

FLORIDA PEER

REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2007

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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 2007. The information provided herein was obtained 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 1525 enforcement cases in 2007, a slight increase of 5% from 2006.

The Office of General Counsel received 72 case reports in 2007, a 27% increase over 2006, and the largest number submitted since 2003. The Number of NOV's increased from 51 in 2006 to 66 in 2007.

113 long-form consent orders were issued by the Department in 2007, a 27% decrease from last year's production. Of further concern is the fact that the percentage of all enforcement cases resolved through the use of short-form consent orders increased for the fourth year in a row, representing yet another Department high in this category.

The Department saw a slight 1% decrease in the number of civil penalty assessments in 2007. More dramatically, however, the dollar amount of assessments dropped by roughly 23% from 2006.

The decrease in the overall number and dollar amount of civil penalty assessments is not due to significantly lower results in one district. Rather, with the exception of the Central District and Northwest Districts the performance of every district declined in 2007 in terms of total assessments levied. And in all but the Central District the average assessments likewise declined.

What is highly troubling is the significant decline that was found in the number of cases brought in dredge and fill programs. In addition, these cases were settled for lower amounts than in 2006. These cases involve wetland encroachment, i.e. improper/illegal development. In addition, the number of cases involving stormwater runoff declined in 2007. Solid waste violations are not infrequent companions to dredge and fill cases. The average penalty

assessments in this area declined as well. Thus, the numbers support a concern that in 2007 the state relaxed its enforcement in those areas in which development interests were involved.

Finally, it should be noted that the number of enforcement cases brought in the air program dropped significantly in 2007, though the average dollar value of those assessments increased. Given the Governor's alleged focus on air quality in Florida the decline in the number of cases is surprising.

A statewide total of \$6,083,693.04 in civil penalties was collected by the FDEP in 2007. This is \$1,541,678.32 (or 20%) below the amount collected in 2006. Given the decrease in penalty assessments, the increase in collections is to be somewhat expected, however, given the large dollar assessments in 2006 one would have also expected a carryover from 2006 in this category, given that not all penalties that were assessed in 2006 were collected.

B. District Results

1. Northeast District

The Northeast District increased the number of case reports, NOV's, final orders and consent orders initiated in 2007 when compared to its performance in 2006. The district saw a substantial increase in the percentage of consent orders that were short-form, as opposed to long-form consent orders. In 2006, 19% were short-form, compared to 68% in 2007. Overall, 66% of all enforcement taken by the district in 2007 was in the form of short-form consent orders. Civil penalty assessments dropped sharply from 2006, representing the second straight year of significant declines in this area. Hazardous waste, industrial waste and domestic waste assessments did increase, however.

2. Northwest District

The Northwest District more than doubled the number of case reports and NOV's that it sent to the OGC in 2007 when compared to 2006. It also issued 81% more consent orders in 2007. Nevertheless, it still issues the second highest percentage of short-form consent orders than any other district in the state. The data also shows a significant downturn in the number of hazardous waste and industrial waste cases in 2007. Civil penalty assessments continued to climb with a significant increase in assessments in the industrial waste program which is due largely to one case against the City of Port St. Joe. Hazardous waste assessments fell in 2007.

3. Central District

The Central District saw significant declines in the number of case reports, NOV's and final orders issued in 2007 as compared to 2006. It issued four fewer consent orders in 2007 of which 65% were of the short-form variety. It saw fewer air, dredge and fill, domestic waste and hazardous waste cases in 2007. Civil penalty assessments did increase significantly from 2006.

Nevertheless, assessments declined in the dredge and fill, domestic waste, hazardous waste, industrial waste and tanks programs.

4. Southwest District

The Southwest District continues to dominate the enforcement arm of the FDEP. In 2007 it saw increases in the numbers of case reports and consent orders originating in its offices and there was a slight downturn in the percentage of short-form consent orders used to resolve enforcement cases. There was an increase in the number of cases in significant program areas including hazardous waste and industrial waste. At the same time, however, civil penalty assessments declined sharply in 2007. Increases were seen in hazardous waste, industrial waste and (in particular) the tanks programs.

5. Southeast District

The Southeast District saw improvements in the number of case reports, NOVs, final orders and consent orders issued in 2007 when compared to 2006. Compared to the performance of other districts its contribution to enforcement stayed relatively the same compared to one year ago, however. Modest increases in the number of enforcement cases were seen in several areas, including hazardous waste and industrial waste, but the number of air cases dropped significantly. Civil penalty assessments declined compared to 2006 with only a modest increase (~ \$7,000) seen in the hazardous waste program.

6. South District

While the South District slightly increased the number of case reports sent to the OGC from 6 in 2006 to 8 in 2007, it saw declines in the other areas, including the number of consent orders. It did increase the percentage of long-form consent orders as an enforcement mechanism, the best performance on a percentage basis of all of the districts in the state. With that said, every major program area saw a decline in the number of enforcement cases in 2007. Civil penalty assessments also saw a significant decline from 2006. Only asbestos and potable water programs saw increases in assessments in 2007. According to the data generated by the FDEP, in 2007, the South District had the weakest enforcement performance of the six districts.

7. All Other Enforcement

This category typically involves Beaches and Coastal Systems categories and Stormwater Runoff cases. In 2007, however, the category also saw an industrial waste case, the civil penalty in which resulted in the assessment performance to double when compared to 2006. Otherwise, the number of cases generated in this segment was negligible compared to the performance of the districts, with the exception of the 46 stormwater cases that were assigned to this area.

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 Department requested serious enforcement through the filing of complaints in civil circuit courts in 72 cases in 2007, an increase of 19 over 2006. This is the second year in a row with increases in this category.

The issuance of NOVs rose from 51 in 2006 to 66 in 2007; however, this is still significantly lower than the 81 NOVs that were issued in 2005.

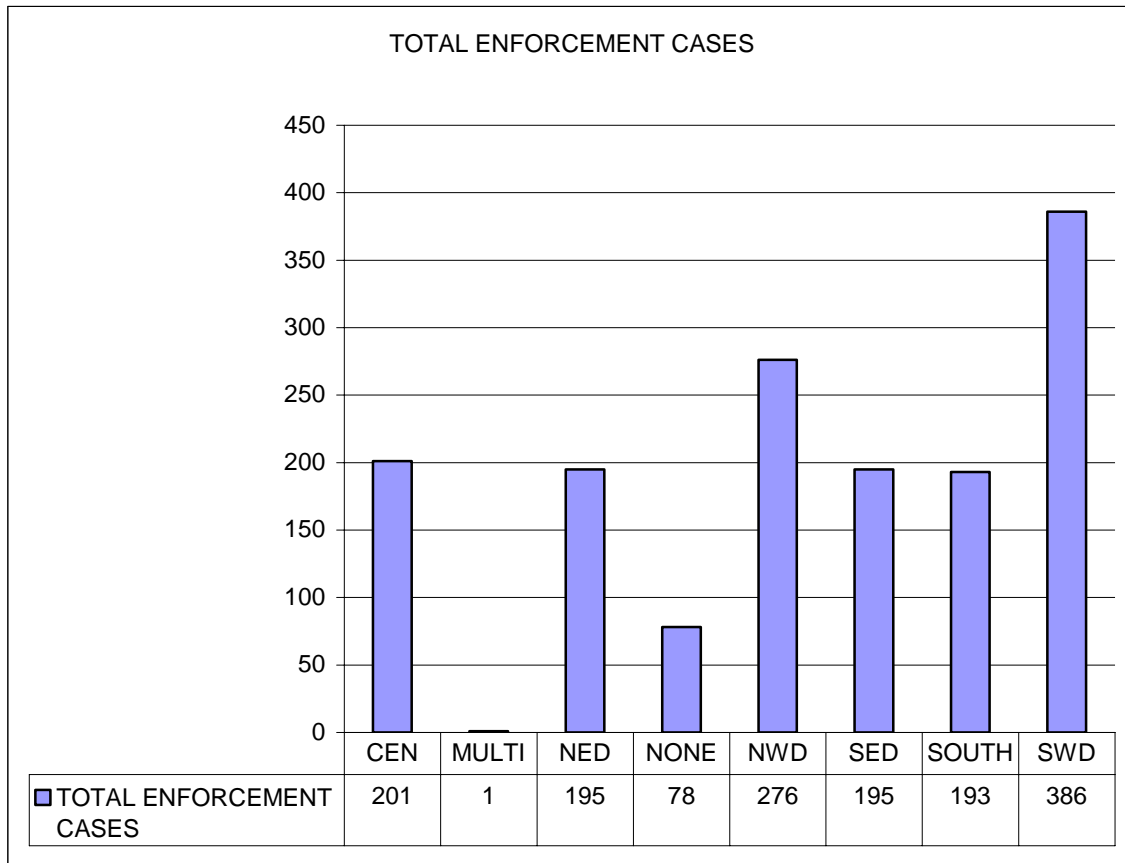
The issuance of long-form consent orders dropped 27% in 2007 with only 113 such orders being issued statewide. This marks the end of what had been a positive increase in the use of this type of enforcement.

The use of model consent orders also fell in 2007 to 250—a 7% decline.

The Department increased its usage of short-form consent orders in 2007. 949 such orders were issued statewide, compared to 879 in 2006. This is the highest usage of short-form consent orders in the Department's history. These orders represent 62.23% of all enforcement initiated in 2007.

The Department issued 43 Final (Enforcement Related) Orders in 2007, more than doubling its production from 2006.

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



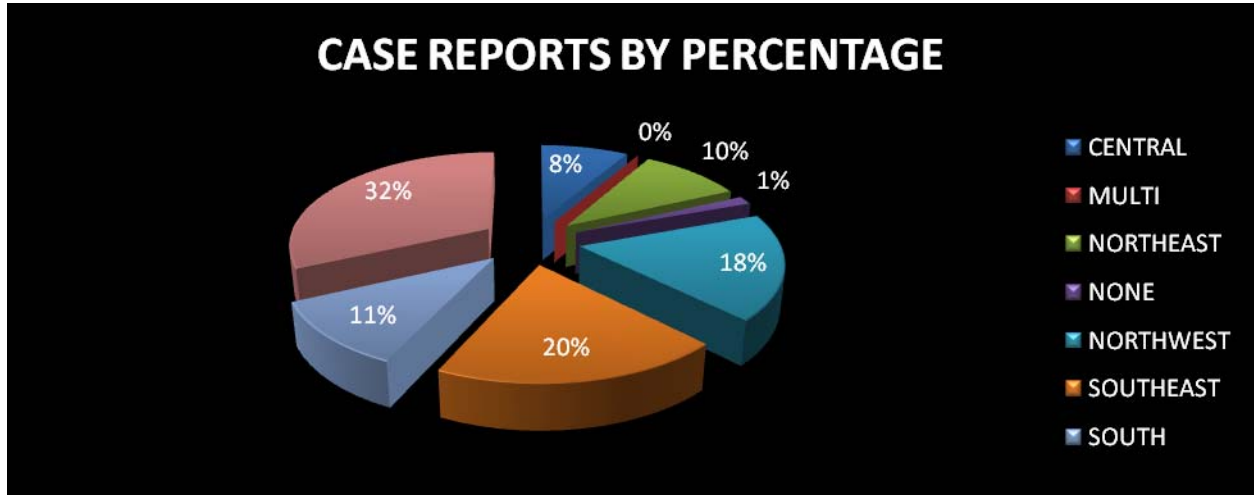
Once again the Southwest District is responsible for a significant portion of the enforcement that is undertaken by the Department as a whole. Interestingly, it does this while also having the third highest percentage of short-form consent orders. In other words, it would appear as though in 2007 a higher percentage of meaningful enforcement was occurring in the Southwest District. As will be seen below, the Southwest District also accounts for a significant majority of the civil penalty assessments in the state. However, the South District utilized the fewest percentage of short-form consent orders of all of the districts.

As in 2006, the Northwest District utilized the short-form consent order as its enforcement mechanism of choice more often than any of the other districts. In 2007 it used short-form consent orders to settle 73.76% of its cases.

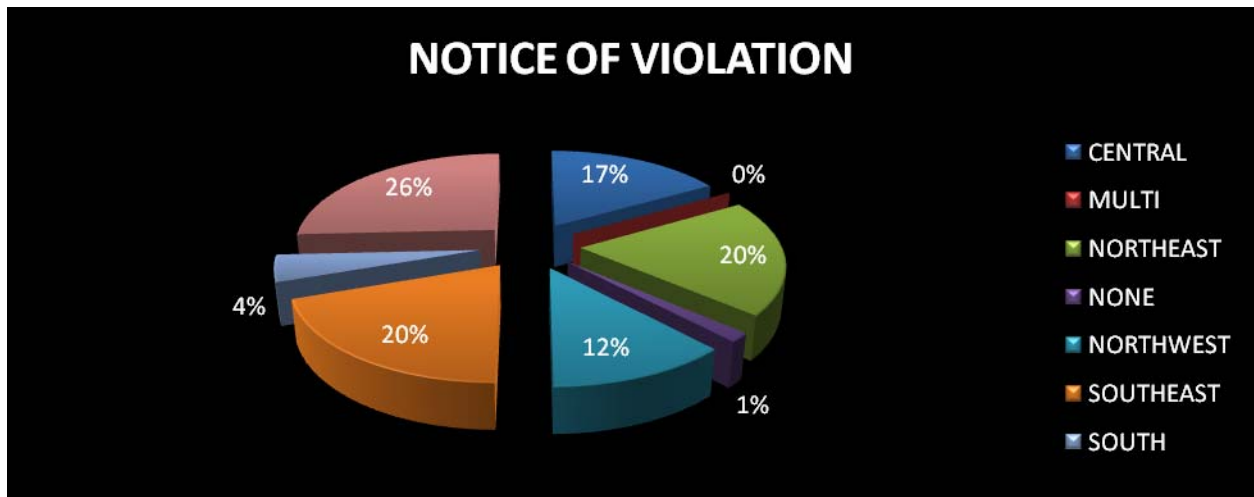
2. Case Reports, NOVs, Consent Orders, Final Orders – District Comparisons

We also looked at the contribution by each District with respect to different enforcement tools. The results follow:

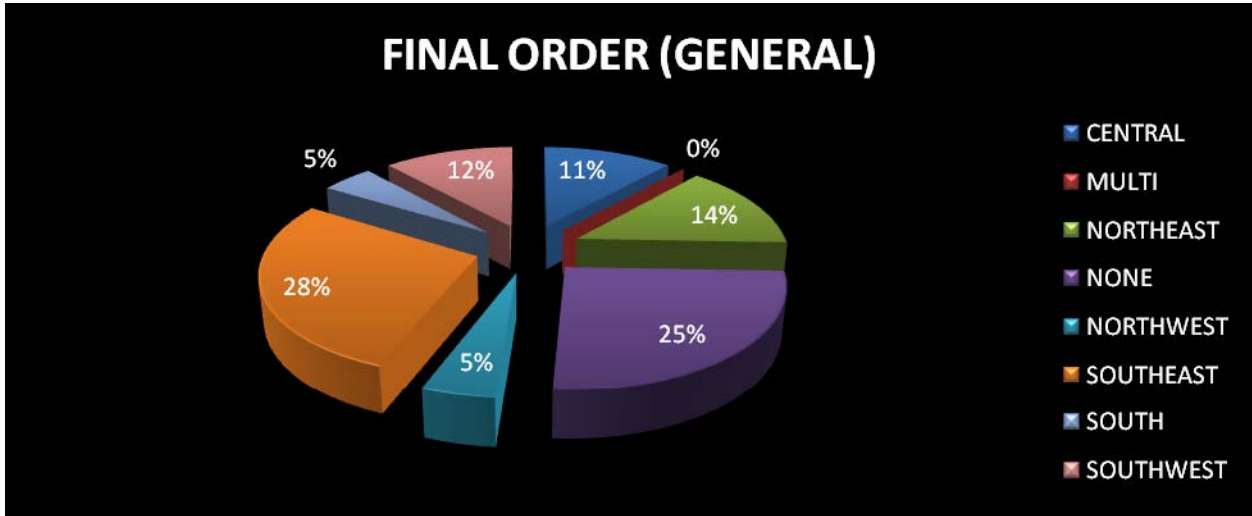
a. Case Reports



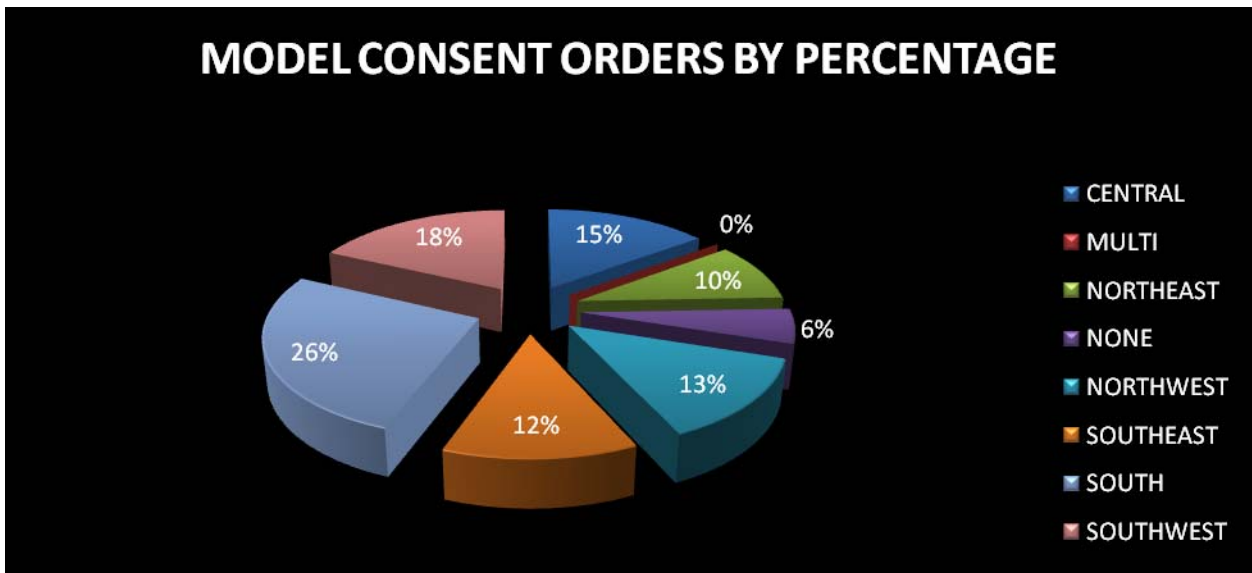
b. NOVs



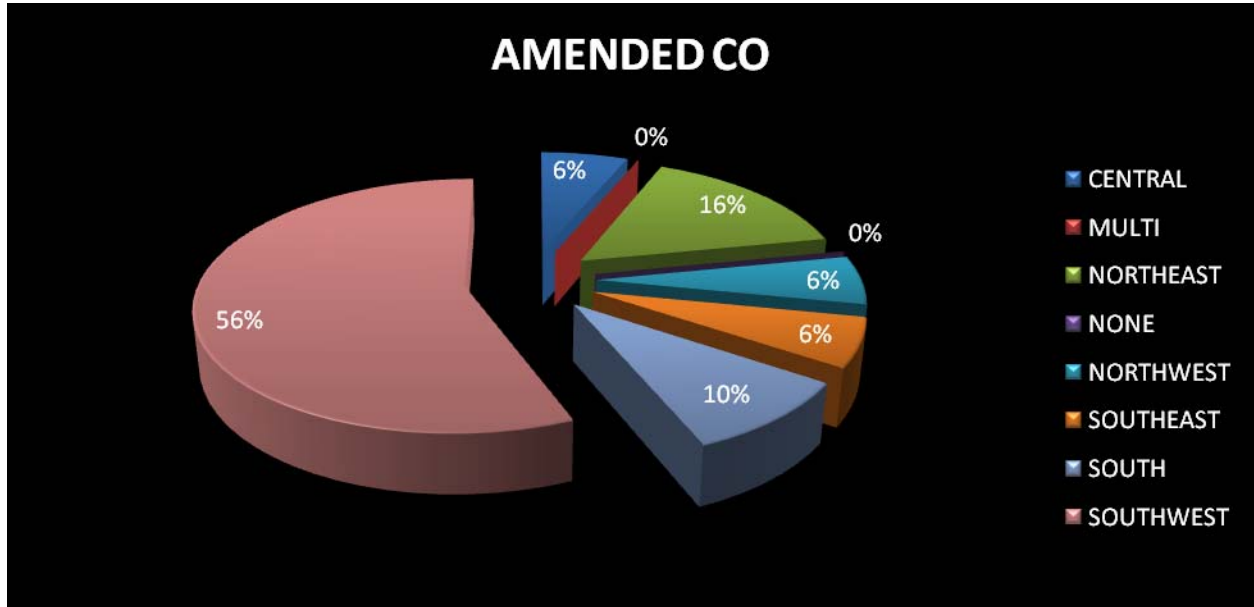
c. Final Orders



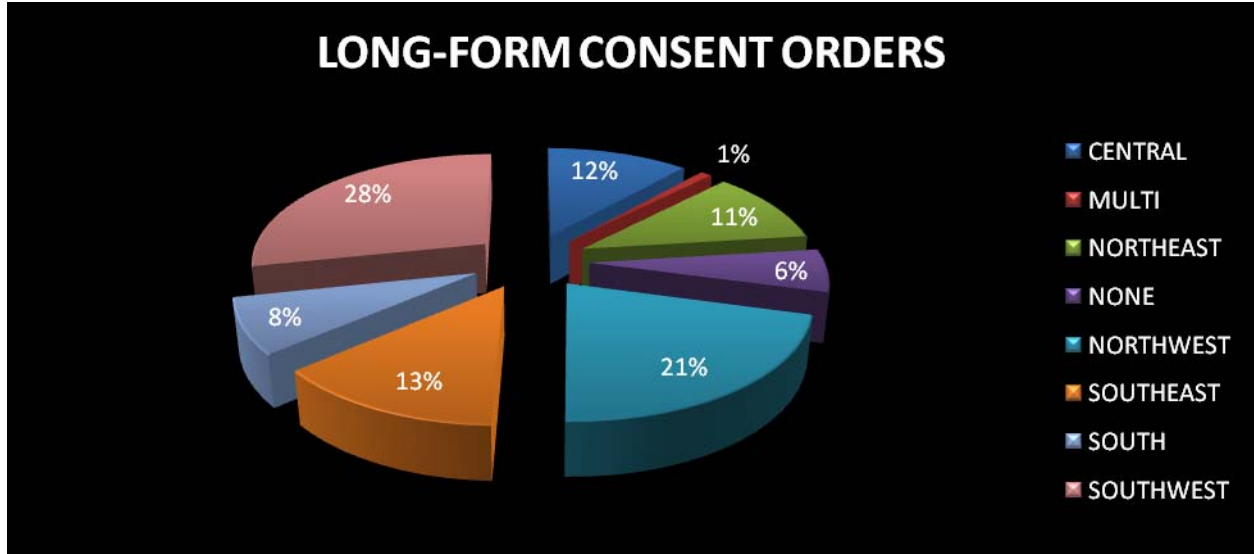
d. Model Consent Orders



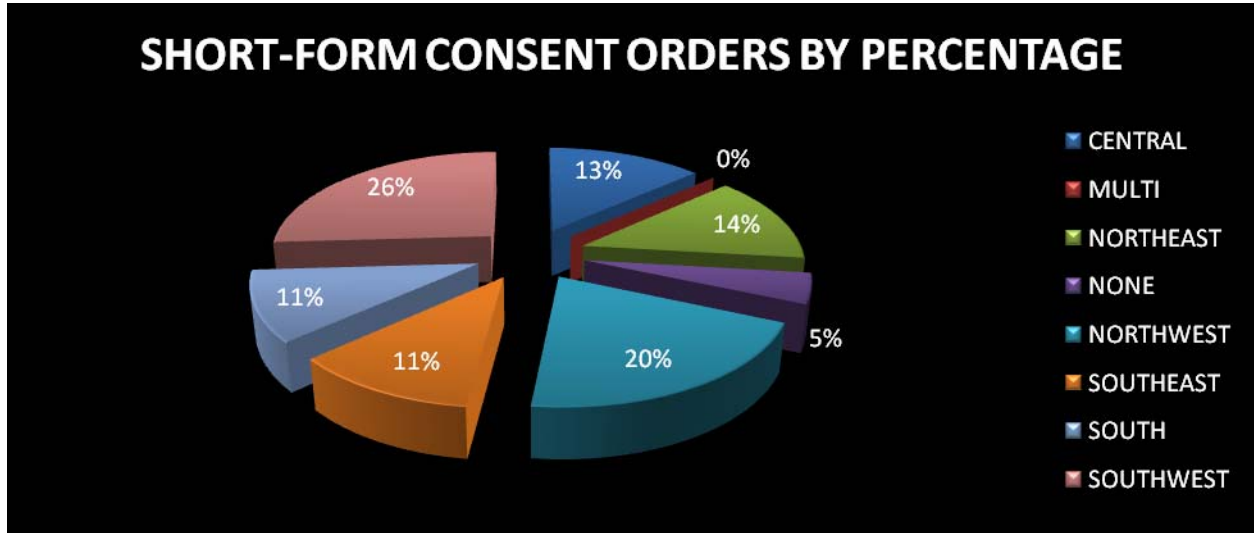
e. Amended Consent Orders



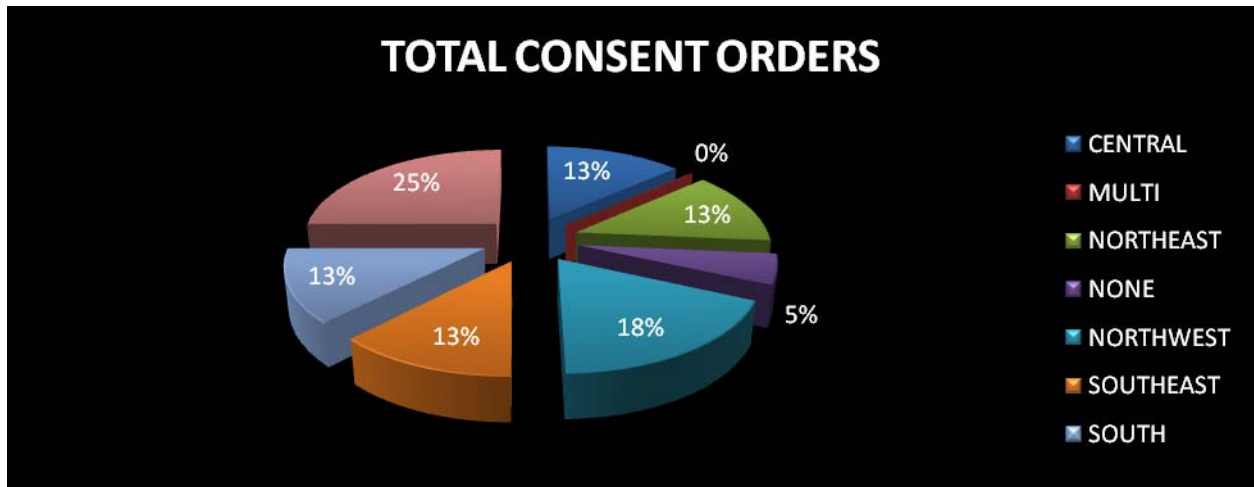
f. Long-Form Consent Orders



g. Short-Form Consent Orders



h. All Consent Orders Combined



3. *Short-Form Consent Orders*

2007 saw a continued increase in the Department’s use of short-form consent orders. Short-form consent orders were used at a higher rate in 2007 than in any year in the Department’s history. 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%
2007	62.23%

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 with all districts increasing their reliance on this tool from 2006. The Northwest District led the way, settling over 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	63.18%
Northeast	65.64%
Other	56.41%
Northwest	70.29%
Southeast	55.38%
South	52.85%
Southwest	63.73%

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	65.13%
Northeast	68.09%
Other	57.14%
Northwest	73.76%
Southeast	59.67%
South	55.14%
Southwest	67.77%

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 Northeast, Southwest and Central Districts. Nevertheless, the percent use of short-form consent orders compared to other consent orders did fall slightly in each district from 2006 to 2007, with the exception of the Southeast and South Districts.

4. 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	45
Air (Excluding Asbestos)	131 ²
Beaches/Coastal	17
Waste Cleanup	5
Dredge & Fill ³	252
Domestic Waste	211
Hazardous Waste	215
Industrial Waste	67
Potable Water	197
Stormwater Runoff	58
Solid Waste	55
Tanks	181
Underground Injection Control	4

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

² Results in red represent declines from 2006 values.

³ 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	37
Air (Excluding Asbestos)	90	41
Beaches/Coastal	17	0
Waste Cleanup	4	1
Dredge & Fill	217	35
Domestic Waste	114	97
Hazardous Waste	116	99
Industrial Waste	46	21
Potable Water	95	102
Stormwater Runoff	8	50
Solid Waste	36	19
Tanks	48	133
Underground Injection Control	4	0

All programs saw improvements over their 2006 results with the notable exceptions of the air, dredge and fill and stormwater runoff programs, all of which saw significant decreases from 2006.

5. *Civil Penalty Assessments*

The Department assessed civil penalties in 1472 cases in 2007, a de minimis decline from 2006. However, in 2007, the FDEP assessed **\$12,330,146.38 in civil penalties, a \$3,737,548.90 decrease from the \$16,067,695.28 assessment in 2006! This represents a 23% decline from the Department's 2006 performance.** The sharp decline in assessments is surprising considering there was an increase (albeit modest) in the number of total enforcement cases for the Department in 2007. On the other hand, we noted in our 2006 report that the sharp increase in assessments in 2006 was somewhat of an aberration because of a few large dollar value penalty assessments that tended to skew the overall results.

Statewide there were 14 cases in which the Department assessed a civil penalty of \$100,000 or more. Interestingly, 6 of those cases (42%) were against local governments. 18 cases saw penalty assessments of \$90,000 or more and 9 of those were against local governments.

The key program areas also saw average dollars assessed on a per case basis as follows with declining results shown in red:

Program Area	2006 Averages	2007 Averages	Historical Averages
Asbestos	\$2,920.59	\$3,098.13	\$10,025.25
Air (Excluding Asbestos)	\$14,140.44	\$29,372.91	6,227.09
Beaches/Coastal	4,195.00	\$1,445.83	786.63
Waste Cleanup	\$101,500.00	\$4,833.33	25,940.05
Dredge & Fill	\$3,536.35	\$2,360.80	3,287.42
Domestic Waste	\$36,657.73	\$13,769.56	10,751.37
Hazardous Waste	\$7,556.85	\$10,675.73	15,986.22
Industrial Waste	\$5,973.66	\$12,776.17	19,506.60
Potable Water	\$1,257.90	\$1,112.25	1,379.30
Stormwater Runoff	\$1,337.14	\$2,396.25	5,768.34
Solid Waste	\$25,641.67	\$12,782.37	6,867.80
Tanks	\$5,384.75	\$11,595.83	4,934.64
Underground Injection Control	\$162,410.00	\$14,675.00	9,755.91

It will be recalled that in mid-2007 the Department announced what it maintained was a new, stricter, penalty policy. This policy, as we pointed out in our review of that policy, was likely to impact one area, hazardous waste. In fact, the average assessments in the hazardous waste area did increase 41% over 2006. However, the hazardous waste averages still underperformed the Department's historical average for this program area even with this new, allegedly stricter, penalty policy. And, as is demonstrated above, even with this allegedly stricter policy several program areas saw declines in the average penalty assessments when compared to 2006.

Of particular note is that the Department opened a significantly smaller number of dredge and fill cases in 2007 and coupled that with significant reductions in the assessments levied in that program area once the violations were discovered. Solid waste cases also saw significant declines in average assessments for 2007.

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

District	Total \$ Assessed	Average \$ Assessments	% of State Total
Central	\$1,457,085.90	\$7,434.11	11.82%
Northeast	\$836,642.29	\$4,836.08	6.79%
Northwest	\$2,347,476.47	\$8,179.36	19.04%
Southeast	\$1,212,639.94	\$7,218.09	9.83%
South	\$738,813.00	\$3,694.07	5.99%
Southwest	\$3,787,423.28	\$10,291.91	30.72%
Totalⁱ	\$12,330,146.38		100.00%

With the exception of the Central and Northwest Districts, every district saw a decline in the total penalties assessed in 2007. In addition, the average penalty assessments declined in all but the Central District.

6. *Civil Penalty Collections*

A statewide total of \$6,083,693.04 in civil penalties was collected by the FDEP in 2007. This is \$1,541,678.32 (or 20%) below the amount collected in 2006. The decrease in collections is to be somewhat expected in light of the decrease in civil penalty assessments for the same time period. However, given the large increase in assessments in 2006 a carryover of collections into 2007 should have also occurred which would have improved the 2007 results.

DISTRICT RESULTS

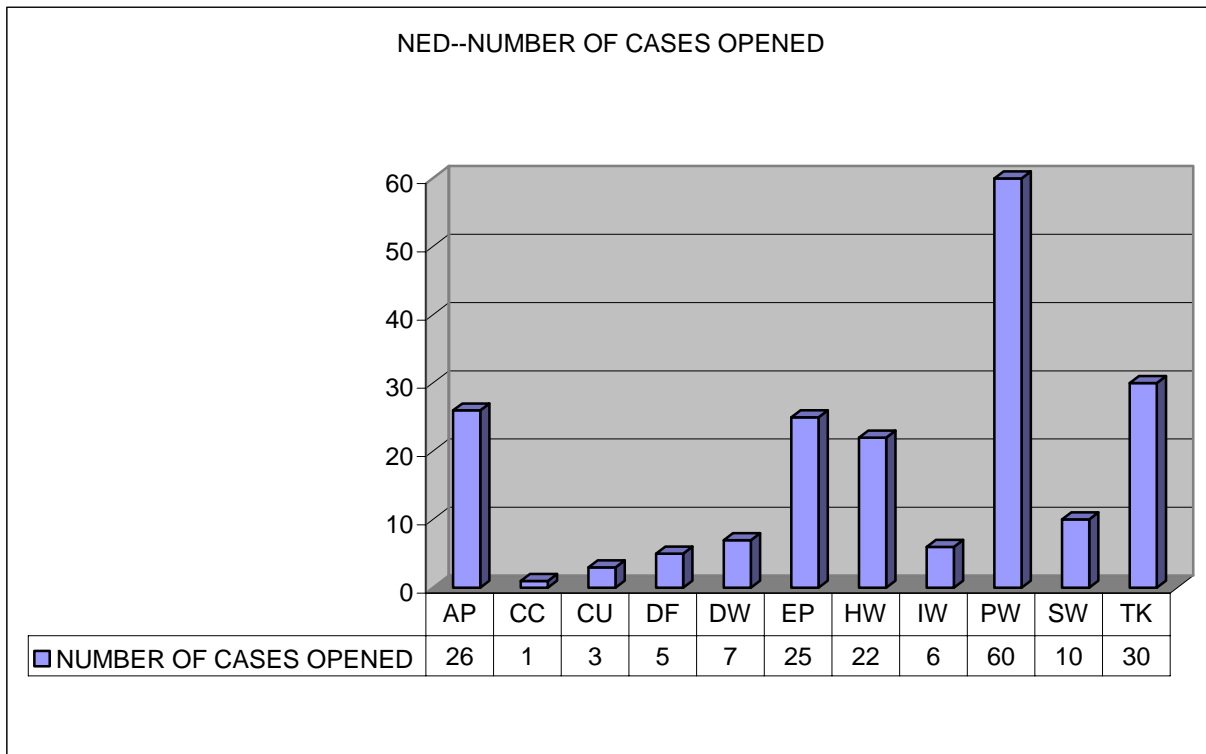
A. Northeast District

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

The district took enforcement in 195 cases in 2007, representing 13% of all enforcement cases initiated by the Department. Of the 195 cases, 7 were case reports (1 more than in 2006) and still fewer than in 2005. 13 NOVs were issued (compared with 9 in 2006) and 6 final orders originated from the district (2 were issued in 2006). 188 consent orders were issued, but only 12 were long-form consent orders, while 128 were short-form. The latter category represented 68% of all consent orders issued by the district and, indeed, 66% of all enforcement taken by the district was in this form.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Northeast District by program area in 2007:⁴



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.

The data shows that except for the potable water program, enforcement in the Northeast District is essentially concentrated on dredge and fill, hazardous waste, air and tanks cases; however, with the exception of the potable water program there is relatively little enforcement taking place considering the size and makeup of the area covered by this district. Considering that 66% of the opened cases were resolved via short-form consent order it becomes even more evident that very little serious enforcement took place in 2007.

C. Civil Penalty Assessments

The NED assessed civil penalties totaling \$836,642.29 in 2007. This is a 29% drop from its 2006 performance. It will be recalled that this district’s 2006 performance was 50% less than its performance in 2005. The district’s performance represented 6.79% of all assessments by the Department in 2007.

Assessments in the major program areas broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$0.00	\$0.00	\$0.00
AP	\$39,800.00	\$1,474.07	\$1,000.00
AW	\$0.00	\$0.00	\$0.00
DF/EP	\$53,680.50	\$2,236.69	\$1,250.00
DW	\$43,200.00	\$4,320.00	\$2,812.50
HW	\$319,618.79	\$13,896.47	\$6,285.00
IW	\$71,000.00	\$11,833.33	\$10,000.00
PW	\$37,450.00	\$706.60	\$455.00
SW	\$167,993.00	\$18,665.89	\$4,000.00
TK	\$103,900.00	\$4,947.62	\$4,500.00

In all of the above program areas for this district the results were lower than the historical statewide averages.

D. Civil Penalty Collections

2007 saw a slight increase in collections with a total of \$669,330.37. The NED collected 11% of all collections by the Department in calendar year 2007, also an improvement from 2006.

B. Northwest District

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

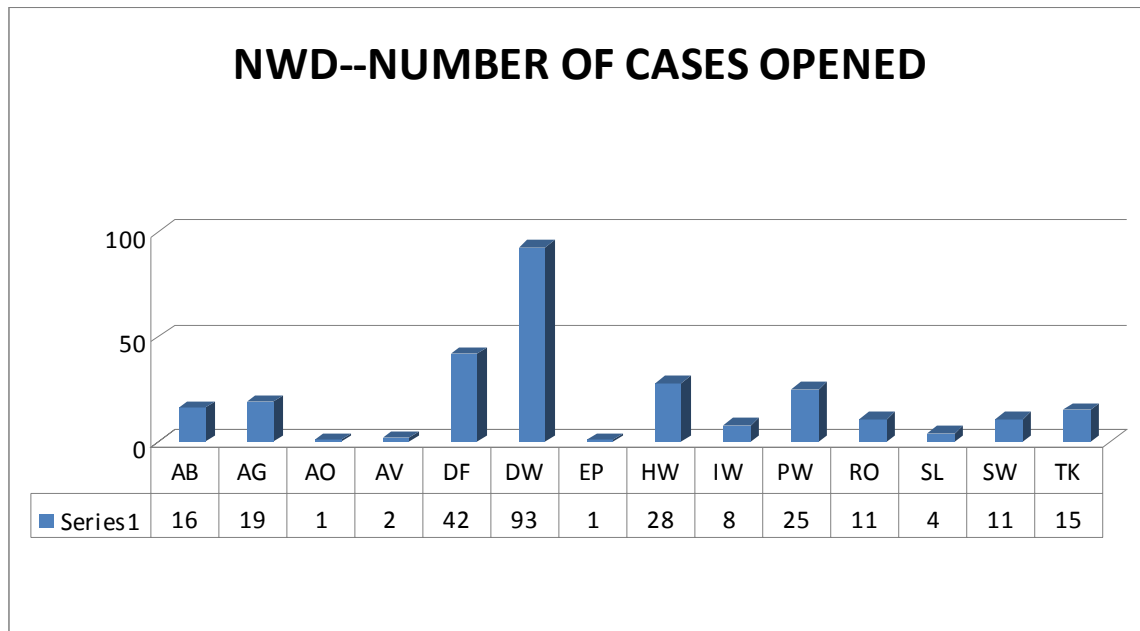
The NWD sent 13 Case Reports to OGC in 2007, more than double its 2006 performance. It issued 8 NOVs, during the same time period, a 100% increase from the previous

year. It issued 2 Final Orders and 263 Consent Orders, the latter being an 81% increase over 2006. However, 194 of the 263 Consent Orders, i.e. 73.76%, were short-form consent orders. While this is a slight decline over 2006 it still represents the highest usage of short-form consent orders of any district in the state.

The NWD issued 18% of all Case Reports statewide, a significant improvement over 2006. It issued 12% of the NOV's and 5% of all Final Orders. 18% of all Consent Orders were issued by the NWD in 2007, the second highest percentage in the state. As noted above, however, over 73% of the consent orders were short-form. All in all, the district's performance in 2007 was an improvement over 2006.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Northwest District by program area in 2007⁵:



The numbers reflect a significant downturn from 2006 in the number of hazardous waste and industrial waste cases, while the number of domestic waste and dredge and fill cases increased.

C. Civil Penalty Assessments

The district assessed civil penalties totaling \$2,347,476.47 which is the third straight year that the district has shown improvement in civil penalty assessments. The increase is a 77%

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

increase over the district's 2006 performance and second highest of the six regulatory districts. Aside from sizeable civil penalty assessments against the Cities of Apalachicola and Port St. Joe, the assessments were likewise rather evenly spread out.

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

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$48,314.00	\$3,220.93	\$2,500.00
AP	\$41,147.00	\$1,714.46	\$942.50
AW	\$0.00	\$0.00	\$0.00
DF/EP	\$90,100.00	\$2,252.50	\$1,000.00
DW	\$1,564,937.50	\$14,904.17	\$1,125.00
HW	\$144,772.97	\$4,387.06	\$2,900.00
IW	\$285,850.00	\$31,761.11	\$2,100.00
PW	\$37,980.00	\$1,808.57	\$1,000.00
SW	\$21,000.00	\$3,500.00	\$3,250.00
TK	\$68,900.00	\$5,741.67	\$4,250.00

The average assessments in the asbestos, air, hazardous waste, solid waste and tanks programs all fell from 2006. While the industrial waste program saw a substantial increase in overall assessments, \$270,000 of the \$285,850.00 in assessments was the result of one assessment against the City of Port St. Joe. While the domestic waste program's sizeable increase was also largely due to the case against the City of Apalachicola, the program still realized an increase even if that result is not considered.

D. Civil Penalty Collections

\$632,438.78 in civil penalties were collected by the NWD in 2007, an increase over the district's performance in 2006. However, this result is only the fifth largest of the six districts. Only the South District performed worse. Given the significant increase in assessments in 2007 we would have expected that collections would have likewise shown a significant increase.

C. Central District

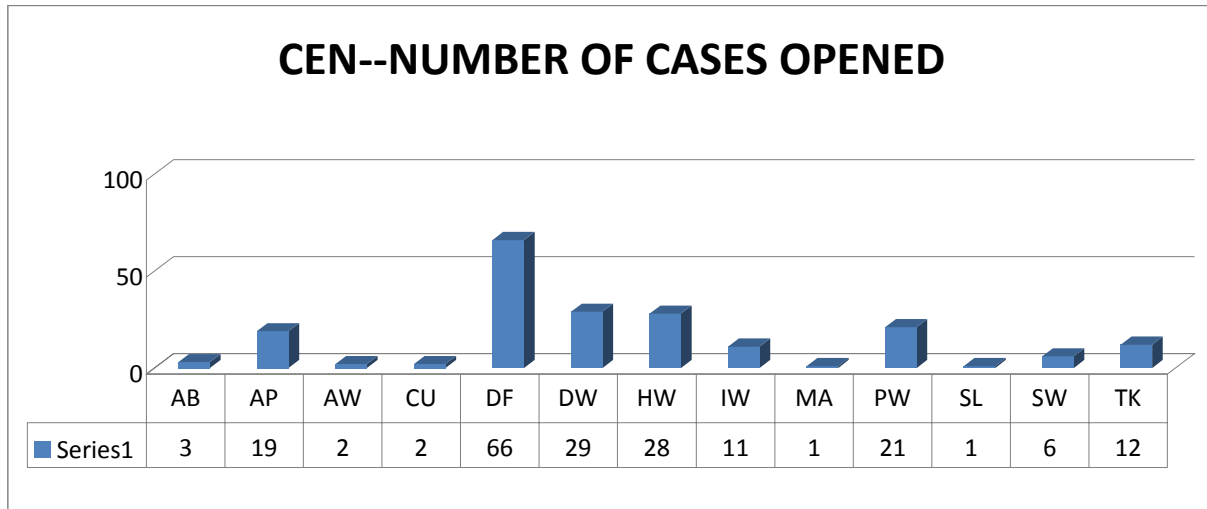
A. Case Reports, NOVs, Consent Orders, Final Orders

The district submitted 6 Case Reports to the OGC in 2007. It issued 11 NOVs, 5 Final Orders, and 195 Consent Orders. When looked at on a percentage basis, the district submitted 8% of all Case Reports, 17% of all NOVs, 12% of all Final Orders, and 13% of all Consent Orders. 65% of the consent orders issued by the district were short-form consent orders.

With the exception of Case Reports, which declined by almost 50%, the overall numbers were fairly stable compared to 2006.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Central District by program area in 2007:



The CEN opened three asbestos cases in 2007, compared with none in 2006. It opened fewer air, dredge and fill, domestic waste and hazardous waste cases than in the year before. Tanks, potable water and industrial waste programs each saw modest improvements.

C. Civil Penalty Assessments

The CEN levied \$1,457,085.90 in civil penalty assessments in 2007, a 46% increase over 2006. The assessments totaled 12% of all assessments statewide, the third highest percentage which is again an improvement over 2006.

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

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$28,075.00	\$9,358.33	\$2,500.00
AP	\$339,969.90	\$14,781.30	\$4,500.00
AW	\$6,000.00	\$6,000.00	\$6,000.00
DF	\$74,197.50	\$1,216.35	\$750.00
DW	\$123,225.00	\$3,734.09	\$2,000.00
HW	\$570,044.50	\$20,358.73	\$9,461.00
IW	\$51,175.00	\$4,652.27	\$2,200.00
PW	\$33,900.00	\$1,695.00	\$900.00
SW	\$168,399.00	\$28,066.50	\$20,400.00
TK	\$56,000.00	\$8,000.00	\$7,000.00

Annual averages in the air, aquatic weed, potable water, solid waste programs are all improved over last year's performance. However, declines were seen in the important programs of dredge and fill, domestic waste, hazardous waste, industrial waste and tanks.

D. Civil Penalty Collections

\$952,907.08 was collected by the CEN in 2007, a \$191,083.33 increase from 2006. It also represents 16% of all collections statewide, which is once again the second most productive district in this category.

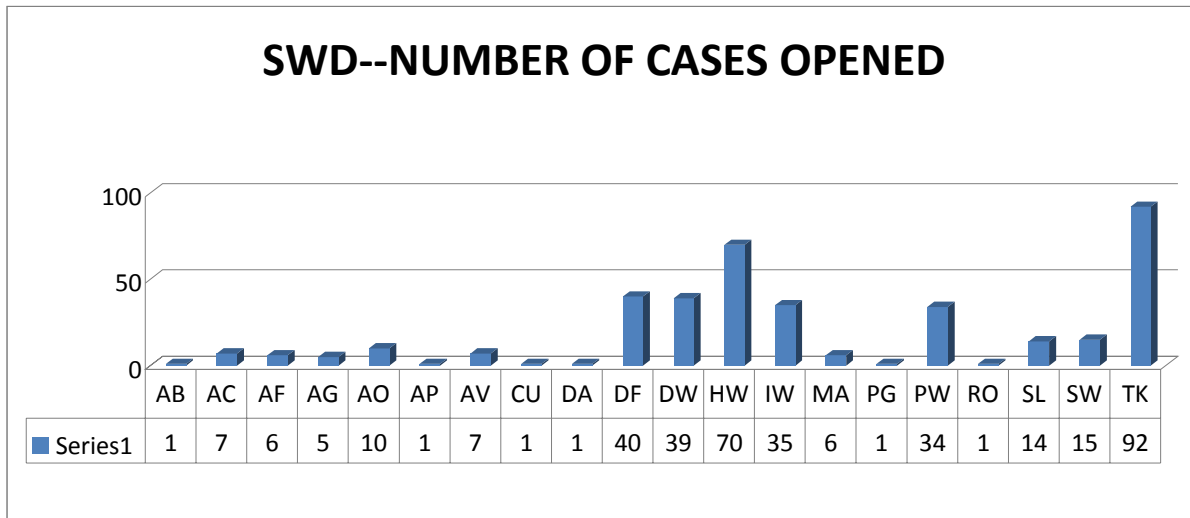
D. Southwest District

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

23 Case Reports were submitted by the district in 2007, seven more than in 2006. This represents 32% of all such reports submitted statewide. The district also issued 17 NOVs, or 26% of all such filings. It issued 5 Final Orders (12%). 363 Consent Orders were issued out of this district, which represents 25% of all Consent Orders issued by the Department in 2007. 68% of the Consent Orders issued by the district were short-form consent orders. While still high, this is a decrease from the 71% reported last year. At the same time, the district utilized the long-form consent order as an enforcement mechanism in 8% of the cases, which is a decrease over last year's production. It remains true that the vast majority of enforcement cases in this district, as in the others, 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 2007:



Seven program areas saw increases in the number of enforcement filings from 2006. Those program areas were air, dredge and fill, hazardous waste, industrial waste, potable water, solid waste and tank. The domestic waste program saw a modest decrease of 5 cases.

C. Civil Penalty Assessments

Civil penalty assessments fell sharply for this district in 2007. The SWD levied civil penalties totaling \$3,787,423.28. The district accounted for 31% of all penalty assessments by the Department. While the performance dropped in 2007, the district continues to be 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	\$650.00	\$650.00	\$650.00
AP	\$194,883.00	\$5,128.50	\$2,375.00
AW	\$0.00	\$0.00	\$0.00
DF/EP	\$113,464.00	\$2,909.33	\$1,600.00
DW	\$837,188.00	\$19,469.49	\$6,000.00
HW	\$833,782.80	\$12,444.52	\$4,300.00
IW	\$237,650.00	\$6,989.71	\$4,000.00
PW	\$36,150.00	\$1,246.55	\$800.00
SW	\$149,749.82	\$10,696.42	\$6,250.00
TK	\$1,306,941.66	\$15,938.31	\$4,050.00

The district saw significant declines in penalty assessments in the air, dredge and fill, domestic waste, potable water and solid waste programs. Hazardous waste, industrial waste, and the tanks program saw increases over the 2006 performance.

D. Civil Penalty Collections

The \$1,976,994.90 in civil penalties collected by the SWD in 2007 represents a significant decline from its 2006 performance, though it continues to make it the lead district in this category. Its collections accounted for 33% of all the monies collected by the Department across the state.

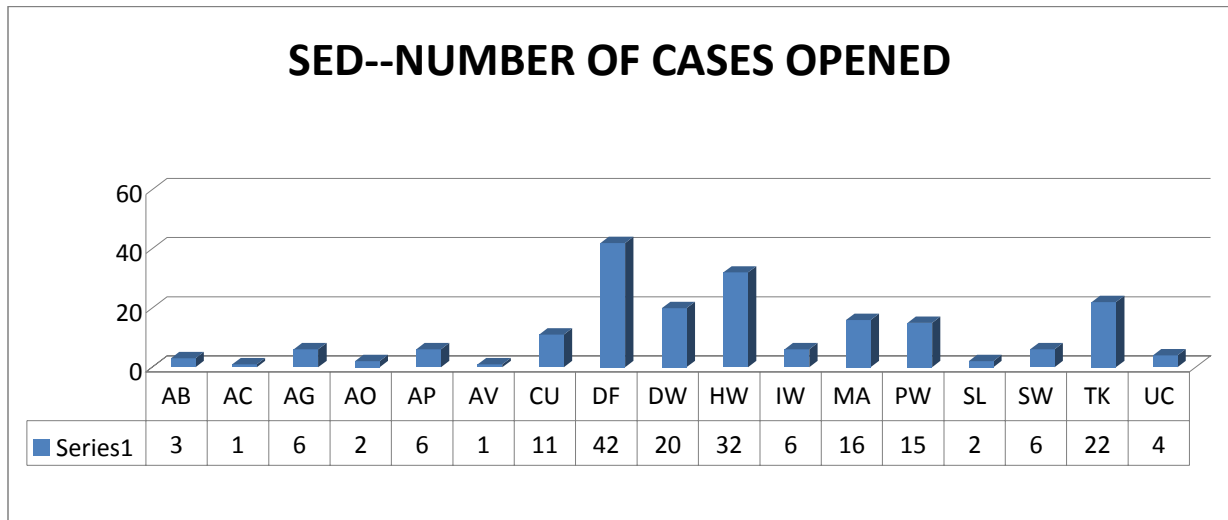
E. Southeast District

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

The SED issued 13 NOVs in 2007, 1 more than in 2006. 14 Case Reports were sent to the OGC in 2007, four more than the number sent in 2006. The district issued 12 Final Orders. It also issued 181 Consent Orders, 15 more than in 2006. 60% of the consent orders that were issued were short-form consent orders. The SED accounted for 19% of all Case Reports sent to the OGC in 2007, 20% of the NOVs, 28% of the Final Orders and 12% of all Consent Orders. The numbers are all essentially unchanged from the district’s performance in 2006.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southeast District by program area in 2007:



The air program saw a significant decline in cases in 2007 compared to 2006. Declines were also seen in the domestic waste, dredge and fill, and potable water programs. Modest increases were seen in the hazardous waste, industrial waste, mangrove alteration, solid waste and underground injection programs. The tanks program area is the only area to see a significant increase in new enforcement cases.

C. Civil Penalty Assessments

\$1,212,639.94 in civil penalty assessments were levied by the SED in 2007, accounting for 10% of all civil penalty assessments levied by the Department in 2007. This performance is the fourth best performance in the state. The 2006 assessment numbers also represent a decrease of over \$1,000,000.00 compared to 2006.

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

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$4,625.00	\$4,625.00	\$1,500.00
AP	\$56,293.00	\$3,518.31	\$2,137.50
AW	\$0.00	\$0.00	\$0.00
DF/EP	\$118,300.00	\$3,113.16	\$2,000.00
DW	\$503,780.00	\$20,990.83	\$7,500.00
HW	\$247,491.94	\$8,249.73	\$5,600.00
IW	\$4,000.00	\$2,000.00	\$2,000.00
PW	\$22,500.00	\$1,875.00	\$1,100.00
SW	\$9,000.00	\$4,500.00	\$4,500.00
TK	\$114,750.00	\$7,650.00	\$6,000.00

Annual averages for air, dredge and fill, domestic waste, industrial waste, and potable water cases all were lower in 2007 compared to 2006. Hazardous waste cases saw a modest increase while the tanks program almost doubled its 2006 performance.

D. Civil Penalty Collections

The SED collected \$622,941.37 in civil penalties in 2007, a decrease from 2006. This accounted for 10% of all dollars collected by the FDEP in civil penalties in 2007.

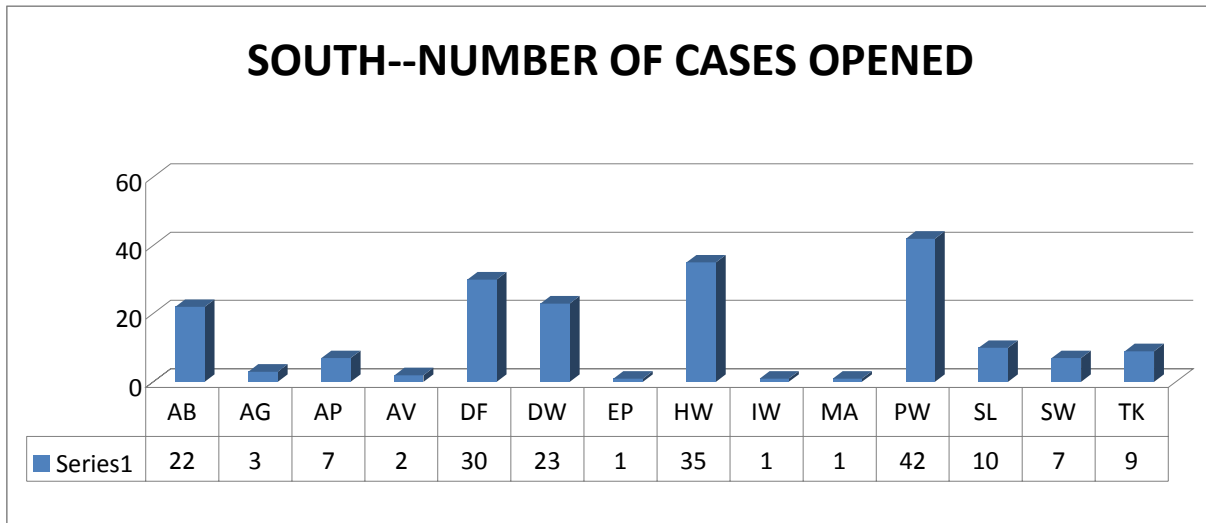
F. South District

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

The SD sent 8 Case Reports to the OGC in 2007. NOV issuance declined from 6 in 2006 to 3 in 2007. It issued 2 Final Orders and 185 Consent Orders. The SD therefore accounted for 11% of all Case Reports, 5% of the NOVs, 5% of the Final Orders and 13% of all Consent Orders. Of the consent orders that it issued, 55% were short-form, once again the lowest percentage in the state. Even with the comparatively low percentage of short-form consent orders, however, the South District clearly has the weakest enforcement program of the six districts.

B. Program Area Enforcement

The following chart provides the number of enforcement cases opened by the Southeast District by program area in 2007:



The South District once again generated the highest percentage of asbestos cases, all but one of which were resolved by issuance of short-form consent orders. However, every major program area declined in the number of enforcement cases, a truly troubling development.

C. Civil Penalty Assessments

Civil penalty assessments levied by the SD amounted to 6% of all assessments levied by the FDEP in 2007, another decline in performance. It assessed \$738,813.00 for the year, a marked decrease from the penalties assessed by the district in 2006.

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

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$60,850.00	\$2,535.42	\$2,000.00
AP	\$35,525.00	\$2,732.69	\$2,025.00
AW	\$0.00	\$0.00	\$0.00
DF/EP	\$116,850.00	\$3,075.00	\$1,600.00
DW	\$232,363.00	\$9,294.52	\$3,000.00
HW	\$158,220.00	\$4,944.38	\$3,365.00
IW	\$3,000.00	\$3,000.00	\$3,000.00
PW	\$32,225.00	\$716.11	\$500.00
SW	\$33,500.00	\$5,583.33	\$3,750.00
TK	\$28,500.00	\$3,562.50	\$2,250.00

With the exception of asbestos and potable water cases, all program areas saw declines in the dollar amount of civil penalty assessments. Annual averages did increase in the asbestos, air, domestic waste, hazardous waste, and industrial waste programs, however.

D. Civil Penalty Collections

\$459,449.29 was collected by the SD in 2007, less than it collected in 2006. The amount collected represents 8% of all dollars collected by the Department in civil penalties in 2007.

G. All Other Enforcement

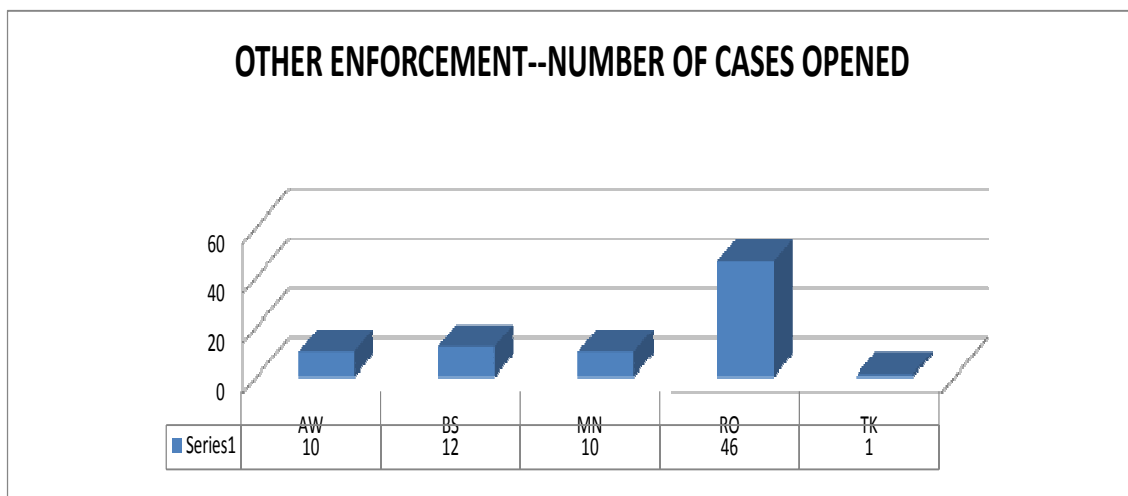
The Department also initiates enforcement cases out of the headquarters in Tallahassee. In addition, some cases handled by the Districts may also be handled jointly with Tallahassee, or coded such that they fall under one of two other categories identified as “Multi” or “None” in the Department’s database. This is particularly true in cases involving stormwater enforcement or enforcement of laws involving the beaches and coastal systems programs. The following results for 2007 represent the combination of the “Multi” and “None” categories. They are referred to cumulative as the “remaining categories.”

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

The remaining categories sent 1 Case Report to the OGC in 2007. They issued 1 NOV, 11 Final Orders, and 78 Consent Orders. The remaining categories therefore accounted for 0% of all Case Reports, 2% of the NOVs, 26% of the Final Orders and 5% 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 2007:



C. Civil Penalty Assessments

Civil penalty assessments doubled from 2006, amounting to 1.58% of all assessments levied by the FDEP in 2007. They assessed \$1,950,065.50 in penalties. Assessments in the major program areas for remaining enforcement areas broke down as follows:

PROGRAM AREA	TOTAL AMOUNT	AVERAGES	MEDIANS
AB	\$0.00	\$0.00	\$0.00
AP	\$0.00	\$0.00	\$0.00
AW	\$18,244.00	\$2,027.11	\$2,000.00
BS	\$18,244.00	\$2,027.11	\$2,000.00
DF/EP	\$0.00	\$0.00	\$0.00
DW	\$0.00	\$0.00	\$0.00
HW	\$0.00	\$0.00	\$0.00
IW	\$165,000.00	\$165,000.00	\$165,000.00
RO	\$70,115.25	\$1,491.81	\$600.00
PW	\$0.00	\$0.00	\$0.00
SW	\$0.00	\$0.00	\$0.00
TK	\$14,000.00	\$14,000.00	\$14,000.00

D. Civil Penalty Collections

\$769,631.25 was collected by the remaining categories in 2007, significantly more than they collected in 2006. The 2007 performance represents 12.65% of all dollars collected by the Department in civil penalties in 2007.

CONCLUSION

Historical data generated by the FDEP shows a Department that, when considering environmental enforcement, began a state of decline since the beginning of the second term of Governor Chiles and has continued through the eight years of the Jeb Bush administration. Therefore, it was widely hoped that this trend would begin to turn around when Governor Crist assumed the mantle of Florida’s leadership. To his credit, Governor Crist has spoken many times about the need to clean up Florida’s air and water quality. Yet, given the results, one must conclude that those speeches are essentially empty rhetoric if we assume that the Department, as the primary agency charged with protecting Florida’s environment, is carrying out the Governor’s actual policies.

In the face of Florida’s many environmental challenges the Department continues to advocate a pay-to-pollute policy, as is evidenced by yet another increase in the percentage of cases settled via short-form consent orders. Emphasis on the use of short-form consent orders continued and, indeed, increased again in 2007 to the highest point in the Department’s history.

At the same time, the use of long-form consent orders declined. Make no mistake, the continued emphasis on short-form consent orders demonstrates a policy that allows the payment of a civil penalty without additional oversight by the Department. It is no doubt true that many cases come to the Department in a posture in which there is nothing left to do but to exact payment of a civil penalty. This is particularly true of situations in which the violator does not hold a permit issued by the Department. However, it is likewise true that there are many more cases in which the violator is a permittee that will be expected to continue discharges of pollutants during the life of the permit. To suggest that in the majority of those cases the Department needs to take no more oversight is disingenuous. The fact is that this is a policy that has been escalating over the past years. The escalation increased due to the legislative change in penalty policies in 2001. When that is coupled with increasing budget shortfalls and job insecurity it is perhaps inevitable that easier resolutions of enforcement cases would be seen. Tough enforcement requires more, not less, personnel and, in particular, personnel who are not afraid of losing their jobs due to budgetary problems or political intervention.

The data is not all negative, to be sure. The number of case reports sent to OGC increased again in 2007. However, that positive result is offset by the fact that the Department issued 118 fewer consent orders, the primary vehicle through which it resolves enforcement cases. This is a 9% reduction from 2006.

Governor Crist spent much of 2007 discussing the need to improve Florida's air and water quality. Yet, 2007 saw a reduction in the number of air enforcement cases. Wetland protection likewise declined from 2006, as evidenced by the decrease in the number of dredge and fill cases. When enforcement cases were opened in dredge and fill cases they were resolved with lower civil penalty assessments than in 2006. The number of new stormwater runoff cases likewise declined. When compared against historical averages for the Department both the dredge and fill and stormwater runoff results were below average. The performance of the latter two categories is also an indication of the Department's approach to developers. Given the performance over the past number of years this approach can hardly be considered to be anything other than extremely supportive of development interests.

We noted in our last report that the strong showing of civil penalty assessments in 2006 was possibly an aberration. This proved to be the case. In 2007 those assessments fell by 23%. What is disturbing, however, is that the decline was not just in one area. Indeed, 4 of the 6 districts saw declines in civil penalty assessments.

County and municipal governments accounted for 50% of all cases in which civil penalty assessments met or exceeded \$90,000.00. This is essentially the same result as in 2006 in which such governments accounted for 44% of the larger assessments. In both years the majority of those cases were domestic waste cases, signaling significant problems with Florida's infrastructure in this area. Fundamentally, the fact that governmental entities in Florida account for roughly half of the largest civil penalty assessments is troubling if we assume that taxpayer funded entities are not complying with Florida's environmental laws.

On August 14, 2007, we issued a press release accompanied by a report on the Department's new penalty policy that had a stated objective of being tougher on polluters,

particularly in the hazardous waste program. www.peer.org/news/news_id.php?row_id=90 In the release we stated:

“On July 18, 2007, Department of Environmental Protection (DEP) Secretary Michael Sole unveiled a new civil pollution fine schedule, declaring “I want to change the idea that ‘penalties are a cost of doing business’ by emphasizing the agency’s tough stance against violators.” On close examination, however, the policy will likely have very little effect because it is largely a restatement of the old policy without any mechanisms in place to ensure that the latitude for stiffer penalties is actually used.”

Unfortunately, the data generated by the Department does nothing to dispel our earlier assessment of the impact of the “new” penalty policy. While it is true that the average civil penalty assessments for hazardous waste violations increased from 2006, they still significantly underperformed compared to historical precedent. In addition, there were clear downturns in other significant areas, most notably in the dredge and fill program—an indication that developers continue to have a firm hold on Florida’s environmental future. And, equally telling is the fact that in 2007 there was a decline in total civil penalty assessments, even with the “new” penalty policy. This is hardly indicative of an agency that has decided to take a “tough stance against violators.”

As we stated above, with the exception of the Central and Northwest Districts, every district saw a decline in the total penalties assessed in 2007. In addition, the average penalty assessments declined in all but the Central District. In one district, the South District, every major program area saw declining numbers in enforcement cases. These results are not indicative of a change in philosophy within the Department—regardless of what Florida’s politicians may tell the public.

Lastly, a true change in enforcement policy would result in fewer, not more, short-form consent orders and a corresponding increase in the number of long-form consent orders, thus demonstrating the Department’s desire to continue closer oversight of those violators against whom enforcement has been taken. When the numbers go in the other direction it is clear that despite the rhetoric the policy in Florida continues to be “Pay-To-Pollute.”

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%.

ⁱ Totals include values for undesignated cases that were handled out of headquarters and that are not shown in above table.