

Enforcement Efforts by the Florida Department of Environmental Protection



2023 REPORT

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PREFACE

Florida is a wonderful place to call home. Florida's vast array of wildlife, water resources, and marine life deserve strong environmental policies and enforcement.

Mismanagement of environmental policy and enforcement compromises the future of our state, and like many Florida residents, I am growing increasingly concerned about the state's inability to address the serious environmental issues that threaten our well-being, such as the growing menace of toxic water pollution and climate change. Part of the solution to these growing problems must be better enforcement of environmental laws and more transparency by the DeSantis Administration.



However, we have a lot of work to do in both of these areas. As this report indicates, the state's enforcement of environmental laws has declined for three straight years and is well below its historical averages. In addition, the Governor's veto of the 2024 Safe Waterways Act shows an administration that is not serious about holding polluters accountable. The Safe Waterways Act would have provided powerful tools to warn the public about dangerous levels of pollution in their waterways and improved environmental enforcement. Additionally, just this summer, the Desantis administration signed into law a measure that removes references to climate change from state law. This measure ignores the reality of climate change. The stakes involved in these kinds of decisions are not just the quality of life for Floridians, but their actual lives.

Despite challenges, I am hopeful. It is clear that Florida residents and many elected leaders want to safeguard Florida's future and implement and enforce strong environmental policy. This report gives voice to the crucial role environmental enforcement must play in protecting public health and the environment in our state.

With all the beauty of Florida's nature comes the responsibility of working together to make Florida a better place to live for humans and wildlife alike. We hope you take a moment to read this report and give us any feedback you may have.

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SUMMARY

Since 2004, PEER has examined Florida Department of Environmental Protection (DEP) data to assess state trends in pollution enforcement.

State records show Florida's environmental enforcement actions are well below historical averages and have declined significantly in the last three years of the DeSantis administration.

Florida DEP enforces a wide array of laws that protect the state's environment and the health of its residents. These include laws protecting air resources from industrial pollution; the quality of Florida's water, rivers, lakes, estuaries, and wetlands; the state's beach and dune systems; and the environment from the improper handling and disposal of solid and hazardous wastes.

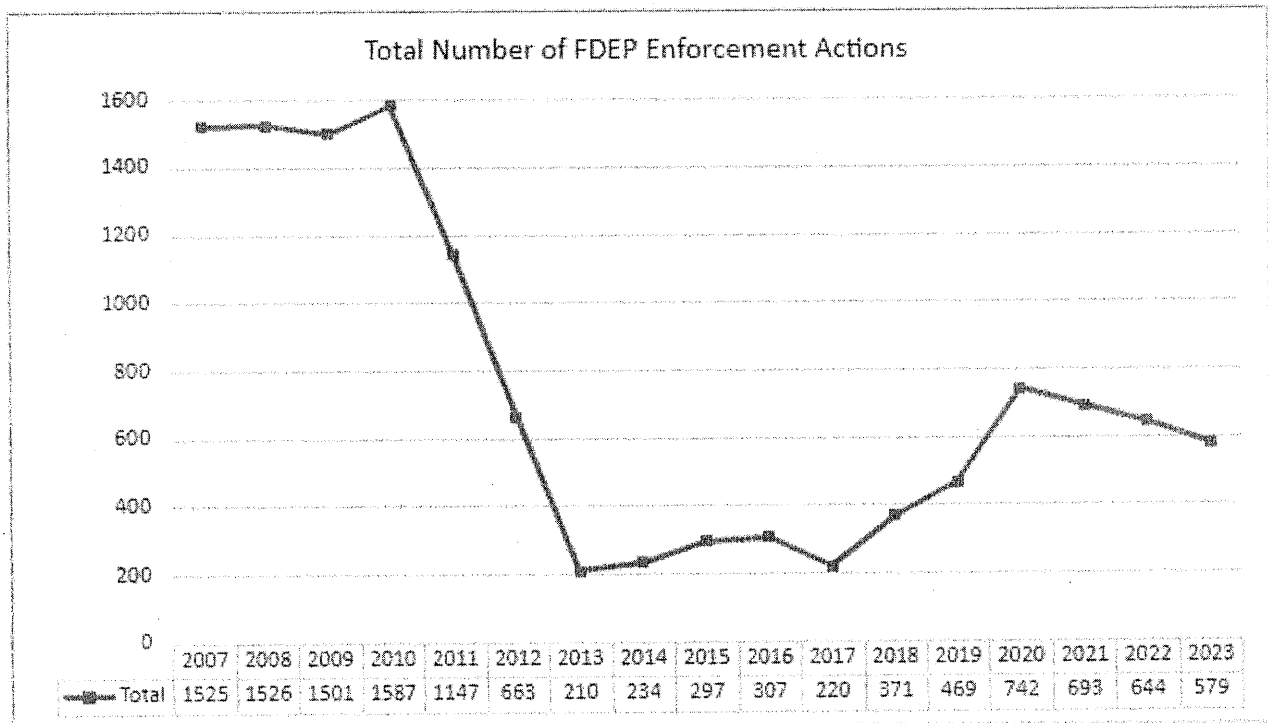
Florida's lack of enforcement of environmental laws threatens the state's water quality and its long-term economic health, including revenue from tourism. Stronger enforcement of environmental laws will help address Florida's environmental crises.

FLORIDA ENFORCEMENT DOWNWARD TREND

In this report, PEER has compiled environmental enforcement data for thirty-five years. This data reveals an enforcement program that has been in decline for over the past thirteen years.

A steady decline in enforcement actions began after former governor Rick Scott took office in 2011. The Scott administration began to favor development interests at the expense of environmental protections.

Between 2010 and 2013, the number of Florida DEP enforcement actions plummeted from 1587 to 210 under Scott's leadership.¹ During Scott's last full year in office, the number of enforcement actions was 220, an 86 percent decrease from their 2010 levels.



Governor DeSantis came to office in 2018 and was publicly more supportive of environmental programs that protected water quality than his predecessor. During his first two years as Governor, environmental enforcement actions tracked by PEER increased from 371 to 742. However, these numbers are now trending downward. In the past three years, enforcement actions have declined to 579.

An examination of environmental enforcement trends reveals that Florida's enforcement numbers remain well below their historical averages. Here is some data that helps illustrate this point.

- Between 1988 – 1995, Florida DEP had an average of 1,048 cases each year;
- Between 1996 – 2010, Florida DEP had an average of 1,303 cases each year; and
- Between 2011 – 2023, Florida DEP had an average of 505 cases each year.
- Although Governor DeSantis had promised to improve Florida's response to environmental crises when he took office in 2018, the number of enforcement actions by Florida DEP in 2023 was 63 percent below what it was in 2010.
- Recent efforts by Florida DEP to improve environmental enforcement are sputtering. Environmental enforcement actions under the DeSantis administration have decreased from 742 to 579 in the past three years after rising during the first two years of his administration.

These trends mask an even bigger problem. This decline in enforcement has occurred during a time of explosive population growth. In 1995, Florida had a population of 14,537,875 residents. By 2010, its population grew to 18,801,310; in 2023, Florida's population was estimated to have reached 22,610,726.ⁱⁱ Under normal circumstances, this population growth would result in more environmental violations, not fewer, as businesses and development grow to accommodate this influx of residents.

ENFORCEMENT OF THE DREDGE AND FILL AND DOMESTIC WASTEWATER PROGRAMS

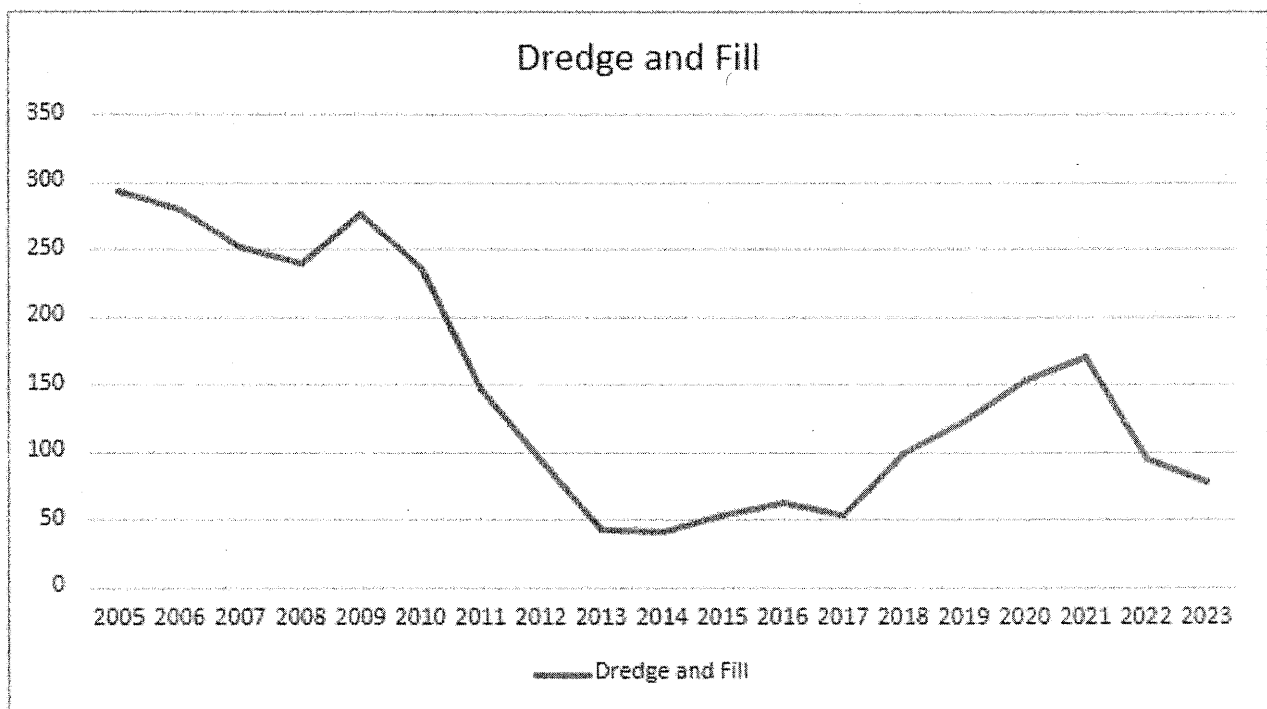
Problems with Florida's environmental enforcement program become apparent when looking at the state's dredge and fill and domestic wastewater programs, two of the largest programs in Florida. The dredge and fill program covers the excavation of wetlands and surface waters and the filling of these wetlands and waters with any materials, such as rocks, sand, and sea walls. The domestic wastewater program covers the proper treatment and disposal of domestic wastewater.

DREDGE AND FILL

Until 2010, the dredge and fill program reliably initiated at least two hundred cases each year. However, that changed when Governor Scott took office, at which point the number of new cases plummeted as the number of new cases steadily declined from 177 in 2011 to 41 in 2014, which marked the lowest point in the agency's history. There has been some modest improvement since then. However, in 2023, there were 78 cases, a decline from 95 cases the year before and a 73 percent decline in the number of enforcement actions since 2005.

In late 2020, the U.S. Environmental Protection Agency (EPA) granted Florida approval to implement a Clean Water Act (CWA) Section 404 program, which transferred permitting and enforcement authority under CWA Section 404, the national dredge and fill program, from the U.S. Army Corps of Engineers to the State of Florida for a broad range of water resources within the state.

In February 2024, a federal court issued an order divesting Florida of its authority to issue Section 404 permits in Florida in response to a lawsuit brought by environmental groups challenging EPA's approval of Florida's 404 permitting authority under the Endangered Species Act.ⁱⁱⁱ The state is appealing that order. Our data collection ends in 2023, so the effects of this ruling are not reflected in our data.



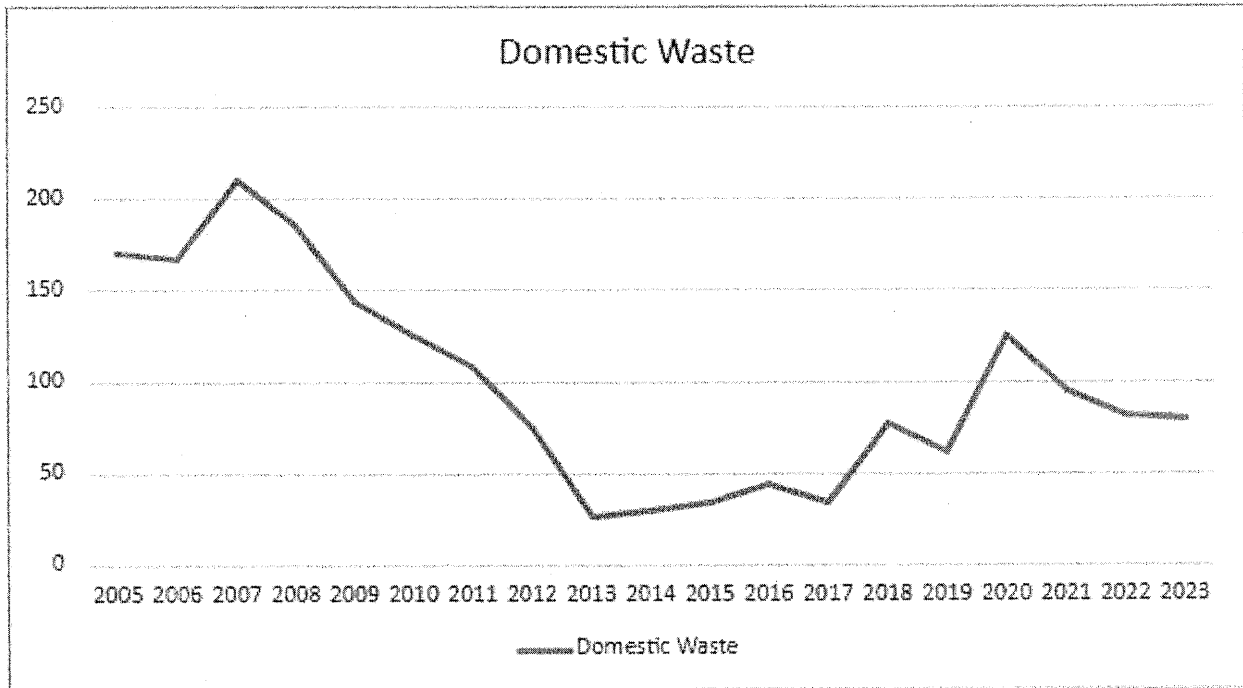
Despite Florida's new Section 404 responsibilities, enforcement actions declined from 171 in 2021 to 95 in 2022 and only 80 in 2023, providing powerful indications that the dredge and fill program was failing to provide adequate compliance oversight of the program.

DOMESTIC WASTEWATER

Likewise, the state's domestic wastewater program has seen a steady slide in the number of enforcement actions despite massive amounts of sewage being released into the state's waterways. State records indicate that since January of 2024, 773 incidents of sewage releases have been reported. Additionally, in 2023, 1,672 incidents were reported; in 2022, 1,832 were reported; and in 2021, 1,684 were reported.^{iv} According to one report by WUFT^v, between

2000 and early 2022, more than 2.4 billion gallons of wastewater spilled onto state lands and into state waters.

Yet enforcement actions in this program are well below their historical averages. From 2005 to 2010, Florida DEP's domestic wastewater program averaged 175 enforcement actions a year. Between 2017 and 2022, the average was only 95. Like other enforcement programs, the number of enforcement actions in the last few years has declined, from 125 in 2020 to 80 in 2023.



AS FLORIDA WATER QUALITY SUFFERS, AN ENFORCEMENT BACKBONE IS LACKING

As Florida's environmental enforcement program has fallen into disrepair, the state lays claim to some of the dirtiest water in the country. It is fouled by pollution from sewage overflows, fertilizer runoff from farms, a reliance on septic systems from homes, and rainwater washing over impervious surfaces and carrying pollutants into waterways.

Recent data submitted by Florida DEP to the U.S. Environmental Protection Agency shows mixed news on water quality during the DeSantis administration. The data shows a growing number of the state's water bodies, including estuaries and lakes, do not meet water quality standards, although the quality of coastal waters and streams has improved somewhat.^{vi}

Despite this, in June 2024, Governor DeSantis vetoed the Safe Waterways Act, a bill that would have required health warnings about bacterial contamination in the ocean and other

Florida waterways.^{vii} The bill would have required state Department of Health advisories if water quality did not meet standards, the closing of affected waterways if necessary, and cities and towns to notify the state and public of any contaminated waterways. It would have also required would have also required measures for clean-water enforcement.^{viii}

The Governor's veto of the Safe Waterways Act sends a powerful signal to local government that they can choose not to inform the public about dangerous water quality conditions on their beaches. This secrecy will mean less pressure on state and local agencies to clean up waterways and take enforcement actions against the parties responsible for this pollution.

Florida's waterways have reached a tipping point. Cleaning them up and minimizing dangerous pathogens, other pollutants, and future harmful algae blooms will require more than money. It will also require sustainable and smart development policies coupled with more regulatory enforcement against polluters and state and local governments being honest with residents about water quality issues in their communities.

SOME IMPROVEMENT, BUT CONTINUED TROUBLE FOR MANATEES

Manatees, the iconic symbol of Florida's wildlife, are also a symbol of the state's struggle to address water quality issues in the state. Although the state has made some improvements, particularly in the Indian River Lagoon, the situation is still dire. In 2023, 555 manatees died.^{ix}

The main culprit is polluted waterways, including increased harmful algal blooms (HABs), which kill off the state's sea grass, the staple of the manatee diet.^x Additionally, manatees ingest the algae itself, which causes gastrointestinal infections and leads to their premature deaths.^{xi}

Many groups are working to restore habitat in the Indian River Lagoon and improve water quality by planting living shorelines, clams, oysters, and seagrasses.^{xii} In particular, the Indian River Lagoon National Estuary Program helps fund the Seagrass Nursery Network to restore seagrass to the lagoon.^{xiii} Thus, there has been a modest improvement in seagrass growth in one portion of the Indian River Lagoon called Mosquito Lagoon.^{xiv} However, the majority of Indian River Lagoon remains devoid of seagrass.^{xv}

Additionally, counties that contribute to nutrient pollution have upgraded their wastewater treatment facilities, removing excess nutrients from the water and treating faulty septic systems.^{xvi} All of these efforts have improved water quality in the Indian River Lagoon. However, there is still much more work to do, and state-level environmental enforcement will need to play a large role in keeping the momentum going by keeping waterways clean, thereby protecting seagrass from being killed off.

CONCLUSION

Thirty-five years of Florida environmental enforcement data compiled by PEER depict an enforcement program in crisis, hollowed out relentless assaults on environmental protections by government leaders over the past twelve years.

Florida, which prides itself on clean water and marine life and derives a significant percentage of its income from tourists who come to experience its natural beauty, is now known as the state with some of the dirtiest water bodies in the United States.

Unfortunately, Governor DeSantis' veto of the Safe Waterways Act shows how he puts polluters above the health and well-being of those dependent on clean water in Florida. This sentiment is backed up by environmental enforcement data, which shows a continued decline in environmental enforcement over the past three years and enforcement activity well below the historical averages. Pouring money into infrastructure projects will not be enough to clean up Florida's dirty water and address other looming environmental crises in Florida. Holding polluters accountable through enforcement actions must be part of the equation.

ⁱ PEER defines enforcement as the sum of Case Reports, all Consent Orders, Notice of Violations, and Final Orders. See Appendix A for more information.

ⁱⁱ *QuickFacts Florida*, U.S. CENSUS (last visited July 9, 2024) <https://www.census.gov/quickfacts/FL>.

ⁱⁱⁱ Dickinson Wright, *Florida Loses Wetland Permitting Authority*, JDSUPRA (April 3, 2024), [^{iv} *Pollution Notice Enterprise Solutions*, FL. DEP. OF ENV. PROT. \(last visited June 24, 2024\), <https://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1>.](https://www.jdsupra.com/legalnews/florida-loses-wetland-permitting-5089826/#:~:text=The%20underlying%20action%20challenged%20in,Waters%20of%20the%20U.S.%2C%20includ; see also Jeffrey R. Porter, The Judge's Decision Vacating EPA's Approval of Florida's 'Dredge and Fill' Permit Authority Has Serious Implications for our Renewable Energy Future, NATL. L.REV. 176 (Feb. 2024), https://natlawreview.com/article/judges-decision-vacating-epas-approval-floridas-dredge-and-fill-permit-authority.</p></div><div data-bbox=)

^v Alexandra Harris, *Spillover*, WUFT NEWS AND THE UF COLLEGE OF JOURNALISM AND COMMUNICATIONS (last visited July 7, 2024), <https://projects.wuft.org/watershed/2022/08/15/spillover/>.

^{vi} Yacob Reyes, *Is Florida's water 'dirtier' under DeSantis? Here's what the data show*, TAMPA BAY TIMES (January 15, 2023) <https://www.tampabay.com/news/florida-politics/2023/01/15/desantis-environment-water-lindsay-cross-politifact-red-tide/#:~:text=Its%20report%20was%20released%20March,for%20swimming%20and%20aquatic%20life.>

^{vii} Anthony Man, *DeSantis vetoes bill to improve public warnings about bacteria contaminating beaches, public waterways*, SUNSENTINEL (June 29, 2024), <https://www.sun-sentinel.com/2024/06/29/desantis-vetoes-bill-to-improve-public-warnings-about-bacteria-contaminating-beaches-public-waterways/>.

^{viii} *HB 177 (2023) – Safe Waterways Act*, FLORIDA HOUSE OF REPRESENTATIVES (last visited July 11, 2024), <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76898#:~:text=Safe%20Waterways%20Act%3A%20Requires%20DOH,in%20specified%20manner%3B%20provides%20municipalities%20%26.>

^{ix} *Preliminary 2023 Manatee Mortality Table by County From 01/01/2023 to 12/31/2023*, FL. FISH AND WILDLIFE CONS. COMM. (last visited August 1, 2024), [HTTPS://MYFWC.COM/MEDIA/AIHNI5NR/YEARTODATE.PDF](https://myfwc.com/MEDIA/AIHNI5NR/YEARTODATE.PDF).

^x *Manatee mortality in Mud River during winter 2024*, FL. FISH AND WILDLIFE CONS. COMM (last visited June 24, 2024), <https://myfwc.com/research/manatee/rescue-mortality-response/statistics/mortality/2024/mud-river/>.

^{xi} *Id.* Six manatee carcasses were reported in Mud River in the span of only two months, an abnormally high number for this location. Scientists tested the cells and tissues of the manatees' small intestines and found that they died from a bacterial infection, the result of a major dietary change from seagrass to toxic macroalgae.

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} *Algae Blooms and Seagrass Loss*, SAVE THE MANATEE (last visited June 25, 2024), <https://savethemanatee.org/manatees/algae-blooms/>.

^{xv} *Id.*

^{xvi} *Id.*