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REPORT ON ENFORCEMENT EFFORTS

BY THE FLORIDA, DEPARTMENT OF

ENVIRONMENTAL PROTECTION

CALENDAR YEAR 2012

PRELIMINARY STATEMENT

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2012. The information provided herein was obtained from raw data provided to Florida PEER by the FDEP in response to a public records request made to the FDEP by Florida PEER under Chapter 119, Florida Statutes.

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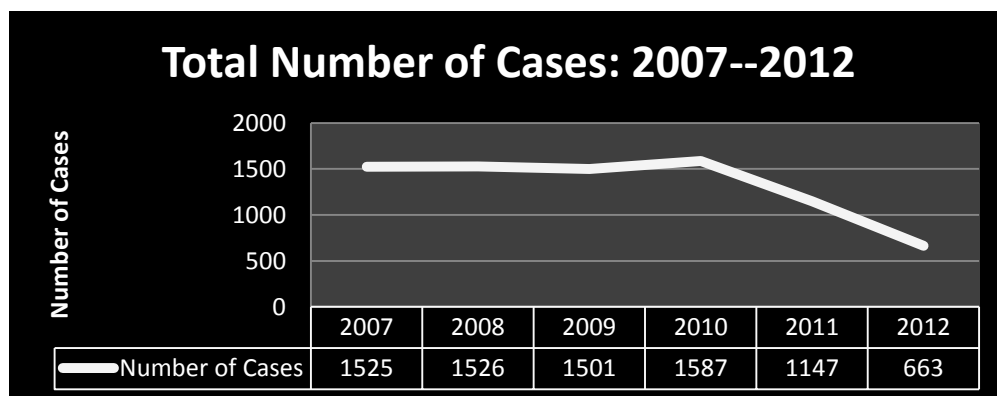
EXECUTIVE SUMMARY

A. Statewide Results

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.¹ 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 programs, at best, seems to be the

¹ \$2,365,368.04 was levied in 1996.

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.

B. District Results

We have provided a [“Quick Look”](#) section in this report to give the reader an overview of the performance of each district. The performance of the individual districts is as follows:

1. Northwest District

For the fourth straight year the number of enforcement cases has fallen in the Northwest District. Every enforcement mechanism, except for short-form consent orders, was utilized in fewer cases in 2012. Long-form consent orders fell for the third year in a row and the usage of short-form consent orders increased slightly. Penalty assessments also declined sharply. The hazardous waste program took enforcement in only 1 case in 2012—down from 21 the year before. The domestic waste, dredge and fill, potable water and tanks programs also saw marked decreases. Total penalties assessed fell 90%. Median assessments did increase from 2011 levels, however. In some cases such as the domestic waste and tanks programs these increases were sizeable. Collections declined 17% compared with 2011.

2. Northeast District

In 2012 the Northeast District initiated enforcement in fewer cases than in it did in 2011. This is the third year of losses. It took enforcement in 116 cases in 2011, compared to 133 in 2011 and 230 in 2010. Every enforcement tool except for the number of case reports fell in 2012 when compared to 2011’s results. It assessed penalties in 28% fewer cases in 2012 than it did the year before. Only the industrial waste and solid waste programs avoided major declines. Dollars assessed dropped 66%, from \$837,127.50 in 2011 to \$283,913.00 in 2012. Median assessments fell as well and collections were down for the third year in a row.

3. Central District

In 2012 the total number of enforcement cases fell 33% in the Central District. This is the second straight year with lower numbers (2011 was 23% lower than in 2010). Case reports and NOV’s held steady, while final orders increased slightly. The number of consent orders fell when compared with 2011’s results. Penalties were assessed in 34% fewer cases in 2012, with every major program except for solid waste seeing dwindling numbers. Penalty dollars assessed fell \$504,122.59 from 2011’s level to \$748,156.17 in 2012. Median assessments rose 50%, however, due chiefly to the air and domestic waste programs. Hazardous waste, industrial waste and potable water medians fell sharply. Collections fell 57% in 2012.

4. Southeast District

The Southeast District initiated enforcement in 56 cases in 2012, down 56% from 2011. It will be recalled that 2011's results were 38% lower than those in 2010. With the exception of short-form consent orders (which increased by 10%) every enforcement mechanism, including the overall number of consent orders issued, fell in 2012. The number of assessments fell 50% in 2012. There were significant decreases in the dredge and fill, hazardous waste, potable water, solid waste and tanks programs. There were still only 2 domestic waste cases in the entire year. Dollars assessed fell by 53%, after having fallen by 54% in 2011. Median assessments fell for the third year in a row. Collections dropped by 43% in 2012, after having dropped 67% in 2011. Collections have now dropped for 3 straight years.

5. South District

The South District took enforcement in 52% fewer cases in 2012. Case reports, NOV's, final orders and consent orders all fell, the latter by 49% (consent orders fell 28% in 2011). Long-form consent orders increased slightly while short-form consent orders fell significantly. For the fourth year in a row the number of penalty assessments declined—by 56% in 2012. Dredge and fill case assessments increased by 3, but all other programs fell. **There were no air or industrial waste cases in this district in all of 2012.** Dollars assessed fell 67% and median assessments also fell from \$2,500.00 to \$2,000.00. The air, domestic waste, industrial waste, mangrove alteration, potable water and solid waste programs also turned in lower numbers in both in total dollars assessed as well as the median for those assessments. Collections dropped by 42%.

6. Southwest District

The Southwest District, which historically has been the predominate district in the Department, accounted for just 11% of all enforcement cases opened by the Department in 2012, a drop of 13% from 2011. The total number of enforcement cases fell by 54%. Every enforcement mechanism, including the overall number of consent orders issued, fell in 2012. Penalties were assessed in 55% fewer cases (132 compared to 295 in 2011 and 445 in 2010). There were significant decreases in the number of assessments in the following programs: asbestos (3), air (32--2nd year of decrease), dredge and fill ((17), domestic waste (14--2nd year of decrease), hazardous waste (26—3rd year of decrease), industrial waste (12—3rd year of decrease), potable water (12--2nd year of decrease), solid waste (6) and tanks (47--2nd year of decrease). Total dollars assessed fell 33% compared with 2011, while median assessments rose from \$2,000.00 in 2011 to \$2,500.00 in 2012. Both dollars assessed and medians fell in the asbestos, dredge and fill, hazardous waste, industrial waste and solid waste programs. While the

dollars assessed in the air program fell drastically. In 2012 collections dropped by \$817,104.64 from 2011's levels, a 70% decline. They had dropped 69% in 2011.

7. All Other Enforcement

This category typically involves the beaches and coastal systems program and stormwater discharge cases. The number of cases opened by this category increased 24% from 67 in 2011 to 88 in 2012. There was an increase in the number of enforcement cases in all of the various enforcement mechanisms, except for final orders. **What is surprising is that this category accounted for 13% of all enforcement cases opened by the Department, more than any of the actual districts.** At the same time, however, on a percentage basis it accounted for the fewest dollars assessed in 2012. The number of penalty assessments rose, as did the dollars assessed. Median assessments remained the same as in 2011 at \$1,199.00. Collections rose 10% from 2011.

STATEWIDE ENFORCEMENT RESULTS²

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

The Department initiated enforcement in 663 cases in 2012, a 42% decline from 2011 when enforcement was taken in 1147 cases. The Department's performance in 2011 dropped 28% when compared to 2010. Therefore, the past two years has seen a 70% drop in enforcement cases!

The Department requested serious enforcement through the filing of complaints in civil circuit courts in 68 cases in 2012, a significant decrease from the 109 requests in 2011. This is the second time in the last 7 years that the Department's performance has declined.

NOV issuance continued to decline, with 54 NOVs filed in 2012, compared to 96 in 2011 and 114 in 2010.

² Florida PEER has previously provided enforcement results for the FDEP based upon data obtained from the agency dating back to 1988. In the past at this juncture we have included a description of the various types of enforcement that the Department is capable of initiating. This description is now at the end of this report in the Appendix wherein the reader will find the descriptions of various enforcement tools, as well as the historical averages for the various program areas. A complete report on the past 20 years of environmental enforcement in Florida can also be found at http://www.peer.org/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf.

The Department issued 482 consent orders in 2012, compared with 844 in 2011 and 1249 consent orders in 2010. Of the 482 consent orders issued in 2012, 69 were long-form consent orders. This is a 37 % reduction from the 109 long-form consent orders issued in 2011, a year that saw a 63% reduction from the 287 long-form consent orders issued in 2010. It is the lowest that this category has seen in the Department's history.

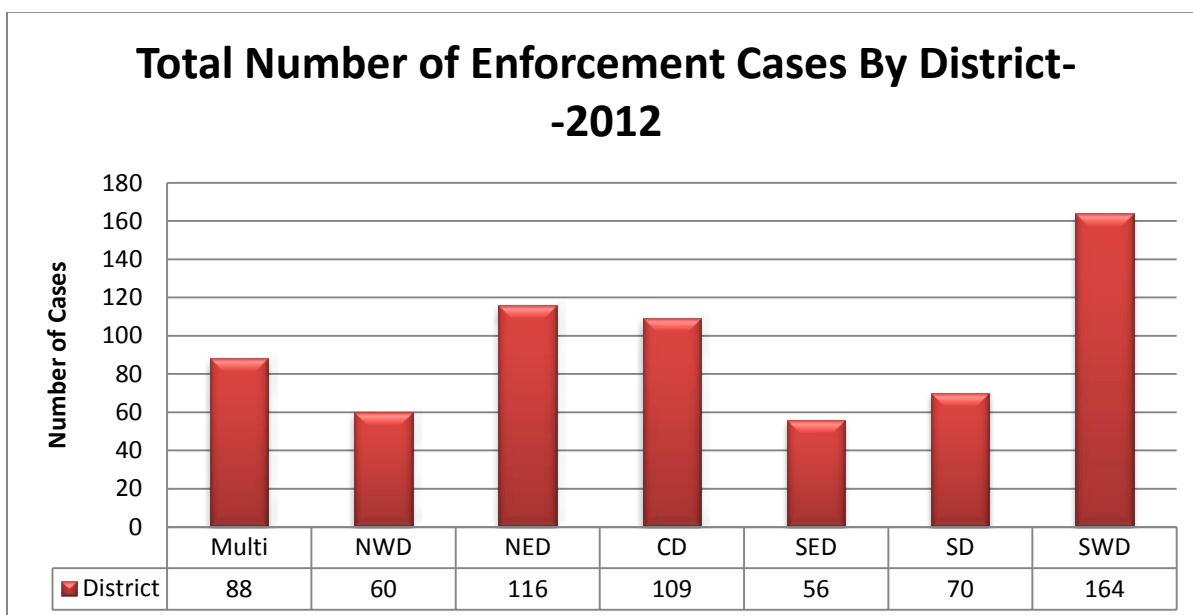
Model consent orders are essentially long-form consent orders that are tailor-made to fit more routine violations in each program area. They dropped from 224 in 2010 to 156 in 2011 and then to 91 in 2012, the lowest number since 1991. This performance is the lowest since 1997 when 134 were issued.

There were a combined 160 long-form consent orders and model consent orders issued in 2011. This is the lowest level for these two enforcement mechanisms in the Department's history.

We have long maintained that the use of short-form consent orders is to be avoided, inasmuch as they essentially do nothing more than serve as a traffic-ticket mechanism for resolving enforcement cases. While this is helpful in some cases, in many others it serves only to avoid additional oversight. Therefore, the less they are used *when compared to other mechanisms* the better. But what we've seen in the past two years is not a strategy for reducing the number of short-form consent orders in order to bolster the other mechanisms, e.g. model consent orders. Instead, they are declining at the same rapid rate as the other enforcement tools possessed by the Department. Short-form consent orders dropped from 531 in 2011 to 276 in 2012. Just two years ago the Department issued 725 such orders. 41% of all enforcement cases were resolved via short-form consent orders, a 5% drop from 2011. One has to go back to 1990 to find a year in which fewer short-form consent orders were issued.

Final orders that were enforcement related dropped from 98 in 2011 to 54 in 2012.

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

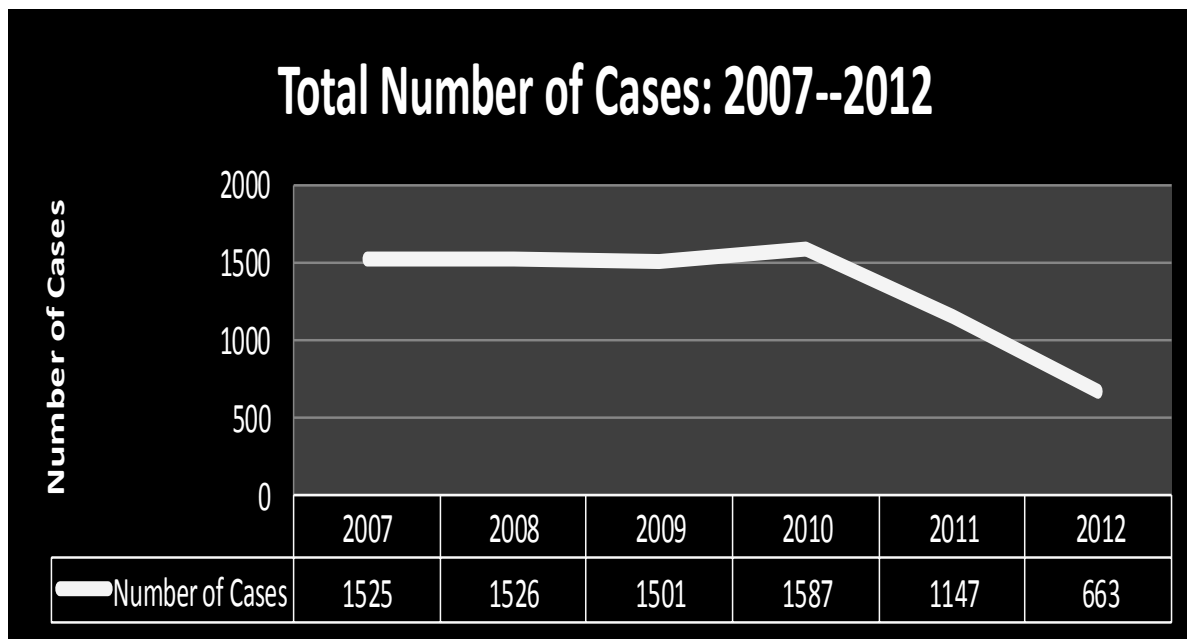


As previously indicated, statewide, the Department took enforcement in 663 cases in 2012, far fewer than the 1147 cases opened in 2011. For the second straight year every district saw decreases in the total number of cases. While the Southwest District continues to be responsible for a significant portion of the enforcement that is undertaken by the Department as a whole, its dominance continues to steadily decline. Cases in this district dropped to 11%, compared to 24% in 2011 and 30% in 2010. In 2012 the Southwest District had fewer cases than did the amorphous “All Other Enforcement” category. This is also the fourth straight year of declining numbers in the Northwest District.

B. Statewide Trends In 2012

We now face a situation in Florida in which the EPA conducts little or no oversight of the state’s activities. It has now reached the point that the EPA decided to turn a blind eye to the fact that the Department’s Secretary has a serious conflict of interest that should disqualify him from serving as the head of a major state agency such as the FDEP. The result is that Secretary is now free to eliminate as much enforcement as he can. He has clearly embarked upon this path.

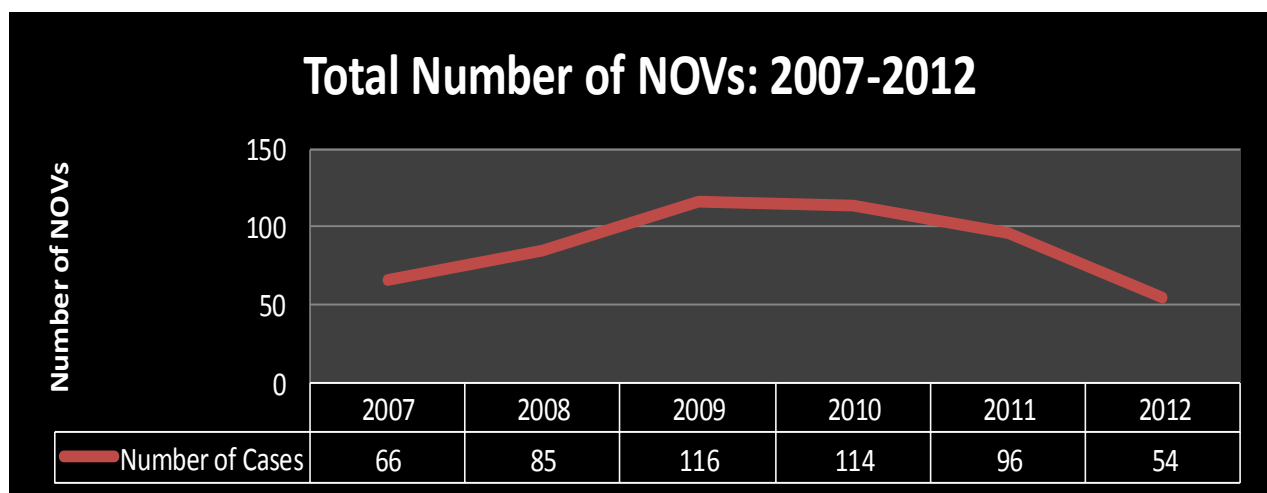
The following chart shows the overall number of enforcement cases brought by the Department over the past five years. The results are astounding:



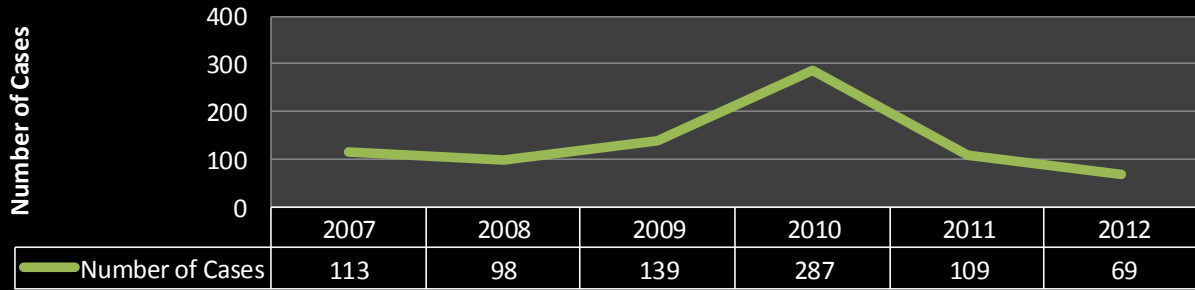
Consent orders continue to be the Department’s enforcement mechanism of choice. Resolution of enforcement cases through the use of consent orders also steadily declined significantly over the course of the past two years.



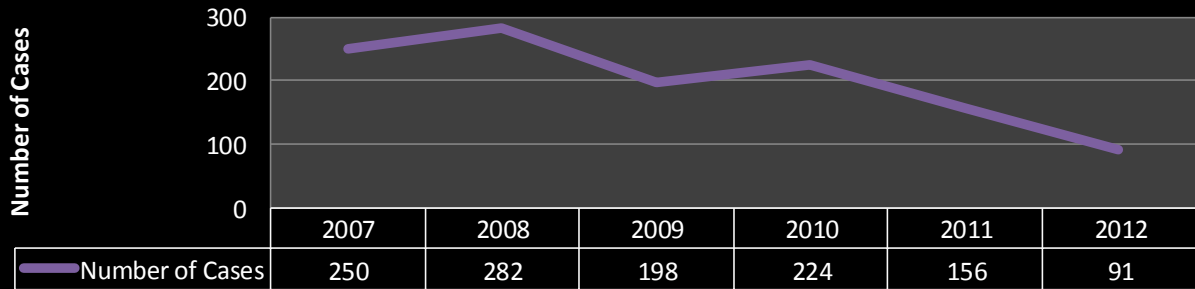
This trend is also seen when we look at individual enforcement mechanisms. The trends for the enforcement mechanisms are shown below. Every mechanism has severe problems:



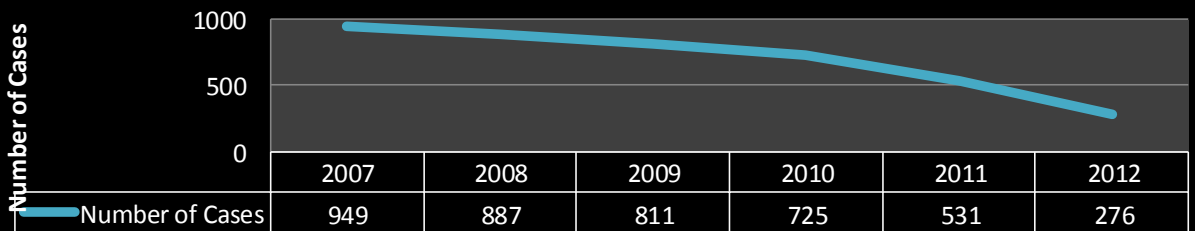
Number of Long-form Consent Orders: 2007-2012

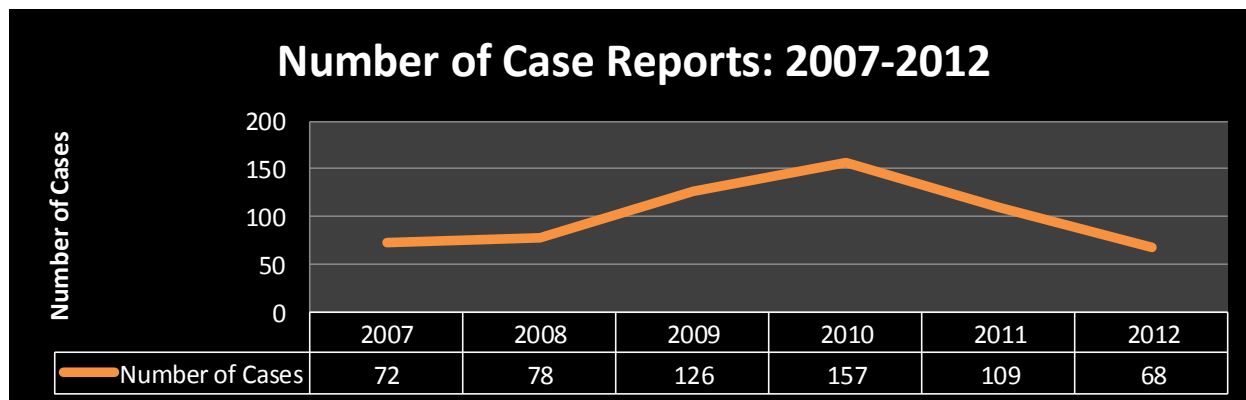


Number of Model Consent Orders: 2007-2012



Number of Short-Form Consent Orders: 2007-2012

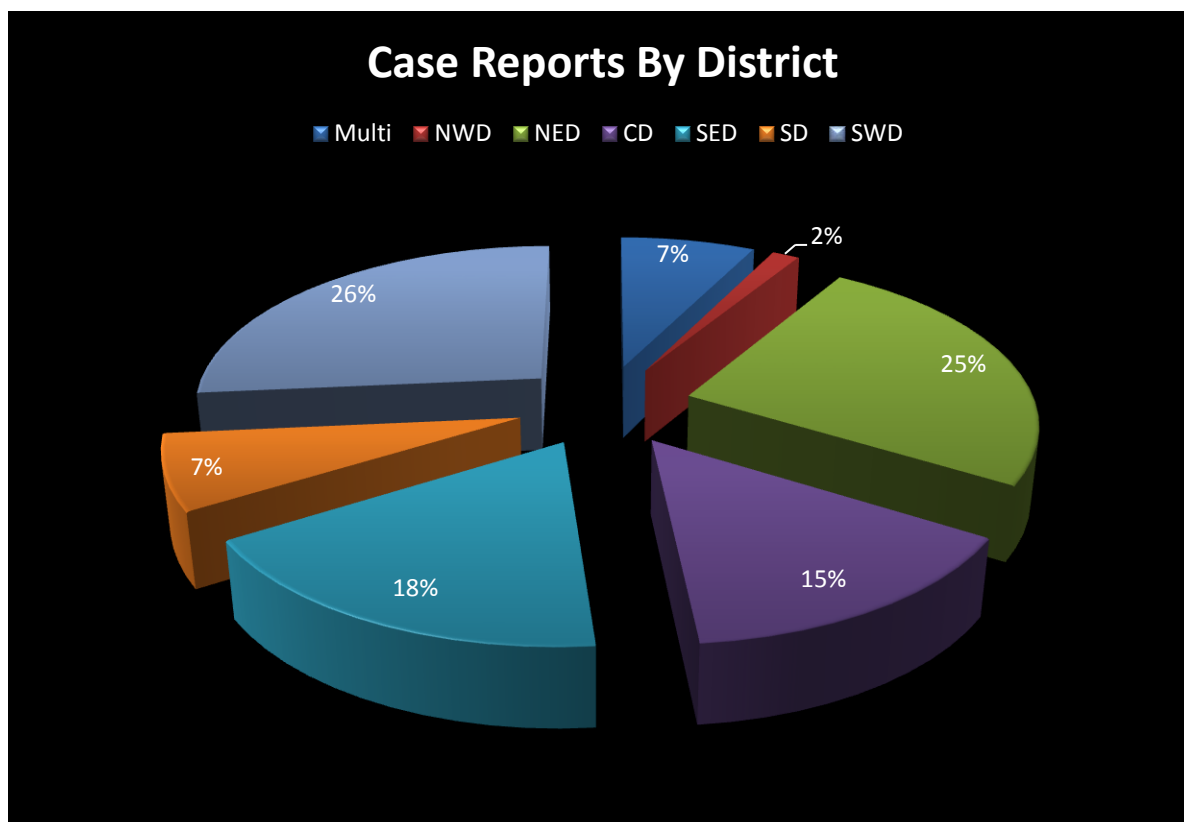




C. Case Reports, NOVs, Consent Orders, Final Orders – District Comparisons

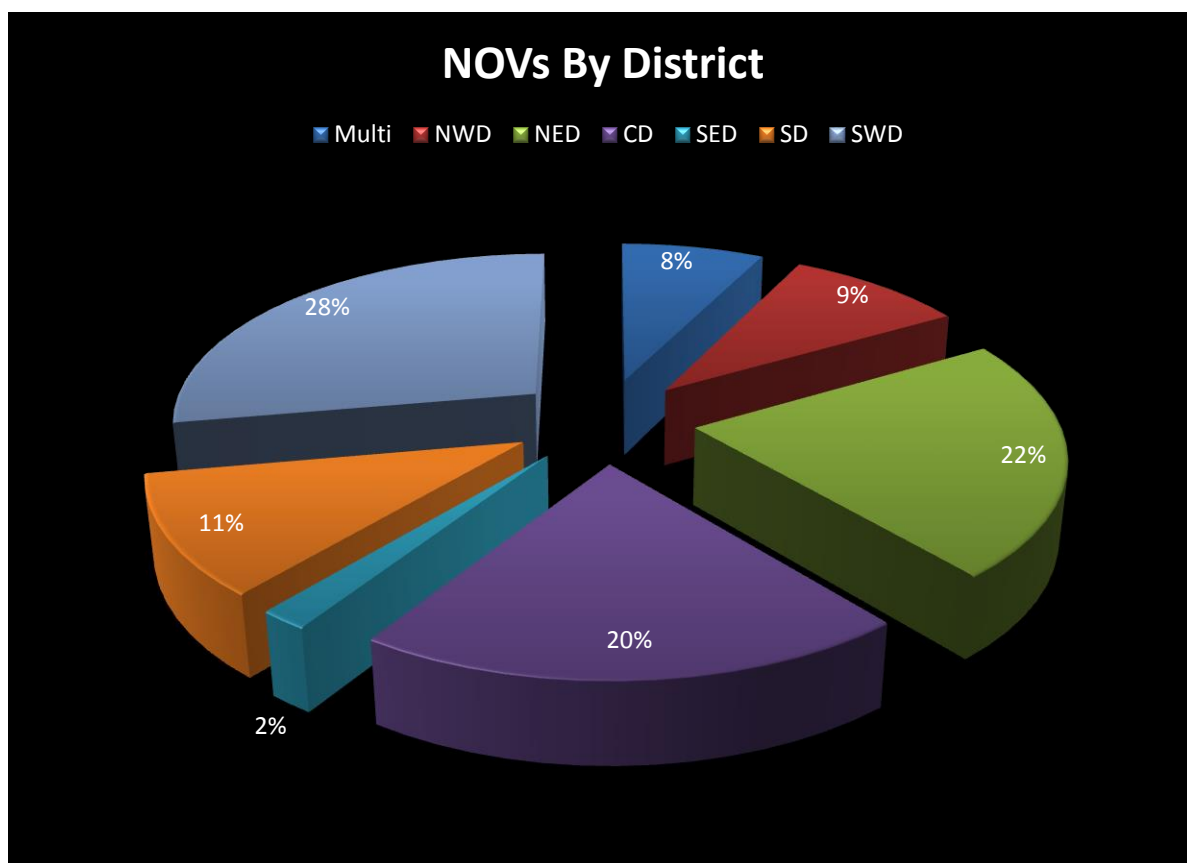
The Department's various enforcement tools were distributed amongst the Districts as follows:

1. Case Reports



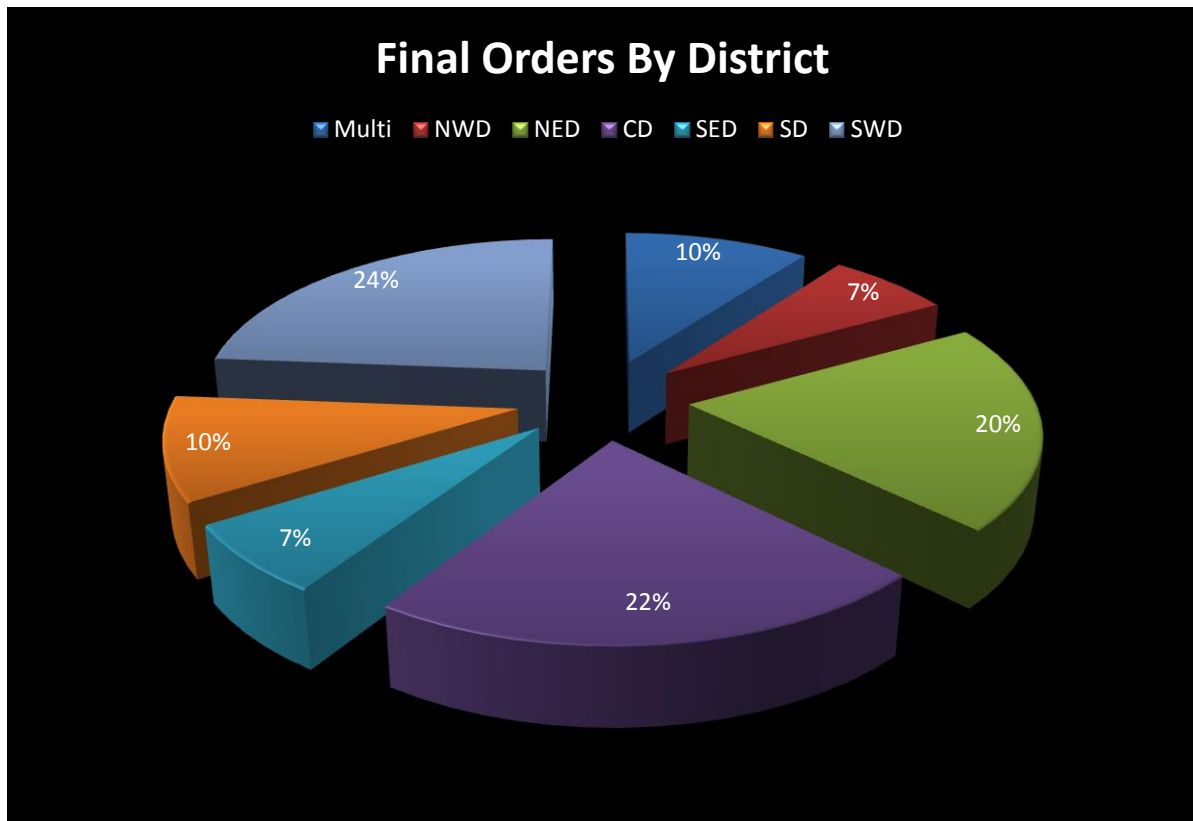
10.2% of the enforcement cases handled by the Department were referred to OGC for various types of litigation, an increase of less than 1% from last year, but the total number of case reports continued to be quite low. Every district, with the exception of the Northeast District, saw significantly poorer performance when compared against 2011's results.

2. NOVs



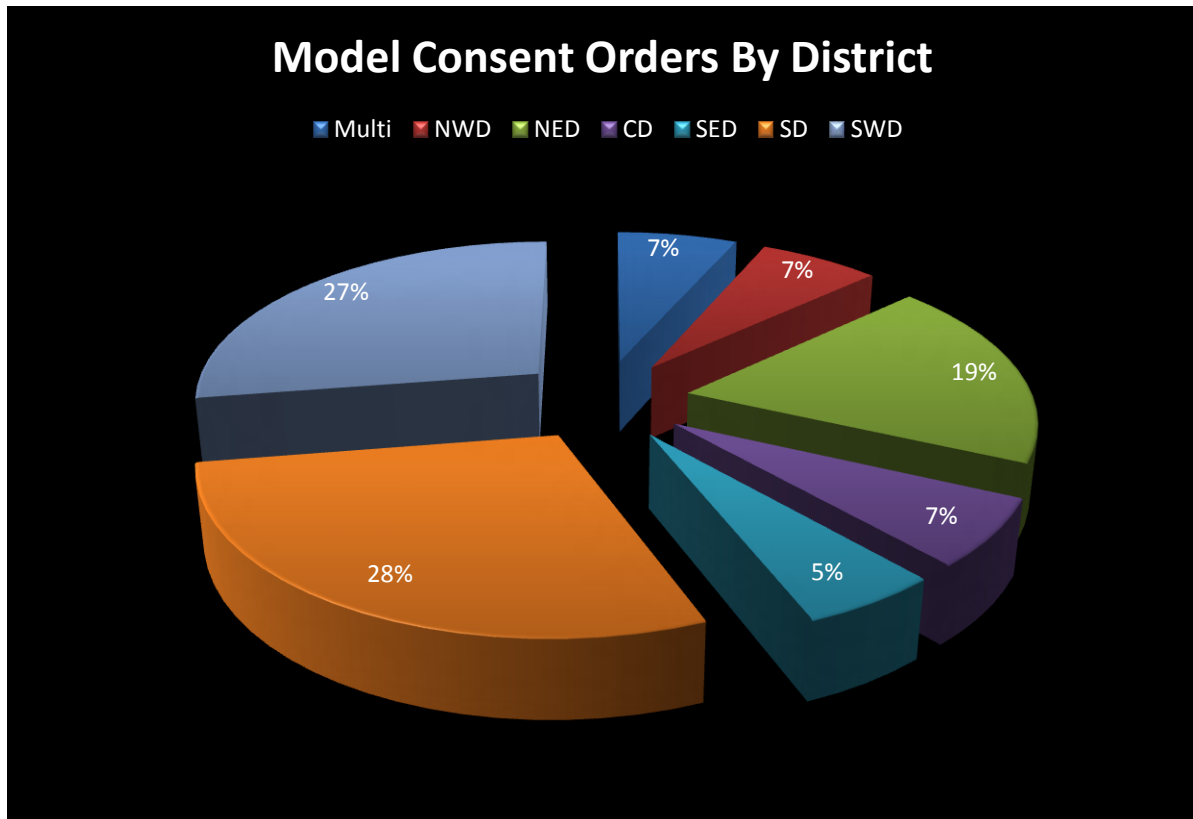
NOV usage broke into two camps in 2012 with the Southwest, Central and Northeast leading and somewhat uniform, whereas the remaining three contributed less. The Central District's performance was exactly the same as in 2011. The remaining districts all saw their performance decline.

3. Final Orders



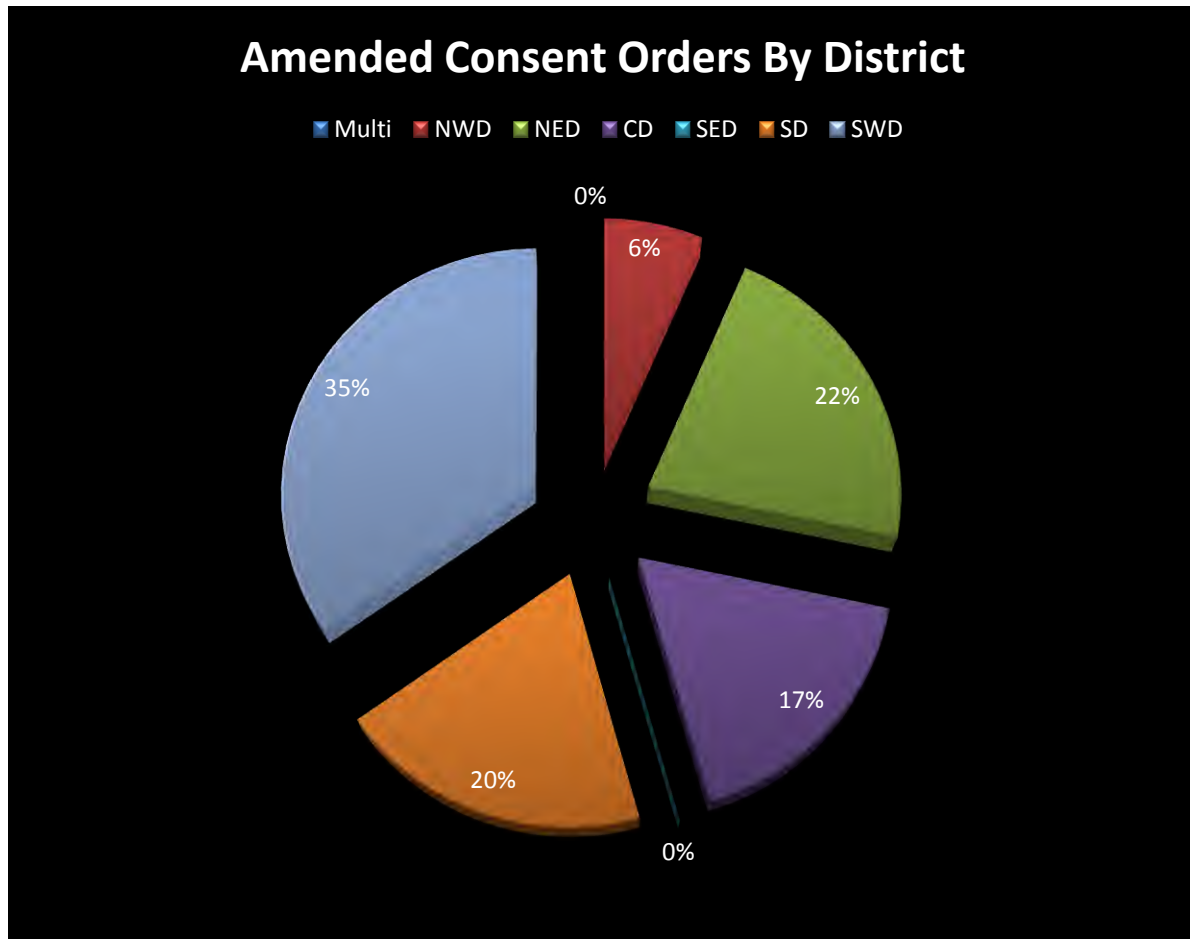
The districts split essentially the same way in final order usage as they did in that of NOVs. Although the Central District issued three more enforcement final orders in 2012 than it did in 2011, every district saw significant decreases from 2011 to 2012 when all types of final orders are considered.

4. Model Consent Orders



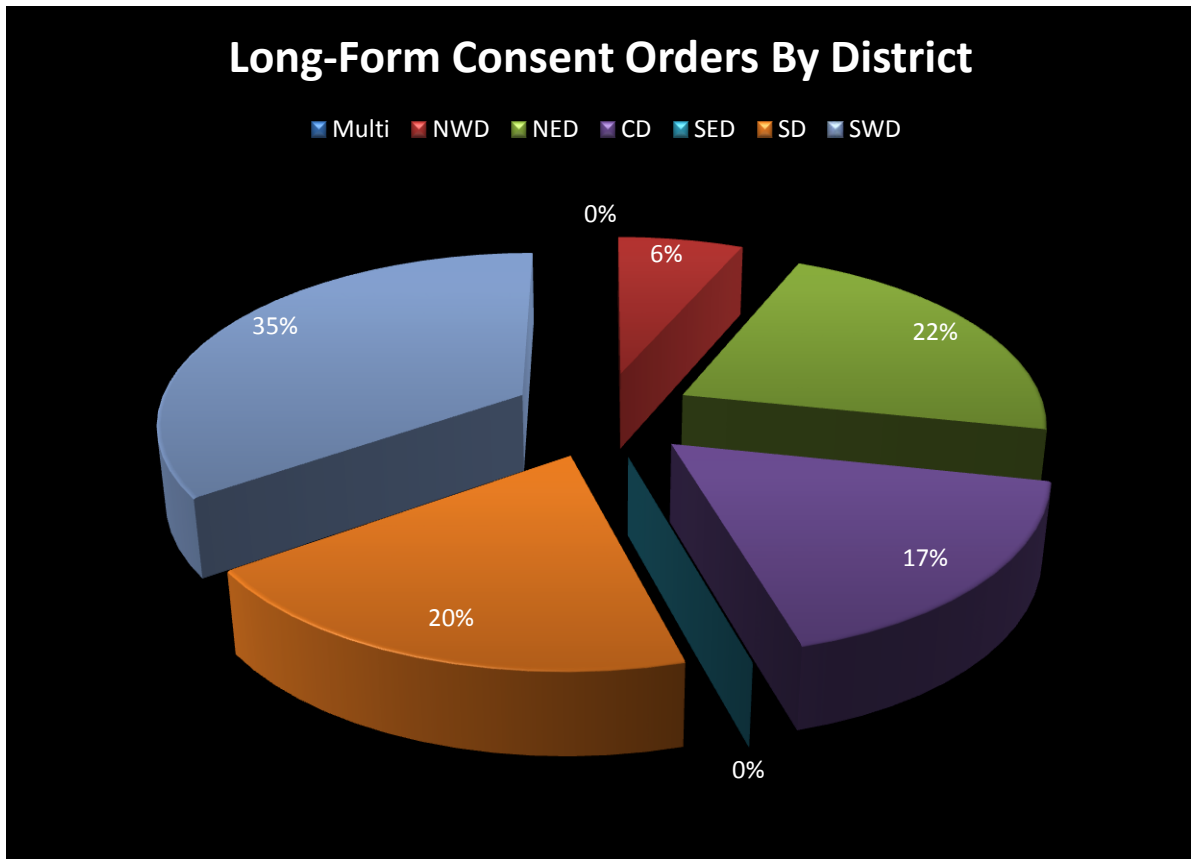
Once again the South District issued the largest single percentage of model consent orders of all of the districts. The Northeast District expanded its use of this enforcement tool compared with 2011's results. Otherwise the distribution was rather stable compared to last year.

5. Amended Consent Orders



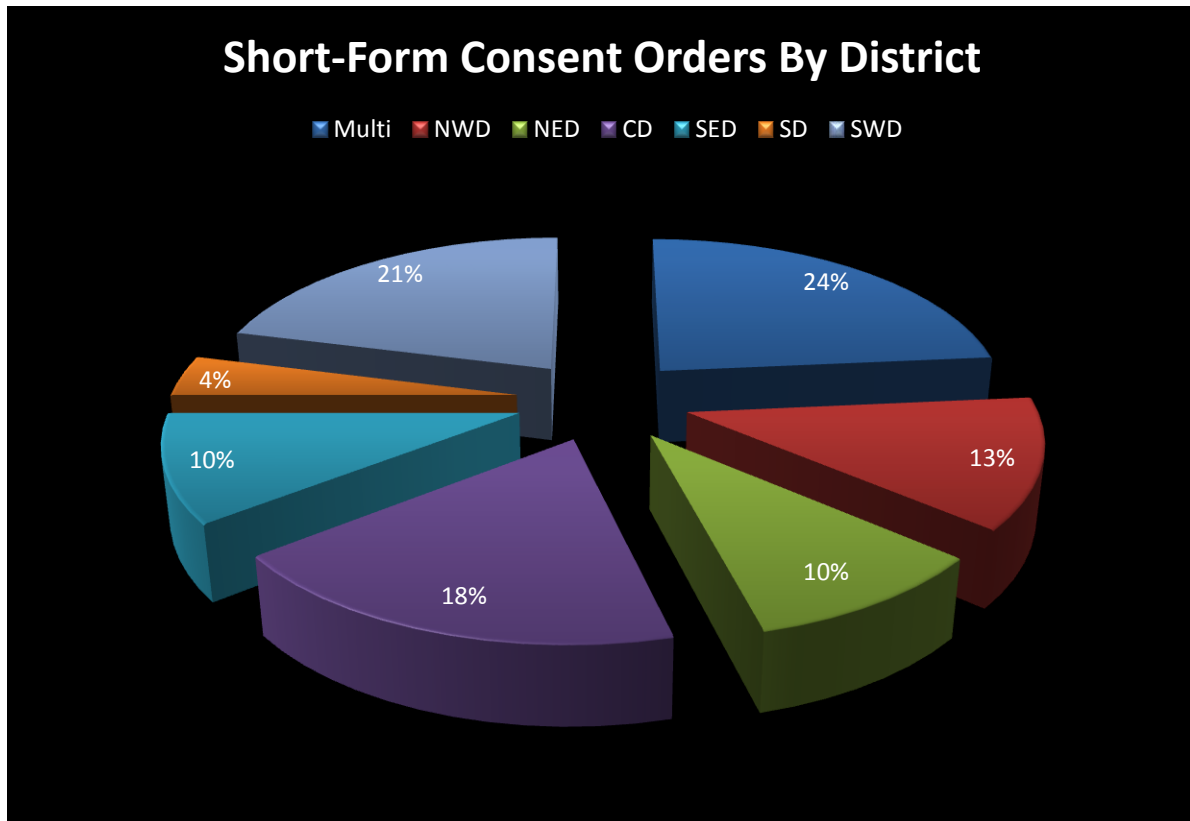
Consent orders are typically amended when circumstances arise that require changes in reporting and monitoring of the permitted facility, indicating that the Department is continuing to monitor the situation that necessitated the original enforcement action. Amended consent orders are not usually needed in instances in which short-form consent orders were the initial enforcement tool of choice. The same downward trend was noted from 2011 to 2012 with the exception of the Northeast District which doubled its production and the Southwest District which essentially remained steady.

6. Long-Form Consent Orders



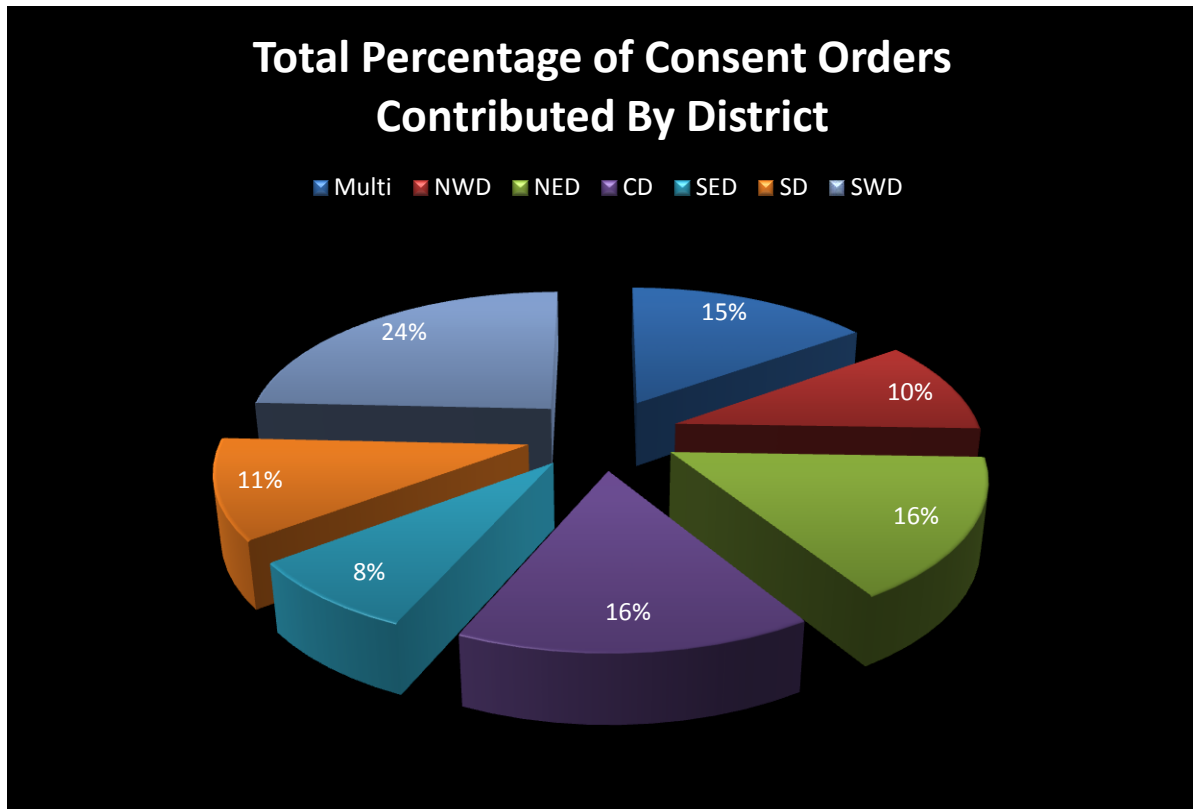
With the exception of the Southeast District, which issued no long-form consent orders, the usage of this tool was pretty much uniform across the state. However, every district saw decreases in performance when compared to 2011's results.

7. Short-Form Consent Orders



The main difference in the distribution of short-form consent orders was essentially a sizeable increase in the number of consent orders issued out of headquarters. Most of these cases were stormwater cases and beaches and shores enforcement. The Southwest District saw a sizeable decrease in its percentage share compared with the other districts. All districts saw significant decreases in the number of short-form consent orders issued in 2012 when compared with 2011.

8. All Consent Orders Combined



The consent order is by far the Department's most preferred method of resolving enforcement cases. As with short-form consent orders, the total percentage of consent orders contributed by each district was basically unchanged from 2011, with the exception of the Southwest District, which reduced its share of this mechanism comparatively speaking. But the Southwest District continues to account for most of the consent orders issued in Florida. In terms of pure numbers every district saw significant declines in the number of consent orders issued in 2012 when compared to 2011.

D. Short-Form Consent Orders

This is one of the few areas of positive news in this report. For the first time in years the Department's use of short-form consent orders as an enforcement mechanism dropped to a level not seen since 1993! The following table demonstrates the history of the use of these enforcement mechanisms from 1988 to the present by showing the percentage of all enforcement cases each year that were resolved via short-form consent orders.

Year	% Short-Form Consent Orders
1988	0.00%
1989	0.00%
1990	24.13%
1991	38.74%
1992	36.32%
1993	46.84%
1994	47.73%
1995	52.60%
1996	49.39%
1997	48.29%
1998	50.05%
1999	48.90%
2000	54.77%
2001	56.38%
2002	55.67%
2003	58.46%
2004	55.23%
2005	60.20%
2006	60.41%
2007	62.23%
2008	58.13%
2009	54.03%
2010	45.68%
2011	46.29%
2012	41.63%

This year only two districts, the Northwest and Southeast, settled a majority of their cases through the short-form route. They were also the only two districts to increase their reliance upon this enforcement mechanism. The multi-district category, which is responsible for the overwhelming percentage of stormwater cases, also saw a major increase in the use of short-form consent orders. Otherwise every district saw substantial decreases with the Southwest District seeing the greatest reduction. This also explains the Department's continued overall weaning from this mechanism since the Southwest District is also the one that is most responsible for the Department's overall enforcement numbers. 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>	46.79%
<i>Northeast</i>	23.28%
<i>Multi-District</i>	73.86%
<i>Northwest</i>	58.33%

<i>Southeast</i>	51.79%
<i>South</i>	15.71%
<i>Southwest</i>	35.37%

We also looked at the use of short-form consent orders solely as a part of the consent order enforcement tool. In other words, once the decision had been made to settle a case through a consent order, how likely was the resolution to be via a short-form consent order, as opposed to a long-form or model consent order. Overall, the Department chose short-form consent orders in 57.26% of the cases in which a consent order was deemed the appropriate enforcement mechanism. The following results give further insight into how enforcement cases are handled in each district.

<i>District</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2011</i>	<i>% Cases Settled Through SF Consent Orders Compared to Other Consent Orders--2012</i>
<i>Central</i>	61.54%	68.00%
<i>Northeast</i>	55.56%	36.00%
<i>Multi-District</i>	80.00%	89.04%
<i>Northwest</i>	67.46%	70.00%
<i>Southeast</i>	63.75%	74.36%
<i>South</i>	38.46%	20.75%
<i>Southwest</i>	70.26%	49.57%

The Northwest and Southeast Districts were the only two (along with the multi-district category) to increase their reliance upon short-form consent orders. All others showed declines with the Southwest District showing the sharpest decrease.

E. Program Area Performance

The number of enforcement cases³ brought in each key program area is as follows:

Program Area	Total No. of Enforcement Cases--2009	Total No. of Enforcement Cases--2010	Total No. of Enforcement Cases--2011	Total No. of Enforcement Cases--2012
Asbestos	36⁴	21	20	10
Air (Excluding Asbestos)	99	145	80	10

³ Defined as the sum of case reports, all consent orders, NOV's and final orders.

⁴ Results in red represent declines from the previous year's values.

Beaches/Coastal	24	15	21	17
Waste Cleanup	24	17	19	14
Dredge & Fill⁵	277	236	148	93
Domestic Waste	144	125	108	75
Hazardous Waste	178	166	119	52
Industrial Waste	85	58	62	39
Potable Water	142	166	110	76
Stormwater Discharge	93	121	55	71
Solid Waste	50	38	63	22
Tanks	232	341	251	129
Underground Injection Control	6	1	0	1

Deceases, most of them extreme, were seen in all but two program areas, stormwater discharge and underground injection control. The former had 16 more cases and the latter had one more case. We included the results from 2009 in the above chart so that the reader can get an idea of just how seriously enforcement has declined over the past three years in key program areas. Of particular note are the air, dredge and fill, domestic waste, hazardous waste, potable water, solid waste, stormwater discharge and tanks programs—all of which have seen sharp declines in enforcement. *With the exception of the domestic waste, potable water and stormwater discharge programs each of those programs has seen at least a 50% decline in prosecutions from 2009 to the present.*

The following table sets out the average number of cases initiated by the Department on an annual basis and then compares those averages to the performance in 2010 through 2012 with respect to the same key program areas listed above. The results are as follows:

Program Area	Historical Averages⁶	2010 Results	2011 Results	2012 Results	Difference from Average
Asbestos	13	21	20	10	(3)
Air (Excluding Asbestos)	93	145	80	15	(78)
Beaches/Coastal	14	15	21	17	3
Waste Cleanup	4	17	19	14	10
Dredge & Fill	216	236	148	93	(123)
Domestic Waste	119	125	108	75	(44)
Hazardous Waste	132	166	119	52	(80)
Industrial Waste	47	58	62	39	(8)
Potable Water	112	166	110	76	(36)
Stormwater Discharge	35	121	55	71	36
Solid Waste	39	38	63	22	(17)
Tanks	72	341	251	129	57
Underground Injection Control	5	1	0	1	(4)

⁵ This includes Environmental Resource Permitting.

⁶ The Historical Averages shown are for the twenty year period of 1987 through 2007.

The results for 2012 were the worst results in this category since we began issuing these reports in 2003, even worse than last year's results. What is quite distressing is the program areas that underperformed the historical averages. Asbestos, air, dredge and fill, domestic waste, hazardous waste, potable water, solid waste and underground injection control all failed to meet those averages. These are the largest programs administered by the Department. Only two programs saw results that were better than the historical averages, the two most noteworthy being stormwater discharge and tanks.

F. Civil Penalty Assessments

Penalty assessments are now in a free-fall. The Department assessed civil penalties in 528 cases in 2012, which is 619 fewer cases than in 2011 and a 54% decline over that same period. **Assessments continue to decline with this being the sixth straight year of decline.**⁷ As in 2011, the results only get worse when delving deeper into the numbers. 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.⁸ 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.

Statewide there were only 3 cases in which the Department assessed a civil penalty of \$100,000 or more, significantly less than the 9 in 2011. Two of those cases were against governmental entities (*City of West Palm Beach Public Utilities* and *Hillsborough County Board of County Commissioners*) both of which saw high assessments in 2011.

The key program areas also saw median dollars assessed on a per case basis as follows:⁹

Program Area	Historical Medians	2011 Medians	2012 Medians
Asbestos	\$2,000.00	\$2,000.00	\$3,640.00
Air (Excluding Asbestos)	\$1,699.50	\$1,500.00	\$4,387.50
Beaches/Coastal	\$500.00	\$750.00	\$1,000.00
Waste Cleanup	\$4,500.00	\$3,500.00	\$36,925.00 ¹⁰

⁷ The Department assessed civil penalties in 1472 cases in 2007, 1408 in 2008, 1363 in 2009, 1318 in 2010 and 949 in 2011.

⁸ \$2,365,368.04 was levied in 1996.

⁹ Data in **red** represent declines from the performance in 2011. Data in **orange** represents performance in 2010 that represents declines from the performance in 2009.

Dredge & Fill	\$700.00	\$1,000.00	\$1,000.00
Domestic Waste	\$2,250.00	\$3,000.00	\$3,600.00
Hazardous Waste	\$4,100.00	\$7,090.00	\$4,104.00
Industrial Waste	\$4,500.00	\$2,500.00	\$1,500.00
Potable Water	\$500.00	\$537.00	\$500.00
Stormwater Discharge	\$600.00	\$1,199.00	\$1,199.00
Solid Waste	\$2,843.00	\$3,000.00	\$3,375.00
Tanks	\$2,712.00	\$5,100.00	\$10,000.00
Underground Injection Control	\$6,850.00	\$0.00	\$0.00

While there was plenty of bad news in the area of assessments, medians held their own in 2012. Most programs recovered from their poor performance in 2011 with the exception being the air, hazardous waste, industrial waste and potable water programs. The industrial waste medians are now below their historical averages, while hazardous waste and potable water medians are near or equal to those averages. Healthy improvements were seen in the asbestos, domestic waste, solid waste and tanks programs. Waste cleanup saw a tremendous increase, however, the median is based upon only two cases for the entire year.

Every district saw a decline in the number of assessments. Every district but the Northwest District saw a decline in the total dollars assessed compared to 2011. The multi-district category improved in both areas. Overall, the Districts' performance in the area of penalty assessments was as follows:

DISTRICT	NUMBER OF ASSESSMENTS IN 2011	NUMBER OF ASSESSMENTS IN 2012	TOTAL \$ ASSESSED	% OF STATE TOTAL
Multi-District	70	77	\$199,147.25	5.91%
NWD	135	55	\$366,937.56	10.9%
NED	111	80	\$283,913.00	8.43%
CEN District	134	89	\$748,156.17	22.22%
SED	90	45	\$438,761.30	13.03%
SD	114	50	\$267,219.00	7.94%
SWD	295	132	\$1,063,447.33	31.58%

This is the **fifth** year in a row that the South District saw a drop in its number of overall assessments. This is the **fourth** year in a row that the Northwest District has seen a drop in the number of overall assessments. This is the **third** year in a row that the Northeast, Central and Southeast Districts have seen a drop in the number of overall assessments.

¹⁰ This result is based on 2 cases statewide.

Dollar assessments compared poorly as well. Five of the six districts assessed fewer dollars in fines in 2012 than they did in 2011.

The comparison of median assessments from 2011 to 2012 amongst the districts is as follows:

DISTRICT	2011 MEDIAN ASSESSMENTS	2012 MEDIAN ASSESSMENTS
Multi-District	\$1,199.00	\$1,199.00
NWD	\$1,500.00	\$2,025.00
NED	\$2,500.00	\$1,605.00
CEN District	\$2,000.00	\$3,000.00
SED	\$3,350.00	\$3,000.00
SD	\$2,500.00	\$2,000.00
SWD	\$2,000.00	\$2,500.00

Three districts, the Northeast, Southeast and South, saw a drop in their median assessments in 2012 when compared to 2011.¹¹ This is now the third year in a row that the Southeast District has seen a drop in its median assessments.

1. The Highest Assessments

The following is a list of the highest assessments, i.e. those assessments exceeding \$100,000, levied by the Department in 2012, sorted by amount:¹²

District ¹³	Program	Polluter	Amount
3	TK	MEDALLION CONVENIENCE STORES, INC.	\$182,200.00

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

¹² The abbreviations are as follows: AB = Asbestos; AC = Air Construction; AF = Air Federal Enforcement Permit; AG = Air General Permit; AO = Air Operation Permit; AM = Air Resource Management; AS = Air Permitted Source; AV = Air Title 5; AW = Aquatic Weed; BS = Beaches and Shores; CC = Collections Case; CM—Coastal & Aquatic Managed Area; CR = Coral Reef ; CU = Waste Cleanup; CZ==Coastal Zone Management; DA = Disciplinary Action; DF = Dredge and Fill; DR= Dry Cleaners; DW = Domestic Waste; EP = Environmental Resource Permitting (Dredge & Fill); ES = ERP Stormwater; EW = ERP Wetlands / Surface Waters; HW = Hazardous Waste; IW = Industrial Waste; MA = Mangrove Alteration; MN = Mining Operations; MR= Marine Resources; OC = Operator Certification; PG = Phospho-Gypsum; PW = Potable Water; RO = Stormwater Discharge; S1 = Untreated Domestic Waste Spills; S3 =Other Domestic Waste Spills; SL = State Lands; SW = Solid Waste; TK = Tanks; UIC = Underground Injection.

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

4	DW	CITY OF WEST PALM BEACH PUBLIC UTILITIES	\$207,500.00
6	DW	HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS	\$558,000.00

G. Civil Penalty Assessments By Program Area—District Comparison

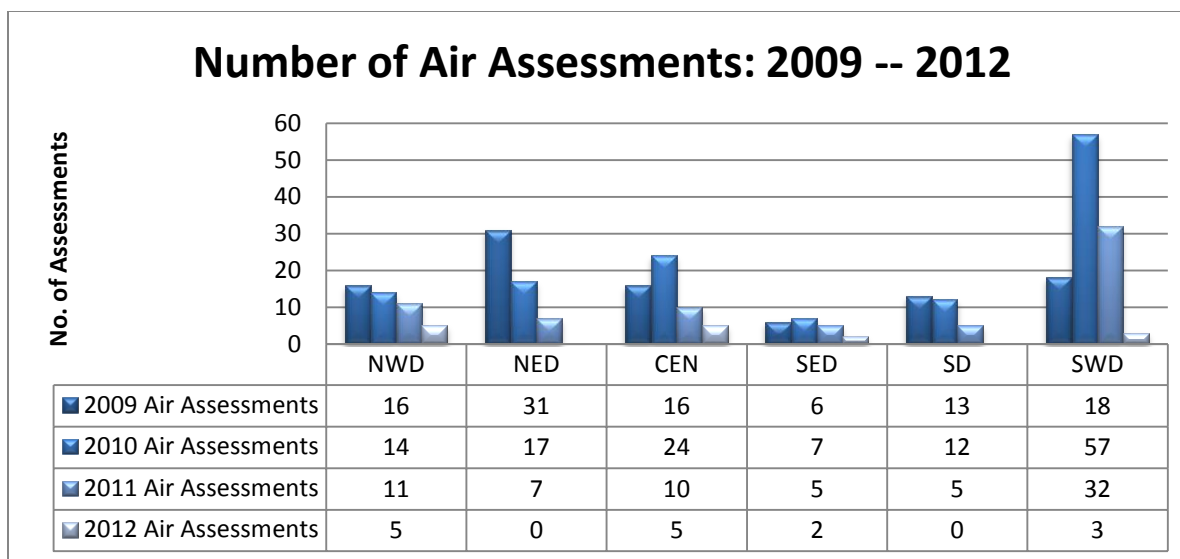
This section addresses the performance of the major program areas in 2012. What follows is a side-by-side comparison regarding the total dollars assessed in each program area, as well as a comparison of each district's median assessments. Given the serious downward trend in many program areas we are also including the results from previous years so that the reader can better understand the state of enforcement in each program.

1. Air Program

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

Year	Total Number of Air Assessments
2009	100
2010	131
2011	70
2012	15

The above numbers suggest that in 2012 the air program in Florida all but ceased to exist. A 79% drop in cases can only be the result of directives at the Secretarial level to withhold enforcement. And as the following chart indicates, over the last three years there is a clear pattern of bringing fewer enforcement cases in the air program in every district. The Southwest District, which was at least holding its own in 2011 has now seen the program essentially dissolve:

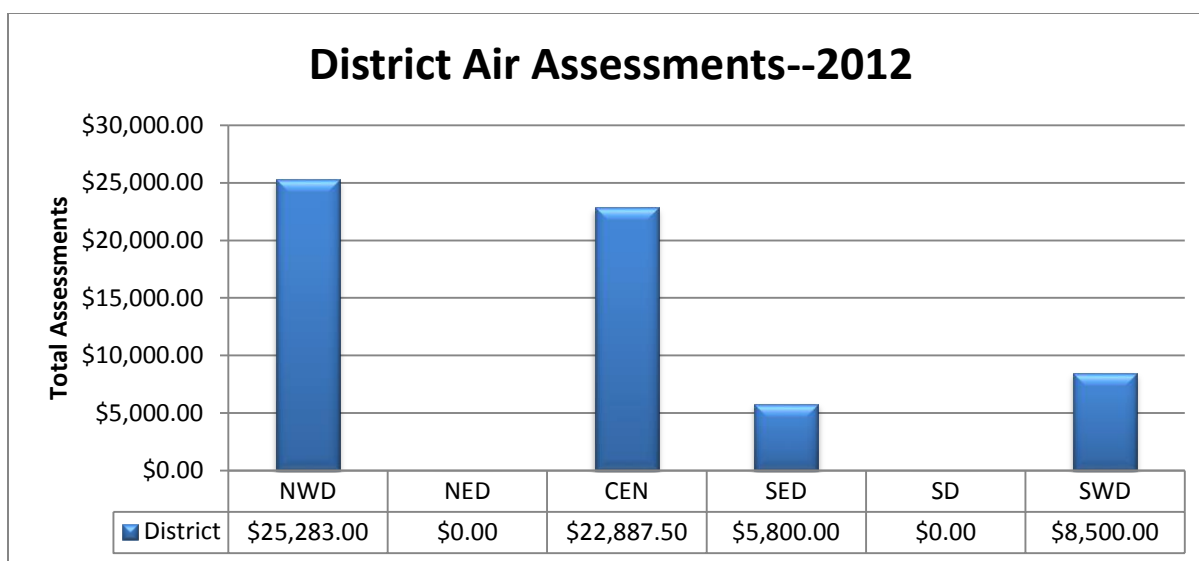


The following table illustrates the decline in assessments for the Department as a whole:

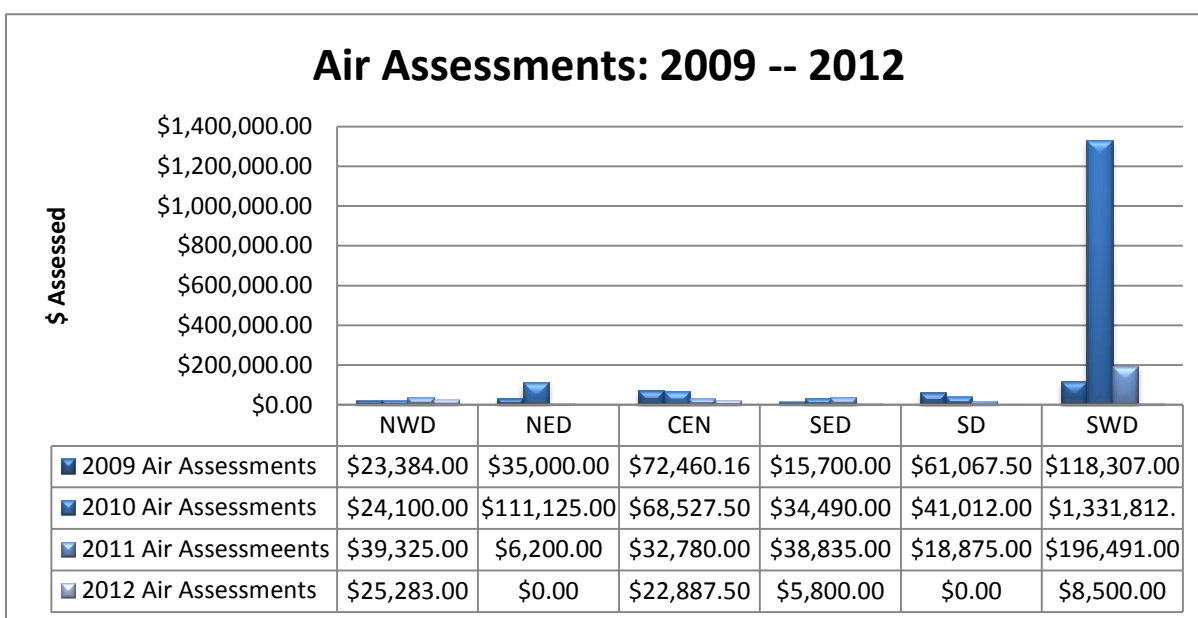
Year	Total \$ Assessed
2009	\$325,918.66
2010	\$1,611,066.50
2011	\$332,506.00
2012	\$62,470.50

In terms of dollars assessed the Southwest District essentially carried the other districts in 2011. In 2012 the air program in the Southwest District all but collapsed. The Northwest District assessed the most in penalties in 2012.¹⁴ However, even that district's results were far less than stellar. The Northeast and South Districts had no air cases in 2012:

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



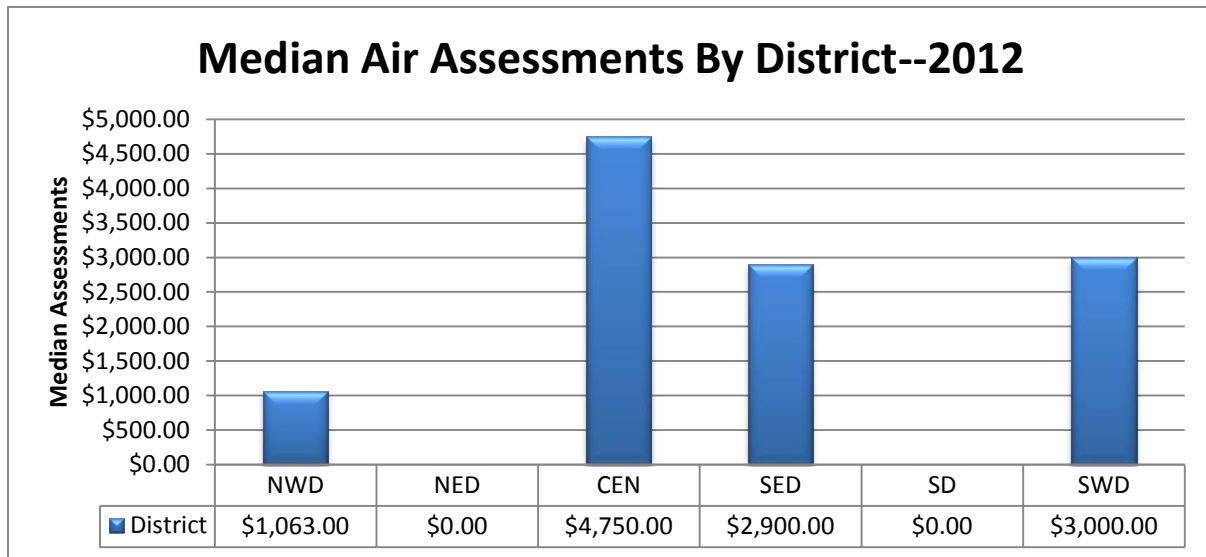
As the following graph indicates, none of the Districts saw improvements in total assessments compared to 2011:



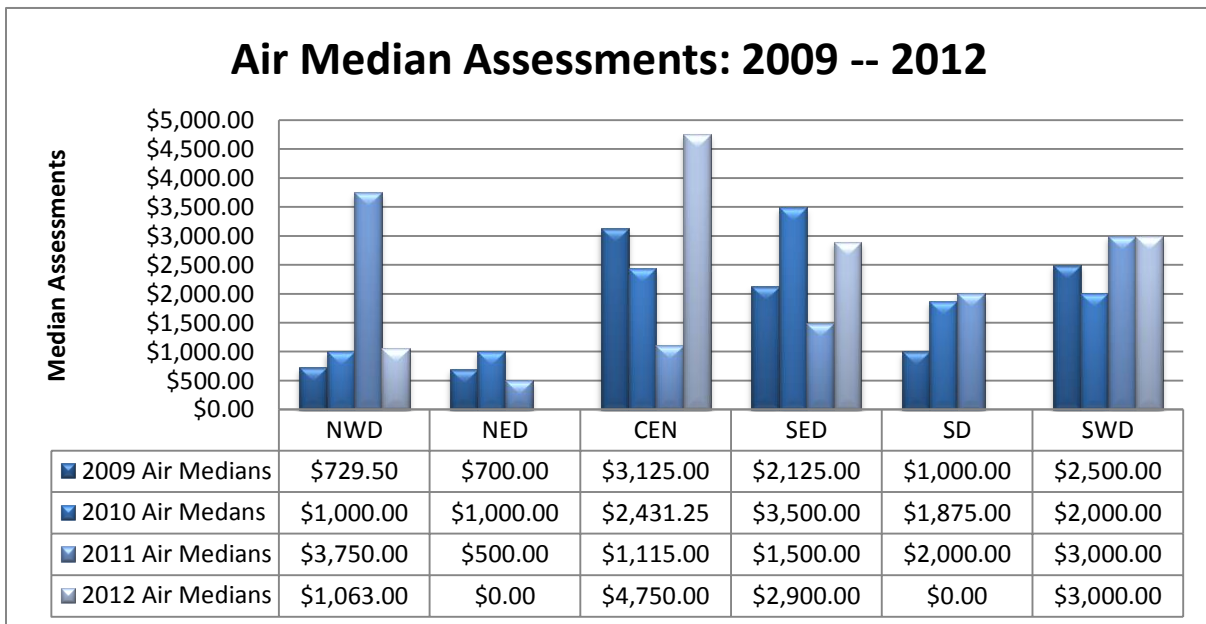
The Department as a whole appears to be more stable when it comes to median assessments in this program, but this would likely be due to the fact that with only 15 total assessments (including in-kind cases) a few cases can have a significant impact upon the overall results.

Year	Median Air Assessments
2009	\$1,200.00
2010	\$2,000.00
2011	\$1,900.00
2012	\$4,387.50

Median air assessments amongst the districts broke down as follows:



The four-year summary shows mixed results on a district-by-district basis. The positive numbers in the Central and Southeast Districts are belied by the fact that they had a total of 7 cases between them.

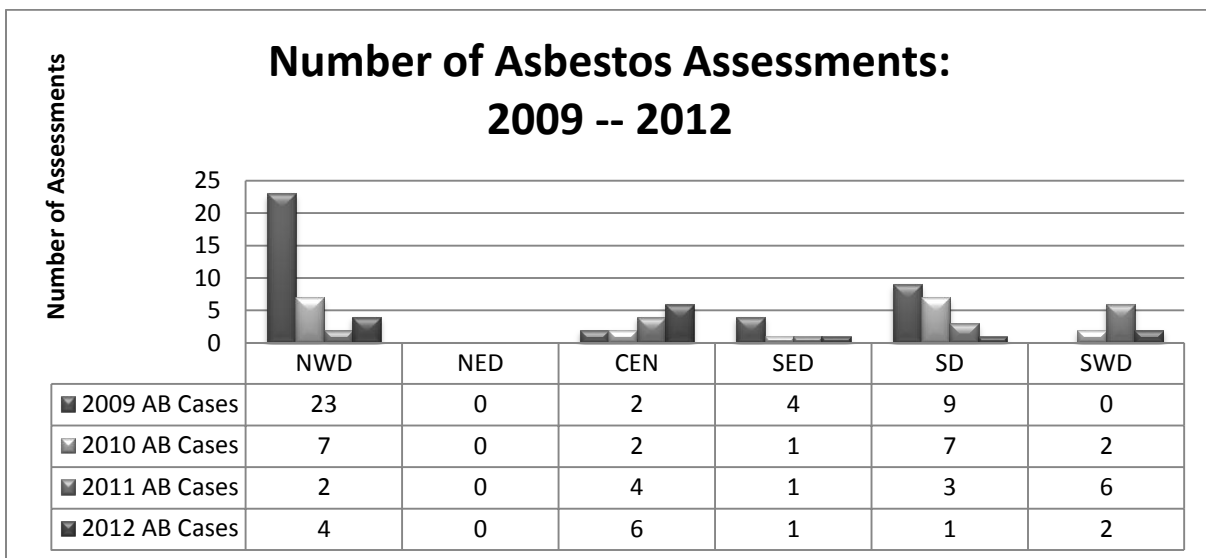


2. Asbestos Program

Since 2010 the number of asbestos assessments has declined 66% Department-wide:

Year	Total Number of Asbestos Assessments
2009	38
2010	19
2011	16
2012	14

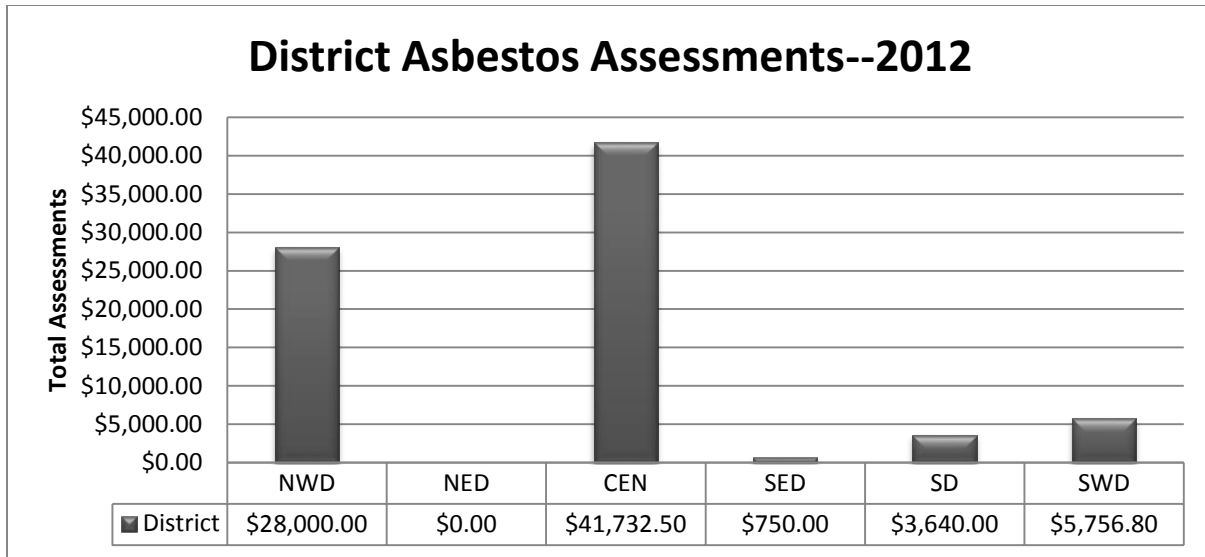
Except for the Central District there is a similar trend:



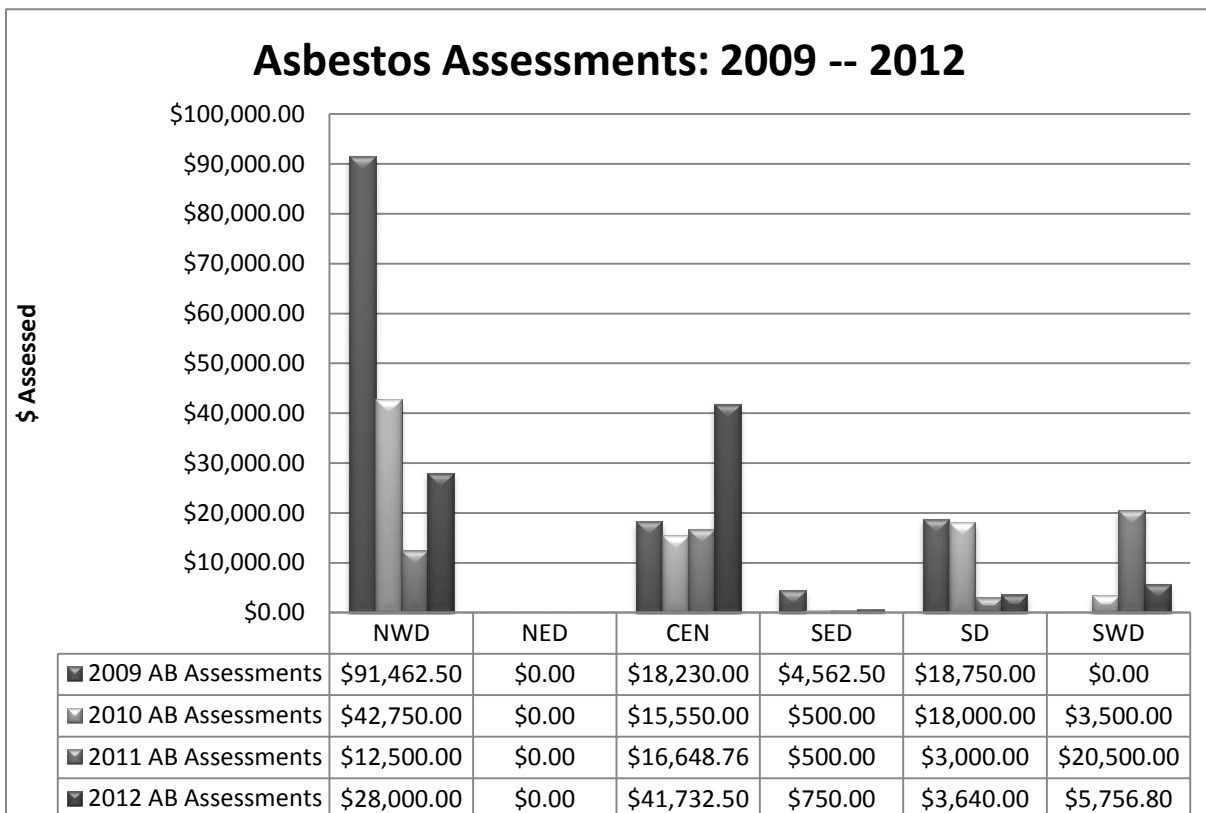
However, 2012 did see a rebound to 2010 levels in terms of dollars assessed:

Year	Total \$ Assessed—Asbestos
2009	\$133,005.00
2010	\$80,300.00
2011	\$53,148.76
2012	\$79,879.30

2012's assessments were dispersed amongst the districts as follows:



Significant improvement was seen in the Northwest and Central Districts with modest improvement in Southeast and South districts. The Southwest District saw a significant decline:

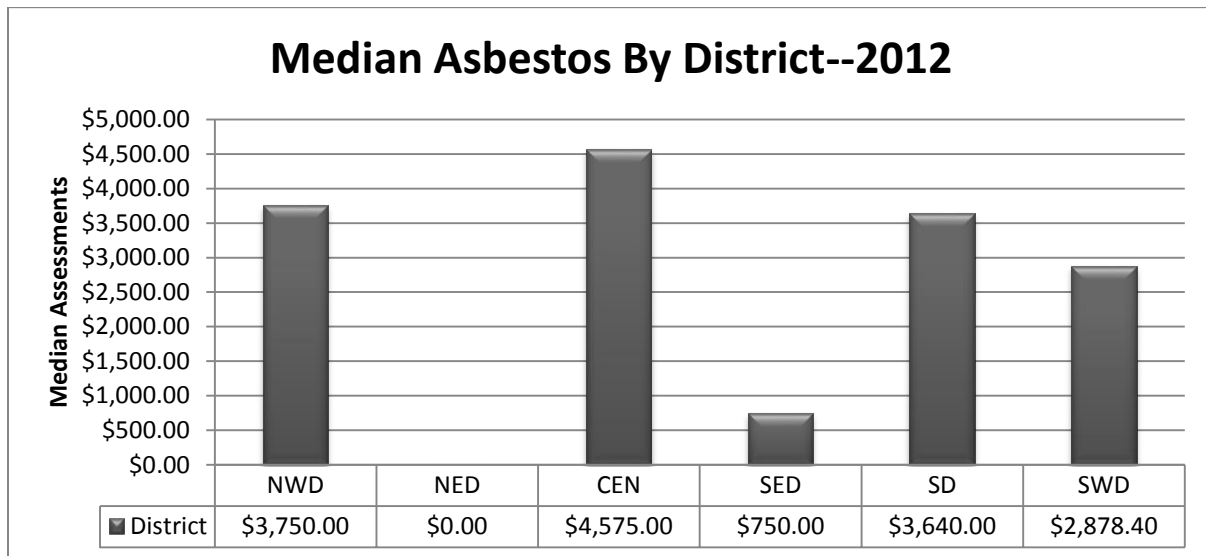


Median asbestos assessments for the Department as a whole continued to improve, however:

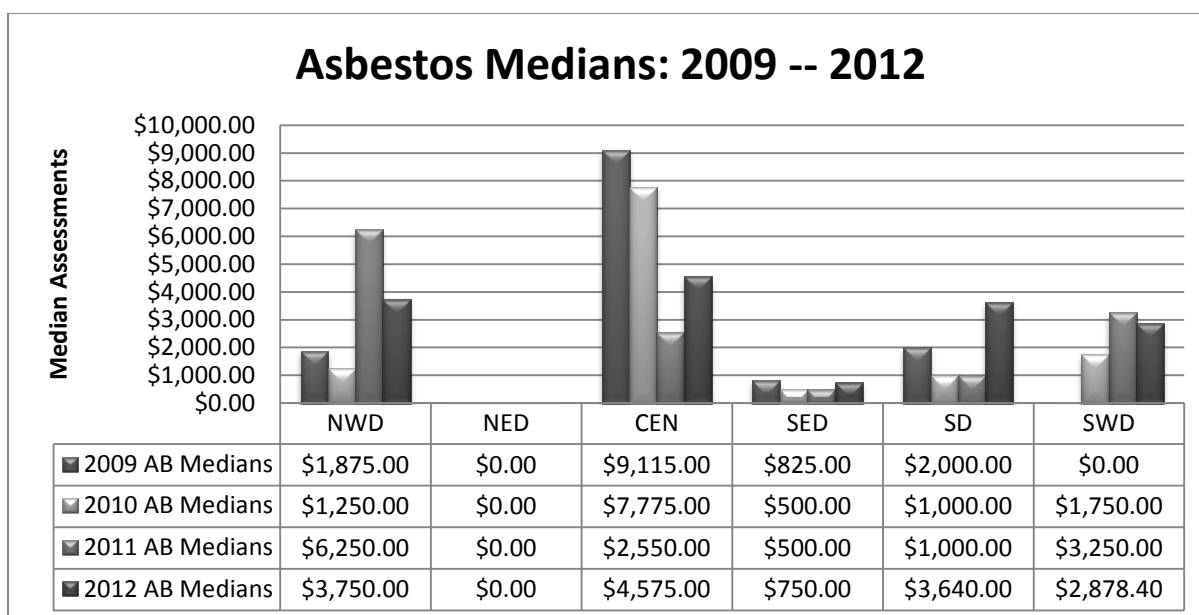
Year	Median Asbestos Assessments
------	-----------------------------

2009	\$1,937.50
2010	\$1,250.00
2011	\$2,000.00
2012	\$3,640.00

The Central and Northwest Districts had the highest medians in the state and also had the highest number of cases overall. While the Southeast and South Districts improved their numbers that result is tempered by the fact that they had only one case each. The Southeast District's numbers are down:



The overall trend seems to be one of status quo to modest improvement; however, the results are based upon very few cases overall, so it is difficult to say that real improvement has been made:

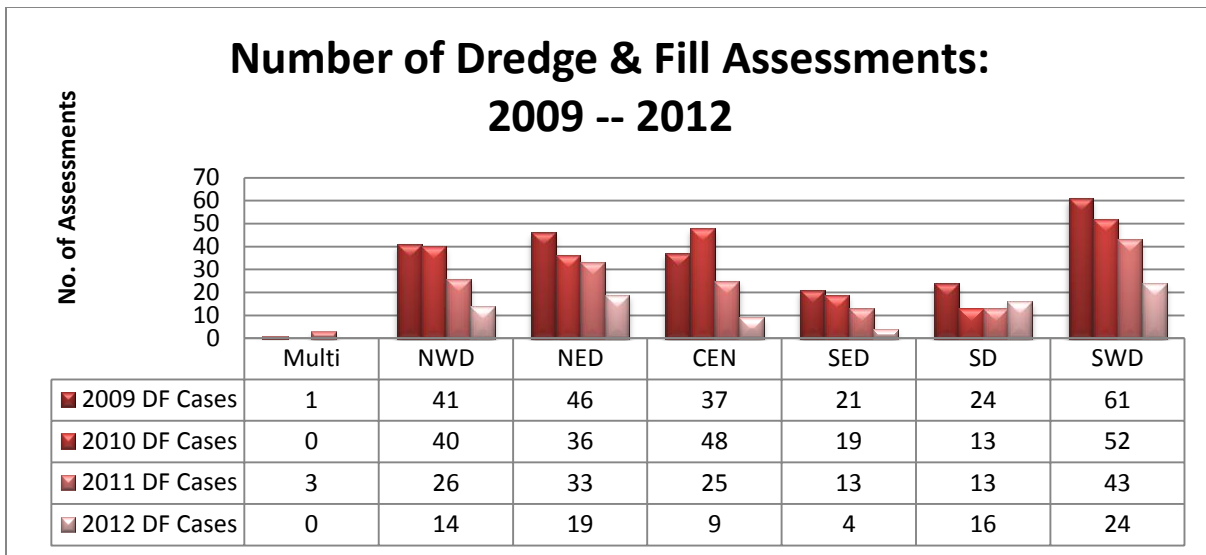


3. Dredge and Fill Program

There has been a clear downward trend when considering the total number of assessments brought by the Department each year. With some exceptions, the data shows that this is a program that continues to be in trouble. The number of cases fell by 45% compared to 2011 and 59% compared to 2010:

Year	Total Number of Assessments
2009	231
2010	208
2011	156
2012	86

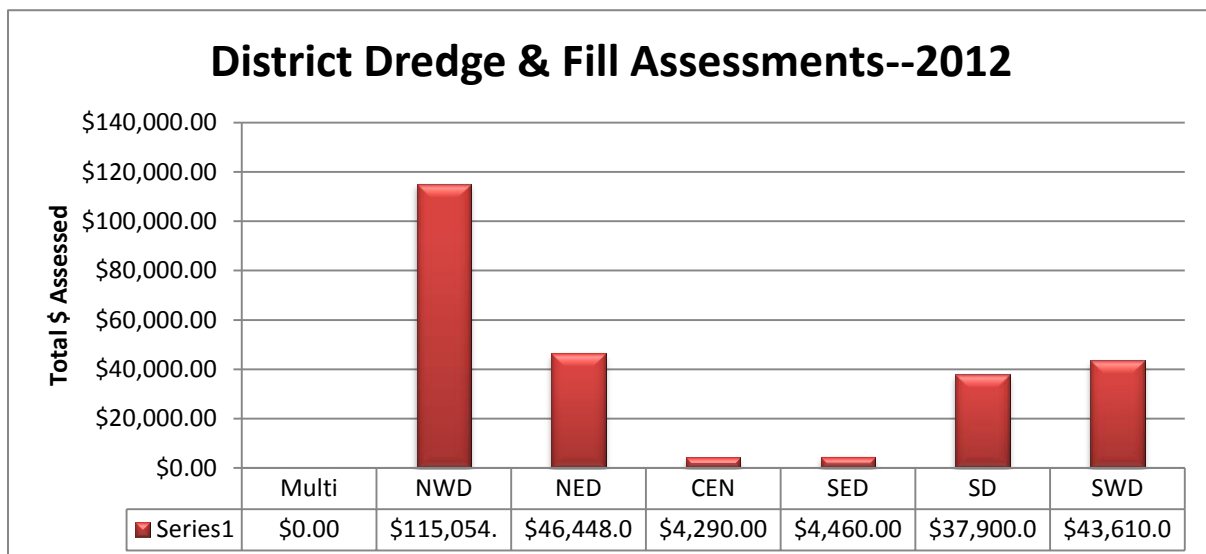
The South District was the only district to show any improvement compared to 2011. Otherwise, every district showed an unmistakable trend towards less enforcement--most of them having significantly fewer cases. The declines in the Central and Southwest Districts are particularly disturbing:



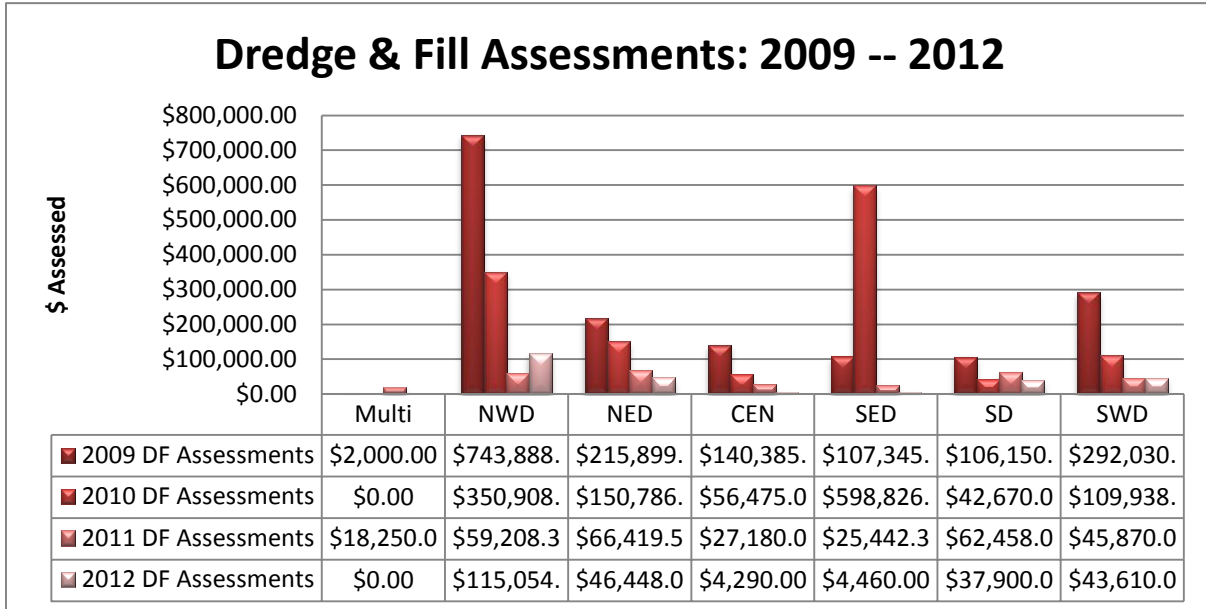
2011 was a very bad year for this program. 2012 was worse. Essentially, the enforcement arm of the program appears to be in a free fall. **Overall, assessments have declined 84% since 2009** The only year that they were lower was in 1989, when the Department was in its infancy:

Year	Total \$ Assessed
2009	\$1,607,697.31
2010	\$1,309,603.40
2011	\$304,828.19
2012	\$251,762.00

The district results were quite bad for this program in 2012, with the exception of the Northwest District. The data for 2011 indicates lower numbers for each district:



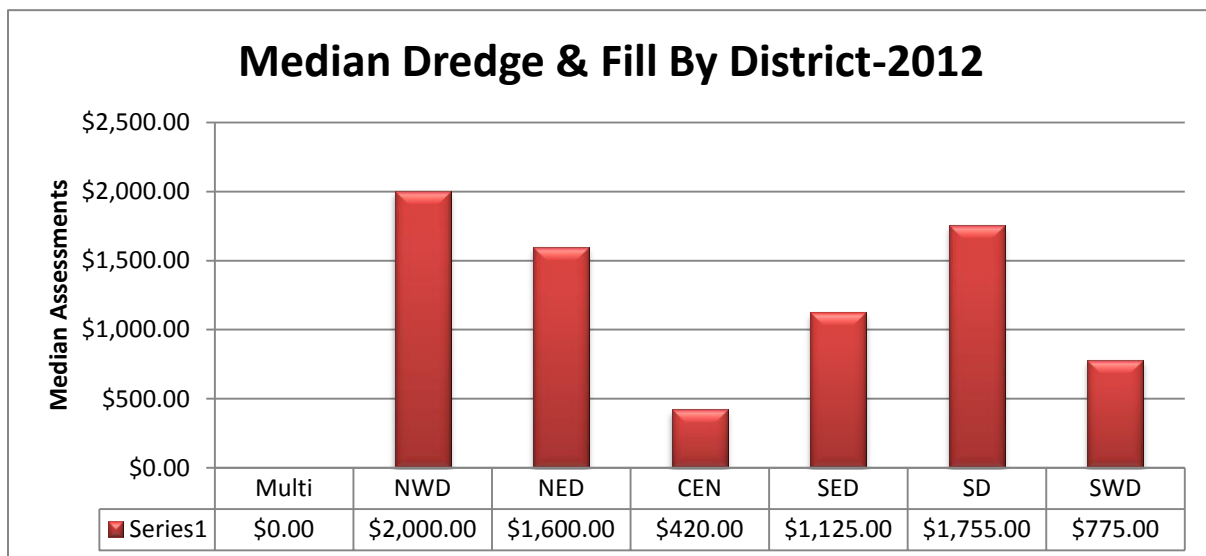
When looking at the 4-year history of the districts the downward trend is easy to see:



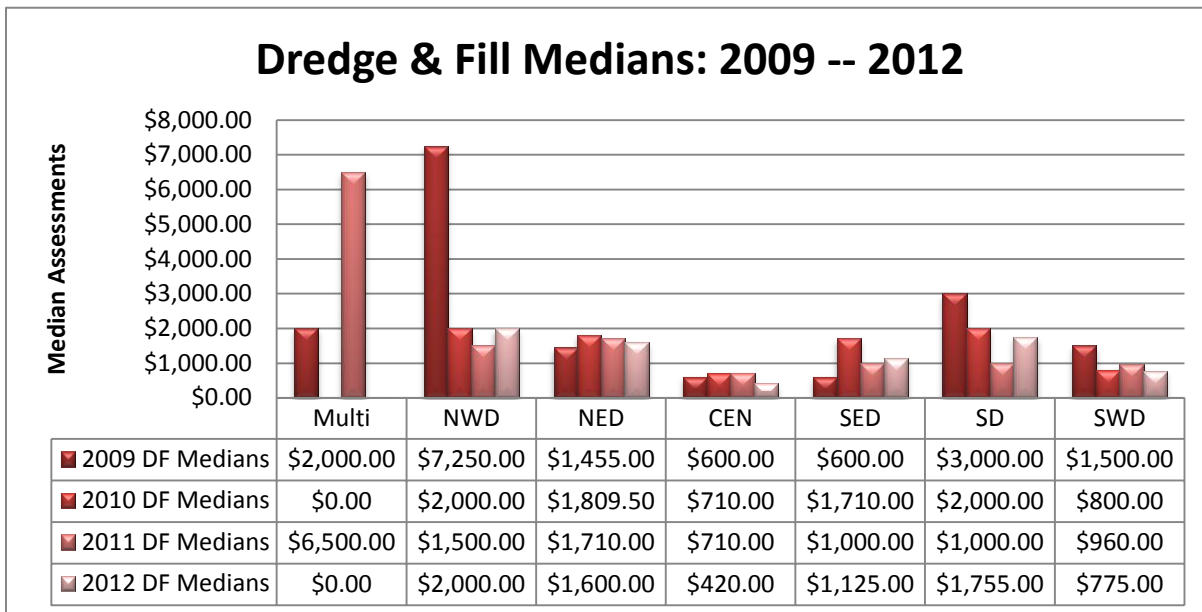
Median assessments remained steady for the Department as a whole:

Year	Median DF Assessments
2009	\$1,500.00
2010	\$1,205.00
2011	\$1,000.00
2012	\$1,000.00

The median assessments amongst the districts for 2012 were:



Median assessments improved somewhat for the Northwest, Southeast and South Districts, while declining in the remaining districts. The decline in the Central District was particularly significant:



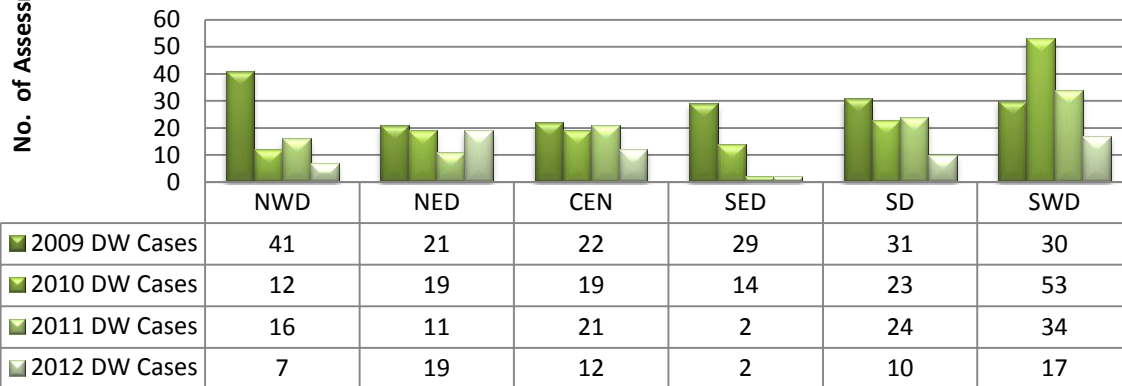
4. Domestic Waste Program

The Department assessed penalties in 70 cases in 2012, thus continuing the decline in this critical area:

Year	Number of Civil Penalty Assessments
2009	174
2010	140
2011	108
2012	70

The number of cases has now dropped 50% from the levels in 2010. The Northeast District was the only district to see any improvement when compared to 2011. As in 2011, the Southeast District took enforcement in only 2 cases for the entire year. The remaining districts all saw sizeable declines:

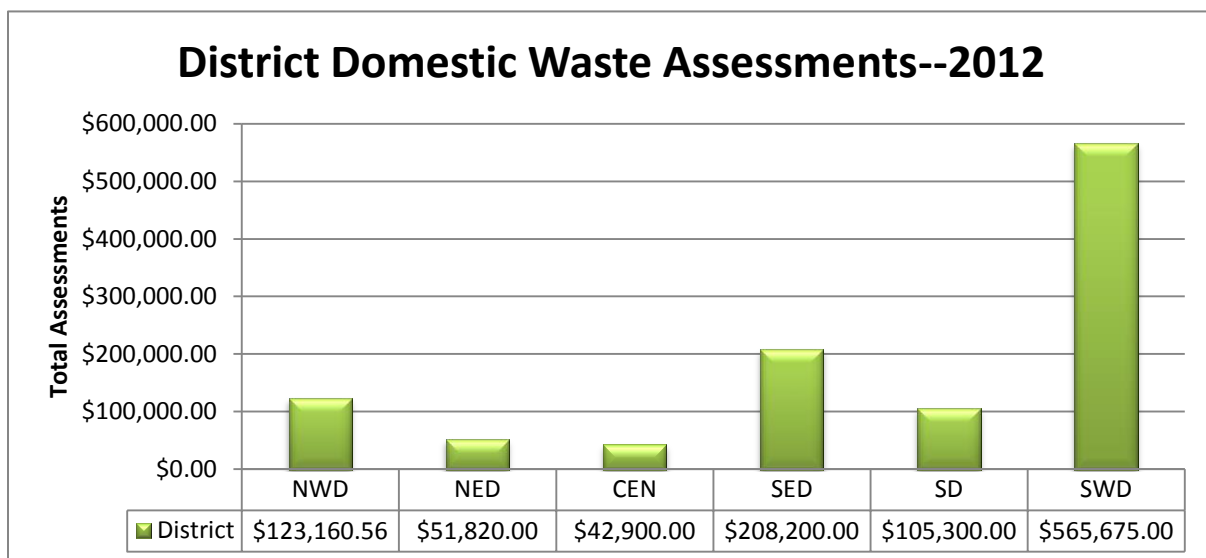
Number of Domestic Waste Assessments: 2009 -- 2012



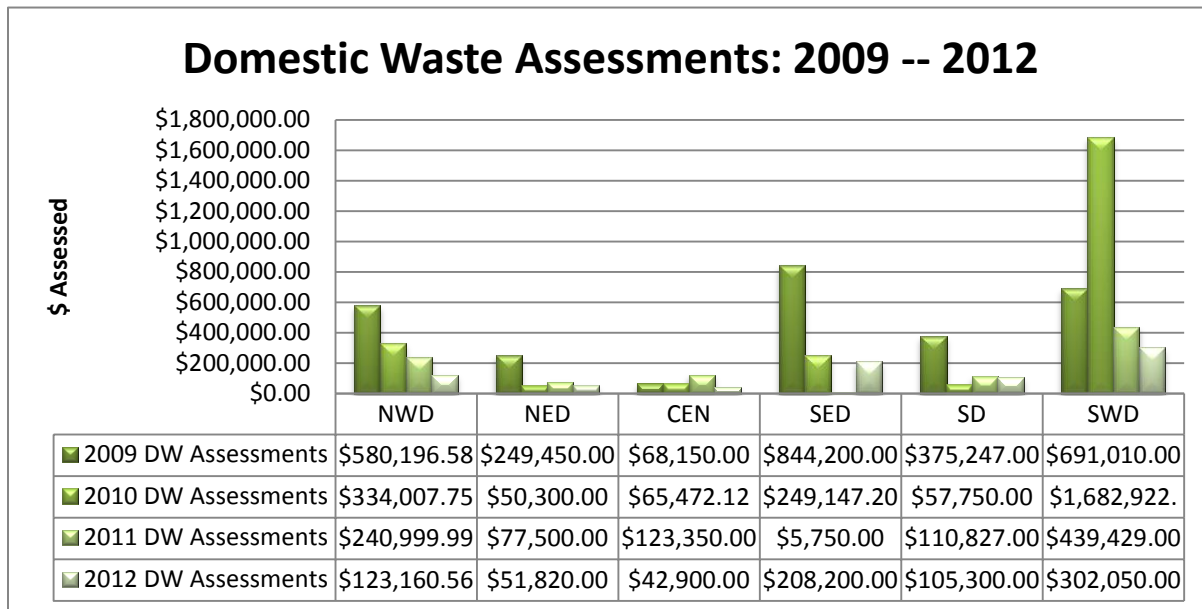
While the results remain considerably lower than in years past, the Department did manage to assess a total of \$1,097,055.56 in civil penalties in 2012, a very modest improvement from the results in 2011. Of the \$1,097,055.56 that was assessed, all but \$331,555.56 came from two cases against local governments:

Year	Domestic Waste Assessments
2009	\$2,808,253.58
2010	\$2,439,599.07
2011	\$997,855.99
2012	\$1,097,055.56

The Districts assessed the penalties as follows:



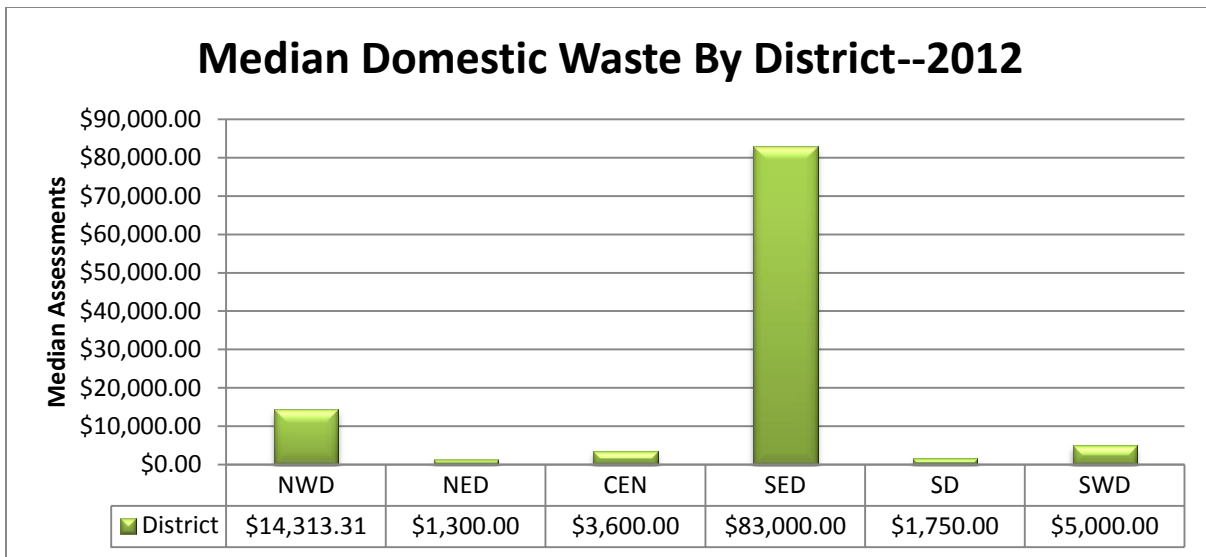
Except for the Southeast District (which only assessed penalties in two cases) every district performed worse in 2012 than it did in 2011. Ironically, it was the two high assessments in the Southeast District that resulted in the modest overall improvement for the Department as a whole:



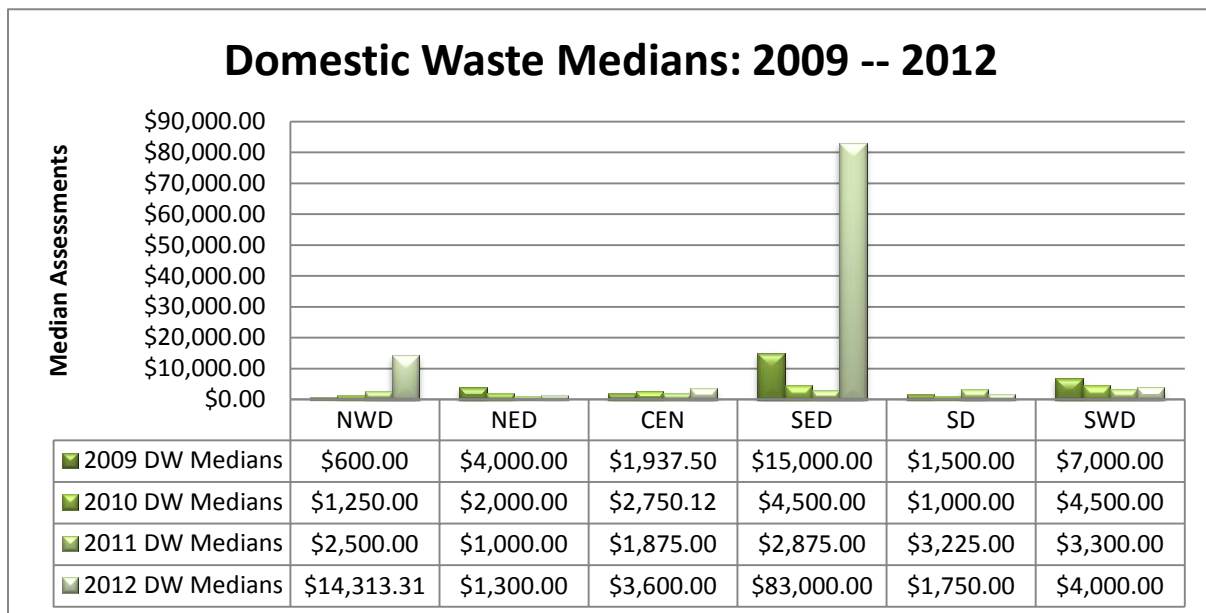
Medians for the Department as a whole continued to improve in 2012:

Year	Median Assessments—Domestic Waste
2009	\$2,275.00
2010	\$2,000.00
2011	\$3,000.00
2012	\$3,600.00

The improvement looks to have been driven largely by the improved numbers in the Northwest and Southwest Districts. Once again, one needs to realize that the Southeast District's results are based upon only **two** penalty assessments—thus it is hardly representative.



The trend in the individual districts is scattered. Overall, however, we do not see the same clear downward spiral that is evident in the air and dredge and fill programs:



5. Hazardous Waste Program

There was a 59% reduction in the number of new enforcement cases in 2012. And there has been an almost 75% reduction since 2010:

Year	Number of Hazardous Waste Assessments
2009	198

2010	202
2011	125
2012	51

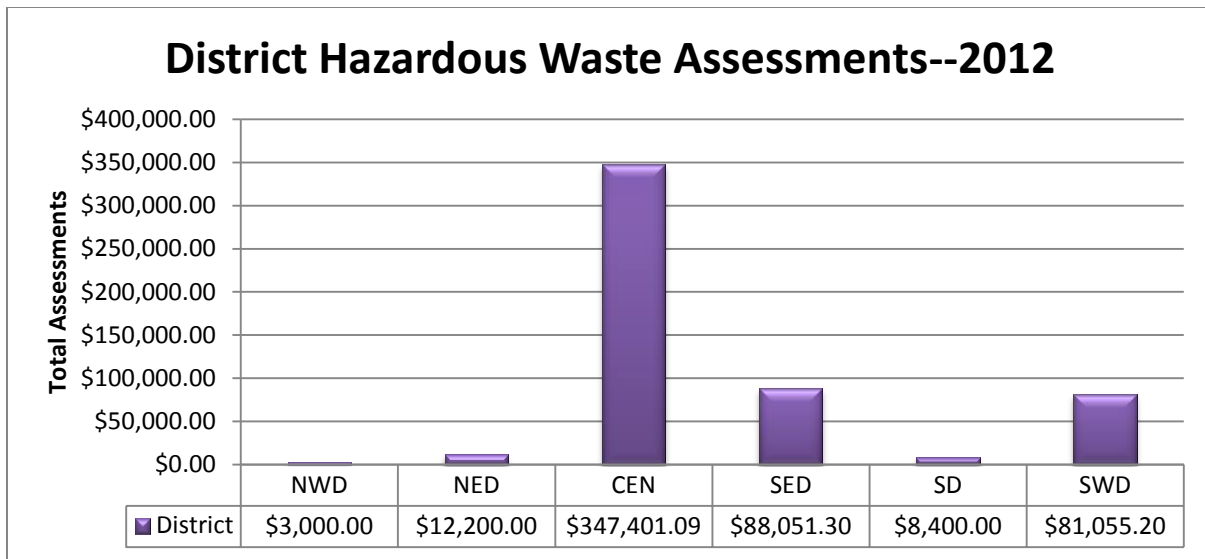
There is now a rather clear downward pattern in each of the districts, with the most prominent reduction being in the Southwest District. In addition, there was only one assessment in the Northwest and South Districts and **three** in the Northeast. These results are particularly troubling given the Department's previous announcements (and changes to the enforcement manual) under former Secretary Sole that this program would see much tougher enforcement. Clearly that approach has been discarded by the new administration. The results are:



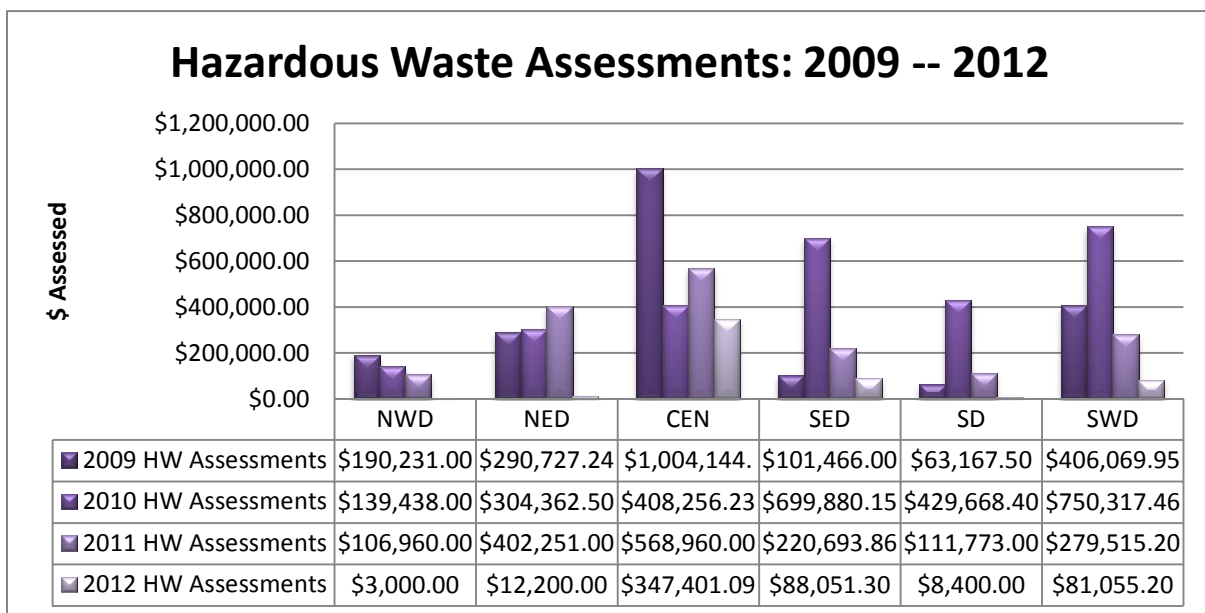
2011 saw a significant drop in hazardous waste assessments. 2012 saw the decline grow larger. In fact, there was a 68% reduction in assessments in 2012. The 2012 results also represent an 80% decline since 2010. The results for the past 4 years are:

Year	Total Hazardous Waste Assessments
2009	\$2,055,805.69
2010	\$2,731,922.74
2011	\$1,690,153.06
2012	\$540,107.59

The Department's assessments in 2012 were divided amongst the districts as follows:



Every district saw drastic falls in hazardous waste assessments in 2012. The Central District fell less than the others. Without its work the overall picture would have been even bleaker:



Median assessments for the Department as a whole also fell to \$4,104.00 in 2012. This represents a **42%** decline from 2011's impressive numbers in this category. Over the past four years the Department's performance has been inconsistent:

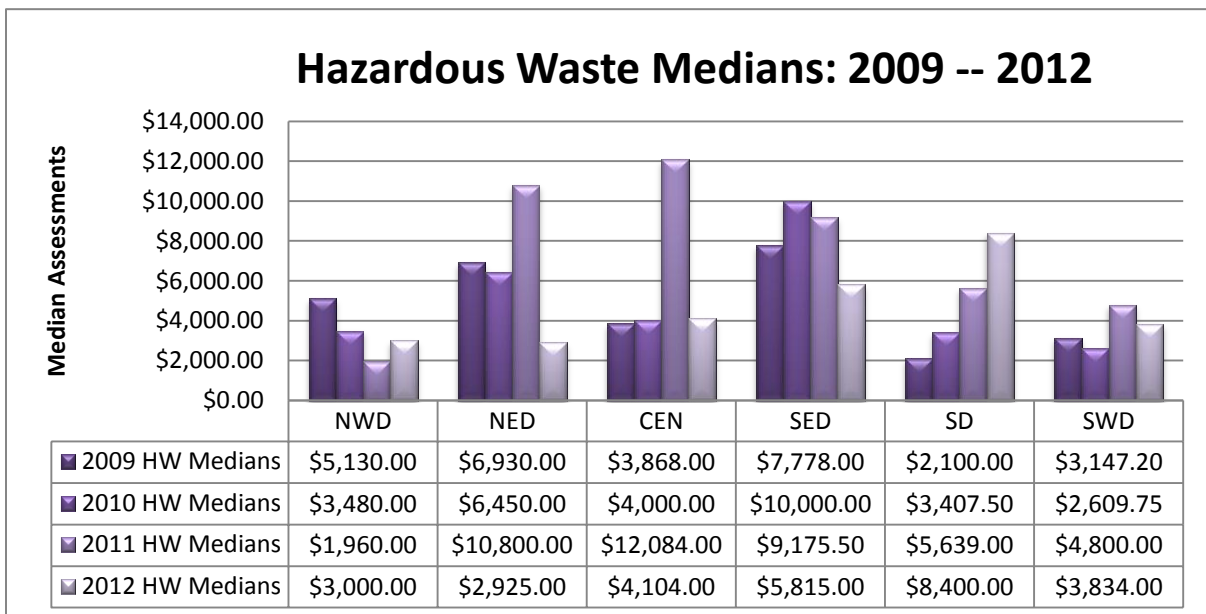
Year	Median Hazardous Waste Assessments
2009	\$4178.25
2010	\$3868.50

2011	\$7,090.00
2012	\$4,104.00

Median assessments for each district in 2012 were :



The median assessments in the South and Northwest Districts are based upon one assessments in each district. Thus, those districts would be considered outliers. Otherwise, medians fell in every district:



6. Industrial Waste Program

As with the other program areas, there continues to be a steady drop in the number of penalty assessments in the industrial waste program:

Year	Number of Industrial Waste Assessments
2009	73
2010	54
2011	46
2012	21

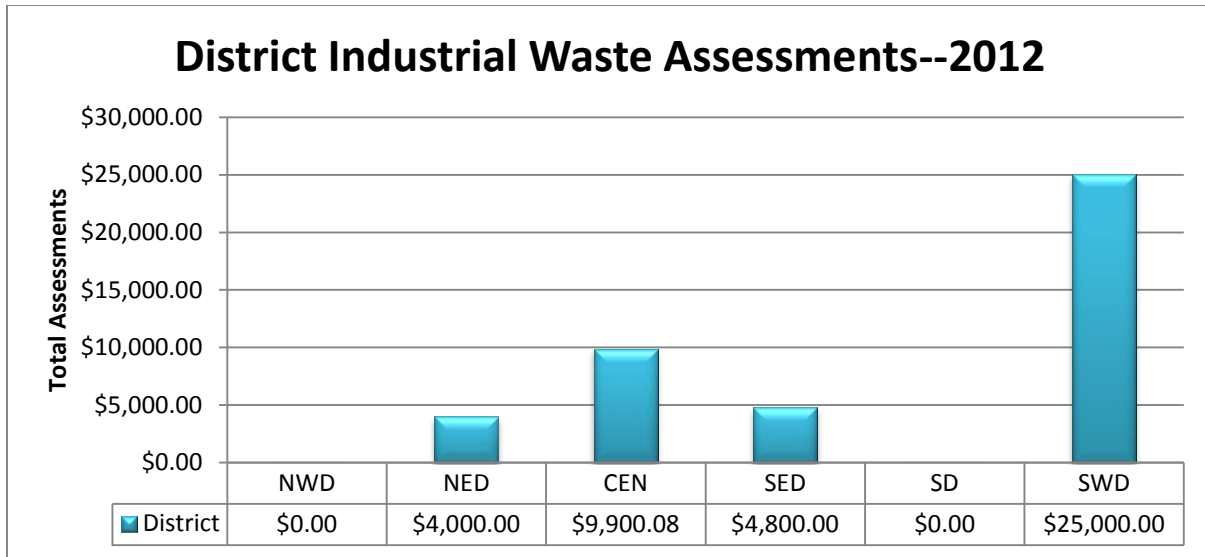
The Southeast District was the only district to improve upon its 2011 performance. All other districts showed poorer performance. The Northwest and South Districts took enforcement in no cases in 2012 and the Southwest District, which opened 21 cases in 2011, opened just 9 in 2012.



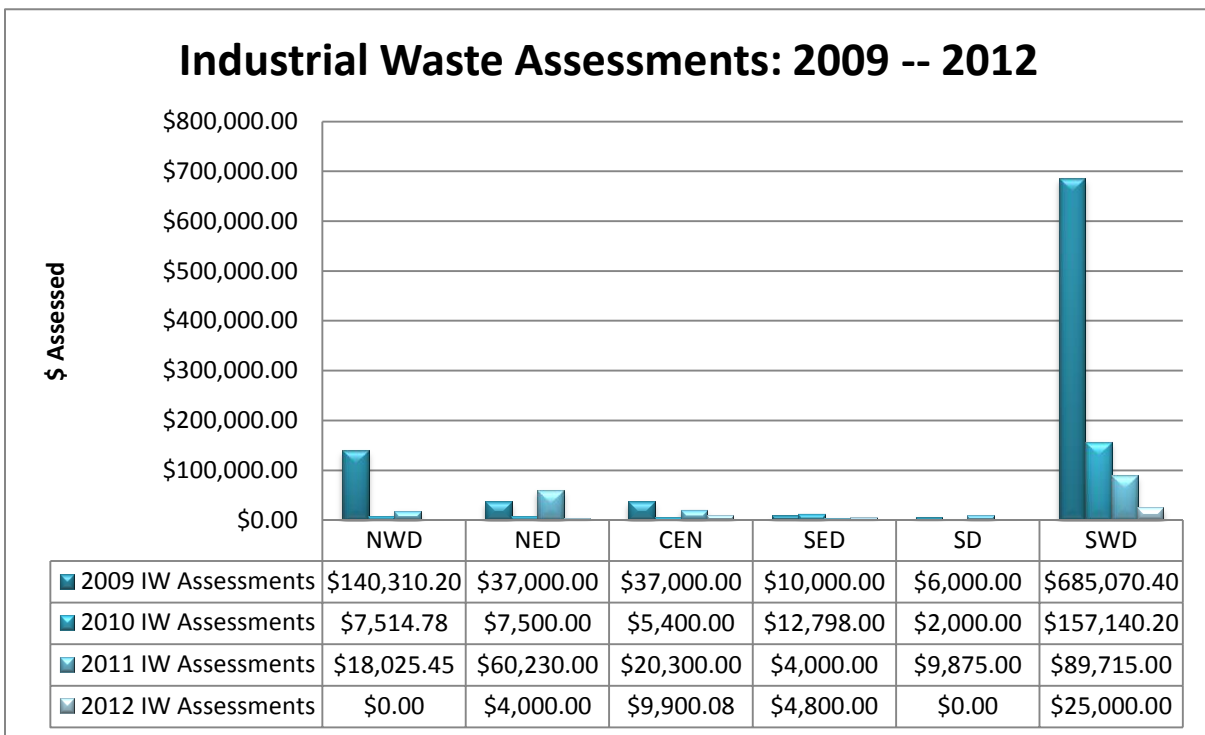
Overall the Department levied just \$43,700.08 in civil penalties in 2012, down from \$202,145.45 in 2011.

Year	Total Industrial Waste Assessments
2009	\$915,380.60
2010	\$192,352.98
2011	\$202,145.45
2012	\$43,700.08

In 2012 the districts assessed penalties in this program as follows:



The yearly decline continues to be seen in all but one of the districts over the course of the past three years. In short, the performance was dismal:



Over the course of the past three years the median civil penalty assessments have remained remarkably stable for the Department, but the median still dropped 40% last year:

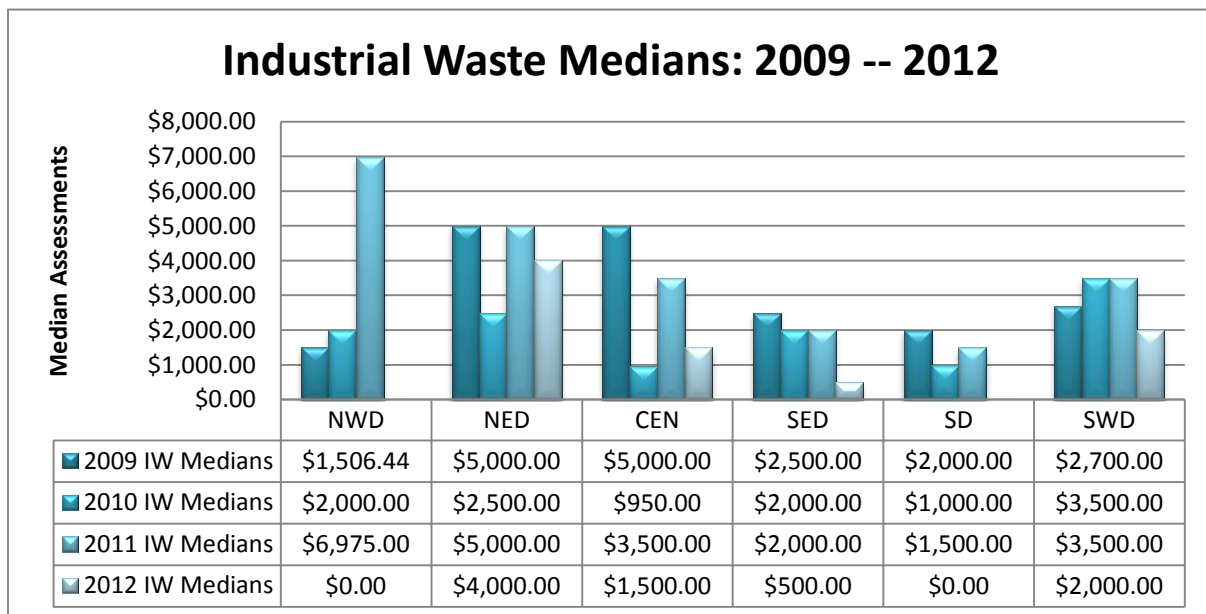
Year	Median Industrial Waste Assessments
2009	\$2,400.00
2010	\$2,590.10

2011	\$2,500.00
2012	\$1,500.00

The highest medians were in the Northeast and Southwest Districts, however, the results for the Northeast District are based upon only one case:



Median assessments were at a four year low in the Northwest, Southeast, South and Southwest Districts:

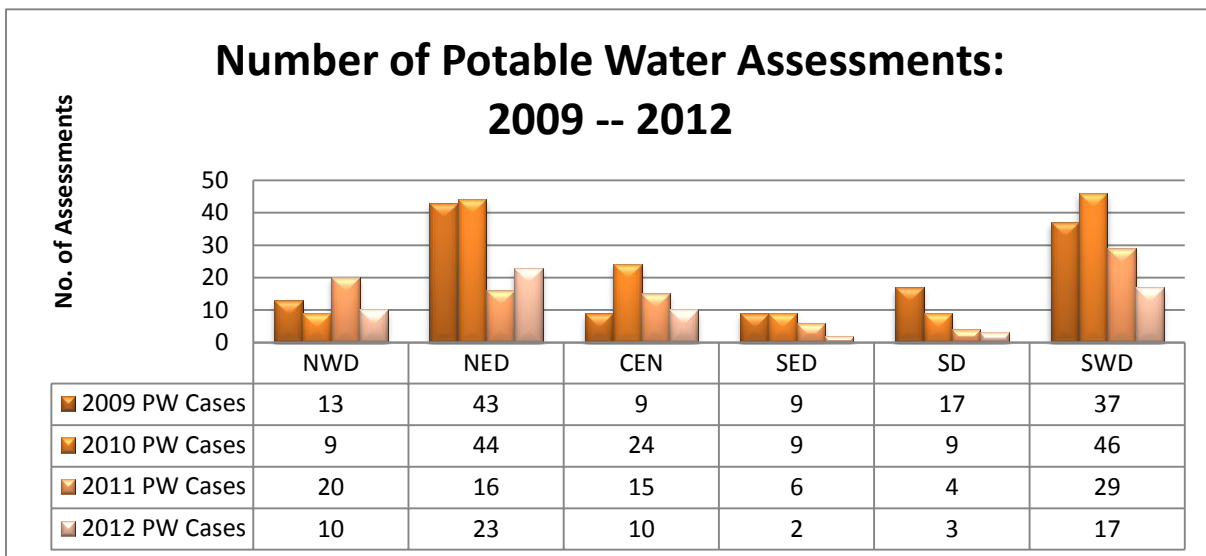


7. Potable Water Program

The potable water program oversees the provision of drinking water to Florida's families, businesses, schools, daycare centers etc. Notwithstanding the critical role that this program plays, the number of potable water assessments has declined once more for the Department as a whole, this time by 22%:

Year	Number of Assessments
2009	128
2010	141
2011	90
2012	65

This decline was the result of poorer performance in every district except for the Northeast District:



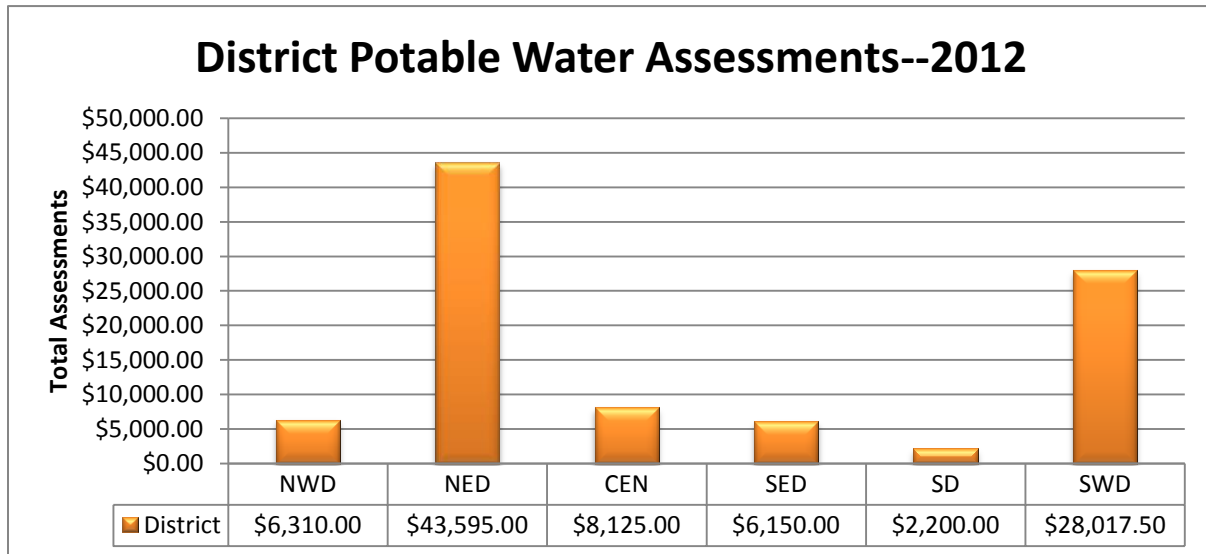
The race to the bottom was led by the Southeast District, which saw the number of its cases drop by 67%, followed by the Northwest District which had a 50% drop. The number of cases reached a four year low for the Southeast, South and Southwest Districts in 2012.

As dictated by the Legislature, the fines for violations of the environmental laws governing this program are small compared to the other programs. The Department as a whole assessed penalties of \$94,397.50 in this program. This is down 37% compared with the results in 2011 and 62% from the results in 2010:

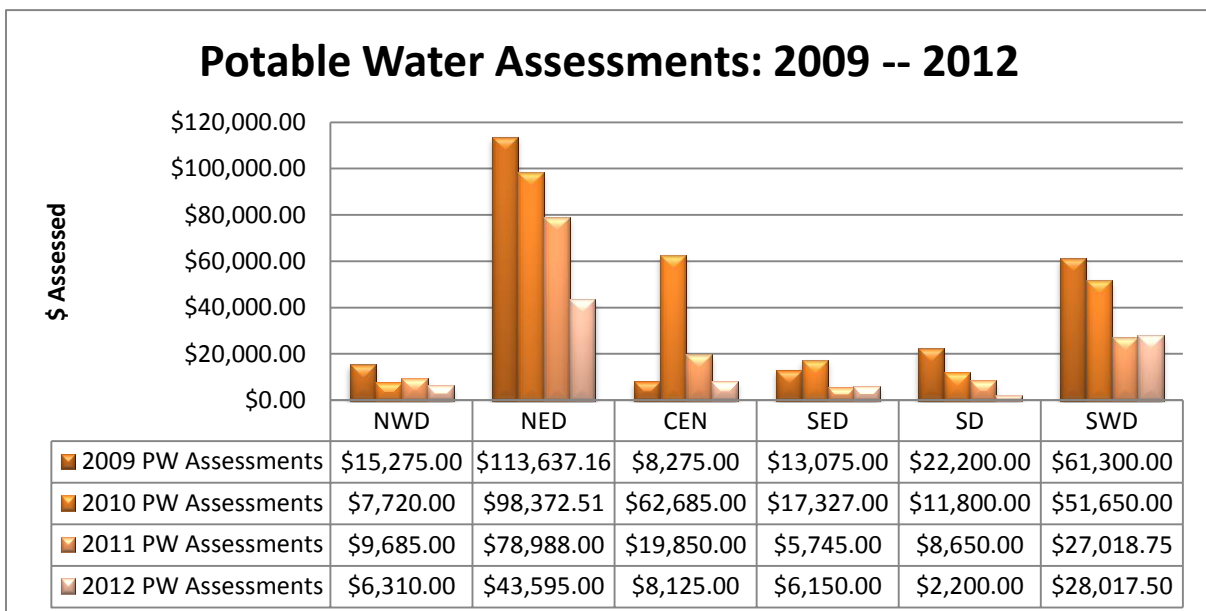
Year	Total Potable Water Assessments
2009	\$233,762.16
2010	\$249,554.51
2011	\$149,936.75

2012**\$94,397.50**

The fines were distributed amongst the districts in 2012 as follows:



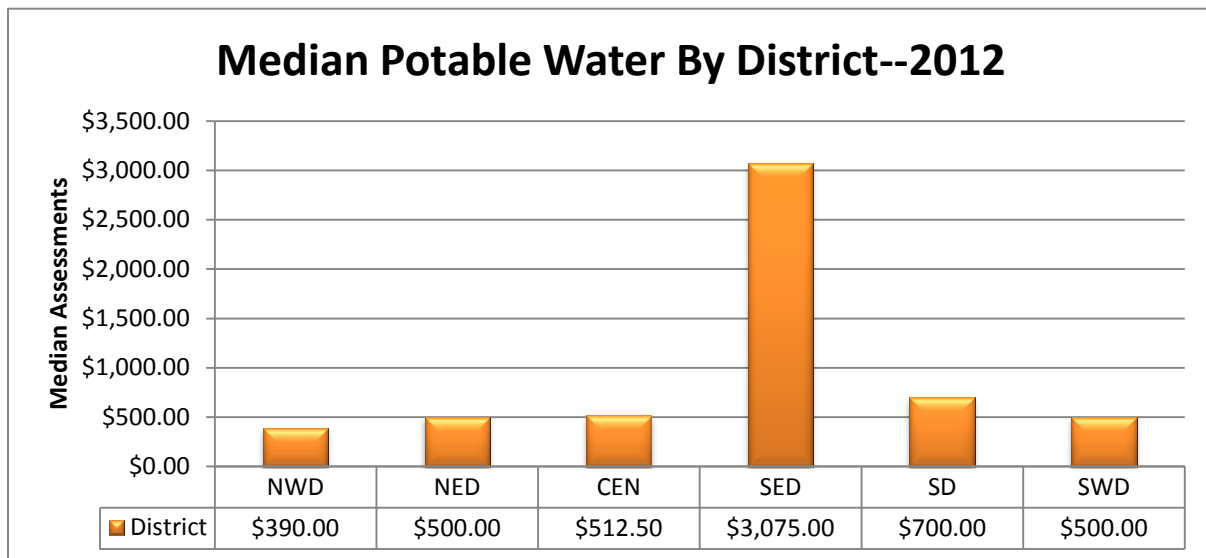
Despite each of them having significantly fewer enforcement cases than in 2011, the Southeast and Southwest Districts were the only districts that increased their assessments in 2012. Most of the districts continue to show a clear downward trend over the past four years:



Median assessments also declined sharply in 2011 for the Department, down 7% to a new level of \$500.00. This new median is 43% lower than the median in 2010 and also lower than the median in 2009:

Year	Median Potable Water Assessments
2009	\$750.00
2010	\$875.00
2011	\$537.50
2012	\$500.00

A comparison of the medians for the districts in 2012 yields these results:

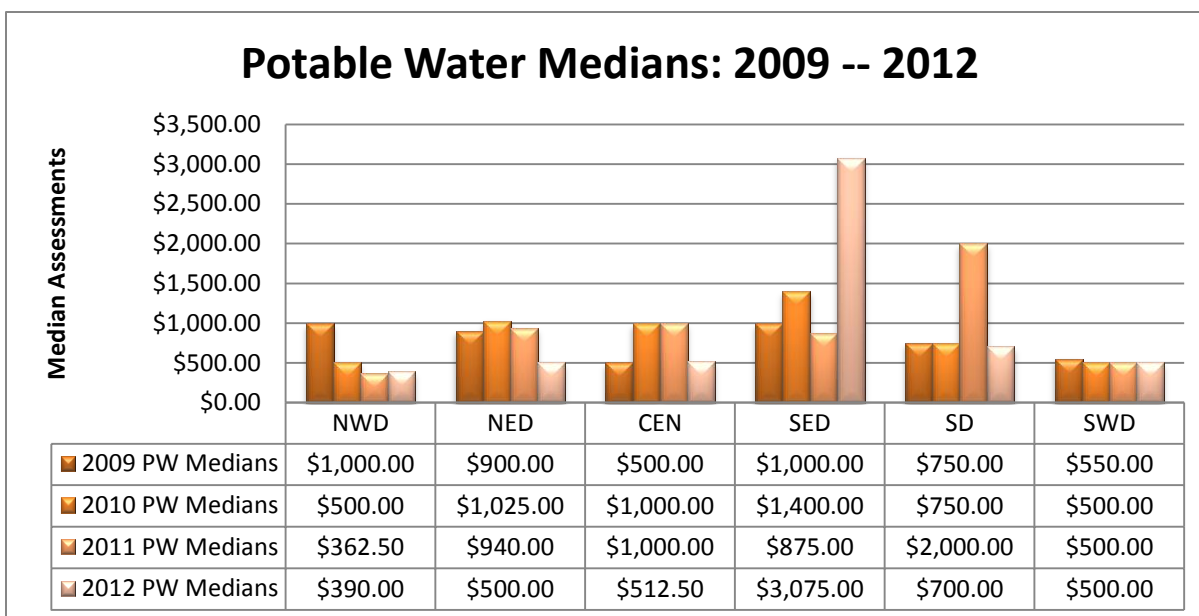


The Northwest District had the lowest median of the group, though the Northeast and Southwest Districts were not far behind. Over the past four years there is no discernable pattern that applies to every district:

Despite having the lowest median of all the districts, the Northwest District did manage to marginally improve its performance compared to 2011. The median for the Southeast District is based on only two cases. The Northwest, Central and South Districts all saw significant declines, while the Southwest District continues to be relatively flat.

8. Stormwater Discharge Program

This is a program that is largely administered out of Tallahassee. The program oversees the design and operation of stormwater discharge ponds/systems throughout Florida. These systems collect and treat stormwater that is generated by large residential and commercial

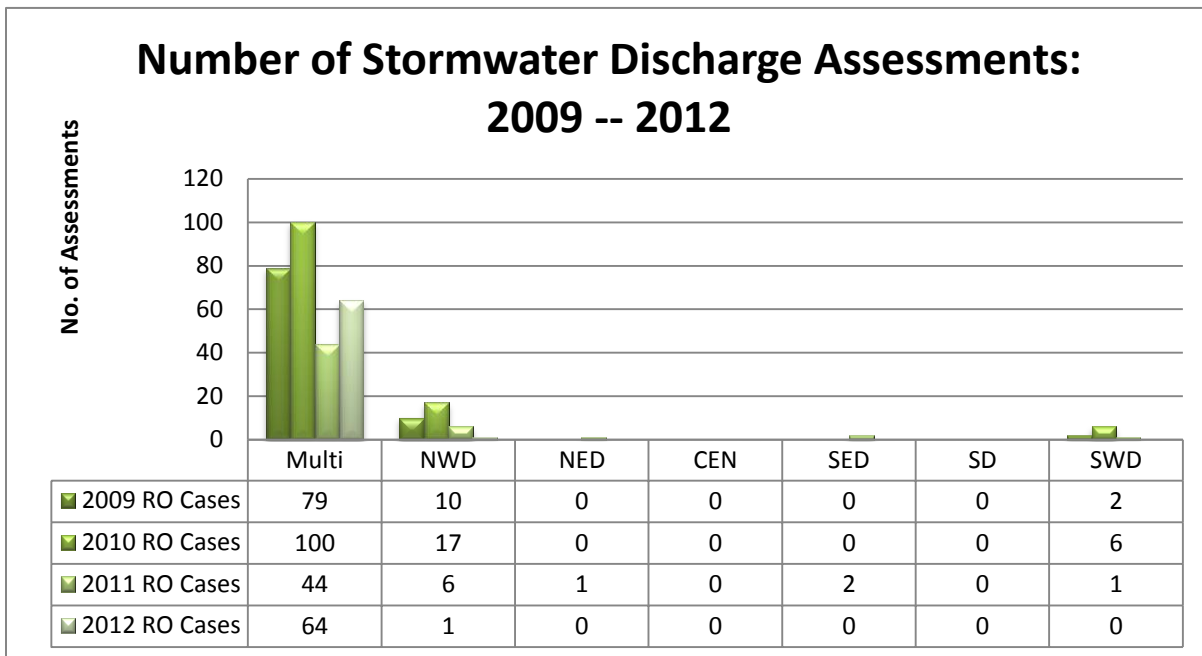


complexes throughout the state. The state's rapid growth means that this program (and its enforcement) will continue to be vital to Florida's environmental health.

The number of assessments rose slightly in 2012 compared to the previous two years:

Year	Number of Assessments
2009	91
2010	123
2011	54
2012	65

The statewide pattern seen above held true for only the Multi-District category. The remaining districts saw fewer cases:

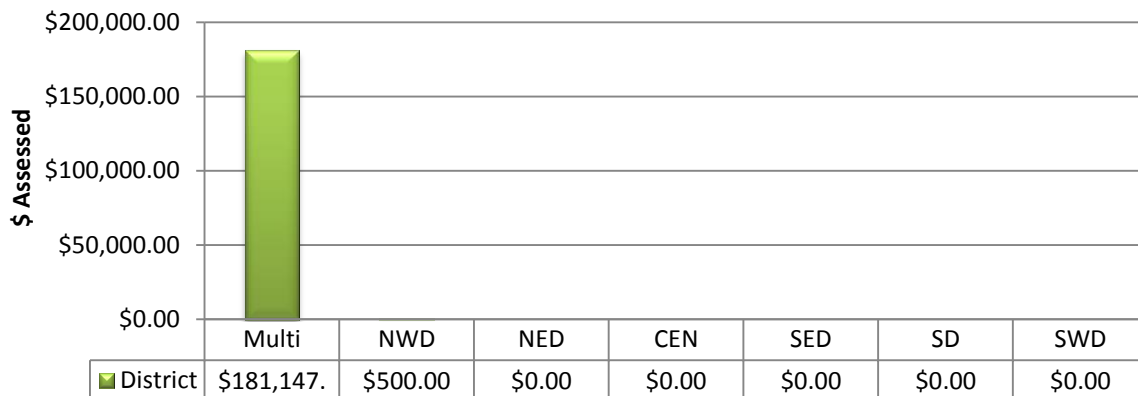


The state assessed slightly fewer penalties in 2012, \$181,647.25, compared to \$182,953.02 in civil penalties over the course of 2011. Overall, the performance is significantly lower than the Department's performance in 2010, but better than the performance in 2009:

Year	Total Stormwater Discharge Assessments
2009	\$169,737.75
2010	\$2,503,620.00
2011	\$182,953.02
2012	\$181,647.25

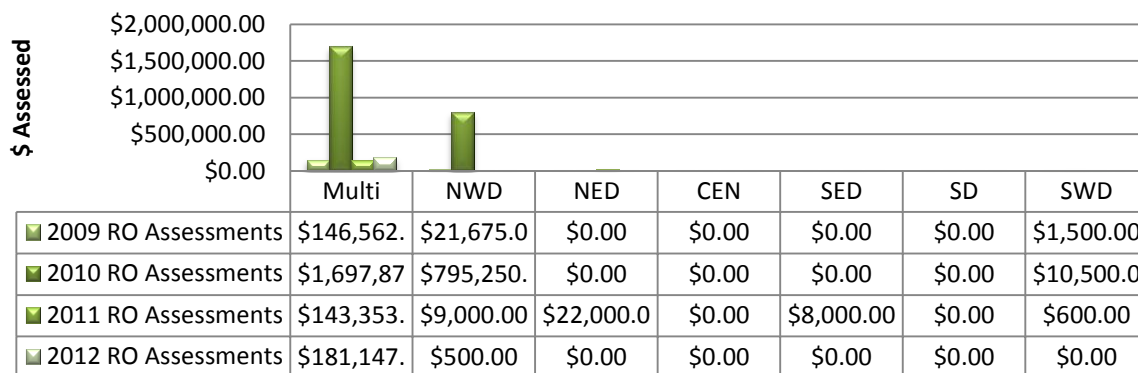
These penalties were assessed across the state in the following fashion:

District Stormwater Assessments--2012



And no discernable pattern is seen over the past four years:

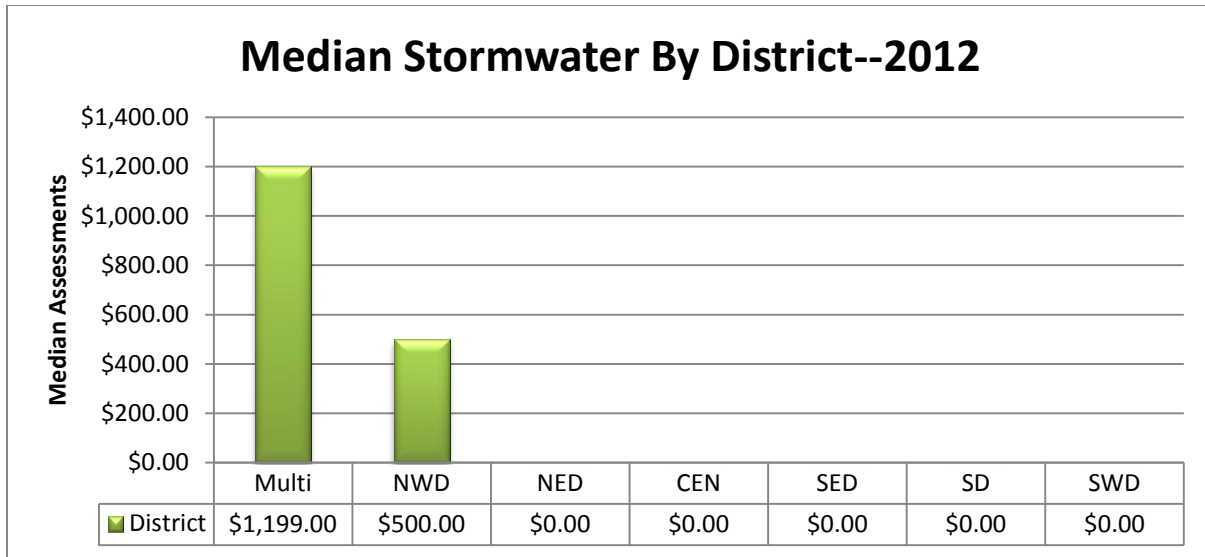
Stormwater Discharge Assessments: 2009 -- 2012



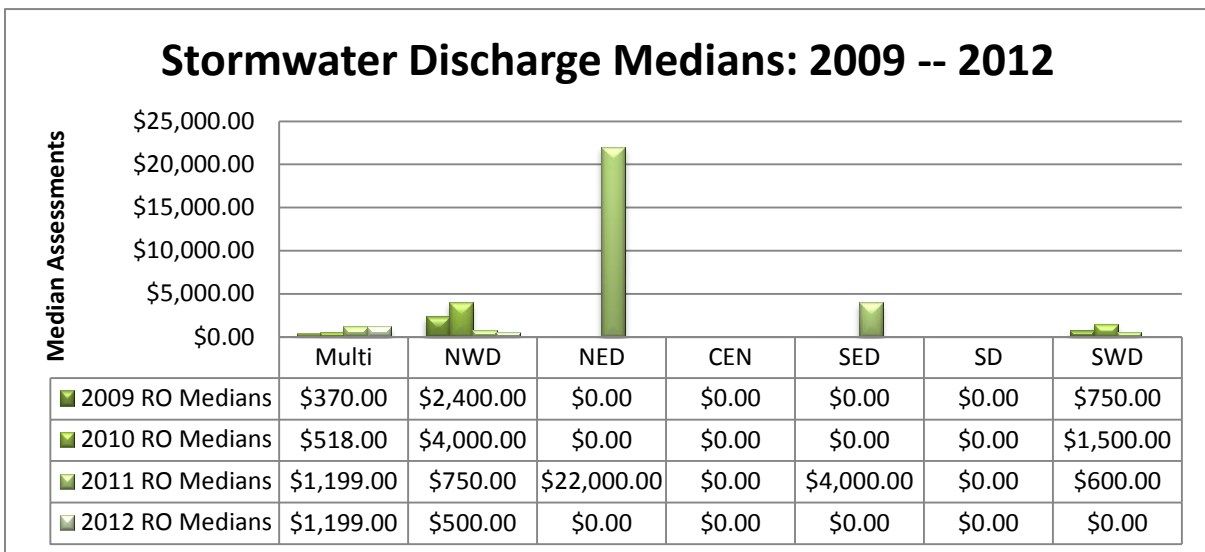
Median assessments remained steady in 2012:

Year	Median Stormwater Discharge Assessments
2009	\$500.00
2010	\$3,500.00
2011	\$1,199.00
2012	\$1,199.00

Medians for the two individual districts that assessed penalties varied substantially:



While trends are not discernable in most districts there does seem to be a trend toward higher mediums in the Multi-District category and toward lower mediums in the Northwest District:



9. Solid Waste Program

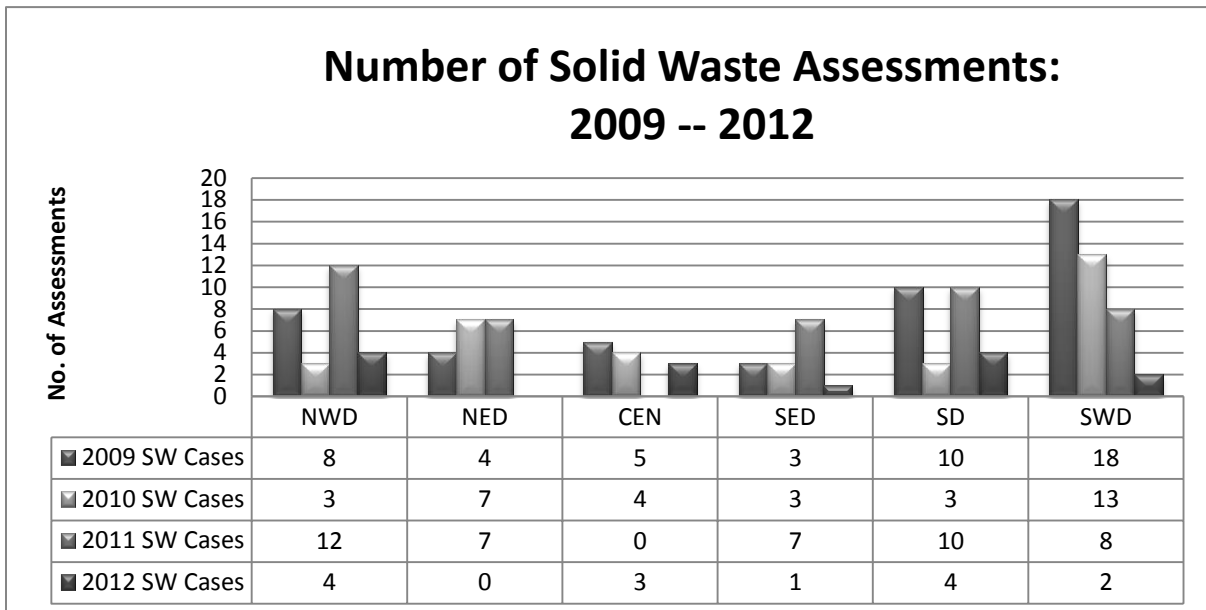
This program oversees the handling of Florida's solid waste that is deposited into landfills across the state. For the past several years enforcement in the program has been mediocre. It looked as though things were turning around in 2011; however, 2011's results were short lived. The bottom fell out in 2012 with respect to the number of enforcement cases and the

amount of civil penalty dollars assessed. The one bright spot was in medians, which rose for the first time in years.

The number of assessments dropped 68% for the Department as a whole in 2012:

Year	Number of Solid Waste Assessments
2009	48
2010	33
2011	44
2012	14

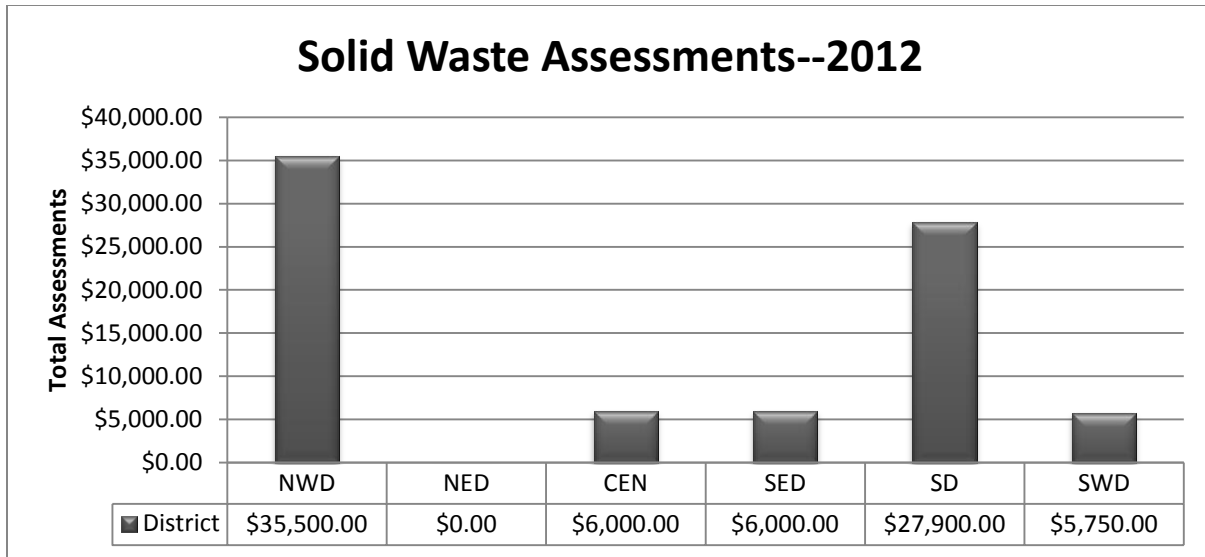
The Central District was the only district to improve its performance compared to 2011. Every other district saw a significant drop in enforcement:



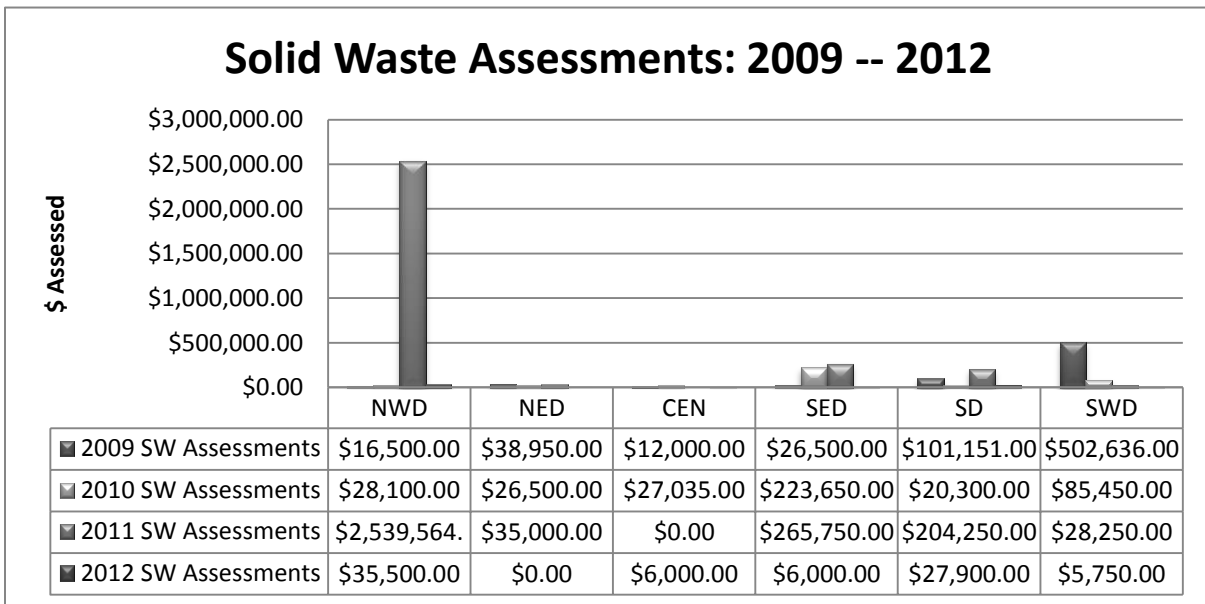
Penalty assessments also dropped significantly to a new four year low:

Year	Total Solid Waste Assessments
2009	\$697,737.00
2010	\$411,035.00
2011	\$3,072,814.00
2012	\$81,150.00

Overall, the civil penalty assessments were assessed amongst the districts as follows:



When compared with 2011's numbers, gains were seen only in the Central District, though the gains were modest. All other districts saw markedly poorer performance. Every district but the Central and South Districts saw four year lows:

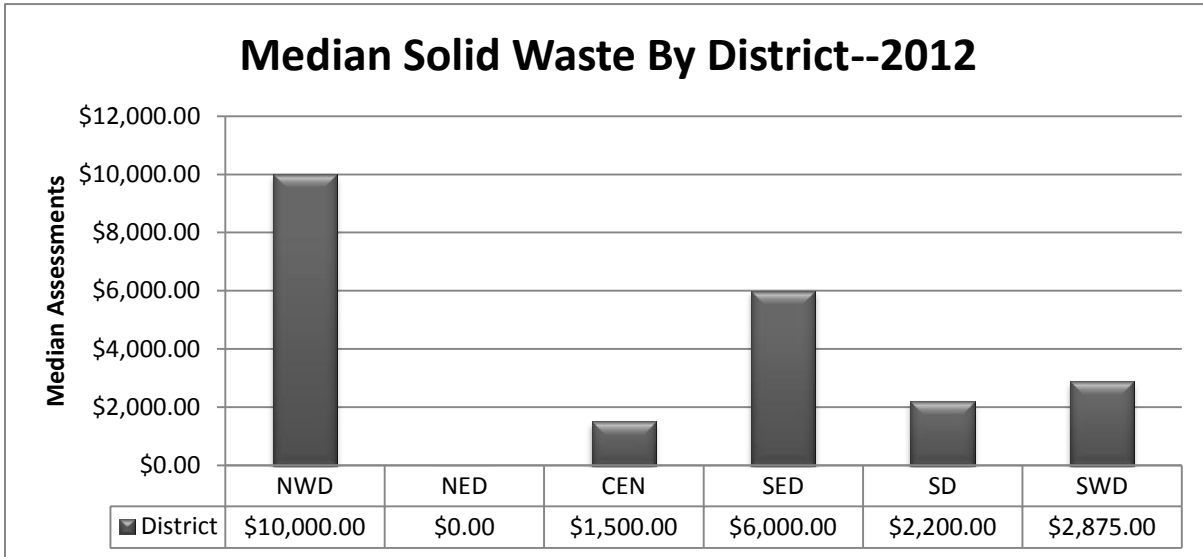


The singular bright spot for this program is that median assessments for the Department rose for the first time in four years:

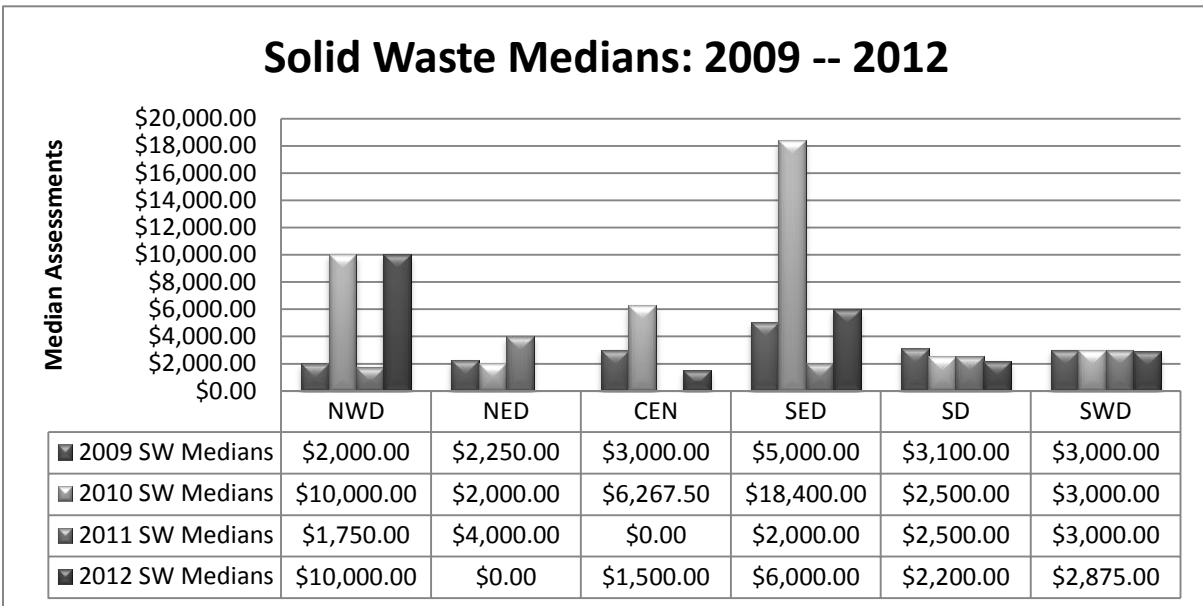
Year	Median Assessments
2009	\$3,000.00
2010	\$3,000.00
2011	\$3,000.00

2012	\$3,375.00
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In 2012 the Northwest and Southeast Districts had the highest medians:



Median assessments improved significantly in all but the South and Southwest Districts, each of which saw relatively small declines:



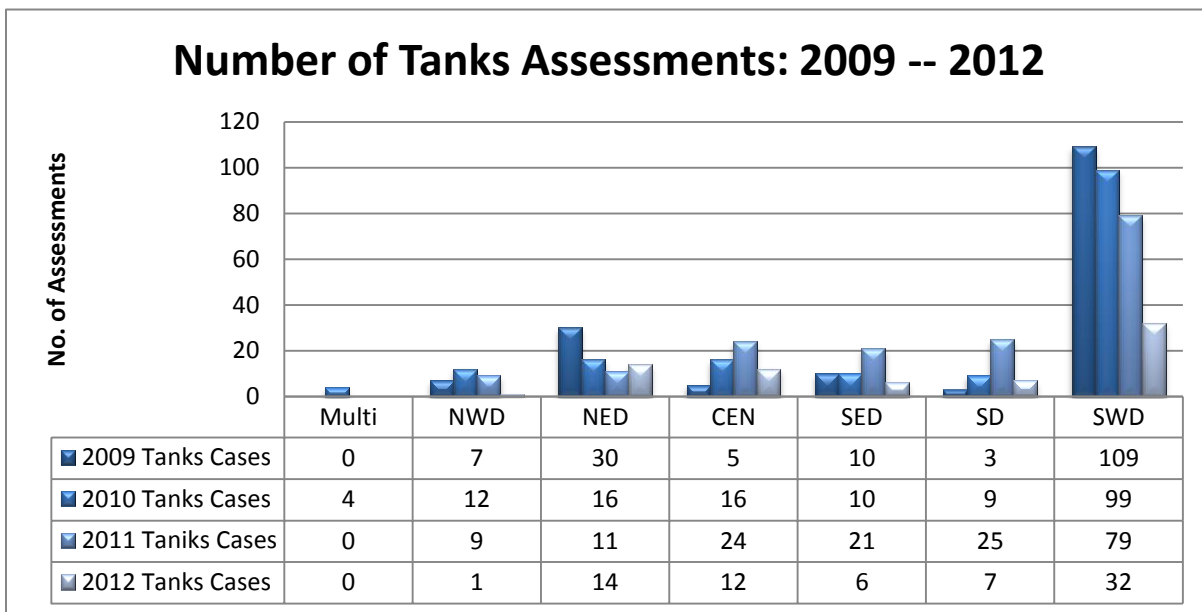
10. Tanks Program

The tanks program regulates the use and cleanup of underground storage tanks throughout Florida. These tanks are used for multiple purposes, including the storage of gasoline at service stations. Many of those tanks are old and subject to leaking dangerous petroleum products into the soil and groundwater. This is a program that in the past has been relatively robust. In 2012 things changed for the worse.

Statewide the number of tanks assessments increased drastically compared to 2011:

Year	Number of Tanks Assessments
2009	164
2010	166
2011	169
2012	72

In our report on 2011's performance we stated that, "[a] disturbing trend is seen in the Southwest District where the number of assessments has been steadily falling over the past 3 years." Unfortunately this trend continued in that district. In fact, every district except for the Northeast District saw significant declines:

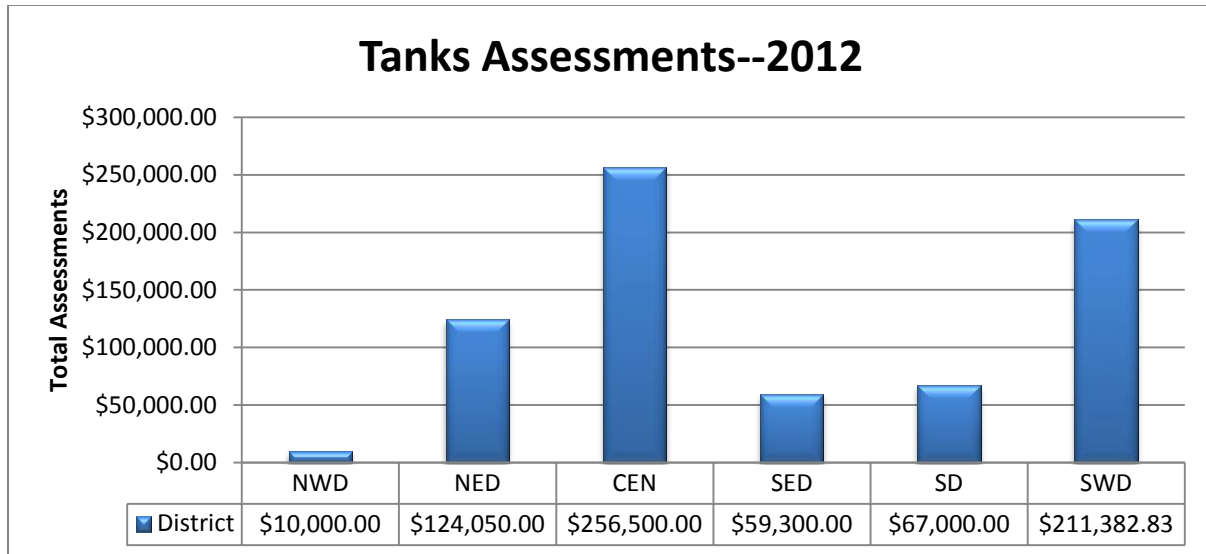


In 2011 assessments had risen to \$1,537,209.03. In 2012 assessments fell to \$728,232.83, a 53% decline:

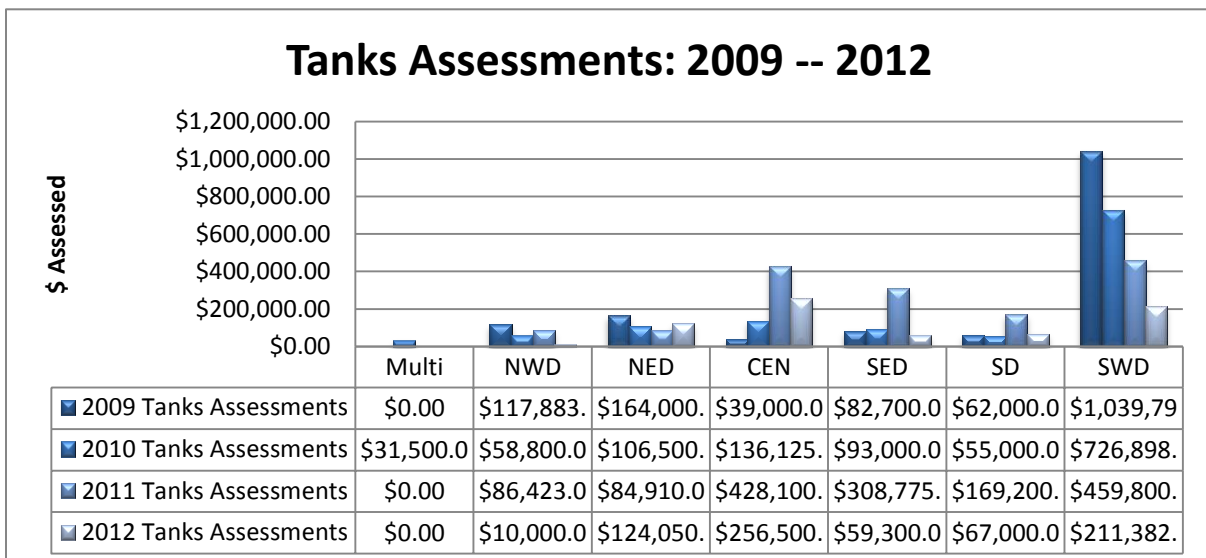
Year	Total Tanks Assessments
2009	\$1,505,376.25
2010	\$1,207,823.56

2011	\$1,537,209.03
2012	\$728,232.83

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



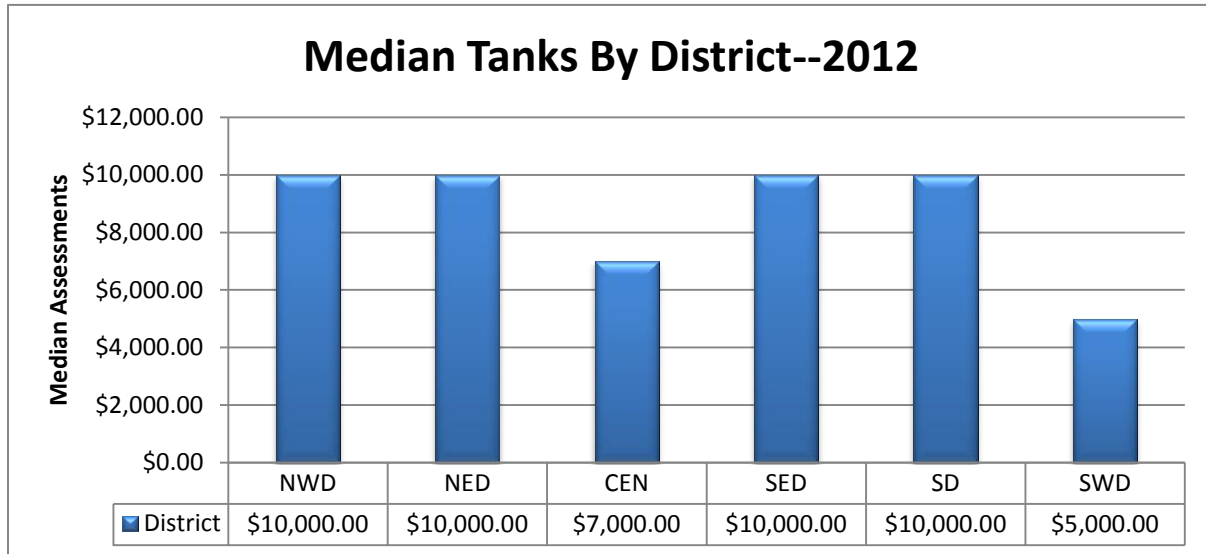
The Northeast District was the only district to assess more in penalty dollars in 2012 than it did in 2011. Every other district performed worse than in the previous year. There continues to be a pronounced downward trend in the Southwest District that is troubling, particularly since that district is almost always (except in 2012) responsible for a majority of assessments levied by the Department in any given year:



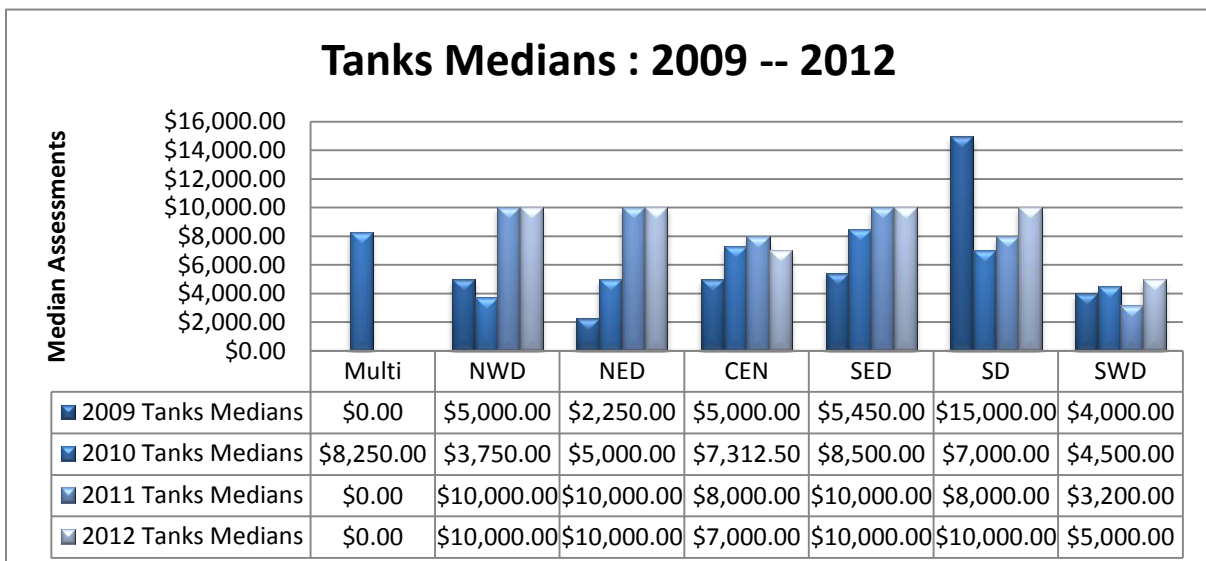
On the positive side, medians for the Department as a whole almost doubled from 2011:

Year	Median Assessments
2009	\$4,100.00
2010	\$5,149.50
2011	\$5,100.00
2012	\$10,000.00

In 2012 the median assessments in the districts were:



The Northeast and Southeast Districts continue to have high medians, which when combined with the 20 assessments between them, has driven the high overall median for the Department. The high median in the Northwest District is only based upon one assessment. The comparatively lower median in the Southwest District continues to be a problem that needs to be monitored given the overall contribution of the Southwest District to this program:



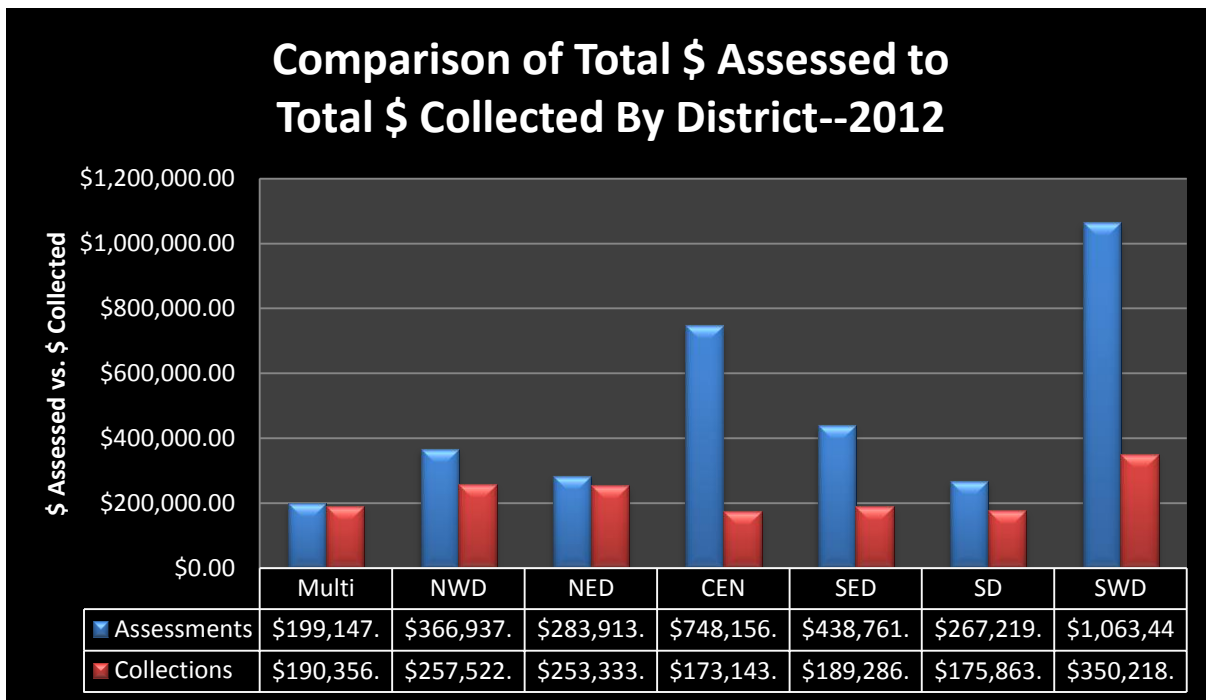
H. Civil Penalty Collections By Program Area—District Comparison

A statewide total of \$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.**

The following chart shows the highest individual collections for every program area that collected civil penalties in 2012, sorted by program area:

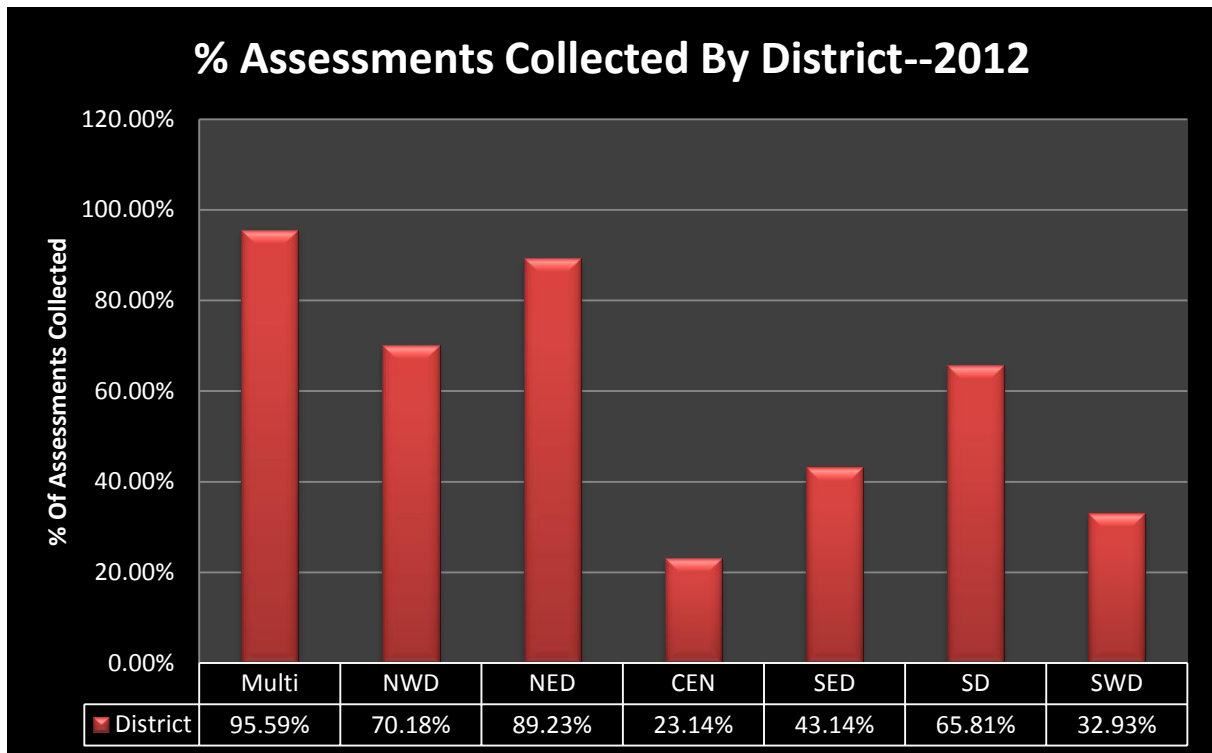
Program	District	OGC #	Highest Collection	Amount of Highest Collection
AB	1	121238	MICA CREEK-SAGAMORE MF VENTURE V: OSCEOLA LLC	\$19,500.00
AP	3	121469	MARION COUNTY BOARD OF COUNTY COMMISSIONERS	\$5,000.00
BS	0	111406	HANSON, STEVEN R	\$3,000.00
CU	1	120687	MEGHAN BURKHART-SMITH FOUNDATION, INC.	\$5,000.00
DF	1	102684	PANAMA CITY- BAY COUNTY AIRPORT AND INDUSTRIAL DISTRICT	\$82,344.00
DW	6	120908	HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS	\$44,500.00
EP	6	103560	GRABER'S EXCAVATING, INC	\$10,000.00
ES	1	121471	PERFECT BIRD, LLC	\$3,000.00
EW	5	111207	DODSON, THOMAS	\$10,000.00
HW	2	94284	LITHIUM NICKEL ASSET HOLDING COMPANY	\$84,000.00
IW	6	111708	REGAL AUTOMOTIVE, INC.	\$4,500.00
MA	4	110566	BYRD FAMILY TRUST	\$34,600.00
MN	6	121207	MOSAIC FERTILIZER, LLC	\$2,000.00
OC	4	121271	HALL, CARL M.	\$250.00
PW	6	93210	CEDAR ACRES, INC.	\$5,854.80
RO	0	110289	RYLAND HOMES, INC.	\$64,074.00
S1	4	111718	W HOTELS	\$700.00
SL	1	121278	FRED FLOUNDER, INC.	\$2,710.00
SW	1	111484	MCCULLOUGH, KENNETH	\$10,000.00
TK	3	110993	PAK, KWONG HO	\$12,566.58

The following chart shows each district and compares the dollars assessed by each district in 2012 with the dollars actually collected, including dollar equivalents for in-kind and penalty prevention projects:



When looking at the results on a percentage basis, i.e. the pure percentage of dollars collected that were assessed, both in penalties and projects, there is more of a variation in performance than last year. The Central and Southwest Districts collected a smaller percentage of assessments than did the Northwest and Northeast Districts.¹⁵

¹⁵ The data will occasionally show that more than 100% of the assessed fines were collected. This is because the districts are also collecting assessments that were made in previous years. Since 100% of the assessments in any given year are seldom, if ever collected, it follows that in some instances the collection rate may exceed the dollars assessed in any given year.

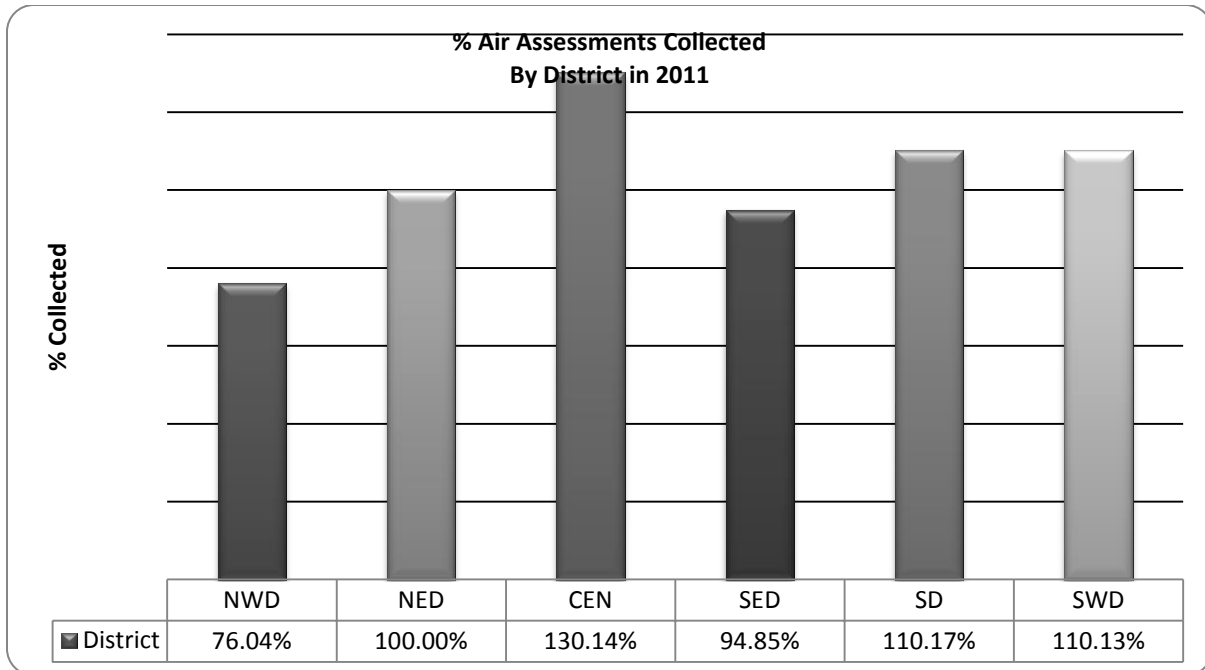


When compared with 2011's results, the Northwest, Northeast and South Districts collected a larger percentage of assessments in 2012. The remaining districts all performed worse than in 2010.

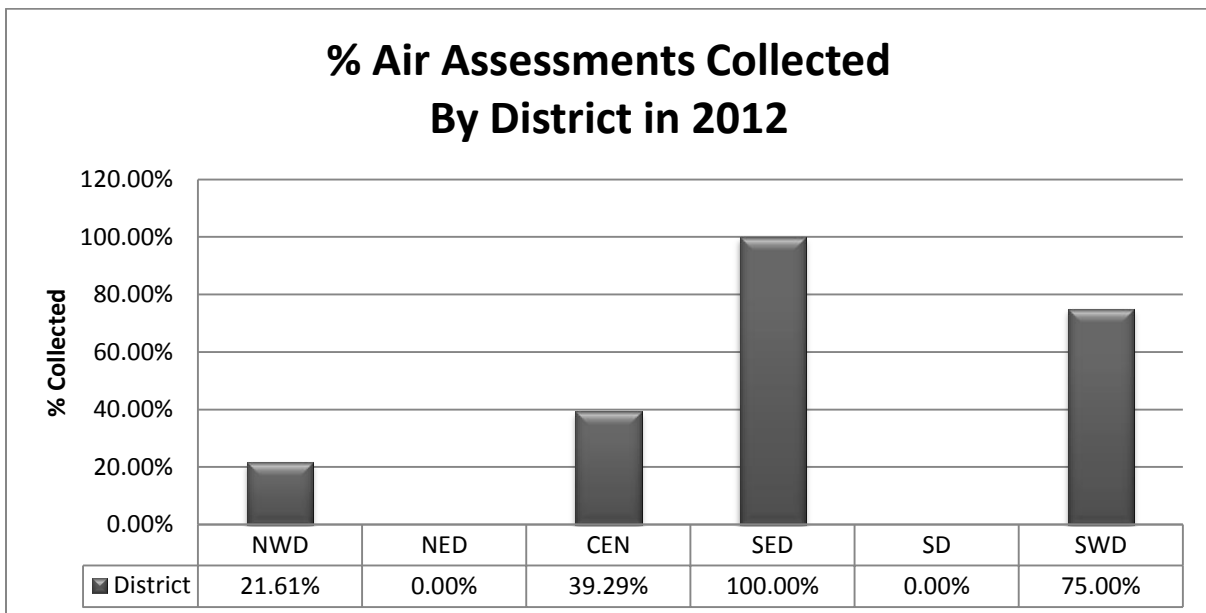
The results for the percentage of assessments actually collected by each district in the major program areas are discussed below.

1. Air Program

In twelve months there was tremendous change in this program. Not only did assessments plummet, but collections did as well. As a whole, the Department collected 62.46% of all assessments in 2012, compared with 106.22% in 2011. The change is most noticeable in the individual districts. To show this we've restated the graph for 2011's results:

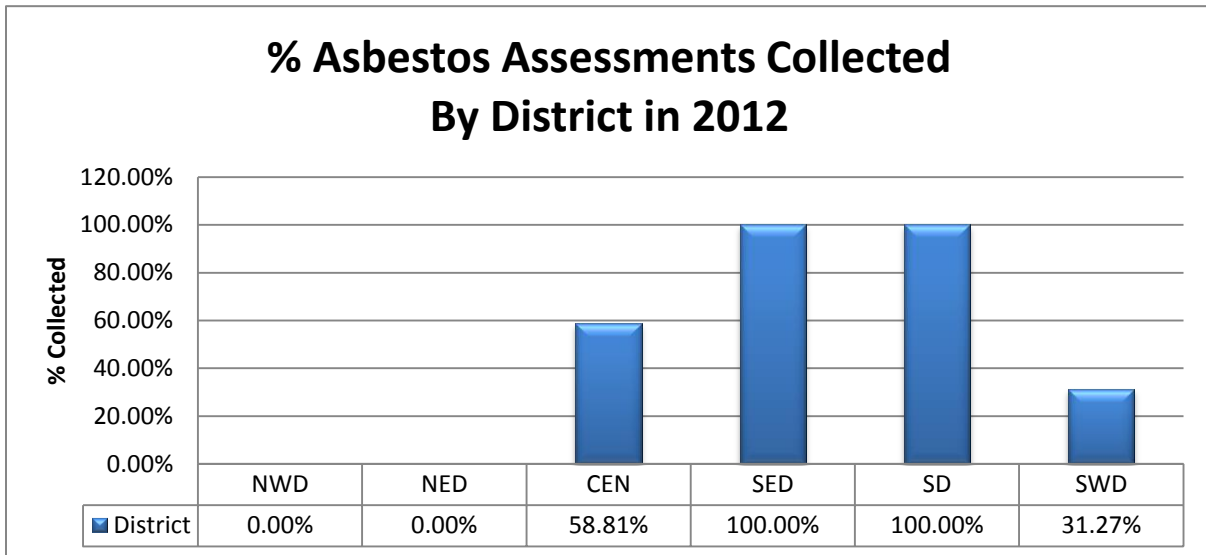


This performance was not replicated in 2012:



2. Asbestos Program

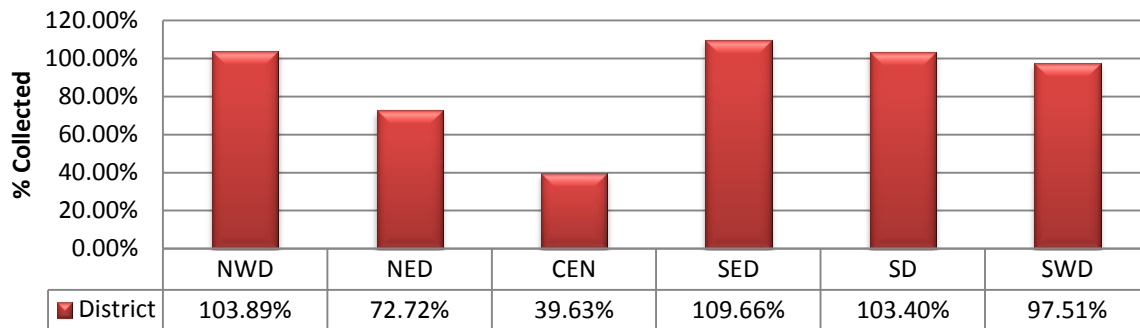
Overall the Department collected 39.63% of its assessments, down from 73.02 % in 2011. The Central, Southeast and South Districts showed improvement, while the Northwest and Southwest Districts both performed much worse than in 2011.



3. Dredge and Fill Program

The Department collected 95.97% of its penalty assessments in this program area, down 5% from 2012. This number drops slightly to 92% when in-kind and penalty prevention projects are included in the numbers. Every district but the Northwest, South and Southwest Districts improved upon their performance in 2012.

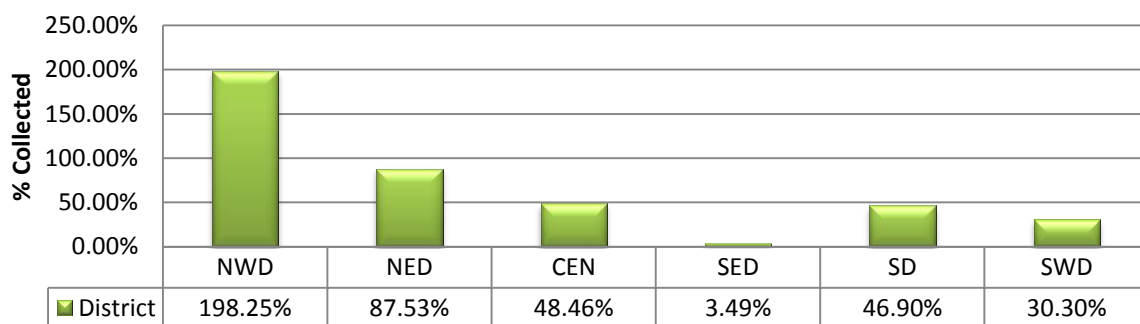
% Dredge & Fill Assessments Collected By District in 2012



4. Domestic Waste Program

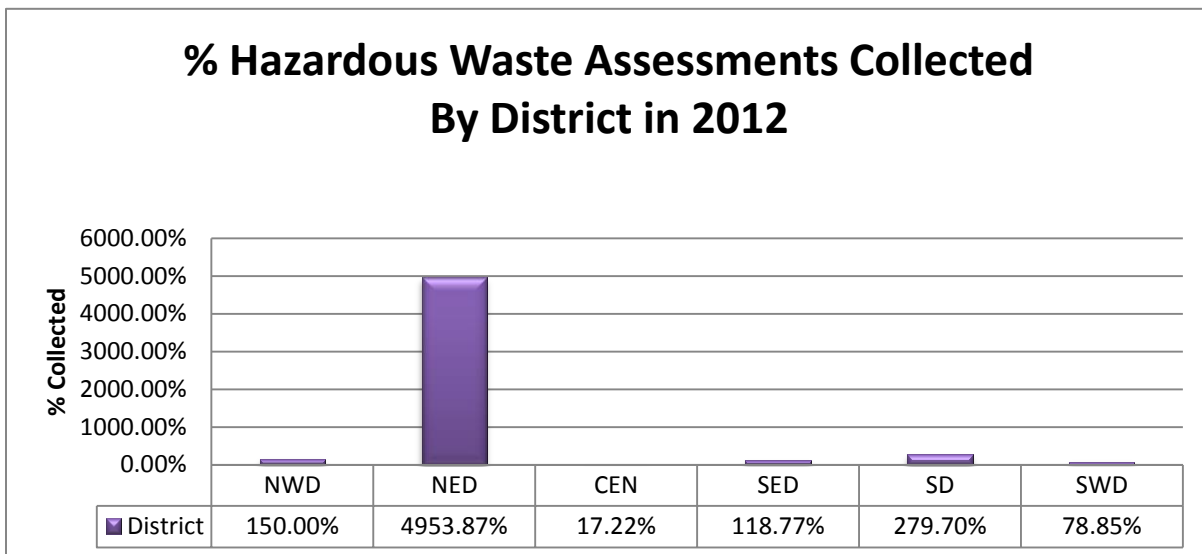
Overall the Department collected 42.58% of its penalty assessments in 2012, down from 84% in 2011. In 2012 only two of the districts, the Northwest and Northeast Districts, collected over 50% of their assessments whereas in 2011 all but the Northwest District had collected over 50% of their assessments. The results for 2012 are:

% Domestic Waste Assessments Collected By District in 2012



5. Hazardous Waste

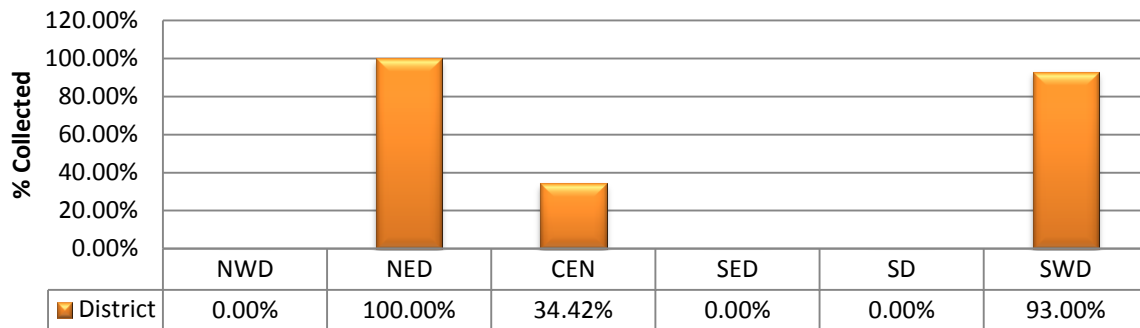
Overall the Department did a better job in 2012. It collected 82.22% of its civil penalties, compared to 53.45% of the civil penalties that it assessed in 2011. The performance of the Northwest, Central and Southwest Districts all improved. The results are:



6. Industrial Waste

The percentage of industrial waste assessments that were collected improved slightly from 2011's results. Statewide 96.29% of penalties assessed were collected, compared to the 93.06% that was collected in 2011. Only the Southwest District saw improved results. The Northeast District stayed the same and the remaining districts all faltered. The districts' performance was:

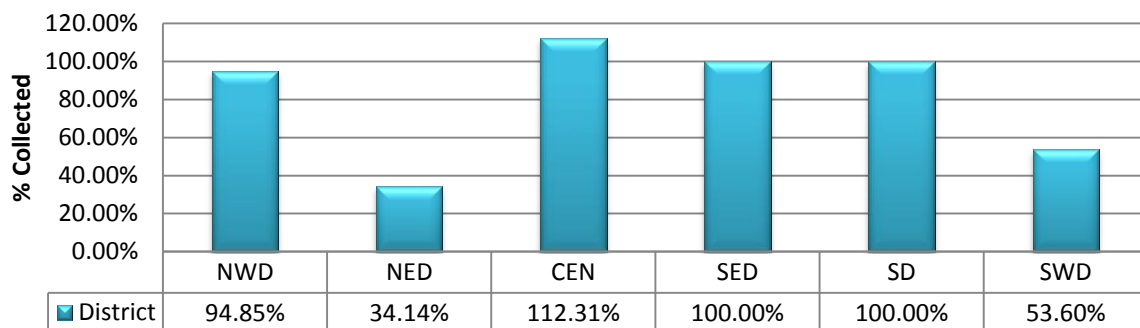
% Industrial Waste Assessments Collected By District in 2012



7. Potable Water Program

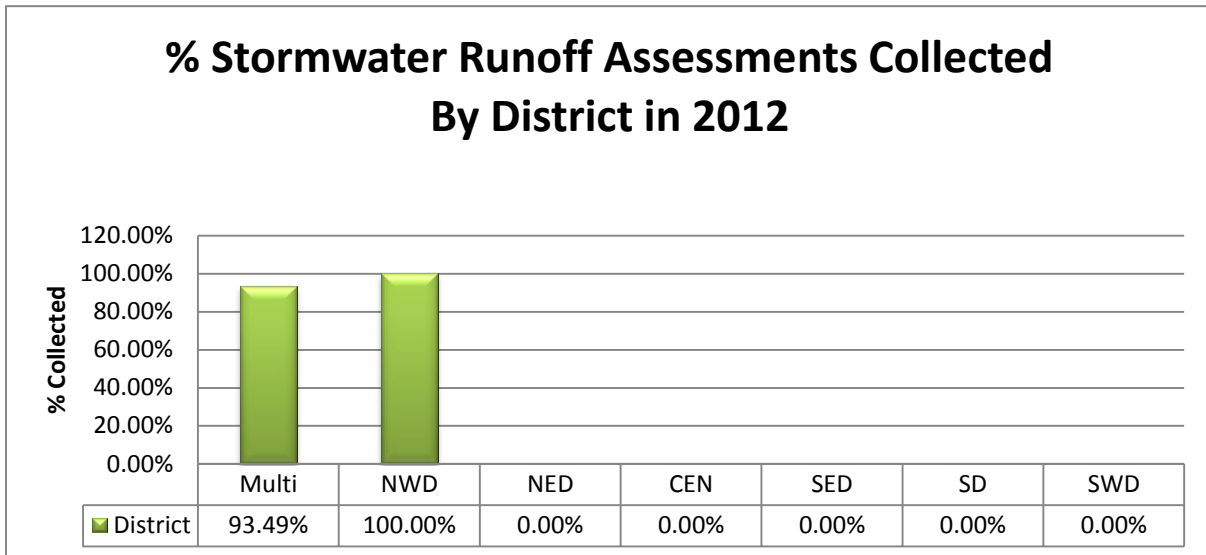
Collections improved slightly, to 56.53% in 2012, when compared with 2011's results. Performance in the Northeast and Central Districts improved. The Northwest, Southwest and Southeast Districts saw declining numbers compared with 2011. The South District remained the same:

% Potable Water Assessments Collected By District in 2012



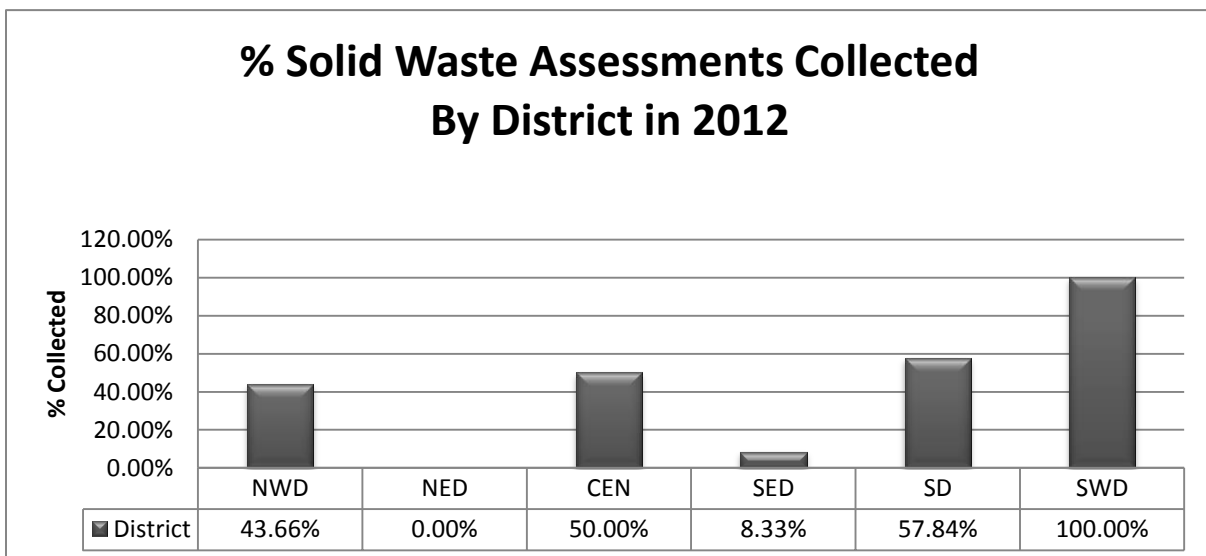
8. Stormwater Discharge Program

The Department collected slightly fewer (93.51%) of its assessments in this program in 2012. There were no assessments made in the Northeast, Central, Southeast, South and Southwest Districts:



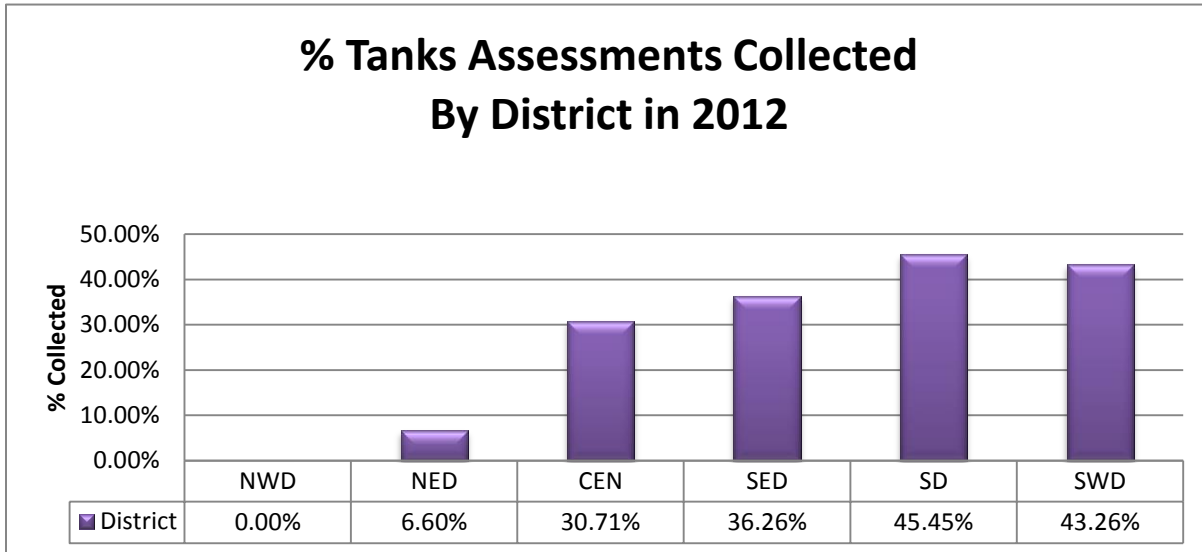
9. Solid Waste Program

Overall the Department collected 52.37% of its assessments. A tremendous improvement from its 3.39% performance in 2011. The 2012 performance also surpassed 2010's results. The performance improved in every district but the Northeast District:



10. Tanks Program

31.74% of the civil penalties assessed in 2012 were collected by the Department, a result that is roughly 5% lower than 2011. The Central, Southeast and South Districts all saw significant improvement, while three of the Districts (Northwest, Northeast and Southwest) collected fewer assessments in 2012 than in 2011. The performance by each district was as follows:



I. A Quick Look At Statewide Results

The following is a summary of the overall enforcement picture for 2012:

Enforcement Area	Performance Compared with 2010	Performance Compared with 2011
Total Number of Cases	Down 58%	Down 42%
Case Reports	Down 57%	Down 38%
NOVs	Down 53%	Down 43%
Final Orders	Down 12%	Down 40%
Consent Orders—Total	Down 41%	Down 43%
Consent Orders—Long-Form	Down 76%	Down 37%
Consent Orders—Model	Down 59%	Down 42%
Consent Orders—Short-Form	Down 62%	Down 52%

Assessments for 2012 can be summarized as follows:

Assessment/Program Area	Performance Compared with 2010	Performance Compared with 2011
Total Number of Assessments	Down 60%	Down 44%
Total Dollars Assessed in Penalties	Down 74%	Down 64%
Total Medians	Unchanged	Unchanged
Air Program—Number of Assessments	Down 89%	Down 79%
Air Program—Dollars Assessed	Down 96%	Down 81%
Air Program—Median	Up 119%	Up 131%
Asbestos Program—Number of Assessments	Down 26%	Down 12%
Asbestos Program—Dollars Assessed	Down 1%	Up 50%
Asbestos—Median	Up 91%	Up 82%
Dredge & Fill—Number of Assessments	Down 59%	Down 45%
Dredge & Fill—Dollars Assessed	Down 81%	Down 17%
Dredge & Fill—Median	Down 17%	Unchanged
Domestic Waste—Number of Assessments	Down 50%	Down 35%
Domestic Waste—Dollars Assessed	Down 55%	Up 10%
Domestic Waste—Median	Up 80%	Up 20%
Hazardous Waste—Number of Assessments	Down 75%	Down 59%
Hazardous Waste—Dollars Assessed	Down 80%	Down 68%
Hazardous Waste—Median	Up 6%	Down 42%
Industrial Waste—Number of Assessments	Down 61%	Down 54%
Industrial Waste—Dollars Assessed	Down 77%	Down 78%
Industrial Waste—Median	Down 42%	Down 40%
Potable Water—Number of Assessments	Down 54%	Down 28%
Potable Water—Dollars Assessed	Down 62%	Down 37%
Potable Water—Median	Down 43%	Down 7%
Stormwater Discharge—Number of Assessments	Down 47%	Up 20%
Stormwater Discharge—Dollars	Down 93%	Down 1%

Assessed		
Stormwater Discharge—Median	Down 66%	Unchanged
Solid Waste—Number of Assessments	Down 58%	Down 68%
Solid Waste—Dollars Assessed	Down 80%	Down 97%
Solid Waste—Median	Unchanged	Unchanged
Tanks—Number of Assessments	Down 57%	Down 57%
Tanks—Dollars Assessed	Down 40%	Down 53%
Tanks—Median	Up 94%	Up 96%

The Collections Results are:

Collections/Program Area	Performance Compared with 2010	Performance Compared with 2011
Total \$ Collected	Down 76%	Down 45%
Air—Penalties Collected	Down 98%	Down 91%
Asbestos—Penalties Collected	Down 54%	Down 21%
Dredge& Fill—Penalties Collected	Down 76%	Down 10%
Domestic Waste—Penalties Collected	Down 68%	Down 52%
Hazardous Waste—Penalties Collected	Down 54%	Down 46%
Industrial Waste—Penalties Collected	Down 92%	Down 79%
Potable Water—Penalties Collected	Down 61%	Down 32%
Stormwater Discharge—Penalties Collected	Down 45%	Up 11%
Solid Waste—Penalties Collected	Down 79%	Down 59%
Tanks—Penalties Collected	Down 69% %	Down 59%

DISTRICT ENFORCEMENT RESULTS

A. Northwest District

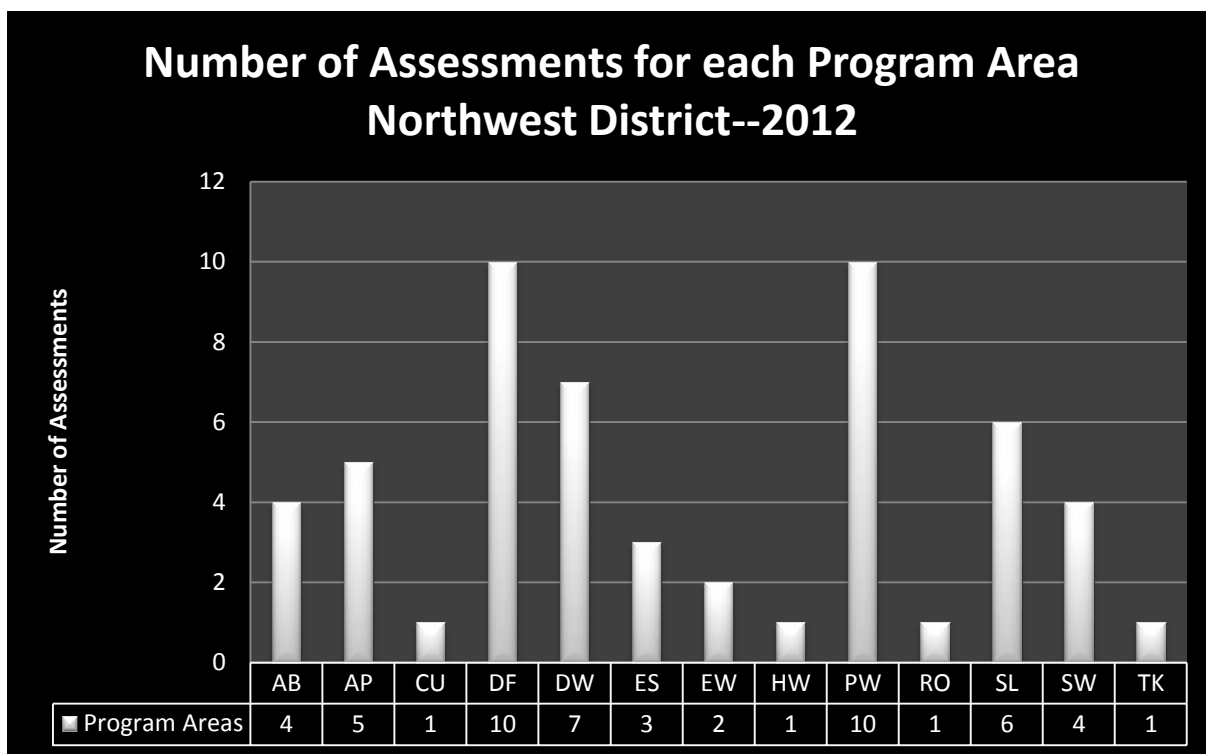
1. Case Reports, NOVs, Consent Orders, Final Orders

The Northwest District initiated enforcement in only 60 cases in 2012. This is 96 fewer cases than in 2011 and the fourth year in a row that enforcement has declined. 9.05% of all of the

enforcement cases opened by the Department came out of this district. It issued only 1 case report, compared with 13 case reports in 2011. 5 NOVs (compared with 6 in 2011) and 4 final orders, also a decrease. 50 of the 60 cases were consent orders, compared to 126 consent orders in 2011 and 134 in 2010. Long-form consent orders have fallen from 20 in 2010 to 15 in 2011 to just 6 in 2012. There were 35 short-form consent orders, 50 fewer than in 2011. The district issued 15% of all short-form consent orders issued by the Department. 58% of all cases initiated by the Northeast District in 2012 were resolved with short-form consent orders, a 4% increase from 2011.

2. Program Area Enforcement

The Northwest District assessed civil penalties in just 55 cases in 2012, which is 80 fewer than in 2011 and 96 fewer than in 2010. The following chart provides a breakdown¹⁶ of how those assessments were distributed among the program areas:



¹⁶ Only program areas with actual assessments are shown. The same is true for the remaining districts that will be discussed.

The hazardous waste section had 21 enforcement assessments in 2011. That fell to just 1 in 2012. Industrial waste fell from 3 to 0. Domestic waste fell from 16 to 7. Dredge and fill cases fell from 24 to 10. Potable water was cut in half and solid waste fell by 2/3. Tanks fell from 9 to 1 in 2012.

3. Civil Penalty Assessments

Civil penalty assessments fell from \$3,633,190.89 in 2011 to \$366,937.56 in 2012, a 90% decrease. \$82,344.00 of that was in one case against the *Panama City-Bay County Airport and Industrial District*. Nevertheless, the district's total assessments made up 39% of all assessments levied by the Department in 2012. The median civil penalty assessment for 2012 for all programs combined in this district was \$2,025.00, a \$525.00 increase from 2011.

Program area assessments for the Northwest District broke down as follows:¹⁷

Program	Total \$ Assessed in 2012	2011 Median	2012 Median
AB	\$28,000.00	\$6,250.00	\$3,750.00
AG	\$0.00	\$2,125.00	\$0.00
AP	\$25,283.00	\$2,875.00	\$1,063.00
AV	\$0.00	\$5,812.50	\$0.00
CS	\$0.00	\$500.00	\$0.00
CU ¹⁸	\$5,000.00	\$251,750.00	\$5,000.00
DF	\$107,054.00	\$1,500.00	\$2,375.00
DW	\$123,160.56	\$2,500.00	\$14,313.31
ES	\$5,000.00	\$500.00	\$1,000.00
EW	\$7,500.00	\$1,750.00	\$3,750.00
HW	\$3,000.00	\$1,960.00	\$3,000.00
IW	\$0.00	\$6,975.00	\$0.00
PW	\$6,310.00	\$362.50	\$390.00
RO	\$500.00	\$1,000.00	\$500.00
SL	\$10,630.00	\$1,500.00	\$1,605.00
SW	\$35,500.00	\$1,750.00	\$10,000.00
TK	\$10,000.00	\$10,000.00	\$10,000.00

¹⁷ Numbers in red represent results that were declines from the previous year's performance. The same format is used for the remaining districts.

¹⁸ The assessments in CU and SW are largely from one polluter.

Median assessments were relatively stable or increased slightly for all programs except the air, waste cleanup and stormwater runoff programs, though the latter two programs only had one assessment each.

4. Civil Penalty Collections

The Northwest District collected \$257,522.56 in civil penalties, compared with \$307,752.21 in civil penalties¹⁹ collected in 2011. The NWD collected 16% of all collections by the Department in calendar year 2012.

B. Northeast District

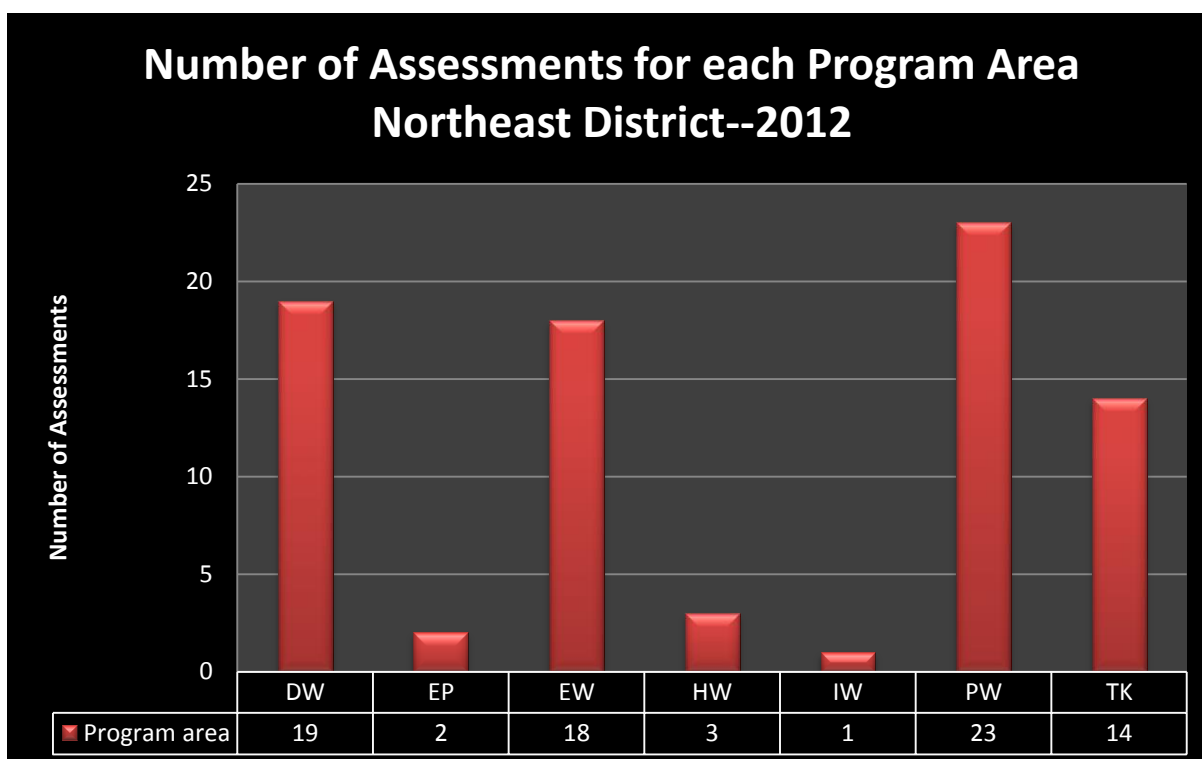
1. Case Reports, NOVs, Consent Orders, Final Orders

The Northeast District initiated enforcement in 116 cases in 2012, down from 133 cases in 2011. 7.73% of all of the enforcement cases opened by the Department came out of this district. It issued 17 case reports, 12 NOVs and 12 final orders, the latter two categories being somewhat lower than in 2011. 75 consent orders were issued, compared to 90 in 2011 and 162 in 2010. 21 of the 75 consent orders were long-form, 10 fewer than in 2011. 27 short-form consent orders were issued—23 less than in 2011. 23% of all cases initiated by the Northeast District in 2012 were resolved with short-form consent orders, down 15% from 2011. 10% of all short-form consent orders issued by the Department came out of this district.

2. Program Area Enforcement

The Northeast District assessed civil penalties in 80 cases in 2012, down 28% from 2011. The breakdown of assessments by program area follows:

¹⁹ The civil penalty collections reported for each district are for straight civil penalties. These numbers do not include in-kind projects. Unless stated otherwise, the same is true for all subsequent district results.



Significant declines were seen in the air, hazardous waste, industrial waste and solid waste programs. There were no air or solid waste assessments in 2012.

3. Civil Penalty Assessments

The Northeast District assessed civil penalties totaling \$283,913.00 in 2012, down sharply from the \$837,127.50 assessed in 2011, a 66% decline, making this the fourth straight year of declining numbers. The district's performance represented 8.5% of all assessments by the Department in 2012. The median civil penalty assessment for 2012 for all programs fell to \$1,605.00, an \$895.00 decline from 2011.

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

Program	Total \$ Assessed in 2012	2011 Median	2012 Median
AP	\$0.00	\$500.00	\$0.00
DW	\$51,820.00	\$1,000.00	\$1,300.00
EP	\$11,000.00	\$2,215.00	\$5,500.00
EW	\$37,248.00	\$1,250.00	\$1,700.00
HW	\$12,200.00	\$10,800.00	\$2,925.00
IW	\$4,000.00	\$5,000.00	\$4,000.00
PW	\$43,595.00	\$940.00	\$500.00

SL	\$0.00	\$3,629.00	\$0.00
SW	\$0.00	\$4,000.00	\$0.00
TK	\$124,050.00	\$10,000.00	\$10,000.00

Total assessments fell in practically every major program area except for the tanks program. Of the programs that actually assessed civil penalties, medians fell in the hazardous waste and industrial waste programs.

4. Civil Penalty Collections

The Northeast District collected \$253,333.75 in civil penalties in 2012, compared to \$355,873.43 in civil penalties collected in 2011. This is the third straight year of declining collections. The district collected 16% of all collections by the Department in calendar year 2012, a slight increase from 2011.

C. Central District

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

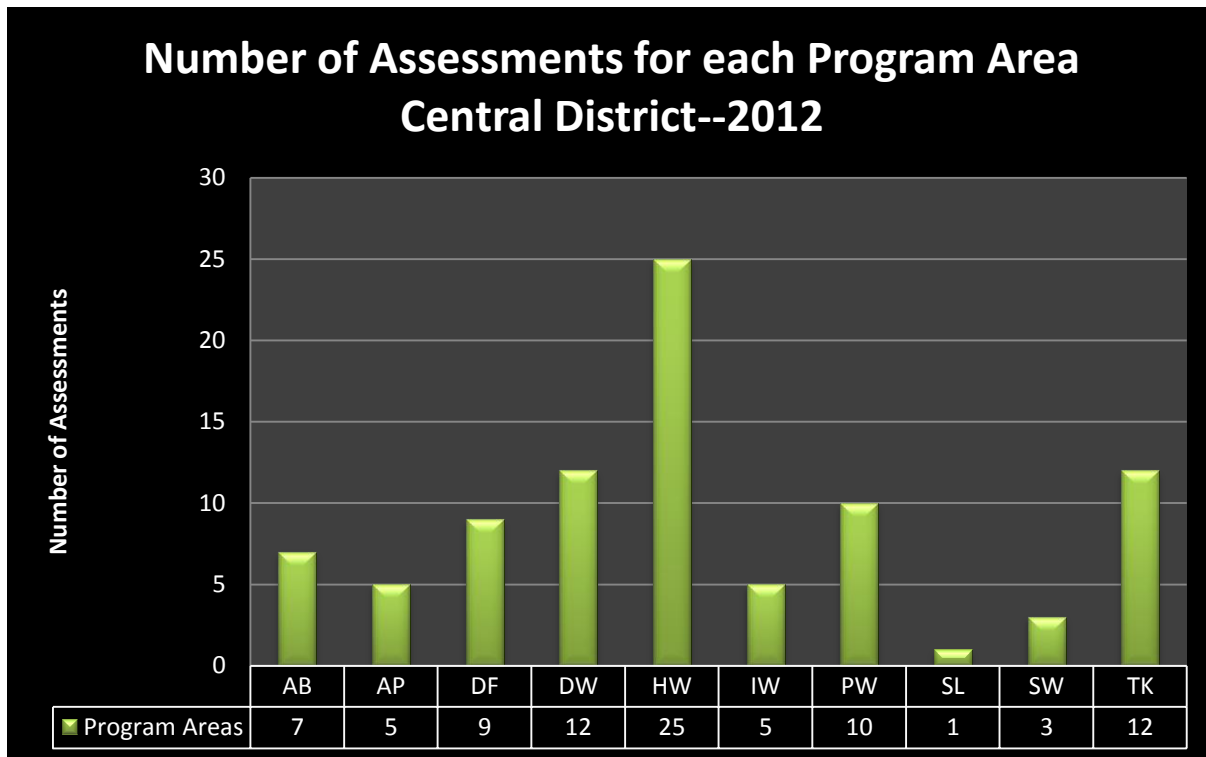
The Central District took enforcement in 109 cases in 2012, down 52 cases (33%) from 2011. It submitted 10 case reports to OGC in 2012, the same as in 2011. It also issued 11 NOV's, again unchanged, 13 final orders (an increase of 3) and 75 consent orders (a drop of 55). Of the 75 consent orders, 68% (51) were short-form consent orders whereas 13% (10) were long-form.

Florida PEER filed a petition in November 2011²⁰ asking that EPA oversee the NPDES permit held by the City of Daytona Beach because of years of permit violations at the facility, coupled with a failure of the Central District to take meaningful enforcement. The EPA declined to take enforcement, as has the FDEP.

2. Program Area Enforcement

The following chart provides the number of cases in which civil penalties were assessed by the Central District by program area in 2012:

²⁰ See, *Daytona Beach on a Sewage Spewing Spree*, http://www.peer.org/news/news_id.php?row_id=1535



The Central District assessed penalties in 89 cases in 2012, a 34% decline from 2011's results. When compared with 2011 there were fewer cases in every major program area except for solid waste, which still only managed 3 total cases in 2012.

3. Civil Penalty Assessments

The Central District levied \$748,156.17 in civil penalty assessments in 2012 a decrease of \$504,122.59, from 2011's results. 2011 had briefly stopped two straight years of declining numbers. Nevertheless, 2012's assessments totaled 22.22% of all assessments statewide, the second highest in the state. Median assessments rose to \$3,000.00 from \$2,000.00 in 2011.

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

Program	Total Assessments in 2012	2011 Medians	2012 Medians
AB	\$41,732.50	\$2,550.00	\$4,575.00
AP	\$27,887.50	\$1,115.00	\$5,000.00
CU	\$0.00	\$2,000.00	\$0.00
DF	\$4,290.00	\$705.00	\$420.00
DW	\$42,900.00	\$1,875.00	\$3,600.00
EP	\$0.00	\$2,000.00	\$0.00
EW	\$0.00	\$850.00	\$0.00

HW	\$347,401.09	\$12,084.00	\$4,104.00
IW	\$9,900.08	\$3,500.00	\$1,500.00
MA	\$0.00	\$500.00	\$0.00
PW	\$8,125.00	\$1,000.00	\$512.50
SL	\$3,420.00	\$12,610.00	\$3,420.00
SW	\$6,000.00	\$0.00	\$1,500.00
TK	\$256,500.00	\$8,000.00	\$7,000.00

Assessments rose in only two programs, asbestos and solid waste, though the latter program only had 3 cases. Total assessments fell for the third year in a row in the dredge and fill program. They fell for the second year in a row in the air and potable water programs. Fortunately the declining medians in the air program were stopped in 2012. Hazardous waste medians fell sharply, as did those in the industrial waste program. Domestic waste medians did manage to increase significantly.

4. Civil Penalty Collections

Along with the decline in assessments came a significant decline in collections in the Central District. It collected just \$173,143.46 in 2012, a 57% decline. This represented 11% of all of the penalties collected department-wide.

D. Southeast District

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

The Southeast District initiated enforcement in 56% fewer cases in 2012. It opened just 56 cases, down from 128 cases in 2011. It issued 1 NOV in 2012 (a decrease of 16), 12 case reports (a decrease of 13) and 4 final orders (down from 10 in 2011). It also issued 39 consent orders (41 fewer than in 2011, a 51% drop). 74% of the consent orders that were issued were short-form consent orders (there were 29), a 10% increase from 2011. Short-form consent orders accounted for 52% of all settlements in this district, a 12% increase from 2011. The district utilized short-form consent orders at a rate that was second only to the Northwest District. The use of long-form consent orders fell from 17 in 2011 to 5 in 2012. On the one positive note, its 12 case reports represented 18% of all case reports generated by the districts in 2012. Nevertheless, all of the modest gains in 2011 were wiped out in 2012.

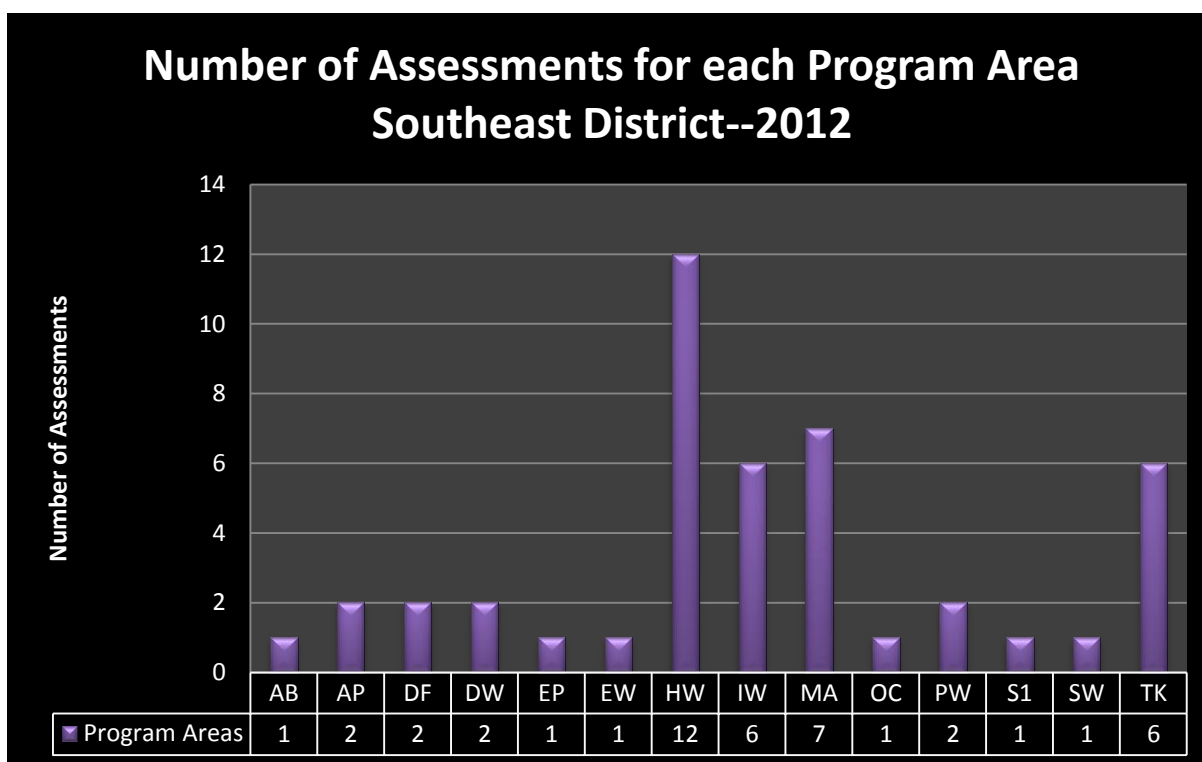
As we noted in last year's report, *Florida* PEER filed a petition with the EPA on August 12, 2010²¹, asking that the EPA assume direct administration of the NPDES permit held by the

²¹ See, *Boca Raton Wastewater Woes Warrant Federal Intervention*, http://www.peer.org/news/news_id.php?row_id=1389

City of Boca Raton because of multiple serious NPDES permit violations by that facility. Ultimately the EPA has done nothing to stem the violations. However, the Palm Beach County Health Department did file an NOV against the City citing numerous violations, some of which we had raised with the EPA. Then, the Health Department inexplicably dropped the case just days before the formal hearing was to begin, thus letting the City off the hook once more.

2. Program Area Enforcement

The following chart provides the number of civil penalty assessments made by the Southeast District by program area in 2012:



The Southeast District assessed civil penalties in 45 cases in 2012, 50% less than in 2011. This is the third year in a row of an overall decline in assessments. The only program to see improvement was the industrial waste program. There were significant decreases in the dredge and fill, hazardous waste, potable water, solid waste and tanks programs.

3. Civil Penalty Assessments

The district levied penalties totaling \$443,768.10 in 2012, a 53% decline from 2011, a year that declined 54% from 2010. To put things in perspective, this performance accounts for

13% of all civil penalty assessments levied by the Department in 2012, which is still a 3% increase from 2011 on a comparative basis. The district's median assessments across all programs also fell for the third year in a row, this time to \$3,000.00 (the median was \$3,350.00 in 2011).

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

Program	Total \$ Assessed in 2012	2011 Medians	2012 Medians
AB	\$5,756.80	\$500.00	\$2,878.40
AP	\$5,800.00	\$1,500.00	\$2,900.00
AV	\$0.00	\$17,167.50	\$0.00
CR	\$0.00	\$10,000.00	\$0.00
DF	\$1,710.00	\$524.00	\$855.00
DW	\$207,500.00	\$2,875.00	\$83,000.00
EP	\$1,500.00	\$1,895.84	\$1,500.00
EW	\$1,250.00	\$0.00	\$1,250.00
HW	\$88,051.30	\$9,175.50	\$5,815.00
IW	\$4,800.00	\$2,000.00	\$500.00
MA	\$55,000.00	\$1,415.00	\$3,200.00
OC	\$0.00	\$0.00	\$250.00
PW	\$6,150.00	\$875.00	\$3,075.00
RO	\$0.00	\$4,000.00	\$0.00
S1	\$700.00	\$0.00	\$0.00
SL	\$0.00	\$2,625.00	\$700.00
SW	\$6,000.00	\$2,000.00	\$6,000.00
TK	\$59,300.00	\$10,000.00	\$10,000.00

This is now the third year in a row in which total penalty assessments declined in the dredge and fill and hazardous waste programs. The domestic waste program saw only two assessments, but one of those was the second highest in the Department for 2012. The two domestic waste assessments accounted for 47% of all of the District's assessments in 2012, an indication of just how weak overall enforcement is in this district. The median assessments declined sharply in the hazardous waste program and this was also the second straight year of declining medians in that program. The significant increase in the solid waste program was based upon only one assessment for the entire year. The potable water program saw only 2 assessments in all of 2012, thus its increased median is likewise not viewed as indicative of truly improved performance.

4. Civil Penalty Collections

The Southeast District matched its poor performance in assessments with an equally poor performance in collections. It collected just \$189,286.47 in civil penalties, compared with \$334,731.70 that it collected in 2011 (a 43% drop), which makes this the second straight year of declining collections. This accounted for 12% of all dollars collected by the Department in civil penalties in 2012.

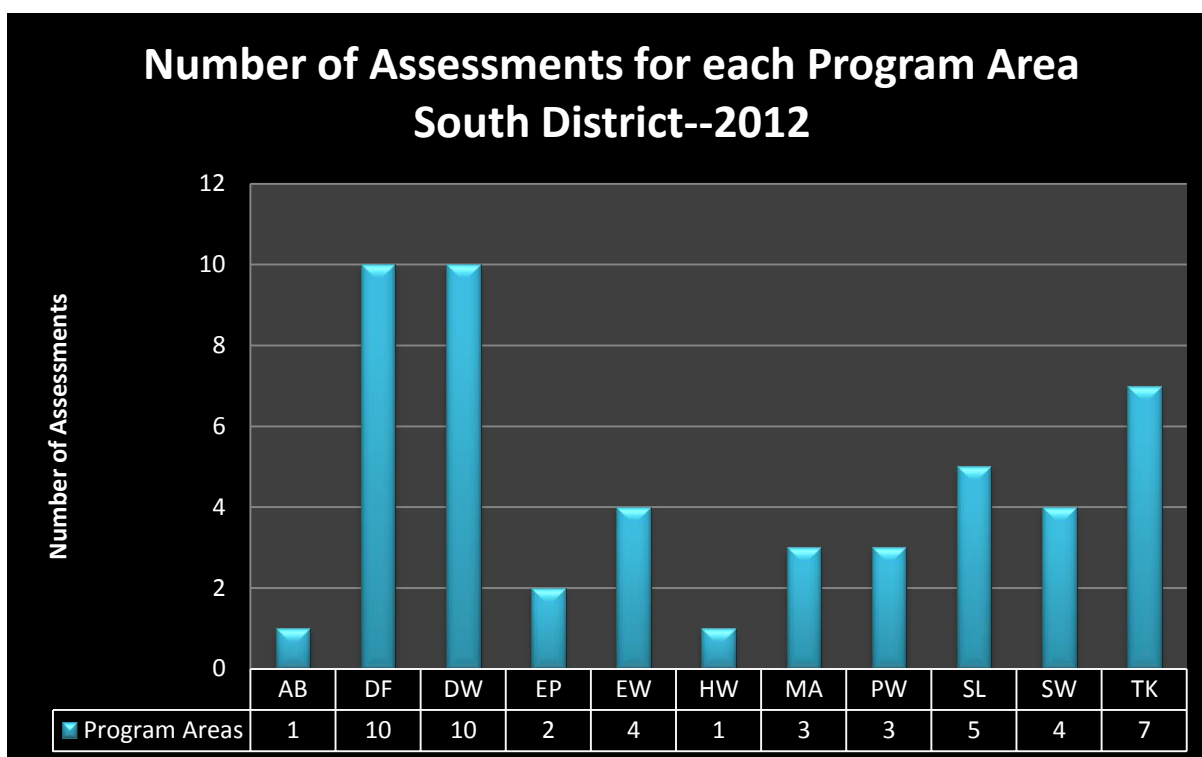
E. South District

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

The South District took enforcement in 70 cases in 2012, a 52% decline from 2011's performance, and 62% fewer than in 2010. The district sent 5 Case Reports to the OGC, 11 less than in 2011. There were 6 NOVs (there were 13 in 2011) and 6 final orders compared with 12 in 2011. 53 consent orders were issued, 51 fewer than in 2011 (a 49% decline). It issued 11 short-form consent orders, compared with 40 in 2011. 16% of all enforcement cases were resolved through the use of short-form consent orders, a figure that remains the lowest usage of these enforcement tools in the state. In 2011 it issued 5 long-form consent orders and this number rose to 7 in 2012. 21% of the consent orders that were issued were long-form consent orders, 16% higher than last year, but still the lowest use of these types of consent orders in Florida. The South District accounted for 7% of all Case Reports, 11% of the NOVs, 10% of the final orders and 11% of all consent orders issued in Florida.

2. Program Area Enforcement

The following chart provides the number of civil penalty assessments issued by the South District by program area in 2012:



The South District assessed penalties in 50 cases in 2012, a 56% decline from the 114 cases in 2011 and the fourth straight year of declining numbers. While there were increases in the number of dredge and fill cases (3), there were declines all other program areas, e.g. asbestos (2), air (5), domestic waste (14), hazardous waste (7), industrial waste (7), mangrove alteration (1), potable water (1), state lands (6), solid waste (6) and tanks (18). **There were no air or industrial waste assessments in 2012.**

3. Civil Penalty Assessments

Civil penalty assessments dropped to \$267,219.00, the third straight year of falling results. This result is 67% lower than in 2011. The district provided 8% of all assessments levied by the FDEP in 2012, slightly less than in 2011. The median assessment for all programs combined was \$2,000.00, a \$500.00 decline from 2011, thus ending two straight years of better numbers.

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

Program	Total \$ Assessed in 2012	2011 Medians	2012 Medians
AB	\$3,640.00	\$1,000.00	\$3,640.00
AG	\$0.00	\$2,000.00	\$0.00
AP	\$0.00	\$3,650.00	\$0.00
DF	\$18,830.00	\$925.00	\$1,425.00

DW	\$105,300.00	\$3,225.00	\$1,750.00
EP	\$5,710.00	\$34,238.00	\$2,855.00
EW	\$13,360.00	\$0.00	\$1,325.00
HW	\$8,400.00	\$5,639.00	\$8,400.00
IW	\$0.00	\$1,500.00	\$0.00
MA	\$5,210.00	\$10,250.00	\$710.00
PW	\$2,200.00	\$2,000.00	\$700.00
SL	\$9,669.00	\$850.00	\$850.00
SW	\$27,900.00	\$2,500.00	\$2,200.00
TK	\$67,000.00	\$8,000.00	\$10,000.00

Assessments declined for the second straight year in the hazardous waste and state lands programs. This was the third straight year of declining total assessments in the potable water program. **Total assessments in the hazardous waste program dropped 92%!** The increase in medians in the asbestos and hazardous waste programs were based upon only one assessment/program. Dredge and fill medians saw a healthy increase.

4. Civil Penalty Collections

The South District collected \$175,863.76 in civil penalties in 2012, compared with \$300,985.15 collected in 2011. The amount collected represents 11% of all dollars collected by the Department in civil penalties in 2012.

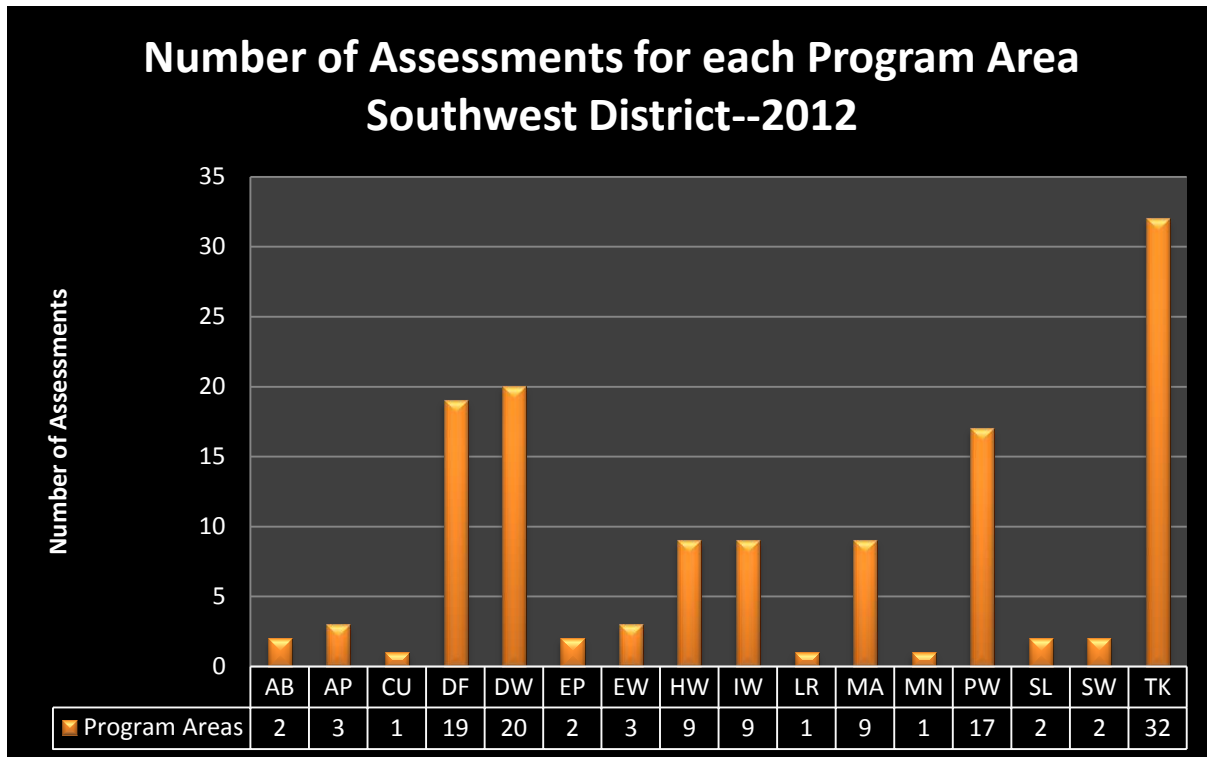
F. Southwest District

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

The Southwest District initiated 164 enforcement cases in 2012, down from 357 enforcement cases in 2010. This district accounted for just 11% of all enforcement taken by the Department in 2012 (last year the district accounted for 24% of all enforcement). 18 case reports were sent to the OGC (down from 29). 15 NOVs were issued (down from 38 in 2011) and 14 final orders were issued (down from 21 in 2011). The district issued 117 consent orders, down 56% from 2011, but still represents 24% of all consent orders issued by the Department in 2012. 50% of the consent orders issued by the district were short-form consent orders, compared to 70% last year. 35% of all of the cases settled by the Southwest District were settled via short-form consent orders. Only 18 long-form consent orders were issued out of this district in 2012, a continuing decline.

2. Program Area Enforcement

The following chart provides the number of enforcement cases in which civil penalties were assessed by the Southwest District by program area in 2012:



The Southwest District assessed civil penalties in 132 cases in 2012, down sharply from the 295 cases in 2011, and the 445 cases assessed in 2010. There were significant decreases in the number of assessments in following programs: asbestos (3), air (32--2nd year of decrease), dredge and fill ((17), domestic waste (14--2nd year of decrease), hazardous waste (26--3rd year of decrease), industrial waste (12--3rd year of decrease), potable water (12--2nd year of decrease), solid waste (6) and tanks (47--2nd year of decrease).

3. Civil Penalty Assessments

Civil penalty assessments fell sharply again in 2012, this time to a total of \$1,063,447.33. Total assessments therefore declined 33% from the \$1,592,075.89 levied in 2011. Just two years ago this district assessed fines of \$4,941,029.22. Median assessments did manage to recover to \$2,500 in 2012, compared with \$2,000.00 in 2011. Overall, the district contributed 32% of all penalty assessments levied by the Department in 2012.

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

Program	Total \$ Assessed in 2012	2011 Medians	2012 Medians
AB	\$5,756.80	\$3,250.00	\$2,878.40
AC	\$0.00	\$5,500.00	\$0.00
AG	\$0.00	\$375.00	\$0.00
AO	\$0.00	\$3,000.00	\$0.00
AP	\$8,500.00	\$2,750.00	\$3,000.00
AS	\$0.00	\$2,000.00	\$0.00
AV	\$0.00	\$6,500.00	\$0.00
CU	\$68,850.00	\$0.00	\$68,850.00
DF	\$21,310.00	\$730.00	\$600.00
DW	\$565,675.00	\$3,300.00	\$5,000.00
EP	\$10,800.00	\$1,250.00	\$5,400.00
ES	\$0.00	\$600.00	\$0.00
EW	\$11,500.00	\$1,000.00	\$3,500.00
HW	\$81,055.20	\$4,800.00	\$3,834.00
IW	\$25,000.00	\$3,500.00	\$2,000.00
LR	\$2,000.00	\$0.00	\$2,000.00
MA	\$14,250.00	\$500.00	\$500.00
MN	\$2,000.00	\$0.00	\$2,000.00
PW	\$28,017.50	\$500.00	\$500.00
SL	\$1,600.00	\$640.00	\$800.00
SW	\$5,750.00	\$3,000.00	\$2,875.00
TK	\$211,382.83	\$3,200.00	\$5,000.00

Penalty assessments declined in every major program area, except for domestic waste and potable water. On a percentage basis, the following major programs saw these results:

<i>Program Area</i>	<i>% Decline from 2011</i>	<i>Comments</i>
<i>Air</i>	85	2nd year in a row
<i>Dredge & Fill</i>	43	2nd year in a row
<i>Hazardous Waste</i>	71	2nd year in a row
<i>Industrial Waste</i>	72	2nd year in a row
<i>State Lands</i>	45	2nd year in a row
<i>Solid Waste</i>	80	2nd year in a row
<i>Tanks</i>	54	2nd year in a row

Median assessments continued to hold their own, except for the asbestos, dredge and fill, hazardous waste, industrial waste, and solid waste programs, each of which saw significantly lower numbers. This is the fourth year in a row that median assessments have declined in the dredge and fill program. Overall, the district's performance declined even further than it did in 2011 and basically reflects the performance of the Department as a whole.

4. Civil Penalty Collections

In 2012 the Southwest District collected \$350,218.44 in civil penalties, compared to \$1,167,323.08 that was collected in 2011. This represents a 70% decline in performance. Its collections accounted for 22% of all the monies collected by the Department across the state, the highest percentage of all of the districts, but still 16% below its performance in 2011.

G. All Other Enforcement

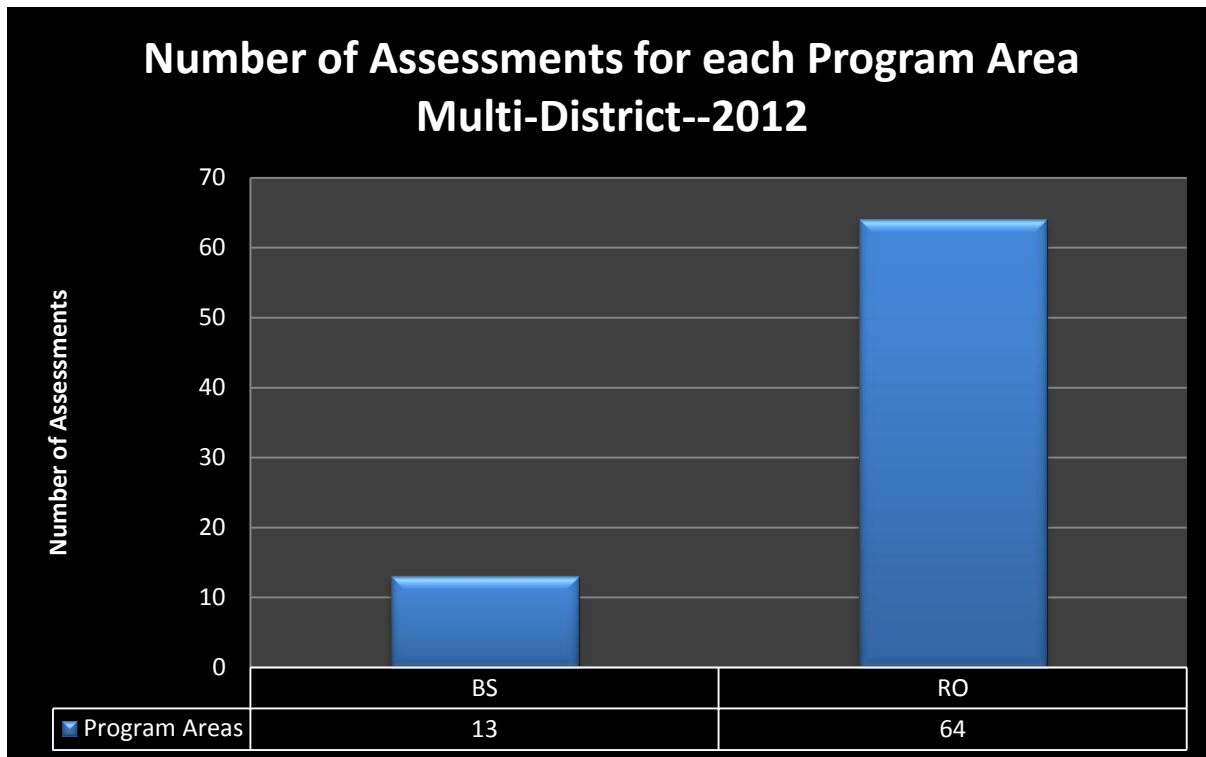
The Department's headquarters in Tallahassee handles some cases, most of them being stormwater discharge cases associated with the National Pollutant Discharge Elimination Program (NPDES), a federally delegated program. Other types of cases are also handled out of Tallahassee. The cases that are not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

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

The remaining categories initiated 88 enforcement actions in 2012, or 13% of all cases opened by the Department. They sent 5 case reports the OGC in 2012, 4 NOVs, 6 Final Orders, and 73 Consent Orders. Their performance improved in all but the number of Final Orders issued. The remaining categories accounted for 7% of all case reports, 8% of the NOVs, 10% of the final orders and 15% of all consent orders.

2. Program Area Enforcement

The following chart provides the number assessments issued by Other Enforcement by program area in 2012:



There were 7 fewer assessments in the beaches and shores program in 2012 compared to 2011, but stormwater discharge assessments increased by 20 cases (a 45% increase).

3. Civil Penalty Assessments

Civil penalty assessments increased slightly from \$196,003.02 in 2011 to \$199,147.25 in 2012. Medians remained the same at \$1,199.00. This accounts for 6% of all assessments levied by the Department in 2012. Assessments broke down as follows:

Program	Total \$ Assessed-- 2012	2011 Medians	2012 Medians
BS	\$18,000.00	\$750.00	\$1,000.00
DF	\$0.00	\$8,125.00	\$0.00
EW	\$0.00	\$2,000.00	\$0.00
MN	\$0.00	\$3,000.00	\$0.00
RO	\$181,147.25	\$1,199.00	\$1,199.00

Stormwater discharge assessments improved 26% in 2012, while their medians held steady. Assessments in the beaches and shores program fell 12%, but the medians rose by one third.

4. Civil Penalty Collections

The remaining categories collected \$190,356.25 in 2012, up from \$171,850.61 collected in 2011. The 2012 performance represents 12% of all dollars collected by the Department in civil penalties in 2012.

H. A Quick Look At District Results

Overall Number of Enforcement Cases:

District	Performance Compared with 2010	Performance Compared with 2011
Northwest	Down 70%	Down 62%
Northeast	Down 67%	Down 13%
Central	Down 64%	Down 33%
Southeast	Down 79%	Down 56%
South	Down 72%	Down 52%
Southwest	Down 74%	Down 54%
Multi-District	Down 46%	Up 24%

Number of Assessments:

District	Performance Compared with 2010	Performance Compared with 2011
Northwest	Down 63%	Down 59%
Northeast	Down 53%	Down 13%
Central	Down 52%	Down 34%
Southeast	Down 59%	Down 50%
South	Down 64%	Down 56%
Southwest	Down 70%	Down 55%
Multi-District	Down 35%	Up 10%

Dollars Assessed:

District	Performance Compared with 2010	Performance Compared with 2011
Northwest	Down 79%	Down 90%
Northeast	Down 84%	Down 66%
Central	Down 57%	Down 40%
Southeast	Down 75%	Down 53%
South	Down 85%	Down 67%
Southwest	Down 39%	Down 33%
Multi-District	Down 91%	Up 2%

Medians By District:

District	Performance Compared with 2010	Performance Compared with 2011
Northwest	Up 1%	Up 35%
Northeast	Down 20%	Down 36%
Central	Up 50%	Up 50%
Southeast	Up 50%	Down 10%
South	Unchanged	Down 20%
Southwest	Up 25%	Up 25%
Multi-District	Up 60%	Unchanged

Overall collections by district:

District	Performance Compared with 2010	Performance Compared with 2011
Northwest	Down 19%	Down 14%
Northeast	Down 20%	Down 29%
Central	Down 45%	Down 57%
Southeast	Down 40%	Down 43%
South	Down 44%	Down 42%
Southwest	Up 11%	Down 70%
Multi-District	Down 40%	Up 11%

CONCLUSION

There is little positive that can be said about the Department's performance in 2012. Based upon the results seen in the actual data there is no room for doubt that the individuals in charge of the Department are intent on seeing enforcement all but eliminated. Every enforcement mechanism declined by a minimum of 37%. Critical programs saw huge drops in dollar assessments, e.g. the air (81%), hazardous waste (68%), industrial waste (78%), potable water (37%), solid waste (97%) and tanks (53%). Collections saw the same pattern emerge. Every district saw substantial declines in the number of cases, the number of assessments, dollars assessed and collections. The only positive is in the median assessments which did see some improvement, but not anywhere close to an across the board result that would indicate that there has been a strong Secretarial push to see stricter enforcement across the board. Indeed, according to the Department's stricter penalty guidelines we should have seen improved hazardous waste medians rise. Instead, they fell 42%.

We expect that the Department will respond to these results by claiming [as it inferred in January of this year](#) that enforcement is not needed because compliance rates have allegedly risen dramatically. In addressing compliance the Department's press release stated that 94% of regulated facilities were in what the Department terms "significant compliance." The release went on to allege that "Significant compliance is defined as facilities in full compliance -- which represents 72 percent of facilities -- and facilities that have violations that present no environmental harm, such as tardy paperwork - equaling 22 percent. The Department regulates roughly 75,000 facilities statewide." What the Department's release did not mention is that the permits issued to these facilities require prompt, accurate records to be submitted to the Department. When facilities fail to comply with those terms they are violating their permits and thus **not in compliance, significant or otherwise**.

The Department's position is short-sighted. Its press release told the entire regulated community that timely submission of reports to the Department is no longer considered to be a violation worthy of mention. Why is this a problem? It is a problem because environmental protection and regulation is largely dependent upon accurate and timely reporting by facilities. No environmental agencies in the country have a sufficient number of inspectors and analysts to confirm compliance solely through inspections. This is why timely and accurate reporting by the permittees is included as a permit requirement in all permits. And it is why the Department in the past has considered failure to properly adhere to those permit requirements as a significant problem. Indeed, the same Department that now tells the public that such failures are inconsequential continues to report these violations (as it must) to the EPA which is then supposed to track them to ensure that the Department is taking the appropriate enforcement. But now the regulated community knows that the Department considers certain permit requirements to be essentially useless appendages unworthy of enforcement. This will hardly lead to an improvement in Florida's environment.

In addition, the Department's own compliance numbers are suspect. As *Florida* PEER noted in a [September 19, 2012 press release](#),

"When PEER asked DEP to produce the records behind Littlejohn's claims [of better compliance], it was unable to do so. Instead, it produced one Excel spreadsheet showing alleged

results from 2011. The spreadsheet had been created after Littlejohn penned the op-ed. Yet, Littlejohn's statements may become self-fulfilling since he issued a memo in November 2011 directing staff to refrain from taking enforcement action except as a last resort."

One needs to understand that the Department's environmental inspectors are governed by a formal enforcement manual that guides them on how to determine when and if enforcement is necessary. The manual has, amongst its many sections, two that are pertinent to this discussion. The "Compliance Options" section of the [Enforcement Manual](#) has not been changed since December 2004. The "Enforcement Options" section has been the same since October 2003. **Therefore, the formal guidelines are the same as the way they were when Governor Scott took office.**

The fact is that there is a benefit to educating the public about the need to protect and improve Florida's environment. In its appended [penalty guidelines](#) the Department's Enforcement Manual envisions this happening. It provides that the Department and the polluter can agree to things such as pollution prevention projects and in-kind penalties that help educate permittees while at the same time accomplishing the Department's goal of environmental protection. But that formal policy does not provide for a complete elimination of enforcement simply in order to appease the business community. Instead, it offers the polluter the ability to avoid paying civil penalties if the polluter agrees to participate in these programs.

The logical question therefore is how this sudden change came about. **How did this happen when the formal enforcement guidelines haven't changed and, equally important, the employees applying those guidelines are for the most part the same as well?** For decades the application of the above guidelines has resulted in levels of formal enforcement that, while they varied from year to year, have almost all been significantly higher than what we have seen in the two years since Governor Scott became Governor. But once Governor Scott became Governor and Herschel Vinyard became the Secretary of the Department the numbers began to plummet. It appears that the numbers did not change without direction from people with significant authority. Those people are people such as Jeff Littlejohn who, in a November 16, 2011 memo to his regulatory directors stressed his expectation that the Department would pursue a "compliance without enforcement" strategy. His memo, while acknowledging the Department's Enforcement Manual, tried a new spin—one that tried to sound as if it was supported by the Enforcement Manual. In reality, it is now clear that the purpose of the memo was to stifle enforcement—regardless of what the Department's own written guidelines require.

Frankly, it would be incredibly naïve for anyone to believe the Department's assertion that they have now created a utopian regulatory scheme in which almost every permittee in Florida is complying with their permits. Human nature suggests that such a result is absurd. And, even if there were a significant improvement in compliance, one would still expect to see at least some programs in which compliance was a problem. But the results from 2012 show the opposite, i.e. with the singular except of the stormwater runoff program every program saw significant declines in enforcement, suggesting that the drop-off was more the result of high level directives to the employees mandating a hands-off approach to environmental regulation.

The enforcement results derived from the Department's own data instead suggest that cuts to personnel along with draconian management styles have led to a situation in which the

employees who once enforced the law now know that enforcement is not something that will be looked upon favorably. It seems to be the case that senior management has taken their marching orders to heart. On May 29, 2012, *Florida* PEER issued [a press release](#) exposing a management meeting that the Department held in July 2011, the purpose of which was to chart a new course for carrying out the Department's goals. The notes from that meeting left no doubt that management was expected to demand that all employees comply with their new plans. Jorge Caspary, Director of Waste Management, was quoted as summing up the approach this way:

“Nothing motivates people like losing a job.”

Not surprisingly, the solid waste program, overseen by Mr. Caspary saw the number of assessments decline by 68% and the penalty dollars assessed declined by 97%. In Tampa the Southwest District [eliminated 40 positions](#) from various program areas with 62% of the positions being enforcement related. More positions were then eliminated in Tallahassee.

Unfortunately common sense dictates a conclusion that enforcement has essentially been eliminated at the Department, for reasons other than all businesses in Florida seeing the error of their ways when their chosen one ascended to the Governor's Office in Tallahassee. No, common sense dictates that enforcement has all but been eliminated at the Department of Environmental Protection because the employees have been made plainly aware that they risk losing their jobs if they proactively attempt to enforce the permits that the Department has issued. The situation will not be positively corrected until such time that the Secretary and his henchmen are replaced by managers who actually care about Florida's environment more than they care about where they will work after a new administration assumes power. Until that time, it is incumbent upon all Floridians to remain vigilant and to demand that the Department wisely use taxpayer's dollars.

APPENDIX

ENFORCEMENT HISTORICAL OVERVIEW

FDEP has long used an approach to enforcement that included a strong emphasis on the use of civil litigation in the state's circuit courts. This approach provided the FDEP with the ability to seek hefty civil penalty assessments against violators, while simultaneously sending a message to the community that environmental violations would not be taken lightly. The filing of such lawsuits was initiated by the filing of case reports that originated in the district offices and went to the FDEP's Office of General Counsel (OGC). However, the filing of lawsuits lost favor politically in the late 1990s. The result was a consistent decrease in the number of civil circuit court filings each year.

The FDEP's next strongest enforcement tool was the issuance of Notices of Violation (NOVs). NOVs are also initiated in the district offices and are filed by the OGC. Once filed they are similar to circuit court lawsuits, though they are brought before an administrative law judge (ALJ) at the Division of Administrative Hearings. Until 2001, ALJs were unable to levy civil penalties in these cases. Thus, the NOVs were used by the Department to bring about direct environmental improvements—both long and short term. After implementation of legislation in 2001, the FDEP was authorized to seek civil penalty assessments via the issuance of NOVs and the ALJs were given statutory authority to impose assessments where warranted. This change in law stopped what had been a general decline in the issuance of NOVs. 2002 saw the first dramatic increase in their usage.

Historically, the most frequently used enforcement tool has, without question, been the use of consent orders, both long-form and short-form. Consent orders (COs) are negotiated agreements between the FDEP and the violator wherein the violator agrees to undertake certain actions to reverse environmental damage caused by the violator's actions. In addition, COs most often require the payment of civil penalties. Consent orders typically take the following form:

- Long-form COs are used in order to require corrective actions on the part of the violator, as well as to require increased monitoring of the violator's future activities. They also typically require the payment of civil penalties.
- Model COs are essentially long-form COs that have been pre-approved by the OGC, thus allowing the individual districts to issue the Model CO without prior consultation with the OGC. They also provide for the assessment of civil penalties.
- Short-form COs are, according to the FDEP "Enforcement Manual" to be used only in those cases in which the violations have ceased and no further follow-up is required by the Department. Thus, these COs only require the payment of civil penalties.

Historically, the FDEP relied heavily upon long-form COs and Model COs in its enforcement cases. Thus, there was a demonstrable and measurable showing of its efforts to not only require environmental remediation, but to also require increased monitoring of known violators. However, as was pointed out in Florida PEER's 2007 report on the FDEP's history over the past 20 years, the use of long-form COs began waning in the 1990s. There was also a sharp increase in the number of Short-form COs.

http://www.peer.org/docs/fl/08_25_11_fl_rpt_on_historical_enforcement.pdf

The Department also tracks the number of final orders that it issues each year. These are administrative orders akin to the final orders issued by judges in state circuit courts. These final orders are binding upon the Department and the violators. They are enforceable in circuit court.