



Florida

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COMPLIANCE RESULTS AT RICK SCOTT'S FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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This report addresses misleading and incorrect statements by the Florida Department of Environmental Protection (FDEP) on environmental compliance rates in major programs administered by FDEP. The information provided herein was obtained from raw data provided to Florida PEER by the FDEP in response to multiple public records requests by Florida PEER under Chapter 119, Florida Statutes.

Executive Summary

This report follows an investigation by Florida PEER into claims made by FDEP that environmental compliance in the regulated community rose to historic high levels because of changes made by FDEP to its administration of environmental regulations. Those changes were made in 2011 during the administration of Governor Rick Scott and have continued under the administration of Governor Ron DeSantis.

FDEP claims that it changed its approach to ensuring compliance with environmental regulations by seeking to educate the regulated community about the steps needed to comply with permits. Although the FDEP has always educated the regulated community about the steps needed to comply with permits, the recent changes de-emphasized traditional inspections and environmental enforcement. Under this new approach, FDEP now sends “Compliance Assistance Offers” (CAOs) to violators when violations are found. These CAOs advise the violator that no formal enforcement will be initiated if the violator corrects the identified problem or allows FDEP to educate the violator about the steps needed to comply with the violator’s permit. Under this new approach, the FDEP theoretically subjects only the most recalcitrant violators to formal enforcement.

FDEP has repeatedly claimed that environmental compliance rates have risen to historically high levels because of this new approach.

Our investigation based on data provided by FDEP finds there is no evidence to support FDEP’s claims. Specifically, we have found that:

- FDEP has repeatedly made misleading and incorrect statements about environmental compliance rates in Florida.
- FDEP has provided no data to back up its claim that compliance rates are the best since 2008. In other words, it was exaggerating its claims of historically high compliance rates based upon non-existent data.
- The number of statewide inspections has dropped 46 percent, from 15,514 in 2012/2013 to 8,431 in 2017/2018.
- FDEP has consistently overstated compliance rates of those facilities inspected. Between 2015 and 2018 FDEP has overstated compliance rates by 23.15%.
- FDEP now bases its “compliance rates” on inspected facilities that are not in “significant non-compliance” without defining what “significant non-compliance” means.

- There was no significant improvement in reducing the percentage of facilities in significant noncompliance as the term is used by FDEP.
- There was no improvement in reducing the percentage of the remaining facilities that are noncompliant.
- FDEP does not consider reporting violations to be “significant.” However, facilities that fail to submit timely reports on pollution emissions and discharges often have underlying environmental problems.
- The lowest compliance levels were in the potable water and domestic wastewater programs. The statewide three-year average of those programs is 41.62% for potable, i.e. drinking, water, 51.56% for NPDES wastewater facilities, and 47.13% for non-NPDES domestic wastewater facilities. Meanwhile, the number of inspections in those programs rose, albeit slightly, in only the NPDES wastewater program.
- The percentage of noncompliant facilities against which FDEP has initiated formal enforcement has steadily declined since 2015/2016, despite compliance rates remaining static. In the last year for which we have both compliance and enforcement data, i.e. 2017, enforcement actions were initiated in only 10% of all cases in which facilities were out of compliance.

Florida residents have a right to honest, open government. FDEP has said consistently said that environmental compliance has been improving under this new cooperative approach. However, FDEP’s claims are not supported by FDEP’s own data which shows a decline in the number of inspections and enforcement actions, and no evidence of higher compliance rates. In fact, the data shows shockingly high levels of non-compliance in potable water systems and waste water facilities, which indicates a systematic failure by FDEP to provide basic oversight in a way that protects the health of Florida residents and their waterways.

FDEP’s failure to conduct an adequate number of inspections and to properly enforce environmental and public health laws has real life consequences. While FDEP was bemoaning the onslaught of algae and red-tide in Florida, for example, their own compliance data shows a remarkable lack of oversight over water discharges and poor levels of compliance with the permits they were issuing. We now have the data to know that one result of FDEP’s compliance approach is an enforcement-free holiday for many polluters.

Introduction

When Rick Scott became governor in 2011, the Florida Department of Environmental Protection’s (FDEP) approach to enforcement took a decidedly different turn. For years the FDEP had been reticent to initiate formal enforcement against violators, but the Scott

administration effectively halted enforcement in most cases. The promoted concept was that working with the regulated entities (something that the FDEP had always done in the past when violators were receptive) would result in higher compliance. This report considers the claims made by the FDEP that compliance rates were steadily rising due to this new approach. For years these claims were made without the public having the ability to really look at their legitimacy. It is only now that we have been able to obtain the data necessary to understand the reality behind the FDEP's claims.

In 2007, then Secretary Michael Sole introduced a new penalty policy that would supposedly result in stricter enforcement against polluters. We analyzed this "new" policy and [published](#) our [analysis](#) that was, to be fair, rather critical of the FDEP's claims. Secretary Sole [responded](#) to our analysis on August 2, 2007, and claimed that, "[w]e are tackling complex, long-standing environmental problems and doing it more efficiently and at less cost to Florida's taxpayers, **while increasing out attention to the 'worst of the worst' offenders** inasmuch as Legislative support allows for. We stand by our strong record of enforcement." (Emphasis added) Notwithstanding Secretary Sole's histrionic assertions, enforcement under his and Governor Crist's administration did not, in the end, produce markedly improved results. Our annual analyses showed that [as early as 2008](#), this so-called stricter policy was not bearing fruit. Our annual reports¹ issued in each of the four years of that administration amply demonstrated that sad reality.

The FDEP's 2007 claim that it would be stricter on enforcement was repeated when Governor Scott took over in 2011. However, the stricter enforcement policy was essentially a restatement of former Secretary Sole's assertions that the enforcement would be targeted towards the absolute worst offenders. In essence, the stricter enforcement policy was now being used as a justification for the administration's desire to take enforcement in far fewer cases than had been seen in the past. Consequently, a new policy was initiated that overtly courted environmental offenders with "compliance assistance."

The FDEP's Post-2011 Public Claims of Compliance

Although the new policy attempted to paint the FDEP as an agency that, prior to Governor Scott, had not worked hard enough with environmental offenders in order to achieve compliance, the fact is that the agency had historically shied away from taking enforcement as a first resort. FDEP's Directive 923² had always emphasized working with offenders to bring about compliance. Formal enforcement would be needed in those cases in which that approach did not work.

¹ 2007: https://www.peer.org/assets/docs/fl/08_16_6_flpeer_2007_enforcement_rpt.pdf
2008: https://www.peer.org/assets/docs/fl/09_3_6_fl_peer_enforcement_rpt_on_2008.pdf
2009: https://www.peer.org/assets/docs/fl/6_23_10_Florida_PEER_Report_on_2009_Enforcement.pdf
2010: https://www.peer.org/assets/docs/fl/8_29_11_FL_Env_%20Enforcement_Report_2010.pdf

² The 2013 version of Directive 923 may be found at https://floridadep.gov/sites/default/files/dep_923_civil_penalty_directive.pdf. It did not dramatically alter the pre-formal enforcement approach to be taken by the FDEP.

The Scott administration undoubtedly knew that its torpedoing of significant aspects of the FDEP's enforcement program would be met with public backlash. What we began to see, therefore, was a media campaign that began claiming that this policy was resulting in new levels of compliance unseen in previous years. Rates were supposedly reaching historically high levels under this new approach. The public campaign appeared to begin in July 2012, when Jeff Littlejohn, former deputy director of regulatory programs, [claimed in an op-ed article](#) in the *Tallahassee Democrat* that compliance under the new administration's policies was reaching significantly high levels. In his op-ed, Littlejohn went so far as to claim that noncompliance rates in the hazardous waste program had actually dropped from 10 percent in 2009 to 2 percent in 2012. In response to these claims, Florida PEER submitted a public records request to the FDEP seeking the data upon which Littlejohn had relied in his op-ed. The FDEP responded to this request by producing a short spreadsheet that had been created *after* the op-ed was published. Moreover, the "data" in the spreadsheet [did not even support Littlejohn's claims](#).

The FDEP continued to push the claim that compliance was on the rise under Scott's direction. In January 2013, [the agency claimed](#) that in 2012, compliance rates had hit a five-year high. This remarkable improvement had occurred just since the new administration had taken over. The agency now claimed that only 6 percent of facilities were out of compliance; however, it noted that other facilities had also been found to have violations. Those violations, it was claimed, had no impact upon Florida's environment. According to the FDEP, 96 percent of Florida's facilities were in "significant compliance" in 2012, while 72 percent were in "full compliance." In its press release, the FDEP noted that both numbers represented significant improvements based upon results dating back to 2008.

In a 2014 statement to WFTV the FDEP continued to claim that compliance in Florida was improving. [WFTV relayed this claim when it reported that](#), "[d]uring the last three years, the Florida Department of Environmental Protection has made great strides toward protecting Florida's environment," said DEP Press Secretary Tiffany Cowie in a written statement to Eyewitness News. "Compliance rates across the department's regulatory programs are at an all-time high of 96-percent. That can be attributed to an uptick in outreach efforts to businesses. In 2013 alone, DEP participated in more than 5,800 events in an effort to increase compliance rates, resulting in greater environmental protection."

The Actual Compliance Data Not Previously Reported by FDEP

The FDEP's public pronouncements on the issue of compliance have clearly been designed to give Floridians the impression that only a small number of facilities in the state are in noncompliance with their permit, and that the FDEP has been taking enforcement against them. In order to advance this meme, the agency has necessarily minimized both the number and significance of facilities in Florida that are not labeled as being in "significant" noncompliance.

The agency has accomplished its goal of minimizing the number of facilities labeled as significantly noncompliant by changing how it reports the results of its inspections. First, when the FDEP claims that a certain percentage of its regulated facilities are "in compliance" it is basing the claim solely upon an evaluation that it performs upon the number of facilities *that it actually inspected*. The actual number of regulated facilities is typically much higher than the number that have been inspected, because the FDEP simply doesn't have a sufficient number of

inspectors to inspect each facility every year. Thus, by measuring compliance just as a fraction of the number of facilities inspected instead of the much larger number of regulated facilities, the FDEP has manufactured a misleadingly high compliance rate.

The second critical issue that needs to be understood is that the FDEP has told the public (and the regulated community) that it only cares about facilities that are in what it terms “significant noncompliance.” To be sure, it is a good thing for the FDEP (or any environmental regulatory agency) to be primarily concerned about facilities in significant noncompliance. However, an agency necessarily risks *lowering* the number of facilities in full compliance when it tells them that some violations will simply be unworthy of enforcement. It is the equivalent of the Florida Highway Patrol informing motorists that only DWIs will receive tickets, while other moving violations will be effectively ignored.

The third consideration is the way the FDEP characterizes violations. Its approach is neither uniform nor consistent, leading to a significant undercounting of noncompliant facilities. Setting aside program specific guidance on facility operations, FDEP inspectors typically rely upon two documents when looking at how to handle facilities that are found to be in noncompliance with their permits. The first document is what is known as Directive 923. This is a directive issued by the FDEP Secretary that generally describes the agency’s approach to environmental enforcement. The second, and main document is the agency’s Enforcement Manual that specifies how to inspect facilities as well as what actions should be taken when violations are found. The Enforcement Manual includes a section on how to characterize penalties based upon two factors, the extent of environmental harm caused by the violation and the extent to which the violation deviates from the facility’s permit. These factors are put into a matrix that then tells the inspector the general range of civil penalties that should be charged. Interestingly, all the subcategories that deal with the extent of environmental harm conclude that at least some environmental harm or threat to the public can result from violating the permit. Further, Section 4.0 in the manual (entitled “Determining Non-Compliance”) simply tells inspectors how to spot noncompliant situations. It provides no guidance on how to label each finding of noncompliance. What is clear from these two documents; however, is that there does not appear to be an overriding rule of general application that defines what the FDEP considers to be a “significant” violation. Indeed, a [memorandum](#) authored on August 20, 2014, by Clifford D. Wilson III, P.E., the Deputy Secretary Regulatory Programs, specifically speaks to the issue of how to characterize facilities as being in significant noncompliance. This memorandum shows that while there may be some overriding program guidance the ultimate determinations have not been consistent and are largely subjective, based upon several factors such as the facility’s history and (we would presume) the nature of the violations identified.³ In practice, this results in facilities being

³ It should be noted that the US EPA does provide some guidance on programs such as RCRA. In a 2003 guidance document the EPA noted that facilities could be considered to be in significant non-compliance even though there has been no significant environmental or health damage. <https://www.epa.gov/sites/production/files/documents/finalerp1203.pdf>. This, of course, directly contradicts the FDEP’s claim that environmental damage is required in order to classify a facility as being in significant noncompliance.

marked as in “minor-non-compliance” when, in fact, the violations were significant. See, e.g. the wastewater case against [Mill Creek RV Park](#) in the Northeast District.

The one area that the FDEP clearly considers to be inconsequential is that of reporting violations. The [2013 press release](#) stated this position, while also mentioning that the FDEP regulates “roughly 75,000 facilities statewide.” The FDEP’s position is absurd. The fact is that environmental regulation is heavily dependent upon the submission to the agency of timely and accurate reporting by each of the regulated facilities. These reports typically include data such as the nature and extent of pollutants that are discharged by each facility into Florida’s air, groundwater and surface waters. The reports are required by the permits issued by the FDEP, which means that each failure to file them in a timely manner is a permit violation. The failure to submit reports on a timely basis is not infrequently associated with other operational problems at offending facilities. Further, when reports are late or simply not submitted, the reality is that the FDEP really doesn’t know the extent to which, if any, the regulated community is harming Florida’s environment. Yet, the FDEP, in its press release has signaled to the regulated community that it considers these violations to be inconsequential.

The final concern about the FDEP’s claims of high compliance rates is that there is now a tendency of some inspectors to minimize the seriousness of violations in order to please the facility and/or the inspector’s manager. [In 2016](#), we reported on this behavior in our [report](#) on the FDEP’s handling of hazardous waste (RCRA) cases throughout Florida. We have also seen situations in which inspectors have advised facilities to correct violations prior to the inspection report being finalized, thus resulting in better ratings for the facilities involved and/or deciding to forego enforcement. See, e.g. the wastewater case involving [Clay County Utilities](#). And, of course, once the ratings are improved the overall statistics for the FDEP improve.

The Data Collection Process

With the above in mind, we turn to the data that we have received from the FDEP concerning its claims of high compliance rates. This data was supplied to us by the FDEP in response to a public records request that we filed in November 2018. Some background is necessary for the reader to fully appreciate the final data, and the legitimacy of the FDEP’s claims that current compliance is at an all-time high in Florida.

When we first submitted our records request, we asked for:

- “[e]xcel spreadsheets created by the Department (excluding quarterly reports) that document the Department’s final statewide claimed compliance rates, broken down by district, for fiscal years 2007/2008 through and including 2017/2018” for all major program areas;
- “Excel spreadsheets created by the Department (excluding quarterly reports) that document the Department’s final statewide claimed number of compliance assistance

offers, broken down by district, for fiscal years 2007/2008 through and including 2017/2018” for all major program areas;

- “...final reports submitted to the Department’s Secretary each fiscal year from 2007/2008 through the present, in which the issues of department-wide compliance rates and/or the number of department-wide compliance assistance offers are covered.”

The FDEP’s response to this request was to send Word documents, for each and every fiscal year beginning in 2013/2014 and continuing through 2017/2018. The response was submitted on January 11, 2019. These documents showed only the final calculated compliance rate for each district, not the underlying data that we had requested.⁴ No documents showing the number of compliance assistance offers were provided and no final reports to the Secretary were provided.

We responded to this request by reminding the FDEP that we had asked for the underlying data. The FDEP’s responded two months later, on March 29, 2019, by sending us the requested spreadsheets for fiscal years 2012/2013, 2015/2016, 2016/2017, and 2017/2018. While the spreadsheet for 2012/2013 did not include a programmatic breakdown, it did include the number of inspections conducted, and the number of facilities that were judged to be in significant noncompliance. No data for 2013/2014 and 2014/2015 was provided. We then requested that we be given the data for the latter two years, to which the FDEP responded that “the current system was not in place until 2015/2016.” Consequently, no further data was produced.

There are three glaring problems that are presented by the FDEP’s response to our request for records that would support its claims:

- In its 2013 press release it claimed that 72 percent of all facilities were in compliance. However, the data supplied for 2012/2013 showed that for that year the FDEP was not tracking the number of facilities that were judged to be in noncompliance—only the number of inspections and findings of significant noncompliance were tracked;
- In its 2013 press release the FDEP claimed that compliance in 2012/2013 was the highest since 2008. However, when we asked for records dating back to 2008 the FDEP responded that the earliest year for which data was collected was 2012;
- The FDEP’s claim that compliance assistance is working is not supported by the records, inasmuch as the agency doesn’t track the number of compliance assistance offers that it has issued, much less the end-result of those offers.

The Data Produced by the FDEP

As noted above, the data we obtained for 2012/2013 contains only information about the number of statewide inspections and the number of those inspections that found the facilities to be in significant noncompliance (SNC). Consequently, there is no realistic way to determine the real

⁴ Some of the documents also showed that the districts were reporting, on a quarterly basis, the average number of days that it took to process permits, the idea being that the number of days was expected to be reduced.

extent of noncompliance for that fiscal year. With that said, the numbers supplied by the FDEP are shown below:

2013/2013 - Total Inspections & SNC

District	Total Inspections	SNC	% SNC
NWD	2,074	93	4%
NED	2,465	121	5%
CD	3,024	259	9%
SED	2,447	96	4%
SD	3,430	132	4%
SWD	2,074	93	4%
Statewide Totals	15,514	794	5%

Beginning with fiscal year 2015/2016 we were able to determine the total number of facilities to be found in noncompliance each year, and to then establish the total number of facilities that the FDEP’s inspectors found to be in noncompliance in each district. The actual percentages are markedly different from the FDEP’s claims.

For 2015/2016 the data shows:⁵

District	INC	MNC	SNC	Total Insp	Claimed Compliance Rate	Actual Compliance Rate	Difference between Claimed and Actual Compliance
NWD	997	209	31	1,237	97.49%	80.60%	16.90%
NED	726	306	60	1,092	94.51%	66.48%	28.02%
CD	786	457	66	1,309	94.96%	60.05%	34.91%
SWD	883	337	84	1,304	93.56%	67.71%	25.84%
SD	1,787	371	53	2,211	97.60%	80.82%	16.78%
SED	1,159	174	33	1,366	97.58%	84.85%	12.74%
Totals	6,338	1,854	327	8,519	96.16%	74.40%	21.76%

⁵ INC=The number of facilities that were inspected and found to be in compliance. MNC=The number of facilities that were inspected and found to be in noncompliance (excluding those that were SNC). SNC=The number of facilities that, upon inspection, were found to be in significant noncompliance. Total Insp=The total number of facilities inspected. Claimed Compliance Rate=the compliance rate claimed by the FDEP. Actual Compliance Rate=The percentage of facilities that were found to be in either noncompliance or SNC.

For 2016/2017 the data shows:

District	INC	MNC	SNC	Total Insp	Claimed Compliance Rate	Actual Compliance Rate	Difference between Claimed and Actual Compliance
NWD	924	200	35	1,159	96.98%	79.72%	17.26%
NED	767	383	39	1,189	96.72%	64.51%	32.21%
CD	705	440	92	1,237	92.56%	56.99%	35.57%
SWD	775	318	69	1,162	94.06%	66.70%	27.37%
SD	1,417	424	49	1,890	97.41%	74.97%	22.43%
SED	1,439	179	48	1,666	97.12%	86.37%	10.74%
Totals	6,027	1,944	332	8,303	96.00%	72.59%	23.41%

For 2017/2018 the data shows:

District	INC	MNC	SNC	Total Insp	Claimed Compliance Rate	Actual Compliance Rate	Difference between Claimed and Actual Compliance
NWD	1,188	203	25	1,416	98.23%	83.90%	14.34%
NED	940	326	24	1,290	98.14%	72.87%	25.27%
CD	735	516	49	1,300	96.23%	56.54%	39.69%
SWD	794	393	43	1,230	96.50%	64.55%	31.95%
SD	1,519	439	69	2,027	96.60%	74.94%	21.66%
SED	960	170	38	1,168	96.75%	82.19%	14.55%
Totals	6,136	2,047	248	8,431	97.06%	72.78%	24.28%

On a statewide basis, then, the compliance rates for each year are:

Year	INC	MNC	SNC	Total Insp	Claimed Compliance Rate	Actual Compliance Rate	Difference between Claimed and Actual Compliance
2015/2016	6,338	1,854	327	8,519	96.16%	74.40%	21.76%
2016/2017	6,027	1,944	332	8,303	96.00%	72.59%	23.41%
2017/2018	6,136	2,047	248	8,431	97.06%	72.78%	24.28%
Total	18,501	5,845	907	25,253	96.41%	73.26%	23.15%

The FDEP’s own data shows that from 2015 to the present, based upon actual inspections, roughly 73 percent of the facilities that the FDEP regulates are in general compliance, while 27 percent are not. This is a far cry from the claims that over 95 percent of the facilities are in compliance with their permits. And while the FDEP may claim that it has always said that the overall compliance rate is roughly 72 percent, the fact is that, based upon inspections and the FDEP’s own non-specific guidelines, we know that the decisions that are made to rate facilities compliance status are often subjective and are sometimes made after the facility has corrected deficiencies that are identified by the inspectors.

It should also be remembered that, according to the FDEP, it regulates at least 75,000 entities in Florida. It is reasonable to assume that, on average, 27 percent of those facilities are in noncompliance with the FDEP’s regulations. Consequently, it follows that roughly 20,250 of these entities are out of compliance each year.

The data also tells us that the Central District is the district that has consistently had the poorest compliance rates. In two of the three years, the Northeast District has had the second poorest compliance rate in the state. The best compliance appears to consistently be in the Southeast and Northwest Districts.

What is equally striking is the number of inspections conducted by the FDEP each year. The FDEP data shows that in 2012/2013 there were 15,514 inspections conducted in Florida. By 2015/2016 this number had dropped to 8,519. For the past three years the average number of inspections conducted by the FDEP in Florida is 8,418. On average, a **46 percent fewer inspections were conducted from 2015 through 2018 than in 2012/2013.**

Finally, the FDEP’s supposed motivation for easing strict enforcement has been that the use of “compliance assistance” would result in regulated facilities complying with environmental laws

at higher rates. What this data tells us is that the use of this regulatory approach has **not** resulted in greater compliance. Indeed, the SNC rates reported by the FDEP have remained essentially unchanged, as have the rates of general noncompliance. Consequently, the only benefit seems to be that the regulated entities enjoyed lower threats of enforcement under the Scott administration. We have seen no indication from the current administration that these policies will change.

Program Compliance

The data supplied by the FDEP from 2015/2016 to the present also breaks down compliance rates among the major programs. This data shows that, on average, the compliance rates vary considerably among the programs. We have listed below the three-year averages for each of the reported programs:⁶

Three-Year Compliance Average							
Program	INC	MNC	SNC	Total Insp	Claimed Compliance Rate	Actual Compliance Rate	Difference between Claimed and Actual Compliance
Air	799	103	16	918	98.26%	87.04%	11.22%
Beaches	2,992	0	10	3,002	99.67%	99.67%	0.00%
DF-ERP	5,627	876	71	6,574	98.92%	85.59%	13.33%
DW	995	984	132	2,111	93.75%	47.13%	46.61%
DW-NPDES	1,340	1,162	97	2,599	96.27%	51.56%	44.71%
HW	893	542	69	1,504	95.41%	59.38%	36.04%
IW	1,500	125	31	1,656	98.13%	90.58%	7.55%
PW	1,353	1,532	366	3,251	88.74%	41.62%	47.12%
SW	2,510	194	23	2,727	99.16%	92.04%	7.11%
Tanks	923	182	80	1,185	93.25%	77.89%	15.36%
UIC	447	44	14	505	97.23%	88.51%	8.71%

As absurd as it seems, we found that the districts were, at various times, reporting 100 percent compliance in some program areas, even though there were documented instances of inspections showing facilities not to be in compliance. For example, in fiscal year 2016/2017, the Southeast District reported that it had inspected 145 DW-NPDES facilities and that 100 percent of them were in compliance. However, the data showed that of the 145 facilities, only 68 were rated as being in compliance, while 77 were in noncompliance. The Southeast District nevertheless

⁶ The program abbreviations are: DF-ERP=dredge and fill; DW=domestic waste (non-surface water discharges); DW-NPDES=domestic waste Clean Water Act surface water discharges; HW=hazardous waste; IW=industrial waste; PW=potable water; SW=solid waste; UIC=underground injection discharges

claimed that 100 percent were in compliance, because none of the facilities were in *significant* noncompliance, i.e. SNC. This is, in fact, how every district calculates its compliance results—by considering *only* the number of SNC facilities to count towards the noncompliance rate. It leads to absurd results, such as in the above-cited case where, the reality is that only 46.90 percent of the facilities were in compliance, not the 100 percent as reported by the district.

What should give every Floridian pause is that the **lowest** compliance rates were found to be in the potable water program, followed by the two domestic wastewater program categories. Over the past three reporting cycles only 41.62 percent of the potable water facilities were found to be in compliance and less than 52 percent of domestic wastewater facilities were in compliance. Further, the compliance rates have been dropping in each of the programs since the 2015/2016 fiscal year.

Of the three program areas (PW, DW and DW-NPDES), the number of inspections rose in only one of the last 3 years and that was in only one program, the DW-NPDES program. Otherwise, the number of inspections steadily declined. Consequently, one cannot conclude that there is a serious effort to improve compliance in these programs.

Enforcement Actions Taken Against Noncompliant Facilities

In the past, we have only been able to report the number of new enforcement cases opened by the FDEP each year. Our annual enforcement reports have delved heavily into those numbers, and those numbers have fallen dramatically since 2011. But what we haven't been able to show is the number of known cases of noncompliance that have avoided enforcement as a result of the

FDEP’s misguided policies. We can now put those situations in more perspective now that we have the compliance numbers from at least some of the years in question.

The following table lists the number of enforcement actions opened by the FDEP in calendar years 2015 through 2017. There was a significant decline in the number of new cases in 2017.

Enforcement Actions by FDEP, 2015-2017

Year	Number of Enforcement Cases
2015	297
2016	307
2017	220

Because the above numbers are based on calendar year results and the compliance data is based upon fiscal year results, it’s not possible to make an exact comparison on an annual basis. However, over time the results and their trends should be instructive. The table below takes the enforcement results and then displays the number of facilities known by the FDEP to be in SNC and in general noncompliance during these three years:

Enforcement by Compliance Status

Year	Number of Enforcement Cases	Number of Facilities in MNC	Number of facilities in SNC	Total Number of Facilities in Noncompliance
2015	297	1854	327	2181
2016	307	1944	332	2276
2017	220	2047	248	2295

The FDEP has never claimed that it takes enforcement in every case in which a facility is determined to be in SNC. Nor could it. Consequently, the fact that the number of enforcement cases is roughly equal to, or a bit lower than, the number of cases found to be in SNC is of little help in establishing a rate of enforcement. To get an idea on the rate of enforcement, we have calculated each year’s rate as being a comparison between the number of facilities known to be in noncompliance and the number of cases in which formal enforcement was initiated. Each year’s rate is stated below:

Percentage of NC Facilities Targeted by Enforcement

Year	Percentage of Noncompliant Facilities against which Formal Enforcement was Initiated
2015	14%
2016	13%
2017	10%

Due to the low compliance rates, we were interested in the rate of enforcement in potable water and domestic wastewater cases for these three years. We would expect that enforcement in those programs would be stronger due to the problems with compliance. But that was not what we found. For the potable water program, the results were:

Enforcement against Potable Water Facilities

Year	Number of PW Enforcement Cases	Number of Facilities in MNC	Number of facilities in SNC	Total Number of Facilities in Noncompliance	Percentage of Noncompliant Facilities against which Formal Enforcement was Initiated
2015	6	485	137	622	1%
2016	15	509	153	662	2%
2017	15	538	76	614	2%

In its enforcement data that it reports each year, the FDEP does not distinguish between non-surface water and surface water (NPDES) domestic waste discharges. We have therefore added both types of domestic wastewater discharge compliance data for each year so that an overall rate of enforcement can be obtained. The results are equally dismal:

Enforcement against Total Domestic Water Discharge Facilities

Year	Number of DW Enforcement Cases	Number of Facilities in MNC	Number of facilities in SNC	Total Number of Facilities in Noncompliance	Percentage of Noncompliant Facilities against which Formal Enforcement was Initiated
2015	34	702	82	784	4%
2016	44	640	77	717	6%
2017	34	804	70	874	4%

While it might not be optimal, enforcement rates similar to those in the above-two programs could be understandable if the compliance rates were high. But the compliance rates in these two programs are the lowest in the state, and one would reasonably expect enforcement rates to be correspondingly high—at least as high as the statewide averages of all programs. These results speak to a total enforcement breakdown in at least some programs.

Conclusion

Under Governor Rick Scott the FDEP told Floridians that environmental compliance would markedly improve by working with businesses and other regulated entities. Secretary Herschel Vinyard (who labored under a clear [conflict of interest](#) throughout his tenure) took great pains to put Scott’s program into place. His successor, Jon Steverson, continued the ill-conceived policies. During this time Floridians were told that the regulated community was complying with its permits at rates that were historically high. Simply stated, these claims were false.

The enforcement data that PEER had analyzed over the course of Scott’s tenure was consistently pointing to a breakdown in the enforcement of permits that the FDEP’s employees were being paid to oversee. Based upon the FDEP’s own data, we now know that the administration’s claims that it was taking enforcement against the worst offenders were only half true. Any objective review of the data leads one to the conclusion that there is no way that even a significant majority of the facilities that were operating in significant noncompliance were the subject of formal enforcement.

Equally important, however, is the fact that the FDEP cut by almost half the number of inspections that it was conducting in programs that it knew were not succeeding. The potable water program oversees Florida’s drinking water supplies, while the domestic wastewater programs oversee the discharges of pollutants into waterways with which Floridians and tourists routinely come into contact. Yet, efforts to increase inspections were poor, at best, even though the agency had compliance data that showed that problems existed.

We would all be well advised to consider that there are real life ramifications to the failure of facilities such as domestic wastewater facilities to comply with their permits. In 2018, Florida saw one of the worst outbreaks of blue-green algae that the state has experienced in recent memory. We also witnessed a red tide bloom that was made worse by the continual discharge of nutrients and decaying algae into the Gulf of Mexico. These events alone caused major health issues and economic paralysis in the state. And during this time Florida's governor and the FDEP acted as if they were perplexed by the problem. They wondered aloud how such a thing could happen on such a massive scale. They blamed entities such as the Army Corps of Engineers (ACOE) for releasing Lake Okeechobee water into major river basins. The ACOE is hardly without blame. But state officials must also bear a significant part of the blame, because it has long been clear that they are more concerned about the finances of the regulated community than the environmental health of Florida's ecosystem. All the while that they were bemoaning the onslaught of algae in Florida's waterways, their own compliance data was showing that their policies were not resulting greater compliance with the permits that they were issuing.

In the final analysis we should have known that Floridians were being lied to by the FDEP all along. It was apparent that numbers were being pulled out of thin air in 2012, when Deputy Secretary Littlejohn penned his op-ed article in the *Tallahassee Democrat* in which he claimed that compliance rates were already at historically high levels. We now know that until 2012 (at the earliest) the FDEP did not have any compliance data, meaning that the claims of historically high compliance under Scott were, and are at best, mere conjecture. To the contrary, the claims were being used to mask efforts by the FDEP to turn eight years of the Scott administration into an enforcement-free holiday for polluters.

Citizens have a right to honest, open government. It has been many years since they have gotten this from the FDEP.