
***CLEARWATER UNDERGROUND WATER
CONSERVATION DISTRICT***

***excerpt of
RULES***

Proposed Amendments to District Rules

Proposed additions reflected in **Highlighted and/or underlined** text, and proposed deletions reflected in ~~strike-out~~.

Revised as of August 9, 2011
Effective September 1, 2011

**** FOR CONVENIENCE OF REVIEW, ONLY THOSE RULES THAT ARE PROPOSED TO BE AMENDED HAVE BEEN INCLUDED IN THIS EXCERPT.**

* * *

SECTION 8. GENERAL PERMITTING POLICIES AND PROCEDURES

RULE 8.3 PERMIT EXCLUSIONS & EXEMPTIONS

The District's permit requirements in these rules do not apply to:

- a) Drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is located or to be located on a tract of land 10 (ten) acres or larger and drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day; provided, however, that this exemption shall also apply after March 1, 2004 to a well to be drilled, completed, or equipped on a tract of land less than 10 (ten) acres in size only if:
 - 1) the well is to be used solely for domestic use or for providing water for livestock or poultry on the tract;
 - 2) such tract was platted, meets an exception to platting, or is otherwise lawfully configured prior to March 1, 2004 as a tract less than 10 (ten) acres in size; and
 - 3) such tract is not further subdivided into smaller tracts of land after March 1, 2004 and prior to the drilling, completion, or equipping of the well.

A well qualifying for exemption under this subsection must observe a minimum distance of 50 feet from the property line (exception may be made if the property line is adjacent to a public road then the center of the road may be the measuring point used to determine the minimum setback of 50 feet per rule 11.5.5(b)) and 100 feet from other wells if producing from the same aquifer. Refer to Section 11 for spacing requirements between wells producing from different aquifers.

* * *

SECTION 11. WELL LOCATION AND COMPLETION

RULE 11.1 RESPONSIBILITY OF LANDOWNERS, LICENSED WELL DRILLERS AND PUMP INSTALLERS

Before filing an application for reworking, replacing, and/or constructing a well by the licensed Well Drillers and Pump Installers in accordance with Texas Water Well Driller's Rules (TDLR), said licensees must be in good standing with TDLR, and submit all necessary license information on the District's administrative form and notification satisfactory to District staff. After an application for a well permit has been granted, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the drilling permit, and not elsewhere, provided, however, that spacing restrictions be met. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code. As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion.

RULE 11.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

~~Standards of completion shall be as specified in 16 Texas Administrative Code, Chapter 76.1000.~~ Standards of Completion for All Wells must be in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Texas Administrative Code, Chapter 76. The following special provisions and District expectations of Well Drillers and Pump Installers constructing and completing in specified Grids are as follows to prevent commingling of undesirable groundwater.

11.3.1 Special Standards of Completion for wells in identified TWDB Grids: All wells drilled and completed by licensed pump installers and well drillers in accordance with TDLR Official notice (May 21, 2003) will complete all wells in grids 58-03-3, 58-03-9, 58-04-2, 58-04-7, 58-03-6, 58-04-1, 58-04-5, 58-04-8 by the minimum alternative construction specifications when drilled to a depth to produce from the Hensell Sand Layer (commonly referred to as the Middle Trinity Aquifer). The Upper Glen Rose Strata (commonly referred to as the Upper Trinity Aquifer) must be sealed off by drilling a 3-inch larger borehole than the outside diameter of the casing, setting packers necessary and sufficient to hold cement, and placing a minimum twenty five (25) feet of cement or bentonite plug in the annulus from the top of the Hensell Sand. The cement or bentonite plug is to prevent commingling of the Upper Glen Rose strata with the Hensell Middle Trinity Strata. Upon final completion of well drilling and pump installation the water quality must be assessed by the well driller and pump installer to assure that commingling is not occurring.

11.3.2 Special Standards of completion for Water Wells Encountering Undesirable Water or Constituents (per Texas Water Well Drillers and Pump Installers Administrative Rule, Chapter 76.101, (Effective March 1, 2013), with CUWCD additional expectations as follows:

(a) If a licensed well driller and/or licensed pump installer encounters undesirable water or constituents and the well is not plugged and reported to the CUWCD staff and/or made into a completed monitoring well as defined in §76.10(33), the licensed well driller shall ensure that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin. It is a defense to prosecution for violation of this section that the driller and/or pump installer responsible was not aware of having encountered undesirable water or constituents.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

- (3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremmie pressured filled provided the annular space is three inches larger than the casing, setting packers necessary and sufficient to hold cement, and placing a minimum twenty five (25) feet of cement or bentonite plug in the annulus below the undesirable water or bad water constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.
- (4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.
- (5) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Commission on Environmental Quality 30 TAC, Chapter 331.

11.5.5 Exceptions to Spacing Requirements:

- (a) The Board may grant exceptions to the spacing requirements of the District if such exceptions comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code.

(b) The General Manager may grant an exception to the 50 foot setback from all property lines when the property line is adjacent to a public road. Under this circumstance, measurement of the setback shall be made from the center of the public road. The application described in this rule must be made in writing, signed by applicant, and include information that demonstrates that the road is a public road and that identifies with specificity the center of the public road, width of the public road, and width of the right of way. This application and accompanying information must be filed with the District along with the drilling permit application. The General Manager has authority to determine the accuracy of the application and accompanying materials and to grant the requested exception to the setback.

b)(c) If an exception to the spacing requirements of the District is desired, a person shall submit an application to the Board. In the application, the applicant must explain the circumstances justifying an exception to the spacing requirements of the District. The application must include a plat or sketch, drawn to scale, one inch equaling 200 feet. The plat or sketch must show the property lines in the immediate area and show accurately, to scale, all wells within one-half mile of the proposed well site. The application must contain the names and addresses of all owners of property whose property adjoins the tract on which the proposed well is to be located. The application

must contain the names and addresses of all owners of existing wells within one-half mile of the proposed well site. The application and plat must be certified by some person actually acquainted with the facts who shall state that the facts contained in the application and plat are true and correct.

e)(d) An exception may be granted by the Board after written notice has been given by the applicant by mailing notice by certified mail, return receipt requested, to all owners of property or existing or permitted wells located within the minimum required distance from the proposed well site, after a public hearing at which all interested parties may appear and be heard. Provided, however, if all such owners execute a waiver in writing, stating that they do not object to the granting of the exception, the Board may proceed, upon notice to the applicant only and without hearing, and take action to grant or deny the exception in full or in part. The applicant shall provide notice under this subsection in the manner, form and content directed by the General Manager. Proof of the mailed notice shall be given to the General Manager by the applicant no less than 10 days prior to the date of the public hearing. Grounds for granting a waiver may include evidence that the well or wells proposed in the application will produce groundwater from an aquifer thereof other than the aquifer from which the wells that are closer than the minimum distances are producing.

f)(e) If the applicant presents waivers signed by all landowners and well owners whose property or wells would be located within the applicable minimum distance established under these Rules from the proposed well site stating that they have no objection to the proposed location of the well site, the Board, upon the General Manager's recommendation, may waive certain spacing requirements for the proposed well location.

e)(f) Notwithstanding anything to the contrary herein, the Board may grant an exception to the spacing requirements set forth under Rule 8.3 for a dewatering well or a leachate well at a meeting posted in accordance with Chapter 551, Texas Government Code, and the additional notice requirements of this rule shall not apply. The Board shall grant the exception to spacing for a dewatering well or leachate well if the location of the well is required pursuant to a rule or order of a state or federal regulatory agency of competent jurisdiction.

SECTION 13 RULEMAKING AND HEARINGS

RULE 13.5 HEARINGS ON OTHER MATTERS

A public hearing may be held on any matter, beyond rulemaking, **Desired Future Conditions, enforcement** and permitting, within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District.

SECTION 14. INVESTIGATIONS AND ENFORCEMENT

RULE 14.1 NOTICE AND ACCESS TO PROPERTY

Board Members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents or employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in Texas Water Code Chapter 36.

RULE 14.2 CONDUCT OF INVESTIGATION

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

RULE 14.3 RULE ENFORCEMENT

14.3.1 If it appears that a person has violated, or is violating any provision of the District Rules, the District may employ any of the following means, or a combination thereof, in providing notice of the alleged violation:

(a) Informal Notice: The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the alleged violation via telephone, via facsimile, via email, or other means necessary informing, or attempting to inform, the appropriate person to explain the violation and the steps necessary to cure the violation. The information received by the District through this informal notice concerning the alleged violation and the date and time of the telephone call will be documented and will remain in the District's files. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(b) Written Notice of Violation: The District may inform the person of the alleged violation through written notice. Each notice of alleged violation issued herein shall explain the basis of the alleged violation, identify the rule or order that may have been violated or appears to be currently violated, and list specific required actions that must be satisfactorily completed to cure any past or present violation to address each violation raised, and may include the payment of proposed penalties in settlement of the enforcement matter. Notice of an alleged violation issued herein shall be provided through a delivery method in compliance with these rules. Nothing in this subsection

shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(c) **Compliance Meeting:** The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District rule or order to discuss each such alleged violation and the steps necessary to satisfactorily remedy each such violation. The General Manager, after first briefing the Board President, may conduct a compliance meeting without the Board, unless otherwise determined by the Board or General Manager. The information received in any meeting conducted pursuant to this subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

14.3.2 Show Cause Hearing.

(a) Upon recommendation of the General Manger to the Board or upon the Board's own initiative, the District may order any person that it believes has violated or is violating any provision of the District's rules or order to appear before the Board at a public meeting, held in accordance with the Texas Open Meetings Act, and called for such purpose and to show cause of the reasons an enforcement action, including the assessment of penalties and initiation of a suit in a court of competent jurisdiction in Bell County, should not be pursued against the person made the subject of the show cause hearing. The Presiding Officer may employ the procedural rules in Section 8 of the District's rules.

(b) No show cause hearing under subsection (a) of this rule may be conducted unless the District serves, on each person made the subject of the show cause hearing, a written notice 10 (ten) calendar days prior to the date of the hearing. Such notice shall include all of the following information:

- (1) the time, date, and place for the hearing; and
- (2) the basis of each asserted violation; and
- (3) the rule or order that the District believes has been violated or is currently being violated; and
- (4) a request that the person duly appear and show cause of the reasons an enforcement action should not be pursued.

The District shall provide written notice of the alleged violation and show cause hearing by certified mail, return receipt requested, hand delivery, first class mail, facsimile, email, FedEx, UPS, or any other type of public or private courier or delivery service. If the District is unable to provide notice to the alleged violator by any of these forms of notice, the District may tape the notice on the door of the alleged violator's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the alleged violator resides or in which the alleged violator's office is located.

(c) The District may pursue immediate enforcement action, including by District order and/or lawsuit in a court of competent jurisdiction, against the person cited to appear in any show cause order issued by the District, where the person cited fails to appear and show cause of the reasons an enforcement action should not be pursued.

(d) Nothing in this rule shall constrain the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time, regardless of whether the District decides to hold a hearing under this Section.

14.3.3 Remedies

(a) The Board shall consider the appropriate remedies to pursue against an alleged violator during the show cause hearing, including assessment of a civil penalty, injunctive relief, or assessment of a civil penalty and injunctive relief. In assessing civil penalties, the Board may determine that 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 \$10,000.00 per violation or a lesser amount determined after consideration, during the enforcement hearing, of the criteria in subsection (b) of this rule.

~~Board of Directors may institute and conduct a suit in the name of the District for injunctive relief, recovery of a civil penalty of not more than \$10,000 per violation, or both injunctive relief and a civil penalty. Each day that a violation continues shall be considered a separate violation.~~

~~14.3.2 The civil penalty for a violation of any District rule is hereby set at the lower of: (1) \$10,000.00 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 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) In determining the amount of a civil penalty, the Board of Directors shall consider the following factors:

- (1) compliance history;
- (2) efforts to correct the violation and whether the violator makes a good faith effort to cooperate with the District;
- (3) the penalty amount necessary to ensure future compliance and deter future noncompliance;
- (4) any enforcement costs related to the violation; and
- (5) any other matters deemed necessary by the Board.

14.3.4 The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under the District's rules. Any person or entity determined by the Board to be in violation of these rules is subject to all past due fees and civil penalties along with all fees and penalties occurring as a result of any violations that ensue after the District provides written notice of an alleged violation. Failure to pay required fees will result in a violation of the District's rules and such failure is subject to civil penalties and other legal remedies.

14.3.5 At any time the District may afford an opportunity to the person alleged or determined to be in violation of the District's rules or order with an opportunity to cure a violation or settle the enforcement matter through coordination and negotiation with the District.

14.3.6 After conclusion of the show cause hearing and decision by the Board, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Bell County. If the District prevails in a suit brought under this Section, the District may seek the Court's statutorily mandatory award of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court in the enforcement proceeding.

* * *

RULE 14.5 CAPPING AND PLUGGING OF WELLS

14.5.2 A deteriorated or abandoned well must be plugged in accordance with the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76). It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.

Any person that plugs a well in the District must submit a copy of the plugging report to the District and the Texas Department of License and Regulation within thirty (30) days of plugging completion.

14.5.3 Special provisions for prior and/or after-the -fact variances apply as follows:

In accordance with TDLR Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76)(**Technical Requirements--Variances—Alternative Procedures**) must also adhere to the District Special Provisions for Variances and requests for alternative procedures. If there is a difference in requirements between TDLR's and the District's rules, the stricter rules control for purposes of complying with the District's requirements.

(a) If the party having the well drilled, deepened, altered or plugged; the licensed well driller, or the party, landowner or person drilling or plugging the well, finds any of the procedures prescribed by §§76.100 - 76.105 inapplicable, unworkable, or inadequate, combinations of the prescribed procedures or alternative procedures may be employed, provided that the proposed alternative procedures will prevent injury and pollution. The department will not grant a variance based solely on cost, aesthetics, or for a well head to be placed below ground level.

(b) Written proposals to use combinations of prescribed procedures or alternative procedures shall be considered application for a variance and must be submitted to the department and District for review prior to their implementation, and provide a copy of the TDLR application for variance to the District.

(c) The District does not accept or approve variance requests (after-the fact) for construction or plugging activities that occurred prior to receiving an approval.

(d) This section shall not apply to a public water system well.

~~14.5.3~~14.5.4 If the owner or lessee fails or refuses to plug or cap the well in compliance with this rule and District standards within thirty (30) days after being requested to do so in writing by an officer, agent, or employee of the District, then, upon Board approval, any person, firm, or corporation employed by the District may go on the land and plug or cap the well safely and securely, pursuant to TWC Chapter 36.118.

Reasonable expenses incurred by the District in plugging or capping a well constitutes a lien on the land on which the well is located.

The District shall perfect the lien by filing in the deed records an affidavit, executed by any person conversant with the facts, stating the following:

- a) the existence of the well;
- b) the legal description of the property on which the well is located;
- c) the approximate location of the well on the property;
- d) the failure or refusal of the owner or lessee, after notification, to close the well within thirty (30) days after the notification;
- e) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
- f) the expense incurred by the District in closing the well.

* * *