

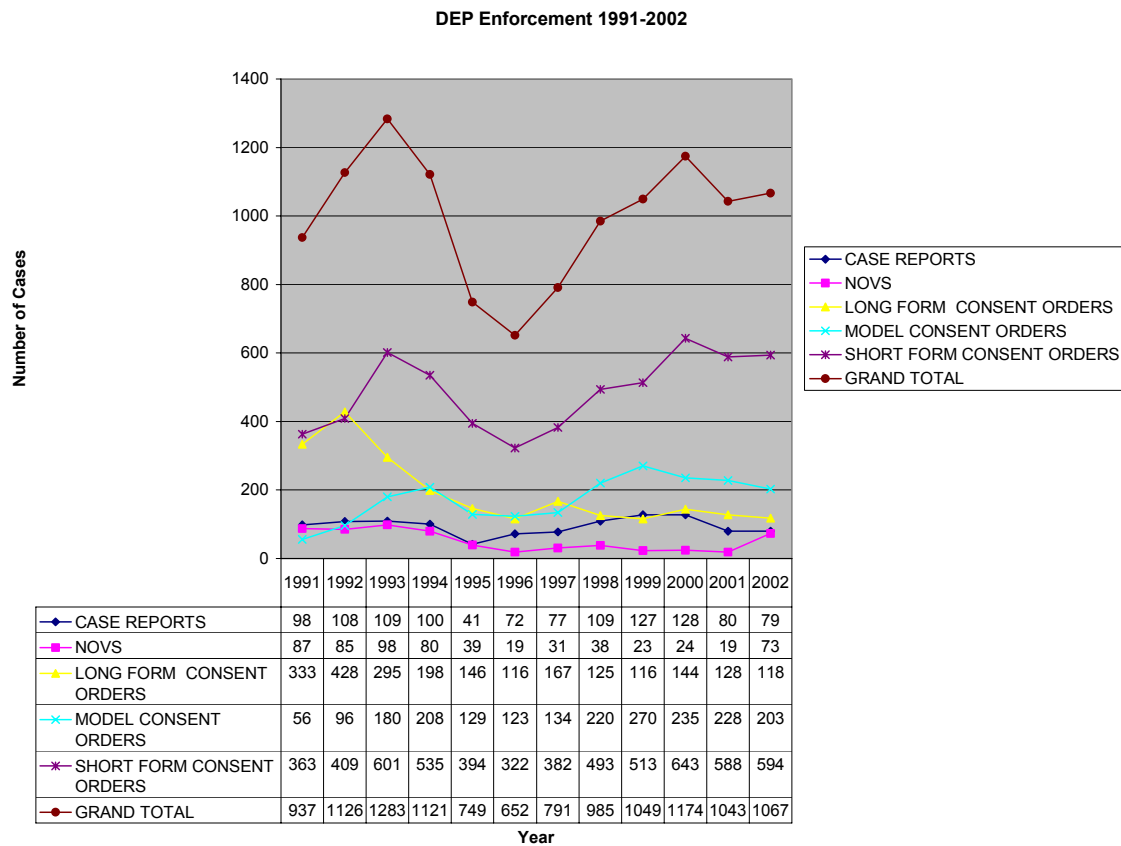


# Florida Public Employees for Environmental Responsibility August, 2003

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## FLORIDA DEP ENFORCEMENT IN DECLINE, AN OVERVIEW

Total DEP enforcement declined significantly after the departure of Secretary Browner<sup>1</sup>. The following data show the history of the Department's enforcement from 1991 through 2002.

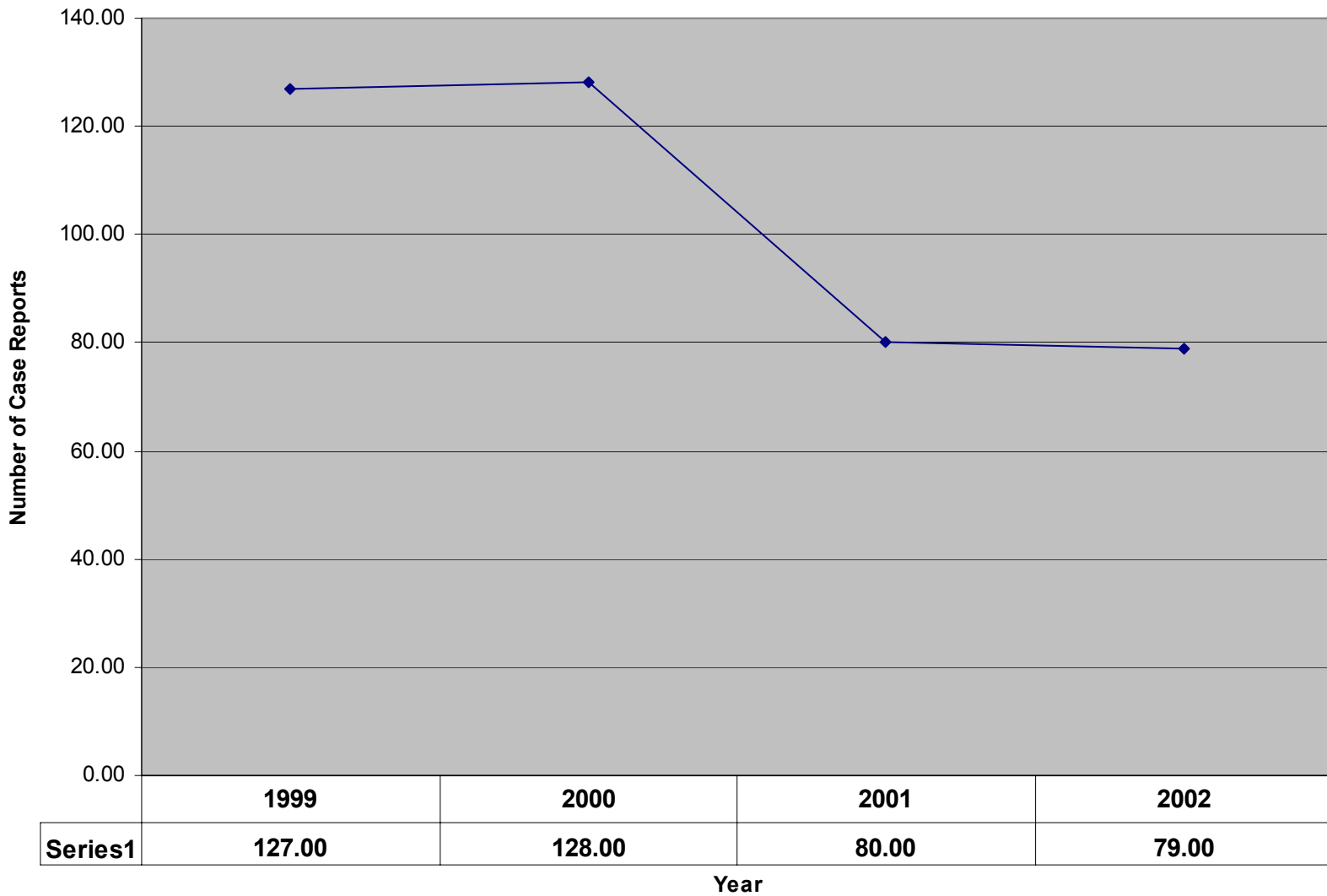


(Fig. 1)

Various enforcement mechanisms are used by the Department. The strongest is the filing of complaints in civil circuit court, and these actions are initiated in the districts by use of a case report that is sent to the Office of General Counsel (OGC) requesting that such an action be filed. The use of case reports reached an all-time low in 1995 and remained low in 1996-1997. They then rebounded from 1998 through 2000. Now, as is shown in Figures 1 and 2, they are again in decline and are at the levels found in 1996-1997.

<sup>1</sup> All data contained in this report was obtained from the State of Florida, Department of Environmental Protection, Office of General Counsel.

### Summary of Case Report Submissions



(Fig. 2)

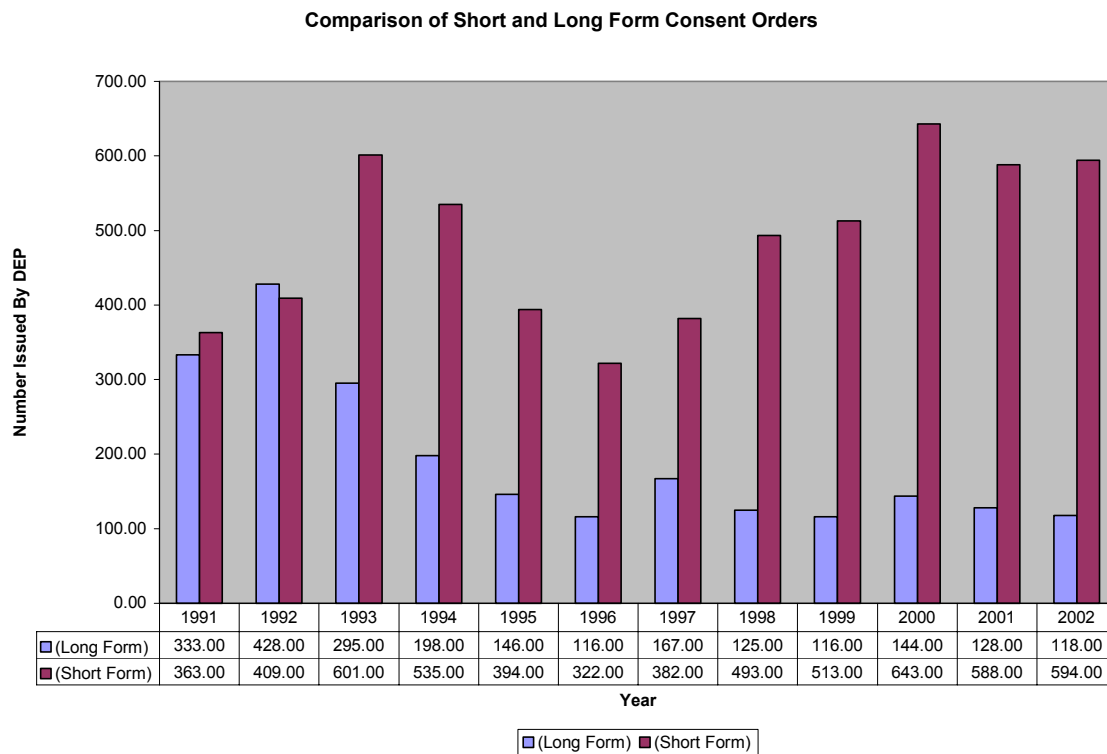
NOVs, or Notices of Violation, are administrative complaints that can be initiated either in the districts or in OGC. Historically they have been less beneficial because of their inability under statute to secure civil penalties from the violator. The Department received administrative penalty authority in 2001 when the Legislature amended § 403.121, Florida Statutes. While there is a rise in the use of NOVs from 2001-2002 this rise does not necessarily indicate more aggressive enforcement inasmuch as NOVs cannot secure *injunctive relief*. Such relief is only available to the Department by filing a civil complaint in circuit court.

Consent Orders are historically the enforcement mechanism most often used by the Department.

The Department uses different forms of consent orders.

- The first, known as Long Form Consent Orders, are negotiated agreements between the Department and the violator with the involvement of OGC. These Orders allow the Department to achieve many objectives. They can require waste cleanup, increased monitoring, more stringent limits on discharges of pollutants etc. In addition, they assess civil penalties, provide for imposition of stipulated penalties and allow the Department to seek injunctive relief *in circuit court* against the violator if the terms of the consent order are violated.
- Short Form Consent Orders are used only when the Department decides not to require anything from the violator other than payment of a civil penalty. There is no cleanup, no increased monitoring, no changes in discharge requirements etc. In short, these types of consent orders are more akin to the issuance of a traffic ticket.

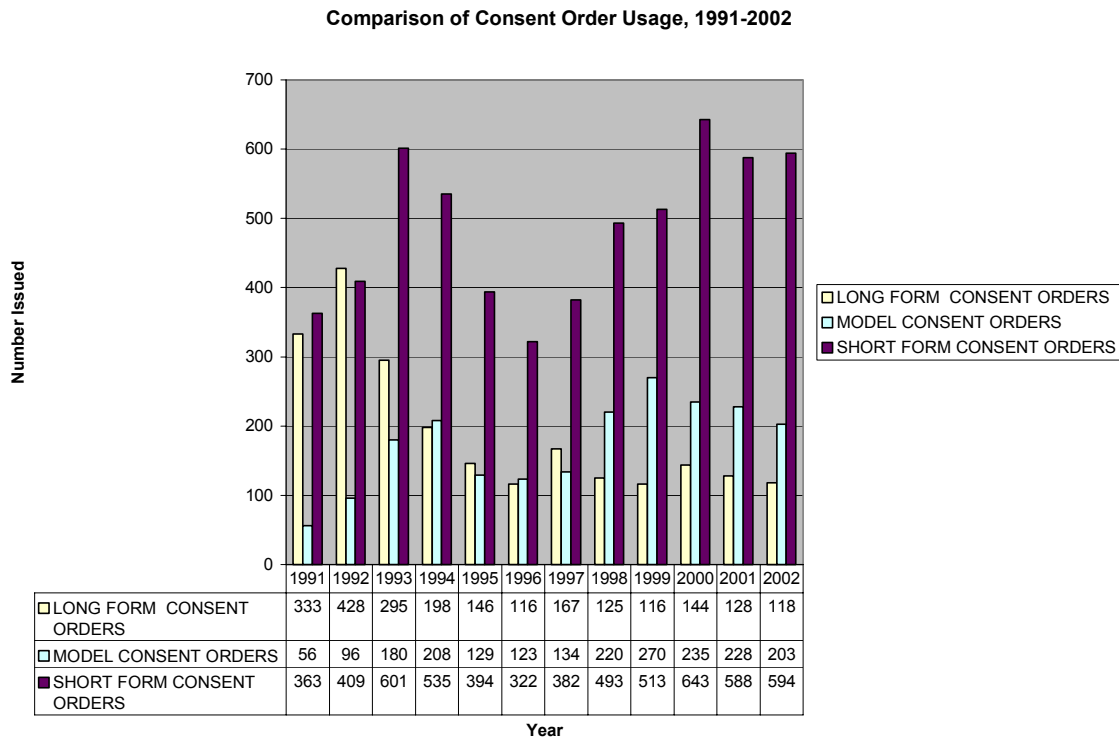
The historical shift in the usage of the Department’s enforcement tools is striking, as shown in Fig. 3, below. Over time DEP has almost totally shifted away from the more meaningful long form consent orders in favor of short form consent orders, that amount to a slap on the wrist.



(Fig. 3)

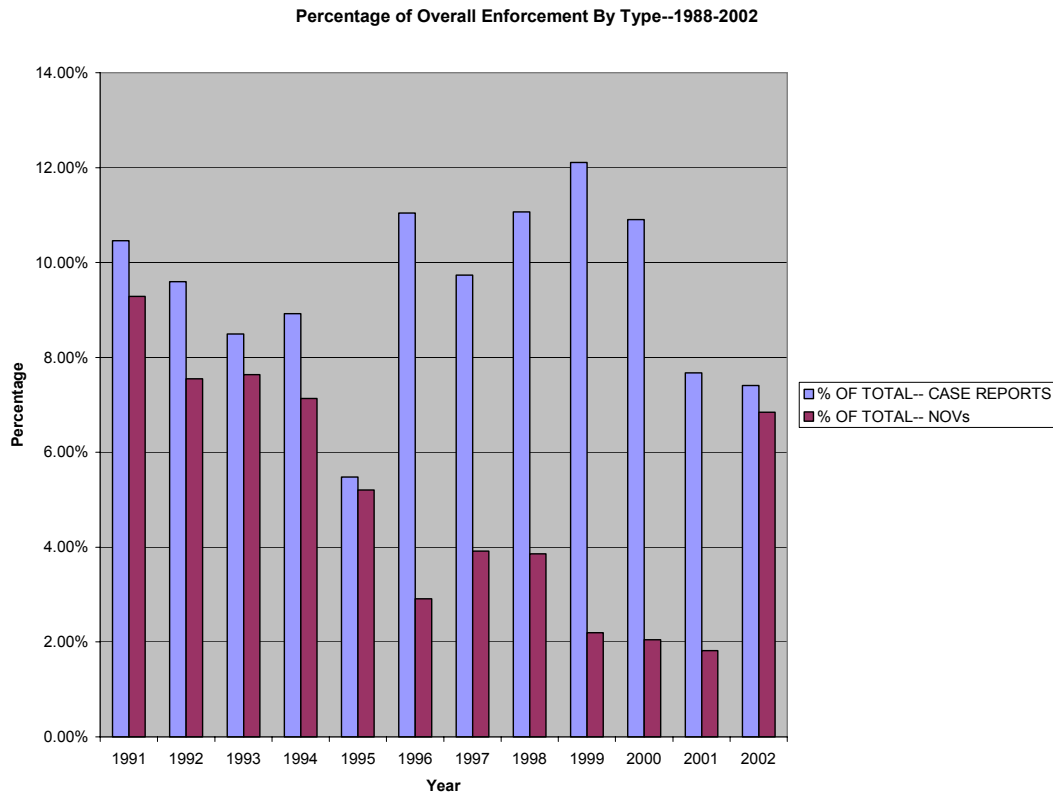
In addition, the State uses Model Consent Orders. Model Consent Orders are similar to Long Form Consent Orders in that they provide the same relief. The difference is that they are boilerplate documents drafted by the OGC and may be used only if the district does not deviate from their terms. Their advantage is that, unlike Long Form Consent Orders, the districts can use them without

involving OGC. The addition of Model Consent Orders to the equation does not serve to change the overall picture however:



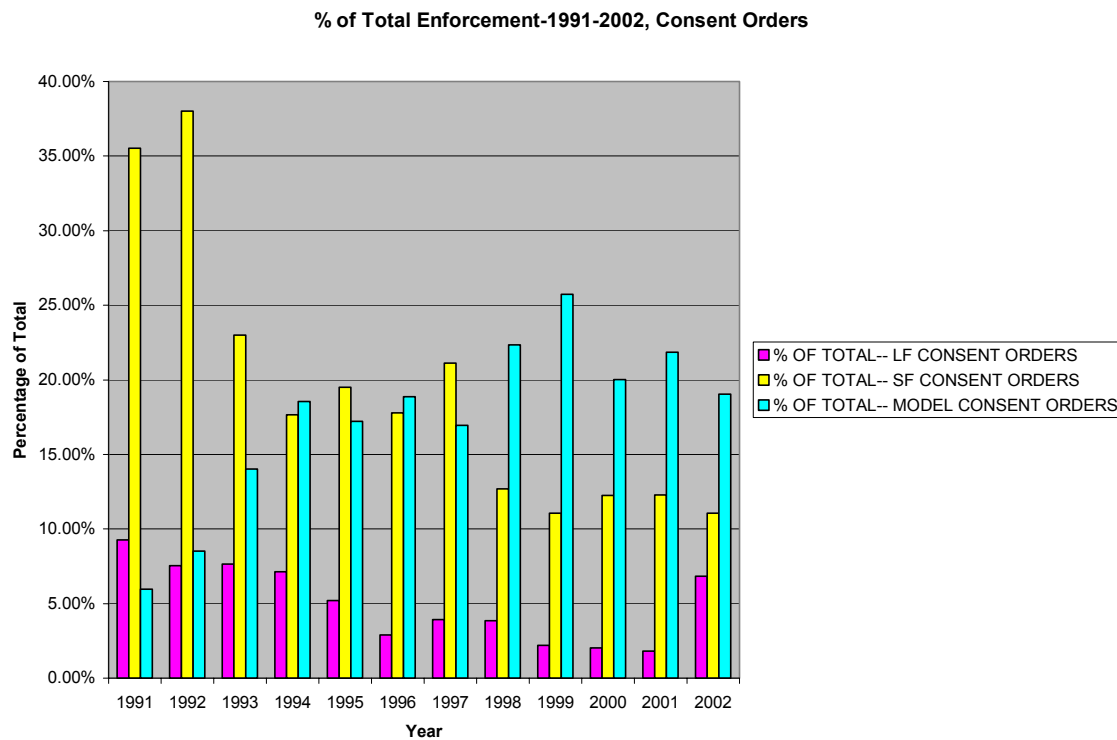
(Fig. 4)

Another way of looking at the data is by considering the percentage of total enforcement that each mechanism occupies. For case reports and NOVs (Notices of Violation) the breakdown is as follows:



(Fig. 5)

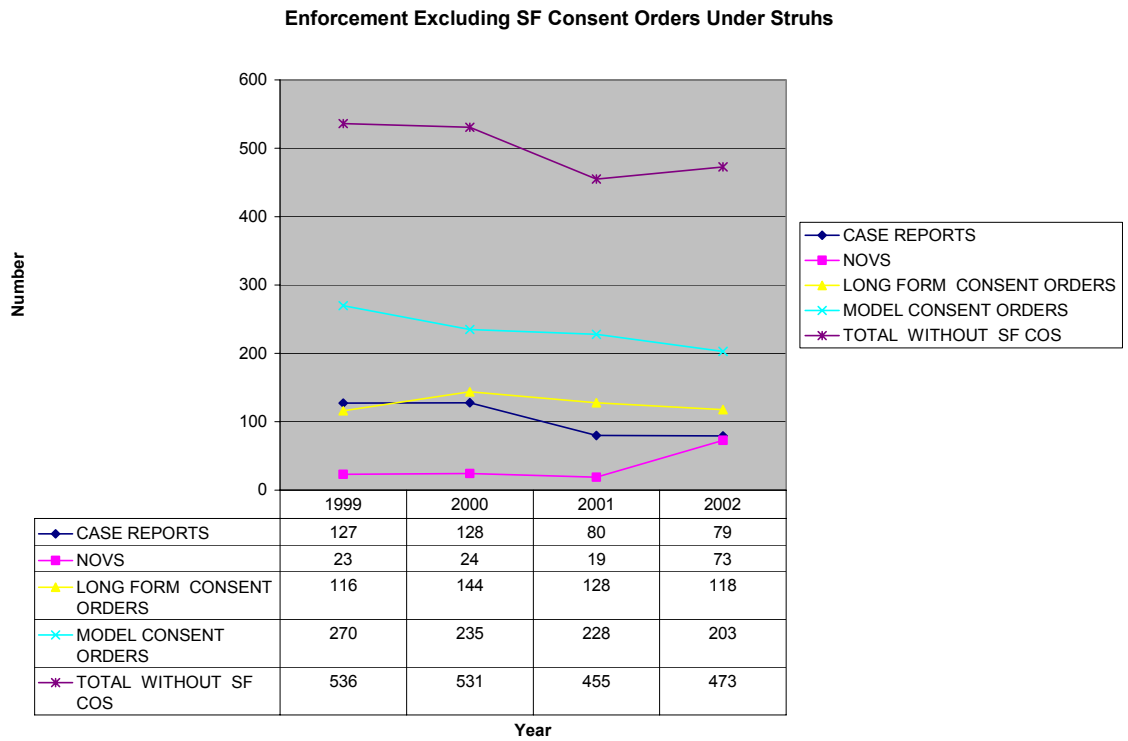
Consent orders occupy a much greater percentage of the Department's enforcement arsenal, and, once again, short form consent orders are the tool most often used:



(Fig. 6)

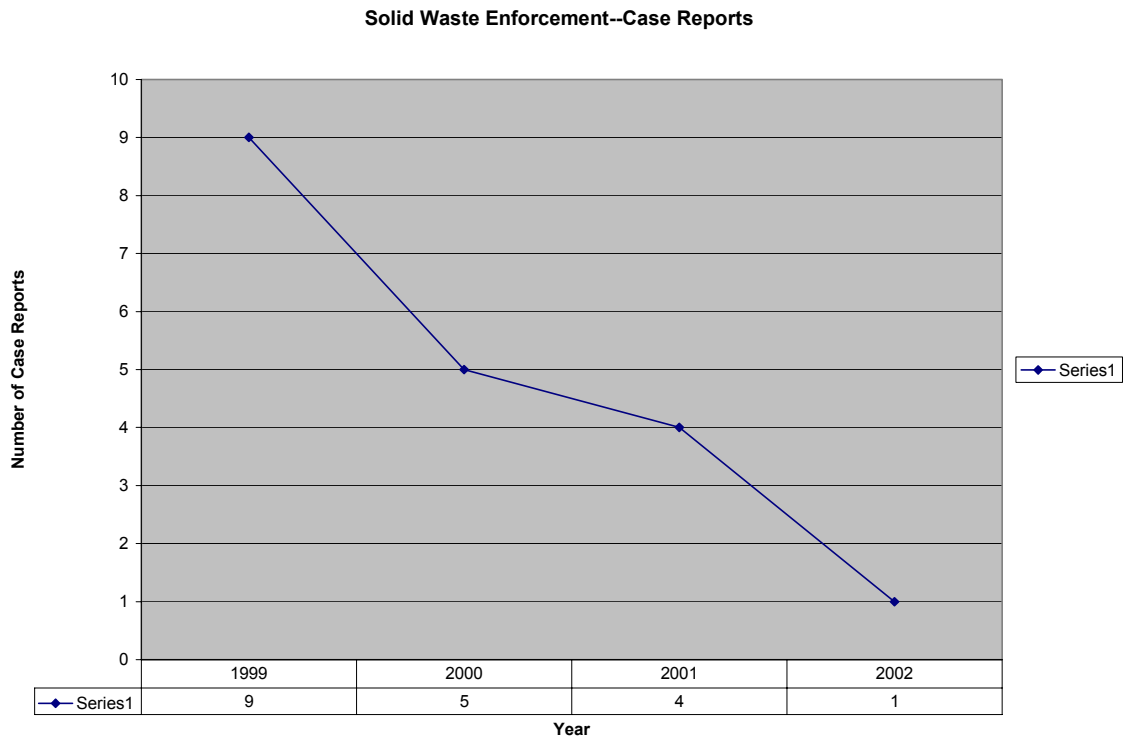
### Enforcement Under David Struhs

A brief review of Fig. 6, above, shows that the much of the Department’s enforcement numbers is based upon the issuance of short form consent orders, the least aggressive form of enforcement available to the Department. And with respect to the current administration it is abundantly clear from Figure 7, below, that *when short form consent orders are removed from the equation overall enforcement is in decline.*



(Fig. 7)

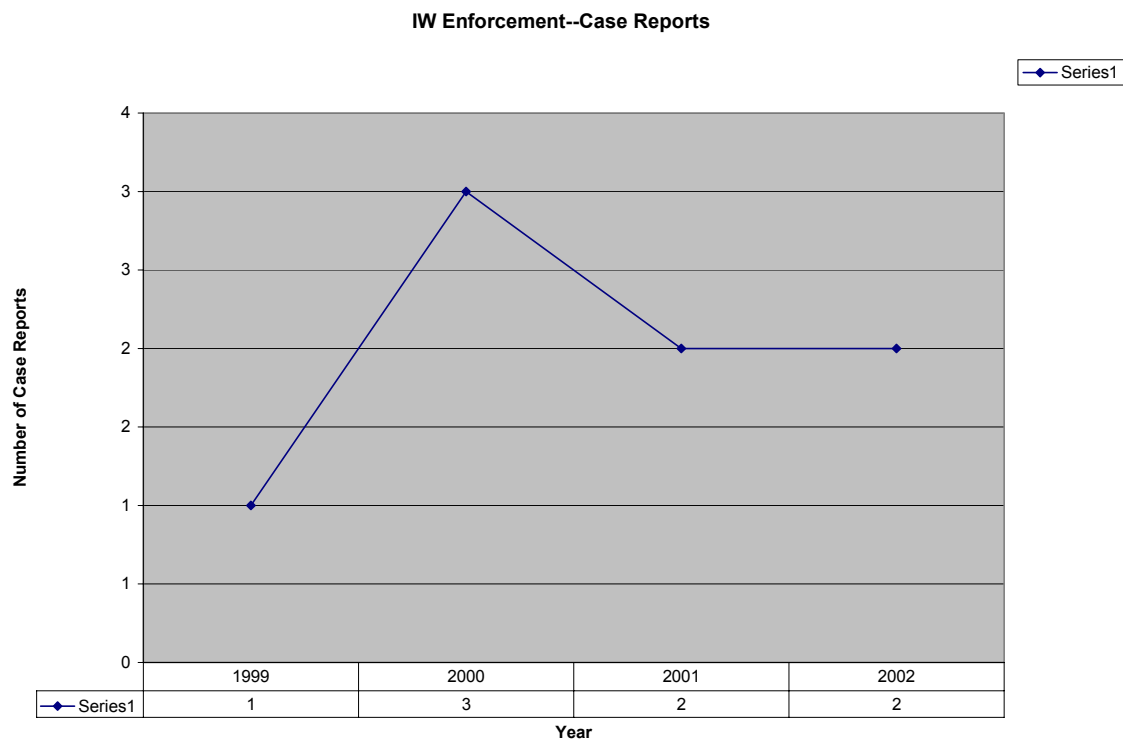
Going deeper into the numbers it is arguably most instructive to look at the number of case reports generated by the districts with respect to different program areas. In other words, how aggressive is the Department in enforcing Florida’s air program, its hazardous waste program etc. A review of those areas yields striking results. For example, there is a dramatic decline in the number of solid waste cases in which the Department is seeking judicial enforcement:



(Fig. 8)

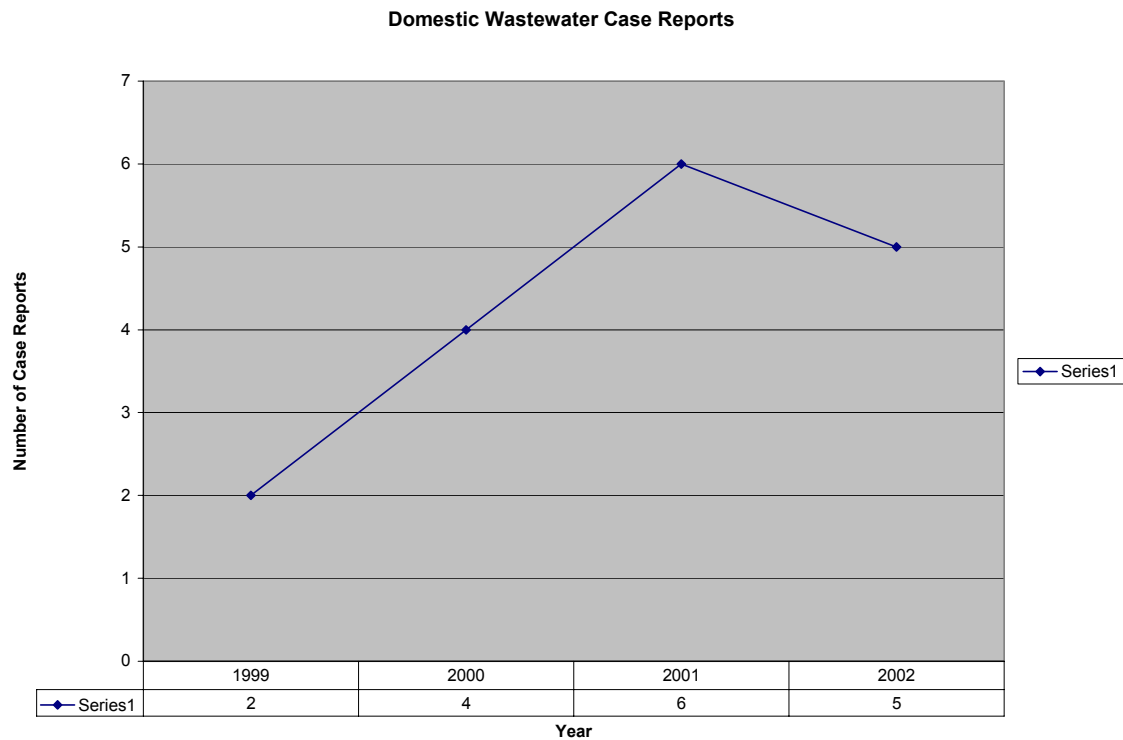


And while Industrial Waste complaints showed an initial increase, they too have leveled out:



(Fig. 9)

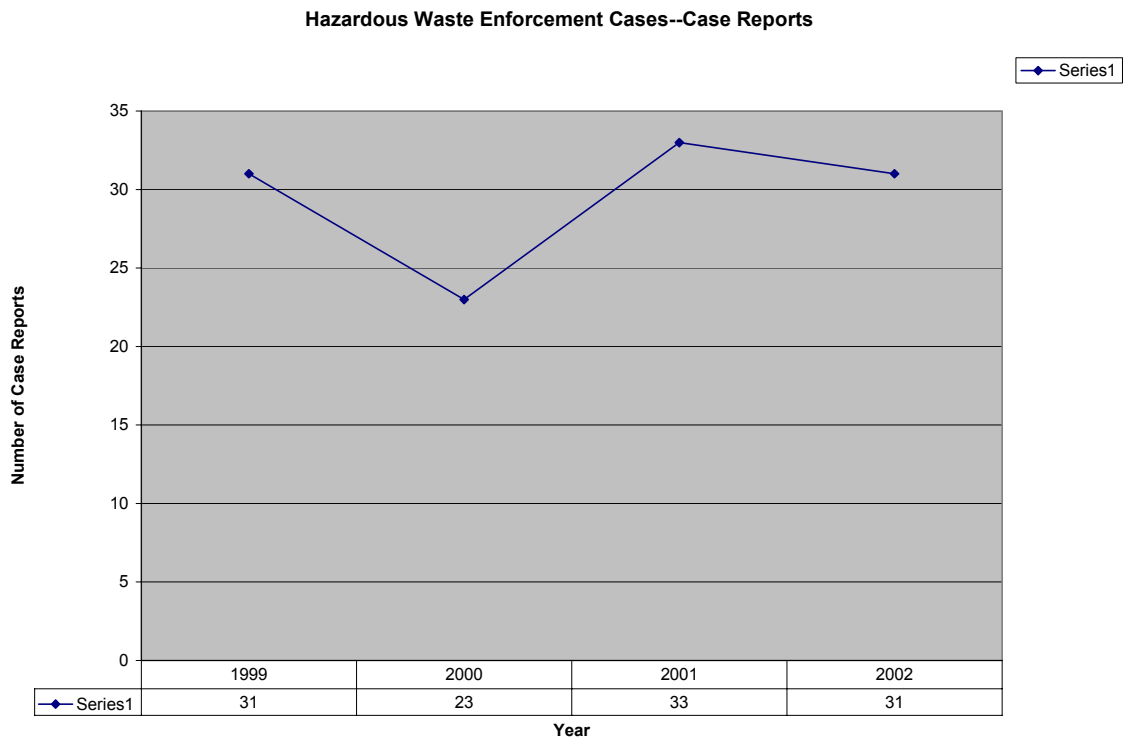
But even this chart somewhat overstates the performance when the total number of cases is considered. The maximum was three, *statewide*, in 2000. A similar trend is found with domestic wastewater cases.



(Fig. 10)

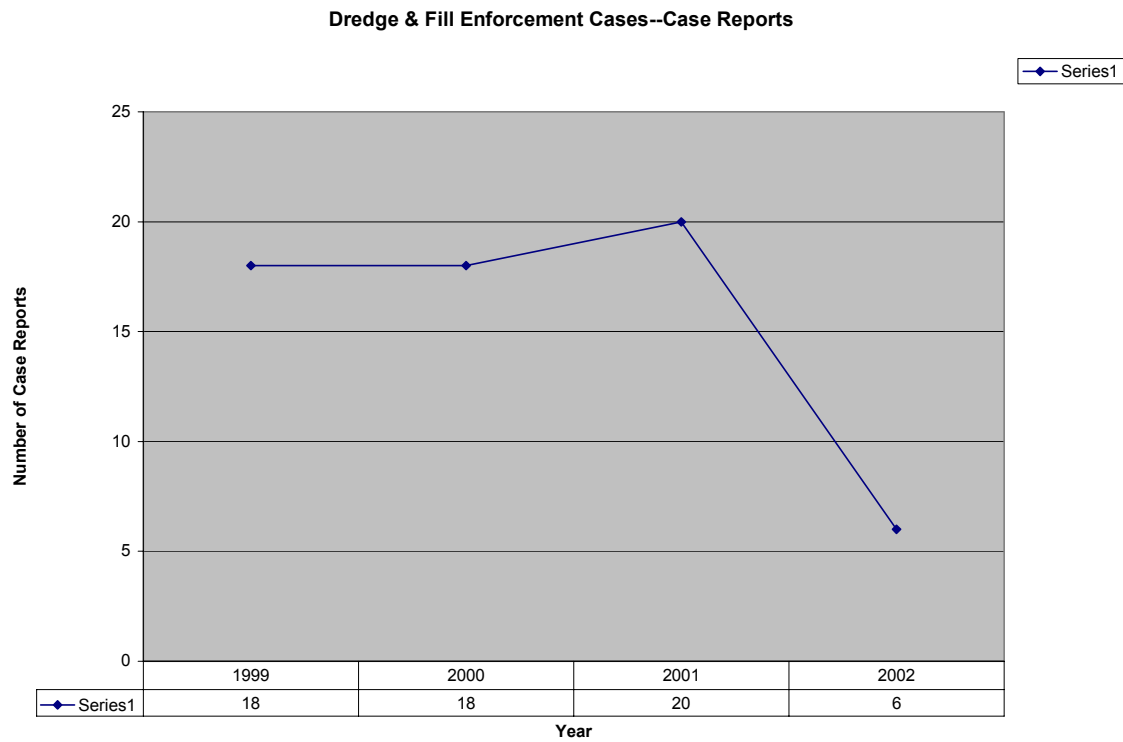
In other words, the most domestic wastewater cases brought in a single year by this administration is *six (6)* for the entire State.

Hazardous waste cases show a rather sporadic history:



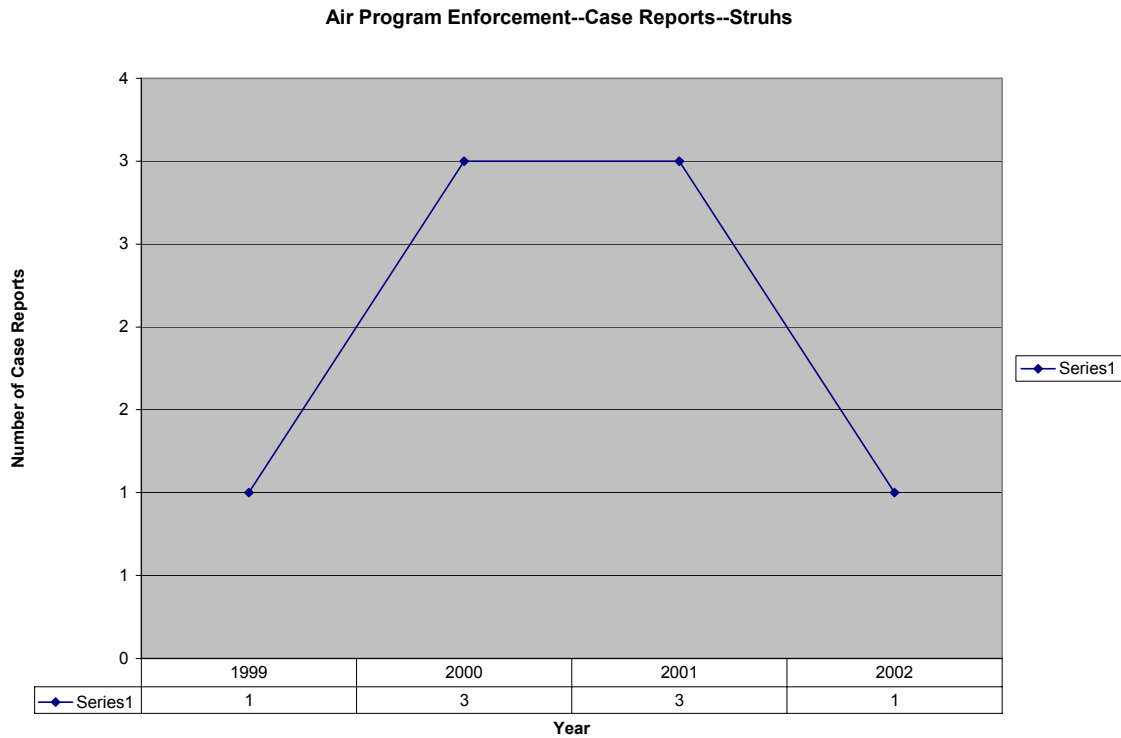
(Fig. 11)

But dredge and fill cases, those cases that involve the filling of Florida’s precious wetlands, show a dramatic decline:



(Fig. 12)

Air Pollution cases are practically non-existent under the Bush administration:



(Fig. 13)

As can be seen from the above, a total of *eight (8)* judicial enforcement cases have been sought by the districts since Secretary Struhs has been at the helm.

As seen in the above graphs, in the most important areas of environmental enforcement it is clear that the Department, under Secretary Struhs, has practically abandoned the use of judicial enforcement, i.e. the most effective and aggressive means of ensuring that Florida's environmental laws are obeyed.