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REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2011

PRELIMINARY STATEMENT

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2011. 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.

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EXECUTIVE SUMMARY

A. Statewide Results

The results that are reported herein must unfortunately be considered against a backdrop of an agency that is now headed by a Secretary who assumed the role immediately upon leaving his position in senior management with a regulated entity. This is the first time in the Department's history that this type of situation has arisen. His prior employment constitutes a direct conflict of interest under the federal Clean Water Act, yet neither the Governor, nor the U.S. EPA, has thus far chosen to remove him from office. The results of allowing the Department to be run by someone who has such a clear conflict of interest are now in and they show an unmistakable decline in enforcement of Florida's environmental laws.

The data provided by the Department pertaining to its performance in 2011 points to a significantly poorer performance in almost every major program and in every district. The numbers show a Department now intent on scaling back its enforcement of Florida's environmental laws beyond the reductions that had already been seen over the course of the recent past.

With the exception of final orders, the number of cases initiated by the Department declined in performance for every type of enforcement mechanism over the course of 2011. The declines ranged from 16% to 62%. **The total number of enforcement cases dropped 28%. The number of enforcement cases fell in every district in 2011.**

The Office of General Counsel received 109 case reports in 2011, a 31% decrease compared to 2010, and the third lowest in the agency's history. The Number of NOV's fell to 96, the lowest since 2008 and a 16% decline from 2010.

109 long-form consent orders were issued by the Department in 2011, a 62% decrease from 2010's performance. Issuance of model consent orders fell 30% to the lowest level since 1997. **There were a combined 265 long-form consent orders and model consent orders issued in 2011. This is the lowest level for the combination of these two enforcement mechanisms since 1996.** Fewer short-form consent orders were issued in 2011 (531) compared to 2010 (725), a 27% decline and the lowest number since 1999. This is the fourth year in a row that the usage of short-form consent orders has declined, although, the use of short-form consent orders as a settlement mechanism increased on a percentage basis compared to the other enforcement mechanisms.

Statewide there were 1,318 civil penalty assessments levied in 2010. **This number fell to 949 in 2011, representing a 28% decline. Every district assessed civil penalties in fewer cases compared with 2010.**

The following programs saw a lower number of assessments in 2011: air, asbestos, dredge & fill, domestic waste, hazardous waste, industrial waste, potable water and stormwater discharge. Only two key programs, solid waste and tanks, saw higher assessments, but the improvements were minimal—11 more cases in solid waste and 3 more in tanks. This is the

fourth year in a row that domestic waste cases have declined. This is the second year in a row of losses for the asbestos, dredge & fill, hazardous waste and industrial waste programs.

A total of \$9,266,595.25 in civil penalties was assessed by the Department in 2011, a 29% decline from the \$13,051,374.23 assessed in civil penalties in 2010. This is the lowest total civil penalty assessment since 2005. Only the Northwest and Central Districts saw an increase in the total dollars assessed in 2011.

In terms of actual dollars, total penalties assessed dropped in the air, asbestos, dredge & fill, domestic waste, hazardous waste, potable water and stormwater discharge programs. They increased in the industrial waste, solid waste and tanks programs.

Statewide there were 9 cases in which the Department assessed a civil penalty of \$100,000 or more, a 50% decrease from 2010's performance. Only 1 of the 9 cases was against a public entity (*Sarasota County*). The rest of the assessments were against private entities. The single highest assessment was in a solid waste case brought by the Northwest District against the *Coyote Land Company*. \$2,465,064.00 was assessed against this company on August 11. Otherwise, 3 of the 9 cases were brought in the Central District. Only 2 of the 9 highest assessments were for hazardous waste violations.

One bright spot was in median assessments. While median assessments for the Department as a whole remained unchanged, the overall median assessments rose in the Northeast and South Districts, while remaining unchanged in the Central District. Medians declined in the Northwest, Southeast and Southwest Districts.

Results were mixed for median assessments in the individual program areas, which in 2011 is a plus. They fell in the air, dredge & fill, industrial waste, potable water, stormwater discharge and tanks programs. **Median assessments rose substantially in the hazardous waste program.** They also rose in the domestic waste program and remained the same in solid waste.

When we looked at just civil penalties that were collected (excluding in-kind and penalty prevention assessments) we found a statewide total of \$3,037,727.79 collected in 2011. This was 57% less than the amount collected in 2010. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$2,520,822.97, an amount that is \$2,309,382.10 less than in 2010. The grand total of collections, i.e. straight penalties collected, together with in-kind and penalty prevention project completions, was therefore, \$5,558,550.76 in 2011, compared to \$11,907,892.26 that was collected just one year ago, a 53% decline overall.

Collections were down in every district. They declined by a minimum of 7% all the way up to 69% when compared with 2010's performance. Nevertheless, all of the districts except for the Northwest and South collected over 50% of penalty dollars assessed. The Northwest District collected 33.26% of its assessments. The South District collected 37.19%. Interestingly, the solid waste program managed to collect a mere 3.39% of its assessments, down roughly 47% from 2010. The tanks program also fell 20% from its 2010 performance.

As in years past, we continue to include 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. Northwest District

For the third straight year the number of enforcement cases has fallen in the Northwest District. Once again it issued fewer case reports, NOVs and consent orders. Long-form consent orders fell, as did short-form consent orders. Total penalties assessed increased sharply to the point that its assessments accounted for 39% of all assessment dollars levied by the Department. Median assessments declined, with hazardous waste medians declining for the third year in a row. Dredge and fill assessments declined, as did their medians. Collections declined 40% compared with 2010.

2. Northeast District

For the second year in a row the Northeast District initiated enforcement in fewer cases than in the previous year. It took enforcement in 133 cases in 2011, compared to 230 in 2010. Every enforcement tool fell in 2011 when compared to 2010's results. On the bright side, total assessments remained steady, falling only 2% from the previous year. Median assessments rose by \$500.00, the second year of increases. Collections were down for the second year in a row.

3. Central District

In 2011 the total number of enforcement cases fell 23% in the Central District. Case reports, NOVs and consent orders all fell. Penalties were assessed in 28% fewer cases, affecting almost every major program. Penalty dollars assessed did rise (47%), however, with median assessments holding steady. Collections fell 7% in 2011.

4. Southeast District

The Southeast District initiated enforcement in 128 cases in 2011, down 38% from 2010. NOVs increased, as did final orders. But case reports fell significantly and consent orders fell by 45%. 23% of all case reports received in Tallahassee were sent by the Southeast District in 2011. It is also the second-highest user of long-form consent orders in the Department. The number of assessments fell in 2011, particularly in the domestic waste program where only 2 cases were pursued in the whole of 2011. Dollars assessed fell by 54% and median assessments fell for the second year in a row. Collections dropped by an astounding 67%.

5. South District

The South District took enforcement in fewer cases in 2011. Case reports, NOVs and consent orders all fell, the latter by 28%. Final orders increased significantly, however. For the third year in a row the number of penalty assessments declined. Dollars assessed fell slightly while medians improved nicely from \$1,695.00 in 2010 to \$2,500.00 in 2011. But dredge and fill assessments fell both in total dollars assessed as well as the median for those assessments. Collections dropped by 25%.

6. Southwest District

The Southwest District accounted for 24% of all enforcement cases opened by the Department in 2011. While a healthy percentage it nevertheless fell from its 1/3 share in 2010. The total number of enforcement cases fell by 22%. As far as the types of enforcement taken, case reports fell, but NOVs and final orders both increased. Consent orders fell 30%, however, and the use of long-form consent orders fell sharply. Penalties were assessed in 34% fewer cases (295 compared to 445 in 2010) and almost every major program area saw declining numbers (except for the dredge and fill program). Total dollars assessed fell 68% compared with 2010 (the greatest decline in this area of all of the districts). Domestic waste assessments dropped 74%, while hazardous waste assessments fell 63%. Dredge and fill assessments likewise fell. Medians fell slightly overall. Collections dropped by over \$2,000,000.00, or 69%--again the largest decline of all of the districts.

7. All Other Enforcement

This category typically involves the beaches and coastal systems program and stormwater discharge cases. There was a sharp increase in the use of final orders, but consent orders fell from 122 in 2010 to just 45 in 2011. Penalty assessments fell by 56% in the stormwater discharge program, but beaches and coastal systems improved slightly. Total dollars assessed fell 89%, while median assessments rose 37%. Overall, this category accounted for only 2% of all assessments levied by the Department. Collections fell 46% from 2010.

STATEWIDE ENFORCEMENT RESULTS¹

A. Case Reports, NOVs, Consent Orders, Final Orders—Statewide Results

The Department initiated enforcement in 1147 cases in 2011, a 28% decline from 2010 when enforcement was taken in 1587 cases.

The Department requested serious enforcement through the filing of complaints in civil circuit courts in 109 cases in 2011, a significant decrease from the 157 requests in 2010. This is the first time in the last 6 years that the Department's performance has declined.

NOV issuance continued to decline, with 96 NOVs filed in 2011, compared to 114 in 2010.

The Department issued 844 consent orders in 2011, compared with 1249 consent orders that were issued in 2010. Of the 844 consent orders issued in 2011, 109 were long-form consent orders. This is a 63% reduction from the 287 long-form consent orders issued in 2010. It is the lowest that this category has seen since 2008. What looked to be the beginning of a positive trend in 2010 now appears to have abruptly stopped.

While long-form consent orders dropped significantly, so to the use of model consent orders. These dropped from 224 in 2010 to 156 in 2011. This performance is the lowest since 1997 when 134 were issued. Model consent orders are essentially long-form consent orders that are tailor-made to fit more routine violations in each program area.

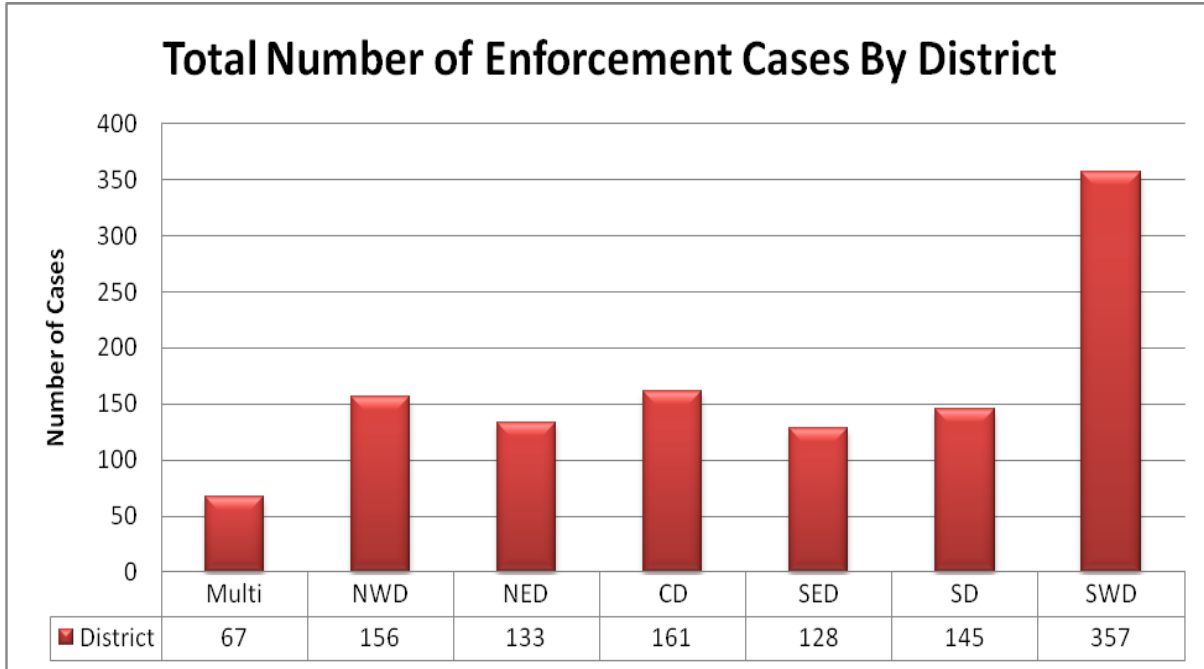
There were a combined 265 long-form consent orders and model consent orders issued in 2011. This is the lowest level for these two enforcement mechanisms since 1996.

Fewer short-form consent orders were also issued in 2011. 531 such orders were issued statewide, compared to 725 in 2010. 46% of all enforcement cases were resolved via short-form consent orders, the same percentage as in 2010. One has to go back to 1999 to find a year in which fewer short-form consent orders were issued.

The one area in which there was some improvement was in final orders. The Department issued 98 final (Enforcement Related) orders in 2011, a 51% increase from 2010's results.

¹ 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. This description is now at 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. 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.

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



As previously indicated, statewide, the Department took enforcement in 1147 cases in 2011, far fewer than the 1587 cases opened in 2010. Virtually every district saw decreases in the total number of cases. While the Southwest District continues to be responsible for a significant portion of the enforcement that is undertaken by the Department as a whole, its dominance dropped from 30% in 2010 to 24% in 2011. (Overall the Southwest District initiated 22% fewer cases in 2011 than it did in 2010.) This is also the third straight year of declining numbers in the Northwest District.

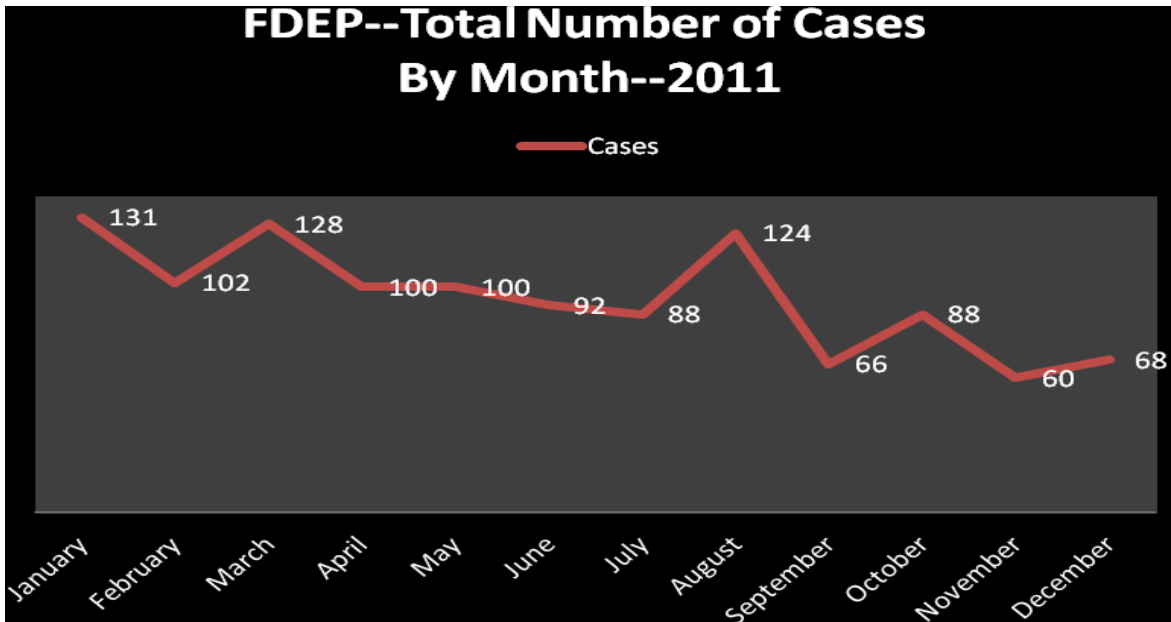
B. Statewide Trends In 2011

The unfortunate fact is that the Department is headed by a Secretary who should be disqualified from overseeing any activities involving Clean Water Act issues. This is because of a clear conflict of interest that he has by virtue of his prior employment with a regulated entity, a conflict that is prohibited under U.S.C. § 1314(i)(2)(D). This is the first time in the Department's history that a sitting Secretary has so clearly been ineligible to hold this office. PEER and the Florida Clean Water Network have filed a petition with the Environmental Protection Agency asking that agency to remedy this situation, but to date the EPA has not acted.² As a result of this situation, coupled with the extent of the decline in enforcement cases overall, we thought it

² See, *EPA Inaction Imperils Clean Water Anti-Conflicts Safeguard*, http://www.peer.org/news/news_id.php?row_id=1552

would be appropriate to see if there were any trends in the enforcement over the course of the year.

We checked the number of cases reported by the Department on a monthly basis. What we found was disconcerting. There was an overall steady decline in the number of cases as the year progressed, as the following chart demonstrates:

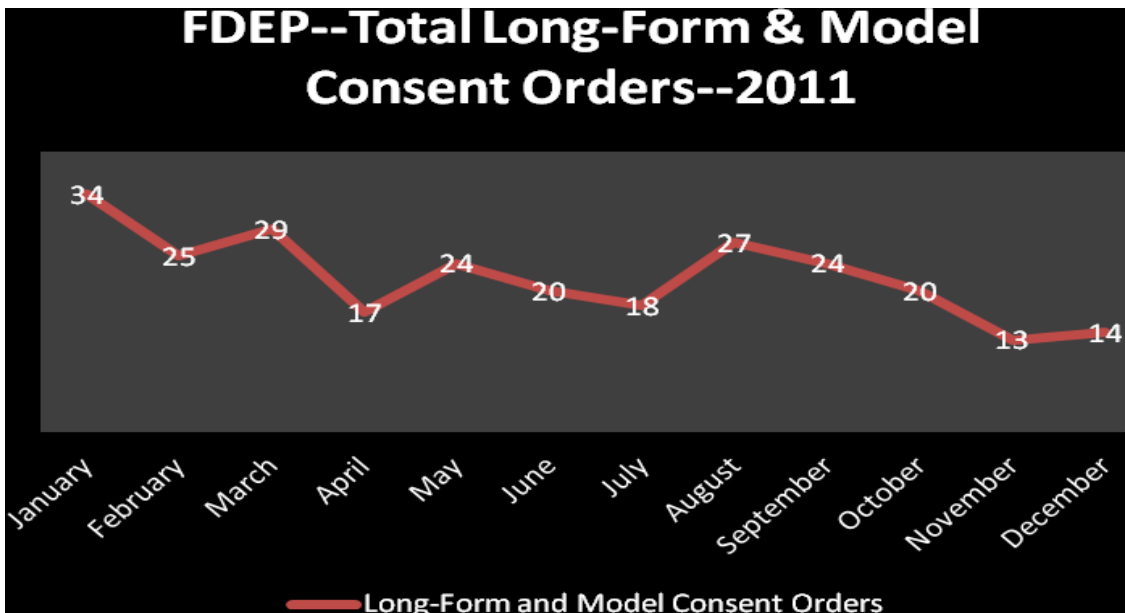


Except for a spike in August, there was a clear downward trend in the number of cases opened in 2011 to a point that the number of new cases had been almost cut in half by December when compared with January's results.

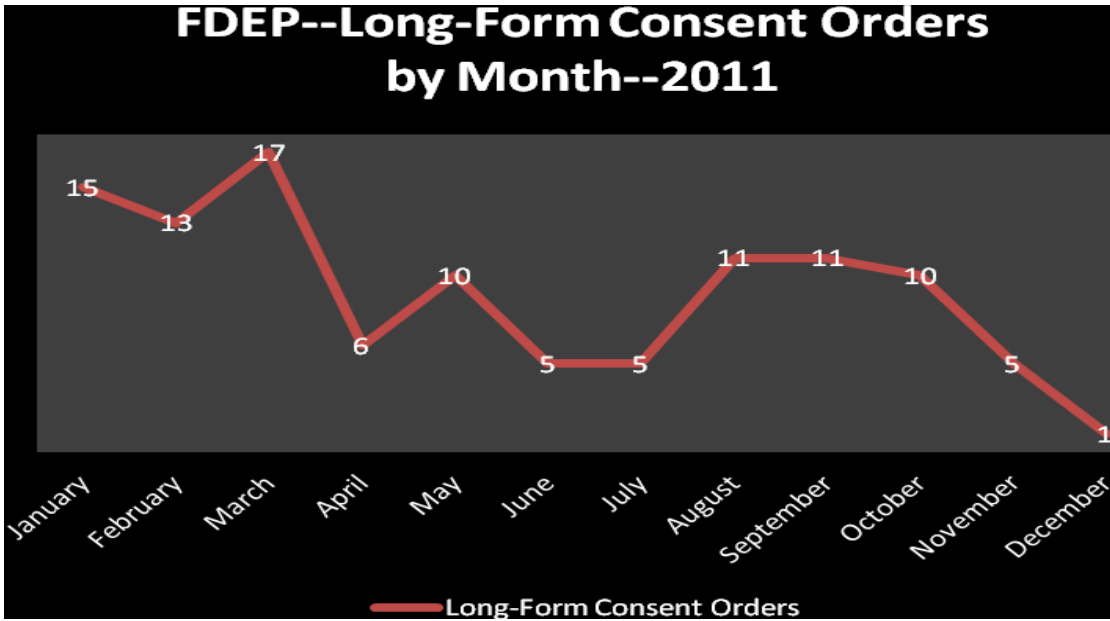
Consent orders are by far the Department's enforcement mechanism of choice. Resolution of enforcement cases through the use of consent orders also steadily declined over the course of 2011. By year's end issuance of consent orders on a monthly basis had been almost cut in half:



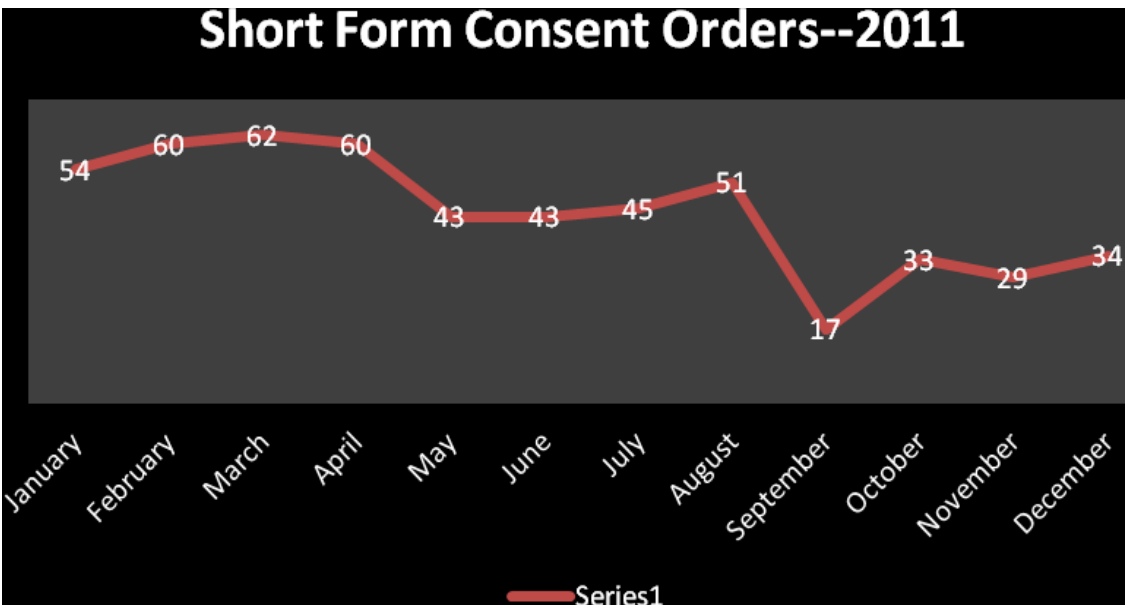
This trend was even more evident when we isolated just long-form and model consent orders together. We looked at these two types of enforcement because they are the types in which the Department maintains greater oversight over the polluter once the enforcement case has been initiated. The trend is unmistakable:



And if we just look at long-form consent orders it is apparent that this form of enforcement has been all but eliminated over the course of the year:



Short-form consent orders followed the same trend as other consent orders in 2011:



The trend for short-form consent orders is interesting because one would naturally expect that the use of this mechanism would increase over the course of the year due to the budget cuts imposed by the Scott administration. This is because it is easier (and thus requires less staff time) to resolve enforcement cases through use of a levied fine than a complex long-form consent

order that not only involves significant negotiation but also additional time spent monitoring the facility in question.

It turns out that a “strategic planning meeting” was held by Secretary Vinyard in July 2011 to discuss enforcement and what is now called “compliance assistance.” On November 16, 2011 Deputy Secretary Jeff Littlejohn issued a memo to all Regulatory Directors outlining guidance to be followed.³ The unstated but nonetheless clear and overwhelming goal described in the memo is one that resists enforcement in all but the worst cases. Instead, the Department will now seek to work with business as a partner. A review of the above data shows what appears to be the result of the July 2011 meeting, inasmuch as the decline in enforcement proceeds unabated until the end of the year.

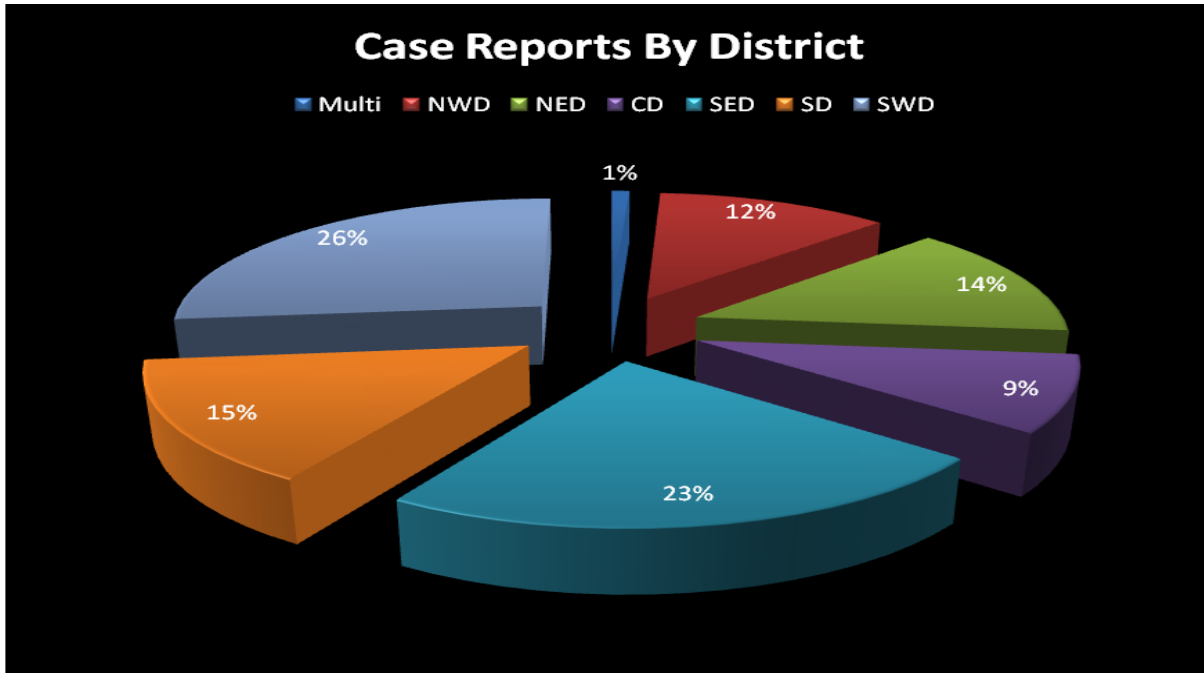
Given what we’re seeing in the data produced by the Department for 2011 it would appear that it will take a lot of work to turn things around in 2012 and beyond.

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

The Department’s various enforcement tools were distributed amongst the Districts as follows:

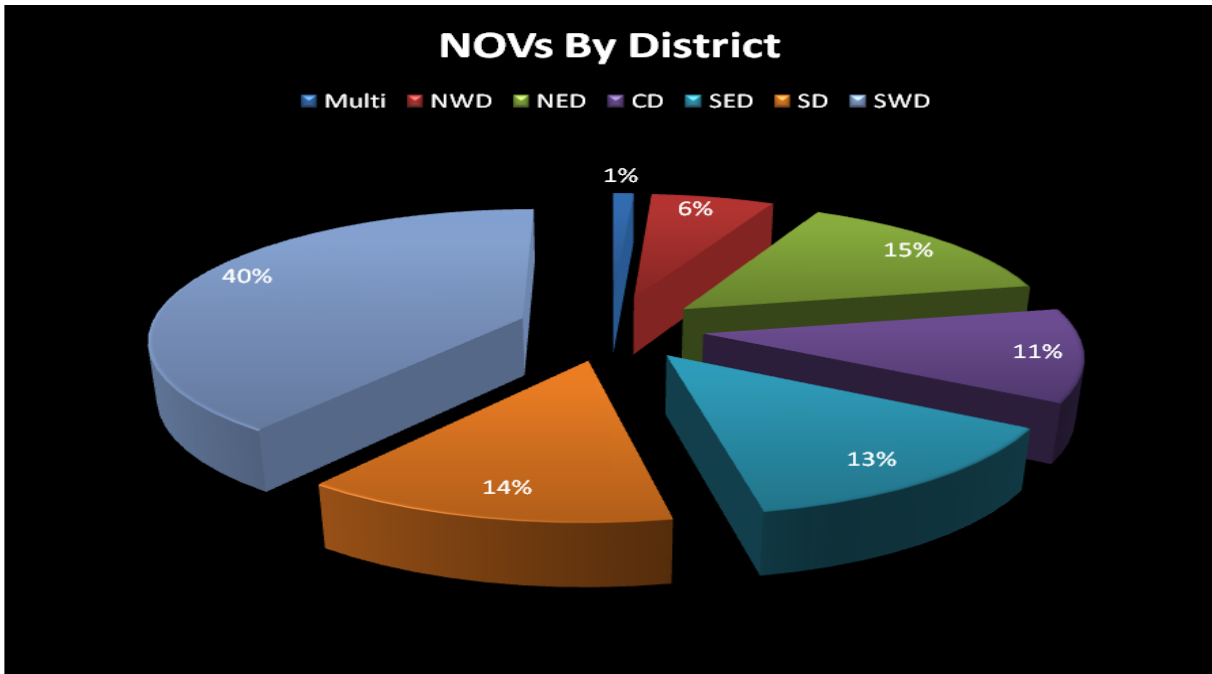
³ The memo may be found on the Department’s website at http://www.dep.state.fl.us/legal/Enforcement/appendix/compliance_documents/memo111611.pdf.

1. Case Reports



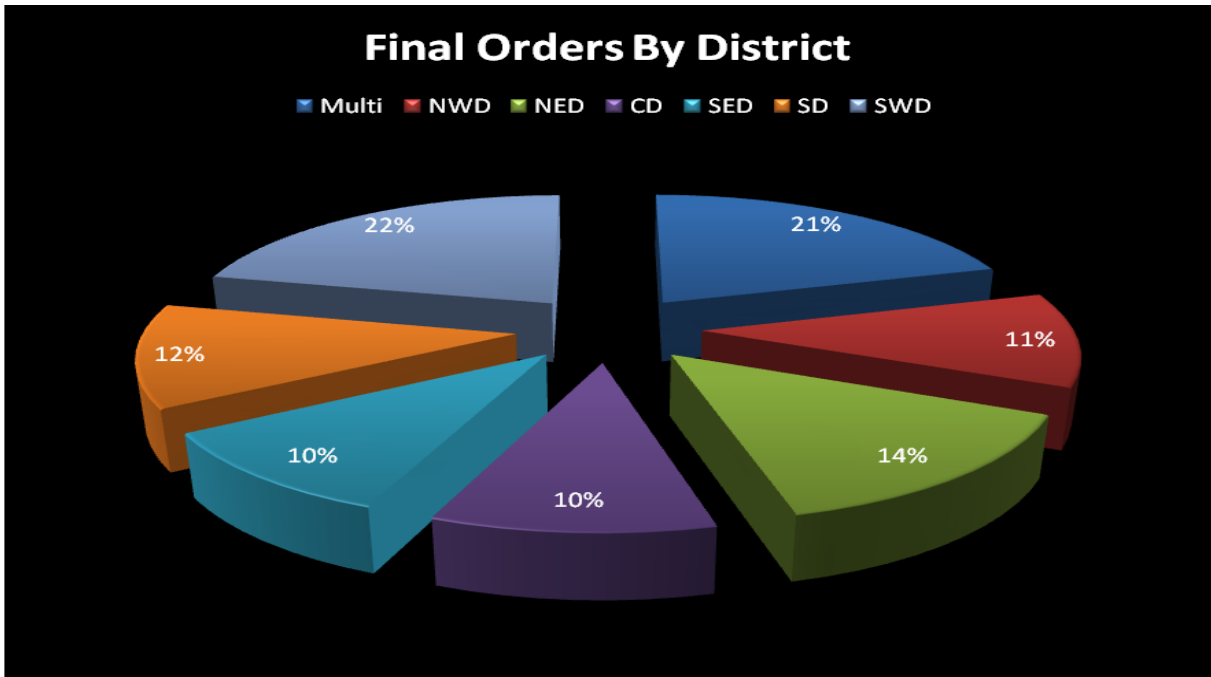
9.50% of the enforcement cases handled by the Department were referred to OGC for various types of litigation, roughly the same percentage as last year, but the total number of case reports decreased significantly when compared with 2010. This year the Southeast and Central Districts saw poorer performance than in 2010. The Southwest District accounted for the largest percentage of case reports, while the Central District accounted for the fewest.

2. NOVs



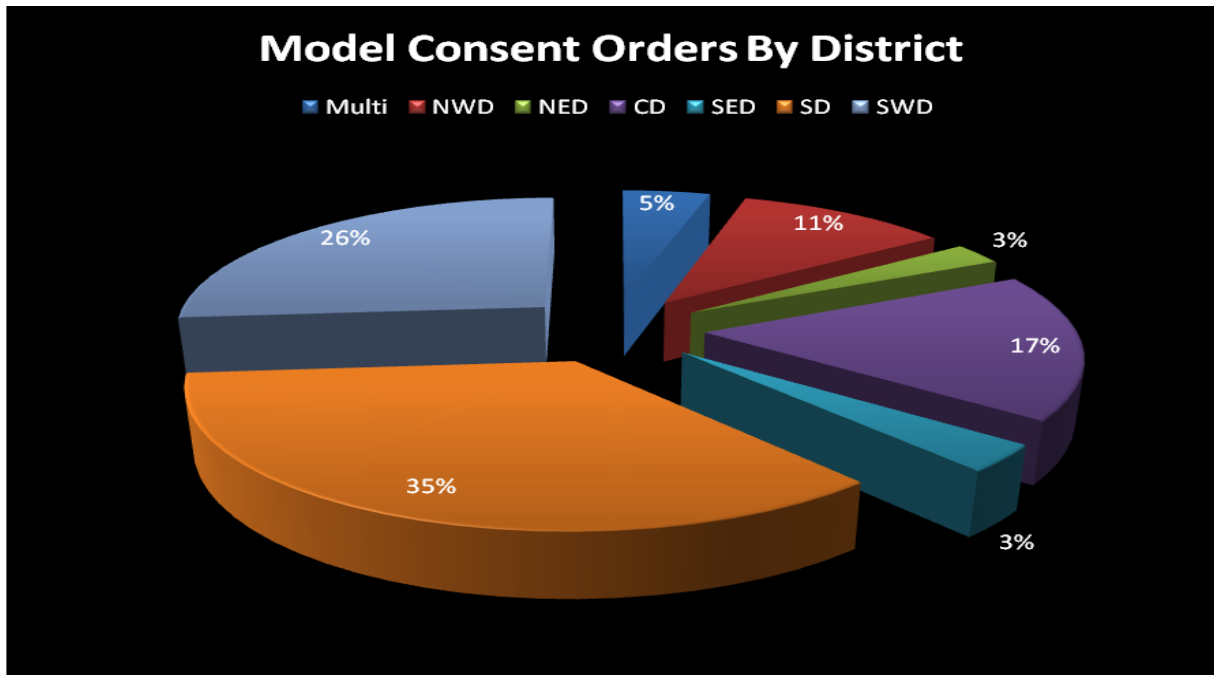
As the chart aptly demonstrates, the usage of NOVs was relatively uniform across all of the districts, with the exception of the Southwest District, which contributed 40% of all such enforcement tools.

3. Final Orders



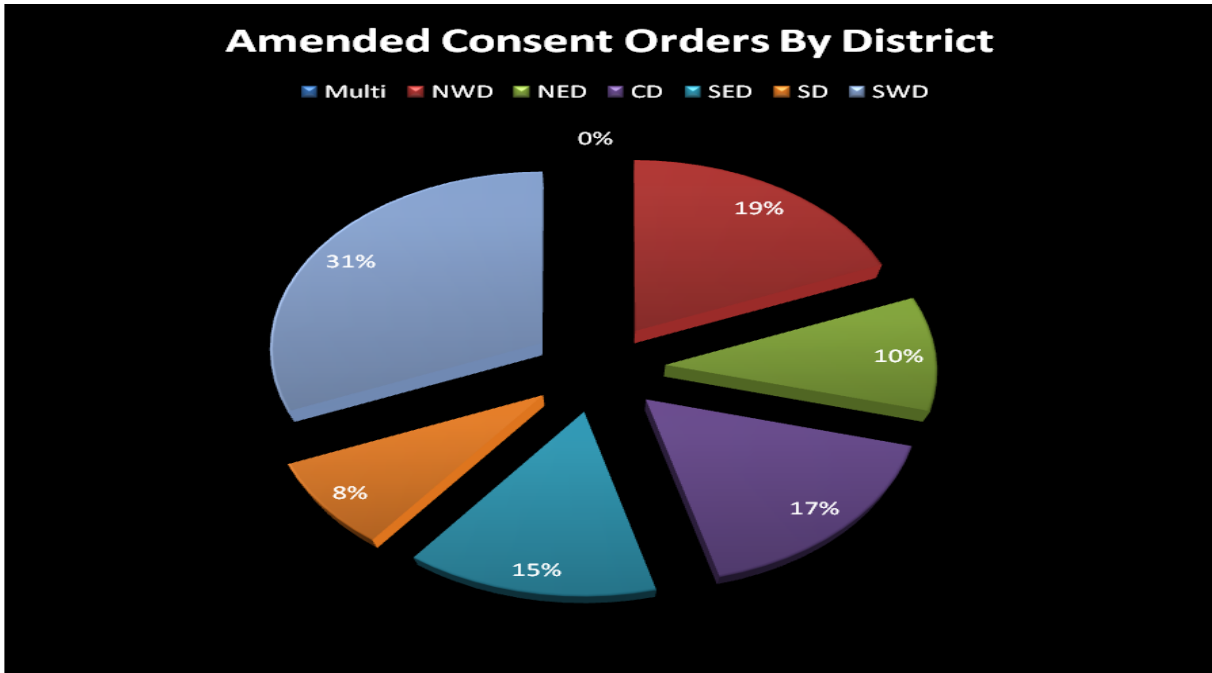
The usage of final orders was relatively uniform across the districts in 2011. Significant increases as a percentage of all final orders were noted in the Southwest District and in Tallahassee, whereas the Northeast District saw a 16% decrease as a percentage of all districts.

4. Model Consent Orders



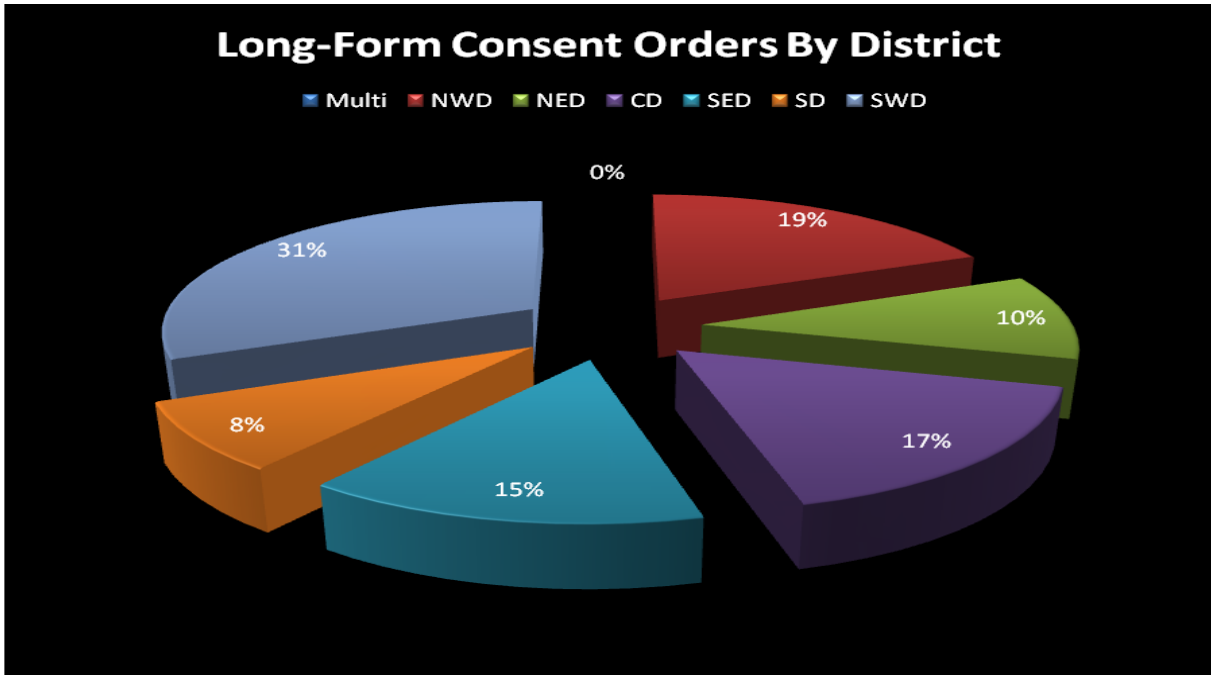
Once again the South District issued the largest single percentage of model consent orders of all of the districts. Otherwise the numbers were rather stable compared to last year.

5. Amended Consent Orders



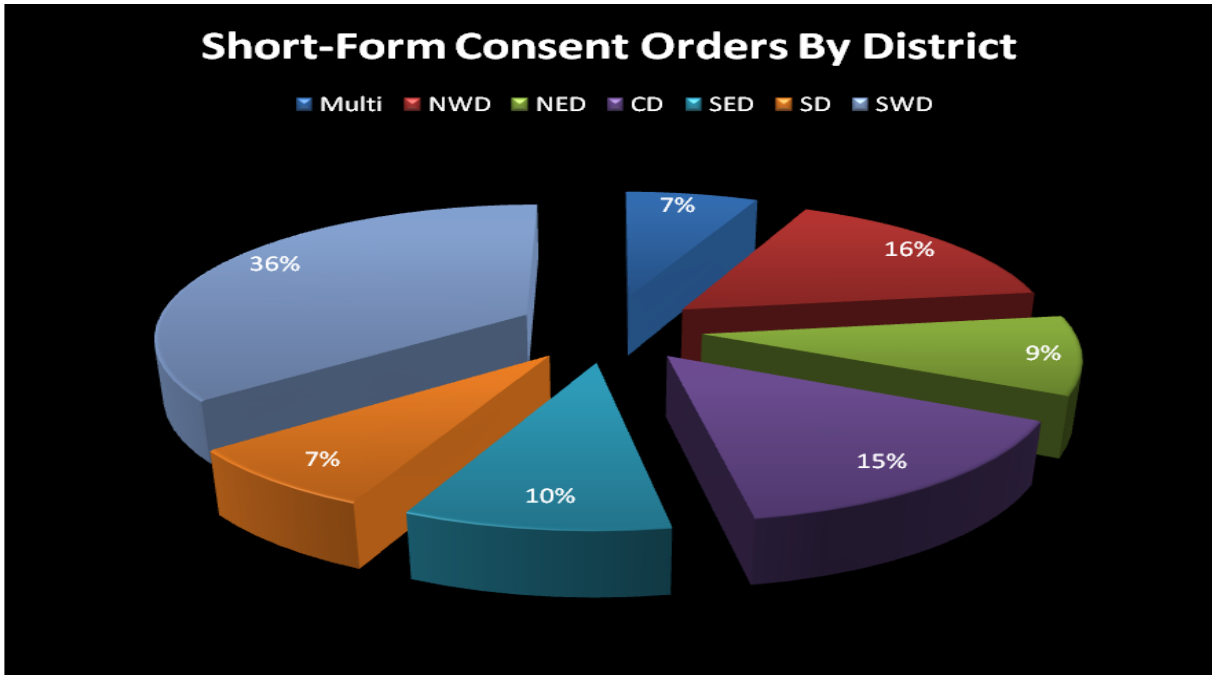
Consent orders are typically amended when circumstances arise that require changes in reporting and monitoring of the permitted facility, indicating that the Department is continuing to monitor the situation that necessitated the original enforcement action. Amended consent orders are not usually needed in instances in which short-form consent orders were the initial enforcement tool of choice. While the distribution of amended consent orders is fairly equal there were sharp declines in the South and Northeast Districts with sharp increases in the Northwest and Central Districts, as well as in Tallahassee.

6. Long-Form Consent Orders



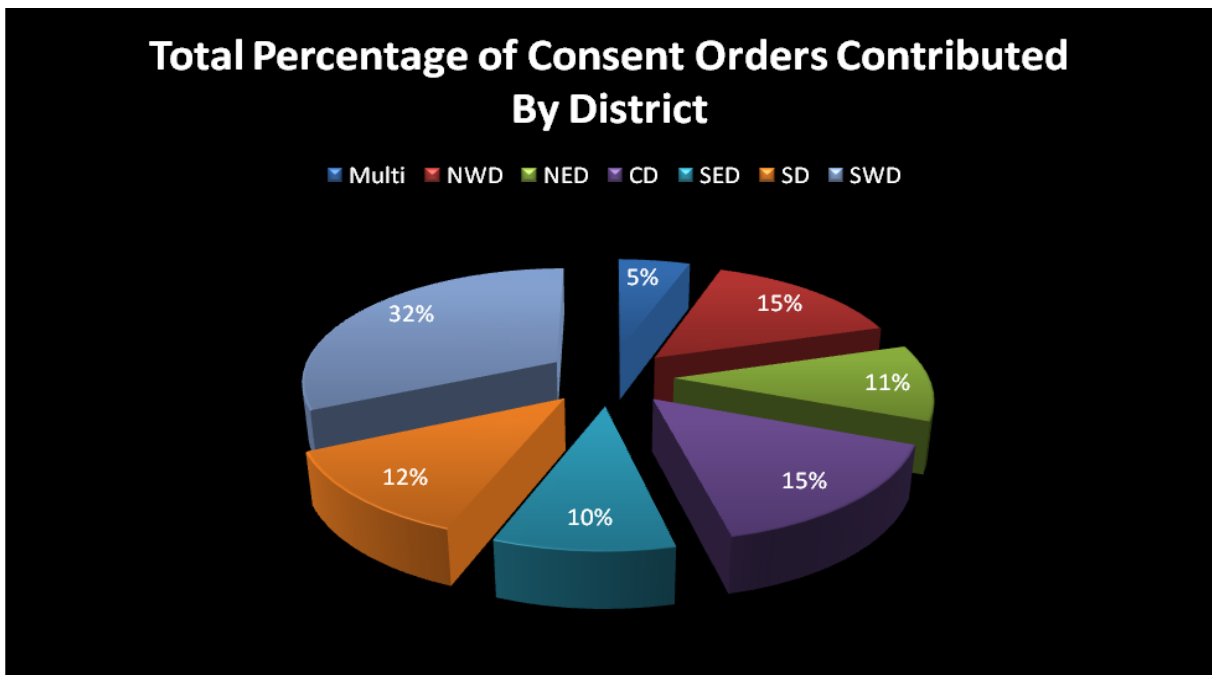
Compared to 2010 there was a significant reduction in the contribution of long-form consent orders generated by the South and Northeast Districts in 2011. On the plus side, sizeable increases were observed in the Central and Northwest Districts.

7. Short-Form Consent Orders



The distribution of short-form consent orders was essentially unchanged from 2010.

8. All Consent Orders Combined



The consent order is by far the Department’s most preferred method of resolving enforcement cases. As with short-form consent orders, the total percentage of consent orders contributed by each district was basically unchanged from 2010. The Southwest District continues to account for 1/3 of all consent orders issued in Florida.

D. Short-Form Consent Orders

For the first time in four years there has been an increase, albeit slight, of the Department’s use of short-form consent orders as an enforcement mechanism. 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%
2009	54.03%
2010	45.68%
2011	46.29%

This year only two districts, the Northwest and Southwest, settled a majority of their cases through the short-form route. The Central District settled almost one half of their cases using this tool. Two districts (the Northwest and Southeast) increased their reliance upon this

enforcement tool compared to 2010. The Southeast District increased its use of short-form consent orders by almost 15%. 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>	49.69%
<i>Northeast</i>	37.59%
<i>Multi-District</i>	53.73%
<i>Northwest</i>	54.49%
<i>Southeast</i>	39.84%
<i>South</i>	27.59%
<i>Southwest</i>	52.94%

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. Overall, the Department chose short-form consent orders in 62.91% of the cases in which a consent order was deemed the appropriate enforcement mechanism. The following results give further insight into how enforcement cases are handled in each district.

<i>District</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders</i>
<i>Central</i>	61.54%
<i>Northeast</i>	55.56%
<i>Multi-District</i>	80.00%
<i>Northwest</i>	67.46%
<i>Southeast</i>	63.75%
<i>South</i>	38.46%
<i>Southwest</i>	70.26%

While most of the districts lowered their use of short-form consent orders, the Southeast District increased its reliance upon them by 28.58% compared to 2010. The multi-district category also significantly increased its dependence upon this mechanism.

E. Program Area Performance

The number of enforcement cases⁴ brought in each key program area is as follows:

Program Area	Total No. of Enforcement	Total No. of Enforcement	Total No. of Enforcement
	Cases--2009	Cases--2010	Cases--2011
Asbestos	36 ⁵	21	20
Air (Excluding Asbestos)	99	145	80
Beaches/Coastal	24	15	21
Waste Cleanup	24	17	19
Dredge & Fill ⁶	277	236	148
Domestic Waste	144	125	108
Hazardous Waste	178	166	119
Industrial Waste	85	58	62
Potable Water	142	166	110
Stormwater Discharge	93	121	55
Solid Waste	50	38	63
Tanks	232	341	251
Underground Injection Control	6	1	0

With the exception of a handful of key programs, enforcement decreases were seen in a clear majority of programs. We included the results from 2009 in the above chart so that the reader can get an idea of just how seriously enforcement has declined over the past two years in some key program areas. Of particular note are the air, dredge and fill, domestic waste, hazardous waste, potable water, stormwater discharge and tanks programs—all of which saw sharp declines in enforcement.

The following table sets out the average number of cases initiated by the Department on an annual basis and then compares those averages to the performance in 2010 and 2011 with respect to the same key program areas listed above. The results are as follows:

Program Area	Historical Averages ⁷	2010 Results	2011 Results	Difference
Asbestos	13	21	20	7
Air (Excluding Asbestos)	93	145	80	(13)
Beaches/Coastal	14	15	21	7
Waste Cleanup	4	17	19	15
Dredge & Fill	216	236	148	(68)

⁴ Defined as the sum of case reports, all consent orders, NOVs and final orders.

⁵ Results in red represent declines from the previous year's values.

⁶ This includes Environmental Resource Permitting.

⁷ The Historical Averages shown are for the twenty year period of 1987 through 2007.

Domestic Waste	119	125	108	(11)
Hazardous Waste	132	166	119	(13)
Industrial Waste	47	58	62	15
Potable Water	112	166	110	(58)
Stormwater Discharge	35	121	55	20
Solid Waste	39	38	63	24
Tanks	72	341	251	179
Underground Injection Control	5	1	0	(5)

The results for 2011 were the worst results in this category since we began issuing these reports in 2003. What is quite distressing is the program areas that underperformed the historical averages. Air, dredge and fill, domestic waste, hazardous waste, potable water and underground injection control all failed to meet those averages. These are the largest programs administered by the Department. Seven programs saw results that were better than the historical averages, the two most noteworthy being stormwater discharge and solid waste.

F. Civil Penalty Assessments

Although the Department initiated enforcement in 1147 cases in 2011 it did not assess civil penalties in every case. This is not abnormal and happens for any number of reasons. Amended consent orders are included in the total enforcement numbers and usually do not include additional penalty assessments. The numbers can also differ because the Department has simply elected not to assess penalties in some cases. The Department assessed civil penalties in 949 cases in 2011 (369 fewer cases than in 2010). **This is the fifth straight year in which the number of assessments has declined.**⁸ By and large, the results only get worse when delving deeper into the numbers. The Department assessed **\$9,266,595.25 in civil penalties, which is \$3,784,778.98 less than the \$13,051,374.23** in civil penalties levied in 2010 (a 29% decline). Moreover, one would have to go back to 2005 to find a year in which fewer penalty dollars were levied.⁹

Statewide there were 9 cases in which the Department assessed a civil penalty of \$100,000 or more, 50% less than in 2010. One of those cases (11% of the total) was against a governmental entity (*Sarasota County*).

The key program areas also saw median dollars assessed on a per case basis as follows:¹⁰

Program Area	Historical	2010	2011
---------------------	-------------------	-------------	-------------

⁸ The Department assessed civil penalties in 1472 cases in 2007, 1408 in 2008, 1363 in 2009 and 1318 in 2010.

⁹ \$7,794,556.15 was levied in 2005.

¹⁰ Data in **red** represent declines from the performance in 2010. Data in **orange** represents performance in 2010 that represents declines from the performance in 2009.

	Medians	Medians	Medians
Asbestos	\$2,000.00	\$1,250.00	\$2,000.00
Air (Excluding Asbestos)	\$1,699.50	\$2,000.00	\$1,500.00
Beaches/Coastal	\$500.00	\$875.00	\$750.00
Waste Cleanup	\$4,500.00	\$750.00	\$3,500.00
Dredge & Fill	\$700.00	\$1,205.00	\$1,000.00
Domestic Waste	\$2,250.00	\$2,000.00	\$3,000.00
Hazardous Waste	\$4,100.00	\$3,868.50	\$7,090.00
Industrial Waste	\$4,500.00	\$2,590.10	\$2,500.00
Potable Water	\$500.00	\$875.00	\$537.00
Stormwater Discharge	\$600.00	\$3,500.00	\$1,199.00
Solid Waste	\$2,843.00	\$3,000.00	\$3,000.00
Tanks	\$2,712.00	\$5,149.50	\$5,100.00
Underground Injection Control	\$6,850.00	\$21,770.75	\$0.00

While there was plenty of bad news in the area of median assessments, one bright spot was the area of hazardous waste, which saw a significant increase compared to 2010's results. This is the one area that former Secretary Sole had insisted that the FDEP's new penalty policy would help. Domestic waste medians also saw a healthy rise. But the hazardous waste results were unfortunately not realized in a majority of the remaining program areas. Of particular concern are the results in the air, dredge and fill and stormwater discharge areas, all of which saw poorer performance. This is the second straight year in which median assessments in the dredge and fill program have declined.

Every district saw a decline in the number of assessments, and four of the six districts saw a decline in the total dollars assessed compared to 2010. Overall, the Districts' performance in the area of penalty assessments was as follows:

DISTRICT	NUMBER OF ASSESSMENTS IN 2010	NUMBER OF ASSESSMENTS IN 2011	TOTAL \$ ASSESSED	% OF STATE TOTAL
Multi-District	120	70	\$196,003.02	2.12%
NWD	150	135	\$3,633,190.89	39.21%
NED	169	111	\$837,127.50	9.03%
CEN District	187	134	\$1,252,278.76	13.51%
SED	109	90	\$942,531.19	10.17%
SD	138	114	\$813,388.00	8.78%
SWD	445	295	\$1,592,075.89	17.18%

This is the **fourth** year in a row that the South District saw a drop in its number of overall assessments. This is the **third** year in a row that the Northwest District saw a drop in the number of overall assessments. **Moreover, every district in 2011 assessed penalties in fewer cases than it did in 2010.**

Dollar assessments compared poorly as well. Four of the six districts assessed fewer dollars in fines in 2011 than they did in 2010:

DISTRICT	TOTAL \$ ASSESSED IN 2010	% OF STATE TOTAL IN 2010	TOTAL \$ ASSESSED IN 2011	% OF STATE TOTAL IN 2011
Multi-District	\$1,753,320.00	13.43%	\$196,003.02	2.12%
NWD	\$1,803,908.53	13.82%	\$3,633,190.89	39.21%
NED	\$855,446.11	6.55%	\$837,127.50	9.03%
CEN District	\$850,315.85	6.52%	\$1,252,278.76	13.51%
SED	\$2,030,645.12	15.56%	\$942,531.19	10.17%
SD	\$816,709.40	6.26%	\$813,388.00	8.78%
SWD	\$4,941,029.22	37.86%	\$1,592,075.89	17.18%

The comparison of median assessments from 2010 to 2011 amongst the districts is as follows:

DISTRICT	2010 MEDIAN ASSESSMENTS	2011 MEDIAN ASSESSMENTS
Multi-District	\$750.00	\$1,199.00
NWD	\$2,000.00	\$1,500.00
NED	\$2,000.00	\$2,500.00
CEN District	\$2,000.00	\$2,000.00
SED	\$3,500.00	\$3,350.00
SD	\$1,695.00	\$2,500.00
SWD	\$2,053.80	\$2,000.00

Three districts, the Northwest, Southeast and Southwest, saw a drop in their median assessments in 2011 when compared to 2010.¹¹ This is the second year in a row that the Southeast District has seen a drop in its median assessments.

1. The Highest Assessments

The following is a list of the highest assessments, i.e. those assessments exceeding \$100,000, levied by the Department in 2011, sorted by program area:¹²

¹¹ By contrast, only one district in 2010 (the Southeast) saw a drop in its median assessments compared to the following year.

¹² The abbreviations are as follows: AB = Asbestos; AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AM = Air Resource Management; AS = Air Permitted Source; AV = Air Title 5; AW = Aquatic Weed; BS = Beaches and Shores; CC = Collections Case; CM—Coastal & (Footnotes continued on next page)

District ¹³	Program	Polluter	Amount
2	HW	LITHIUM NICKEL ASSET HOLDING COMPANY	\$168,966.00
4	TK	DBR LEASE EXCHANGE, LLC; 2571 BOGGY CREEK ROAD ASSOCIATES, LLC	\$170,000.00
5	SW	PRICE CUTTERS TRASH REMOVAL AND P-ROCK SALES, INC.	\$187,550.00
6	DW	SARASOTA COUNTY BOARD OF COUNTY COMMISSIONERS	\$195,256.00
3	TK	DELCO OIL, INC., DULUCA STEPHEN B. AND DENISE S.	\$190,000.00
3	HW	HI-ACRES, LLC, D/B/A FOREMOST FERTILIZER	\$200,000.00
4	SW	PORTER, GEORGE, JR.	\$253,750.00
1	CU	COYOTE LAND CO., INC.	\$500,000.00
1	SW	COYOTE LAND CO., INC.	\$2,465,064.00

G. Civil Penalty Assessments By Program Area—District Comparison

This section addresses the performance of the major program areas in 2011. 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 assessments. Given the serious downward trend in many program areas we are also including the results from previous years so that the reader can better understand the state of enforcement in each program.

1. Air Program

The Department-wide results showed a clear decrease in the number of air assessments:

Year	Total Number of Air Assessments
2009	100

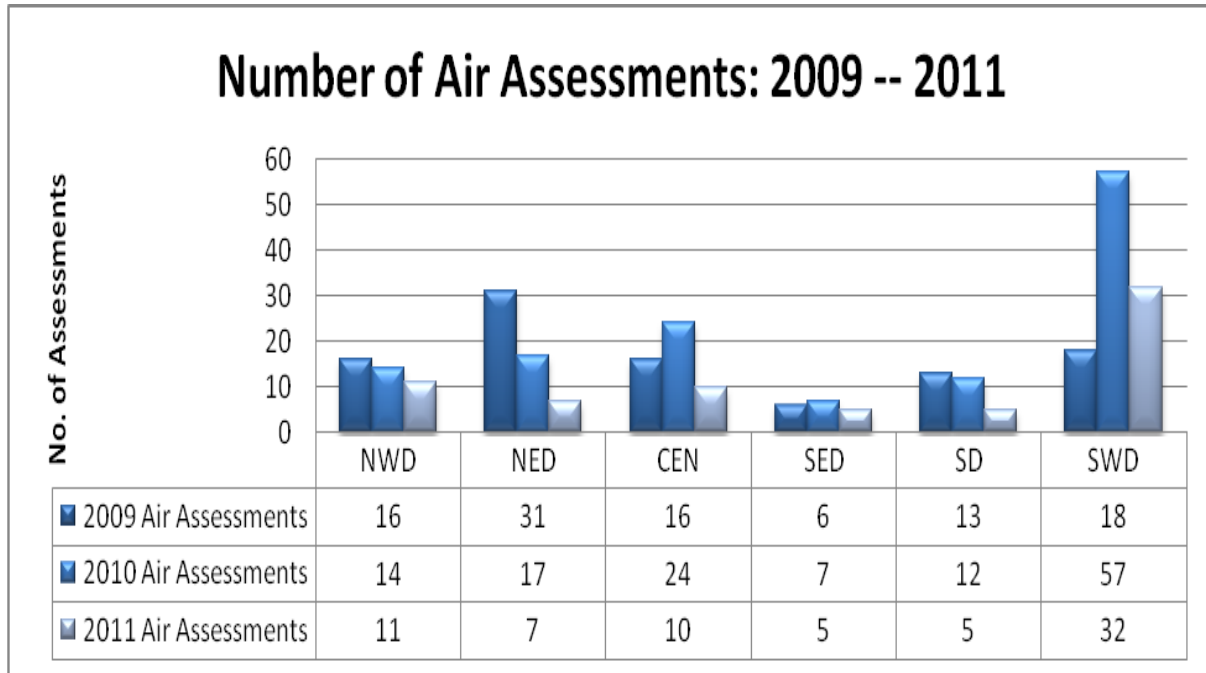
Aquatic Managed Area; CR = Coral Reef ; CU = Waste Cleanup; CZ==Coastal Zone Management; DA = Disciplinary Action; DF = Dredge and Fill; DR= Dry Cleaners; DW = Domestic Waste; EP = Environmental Resource Permitting (Dredge & Fill); ES = ERP Stormwater; EW = ERP Wetlands / Surface Waters; HW = Hazardous Waste; IW = Industrial Waste; MA = Mangrove Alteration; MN = Mining Operations; MR= Marine Resources; OC = Operator Certification; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Discharge; S1 = Untreated Domestic Waste Spills; S3 =Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection.

¹³ District numbers correspond to the following districts: 0=Multi-District; 1=Northwest District, 2=Northeast District, 3=Central District, 4=Southeast District, 5=South District, 6=Southwest District.

2010
2011

131
70

And as the following chart indicates, over the last three years there is a clear pattern of bringing fewer enforcement cases in the air program in every district but the Southwest District:

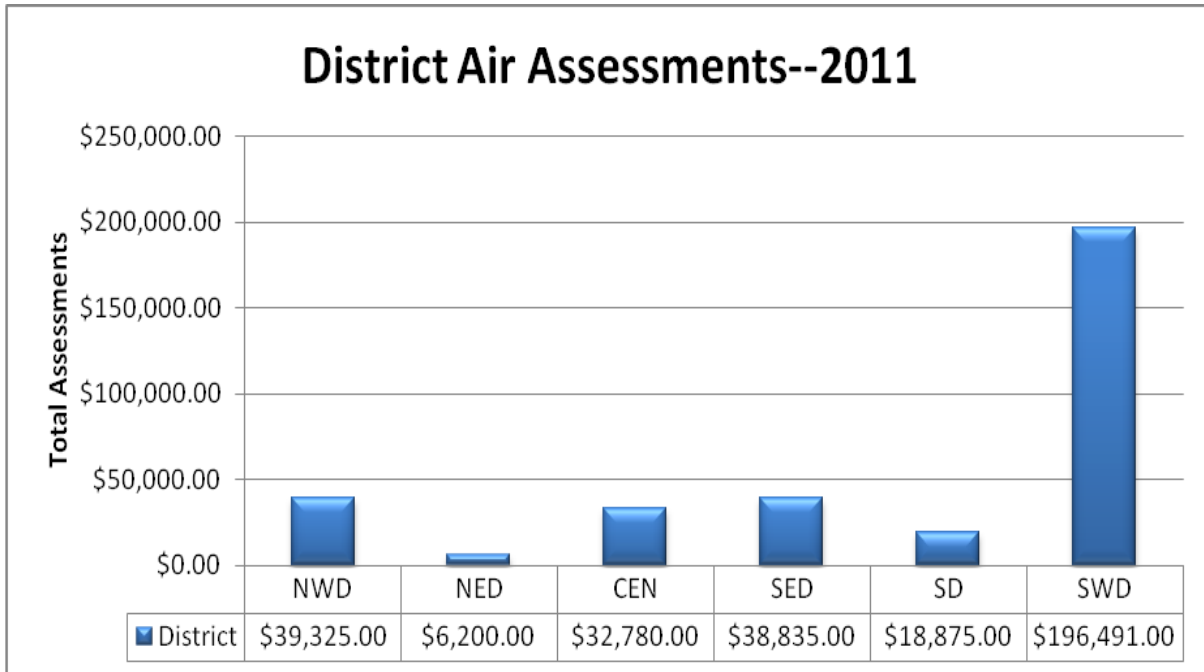


The following table illustrates the decline in assessments for the Department as a whole:

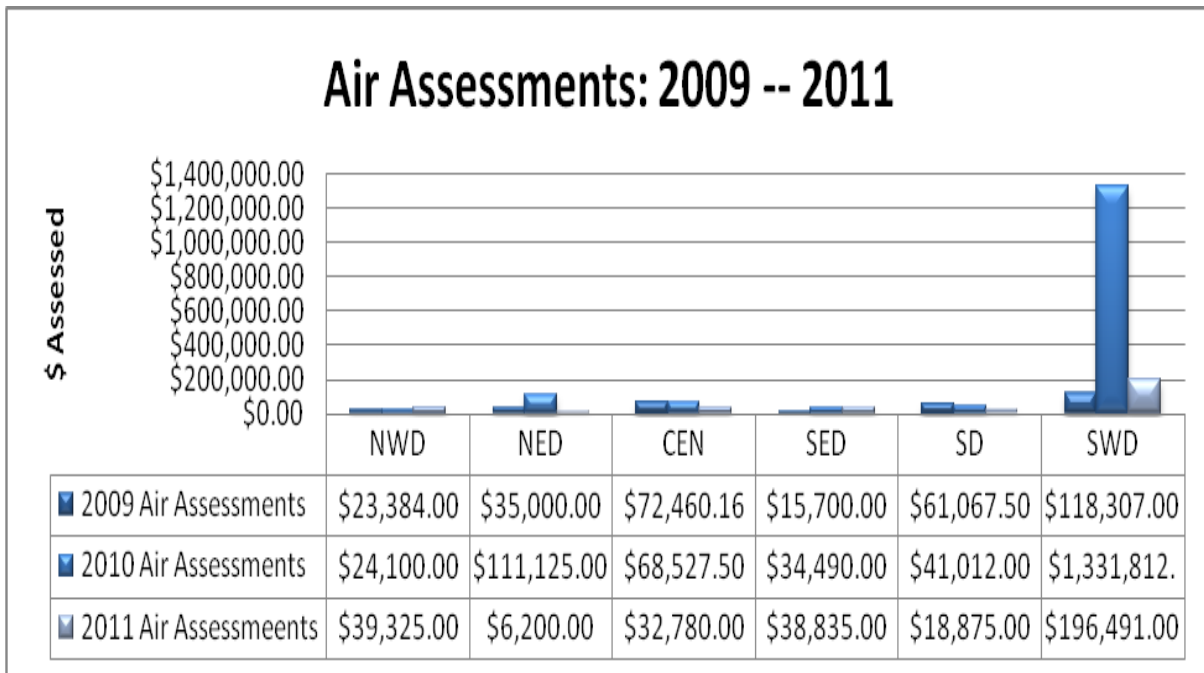
Year	Total \$ Assessed
2009	\$325,918.66
2010	\$1,611,066.50
2011	\$332,506.00

In terms of dollars assessed the Southwest District essentially carried the other districts in 2011.¹⁴ However, even that district's results were far less than stellar:

¹⁴ In those programs in which the multi-district group had no assessments we have not included the group in the tables.



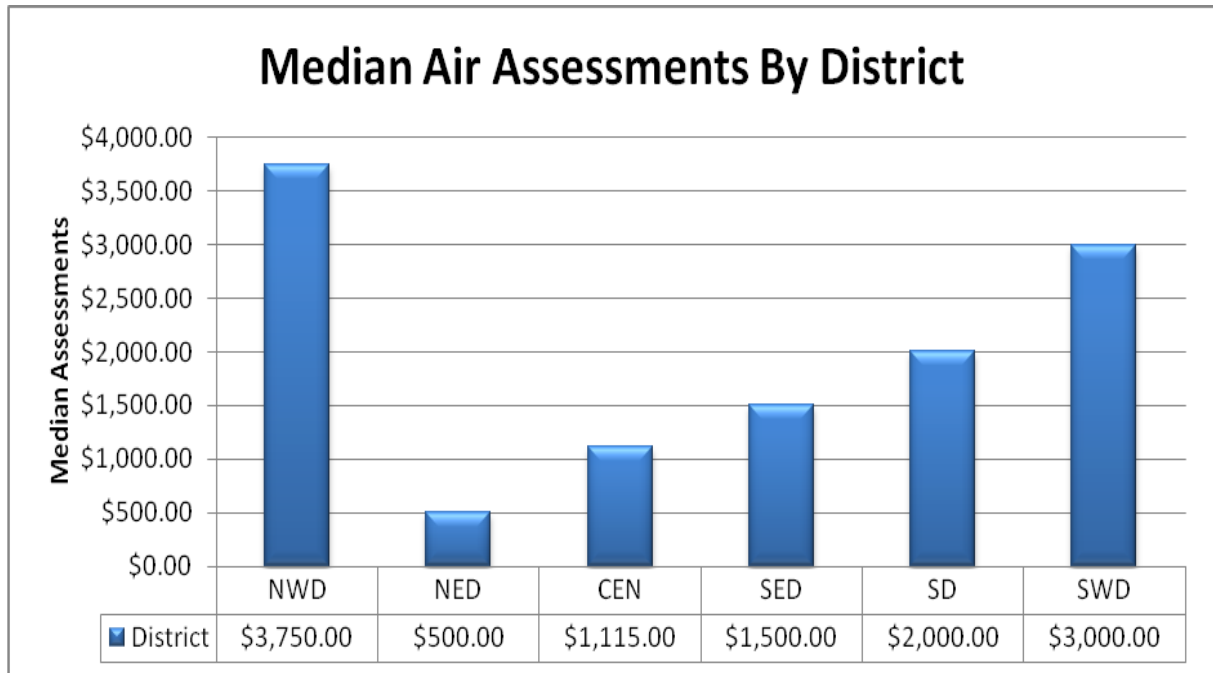
As the following graph indicates, only the Northwest and Southeast District saw improvements in total assessments compared to 2010:



The Department as a whole appears to be more stable when it comes to median assessments in this program, but this would likely be due to the significant proportion of air cases generated by the Southwest District and the corresponding higher median:

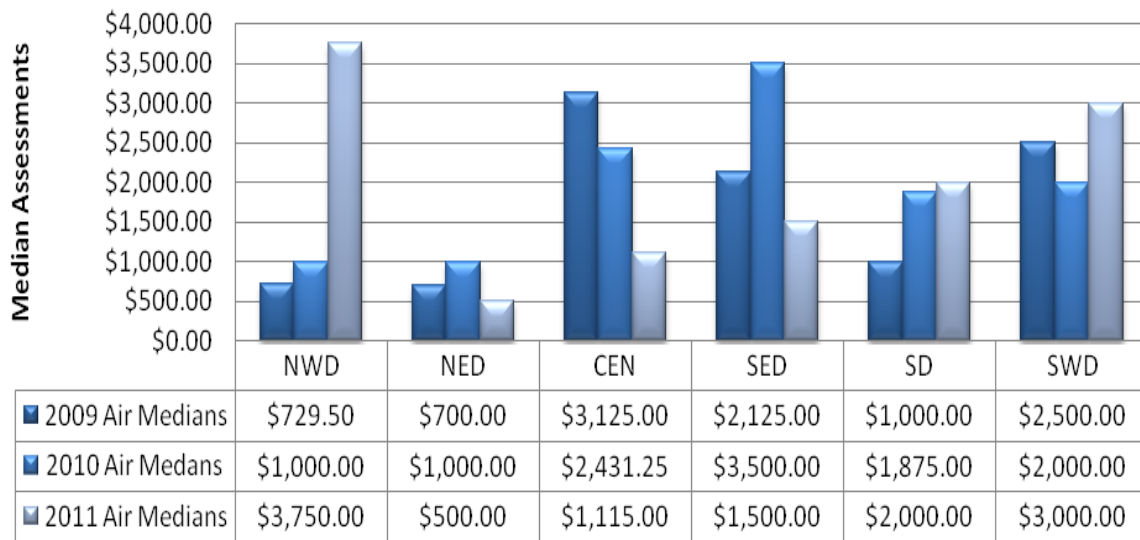
Year	Median Air Assessments
2009	\$1,200.00
2010	\$2,000.00
2011	\$1,900.00

Median air assessments amongst the districts broke down as follows:



The three-year summary shows mixed results on a district-by-district basis. The Central, Northeast and Southeast Districts show a stark downward trend, whereas the remaining three are more hopeful:

Air Median Assessments: 2009 -- 2011



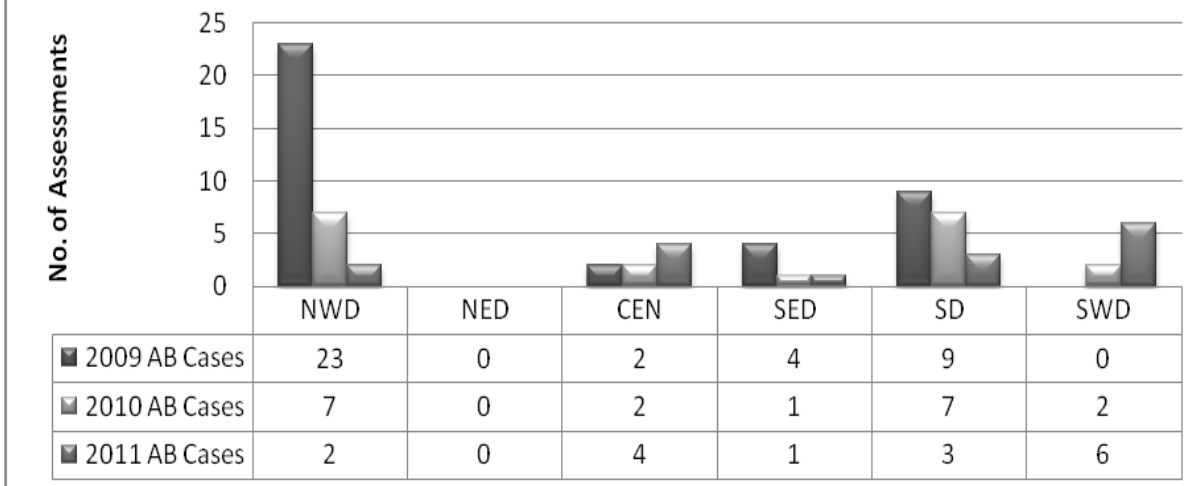
2. Asbestos Program

Since 2010 the number of asbestos assessments has declined slightly Department-wide:

Year	Total Number of Asbestos Assessments
2009	38
2010	19
2011	16

Except for the Central and Southwest Districts there is a similar trend:

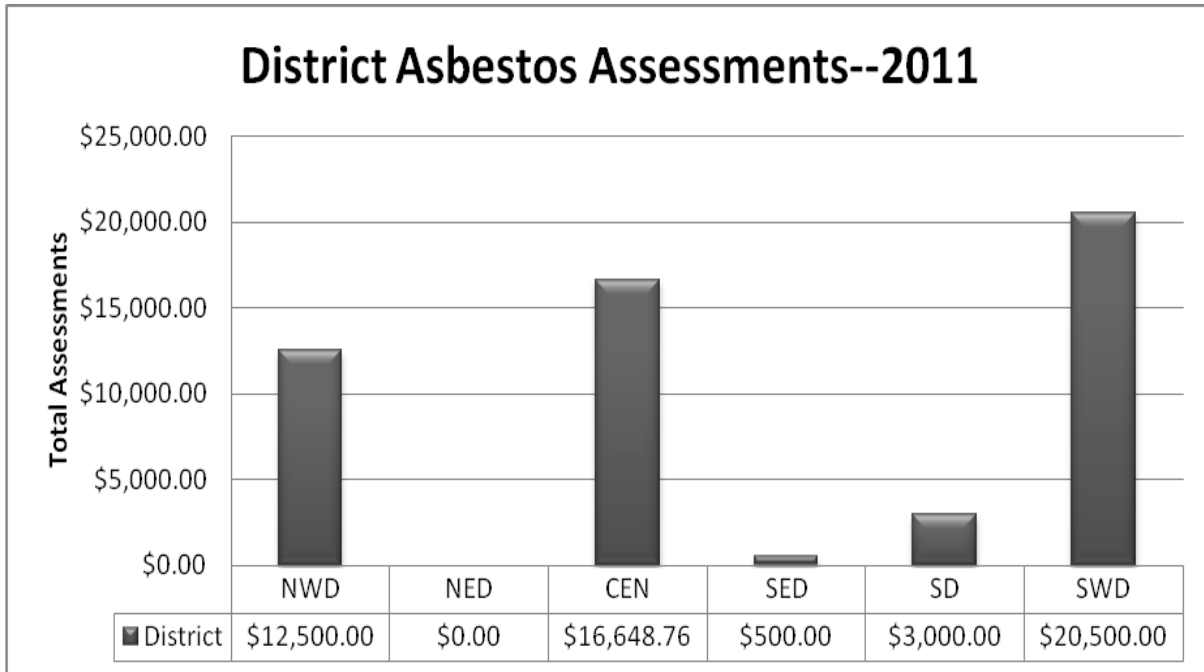
Number of Asbestos Assessments: 2009 -- 2011



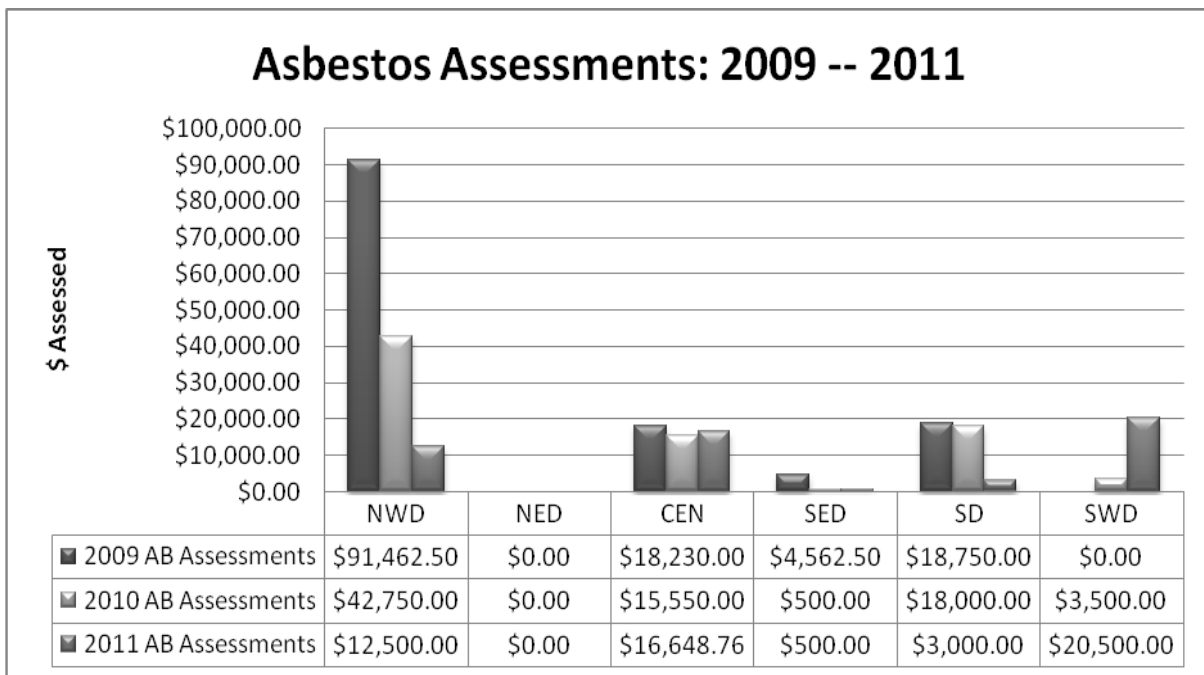
In terms of dollar assessments the Department's performance over the past three years has been decidedly weakening:

Year	Total \$ Assessed--Asbestos
2009	\$133,005.00
2010	\$80,300.00
2011	\$53,148.76

2011's assessments were dispersed amongst the districts as follows:



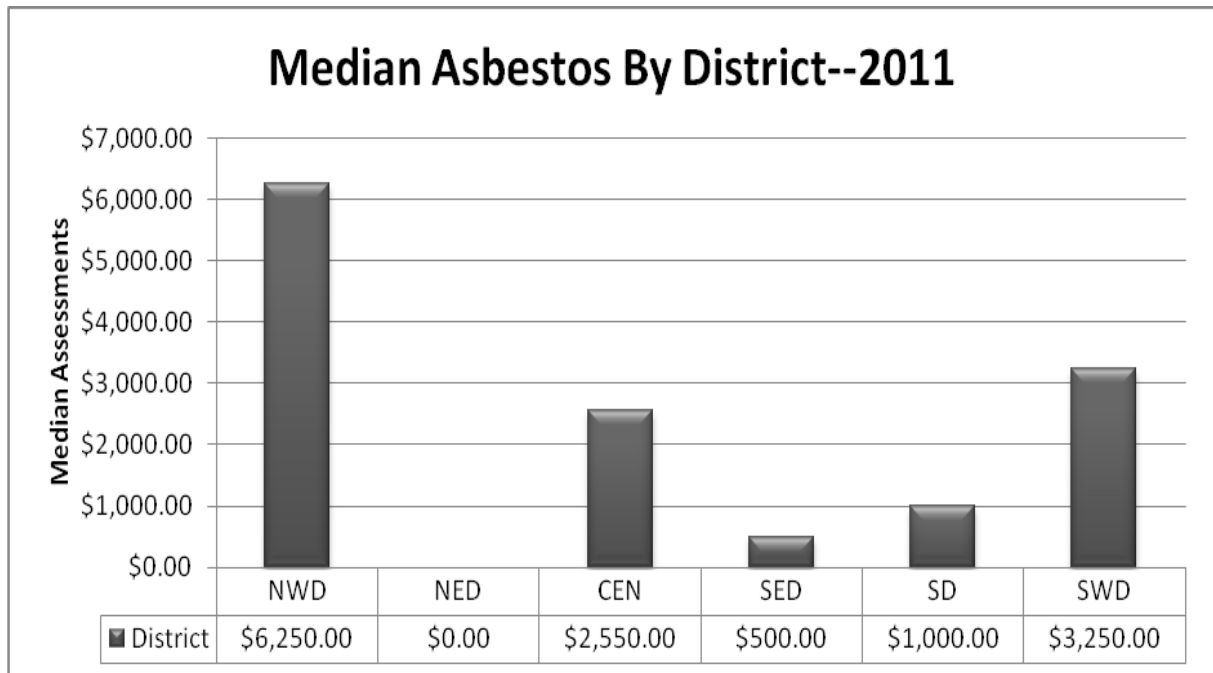
The district breakdown of recent years shows where the problems are more acute. The greatest shifts have been in the Northwest, Southeast and South Districts. The Central and Southwest Districts increased the dollar value of penalties levied in 2011 compared to 2010, although these improvements were not enough to offset the losses in the Northwest and South Districts:



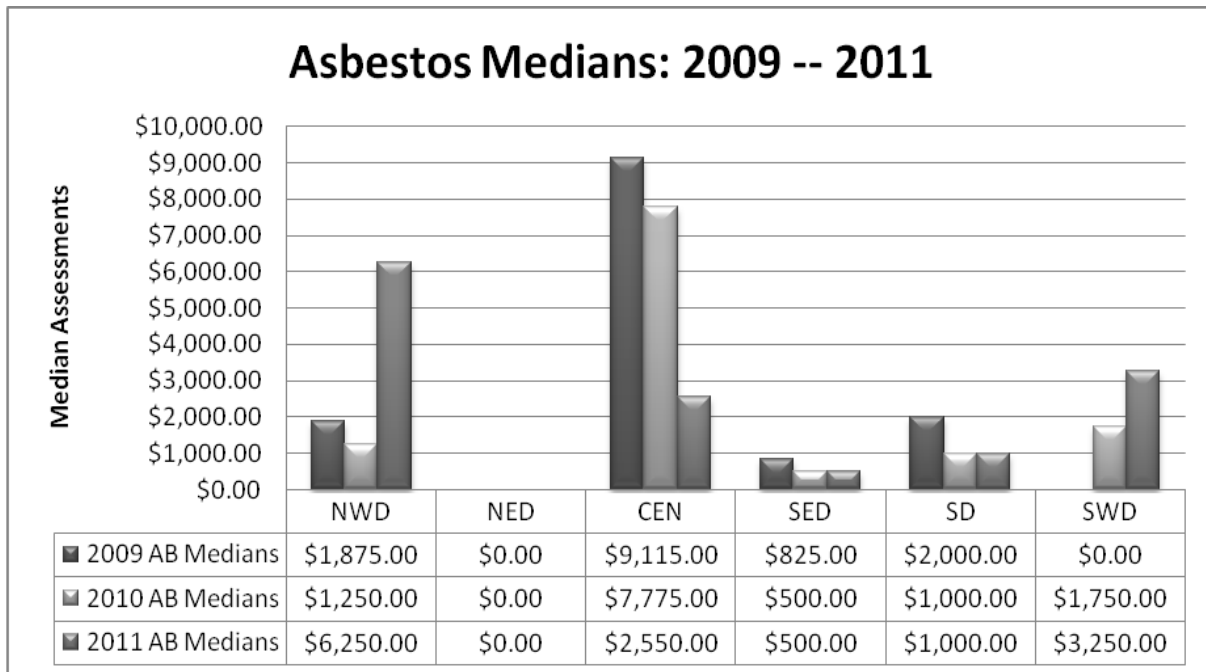
Median asbestos assessments for the Department as a whole are improved over the past three years:

Year	Median Asbestos Assessments
2009	\$1,937.50
2010	\$1,250.00
2011	\$2,000.00

While the Northwest District had the highest median asbestos assessments in 2011, this result is based upon only two cases:



Median payments in the Northwest and Southeast Districts improved over the period, while the Central District is going in the opposite direction:



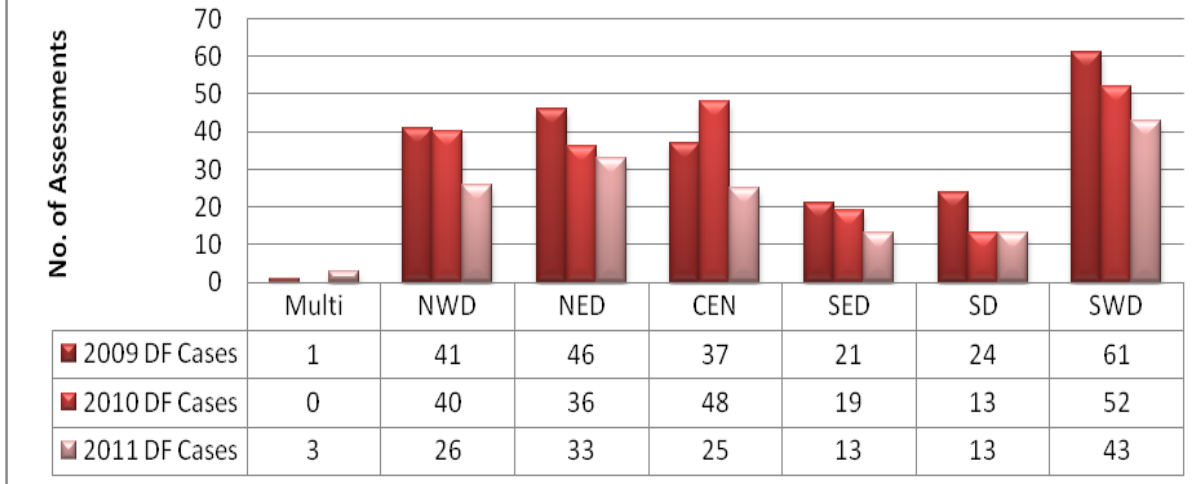
3. Dredge and Fill Program

With some exceptions, the data shows that this is a program in trouble. There has been a clear downward trend when considering the total number of assessments brought by the Department each year:

Year	Total Number of Assessments
2009	231
2010	208
2011	156

And with the exception of the multi-district category (with a total of 4 cases over 3 years), every district shows the same trend:

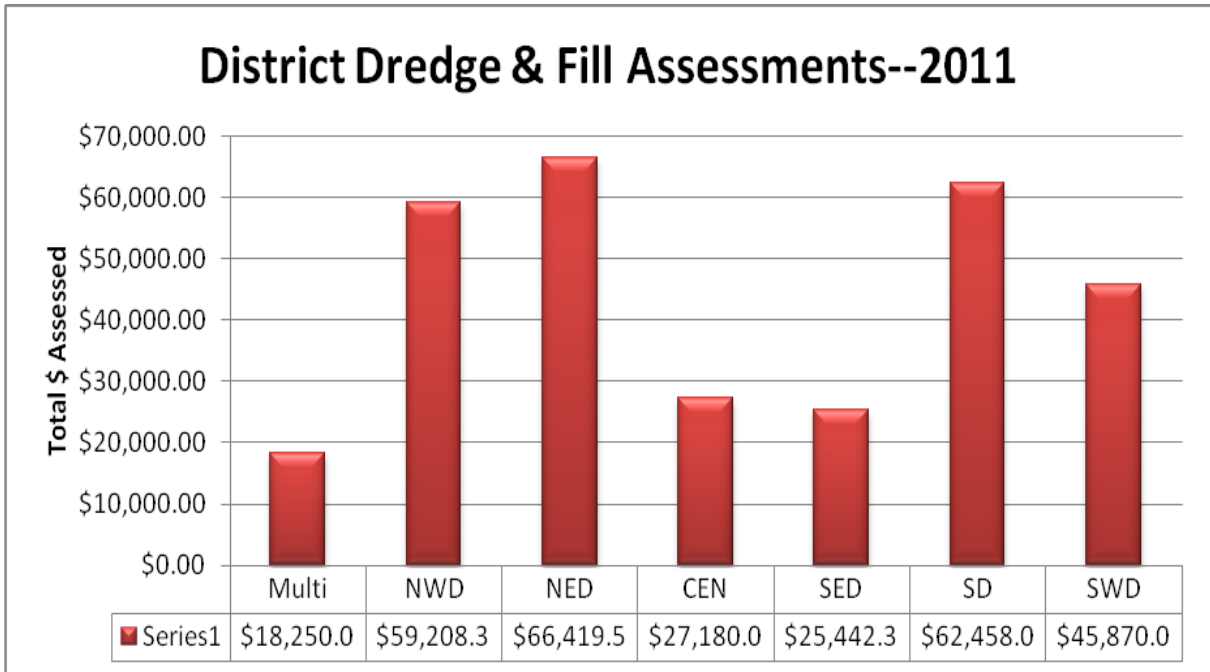
Number of Dredge & Fill Assessments: 2009 -- 2011



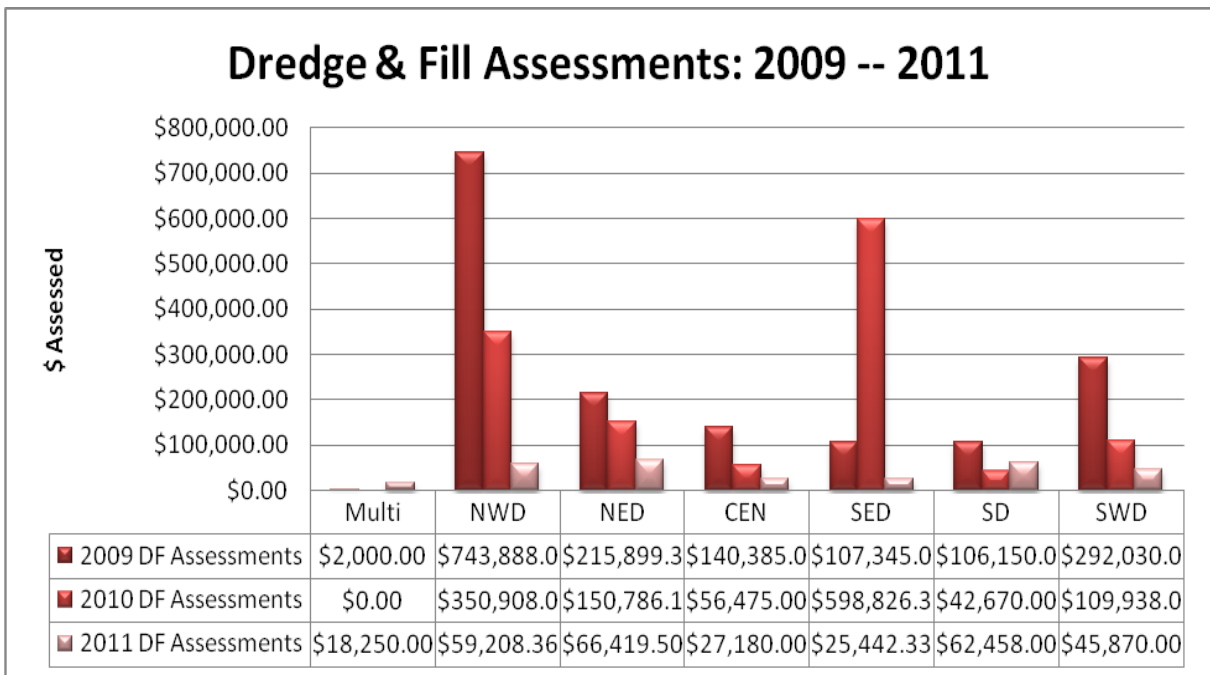
On the surface the 2011 numbers pertaining to total dollar assessments makes it seem as though this is a healthy program. But when the numbers for the entire Department are viewed over the last three years the scope of the problem is apparent:

Year	Total \$ Assessed
2009	\$1,607,697.31
2010	\$1,309,603.40
2011	\$304,828.19

Essentially, the numbers tanked in 2011 in this program. The data for 2011 indicates lower numbers for each district:



When looking at the 3-year history of the districts the downward trend is easy to see:

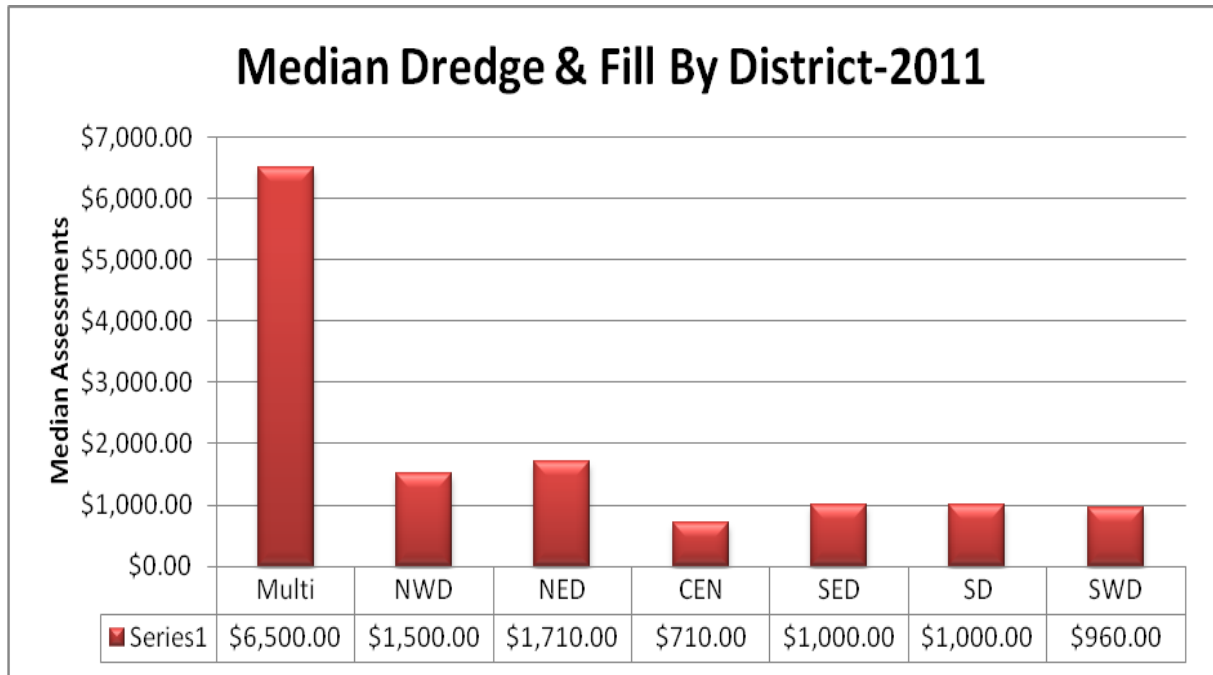


The medians were the one sub-category that at least showed mixed results. For the entire Department there is nevertheless a clear downward trend. And the results for 2011 are 1/3 lower than the numbers just two years ago:

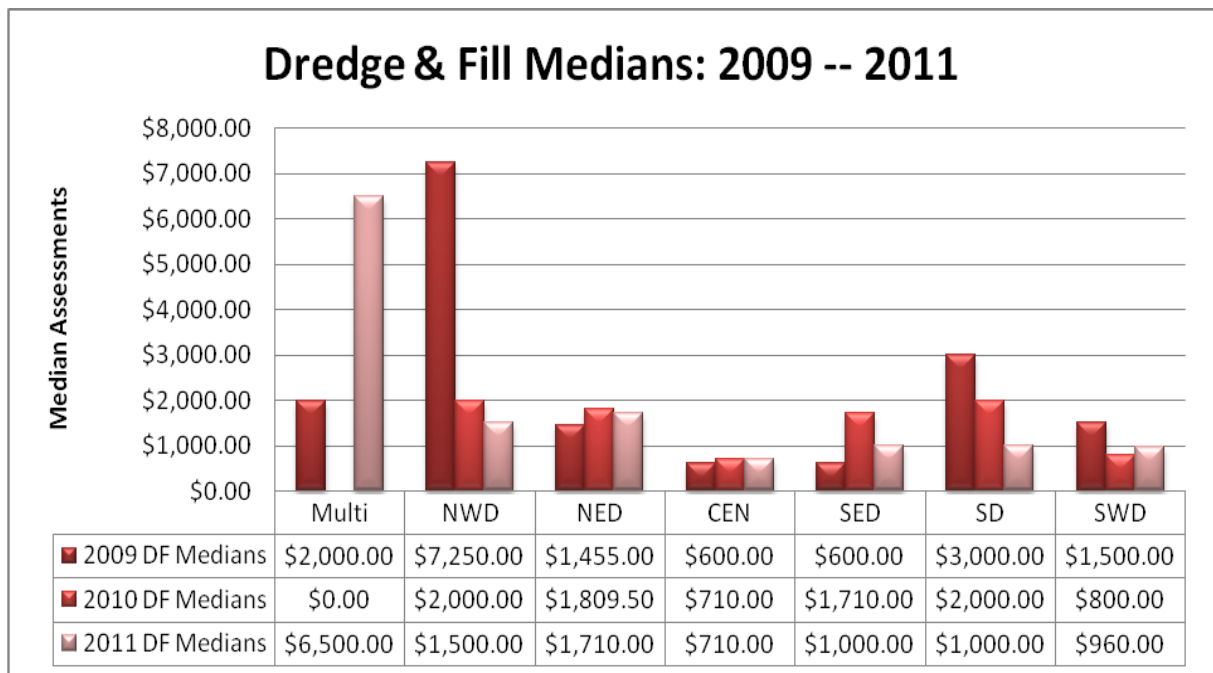
Year	Median DF Assessments
2009	\$1,500.00

2010	\$1,205.00
2011	\$1,000.00

The median assessments amongst the districts for 2011 were:



The one bit of good news is that when each district is viewed for its three-year performance it is clear that every district has not performed as bad:

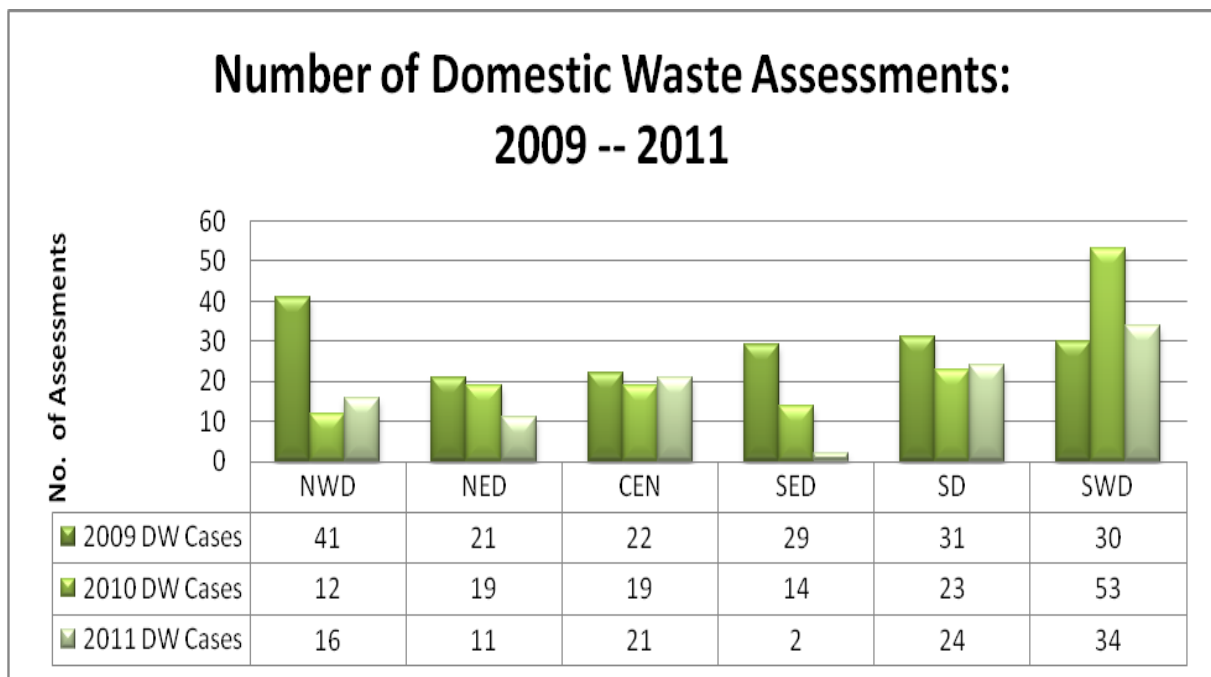


4. Domestic Waste Program

The Department assessed penalties in 108 cases in 2011. The downward spiral in total assessments seen in the other programs is also seen in the domestic waste program over the past 3 years:

Year	Number of Civil Penalty Assessments
2009	174
2010	140
2011	108

This 23% drop from 2010 (38% from 2009) can also be seen in the districts over the same three year period. While the Southeast District had the poorest performance by far (**managing only two penalty assessments for the entire year**), The Northeast District was not far behind with a total of 11 assessments in all of 2011. The Northwest District has declined 61% since 2009:



The Department assessed a total of \$997,855.99 in civil penalties in 2011. Dollar assessments have also declined for the Department as a whole over the past three years.

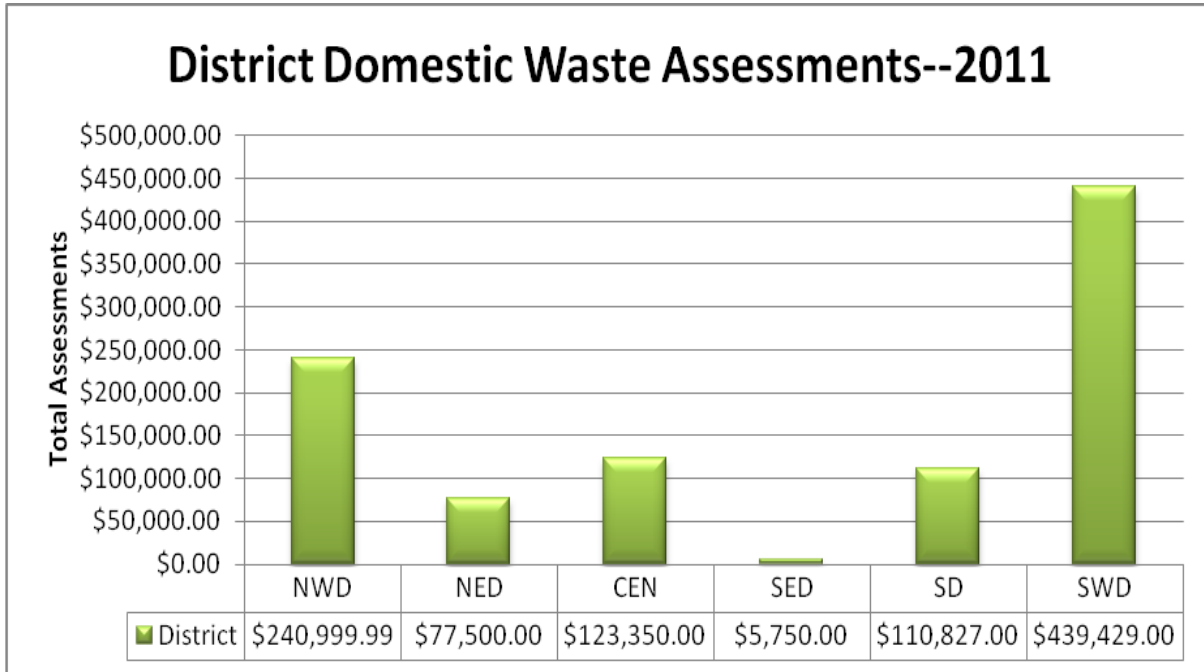
Domestic waste assessments plummeted 59% compared to 2010 :

Year	Domestic Waste Assessments
2009	\$2,808,253.58
2010	\$2,439,599.07

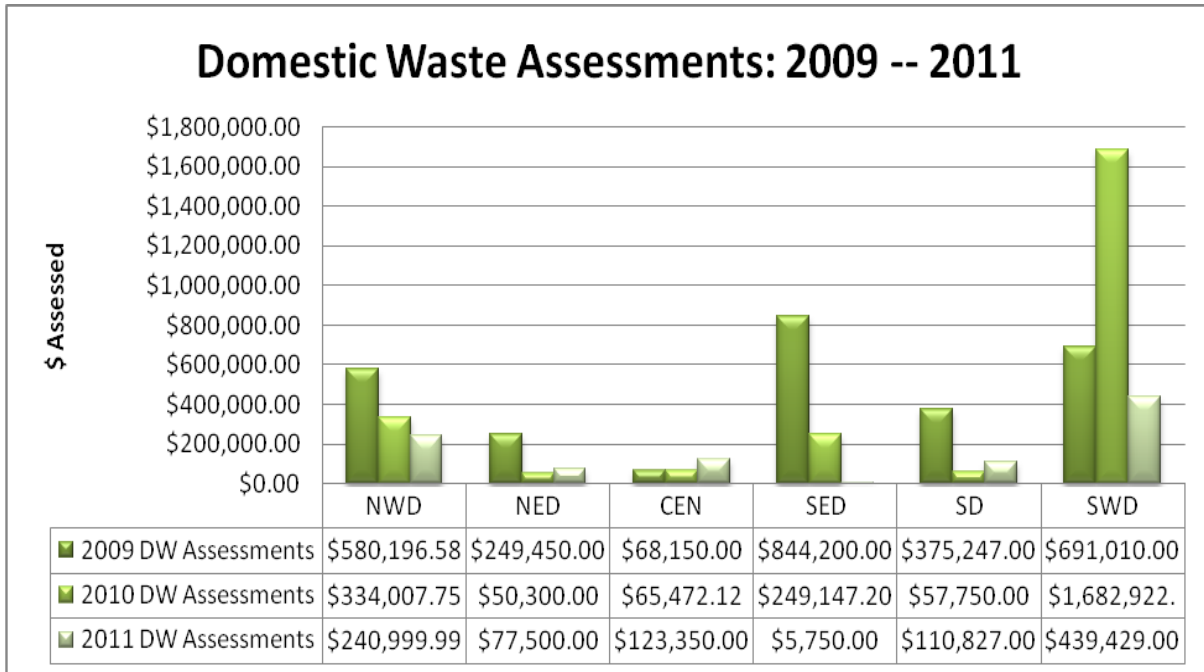
2011

\$997,855.99

The Districts assessed the penalties as follows:



The Southeast District's results clearly show that this program was all but non-functional in 2011. But when the results of all of the districts are compared over time the downward trend can be seen in every district, except for the Central and, to a lesser extent, the South and Northeast Districts:

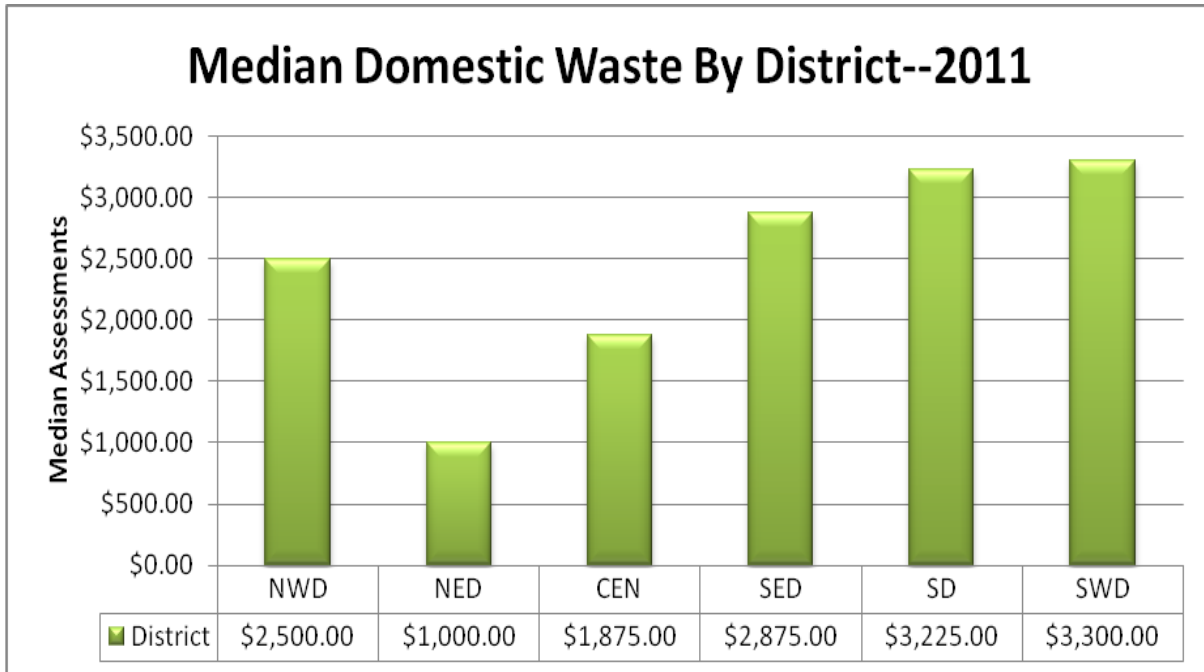


The single highest domestic waste assessment was against *Sarasota County* in the amount of \$195,256.00 (OGC# 102682) levied by the Southwest District. The next highest was against *Shelley's Septic Tanks, Inc.* (OGC# 93021) in the amount of \$72,000.00, levied by the Central District. By contrast, the highest domestic waste in the Southeast District was in the amount of \$5,500.00. It was levied against the *Tindall Hammock Irrigation & Soil Conservation District* (OGC# 111392).

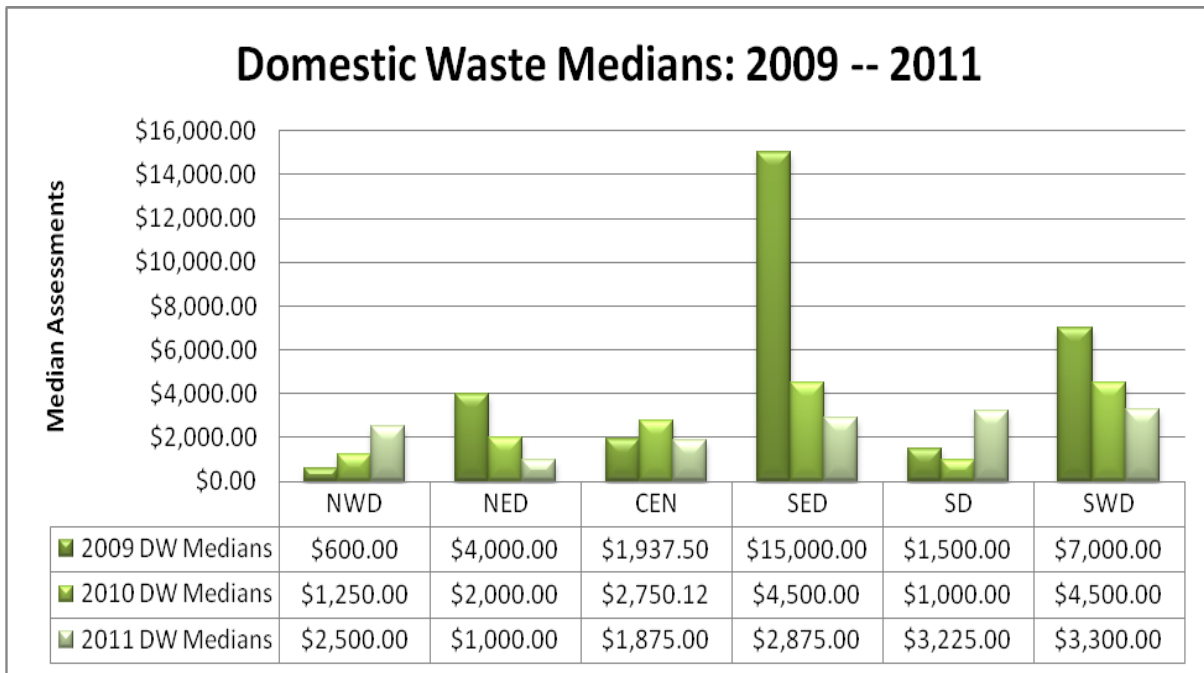
Overall, the Department did manage to **significantly** improve its domestic waste medians, both from the results in 2010 and 2009:

Year	Median Assessments—Domestic Waste
2009	\$2,275.00
2010	\$2,000.00
2011	\$3,000.00

When the data is broken down further it can be seen that the South and Southwest Districts were the two districts with medians equal to, or higher than, the overall \$3,000.00 median for 2011. The remaining districts were far behind those two districts. The Southeast District's results, it should be remembered, are based upon only **two** penalty assessments—thus it is hardly representative.



The trend in the Northeast, Southeast and Southwest Districts is decidedly decreasing. It will be interesting to see if these districts are able to reverse the trend next year.



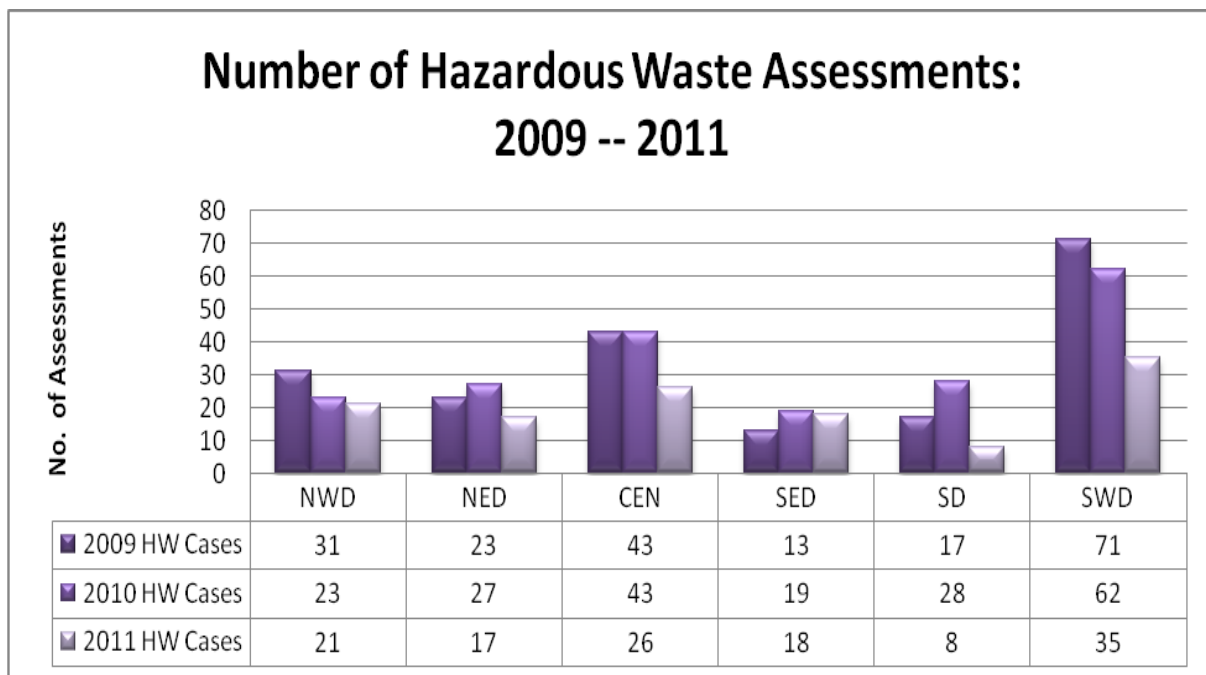
Overall, the data points to a program that is clearly choosing to take enforcement in fewer cases, which is naturally resulting in lower total assessments. And while the median assessments have increased, this result is predominately due to the performance in the South and Southwest Districts. Meanwhile, the remaining four districts appear to be taking a hands off approach to enforcement.

5. Hazardous Waste Program

This is another program in which the Department assessed civil penalties in far fewer cases in 2011. It did so in only 125 cases, compared to 202 cases in 2010. Overall, the trend is not definitive, however:

Year	Number of Hazardous Waste Assessments
2009	198
2010	202
2011	125

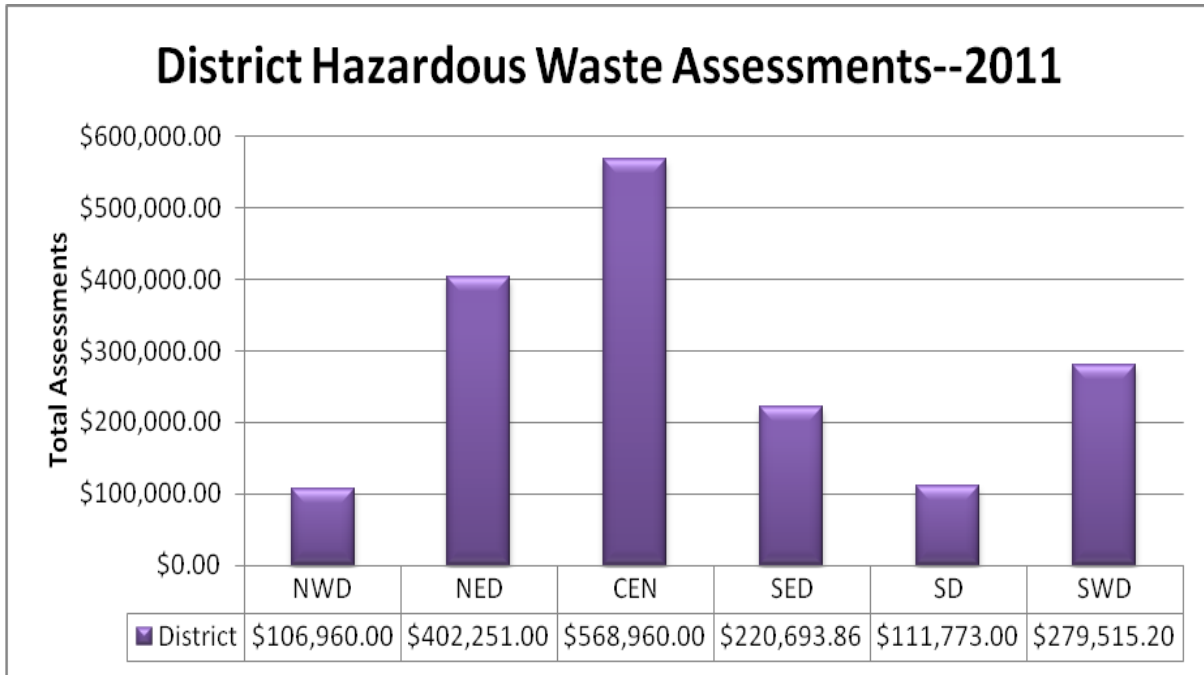
This same pattern is seen in the districts. There is a noticeable trend towards fewer assessments overall. The troubling aspect is the significant decline in assessments out of the Southwest District, the one district with a clear history of being tougher on enforcement:



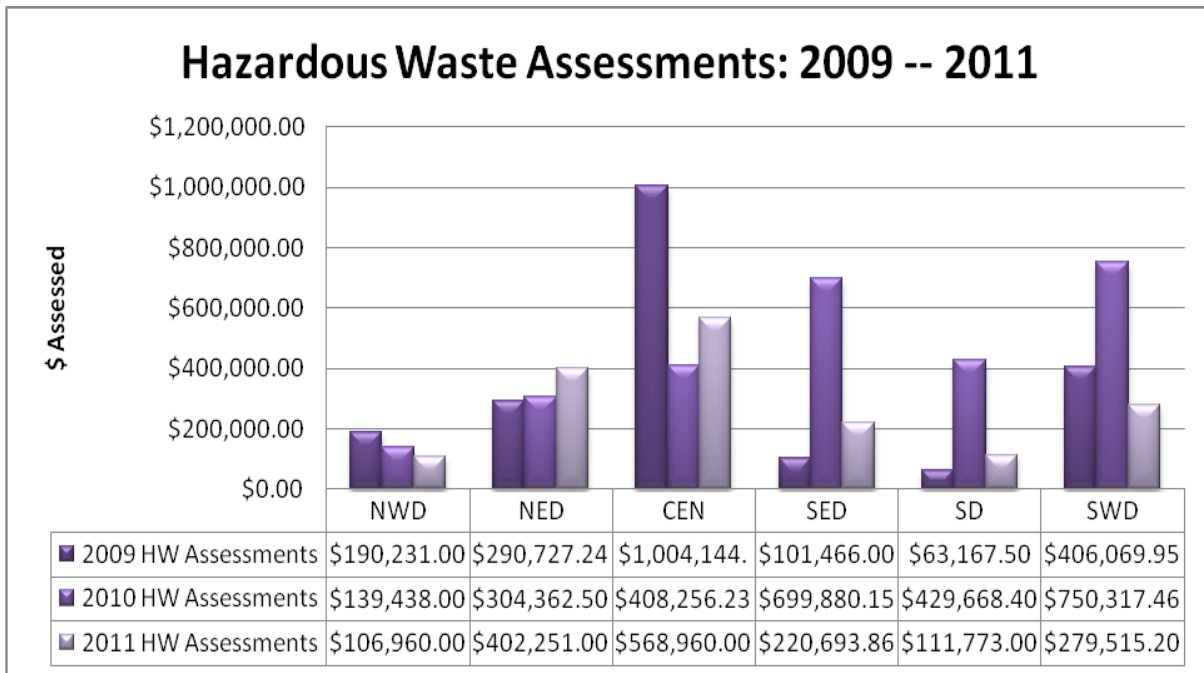
Last year we noted a significant increase in the Department's dollar assessments in this program. That increase did not last. Hazardous waste assessments fell to \$1,690,153.06 in 2011. This is a 38% decline from 2010's performance. Over the past three years the Department's performance has not been consistent in either direction:

Year	Total Hazardous Waste Assessments
2009	\$2,055,805.69
2010	\$2,731,922.74
2011	\$1,690,153.06

The Department's assessments in 2011 were divided amongst the districts as follows:



The same fluctuation in the statewide results over the past three years is evident amongst the districts:

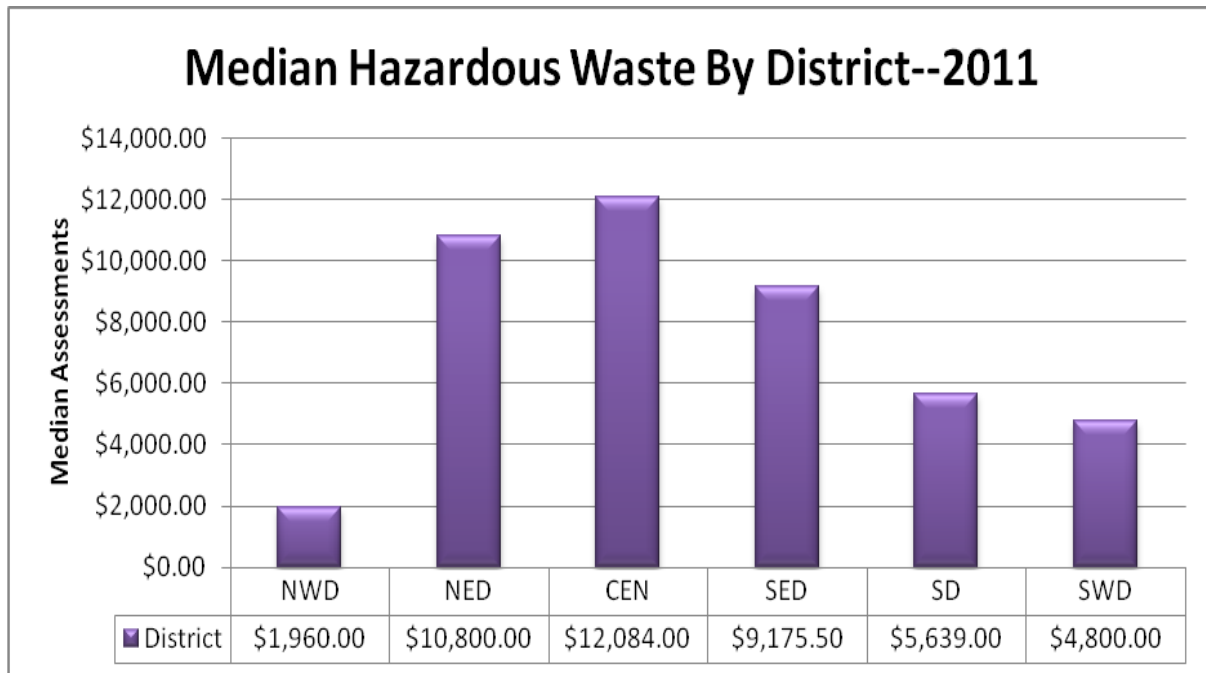


Only two of the districts, the Northeast and Central, saw increases in their hazardous waste assessments in 2011. Assessments plunged in the Southwest, South and Southeast Districts. The two highest hazardous waste assessments came from the Northeast and Central districts as well. On the plus side, only one district, the Northwest, is showing a clear downward trend in this sub-category.

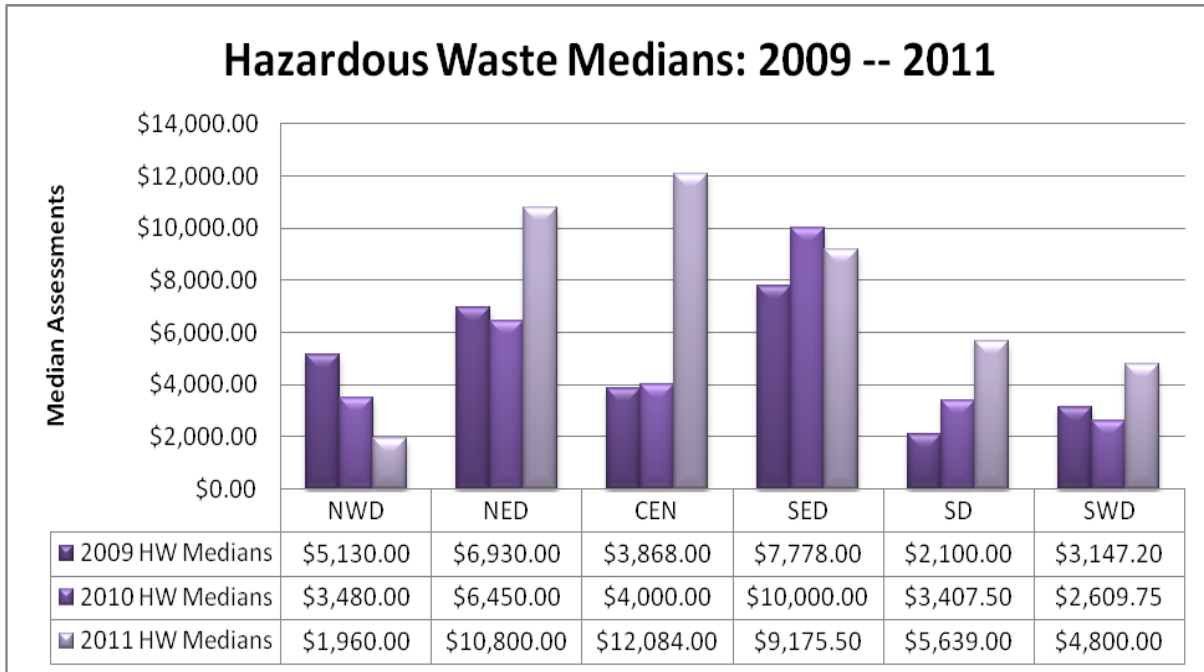
Median assessments for the Department as a whole rose **83%** in 2011 to \$7,090.00. Over the past three years the Department’s performance has been inconsistent:

Year	Median Hazardous Waste Assessments
2009	\$4178.25
2010	\$3868.50
2011	\$7,090.00

Median assessments for each district in 2011 were :



These results are interesting. Four of the districts, the Northeast, Central, South and Southwest, actually saw higher median assessments compared to their performance in 2010. But the Northwest District’s performance fell by 43%, while the Southeast District’s performance fell by 8%. The Northwest District is clearly on a downward trajectory insofar as medians are concerned:



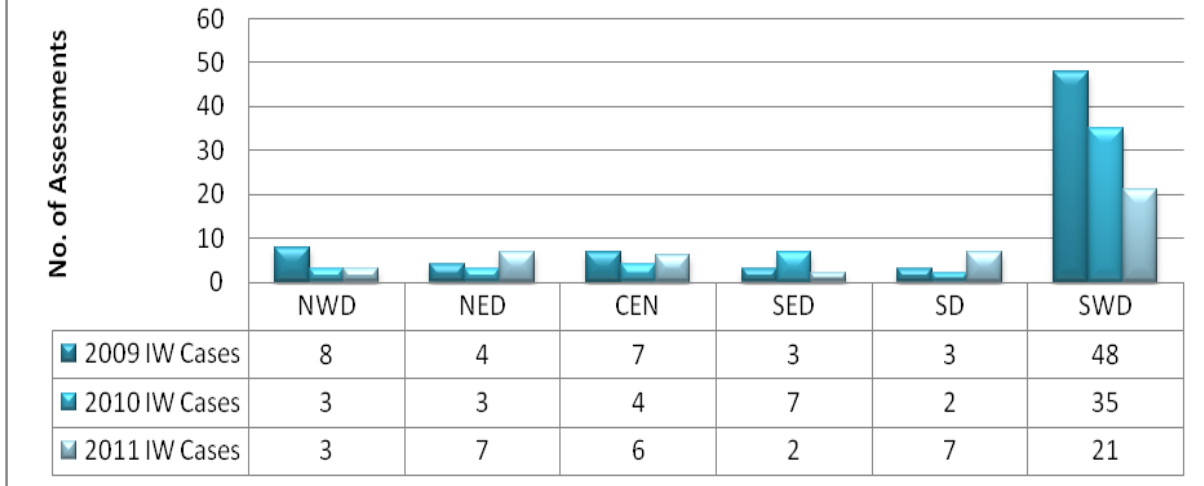
6. Industrial Waste Program

As with the other program areas, there is also a steady drop in the number of penalty assessments in the industrial waste program:

Year	Number of Industrial Waste Assessments- -2011
2009	73
2010	54
2011	46

The Southeast District only managed **two** assessments in 2011 and the Southwest District's performance also dropped 40% compared to 2010. Only the Northeast and South Districts performed better than they did in 2009.

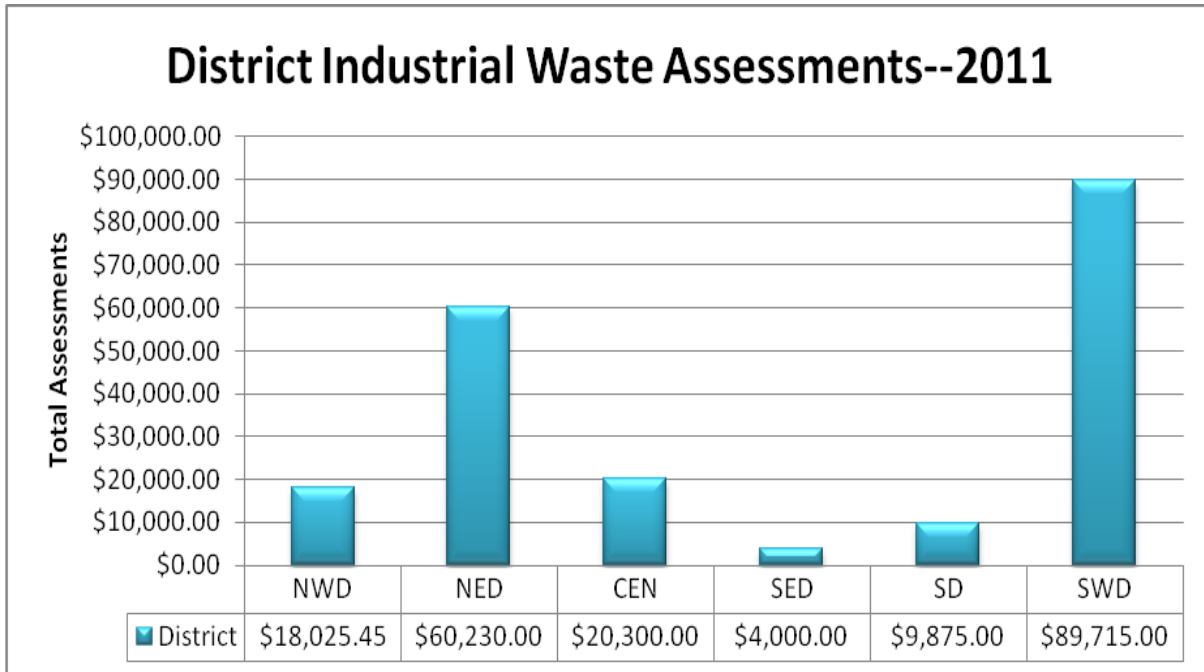
Number of Industrial Waste Assessments: 2009 -- 2011



Overall the Department levied \$202,145.45 in civil penalties in the industrial waste program, slightly better than 2010's performance. This is still significantly less than the penalties levied in 2009:

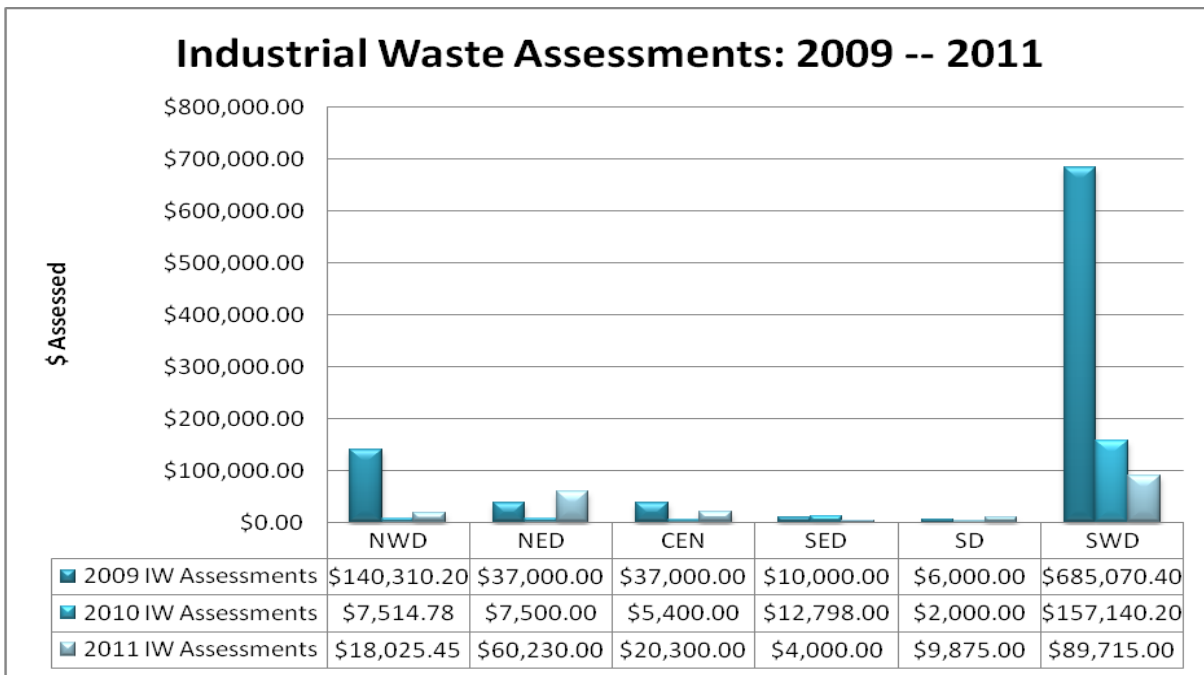
Year	Total Industrial Waste Assessments
2009	\$915,380.60
2010	\$192,352.98
2011	\$202,145.45

In 2011 the districts assessed penalties in this program as follows:



None of the districts assessed penalties in excess of \$100,000 in a single case.

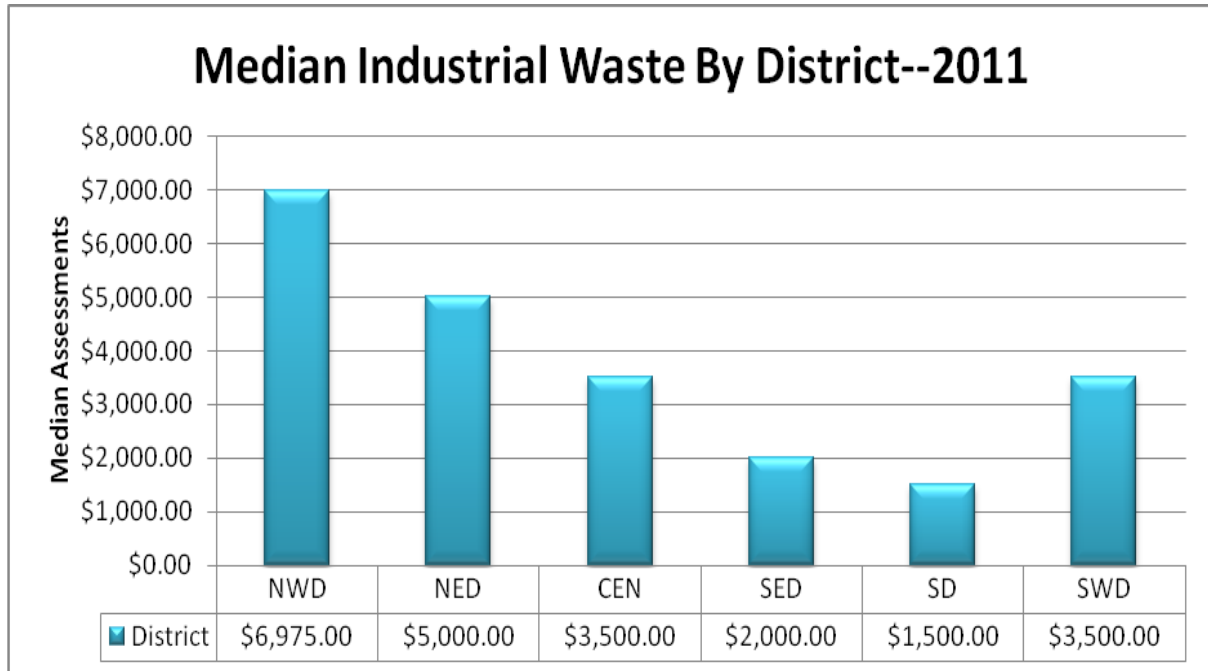
The yearly decline is also seen in most of the districts over the course of the past three years. Four of the districts improved their assessments compared to 2010; however, four of them (most notably the Southwest District) also performed worse than they did in 2009:



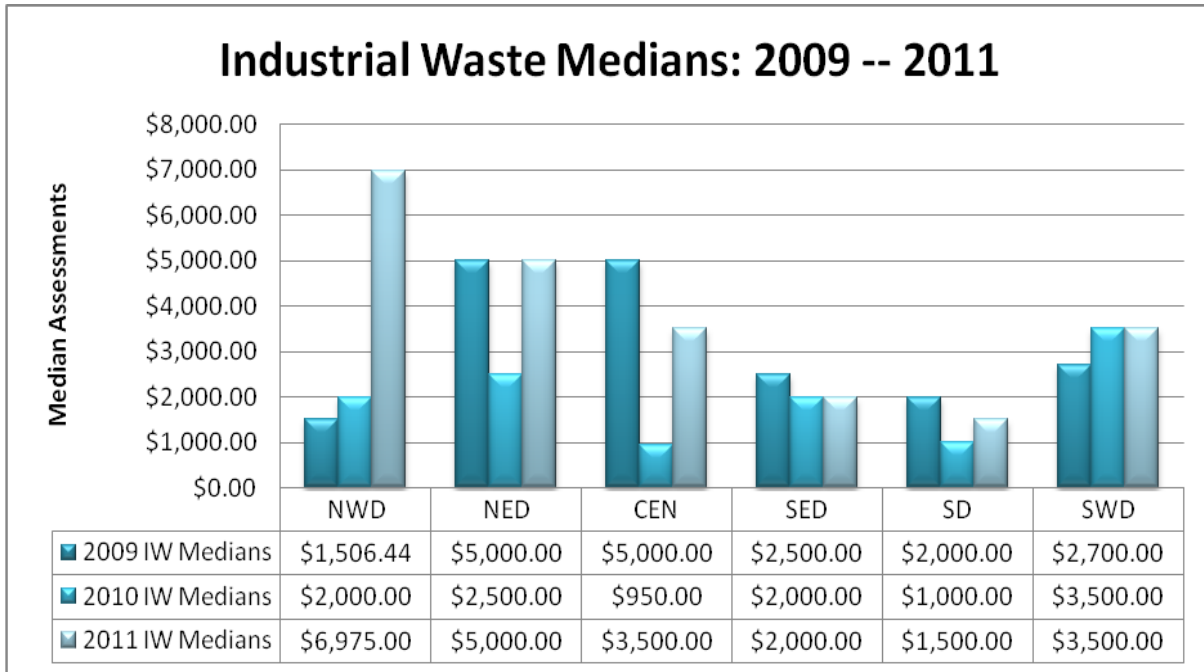
Over the course of the past three years the median civil penalty assessments have remained remarkably stable for the Department, dropping somewhat last year:

Year	Median Industrial Waste Assessments
2009	\$2,400.00
2010	\$2,590.10
2011	\$2,500.00

Median assessments were \$2,500.00 for the Department as a whole. The highest medians were in the Northwest and Northeast Districts:



The same positive result is generally true for each of the districts, with two caveats, the 2011 results for the Northwest District are based on only **three** total assessments. The Southeast District's results are based on only **two** assessments. With that caveat, every district either equalled or improved upon its median assessments from 2010:



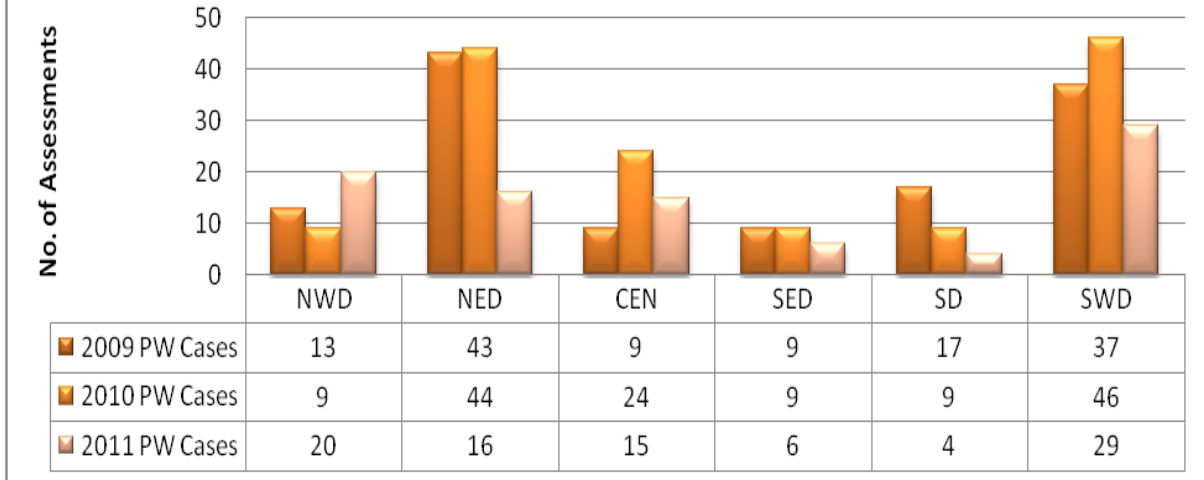
7. Potable Water Program

The potable water program oversees the provision of drinking water to Florida's families, businesses, schools etc. Notwithstanding the critical role that this program plays, the number of potable water assessments declined in 2011 for the Department as a whole:

Year	Number of Assessments
2009	128
2010	141
2011	90

This 36% decline was the result of poorer performance in every district except for the Northwest District:

Number of Potable Water Assessments: 2009 -- 2011



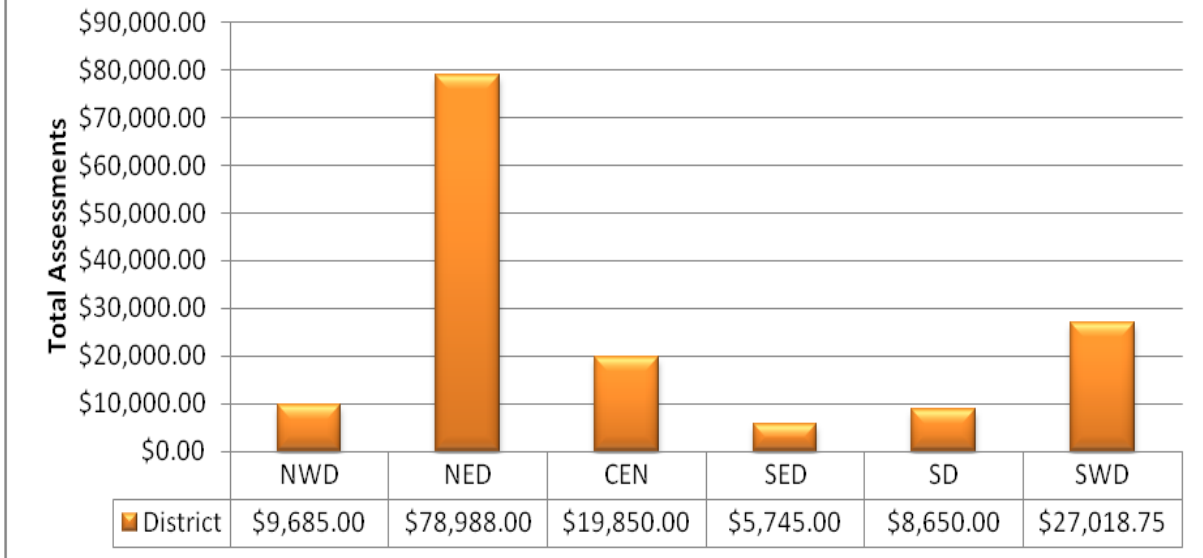
As the above chart demonstrates, only the Northwest and Central Districts assessed penalties in more cases in 2011 than they did in 2009.

As dictated by the Legislature, the fines for violations of the environmental laws governing this program are small compared to the other programs. The Department as a whole assessed penalties of \$149,936.75 in this program. This is down 40% compared with the \$249,554.51 assessed in 2010 and also down considerably compared with 2009:

Year	Total Potable Water Assessments
2009	\$233,762.16
2010	\$249,554.51
2011	\$149,936.75

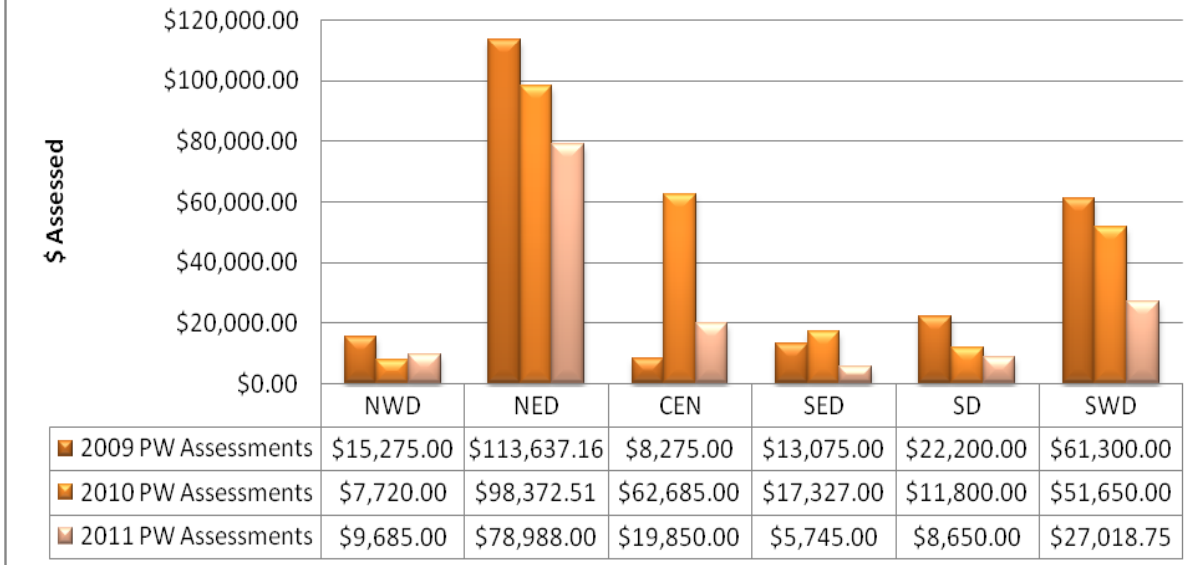
The fines were distributed amongst the districts in 2011 as follows:

District Potable Water Assessments--2011



Despite the disproportionate size of the fines in the Northeast District, the Northwest District was the only district that increased its assessments in 2011. Most of the districts have shown clear downward trends over the past three years:

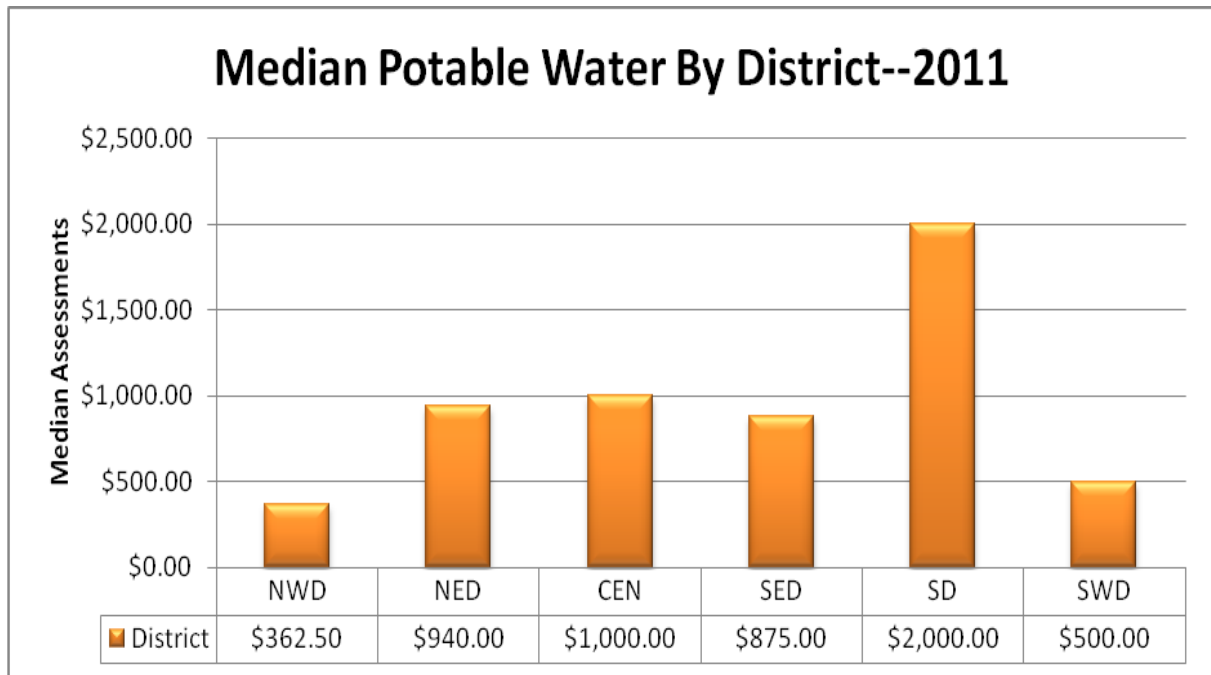
Potable Water Assessments: 2009 -- 2011



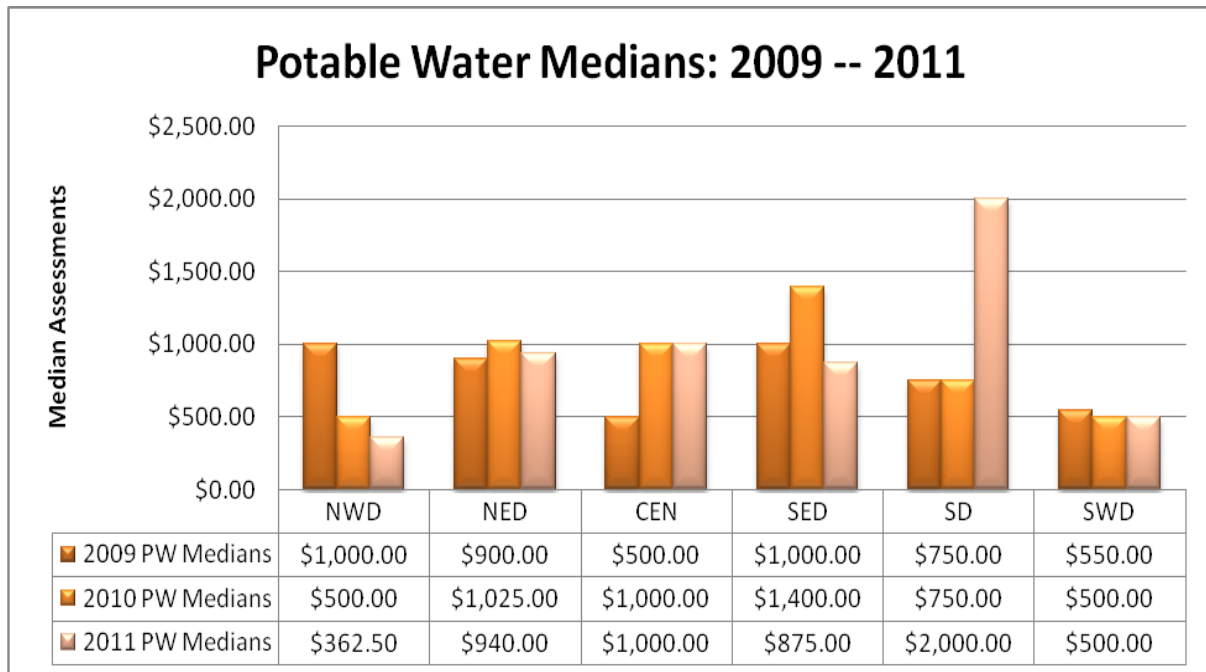
Median assessments also declined sharply in 2011 for the Department, down 38% to a new level of \$537.50. This new median is also lower than the median in 2009:

Year	Median Potable Water Assessments
2009	\$750.00
2010	\$875.00
2011	\$537.50

A comparison of the medians for the districts in 2011 yields these results:



The Northwest District had the lowest median of the group, though the Southwest District was not far behind. Over the past three years there is no discernable pattern that applies to every district:



While the Northwest and Southeast Districts clearly appear to be losing ground in this area, the Central and Southeast Districts are showing improvements. The performance of the Northeast and Southwest Districts has been relatively flat.

8. Stormwater Discharge Program

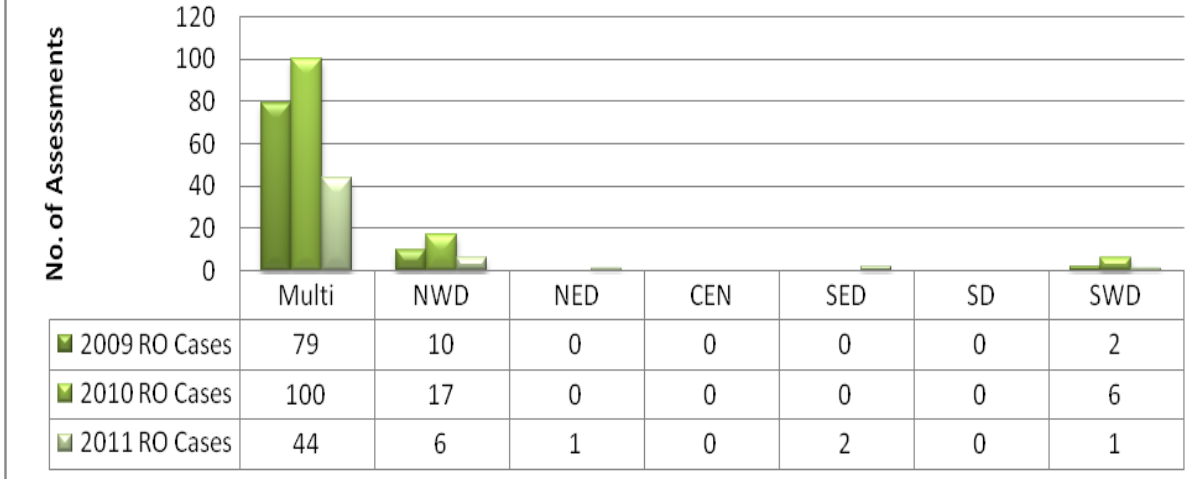
This is the first year that we have included this program in our report. We are including it now because over the past years it has appeared to be growing in size and is an integral part of the NPDES Program administered by the Department. This is a program that is largely administered out of Tallahassee. The program oversees the design and operation of stormwater discharge ponds/systems throughout Florida. These systems collect and treat stormwater that is generated by large residential and commercial complexes throughout the state. The state's rapid growth means that this program (and its enforcement) will continue to be vital to Florida's environmental health.

The number of assessments was down in 2011 compared to the previous two years:

Year	Number of Assessments
2009	91
2010	123
2011	54

The statewide pattern seen above is also seen in the Multi-District category and the Northwest District, both of which handle the vast majority of these cases:

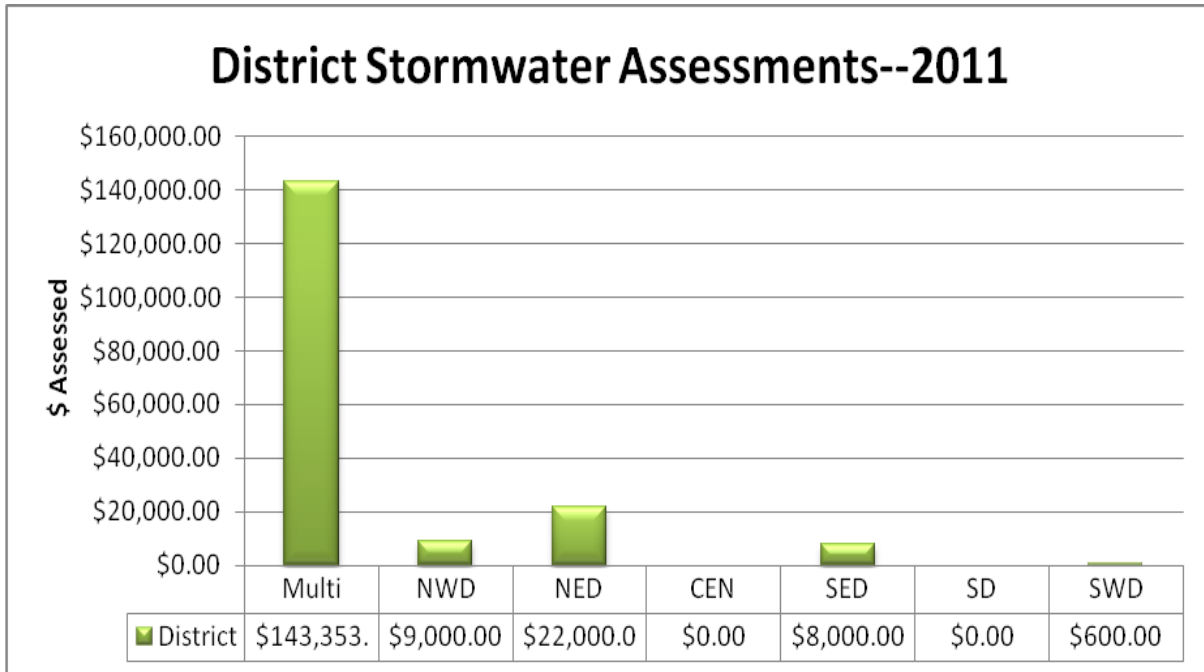
Number of Stormwater Discharge Assessments: 2009 -- 2011



The state assessed \$182,953.02 in civil penalties over the course of 2011. This figure is significantly lower than the Department's past performance:

Year	Total Stormwater Discharge Assessments
2009	\$169,737.75
2010	\$2,503,620.00
2011	\$182,953.02

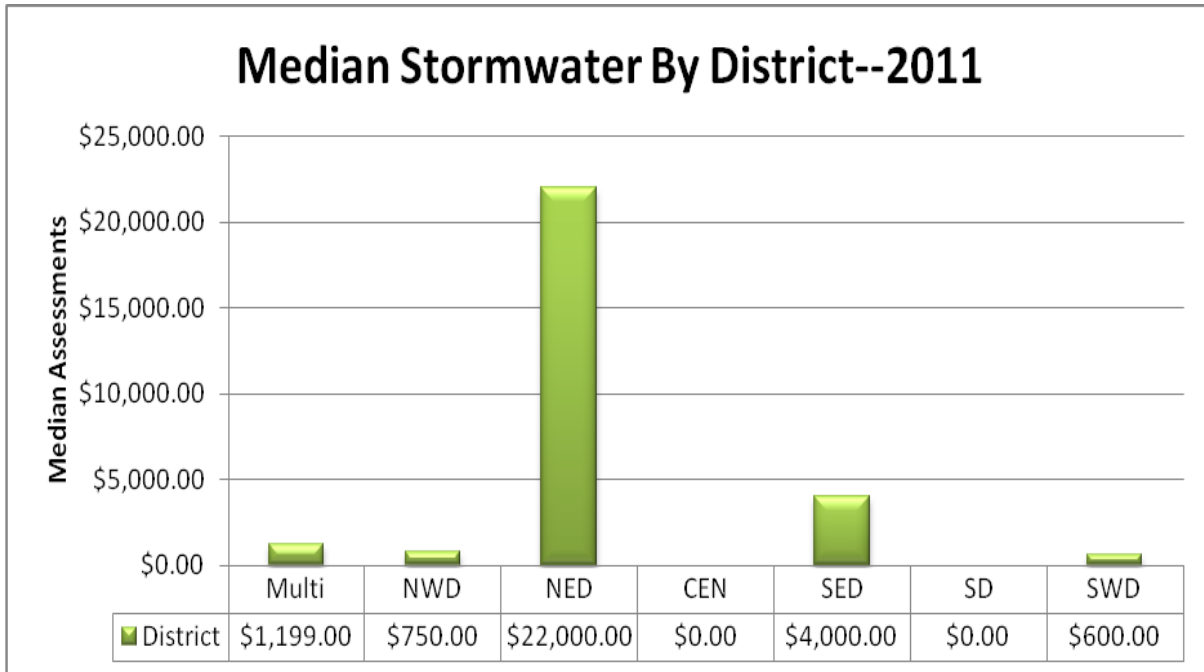
These penalties were assessed across the state in the following fashion:



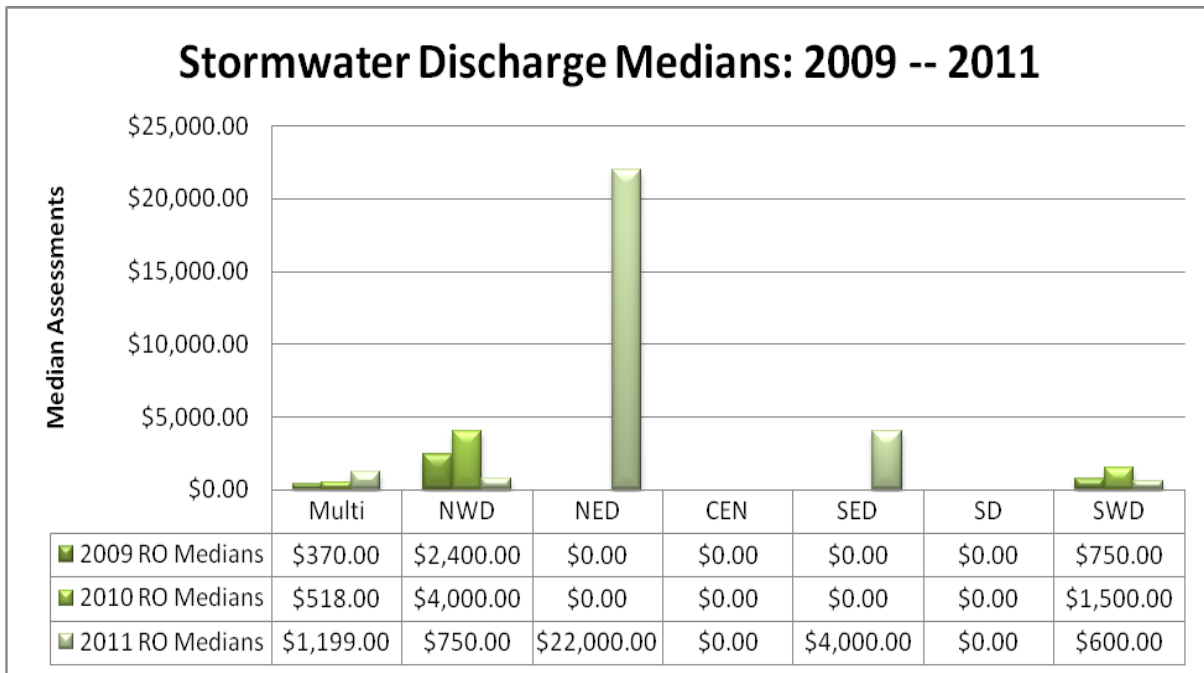
Median assessments also fell from 2010's relatively high levels. 2010, which saw the highest number of assessments, also had median assessments that were almost three times higher than 2011:

Year	Median Stormwater Discharge Assessments
2009	\$500.00
2010	\$3,500.00
2011	\$1,199.00

Medians for the individual districts varied substantially:



The Department's overall poorer showing in 2011 appears to be largely due to a poorer performance in the Northwest District where the median fell the most:



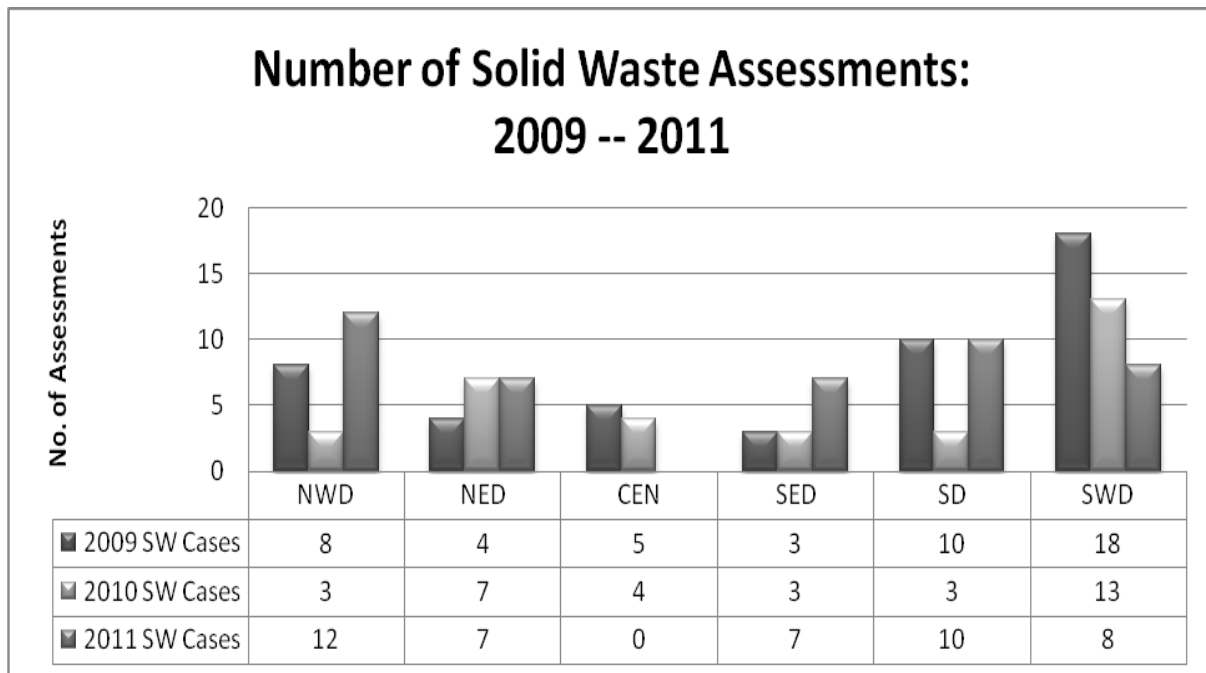
9. Solid Waste Program

This program oversees the handling of Florida's solid waste that is deposited into landfills across the state. For the past several years enforcement in the program has been mediocre; however, 2011 saw better numbers. The Department assessed \$3,072,814.00 in civil penalties, 2,661,779.00 more than the total assessments of \$411,035.00 in 2010! Much of this increase was due to a substantial assessment by the Northwest District against the *Coyote Land Company, Inc.* (\$2,465,064.00, OGC# 110112), but there was still an increase even when subtracting this assessment from the total.

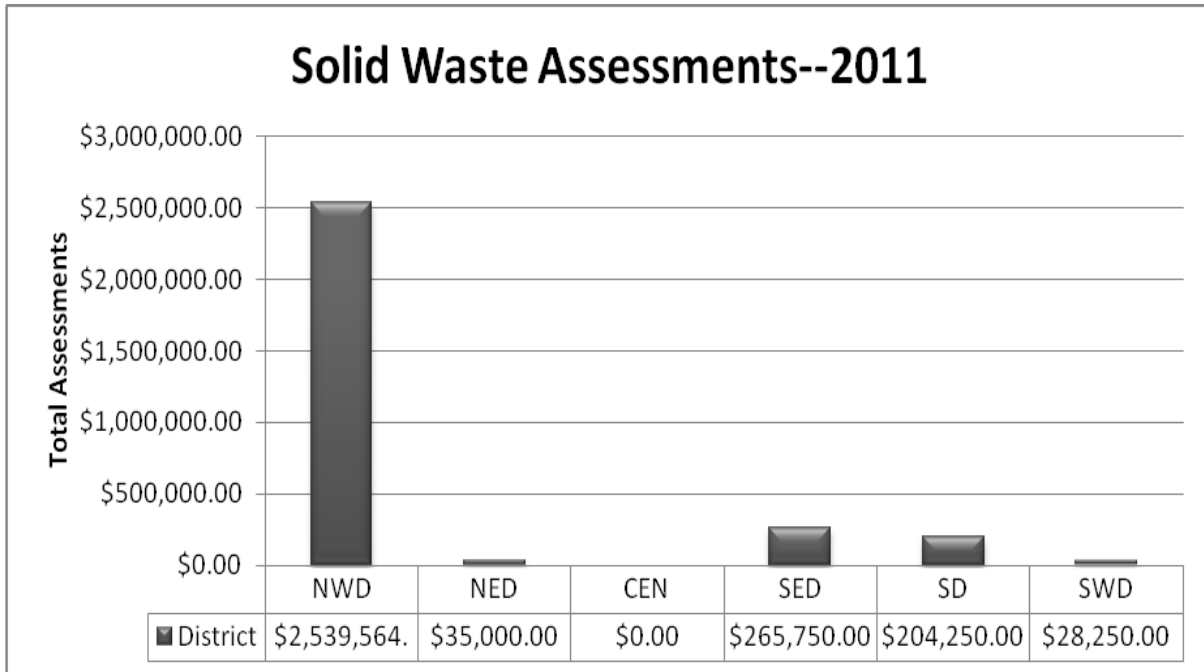
The number of assessments has also remained steady over the past three years. There was an increase from 2010 to 2011:

Year	Number of Solid Waste Assessments
2009	48
2010	33
2011	44

The performance of the districts, vis-à-vis the number of penalty assessments has fluctuated over the past three years, though clear downward trends are evident in both the Central and Southwest Districts:



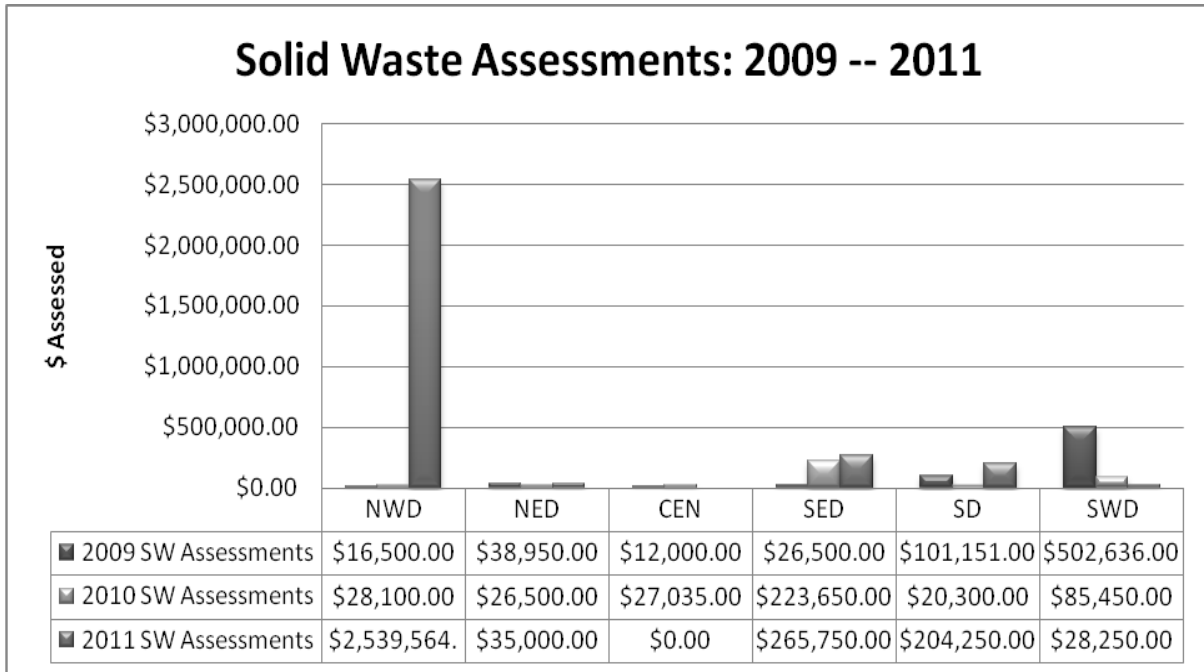
Overall, the \$3,072,814.00 in civil penalty assessments was assessed amongst the districts as follows:



The Department's assessments have fluctuated over the past three years:

Year	Total Solid Waste Assessments
2009	\$697,737.00
2010	\$411,035.00
2011	\$3,072,814.00

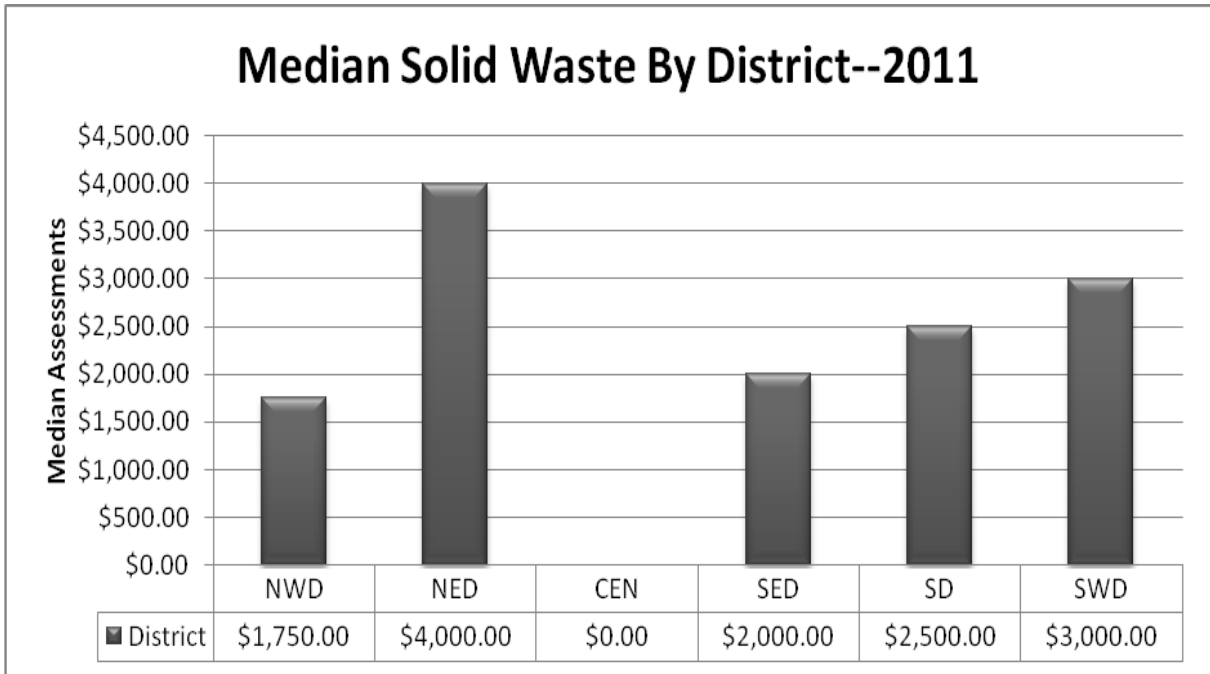
When compared with 2010's numbers, substantial gains were seen in the Northwest and South Districts, while substantially poorer performance was seen in the Central and Southwest Districts.



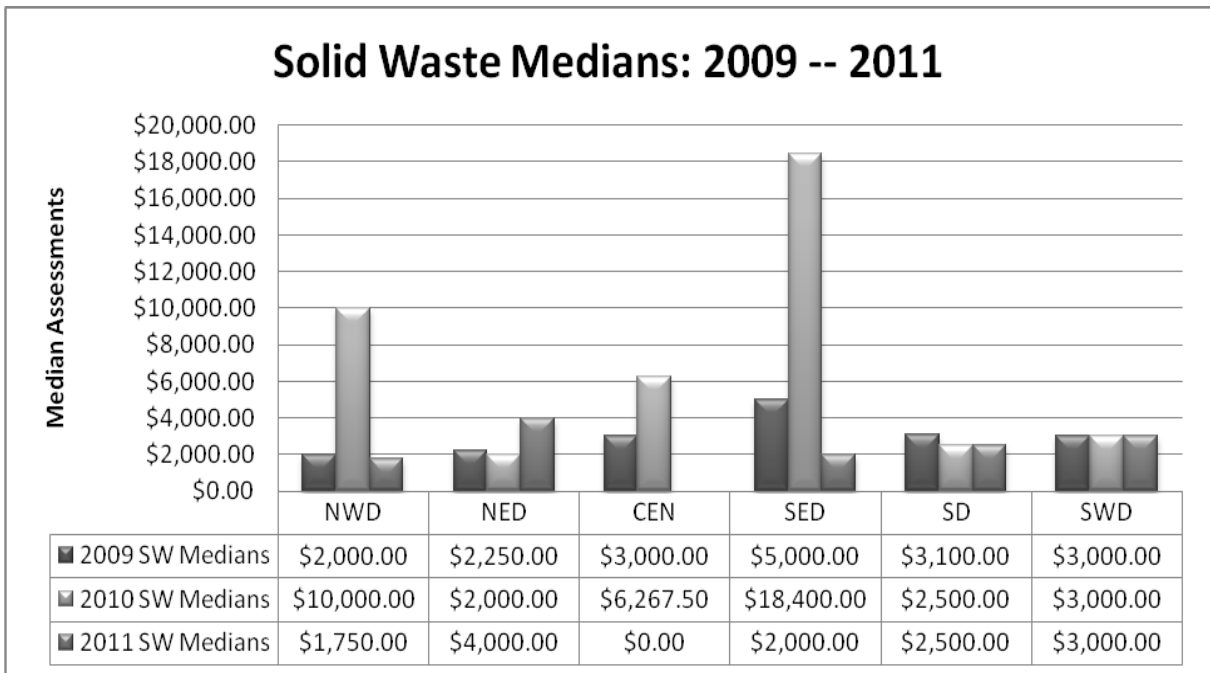
Median assessments for the Department have remained steady at \$3,000.00 over the past 3 years.

Year	Median Assessments
2009	\$3,000.00
2010	\$3,000.00
2011	\$3,000.00

In 2011 the Northeast and Southwest Districts had the highest medians:



While a significant gain in median assessments was seen in the Northeast District, significant declines were seen in the Northwest, Central and Southeast Districts. The Southwest District held its own:



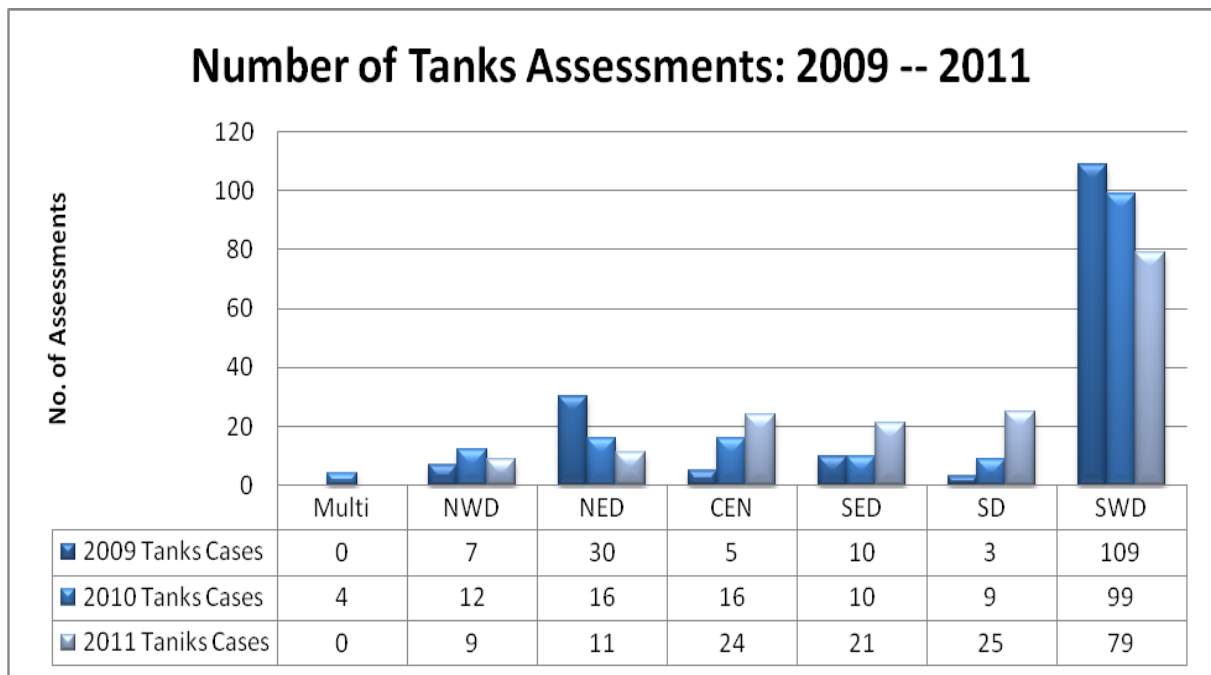
10. Tanks Program

The tanks program regulates the use of underground storage tanks throughout Florida. These tanks are used for multiple purposes, including the storage of gasoline at service stations. Many of those tanks are old and subject to leaking dangerous petroleum products into the soil and groundwater. Fortunately this is a program that is relatively robust. In 2011 it had mixed results, but overall it performed better than most of the other programs run by the Department.

Statewide the number of tanks assessments increased compared to both 2010 and 2009:

Year	Number of Tanks Assessments
2009	164
2010	166
2011	169

A disturbing trend is seen in the Southwest District where the number of assessments has been steadily falling over the past 3 years. This trend is also seen in the Northeast District, while the Central, Southeast and South Districts show promise:



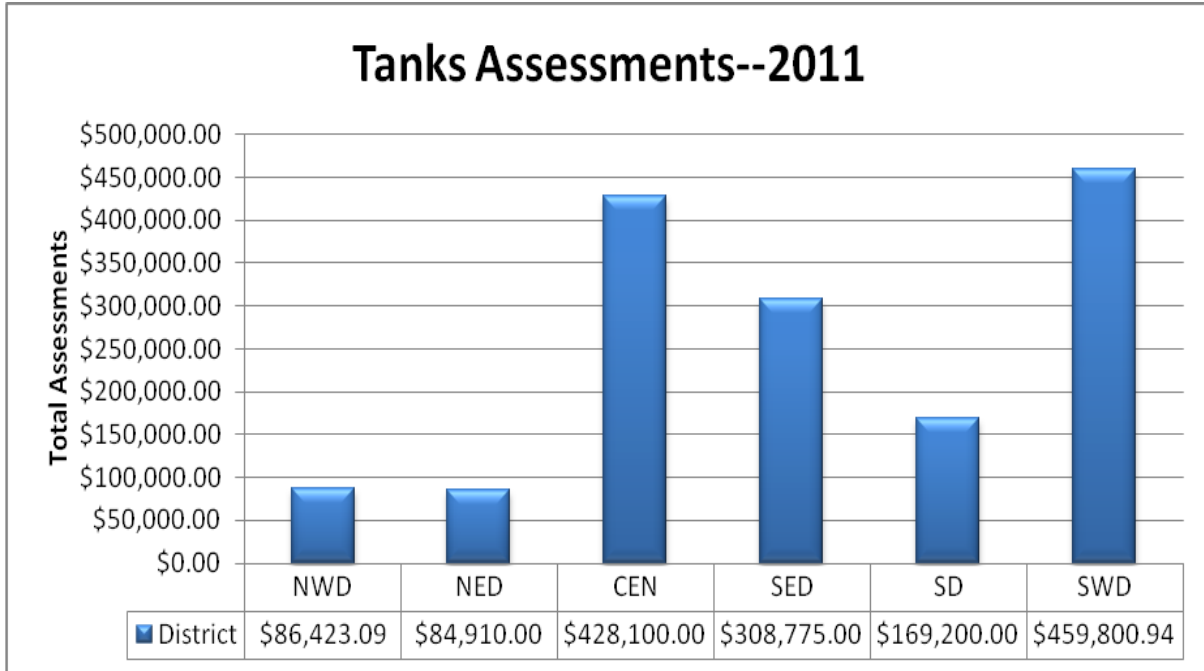
In 2010 the Department assessed penalties totaling \$1,207,823.56. In 2011 assessments rose to \$1,537,209.03, a 27% increase! The trend over the past 3 years has generally been positive:

Year	Total Tanks Assessments
2009	\$1,505,376.25
2010	\$1,207,823.56

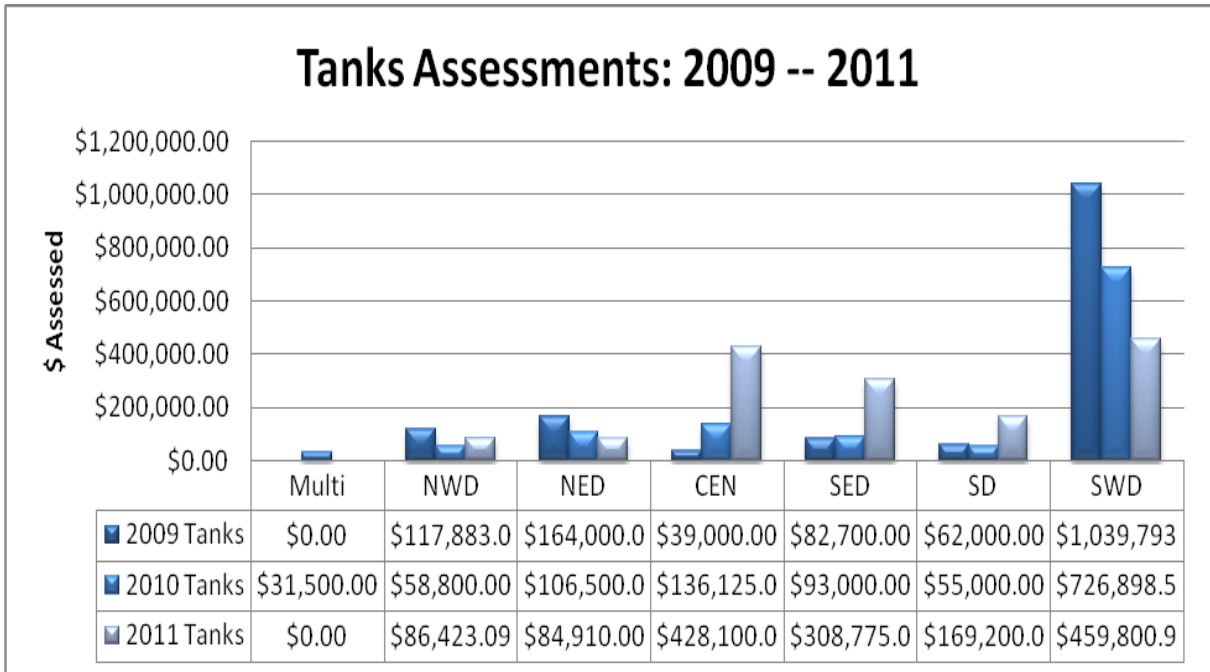
2011

\$1,537,209.03

Each district contributed to the overall results as shown in the following chart. The Central and Southwest Districts contributed the most of all of the districts:



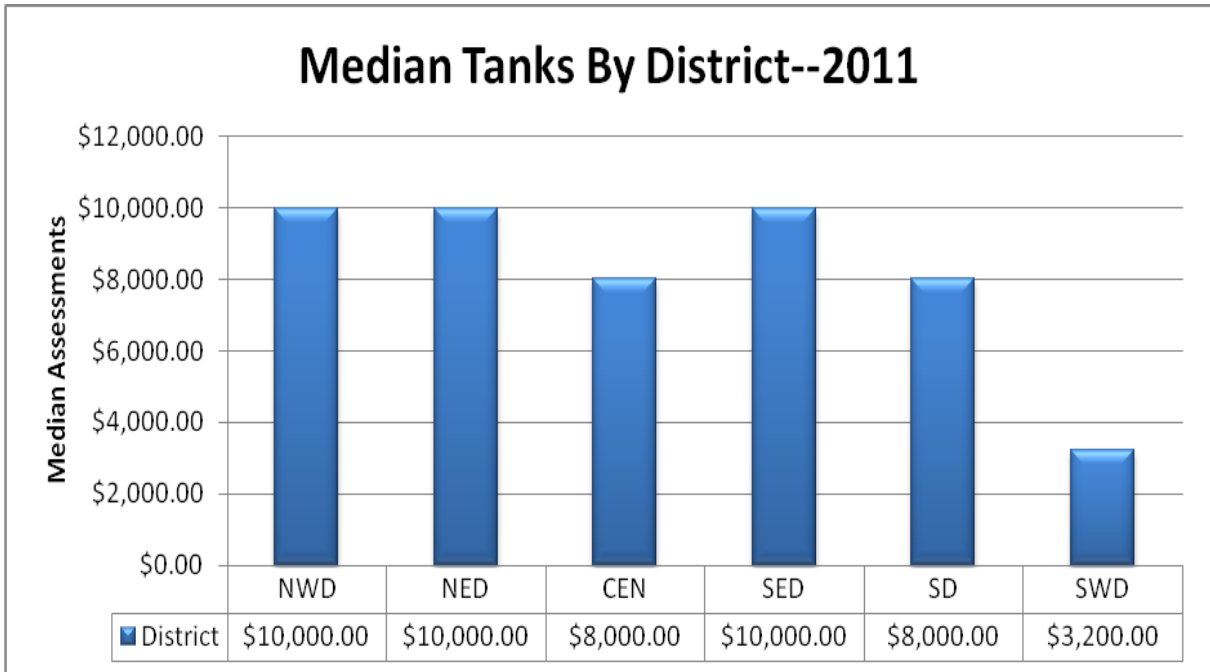
Over the past three years there has been a rather pronounced downward trend in the Southwest District that is troubling, particularly since that district is almost always responsible for a majority of assessments levied by the Department in any given year:



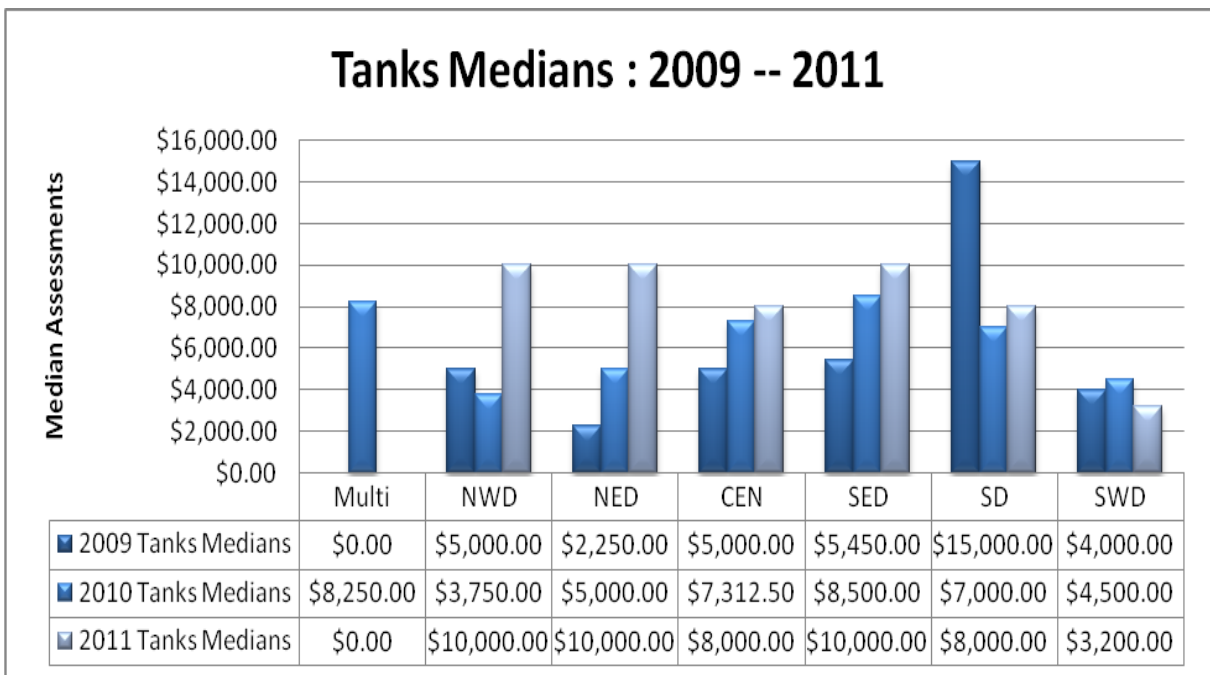
The increase in median assessments seen in 2010 was almost maintained in 2011:

Year	Median Assessments
2009	\$4,100.00
2010	\$5,149.50
2011	\$5,100.00

In 2011 the median assessments in the districts were:



This distribution is largely the same as in 2010, except for a decided increase in the Northeast District. And the overall trend is quite similar to the trend seen in the number of assessments levied each year. The lower median in the Southwest District, while not huge, is nonetheless a problem that will need to be monitored given the overall contribution of the Southwest District to this program:



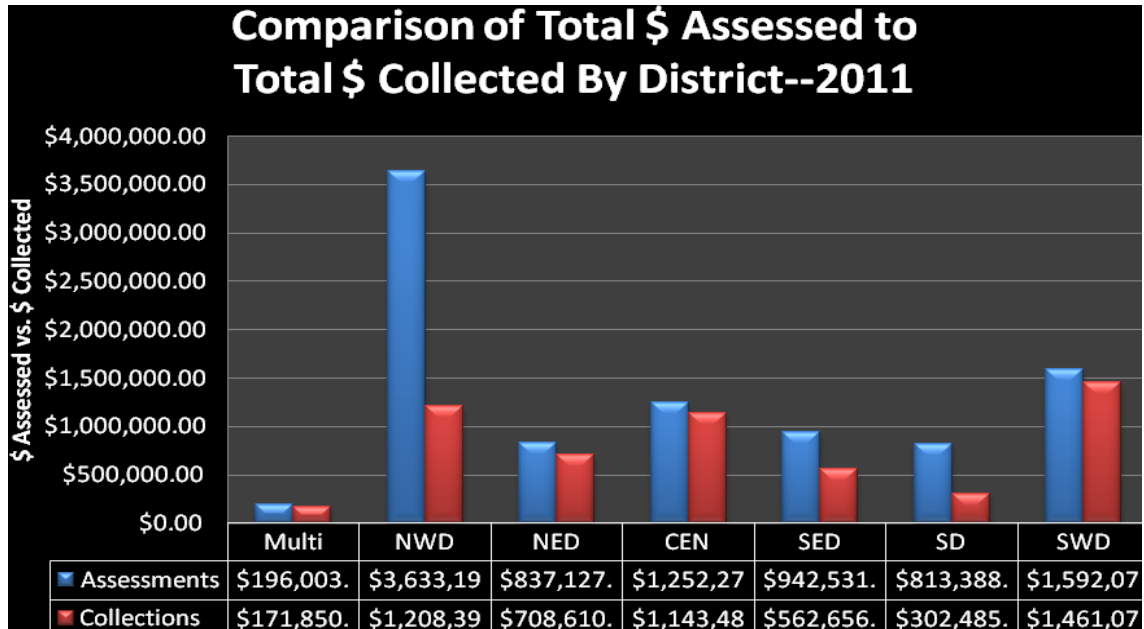
H. Civil Penalty Collections By Program Area—District Comparison

A statewide total of \$3,037,727.79 was collected by the Department in 2011. This is 57% lower than in 2010. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$2,520,822.97, which is 48% lower than 2010's results. Assuming the Department's valuation of these projects to be accurate, the result is a total collection by the Department of \$5,558,550.76, a figure that is still far less than the \$9,266,595.25 assessed by the Department in 2010.

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

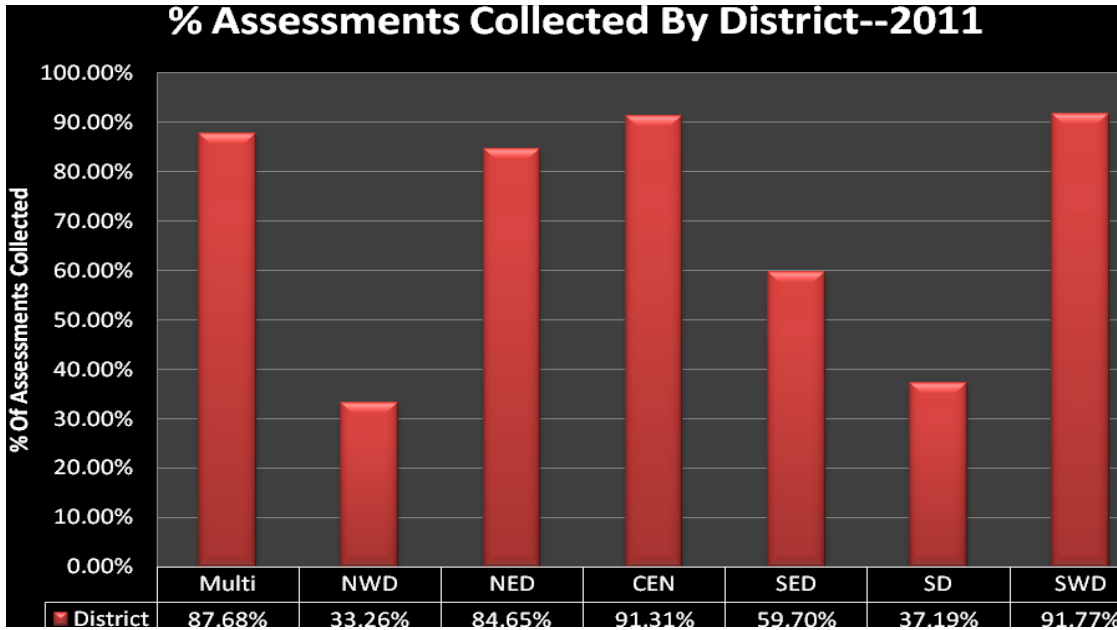
Program	District	OGC#	Polluter	Amount
AB	3	103702	CAROLYN PROPERTIES, LLC AND GALBREATH REALTY, INC.	\$10,748.76
AC	6	103703	GENERAL ENGINES COMPANY, INC.	\$16,181.00
AG	1	110082	FORT WALTON CONCRETE, INC.	\$2,125.00
AO	6	93921	THE LANE CONSTRUCTION CORPORATION	\$6,400.00
AP	6	110230	PINELLAS COUNTY UTILITIES, SOLID WASTE	\$48,600.00
AS	6	102677	POLK COUNTY BOCC	\$10,000.00
AV	4	103610	PALM BEACH COUNTY SOLID WASTE AUTHORITY	\$33,710.00
BS	0	111490	PATTERSON, CHAD M. HOWARD M. AND MARSHA H.	\$6,000.00
CS	1	111057	CITY OF LYNN HAVEN	\$500.00
CU	1	102699	SANTA ROSA COUNTY DISTRICT SCHOOLS	\$3,500.00
DF	1	101966	D & H PROPERTIES, LLC	\$6,250.00
DW	6	102683	CITY OF CLEARWATER	\$41,940.00
EP	5	71163	AMERICAN EARTH MOVERS, INC.	\$34,238.00
ES	2	110734	THE HUBBARD GROUP, INC.	\$22,000.00
EW	1	111073	PORTOFINO MASTER HOMEOWNERS ASSOCIATION, INC.	\$3,000.00
HW	3	110370	HI-ACRES, LLC, D/B/A FOREMOST FERTILIZER	\$50,000.00
IW	2	103539	PILGRIM'S PRIDE CORPORATION	\$36,600.00
MA	4	101628	TOSCANA HOMEOWNERS ASSOCIATION AND BEACH CLUB	\$25,600.00
MN	0	100688	RED BAY SAND MINE, INC.	\$8,000.00
PW	3	110111	TOHOPEKALIGA WATER AUTHORITY	\$5,000.00
RO	0	102663	BEAZER HOMES USA, INC	\$57,335.00
SL	4	103473	RAY QUALMANN MARINE CONSTRUCTION, INC.	\$5,000.00
SW	1	61830	PEAVY & SON CONSTRUCTION CO.	\$50,000.00
TK	6	52852	AJ PETROLEUM	\$32,696.07

The following chart shows each district and compares the dollars assessed by each district in 2011 with the dollars actually collected, including dollar equivalents for in-kind and penalty prevention projects:



When looking at the results on a percentage basis, i.e. the pure percentage of dollars collected that were assessed, both in penalties and projects, the districts appear to be performing roughly the same. The Southeast and Southwest Districts both collected more in fines than were assessed in 2010, but this was not the case in 2011.¹⁵

¹⁵ 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.



When compared with 2010's results, the Northwest and Central Districts collected a larger percentage of assessments in 2011. The remaining districts all performed worse than in 2010.

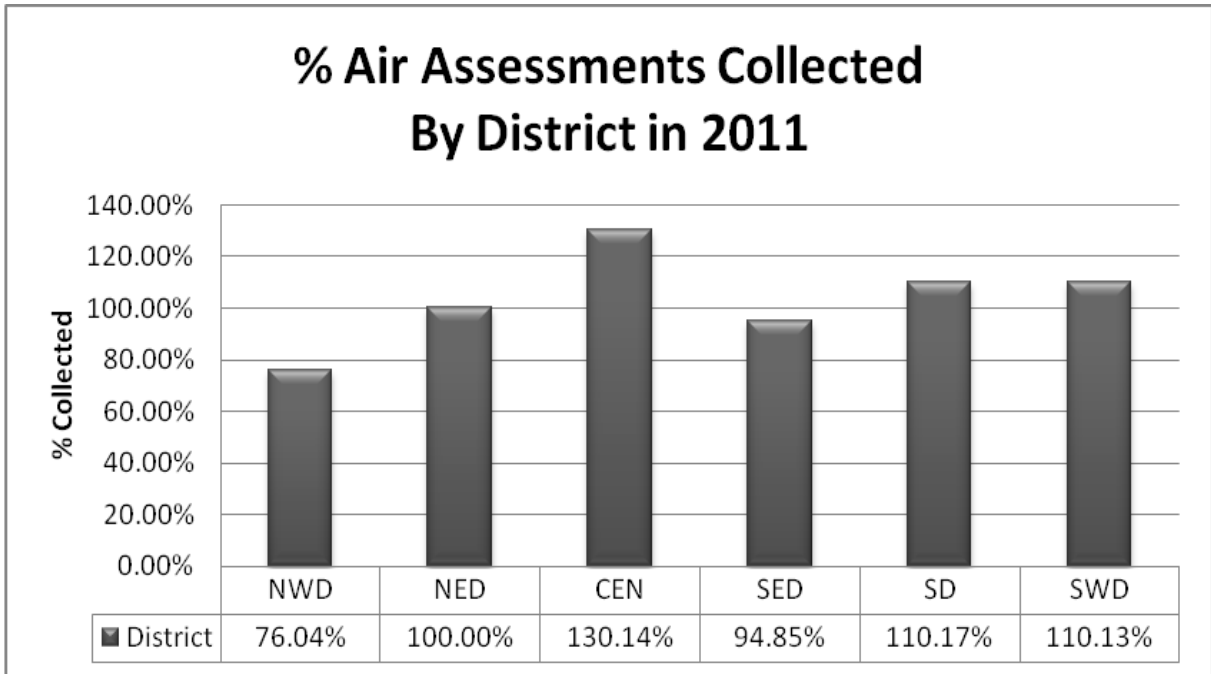
The results for the percentage of assessments actually collected by each district in the major program areas are discussed below.

1. Air Program

The data shows that when penalty assessments and collections are considered¹⁶ the districts continue to collect almost all of the assessments in this program area.¹⁷ As a whole, the Department collected 106.22% of its assessments, slightly more than in 2010.

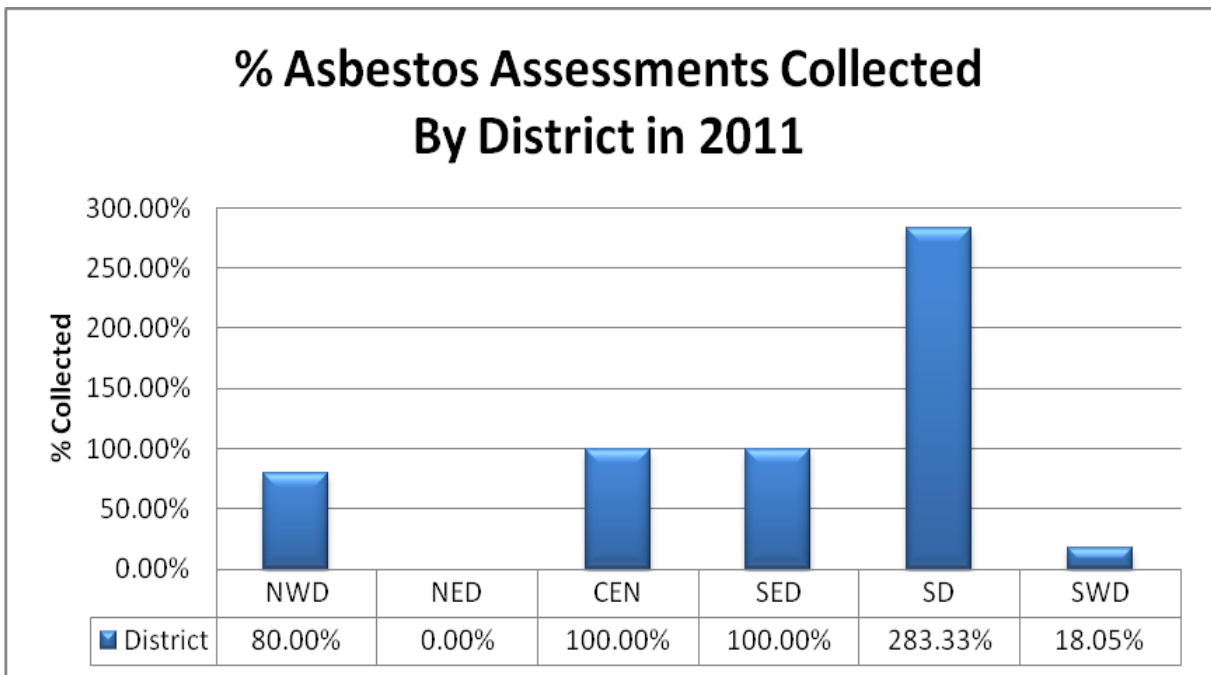
¹⁶ Excluding in-kind and penalty project assessments. All of the charts in this section exclude in-kind and Penalty project assessments, unless otherwise indicated.

¹⁷ In most cases no collections were made by the multi-district category. It is therefore not included in the graphs unless positive figures exist to be reported.



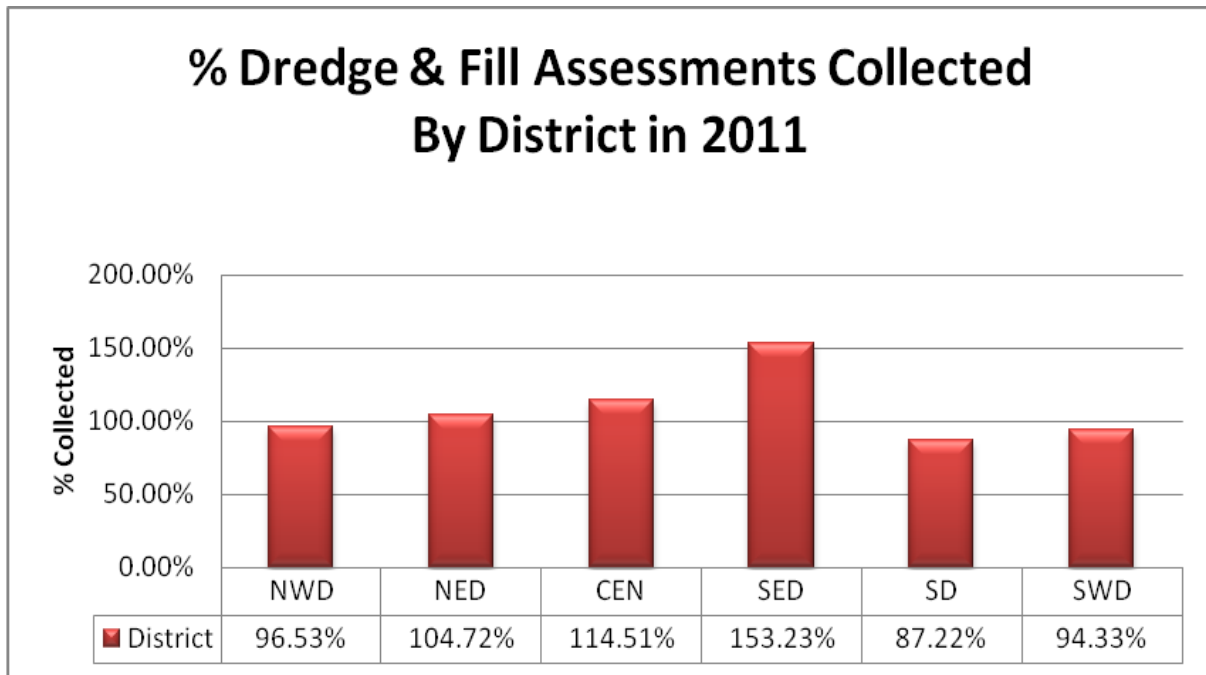
2. Asbestos Program

Overall the Department collected 73.02 % of its assessments. This is 13% less than in 2010. The South and Central Districts showed improvement. The Southwest District performed much worse than in 2010.



3. Dredge and Fill Program

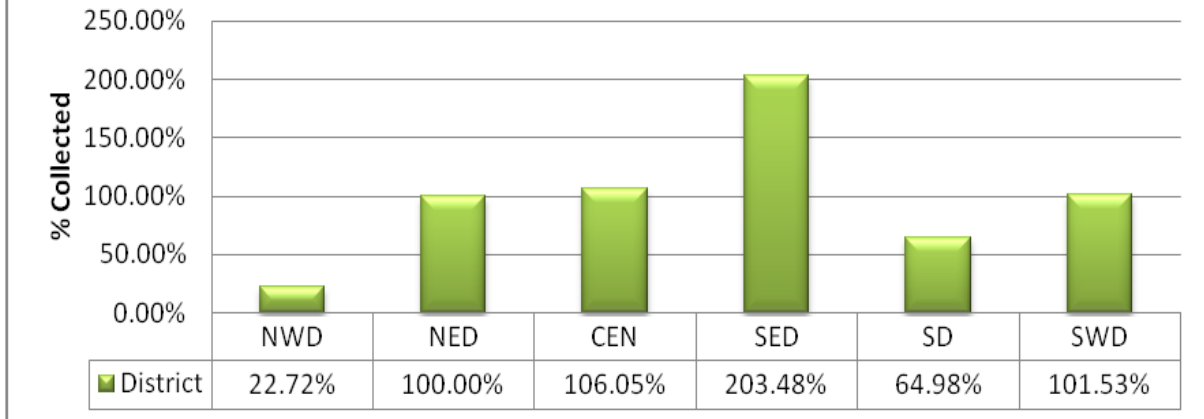
The Department collected 101% of its penalty assessments in this program area. This number drops slightly to 92% when in-kind and penalty prevention projects are included in the numbers. Every district but the Northeast District improved upon its performance in 2011.



4. Domestic Waste Program

Overall the Department collected 84% of its penalty assessments in this program area—much better than in 2010. In 2010 only two of the districts, the Northeast and South Districts, collected over 50% of their assessments. In 2011 all but the Northwest District had collected over 50% of their assessments. The high result for the Southeast District is a bit of an outlier, due to the fact that it assessed penalties in only two cases with a grand total of \$5,750.00, the lowest assessments of all of the districts. It collected \$11,700.00 in civil penalties which is far less than the total dollars assessed by any of the districts.

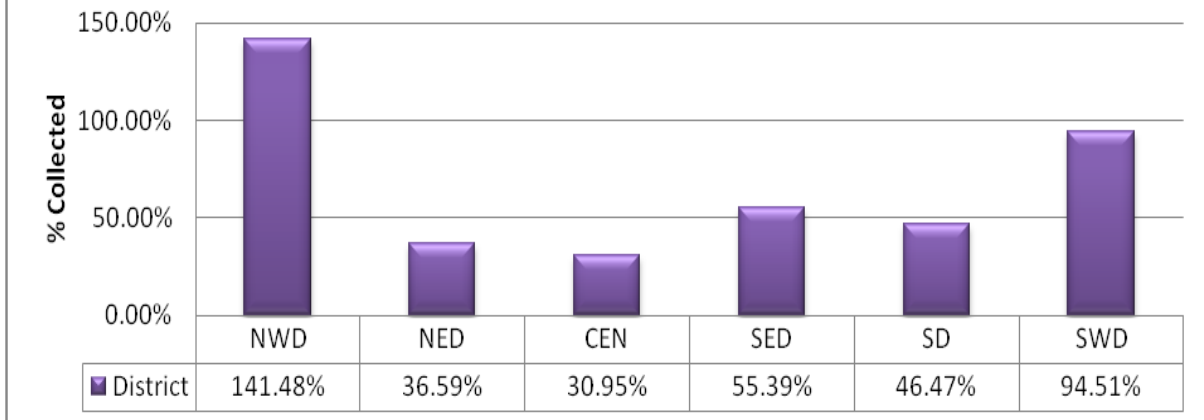
% Domestic Waste Assessments Collected By District in 2011



5. Hazardous Waste

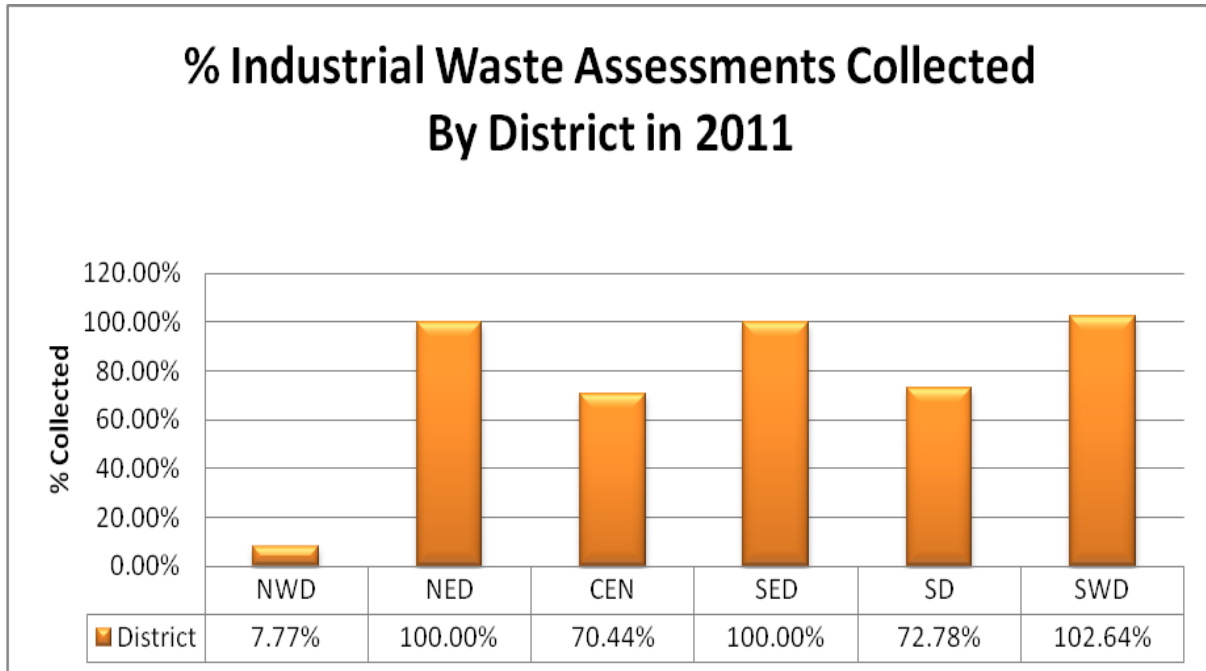
Overall the Department collected 53.45% of the civil penalties that it assessed in 2011, again better than in 2010. Only the Northeast District's performance declined:

% Hazardous Waste Assessments Collected By District in 2011



6. Industrial Waste

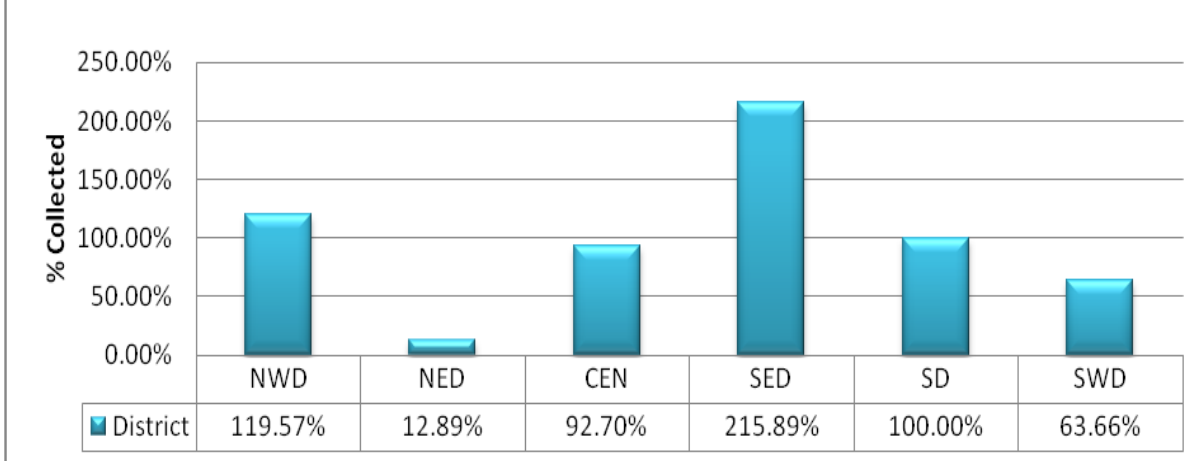
The percentage of industrial waste assessments that were collected dropped significantly in 2011. 93.06% of the penalties assessed were collected, down sharply from the 261.69% collected in 2010. Only the Southeast District saw improved results, however, it only assessed penalties in 2 cases totaling \$4,000.00. It collected those assessments:



7. Potable Water Program

Overall the Department collected 52.78% of its assessments, essentially the same performance as in 2010. The Northwest, South and Southwest Districts saw declining numbers compared with 2010:

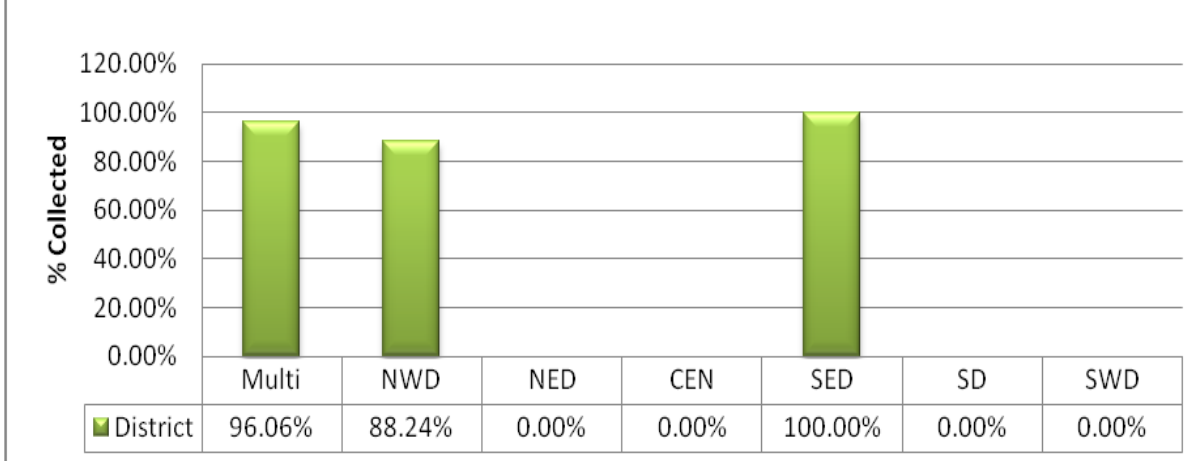
% Potable Water Assessments Collected By District in 2011



8. Stormwater Discharge Program

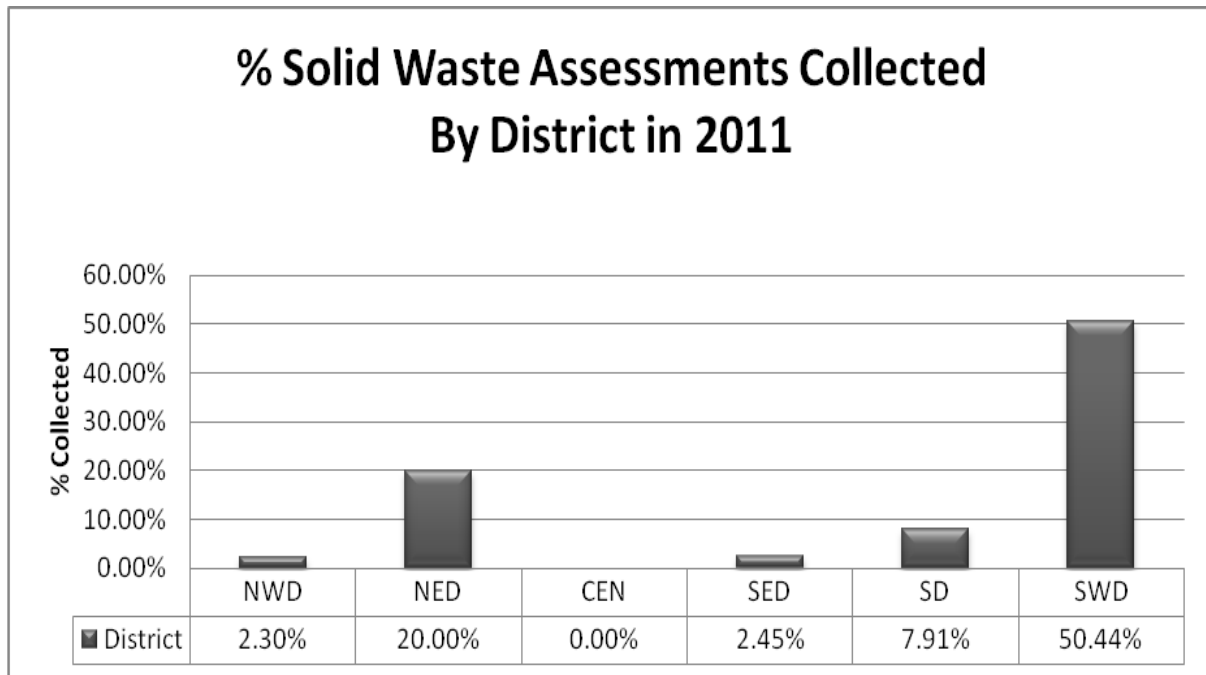
The Department collected 95.84% of its assessments in this program in 2011. The Multi-District category, which handles most of this program, collected 96.06% of its assessments. There were no assessments made in the Northeast, Central, South and Southwest Districts:

% Stormwater Runoff Assessments Collected By District in 2011



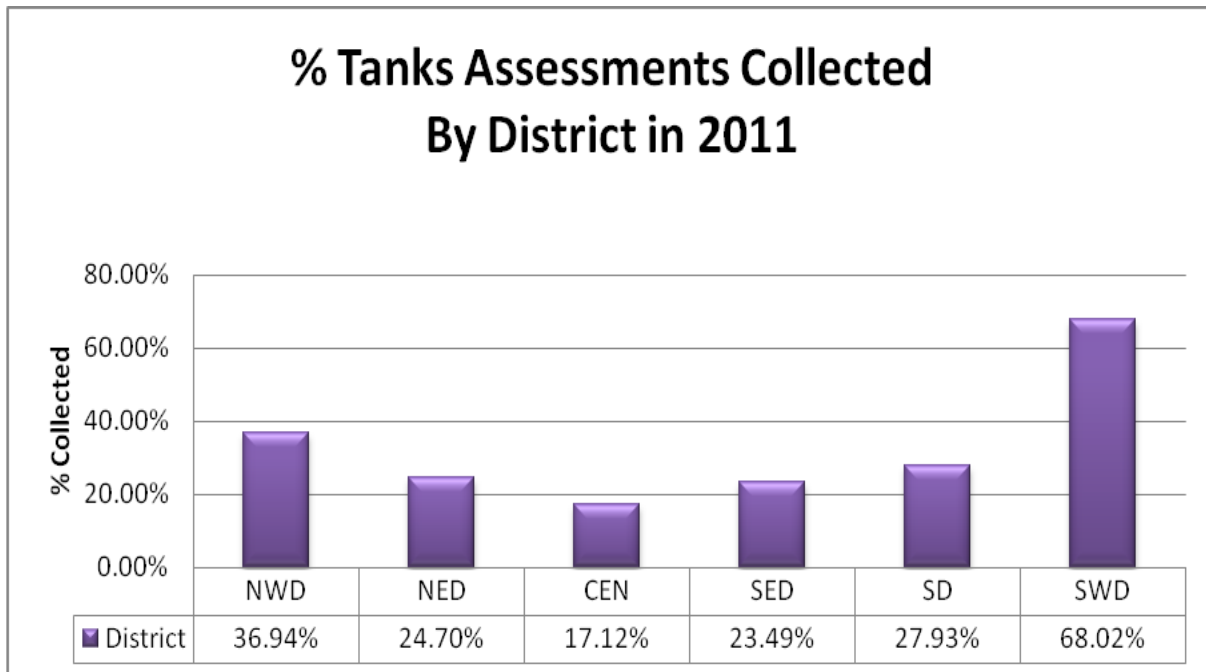
9. Solid Waste Program

Overall the Department collected a mere 3.39% of its civil penalty assessments in 2011, down sharply from the 50.42% performance in 2010. The performance was lower in every district:



10. Tanks Program

36.97% of the civil penalties assessed in 2011 were collected by the Department, a lower result than in 2010 (which was roughly 20% better). Four of the Districts collected fewer assessments in 2011 than in 2010. The Southwest District, which saw a modest 5.6% increase over 2010, was the only district to see improved results. The performance by each district was as follows:



I. A Quick Look At Statewide Results

The following is a summary of the overall enforcement picture for 2011:

Enforcement Area	Performance Compared with 2010
Total Number of Cases	Down 28%
Case Reports	Down 31%
NOVs	Down 16%
Final Orders	Up 51%
Consent Orders—Total	Down 32%
Consent Orders—Long-Form	Down 62%
Consent Orders—Model	Down 30%
Consent Orders—Short-Form	Down 27%

Assessments for 2011 can be summarized as follows:

Assessment/Program Area	Performance Compared with 2010
Total Number of Assessments	Down 28%
Total Dollars Assessed in Penalties	Down 29%
Total Medians	Unchanged
Air Program—Number of Assessments	Down 47%
Air Program—Dollars Assessed	Down 79%

Air Program—Median	Down 5%
Asbestos Program—Number of Assessments	Down 18%
Asbestos Program—Dollars Assessed	Down 34%
Asbestos—Median	Up 60%
Dredge & Fill—Number of Assessments	Down 25%
Dredge & Fill—Dollars Assessed	Down 77%
Dredge & Fill—Median	Down 17%
Domestic Waste—Number of Assessments	Down 23%
Domestic Waste—Dollars Assessed	Down 59%
Domestic Waste—Median	Up 50%
Hazardous Waste—Number of Assessments	Down 38%
Hazardous Waste—Dollars Assessed	Down 38%
Hazardous Waste—Median	Up 83%
Industrial Waste—Number of Assessments	Down 15%
Industrial Waste—Dollars Assessed	Up 5%
Industrial Waste—Median	Down 3%
Potable Water—Number of Assessments	Down 36%
Potable Water—Dollars Assessed	Down 40%
Potable Water—Median	Down 39%
Stormwater Discharge—Number of Assessments	Down 56%
Stormwater Discharge—Dollars Assessed	Down 93%
Stormwater Discharge—Median	Down 66%
Solid Waste—Number of Assessments	Up 33%
Solid Waste—Dollars Assessed	Up 648%
Solid Waste—Median	Unchanged
Tanks—Number of Assessments	Up 2%
Tanks—Dollars Assessed	Up 27%
Tanks—Median	Down 1%

The Collections Results are:

Collections/Program Area	Performance Compared with 2010
Total Collections	Down 57%
Air—Penalties Collected	Up 7%
Asbestos—Penalties Collected	Down 13%
Dredge & Fill—Penalties Collected	Up 14%
Domestic Waste—Penalties Collected	Up 50%
Hazardous Waste—Penalties Collected	Up 20%
Industrial Waste—Penalties Collected	Down 169%
Potable Water—Penalties Collected	Down 2%
Stormwater Discharge—Penalties Collected	Up 83%
Solid Waste—Penalties Collected	Down 47%
Tanks—Penalties Collected	Down 20%

DISTRICT ENFORCEMENT RESULTS

A. Northwest District

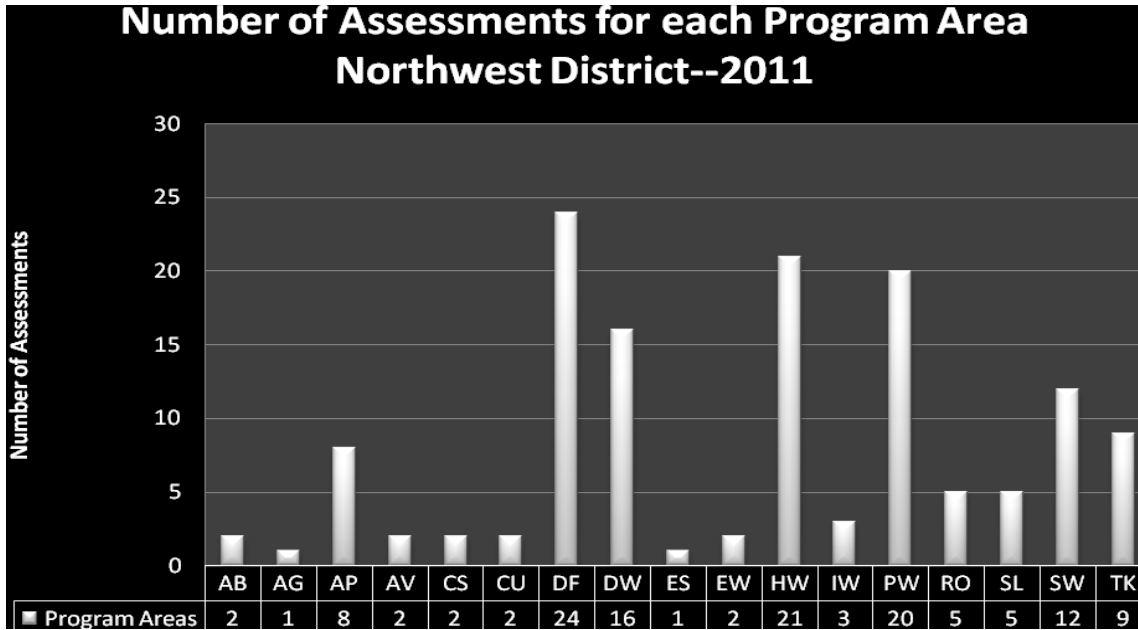
1. Case Reports, NOVs, Consent Orders, Final Orders

The Northwest District initiated enforcement in 156 cases in 2011, 11 fewer than in 2010. 13.60% of all of the enforcement cases opened by the Department came out of this district. It issued 13 case reports (4 fewer than in 2010), 6 NOVs (2010 saw 9 NOVs) and 11 final orders (an increase of 4). 126 consent orders were issued, compared to 134 in 2010. Long-form consent orders fell from 20 in 2010 to 15 in 2011. There were 85 short-form consent orders, a slight drop-off from 2010's 87. The district issued 16% of all short-form consent orders issued by the Department in Florida. 54% of all cases initiated by the Northeast District in 2011 were resolved with short-form consent orders, a 2% increase from 2010.

2. Program Area Enforcement

The Northwest District assessed civil penalties in 135 cases in 2011, 16 fewer cases than in 2010. The following chart provides a breakdown¹⁸ of how those assessments were distributed among the program areas:

¹⁸ Only program areas with actual assessments are shown. The same is true for the remaining districts that will be discussed.



The data shows that a majority of the assessments were in the dredge and fill, hazardous waste, domestic waste and potable water programs. The domestic waste program saw a healthy increase in the number of assessments, while the remaining programs largely declined.

3. Civil Penalty Assessments

The Northwest District assessed \$1,829,282.36 more in civil penalties in 2011 than it did in 2010. The total civil penalties assessed in 2011 was \$3,633,190.89, a 101% increase from 2010's performance. With that said, the overwhelming majority (almost \$3,000,000.00) of the total amount of assessments came in two cases (solid waste and waste cleanup) against the same polluter, *Coyote Land Co., Inc.* Were it not for these two cases the district's performance would have been dismal compared with 2010. Nevertheless, the district's total assessments made up 39% of all assessments levied by the Department in 2011. The median civil penalty assessment for 2011 for all programs combined was \$1,500.00, a \$500.00 decrease from 2010.

Program area assessments for the Northwest District broke down as follows:¹⁹

Program	Total \$ Assessed	2010 Median	2011 Median
AB	\$12,500.00	\$1,250.00	\$6,250.00
AG	\$2,125.00	\$500.00	\$2,125.00

¹⁹ Numbers in red represent results that were declines from the previous year's performance. The same format is used for the remaining districts.

AP	\$25,575.00	\$0.00	\$2,875.00
AV	\$11,625.00	\$1,000.00	\$5,812.50
CS	\$1,000.00	\$0.00	\$500.00
CU ²⁰	\$503,500.00	\$750.00	\$251,750.00
DF	\$55,708.36	\$2,000.00	\$1,500.00
DW	\$240,999.99	\$1,250.00	\$2,500.00
ES	\$500.00	\$0.00	\$500.00
EW	\$3,500.00	\$0.00	\$1,750.00
HW	\$106,960.00	\$3,480.00	\$1,960.00
IW	\$18,025.45	\$2,000.00	\$6,975.00
PW	\$9,685.00	\$500.00	\$362.50
RO	\$8,500.00	\$4,000.00	\$1,000.00
SL	\$7,000.00	\$1665.00	\$1,500.00
SW	\$2,539,564.00	\$10,000.00	\$1,750.00
TK	\$86,423.09	\$3,750.00	\$10,000.00

The median assessments for the hazardous waste program declined for the third year in a row. The median assessments for the potable water and state lands programs declined for the second year in a row.

4. Civil Penalty Collections

The Northwest District collected \$307,752.21 in civil penalties²¹ compared with \$598,437.53 in civil penalties collected in 2010. The NWD collected 10% of all collections by the Department in calendar year 2011, up 2% from 2010.

B. Northeast District

1. Case Reports, NOV's, Consent Orders, Final Orders

The Northeast District initiated enforcement in 133 cases in 2011. This was 97 cases fewer than in 2010 and 120 fewer than in 2009. 8.86% of all of the enforcement cases opened by the Department came out of this district. It issued 15 case reports, 14 NOV's and 14 final orders. All of these results were lower than in 2010. 90 consent orders were issued, compared to 162

²⁰ The assessments in CU and SW are largely from one polluter.

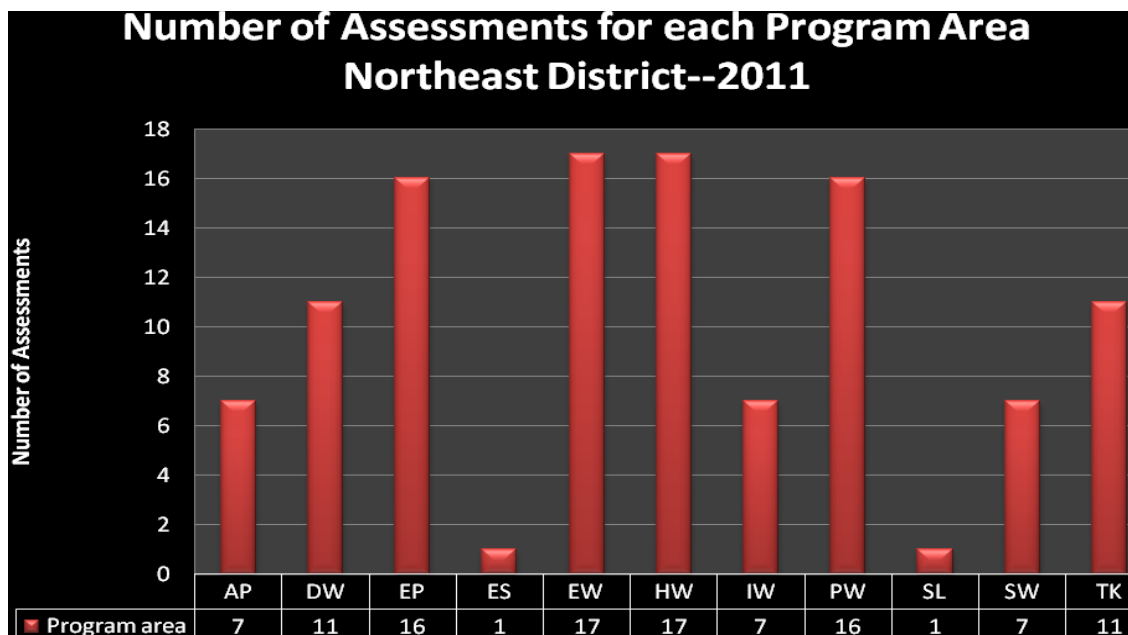
²¹ The civil penalty collections reported for each district are for straight civil penalties. These numbers do not include in-kind projects. Unless stated otherwise, the same is true for all subsequent district results.

consent orders issued in 2010. 31 of the 90 consent orders were long-form, 13 fewer than in 2010. 50 short-form consent orders were issued—43 less than in 2010. 38% of all cases initiated by the Northeast District in 2011 were resolved with short-form consent orders, down slightly from 2010. 9% of all short-form consent orders issued by the Department in Florida came out of this district.

In January 2011 *Florida* PEER filed a petition²² with EPA under the Clean Water Act asking that agency to intervene in the NPDES permit held by the Clay County Utility Authority because of multiple unenforced violations of its permit. The EPA ultimately declined to intervene, thus allowing the polluter to avoid prosecution.

2. Program Area Enforcement

The Northeast District assessed civil penalties in 111 cases in 2011, down 34% from 2010. The breakdown of assessments by program area follows:



Significant declines were seen in every major program area except for the industrial waste and solid waste programs.

²² See, *St. Johns River Municipal Polluter Out of Control*, http://www.peer.org/news/news_id.php?row_id=1446

3. Civil Penalty Assessments

The Northeast District assessed civil penalties totaling \$837,127.50 in 2011, down 2% from the \$855,446.11 assessed in 2010. This is the third straight year of declining numbers. The district's performance represented 9% of all assessments by the Department in 2011. The median civil penalty assessment for 2011 for all programs combined was \$2,500.00, a \$500.00 increase from 2010. This is the second straight year in which median assessments has risen in this district.

Program area assessments for the Northeast District broke down as follows:

Program	Total \$ Assessed	2010 Median	2011 Median
AP	\$6,200.00	\$1,000.00	\$500.00
DF	\$0.00	\$3,500.00	\$0.00
DW	\$77,500.00	\$3,500.00	\$1,000.00
EP	\$37,125.50	\$1,710.00	\$2,215.00
EW	\$29,294.00	0.00	\$1,250.00
HW	\$402,251.00	\$6,450.00	\$10,800.00
IW	\$60,230.00	\$2,500.00	\$5,000.00
PW	\$78,988.00	\$1,025.00	\$940.00
SL	\$3,629.00	\$0.00	\$3,629.00
SW	\$35,000.00	\$2,000.00	\$4,000.00
TK	\$84,910.00	\$5,000.00	\$10,000.00

All things considered, the numbers indicate that the district held its own in terms of the dollars assessed and median assessments compared to years past. The domestic waste median assessments did fall significantly and this was the second straight year of declining numbers in this program area.

4. Civil Penalty Collections

The Northeast District collected \$355,873.43 in civil penalties in 2011, compared to \$514,369.42 that was collected in 2010. This is the second straight year of declining collections. The district collected 12% of all collections by the Department in calendar year 2011, a 5% increase from 2010.

C. Central District

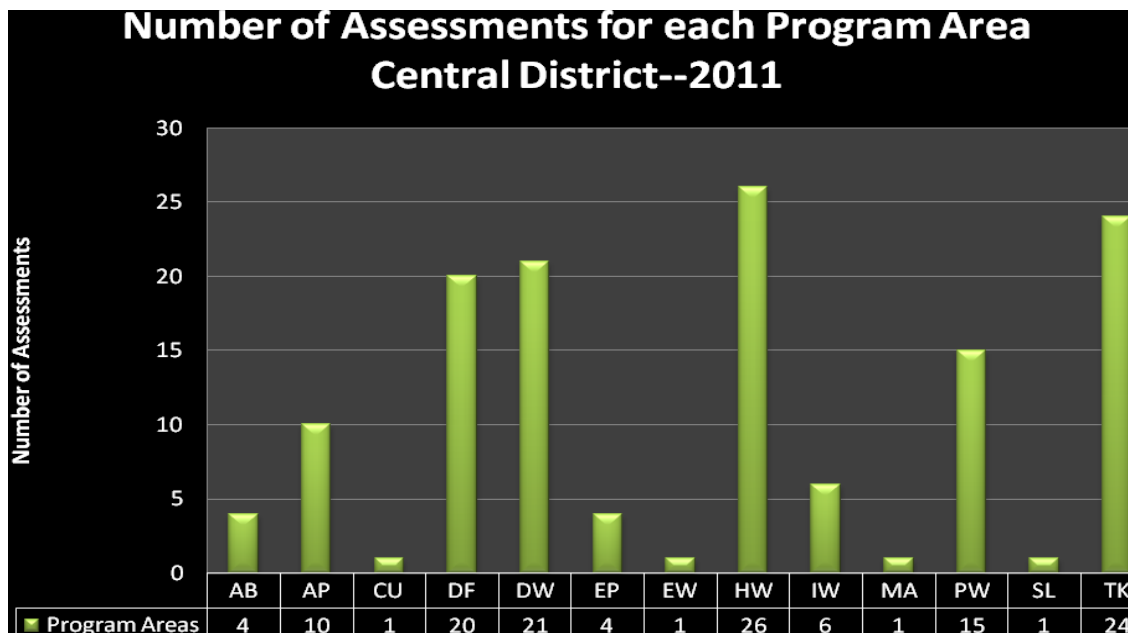
1. Case Reports, NOV's, Consent Orders, Final Orders

The Central District took enforcement in 161 cases in 2011. This is a 23% drop compared with 2010. It submitted 10 case reports to OGC in 2011, 11 fewer than in 2010. It also issued 11 NOVs (a drop of 7), 10 final orders and 130 consent orders (a drop of 29). Of the 130 consent orders, 62% (80) were short-form consent orders whereas 12% (15) were long-form.

Florida PEER filed a petition in November 2011²³ asking that EPA oversee the NPDES permit held by the City of Daytona Beach because of years of permit violations at the facility, coupled with a failure of the Central District to take meaningful enforcement. To date the EPA has not acted upon the petition.

2. 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 2011:



The Central District assessed penalties in 134 cases in 2011, a 28% decline from 2010's results. When compared with 2010 there were fewer asbestos (2), air (14), dredge and fill/EP/EW (23), hazardous waste (17), potable water (9) and solid waste cases (4) in 2011.

²³ See, *Daytona Beach on a Sewage Spewing Spree*, http://www.peer.org/news/news_id.php?row_id=1535

3. Civil Penalty Assessments

The Central District levied \$1,252,278.76 in civil penalty assessments in 2011, an increase of \$401,962.91 compared to 2010. This brought a halt to a two-year decline in civil penalty assessments. The assessments totaled 13.51% of all assessments statewide, the third highest in the state. Median assessments held steady at \$2,000.00.

Program area assessments for the Central District broke down as follows:

Program	Total Assessments	2010 Medians	2011 Medians
AB	\$16,648.76	\$7,775.00	\$2,550.00
AP	\$32,780.00	\$2,431.25	\$1,115.00
CU	\$2,000.00	\$0.00	\$2,000.00
DF	\$17,120.00	\$500.00	\$705.00
DW	\$123,350.00	\$2,750.12	\$1,875.00
EP	\$9,210.00	\$1,410.00	\$2,000.00
EW	\$850.00	\$0.00	\$850.00
HW	\$568,960.00	\$4,000.00	\$12,084.00
IW	\$20,300.00	\$950.00	\$3,500.00
MA	\$500.00	\$1,080.00	\$500.00
PW	\$19,850.00	\$1,000.00	\$1,000.00
SL	\$12,610.00	\$1,855.00	\$12,610.00
SW	\$0.00	\$6,267.50	\$0.00
TK	\$428,100.00	\$7,312.50	\$8,000.00

Total assessments fell for the second year in a row in the dredge and fill program. This is the third year in a row that median assessments have fallen in the air program. Asbestos and mangrove alteration medians fell for the second straight year. Median assessments in the asbestos, air, domestic waste and mangrove alteration programs were all lower in 2011 than they were two years ago in 2009. There were no assessments in the solid waste program during all of 2011.

4. Civil Penalty Collections

Despite an increase in assessments, the Central District collected fewer dollars in 2011. It collected \$399,211.61 in 2011, an amount that is \$28,911.55 less than the year before. This represented 13% of all of the penalties collected department-wide.

D. Southeast District

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

The Southeast District initiated enforcement in 128 cases in 2011. This is 78 cases less than in 2010, a 38% decline. It issued 17 NOVs in 2011 (an increase of 2), 25 case reports (a decrease of 16) and 10 final orders (double its 2010 performance). It also issued 80 consent orders (65 fewer than in 2010, a 45% drop). 64% of the consent orders that were issued were short-form consent orders, a significant increase from the 35% rate just a year ago. 40% of all of the district's enforcement in 2011 was settled via this traffic-ticket route, a 15% increase compared to 2010. On the positive side, 21% of the consent orders that were issued were long-form consent orders, making this district's use of this mechanism the second highest of all of the districts. 20% of all of this district's enforcement cases were sent to the Office of General Counsel via the case report route, the highest percentage of all of the districts. And the district accounted for 23% of all Case Reports sent to the OGC in 2011. Overall, however, what appeared to be significant gains in most of the areas in 2010 seem to have been lost in 2011.

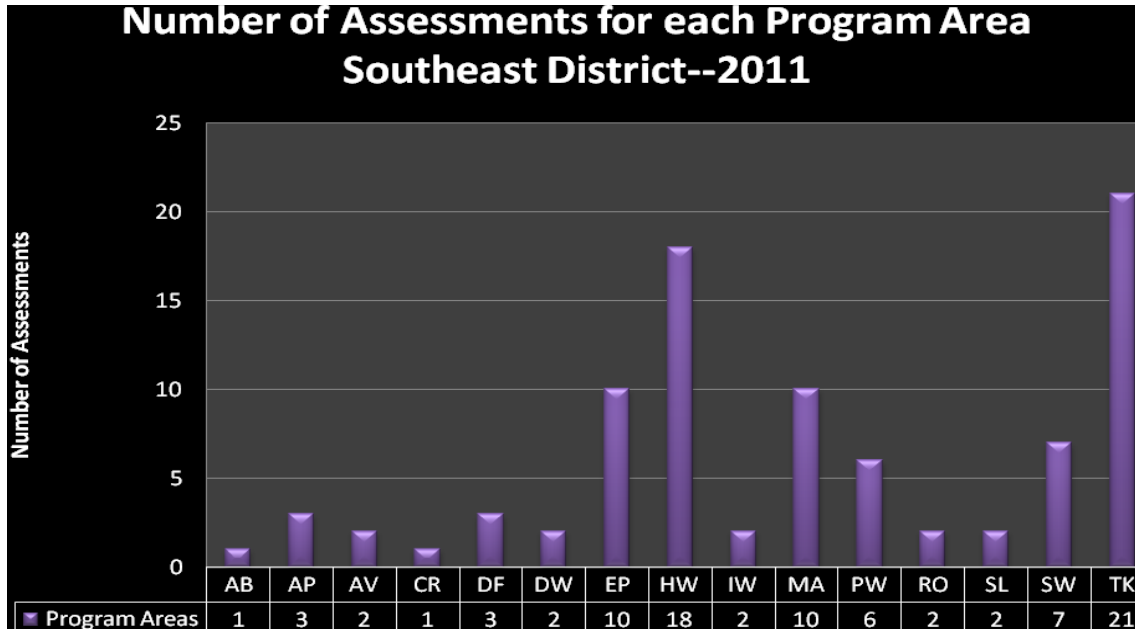
Florida PEER filed a petition with the EPA on August 12, 2010²⁴, asking that the EPA assume direct administration of the NPDES permit held by the *City of Boca Raton* because of multiple serious NPDES permit violations by that facility. The Southeast District has failed to take enforcement against the polluter even though a former employee blew the whistle on illegal activities involving the Clean Water Act and federal Safe Drinking Water Act at the facility.²⁵ Instead, the Southeast District has repeatedly worked to prevent enforcement going so far as to work with the polluter to "correct" reports that were sent to the Department that showed permit violations. To date the EPA has failed to intervene. This year the Southeast District opened a total of 3 domestic waste enforcement cases for the entire year, 2 in which penalties were assessed via short-form consent orders and 1 amended consent order.

2. Program Area Enforcement

The following chart provides the number of civil penalty assessments made by the Southeast District by program area in 2011:

²⁴ See, *Boca Raton Wastewater Woes Warrant Federal Intervention*, http://www.peer.org/news/news_id.php?row_id=1389

²⁵ See, *Boca Raton Utility Workers Blow Whistle on Health Risks*, http://www.peer.org/news/news_id.php?row_id=1430



The Southeast District assessed civil penalties in 90 cases in 2011. This is 19 fewer cases than in 2010 and the second year in a row of an overall decline in assessments. It appears that the domestic waste program virtually ceased to function, managing only 2 cases for the entire year (compared to 14 in 2010). Industrial waste cases fell from an already paltry 7 in 2010 to just 2 in 2011. The only program area to see a healthy improvement was the tanks program which saw a 110% increase. The other programs remained relatively stable.

3. Civil Penalty Assessments

The decrease in the number of assessments carried over to the total dollars assessed for this district. There was a 54% drop in penalty assessments to a new level of \$942,531.19. This performance accounts for 10% of all civil penalty assessments levied by the Department in 2011, a 4% increase. The district's median assessments across all programs also fell for the second year in a row, this time to \$3,350.00 (the median was \$3,500.00 in 2010).

Program area assessments for the Southeast District broke down as follows:

Program	Total \$ Assessed	2010 Medians	2011 Medians
AB	\$500.00	\$500.00	\$500.00
AP	\$4,500.00	\$0.00	\$1,500.00
AV	\$34,335.00	\$3,445.00	\$17,167.50
CR	\$10,000.00	\$0.00	\$10,000.00
DF	\$1,774.00	\$1,565.00	\$524.00
DW	\$5,750.00	\$2,000.00	\$2,875.00

EP	\$23,668.33	\$17,250.00	\$1,895.84
HW	\$220,693.86	\$10,000.00	\$9,175.50
IW	\$4,000.00	\$2,000.00	\$2,000.00
MA	\$43,790.00	\$2,250.00	\$1,415.00
PW	\$5,745.00	\$1,400.00	\$875.00
RO	\$8,000.00	\$0.00	\$4,000.00
SL	\$5,250.00	\$1,500.00	\$2,625.00
SW	\$265,750.00	\$18,400.00	\$2,000.00
TK	\$308,775.00	\$8,500.00	\$10,000.00

This is the second year in a row in which total penalty assessments declined in the dredge and fill and domestic waste programs. The median assessments also declined for the second straight year in the dredge and fill program. And while they appeared to improve in the domestic waste program it must be remembered that there were only two assessments for the entire year. The same can be said for the industrial waste program. There were also significant reductions in the medians for mangrove alteration, potable water and solid waste programs.

4. Civil Penalty Collections

The Southeast District matched its poor performance in assessments with an equally poor performance in collections. It collected \$334,731.70 in 2011, compared to \$1,008,391.30 in civil penalties collected in 2010 (a 67% drop). This accounted for 11% of all dollars collected by the Department in civil penalties in 2011.

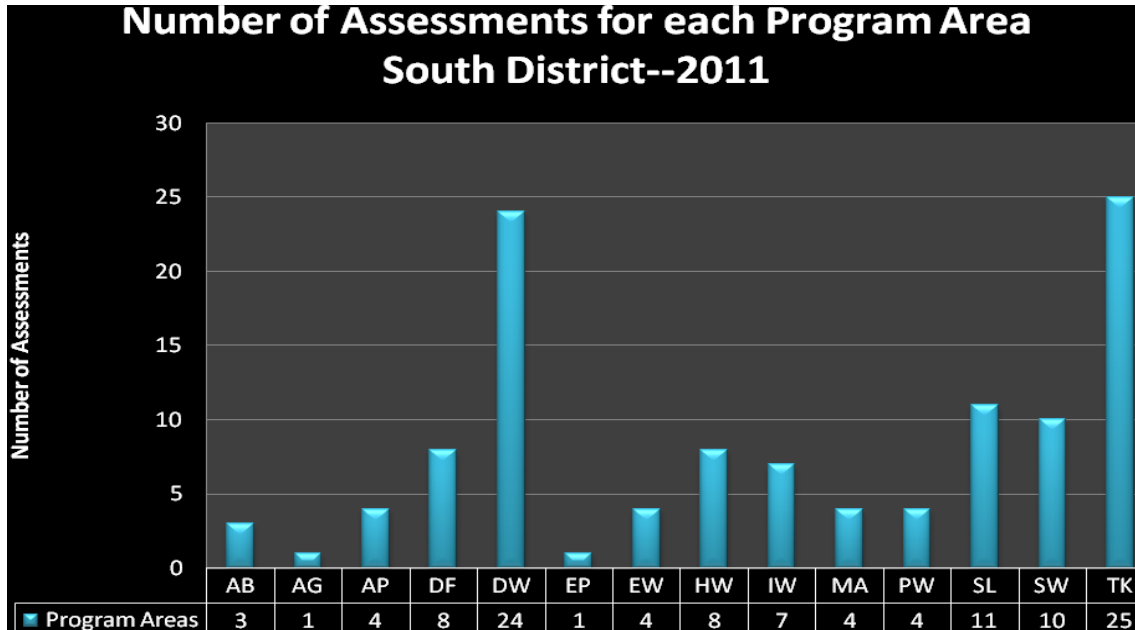
E. South District

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

The South District took enforcement in 145 cases in 2011, 42 cases fewer than the 187 cases in 2010. The district sent 16 Case Reports to the OGC, 4 less than in 2010. There were 13 NOVs (a 24% drop), but there were 12 final orders (a 140% increase). 104 consent orders were issued, 41 fewer than in 2010 (a 28% decline). 28% of all enforcement cases were resolved through the use of short-form consent orders, the lowest usage of these enforcement tools in the state. 4.81% of the consent orders that were issued were long-form consent orders, the lowest use of these types of consent orders in Florida. The South District accounted for 15% of all Case Reports, 14% of the NOVs, 12% of the final orders and 12% of all consent orders issued in Florida.

2. Program Area Enforcement

The following chart provides the number of civil penalty assessments issued by the South District by program area in 2011:



The South District assessed penalties in 114 cases in 2011, the third straight year of declining numbers. There were declines in the asbestos (4), air (7), hazardous waste (20), mangrove alteration (7), potable water (5) and state lands (9) programs. The solid waste and tanks programs both saw healthy increases. The dredge and fill, domestic waste and industrial waste programs also improved over 2010.

3. Civil Penalty Assessments

Civil penalty assessments dropped for the second year in a row. A total of \$813,388.00 in penalties was assessed in 2011, compared to \$816,709.40 in 2010. The district provided 9% of all assessments levied by the FDEP in 2011. The median assessment for all programs combined was \$2,500.00, a significant improvement from the \$1,695.00 rate in 2010 and the second straight year of improvement in this category.

Program area assessments for the South District broke down as follows:

Program	Total \$ Assessed— 2011	2010 Medians	2011 Medians
AB	\$3,000.00	\$1,000.00	\$1,000.00
AG	\$2,000.00²⁶	\$1,375.00	\$2,000.00
AP	\$16,875.00	\$2,775.00	\$3,650.00
DF	\$9,220.00	\$1,500.00	\$925.00
DW	\$110,827.00	\$1,000.00	\$3,225.00
EP	\$34,238.00	\$10,000.00	\$34,238.00
HW	\$111,773.00	\$3,407.50	\$5,639.00
IW	\$9,875.00	\$1,000.00	\$1,500.00
MA	\$100,920.00	\$3,000.00	\$10,250.00
PW	\$8,650.00	\$750.00	\$2,000.00
SL	\$13,560.00	\$1,500.00	\$850.00
SW	\$204,250.00	\$2,500.00	\$2,500.00
TK	\$169,200.00	\$7,000.00	\$8,000.00

This was the second straight year of declining total assessments in the asbestos, dredge and fill and potable water programs. Total assessments in the hazardous waste program declined \$317,895.40, a 74% drop. There were significant increases in median assessments in the domestic waste, hazardous waste, mangrove alteration and potable water programs.

4. Civil Penalty Collections

The South District collected \$300,985.15 in civil penalties in 2011, a 25% drop from 2010. The amount collected represents 10% of all dollars collected by the Department in civil penalties in 2011.

F. Southwest District

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

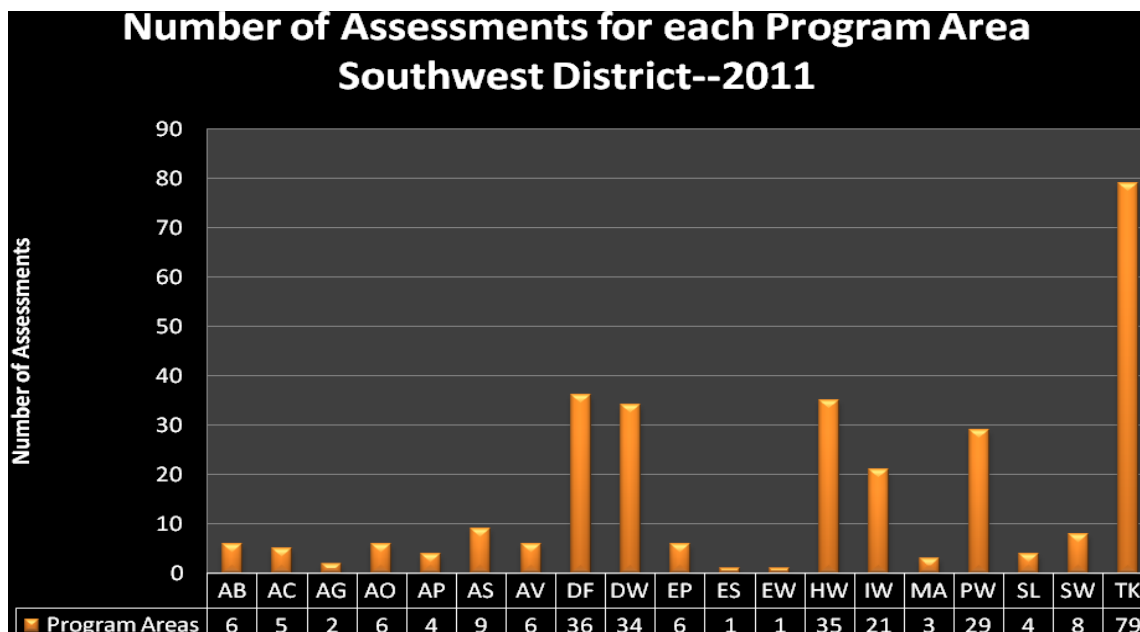
The Southwest District initiated 357 enforcement cases in 2011, down from 445 enforcement cases in 2010. This district accounted for 24% of all enforcement taken by the Department in 2011 (last year the district accounted for over 1/3 of all enforcement). 29 case reports were sent to the OGC (down from 36). 38 NOVs were issued (10 more than in 2010) and

²⁶ There was only one assessment in the AG and EP programs.

21 final orders were issued (12 more than in 2010). The district issued 269 consent orders, down 30% from 2010, but still represents 32% of all consent orders issued by the Department in 2011. 70% of the consent orders issued by the district were short-form consent orders, compared to 68% last year. Only 24 long-form consent orders were issued out of this district in 2011, a sharp drop-off from 2010, ending what had been two straight years of improvement. 53% of all of the cases settled by the Southwest District were settled via short-form consent orders, second only to the Northwest District.

2. 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 2011:



The Southwest District assessed civil penalties in 295 cases in 2011, down sharply from the 445 cases assessed in 2010. There were significant decreases in the number of assessments in the air (23), domestic waste (19), hazardous waste (27—2nd year of decrease), industrial waste (14—2nd year of decrease), potable water (17) and tanks (20) programs.

3. Civil Penalty Assessments

Civil penalty assessments fell sharply in 2011, ending what had been two straight years of improvement. Total assessments were \$1,592,075.89, an amazing 68% decline from the \$4,941,029.22 levied in 2010. In addition, median assessments fell from \$2,053.80 in 2010 to

\$2,000.00 in 2011. Overall, the district contributed 17% of all penalty assessments levied by the Department in 2011.

Program area assessments for the Southwest District broke down as follows:

Program	Total Assessments--2011	2010 Medians	2011 Medians
AB	\$20,500.00	\$1,750.00	\$3,250.00
AC	\$35,381.00	\$4,312.50	\$5,500.00
AG	\$750.00	\$1,000.00	\$375.00
AO	\$18,775.00	\$2,000.00	\$3,000.00
AP	\$55,600.00	\$88,000.00	\$2,750.00
AS	\$27,985.00	\$1,000.00	\$2,000.00
AV	\$58,000.00	\$9,000.00	\$6,500.00
DF	\$37,370.00	\$775.00	\$730.00
DW	\$439,429.00	\$4,500.00	\$3,300.00
EP	\$7,500.00	\$1,000.00	\$1,250.00
ES	\$600.00	n/a	\$600.00
EW	\$1,000.00	n/a	\$1,000.00
HW	\$279,515.20	\$2,609.75	\$4,800.00
IW	\$89,715.00	\$3,500.00	\$3,500.00
MA	\$2,006.00	\$1,500.00	\$500.00
PW	\$27,018.75	\$500.00	\$500.00
SL	\$2,880.00	\$1,000.00	\$640.00
SW	\$28,250.00	\$3,000.00	\$3,000.00
TK	\$459,800.94	\$4,500.00	\$3,200.00

Declining assessments were seen in every program except for the asbestos, air, ERP wetlands/surface waters and ERP stormwater programs. Domestic waste assessments dropped 74%. Hazardous waste assessments dropped 63%. Potable water assessments dropped 48% and tanks assessments dropped 37%. Total assessments declined for the second year in a row in the dredge and fill, ERP, industrial waste, mangrove alteration, potable water, state lands, solid waste and tanks programs. Fortunately, median assessments held their own, except for the dredge and fill, domestic waste and tanks programs, each of which saw significantly lower numbers. Median assessments declined for the third year in a row in the air general permit, dredge and fill, state lands and tanks programs. Median assessments declined for the second year in a row in the domestic waste and mangrove alteration programs. Overall, the district's performance was dismal and essentially reflects the performance of the Department as a whole.

4. Civil Penalty Collections

In 2011 the Southwest District collected \$1,167,323.08 in civil penalties, compared to the \$3,815,357.05 in civil penalties that were collected in 2010. Its collections accounted for 38% of

all the monies collected by the Department across the state, the highest percentage of all of the districts.

G. All Other Enforcement

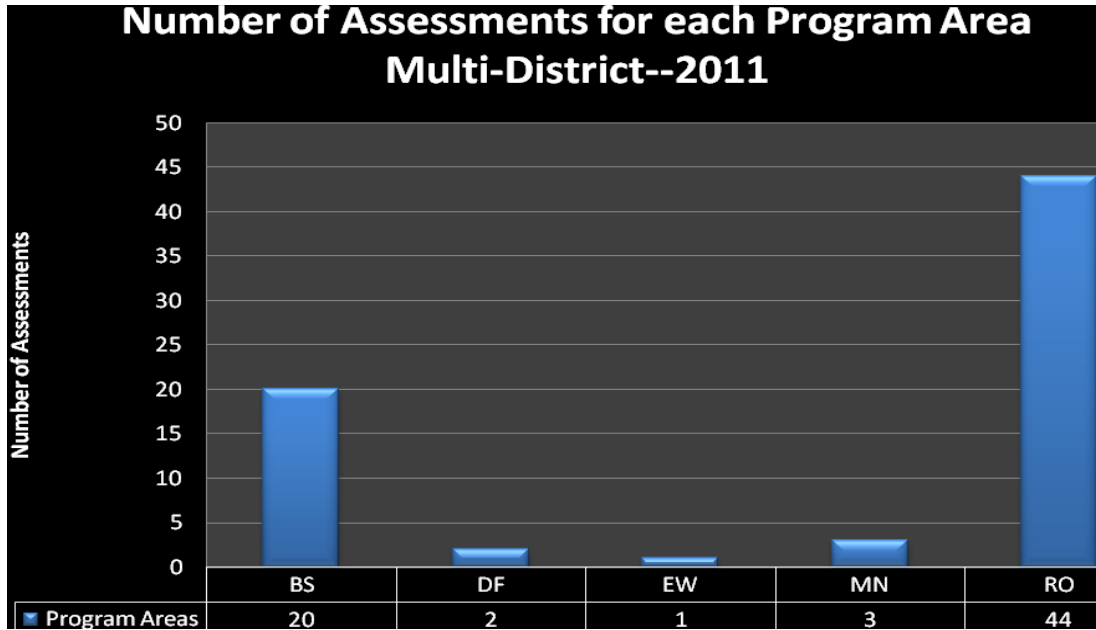
The Department's headquarters in Tallahassee handles some cases, most of them being stormwater discharge cases associated with the National Pollutant Discharge Elimination Program (NPDES), a federally delegated program. Other types of cases are also handled out of Tallahassee. The cases that are not handled directly by the districts are cumulatively referred to as the "Multi-District" or "remaining categories."

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

The remaining categories sent one case report to the OGC in 2011. They issued one NOV, 20 Final orders (9 more than in 2010), and 45 consent orders (122 were issued in 2010). The remaining categories accounted for 1% of all case reports, 1% of the NOVs, 21% of the final orders and 5% of all consent orders (down from 5% in 2010).

2. Program Area Enforcement

The following chart provides the number assessments issued by Other Enforcement by program area in 2011:



There were 6 more assessments in the beaches and shores program in 2011 compared to 2010, but stormwater discharge assessments fell by 56 cases (a 56% decline).

3. Civil Penalty Assessments

Civil penalty assessments fell in 2011, from \$1,753,320.00 in 2010 to \$196,003.02. Medians rose from \$750.00 in 2010 to \$1,199.00 in 2011. This accounts for 2% of all assessments levied by the Department in 2011. Assessments broke down as follows:

Program	Total \$ Assessed--2011	2010 Medians	2011 Medians
BS	\$20,400.00	\$875.00	\$750.00
DF	\$16,250.00	\$0.00	\$8,125.00
EW	\$2,000.00	n/a	\$2,000.00
MN	\$14,000.00	\$6,100.00	\$3,000.00
RO	\$143,353.02	\$518.00	\$1,199.00

Stormwater discharge assessments fell 92% in 2011, although their medians rose 131%. The beaches and shores program saw a solid increase in the dollars assessed while the program's medians fell.

4. Civil Penalty Collections

The remaining categories collected \$171,850.61 in 2011, 46% less than in 2010. The result is not surprising given the substantial decline in the penalties assessed. The 2011 performance represents 6% of all dollars collected by the Department in civil penalties in 2011.

H. A Quick Look At District Results

Overall Number of Enforcement Cases:

District	Performance Compared with 2010
Northwest	Down 7%
Northeast	Down 42%
Central	Down 23%
Southeast	Down 38%
South	Down 22%
Southwest	Down 20%
Multi-District	Down 50%

Number of Assessments:

District	Performance Compared with 2010
Northwest	Down 10%
Northeast	Down 34%
Central	Down 28%
Southeast	Down 17%
South	Down 17%
Southwest	Down 34%
Multi-District	Down 42%

Dollars Assessed:

District	Performance Compared with 2010
Northwest	Up 101%
Northeast	Down 2%
Central	Up 47%
Southeast	Down 54%
South	Down .5%
Southwest	Down 68%
Multi-District	Down 89%

Medians By District:

District	Performance Compared with 2010
Northwest	Down 33%
Northeast	Up 20%
Central	Unchanged
Southeast	Down 4%
South	Up 32%
Southwest	Down 3%
Multi-District	Up 37%

Overall collections by district:

District	Performance Compared with 2010
Northwest	Down 40%
Northeast	Down 22%
Central	Down 7%
Southeast	Down 67%
South	Down 25%
Southwest	Down 69%
Multi-District	Down 46%

CONCLUSION

In last year's annual report we concluded that the Crist administration had taken steps to improve the Department's overall enforcement posture, but that the improvement in the Department's performance in most areas had increased modestly at best. We ended the report by stating that:

“The question now before us is how the Florida, Department of Environmental Protection will perform under Governor Scott. His pronouncements are coupled with a political climate in the state that demands less regulation and accountability of private polluters, but ironically greater accountability of public agencies. The Governor's first budget saw draconian cuts in many agencies, not the least of which is the FDEP. Given the Governor's stated intention of weakening the FDEP's ability to regulate polluters it is worthwhile for the public to maintain a healthy vigilance if Florida's environment can be expected to remain a positive factor in the lives of Floridians and those who consider visiting this state.”

After one year in office the impacts of the Governor's policies are now evident. It can be safely said that the results reported herein are the results that the current administration wanted. With few exceptions the Department underperformed in every major category and in every district. The use of both long-form and model consent orders has seriously declined. Every district opened fewer enforcement cases, assessed penalties in fewer cases and collected fewer penalty dollars. Only two districts assessed more in fines when compared with 2010's performance and in one of those the results are because of penalties against one polluter in two cases. Median assessments rose in only two of the five districts.

The numbers generated by the Department from 2011 suggest that this is an agency that has now all but forgotten that it is a regulatory agency. Clearly the employees have gotten the message that enforcement is to be avoided at all costs, after all, it is not easy to take enforcement against a permittee that everyone calls your “partner.” This is a significant change that has been gradually caused by recent administrations that demanded that industry be treated as such. They advanced these policies either through extreme naiveté or in a deliberate attempt to significantly weaken the Department and its mission to protect Florida's environment. Now, the new administration has radically pursued more drastic and accelerated changes in this regard in the name of creating a “business-friendly” environment in Florida so that more jobs will be created. This is a worthy goal, but at what cost?

Being pro business does not require that the keys to the agency are turned over to the polluters. Previous administrations have shown that it is possible to be “business-friendly” while simultaneously protecting Florida's environment. After all, the environment has been one of Florida's major attractions over the decade—and that has attracted tourists and that means increased revenues for everyone. Responsible businesses recognize this and want to play by the

rules. Turning the Department over to business effectively means that polluters, many of whom don't live here and who do not have Floridians' best interest at heart, will be given a free pass to cause significant destruction to Florida's environment, all for the sake of easy profits.

The data suggests that immediate changes need to be taken in order to correct the course that is currently being taken. The bottom line is that the agency needs new blood. The first change needs to be the removal of Secretary Vinyard. His willingness to accept a position that, as a member of the Florida Bar, he knows, or should know, presents a conflict of interest makes him, in our opinion, unfit for the position he now holds. He should put the people of Florida first and resign immediately. In addition, it is our opinion that all senior administration employees within the Department should be replaced. Frankly, their willingness to advance an agenda that is so clearly anti-environment, while working in Florida's largest environmental agency, does nothing but undermine the agency's mission. It tells every employee that reports to them that the agency is not serious about protecting Florida's environment. New senior management should take the necessary steps to let the rank and file employees know that they are expected to act as regulators, not as welcome-wagon teams for industry. Finally, the draconian budget cuts and employee policies such as a ever increasing demand to perform more with less resources and at lower salaries (and policies such as the Governor's Executive Order 11-58 requiring random drug testing of all state employees²⁷) need to be ended immediately if there is to be any hope of minimizing the damage to personnel and to Florida's environment.

Sooner or later there will be a price to be paid if immediate changes are not pursued. Ultimately, the cost will be steep and in the future it will be paid by the taxpayers when they are called upon to clean up the polluted air that is breathed by residents and tourists alike. They will likewise be called upon to pay for cleanup of the waterways that provide the water we drink and the recreation that residents and tourists alike enjoy. These waterways have already suffered significant negative impacts from years of neglect by previous administrations. Delaying their cleanup will only result in higher prices to pay when future administrations decide that their pollution must stop.

Despite the dismal performance in 2011 we support the Department's employees who are trying to do their jobs like the professionals that they are. Their task is herculean in this climate. We remain ready to assist where we can. We encourage employees to contact us confidentially to report improper conduct within the agency. We may be reached at info@peer.org or flpeer@peer.org.

²⁷ The Governor has been sued over this policy. <http://www.acluf.org/pdfs/Legal%20PDFs/2011-ACLU-AFSCMEComplaint.pdf>

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.