

FLORIDA PEER

REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2009

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

PRELIMINARY STATEMENT

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2009. The information provided herein was obtained from raw data provided to Florida PEER by the FDEP in response to a public records request made to the FDEP by Florida PEER under Chapter 119, Florida Statutes.

Table of Contents

EXECUTIVE SUMMARY	1
A. Statewide Results	1
B. District Results	2
1. Northeast District	2
2. Northwest District	3
3. Central District	3
4. Southwest District	3
5. Southeast District	3
6. South District	4
7. All Other Enforcement	4
STATEWIDE ENFORCEMENT RESULTS.....	5
1. Case Reports, NOVs, Consent Orders, Final Orders.....	5
2. Case Reports, NOVs, Consent Orders, Final Orders – District Comparisons	6
a. Case Reports.....	7
b. NOVs.....	8
c. Final Orders	9
d. Model Consent Orders	9
e. Amended Consent Orders.....	10
f. Long-Form Consent Orders.....	11
g. Short-Form Consent Orders	12
h. All Consent Orders Combined	13
3. Short-Form Consent Orders	14

4. Program Area Performance	16
5. Civil Penalty Assessments	17
a. The Highest Assessments	20
6. Civil Penalty Assessments By Program Area—District Comparison	21
a. Air Program	21
b. Asbestos Program	23
c. Dredge and Fill Program	24
d. Domestic Waste Program	25
e. Hazardous Waste Program	26
f. Industrial Waste Program	28
g. Potable Water Program	29
h. Solid Waste Program.....	30
i. Tanks Program	32
7. Civil Penalty Collections	33
a. Air Program	36
b. Asbestos Program	37
c. Dredge and Fill Program	38
d. Domestic Waste Program	38
e. Hazardous Waste	39
f. Industrial Waste	40
g. Potable Water Program	40
h. Solid Waste Program.....	41
i. Tanks Program	41
DISTRICT ENFORCEMENT RESULTS	42
A. Northeast District	42
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i>	42
B. <i>Program Area Enforcement</i>	42
C. <i>Civil Penalty Assessments</i>	43
D. <i>Civil Penalty Collections</i>	44
B. Northwest District	44
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i>	44
B. <i>Program Area Enforcement</i>	45

C. Civil Penalty Assessments	45
D. Civil Penalty Collections	46
C. Central District	46
A. Case Reports, NOVs, Consent Orders, Final Orders	46
B. Program Area Enforcement	46
C. Civil Penalty Assessments	47
D. Civil Penalty Collections	48
D. Southwest District	48
A. Case Reports, NOVs, Consent Orders, Final Orders	48
B. Program Area Enforcement	48
C. Civil Penalty Assessments	49
D. Civil Penalty Collections	50
E. Southeast District	50
A. Case Reports, NOVs, Consent Orders, Final Orders	50
B. Program Area Enforcement	51
C. Civil Penalty Assessments	51
D. Civil Penalty Collections	52
F. South District	52
A. Case Reports, NOVs, Consent Orders, Final Orders	52
B. Program Area Enforcement	53
C. Civil Penalty Assessments	54
D. Civil Penalty Collections	54
G. All Other Enforcement	55
A. Case Reports, NOVs, Consent Orders, Final Orders	55
B. Program Area Enforcement	55
C. Civil Penalty Assessments	56
D. Civil Penalty Collections	56
CONCLUSION	56
APPENDIX	58

EXECUTIVE SUMMARY

A. Statewide Results

Overall, the Department opened 1503 enforcement cases in 2009, a de minimus decrease from the 1526 cases opened in 2008.

The Office of General Counsel received 126 case reports in 2009, a 62% increase over 2008, and the largest number submitted since 2003. The Number of NOV's increased from 85 in 2008 to 116 in 2009.

139 long-form consent orders were issued by the Department in 2009, a significant increase from last year's production, though model consent orders decreased by 30%. The trend of decreasing the issuance of short-form consent orders likewise continued with 76 fewer orders issued in 2009 than in 2008.

For the third year in a row the Department saw a decrease in the number of civil penalty assessments. Equally troubling is that the dollar amount of civil penalty assessments dropped by \$795,688.49 from 2008's performance. This is the also the third straight year of declining assessments. Given the repeated years of budget shortfalls, along with the increasing reports of environmental problems facing the state, the failure of Florida's largest environmental agency to aggressively enforce these laws is simply inexplicable.

Statewide there were 14 cases in which the Department assessed a civil penalty of \$100,000 or more, a slight increase over 2008. Once again 50% of the biggest fines were levied against local governmental entities.

Three of the districts, as well as the headquarters, saw a decrease in the overall number of civil penalty assessments in 2009. In 2008 there was also a sizeable decrease in the dollar amount of assessments that was due largely due to a significantly poorer performance in the Southwest District. The situation changed in 2009, however, when 4 of the six districts saw decreases in the dollar amount of penalty assessments. And whereas the median payment averages for all districts (except the Southwest District) rose in 2008, the opposite occurred in 2009 when four of the six districts saw median assessments drop. The single highest civil penalty assessment against a non-governmental entity was a \$409,000.00 assessment in a solid waste case against George Coniglio. The highest assessment against a governmental entity was levied against the Orange County Public Schools in the amount of \$658,556.00 (1/2 of which was an in-kind assessment) as a result of hazardous waste violations.

Five key program areas saw declines in the number of enforcement cases opened in 2009. Those program areas were asbestos, air, domestic waste, potable water, stormwater runoff and solid waste. This was the third straight year in which the number of air cases dropped and the second straight year in which the number of domestic waste and potable water cases dropped. With respect to the actual dollar assessments there were declines in the median assessment averages of the asbestos, air, industrial waste, stormwater runoff, solid waste, and underground

injection programs. Hazardous waste median assessments rose in 2009, but total dollars assessed fell once again.

We are continuing to include a breakdown of how each district is performing in assessing civil penalties in the major program areas. What the data shows is that in the air program there is little discrepancy amongst the districts, however, the lowest performing districts are in the north in terms of the medians. In the dredge and fill program the Northwest District outperformed the remaining districts both in dollars assessed and the median assessments. The Northwest District continues to assess penalties in domestic waste cases at a far lower rate than the other districts. With respect to the hazardous waste program the Northeast, Central, South and Southwest Districts all assessed penalties at a lower rate in 2009 than they did in 2008.

A statewide total of \$4,842,642.95 in civil penalties was collected by the FDEP in 2009. This is \$641,837.05 below the amount collected in 2008, an 11.7% decline. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$3,280,253.53 in 2009. Assuming the Department's valuation of these projects to be accurate, the result is a total collection by the Department of \$8,122,896.48.

As with assessments, we are continuing to include a section in this report dedicated to looking at how effective the districts were in collecting civil penalty assessments overall, as well as on a program-by-program basis. When all forms of penalties are considered each of the districts is collecting in excess of 60% of assessments made, with the Southwest and Central Districts turning in the poorest performance, both being almost identical. Some programs such as the air program saw very high collection rates across almost all of the districts, e.g. the air program; whereas other programs, one in particular (domestic waste) saw significantly lower collection rates, also across the spectrum.

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

B. District Results

1. Northeast District

The Northeast District improved its performance in most areas. It took enforcement in more cases than in 2008. Just over half of its cases were resolved via short-form consent orders, and it issued more case reports as a percentage of all of its enforcement than in any other district in the state. The district also increased the number of civil penalty assessments it made in 2009. Nevertheless, total assessments declined 10% from 2008, and the medians dropped in key program areas, most notably the hazardous waste program. The district did improve upon its collection of civil penalties, however.

2. Northwest District

The Northwest District took enforcement in 1/3 fewer cases in 2009 than it did in 2008. It also issued 40% fewer consent orders. It still issues the second highest percentage of short-form consent orders than any other district in the state. The number of civil penalty assessments declined significantly in 2009, and the total dollar value of assessments dropped 18%. Median assessments saw significant increases in the hazardous waste and environmental resource permitting programs, but fell in most other programs. The asbestos, industrial waste and solid waste programs saw the biggest declines in their median assessments. Civil penalty collections dropped by 44% compared to 2008.

3. Central District

The Central District initiated enforcement in 170 cases in 2009—a 19% decrease from 2008. This district was the second-most likely to recommend litigation in order to resolve an enforcement case. It was also the second-least likely to resolve an enforcement case via a short-form consent order. There were 22% fewer civil penalty assessments in 2009. There were more asbestos (1), hazardous waste (8), state lands (3) and solid waste (2) cases in 2009, compared to 2008. Otherwise, every other program saw poorer performance. Significant reductions were seen in the median assessments for the air, domestic waste, dredge and fill and hazardous waste programs. These were back-to-back declines in performance in the air and hazardous waste programs. Civil penalty collections also dropped significantly.

4. Southwest District

This is the one district for which the numbers improved in 2009 almost across the board. The district opened more cases in 2009 and assessed more penalties in more cases. It reduced its tendency to resolve and collected more cases through the use of short-form consent orders, while at the same time dramatically increasing its use of long-form consent orders—which means more aggressive oversight over polluters. Not everything improved, however. While the district assessed more civil penalties the medians for many programs actually dropped in 2009. Among those were the dredge and fill, hazardous waste, state lands, solid waste and tanks programs. The drop in hazardous waste medians was not steep, but they did decline nonetheless—for the second straight year. In addition, the district collected fewer assessments in 2009 than it did in 2008. The bottom line, however, is that the overall numbers for the Department would be significantly worse were it not for this district's performance.

5. Southeast District

The Southeast District saw marginal improvement in the number of enforcement cases opened in 2009. It also saw improvements in the numbers of consent orders issued, as well as most other enforcement mechanisms. That said, this district ultimately opened the fewest number of enforcement cases of all of the districts in 2009. While the district assessed penalties in more cases in 2009, the total dollars assessed dropped 40% compared to 2008! Nevertheless, the district increased its median assessments in most programs. There were fewer overall assessments in the few programs that saw their medians decline.

6. South District

The South District took enforcement in 34 fewer cases in 2009 than it did in 2008. While most indicators were rather stable, the use of consent orders declined once again, making this the third year in a row that usage of this important enforcement tool has dropped. However, the district continues to be the district in which short-form consent orders are least likely to be used. The number of cases in which penalties were assessed dropped 19% in 2009; but the actual dollars assessed increased modestly (7%). Median assessments dropped in the domestic waste, hazardous waste, potable water and solid waste programs. This is the second straight year of declines in the domestic and hazardous waste programs. The collection of civil penalties also declined in 2009.

7. All Other Enforcement

This category typically involves the Beaches and Coastal Systems program and Stormwater Runoff cases. There was a decline in the issuance of consent orders. There were 9 more assessments in the beaches and shores program in 2009 compared to 2008, while stormwater discharge assessments dropped by 25 cases. Civil penalty assessments increased overall, however the median assessments for stormwater discharge cases declined from 2008, the second straight year of declines. Civil penalty collections also declined.

STATEWIDE ENFORCEMENT RESULTS¹

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

The Department requested serious enforcement through the filing of complaints in civil circuit and administrative courts in 126 cases in 2009, a significant increase over 2008. This is the fourth year in a row with increases in this category.

NOV issuance also improved in 2009 with 116 issued by the Department. This is 31 more NOVs than were issued in 2008.

The Department issued 139 long-form consent orders in 2009, 41 more than in 2008. This 42% increase is much needed after the long downward spiral that we had been reporting.

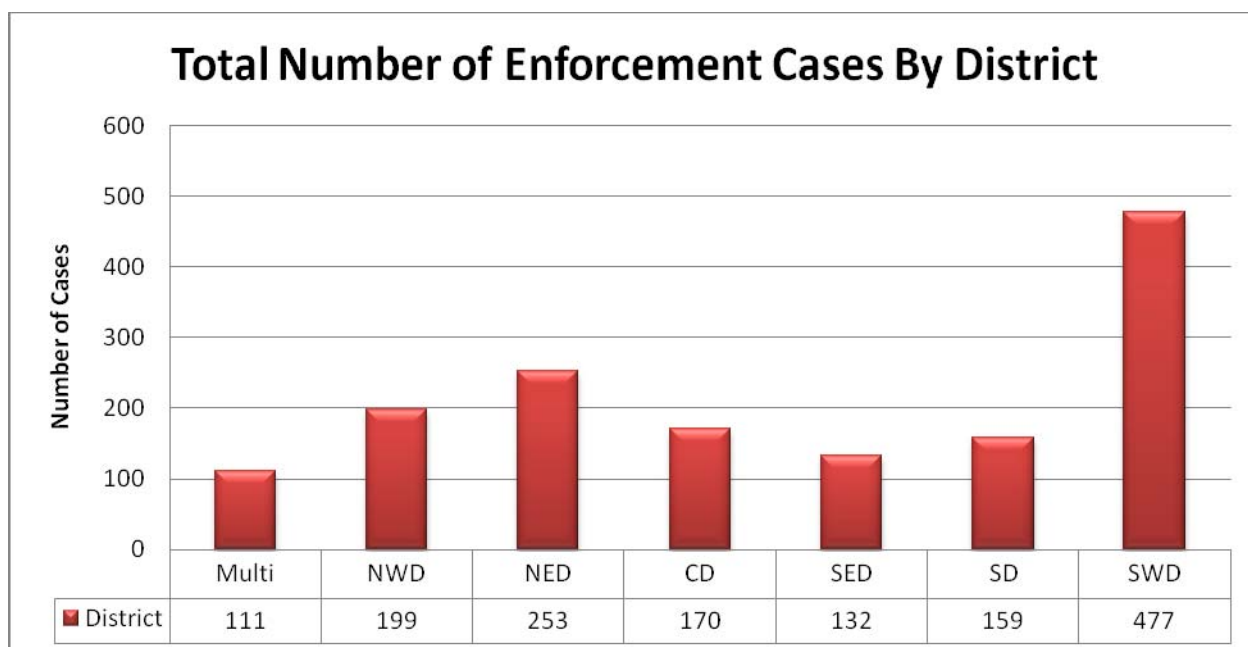
While long-form consent orders increased, the use of model consent orders decreased just as significantly from 282 in 2008 to 198 in 2009. Model consent orders are essentially long-form consent orders that are tailor-made to fit more routine violations in each program area. They are significant enforcement tools and their decline should be cause for concern.

Fewer short-form consent orders were also issued in 2009. 811 such orders were issued statewide, compared to 887 in 2008. In 2009, 54% of all enforcement cases were resolved via short-form consent orders, a 4% drop from 2008, but still a high percentage overall.

The Department issued 87 Final (Enforcement Related) Orders in 2009, a continued increase in the use of these tools.

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

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. We have moved this section to the end of this report in the Appendix wherein the reader will find the descriptions of various enforcement tools, as well as the historical averages for the various program areas. 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

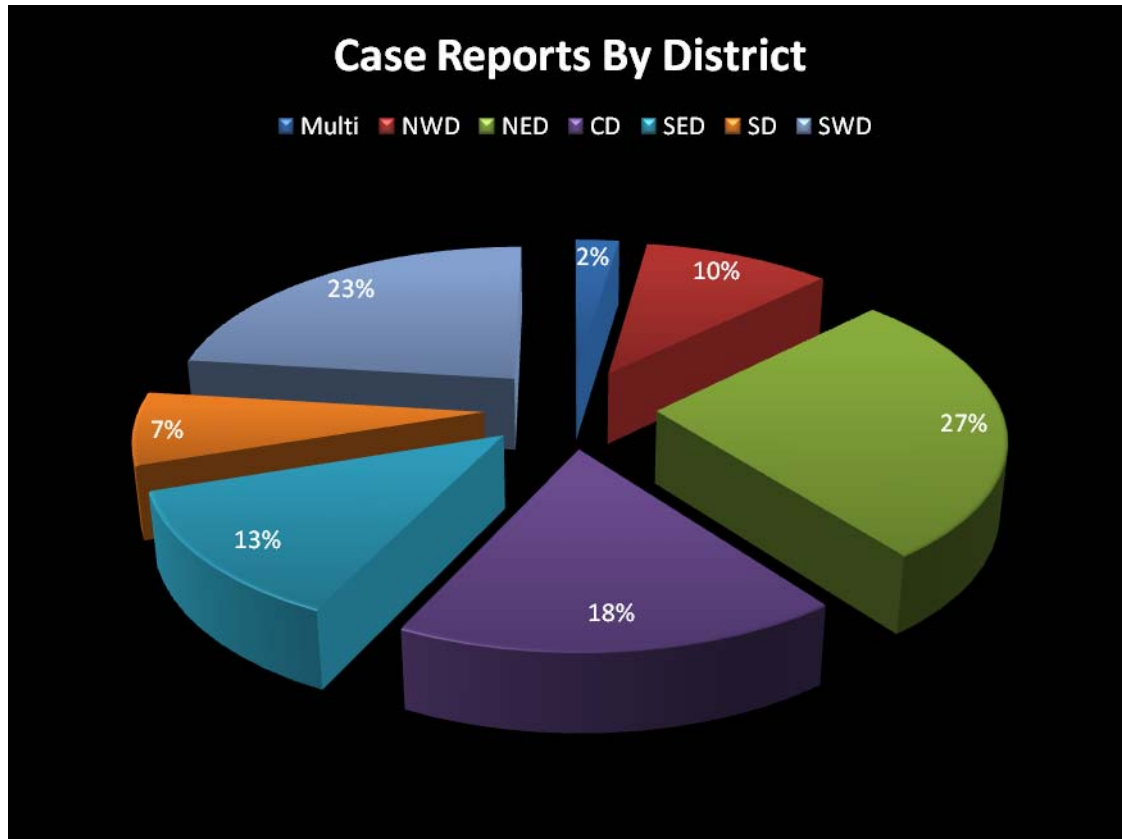


Statewide, the Department took enforcement in 1501 cases in 2009. Fewer cases were pursued in the Northwest, Central and South Districts in 2009 as compared to 2008. The Southwest District continues to be responsible for a significant portion of the enforcement that is undertaken by the Department as a whole. The Northwest District not only saw a decrease in enforcement cases overall, but also an increase in the use of short-form consent orders in resolving those cases—suggesting an overall weakening of its enforcement policies in 2009. As in 2008 and 2007, the South District was the district least likely to resolve cases through use of a short-form consent order.

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

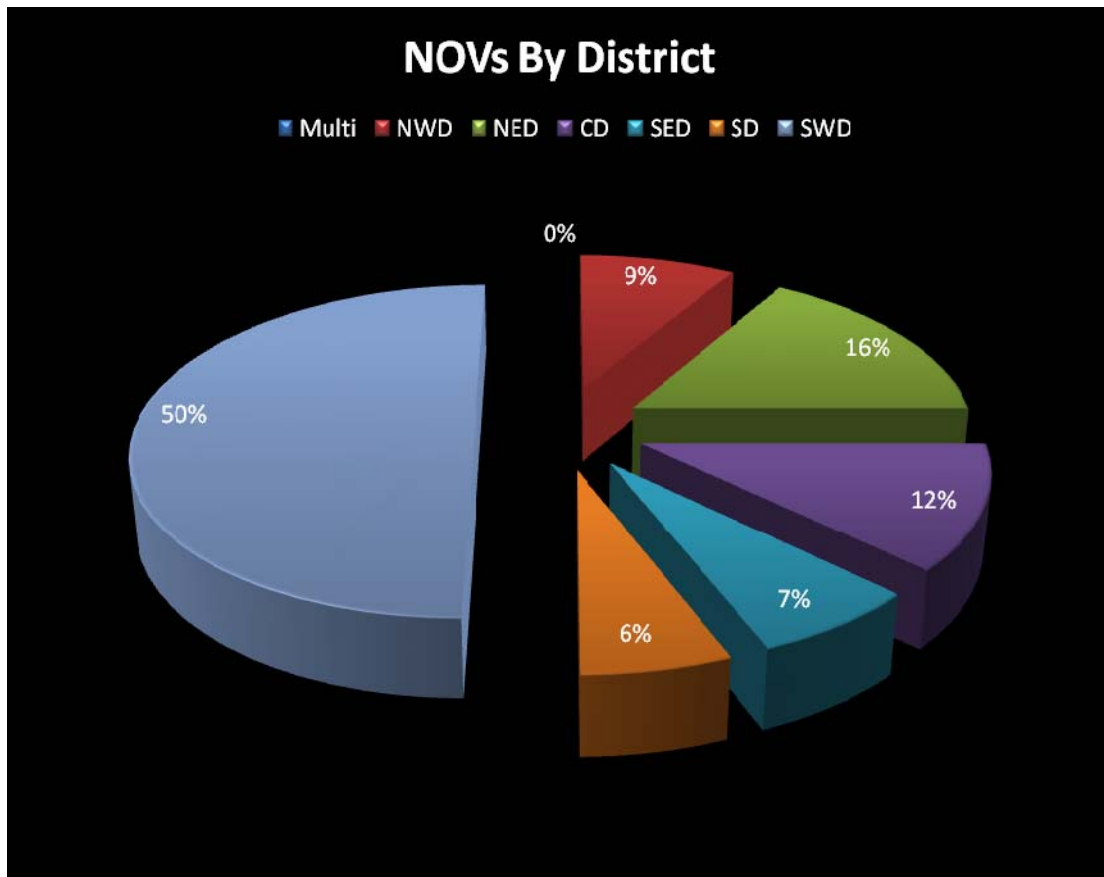
We also looked at the contribution by each District with respect to different enforcement tools. The results follow:

a. Case Reports



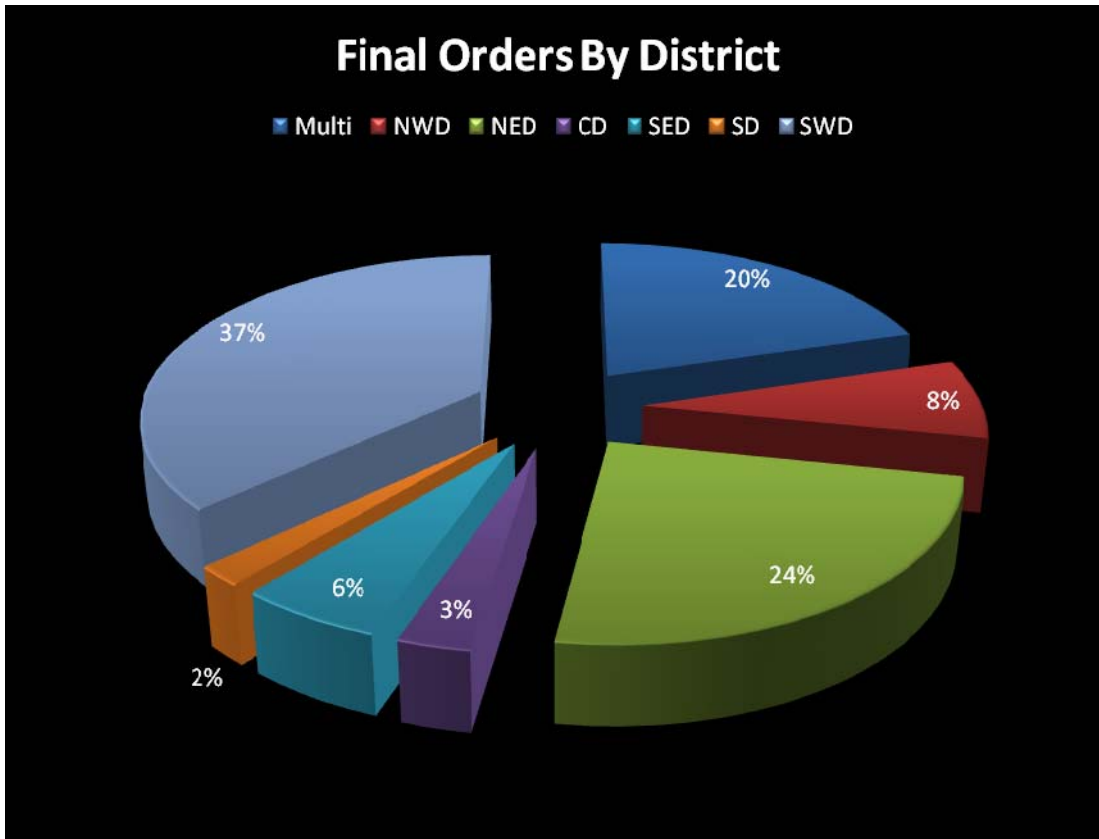
8.39% of the enforcement cases handled by the Department were referred to OGC for various types of litigation. And while the Southwest District accounts for the largest number of cases, it was the Northeast District that used litigation most often (13.44%) in 2009, when compared to the other forms of enforcement tools at its disposal.

b. NOVs



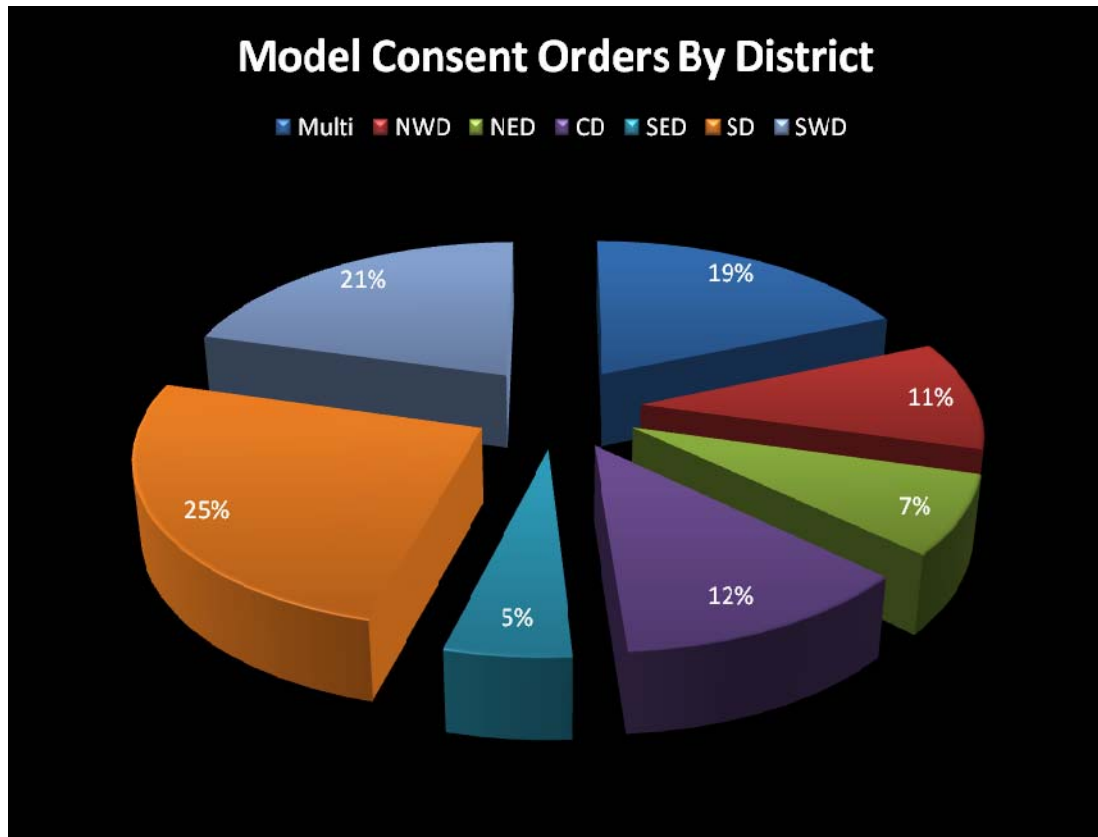
Two districts, the Southwest and the Northeast accounted for almost 1/3 of all of the NOV's issued by the Department in 2009.

c. Final Orders



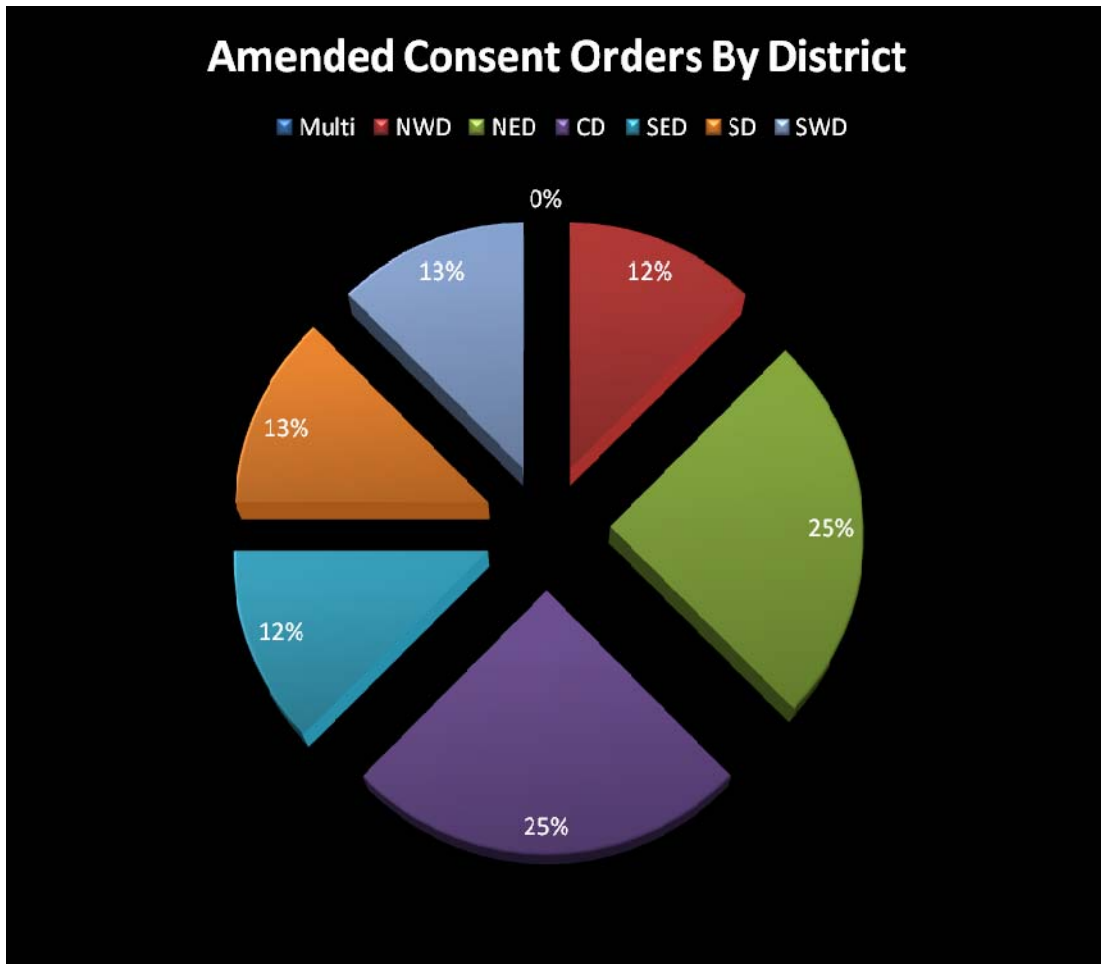
Once again, almost 1/3 of all final orders were issued out of the Southwest and Northeast Districts. This differs from 2008 when most final orders were issued out of Tallahassee. The remaining 4 districts accounted for less than 1/5 of the remaining final orders while Tallahassee issued 20%.

d. Model Consent Orders



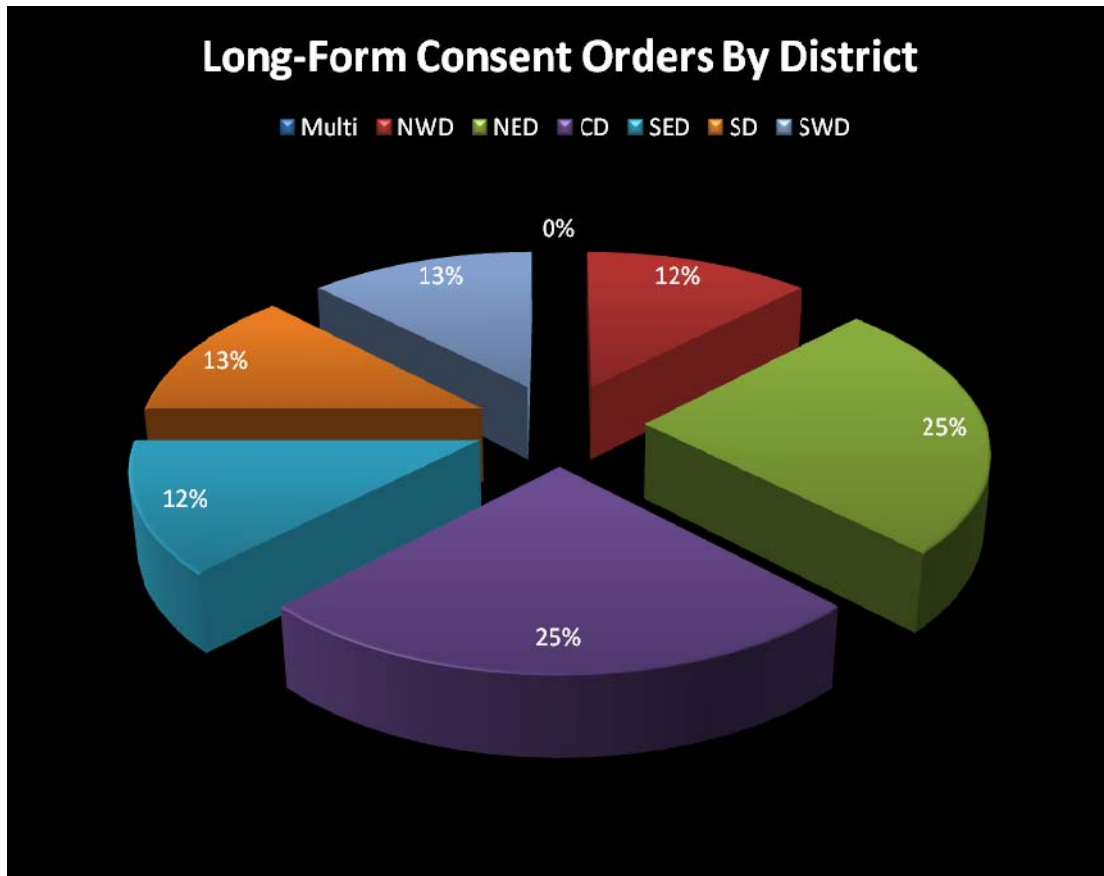
The Northwest District more than doubled its use of model consent orders in 2009 while the Southwest District reduced its usage of this enforcement tool by 2/3.

e. Amended Consent Orders



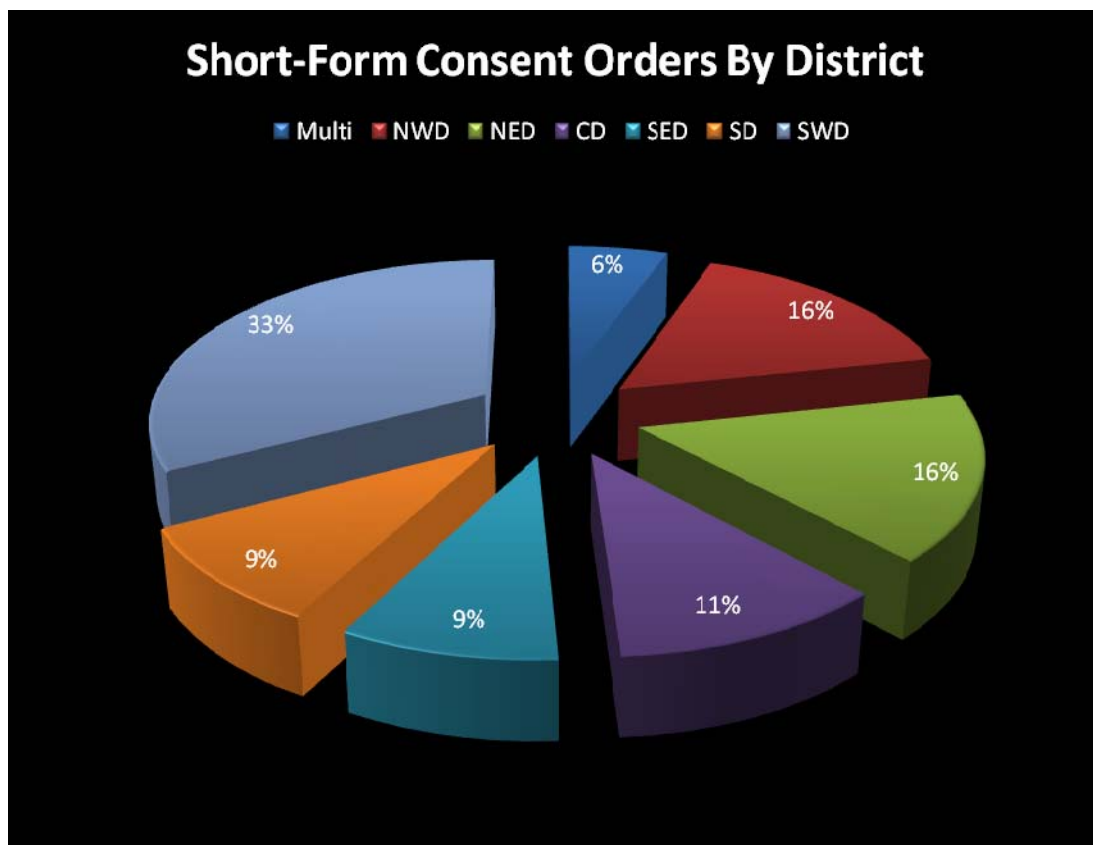
The Central and Northeast Districts accounted for $\frac{1}{2}$ of all of the consent orders that were amended in 2009.

f. Long-Form Consent Orders



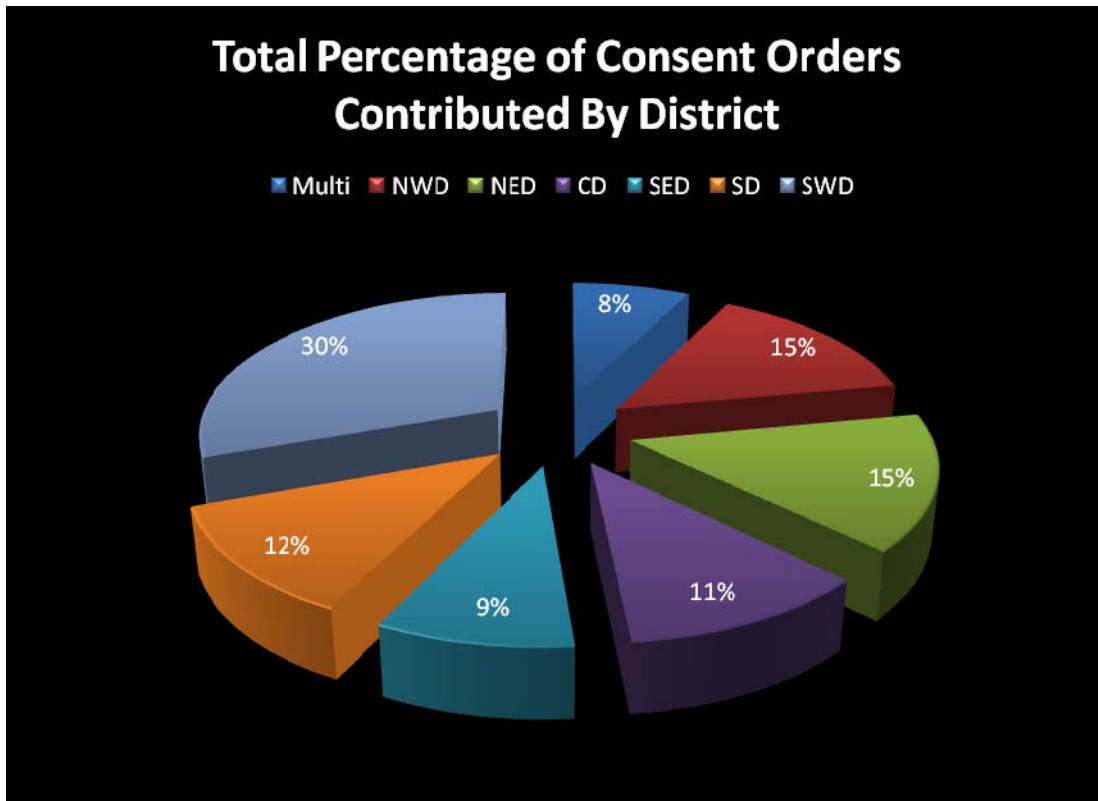
While the Central and Northeast Districts accounted for half of all long-form consent orders in 2009, the remaining districts all used this enforcement tool about equally unlike in other years when there have been more significant discrepancies in the data. One would suspect that these results are indicative of more emphasis being placed on this tool than was the case in the past.

g. Short-Form Consent Orders



Other than a slight uptick in the usage of short-form consent orders in the Southwest and Northwest Districts the numbers are relatively stable in terms of the proportional usage of short-form consent orders across the state.

h. All Consent Orders Combined



3. Short-Form Consent Orders

For the second consecutive year there has been a decrease in the Department's use of this enforcement mechanism—this time by just over 4 percent. While not dramatic, the last two years have seen more than an 8% decrease in the usage of short-form consent orders, a move in the right direction. 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%

Once again, all districts settled a clear majority of their cases through the short-form route; however, **all of the districts reduced their reliance on this enforcement tool**. The Northeast and Southwest Districts both showed significant decreases in their reliance upon short-form consent orders. The following table, which compares the use of short-form consent orders to all other enforcement tools, gives the actual percentages.

<i>District</i>	<i>% Cases Settled Through SF COs</i>
<i>Central</i>	52.94%
<i>Northeast</i>	62.05%
<i>Multi-District</i>	42.03%
<i>Northwest</i>	61.95%
<i>Southeast</i>	52.54%
<i>South</i>	50.78%
<i>Southwest</i>	67.64%

We also looked at the use of short-form consent orders solely as a part of the consent order enforcement tool. In other words, once the decision had been made to settle a case through a consent order, how likely was the resolution to be via a short-form consent order, as opposed to a long-form or model-consent order. These results give further insight into how enforcement cases are handled in each district.

<i>District</i>	<i>% Cases Settled Through SF Cos Compared to Other Cos</i>
<i>Central</i>	68.70%
<i>Northeast</i>	75.43%
<i>Multi-District</i>	51.72%
<i>Northwest</i>	77.98%

<i>Southeast</i>	69.61%
<i>South</i>	54.61%
<i>Southwest</i>	75.28%

Every district increased its tendency to use the short-form consent order as its consent order of choice when compared to 2008. The largest increase in reliance upon the short-form consent order was seen in the Southeast District, which saw an increase of 17.07%. The South District saw the smallest increase—just under 4%.

4. Program Area Performance

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

Program Area	Total No. of Enf. Cases-- 2008	Total No. of Enf. Cases-- 2009
Asbestos	44	36
Air (Excluding Asbestos)	123	99³
Beaches/Coastal	21	24
Waste Cleanup	15	24
Dredge & Fill⁴	219	277
Domestic Waste	186	144
Hazardous Waste	173	178
Industrial Waste	67	85
Potable Water	181	142
Stormwater Runoff	134	93
Solid Waste	55	50
Tanks	221	232
Underground Injection Control	2	6

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

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

³ Results in red represent declines from 2008 values.

⁴ This includes Environmental Resource Permitting.

Program Area	Historical Averages ⁵	2009 Results	Difference
Asbestos	13	36	23
Air (Excluding Asbestos)	93	99	6
Beaches/Coastal	14	24	10
Waste Cleanup	4	24	20
Dredge & Fill	216	277	61
Domestic Waste	119	144	25
Hazardous Waste	132	178	46
Industrial Waste	47	85	38
Potable Water	112	142	30
Stormwater Runoff	35	93	58
Solid Waste	39	50	11
Tanks	72	232	160
Underground Injection Control	5	6	1

Key programs saw decreases in the number of enforcement cases from 2008. These programs are Air, Asbestos, Domestic Waste, Potable Water, Stormwater Runoff and Solid Waste. On the positive side, there were increases in the hazardous waste and industrial waste programs.

5. Civil Penalty Assessments

The Department assessed civil penalties in 1363 cases in 2009—45 fewer cases than in 2008. This is also the third straight year in which the number of assessments has declined.⁶ In addition, in 2009, the Department assessed \$10,870,901.00 in civil penalties, **\$795,688.49 less than in 2008 and the third straight year of decline.** The decline in assessments continues to be surprising considering the Department's announced plan to increase environmental protection through harsher penalty assessments.

Statewide there were 13 cases in which the Department assessed a civil penalty of \$100,000 or more. Seven of those cases were against governmental entities. 1 case saw a penalty assessment of between \$90,000 and \$100,000, it was also against a governmental entity, the City of Clearwater.

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

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

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

⁷ Data in **red** represent declines from the performance in 2008. Data in **orange** represents performance in 2008 that represents declines from the performance in 2007.

Program Area	Historical Medians	2008 Medians	2009 Medians
Asbestos	\$2,000.00	\$2,000.00	\$1,937.50
Air (Excluding Asbestos)	\$1,699.50	\$2,000.00	\$1,200.00
Beaches/Coastal	\$500.00	\$750.00	\$750.00
Waste Cleanup	\$4,500.00	\$1,875.00	\$2,000.00
Dredge & Fill	\$700.00	\$1,500.00	\$1,500.00
Domestic Waste	\$2,250.00	\$2,000.00	\$2,500.00
Hazardous Waste	\$4,100.00	\$3,866.00	\$4,178.25
Industrial Waste	\$4,500.00	\$3,100.00	\$2,400.00
Potable Water	\$500.00	\$700.00	\$750.0
Stormwater Runoff	\$600.00	\$1,199.00	\$500.00
Solid Waste	\$2,843.00	\$4,000.00	\$3,000.00
Tanks	\$2,712.00	\$4,000.00	\$4,100.00
Underground Injection Control	\$6,850.00	\$17,800.00	\$14,250.00

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

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

We evaluated this policy and concluded that under this “new” policy, increases in penalties, if they were to occur, were likely to occur in predominately one area—hazardous waste.⁹ The actual results have been underwhelming. 2007 saw a 4.8% increase in the median assessments for hazardous waste cases. 2008 saw the median assessments for hazardous waste actually decline to levels not seen since 2005. Last year there was a modest \$312.25 increase in the median assessments for hazardous waste violations, but industrial waste assessments dropped for the second year in a row. Of the 13 penalty assessments exceeding \$100,000 only 1 was in a hazardous waste case. That assessment was against the Orange County Public School system (OGC Number 90072).

Not only did the median payment averages decline in industrial waste cases, but other key program areas likewise saw decreases, most notably the air, stormwater runoff and solid waste programs. The domestic waste program saw a respectable gain.

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

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

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

DISTRICT	TOTAL \$ ASSESSED	MEDIAN ASSESSMENTS	% OF STATE TOTAL
Multi-District	\$195,782.75	\$750.00	2
NWD	\$1,950,004.28	\$2,000.00	18
NED	\$1,169,163.71	\$1,500.00	11
CEN District	\$1,392,274.16	\$1,500.00	13
SED	\$1,322,348.50	\$4,125.00	12
SD	\$904,643.00	\$1,600.00	8
SWD	\$3,936,684.60	\$1,600.00	36

In terms of dollars assessed, with the exception of the South and Southwest Districts, every district saw a decrease in the total penalties in 2009, an almost total reversal of the 2008 results. The Southwest District, which historically has the most assessments of any district in the state, saw a sharp increase in that district's total dollars assessed.

The comparison of median assessments from 2008 to 2009 amongst the districts is as follows:

DISTRICT	NUMBER OF ASSESSMENTS IN 2008	2008 MEDIAN ASSESSMENTS	NUMBER OF ASSESSMENTS IN 2009	2009 MEDIAN ASSESSMENTS
Multi-District	126	\$750.00	108	\$750.00
NWD	303	\$1,750.00	206	\$2,000.00
NED	158	\$2,000.00	206	\$1,500.00
CEN District	195	\$2,299.00	152	\$1,500.00
SED	104	\$2,000.00	122	\$4,125.00
SD	185	\$2,000.00	150	\$1,600.00
SWD	337	\$3,000.00	419	\$1,600.00

Of the 6 districts (excluding the multi-district category), only the Northwest and Southeast Districts saw improvements in their median assessments. The remaining four all showed reduced performance. The Southeast District saw improvements in both the number of assessments and the median assessments from 2008. The Central District, however, saw declines in the number of assessments for two straight years and its median assessments also dropped from 2008.

a. The Highest Assessments

The following is a list of the highest assessments levied by the Department in 2009, sorted by program area:¹⁰

District ¹¹	Program	Case	Assessment
1	AB	OKALOOSA COUNCIL ON AGING; DEP VS.	\$47,700.00
1	AC	SCAP, INC.; DEP VS.	\$2,500.00
1	AF	PALL CORPORATION; DEP VS.	\$2,500.00
6	AF	FLAIR PPC CORP; DEP VS.	\$2,500.00
4	AG	CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC; DEP VS.	\$4,000.00
6	AM	CR 466A LANDFILL FACILITY, LLC; DEP VS.	\$11,500.00
6	AO	DAY AND NIGHT TIRE, LLC; DEP VS.	\$26,000.00
3	AP	BROWNLIE-MAXWELL FUNERAL HOME, P.A.; DEP VS.	\$20,600.00
6	AS	CEMEX INC.; DEP VS.	\$45,000.00
5	AV	FLORIDA CRYSTAL CORPORATION; DEP VS.	\$43,567.50
0	BS	MANATEE COUNTY PORT AUTHORITY, SNELL, RANDOLPH, ET AL; DEP VS.	\$5,000.00
1	CP	STATE OF FLORIDA VS. SIKES, HERBERT	\$2,000.00
6	CU	HARCROS CHEMICALS; DER VS.	\$10,999.00
4	DA	TYLER, SHAWN D.; DEP VS.	\$2,000.00
1	DF	PANAMA CITY - BAY COUNTY AIRPORT AND INDUSTRIAL DISTRICT; DEP VS.	\$620,183.00
4	DW	CITY OF WEST PALM BEACH; DEP VS.	\$378,675.00
2	EP	FLORIDA INLAND NAVIGATION DISTRICT; DEP VS.	\$131,377.50
3	HW	ORANGE COUNTY PUBLIC SCHOOLS; DEP VS.	\$658,556.00
6	IW	CENTRAL BEEF INDUSTRIES, L.L.C.; DEP VS.	\$500,000.00
6	MA	DUNESCAPES, INC. AND PATTEN, RUTH A.; DEP VS.	\$10,000.00
0 ¹²	MN		\$12,070.00
4	OC	KLEYNHANS, GERHARDUS; DEP VS.	\$1,000.00
6	PG	U.S. AGRI-CHEMICALS CORPORATION; DEP VS.	\$49,199.00

¹⁰ The abbreviations are as follows: AB = Asbestos; AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AS = Air Permitted Source; AV = Air Title 5; AW = Aquatic Weed; BS = Beaches and Shores; CC = Collections Case; CU = Waste Cleanup; DA = Disciplinary Action; DF = Dredge and Fill; DW = Domestic Waste; EP = Environmental Resource Permitting (Dredge & Fill); HW = Hazardous Waste; IW = Industrial Waste; MA = Mangrove Alteration; MN = Mining Operations; OC = Operator Certification; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Runoff; S1 = Untreated Domestic Waste Spills; S3 = Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection.

¹¹ The Districts are as follows: 0=Multi-District, 1=Northwest District, 2=Northeast District, 3=Central District, 4=Southeast District, 5=South District, 6=Southwest District

¹² The name of the violator was not available for this assessment.

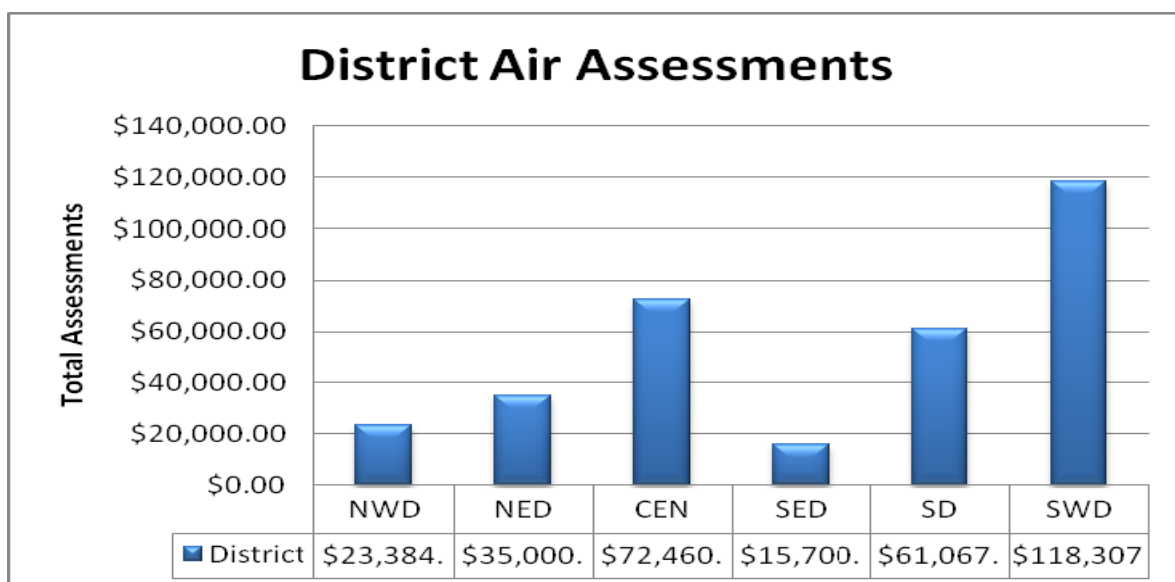
2	PW	YUKON STATION COMMUNITY, INC.; DEP VS.	\$40,000.00
0	RO	AUTO CONNECTION PARTS EXPRESS, INC.; DEP VS.	\$42,700.00
4	S1	MIAMI DADE WATER AND SEWER DEPARTMENT; DEP VS.	\$20,000.00
4	S3	CITY OF WEST PALM BEACH; DEP VS.	\$62,600.00
2	SL	ARNETT, CLARA MAE H. & HOOVER MARINE, LLC; DEP AND BOARD OF TRUSTEES VS.	\$7,500.00
6	SW	CONIGLIO, GEORGE, SR.; DEP VS.	\$409,000.00
6	TK	JOHNSON, DANNY L.; DEP VS.	\$101,000.00
4	UC	MIAMI-DADE COUNTY; DEP VS.	\$35,000.00

6. Civil Penalty Assessments By Program Area—District Comparison

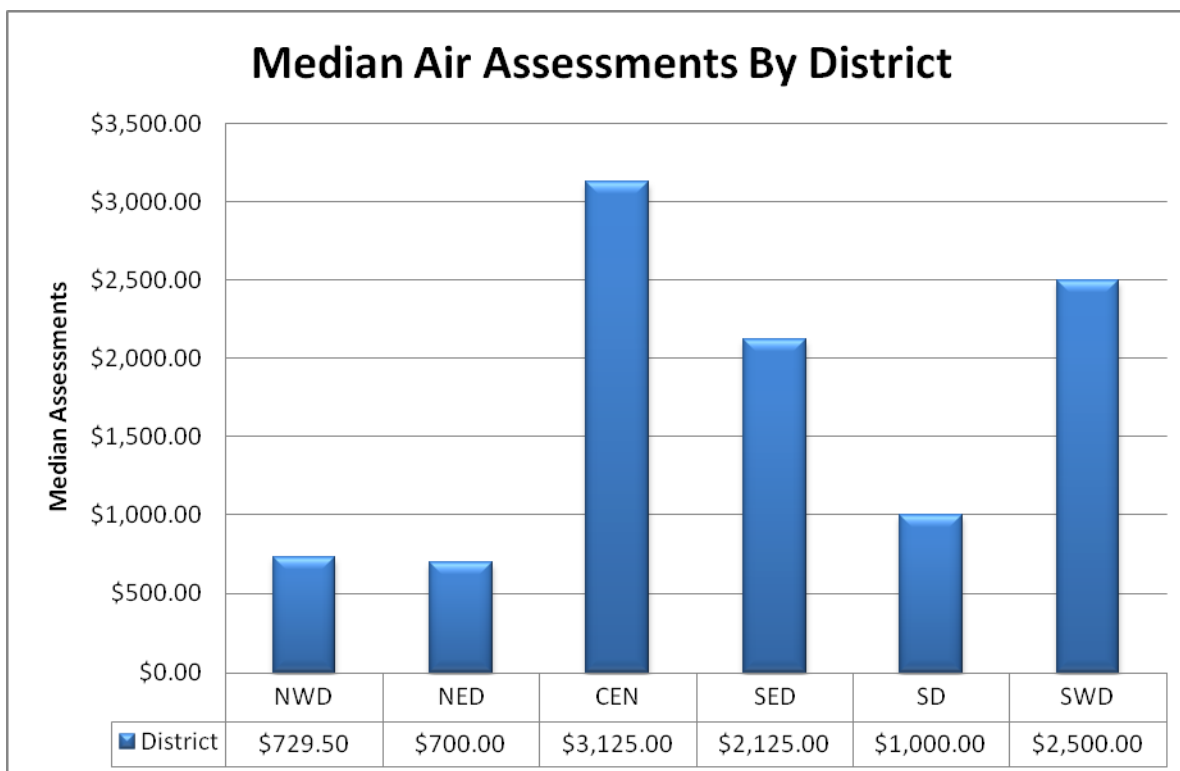
Given the Department's announced emphasis on the new penalty policy we are continuing with a review of the major program areas to see how the districts compared in their performance. What follows is a side-by-side comparison regarding the total dollars assessed in each program area, as well as a comparison of each district's median assessment.

a. Air Program

The Governor has been very public about his administration's efforts to improve the quality of Florida's air. The median air assessments for the agency declined significantly in 2009 in spite of his public pronouncements. The Department's data continues to suggest that not every district is being particularly aggressive.

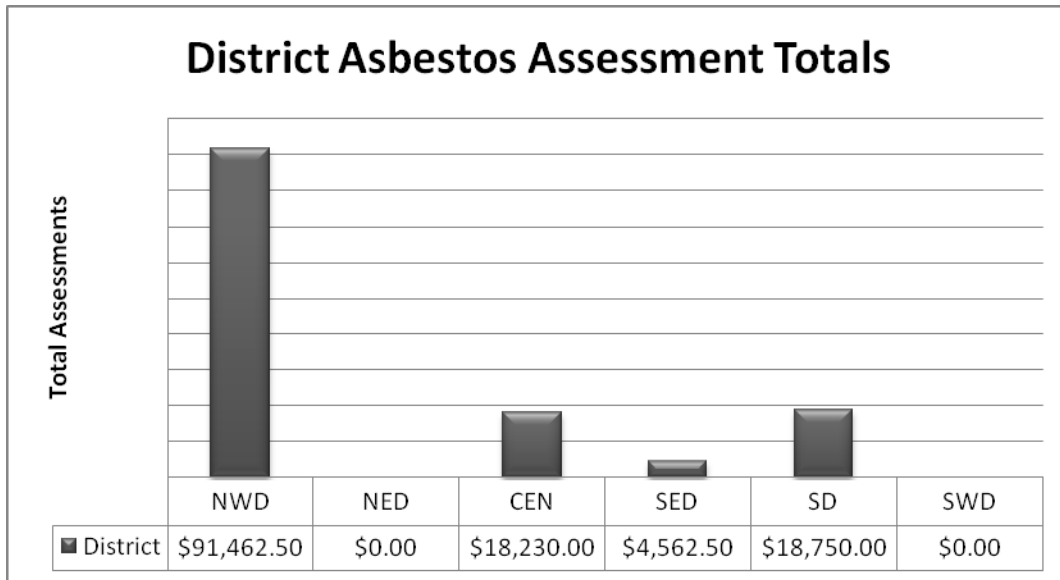


Only the South and Southwest Districts saw significant increases in the air program assessments. The median assessments showed a similar dismal result. The Northeast, Central and Southeast Districts all saw lower median assessments compared to 2008:

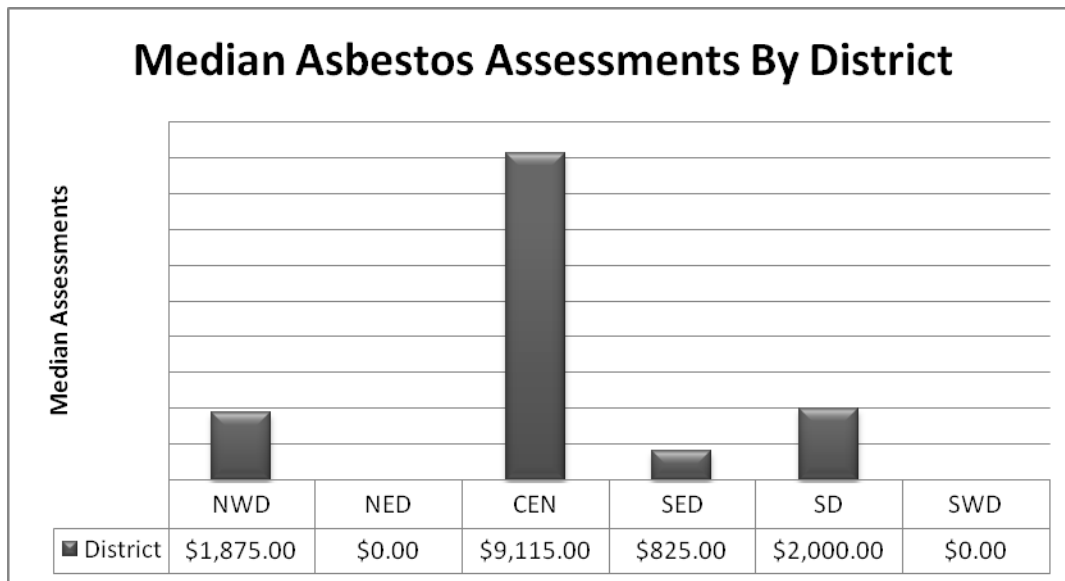


The above graph shows just how bad the air assessment program's enforcement has been. As mentioned above, the Central and Southeast Districts both saw declines in their median assessments. Yet despite those decreases they still outperformed the other districts, except for the Southwest. The Northeast District continues to perform particularly poorly.

b. Asbestos Program



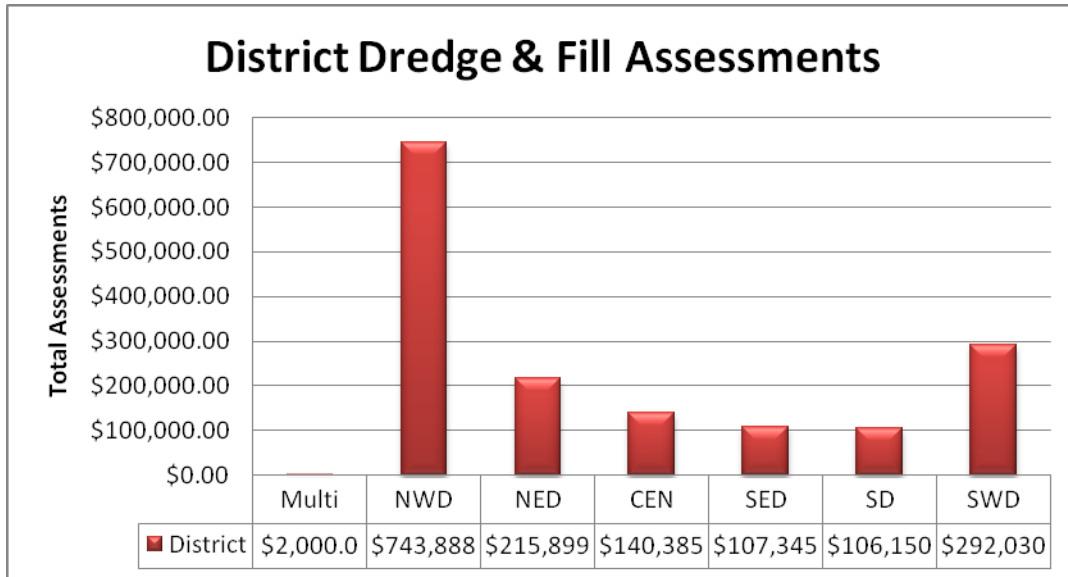
Three districts are showing a moderate amount of enforcement in this area. The remaining districts are either foregoing assessments altogether or are relying on local programs to handle this area for them.



The Northwest District saw a significant decrease in the median assessments in this program area, while the Central District showed marked improvement. Local programs are likely picking up at least some of the slack in some districts.

c. Dredge and Fill Program

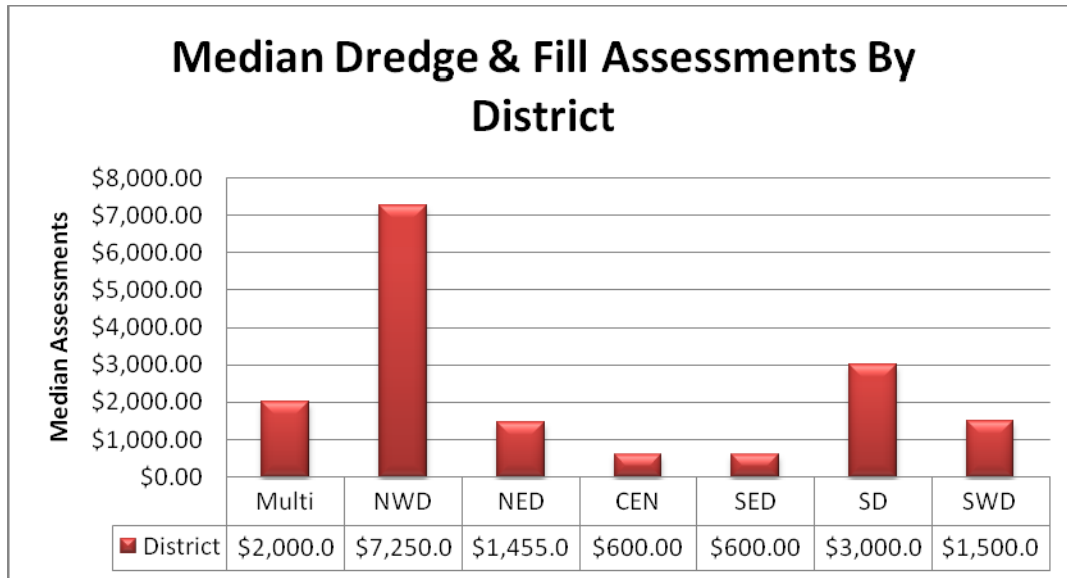
We are very pleased to see that the Department more than doubled its assessments in this program compared to 2008. Particularly given the rather dismal result seen in many of the other major programs in 2009. In total, the Department assessed \$1,629,197.31 in penalties over the course of the year. Overall, the Districts assessed the penalties as follows:



Every district but the South District saw improvements in this area in 2009. The reason for the high assessments in the Northwest District is due largely to one assessment against the *Panama City/Bay County Airport and Industrial District* in the amount of \$620,183.00.¹³ The airport that was penalized was built in undeveloped wetlands in North Florida north of Panama City. The existing Panama City Airport is a minimal use airport. The “need” for the new airport was to allow the largest landowner in the area, the St. Joe Company, to further develop much of the last undeveloped stretches of land (and wetlands) in Florida.

The median assessments amongst the districts for 2009 were:

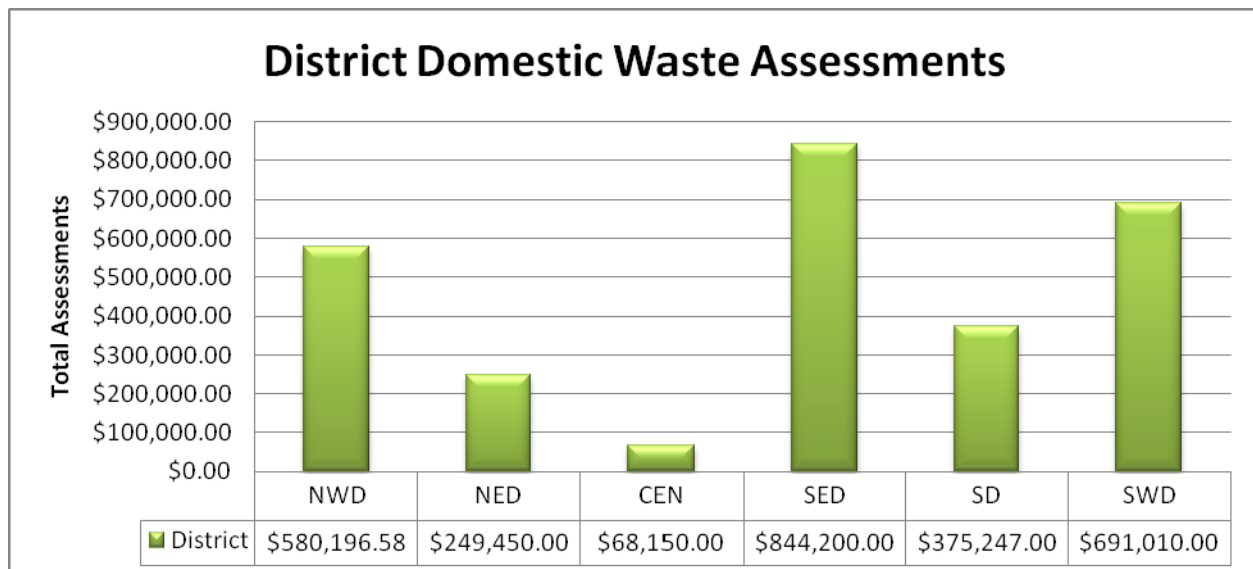
¹³ Case number 90922.



The Northwest District's median assessments rose dramatically in 2009, a sign that the high dollar assessments was due to more than just the single large assessment against the Panama City Airport. The Central, Southeast and Southwest Districts saw lower median assessments in 2009.

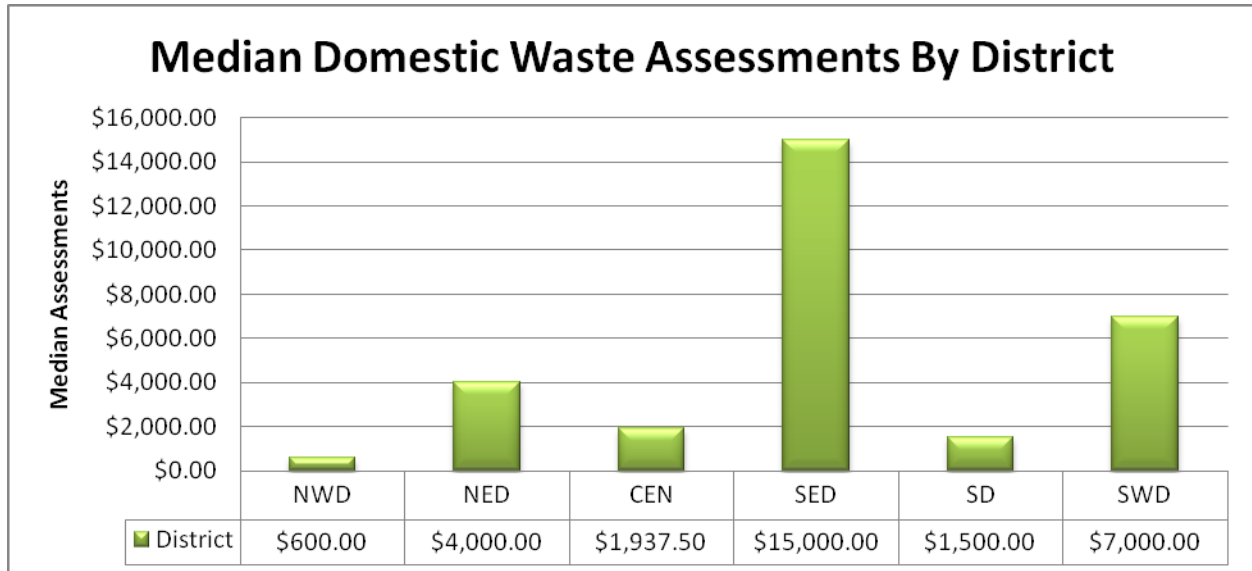
d. Domestic Waste Program

The Department also assessed more civil penalties in this program in 2009. The Districts assessed the penalties as follows:



Improvements were seen in all but the Northwest and Central Districts. The high level of assessments in the Southeast District was due to a single assessment of \$378,675.00 against the *City of West Palm Beach* in case number 93041. The largest assessment by the Northwest

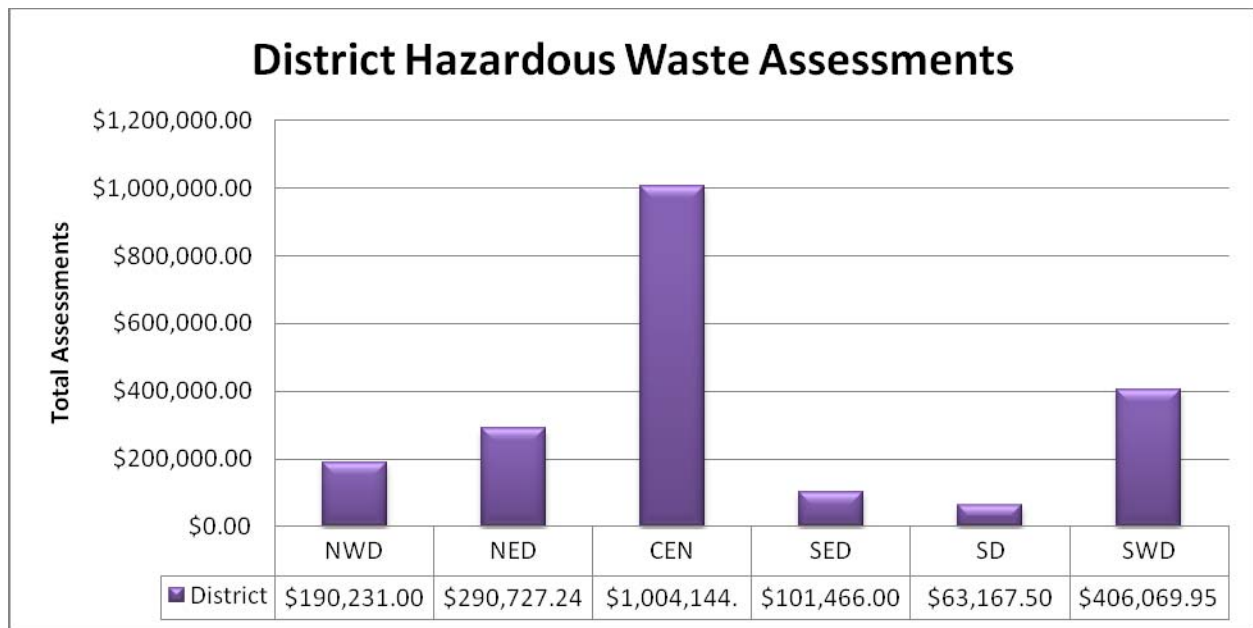
District was in the amount of \$256,250.00 against the *Niceville Valparaiso, Okaloosa County Regional Sewer Board* in case number 62656. The South District saw a similarly large assessment in the amount of \$325,548.00 against the *Florida Governmental Utility Authority* in case number 93052.



Every district except for the South District, saw improvements in the median civil penalty assessments in this program area. Once again, however, the Northwest District treated the program area as an afterthought so far as severity of assessments is concerned. This miniscule level of assessments sends a signal to the business community that the cost of violating wastewater laws in the Florida Panhandle is minimal.

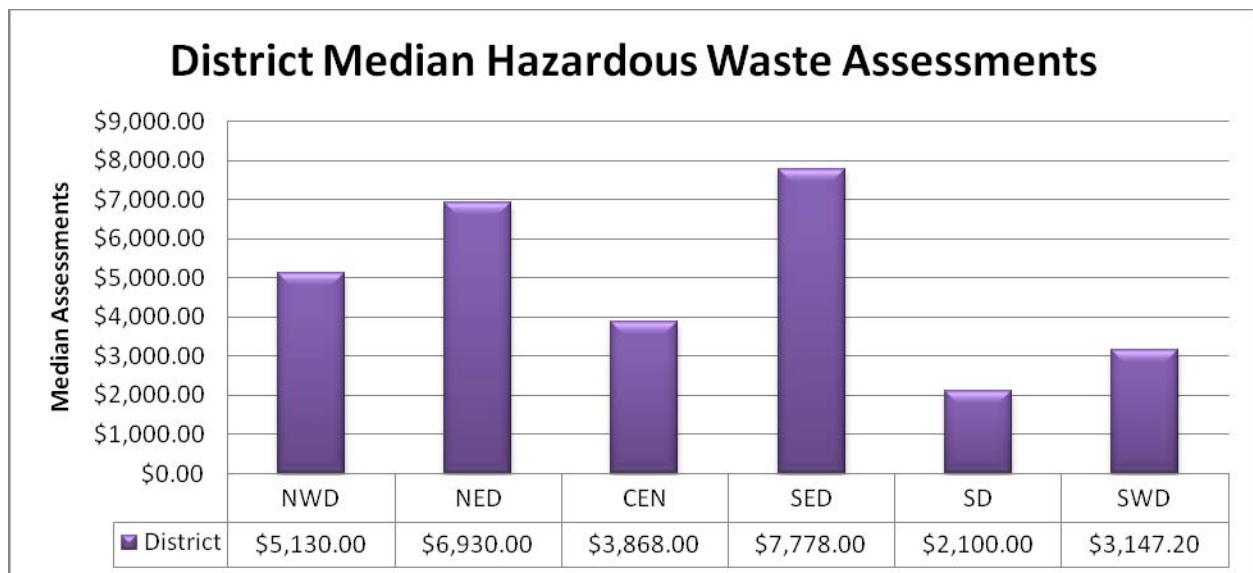
e. Hazardous Waste Program

We've repeatedly drawn attention to the fact that the FDEP has alleged that this program area would see higher civil penalties due to an effort to ensure that violators did not see hazardous waste fines as anything more than a cost of doing business. Simply stated, the Department's claims have not been proven accurate. The total fines dropped in 2009 just as they did in 2008. The drop in 2009 was \$20,389.28, minor to be sure, but also not the alleged improvements the public was told would be forthcoming. When the data is examined for district performance it can be readily seen that only two districts, the Central and Southwest, saw significant assessments:



Three of the districts, the Northwest, the Northeast and the South saw their total assessments fall in 2009. \$658,556.00 of the \$724,125.40 assessed by the Central District was the result of one assessment against the *Orange County Public School System* (OGC #90072).

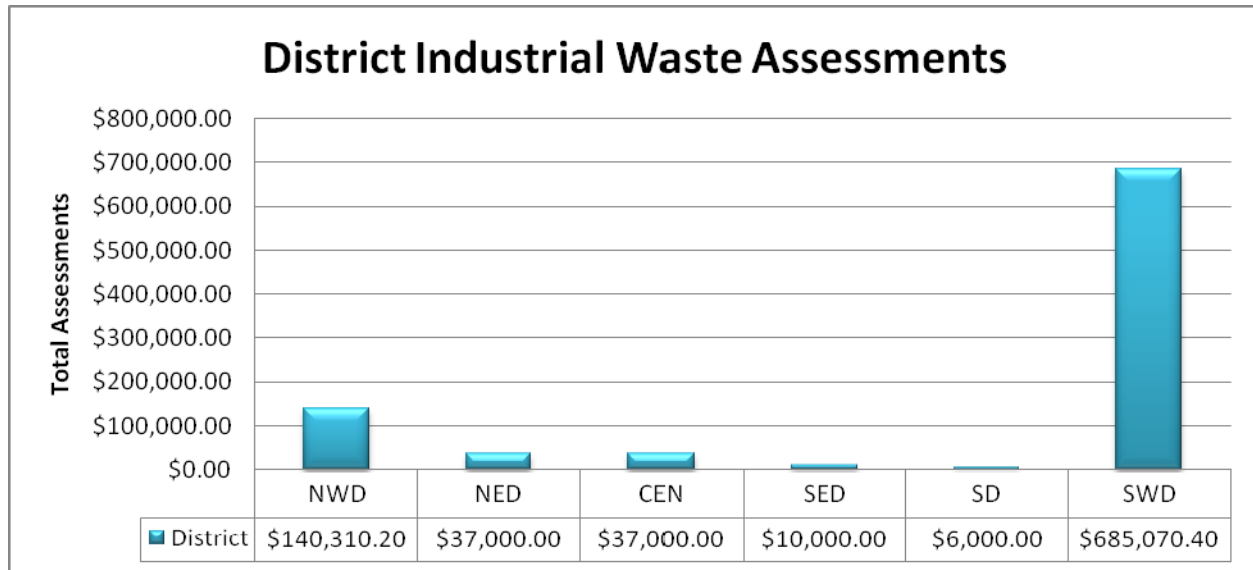
Median assessments were:



The Northeast, Central, South and Southwest Districts all assessed penalties at a lower rate in 2009 than they did in 2008. Both the Northwest and Southeast Districts, by comparison, saw significant improvements in the median assessment rate.

f. Industrial Waste Program

The districts assessed penalties in this program as follows:



Assessments were higher in the Northwest, Northeast, South and Southwest Districts, while they fell significantly in both the Central and Southeast Districts. The much larger performance in the Southwest District was due in large part to one case: *DEP vs. Central Beef Industries, L.L.C.* (OGC# 11558). In this case the polluter was assessed a \$500,000.00 civil penalty. The next highest assessment in that district was in the amount of \$19,859.00. The same scenario occurred in the Northwest District where the highest assessment was in the amount of \$132,297.33 against *Telogia Power, L.L.C.* (OGC#80367) and the next highest assessment was in the amount of \$2,000.00.

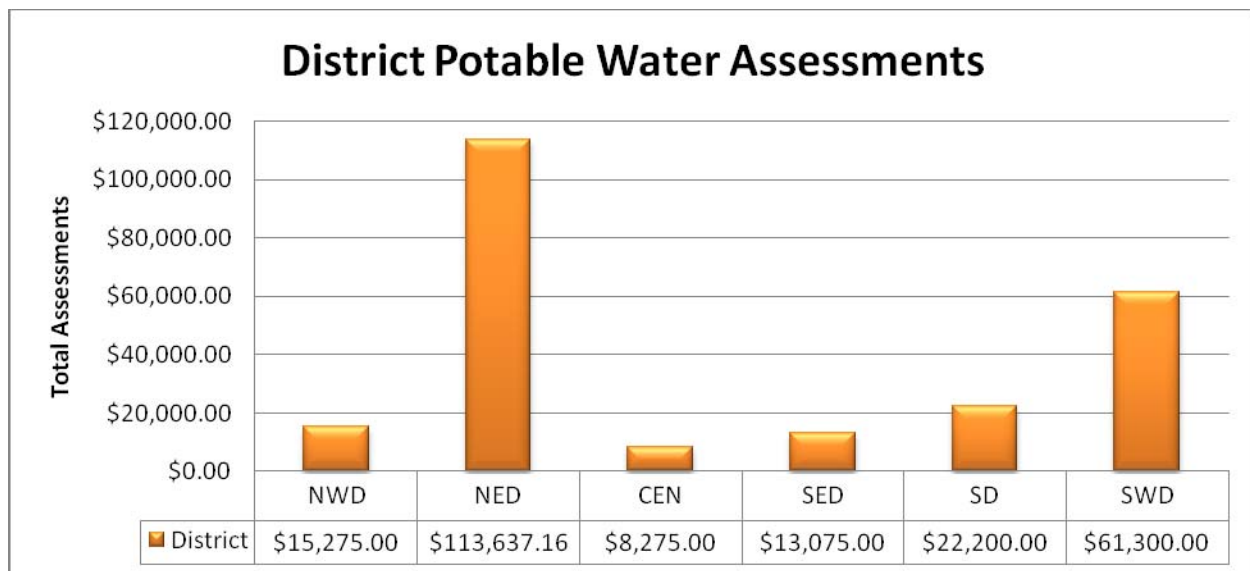
Median assessments were the highest in the Northeast and Central Districts:



Median assessments fell in the Northwest (30%) and Southeast (50%) Districts. They rose in the remaining four.

g. Potable Water Program

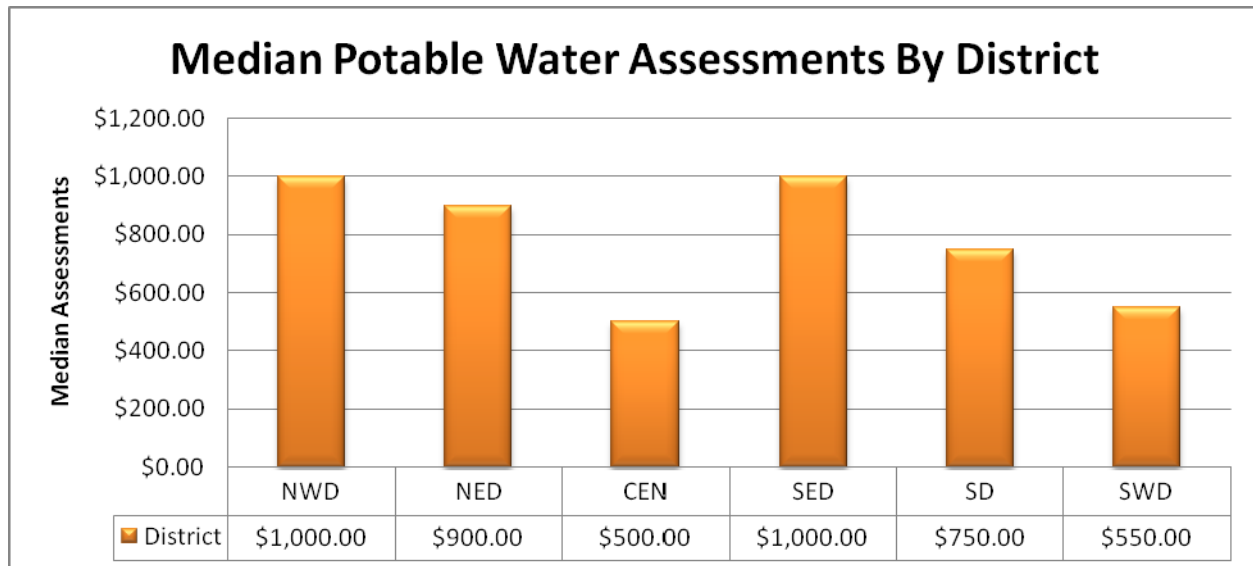
The potable water program oversees the provision of drinking water to Florida's families, businesses, schools etc. Despite this critical responsibility the Legislature has, by statute, minimized the typical fine for violation of these regulations. The districts have assessed those fines as follows:



Except for the Northeast District, assessments fell across the board in 2009 compared to 2008. The largest assessment in the Northeast District was in the amount of \$49,000.00 against *Yukon Station Community, Inc.* (OGC# 62096). Even when this assessment is subtracted out, the

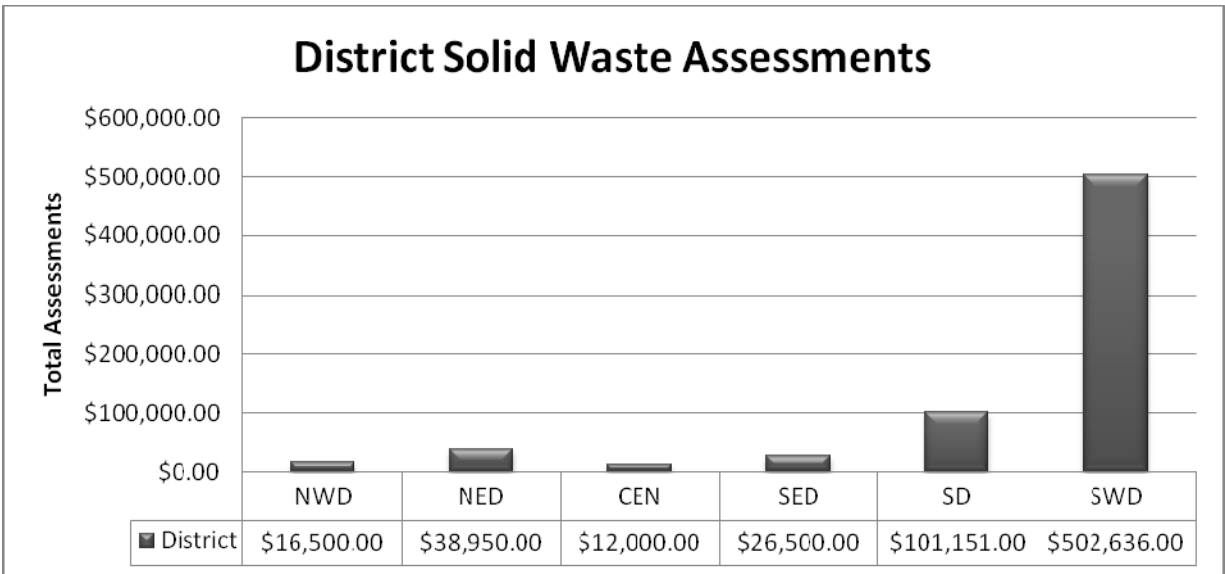
Northeast District assessed more civil penalties than did the Southwest District, the next best performing district.

Median assessments did not vary tremendously among the districts. Assessments fell in the Northwest, Southeast and South Districts compared to 2008. None of the districts showed an aggressive approach to fining polluters in this program area, however:



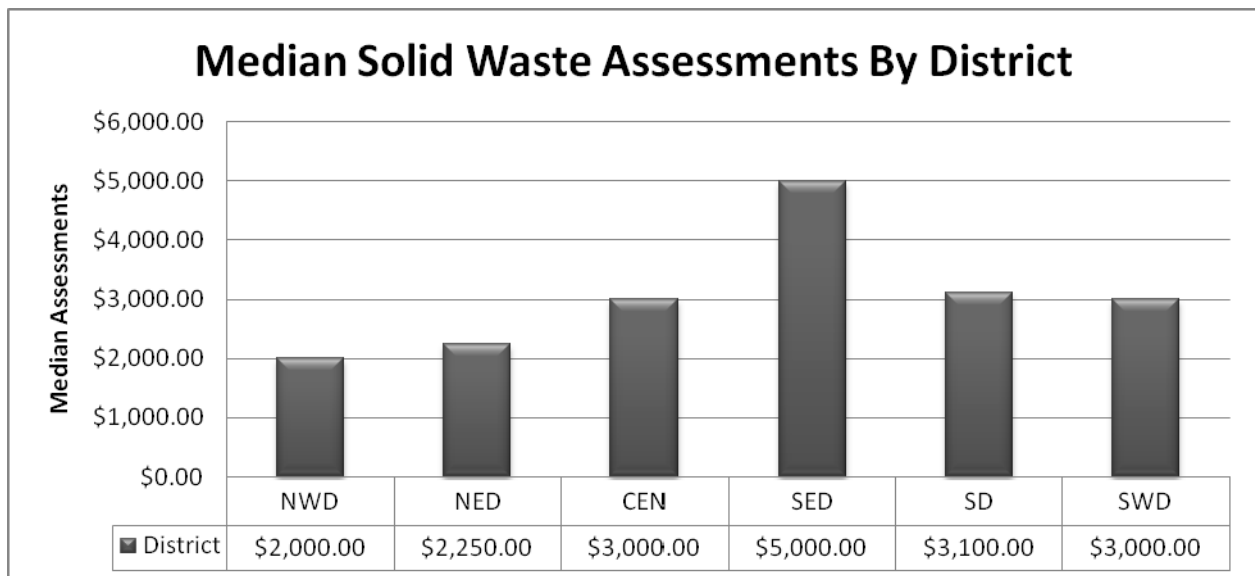
h. Solid Waste Program

This program oversees the handling of Florida's solid waste that is deposited into landfills across the state. The data show a program whose performance continues to be unremarkable in 2009, even though every district but the Northwest District showed better results than in 2008.



George Coniglio, Sr. was assessed a civil penalty of \$409,000.00 (OGC# 30292) by the Southwest District. Otherwise, the Southwest and South Districts would have been about even in this program.

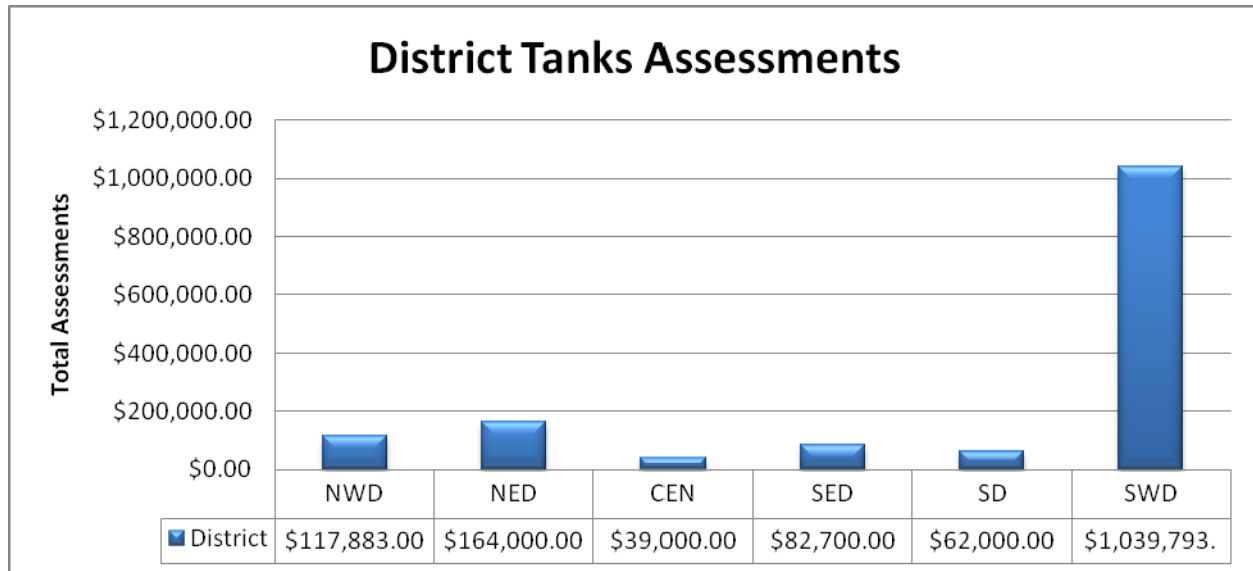
The median assessments broke down as follows:



Median assessments fell in all but the Central and Southeast Districts when compared to 2008. The Southwest District saw the largest drop in median assessments, down from \$6,625.00 just one year ago.

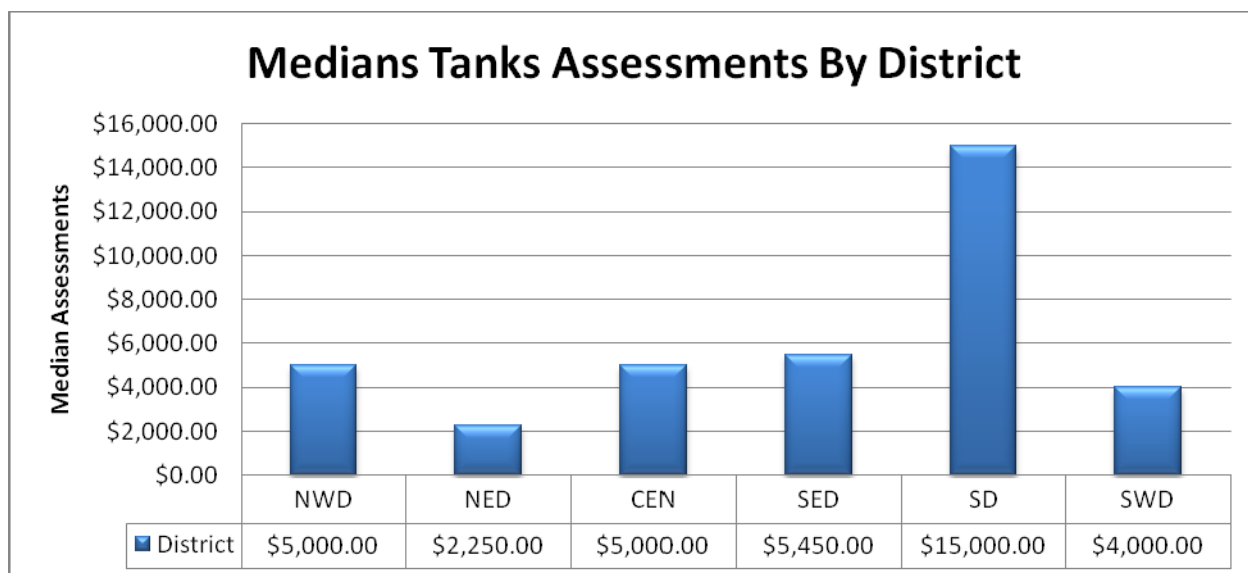
i. Tanks Program

The storage and handling of Petroleum products is regulated under the tanks program. Not surprisingly, this is an active program area each year. Once again, the data reflect a somewhat uniform assessment pattern across the state, except for the Southwest District, which significantly outperformed the others.



The high dollars assessed by the Southwest District was not due primarily to one case. Instead, there were four comparatively high assessments, followed by 104 less harsh penalty assessments. The highest single assessment was in the case of *DEP vs. Danny L. Johnson* on July 13, 2009 (OGC # 81989). Mr. Johnson was assessed a civil penalty of \$101,000.00. The three next highest assessments were in the amounts of \$100,000.00 against *Lakeland Citgo* (OGC # 81695), \$96,080.00 against the City of Clearwater (OGC # 90985), and \$85,593.00 against *Slavoljub and Ljubica Stefanovic* (OGC # 71300).

The median assessments were:



Interestingly, median assessments fell in the Southwest District compared to its performance in 2008. The medians also fell in the Northwest District, but rose in the remaining four.

7. Civil Penalty Collections

A statewide total of \$4,842,642.95 in civil penalties was collected by the FDEP in 2009. This is \$641,837.05 below the amount collected in 2008, an 11.7% decline. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$3,280,253.53 in 2009. Assuming the Department's valuation of these projects to be accurate, the result is a total collection by the Department of \$8,122,896.48.

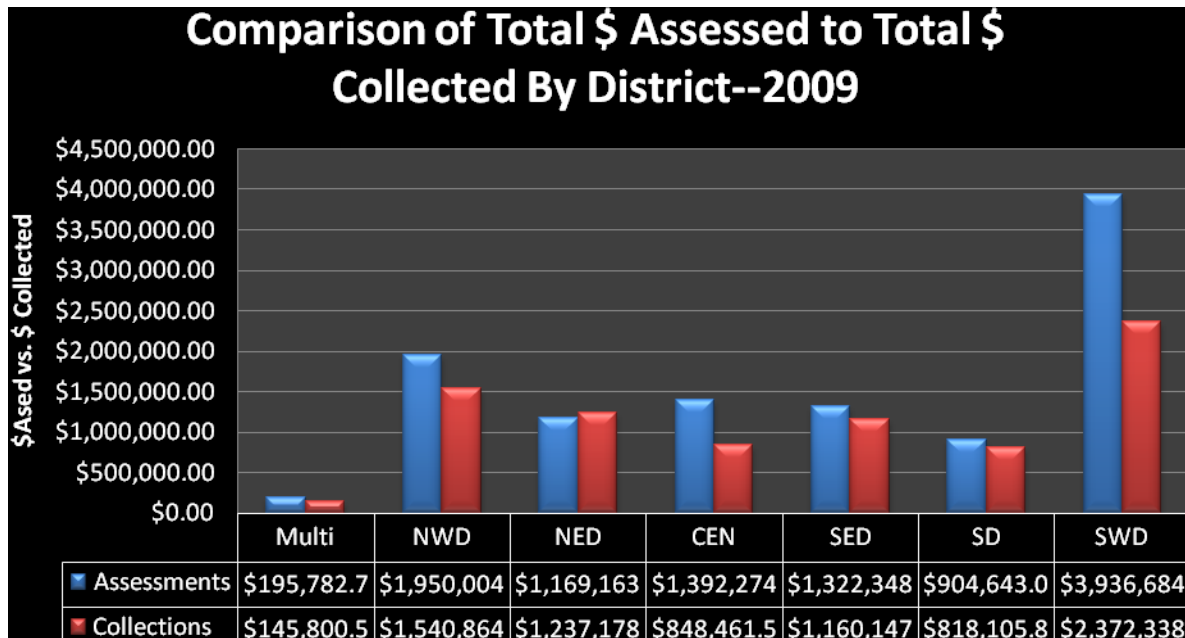
The following chart shows the highest collections, sorted by program area:

Program	District ¹⁴	OGC#	Case Style	Amount
AB	5	93471	SUNCON, INC.; DEP VS.	\$5,250.00
AC	1	93087	SCAP, INC.; DEP VS.	\$2,500.00
AF	6	90530	FLAIR PPC CORP; DEP VS.	\$2,500.00
AG	4	90886	CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC; DEP VS.	\$4,000.00
AM	6	90157	CR 466A LANDFILL FACILITY, LLC; DEP VS.	\$11,500.00
AO	6	93491	DAY AND NIGHT TIRE, LLC; DEP VS.	\$7,000.00

¹⁴ 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.

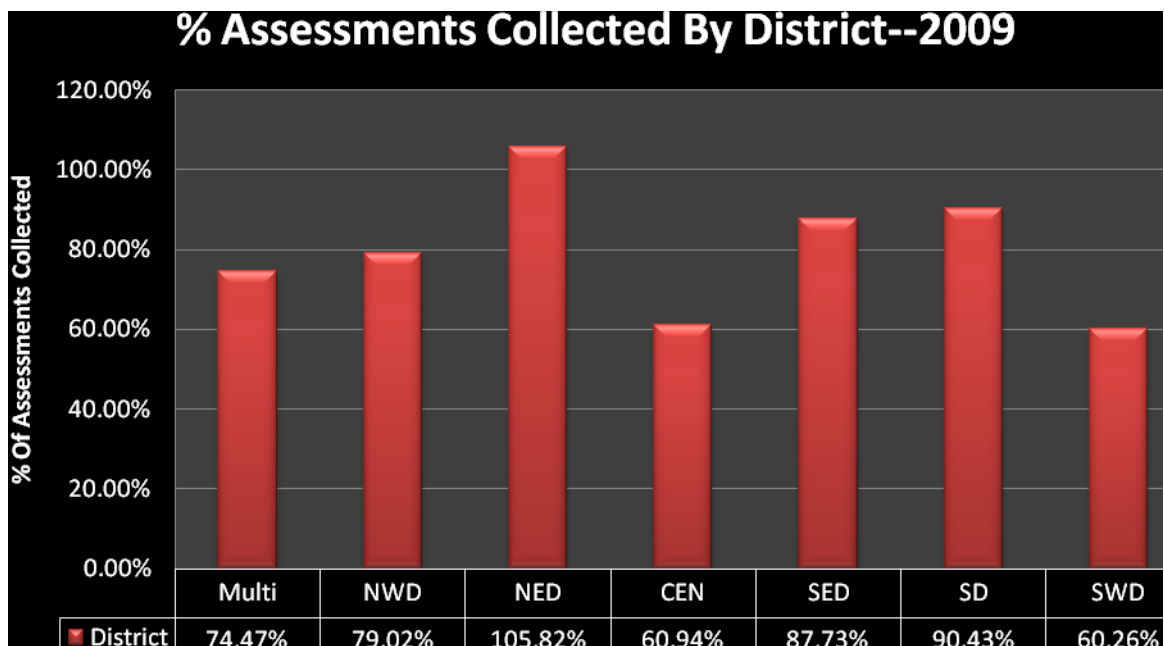
AP	4	81652	MONTENAY POWER CORP.; DEP VS.	\$485,322.00
AS	6	82877	CEMEX INC.; DEP VS.	\$45,000.00
AV	5	90012	FLORIDA CRYSTAL CORPORATION; DEP VS.	\$43,567.50
BS	0	71200	MANATEE COUNTY PORT AUTHORITY, SNELL, RANDOLPH, ET AL; DEP VS.	\$5,000.00
CP	1	90615	STATE OF FLORIDA VS. SIKES, HERBERT	\$5,000.00
CU	6	880718	HARCROS CHEMICALS; DER VS.	\$10,999.00
DF	6	82607	GULFSTREAM NATURAL GAS SYSTEMS, LLC; DEP VS.	\$160,000.00
DW	4	90928	ARDAMAN & ASSOCIATES, INC.; DEP VS.	\$70,400.00
EP	2	62359	FLORIDA INLAND NAVIGATION DISTRICT; DEP VS.	\$52,551.00
HW	2	82520	UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY; DEP VS.	\$65,514.00
IW	6	11558	CENTRAL BEEF INDUSTRIES, L.L.C.; DEP VS.	\$150,000.00
MA	5	90866	MCBRATNIE, SHAWN; DEP VS	\$7,360.00
MN	0	93611	[Case Name Unavailable]	\$12,070.00
PG	6	82750	U.S. AGRI-CHEMICALS CORPORATION; DEP VS.	\$49,199.00
PW	6	90057	TAMPA BAY WATER; DEP VS	\$10,000.00
RO	0	82923	GULF MARINE REPAIR CORPORATION; DEP VS.	\$8,999.00
S1	4	80084	MIAMI DADE WATER AND SEWER DEPARTMENT; DEP VS.	\$20,000.00
SL	4	82011	CITY OF MIAMI BEACH, ET AL; DEP & BOARD OF TRUSTEES IITF	\$4,250.00
SW	2	71511	CITY OF JACKSONVILLE, JEA, SPHINX MANGEMENT, INC., ET AL DEP VS.	\$33,450.00
TK	6	90208	JAFERI, ALI M, USA GROCERS GROUP, INC., FS-ASHTON BELCHER, LLC, ET AL; DEP	\$30,000.00
UC	4	31376	MIAMI-DADE COUNTY; DEP VS.	\$35,000.00

The following chart shows each district and compares the dollars assessed by each district in 2009 with the dollars actually collected, including dollar equivalents for in-kind and penalty prevention projects:



When looked at 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, with the exception being the Central and Southwest Districts both of which are performing worse than the others: 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.



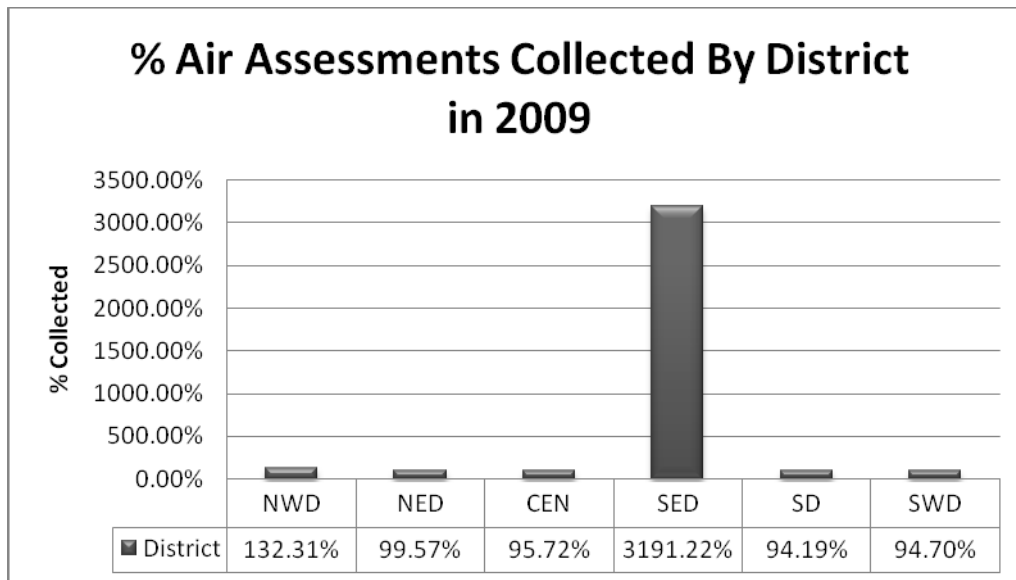
We also looked at the percentage of assessments actually collected by each district in the major program areas. Those results follow.

a. Air Program

The data clearly shows that when penalty assessments and collections are considered¹⁶ the districts are collecting almost all of the assessments in this program area.¹⁷ Overall the Department collected **247.88%** of its assessments in this program area, indicating that it made significant inroads towards collecting penalties levied in previous years. The disproportionately large return in the Southeast District is due primarily to the collection of a \$485,322.00 penalty levied against the *Montenay Power Corporation* in case number 81652.

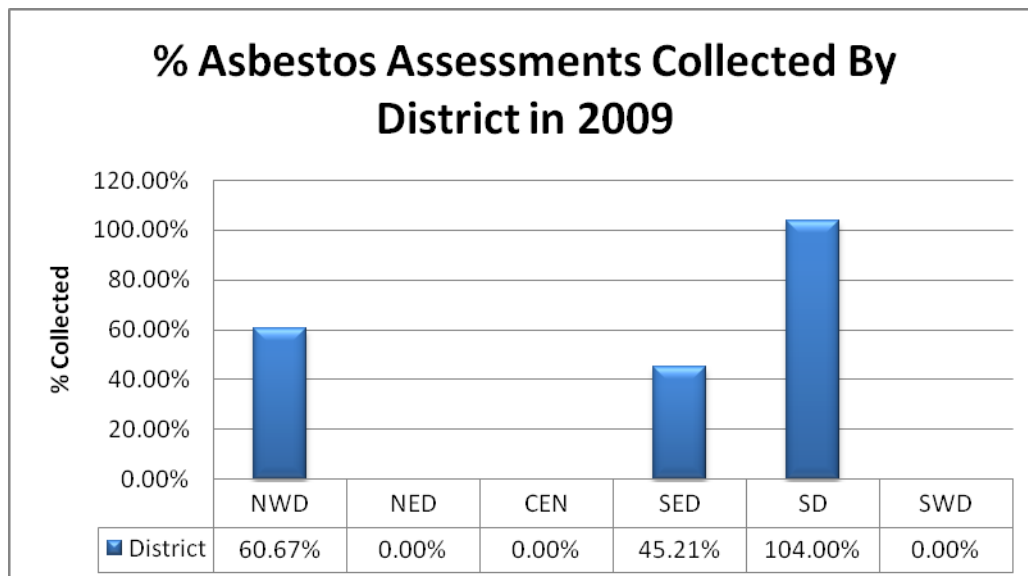
¹⁶ Excluding in-kind and penalty project assessments.

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.



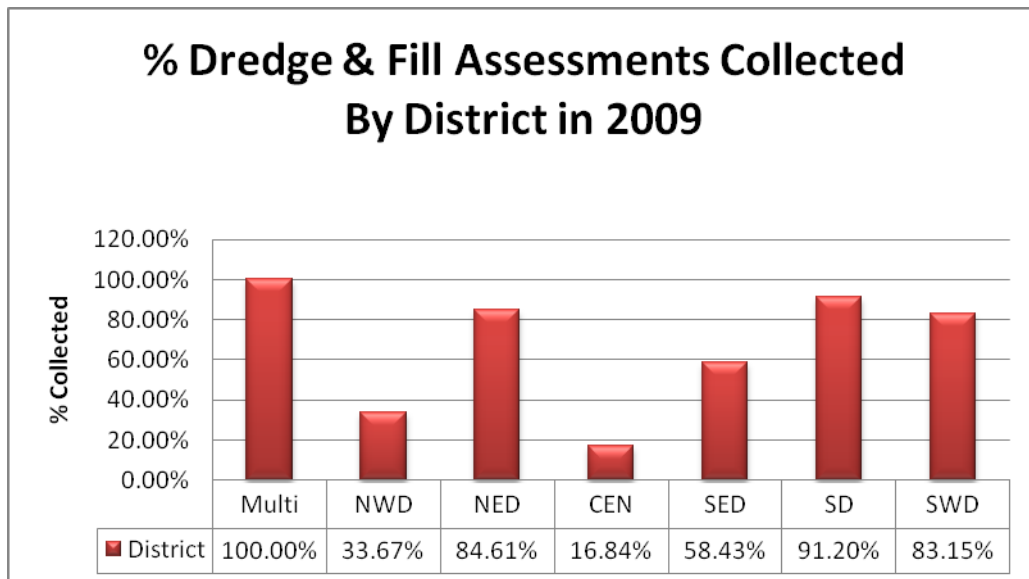
b. Asbestos Program

Overall the Department collected 62.69% of its assessments in this program area. The districts reported much less in the way of collections in this program area. Only three of the six districts reported any collections.



c. Dredge and Fill Program

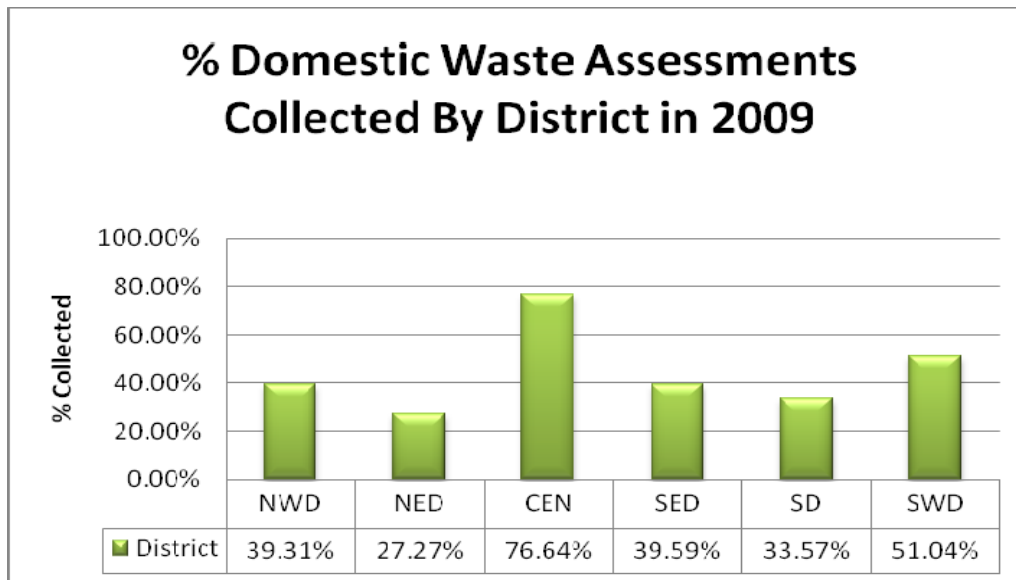
Overall the Department collected 57.12% of its assessments in this program area. This program area saw a lower rate of collection than that enjoyed by the air program.



The troubling aspect of the above results is that these numbers include all collections, i.e. fines, in-kind projects and penalty prevention projects. This is an area that should have a disproportionately high number of in-kind projects because of the nature of the violations involved and the Department's alleged emphasis on restoring wetlands. The data suggests that in the Northwest and Central Districts in particular (and to a lesser extent the Southeast District) little is being done to ensure that assessments are collected.

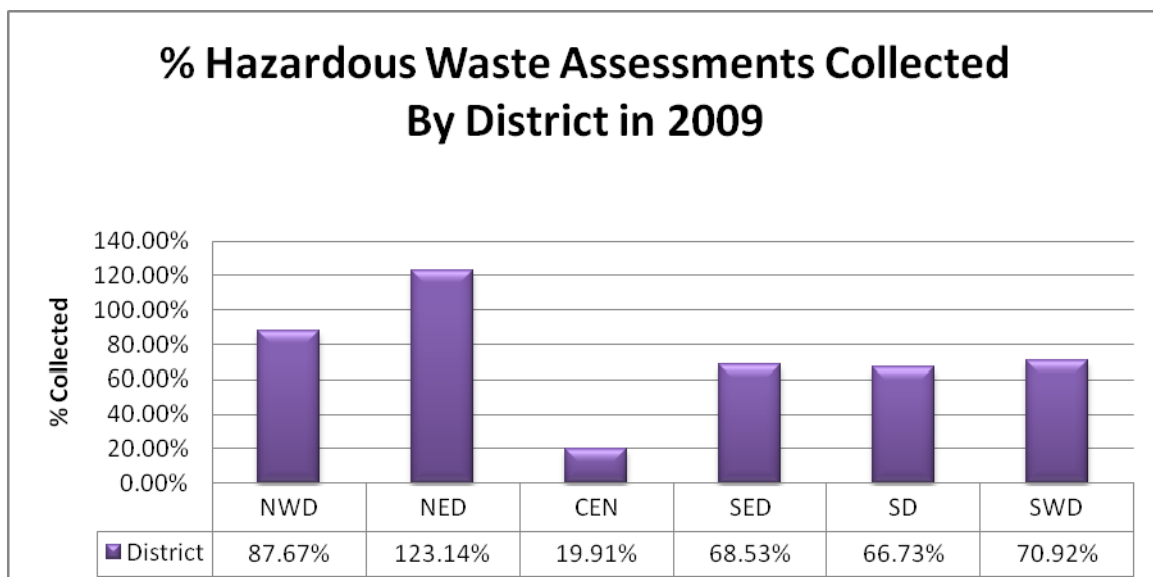
d. Domestic Waste Program

Overall the Department collected 42.76% of its assessments in this program area. Except for the Central District, collections in this program area continue to be significantly sub-par. Only the Central and Southwest Districts collected over 50% of its assessments.



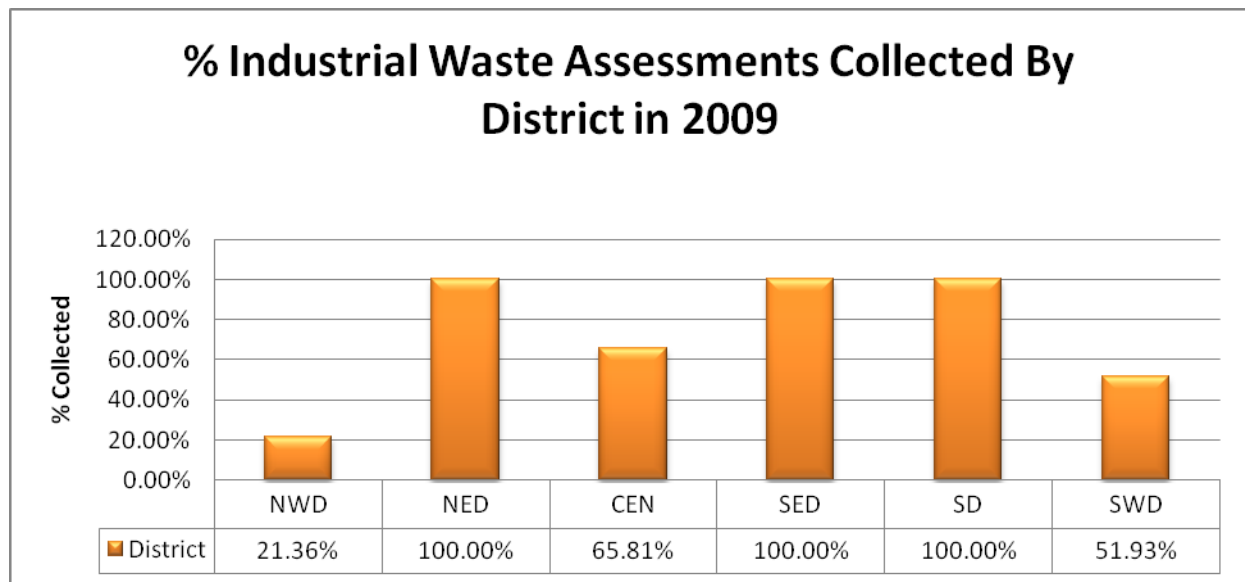
e. Hazardous Waste

Overall the Department collected 59.51% of its assessments in this program area. Four of the districts, the Northwest, Central, Southeast and Southwest, collected fewer assessments than was the case in 2008. The performance in the Central District is, to put it mildly, significantly poor:



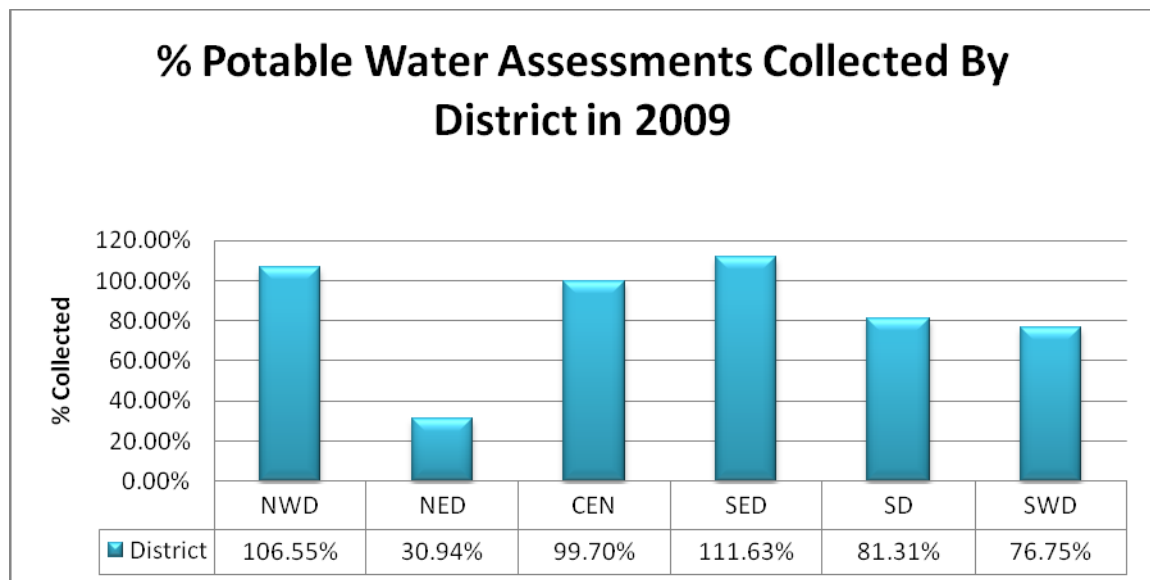
f. Industrial Waste

Overall the Department collected 53.36% of its assessments in this program area. Three of the Districts collected 100 percent of the assessments—a truly good performance. However, the Northwest District failed to collect even a quarter of the assessments in this program area:



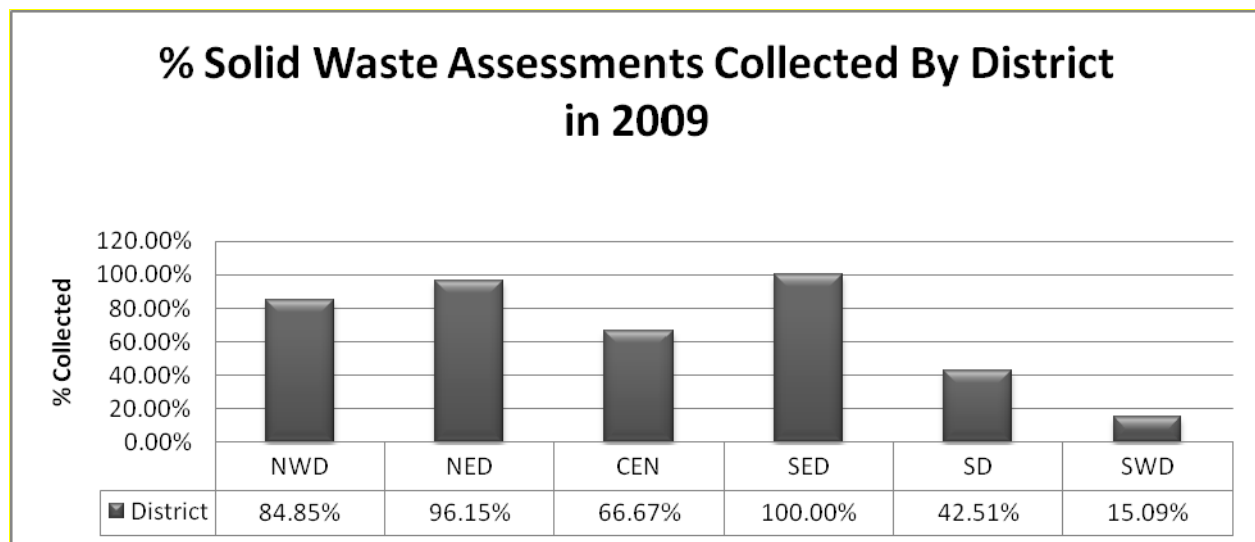
g. Potable Water Program

Overall the Department collected 58.96% of its assessments in this program area. With the exception of the Northeast District, every district in the Department collected over 50% of the penalties assessed in this program area.



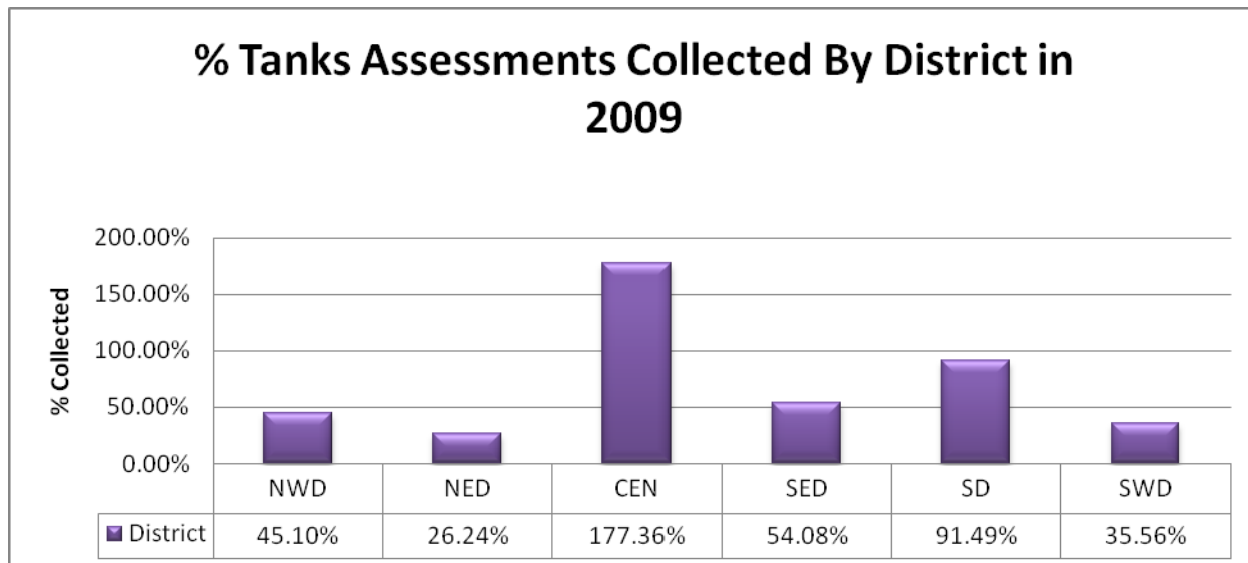
h. Solid Waste Program

Overall the Department collected 29.72% of its assessments in this program area. The Northwest District performed significantly better in 2009, as compared to 2008. All of the remaining districts (including the Northeast and Southeast Districts) turned in poorer performance in 2009, with the Southwest District leading the race to the bottom:



i. Tanks Program

Overall the Department collected 40.01% of its assessments in this program area. Four of the Districts collected fewer assessments in 2009 than in 2008. Those districts were the Northwest, the Northeast, the Southeast and Southwest. The Central and South Districts improved on their previous performance:



DISTRICT ENFORCEMENT RESULTS

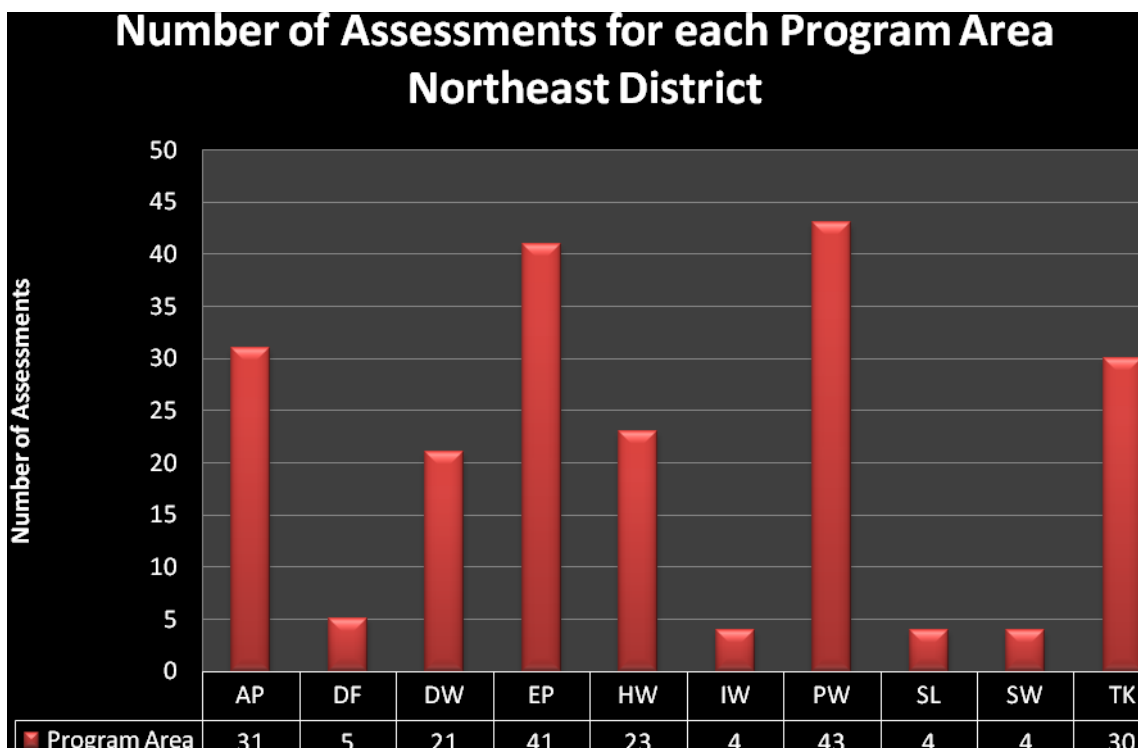
A. Northeast District

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

The Northeast District initiated enforcement in 253 cases in 2009, 57 more than in 2008. 16.86% of all of the enforcement cases opened by the Department came out of this district. It issued 34 case reports (the highest percentage in the state), 19 NOVs and 25 final orders. 175 consent orders were issued (compared with 149 in 2008, but still fewer than in 2007) and of those 26 were long-form consent orders. 132 short-form consent orders were issued, 16% of all short-form consent orders issued by the Department in Florida. 52% of all cases initiated by the Northeast District in 2009 were resolved with short-form consent orders.

B. Program Area Enforcement

The Northeast District assessed civil penalties in 206 cases in 2009, 49 more cases than in 2008. The following chart provides a breakdown¹⁸ of how those assessments were distributed among the program areas:



The data shows that a majority of the assessments were in the dredge and fill and environmental resource permitting programs as well as the potable water program. The air and tanks programs remained stable. However, there continue to be a minimal number of assessments in the industrial waste program.

C. Civil Penalty Assessments

The NED assessed civil penalties totaling \$1,169,163.71 in 2009. This is \$130,225.04 less than was assessed in 2008, a 10% decrease. The district's performance represented 11% of all assessments by the Department in 2009, the same as in 2008. The median civil penalty assessment for 2009 for all programs combined was \$1,500.00, a \$500.00 decrease from 2008.

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

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

Program	Total \$ Assessed	2008 Median	2009 Median
AP	\$35,000.00	\$1,000.00	\$700.00
DF	\$11,500.00	\$0.00	\$1,500.00
DW	\$249,450.00	\$4,000.00	4,000.00
EP	\$215,899.31	\$1,000.00	1,410.00
HW	\$290,727.24	\$19,400.00	\$6,930.00
IW	\$37,000.00	\$2,900.00	\$5,000.00
PW	\$113,637.16	\$560.00	\$900.00
SL	\$13,000.00	\$4,000.00	\$2,250.00
SW	\$38,950.00	\$3,500.00¹⁹	\$2,250.00
TK	\$164,000.00	\$2,000.00	\$2,250.00

The median assessments for the air, hazardous waste, state lands and solid waste programs underperformed in 2009. The solid waste medians declined for the second year in a row.

D. Civil Penalty Collections

The Northeast District collected \$613,564.62 in civil penalties²⁰, compared with a total of \$512,427.23 for 2008. The NED collected 13% of all collections by the Department in calendar year 2009.

B. Northwest District

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

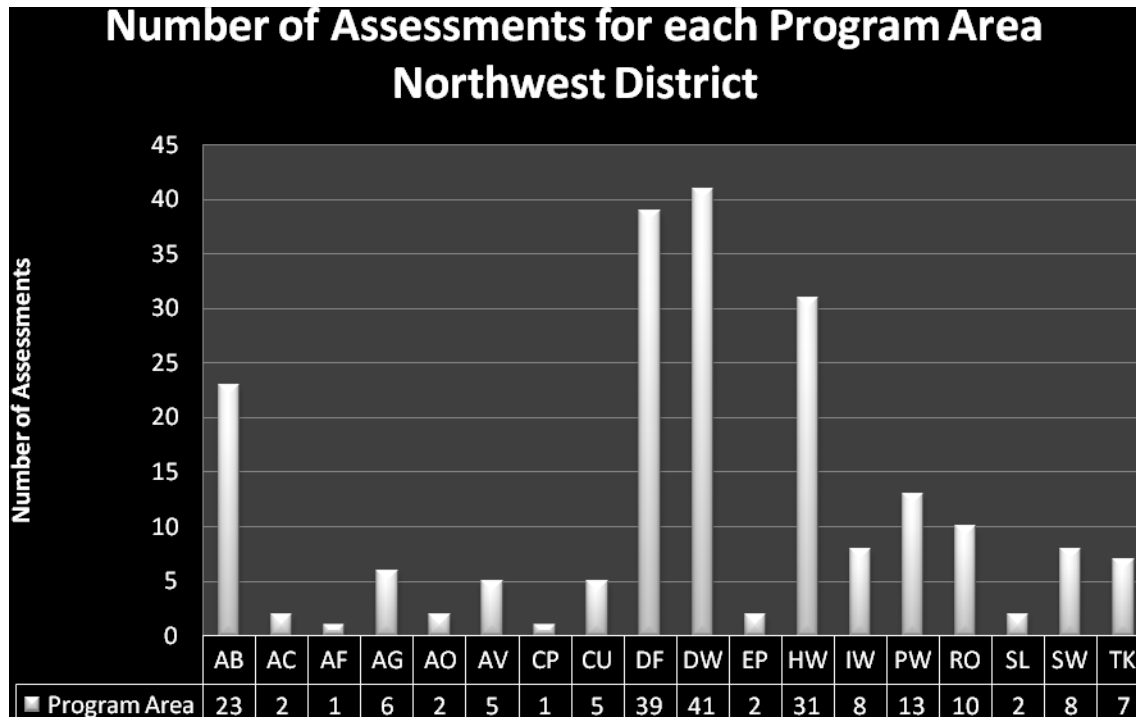
The district took enforcement in 199 cases in 2009 substantially lower than the 297 cases in 2008. This represents 13.26% of all enforcement cases initiated by the Department. Of the 199 cases, 13 were case reports. 10 NOVs were issued (compared with 8 in 2008) and 8 final orders originated from the district. 168 consent orders were issued, a significant decrease from the 278 in 2008, and only 15 were long-form consent orders, while 131 were short-form. The latter category represented 78% of all consent orders issued by the district. 66% of all enforcement taken by the district was in this form, the highest percentage of all of the districts.

¹⁹ Numbers in bold represent medians that were declines in 2008 from the 2007 performances. The same format is used for the remaining districts.

²⁰ The civil penalty collections reported for each district are for straight civil penalties. These numbers do not include in-kind projects.

B. Program Area Enforcement

The Northwest District assessed civil penalties in 206 cases in 2009, 97 fewer cases than in 2008. The following chart provides how those cases were distributed across program areas:



The numbers reflect an increase in the number of potable water assessments, otherwise every program saw lower results.

C. Civil Penalty Assessments

The district assessed civil penalties totaling \$1,950,004.28 in 2009 which is \$433,077.12 less than in 2008, **an 18% decrease from 2008**. The district accounted for 18% of all state assessments. The median assessment was \$2,000.00.

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

Program	Total Assessments	2008 Medians	2009 Medians
AB	\$91,462.50	\$3,125.00	\$1,875.00
AC	\$4,500.00	\$0.00	\$2,250.00
AF	\$2,500.00	\$0.00	\$2,500.00
AG	\$3,084.00	\$1,275.00	\$500.00
AO	\$925.00	\$3,250.00	\$462.50
AV	\$12,375.00	\$2,500.00	\$2,000.00

CP	\$2,000.00	\$0.00	\$2,000.00
CU	\$5,699.00	\$0.00	\$1,000.00
DF	\$729,388.00	\$1,500.00	\$1,500.00
DW	\$580,196.58	\$500.00	\$600.00
EP	\$14,500.00	\$2,000.00	\$7,250.00
HW	\$190,231.00	\$1,700.16	\$5,130.00
IW	\$140,310.20	\$5,000.00	\$1,506.44
PW	\$15,275.00	\$1,750.00	\$1,000.00
RO	\$21,675.00	\$3,100.00	\$2,400.00
SL	\$1,500.00	\$1,500.00	\$2,400.00
SW	\$16,500.00	\$3,250.00	\$2,000.00
TK	\$117,883.00	\$5,500.00	\$5,000.00

Median assessments saw significant increases in the hazardous waste and environmental resource permitting programs, but fell in most other programs. The asbestos, industrial waste and solid waste programs saw the biggest declines in their median assessments.

D. Civil Penalty Collections

\$581,052.69 in civil penalties was collected by the NWD in 2009, a 44% decrease compared to the district's performance in 2008. The district collected 12% of all penalty dollars received by the Department in 2009—a 7% decline from 2008.

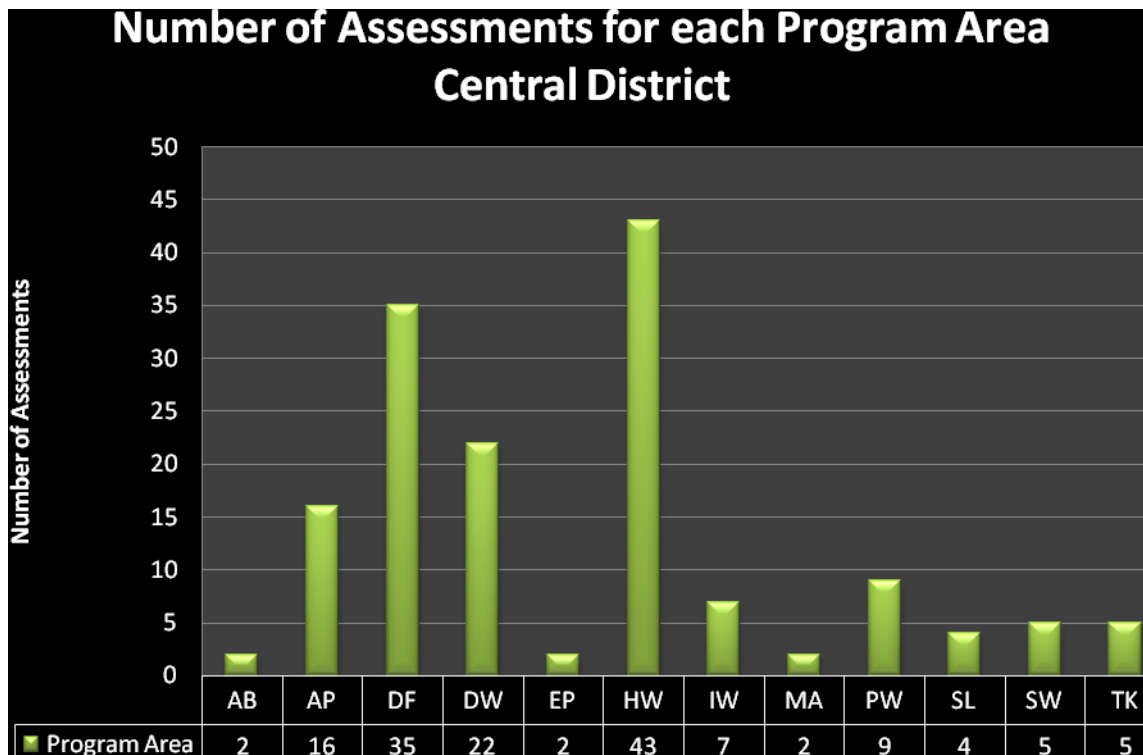
C. Central District

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

The Central District took enforcement in 170 cases in 2009. It submitted 22 case reports to OGC in 2009, 13 more than in the previous year and the second highest percentage of all of the districts. It also issued 14 NOVs, 3 final orders and 131 consent orders. Of the 131 consent orders, 69% (90) were short-form consent orders whereas only 15 were long-form. This district was the second least likely district to resolve enforcement cases by using short-form consent orders.

B. Program Area Enforcement

The following chart provides the number of cases in which civil penalties were assessed by the Central District by program area in 2009:



The Central District assessed penalties in 195 cases in 2008. That number fell to 152 in 2009. There were more asbestos (1), hazardous waste (8), state lands (3) and solid waste (2) cases in 2009, compared to 2008. Otherwise, every other program saw poorer performance.

C. Civil Penalty Assessments

The CEN levied \$2,462,553.41 in civil penalty assessments in 2008. In 2009 the number fell to \$1,404,524.16, a 43% decrease! The assessments totaled 13% of all assessments statewide and the median assessments were \$1,500.00.

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

Program	Total Assessments	2008 Medians	2009 Medians
AB	\$18,230.00	\$800.00	\$9,115.00
AP	\$72,460.16	\$4,250.00	\$3,125.00
DF	\$136,885.00	\$1,000.00	\$600.00
DW	\$68,150.00	\$2,812.50	\$1,937.50
EP	\$3,500.00	\$250.00	\$1,750.00
HW	\$1,004,144.00	\$9,197.00	\$3,868.00
IW	\$37,000.00	\$4,500.00	\$5,000.00
MA	\$2,750.00	\$500.00	\$1,375.00
PW	\$8,275.00	\$450.00	\$500.00

SL	\$2,130.00	\$2,700.00	\$340.00
SW	\$12,000.00	\$2,500.00	\$3,000.00
TK	\$39,000.00	\$4,500.00	\$5,000.00

Median assessments rose significantly in the asbestos and environmental resource permitting programs. Significant reductions were seen in the air, domestic waste, dredge and fill and hazardous waste programs. These were back-to-back declines in performance in the air and hazardous waste programs.

D. Civil Penalty Collections

The Central District also collected fewer civil penalties in 2009--\$335,843.07—compared to \$594,185.59 in 2008. This represented 7% of all of the penalties collected department-wide. This was the poorest performance of all of the districts.

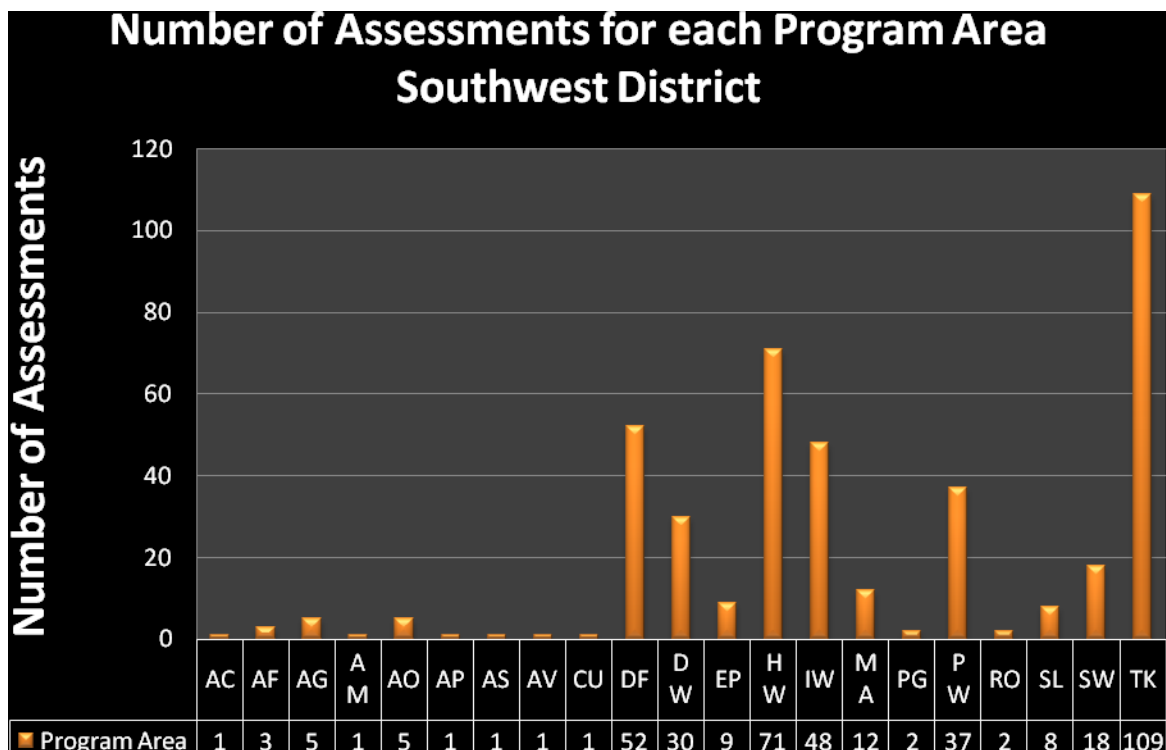
D. Southwest District

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

29 case reports were submitted by the district in 2009, 10 more than in 2008 and 23% of all such reports submitted statewide. The district also issued 58 NOVs (27 more than in 2008), or 50% of all such filings. It issued 38 Final Orders, 26 more than in 2008. 352 Consent Orders were issued out of this district (compared with 315 last year), which represents 30% of all Consent Orders issued by the Department in 2009. 75% of the Consent Orders issued by the district were short-form consent orders, compared to 81% last year. 45 long-form consent orders were issued out of this district in 2009, almost double the number that it issued in 2008. The district also lowered its dependence on the short-form consent order as the primary form of enforcement from the 68% in 2008 to 56% in 2009.

B. Program Area Enforcement

The following chart provides the number of enforcement cases in which civil penalties were assessed by the Southwest District by program area in 2009:



Assessments were levied in 417 cases in 2009, compared with 337 cases in 2008, a healthy increase. There were significant increases in the number of assessments in the dredge and fill (33), hazardous waste (21) and industrial waste (27) programs, while the remaining program areas remained essentially stable.

C. Civil Penalty Assessments

Civil penalty assessments also rose sharply for this district in 2009, ending a two-year slide. In 2009 the SWD levied civil penalties totaling \$3,936,684.60 , **a 73% increase from the year before!** The district accounted for 36% of all penalty assessments by the Department, clearly the best performance of all of the districts. However, the one problem was that median assessments fell to \$1,600.00 in 2009. Frankly, were it not for the performance of the Southwest District, the Department's numbers would have been significantly more dismal, so far as assessments were concerned.

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

Program	Total Assessments	2008 Medians	2009 Medians
AC	\$1,350.00	\$1,625.00	\$1,350.00
AF	\$5,750.00	\$7,200.00	\$2,000.00
AG	\$8,457.00	\$1,450.00	\$1,200.00
AM	\$11,500.00	\$0.00	\$11,500.00

AO	\$43,100.00	\$6,396.00	\$2,500.00
AP	\$10,000.00	\$0.00	\$10,000.00
AS	\$45,000.00	\$0.00	\$45,000.00
AV	\$6,000.00	\$875.00	\$6,000.00
CU	\$10,999.00	\$23,250.00	\$10,999.00
DF	\$271,480.00	\$2,200.00	\$1,300.00
DW	\$691,010.00	\$5,600.00	\$7,000.00
EP	\$30,550.00	\$3,000.00	\$1,500.00
HW	\$406,069.95	\$3,436.50	\$3,147.20
IW	\$685,070.40	\$2,450.00	\$2,700.00
MA	\$38,820.00	\$1,199.00	\$2,150.00
PG	\$54,199.00	\$5,000.00	\$27,099.50
PW	\$61,300.00	\$500.00	\$550.00
RO	\$1,500.00	\$3,000.00	\$750.00
SL	\$12,100.00	\$1,500.00	\$1,300.00
SW	\$502,636.00	\$6,625.00	\$3,000.00
TK	\$1,039,793.25	\$4,600.00	\$4,000.00

9 program areas saw increases in their median assessments in 2009, but 12 saw declines. And two program areas, hazardous waste and solid waste, saw declines for the second straight year.

D. Civil Penalty Collections

The Southwest District collected \$1,808,261.65 in civil penalties in 2009 compared with \$1,970,667.06 collected in 2008. This is the third straight year of declining collections. Its collections accounted for 37% of all the monies collected by the Department across the state, once again the highest percentage of all of the districts.

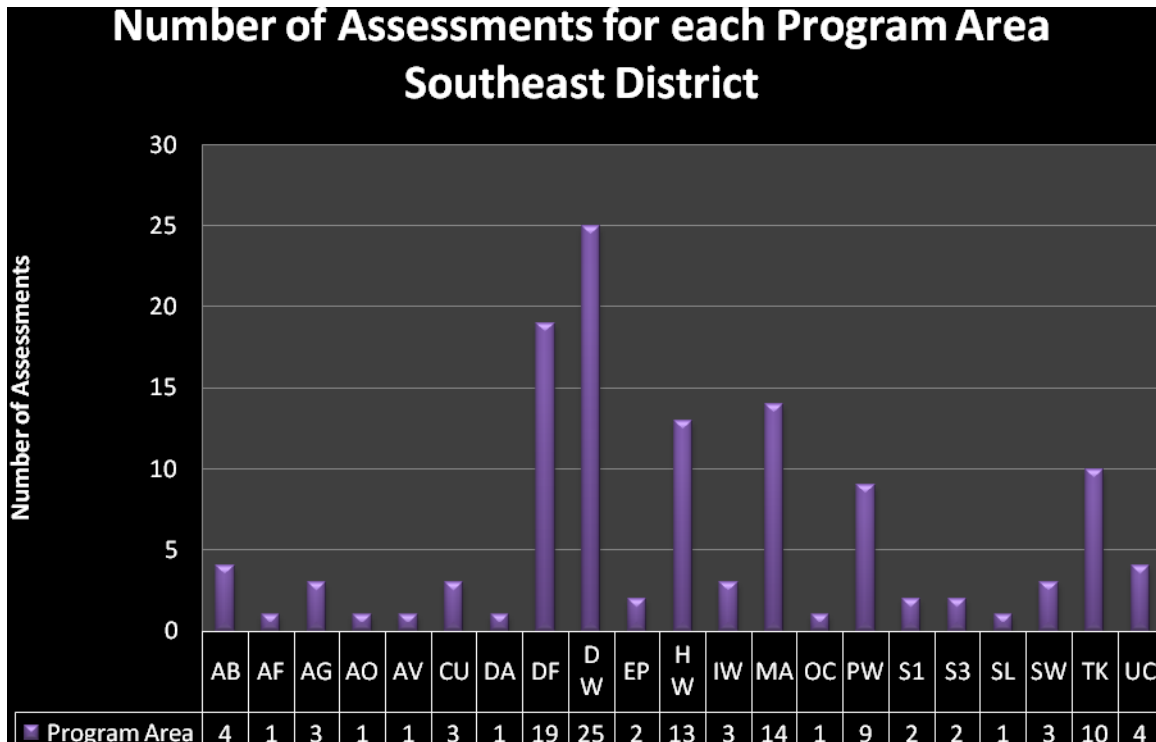
E. Southeast District

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

The SED initiated enforcement in 132 cases in 2009, the fewest of all of the districts. It issued 8 NOVs in 2009 (a slight improvement) and 16 case reports and 6 final orders, both of which were also improvements over 2008. It also issued 102 Consent Orders, 4 more than in 2008. 70% of the consent orders that were issued were short-form consent orders. The SED accounted for 13% of all Case Reports sent to the OGC in 2009, 7% of the NOVs, 6% of the Final Orders and 9% of all Consent Orders. Generally, the numbers all point to performance that is has marginally improved from 2008.

B. Program Area Enforcement

The following chart provides the number of civil penalty assessments made by the Southeast District by program area in 2009:



The Southeast District assessed civil penalties in 122 cases in 2009, 18 more cases than in 2008. With the exception of the air and industrial waste programs, the Southeast District showed varying degrees of improvement in every major area in 2009. The hazardous waste program had 3 more cases in 2008 than in 2009. The domestic waste program saw the largest increase in the number of cases, going from 21 cases in 2008 to 29 in 2009. Industrial waste declined by 3 cases.

C. Civil Penalty Assessments

The increase in the number of assessments did not carry over to the dollars assessed in 2009. In fact, the district saw a 40% decline in dollars assessed with assessments totaling \$1,322,348.50 in 2009. This performance accounts for 12% of all civil penalty assessments levied by the Department in 2009, a 7% drop; however, the district did manage to increase its median assessments across all program areas to \$4,125.00.

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

Program	Total \$ Assessed	2008 Medians	2009 Medians
AB	\$4,562.50	\$350.00	\$825.00
AF	\$1,750.00	\$500.00	\$1,750.00
AG	\$5,750.00	\$1,500.00	\$1,000.00
AO	\$5,700.00	\$0.00	\$5,700.00
AV	\$2,500.00	\$1,062.50	\$2,500.00
CU	\$18,000.00	\$1,000.00	\$5,000.00
DA	\$2,000.00	\$2,000.00	\$2,000.00
DF	\$97,645.00	\$1,100.00	\$2,710.00
DW	\$756,600.00	\$5,500.00	\$14,590.00
EP	\$9,700.00	\$0.00	\$4,850.00
HW	\$101,466.00	\$3,500.00	\$7,778.00
IW	\$10,000.00	\$5,000.00	\$2,500.00
MA	\$45,150.00	\$650.00	\$2,250.00
OC	\$1,000.00	\$1,000.00	\$1,000.00
PW	\$13,075.00	\$1,800.00	\$1,000.00
S1	\$25,000.00	\$2,000.00	\$12,500.00
S3	\$62,600.00	\$9,500.00	\$31,300.00
SL	\$4,250.00	\$0.00	\$4,250.00
SW	\$26,500.00	\$3,700.00	\$5,000.00
TK	\$82,700.00	\$5,412.50	\$5,450.00
UC	\$46,400.00	\$35,000.00	\$5,600.00

Median assessments increased in most program areas in 2009 with especially healthy increases in the domestic waste, hazardous waste and solid waste programs. It is also noteworthy that none of the program areas saw back-to-back declines. The programs that declined in 2009 also had relatively few assessments compared with other programs.

D. Civil Penalty Collections

The SED collected \$966,291.02 in civil penalties in 2009, a significant increase from the \$651,989.85 it collected in 2008. This accounted for 20% of all dollars collected by the FDEP in civil penalties in 2008, the second best performance of all of the districts.

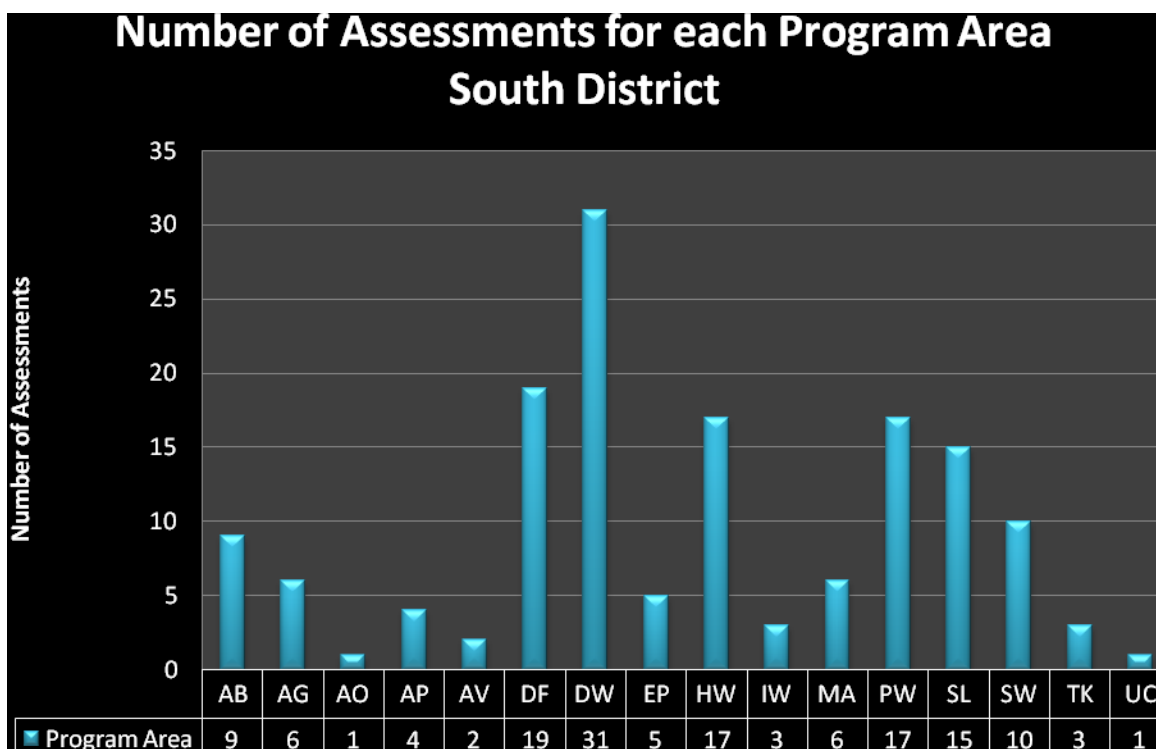
F. South District

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

The South District took enforcement in 159 cases in 2009, the second lowest of the 6 districts. The district sent 9 Case Reports to the OGC in 2009, the same as in 2008. 7 NOVs and 2 Final Orders were issued in 2009. This district issued 141 consent orders in 2009, 35 fewer than in 2008, making this 3 years in a row in which the number of consent orders has declined. On the bright side, 48% of all enforcement cases were resolved through the use of short-form consent orders, indicating that the district continues to be the district least likely to resort to this enforcement tool amongst all of the districts in the state. The South District accounted for 7% of all Case Reports, 6% of the NOV's, 2% of the Final Orders and 12% of all Consent Orders.

B. Program Area Enforcement

The following chart provides the number of civil penalty assessments issued by the South District by program area in 2009:



The South District assessed penalties in 185 cases in 2008. That number fell to 149 cases in 2009, a drop of 19%. Increases were seen in the general air permitting (1), air pollution (3), domestic waste (10), environmental resource permitting (4), industrial waste (1) programs. Significant decreases were seen in the dredge and fill (12), hazardous waste (8), potable water (13) and tanks (18) programs.

C. Civil Penalty Assessments

Civil penalty assessments levied by the SD amounted to 8% of all assessments levied by the FDEP in 2009, a modest 1% improvement from 2008. It assessed \$904,643.00 for the year, a \$57,329.08 (7%) increase from the penalties assessed by the district in 2008. The median assessment for all programs combined was \$1,600.00, a decline from 2008.

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

Program	Total \$ Assessed	2008 Medians	2009 Medians
AB	\$18,750.00	\$2,000.00	\$2,000.00
AG	\$5,350.00	\$600.00	\$925.00
AO	\$3,705.00	\$0.00	\$3,705.00
AP	\$6,900.00	\$425.00	\$1,000.00
AV	\$45,112.50	\$7,702.50	\$22,556.25
DF	\$85,350.00	\$2,760.00	\$3,000.00
DW	\$375,247.00	\$2,500.00	\$1,500.00
EP	\$20,800.00	\$3,000.00	\$3,500.00
HW	\$63,167.50	\$2,900.00	\$2,100.00
IW	\$6,000.00	\$1,250.00	\$2,000.00
MA	\$10,310.00	\$0.00	\$500.00
PW	\$22,200.00	\$950.00	\$750.00
SL	\$30,850.00	\$2,000.00	\$2,000.00
SW	\$101,151.00	\$4,075.00	\$3,100.00
TK	\$62,000.00	\$3,500.00	\$15,000.00
UC	\$47,750.00	\$600.00	\$23,875.00

Two program areas, domestic and hazardous waste, saw back-to-back declines in the median assessments for 2009 compared to 2008. Declines were also seen in the potable water and solid waste programs as well. Otherwise, the programs held their own compared to 2008. While the gains were sizeable in the tanks and underground injection well programs it should be noted that there were only 3 cases in the former and one in the latter.²¹

D. Civil Penalty Collections

\$391,829.31 was collected by the SD in 2009, compared to \$544,311.53 collected in 2008. The amount collected represents 8% of all dollars collected by the Department in civil penalties in 2009.

²¹ While there was only one UC case, the penalty assessment was divided between a straight penalty assessment and an in-kind penalty, thus the median was less than the total penalty.

G. All Other Enforcement

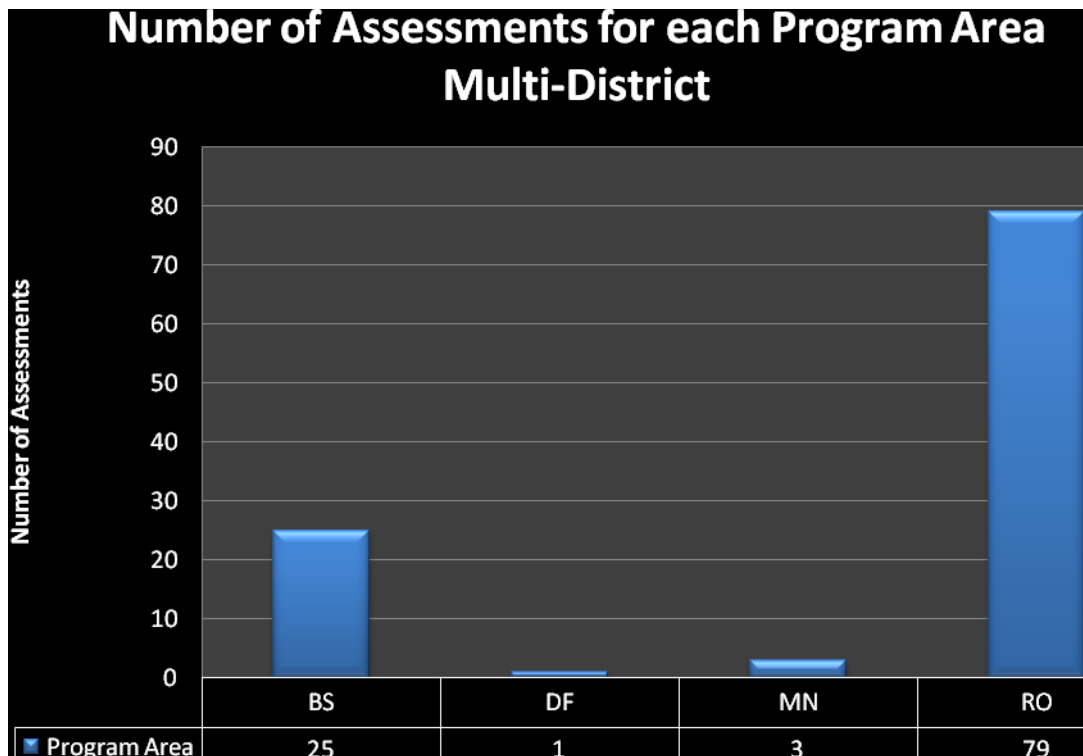
A host of other cases, primarily stormwater runoff cases and beaches and coastal systems cases are handled by the Department's headquarters in Tallahassee. These cases are cumulatively referred to as the "Multi-District" or "remaining categories."

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

The remaining categories sent 3 Case Reports to the OGC in 2009. They issued no NOV's, 21 Final Orders, and 87 Consent Orders—the latter category representing a decline from 2008. The remaining categories accounted for 2% of all Case Reports, 0% of the NOV's, 20% of the Final Orders and 8% of all Consent Orders.

B. *Program Area Enforcement*

The following chart provides the number assessments issued by Other Enforcement by program area in 2009:



There were 9 more assessments in the beaches and shores program in 2009 compared to 2008, while stormwater discharge assessments dropped by 25 cases.

C. Civil Penalty Assessments

Civil penalty assessments rose in 2009, from \$180,637.25 in 2008 to \$195,782.75. This accounts for 2% of all assessments levied by the FDEP in 2009. Assessments broke down as follows:

Program	Total \$ Assessed	2008 Medians	2009 Medians
BS	\$27,750.00	\$750.00	\$750.00
DF	\$2,000.00	\$0.00	\$2,000.00
MN	\$19,470.00	\$3,000.00	\$4,000.00
RO	\$146,562.75	\$392.00	\$370.00

Median assessments dropped in the stormwater discharge program for the second year in a row.

D. Civil Penalty Collections

\$145,800.59 was collected by the remaining categories in 2009, significantly less than the \$178,540.75 they collected in 2008. The 2009 performance represents 3% of all dollars collected by the Department in civil penalties in 2009.

CONCLUSION

While there were bright spots for the Department in 2009, e.g. the continuing drop in the use of short-form consent orders to resolve enforcement cases, the unfortunate reality is that the bad outshined the good. There was a drop in the number of enforcement cases, the number of penalty assessments and a sizeable drop in the dollars assessed in penalties in 2009, including a drop in the dollars assessed in the hazardous waste program. Last, but not least, there was also a drop in the collection of civil penalties.

This administration came into office stating very publically that it would adopt policies that were tougher on polluters. This is particularly true, we were told, with respect to hazardous waste violations. But once the spotlights of the cameras dimmed it is now clear that the Department did little, if anything, to fundamentally change the manner in which it punished those who discharge toxic wastes into Florida's waters and land. No, after three years the numbers simply tell a much different story. Instead of seizing the opportunity to begin to turnaround the horrid performance that we saw under the previous administration, the Department, under the leadership of Secretary Sole, has very clearly continued the downhill slide. Sadly, it can now be counted on to do little more than act as a giant public relations machine for whoever happens to be holding the reins of power.

Florida is now facing what appears to be one of the greatest threats to its environment in decades. After years of overdevelopment, destruction of wetlands and encroachment upon lands and waters needed for endangered species we now face the threat of an oil spill that could destroy our beaches, remaining wetlands, habitat for endangered species, our seafood industry and the very livelihoods of Floridians who rely upon the water to earn a living. In the midst of this catastrophic event we have watched as the Governor has taken \$25 million from the polluter to be used for public relations to tell the world that Florida's beaches and waters are clean. Given the Department's history of preferring to side with polluters over the environment, we now have to ask ourselves, what will happen in the future if the waters that people enjoy actually become polluted with petroleum and/or dispersants. Will the Department have the strength to tell the public that they cannot, in fact, enjoy Florida's environment without putting their own health at risk? The future will answer this question to be sure.

We can only hope that the Department will use this catastrophe to right the ship and finally decide to begin forcefully enforcing Florida's environmental laws in such a way that matches the spin to which we have become accustomed. It is time to just say "no" to the developers, the oil companies and the host of other polluters who have so steadily endeavored to turn Florida's environment into one big amusement park. It is time that we had a department that actually saw its mission as protecting Florida's environment—not the backsides of those who would do otherwise.

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.