



P.O. Box 14463 • Tallahassee, FL 32317-4463  
tel: 850-877-8097 • fax: 850-942-5264  
website: <http://www.peer.org> • e-mail: [flpeer@peer.org](mailto:flpeer@peer.org)

# **REPORT ON ENFORCEMENT EFFORTS**

## **BY THE FLORIDA, DEPARTMENT OF**

### **ENVIRONMENTAL PROTECTION**

## **CALENDAR YEAR 2010**

## **PRELIMINARY STATEMENT**

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2010. 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 .....	8
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 .....	22
c. Dredge and Fill Program .....	24
d. Domestic Waste Program .....	25
e. Hazardous Waste Program .....	26
f. Industrial Waste Program .....	27
g. Potable Water Program .....	29
h. Solid Waste Program.....	30
i. Tanks Program .....	31
7. Civil Penalty Collections .....	33
a. Air Program .....	35
b. Asbestos Program .....	36
c. Dredge and Fill Program .....	37
d. Domestic Waste Program .....	37
e. Hazardous Waste .....	38
f. Industrial Waste .....	39
g. Potable Water Program .....	39
h. Solid Waste Program.....	40
i. Tanks Program .....	40
DISTRICT ENFORCEMENT RESULTS .....	41
A. Northeast District .....	41
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i> .....	41
B. <i>Program Area Enforcement</i> .....	42
C. <i>Civil Penalty Assessments</i> .....	42
D. <i>Civil Penalty Collections</i> .....	43
B. Northwest District .....	43
A. <i>Case Reports, NOVs, Consent Orders, Final Orders</i> .....	43
B. <i>Program Area Enforcement</i> .....	44

C. Civil Penalty Assessments .....	44
D. Civil Penalty Collections .....	45
C. Central District .....	45
A. Case Reports, NOVs, Consent Orders, Final Orders .....	45
B. Program Area Enforcement .....	46
C. Civil Penalty Assessments .....	46
D. Civil Penalty Collections .....	47
D. Southwest District .....	47
A. Case Reports, NOVs, Consent Orders, Final Orders .....	47
B. Program Area Enforcement .....	48
C. Civil Penalty Assessments .....	48
D. Civil Penalty Collections .....	49
E. Southeast District .....	50
A. Case Reports, NOVs, Consent Orders, Final Orders .....	50
B. Program Area Enforcement .....	50
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 .....	52
C. Civil Penalty Assessments .....	53
D. Civil Penalty Collections .....	54
G. All Other Enforcement .....	54
A. Case Reports, NOVs, Consent Orders, Final Orders .....	54
B. Program Area Enforcement .....	55
C. Civil Penalty Assessments .....	55
D. Civil Penalty Collections .....	56
CONCLUSION .....	56
APPENDIX .....	58

## **EXECUTIVE SUMMARY**

### **A. Statewide Results**

Overall, the Department opened 1587 enforcement cases in 2010, a respectable increase from the 1503 cases opened in 2009. Three districts opened fewer enforcement cases in 2010. Those were the Northwest, Northeast and Southwest. However, the Southwest continues to engage in the most enforcement cases in the state.

The Office of General Counsel received 157 case reports in 2010, a 25% increase over 2009, and the largest number submitted since 2003. The Number of NOV's fell slightly from 116 in 2009 to 114 in 2010.

287 long-form consent orders were issued by the Department in 2010, more than double the number of such consent orders issued in 2009! 13% more model consent orders were issued in 2010 compared with 2009. Fewer short-form consent orders were issued in 2010 (725) compared to 2009 (811). This is the third year in a row that the usage of short-form consent orders has declined. All in all, these trends were decidedly positive.

The Department reversed its trend of decreasing civil penalty assessments in 2010. \$13,051,374.23 was assessed in civil penalties in 2010 representing a 20% increase over 2009's performance. The Department assessed **\$13,051,374.23** in civil penalties, **\$2,180,473.23 more than in 2009, ending a three year skid in assessments.** This is the biggest rate of civil penalty assessment for the Department since 2006.

Statewide there were 18 cases in which the Department assessed a civil penalty of \$100,000 or more, a 29% increase over 2009. 78% of these large assessments were against non-governmental entities, compared to 50% in the years past.

Overall four of the districts, as well as the headquarters, saw a decrease in the overall number of civil penalty assessments in 2010. However, only one district, the Southeast, saw a decrease in median assessments. The single highest assessment was an environmental resource permitting case against *Spar Shipholding AS* in the amount of \$543,026.30. The Southeast District levied this civil penalty. Of the 22 assessments that exceeded \$100,000.00 it is interesting that only 5 were hazardous waste cases. Also, this is the second year in a row that the Northwest District has levied a civil penalty assessment exceeding \$100,000.00 against the *Panama City-Bay County Airport and Industrial District* for dredge and fill violations. The FDEP strongly pushed to give this violator its permit over many objections because of the destruction to the wetlands that it was feared would occur. Now, it seems, the opponents' fears have been realized.

Six key program areas saw declines in the number of enforcement cases opened in 2010. Those program areas were asbestos, dredge and fill, domestic waste, hazardous waste, industrial waste and solid waste. This was the third straight year in which the number of domestic waste cases declined. It was the second straight year in which the number of solid waste cases dropped. With respect to actual dollar assessments there were declines in the median assessment averages

in the asbestos, waste cleanup, domestic waste, dredge and fill and hazardous waste and solid waste programs.

One district, the Southwest, vastly outperformed the other districts in the air, domestic waste, industrial waste programs and tanks programs. The Southwest's performance was such that without its results the data would have been truly dismal for the Department as a whole. The Northwest District outperformed the other districts in asbestos assessments, while the Central District's median assessments in that program were by far the highest. The Southeast District by far had the highest dollar assessments and the highest median assessments in the solid waste program. Department-wide the results were generally unimpressive in the hazardous waste program—median assessments fell in the Northwest, Northeast and Southwest Districts compared to 2009. This is the second year in a row in which median assessments declined in the Northeast and Southwest Districts. These results are particularly disappointing given the administration's assurances that its "new" penalty policy would bring stricter enforcement.

A statewide total of \$7,077,687.19 was collected by the FDEP in 2010, which is \$2,235,044.24 more than was collected in 2009. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$4,830,205.07 in 2010. Assuming the Department's valuation of these projects to be accurate, the result is a total collection by the Department of \$11,907,892.26.

With respect to collections, all of the districts collected over 50% of those dollars assessed. The Central District performed the worst with a 58% recovery, while the Southeast District performed the best with a recovery of 158%. When compared with 2009's results, the Northwest, Northeast and Central Districts collected smaller percentages of assessments in 2010, with the remaining districts faring better. In the domestic and hazardous waste programs only two districts collected over 50% of the actual dollars assessed, a disappointing result. The tanks program is the only program in which none of the districts collected 100% of the penalties assessed. Inasmuch as these numbers include credits for in-kind and penalty prevention projects that were completed the overall picture is rather mixed.

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

## ***B. District Results***

### **1. Northeast District**

The Northeast District initiated enforcement in fewer cases in 2010 than it did in 2009, although it increased the number of long-form consent orders that it issued. The district also assessed civil penalties in fewer cases in 2010 and the total dollars assessed in civil penalties also declined. The median assessments did improve, however. Total collections dropped as well.

## 2. Northwest District

For the second straight year the Northwest District has reduced the number of cases in which it took enforcement. It issued fewer consent orders while at the same time increasing the number of long-form consent orders as an enforcement tool. It also issued fewer short-form consent orders, although it used them at a greater rate than all other districts except for one. Civil penalty assessments dropped sharply as well in the Northwest District. Actual dollars assessed as penalties also dropped 7% compared to 2009. Total assessments were substantially down in asbestos, dredge and fill, domestic waste, hazardous waste, industrial waste, potable water and tanks cases. The district increased its collection of civil penalties slightly, the second straight year that collections declined.

## 3. Central District

The Central District increased enforcement cases by 22% compared to 2009. It continues to rely heavily on short-form consent orders, however. The district assessed civil penalties in more cases as well. However, it levied \$850,315.85 in civil penalty assessments in 2010. This is \$554,208.31 fewer dollars than assessed in 2009, a 39% decline. 2009's performance was a 43% decline from 2008, making this the second straight year of decreasing assessments. This is actually the lowest total for civil penalty assessments in this district since 2003. Total assessments fell sharply in the dredge and fill (70%), hazardous waste (59%) and industrial waste (85%) programs. The district did collect—\$428,123.16 in civil penalties in 2010, an improvement over 2009.

## 4. Southwest District

The Southwest District accounted for just over 1/3 of all enforcement cases opened by the Department in 2010. It opened more case reports than in 2009 as well issuing more consent orders. It lowered its dependency on short-form consent orders, thus continuing its reduced reliance upon this enforcement tool. Nevertheless, it still settles most of its cases with the use of short-form consent orders and its usage is the highest in the state. At the same time it sharply increased the number of long-form consent orders that it issued. The district assessed civil penalties in 445 cases in 2010. It assessed 26% more civil penalty dollars in 2010 than it did in 2009 and median assessments also rose in 2010. However, medians fell in a number of key program areas including dredge and fill, domestic waste and hazardous waste. There was improvement in the industrial waste medians. Civil penalty collections rose sharply for the year and accounted for 54% of all civil penalties collected by the Department.

## 5. Southeast District

The Southeast District initiated enforcement in 206 cases in 2010, a 56% improvement over 2009! It improved in every major area, especially in the area of case reports, which saw a 151% increase. In fact, it accounted for 56% of all case reports issued by the Department in 2010. It is the district least likely to use short-form consent orders. The initiation of cases did not translate to high numbers of penalty assessments however. In fact, civil penalties were assessed in fewer cases, particularly in the asbestos, domestic waste and hazardous waste programs. At the same time, the district almost doubled the dollars assessed in 2010 when compared with 2009's results. One would expect that in such situations the median assessments would also have risen, but in fact the median dropped in 2010. Essentially what occurred in this district was that there were several very high individual assessments that resulted in overall high numbers but many individual program areas actually saw decreases in their overall medians. The hazardous waste median did rise significantly, however. Civil penalty collections rose slightly in 2010.

## 6. South District

The South District took enforcement in a few more cases in 2010 than it did in 2009, but overall it was the second least likely district to initiate enforcement. It did show significant improvement in the use of case reports, more than doubling the number that it sent to Tallahassee in 2010. It also issued more consent orders in 2010 than it did in 2009. The district assessed civil penalties in fewer cases in 2010, the second straight year of declining numbers. It also assessed 10% fewer civil penalty dollars in 2010, although the median assessments rose somewhat. There were significant declines in dredge and fill, domestic waste and industrial waste. On the bright side, hazardous waste assessments rose sharply both in total dollars and medians. Total collections for the district saw a modest increase.

## 7. All Other Enforcement

This category typically involves the Beaches and Coastal Systems program and Stormwater Runoff cases. There was a sharp increase in the use of consent orders in 2010, but it sent no case reports to OGC. While it assessed civil penalties in fewer beaches and coastal systems cases, it increased its assessments in stormwater runoff cases. This category dramatically increased the dollars it assessed in civil penalties from \$195,782.75 in 2009 to \$1,753,320.00, predominately in the stormwater discharge program. It also significantly increased the dollars it collected in 2010.

## STATEWIDE ENFORCEMENT RESULTS<sup>1</sup>

### 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 157 cases in 2010, a significant increase over 2009. This is the fifth year in a row with increases in this category.

NOV issuance declined slightly in 2010 with 114 issued by the Department. This is 2 fewer NOVs than were issued in 2009.

The Department issued 287 long-form consent orders in 2010, 148 more than in 2009. This 106% increase continues a promising trend that we noted in last year's report.

While long-form consent orders increased, the use of model consent orders also increased just as significantly from 198 in 2009 to 224 in 2010. 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 increase usage is a positive.

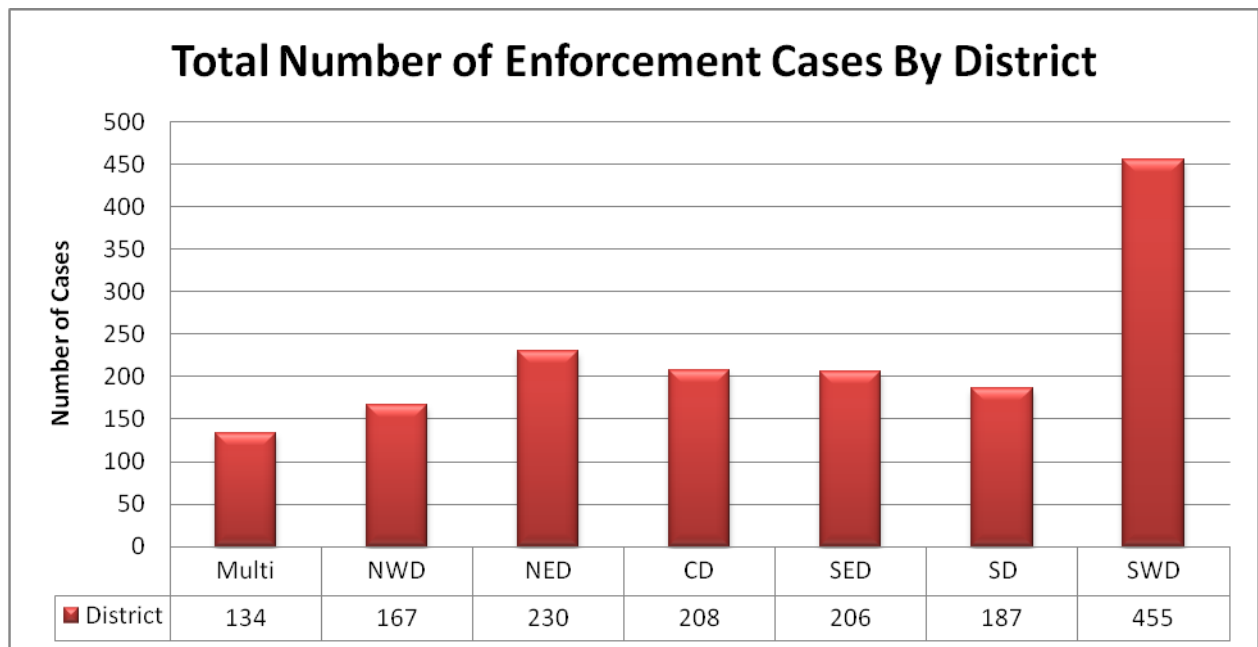
Fewer short-form consent orders were also issued in 2010. 725 such orders were issued statewide, compared to 811 in 2009. In 2010, 46% of all enforcement cases were resolved via short-form consent orders, an 8% drop from 2009. While this is still a high percentage overall it is clear that the use of this vehicle to resolve environmental violations is trending down.

The Department issued 65 Final (Enforcement Related) Orders in 2010, a decrease compared to 2009.

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

---

<sup>1</sup> *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](http://www.peer.org/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf)

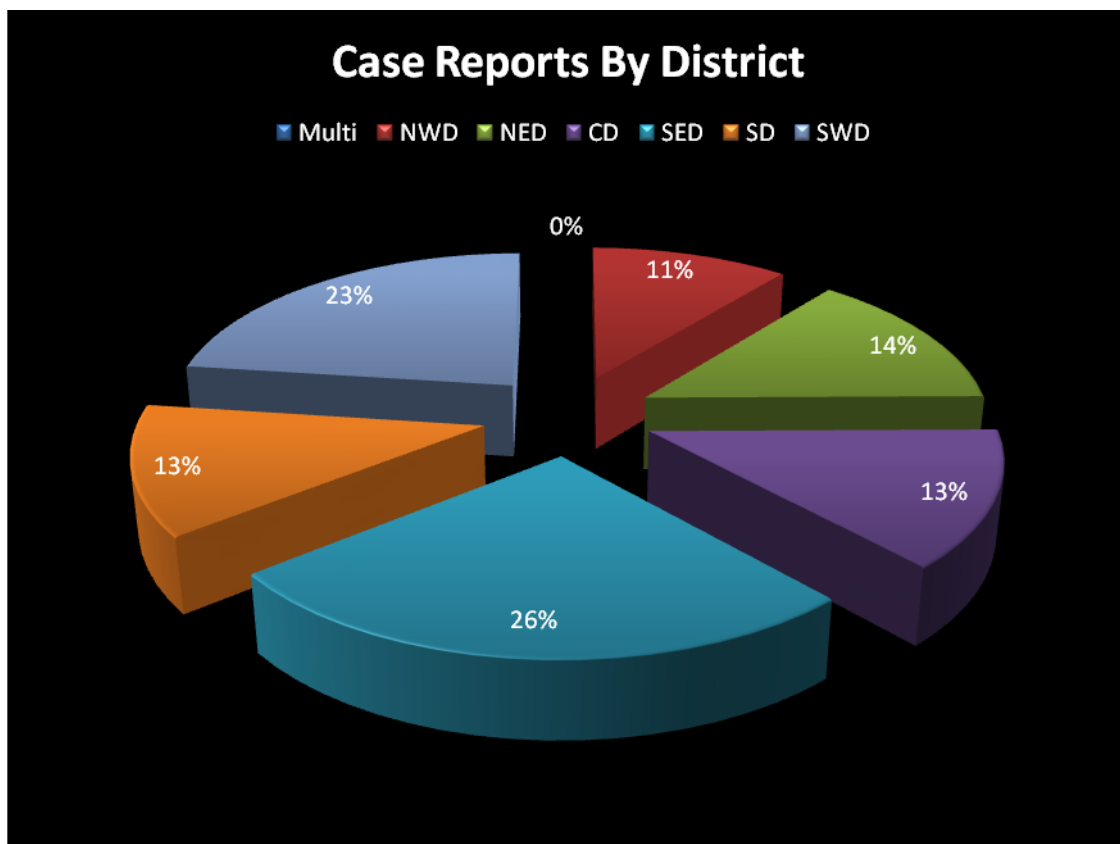


Statewide, the Department took enforcement in 1587 cases in 2010. Fewer cases were pursued in the Northwest, Northeast and Southwest Districts in 2010 as compared to 2009. The Southwest District continues to be responsible for a significant portion of the enforcement that is undertaken by the Department as a whole, this year accounting for 30% of all of the enforcement taken by the Department. The Northwest District saw a decrease in enforcement cases for the second year in a row.

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

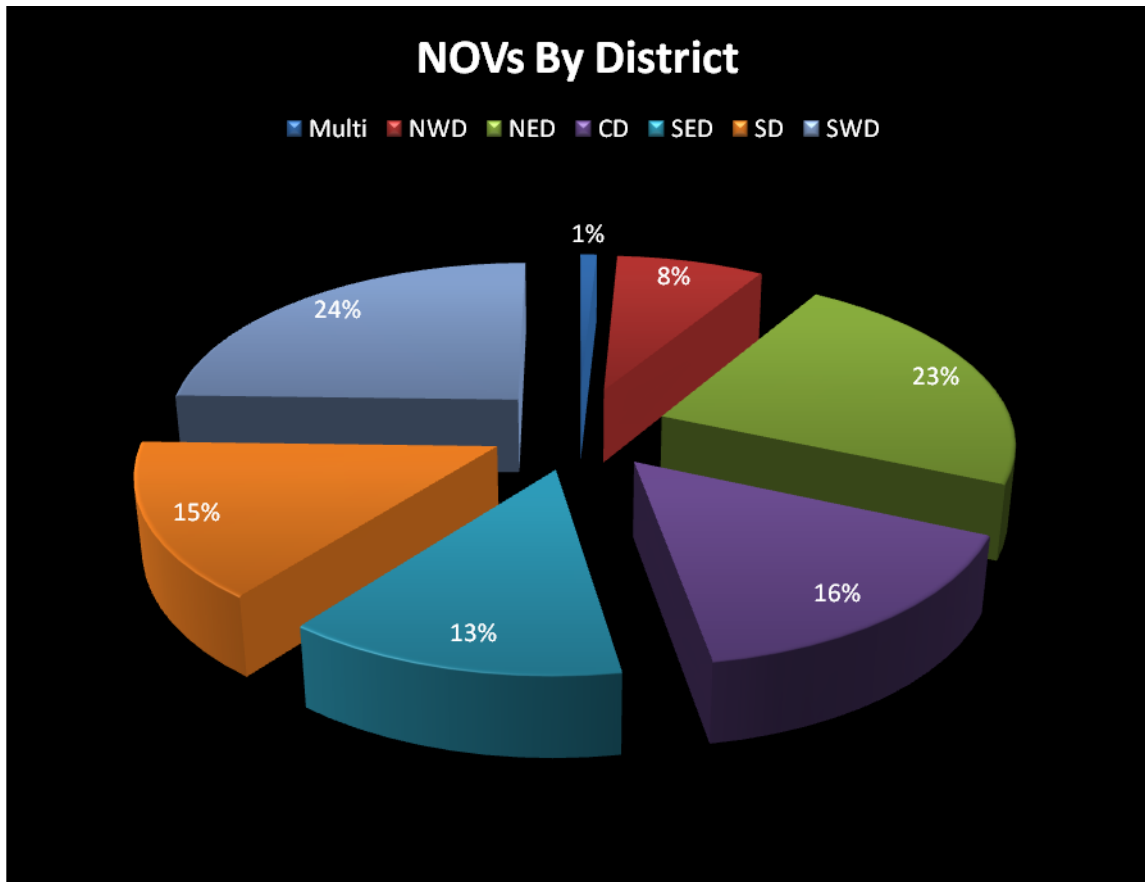
The Department's various enforcement tools were used by each District as follows:

a. Case Reports



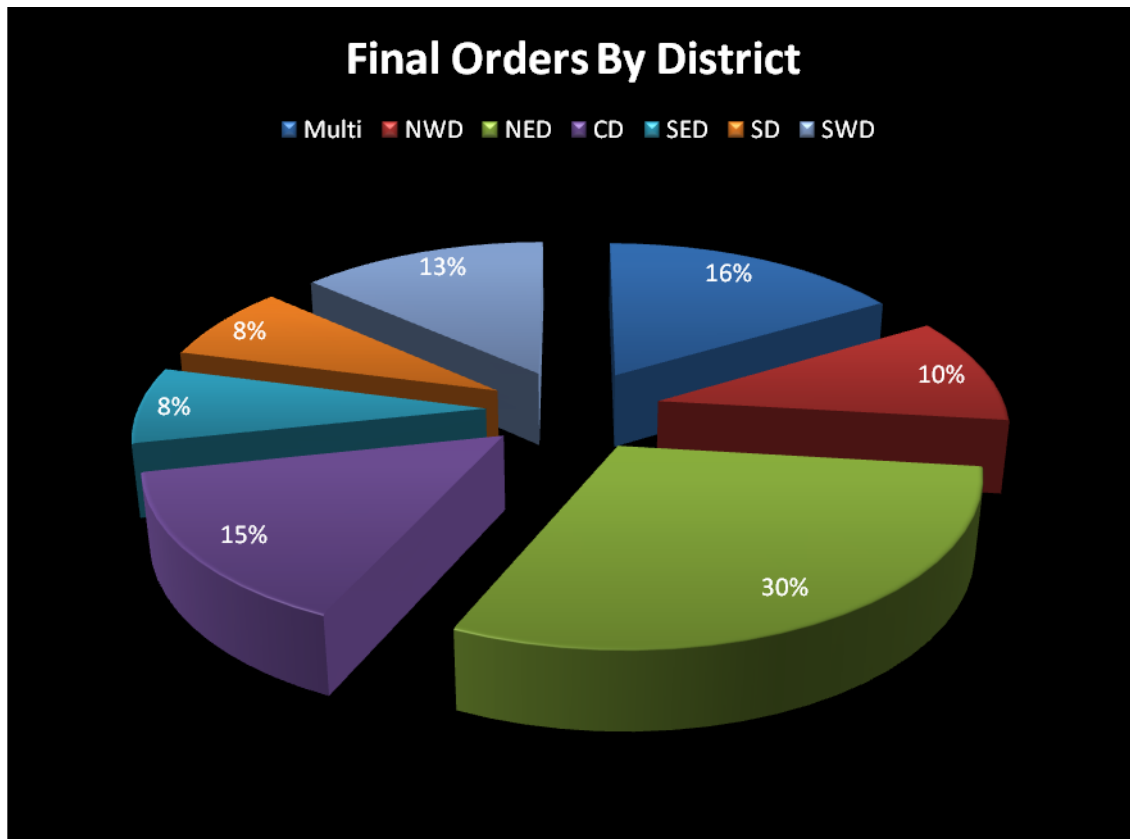
9.89% of the enforcement cases handled by the Department were referred to OGC for various types of litigation, roughly the same percentage as last year. This year the Southeast District accounted for the largest percentage of case reports, while the Northwest District accounted for the fewest.

**b. NOVs**



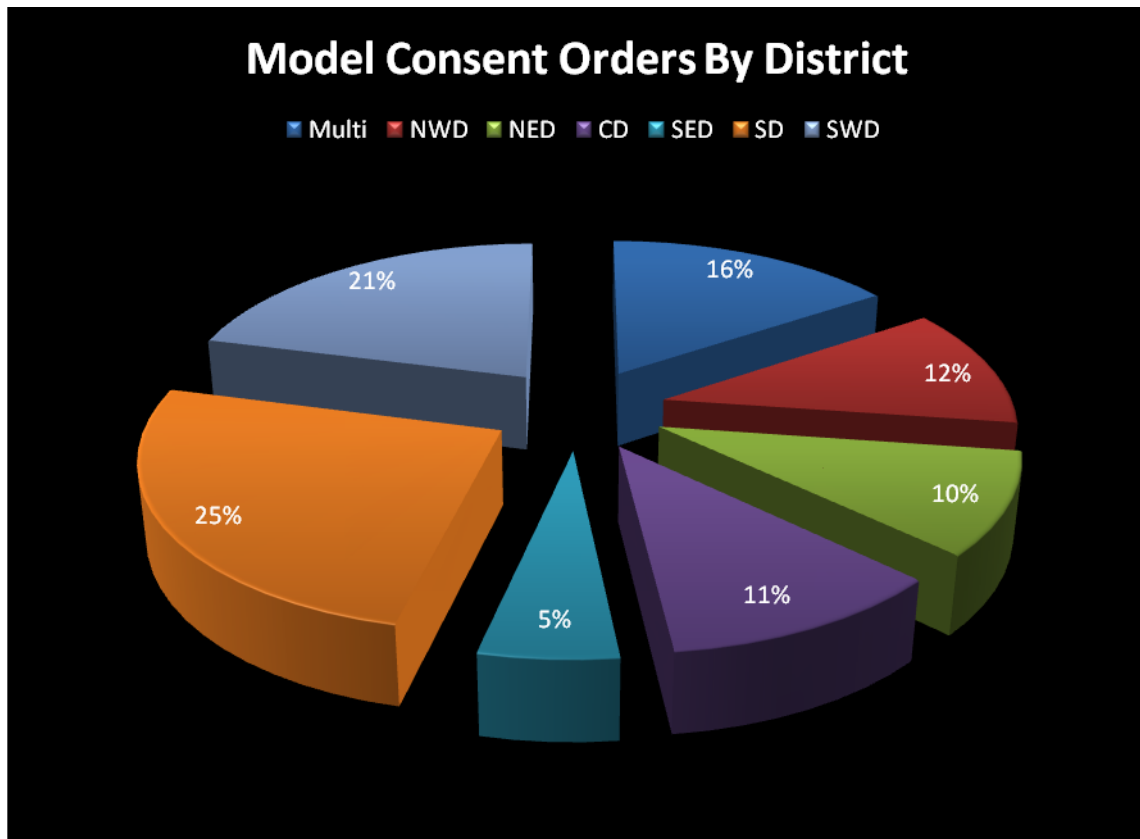
While the distribution of NOVs was more balanced in 2010, the Southwest and the Northeast still accounted for almost 1/2 of all of the NOVs issued by the Department.

**c. Final Orders**



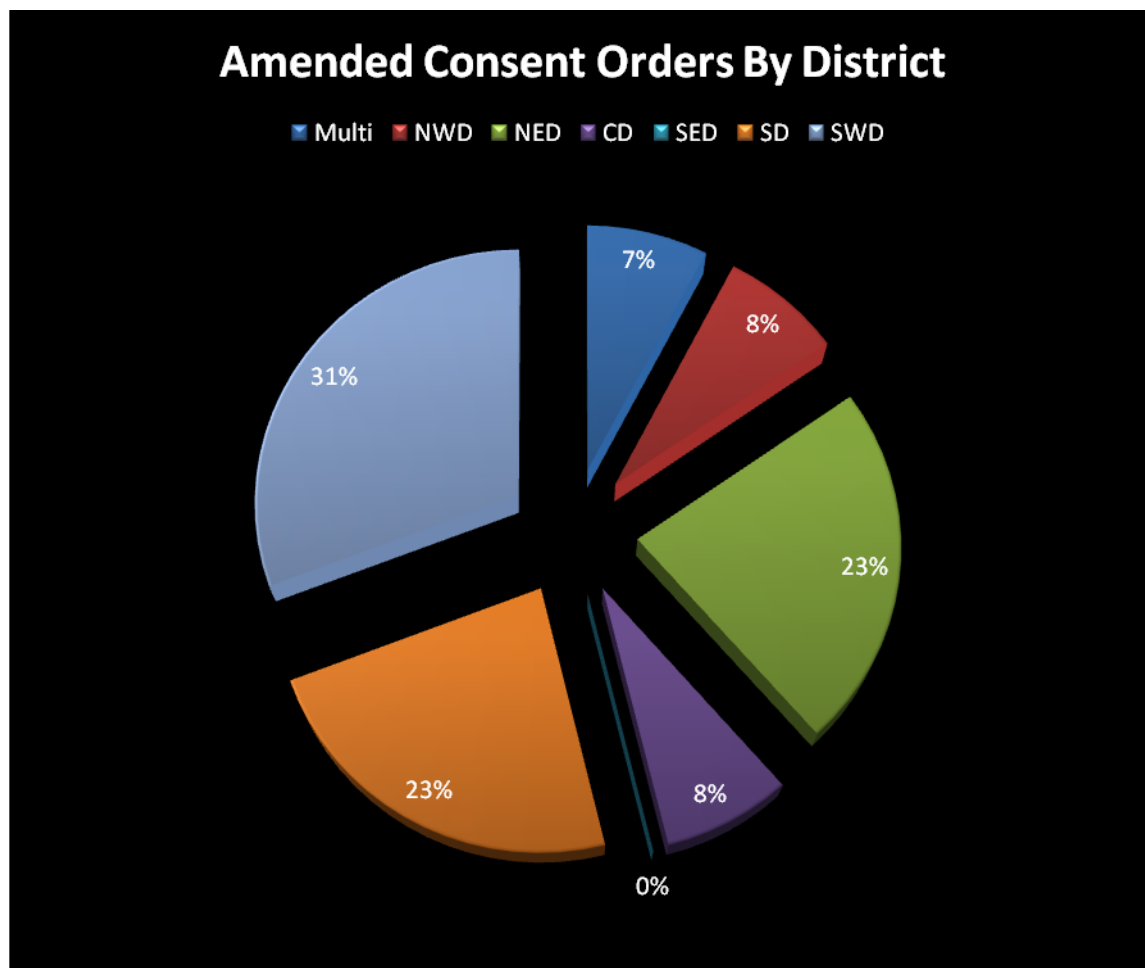
The Northeast District accounted for 30% of all final orders issued by the Department in 2010 with the Central and Southwest Districts supplying 28%. Tallahassee's contribution continued to decline with 16% of these orders emanating from there.

**d. Model Consent Orders**



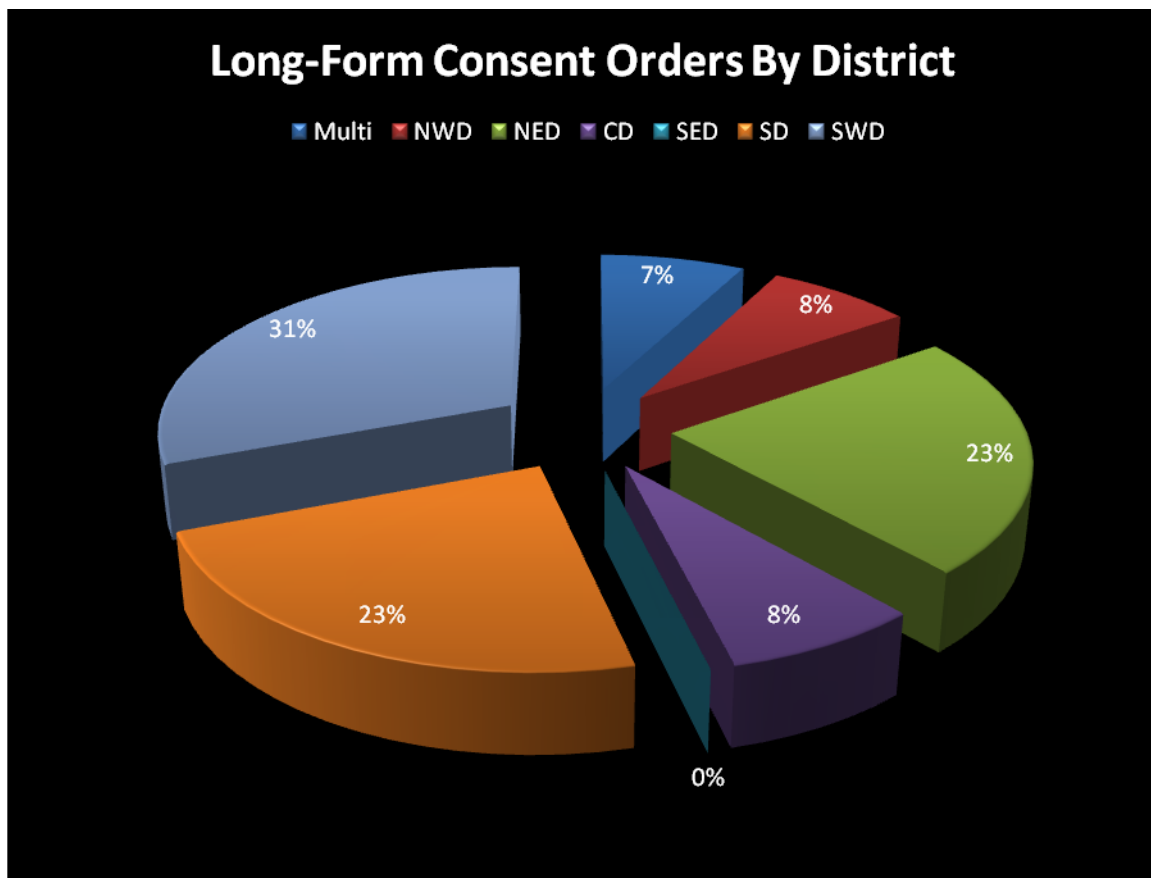
The use of model consent orders remained more or less the same across the Districts in 2010 when compared with 2009 with only minor variations.

**e. Amended Consent Orders**



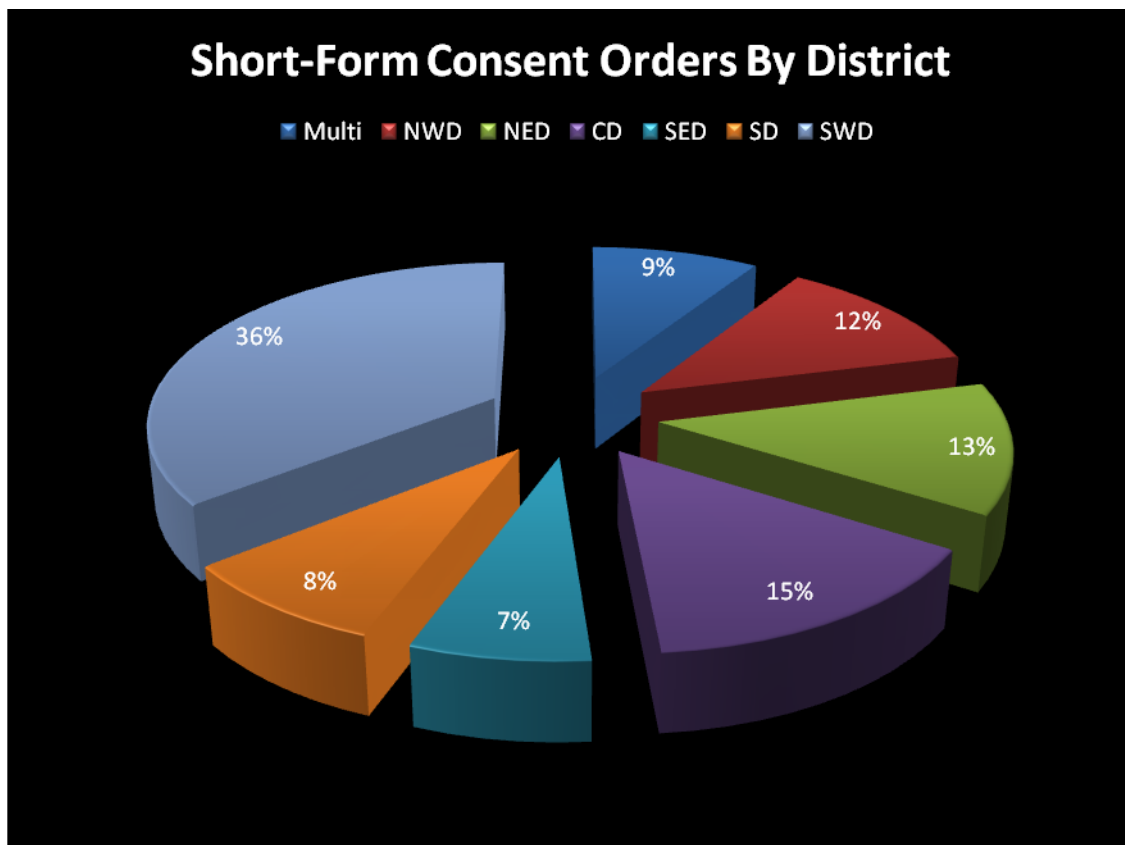
8% of all amended consent orders came from the Central District in 2010 while 31% came from the Southwest District. These two districts essentially swapped their contributions compared to 2009 when they contributed 25% and 13% respectively.

**f. Long-Form Consent Orders**



Over 2/3 of all long-form consent orders were issued by the Southwest, South and Northeast Districts in 2010. The remaining three districts essentially divided up the balance in equal amounts.

#### **g. Short-Form Consent Orders**

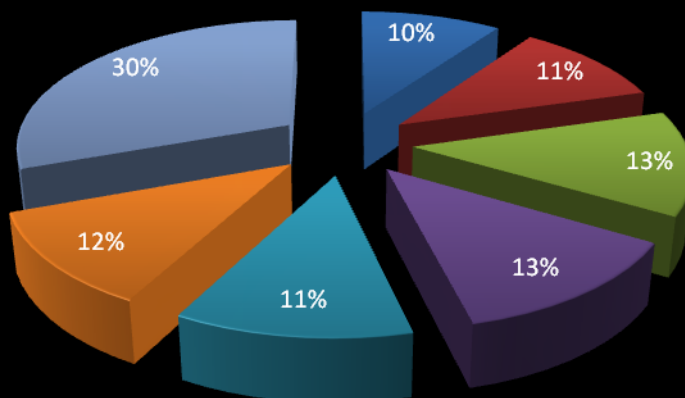


The numbers are relatively stable in terms of the proportional usage of short-form consent orders across the state. The Southwest District provided the greatest percentage overall and increased its contribution from last year by 3%.

**h. All Consent Orders Combined**

## Total Percentage of Consent Orders Contributed By District

Multi NWD NED CD SED SD SWD



The Consent Order is by far the Department's most preferred method of resolving enforcement cases. This year the Southwest District accounted for a full third of all consent orders issued. As with many of the previous areas, the numbers are very similar to what we saw last year with only minor variations.

### 3. Short-Form Consent Orders

For the third consecutive year there has been a decrease in the Department's use of this enforcement mechanism—this time by over 8 percent. There has been an almost 17% decline in the use of this enforcement mechanism since 2007. The following table demonstrates the history of the use of these enforcement mechanisms from 1988 to the present by showing the percentage of all enforcement cases each year that were resolved via short-form consent orders.

Year	% Short-Form Consent Orders
1988	0.00%
1989	0.00%
1990	24.13%
1991	38.74%
1992	36.32%
1993	46.84%
1994	47.73%

1995	52.60%
1996	49.39%
1997	48.29%
1998	50.05%
1999	48.90%
2000	54.77%
2001	56.38%
2002	55.67%
2003	58.46%
2004	55.23%
2005	60.20%
2006	60.41%
2007	62.23%
2008	58.13%
2009	54.03%
2010	45.68%

This year only three districts, the Central, Northwest and Southwest, settled a majority of their cases through the short-form route; however, **once again all of the districts reduced their reliance on this enforcement tool**. The Southeast District showed a significant decrease in its 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>	51.44%
<i>Northeast</i>	40.43%
<i>Multi-District</i>	49.25%
<i>Northwest</i>	52.10%
<i>Southeast</i>	24.76%
<i>South</i>	33.16%
<i>Southwest</i>	56.92%

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>	67.30%

<i>Northeast</i>	<b>57.41%</b>
<i>Multi-District</i>	<b>54.10%</b>
<i>Northwest</i>	<b>64.93%</b>
<i>Southeast</i>	<b>35.17%</b>
<i>South</i>	<b>42.76%</b>
<i>Southwest</i>	<b>67.80%</b>

Every district lowered its use of the short-form consent order as its consent order of choice when compared to 2009. The largest decrease in reliance upon the short-form consent order was seen in the Southeast District.

#### 4. Program Area Performance

The number of enforcement cases<sup>2</sup> brought in each key program area is as follows:

<b>Program Area</b>	<b>Total No. of Enf. Cases-- 2009</b>	<b>Total No. of Enf. Cases-- 2010</b>
<b>Asbestos</b>	36	<b>21</b> <sup>3</sup>
<b>Air (Excluding Asbestos)</b>	99	145
<b>Beaches/Coastal</b>	24	<b>15</b>
<b>Waste Cleanup</b>	24	<b>17</b>
<b>Dredge &amp; Fill</b> <sup>4</sup>	277	<b>236</b>
<b>Domestic Waste</b>	144	<b>125</b>
<b>Hazardous Waste</b>	178	<b>166</b>
<b>Industrial Waste</b>	85	<b>58</b>
<b>Potable Water</b>	142	166
<b>Stormwater Runoff</b>	93	121
<b>Solid Waste</b>	50	<b>38</b>
<b>Tanks</b>	232	341
<b>Underground Injection Control</b>	6	<b>1</b>

As is evident from the above chart, most of the significant program areas saw a decrease in the number of case initiated by the Department in 2010. Of those, the programs most responsible for

---

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

<sup>3</sup> Results in red represent declines from 2009 values.

<sup>4</sup> This includes Environmental Resource Permitting.

oversight of Florida's surface water quality saw the largest declines, with the sole exception of stormwater runoff.

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

<b>Program Area</b>	<b>Historical Averages<sup>5</sup></b>	<b>2010 Results</b>	<b>Difference</b>
<b>Asbestos</b>	13	21	8
<b>Air (Excluding Asbestos)</b>	93	145	52
<b>Beaches/Coastal</b>	14	15	1
<b>Waste Cleanup</b>	4	17	13
<b>Dredge &amp; Fill</b>	216	236	20
<b>Domestic Waste</b>	119	125	6
<b>Hazardous Waste</b>	132	166	34
<b>Industrial Waste</b>	47	58	11
<b>Potable Water</b>	112	166	54
<b>Stormwater Runoff</b>	35	121	86
<b>Solid Waste</b>	39	<b>38</b>	<b>(1)</b>
<b>Tanks</b>	72	341	269
<b>Underground Injection Control</b>	5	<b>1</b>	<b>(4)</b>

All but two programs saw results that were better than the historical averages even though most programs performed at a lower rate than in 2009.

## 5. Civil Penalty Assessments

The Department assessed civil penalties in 1318 cases in 2010—45 fewer cases than in 2009. This is the fourth straight year in which the number of assessments has declined.<sup>6</sup> On the bright side, the Department assessed **\$13,051,374.23** in civil penalties, **\$2,180,473.23 more than in 2009, ending a three year skid.**

Statewide there were 18 cases in which the Department assessed a civil penalty of \$100,000 or more. Four of those cases (22%) were against governmental entities.

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

---

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

<sup>6</sup> The Department assessed civil penalties in 1472 cases in 2007, 1408 in 2008 and 1363 in 2009.

<sup>7</sup> Data in **red** represent declines from the performance in 2009. Data in **orange** represents performance in 2009 that represents declines from the performance in 2008.

Program Area	Historical Medians	2009 Medians	2010 Medians
Asbestos	\$2,000.00	<b>\$1,937.50</b>	<b>\$1,250.00</b>
Air (Excluding Asbestos)	\$1,699.50	<b>\$1,200.00</b>	<b>\$2,000.00</b>
Beaches/Coastal	\$500.00	<b>\$750.00</b>	<b>\$875.00</b>
Waste Cleanup	\$4,500.00	<b>\$2,000.00</b>	<b>\$750.00</b>
Dredge & Fill	\$700.00	<b>\$1,500.00</b>	<b>\$1,205.00</b>
Domestic Waste	\$2,250.00	<b>\$2,500.00</b>	<b>\$2,000.00</b>
Hazardous Waste	\$4,100.00	<b>\$4,178.25</b>	<b>\$3,868.50</b>
Industrial Waste	\$4,500.00	<b>\$2,400.00</b>	<b>\$2,590.10</b>
Potable Water	\$500.00	<b>\$750.0</b>	<b>\$875.00</b>
Stormwater Runoff	\$600.00	<b>\$500.00</b>	<b>\$3,500.00</b>
Solid Waste	\$2,843.00	<b>\$3,000.00</b>	<b>\$3,000.00</b>
Tanks	\$2,712.00	<b>\$4,100.00</b>	<b>\$5,149.50</b>
Underground Injection Control	\$6,850.00	<b>\$14,250.00</b>	<b>\$21,770.75</b>

Once again, it bears restating that in mid-2007 the Department announced what it maintained was a new, stricter, penalty policy.<sup>8</sup> 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.<sup>9</sup> We now have 4 years of results and they are 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. 2009 saw 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. 2010 has once again seen a decline in median hazardous waste assessments back to the level in 2008, but median industrial waste assessments did see an 8% increase to \$2,590.10. Of the 18 penalty assessments exceeding \$100,000 only 4 were in hazardous waste cases. Those assessments were against *Allied Universal Corporation* (OGC Number 70177) in the amount of \$427,500.00, *C.F. Industries, Inc.* (OGC Number 93352) in the amount of \$350,719.76, *Scott Stone and S. Stone Enterprises, LLC* (OGC Number 90254) in the amount of \$321,334.00 and *Scott Yaslow and Tranz-Parts, Inc.* (OGC Number 82666) in the amount of \$118,248.00.

---

<sup>8</sup> 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](http://www.dep.state.fl.us/secretary/news/2007/07/0718_01.htm)

<sup>9</sup> 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](http://www.peer.org/news/news_id.php?row_id=903)

All things considered, all five of the program areas that saw declining median assessments also saw a decrease in the number of actual assessments made when compared to 2009. It is safe to say that all four of these five areas, i.e. asbestos, dredge and fill, domestic waste and hazardous waste are areas that have seen lobbying efforts designed to lessen their effectiveness. Those efforts appear to have worked. While the median assessments rose slightly in industrial waste cases they remain well below the historical medians for the program area.

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

DISTRICT	TOTAL \$ ASSESSED	MEDIAN ASSESSMENTS	% OF STATE TOTAL
Multi-District	\$1,753,320.00	\$750.00	13
NWD	<b>\$1,803,908.53</b>	\$2,000.00	14
NED	<b>\$855,446.11</b>	\$2,000.00	7
CEN District	<b>\$850,315.85</b>	\$2,000.00	7
SED	\$2,030,645.12	<b>\$3,500.00</b>	16
SD	<b>\$816,709.40</b>	\$1,695.00	6
SWD	\$4,941,029.22	\$2,053.80	38

In terms of dollars assessed, with the exception of the Southeast and Southwest Districts, every district saw a decrease in the total penalties in 2010.

The comparison of median assessments from 2009 to 2010 amongst the districts is as follows:

DISTRICT	NUMBER OF ASSESSMENTS IN 2009	2009 MEDIAN ASSESSMENTS	NUMBER OF ASSESSMENTS IN 2010	2010 MEDIAN ASSESSMENTS
Multi-District	<b>108</b>	\$750.00	120	\$750.00
NWD	<b>206</b>	\$2,000.00	<b>150</b>	\$2,000.00
NED	206	<b>\$1,500.00</b>	<b>169</b>	\$2,000.00
CEN District	<b>152</b>	<b>\$1,500.00</b>	187	\$2,000.00
SED	122	\$4,125.00	<b>109</b>	<b>\$3,500.00</b>
SD	<b>150</b>	<b>\$1,600.00</b>	<b>138</b>	\$1,695.00
SWD	419	<b>\$1,600.00</b>	445	\$2,053.80

This is the second year in a row that the Northwest District saw a drop in the overall number of assessments. It is the third year in a row of declining assessments in the South District. The Northeast and Southeast Districts also saw fewer assessments compared to 2009. With the exception of the Southeast District, all of the districts saw improvements in their 2010 median assessment levels compared to 2009. Interestingly, the Southeast District saw a drop in its median assessments, although it had the highest median assessments of all 6 districts—just as was the case in 2009.

a. The Highest Assessments

The following is a list of the highest assessments, i.e. those assessments exceeding \$100,000, levied by the Department in 2010, sorted by program area:<sup>10</sup>

<b>District<sup>11</sup></b>	<b>Program</b>	<b>Violator</b>	<b>Amount</b>
<b>6</b>	<b>AF</b>	<b>KINDER MORGAN PORT MANATEE TERMINAL, LLC</b>	<b>\$331,000.00</b>
<b>6</b>	<b>AP</b>	<b>CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC</b>	<b>\$520,000.00</b>
<b>6</b>	<b>AV</b>	<b>CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC</b>	<b>\$150,000.00</b>
<b>1</b>	<b>DF</b>	<b>PANAMA CITY - BAY COUNTY AIRPORT AND INDUSTRIAL DISTRICT</b>	<b>\$252,498.00</b>
<b>1</b>	<b>DW</b>	<b>DESTIN WATER USERS, INC.</b>	<b>\$196,044.75</b>
<b>6</b>	<b>DW</b>	<b>HILLSBOROUGH COUNTY BOCC (WATER RESOURCE SERVICES)</b>	<b>\$130,500.00</b>
<b>6</b>	<b>DW</b>	<b>HILLSBOROUGH COUNTY BOCC (WATER RESOURCE SERVICES)</b>	<b>\$166,500.00<sup>12</sup></b>
<b>6</b>	<b>DW</b>	<b>PINELLAS COUNTY</b>	<b>\$293,460.00</b>
<b>6</b>	<b>DW</b>	<b>PINELLAS COUNTY</b>	<b>\$352,152.00<sup>13</sup></b>
<b>6</b>	<b>DW</b>	<b>MULBERRY, CITY OF</b>	<b>\$135,000.00</b>
<b>6</b>	<b>DW</b>	<b>HILLSBOROUGH COUNTY</b>	<b>\$120,000.00</b>
<b>4</b>	<b>EP</b>	<b>SPAR SHIPHOLDING AS, SPAR SHIPPING AS; ET AL</b>	<b>\$543,026.30</b>

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

<sup>11</sup> 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.

<sup>12</sup> This is an in-kind project assessment.

<sup>13</sup> This is an in-kind project assessment.

4	HW	ALLIED UNIVERSAL CORP. <sup>14</sup>	\$202,500.00 <sup>15</sup>
4	HW	ALLIED UNIVERSAL CORP.	\$225,000.00
6	HW	YASLOW, SCOTT AND TRANZ-PARTS, INC.	\$118,248.00
5	HW	STONE, SCOTT AND S. STONE ENTERPRISES, LLC	\$321,334.00
6	HW	C.F. INDUSTRIES, INC.	\$350,719.76
0	RO	JG CYPRESS CREEK, LLC	\$133,561.00
0	RO	PHOENIX CONSTRUCTION SERVICES, INC.	\$575,604.00
0	RO	PHOENIX CONSTRUCTION SERVICES, INC.	\$863,406.00 <sup>16</sup>
1	RO	MORNINGSIDE DEVELOPMENT OF BAY COUNTY, LLC, ET AL	\$711,000.00
4	SW	PORTER, GEORGE, JR.	\$204,750.00

It should be noted that this is the second year in a row that the *Panama City-Bay County Airport and Industrial District* has been assessed penalties exceeding \$100,000 for violating Florida's dredge and fill laws.

## 6. *Civil Penalty Assessments By Program Area—District Comparison*

As in years past, 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**

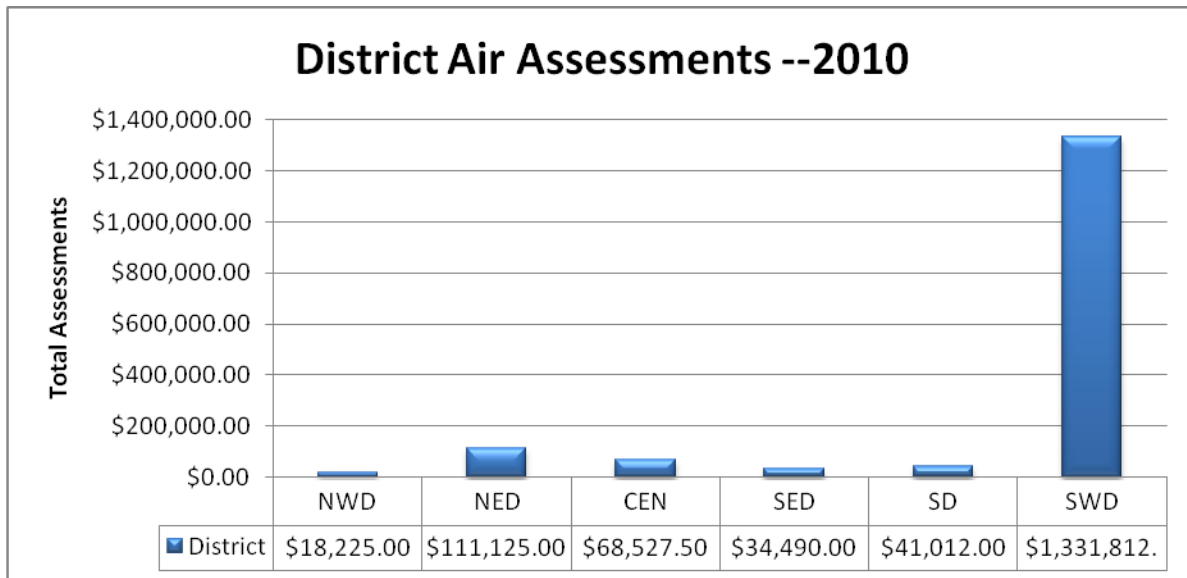
While he was Governor, Governor Crist was very public about his administration's efforts to improve the quality of Florida's air. The Department's data continues to suggest that not every district was overly particularly aggressive, notwithstanding the Governor's assurances.

---

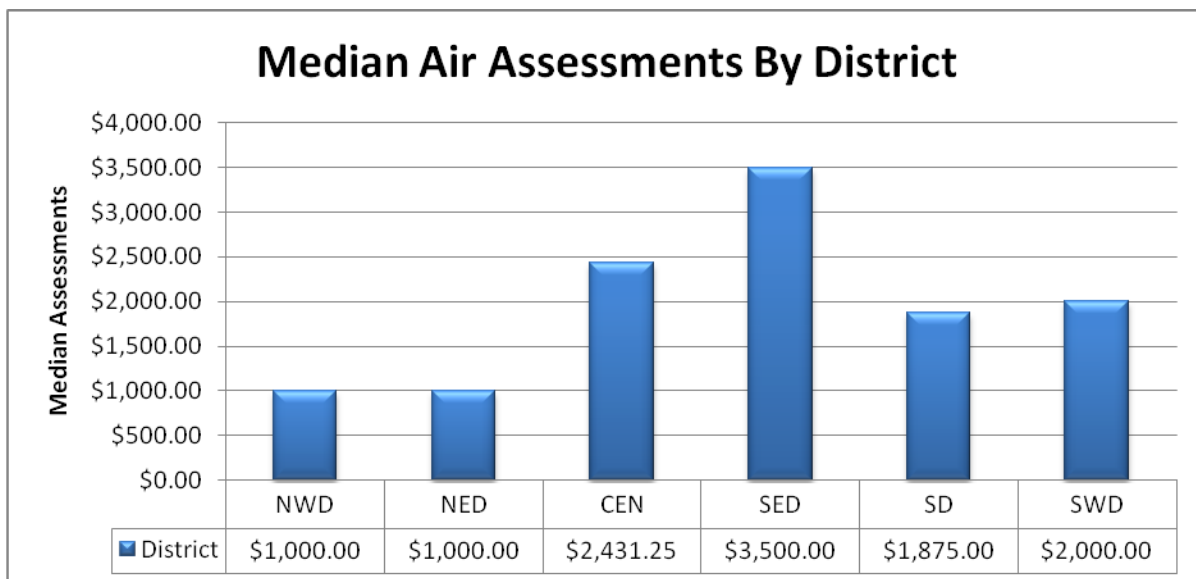
<sup>14</sup> In 4 cases, the district's assessment against the violator was split between civil penalty assessments and in-kind or penalty prevention project assessments. We have shown both in this chart.

<sup>15</sup> This is a penalty prevention project assessment.

<sup>16</sup> This is an in-kind project assessment.

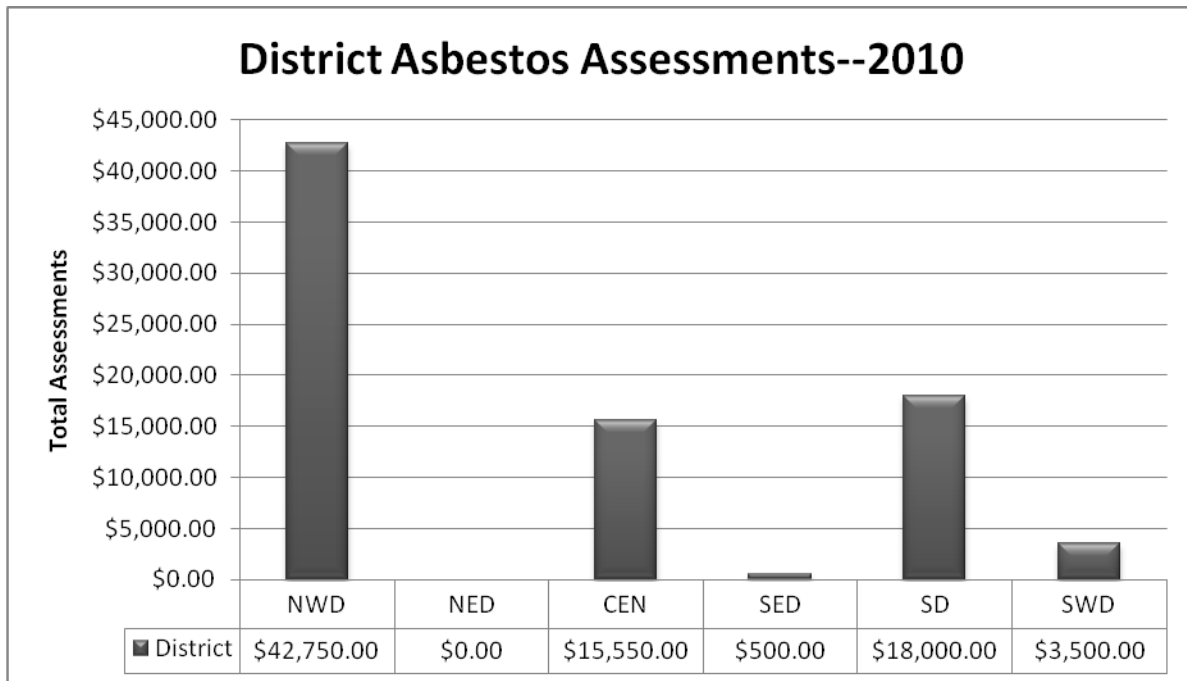


As is clear from the above graph, the vast majority of air assessments are attributed to the Southwest District. 83% of all air assessments for the Department came out of that district. Nevertheless, the Northeast District saw significant improvement compared to 2009, as did the Southeast District. The remaining districts saw declines in air assessments for 2010.

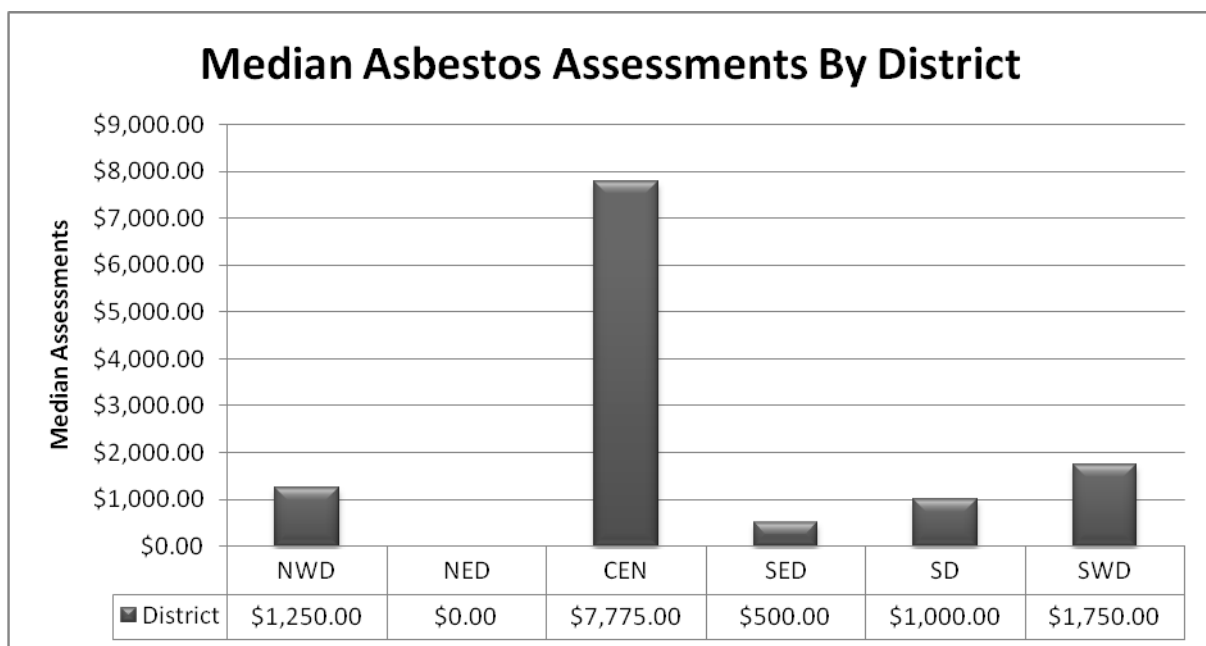


When assessments are levied, the Central and Southeast Districts typically appear to be stricter. The Southeast District actually increased its median assessments compared to 2009, as did the Northeast, Northwest and South Districts.

#### **b. Asbestos Program**



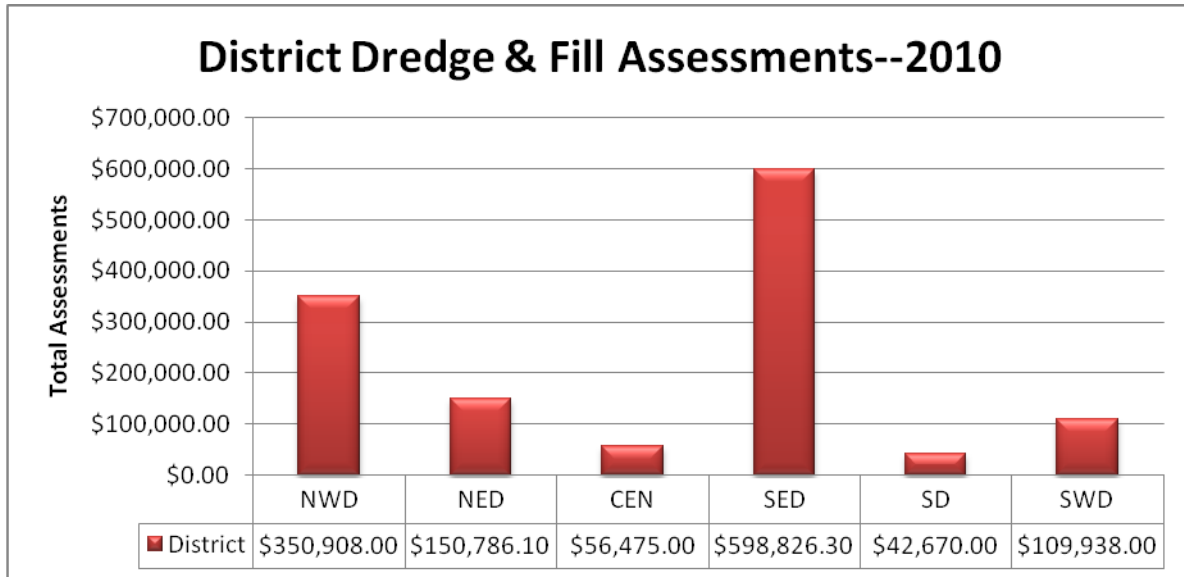
The Southwest District was the only district in 2010 to show an improvement over 2009's performance.



The South and Southwest Districts improved over 2009 with the remaining districts showing lower medians in this area. Local programs are likely picking up at least some of the slack in some districts.

### c. Dredge and Fill Program

The gains that the Department made in 2009 in this program area did not carry over to 2010. In total, the Department assessed \$1,309,603.40 in civil penalties in 2010 compared to \$1,629,197.31 assessed in 2009. Overall, the Districts assessed the penalties as follows:



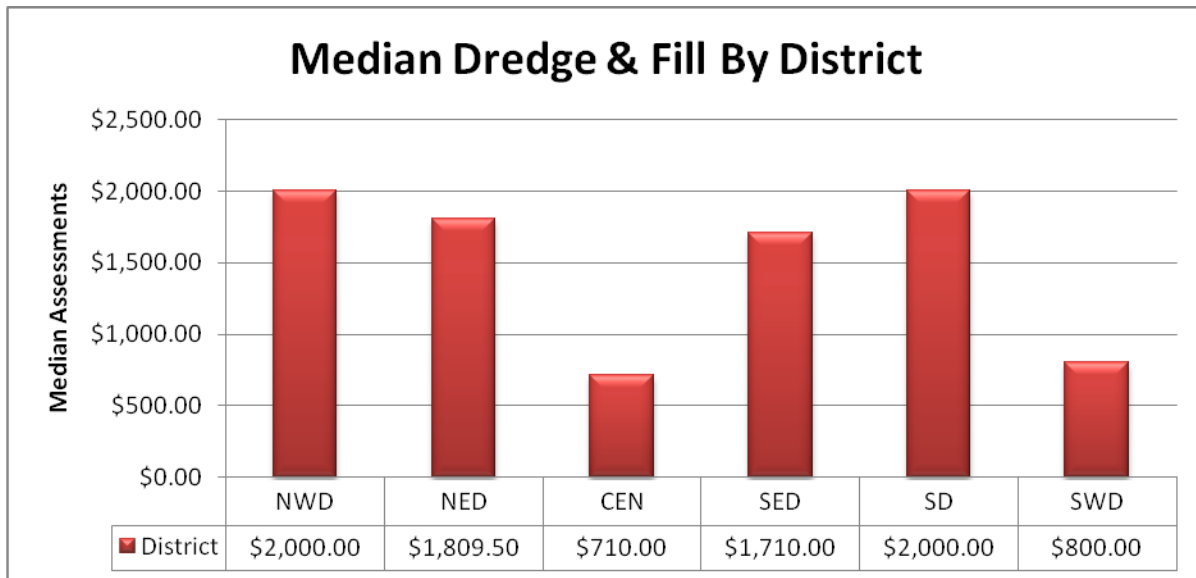
The Central and Southeast Districts were the only two districts to show improvement over 2009's results. Every other district saw declining numbers. Interestingly, the reason for the high assessments in the Northwest District is due largely to one assessment against the *Panama City/Bay County Airport and Industrial District* in the amount of \$252,498.00<sup>17</sup>. This violator also was responsible for the Northwest District's largest dredge and fill assessment in 2009, an assessment of \$620,183.00.<sup>18</sup> 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 Department caved in to the developer's lobbying and permitted the project over the strong objections raised by interested citizens.

The median assessments amongst the districts for 2010 were:

---

<sup>17</sup> Case number 100808

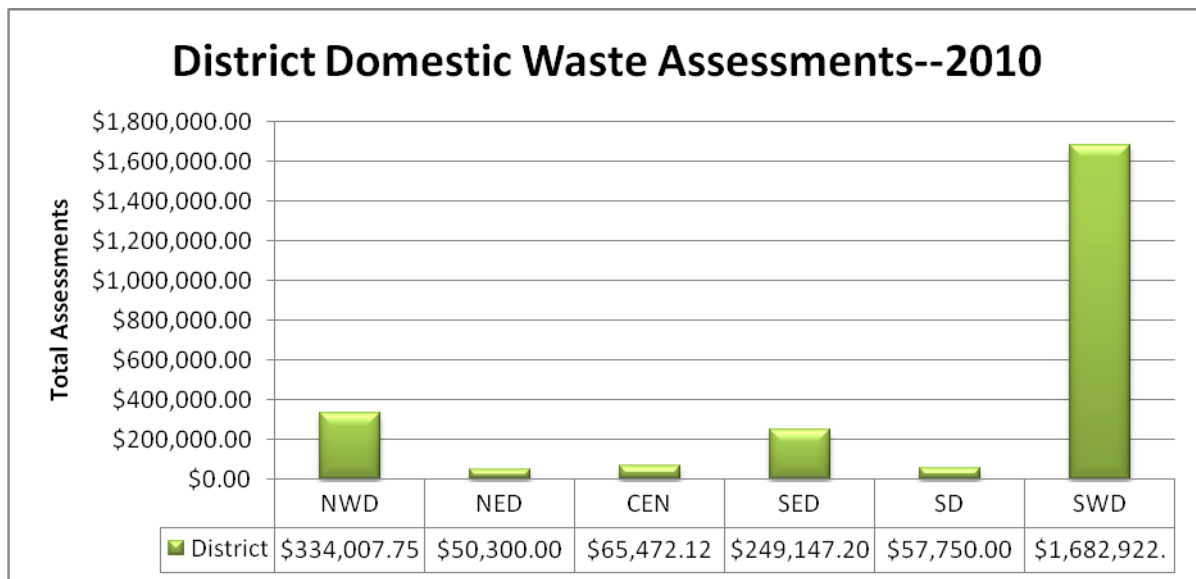
<sup>18</sup> Case number 90922.



The Northeast, Central and Southeast Districts did see improvements in their median penalty assessments in 2010.

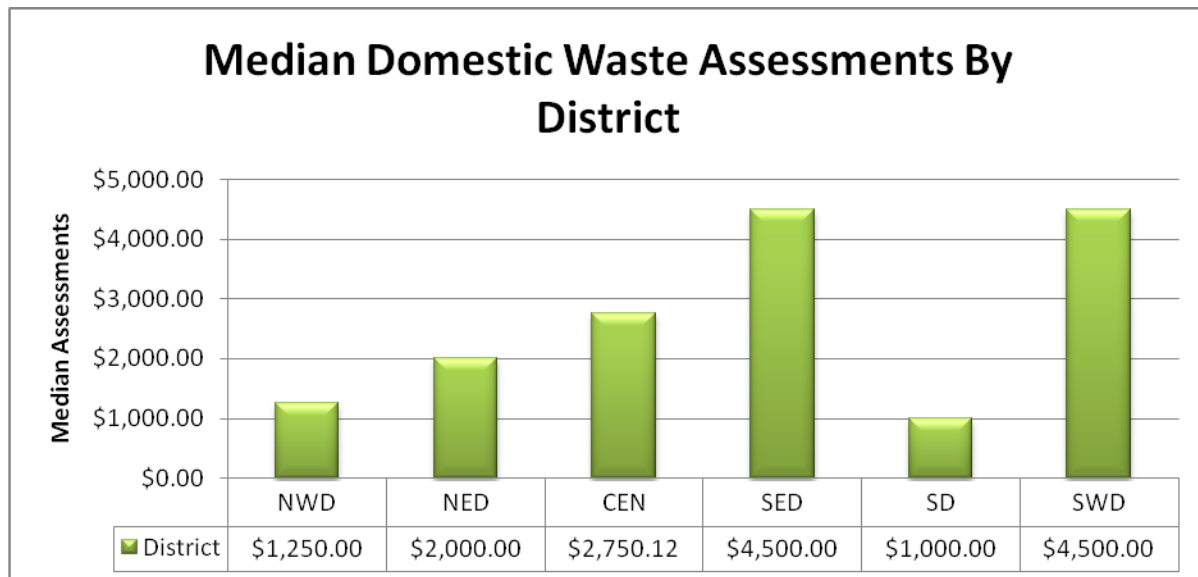
#### d. Domestic Waste Program

The Department assessed \$368,654.51 fewer civil penalties in this program than it did in 2009. The Districts assessed the penalties as follows:



All districts except for the Southwest District showed significant decreases in their domestic waste assessments in 2010. The Southwest District assessed \$691,010.00 in 2009 and \$1,682,922.00 in 2010. The high performance of the Southwest District is due in no small part to two major assessments. It assessed \$297,000.00 against *Hillsborough County BOCC (Water*

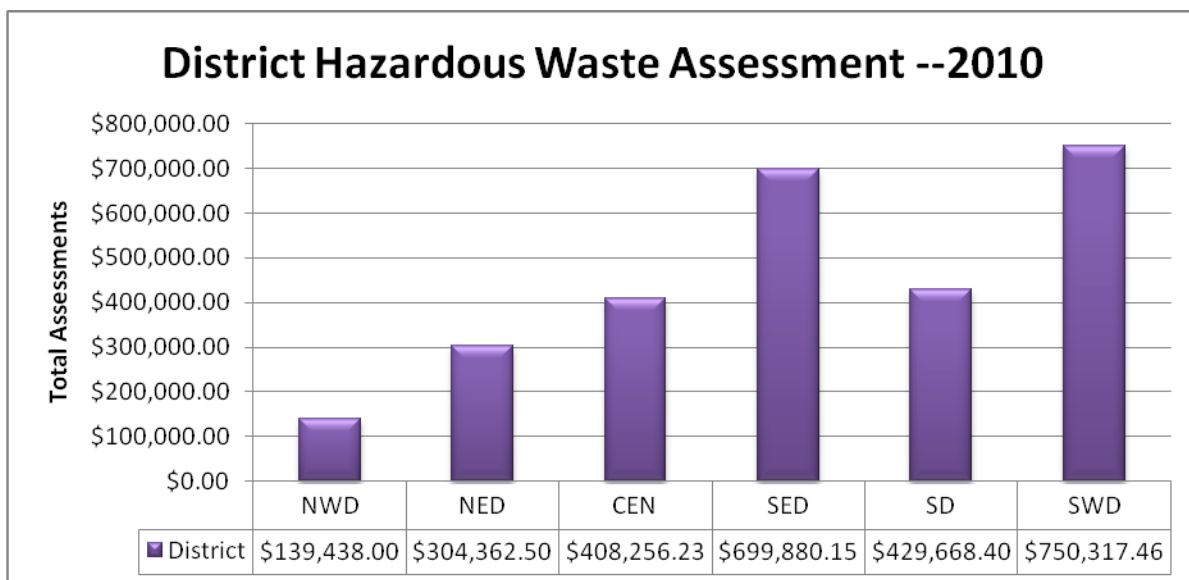
*Resource Services*) in case number 92829 and \$645,612.00 against *Pinellas County* in case number 93566.



Four districts, the Northeast, Southeast, South and Southwest, saw their median assessments drop in 2010, whereas the Northwest and Central districts saw improvement.

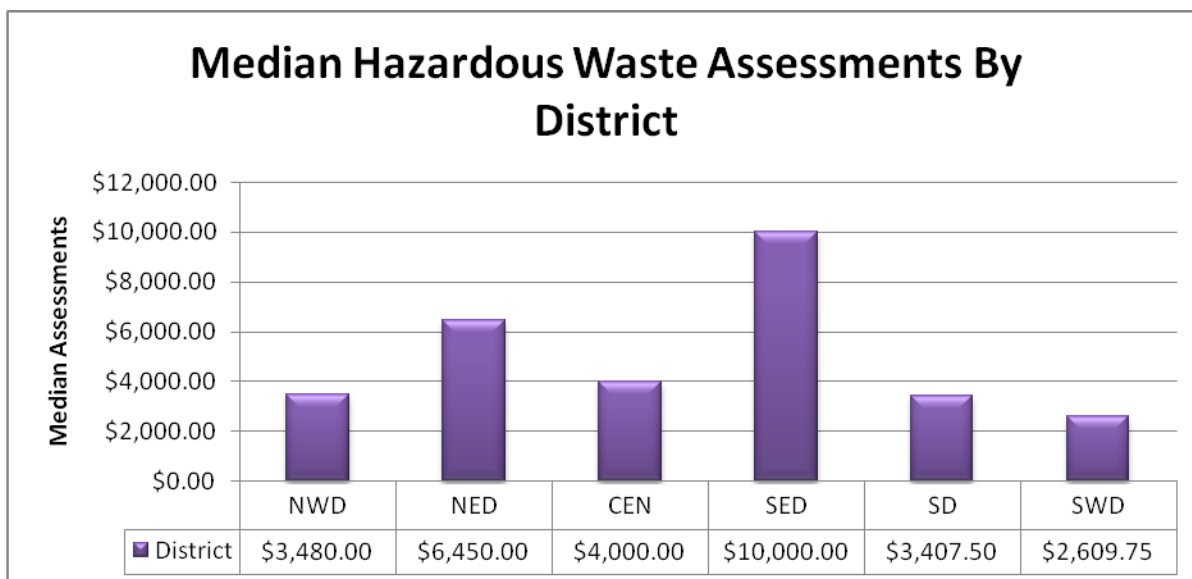
**e. Hazardous Waste Program**

Hazardous waste assessments finally saw an increase in 2010, with a total of \$2,731,922.74 being assessed. This represents a \$676, 117.05 increase from 2009 and it is the first increase since 2007. Interestingly, 4 cases accounted for \$1,217,801.76 (45%) of the total assessments levied against violators. Only two of the districts, the Northwest and Central, saw a decrease in civil penalty assessments.



\$321,344.00 of the assessments in the South District were from one case, *Scott Stone and S. Stone Enterprises, LLC* (OGC Number 90254).

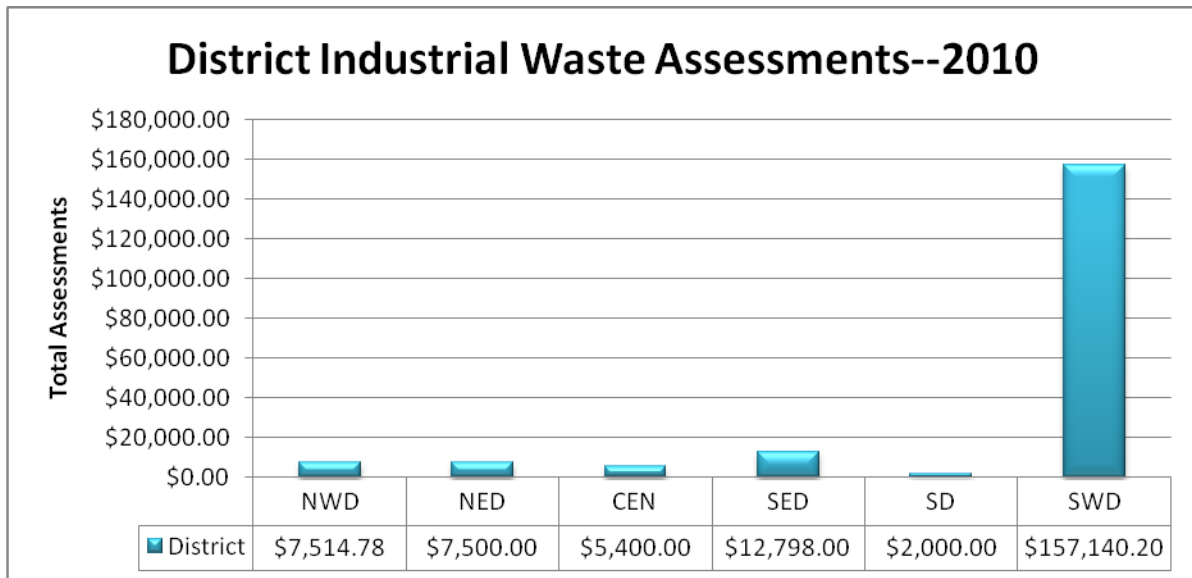
Median assessments were:



Median assessments for the Department as a whole. They also fell in the Northwest, Northeast and Southwest Districts compared to 2009. This is the second year in a row in which median assessments declined in the Northeast and Southwest Districts. Once again, significant improvements were found in the Southeast District, however.

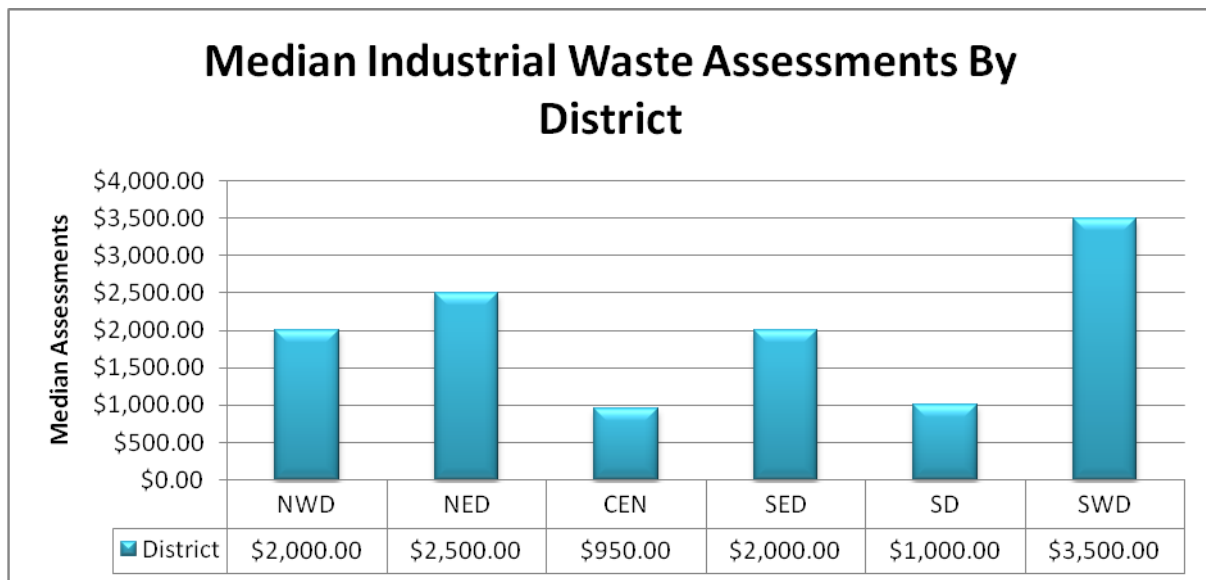
#### **f. Industrial Waste Program**

The districts assessed penalties in this program as follows:



Department-wide assessments in this program area totaled only \$192,352.98 substantially less than the \$915,380.60 assessed just one year ago. The only district that did not see a decline in industrial waste assessments was the Southeast District, but its increase was minor. The declines in the remaining five districts were all substantial. None of the districts assessed penalties in excess of \$100,000 in a single case.

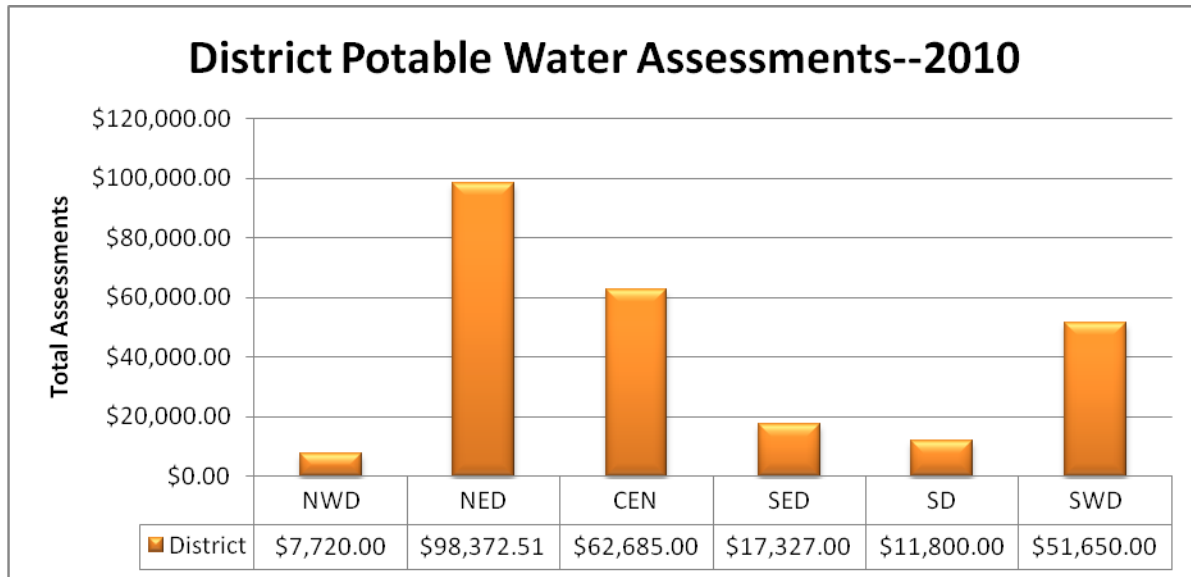
Median assessments were the highest in the Southwest, Southeast and Northeast Districts:



Median assessments fell in every district but the Northwest District. On the bright side- median assessments rose for the Department as a whole.

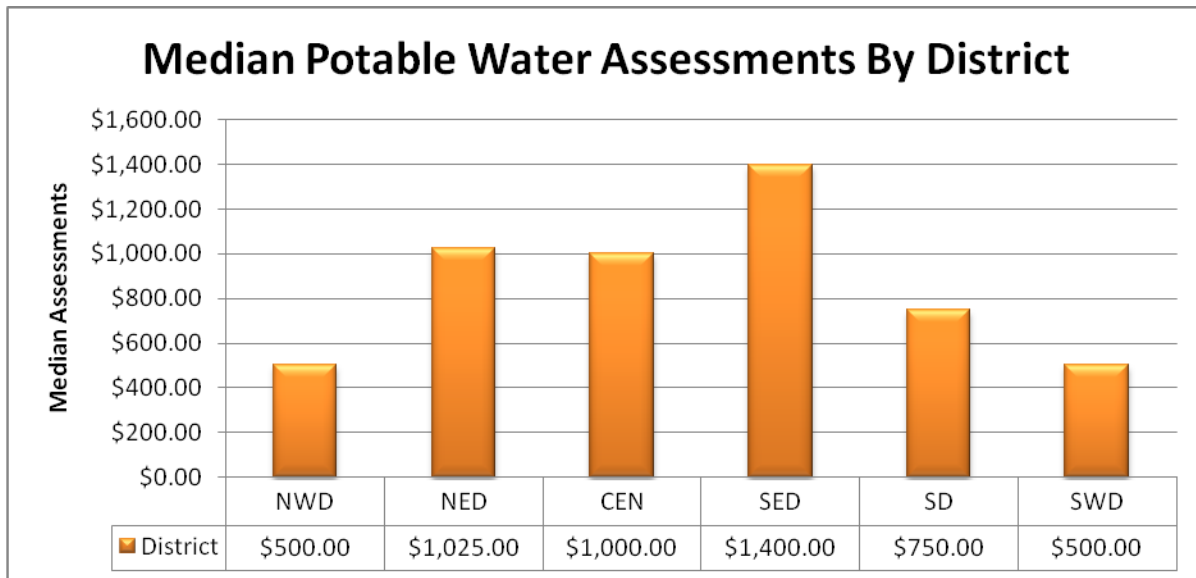
**g. Potable Water Program**

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:



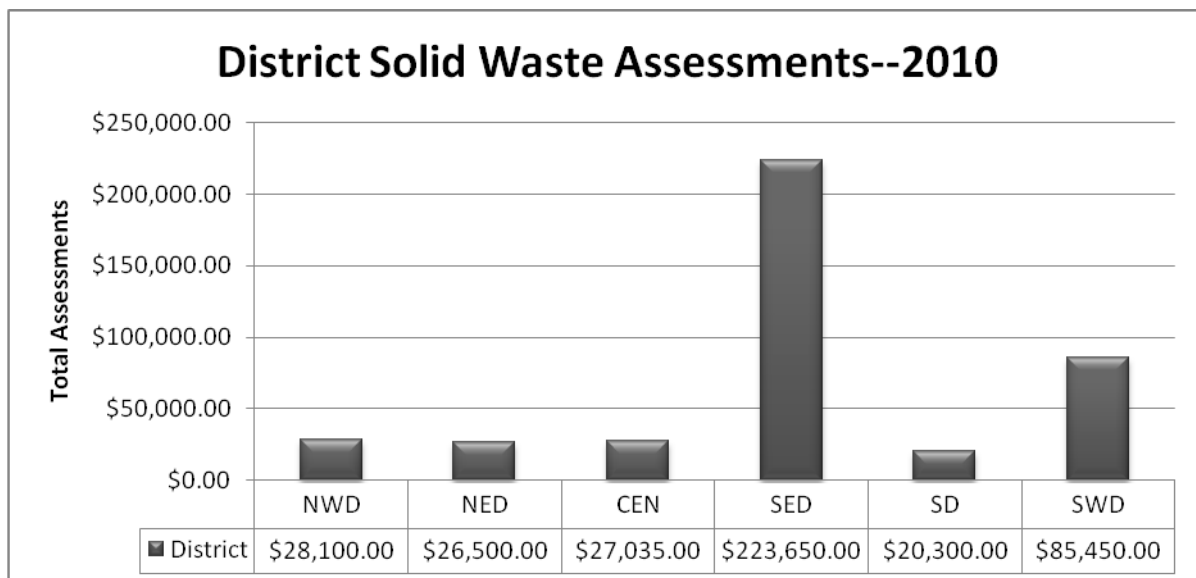
Total assessments for the Department were \$249,554.51, slightly better than the \$233,762.16 assessed in 2009. Except for the Central and Southeast Districts, assessments fell across the board in 2010 compared to 2009. The largest assessment in the Department was levied by the Southwest District in its case against *Manitoba Ltd. Corporation* in the amount of \$16,000.00 (OGC# 90536).

Median assessments did not vary tremendously among the districts. Assessments fell in the Northwest, and Southwest Districts compared to 2009, the 2<sup>nd</sup> straight year of declining numbers in the Northwest District. None of the districts showed an aggressive approach to fining polluters in this program area, however:



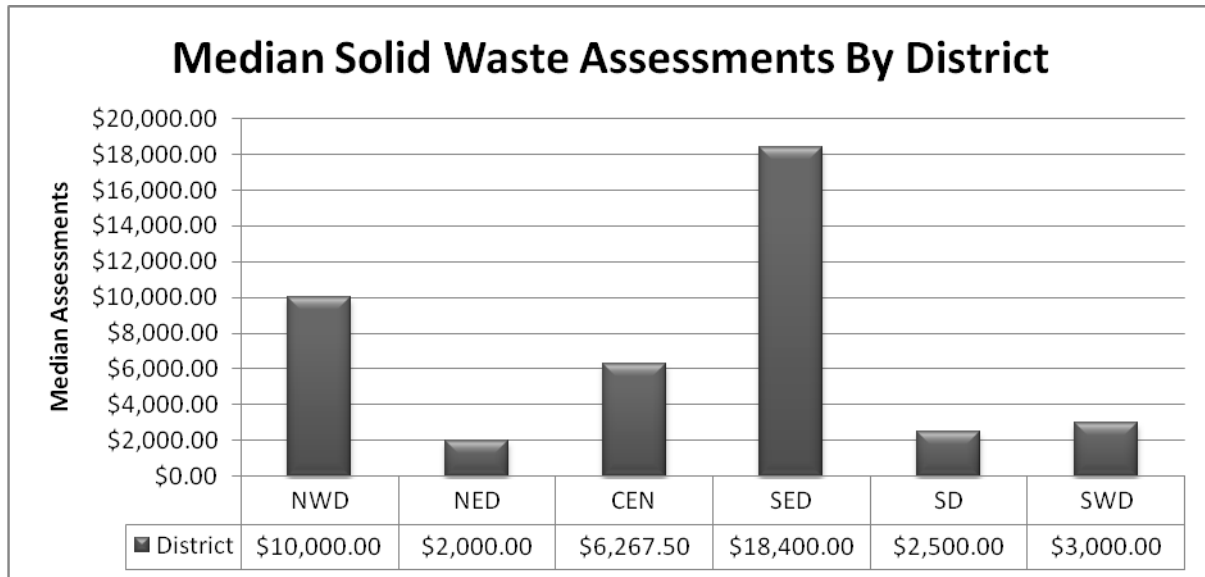
#### **h. Solid Waste Program**

This program oversees the handling of Florida's solid waste that is deposited into landfills across the state. Enforcement in the program has been mediocre for years, but it fell even further in 2010, which saw total assessments of \$411,035.00. This is 42% lower than 2009's results. The Northeast, South and Southwest Districts each saw lower enforcement numbers. The Southeast District turned in significantly higher results than the remaining districts.



*George Porter, Jr.* was assessed a civil penalty of \$204,750.00 (OGC# 82237) by the Southeast District. This one case accounted for 92% of the district's final results.

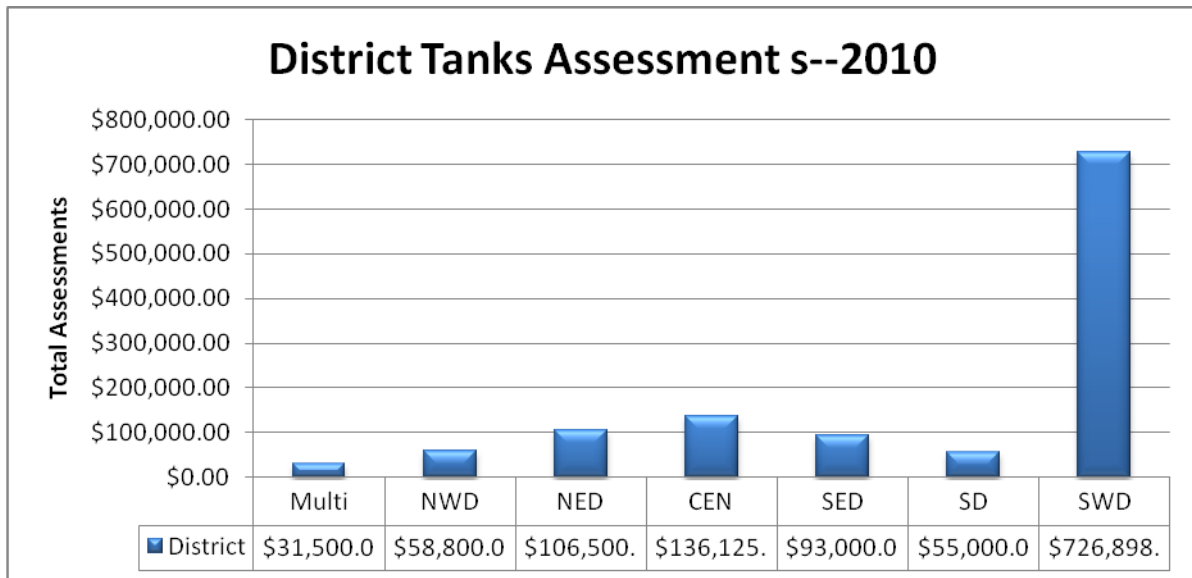
The median assessments broke down as follows:



Median assessments fell in the Northeast and South Districts with significant increases in all but the Southwest District.

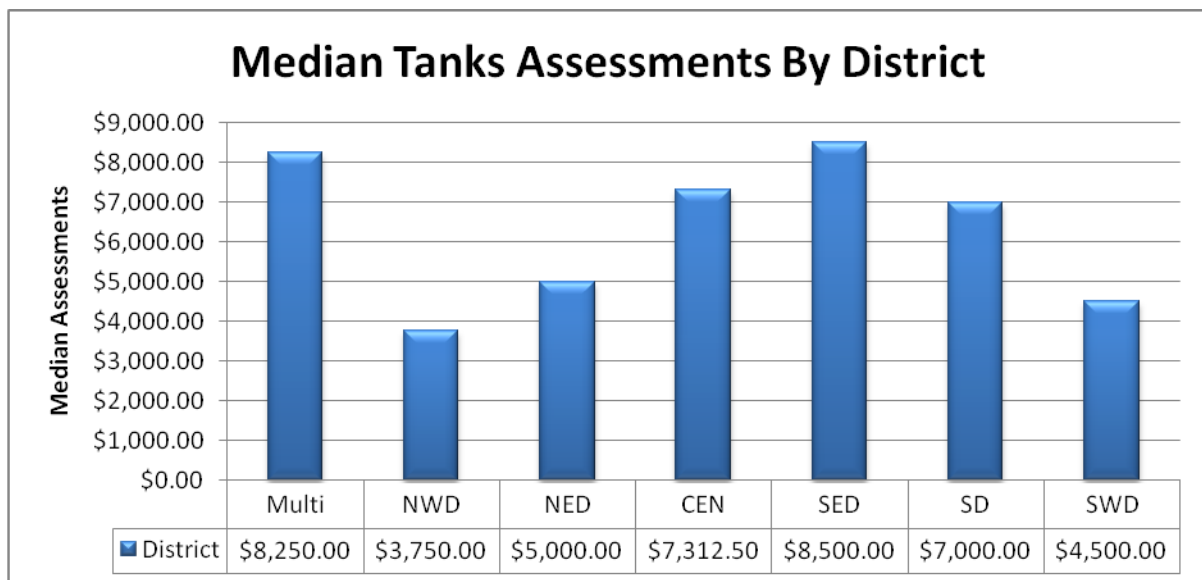
#### **i. Tanks Program**

The Department assessed civil penalties of \$697,737.00 in 2009. In 2010 this number rose to \$1,207,823.56 more than doubling 2009's performance! The storage and handling of Petroleum products is regulated under the tanks program. Just as in 2009, the data reflect a somewhat uniform assessment pattern across the state, except for the Southwest District, which significantly outperformed the others. The Northwest, Northeast and South Districts each saw decreased performance compared with 2009.



The Southwest District assessed civil penalties in 99 cases in 2010. The assessments in only 2 of those cases exceeded \$50,000.00: *Port Richey Energy, Inc.* was assessed \$93,894.00 (OGC# 92798) and *O'Brady's Ark LLC* was assessed \$52,500.00 (OGC# 93083).

The median assessments were:



This is actually the second straight year in which the Southwest District's median assessments have fallen compared to its performance in the previous year. Each of the other districts turned in better performances in this category compared to 2009.

## 7. Civil Penalty Collections

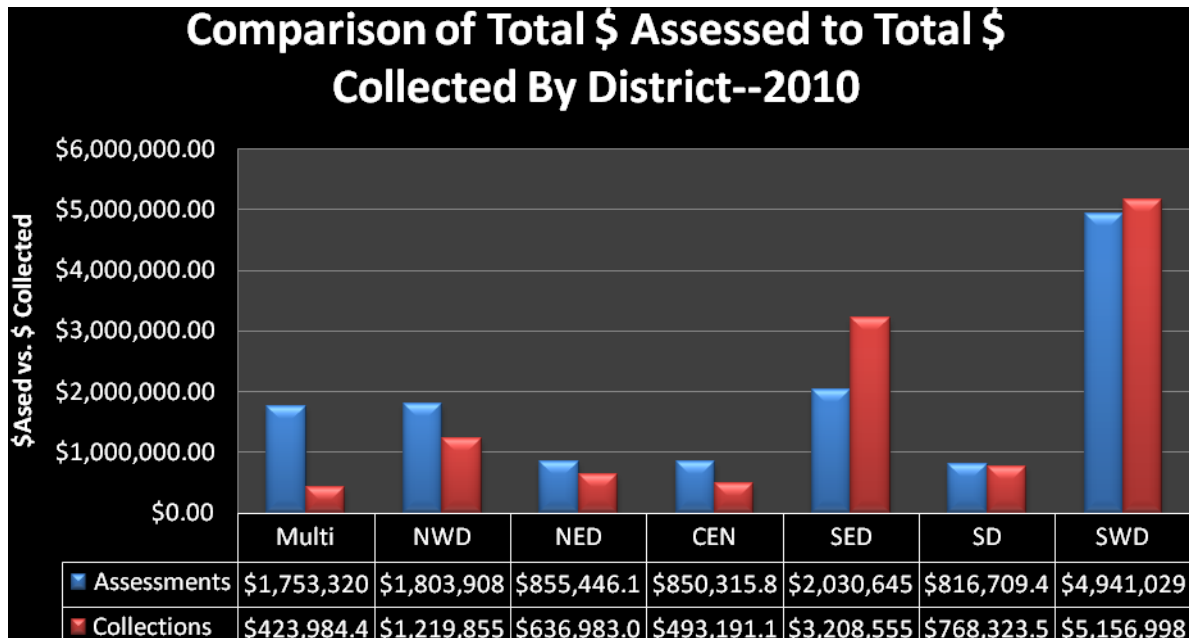
A statewide total of \$7,077,687.19, 46% better than 2009, but still below the results seen in 2008. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$4,830,205.07, again better than in 2009. Assuming the Department's valuation of these projects to be accurate, the result is a total collection by the Department of \$11,907,892.26.

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

Program	District	OGC#	Violator	Amount
AB	1	92855	VILLAS AT JASMINE PARK, LLC	\$27,500.00
AC	6	101525	PROCESS WATER SOLUTIONS, LLC	\$5,500.00
AF	6	100830	KINDER MORGAN PORT MANATEE TERMINAL, LLC	\$331,000.00
AG	6	101011	SCOTT SIGN SYSTEMS, INC.	\$7,200.00
AM	6	93398	OVERSTREET PAVING, INC.	\$6,700.00
AO	4	102505	RANGER CONSTRUCTION INDUSTRIES, INC.	\$6,000.00
AP	6	101407	CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC	\$520,000.00
AS	6	101996	YELLOWFIN YACHTS, INC.	\$77,592.00
AV	6	102028	MOSAIC FERTILIZER, LLC	\$23,800.00
BS	0	103429	REMINGTON LODGING & HOSPITALITY, LLC	\$1,000.00
CM	4	102237	ESCALADA, SERGIO	\$150.00
CU	1	90638	AWADALLAH, DONYA A. & PANAMA CITY MARKET, INC.	\$1,500.00
DA	4	61543	TYLER, SHAWN D.	\$2,000.00
DF	1	100808	PANAMA CITY - BAY COUNTY AIRPORT AND INDUSTRIAL DISTRICT	\$116,000.00
DR	4	101665	NAVKAR OF AMERICA, INC.	\$663.00
DW	4	930760	DADE COUNTY	\$98,847.20
EP	4	101100	SPAR SHIPHOLDING AS, SPAR SHIPPING AS; ET AL	\$543,026.30
HW	6	93352	C.F. INDUSTRIES, INC.	\$350,719.76
IW	6	11558	CENTRAL BEEF INDUSTRIES, LLC	\$350,000.00
MA	5	71365	REALMARK BURNT STORE MARINA, GULF TO BAY TREE & LANDSCAPE SERVICE, INC.	\$49,200.00
MN	0	102827	MOSAIC FERTILIZER, LLC	\$9,200.00
MR	4	101080	FILLETTE GREEN SHIPPING; ROSLYN SHIPPING, INC.; SEA WORLD MANAGEMENT	\$4,600.00
OC	4	90250	KLEYNHANS, GERHARDUS	\$1,000.00
PW	6	90536	5680884 MANITOBA LTD. CORPORATION	\$16,000.00
RO	0	82559	JG CYPRESS CREEK, LLC	\$133,561.00
SL	5	102365	TRAINA, DOUGLAS J.	\$20,400.00

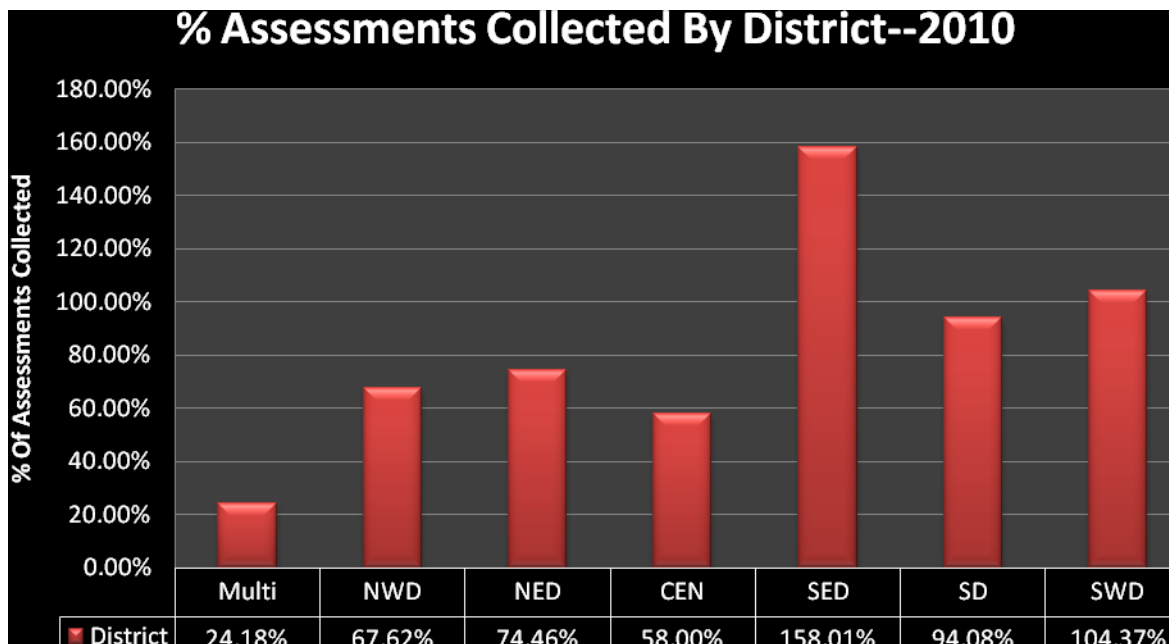
SW	6	30292	CONIGLIO, GEORGE, SR.	\$332,500.00
TK	6	93083	O'BRADY'S ARK LLC	\$27,500.00
UC	4	31376	MIAMI-DADE COUNTY	\$42,342.47

The following chart shows how each district and compares the dollars assessed by each district in 2010 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, although the Southeast and Southwest Districts both managed to collect more in fines than were assessed in 2010, meaning that they also collected monies levied in previous years:<sup>19</sup>

<sup>19</sup> The data will occasionally show that more than 100% of the assessed fines were collected. This is because the districts are also collecting assessments that were made in previous years. Since 100% of the assessments in any given year are seldom, if ever collected, it follows that in some instances the collection rate may exceed the dollars assessed in any given year.



When compared with 2009's results, the Northwest, Northeast and Central Districts collected smaller percentages of assessments in 2010, with the remaining districts faring better.

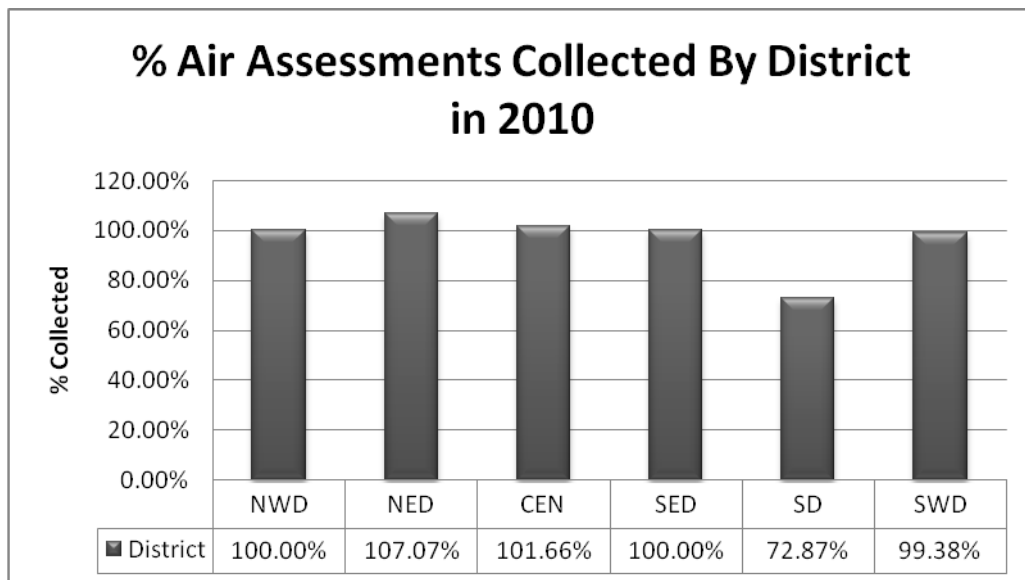
We also looked at the percentage of assessments actually collected by each district in the major program areas. Those results follow.

**a. Air Program**

The data clearly shows that when penalty assessments and collections are considered<sup>20</sup> the districts are collecting almost all of the assessments in this program area.<sup>21</sup> However, the overall 99.05% collection rate is significantly less than last year's 247.88% result. With the exception of the South District, all districts performed at roughly the same level.

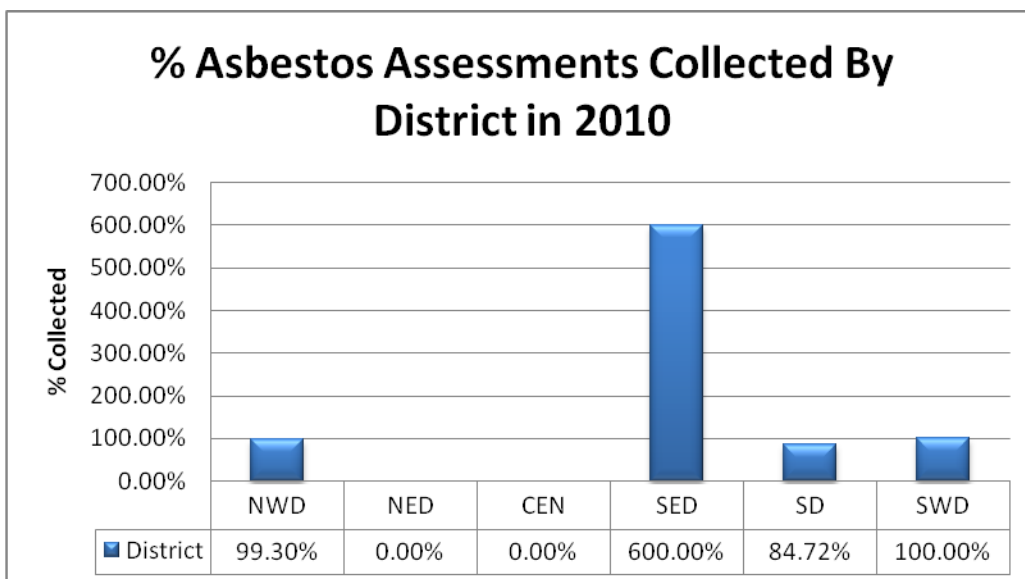
<sup>20</sup> Excluding in-kind and penalty project assessments.

<sup>21</sup> 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.



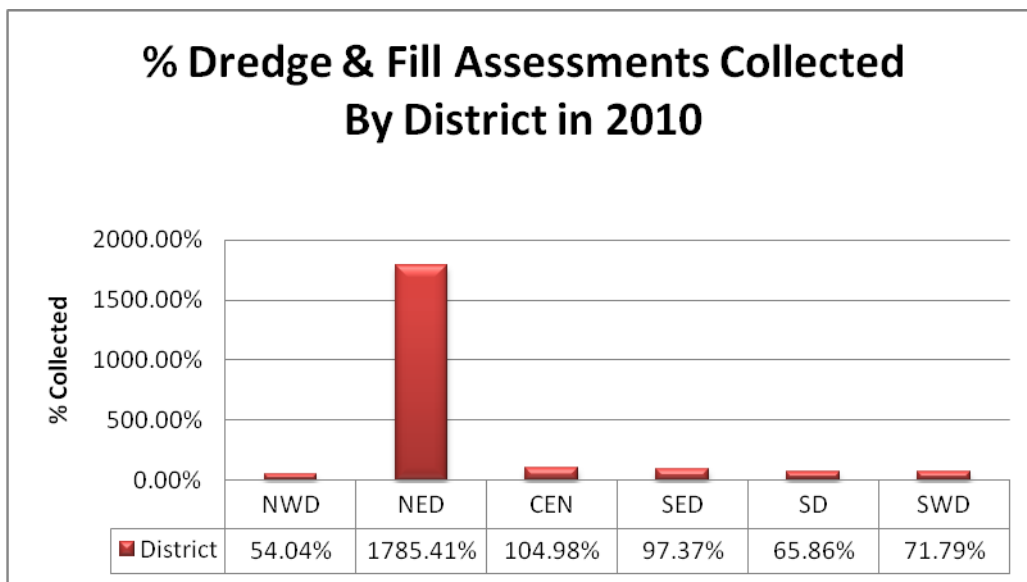
**b. Asbestos Program**

Overall the Department collected 86.46% of its assessments in this program area, almost 24% better than in 2009. The Southwest District performed much better in 2010.



**c. Dredge and Fill Program**

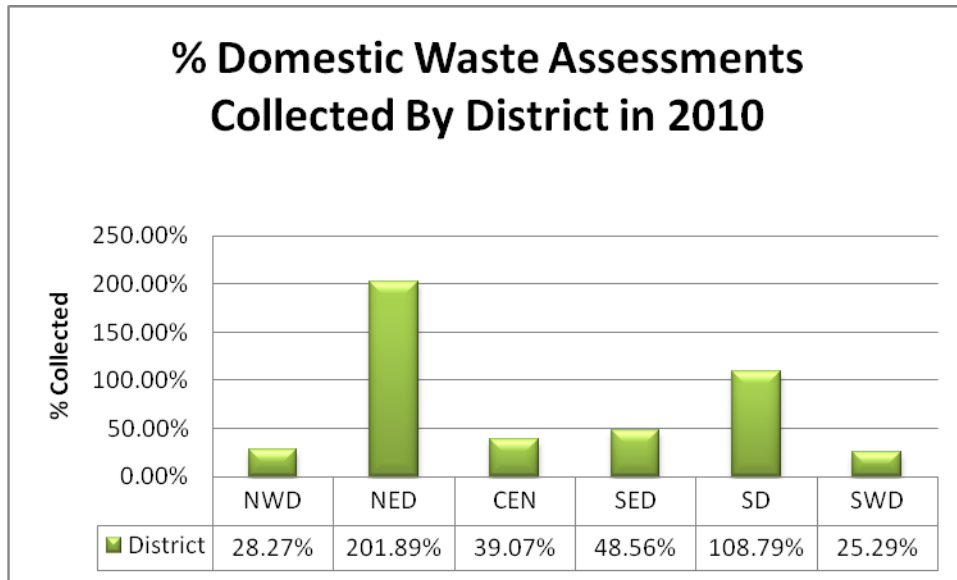
The Department collected 77.43% of its assessments in this program area when in-kind and penalty prevention projects are included in the numbers. This program area continues to see a lower rate of collection than that enjoyed by the air program.



Only the South and Southwest Districts collected lower percentages of civil penalties than they did in 2009. Otherwise, there was improvement throughout the Department. The disproportionately high percentage in the Northeast District is misleading because the District only assessed 2 civil penalties totalling \$7,000.00.

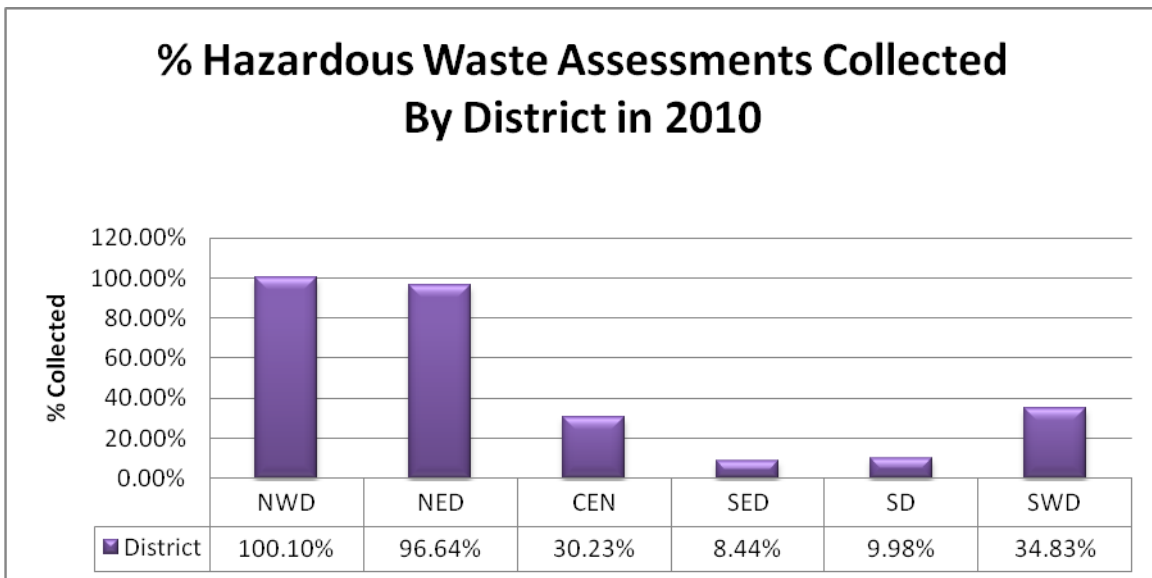
**d. Domestic Waste Program**

Overall the Department collected 34.79% of its penalty assessments in this program area—fewer than in 2009. Only the Northeast and South Districts collected over 50% of their assessments. The Southwest District, which had the highest dollar value of penalty assessments also collected the lowest percentage of all of the districts.



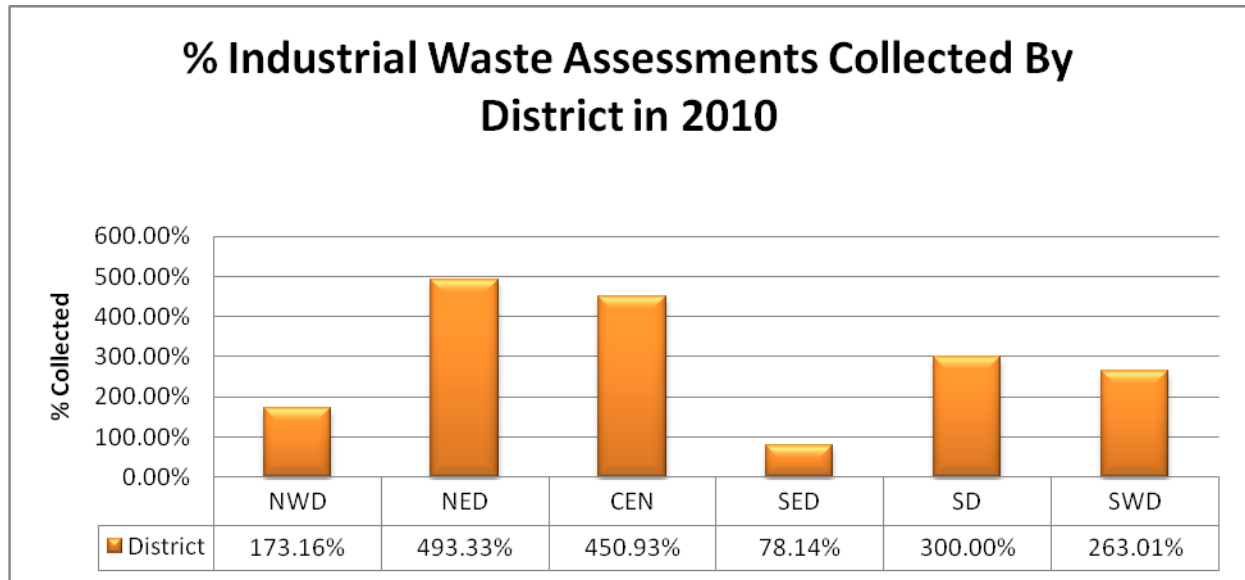
**e. Hazardous Waste**

Overall the Department collected 59.84% of its assessments in this program area, including in-kind and pollution prevention program assessments. It only collected 33.39% of the civil penalties that it assessed, however. Only the Northwest and Central Districts collected a higher percentage of penalty assessments in 2010. The performance of the Southeast and South Districts was pathetic:



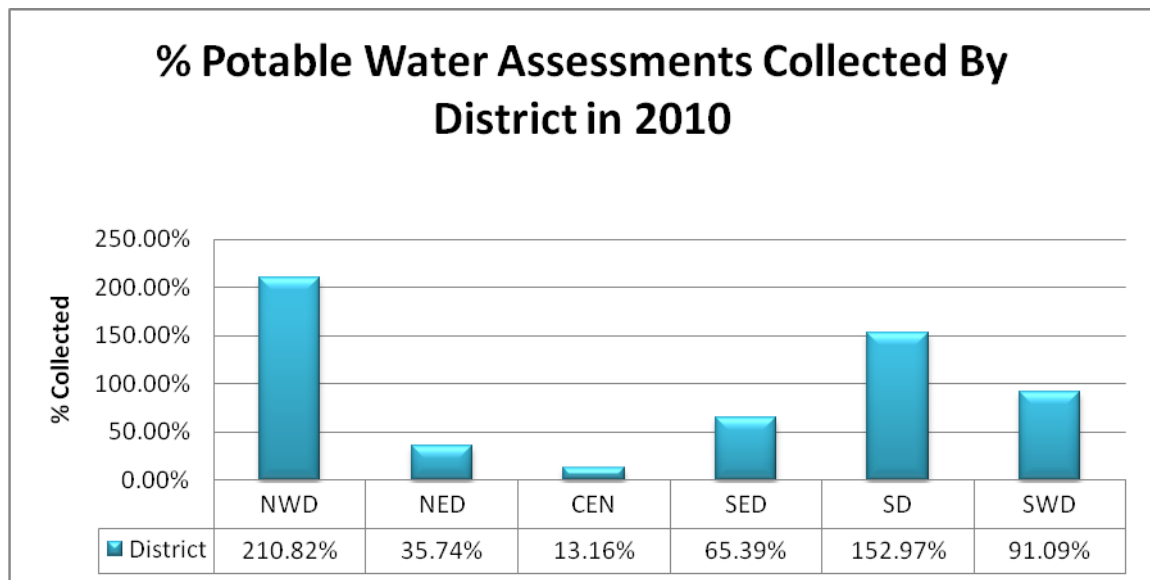
**f. Industrial Waste**

In terms of collections, the Department saw significant improvement in this year in 2010. It collected 261.69% of the penalty assessments that it levied. Only the Southeast District saw lower results:



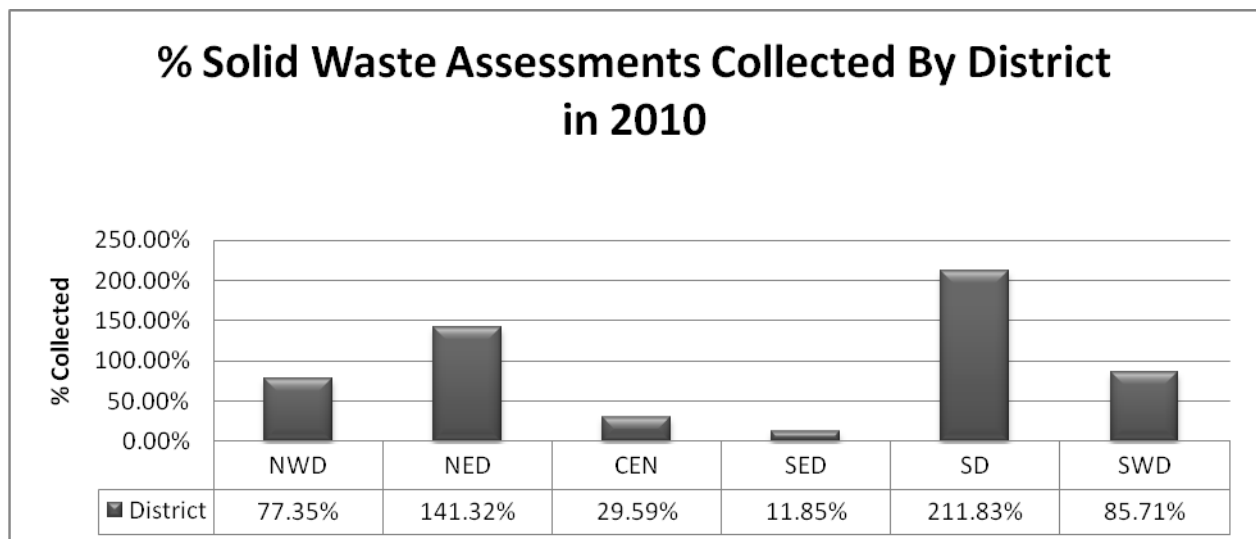
**g. Potable Water Program**

Overall the Department collected 54.54% of its civil penalty assessments in this program area. With the exception of the Central and Southeast Districts, every district in the Department saw improvements over 2009's performance.



**h. Solid Waste Program**

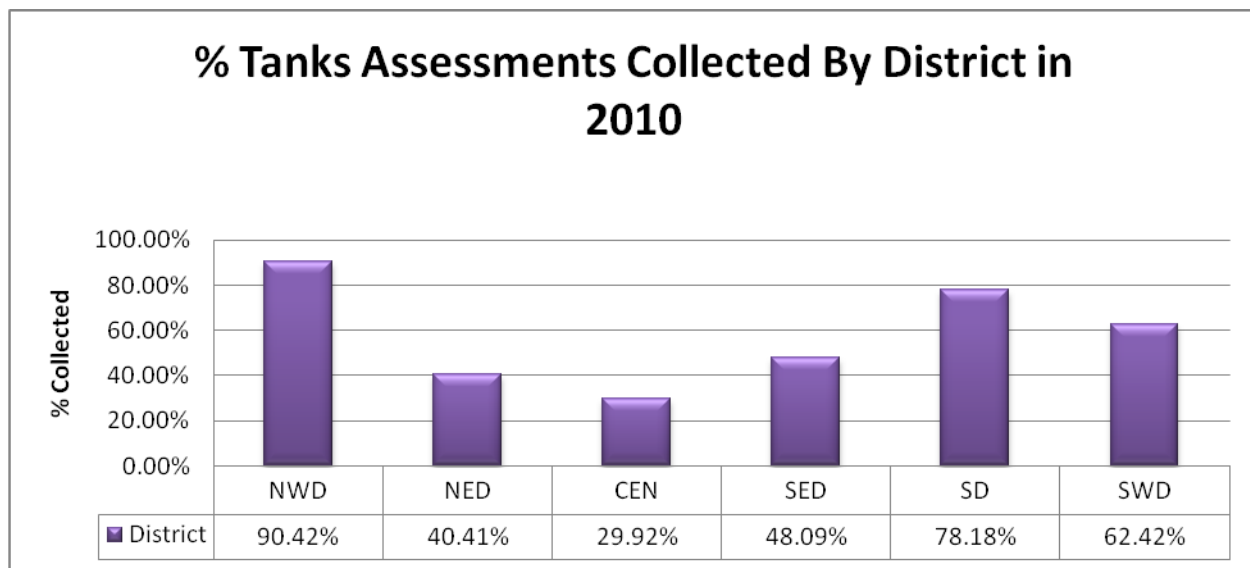
Overall the Department collected 50.42% of its civil penalty assessments in this program area, almost twice what it recovered in 2009. The Northwest, Central and Southeast Districts turned in lower results than in 2009:



**i. Tanks Program**

Overall the Department collected 56.69% of its assessments in this program area, 16% better than in 2009. Four of the Districts collected fewer assessments in 2010 than in 2009.

Those districts were the Northeast (for the second year in a row), the Central the Southeast (for the second year in a row) and the South. The Northwest and Southwest Districts improved on their previous performance:



## **DISTRICT ENFORCEMENT RESULTS**

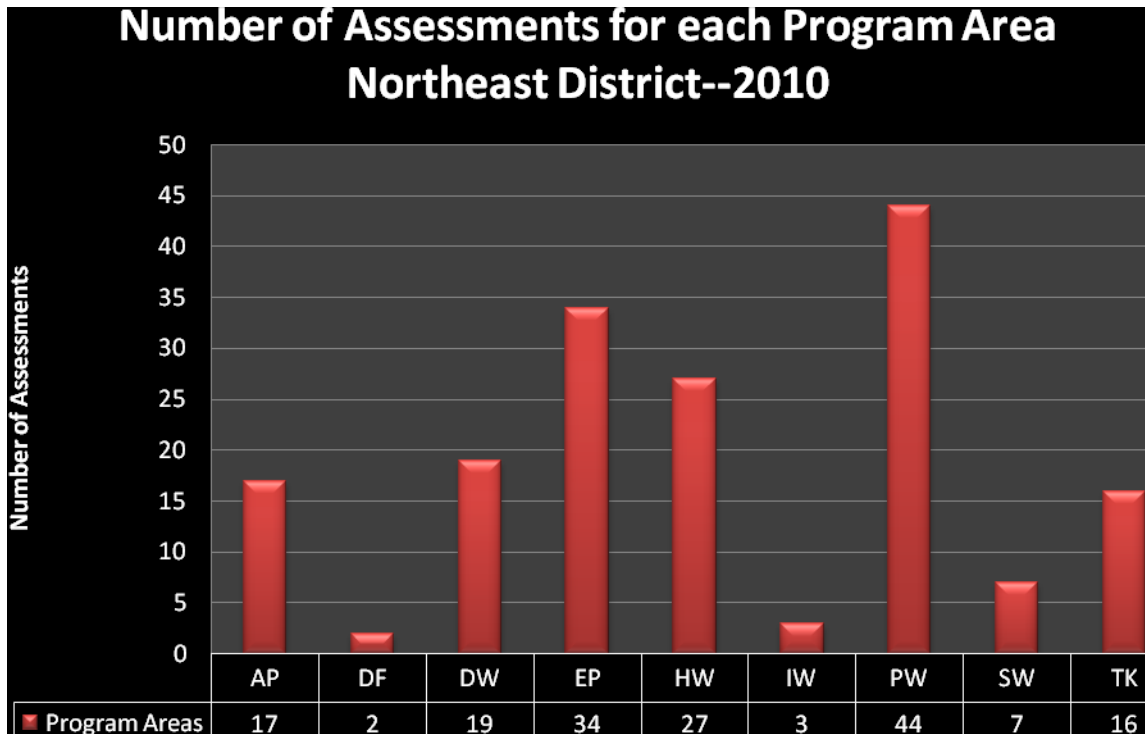
### **A. Northeast District**

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

The Northeast District initiated enforcement in 230 cases in 2010, 27 fewer than in 2009. 15.32% of all of the enforcement cases opened by the Department came out of this district. It issued 22 case reports, 26 NOVs (7 more than in 2009) and 20 final orders. 162 consent orders were issued and of those 44 were long-form consent orders, an increase of 18 compared to 2009. 93 short-form consent orders were issued, 12% of all short-form consent orders issued by the Department in Florida. 40% of all cases initiated by the Northeast District in 2010 were resolved with short-form consent orders.

## ***B. Program Area Enforcement***

The Northeast District assessed civil penalties in 169 cases in 2010, 37 fewer cases than in 2009. The following chart provides a breakdown<sup>22</sup> of how those assessments were distributed among the program areas:



The data shows that a majority of the assessments were in the potable water and in the environmental resource permitting programs. The air and tanks programs both fell significantly. Just as in 2009, there continue to be a minimal number of assessments in the industrial waste program.

## ***C. Civil Penalty Assessments***

The NED assessed civil penalties totaling \$855,446.11 in 2010. This is \$313,717.60 less than was assessed in 2009 and the second straight year of declining numbers. The district's performance represented 7% of all assessments by the Department in 2010, compared to 11% in 2009. The median civil penalty assessment for 2010 for all programs combined was \$2,000.00, a \$500.00 increase from 2009.

---

<sup>22</sup> Only program areas with actual assessments are shown. The same is true for the remaining districts that will be discussed.

Program area assessments for the Northeast District broke down as follows:<sup>23</sup>

Program	Total \$ Assessed	2009 Median	2010 Median
AP	\$111,125.00	<b>\$700.00</b>	\$1,000.00
DF	<b>\$7,000.00</b>	\$1,500.00	\$3,500.00
DW	<b>\$50,300.00</b>	4,000.00	<b>\$3,500.00</b>
EP	<b>\$143,786.10</b>	1,410.00	\$1,710.00
HW	\$304,362.50	<b>\$6,930.00</b>	<b>\$6,450.00</b>
IW	<b>\$7,500.00</b>	\$5,000.00	<b>\$2,500.00</b>
PW	<b>\$98,372.51</b>	\$900.00	\$1,025.00
SL	<b>\$0.00</b>	<b>\$2,250.00</b>	<b>\$0.00</b>
SW	<b>\$26,500.00</b>	<b>\$2,250.00</b>	<b>\$2,000.00</b>
TK	<b>\$106,500.00</b>	\$2,250.00	\$5,000.00

The total and median assessments for the domestic waste, industrial waste, state lands and solid waste programs underperformed in 2010. The hazardous waste, state lands and solid waste medians declined for the second year in a row.

#### ***D. Civil Penalty Collections***

The Northeast District collected \$514,369.42 in civil penalties, compared with \$613,564.62 in civil penalties that were collected in 2009<sup>24</sup>. The NED collected 7% of all collections by the Department in calendar year 2010, down 6% from 2009.

## **B. Northwest District**

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

The district took enforcement in 167 cases in 2010, 32 cases fewer than in 2009 and the second straight year of declining numbers. The district was responsible for 10.52% of all enforcement cases statewide. Of the 167 cases, 17 were case reports. 9 NOVs were issued and 7 final orders originated from the district. 134 consent orders were issued in 2010, 34 fewer than in 2009. 20 were long-form consent orders (an increase over 2009), while 87 were short-form (43 fewer than in 2009). The latter category represented 65% of all consent orders issued by the

---

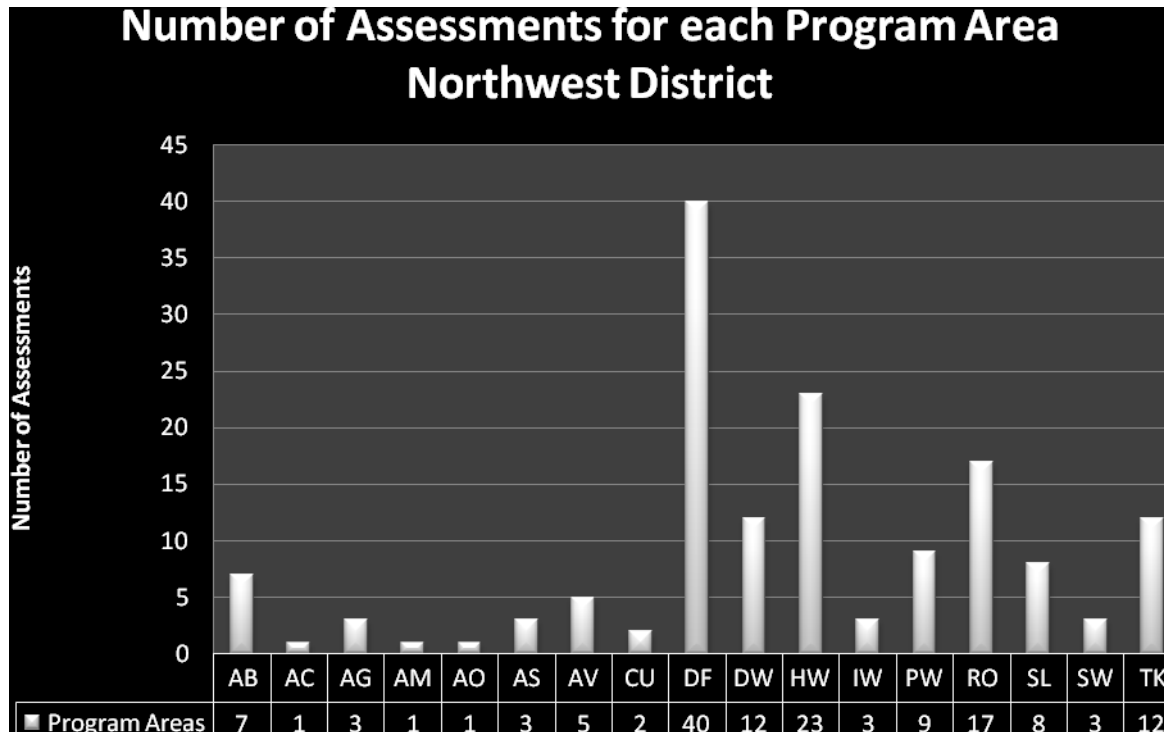
<sup>23</sup> Numbers in bold represent results that were declines from the previous year's performance. The same format is used for the remaining districts.

<sup>24</sup> The civil penalty collections reported for each district are for straight civil penalties. These numbers do not include in-kind projects.

district. 52% of all enforcement taken by the district was in this form, the second-highest percentage of all of the districts.

### ***B. Program Area Enforcement***

The Northwest District assessed civil penalties in 150 cases in 2010, far fewer cases than in 2009. The following chart provides how those cases were distributed across program areas:



Increases were seen in stormwater discharge, state lands and tanks cases, otherwise every program saw lower results.

### ***C. Civil Penalty Assessments***

The district assessed civil penalties totaling \$1,803,908.53, an amount that is \$146,095.75 (7%) less than in 2009. This is the second straight year of declining assessments for this district. The median assessment did remain steady at \$2,000.00.

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

Program	Total Assessments	2009 Medians	2010 Medians
AB	\$42,750.00	\$1,875.00	\$1,250.00
AC	\$1,500.00	\$2,250.00	\$1,500.00

AF	<b>\$0.00</b>	\$2,500.00	<b>\$0.00</b>
AG	\$4,375.00	\$500.00	\$500.00
AM	\$2,000.00	\$0.00	\$2,000.00
AO	\$1,000.00	<b>\$462.50</b>	\$1,000.00
AS	\$7,100.00	\$0.00	\$1,000.00
AV	<b>\$8,125.00</b>	<b>\$2,000.00</b>	<b>\$1,000.00</b>
CP	<b>\$0.00</b>	\$2,000.00	<b>\$0.00</b>
CU	<b>\$1,500.00</b>	\$1,000.00	<b>\$750.00</b>
DF	<b>\$350,908.00</b>	\$1,500.00	\$2,000.00
DW	<b>\$334,007.75</b>	\$600.00	\$1,250.00
EP	<b>\$0.00</b>	\$7,250.00	<b>\$0.00</b>
HW	<b>\$139,438.00</b>	\$5,130.00	<b>\$3,480.00</b>
IW	<b>\$7,514.78</b>	<b>\$1,506.44</b>	\$2,000.00
PW	<b>\$7,720.00</b>	<b>\$1,000.00</b>	<b>\$500.00</b>
RO	\$795,250.00	<b>\$2,400.00</b>	\$4,000.00
SL	\$13,820.00	\$2,400.00	<b>\$1,665.00</b>
SW	\$28,100.00	<b>\$2,000.00</b>	\$10,000.00
TK	<b>\$58,800.00</b>	<b>\$5,000.00</b>	<b>\$3,750.00</b>

Total assessments were substantially down in asbestos, dredge and fill, domestic waste, hazardous waste, industrial waste, potable water and tanks cases. Median assessments saw significant decreases in asbestos, hazardous waste, potable water, state lands and tanks cases. Median assessments declined for two years in a row in asbestos, air Title V, potable water and tanks cases. The solid waste program saw a significant improvement in median assessments, as did the domestic waste and dredge and fill programs.

#### ***D. Civil Penalty Collections***

\$598,437.53 in civil penalties was collected by the NWD in 2010, a slight increase compared to the district's performance in 2009. The district collected 8% of all penalty dollars received by the Department in 2010. The district did report that in-kind/penalty prevention projects valued at \$621,417.95 were completed in 2010.

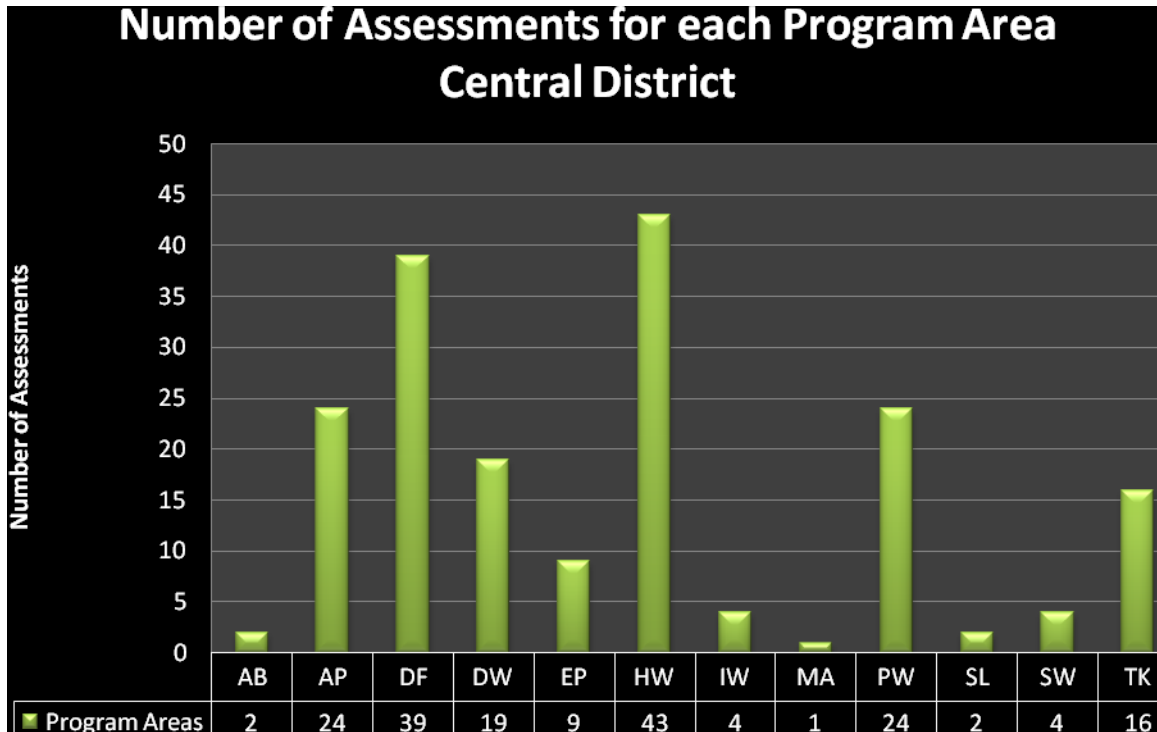
### **C. Central District**

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

The Central District took enforcement in 208 cases in 2010, a 22% increase over 2009. It submitted 21 case reports to OGC in 2010. It also issued 18 NOVs, 10 final orders and 159 consent orders. Of the 159 consent orders, 67% (90) were short-form consent orders whereas only 16% were long-form.

### ***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 2010:



The Central District assessed penalties in 187 cases in 2010, an improvement over the 152 assessments in 2009. There were more air (8), dredge and fill/EP (11), potable water (15) and tanks (11) cases in 2010, compared to 2009.

### ***C. Civil Penalty Assessments***

The CEN levied \$850,315.85 in civil penalty assessments in 2010. This is \$554,208.31 fewer dollars than assessed in 2009, a 39% decline. 2009's performance was a 43% decline from 2008, making this the second straight year of decreasing assessments. This is actually the lowest total for civil penalty assessments in this district since 2003. The assessments totaled 7% of all assessments statewide, tied with the Northeast District for the lowest percentage, though median assessments did rise to \$2,000.00.

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

Program	Total Assessments	Total Assessments	2009 Medians	2010 Medians
AB	\$18,230.00	\$15,550.00	\$9,115.00	\$7,775.00

AP	\$72,460.16	<b>\$68,527.50</b>	<b>\$3,125.00</b>	<b>\$2,431.25</b>
DF	\$136,885.00	<b>\$40,660.00</b>	<b>\$600.00</b>	<b>\$500.00</b>
DW	\$68,150.00	<b>\$65,472.12</b>	<b>\$1,937.50</b>	\$2,750.12
EP	\$3,500.00	\$15,815.00	\$1,750.00	<b>\$1,410.00</b>
HW	\$1,004,144.00	<b>\$408,256.23</b>	<b>\$3,868.00</b>	\$4,000.00
IW	\$37,000.00	<b>\$5,400.00</b>	\$5,000.00	<b>\$950.00</b>
MA	\$2,750.00	<b>\$1,080.00</b>	\$1,375.00	<b>\$1,080.00</b>
PW	\$8,275.00	\$62,685.00	\$500.00	\$1,000.00
SL	\$2,130.00	\$3,710.00	<b>\$340.00</b>	\$1,855.00
SW	\$12,000.00	\$27,035.00	\$3,000.00	\$6,267.50
TK	\$39,000.00	\$136,125.00	\$5,000.00	\$7,312.50

Total assessments fell sharply in the dredge and fill (70%), hazardous waste (59%) and industrial waste (85%) programs. Median assessments fell in the asbestos, air, dredge and fill, industrial waste and mangrove alteration programs. Otherwise, substantial improvements were noted in the domestic waste, potable water, state lands, solid waste and tanks programs.

#### ***D. Civil Penalty Collections***

The Central District did manage to collect more civil penalties in 2010—\$428,123.16—compared to--\$335,843.07 in 2009, though this is still far less than the \$594,185.59 collected in 2008. This represented 6% of all of the penalties collected department-wide. The Central and South Districts tied for the poorest performance of all of the districts.

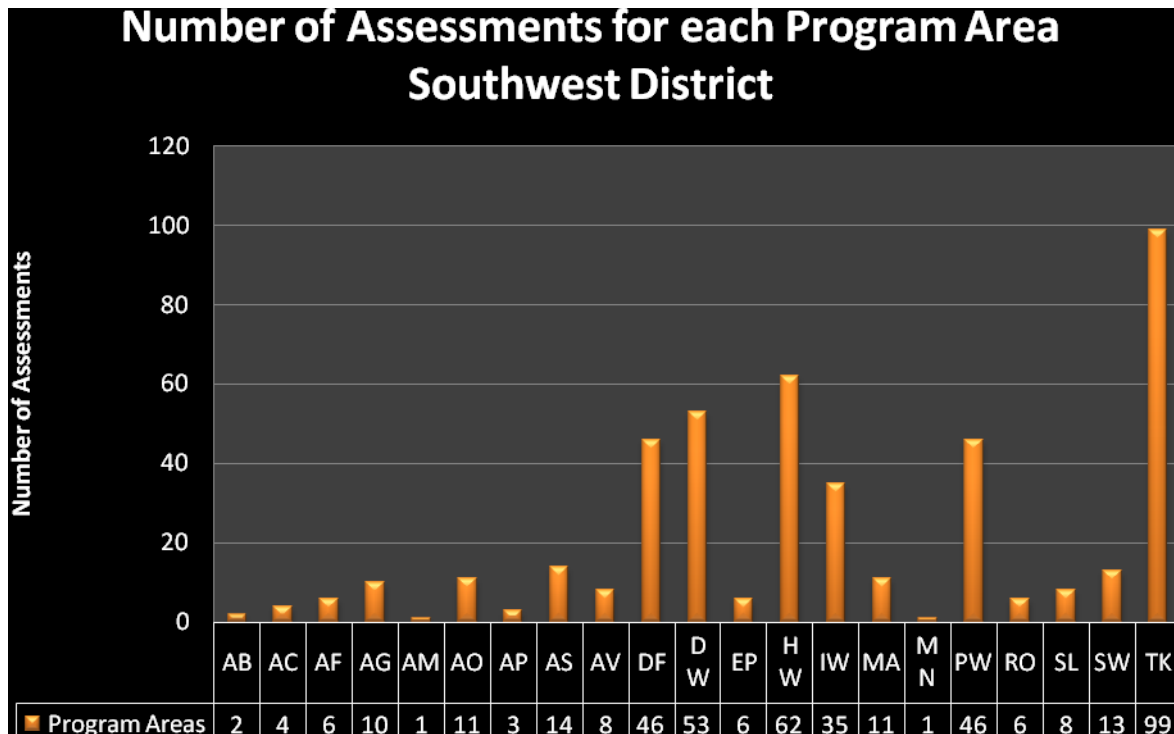
### **D. Southwest District**

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

The Southwest District initiated 445 enforcement cases in 2010, just over 1/3 of all enforcement by the Department in 2010. 36 case reports were submitted by the district in 2010, 7 more than in 2009 and 23% of all such reports submitted statewide. The district also issued 28 NOVs (30 less than in 2009), or 24% of all such filings. It issued 9 Final Orders, 29 less than in 2009. 382 Consent Orders were issued out of this district (compared with 352 last year), which represents 30% of all Consent Orders issued by the Department in 2009. 68% of the Consent Orders issued by the district were short-form consent orders, compared to 75% last year, which makes this the second year in a row of declining usage of short-form consent orders. 72 long-form consent orders were issued out of this district in 2010, a sharp increase from last year and once again the second straight year of improvement. The Southwest District still settles more of its cases through the use of short-form consent orders (57%) than any other district in the state.

## ***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 2010:



The Southwest District assessed civil penalties in 445 cases in 2010. There were significant increases in the number of assessments in the air (39), domestic waste (23), and potable water (9) programs, but the remaining programs saw fewer assessments—particularly hazardous waste and industrial waste.

## ***C. Civil Penalty Assessments***

Civil penalty assessments rose 26% for this district in 2010, the second year in a row in which assessments have been on the increase. In 2010 the SWD levied civil penalties totaling \$4,941,029.22, an increase of 1,004,344.62 over 2009. The district accounted for 38% of all penalty assessments by the Department, clearly the best performance of all of the districts. In addition, median assessments also rose from \$1,600.00 in 2009 to \$2,053.80 in 2010. In many respects the Southwest District continues to carry the bulk of the heavy lifting for the Department.

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

<b>Program</b>	<b>Total Assessments</b>	<b>2009 Medians</b>	<b>2010 Medians</b>
AB	\$3,500.00	<b>0.00</b>	\$1,750.00
AC	\$14,625.00	<b>\$1,350.00</b>	\$4,312.50
AF	\$344,750.00	<b>\$2,000.00</b>	\$2,625.00
AG	\$18,075.00	<b>\$1,200.00</b>	<b>\$1,000.00</b>
AM	<b>\$6,700.00</b>	\$11,500.00	<b>\$6,700.00</b>
AO	<b>\$20,245.00</b>	<b>\$2,500.00</b>	<b>\$2,000.00</b>
AP	\$613,800.00	\$10,000.00	\$88,000.00
AS	\$94,917.00	\$45,000.00	<b>\$1,000.00</b>
AV	\$218,700.00	\$6,000.00	\$9,000.00
CU	<b>\$0.00</b>	<b>\$10,999.00</b>	<b>\$0.00</b>
DF	<b>\$90,558.00</b>	<b>\$1,300.00</b>	<b>\$775.00</b>
DW	\$1,682,922.00	\$7,000.00	<b>\$4,500.00</b>
EP	<b>\$19,380.00</b>	<b>\$1,500.00</b>	<b>\$1,000.00</b>
HW	\$750,317.46	<b>\$3,147.20</b>	<b>\$2,609.75</b>
IW	<b>\$157,140.20</b>	\$2,700.00	\$3,500.00
MA	<b>\$17,471.00</b>	\$2,150.00	<b>\$1,500.00</b>
MN	\$5,000.00	\$0.00	\$5,000.00
PG	<b>\$0.00</b>	\$27,099.50	<b>\$0.00</b>
PW	<b>\$51,650.00</b>	\$550.00	<b>\$500.00</b>
RO	\$10,500.00	<b>\$750.00</b>	\$1,500.00
SL	<b>\$8,430.00</b>	<b>\$1,300.00</b>	<b>\$1,000.00</b>
SW	<b>\$85,450.00</b>	<b>\$3,000.00</b>	\$3,000.00
TK	<b>\$726,898.56</b>	<b>\$4,000.00</b>	<b>\$4,500.00</b>

While there were increases in median assessments, notably in the tanks program, there were also 13 programs that saw lower numbers. Dredge and fill median assessments dropped by \$525.00, a not insignificant amount and this is the second straight year of declining numbers in that program. Total assessments in the dredge and fill program fell sharply as well. Hazardous waste medians also saw two straight years of lower results. It appears from the data that the 99 tanks cases were the means by which the district's overall numbers improved.

#### ***D. Civil Penalty Collections***

In 2010 the Southwest District collected \$3,815,357.05 in civil penalties compared with \$1,808,261.65 that was collected in 2009 a sharp increase. Its collections accounted for **54%** of all the monies collected by the Department across the state, once again the highest percentage of all of the districts.

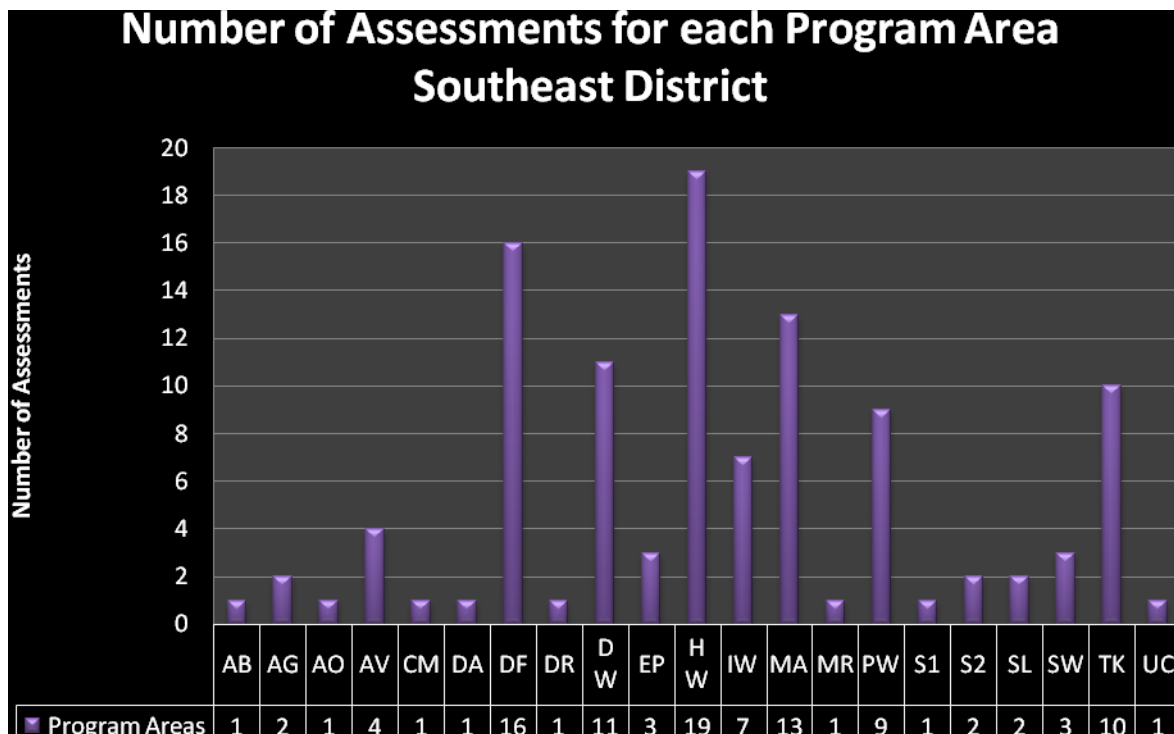
## E. Southeast District

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

The SED initiated enforcement in 206 cases in 2010, 74 more cases than in 2009, representing a 56% increase! It issued 15 NOVs in 2010 (almost double the district's output in 2009) and 41 case reports (a 151% improvement) and 5 final orders. It also issued 145 Consent Orders, 43 more than in 2009. 35% of the consent orders that were issued were short-form consent orders. 25% of the district's enforcement cases were resolved through short-form consent orders, making it the district least likely to use this as an enforcement tool. The SED accounted for 56% of all Case Reports sent to the OGC in 2010, by far the highest contribution of all of the districts. It also accounted for 13% of the NOVs, 16% of the Final Orders and 10% of all Consent Orders. Generally, the numbers all point to performance that is has significantly improved from 2009.

### B. *Program Area Enforcement*

The following chart provides the number of civil penalty assessments made by the Southeast District by program area in 2010:



The Southeast District assessed civil penalties in 109 cases in 2010, 13 fewer cases than in 2009. This is an unusual development considering the significant increase otherwise noted in the overall number of enforcement actions generated by the district in 2010. The three major programs that saw slippage in their numbers were the asbestos, domestic waste and hazardous waste programs. The other programs remained relatively stable.

### ***C. Civil Penalty Assessments***

The decrease in the number of assessments did not carry over to the dollars assessed in 2010. To the contrary, dollars assessed in civil penalties almost doubled to \$2,030,645.12! This performance accounts for 16% of all civil penalty assessments levied by the Department in 2010, a 4% increase. At the same time, however, the district's median assessments across all programs fell to \$3,500.00, suggesting that its overall positive performance was due to very large assessments in single cases.

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

<b>Program</b>	<b>Total \$ Assessed</b>	<b>2009 Medians</b>	<b>2010 Medians</b>
AB	<b>\$500.00</b>	\$825.00	<b>\$500.00</b>
AF	<b>\$0.00</b>	\$1,750.00	<b>\$0.00</b>
AG	<b>\$5,000.00</b>	<b>\$1,000.00</b>	\$2,500.00
AO	\$6,000.00	\$5,700.00	\$6,000.00
AV	\$23,490.00	\$2,500.00	\$3,445.00
CM	\$150.00	\$0.00	\$150.00
CU	<b>\$0.00</b>	\$5,000.00	<b>\$0.00</b>
DA	<b>\$100.00</b>	\$2,000.00	<b>\$100.00</b>
DF	<b>\$32,300.00</b>	\$2,710.00	<b>\$1,565.00</b>
DR	\$11,934.00	\$0.00	\$11,934.00
DW	<b>\$129,147.20</b>	\$14,590.00	<b>\$2,000.00</b>
EP	\$566,526.30	\$4,850.00	\$17,250.00
HW	\$699,880.15	\$7,778.00	\$10,000.00
IW	\$12,798.00	<b>\$2,500.00</b>	<b>\$2,000.00</b>
MA	<b>\$38,900.00</b>	\$2,250.00	\$2,250.00
MR	\$4,600.00	\$0.00	\$4,600.00
OC	<b>\$0.00</b>	\$1,000.00	<b>\$0.00</b>
PW	\$17,327.00	<b>\$1,000.00</b>	\$1,400.00
S1	<b>\$20,000.00</b>	\$12,500.00	\$20,000.00
S2	\$100,000.00	\$0.00	\$50,000.00
S3	<b>\$0.00</b>	\$31,300.00	<b>\$0.00</b>
SL	<b>\$3,000.00</b>	\$4,250.00	<b>\$1,500.00</b>
SW	\$223,650.00	\$5,000.00	\$18,400.00
TK	\$93,000.00	\$5,450.00	\$8,500.00
UC	<b>\$42,342.47</b>	<b>\$5,600.00</b>	\$42,342.47

The district's somewhat chaotic results are more easily explained when broken down into individual program areas. There were substantial reductions in civil penalty assessments in the asbestos, dredge and fill, domestic waste (by over \$600,000.00) and mangrove alteration programs. At the same time, however, these decreases were offset by significant increases in the hazardous waste, environmental resource permitting, solid waste and tanks programs. Two programs stand out as being bases for concern in the median assessments category: domestic waste, which saw a significant drop in median assessments and industrial waste, which saw its numbers decline for the second year in a row.

There were a number of high assessment cases in this district. Among those assessments were cases against (1) *Allied Universal Corporation*, hazardous waste, \$427,500.00 (OGC # 70177), (2) *George Porter, Jr.*, solid waste, \$204,750.00 (OGC # 82237) and (3) *Spar Shipholding As, Spar Shipping As, et. al.*, environmental resource permitting, \$543,026.30 (OGC # 101100). These three cases accounted for over one half of the district's overall increase in assessments.

#### ***D. Civil Penalty Collections***

The SED collected \$1,008,391.30 in civil penalties in 2010, a slight increase compared to 2009. This accounted for 14% of all dollars collected by the FDEP in civil penalties in 2010, once again the second best performance of all of the districts.

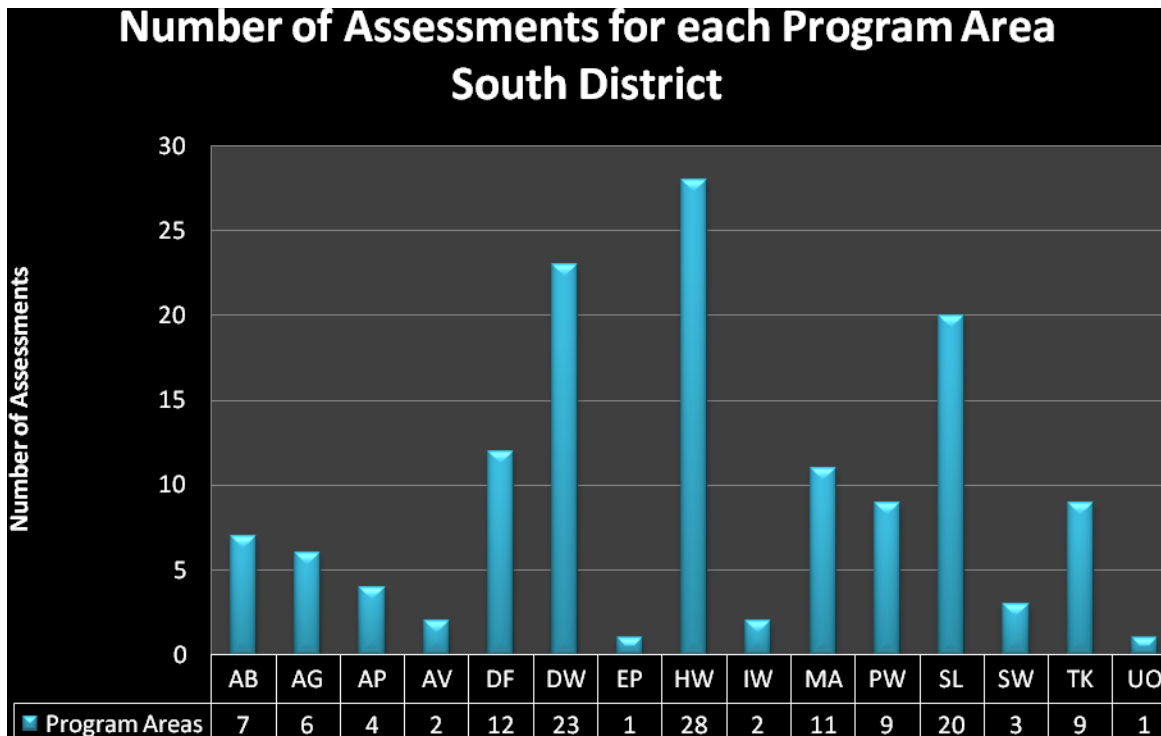
### **F. South District**

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

The South District took enforcement in 187 cases in 2010, the second lowest of the 6 districts (the Northwest District being the lowest), but better than its 2009 performance. The district sent 20 Case Reports to the OGC in 2010, more than double the number in 2009. 17 NOVs and 5 Final Orders were issued in 2010, both of which were also substantially better results than in 2009. This district issued 145 consent orders in 2010, slightly better than 2009 and reversing what had been a downward trend. 33% of all enforcement cases were resolved through the use of short-form consent orders, the second-lowest usage of these enforcement tools in the state. The South District accounted for 13% of all Case Reports, 15% of the NOVs, 8% 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 2010:



The South District assessed penalties in 138 cases in 2010, the second straight year of declining numbers. The hazardous waste program saw the greatest improvement with mangrove alteration, state lands and tanks programs also seeing modest improvements. Otherwise performance basically declined throughout. The dredge and fill program saw 7 fewer cases than in 2009, the second straight year of declining results.

### ***C. Civil Penalty Assessments***

Civil penalty assessments dropped from \$904,643.00 to \$816,709.40 in 2010, a 10% drop. The district provided 6% of all assessments levied by the FDEP in 2010. The median assessment for all programs combined was \$1,695.00, an improvement from the \$1600.00 posted in 2009.

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

Program	Total \$ Assessed	Total \$ Assessed	2009 Medians	2010 Medians
AB	\$18,750.00	<b>\$18,000.00</b>	\$2,000.00	<b>\$1,000.00</b>
AG	\$5,350.00	\$10,250.00	\$925.00	\$1,375.00
AO	\$3,705.00	<b>\$0.00</b>	\$3,705.00	<b>\$0.00</b>
AP	\$6,900.00	\$16,050.00	\$1,000.00	\$2,775.00
AV	\$45,112.50	<b>\$14,712.00</b>	\$22,556.25	<b>\$7,356.00</b>

DF	\$85,350.00	<b>\$32,670.00</b>	\$3,000.00	<b>\$1,500.00</b>
DW	\$375,247.00	<b>\$57,750.00</b>	<b>\$1,500.00</b>	<b>\$1,000.00</b>
EP	\$20,800.00	<b>\$10,000.00</b>	\$3,500.00	\$10,000.00
HW	\$63,167.50	\$429,668.40	<b>\$2,100.00</b>	\$3,407.50
IW	\$6,000.00	<b>\$2,000.00</b>	\$2,000.00	<b>\$1,000.00</b>
MA	\$10,310.00	\$71,260.00	\$500.00	\$3,000.00
PW	\$22,200.00	<b>\$11,800.00</b>	<b>\$750.00</b>	\$750.00
SL	\$30,850.00	\$66,050.00	\$2,000.00	<b>\$1,500.00</b>
SW	\$101,151.00	<b>\$20,300.00</b>	<b>\$3,100.00</b>	<b>\$2,500.00</b>
TK	\$62,000.00	<b>\$55,000.00</b>	\$15,000.00	<b>\$7,000.00</b>
UC	\$47,750.00	<b>\$1,199.00</b>	\$23,875.00	<b>\$1,199.00</b>

Total assessments nosedived in certain critical program areas. Those declines were: dredge and fill which dropped \$52,680.00, industrial waste saw a \$4,000 drop in a program area that was already less than stellar in its performance, potable water assessments dropped by \$10,400.00, solid waste dropped by \$80,851.00, tanks dropped by \$7,000.00 and underground injection assessments dropped by \$46,551.00. On the bright side, hazardous waste assessments saw a tremendous rise in assessments from \$63,167.50 to \$429,668.40. The hazardous waste program coupled its noteworthy improvement in the number of assessments with a significant improvement in its median assessments. The domestic waste program, on the other hand, has now seen three straight years in which its median assessments have fallen—in 2007 its median assessments were \$3,000.00. The solid waste program also saw back-to-back declines in the median assessments for 2010 compared to 2009.

#### ***D. Civil Penalty Collections***

\$397,024.27 was collected by the SD in 2010, a little over \$5,000.00 more than was collected in 2009. The amount collected represents 6% of all dollars collected by the Department in civil penalties in 2010.

### **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."

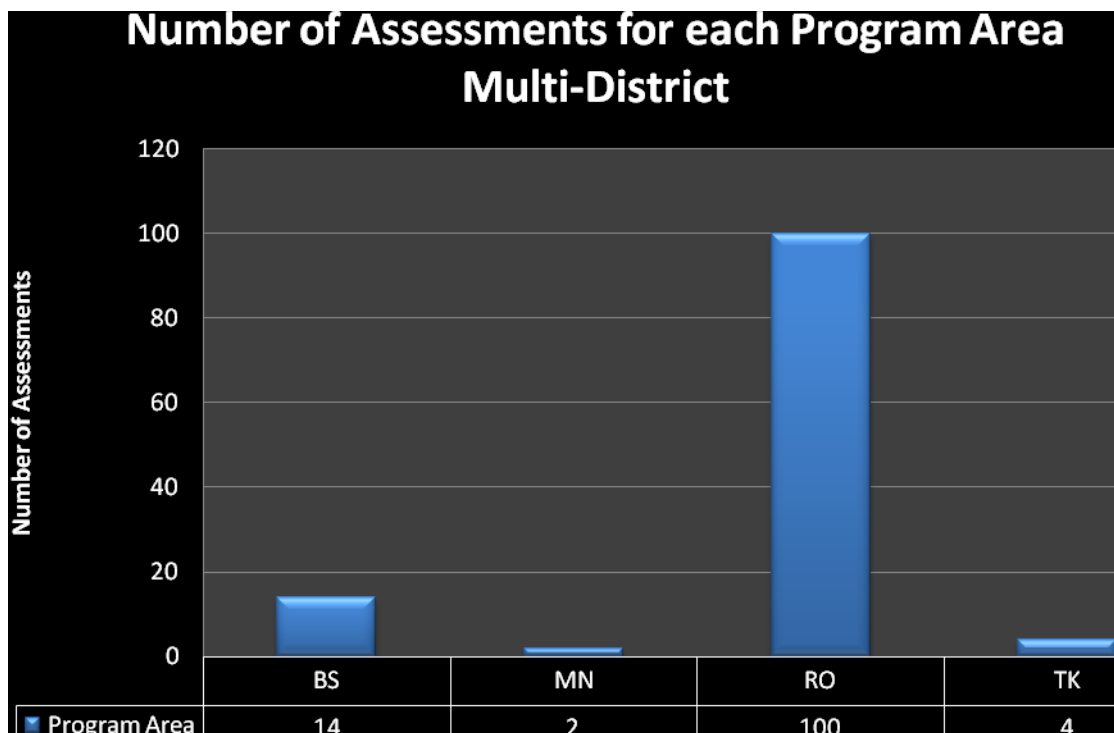
#### ***A. Case Reports, NOVs, Consent Orders, Final Orders***

The remaining categories sent no Case Reports to the OGC in 2010. They issued one NOV, 11 Final Orders, and 122 Consent Orders—the latter category representing a 40%

improvement from 2009. The remaining categories accounted for 0% of all Case Reports, 1% of the NOV's, 160% of the Final Orders and 10% of all Consent Orders.

### ***B. Program Area Enforcement***

The following chart provides the number assessments issued by Other Enforcement by program area in 2010:



There were 11 fewer assessments in the beaches and shores program in 2010 compared to 2009, while stormwater discharge assessments rose by 21 cases.

### ***C. Civil Penalty Assessments***

Civil penalty assessments rose in 2010, from \$195,782.75 in 2009 to \$1,753,320.00, predominately in the stormwater discharge program. This accounts for 13% of all assessments levied by the FDEP in 2010. Assessments broke down as follows:

Program	Total \$ Assessed	2009 Medians	2010 Medians
BS	<b>\$11,750.00</b>	\$750.00	\$875.00
DF	<b>\$0.00</b>	\$2,000.00	<b>\$0.00</b>
MN	<b>\$12,200.00</b>	\$4,000.00	\$6,100.00

RO	1,697,870.00	<b>\$370.00</b>	\$518.00
TK	31,500.00	\$0.00	\$8,250.00

#### ***D. Civil Penalty Collections***

\$315,984.46 was collected by the remaining categories in 2010, a much higher amount than the \$145,800.59 that was collected by the remaining categories in 2009. The 2010 performance represents 5% of all dollars collected by the Department in civil penalties in 2010.

### **CONCLUSION**

2010 saw improvements in (1) the number of enforcement cases that were opened, (2) the continued lessening of the usage of short-form consent orders to resolve those cases, (3) a healthy increase in the Department's willingness to take polluters to court and (4) ultimately an increase in the dollars assessed against those polluters in the form of civil penalties. All of these indicators are positive and the Department deserves credit for those improvements.

If we drill down in the numbers, however, we find continued reasons for healthy skepticism. First and foremost, the improvement that we saw is due largely to better performance in the Southwest and Southeast Districts. Interestingly, the Southwest District also amends its consent orders more than any other district, an indication that it tends to monitor enforcement cases more aggressively than the other districts. But the overall improvement is not Department-wide. The Northeast and Northwest Districts opened fewer enforcement cases, assessed penalties in fewer cases and assessed fewer dollars in penalties in 2010. The Northeast District also collected fewer penalties than it assessed. And the Central District assessed civil penalty dollars at the lowest rate for that district since 2003.

The Southwest District basically accounted for fully one third of the Department's enforcement in 2010. Thus, the Department's numbers were bound to improve when that district significantly improved its assessment numbers compared to 2009. For its part, the Southeast District also saw healthy improvement, but that improvement was largely the result of isolated high dollar assessments. The other four districts turned in poorer performances overall when compared to their past performance. Moreover, much of the overall increase in the dollars assessed came from two program areas, the tanks program and the stormwater discharge program, the latter program seeing a significant increase in enforcement.

The increases in the tanks and stormwater discharge programs were not realized in other major programs, however. For example, there were sharp decreases in assessments in the dredge and fill, domestic waste, industrial waste and solid waste programs. In addition, there were no industrial waste assessments exceeding \$100,000. Finally, collections in the domestic waste program declined, including collections in the Southwest District.

Looking at penalty assessments further we find that (with the exception of the industrial waste program) the median penalty assessments declined in each of the aforementioned programs that saw overall lower total dollars assessed. In other words, not only were there fewer

dollars assessed, but the severity of the individual penalties has declined as well. The hazardous waste program, which the Department's new penalty policy was supposed to inject new life into, saw its median assessments drop to levels last seen in 2008. Even the Southwest District saw lower median assessments in its air, dredge and fill, domestic waste, hazardous waste and tanks programs.

Since this is the final report covering the Department's performance under Governor Charlie Crist, we thought that it would be worthwhile to compare the overall performance in his first year with 2010, the final year that he was in office. Before discussing those results, however, we believe that it is fair to say that the FDEP under Governor Crist, while clearly not perfect, performed better overall than it did under his predecessor, Governor Bush. The Department generally opened more enforcement cases and assessed higher penalties than did the Jeb Bush FDEP. The agency under Governor Bush had taken a decided enforcement approach that meant issuing the equivalent of traffic tickets to polluters while simultaneously lessening monitoring of these cases. Litigation was seriously frowned upon. And while there were a few years in which assessments were significant, they did not, in our opinion, erase the overall bad performance in the other years. In general, the agency was polluter-friendly.

Governor Crist had a challenge when he assumed control over the FDEP. Some would say that the agency could go nowhere but up, and the numbers would indicate that there was limited improvement during the Crist years. The total number of enforcement cases opened in 2007 was 1525. In 2010 that number had risen modestly to 1587. Case reports, the documents issued by districts when they seek the most severe civil punishment rose dramatically under Governor Crist, from 72 in 2007 to 157 in 2010, the highest number since the agency was formed. With respect to total dollars assessed by the Department, we see that in 2007 the Department assessed \$12,330,146.38 compared to \$13,051,374.23 assessed in 2010. The increase is modest in real terms, but when the dollars assessed in 2007 are adjusted for inflation the result is \$12,951,457.13—less than \$100,000.00 difference. In other words, the Department basically remained the same.

The one area that the Crist administration indicated that it would seriously increase penalties was the hazardous waste program. \$2,273,931.00 was assessed by the Department in 2007 (\$2,388,513.40 when adjusted for inflation) compared to the \$2,731,922.74 assessed in 2010, a 20% increase. **What is disheartening, however, is that hazardous waste median assessments fell from \$4,300.00 in 2007 to \$3,868.50 in 2010, a 10% decline.** So, the bottom line is that the Department basically managed to maintain the status quo during the 4 years that Governor Crist was in office. But the Department weakened its enforcement in the one program area that Secretary Sole promised would see stricter enforcement.

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

## 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](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.