

ENFORCEMENT POLICY

ADOPTED FEBRUARY 21, 2005

This Policy shall constitute the general procedures of the Fayette County Groundwater Conservation District (the District) in matters relating to enforcement of 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

When it is discovered that one or more provisions or conditions of the District's Rules 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 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.

1. The General Manager shall send a letter notifying the well owner or operator that a District Rule(s) has been violated, and what must be done by the well owner or operator to bring the well into compliance. Any appropriate application or other form(s) and/or documents shall be sent along with the letter. The 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 well owner or operator wishes to settle the violation, he must sign the settlement agreement, enclose a check in the amount stated in the agreement, and return both no later than 30 days from the date of the letter.
2. If the letter is returned unopened, the General Manager may attempt to hand deliver the applications and/or obtain a proper address. If there is no response within 30 days, the General Manager shall send a second letter explaining the consequences of failing to respond, comply, and/or settle. If possible, the General Manager will also make a follow up phone call.
3. If there is still no satisfactory response within 30 days, the District's General Counsel shall send a third letter indicating the need to file suit if the applications are not received by date certain. The letter may include a copy of the petition to be filed if the deadline is

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

4. If there is no response within 30 days, 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.
5. All mail relating to enforcement matters shall be sent both Certified, Return Receipt Requested, and regular U. S. Mail.

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 danger to public health or the environment, 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 may appear before the Board with extenuating circumstances or to make a counter-offer. The Board has the discretion to accept a counter-offer or otherwise modify the settlement offer amount.

VIOLATION GUIDELINES

I. Level One Violations

B. The following acts shall constitute minor (Level One) violations:

1. Overpumping of the permitted amount by less than 10% of the permitted amount.
2. Refusing access to wells or well equipment or blocking access to well or well equipment.
3. Failure to file a well registration on a well that has a valid permit or is exempt from permitting.
4. Failure to submit annual Groundwater Production report within the required period
5. Failure to submit required documentation reflecting alterations or increased production

6. Failure to obtain an exception to a District rule concerning minimum tract size and/or distance from a property line prior to drilling a well

C. Penalties for Level One violations are:

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| First Violation: | \$50.00 |
| Second Violation: | \$100.00 |
| Third Violation: | Major Violation |

D. A second violation shall be any violation within 7 years of the first violation of the same level. A third violation shall be any violation following the second violation within 7 years of the first violation.

E. All violations for pumping any amount of groundwater in excess of the permitted amount, but less than 110% of the permitted amount, will result in the stated penalty plus an amount equal to the permit, production, or transport fees applied to the excess pumpage at the current applicable fee rate.

II. Level Two Violations

A. The following acts shall constitute major (Level Two) violations:

1. Overpumping of the permitted amount by 10% or more.
2. Failure to obtain a permit (including failure to renew a permit and failure to obtain a permit prior to drilling a well).
3. Failure to meter a well when required.
4. Failure to meet requirements of permit special provisions regarding reductions.
5. Failure to file a well registration on a well that is not permitted and requires a permit.
6. Falsification of records provided to the District
7. Performing services as a Driller without a current License issued by the Texas Department of Licensing and Regulation
8. Performing services as a Pump Installer without a current License issued by the Texas Department of Licensing and Regulation
9. Failure to plug or cap an abandoned or deteriorated well within required period
10. Use of groundwater for purposes other than indicated on the permit.

B. Penalties for Level Two violations are:

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| First Violation: | \$250.00 |
| Second Violation: | \$500.00 |
| Third Violation: | Civil Suit for injunction or damages, Including court costs |

III. Water Well Construction and Completion requirements

Penalties assessed for the rules violations identified in this category will be charged to the well driller.

1. Failure to utilize approved construction materials **\$250 + remediation**
2. Failure to properly cement annular space **\$500 + remediation**
3. Failure to complete wellhead concrete slab within
4. 10 days of departure of the drilling rig from the wellsite **\$100/day**
5. Failure to file documentation with District within required period **\$100**

IV. Adverse Impact

1. Use of groundwater that constitutes waste **\$500/day + remediation**
2. Use of groundwater that causes adverse impact on neighboring wells **\$500/day + remediation**

V. 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:

§ 36.102. Enforcement of Rules

- (a) A district may enforce this chapter and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) The board by rule may set reasonable civil penalties 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 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, 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.