

GUIDELINES
FOR
CHARACTERIZING
ENVIRONMENTAL RESOURCES
VIOLATIONS

May 2008

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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.

A Notice of Violation (NOV) should never refer to these guidelines. All NOVs should be calculated strictly in accordance with the penalty amounts in the Environmental Litigation Reform Act statute (“ELRA”), Section 403.121, Florida Statutes (F.S.) in accordance with DEP Directive 923, Settlement Guidelines for Civil Penalties.

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 in 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 preference. 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/penalty/files/update_DEP_--923_civil_penalty_directive_July_2007.pdf

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 of an 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 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:

- a. The violation is causing daily adverse impacts to the environment; or
- b. The violator knew or should have known of the violation, or failed to mitigate the violation after the first day it occurred; or
- c. 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 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 Environmental Resource 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.

- a. Mangrove alterations occurring outside of a Riparian Mangrove Fringe (RMF) where the percent alteration of the trimmed area is greater than 30%. A RMF is defined in Section 403.9325(7), F.S., to mean “mangroves growing along the shoreline on private property, property owned by a governmental entity, or sovereign submerged land, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree.”
- b. Any unauthorized dredge, fill or mangrove alteration activity occurring within a conservation easement and/or “Public lands set aside for conservation or preservation” as defined by Section 403.9325(6), F.S.
- c. Impacts, including but not limited to dredging, filling, denuding, and grounding, to seagrass communities where the size of the impacted area measures greater than 500 square feet.
- d. Impacts, including but not limited to dredging, filling, and/or grounding to coral communities where the size of the impacted area measures greater than 200 square feet.
- e. Impacts, including but not limited to dredging, filling, denuding, and grounding, to high quality benthic communities other than coral and seagrass where the size of the impacted area measures greater than 400 square feet.
- f. Turbidity violations occurring outside a mixing zone as defined by Rule 62-302.200(32), F.A.C. measuring greater than 70 NTUs above background.
- g. Turbidity violations occurring outside a mixing zone as defined by Rule 62-302.200(32), F.A.C. located in Outstanding Florida Waters (OFWs) measuring greater than 15 NTUs above background. The current water quality standard for OFWs prohibits degradation of water quality pursuant to Rule 62-302.700, F.A.C.

- h. Dredge/fill violations occurring in high quality wetlands where the impacted area measures greater than 1 acre.

3. 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.

- a. Failure to provide a survey, engineered drawings, geotechnical data, or water quality data as a result of avoiding applying for a permit.
- b. Mangrove alterations that result in an improved view of waterfront. For example, a waterfront owner takes the previously authorized configuration of 24' windowed mangroves down to 3'. The owner had 60% riparian right of view but now has 100%. This will result in a significant economic benefit to the owner, especially if the house is sold immediately after the alteration.
- c. Failure to utilize required manatee observer or third party inspector. Staff could obtain hourly rates for the observer and inspector and calculate the economic benefit.
- d. Not providing, replacing, or maintaining pollution control equipment to ensure that adequate stabilization and containment is provided. Staff should request from facility copies of receipts of past costs associated with the providing, replacing, or maintaining of pollution control equipment.
- e. Recovery of lost permit fee pursuant to Rule 62-4.050(4), F.A.C.

**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

$\leq 1/10$ of an acre (4,356 sq. ft.)	1
$> 1/10$ of an acre and $\leq 1/4$ acre (10, 890 sq. ft)	2

FOR CONTIGUOUS WETLANDS

$\leq 1/20$ of an acre (2,178 sq. ft.)	1
$> 1/20$ of an acre and $\leq 1/4$ acre (10, 890 sq ft)	2

FOR ALL WETLANDS

$> 1/4$ of an acre and $\leq 1/2$ acre (21,780 sq. ft.)	4
$> 1/2$ of an acre and ≤ 1 acre (43,560 sq. ft.)	5

> 1 acre = 5 points for the first acre plus 5 points for each additional acre. For fractions, return to the applicable interval above and assess the appropriate points. (Ex. 1.25 acres of impacts: 5 points for the first acre + 2 points for the additional 1/4 acre = 7 points.)

Area – Total _____

II. Waterbody (in or adjacent to):

Class III, IV, V	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 the fill has been 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 within 1 growing season 1 x _____ = _____

Impacted area can be restored and recover within 3-5 years 2 x _____ = _____

Impacted area can be restored and recover within 5-10 years 3 x _____ = _____

Area to remain permanently impacted or >10 years recovery 4 x _____ = _____

Permanency - Total _____

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 IV, 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 by 1.

Quality:

Decimal Fraction of area impacted

Low:

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

1 x _____ = _____

Medium:

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

3 x _____ = _____

High:

A wetland system with 5% or less exotic or nuisance vegetation and no hydrological or other physical alterations that affect the system

5 x _____ = _____

Quality - Total _____

POTENTIAL FOR HARM

Grand Total _____

MAJOR: 15 OR GREATER

MODERATE: 9 - 14

MINOR: 1 - 8

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:

ACTIVITY IS PERMITTABLE ONLY WITH MODIFICATIONS.
(THIS MAY INCLUDE MODIFICATIONS SUCH AS RELOCATING A
PORTION OF THE FILL AND/OR INSTALLING CULVERTS)

MINOR:

ACTIVITY IS PERMITTABLE WITHOUT MODIFICATIONS.

CONSTRUCTION OF DOCKS WITHOUT A PERMIT

Impacts to submerged resources should be evaluated separately as appropriate, using the “Violations Involving Damage to Seagrass” or “Violations Involving Damage to Coral, Hardbottom and Other Sessile Organisms” guidelines.

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 V SURFACE WATERS WITH DEMINIMUS OR NO DAMAGE TO SUBMERGED RESOURCES.
2. CONSTRUCTION OF 1-2 BOAT SLIPS.

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: ACTIVITY IS NOT PERMITTABLE EVEN WITH MODIFICATIONS.

MODERATE: ACTIVITY IS PERMITTABLE ONLY WITH MODIFICATIONS.

MINOR: ACTIVITY IS PERMITTABLE WITHOUT MODIFICATIONS.

**VIOLATIONS INVOLVING DAMAGE TO CORAL, HARDBOTTOM, AND OTHER
SESSILE ORGANISMS**

POTENTIAL FOR HARM:

I. SIZE OF IMPACTED AREA

1. LESS THAN 25 SQ. FT.	1
2. 26 SQ. FT. – 100 SQ. FT.	2
3. 101 SQ. FT. – 200 SQ. FT.	3
4. GREATER THAN 200 SQ. FT.	5
Subtotal	_____

II. TYPE OF CORAL/HARDBOTTOM AFFECTED (MAJORITY)

1. GENERAL HARDBOTTOM (I.E. WORMROCK)	2
2. ALL IMPACTED SPECIES ARE <u>NOT PROHIBITED</u> FROM HARVESTING EXCEPT HARDBOTTOM SPECIES (ALL PROHIBITED SPECIES ARE LISTED BELOW)	3
3. ALL SPECIES PROHIBITED FROM HARVESTING LIVE ROCK, VENUS SEA FAN (<i>GORGONIA FLABELLUM</i>), COMMON SEA FAN (<i>GORGONIA VENTALINA</i>), ANY HARD OR STONY CORAL (<i>ORDER SCLERACTINIA</i>), OR ANY FIRE CORAL (<i>GENUS MILLEPORA</i>).	5
Subtotal	_____

III. DEPTH

1. GREATER THAN 75 FT.	1
2. 51 FT. – 75 FT.	2
3. 26 FT. – 50 FT.	3
4. LESS THAN 25 FT.	5
Subtotal	_____

IV. TYPE OF IMPACT

- | | |
|------------------------------------|---|
| 1. TURBIDITY/SEDIMENTATION | 2 |
| 2. POLLUTION | 3 |
| 3. DREDGE/FILL, REMOVAL, GROUNDING | 5 |

Subtotal _____

POTENTIAL FOR HARM: **(I-IV) Grand Total** _____

DIVIDE TOTAL BY THE NUMBER OF AREAS USED

MAJOR 4.1 – 5.0

MODERATE 2.1 – 4.0

MINOR 1.0 – 2.0

EXTENT OF DEVIATION:

MAJOR (THERE ARE NO MODERATE OR MINOR CATEGORIES)

VIOLATIONS INVOLVING DAMAGE TO SEAGRASS

POTENTIAL FOR HARM:

I. SIZE OF IMPACTED AREA (2X IF DENUDING RESULTS IN SEAGRASS MORTALITY)

1. LESS THAN 50 SQ. FT.	1
2. 51 SQ. FT. – 250 SQ. FT.	2
3. 251 SQ. FT. – 500 SQ. FT.	3
4. GREATER THAN 500 SQ. FT.	5
	Subtotal _____

II. SPECIES OF SEAGRASS AFFECTED (MAJORITY)

1. <i>Halodule wrightii</i> , <i>Ruppia maritima</i>	3
2. <i>Thalassia testudinum</i> , <i>Syringodium filiforme</i> , <i>Halophila engelmannii</i> , <i>Halophila decipiens</i> ,	4
3. <i>Halophila johnsonii</i>	5
	Subtotal _____

III. TYPE OF IMPACT

1. SHADING	2
2. POLLUTION, TURBIDITY	4
3. DREDGING	5
	Subtotal _____

POTENTIAL FOR HARM: (I-III) Grand Total _____

DIVIDE TOTAL BY THE NUMBER OF AREAS USED

MAJOR 4.1 – 6.6

MODERATE 2.1 – 4.0

MINOR 1.0 – 2.0

EXTENT OF DEVIATION:

MAJOR (THERE ARE NO MODERATE OR MINOR CATEGORIES)

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. For activities that result in impacts to wetlands or submerged resources or result in water quality violations, the applicable violation specific guidelines should also be used in conjunction with these guidelines. These guidelines should not be used for violations involving failure to monitor, the “TESTING, REPORTING OR RECORD KEEPING VIOLATION” guidelines should be used.

POTENTIAL FOR HARM:

THERE ARE NO MAJOR OR MODERATE CATEGORIES (NOT TO BE USED FOR FAILURE TO CONDUCT REQUIRED MONITORING, SEE ABOVE)

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 NO LOSS OR IMPACT TO WETLANDS OR SUBMERGED RESOURCES.

**PERMIT VIOLATIONS INVOLVING THE FAILURE TO DO
MITIGATION OR OTHER REQUIRED WORK**

These guidelines should be used for failure to satisfy mitigation related requirements (i.e. construction, planting, signage/postings, maintenance, management, alternative mitigation/contingency plans, etc.) or other work such as public interest requirements and/or net environmental benefits (NEBs).

POTENTIAL FOR HARM:

MAJOR:

1. FAILURE TO PERFORM OR COMPLETE CREATION OR ENHANCEMENT OF REQUIRED MITIGATION OR OTHER WORK GREATER THAN ONE (1) ACRE.

2. FAILURE TO SATISFY MITIGATION REQUIREMENTS, INCLUDING THE PURCHASE OF MITIGATION CREDITS WITHIN THE REQUIRED TIMEFRAME.

MODERATE:

FAILURE TO PERFORM OR COMPLETE CREATION OR ENHANCEMENT OF REQUIRED MITIGATION OR OTHER WORK OF ONE (1) ACRE OR LESS.

MINOR:

FAILURE TO PERFORM MAINTENANCE PURSUANT TO MITIGATION REQUIREMENTS.

EXTENT OF DEVIATION:

MAJOR:

COMPLETION OF 50% OR LESS.

MODERATE:

COMPLETION OF MORE THAN 50% BUT LESS THAN 90%.

MINOR:

COMPLETION OF 90% BUT LESS THAN 100%

VIOLATIONS OF WATER QUALITY STANDARDS ASSOCIATED WITH DREDGING AND FILLING ACTIVITIES

These guidelines may be used in conjunction with other more specific guidelines, and are not intended to supersede any other guidelines. For activities that result in impacts to wetlands or submerged resources or result in water quality violations, the applicable violation specific guidelines should also be used in conjunction with these guidelines.

POTENTIAL FOR HARM:

MAJOR:

1. ALL VIOLATIONS OF WATER QUALITY STANDARDS OCCURRING IN CLASS I OR 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 ¼ MILE (1320 LINEAR FEET) IN CREEKS, CANALS AND OTHER CONFINED WATERWAYS OR ¼ ACRE (10,890 SQUARE FEET) IN ALL OTHER WATERBODIES.
3. TURBIDITY VIOLATIONS THAT RESULT IN SILTING/SEDIMENTATION THAT ADVERSELY IMPACTS ADJACENT OR DOWNSTREAM SUBMERGED RESOURCES OR CREATE 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 ¼ 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 15 NTUs IN AN OFW OR GREATER THAN 70 NTU IN ANY WATERBODY.
2. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING 25% OF STANDARDS.

MODERATE:

1. VIOLATIONS OF THE TURBIDITY STANDARD BETWEEN 50 AND 70 NTUs IN A WATERBODY OTHER THAN AN OFW.
2. VIOLATION OF THE TURBIDITY STANDARD IN AN OFW LESS THAN OR EQUAL TO 15 NTUs.
3. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING BETWEEN 5% AND 25% OF STANDARDS.

MINOR:

1. VIOLATIONS OF THE TURBIDITY STANDARD LESS THAN 50 NTUS ABOVE BACKGROUND IN A WATERBODY OTHER THAN AN OFW.
2. VIOLATIONS OF OTHER WATER QUALITY PARAMETERS EXCEEDING LESS THAN 5% OF THE STANDARD.

TESTING, REPORTING OR RECORD KEEPING VIOLATIONS

POTENTIAL FOR HARM:

MAJOR:

SUBMITTAL OF FRAUDULENT DATA OR INFORMATION

MODERATE:

1. ALL TESTING REQUIREMENT VIOLATIONS (I.E. INAPPRPRIATE FREQUENCY, LOCATION, PARAMETER, ETC.).
2. FAILURE TO CONDUCT OR REPORT ANALYTICAL DATA REQUIREMENTS.

MINOR:

ALL NON-DATA REPORTING OR RECORD KEEPING VIOLATIONS.

EXTENT OF DEVIATION:

MAJOR:

1. FAILURE TO PERFORM TESTING, REPORTING OR SUBMITTAL REQUIRED BY PERMIT OR RULE.
2. NOTICE OF ABNORMAL OCCURRENCES OR SYSTEM FAILURES NOT BEING REPORTED WHEN REQUIRED BY PERMIT OR RULE.
3. SUBMITTAL OF FRAUDULENT DATA OR INFORMATION

MODERATE:

1. REPORTING OR RECORD KEEPING REQUIREMENTS ARE ONLY COMPLIED WITH AFTER REQUESTED BY THE DEPARTMENT.
2. REQUIRED REPORTS ARE SUBMITTED MORE THAN 60 DAYS LATE.

MINOR:

REQUIRED REPORTS ARE SUBMITTED LESS THAN 60 DAYS LATE.

MANGROVE VIOLATIONS

Contact OGC for repeat mangrove violations.

POTENTIAL FOR HARM:

I. PERCENT (%) ALTERATION OF THE TRIMMED AREA (2X IF MANGROVE MORTALITY, CHEMICAL DEFOLIATION, REMOVAL AND/OR FILLING OVER TRUNKS)

- | | |
|---------------|-----|
| 1. 5% - 25 | 1 |
| 2. 26% - 50% | 2 |
| 3. 50% - 100% | 3-5 |

Subtotal _____

II. SIZE OF TRIMMED AREA

- | | |
|-----------------------------|---|
| 1. LESS THAN 500 SQ.FT. | 1 |
| 2. 500 SQ.FT. - 1000 SQ.FT | 2 |
| 3. 1000 SQ.FT.- 2999 SQ.FT. | 3 |
| 4. 3000 SQ.FT.- 4999 SQ.FT. | 4 |
| 5. OVER 5000 SQ.FT. | 5 |

Subtotal _____

III. AVERAGE SIZE OF TREE TRIMMED

- | | |
|---|---|
| 1. LESS THAN 1 INCH BASE TRUNK DIAMETER | 1 |
| 2. 1" - 3" BASE TRUNK DIAMETER | 2 |
| 3. 3" - 5" BASE TRUNK DIAMETER | 3 |
| 4. 5" - 7" BASE TRUNK DIAMETER | 4 |
| 5. GREATER THAN 7" BASE TRUNK DIAMETER | 5 |

Subtotal _____

IV. TYPE OF MANGROVE AFFECTED (MAJORITY)

- | | |
|----------|---|
| 1. WHITE | 1 |
| 2. BLACK | 2 |
| 3. RED | 5 |

Subtotal _____

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 _____

POTENTIAL FOR HARM

Grand Total (I-V) _____

DIVIDE TOTAL BY THE NUMBER OF AREAS USED

- 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, MITIGATION AREA, OR "PUBLIC LANDS SET ASIDE FOR CONSERVATION OR PRESERVATION" PURSUANT TO SECTION 403.9325(6), F.S.
2. INDIVIDUAL PERMIT REQUIRED.
3. ACTIVITY IS NOT PERMITTABLE EVEN WITH MODIFICATIONS.

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

ACTIVITY FITS WITHIN GENERAL PERMIT CRITERIA.

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 SHELLFISH HARVESTING AND ALL OFW, AQUATIC PRESERVES, AND SWIM PRIORITY WATERBODIES WITH APPROVED PLAN.
2. GREATER THAN 1000 SQ. FT. IMPACT AREA IN CLASS II NOT APPROVED, III, IV, OR V WATERS.
3. DEVIATION FROM THE CONTINUOUS CONSTRUCTION LINE OF 10 FT. OR GREATER, WATERWARD OR LANDWARD.
4. STRUCTURE CONSISTS OF GREATER THAN 50% DELETERIOUS MATERIAL SUCH AS, BUT NOT LIMITED TO ASPHALT, REBAR, ROOFING TILES, CREOSOTE PILINGS.
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, OR 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 PILINGS.

MINOR:

1. LESS THAN 200 SQ. FT. IMPACT IN CLASS II NOT APPROVED, III, IV OR 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.

EXTENT OF DEVIATION:

MAJOR:

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. PERMITTABLE 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 SQ. FT. 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 SQ. FT. 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 SQ. FT. 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 PERMITTABLE 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 PERMITTABLE.

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 SQ. FT. 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 SQ. FT. 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 SQ. FT. 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 PERMITTABLE 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 PERMITTABLE 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 OF 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 PERMITTABLE WITHOUT MODIFICATIONS.

VIOLATION OF BINDING AGREEMENTS AND CONSERVATION EASEMENTS

A binding agreement is a legal instrument, such as, but not limited to, a long-term Agreement, Agreement for Covenant Running with Land.

POTENTIAL FOR HARM:

MAJOR:

FAILURE TO EXECUTE AND RECORD A BINDING AGREEMENT OR CONSERVATION EASEMENT AS REQUIRED BY AN ENVIRONMENTAL RESOURCE OR WETLAND RESOURCE PERMIT.

MINOR:

FAILURE TO PROVIDE A RECORDED COPY OF THE BINDING AGREEMENT OR CONSERVATION AGREEMENT TO THE DEPARTMENT WITHIN THE TIMEFRAMES REQUIRED.

EXTENT OF DEVIATION:

MAJOR:

RECORDED COPY OF BINDING AGREEMENT OR CONSERVATION EASEMENT IS NOT PROVIDED TO THE DEPARTMENT PRIOR TO EXPIRATION OF CONSTRUCTION PHASE FOR ERP OR ENTIRE WR PERMIT AND THE CONSTRUCTION IS COMPLETE AS AUTHORIZED.

MODERATE:

1. RECORDED COPY OF BINDING AGREEMENT OR CONSERVATION EASEMENT IS PROVIDED TO THE DEPARTMENT GREATER THAN 60 DAYS LATE.
2. PERMIT IS ACTIVE, CONSTRUCTION IS COMPLETE – BINDING AGREEMENT OR CONSERVATION EASEMENT REQUIRED TO BE RECORDED PRIOR TO CONSTRUCTION.

MINOR

1. RECORDED COPY OF BINDING AGREEMENT OR CONSERVATION EASEMENT IS PROVIDED TO THE DEPARTMENT UP TO 60 DAYS LATE.
2. PERMIT IS ACTIVE, CONSTRUCTION HAS NOT COMMENCED – BINDING AGREEMENT OR CONSERVATION EASEMENT REQUIRED TO BE RECORDED IN A TIME FRAME AFTER PERMIT ISSUANCE.