

OCTOBER 2002

**FLORIDA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

**WATER WELL CONTRACTOR
DISCIPLINARY GUIDELINES
AND PROCEDURES MANUAL**

INTRODUCTION

The purpose of this document is to establish disciplinary guidelines that are applicable to each specific ground for disciplinary action that may be taken by a Permitting Authority. As directed by Section 373.333, Florida Statutes, guidelines will be developed and consistently applied by the Permitting Authority that address the following criteria:

- Specify a meaningful range of designated disciplinary actions based upon severity and repetition of specific offenses.
- Distinguish minor violations from those violations that endanger public health, safety, and welfare or may contaminate the water resource.
- Inform the public of likely disciplinary actions that may be imposed for proscribed conduct.

Each Permitting Authority when taking disciplinary action against any water well contractor will use this document, adopted by reference in Chapter 62 - 531, F.A.C. Copies of these guidelines will be provided to all water well contractors at the time they receive a water well contractor license to operate in the State of Florida.

DISCIPLINARY ACTIONS

The Permitting Authorities are authorized to enter an order imposing any of the following disciplinary actions when a water well contractor has committed any violation identified in Chapter 62-531, F.A.C. This document establishes guidelines for the Permitting Authorities to follow when imposing these actions so that enforcement may be conducted in a consistent manner among the Permitting Authorities. Such disciplinary actions may include:

- 1) Denial of an application for licensure or for renewal of a license.
- 2) Revocation of a license for a period of not less than 1 year, during which time the water well contractor cannot construct, repair, or abandon a water well as a licensed water well contractor.
- 3) Suspension of a license for a period of 30 to 365 days, during which time the water well contractor cannot construct, repair, or abandon a water well as a licensed water well contractor.
- 4) Placement of a water well contractor's license on probation for a minimum of 6 months, during which time the water well contractor would be required to give the Permitting Authority 24-hour notice prior to construction, repair, or abandonment of any water well. Any violation committed during the period of probation will be the subject of an enforcement action.

- 5) Restriction of the water well contractor's authorized scope of practice. Such restrictions may apply to the construction, repair, or abandonment of a specific type of well, a type of drilling method, a type of geographic area, or a type of activity (construction, repair, or abandonment). The restriction will continue until the water well contractor demonstrates to the Permitting Authority competency in the area of restriction in accordance with the terms set out in the final order.
- 6) Imposition of an administrative penalty of up to \$1000 for each violation.
- 7) Assessment of points against a water well contractor's license.

The disciplinary actions identified above may be taken by any Permitting Authority against a water well contractor, regardless of where the contractor's license was issued.

ADMINISTRATIVE PENALTY ASSESSMENT CRITERIA

Generally, administrative penalties will be imposed for violations of water well construction standards or requirements, or for permit violations. Administrative penalty amounts may range from \$100 to \$1000 for each separate violation.

Administrative penalty amounts will be assessed on a sliding scale related to water resource or human health impact. Table 1 establishes recommended administrative penalties based on the category of the violation versus the severity of the violation. Table 2 establishes guidelines for general categories for violations ranging from minor to major based upon the nature of the requirement being violated. Table 3 lists adjustment factors that may be used to add further flexibility.

A dictionary of citations will be used by each Permitting Authority to increase the efficiency and understanding of the cited violations. Standardization of administrative penalty policies, using the category of violations and severity determinations, will produce a more effective program.

TABLE 1

SLIDING SCALE OF RECOMMENDED ADMINISTRATIVE PENALTIES

<u>SEVERITY</u>	<u>CATEGORY OF VIOLATION</u>		
	<u>MAJOR</u>	<u>MODERATE</u>	<u>MINOR</u>
High	\$1000	\$600	\$400
Medium	\$500	\$350	\$250
Low	\$250	\$150	\$100

CATEGORIES OF VIOLATIONS

The first factor in determining the recommended administrative penalty is the category of the violation. Guidelines for designating the category of violations of water well construction requirements or standards have been established in Table 2 based upon the nature of the violations and the potential for harm to the water resource or human health. Minor violations are generally those that pose no risk of impacting the water

resource. Moderate violations are those that have the potential of causing an impact to the water resource. Major violations are those that pose a threat to human health or the water resource.

Table 2 is a guideline to categorize violation types as minor, moderate, or major. There may be similar violations that occur in different Permitting Authorities, which have differing potentials for harm to the water resource. Since this is the key to the category of violation, a moderate violation in one Permitting Authority could be a major violation in another Permitting Authority.

SEVERITY OF THE VIOLATION

The severity of the violation is the second factor in determining the recommended penalty. The severity identified in Table 1 ranges from low to high and indicates the degree to which the violation deviates from the rule. Violations of a low severity involve minimal deviation. Violations of a medium severity involve significant deviation. Violations of a high severity involve extreme or repeated deviation or harm to human health. Each Permitting Authority will make a determination of the severity of each specific violation of its rules based upon both a technical evaluation and historical knowledge of the potential impacts of such violations.

TABLE 2
VIOLATIONS

- 1) Water Well Contractor License
 - a) Practicing water well contracting without an active license is a Major violation.
 - b) Allowance by a licensed water well contractor of the use of his or her license by another person, unless that person is employed by or under the supervision of the contractor, is a Major violation.
 - c) Failure to display the water well contractor's number on each piece of drilling equipment owned, leased, or operated by the water well contractor is a Minor violation.

- 2) Permitting Requirements
 - a) Failure to obtain a required permit for construction, repair, or abandonment is a Major violation.
 - b) Knowingly providing false information when applying for a permit is a Major violation.
 - c) Conducting activities in a manner that would harm the water resource is a Major violation.
 - d) Failure to comply with a permit condition that poses a threat to human health or the water resource is a Major violation.

- 3) Well Completion Report
 - a) Failure to comply with a well completion report requirement is a Minor violation.

- 4) Inspection
 - a) Failure to allow an inspection is a Moderate violation.

- 5) Variance Condition
 - a) Failure to abide by the conditions of a variance is a Major violation.

- 6) Water Well Construction Standards
 - a) Failure to comply with a well construction standard is a Major violation.

CITATION DICTIONARY

Each Permitting Authority will use a citation dictionary that lists each possible violation with a specific number assigned to it and a recommended administrative penalty and points. The dictionary will be developed in accordance with the guidelines established in Tables 1 and 2, and will generally be consistent for similar violations in all Permitting Authorities. A citation will mean an individually numbered violation.

ADMINISTRATIVE PENALTY AND POINTS ADJUSTMENT

Administrative penalty and points adjustments may occur as each Permitting Authority pursues disciplinary action for non-compliance. A licensed water well contractor who has violated a rule citation is cited for an administrative penalty amount based on the sliding scale of recommended administrative penalties (Table 1).

The administrative penalty amount may be adjusted based upon the factors identified in Table 3. Points assessed against a well contractor's license may also be adjusted based upon the factors identified in Table 3. Each factor may be applied separately. The adjusted administrative penalty and points will be included in the consent order or final order.

TABLE 3

ADMINISTRATIVE PENALTY AND POINTS ADJUSTMENTS

DIRECTION	ADJUSTMENT FACTORS
(-) 0 - 100%	Good faith efforts to comply. Examples of good faith efforts are the contractor reporting the violation to the Permitting Authority before discovery of the violation by the Permitting Authority, correction of the violation by the contractor, and restitution to the affected property owner or customer.
(+) 0 - 100%	History of noncompliance 0 – 30% 1-2 previous violations or 5-10 license points 31 – 60% 3-4 previous violations or 11-30 license points 61 – 100% 5 or more previous violations or more than 30 license points

GUIDELINES FOR DISCIPLINARY ACTION

Permitting Authorities will use the following disciplinary action guidelines in order to provide for consistent enforcement actions among the Permitting Authorities. The guidelines are intended to resolve violations in an equitable and timely manner. Each guideline gives clear instructions that describe how and when an enforcement action will be pursued.

GUIDELINE 1 - PROGRESSIVE STEPS FOR DISCIPLINARY ACTION

The following is a summary of the progressive disciplinary actions that may be used by the Permitting Authority (see Figure 1).

Warning Letter -The Permitting Authority may send a warning letter to a water well contractor who has violated certain well construction rules. The warning letter will identify the violation(s) and advise the water well contractor to either take the necessary corrective action(s) (if applicable) or to contest the violation(s) in writing within 15 days after receipt of the warning letter. If the contractor contests the alleged violation, the Permitting Authority will respond in writing to the contractor within 15 days. If the contractor performs corrective action within the specified time, no further disciplinary action based upon the warning letter will be taken. If the contractor does not comply with the warning letter within the time specified, the Permitting Authority may take further enforcement action.

Notice of Violation - The Permitting Authority may send a notice of violation (NOV) to the water well contractor that will cite the alleged violation(s), identify what corrective actions are required, and identify the possible disciplinary actions, including

FIGURE 1

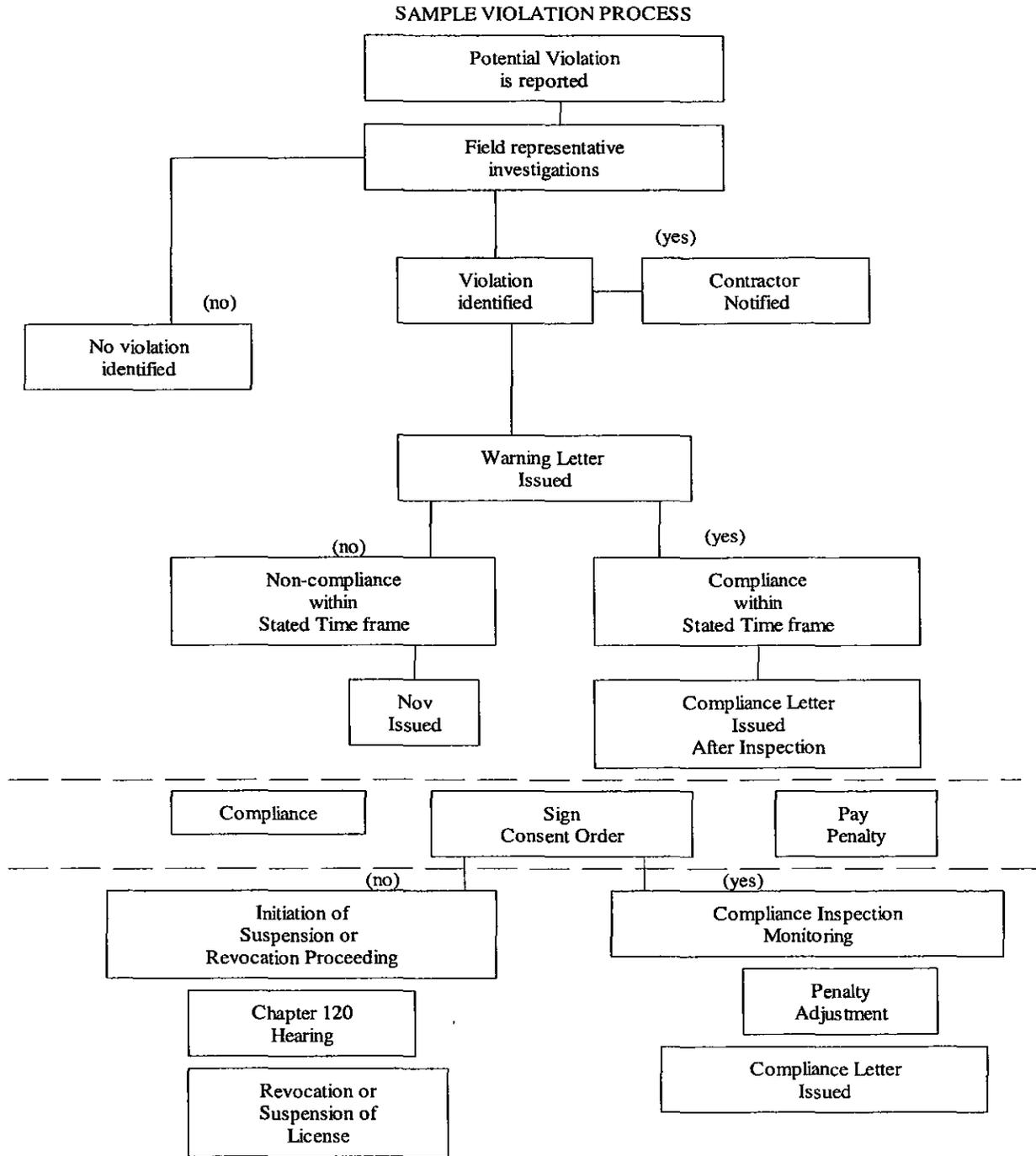


Figure 1. The suggested progression of events from Warning Letter to Revocation procedures.

the standard administrative penalty and points for each violation. The contractor will be requested to contact the Permitting Authority within a specified time to resolve the violation through a consent order. When the contractor meets with the Permitting Authority, the violation and the disciplinary actions will be discussed and a consent order may be negotiated. If the contractor does not contact the Permitting Authority to resolve the violation, the Permitting Authority will proceed with an enforcement action that may include suspension or revocation of the contractor's license. Depending on the severity and/or repetitiveness of the violation, the Permitting Authority may proceed directly with issuing an NOV without sending a warning letter.

After issuance of an NOV to a water well contractor, the Permitting Authority will refer the enforcement matter to the appropriate authority for resolution through a negotiated consent order or litigation.

Consent Order - The Permitting Authority will prepare a proposed consent order for the water well contractor's signature. The consent order will include an administrative penalty and points, which may be adjusted by the Permitting Authority from the administrative penalty and points identified in the NOV based on the adjustment factors contained in Table 3 herein. The consent order also will include any corrective action that is necessary, and any other appropriate disciplinary actions.

Administrative Complaint and Order (ACO) - If the water well contractor refuses to sign a proposed consent order, the Permitting Authority will file an ACO. The ACO will list the corrective action(s) required and propose administrative penalties and points, and any other appropriate disciplinary actions. The rights of the water well contractor to file a petition for a hearing as provided in Chapter 120, F.S., will also be included in the ACO. The ACO may also provide for the suspension or revocation of the water well

contractor's license until such time as the water well contractor complies with the terms of the ACO. If the water well contractor does not timely file a petition for an administrative hearing, the ACO will become a Final Order enforceable in a court of competent jurisdiction. The Permitting Authority may proceed directly to an ACO depending upon the severity and/or repetitiveness of the violation(s).

GUIDELINE 2 - FIRST NOTICE OF DISCIPLINARY ACTION RECOMMENDATIONS

There are certain violations that do not allow for corrective action to be taken by a water well contractor to avoid disciplinary action. Examples of these types of violations include: failure to maintain a current water well contractor's license, failure to provide drilling samples when required by the Permitting Authority, and failure to obtain an applicable permit prior to construction, repair, or abandonment of a well.

Appropriate administrative penalties and points assessed against the water well contractor's license and any other appropriate disciplinary actions will be pursued when these violations occur.

GUIDELINE 3 - VIOLATION POINTS SYSTEM AND WORKSHOP PROGRAM

The cumulative total of violations will be monitored using a points system based on the Table 1 recommended administrative penalties. Points are only assessed on those violations for which a Permitting Authority has taken final action. Each point is equivalent to .01 of the administrative penalty assessed by the Permitting Authority. Table 4 illustrates the number of points assessed.

TABLE 4

ADMINISTRATIVE PENALTIES AND POINTS

<u>ADMINISTRATIVE PENALTIES</u>	<u>POINTS ASSESSED</u>
\$1000	10
\$600	6
\$500	5
\$400	4
\$350	3.5
\$250	2.5
\$150	1.5
\$100	1

Points are accumulated regardless of compliance and can only be reduced by attendance at educational workshops dealing with the regulation of wells and proper well construction techniques. The Department (FDEP) or the Water Management Districts will approve educational workshops for point reduction purposes. No more than 18 hours of workshops can be used to reduce points in any biennial licensing period and a maximum of 27 hours in any two consecutive licensing periods. Each workshop will be rated at 1 point per classroom hour. Points remain on the contractor's license for 3 consecutive years from the effective date of the permitting authority's final action, regardless of renewal, unless reduced by attendance at educational workshops for point reduction purposes. The effective date of point reduction is the date of the workshop attended.

The educational workshops will continue with the same rotation each year to provide regional and statewide participation. The workshop agenda may include rule interpretation with emphasis on minimum standards, compliance, drilling techniques, and other related topics. Additional workshops and related topics may also qualify as educational workshops for point reduction purposes. The number of points associated with the additional workshops and seminars will be determined by the Department and the Water Management Districts.

GUIDELINE 4 – LICENSE ACTIONS

If a contractor accumulates 12 or more points during any 36 consecutive month period, the Permitting Authority may place the water well contractor's license on probation and may restrict the scope of the contractor's practice for 6 to 12 months (see Table 5). If a contractor accumulates 24 or more points during any 36 consecutive month period, the Permitting Authority may suspend the contractor's license for 30 to 180 days. If a contractor accumulates 36 or more points during any 36 consecutive month period, the Permitting Authority may suspend the contractor's license for 181 to 365 days.

The Permitting Authority may revoke a water well contractor's license for 1 year if the contractor accumulates 48 points or more during any 36 consecutive month period. If a water well contractor's license is revoked, in order to be issued a new license, the contractor must take and pass the water well contractor licensing examination. If a water well contractor accumulates 60 points or more during any 36 consecutive month period, the Permitting Authority may permanently revoke the contractor's license. Points will be assessed on the effective date of the consent order or final order.

TABLE 5
POINTS AND RESTRICTION MATRIX

Restriction	Points	Duration
Probation and/or license restrictions	12 or more in any 36 consecutive month period	6 months to 1 year
Suspension – 1 st category	24 or more in any 36 consecutive month period	30 days to 6 months
Suspension – 2 nd category	36 or more in any 36 consecutive month period	181 days to 1 year
Revocation	48 or more in any 36 consecutive month period	Minimum of 1 year
Permanent Revocation	60 or more in any 36 consecutive month period	Permanent
<p>Note: No more than 18 hours of workshops can be used to reduce points in any biennial licensing period and no more than 27 hours in any two consecutive licensing periods.</p>		

GUIDELINE 5 - REPETITIVE VIOLATIONS

Repetitive violations of the same rule citation are an indication of a licensed contractor's refusal to abide by well construction or permitting requirements.

The well construction rules have been promulgated to protect the water resource and human health. Compliance with these minimum standards is the means by which the resource and human health are protected. Therefore, it is imperative that repetitive violations are minimized.

Corrective actions pursued by the Permitting Authority and accomplished by the contractor do not in any way excuse repeated violations. A water well contractor may receive warning letters for the same violation before a Notice of Violation is issued.

OTHER GROUNDS FOR DISCIPLINARY ACTION

In accordance with Section 373.333, F.S., there are other grounds for which the Permitting Authority may take disciplinary action. The statute authorizes the Permitting Authority to impose one or more specific disciplinary actions against a person found guilty of any one of these grounds. The disciplinary action, which may be taken by a Permitting Authority for each of these grounds, is established as follows:

- 1) Attempting to obtain, obtaining, or renewing a license under this part by bribery or fraudulent misrepresentation.

For attempting to obtain or renew a license under these conditions, the Permitting Authority will deny the application for licensure. If a license obtained under these conditions is issued, the Permitting Authority may revoke such license, in addition to assessing a Major violation penalty and points.

- 2) Being convicted or found guilty, regardless of adjudication, of fraud or deceit or of gross negligence, incompetence, or misconduct in the performance of work, or of a crime in any jurisdiction which directly relates to the practice of water well contracting or the ability to practice water well contracting.

The disciplinary actions that may be taken by the Permitting Authority for this ground include any one or more of the following - denial of license renewal, suspension or

revocation of a license, assessment of a Major violation penalty and points, probation, or restrictions on the authorized scope of practice.

3) Allowing any other person to use the license.

If found guilty of allowing any other person to use his/her license, the Permitting Authority will revoke the water well contractor's license, in addition to assessing a Major violation penalty and points.

4) Violating or refusing to comply with any provision of Chapter 373, F.S., or a rule adopted by the Department or any Water Management District under the authority of Chapter 373, F.S., or any order of a Permitting Authority previously entered in a disciplinary hearing.

The disciplinary actions that may be taken by the Permitting Authority for the water well contractor's violation of or refusal to comply with Chapter 373, F.S., or rules adopted pursuant to that Chapter will include any one or more of the following - denial of renewal of the license, suspension or revocation of the license, assessment of a penalties and points, probation, or restrictions on the authorized scope of practice. For refusing to comply with the conditions of a final order, the Permitting Authority may suspend or revoke the license.

5) Constructing, repairing, or abandoning a water well without first obtaining all applicable permits.

For not first obtaining all applicable permits, the Permitting Authority may assess the water well contractor penalties and points in the Major category.

- 6) Having had administrative or disciplinary action relating to water well construction, repair, or abandonment taken by any municipality or county or by any state agency. The Permitting Authority will review these actions before the Permitting Authority takes any disciplinary action of its own.

The disciplinary actions that may be taken by the Permitting Authority for this ground include any one or more of the following -- denial of license renewal, suspension or revocation of the license, assessment of a Major violation penalties and points, probation, or restrictions on the authorized scope of practice.

- 7) Practicing with a revoked, suspended, or inactive license.

For practicing with a revoked, suspended, or inactive license, the Permitting Authority may issue a cease and desist order, assess an administrative penalty of \$1000 per offense, or file a complaint in a court of competent jurisdiction seeking monetary penalties and injunctive relief.

CONCLUSION

Violations and appropriate agency action must be balanced between a strong but reasonable enforcement directive and a good educational workshop program. The disciplinary action guidelines address water well contractors who fail to abide by the minimum water well construction standards or permitting requirements. The workshop program presents an option and second chance for the licensed water well contractor.