

FLORIDA PEER

REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2008

**Florida PEER
P.O. Box 14463
Tallahassee, Florida
(850) 877-8097
(850) 942-5264 (Fax)
Email: flpeer@peer.org**

PRELIMINARY STATEMENT

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2008. 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.

Table of Contents

EXECUTIVE SUMMARY	1
A. Statewide Results	1
B. District Results	3
STATEWIDE ENFORCEMENT RESULTS.....	5
1. Case Reports, NOVs, Consent Orders, Final Orders.....	5
2. Case Reports, NOVs, Consent Orders, Final Orders – District Comparisons	6
3. Short-Form Consent Orders	11
4. Program Area Performance	13
5. Civil Penalty Assessments	14
a. The Highest Assessments.....	16
6. Civil Penalty Assessments By Program Area—District Comparison.....	18
a. Air Program	18
b. Asbestos Program	19
c. Dredge and Fill Program	20
d. Domestic Waste Program	22
e. Hazardous Waste Program	23
f. Industrial Waste Program	25
g. Potable Water Program	26
h. Solid Waste Program.....	27
i. Tanks Program	28
7. Civil Penalty Collections	29
a. Air Program	32

b.	Asbestos Program	33
c.	Dredge and Fill Program	34
d.	Domestic Waste Program	35
e.	Hazardous Waste	36
f.	Industrial Waste	37
g.	Potable Water Program	38
h.	Solid Waste Program.....	39
i.	Tanks Program	40
	DISTRICT ENFORCEMENT RESULTS	41
A.	Northeast District.....	41
A.	<i>Case Reports, NOVs, Consent Orders, Final Orders</i>	41
B.	<i>Program Area Enforcement</i>	41
C.	<i>Civil Penalty Assessments</i>	42
D.	<i>Civil Penalty Collections</i>	43
B.	Northwest District.....	43
A.	<i>Case Reports, NOVs, Consent Orders, Final Orders</i>	43
B.	<i>Program Area Enforcement</i>	44
C.	<i>Civil Penalty Assessments</i>	44
D.	<i>Civil Penalty Collections</i>	45
C.	Central District	46
A.	<i>Case Reports, NOVs, Consent Orders, Final Orders</i>	46
B.	<i>Program Area Enforcement</i>	46
C.	<i>Civil Penalty Assessments</i>	47
D.	<i>Civil Penalty Collections</i>	48
D.	Southwest District.....	48
A.	<i>Case Reports, NOVs, Consent Orders, Final Orders</i>	48
B.	<i>Program Area Enforcement</i>	49
C.	<i>Civil Penalty Assessments</i>	50
D.	<i>Civil Penalty Collections</i>	51
E.	Southeast District.....	51
A.	<i>Case Reports, NOVs, Consent Orders, Final Orders</i>	51
B.	<i>Program Area Enforcement</i>	51

C. <i>Civil Penalty Assessments</i>	52
D. <i>Civil Penalty Collections</i>	54
F. South District.....	54
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i>	54
B. <i>Program Area Enforcement</i>	54
C. <i>Civil Penalty Assessments</i>	55
D. <i>Civil Penalty Collections</i>	56
G. All Other Enforcement	56
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i>	56
B. <i>Program Area Enforcement</i>	57
C. <i>Civil Penalty Assessments</i>	57
D. <i>Civil Penalty Collections</i>	58
CONCLUSION.....	58
APPENDIX.....	61

EXECUTIVE SUMMARY

A. Statewide Results

1. General Observations

Overall, the Department opened 1526 enforcement cases in 2008, a de minimus increase from the 1525 cases opened in 2007.

The Office of General Counsel received 78 case reports in 2008, a 9% increase over 2007, and the largest number submitted since 2003. The Number of NOV's increased from 66 in 2007 to 85 in 2008.

98 long-form consent orders were issued by the Department in 2008, a 14% decrease from last year's production. On a brighter note, the percentage of all enforcement cases resolved through the use of short-form consent orders actually decreased in 2008 to levels not seen since 2005.

For the second year in a row the Department saw a decrease in the number of civil penalty assessments. Equally troubling is that the dollar amount of civil penalty assessments dropped by 5.38% from 2007's performance. Civil penalty assessments are used for many different projects and, in addition, in many cases they are used to pay state workers' salaries. At a time when Florida is seeing record budget deficits the decline in civil penalties is frankly illogical.

Statewide there were 11 cases in which the Department assessed a civil penalty of \$100,000 or more. In 2007 there were 14 such cases. In 2008 over 50% of the biggest fines were levied against governmental entities, all but one of which were local.

The decrease in the overall number of civil penalty assessments is not due to one district. In fact, all districts, except for the Northwest District, saw significantly fewer assessments. The decrease in the dollar amount of assessments is largely due to significantly poorer performance in the Southwest District which historically has turned in much higher dollar assessments than the remaining 5 districts. The median payment averages for all districts rose in 2008, with the exception of the Southwest District, which remained the same as in 2007, and the Southeast District, which saw medians drop. The single highest assessment was an air pollution case against Monteny Power Corporation in the amount of \$1,698,627.00.

Several key program areas saw declines in the number of enforcement cases opened in 2008. This was the second straight year in which the number of air cases dropped. In addition, declines were seen in dredge and fill cases, hazardous waste and domestic waste cases and potable water cases. In addition, with respect to the actual dollar assessments there were declines

in the median assessment averages of the waste cleanup, hazardous waste, domestic waste, industrial waste and tanks programs. Given the Department's announcement last year that it intended to increase its fines, particularly in the hazardous waste area, the fact that median assessments actually dropped in the key programs belies the spin.

For the first time in our annual report we have included a breakdown of how each district is performing in assessing civil penalties in the major program areas. We felt that a review of this data would be helpful in assessing the effectiveness of the "new" penalty policy announced by the Department last year. What the data shows is that in the air program there is little discrepancy amongst the districts. The Central and Southeast had disproportionately high assessments; however, those were due to two cases. In the dredge and fill program it was interesting to see that assessments were lower in the districts responsible for Florida's Atlantic Coast and central counties; whereas the districts that handle the Gulf region assessed higher penalties. The hazardous waste program saw a similar pattern as did the air program, i.e. two districts (Northeast and Central) saw significantly higher assessments based on two cases.

A statewide total of \$5,484,480.00 in civil penalties was collected by the FDEP in 2008. This is \$599,213.04 below the amount collected in 2007, a 9.8% decline. The single highest collection amount was \$190,000.00 paid by the Palm Beach Post in a domestic waste case against it.

Given the decrease in penalty assessments, the decrease in collections could be expected, except to say that in a climate of severe budget deficits it would seem that a greater emphasis on actually collecting the fines assessed would be in order. In many of these program areas the fines are used to pay the salaries of Department employees, not to mention their use in helping to improve Florida's environment. Likewise, it does little good to espouse a tough penalty policy when the violators know that there is a 50/50 chance that little will be done to actually collect the fine.

As with assessments, we also included a new section in this report dedicated to looking at how effective the districts were in collecting civil penalty assessments overall, as well as on a program-by-program basis. The results show a wide discrepancy ranging from the Central District which collected only 24% of its assessments to the Southwest District, which collected 86% of the fines that it levied. Some programs such as the air program saw very high collection rates across almost all of the districts; whereas other programs, two in particular (dredge and fill and domestic waste) saw significantly lower collection rates, also across the spectrum. The hazardous waste program, which saw healthy collections, also saw a marked tendency across all of the districts towards collection of the lower assessments and a lower collection rate of the higher assessments—something not nearly as pronounced as in the other program areas.

We have also included a listing of the highest dollar assessments by program area in this report. We have included the names of the violators as well. In addition, we have included a listing of the highest collections made by the Department in each program area.

B. District Results

1. Northeast District

The Northeast District increased the number of case reports, NOV's and final orders initiated in 2008 when compared to its performance in 2007. There were far fewer consent orders issued and 81% of the consent orders that were issued were short-form. Overall, 62% of all enforcement taken by the district in 2007 was in the form of short-form consent orders, a slight decrease in their usage. Civil penalty assessments increased significantly from 2007. Most programs saw increases in their median assessments; however, dredge and fill, industrial waste, solid waste and the tanks program all saw declines. Collections declined in this district in 2008.

2. Northwest District

The Northwest District backed off the number of case reports it sent to OGC in 2008, while it maintained its level of NOV issuance. It also issued more consent orders in 2008 than it did in 2007 with 66% of the consent orders being short-form. It still issues the second highest percentage of short-form consent orders than any other district in the state. Civil penalty dollar assessments saw a modest increase in 2008, though median assessments dropped in domestic waste and hazardous waste cases. Collections rose substantially compared to 2007.

3. Central District

The Central District saw increases in the number of all enforcement mechanisms except for consent orders, which saw a modest decline. 60% of the consent orders that were issued were of the short-form variety, fewer than in 2007. It issued four fewer consent orders in 2008 of which 65% were of the short-form variety. There were more air, domestic waste (1), hazardous waste (7) and mangrove alteration cases in 2008, compared to 2007. The district assessed civil penalties in fewer cases in the dredge and fill, industrial waste, potable water and solid waste programs. Civil penalty dollar assessments rose dramatically in 2008; however, median assessments dropped in seven of the thirteen program areas in 2008. Most notably the declines included hazardous waste assessments, though there were also significant declines in the asbestos, potable water, solid waste and tanks programs. Improvements were seen in domestic and industrial waste in particular. Total collections dropped significantly in spite of the rise in total assessments.

4. Southwest District

Enforcement in the Southwest District was not as strong as in past years. It saw fewer case reports, but did issue many more NOV's than in years past. It generated fewer consent orders than in 2007 of which 81% were of the short-form variety. Its high usage of short-form consent orders led the state, an unusual development given past enforcement. New enforcement cases dropped in the dredge and fill, domestic waste, hazardous waste and industrial waste programs.

Civil penalty dollar assessments dropped 60% compared to 2007, the second straight year of declining numbers. **Significant programs such as domestic waste, hazardous waste, industrial waste and potable water all saw significant declines in their median assessments.** Collections also declined for the second straight year, although the District continues to lead the state in the amount of money collected.

5. Southeast District

The Southeast District saw significant declines in every enforcement mechanism in 2008. In 2007 it issued 181 Consent Orders, compared with 98 in 2008. Generally, the numbers all point to weakening performance in 2008. Significant declines in the number of assessments were seen in the following program areas: dredge and fill, domestic waste, hazardous waste, mangrove alteration, potable water, solid waste, tanks and underground injection. Civil penalty dollar assessments rose 82% in 2008; however, that increase was due largely to one air pollution case against Montenay Power Corporation. If that assessment were not considered the district would have actually seen a drop in assessments. Median assessments dropped in the following program areas: asbestos, waste cleanup, **dredge and fill, domestic waste, hazardous waste**, mangrove alteration, solid waste and tanks. A modest increase in collections was seen in 2008.

6. South District

The SD saw modest increases in the number of Case Reports, NOV's and Final Orders in 2008. This was tempered by a drop in the number of Consent Orders. However, 56% of the Consent Orders were short-form, the lowest percentage in the state. The following programs saw a declining number of assessments in 2008: air, asbestos, domestic waste, hazardous waste and potable water. The district assessed \$847,313.92 for the year, a \$108,500.92 (15%) increase from the penalties assessed by the district in 2007. Median assessments declined in domestic waste, hazardous waste, industrial waste and two air sub-programs. Collections saw a modest increase in 2008.

7. All Other Enforcement

This category typically involves Beaches and Coastal Systems categories and Stormwater Runoff cases. The remaining categories saw improvements in all the numbers of enforcement mechanisms in 2008, including Consent Orders. Both assessments and collections dropped in 2008 compared to 2007. Median assessments dropped in both beaches and shores and the stormwater runoff programs—the two programs primarily handled in this section.

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

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

The Department requested serious enforcement through the filing of complaints in civil circuit courts in 78 cases in 2008, an increase of 6 over 2007. This is the third year in a row with increases in this category.

The issuance of NOVs rose from 66 in 2007 to 85 in 2008, indicating continued improvement in this area.

The issuance of long-form consent orders dropped 14% in 2007 with only 98 such orders being issued statewide. This continues a decline in the use of these significant enforcement tools.

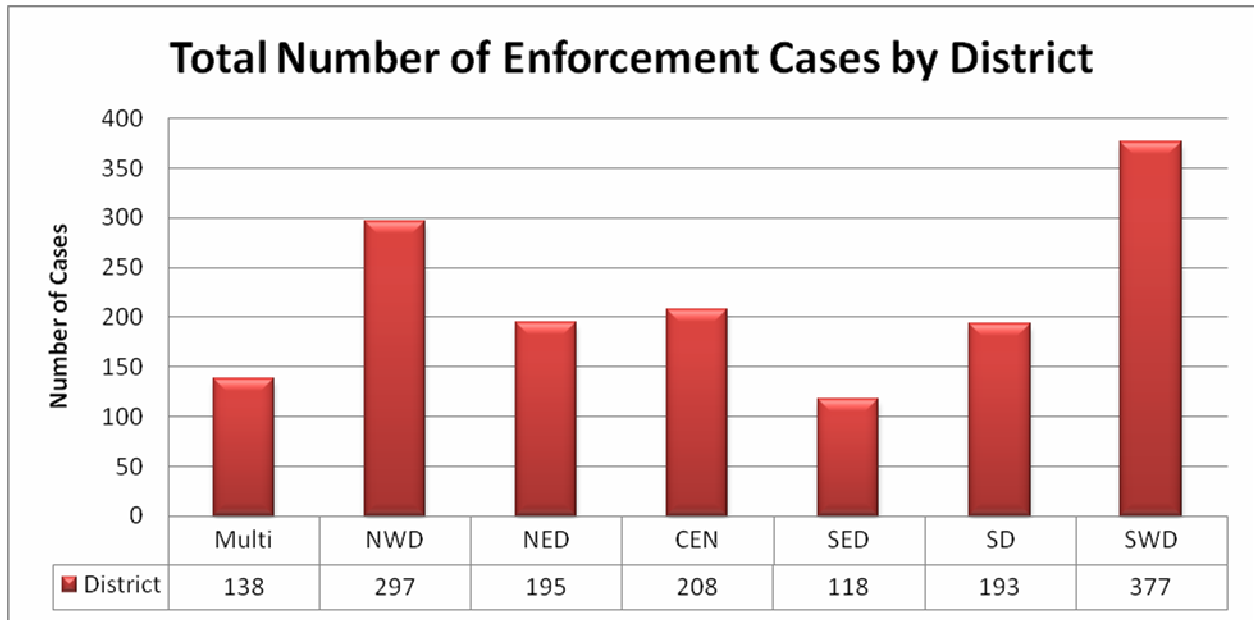
The use of model consent orders increased from 250 in 2007 to 282 in 2008—a 14% increase.

The Department actually decreased its usage of short-form consent orders in 2008. 887 such orders were issued statewide, compared to 949 in 2007, reverting to a level more akin to the level in 2006. These orders represent 58.13% of all enforcement initiated in 2008, a bit of a decline from 2007's exceedingly high percentage.

The Department issued 56 Final (Enforcement Related) Orders in 2008, a continued increase in the use of these tools.

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

¹ A complete report on the past 20 years of environmental enforcement in Florida can also be found at http://www.peer.org/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf



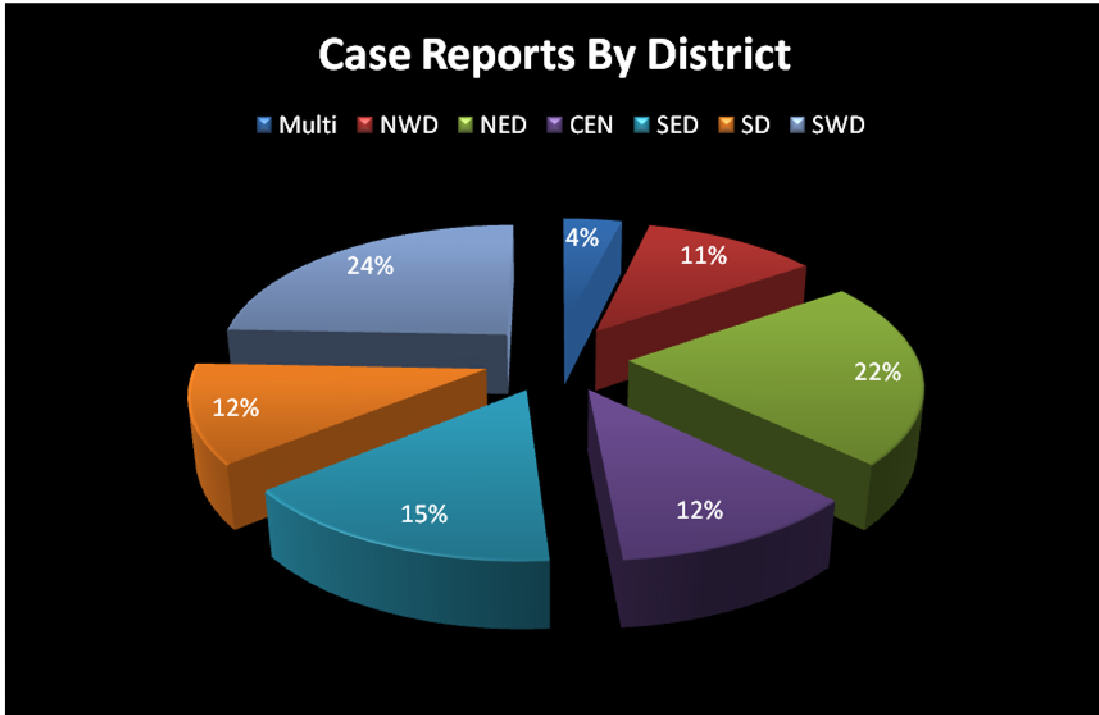
Once again the Southwest District is responsible for a significant portion of the enforcement that is undertaken by the Department as a whole. However, 67.64% of the time that the district elects to use a consent order to resolve an enforcement case it does so via a short-form consent order. And it uses short-form consent orders more often than does any other district. Thus, while it is more apt to take enforcement, it is arguably not the most aggressive district in the state.

As in 2007, the South District was the district least likely to resolve cases through use of a short-form consent order.

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

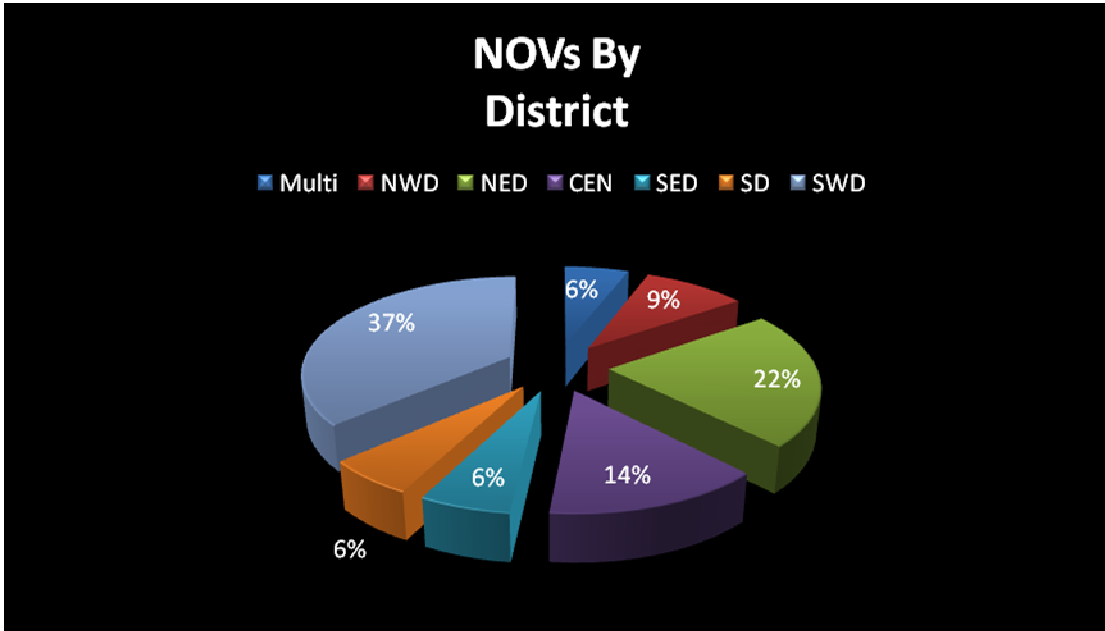
We also looked at the contribution by each District with respect to different enforcement tools. The results follow:

a. Case Reports

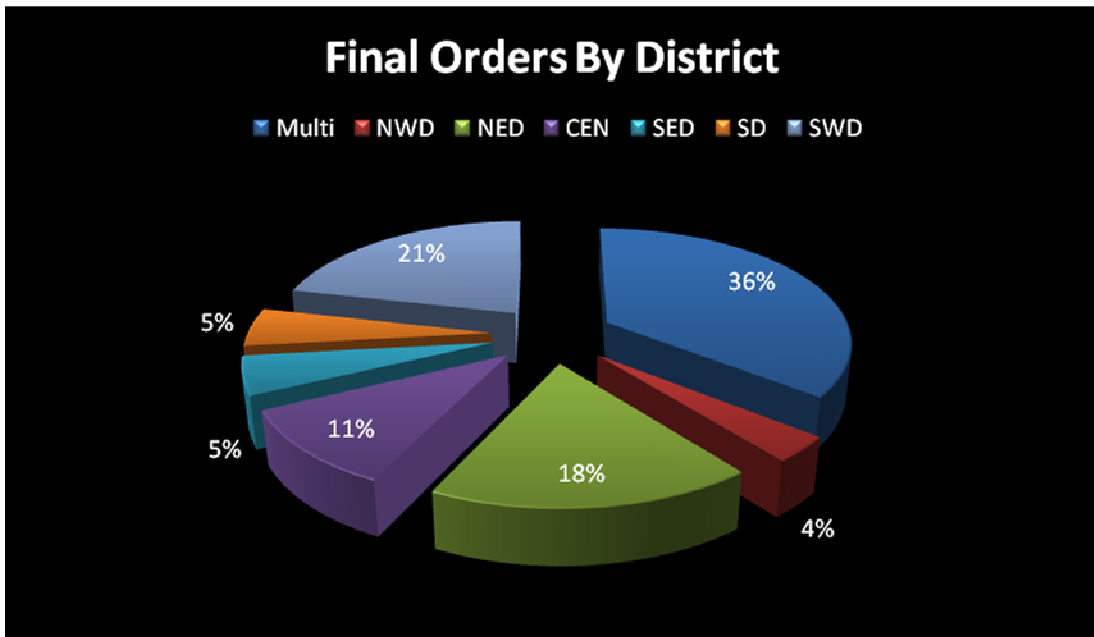


On average, the Department uses litigation in only 5.11% of all of its enforcement cases. And while the Southwest District accounts for the largest number of cases, it is the Southeast District that uses litigation most often (10.17%) when compared to the other forms of enforcement tools at its disposal.

b. NOVs

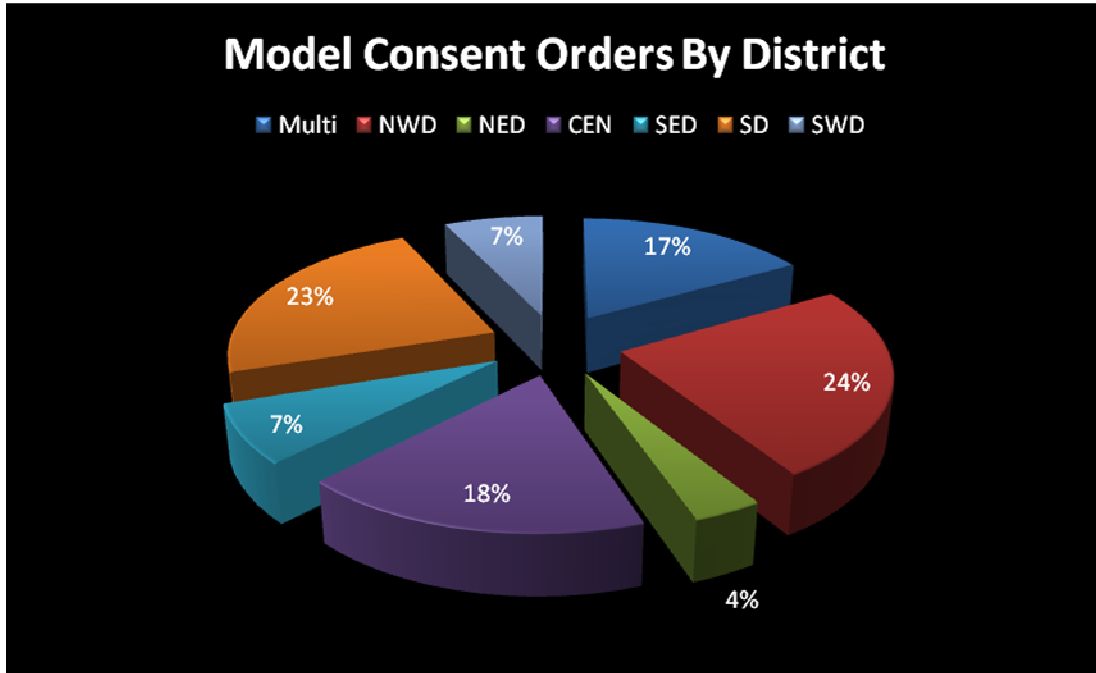


c. Final Orders

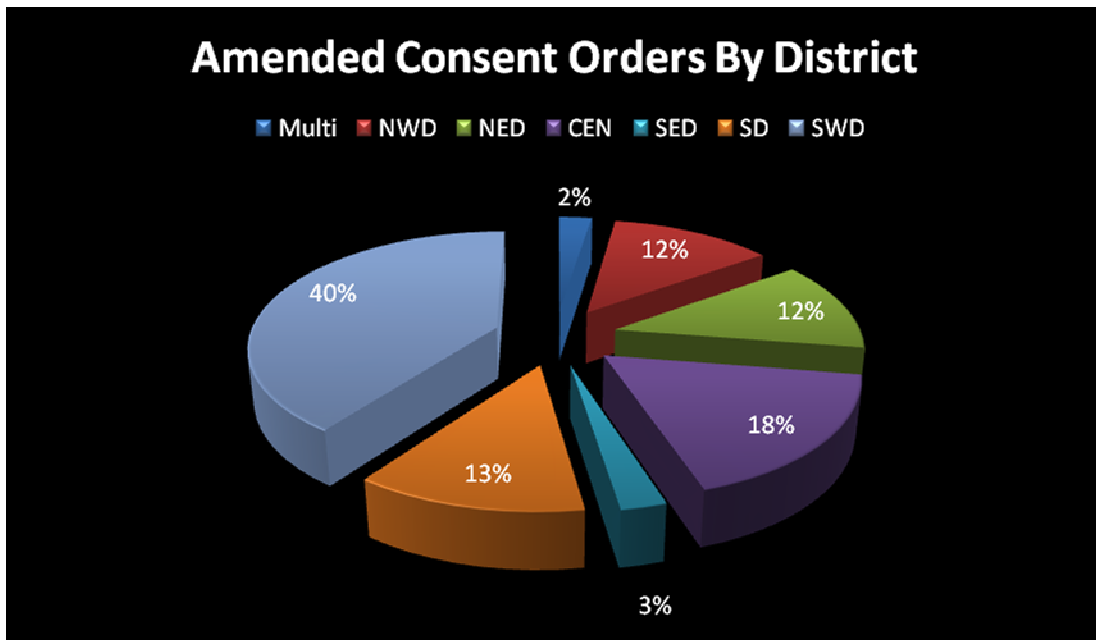


As is clear in the above chart, the majority of final orders are issued out of Tallahassee. The overwhelming majority of cases handled are beaches and shores cases, as well as stormwater runoff cases.

d. Model Consent Orders



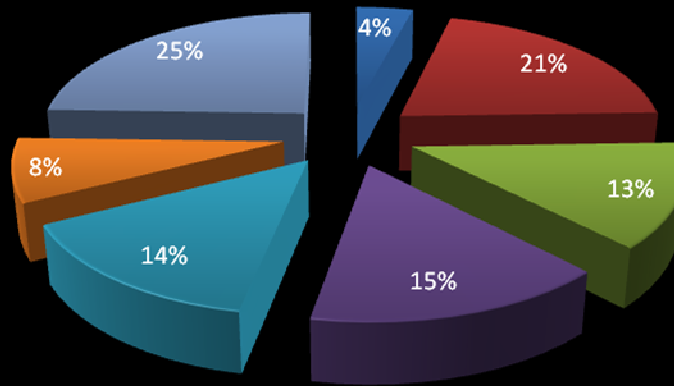
e. Amended Consent Orders



f. Long-Form Consent Orders

Long-Form Consent Orders By District

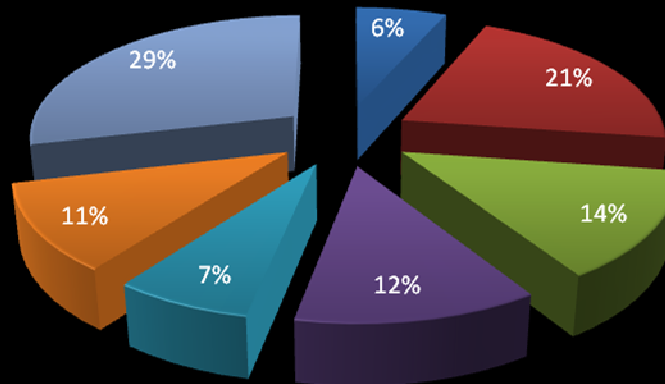
Multi NWD NED CEN SED SD SWD



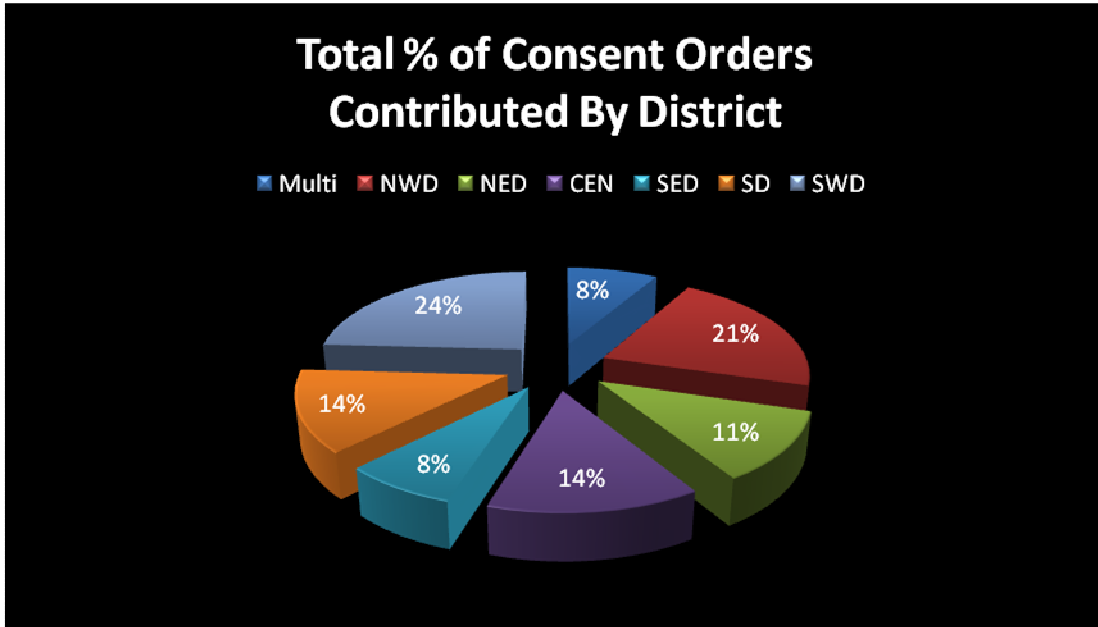
g. Short-Form Consent Orders

Short-Form Consent Orders By District

Multi NWD NED CEN SED SD SWD



h. All Consent Orders Combined



3. Short-Form Consent Orders

We are pleased to see that 2008 saw a net decrease in the Department's use of short-form consent orders. This is the first decrease on an annual basis since 2004. The following table demonstrates the history of the use of these enforcement mechanisms from 1988 to the present by showing the percentage of all enforcement cases each year 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%
2008	58.13%

Once again, all districts settled a clear majority of their cases through the short-form route; however, all of the districts reduced their reliance on this enforcement tool. The sole exception to this trend was in the Southwest District, which actually increased its use of short-form consent orders over 2007. The following table, which compares the use of short-form consent orders to all other enforcement tools, gives the actual percentages.

<i>District</i>	<i>% Cases Settled Through SF COs</i>
<i>Central</i>	52.40%
<i>Northeast</i>	62.05%
<i>Multi-District</i>	42.03%
<i>Northwest</i>	61.95%
<i>Southeast</i>	52.54%
<i>South</i>	50.78%
<i>Southwest</i>	67.64%

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.

<i>District</i>	<i>% Cases Settled Through SF Cos Compared to Other Cos</i>
<i>Central</i>	52.40%
<i>Northeast</i>	62.05%
<i>Multi-District</i>	52.73%
<i>Northwest</i>	61.95%
<i>Southeast</i>	52.54%
<i>South</i>	50.78%
<i>Southwest</i>	67.64%

In those cases in which the districts made a decision to use a consent order, all of them chose to use a short-form consent order less frequently than in 2007, most by sizeable percentages. The sole exception, once again, was the Southwest District which reported only a minimal drop.

4. Program Area Performance

The number of enforcement cases² brought in each key program area is as follows:

Program Area	Total No. of Enf. Cases
Asbestos	44
Air (Excluding Asbestos)	123 ³
Beaches/Coastal	21
Waste Cleanup	15
Dredge & Fill ⁴	219
Domestic Waste	186
Hazardous Waste	173
Industrial Waste	67
Potable Water	181
Stormwater Runoff	134
Solid Waste	55
Tanks	221
Underground Injection Control	2

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

Program Area	Historical Averages ⁵	Difference
Asbestos	13	31
Air (Excluding Asbestos)	93	30
Beaches/Coastal	14	7
Waste Cleanup	4	11

² Defined as the sum of case reports, all consent orders, NOVs and Final Orders.

³ Results in red represent declines from 2007 values.

⁴ This includes Environmental Resource Permitting.

⁵ The Historical Averages shown have been revised to include the twenty year period of 1987 through 2007.

Dredge & Fill	216	3
Domestic Waste	119	67
Hazardous Waste	132	41
Industrial Waste	47	20
Potable Water	112	69
Stormwater Runoff	35	95
Solid Waste	39	16
Tanks	72	147
Underground Injection Control	5	-3

Key programs saw decreases in the number of enforcement cases from 2007. These programs are Air, Dredge and Fill, Domestic Waste, Hazardous Waste, Potable Water and Underground Injection Control. The fact that all key areas except for industrial waste saw declines is seriously troubling—especially given the Department’s assertions that it would increase enforcement in hazardous waste cases.

5. Civil Penalty Assessments

The Department assessed civil penalties in 1408 cases in 2008, the second straight year in which the number of assessments has declined.⁶ In addition, in 2008, the Department assessed \$11,666,589.49 in civil penalties, **\$663,556.89 less than in 2007 and the second straight year of decline.** The decline in assessments is surprising considering the Department’s announced plan to increase environmental protection through harsher penalty assessments.

Statewide there were 11 cases in which the Department assessed a civil penalty of \$100,000 or more. Six of those cases were against governmental entities. 3 cases saw penalty assessments of between \$90,000 and \$100,000 and none of those were against governmental entities.

The key program areas also saw median dollars assessed on a per case basis as follows:⁷

Program Area	Historical Medians	2007 Medians	2008 Medians
Asbestos	\$2,000.00	\$2,000.00	\$2,000.00
Air (Excluding Asbestos)	\$1,699.50	\$1,525.00	\$2,000.00
Beaches/Coastal	\$500.00	\$750.00	\$750.00
Waste Cleanup	\$4,500.00	\$4,000.00	\$1,875.00
Dredge & Fill	\$700.00	\$1,100.00	\$1,500.00

⁶ The Department assessed civil penalties in 1472 cases in 2007.

⁷ Data in red represent declines from the performance in 2007.

Domestic Waste	\$2,250.00	\$2,200.00	\$2,000.00
Hazardous Waste	\$4,100.00	\$4,300.00	\$3,866.00
Industrial Waste	\$4,500.00	\$4,000.00	\$3,100.00
Potable Water	\$500.00	\$500.00	\$700.00
Stormwater Runoff	\$600.00	\$1,000.00	\$1,199.00
Solid Waste	\$2,843.00	\$4,000.00	\$4,000.00
Tanks	\$2,712.00	\$4,250.00	\$4,000.00
Underground Injection Control	\$6,850.00	\$11,400.00	\$17,800.00

It bears restating that in mid-2007 the Department announced what it maintained was a new, stricter, penalty policy.⁸ The announcement noted:

“The changes to DEP’s guidelines provide a stronger deterrent for the most egregious violations, ultimately reducing the number of significant infractions that occur,” said DEP Secretary Sole. “I want to change the idea that ‘penalties are a cost of doing business’ by emphasizing the agency’s tough stance against violators.”

We evaluated this policy and concluded that under this “new” policy, increases in penalties, if they were to occur, were likely to occur in predominately one area—hazardous waste.⁹ The actual results have been underwhelming. 2007 saw a 4.8% increase in the median assessments for hazardous waste cases. However, last year, the median assessments actually **declined** to levels not seen since 2005. Of the 11 penalty assessments exceeding \$100,000 only 2 were in hazardous waste cases and both of those assessments were against governmental entities (the United States Navy in case #82520 and the Lake County School Board in case #80193).

Not only did the median payment averages decline in hazardous waste cases, but other key program areas likewise saw decreases, most notably the domestic and industrial waste programs. The air and dredge & fill programs saw respectable gains.¹⁰

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

DISTRICT	TOTAL \$ ASSESSED	MEDIAN ASSESSMENTS	% OF STATE TOTAL
Multi-District	\$180,637.25	\$750.00	2
NWD	\$2,383,081.40	\$1,750.00	20
NED	\$1,299,388.75	\$2,000.00	11
CEN District	\$2,462,553.41	\$2,299.00	21
SED	\$2,212,838.00	\$2,000.00	19

⁸ See, DEP Secretary Announces Strengthened Penalty Guidelines at Keynote Speech to Major Environmental Gathering, http://www.dep.state.fl.us/secretary/news/2007/07/0718_01.htm

⁹ See, Tough New Florida Pollution Penalties Not So Tough After All, August 14, 2007. http://www.peer.org/news/news_id.php?row_id=903

¹⁰ There were only 2 underground injection cases in 2008, thus the sizeable increase is unlikely to support a conclusion that the increase is due to a significant policy shift.

SD	\$847,313.92	\$2,000.00	7
SWD	\$2,280,776.76	\$3,000.00	20

In terms of dollars assessed, with the exception of the Southwest District, every district saw an increase in the total penalties in 2008. However, the Southwest District, which historically has the most assessments of any district in the state, saw a sharp decrease of 39.78% in that district's total dollars assessed.

The comparison of median assessments from 2007 to 2008 amongst the districts is as follows:

DISTRICT	NUMBER OF ASSESSMENTS IN 2007	2007 MEDIAN ASSESSMENTS	NUMBER OF ASSESSMENTS IN 2008	2008 MEDIAN ASSESSMENTS
Multi-District	79	\$1,000.00	126	\$750.00
NWD	287	\$1,500.00	303	\$1,750.00
NED	173	\$1,350.00	158	\$2,000.00
CEN District	196	\$1,937.50	195	\$2,299.00
SED	167	\$3,000.00	104	\$2,000.00
SD	200	\$1,500.00	185	\$2,000.00
SWD	368	\$3,000.00	337	\$3,000.00

As can be seen from the above data, of the 6 districts, only the Southeast District saw a decline in its median assessments. The Southwest District saw no change from 2007. When the number of assessments is examined for each district; however, another picture emerges. First, it is clear that of the 6 districts, only the Northwest District actually assessed fines in more cases in 2008 than in 2007. The Southeast District not only assessed penalties in fewer cases, it also saw a decrease in the amount of the assessments charged. The Southwest, South, Central and Northeast Districts all assessed penalties in fewer cases; however, when penalties were assessed in 2008 the data suggests that the penalties were somewhat higher overall than in 2007.

a. The Highest Assessments

The following is a list of the highest assessments levied by the Department in 2008, sorted by program area:¹¹

¹¹ The abbreviations are as follows: AB = Asbestos; AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AS = Air Permitted Source; AV = Air Title 5; AW = Aquatic Weed; BS = Beaches and Shores; CC = Collections Case; CU = Waste Cleanup; DA = Disciplinary Action; DF = Dredge and Fill; DW = Domestic Waste; EP = Environmental Resource Permitting (Dredge & Fill); HW = Hazardous Waste; IW = Industrial Waste; MA = Mangrove Alteration; MN = Mining Operations; OC = Operator Certification; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Runoff; S1 = Untreated Domestic (Footnotes continued on next page)

District	Program	Case Style	Amount
1	AB	A & B DOZING; DEP VS.	\$21,250.00
6	AC	SUPERIOR ASPHALT, INC.; DEP VS.	\$10,000.00
6	AF	WHEELBLAST, INC.; DEP VS.	\$16,200.00
4	AG	TARMAC AMERICA, LLC; DEP VS.	\$7,090.00
6	AO	IFCO SYSTEMS NORTH AMERICA, INC.; DEP VS.	\$15,000.00
4	AP	MONTENAY POWER CORP.; DEP VS.	\$1,698,627.00
5	AV	FLORIDA CRYSTAL, INC.; DEP VS.	\$14,905.00
0	AW	STATE LAKES, INC.; AND HABICHT, KEVIN B. AND DENISE S.; DEP VS.	\$2,500.00
0	BS	THE BEACH AND YACHT CLUB OF PERDIDO KEY OWNERS ASSOCIATION; DEP VS.	\$3,500.00
2	CC	ABN VENTURE, INC. AND ALI, AMIR; DEP VS.	\$89,037.00
6	CU	LOCKHEED MARTIN CORPORATION; DEP VS.	\$48,797.00
4	DA	TYLER, SHAWN D.; DEP VS.	\$2,000.00
5	DF	DE LEON, ISREAL AND ANDERSON EXCAVATION, INC.; DEP VS.	\$92,569.61
1	DW	SANTA ROSA COUNTY NAVARRE BEACH WATER & SEWER DEPARTMENT; DEP VS.	\$371,250.00
2	EP	WEBB MARINE CONSTRUCTION, INC.; DEP VS.	\$5,000.00
2	HW	UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY; DEP VS.	\$435,084.00
4	IW	UNDERHILL FARMS, INC.; DEP VS.	\$30,000.00
4	MA	VENTURE CONCEPTS INTERNATIONAL, INC.; DEP VS.	\$3,200.00
6	MN	MOSAIC FERTILIZER, L.L.C.; DEP VS.	\$76,480.90
4	OC	MCKEEFRY, DONALD; DEP VS.	\$1,000.00
6	PG	MOSAIC FERTILIZER, L.L.C.; DEP VS.	\$14,540.00
3	PW	AQUA UTILITIES FLORIDA, INC.; DEP VS.	\$28,900.00
0	RO	JUBILEE; DEP VS.	\$11,199.00
4	S1	MIAMI-DADE WATER & SEWER DEPARTMENT; DEP VS.	\$9,500.00
4	S3	MIAMI-DADE WATER & SEWER DEPT.; DEP VS.	\$9,500.00
5	SL	MORRISSETTE, DENNIS G.; DEP VS.	\$10,000.00
1	SW	LOUISIANA INVESTMENT GROUP, LLC; DEP VS. (FORMERLY LEAF VS. DEP)	\$661,500.00
6	TK	POLK COUNTY BOARD OF COUNTY COMMISSIONERS; DEP VS.	\$160,000.00
4	UC	MIAMI-DADE COUNTY; DEP VS.	\$35,000.00

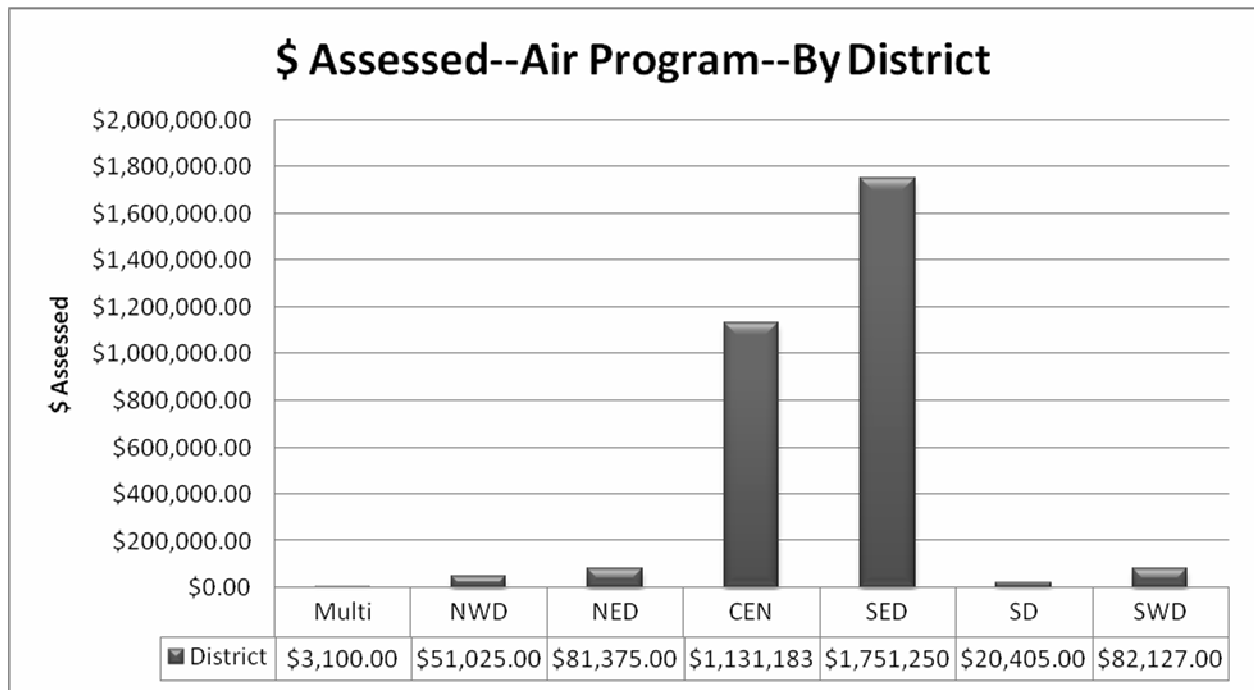
Waste Spills; S3 =Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection.

6. Civil Penalty Assessments By Program Area—District Comparison

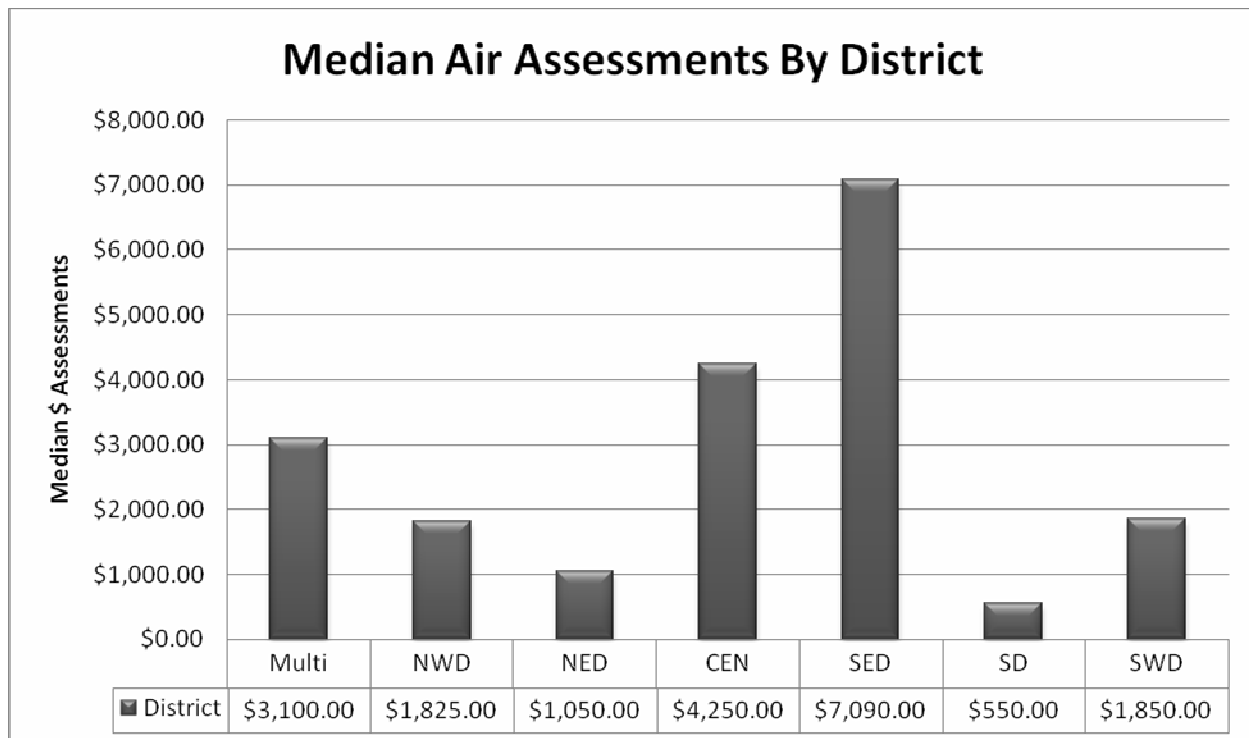
Given the Department’s announced emphasis on the new penalty policy we felt it would be appropriate to also look at the major program areas to see how the districts compared in their performance. What follows is a side-by-side comparison regarding the total dollars assessed in each program area, as well as a comparison of each district’s median assessment.

a. Air Program

The Governor has been very public about his administration’s efforts to improve the quality of Florida’s air. It is a fair question then to ask whether the Department’s districts are aggressively pursuing his stated agenda. The Department’s data suggests that not every district is being particularly aggressive.

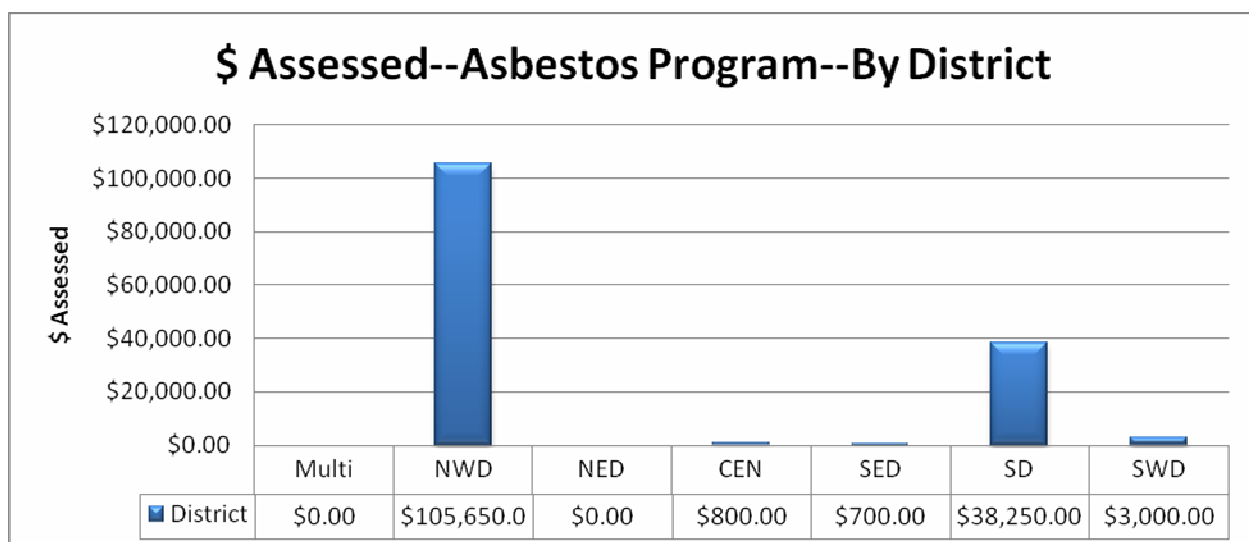


Only the Central and Southeast Districts saw significant assessments in the air program. And when the median assessments are considered the same pattern emerges:

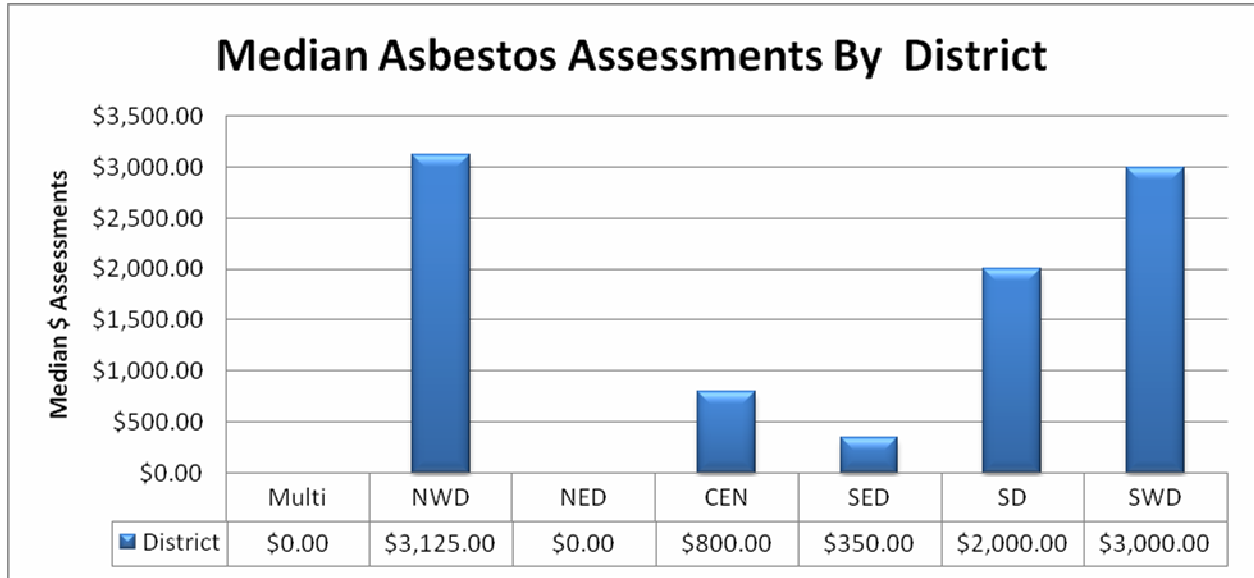


The median assessments indicate that on average the Central and Southeast Districts are being tougher on air violations than the remaining districts. Indeed, of all of the various air program assessments, the two highest assessments occurred in the Central District which assessed a \$798,981.00 fine against Volusia County (#72701) and in the Southeast District which assessed a \$1,698,627.00 fine against Montanay Power Corporation (#81652). What is particularly troubling in these numbers, we believe, is the low medians in the Northeast and Southwest Districts, both of which are more populated and have higher concentrations of industry.

b. Asbestos Program



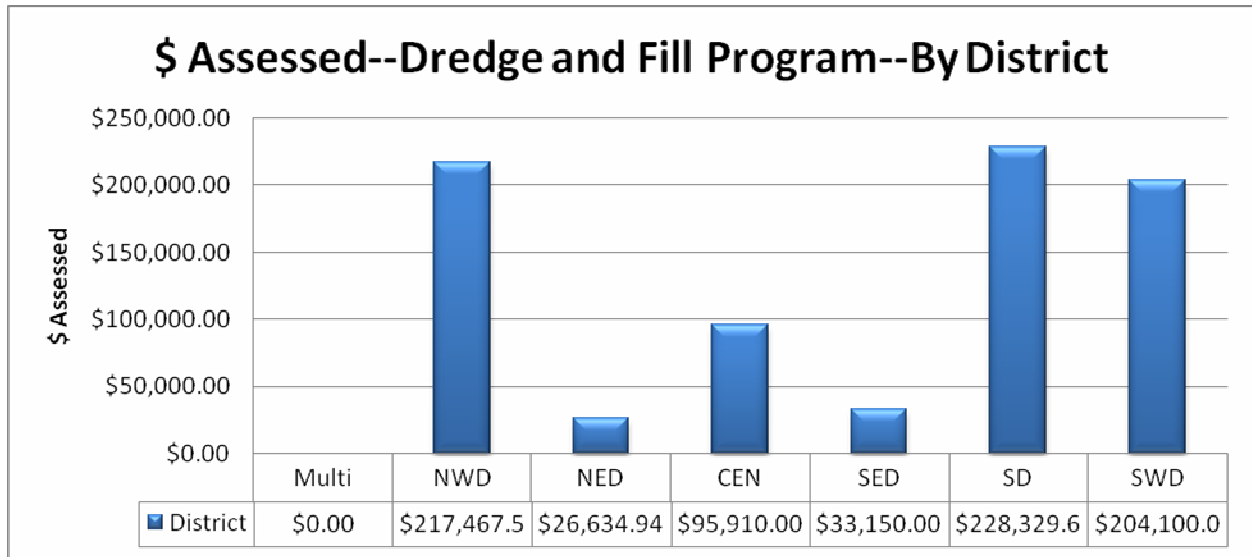
It is clear from the above that only two districts are showing even a moderate amount of enforcement in this area. The remaining districts are either foregoing assessments altogether or are relying on local programs to handle this area for them.



Given the paucity of assessments in all but the Northwest and South Districts the median assessments in this program, even though higher in the Southwest District, can hardly be seen as indicative of aggressive involvement by the Department. Again, however, local programs are likely picking up at least some of the slack in some districts.

c. Dredge and Fill Program

This is an area that, in many respects more than most, is in the political bulls-eye in Florida. Historically development interests have always been powerful in the state. They continue to be so, even with the current economic problems facing the state. Not surprisingly, this appears to have carried through to the dredge and fill program—the program most responsible for oversight over wetland destruction. The data show a significant discrepancy amongst the districts in the amount of penalties assessed:



Interestingly, there is a significant difference between the districts that are responsible for enforcement along Florida’s Atlantic coastline (and South Central areas of the state) and those that are involved with the Gulf coast. In fact, if all of the penalties assessed by the Northeast, Central and Southeast Districts are combined, they still do not surpass the dollars assessed by the lowest performing district that handles wetland protection for the Gulf region.

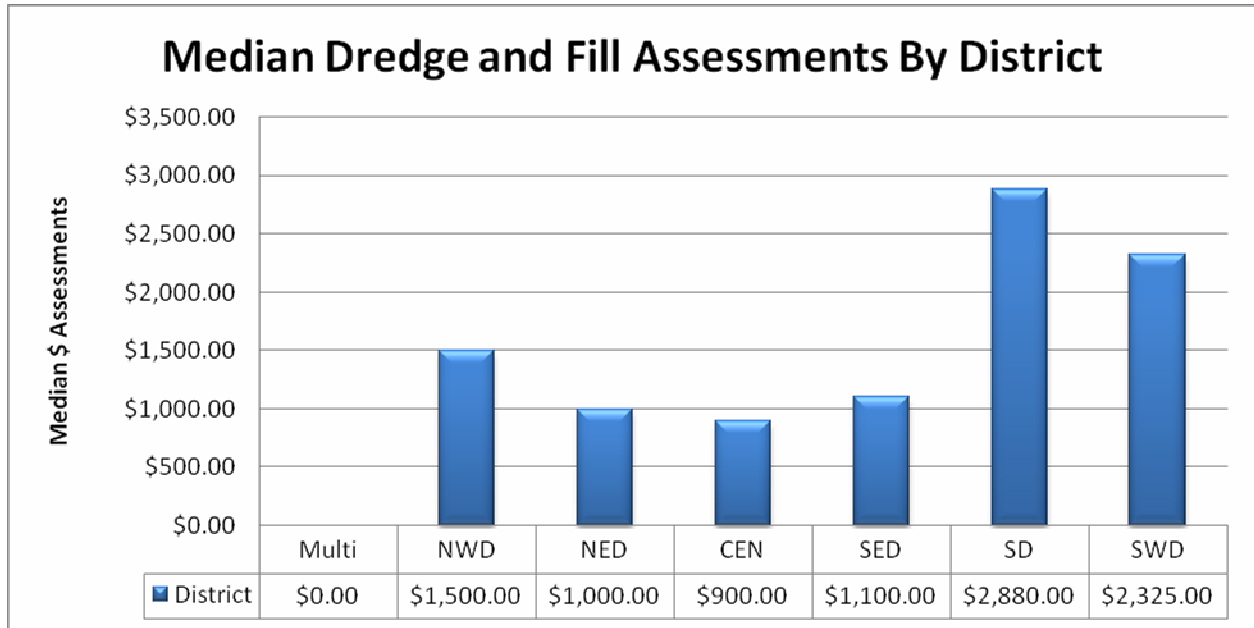
An anecdotal case demonstrates the mentality involved in the Department’s enforcement of Florida’s dredge and fill laws. During the course of the year we were alerted to the manner in which the Department had handled a dredge and fill violation in the Northeast District. The issue involved the unpermitted use of concrete riprap, a rather straightforward violation. Upon review of the file we found that a complaint was made to the Department on August 5, 2008. It was assigned complaint number 16122. Department personnel investigated the site the next day and confirmed that the unpermitted activities were well underway and also confirmed that the activity was unpermitted. Photographs were taken to confirm the violation, as well as confirming the existence of other unpermitted activity by other landowners.¹² The file reflects that the violator feigned ignorance of the necessity of obtaining a permit yet somehow managed to apply for the same (including payment of the \$500 application fee) the same day as the inspection. The following day, August 7, the Department wrote to the violator and informed him that his activities may have violated Section 373, Florida Statutes.¹³ In an entry on September 3, 2008, the permit file states: “As long as permit gets issued, no fines and penalties; if permit gets denied, we will re-address and resolve issues through fines and penalties or complete removal.” Not surprisingly, on December 19, 2008, the Department issued its notice of intent to issue the permit. No enforcement file was ever opened. No fines were ever assessed. Thus, the approach is

¹² There was no indication in the file that separate investigations were being opened to handle the observed violations by other property owners.

¹³ §373.129(5), Fla. Stat., provides for a civil penalty up to \$10,000/day for this type of unpermitted activity. Each day that the unpermitted structure remains in the wetlands constitutes a new violation. §403.121(3)(c), Fla. Stat., provides that the Department shall assess a minimum fine of \$1,000.00 for unpermitted dredging and filling.

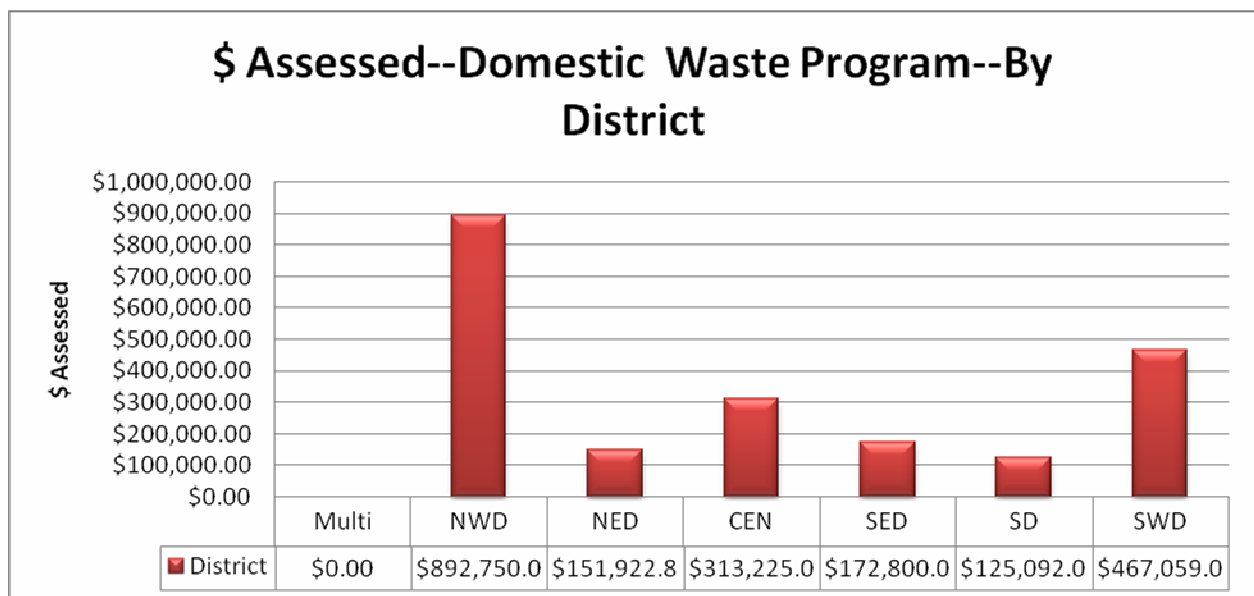
clear: go ahead and violate Florida’s dredge and fill laws—if you’re caught just apply for an after the fact permit and all will be forgiven.

The same pattern exists in the median assessments:



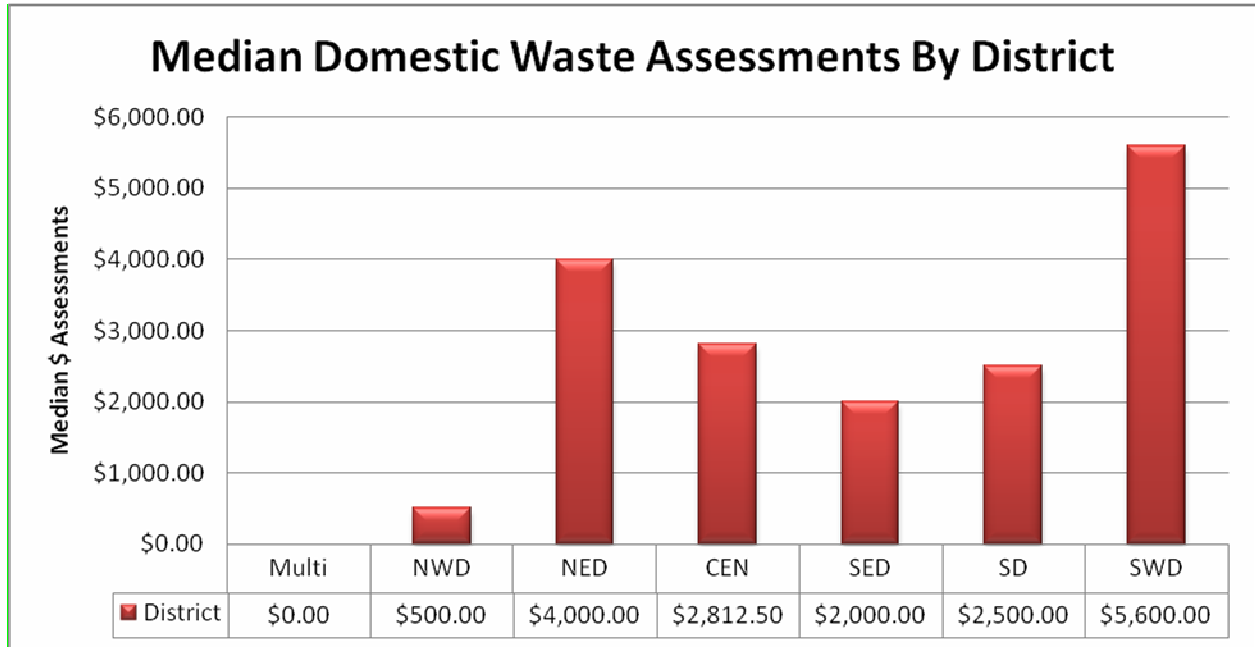
d. Domestic Waste Program

In terms of a pattern of assessments, this program area generally follows the dredge and fill program:



While the Northwest District significantly assessed more penalties than the other districts in this program area, \$371,250.00 of its assessments were levied against one violator (Santa Rosa County, Navarre Beach Water & Sewer Department, OGC #71203). Nevertheless, even if that assessment is subtracted out, the district still assessed more dollars in penalties than any other district.

The dollars assessed do not entirely reflect the severity of assessments in the Northwest District, however. For as is shown below, fines out of this district typically were much lower than the other districts in the state:

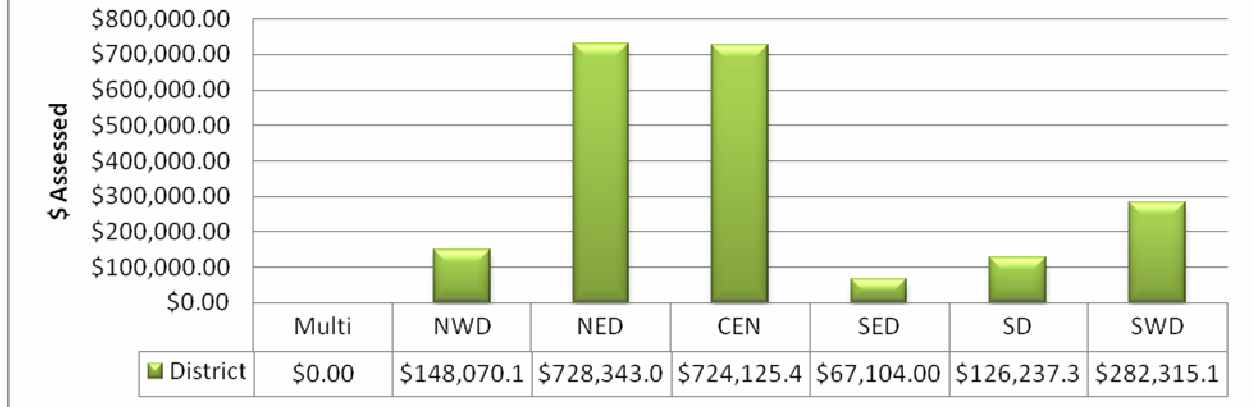


Thus, the data suggests that the Northwest District saw a large dollar amount of assessments levied, but the fines levied were typically not as severe as high other districts, particularly the Southwest District.

e. Hazardous Waste Program

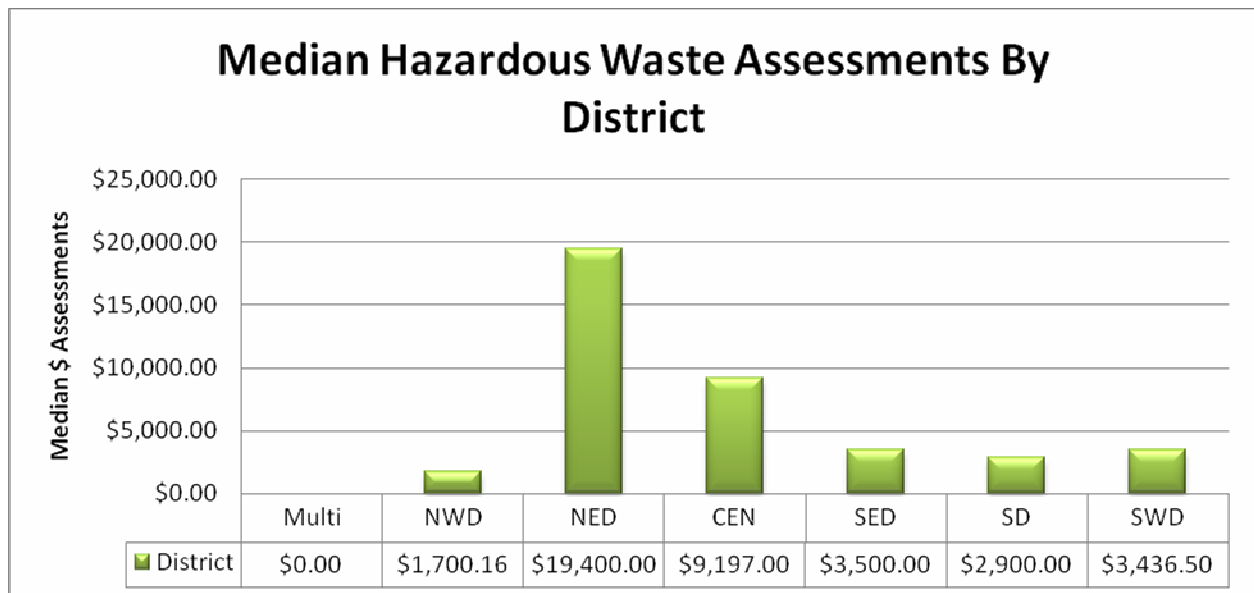
As previously stated, this is the program area that the FDEP has said would see higher civil penalties due to an effort to ensure that violators did not see hazardous waste fines as nothing more than a cost of doing business. Notwithstanding those assurances, as explained in Section 5. above, fines in the hazardous waste program actually dropped in 2008. When the data is examined for district performance it can be readily seen that only two districts saw significant assessments:

\$ Assessed--Hazardous Waste Program--By District



\$435,084.00 of the \$728,343.00 assessed by the Northeast District was the result of one assessment against the United States, Department of the Navy. The Central District's highest assessment, by contrast, was against the Florida Institute of Technology in the amount of \$143,121.61.

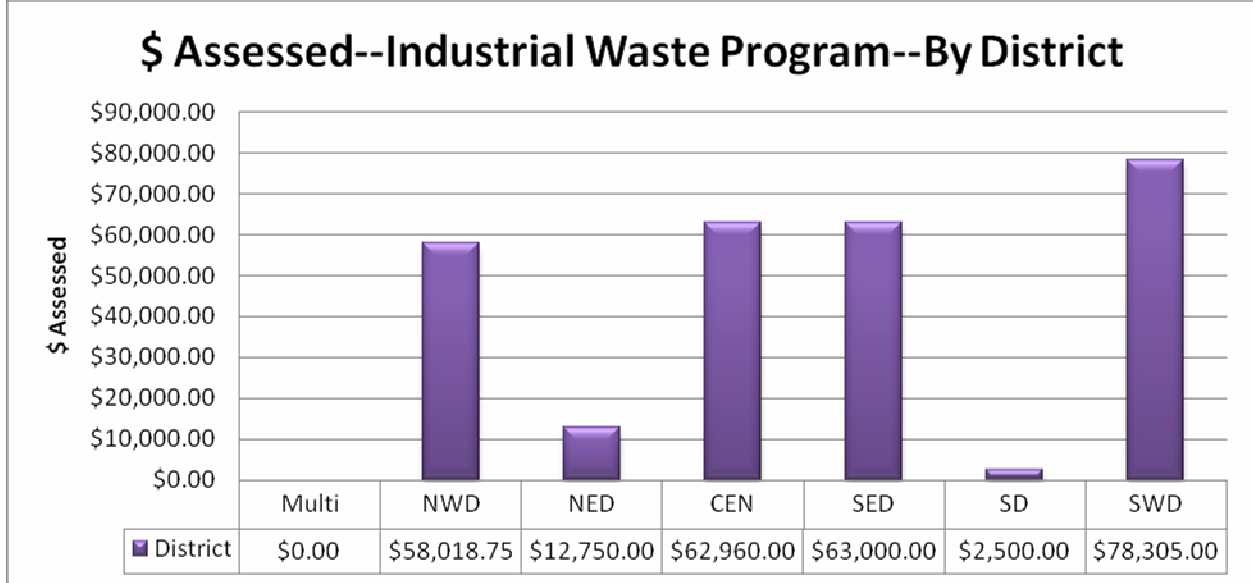
Median assessments followed the same pattern:



In other words, the average median assessment in the Northeast District was roughly equal to the highest dollar assessment levied by the Southeast District—an indication of how poorly the Southeast District performed.

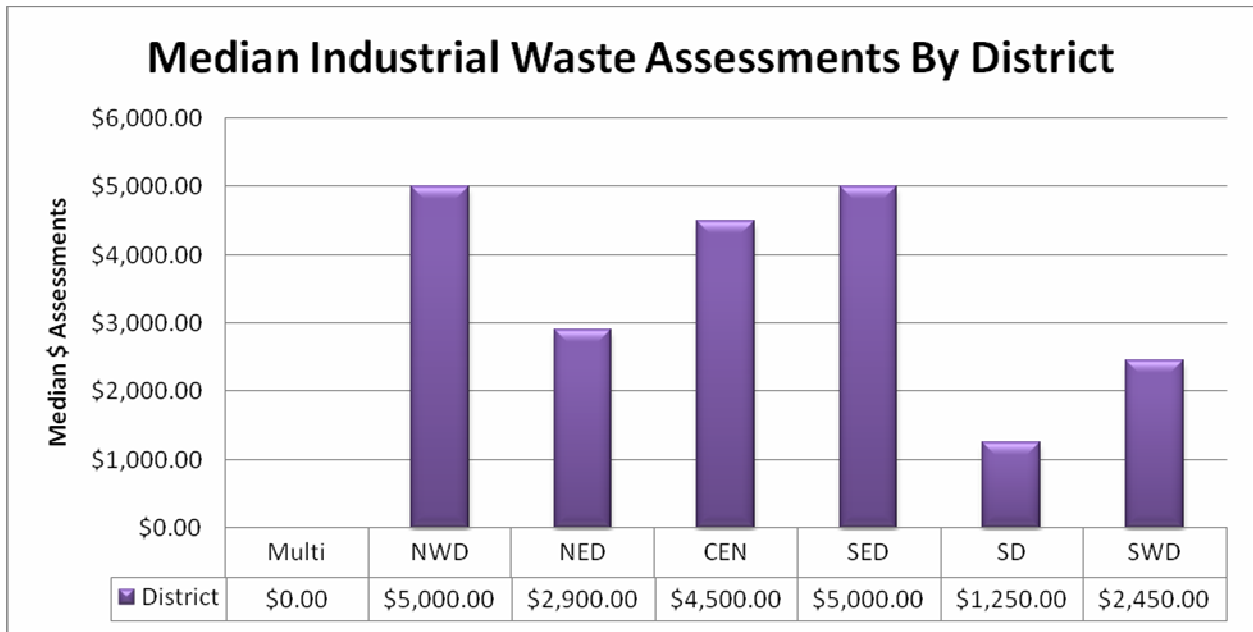
f. Industrial Waste Program

With the exception of the Northeast and South Districts, the Districts saw a rather uniform performance:



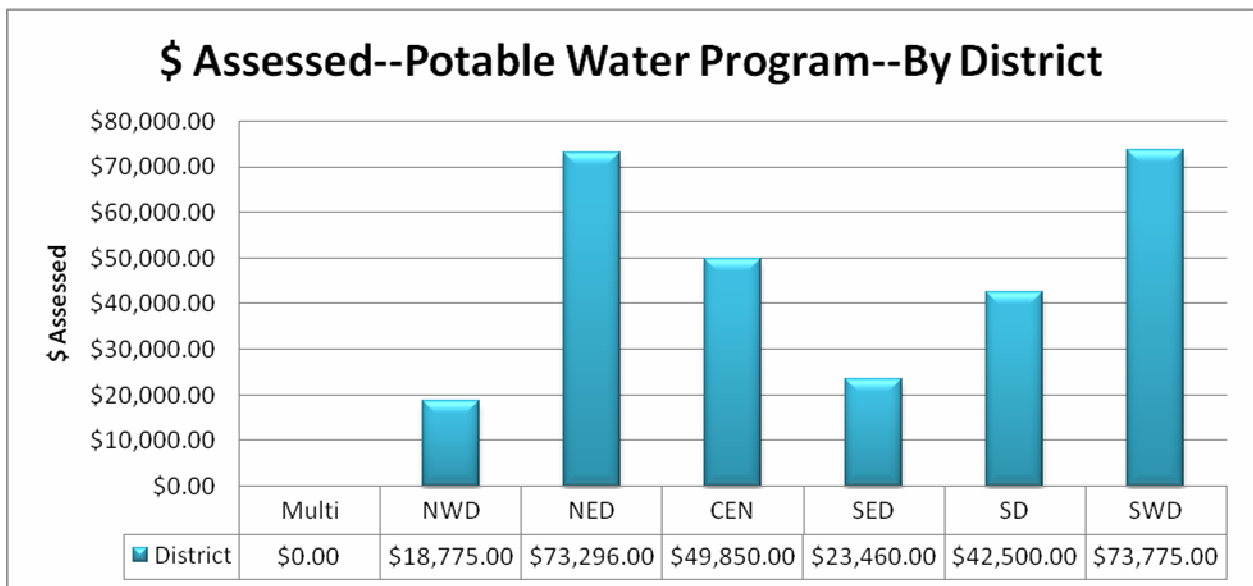
While the performance was relatively uniform it should also be noted that the single highest assessment of all of the districts was against Underhill Farms, Inc. (#31952) in the amount of \$30,000.00 in the Southeast District. Industrial waste violations are typically industrial discharges of pollutants into surface waters. Given the high number of surface waters in Florida that are severely impaired, i.e. contaminated by pollutants, it is inexplicable that the state is able to muster only minimal assessments against the corporations that are largely responsible for the violations.

Median assessments were likewise rather uniform on a district to district basis:

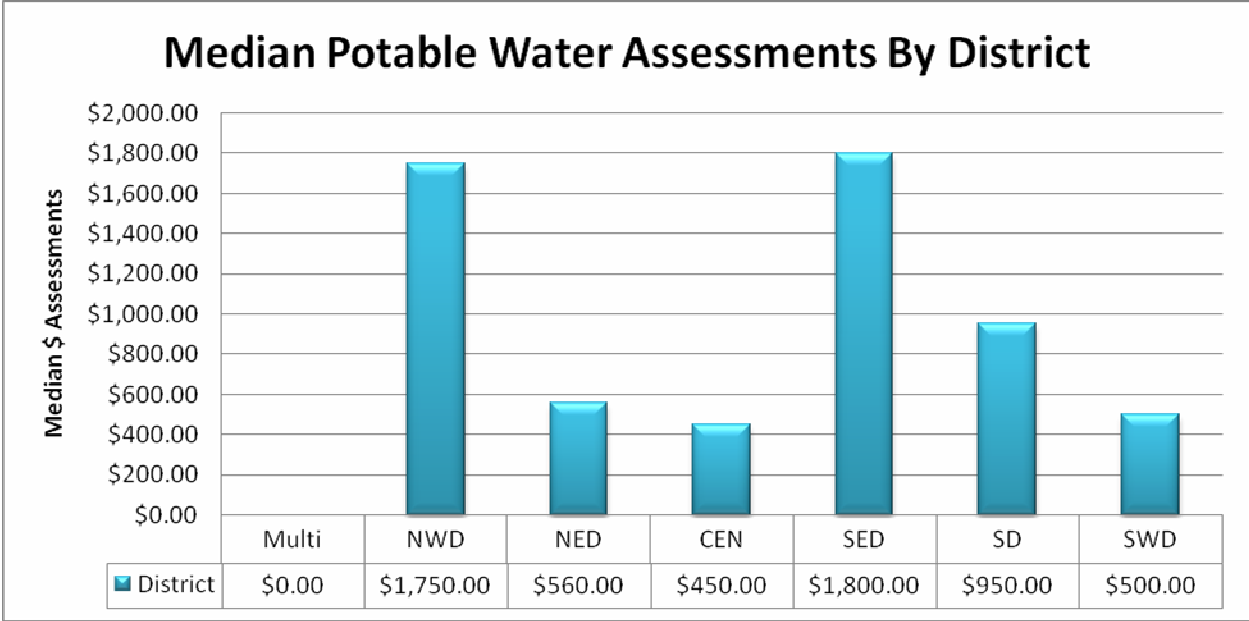


g. Potable Water Program

The potable water program oversees the provision of drinking water to Florida’s families, businesses, schools etc. Despite this critical responsibility the Legislature has, by statute, minimized the typical fine for violation of these regulations. The districts have assessed those fines as follows:

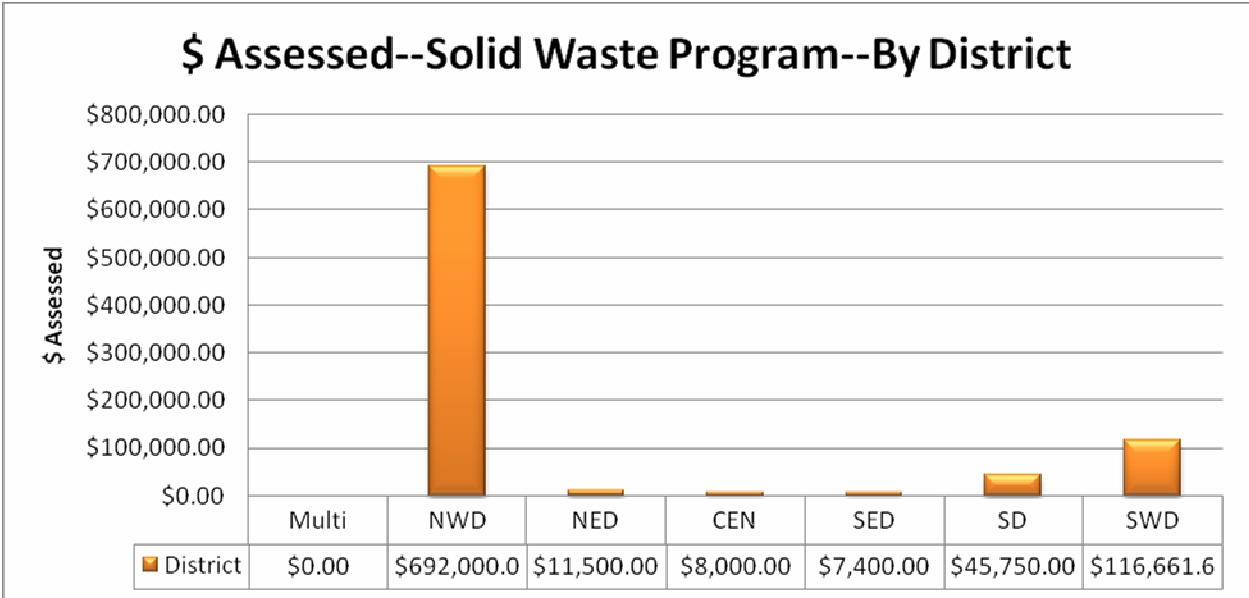


The Central District had the single highest assessment (\$28,900.00) of all of the districts. The case was against Aqua Utilities of Florida, Inc. (#62432). The Northwest and Southeast Districts assessed the fewest penalties of the six districts. However, as the following chart shows, they also had the highest median assessments of all of the districts.



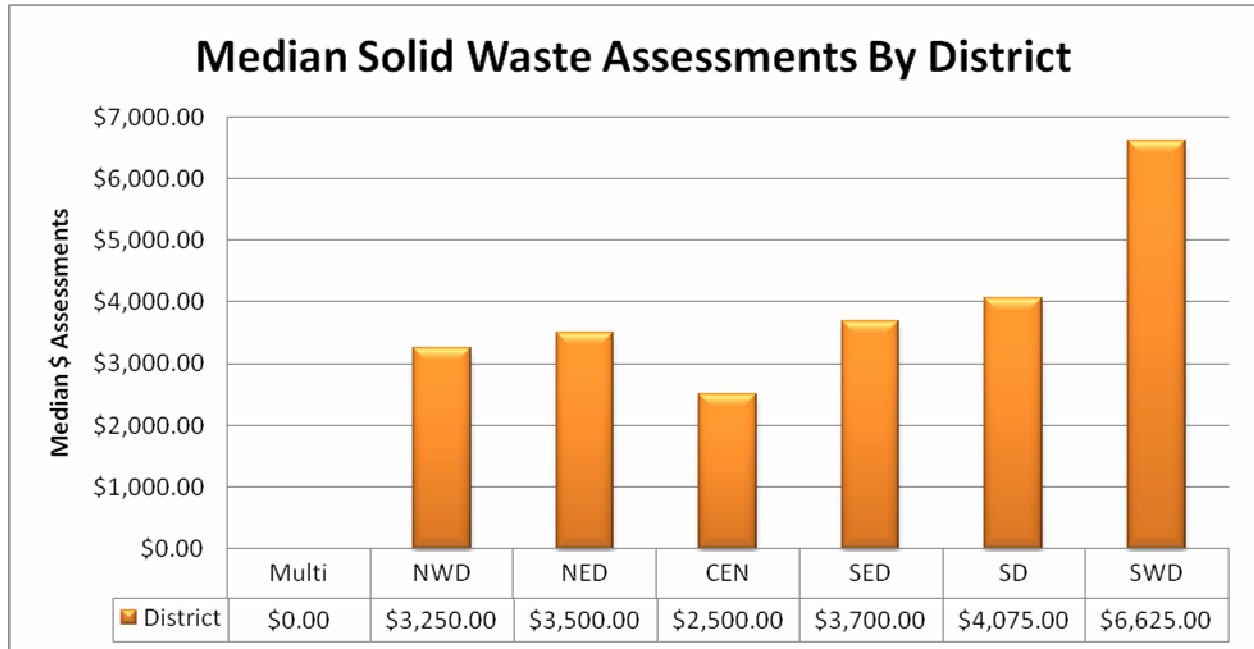
h. Solid Waste Program

This program oversees the handling of Florida’s solid waste that is deposited into landfills across the state. The data show a program whose performance was unremarkable in 2008.



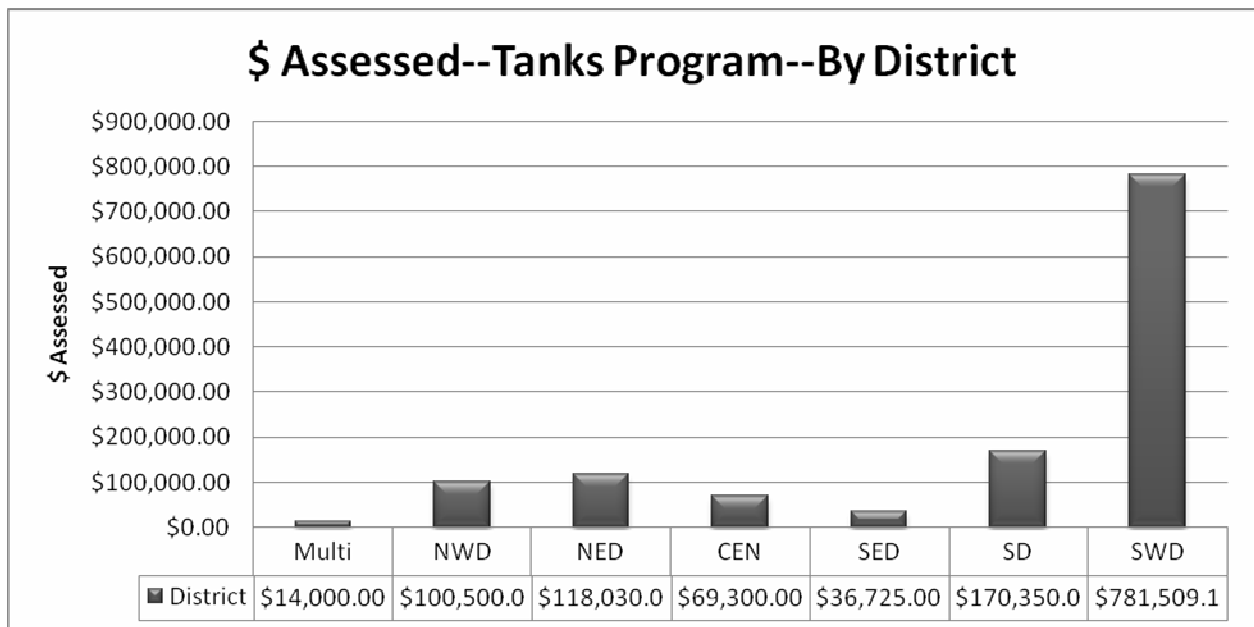
The Northwest District’s extraordinary total is largely the result of one assessment of \$661,500.00 against the Louisiana Investment Group, LLC (#61157) in March 2008. Had that one assessment not been levied the district would have had the third highest total of the six

districts. The South and Southwest Districts accounted for 24 of the 41 assessments that were levied across the state. The median assessments broke down as follows:



i. Tanks Program

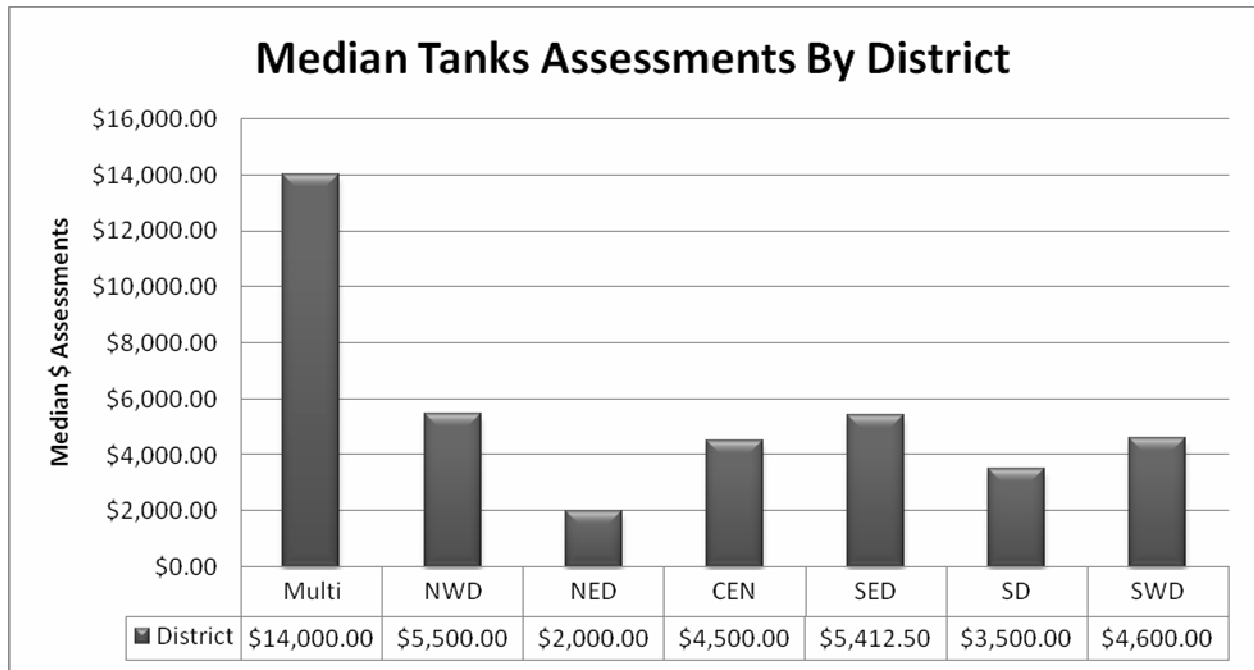
The storage and handling of Petroleum products is regulated under the tanks program. Not surprisingly, this is an active program area each year. The data reflect a somewhat uniform assessment pattern across the state with the lowest performance being seen in the Southeast District.



69% of all of the assessments levied in this program area occurred in the Southwest and South Districts.

The Southwest District not only assessed the most fines in the state, it also accounted for the largest single assessment (\$160,000 against Polk County Board of County Commissioners, #80339). The next highest assessment in the state was also against a county. It was levied in the South District against Charlotte County Board of County Commissioners in the amount of \$74,500.00 (#81123).

The median assessments were:



The median assessment reported in Tallahassee is based on one assessment of \$14,000.00 against Home Depot in case number 71900.

7. Civil Penalty Collections

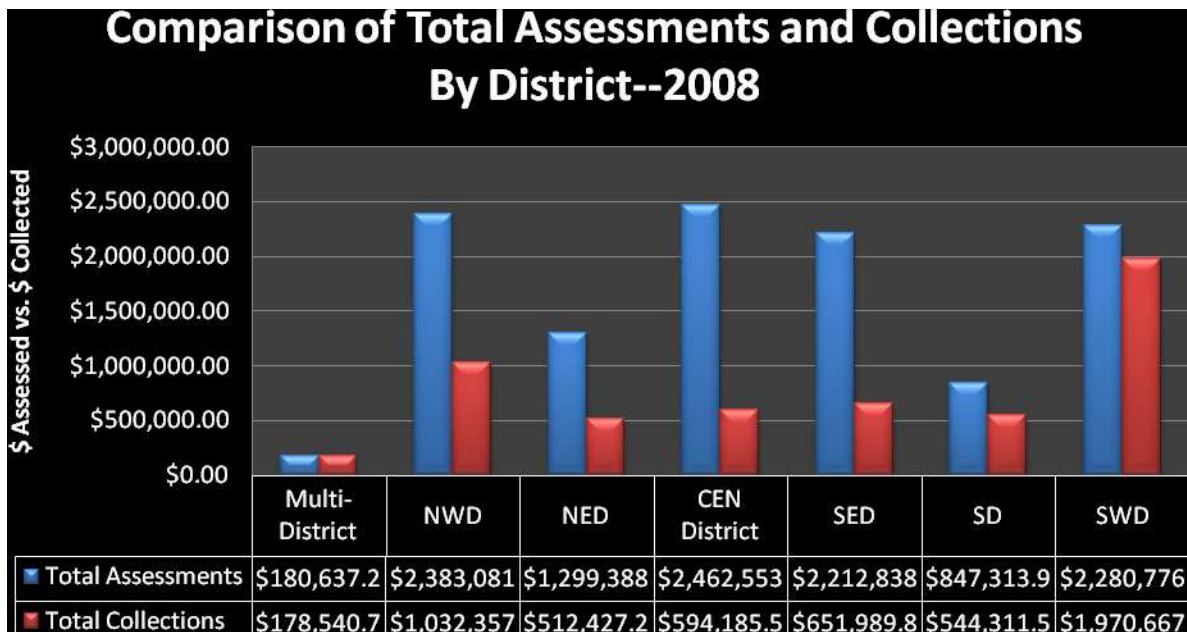
A statewide total of \$5,484,480.00 in civil penalties was collected by the FDEP in 2008. This is \$599,213.04 below the amount collected in 2007, a 9.8% decline.

The following chart shows the highest collections, sorted by program area:

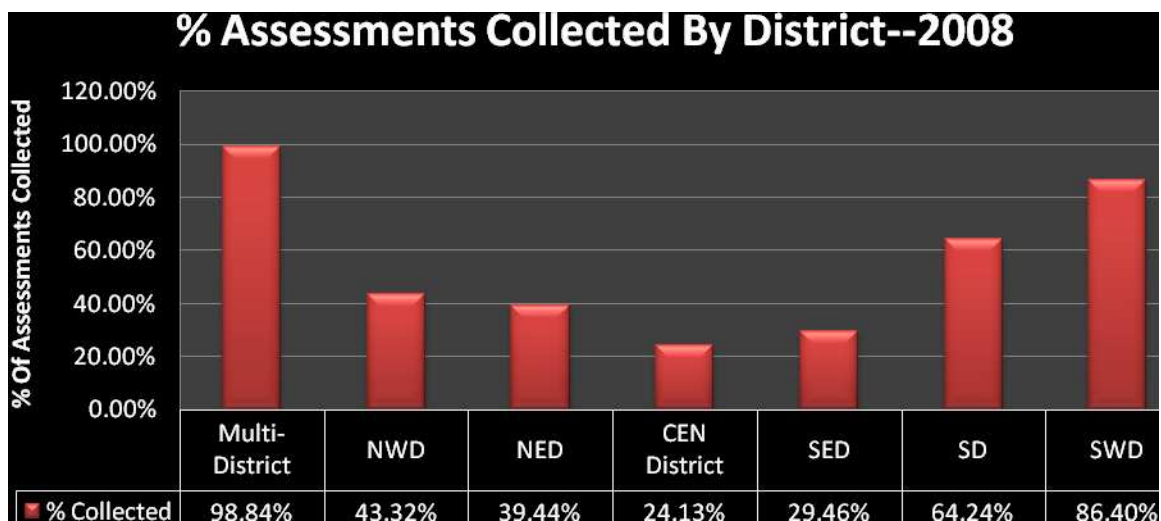
District	Program	Case Style	Amount
1	AB	FORTNEY & WEYGANDT, INC.; DEP VS.	\$9,250.00
6	AC	SUPERIOR ASPHALT, INC.; DEP VS.	\$10,000.00

6	AF	WHEELBLAST, INC.; DEP VS.	\$1,800.00
4	AG	TARMAC AMERICA, LLC; DEP VS.	\$7,090.00
6	AO	IFCO SYSTEMS NORTH AMERICA, INC.; DEP VS.	\$15,000.00
3	AP	FLORIDA PRODUCTION ENGINEERING, INC.; DEP VS.	\$44,250.00
5	AV	FLORIDA CRYSTAL, INC.; DEP VS.	\$14,905.00
0	AW	STATE LAKES, INC.; AND HABICHT, KEVIN B. AND DENISE S.; DEP VS.	\$2,500.00
0	BS	THE BEACH AND YACHT CLUB OF PERDIDO KEY OWNERS ASSOCIATION; DEP VS.	\$3,500.00
6	CU	LOCKHEED MARTIN CORPORATION; DEP VS.	\$48,797.00
6	DF	MCCAUGHAN, MARIE A.; HORNYAK, MICHAEL C; ADAMS, EGAN & STORY, ROBIN; DEP V.	\$40,000.00
4	DW	PALM BEACH POST; DEP VS.	\$190,000.00
2	EP	MASTERPIECE HOMES, LLC; DEP VS.	\$3,900.00
6	HW	INDUSTRIAL GALVANIZERS - SOUTHEASTERN INC; DEP VS.	\$45,114.00
2	IW	ILUKA RESOURCES, INC.; DEP VS.	\$30,800.00
4	MA	VENTURE CONCEPTS INTERNATIONAL, INC.; DEP VS.	\$3,200.00
6	MN	MOSAIC FERTILIZER, L.L.C.; DEP VS.	\$76,480.90
4	OC	MCKEEFRY, DONALD; DEP VS.	\$1,000.00
6	PG	MOSAIC FERTILIZER, L.L.C.; DEP VS.	\$14,540.00
3	PW	AQUA UTILITIES FLORIDA, INC.; DEP VS.	\$28,900.00
0	RO	JUBILEE; DEP VS.	\$11,199.00
4	S1	MIAMI-DADE WATER & SEWER DEPARTMENT; DEP VS.	\$9,500.00
4	S3	MIAMI-DADE WATER & SEWER DEPT.; DEP VS.	\$9,500.00
5	SL	MORRISSETTE, DENNIS G.; DEP VS.	\$16,600.00
6	SW	WCA OF FLORIDA, LLC; DEP VS.	\$30,499.00
5	TK	CHARLOTTE COUNTY BOARD OF COUNTY COMMISSIONERS; DEP VS.	\$74,500.00
4	UC	MIAMI-DADE COUNTY; DEP VS.	\$35,000.00

The following chart shows each district and compares the dollars assessed by each district in 2008 with the dollars actually collected:



When looked at on a percentage basis, i.e. the percent of assessments actually collected the results are more clearly seen:

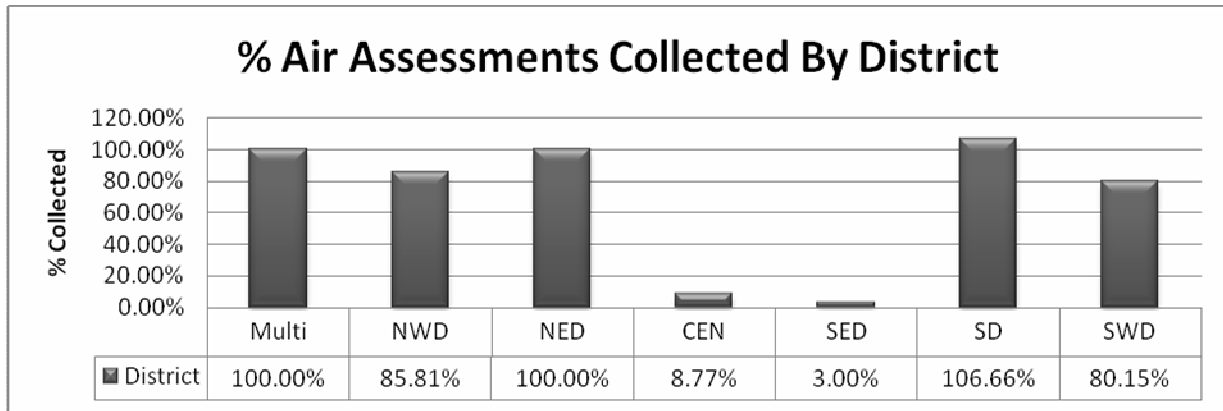


Given the decrease in penalty assessments, the decrease in collections could be expected, except to say that in a climate of severe budget deficits it would seem that a greater emphasis on actually collecting the fines assessed would be in order. Likewise, it does little good to espouse a tough penalty policy when the violators know that there is a 50/50 chance that little will be done to actually collect the fine.

Drilling down deeper, we looked at the percentage of assessments actually collected by each district in the major program areas. Those results follow.¹⁴

a. Air Program

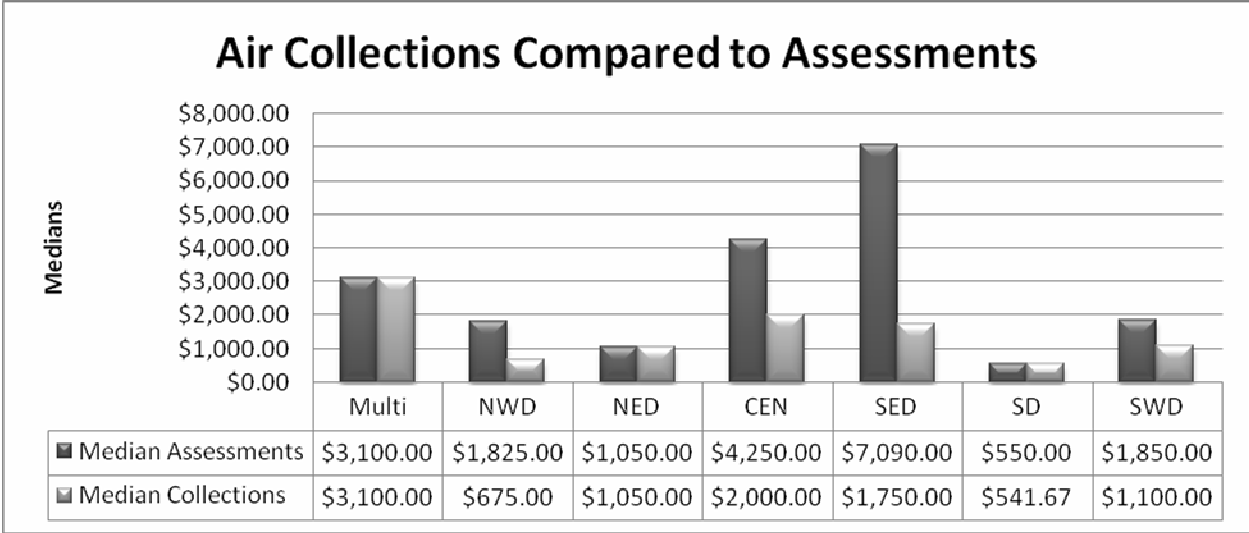
Simply stated, the data suggests that if assessments are levied in the Central and Southeast District there is little likelihood that the fines will actually be collected:



It will be recalled that in Section 6.a. we noted that the two highest air assessments were levied in the Central and Southeast Districts. The above results indicate that although the other districts assessed fewer fines, they collected a significant portion of those fines.

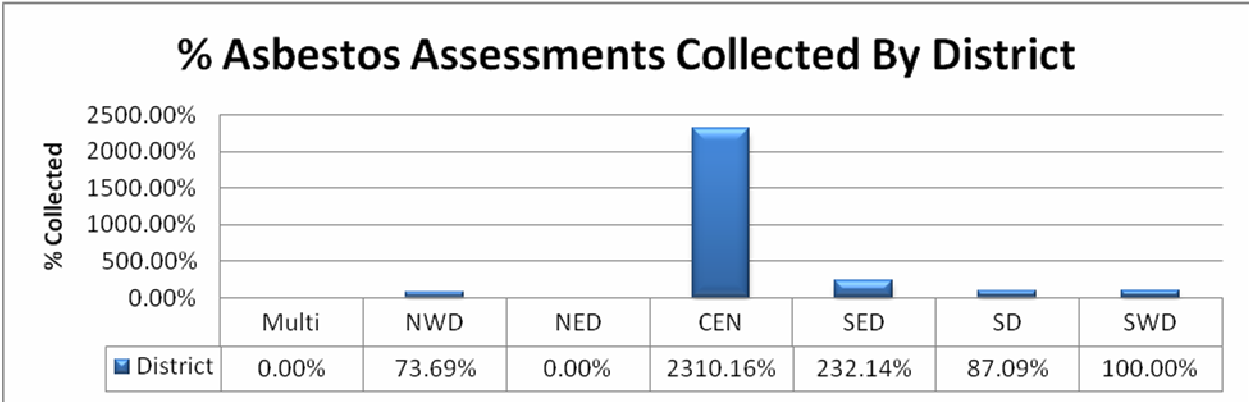
The following data also shows that, except for the Central and Southeast Districts, the districts are generally succeeding in collecting fines regardless of their size. In the Central and Southeast Districts, however, there is a noticeable tendency towards collection of the lower fines as opposed to the higher fines:

¹⁴ The data will occasionally show that more than 100% of the assessed fines were collected. This is because the districts are also collecting assessments that were made in previous years. Since 100% of the assessments in any given year are seldom, if ever collected, it follows that in some instances the collection rate may exceed the dollars assessed in any given year.

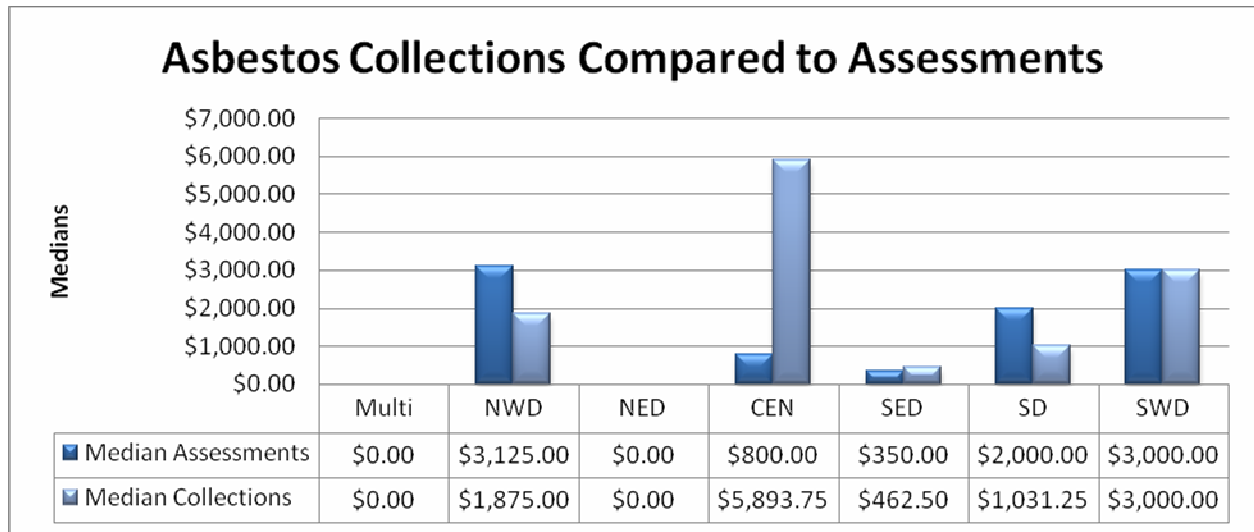


b. Asbestos Program

The districts likewise collected a significant portion of fines in the asbestos program.

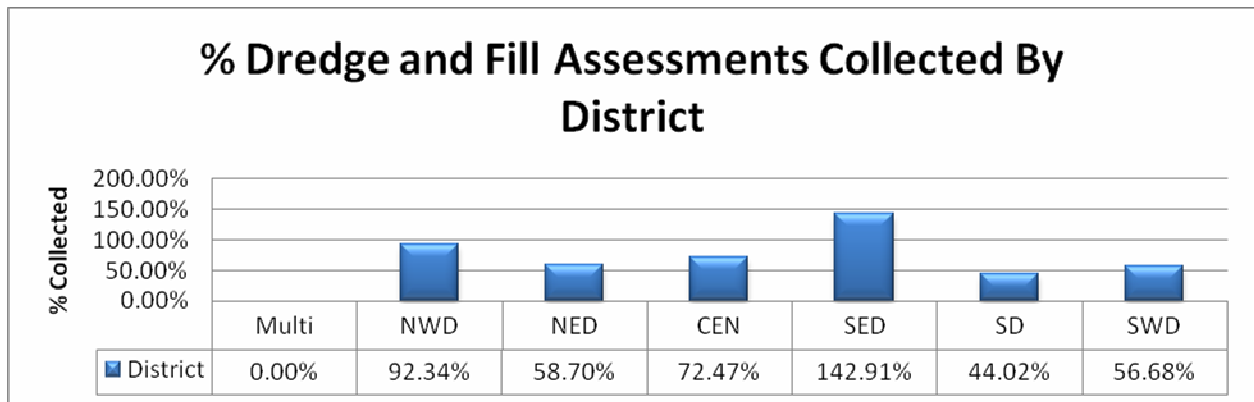


A comparison of the median assessments and collections verifies the performance.



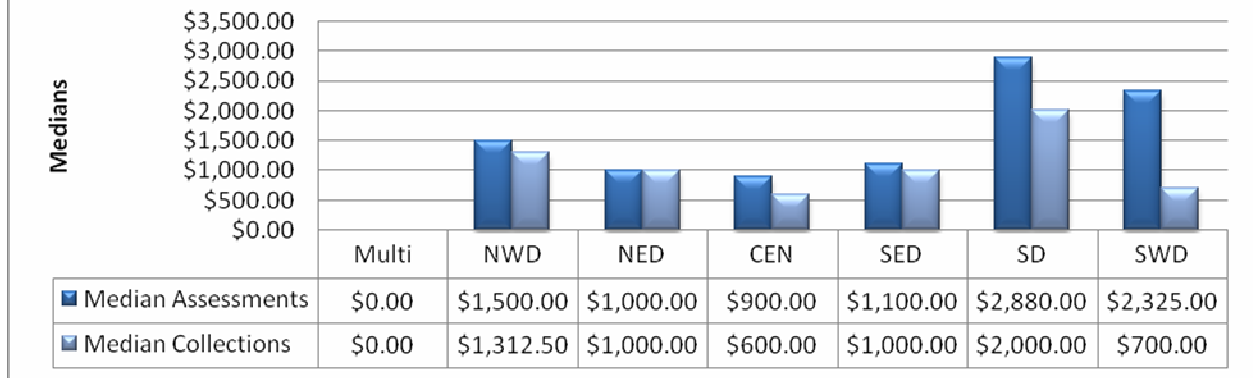
c. Dredge and Fill Program

This program area saw a lower rate of collection than that enjoyed by the air and asbestos programs.



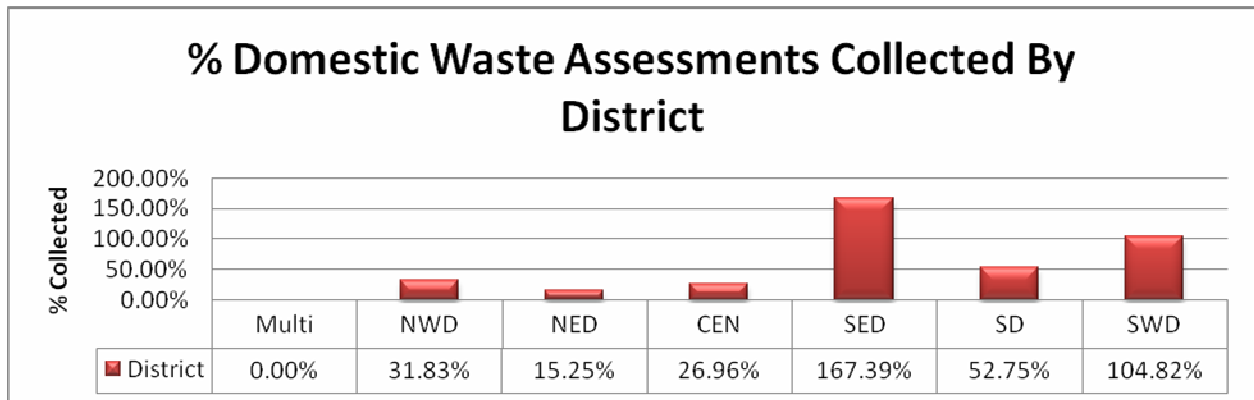
The Southwest District tended to disproportionately collect the smaller fines over the higher amounts.

Dredge & Fill Collections Compared to Assessments



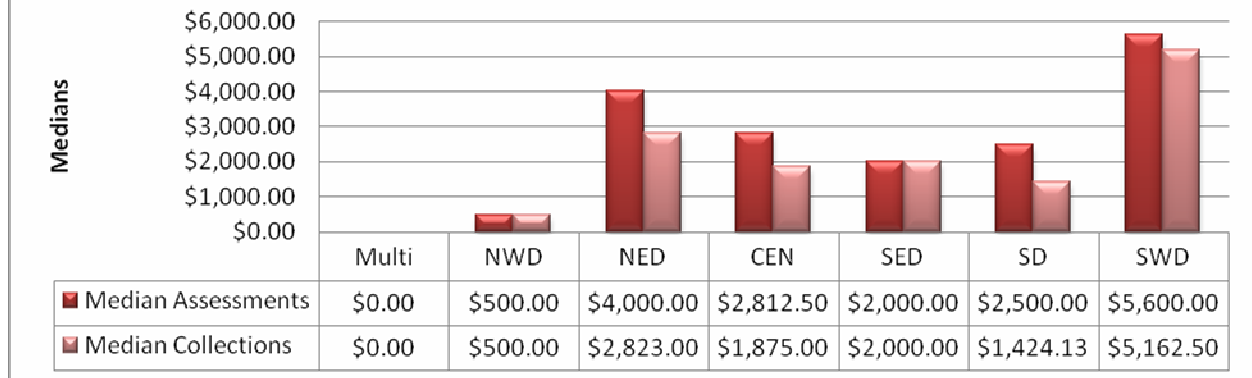
d. Domestic Waste Program

Except for the Southeast and Southwest Districts, collections in this program area were dismal.



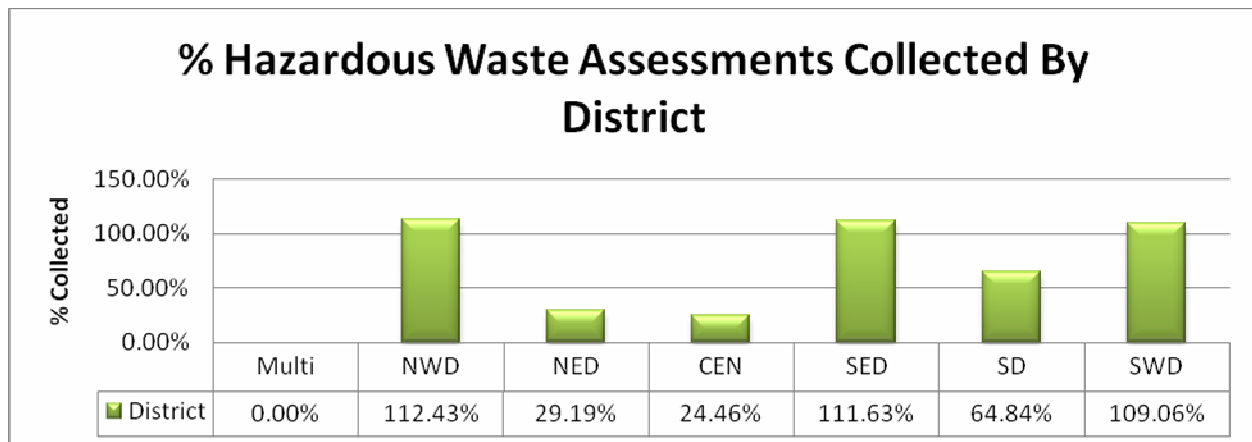
Once assessed, the Northeast, Central and South Districts had less success in collecting the larger fines than did the Northwest, Southeast and Southwest Districts.

Domestic Waste Collections Compared to Assessments



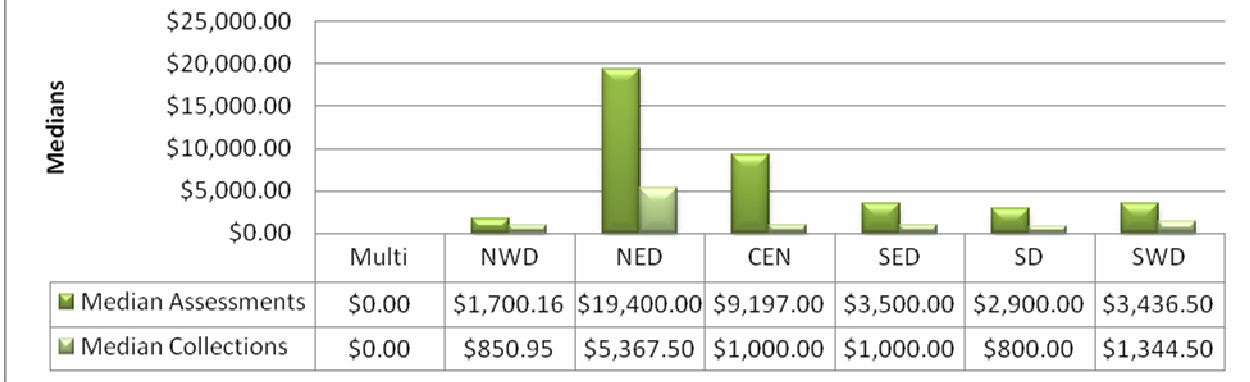
e. Hazardous Waste

The Central and Northeast Districts had the highest assessments of all of the districts in 2008. However, they also collected a much lower percentage of those fines. The remaining districts all collected over 50% of the assessed fines with three of the districts making significant inroads in collecting fines that were left uncollected from previous years:



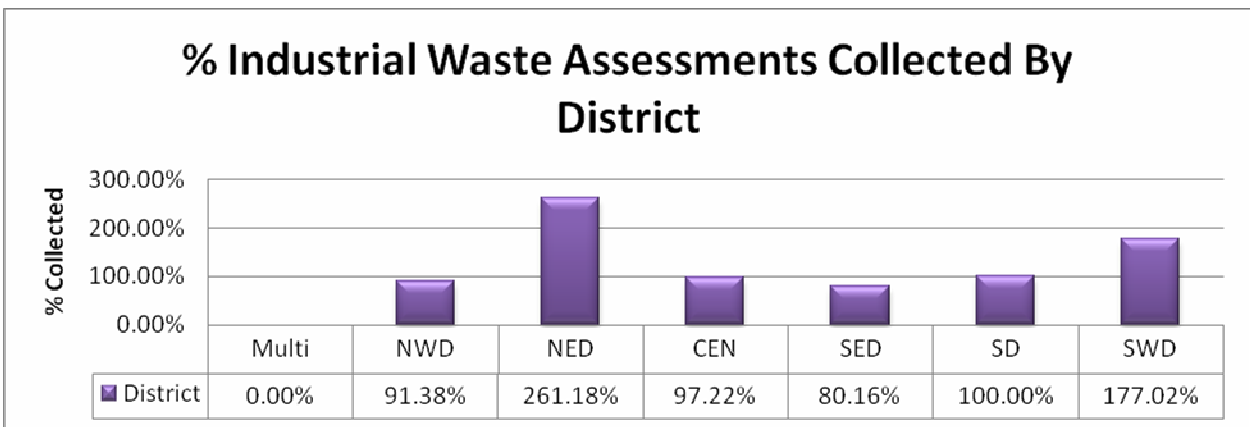
Unlike the other program areas, however, the hazardous waste program saw a significant discrepancy in the size of the collections. Every district saw a marked tendency towards collecting the lower fines, rather than the higher ones:

Hazardous Waste Collections Compared to Assessments

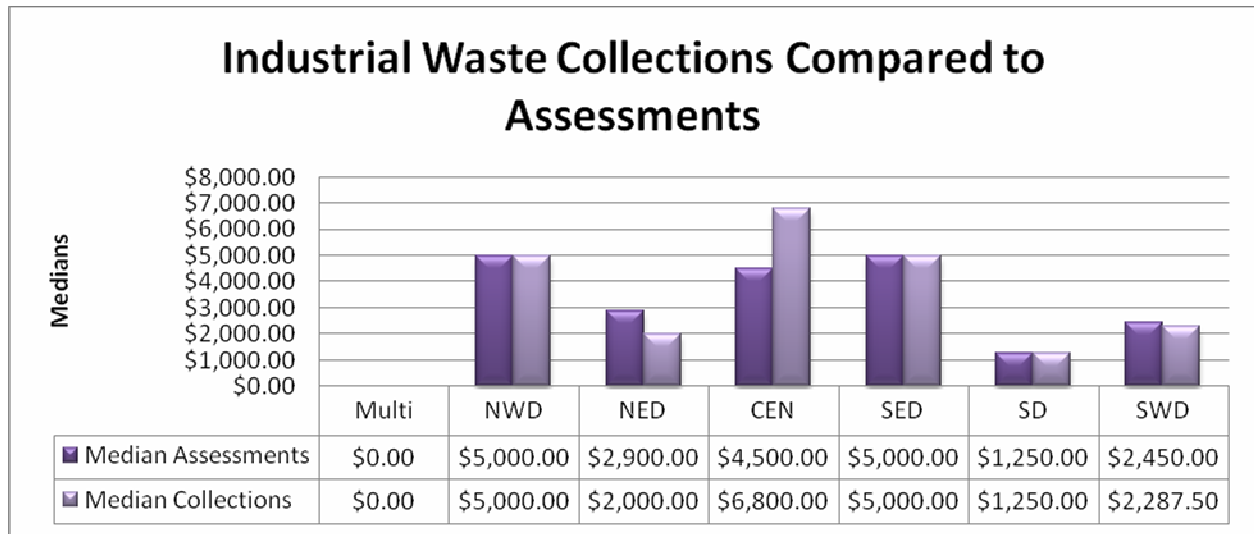


f. Industrial Waste

Industrial waste cases saw a higher collection rate than many of the other programs, with each of the districts collecting at least 80% of the assessed fines:

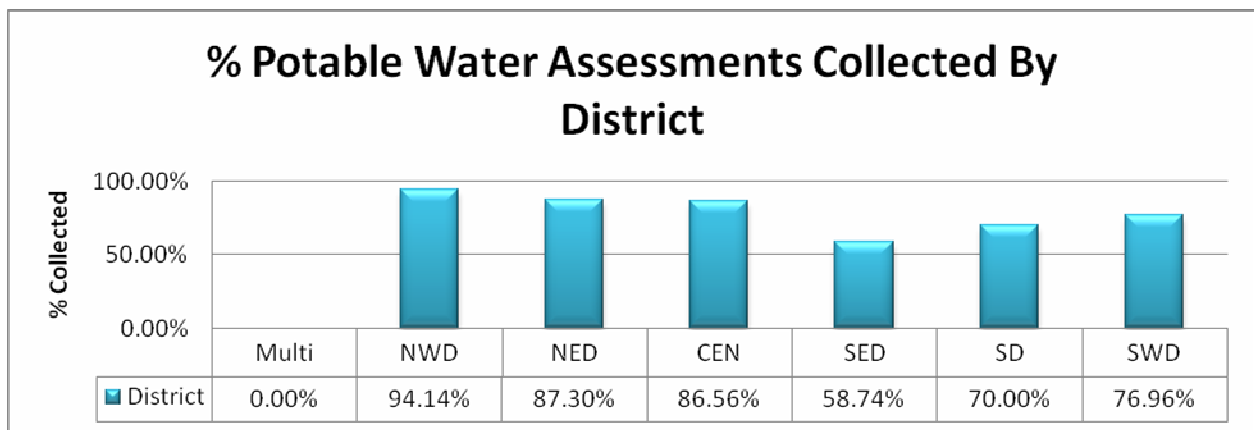


Not surprisingly, the median collection amounts either equalled or exceeded the median assessments in all but the Northeast District:



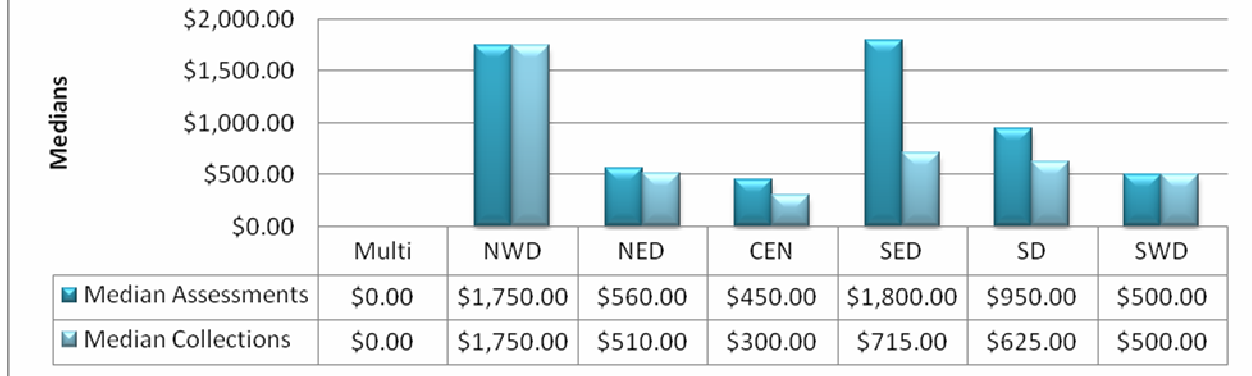
g. Potable Water Program

Every district in the Department collected over 50% of the penalties assessed. The Northwest District, which assessed the fewest amount of fines in this area, collected the highest percentage of those fines:



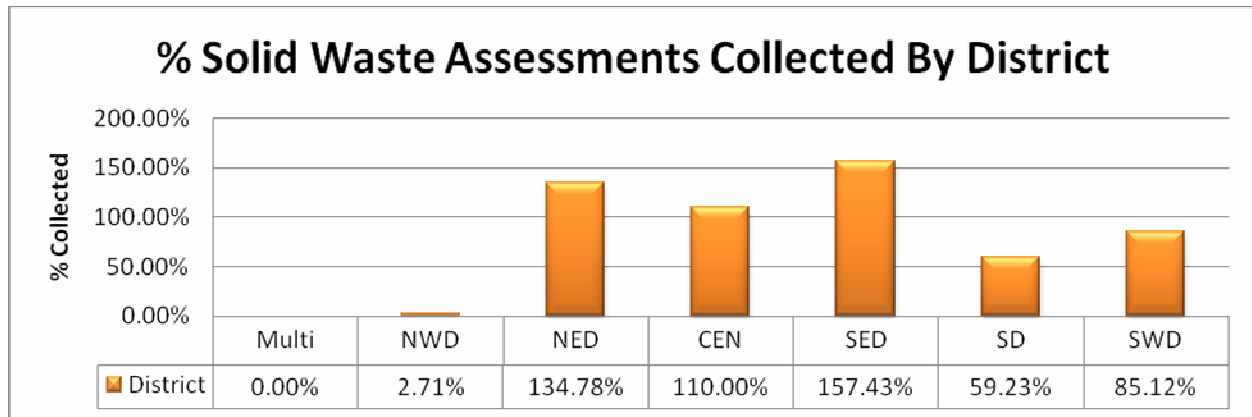
At the same time, however, the Southeast District, which had the highest assessments in the state, also collected the fewest percentage of those assessments and predominately collected the lower assessments:

Potable Water Collections Compared to Assessments



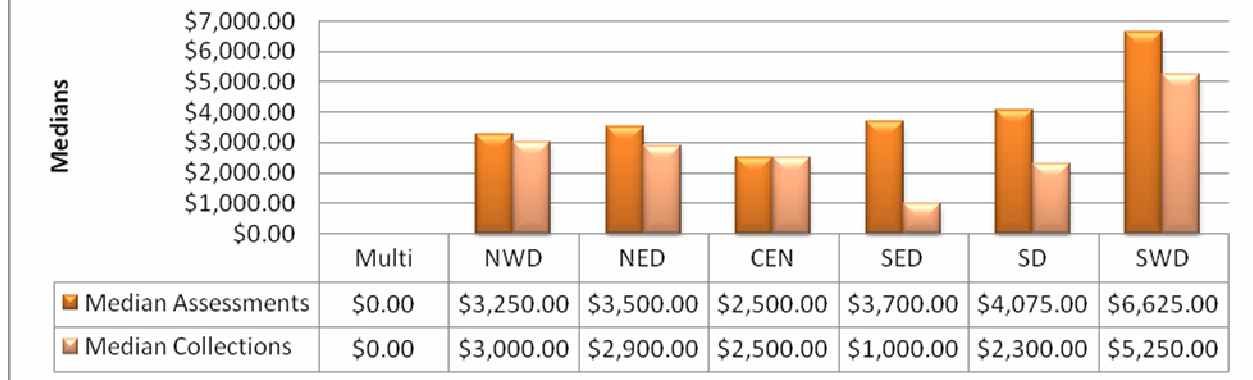
h. Solid Waste Program

The Northwest District, which had the most assessments in 2008 barely collected any of them. The remaining districts all collected in excess of 50% of the fines that they levied:



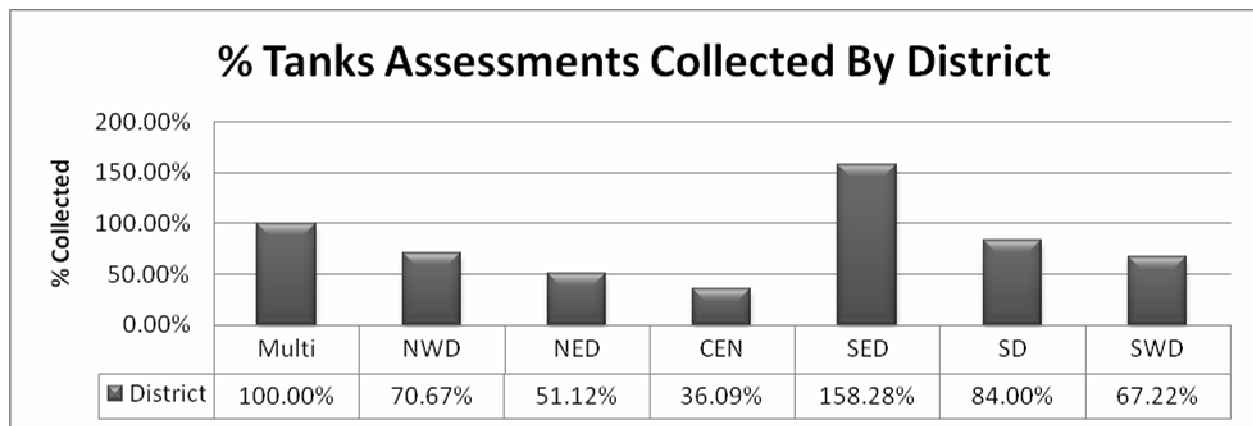
Normally districts that collect a majority of the monies assessed against violators also see median collections roughly equal to the median assessments that were levied. This did not hold true for the Southeast District, however. The district collected well over 100% of the dollars assessed in 2008, yet the median value of those collections was less than 1/3 of the median of the assessments, meaning that the fines that were collected were largely on the low end of the spectrum:

Solid Waste Collections Compared to Assessments

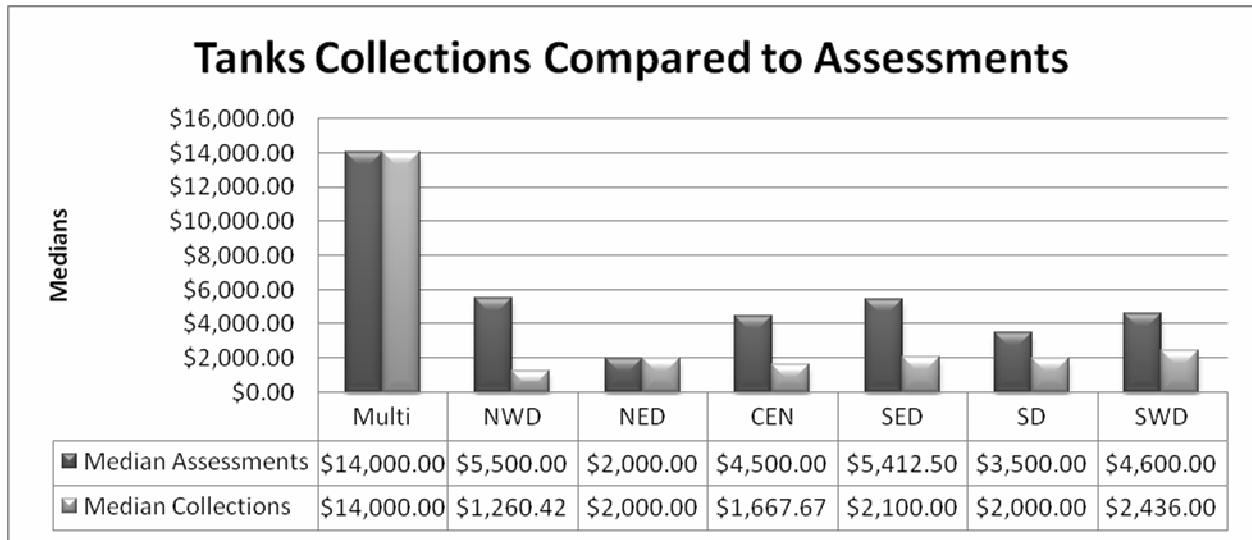


i. Tanks Program

The Southwest District assessed 4.6 times the fines of the South District (which posted the second highest level of fines) in 2008, yet it collected a lower percentage of its assessments than all but the Northeast and Central Districts. At the same time, the Southeast District, which had the fewest assessments of all of the districts, also collected the highest percentage of those assessments:



The Southeast District also had the highest median assessments of all of the districts in this program. But it once again failed to recover more of the high end assessments than of the lower fines that it levied. The Northwest District saw collection medians less than 25% of its median assessments:



DISTRICT ENFORCEMENT RESULTS

A. Northeast District

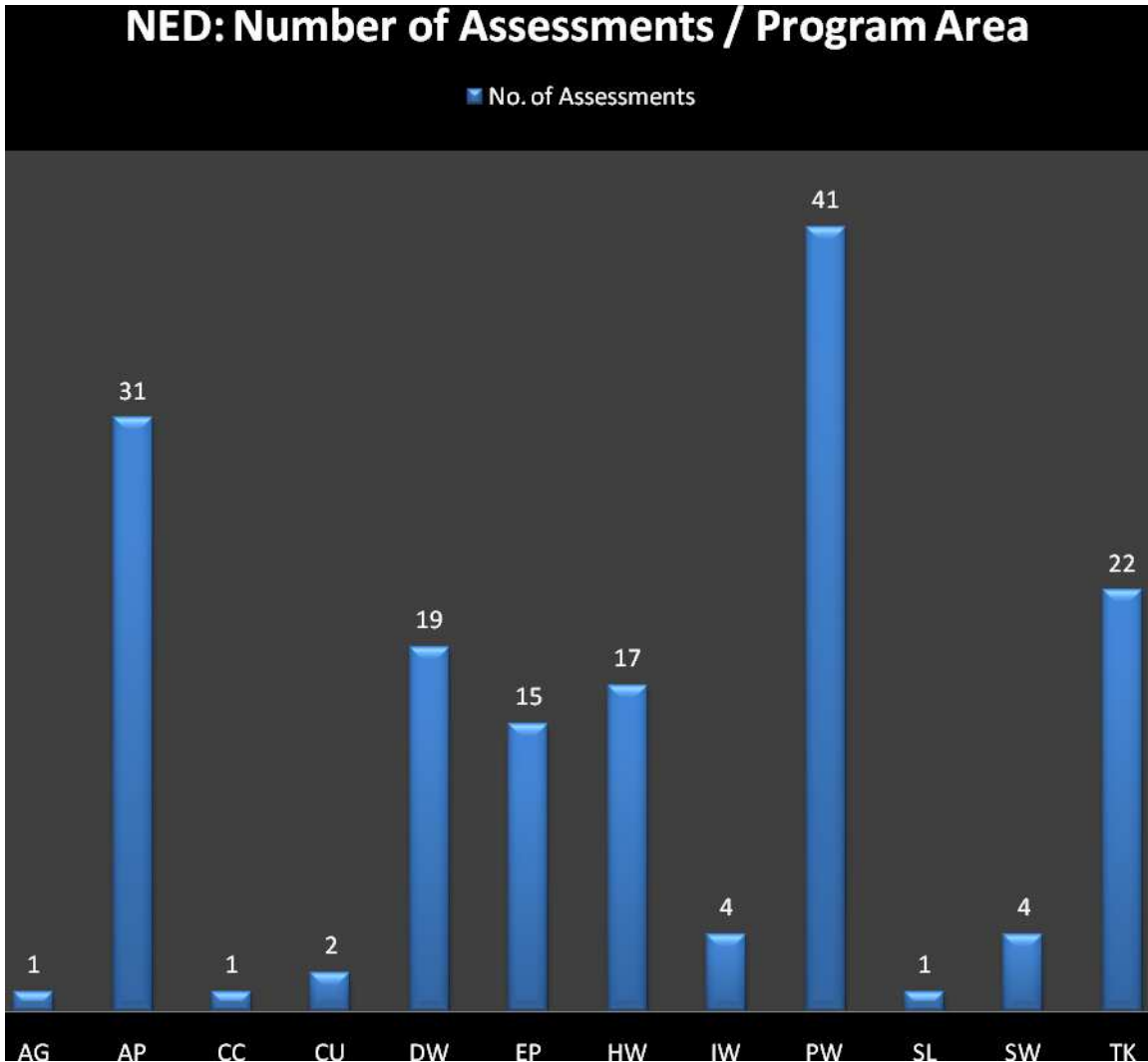
A. Case Reports, NOVs, Consent Orders, Final Orders

The district took enforcement in 195 cases in 2008 (exactly the same total as in 2007) representing 13% of all enforcement cases initiated by the Department. Of the 195 cases, 17 were case reports (10 more than in 2007). 19 NOVs were issued (compared with 13 in 2007) and 10 final orders originated from the district (6 were issued in 2007). 149 consent orders were issued, down sharply from the 188 in 2007, but only 13 were long-form consent orders, while 121 were short-form. The latter category represented 81% of all consent orders issued by the district and, indeed, 62% of all enforcement taken by the district was in this form.

B. Program Area Enforcement

The Northeast District assessed civil penalties in 158 cases in 2008. The following chart provides a breakdown¹⁵ of how those assessments were distributed among the program areas;

¹⁵ Only program areas with actual assessments are shown. The same is true for the remaining districts that will be discussed.



The data shows that except for the potable water program, enforcement in the Northeast District was essentially concentrated on air and potable water cases with domestic waste, dredge and fill, hazardous waste and tanks cases being roughly equally distributed. There were only 4 industrial waste assessments in this industry heavy area of the state.

C. Civil Penalty Assessments

The NED assessed civil penalties totaling \$1,299,388.75 in 2008. This is a 55% increase from its dismal 2007 performance. The district's performance represented 11% of all assessments by the Department in 2008, a 5% increase from 2007. The median civil penalty assessment for 2008 for all programs combined was \$2,000.00.

Assessments in the major program areas broke down as follows:

Program		Total \$ Assessed	2007 Median	2008 Median
AG		\$1,100.00	\$0.00	\$1,100.00
AP		\$80,275.00	\$1,000.00	\$1,000.00
CC		\$89,037.00	\$0.00	\$89,037.00
CU		\$2,500.00	\$0.00	\$1,250.00
DW		\$151,922.81	\$2,812.50	\$4,000.00
EP		\$26,634.94	\$1,250.00	\$1,000.00
HW		\$728,343.00	\$6,285.00	\$19,400.00
IW		\$12,750.00	\$10,000.00	\$2,900.00
PW		\$73,296.00	\$455.00	\$560.00
SL		\$4,000.00	\$0.00	\$4,000.00
SW		\$11,500.00	\$4,000.00	\$3,500.00
TK		\$118,030.00	\$4,500.00	\$2,000.00

The median assessments for the following programs underperformed the Department as a whole: air, waste cleanup, dredge and fill, industrial waste, potable water, solid waste and tanks. The hazardous waste and domestic waste programs performed significantly better than the statewide median.

D. Civil Penalty Collections

2008 saw a decline in collections with a total of \$512,427.23. The NED collected 9% of all collections by the Department in calendar year 2008, also a decline from 2007.

B. Northwest District

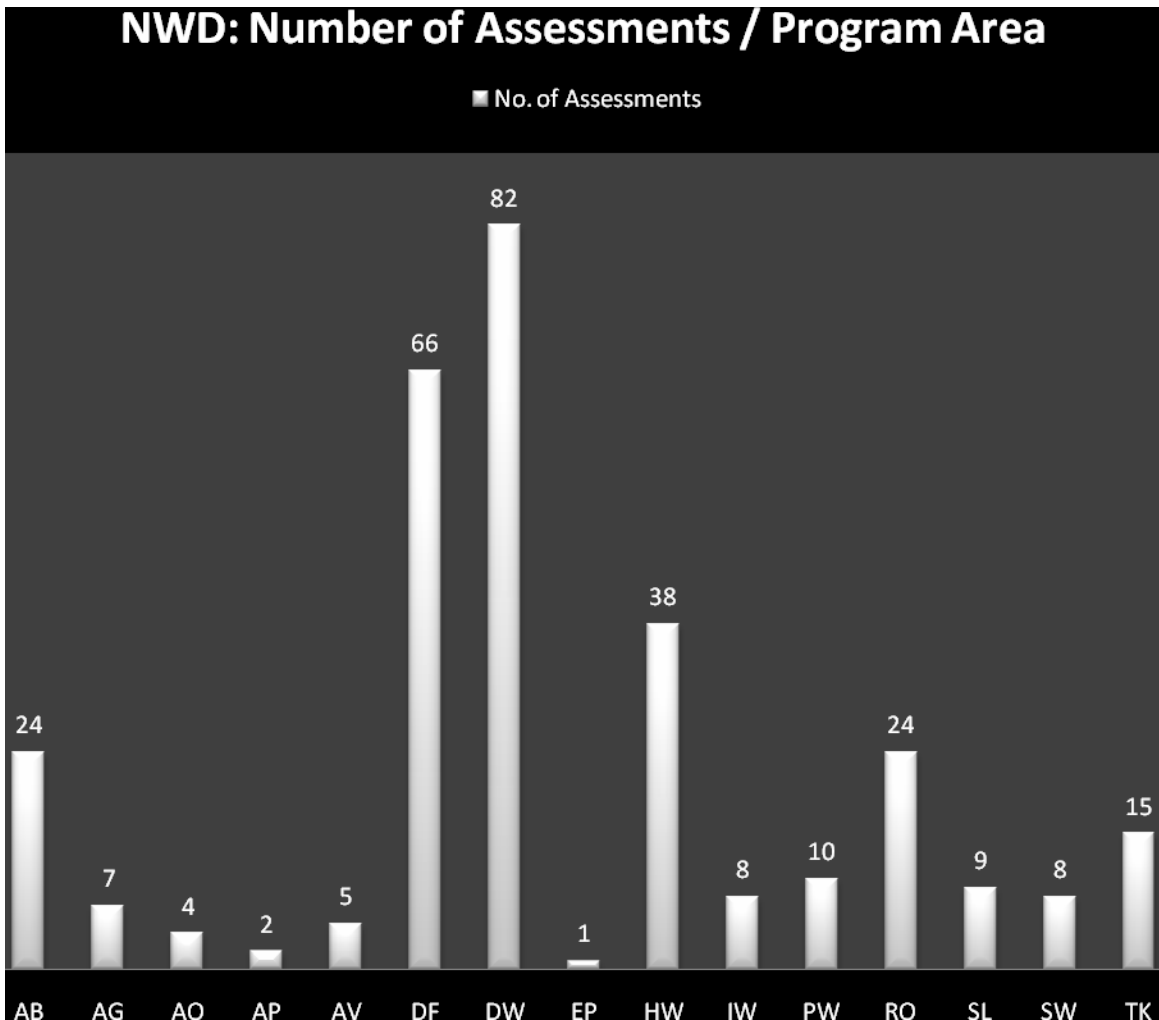
A. Case Reports, NOVs, Consent Orders, Final Orders

The NWD sent 9 Case Reports to OGC in 2008, four fewer than in 2007. It issued 8 NOVs, during the same time period, the same as last year. It issued 2 Final Orders and 278 Consent Orders, a small increase over 2007. 184 of the 278 Consent Orders, i.e. 66.19%, were short-form consent orders, again an improvement over 2007, but still the second highest in the state.

The NWD issued 11% of all Case Reports statewide, less than in 2007. It issued 9% of the NOVs and 4% of all Final Orders. 21% of all Consent Orders were issued by the NWD in 2008, the second highest percentage in the state.

B. Program Area Enforcement

The Northwest District assessed civil penalties in 303 cases in 2008. The following chart provides how those cases were distributed across program areas:



The numbers reflect an increase in the number of asbestos, dredge and fill, hazardous waste assessments, and stormwater runoff assessments, while the number of air, domestic waste, potable water and solid waste assessments decreased.

C. Civil Penalty Assessments

The district assessed civil penalties totaling \$2,383,081.40 in 2008, a slight increase over 2007, but the fourth straight year that the district has shown improvement in civil penalty assessments. The largest assessment was in a solid waste case against the Louisiana Investment Group with

the second highest being a domestic waste case against Santa Rosa County. Otherwise, the assessments were evenly distributed.

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

Program	Total \$ Assessed	2007 Median	2008 Median
AB	\$105,650.00	\$2,500.00	\$3,125.00
AG	\$9,875.00	\$850.00	\$1,275.00
AO	\$16,200.00	\$3,500.00	\$3,250.00
AP	\$8,750.00	\$942.50	\$4,375.00
AV	\$16,200.00	\$6,500.00	\$2,500.00
DF	\$215,467.50	\$1,000.00	\$1,500.00
DW	\$892,750.00	\$1,125.00	\$500.00
EP	\$2,000.00	\$2,000.00	\$2,000.00
HW	\$148,070.15	\$2,900.00	\$1,700.16
IW	\$58,018.75	\$2,100.00	\$5,000.00
PW	\$18,775.00	\$1,000.00	\$1,750.00
RO	\$84,325.00	\$1,000.00	\$3,100.00
SL	\$14,500.00	\$1,000.00	\$1,500.00
SW	\$692,000.00	\$3,250.00	\$3,250.00
TK	\$100,500.00	\$4,250.00	\$5,500.00

Median assessments rose in every program area except for hazardous waste, domestic waste in 2008, and two sub-air programs (AO and AV). Both the domestic waste and hazardous waste programs saw significant decline. While the industrial waste program saw a substantial increase in median assessments the total industrial waste assessments dropped by over \$200,000.00.

D. Civil Penalty Collections

\$1,032,357.99 in civil penalties were collected by the NWD in 2008, a sizeable increase over the district's performance in 2007. This district collected more penalty dollars (19% of total) than any other district except for the Southwest District (36%) in 2007. This is a significantly better performance than in 2007.

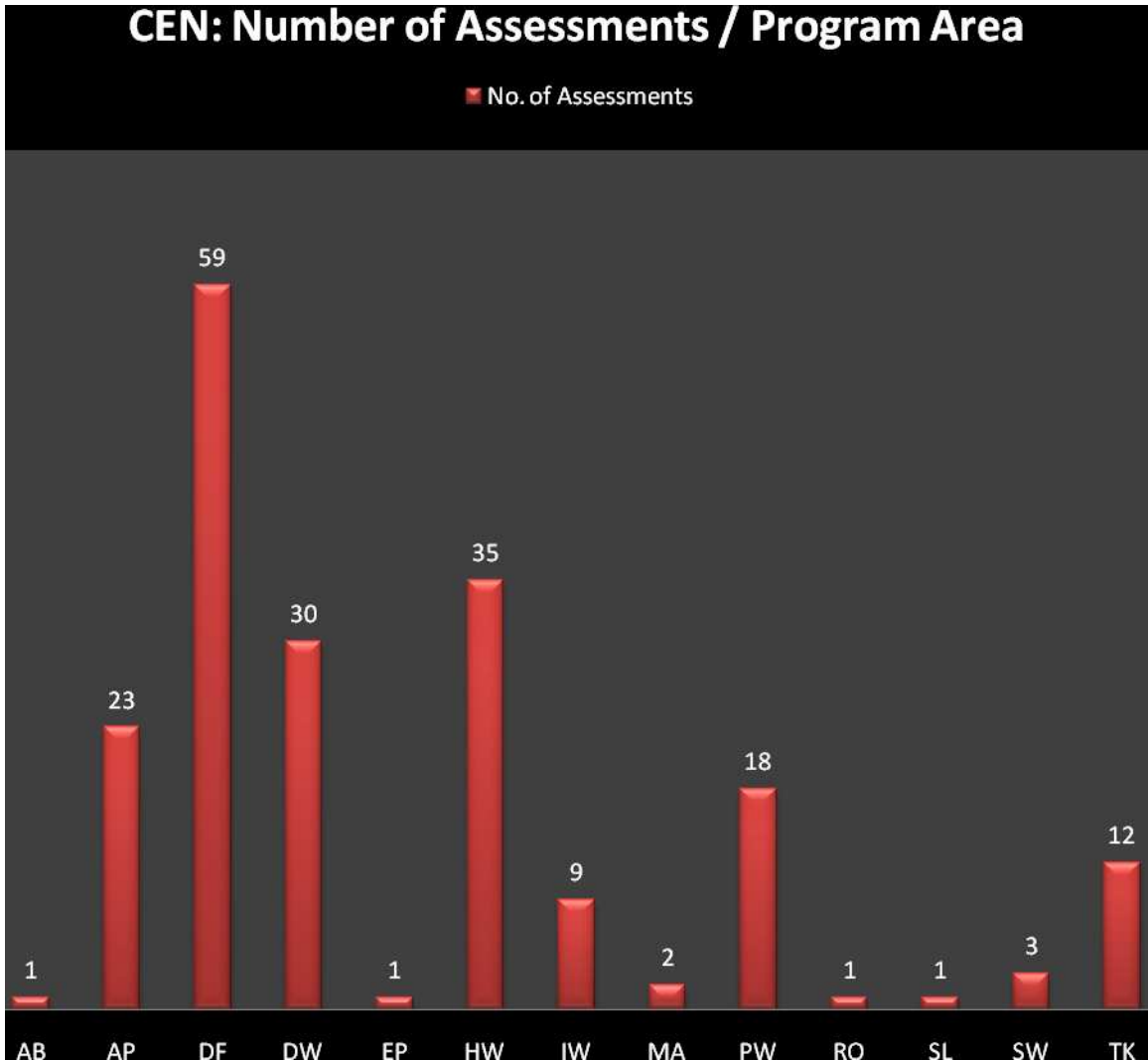
C. Central District

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

The district submitted 9 Case Reports to the OGC in 2008. It issued 12 NOVs, 6 Final Orders, and 181 Consent Orders. With the exception of consent orders, each enforcement mechanism increased in 2008 when compared with 2007. There were 14 fewer consent orders issued in 2008 than in 2007. When looked at on a percentage basis, the district submitted 12% of all Case Reports, 14% of all NOVs, 11% of all Final Orders, and 14% of all Consent Orders. 60% of the consent orders issued by the district were short-form consent orders, a 5% decline from 2007.

B. Program Area Enforcement

The following chart provides the number of cases in which civil penalties were assessed by the Central District by program area in 2008:



There were more air, domestic waste (1), hazardous waste (7) and mangrove alteration cases in 2008, compared to 2007. The district assessed civil penalties in fewer cases in the dredge and fill, industrial waste, potable water and solid waste programs.

C. Civil Penalty Assessments

The CEN levied \$2,462,553.41 in civil penalty assessments in 2008, a 69% increase over 2007! The assessments totaled 21% of all assessments statewide, the highest percentage of all of the districts. In 2007 the district accounted for 12% of all of the assessments statewide.

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

Program		Total \$ Assessed	2007 Medians	2008 Medians
AB		\$800.00	\$2,500.00	\$800.00
AP		\$1,131,183.00	\$4,500.00	\$4,250.00
DF		\$95,660.00	\$750.00	\$1,000.00
DW		\$313,225.00	\$2,000.00	\$2,812.50
EP		\$250.00	\$0.00	\$250.00
HW		\$724,125.41	\$9,461.00	\$9,197.00
IW		\$62,960.00	\$2,200.00	\$4,500.00
MA		\$1,000.00	\$1,000.00	\$500.00
PW		\$49,850.00	\$900.00	\$450.00
RO		\$3,500.00	\$0.00	\$3,500.00
SL		\$2,700.00	\$600.00	\$2,700.00
SW		\$8,000.00	\$20,400.00	\$2,500.00
TK		\$69,300.00	\$7,000.00	\$4,500.00

Median assessments dropped in seven of the thirteen program areas in 2008. Most notably the declines included hazardous waste assessments, though there were also significant declines in the asbestos, potable water, solid waste and tanks programs. Improvements were seen in domestic and industrial waste in particular.

D. Civil Penalty Collections

Although the district saw significant increases in assessments in 2008, **the penalties that were actually collected dropped significantly to \$594,185.59, as compared to the \$952,907.08 that was collected in 2007.**

D. Southwest District

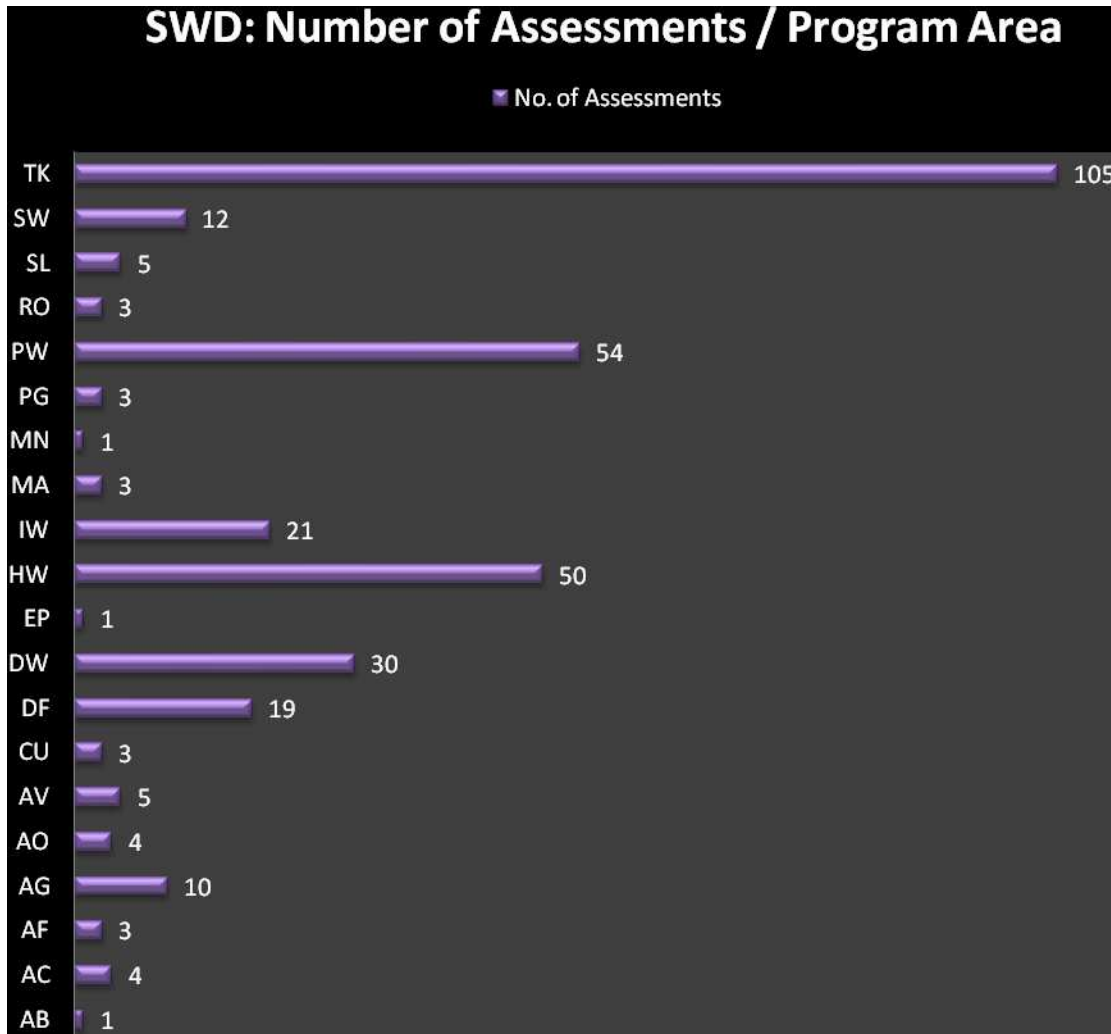
A. Case Reports, NOVs, Consent Orders, Final Orders

19 Case Reports were submitted by the district in 2008, four fewer than in 2007. This represents 24% of all such reports submitted statewide. The district also issued 31 NOVs (a sizeable increase over 2007), or 37% of all such filings. It issued 12 Final Orders (21%). 315 Consent Orders were issued out of this district (compared with 363 last year), which represents 24% of all Consent Orders issued by the Department in 2008. 81% of the Consent Orders issued by the district were short-form consent orders, compared to 68% last year. 24 long-form consent orders were issued out of this district in 2008, the most of any district. However, it utilized the

short-form consent order as the primary means of enforcement in 68% of all of its enforcement cases in 2008 which is also the highest percentage of any of the districts.

B. Program Area Enforcement

The following chart provides the number of enforcement cases in which civil penalties were assessed by the Southwest District by program area in 2008:



Six program areas saw increases in the number of enforcement filings from 2007. Those program areas were general air permitting, waste cleanup, phospho-gypsum, potable water, stormwater runoff and tanks. Significantly however, there were significant declines in dredge and fill assessments, as well as domestic waste, hazardous waste and industrial waste.

C. Civil Penalty Assessments

Civil penalty assessments fell sharply for this district in 2008, the second straight year of declines. The SWD levied civil penalties totaling \$2,280,776.76, **a 60% drop from the \$3,787,423.28 that was assessed in 2007**. The district accounted for 20% of all penalty assessments by the Department down sharply from 2007. 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	Total \$ Assessed	2007 Medians	2008 Medians
AB	\$3,000.00	\$650.00	\$3,000.00
AC	\$13,750.00	\$1,625.00	\$1,625.00
AF	\$17,200.00	\$3,550.00	\$7,200.00
AG	\$16,310.00	\$904.00	\$1,450.00
AO	\$29,792.00	\$4,000.00	\$6,396.00
AV	\$5,075.00	\$3,000.00	\$875.00
CU	\$73,547.00	\$0.00	\$23,250.00
DF	\$201,100.00	\$1,600.00	\$2,200.00
DW	\$467,059.00	\$6,000.00	\$5,600.00
EP	\$3,000.00	\$0.00	\$3,000.00
HW	\$282,315.10	\$4,300.00	\$3,436.50
IW	\$78,305.00	\$4,000.00	\$2,450.00
MA	\$4,857.00	\$1,430.00	\$1,199.00
MN	\$76,480.90	\$0.00	\$76,480.90
PG	\$21,540.00	\$0.00	\$5,000.00
PW	\$73,775.00	\$800.00	\$500.00
RO	\$7,500.00	\$24,435.00	\$3,000.00
SL	\$8,000.00	\$1,000.00	\$1,500.00
SW	\$116,661.60	\$6,250.00	\$6,625.00
TK	\$781,509.16	\$4,050.00	\$4,600.00

Many program areas saw increases in their median assessments in 2008. **But it is likewise true that significant programs such as domestic waste, hazardous waste, industrial waste and potable water all saw significant declines in their median assessments.** This is the second straight year of declining numbers in the domestic waste, potable water and solid waste programs.

D. Civil Penalty Collections

The Southwest District collected \$1,970,667.06 in civil penalties in 2008 compared with \$1,976,994.90 that it collected the previous year. This is the second straight year of declining collections. Its collections accounted for 36% of all the monies collected by the Department across the state, once again the highest percentage of all of the districts.

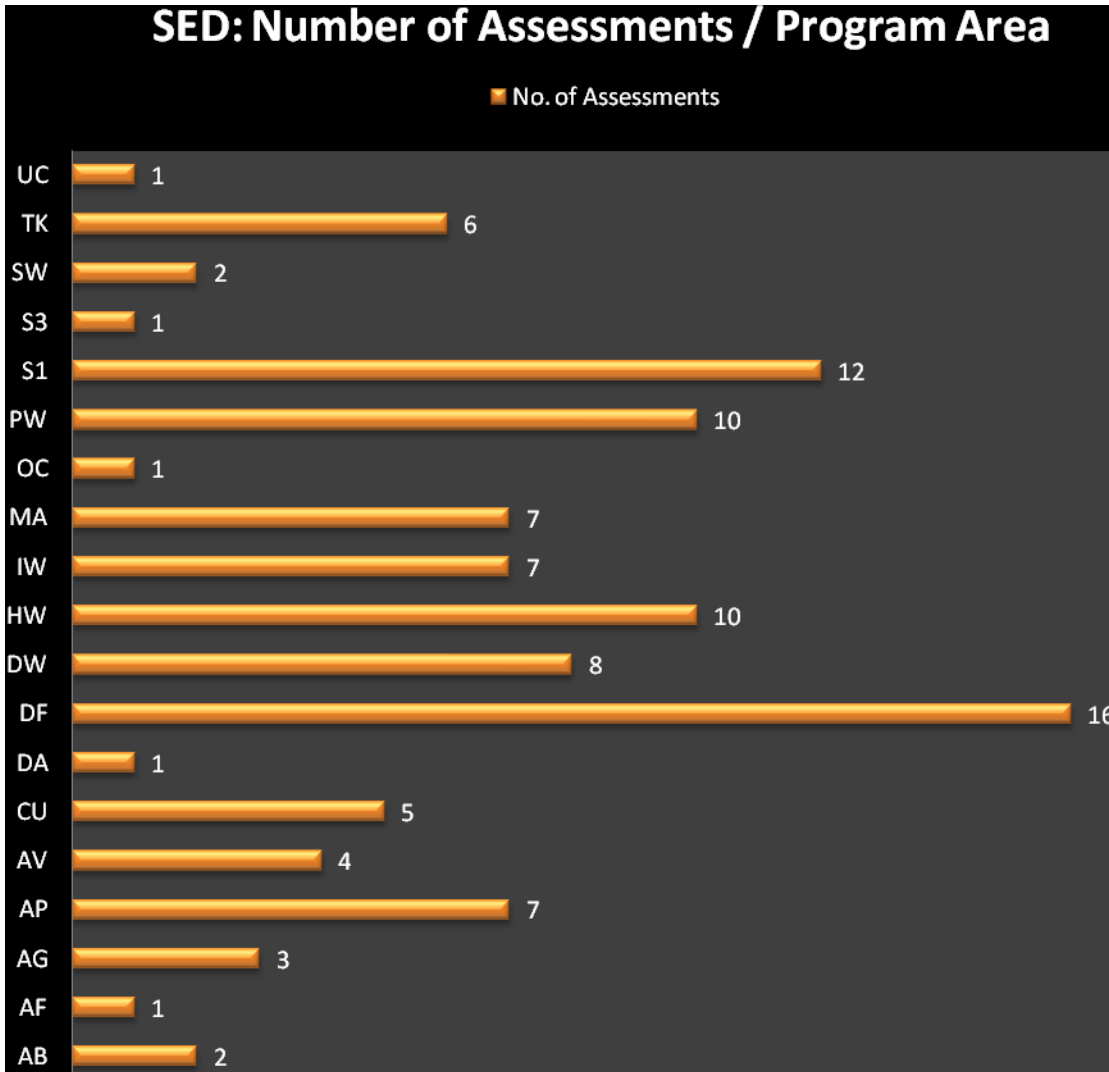
E. Southeast District

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

The SED issued 5 NOVs in 2008, 8 fewer than in 2007. 12 Case Reports were sent to the OGC in 2008, two less than the number sent in 2007. The district issued 3 Final Orders. It also issued 98 Consent Orders, 83 less than in 2007. 63% of the consent orders that were issued were short-form consent orders. The SED accounted for 15% of all Case Reports sent to the OGC in 2008, 6% of the NOVs, 5% of the Final Orders and 8% of all Consent Orders. Generally, the numbers all point to weakening performance in 2008.

B. Program Area Enforcement

The following chart provides the number of civil penalty assessments made by the Southeast District by program area in 2008:



The industrial waste program had one more assessment in 2008 than it did in 2007, i.e. it was essentially unchanged. Otherwise, significant declines in assessments were seen in the following programs: Dredge and fill (26 fewer in 2008), domestic waste (12 fewer), hazardous waste (22 fewer), mangrove alteration (9 fewer), potable water (5 fewer), solid waste (4 fewer), tanks (16 fewer) and underground injection (3 fewer). In other words, the district essentially backed off civil penalty assessments in 2008.

C. Civil Penalty Assessments

Even though assessments were levied in fewer cases in 2008, the district did see a healthy increase in the dollars assessed. \$2,212,838.00, an increase of \$1,000,198.06, or 82.48%, over 2007. This performance accounts for 19% of all civil penalty assessments levied by the Department in 2008. This performance is the fourth best performance in the state.

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

Program	Total \$ Assessed	2007 Medians	2008 Medians
AB	\$700.00	\$1,500.00	\$350.00
AF	\$500.00	\$0.00	\$500.00
AG	\$9,090.00	\$946.50	\$1,500.00
AP	\$1,737,035.00	\$2,137.50	\$10,665.00
AV	\$4,625.00	\$0.00	\$1,062.50
CU	\$9,500.00	\$3,500.00	\$1,000.00
DA	\$2,000.00	\$0.00	\$2,000.00
DF	\$33,150.00	\$2,000.00	\$1,100.00
DW	\$122,800.00	\$7,500.00	\$5,500.00
HW	\$67,104.00	\$5,600.00	\$3,500.00
IW	\$63,000.00	\$2,000.00	\$5,000.00
MA	\$9,749.00	\$2,000.00	\$650.00
OC	\$1,000.00	\$0.00	\$1,000.00
PW	\$23,460.00	\$1,100.00	\$1,800.00
S1	\$40,500.00	\$0.00	\$2,000.00
S3	\$9,500.00	\$0.00	\$9,500.00
SW	\$7,400.00	\$4,500.00	\$3,700.00
TK	\$36,725.00	\$6,000.00	\$5,412.50
UC	\$35,000.00	\$11,400.00	\$35,000.00

Median assessments dropped in the following program areas: asbestos, waste cleanup, **dredge and fill, domestic waste, hazardous waste**, mangrove alteration, solid waste and tanks. Annual averages for dredge and fill and domestic waste declined for the second year in a row.

The obvious question is how the district could increase the dollars assessed and yet see declines in so many major program areas. It appears that the answer is that one case, DEP vs. Montenay Power Corporation, gave the district a significant boost in dollar assessments. That one case alone, assessed penalties of \$1,698,627.00 for violations of air program rules. If that case were factored out of the equation the district would have actually seen lower dollar assessments in 2008—more accurately reflecting the performance shown in the median assessment results. By way of contrast, the highest assessment in the hazardous waste program (touted as being tougher on polluters now) was against Ashland, Inc. in the amount of \$19,724.00.

D. Civil Penalty Collections

The SED collected \$651,989.85 in civil penalties in 2008, a modest increase of \$29,048.48 from 2007's performance. This accounted for 12% of all dollars collected by the FDEP in civil penalties in 2007.

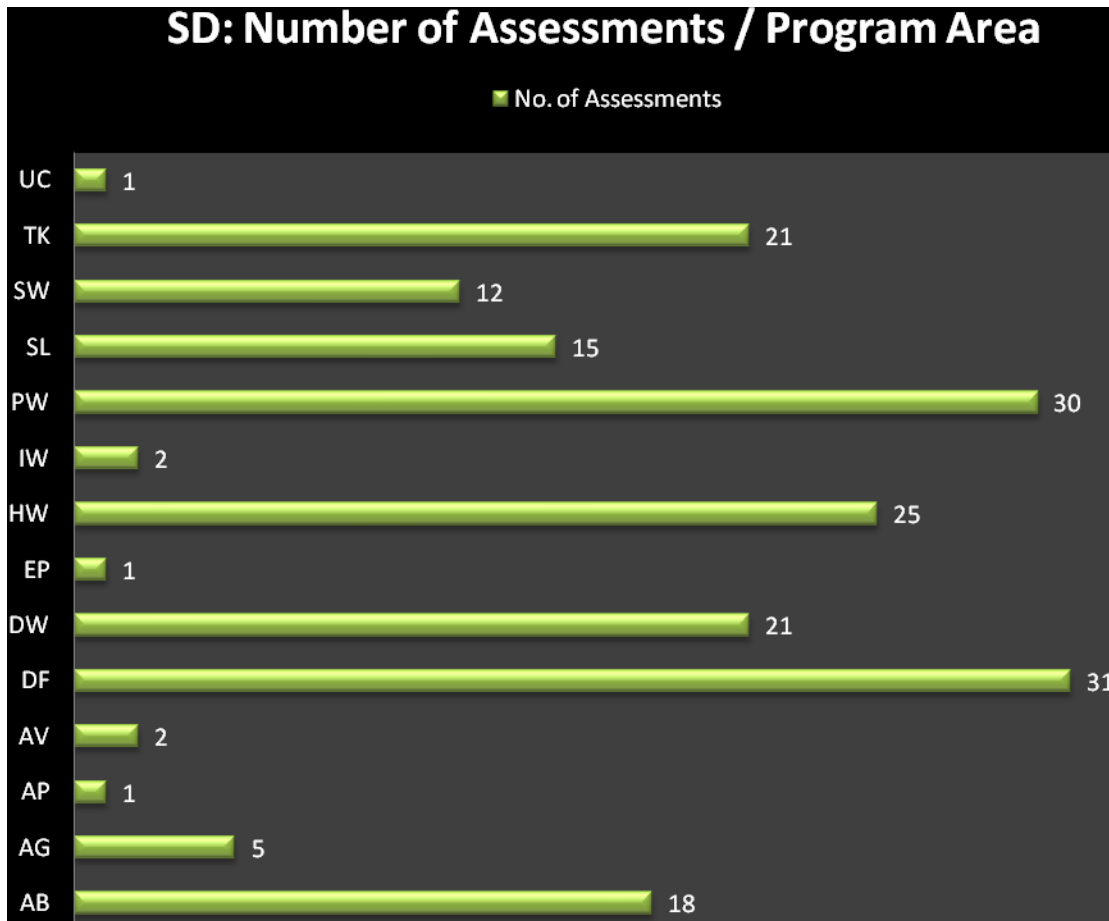
F. South District

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

The SD sent 9 Case Reports to the OGC in 2008. 5 NOVs and 3 Final Orders were issued in 2008. While the first 3 results were modest improvements over 2007, the 176 Consent Orders that were issued were fewer than the 185 in 2008. The SD accounted for 12% of all Case Reports, 6% of the NOVs, 5% of the Final Orders and 14% of all Consent Orders. Of the consent orders that it issued, 56% were short-form, once again the lowest percentage in the state.

B. Program Area Enforcement

The following chart provides the number of civil penalty assessments issued by the Southeast District by program area in 2008:



Increases in the number of assessments were seen in the following programs: dredge and fill (1), industrial waste (1), state lands (5), solid waste (2) and tanks (12). Once again, however, the number of assessments in major program areas continued to decline. The following programs saw declining numbers: air (8), asbestos (4), domestic waste (2), hazardous waste (10) and potable water (12).

C. Civil Penalty Assessments

Civil penalty assessments levied by the SD amounted to 7% of all assessments levied by the FDEP in 2008, a modest 1% improvement from 2007. It assessed \$847,313.92 for the year, a \$108,500.92 (15%) increase from the penalties assessed by the district in 2007.

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

Program	Total \$ Assessed	2007 Medians	2008 Medians
AB	\$38,250.00	\$2,000.00	\$2,000.00
AG	\$4,575.00	\$1,062.50	\$600.00

AP		\$425.00	\$2,525.00	\$425.00
AV		\$15,405.00	\$5,500.00	\$7,702.50
DF		\$225,329.61	\$1,600.00	\$2,760.00
DW		\$125,092.00	\$3,000.00	\$2,500.00
EP		\$3,000.00	\$0.00	\$3,000.00
HW		\$126,237.31	\$3,365.00	\$2,900.00
IW		\$2,500.00	\$3,000.00	\$1,250.00
PW		\$42,500.00	\$500.00	\$950.00
SL		\$47,300.00	\$1,100.00	\$2,000.00
SW		\$45,750.00	\$3,750.00	\$4,075.00
TK		\$170,350.00	\$2,250.00	\$3,500.00
UC		\$600.00	\$0.00	\$600.00

This district appeared to follow the trend of the other DEP districts, while there were increased median assessments in some areas, the major programs, including hazardous waste, generally saw declines in the medians.¹⁶

D. Civil Penalty Collections

\$544,311.53 was collected by the SD in 2008, \$84,862.24 (18%) more than it collected in 2007. The amount collected represents 10% of all dollars collected by the Department in civil penalties in 2008.

G. All Other Enforcement

A host of other cases, primarily stormwater runoff cases and beaches and coastal systems cases are handled by the Department's headquarters in Tallahassee. These cases are cumulatively referred to as the "remaining categories."

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

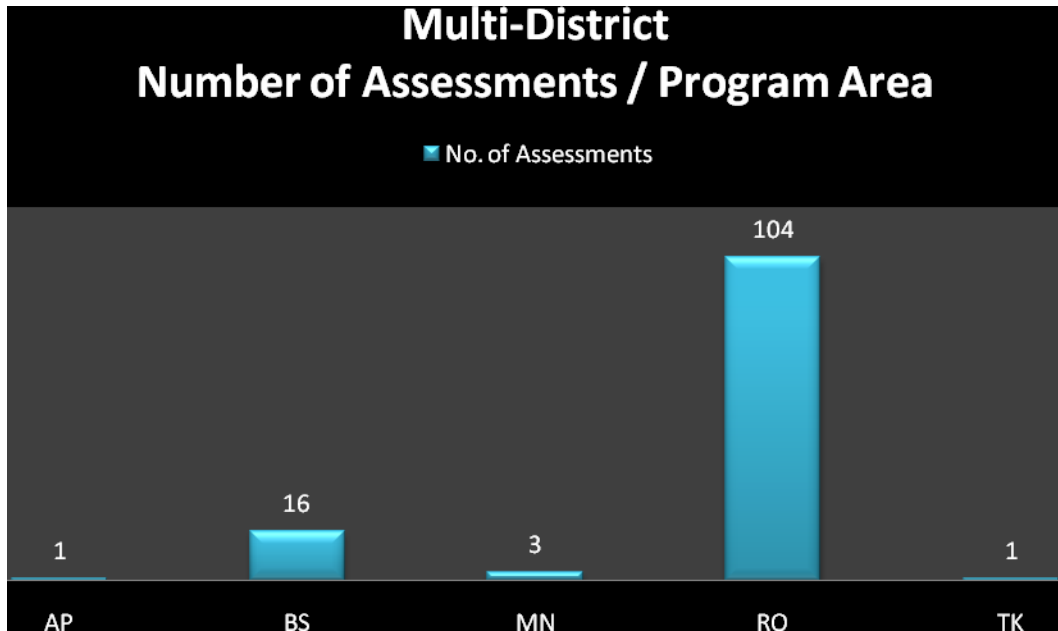
The remaining categories sent 3 Case Reports to the OGC in 2008. They issued 5 NOVs, 20 Final Orders, and 110 Consent Orders—all figures representing improvements over 2007. The

¹⁶ The chart above (as do they all) breaks out the various air programs. A cursory review of the same would lead to the conclusion that the district significantly improved its enforcement of the air rules based on the improvement in AV enforcement. In fact, however, the median of all air programs combined in 2007 was \$2,025.00. **In 2008 it fell to \$550.00.**

remaining categories therefore accounted for 4% of all Case Reports, 6% of the NOV's, 36% of the Final Orders and 8% of all Consent Orders.

B. Program Area Enforcement

The following chart provides the number assessments issued by Other Enforcement by program area in 2008:



C. Civil Penalty Assessments

Civil penalty assessments dropped in 2008, from \$285,603.25 in 2007 to \$180,637.25. This accounts for 2% of all assessments levied by the FDEP in 2008. Assessments broke down as follows:

Program	Total \$ Assessed	2007 Medians	2008 Medians
AP	\$3,100.00	\$0.00	\$3,100.00
AW	\$2,500.00	\$2,000.00	\$2,500.00
BS	\$18,900.00	\$2,000.00	\$750.00
MN	\$8,000.00	\$12,500.00	\$3,000.00
RO	\$134,137.25	\$600.00	\$392.00
TK	\$14,000.00	\$14,000.00	\$14,000.00

Median assessments dropped in the two programs most likely to be handled out of Tallahassee—beaches and shores and stormwater runoff, both of which saw sizeable decreases.

D. Civil Penalty Collections

\$178,540.75 was collected by the remaining categories in 2008, significantly less than they collected in 2007. The 2008 performance represents 3% of all dollars collected by the Department in civil penalties in 2008.

CONCLUSION

The data produced by the Department show mixed results. First, over the past years we have been highly critical of the Department's ever-increasing use of short-form consent orders as the mechanism used to resolve enforcement cases. For the first time in years, the use of this mechanism dropped (with the notable exception of the Southwest District) while case reports, notices of violation and model consent orders all increased. To be sure, the usage of long-form consent orders declined once again; however, we still feel that it is encouraging to see less of a reliance on short-form consent orders that realistically are nothing other than the equivalent of a traffic ticket. It will take some time to tell if the trend is lasting, or whether 2008 was an aberration.

The troubling aspect of the results is that in 2007 the Secretary very publicly stated that the Department was changing its penalty policy such that the penalties would be higher and their issuance would no longer be seen as the cost of doing business in Florida. When civil penalty assessments declined last year we did not believe that the decline was due to the policy not having had a chance to work. Frankly, this is because the Department now has a long history of being lax on environmental violators, coupled with an aggressive public relations machine designed to sell the public on a parallel reality. 2008 saw both a decline in the number of assessments in all but one district, as well as a decline in the dollars assessed. This includes the one program area that the Department was most insistent would see higher penalties—the hazardous waste program. In addition, the median assessments in the hazardous waste program declined.

In looking at the dredge and fill program we included the case of an unpermitted activity that was discovered by way of a citizen complaint only to have the Department waive all fines, so long as the violator paid the permit application fee followed by the issuance of a permit by the Department. While this was a relatively small case it is instructive about how the Department views its mission: it is to be the kind, compassionate moderator that is there to educate the public. These are good qualities, at least for the classroom. But when it comes to a regulatory framework it doesn't work effectively. That was proven in stark fashion this year with the economic meltdown enabled by a failure of federal agencies to exercise proper oversight over the financial markets. There is no reason to think the result should be any different in the environmental sector. Indeed, the lesson learned by the dredge and fill case in Jacksonville is that a violator can engage in unpermitted activity with little concern of consequences because even if

the violator is caught, the Department will make things right for him or her. We have seen how miserably this philosophy failed in the financial sector. If we are to avoid similar results in our environment we would respectfully suggest that what is desperately needed is for the Department of Environmental Protection to remember that it is a regulatory agency—not the Mister Rogers of developers and industry.

2008 was the year in which the Governor proposed that Florida purchase heavily contaminated property owned by U.S. Sugar in order to facilitate the restoration of the Everglades, a national treasure. While there are definitely positive aspects to the state acquiring ownership of this environmentally sensitive area it bears considering that current estimates place the cleanup costs of this property in the hundreds of millions of dollars. We reported last year that over the course of the past twenty (20) years the state has fined U.S. Sugar a grand total of less than \$17,000.00 because of its actions in contaminating the environment. See, http://www.peer.org/news/news_id.php?row_id=1128. Thus, the taxpayers will be asked to pay for the cleanup caused by this industry giant. With that in mind, one must ask whether or not Floridians can expect to see serious environmental enforcement from this point forward in the two districts (Southeast and South) that oversee environmental compliance in the region. It is a serious question since these two districts are the two least effective districts in environmental enforcement in Florida. The bottom line is that effective Everglades restoration will not occur unless the districts that are charged with environmental oversight aggressively crack down on polluters because continued uncontrolled introduction of pollutants into source waterbodies all but guarantees that restoration efforts will be largely futile.

At the same time that assessments were dropping statewide so too were collections—by almost 10% compared to 2007. Indeed, 4 of the 6 districts posted results showing that they collected less than 50% of the dollars that were assessed overall. While the single highest assessment was \$1,698,627.00, the single highest collection was \$190,000.00. From a deterrence standpoint it doesn't matter that much how high the assessment is, if minimal effort being expended to collect the money.

There are perhaps many reasons for the poor performance seen in 2008, not the least of which is the continued chipping away at the Department's budget. The effect of the legislative cuts can only be expected to have a negative impact on employee morale. This is perhaps part of the reason why the number of assessments dropped in 2008—after all, sooner or later fewer motivated employees will translate into fewer cases. The problem is that this drop in assessments also means a drop in revenue to the Department. The drop in revenue includes a drop in salary dollars, because many of the fines collected are used to pay salaries. Thus, in very real terms we see a Department that year after year asks for a bigger budget while at the same time failing to use all of the means at its disposal to ensure its effective operation. It is the equivalent of the child who kills his parents and then pleads for mercy because he is an orphan.

As Floridians know, the budget cuts by the Legislature are also having serious negative impacts upon local governments, many of which are being forced to close programs and lay off employees. If we look at the fines levied against polluters in 2008 we see a continuation of what we saw in 2007; over 50% of the biggest fines were levied against governmental entities, all but one of which were local. Local governments from across the state are generously represented in

the entire list of civil penalty assessments levied by the Department in practically every program area. With increasing budget cuts we can expect to see this list grow.

The problems identified above are not insurmountable. In fact, in some respects they should be relatively easy to overcome if Floridians want to see a future in which Florida's environment is protected in a manner that allows them to drink the water free of concern about the pollutants they are ingesting. Or perhaps free of concern about whether their homes will be wiped out by the next major hurricane because the wetlands have been destroyed by developers. Or free of concern about whether they can swim in the Gulf or the Atlantic without being exposed to pollutants discharged by dischargers whose greatest benefactors reside in Florida's Legislature. No, the problems can be corrected but the Department's history suggests that the correction will only be realized when the Legislature is serious about protecting Florida's environment and when the people who currently sit in upper management positions have been replaced by people who honestly want to see environmental protection be more than just a catch phrase. In short, it means that the public will have to demand changes.

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 Notices of Violation (NOVs). NOVs are also initiated in the district offices and are filed by the OGC. Once filed they are similar to circuit court lawsuits, though they are brought before an administrative law judge (ALJ) at the Division of Administrative Hearings. Until 2001, ALJs were unable to levy civil penalties in these cases. Thus, the NOVs were used by the Department to bring about direct environmental improvements—both long and short term. After implementation of legislation in 2001, the FDEP was authorized to seek civil penalty assessments via the issuance of NOVs and the ALJs were given statutory authority to impose assessments where warranted. This change in law stopped what had been a general decline in the issuance of NOVs. 2002 saw the first dramatic increase in their usage.

Historically, the most frequently used enforcement tool has, without question, been the use of Consent Orders, both long-form and short-form. Consent Orders (COs) are negotiated agreements between the FDEP and the violator wherein the violator agrees to undertake certain actions to reverse environmental damage caused by the violator's actions. In addition, COs most often require the payment of civil penalties. Consent Orders typically take the following form:

- Long-form COs are used 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 2007 report on the FDEP's history over the past 20 years, the use of Long-form COs began waning in the 1990s. There was also a sharp increase in the number of Short-form COs.

http://www.peer.org/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf

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.