

Texana Groundwater Conservation District

Enforcement Policy

Adopted: January 19, 2017

This Policy shall constitute the general procedures of the Texana Groundwater Conservation District (the "District") in matters relating to enforcement of its rules. This Policy does not restrict the District from taking any other actions ordered by the Board of Directors, nor does this policy create any procedural rights for any person inside or outside the District's jurisdiction. It is the policy of the District to only file suit to enforce its rules as a last resort.

VIOLATION OF DISTRICT RULES AND PERMITS

When it is discovered that one or more provisions or conditions of the District's Rules or Permits have been violated, the General Manager shall bring these violations to the attention of the Board of Directors (the "Board"), along with all pertinent facts surrounding the violation. The General Manager shall recommend an appropriate settlement offer for consideration and action by the Board to settle the violation in lieu of litigation. The Board of Directors may instruct the General Manager to tender an offer on behalf of the District to settle the violation or to institute a civil suit on behalf of the District in the appropriate court to seek civil penalties. When a violation of a District Rule or Permit is discovered, the following steps, under the direction of the Board, shall be followed prior to any suit being filed, unless there is an immediate and imminent danger to public health or the environment.

1st Notice of Violation: The General Manager shall send a Notice of Violation Letter (NOV Letter) notifying the well owner, operator, or well driller (Alleged Violator) that a District Rule(s) or Permit(s) has been violated, and necessary actions by the Alleged Violator(s) to achieve compliance. Any appropriate application(s), form(s), or document(s) shall be sent with the NOV Letter. The NOV Letter shall also indicate the District's statutory authority to set reasonable civil penalties not to exceed \$10,000 per day per violation, and that each day of a continuing violation constitutes a separate violation (§36.102, Texas Water Code). The letter will indicate that the Board prefers to settle the violation, initiating lawsuits as a last resort. The General Manager shall include a settlement agreement, whose terms have been agreed upon by the Board of Directors. If the Alleged Violator(s) wishes to settle the violation, he must submit a signed settlement agreement and submit any necessary payment by cashier check or money order in the amount stated in the settle agreement no later than 30 days from the date of the NOV Letter.

2nd Notice of Violation: If the 1st NOV Letter is returned due to an incorrect address, the General Manager may attempt to hand deliver the 1st Notice of Violation or obtain a proper address for the Alleged Violator(s). If there is no response within 30 days, the General Manager shall send a second Notice of Violation Letter (NOV2 Letter) to the Alleged Violator(s) explaining the consequences of failing to respond, comply, or settle the matter(s). If possible, the General Manager will attempt to contact the Alleged Violator(s) by telephone.

Notice of Need to File Suit: If there is no satisfactory response within 30 days, the District's General Counsel shall send a letter (NNFS Letter) to the Alleged Violator(s) indicating the need to file suit if a satisfactory response is not received within 30 days.

The NNFS Letter shall include a draft copy of the petition to be filed. The General

Manager shall, at each regular meeting of the Board, inform the Board of any person who has received the NNFS Letter and not responded as of the meeting date. The Board may choose to authorize enforcement by filing a civil suit in the event the violator does not respond to the NNFS Letter.

If there is no response within 30 days of transmittal of the NNFS Letter, upon approval by the Board, the District's General Counsel shall institute a civil suit on behalf of the District in the appropriate court to seek injunctive relief and civil penalties.

All mail relating to enforcement matters shall be sent Certified Mail, Return Receipt Requested through the United States Postal Service.

If an immediate and imminent danger exists such that the situation cannot afford the 72 hours notice required to call a special meeting of the Board, the Open Meetings Act does allow for 2 hours notice of an emergency meeting. Note, however, that the Open Meetings Act (§ 551.045, Government Code) limits an emergency meeting to the following: "An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation."

The District's General Counsel may file suit for an appropriate injunction whenever a rule violation is discovered that is an imminent threat to public health and safety, after having called an emergency meeting, with proper notice given. If a quorum cannot be present for an emergency meeting, then the District's General Counsel may file suit only with prior authorization from the highest-ranking Board official available at the time.

The District has the discretion to increase the settlement offer amount based on the number of violations or the severity of the violations.

The Alleged Violator(s) may appear before the Board to present information regarding any extenuating circumstances or to make a counter-offer. The Board has the discretion to accept a counter-offer or otherwise modify the settlement offer to the Alleged Violator(s).

VIOLATION GUIDELINES

Level One Violations: The following acts shall constitute Level One Violations:

1. Failure to obtain a permit to drill a well prior to drilling a well not otherwise exempted by Chapter 36 of the Texas Water Code.
2. Failure to register, with the District, a well drilled after the original date on which this policy is adopted and within 60 days of completing the water well.
3. Failure to locate a well in a location that satisfies the conditions of the associated drilling permit issued by the District or the spacing limitations established in the District Rules.
4. Failure to obtain the necessary waivers prior to drilling a well located such that the District Rules regarding well spacing are not satisfied.
5. Failure to construct and complete a well in compliance with the District Rules.
6. Failure to obtain a production permit (i.e. an operating permit or historic use validation permit) prior to operating a well in a manner that constitutes non-exempt use.
7. Failure to submit required groundwater production reports within 30 days of the close of the reporting period.
8. Failure to limit groundwater production from a non-exempt use well to an amount less than 110% of the authorized groundwater production rates.
9. Failure to limit the use of groundwater produced from a non-exempt use well to the purposes authorized by the District.
10. Failure to obtain a permit authorizing groundwater transport out of the District's boundary.
11. Failure to limit groundwater transport to an amount less than 110% of the amount of groundwater authorized for transport by a permit issued by the District.
12. Failure to satisfy or comply with any condition of a permit issued by the District.
13. Failure to properly plug or cap an abandoned well within the required period.
14. Failure to properly plug or remediate a deteriorated well within the required period.
15. Failure to prevent the waste of groundwater produced from a well within a person's control.

Note 1: Any Level One Violation by a person subsequent to settlement of a violation within 5 years of the previous violation constitutes a Level Two Violation.

Note 2: Five (5) or more Level One Violations by a single person per incident shall be considered Level Two Violations.

Note 3: An additional violation occurs each day an existing violation remains unresolved.

The following items identify the minimum penalties that the District shall assess for Level One Violations:

1. \$100.00 for a single violation per incident per Alleged Violator;
2. \$200.00 for every violation per incident per Alleged Violator in excess of the first violation.

Level Two Violations: The following acts shall constitute Level Two Violations:

1. Any re-occurrence of a Level One Violation by a person subsequent to settlement of a violation within 5 years of the previous violation.
2. Five (5) or more Level One Violations by a single person.
3. Falsification of records provided to the District.
4. Performing services as a well driller without a current license issued by the Texas Department of Licensing and Regulation.
5. Performing services as a pump installer without a current license issued by the Texas Department of Licensing and Regulation.

The following items identify the minimum penalties that the District shall assess for Level Two Violations:

1. \$250.00 for a single violation per incident per Alleged Violator;
2. \$500.00 for every violation per incident per Alleged Violator in excess of the first violation.

Other Violations: Penalties for violations of any District Rule that is not explicitly described herein will be assessed at the discretion of the Board of Directors.

Statutory Authority: Section 36.102 of the Texas Water Code

Sec. 36.102. ENFORCEMENT OF RULES.

(a) A district may enforce this chapter and its rules against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) The board by rule may set reasonable civil penalties against any person for breach of any rule of the district not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.

(c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in

the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(d) If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

(e) In an enforcement action by a district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district may impose under Section 36.122, 36.205, or this section, or under a special law governing a district operating under this chapter, constitute a limit of liability of the governmental entity for the violation. This subsection shall not be construed to prohibit the recovery by a district of fees and costs under Subsection (d) in an action against any person that is a governmental entity.

Adopted by the Texana Groundwater Conservation District Board of Directors on

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Presiding Officer

Attest by:

Director of the District