

THE PURPOSE OF THIS DOCUMENT IS TO PROVIDE DRAFT AMENDMENTS TO BE CONSIDERED AT A PUBLIC HEARING AND BOARD MEETING ON MAY 10, 2022

RULE 1.1 DEFINITIONS OF TERMS

“Enforcement Committee” means an ad hoc committee appointed by the President of the Board, and made up of two members from each County.

RULE 14.1. TYPES OF HEARINGS. The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined in an adjudicative proceeding and opportunity for an adjudicative hearing; and rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Additionally, the Board may be called upon to conduct enforcement hearings as set out in Section 14.10. Any matter designated for hearing before the Board may be referred by the Board for hearing before a hearing examiner. The Board may appoint a hearing examiner for any matter, at any time prior to the final decision on the matter. [Amended June 12, 2012]

RULE 14.10 ENFORCEMENT HEARING.

1. If the District has good cause to believe that a person/entity has violated, is violating, or is threatening to violate any provision of the rules, the General Manager and/or the Board has the authority to undertake a variety of enforcement actions against such alleged violations or continuing alleged violations.
2. A basic enforcement action may be undertaken by and through the General Manager, based upon his/her determination that one or more rules have been violated pursuant to Rule 15.4.2. The General Manager shall issue the person/entity alleged to have violated the rules (“Respondent”) a Notice of Alleged Violation(s) containing a brief summary of the alleged violation(s) and state the amount of the administrative penalty assessed in line with the minimum penalties set out in Rule 15.4. Should the alleged Respondent desire, the Respondent may file an appeal to such basic enforcement action pursuant to the procedures set out herein.
3. Should the Enforcement Committee or the Board of Directors determine that the basic enforcement action has not resulted in resolving the alleged violation, the District shall pursue an enforcement action as set out in Section 15. The Enforcement Committee or the Board of Directors shall issue the Respondent an additional Notice of Alleged Violation. This notice will include a brief summary of the alleged violation, state the amount of the administrative penalty pursued, and inform the Respondent of the Respondent's right to appeal the enforcement action issued by the Enforcement Committee or the Board of Directors. The only parties to this hearing shall be the District, by and through the General

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE

Manager and the Respondent(s). There is a rebuttable presumption that the notice is received three (3) days after it was mailed.

4. Not later than the tenth (10th) day after the Notice of Alleged Violation is received by the Respondent, the Respondent, in writing, must:

(1) agree to settle the matter without a formal enforcement hearing before the Board of Directors and accept the determination and settlement penalty recommended by the Enforcement Committee or the Board of Directors; or

(2) make a request for a formal hearing before the Board of Directors to appeal the occurrence of the violation, the amount of the penalty, or both.

(c) If, within ten (10) days of receipt of the Notice of Alleged Violation, the Respondent fails to respond to the Notice of Alleged Violation and either accept the Enforcement Committee's determination and recommended administrative penalty, sanction, or both, or make a written request for a hearing on the determination, the Enforcement Committee may propose entry of a default order against the Respondent unless otherwise provided by applicable law.

(d) Where the Respondent fails to answer to the Notice of Alleged Violation, the Enforcement Committee may present to the Board a proposed Default Order containing findings of fact and conclusions of law. The Board may grant the relief recommended in the proposed Default Order, or such other relief as may be justified by the evidence presented by the Enforcement Committee.

(e) If the Respondent agrees to settle the matter without a formal hearing and accepts the determination and amount of penalty recommended by the Enforcement Committee, the Respondent must pay the penalty to the Board according to an agreed schedule, or if there is no agreed schedule, not later than sixty (60) days following the date that the Notice of Alleged Violation was issued.

(f) The Enforcement Committee must report the proposed agreement to the Board stating a summary of the facts or allegations against the Respondent and the amount of the recommended administrative penalty. The Board may approve the proposed agreement and its recommended penalty by order. If the Respondent subsequently violates the Board's Order adopting the agreement between the Respondent and the Enforcement Committee by failing to pay the penalty timely, the Board may:

(1) Increase the amount of the penalty and extend the time to pay;

(2) Refer the matter directly to the Board for a full Enforcement Hearing; or

(3) May sue the Respondent to collect the penalty owed pursuant to 15.3.2.

(g) The Enforcement Committee must set a formal hearing on the matter as a contested case before the Board of Directors if:

(1) the Respondent requests a formal hearing as required by subsection (b)(2) of this section;

(2) the parties do not agree to settle the matter as stated in subsection (e) of this section; or

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE

(3) the Board declines to approve the proposed agreement in subsection (f) of this section.

(h) Following the hearing, the Board of Directors must issue a proposal for decision containing findings of facts and conclusions of law. The Board is the ultimate arbiter of the proper penalty.

(i) The Board may impose an administrative penalty within the parameters set out in Section 15.4.4, which contains minimum and maximum penalties.

(j) The amounts specified in the table in subsection 15.4.4 are guidelines only. The Board retains the right to increase or decrease the amount of an administrative penalty, or add additional items to the penalty based on the circumstances in each case. Should evidence be discovered during the hearing that demonstrates that the Respondent has endangered the groundwater within the District or has committed multiple violations, the Board may modify the administrative penalty accordingly or may recommend that a review of the underlying permit as stated in subsection 15.3.3 be undertaken.

(k) Because it is the policy of the Board to pursue expeditious resolution of complaints when appropriate, administrative penalties in uncontested enforcement cases may be less than the amounts specified in subsection 15.4.4. Among other reasons, this may be because the Respondent admits fault, takes steps to rectify matters, timely responds to Board concerns, or identifies mitigating circumstances; settlements overall avoid additional administrative costs to the Board and are therefore beneficial.

(l) Based on the proposal for decision, including the findings of fact and conclusions of law, the Board must issue an Order stating its decision in the contested case and a notice to the Respondent of the Respondent's right to judicial review of the Order.

(m) When the Default Order adopted under subsection (d) of this section or the Order adopted under subsection (l) of this section includes the imposition of an administrative penalty:

(1) not later than the 30th day after the date that the Default Order or Order becomes final:

(A) the Respondent must pay the penalty to the Board; or

(B) the Respondent must file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(2) after all opportunities for judicial review have passed and it is determined that the Respondent owes the penalty and Respondent fails to timely pay the penalty:

(A) the Board is authorized to reconsider the underlying permit and modify such permit as the Board determines is warranted under the circumstances.

RULE 15.3. RULE ENFORCEMENT.

1. If a person has violated, is violating, or is threatening to violate any provision of the rules, the Board may institute and conduct a suit in the name of the District for enforcement of these rules and the provisions of Chapter 36, Texas Water Code. When used in this Section 15, the word

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE

"rules" includes and refers to the rules in which this Section 15 is included and all other written rules adopted by the District, applicable state law, and the terms, conditions and provisions of any relevant permit granted by the District. [Amended December 8, 2009] [Amended June 12, 2012]

2. The rules may be further enforced by injunction and other judicial proceedings, either at law or in equity, and, in lieu of or in addition to any other authorized enforcement action, any person who violates any term or provision of these rules will be subject to civil fine and penalties as provided herein.

3. Any person violating any of the provisions of these rules or failing to comply therewith or with any of the requirements thereof, or who drills or operates any well, or transports water outside of the District in violation of these rules, or in violation of any written statement or plan submitted and approved hereunder, will be subject to a civil penalty of not less than the minimum penalty provided in Rule 15.4 and not more than ten thousand dollars (\$10,000.00) per day, and each day the violation continues constitutes a separate offense. The Board has established the penalties set forth in Rule 15.4 as the minimum penalty for violation of the rules. The Board may at an Enforcement Hearing on a violation, assess a greater civil penalty for breach of any rule of the District, and the penalty assessed by the Board shall be in addition to all the other remedies provided herein. Following such Enforcement Hearing, the Board may, in addition to any civil penalty set out herein, take up review of the permit(s) which may result in modification or suspension of such permit(s). Modification or Suspension, as used herein, may include revoking a permit in part or in whole or it may include filing suit to modify a permit up to and including revocation of the entire permit [Amended December 8, 2009] [Amended June 12, 2012]

Deleted: the minimum or

4. If the Board finds a violation of these rules and determines it necessary and directs that a lawsuit be filed to enforce these rules in a court of competent jurisdiction, or to enforce any other applicable law the Board and the District has the authority to enforce, in addition to any fine or penalty imposed by the court, the District shall be entitled recover reasonable attorney fees, costs of expert witnesses, costs of court, and any other costs incurred by the District. [Amended December 9, 2009]

RULE 15.4. PENALTIES FOR NON-COMPLIANCE. The penalties provided in this Rule shall be the minimum penalty for the respective violation. These penalties shall be the minimum penalty applicable to the first two offenses of the rules by a person. The Board may, during the Enforcement Hearing, set a higher penalty which shall, if accepted by the person or entity responsible, be in lieu of the District filing a complaint in district court, and, in addition to the penalty, also assess against and collect from a person that violates the rules all costs incurred by the District to enforce the rules. [Amended June 12, 2012]

Deleted: on

Deleted: h

1. The District shall give written notice to any person that is in violation of the rules.

2. The general manager of the District has the authority, subject to the right of appeal to the Board, to set and collect the minimum penalties set forth in this Rule, subject to acceptance by

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE

the responsible person or entity in lieu of the District proceeding judicially. Any appeal under this subsection by an alleged responsible person or entity shall not automatically result in a full Enforcement Hearing, but shall be reviewed by the Enforcement Committee to determine possible action short of such full Enforcement Hearing. [Amended June 12, 2012] [Amended July 2, 2019]

Deleted:

3. The written notice shall include notice of the specific violation and, if an investigation has been made, a copy of the investigation report. The notice may assess an administrative penalty as provided in this Rule; require immediate remedial action; and advise that a penalty will be assessed for each additional day of violation if remedial action is not taken promptly. The notice shall advise the person of the right to request and obtain an Enforcement Hearing at a public meeting of the Board. All administrative penalties shall be subject to acceptance and payment by the responsible person or entity in lieu of the District conducting an Enforcement Hearing or filing complaints in the district court. If the proposed penalty is not accepted and paid as a settlement and resolution of the alleged violation, the District will conduct the Enforcement Hearing; further, the District retains the right to file a complaint in district court that requests the court to set the penalties and grant the District attorney fees. [Amended June 12, 2012] [Amended July 2, 2019]

Deleted: h

Deleted: not

4. The following minimum penalties are assessed for the first and the second violation of a District rule, state law over which the District has jurisdiction, or a permit or order issued by the District, and the maximum penalties may be not more than ten thousand dollars (\$10,000.00) per day. Each day that the violation continues constitutes or may constitute a separate offense. All penalties beyond such minimum amounts are assessed by the Board pursuant to Section 15.3.3:

Schedule of Administrative Penalties		
Non-Compliant Action	Minimum Penalty	Maximum Penalty
Failure to obtain a drilling permit, or drilling a well without a drilling permit	\$1,000.00	<u>\$10,000.00</u>
Drilling a well without a license other than on property owned and for personal use by driller	\$1,500.00	<u>\$10,000.00</u>
Exceeding permitted production rate or volume	\$1,000.00	<u>\$10,000.00</u>
Altering production capacity of an existing well without a permit or permit amendment	\$500.00	<u>\$10,000.00</u>
Equipping an exempt well to enable production of more than 25,000 gallons per day prior to obtaining the required permits	\$1,000.00	<u>\$10,000.00</u>
Using water from a well for a purpose other than the purpose indicated in the well registration or well permit	\$1,000.00	<u>\$10,000.00</u>
Failure to report production as required by Rules or special permit requirements [Added July 13, 2021]	\$500.00	<u>\$10,000.00</u>
Violation of District Rule or Permit (other than the above listed violations)	\$250.00	<u>\$10,000.00</u>
[Rule 15.4 added December 9, 2009]		

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE

CONFIDENTIAL; ATTORNEY-CLIENT PRIVILEGE