

***ENFORCEMENT RESPONSE PLAN***

***(ERP)***

***Anderson County***

***South Carolina***

***October 2015***



**ENFORCEMENT RESPONSE PLAN**  
*Anderson County*  
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## **I. INTRODUCTION**

This Enforcement Response Plan (ERP) document was developed as a guidance manual for identifying specific violation types, defining Anderson County's response to these violations, and calculating civil penalty assessments associated with enforcement actions resulting from violations of provisions of the Anderson County Storm Water Management and Sedimentation Control Ordinance Chapter 38, Article V (Ordinance) or the Anderson County Storm Water Design Manual (SWDM). The goals of the Enforcement Response Plan are to:

- 1) Deter future noncompliance by the violator and other members of the regulated community,
- 2) Ensure that violators do not obtain economic benefit or advantage over competitors through noncompliance, and
- 3) Apply fair and consistent enforcement actions to the regulated community throughout the County.

Upon determination that a violation of any provisions of the Ordinance or the SWDM has occurred, the County may choose to assess and make a written demand for payment of a civil penalty. In addition to any applicable civil penalties, any entity that negligently or intentionally violates any provision of the above shall be guilty of a misdemeanor and shall be punished within the jurisdictional limits of magistrate's court. In cases where the violator refuses to comply with the demand for payment, the County may file a civil action in circuit court pursuant to Sec.38-529.

This Enforcement Response Plan (ERP) document is for the use of Anderson County personnel. Anderson County reserves the right to change this document at any time, without prior notice, or to act at variance to this document. This document does not create any rights, implied or otherwise, to any third parties.

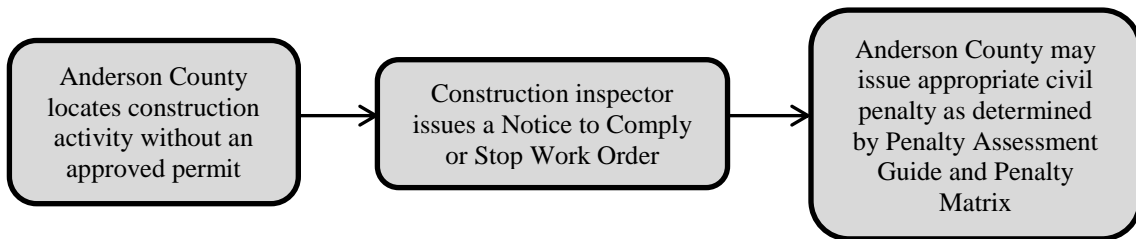
## II. VIOLATION CATEGORIES

### A. Construction/Permitting Violations

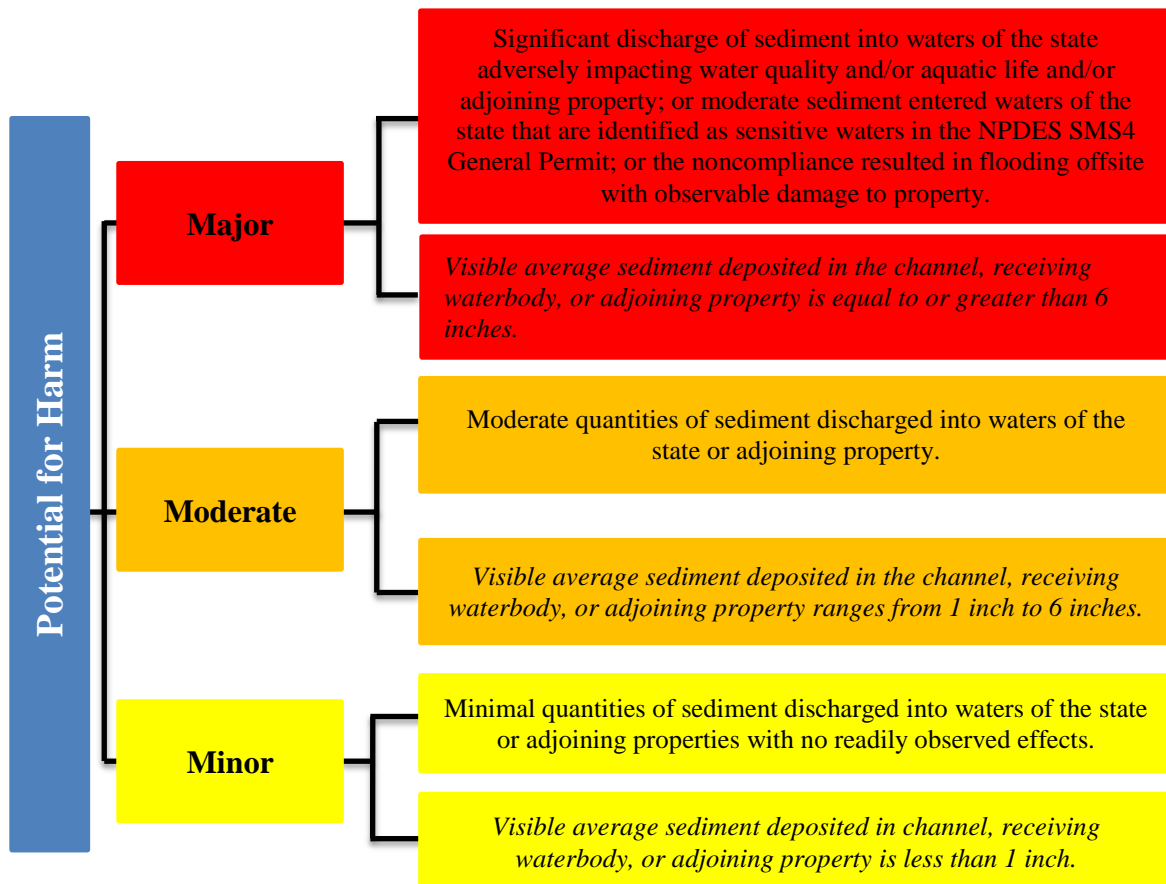
#### 1. Initiation of construction activity without a site development/land disturbing/grading permit.

##### a. Anderson County response:

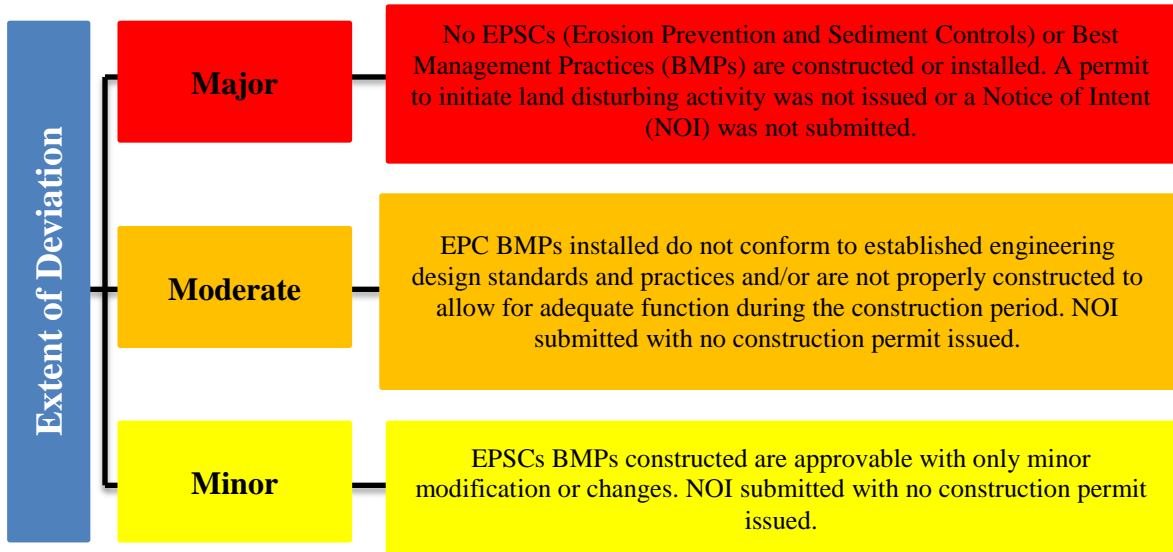
Anderson County may issue a request for action and issue a civil penalty as determined by the Penalty Assessment Guide and Penalty Matrix for all violations involving initiation of construction activity without a site development/land disturbing/grading permit.



##### b. Determine Potential for Harm resulting from violation:



**c. Determine Extent of Deviation:**



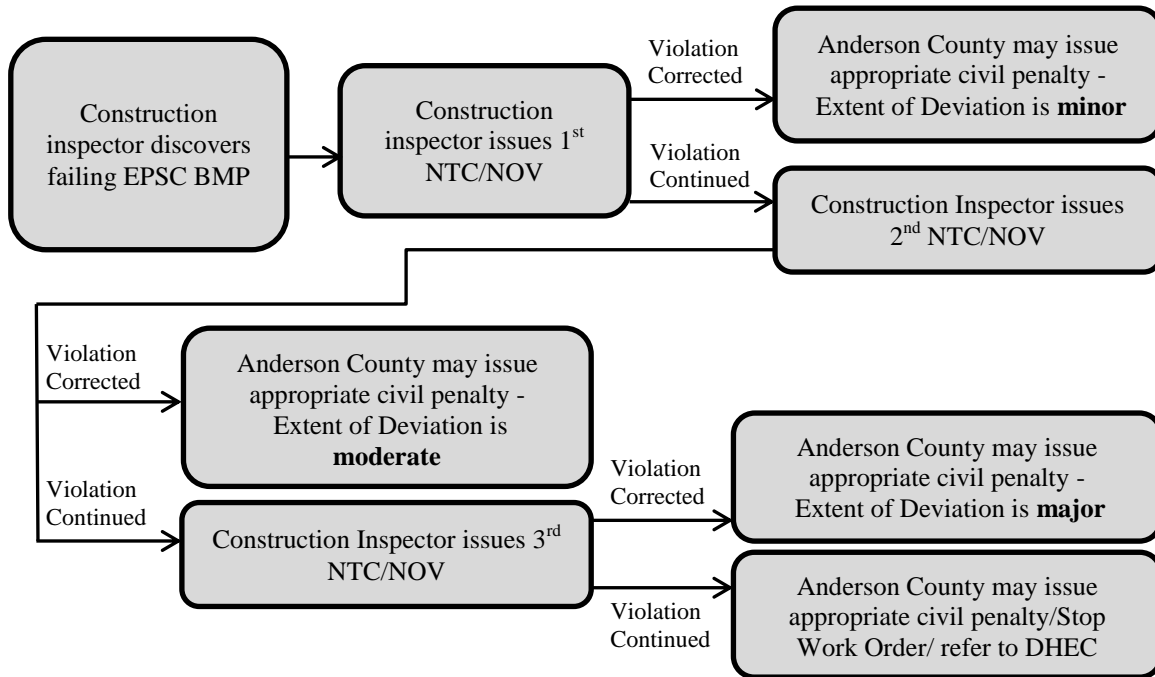
**d. Select applicable civil penalty:**

Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

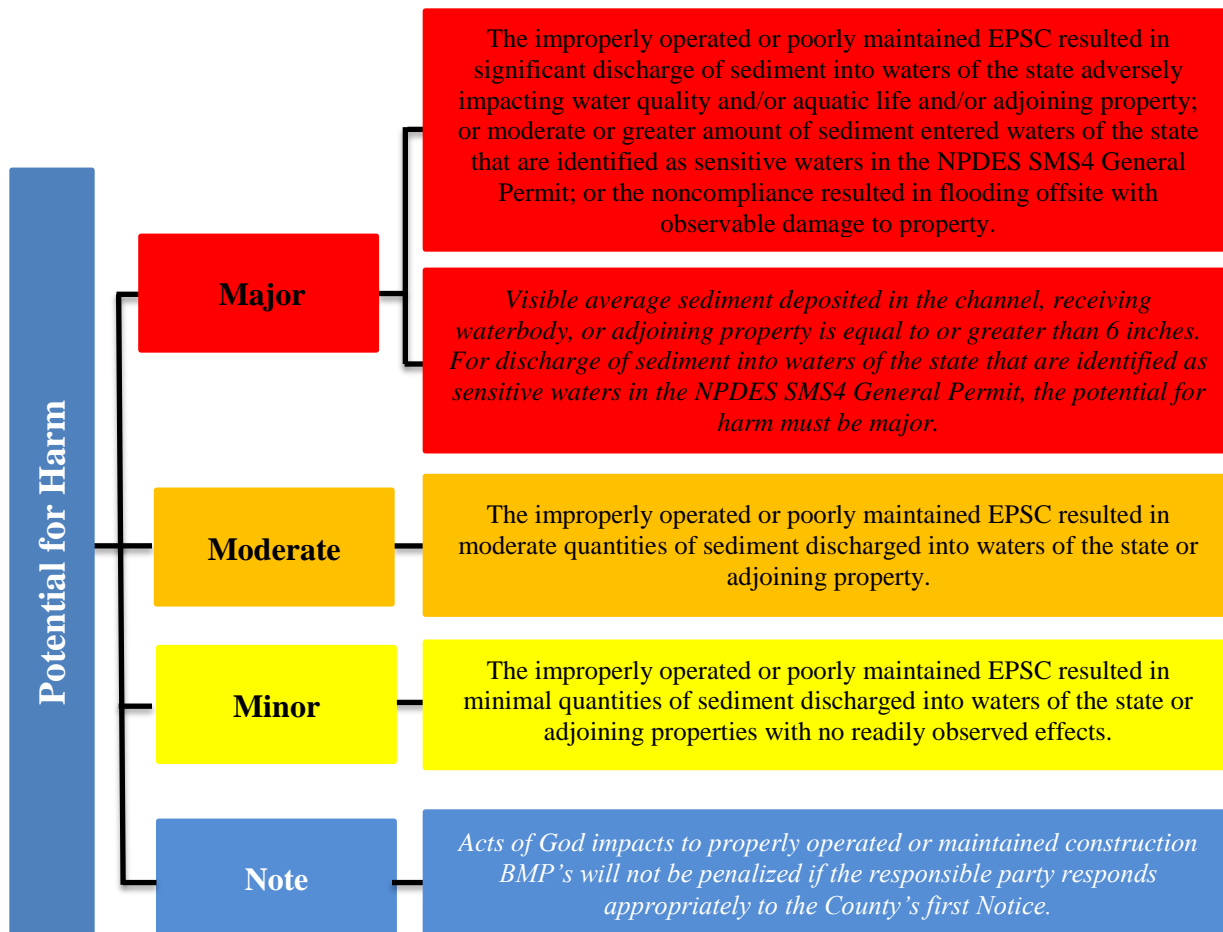
**2. Failure to properly operate and/or maintain all BMPs, components, facilities, and equipment associated with site Erosion Prevention and Sediment Control (EPSC).**

**a. Anderson County response:**

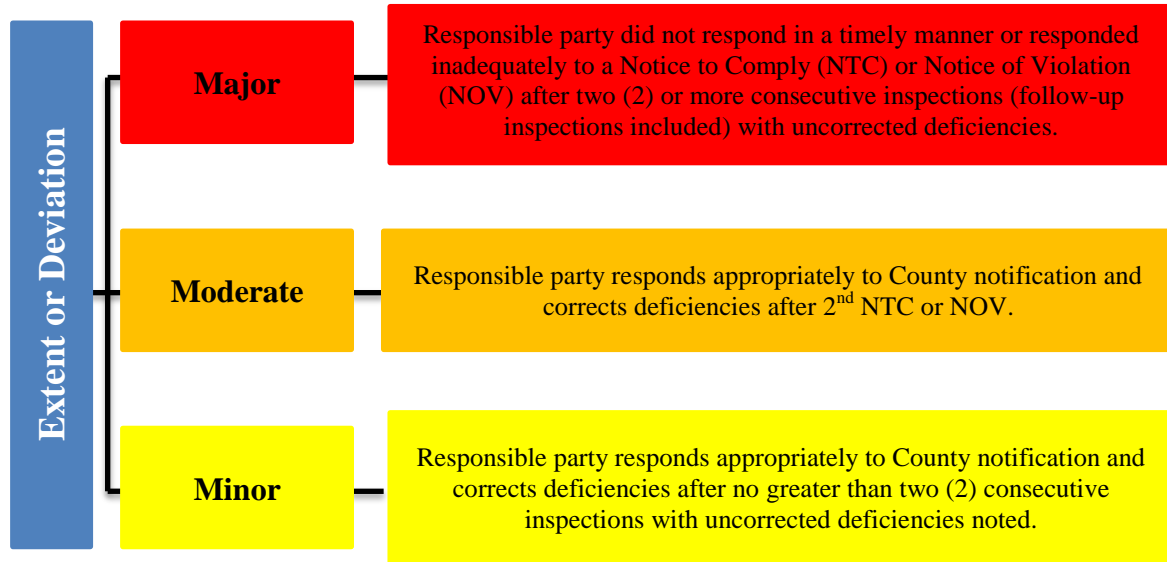
In cases of minor violations for operation and maintenance of EPSC BMPs, the construction inspector may issue a verbal warning prior to issuing written notifications. Anderson County may issue a Notice to Comply (NTC) or Notice of Violation (NOV) if the construction operator fails to correct the deficiency after a verbal warning, if one is given. Anderson County will conduct follow-up inspections to ensure corrective action is provided. Additional NTC/NOV may be issued if corrective action is not provided. If the responsible party fails to provide corrective action a Stop Work Order may be issued and the matter referred to SCDHEC.



**b. Determine Potential for Harm resulting from violation:**



**c. Determine Extent of Deviation:**



**d. Select applicable Civil Penalty:**

Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

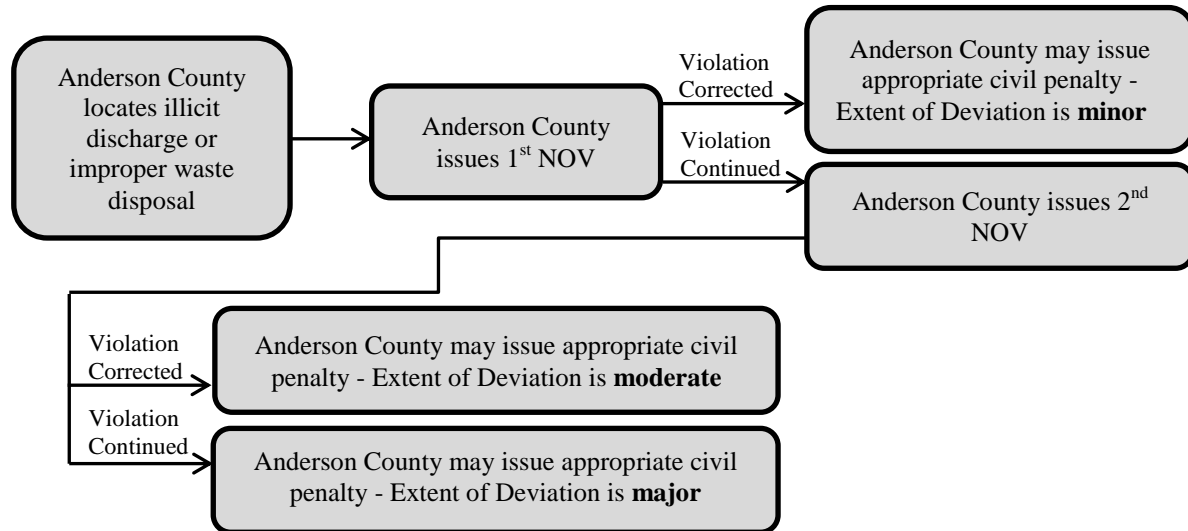
## **B. Illicit Discharge/ Illicit Connection/ Improper Waste Disposal**

### **1. Anderson County response:**

Anderson County must report immediately the occurrence of any dry weather flows believed to be an immediate threat to human health or the environment to SC DHEC Emergency Response, 1-888-481-0125. If the source of the suspected illicit discharge is found to be a suspected non-compliance with an NPDES permit, the appropriate SC DHEC Regional Office must be notified.

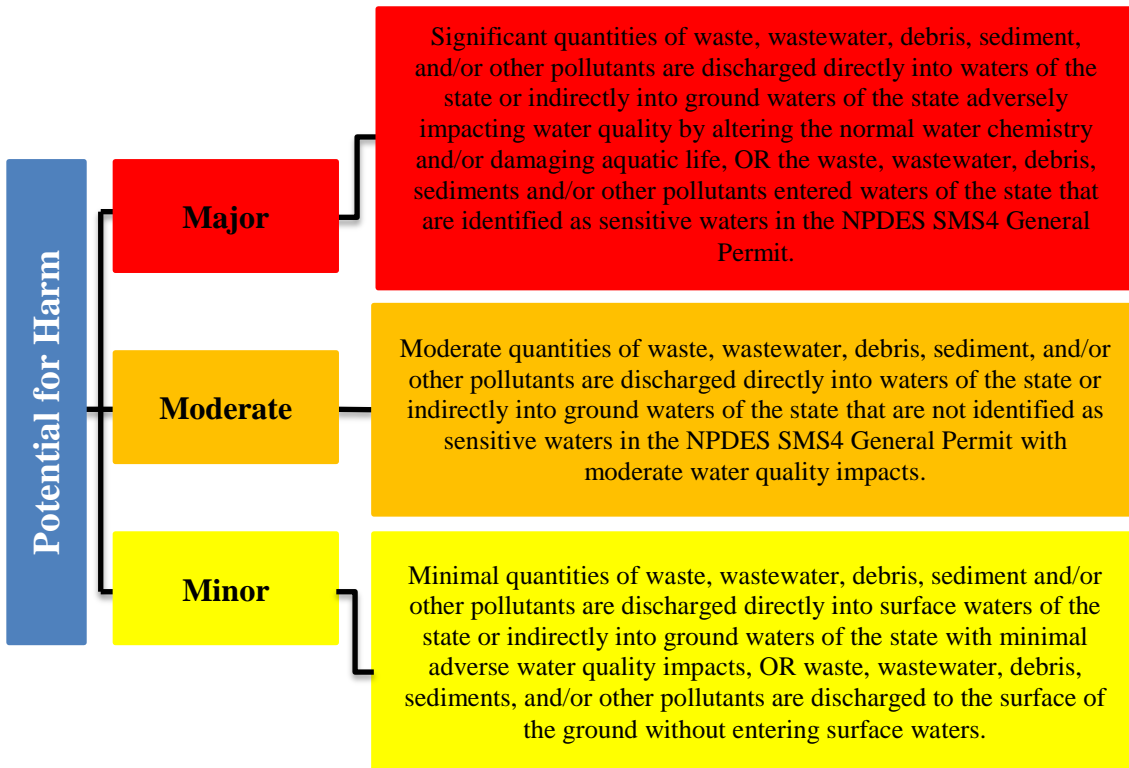
Once the source of the illicit discharge has been determined, Anderson County will notify the responsible party of the discharge as soon as practicable but not later than one business day. The County will require the responsible party to conduct all necessary corrective actions to eliminate the non-stormwater discharge within 30 days. If elimination takes longer than 30 days, Anderson County will require responsible parties to submit a plan with a schedule for elimination. Anderson County will conduct a follow-up investigation to verify that the discharge has been eliminated upon being notified by responsible parties that the discharge has been eliminated.

Anderson County may issue a verbal warning prior to the initial Notice of Violation (NOV). Anderson County will issue a 2<sup>nd</sup> NOV after 30 days if the illicit discharge has not been eliminated and no schedule for elimination has been submitted. Anderson County will conduct follow-up inspections to ensure corrective action is provided. If neither appropriate corrective action have been provided nor a schedule of elimination acceptable to the County established after the 2<sup>nd</sup> NOV deadline passes a civil penalty will be issued.

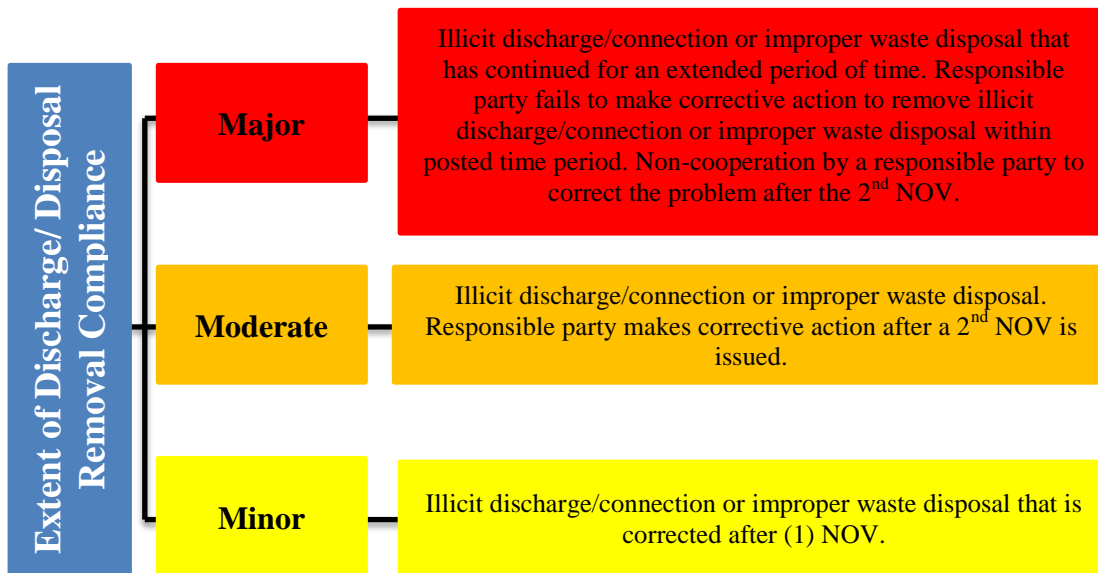




**2. Determine Potential for Harm resulting from violation:**



**3. Determine extent of discharge/disposal removal compliance:**



**4. Select applicable Civil Penalty:**

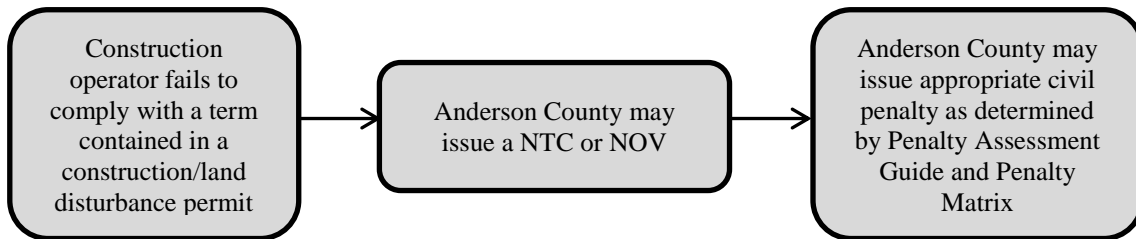
Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

## C. Failure to Comply with Permit

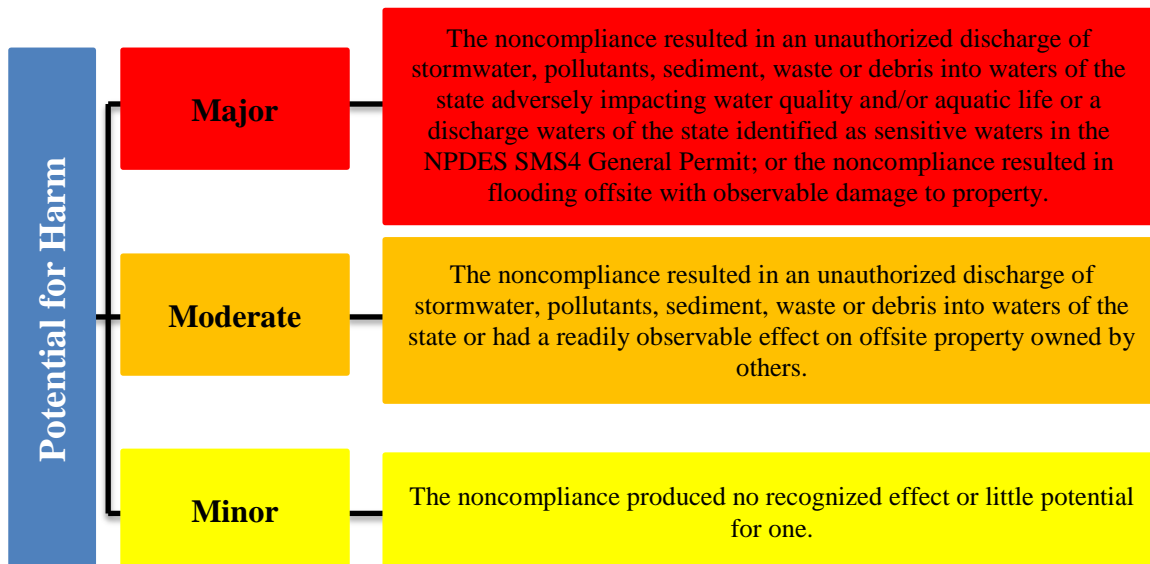
Failure to comply with a requirement, condition, or term contained in a construction permit, site development, land disturbance, or grading permit.

### 1. Anderson County response:

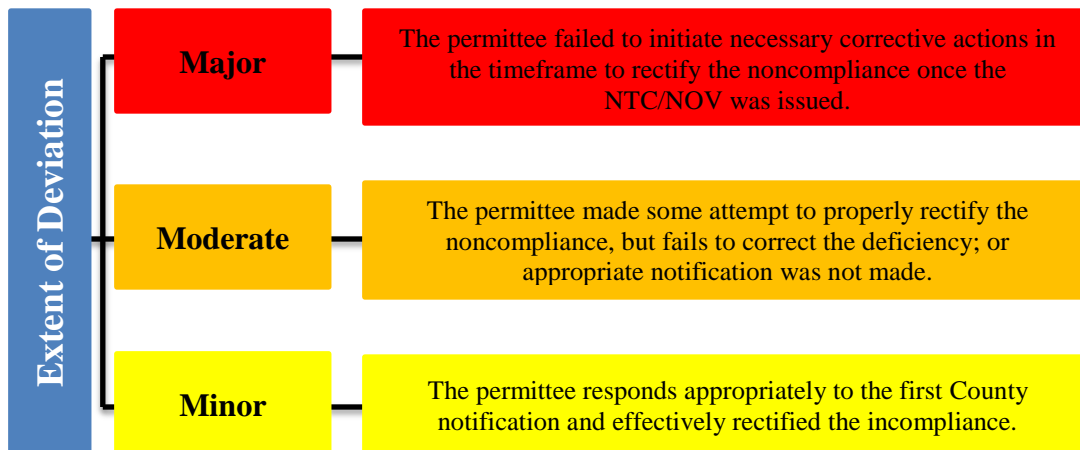
Anderson County may issue Notice to Comply (NTC) or Notice of Violation (NOV) upon initial discovery of violation. Anderson County will conduct follow-up inspections to ensure corrective action is provided.



### 2. Determine Potential for Harm resulting from violation:



### 3. Determine Extent of Deviation:



### 4. Select applicable Civil Penalty:

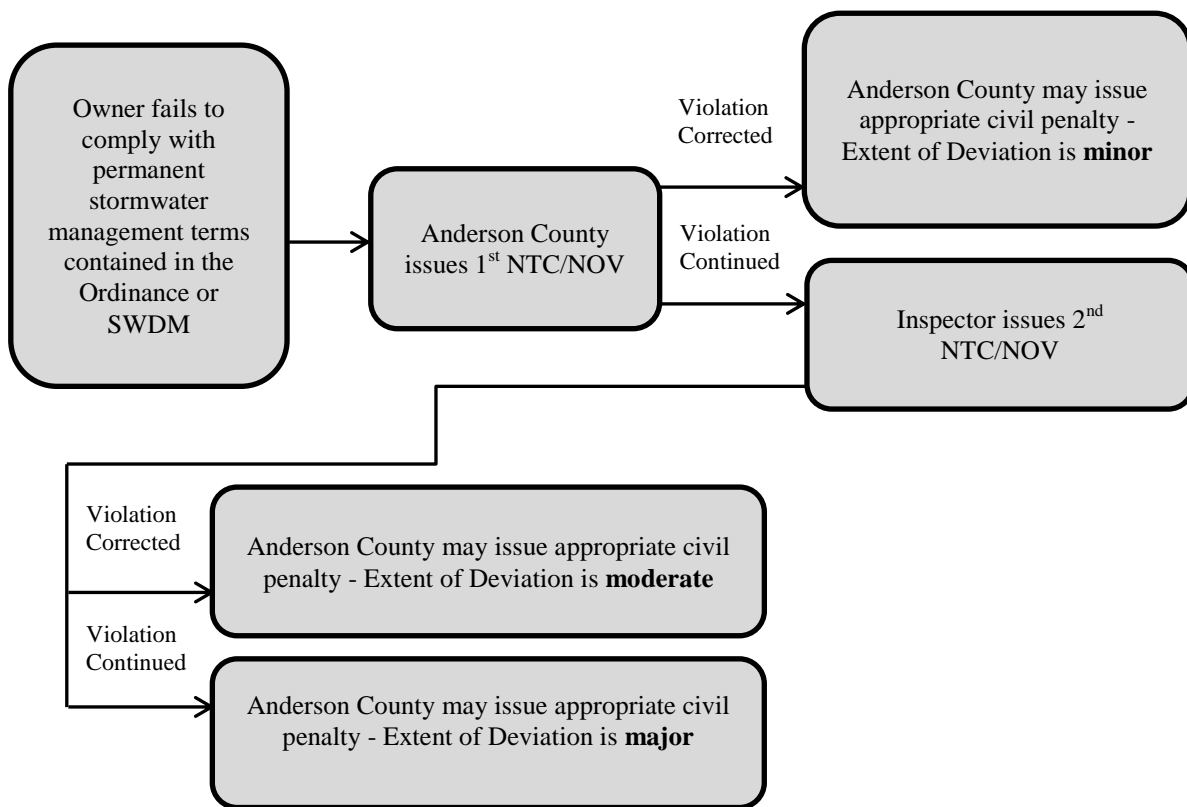
Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

## D. Failure to Comply with Permanent Stormwater Management Requirements

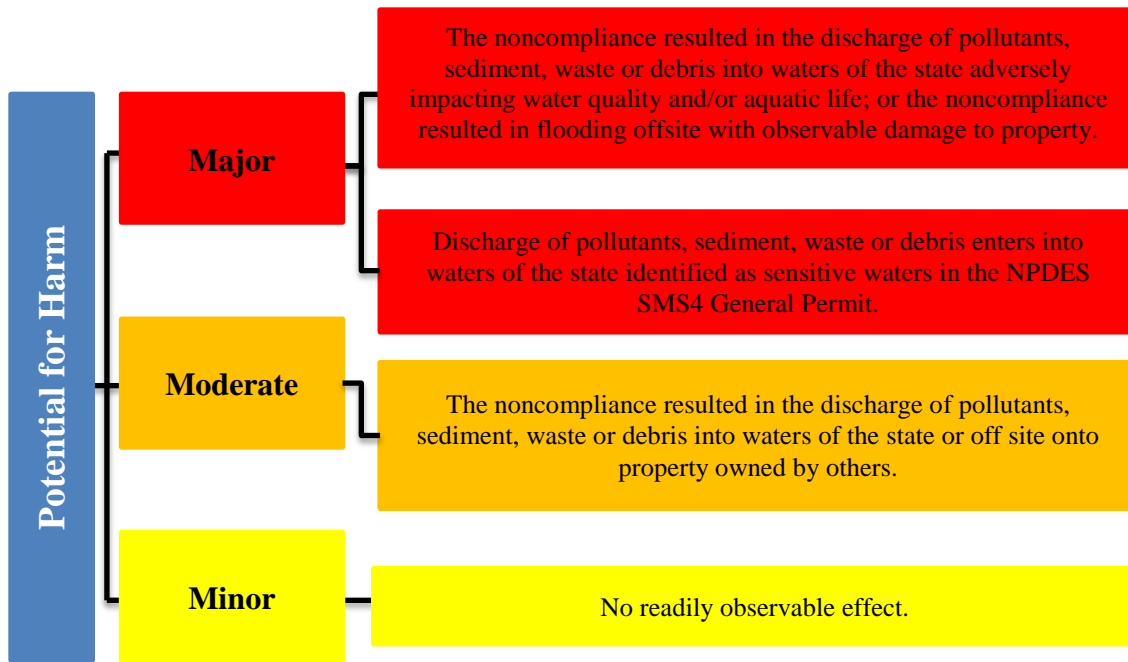
Failure to comply with a permanent stormwater management requirements.

### 1. Anderson County response:

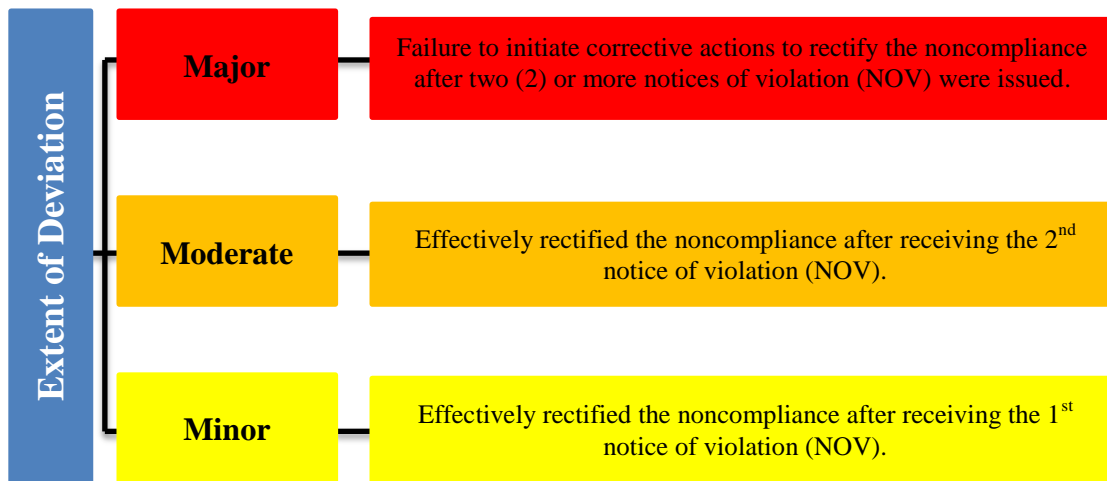
Anderson County may issue a verbal warning prior to issuance of written notifications upon initial discovery of a permanent stormwater management violation. Anderson County may issue a Notice to Comply (NTC) or Notice of Violation (NOV) concerning a permanent stormwater management violation. Anderson County will conduct follow-up inspections to ensure corrective action is provided.



**2. Determine Potential for Harm resulting from violation:**



**3. Determine Extent of Deviation:**



**4. Select applicable Civil Penalty:**

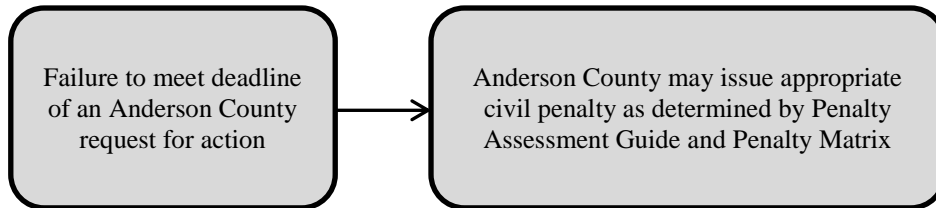
Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

## E. Failure to Comply with a County Request

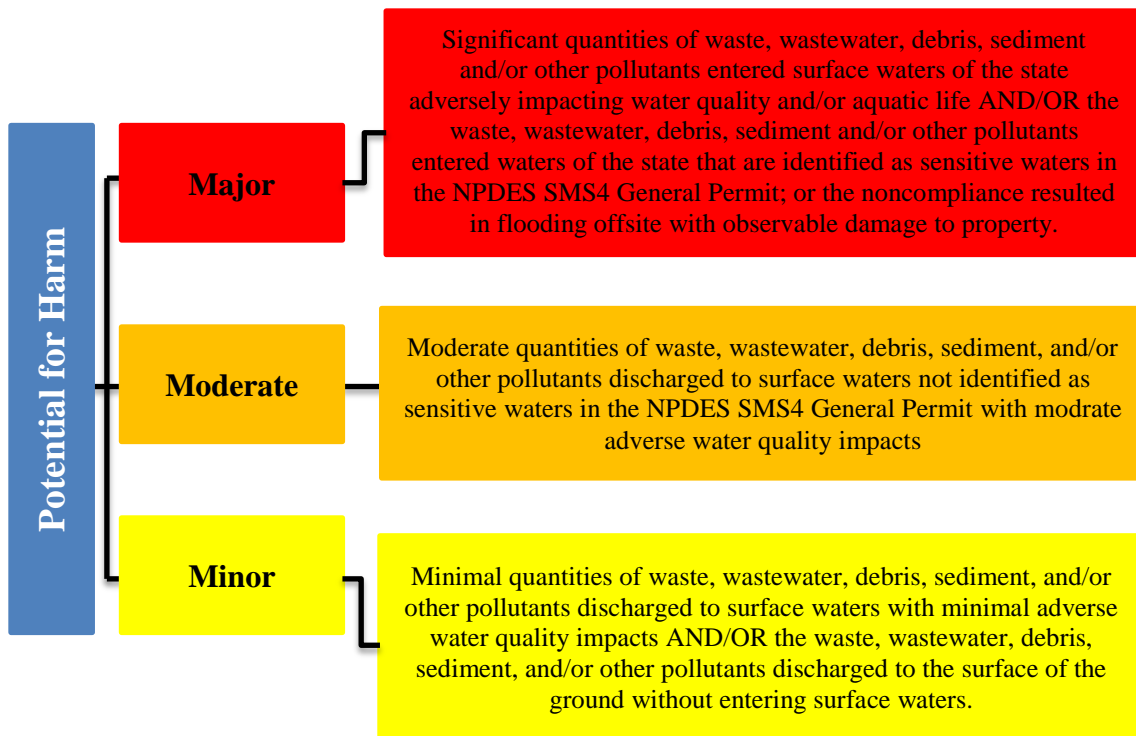
Failure to comply with each requirement, term, or condition of a County Request for Action (Request).

### 1. Anderson County response:

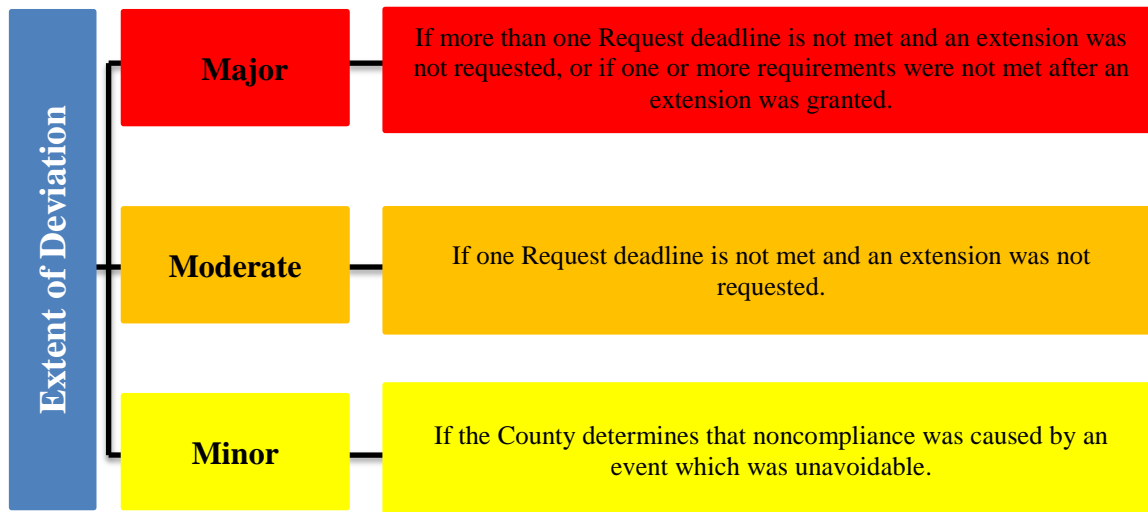
For instances in which there is a failure to comply with a condition of a County Request for Action, Anderson County may issue civil penalties when deadlines are not met.



### 2. Determine Potential for Harm resulting from violation:



### 3. Determine Extent of Deviation:



### 4. Select applicable Civil Penalty:

Issue a civil penalty as determined by Penalty Assessment Guide and Penalty Matrix.

### **III. PENALTY CALCULATION RATIONALE**

The civil penalty calculation will include consideration of the following factors:

- 1) Degree of harm or Potential for Harm to the public health, safety, private property, or the environment.
- 2) Extent of Deviation from the requirements of the regulation, standard, or permit.
- 3) Frequency or duration of the violation.
- 4) Economic benefit as a result of noncompliance.
- 5) Cost of restoration of the environment or abatement of the environmental harm.
- 6) Past performance record or past history of noncompliance.
- 7) Degree of willfulness or negligence.

A civil penalty assessment rationale will be developed and outlined in writing for each enforcement action for which a civil penalty is assessed.

Penalties for long-lasting and/or continuing violations (such as, but not limited to, unauthorized discharges or poor operation and maintenance) and recovery of economic benefit may be assessed per occurrence, per month, or per week.



## **IV. PENALTY ASSESSMENT GUIDE**

**STEP 1** Confirm all the pertinent facts of the alleged violation(s) with appropriate County personnel.

**STEP 2** Calculate the Maximum Allowable penalty per Anderson County Storm Water Management and Sedimentation Control Ordinance Sec. 38-529.

**STEP 3** Calculate the Economic Benefit derived by the responsible party for noncompliance, if applicable.

[NOTE: This calculation can only be done using reasonable capital and operational cost estimates assuming that the installation/proper maintenance/licensing of the required equipment or personnel, or proper installation/construction, or appropriate sampling, or site remediation/protection/registration would have allowed the responsible party to achieve compliance with the applicable regulations. Time cost of money and doing business shall be a consideration of the value of noncompliance. This information may not be available prior to the initial request and the penalty would need to be adjusted upward at a later date to include this penalty component.]

**STEP 4** Calculate the Gravity Component for each violation using the "Penalty Assessment Guide" and "Penalty Matrix."

**STEP 4a** Determine the appropriate degree of "Potential for Harm" to human health or the environment.

**STEP 4b** Determine the appropriate degree of the "Extent of Deviation" from the applicable requirement or regulation.

**STEP 4c** Select the applicable penalty range from the "Penalty Matrix".

**STEP 4d** Determine the amount of penalty from the penalty range by evaluating the criteria for the number of violation occurrences.

**STEP 5** For each violation in the Gravity Component determine if there were additional or multiple violations and/or recalcitrance.

For each violation in the Gravity Component, multiply the assessed amount by 1.1 to 2.5 (110%-250%) to allow for a resistance/multiple violation factor.

[NOTE: The penalty may be adjusted upward to address additional violations in excess of those on which the Gravity Component was calculated and/or the documented

demonstration of un-cooperativeness, i.e. unjustified delays in preventing, correcting, or mitigating violations, violations of previous orders, failure to provide timely or complete information, etc.]

#### STEP 6

Determine whether the Respondent has had previous Requests for the same violation to provide for a Violation Reoccurrence Factor (Repeat Violator).

- For a second offense violation within a three year period, take the total Gravity Component and multiply it by 1.1 to 1.5 (110%-150%).
- For a third offense within a five year period, take the total Gravity Component and multiply it by 1.5 to 3.0 (150%-300%)

[NOTE: this factor should be applied to similar violations in a previous Request involving the same party, at the same site. It can, when appropriate, be used for similar violations by the same party at different sites.]

[NOTE: At this point, calculate the Administrative Penalty using the following equation:

$$\text{ADMINISTRATIVE PENALTY} = \text{Economic Benefit} + \text{Total Gravity Component} + \text{Recalcitrance/Multiple Factor} + \text{Violation Reoccurrence Factor}$$

The Administrative Penalty must not exceed the Statutory Maximum, but should be greater than the economic benefit. After the demand for payment, the administrative penalty may be adjusted upward or downward if additional violations are discovered or if violations did not actually exist or economic benefit needs additional consideration.]

#### STEP 7

Determine "Additional Adjustment Factors":

1. Degree of cooperation or good faith efforts (1-15% reduction)
2. Measures taken to prevent reoccurrence (1-15% reduction)

[NOTE: Consideration of these factors allow for the downward adjustment of the penalty amount. United State Environmental Protection Agency (USEPA) guidance states that the maximum penalty reduction for municipals and small businesses should be no more than the higher of (a) economic benefit plus 10% of calculated penalty; or, (b) 25% of calculated penalty.]

#### STEP 8

The total civil penalty settlement amount is based upon the following formula:

$$\text{CIVIL PENALTY} = \text{Economic Benefit (as is or adjusted)} + \text{Total Gravity Component (as is or adjusted)} + \text{Recalcitrance/Multiple Factor (as is or adjusted)} + \text{Violation Reoccurrence Factor (as is or adjusted)} - \text{Additional Adjustment Factors (from Step 7)}$$

[NOTE: A penalty may be adjusted another 20% pending further discussions with and recommendations from County Stormwater Management staff. Any further penalty adjustment beyond that can only be made by the County Administrator.]

STEP 9

Consider the Maximum Allowable penalty against the calculated Civil Penalty and select the most appropriate.

## V. PENALTY MATRIX

This matrix is used to determine the Gravity Component for violations. Each violation cited should be run through the matrix to determine the total Gravity Component of the penalty.

\* **Potential for Harm** = What was the Potential for Harm to human health, the environment, or property?

\* **Extent of Deviation** = How much did the Responsible Party deviate from the relevant requirement or regulation?

		Extent of Deviation		
		Minor	Moderate	Major
Potential for Harm	Minor	\$0 – \$1,500	\$1,500 – \$3,000	\$3,000 – \$4,500
	Moderate	\$1,500 – \$3,000	\$3,000 – \$4,500	\$4,500 – \$6,000
	Major	\$3,000 – \$4,500	\$4,500 – \$6,000	\$6,000 – \$7,500
		Penalty Range		