

Guidelines for Characterizing Wastewater 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 wastewater 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.).

Violation (Statutory Language)	Base Penalty	Cite (F.S.)
Failure to obtain a required wastewater permit, other than a permit required for surface water discharge	\$2,000	403.121(3)(b)
An unpermitted or unauthorized discharge or effluent limitation exceedance for a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation; Each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.	\$4,000	403.121(3)(b)
An unpermitted or unauthorized discharge or effluent limitation exceedance that resulted in a surface water or groundwater quality violation; Each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.	\$10,000	403.121(3)(b)
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)

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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)

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.

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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 wastewater 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 Wastewater 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**

*For the purpose of the penalty calculation only, type III facilities that do not discharge to surface waters or unrestricted public access irrigation systems may be reduced by one category for "Environmental Harm" only. Those facilities with less than 25,000 gpd design capacity that do not discharge to surface waters or unrestricted public access irrigation systems may be considered "minor" in the category for "Environmental Harm" only.

**Environmental Education may be an acceptable substitute.

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FAILURE TO SUBMIT NOTIFICATION OF COMPLETION OF CONSTRUCTION "CERTIFICATION" PRIOR TO PLACING TREATMENT, DISPOSAL OR COLLECTION SYSTEM INTO OPERATION

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	N/A	N/A
Moderate	N/A	N/A
Minor	Failure to submit notification of completion of construction "certification" prior to placing treatment, disposal or collection system into operation.	Permitted treatment, disposal, or collection system placed into operation without receiving certification and approval from the department.

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FAILURE TO NOTIFY OF PLANNED BYPASS, ABNORMAL EVENT OR NON-COMPLIANCE [62-620.610(20)-(22), F.A.C.] [62-604.550(2), F.A.C]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Bypass, abnormal event or non-compliance meeting the criteria for State Watch Office reporting with human health or environmental impacts documented.	Bypass, abnormal event or non-compliance is discovered by the Department without notice provided by the permittee or authorized representative or the failure to report was intentional.
Moderate	Bypass, abnormal event or non-compliance meeting the criteria for State Watch Office reporting	Permittee or authorized representative notified the Department (or local program) beyond 72 hours of the discovery of the reportable noncompliance or did not provide the five-day written submission.
Minor	Bypass, abnormal event or non-compliance not meeting the criteria for State Watch Office reporting	Permittee or authorized representative notified the Department (or local program) less than 72 hours but more than 24 hours from the discovery of the bypass, abnormal event or non-compliance or did not provide a written submission within five days.

FAILURE TO USE APPROPRIATE SIGNAGE OR ACCESS CONTROLS FOR REUSE OR LAND APPLICATION SITES [62-610.418, F.A.C.], [62-610.468, F.A.C.], [62-610.469, F.A.C.], [62-610.518, F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to implement appropriate access controls or advisory signs, resulting in prohibited recreational activities, a cross connection, or human health impacts.	Most access controls or advisory signs were absent at evaluated locations.
Moderate	Failure to implement or maintain appropriate access controls or advisory signage.	Required access controls were inadequate, and/or advisory signs were absent, illegible, or not visible at one or more required locations, though some of the required elements were in place.
Minor	Inadequate implementation or maintenance of access controls or advisory signage that allowed appropriate identification of the site or system.	Most required access controls or advisory signs were implemented correctly, but advisory sign placement or text was incorrect.

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IMPROPER RELEASE OR DISPOSAL OF SEWAGE, RAW MATERIALS, PROCESS MATERIALS, OR INADEQUATELY TREATED WASTEWATER

Matrix Factor	Environmental Harm	Points
Characteristic of Wastewater	Fully Treated	0
	Partially Treated with Adequate Disinfection and De-chlorination, if applicable	1
	Partially Treated without Adequate Disinfection or De-chlorination, if applicable	2
	Untreated	3
Total Spill Volume (gallons)	0 - 1,000	0
	1,001 - 10,000	1
	10,001 - 100,000	2
	>100,000	3
Receiving Water Classification	Did not enter waters with a classification	0
	Class G-III and G-IV ground water	1
	Class IV Agricultural Water Supplies	2
	Class V Navigation, Utility and Industrial Use	2
	Class III Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife	3
	Class I Potable Water Supplies	4
	Class II Shellfish Propagation or Harvesting	4
	Class F-I, G-I, or G-II ground waters	4
Special Protections (if applicable)	Outstanding Florida Water or Outstanding National Resource Water	3
	Aquatic Preserve	3
	Water is on the verified impaired list for pollutants likely to be contained in the discharge	3
Environmental Impacts (if applicable)	Biological Impacts -Fish Kill/Wildlife, Vegetation, or Algal Impacts Observed	10
	Beach or Recreational Area Closure	10
	Public Contact with Discharge Occurred or Likely, e.g. Building Back-ups or Drinking Water Wells Impacted	10
Sampling (if release entered waters with a classification)	Water Quality Results did not demonstrate Water Quality Violations	0
	Samples collected demonstrate Water Quality Violations	6
	Failure to Collect Adequate Samples	6
	Total	
	Major	≥ 11
	Moderate	6 - 10
	Minor	≤ 5

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Extent of Deviation from Requirement	
Major	Release or disposal is deliberate, resulting from a failure to implement a required manual or plan, or timely and adequate corrective measures were not taken.
Moderate	Release or disposal results from inadequate implementation of an approved manual or plan, however, timely corrective measures were taken.
Minor	Release or disposal is a result of failed equipment that has received proper maintenance or due to conditions beyond the facility's reasonable control.

FAILURE TO MEET PERMIT IMPOSED EFFLUENT LIMITATIONS AND/OR WATER QUALITY CRITERIA

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Exceedance of permit limitations that results in violation of water quality criteria.	Effluent exceedance is greater than or equal to two times ($\geq 2X$) the effluent limits.
Moderate	Exceedance of permit limitations that results in or is reasonably expected to result in violation of water quality criteria.	Effluent exceedance is greater than or equal to one and a half times ($\geq 1.5X$) but less than two times ($< 2X$) the effluent limit.
Minor	Exceedance of permit limitations to restricted access areas, or exceedance of permit limitations that does not result or is not reasonably expected to result in a violation of water quality criteria.	Effluent exceedance is less than one and a half times ($< 1.5 X$) the effluent limit.

(See Chapter 62-302, Florida Administrative Code, for the designated uses and specific water quality criteria corresponding with each surface and ground water classification.)

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OPERATION, CONSTRUCTION OR MODIFICATION OF WASTEWATER TREATMENT, DISPOSAL OR COLLECTION/TRANSMISSION SYSTEMS WITHOUT A PERMIT OR REQUIRED REVISIONS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Operation, Construction or Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without a permit or required revisions that results in violation of water quality criteria.	A valid permit or any other valid authorization is not obtained prior to operation, construction or modification or obtained more than 30 days after expiration, operation or modification; Failure to apply after discovery by the Department
Moderate	Operation, Construction or Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without a permit or required revisions that results in or is reasonably expected to result in violation of water quality criteria.	Facility submitted application within 30 days of expiration or within 30 days of construction commencement or modifications. Upon discovery and if appropriate, the facility ceased modifications or construction until proper approval was obtained.
Minor	Unpermitted Minor Modifications; Operation, Construction or Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without a permit that does not result in or is not reasonably expected to result in a violation of water quality criteria.	Failure to submit timely permit applications at least 180 days before discharge occurs or failure to submit minor modification forms at least 90 days before construction/modification or operation.

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FAILURE TO CONSTRUCT WASTEWATER TREATMENT OR DISPOSAL SYSTEMS IN ACCORDANCE WITH APPROVED PLANS OR COMPLIANCE SCHEDULE

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to construct wastewater treatment or disposal system in accordance with approved plans or compliance schedules that results in violation of water quality criteria.	Numerous or major construction deviations discovered by the Department after completion of construction without notice provided by the permittee or authorized representative; Compliance schedule milestones are exceeded by 90 days or more.
Moderate	Failure to construct wastewater treatment or disposal system in accordance with approved plans or compliance schedules that results in or is reasonably expected to result in violation of water quality criteria.	Construction deviations discovered by the Department after completion of construction without notice provided by the permittee or authorized representative; Compliance schedule milestones are exceeded by 30 to 89 days.
Minor	Failure to construct wastewater treatment or disposal system in accordance with approved plans or compliance schedules does not result or is not reasonably expected to result in a violation of water quality criteria.	Single, minor construction deviation discovered by the Department during construction without notice provided by the permittee or authorized representative; Compliance milestones are exceeded by less than 30 days.

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FAILURE TO MAINTAIN OR OPERATE EQUIPMENT, FACILITY, TRANSMISSION OR COLLECTION SYSTEM

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to maintain or operate equipment, facility, transmission or collection system that results in pollution.	Facility is operating without an Operation and Maintenance Manual and/or operating equipment outside of manufacturer's recommendations for 60 days or more after replacements or repairs were indicated.
Moderate	Failure to maintain or operate equipment, facility, transmission or collection system that results in or is reasonably expected to result in pollution.	Numerous and/or frequent deviations exist from standard operating practices/procedures or from the Operation and Maintenance Manual and/or operating equipment outside of manufacturer's recommendations for 30 days or more, but fewer than 60 days, after replacements or repairs were indicated.
Minor	Failure to maintain or operate equipment, facility, transmission or collection system that did not result or is not reasonably expected to result in pollution.	Minor deviations exist from standard operating practices/procedures or from the Operation and Maintenance Manual and/or operating equipment outside of manufacturer's recommendations for fewer than 30 days after replacements or repairs were indicated.

FAILURE TO CONDUCT WATER QUALITY OR BIOSOLIDS MONITORING

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to conduct water quality or biosolids monitoring that results in pollution.	Required monitoring on a weekly, monthly, quarterly, semi-annual, or annual basis was not conducted for two or more monitoring periods.
Moderate	Failure to conduct water quality or biosolids monitoring that results in or is reasonably expected to result in pollution.	Required monitoring on a daily, weekly, monthly, quarterly, semi-annual, or annual basis was not conducted for one monitoring period.
Minor	Failure to conduct water quality or biosolids monitoring that does not result or is not reasonably expected to result in pollution.	N/A

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FAILURE TO MEET SAMPLE COLLECTION PROCEDURES OR LABORATORY REQUIREMENTS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to meet sample collection procedures or laboratory requirements that results in pollution.	Numerous deficiencies were identified in the facility or contract lab that indicate unreliable data which does not meet the Department's quality assurance standards, the lab is not accredited by the TNI/NELAC, and/or unapproved methods were used for testing.
Moderate	Failure to meet sample collection procedures or laboratory requirements that results in or is reasonably expected to result in pollution.	Deficiencies were identified in the facility or contract lab that impacts the reliability of the facility and do not meet the Department's quality assurance standards.
Minor	Failure to meet sample collection procedures or laboratory requirements that does not result or is not reasonably expected to result in pollution.	Some minor deficiencies were identified in the facility or contract lab's recordkeeping or methods that do not impact the reliability of the facility data reported to the Department.

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Specific Guidelines for Domestic Wastewater

FAILURE TO PROVIDE CERTIFIED OPERATOR [62-699.310(2)(a), F.A.C], [62-640.880(2)(j), F.A.C.]

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to provide a certified operator for wastewater or biosolids management facilities that results in pollution.	Staffing requirements are not met for one month or more at Class C and D wastewater facilities, or staffing requirements were not met for any length of time at Class A wastewater or Type I biosolids management facility.
Moderate	Failure to provide a certified operator that results in or is reasonably expected to result in pollution.	Staffing requirements are not met for less than one month at Class C and D wastewater facilities, or staffing requirements were not met for any length of time at Class B Wastewater or Type II biosolids management facilities.
Minor	Failure to provide a certified operator that did not result or is not reasonably expected to result in pollution.	Minor deviation from meeting minimum staffing requirements for Class C and D wastewater facilities or Type III biosolids management facilities.

IMPROPER APPLICATION, RELEASE OR DISPOSAL OF BIOSOLIDS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Improper application, release or disposal of biosolids to Class I, II, or III surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, or over Class F-I, G-I or G-II ground waters that results in pollution. Non-Class AA biosolids were improperly applied, released, or disposed in a manner that results in exposure to the public.	Release or disposal is deliberate, results from a failure to implement a required manual or plan, or timely and adequate corrective measures were not taken.
Moderate	Improper application, release or disposal of biosolids to Class IV or V surface waters, surface waters with no classification, ground surfaces, or over Class F-I, G-I or G-II ground waters that results in or is reasonably expected to result in pollution. Non-Class AA biosolids were improperly applied, released, or disposed, in a manner that results in or is reasonably expected to result in exposure to the public.	Release or disposal results from inadequate implementation of an approved manual or plan, however, timely corrective measures were taken.
Minor	Improper application, release or disposal of biosolids with no impact to waters or over Class G-III or G-IV ground waters that did not result in or is not reasonably expected to result in pollution.	Release or disposal is a result of failed equipment that has received proper maintenance or due to conditions beyond the facility's reasonable control.

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Specific Guidelines for Concentrated Animal Feeding Operations (CAFOs)

FAILURE TO PROPERLY MAINTAIN OR OPERATE ANIMAL FEEDING OPERATIONS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to prevent animal access to waters of the state (wetlands, sinkholes, ponds, streams, etc.), more animals onsite than allowed by permit, improper management of dead animals, failure to line wastewater impoundments in accordance with the permit, diverting non-contact of stormwater into production area(s), or failure to maintain wastewater impoundments, including storage pond embankments and access areas that results in pollution.	The facility has been previously notified of the Department's requirements and failed to implement adequate corrective measures.
Moderate	Failure to prevent animal access to waters of the state (wetlands, sinkholes, ponds, streams, etc.) , more animals onsite than allowed by permit, improper management of dead animals, failure to line wastewater impoundments in accordance with the permit, diverting non-contact stormwater into production area(s), or failure to maintain wastewater impoundments, including storage pond embankments and access areas that results in or is reasonably expected to result in pollution.	The facility implements corrective measures in a timely manner with most requirements being met after notification by the Department.
Minor	Failure to prevent animal access to waters of the state (wetlands, sinkholes, ponds, streams, etc.), more animals onsite than allowed by permit, improper management of dead animals, failure to line wastewater impoundments in accordance with the permit, diverting non-contact stormwater into production area(s), or failure to maintain wastewater impoundments, including storage pond embankments and access areas that does not result or is not reasonably expected to result in pollution.	Minor deviations from the requirements, and adequate corrective actions were immediately implemented.

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IMPROPER APPLICATION / DISPOSAL OF MANURE, LITTER OR PROCESS WASTEWATER FROM ANIMAL FEEDING OPERATIONS

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Release or disposal to Class I, II, or III surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, or over Class F-I, G-I or G-II ground waters that results in pollution.	Improper application or disposal is deliberate, adequate corrective measures were not taken, or Nutrient Management Plan (NMP) was not developed and/or not approved by the Department.
Moderate	Release or disposal to Class IV or V surface waters, surface waters with no classification, ground surfaces, or over Class F-I, G-I or G-II ground waters that results in or is reasonably expected to result in pollution.	Release or disposal results from inadequate implementation of an approved Nutrient Management Plan (NMP); however, timely corrective measures were taken.
Minor	Release or disposal with no impact to waters or over Class G-III or G-IV ground waters that did not result or is not reasonably expected to result in pollution.	Release or disposal was a result of failed equipment, or BMP that received proper maintenance or due to conditions beyond the facility's reasonable control.