

# **Rules Compliance Policy-Middle Trinity Groundwater Conservation District**

## **I. General Guidelines**

The rules compliance policy for the Middle Trinity Groundwater Conservation District ("District) provides the general guidelines that the District will follow when enforcing its rules or addressing other issues within its jurisdiction. The District's rules compliance policy 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. Pursuant to District Rule 11.3, this rules compliance policy and the civil penalty schedule included herein constitute a rule of the District for all purposes. The District's rules compliance policy does not generate or provide any procedural or substantive rights to any person or entity.

## **II. Statutory Authority**

Through its rules compliance policy, 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 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 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 attorney's fees shall be fixed by the court.

## **III. District Rule Authority**

The District also derives its enforcement and rules compliance authority from its Rules. Several different sections of the Rules touch upon the District's enforcement of its Rules, including Rule 11.3. While its provisions are not exclusive, Rule 11.3 provides the powers that the District may exercise when enforcing its rules. The language of Rule 11.3 is as follows:

(a) If it appears that a person or entity has violated, is violating, or is threatening to violate any provision of the District Rules, the Board of Directors may institute and conduct a suit in a court of competent jurisdiction in the name of the District for injunctive relief, recovery of a civil penalty in an amount set by District Rule per violation, both injunctive relief and a civil penalty, or any other appropriate remedy. Each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District Rule is hereby set at the lower of: (1) \$10,000 per violation; or (2) a lesser amount based on the severity of the violation set forth in a civil penalty schedule which the Board of Directors may adopt from time to time via a resolution in a properly noticed meeting, which civil penalty schedule is incorporated by reference into these Rules and shall constitute a Rule of the District for all purposes. Each day that a violation continues shall be considered a separate violation.

(b) A penalty under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.

(c) If the District prevails in a suit to enforce its Rules, the District may seek and the court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this Rule shall be fixed by the court.

(d) Any permit issued by the District may be revoked for violation of District Rules, Chapter 36, Water Code, or violations of the terms and conditions of the permit.

#### **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 the Violation Guidelines Section of this rules compliance policy. 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 rules compliance policy upon discovery of a violation. Under the circumstances detailed below, the General Manager may take action without board approval. Conversely, some situations will trigger the need for Board consideration and possible Board action.

The General Manager may take steps to address a rule violation without an initial Board consideration if the violation is a Minor Violation. Further, 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 witnessed, 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 Minor Violation, then the General Manager may send written correspondence to the person responsible for the Minor Violation if such action is necessary to resolve the violation in the discretion of the General Manager. The General Manager is also authorized to negotiate a settlement of 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 an oral or written 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 Violation 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 an oral or written 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 provided in this enforcement policy. Upon receipt of the report of the rule violation, 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/or attorney fees; or take any other appropriate action within the District's authority.

## **VI. Violation Guidelines**

The District shall use the Violation Guidelines and Civil Penalty Schedules established in this rules compliance policy 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. At no time may the District seek a rule violation penalty that exceeds \$10,000 per day per violation.

When determining the amount of a rule violation penalty, the District shall use the specific amounts listed in the Civil Penalty Schedules below. But the District does have the discretion to establish a penalty amount 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 necessary to mitigate any damages caused by the rule violation; and
- (4) the severity of the rule violation.

## **VII. Major Violations**

The District deems the following acts as Major Violations:

1. Drilling a well without registering the well (well is exempt from permit) – (Rule 5.2)
2. Drilling a well without an Operating Permit - (Rule 5.2(d) / Rule 5.5(b))
3. Operating a well without a permit – (Rule 5.2(d))
4. Failure to register a well that is altered – (Rule 5.2(a))
5. Falsification of information on registration and permit documents – (Rule 5.12(e))
6. Failure to amend permit – (Rule 5.14)
7. Exceeding production cap for wells – (Rule 3.2(a))
8. Exceeding production limit of Operating Permit (Rule 3.3 / Rule 5.13)
9. Failure to meet spacing requirements for new wells that require an Operating Permit - (Rule 7.4)
10. Failure to meet spacing requirements from septic, cemetery, and property line as set forth in TDLR Rules in Texas Administrative Code – (Rule 7.3)
11. Drilling a well at a location other than that specified in the permit – (Rule 7.2)
12. Failure to complete or recomplete wells properly – (Rules 7.5/7.6)
13. Failure of an entity holding a permit from the Railroad Commission to supply information to the District required under District Rules – (Rule 5.4(d))
14. Failure of a driller to supply a Driller's Log or Well Completion Report - (Rule 5.16)
15. Incorrectly reworking or replacing a well – (Rule 6.1)
16. Committing intentional or negligent waste - (Rule 9.1)
17. Surface pollution - (Rule 9.2)

18. Sub-surface pollution - (Rule 9.3)
19. Well owner refusing access to wells or inspection or testing – (Rules 5.2(j); 5.12(d); and 11.1)
20. Failure to report meter readings on water transported out of the district (Rule 12.1(b) & 13.5)
21. Failure to pay transport fees – (Rule 12.1(a))
22. Failure to meter wells for groundwater exploration to the proper specifications – (Rule 13.1)
23. Failure to meter wells as part of Voluntary Metering Program – (Rule 13.6)
24. Failure to report meter readings as part of Voluntary Metering Program - (Rule 13.6)
25. Manipulation of, tampering with, or removal of meters that are part of Voluntary Metering Program – (Rule 13.6(e)(8))
26. Exceeding production limit for wells that are part of Voluntary Metering Program – (Rule 13.6(e)(9))

### **VIII. Civil Penalty Schedule for Major Violations**

<b>First Violation:</b>	<b>\$200.00</b>
<b>Second Violation:</b>	<b>\$400.00</b>
<b>Third Violation:</b>	<b>Civil suit for injunction and damages</b>

A second violation shall be any rule violation that occurs within 5 years of the first violation of the same level. A third violation shall be any violation which follows the second violation within 5 years of the first violation. Each day of a continuing violation constitutes a separate violation within the violation class. For example, operating a well without a permit for 10 days would constitute ten separate "First Violations" of the Rules. After litigation or settlement with the District for that series of violations, if the same person again operated a well without a permit within 5 years of the dates of the first series of illegal well operations, each day of the subsequent violations would constitute separate "Second Violations."

### **IX. Minor Violations**

The District deems the following acts as Minor Violations:

1. Operating a well without registering the well – (Rule 5.2(a))

2. Failure to register a well that is completed or subject to change in type or location of use - (Rule 5.2(a))
3. Failure to amend registration – (Rule 5.2(k))
4. Failure to cap a well to prevent waste, prevent pollution, or prevent further deterioration of a well casing or capping of well not adequately done - (Rule 11.5)
5. Failure to plug an abandoned or deteriorated well - (Rule 11.5(b))
6. Failure to notify District of change of ownership of well - (Rules 5.2(k) and 5.12(b))
7. Failure to timely renew an Operating Permit - (Rule 5.5(d))
8. Failure to complete the Groundwater Well Status Report - (Rules 5.12(k) / Rule 5.17)

#### **X. Civil Penalty Schedule for Minor Violations**

<b>First Violation:</b>	<b>\$50.00</b>
<b>Second Violation:</b>	<b>\$100.00</b>
<b>Third Violation:</b>	<b>Major Violation</b>

A second violation shall be any rule violation that occurs within 5 years of the first violation of the same level. A third violation shall be any violation which follows the second violation within 5 years of the first violation. Each day of a continuing violation constitutes a separate violation within the violation class (see example under Section VIII above).

#### **XI. Other Violations of District Rules Not Specifically Listed Herein**

Any violation of a District Rule not specifically set forth herein shall be presented to the Board of Directors for a determination of whether the violation is Minor or Major, based upon the severity of the violation and the particular facts and issues involved, whereupon the procedures and the appropriate civil penalty amount set forth herein for Minor and Major Violations shall apply to the violation.