

PANOLA COUNTY GROUNDWATER CONSERVATION DISTRICT

CIVIL PENALTY SCHEDULE

I. General Guidelines

The Civil Penalty Schedule for the Panola County Groundwater Conservation District (“District”) provides the guidelines that the District will follow when enforcing its rules or addressing other issues within its jurisdiction. The District’s Civil Penalty Schedule in no way restricts the District’s authority or powers as established by Chapter 36 of the Texas Water Code (“Chapter 36”), the District’s Rules (“Rules”), or any order of the Board of Directors (“Board”) of the District. If the District’s Civil Penalty Schedule contradicts or is inconsistent with Chapter 36 or the Rules, Chapter 36 or the Rules prevail. The District’s Civil Penalty Schedule does not generate or provide any procedural or substantive rights to any person or entity.

II. Statutory Authority

Through its Civil Penalty Schedule, the District exercises the powers granted to groundwater conservation districts by Chapter 36. Specifically, Section 36.102 (Enforcement of Rules) of Chapter 36 provides as follows:

(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 \$25,000 per day per violation, and each day of a continuing violation constitutes a separate violation. Notwithstanding the foregoing, the District may recover a civil penalty in excess of \$25,000 per day per violation should it be determined that the person gained an economic benefit greater than the maximum penalty as a result of the violation.

(c) A penalty under this section is in addition to any other penalty provided by 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 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.

III. District Rule Authority

The District also derives its enforcement authority from Chapter 36 of the Texas Water Code and its Rules. Several different sections of the Rules address the District's ability to enforce its Rules. While its provisions are not exclusive, Section 13 provides the powers that the District may exercise when enforcing its rules.

IV. Discovery of Violation of a District Rule

The General Manager of the District will determine at the time of discovery of a rule violation or shortly thereafter if the rule violation constitutes a Major or Minor Violation. The framework for the General Manager making such a determination and an illustrative list of Major or Minor Violations is provided in Sections VI and VII of this Civil Penalty Schedule. As part of the violation determination, the General Manager will identify if the violation poses an immediate or imminent danger to public health or the environment.

V. General Manager Authority

The General Manager is granted the authority to take action under this Civil Penalty Schedule upon discovery of a violation. Under the circumstances detailed below, the General Manager may take action without Board approval. Conversely, some situations will result in the need for the Board's consideration and possible action.

The General Manager may take steps to address a rule violation without initial Board consideration if the violation is a Minor Violation. The General Manager may immediately file a civil suit on behalf of the District for injunctive relief, civil penalties, damages, attorney fees, costs of expert witnesses, and other costs incurred by the District if the General Manager becomes aware of a rule violation that presents an immediate or imminent danger to public health or the environment in the judgment of the General Manager or if a well is being drilled without the necessary District permit or registration.

If the General Manager is addressing a Major or Minor Violation, then the General Manager may provide informal notice, send written correspondence, or may conduct compliance meetings with the person responsible for the Major or Minor Violations, as set forth in Rule 13.5, if such action is necessary to resolve the violation in the discretion of the General Manager. In accordance with Rule 13.6, the General Manager may recommend to the Board or the Board may take action to order any person that is believed to have violated or is believed to be violating any provision of the Rules to appear before the Board at a public meeting held for the person to show cause of the reasons an enforcement action should not be pursued.

The General Manager is authorized to negotiate a settlement of Major or Minor Violations with the violators, if possible, for a 90 day period which begins as of the date of discovery of the rule violation. If possible, the General Manager will provide the Board with a report at each monthly Board meeting of the violations of the Rules that have occurred since the previous Board meeting.

The General Manager must bring to the Board's attention any Major or Minor Violation that the General Manager has been unable to resolve in the 90 day time period that began as of the date of discovery of the rule violation. The General Manager will provide the Board with a report which details the factual scenario involved with the violation and will recommend a settlement offer to resolve the violation in lieu of litigation which takes into consideration the Violation Guidelines and Civil Penalty Schedules of this Civil Penalty Schedule. Upon receipt of the report of such a rule violation that the General Manager has been unable to resolve within 90 days, the Board will consider the rule violation and may direct the General Manager to settle the violation with the violator, commence the filing of a civil suit in the applicable court to seek civil penalties, injunctive relief, costs of court and expert witnesses, damages, and attorney fees, or take any other appropriate action within the District's authority.

VI. Violation Guidelines

The District shall use the penalty schedules set forth in this Civil Penalty Schedule in any civil suit brought by the District to enforce its rules, Chapter 36, or any other District power and in making any settlement offer the District may extend to a rule violator. The board by rule may set reasonable civil penalties against any person for breach of any rule of the district not to exceed \$25,000 per day per violation, and each day of a continuing violation constitutes a separate violation. Notwithstanding the foregoing, the District may recover a civil penalty in excess of \$25,000 per day per violation should it be determined that the person gained an economic benefit greater than the maximum penalty as a result of the violation.

When determining the amount of a rule violation penalty, the District may, in its discretion, use the specific amounts listed in the civil penalty schedules established in Sections VIII and X. The District also has the discretion to establish a penalty amount in excess of the amounts set forth in Section VIII and X that takes the following factors into consideration:

1. The amount of money necessary to offset any economic benefit received by the rule violator because of the rule violation;
2. The amount of money necessary to allow the District to recover all costs incurred by the District in addressing the rule violation, including but not limited to, any costs for attorneys, experts, consultants and time invested by District staff;
3. The amount of money necessary to mitigate any damages caused by the rule violation;
4. Whether the person gained an economic benefit greater than the maximum penalty as a result of the violation; and
5. The severity of the rule violation.

VII. Major Violations

The District deems the following acts as Major Violations:

1. Drilling, modifying, or substantially altering a well without registering the well with the District (Rule 3.1)

2. Drilling or constructing a new, non-exempt well without obtaining a Drilling Permit from the District (Rule 3.7(a))
3. Operating or producing groundwater from a new, non-exempt well or substantially altering an existing well causing the well to lose its non-exempt status without obtaining an Operating Permit from the District (Rule 3.7(a))
4. Falsification of information on registration and permit application documents (Rules 3.3(i), 3.7(e), and 3.16(c)(9))
5. Exceeding production limitation specified in Grandfathered Use Permit or Operating Permit (Rule 7.1 and Rule 7.2)
6. Failure to meet spacing requirements without obtaining an exception from the Board (Rule 5.2 and Rule 5.3)
7. Failure to meet spacing requirements from septic, cemetery, and property line as set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code (Rule 4.1(a))
8. Drilling a well at a location not within 30 feet (10 yards) of the location specified in the registration or permit application (Rule 3.4(d))
9. Failure to properly complete wells drilled or altered (Rule 4.1(a))
10. Committing intentional or negligent waste (Rule 8.1)
11. Causing surface or subsurface pollution (Rule 8.1)
12. Well owner refusing access to wells for District inspection (Rule 8.3 and Rule 13.4)
13. Failure to pay groundwater transport fees (Rule 14.1)
14. Failure to meter wells to the proper specifications (Rule 6.1)

VIII. Civil Penalty Schedule for Major Violations

First Violation: \$300.00

Second Violation: \$500.00

Third Violation: Civil suit for injunction and damages

A second violation shall be any rule violation that occurs within five (5) years of the first violation of the same level. A third violation shall be any violation which follows the second violation within five (5) years of the first violation. Each day of a violation constitutes a separate violation.

IX. Minor Violations

The District deems the following acts as Minor Violations:

1. Failure to register an existing well with the District (Rule 3.1)

2. Failure to amend well registration (Rule 3.3)
3. Failure to cap an inactive well or inadequate capping of well (Rule 9.1)
4. Failure to plug an abandoned well (Rule 9.2)
5. Failure to amend permit (Rule 3.13)
6. Failure to timely renew an Operating Permit or a Grandfather Use Permit (Rule 3.16(b))
7. Failure to submit required groundwater production reports (Rule 4.2(a))

X. Civil Penalty Schedule for Minor Violations

First Violation: \$50.00

Second Violation: \$100.00

Third Violation: Major Violation

A second violation shall be any rule violation that occurs within five (5) years of the first violation of the same level. A third violation shall be any violation which follows the second violation within five (5) years of the first violation. Each day of a violation constitutes a separate violation.