

# Guidelines for Characterizing Solid Waste 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 solid waste 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 seek an administrative penalty for certain violations pursuant to s. 403.121(2), Florida Statutes (F.S.). Administrative penalty amounts are stipulated by statute and cannot not exceed \$50,000 per assessment when calculated in accordance with the applicable sections of 403.121, F.S. For additional details, see DEP Directive 923.

Violation (statutory language)	ELRA Base Penalty	Cite (F.S.)
Unpermitted or unauthorized disposal or storage of solid waste	\$3,000.00	403.121(3)(e)
Add-On 1 – if the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is C&D debris in excess of 20 yd <sup>3</sup> , add \$1,500	plus \$1, 000	403.121(3)(e)
Add-On 2 – If the waste is disposed of or stored in any natural or artificial body of water or within 500 feet of a potable water well, add \$1,500	plus \$1, 500	403.121(3)(e)
Add-On 3 – If the waste contains PCB at a concentration of 50 ppm or greater; untreated biomedical waste; friable asbestos greater than 1 m <sup>3</sup> which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more lead acid batteries, add \$1,500	plus \$1, 500	403.121(3)(e)
Failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; or failure to provide access control for three consecutive inspections	\$4500.00	403.121(3)(e)
Failure to construct or maintain a required stormwater management system	\$3,000.00	403.121(3)(e)

## **Guidelines for Characterizing Solid Waste Violations**

Failure to satisfy financial responsibility requirements or for violation of s. 377.371(1)	\$7,500.00	403.121(4)(a)
Failure to install, maintain, or use a required pollution control system or device	\$6,000.00	403.121(4)(b)
Failure to obtain a required permit before construction or modification	\$4,500.00	403.121(4)(c)
Failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit	\$3,000.00	403.121(4)(d)
Failure to maintain required staff to respond to emergencies; 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	\$1,500.00	403.121(4)(e)
Failure to prepare, submit, maintain, or use required reports or other required documentation	\$750.00	403.121(4)(f)
Failure to comply with any other Departmental regulatory statute or rule requirement	\$1,000.00	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.

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

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

# Guidelines for Characterizing Solid Waste Violations

## Penalty Calculation Matrix for Solid Waste Violations

### Matrix Factor Considerations

The Department’s Penalty Matrix identifying what types of violations fall into what quadrants for cases other than Potable Water, Hazardous Substances, or Hazardous Waste is reproduced below. 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.

E N V I R O N M E N T A L  H A R M	EXTENT OF DEVIATION FROM REQUIREMENT		
		MAJOR	MODERATE
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

### Peer Review and Penalty Amount Approvals

In all cases where a proposed solid waste penalty exceeds \$25,000, a peer review by the Division of Waste Management is required and the Deputy Secretary must approve the proposed penalty. The Secretary must approve proposed penalties of \$75,000 or more.

## Guidelines for Characterizing Solid Waste Violations

### Matrix Factors—General Prohibition

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	1. Storage, processing or disposal of solid wastes, with or without a permit, that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	1. Volumes of solid waste $\geq 50 \text{ yd}^3$ , except yard trash, or liquid solid waste $\geq 55$ gallons. 2. Violation for untreated biomedical wastes. 3. Violation for greater than $1 \text{ yd}^3$ of regulated asbestos-containing wastes.
<b>Moderate</b>	1. Storage, processing or disposal of solid wastes, with or without a permit, 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. Volumes of solid waste, except yard trash, $< 50 \text{ yd}^3$ or yard trash $\geq 50 \text{ yd}^3$ . 2. Volumes of liquid solid wastes $< 55$ gallons. 3. Violation for lead-acid batteries or used oil. 4. Violation for unauthorized burning of solid wastes. 5. Violation for $< 1 \text{ yd}^3$ of regulated asbestos-containing wastes or $\geq 10,000$ whole waste tires.
<b>Minor</b>	1. Storage, processing or disposal of solid wastes, with or without a permit, that actually or are reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.	1. Volume of $< 50 \text{ yd}^3$ of yard trash. 2. Violation for white goods or $< 10,000$ whole waste tires.

### Matrix Factors—Construction Violations for Disposal Facilities

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	1. Failure to construct a facility in accordance with the permit or rule that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	1. Failure to install the liner system where required in a Department order or permit. 2. The facility includes management of Class I wastes.
<b>Moderate</b>	1. Failure to construct a facility in accordance with the permit or rule that actually or is reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	1. Substantial deviations from the permitted construction plans made without prior approval of the Department. 2. The facility includes management of Class III and C&D debris wastes but not Class I wastes or only yard trash.
<b>Minor</b>	1. Failure to construct a facility in accordance with the permit or rule that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.	1. Failure to submit the completion of construction documentation. 2. Substantial deviations from the permitted construction plans, that are not described with the reasons given for them in the Certification of Construction Completion. 3. The facility includes management of yard trash only.

# Guidelines for Characterizing Solid Waste Violations

## Matrix Factors—Operation Violations for Disposal Facilities

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Failure to operate a facility in accordance with the permit or rule that actually results in pollution in a manner that represents a substantial threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Substantial discharge of leachate, confirmed in more than two consecutive inspections or other verifications.</li> <li>2. Confirmation of combustible gas levels exceeding 25% the LEL in off-site structures.</li> <li>3. More than two confirmed consecutive violations of a primary water quality standard beyond the ZOD.</li> <li>4. Failure to submit required reports or provide financial assurance within 1.5 years of due date.</li> <li>5. No trained spotter on duty at the working face for more than two consecutive inspections or other verifications.</li> <li>6. Failure to control a fire in the disposal area that is greater than one acre in extent, and failure to meet any fire prevention or control requirements in an applicable permit or rule.</li> <li>7. Exceeding the permitted design height by 20 feet or more.</li> </ol>
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Failure to operate a facility in accordance with the permit or rule that actually or is 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. Substantial discharge of leachate confirmed in more than one inspection or other verification.</li> <li>2. More than two confirmed consecutive violations of a water quality standard, other than primary standards, beyond the ground water ZOD.</li> <li>3. Confirmation of combustible gases exceeding 25% of the LEL in on-site structures but not off-site.</li> <li>4. Failure to submit required reports, provide financial assurance or financial assurance cost estimate updates within one year of due date.</li> <li>5. No trained spotter on duty at the working face, for two inspections or other verifications.</li> <li>6. Failure to maintain adequate initial or intermediate cover, confirmed in more than two inspections or other verifications.</li> <li>7. Failure to provide adequate access control for two or more consecutive inspections.</li> <li>8. Failure to control erosion so that waste is exposed or maintain side slopes in accordance with the rule, for more than one inspection or other verification.</li> <li>9. Failure to control a fire in the disposal area that is less than one acre in extent, and failure to meet any fire prevention or control requirements in an applicable permit or rule.</li> <li>10. Exceeding the permitted design height by 10 feet or more but less than 20 feet.</li> </ol>

## Guidelines for Characterizing Solid Waste Violations

<b>Minor</b>	<ol style="list-style-type: none"> <li>1. Failure to operate a facility in accordance with the permit or rule that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Leachate release that is a temporary failure of the control system with little release to the environment.</li> <li>2. Failure to provide adequate access control for more than one inspection or other verification.</li> <li>3. Failure to control off-site impacts from dust, litter or objectionable odors in accordance with the rule.</li> <li>4. Failure to maintain adequate initial or intermediate cover, confirmed in more than one inspection or other verification.</li> <li>5. Failure to control erosion, but waste is not exposed, for more than one inspection or other verification.</li> <li>6. Failure to submit required reports, financial assurance, or financial assurance cost estimate updates within six months of the due date.</li> <li>7. Exceeding the permitted design height by less than 10 feet.</li> </ol>
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### Matrix Factors—Closure Violations for Disposal Facilities

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Failure to close a facility in accordance with the rule or permit that actually results in pollution in a manner that represents a substantial threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Failure to install the barrier layer where required in a Department order or permit.</li> <li>2. The facility includes management of Class I wastes.</li> <li>3. Substantial discharge of leachate, confirmed in more than two or more consecutive inspections or other verifications.</li> <li>4. Confirmation of combustible gas levels exceeding 25% the LEL in off-site structures.</li> <li>5. More than two confirmed violations of a primary water quality standard beyond the ZOD.</li> <li>6. Failure to submit required reports or provide financial assurance within 1 year of due date.</li> </ol>

## Guidelines for Characterizing Solid Waste Violations

<p><b>Moderate</b></p>	<p>1. Failure to close a facility in accordance with the rule or permit that actually or is reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.</p>	<ol style="list-style-type: none"> <li>1. Substantial deviations from the permitted closure plans, including the barrier layer of the final cover, made without prior approval of the Department.</li> <li>2. The facility includes management of Class III and C&amp;D debris wastes, but not Class I wastes or only yard trash.</li> <li>3. Substantial discharge of leachate, confirmed in two inspections or other verifications.</li> <li>4. More than two confirmed violations of a given water quality standard, other than primary ground water standards beyond the ZOD.</li> <li>5. Confirmation of combustible gases exceeding 25% of the LEL in on-site structures but not off-site.</li> <li>6. Failure to submit required reports, provide financial assurance or financial assurance cost estimate updates within one year of due date.</li> <li>7. Failure to correct areas with substantial subsidence within 90 days of notification by the Department.</li> <li>8. Failure to control and correct erosion where waste is exposed within 90 days of notification by the Department.</li> </ol>
<p><b>Minor</b></p>	<p>1. Failure to close a facility in accordance with the rule or permit that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</p>	<ol style="list-style-type: none"> <li>1. Failure to provide required Certification of Completion of Construction documentation.</li> <li>2. Substantial deviations from the permitted construction plans, that are not described with the reasons given for them in the Certification of Construction Completion.</li> <li>3. The facility includes management of yard trash only.</li> <li>4. Substantial discharge of leachate, confirmed by inspection or other verification.</li> <li>5. Failure to provide adequate access control for one inspection.</li> <li>6. Failure to submit required reports, financial assurance, or financial assurance cost estimate updates within six months of the due date.</li> </ol>

# Guidelines for Characterizing Solid Waste Violations

## Matrix Factors—Violations for Waste Processing Facilities, Waste-To-Energy Facilities, and Soil Treatment Facilities

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Failure to construct, operate or close a facility in accordance with the rule or permit that actually results in pollution in a manner that represents a substantial threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Substantial discharge of leachate, confirmed in more than two or more consecutive inspections or other verifications.</li> <li>2. Failure to submit required reports or provide financial assurance, if required, within 1.5 years of due date.</li> <li>3. Failure to have a trained operator or trained spotters, if required, in three or more consecutive inspections or other verifications.</li> <li>4. Failure to remove and dispose of unauthorized wastes, if required, or to timely process wastes according to the rule in three or more consecutive inspections or other verifications.</li> <li>5. Storage of <math>\geq 50</math> yd<sup>3</sup> of Class I or Class III wastes, WTE ash or untreated soil outside of the leachate collection system.</li> </ol>
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Failure to construct, operate or close a facility in accordance with the rule or permit that actually or is 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. Substantial discharge of leachate, confirmed in two inspections or other verifications.</li> <li>2. Failure to submit required reports or provide financial assurance, if required, within one year of due date.</li> <li>3. Failure to have a trained operator or trained spotters, if required, in more than two consecutive inspections or other verifications.</li> <li>4. Failure to remove and dispose of unauthorized wastes, if required, or timely process wastes according to the rule in two consecutive inspections or other verifications.</li> <li>5. Storage of <math>&lt; 50</math> and <math>\geq 20</math> yd<sup>3</sup> of Class I or Class III wastes, WTE ash or untreated soil outside of the leachate collection system; or storage of <math>\geq 50</math> yd<sup>3</sup> of C&amp;D debris outside the leachate collection system or ground water monitoring system.</li> <li>6. Failure to provide adequate access control for two or more consecutive inspections.</li> <li>7. Failure to close the facility that involves <math>\geq 100</math> yd<sup>3</sup> of wastes.</li> <li>8. Failure to maintain the leachate collection system in accordance with the rule, for two or more consecutive inspections.</li> </ol>

## Guidelines for Characterizing Solid Waste Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Minor</b>	<ol style="list-style-type: none"> <li>1. Failure to construct, operate close a facility in accordance with the rule or permit that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Leachate release that is a temporary failure of the control system with little release to the environment.</li> <li>2. Failure to submit required reports or provide financial assurance, if required, within six months of due date.</li> <li>3. Failure to have a trained operator or trained spotters, if required, in one inspection.</li> <li>4. Failure to remove and dispose of unauthorized wastes, if required, or timely process wastes according to the rule in one inspection or other verification.</li> <li>5. Storage of &lt; 50 yd<sup>3</sup> of C&amp;D debris, or &lt; 20 yd<sup>3</sup> of Class I or Class III wastes, WTE ash or untreated soil, outside the leachate collection system or ground water monitoring system.</li> <li>6. Failure to provide adequate access control for one inspection.</li> <li>7. Failure to control off-site impacts from dust, litter or objectionable odors in accordance with the rule.</li> <li>8. Failure to close the facility in accordance with the approved closure plan that involves &lt; 100 yd<sup>3</sup> of wastes.</li> <li>9. Failure to maintain the leachate collection system in accordance with the rule for one inspection.</li> </ol>

### Matrix Factors—Violations for Waste Tire Processing and Storage

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Failure to operate close a facility in accordance with the rule or permit that actually results in pollution in a manner that represents a substantial threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Storage of ≥ 10,000 waste tires without authorization.</li> <li>2. Failure to submit required reports or provide financial assurance, if required, within 1.5 years of due date.</li> <li>3. Waste tire fire involving ≥ 5,000 waste tires (~500 yd<sup>3</sup>).</li> <li>4. Failure to meet the waste tire storage requirements for more than three consecutive inspections or other verifications.</li> </ol>

## Guidelines for Characterizing Solid Waste Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Failure to operate or close a facility in accordance with the rule or permit that actually or is 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. Storage of &lt; 10,000 and <math>\geq</math> 5,000 wastetires without authorization.</li> <li>2. Failure to submit required reports or provide financial assurance, where required, within one year of due date.</li> <li>3. Waste tire fire involving &lt; 5,000 and <math>\geq</math> 1,500 waste tires, and failure to meet any fire prevention or control requirements in an applicable permit or rule.</li> <li>4. Failure to meet the waste tire storage or processing requirements for more than two consecutive inspections or other verifications.</li> <li>5. Failure to have an attendant present when the site is receiving tires from the public for two or more consecutive inspections.</li> </ol>
<b>Minor</b>	<ol style="list-style-type: none"> <li>1. Failure to operate or close a facility in accordance with the rule or permit that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Storage of &lt; 5,000 and <math>\geq</math> 1,500 waste tires without authorization for more than one inspection or other verification.</li> <li>2. Failure to submit required reports or provide financial assurance, if required, within six months of due date.</li> <li>3. Failure to meet the waste tire storage or processing requirements for more than one inspection or verification.</li> <li>4. Failure to have an attendant present when the site is receiving tires from the public for more than one inspection or verification.</li> <li>5. Failure to maintain control of mosquitoes and rodents so as to protect the public health and welfare, for more than one inspection or other verification.</li> </ol>

### Matrix Factors—Violations for Organics Processing and Recycling Facilities

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Failure to operate or close a facility in accordance with the rule or permit that actually results in pollution in a manner that represents a substantial threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Failure to prevent contamination of the final product with pathogens from incoming wastes, for more than one inspection or other verification.</li> <li>2. Sale of off-site use of compost that has not met the time-temperature requirements for disinfection, for more than two inspections or other verifications.</li> <li>3. Failure to submit required reports within 1.5 years of due date.</li> </ol>

## Guidelines for Characterizing Solid Waste Violations

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Failure to operate or close a facility in accordance with the rule or permit that actually or is 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. Failure to meet the facility design or operating criteria required by rule, for two or more consecutive inspections or other verifications.</li> <li>2. Sale of off-site use of compost that has not met the time-temperature requirements for disinfection, for more than one inspection or other verification.</li> <li>3. Failure to meet the compost testing requirements for two or more consecutive inspections or other verifications.</li> <li>4. Failure to submit required reports within one year of due date.</li> </ol>
<b>Minor</b>	<ol style="list-style-type: none"> <li>1. Failure to operate or close a facility in accordance with the rule or permit that actually or is reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.</li> </ol>	<ol style="list-style-type: none"> <li>1. Failure to control off-site impacts from dust, litter or objectionable odors.</li> <li>2. Failure to meet the facility design or operating criteria required by rule, for one inspection or other verification.</li> <li>3. Failure to maintain access control and operational requirements for fire protection and control, for more than one inspection or other verification.</li> <li>4. Failure to submit required reports within six months of due date.</li> <li>5. Failure to meet the compost testing requirements for more than one inspection or other verification.</li> </ol>