

Guidelines for Characterizing Stormwater 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 NPDES Stormwater 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.). NPDES stormwater violations are not specifically listed in Section 403.121(3), F.S., so the ELRA base penalty amounts and adjustment factors that are potentially applicable to NPDES stormwater violations are limited to the following violations, as listed in Sections 403.121(4) and (5), F.S.

Violation (Statutory Language)	Base Penalty	Cite (F.S.)
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 conduct required release detection	\$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)
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)

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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 for NPDES stormwater violations, including:
 - Resource considerations—Is the receiving water an Outstanding Florida Water or Aquatic Preserve? Is it a Class I or Class II water body? Is it an impaired water body with an established or adopted total maximum daily load (TMDL) for one or more pollutants?
 - Frequent ownership changes—Did the problem result from new owners not fully aware of their permit requirements? Were the previous owners responsible for the violations?
 - Multiple responsible parties—Were the developers, subcontractors, property owners, or all parties responsible for the violation?
 - Construction project turnaround time—Has the project been completed, and the soil stabilized before the penalty can be issued?

In-Kind Penalties and Pollution Prevention Projects

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

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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 stormwater 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 Stormwater 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	\$15,000 to \$12,000	\$11,999 to \$9,000	\$8,999 to \$6,900
	MODERATE	\$6,899 to \$4,800	\$4,799 to \$3,000	\$2,999 to \$1,800
	MINOR	\$1,799 to \$1250	\$1,249 to \$750**	\$750**

**Environmental Education may be an acceptable substitute.

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PERMIT COVERAGE VIOLATIONS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Unpermitted site activities which result in pollution.	Site did not obtain adequate permit coverage prior to conducting regulated activities or permit expired for more than five years.
Moderate	MS4, MSGP, Small CGP or large CGP activities which result in or are reasonably expected to result in pollution.	Permit expired for more than one year but less than five years.
Minor	MS4 or NEX which do not result in or are not reasonably expected to result in pollution.	Permit expired for one year or less.

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INSPECTIONS, PLANS, AND REPORTS-FACILITY SITE REVIEW

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Discharge of contaminated stormwater runoff which results in pollution.	<p>CGP & MSGP:</p> <ul style="list-style-type: none"> SWPPP is missing, or greater than 50% of inspection reports are missing or are not being conducted. <p>MSGP:</p> <ul style="list-style-type: none"> DMR exceedances noted but no SWPPP amendments were made, or greater than 50% Annual Comprehensive Site Compliance Evaluations (ACSCs) or Quarterly Visual Assessments/Monitoring are missing or not being conducted. <p>MS4:</p> <ul style="list-style-type: none"> Control measure not in place, or no standard operating procedure.
Moderate	Discharge of contaminated stormwater runoff which results in or is reasonably expected to result in pollution.	<p>CGP & MSGP:</p> <ul style="list-style-type: none"> The SWPPP is less than 50% complete or is not up-to-date, or Between 25%-50% of inspection reports were missing or incomplete. <p>MSGP:</p> <ul style="list-style-type: none"> No inspection/monitoring schedule or summary identified in the SWPPP, or Between 25%-50% of Annual Comprehensive Site Compliance Evaluations (ACSCs) or Quarterly Visual Assessments/Monitoring are missing or not being conducted. <p>MS4:</p> <ul style="list-style-type: none"> Control measure in place, but mostly out of compliance (major corrections needed) or standard operating procedures missing multiple elements.
Minor	Actual or potential discharge of contaminated stormwater runoff which does not result in or is not reasonably expected to result in pollution.	<p>CGP & MSGP:</p> <ul style="list-style-type: none"> All or the majority of the SWPPP is complete and up-to-date, and <ul style="list-style-type: none"> less than 25% of inspection reports are missing or incomplete, or one BMP is not included in the SWPPP. <p>MSGP:</p> <ul style="list-style-type: none"> Less than 25% of ACSCs or Quarterly Visual Assessments/Monitoring are missing or incomplete. <p>MS4:</p> <ul style="list-style-type: none"> Control measure in place, and mostly in compliance (minor corrections needed), plans/reports more than 50% complete or, incomplete documentation of activity.

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BEST MANAGEMENT PRACTICES – CONDITION OF RECEIVING WATER

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Observation or documentation of pollution from runoff, i.e., turbidity plume, sediment, oily sheen, floating trash or debris, with impacts to waters or turbidity readings 29 NTU above background.	<p>Failure to install multiple BMPs, failure to implement effective BMPs, or multiple uncorrected BMP deficiencies are documented by required inspection reports.</p> <p>MS4 ONLY: Program element not in place, no implementation of activity, or no regulatory element.</p>
Moderate	Observation or documentation of polluted runoff, i.e., sediment, oils, trash or debris, which is actually or reasonably expected to impact waters.	<p>Failure to maintain multiple BMPs with major corrections required, failure to install a single BMP, or a single uncorrected BMP deficiency is documented on required inspection reports.</p> <p>MS4 ONLY: Program element in place, but mostly out of compliance, i.e., major corrections are needed, or BMPs are partially implemented.</p>
Minor	Observation or documentation of minimal off-site impacts, i.e., staining, discoloration, trash without impacts to waters.	<p>One or more BMPs with minor, easily corrected deficiencies, or failure to maintain a single BMP.</p> <p>MS4 ONLY: Program element in place, and mostly in compliance, i.e., minor corrections needed.</p>

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FAILURE TO CONDUCT MSGP ANALYTICAL MONITORING

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Observation or documentation of pollution from runoff, e.g., turbidity plume, sediment, oily sheen, floating trash or debris, with impacts to waters or samples demonstrating water quality violations.	Required monitoring was not conducted for four or more quarters or, DMRs were not submitted.
Moderate	Observation or documentation of polluted runoff, e.g., sediment, oils, trash or debris, which impacts or is reasonably expected to impact waters.	Required monitoring was not conducted for two or three quarters, or multiple parameters were not analyzed. DMR were submitted.
Minor	Observation or documentation of minimal off-site impacts, e.g., staining, discoloration, trash, without impacts to waters.	Required monitoring was not conducted for one quarter, or a single parameter was not analyzed. DMR were submitted.