



# FLORIDA PEER

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## **Report On Enforcement Efforts By The Florida, Department Of Environmental Protection For Calendar Year 2013**

### ***COLLECTIONS***

***September 2014***

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## **PRELIMINARY STATEMENT**

This report addresses the enforcement results of the State of Florida, Department of Environmental Protection (FDEP or the Department) in calendar year 2013. 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.

### **Introduction**

Our previous two reports have focused on the numbers and types of enforcement actions brought by the Florida, Department of Environmental Protection (FDEP or Department) as well as the actual assessments (civil penalties) levied by the FDEP during the course of calendar year 2013. The results that we reported were derived from data obtained directly from the FDEP. The data showed that enforcement at the FDEP in 2013 dropped 68% from the dismal results turned in for 2012. Overall, enforcement has dropped 87% from the levels reached just 3 years ago in 2010. The decline is across the board, affecting all districts and all program levels. Moreover, of the cases opened by the FDEP, only 62% actually resulted in penalties being assessed. This resulted in a 57% decline in assessments from 2012's poor results and an 89% decline from the performance in 2010.

In this report we focus exclusively upon the civil penalties that were collected by the Department during the same 2013 calendar year. As with the previous report, the results are not promising. While the Department is collecting a higher percentage of the penalties assessed, there is still a drastic decline in the penalty dollars collected both on a statewide and district level. Collections in many programs have fallen. The penalties themselves serve as a deterrent to future law breaking. But in addition to that, once collected, penalties are used to fund environmental restoration efforts as well as to contribute towards agency programs and for things such as paying the salaries of FDEP personnel. Thus, the policies that have been enacted to prevent the assessment of civil penalties, if continued, will likely result in real additional harm to the FDEP itself, not to mention the environment that it is statutorily obligated to protect.

### **Results**

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

The initiation of enforcement actions and the assessment of civil penalties can be a fruitless endeavor if the assessed penalties are not collected. The reason is that in Florida the

collected civil penalties are used, by law, to fund, among other things, the restoration of ecosystems in the state. Florida lawmakers created the Ecosystem Management and Restoration Trust Fund (Fund) for just this purpose. The Fund was created through § 403.1651, Florida Statutes and it provides that monies deposited into it be used for many things such as the implementation of programs used to manage and restore ecosystems and drinking water, § 403.1651(1)(a), Fla. Stat., coral reef protection, § 403.1651(1)(b) & (d), Fla. Stat., and preservation of Florida's beaches, § 403.1651(1)(g), Fla. Stat. The implementation and management of programs are loaded terms that include the entire gamut of program administration, including equipment and salaries of the employees who are hired to work in them.

Civil penalties that are collected must be deposited into the Fund according to § 403.121(11), Florida Statutes, which states that:

(11) Penalties collected pursuant to this section shall be deposited in the Ecosystem Management and Restoration Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

Therefore, it is not enough for the Department to simply assess a civil penalty. It must also do the hard work of actually collecting that penalty; otherwise the monies do not get deposited into the Fund. Consequently, if penalties are assessed but not collected it means, in a very real way, that money is lost that could have been used to restore things such as coral reefs and beaches. It also means that money is lost that could have been used to administer programs that are supposed to ensure that our air is safe to breathe, our drinking water is safe to drink and our rivers are safe to fish and swim in.

With the above in mind, we turn to the FDEP's performance in 2013, first in the area of collecting the monies that its programs assessed. The results are mixed.

The Department collected \$687,777.69 in civil penalty assessments in 2013, a 57% decline from the \$1,589,724.69 that was collected by the Department in 2012. The following table shows the collections attributed to the Department in years past:

Year	Amount Collected
<b>2007</b>	\$6,083,693.04
<b>2008</b>	\$5,484,480.00
<b>2009</b>	\$4,842,642.95

<b>2010</b>	\$7,077,687.19
<b>2011</b>	\$3,037,727.79
<b>2012</b>	\$1,589,724.69
<b>2013</b>	\$687,777.69

As is obvious from the above table, except for 2010 there has been a steady decline in the amount of money collected by the Department every year since 2007. The declines in the first four years were more moderate. Since 2011, however, the loss of monies collected has been significantly higher.

Another way of evaluating the Department's performance is to consider the percentage of civil penalties that is collected each year. The following table shows how that has developed over the same time period, considering just penalty assessments (absent in-kind and penalty prevention projects) and collections:

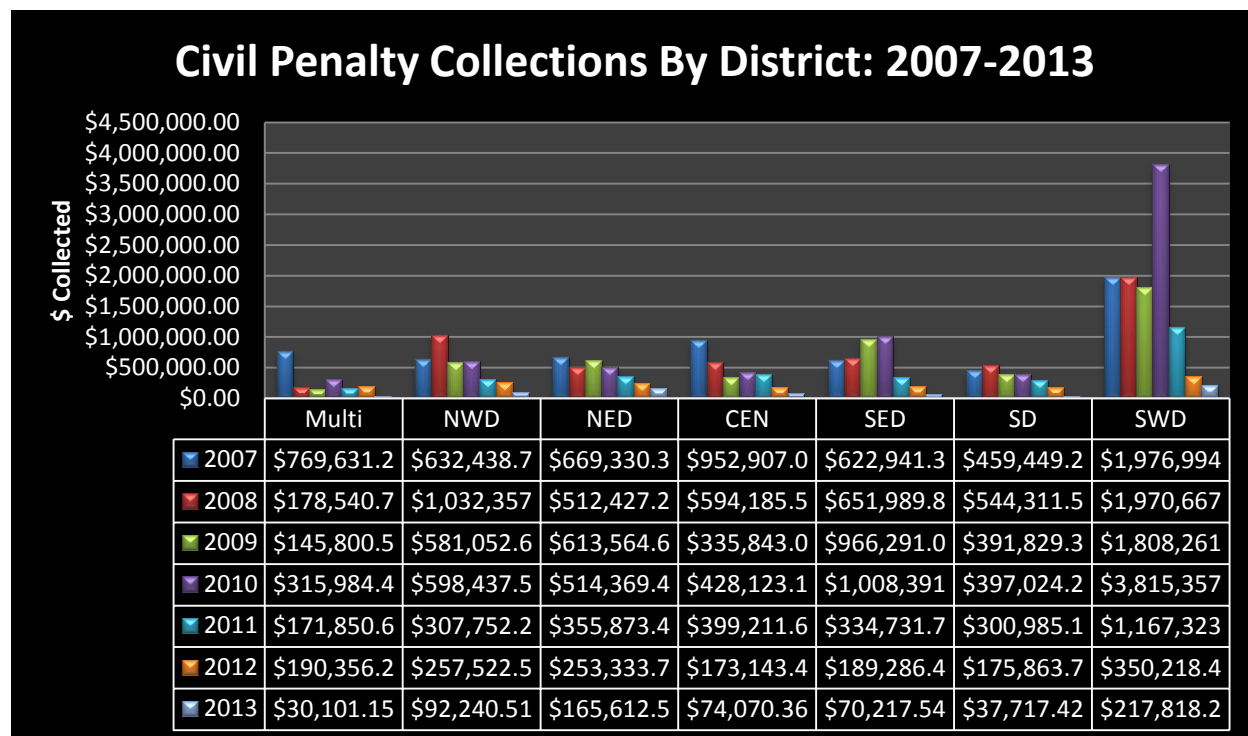
<b>Year</b>	<b>Assessments</b>	<b>Collections</b>	<b>% Assessments Collected</b>
<b>2007</b>	\$9,079,363.10	\$6,083,693.04	67%
<b>2008</b>	\$7,597,011.98	\$5,484,480.00	72%
<b>2009</b>	\$8,370,981.04	\$4,842,642.95	58%
<b>2010</b>	\$10,310,833.83	\$7,077,687.19	69%
<b>2011</b>	\$8,333,933.39	\$3,037,727.79	36%
<b>2012</b>	\$2,796,447.01	\$1,589,724.69	57%
<b>2013</b>	\$1,017,405.30	\$687,777.69	68%

The above results show that since 2007 there has not been a significant change (except for 2011) in the percentage of penalty dollars that have been collected. In fact, the percentage of collected assessments has steadily risen from the poor results in 2011.

So in looking at the big picture, the Department's collection rate has stayed steady over the past seven years. What has changed is the drastic cut in the dollars assessed. This drop in assessments means that there is a real drop in monies that are available for environmental protection so long as the percentage of penalties collected remains essentially the same. The only realistic way to improve upon the Department's ability to protect Florida's environment given

these numbers would be to significantly increase the percentage of assessments that are actually collected.<sup>1</sup> And that is not happening.

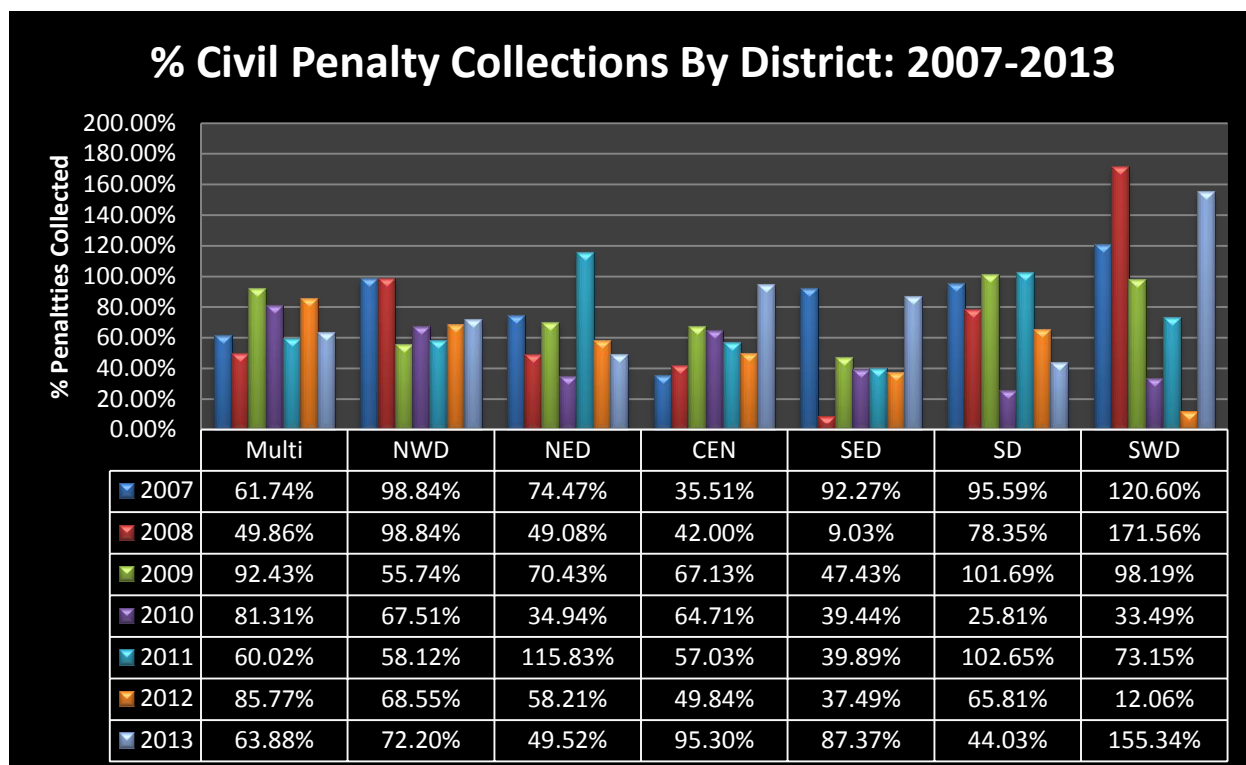
A look at how the individual districts have performed over the same period shows the same downward trend in every district insofar as the total penalty collections each year:



The results are a bit less clear with respect to the *percentage* of assessments collected by each district:

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<sup>1</sup> As we recently reported, the Department's own reporting to the EPA showed that compliance rates in wastewater discharges has not improved, thus undermining the Department's consistent assertion that there is no need for enforcement because permittees have suddenly begun complying with their permits.



What is clear is that one district, i.e. the Northwest, is showing a discernable trend towards increasing the percentage of assessments that it collects. Since 2011, however, the Northeast and South Districts have shown a clear trend in the opposite direction.

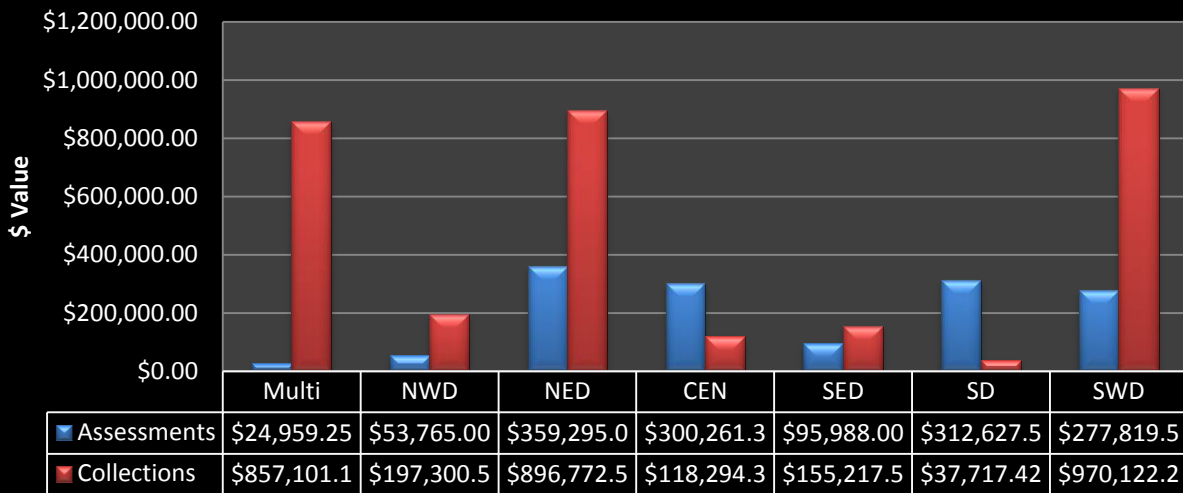
Finally, we considered the fact that the Department also has in-kind and penalty prevention projects associated with enforcement actions that are wrapping up during the course of the year. In other words, these are projects that polluters agree to undertake in lieu of paying civil penalties. The projects often are not concluded within the same year that the enforcement action began and can, in fact, span years of work. So the result is that the Department will often have such projects concluding in one year for enforcement actions that were undertaken years prior. When those projects are factored into the year-end results it can, and often does, give a much different (and unrealistic) picture of the Department's performance in the current year, largely because they are the result of actions taken years before.<sup>2</sup> Nevertheless we provide the results for 2013, just as we have in years past.

First, we are providing a comparison of the total dollars assessed, including in-kind and P2 assessments, to the total collections for each district, including in-kind and penalty prevention projections:

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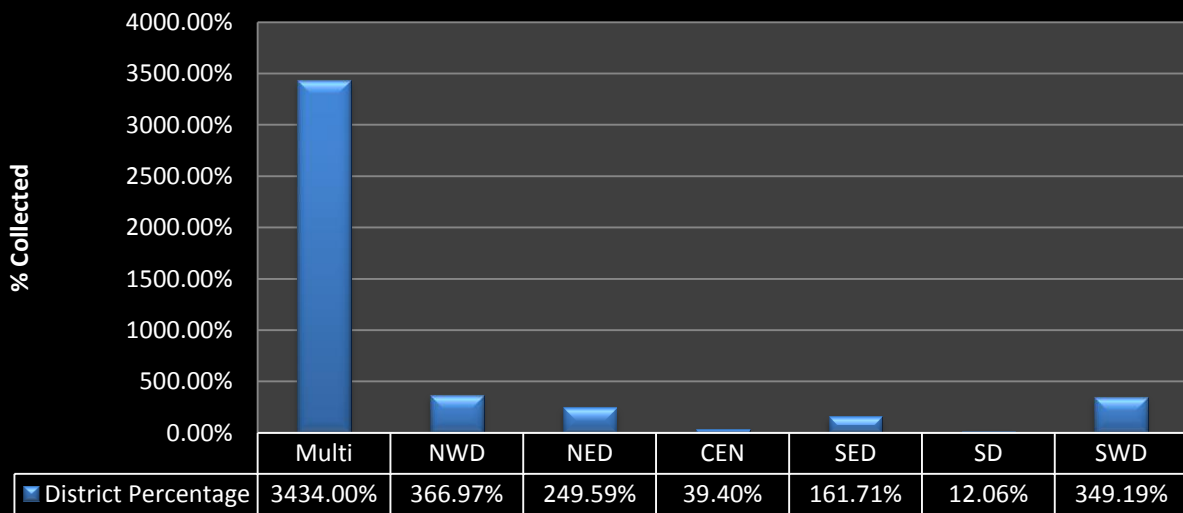
<sup>2</sup> The same can happen with dollar assessments, however, it is more often the case that penalty assessments are collected in the same year that they are assessed, or at minimum, installments are collected throughout the year, thus minimizing the overall impact of collecting dollars in one year that were assessed in years past.

## \$ Assessed By District Compared To \$ Collected--2013



Likewise, when in-kind and penalty prevention projects are considered the bare percentage of collected penalties rises significantly for most districts:

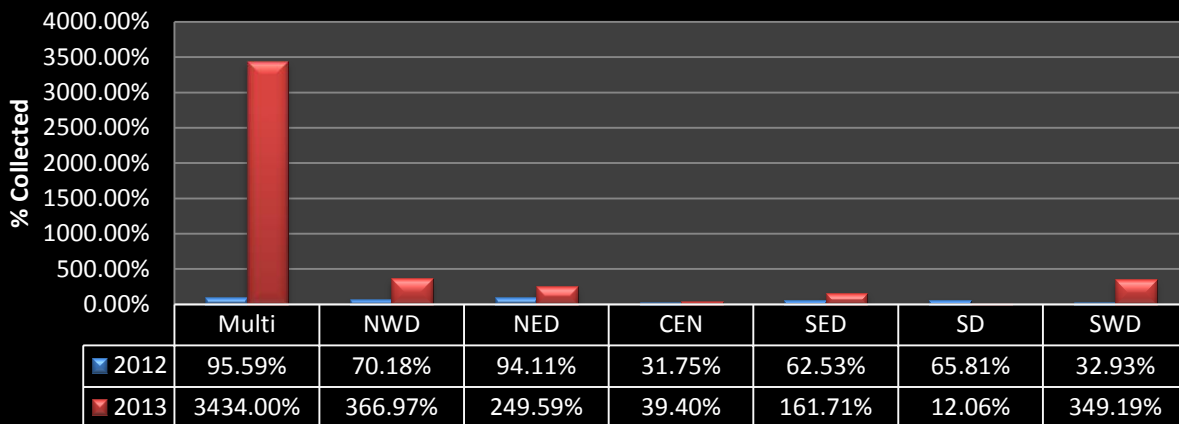
## % Collections, Including In-Kind And P2



When compared with 2012 the above results represent increases for every district but the South District.



## Comparison Of Collections By District 2012-2013



### **B. Civil Penalty Collections By Program Area—District Comparison**

We first turn to the highest collections in each program area for 2013. The following chart shows the highest individual collections for every program area that collected civil penalties in 2013, sorted by program area:

Program <sup>3</sup>	District <sup>4</sup>	OGC #	Highest Collection	Amount of Highest Collection
AP	6	121610	PINELLAS COUNTY UTILITIES	\$20,250.00
BS	0	131090	REGALIA BEACH DEVELOPERS, LLC	\$7,500.00
DF	1	121247	SOUTHEASTERN CONSULTING & DEVELOPMENT COMPANY	\$6,000.00

<sup>3</sup> The abbreviations are: 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.

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

DW	6	50259	CITY OF TAMPA	\$46,000.00
EP	2	70231	DREDGE ENTERPRISE, LLC	\$45,000.00
EW	6	121488	HERNANDO COUNTY DEPARTMENT OF PUBLIC WORKS	\$10,000.00
HW	2	94284	LITHIUM NICKEL ASSET HOLDING COMPANY	\$42,000.00
IW	6	121605	THE FLORIDA BREWERY, INC.	\$7,000.00
LR	6	103555	MAHON, THOMAS B.	\$1,626.02
MA	4	121146	FIER, DR. ROBERT H.	\$10,000.00
MN	0	121554	DOT CLAY, LLC	\$5,000.00
PW	5	121514	HOLMES UTILITIES, INC.	\$5,400.00
RO	1	121798	NORTHWEST FLORIDA HOLDINGS, INC.	\$9,250.00
SL	1	131186	BAYBRIDGE VILLAS HOMEOWNER'S ASSOCIATION, INC.	\$1,710.00
SW	6	50239	ABRAY CONSTRUCTION, INC. AND DAMOTH, ROBERT MICHAEL	\$28,076.71
TK	2	60109	MILLER'S MARINA OF SUWANNEE, INC.	\$10,000.00

Interestingly, the Department's highest collections have fallen significantly since 2010. The following table shows the highest single collection for each year from 2010 through 2013:

Year	Program	District	OGC #	Highest Collection	Amount of Highest Collection
2010	EP	4	101100	SPAR SHIPHOLDING AS, SPAR SHIPPING AS; ET AL	\$543,026.30
2011	RO	0	102663	BEAZER HOMES USA, INC	\$57,335.00
2012	HW	2	94284	Lithium Nickel Asset Holding Company	\$84,000.00
2013	DW	6	50259	CITY OF TAMPA	\$46,000.00

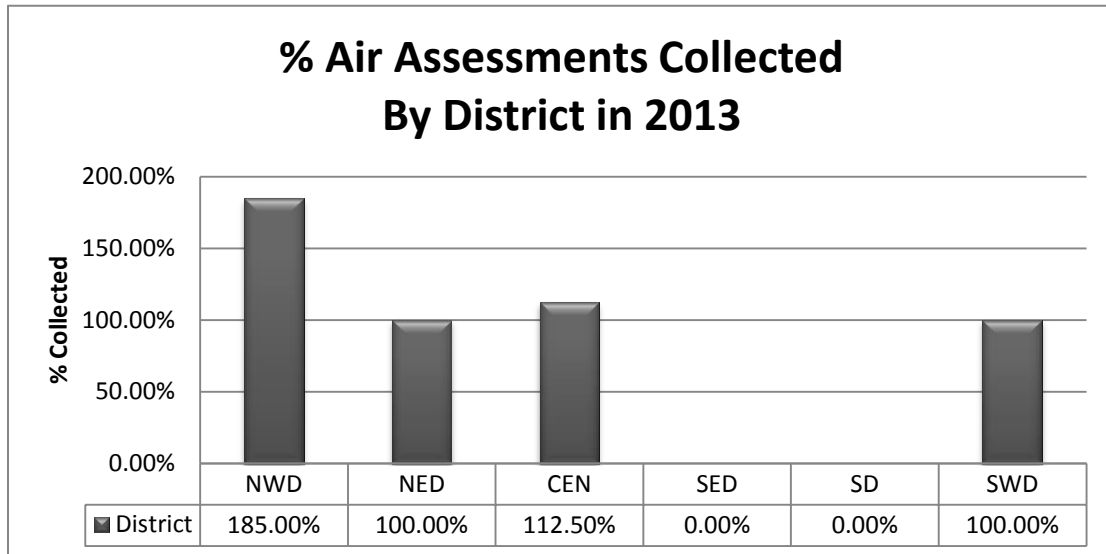
Not only were the results in 2010 significantly higher than in 2013, but there were 6 additional collections in 2010 that were over \$100,000.00; and four of the six were over \$300,000.00.

## **Individual Program Breakdown**

The results for the percentage of assessments actually collected by each district in the major program areas are discussed below. These results are for penalty assessments only, i.e. they do not include in-kind or P2 assessments or collections.

### **1. Air Program**

This program saw improvement in every district but the Southeast and South:



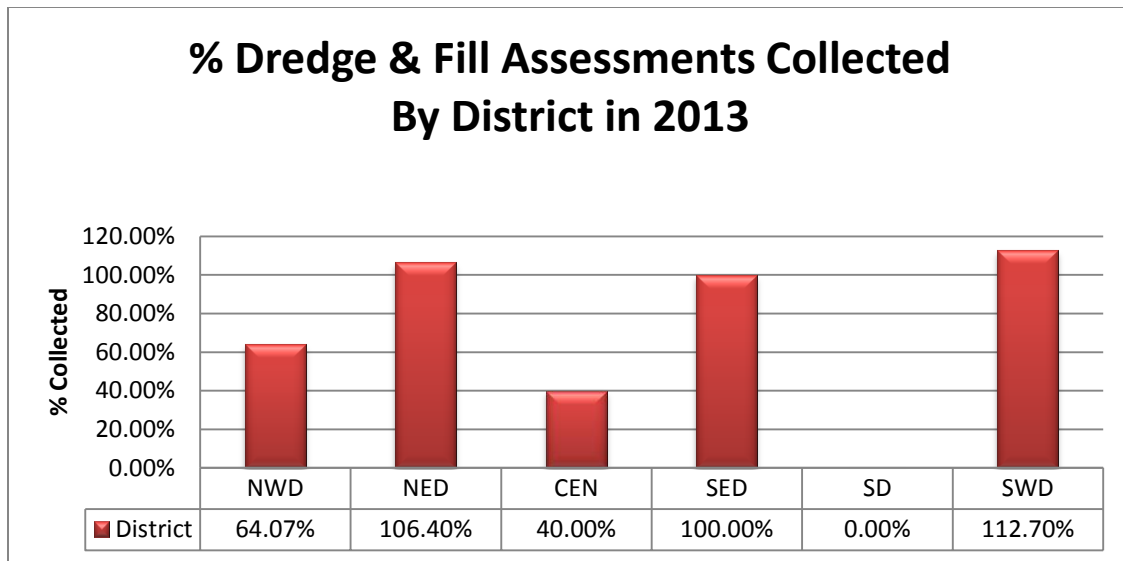
Overall, the Department collected more in penalties than it assessed in 2013. It collected 113.79% of the penalties assessed, indicating that it collected penalties that were assessed in previous years.

### **2. Asbestos Program**

Overall the Department assessed no penalties in 2013, but it did manage to collect \$4,500.01 in penalties that were assessed in previous years in the Northwest District.

### **3. Dredge and Fill Program**

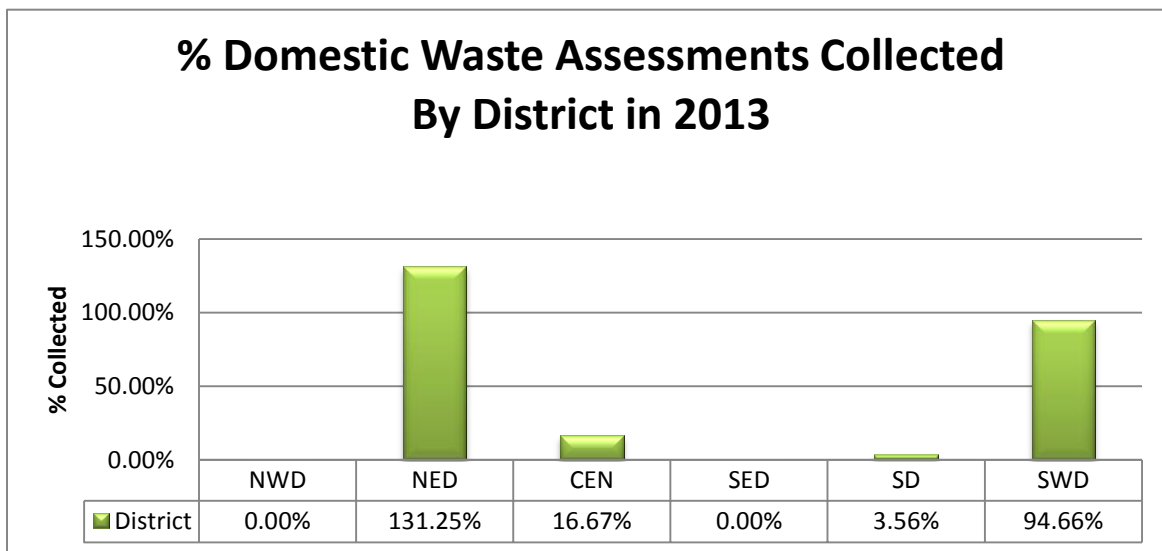
The Department collected 56.77% of the penalties assessed in this area, down 39.20% from 2012. (Even when in-kind and penalty prevention projects are considered the result remains at 57.85% for the Department as a whole.) The performance fell in the Northwest, Southeast and South Districts.



#### 4. Domestic Waste Program

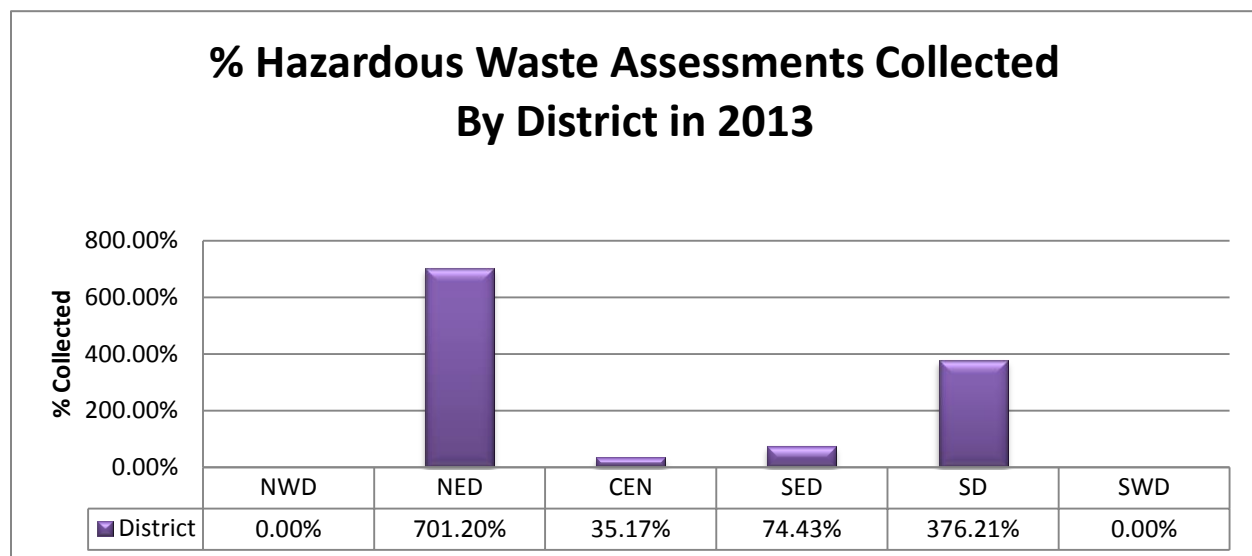
In 2012 the Department collected only 42.58% of its penalty assessments. In 2013 that figure fell even further to 39.53%. Just 2 years ago (in 2011) the Department collected 84% of its assessed penalties in this program area.

In 2013 only two of the districts, the Northeast and Southwest Districts, improved upon their previous year's performance. The remaining four fell significantly. The results for 2013 are:



## 5. Hazardous Waste

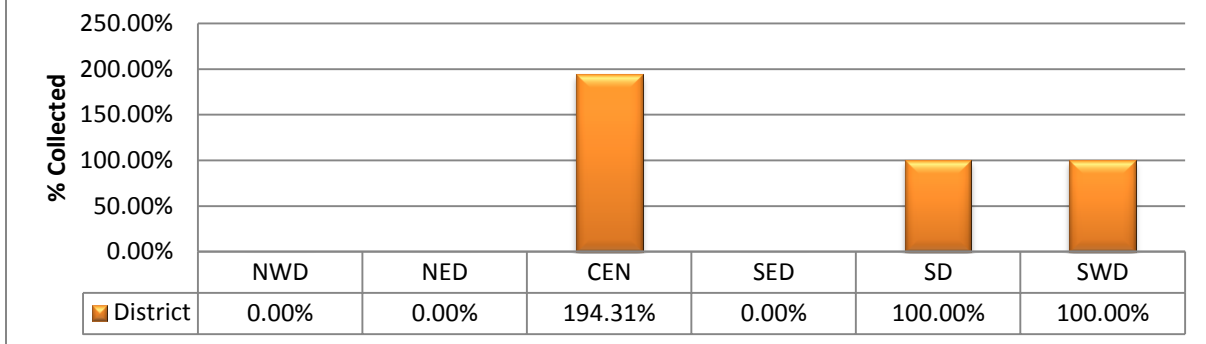
The Department continued to do better in collecting penalties assessed in this program. It improved from 82.22% in 2012 to 98.38% in 2013, the second straight year of improvement. In spite of the overall improvement the Central and South Districts were the only two districts to improve over 2012. Ultimately the improvement was due in large part to significant recoveries in the Northeast, Central and Southwest District (although the SWD assessed no civil penalties in 2013 in this program, thus showing a 0% recovery rate). The results are:



## 6. Industrial Waste

The percentage of industrial waste assessments that were collected improved once again in 2013. The Department collected 137.90% of its assessments, compared to 96.29% in 2012 and 93.06% in 2011. In addition, three of the districts improved upon their performance. The Northwest, Northeast and Southeast Districts did not assess or collect any penalties in this area. The districts' performance was:

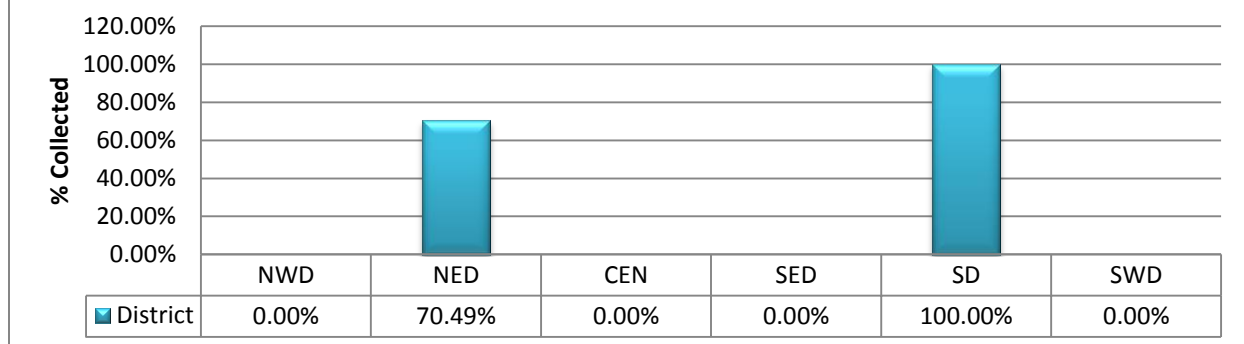
## % Industrial Waste Assessments Collected By District in 2013



### 7. Potable Water Program

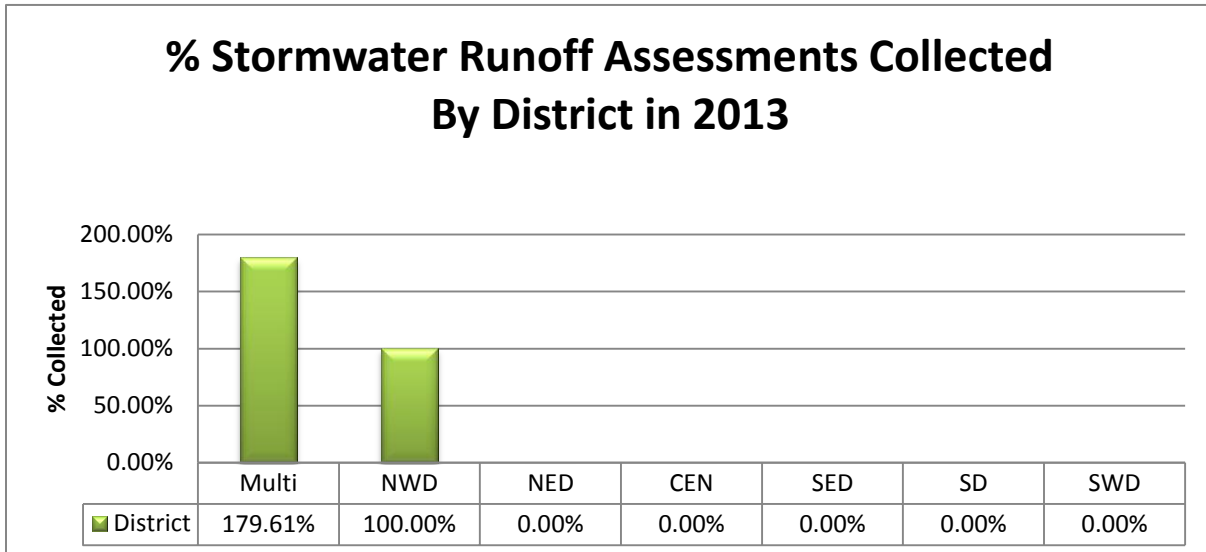
Collections fell to 32.41% in this area in 2013, compared to 56.53% in 2012. Performance in the Northeast District improved. Only the Northeast and South Districts collected any penalties. The Central District assessed \$19,600.00 in penalties but collected none. No penalties were assessed in the Northwest, Southeast and Southwest Districts. The overall results are:

## % Potable Water Assessments Collected By District in 2013



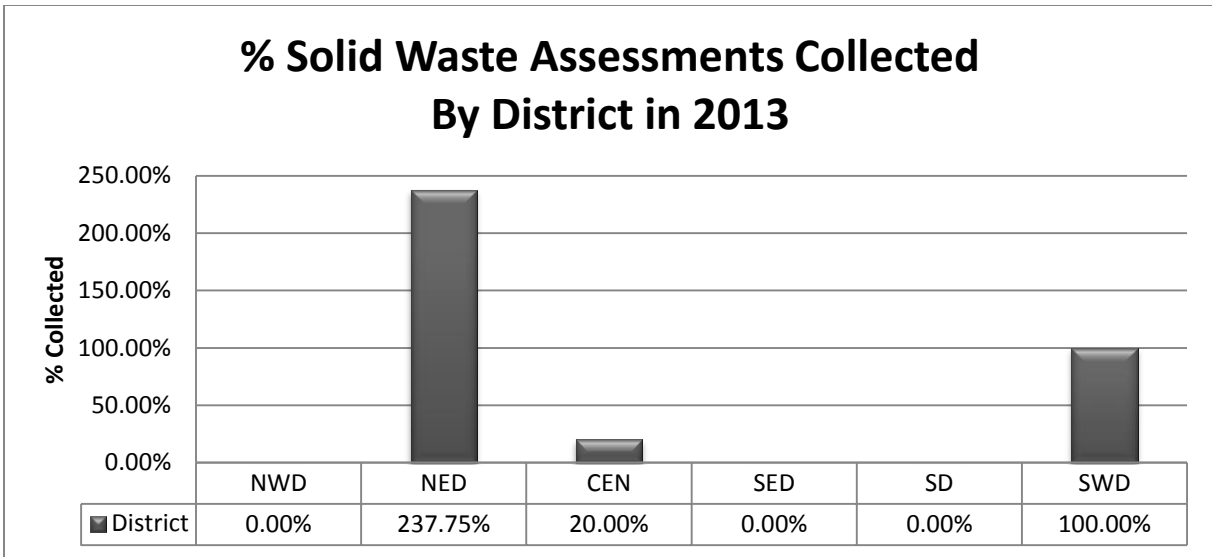
## 8. Stormwater Discharge Program

The Department collected significantly more of its assessments in this program. It collected 123.15% in 2013, compared to 93.51% in 2012. This activity was limited to the multi-district category and the Northwest District, however. None of the other districts had any activity. The results are:



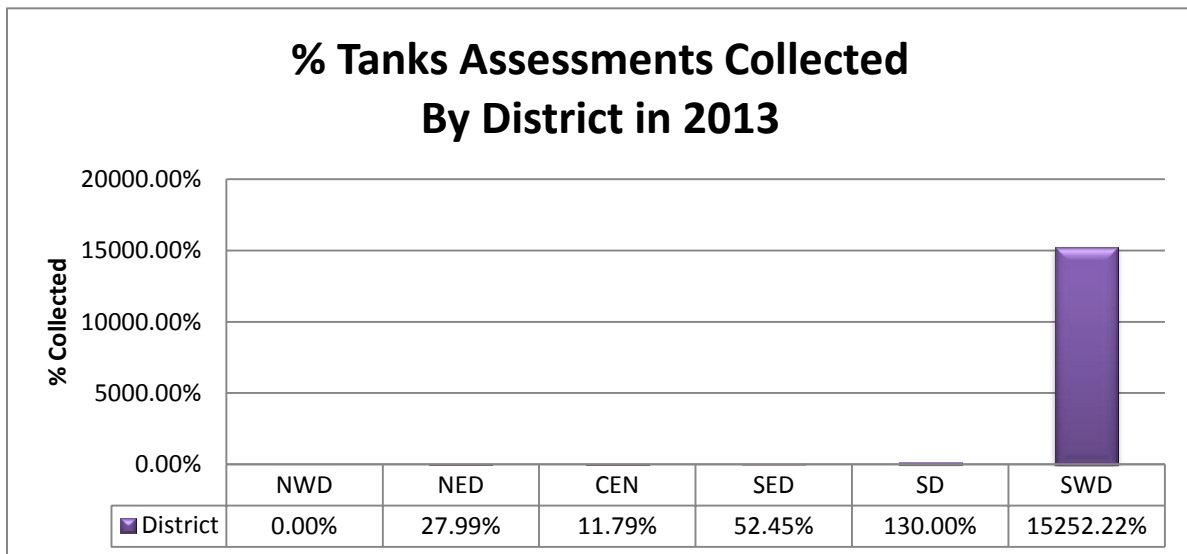
## 9. Solid Waste Program

Overall the Department continued to improve in this area, collecting 102.66% of its assessments. This compares to 52.37% collected in 2012 and 3.39% in 2011. The performance fell in the Northwest, Central and Southeast Districts. It stayed the same in the Southwest District. Thus, the overall improvement was primarily due to better returns in the Northeast District:



## 10. Tanks Program

The Department collected 59.75% of its assessments in 2013, almost double its 31.74% performance in 2012! While the Southwest District dramatically improved on its collections as a percentage, the reality is that it assessed only \$273.84 in this area in 2013. Nevertheless, it still collected the most of any district. Improvements were seen in that district, as well as the Northeast, Southeast and South Districts. Once again the Northwest District assessed nothing and collected nothing:





## **Conclusion**

Overall, 2013 presents us with a mixed bag when it comes to the issue of collections. In terms of actual dollars collected the Department brought in 48% fewer dollars than it did in 2012. However, that is largely due to the fact that assessments continued to fall so drastically in 2013. Obviously, if fewer dollars are assessed, then fewer dollars will be collected. However, when looked at through the prism of the percentage of dollars assessed we see that the percentage of dollars collected compared to dollars assessed actually increased to 68%. This is a 9% increase from 2012's performance and the second year in a row in which the Department has collected more of its assessed penalties. At the same time, however, all six districts have seen progressively worse results in actual dollars collected *every year since 2010*. Looking at the programs themselves, when considering the percentage of collections compared to assessments, 4 programs saw increases in performance in 2012.<sup>5</sup> This rose to 6 programs in 2013.<sup>6</sup> In fact, 2013's performance means that the hazardous waste, industrial waste and solid waste programs have improved their performance for 2 years in a row.

Do the above results give us a reason to be optimistic? Well, yes and mostly no. If we focus solely on the percentage of dollars recovered by the Department then there is reason to be optimistic. After all, higher percentages of assessments are being collected by the Department as a whole in many of the individual districts and programs. That is the good news. The bad news is that the amount of dollars collected would have to more than double in order to simply equal the amount of dollars collected in 2012 alone. In other words, the Department would have to collect over 100% of its assessments just to stay even. Clearly that is not happening, even with the modestly improved collection percentage.

Put another way, the lack of assessments is starving the Department. Fewer dollars to work with mean that the Ecosystem Management and Restoration Trust Fund is replenished at a slower rate, if at all. This, in turn means that there is less money for ecosystem management programs unless the Legislature pumps more funds into the agency. By the same token, there is less money for beach restoration. There is less money for wetlands restoration, including Everglades restoration. And there is less money to help ensure that our air is clean, e.g. asbestos abatement programs. All the while there is less money to fund employees' salaries, which will probably result in more layoffs and turnover in the future if the ship is not righted.

The Governor and Secretary may respond that projects are still moving forward and that environmental protection has not diminished. If such were the case (which the evidence does not support) then it would mean that money was coming from the Legislature. But the Legislature can only appropriate funding that it receives from taxpayers. Indeed, taxpayers have always had the burden of funding programs and the agencies that administer them. *But in the past that burden has always been offset by penalty dollars paid by polluters who foul the environment.* What is now happening is that the Governor's and Secretary's policies have resulted in a

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<sup>5</sup> Hazardous Waste, Industrial Waste, Potable Water and Solid Waste Programs.

<sup>6</sup> Air, Hazardous Waste, Industrial Waste, Stormwater Discharge, Solid Waste and Tanks Programs.

significant shifting of the burden of protecting Florida's environment such that taxpayers bear a much heavier load.<sup>7</sup> Polluters are now undeniably paying significantly less.

So, why would anyone in a seat of authority such as the Governor or his DEP Secretary allow such results? After being in power for over three years it would be hard, even naïve, to argue that these are the results of mere mismanagement. After all, there is consistently one group of Floridians who have benefited under these policies. Those are the people and corporations who have illegally polluted Florida's environment. Other empirical evidence supports the related argument that the administration simply does not place a high value on Florida's environment. Consider for example that we now know that the DEP's Division of State Lands has rejected offers by polluters such as Mosaic to turn over 4,100 acres of environmentally important land at the Peaceful Horse Ranch as part of a settlement of an environmental lawsuit against Mosaic<sup>8</sup> and also refuses to accept other donations of environmentally sensitive land in other cases. Accepting such property would make it easier for the State to preserve Florida's environment. Yet all of these actions, go in the opposite direction. Thus, one has even more cause to question the true motives behind the actions of the leaders and managers of the DEP.

Sadly, by now it has become abundantly clear that the ultimate goal of Florida's Governor and Secretary Vinyard is to protect polluters and the money that they represent. Florida's environment now has to fend for itself so that they can benefit.

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<sup>7</sup> This would seem to go against the administration's stated policies of wanting to reduce the tax burden on Florida's residents.

<sup>8</sup> *See, After dismantling land programs, Scott now wants funds for them,*  
<http://www.tampabay.com/news/environment/scotts-proposed-boost-to-environmental-land-buying-comes-after-three-years/2195563>