

Guidelines for Characterizing Drinking Water Violations

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 amount of 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 drinking water 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 wrongful 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.)
For a drinking water contamination violation	\$3,000	403.121(3)(a)
<i>Add-On 1</i> – If the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level (MCL), fecal coliform bacteria violation, add \$1,500	+ \$1,500	403.121(3)(a)
<i>Add-On 2</i> – If the violation occurs at system, add \$1,500	+ \$1,500	403.121(3)(a)
<i>Add-On 3</i> – If any Maximum Contaminant Level is exceeded by more than 100 percent, add \$1,500	+ \$1,500	403.121(3)(a)
Failure to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance	\$4,500	403.121(3)(a)
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)

Guidelines for Characterizing Drinking Water Violations

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)
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 not otherwise identified in this section	\$1,000	403.121(5)

*The administrative penalty assessed for a public water system serving a population of more than 10,000 may not be less than \$1,000 per day per violation [402.121(2)(b), F.S.].

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. The adjustment factors can be used in two ways. After determining the correct box according to the matrix factors (minor, moderate, or major), the adjustments can help determine whether to use the midpoint (default), low end, or high end of the penalty range. In addition, after a penalty amount from the matrix has been determined, adjustment factors can be used to decrease or increase a penalty, down to zero or up to the statutory maximum. These factors include:

- 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.
- Other unique factors.

In-Kind Penalties and Pollution Prevention Projects

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

Guidelines for Characterizing Drinking Water Violations

Penalty Calculation Matrix

Matrix Factor Considerations

The DEP 923-defined levels for environmental harm and extent of deviation are found in the table below and should be applied when evaluating drinking water violations for penalty calculation. This table can be referenced when considering unique violations and should be used in the absence of a program specific matrix table for the violation.

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Violations that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	The violator deviates from the requirements of the law by a significant extent (e.g. an order of magnitude or more) or the violation was willful and intentional.
Moderate	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.	The violator deviates from the legal requirements of the law significantly but for a short period of time and/or most of the requirements are implemented as intended.
Minor	Violations that actually or are reasonably expected to result in a minimal threat to human health or the environment.	The violator deviates somewhat from the requirements of the law but most of the requirements are met.

The Department's Penalty Matrix for drinking water cases is found below.

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	\$7,500 to \$6,200	\$5,999 to \$4,500	\$4,499 to \$3,450
	MODERATE	\$3,449 to \$2,400	\$2,399 to \$1,500	\$1,499 to \$900
	MINOR	\$899 to \$750	\$750*	\$750*

*Environmental Education may be an acceptable substitute.

Guidelines for Characterizing Drinking Water Violations

Small System Adjustment Factors*

Based on a drinking water system type: (Transient Non-Community, Nontransient Non-Community, Community) and population served, penalty amounts can be adjusted downward if deemed appropriate using the table listed below.

Population	PWS Type "N" Transient Non-Community	PWS Type "P" Nontransient Non-Community	PWS Type "C" Community
25 - 100	65%	60%	50%
101 - 350	40%	35%	25%
351 - 3,300	30%	25%	20%

*If it is determined that the violations were knowing, deliberate, or chronic violations, penalties should be calculated by using the top of the ranges.

PERMITTING AND MODIFICATIONS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to obtain Department approval or give notification prior to a major component, e.g., service main, being placed into or returned to operation.	1. No notification provided. 2. Discovery by department.
Moderate	Failure to provide written notification for a general permit to the Department before beginning work or alterations.	1. Work or alterations placed into service after submittal of some or all required documentation but without Department approval or clearance. 2. Notification provided at 13 days or less before beginning work on alterations or after alterations began.
Minor	Where no permit is required, failure to provide written notification before beginning work or alterations.	Notification not provided to the Department at least 14 days before beginning work on alterations.

RECORDKEEPING – GENERAL RECORDS RETENTION [RULE 62-550.720, F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	N/A	Records retained five years less than the required retention time.
Moderate	Between 25% to 50% of records not retained as required.	Records retained two years less than the required retention time.
Minor	Less than 25% of records not retained as required.	Records retained one year less than the required retention time.

Guidelines for Characterizing Drinking Water Violations

RECORDKEEPING – OPERATIONS AND MAINTENANCE (O&M) LOGS AND MONTHLY OPERATION REPORTS (MOR)

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Falsification of entries in the O&M logs and monthly operations reports	Any falsification noted in the O&M logs and/or MORs
Moderate	Failure to record in O&M logs and monthly operation reports the residual disinfectant concentration, temperature of the water at the point where residual disinfectant concentration is monitored, and the pH of the water at the point where residual disinfectant concentration is monitored.	More than 30 days of missing entries in the O&M logs and/or MORs per monitoring period.
Minor	Failure to record in O&M logs and monthly operation reports the residual disinfectant concentration, temperature of the water at the point where residual disinfectant concentration is monitored, and the pH of the water at the point where residual disinfectant concentration is monitored.	More than 7 days of missing entries in the O&M logs and/or MORs per monitoring period.

SETBACKS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Well construction less than 100 ft. from a sanitary hazard that poses a potentially high risk as defined in 62-555.312(3), F.A.C. 2. Failure to observe well setback distances discussed in Part A of Table I in 62-532.400(7), F.A.C.	Well or well construction within setback that was discovered by the department.
Moderate	Well construction less than 50 feet from a sanitary hazard that poses a moderate risk as defined in 62-555.312(3), F.A.C.	Department was notified of well or well construction within setback.
Minor	Failure to provide at least three feet in horizontal distance between the outside of new or relocated underground water mains and the outside of any existing or proposed storm sewer, stormwater force main, or pipeline conveying reclaimed water regulated under Part III of Chapter 62-610, F.A.C.	Well construction free from, or least not subject to, inundation with surface drainage and flood water.

Guidelines for Characterizing Drinking Water Violations

OPERATIONS & MAINTENANCE – FAILURE TO PROVIDE CORROSION CONTROL TREATMENT OR STUDIES

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to provide adequate corrosion control treatment after a lead action level exceedance.	Treatment or study is more than six months overdue.
	Failure to conduct corrosion control study.	
Moderate	Failure to provide corrosion control treatment after a copper action level exceedance.	Treatment or study is one to six months overdue.
	Failure to provide corrosion control study after a lead action level exceedance.	
	Failure to provide corrosion control study after copper action level exceedance.	
Minor	N/A	Treatment or study is less than one month overdue.

Guidelines for Characterizing Drinking Water Violations

OPERATIONS AND MAINTENANCE – FAILURE TO PROPERLY DISINFECT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Public health issues arising from the source or components being susceptible to microbial contamination. Inadequate disinfection with bacteriological results that don't meet the applicable standard in the distribution system.	Minimum free chlorine residual is ≤ 0.1 mg/L. Minimum combined chlorine residual at ≤ 0.3 mg/L. $\leq 50\%$ of the UV or ozonation minimum dose achieved.
Moderate	Inadequate disinfection with no bacteriological results or bacteriological results that don't meet the applicable standard in the distribution system. Failure to properly disinfect components before placing into/returning to operation	Minimum free chlorine is < 0.1mg/L but < 0.2 mg/L. Minimum combined chlorine residual < 0.3mg/L but < 0.6mg/L. Between 50% but less than 100% of the UV or ozonation minimum dose achieved.
Minor	Protocols that may lead to inadequate disinfection; Bacteriological results are meeting the applicable standard for the distribution system.	Minimum free chlorine is ≥ 0.2 mg/L Minimum combined chlorine residual ≥ 0.6mg/L. $\geq 100\%$ of the UV or ozonation minimum dose achieved. Deficiencies noted in the maintenance, protocols or recordkeeping of disinfection equipment or processes.

Guidelines for Characterizing Drinking Water Violations

OPERATIONS & MAINTENANCE – FAILURE TO IMPLEMENT A CROSS CONNECTION CONTROL PROGRAM [62-555.360, F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to implement an adequate cross connection control program which resulted in a high-risk user exposure to a cross-connection as defined in 62-555.360 (3), F.A.C.	Cross connection was not addressed within 30 days from discovery.
Moderate	Failure to implement an adequate cross connection control program which resulted in a low-risk user exposure to a cross-connection or is likely to result in a high-risk user exposure to a cross connection as defined in 62-555.360 (3), F.A.C.	Cross connection or deficiency was addressed between 15 and 29 days from discovery.
Minor	Failure to implement an adequate cross connection program in a manner that is unlikely to result in a cross connection.	Cross connection or deficiency was addressed within 14 days of discovery.

OPERATIONS & MAINTENANCE – GENERAL STRUCTURAL

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to keep all necessary public water system components in operation and in good operating condition which led to pollution or human health impacts.	> 90 days.
Moderate	Failure to keep all necessary public water system components in operation and in good operating condition which led to or is reasonably expected to lead to pollution or human health impacts.	30 to 90 days OR any equipment other than disinfection equipment OR hydro tank involved.
Minor	1. Failure to provide a conveniently accessible sampling tap, located downstream at a point where all treatment chemicals have been thoroughly mixed with the water and shall be located upstream from all water customers, at each entry point to a drinking water distribution system so that samples of finished drinking water may be taken. 2. Failure to equip all water treatment plants with a totalizing flow meter or elapsed timer to measure the net quantity of finished drinking water, excluding any filter backwash water produced at the plant each day.	< 30 days.

Guidelines for Characterizing Drinking Water Violations

FAILURE TO NOTIFY THE DEPARTMENT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	N/A	Failure to report a system failure to the Department.
Moderate	Failure to notify the Department of a system failure that results in an MCL violation or that is reasonably likely to result in an MCL violation.	Failure to timely report a system failure to the Department.
Minor	Failure to notify the Department of a breakdown of any water treatment or pumping facilities, or a water main break.	N/A

FAILURE TO NOTIFY THE STATE WATCH OFFICE (SWO)

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to notify the SWO of a security breach of a high risk (level 3) incident at a public water system.	Failure of a Community System >10,000 population to notify the SWO within 2 hours after an incident is discovered.
Moderate	Failure to notify the SWO of a security breach of a moderate risk (level 2) incident at a public water system.	1. Failure of a Community System >10,000 population to notify the SWO within 24 hours after an incident is discovered. 2. Failure of a Community System <10,000 population to notify the SWO within 72 hours after an incident is discovered.
Minor	Failure to notify the SWO of a security breach of a low risk (level 1) incident at a public water system.	1. Failure of a Community System >10,000 population to notify the SWO within 72 hours after an incident is discovered. 2. Failure of a Community System <10,000 population to notify the SWO within 24 hours after an incident is discovered. 3. Failure of a Non-Community System to notify the SWO within 72 hours after an incident is discovered.

Guidelines for Characterizing Drinking Water Violations

FAILURE TO CONDUCT MONITORING OR ADDRESS A MAXIMUM CONTAMINANT LEVEL (MCL)

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to monitor or address a primary MCL with human health or environmental impacts documented.	Population Size: > 501.
Moderate	Failure to monitor or address a primary MCL.	Population Size: 101 – 500.
Minor	Failure to monitor or address a Secondary MCL.	Population Size: 25-100.