

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 stipulated 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, or fecal coliform bacteria violation, add \$1500	+ \$1,500	
<i>Add-On 2</i> – If the violation occurs at a community water system, add \$1500	+ \$1,500	
<i>Add-On 3</i> – If any Maximum Contaminant Level is exceeded by more than 100 percent, add \$1500	+ \$1,500	
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	
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		

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Violation (statutory language)	Base Penalty	Cite (F.S.)
Failure to maintain required staff to respond to emergencies	\$1,500	403.121(4)(e)
Failure to conduct required training		
Failure to prepare, maintain, or update required contingency plans		
Failure to adequately respond to emergencies to bring an emergency situation under control		
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	\$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 based on the matrix. 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.
- Other Language that should be included as recommended by WCEP staff

In-Kind Penalties and Pollution Prevention Projects

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

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Penalty Calculation Matrix for Drinking Water Violations

Matrix Factor Considerations

Below are charts identifying what types of violations fall into what quadrants of the Department's Penalty Matrix for Potable Water found in Directive 923, and reproduced below. Remember, to place a violation in the 'Major' row 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.

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

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Small System Adjustment Factors*

Based on a drinking water system type: (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'	PWS Type 'P' Not Vulnerable	All Others
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.

Matrix Factors—Permitting and Modifications

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	<ol style="list-style-type: none"> 1. Failure to obtain Department approval or give notification prior to a major component being placed into, or returned, to operation which caused significant environmental harm and/or resulted in significant public health issues. 	<ol style="list-style-type: none"> 1. Work or alternations placed into service without Department approval or clearance. 2. Subpart H system/modification approval.
Moderate	<ol style="list-style-type: none"> 1. Failure to provide written notification to the Department before beginning work or alterations which caused moderate environmental harm and/or health issues. 	<ol style="list-style-type: none"> 1. Work or alterations placed into service after submittal of some but not all required documentation and without Department approval or clearance. 2. Work or alterations placed into service after submittal of all required documentation but without Department approval or clearance.
Minor	<ol style="list-style-type: none"> 1. Modification of the disinfection process w/o written Department approval. 2. Failure to provide written notification before beginning work or alterations. 	<ol style="list-style-type: none"> 1. Notification not provided to the Department 14 days or more before beginning work on alterations.

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Matrix Factors—Recordkeeping - O&M Logs

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Moderate	1. 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.	1. No records
Minor	1. 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.	1. > 7 days

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Matrix Factors—Setbacks

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	<ol style="list-style-type: none"> 1. Failure to place new wells from other sanitary hazards that caused significant environmental harm to ground water quality and/or resulted in significant public health issues. 2. Failure to observe setback distances discussed in 62-532.400(7), FAC and listed in Part A of Table I in Chapter 62-532, FAC. that caused significant environmental harm to ground water quality and/or resulted in significant public health issues. 	<ol style="list-style-type: none"> 1. Well construction: 100 ft.
Moderate	<ol style="list-style-type: none"> 1. Water main passes through or comes into contact with any part of a sanitary sewer manhole which led to measurable environmental and/or health issues. 	<ol style="list-style-type: none"> 1. Well construction 50 ft.
Minor	<ol style="list-style-type: none"> 1. 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, FAC. 	<ol style="list-style-type: none"> 1. Well construction free from, or least subject to, inundation with surface drainage and flood water.

Matrix Factors—Operations & Maintenance: Failure to Provide Corrosion Control

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Significant harm to the environment and/or significant public health issues resulting from failed treatment required due to a lead action level exceedance.	Treatment is more than six months overdue.
Moderate	Measurable environmental harm or public health issues resulting from failed treatment required due to a copper action level exceedance.	Treatment is 1-6 months overdue.
Minor	[Reserved]	[Reserved]

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Matrix Factors—Operations & Maintenance: General Operational

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	<p>Significant environmental harm and/or significant public health issues resulting from:</p> <ol style="list-style-type: none"> 1. Failure to provide corrosion control study after a lead action level exceedance. 2. Failure to properly disinfect components before placing into/returning to operation. 	<ol style="list-style-type: none"> 1. Study is more than six months overdue. 2. Fluoride > 7 days
Moderate	<p>Measurable environmental harm and/or public health issues resulting from:</p> <ol style="list-style-type: none"> 1. Failure to provide corrosion control study. 2. Failure to measure and record daily the quantity of fluoride chemical used, calculate and record daily the fluoride dose, and measure and record daily the fluoride concentration in the finished drinking water at the entry to the drinking water distribution system, for plants fluoridating water. 	<ol style="list-style-type: none"> 1. Study is 1-6 months overdue. 2. Fluoride 2-7 days
Minor	[Reserved]	<ol style="list-style-type: none"> 1. Fluoride: 1 day

Matrix Factors—Operations & Maintenance: Failure to Maintain Disinfection

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	<p>Significant harm to the environment and/or significant public health issues arising from the source being susceptible to microbial contamination. Inadequate disinfection with no bacteriological results or bacteriological results that don't meet the applicable standard.</p>	<p>The water is not receiving any detectable disinfection treatment.</p>
Moderate	<p>Measurable environmental harm and/or public health issues resulting from inadequate disinfection with bacteriological results that meet the applicable standard.</p>	<p>The water is receiving a detectable amount of disinfection treatment but is less than the treatment required by the applicable standard.</p>
Minor	[Reserved]	[Reserved]

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Matrix Factors—Failure to Notify the Department

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	[Reserved]	Failure to report a system failure to the Department.
Moderate	Measurable environmental harm or public health issues due to a 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.	[Reserved]

Matrix Factors—Operations & Maintenance: General Structural

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Failure to keep all necessary public water system components in operation and in good operating condition which led to significant environmental harm or significant public health issues.	> 90 days
Moderate	1. Failure to keep all necessary public water system components in operation and in good operating condition which led to measurable environmental harm or public health issues.	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

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Matrix Factors—Failure to Notify State Watch Office

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	1. Major environmental harm or significant public health issues resulting from a failure to notify the SWO of a security breach of a high risk (level 3) incident at a public water system.	1. Failure of a CWS >10,000 population to notify the SWP within 2 hours after an incident is discovered.
Moderate	1. Measurable environmental harm and/or public health issues resulting from a 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 CWS >10,000 population to notify the SWP within 24 hours after an incident is discovered. 2. Failure of a CWS <10,000 population to notify the SWP within 72 hours after an incident is discovered.
Minor	1. 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 CWS >10,000 population to notify the SWP within 72 hours after an incident is discovered. 2. Failure of a CWS <10,000 population to notify the SWP within 24 hours after an incident is discovered. 3. Failure of a NC to notify the SWP within 72 hours after an incident is discovered.

Matrix Factors—Failure to Conduct Monitoring or Address a Primary MCL

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to monitor or address an MCL which led to significant environmental harm or significant public health issues.	Population Size: ≥ 501
Moderate	Failure to monitor or address an MCL which led to measurable environmental harm or public health issues.	Population Size: 101-500
Minor	Failure to monitor or address a Secondary MCL which led to measurable environmental harm or public health issues.	Population Size: 25-100