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EPC Penalty Matrix
## PENALTY ASSESSMENT MATRIX

<table>
<thead>
<tr>
<th>Potential for Harm</th>
<th>Extent of Deviation from Requirement</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major</td>
<td>$5,000 to $4,000</td>
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<td>Minor</td>
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<td>$300</td>
<td>$250</td>
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</tbody>
</table>

July 2008
DEP Penalty Matrix
(from an attachment in DEP Directive 923)
**DEP and Delegated Programs**

**PENALTY CALCULATION MATRIX**

**EXTENT OF DEVIATION FROM REQUIREMENT**

<table>
<thead>
<tr>
<th>Potential For Harm</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
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<td>Minor</td>
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<td>$199 to $100</td>
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</tbody>
</table>

*Reduce by 1/2 all categories for peciable water cases.

**ATTACHMENT I**
EPC Enforcement Policy
ENFORCEMENT POLICY

PURPOSE

To outline standard administrative procedures involved in enforcement activities agency-wide; to describe the basic methodology used in enforcement activities; and to explain and define actions to be used in implementing enforcement and issuing enforcement documents.

POLICY

PART I. Scope: This guidance applies to all EPC administrative enforcement actions. Failure to follow any specific procedure or format described herein will not in itself invalidate the enforcement action taken. Administrative or Legal enforcement action may be initiated at any point in the process.

PART II. Environmental Protection Commission Enforcement Procedures: EPC takes enforcement action to correct violations of regulations, abate pollution, safeguard the public health and welfare, collect cost and penalties, and expeditiously resolve those activities found to be environmentally disruptive or disturbing to the community. The choice of enforcement action, whether administrative, civil or criminal, will depend on the characteristics of the violation and the compliance history of the violator.

A. Notification and Enforcement Mechanisms

(1) NOI. For violations of environmental regulations where a negotiated settlement is reasonably likely, a Notice of Intent to Initiate Enforcement (NOI) is issued. The NOI provides notice to the responsible party (aka violator) that staff believes there has been a violation of statutes, rules, agency orders, and/or permit conditions and intends to pursue enforcement. The responsible party is requested to: 1) "show cause" if it believes that the information which staff relied upon is incorrect or incomplete; and 2) provide a written explanation of the alleged violation and identify what actions it has taken or would be willing to implement to correct and prevent future similar violations. Ten calendar days from date of receipt are usually allowed for the responsible party to respond, but this may be extended based on the case’s circumstances. The respective Division Director signs the NOI. Unless the violator is able to "show cause" that the alleged violations in the NOI are other than originally perceived by staff, enforcement actions initiated by NOI should result in the execution of a settlement agreement via a consent order (CO). The consent order, in most cases, includes reimbursement of staff costs, and may include settlement penalties and corrective actions if necessary.

(2) Citation/NOV. The Citation (known as a Notice of Violation or NOV in delegated programs) is issued by the Executive Director pursuant to Section 14 of the Act. It is a formal administrative finding of violation, and may also include an order to cease and/or
an order to correct the violation. In delegated programs, pursuant to section 403.121(2), F.S., an ELRA NOV may also have an order for civil penalties and cost reimbursement. The use of an ELRA NOV is highly regulated by section 403.121(2)(b) and (c), F.S. (e.g. – cannot exceed $10,000 penalty, must include all corrective actions, only one ELRA NOV per entity thus it must include all known regulatory programs violations, etc.). Thus, consult all delegated divisions and Legal before issuing an ELRA NOV. The Citation gives specific notice that it may be appealed as per Section 9 of the Act (or for delegated programs Chapter 120, F.S.). This enforcement action is usually implemented for serious violations, those in which settlement may be difficult to achieve, or in those cases where settlement through the NOI and initial draft consent order is at an impasse. If the case merits it (especially for an injunction), a Citation does not need to be prepared, and after authorization, a lawsuit can be immediately filed in court after appropriate approvals are given by the Commission and/or the Executive Director. Failure to comply with a Citation is a specific and separate violation of the EPC Act (or for delegated programs, Chapter 403, F.S.). The Citation must be reviewed by the Legal Department for legal sufficiency prior to signature by the Executive Director. If the Citation is appealed and the violator wishes to proceed with a hearing, the Legal Department in coordination with the assigned hearing officer will set a hearing date. However, a violator may wish to preserve its right to appeal, yet hold that process in abeyance pending negotiation of a settlement. This will be accommodated as long as good faith efforts toward settlement are evident. The enforcement action timelines in this guidance will be taken into consideration under these circumstances. Appealing the Citation does not relieve the violator of the obligation to comply with applicable permits and laws, but it does stay the Citation. If the violation is not stopped within the time specified, or reasonable steps taken to rectify the violation, the Executive Director shall have the power and authority to issue an order requiring the violator to cease the activity or suspend operation of the facility causing the violation until the violation has been corrected. If a Citation is not appealed, it automatically becomes an enforceable order of the agency and can be enforced in circuit court. An unappealed NOV requires a Final Order attached to it. An unappealed Citation (or an NOV with a Final Order) is equal in legal force to a signed Consent Order, but unlike a CO, Citations and non-ELRA NOVs will not have a penalty and cost assessment (those will be assessed later in court or via settlement).

(3) Emergency Order. An Emergency Order is issued by the Executive Director pursuant to Section 15 of the Act and is reserved for violations that create an immediate public health hazard or cause irreparable harm. The Order requires immediate cessation of the activities causing the threat of harm. Failure to comply with an Emergency Order is a specific and separate violation of the Act. The Legal Department will review this document for legal sufficiency prior to signature by the Executive Director.

(4) Litigation. Section 18 of the EPC Act authorizes the Commission to seek civil judicial remedies for violations of the Act. This typically requires approval of the EPC Board or in expedited matters the Executive Director. Judicial remedies may be sought before, concurrent with or after administrative enforcement is pursued. Judicial actions may be to enforce compliance with the Act, regulations and orders, to seek an injunction to cease a violation, and/or to require correction. The Commission is entitled to recover its costs, damages and the court can assess a civil penalty of up to $5,000 (or $10,000 if state remedies are sought) per day per violation. Once a case is transferred to the Legal
Department, the Division enforcement coordinator will continue to monitor case activity and act as liaison between Division staff and the Legal Department as necessary.

(5) **Criminal Activity and Coordination with Law Enforcement.** Section 17(3) of the EPC Act provides that a violation of the EPC Act and rules can be a criminal violation. In the event a compliance or enforcement case involves a situation that may rise to the level of criminal activity, EPC staff shall inform their Division Director and the Executive Director before calling law enforcement. In the event that a situation merits immediate law enforcement involvement, the staff may contact law enforcement at their discretion but must also immediately thereafter (same day) inform the Division Director and the Executive Director. The following are some reasons why referral for criminal enforcement will be considered: if a violation is severe, intentional, or in knowing disregard for the likelihood of violation and within the clear control of a person. This subsection is not intended to limit or address interaction with law enforcement for employee safety matters (e.g. – escort to a site inspection).

B. **Resolution Mechanisms**

(1) **Short Form Consent Order.** The Short Form Consent Order (SFCO, formerly known as “settlement letter”) is a document issued by the division and becomes a contractual agreement and order of the agency when signed by an authorized representative of the violator. The SFCO is typically used when there are no further corrective actions needed. The Executive Director, the Executive Director’s designee, or the Division Director may execute the SFCO on behalf of the EPC. The SFCO must include the following: a finding of facts regarding the violation, the actions already taken to abate same, the actions taken to prevent a recurrence of the violation, and any agreed upon penalties and investigative costs.

A SFCO should generally not be used if corrective actions are required.

When corrective actions are required, a consent order is the recommended means of resolution. This document must be reviewed by the Legal Department for legal sufficiency, in draft form, prior to mailing.

(2) **Consent Order.** The Consent Order is a settlement document in the form of an administrative order which outlines the facts of a violation and the requirements for a mutually satisfactory resolution. The Consent Order normally contains the following:

(a) Identification of responsible party(ies) and location of violation.
(b) A finding of facts regarding the violations.
(c) Corrective actions and deadlines for completion.
(d) Recovery of the costs incurred in investigation and resolution
(e) Settlement penalty in lieu of civil penalties.
(f) Stipulated penalties for missing deadline dates and/or for future violations of a similar nature.
(g) Waiver of EPC's right to seek judicial imposition of damages or civil penalties for violations described in the order, and a waiver of the violator's right to a hearing or judicial review of the terms of the order.
(h) In cases requiring correction or monitoring over an extended period of time, recording of the document with the Clerk of the Court in the Official Records of Hillsborough County may be required.

The Legal Department maintains shell Consent Orders for the local and delegated programs. The cover letter usually requires a response from the violator within fifteen days of receipt and if all parties agree to the terms, the Consent Order is executed by the Executive Director. Execution of a SFCO or CO by the violator requires a signed and notarized affidavit; please consult Legal if you want to waive the affidavit.

(3) **Closeout Letter.** A Closeout Letter shall be signed by the Division Director and issued to all parties to the Consent Order (including a SFCO) or an NOV and/or Final Order after an NOV when a violator has fulfilled all EPC requirements and is in compliance with applicable regulations that pertain to the Consent Order or NOV or Final Order after an NOV.

C. **Timeline for Case Tracking and Resolution**

The deadlines in this section have been established to create consistent goals for notification and resolution in EPC administrative enforcement actions. It is recognized that each enforcement case is unique, and that case-specific negotiations and settlement requirements may make settlement by a specific deadline impossible. Each Division enforcement coordinator will use these deadlines to track the settlement process and make appropriate recommendations to the Division Director for timely action.

(1) **Day 0** is set by the Division enforcement coordinator at the date of receipt of the referral from staff. If other timelines have been established by agreement, those timelines will supersede this guidance.

(2) **By Day 15,** the Division enforcement coordinator will verify and ensure that the appropriate responsible parties have received some form of timely written notice (e.g. – noncompliance letter, warning notice, inspection report, etc) that a violation exists or occurred as provided for in the EPC’s **Complaints, Compliance Assistance Letter, and Warning Notice Policy.** Thus, some form of written notice must issue by Day 15, if the compliance staff did not issue it. Notice may be provided by either Division staff or the enforcement coordinator.

(3) **By Day 60,** one of the notification or enforcement mechanisms (e.g. – NOI, Citation, NOV, CO, etc.) described in this policy will be sent to the violator by certified mail or personal service. If appropriate settlement negotiations have begun prior to day 60, issuance of a notification or enforcement document may be waived or delayed.

(4) The Executive Director shall be provided a monthly update at a Senior Staff meeting by each regulatory Division Director prior to the regular EPC Board meeting as to all new NOIs, NOVs and Citations that the EPC has issued in the past month. A standard reporting format shall be used by all divisions.

(5) **By Day 180,** if appropriate settlement of the violation(s) has not been achieved and is not imminent, the Division enforcement coordinator and other Division staff involved in the case will make a recommendation to the Division Director to either issue a Citation/NOV
(if one has not already issued) or refer the case to the Legal Department for appropriate legal action. In the event a Division needs in excess of these 180 days for resolution of a matter, the Division shall seek written approval from the Executive Director.

D. **Director's Penalty Assessment Guidelines**

Penalties for the settlement of enforcement cases are collected pursuant to one of the resolution mechanisms described in this policy. The penalty amount is calculated by enforcement staff in coordination with the Division enforcement coordinator and in accordance with all applicable laws, the appropriate penalty matrix, and the associated DEP and/or Division's Penalty Assessment Guidelines (see Part III below). The Division Director shall review and sign-off on the initial penalty calculation. A penalty calculation worksheet shall be filed in the appropriate enforcement file and shall be dated and initialed by the coordinator. Any revisions that are made to the initial penalty calculation must be justified in accordance with the Penalty Assessment Guidelines; the justification for such revision should be included in the enforcement file. A penalty cannot be adjusted below what is allowed in the guidelines unless recommended by staff and agreed to by the Division Director. The rationale for any such adjustment will be explained in a memorandum to the file from the Division enforcement coordinator. Penalties shall be referred to in settlement documents as “penalties” or “settlement payment.” Any initial penalty that exceeds $5,000 shall be reviewed by the Executive Director prior to it being offered to the violator. Although all penalties shall be calculated consistent with division specific guidelines referenced herein (e.g. DEP Directive 923), special attention shall be paid to consideration of the applicability and inclusion of economic benefit of non-compliance, multiple or multi-day penalties, cost avoidance, and treatment of violators with a history of non-compliance. In furtherance of that consideration, the EPC enforcement staff shall include an upward adjustment in settlement penalty offers for the history of non-compliance factor for any violation within any and all EPC divisions as follows: 1) one other violation within five years of the current violation receives a 10 - 25% upward adjustment and 2) two or more violation(s) within five years of the current violation receives a 25 - 50% upward adjustment. But for where ELRA applies, any past violations may be considered, not just those that are in orders or judgments.

By statute, each day a violation continues it is considered a separate violation, punishable by $5,000 to $10,000 per day per violation. Some discretion may be exercised by the enforcement coordinator, the Division Director, and the Executive Director in calculating multiple day penalties (e.g. – multi-week penalties).

Any settlement offer outside of the penalty matrix must be approved by the Executive Director. Thus, if during a negotiation an offer is conceptually agreed upon, but it does not fall within the appropriate matrix, then the EPC staff must notify the violator that they must have the Executive Director approve the settlement amount. Staff is encouraged to inform the Executive Director of any large revision in a penalty offer that is within the matrix, but is considered a large revision from the original calculation. Staff is encouraged to inform the Executive Director of any penalty offer that is a large revision from an initial ELRA penalty calculation. Additionally, due to financial hardship, the violator may request the reduction or forgiveness of penalties and/or costs that resulted from an enforcement action. All such requests shall be in accordance with EPC’s Enforcement Hardship Requests Policy.
E. Reimbursement for Investigative Costs

All staff costs for investigation and resolution of administrative enforcement actions will be collected as provided for in Chapter 1-6, Rules of the Commission, and according to the "Procedure for Recovering Administrative Enforcement Costs."

PART III. Matrices and Guidelines Utilized by the EPC. The EPC utilizes various penalty matrices, statutory penalties, DEP guidelines, and EPC guidelines. The following is a non-exhaustive list of the matrices and guidelines EPC uses for settlement penalty characterization:

1) EPC Penalty Matrix
2) DEP Penalty Matrix (in DEP Directive 923)
3) DEP Settlement Guidelines for Civil and Administrative Penalties (DEP Directive 923, February 14, 2013)
4) EPC Air Mgmt. Division Penalty Assessment Guidelines
5) DEP Guidelines for Characterizing Solid Waste Violations
6) DEP Guidelines for Characterizing Storage Tank Violations (June 28, 2013)
7) DEP Guidelines for Characterizing Wastewater Violations
8) DEP Guidelines for Characterizing Environmental Resource Violations (Wetlands)
9) EPC Guidelines for Mangrove Violations
10) Statutory Penalties in section 403.121, F.S.
11) Statutory Penalties in section 17 of the EPC Act.
12) Mangrove Penalty statute in section 403.9332, F.S.
13) Chapter 1-6, Rules of the EPC
14) Enforcement Hardship Requests Policy

The Executive Director approves the use of all the above matrices and guidelines, but acknowledges that the DEP or EPA may amend these from time to time and the EPC staff shall use the most current version of any appropriate guidance. Many of the documents in the above list of guidance and matrices are subject to change by the DEP, thus they are not incorporated as is, but merely referenced as guidance tools. Each Division’s enforcement coordinator shall ensure they are using the most up-to-date matrices and guidelines. The EPC’s penalty matrix, with minor exception, is half the dollar amounts of the DEP’s matrix, as the DEP generally has authority to seek up to $10,000 per day per violation and the EPC act provides for $5,000 per day per violation.

It should also be noted that the EPC has two other policies: Complaints, Compliance Assistance Letters, and Warning Notice Policy and Enforcement Hardship Requests Policy that also detail many compliance and enforcements procedures.

Approved:

Richard Garrity, PhD
Executive Director EPC

Date

Policy Established: August 29, 1989; September 20, 1991; amended May 1, 1996; amended July 21, 2008; and amended on the date executed above.

EPC Executive Director Policy – Enforcement (f/k/a EPC Enforcement Policy)

Page 6 of 6
DEP Settlement Guidelines for Civil and Administrative Penalties
(DEP Directive 923, July 2007)
SETTLEMENT GUIDELINES FOR CIVIL AND ADMINISTRATIVE PENALTIES

1. Purpose

These guidelines are intended to provide a rational, fair and consistent method for determining the appropriate amount of civil and administrative penalties the Department should seek from responsible parties in settling enforcement actions. These guidelines should be used in settling both administrative and judicial enforcement actions brought against persons violating Department statutes or rules. Although the Environmental Litigation Reform Act (ELRA) enacted in the 2001 legislative session sets specific penalty amounts for certain violations covered under the Act when those violations are pursued with a Notice of Violation, these guidelines provide: (1) direction about the application of the ELRA penalty schedule to the penalty calculation and negotiation process, (2) direction for programs not covered under ELRA, and (3) direction on cases that involve penalties calculated under ELRA that exceed $10,000. It is intended that these guidelines be used solely for internal staff guidance in determining what position the agency should take in settlement negotiations concerning penalties. These guidelines are not applicable for assessing damages to natural resources. In an appropriate case, monetary relief for actual damages caused to the State's natural resources can be sought in addition to civil or administrative penalties. These guidelines will be periodically reviewed to determine their effectiveness, and whether refinements are needed.

2. Authority

403.061 and 403.121, Florida Statutes

3. Introduction

With the enactment of ELRA the Department now has administrative penalty authority for most programs. The negotiation process involving the use of consents orders to settle matters involving civil penalties should be used, whenever possible and appropriate, before issuing a notice of violation or a judicial complaint. No notice of violation or complaint should refer to these guidelines. If a settlement cannot be reached and recovering penalties is appropriate, the Department must issue a notice of violation in all cases that are covered under ELRA that involve only penalties, and that involve penalties in an amount that is $10,000 or less as calculated under ELRA.

Independent of ELRA, the Department has statutory authority to assess administrative penalties in Beachos and Coastal Systems cases for up to $10,000 per day. Section
161.054(1), Florida Statutes, and in State Lands cases for up to $10,000 per day, Section 253.04(2), Florida Statutes. ELRA does not modify or add to that existing authority. Penalty guidelines for these programs have been adopted by rule.

The Department now has the authority to impose up to a total of $10,000 in civil penalties in one administrative action for most regulatory violations as provided in ELRA. The Department also has the authority in a judicial proceeding to ask a court to assess penalties of up to $10,000 per day per violation in Sections 403.141, and 373.129(5) Florida Statutes; up to $25,000 per day per violation for hazardous substance violations in Section 403.726; up to $50,000 per day per violation for hazardous waste violations in Section 403.727, Florida Statutes; and up to $5,000 per day per violation for violations of the Safe Drinking Water Act in Section 403.860, Florida Statutes and for violations involving phosphate mines in Section 378.271(2)(4), Florida Statutes.

In determining whether the Department should settle a case, file a notice of violation, or go to court for a judicial assessment of penalties, the Department will not only look at the statutory authorizations and requirements, but also at the following: does enforcement result in the elimination of any economic benefit gained by the violator as a result of the violation; and beyond that, does enforcement provide enough of a financial disincentive to discourage future violations not only from the violator but from others contemplating similar activity? At the same time, this policy should not be used to try to obtain more without litigation than could be obtained as civil penalties in an administrative or a judicial action. It must also be recognized that in some cases the benefits to the Department and public are not worth the costs and effort necessary to recover a penalty. The District and Division Directors are authorized to deviate from these guidelines consistent with state law in raising or lowering the penalties when doing so will result in better compliance and better capability for carrying out the mission of the agency.

The Department staff involved in pursuing enforcement, with appropriate supervisory review, should use their judgment along with any program specific guidance that is consistent with this policy as to when a penalty should be sought. The use of penalties is an enforcement tool that should be used in any case in which it is determined that penalties are needed to ensure that the responsible party and others similarly situated are deterred from future non-compliance. In summary, the basic purpose of this document is to provide guidance about how to calculate penalties for initial settlement discussions, and how to make adjustments to the penalties, either up or down, during the negotiation process.
4. Applicability to Program Areas

This policy is designed to apply to all program areas except Beaches and Coastal Systems and State Lands, unless otherwise preempted by an interagency agreement or other obligation of the Department. The Department currently has interagency agreements with the EPA. Those agreements incorporate penalty policies for certain program specific violations, which should be used as guidance to the extent they are different than this policy and not inconsistent with state law. There may be other situations where, from time to time, there may be interagency agreements regarding enforcement of a specific case or series of cases. These must be treated on a case-by-case basis.

Most of the Department’s programs have developed program specific guidelines for characterizing violations routinely found in their program areas. The program specific guidelines do not attempt to provide guidelines for every possible violation that may be discovered. The program specific guidelines are intended to be used in conjunction with these Settlement Guidelines when calculating the appropriate penalties to be sought in cases involving penalties exceeding $10,000 or in cases involving programs not covered under ELRA. There may be some cases that involve unusual circumstances that have not been factored into the program specific guidelines.

5. Penalty Calculation

The initial step in calculating any penalty is to determine whether the program under which the penalty is being assessed is covered by ELRA, and whether the penalty using ELRA exceeds $10,000. The RCRA, UIC, Asbestos and Beaches and Coastal Systems programs are not specifically covered by ELRA.

A. If the program is not covered by ELRA:

The penalty should be calculated using: (a) the program specific guidelines to determine how the violation should be characterized; and (b) the guidance below in Sections 6, 7, and 8 to determine the total penalty amount.

B. If the program is covered by ELRA and the penalty does not exceed $10,000:

1. The civil penalty calculation should start with the application of the specific penalty schedule in ELRA. If the total amount of penalties calculated for all violations using the ELRA penalty schedule is $10,000 or less, those calculations should be used as the baseline for settlement discussions.
2. Once the baseline penalty has been established, a decision must be made as to whether there are any mitigating circumstances involved in the particular case that would warrant downward or upward adjustments of the penalties calculated using the ELRA penalty schedule.

3. Downward adjustments could be made for good faith efforts to comply before or after the discovery of the violation, or for violations caused by circumstances beyond the control of the responsible party which could not have been prevented by due diligence. A downward adjustment could also be made if it is determined, after review of the responsible party’s financial information, that the responsible party is unable to pay the penalty schedule amount.

4. Upward adjustments to the penalty schedule amount could be made based upon a history of non-compliance as provided in ELRA or for economic benefit gained from the violation. If the upward adjustments together with the ELRA schedule baseline penalty should not exceed a total of $10,000, the penalty must be capped at $10,000, if the Department is going to pursue the penalty under ELRA.

C. If the calculated penalty using the specific penalty schedule in ELRA exceeds $10,000:

There may be cases in which the calculated penalty marginally exceeds $10,000 and would not warrant a state court action, if not settled. As a practical matter, those cases should either be settled at $10,000 or pursued administratively for the maximum allowed under the ELRA. When a particular penalty for violations covered under ELRA exceeds $10,000, the characterization of the violation should be determined using the program specific guidelines, and the appropriate penalty matrix should be used for all violations.

δ. The Penalty Matrix

The penalty matrix in Attachments I, II, III, and IV have two factors:

a. potential for environmental harm; and

b. extent of deviation from a statutory or regulatory requirement.

Subsection a. addresses the actual or potential harm to human health or the environment that may occur as a result of the violation. Note that the harm may be actual or potential - the focus should be on the activity itself and not upon whether it was discovered in time to prevent serious environmental consequences. There are three levels of potential for harm within this axis of the matrix:
1. MAJOR: violations that actually or are reasonably expected to result in pollution in a manner that represents a substantial threat to human health or the environment;

2. 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;

3. MINOR: violations that actually or are reasonably expected to result in minimal or no pollution.

An example of a major violation is a discharge or emission of a pollutant to the air or a water body in a manner which exceeds air or water quality standards either by a substantial amount or over a substantial period of time, or occurs in an ambient environment that is so classified that it will be substantially affected by the discharge or emission, or a dredge and fill violation that covers a substantial area, occurs over a substantial period of time, or affects a water body that is so classified that it is substantially affected by the activity. Moderate and minor violations are those with impacts on such activities comparable to the degree of harm as defined above.

Subsection b. addresses the degree to which the violation deviates from Department statutes and rules and thereby upsets the orderly and consistent application of the law. The three levels are classified as follows:

1. MAJOR: the violator deviates from the requirements of the law to such an extent that there is substantial noncompliance.

2. MODERATE: the violator deviates from the legal requirements of the law significantly but none of the requirements are implemented as intended.

3. MINOR: the violator deviates somewhat from the requirements of the law but most of the requirements are met.
Each box in the penalty matrix contains a range of penalty amounts. If it is determined that the violations were knowing, deliberate or chronic violations, penalties should be calculated by using the top of the ranges. The district staff may calculate penalties as the top of the ranges for any business or individual for any violation if the seriousness of the violation or the history of non-compliance requires a higher penalty to achieve deterrence.

7. Multiple and Multi-Day Penalties

Violations usually occur in multiples, over extended periods of time. While the policy must be designed to encourage a prompt return to compliance, assessing the full matrix penalty amount for each day of a violation for those cases outside the scope of ELRA could result in an astronomical amount being sought. On the other hand, such a calculation might be useful in setting outside limits if a large economic benefit has been received from the violation. In order to recognize ongoing and multiple violations without unrealistic results, the following applies:

A penalty should be calculated for every violation which constitutes an independent and substantially distinguishable violation, or when the same person has violated the same requirement in substantially different locations. One activity or omission can result in more than one violation. For example, failing to conduct sampling of a public drinking water system may result in a number of separate violations such as: no organic chemical sampling, no inorganic chemical sampling, no turbidity sampling, no microbiological sampling, and so forth. On the other hand, if there is only one activity or omission that serves as the basis for several violations, but the violations are essentially of the same nature or have the same or potentially the same impact on the environment, but prohibited by different rules regulating that same activity, only one penalty should be calculated. For example, discharging solid waste in a wetland can be a solid waste and a dredge and fill violation. Or if one violation results in violations of related rules bearing on basically the same subject, only one penalty should be calculated.

Multi-day penalties should be pursued where daily advantage is being gained by the violator for an ongoing violation; where the violation is causing daily adverse impacts to the environment or the program, or where the violator knew or should have known of the violation after the first day it occurred and either failed to take action to mitigate or eliminate the violation or took action that resulted in the violation continuing; or where economic benefit is being gained on a daily basis. Multi-day penalties should be computed by multiplying the appropriate daily penalty calculated or a part thereof by the number of days of noncompliance. Where the impact of the ongoing violation is not significantly detrimental to the environment or the program, a penalty amount that is
lower than the matrix amount should be calculated for the violations that occur after the first day. For violations that are significantly detrimental to the environment or the program, a penalty amount at the matrix amount should be calculated for the violations that occur after the first day, up to 30 days of non-compliance. For violations that occur for more than 30 days, judgment should be exercised to determine the appropriate penalty amount to be sought for each additional day of non-compliance that occurs over 30 days. For multi-day hazardous waste violations, staff should follow the guidance provided in EPA’s most current RCRA Civil Penalty Policy. Multi-day penalties are also useful when a facility agrees to come into compliance by a specific date. In that case stipulated daily penalties could be required for missing the agreed upon compliance date. Or the overall penalty could be lowered based upon the number of days the violator comes into compliance prior to the compliance date.

An alternative to multiplying the total daily penalty by the number of days of noncompliance for non-ELRA cases that are not significantly detrimental to the environment or program would be to use one or more of the adjustment factor amounts chosen multiplied by the number of days the adjustment factor is appropriate. For example, assume a total one day penalty of $8,000 was arrived at by adding $5,000 derived from the matrix, $1,000 for lack of good faith before the Department discovered the violation, and $1,500 for lack of good faith after the Department informed the responsible party of the violation, but you feel the penalty is too low considering the nature of the violation. A multi-day penalty could be calculated, for example, by adding to the total one-day penalty ($6,000) a multiple of $1,000 times the number of days the violation occurred prior to being discovered by the Department and the violator acted with lack of good faith, and/or by multiplying $1,000 times the number of days the violation occurred after the Department informed the responsible party of the violation and the violator acted with lack of good faith.

If the above described example involved a violation that took place over a twenty-day period with the violator acting with lack of good faith for five days prior to the Department discovering the violation, and the violator acting with lack of good faith for ten days after being informed of the violation by the Department, the total penalty could be calculated as follows:

a. One day penalty - $6,000 (without adjustments), plus

b. A multi-day penalty using the adjustment factor amount for lack of good faith prior to the Department discovering the violation times the number of days lack of good faith was demonstrated by the violator - $1,000 x 5 = $5,000, plus
c. A multi-day penalty using the adjustment factor amount for lack of 
good faith after the violator was informed of the violation by the 
Department times the number of days lack of good faith was 
demonstrated by the violator - $1,000 x 10 - $10,000.

d. Total penalty proposed for settlement - $6,000 + $5,000 + $10,000 = 
$21,000.

It is important in using daily penalties of this type that the amount be sufficient to 
discourage the violator from continuing a violation by making it more expensive to pay 
the daily penalty than to come into compliance. Since some programs either have or will 
develop guidelines for determining when multiple or multi-day penalties are appropriate, 
you should refer to the program specific guidelines for further guidance. Also, if the case 
falls within the scope of ELRA, multi-day penalties should be pursued consistent with 
ELRA.

8. Adjustment Factors

The attached Penalty Computation Worksheet sets out the steps you should follow in 
calculating a penalty based upon the matrix and adjustment factors. After you have 
calculated the penalty amount derived from the matrix, you should consider the 
adjustment factors and determine whether any or all of them should be used. When 
applying adjustment factors, a penalty can be reduced to zero or increased up to the 
statutory maximum per day allowed for the particular violation.

**Good Faith Efforts to Comply/Lack of Good Faith Prior to Discovery of the** 
**Violation by the Department:** This adjustment factor can be used to increase or 
decrease the amount of penalties derived from the penalty matrix. This adjustment factor 
allows you to consider what efforts the responsible party made prior to the Department’s 
discovering a violation to comply with applicable regulations. Some examples of lack of 
good faith are:

a. The responsible party knew it was not complying with the Department’s 
regulations.

b. The responsible party claims it did not know it was not complying with the 
Department’s regulations, but because of the nature of the responsible party’s 
business and the length of time the business was operating, it is reasonable to 
assume that the responsible party should have known about the Department’s 
regulations, or the responsible party made no efforts to find out about what
Department regulations apply when it would have been responsible to have done so.

c. The violation was caused by an uninformed employee or agent of the responsible party, and the responsible party knew or should have known about the Department’s regulations and made no or little effort to train, educate or inform its employees or agents.

Some examples of good faith efforts to comply are:

a. The violation was caused by the responsible party’s employees or agents despite the responsible party’s reasonable efforts to train, educate or inform its employees or agents.

b. The violation was caused by the responsible party as a result of a legitimate/misinterpretation of the Department’s regulations.

c. The violation occurred after a Department regulation was changed and compliance was required, but the responsible party had been making reasonable efforts to bring its operation into compliance with the new Department regulation.

d. The responsible party took action on its own to mitigate the violation once it discovered that a violation had occurred.

e. Once the responsible party discovered the violation, it made changes to its operation on its own to prevent future violations from occurring.

f. The responsible party has demonstrated that it is operating in accordance with an acceptable Partnership for Ecosystem Protection (PEP) Implementation Plan, or other DEP sanctioned partnership program.

g. The responsible party has demonstrated that it is implementing an acceptable pollution prevention plan.

h. The responsible party has demonstrated that it is implementing a self-audit program consistent with the Department’s policy on Incentives for Self-Evaluation by the Regulated Community, DEP Directive 922. This would apply in those cases in which the Department discovered the violation.

i. The responsible party has demonstrated that it is operating in accordance with a DEP Ecosystem Management Agreement.
Good Faith Efforts to Comply/Lack of Good Faith after the Department Informs the Responsible Party of the Violation: This adjustment factor can be used to increase or decrease the amount of penalties derived from the penalty matrix. Some examples of good faith efforts to comply are:

a) Once the responsible party was notified of the violation by the Department, it took immediate action to stop the violation and mitigate any effects of the violation.

b) Once the responsible party was notified of the violation by the Department, it cooperated with the Department in reaching a quick and effective agreement for addressing the violation.

Some examples of lack of good faith efforts to comply are:

a. The responsible party took affirmative action that was in violation of the Department’s regulation after being notified by the Department that such action constituted a violation of the Department’s regulation.

b. The responsible party failed to take action to stop an ongoing violation or to mitigate the effects of a violation after being notified by the Department that it was in violation of a Department regulation.

c. The responsible party failed to cooperate with the Department in trying to reach a quick and effective agreement for addressing the violation after the Department notified the responsible party it was in violation of a Department regulation.

History of Non-Compliance: This adjustment factor can be used to increase the amount of penalties derived from the penalty matrix or ELRA schedule. This adjustment factor should be used if a violation has occurred within a five-year period prior to the occurrence of the current violation and a consent order, final order, judgment, judicial complaint or notice of violation was issued for the violation; the previous violations involved any of the programs regulated by the Department; and the previous violations involved a penalty obtained or being pursued for at least one of the violations in the amount of $2,000 or more. For ELRA cases, the history of non-compliance prior to June of 2001 cannot be considered.

Economic Benefit of Non-Compliance: Economic benefits can be both passive, such as avoided costs gained from inaction, where the benefits come from the money saved from avoiding or delaying costs of compliance; and active, such as increased profits or revenue gained from actions taken in violation of Department statutes or rules where the benefits
would not have been gained, if the facility had only been operated in compliance. In certain situations a responsible party could both actively and passively gain economic benefit from violating Department statutes or rules.

Passive economic benefits usually consist of the money that was made or that could have been made by an alternate use of the money that should have been expended to bring the facility into compliance. Assuming the responsible party will be forced to spend money to bring the facility into compliance as a result of the enforcement action, the minimum economic benefit associated with avoiding or delaying costs can be determined by calculating the amount of interest that was or could have been earned on the amount of money that should have been spent to bring the facility into compliance. The amount of this form of economic benefit will depend upon the amount of money that should have been spent, the period of time the costs were avoided or delayed, and the prevailing interest rate. A common example of economic benefits gained from avoiding or delaying costs is the situation in which an owner or operator of a regulated source of pollution fails to purchase a pollution control device needed to operate the facility in compliance with pollution control laws.

Active economic benefits usually consist of any increase in profits, revenue gained or reduction in costs that are directly attributable to the activity conducted in violation of Department statutes or rules. Increased profits and/or a reduction of costs, for example, can occur when a facility that is required to operate with a pollution control device is operated without the use of the pollution control device in order to increase the production or reduce the costs of production. Increased profits can also be gained when action is taken such as constructing and operating a facility without obtaining the required permits in order to make money from the operation of the facility sooner than would have been allowed. A possible example could involve a situation in which the developer of a shopping center conducts dredging and filling activities, constructs a stormwater facility or runs water and sewer lines without waiting to obtain permits so that the construction of the shopping center can meet a deadline for opening.

In addition to adjusting ELRA penalties by considering economic benefits, in non-ELRA cases the economic benefit adjustment factor can be used to increase the amount of penalties derived from the penalty matrix. There may be cases that arise in which the economic benefit gained by the violator exceeds the amount of money that can be recovered in civil penalties authorized by law. For example, three days of circumvention of a pollution control device could result in increased profits, revenue gained and/or a reduction in costs amounting to more than $30,000, the statutory amount that would be allowed for three days of violations for which a $10,000 penalty per day can be imposed. Other than in ELRA cases, the statute does not specifically authorize the recovery of economic benefits gained by the violator. The statute does allow for penalties to be
imposed is an amount that ensures immediate and continued compliance, and unless the economic benefit from the violation is taken away by the penalties, the penalties will not ensure immediate and continued compliance. Therefore, economic benefits that are not de minimus should be included in all penalty calculations up to the amount allowed by the applicable statutory per day penalty cap. For example, if a violation occurs for 10 days and the statute allows for the imposition of a penalty up to $10,000 per day, and the matrix penalty calculated for the violations is $60,000, the amount of economic benefit gained by the violator should be added to the matrix penalty up to the statutory maximum penalty of $100,000. Continuing with the example, if the matrix penalty calculated for the violations is $60,000, and the economic benefit to the violator from the violations is $30,000, the penalty sought should be $90,000. If the matrix penalty calculated for the violations is $60,000 and the economic benefit to the violator from the violations is $50,000, the Department would be limited to pursuing a penalty of $100,000. Staff should attempt to capture economic benefit gained by one or more violations by using the statutory penalty cap for the total of all violations.

For non-ELRA cases, the statute provides that a penalty should be calculated in an amount sufficient to ensure future compliance. It is therefore the Department's policy to ensure future compliance by eliminating as much of the economic benefits of non-compliance as the statute will allow by adding the economic benefits of non-compliance, where appropriate and practical, to all civil penalty calculations.

In some cases it may be very difficult to determine the economic benefits of non-compliance, or the amount of the benefits may be insignificant. For any significant economic benefits, the District staff should request that OGC assist in the development of an appropriate amount by use of EPA's computer model for calculating economic benefits (Ben) or by use of some other accepted economic method. The request should be directed to OGC or the appropriate department financial analyst.

**Ability to Pay:** This adjustment factor may be used to decrease or increase the amount of penalties derived from the penalty matrix. This adjustment factor may be used to decrease the amount of penalties derived from the ELRA schedule. The violator has the burden of providing to the Department all of the financial information needed to determine ability to pay. If sufficient information is not provided by the violator, an ability to pay adjustment decreasing the penalty should not be considered. Like economic benefits, ability to pay may be a difficult matter to determine by the District staff. If the District staff needs assistance in determining ability to pay, a request should be made by the District staff to OGC to assist in the ability to pay determination by use of EPA's computer model for determining ability to pay (ABEL) or by use of some other accepted financial method.
Other Unique Factors: This adjustment factor can be used to increase or decrease the amount of penalties to be pursued in an ELRA case, but may not be used to increase the amount of penalties that can be pursued in an ELRA case. This adjustment factor is intended to provide the District with flexibility to make adjustments in a particular case based upon unique circumstances that do not clearly fit within the other adjustment factors. When it is used, the unique circumstances justifying its use must be specifically explained on the penalty worksheet.

9. In-Kind Penalties

Once the settlement amount has been established, it may be appropriate to consider as in-kind penalty project by the violator as a way of reducing the total cash amount owed the Department. The in-kind penalty project is not designed to give the violator credit for the cost of corrective actions that he would be required to undertake anyway, but only to offset all or some portion of the cash settlement in a mutually satisfactory manner. So long as the financial impact upon the violator is equivalent to that established pursuant to these settlement guidelines, the Department may consider alternative ways that the violator may pay the penalty.

In-kind penalties should only be considered in the following circumstances:

a) if the responsible party is a government entity, such as a federal agency, state agency, county, city, university, or school board,

b) if the responsible party is a private party proposing an environmental restoration or enhancement project, or

c) if the responsible party is a private party proposing an in-kind project that does not involve environmental restoration or enhancement for a calculated penalty of $10,000 or more.

In-kind penalties are limited to the following specific options:

a. Material and/or Labor Support for Environmental Enhancement or Restoration Projects. Preference should be given to proposals that involve participation in existing or proposed government sponsored environmental enhancement or restoration projects such as SWIM projects. The responsible party shall be required to place appropriate signs at the project site during the implementation of the project indicating that the responsible party's involvement with the project is the result of a Department enforcement action. Once the project has been
completed as required by the Consent Order, the sign may be taken down. However, the responsible party should not be allowed to post a sign at the site after the project has been completed indicating that the reason for the project being completed was anything other than a DEP enforcement action. For all environmental enhancement or restoration projects conducted on private property, the responsible party must provide a conservation easement to the Department for the land on which the restoration project took place. For an environmental enhancement or restoration project on public land, the responsible party may need to provide a conservation easement to the Department for private land adjoining the environmental enhancement or restoration project if it is required to protect the completed restoration project.

b. Environmental Information/Education Projects. Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department’s pollution control activities. An example of an acceptable information or education project is one that involves training, workshops, brochures, PSAs, or handbooks on what small quantity generators of hazardous waste need to do to comply with RCRA. The information or education projects must not include recognition of the development of the projects by the responsible parties.

c. Capital or Facility Improvements. Any capital or facility improvement project proposed must demonstrate how the capital or facility improvement project will directly enhance the Department’s pollution control activities. An example of an acceptable capital or facility improvement project is one that involves the construction of a sewer line to hook up a failing package plant, owned and operated by an insolvent third party, to a regional sewage treatment plant. An example of an unacceptable capital or facility improvement project is one that involves the planting of upland trees and shrubs.

d. Property. A responsible party may propose to donate environmentally sensitive land to the Department as an in-kind penalty. Any proposals concerning the donation of land to the Department as an in-kind penalty must receive prior approval from the Department’s Division of State Lands. The DEP may require proposals concerning the donation of land to another government entity or non-profit organization to include a conservation easement involving the donated property.

If an in-kind penalty is used in lieu of a cash penalty, the value of the in-kind penalty should be 1 and 1/2 times the amount of the penalty if paid in cash. Department staff should not be involved in choosing vendors or agents used by
the responsible party in implementing an in-kind project. No in-kind penalty project should include the purchase or lease of any equipment for the Department.

10. Pollution Prevention Credits

Whenever practicable, enforcement staff should affirmatively consider and discuss with responsible parties the option of offsetting civil penalties with pollution prevention projects. Responsible parties should be provided materials on the Department’s Pollution Prevention Programs as well as the definition of a pollution prevention project, the nature of preferred pollution prevention projects, a description of the information that would need to be submitted by the responsible party to the Department for a pollution prevention project to be approved, and a description and sample of a pollution prevention plan that would be attached as an exhibit to a consent order or settlement agreement.

Pollution Prevention Project in the context of enforcement is defined as a process improvement that can be classified in one of the following three categories:

a. Source Reduction - Source reduction involves eliminating the source of pollution. It is accomplished when chemicals or processes that produce pollution are eliminated or replaced with chemicals or processes that cause less pollution. The ideal is to produce goods with no pollution. This has the most benefit for the environment and usually requires the greatest change in the production process. Source reduction can be as sweeping as terminating the production of products that cannot be manufactured without pollution, or it can be as mundane as eliminating an unneeded cleaning step. Other examples of source reduction include:

(1) Replacing a vapor degreaser with a re-circulating, water based cleaning process;
(2) Using darker wood to eliminate solvents in ordinary staining;
(3) Using UV cure paint to eliminate the solvents in ordinary paint;
(4) Using a painted or plastic surface instead of chrome-plated surface such as those found on lawn mower handles and the "Euro-tuck" cars and bumpers;
(5) Eliminating the release of CFC by sending electronic parts for sterilization to a plant that can use pure ethylene oxide instead of the more common ethylene oxide/benz mix.
(6) Keeping supplies and stock out of the weather to eliminate clearing between processes;

(7) Having a vendor use a no-clean rust inhibitor on incoming parts; and

(8) Using propylene carbonate instead of acetone to clean tools used in fiberglass parts manufacturing.

b. Waste Minimization - Waste minimization involves the conservation of materials that are the source of pollution. This is accomplished when releases of chemicals to the environment are reduced. The ideal situation is a no-loss process. Waste minimization can be as expensive as replacing a regular vapor degreaser with one that has an airlock, or it can be as simple as using large, refillable containers to reduce the amount of material disposed of on the walls of emptied containers. Other examples include:

(1) Using High Volume Low Pressure paint guns in place of High Pressure Low Volume paint guns in a painting line to reduce paint loss.

(2) Using electrostatics with painting to reduce paint loss.

(7) Keeping containers of liquids covered and cool to minimize evaporation.

(4) Using processes less likely to produce spills.

(5) Using rollers instead of sprayers to reduce evaporation loss from atomization.

(6) Adjusting floating lid tanks to keep fixed volume tanks full, reducing evaporation.

(7) Using counter current rinsing to reduce water use.

(8) Reducing drainout to minimize chemical depletion.

c. On-Site Recycling - On-site recycling involves the reuse of materials that are the source of pollution. Process - chemicals are reused directly in the process or are revived in some manner and reused in either their original process or in some other operation within the facility. The ideal is total reuse of materials. On-site recycling can be as complex as an ion exchange system for the recovery of
d. Pollution prevention does NOT include:

(1) Off-site recycling such as sending used process water to be reused at a golf course, sending used motor oil or coolant off-site for reclamation or incineration, off-site solvent recovery, or regeneration of ion exchange columns;

(2) Treatment such as: wastewater treatment to remove contaminants prior to disposal, evaporation of a waste stream to remove water from contaminants, sludge de-watering to reduce volume, air stack scrubbers to remove gaseous contaminants or catalytic incinerators to remove VOCs from air;

(3) Disposal such as: landfiling or incineration.

Before a pollution prevention project should be approved to offset civil penalties, the responsible party must submit a waste audit report to the Department. The responsible party should be given the option of preparing the report on his or her own, by hiring a consultant or by requesting the help of the Department's Pollution Prevention Program staff. The waste audit report must include: 1) a waste audit of the facility or of the process or processes that are relevant to the proposed pollution
prevention project; 2) a pollution prevention opportunity penalty calculation; and 3) a conceptual pollution prevention proposal.

The Department retains the option to approve or disapprove the submitted conceptual proposal depending upon the environmental merits of the proposal. The Divisions should provide programmatic guidance to the enforcement staff concerning the nature of preferred pollution prevention projects. Potential or actual economic benefits gained by the responsible party should not be used as a basis for denying an otherwise acceptable proposal for a pollution prevention project.

Once a conceptual pollution prevention project has been approved, the responsible party must prepare a pollution prevention project plan that must, when applicable, include information on the following: design, construction, installation, testing, training, maintenance/operation, capital/equipment costs, monitoring, reporting, and scheduling of activities.

No costs expended by a responsible party on a pollution prevention project that are necessary to bring the facility into compliance with current law should be used to offset civil penalties. The following costs associated with pollution prevention projects can be used to offset up to 100% of civil penalties on a dollar for dollar basis:

a. Preparation of a pollution prevention plan.
b. Design of a pollution prevention project.
c. Installation of a pollution prevention project.
d. Construction of a pollution prevention project.
e. Testing of a pollution prevention project.
f. Training of staff concerning the implementation of a pollution prevention project.
g. Capital/equipment needed for a pollution prevention project.

The following costs should not be used to offset a civil penalty:
a. Cost incurred in conducting a waste audit and preparing a waste audit report (includes waste audit, opportunity assessment and conceptual proposal).

b. Maintenance and operation costs involved in implementing a pollution prevention project.

c. Monitoring and reporting costs.

A responsible party should not be given the opportunity to bank or transfer pollution prevention credits to offset future civil penalties.

Whenever possible, approval of specific pollution prevention projects should be obtained prior to entering into a consent order or settlement agreement. District Directors or Division Directors are authorized to approve pollution prevention proposals. If the specifics of a pollution prevention plan cannot be worked out in time to meet EPA timelines for taking formal enforcement action, the responsible party can be given the option of paying the civil penalty in cash or having a pollution prevention project reviewed and approved by a time certain to be identified in a consent order or settlement agreement.

For all approved pollution prevention projects, the responsible party must maintain/operate the pollution prevention project for a time certain after initial implementation, and must be required to submit at least one report discussing the status of implementation and the pollution prevention results of the project.

11. Review by the Office of General Counsel

There are three situations in which approval by the Office of General Counsel and notice to the appropriate Division Director is required prior to settlement:

a. The case involves a proposed penalty of $25,000 or more for non-RCRA cases, or $50,000 or more for RCRA cases.

b. The case involves a proposed cash penalty of $10,000 or more to be satisfied with an in-kind proposal that does not involve environmental enhancement or restoration.

c. Any other case identified by the district, a Division Director, OGC, a Deputy Secretary, or the Secretary as being one of significant public interest or legal precedent.
All penalty proposals that require Office of General Counsel approval should be submitted to the Office of General Counsel using the Department’s form penalty authorization memo and routed to the Chief Deputy General Counsel for review to determine whether the penalty proposals are consistent with this policy.

12. Procedure for Implementation

In order for these guidelines to be implemented properly, adequate record keeping must be followed. The penalty determination matrices are attached.

Also attached is the penalty computation worksheet. This worksheet should be used in all cases in which a penalty is calculated and proposed, and should be sent along with the draft Consent Order that is to be reviewed by OGC for final approval. If the penalty being sought includes an adjustment and/or a multi-day determination, fill out both Part I and Part II.

If the penalty amount calculated as the Total Penalties for all Violations in Part I is reduced after meeting with the responsible party, a new penalty computation worksheet or Part III of the penalty computation worksheet must be filled out. If the penalty is being reduced based upon new information concerning the facts or law relied upon to determine the number or character of the violations for which penalties are being sought, a new penalty computation worksheet should be filled out reflecting the changes in the violations for which penalties are being sought or the characterization of the violations. If the penalty is being reduced for other reasons, Part III of the penalty computation worksheet must be filled out and signed and dated by the Director of District Management.

A narrative explanation should also be prepared in all cases to be reviewed by the Chief Deputy General Counsel to explain how the penalty proposal was reached, and in all cases in which the program specific guidelines are not being followed. This should be completed at the time the penalty is calculated and forwarded with the penalty computation worksheet.

Responsible Office: Office of General Counsel
ATTACHMENTS:

Penalty Calculation Matrix (Potable Water Cases),
(ATTACHMENT I)

Penalty Calculation Matrix (Cases other than PW, HS or HW)
(ATTACHMENT II)

Penalty Calculation Matrix (Hazardous Substance Cases)
(ATTACHMENT III)

Penalty Calculation Matrix (Hazardous Waste Cases)
(ATTACHMENT IV)

Penalty Computation Worksheet,
(ATTACHMENT V)
## ATTACHMENT I

### PENALTY CALCULATION MATRIX

*(Possible Water Cases)*

### EXTENT OF DEVIATION FROM REQUIREMENT

<table>
<thead>
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<th>Potential For Harm</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
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</thead>
<tbody>
<tr>
<td>Major</td>
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<td>$999 to $500</td>
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## ATTACHMENT II

**PENALTY CALCULATION MATRIX**

**EXTENT OF DEVIATION FROM REQUIREMENT**

*For Cases other than PW, HS, or JW*

<table>
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<td>Moderate</td>
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<td>Minor</td>
<td>$1,199 to $590</td>
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<td>$500</td>
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### ATTACHMENT III

#### PENALTY CALCULATION MATRIX

**EXTENT OF DEVIATION FROM REQUIREMENT**

(Hazardous Substance Cases)

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<td>to</td>
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<table>
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<tbody>
<tr>
<td>MODERATE</td>
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<td>$10,999</td>
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<tbody>
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</tr>
<tr>
<td>$2,999</td>
</tr>
<tr>
<td>to</td>
</tr>
<tr>
<td>$1,590</td>
</tr>
</tbody>
</table>

This matrix should be used whenever the following two conditions exist:

1) The violation creates an imminent hazard as defined in Section 463.726(3), Florida Statutes: “if any hazardous substance creates an immediate and substantial danger to human health, safety, or welfare or to the environment.”

2) The violation involves the release, discharge of a hazardous substance as defined in Section 403.703(29), Florida Statutes. Florida’s definition of a hazardous substance refers to the federal definition of a hazardous substance under CERCLA. The CERCLA definition of a hazardous substance includes a list of substances that can be found at 40 CFR 302.4. In addition to the list of hazardous substances, hazardous substances can include any toxic pollutant listed under Section 307(a) of the Clean Water Act, any substance designated pursuant to Section 311(b)(2)(A) of the Clean Water Act, and any hazardous air pollutant listed under Section 112 of the Clean Air Act. The list of hazardous air pollutants should only be used as a basis for pursuing hazardous substance penalties if the pollutants have been released or discharged to the ground, surface water or ground water. All hazardous wastes are hazardous substances. If the violation involves a hazardous waste, the hazardous waste matrix should be used for that violation.
## ATTACHMENT IV

**PENALTY CALCULATION MATRIX**

**EXTENT OF DEVIATION FROM REQUIREMENT**

(Hazardous Waste Cases)

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<td>Moderate</td>
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<tr>
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<td>$3,868 to $7,934</td>
<td>$1,935 to $645</td>
<td>$644 to $500</td>
</tr>
<tr>
<td>to $7,934</td>
<td>to $645</td>
<td>to $500</td>
<td></td>
</tr>
</tbody>
</table>

Note: If the violation involving a hazardous waste results in human injury or death, or involves the deliberate disposal to the ground, surface water or groundwater, the $50,000 per day statutory maximum penalty should be pursued.
ATTACHMENT V
PENALTY COMPUTATION WORKSHEET

Viator's Name: 

Identify Violator's Facility: 

Name of Department Staff Responsible for the Penalty Computations: 

Date: 

PART 1 - Penalty Determinations

<table>
<thead>
<tr>
<th>Violation Type</th>
<th>ELRA Schedule</th>
<th>Potential for Harm</th>
<th>Extent of Dev.</th>
<th>Matrix Amount</th>
<th>Multi-day</th>
<th>Adjustments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
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<td></td>
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<tr>
<td>3</td>
<td></td>
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<td></td>
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<tr>
<td>4</td>
<td></td>
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<tr>
<td>5</td>
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<tr>
<td>6</td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>7</td>
<td></td>
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<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Penalties for all Violations: 

Director of District Management

Division Director

Date
ATTACHMENT V

Part II - Multi-day Penalties and Adjustments

ADJUSTMENTS

<table>
<thead>
<tr>
<th>Description</th>
<th>Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good faith/Lack of good faith prior to discovery:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
<tr>
<td>Good faith/Lack of good faith after discovery:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
<tr>
<td>History of Non-compliance:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
<tr>
<td>Economic benefit of non-compliance:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
<tr>
<td>Ability to pay:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
<tr>
<td>Total Adjustments:</td>
<td></td>
</tr>
</tbody>
</table>

MULTI-DAY PENALTIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of days adjustment factor(s) to be applied:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
</tbody>
</table>

Or

<table>
<thead>
<tr>
<th>Description</th>
<th>Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of days matrix amount is to be multiplied:</td>
<td></td>
</tr>
<tr>
<td>Justification</td>
<td></td>
</tr>
</tbody>
</table>
**ATTACHMENT V**

**Part III - Other Adjustments Made After Meeting with the Responsible Party**

<table>
<thead>
<tr>
<th>ADJUSTMENT</th>
<th>Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relative merits of the case:</td>
<td></td>
</tr>
<tr>
<td>Resource considerations:</td>
<td></td>
</tr>
<tr>
<td>Other justification:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Date  

Director of District Management or Division Director
PENALTY ASSESSMENT GUIDELINES
Environmental Protection Commission
Air Management Division

I. Purpose: To provide a mechanism for quantifying environmental harm and to ensure fairness and consistency in determining settlement penalties stemming from violations of environmental regulations.

These guidelines are designed and intended solely as a mechanism for determining appropriate penalties for administrative settlement prior to litigation, and are specifically not intended to limit considerations in any judicial imposition of a civil or criminal penalty.

Under these guidelines, the initial calculation of a penalty amount, prior to the commencement of negotiations, will yield a first estimate of the amount proposed for settlement. During the course of negotiations, violation-related factors may be demonstrated to be other than as initially perceived. Pursuant to new evidence provided or demonstrated to the satisfaction of the agency, the initial proposed settlement amount may be revised.

II. Scope: The guidance in this SOP applies to cases referred for enforcement in the Air Management Division.

III. References:
A. Clean Air Act Stationary Source Civil Penalty Policy (EPA), October 25, 1991
B. Asbestos Demolition and Renovation Civil Penalty Policy (EPA), May 11, 1992
C. EPC Enforcement Policy, amended July 21, 2008
E. Guidelines for Characterizing Air Violations (DEP), June 10, 2010
F. Asbestos Demolition and Renovation Penalty Guidelines (DEP), June 2003
G. The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs) Policy (EPA), December 22, 1998
H. Supplemental Environmental Projects (SEP) Policy (EPA), April 10, 1998
I. Clarification Regarding Federally Reportable Violations for Clean Air Act Stationary Sources (EPA), March 22, 2010

IV. Goals of Penalty Assessment:
A. To restore economic balance by removing any competitive advantage derived from noncompliance.

B. To compensate the public for environmental harm that cannot be otherwise quantified.
C. To expedite the resolution of environmental problems.

D. To deter violation of environmental laws.

V. Definitions:

A. **Benefit Component**: The economic advantage which an organization or facility may gain over similar organizations or facilities by its noncompliance with established regulatory requirements.

B. **Gravity Component**: A monetary value, which reflects the seriousness of a given violation.

C. **Facility**: All of the emissions units which are located on one or more contiguous or adjacent properties, and which are under the control of the same person (or persons under common control). [Rule 62-210.200(134), F.A.C.]

D. **Major facility**: Any facility which emits, or has the potential to emit:
   1) 5 tons per year or more of lead or lead compounds, measured as elemental lead;
   2) 30 tons per year or more of acrylonitrile; or
   3) 100 tons per year or more of any other air pollutant subject to regulation under Chapter 403, Florida Statutes. [Rule 62-210.200(185), F.A.C.]

E. **Minor facility**: Any facility that is not a major facility. [Rule 62-210.200(195), F.A.C.]

F. **Synthetic Non-Title V Facility**: A facility that would be classified as a Title V source, but for a physical or operational limitation assumed by the owner or operator on the capacity of the facility to emit a pollutant, including any air pollution control equipment and any restriction on hours of operation or on the type or amount of material combusted, stored, or processed, provided that such physical or operational limitation is federally enforceable. (Rule 62-210.200(298), F.A.C.)


VI. **Penalty Assessment Procedures**: Violation-specific guidance follows for stationary sources, asbestos demolition/renovation, nuisance, open burning, and noise.

A. **Stationary Sources**

   1. The Benefit Component:

      a. Economic advantage from delayed or avoided costs may result from:

         (1) Failure to install and/or maintain equipment needed to meet emission control standards.

         (2) Failure to effect process changes needed to lessen pollution.

         (3) Failure to comply with testing, reporting and permitting requirements of the environmental regulatory scheme.
b. Calculating the benefit component:

(1) EPA's BEN model will be used to calculate the economic benefit of noncompliance in the following types of HPV cases, if it is accessible and does not unduly delay settlement: 1) violations for which resolution requires the installation of new control equipment; 2) where modifications to control equipment or process changes costing more than $25,000 are required to comply; 3) in any case for which the violation had been ongoing for at least one year; and 4) violations for which the facility was likely to have obtained significant savings in operation and maintenance expenses. The BEN model may be used to calculate the economic benefit in cases that are not classified as HPVs based on case-specific circumstances.

(2) The economic benefit of noncompliance for unpermitted sources and for failure to conduct required compliance tests will be calculated as follows:

**ECONOMIC BENEFIT COMPONENT**

<table>
<thead>
<tr>
<th>Option Choice</th>
<th>Permit Fee Major Facility</th>
<th>Permit Fee Minor Facility</th>
<th>Compliance Testing at All Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>EPA's BEN Model Calculation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>$30 per ton actual emission</td>
<td>$100/yr</td>
<td>Amount x Number of years</td>
</tr>
<tr>
<td></td>
<td>$30.00 x = $0.00</td>
<td>$100.00 x = Total</td>
<td>Number of years</td>
</tr>
<tr>
<td></td>
<td>Emissions in TPY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>Permit Fee Minor Facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>Compliance Testing at All Facilities</td>
<td>Amount x Number of years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>VE</td>
<td>$200.00 x = Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PM</td>
<td>$3,000.00 x = Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dioxin/Furan</td>
<td>$5,000.00 x = Total</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Option Choice</th>
<th>Calculation</th>
<th>BEN Model Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Permit Fee Major Facility</td>
<td>$30 per ton actual emission</td>
</tr>
<tr>
<td>(2)</td>
<td>Permit Fee Minor Facility</td>
<td>$100/yr</td>
</tr>
<tr>
<td>(3)</td>
<td>Compliance Testing at All Facilities</td>
<td>Amount x Number of years</td>
</tr>
<tr>
<td>(4)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2. The Gravity Component

Calculation of the gravity component results from consideration of the four areas identified below: actual harm, probable harm, potential harm, and adjustments. The nature of actual harm and probable harm precludes the use of both categories in calculating a penalty for the same violation.

a. Actual Harm/Documented Emission Violation: This factor focuses on the harm that results from exceeding a source-specific emissions limit in a rule or permit and does not require proof that injury actually occurred. It is not restricted to determinations based solely on the reference compliance methodology, but can be based on any credible evidence. The determination for this category is based on a
series of multipliers, which take into account such parameters as the extent of deviation above the emissions limit, the size of the facility, the toxicity of the pollutant, the sensitivity of the environment to that pollutant, and the length of time of the violation. The above parameters should be quantified as follows:

(1) Level of violation

<table>
<thead>
<tr>
<th>Amount Above the Limit</th>
<th>Per Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 10%</td>
<td>$1,500</td>
</tr>
<tr>
<td>11 – 25%</td>
<td>$2,000</td>
</tr>
<tr>
<td>26 – 50%</td>
<td>$2,500</td>
</tr>
<tr>
<td>51 – 75%</td>
<td>$3,000</td>
</tr>
<tr>
<td>76 – 100%</td>
<td>$3,500</td>
</tr>
<tr>
<td>101 – 150%</td>
<td>$4,000</td>
</tr>
<tr>
<td>151 – 200%</td>
<td>$4,500</td>
</tr>
<tr>
<td>&gt; 200%</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

(2) Percent Opacity Greater than the Limit

<table>
<thead>
<tr>
<th>Percent Opacity Greater than the Limit</th>
<th>Per Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>$0 - $500</td>
</tr>
<tr>
<td>11% – 25%</td>
<td>$1,000</td>
</tr>
<tr>
<td>&gt; 25%</td>
<td>$1,500</td>
</tr>
</tbody>
</table>

(2) Size of Facility: For a major facility, multiply the above values by 2; for a synthetic non-title V facility, multiply the above values by 1.5.

(3) Hazardous pollutant: For violations of the National Emissions Standards for Hazardous Air Pollutants (NESHAP), multiply the above values by 2.

(4) Sensitivity of the environment: This multiplier focuses on the designation of the area in which the violation occurred and the pollutant in violation. For ozone, both VOC and NOx sources would trigger the multipliers of 1.5 and 2 listed below.

<table>
<thead>
<tr>
<th>State Designation</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attainment/Unclassified</td>
<td>1</td>
</tr>
<tr>
<td>Maintenance: Facilities in the maintenance area</td>
<td>1.5</td>
</tr>
<tr>
<td>Nonattainment (NAA): Facilities in the NAA</td>
<td>2</td>
</tr>
</tbody>
</table>

(5) The length of time a violation continues: The longer a violation continues uncorrected, the greater the harm. Violations should be assumed to be continuous from the first provable date of violation until the facility demonstrates compliance, if there have been no significant process or operational changes. The following matrix will be used to arrive at the appropriate multiplier:
The DEP’s “Guidelines for Characterizing Air Violations” allow for the calculation of multi-day penalties for certain types of violations on either a quarterly or an annual basis. The section on multi-day penalties in the DEP’s air guidelines provides specific examples. These types of multi-day penalty calculations are an option to the above matrix, for violations that meet DEP’s criteria, to ensure that the final penalty amount is reasonable and consistent.

b. Probable Harm/Violation of Practices Required by Rule and/or Permit: This category focuses on improper operation of a source and/or the control equipment, or operating without a permit, which can reasonably be expected to result in unauthorized emissions. Documentation or quantification of actual emissions is not required.

### Multi-Day Penalty

<table>
<thead>
<tr>
<th>Period of Violation</th>
<th>Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤7 days</td>
<td>1</td>
</tr>
<tr>
<td>8-14 days</td>
<td>2</td>
</tr>
<tr>
<td>15-21 days</td>
<td>3</td>
</tr>
<tr>
<td>22-28 days</td>
<td>4</td>
</tr>
<tr>
<td>29-60 days</td>
<td>5</td>
</tr>
<tr>
<td>61-90 days</td>
<td>6</td>
</tr>
<tr>
<td>91-120 days</td>
<td>7</td>
</tr>
<tr>
<td>121-150 days</td>
<td>8</td>
</tr>
<tr>
<td>151-180 days</td>
<td>9</td>
</tr>
<tr>
<td>181-365 days</td>
<td>10</td>
</tr>
<tr>
<td>366-730 days</td>
<td>11</td>
</tr>
<tr>
<td>731-1095 days</td>
<td>12</td>
</tr>
<tr>
<td>1096-1460 days</td>
<td>13</td>
</tr>
<tr>
<td>1461-1825 days</td>
<td>14</td>
</tr>
<tr>
<td>&gt;1826 days</td>
<td>15</td>
</tr>
</tbody>
</table>

The DEP’s “Guidelines for Characterizing Air Violations” allow for the calculation of multi-day penalties for certain types of violations on either a quarterly or an annual basis. The section on multi-day penalties in the DEP’s air guidelines provides specific examples. These types of multi-day penalty calculations are an option to the above matrix, for violations that meet DEP’s criteria, to ensure that the final penalty amount is reasonable and consistent.

b. Probable Harm/Violation of Practices Required by Rule and/or Permit: This category focuses on improper operation of a source and/or the control equipment, or operating without a permit, which can reasonably be expected to result in unauthorized emissions. Documentation or quantification of actual emissions is not required.

<table>
<thead>
<tr>
<th>Violation</th>
<th>Facility Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Circumvention or improper operation of control equipment</td>
<td>Major $3,000</td>
</tr>
<tr>
<td>2  Improper maintenance of control equipment</td>
<td>Major $2,000</td>
</tr>
<tr>
<td>3  Violation of permit conditions: work practice or technology that serves as emission limit or surrogate limit (e.g., production rates; parametric limits)</td>
<td>Major $3,000</td>
</tr>
<tr>
<td>Violation</td>
<td>Facility</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td></td>
<td>Major</td>
</tr>
<tr>
<td>1  Failure to submit required notification (excess emissions; abnormal events)</td>
<td>$1,000</td>
</tr>
<tr>
<td>2  Construction without permit</td>
<td>N/A</td>
</tr>
<tr>
<td>3  Construction without PSD/NSR/Title V</td>
<td>$8,000</td>
</tr>
<tr>
<td>4  Failure to submit compliance monitoring and/or test results within 45 days of testing</td>
<td>$1,000</td>
</tr>
<tr>
<td>5  Failure to conduct initial compliance demonstration in accordance with the timelines specified in the permit or in the rule</td>
<td>$2,500</td>
</tr>
<tr>
<td>6  Failure to conduct compliance demonstration (other than the initial) in accordance with the timelines specified in the permit</td>
<td>$2,000</td>
</tr>
<tr>
<td>7  Failure to submit (or timely submit) required reports (stack tests, AORs, SOCs)</td>
<td>$1,000</td>
</tr>
<tr>
<td>8  Failure to pay EPC fees pursuant to Chapter 1-6</td>
<td>$1,000</td>
</tr>
<tr>
<td>9  Permit Violation: Record keeping and O &amp; M</td>
<td>$1,000</td>
</tr>
<tr>
<td>10 Operation without notification of intent to use general permit</td>
<td>N/A</td>
</tr>
</tbody>
</table>
d. Adjusting the Gravity Component: In order to promote equity, the system for penalty assessment must have enough flexibility to account for the unique facts of each case, yet it must produce consistent results to treat similar violators equally. This is accomplished by identifying differences between cases and providing adjustment of the total gravity component according to those circumstances. Such adjustments do not apply to the benefit component, which should not be mitigated. In most cases and under normal circumstances, adjustment should not be necessary. The application of these adjustments prior to negotiation depends upon the facts known to or presented to staff, and will yield a first estimate or preliminary deterrence figure. If warranted, this figure may be further adjusted during negotiation.

(1) Correction
Because the end result of effective regulation is to prevent or avoid pollution, it is important to recognize and reward those who immediately effect correction of an environmental problem. Therefore, the penalty may be adjusted downward for the violator's prompt correction of the circumstances that resulted in a violation and/or correction of the environmental harm caused.

The range of adjustment is up to 20% of the preliminary deterrence amount.

(2) Self-Reporting
Because the current regulatory scheme is based in part on the concept of self-reporting, it is important to recognize and reward violators for being forthright. If the violation is reported immediately or in a timely manner, the penalty may be reduced by up to 25%.

(3) History of Noncompliance
In accordance with EPC’s Enforcement Policy, as amended and approved by the Executive Director on July 21, 2008, the history of noncompliance will be addressed by accounting for any violation within any and all EPC divisions as follows: 1) One other violation within five years of the current violations receives a 10-25% upward adjustment and 2) Two or more violations within five years of the current violation receives a 25-50% upward adjustment. However, where ELRA applies, any past violations may be considered, not just those that are in orders or judgments.

(4) Flexibility-Adjustment Factors
In the interest of equity, the penalty assessment system should also consider mitigating and case-specific circumstances. This factor should rarely be used for adjusting a penalty and reasons for doing so must be identified in the enforcement file.
3. **Penalty Calculation Procedure**

All Air Division penalty calculations are performed using Excel spreadsheets that, for the purposes of stationary source penalties, will result in the worksheet labeled Attachment 1. The benefit and gravity components are to be calculated for each violation and added together. The total amount should not exceed the appropriate statutory limit per violation multiplied by the number of days of violation. The final result is not fixed and, depending on mitigating circumstances or additional information, could be scaled up or down as conditions dictate. Any revisions from the original penalty calculation will be recorded on a penalty calculation worksheet, and will be justified in accordance with these guidelines. Supporting information will be included in the enforcement file.

4. **Reduction or Exemption from Settlement Penalty Assessment**

a. A penalty cannot be adjusted below what is allowed in these guidelines unless approved by the Division Director and the Executive Director. The rationale for any such adjustment will be explained in a memorandum to the file from the enforcement coordinator.

b. A violator may request that the Executive Director waive a settlement penalty due to financial hardship. To qualify for such a waiver, the responsible party must supply information as required by EPC staff, and meet the criteria established for hardship. Violations designated as HPVs under EPA's "Timely and Appropriate" Policy may not be eligible for such a waiver.

c. In some cases, it may be appropriate to consider supplemental environmental projects (SEPs) in lieu of a portion of the cash penalty. EPA’s *Supplemental Environmental Projects Policy* (April 10, 1998) may be used as a guideline to evaluate and implement such projects. *DEP Directive 923* also provides guidance for in-kind penalties and pollution prevention (P2) projects. The Air Division’s preferred means of settlement in such cases is through the SEP Policy, but under certain limited circumstances DEP’s in-kind or P2 project guidance may be considered.

B. **Asbestos Demolition/Renovation**

The following matrix and the calculation sheet in Attachment 2 are used to establish an initial settlement penalty amount. This preliminary deterrence amount may be adjusted for some of the factors applied to stationary source violations (see VI.A.2.d.). However, adjustment for history of violation does not apply since the asbestos matrix accounts for past violations.

a. **Benefit Component**

Information on actual economic benefit should be used if available. In the absence of reliable information regarding actual expenses, the benefit component for asbestos violations should be calculated as $20 per linear, square, or cubic foot of asbestos improperly removed or handled. Whenever possible, the agency inspector will estimate this amount. If the violator can provide documentation to substantiate the actual amount of asbestos improperly removed or handled, that amount will be used to calculate the benefit component. If no convincing evidence to the contrary is available, it will be assumed that all asbestos disturbed during the particular project was removed improperly.
b. Gravity Component

Matrices for calculating notification, substantive, and waste disposal/record keeping violations follow. Where there is evidence indicating that only part of a demolition or renovation project involved improper shipping, removal, disposal, or handling, the penalty will be calculated based on the number of units improperly handled.

If additional guidance is required, the state and federal guidelines will serve as a reference.

c. Second and Subsequent Violations

For the purpose of settlement penalties, second or subsequent violations have occurred if the following criteria are met:

- Owner or operator was previously notified by a local agency, a state agency, or the EPA of a NESHAP violation;
- Owner or operator was notified of any one of the following types of NESHAP violations: notification, work practice, disposal;
- The notification of prior violation was in writing. Such written notification may include, but is not limited to, the following: a letter referencing a circumstance of violation, warning notice, notice of intent to initiate enforcement, citation, notice of violation.

If an owner or operator is notified of a violation, and a second or subsequent violation is found at the same project, but on a different date, then the penalty calculation for the second or subsequent violation will be figured as such. Conversely, if several violations are discovered during one inspection, or during separate inspections of the same project conducted over a one-day period, each of the NESHAP violations will be included in the penalty calculation as first-time violations.

d. Duration of the Violation

The gravity component of the penalty should be calculated to reflect the duration of the violation. When there is evidence of an on-going violation, the gravity component of the penalty will be increased by the "each additional day" amount in the matrix.

e. Correction

Due to the hazardous nature of asbestos and importance of immediate correction, action on the part of the violator to promptly correct a substantive asbestos violation should not be considered a mitigating factor. Instead, the failure to promptly correct the environmental harm should be considered an aggravating factor.

f. Multiple Parties

If a case involves multiple parties and anyone of them has been involved in a previous NESHAP violation, the penalty should be derived based on the second or subsequent offense. In most cases of this nature, the settlement amount as a whole will be sought. Should apportionment of the penalty become necessary to achieve settlement with one party or all parties, the Penalty Assessment Guidelines for Asbestos Demolition/Renovation will be used to assist in apportioning the penalty among the responsible parties.
## Matrix for Notification Violations

<table>
<thead>
<tr>
<th>Notification Violations</th>
<th>1\textsuperscript{st} Violation</th>
<th>2\textsuperscript{nd} Violation</th>
<th>Subsequent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No notice and probable substantive noncompliance</td>
<td>$2,000 - $6,000</td>
<td>$5,000 - $8,000</td>
<td>$7,000 - $10,000</td>
</tr>
<tr>
<td>No notice, but probable substantive compliance</td>
<td>$1,000 - $4,000*</td>
<td>$3,000 - $7,000</td>
<td>$6,000 - $10,000</td>
</tr>
</tbody>
</table>

* A first time non-notification violation for demolition by owner with probable substantive compliance could be resolved with a penalty as low as $0.

### Late, Incomplete, or Inaccurate Notice/Survey

<table>
<thead>
<tr>
<th>Violation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice lacks job location and/or asbestos removal starting and completion dates</td>
<td>$800 - $1,600</td>
</tr>
<tr>
<td>Notice submitted while asbestos removal in progress</td>
<td>$500 - $800</td>
</tr>
<tr>
<td>Failure to update notice when amount of asbestos changes by at least 20%</td>
<td>$500 - $800</td>
</tr>
<tr>
<td>Failure to provide telephone and written notice when start date changes</td>
<td>$500 - $800</td>
</tr>
<tr>
<td>Failure to identify on the notice the accurate amount of asbestos material affected by the renovation or demolition</td>
<td>$500 - $800</td>
</tr>
<tr>
<td>All other notification violations</td>
<td>$500</td>
</tr>
<tr>
<td>Failure to survey; No asbestos</td>
<td>$500</td>
</tr>
</tbody>
</table>

### Waste Shipment Violations

<table>
<thead>
<tr>
<th>Violation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to maintain waste shipment records which precludes discovery of waste disposal activity [61-150(d)]</td>
<td>$500 - $800</td>
</tr>
<tr>
<td>All other waste shipment violations</td>
<td>$500</td>
</tr>
<tr>
<td>Failure to mark waste transport vehicles during loading and unloading (assess for each day of shipment) [61.150(c)]</td>
<td>$50 - $180</td>
</tr>
</tbody>
</table>
Matrix for Work Practice, Emission, and Other Violations

Gravity Component

<table>
<thead>
<tr>
<th>Total Amount of Asbestos Involved</th>
<th>1st Violation</th>
<th>Each Additional Day</th>
<th>2nd Violation</th>
<th>Each Additional Day</th>
<th>3rd and Subsequent Violations</th>
<th>Each Additional Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 10 Units</td>
<td>$500 - $2,500</td>
<td>$200</td>
<td>$2,500 - $6,000</td>
<td>$600</td>
<td>$6,000 - $10,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>&gt; 10 units ≤ 50 Units</td>
<td>$1,000 - $4,500</td>
<td>$400</td>
<td>$4,000 - $7,500</td>
<td>$800</td>
<td>$7,000 - $10,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>&gt; 50 Units</td>
<td>$2,500 - $6,000</td>
<td>$600</td>
<td>$5,000 - $8,500</td>
<td>$1,000</td>
<td>$7,000 - $10,000</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

Unit = 260 linear feet, 160 square feet or 35 cubic feet – if more than one type of measurement involved, convert each amount to units and add together.

Apply matrix separately to each violation of 61.145(a) (survey) and each sub-paragraph of 61.145(c) and 61.150, except 61.150(d) (waste shipment records) and 61.150(c) (vehicle marking) (see chart on page 11); calculate additional days of violation, when applicable, for each sub-paragraph - add together.

Benefit Component

For asbestos on pipes or other facility components:

$20 per linear, square, or cubic foot of asbestos for any substantive violation.

C. Nuisance

A benefit component for settlement may be appropriate, as explained in Section VI.A.1. The gravity component for settlement penalties for violations of section 16 of the Act will be calculated according to the following matrix and multipliers. It may be adjusted as provided for in section VI. A. 2. d. Attachment 3 is the Settlement Penalty Calculation Sheet for Nuisance Penalties.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Commercial/Industrial</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Odor/Fumes</td>
<td>$1,000</td>
<td>$500</td>
</tr>
<tr>
<td>Dust/Particulate Matter/Smoke</td>
<td>$1,000</td>
<td>$500</td>
</tr>
<tr>
<td>Noise</td>
<td>$1,000</td>
<td>$500</td>
</tr>
<tr>
<td>Gas/Mist/Vapor</td>
<td>$1,000</td>
<td>$500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Quantity/Level</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>≥ 10 persons/households affected</td>
<td>x 2</td>
</tr>
<tr>
<td>Adjacent property and/or &lt; 10 persons/households affected</td>
<td>x 1</td>
</tr>
</tbody>
</table>
Effects | Factor
--- | ---
Interferes with human health/repose/safety by causing severe annoyance or discomfort, tending to lessen normal food and water intake, producing irritation of upper respiratory tract, producing symptoms of nausea or causing injury | x 2
Detrimental/damaging to property/animal/plant life | x 1.5
Interferes with normal conduct of business | x 1
Detrimental to comfort or living conditions | x 1

Length of Time of Violation | Factor
--- | ---
Continuous for more than 1 day | x 2
Intermittent | x 1.5
One-time event | x 1

D. Other Violations

Other air violations in the Act and/or the Rules are subject to specific or quantitative prohibitions. Open burning and noise violations therefore require separate calculation worksheets to specifically address their unique characteristics and can be found in Attachments 4-5. The various components, multipliers, and adjustment factors, when applicable, are consistent with the previous guidance for stationary sources.

a. For open burning without authorization or open burning of prohibited materials, the following economic benefit calculation will be used, unless the violator can substantiate an actual, lesser amount:

<table>
<thead>
<tr>
<th>Material Burned</th>
<th>Price of Disposal at Landfill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vegetative material (yard waste)</td>
<td>$31.50/ton</td>
</tr>
<tr>
<td>Non-processable material (copper wire, construction/demolition debris, appliances)</td>
<td>$42/ton</td>
</tr>
<tr>
<td>Combustible material other than vegetative material (mattresses, cardboard, construction debris)</td>
<td>$70/ton</td>
</tr>
<tr>
<td>Tires</td>
<td>$83/ton</td>
</tr>
</tbody>
</table>
IMPLEMENTED:
DATE: 1/17/12

Jerry Campbell, Director
Air Management Division
Environmental Protection Commission of Hillsborough County

Attachment 1 - Stationary Source Penalty Worksheet
Attachment 2 - Asbestos Penalty Worksheet
Attachment 3 - Nuisance Penalty Worksheet
Attachment 4 - Open Burning Penalty Worksheet
Attachment 5 - Noise Penalty Worksheet
DEP Guidelines for Characterizing Solid Waste Violations
(November 16, 2007)
GUIDELINES FOR CHARACTERIZING SOLID WASTE VIOLATIONS

FINAL

November 16, 2007

Prepared by:
Department of Environmental Protection
Solid Waste Program
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<td>4.1 Facility Maintenance</td>
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<td>11.2 Facility Construction and Design</td>
<td>56</td>
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<td>11.3 Facility Operation</td>
<td>57</td>
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<td>12.2 Permit Requirements</td>
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<td>15.1 Unauthorized Processing of Solid Waste</td>
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</tr>
<tr>
<td>15.2 Facility Construction and Operation</td>
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</tr>
</tbody>
</table>
INTRODUCTION

This document entitled, "Guidelines for Characterizing Solid Waste Violations" (a.k.a. Program Specific Guidelines), is intended to be used with DEP Directive 923 entitled, "Settlement Guidelines for Civil and Administrative Penalties," as a tool for evaluating solid waste facility violations and determining appropriate enforcement actions and penalty amounts. DEP Directive 923 is the primary tool for determining how to calculate penalties for violations and how to make adjustments to the penalty amounts, either up or down, during the negotiation process. This Program Specific Guidelines document acts as a supplement to DEP Directive 923 and provides specific guidance to Department staff on solid waste violations.

DEP Directive 923 describes when the Environmental Litigation Reform Act (ELRA), Section 403.121, Florida Statutes (F.S.), is applicable and not applicable. It also provides the procedures to be used to determine when ELRA is applicable. Consistent with the organization of DEP Directive 923, this document helps the user:

- determine the penalty when ELRA applies (ELRA cases);
- determine the penalty when ELRA does not apply (non-ELRA cases);
- make adjustments in penalties for economic benefits and multi-day violations; and,
- with guidance on the meaning of Significant Non-Compliance violations and violations that are "significantly detrimental to the program and environment."

This document consists of two parts. Part 1 explains how ELRA is to be used and includes a chart defining the codes and penalty amounts used for ELRA violations. Part 1 also provides additional guidance on SNCOs and significantly detrimental violations. Part 2 presents a lengthy table, called the Guidelines, which lists the solid waste violations and the penalty amounts that should be used in non-ELRA cases.

Because facilities and violations are often unique, this document is intended for application on a case-by-case basis with the underlying goal that over time, they will improve the consistency with which penalties are assessed for solid waste violations on a statewide basis.
PART 1 - GENERAL GUIDANCE
As described in DEP Directive 923, ELRA applies to solid waste cases. However, ELRA should only be used if the total amount of penalties calculated for all violations using the ELRA penalty schedule is $10,000 or less. If the penalty amount exceeds $10,000, then the Guidelines of Part 2 should be used to calculate the penalty amount.

To assist in understanding ELRA violations and their corresponding penalty amounts, the following chart, entitled ELRA Solid Waste and Generic Violations and Penalties, has been prepared. This chart lists each specific solid waste violation found in ELRA with its corresponding penalty. It also lists other program specific violations applicable to solid waste facilities as well as the generic (non-program specific) violations in ELRA and penalty amounts. This chart uses shorthand codes to refer to the specific statutory provisions. These shorthand codes have the following meanings:

1. SW-1 through SW-9 refer to those violations specified in Section 403.121(3)(e), F.S. This statute provides that "the unpermitted or unauthorized disposal or storage of solid waste" (SW-1) will result in a penalty of $2000; additional penalties are assessed depending on the nature of the waste or the location of the disposal or storage. So, for example, the unauthorized disposal of Class I solid waste would be subject to a penalty of $2000 (SW-1), plus an additional penalty of $1000 (SW-2). If this disposal took place within 500 feet of a potable water well, the statute adds an additional penalty of $1000 (SW-4).

2. SW-10 through SW-14 refer to those violations specified in Section 403.121(3)(e), F.S.

3. WW-1 refers to the applicable violations specified in Section 403.121(3)(b), F.S.

4. AIR-1 refers to those applicable violations specified in Section 403.121(3)(f), F.S.

5. GEN-1 refers to those violations specified in Section 403.121(4)(a), F.S.

6. GEN-2 refers to those violations specified in Section 403.121(4)(b), F.S.

7. GEN-3 refers to those violations specified in Section 403.121(4)(c), F.S.

8. GEN-4 through GEN-8 refer to those violations specified in Section 403.121(4)(d), F.S.

9. GEN-7 through GEN-11 refer to those violations specified in Section 403.121(4)(n), F.S.

10. GEN-12 refers to those violations specified in Section 433.121(4)(f), F.S.

11. GEN-13 refers to those violations specified in Section 403.121(5), F.S.

Section 1.0 in Part 2 of this document, entitled "Prohibitions," is intended to apply to violations which occur at unpermitted facilities or sites. It is also intended to apply to violations at permitted facilities or sites if the actions leading to the violations were not authorized by or contemplated in the permit. For example, if a person disposes of Class I solid waste at an unpermitted site, SW-2 would apply. If a person operates a permitted Class I landfill but disposes of Class I solid waste outside the permitted footprint of that landfill, SW-2 would also apply.
Many solid waste violations are not specified in Section 403.121(3)(e), F.S. In those cases where a violation does not fit into any specific ELRA violation and it cannot be reasonably included with an existing ELRA violation, Section 403.121(5), F.S., provides that such violations can be subject to a penalty of $500.

4. Sections 403.121(2)(b) and (3), F.S., require the Department to calculate administrative penalties in accordance with ELRA in all cases where the penalties do not exceed $10,000, with three exceptions. If the violations involve hazardous waste, asbestos, or underground injection, the Department is not required to use the ELRA penalty calculations. However, Section 403.121(3)(e), F.S., specifically addresses solid waste violations involving “friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered.” Because Sections 403.121(2)(b) and (3), F.S., do not exclude asbestos from ELRA but merely give the Department the option of using ELRA, it is the Department's position that any solid waste violations involving the unauthorized disposal of asbestos will be addressed using the ELRA process. Similarly, if the Department's solid waste program elects to pursue a solid waste violation involving the unauthorized disposal of hazardous waste in a permitted solid waste management facility, it will do so using the ELRA process. However, this position does not apply if the Department's air program elects to pursue violations involving asbestos, or if the Department’s hazardous waste program elects to pursue violations involving hazardous waste.
# Chart: ELRA Solid Waste and Generic Violations and Penalties

<table>
<thead>
<tr>
<th>Codes</th>
<th>ELRA Violations</th>
<th>ELRA Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SW Specific Violations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SW-1 403.121(3)(e) F.S.</td>
<td>Unpermitted or unauthorized disposal or storage of solid waste</td>
<td>$0,000</td>
</tr>
<tr>
<td>SW-2 403.121(3)(e) F.S.</td>
<td>If solid waste is Class I or Class III (excluding yard trash) in any amount or is C&amp;D debris over 20 cubic yards.</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-3 403.121(3)(e) F.S.</td>
<td>Solid waste disposed in water.</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-4 403.121(3)(e) F.S.</td>
<td>Solid waste disposed within 500 feet of potable water well.</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-5 403.121(3)(e) F.S.</td>
<td>Solid waste containing PCB &gt;50ppm</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-6 403.121(3)(e) F.S.</td>
<td>Untreated biomedical waste</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-7 403.121(3)(e) F.S.</td>
<td>Frangible asbestos &gt; 1 cubic meter which is not wetted, bagged, and covered.</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-8 403.121(3)(e) F.S.</td>
<td>Used oil &gt; 25 gallons</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-9 403.121(3)(e) F.S.</td>
<td>10 or more lead acid batteries</td>
<td>plus $1000</td>
</tr>
<tr>
<td>SW-10 403.121(3)(e) F.S.</td>
<td>Failure to properly maintain leachate control</td>
<td>$3,000</td>
</tr>
<tr>
<td>SW-11 403.121(3)(e) F.S.</td>
<td>Unauthorized burning</td>
<td>$3,000</td>
</tr>
<tr>
<td>SW-12 403.121(3)(e) F.S.</td>
<td>Failure to have trained spotter at working face when accepting waste</td>
<td>$3,000</td>
</tr>
<tr>
<td>SW-13 403.121(3)(e) F.S.</td>
<td>Failure to provide access control for 3 consecutive inspections</td>
<td>$3,000</td>
</tr>
<tr>
<td>SW-14 403.121(3)(e) F.S.</td>
<td>Failure to construct or maintain stormwater management system.</td>
<td>$2,000</td>
</tr>
<tr>
<td><strong>Other Violations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WW-1 403.121(3)(b) F.S.</td>
<td>Unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation.</td>
<td>$5,000</td>
</tr>
<tr>
<td>AIR-1 403.121(3)(f) F.S.</td>
<td>Unpermitted or unauthorized air emission resulting in an air quality violation.</td>
<td>$2,000</td>
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<tr>
<td>GEN-1 403.121(4)(a) F.S.</td>
<td>Failure to satisfy financial responsibility requirements</td>
<td>$5,000</td>
</tr>
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<td>GEN-2 403.121(4)(g) F.S.</td>
<td>Failure to install, maintain, or use a required pollution control device.</td>
<td>$4,000</td>
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<td>ELRA VIOLATIONS</td>
<td>ELRA PENALTY</td>
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</tr>
<tr>
<td>403.12(1)(c) F.S.</td>
<td>Failure to obtain required permit before construction or modification</td>
<td>$3,000</td>
</tr>
<tr>
<td>403.12(4)(d) F.S.</td>
<td>Failure to conduct required monitoring or testing</td>
<td>$2,000</td>
</tr>
<tr>
<td>403.12(1)(d) F.S.</td>
<td>Failure to conduct required release detection</td>
<td>$2,000</td>
</tr>
<tr>
<td>403.12(1)(d) F.S.</td>
<td>Failure to construct in compliance w/ permit</td>
<td>$2,000</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to maintain required staff</td>
<td>$1,000</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to conduct required training</td>
<td>$1,000</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to prepare, maintain, or update required contingency plans</td>
<td>$1,000</td>
</tr>
<tr>
<td>403.12(4)(e) F.S.</td>
<td>Failure to adequately respond to emergencies to bring under control</td>
<td>$1,000</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to submit required notification to the Department</td>
<td>$1,000</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to prepare, submit, maintain, or use required reports or documentation</td>
<td>$500</td>
</tr>
<tr>
<td>403.12(1)(e) F.S.</td>
<td>Failure to comply with any other Departmental statute or rule requirement not otherwise identified in this section</td>
<td>$500</td>
</tr>
</tbody>
</table>
Pursuant to DEP Directive 923, if the total amount of penalties calculated for all the violations utilizing ELRA exceeds $10,000, then the program specific guidelines should be used to calculate the penalty. These Guidelines are contained in Part 2 of this document. These Guidelines should also be used in those cases where the alleged violator "opts out" of the administrative process after the filing of the Notice of Violation in accordance with Section 403.121(2)(c), F.S. Once a party opts out of the administrative process, staff should prepare a case report and attach a copy of the NOV. The NOV can be used to provide the description of the facts and violations needed as part of the case report. The penalties pursued in the state court litigation should be consistent with penalties calculated using the matrix, even if those penalties would be higher than the penalties pursued in the NOV.

The following Penalty Matrix from DEP Directive 923 must be used to determine the penalty amount for each violation. The Guidelines in Part 2 should be used to characterize each violation and determine which section of the Penalty Matrix applies.

### Penalty Calculation Matrix for Solid Waste Cases

<table>
<thead>
<tr>
<th>Extent of Deviation</th>
<th>MAJOR</th>
<th>MODERATE</th>
<th>MINOR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Major</strong></td>
<td>$10,000 to $8,000</td>
<td>$7,999 to $6,000</td>
<td>$5,999 to $4,000</td>
</tr>
<tr>
<td><strong>Moderate</strong></td>
<td>$4,599 to $3,200</td>
<td>$3,199 to $2,000</td>
<td>$1,999 to $1,200</td>
</tr>
<tr>
<td><strong>Minor</strong></td>
<td>$1,199 to $500</td>
<td>$500</td>
<td>$500</td>
</tr>
</tbody>
</table>
GUIDANCE FOR SPECIAL VIOLATIONS AND ADJUSTMENT FACTORS

Significant Non-Compliance Violations

A "Significant Non-Compliance" violation (SNC) is also known as a major violation. All other violations are considered minor violations. A SNC violation exists when the violation is actually or reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment. SNCs occur in the following cases when using the Penalty Calculation Matrix:

1. in all cases where there is a major potential for harm (the extent of deviation can be major, moderate or minor); or
2. when there is a moderate potential for harm but a major extent of deviation, a moderate/major violation.

All other categories of the Penalty Calculation Matrix would be minor violations not SNCs (e.g., moderate/moderate, minor/moderate, etc.). Examples of possible SNC violations are:

- disposal of hazardous wastes;
- mixing of leachate and stormwater;
- disposal of oil in unlined landfills.

Violations Significantly Detrimental to the Environment or Program

DEP Directive 923 states that when calculating multi-day penalties the daily penalty amount used in the calculation should consider if the violation is significantly detrimental to the environment or the program. While there are no criteria for these violations, they would generally be a subset of the major/major type violations. For the purpose of the Solid Waste Program, the following violations will be considered "significantly detrimental to the environment or program:"

- Operation of a landfill, C&D debris facility or waste processing facility without a permit.
- Disposal of greater than 20 cubic yards of Class I or Class III solid waste in a wetland within the jurisdiction of the Department.
- Failure to perform applicable corrective actions for confirmed contamination in compliance wells within 6 months of the required due dates.
- Failure to demonstrate adequate financial assurance for closure and long-term care within 6 months of the required due dates.

Adjustments for Economic Benefit of Non-Compliance

DEP Directive 923 states that penalty calculations can be adjusted upwards for violations where an economic benefit was gained from non-compliance. Economic benefits can be passive such as when money is saved by avoiding or delaying costs of compliance. Economic benefit can also be active such as increasing profits by conducting activities that are in violation of the Department’s requirements. The
following list describes possible activities that can be considered when evaluating potential economic benefits of non-compliance.

1. Construction/Modification/Operating without a permit:
   - Application fees.
   - Engineering fees.
   - Placement of waste in new cell prior to certification by the Department.
   - Placement of waste in an area where the footprint of a landfill or disposal facility was expanded without permit/authorization. (vertical & lateral expansion).
   - Disposal of waste beyond the permitted footprint or higher than the permitted height while continuing to receive income from the tipping fees.

2. Monitoring/Water Quality:
   - Failure to sample ground/surface water/ leachate.
   - Consultant fees (may include sampling).
   - Laboratory cost to analyze each required sample per wet.
   - Failure to construct required number of wells etc.

3. Open Burning (unauthorized):
   - Cost saved for burning of solid waste instead of paying cost to take to landfill.

4. Financial assurance:
   - Consultant’s fees – preparation of forms.
   - Avoided cost for annual fees to bank.
   - Cost to maintain Standby Trust Agreement.
   - Cost saved by not funding the appropriate amount for Financial Assurance.

5. Failure to conduct required training (spotter, operator):
   - Avoided or delayed cost for training.

6. Unauthorized discharge of Leachate:
   - Avoided cost for payment to get rid of leachate.

In addition, the following are approximate costs for some violations. These costs have been used and approved by the Office of General Counsel in previous litigation cases and are provided as examples for a C&D debris facility.

- Quarterly ground water monitoring (two monitoring wells for an inactive Class III Landfill in Pinellas County). - $1,730.
- Cost of Professional Engineer to prepare annual closure cost estimate. - $1,000.
- Cost of Professional Engineer to prepare five year closure cost estimate. - $10,000.
- Cost for annual topographic survey and capacity estimate, including engineering costs for calculating capacity estimate, survey, copies of survey/capacity estimate. - $12,000.
Adjustments for Multi-day Penalties

DEP Directive 923 states that penalty calculations can be adjusted upwards for violations extending over multiple days, i.e., multi-day penalties. While the maximum penalty allowed by statute is $10,000 per day per violation, the calculated total penalty amount may be increased for violations that continued over multiple days. One should also consider if the violation is significantly detrimental to the environment or program as well. DEF Directive 923 should be consulted to determine how this type of violation would impact the multi-day penalty calculations. Examples of possible multi-day violations to consider are listed below.

- Unauthorized discharge of leachate (number of days violation occurred).
- Open burning of Solid Waste (number of days violation occurred).
- Failure to implement monitoring requirement (monthly, quarterly and/or, semi-annual may include gas, groundwater, etc.)
\textbf{EXTENT OF DEVIATION:}

\textbf{MAJOR:}
1. Failure to demonstrate a double liner system as required by rule.
2. Failure to maintain a minimum of 2 feet above the depth which would occur in the event of a 25-year, 24-hour storm resulting in release of leachate to the environment.
3. Failure to control disease vectors and off-site odors resulting from leachate. Cited for 1 inspection.

\textbf{MODERATE:}
1. Failure to maintain a minimum of 2 feet above the depth which would occur in the event of a 25-year, 24-hour storm. Cited for 2 inspections.
2. Failure to control disease vectors and off-site odors resulting from leachate. Cited for 2 inspections

\textbf{2.2 Water Quality Monitoring}

\textbf{2.2.1 Monitoring Implementation}

\textbf{POTENTIAL FOR HARM:}

\textbf{MAJOR:}
1. Confirmed violation of primary water quality standards and/or criteria at a detection or compliance point.
2. Failure to comply with monitoring requirements for landfills or any facility with existing groundwater contamination.
3. Failure to maintain the monitoring system for an unlined facility or a facility without leachate controls if the evaluation indicates the potential for groundwater contamination.

\textbf{MODERATE:}
1. Failure to comply with monitoring requirements that are required for the facility.
2. Failure to maintain the monitoring system for a facility that is required to be monitored.

\textbf{MINOR:}
1. Violation of secondary water quality standards at a detection or compliance point.

\textbf{EXTENT OF DEVIATION:}

\textbf{MAJOR:}
1. Any confirmed results above primary/secondary water quality standards and/or criteria at the compliance point.
2. Failure to conduct more than one monitoring event.
3. Failure to submit ground or surface water report within 6 months of due date.
4. Failure to maintain the monitoring system for an unlined facility or a facility without leachate controls if the evaluation indicates the potential for groundwater contamination
5. Failure to initiate corrective actions in accordance with Rule 62-701.510(4)(c), F.A.C. within approved time frames.
6. Two or more monitoring data sets invalidated during the term of the permit.
7. Failure to maintain the monitoring system for more than one event at an unlined facility.
8. Failure to perform sampling in accordance with Chapter 62-160, F.A.C.

MODERATE:
1. Failure to conduct one monitoring event.
2. Failure to submit ground or surface water monitoring report within 3 months of due date.
3. One monitoring data set invalidated during the term of the permit.
4. Failure to maintain the monitoring system for more than one event at a lined facility.
5. Failure to analyze for all required parameters or analyze to appropriate detection limits.
6. Failure to implement a remedial action plan for assessment monitoring for secondary contaminants as required in Rule 62-701.510(7), F.A.C., within the approved time frames.

MINOR:
1. Failure to submit ground or surface water monitoring report on the due date.

2.2.2 Construction of Water Monitoring System

POTENTIAL FOR HARM

MAJOR:
1. Failure to construct ground water monitoring system in accordance with the permit or approved ground and/or surface water monitoring plan.

MODERATE:
1. Failure to install protective bollards or other devices around new or existing wells located in heavy traffic flow to prevent damage and/or lock monitoring wells to minimize unauthorized access.
2. Failure to submit well completion report Form 62-701.900 (30).
EXTENT OF DEVIATION

MAJOR:
1. Failure to construct ground water monitoring system within 90 days of timeframe specified in the permit or approved ground and/or surface water monitoring plan.

MODERATE:
1. Failure to construct ground water monitoring system within 60 days of timeframe specified in the permit or approved ground and/or surface water monitoring plan.
2. Failure to install protective bollards or other devices around new or existing wells located in heavy traffic flow to prevent damage and/or to lock monitoring wells to minimize unauthorized access. Cited for 2 consecutive inspections.
3. Failure to submit well completion report Form 62-701.900 (30), 90 days after completion.

MINOR:
1. Failure to construct ground water monitoring system within 30 days of timeframe specified in the permit or approved groundwater and/or surface water monitoring plan.
2. Failure to install protective bollards or other devices around new or existing wells located in heavy traffic flow to prevent damage and/or to lock monitoring wells to minimize unauthorized access. Cited for 1 inspection.
3. Failure to submit well completion report Form 62-701.900 (30), 60 days after completion.

2.3 Gas Monitoring

2.3.1 Monitoring Implementation

POTENTIAL FOR HARM

MAJOR:
1. Methane gas levels exceed 25 percent the LEL in a structure or at or beyond the property boundary.
2. Failure to comply with the gas monitoring requirements.
3. Failure to operate gas management system in accordance with permit.
4. Failure to submit a remediation plan for methane gas release per Rule 701. 400(10)(c)(3) b. F.A.C.
5. Failure to timely complete the remedy for gas remediation within 60 days of detection or as otherwise approved per Rule 701.400(10)(c)(3) b. F.A.C.
MODERATE:

1. Methane gas has reached the LEL at or beyond the landfill boundary and is venting to the atmosphere.

MINOR:

1. Gas is causing objectionable odors at or beyond the facility boundary.
2. Submission of gas monitoring results.

EXTENT OF DEVIATION

MAJOR:

1. Any methane gas results over 25 percent the LEL in a structure or 100 percent the LEL beyond the landfill boundary.
2. Failure to conduct 2 of the 4 quarterly monitoring events within a 1 year period.
3. Failure to submit gas monitoring results within 6 months of due date.
4. Any verified objectionable odor that persists for seven consecutive days.
5. Failure to submit a remediation plan for a methane gas release within seven days of detection in accordance with Rule 62-701.400(10)(c)3.b., F.A.C.
6. Failure to complete the remedy for gas remediation within sixty days of detection in accordance with Rule 62-701.400(10)(c)3.b., F.A.C.
7. Failure to take all necessary steps to ensure protection of human health in the event of a methane gas release in accordance with Rule 62-701.400(10)(c)3.a., F.A.C.

MODERATE:

1. Failure to conduct one quarterly gas monitoring event.
2. Failure to submit gas sampling results within 3 months of due date.
3. Any verified objectionable odor that persists for 24 hours.

MINOR:

1. Failure to submit gas monitoring results within one month of due date.

2.3.2 Construction of Gas Monitoring System

POTENTIAL FOR HARM

MODERATE:

1. Failure to construct gas monitoring and/or management system in accordance with the permit.
2. Failure to install soil monitoring probes along the property boundary segment of the facility.

**EXTEND OF DEVIATION:**

**MAJOR:**
1. Failure to construct gas monitoring system within 90 days of timeframe specified in the permit.

**MODERATE:**
1. Failure to construct gas monitoring system within 60 days of timeframe specified in the permit.

**MINOR:**
1. Failure to construct gas monitoring system within 30 days of timeframe specified in the permit.

### 2.4 Report and Record Keeping

**POTENTIAL FOR HARM**

**MINOR:**
1. Failure to maintain required reports/records or to submit timely reports to the Department. Such reports include waste quantity, WTE ash analysis, and any other report required by the current operations permit.

**EXTEND OF DEVIATION:**

**MAJOR:**
1. Failure to submit reports within one year.

**MODERATE:**
1. Failure to submit reports within 6 months.

**MINOR:**
1. Failure to submit report within 3 months.
2.5 Stormwater Management

2.5.1 Function of the Stormwater System

**POTENTIAL FOR HARM**

**MAJOR:**
1. Failure of stormwater system resulting in the release of inadequately treated stormwater.
2. Failure of stormwater system resulting in major flooding of off-site property or structure.
3. Failure of the system to adequately control erosion or sedimentation.

**MODERATE:**
1. Malfunction of portions of a system that results in frequent releases of inadequately treated stormwater or moderate flooding of off-site property structures.

**MINOR:**
1. Malfunction of portions of a system that result in releases of inadequately treated stormwater.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Complete failure of stormwater system causing a sudden release of untreated stormwater, heavy siltation in waters of the State or violation of State Water Quality Standards. Cited for the first time.
2. Failure of stormwater system resulting in major flooding of off-site property or structure. Cited for the first time.
3. Failure of the stormwater system to adequately control erosion and sedimentation resulting in extensive silt deposits in adjacent jurisdictional wetlands or waters of the State. Cited 2 times.

**MODERATE:**
1. Malfunction of portions of a system that results in releases of inadequately treated stormwater. Cited 2 times.
2. Malfunction of a stormwater system that results in moderate flooding of off-site property or structures. Cited 1 time.
3. Failure of the stormwater system to adequately control erosion and sedimentation resulting in extensive siltation in adjacent jurisdictional wetlands or waters of the State. Cited 1 time.
PART 2 - GUIDELINES
1.0 PROHIBITIONS

1.1 Disposal/Storage at an Unpermitted Facility

POTENTIAL FOR HARM:

MAJOR:
1. Storage, process and/or disposal of Class I solid waste without a permit.

MODERATE:
1. Storage, process and/or disposal of Class III or C&D debris without a permit.

MINOR:
1. Storage, process and/or disposal of yard trash without a permit.

EXTENT OF DEVIATION:

MAJOR:
1. Storage, process and/or disposal of greater than or equal to 20 cubic yards of solid waste.
2. Storage, process and/or disposal of greater than or equal to 55 gallons of liquid solid waste.

MODERATE:
1. Storage, process and/or disposal of less than 20 cubic yards of Class I, Class III or C&D debris waste, except yard trash.
2. Storage, process and/or disposal of less than 55 gallons of liquid solid waste.

MINOR:
1. Storage, process and/or disposal of less than 20 cubic yards of yard trash.

NOTE: Other violations related to mishandling of solid waste (i.e., unauthorized wastes, etc.) are in facility (Class I, Class III, C&D, & land clearing) specific categories.

1.2 Violate Air or Water Quality Standards

POTENTIAL FOR HARM:

MAJOR:
1. Storage, process and/or disposal of solid waste in a manner that would violate air or water quality standards or criteria of the receiving water.
EXTENT OF DEVIATION:

MAJOR:
1. Storage, process and/or disposal of greater than or equal to 20 cubic yards solid waste.
2. Storage, process and/or disposal of greater than or equal to 55 gallons of liquid solid waste.

MODERATE:
1. Storage, process and/or disposal of less than 20 cubic yards of Class I, Class III or C&D debris wastes, except yard trash.
2. Storage, process and/or disposal of less than 55 gallons of liquid solid waste.

MINOR:
1. Storage, process and/or disposal of less than 20 cubic yards of yard trash.

1.3 In Areas Lacking Geological Support

POTENTIAL FOR HARM:

MAJOR:
1. Unauthorized disposal or storage of Class I solid waste in areas where geological formations or subsurface features will not provide support for the solid waste. Rule 62-701.300(2)(a), F.A.C.

MODERATE:
2. Unauthorized disposal or storage of Class III or C&D Debris solid waste in areas where geological formations or subsurface features will not provide support for the solid waste. Rule 62-701.300(2)(a), F.A.C.

EXTENT OF DEVIATION

MAJOR:
1. Storage, process and/or disposal of greater than or equal to 20 cubic yards solid waste.
2. Storage, process and/or disposal of greater than or equal to 55 gallons of liquid solid waste.

MODERATE:
1. Storage, process and/or disposal of less than 20 cubic yards of Class I, Class III or C&D debris wastes, except yard trash.
2. Storage, process and/or disposal of less than 55 gallons of liquid solid waste.
MINOR:
1. Storage, process and/or disposal of less than 20 cubic yards of yard trash.

1.4 In a Dewatered Pit

POTENTIAL FOR HARM

MAJOR:
1. Unauthorized disposal or storage of solid waste in an undrained dewatered pit with no leachate controls. 62-701.300(2)(c), F.A.C.

EXTENT OF DEVIATION

MAJOR:
1. Storage and/or disposal of Class I or Class III acid waste greater than or equal to 20 cubic yards.

MODERATE:
1. Storage and/or disposal of C&D or yard trash greater than or equal to 20 cubic yards.
2. Storage and/or disposal of Class I and Class III solid waste less than 20 cubic yards.

MINOR:
1. Storage and/or disposal of less than 20 cubic yards of C&D debris or yard trash.

1.5 In a Water Body

POTENTIAL FOR HARM

MAJOR:
1. Unauthorized disposal or storage of solid waste in any natural or artificial body of water including ground water and wetlands within the jurisdiction of the Department. This does not apply to areas of standing water that exist only after storm events, provided it does not cause objectionable odors or sanitary nuisances. Rule 62-701.300(2)(d), F.A.C.

EXTENT OF DEVIATION

MAJOR:
1. Storage and/or disposal of greater than or equal to 20 cubic yards of Class I or Class III waste.
2. Storage and/or disposal of greater than or equal to 55 gallons of liquid solid waste.
MODERATE:
1. Storage and/or disposal of less than 20 cubic yards of Class I or Class III waste.
2. Storage and/or disposal of less than 55 gallons of liquid solid waste.
3. Storage and/or disposal of greater than or equal to 20 cubic yards of C&D debris or yard trash.

MINOR:
1. Storage and/or disposal of less than 20 cubic yards of C&D debris or yard trash.

1.6 Setback from a Water Body

POTENTIAL FOR HARM

MAJOR:
1. Unauthorized disposal or storage of solid waste, other than yard trash, within 200 feet of any natural or artificial body of water, including wetlands, except on-site water bodies with no off-site discharge. Rule 62-701.300(2)(e), F.A.C.

MODERATE:
1. Unauthorized disposal or storage of yard trash within 50 feet of any natural or artificial body of water, including wetlands, except on-site water bodies with no off-site discharge. Rule 62-701.300(15)(b), F.A.C.

EXTENT OF DEVIATION

MAJOR:
1. Storage and/or disposal of greater than or equal to 20 cubic yards solid waste.
2. Storage and/or disposal of greater than or equal to 55 gallons of liquid solid waste.

MODERATE:
1. Storage, process and/or disposal of less than 20 cubic yards of Class I, Class III or C&D debris wastes, except yard trash.
2. Storage, process and/or disposal of less than 55 gallons of liquid solid waste.

MINOR:
1. Storage, process and/or disposal of less than 20 cubic yards of yard trash.
1.7 Right-Of-Way

**POTENTIAL FOR HARM:**

**MODERATE:**
1. Unauthorized disposal or storage of solid waste on the right of way of any public highway, road or alley. Rule 62-701.300(2)(f), F.A.C.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Storage and/or disposal of Class I solid waste greater than or equal to 20 cubic yards.

**MODERATE:**
1. Storage and/or disposal of Class III or C&D debris wastes greater than or equal to 20 cubic yards.
2. Storage and/or disposal of less than 20 cubic yards of Class I waste.

**MINOR:**
1. Storage and/or disposal of Class III or C&D debris less than 20 cubic yards.

1.3 Potable Wells

**POTENTIAL FOR HARM:**

**MAJOR:**
1. Unauthorized disposal or storage of solid waste, except yard trash, within 400 feet of an existing or approved potable water well unless storage or disposal takes place at a facility for which a complete permit application was filed or which was originally permitted before the potable water well was in existence. Rule 62-701.300(2)(b), F.A.C.

**MINOR:**
1. Unauthorized disposal or storage of yard trash within 100 feet of an off-site potable water well. Rule 62-701.300(12)(a), F.A.C.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Storage, process and/or disposal of greater than or equal to 20 cubic yards of Class I or Class III solid waste.
2. Storage, process and/or disposal of greater than or equal to 55 gallons of liquid solid waste.
MEDIUM:
1. Storage, process and/or disposal of less than 20 cubic yards of Class I, Class III wastes.
2. Storage, process and/or disposal of greater than or equal to 20 cubic yards of C&D debris waste.
3. Storage, process and/or disposal of less than 55 gallons of liquid solid waste.

MINOR:
1. Storage, process and/or disposal of less than 20 cubic yards of C&D debris.

1.9 Unauthorized Burning of Solid Waste

POTENTIAL FOR HARM:

MAJOR:
1. All unauthorized burning of solid waste.

EXTENT OF DEVIATION:

MAJOR:
1. Any unauthorized burning of solid waste for greater than 4 hours.

MEDIUM:
1. Any unauthorized burning of solid waste for less than or equal to 4 hours.

1.10 Liquids Restrictions

POTENTIAL FOR HARM

MAJOR:
1. Disposal of non-containerized liquid waste in a Class I landfill unless the liquid is leachate or gas condensate derived from the disposal unit or household waste other than septic waste.
2. Disposal of non-containerized liquid waste in a Class III or C&D debris disposal facility unless the liquid is leachate or gas condensate derived from the disposal unit.

MEDIUM:
1. Disposal or placement containers holding liquid waste in a Class I landfill unless the waste is household waste.
2. Disposal or placement containers holding liquid waste in a Class III landfill or C&D debris site.
3. Disposal of containers or tanks 20 gallons or larger in capacity that have not had one end removed or been punctured to ensure the containers or tanks are empty.
EXTENT OF DEVIATION

MAJOR:
1. Liquid waste greater than 25 gallons including septic and hazardous waste.

MODERATE:
1. Liquid waste less or equal to than 25 gallons including septic and hazardous waste.
2. Containers holding liquid waste greater than 20 gallons other than household waste.

MINOR:
1. Containers or tanks 20 gallons or larger that do not have punctures or at least one site removed.
2.0 VIOLATION CATEGORIES COMMON TO MULTIPLE FACILITIES

2.1 Leachate Management

2.1.1 Operation of the LCR System
Rules 62-701.500(8) and 62-701.570(1), F.A.C.

POTENTIAL FOR HARM:

MAJOR:
1. Failure to properly maintain leachate collection and removal system so that the leachate may be discharged to the environment.
2. Release of leachate to the environment.

MODERATE:
1. Failure to properly maintain the leachate collection and removal system such that the storm water mixes with leachate.
2. Failure for landfills to properly maintain the leachate collection and removal system such that the system functions as designed.
3. Failure for waste processing facilities to clean leachate drains and conveyances so that leachate flow is not impeded.
4. Failure for waste processing facilities to operate the leachate collection system so as to minimize the presence of standing water.
5. Failure to monitor the leachate quality
6. Failure for landfills to water pressure clean or inspect by video recording at time of permit renewal or after installation of a new construction of collection system, but prior to placement of waste.

MINOR:
1. Failure to submit reports and maintain records.

EXTENT OF DEVIATION

MAJOR:
1. Failure to properly maintain leachate collection and removal system, or a bypass of the system, so that the leachate escapes to the environment. Cited for two inspections.
2. Failure to properly maintain the leachate collection and removal system such that storm water mixes with leachate. Cited for 2 inspections.
3. Failure to maintain the leachate collection and removal system so that the system functions as designed. Cited for 2 inspections.
4. Failure for waste processing facilities to clean leachate drains and conveyances so that leachate flow is not impeded. Cited two times.
5. Failure for waste processing facilities to operate the leachate collection system so as to minimize the presence of standing water. Cited two times.
6. Failure to properly monitor the leachate quality. Cited for 3 times.
7. Failure to submit reports and maintain records. Cited for 3 inspections.
8. Failure to water pressure clean or inspect by video recording at time of permit renewal or after installation of a new construction of collection system, but prior to placement of waste. Greater than 180 days.

MODERATE:

1. Failure to properly maintain leachate collection and removal system, or a bypass of the system, so that the leachate escapes to the environment. Cited 1 time.
2. Failure to properly maintain the leachate collection and removal system so storm water mixes with leachate. Cited 1 time.
3. Failure to maintain the leachate collection and removal system so that the system functions as designed. Cited for one inspection.
4. Failure for waste processing facilities to clean leachate drains and conveyances so that leachate flow is not impeded. Cited one time.
5. Failure for waste processing facilities to operate the leachate collection system so as to minimize the presence of standing water. Cited one time.
6. Failure to monitor the leachate collection and removal system. Cited for 2 inspections.
7. Failure to submit reports and maintain records. Cited for 2 inspections.
8. Intentional discharge of leachate to stormwater system.

MINOR:

1. A temporary failure of the facility’s leachate control system such that little or no leachate is discharged to the environment.

2.1.2 Leachate Recirculation
Rule 62-701.400(4), F.A.C.

POTENTIAL FOR HARM:

MAJOR:

1. Recirculation of leachate without a permit modification or written authorization from the Department.
2. Recirculation of leachate on top of areas where barrier layer that is a part of the final cover is installed.
3. Recirculation of leachate during wet weather or in quantities that may cause run off outside the solid waste disposal unit, surface.
seeps, windblown spray or exceedance of limits of leachate head on liner.

**MODERATE:**

1. Ponding of leachate due to recirculation unless it is an integral part of the design plan.

**EXTENT OF DEVIATION:**

**MAJOR:**

1. Recirculation of leachate without a permit modification or written authorization from the Department resulting in release of leachate to the environment.
2. Recirculation of leachate on top of areas where barrier layer that is a part of the final cover is installed resulting in release of leachate to the environment.
3. Recirculation of leachate during wet weather or in quantities that may cause run off outside the solid waste disposal unit, surface seeps, windblown spray or exceedance of limits of leachate head on liner.

**MODERATE:**

1. Recirculation of leachate without a permit modification or written authorization from the Department. No release to the environment.
2. Recirculation of leachate on top of areas where barrier layer that is a part of the final cover is installed. No release to the environment.
3. Recirculation of leachate during wet weather or in quantities that may cause run off outside the solid waste disposal unit, surface seeps, windblown spray or exceedance of limits of leachate head on liner. Cited for 1 inspection.

**MODERATE:**

1. Ponding of leachate due to recirculation unless it is an integral part of a design plan. Cited for 1 inspection.

**2.1.3 Leachate Surface Impoundments**

**POTENTIAL FOR HARM:**

**MAJOR:**

1. Failure to demonstrate a double liner system as required by rule.
2. Failure to maintain a minimum of 2 feet above the depth which would occur in the event of a 25-year, 24 hour storm.
3. Failure to control vectors and off-site odors resulting from leachate.
2.5.2 Construction of Stormwater System

**POTENTIAL FOR HARM**

**MAJOR:**
1. Construction, modification and operation of a stormwater system without a Department permit.
2. Failure to construct a stormwater management system where required by rule.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Construction or modification of a new stormwater management system without a permit if the construction or modification is not permitable.
2. Failure to construct a stormwater management system where required by rule.
3. Modification of a stormwater management system that nullifies or significantly alters the original permitted design.

**MODERATE:**
1. Construction of a stormwater management system as required by rule but not in accordance with the permit.

**MINOR:**
1. Construction or modification of a new stormwater management system without a permit if the construction or modification is permitable.
2. Construction of a stormwater management system where required by rule but not in accordance with the permit, but permitable.

2.5.3 Maintenance of Stormwater System

**POTENTIAL FOR HARM:**

**MODERATE:**
1. Failure to stabilize and restore eroded areas.
2. Failure to remove trash and debris from stormwater system.
3. Failure to remove sediments and debris from sediment storage.
4. Failure to maintain littoral zone and removal of vegetation such as cattails and other exotic species.
EXTENT OF DEVIATION:

MAJOR:
1. Failure to stabilize and restore eroded areas resulting in partial failure of system. Cited 3 times.
2. Failure to remove trash and debris from stormwater system. Cited 3 times.
3. Failure to remove sediments and debris from sediment stumps. Cited 3 times.
4. Failure to maintain littoral zone and removal of vegetation such as cattails and other exotic species. Cited 3 times.

MODERATE:
1. Failure to stabilize and restore eroded areas resulting in partial failure of system. Cited 2 times.
2. Failure to remove trash and debris from stormwater system. Cited 2 times.
3. Failure to remove sediments and debris from sediment stumps. Cited 2 times.
4. Failure to maintain littoral zone and removal of vegetation such as cattails and other exotic species. Cited 2 times.

MINOR:
1. Failure to stabilize and restore eroded areas. Cited 1 time.
2. Failure to remove trash and debris from stormwater system. Cited 1 time.
3. Failure to remove sediments and debris from sediment stumps. Cited 1 time.
4. Failure to maintain littoral zone and removal of vegetation such as cattails and other exotic species. Cited 1 time.

2.6 Financial Assurance
Rule 62-701.630, F.A.C.

2.6.1 Cost Estimates and Annual Updates

POTENTIAL FOR HARM

MAJOR:
1. Failure to provide acceptable cost estimates for both closure and long-term care.

MINOR:
1. Failure to provide annual cost estimate updates for closure or long-term care.
2. Failure to provide timely annual cost estimate updates for closure or long-term care.
2.6.2 Closure or Long-term Care Instruments

**EXTENT OF DEVIATION:**

**MAJOR:**
1. Submittal of acceptable cost estimates 180 days after due date.

**MODERATE:**
1. Submittal of acceptable cost estimates 90 days after due date.

**MINOR:**
1. Submittal of acceptable cost estimates within 90 days of due date.

**POTENTIAL FOR HARM:**

**MAJOR:**
1. Failure to establish financial assurance acceptable to the Department for closure or long-term care.
2. Failure to establish financial assurance for corrective action, acceptable to the Department, after corrective action remedy selected.
3. Failure to submit Standby Trust Agreement.

**MODERATE:**
1. Failure to provide adequate proof to the Department of the establishment of financial assurance for closure or long-term care.
2. Failure to provide adequate proof to the Department of the establishment of financial assurance for corrective action.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Financial assurance established 180 days after due date.
2. Financial assurance for corrective action established 240 days after due date.
3. Submittal of adequate proof of financial assurance for closure, long-term care or corrective action 180 days after due date.
4. Failure to submit Standby Trust Agreement 180 days after the due date.
**MODERATE:**
1. Financial assurance established 90 days after due date.
2. Financial assurance for corrective action established 180 days after due date.
3. Submittal of adequate proof of financial assurance for closure, long-term care or corrective action 90 days after due date.

**MINOR:**
1. Financial assurance established within 90 days after due date.
2. Financial assurance for corrective action established within 180 days after due date.
3. Submittal of adequate proof of financial assurance for closure, long-term care or corrective action within 90 days after due date.
3.0 CLASS I LANDFILLS

3.1 Unauthorized Disposal of Solid Waste

POTENTIAL FOR HARM

Disposal of any of the following waste in the quantities listed below.

MAJOR:
1. Hazardous waste.
2. Liquid and non-liquid polychlorinated biphenyl (PCB) at concentration of 50 parts per million or greater.
3. Untreated biomedical waste.
4. Improper or uncontrolled disposal of friable asbestos containing material (greater than 1 percent by weight).
5. Lead-acid batteries improperly stored or disposed of at the site.

MODERATE:
1. Used oil improperly stored or disposed of at the site.
2. Used oil co-mingled with solid waste.
3. Non-hazardous waste, either liquid or solid, that is not designated in the permit.

MINOR:
1. Unauthorized disposal of white goods.
2. Whole waste tires in the working face of Class I landfill.
3. Yard waste in a Class I landfill.

EXTENT OF DEVIATION

Disposal of any of the following waste in the quantities listed below:

MAJOR:
1. PCB at concentration of 50 parts per million or greater in the form of contaminated soil, rags or other debris.
2. Hazardous waste greater than 25 gallons or 220 pounds.
3. Untreated biomedical waste greater than 25 pounds.
4. Friable asbestos greater than 1 cubic meter that is not wetted, bagged and covered.
5. Used oil greater than 550 gallons.
6. Greater than 10 lead acid batteries.
7. Non-hazardous waste either liquid greater than 1000 gallons or solid greater than 20 yards.

MODERATE:
1. Hazardous waste less than or equal to 25 gallons or 220 pounds.
2. Biomedical waste (untreated) less than or equal to 25 pounds.
3. Regulated asbestos less or equal to than 1 cubic meter that is not wetted, bagged and covered.
4. Used oil between 25 to 550 gallons.
5. Lead acid batteries, between 5 to 10 batteries.
6. Non-hazardous waste not designated in the permit which includes either liquid between 25 to 1900 gallons or solid less than 20 but greater than 5 cubic yards.
7. 10 or more whole waste tires.

MINOR:
1. Used oil less than or equal to 25 gallons.
2. Non-hazardous waste not designated in the permit which includes either liquid less than 25 gallons or solid less than 5 cubic yards.
3. Lead acid batteries less than 5.
4. Waste tires less than 10.

3.2 Facility Construction and Design

POTENTIAL FOR HARM:

MAJOR:
1. Construction, operation or modification of a Class I landfill without a Department permit.
2. Vertical expansion or lateral expansion of the permitted disposal area without authorization by the Department in a permit or in writing.
3. Substantial deviation from approved construction plans without authorization from the Department.
4. Construction results in a significant side slope failure or a deep seated failure through the waste.
5. Exceeding design height, if foundation analysis does not demonstrate sufficient support.

MODERATE:
1. Failure to provide certification of construction completion to the Department upon completion of construction project.
2. Failure to maintain compaction and sloping of the waste as necessary to ensure closure requirements can be met and in accordance with the schedule for compaction and grading as provided in the facility's operational plan.
3. Failure to adequately describe all significant deviations from the approved construction plans and the reasons for them in the certification of completion construction documents.

MINOR:
1. Exceeding design height, if foundation analysis does demonstrate sufficient support.
EXTENT OF DEVIATION

MAJOR:
1. Construction, operation or modification of a Class I landfill without a Department permit if construction, operation, or modification is not permissible.
2. Failure to provide certification of construction completion to the Department within 90 days of completion of the construction project.
3. Failure to provide a certification of closure construction completion to the Department.
4. Above grade slopes are steeper than 3 feet horizontal to 1 foot vertical.
5. Construction results in a significant side slope failure or a deep seated failure through the waste.
6. Exceeding design height by equal to or more than 20 feet.

MODERATE:
1. Construction, operation, modification or closure of a Class I landfill without a Department permit if construction, operation, or modification is permissible.
2. Failure to provide certification of construction completion to the Department within 60 days of completion of the construction project.
3. Failure to submit a closure permit application or request a modification of the current permit at least 90 days from the date when waste will no longer be accepted.
4. Exceeding design height by less than 20 feet but greater than or equal to 10 feet.

MINOR:
1. Exceeding design height by less than 10 feet.
2. Failure to provide certification of construction completion to the Department within 30 days of completion of the construction project.

3.3 Facility Operations

POTENTIAL FOR HARM

MAJOR:
1. No trained spotter on duty at the working face during the operation of the landfill.

MODERATE:
1. Insufficient personnel or equipment to properly operate the facility, including spotters, attendants and trained operators.
2. Failure to maintain adequate cover, including daily and intermediate.
3. Failure to maintain fire control equipment.
4. Failure to implement a waste checking program (weekly random inspection).
5. Failure to provide adequate access control.
6. Failure to control or correct erosion resulting in exposed waste.
7. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical slopes (3H:1V) on the working face of the cell and all site grades above land surface.
8. Failure to control dust by allowing unconfined emission of particulate matter in violation of Rule 62-296.320(4)(c), F.A.C.

MINOR:
1. Failure to control litter.
2. Failure to maintain access road.
3. Failure to properly compact wastes.
4. Failure to weigh waste at county owned disposal facility.
5. Failure to segregate Construction and Demolition Debris from other solid waste at Class I landfill.
6. Failure to control or correct erosion.
7. Failure to install and maintain a recording rain gauge.

EXTENT OF DEVIATION

MAJOR:
1. No spotter or trained operator on duty while facility is receiving waste.
2. Failure to apply daily cover and use unapproved cover.
3. Failure to segregate more than 10 tons of C&D debris from the Class I waste stream.
4. Failure to maintain equipment causing it to be inoperable with no backup equipment. Cited for three inspections.
5. Failure to implement or provide records of waste checking program.
6. Failure to begin corrective action for erosion within a period of 2 weeks.
7. Failure to provide access control cited for three consecutive inspections.
8. Failure to control litter so that the litter is off-site, and in the storm water system for more than 24 hours.
9. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical (3H:1V) slopes on the working face of the cell and all site grades above land surface.
10. Failure to comply with all of the requirements listed in the MINOR category above.
11. Failure to comply with any one of the requirements listed in the MINOR category above. Cited for three consecutive inspections.
12. Failure to control dust by allowing unconfined emission of particulate matter in violation of Rule 62-296.320(4)(c), F.A.C.
**MEDIUM:**
1. Failure to segregate between 5 to 10 tons of (C&D) prohibited waste.
2. Missing or inoperable fire equipment at the landfill.
3. Inoperable equipment with no backup equipment but can be secured within 24 hours.
4. Failure to complete corrective action for erosion within a period of 2 weeks.
5. Failure to provide access control. Cited for two consecutive inspections.
6. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical (3H:1V) slopes on the initial cover of the cell.

**MINOR:**
1. Failure to segregate less than 5 tons of (C&D) prohibited waste.
2. Insufficient personnel so that routine duties cannot be implemented.
3. Failure to control dust and litter so that the litter is beyond the working face and not picked up within 24 hours.
4. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical (3H:1V) slopes on the initial cover and working face the cell.
5. All other violations with a minor potential for harm.
4.0 CLOSED CLASS I LANDFILLS

4.1 Facility Maintenance

POTENTIAL FOR HARM

MODERATE:

1. Failure to correct excessive settlement/subsidence (for example, exposed barrier layer, ponding water with cattails growing in water, cracks or holes in the liner system).
2. Failure to control or correct erosion with exposed waste.
3. Failure to maintain access control.
4. Failure to place final cover over entire surface of each disposal unit and plant with drought-resistant species that will control erosion and protect the seal.

MINOR:

1. Failure to maintain vegetation.
2. Failure to control erosion with no exposed waste.

EXTENT OF DevIA TIOn

MAJOR:

1. Failure to correct settlement in 90 days.
2. Failure to control or correct erosion and to implement corrective action within a period of 2 weeks.
3. Failure to comply with any one of the requirements listed in the MINOR category above. Cited for three consecutive inspections.
4. Failure to place final cover over entire surface of each disposal unit and plant with drought-resistant species that will control erosion and protect the seal within 1 year after it has reached its final grade.

MODERATE:

1. Failure to correct settlement in 60 days.
2. Failure to control or correct erosion with exposed waste and to complete corrective action within a period of 2 weeks.
3. Failure to maintain access control for two consecutive inspections.
4. Failure to place final cover over entire surface of each disposal unit and plant with drought-resistant species that will control erosion and protect the seal within 210 days after it has reached its final grade.

MINOR:

1. Failure to correct settlement in 30 days.
2. Failure to control or correct erosion with exposed waste repaired within two weeks.
3. Failure to maintain access control cited once.
4. Failure to place final cover over entire surface of each disposal unit and plant with drought-resistant species that will control erosion and protect the seal within 180 days after it has reached its final grade.

4.2 Permit Requirements

**POTENTIAL FOR HARM:**

**MAJOR:**
1. Closure of a Class I landfill without a Department permit.

**MODERATE:**
1. Failure to provide a certification of closure construction completion to the Department.
2. Failure to submit a closure permit application or request a modification of the current permit at least 90 days from the date when waste will no longer be accepted.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Failure to provide a certification of closure construction completion to the Department within 90 days of completion of construction project.

**MODERATE:**
1. Failure to provide a certification of closure construction completion to the Department within 60 days of completion of construction project.

**MINOR:**
1. Failure to provide a certification of closure construction completion to the Department within 30 days of completion of construction project.
5.0 CLASS III LANDFILLS

5.1 Unauthorized Disposal of Solid Waste

POTENTIAL FOR HARM

Disposal of any of the following wastes in the quantities listed below.

MAJOR:
1. Hazardous waste.
2. Liquid and non-liquid polychlorinated biphenyl (PCB) at concentration of 50 parts per million or greater.
3. Untreated biomedical waste.
4. Improper or uncontrolled disposal of friable asbestos containing material (greater than 1 percent by weight).
5. Lead-acid batteries improperly stored or disposed of at the site.
6. Used oil at a Class III or unlined landfill.
7. Disposal of Class I waste.

MODERATE:
1. Non-hazardous waste either liquid or solid that is not designated in the permit.
2. Storage of Class I waste.

MINOR:
1. Unauthorized disposal of white goods.
2. Whole waste tires in the working face of Class I landfill.

EXTENT OF DEVIATION

Disposal of any of the following waste in the quantities listed below.

MAJOR:
1. PCB at concentration of 50 parts per million or greater in the form of contaminated soil, rags or other debris.
2. Hazardous waste greater than 25 gallons or 220 pounds in lined Class III landfill.
3. Hazardous waste in any quantity in an unlined Class III.
4. Biomedical waste (untreated) greater than 25 pounds in both lined and unlined Class III.
5. Regulated (Friable) asbestos greater than 1 cubic meter that is not wetted, bagged and covered.
6. Used oil greater than 550 gallons in lined Class III.
7. Used oil greater than 25 gallons in unlined Class III.
8. 10 or more lead acid batteries.
9. Non-hazardous waste either liquid greater than 1000 gallons or solid greater than 20 cubic yards in both lined and unlined landfills.
10. Class I waste greater than 5 cubic yards on site more than 7 days, or less than 5 cubic yards on site greater than 14 days.

**MODERATE:**

1. Hazardous waste less than 25 gallons or 220 pounds, (lined Class III)
2. Biomedical waste (untreated) less than 25 pounds Class III.
3. Regulated asbestos less than 1 cubic meter that is not wetted, bagged and covered.
4. Used oil less than 25 gallons in an unlined Class III
5. Used oil between 25 to 550 gallons in a lined a Class III.
6. Lead acid batteries between 5 to 10.
7. Non-hazardous waste not designated in the permit which includes either liquid between 25 to 1000 gallons or solid less than 20 but greater than 5 cubic yards.
8. 10 or more whole waste tires in the landfill.
9. Class I waste greater than 5 cubic yards on site greater than 48 hours or less than 5 cubic yards on site greater than 7 days.

**MINOR:**

1. Used oil less than 25 gallons in a lined Class III.
2. Non-hazardous waste not designated in the permit which includes either liquid less than 25 gallons or solid less than 5 cubic yards.
3. Waste tires less than 10.
4. Class I waste less than 5 cubic yards on site greater than 48 hours.

5.2 **Facility Operations (Class III lined/unlined)**

**POTENTIAL FOR HARM:**

**MAJOR:**

1. No trained speter on duty at the working face during the operation of the landfill.

**MODERATE:**

1. Insufficient personnel or equipment to properly operate the facility, including spotters, attendants and trained operators.
2. Failure to maintain adequate cover, including initial and intermediate.
3. Failure to maintain fire control facilities.
4. Failure to implement a waste checking program (weekly random inspection).
5. Failure to provide adequate access control.
6. Failure to control or correct erosion resulting in exposed waste.
7. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical slopes on the working face of the cell and all site grades above land surface.

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8. Failure to control dust by allowing unconfined emissions of particulate matter in violation of Rule 62-296.320(4)(c), F.A.C.

**MINOR:**
1. Failure to control litter.
2. Failure to maintain access road.
3. Failure to properly compact wastes.
4. Failure to weigh waste at county owned disposal facility.
5. Failure to segregate Construction and Demolition debris from other solid waste at Class I landfill.
6. Failure to control or correct erosion.
7. Failure to install and maintain a recording rain gauge.

**EXTENT OF DEVIATION:**

**MAJOR:**
1. No spotter or trained operator on duty while facility is receiving waste.
2. Failure to apply weekly cover and/or use unapproved cover.
3. Failure to segregate more than 10 tons of C&D debris from the Class I waste stream.
4. Failure to maintain equipment causing it to be inoperable with no backup equipment. Cited for three consecutive inspections.
5. Failure to implement or provide records of waste checking program.
6. Failure to begin corrective action for erosion within a period of 2 weeks.
7. Failure to provide access control. Cited for three consecutive inspections.
8. Failure to control litter so that the litter is off site, and in the storm water system for more than 24 hours.
9. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical slopes on the working face of the cell and all site grades above land surface.
10. Failure to comply with all of the requirements listed in the MINOR category above.
11. Failure to comply with any one of the requirements listed in the MINOR category above. Cited for three consecutive inspections.

**MODERATE:**
1. Failure to segregate between 5 to 10 tons of (Class I) prohibited waste.
2. Missing or inoperable fie equipment at the landfill.
3. Inoperable equipment with no backup equipment but can be secured within 24 hours.
4. Failure to complete corrective action for erosion within a period of 2 weeks.
5. Failure to provide access control cited for two consecutive inspections.
6. Failure to control dust and litter so that the litter is beyond the working face and not picked up within 24 hours.
7. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical slopes on the initial cover of the cell.

**MINOR:**

1. Failure to segregate less than 5 tons of (Class I) prohibited waste.
2. Insufficient personnel so that routine duties cannot be implemented.
3. Failure to control dust and litter so that the litter is beyond the working face but not picked up within 24 hours.
4. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical slopes on the initial cover and working face the cell.
5. All other violations with a minor potential for harm.
6.0. CLOSED CLASS III LANDFILLS

6.1 Facility Maintenance

POTENTIAL FOR HARM

MODE RATE:

1. Failure to control or correct erosion with exposed waste.
2. Failure to maintain access control.

MINOR:

1. Failure to maintain vegetation cover.
2. Failure to control erosion with no exposed waste.

EXTENT OF DEVIATION:

MAJOR:

1. Failure to correct settlement in 90 days.
2. Failure to control or correct erosion and to implement corrective action within a period of 2 weeks.
3. Failure to comply with any one of the requirements listed in the MINOR category above. Cited for three consecutive inspections.

MODERATE:

1. Failure to correct settlement in 60 days.
2. Failure to control or correct erosion with exposed waste and to complete corrective action within a period of 2 weeks.
3. Failure to maintain access control for two consecutive inspections.

MINOR:

1. Failure to correct settlement in 30 days.
2. Failure to control or correct erosion with exposed waste repaired within two weeks.
3. Failure to maintain access control cited once.
4. All other violations with a minor potential for harm.

6.2 Permit Requirements

POTENTIAL FOR HARM:

MAJOR:

1. Closure of a Class III landfill without a Department permit.
MODERATE:

1. Failure to provide a certification of closure construction completion to the Department.
2. Failure to submit a closure permit application or request a modification of the current permit at least 90 days from the date when waste will no longer be accepted.

EXTENT OF DEVIATION

MAJOR:

1. Failure to provide a certification of closure construction completion to the Department within 90 days of completion of construction project.

MODERATE:

1. Failure to provide a certification of closure construction completion to the Department within 60 days of completion of construction project.

MINOR:

1. Failure to provide a certification of closure construction completion to the Department within 30 days of completion of construction project.
7.0 SOIL TREATMENT FACILITIES

POTENTIAL FOR HARM:

MAJOR:
1. Release of leachate to environment.
2. Failure to properly maintain leachate collection system so that leachate may escape to the environment.
3. Confirmed violation of primary water quality standards and/or criteria at a detection or compliance point.
4. Failure to comply with groundwater monitoring requirements for any facility with existing groundwater contamination.
5. Storage of un-contained contaminated soils in an area that is not protected by a leachate collection system.
6. Distribution of treated soil as clean soil that is not tested to be clean soil in accordance with proper test methods and/or proper testing intervals.
7. Acceptance of contaminated soils that are not characterized to be non-hazardous.

MINTER:
1. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators.
2. Failure to comply with groundwater monitoring requirements.
3. Failure to maintain the groundwater monitoring system.

MINOR:
1. Failure to control dust or litter.
2. Failure to maintain fire control facilities.
3. Failure to maintain required records or to file required reports.

EXTENT OF DEVIATION:

MAJOR:
1. Failure to properly maintain leachate collection so that so that leachate escapes to the environment, cited two consecutive times.
2. Failure to monitor the leachate collection system, cited 3 times.
3. Storage of un-contained contaminated soils in area not protected by a leachate collection system and that is exposed to rainfall.
4. Any confirmed results above primary/secondary water quality standards and/or criteria the compliance point.
5. Failure to conduct more than one monitoring event.
6. Failure to submit ground or surface water report within 12 months of due date.
7. Failure to implement a remedial action plan for assessment monitoring required in Rule 62-701.510(7), F.A.C. within the approved time frames.
8. Two or more monitoring data sets invalidated during the term of the permit.
9. Failure to perform sampling under CQAP.
10. Insufficient personnel or equipment to properly operate facility, including attendants and trained operators, cited 3 times.
11. Acceptance of greater than 220 pounds of contaminated soils that are not characterized to be non-hazardous.
12. Distribution of treated soil in an unrestricted manner that was not tested in accordance with proper test methods and/or proper testing intervals or was tested and failed criteria for unrestricted end use.

**MODERATE:**

1. Failure to properly maintain leachate collection so that so that leachate escapes to the environment, cited one time.
2. Failure to monitor the leachate collection system cited 2 times.
3. Storage of un-containerized contaminated soils in an area not protected by a leachate collection system but not exposed to rainfall.
4. Failure to control dust or litter off-site.
5. Failure to conduct one monitoring event.
6. Failure to submit ground or surface water monitoring report within 6 months of due date.
7. One monitoring data set invalidated during the term of the permit.
8. Failure to maintain the monitoring system for more than one event.
9. Failure to analyze for all required parameters or analyze to appropriate detection limits.
10. Acceptance of less than 220 pounds of contaminated soils that are not characterized to be non-hazardous.
11. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators, cited 2 times.
12. Distribution of treated soil that was not tested in accordance with proper test methods and/or proper testing intervals or was tested and failed criteria for a designated end use.

**MINOR:**

1. Failure to monitor the leachate collection system cited 1 time.
2. Failure to control dust or litter on-site.
3. Contaminated soils accumulating from spills at facility or other handling outside an area protected by a leachate collection system.
4. Failure to maintain required records or to file required reports.
5. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators, cited one time.
8.0 WASTE-TO-ENERGY FACILITIES

POTENTIAL FOR HARM:

MAJOR:
1. Release of leachate to environment.
2. Failure to properly maintain leachate collection system so that leachate may escape to the environment.
3. Confirmed violation of primary water quality standards and/or criteria at a detection or compliance point.
4. Failure to comply with monitoring requirements for any facility with existing groundwater contamination.
5. Burning mercury containing devices or other prohibited wastes.
6. Storage of solid waste or ash in an area that is not protected by a leachate collection system

MODERATE:
1. Failure to adequately process raw waste in fuel pit per approved operations plan.
2. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators.
3. Failure to comply with groundwater monitoring requirements.
4. Failure to maintain the groundwater monitoring system.

MINOR:
1. Failure to maintain access roads and signs.
2. Failure to maintain barrier.
3. Failure to control dust or litter.
4. Failure to maintain fire control facilities.
5. Failure to implement weekly random load checking of waste delivered to the facility.
6. Failure to maintain required records or to file required reports.

EXTENT OF DEVIATION:

MAJOR:
1. Failure to properly maintain leachate collection system so that leachate escapes to the environment, cited two consecutive times.
2. Failure to monitor the leachate collection system, cited 3 times.
3. Burning of mercury containing devices or other prohibited wastes, cited 3 times.
4. Storage of solid waste or ash in area not protected by a leachate collection system and that is exposed to rainfall.
5. Failure to adequately process raw waste in fuel pit per approved operations plan, cited 3 times.
6. Any confirmed results above primary/secondary water quality standards and/or criteria the compliance point.
7. Failure to conduct more than one monitoring event.
8. Failure to submit ground or surface water report within 12 months of due date.
9. Failure to implement a remedial action plan for assessment monitoring required in Rule 62-701.4:10(7), F.A.C., within the approved time frames.
10. Two or more monitoring data sets invalidated during the term of the permit.
11. Failure to perform sampling under CQAP.
12. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators, cited 3 times.

**MODERATE:**

1. Failure to properly maintain leachate collection so that so that leachate escapes to the environment, cited one time.
2. Burning of mercury containing devices or other prohibited wastes, cited 2 times.
3. Storage of solid waste or ash in areas not protected by a leachate collection system but not exposed to rainfall.
4. Failure to control dust or litter off-site.
5. Failure to conduct one monitoring event.
6. Failure to submit ground or surface water monitoring report within 5 months of due date.
7. One monitoring data set invalidated during the term of the permit.
8. Failure to maintain the monitoring system for more than one event.
9. Failure to analyze all required parameters or analyze to appropriate detection limits.
15. Failure to adequately process raw waste in fuel pit per approved operations plan, cited 2 times.
11. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators, cited 2 times.

**MINOR:**

1. Failure to monitor the leachate collection system, cited 1 time.
2. Not collecting litter by the end of the working day.
3. Burning of mercury containing devices or other prohibited wastes, cited 1 time.
4. Failure to control dust or litter on-site.
5. Ash accumulating from spills or ash collection system leaks.
6. Treat odor violations in the same manner as odor violations are treated by the air program.
7. Failure to implement weekly random load checking of waste delivered to the facility.
8. Failure to maintain required records or to file required reports.
9. Failure to adequately process raw waste in fuel pit per approved operations plan, cited one time.
10. Insufficient personnel or equipment to properly operate facility, including attendants, and trained operators, cited one time.
9.0 WASTE PROCESSING FACILITIES

9.1 Construction, Design, Operation and Closure

POTENTIAL FOR HARM

MAJOR:
1. Construction, operation, or modification of a Class I waste processing facility without a Department permit.

MODOERATE:
1. Construction, operation, or modification of mixed waste consisting of Class III and/or C&D debris, and greater than incidental amounts of Class I waste without a Department permit.
2. Failure to complete closure activities in a timely manner.

MINOR:
1. Construction, operation, or modification of a Class III or C&D debris waste processing facility without a Department permit.
2. Failure to timely implement facility closure modification requirements or to provide the Department timely certification of closure completion.

EXTENT OF DEVIATION

MAJOR:
1. Construction, operation, or modification of a waste processing facility without a Department permit if construction, operation, or modification is not permissible.
2. Upon closing the facility, failure to remove or otherwise dispose of all solid waste and residue from the facility greater than or equal to 90 days after it has received the final solid waste shipment.
3. Failure to complete closure of the facility, including the removal of all recovered materials from the site, greater than or equal to 240 days after receiving the final waste quantity.
4. Failure to timely implement facility closure notification requirements or to provide the Department timely certification of closure completion.
5. Failure to provide the Department notification of closure prior to ceasing operation of the facility.

MODOERATE:
1. Construction, operation, or modification of a waste processing facility without a Department permit if construction, operation, or modification is permissible.
2. Upon closing the facility, failure to remove or otherwise dispose of all solid waste and residue from the facility
greater than or equal to 60 days but less than 90 days after it has received the final solid waste shipment.

3. Failure to complete closure of the facility, including the removal of all recovered materials from the site, greater than or equal to 210 days but less than 240 days after receiving the final waste quantity.

4. Failure for a facility that operates without a leachate control system to perform a contamination evaluation as part of its closure activities.

MINOR:

1. Upon closing the facility, failure to remove or otherwise dispose of all solid waste and residue from the facility greater than or equal to 30 days but less than 60 days after it has received the final solid waste shipment.

2. Failure to complete closure of the facility, including the removal of all recovered materials from the site greater than 180 days but less than 210 days after receiving the final waste quantity.

9.2 Facility Operation

POTENTIAL FOR HARM

MODERATE:

1. Collection, storage, or processing solid waste other than those permitted to be accepted of under Department permit.

2. Exceeding identified on-site storage capacities or area for recyclable materials, non-processible wastes, unauthorized wastes, and residues.

3. Failure to maintain at least one trained operator on duty at the facility while operating.

4. Failure to remove unauthorized waste from the waste stream and place it in appropriate containers.

5. Failure to follow plan to inspect the wastes that specifies inspection procedures and procedures for handling unauthorized wastes.

6. Failure to have at least one trained spotter on duty at all times that waste is received at the site.

7. Failure to have operators or spotters trained in accordance with Rule 62-701.320(15), F.A.C.

8. Insufficient personnel or equipment to properly operate the facility, including spotters, attendants and trained operators.

9. Failure to operate the facility to control objectionable odors in accordance with Rule 62-296.320(2), F.A.C.

10. Failure to maintain available adequate fire protection.

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11. Failure to implement the facility’s approved waste checking program.
12. Failure to provide adequate access control.

**MINOR:**
1. Failure to provide, operate or maintain processing equipment in accordance with the facility’s permit and operation plan.
2. Failure to handle waste on a first-in, first-out basis, if required.
3. Storage of unprocessed putrescible waste for more than 48 hours without provisions for vector and odor controls.
4. Failure to clean, at least on a weekly basis, all waste processing/storage areas.
5. Failure to have adequate ventilation in tipping processing, sorting, storage and compaction areas that are in an enclosed building or covered area.
6. Failure to comply with any part of facility’s Operation Plan not otherwise identified in this section.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Acceptance/processing/improper storage of greater than 10 cubic yards of unauthorized solid waste or the acceptance of loads containing greater than 50 percent unauthorized waste.
2. Exceeding identified on-site storage capacities for recyclable materials, non-processible waste, unauthorized wastes, and residues by greater than 25 percent.
3. Failure to maintain at least one trained operator on duty at the facility while operating. Cited on two occasions or more.
4. Failure to remove unauthorized waste from the waste stream and place it in appropriate containers on two occasions or more.
5. Failure to follow plan to inspect the wastes that specifies inspection procedures and procedures for handling unauthorized wastes on two occasions or more.
6. Failure to have at least one trained spotter on duty at all times that waste is received at the site. Cited two times.
7. Failure to have operators or spotters trained in accordance with Rule 62-701.320(15), F.A.C. Cited two times.
8. Insufficient personnel or equipment to properly operate the facility, including spotters, attendants, and trained operators on two occasions or more.
9. Failure to operate and maintain processing equipment such as to impede facility operations on two occasions or more.
10. Failure to handle waste on a first-in, first-out basis, if required, on three occasions or more.
11. Storage of unprocessed putrescible waste for more than 7 days without provisions for vector and odor controls.
12. Failure to clean, at least on a weekly basis, all waste processing/storage areas on two occasions or more.
13. Failure to have adequate ventilation in tipping processing, sorting, storage and compaction areas that are in an enclosed building or covered area on two occasions or more.
14. Failure to comply with same part of facility's Operation Plan not otherwise identified in this section on two occasions or more.
15. Failure to maintain available adequate fire protection.

MODERATE:
1. Acceptance/processing/ improper storage of greater than 3 cubic yards of unauthorized solid waste or the acceptance of loads containing greater than 25 percent unauthorized waste.
2. Exceeding identified on-site storage capacities or area for recyclable materials, non-processible wastes, unauthorized wastes, and residues by greater than 10 percent.
3. Failure to maintain at least one trained operator on duty at the facility while operating. Cited on one occasion.
4. Failure to remove unauthorized waste from the waste stream and place in appropriate containers on one occasion.
5. Failure to follow plan to inspect the wastes received by the facility that specifies inspection procedures and procedures for handling unauthorized wastes on one occasion.
6. Failure to have at least one trained operator on duty at all times that waste is received at the site. Cited one time.
7. Failure to have operators or spotters trained in accordance with Rule 62-701.320(1), F.A.C. Cited one time.
8. Insufficient personnel or equipment to properly operate the facility, including spotters, attendants, and trained operators on one occasion.
9. Failure to operate facility to control objectionable odors in accordance with subsection 62-296.320(2), F.A.C.
10. Failure to operate and maintain processing equipment such as to impede facility operations on one occasion.
11. Failure to handle waste on a first-in, first-out basis, if required, on two occasions.
12. Storage of unprocessed putrescible waste for more than 4 days without provisions for vector and odor controls.
13. Failure to clean, at least on a weekly basis, all waste processing/storage areas on one occasion.
14. Failure to implement facility's approved waste checking program.
15. Failure to provide adequate access control on two consecutive inspections.
16. Failure to have adequate ventilation in tipping processing, sorting, storage and compaction areas that are in an enclosed building or covered area on one occasion.

17. Failure to comply with any part of facility's Operation Plan not otherwise identified in this section on one occasion.

**MINOR:**

1. Acceptance/processing/ improper storage of greater than 1 cu. yd. of unauthorized solid waste or the acceptance of loads containing greater than 10 percent unauthorized waste.

2. Exceeding identified on-site storage capacities or area for recyclable materials, non-processible wastes, unauthorized wastes, and residues by less than 10 percent.

3. Failure to handle waste on a first-in, first-out basis, if required, on one occasion.

4. Storage of unprocessed putrescible waste for more than 2 days without provisions for vector and odor controls.

5. Failure to clean, at least on a weekly basis, all waste processing/storage areas on one occasion.

6. Failure to provide adequate access control on one occasion.
10.0 LAND CLEARING DEBRIS DISPOSAL FACILITIES

10.1 Unauthorized Disposal of Solid Waste

**POTENTIAL FOR HARM**

**MAJOR:**
1. Storage and/or disposal of hazardous waste.
2. Storage and/or disposal of prohibited wastes in accordance with Rule 62-701.300(5),(6)&(8), F.A.C.
3. Storage and/or disposal of Class I waste.

**MODERATE:**
1. Storage and/or disposal of Class III wastes or C&D debris wastes.

**MINOR:**
1. Failure to place prohibited waste into appropriate containers or secured storage areas.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Unauthorized disposal of 25 gallons or 220 pounds of hazardous waste.
2. Unauthorized disposal of 25 gallons or 220 pounds of prohibited wastes in accordance with Rule 62-701.300(5),(6)&(8), F.A.C.
3. Unauthorized disposal of greater than 20 cubic yards of non-hazardous waste.
4. Class I waste greater than 5 cubic yards on-site more than 7 days, or less than 5 cubic yards on-site greater than 14 days.

**MODERATE:**
1. Unauthorized disposal of less than 25 gallons or 220 pounds of hazardous waste.
2. Unauthorized disposal of less than 25 gallons or 220 pounds of prohibited wastes in accordance with Rule 62-701.300(5),(6)&(8), F.A.C.
3. Unauthorized disposal of greater than 5 cubic yards but less than 20 cubic yards of non-hazardous waste.
4. Failure to remove putrescible waste from the site within 48 hours or as stated in permit application.
5. Class I waste greater than 5 cubic yards on site greater than 48 hours or less than 5 cubic yards on site greater than 7 days.

**MINOR:**
1. Unauthorized disposal of less than 5 cubic yards of non-hazardous waste.
2. Failure to place prohibited waste in appropriate containers or secured storage areas.
3. Class I waste less than 5 cubic yards on site greater than 48 hours.
4. Class ill waste, C&D waste, or white goods greater than 20 cubic yards on site more than 30 days, or greater than 20 cubic yards on site greater than 90 days.

10.2 Facility Construction

**POTENTIAL FOR HARM**

**MODERATE:**
1. Exceeding design height if foundation analysis does not demonstrate sufficient support.
2. Failure to maintain a maximum of 3 feet horizontal to 1 foot vertical on all covered slopes above land surface.
3. Failure to maintain compaction and sloping of the waste as necessary to ensure that closure requirements can be met and in accordance with the schedule for compaction and grading provided in the facility's operational plan.

**MINOR:**
1. Exceeding design height, if foundation analysis does demonstrate sufficient support.
2. Failure to close facility in accordance with rule and closure plan.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Exceed design height by greater than 20 feet.
2. Slope grades steeper than 5 feet horizontal to 1 foot vertical.
3. Closure not complete after 360 days after final receipt of waste.

**MODERATE:**
1. Exceed design height by less than 20 feet but greater than 10 feet.
2. Slope grades shallower than 5 feet horizontal to 1 foot vertical but steeper than 3 feet horizontal to 1 foot vertical.
3. Closure not complete between 210 and 360 days after final receipt of waste.

**MINOR:**
1. Exceed design height by less than 10 feet.
2. Closure not complete between 180 and 210 days after final receipt of waste.
10.3 Facility Operation

**POTENTIAL FOR HARM**

**MAJOR:**
1. No spotter on duty at the working face during operations.

**MODERATE:**
1. Disposal of land clearing debris in standing water or groundwater.
2. Failure to control offsite litter and dust.
3. Encroaching into setbacks from wetlands, potable water wells, and community water wells.

**MINOR:**
1. Failure to control onsite litter and dust.
2. Failure to maintain access road.
3. Failure to provide adequate containmentized storage for unacceptable waste.
4. Failure to operate in accordance with approved operational plan.
5. Failure to maintain access control to the disposal facility by fencing or other effective barriers.
6. Onsite disposal of land clearing debris in violation of Rule 62-701.730(17), FAC.

**EXTENT OF DEVIATION**

**MAJOR:**
1. No spotter on duty at the working face during operations cited for the third time.
2. Disposal of more than 40 cubic yards of land clearing debris in standing water or groundwater.
3. Failure to control offsite litter and dust cited for the third time.
4. Encroaching into setbacks from wetlands, potable water wells, and community water wells by 50 percent of the setback.
5. All minor violations cited for the third time.

**MODERATE:**
1. No spotter on duty at the working face during operations cited for the second time.
2. Disposal of less than 40 cubic yards of land clearing debris in standing water or groundwater.
3. Failure to control offsite litter and dust cited for the second time.
4. Encroaching into setbacks from wetlands, potable water wells, and community water wells by 25 percent of the setback.
5. All minor violations cited for the second time.

**MINOR:**
1. No spotter on duty at the working face during operations cited for the first time.
2. Failure to control offsite litter and dust cited for the first time.
3. Encroaching into setbacks from wetlands, potable water wells, and community water wells by 10 percent of the setback.
4. All minor violations cited for the first time.
11.0 CONSTRUCTION & DEMOLITION DEBRIS FACILITY

11.1 Unauthorized Disposal of Solid Waste

POTENTIAL FOR HARM

MAJOR:
1. Disposal of Class I solid waste.
2. Hazardous waste.
3. Liquid and non-liquid polychlorinated biphenyl (PCB) at concentration of 50 parts per million or greater.
4. Untreated biomedical waste.
5. Improper or uncontrolled disposal of friable asbestos containing material (greater than 1 percent by weight).
6. Lead-acid batteries improperly stored or disposed at the site.
7. Used oil or used oil co-mingled with solid waste.

MODERATE:
1. Unauthorized disposal of white goods.

MINOR:
1. Storage and or disposal of Class III solid waste.

EXTENT OF DEVIATION

MAJOR:
1. Disposal/processing/improper storage of greater than 20 cubic yards of unauthorized solid waste or the acceptance of loads containing greater than 40 percent unauthorized waste.
2. Disposal of greater than 1 cubic yard of regulated asbestos-containing waste.
3. Disposal of hazardous waste, lead acid batteries, white goods or used oil.
4. Class I waste greater than 5 cubic yards on site greater than 7 days, or less than 5 cubic yards on site greater than 14 days.

MODERATE:
1. Disposal/processing/improper storage of less than 20 cubic yards of unauthorized solid waste or the acceptance of loads containing greater than 20 percent unauthorized waste.
2. Disposal of greater than 1/4 cubic yard of regulated asbestos-containing waste.
3. Class I waste greater than 5 cubic yards on site more than 48 hours, or less than 5 cubic yards on site more than 14 days.
MINOR:
1. Disposal/processing/ improper storage of less than 5 cubic yards of unauthorized solid waste or the acceptance of loads containing greater than 10 percent unauthorized waste.
2. Disposal of less than 1/4 cubic yards of regulated asbestos-containing waste.
3. Class I waste less than 5 cubic yards on site more than 48 hours.
4. Class III waste, C&D waste, or white goods greater than 20 cubic yards on site more than 30 days, or less than 20 cubic yards on site greater than 90 days.

11.2 Facility Construction and Design

POTENTIAL FOR HARM

MODERATE:
1. Construction, operation, or modification of an off-site construction and demolition debris disposal facility without a Department permit.
2. Construction, operation, or modification of an off-site construction and demolition debris recycling facility without a Department permit.

MINOR:
1. Failure to submit an updated closure plan to the Department, to reflect any changes in the closure plan due to actual operational conditions at the facility, at least 90 days prior to the date when wastes will no longer be accepted.
2. Failure to provide certification of closure completion to the Department upon completion of construction project.

EXTENT OF DEVIATION

MAJOR:
1. Construction, operation, or modification of an off-site construction and demolition debris disposal or recycling facility without a Department permit if construction, operation, or modification is not permissible.
2. Failure to provide certification of closure construction completion to the Department within 90 days of completion of construction project.

MODERATE:
1. Construction, operation, or modification of an off-site construction and demolition debris disposal or recycling facility without a Department permit if the construction, operation, or modification is permissible.
2. Failure to submit an updated closure plan to the Department to reflect any changes in the closure plan due to actual operational conditions at the facility, at least 90 days prior to the date when wastes will no longer be accepted.
3. Failure to provide certification of closure completion to the Department within 60 days of completion of the construction project.

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MINOR:
1. Failure to provide certification of construction completion to the Department within 60 days of completion of the construction project.

11.3 Facility Operation

POTENTIAL FOR HARM

MAJOR:
1. Failure to provide at least one trained spotter on duty at the working face or tipping area to inspect the incoming waste when waste is being accepted at the site.
2. Failure to maintain at least one trained operator for the facility.
3. Disposal of construction and demolition debris waste in water.
4. Disposal of construction and demolition debris that exceeds the design height, if foundation analysis does not demonstrate sufficient support.

MINDER:
1. Temporary storage of inadvertently accepted non-construction and demolition debris waste at a construction and demolition debris recycling facility.
2. Failure to comply with any setback requirement for the disposal of construction and demolition debris established for the facility.
3. On-site disposal of construction and demolition debris in violation of Rule 62-701.730(17), F.A.C.
4. Failure to maintain access control to the disposal facility by fencing or other effective barriers to prevent disposal of solid waste other than construction and demolition debris.
5. Failure to remove unauthorized waste from the waste stream and place into appropriate containers or secure storage areas in a timely manner.
6. Failure to maintain working face and internal slopes of all disposal units not greater than three feet horizontal to one foot vertical (3H:1V) and reasonable assurance is not provided in operation plan that fires can be controlled in steeply sloped areas.
7. Failure to compact and slope waste during the life of the facility to assure that the requirements of Rule 62-701.730(9), F.A.C. can be met.
8. Failure to comply with schedule for compaction and grading included in the operation plan.
9. Failure to maintain a sufficient number of spotters on duty at the working face to inspect the incoming waste at all times; waste is being accepted at the site.
10. Failure to have operators or spotters trained in accordance with Rule 62-701.320(15), F.A.C.
12. Improper use or reuse of recovered fines or screened materials debris from the construction and demolition debris waste stream.
13. Failure to operate disposal areas so that adverse environmental and aesthetic health impacts, such as blowing litter and vectors, are minimized.
14. Failure to manage CCA treated wood as provided in subsection 62-701.730(20), F.A.C.
15. Disposal of construction and demolition debris that exceeds the design height, if foundation analysis does not demonstrate sufficient support.
16. Disposal of construction and demolition debris waste beyond the permitted footprint.

MINOR:
1. Failure to operate the facility to control objectionable odors in accordance with Rule 62-296.320(2), F.A.C.
2. Failure to maintain segregated disposal areas for construction and demolition debris at a solid waste landfill.
3. Failure to post signs indicating the name of the operating authority, traffic flow, hours of operation and restrictions or conditions of disposal.
4. Failure to follow the method and sequence of filling waste in the operations plan.
5. Lift depths exceed 10 feet and are not authorized by the operation plan.

EXTENT OF DEVIATION

MAJOR:
1. Acceptance and processing of non-construction and demolition debris waste at a construction and demolition debris recycling facility. Cited two times.
2. On-site disposal of construction and demolition debris in violation of the solid waste prohibitions of Rule 62-701.300, F.A.C.
3. Disposal of construction and demolition debris greater than 25 percent within any setback requirement established for the facility.
4. Disposal of construction and demolition debris greater than 25 feet beyond the disposal footprint.
5. Exceeding the design height by greater than 20 feet.
6. Facility currently does not have at least one trained operator for the facility.
7. Facility currently has no trained spotter.
8. Failure to remove unauthorized waste from the waste stream and place into appropriate containers or secure storage areas in a timely manner as noted on three consecutive inspections.
9. Storage of Class I waste for more than 30 days.
10. Storage of Class III waste for more than 90 days.
11. Failure to follow the method and sequence of filling waste in the operation plan. Cited two times.
12. Lift depths exceed 10 feet and are not authorized by the operation plan. Cited two times.
1. Acceptance and processing of non-construction and demolition debris waste at a construction and demolition debris recycling facility. Cited one time.
2. Improper use or reuse of more than 20 cubic yards of recovered fines or screened materials debris from the construction and demolition debris waste stream.
3. Disposal of construction and demolition debris greater than 10 percent within any setback requirement established for the facility.
4. Disposal of construction and demolition debris greater than 10 feet but less than or equal to 25 feet beyond the permitted footprint.
5. Exceeding the design height by greater than 10 feet but less than or equal to 20 feet.
7. Failure to maintain working face and internal slopes of all disposal units not greater than three feet horizontal to one foot vertical rise (3H:1V) and reasonable assurance is not provided in operation plan that fires can be controlled in steeply sloped areas.
8. Failure to compact and slope waste during the life of the facility to assure that the requirements of Rule 62-701.730(9), F.A.C. can be met.
9. Failure to comply with schedule for compaction and grading included in the operation plan.
10. Failure to follow the method and sequence of filling waste in the operation plan. Cited one time.
11. Lift depths exceed 10 feet and are not authorized by the operation plan. Cited one time.
12. Facility hires a trained spotter, but fails to maintain at least one trained spotter on duty at the working face to inspect the incoming waste at all times waste is being accepted at the site.
13. Failure to maintain access to the disposal facility by fencing or other effective barriers to prevent disposal of solid waste other than construction and demolition debris on three consecutive inspections.
14. Failure to remove unauthorized waste material from the waste stream and place into appropriate containers or secure storage areas in a timely manner as noted on two consecutive inspections or three inspections within 2 years.
15. Failure to operate the facility to control objectionable odors in accordance with Rule 62-296.320(2), F.A.C.
16. Failure to operate disposal areas so that adverse environmental and public health impacts, such as blowing litter and vectors, such that deficiencies are noted on two consecutive inspections or three inspections within 2 years or the non-compliance results in numerous citizen complaints.
17. Storage of Class I waste for more than 7 days.
18. Storage of Class III waste for more than 63 days.
19. Failure to manage CCA treated wood as provided in Rule 62-701.730(20), F.A.C.
MINOR:

1. Improper use or reuse of less than 20 cubic yards of recovered fines or screened materials debris from the construction and demolition debris waste stream.

2. Disposal of construction and demolition debris less than 10 percent within any setback requirement established for the facility or disposal of construction and demolition debris less than or equal to 10 feet beyond the permitted footprint.

3. Exceeding the design height by less than or equal to 10 feet.

4. Failure to maintain access control to the disposal facility by fencing or other effective barriers to prevent disposal of solid waste other than construction and demolition debris.

5. Failure to remove unauthorized waste from the waste stream and place into appropriate containers or secure storage areas in a timely manner.

6. Failure to maintain segregated disposal areas for construction and demolition debris at a solid waste landfill.

7. Failure to operate disposal areas so that adverse environmental and public health impacts, such as blowing litter and vectors, are minimized.

8. Storage of Class III waste for more than 30 days.

9. Failure to post signs indicating the name of the operating authority, traffic flow, hours of operation and restrictions or conditions of disposal.
12.0 CLOSED CONSTRUCTION & DEMOLITION DEBRIS FACILITY

(If a liner and a leachate management system is in place at the facility, the facility shall comply with all requirements in accordance with rule 62-701.730(4)(f), F.A.C.)

12.1 Cover System Maintenance

POTENTIAL FOR HARM

MODERATE:

1. Failure to correct excessive settlement or subsidence (for example, ponding water with cattails growing in water, cracks or holes in the cover material).
2. Failure to control or correct erosion with exposed waste.
3. Failure to maintain access control.
4. Failure to implement and provide continued long-term care monitoring and maintenance of the facility in accordance with the facilities approved closure and long-term care plan.
5. Failure to place final cover and seeding or planting of vegetative cover on each disposal unit within 180 days after it has reached its final grade or ceased receiving waste.
6. Failure to install final and/or intermediate cover on the disposal unit in accordance with the temporary closure requirements in Rule 62-701.730(9)(c), F.A.C.

MINOR:

1. Failure to maintain vegetation.
2. Failure to control erosion with no exposed waste.

EXTENT OF DEVIATION

MAJOR:

1. Failure to correct settlement in 90 days.
2. Failure to control or correct erosion and to implement corrective action within a period of 2 weeks.
3. Failure to comply with any one of the requirements listed in the MINOR category above. Cited for three consecutive inspections.
4. Failure to place final cover and seeding or planting of vegetative cover on each disposal unit within 1 year after it has reached its final grade.
5. Failure to install final and/or intermediate cover on the disposal unit in accordance with the temporary closure requirements in Rule 62-701.730(9)(c), F.A.C. 90 days or longer after the unit stops accepting waste.
Mildly Hazardous

1. Failure to correct settlement in 60 days.
2. Failure to control or correct erosion with exposed waste and to complete corrective action within a period of 2 weeks, in accordance with the permit.
3. Failure to maintain access control for two consecutive inspections.
4. Failure to place final cover and seeding or planting of vegetative cover on each disposal unit within 210 days after it has reached its final grade.
5. Failure to install final and/or intermediate cover on the disposal unit in accordance with the temporary closure requirements in Rule 62-701.730(9)(c), F.A.C. within 60 days after the unit stops accepting waste.
6. Failure to continue long-term care monitoring and maintenance of the facility in accordance with the facilities approved closure and long-term care plan.

Minor

1. Failure to correct settlement in 30 days.
2. Failure to control or correct erosion with exposed waste repaired within two weeks.
3. Failure to maintain access control cited once.
4. All other violations with a minor potential for harm.
5. Failure to place final cover and seeding or planting of vegetative cover on each disposal unit within 180 days after it has reached its final grade.
6. Failure to install final and/or intermediate cover on the disposal unit in accordance with the temporary closure requirements in Rule 62-701.730(9)(c), F.A.C. within 30 days after the unit stops accepting waste.

12.2 Permit Requirements

Potential for Harm

Major

1. Closure of a Construction & Demolition Debris Facility without a Department permit.

Mildly Hazardous

1. Failure to provide a certification of closure construction completion to the Department.

Extent of Deviation

Mildly Hazardous

1. Failure to provide a certification of closure construction completion to the Department within 60 days of completion of construction project.

Minor

1. Failure to provide a certification of closure construction completion to the Department within 30 days of completion of construction project.
13.0 WASTE TIRE FACILITIES

13.1 Unauthorized Storage, Transport, Processing, and Disposal of Waste Tires

POTENTIAL FOR HARM

MAJOR:
1. Storage or disposal of greater than or equal to 10,000 waste tires other than at a solid waste management facility permitted by the Department for storage or disposal of waste tires.
2. Unauthorized waste tire storage or disposal within 1,500 feet of a residential or business community, which is either involved in a fire or is a source of breeding mosquitoes.
3. Unauthorized waste tire storage or disposal in violation of the solid waste prohibitions of Rule 62-701.300(2), F.A.C., which is either involved in a fire or is a source of breeding mosquitoes.

MODERATE:
1. Storage or disposal of greater than or equal to 1,500 waste tires, but less than 10,000, other than at a solid waste management facility permitted by the Department for storage or disposal of waste tires.
2. Unauthorized waste tire storage or disposal within 5,000 feet of a residential or business community, which is either involved in a fire or is a source of breeding mosquitoes.
3. Constructing, operating or modifying a waste tire processing facility without a permit.
4. Constructing, operating or modifying a waste tire collection center without a permit.
5. Collecting/transporting waste tires without obtaining proper registration.
6. Contracting transportation, disposal or processing of waste tires with an unregistered waste tire collector.

MINOR:
1. Unauthorized waste tire storage or disposal greater than 5,000 feet from a residential or business community, which is either involved in a fire or is a source of breeding mosquitoes.
2. Operating mobile waste tire processing equipment without a permit.
3. Disposal of whole tires at a landfill or use of insufficiently small parts of tires as initial cover.
4. Failure to comply with notification requirements for a waste tire site.

EXTENT OF DEVIATION

MAJOR:
1. Storage or disposal of greater than or equal to 10,000 waste tires other than at a solid waste management facility permitted by the Department for storage or disposal of waste tires.

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2. Unauthorized storage or disposal of greater than or equal to 5,000 waste tires that are either involved in a fire or a source of breeding mosquitoes.
3. Construction, operation, or modification of a waste tire processing facility without a Department permit if construction, operation, or modification is not permitted.
4. Construction, operation, or modification of a waste tire collection center without a Department permit if construction, operation, or modification is not permitted.
5. Collecting/transporting waste tires without obtaining proper registration on three occasions or more.
6. Contracting transportation, disposal or processing of waste tires with an unregistered waste tire collector on three occasions or more.
7. Operating mobile waste tire processing equipment without a permit if equipment or operation is not permitted.
8. Disposal of whole tires at a landfill or use of insufficiently small parts of tires as initial cover on three occasions or more.

**MODERATE:**

1. Storage or disposal of greater than or equal to 1,500 waste tires, but less than 10,000, other than at a solid waste management facility permitted by the Department for storage or disposal of waste tires.
2. Unauthorized storage or disposal of greater than or equal to 1,500 waste tires, but less than 5,000, which are either involved in a fire or a source of breeding mosquitoes.
3. Collecting/transporting waste tires without obtaining proper registration on two occasions.
4. Contracting transportation, disposal or processing of waste tires with an unregistered waste tire collector on two occasions.
5. Disposal of whole tires at a landfill or use of insufficiently small parts of tires as initial cover on two occasions.
6. Failure to comply with notification requirements for a waste tire site if the site contains greater than 10,000 tires.

**Minor:**

1. Storage or disposal of less than 1,500 waste tires, which are either involved in a fire or a source of breeding mosquitoes.
2. Unauthorized waste tire storage or disposal in violation of the solid waste prohibitions of Rule 62-701.30(2), F.A.C., which is either involved in a fire or is a source of breeding mosquitoes.
3. Construction, operation, or modification of a waste tire processing facility without a Department permit if construction, operation, or modification is permitted.
4. Construction, operation, or modification of a waste tire collection center without a Department permit if construction, operation, or modification is permitted.
5. Collecting/transporting waste tires without obtaining proper registration on one occasion.
6. Contracting transportation, disposal or processing of waste tires with an unregistered waste tire collector on one occasion.
7. Operating mobile waste tire processing equipment without a permit if equipment and operation is permissible.
8. Disposal of whole tires at a landfill or use of insufficiently small parts of tires as initial cover on one occasion.
9. Failure to comply with notification requirements for a waste tire site if the site contains greater than 1,500 tires.

13.2 Waste Tire Collectors

POTENTIAL FOR HARM

MORERATE:
1. Transport of waste tires to a facility other a facility permitted or exempt by the Department to receive waste tires.

MINOR:
1. Failure of a registered waste tire collector to properly display a current waste tire collector decal on all vehicles used to transport waste tires.
2. Failure to record & maintain and make available, required information regarding activities.
3. Failure to submit an annual report to the Department in accordance with Rule 62-711.520(7), F.A.C.

EXTENT OF DEVIATION

MAJOR:
1. Transport of waste tires to a facility other a facility permitted or exempt by the Department to receive waste tires on two occasions or more.
2. Failure of a registered waste tire collector to properly display a current waste tire collector decal on all vehicles used to transport waste tires on two occasions or more.
3. Failure to record & maintain and make available, required information regarding activities on three occasions or more.
4. Failure to submit an annual report to the Department in accordance with Rule 62-711.520(7), F.A.C., within 120 days of the date due.

MODERATE:
1. Transport of waste tire to a facility other a facility permitted or exempt by the Department to receive waste tires on one occasion.
2. Failure of a registered waste tire collector to properly display a current waste tire collector decal on all vehicles used to transport waste tires on one occasion.
3. Failure to record, maintain and make available required information regarding activities on two occasions.
4. Failure to submit an annual report to the Department in accordance with Rule 62-711.520(7), F.A.C., within 90 days of the date due.

MINOR:
1. Failure to record, maintain and make available, required information regarding activities on one occasion.
2. Failure to submit an annual report to the Department in accordance with Rule 62-711.620(7), F.A.C., within 30 days of the date due.

13.3 Waste Tire Facility Operations and Closure

POTENTIAL FOR HARM

MAJOR:

1. Acceptance of waste tires for processing once permitted storage limit has been reached in any category or in excess of the closing cost estimate.

MODERATE:

1. Failure to process and remove at least 75 percent of the waste tire delivered to and contained on site in a calendar year.
2. Storage of greater than 1,500 tires at a waste tire collection center at any one time.
3. Failure to remove all waste tires, other than used tires, for recycling, processing, or disposal at least once a year from a waste tire collection center.
4. Failure to remove all processed tires and residues from a waste tire site where mobile processing equipment is operating within 30 days of completion of the processing.
5. Operation of mobile waste tire processing equipment at any site for greater than 120 days.

MINOR:

1. Failure to record, maintain and make available, required information regarding activities.

EXTENT OF DEVIATION

MAJOR:

1. Exceeding the permitted storage limit in any category or the closing cost estimate of a waste tire facility by 25 percent or greater.
2. Exceeding the required time frames for the removal of waste tires, processed tires, or residues by 25 percent or greater.
3. Failure to record, maintain and make available, required information regarding activities two times or more.

MODERATE:

1. Exceeding the permitted storage limit in any category or the closing cost estimate of a waste tire facility by 10 percent or greater.
2. Exceeding the required time frames for the removal of waste tires, processed tires, or residues by 10 percent or greater.
3. Failure to record, maintain and make available required information regarding activities on two occasions.
1. Exceeding the permitted storage limit in any category or the closing cost estimate of a waste tire facility by less than 10 percent.
2. Exceeding the required time frames for the removal of waste tires, processed tires, or residues by less than 10 percent.
3. Failure to record, maintain, and make available, required information regarding activities on one occasion.

### 13.4 Waste Tire Storage Requirements

#### PCTENTIAL FOR HARM

#### MAJOR:

1. Operations involving open flames within 25 feet of a waste tire pile.
2. Failure to immediately (within 24 hours) notify Department in the event of a fire or other emergency which poses an unanticipated threat to the public health or the environment.
3. Failure to have an attendant present when site is open for business to receive waste tires from the public.
4. Constructing, operating, or maintaining a waste tire site within 200 feet of any natural or artificial body of water, including jurisdictional wetlands except those contained within the property boundaries which do not ordinarily discharge from the site.

#### MODERATE:

1. Failure to maintain waste tire piles size dimension and setback requirements.
2. Failure to have annual fire safety survey conducted by local fire protection services.
3. Failure to prepare, update annually and keep available an emergency preparedness manual.
4. Failure to maintain adequate communication equipment on-site.
5. Failure to maintain control of mosquitoes and rodents so as to protect the public health and welfare.
6. Failure to maintain adequate site access control.
7. Failure to maintain temperature control measures in processed tire piles above 8 feet high so that internal temperatures do not exceed 300 degrees Fahrenheit.

#### MINOR:

1. Failure to maintain proper signage at a facility receiving waste tires from the public.
2. Failure to record and maintain and make available the required information regarding activities.
EXTENT OF DEVIATION

MAJOR:

1. Operations involving open flames within 25 feet of a waste tire pile found on two occasions or more.
2. Failure to notify Department, within 72 hours, in the event of a fire or other emergency which poses an unanticipated threat to the public health or the environment.
3. Failure to have an attendant present when site is open for business to receive waste tire from the public on three occasions or more.
4. Constructing, operating, or maintaining a waste tire site in any natural or artificial body of water, including jurisdictional wetlands except those contained within the property boundaries which do not ordinarily discharge from the site.
5. Exceeding waste tire piles size dimension and setback requirements by 25 percent or greater.
6. Failure to have annual fire safety survey conducted by local fire protection services within 180 days of due date.
7. Failure to prepare, update annually or keep available an emergency preparedness manual on three occasions or more.
8. Failure to maintain adequate communication equipment on-site for 7 days or longer.
9. Failure to maintain control of mosquitoes and rodents so as to protect the public health and welfare on three occasions or more.
10. Failure to maintain adequate site access control on three occasions or more.
11. Failure to maintain temperature control measures in processed tire piles above 8 feet high so that internal temperatures do not exceed 300 degrees Fahrenheit on three occasions or more.
12. Failure to maintain proper signage at a facility receiving waste tires from the public on three occasions or more.
13. Failure to record, maintain and make available, required information regarding activities on three occasions or more.

MODERATE:

1. Operations involving open flames within 25 feet of a waste tire pile found on one occasion.
2. Failure to notify Department, within 48 hours, in the event of a fire or other emergency which poses an unanticipated threat to the public health or the environment.
3. Failure to have an attendant present when site is open for business to receive waste tire from the public on two occasions.
4. Constructing, operating, or maintaining a waste tire site within 50 feet of any natural or artificial body of water, including jurisdictional wetlands except those contained within the property boundaries which do not ordinarily discharge from the site.
5. Exceeding waste tire piles size dimension and setback requirements by 25 percent or more.
6. Failure to have annual fire safety survey conducted by local fire protection services within 90 days of due date.
7. Failure to prepare, update annually or keep available an emergency preparedness manual on two occasions.
8. Failure to maintain adequate communication equipment on-site for 72 hours or longer.
9. Failure to control mosquitoes and rodents so as to protect the public health and welfare on two occasions.
10. Failure to maintain site access control on two occasions.
11. Failure to maintain temperature control measures in processed tire piles above 8 feet high so that internal temperatures do not exceed 300 degrees Fahrenheit on two occasions.
12. Failure to maintain proper signage at a facility receiving waste tires from the public on two occasions.
13. Failure to record and maintain and make available, required information regarding activities on two occasions.

**MINOR:**

1. Failure to notify Department, within 24 hours, in the event of a fire or other emergency which poses an unanticipated threat to the public health or the environment.
2. Failure to have an attendant present when site is open for business to receive waste tire from the public on one occasion.
3. Constructing, operating, or maintaining a waste tire site within 200 feet of any natural or artificial body of water, including jurisdictional wetlands except those contained within the property boundaries which do not ordinarily discharge from the site.
4. Exceeding waste tire pile size dimension and setback requirements by less than 25 percent.
5. Failure to have annual fire safety survey conducted by local fire protection services within 30 days of due date.
6. Failure to prepare, update annually or keep available an emergency preparedness manual on one occasion.
7. Failure to maintain adequate communication equipment on-site for less than 72 hours.
8. Failure to control mosquitoes and rodents so as to protect the public health and welfare on one occasion.
9. Failure to maintain site access control on one occasion.
10. Failure to maintain temperature control measures in processed tire piles above 8 feet high so that internal temperatures do not exceed 300 degrees Fahrenheit on one occasion.
11. Failure to maintain proper signage at a facility receiving waste tires from the public on one occasion.
12. Failure to record, maintain and make available, required information regarding activities on one occasion.
14.0 COMPOST FACILITIES

14.1 Unauthorized Processing of Solid Waste

POTENTIAL FOR HARM

MAJOR:
1. Any amount of asbestos or hazardous waste.
2. Any amount of biomedical waste.
3. More than 55 gallons of used oil.

MODERATE:
1. Less than 55 gallons of used oil.

EXTENT OF DEVIATION

MAJOR:
1. No attempt to segregate unapproved materials.
2. Processing of unapproved materials.

MODERATE:
1. Processing of any amount of asbestos or hazardous waste.
2. Processing over 55 gallons of used oil.

MINOR:
1. Processing of less than 55 gallons of used oil.

14.2 General Operational Considerations

POTENTIAL FOR HARM

MAJOR:
1. Failure to prevent contamination of the final product with pathogens from incoming waste.
2. Sale or off-site use of compost which has not met the time-temperature requirements of disaffectation.
3. Solid waste, excluding recovered materials that will not be processed into compost that must be removed within 72 hours for disposal per Chapter 62-701 requirements.

MODERATE:
1. Exceeding compost storage capacity or waste storage time limits.
2. Insufficient personnel or equipment to properly operate facility, including spotters, attendants, and trained operators.

MINOR:
1. Failure to maintain access roads and signs.
2. Failure to maintain barrier.
3. Failure to control dust or litter.
4. Failure to maintain fire protection and control provisions.
5. Failure to control odors.
**EXTENT OF DEVIATION**

**MAJOR:**
1. No attendant on duty while facility is open.
2. Compost or waste exceeds storage capacity design amount by more than 20 cubic yards or time limits by 50 percent.
3. Multiple incidences of failure to prevent contamination of the final product from contamination by pathogens from incoming waste. Cited two times.

**MODERATE:**
1. Compost or waste exceeds storage capacity design amount by less than 5 cubic yards or time limits by 50 percent.
2. One incidence of sale or off-site use of compost which has not met the time-temperature requirements for disinfection.
3. Failure to prevent contamination of the final product from contamination by pathogens from incoming waste. Cited for one inspection.

**MINOR:**
1. insufficient personnel or equipment to properly operate facility.
2. All violations with a minor potential for harm.
3. Compost or waste exceeds storage capacity design amount or time limits by less than 15 percent.

**POTENTIAL FOR HARM**

**MODERATE:**
1. Failure to provide adequate access control.

**EXTENT OF DEVIATION**

**MAJOR:**
1. Failure to maintain equipment causing it to be inoperable with no backup equipment cited for three consecutive inspections.
2. Failure to provide access control cited for three consecutive inspections.

**MODERATE:**
1. Inoperable equipment with no backup equipment but can be secured within 24 hours.
2. Failure to provide access control cited for two consecutive inspections.

### 14.3 Testing and Reporting Requirements for Final Product

**POTENTIAL FOR HARM**

**MAJOR:**
1. Failure to meet compost testing requirements for compost distributed as type Y, YM, or A.

**MODERATE:**
1. Failure to meet testing requirements for compost distributed as type B or C.
MINOR:
1. Failure to meet testing requirements for compost distributed as type D or E.
2. Failure to meet reporting requirements for any final compost product.

EXTENT OF DEVIATION

MAJOR:
1. Failure to submit testing results for three or more testing periods.

MODERATE:
1. Failure to submit testing results or submittal of incomplete results for two testing periods.

MINOR:
1. All other testing or reporting violations.
15.0 YARD TRASH PROCESSING FACILITIES

15.1 Unauthorized Processing of Solid Waste

Yard Trash Processing Facilities are required to obtain a registration, not a permit. The distance requirements listed for some of the prohibitions have been reduced for off-site potable well distance and off-site water body distances. Yard Trash Processing Facilities are not required to control leachate or monitor ground or surface water. Therefore, to be consistent with the rules, we consider the groundwater and surface water threat of vegetative debris at yard trash processing facilities or yard trash transfer stations to be minimal. We believe that fire represents the greatest potential for harm at these facilities.

POTENTIAL FOR HARM

MAJOR:
1. Processing of Class I waste on-site.

MODERATE:
1. Disposal of yard trash in water.

MINOR:
1. Processing of Class III waste or C&D debris on-site.

EXTENT OF DEVIATION

MAJOR:
1. Storage of greater than 40 cubic yards of yard trash in water.
2. Processing or disposal of greater than 20 cubic yards of Class I waste.
3. Processing or disposal of greater than 20 cubic yards of Class III or C&D debris waste.

MODERATE:
1. Storage of greater than 20 cubic yards but less than or equal to 40 cubic yards of yard trash in water.
2. Processing or disposal of greater than 5 but less than or equal to 20 cubic yards of Class I waste.
3. Processing or disposal of greater than 5 but less than or equal to 20 cubic yards of Class III or C&D debris waste.

MINOR:
1. Storage of less than or equal to 20 cubic yards of yard trash in water.
2. Processing or disposal of less than or equal to 5 cubic yards of Class I waste.
3. Processing or disposal of less than or equal to 5 cubic yards of Class III or C&D debris waste.

15.2 Facility Construction and Operation

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POTENTIAL FOR HARM

MAJOR:
1. Un-containerized storage of putrescible waste or storage of putrescible waste for more than 48 hours.
2. Part of the area occupied by processed or unprocessed material is greater than 50 feet from access by motorized fire fighting equipment.

MODERATE:
1. Failure to maintain an all-weather access road, at least 20 feet wide, all around the perimeter of the site.
2. Failure to maintain interior lanes between yard waste piles at least 15 feet wide.

MINOR:
1. Construction, operation or modification of a yard trash processing facility without registration with the Department.
2. Failure to process all yard trash within 6 months of receipt or within the period required for receiving 3,000 tons or 12,000 cubic yards, whichever is longer.
3. Failure to remove processed material from the site within 18 months or as otherwise approved by the Department.
4. Failure to provide access control.
5. Failure to control dust or litter.
6. Failure to operate the facility to control objectionable odors.

EXTENT OF DEVIATION

MAJOR:
1. Processing of greater than 100 cubic yards of yard trash without a registration.
2. Greater than 20 cubic yards of un-containerized putrescible waste.
3. Third consecutive violation for failure to process all yard trash within 6 months of receipt or within the period required for receiving 3,000 tons or 12,000 cubic yards, whichever is longer.
4. Third consecutive violation for failure to remove processed material from the site within 18 months or as otherwise approved by the Department.
5. Third consecutive violation for failure to provide access control.
6. Third consecutive violation for failure to maintain an all-weather access road, at least 20 feet wide, all around the perimeter of the site.
7. Third consecutive violation for failure to maintain interior lanes between yard waste piles at least 15 feet wide.
8. Third consecutive violation for part of the area occupied by processed or unprocessed material being greater than 50 feet from access by motorized fire fighting equipment.
9. Third consecutive violation for failure to operate the facility to control objectionable odors.
**Yard Trash Processing Facilities**

**MODERATE:**

1. Processing of greater than 20 cubic yards but less than or equal to 100 cubic yards of yard trash without a registration.
2. Greater than 5 but less than or equal to 20 cubic yards of putrescible waste.
3. Second consecutive violation for failure to process all yard trash within 6 months of receipt or within the period required for receiving 3,000 tons or 12,000 cubic yards, whichever is longer.
4. Second consecutive violation for failure to remove processed material from the site within 18 months or as otherwise approved by the Department.
5. Second consecutive violation for failure to provide access control.
6. Second consecutive violation for failure to maintain an all-weather access road, at least 20 feet wide, all around the perimeter of the site.
7. Second consecutive violation for failure to maintain interior lanes between yard waste piles at least 15 feet wide.
8. Second consecutive violation for part of the area occupied by processed or unprocessed material being greater than 50 feet from access by motorized fire fighting equipment.
9. Second consecutive violation for failure to operate the facility to control objectionable odors.

**MINOR:**

1. Storage of less than or equal to 20 cubic yards of yard trash in water.
2. First violation for failure to process all yard trash within 6 months of receipt or within the period required for receiving 3,000 tons or 12,000 cubic yards, whichever is longer.
3. First violation for failure to remove processed material from the site within 18 months or as otherwise approved by the Department.
4. First violation for failure to provide access control.
5. Failure to control dust or litter.
6. First violation for failure to maintain an all-weather access road, at least 20 feet wide, all around the perimeter of the site.
7. First violation for failure to maintain interior lanes between yard waste piles at least 15 feet wide.
8. First violation for part of the area occupied by processed or unprocessed material being greater than 50 feet from access by motorized fire fighting equipment.
9. First violation for failure to operate the facility to control objectionable odors.
FIRE STORAGE
Tanks
Program
DEP Storage Tanks Penalty Guidelines and Assessments
(January 25, 2000)
TO: Directors of District Management
District Waste Program Administrators

FROM: John M. Ruddell, Director
Division of Waste Management

DATE: January 25, 2000

SUBJECT: Storage Tank Penalty Guidelines and Assessments

The attached Storage Tank Penalty Guidelines and Assessments Matrix has been approved for implementation, effective immediately. These documents are to be utilized for violations of Chapter 62-761 F.A.C., and supersede all previous guidance. These general guidelines were developed by District and Tallahassee personnel in an effort to provide some consistency throughout the program.

If you have any questions, please contact Rick Vail or Marshall Mott-Smith at (850) 488-3935.

CC: Mike Sole
Mike Ashley
District Tanks Program Supervisors
Betsy Hewitt
Rebecca Grace
Larry Morgan
1. The penalty guidelines are only intended to address Chapter 62-761 F.A.C. violations.

2. Penalties should be adjusted according to the factors listed within the DEP Office of General Council Enforcement Manual civil penalty guidelines for settlement, such as:
   a. The violation is deliberate.
   b. The violation continues after notice of violation without reasonable efforts made by the responsible party to correct the violation.
   c. The violation occurs on more than one day.
   d. The violation results in economic benefits to the responsible party.

3. Where liability is imposed on "persons", penalties may be pursued against an owner and/or operator if they are involved or responsible for a violation, or they have authorized the activity that resulted in violation.

4. In general, consent orders should contain stipulated penalties for failure to comply with the provisions of the consent order.
## Storage Tank Program

### Chapter 62-761 F. A. C.

### Penalty Assessment Matrix

#### Extent of Deviation

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DEP Petroleum Storage Tanks
Penalty Matrix
(January 2008)
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Примечания:
- Цены указаны в рублях.
- Продукты расположены в алфавитном порядке по наименованию.
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Примечание: Текст статьи является фрагментарным и не отражает полноту содержания изданного материала.
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<td>30</td>
<td>M</td>
<td>Engineer</td>
<td>Bachelor</td>
<td>5 years</td>
<td>Programming</td>
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<tr>
<td>Jane</td>
<td>25</td>
<td>F</td>
<td>Teacher</td>
<td>Master</td>
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<tr>
<td>Mike</td>
<td>35</td>
<td>M</td>
<td>Developer</td>
<td>Diploma</td>
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*John has 5 years of experience as an engineer with a Bachelor's degree in Engineering.
Jane has 2 years of teaching experience with a Master's degree in Education.
Mike has 7 years of experience as a developer with a Diploma in Computer Science.*
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<td>1</td>
<td>01/01/2023</td>
<td>John Doe</td>
<td>123 Main St, Anytown</td>
<td>555-1234</td>
<td><a href="mailto:jdoe@email.com">jdoe@email.com</a></td>
</tr>
<tr>
<td>2</td>
<td>02/01/2023</td>
<td>Jane Smith</td>
<td>456 Oak St, Anytown</td>
<td>555-5678</td>
<td><a href="mailto:jsmith@email.com">jsmith@email.com</a></td>
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<tr>
<td>3</td>
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<td>Michael Johnson</td>
<td>789 Pine St, Anytown</td>
<td>555-9876</td>
<td><a href="mailto:mjohnson@email.com">mjohnson@email.com</a></td>
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*Note: This is a sample table representation.*
DEP Guidelines for Characterizing Wastewater Violations
(January 2008)
GUIDELINES
FOR
CHARACTERIZING
WASTEWATER
VIOLATIONS

January 2008
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I. DEFINITIONS

1. "Department" shall mean the Department of Environmental Protection (DEP), including delegated local programs.

2. "Improper Release or Disposal" of Wastewater (or Residuals see definition 3 below) shall mean wastewater or residuals released or disposed of without being provided proper treatment and/or disposal or otherwise not approved by the Department necessary to maintain applicable standards. This term also applies to a spill or unauthorized discharge at a permitted facility, to which the facility's permit imposed effluent limitations do not apply, to any release, disposal, or unauthorized discharge that does not receive proper treatment and disposal by an unpermitted facility, and to procedural requirements for handling wastewater or residuals.

3. "Residuals (aka Biosolids)" for purposes of this guidance are those related to, or from the process of a Domestic wastewater treatment facility and as defined in Section 02-640.300(31) F.A.C.

   a. Application of residuals for this guidance shall mean the beneficial reuse of residuals through application to land surfaces for agricultural purpose in appropriate amounts and rates.

   b. Application sites are those sites intended for the application of domestic wastewater residuals.
II. ELRA GUIDANCE

Section 403.121 of the Florida Statutes, more commonly known as ELRA (Environmental Litigation Reform Act) designates certain types of environmental violations with a specific penalty amount. The guidelines below are designed to assist enforcement staff in characterizing specific wastewater violations into the general language contained in the Florida Statutes and determining the penalty amount.

When the decision has been made to pursue enforcement actions for a wastewater violation(s), staff should use ELRA, DEP Directive 923, the DEP Enforcement Manual and this program specific guidance to characterize the violations and calculate the appropriate penalty. If the total penalty amount calculated is $10,000 or less, then that amount should be used as the baseline for settlement discussions. If the total penalty amount calculated is more than $10,000, then the General Guidelines contained in the remainder of this document for characterizing wastewater violations should be used instead, as the basis for penalty calculations, unless the District Director decides to cap the penalty at $10,000. If the ELRA NOV is the enforcement document chosen to pursue penalties, then staff shall follow ELRA (Section 463.121 F.S.), DEP Directive 923 and the guidance contained in this section.

Provided in the guidance below is the statutory authority (bold text) and the specific penalty amount. Also provided in each category are applicable examples that meet this section, but applicability is not limited to just these examples.

A. Unpermitted or Unauthorized Discharge or Effluent Violation(s)

403.121 (3) (b) ...For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $5,000.

$5,000

- Unpermitted or unauthorized discharge of wastewater or residuals to surface water that results in water quality standards (Rule 62-302 F.A.C.) violations or water quality criteria violations.
- Unpermitted or unauthorized discharge of wastewater or residuals that impact(s) groundwater quality.
- Exceedance of a permit imposed effluent limitation which is equivalent to or more stringent than the corresponding surface water quality standard(s).
- Exceedance of a permit imposed limitation or ground water quality standard (Rule 62-550 F.A.C.) or limitation in a compliance monitoring well.

403.121 (3) (b) ...for a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $2,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance...
$2,000
- Unpermitted or unauthorized discharge of wastewater or residuals which do not affect surface water(s).
- Unpermitted or unauthorized discharge of wastewater or residuals which did not impact groundwater quality.
- Exceedance of a permit imposed limitation which does not meet the condition for the $5,000 penalty above.

403.121 (3) (b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $1,000...

$1,000
- Failure to obtain any other wastewater permit, including but not limited to collection system permits.

NOTE: This penalty amount of $1,000 shall be assessed in addition to the $3,000 penalty for modification or construction without a permit assessed under 403.121(4)c for a total of $4,000.

B. Additional Penalties
In addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following:

1. Installation and Maintenance Violations
   403.121 (4)
   (b) For failure to install, maintain, or use a required pollution control system or device, $4,000.

$4,000
- Failure to properly maintain or operate a wastewater or residual treatment/disposal facility
- Failure to properly maintain or operate a wastewater collection/transmission system.
- Failure to follow the operating protocol for a Public Access Reuse Facility

2. Modification or Construction Permit Violations
   (c) For failure to obtain a required permit before construction or modification, $3,000.

$3,000
• The construction or modification of a wastewater treatment system, not related to
  a surface water discharge, without a permit regardless of whether the construction
  activity is complete or placed into service.
• The construction or modification of a collection system without a permit regard-
  less of whether the construction activity is complete or placed into service.

NOTE: This penalty amount of $3,000 shall be assessed in addition to the $1,000 penalty
for failure to obtain required wastewater permit assessed under 403.121(3)(b) for a
total of $4,000.

3. Monitoring or Construction Violations
   (d) For failure to conduct required monitoring or testing; failure to conduct re-
   quired release detection; or failure to construct in compliance with a permit, $2,000.

   $2,000
   • Failure to conduct required water quality or residuals monitoring.
   • Failure to follow standard operating procedures for sample collection activities.
   • Failure to construct in accordance with approved plans, permit or compliance
     schedule.

4. Staffing and Notification Violations
   (e) For failure to maintain required staff to respond to emergencies; failure to con-
   duct required training; failure to prepare, maintain, or update required contingen-
   cy plans; failure to adequately respond to emergencies to bring an emergency situa-
   tion under control; or failure to submit required notification to the department,
   $1,000.

   $1,000
   • Failure to provide or meet licensed operator and/or staffing requirements
   • Lead operator requirement not met.
   • Failure to properly notify the Department of any unauthorized spill or discharge, ab-
     normal event, or non-compliance event.
   • Failure to prepare, maintain, or update required contingency plans.
   • Failure to respond to emergencies.
   • Failure to notify of planned by-pass.

5. Report / Documentation Submittals
(f) For failure to prepare, submit, maintain, or use required reports or other required documentation, $500.

$500
- Failure to submit timely and/or accurate results, records or reports.
- Failure to timely submit required notification of completion (certification).
- Failure to submit request to place into service.
- Failure to prepare, maintain, update or follow required Best Management Plan (BMPs)

6. Other Violations
403.121(5) For failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of $500.

$500
- Failure to discourage unauthorized entry.
- Failure to prevent unauthorized introduction of stormwater.
- Failure to submit annual fee (Rule 62-4.052(3))
- Inadequate implementation of approved pre-treatment program.
- Any other violation not addressed above.

C. Multi-day Assessment
403.121(6) For each additional day during which a violation occurs, the administrative penalty in subsection (3), subsection (4), and subsection (5) may be assessed per day per violation.

The following violation types have the potential to being multi-day
- Any effluent or residuals violations that occur for more than one day.
- Failure to submit records or reports in a timely fashion.
- Failure to collect samples.
- Unauthorized discharge.

403.121(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $2,000 or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.
(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

403.121(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, shall not exceed $10,000.
III. GENERAL GUIDELINES

This addendum is to be used to determine appropriate penalty amounts for wastewater violations once an enforcement action is initiated. The following section of the addendum identifies specific guidelines to assist in determining the appropriate penalty matrix cell range. This section addresses other wastewater penalty assessment issues and guidelines to a limited extent, and will be more fully developed as experience in applying the program specific guidelines dictates.

*Staff are reminded that this Program Specific Guidance is not a stand-alone document but should be used in conjunction with the DEP Enforcement Manual, DEP Directive 923 and the Wastewater Program Enforcement Response Guide.*

A. Multi-day Assessments

When violations occur over extended periods of time, the assessment of multi-day penalties should be pursued in accordance with DEP Directive 923 when:

1. The violation is causing daily adverse impacts to the environment; or
2. The violator knew or should have known of the violation, or failed to mitigate the violation after the first day it occurred; or
3. Violator derives economic benefit on a daily basis

Multi-day penalties should be computed by multiplying the appropriate daily penalty calculated (or a part thereof) by the number of days in non-compliance. Where the impact of the ongoing violation is not significantly detrimental to the environment or the program, a penalty amount that is lower than the matrix amount should be calculated for the violations that occur after the first day. For violations that are significantly detrimental to the environment (see section below) or the program, a penalty amount at the matrix amount should be calculated for the violations that occur after the first day, up to 30 days of non-compliance. For violations that occur for more than 30 days, judgment should be exercised to determine the appropriate penalty amount to be sought for each additional day of non-compliance that occurs over 30 days.

Violations Significantly Detrimental to the Environment

The following violations are considered by the Wastewater Program as being Significantly Detrimental to the Environment. Penalties for multi-day violations meeting any of these criteria should be pursued at the matrix amount beginning on the first day of violation up to 30 days of non-compliance in accordance with Directive 923.

1. An unpermitted release of wastewater or residuals to any class of State waters that results in water quality violations or any release of wastewater or residuals that results in a violation of water quality criteria or documented environmental damage (i.e. fish kills, algae blooms).
2. Release of wastewater by a utility into an unrestricted public access irrigation system that did not meet reuse quality for high level disinfection and the release was caused by the failure to follow the approved operating protocol. For example, the total chlorine residual of the reuse water was less than 1 milligram per liter and the fecal coliform value was greater than 25 CFU/100 milliliter, and the release was caused by the failure to follow the approved operating protocol.

3. The distribution, marketing, or application of inadequately treated residuals on unrestricted public access areas.

4. Application of effluent or wastewater residuals that cause exceedences of the primary drinking water standards in public or private drinking water wells.

B. Economic Benefit

The following violations are those which should be considered for economic benefit when calculating penalty amounts. Economic benefit should be calculated whenever such benefit is gained by being in violation and should not be limited to considering just those violations meeting the criteria below. When calculating economic benefit, enforcement staff should attempt to gather accurate and relevant information as the economic benefit may vary between different areas of the state. However, in cases when more accurate rate information is not available, staff should use the recommended rates below when calculating economic benefit.

1. Failure to collect required samples (or if operating without a permit, samples which would have been required). Estimate and include in the penalty calculations the laboratory costs for failure to analyze for required sampling parameters. May also include cost benefits if an outside contractor was supposed to be used to collect samples.

See appendix A - Table of Recommended Laboratory Rates

The following rates can be used as “averages” for similar sampling requirements:

- **Generic Permits**: $1500 with Toxicity requirement (add $310 for discharges to Marine Waters)
  - $350 without Toxicity requirement
- **Monitoring Wells**: $400 per well
- **DW <100K gpd**: $200 per outfall

Guidelines for Characterizing Wastewater Violations
2. Failure to provide or meet certified operator staffing requirements in accordance with the permit and/or Rule 62-699, FAC. Estimate and include in the penalty calculations the hourly rate of the required licensed operator against the number of hours facility was without the appropriate licensed operator.

<table>
<thead>
<tr>
<th>License Type</th>
<th>Average Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A</td>
<td>$26.00</td>
</tr>
<tr>
<td>Class B</td>
<td>$24.00</td>
</tr>
<tr>
<td>Class C</td>
<td>$22.00</td>
</tr>
<tr>
<td>Class D</td>
<td>$20.00</td>
</tr>
</tbody>
</table>

3. Construction of a treatment or collection/ transmission wastewater system without a Department permit. Staff should request and review copies of construction contracts to determine if violator gains penalties/incentives/ rewards by constructing without a permit.

4. Placing a wastewater collection/ transmission system into service prior to submittal of certification of completion of construction and clearance from the Department to operate. Staff should request and review copies of construction contracts to determine if violator gains penalties/incentives/ rewards by operating without clearance.

5. Not providing, replacing, or maintaining pollution control equipment to ensure that adequate transmission, treatment or disposal is provided. Staff should request from facility copies of receipts of past costs associated with providing, replacing, or maintaining of pollution control equipment.

6. Permit fee costs of constructing and/or operating a facility without a permit. Costs saved by operating without a permit can be pro-rated against the application fee as well as the annual fee (if applicable).

Calculating Application Fee Benefit

\[
\frac{\text{# of days operating without a permit}}{1825 (\text{# days in 5yr permit})} \times \text{Application Fee} = \text{Economic Benefit}
\]

Calculating Annual Fee Benefit (applicable to NPDES only)

\[
\frac{\text{# of days operating without a permit}}{365 (\text{# days/yr})} \times \text{Annual Fee} = \text{Economic Benefit}
\]

7. Failure to provide adequate cleanup of a wastewater spill or for allowing an unpermitted wastewater discharge to occur instead of hauling to an approved alternate disposal site. Estimate
and include in the penalty calculations the costs for proper hauling, treatment and disposal of wastewater (see table below for averages).

8. Inadequate sludge wasting, hauling, and land application resulting in operational problems. Estimate and include in the penalty calculations the costs for proper hauling, treatment and disposal of residuals. When estimating the number of gallons that should have been wasted, the following calculation may be used:

\[
\text{Average Daily Flow (gpd) \times 1.5 \times number of days sludge was not wasted \times \$0.125}
\]

<table>
<thead>
<tr>
<th>Costs per gallon</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hauling</td>
<td>$0.125</td>
</tr>
<tr>
<td>Treating</td>
<td>$0.127</td>
</tr>
</tbody>
</table>

9. Failure to use an approved site for land application of Class A or Class B residuals. Estimate and include in the penalty calculations the costs for the preparation and submittal of an Agricultural Use Plan by a consultant or hauling contractor, the costs for proper hauling an appropriate distance, and the costs of applying the residuals.

C. Adjustment Factors

Penalties should be sufficient to discourage future wastewater violations. In considering the size of the penalty, the history of noncompliance and the economic benefit of noncompliance should be routinely considered.

For the purpose of the penalty calculation only, domestic wastewater type III facilities that do not discharge to surface waters or unrestricted public access irrigation systems, may be reduced by one category, i.e., "Potential for Harm" only. Those wastewater 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 "Potential for Harm" only. The determination for applying such an adjustment is to be made based upon the design capacity and/or permitted capacity, the nature of the discharge, and the best professional judgment of enforcement personnel.

D. Grouping of Like Violations

Grouping of the following violations may be appropriate on a case-by-case basis:

1. Permit limitation violations.
2. Failure to maintain equipment violations.
3. Reports/Records/Results violations
E. Enforcement Discretion and Penalty Assessment

There will be cases when the Department can use its enforcement discretion to conclude that it will not be worthy to assess a penalty. Some factors to determine these cases include the minor nature of the violation or a positive change in ownership. Considering practical resource limitations, when such factors exist, a penalty should not generally be sought.

These cases include, but are not limited to:

1. New owners of wastewater treatment and disposal systems or residuals management facilities that timely bring the systems into compliance.

2. Permittees cited for minor operation/maintenance violations that possess currently valid permits.

3. Facilities with industrial processes newly determined to be within the Department’s regulatory authority.

4. Permittees that use contract laboratories where the contract laboratories possess appropriate Quality Assurance Plans or laboratory certifications, but otherwise fail to meet applicable laboratory requirements. The Department, when it becomes aware of laboratory violations at a permittee’s contract laboratory, should notify the permittee, the appropriate section of the Department of Health, and the Department’s Environmental Assessment Section, in writing. Once notified, if the permittee fails to resolve the deficiencies with the contract laboratory, an appropriate penalty may then be assessed against the permittee based on the "Failure to Provide Timely and Accurate Reports/Records/Results" violation category contained in the Specific Guidelines.

F. Wastewater Violations Involving Hazardous Substances

Wastewater violations involving hazardous substances should be assessed using the $25,000 penalty matrix.
Specific Guidelines for Domestic and Industrial Wastewater
1. **FAILURE TO MEET PERMIT IMPOSED EFFLUENT LIMITATIONS AND/OR WATER QUALITY STANDARDS**

(See Table 1 for identification of parameter groups. 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.)

**Potential for Harm**

**Major:**

1. Exceedance of a permit imposed effluent limitation which is equivalent to or more stringent than the corresponding water quality standard for Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.

2. Results in a violation of water quality criteria, or toxicity standards for Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.

3. Results in a violation of ground water quality standards, for Class F-I, Class G-I, or Class G-II ground waters.

4. Results in a damage / danger to public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

**Moderate:**

1. Provides the reasonable potential for, a violation of water quality criteria, water quality standards, or toxicity standards for Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.

2. Results in, or provides the reasonable potential for, a violation of water quality criteria, water quality standards, or toxicity standards for Class IV or Class V surface waters.

3. Provides the reasonable potential for, a violation of ground water quality standards for Class F-I, Class G-I, or Class G-II ground waters.

4. Results in, or provides the reasonable potential for, a violation of ground water quality standards for Class G-III or Class G-IV ground waters.

5. Provides the reasonable potential for damage / danger to public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

6. Results in, or provides the reasonable potential for, a violation of minimum or general criteria, or toxicity standards for surface waters with no classification.
Minor: 1. Does not result in, or provide the reasonable potential for, a violation of water quality criteria, water quality standards, or toxicity standards.

Extent of Deviation

Major: 1. Violation of a limit for a Group I parameter by 80 percent or more (i.e., greater than or equal to 1.8 times the effluent limit).

2. Violation of a limit for a Group II parameter by 40 percent or more (i.e., greater than or equal to 1.4 times the effluent limit).

3. Violation of a Flow, Dissolved Oxygen (DO) or Fecal Coliform limit by 80 percent or more (i.e., greater than or equal to 1.8 times the effluent limit).

4. Violation of a Unionized Ammonia limit by 40 percent or more (i.e., greater than or equal to 1.4 times the effluent limit).

5. Violation of a Total Suspended Solids (TSS) or Fecal Coliform unrestricted public access reuse limit by 40 percent or more (i.e., greater than or equal to 1.4 times the effluent limit) and failure to follow the approved operating protocol.

6. Violation of a limit for any other parameter by 60 percent or more (i.e., greater than or equal to 1.6 times the effluent limit).

7. Violation of toxicity standards (acute or chronic) in 75% or more of tests (routine and follow-up) conducted within a one year period.

8. For pH violations, violation of the limit by more than 1.0 s.u.

9. Violations of Total Residual Chlorine for de-chlorination occurs in more than 20% of the measurements taken during any monthly monitoring period.

Moderate: 1. Violation of a limit for a Group I parameter by 40 percent to 80 percent (i.e., ranging from 1.4 times the effluent limit to less than 1.8 times the effluent limit).

2. Violation of a limit for a Group II parameter by 20 percent to 40 percent (i.e., ranging from 1.2 times the effluent limit to less than 1.4 times the effluent limit).
3. Violation of a Flow, Dissolved Oxygen (DO) or Fecal Coliform limit by 40 percent to 80 percent (i.e., ranging from 1.4 times the effluent limit to less than 1.8 times the effluent limit).

4. Violation of an Unionized Ammonia limit by 20 percent to 40 percent (i.e., ranging from 1.2 times the effluent limit to less than 1.4 times the effluent limit).

5. Violation of a Total Suspended Solids (TSS) or Fecal Coliform unrestricted public access reuse limit by 20 percent to 40 percent (i.e., ranging from 1.2 times the effluent limit to less than 1.4 times the effluent limit) and failure to follow the approved operating protocol.

6. Violation of a limit for any other parameter by 30 percent to 60 percent (i.e., ranging from 1.3 times the effluent limit to less than 1.6 times the effluent limit).

7. Violation of toxicity standards (acute or chronic) in more than 25% but less than 75% of tests (routine and follow-up) conducted within one year period.

8. For pH violations, violation of the limit by 0.5 s.u. to 0.99 s.u.

9. Violations of Total Residual Chlorine for de-chlorination occurs in more than 10% (but no more than 20%) of the measurements taken during any monthly monitoring period.

Minor:

1. Violation of a limit for a Group I parameter by less than 40 percent (i.e., less than 1.4 times the effluent limit).

2. Violation of a limit for a Group II parameter by less than 20 percent (i.e., less than 1.2 times the effluent limit).

3. Violation of a Flow, Dissolved Oxygen (DO) or Fecal Coliform limit by less than 40 percent (i.e., less than or equal to 1.4 times the effluent limit).

4. Violation of an Unionized Ammonia limit by less than 20 percent (i.e., less than 1.2 times the effluent limit).

5. Violation of a Total Suspended Solids (TSS) or Fecal Coliform unrestricted public access reuse limit by less than 20 percent (i.e., less than 1.2 times the effluent limit).

Guidelines for Characterizing Wastewater Violations
6. Violation of a limit for any other parameter by less than 30 percent (i.e., less than 1.3 times the effluent limit).

7. Violation of toxicity standards (acute or chronic) in 2% or less of tests (routine and follow-up) conducted within a one year period.

8. For pH violations, violation of the limit by less than 0.5 s.u.

9. Violation of Total Residual Chlorine for de-chlorination occurs in less than 10% of the measurements taken during any monthly monitoring period.
### Table 1

**Group I Parameters**

<table>
<thead>
<tr>
<th><strong>DETERGENTS AND OILS:</strong></th>
<th><strong>MINERALS:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil/Grease</td>
<td>Calcium</td>
</tr>
<tr>
<td>MBAS</td>
<td>Chloride</td>
</tr>
<tr>
<td>NTA</td>
<td>Fluoride</td>
</tr>
<tr>
<td>Other detergents or algicides</td>
<td>Magnesium</td>
</tr>
<tr>
<td></td>
<td>Sodium</td>
</tr>
<tr>
<td></td>
<td>Potassium</td>
</tr>
<tr>
<td></td>
<td>Sulfur</td>
</tr>
<tr>
<td><strong>OXYGEN DEMAND:</strong></td>
<td></td>
</tr>
<tr>
<td>BOD/CBOD (Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand)</td>
<td>Total Alkalinity</td>
</tr>
<tr>
<td>COD (Chemical Oxygen Demand)</td>
<td>Total Hardness</td>
</tr>
<tr>
<td>Total Oxygen Demands</td>
<td>Other Minerals</td>
</tr>
<tr>
<td>TOC (Total Organic Carbon)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>SOLIDS:</strong></td>
<td><strong>METALS:</strong></td>
</tr>
<tr>
<td>TSS (Total Suspended Solids)</td>
<td>Aluminum</td>
</tr>
<tr>
<td>TDS (Total Dissolved Solids)</td>
<td>Cobalt</td>
</tr>
<tr>
<td>Other</td>
<td>Iron</td>
</tr>
<tr>
<td></td>
<td>Vanadium</td>
</tr>
<tr>
<td><strong>NUTRIENTS:</strong></td>
<td></td>
</tr>
<tr>
<td>Phosphorus Compounds</td>
<td></td>
</tr>
<tr>
<td>Nitrogen Compounds</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

**Group II Parameters**

<table>
<thead>
<tr>
<th><strong>METALS:</strong></th>
<th><strong>ORGANICS:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Other metals not specifically listed under Group I</td>
<td>All organics are Group II except those specifically listed in Group I</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>INORGANICS:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyanide</td>
<td></td>
</tr>
<tr>
<td>Total Residual Chlorine</td>
<td></td>
</tr>
</tbody>
</table>

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

Potential for Harm

Major: 1. Release or disposal of raw wastewater to Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.

2. The release or disposal results in serious damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

Moderate: 1. Release or disposal of inadequately treated wastewater to Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.

2. The release or disposal provides the reasonable potential for damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

3. Release or disposal of raw wastewater to Class IV or Class V surface waters, or to surface waters with no classification.

4. Release or disposal is to ground surfaces over Class F-I, Class G-I, or Class G-II ground waters.

Minor: 1. Release or disposal of inadequately treated wastewater to Class IV or Class V surface waters, or to surface waters with no classification.

2. Results in, or provides the reasonable potential for, minimal damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

3. Release or disposal is to ground surfaces over Class G-III or Class G IV ground waters.

4. Release or disposal is minimal.
**Extent of Deviation**

**Major:**
1. Release or disposal is deliberate or results from improper operation or maintenance.
2. Facility fails to immediately implement adequate corrective measures.

**Moderate:**
1. Facility immediately implements adequate corrective measures.

**Minor:**
1. Release or disposal was a result of failed equipment that had received proper maintenance or due to conditions beyond the facility’s reasonable control.
3. FAILURE TO DISCOURAGE UNAUTHORIZED ENTRY OR PROVIDE APPROPRIATE
NOTIFICATION FOR PUBLIC ACCESS REUSE

Potential for Harm

Major: 1. Results in, or provides the reasonable potential for, serious dam-
age/danger to the environment or public health, safety, or welfare.

Moderate: 1. Results in, or provides the reasonable potential for, damage/danger to the environment or public health, safety, or welfare.

2. Results in, or provides the reasonable potential for, the failure to comply with any condition of a permit.

Minor: 1. Results in, or provides the reasonable potential for, any decrease or in-
terference in operation, treatment, or safety proficiency.

2. Results in, or provides the reasonable potential for, minimal dam-
age/danger to the environment or public health, safety, or welfare.

Extent of Deviation

Major: 1. Plant site/land application site has no features to discourage unauthor-
ized entry and is located in a populated area.

2. Plant site features to discourage unauthorized entry are inappropriate, or in disrepair or are being improperly used, and the site is located in a popu-
licated area.

3. Public access reuse sites such as shopping centers, parks, playgrounds, fountains, etc. with no signage to advise the public of reclaimed water use.

4. Failure to provide initial or annual public notification of the use of re-
claimed water.

Moderate: 1. Plant site/land application site has no features to discourage unauthor-
ized entry, but is located in a remote area.
2. Plant site/land application site features to discourage unauthorized entry are not entirely appropriate, but functional and being properly used and the site is located in a populated area.

3. Plant site/land application site features to discourage unauthorized entry are inappropriate or in disrepair or being improperly used, but the site is located in a remote area.

4. Plant site/land application site features to discourage unauthorized entry are appropriate, but in disrepair or being improperly used, and the site is located in a populated area.

5. The annual public notification of the use of reclaimed water was submitted, but was not complete or did not meet the intent of the rule.

6. Public access reuse sites, such as residential common grounds landscaping and golf courses, with no signage to advise of the public of reclaimed water use.

Minor:

1. Plant site/land application site features to discourage unauthorized entry are not entirely appropriate, but functional and being properly used, and the site is located in a remote area.

2. Plant site/land application site features to discourage unauthorized entry are appropriate, but in disrepair or being improperly used, and the site is located in a remote area.

3. Public access reuse sites, such as residential lawn irrigation systems and private orange groves, with no signage to advise the public of reclaimed water use.
4. FAILURE TO PROVIDE TIMELY OR ACCURATE REPORTS/RECORDS/RESULTS

Potential for Harm

Major: 1. Failure to submit timely and/or accurate reports/records/results in cases where violations of Department requirements occurred.

Moderate: 1. Failure to submit timely and/or accurate Department-required reports/records/results containing water quality data.

Minor: 1. Failure to submit timely and/or accurate Department-required reports/records/results not containing water quality data.

Extent of Deviation

Major: 1. Fraudulent data provided.

2. Three consecutive submittals not provided.

3. 50 percent of required submittals not provided within a twelve-month period, regardless of whether written notifications are issued by the Department.

4. Submittal not provided after two written notifications are issued by the Department.

Moderate: 1. Two consecutive submittals not provided.

2. 25 percent of required submittals not provided within a twelve-month period, regardless of whether written notifications are issued by the Department.

3. Submittal not provided after one written notification is issued by the Department.

4. Timely submittal is incomplete or inaccurate but not fraudulent.

Minor: 1. Submittal is provided within four weeks of its due date.

2. Reports/Records/Results not provided are maintained and available at the treatment facility.
5. FAILURE TO NOTIFY OF ABNORMAL EVENT OR NONCOMPLIANCE

Potential for Harm

Major: 1. Event results in, or provides the reasonable potential for, the release or disposal of wastewater, effluent, reclaimed water or residuals to surface or ground waters at an unapproved disposal site.

Moderate: 1. Event results in, or provides the reasonable potential for, a failure to meet permit-imposed effluent limitations, residuals application rates, or applicable water quality standards at an approved disposal site.

Minor: 1. Event results in the release or disposal of a minimal amount of, wastewater, effluent, reclaimed water or residuals with minimal potential for harm to the environment or public health, safety, and welfare.

Extent of Deviation

Major: 1. Abnormal event or noncompliance is discovered by the Department without timely notice provided by the permittee or authorized representative.

2. Permittee or authorized representative has been previously notified on the proper reporting of abnormal events or noncompliance.

3. Permittee or authorized representative fails to follow a contingency plan which has been accepted by the Department.

Moderate: 1. Permittee or authorized representative notify the Department (or local program) beyond 72 hours of the discovery of the abnormal event or noncompliance.

2. Permittee or authorized representative fail to submit a written report, if required.

Minor: 1. Permittee or authorized representative notify the Department (and local Program) between 24 and 72 hours of the discovery of the abnormal event or noncompliance.

2. Permittee or authorized representative submit a written report >5 days after the discovery of the abnormal event or noncompliance, if required.
6. FAILURE TO NOTIFY OF PLANNED BYPASS

Potential for Harm

Major: 1. Bypass results in, or provides the reasonable potential for, the release or disposal of wastewater, effluent, reclaimed water or residuals to surface or ground waters at an unapproved disposal site.

Moderate: 1. Bypass results in, or provides the reasonable potential for, a failure to meet permit imposed effluent limitations, residuals standards, or applicable water quality standards at an approved disposal site.

Minor: 1. Bypass results in, or provides the reasonable potential for, the failure to comply with any conditions of a permit, other than permit imposed effluent limitations, residuals standards, or applicable water quality standards.

Extent of Deviation

Major: 1. Planned bypass is discovered by the Department (or local program) without notice provided by the permittee or authorized representative.

Moderate: 1. Permittee or authorized representative notifies the Department of the planned bypass after its occurrence.

Minor: 1. Permittee or authorized representative notifies the Department of the planned bypass during the time of its occurrence.
7. CONSTRUCTION OR MAJOR MODIFICATION OF A WASTEWATER TREATMENT OR DISPOSAL SYSTEM WITHOUT A PERMIT

(Note: Not applicable when construction or modification relate solely to the surface water discharge and at some power plants - refer to rule 62-620 300(3), F.A.C.)

Potential for Harm:

Major: 1. Treatment or disposal system is placed in service without Department approval and effluent or residuals are discharged or land applied to an unpermitted disposal site.

2. Treatment or disposal system is placed in service without Department approval and its operation results in, or provides the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals application rates, or toxicity standards.

Moderate: 1. Treatment or disposal system is placed in service without Department approval and effluent or residuals are discharged or land applied to a permitted disposal site.

2. Treatment or disposal system is placed in service without Department approval and its operation does not result in, or provide the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals application rates, or toxicity standards.

3. Treatment or disposal system is placed in service without Department approval and its operation results in, or provide a reasonable potential for, failure to meet other permit requirements.

Minor: 1. Treatment or disposal system constructed, or under construction, but not placed in service.

Extent of Deviation

Major: 1. Construction without a permit.

Moderate: 1. NA.

Minor: 1. NA.
8. FAILURE TO SUBMIT NOTIFICATION OF COMPLETION OF CONSTRUCTION "CERTIFICATION" PRIOR TO PLACING TREATMENT, DISPOSAL OR COLLECTION SYSTEM INTO OPERATION

Potential for Harm

Major: 1. System operation results in, or provides the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals standards, or toxicity standards.

2. System operation results in, or provides the reasonable potential for, a danger / danger to public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

Moderate: 1. System operation, while not in compliance with permit conditions or Department rules, does not result in, or provide the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals standards, or toxicity standards.

Minor: 1. System operation is in compliance with all other permit conditions or Department rules.

2. System would have been eligible for Department approval.

Extent of Deviation

Major: 1. Permitted collection system placed into operation without receiving approval from the department.

2. Permitted treatment and/or disposal system placed into operation prior to submittal of certification to the department.

Moderate: 1. N/A

Minor: 1. N/A
9. OPERATION OF A WASTEWATER TREATMENT OR DISPOSAL SYSTEM WITHOUT A PERMIT

Potential for Harm

Major: 1. System operation results in, or provides the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals standards, or toxicity standards.

2. Results in, or provides the reasonable potential for, damage/danger to public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

Moderate: 1. System operation, while not in complete compliance with expired permit conditions or Department rules, does not result in, or provide the reasonable potential for, violations of applicable water quality criteria, water quality standards, residuals standards, or toxicity standards.

Minor: 1. System operation is in complete compliance with expired permit conditions or Department rules.

Extent of Deviation

Major: 1. Treatment and disposal system operating without ever possessing a valid permit or any other valid authorization.

2. Treatment and disposal system operating beyond one year of last valid permit's expiration.

3. Failure to apply for a permit after two written notifications are issued by the Department.

Moderate: 1. Treatment and disposal system operating between four months and one year of last valid permit's expiration.

2. Failure to apply for a permit after one written notification is issued by the Department.

Minor: 1. Treatment and disposal system operating within four months of last valid permit's expiration.
10. FAILURE TO CONSTRUCT WASTEWATER
TREATMENT OR DISPOSAL SYSTEMS SUBSTANTIALLY IN ACCORDANCE WITH
APPROVED PLANS OR COMPLIANCE SCHEDULE

Potential for Harm

Major:  
1. Results in, or provider the reasonable potential for, failure to meet per-
mit-imposed effluent limitations, residuals standards, or applicable water
quality standards.
2. Results in, or provides the reasonable potential for, damage/danger to
the environment or public health, safety, or welfare, including but not
limited to unrestricted public access irrigation systems.

Moderate:  
1. Results in, or provides the reasonable potential for, a failure to comply
with any conditions of a permit, including the compliance schedule of an
administrative order, other than permit-imposed effluent limitations, re-
siduals standards, or applicable water quality standards.
2. Results in, or provides the reasonable potential for, any decrease or in-
terference in operation, treatment, or safety proficiency.

Minor:  
1. Results in a Department review of the construction deviations to deter-
mine all applicable Department rule and permit requirements will still be
met.

Extent of Deviation

Major:  
1. Numerous substantial construction deviations are discovered by the De-
partment after completion of construction without notice provided by the
permittee or authorized representative.
2. Compliance schedule milestone for construction/modification contained
in permit or administrative order exceeded by greater than 180 days.

Moderate:  
1. Substantial construction deviations are discovered by the Department
after completion of construction without notice provided by the permit-
tee or authorized representative.
2. Compliance schedule milestone for construction/modification exceeded
by between 90 and 180 days.

Guidelines for Characterizing Wastewater Violations
Minor:

1. Substantial construction deviations are discovered by the Department during construction without notice provided by the permittee or authorized representative.

2. Compliance schedule milestone for construction/ modification exceeded by less than 90 days.
11. FAILURE TO PREVENT UNAUTHORIZED INTRODUCTION OF STORMWATER

Potential for Harm

Major: 1. Results in, or provides the reasonable potential for, the improper release or disposal of wastewater, effluent, reclaimed water to surface or ground waters.

Moderate: 1. Results in, or provides the reasonable potential for, failure to meet permit-imposed effluent limitations or applicable water quality standards.

Minor: 1. Results in, or provides the reasonable potential for, failure to comply with any conditions of a permit, other than permit-imposed effluent limitations.

2. Results in, or provides the reasonable potential for, any decrease or interference in operation, treatment, or safety proficiency.

Extent of Deviation

Major: 1. Unauthorized introduction of stormwater.

2. Facility has neglected collection system maintenance and repair, and/or does not have a planned inflow/infiltration control program.

Moderate: 1. Failure to implement a planned infiltration/inflow control program.

Minor: 1. Facility actively working to correct problems through a written inflow/infiltration control program.
12. FAILURE TO MAINTAIN OR OPERATE EQUIPMENT, FACILITY, TRANSMISSION OR COLLECTION SYSTEM

Potential for Harm

Major:
1. Results in, or provides the reasonable potential for, the improper release or disposal of wastewater, effluent, reclaimed water or residuals to surface or ground waters.

2. Results in, or provides the reasonable potential for, damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

3. Results in, or provides the reasonable potential for, failure to meet permit-imposed effluent limitations, residuals standards, or applicable water quality standards.

Moderate:
1. Results in, or provides the reasonable potential for, failure to comply with any conditions of a permit other than permit-imposed effluent limitations, residuals standards, or applicable water quality standards.

2. Results in, or provides the reasonable potential for, the improper release or disposal of wastewater, effluent, reclaimed water or residuals to ground surface.

3. Results in objectionable odors, excessive noise, structural deterioration, or any other condition potentially adverse to the intended function or to the public health, safety, or welfare.

4. Results in any decrease or interference in operation, treatment, or safety proficiency.

Minor:
1. Does not result in, or provide the reasonable potential for, damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

2. Provides the reasonable potential for, objectionable odors, excessive noise, structural deterioration, or any other condition potentially adverse to the intended function or to the public health, safety, or welfare.

3. Provides the reasonable potential for, any decrease or interference in operation, treatment, or safety proficiency.
Extent of Deviation

Major:
1. Equipment is totally inoperative.
2. Corrective measures not implemented after one written notification is issued by the Department.
3. Results in the failure to obtain permit renewal.
4. Numerous substantial deviations exist from the standard practices/procedures or from the operation and maintenance manual.
5. Permittee or authorized representative failed to perform routine maintenance.

Moderate:
1. Equipment is operating at reduced treatment or operating efficiency.
2. Substantial deviations exist from standard practices/procedures or from the operation and maintenance manual.
3. Permittee or authorized representative failed to document routine maintenance.

Minor:
1. Equipment is operating at reduced mechanical/structural efficiency.
2. Deviations exist from standard practices/procedures or from the operation and maintenance manual.
13. FAILURE TO CONDUCT WATER QUALITY OR RESIDUALS MONITORING

(See Table 1 for identification of parameter groups.)

Potential for Harm

Major:
1. Failure to conduct monitoring that results in, or provides the reasonable potential for, serious damage/danger to the environment or public health, safety, or welfare to go undetected, including but not limited to unrestricted public access irrigation systems.
2. Failure to conduct monitoring for a Group II parameter.
3. Failure to conduct monitoring of the Unionized Ammonia parameter.
4. Failure to conduct monitoring of Total Residual Chlorine, Total Suspended Solids (TSS) and/or Fecal Coliform for unrestricted public access.
5. Failure to conduct required toxicity testing.
6. Failure to conduct required monitoring of a process parameter to demonstrate pathogen reduction at a residuals facility.

Moderate:
1. Failure to conduct monitoring for a Group I or any other parameter, excluding Group II parameters.
2. Failure to conduct monitoring of the following parameters: Flow, Dissolved Oxygen (DO) or Fecal Coliform.
3. Failure to conduct monitoring results in, or provides the reasonable potential for, moderate damage/danger to the environment or public health, safety, or welfare to go undetected, including but not limited to unrestricted public access irrigation systems.
4. Failure to conduct required monitoring of a process parameter to demonstrate vector attraction reduction at a residuals facility.

Minor:
1. Failure to conduct monitoring results in, or provides the reasonable potential for, minimal or no damage/danger to the environment or public health, safety, or welfare to go undetected, including but not limited to unrestricted public access irrigation systems.
Extent of Deviation

Major:
1. Required daily monitoring of a parameter is not conducted for 30 or more monitoring days.
2. Required weekly monitoring of a parameter is not conducted for six or more weeks or required bi-weekly monitoring of a parameter is not conducted for 12 or more weeks.
3. Required monthly monitoring of a parameter is not conducted for three or more months or required quarterly monitoring of a parameter is not conducted for six or more months.
4. Required annual monitoring of a parameter is not conducted for three consecutive years or required semi-annual monitoring of a parameter is not conducted for 18 or more months.
5. Required monthly monitoring for Class AA residuals was not conducted for one or more months.

Moderate:
1. Required daily monitoring of a parameter is not conducted for 11 to 30 monitoring days.
2. Required weekly monitoring of a parameter is not conducted for three to six weeks or required bi-weekly monitoring of parameter is not conducted for five to 12 weeks.
3. Required monthly monitoring of a parameter is not conducted for up to two months or required quarterly monitoring of a parameter is not conducted for four to six months.
4. Required annual monitoring of a parameter is not conducted for two consecutive years or required semi-annual monitoring of a parameter is not conducted for 12 consecutive months.
5. Required monthly monitoring for non-Class AA residuals was not conducted for one or more months.
Minor:

1. Required daily monitoring of a parameter is not conducted for 10 or less monitoring days.

2. Required weekly monitoring of a parameter is not conducted for two or less weeks or required biweekly monitoring of a parameter is not conducted for four or less weeks.

3. Required monthly monitoring of a parameter is not conducted for a month or required quarterly monitoring of a parameter is not conducted for three or less months.

4. Required annual monitoring of a parameter is not conducted or required semi-annual monitoring of a parameter is conducted only once in a twelve-month period.
14. FAILURE TO MEET SAMPLE COLLECTION PROCEDURES OR LABORATORY REQUIREMENTS

(This violation category applies to a permittee using its own laboratory, or to a permittee using a contract laboratory to the extent that the permittee is responsible, either by permit condition or Department rule, for ensuring the contract laboratory has appropriate Department of Health and NEILAC laboratory certification. Refer to the Enforcement Discretion and Penalty Assessment section of the General Guidelines for further guidance on assessing penalties when a contract laboratory is used.)

Potential for Harm

Major: 1. 75 percent or more of the results or data represented in a report submitted to the Department was invalid or unacceptable.

2. Results in, or provides the reasonable potential for damage/danger to the environment or public health, safety, or welfare.

3. Results in, or provides the reasonable potential for, failure to meet permit-imposed effluent limitations, residuals standards, or applicable water quality standards.

Moderate: 1. Results in, or provides the reasonable potential for, failure to comply with any conditions of a permit other than permit-imposed effluent limitations, residuals standards, or applicable water quality standards.

2. 25 to 75 percent of the results or data represented in a report submitted to the Department were invalid or unacceptable.

Minor: 1. Little or no potential exists for the improper release of wastewater or residuals, with reasonable potential for harm to the environment, public health, safety and welfare.

2. Less than 25 percent of the results or data represented in a report submitted to the Department were invalid or unacceptable.

Extent of Deviation

Major: 1. Use of a laboratory not certified to analyze samples required by the permit.

2. Representative samples are not being collected.
3. Corrective action is not instituted after two written notices by the Department.

4. The data submitted is invalidated in accordance with Chapter 62-160, FAC.

5. Calibration records which are required by the Standard Operating Procedures (SOP) do not exist or are substantially deficient for sampling results or monitoring required by the permit for three or more months.

6. Calibration records do not exist for required continuous monitoring for one or more months.

7. Data has been changed or altered.

8. Data in the final report cannot be traced to a specific sampling site, date, and time.

9. Required analytical methodology is not used.

Moderate:

1. Corrective measures not implemented after one written notice issued by the Department.

2. Calibration records do not exist or are substantially deficient for sampling or monitoring required by the permit for a period of one to three months.

3. Monthly or less frequent sampling required by permit is not performed in accordance with the Department’s SOP.

4. Calibration is less frequent than required or not in accordance with the Department’s SOP.

5. Calibration records do not exist for required continuous monitoring for less than a month.

6. Required sampling procedures are not used as specified in Department's written standard operating procedures.

7. Required analytical methodology was used, but was not followed correctly.

8. Required quality control measures and criteria are not used.
9. Laboratory documentation and records do not enable analytical activities to be reconstructed.

Minor:
1. Calibration records do not exist for required daily sampling or monitoring required by the permit for less than one month.
2. Laboratory records are not retained for a minimum of three years.
3. A required quality assurance report is not submitted.
Specific Guidelines for Domestic Wastewater
15. FAILURE TO PROVIDE CERTIFIED OPERATOR

Potential For Harm

Major:
1. Categories I through IV, Class A.
2. Lack of an operator results in, or provides the reasonable potential for, serious damage/danger to the environment or public health, safety, or welfare.
3. Lack of an operator for the times required at any unrestricted public access reuse facility.
4. Lack of an operator for the times required at a Type I residuals management facility.

Moderate:
1. Categories I through IV, Class B.
2. Category I, Class C, 0.10 MGD up to 0.5 MGD.
3. Category II, Class C, 0.25 MGD up to 1 MGD.
4. Category III, Class C, 0.50 MGD up to 2 MGD.
5. Category IV, Class C, 0.75 MGD up to 3 MGD.
6. Lack of an operator results in, or provides the reasonable potential for, moderate damage/danger to the environment or public health, safety or welfare.
7. Lack of an operator for the times required at a Type II residuals management facility.

Minor:
1. Category I, Class C, less than 0.10 MGD.
2. Category II, Class C, less than 0.25 MGD.
3. Category III, Class C, less than 0.50 MGD; Class D.
4. Category IV, Class C, less than 0.75 MGD; Class D.
5. Lack of an operator results in, or provides the reasonable potential for, minimal damage/danger to the environment or public health, safety or welfare.
6. Lack of an operator for the times required at a Type III residuals management facility.

Extent of Deviation

Major: 1. Staffing requirements not met, and lead operator requirement not met.

Moderate: 1. Staffing requirements not met, but lead operator requirement is met.
       2. Lead operator requirement not met, but otherwise, staffing requirements are satisfactory.

Minor: 1. Minor deviation from meeting minimum staffing requirements.
16. CONSTRUCTION OF A DOMESTIC WASTEWATER
COLLECTION/TRANSMISSION SYSTEM WITHOUT A PERMIT

Potential for Harm

Major:
1. System placed in service resulting in, or providing the reasonable potential for, an exceedance of the facility’s design capacity.

2. System placed in service resulting in, or providing the reasonable potential for, the improper release or disposal of wastewater, effluent, reclaimed water or residuals.

Moderate:
1. System placed in service without resulting in, or providing the reasonable potential for, a design capacity exceedance or the improper release or disposal of wastewater, effluent, reclaimed water or residuals.

2. System constructed in substantial deviation from Department rules and/or generally accepted standards of design.

Minor:
1. System constructed, or under construction, but not placed in service and the system substantially complies with Department rules and generally accepted standards of design.

Extent of Deviation

Major:
1. Construction without a permit.

Moderate:
1. NA.

Minor:
1. NA.
17. IMPROPER APPLICATION, RELEASE OR DISPOSAL OF RESIDUALS

Potential for Harm

Major:
1. Release or disposal is to Class I, Class II, or Class III surface waters, or Outstanding Florida Waters, or Outstanding National Resource Waters.
2. Results in, or provides the reasonable potential for, serious damage / danger to the environment or public health, safety, or welfare.
3. Application of residuals or “other solids” that do not meet Class A or Class AA criteria on unrestricted access areas, including but not limited to playgrounds, parks, golf courses, lawns, hospital grounds, etc., or distribution and marketing of residuals that do not meet the criteria of Section 62-640.850, F.A.C.
4. Growing or harvesting of sod or food crops after application of residuals in a manner that violates Chapter 62-640, F.A.C.
5. Application of residuals exceeding the parameter ceiling limits in Chapter 62-640, F.A.C., or application that exceeds the allowable cumulative loading limits of heavy metals in Chapter 62-640, F.A.C.
6. Application of residuals at a rate exceeding 50 percent of the application rates approved in the site plan.

Moderate:
1. Release or disposal is to Class IV or Class V surface waters, or to surface waters with no classification.
2. Release or disposal to ground surfaces over Class F-1, Class G-1 or Class G-II ground waters
3. Release or disposal result, or cause reasonable potential for, moderate damage / danger to the environment or public health, safety, or welfare.
4. The management or application of residuals resulting in a violation of the odor prohibition in Chapter 62-296, F.A.C. (objectionable odors).
5. Application of residuals or “other solids” that do not meet at least Class B pathogen reduction requirements in restricted access areas.
6. Application of Class B residuals at an unapproved land application site or site not specified in residuals generator’s permit.
7. Application of Class B residuals in areas where the ground water level is less than two feet below the surface.

8. Application of residuals at a rate exceeding 20 percent of the application rates specified in the approved site plan.

9. Storing, stockpiling, or staging residuals in a manner that violates Chapter 62-640, F.A.C.

10. Application of Class B residuals during rains that cause runoff from the site or when surface soils are saturated.

11. Failure to maintain setback distances that do not result in, or provide the reasonable potential for, serious damage/danger to the environment or public health, safety, or welfare.

12. Application of Class B residuals in areas where livestock are actively grazing and/or failure to prevent animal grazing for 30 days after each application.

13. Growing or harvesting of feed crops after application of residuals in a manner that violates Chapter 62-640, F.A.C.

14. Access restrictions not observed or met at sites approved for Class B residuals.

Minor:

1. Results in, or provides the reasonable potential for, minimal damage/danger to the environment or public health, safety, or welfare, including but not limited to unrestricted public access irrigation systems.

2. Release or disposal to ground surfaces over Class G-III or Class G-IV ground waters.

3. Release or disposal is minimal.

4. Non-uniform application of Class A or Class B residuals over application site.

5. Application of residuals or “other solids” that do not meet at least Class B vector attraction requirements in restricted access areas.

6. Application of Class A residuals at an unapproved land application site or site not specified in residuals generator’s permit.

Guidelines for Characterizing Wastewater Violations
7. Application of Class A residuals in areas where the ground water level is less than two feet below the surface.

8. Application of Class A residuals during rains that cause runoff from the site or when surface soils are saturated.

9. Crop growth at site does not match the crop specified in the site plan.

Extent of Deviation

Major:
1. Improper application, release or disposal is deliberate or results from improper operation, maintenance, or significantly inadequate record keeping.

2. Failure to immediately implement adequate corrective measures.

Moderate:
1. Improper application, release or disposal results from inadequate record keeping.

2. Adequate corrective measures were immediately implemented.

Minor:
1. Improper application, release or disposal results from minor deficiencies in record keeping.

2. Improper application, release or disposal was a result of failed equipment that had received proper maintenance or due to conditions beyond the permittee's or hauler's control.
18. FAILURE TO FOLLOW THE OPERATING PROTOCOL FOR A
PUBLIC ACCESS REUSE FACILITY

Potential for Harm

Major:
1. Results in, or provides the reasonable potential for, the release or disposal of inadequately treated wastewater to an unrestricted public access irrigation systems.
2. Results in, or provides the reasonable potential for damage/danger to the environment or public health, safety or welfare.

Moderate:
1. Little or no potential exists for the release of inadequately treated wastewater with no reasonable potential for harm to the environment, public health, safety and welfare.

Minor:
1. N/A

Extent of Deviation

Major:
1. Permittee or operator has been previously notified of the requirement to follow the operating protocol.
2. Operating protocol not followed and no assurances exist that the protocol limits were met during the time of reclaimed water production.
3. Protocol violations are discovered by the Department.

Moderate:
1. Permittee or operator corrects the protocol violation within one hour beyond the established lag time, and properly notifies the Department.

Minor:
1. Permittee or operator corrects the protocol violations within 15 minutes beyond the established lag time and properly notifies the Department.
19. DISCHARGE OF WASTEWATER FROM PRETREATMENT INDUSTRIAL USERS REGULATED BY THE DEPARTMENT

Potential For Harm

Major: 1. Introduction of pollutants into a wastewater facility which is a violation of the Specific Prohibitions in Chapter 62-625, F.A.C.

Moderate 1. Introduction of pollutants into a wastewater facility which causes, alone or in conjunction with other discharges, pass through or interference not identified as a Specific Prohibition.

Minor 1. Violation of pretreatment standards other than the General or Specific Prohibitions specifically listed in Chapter 62-625, F.A.C.

Extent of Deviation

Major: 1. Discharge of a wastewater without required pretreatment or without an authorized control mechanism under Chapter 62-625, F.A.C.

Moderate: 1. Discharge of a wastewater with a pretreatment system that is adequate, but not operational.

Minor: 1. Discharge of a wastewater with from an inadequately operating pretreatment system.

2. Discharge of a wastewater without necessary pretreatment due to circumstances that the control authority or permittee could not have reasonably been expected to acknowledge or prevent.
20. INADEQUATE IMPLEMENTATION OF APPROVED PRETREATMENT PROGRAM

Potential for Harm

Major: 1. Results in, or provides the reasonable potential for, the improper release 
or disposal of wastewater, effluent, reclaimed water or residuals to sur-
face or ground waters.

2. Results in, or provides the reasonable potential for, damage/danger to 
the environment or public health, safety, or welfare, including but not 
limited to unrestricted public access irrigation systems.

Moderate: 1. Results in, or provides the reasonable potential for, a failure to meet 
permit imposed effluent limitations, residuals standards, or applicable 
water quality standards.

Minor 1. Results in, or provides the reasonable potential for, any decrease or in-
terference in operation, treatment, or safety proficiency.

Extent of Deviation:

Major: 1. Failure by the approved pretreatment program to take effective actions, 
in response to discharges which result in pass through and/or interfe-
rence, to eliminate the discharge within 90 days of identifying the re-
sponsible industry or failure to initiate formal enforcement action within 
90 days of identification of the SNC.

Moderate 1. Failure by the approved pretreatment program to complete a pretreat-
ment implementation compliance schedule milestone within 90 days of 
the due date specified in the NPDES permit, enforcement order, or ap-
proved program.

2. Failure by the approved pretreatment program to issue, reissue, or ratify 
industrial user permits, or other enforceable control mechanisms, where 
required, for at least 90% of the Significant Industrial Users (SIUs), 
within 180 days after program approval, or within 180 days of the date 
required in the approved program, NPDES permit or enforcement order.
3. Failure by the approved pretreatment program to conduct a complete inspection or sampling of at least 80% of the SIUs as required by the permit, the approved program or the enforcement order.

4. Failure by the approved pretreatment program to enforce pretreatment standards or reporting requirements, including self-monitoring requirements, as required by the approved program, the NPDES permit, or the General Pretreatment Regulations.

5. Failure by the approved pretreatment program to take appropriate action against a violation within 30 days of being notified of each violation.

6. Failure by the approved pretreatment program to take effective actions in response to incidents of significant noncompliance that failed to return the SIU to compliance within 90 days of the receipt of information establishing significant noncompliance.

Minor: 1. Failure by the approved pretreatment program to submit a pretreatment report (e.g., annual report or publication of significant violators) to the Approval Authority within 30 days of the due date specified on the NPDES permit, enforcement order or approved program.
Specific Guidelines for Industrial Wastewater
21. FAILURE TO PROPERLY MAINTAIN OR OPERATE
ANIMAL FEEDING OPERATIONS

Potential for Harm

Major:
1. Failure to prevent animal access to water sources (wetlands, sinkholes, ponds, etc.) which have a direct connection to surface waters and which results in impacts to waters of the State.
2. Facility is operating with an annual average of more animals on-site than allowed by permit which results in impacts to waters of the State.
3. Improper management of dead animals which results in impacts to waters of the State.
4. Failure to maintain high intensity areas of the facility which results in impacts to waters of the State.
5. Failure to line wastewater impoundments as required by the permit.
6. Unauthorized introduction of stormwater into production area(s) which results in impacts to waters of the State.
7. Failure to prevent the unauthorized introduction of chemicals into manure, litter and/or process wastewater storage or treatment structures which results in impacts to waters of the State.

Moderate:
1. Failure to prevent animal access to water sources (wetlands, sinkholes, ponds, etc.) which have a direct connection to surface waters and provides the reasonable potential for impacts to waters of the State.
2. Facility is operating with an annual average of more animals on-site than allowed by permit which provides reasonable potential for impacts to waters of the State.
3. Improper management of dead animals provides reasonable potential for impacts to waters of the State.
4. Failure to maintain high intensity areas of the facility which provides the reasonable potential for impacts to waters of the State.
5. Failure to properly line wastewater impoundments to the design specifications of the permit which results in, or provides reasonable potential for impacts to waters of the State.

6. Unauthorized introduction of stormwater into production area(s) which provides the reasonable potential for impacts to waters of the State.

7. Failure to prevent the unauthorized introduction of chemicals into mature, litter and/or process wastewater storage or treatment structures which provides reasonable potential for impacts to waters of the State.

8. Failure to maintain wastewater impoundments, including storage pond embankments and access areas.

9. Failure to install and maintain a staff gauge for open surface liquid impoundments.

10. Failure to conduct and/or record routine inspections in accordance with the permit which results in impacts to waters of the State.

Minor:

1. Failure to prevent animal access to water sources (wetlands, sinkholes, ponds, etc.) which have a direct connection to waters of the State.

2. Facility is operating with an annual average of more animals on-site than allowed by the permit.

3. Improper management of dead animals.

4. Failure to maintain high intensity areas of the facility.

5. Failure to properly line wastewater impoundments to the design specifications of the permit which results in minimal impacts to waters of the State.

6. Unauthorized introduction of stormwater in production area(s).

7. Failure to prevent the unauthorized introduction of chemicals into mature, litter and/or process wastewater storage or treatment structures which results in minimal impacts to waters of the State.

8. Failure to maintain a staff gauge for open surface liquid impoundments.

9. Failure to conduct and/or record routine inspections in accordance with the permit.
Extent of Deviation

Major: 1. Permittee, responsible authority or facility manager has been previously notified of the Department’s requirements.

2. Facility is operating with more animals on-site than allowed by the permit (>10% more).

3. Failure to immediately implement adequate corrective measures.

4. Failure to request and obtain Department approval for operational changes.

Moderate: 1. Permittee, responsible authority or facility manager corrects violations found, within approved timeframe.

2. Facility submitted a permit modification request, however, did not obtain Department approval prior to implementation.

3. Facility is operating with more animals on-site than allowed by the permit (5-10% more).

Minor: 1. Adequate corrective measures were immediately implemented.

2. Facility is operating with more animals on-site than allowed by the permit (<5% more).
22. IMPROPER APPLICATION / DISPOSAL OF MANURE, LITTER OR PROCESS WASTEWATER FROM ANIMAL FEEDING OPERATIONS

Potential for Harm

Major:

1. Results in, or provides reasonable potential for, a release or disposal to a Class I, Class II, or Class III surface water, or Outstanding Florida Water, or Outstanding National Resource Water.

2. Results in, or provides the reasonable potential for, serious damage/danger to the environment or public health, safety or welfare.

3. Failure to develop the Department approved Nutrient Management Plan (NMP) for the facility within the timeframe specified in the permit.

4. Crop type in land application area(s) is not consistent with the Department approved NMP, and does not uptake limiting nutrients, such as, Nitrogen and/or Phosphorous, at the same agronomic rate or greater.

5. Failure to maintain setback distances that result in, or provide the reasonable potential for, serious damage/danger to the environment or public health, safety or welfare.

6. Significant deviations from the Department approved NMP.

Moderate:

1. Results in, or provides reasonable potential for, a release or disposal to Class IV or Class V surface waters, or to surface waters with no classification.

2. Results in, or provides reasonable potential for, a release or disposal to ground surfaces over Class I-1, Class G-I or Class G-II ground waters.

3. Results in, or provides reasonable potential for, moderate damage/danger to the environment or public health, safety or welfare.

4. Failure to update the Department approved NMP for the facility within the timeframe specified in the permit.

5. Failure to maintain setback distances that result in, or provides reasonable potential for, moderate damage or danger to the environment or public health, safety or welfare.

6. Moderate deviations from the Department approved NMP.
Minor:
1. Results in, or provides reasonable potential for, release or disposal to ground surfaces over Class G-III or Class G-IV ground waters.
2. Results in, or provides the reasonable potential for, minimal damage/danger to the environment or public health, safety or welfare.
3. Minor deviations from the Department approved NMP.

Extent of Deviation

Major:
1. Improper application or disposal is deliberate or results from improper operation, maintenance, or significantly inadequate record keeping.
2. Failure to immediately implement adequate corrective measures.

Moderate:
1. Improper application or disposal results from inadequate record keeping.
2. Permittee, responsible authority or facility manager corrects violations found within approved timeframe.

Minor:
1. Improper application or disposal results from minor deficiencies in record keeping.
2. Improper application or disposal was a result of failed equipment that had received proper maintenance or due to conditions beyond the permittee’s, responsible authority’s or facility manager’s control.
3. Adequate corrective measures were immediately implemented.
**PENALTY ASSESSMENT MATRIX**

**EXTENT OF DEVIATION FROM REQUIREMENT**

<table>
<thead>
<tr>
<th>Potential Harm</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAJOR</td>
<td>$10,000 to $8,000</td>
<td>$7,999 to $6,000</td>
<td>$5,999 to $4,600</td>
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<tr>
<td>MODERATE</td>
<td>$4,599 to $3,200</td>
<td>$3,199 to $2,000</td>
<td>$1,999 to $1,200</td>
</tr>
<tr>
<td>MINOR</td>
<td>$1,199 to $500</td>
<td>$500 to $500</td>
<td>$500 to $500</td>
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</tbody>
</table>

*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 "Potential for 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 "Potential for Harm" only.*
Appendix A

Table of Recommended Laboratory Rates
### Laboratory Costs - Chemistry

#### Inorganic Analyses, Metals

<table>
<thead>
<tr>
<th>Analysis/Service</th>
<th>EPA Method Reference</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metals by Chelation Extraction</td>
<td>200.10</td>
<td>$200.00</td>
</tr>
<tr>
<td>Total Recoverable Metals</td>
<td>200.720.8</td>
<td>$30.00</td>
</tr>
<tr>
<td>Mercury—crude</td>
<td>245.1</td>
<td>$88.00</td>
</tr>
<tr>
<td>Mercury—Trace Level</td>
<td>1651</td>
<td>$262.00</td>
</tr>
<tr>
<td></td>
<td>with kit prep</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1631</td>
<td>$132.00</td>
</tr>
<tr>
<td></td>
<td>without kit prep</td>
<td></td>
</tr>
<tr>
<td>Methyl Mercury</td>
<td>In-house (GC/MS)</td>
<td>$660.00</td>
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#### Inorganic Analyses, Non-Metals

<table>
<thead>
<tr>
<th>Analysis/Service</th>
<th>EPA Method Reference</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alkalinity</td>
<td>310.1</td>
<td>$1.48</td>
</tr>
<tr>
<td>Ammonia</td>
<td>350.1</td>
<td>$1.20</td>
</tr>
<tr>
<td>Chloride</td>
<td>300</td>
<td>$1.20</td>
</tr>
<tr>
<td>Cyanide</td>
<td>335.1 - 335.6</td>
<td>$106.00</td>
</tr>
<tr>
<td>Fluoride</td>
<td>340.2</td>
<td>$1.20</td>
</tr>
<tr>
<td>Nitrate</td>
<td>400</td>
<td>$1.20</td>
</tr>
<tr>
<td>Nitrite or</td>
<td>353.2</td>
<td>$1.20</td>
</tr>
<tr>
<td>Silica</td>
<td>370.1</td>
<td>$1.20</td>
</tr>
<tr>
<td>Sulfate</td>
<td>200</td>
<td>$1.20</td>
</tr>
<tr>
<td>Orthophosphate</td>
<td>365.1 - 365.4</td>
<td>$88.00</td>
</tr>
<tr>
<td>Total Phosphorous</td>
<td>365.1 - 365.4</td>
<td>$88.00</td>
</tr>
<tr>
<td>Total Kjeldahl</td>
<td>351.2</td>
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<tr>
<td>Filtrable (TSS)</td>
<td>160.1</td>
<td>$18.00</td>
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<tr>
<td>Residue, Non-</td>
<td>140.2</td>
<td>$18.00</td>
</tr>
<tr>
<td>Filtrable (TDS)</td>
<td>160.2</td>
<td>$18.00</td>
</tr>
<tr>
<td>Residue, Total</td>
<td>165.3</td>
<td>$18.00</td>
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<tr>
<td>Total Organic Carbon</td>
<td>415.1</td>
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<tr>
<td>Turbidity</td>
<td>180.1</td>
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<tr>
<td>Color</td>
<td>110.2</td>
<td>$13.20</td>
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<tr>
<td>Sulfide</td>
<td>776.2</td>
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<tr>
<td>pH</td>
<td>150.1</td>
<td>$13.20</td>
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<tr>
<td>Specific Conductivity</td>
<td>120.1</td>
<td>$13.20</td>
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<tr>
<td>Organic Analyses</td>
<td>EPA Method Reference</td>
<td>Cost</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>----------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Volatile Organics</td>
<td>624 or 830</td>
<td>$256.00</td>
</tr>
<tr>
<td>Acrolein and Acrylonitrile</td>
<td>624 or 830</td>
<td>$200.00</td>
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<tr>
<td>Base-Neutral &amp; Acid</td>
<td>625 or 927A</td>
<td>$1,150.00</td>
</tr>
<tr>
<td>Acid Extractables</td>
<td>623 or 827H</td>
<td>$1,085.00</td>
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<tr>
<td>Total Recoverable</td>
<td>PL/PHO</td>
<td>$770.00</td>
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<tr>
<td>Carboxanites</td>
<td>551.1</td>
<td>$240.00</td>
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<tr>
<td>Phenol Urea</td>
<td>In-House/let/trv</td>
<td>$240.00</td>
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<tr>
<td>Acid Herbicides</td>
<td>In-House/let/trv</td>
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<tr>
<td>Caffeine</td>
<td>DEF SOP/GC/088.1</td>
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<tr>
<td>Glyphosate</td>
<td>547</td>
<td>$110.00</td>
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<tr>
<td>Digoxin</td>
<td>549</td>
<td>$200.00</td>
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<tr>
<td>Benzoyl</td>
<td>In-House/let/trv</td>
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<tr>
<td>Organo Chlorine Pesticides</td>
<td>608 or 1081</td>
<td>$200.00</td>
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<tr>
<td>Organo Chlorine Pesticides &amp; PCB's</td>
<td>608 or 1081/8807</td>
<td>$250.00</td>
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<tr>
<td>Organo Chlorine Pesticides &amp; PCB's (Ultra Trace Level)</td>
<td>608/817: 808/1804</td>
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<tr>
<td>PCB's</td>
<td>608, 8082</td>
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</tr>
<tr>
<td>Organo Nitrogen/phosphorus pesticides</td>
<td>307/184/20/62/833</td>
<td>$120.00</td>
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<tr>
<td>Organo Nitrogen/phosphorus pesticides (Ultra Trace Level)</td>
<td>307/184/1062/833</td>
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<tr>
<td>Fumigant</td>
<td>584</td>
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<tr>
<td>Zinc Phosphide</td>
<td>In-House/gspdp</td>
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<tr>
<td>Fluoride</td>
<td>614</td>
<td>$240.00</td>
</tr>
<tr>
<td>Ethylene Thioctate</td>
<td>569</td>
<td>$210.00</td>
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<tr>
<td>Benzoate Degradation</td>
<td>In-House</td>
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<tr>
<td>Ascorbate, etc.</td>
<td>In-House/gspdp</td>
<td>$240.00</td>
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<tr>
<td>2-Methamphetamine + metabolites</td>
<td>In-House/gspdp</td>
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<tr>
<td>Sulfoxyl Ureas</td>
<td>In-House/gspdp</td>
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<table>
<thead>
<tr>
<th>Additional Analyses</th>
<th>EPA Method Reference</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Oil &amp; Grease</td>
<td>413.1</td>
<td>$65.00</td>
</tr>
<tr>
<td>Methylene Blue Active Substances (MBAS)</td>
<td>425.1</td>
<td>$55.00</td>
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<tr>
<td>Chemical Oxygen Demand</td>
<td>410.4</td>
<td>$22.00</td>
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<td>Laboratory Costs - Biological</td>
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<td>------------------------------</td>
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<tr>
<td><strong>DEP Analysis</strong></td>
<td><strong>DEP Analysis Description</strong></td>
<td><strong>Cost</strong></td>
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<td>DTM-QL-C</td>
<td>No. of diatom taxa of qualitative phytoplankton sample</td>
<td>$1,225.00</td>
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<tr>
<td>DTM-QN-C</td>
<td>No. of diatom taxa of quantitative phytoplankton sample</td>
<td>$840.00</td>
</tr>
<tr>
<td>DTM-QLSV-C</td>
<td>No. of diatom taxa of quantitative phytoplankton sample w/speciation and cell counts</td>
<td>$665.00</td>
</tr>
<tr>
<td>DTM-QNEV-C</td>
<td>No. of diatom taxa of quantitative phytoplankton sample w/speciation and cell counts</td>
<td>$840.00</td>
</tr>
<tr>
<td>DTY-QN-C</td>
<td>No. of diatom taxa of quantitative phytoplankton sample</td>
<td>$805.00</td>
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<tr>
<td>PKD-QN-C</td>
<td>No. of rotther taxa of quantitative phytoplankton sample</td>
<td>$630.00</td>
</tr>
<tr>
<td>PPK-QN-C</td>
<td>No. of taxa of quantitative phytoplankton sample</td>
<td>$290.00</td>
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<tr>
<td>PRN-QL-C</td>
<td>No. of wet taxa of qualitative phytoplankton sample</td>
<td>$700.00</td>
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<tr>
<td>PRN-QN-C</td>
<td>No. of wet taxa of qualitative phytoplankton sample</td>
<td>$875.00</td>
</tr>
<tr>
<td>PRN-QNEV-C</td>
<td>No. of wet taxa of qualitative phytoplankton sample w/speciation and cell counts</td>
<td>$805.00</td>
</tr>
</tbody>
</table>

**Invertebrate Taxonomy**

<table>
<thead>
<tr>
<th><strong>Sample Code</strong></th>
<th><strong>Description</strong></th>
<th><strong>Cost</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>MI-FW-OED</td>
<td>No. taxa of chironomid/larvae, Bur Aq Pln</td>
<td>$330.00</td>
</tr>
<tr>
<td>MI-FW-OEDR</td>
<td>No. taxa of FW macroinvertebs, bioreconstruction</td>
<td>$528.00</td>
</tr>
<tr>
<td>MI-FW-QLCDC</td>
<td>No. taxa of FW macroinvertebs, qual samp, 20 dips</td>
<td>$880.00</td>
</tr>
<tr>
<td>MI-FW-QLCDN</td>
<td>No. taxa of Everglades macroinvertebs, qual samp, 70 dips</td>
<td>$1,155.00</td>
</tr>
<tr>
<td>MI-WL-QLCDN</td>
<td>No. taxa of Wolfand tineomycocci, qual samp, 20 dips</td>
<td>$1,265.00</td>
</tr>
<tr>
<td>MI-FW-QLS</td>
<td>No. taxa of FW macroinvertebs, lake 10 mesh screen</td>
<td>$800.00</td>
</tr>
<tr>
<td>MI-FW-QNAC</td>
<td>No. taxa of FW macroinvertebs, artificial substrate</td>
<td>$995.00</td>
</tr>
<tr>
<td>MI-BV-QNAC</td>
<td>No. taxa of Everglades macroinvertebs, artificial substrate</td>
<td>$225.00</td>
</tr>
<tr>
<td>MI-FW-QNLC</td>
<td>No. taxa of FW macroinvertebs, composite 10x4 sample</td>
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</tr>
<tr>
<td>MI-FW-QNCC</td>
<td>No. taxa of FW macroinvertebs, natural substrate</td>
<td>$5,005.00</td>
</tr>
<tr>
<td>MI-MN-3QOR</td>
<td>No. taxa SW macroinvertebs, quant samp, 3 inch core</td>
<td>$2,100.00</td>
</tr>
<tr>
<td>MI-MN-3QOD</td>
<td>No. taxa SW macroinvertebs, qual samp, 20 dips</td>
<td>$4,620.80</td>
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<tr>
<td>MI-MN-3QNC</td>
<td>No. taxa SW macroinvertebs, qual samp, 1 dip</td>
<td>$1,475.00</td>
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<tr>
<td>MI-MN-3QCC</td>
<td>No. taxa SW macroinvertebs, quant samp, 2 inch core</td>
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<tr>
<td>MI-MN-3QCF</td>
<td>No. taxa SW macroinvertebs, quant samp, 10 core composite</td>
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<tr>
<td>MI-MN-QNCC</td>
<td>No. taxa micro macroinvertebs, natural substrate</td>
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</tr>
<tr>
<td>MI-MN-NOSIX</td>
<td>No. taxa marine macroinvertebs, substrate wk, veesves</td>
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</tr>
<tr>
<td>MI-MN-VNID</td>
<td>No. taxa micro macroinvertebs, seagrass, veesves</td>
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</table>

**Toxicity Bioassay**

<table>
<thead>
<tr>
<th><strong>Sample Code</strong></th>
<th><strong>Description</strong></th>
<th><strong>Cost</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>BIV-FAD-FCD</td>
<td>Definitive acute toxicity test, FW—water flea</td>
<td>$700.00</td>
</tr>
<tr>
<td>BIV-FAD-FSS</td>
<td>Definitive acute toxicity test, FW—freshwater fish</td>
<td>$840.00</td>
</tr>
<tr>
<td>DST-AD-SES</td>
<td>Definitive acute toxicity test, SW—saltwater fish</td>
<td>$860.00</td>
</tr>
<tr>
<td>BSV-AD-SMT</td>
<td>Definitive acute toxicity test, SW—mixed species</td>
<td>$900.00</td>
</tr>
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</table>

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<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSY-AS-FCF</td>
<td>Screening acute toxicity test, FW-water flea</td>
<td>$500.00</td>
</tr>
<tr>
<td>BSY-AS-FFS</td>
<td>Screening acute toxicity test, FW-freshwater fish</td>
<td>$550.00</td>
</tr>
<tr>
<td>BSY-AS-MFS</td>
<td>Screening acute toxicity test, SW-saline water fish</td>
<td>$750.00</td>
</tr>
<tr>
<td>BSY-AS-MMY</td>
<td>Screening acute toxicity test, SW-mud shrimp</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-CD-FCF</td>
<td>Chronic toxicity test, definitive, FW-water flea</td>
<td>$1,400.00</td>
</tr>
<tr>
<td>BSY-CD-FFS</td>
<td>Chronic toxicity test, definitive, FW-freshwater fish</td>
<td>$1,480.00</td>
</tr>
<tr>
<td>BSY-CD-FSS</td>
<td>Chronic toxicity test, definitive, FW-freshwater algae</td>
<td>$770.00</td>
</tr>
<tr>
<td>BSY-CD-MAR</td>
<td>Chronic toxicity test, definitive, SW-marshals</td>
<td>$980.00</td>
</tr>
<tr>
<td>BSY-CD-MPS</td>
<td>Chronic toxicity test, SW-Medusa fish</td>
<td>$1,480.00</td>
</tr>
<tr>
<td>BSY-CD-MMU</td>
<td>Chronic toxicity test, definitive, SW-coot clam</td>
<td>$1,600.00</td>
</tr>
<tr>
<td>BSY-CD-MMY</td>
<td>Chronic toxicity test, definitive, SW-mud shrimp</td>
<td>$1,580.00</td>
</tr>
<tr>
<td>BSY-CS-FCF</td>
<td>Chronic toxicity test, screen, FW-water flea</td>
<td>$960.00</td>
</tr>
<tr>
<td>BSY-CS-FSS</td>
<td>Chronic toxicity test, screen, FW-freshwater fish</td>
<td>$1,660.00</td>
</tr>
<tr>
<td>BSY-CS-FSS</td>
<td>Chronic toxicity test, screen, FW-freshwater algae</td>
<td>$660.00</td>
</tr>
<tr>
<td>BSY-CS-VAR</td>
<td>Chronic toxicity test, screen, SW-sea anemian</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-CS-MPS</td>
<td>Chronic toxicity test, screen, SW-Medusa fish</td>
<td>$1,600.00</td>
</tr>
<tr>
<td>BSY-CS-MMU</td>
<td>Chronic toxicity test, screen, SW-coot clam</td>
<td>$1,660.00</td>
</tr>
<tr>
<td>BSY-CS-MMY</td>
<td>Chronic toxicity test, screen, SW-mud shrimp</td>
<td>$1,120.00</td>
</tr>
<tr>
<td>AA-AGP</td>
<td>Determines potential for algal growth</td>
<td>$200.00</td>
</tr>
<tr>
<td>AA-AQ/G-F</td>
<td>Determines potential for algal growth, speciess</td>
<td>$200.00</td>
</tr>
<tr>
<td>AA-ALM-NTF</td>
<td>Determines nutrient(s) limiting algal growth</td>
<td>$480.00</td>
</tr>
<tr>
<td>AA-ALM-NTF</td>
<td>Determines nutrient(s) limiting algal growth</td>
<td>$480.00</td>
</tr>
</tbody>
</table>

### Sediment Bioassay

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSY-AD-FCF</td>
<td>Acute Definitive Toxicity Test w/Sediment Free Water and the Water flea</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-CFD</td>
<td>Acute Definitive Toxicity Test w/Sediment Eluates and the Water flea</td>
<td>$860.00</td>
</tr>
<tr>
<td>BSY-AD-WDC</td>
<td>Acute Definitive Toxicity Test w/Whole Sediment and the Water flea</td>
<td>$840.00</td>
</tr>
<tr>
<td>BSY-AD-EFF</td>
<td>Acute Definitive Toxicity Test w/Sediment Eluates and Freshwater Fish Species</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-WFF</td>
<td>Acute Definitive Toxicity Test w/Whole Sediment and Freshwater Fish Species</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-EMF</td>
<td>Acute Definitive Toxicity Test w/Sediment Eluates and Marine Fish Species</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-WMF</td>
<td>Acute Definitive Toxicity Test w/Whole Sediment Eluates and Marine Fish Species</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-PMY</td>
<td>Acute Definitive Toxicity Test w/Sediment Pure Water and Mysid Shrimp</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-ERF</td>
<td>Acute Definitive Toxicity Test w/Sediment Eluates and Mysid Shrimp</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AD-WMY</td>
<td>Acute Definitive Toxicity Test w/Whole Sediment and Mysid Shrimp</td>
<td>$800.00</td>
</tr>
<tr>
<td>BSY-AS-PCF</td>
<td>Acute Screening Toxicity Test w/Sediment Pure Water and the Water flea</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-UCF</td>
<td>Acute Screening Toxicity Test w/Sediment Eluates and the Water flea</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-WCD</td>
<td>Acute Screening Toxicity Test w/Whole Sediment and the Water flea</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-EFF</td>
<td>Acute Screening Toxicity Test w/Sediment Eluates and Freshwater Fish Species</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-WFF</td>
<td>Acute Screening Toxicity Test w/Whole Sediment and Freshwater Fish Species</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-EMF</td>
<td>Acute Screening Toxicity Test w/Sediment Eluates and Marine Fish Species</td>
<td>$620.00</td>
</tr>
</tbody>
</table>

Guidelines for Characterizing Wastewater Violations
<table>
<thead>
<tr>
<th>Method Code</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSY-AS-WMF</td>
<td>Acute Screening Toxicity Test w/Whole Sediment and Marine Fish Species</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-PHY</td>
<td>Acute Screening Toxicity Test w/Sediment Pore Water and Mysis Shrimp</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-EMY</td>
<td>Acute Screening Toxicity Test w/Sediment Elutriate and Mysis Shrimp</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-AS-WMY</td>
<td>Acute Screening Toxicity Test w/Whole Sediment and Mysis Shrimp</td>
<td>$620.00</td>
</tr>
<tr>
<td>BSY-CD-NCD</td>
<td>Chronic Definitive Toxicity Test w/Sediment Pore Water and the Water Flora</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>BSY-CD-ECD</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and the Water Flora</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>BSY-CD-EFF</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and Freshwater Fish Species</td>
<td>$1,720.00</td>
</tr>
<tr>
<td>BSY-CD-PAR</td>
<td>Chronic Definitive Toxicity Test w/Sediment Pore Water and Sea Urchin Gametes</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-EAR</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and Sea Urchin Gametes</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-EMF</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and Marine Fish Species</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-PMU</td>
<td>Chronic Definitive Toxicity Test w/Sediment Pore Water and Coot Clam Embryos</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-EMU</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and Coot Clam Embryos</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-AMY</td>
<td>Chronic Definitive Toxicity Test w/Sediment Elutriate and Mysis Shrimp</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-PICD</td>
<td>Chronic Screening Toxicity Test w/Sediment Pore Water and the Water Flora</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-EC</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and the Water Flora</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-EFF</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and Freshwater Fish Species</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>BSY-CD-PAR</td>
<td>Chronic Screening Toxicity Test w/Sediment Pore Water and Sea Urchin Gametes</td>
<td>$700.00</td>
</tr>
<tr>
<td>BSY-CD-EAR</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and Sea Urchin Gametes</td>
<td>$700.00</td>
</tr>
<tr>
<td>BSY-CD-EMF</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and Marine Fish Species</td>
<td>$700.00</td>
</tr>
<tr>
<td>BSY-CD-PMU</td>
<td>Chronic Screening Toxicity Test w/Sediment Pore Water and Coot Clam Embryos</td>
<td>$700.00</td>
</tr>
<tr>
<td>BSY-CD-EMU</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and Coot Clam Embryos</td>
<td>$700.00</td>
</tr>
<tr>
<td>BSY-CD-AMY</td>
<td>Chronic Screening Toxicity Test w/Sediment Elutriate and Mysis Shrimp</td>
<td>$700.00</td>
</tr>
</tbody>
</table>

**W-CHLORINE**

- Analysis of Total Chlorine in Liquid Materials

---

**Bench Biology - Chi, BOD, Micro. & Sediments**

- **CHL-PTN-P**: Periphyton chlorophyll-a and phaeopigments - $70.00
- **CHL-EVUL-P**: Evolved periphyton chlorophyll-a and phaeopigments - $70.00
- **CHL-PTN-W**: Phytoplankton chlorophyll-a and phaeopigments - $60.00
- **CHL-EVUL-W**: Evolved phytoplankton chlorophyll-a and phaeopigments - $60.00
- **SDMN-T-AFPW**: Perchlorate organisms in sediment
- **SED-PSZ**: Measurement of sediment particle-size proportions
- **SED-PSZ-LS**: Laser measurement of sediment particle-size
- **BOD-NH3**: 5-day BOD, nitrogen-nitriified (C=N02BOD) - $90.00
- **BOD-UNN**: 5-day BOD, NIT nitrogen-nitriified - $90.00

*Guidelines for Characterizing Wastewater Violations*
| BODLIT-INDIB | Five N-oxidized BODs of different duration | $220.00 |
| BODLIT-MF | Free NO2-N-oxidized BODs of different durations | $590.00 |
| FCOILL-MF | Escherichia coli by membrane filter method | $40.00 |
| ENTEROC-MF | Enterococci by membrane filter method | $50.00 |
| FCOLL-MF | Fecal coliforms by membrane filter method | $40.00 |
| FCOLL-MNP | Fecal coliforms by multiple tube method | $50.00 |
| FSTREP-MF | Fecal streptococci by membrane filter method | $40.00 |
| KMUSHS-MF | Kloubetsia by membrane filter method | $50.00 |
| PLATE-COUNT | Standard hemocytomic plate count | $20.00 |
| TCOILL-DWPA | HRS drinking water test, 30 kr holding time, F/A | $20.00 |
| TCOILL-DW | HRS drinking water test, 30 hr holding time | $30.00 |
| TCOILL-MF | Total coliforms by membrane filter method | $40.00 |
| TCOILL-MPN | Total coliforms by multiple tube method | $50.00 |
| WATER-SUST | Test DI water for microbiology QA standards | $800.00 |

Average analytical costs for generic permits or monitoring wells are itemized below and can be used in place of specific costs for the economic benefit calculation.

### Generic Permits

<table>
<thead>
<tr>
<th>Analysis/Service</th>
<th>EPA Reference</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor, travel time, per diem, sample equipment etc.</td>
<td>N/A</td>
<td>$100.00</td>
</tr>
<tr>
<td>Volatile Organics</td>
<td>624 or 8260</td>
<td>$236.00</td>
</tr>
<tr>
<td>Total Recoverable Metals</td>
<td>200/73/200.8</td>
<td>$30.00</td>
</tr>
<tr>
<td>pH</td>
<td>150.1</td>
<td>$13.20</td>
</tr>
<tr>
<td>Screening acute toxicity test, FW—water flea</td>
<td>BSX-AS-FCD</td>
<td>$590.00</td>
</tr>
<tr>
<td>Screening acute toxicity test, FW—freshwater fish</td>
<td>BSX-AS-FFS</td>
<td>$550.00</td>
</tr>
<tr>
<td>Specific Cost Totals</td>
<td>Per Unit</td>
<td>$1,840.00</td>
</tr>
<tr>
<td>Estimated Average costs to be used in EB calculations</td>
<td></td>
<td>$1,840.00</td>
</tr>
</tbody>
</table>

*Add $1.00 per rpgal for discharges to marine waters—cost difference for toxicity testing*

### Monitoring Wells

<table>
<thead>
<tr>
<th>Analysis/Service</th>
<th>EPA Reference</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor, travel time, per diem, sample equipment etc.</td>
<td>Scientist staff</td>
<td>$150.00</td>
</tr>
<tr>
<td>Fecal coliforms by membrane filter method</td>
<td>FCOILL-MF</td>
<td>$40.00</td>
</tr>
<tr>
<td>Total Recoverable Metals</td>
<td>200/73/200.8</td>
<td>$30.00</td>
</tr>
<tr>
<td>pH</td>
<td>150.1</td>
<td>$13.20</td>
</tr>
<tr>
<td>Nitrate</td>
<td>351.2</td>
<td>$31.20</td>
</tr>
<tr>
<td>Nitrite</td>
<td>351.1</td>
<td>$31.20</td>
</tr>
<tr>
<td>Salinity</td>
<td>351.1</td>
<td>$31.20</td>
</tr>
<tr>
<td>Filterable (TDS)</td>
<td>Per Monitoring Well</td>
<td>$437.45</td>
</tr>
</tbody>
</table>

Guidelines for Characterizing Wastewater Violations

*Page 602 of 67*
Average analytical costs for domestic wastewater facilities with a designed capacity of 0.1 MGD or less are itemized below and can be used in place of specific costs for the economic benefit calculation.

<table>
<thead>
<tr>
<th>Analysis/Service</th>
<th>EPA Method Reference</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor, travel time, per diem, sample equipment etc.</td>
<td>Scientist staff</td>
<td>$100.00</td>
</tr>
<tr>
<td>Chemical Oxygen Demand</td>
<td>410.4</td>
<td>$22.00</td>
</tr>
<tr>
<td>Filterable (TSS)</td>
<td>160.1</td>
<td>$10.00</td>
</tr>
<tr>
<td>pH</td>
<td>150.1</td>
<td>$13.20</td>
</tr>
<tr>
<td>FCOLI-MF by membrane filter method</td>
<td></td>
<td>$40.00</td>
</tr>
<tr>
<td>Special costs to be used in EB calculations</td>
<td>Per Outfall</td>
<td>$295.00</td>
</tr>
</tbody>
</table>

** Estimated Average costs to be used in EB calculations $200.00 **
DEP Guidelines for Characterizing Environmental Resource Violations
(Wetlands – November 2001)
GUIDELINES
FOR
CHARACTERIZING
ENVIRONMENTAL RESOURCES
VIOLATIONS
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11/01
GENERAL ENVIRONMENTAL RESOURCE/WETLAND RESOURCE
PROGRAM PENALTY GUIDELINES

These guidelines are intended to provide a rational, fair, and consistent method for determining the appropriate amount of civil penalties the Department should seek from responsible parties in settling State Lands & Environmental Resource/Wetland Resource Management (SLERP/WRM) enforcement actions. This document should be used as a guideline for settling both administrative and judicial actions brought against persons or entities violating Department statutes or rules. These guidelines are not applicable for assessing damages to natural resources.

Currently, the Department has no administrative penalty authority authorized for ERP violations. Consequently, the Department cannot assess penalties as part of a Notice of Violation (NOV) for ERP regulatory violations. A NOV should never refer to these guidelines or otherwise request penalties in the document. However, the Department can obtain penalties through a Consent Order as part of the settlement of an administrative proceeding. If a settlement cannot be reached, the Department can institute a court proceeding requesting a circuit court judge to impose penalties. The court has the authority to assess penalties of up to $10,000 per day per violation pursuant to Sections 253.04, 373.129 and 403.141, F.S. In determining whether a case should be settled or proceed through a judicial remedy, the Department considers various factors such as the cost of the remedial measures that must be undertaken, whether the enforcement action will result in the elimination of any economic benefit gained by the violator as a result of the violation, and whether the enforcement action will provide a financial disincentive to discourage future violations. At the same time, the settlement guideline should not be used to try to obtain more penalties is a settlement than could be obtained as civil penalties in a court action. It must be recognized that in some cases the costs to the Department are not worth the effort necessary to recover the penalty.

In summary, the basic purpose of this document is to provide guidance concerning when settlement may be appropriate in lieu of judicial litigation to seek penalties for the SLERP/WRM program. This document is intended to supplement, not supplant, the Department's Settlement Guidelines for Civil Penalties, which applies generally to all DEP program areas. If situations arise where these guidelines appear to conflict with the DEP Settlement Guidelines for Civil Penalties, the Department's Guidelines should take precedence. However, the details should first be discussed with the SLERP/WRM enforcement attorney in the Office of General Counsel. The basis for determining the appropriate amount for a penalty is to use the Penalty Matrix, which weighs the Potential for Environmental Harm against the Extent of Deviation from a statutory or regulatory requirement. It is strongly recommended that penalty calculations be determined or
reviewed by a committee. Initial calculations should be started at the top of each cell of the penalty matrix and mitigating factors taken into account. For a more complete discussion of the Matrix refer to the Settlement Guidelines for Civil Penalties in the Department’s Compliance and Enforcement Manual located on our webpage at:

http://www.dep.state.fl.us/legal/legaldocuments/esfmanual/esfolist.htm

General penalty assessment guidance is as follows:

1. A penalty should not be sought for an Environmental Resource ERP/WRM violation (excluding mangrove cases) if ALL of the below listed limitations are met:

A. Less than 1/10 acre of wetlands affected by the violation;
B. The violation is characterized as minor/minor using these guidelines;
C. Violation is corrected within 30 days of notice from the Department, or does not require correction;
D. There is no permanent damage to significant resources;
E. It was not a deliberate violation;
F. The responsible party did not have a history of non-compliance;
G. The violation does not involve work conducted while a permit application is being processed by the Department.

2. Multi-day penalties should be sought for activities which occur on more than one day if any one or more of the following occur:

A. The violation is deliberate or continues after written notice of the violation by the Department without reasonable efforts made by the responsible party to correct the violation;
B. Additional days of violation result in economic benefit to the responsible party;
C. A violation involves more than one acre of dredging and/or filling;
D. There are documented turbidity violations;
E. If any violation involves special waters (OFW, Aquatic Preserve, Class II approved or conditionally approved water bodies).
VIOLATIONS INVOLVING DREDGING OR FILLING IN WETLANDS WITHOUT A PERMIT

The four categories below are evaluated and assigned points as indicated. The points are totaled and used to determine the severity of the violation as major, moderate or minor potential for harm.

Potential for Harm:

I. **Total Area of Dredging and Filling:**

**FOR ISOLATED WETLANDS**

\[ \leq \frac{1}{10} \text{ OF AN ACRE (4,356 SQ. FT.)} \]

\( (\text{NGP 62.341, 475 allows up to 4,000 sq. ft.}) \]

\[ >\frac{1}{10} \text{ of an acre and } \leq \frac{1}{4} \text{ acre (10, 890 sq. ft.)} \]

\[ 2 \]

**FOR CONTIGUOUS WETLANDS**

\[ \leq \frac{1}{20} \text{ OF AN ACRE (2,178 SQ. FT.)} \]

\[ >\frac{1}{20} \text{ of an acre and } \leq \frac{1}{4} \text{ acre (10, 890 sq ft)} \]

\[ 2 \]

**FOR ALL WETLANDS**

\[ >\frac{1}{4} \text{ of an acre and } <\frac{1}{2} \text{ acre (21,780 sq. ft.)} \]

\[ 4 \]

\[ >\frac{1}{2} \text{ of an acre and } \leq 1 \text{ acre (43,560 sq. ft.)} \]

\[ 5 \]

\[ >1 \text{acre} = 5 \text{ plus 5 points per additional acre} \]

<table>
<thead>
<tr>
<th>Area</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
II. Waterbody (in or adjacent to):

Class III 1
Class II, not approved 2
Class II, approved/conditionally approved 3
Class I 6

Outstanding Florida Water, Aquatic Preserve,
or areas of special protection designation
(buffer preserves, RPZ (Resource protection zone), etc.) 6

Waterbody - Total __________

III. Permanency:

"Restored" as used here shall mean: Fill removed/replaced, proper hydrology achieved and planting completed. "Recover" as used here shall mean restoration to pre-impact conditions. If different areas of impact require varying lengths of time to restore or if some areas are to remain permanently impacted, points are multiplied by percentage of total impact area for each category then added to obtain a total score for permanency of impact.

Decimal Fraction of Area Impacted

IMPACTED AREA CAN BE RESTORED AND RECOVER 1 X _____ = _____
within 1 growing season

Impacted area can be restored and recover 2 x _____ = _____
within 3-5 years

Impacted area can be restored and recover 3 x _____ = _____
IN 5-10 YEARS

Area to remain permanently impacted 4 x _____ = _____
or >10 years recovery

Permanency - Total ______________

4
IV. Habitat quality:

Areas impacted by unauthorized activities in violation of a department rule, order or permit adopted or issued pursuant to chapter 373, F.S. or part VII, chapter 403, F.S. will be evaluated as if the unauthorized activity had not occurred.

If wetlands of differing quality within the violation site were impacted, points are multiplied by percentage of total impact area for each category of quality then added to obtain a total score for condition. If the total impact area is of one quality type, then multiply times 1.

<table>
<thead>
<tr>
<th>Quality</th>
<th>Decimal Fraction of area impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>A wetland system with greater than 50% exotic or nuisance vegetation and/or moderate to major hydrological or other physical alterations that affect the system</td>
</tr>
<tr>
<td></td>
<td>$1 \times \frac{_}{_} = \frac{_}{_}$</td>
</tr>
<tr>
<td>Moderate</td>
<td>A wetland system with a 6% to 50% exotic or nuisance vegetation and/or with minor hydrological or other physical alterations that affect the system</td>
</tr>
<tr>
<td></td>
<td>$3 \times \frac{_}{_} = \frac{_}{_}$</td>
</tr>
<tr>
<td>High</td>
<td>A wetland system with 5% or less exotic or nuisance vegetation and/or hydrological or other physical alterations that affect the system</td>
</tr>
<tr>
<td></td>
<td>$5 \times \frac{_}{_} = \frac{_}{_}$</td>
</tr>
</tbody>
</table>

Quality - Total

Potential For Harm

<table>
<thead>
<tr>
<th>MAJOR:</th>
<th>15 OR GREATER</th>
</tr>
</thead>
<tbody>
<tr>
<td>MODERATE:</td>
<td>9 - 14</td>
</tr>
<tr>
<td>MINOR:</td>
<td>1 - 8</td>
</tr>
</tbody>
</table>

Grand Total

5
Extent of Deviation:
Mitigation is not to be considered a modification. If the violation requires mitigation to offset the impacts, then it is considered a major extent of deviation.

MAJOR:
1. ACTIVITY IS NOT PERMITTABLE EVEN WITH MODIFICATIONS.
2. DREDGING OR FILLING WITHIN A CONSERVATION EASEMENT

MODERATE:
1. ACTIVITY IS PERMITTABLE ONLY WITH MODIFICATIONS. (THIS MAY INCLUDE MODIFICATIONS SUCH AS RELOCATING FILL AND/OR INSTALLING CULVERTS)

MINOR:
1. ACTIVITY IS PERMITTABLE WITHOUT MODIFICATIONS.
CONSTRUCTION OF DOCKS WITHOUT A PERMIT

POTENTIAL FOR HARM:

MAJOR:
1. IN OR ADJACENT TO CLASS I, II, III SURFACE WATERS, OFW, OR AQUATIC PRESERVES WITH POTENTIAL OR ACTUAL PERMANENT DAMAGE TO SUBMERGED RESOURCES.

2. CONSTRUCTION OF 10 OR MORE BOAT SLIPS.

3. POTENTIAL TO ADVERSELY IMPACT PROTECTED SPECIES (I.E. MANATEES, SEA TURTLES, ETC.).

MODERATE:
1. IN OR ADJACENT TO CLASS I, II, III SURFACE WATERS, OFW, OR AQUATIC PRESERVES WITH POTENTIAL OR ACTUAL TEMPORARY DAMAGE TO SUBMERGED RESOURCES.

2. CONSTRUCTION OF 3-9 BOAT SLIPS.

MINOR:
1. IN OR ADJACENT TO CLASS I, II, III, IV OR Y SURFACE WATERS WITH DEMINIMUS OR NO DAMAGE TO SUBMERGED RESOURCES.

EXTENT OF DEVIATION:

MAJOR:
1. ACTIVITY IS NOT PERMISSIBLE EVEN WITH MODIFICATIONS.

MODERATE:
1. ACTIVITY IS PERMISSIBLE ONLY WITH MODIFICATIONS.

MINOR:
1. ACTIVITY IS PERMISSIBLE WITHOUT MODIFICATIONS.
PERMIT VIOLATIONS INVOLVING DREDGING, FILLING, OR CONSTRUCTION OR FAILURE TO DO REQUIRED WORK OTHER THAN MITIGATION

These guidelines may be used in conjunction with other more specific guidelines, and are not intended to supersede any other guidelines.

Potential for Harm:
No major or moderate categories

MINOR: FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS, DRAWINGS, OR OTHER PERMIT ATTACHMENTS, INCLUDING BMP’S, CONSTRUCTION METHODS, TIME LINE OR ADMINISTRATIVE REQUIREMENTS.

Extent of Deviation:

MAJOR: FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS, DRAWINGS OR PERMIT ATTACHMENTS THAT RESULT IN PERMANENT LOSS OR IMPACT TO WETLANDS OR SUBMERGED RESOURCES, OR WATER QUALITY VIOLATION.

MODERATE: FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS, DRAWINGS OR PERMIT ATTACHMENTS THAT RESULT IN TEMPORARY LOSS OR IMPACT TO WETLANDS OR SUBMERGED RESOURCES.

MINOR: FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS, DRAWINGS OR PERMIT ATTACHMENTS THAT RESULT IN NG LOSS OR IMPACT TO WETLANDS OR SUBMERGED RESOURCES.
PERMIT VIOLATIONS INVOLVING THE FAILURE TO DO
MITIGATION OR OTHER REQUIRED WORK

Potential for Harm:

MAJOR:
1.FAILURE TO PERFORM CREATION OR ENHANCEMENT OF REQUIRED MITIGATION OR PLACEMENT OF REQUIRED RIPRAP GREATER THAN ONE (1) ACRE

2. FAILURE TO COMPLY WITH PERMIT CONDITIONS (INCLUDING BMPS) THAT RESULT IN WATER QUALITY VIOLATIONS IN OFW’S, CLASS I, CLASS II WATERS, AQUATIC PRESERVES, AND SWIM WATER BODIES WITH APPROVED PLANS.

MODERATE:
1. FAILURE TO PERFORM CREATION OR ENHANCEMENT OF REQUIRED MITIGATION OR PLACEMENT OF REQUIRED RIPRAP OF ONE (1) ACRE OR LESS

2. FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS INCLUDING BMPS THAT RESULT IN WATER QUALITY VIOLATIONS IN CLASS III WATERS

3. FAILURE TO USE REQUIRED BEST MANAGEMENT PRACTICES (BMP’S) RESULTING IN IMPACTS TO CLASS III SURFACE WATERS.

MINOR:
1. FAILURE TO PERFORM MAINTENANCE PURSUANT TO MITIGATION REQUIREMENTS.

2. FAILURE TO COMPLY WITH GENERAL OR SPECIFIC CONDITIONS OR FAILURE TO USE REQUIRED TURBIDITY SCREENS OR OTHER BMPS IN OR ADJACENT TO CLASS III, IV AND V WATERS.
EXTENT OF DEVIATION:

MAJOR:

COMPLETION OF ONLY 50% OR LESS OF REQUIRED MITIGATION.

MODERATE:

1. COMPLETION OF ONLY 50% OR LESS OF THE REQUIRED RIPRAP.

2. FAILURE TO USE REQUIRED TURBIDITY SCREENS OR OTHER BMPS IN A FUNCTIONING MANNER TO PREVENT EROSION AND/OR WATER QUALITY VIOLATIONS.

3. COMPLETION OF MORE THAN 50% BUT LESS THAN 90% OF REQUIRED MITIGATION.

4. FAILURE TO IMPLEMENT AN APPROVED ALTERNATIVE MITIGATION PLAN WITHIN 90 DAYS OF THE TIME FRAME SET FORTH IN THE PLAN

MINOR:

1. COMPLETION OF 90% BUT LESS THAN 100% OF REQUIRED MITIGATION.

2. COMPLETION OF MORE THAN 50% BUT LESS THAN 100% OF REQUIRED RIPRAP.
VIOLATIONS OF WATER QUALITY STANDARDS ASSOCIATED WITH DREDGING AND FILLING ACTIVITIES

POTENTIAL FOR HARM:

MAJOR:

1. ALL VIOLATIONS OF WATER QUALITY STANDARDS OCCURRING IN CLASS I WATERS, CLASS II WATERS THAT ARE APPROVED OR CONDITIONALLY APPROVED FOR SHELLFISH HARVESTING, OFWS AND AQUATIC PRESERVES.

2. WATER QUALITY VIOLATIONS IN CLASS III SURFACE WATERS THAT IMPACT AN AREA THAT EXCEEDS ¾ MILE (1320 LINEAR FEET) IN CREEKS, CANALS AND OTHER CONFINED WATERWAYS OR ¾ ACRE (10,890 SQUARE FEET) IN ALL OTHER WATERBODIES.

3. TURBIDITY VIOLATIONS THAT RESULT IN SILTING THAT ADVERSELY IMPACTS ADJACENT OR DOWNSTREAM SUBMERGED RESOURCES OR CREATES SANDBARS.

MODERATE:

1. VIOLATIONS OF WATER QUALITY STANDARDS IN CLASS III WATERS OTHER THAN AQUATIC PRESERVES AND OFWS, AND CLASS II WATERS NOT APPROVED FOR SHELLFISH HARVESTING AND THE WATER QUALITY VIOLATIONS IMPACT AN AREA LESS THAN ¾ MILE IN CREEKS, CANALS AND OTHER CONFINED WATERWAYS OR BETWEEN 2,000 AND 10,889 SQUARE FEET IN ALL OTHER WATERBODIES.

2. TURBIDITY VIOLATIONS THAT MAY POTENTIALLY RESULT IN SILTING THAT CAN ADVERSELY IMPACT ADJACENT OR DOWNSTREAM SUBMERGED RESOURCES OR CREATE SANDBARS.

MINOR:

1. VIOLATIONS OF WATER QUALITY STANDARDS IN CLASS IV OR CLASS V WATERS.

2. WATER QUALITY VIOLATIONS IN CLASS III OTHER THAN AQUATIC PRESERVES AND OFWS, AND CLASS II WATERS NOT APPROVED FOR SHELLFISH HARVESTING THAT IMPACT AN AREA LESS THAN 2,000 SQUARE FEET IN UNCONFINED WATERS.

EXTENT OF DEVIATION:
MAJOR:
1. VIOLATIONS OF THE TURBIDITY STANDARD GREATER THAN 200 NTU IN ANY WATERBODY.
2. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING 25% OF STANDARDS THAT OCCUR IN OR ADJACENT TO CLASS III WATERBODIES.

MODERATE:
1. VIOLATIONS OF THE TURBIDITY STANDARD BETWEEN 50 AND 200 N.T.U.S.
2. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING BETWEEN 5% AND 25% OF STANDARDS THAT OCCUR IN CLASS III WATERBODIES.

MINOR:
1. VIOLATIONS OF THE TURBIDITY STANDARD LESS THAN 50 N.T.U.S ABOVE BACKGROUND.
2. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING LESS THAN 5% OF THE STANDARD THAT OCCURS IN OR ADJACENT TO CLASS III WATERBODIES.

TESTING, REPORTING OR RECORD KEEPING VIOLATIONS
POTENTIAL FOR HARM:

Major
1. Submission of fraudulent data or information that conceals a violation.

Moderate:
1. All testing violations.
2. Failure to report analytical data requirements.
3. Submission of fraudulent analytical data that does not conceal a violation.

Minor:
1. All non-data reporting or record keeping violations.
2. Submission of fraudulent non-analytical data or information.

EXTENT OF DEVIATION:

Major:
1. Failure to perform testing, reporting or submission required by permit or rule.
2. Notice of abnormal occurrences or system failures potentially resulting in reduced water quality not being reported when required by permit or rule.
3. Submission of fraudulent data or information.

Moderate:
1. Reporting or record keeping requirements are only complied with after one request by the department.
2. Required reports are submitted more than 60 days late.

Minor:
1. Required reports are submitted less than 60 days late.

Mangrove Violations
POTENTIAL FOR HARM:

I. PER-CENT (%) ALTERATION OF THE TRIMMED AREA (CX IF MANGROVE MORTALITY, CHEMICAL DEFOLEATION, REMOVAL AND/OR FILLING OVER TRUNKS)

1. 5% - 25
2. 26% - 30%
3. 50% - 100%

SUBTOTAL

II. SIZE OF TRIMMED AREA

1. LESS THAN 500 SQ.FT.
2. 500 SQ.FT. - 1000 SQ.FT
3. 1000 SQ.FT. - 2999 SQ.FT.
4. 2000 SQ.FT. - 4999 SQ.FT.
5. OVER 5000 SQ.FT.

SUBTOTAL

III. AVERAGE SIZE OF TREE TRIMMED

1. LESS THAN 1 INCH BASE TRUNK DIAMETER
2. 1" - 3" BASE TRUNK DIAMETER
3. 3" - 5" BASE TRUNK DIAMETER
4. 5" - 7" BASE TRUNK DIAMETER
5. GREATER THAN 7" BASE TRUNK DIAMETER

SUBTOTAL

IV. TYPE OF MANGROVE AFFECTED (MAJORITY)

1. WHITE
2. BLACK
3. RED

SUBTOTAL

14
V. MANGROVE FRINGE DEPTH

1. LESS THAN 25 FEET 1
2. 26 FEET TO 50 FEET 2
3. 51 FEET TO 100 FEET 3
4. 101 FEET TO 250 FEET 4
5. OVER 250 FEET 5

SUBTOTAL _____

TOTAL (1 - \( V \)) = _____

DIVIDE TOTAL BY THE NUMBER OF AREAS USED (1 - \( V \)) = _____

MAJOR 4.1 - 5.0
MODERATE 2.1 - 4.0
MINOR 1.0 - 2.0

EXTENT OF DEVIATION:

MAJOR:
1. ACTIVITY NOT ALLOWED IN CONSERVATION EASEMENT OR MITIGATION AREA.
2. INDIVIDUAL PERMIT REQUIRED.

MODERATE
1. ACTIVITY REQUIRED A PROFESSIONAL MANGROVE TRIMMER.
2. GENERAL PERMIT REQUIRED.
3. ACTIVITY OCCURRED ON LANDS NOT OWNED OR CONTROLLED BY PERSON (EXCLUDING CONSERVATION EASEMENT OR MITIGATION AREAS).

MINOR
1. ACTIVITY FITS WITHIN GENERAL PERMIT CRITERIA.
2. ACTIVITY FITS WITHIN EXEMPTION CRITERIA (EXCLUDING DEPOLIATION ASPECTS OF THE RULE).

NOTE: For repeat mangrove violations, contact OGC
SHORELINE HARDENING STRUCTURES WITHOUT A PERMIT

Impact area means the total area of wetlands or surface water affected by placement of the shoreline hardening structure.

Potential for Harm:

MAJOR:

1. IMPACT AREA OF 500 SQ. FT. OR MORE IN OR ADJACENT TO CLASS I, II WATERS WHICH ARE APPROVED OR CONDITIONALLY APPROVED FOR SHELLED FISH HARVESTING, AND ALL OF W, AQUATIC PRESERVES, AND SWIM PRIORITY WATERBODIES WITH APPROVED PLAN.

2. >1000 SQUARE FEET IMPACT AREA IN CLASS II NOT APPROVED, III, IV, & V WATERS.

3. DEVIATION FROM THE CONTINUOUS CONSTRUCTION LINE OF 10 FT. OR GREATER, WATERWARD OR LANDWARD.

4. STRUCTURE CONSISTS OF >50% DELETERIOUS MATERIAL SUCH AS BUT NOT LIMITED TO ASPHALT, REBAR, ROOFING TILES, CREOSOTE PILING, ETC.

5. RECOVERY TIME OF IMPACTED SYSTEM EXPECTED TO EXCEED THREE YEARS.

MODERATE:

1. LESS THAN 500 SQ. FT. IMPACT IN CLASS I, II APPROVED, OFW, AQUATIC PRESERVES, AND SWIM WATERBODIES WITH APPROVED PLAN.

2. 200 TO 1000 SQ. FT. IMPACT IN CLASS II NOT APPROVED, III, IV, AND V WATERS.

3. DEVIATION FROM THE CONTINUOUS CONSTRUCTION LINE LESS THAN 10 FT., WATERWARD OR LANDWARD.

4. STRUCTURE CONSISTS OF 10 - 50% DELETERIOUS MATERIAL SUCH AS BUT NOT LIMITED TO ASPHALT, REBAR, ROOFING TILES, CREOSOTE PILING, ETC.
MINOR:
1. \( \leq 200 \text{ SQ. FT. IMPACT IN CLASS II NOT APPROVED, III, IV AND V WATERS.} \)

2. PLACEMENT OR REPLACEMENT OF SEAWALL, WITHOUT RIPRAP IN ESTUARIES OR LAGOONS WHERE OTHER SEAWALLS ARE PRESENT.

3. STRUCTURE CONSISTS OF \(<10\%\) DELETERIOUS MATERIAL SUCH AS BUT NOT LIMITED TO ASPHALT, REBAR, ROOFING TILES, CREOSOTE PILINGS, ETC..

**EXTENT OF DEVIATION:**

MAJOR:
1. REMOVAL OF SHORELINE HARDENING STRUCTURE REQUIRED.

MODERATE:
1. MODIFICATION OF STRUCTURE REQUIRED. (I.E.: ANGLING ENDS TO MEET CONTINUOUS CONSTRUCTION LINE).

2. REMOVAL OF DELETERIOUS MATERIAL REQUIRED.

3. PLACEMENT OF STRUCTURE SUITABLE, BUT MINOR IMPROVEMENTS REQUIRED FOR ISSUANCE. (I.E.: PLANTINGS IN TOE, NO FILTER FABRIC, ETC.)

MINOR:
1. PERMISSIBLE AS PLACED WITHOUT MODIFICATION.
STORMWATER VIOLATIONS
FACILITIES UNDER CONSTRUCTION OR CONSTRUCTED WITHOUT A PERMIT

POTENTIAL FOR HARM:

MAJOR:
1. FAILURE OF A STORMWATER MANAGEMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN OVER 10,000 FT² OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS, OR ANY IMPACT INTO AN OUTSTANDING FLORIDA WATER (OFW), CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS.

2. CONSTRUCTION THAT RESULTS IN A DISCHARGE OF STORMWATER FROM A SITE GREATER THAN ONE (1) ACRE OF TOTAL AREA OR GREATER THAN 0.5 ACRE OF IMPERVIOUS AREA WITHOUT A STORMWATER MANAGEMENT SYSTEM.

MODERATE:
1. FAILURE OF A STORMWATER MANAGEMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN 2,000 TO 10,000 FT² OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS (OTHER THAN AN OFW, CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS).

2. CONSTRUCTION THAT RESULTS IN A DISCHARGE OF STORMWATER FROM A SITE LESS THAN ONE (1) ACRE OF TOTAL AREA OR LESS THAN 0.5 ACRE OF IMPERVIOUS AREA WITHOUT A STORMWATER MANAGEMENT SYSTEM.

3. CONSTRUCTION OF A NEW STORMWATER MANAGEMENT SYSTEM FOR A SITE GREATER THAN ONE (1) ACRE OF TOTAL AREA OR GREATER THAN 0.5 ACRE OF IMPERVIOUS AREA.
MINOR:

1. FAILURE OF A STORMWATER MANAGEMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN LESS THAN 2,000 FT² OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS (OTHER THAN AN OFW, CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS).

2. CONSTRUCTION OF A NEW STORMWATER MANAGEMENT SYSTEM FOR A SITE LESS THAN ONE (1) ACRE OF TOTAL AREA OR LESS THAN 0.5 ACRE OF IMPERVIOUS AREA.

EXTENT OF DEVIATION:

MAJOR:

1. CONSTRUCTION THAT RESULTS IN THE DISCHARGE OF STORMWATER OR CONSTRUCTION OF A NEW STORMWATER MANAGEMENT SYSTEM WITHOUT A DEPARTMENT APPROVED PERMIT, WHICH FAILS TO QUALIFY FOR AN EXEMPTION FROM PERMIT REQUIREMENTS AND IS NOT PERMISSIBLE AS CONSTRUCTED.

2. VIOLATION OCCURS AFTER PRIOR NOTICE FROM THE DEPARTMENT.

MODERATE:

1. CONSTRUCTION THAT RESULTS IN THE DISCHARGE OF STORMWATER OR CONSTRUCTION OF A NEW STORMWATER MANAGEMENT SYSTEM WITHOUT A DEPARTMENT APPROVED PERMIT, WHICH FAILS TO QUALIFY FOR AN EXEMPTION OF PERMIT REQUIREMENTS AND IS PERMISSIBLE

2. FAILURE TO IMPLEMENT EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES (BMPS) DURING CONSTRUCTION TO RETAIN SEDIMENTS ON-SITE.

MINOR: (NO MINOR CATEGORIES)
STORMWATER VIOLATIONS
PERMITTED CONSTRUCTED FACILITIES

POTENTIAL FOR HARM:

MAJOR:

1. COMPLETE SYSTEM FAILURE THAT RESULTS IN A CATASTROPHIC OR CONTINUOUS RELEASE OF UNTREATED STORMWATER.

2. FAILURE OF A STORMWATER TREATMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN OVER 10,000 FT$^3$ OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS, OR ANY IMPACT INTO AN OUTSTANDING FLORIDA WATER (OFW), CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS.

MODERATE:

1. PARTIAL SYSTEM failure THAT RESULTS IN FREQUENT RELEASES OF INADEQUATELY TREATED STORMWATER.

2. FAILURE OF A STORMWATER TREATMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN 2,000 TO 10,000 FT$^3$ OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS (OTHER THAN AN OFW, CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS).

MINOR:

1. PARTIAL SYSTEM failure THAT RESULTS IN INFREQUENT RELEASES OF INADEQUATELY TREATED STORMWATER.

2. FAILURE OF A STORMWATER TREATMENT SYSTEM OR FAILURE TO USE EROSION OR SEDIMENTATION CONTROLS RESULTING IN LESS THAN 2,000 FT$^3$ OF IMPACT IN WATERS IN (OR OF) THE STATE OR JURISDICTIONAL WETLANDS (OTHER THAN AN OFW, CLASS I WATERS, CLASS II WATERS, AQUATIC PRESERVES OR SWIM WATER BODIES WITH APPROVED PLANS).
EXTENT OF DEVIATION:

MAJOR:

1. CONSTRUCTION WITHOUT A REQUIRED STORMWATER MANAGEMENT SYSTEM THAT RESULTS IN THE DISCHARGE OF STORMWATER.

2. MODIFICATION OF A STORMWATER MANAGEMENT SYSTEM THAT NULLIFIES THE ORIGINAL PERMITTED DESIGN WITHOUT A DEPARTMENT APPROVED PERMIT FOR THE MODIFICATION, WHICH FAILS TO QUALIFY FOR AN EXEMPTION FROM PERMIT REQUIREMENTS AND IS NOT PERMITTED AS CONSTRUCTED EVEN WITH FURTHER MODIFICATION.

MODERATE:

1. MODIFICATION OF A STORMWATER MANAGEMENT SYSTEM THAT NULLIFIES THE ORIGINAL PERMITTED DESIGN, WHICH FAILS TO QUALIFY FOR AN EXEMPTION FROM PERMIT REQUIREMENTS AND IS PERMITTED ONLY WITH FURTHER MODIFICATIONS.

2. FAILURE TO COMPLETE A STORMWATER MANAGEMENT SYSTEM IN ACCORDANCE WITH A DEPARTMENT APPROVED PERMIT PRIOR TO COMPLETION OF CONSTRUCTION OF THE POTENTIAL STORMWATER POLLUTION SOURCE.

3. FAILURE TO MEET SWALE EXEMPTION REQUIREMENTS WITHIN 30 DAYS COMPLETION OF CONSTRUCTION OF THE STORMWATER DISCHARGE FACILITY FOR A FACILITY CONSTRUCTED UNDER THE "NOTICED" OR "NO NOTICED" SWALE EXEMPTION. (APPLICABLE IN NW DISTRICT ONLY)

4. FAILURE TO MAINTAIN A STORMWATER MANAGEMENT SYSTEM.

MINOR:

MODIFICATION OF A STORMWATER MANAGEMENT SYSTEM THAT NULLIFIES THE ORIGINAL PERMITTED DESIGN, WHICH FAILS TO QUALIFY FOR AN EXEMPTION FROM PERMIT REQUIREMENTS AND IS PERMITTED WITHOUT MODIFICATIONS.
VIOLATION OF BINDING AGREEMENTS

A BINDING AGREEMENT IS A LEGAL INSTRUMENT, SUCH AS, BUT NOT LIMITED TO, A LONG-TERM AGREEMENT, AGREEMENT FOR COVENANT RUNNING WITH LAND AND CONSERVATION EASEMENT.

POTENTIAL FOR HARM:

MAJOR:
FAILURE TO EXECUTE AND RECORD A BINDING AGREEMENT AS REQUIRED BY AN ENVIRONMENTAL RESOURCE OR WETLAND RESOURCE PERMIT.

MINOR:
FAILURE TO PROVIDE A RECORDED COPY OF THE BINDING AGREEMENT TO THE DEPARTMENT WITHIN THE TIME FRAMES REQUIRED.

EXTENT OF DEVIATION:

MAJOR:
RECORDED COPY OF BINDING AGREEMENT IS NOT PROVIDED TO THE DEPARTMENT PRIOR TO EXPIRATION OF PERMIT (CONSTRUCTION PHASE FOR ERP OR ENTIRE WR PERMIT) AND THE CONSTRUCTION IS COMPLETE AS AUTHORIZED.

MODERATE:
1. RECORDED COPY OF BINDING AGREEMENT IS PROVIDED TO THE DEPARTMENT GREATER THAN 60 DAYS LATE.

2. PERMIT IS ACTIVE, CONSTRUCTION IS COMPLETE – BINDING AGREEMENT REQUIRED TO BE RECORDED PRIOR TO CONSTRUCTION.

MINOR:
1. RECORDED COPY OF BINDING AGREEMENT IS PROVIDED TO THE DEPARTMENT UP TO 60 DAYS LATE.

2. PERMIT IS ACTIVE, CONSTRUCTION HAS NOT COMMENCED – BINDING AGREEMENT REQUIRED TO BE RECORDED IN A TIME FRAME AFTER PERMIT ISSUANCE.
EPC Guidelines for Mangrove Violations
(January 26, 2007)
DEP/EPC GUIDELINES FOR MANGROVE VIOLATIONS

POTENTIAL FOR HARM:

1. PER-CENT (%) ALTERATION OF THE TRIMMED AREA (2X IF MANGROVE MORTALITY, CHEMICAL DEFOILATION, REMOVAL AND/OR FILLING OVER TRUNKS)

<table>
<thead>
<tr>
<th>Percent</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>5% - 2.5</td>
<td>1</td>
</tr>
<tr>
<td>26% - 50%</td>
<td>2</td>
</tr>
<tr>
<td>50% - 150%</td>
<td>3-5</td>
</tr>
</tbody>
</table>

SUBTOTAL

2. SIZE OF TRIMMED AREA

<table>
<thead>
<tr>
<th>Size</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500 sq. ft.</td>
<td>1</td>
</tr>
<tr>
<td>500 sq. ft. - 1000 sq. ft.</td>
<td>2</td>
</tr>
<tr>
<td>1000 sq. ft. - 2999 sq. ft.</td>
<td>3</td>
</tr>
<tr>
<td>3000 sq. ft. - 4999 sq. ft.</td>
<td>4</td>
</tr>
<tr>
<td>Over 5000 sq. ft.</td>
<td>5</td>
</tr>
</tbody>
</table>

SUBTOTAL

3. AVERAGE SIZE OF TREE TRIMMED/ALTERED

<table>
<thead>
<tr>
<th>Diameter Size</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 inch base trunk diameter</td>
<td>1</td>
</tr>
<tr>
<td>1&quot; - 3&quot; base trunk diameter</td>
<td>2</td>
</tr>
<tr>
<td>3&quot; - 5&quot; base trunk diameter</td>
<td>3</td>
</tr>
<tr>
<td>5&quot; - 7&quot; base trunk diameter</td>
<td>4</td>
</tr>
<tr>
<td>Greater than 7&quot; base trunk diameter</td>
<td>5</td>
</tr>
</tbody>
</table>

SUBTOTAL

www.epcwc.org
E-Mail epcinfo@epcwc.org
Printed on recycled paper
4. TYPE OF MANGROVE AFFECTED (MAJORITY)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>WHITE</td>
</tr>
<tr>
<td>2.</td>
<td>BLACK</td>
</tr>
<tr>
<td>3.</td>
<td>RED</td>
</tr>
</tbody>
</table>

**SUBTOTAL**

5. MANGROVE FRINGE DEPTH

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>LESS THAN 25 FEET</td>
</tr>
<tr>
<td>2.</td>
<td>26 FEET TO 50 FEET</td>
</tr>
<tr>
<td>3.</td>
<td>51 FEET TO 100 FEET</td>
</tr>
<tr>
<td>4.</td>
<td>101 FEET TO 250 FEET</td>
</tr>
<tr>
<td>5.</td>
<td>OVER 250 FEET</td>
</tr>
</tbody>
</table>

**SUBTOTAL**

TOTAL: (1-5) = 

DIVIDE TOTAL BY THE NUMBER OF AREAS USED (1-6) =

<table>
<thead>
<tr>
<th>EXTENT OF DEVIATION</th>
<th>EXAMPLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAJOR</td>
<td>4.1 - 5.0</td>
</tr>
<tr>
<td>MODERATE</td>
<td>2.2 - 4.0</td>
</tr>
<tr>
<td>MINOR</td>
<td>1.0 - 2.0</td>
</tr>
</tbody>
</table>

**EXTENT OF DEVIATION:**

1. ACTIVITY NOT ALLOWED IN CONSERVATION EASEMENT OR MITIGATION AREA.

2. INDIVIDUAL PERMIT REQUIRED.

**MODERATE:**

1. ACTIVITY REQUIRED A PROFESSIONAL MANGROVE TRIMMER.

2. GENERAL PERMIT REQUIRED.

3. ACTIVITY OCCURRED ON LANDS NOT OWNED OR CONTROLLED BY PERSON (EXCLUDING CONSERVATION EASEMENT OR MITIGATION AREAS).

**MINOR:**

1. ACTIVITY FITS WITHIN GENERAL PERMIT CRITERIA.

2. ACTIVITY FITS WITHIN EXEMPTION CRITERIA (EXCLUDING DEFOLIATION ASPECTS OF THE RULE).
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EPC WETLANDS PENALTY CALCULATIONS MATRIX

EXTENT OF DEVIATION FROM REQUIREMENTS
Section 403.121, F.S.
[Environmental Litigation Reform Act – ELRA]
(administrative penalties)
403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), it shall not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed $10,000 per assessment as calculated in accordance with subsections (3), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than $1,000 per day per violation. The department shall not impose administrative penalties in excess of $10,000 in a notice of violation. The department shall not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of violation may be hand delivered or personally
served in accordance with chapter 48. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent’s decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. No administrative penalties should be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent shall not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator’s time per case at $150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.
(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent shall be entitled to an award of attorney’s fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). No award of attorney’s fees as provided by this subsection shall exceed $15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department’s authority provided in ss. 403.121, 403.131, and 403.141, to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of $10,000 for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of $10,000. The department also retains the authority provided in ss. 403.121, 403.131, and 403.141, to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of $10,000 in penalties may be settled in the court action for less than $10,000.

(b) Chapter 120 shall apply to any administrative action taken by the department or any delegated program pursuing administrative penalties in accordance with this section.

(3) Except for violations involving hazardous waste, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(a) For a drinking water contamination violation, the department shall assess a penalty of $2,000 for a Maximum Contaminant Level (MCL) violation; plus $1,000 if the violation is for a primary organic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus $1,000 if the violation occurs at a community water system; and plus $1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent. For failure to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance, the department shall assess a penalty of $3,000.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $1,000. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $2,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $5,000.
(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of $1,000 for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus $2,900 if the dredging or filling occurs in an aquatic preserve, Outstanding Florida Water, conservation easement, or Class I or Class II surface water, plus $1,000 if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus $1,000 if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule shall not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of $3,000 for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of $2,000 for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of $5,000 per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of $5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 463.9328. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

(e) For solid waste violations, the department shall assess a penalty of $2,900 for the unpermitted or unauthorized disposal or storage of solid waste; plus $1,000 if the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is construction and demolition debris in excess of 20 cubic yards, plus $7,000 if the waste is disposed of or stored in any natural or artificial body of water or within 50 feet of a potable water well, plus $1,000 if the waste contains PCB at a concentration of 50 parts per million or greater; unencrypted biomedical waste; friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more acid batteries. The department shall assess a penalty of $3,000 for failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; failure to provide access control for three consecutive inspections. The department shall assess a penalty of $2,900 for failure to construct or maintain a required stormwater management system.

(f) For an air emission violation, the department shall assess a penalty of $1,000 for an unpermitted or unauthorized air emission or an air-emission-permit exceedance, plus $1,000 if the emission results in an air quality violation, plus $3,000 if the emission was from a major
source and the source was major for the pollutant in violation; plus $1,000 if the emission was more than 150 percent of the allowable level.

(g) For storage tank system and petroleum contamination violations, the department shall assess a penalty of $5,000 for 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; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued. The department shall assess a penalty of $3,000 for failure to timely upgrade a storage tank system. The department shall assess a penalty of $2,000 for failure to conduct or maintain required release detection; failure to timely investigate a suspected release from a storage system; depositing motor fuel into an unregistered storage tank system; failure to timely assess or remediate petroleum contamination; or failure to properly install a storage tank system. The department shall assess a penalty of $1,000 for failure to properly operate, maintain, or close a storage tank system.

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following schedule:

(a) For failure to satisfy financial responsibility requirements or for violation of s. 377.371(1), $5,000.

(b) For failure to install, maintain, or use a required pollution control system or device, $4,000.

(c) For failure to obtain a required permit before construction or modification, $3,000.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, $2,000.

(e) For 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; or failure to submit required notification to the department, $1,000.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, $300.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of $500.

(6) For each additional day during which a violation occurs, the administrative penalties in subsection (3), subsection (4), and subsection (5) may be assessed per day per violation.
(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $2,000 or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, shall not exceed $10,000.

(9) The administrative penalties assessed for any particular violation shall not exceed $5,000 against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds $5,000, or there are multiday violations. The total administrative penalties shall not exceed $10,000 per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsection (3), subsection (4), and subsection (5) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited in the Ecosystem Management and Restoration Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsection (3), subsection (4), subsection (5), subsection (6), or
subsection (7) shall not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

History.—s. 13, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-114; s. 1, ch. 70-139; s. 349; ch. 71-136; s. 112, ch. 71-355; s. 1, ch. 72-286; s. 138, ch. 77-104; s. 1, ch. 77-117; s. 14, ch. 78-95; s. 263, ch. 81-259; s. 3, ch. 90-82; s. 61, ch. 96-321; s. 1, ch. 2001-258; s. 2, ch. 2002-165; ss. 43, 44, 76, ch. 2004-269; s. 15, ch. 2004-381.