

# **Guidelines for Characterizing UIC 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 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 Underground Injection Control (UIC) violations.

Certain (UIC) program violations may result in the generation of wastewater that can cause surface water quality violations. Surface water quality violations resulting from UIC related activities should be referred to other Department programs for coordination of enforcement efforts.

**\*\*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.**

## **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 UIC 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.

<b>Matrix Factor</b>	<b>Environmental Harm</b>	<b>Extent of Deviation from Requirement</b>
<b>Major</b>	Violations that actually 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.
<b>Moderate</b>	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.
<b>Minor</b>	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.

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The Department’s Penalty Matrix for UIC 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.

## 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 UIC Violations**

## **FAILURE TO PROVIDE TIMELY, COMPLETE, AND ACCURATE REPORTS/RECORDS**

<b>Matrix Factor</b>	<b>Environmental Harm</b>	<b>Extent of Deviation from Requirement</b>
<b>Major</b>	N/A	<ol style="list-style-type: none"> <li>1. Fraudulent data or information provided.</li> <li>2. Three consecutive submittals were not provided, regardless of whether written notifications are issued by the Department.</li> <li>3. 50 percent of required submittals not provided within a twelve-month period, regardless of whether written notifications are issued by the Department.</li> <li>4. Submittal not provided after two written notifications are issued by the Department.</li> </ol>
<b>Moderate</b>	N/A	<ol style="list-style-type: none"> <li>1. Two consecutive submittals not provided, regardless of whether written notifications are issued by the Department.</li> <li>2. 25 percent of required submittals not provided within a twelve-month period, regardless of whether written notifications are issued by the Department.</li> <li>3. Submittal not provided after one written notification is issued by the Department.</li> <li>4. Timely submittal is incomplete or inaccurate but not fraudulent.</li> </ol>
<b>Minor</b>	Failure to provide timely, complete and accurate reports and records.	<ol style="list-style-type: none"> <li>1. Submittal is provided within four weeks of its due date.</li> <li>2. Reports and records not provided are maintained and available at the treatment facility.</li> </ol>

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## FAILURE TO NOTIFY OF ABNORMAL EVENT OR NONCOMPLIANCE [62-528.415(4), F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Failure to notify of an abnormal event or noncompliance which results in pollution.	<ol style="list-style-type: none"> <li>1. Unreported abnormal event or noncompliance is discovered by the Department (or local program).</li> <li>2. Permittee or authorized representative has been previously notified by the Department concerning the proper reporting of abnormal events or noncompliance.</li> <li>3. Permittee or authorized representative fails to follow a contingency plan that has been accepted by the Department.</li> </ol>
<b>Moderate</b>	Failure to notify of an abnormal event or noncompliance which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Permittee notifies the Department (and local program) beyond 24 hours of abnormal event or noncompliance.</li> <li>2. Permittee or authorized representative fails to submit a written report.</li> </ol>
<b>Minor</b>	Failure to notify of an abnormal event or noncompliance that does not result or is not reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Permittee or authorized representative submit a written report &gt;5 days after the abnormal event or noncompliance.</li> <li>2. Failure to notify the Department of use of the authorized emergency disposal system.</li> </ol>

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## CONSTRUCTION OF WELL WITHOUT A PERMIT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Well placed into service which results in pollution.	1. Construction without a valid construction permit.  2. Construction without a Florida water well contractor's license.  3. Submittal of an application after expiration date of construction permit.
<b>Moderate</b>	Well placed into service which results or is reasonably expected to result in pollution.	Submittal of an incomplete application less than sixty days of the construction permit expiration date.
<b>Minor</b>	Well constructed or well under construction but not placed in service and does not result or is not reasonably expected to result in pollution.	N/A

## IMPROPER WELL CONSTRUCTION OR FAILURE IN ACCORDANCE WITH APPROVED PLANS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Construction which results in pollution.	1. Construction deviations are discovered after completion of construction without notice provided.  2. Construction deviations such as location change, casing landing, cementing, or actual drilling occurred during construction.
<b>Moderate</b>	Construction which results or is reasonably expected to result in pollution.	Construction deviations are discovered during construction with no notice provided and do not involve activities such as casing landing, cementing or actual drilling.
<b>Minor</b>	Construction that does not result or is not reasonably expected to result in pollution.	N/A

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## OPERATION OF WELL WITHOUT A PERMIT OR AUTHORIZATION

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Operation of the well which results in pollution.	<ol style="list-style-type: none"> <li>1. Non-submittal of an application.</li> <li>2. Submittal of an application after expiration date of operation or construction permit.</li> <li>3. Injection well system operating without possessing an appropriate valid permit or other valid authorization from the Department.</li> </ol>
<b>Moderate</b>	Operation of the well which results or is reasonably expected to result in pollution.	Submittal of an incomplete application less than 60 days before expiration of the operation or construction permit.
<b>Minor</b>	Operation of the well that does not result or is not reasonably expected to result in pollution.	N/A

## SHORT TERM TEST INJECTION WITHOUT PRIOR AUTHORIZATION AS REQUIRED BY PERMIT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Injection test which results in pollution.	<ol style="list-style-type: none"> <li>1. Test injection without prior written authorization.</li> <li>2. Test injection written authorization obtained from Department that was based on false, inaccurate, or incomplete data or information submitted by the permittee or the agent of the permittee.</li> <li>3. Commenced test injection without monitoring effluent or completion of monitor wells.</li> </ol>
<b>Moderate</b>	Injection test which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Commenced test injection without obtaining background water quality sampling and appropriate analyses.</li> <li>2. Commenced test injection not in accordance with permit conditions.</li> </ol>
<b>Minor</b>	Injection test that does not result or is not reasonably expected to result in pollution.	N/A

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## UNAUTHORIZED OPERATIONAL OR CYCLE TESTING

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Injection which results in pollution.	<ol style="list-style-type: none"> <li>1. Failure to get authorization.</li> <li>2. Injection of unauthorized material.</li> <li>3. Facility fails to immediately implement adequate corrective measures.</li> </ol>
<b>Moderate</b>	Injection which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Did not submit required testing results.</li> <li>2. Facility immediately implements adequate corrective measures.</li> </ol>
<b>Minor</b>	Injection that does not result or is not reasonably expected to result in pollution.	Required testing results were submitted late.

## MECHANICAL INTEGRITY TEST (MIT) VIOLATION

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	MIT violation which results in pollution.	<ol style="list-style-type: none"> <li>1. Failure of MIT allowing fluid movement into a USDW.</li> <li>2. Failed MIT where location of leak or extent of vertical fluid movement has not been determined.</li> <li>3. No MIT performed.</li> <li>4. MIT completed over 3 months after due date.</li> <li>5. MIT conducted using unauthorized or inappropriate equipment or tracer material.</li> </ol>
<b>Moderate</b>	MIT violation which results in or is reasonably expected to result in pollution.	MIT completed within 1 month to 3 months after due date.
<b>Minor</b>	MIT violation that does not result or is not reasonably expected to result in pollution.	MIT completed less than 1 month after due date.

# Guidelines for Characterizing UIC Violations

## FAILURE TO MAINTAIN OR OPERATE EQUIPMENT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Failure which results in pollution.	<ol style="list-style-type: none"> <li>1. Primary equipment essential to the operation of the well is totally inoperative.</li> <li>2. Corrective measures not implemented after one written DEP notification is issued.</li> <li>3. Failure to maintain fully operational Emergency Disposal System in accordance with Chapter 62-528, F.A.C., or permit's specific conditions.</li> <li>4. Facility failed to perform routine maintenance.</li> <li>5. More than one deviation exists from the standard practices/procedures or from the operation and maintenance manual.</li> </ol>
<b>Moderate</b>	Failure which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Support equipment, non-essential to the operation of the well, is inoperative.</li> <li>2. Corrective measures not implemented after one written Department notification is issued.</li> <li>3. Failure to maintain fully operational Emergency Disposal System in accordance with Chapter 62-528, F.A.C., or permit's specific conditions.</li> <li>4. A single deviation exists from standard practices/procedures or from the operation and maintenance manual.</li> <li>5. Facility failed to document routine maintenance.</li> </ol>
<b>Minor</b>	Failure that does not result or is not reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Equipment is operating at reduced mechanical/structural efficiency.</li> <li>2. Minor deviations exist from standard practices/procedures or from the operation and maintenance manual.</li> </ol>

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## FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY [62-528.435(9), F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	N/A	<ol style="list-style-type: none"> <li>1. No plugging and abandonment plan submitted.</li> <li>2. Expiration of financial mechanism.</li> <li>3. Department draws on Letter of Credit.</li> <li>4. Insufficient funding to plug and abandon injection well system when abandonment becomes necessary.</li> </ol>
<b>Moderate</b>	N/A	<ol style="list-style-type: none"> <li>1. No current audited financial report.</li> <li>2. No current plugging and abandonment cost estimates.</li> <li>3. The permittee failed to submit a satisfactory Certificate of Financial Responsibility Demonstration for each well.</li> </ol>
<b>Minor</b>	Failure to maintain financial responsibility.	N/A

## LACK OF CONFINEMENT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Fluid movement which results in pollution.	<ol style="list-style-type: none"> <li>1. Fluid moved into the USDW.</li> <li>2. Water quality or pressure data indicates lack of confinement or deficient mechanical integrity.</li> <li>3. Mechanical integrity testing indicates lack of confinement or deficient mechanical integrity.</li> </ol>
<b>Moderate</b>	Fluid movement which results or is reasonably expected to result in pollution.	Fluid moved into an unpermitted zone that is a non-USDW.
<b>Minor</b>	Fluid movement that does not result or is not reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Pressure data, water quality data, and mechanical integrity testing provides reasonable assurance that mechanical integrity has been demonstrated and that waters of the State have been afforded protection against contamination.</li> <li>2. Pressure data, water quality data, and mechanical integrity testing provides reasonable assurance that confinement has been demonstrated and that waters of the State have been afforded protection against contamination.</li> </ol>

# Guidelines for Characterizing UIC Violations

## UNAUTHORIZED PLUGGING AND ABANDONMENT

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Plugging and abandonment which results in pollution.	<ol style="list-style-type: none"> <li>1. Plugging and abandonment without a permit.</li> <li>2. Plugging and abandonment which allows fluid movement between aquifers.</li> <li>3. Plugging and abandonment by an unlicensed contractor.</li> </ol>
<b>Moderate</b>	Plugging and abandonment which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Use of materials not approved by the Department.</li> <li>2. Failure to provide required notifications to the Department.</li> </ol>
<b>Minor</b>	Plugging and abandonment that does not result or is not reasonably expected to result in pollution.	N/A

## FAILURE TO MEET PERMIT LIMITATIONS OR WATER QUALITY STANDARDS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	<ol style="list-style-type: none"> <li>1. Exceedance of permit limitations that results in violation of water quality criteria.</li> <li>2. Injection of hazardous waste.</li> <li>3. Violation of a federal primary drinking water standard.</li> </ol>	<ol style="list-style-type: none"> <li>1. Any exceedance of a flow or pressure limit.</li> <li>2. Exceedance is greater than or equal to two times (<math>\geq 2X</math>) the limits.</li> </ol>
<b>Moderate</b>	<ol style="list-style-type: none"> <li>1. Exceedance of permit limitations that results in or is reasonably expected to result in violation of water quality criteria.</li> <li>2. Violation of a water quality criteria exemption limit, a state secondary drinking water standard or the sodium standard.</li> </ol>	Exceedance is greater than or equal to one and a half times ( $\geq 1.5X$ ) but less than two times ( $< 2X$ ) the limit.
<b>Minor</b>	Exceedance of permit limitations that does not result or is not reasonably expected to result in a violation of water quality criteria.	Exceedance is less than one and a half times ( $< 1.5 X$ ) the limit.

# Guidelines for Characterizing UIC Violations

## FAILURE TO CONDUCT WATER QUALITY MONITORING

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
<b>Major</b>	Failure to conduct water quality monitoring which results in pollution.	<ol style="list-style-type: none"> <li>1. Required daily monitoring of a parameter is not conducted for 30 or more monitoring days.</li> <li>2. Required bi-weekly monitoring of a parameter is not conducted for 12 or more weeks, or required weekly monitoring of a parameter is not conducted for 6 or more weeks.</li> <li>3. Required quarterly monitoring of a parameter is not conducted for 6 or more months, or required monthly monitoring of a parameter is not conducted for 3 or more months.</li> <li>4. Required annual monitoring of a parameter is not conducted for 3 consecutive years, or semi-annual monitoring of a parameter is not conducted for 18 or more months.</li> <li>5. Failure to obtain background water quality data prior to injection.</li> </ol>
<b>Moderate</b>	Failure to conduct water quality monitoring which results or is reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Required daily monitoring of a parameter is not conducted for 11 to 30 monitoring days.</li> <li>2. Required bi-weekly monitoring of a parameter is not conducted for 5 to 12 weeks, or weekly monitoring of parameter is not conducted for 3 to 6 weeks.</li> <li>3. Required quarterly monitoring of a parameter is not conducted for 4 to 6 months, or monthly monitoring of a parameter is not conducted for up to 2 months.</li> <li>4. Required annual monitoring of a parameter is not conducted for 2 consecutive years, or semi-annual monitoring of a parameter is not conducted for 12 consecutive months.</li> </ol>
<b>Minor</b>	Failure to conduct water quality monitoring that does not result or is not reasonably expected to result in pollution.	<ol style="list-style-type: none"> <li>1. Required daily monitoring of a parameter is not conducted for 10 or less monitoring days.</li> <li>2. Required bi-weekly monitoring of a parameter is not conducted for 4 or less weeks, or weekly monitoring of a parameter is not conducted for 2 or less weeks.</li> <li>3. Required quarterly monitoring of a parameter is not conducted for 3 or less months, or required monthly monitoring of a parameter is not conducted for a month.</li> <li>4. Required annual monitoring of a parameter is not conducted, or semi-annual monitoring of a parameter is conducted only once in a twelve-month period.</li> </ol>