a few. In a time where Florida is facing what could be an unprecedented environmental crisis the importance of environmental regulation and enforcement cannot be ignored.

As we think about ways to address these crises, this report is an important reminder of the central role that environmental enforcement must play in helping to address these threats and how Florida is falling short in actively enforcing its environmental laws. It's no secret that for environmental legislation to succeed, it must be efficiently and effectively enforced.

With all the beauty of Florida's nature comes the responsibility of working together to make Florida a better place to live for humans and wildlife alike. PEER will continue to provide a critical voice on the crucial role environmental enforcement must play in protecting public health and the environment in our state.

We hope you take a moment to read this report and give us any feedback you may have.

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Summary

Since 2004, PEER has examined Florida Department of Environmental Protection (DEP) data to assess state trends in pollution enforcement.

Despite a population bloom and a proliferation of toxic algae blooms, sewer overflows, and the die-off manatees in Florida waters, state records show Florida's environmental enforcement actions are well below historical averages and have declined significantly in the last two years of the DeSantis administration.

Florida DEP enforces a wide array of laws that protect the state’s environment and the health of its residents. These include laws that protect air resources from industrial pollution, laws that protect the quality of Florida’s water, rivers, lakes, estuaries, and wetlands, and preservation of the state’s beach and dune systems, and laws that protect the environment from the improper handling and disposal of solid and hazardous wastes.

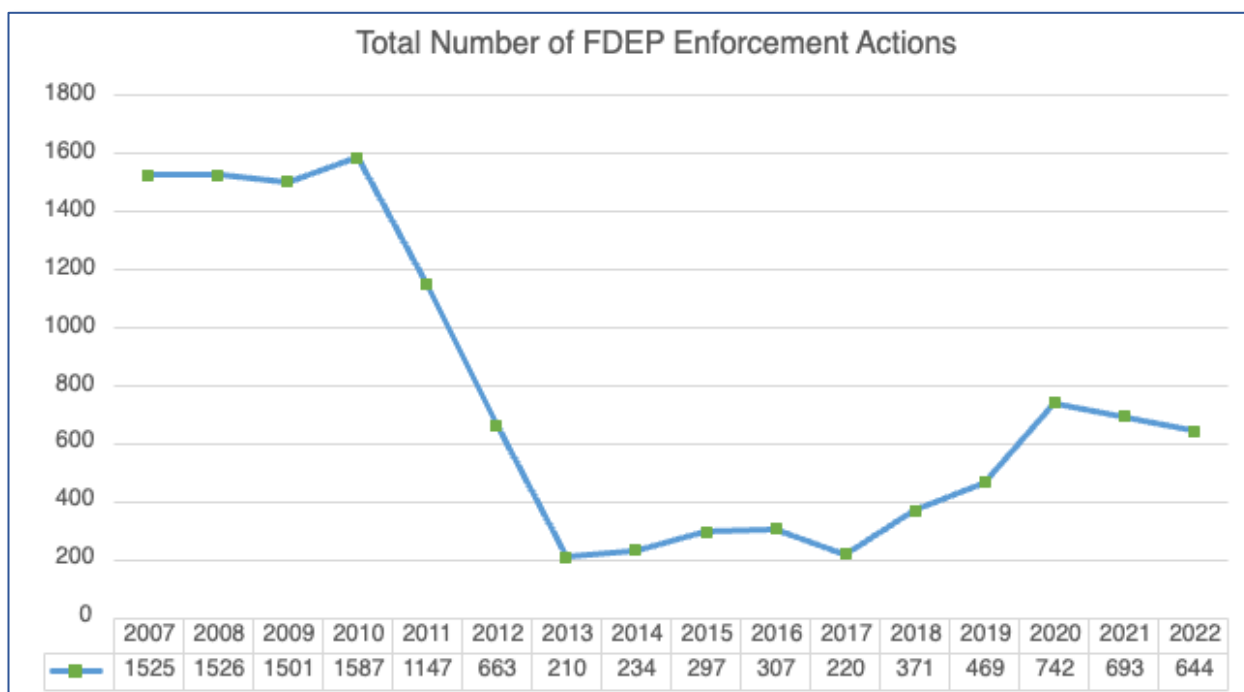
In a state heavily reliant on its natural beauty and water quality for tourism revenue, the lack of environmental enforcement is threatening water quality and the state's long-term economic health. Stronger enforcement of environmental laws is needed to help address Florida’s looming environmental crises.

Florida Enforcement Downward Trend

Thirty-four years of Florida environmental enforcement data compiled by PEER depict an enforcement program in crisis, hollowed out relentless assaults on environmental protections by government leaders over the past 12 years.

When former governor Rick Scott took office in 2011, he began to favor development interests at the expense of environmental protections. The effects of this new governing philosophy became immediately apparent in the number of enforcement actions taken by Florida DEP.

Between 2010 and 2013, the number of Florida DEP enforcement actions plummeted from 1587 to 210 under Scott's leadership.ⁱ During Scott's last full year in office, the number of enforcement actions was 220, an 86 percent decrease from their 2010 levels.



Governor DeSantis came to office in 2018 publicly more supportive of environmental programs that protected water quality than his predecessor. During his first two years as Governor, environmental enforcement actions increased from 371 to 742. However, these numbers are now trending downward. In the past two years, the number of enforcement actions has declined to 644.

An examination of environmental enforcement trends reveals that Florida's enforcement numbers remain well below their historical averages.

- 1988 – 1995 had an average of 1,048 cases each year;
- 1996 – 2010 had an average of 1,303 cases each year; and
- 2011 – 2022 had an average of 500 cases each year.

- Although Governor DeSantis had promised to improve Florida's response to environmental crises when he took office in 2018, the number of enforcement actions in 2022 by Florida DEP was 59 percent below what they were in 2010.
- Recent efforts by Florida DEP's efforts to improve environmental enforcement are sputtering. Environmental enforcement actions under the DeSantis administration have decreased from 742 to 644 in the past two years after rising during the first two years of his administration.

These trends mask an even bigger problem. This decline in enforcement has occurred during a time of explosive population growth. In 1995, Florida had a population of 14,537,875 residents. By 2010, its population grew to 18,801,310; in 2022, Florida's population was estimated to have reached 22,244,823.ⁱⁱ In normal circumstances, this population growth would result in more environmental violations, not fewer, as businesses and development grow to accommodate this influx of residents.

Enforcement of the Dredge and Fill and Domestic Wastewater Programs

Problems with Florida's environmental enforcement program become apparent when looking at the state's dredge and fill and domestic wastewater programs, two of the largest programs in Florida. The dredge and fill program covers the excavation of wetlands and surface waters and the filling of these wetlands and waters with any materials, such as rocks, sand, and sea walls. The domestic wastewater program covers the proper treatment and disposal of domestic wastewater.

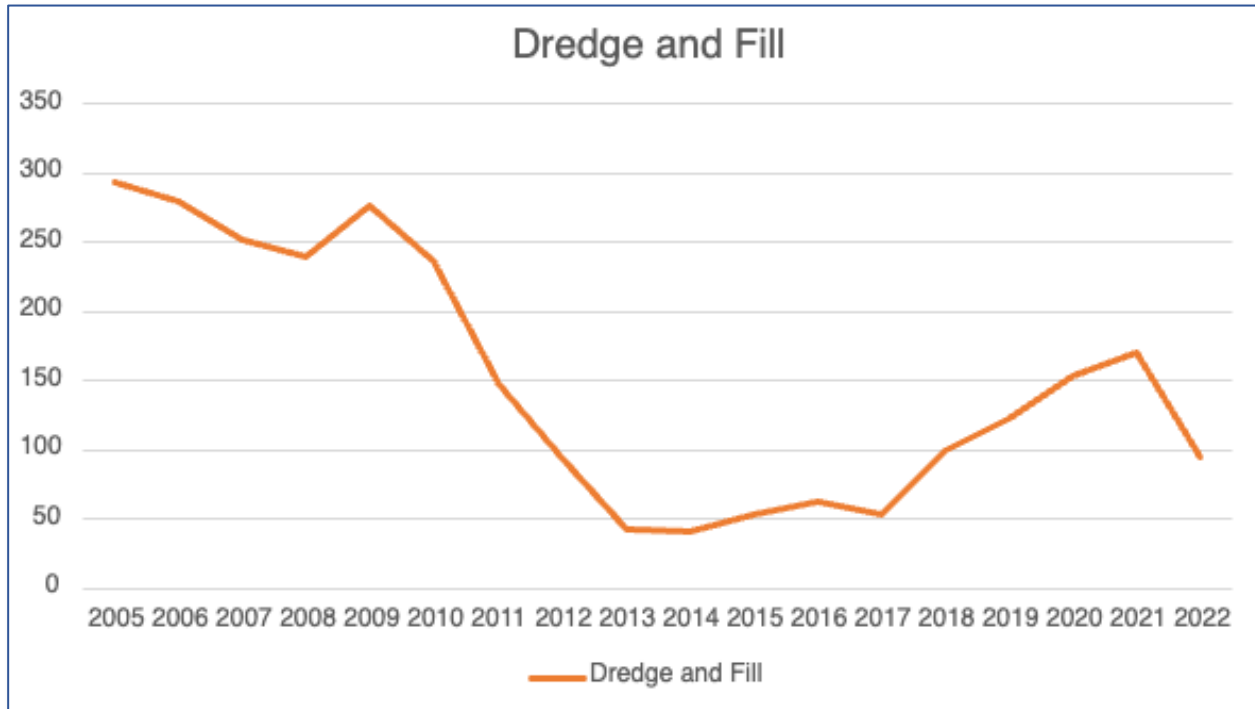
Dredge and Fill

Until 2010, 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 as 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 has been some modest improvement since then. However, in 2022, there were 95 cases, a decline from 171 cases the year before and a 68 percent decline in the number of enforcement actions since 2005.

Things will get worse in the dredge and fill program in Florida. In late 2020, the U.S. Environmental Protection Agency (EPA) granted Florida approval to implement a Clean Water Act (CWA) Section 404 program, which transferred permitting and enforcement authority under CWA Section 404, the national dredge and fill program, from the U.S. Army Corps of Engineers to the State of Florida for a broad range of water resources within the state.

Under this new scheme, Florida's entire dredge and fill program is short-staffed, underfunded, and untrained, according to outside observers,ⁱⁱⁱ and is now processing a record number of applications with little oversight and less enforcement than before it assumed the federal program.

Further threatening Florida’s water quality is a decision in May 2023 by the Supreme Court that will lead to more development and pollution in wetlands and waterbodies in Florida. The Court overturned 50 years of legal precedent and held that the federal Clean Water Act only applied to wetlands with "continuous surface connections" to larger bodies of water.^{iv} This ruling means that developers can fill wetlands and other waterways, and industries can discharge pollutants into these waterways without a Clean Water Act permit or similar state permit.



Domestic Wastewater

Likewise, the state’s domestic wastewater program has seen a steady slide in the number of enforcement actions despite massive amounts of sewage being released into the state’s waterways. State records indicate that in 2022, there were 1,831 incidents reported. In 2021, there were 1,684 incidents reported. In 2020, there were 1,834 incidents reported.^v According to one report by WUFT^{vi}, between 2000 and early 2022, more than 2.4 billion gallons of wastewater spilled onto state lands and into state waters.

Yet enforcement actions in this program are well below their historical averages. From 2005 to 2010, Florida DEP’s domestic wastewater program averaged 175 enforcement actions a year. Between 2017 and 2022, the average was only 95. Like other enforcement programs, the number of enforcement actions in the last few years has declined, from 125 in 2020 to 82 in 2022.



As Florida Water Quality Suffers, An Enforcement Backbone is Lacking

As Florida’s environmental enforcement program has fallen into disrepair, the state has some of the dirtiest water in the country, fouled by pollution for sewage overflows, fertilizer runoff from farms, a reliance on septic systems from homes, and rainwater washing over impervious surfaces and carrying pollutants into waterways.

A 2022 study examining water quality across the U.S. shows Florida ranking first for the highest total acres of lakes too polluted for swimming or healthy aquatic life. The report by the Environmental Integrity Project^{vii} found that Florida ranks first in the U.S. for total acres of lakes classified as impaired for swimming and aquatic life (873,340 acres) and second for total lake acres listed as impaired for any use (935,808 acres).

Meanwhile, more recent data submitted by Florida DEP to the U.S. Environmental Protection Agency shows mixed news on water quality during the DeSantis administration. The data shows a growing number of the state's water bodies, including estuaries and lakes, do not meet water quality standards, although the quality of coastal waters and streams has improved somewhat.^{viii}

Florida’s Governor has proposed spending more money to address this growing problem. With a growing threat this year from toxic algae blooms in Florida’s warming waters, in June, the Governor signed into law a state budget with 3.5 billion dollars in spending for the environment, including record amounts of spending on infrastructure development and environmental restoration projects.^{ix}

However, as many commentators point out, this spending will do little to address the causes of the pollution choking Florida's waterways. While painting this budget as a victory for the environment, the Governor has taken a number of steps that will make stopping water pollution more difficult in Florida. For example, this year, the Governor has signed into law legislation to:

- Make it easier for developers to get projects approved and hinder efforts to toughen development standards after natural disasters;^x
- Put a moratorium on fertilizer restrictions put in place by local communities who use these restrictions to manage nutrient pollution into local waterways; and,^{xi}
- Require citizens who unsuccessfully challenge an amendment to local comprehensive plans to pay the legal fees if they lose that challenge, even if meritorious.^{xii}

Florida's waterways have reached a tipping point. Cleaning them up and minimizing future harmful algae blooms will require more than money. It will also require sustainable and smart development policies coupled with more regulatory enforcement against polluters.

Manatee Die Off—Canaries in the Coal Mine



Manatees, the iconic symbol of Florida's wildlife, are now also a symbol of its collapsing environment and the state's failure to enforce its environmental laws.

In 2021 and 2022, almost 2,000 manatees died – nearly 20 percent of the state's population, mostly from starvation. Three hundred and fifty-five have died between January and mid-July of 2023.

The main culprit is polluted waterways, including increased harmful algal blooms (HABs), which are killing off the state's sea

grass, the staple of the manatee diet. Manatees' habitat has seen a 95 percent reduction in seagrass since 2011.

Nowhere is the effect of poor water quality on the manatees more apparent than in the Indian River Lagoon area. More than 90 percent of the seagrass in the Indian River Lagoon has died off, leading to widespread starvation among the manatee population in that lagoon. The lagoon bottom, once teeming with grasses and marine life, now resembles an underwater desert in many areas.

Many groups are heroically focusing on restoring these grasses, and the state now feeds manatees lettuce to prevent starvation. But Florida is continuing to ignore the root cause of this die-off. Much of this seagrass will die off again without drastic measures by the state to

address water pollution, including increasing enforcement of existing laws to protect water quality.

For example, a 2022 investigation by TC Palm^{xiii} found that despite hundreds of properties around Lake Okeechobee violating state water pollution phosphorus limits, the state has imposed no penalties on the violators. In early July, 68 percent of Lake Okeechobee, which can overflow into waterways that feed into the Indian River Lagoon, was covered in toxic algae blooms.

The TC Palm investigation report found that 872 farmers had ignored DEP warning letters requiring them to enroll in Basin Management Action Plans (BAMPs) or pay for water-quality monitoring. The report notes, “State law gives DEP the power to issue fines up to \$50,000, but the agency said it never has, nor has it filed a lawsuit, in the five years the program has been enforceable.”

This lack of pollution enforcement will mean more nutrient pollution from fertilizer and wastewater runoff and other discharges and more die-offs in Florida's marine ecosystems.



Conclusion

Thirty-four years of Florida environmental enforcement data compiled by PEER depict an enforcement program in crisis, hollowed out relentless assaults on environmental protections by government leaders over the past 12 years.

Florida, which prides itself on clean water and marine life, and derives a significant percentage of its income from tourists coming to experience Florida's natural beauty, now is known as the state with some of the dirtiest water bodies in the United States.

Unfortunately, Florida's Governor and the state legislature have shown no appetite for supporting smart growth policies and strong enforcement of environmental laws, both of which are needed if Florida is to successfully tackle its water quality crisis.

Pouring money into infrastructure projects will not be enough to clean up Florida's dirty water and address other looming environmental crises.

ⁱ PEER defines enforcement as the sum of Case Reports, all Consent Orders, Notice of Violations, and Final Orders. See Appendix A for more information.

ⁱⁱ United States Census, QuickFacts Florida (last viewed on July 18, 2023) <https://www.census.gov/quickfacts/FL>.

ⁱⁱⁱ Jeffrey Schweers, Florida lawmakers' plan speed up wetlands destruction, critics say, Orlando Sentinel (May 11, 2022) <https://www.orlandosentinel.com/2022/05/11/florida-lawmakers-plan-speeds-up-wetlands-destruction-critics-say/>.

^{iv} Sackett v. Environmental Protection Agency 143 S.Ct. 1322 (2023).

^v Florida Department of Environmental Protection, Pollution Notice Enterprise Solutions (last viewed on July 18, 2023) <https://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1>.

^{vi} Alexandra Harris, Spillover, WUFT News and the UF College of Journalism and Communications <https://projects.wuft.org/watershed/2022/08/15/spillover/>.

^{vii} Keene Kelderman, Ari Phillips, Tom Pelton, Eric Schaeffer, Paul MacGillis-Falcon & Courtney Bernhardt, The Clean Water Act at 50: Promises Half kept at the Half-Century Mark, Environmental Integrity Project (March 17, 2022).

<https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA-report-3.23.22-FINAL.pdf>.

^{viii} Yacob Reyes, Is Florida's water 'dirtier' under DeSantis? Here's what the data show, Tampa Bay Times (January 15, 2023) <https://www.tampabay.com/news/florida-politics/2023/01/15/desantis-environment-water-lindsay-cross-politifact-red-tide/#:~:text=Its%20report%20was%20released%20March,for%20swimming%20and%20aquatic%20life>.

^{ix} Kate Hussey, Gov. Ron DeSantis signs record-breaking budget for Florida, WPTV (June 15, 2023)

<https://www.wptv.com/news/state/gov-ron-desantis-signs-record-breaking-117-billion-budget-for-florida>

^x Amy Green, DeSantis Promised in 2018 That is Elected Governor He Would Clean Up Florida's Toxic Algae. The Algae Are Still Blooming, Inside Climate News (July 14, 2023) <https://insideclimatenews.org/news/14072023/desantis-environmental-record-algae-blooms-everglades/>.

^{xi} Katie Kustura, Experts say fertilizer's impact in Florida already known, but study clears state budget, The Daytona Beach News-Journal (June 20, 2023) <https://www.news-journalonline.com/story/news/2023/06/20/fl-environmentalists-seasonal-fertilizer-bans-work-250k-study-a-waste/70330407007/>.

^{xii} Lesley Dwyer, New Florida law hinders citizens' ability to challenge development, Observer, (July 11, 2023)

<https://www.youobserver.com/news/2023/jul/11/new-florida-law-hinders-citizens-ability-challenge-development/>.

^{xiii} Sydney Czyzon & Max Chesnes, 'Look at the water for evidence.' Data proves Florida pollution prevention not working, Treasure Coast Newspapers (May 6, 2022) <https://www.tcpalm.com/in-depth/news/local/indian-river-lagoon/2022/01/05/florida-bmaps-lake-okeechobee-water-pollution-environment-bmp-fdep-fdacs-desantis-farming-regulation/6392489001/>.

Types of Enforcement Action

Florida DEP has a number of options once it decides to initiate formal enforcement against a violator. It can initiate administrative Notices of Violation (NOVs), Final Orders, Consent Orders, and Case Reports, which are reports sent from the Florida DEP districts to the Office of General Counsel (OGC) asking for more serious enforcement by way of circuit court litigation.

There are several types of consent orders. Long-form Consent Orders 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 Consent Orders are essentially Long-form Consent Orders that have been pre-approved by the OGC, thus allowing the individual districts to issue the Model Consent Order 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.

Florida’s enforcement program relies on Short-form Consent Orders and Model Consent Orders for almost two-thirds of its enforcement actions.

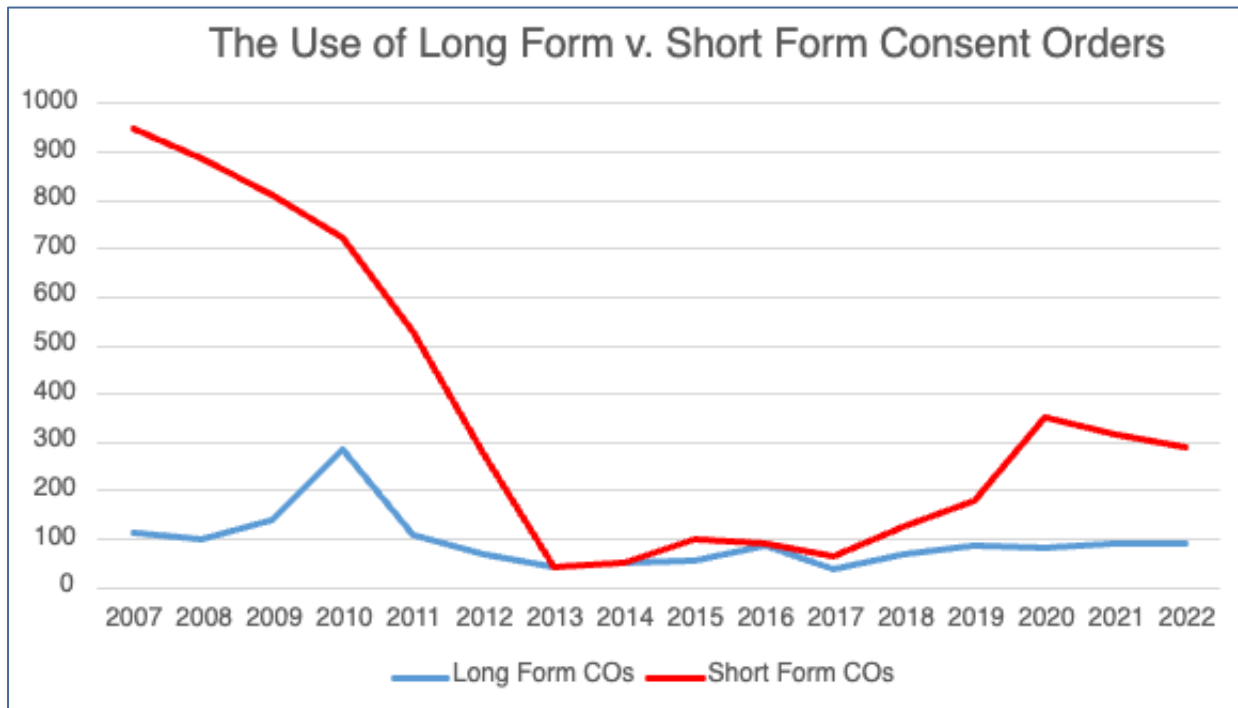
The number of cases initiated in 2022 was divided as follows:

Type of Enforcement	Number of Actions Taken in 2022
NOVs	30
Final Orders	41
Long-form Consent Orders	90
Model Consent Orders	125
Amended Consent Orders	9
Short-form Consent Orders	292
Case Reports	57
Total	644

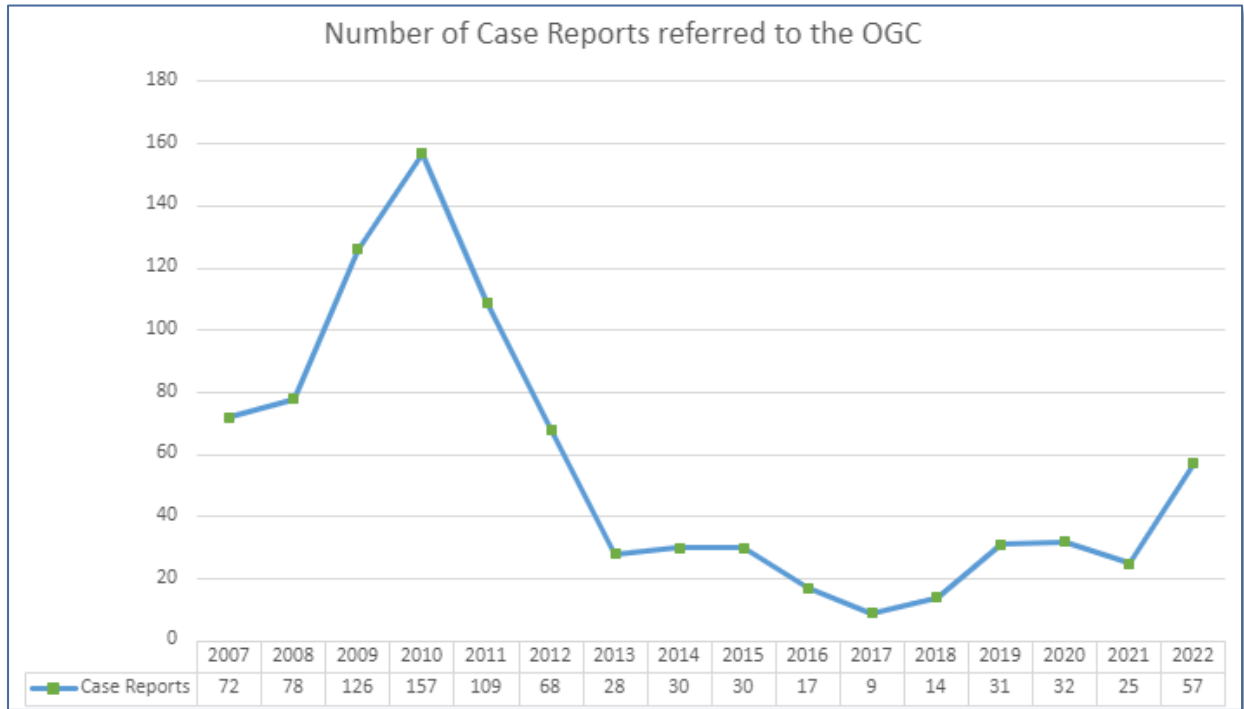
In 2022, there was a significant drop in the number of Notice of Violations (NOVs) issued to violators. In 2021, the FEDP issued 67 NOVs. In 2022, that number was cut by more than half to 30 NOVs for the entire state.



The use of consent orders continues to be the preferred method of enforcement used by the FDEP. The number of long-form and short-form consent orders issued by the FDEP decreased from 406 in 2021 to 382 in 2022. The graph below shows the number of long-form and short-form consent orders issued for the years from 2007 through 2022:



The number of Case Reports sent to the OGC more than doubled in 2022, jumping from 25 in 2021 to 57 in 2022. The graph below shows the number of Case Reports referred to the OGC for the years from 2007 through 2022:



Penalties Assessed and Collected

In 2022, the FDEP assessed 617 penalties and collected 698 penalties. The total sum of assessed penalties for 2022 amounted to \$11,834,573.08. The total sum of collected penalties for 2022 amounted to \$3,066,166.60.

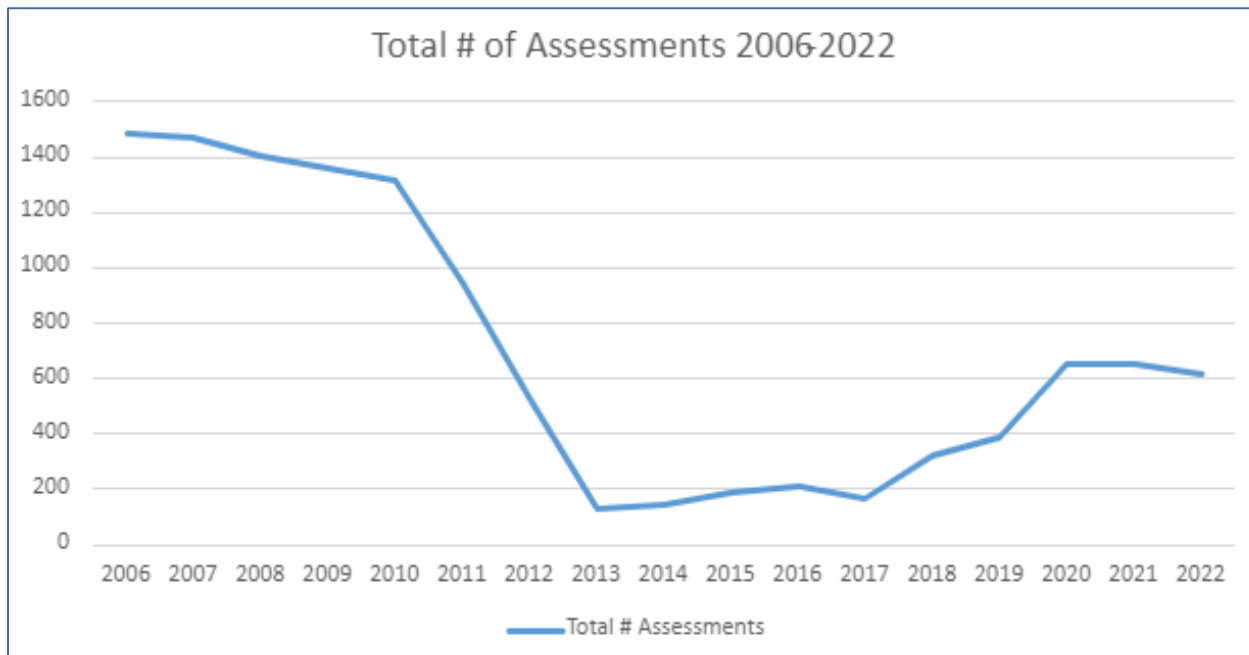
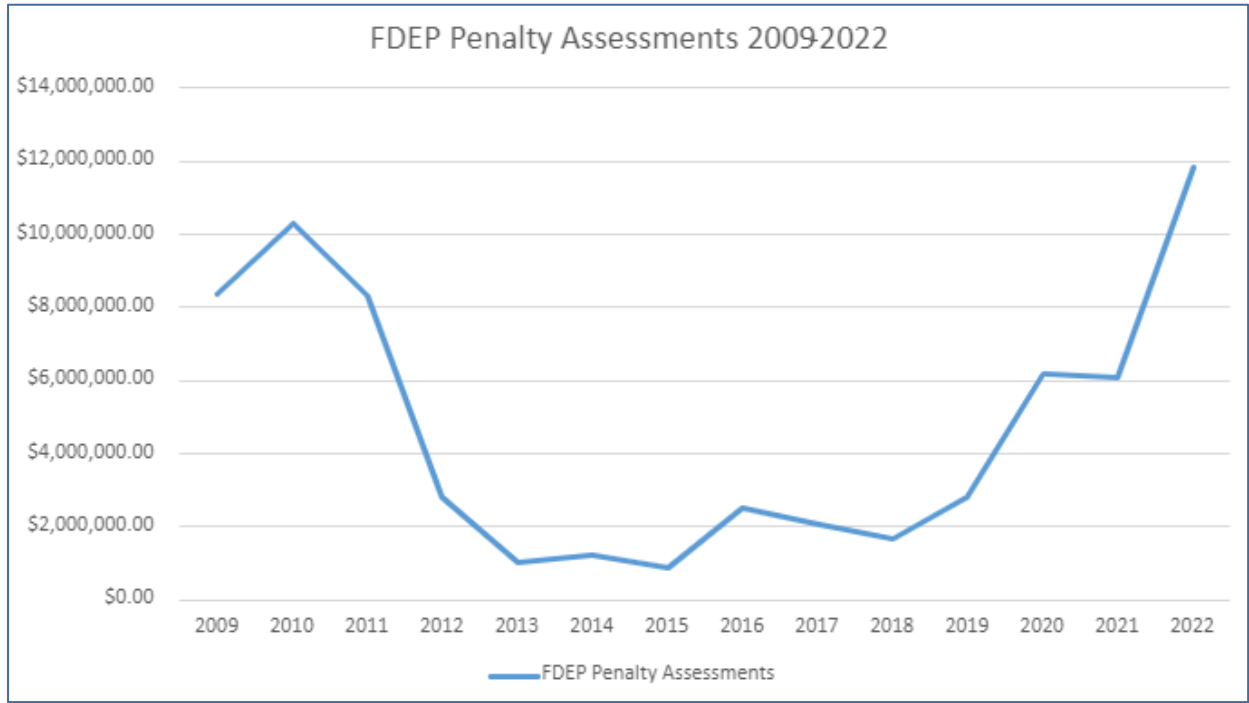
Ten Highest Assessments in 2022 - Florida Department of Environmental Protection

Offender	Assessed Penalty	Case Type
Gulf Breeze Regional Water System	\$1,500,000	Domestic waste
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City of Panama City	\$867,750	Domestic waste
City of Panama City	\$578,500	Domestic waste
Midway Water Systems, Inc.	\$330,000	Potable water
Envirofocus Technologies, LLC	\$293,000	Hazardous waste
Emerald Coast Utilities Authority	\$225,375	Domestic waste
Midway Water Systems, Inc.	\$220,000	Potable water
Nadia Hotel, LLC D/B/A Fairbridge Inn Express-Dundee	\$180,000	Untreated domestic waste spill
City of Haines City	\$166,500	Domestic waste

Ten Highest Collections in 2022 - Florida Department of Environmental Protection

Offender	Assessed Penalty	Case Type
Envirofocus Technologies, LLC	\$293,000	Hazardous waste
City of Fort Lauderdale	\$148,000	Domestic waste
FedEx Ground Package System, Inc.	\$135,480	Hazardous waste
Chemours Company FC, LLC	\$60,000	Water well contractors
Allied Recycling Arcadia, Inc.	\$53,600	Solid waste
City of Saint Cloud	\$51,735.37	Domestic waste
Osprey Amoco Inc.	\$47,960.64	Tanks/petroleum contamination
Miami Dade County Public Health Trust	\$46,860	Tanks/petroleum contamination
Lhiost North America of Alabama, LLC	\$45,270	Air Pollution
City of Port Richey	\$40,848.12	Stormwater runoff

Although the number of Assessments remained low in 2022, the amount of money assessed was high as illustrated in these two graphs below.



In-kind and Pollution Prevention Projects

In-kind (IK) and pollution prevention (P2) projects have long been used by the FDEP as part of the enforcement process. 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.

In 2022, the FEDP completed 25 IK projects and 16 P2 projects.

- DW: Domestic Waste
- HW: Hazardous Waste
- IW: Industrial Waste
- PW: Potable Water
- S1: Untreated DW Spills
- S3: Other DW Spills
- TK: Tanks/Petroleum Contamination
- UC: Underground Inject/Control

The total value of these assessment decline substantially in 2022, as illustrated in the graph below.

