

## **Rule 7 Enforcement and Variances**

### ***Rule 7.1 Complaints and Investigations***

- 7.1.A.** All complaints shall be reflected on a District complaint form. These forms are available at the District office. If a complaint is made verbally, by telephone, or in person, District personnel will ensure that the information is recorded on a District complaint form. The complainant must inform the District if they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code §36.119.
- 7.1.B.** For purposes of this Rule 7.1 and § 36.119, an aggrieved party is a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which the well subject to the complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the subject well.
- 7.1.C.** A complainant may ask to remain anonymous, unless they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code §36.119.
- 7.1.D.** A District representative will investigate the complaint promptly and will memorialize his findings in a written investigation report.
- 7.1.E.** A copy of the investigation report will be sent to the person about whom the complaint was made. If the complainant has provided his name and address, a copy of the investigation report will be sent to the complainant.

## COW CREEK GROUNDWATER CONSERVATION DISTRICT RULES

### 7.1.F. Board Consideration of Investigation Reports

- (1) The investigation reports for all complaints must be presented to the Board for consideration not later than 90 days from the date of receipt of the complaint.
- (2) Notice of the date, time, and location of the Board meeting at which the investigation report will be considered and a copy of the investigation report shall be mailed to the person about whom the complaint was made and to the complainant by certified mail, return receipt requested, at least ten days prior to the scheduled Board meeting.
- (3) At the Board meeting, the Board may decide that there was no violation and close the complaint file. If the Board decides that there has been a violation, it may direct the District staff to issue a notice of violation under Rule 7.2.B or initiate civil enforcement under Rule 7.2.A.

**7.1.G.** If the District has concurrent legal authority with another local, state, or federal government, the District may defer investigation and enforcement to the other governmental entity on the matter.

*Adopted May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. Amended December 10, 2012 by Board Order 2012-008 effective December 12, 2012. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

## **Rule 7.2     **Enforcement****

### **7.2.A. Civil Enforcement**

- (1) As authorized by Texas Water Code Section 36.102, the violation of any District Rule shall be subject to a civil penalty not to exceed \$10,000.00 per day per violation, and each day of a continuing violation constitutes a separate violation.
- (2) The Board may seek enforcement of such civil penalties against any person by injunction, mandatory injunction, or other appropriate remedy through a complaint filed in a court of competent jurisdiction.
- (3) If the District prevails in any suit to enforce its rules, the District may seek, and the court shall grant, recovery of attorney's fees, costs for

## COW CREEK GROUNDWATER CONSERVATION DISTRICT RULES

expert witnesses, and any other costs incurred by the District before the court.

- (4) In an enforcement action by the 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 the District may impose under Sections 36.122, 36.205, or 36.102 or under a special law governing a GCD, constitute a limit of liability of the governmental entity for the violation. The District is not prohibited the recovery of fees and costs under District Rule 7.5.C in an action against any person that is a governmental entity.

### **7.2.B. Notice of Violation**

The District shall send a notice of violation to a person who is believed to be in violation of law, including violation of a District Rule, Order, or permit. The notice shall include a copy of the investigation report. The notice may require remedial action and may assess a penalty. The notice shall provide the opportunity for public hearing under Rule 8.6.

### **7.2.C. Penalty Schedule**

- (1) The District may assess penalties for non-compliance with District Rules including failure to comply with conditions of a permit issued by the District. Penalties will be assessed in accordance with the penalty schedule adopted by the Board and posted on the District website.
- (2) Penalties may be assessed per day per violation, with each day of a continuing violation constituting a separate violation.

### **7.2.D. Enforcement Fee**

In addition to any penalty authorized by Rule 7.2.C., if the District is required to incur expenses to enforce District Rules, including the payment of a production fee, the person responsible for causing the District to incur the expense shall reimburse the District for such expenses within ten days after receipt of a demand for payment from the District.

### **7.2.E. Regulatory Compliance**

All wells and well owners located within the District shall comply with all applicable Rules, orders, requirements, resolutions, policies, directives, standards, guidelines, or any other regulatory measures implemented by the District.

## COW CREEK GROUNDWATER CONSERVATION DISTRICT RULES

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### **Rule 7.3      Variances**

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include the reasons for the request. A request for a variance from the requirements of Rule 6 Well Spacing shall comply with Rule 6.6. A variance from Rules 3.2(A)(1) and 10.4 may only be granted if the applicant meets a Kendall County Development Rule 102 platting exception and the well may be limited in production capability to 7 gallons per minute or less. This Rule 7.3 is not applicable to a request for a variance from a permit requirement. A variance from a permit requirement requires an application for an amendment and shall comply with Rule 3.4.F.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Renumbered (previously 7.2) May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*