

FLORIDA PEER

REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2006

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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 2006. The information provided herein was gleaned 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.

EXECUTIVE SUMMARY

A. Statewide Results

1. General Observations

Overall, the Department opened 1455 enforcement cases in 2006, a slight decrease from 2005.

The Office of General Counsel received 53 case reports in 2006, an 8% increase over 2005, and the largest number submitted since 2003. The Number of NOV's dropped from 81 in 2005 to 51 in 2006.

154 long-form consent orders were issued by the Department in 2006, representing the third straight year of increases in this important category. Nevertheless, the percentage of all enforcement cases resolved through the use of short-form consent orders increased yet again to a new Department high.

The Department saw a 7% increase in the number of civil penalty assessments in 2006. More dramatically, however, the dollar amount of assessments more than doubled from 2005, increasing \$8,273,139.13 from last year. This increase was attributable, in large part, to 5 large penalty assessments in the state. Indeed, almost 50% of the penalty dollars assessed in Florida in 2006 arose from one case against Pasco County.

The increase in the overall number of civil penalty assessments is the result of increases in the number of asbestos (in two districts), beaches and coastal Systems, and waste cleanup cases. All other program areas saw a decrease in the number of enforcement cases brought in 2006. An increase in the number of cases in a program area does not, however, necessarily equate to an increase in the average penalty assessments. For example, while the number of asbestos cases increased, the average penalty assessments decreased by 47%. Average hazardous waste case assessments dropped 14% from 2005. Potable water, stormwater runoff and tanks cases also saw decreases in the average civil penalty assessment for 2006.

A statewide total of \$7,625,371.36 in civil penalties was collected by the FDEP in 2006. This is \$2,641,891.79 (or 53%) above the amount collected in 2005. Given the increase in penalty assessments, the increase in collections is to be expected.

B. District Results

1. Northeast District

The Northeast District sent significantly fewer case reports and NOV's to the OGC in 2006 than it did in 2005. It also reported opening no asbestos enforcement cases in 2006 and was second to last in dredge and fill and industrial waste enforcement. It tied for the lowest percentage of hazardous waste cases in the state. In addition, the average assessments in air, hazardous waste, industrial waste, tanks and potable water cases are significantly lower than the historical statewide averages.

2. Northwest District

The NWD managed to send 5 Case Reports to OGC in 2006, one better than its 2005 performance. The number of NOV's issued dropped by 50%. In addition, 75.17% of the district's consent orders were short-form consent orders—the most of any district in the state. It's use of long-form consent orders is the lowest in the state. That said, the district opened a significant number of asbestos cases in 2006, the second highest of all of the districts. Civil penalty assessments rose sharply, bolstered in large part by a single domestic waste assessment. Otherwise, the average penalty assessments in the asbestos, air, dredge and fill, hazardous waste, industrial waste, stormwater runoff and solid waste programs, were all significantly lower than the statewide averages.

3. Central District

The Central District submitted 20.37% of all Case Reports, 7.69% of all NOV's, 4.54% of all Final Orders, and 14.90% of all Consent Orders. 64.82% of the consent orders issued by the district were short-form consent orders. The CEN opened no asbestos cases in 2006. The CEN levied \$995,984.35 in civil penalty assessments in 2006, an increase over its 2005 performance, but still the lowest total dollar assessment of all of the districts.

4. Southwest District

As in years past, the Southwest District easily outperformed the remaining districts in the Department in sheer volume of enforcement cases. However, it also settled over 70% of its cases through the use of short-form consent orders. The SWD levied civil

penalties totaling \$8,654,899.20, which accounted for 53.87% of all penalty assessments by the Department.

5. Southeast District

The SED accounted for 18.51% of all Case Reports sent to the OGC in 2006, 23.07% of the NOV's, 27.27% of the Final Orders and 12.43% of all Consent Orders. Annual averages for civil penalty assessments in air, dredge and fill, hazardous waste, industrial waste and solid waste cases were all significantly lower than statewide historical averages. However, the district led the state in dollars assessed in underground injection well cases.

6. South District

The SD accounted for 11.11% of all Case Reports, 11.53% of the NOV's, 9.09% of the Final Orders and 16.48% of all Consent Orders in the state. Of the consent orders that it issued, 53.64% were short-form, the lowest percentage in the state. It processed 6 Case Reports and 6 NOV's in 2006. NOV usage in 2006 was dramatically lower than in 2005. The South District led the state in the number of asbestos cases in which it took formal enforcement. Annual averages civil penalties in asbestos, air, dredge and fill, hazardous waste, industrial waste, potable water, solid waste and tanks cases were all significantly lower than statewide historical averages.

7. All Other Enforcement

This category typically involves Beaches and Coastal Systems categories and Stormwater Runoff cases. This category sent 0 Case Reports to the OGC in 2006. They issued only 1 NOV, 5 Final Orders, and 137 Consent Orders. \$520,685.00 in civil penalty assessments was collected by this category in 2006, a significant increase over its 2005 performance.

STATEWIDE ENFORCEMENT RESULTS

Florida PEER has previously provided enforcement results for the FDEP based upon data obtained from the agency dating back to 1988. In the past at this juncture we have included a description of the various types of enforcement that the Department is capable of initiating. We have moved this section to the end of this report in the Appendix wherein the reader will find the descriptions of various enforcement tools, as well as the historical averages for the various program areas.

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

The number of requests for serious enforcement through the filing of complaints in civil circuit courts increased to 53 in 2006. This represents an increase from the dismal total of 49 last year. It is also the highest number of requests since 2003.

The issuance of NOVs dropped from 81 in 2005 to 51 in 2006. This is the lowest number of NOVs on an annual basis in the years 2002-2005. It is also lower than the historical average of 58.

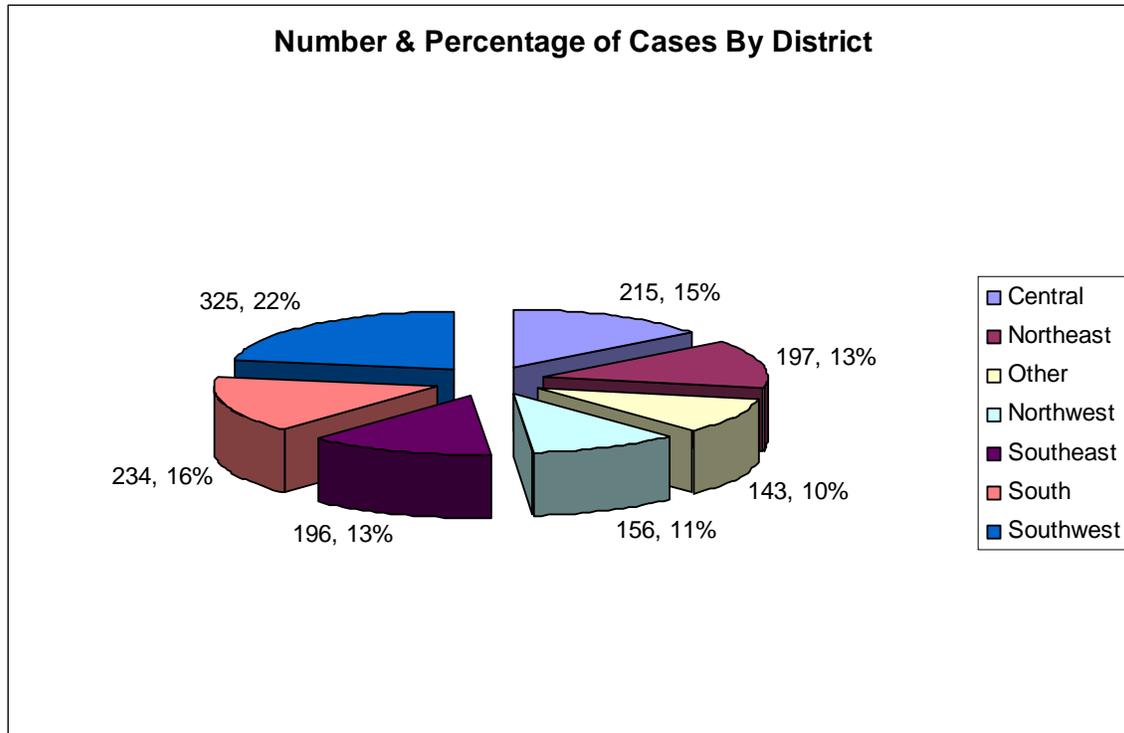
On a positive note, 2006 saw 154 long-form consent orders issued by the Department. This represents the third straight year of increases in this important category.

Model consent orders continued to be issued at an increased rate over the historical average of 140.53. 269 were issued in 2006, a slight increase over 2005.

The usage of short-form consent orders continued to predominate as the Department's enforcement tool of choice. 879 such orders were issued in 2006, down slightly from the 894 in 2005.

The Department issued 21 Final (Enforcement Related) Orders in 2006. This is a 47% decline over 2005.

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



The Southwest District is responsible for a significant portion of the enforcement that is undertaken by the Department as a whole. As will be seen below, it accounts for a significant majority of the civil penalty assessments in the state. However, the Southeast District utilizes the fewest percentage of short-form consent orders of all of the districts.

By contrast, the Northwest District utilizes the short-form consent order to settle three quarters of its enforcement cases—by far the most of each of the other districts. The Northwest District also had the fewest number of cases resolved by consent orders and the fewest number of case reports sent to the Office of General Counsel. It tied with the Central District for the fewest number of Notices of Violation.

The Central District had the fewest total dollar assessments of all of the districts.

2. Short-Form Consent Orders

2006 saw a continued increase in the Department’s use of short-form consent orders. 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%
2006	60.41%

Once again, with the exception of the Southeast and South Districts, all districts settled a clear majority of their cases through the short-form route. The Northwest District lead the way, settling almost 70% of their cases in this manner. The following table, which compares the use of short-form consent orders to all other enforcement tools, gives the actual percentages.

District	% Cases Settled Through SF COs
Central	60.00%
Northeast	63.45%
Other	69.93%
Northwest	69.87%
Southeast	49.00%
South	50.00%
Southwest	63.00%

We also looked at the use of short-form consent orders solely as a part of the consent order enforcement tool. In other words, once the decision had been made to settle a case through a consent order, how likely was the resolution to be via a short-form

consent order, as opposed to a long-form or model-consent order. These results give further insight into how enforcement cases are handled in each district.

District	% Cases Settled Through SF Cos Compared to Other Cos
Central	64.82%
Northeast	69.83%
Other	72.99%
Northwest	75.17%
Southeast	57.83%
South	53.64%
Southwest	70.93%

When the data is considered in this light it becomes apparent that not only does the Northwest District settle the most cases by use of the short-form consent order, but also, that district has utilized this mechanism almost to the exclusion of other forms of consent orders. Close behind, however, are the Southeast and Northeast Districts. The Southeast and South Districts appear to take a more considered approach to taking enforcement.

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	34
Air (Excluding Asbestos)	154
Beaches/Coastal	6
Waste Cleanup	5
Dredge & Fill²	280
Domestic Waste	167
Hazardous Waste	186
Industrial Waste	64
Potable Water	170
Stormwater Runoff	126
Solid Waste	52
Tanks	136
Underground Injection Control	4

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

² This includes Environmental Resource Permitting.

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

Program Area	Historical Averages	Difference
Asbestos	8	26
Air (Excluding Asbestos)	90	64
Beaches/Coastal	17	(11)
Waste Cleanup	4	1
Dredge & Fill	217	63
Domestic Waste	114	53
Hazardous Waste	116	70
Industrial Waste	46	18
Potable Water	95	75
Stormwater Runoff	8	118
Solid Waste	36	16
Tanks	48	88
Underground Injection Control	4	0

The asbestos program saw a significant increase in the number of cases, besting its 2005 numbers by 15 cases. Beaches and Coastal Systems, as well as Waste Cleanup saw modest improvements from 2005. On the negative side, however, all of the other programs identified above saw a **decrease** in the number of enforcement cases brought in 2006 compared to 2005.

4. *Civil Penalty Assessments*

The Department assessed civil penalties in 1488 cases in 2006, a 7% increase over 2005. At the same time, however, in 2006 the FDEP assessed **\$16,067,695.28 in civil penalties, an increase of \$8,273,139.13. This represents a 106% increase over the Department's 2005 performance.** This is the first positive performance in this area in the past two years.

Given the modest increase in the number of cases in which civil penalties were assessed, the numbers suggest that the final dollar value of penalty assessments is the result of a handful of high value cases. Indeed, this was the case. Almost \$4,000,000.00 in assessments was levied in one domestic wastewater case against Pasco County, thus accounting for almost 50% of the Department's statewide gain. Over \$500,000.00 was assessed in another wastewater case, this one against Emerald Coast Utility Authorities. Another \$375,750,000.00 was assessed against the Miami-Dade Water and Sewer Department in another domestic wastewater case. A Solid Waste case against Abray Construction, Inc. and Robert Michael Damoth, accounted for another \$1,000,000.00 of

the increase. Over \$600,000,000.00 was assessed against the Miami-Dade Water and Sewer Department in an underground injection well case.

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

Program Area	2005 Averages	2006 Averages	Historical Averages
Asbestos	\$5,502.31	\$2,920.59	\$10,025.25
Air (Excluding Asbestos)	\$3,346.15	\$14,140.44	6,227.09
Beaches/Coastal	\$366.67	4,195.00	786.63
Waste Cleanup	0.00	\$101,500.00	25,940.05
Dredge & Fill	\$2,588.37 ³	\$3,536.35	3,287.42
Domestic Waste	\$8,868.50	\$36,657.73	10,751.37
Hazardous Waste	\$8,803.31	\$7,556.85	15,986.22
Industrial Waste	\$5,115.48	\$5,973.66	19,506.60
Potable Water	\$1,286.95	\$1,257.90	1,379.30
Stormwater Runoff	\$2,015.88	\$1,337.14	5,768.34
Solid Waste	\$9,832.73	\$25,641.67	6,867.80
Tanks	\$6,121.18	\$5,384.75	4,934.64
Underground Injection Control	\$18,413.60	\$162,410.00	9,755.91

Although the number of Asbestos cases rose sharply last year, the average of the assessments in the Asbestos Program declined for the second year in a row. Air assessments increased dramatically from 2005. Domestic Waste averages rose dramatically due in large part to the cases against Pasco County, Emerald Coast Utility Authority and the Miami Dade Water and Sewer Department. Hazardous waste and Tanks cases declined for the second year in a row.

³ This includes Environmental Resource Permitting.

Overall, the Districts' performance in the area of penalty assessments was as follows:

DISTRICT	TOTAL \$ ASSESSED	AVG. \$ ASSESSED	% OF TOTAL
Central	\$995,984.35	\$4,979.92	6.20%
Northeast	\$1,174,900.19	\$6,316.67	7.31%
Other	\$509,937.50	\$3,516.81	3.17%
Northwest	\$1,326,920.06	\$8,398.23	8.26%
Southeast	\$2,225,491.98	\$11,471.61	13.85%
South	\$1,179,562.00	\$4,554.29	7.34%
Southwest	\$8,654,899.20	\$25,014.16	53.87%
Statewide Total	\$16,067,695.28		100.00%

With the exception of the Southwest District, the performance of every departmental district in the state dropped as a percentage of total penalty assessments. Incredibly, over 53% of all of the penalty assessments in Florida originated out of the Southwest District.

5. *Civil Penalty Collections*

A statewide total of \$7,625,371.36 in civil penalties was collected by the FDEP in 2006. This is \$2,641,891.79 (or 53%) above the amount collected in 2005. The increase decrease in collections is to be expected in light of the increase in civil penalty assessments for the same time period.

DISTRICT RESULTS

A. Northeast District

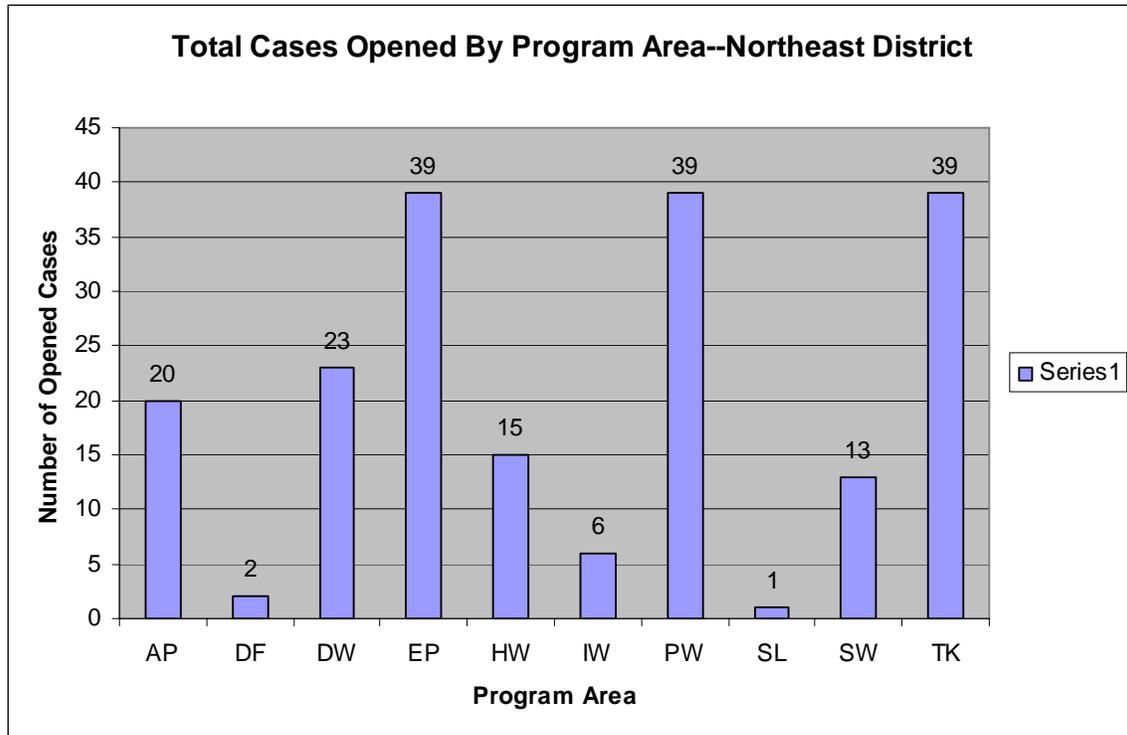
A. Case Reports, NOVs, Consent Orders, Final Orders

The district submitted 6 case reports to OGC in 2006. This is 5 fewer more than in 2005. This also represents 11% of all case reports sent to OGC throughout the state—one half the percentage contributed in 2005. During the same time period 9 NOVs (17% of all statewide) were issued, six fewer more than in 2005. The district also entered 2 Final Orders for the same time period. The district issued 179 Consent Orders (13.41% of all statewide), a slight increase for the district. 69.83% of the consent orders that the district issued were short-form consent orders. That said, it should also be noted that of all of the consent orders issued by the district, 35 were long-form consent orders (19% of all consent orders issued by the district).

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Northeast District by program area in 2006:⁴

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



For the second straight year this district has opened no asbestos cases. The district also had the second lowest percentage of dredge and fill cases and of industrial waste 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 \$1,174,900.19 for 2006. This equates to 7.31% of all assessments levied statewide—a drop of 50% compared to its 2005 contribution. Assessments in the major program areas broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AP	\$43,400.00	\$1,972.73	\$1,750.00
DF/EP	\$146,247.00	\$3,749.92	\$1,000.00
DW	\$232,800.00	\$10,581.82	\$3,000.00
HW	\$75,388.00	\$6,282.33	\$3,315.00
IW	\$35,450.00	\$5,908.33	\$5,000.00
PW	\$15,705.75	\$461.93	\$205.00
SL	\$13,000.00	\$13,000.00	\$13,000.00
SW	\$406,500.00	\$10,000.00	\$19,357.14
TK	\$206,409.44	\$7,117.57	\$2,500.00

For this district, the average assessments in air, hazardous waste, industrial waste, tanks and potable water cases are significantly lower than the historical statewide averages. It assessed solid waste cases significantly higher than the \$6,867.80 statewide historical average.

D. Civil Penalty Collections

2006 saw a significant decline in collections by the NED for a second year in a row with a total of \$655,351.59. As a percentage, the NED collected 8.59% of all collections by the FDEP in calendar year 2006.

B. Northwest District

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

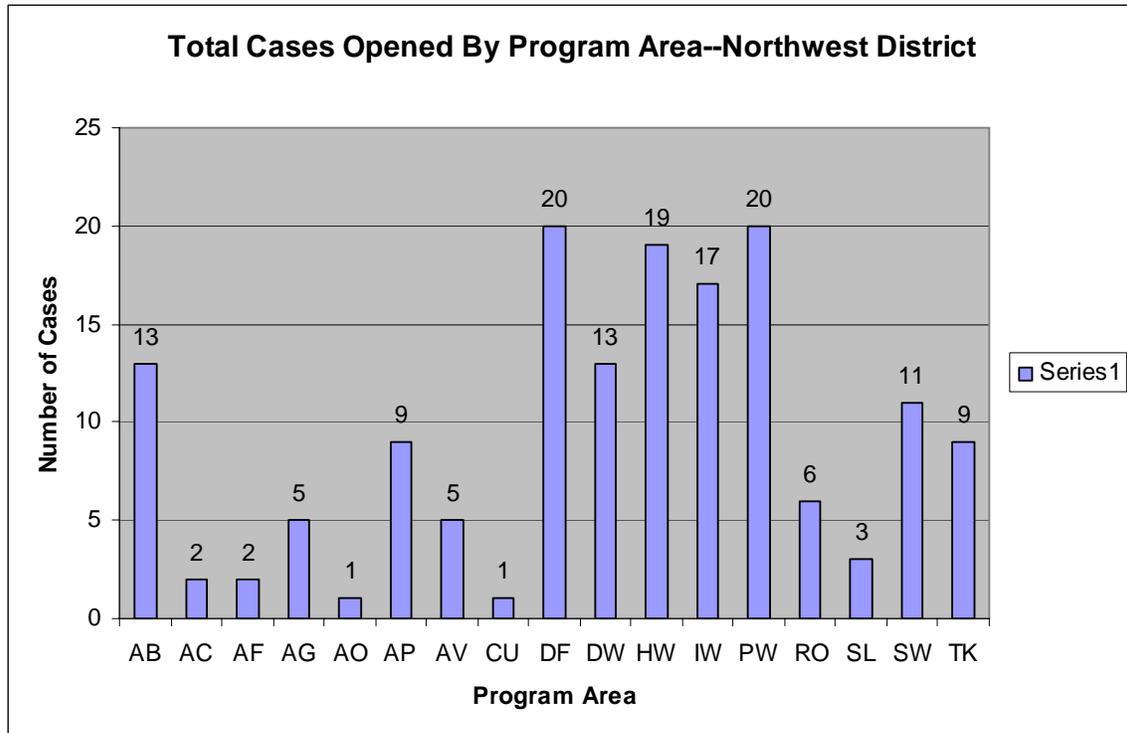
The NWD sent only 5 Case Reports to OGC in 2006. This is one better than the 2005 performance, but still far below the 2004 numbers. It issued 4 NOVs, during the same time period, a 50% decrease from the previous year. It issued 2 Final Orders and 145 Consent Orders, the latter being a substantial increase over 2005. 109 of the 145 Consent Orders, i.e. 75.17%, were short-form consent orders. Therefore, the district moved even closer towards a “pay to pollute” approach.

When compared to the production of other districts the NWD clearly remains at the bottom, indicating a continued lack of enforcement. It issued 10.86% of all Case Reports statewide, a slight improvement comparatively speaking, and managed only 8% of the NOVs and 9% of all Final Orders. 8.71% of all Consent Orders were issued by the NWD in 2006. As noted above, over 75% of the consent orders were short-form. The district’s previously decent showing regarding the use of long-form consent orders, has dropped to 8%, the lowest of the districts.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Northwest District by program area in 2006⁵:

⁵ Additional program codes include: AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AS = Air Permitted Source; AV = Air Title 5



This district opened the fewest percentage of dredge and fill, domestic waste, hazardous waste cases of all of the six districts in the state in 2006. It improved its performance in air enforcement, however. And it opened the second highest number of asbestos and industrial waste cases of the 6 districts.

C. Civil Penalty Assessments

The district assessed civil penalties totaling \$1,326,920.06 in 2006, a 78% improvement over 2005's results. It is also the second straight year that the district has shown improvement in civil penalty assessments. The district is now squarely in the middle of the 6 districts in terms of overall civil penalty assessments. This news is tempered by the fact that the district saw one domestic waste assessment that exceeded \$500,000.00, thus accounting for a sizeable percentage of the increase.

Assessments in the major program areas for the Northwest District broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVG.	MEDIAN
AB	\$52,250.00	\$4,354.17	\$4,500.00
AIR	\$65,000.00	\$2,560.00	\$1,000.00
DF	\$29,000.00	\$1,260.87	\$1,000.00
DW	\$772,600.00	\$64,383.33	\$3,250.00
HW	\$215,770.06	\$8,630.80	\$3,465.00
IW	\$34,400.00	\$2,457.14	\$1,000.00
PW	\$24,150.00	\$1,207.50	\$1,000.00
RO	\$7,000.00	\$1,166.67	\$1,000.00
SL	\$2,500.00	\$833.33	\$1,000.00
SW	\$36,000.00	\$4,000.00	\$3,000.00
TK	\$88,250.00	\$9,805.56	\$3,000.00

The average assessments in the asbestos, air, dredge and fill, hazardous waste, industrial waste, stormwater runoff and solid waste programs, are all significantly lower than the statewide averages. Nevertheless, this is one of only four districts that even assessed penalties in asbestos cases in 2006. The high domestic waste average was bolstered by a single civil penalty in excess of \$500,000.00 against Emerald Coast Utilities Authority.

D. Civil Penalty Collections

\$507,365.93 in civil penalties were collected by the NWD in 2006. This is an increase over the district's performance in 2005. Nevertheless, this amount equals 6.65% 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

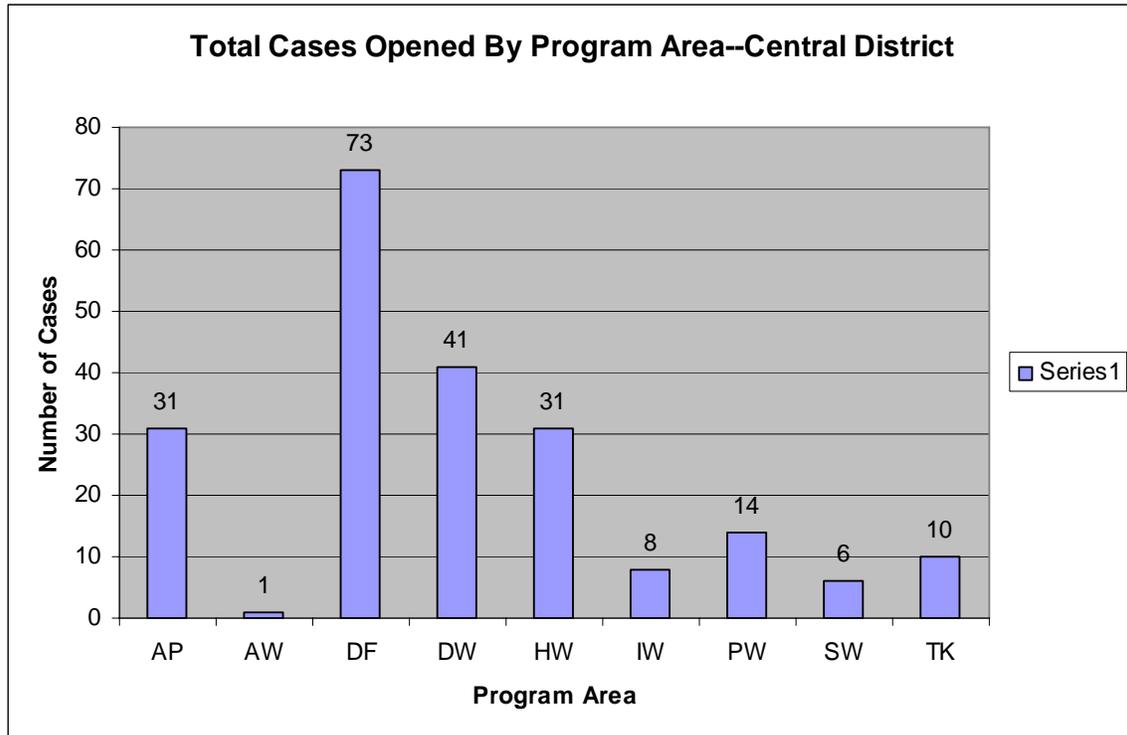
A. Case Reports, NOVs, Consent Orders, Final Orders

The district submitted 11 Case Reports to the OGC in 2006. It issued 4 NOVs, 1 Final Order, and 199 Consent Orders. When looked at on a percentage basis the district submitted 20% of all Case Reports, 8% of all NOVs, 5% of all Final Orders, and 15% of all Consent Orders. 65% of the consent orders issued by the district were short-form consent orders.

With the exception of NOVs, which declined by more than 50%, the overall numbers were fairly stable compared to 2005.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Central District by program area in 2006:



The CEN opened no asbestos cases in 2006. It opened the highest percentage of dredge and fill and domestic waste cases and the second highest percentage of air cases of all of the districts in the state. It opened the fewest number of potable water cases of all of the districts.

C. Civil Penalty Assessments

The CEN levied \$995,984.35 in civil penalty assessments in 2006, an increase over its 2005 performance. The assessments totaled 6.20% of all assessments statewide. The Central District therefore had the fewest dollar value of civil penalty assessments of all of the districts. Assessments in the major program areas for the Central District broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AP	\$265,030.00	\$7,795.00	\$4,000.00
AW	\$3,200.00	\$3,200.00	\$3,200.00
DF	\$83,000.00	\$1,338.71	\$600.00
DW	\$175,601.50	\$4,390.04	\$2,000.00
HW	\$209,467.85	\$7,223.03	\$6,336.00
IW	\$109,050.00	\$15,578.57	\$1,600.00
PW	\$31,000.00	\$2,214.29	\$450.00
SW	\$48,000.00	\$8,000.00	\$7,500.00
TK	\$71,635.00	\$10,233.57	\$10,500.00

Annual averages for air, dredge and fill, domestic waste, hazardous waste and industrial waste cases are all significantly lower than statewide historical averages. Potable water, solid waste and tanks assessments are all above the state-wide averages.

D. Civil Penalty Collections

\$761,823.75 was collected by the CEN in 2006, a slight decrease from the 2005 results. It also represents 9.99% of all collections statewide, which is the second most productive district in this category.

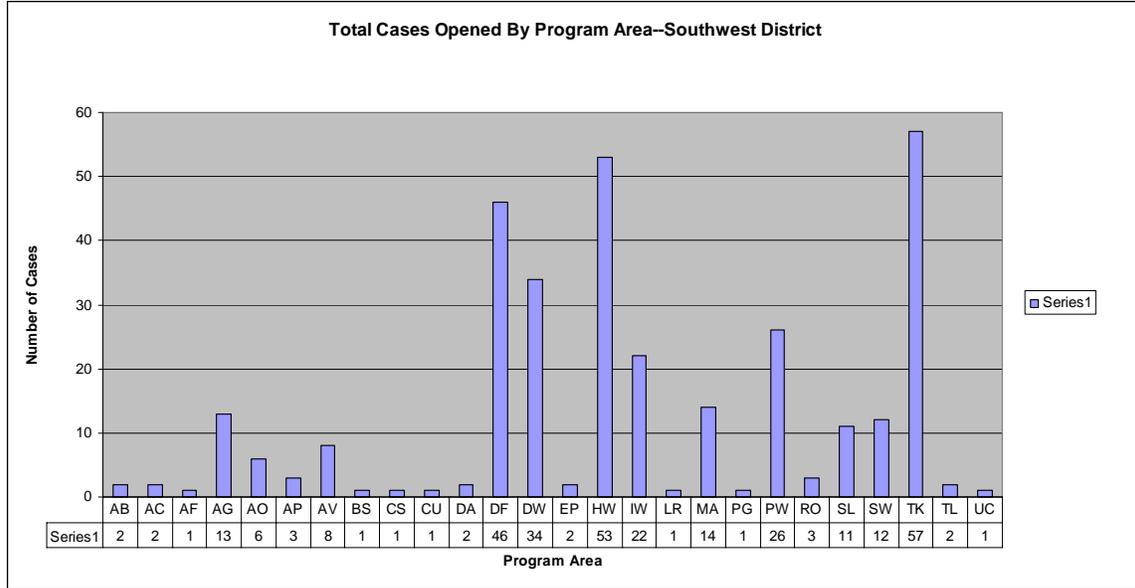
D. Southwest District

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

16 Case Reports were submitted by the district in 2006, five more than in 2005. This represents 29.62% of all such reports submitted statewide. The district also issued 16 NOVs, or 30.76% of all such filings. It issued 4 Final Orders (18.18%). 289 Consent Orders were issued out of this district, which represents 21.64% of all Consent Orders issued by the Department in 2006. 71% of the Consent Orders issued by the district were short-form consent orders. While still high, this is a decrease from the 78% reported last year. At the same time, the district utilized the long-form consent order as an enforcement mechanism in 13.84% of the cases, which is an increase over last year's production. Regardless of the improvement in the usage of long-form consent orders, it is still clear 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 2006:



The Southwest District has long stood out as a district that more actively exerts a presence in almost all of the Department’s program areas. This year is no exception. It is clear, however, that as with most districts, the emphasis is placed in the air (the separate sub-programs cumulatively add up to a sizeable influence), dredge & fill, domestic waste, hazardous waste, industrial waste, potable water and tanks programs. In 2006, the district also took enforcement in 2 asbestos cases, a minimal showing, but better than the total failure to show any meaningful enforcement in 2005.

C. Civil Penalty Assessments

Civil penalty assessments rose sharply for this district in 2006. The SWD levied civil penalties totaling \$8,654,899.20. The district accounted for 53.87% of all penalty assessments by the Department. This is by far the single most aggressive district in the Department in this category.

Assessments in the major program areas for the Southwest District broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$4,000.00	\$2,000.00	\$2,000.00
AIR	\$1,826,050.00	\$40,578.89	\$2,000.00
BS	\$17,000.00	\$17,000.00	\$17,000.00
CS	\$3,000.00	\$3,000.00	\$3,000.00
CU	\$3,000.00	\$3,000.00	\$3,000.00
DA	\$500.00	\$500.00	\$500.00
DF/EP	\$313,130.00	\$7,637.32	\$800.00
DW	\$4,169,955.00	\$122,645.74	\$5,000.00
HW	\$586,084.50	\$10,282.18	\$4,800.00
IW	\$135,873.00	\$7,548.50	\$3,349.50
MA	\$19,003.00	\$1,583.58	\$1,492.00
PG	\$5,000.00	\$5,000.00	\$5,000.00
PW	\$50,700.00	\$1,334.21	\$500.00
RO	\$34,700.00	\$11,566.67	\$2,000.00
SL	\$3,700.00	\$1,233.33	\$1,000.00
SW	\$1,069,350.00	\$46,493.48	\$3,000.00
TK	\$236,253.70	\$3,810.54	\$2,500.00
TL	\$4,500.00	\$2,250.00	\$2,250.00
UC	\$173,100.00	\$173,100.00	\$173,100.00

The strong showing in the domestic waste program is due, in large part, to a penalty assessment of \$3,948,780.00 against Pasco County Utilities. The air program also saw a \$1.2 million assessment against Cemex Chemical, thus raising the average and median levels for that program. A \$1,000,000.00 penalty was assessed against Abray Construction, Inc. and Robert Michael Damoth in a solid waste case. Finally, Mosaic Fertilizer was penalized \$173,100 in an underground injection well case. The annual average for dredge and fill cases came in above the historical average in 2006, while hazardous waste, industrial waste and tanks cases were all significantly lower than statewide historical averages.

D. Civil Penalty Collections

Once again, the \$3,907,468.57 in civil penalties collected by the SWD in 2006 continues to make it the lead district in this category. Its collections accounted for 51.24% of all the monies collected by the Department across the state.

E. Southeast District

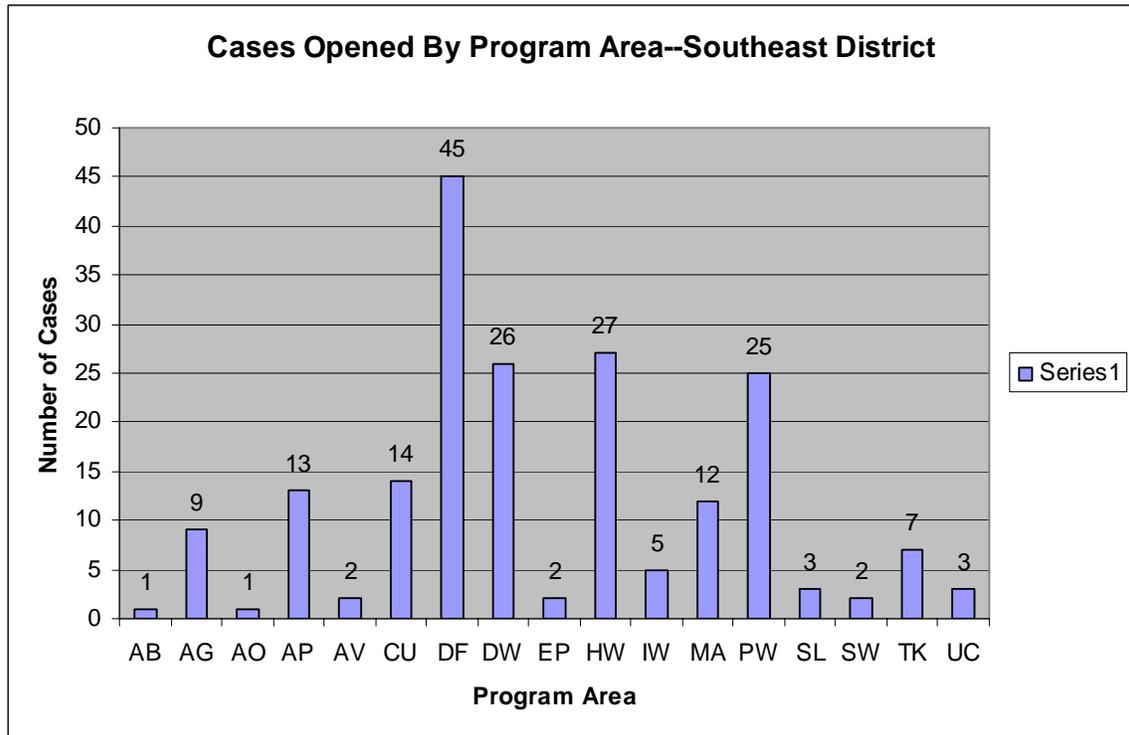
A. Case Reports, NOVs, Consent Orders, Final Orders

The SED issued 12 NOVs in 2006, 3 more than in 2005. 10 Case Reports were sent to the OGC in 2006, twice the number sent in 2005. The district issued 6 Final

Orders. It also issued 166 Consent Orders, 25 fewer than in 2005. The district utilized short-form consent orders at a rate of **57.83%**, which is a slight increase over last year's report. The SED accounted for 18.51% of all Case Reports sent to the OGC in 2006, 23.07% of the NOV's, 27.27% of the Final Orders and 12.43% 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 2006:



The Southeast District had only one asbestos case and two solid waste cases in 2006. It also accounted for the fewest number of solid waste and tanks cases of all of the districts. It managed only 51% of the number of dredge and fill enforcement cases that it reported in 2005.

C. Civil Penalty Assessments

\$2,225,491.98 in civil penalty assessments were levied by the SED in 2006, accounting for 13.85% of all civil penalty assessments levied by the Department in 2006. This performance is the second best performance in the state. The 2006 assessment numbers also represent an increase compared to 2005.

Assessments in the major program areas for the Southeast District broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	Averages	Medians
AB	\$1,000.00	\$1,000.00	-\$1,000.00
Air	\$68,150.00	\$2,963.04	\$1,000.00
DF/EP	\$156,400.00	\$2,896.30	\$2,200.00
DW	\$983,200.00	\$26,572.97	\$7,000.00
HW	\$240,011.00	\$7,500.34	\$4,100.00
IW	\$22,500.00	\$4,500.00	\$2,500.00
MA	\$18,950.00	\$2,105.56	\$2,000.00
PW	\$28,400.00	\$2,028.57	\$1,800.00
SL	\$5,500.00	\$2,750.00	\$2,750.00
SW	\$4,000.00	\$2,000.00	\$2,000.00
TK	\$58,430.98	\$5,311.91	\$3,339.33
UC	\$638,950.00	\$159,737.50	\$132,550.00

As noted above, the Southeast District had only one asbestos case and two solid waste cases in which it assessed penalties in 2006. The assessments were minimal. Its \$638,950.00 in assessments in underground injection well cases put it at the top of all districts in that category.

Annual averages for air, dredge and fill, hazardous waste, industrial waste and solid waste cases are all significantly lower than statewide historical averages. Potable water and tanks cases are above that average.

D. Civil Penalty Collections

The SED collected \$743,762.97 in civil penalties in 2006, a significant increase over 2005. This accounted for 9.75% of all dollars collected by the FDEP in civil penalties in 2006.

F. South District

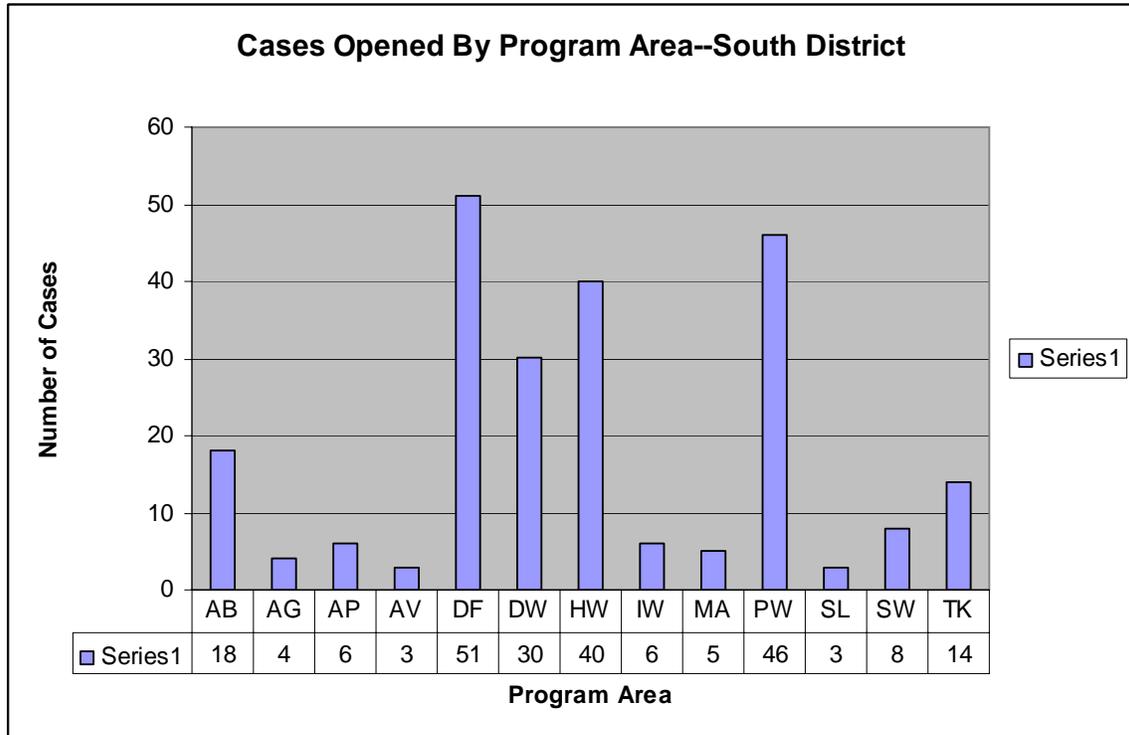
A. Case Reports, NOVs, Consent Orders, Final Orders

The SD sent 6 Case Reports to the OGC in 2006. NOV issuance declined from 19 in 2005 to 6 in 2006. It issued 2 Final Orders and 220 Consent Orders. The SD therefore accounted for 11.11% of all Case Reports, 11.53% of the NOVs, 9.09% of the Final

Orders and 16.48% of all Consent Orders. Of the consent orders that it issued, 53.64% were short-form, the 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 2006:



The South District generated the highest percentage of asbestos cases, all of which were resolved by issuance of short-form consent orders. It led the state in the number of potable water cases as well. It also initiated the second highest number of dredge and fill, hazardous waste cases in the state. Significantly absent, however, were any mangrove alteration cases, which, for this part of the state, is not what one would expect given the high rate of development.

C. Civil Penalty Assessments

Civil penalty assessments levied by the SD amounted to 7.34% of all assessments levied by the FDEP in 2006. It assessed \$1,179,562.00 for the year, a marked increase from the \$780,564.25 in penalties assessed by the district in 2005.

Assessments in the major program areas for the South District broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$42,050.00	\$2,213.16	\$2,000.00
Air	\$53,525.00	\$3,823.21	\$1,850.00
DF	\$322,519.00	\$4,134.86	\$1,000.00
DW	\$337,550.00	\$9,122.97	\$1,000.00
HW	\$177,092.00	\$4,024.82	\$3,137.50
IW	\$9,199.00	\$1,149.88	\$1,000.00
PW	\$50,050.00	\$1,283.33	\$500.00
SL	\$3,000.00	\$25,700.00	\$3,000.00
SW	\$128,500.00	\$25,700.00	\$6,100.00
TK	\$56,077.00	\$4,005.50	\$4,000.00

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

D. Civil Penalty Collections

\$528,913.55, was collected by the SD in 2006, slightly less than it collected in 2005. Given the increase in civil penalty assessments over 2005's results, one would have expected collections to also increase. The amount collected represents 6.94% of all dollars collected by the Department in civil penalties in 2006.

G. All Other Enforcement

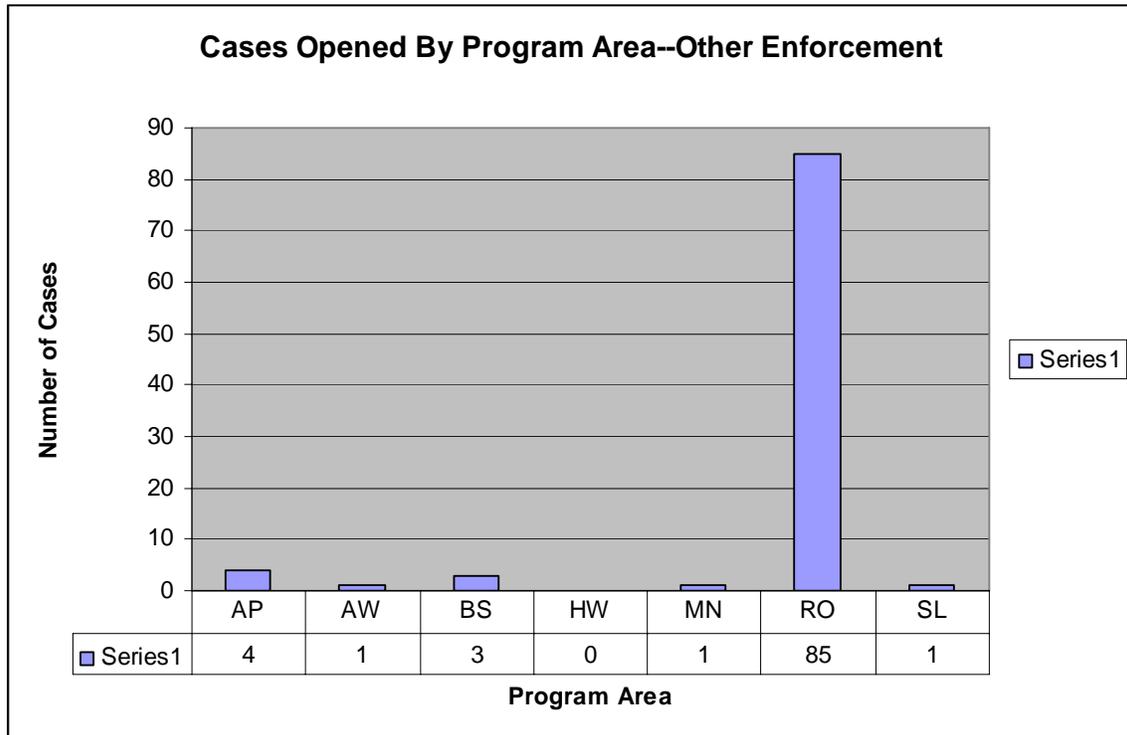
The Department also initiates enforcement cases out of the headquarters in Tallahassee. In addition, some cases handled by the Districts may also be handled jointly with Tallahassee, or coded such that they fall under one of two other categories identified as "All" or "None" in the Department's database. This is particularly true in cases involving stormwater enforcement or enforcement of laws involving the beaches and coastal systems programs. The following results for 2006 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 2006. They issued only 1 NOV, 5 Final Orders, and 137 Consent Orders. The remaining categories therefore accounted for 0% of all Case Reports, 1.92% of the NOVs, 22.73% of the Final Orders and 10.26% of all Consent Orders.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by Other Enforcement by program area in 2006:



C. Civil Penalty Assessments

Civil penalty assessments declined from 2005, amounting to 3.17% of all assessments levied by the FDEP in 2006. They assessed \$509,937.50 in penalties. Assessments in the major program areas for remaining enforcement areas broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AP	\$111,000.00	\$12,333.33	\$7,200.00
AW	\$7,848.00	\$3,924.00	\$3,924.00
BS	\$3,975.00	\$993.75	\$550.00
CU	\$200,000.00	\$200,000.00	\$200,000.00
MN	\$58,248.00	\$5,824.80	\$4,500.00
RO	\$128,116.50	\$1,085.73	\$518.00
SL	\$750.00	\$750.00	\$750.00

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

D. Civil Penalty Collections

\$520,685.00 was collected by the remaining categories in 2006, significantly more than they collected in 2005. The 2006 performance represents 6.83% of all dollars collected by the Department in civil penalties in 2006.

CONCLUSION

The Department's continued emphasis on the use of short-form consent orders continued and, indeed, increased again in 2006. As we have stated in the past, this policy is one that allows the payment of a civil penalty without additional oversight by the Department.

We are nevertheless heartened to see continued increases, albeit small increases, in case referrals to the Office of General Counsel. Equally positive is the increase, again small however, in the use of long-form consent orders as a mechanism for resolving complex environmental cases. We strongly recommend the implementation of policies that encourage greater Department oversight. We believe that such policies will be crucial if there is to be a restoration of public respect for the environmental laws of this state.

The Department will assuredly claim a strong increase in enforcement given the doubling of the dollars assessed in civil penalties compared to 2005. However, this positive news must be tempered with the fact that the actual number of enforcement cases dropped slightly for 2005. In addition, the sharp increase in the dollar assessment is almost entirely due to large assessments in 5 cases statewide.

The 5 large cases settled by the Department in 2006 had an equally positive impact on the average penalty assessments in their respective program areas. We continue to see, however, that average penalty assessments in key corporate areas such as industrial waste, hazardous waste, asbestos, potable water and stormwater runoff are less than the Department's historical averages.

The individual performance of each District remained rather stable compared to 2005. The Southwest District continues to generate the overwhelming majority of enforcement cases each year. It generated 53% of all of the civil penalty assessments in 2006. The Northwest District, by way of contrast, continues to be very resistant to formal

enforcement. Developers, it would seem, have had a significant influence on the district's performance, given that the district enforced the fewest number of dredge and fill cases of all of the districts and assessed penalties below the average in that area as well.

With that said, the asbestos program seems to be barely functional, inasmuch as the Northeast and Central Districts took no formal enforcement in this area. Even the Southwest District opened only 2 asbestos cases in 2006. The combined civil penalty assessments totaled \$4,000.00. Given the heavy industrial presence in each of these three districts the results are hardly defensible.

In sum, the Department has clearly become an agency that is most interested in assessing civil penalties with minimal additional oversight being given. It is a pay-to-pollute philosophy that enables polluters to reasonably predict the financial consequences of behavior that violates Florida's environmental laws. This makes business plans easier to draft. It does nothing of significance to protect Florida's fragile environment.

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). 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 (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 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%.