

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 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	\$4,000	
An unpermitted or unauthorized discharge or effluent limitation exceedance that resulted in a surface water or groundwater quality violation	\$10,000	
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		
Failure to construct in compliance with a permit		
Failure to maintain required staff to respond to emergencies	\$1,500	403.121(4)(e)
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		

Guidelines for Characterizing Wastewater Violations

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 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.

Violations that are considered by the Wastewater Program as being Significantly Detrimental to the Environment should be pursued at the matrix amount beginning on the first day of violation up to a maximum of 30 days as in accordance with Directive 923.

In-Kind Penalties and Pollution Prevention Projects

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

Penalty Calculation Matrix for Wastewater Violations

Matrix Factor Considerations

The Department’s Penalty Matrix for cases other than Potable Water, Hazardous Substances, or Hazardous Waste, found in Directive 923, is reproduced below. Below the matrix are tables identifying what types of violations fall into what range of the matrix. It is important to remember that to place 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.

Guidelines for Characterizing Wastewater Violations

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 \$750	\$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.

Specific Guidelines for Both Domestic and Industrial Wastewater

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 that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Permitted treatment, disposal, or collection system placed into operation without receiving certification and approval from the department.

Guidelines for Characterizing Wastewater Violations

FAILURE TO NOTIFY OF PLANNED BYPASS, ABNORMAL EVENT OR NON-COMPLIANCE

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Bypass, abnormal event or non-compliance results in the release or disposal of wastewater, effluent, reclaimed water or biosolids to surface or ground waters at an unapproved disposal site that actually result in pollution in a manner that represents a substantial threat to human health or the environment.	Bypass, abnormal event or non-compliance is discovered by the Department without timely notice provided by the permittee or authorized representative even after repeat discussions on the proper reporting of bypass, abnormal event or non-compliance.
Moderate	Bypass, abnormal event or non-compliance results in the release or disposal of wastewater, effluent, reclaimed water or biosolids to surface or ground waters at an approved disposal site that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Permittee or authorized representative notified the Department (or local program) beyond 72 hours of the discovery of the bypass, abnormal event or non-compliance and did not follow-up in writing.
Minor	Bypass, abnormal event or non-compliance results in the release or disposal of wastewater, effluent, reclaimed water or biosolids to surface or ground waters at an approved disposal site that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Permittee or authorized representative notified the Department (and local program) between 24 and 72 hours of the discovery of the bypass, abnormal event or non-compliance and did not follow-up in writing.

Guidelines for Characterizing Wastewater Violations

FAILURE TO DISCOURAGE UNAUTHORIZED ENTRY OR PROVIDE APPROPRIATE NOTIFICATION FOR PUBLIC ACCESS REUSE

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Resulted in substantial damage/harm to equipment, the environment, or public health, safety, or welfare.	Plant site/land application site provides no public notification as a reuse site, or has no features to discourage unauthorized entry or is in disrepair and being improperly used.
Moderate	Resulted in significant damage/harm to equipment, the environment, or public health, safety, or welfare.	Plant site/land application site provides no public notification as a reuse site, but has some features to discourage unauthorized entry.
Minor	Resulted in minimal decrease or interference in operation, treatment, or safety proficiency.	Plant site/land application site provides public notification as a reuse site, but only has minimal features to discourage unauthorized entry.

Guidelines for Characterizing Wastewater Violations

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

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Release or disposal of any raw wastewater to Class I, II, III, IV, V surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, or Class F-I, G-I, or G-II ground waters that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Release or disposal is deliberate or results from improper operation or maintenance or fails to immediately implement adequate corrective measures.
Moderate	Release or disposal of inadequately treated wastewater to Class I, II, or III surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, Class F-I, G-I, or G-II ground waters that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Facility immediately implements adequate corrective measures.
Minor	Release or disposal of inadequately treated wastewater to Class IV or Class V surface waters, surface waters with no classification that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Release or disposal was a result of failed equipment that had received proper maintenance or due to conditions beyond the facility's reasonable control.

Guidelines for Characterizing Wastewater Violations

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

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Violation of permit limitations that result in a violation of water quality standards of Class I, II, III, IV, or V surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, Class F-I, G-I, or G-II ground waters that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Effluent violation's greater than 2.0 X's the effluent limits.
Moderate	Violation of permit limitations that result in a violation of water quality standards, Class I, Class II, or Class III surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, Class F-I, G-I, or G-II ground waters that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Effluent violation's greater than 1.5 X's but not more than 2.0 X's the effluent limit.
Minor	Violation of permit limitations that result in a violation of water quality standards, Class IV, or V surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, Class F-I, G-I, or G-II ground waters that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Effluent violation's greater than the permit limit but not more than 1.5 X's the effluent limit.

(See Chapters 62-3 and 62-302, Florida Administrative Code, for the designated uses and specific water quality criteria corresponding with each surface and ground water classification.)

Guidelines for Characterizing Wastewater Violations

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

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Operation, Construction or Major Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without a permit that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Operation, Construction or Major Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without ever possessing a valid permit or any other valid authorization or failure to comply after notification by the Department.
Moderate	Operation, Construction or Major Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems 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.	Operation, Construction or Major Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems between four months and one year of last valid permit's expiration even after written notification by the Department.
Minor	Operation, Construction or Major Modification of Wastewater Treatment, Disposal or Collection/Transmission Systems without a permit that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Operation of Wastewater Treatment, Disposal or Collection/Transmission Systems within four months of last valid permit's expiration even after written notification by the Department.

Guidelines for Characterizing Wastewater Violations

FAILURE TO PREVENT UNAUTHORIZED OR DELIBERATE INTRODUCTION OF STORMWATER INTO COLLECTION SYSTEMS AND TRANSMISSION FACILITIES

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Results in the improper release or disposal of wastewater, effluent, reclaimed water to surface or ground waters that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Unauthorized introduction of stormwater due to neglected collection system maintenance and repair, and/or does not have a planned inflow/infiltration control program.
Moderate	Results in the improper release or disposal of wastewater, effluent, reclaimed water to surface or ground waters that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Failure to implement a planned infiltration/inflow control program.
Minor	Results in the improper release or disposal of wastewater, effluent, reclaimed water to surface or ground waters that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Facility actively working to correct problems through a written inflow/infiltration control program.

Guidelines for Characterizing Wastewater Violations

FAILURE TO CONSTRUCT WASTEWATER TREATMENT OR DISPOSAL SYSTEMS SUBSTANTIALLY 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 actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Numerous substantial construction deviations discovered by the Department after completion of construction without notice provided by the permittee or authorized representative or compliance schedule milestones are exceeded by greater than 180 days.
Moderate	Failure to construct wastewater treatment or disposal system in accordance with approved plans or compliance schedules that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Substantial construction deviations discovered by the Department after completion of construction without notice provided by the permittee or authorized representative or compliance schedule milestones are exceeded by between 90 to 180 days.
Minor	Failure to construct wastewater treatment or disposal system in accordance with approved plans or compliance schedules that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Substantial construction deviations discovered by the Department during construction without notice provided by the permittee or authorized representative or compliance milestones are exceeded by less than 90 days.

Guidelines for Characterizing Wastewater Violations

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 actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Facility is operating without an Operation and Maintenance Manual.
Moderate	Failure to maintain or operate equipment, facility, transmission or collection system that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Numerous and frequent deviations exist from standard operating practices/procedures or from the Operation and Maintenance Manual.
Minor	Failure to maintain or operate equipment, facility, transmission or collection system that actually or are reasonably expected to result in a minimal threat to human health or the environment.	Minor deviations exist from standard operating practices/procedures or from the Operation and Maintenance Manual.

Guidelines for Characterizing Wastewater Violations

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 actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Required monitoring on a weekly, monthly, quarterly, semi-annual, or annual basis is not conducted for 2 or more consecutive monitoring periods.
Moderate	Failure to conduct water quality or biosolids monitoring that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Required monitoring on a daily, weekly, monthly, quarterly, semi-annual, or annual basis is not conducted for 1 monitoring period.
Minor	Failure to conduct water quality or biosolids monitoring that actually or are reasonably expected to result in minimal threat to human health or the environment.	N/A

Guidelines for Characterizing Wastewater Violations

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 actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Substantial deficiencies were identified in the facility or contract lab that question the lab's ability to collect, analyze, and report data that meets the Department's quality control standards.
Moderate	Failure to meet sample collection procedures or laboratory requirements that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Deficiencies were identified in the facility or contract lab that question some of the data generated by the lab that needs immediate follow-up to demonstrate their ability to continue to collect, analyze, and report data that meets the Department's quality control standards.
Minor	Failure to meet sample collection procedures or laboratory requirements that actually or are reasonably expected to result in minimal threat to human health or the environment.	Some minor deficiencies were identified in the facility or contract lab that require correction before the facility's next routine inspection, yet are not severe enough to bring into question the reliability of the facility's data.

Guidelines for Characterizing Wastewater Violations

Specific Guidelines for Domestic Wastewater

FAILURE TO PROVIDE CERTIFIED OPERATOR

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Failure to provide a certified operator for Categories I through IV, Class A, or Type I biosolids management facilities that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Staffing and lead operator requirements are not met.
Moderate	Failure to provide a certified operator for Categories I through IV, Class B, or Type II biosolids management facilities that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Staffing requirements are not met, but lead operator requirement is met.
Minor	Failure to provide a certified operator for Category I, II, III, IV, or Type III biosolids management facilities that actually or are reasonably expected to result in minimal threat to human health or the environment.	Minor deviation from meeting minimum staffing requirements.

Guidelines for Characterizing Wastewater Violations

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 Class F-I, GI or GII ground waters that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Improper application, release or disposal was deliberate or resulted from inadequate operation and maintenance.
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, GI or GII ground waters that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Improper application, release or disposal resulted from inadequate operation and maintenance or failed equipment that had received proper maintenance or due to conditions beyond the permittee's or hauler's control.
Minor	Improper application, release or disposal of biosolids over Class GIII or GIV ground waters that actually or are reasonably expected to result in minimal threat to human health or the environment.	Improper application, release or disposal was immediately corrected.

Guidelines for Characterizing Wastewater Violations

FAILURE TO FOLLOW THE OPERATING PROTOCOL FOR A PUBLIC ACCESS REUSE FACILITY

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	N/A	Protocol violations are discovered by the Department and the permittee or operator had been previously notified of the requirement to follow the operating protocol with no assurances that the protocol limits were met during the time of reclaimed water production.
Moderate	Resulted in the release or disposal of inadequately treated wastewater to an unrestricted public access irrigation system that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Protocol violations are discovered by the permittee or operator and not reported.
Minor	Resulted in the release or disposal of inadequately treated wastewater to an unrestricted public access irrigation system that actually or are reasonably expected to result in minimal threat to human health or the environment.	Permittee or operator promptly corrects the protocol violations and properly notifies the Department.

Guidelines for Characterizing Wastewater Violations

Specific Guidelines for Industrial Wastewater

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 water sources (wetlands, sinkholes, ponds, streams, etc.), more animals onsite than allow by permit, improper management of dead animals, failure to line wastewater impoundments, unauthorized introduction of stormwater into production area(s), failure to maintain wastewater impoundments, including storage pond embankments and access areas that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Permittee, responsible authority, or facility manager has been previously notified on multiple occasions of the Department's requirements and failed to immediately implement adequate corrective measures.
Moderate	Failure to prevent animal access to water sources (wetlands, sinkholes, ponds, streams, etc.) , more animals onsite than allow by permit, improper management of dead animals, failure to line wastewater impoundments, unauthorized introduction of stormwater into production area(s), failure to maintain wastewater impoundments, including storage pond embankments and access areas that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Permittee, responsible authority, or facility manager corrects violations found after second notification by the Department.
Minor	Failure to prevent animal access to water sources (wetlands, sinkholes, ponds, streams, etc.), more animals onsite than allow by permit, improper management of dead animals, failure to line wastewater impoundments, unauthorized introduction of stormwater into production area(s), failure to maintain wastewater impoundments, including storage pond embankments and access areas that actually or are reasonably expected to result in minimal threat to human health or the environment.	Permittee, responsible authority, or facility manager corrects violations found after first notification by the Department.

Guidelines for Characterizing Wastewater Violations

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

Matrix Factor	Environmental Harm	Extent of Deviation from Requirement
Major	Results in release or disposal to a Class I, Class II, or Class III surface waters, Outstanding Florida Waters, Outstanding National Resource Waters, or failure to develop a Department approved Nutrient Management Plan (NMP) that actually results in pollution in a manner that represents a substantial threat to human health or the environment.	Improper application or disposal is deliberate or results from inadequate operation and maintenance with a failure to immediately implement corrective measures.
Moderate	Results in release or disposal to Class IV or Class V surface waters, or to surface waters with no classification, ground surfaces over Class F-I, Class GI or Class GII ground waters that actually or are reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment.	Improper application or disposal results from inadequate operation and maintenance with a failure to immediately implement corrective measures.
Minor	Results in release or disposal to ground surfaces over Class GIII or Class GIV ground waters that actually or are reasonably expected to result in minimal threat to human health or the environment.	Improper application or disposal results from inadequate operation and maintenance, but immediately implement corrective measures.