



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 2012**



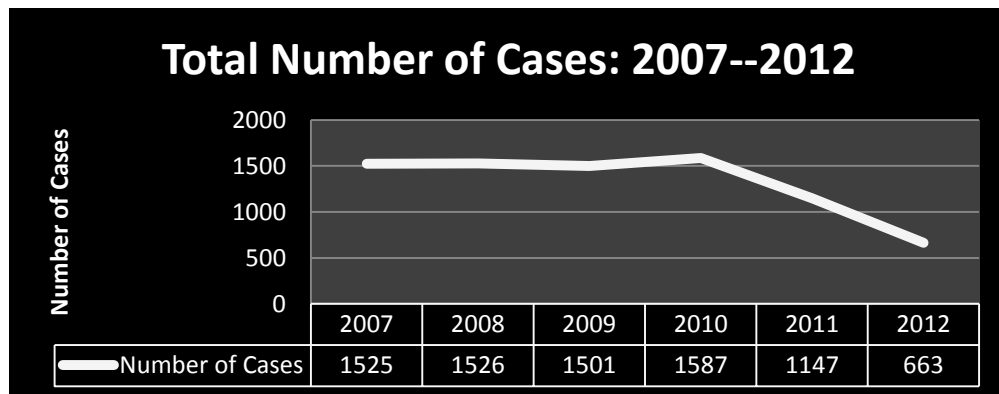
## **EXECUTIVE SUMMARY**

### ***A. Statewide Results***

Last year when we reported on the data that we had received from the Department of Environmental Protection for calendar year 2011 we stated that the poor results had to be viewed with an understanding that the head of the Department, Secretary Herschel Vinyard, possessed a significant conflict of interest, having come directly from a position with a regulated entity. Therefore, the poor results were understandable. Now, two years into Mr. Vinyard's rule, we have a significant body of data to show the impact that a Secretary and Deputy Secretary, both with significant conflicts of interest, can have upon the performance of a major state agency such as the Department. That data shows a Department that in 2012 became all but non-functional. We have provided a [summary](#) section in this report to give the reader an overview of the performance of each district.

**The total number of cases opened by the Department in 2012 fell 42% when compared with 2011's performance. They are down 58% from 2010.** The total number of cases fell in every district with the highest decline being in the Northwest District. The number of new cases has dropped **79%** since 2010 in the Southeast District alone. Statewide, every subcategory fell. For example, the number of cases sent to the Office of General Counsel fell 38%. Administrative notices of violation fell 43%. Consent orders, the most used enforcement tool available the Department, fell 43%.

The extent of decline is readily visible when charted. Over the past 6 years the Department's performance, vis-à-vis the total number of cases per year looks like this:



The Office of General Counsel received 68 case reports in 2012, compared with 109 case reports in 2011. The Number of NOV's fell to 54, down from 96 in 2011 and 114 in 2010.

482 consent orders were issued in 2012. In 2011 the Department issued 844 and in 2010 it issued 1249. **There were a combined 160 long-form consent orders and model consent orders issued in 2011. This is the lowest level for the combination of these two enforcement mechanisms in the Department's history. 69 of the consent orders were long-form consent orders, also the lowest number in the Department's**

**history.** 276 short-form consent orders were issued in 2012, the lowest number since 1990 when the Department was just getting off the ground. The Department issued 531 short-form consent orders in 2011 and 725 in 2012. As a percentage of all consent orders, short-form consent orders dropped 5% from 2011.

The 528 penalty assessments were levied in 2012, a result that is 44% lower than the number in 2011 and 60% lower than the number in 2010. This is the sixth straight year that penalty assessments have declined. **Every district assessed civil penalties in fewer cases compared with 2011 with declines ranging from 13% in the Northeast District to 59% in the Northwest District.**

With the exception of the Underground Injection Control program, which had one case for the entire state, **every** major program saw a decline in the number of cases initiated in 2012. **The air program, which saw 145 cases in 2010 and 80 in 2011 had just 15 in 2012 for the entire state, indicating that the program essentially shut down. The number of solid waste cases dropped 68% as well.** The dredge and fill, hazardous waste, potable water and tanks programs all had less than half the number of cases than they had in 2010. This is the fifth year in a row that domestic waste cases declined. It is the third year in a row that asbestos, dredge and fill, hazardous waste and the industrial waste programs declined. The air, potable water and tanks programs all declined for the second year in a row.

The Department assessed **\$3,367,581.61 in civil penalties in 2012, a 64% decline from the \$9,266,595.25 that was assessed barely one year ago. This follows 2011's performance, which saw a 29% decline from 2010.** Moreover, one would have to go back to 1996 (the year after DER and DNR merged to form FDEP) to find a year in which fewer penalty dollars were levied.<sup>1</sup> Prior to that, the lowest dollar value of civil penalty assessments was in 1988 (\$1,013,302.16), the first full year for which data is available for the then Department of Environmental Regulation.

In terms of actual dollars, total penalties assessed dropped **97% in the solid waste program and 81% in the air program.** They also fell in the dredge & fill, hazardous waste, industrial waste, potable water, stormwater discharge and tanks programs. They increased in the asbestos and domestic waste programs.

Statewide there were 3 cases in which the Department assessed a civil penalty of \$100,000 or more. In 2011 there were 9 cases. 2 of the 3 cases were against local governments. The single highest assessment was a domestic waste case brought by the Southwest District against the *Hillsborough County Board of County Commissioners*. The penalty assessment was in the amount of \$558,000.00.

Median assessments continued unchanged for the Department as a whole, however, they saw healthy increases in the Northwest, Central and Southwest Districts. At the same time, there were significant declines in the Northeast, Southeast and South Districts. The fact that the Southeast and South Districts have mediocre enforcement

---

<sup>1</sup> \$2,365,368.04 was levied in 1996.

programs, at best, seems to be the reason that the Department as a whole did not see appreciable downturns in median assessments, since their declines really contributed less to the overall results.

Results were better for median assessments in the individual program areas. Only three programs, the hazardous waste, industrial waste and potable water saw their medians decline. The decline in the hazardous waste program is particularly troubling given the recently revised penalty policy under former Secretary Sole, which was aimed at significantly increasing medians in this program.

A statewide total of \$1,589,724.69 was collected by the Department in 2012, a **48% decline from 2011's efforts**. 2011's results, it will be recalled, were 57% lower than those in 2010. The Department also recorded in-kind and penalty prevention project fulfillments valued at \$88,622.10, a 65% decline from the \$2,520,822.97 collected in 2011. **The Department's data thus puts total collections for 2012 at \$1,678,346.79, which is 70% less than 2011 and 81% lower than what was collected just two years ago in 2010.**

Collections were down in every district. They declined by a minimum of 14% in the Northwest District up to 70% in the Southwest District. The Central, Southeast and Southwest Districts each collected less than 50% of the penalty dollars that they assessed. The Northeast District turned in the best performance, collecting 89% of the penalties assessed. The domestic waste program suffered less than the other programs in terms of penalty dollars assessed, however, it only managed to collect 43% of those assessments. Only the asbestos and tanks programs performed worse, collecting 40% and 32% of their assessments respectively. Collections in the solid waste program improved markedly. It managed to collect a mere 3.39% of its assessments in 2011, but improved to 52% in 2012—although its assessments in 2012 were meager, at best.

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

Finally, we also noted that in our previous report that a petition before the EPA asked that agency to investigate and disqualify Secretary Vinyard from acting on Clean Water Act cases. Early this year, the EPA [denied the petition](#), after sitting on it for two years and conducting no independent investigation. To make matters worse, the EPA determined that the petition was now moot since two years had elapsed since Mr. Vinyard took office. At the same time, and again without conducting an independent investigation, EPA denied a similar petition against the Department's Deputy Secretary of Regulatory Programs, Jeff Littlejohn. EPA has now all but announced the abdication of its oversight responsibility over the Department. Therefore, the question before Floridians now is how best to turn around what has clearly become a disastrous turn of events for the Department and the State of Florida.