

FLORIDA PEER

REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2005

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PRELIMINARY STATEMENT

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2005. The information provided herein was gleaned from raw data provided to Florida PEER by the FDEP in February 2006 in response to a public records request made to the FDEP by Florida PEER under Chapter 119, Florida Statutes.

EXECUTIVE SUMMARY

A. Statewide Results

1. General Observations

Overall, the Department opened 1485 enforcement cases in 2005, a significant increase over 2004.

The Office of General Counsel received only 49 case reports in 2005, continuing the descent that has taken place in the past few years. This is the fewest number of case reports received by the OGC since the Department began collecting this data. The Number of NOV's increased modestly from 78 in 2004 to 81 in 2005.

While the issuance of long-form consent orders marginally improved in 2005, the improvement continues to be insignificant when judged by historical standards. The Department continues to rely heavily upon short-form consent orders to resolve its enforcement cases. Indeed, 60% of its cases are now resolved through the use of short-form consent orders.

Civil penalty assessments dramatically declined in 2005. A total of \$7,794,556.15 was assessed in 2005, a decline of \$1,876,114.31 from the 2004 performance. This is the second straight year of declining civil penalty assessments for the state.

The Department assessed civil penalties in 1394 cases in 2005. Dredge and fill cases increased during the period, a turnaround from the poor results in this area in 2004. The average penalty per dredge and fill case, while still lower than the average for 2003, also increased over the 2004 results.

The Department collected \$4,983,479.57 in civil penalty assessments in 2005, down from the \$5,846,109.59 it collected the year before. Logically, this decline would seem to be a result of the lower civil penalty assessments in 2005.

B. District Results

1. Northeast District

The Northeast District reported opening no asbestos enforcement cases in 2005. It also increasingly relies on the use of short-form consent orders to resolve those cases that it does open.

2. Northwest District

The Northwest District continues to provide less enforcement than all of the remaining districts in the state. This district opened the fewest percentage of air, dredge and fill and domestic waste cases of all of the six districts in the state in 2005.

3. Central District

The Central District submitted 15.28% of all Case Reports, 11.11% of all NOV's, 6.67% of all Final Orders, and 15.28% of all Consent Orders (a 5% decline from 2004). 71% of the consent orders issued by the district were short-form consent orders. This represents the third highest percentage of short-form consent order usage in the state.

4. Southwest District

Once again, the Southwest District easily outperformed the remaining districts in the Department in sheer volume of enforcement cases. However, it also settled the highest number of enforcement cases through the use of short-form consent orders. Furthermore, it reported opening no asbestos cases in 2005.

5. Southeast District

The SED issued 9 NOV's in 2005, 4 fewer more than in 2004. 5 Case Reports were sent to the OGC in 2005, fully half the number sent in 2004. The district utilized short-form consent orders at a rate of **54.45%**, which is the **lowest percentage** of all of the districts in the state. The district also opened the largest percentage of dredge and fill cases of all of the districts in 2005.

6. South District

In 2005, the SD continued to show improvement in the area of Case Reports. It sent 7 Case Reports to the OGC in 2005. It also increased its NOV issuance to 19, 11

more than in 2004. Of the consent orders that it issued, **58.29%** were short-form. This is the second lowest percentage in the state.

7. All Other Enforcement

This category typically involves Beaches and Coastal Systems categories and Stormwater Runoff cases. In 2005, it accounted for 0% of all Case Reports, 1.23% of the NOV's, 31.11% of the Final Orders and 10.47% of all Consent Orders.

STATEWIDE RESULTS

A. 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). However, the filing of lawsuits lost favor politically in the late 1990s. The result was a consistent decrease in the number of civil circuit court filings each year.

The FDEP's next strongest enforcement tool was the issuance of Notice's of Violation (NOV's). NOV's 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 recently, i.e. 2001, ALJs were unable to levy civil penalties in these cases. Thus, the NOV's 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 NOV's 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 NOV's. 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 in order 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 2003 historical assessment of FDEP enforcement, the use of Long-form COs began waning in the late 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.

The trend for civil penalty assessments is clearly discernable from a historical perspective. Generally, the four years from 1987 through 1990 saw by far the fewest total dollars in such assessments (\$8,452,727.56), while the five year period from 1991 through 1994 saw the largest dollar assessments (\$39,792,904.76). The average annual civil penalty assessments for the period of 1987 through 1992 was \$6,534,859.27.

The Department has historically assessed civil penalties in 761 cases on average each year. It’s historical median for all program areas is 805 cases each year. The Department’s average annual performance with respect to the number of cases in which it assesses civil penalties in various key program areas is shown below:

Program Area	Historical Average	Historical Median
Asbestos	8	8
Air (Excluding Asbestos)	90	90
Beaches/Coastal	17	17
Waste Cleanup	4	3
Dredge & Fill	217	215
Domestic Waste	114	112
Hazardous Waste	116	119

Industrial Waste	46	43
Potable Water	95	97
Stormwater Runoff	8	7
Solid Waste	36	30
Tanks	48	35
Underground Injection Control	4	4

The above data represents the period of 1988 through 2002, based on calendar year performance. Only two program areas assessed civil penalties in 1987, therefore, the inclusion of that year's negative results would improperly skewer the data for the remaining programs.

As for the average and median dollars assessed on each case during the same time period the Department has performed as follows for the same key program areas:

Program Area	Historical Averages	Historical Medians
Asbestos	\$10,025.25	\$4,968.02
Air (Excluding Asbestos)	\$6,227.09	\$5,323.72
Beaches/Coastal	\$786.63	\$538.89
Waste Cleanup	\$25,940.05	\$7,989.00
Dredge & Fill	\$3,287.42	\$2,966.12
Domestic Waste	\$10,751.37	\$5,684.30
Hazardous Waste	\$15,986.22	\$10,514.61
Industrial Waste	\$19,506.60	\$13,150.86
Potable Water	\$1,379.30	\$1,168.31
Stormwater Runoff	\$5,768.34	\$1,860.71
Solid Waste	\$6,867.80	\$4,880.99
Tanks	\$4,934.64	\$4,824.97
Underground Injection Control	\$9,755.91	\$8,878.80

Here again, the results are based on calendar years 1988 through 2002.

Historically, the agency has never collected all civil penalties that it has assessed. This is not surprising when it is considered that a certain percentage of violators routinely take active measures to avoid paying the fines that they owe, and a certain percentage also lack the financial resources to be able to pay the fines. Over the period from 1987 through 1992 the average dollars collected each calendar year has been \$3,270,983.42, or 50.05 percent of the fines assessed. Interestingly, the initial four years, i.e. 1987-1990 had the highest collection percentage, 89.95%, while the period from 1999-2002 had the lowest collection percentage, 42.84%.

B. STATEWIDE ENFORCEMENT RESULTS

1. Case Reports, NOVs, Consent Orders, Final Orders

The downward trend in the number of requests for serious enforcement through the filing of complaints in civil circuit courts continued once again in 2005. Statewide, a total of 49 case reports were received by the Office of General Counsel. This is the lowest number of case reports submitted by the districts since 1988.

The number of NOVs filed by the FDEP rose in 2005. A statewide total of 81 NOVs were filed in 2005—3 more than in 2003.

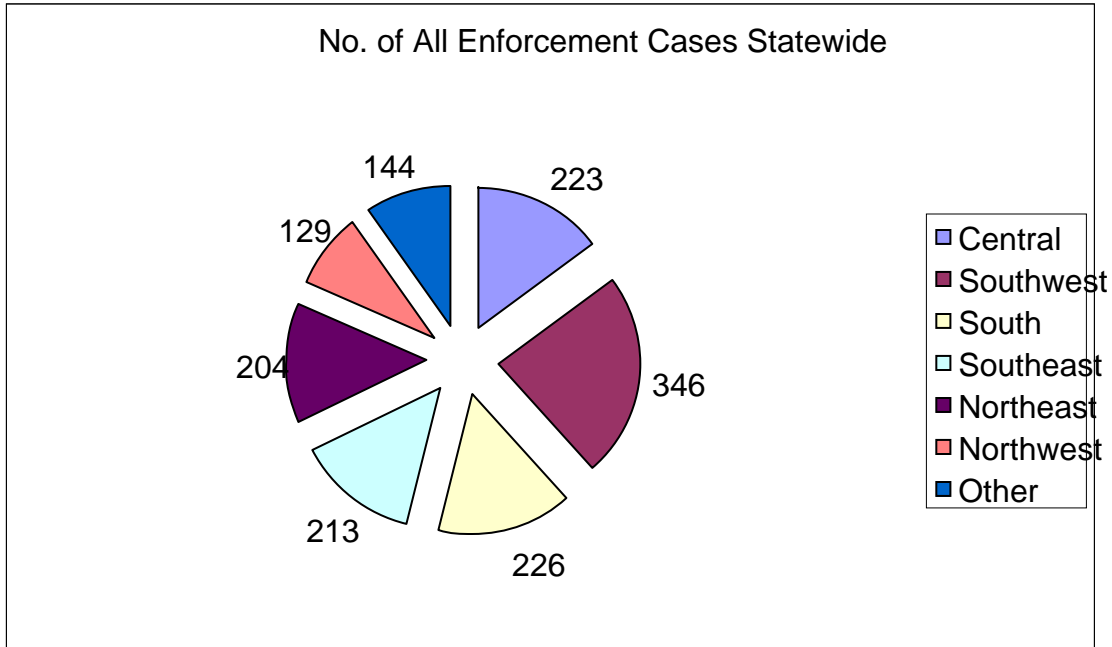
2005 saw another increase in the number of long-form consent orders. Statewide, 128 such orders were issued, an increase of 11 over 2005. The second straight year for such an increase.

Model consent orders continued to be issued at an increased rate over the historical average of 140.53. 259 were issued in 2004, 9 more than in 2004.

The usage of short-form consent orders escalated sharply in 2005. 894 such orders were issued in 2005, **181** more than in 2004. This is also significantly higher than the statewide average of 404.93 issued each year across the state.

The Department issued 45 Final (Enforcement Related) Orders in 2005. This is 5 fewer than in 2003.

Overall, enforcement was divided between the Department's district offices as follows:



Once again we see that the Southwest District is responsible for a significant portion of the enforcement that is undertaken by the Department as a whole. The Northwest District had the fewest number of enforcement cases of all of the districts, including the catch-all category of “Other.”

2. Short-Form Consent Orders

The Department’s use of short-form consent orders continues to rise significantly. The following table demonstrates the progression of the use of these enforcement mechanisms from 1988 to the present by showing the percentage of all enforcement cases that were resolved via short-form consent orders.

Year	% Short-Form Consent Orders
1988	0.00%
1989	0.00%
1990	24.13%
1991	38.74%
1992	36.32%
1993	46.84%
1994	47.73%
1995	52.60%
1996	49.39%
1997	48.29%

1998	50.05%
1999	48.90%
2000	54.77%
2001	56.38%
2002	55.67%
2003	58.46%
2004	55.23%
2005	60.20%

For 2005, with the exception of the Southeast District, all districts settled a clear majority of their cases through the short-form route. The Southwest District lead the way, settling almost 70% of their cases in this manner. The following table gives the actual percentages.

District	% Cases Settled Through SF COs
Central	63.68%
Northeast	59.31%
Other	63.19%
Northwest	62.02%
Southeast	48.83%
South	51.33%
Southwest	69.36%

Thus, as will be discussed below, while the Southwest District clearly has the most enforcement cases of all of the districts, it is also the most likely to resolve each case through the use of a short-form consent order.

3. *Program Area Performance*

The number of enforcement cases¹ brought in each key program area is as follows:

Program Area	Total No. of Enf. Cases
Asbestos	19
Air (Excluding Asbestos)	140
Beaches/Coastal	2

¹ Defined as the sum of case reports, all consent orders, NOVs and Final Orders.

Waste Cleanup	7
Dredge & Fill²	294
Domestic Waste	170
Hazardous Waste	188
Industrial Waste	50
Potable Water	176
Stormwater Runoff	131
Solid Waste	57
Tanks	177
Underground Injection Control	6

Compared to the historical averages, the same key program areas performed as follows:

Program Area	Historical Averages	Difference
Asbestos	8	11
Air (Excluding Asbestos)	90	50
Beaches/Coastal	17	(15)
Waste Cleanup	4	(3)
Dredge & Fill	217	77
Domestic Waste	114	56
Hazardous Waste	116	72
Industrial Waste	46	4
Potable Water	95	81
Stormwater Runoff	8	123
Solid Waste	36	21
Tanks	48	129
Underground Injection Control	4	2

With the exception of the Beaches and Coastal Systems Program and the Waste Cleanup Program, 2005 saw a significant increase in the number of cases brought in most program areas. This includes dredge and fill cases, which last year had declined significantly.

4. *Civil Penalty Assessments*

The Department assessed civil penalties in 1394 cases in 2005, significantly higher than in 2004. At the same time, however, in 2005 the FDEP assessed **\$7,794,556.15** in civil penalties. This is \$1,876,114.31 less than the amount assessed in 2004, a 19% decline, and the second straight year of declining numbers in this area. It is

² This includes Environmental Resource Permitting.

also somewhat surprising in light of the increase in the number of NOV's, long-form consent orders and short-form consent orders issued by the Department in 2005.

The key program areas also saw average dollars assessed on a per case basis as follows:

Program Area	2004 Averages	2005 Averages	Historical Averages
Asbestos	\$4,333.08	\$5,502.31	\$10,025.25
Air (Excluding Asbestos)	6,324.16	\$3,346.15	6,227.09
Beaches/Coastal	591.67	\$366.67	786.63
Waste Cleanup	2,500.00	0.00	25,940.05
Dredge & Fill	2,109.71	\$2,588.37 ³	3,287.42
Domestic Waste	18,936.78	\$8,868.50	10,751.37
Hazardous Waste	12,610.94	\$8,803.31	15,986.22
Industrial Waste	16,621.50	\$5,115.48	19,506.60
Potable Water	862.44	\$1,286.95	1,379.30
Stormwater Runoff	1,734.94	\$2,015.88	5,768.34
Solid Waste	7,812.72	\$9,832.73	6,867.80
Tanks	15,269.73	\$6,121.18	4,934.64
Underground Injection Control	0.00	\$18,413.60	9,755.91

Assessments in the Air Program declined by **47%** in 2005. Hazardous waste cases saw a **30%** decline and industrial waste cases declined a staggering **69%**! Once again, dredge and fill cases are not being assessed in keeping with their historical averages, although the 2005 average is up slightly from last year. 2005 represents the fifth straight year in which the Department has assessed civil penalties at a rate below its baseline average in the dredge and fill program. Tanks cases also declined by **60%** in 2005.

Overall, the Districts' performance in the area of penalty assessments varied widely:

DISTRICT	Total \$ Assessed	% of Statewide
CENTRAL	\$927,555.95	11.90%
NORTHEAST	\$1,126,759.75	14.46%
NONE	\$432,077.00	5.54%
NORTHWEST	\$744,441.00	9.55%

³ This includes Environmental Resource Permitting.

SOUTHEAST	\$1,394,066.33	17.89%
SOUTH	\$780,564.25	10.01%
SOUTHWEST	\$2,389,091.87	30.65%
Statewide Total	\$7,794,556.15	

5. *Civil Penalty Collections*

A statewide total of \$4,983,479.57 in civil penalties was collected by the FDEP in 2005. This is \$862,630.02 (or 15%) below the amount collected in 2004. The sharp decrease in collections is to be expected in light of the decline in civil penalty assessments for the same time period.

DISTRICTS

A. Northeast District

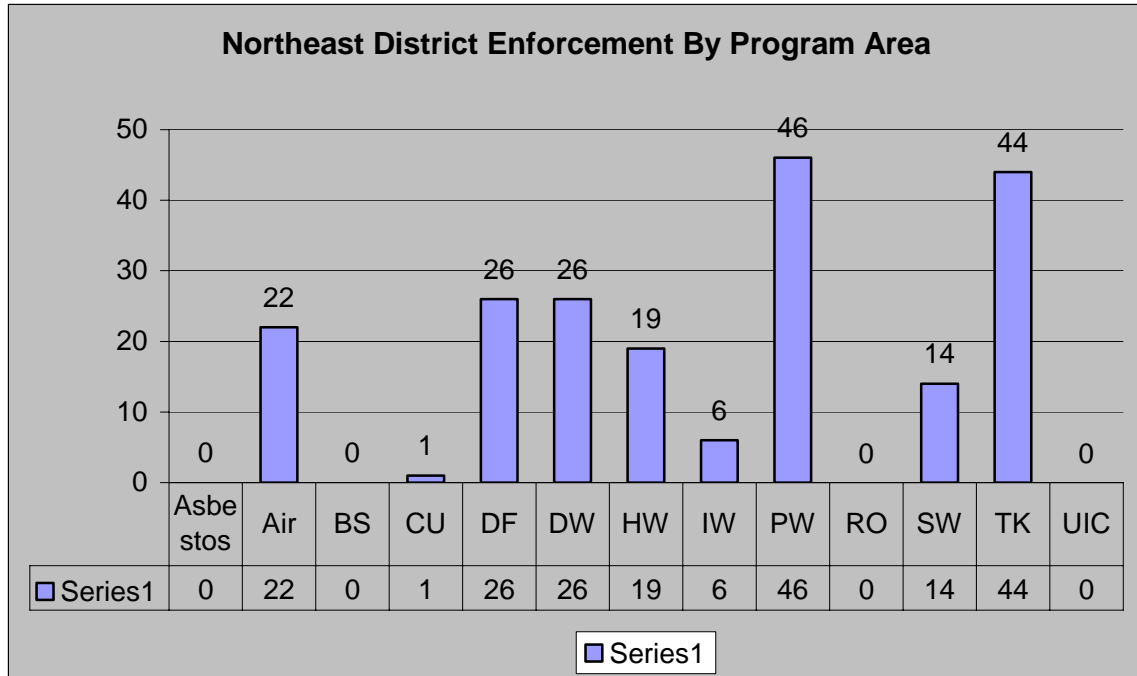
A. *Case Reports, NOVs, Consent Orders, Final Orders*

The district submitted 11 case reports to OGC in 2005. This is 1 more than the year before. This also represents 22.45% of all case reports sent to OGC throughout the state. During the same time period 15 NOVs (18.52% of all statewide) were issued, six fewer more than in 2004. The district also entered 14 Final Orders for the same time period. The district issued 164 Consent Orders (12.53% of all statewide), a net decrease for the district. Added to this, **73.78%** of the consent orders that the district issued were short-form consent orders. This is the second highest percentage of all of the districts in the state. That said, it should also be noted that of all of the consent orders issued by the district, **18.29%** were long-form consent orders, which is the highest percentage in the state.

B. *Program Area Enforcement*

The following chart provides the number of enforcement cases opened by the Northeast District by program area in 2005:⁴

⁴ The abbreviations are as follows: AB = Asbestos; Air = Air; DF = Dredge and Fill; DW = Domestic Waste; HW = Hazardous Waste; IW = Industrial Waste; MA = Mangroves; PW = Potable Water; RO = Stormwater Runoff; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection.



The most troubling result is found in the Asbestos Program, which reported no enforcement cases for the year. The district also had the second lowest percentage of dredge and fill cases of the six districts. It tied for the lowest percentage of hazardous waste cases. It had the second highest percentage of tanks cases and the highest percentage of potable water cases in the state.

C. Civil Penalty Assessments

The NED assessed civil penalties totaling \$1,126,759.75 for 2005. This equates to 14.46% of all assessments levied statewide. Assessments in the major program areas broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$0.00	\$0.00	\$0.00
Air	\$97,625.00	\$3,366.38	\$1,000.00
DF	\$61,500.00	\$2,050.00	\$1,100.00
DW	\$127,750.00	\$7,984.38	\$1,500.00
HW	\$478,658.25	\$22,793.25	\$4,900.00
IW	\$72,600.00	\$18,150.00	\$20,400.00
MA	\$0.00	\$0.00	\$0.00

PW	\$12,007.50	\$261.03	\$200.00
RO	\$0.00	\$0.00	\$0.00
SL	\$0.00	\$0.00	\$0.00
SW	\$111,869.00	\$8,605.31	\$4,250.00
TK	\$164,750.00	\$6,336.54	\$3,000.00

For this district, the average assessments in air, dredge and fill and potable water cases are significantly lower than the historical statewide averages.

D. Civil Penalty Collections

2005 saw a significant decline in collections by the NED with a total of \$703,367.27. As a percentage, the NED collected 14.11% of all collections by the FDEP in calendar year 2005.

B. Northwest District

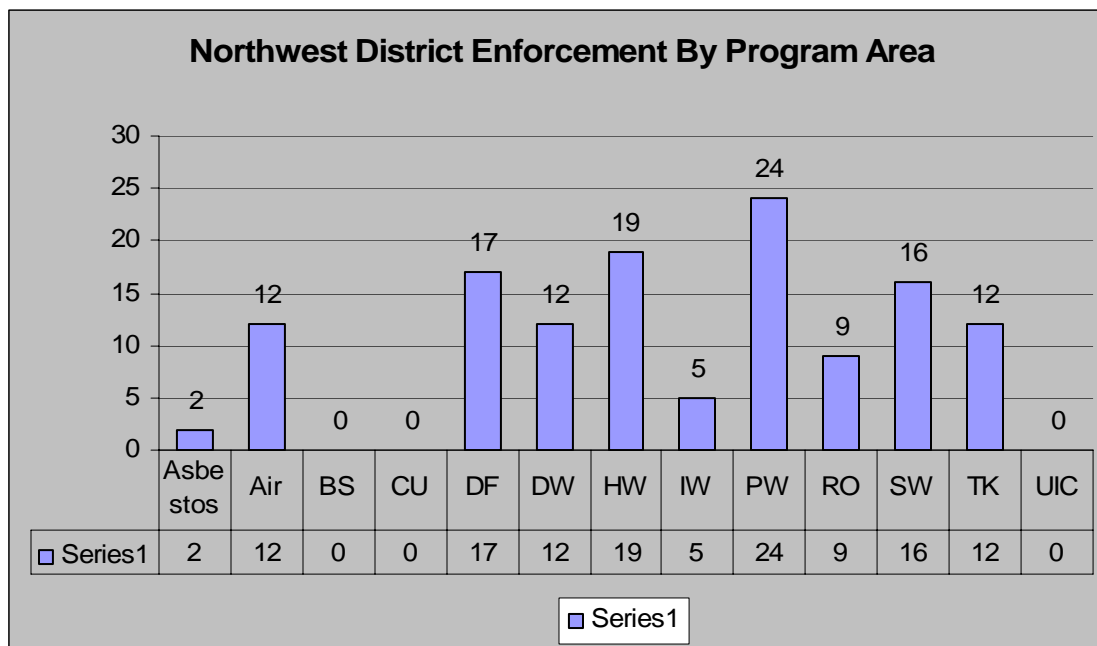
A. Case Reports, NOVs, Consent Orders, Final Orders

The NWD sent only 4 Case Reports to OGC in 2005. This is less than half of the already low number that were submitted in 2004. It issued 8 NOVs, during the same time period, a slight increase over the previous year. It issued 3 Final Orders and 114 Consent Orders. 80 of the 114 Consent Orders, i.e. 70.17%, were short-form consent orders.

When compared to the production of other districts the NWD clearly remains at the bottom, indicating a continued lack of enforcement. It issued only 8.16% of all Case Reports statewide and managed less than 10% (9.88%) of the NOVs and 6.67% of all Final Orders. 8.71% of all Consent Orders were issued by the NWD in 2005. As noted above, over 70% of the consent orders were short-form. One positive factor is the use of long-form consent orders, which stands at 13.16% of all consent orders issued by the district. This is the second highest use of long-form consent orders in the state. Thus, when consent orders are chosen as the enforcement tool, there is some greater likelihood that the district will opt for issuing a long-form consent order.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Northwest District by program area in 2005:



This district opened the fewest percentage of air, dredge and fill and domestic waste cases of all of the six districts in the state in 2005. It tied with the Northeast District for the fewest number of hazardous waste cases in the state. It tied with the Central District for the fewest number of tanks cases in the state.

C. Civil Penalty Assessments

The district assessed civil penalties totaling \$744,441.00 in 2005. This is an increase over the 2004 results and equals 9.55% of all civil penalty assessments levied by the FDEP statewide. This remains the lowest percentage of all the districts. Assessments in the major program areas for the Northwest District broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$7,250.00	\$3,625.00	\$3,625.00
Air	\$36,175.00	\$3,014.58	\$1,562.50
DF	\$38,900.00	\$2,288.24	\$1,500.00
DW	\$143,750.00	\$11,979.17	\$2,500.00
HW	\$110,766.00	\$3,955.93	\$2,537.50

IW	\$5,700.00	\$950.00	\$750.00
MA	\$0.00	\$0.00	\$0.00
PW	\$23,350.00	\$833.93	\$500.00
RO	\$10,000.00	\$1,428.57	\$1,000.00
SL	\$2,500.00	\$2,500.00	\$2,500.00
SW	\$212,500.00	\$14,166.67	\$4,000.00
TK	\$153,550.00	\$12,795.83	\$1,000.00

Of particular note are the average assessments in the air, hazardous waste, industrial waste and potable water programs, all of which are significantly lower than the statewide averages. The average assessment historically for industrial waste cases is \$19,506.60. The NWD average in 2005 was \$950.00.

D. Civil Penalty Collections

\$441,998.79 in civil penalties were collected by the NWD in 2005. This is also an increase over the district's performance in 2004. This amount equals 8.87% of all civil penalties collected by the FDEP statewide. Once again, this is the lowest percentage of all the districts in the state.

C. Central District

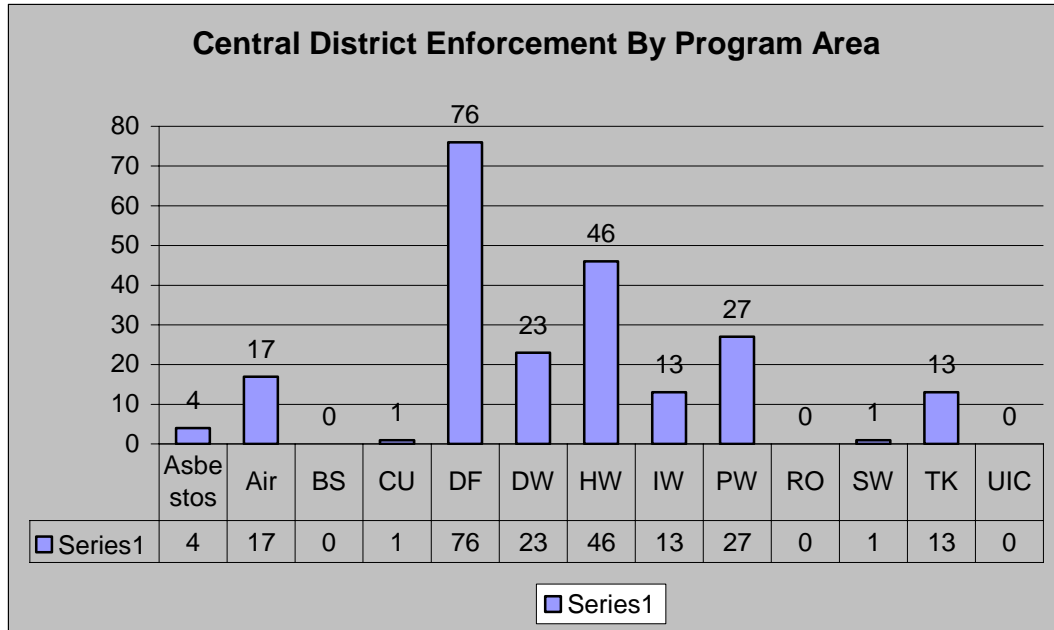
A. Case Reports, NOVs, Consent Orders, Final Orders

The district submitted 11 Case Reports to the OGC in 2005. It issued 9 NOVs, 3 Final Orders, and 200 Consent Orders. The latter represents an increase over the 2004 numbers, but is still slightly less than the 207 registered in 2003. When looked at on a percentage basis the district submitted 15.28% of all Case Reports, 11.11% of all NOVs, 6.67% of all Final Orders, and 15.28% of all Consent Orders. 71% of the consent orders issued by the district were short-form consent orders. This is the third highest percentage in the state.

With the exception of Final Orders, which declined significantly, the overall numbers were fairly stable compared to 2004.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Central District by program area in 2005:



The CEN had the second highest percentage of dredge and fill cases of all of the districts in the state.

C. Civil Penalty Assessments

The CEN levied \$927,555.95 in civil penalty assessments in 2005, a slight increase over its 2004 performance. The assessments totaled 11.90% of all assessments statewide. Assessments in the major program areas for the Central District broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$80,048.50	\$13,341.42	\$6,486.50
Air	\$140,129.00	\$8,242.88	\$4,000.00
DF	\$87,575.00	\$1,326.89	\$1,000.00
DW	\$44,441.45	\$2,020.07	\$1,700.00
HW	\$382,227.00	\$10,058.61	\$7,099.50
IW	\$24,550.00	\$2,045.83	\$1,850.00
MA	\$1,000.00	\$500.00	\$500.00
PW	\$33,585.00	\$1,243.89	\$800.00
RO	\$0.00	\$0.00	\$0.00
SL	\$0.00	\$0.00	\$0.00
SW	\$0.00	\$0.00	\$0.00
TK	\$134,000.00	\$11,166.67	\$9,500.00

Annual averages for dredge and fill, hazardous waste and industrial waste cases are all significantly lower than statewide historical averages.

D. Civil Penalty Collections

\$762,523.79 was collected by the CEN in 2005, a significant increase over the 2004 results. It also represents 15.30% of all collections statewide.

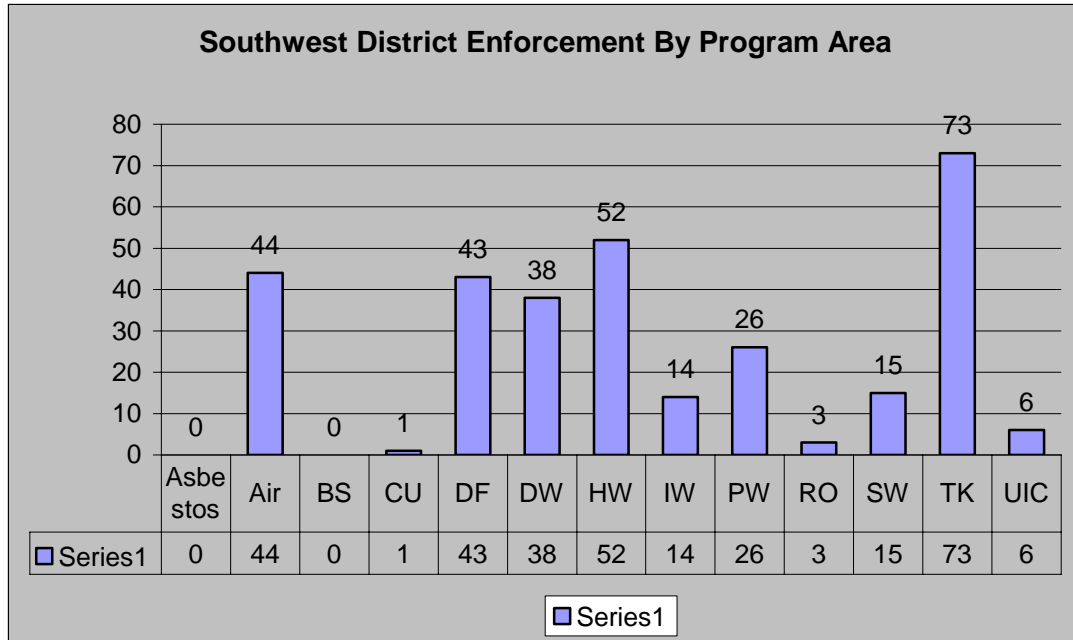
D. Southwest District

A. Case Reports, NOVs, Consent Orders, Final Orders

11 Case Reports were submitted by the district in 2005, two more than in 2004. This represents 22.45% of all such reports submitted statewide. The district also issued 20 NOVs, or 24.69% of all such filings. It issued 10 Final Orders (22.22%). 304 Consent Orders were issued out of this district, which represents 23.22% of all Consent Orders issued by the Department in 2005. In addition, **78%** of the Consent Orders issued by the district were short-form consent orders. This is the highest percentage of short-form consent orders in the state. At the same time, the district chose the long-form consent order as an enforcement mechanism in only **4.93%** of the cases in which a consent order was used. This is the lowest percentage of long-form consent orders in the state. Thus, while the actual number of enforcement cases is high, the conclusion is that the vast majority of these cases are resolved through the payment of a civil penalty with no further oversight provided.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southwest District by program area in 2005:



As with the Northeast District, the troubling indicator in this category is the total absence of asbestos enforcement cases, particularly for a district such as this which is otherwise so active in the enforcement area. It also had the third highest percentage of dredge and fill cases statewide and the largest percentage of hazardous waste, industrial waste and tanks cases.

C. Civil Penalty Assessments

Civil penalty assessments declined for this district in 2005. The SWD levied civil penalties totaling \$2,389,091.87. In spite of the relative decrease compared to 2004, the district accounted for a higher percentage of civil penalty assessments statewide in 2005, representing 30.65% of all such assessments by the Department. Assessments in the major program areas for the Southwest District broke down as follows:

Program. Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$0.00	\$0.00	\$0.00
Air	\$628,532.00	\$12,324.16	\$2,000.00
DF	\$89,743.00	\$2,301.10	\$1,394.00
DW	\$559,415.00	\$14,343.97	\$4,600.00
HW	\$427,477.90	\$7,916.26	\$3,035.00
IW	\$31,000.00	\$3,444.44	\$2,000.00

MA	\$26,903.80	\$1,793.59	\$800.00
PG	\$25,081.00	\$5,016.20	\$5,000.00
PW	\$76,250.00	\$2,932.69	\$500.00
RO	\$3,750.00	\$1,250.00	\$1,000.00
SL	\$9,200.00	\$2,300.00	\$2,250.00
SW	\$135,400.00	\$10,415.38	\$10,000.00
TK	\$244,271.17	\$3,489.59	\$2,500.00
UIC	\$132,068.00	\$18,866.86	\$20,000.00

Annual averages for dredge and fill, hazardous waste, industrial waste and tanks cases are all significantly lower than statewide historical averages.

D. Civil Penalty Collections

The \$1,730,367.76 in civil penalties collected by the SWD in 2005 continues to make it the lead district in this category. Its collections accounted for 34.72% of all the monies collected by the Department across the state.

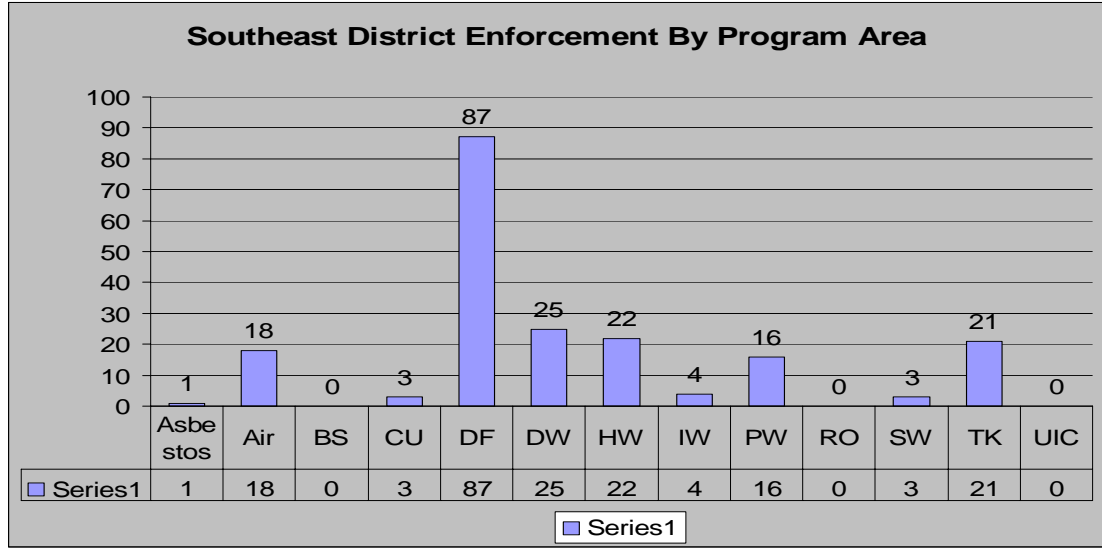
E. Southeast District

A. Case Reports, NOVs, Consent Orders, Final Orders

The SED issued 9 NOVs in 2005, 4 fewer more than in 2004. 5 Case Reports were sent to the OGC in 2005, fully half the number sent in 2004. The district issued 8 Final Orders, which was a slight improvement over 2004. It also issued 191 Consent Orders, 54 more than in 2004. The district utilized short-form consent orders at a rate of **54.45%**, which is the lowest percentage of all of the districts in the state. The SED accounted for 10.20% of all Case Reports sent to the OGC in 2005, 11.11% of the NOVs, 17.78% of the Final Orders and 14.59% of all Consent Orders.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southeast District by program area in 2005:



On a percentage basis, the Southeast District had the most dredge and fill cases of all of the six districts. It also had the lowest percentage of industrial waste cases of all of the districts.

C. Civil Penalty Assessments

\$1,394,066.33 in civil penalty assessments were levied by the SED in 2005, accounting for 17.89% of all civil penalty assessments levied by the Department in 2005. The 2005 assessment numbers also represent an increase of \$496,350.87 assessed compared to 2004. Assessments in the major program areas for the Southeast District broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$1,250.00	\$625.00	\$625.00
Air	\$384,350.00	\$16,710.87	\$5,900.00
DF	\$171,300.00	\$1,924.72	\$1,500.00
DW	\$334,450.00	\$11,148.33	\$3,750.00
HW	\$170,985.00	\$7,124.38	\$4,500.00
IW	\$14,000.00	\$4,666.67	\$4,000.00
MA	\$20,298.00	\$1,561.38	\$1,199.00
OC	\$100.00	\$100.00	\$100.00
PG	\$0.00	\$0.00	\$0.00
PW	\$53,000.00	\$4,818.18	\$2,000.00
RO	\$0.00	\$0.00	\$0.00

SL	\$3,000.00	\$1,500.00	\$1,500.00
SW	\$19,000.00	\$3,800.00	\$1,000.00
TK	\$222,333.33	\$10,106.06	\$9,500.00
UIC	\$0.00	\$0.00	\$0.00

Annual averages for dredge and fill, hazardous waste and industrial waste cases are all significantly lower than statewide historical averages.

D. Civil Penalty Collections

The SED collected \$495,374.85 in civil penalties in 2005, a decrease from the \$573,381.82 collected in the previous year. This accounted for 9.94% of all dollars collected by the FDEP in civil penalties in 2005.

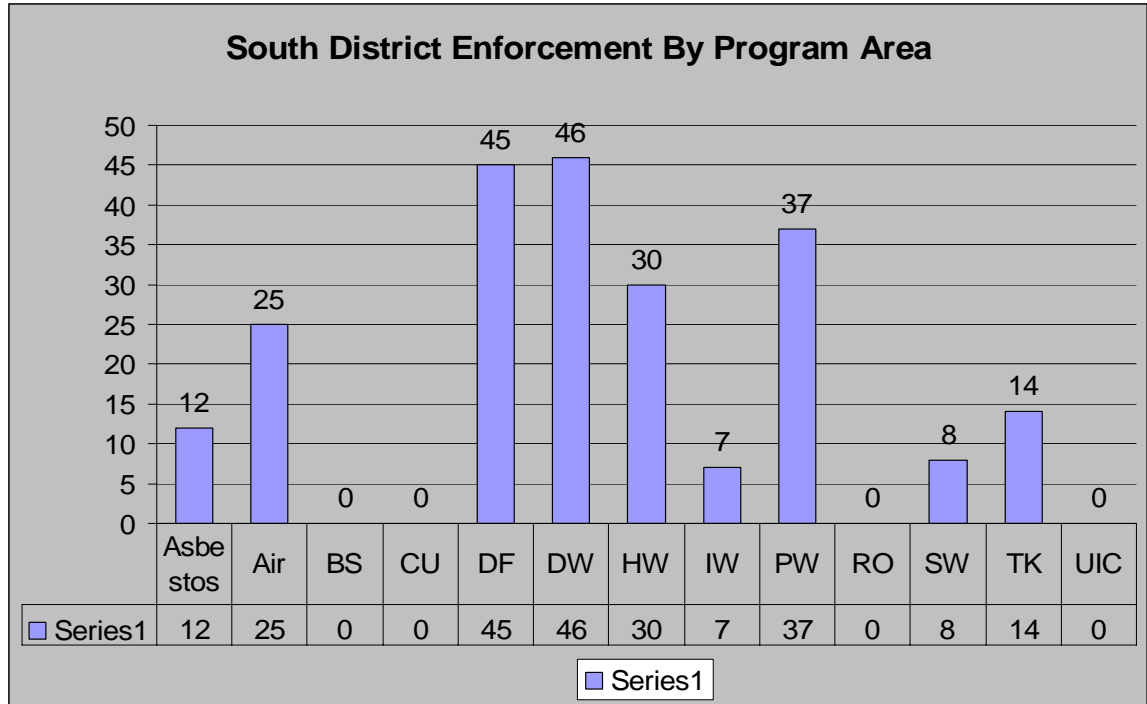
F. South District

A. Case Reports, NOVs, Consent Orders, Final Orders

In 2005, the SD continued to show improvement in the area of Case Reports. It sent 7 Case Reports to the OGC in 2005. It also increased its NOV issuance to 19, 11 more than in 2004. It issued 1 Final Order and 199 Consent Orders. The SD therefore accounted for 14.29% of all Case Reports, 23.46% of the NOVs, 2.22% of the Final Orders and 15.20% of all Consent Orders. Of the consent orders that it issued, **58.29%** were short-form. This is the second lowest percentage in the state.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southeast District by program area in 2005:



The South District generated the highest percentage of domestic waste cases and the second highest percentage of potable water cases of all of the six districts in the state in 2005.

C. Civil Penalty Assessments

Civil penalty assessments levied by the SD amounted to 10.01% of all assessments levied by the FDEP in 2005, a percentage decrease. It assessed \$780,564.25 for the year, a marked decrease from the \$1,301,617.25 in penalties assessed by the district in 2004. Assessments in the major program areas for the South District broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$27,000.00	\$2,454.55	\$2,000.00
Air	\$65,912.00	\$2,636.48	\$1,000.00
DF	\$332,670.00	\$5,453.61	\$3,000.00
DW	\$111,600.00	\$3,720.00	\$1,500.00
HW	\$146,532.25	\$4,884.41	\$1,928.13
IW	\$7,000.00	\$1,166.67	\$1,000.00
MA	\$6,700.00	\$3,350.00	\$3,350.00
PG	\$0.00	\$0.00	\$0.00

PW	\$24,450.00	\$698.57	\$500.00
RO	\$0.00	\$0.00	\$0.00
SL	\$0.00	\$0.00	\$0.00
SW	\$22,700.00	\$4,540.00	\$3,000.00
TK	\$36,000.00	\$2,571.43	\$1,500.00
UIC	\$0.00	\$0.00	\$0.00

Annual averages for dredge and fill, hazardous waste, industrial waste, potable water and tanks cases are all significantly lower than statewide historical averages.

D. Civil Penalty Collections

\$551,490.62 was collected by the SD in 2005, significantly fewer than it collected in 2004. This amount represents 11.07% of all dollars collected by the Department in civil penalties in 2005.

G. All Other Enforcement

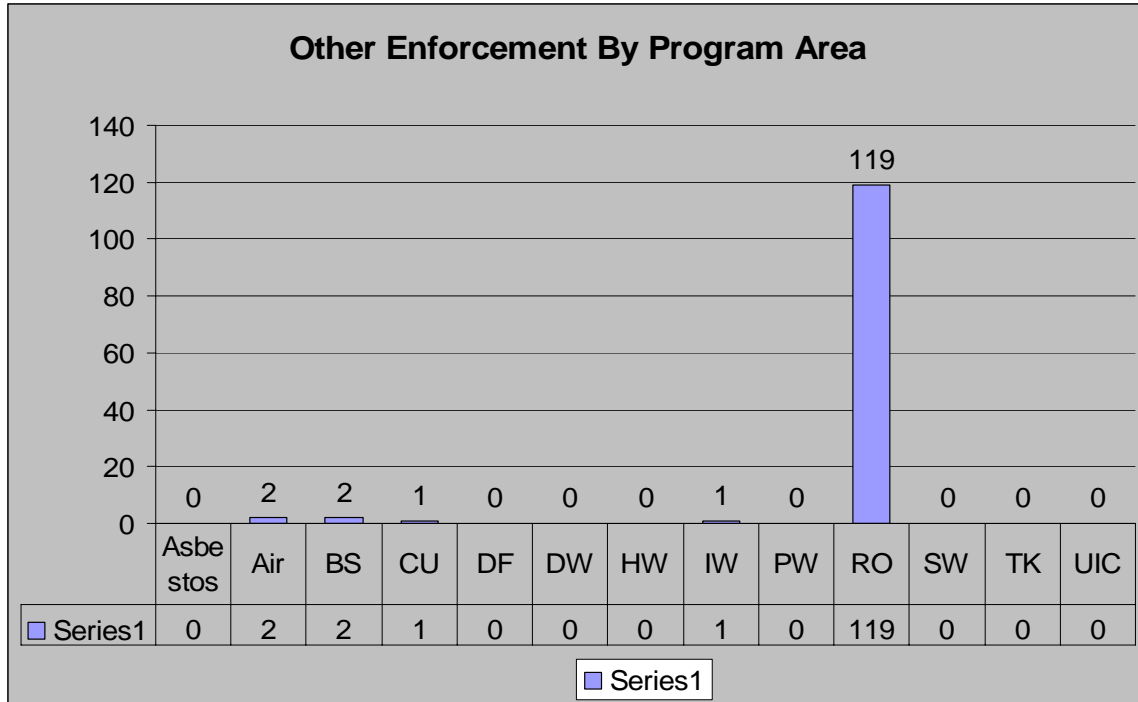
The Department also initiates enforcement cases out of the headquarters in Tallahassee. In addition, some cases handled by the Districts may also be handled jointly with Tallahassee, or coded such that they fall under one of two other categories identified as “All” or “None” in the Department’s database. This is particularly true in cases involving stormwater enforcement or enforcement of laws involving the beaches and coastal systems programs. The following results for 2005 represent the combination of the “All” and “None” categories. They are referred to cumulative as the “remaining categories.”

A. Case Reports, NOVs, Consent Orders, Final Orders

The remaining categories sent 0 Case Reports to the OGC in 2005. They issued only 1 NOV, 14 Final Orders, and 164 Consent Orders. All categories other than Consent Orders represent a decline over 2004. The remaining categories therefore accounted for 0% of all Case Reports, 1.23% of the NOVs, 31.11% of the Final Orders and 10.47% of all Consent Orders.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southeast District by program area in 2005:



C. Civil Penalty Assessments

Civil penalty assessments declined from 2004, amounting to 5.54% of all assessments levied by the FDEP in 2005. They assessed \$432,077.00 in penalties. Assessments in the major program areas for remaining enforcement areas broke down as follows:

Program Area	Total Assessments	Avg. Assessments	Median Assessments
AB	\$0.00	\$0.00	\$0.00
Air	\$10,200.00	\$5,100.00	\$5,100.00
AW	\$1,000.00	\$1,000.00	\$1,000.00
BS	\$1,100.00	\$366.67	\$300.00
DF	\$0.00	\$0.00	\$0.00
DW	\$0.00	\$0.00	\$0.00
HW	\$0.00	\$0.00	\$0.00
IW	\$60,000.00	\$30,000.00	\$30,000.00
MA	\$0.00	\$0.00	\$0.00
MN	\$111,995.00	\$8,615.00	\$5,000.00
OC	\$0.00	\$0.00	\$0.00
PG	\$0.00	\$0.00	\$0.00

PW	\$0.00	\$0.00	\$0.00
RO	\$244,282.00	\$2,070.19	\$518.00
SL	\$3,500.00	\$875.00	\$1,000.00
SW	\$0.00	\$0.00	\$0.00
TK	\$0.00	\$0.00	\$0.00
UIC	\$0.00	\$0.00	\$0.00

The annual average for stormwater runoff cases is significantly lower than the historical statewide average.

D. Civil Penalty Collections

\$298,356.50 was collected by the remaining categories in 2005, significantly less than the (74%) than they collected in 2004. \$831,869.50 was collected by these categories in 2004. The 2005 performance represents 5.99% of all dollars collected by the Department in civil penalties in 2005.

CONCLUSION

The Department's primary enforcement tool continues to be the use of short-form consent orders. Their usage is increased in 2005 and continues the general upward trend. The result is a "pay to pollute" enforcement policy that affords little oversight once the violations are identified by the Department. This differs dramatically from the way the Department used to handle enforcement in that the emphasis has shifted away from requiring greater reporting and greater oversight over those individuals and companies that violate Florida's environmental laws. We do not view this as a healthy trend that would result in greater environmental protection.

While the number of enforcement cases increased in 2005, what is striking is that the average civil penalty assessments dropped significantly in key program areas: air, hazardous waste, industrial waste and tanks. With the exception of the tanks averages, these programs are also assessing civil penalties at rates that are below the Department's historical average. We noted in last year's report on the Department's 2004 enforcement results that there were problems on the horizon in the hazardous waste and industrial waste programs. Clearly these problems have not been corrected.

There is also concern with the results reported in the Northeast and Southwest Districts in the area of asbestos enforcement. Each of these districts include highly populated areas. Yet neither district reported opening any asbestos enforcement cases. The asbestos (NESHAP) program is a federally delegated program that the Department receives federal grant money to operate. We cannot help but wonder how wisely the dollars are being spent in light of the results in these two districts. On the plus side, the

number of asbestos cases did increase in other parts of the state, however, the overall civil penalty averages still remain significantly lower than the historical average.

The performance of individual districts remains essentially the same. The Southwest District remains the leader in sheer volume; however, it is clear that the vast majority of cases in that district are resolved through the payment of a civil penalty. Thus, one cannot help but wonder how much actual protection the environment is receiving. The Northwest District continues, with few exceptions, to turn in the lowest numbers in the enforcement arena. The troubling aspect about its performance is that it oversees that part of the state that is becoming increasingly susceptible to increased development. Given the district's all but complete failure to provide any meaningful oversight the future for the region's environment is not particularly bright.

It is now even clearer that the Department has become an agency that does little more than identify violations and then charges the violator a civil penalty that in many cases is lower than penalties assessed in the past. In addition, violators no longer need to be particularly concerned about the possibility that they will be forced to answer to a circuit court judge, or that they will have to incur attorney's fees in defending such cases. The threat is all but non-existent. The message is clear: if a violation occurs, one simply buys his or her way out of it at the expense of the environment. Clearly, there is less "process" involved in environmental enforcement in today's regulatory scheme.

Is there greater "protection," as the Department promises? It is hard to envision how this translates into more "protection" for the environment as a whole. The reasons are rather simple and straightforward. First, if there were truly greater environmental compliance one would not expect to see an increased number of enforcement cases on a statewide basis. Second, it is the clear policy in some districts, e.g. the Northwest District, to avoid formal enforcement if at all possible. Thus, while the sheer number of enforcement cases increased for the Department as a whole in 2005, it is likely that these numbers would have been significantly higher if the districts had taken less of an approach towards appeasing the regulated community. Third, the fact that the average penalty assessments declined sends a clear signal to the regulated community that even if they are caught their punishment will be lower. Finally, the increased reliance on short-form consent orders further tells the regulated community that even if they are caught, there will be little or no increased future oversight by the Department. All of these factors point to a scenario in which there is significantly less protection for the environment as a whole.