

# Guidelines for Characterizing Air Violations

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## Introduction

Department of Environmental Protection (DEP) Directive 923 is the Department's controlling enforcement document. These guidelines are intended to complement Directive 923 to determine the appropriate civil and administrative penalties to seek when settling enforcement actions. These guidelines are intended to provide a rational, fair, and consistent method to determine the appropriate enforcement response for air violations.

**\*\*While as a general matter, Florida does recognize that "the statute of limitations in environmental contexts where there is a continuing invasion of rights does not begin to run until the wrong invasion of rights that constitutes the violation ceases," instances where violations are approaching the 4 year mark should be reviewed as soon as possible with the Office of General Counsel to preserve all legal options.**

## Administrative Penalties (ELRA)

Under the Environmental Litigation and Reform Act (ELRA), the Department can issue an administrative penalty for certain violations through a Notice of Violation (NOV). Administrative penalty amounts are set by statute. For additional details, see DEP Directive 923 and Section 403.121 of the Florida Statutes (F.S.).

Violation (statutory language)	Base Penalty	Cite (F.S.)
Air emission permit exceedance, or unpermitted/unauthorized air emission	\$1,500	403.121(3)(f)
<i>Add-On 1</i> – If the emission was from a major source and the source was major for the pollutant in violation, add \$4,500	+ \$4,500	
<i>Add-On 2</i> – If the emission was more than 150% of the allowable level, add \$1,500	+ \$1,500	
Failure to install, maintain, or use a required pollution control system or device	\$6,000	403.121(4)(b)
Failure to obtain a required permit before construction or modification	\$4,500	403.121(4)(c)
Failure to conduct required monitoring or testing	\$3,000	403.121(4)(d)
Failure to construct in compliance with a permit	\$3,000	403.121(4)(d)
Failure to maintain required staff to respond to emergencies	\$1,500	403.121(4)(e)
Failure to conduct required training	\$1,500	403.121(4)(e)
Failure to prepare, maintain, or update required contingency plans	\$1,500	403.121(4)(e)
Failure to adequately respond to emergencies to bring an emergency situation under control	\$1,500	403.121(4)(e)
Failure to submit required notification to the Department	\$1,500	403.121(4)(e)

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Failure to prepare, submit, maintain, or use required reports or other required documentation	\$750	403.121(4)(f)
Failure to comply with any other Departmental regulatory statute or rule requirement	\$1,000	403.121(5)

### **Multi-Day Penalties and Adjustment Factors**

DEP Directive 923 discusses when and how to assess multi-day penalties. The directive also sets out various adjustment factors to be used when calculating a penalty. These factors include:

- Knowing, deliberate, or chronic violations.
- Good faith efforts to comply (or lack of good faith efforts to comply) either prior to or after Department discovery of the violation.
- History of noncompliance.
- Economic benefit of noncompliance.
- Ability to pay.
- Other unique factors.

### **In-Kind Penalties and Pollution Prevention Projects**

In-Kind Penalties and Pollution Prevention Projects should be considered as provided in Directive 923.

### **Penalty Calculation Matrix for Air Violations**

#### **Matrix Factor Considerations**

The Department's Penalty Matrix for cases other than Potable Water, Hazardous Substances, or Hazardous Waste, found in Directive 923, is reproduced below. Below the matrix are tables identifying what types of violations fall into what range of the matrix. It is important to remember when placing a violation in the 'Major' category for Environmental Harm, the violation must have actually resulted in pollution in a manner that represents a substantial threat to human health or the environment. Moderate violations are those violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment. Minor violations are those violations that actually or are reasonably expected to result in a minimal threat to human health or the environment.

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E N V I R O N M E N T A L  H A R M	EXTENT OF DEVIATION FROM REQUIREMENT			
		MAJOR	MODERATE	MINOR
	MAJOR	\$15,000 to \$13,000	\$12,999 to \$11,000	\$10,999 to \$9,000
	MODERATE	\$8,999 to \$7,000	\$6,999 to \$5,000	\$4,999 to \$3,000
	MINOR	\$2,999 to \$2,000	\$1,999 to \$1,000*	\$1,000*

\* Environmental Education may be an acceptable substitute to offset penalties on a one-time basis

### Matrix Factors—Emission Standard Exceedances

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	1. <b>Major</b> or <b>synthetic minor</b> source exceedances of emissions standards that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Emissions greater than or equal to 200 percent of allowable.
<b>Moderate</b>	1. <b>Major, synthetic minor, or minor source</b> exceedances of emissions standards that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Emissions greater than or equal to 150 percent of allowable, but less than 200 percent of allowable.
<b>Minor</b>	1. <b>Major, synthetic minor, or minor source</b> exceedances of emissions standards that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Emission standard exceedances at facilities operating under an <b>air general permit</b> .	1. Emissions greater than 100 percent of allowable, but less than 150 percent of allowable.

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### Matrix Factors—Visible Emission Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	[Reserved]	<ol style="list-style-type: none"> <li>1. Percent opacity greater than or equal to 200 percent of allowable.</li> <li>2. Percent opacity greater than or equal to 150 percent of allowable, but less than 200 percent of allowable, for more than 3 hours during an operating day.</li> </ol>
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. <b>Major, synthetic minor, or minor source</b> violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Percent opacity greater than or equal to 150 percent of allowable, but less than 200 percent of allowable, for 3 hours or less during an operating day.</li> <li>2. Percent opacity greater than 100 percent of allowable, but less than 150 percent of allowable, for more than 3 hours during an operating day.</li> </ol>
<b>Minor</b>	<ol style="list-style-type: none"> <li>1. <b>Major, synthetic minor, or minor source</b> violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> <li>2. Facilities operating under an <b>air general permit</b>.</li> </ol>	<ol style="list-style-type: none"> <li>1. Percent opacity greater than 100 percent of allowable, but less than 150 percent of allowable, for 3 hours or less during an operating day.</li> </ol>

### Matrix Factors—Testing Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	[Reserved]	<ol style="list-style-type: none"> <li>1. Tests not conducted or conducted 60 days or more after the due date.</li> </ol>
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Testing requirement violations at a <b>major, synthetic minor, or minor source</b> that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Tests conducted 30 days or more after, but less than 60 days after the due date.</li> </ol>
<b>Minor</b>	<ol style="list-style-type: none"> <li>1. Testing requirement violations at a <b>major, synthetic minor, or minor source</b> that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> <li>2. Testing requirement violations at an <b>air general permit</b> facility.</li> </ol>	<ol style="list-style-type: none"> <li>1. Test conducted less than 30 days after the due date.</li> </ol>

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### Matrix Factors—Construction or Operation without a Permit

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. <b>Major</b> or <b>synthetic minor</b> source <i>operating</i> without a permit in a manner that actually results in pollution that represents a substantial threat to human health or the environment.	1. Construction or operation of a source prior to obtaining required permit.
Moderate	1. <b>Major, synthetic minor, or minor source</b> <i>operating</i> without a permit in a manner that actually or is reasonably expected to result in pollution that represents a significant threat to human health or the environment.	1. Continued construction or operation of a source following permit expiration. 2. Constructing with unauthorized variations from a permit, and the variance directly impacts emissions.
Minor	1. <b>Major, synthetic minor, or minor source</b> <i>operating</i> without a permit in a manner that actually or is reasonably expected to result in pollution that represents a minimal threat to human health or the environment. 2. <b>Major, synthetic minor, or minor source</b> <i>constructing</i> without a permit or registration. 3. <b>Air general permit</b> facility operating or <i>constructing</i> without registration.	1. Constructing with unauthorized variations from a permit, and the variance does not directly impact emissions.

### Matrix Factors—Monitoring Performance Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	1. Monitors not installed, calibrated, or certified. 2. Monitors installed, but not operated (i.e., no attempt to operate monitor).
Moderate	1. Monitoring violations at a <b>major</b> or <b>synthetic minor</b> source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Failure to meet minimum monitor availability requirements, and no other estimate or testing of emissions is performed. 2. Monitors not properly maintained.
Minor	1. Monitoring violations at a <b>major, synthetic minor, or minor source</b> that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Monitoring violations at an <b>air general permit</b> facility.	1. Failure to meet minimum monitor availability requirements, but emissions are estimated or testing is performed.

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### Matrix Factors—Recordkeeping Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	[Reserved]	1. Records not maintained or incompletely maintained for 50 percent or greater of the time in any calendar quarter.
<b>Moderate</b>	1. Recordkeeping violations at a <b>major</b> or <b>synthetic minor</b> source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Records not maintained or incompletely maintained for 25 percent or greater of the time, but less than 50 percent of the time, in any calendar quarter.
<b>Minor</b>	1. Recordkeeping violations at a <b>major</b> or <b>synthetic minor</b> source that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Recordkeeping violations at a <b>minor source</b> or an <b>air general permit</b> facility.	1. Records not maintained or incompletely maintained for less than 25 percent of the time in any calendar quarter. 2. Complete records maintained, but maintained in the wrong format.

### Matrix Factors—Reporting and Notification Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	[Reserved]	1. Report or notification not submitted, or submitted 60 days or more after the due date. 2. Incomplete or inaccurate annual statement of compliance.
<b>Moderate</b>	1. Reporting or notification violations at a <b>major</b> or <b>synthetic minor</b> source that are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Report or notification submitted 30 days or more after, but less than 60 days after the due date.
<b>Minor</b>	1. Reporting or notification violations at a <b>major</b> or <b>synthetic minor</b> source that are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Reporting or notification violations at a <b>minor source</b> or an <b>air general permit</b> facility.	1. Report or notification submitted less than 30 days after the due date.

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### Matrix Factors—Permit Conditions Limiting Capacity

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	1. <b>Major</b> or <b>synthetic minor</b> source limiting capacity violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Operation greater than or equal to 150 percent of allowable.
<b>Moderate</b>	1. <b>Major, synthetic minor, or minor source</b> limiting capacity violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Operation greater than or equal to 115 percent of allowable, but less than 150 percent of allowable.
<b>Minor</b>	1. <b>Major, synthetic minor, or minor source</b> limiting capacity violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Limiting capacity violations at an <b>air general permit</b> facility.	1. Operation greater than 100 percent of allowable, but less than 115 percent of allowable.

### Matrix Factors—Improper Operation or Maintenance

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	1. <b>Major</b> or <b>synthetic minor source</b> violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Equipment installed but totally inoperative. 2. Very poor operation or maintenance such that control device is considered to be completely bypassed. 3. Operation, maintenance, or work practice measures not implemented.
<b>Moderate</b>	1. <b>Major</b> or <b>synthetic minor source</b> violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Equipment installed but operating at reduced efficiency as evidenced by data collected from inspections or tests. 2. Poor operation or maintenance such that the control device is considered to be partially bypassed. 3. Operation, maintenance, or work practice measures partially implemented as evidenced by records showing performance of some but not all required activities.
<b>Minor</b>	1. <b>Major</b> or <b>synthetic minor</b> source violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Violations at a <b>minor source</b> or an <b>air general permit</b> facility.	1. Operation, maintenance, or work practice measures are implemented that are effective and equivalent to – but different from – the required measures.

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### Matrix Factors—Circumvention

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. <b>Major</b> or <b>synthetic minor source</b> violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	1. Deliberate, willful, or wanton.
Moderate	1. <b>Major, synthetic minor source, or minor source</b> violations that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Negligent.
Minor	1. <b>Major, synthetic minor, or minor source</b> violations that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. 2. Violations at an <b>air general permit</b> facility.	[Not applicable]