

# Guidelines for Characterizing Storage Tank 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 amount of 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 storage tank 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.)
Failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed.	\$7,500	403.121(3)(g)
Improper disposal of contaminated media from a storage tank system release or discharge (such as spreading contamination from stockpiled soil).	\$7,500	403.121(3)(g)
Failure to satisfy financial responsibility requirements.	\$7,500	403.121(4)(a)
Depositing motor fuel into an unregistered storage tank system.	\$3,000	403.121(3)(g)
Failure to properly install a storage tank system.	\$3,000	403.121(3)(g)
Failure to submit required notification to the department.	\$1,500	403.121(4)(e)
Failure to properly operate, maintain, or close a storage tank system.	\$1,500	403.121(3)(g)
Failure to timely upgrade a storage tank system.	\$4,500	403.121(3)(g)
Failure to conduct or maintain required release detection.	\$3,000	403.121(3)(g)
Failure to timely investigate a suspected release.	\$3,000	403.121(3)(g)
Failure to timely assess or remediate petroleum contamination (such as failure to remove stockpiled soil after 30 / 60 / 90 days).	\$3,000	403.121(3)(g)
Failure to conduct required monitoring or testing.	\$3,000	403.121(4)(d)

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Violation (statutory language)	ELRA Base Penalty	Cite (F.S.)
Failure to prepare, submit, maintain, or use required reports or other required documentation.	\$750	403.121(4)(f)
Failure to submit or maintain required documentation.	\$750	403.121(4)(f)
Failure to prepare, submit, maintain, or use required documentation.	\$750	403.121(4)(f)
Failure to comply with any other departmental regulatory statute, regulation or requirement.	\$1,000	403.121(5)

### **Initial Enforcement for Storage Tank Violations-After Referral**

Contracted County local programs shall refer outstanding facility violations to their respective DEP District office after 90 days, if outstanding violations remain. Referrals shall be conducted in accordance with the Guidelines for Case Referrals (refer to County Contract Guidance Document G).

Upon acceptance of the referral, the District will take the lead on enforcement. The District may request assistance from the County during the enforcement process, but the District will be the principal contact with the owner/operator from this point forward.

Upon receipt of the referral, the District will issue a Warning Letter to the owner/operator of the facility. The Warning Letter will offer a meeting to negotiate a resolution of the violations. If the facility has resolved all violations at the time of the meeting, then a Short Form Consent Order will be offered with a penalty for exceeding the 90-day compliance assistance period with referral. The penalty will include administrative costs to the Department. Additional ELRA penalties may be assessed for specific violations in accordance with this guidance). If the facility does not respond to the Warning Letter nor resolve the violations, then a Notice of Violation shall be drafted with full maximum ELRA penalties for all applicable violations. The District also has the flexibility to charge multi-day penalties up to a maximum of \$50,000, or reduce penalties based on mitigating circumstances approved by District management.

If the facility has not resolved the violations at the time of the meeting, then a Long Form Consent Order (LFCO) may be used. The LFCO will include minimum determined penalties, as well as additional ELRA penalties assessed for specific violations in accordance with Guidelines for Characterizing Storage Tank Violations, and the necessary corrective actions.

If penalties assessed are greater than \$50,000, then the district may draft a Case Report letter to submit to OGC.

### **Civil Penalty Calculation Matrix for Storage Tank 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, found in Directive 923, 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

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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	\$10,000 to \$8,000	\$7,999 to \$6,000	\$5,999 to \$4,600
	MODERATE	\$4,599 to \$3,100	\$3,199 to \$2,000	\$1,999 to \$1,200
MINOR	\$1,199 to \$1,000	\$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 tank 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.

### Matrix Factors—General Prohibition

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>Storage of Pollutants 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>Failure to empty a damaged storage system, where necessary, in a timely manner to contain, remove, and abate the discharge and to prevent further discharge to the environment.</li> <li>Failure to satisfy financial responsibility requirements within more than 180 days of due date.</li> </ol>

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Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Moderate	<ol style="list-style-type: none"> <li>Storage of Pollutants 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>Depositing motor fuel into an unregistered storage tank system.</li> <li>Improper disposal of contaminated media from a storage tank system release or discharge.</li> <li>Failure to properly install a storage tank system.</li> <li>Failure to submit required Discharge Reporting Form [DEP Form # 62-761.900(1)] to the department.</li> <li>Failure to properly operate, maintain, or close a storage tank system for more than one inspection or other verification.</li> <li>Failure to timely upgrade a storage tank system.</li> <li>Failure to conduct or maintain required release detection.</li> <li>Failure to timely investigate a suspected release.</li> <li>Failure to satisfy financial responsibility requirements within less than 180 days of due date.</li> <li>Failure to timely assess or remediate petroleum contamination (such as failure to remove stockpiled soil after 30/60/90 days).</li> <li>Failure to conduct required monitoring or testing for more than one inspection or other verification.</li> </ol>
Minor	<ol style="list-style-type: none"> <li>Failure to operate or close a storage tank facility in accordance with the 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>Failure to prepare, submit, maintain, or use required reports or other required documentation, other than a Discharge Reporting Form [DEP Form #62-761.900(1)].</li> <li>Failure to comply with any other departmental regulatory statute, regulation or requirement.</li> </ol>

### 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.