

CHAPTER 9 – INVESTIGATION AND ENFORCEMENT

SECTION 9.1 – INVESTIGATION

RULE 9.1.1 – NOTICE AND ACCESS TO PROPERTY

- a) Access to Property – Board members and District agents and employees are entitled to access all property within the District at any reasonable time to carry out technical and other investigations necessary to the implementation of the District Rules or for the purpose of inspecting and investigation conditions relating to the quality of water or the compliance with any rule, regulation, permit or other order of the District.
- b) Notice – Prior to entering upon a property for the purpose of conducting an investigation, the person seeking access must first make a reasonable attempt to give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee before entering a property. Information contained in any application or other information on file with the District may be used to contact a person concerning entry upon the property. Notice is not required if prior permission is granted to enter without notice.
- c) Conduct of Investigator – When investigators or inspections require entrance upon private property, such investigations and such inspections shall be conducted at reasonable times, and shall be consistent with all applicable rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations shall identify themselves and present District identification upon request by the owner, operator, lessee, management in residence, or person in charge.
- d) Restricting Access to Property – Inhibiting or prohibiting access to any Board member or District agents or employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36.102.

RULE 9.1.2 – RESPONSE TO PROTEST OR COMPLAINT

- a) Citation – The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person owning or operating a well within the District, or any person in the District violating the Act, these Rules, or an Order of the Board. Under the citation, that person is ordered to appear before the Board in a public hearing and said person is required to show cause why an enforcement action should not be initiated or why his operating authority or permit should not be suspended, cancelled, or otherwise restricted and limited, for failure to abide by the terms and provision of the permit, these Rules, or the Act.

SECTION 9.2 – ENFORCEMENT

RULE 9.2.1 – ACTS ON VIOLATIONS

- a) Powers of the Board – If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules or of any regulation, permit, or other order of the District, the Board of Directors may institute and conduct a suit in the name of the District for enforcement of rules through the provisions of Chapter 36.102 of the Texas Water Code.

RULE 9.2.2 – EXCEPTIONS TO DISTRICT RULES

- a) Power to Grant an Exception – In order to accomplish the purpose set forth in these Rules, the Board may grant exceptions to Rules of the District. This Rule, and all other Rules of the District, shall not be construed so as to limit the discretionary power of the Board, and the powers stated are cumulative of all other powers possessed by the Board.
- b) Filing for an Exception – Any person, firm, corporation, association of persons, or other entity desiring an exception to any Rule shall file a written application with the District office which includes: (i) a statement regarding the nature of the exception requested; (ii) the justification for granting the exception; (iii) any information that the applicant deems appropriate in support of the application for an exception; and (iv) a listing of adjacent landowners and affected parties; and (v) all waivers signed by affected parties and landowners whose property borders that of the applicant.
- c) Waiver – If all such affected parties execute a waiver in writing stating that they do not object to the granting of such exception, the Board may thereupon proceed to decide upon the granting or refusing of such application without notice or hearing except to the applicant. The applicant may also waive notice or hearing, or both.
- d) Notice and Hearing – Assuming Rule 9.2.2.c does not apply, then all applicants for exceptions and affected

parties may be subject to public hearings pursuant to Section 8.2.

RULE 9.2.3 – SEALING OF WELLS

- a) **Authority to Act** – The District may seal wells that are prohibited by the Rule, Board orders or court judgment from withdrawing groundwater within the District.
- b) **Grounds for Action** – This authorization to seal a well or to take other appropriate action to prohibit the withdrawal of groundwater extends to, but is not limited to, the following circumstances in which: (i) a permit has been granted, but the applicable fees have not been paid within the time period provided for payment; (ii) representations have been made by the well owner or operator that no groundwater is to be withdrawn from a well during a particular period; (iii) no application has been made for a permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; (iv) the Board has denied, cancelled, or revoked a permit; (v) permit conditions have not been met; or (vi) a threat of, or potential for, contamination to the aquifer exists.
- c) **Red-Tagging** – For any well that has been sealed by the District, a red-tag shall be placed on the well in such a way that the well cannot continue operation without interfering or tampering with the red-tag. The presence of a red tag is an indication by the District to the well owner, well operator or responsible party that the well is not to be produced.
- d) **Tampering** – The action or actions of tampering with, altering, damaging, or removing a red-tag, or in any other way violating the integrity of the red-tag, or pumping of groundwater from a well that has been red-tagged constitutes a violation of these Rules and subjects the person performing such action(s), as well as any well owner or primary operator who does not prevent such action(s) or who authorizes or allows such action(s), to such penalties as provided by Section 36.102 of the Texas Water Code and Chapter 9 of these Rules.

RULE 9.2.4 – PENALTIES FOR LATE PAYMENT

- a) **Late Payment Fee** – Failure to make complete and timely payments of a fee will automatically result in a late payment penalty of ten percent (10%) of the amount not paid. The fee payment plus the late payment fee must be made within thirty (30) calendar days following the date the payment is due, otherwise the permit may be declared void by the Board. Should the permittee show due cause as to why the payment was late, the Board or General Manager has the discretion to waive the late payment fee.
- b) **Loss of Installment Payment Option** – The option of making payment of a production or export fee in installments may be made available by the District in order to avoid causing cash flow problems for permittees. Any permittee who, two or more times during the permit term, makes late payment of fee installments, will be required to pay production and export fees during the following two (2) years as an annual payment upon permit issuance, without an installment payment option.
- c) **Unauthorized Use of the Well** – After a permit is declared void for failure to make payment of a production or transport fee, all enforcement mechanisms provided by this Rule and the Act shall be available to prevent unauthorized use of the well, and may be initiated by the General Manager without further authorization from the Board.

RULE 9.2.5 – FAILURE TO REPORT PUMPAGE AND/OR TRANSPORTED VOLUMES

- a) **Failure to Report** – The accurate reporting and timely submission of pumpage and/or exported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, export and water quality reports, as required by Rules 3.3.9.b, 3.4.11.b, and 3.5.10.a of these Rules, may result in forfeiture of the permit, civil penalties, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or exported volumes and water quality reports.
- b) **Inhibiting Meter Reading** – For wells that require metering, permittees must ensure that meters are installed and maintained in a manner that allows unimpeded inspection by District staff or consultants. Failure may result in a fine and/or revocation of the permit.
- c) **Failure to Allow Well Monitoring** – All non-exempt wells are subject to periodic measurements of water level in the well by District staff or consultants. Staff will work with well owners to ensure that there is minimal disruption in the well operation. Refusal to allow monitoring of water levels may result in a fine and/or revocation of the permit.

RULE 9.2.6 – ADVERSE IMPACT MITIGATION

- a) **Interference with Other Wells** – The Board may request the water well owner or operator who is negatively impacting an existing registered water well to enter into discussions or formal mediation to address the negative impact. In the absence of an agreed upon recommendation between a water well owner that unreasonably affects an existing registered or permitted water well owner, and the affected well owner (for example, a mitigation contract or plan), the Board may on its own motion amend the permit (Rule 3.3.7.d or 3.4.8.d) or otherwise impose pumping restrictions or conditions, and/or civil penalties upon the well owner adversely affecting existing registered or permitted water wells, as necessary, to address adverse impacts. The Board shall take into consideration the presence of area wells that existed prior to a new well being drilled when reviewing potential mitigation actions.
- b) **Complaints** – The Board may also consider any complaints received in writing concerning negative impacts of any wells upon an existing registered water well within the District. The Board shall consider all registered and permitted wells in the area when assessing the complaint.
- c) **Supporting Documentation** – Any complaints filed by registered or permitted water well owners complaining about unreasonable effects by another water well owner shall indicate the amount of expense incurred, when the negative impact occurred, and shall be accompanied by either actual invoices or by written estimate from a licensed water well driller, pump installer, or certified engineer.

RULE 9.2.7 – CIVIL PENALTIES

- a) **Enforcement** – The District may enforce these Rules by injunction or other appropriate remedy in a court of competent jurisdiction.
- b) **Rights to Assess Civil Penalties** – The Board may assess reasonable civil penalties for breach of any rule of the District not to exceed \$10,000 per day per violation, and each day of continuing violation constitutes a separate violation. In determining the necessity for injunctive relief or other appropriate remedy and the amount of the penalty the District shall consider: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard created to the health, safety, or economic welfare of the public, or pollution of the groundwater; (ii) the economic harm to property or environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter future violations; (v) the efforts to correct the violation; and, (vi) any other matter that justice may require.
- c) **Notice of Violation** – Once the District discovers that its Rules have been violated, District staff may first send a notice of violation to the violator. The notice will include the corrective steps that must be taken and the date upon which the violation must be corrected. If the violation is not remedied by the date in the District’s initial violation notice, a show cause order may be sent by the District staff informing the violator of the time and place to appear before the Board, the penalty that could be assessed, and the date that the penalty will begin to be assessed. If the violation requires immediate remedial action, the District staff may take appropriate measures, including but not limited to seeking an immediate injunction against the violator.
- d) **Initial Penalties** – The Board may assess the following initial minimum penalties for the listed Rule violations. The Board may set reasonable penalties for other Rule violations that are not listed. The District will work with the violator to ensure that compliance is reached. The penalty table is as below:

Violation	Initial Minimum Penalty
Failure to permit a well according to District Rules.	\$200
Failure to install a meter on a permitted well where required by District Rules.	\$250
Use of groundwater that constitutes waste.	\$500
Falsification of records or permit applications.	\$1000
Failure to file documentation or well log with the District within the required time period.	\$200
Failure to properly plug or cover an abandoned well.	\$250
Failure to adhere to rules and restrictions mandated by a District designated CGDA.	\$5000

If the violator is not cooperative or does not make reasonable progress toward compliance within a Board-determined timeframe, the Board may assess the penalty for every day that the violation is unresolved. For the second incidence of any offense, the listed initial minimum penalty may be doubled and the third incidence may be tripled, up to a maximum fine of \$10,000 per day.

- e) **Civil Penalties Recovered** – All civil penalties recovered by the District shall be paid to the Colorado County Groundwater Conservation District.
- f) **Jurisdiction** – A penalty under this section may be enforced by complaints filed in the appropriate court of jurisdiction in Colorado County.
- g) **Further Penalties** – A penalty under this section is in addition to any other penalty provided by the law of this State and may be enforced by complaints filed in a court of competent jurisdiction in Colorado County, Texas.
- h) **Recovery of Fees** – If the District prevails in any suit to enforce its Rules, the District may, in the same action, recover 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.