

**RULES OF THE
BRAZORIA COUNTY
GROUNDWATER CONSERVATION DISTRICT**

**ADOPTED ON:
SEPTEMBER 13, 2007**

**RULES OF THE
BRAZORIA COUNTY
GROUNDWATER CONSERVATION DISTRICT**

Board of Directors

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TABLE OF CONTENTS

CHAPTER 1. GENERAL PROVISIONS	1
SUBCHAPTER A: GENERAL	1
§1.1 PURPOSE OF RULES.	1
§1.2 USE AND EFFECT OF RULES.	1
§1.3 AMENDING RULES.	1
§1.4 HEADINGS AND CAPTIONS.	1
§1.5 CONSTRUCTION OF RULES.	1
§1.6 SEVERABILITY.	2
§1.7 SAVINGS CLAUSE.	2
§1.8 COMPUTING TIME.	2
§1.9 TIME LIMITS.	2
§1.10 REGULATORY COMPLIANCE.	2
SUBCHAPTER B: RULEMAKING PROCEDURES	3
§1.20 PUBLIC HEARINGS ON PROPOSED RULES.	3
§1.21 NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES.	3
CHAPTER 2. DEFINITIONS.....	3
§2.1 APPLICABILITY.....	3
§2.2 DEFINITIONS.....	4
CHAPTER 3. REGISTRATION, PERMITS, FEES, AND OTHER REQUIREMENTS.....	9
SUBCHAPTER A: SCOPE AND APPLICABILITY	9
§3.1 REGISTRATION REQUIRED.	9
§3.2 REGISTRATION OF WELLS.	9
§3.3 PERMIT REQUIREMENTS.	10
§3.4 EXEMPTIONS FROM PERMITTING.....	10
SUBCHAPTER B: APPLICATION REQUIREMENTS AND PROCESSING.....	11
§3.10 PREPARATION OF AN APPLICATION.	11
§3.11 REQUIREMENTS FOR APPLICATIONS.....	12
§3.12 SCHEDULING AND NOTICE OF HEARING ON AN APPLICATION.	13
§3.13 HEARING PROCEDURES.....	13
§3.14 ACTION ON APPLICATIONS.	15
§3.15 TERM OF PERMITS.	15
§3.16 PERMIT TERMS AND CONDITIONS.....	15
§3.17 PERMIT RENEWAL.	16
§3.18 PERMIT AMENDMENTS.....	16
§3.19 PERMIT REVOCATION, CANCELLATION, OR MODIFICATION.	16
§3.20 REQUESTS FOR REHEARING.	16
§3.21 DECISION; WHEN FINAL.	17
§3.30 REPORTS.....	17
§3.31 FEES AND PAYMENT OF FEES.....	18
CHAPTER 4. MEASURING METHODS.....	19
§4.1 MEASUREMENT OF WATER USE BY PERMITTED WELLS.	19

§4.2	VIOLETION OF METERING AND REPORTING REQUIREMENTS.....	19
CHAPTER 5. GENERAL PROVISIONS AND PROHIBITIONS		20
§5.1	GENERAL PROHIBITION.....	20
§5.2	SUBSURFACE POLLUTION.....	20
§5.3	SURFACE POLLUTION.....	20
§5.4	ORDERS TO PREVENT WASTE/POLLUTION.....	20
CHAPTER 6. REGULATION OF WELL SPACING AND PRODUCTION		20
SUBCHAPTER A: GENERAL PROVISIONS		20
§6.1	PURPOSE.....	20
§6.2	APPLICABILITY.....	21
§6.3	BASIS FOR LIMITATION OF WELL SPACING AND PRODUCTION.....	21
SUBCHAPTER B: SPACING REQUIREMENTS		21
§6.10	DRILLING WELLS AT UNAPPROVED LOCATIONS PROHIBITED.....	21
§6.11	MINIMUM SPACING APPLICABLE TO ALL NEW WELLS.....	21
§6.12	ADDITIONAL STANDARDS.....	21
CHAPTER 7. DRILLING, EQUIPPING AND CONSTRUCTION		21
§7.1	RECORDS.....	21
§7.2	DRILLING AND COMPLETION OF WELLS.....	22
CHAPTER 8. ABANDONED, OPEN AND UNCOVERED WELLS.....		22
§8.1	REGISTRATION AND SEALING.....	22
§8.2	MINIMUM STANDARDS.....	22
§8.3	ENFORCEMENT.....	23
§8.4	PENALTIES.....	23
CHAPTER 9. WATER CONSERVATION AND DROUGHT		23
§9.1	CONSERVATION POLICY.....	23
§9.2	WATER CONSERVATION PLANS.....	23
CHAPTER 10. ENFORCEMENT.....		24
§10.1	NOTICE AND ACCESS.....	24
§10.2	SHOW CAUSE ORDERS AND COMPLAINTS.....	24
§10.3	CONDUCT OF INVESTIGATION.....	24
§10.4	SEALING OF WELLS.....	24
§10.5	REQUEST FOR INJUNCTIVE RELIEF.....	25
§10.6	PENALTIES FOR LATE PAYMENT OF FEES.....	25
§10.7	FAILURE TO REPORT PUMPAGE AND/OR EXPORTED VOLUMES.....	26
§10.8	EMERGENCY ORDERS.....	26
§10.9	CIVIL PENALTIES.....	26

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A: GENERAL

§1.1 PURPOSE OF RULES.

The purpose of the District Rules of the Brazoria County Groundwater Conservation District (the “District Rules”) is to implement the powers and duties of the District under its enabling Act as amended, Texas Water Code Chapter 36, and other applicable laws and to establish the general policies and procedures of the District.

§1.2 USE AND EFFECT OF RULES.

- (a) The District Rules shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists; nor shall they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor shall they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the Act as amended.
- (b) Except as otherwise specified, the District Rules are effective on the date of adoption by the Board of Directors. References to Texas Water Code Chapter 36 include subsequent revisions and are effective upon the effective date of the District Rules or upon the effective date of subsequent amendments to Texas Water Code Chapter 36.

§1.3 AMENDING RULES.

The Board may, following notice and hearing, amend the District Rules or adopt new rules from time to time.

§1.4 HEADINGS AND CAPTIONS.

The section and other headings and captions contained in the District Rules are for reference purposes only and shall not affect in any way the meaning or interpretation of the District Rules.

§1.5 CONSTRUCTION OF RULES.

- (a) Unless otherwise expressly provided for in the District Rules, the past, present and future tense shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.
- (b) The verbs “may,” “can,” “might,” “should,” or “could” are used when an action is optional or may not apply in every case. The verbs “will,” “shall,” or “must” are used when an action is required. The verb “cannot” is used when an action is not allowed or is unachievable.

§1.6 SEVERABILITY.

In case any one or more of the provisions contained in the District Rules shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other Rules, or provisions hereof, and the District Rules shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained herein.

§1.7 SAVINGS CLAUSE.

If any section, sentence, paragraph, clause, or part of the District Rules should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of the District Rules; and the Board does hereby declare that it would have adopted and promulgated such remaining portions irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.

§1.8 COMPUTING TIME.

In computing any period of time prescribed or allowed by the District Rules, by order of the Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Saturday, Sunday, or legal holiday on which the District is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, or a legal holiday on which the District is closed.

§1.9 TIME LIMITS.

Applications, requests, or other papers or documents required or permitted to be filed under the District Rules must be received for filing at the District, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

§1.10 REGULATORY COMPLIANCE.

Where District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations shall control, provided the rules and regulations are within the scope of the District's statutory authority and are not otherwise preempted by state or federal law.

SUBCHAPTER B: RULEMAKING PROCEDURES

§1.20 PUBLIC HEARINGS ON PROPOSED RULES.

The Board shall hold at least one public hearing on proposed rules prior to adoption of the proposed rules as final rules.

§1.21 NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES.

- (a) The Board will set a time and place for any public hearing on proposed rules of the District.
- (b) The Board shall give prior notice of the public hearing at least twenty (20) days before the public hearing by all of the following:
 - (1) posting the notice in the location where notices of the District's Board meetings are posted;
 - (2) providing notice to the Brazoria County Clerk;
 - (3) publishing notice in one or more newspapers of general circulation in Brazoria County; and
 - (4) providing notice by mail, facsimile, or electronic mail to any person who has requested notice.
- (c) The notice shall advise the public of the following:
 - (1) the time, date, and location of the rulemaking hearing;
 - (2) a brief explanation of the subject of the rulemaking hearing; and
 - (3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

CHAPTER 2. DEFINITIONS

§2.1 APPLICABILITY.

- (a) The District employs two types of definitions. General definitions apply to all Rules of the District. Specific definitions apply only to the chapter in which they are located. Specific definitions applying only to a particular chapter are set out in that chapter.
- (b) The District follows the definitions of terms set forth in Texas Water Code Chapter 36 and other definitions as set forth herein.

§2.2 DEFINITIONS.

Unless the context clearly indicates a contrary meaning, the following words and terms shall have the following meanings in the District Rules:

- (1) **“Abandoned Well”** - a well that has not been used for six consecutive months. A well is considered to be in use in the following cases: (a) a non-deteriorated well which contains the casing, pump, and pump column in good condition; (b) a non-deteriorated relief well; or (c) a non-deteriorated well which has been capped.
- (2) **“Acre Foot”** - the volume of water necessary to cover one acre of land one foot deep or 325,851 gallons.
- (3) **“Act”** - the District's enabling legislation H.B. No. 3602 of the 78th Texas Legislature, as amended by H.B. No. 4114 of the 80th Texas Legislature, in conjunction with Texas Water Code Chapter 36, as amended.
- (4) **“Agricultural Use”** - any use or activity involving agriculture, including irrigation, as defined in Texas Water Code Section 36.001(2). including but not limited to aquaculture; irrigation to cultivate the soil to produce crops; the practice of floriculture, viticulture, silviculture, and horticulture, including nursery grower operations; raising, feeding, or keeping animals for breeding or production of food or fiber or other products with a tangible commercial value; planting cover crops, wildlife management; or raising or keeping equine animals.
- (5) **“Agriculture”** - cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers; the practice of floriculture, viticulture, silviculture, and horticulture, the cultivation of plants in containers or nonsoil media, by a nursery grower; raising, feeding, or keeping animals for breeding or production of food or fiber or other products with a tangible commercial value; planting cover crops; wildlife management; or raising or keeping equine animals, as defined in Texas Water Code Section 36.001(19).
- (6) **“Annular Space”** - the space between two cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole and the installed casing.
- (7) **“AWWA”** - American Water Works Association.
- (8) **“Board”** - the Board of Directors of the Brazoria County Groundwater Conservation District..
- (9) **“Capped”** – with respect to a water well, means a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

- (10) “**Casing**” – a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the groundwaters to their respective zones or origin, or to prevent surface contaminant infiltration.
- (11) “**Cement Grout**” - a mixture of water and cement, which may also include a bentonite clay component.
- (12) “**Commission**” - means the Texas Commission on Environmental Quality or its successor agency.
- (13) “**Dewatering Well**” – a well used to produce groundwater to lower or control the level of the water table in the area of the well.
- (14) “**Director**” - an elected or appointed member of the Board of Directors of the Brazoria County Groundwater Conservation District.
- (15) “**Discharge**” - the volume of water that passes a given point within a given period of time.
- (16) “**District**” - the Brazoria County Groundwater Conservation District.
- (17) “**District Rules**” - standards and regulations promulgated by the District.
- (18) “**Domestic Use**” - the use of water by an individual, or a single family unit, or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities; obtained directly by an individual or single family unit, not supplied by a water company, water district, or municipality.
- (19) “**Drill**” - drilling, equipping, completing wells, or modifying the size of wells or well pumps/motors (resulting in an increase in pumpage volume) whereby a drilling or service rig must be on location to perform the activity.
- (20) “**Existing Well**” – any well in the District that was drilled and completed prior to the adoption of the District Rules.
- (21) “**Export**” – the transfer of groundwater out of the District.
- (22) “**Fees**” - charges imposed by the District pursuant to rule, order, or the Act.
- (23) “**Groundwater**” - water located beneath the earth's surface but does not include water produced with oil and gas production or water that is discharged from a relief well or associated piezometer.
- (24) “**Groundwater Reservoir**” - a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

- (25) **“Incidental Use”** - a beneficial use of water which is of a minor nature. Transport of water outside the District by a permittee which totals 5% or less, but in no case more than 5,000,000 gallons, of the permittee’s annual estimated pumpage is considered incidental use (15.34 acre foot).
- (26) **“Industrial Use”** – including, but not limited to, the use of water integral to the production of primary goods and/or services provided by industrial, manufacturing or commercial facilities and used primarily in the building, production, manufacturing, or alteration of a product or goods, or a well used to wash, cleanse, cool, or heat such goods or products; does not include agricultural use.
- (27) **“Meter”** – a water flow measurement device which meets AWWA standards for the applicable line size, pressures and flows and which is properly installed according to the manufacturer’s specifications.
- (28) **“Modify”** - to alter the physical or mechanical characteristics of a well, its equipment, or production capabilities. This does not include repair of equipment, well houses or enclosures, or replacement with comparable equipment.
- (29) **“Monitoring Well”** - a well constructed to measure or monitor water quality and/or quantity and movement. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells.
- (30) **“Municipal Use”** - the use of water for a public water system for residential, commercial, or public and institutional uses, including the application of potable water for irrigation of golf courses, parks and recreational uses; it does not include water for industrial uses even when industrial users are receiving potable water.
- (31) **“New Well”** – any well that is not an existing well as defined in the District Rules.
- (32) **“Open or Uncovered Well”** - an artificial excavation at least 10 feet deep and not more than six feet in diameter, that is dug or drilled for the purpose of producing the groundwater, or for injection, monitoring, or de-watering purposes, and is not capped or covered as required by the District.
- (33) **“Operate or Operations”** - to produce or cause to produce water from a well or to use a well for injection or closed loop heat exchange purposes.
- (34) **“Person”** - includes a corporation, individual, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (35) **“Plug”** - to close a well permanently in accordance with approved District standards.
- (36) **“Potable Water”** – water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

- (37) **“Public Water System:** - As defined by Texas Administrative Code, Title 30, Chapter 290, a system for the provision to the public of water for human consumption through pipes or other constructed conveyances.. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes; any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.
- (38) **“Pumpage”** - all groundwater withdrawn from the ground, measured at the wellhead.
- (39) **“Permit”** - an authorization issued by the District allowing the withdrawal of groundwater from a nonexempt well for a designated period of time and/or a specific amount of groundwater from a nonexempt well for a designated period of time, generally in the form of gallons or acre-feet per year.
- (40) **“Permit Amendment”** - a minor or major change in the permit.
- (41) **“Recreational Use”** – the use of water for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course or similar development.
- (42) **“Red Tag”** - an official seal, tag, or label placed on a well or its equipment, or the act of placing the tag or label, to indicate that further pumping of groundwater, or operation of the well, or continuing with other District regulated activities is not permitted by the District, will be in violation of District Rules, and may subject the well owner and operator to civil suit and/or penalties.
- (43) **“Relief Well”** – an artesian well and associated piezometers used to maintain the structural integrity of a reservoir embankment system or other similar structures.
- (44) **“Remediation Well”**- means a well used to clean up, treat, or prevent contamination of underground sources of water.
- (45) **“Salt Dome”** - geologic structure resulting from the upward movement of a salt mass caused by gravitational instability of a low density salt layer overlain by a high density layer.

- (46) “**Seal**” - the impermeable material, such as cement grout, bentonite, or puddling clay, placed in the annular space between the borehole wall and the casing to prevent the downhole movement of surface water or the vertical mixing of groundwater.
- (47) “**Special Provisions**” - conditions or requirements added to a permit which may be more or less restrictive than the District Rules as a result of circumstances unique to a particular situation.
- (48) “**Spring**” - a point(s) of natural discharge from an aquifer.
- (49) “**Stratum**” - a layer of rock having a similar composition throughout.
- (50) “**Subsidence**” – sinking of a portion of the land surface resulting from removal of fluids from subsurface reservoirs such as oil and gas deposits, groundwater, or salt domes.
- (51) “**User**” - a person who produces, distributes, or uses water from the aquifer(s).
- (52) “**Water Table**” - the upper boundary of the saturated zone in an unconfined aquifer.
- (53) “**Well**” - any artificial excavation or borehole constructed for the purposes of exploring for or producing groundwater, or for injection, monitoring, or de-watering purposes.
- (54) “**Well Log**” - an accurately kept record made during the process of drilling on forms prescribed by the Texas Department of Licensing and Registration (TDLR), showing the depth of the well bore, thickness of the formations, character of casing installed, together with any other data or information required by the Water Well Drillers Team; or any other special purpose well log that may be available for a given well, such as a gamma ray log, a temperature log, an electric log, or a caliper log.
- (55) “**Well Pumps and Equipment**” - devices and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.
- (56) “**Well Registration**” - the creation of a record of the well by use and a well identification number for purposes of registering the well as to its geographic location and for notification to the well owner in cases of spills or accidents, data collection, record keeping and for future planning purposes.
- (57) “**Withdraw or Withdrawal**” - the act of extracting groundwater by pumping or any other method, other than the discharge of natural springs.

CHAPTER 3. REGISTRATION, PERMITS, FEES, AND OTHER REQUIREMENTS

SUBCHAPTER A: SCOPE AND APPLICABILITY

§3.1 REGISTRATION REQUIRED.

- (a) The Board has determined that registration of wells within the District benefits the public and supports the preservation and protection of groundwater within the District by providing detailed information regarding the size and location of wells located within the District.
- (b) Except as provided herein, all permanent production wells within the District, whether exempt or non-exempt from permitting, are required to be registered with the District and a State Well Report must be submitted to the District within sixty (60) days of the drilling of a well. If the State Well Report is not submitted to the District within sixty (60) days of the drilling of a well, the continued operation of the well is a violation of District Rules and is subject to fines and fees in accordance with Section 10.9 of the Rules.
- (c) The following types of wells are not required to be registered with the District:
 - (1) Non-production monitoring wells; and
 - (2) Temporary dewatering wells; and
 - (3) Remediation wells.

§3.2 REGISTRATION OF WELLS.

- (a) Except as provided in Section 3.1, all new wells must be registered by the well owner, the well driller, or other authorized agent of the well owner prior to the well being drilled, equipped or completed.
- (b) Registration of existing wells that are exempt from permitting by the District:

All existing exempt wells having an inside diameter measuring greater than 4.5 inches must be registered by the well owner or the agent of the well owner by December 31, 2006. All existing exempt wells having an inside diameter measuring between 3.5 inches and 4.5 inches must be registered by the well owner or the agent of the well owner by December 31, 2007. All existing exempt wells having an inside diameter measuring less than 3.5 inches may be registered by the well owner or the agent of the well owner on a voluntary basis.
- (c) Registration of existing wells that are non-exempt from permitting by the District:

All existing non-exempt wells must be fully compliant with the registration requirements of this section prior to December 31, 2007.

- (d) The well owner, the well driller or the authorized agent of the well owner shall register the well by completing a District registration form and submitting the form to the District.
- (e) It is a violation of the District's Rules to drill, equip, complete, or produce groundwater from a new well, or to operate an existing well after December 31, 2006, without submitting a complete District registration form to the District. A violation begins on the first day of such drilling, equipping, completion, production of groundwater or operation and continues each day thereafter until a complete District registration form is submitted to the District.
- (f) A registration for a new well will expire and be considered null and void by the District if the well is not drilled within one year of the date the complete District registration form is submitted to the District. The registrant must submit a new and complete District registration form to the District before drilling may commence on the new well.

NO FEE, TAX OR OTHER ASSESSMENT WILL BE COLLECTED FOR WELL REGISTRATION.

§3.3 PERMIT REQUIREMENTS.

- (a) Except as otherwise provided herein, a permit from the District is required prior to drilling, equipping, completing, operating, or producing groundwater from any non-exempt well within the District. It is a violation of the District Rules for a well owner, well operator, well driller, or any other person acting on behalf of the well owner to drill, equip, complete, operate, or produce groundwater from a non-exempt well within the District without first obtaining the proper permit or permit amendment.
- (b) A well must remain properly permitted unless and until the power source is disconnected or the well casing or discharge pipe is capped or plugged.
- (c) An application for a permit, permit amendment, or permit renewal shall be submitted in accordance with Subchapter B of this Chapter.
- (d) The owner or operator of an existing well must be fully compliant with the permitting requirements of this section by prior to December 31, 2006. An applicant for a new well must be fully compliant with the permitting requirements of this section prior to drilling, equipping, completing, operating, or producing groundwater from the well.

§3.4 EXEMPTIONS FROM PERMITTING.

- (a) The following wells are not required to have a permit from the District:

- (1) a well that is exempt from registration under Section 3.1(c):
 - (a) Non-production monitoring wells; and
 - (b) Temporary dewatering wells; and
 - (c) Remediation wells; and
 - (2) **A NEW OR EXISTING WATER WELL ON PRIVATE PROPERTY THAT SERVES ONLY A SINGLE-FAMILY DWELLING USED ONLY FOR DOMESTIC PURPOSES; AND**
 - (3) **A NEW OR EXISTING WATER WELL USED ONLY FOR AGRICULTURE; AND**
 - (4) a well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the Railroad Commission permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; and
- (g) a water well authorized under a permit issued by the Railroad Commission of Texas under Natural Resources Code Chapter 134, provided the withdrawals are no greater than the amount necessary for mining activities specified in the Railroad Commission permit; and
- (b) A well exempt under Subsection (a) will lose its exempt status and must be permitted if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a).

SUBCHAPTER B: APPLICATION REQUIREMENTS AND PROCESSING

§3.10 PREPARATION OF AN APPLICATION.

- (a) Form of Application. Application for a well registration, permit, permit amendment, or permit renewal shall be made on District forms. Applications shall be in writing and sworn to.
- (b) Proper Registrant, Applicant, or Declarant. The application must be submitted and signed by the well owner or a Water Well Driller licensed by the State of Texas or an authorized agent of the owner. The authorized agent may be required to provide the District with a notarized authorization from the landowner.
- (c) Completeness of an Application. An application shall be considered administratively complete if it includes all information required to be included in the application; is signed and includes any maps, documents, or supplementary information requested

by the Board or staff. A determination of administrative completeness will be made by the District's designee.

- (d) Action on Incomplete Applications. The District will not take action on an application which is not administratively complete or which has not proceeded in a manner consistent with District Rules. An application may be rejected as not administratively complete if the District finds that substantive information required by the application or District staff is missing, false, or incorrect. Applicants submitting incomplete applications will be notified by the District in writing.

§3.11 REQUIREMENTS FOR APPLICATIONS.

- (a) A separate application is required for each well.
- (b) Content Requirements. An application must contain the following information in sufficient detail to be acceptable to the District:
 - (1) Minimum Requirements. All applications shall include the following:
 - (A) the name, mailing address, and phone number of the applicant and the owner of the property on which the well is or will be located; and
 - (B) if the applicant is other than the owner of the property, or a Water Well Driller licensed by the State of Texas, or an authorized agent for the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use; and
 - (C) a detailed statement of the nature and purpose of the proposed groundwater usage and the amount of groundwater proposed to be used for each purpose; and
 - (D) the location of the well and the estimated rate at which water will be withdrawn from the well; and
 - (E) the proposed location(s) of use of the water from the well; and
 - (F) the proposed casing size and pump capacity; and
 - (G) a statement by the applicant that the water withdrawn under the permit will be put to a beneficial, non-wasteful use at all times and that the applicant will comply with all District Rules, orders, and permit provisions; and
 - (H) a water well closure plan or a declaration that the applicant will comply with well plugging and capping guidelines set forth in the District Rules and will report well closures to the District; and

- (I) any other information deemed necessary for the evaluation of the application by the Board or the District's designee.

§3.12 SCHEDULING AND NOTICE OF HEARING ON AN APPLICATION.

- (a) Scheduling of Hearing. Unless the District Rules specifically provide that a hearing is not required for an application, once an application has been declared administratively complete by the District's designee, the Board will schedule the application for a hearing at a regular or special meeting of the Board.
- (b) Notice of Hearings. Not later than the 10th day before the date of the hearing, the Board shall give notice of all hearings involving permit applications in the following manner:
 - (1) post notice in a place readily accessible to the public at the District office; and
 - (2) provide notice to the Brazoria County Clerk; and
 - (3) provide notice by regular mail to the applicant or an authorized agent.
- (c) Contents of Notice. The notice shall include:
 - (1) the name of the applicant; and
 - (2) the date, time, and location of the hearing; and
 - (3) the address or approximate location of the well or proposed well; and
 - (4) a brief explanation of the proposed permit or permit amendment, and
 - (5) the purpose of the proposed use, and any change in use; and
 - (6) any other information Board deems relevant or appropriate.

§3.13 HEARING PROCEDURES.

- (a) General Provisions. Hearings on permit matters will be conducted by a quorum of the Board or an individual to whom the Board has delegated the responsibility to preside as a hearings examiner. The Board president, or another Board member designated by the president, or the hearings examiner shall serve as the presiding officer for the hearing.
- (b) Hearing Registration. The District may require each person who attends a hearing to submit a hearing registration form stating the person's name, address, whom the person represents, and whether the person wishes to testify.

- (c) Conduct of Hearings. The presiding officer may:
- (1) convene the hearing at the time and place specified in the notice; and
 - (2) set any necessary additional hearing dates; and
 - (3) establish the order for presentation of evidence; and
 - (4) administer oaths to all persons presenting testimony; and
 - (5) examine persons presenting testimony; and
 - (6) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party; and
 - (7) prescribe reasonable time limits for testimony and the presentation of evidence.
- (d) Continuance. The presiding officer may continue a hearing from time to time and from place to place without providing notice under the District Rules by announcing at the hearing the time, date, and location of the continued hearing.
- (e) Recording. The District shall prepare and keep a record of each hearing in the form of either minutes, or audio or video recording, or court reporter transcription, or the report described by Subsection (f) of this section. If a hearing is transcribed at the request of a party to the hearing, the presiding officer may assess the costs associated with producing the transcript to one or more parties. If a hearing involves a contested application, then the District shall keep a record of the hearing in the form of audio or video recording or a court reporter transcription.
- (f) Report. The presiding officer shall submit a report to the Board not later than the 30th day after the date a hearing is concluded, unless the hearing was conducted by a quorum of the Board. If the hearing was conducted by a quorum of the Board, the presiding officer shall determine at the presiding officer's discretion whether to prepare and submit a report to the Board under this section. The report must include:
- (1) a summary of the subject matter of the hearing; and
 - (2) a summary of the evidence or public comments received; and
 - (3) the presiding officer's recommendations for Board action on the subject matter of the hearing.

§3.14 ACTION ON APPLICATIONS.

The Board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

§3.15 TERM OF PERMITS.

- (a) Each permit shall have an effective term in accordance with the District's Fee Schedule. The permit fee charged by the District shall be in accordance with the District's Fee Schedule.
- (b) A permit will be considered null and void by the District if the well is not drilled within twelve (12) months of the date the permit is issued.

§3.16 PERMIT TERMS AND CONDITIONS.

All permits are granted subject to the District Rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall be subject to the following terms and conditions:

- (a) The permit is granted in accordance with the provisions of H.B. No. 3602 of the 78th Texas Legislature, as amended by H.B. 4114 of the 80th Texas Legislature, in conjunction with Texas Water Code Chapter 36, and the rules and orders of the District, and acceptance of the permit constitutes an acknowledgment and agreement that the permittee will comply with all the terms, provisions, conditions, requirements, limitations, and restrictions embodied in the permit and with the rules and orders of the District.
- (b) The drilling and operation of the well for the authorized use shall be conducted in such a manner as to avoid waste, pollution, or harm to the aquifer.
- (c) The permittee shall maintain records indicating the amount of groundwater withdrawn each month, the purpose of the withdrawal, and the total amount of water exported, if any. The amount of groundwater withdrawn each month shall be recorded on a District form and reported to the District.
- (d) The permittee agrees to cooperate fully in any reasonable inspection of the well site and related monitoring or sampling by District representatives.
- (e) Driller's logs must be submitted to the District within sixty (60) days of the drilling of a well. Failure to submit a driller's log will be grounds for revocation of a permit.
- (f) Violation of the permit's terms, conditions, requirements, or special provisions is a violation of the District Rules and shall be punishable by civil penalties as provided by the Act and the District Rules.

§3.17 PERMIT RENEWAL.

Well owners or operators shall make application to renew permits required under the District Rules prior to the expiration of the permit term. The well owner or operator shall indicate on the application form whether any changes to the well, well operations, purpose of use, or special conditions have occurred.

§3.18 PERMIT AMENDMENTS

- (a) It is a violation of the District Rules for a permittee to violate any term, provision, or restriction contained in a permit issued by the District. A permittee must apply for and receive an amendment to their permit prior to changing any term, provision, or restriction in the permit.
- (b) An application for permit amendment shall be made on District forms and any applicable fee shall be paid in accordance with the District's fee schedule.

§3.19 PERMIT REVOCATION, CANCELLATION, OR MODIFICATION.

- (a) A permit is not a vested right of the holder.
- (b) After notice and an opportunity for hearing, a permit may be revoked, suspended, terminated, canceled, modified, or amended in whole or in part for cause, including, but not limited to (i) violation of any terms or conditions of the permit, (ii) obtaining the permit by misrepresentation or failure to disclose relevant facts, or (iii) failure to comply with any applicable rules, regulations, fee schedule, special provisions, requirements, or orders of the District. The permittee shall furnish to the District upon request, and within a reasonable time, any information to determine whether cause exists for revoking, suspending, terminating, canceling, modifying, or amending a permit.

§3.20 REQUESTS FOR REHEARING.

- (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the Board not later than the 20th day after the date of the Board's decision.
- (b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions

from the Board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.

- (c) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (d) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (e) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

§3.21 DECISION; WHEN FINAL.

- (a) A decision by the Board on a permit or permit amendment application is final:
 - (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
 - (2) if a request for rehearing is filed on time, on the date:
 - (A) the Board denies the request for rehearing; or
 - (B) the Board renders a written decision after rehearing.

SUBCHAPTER C: REQUIREMENTS OF WELL OWNERS AND OPERATORS

§3.30 REPORTS.

- (a) Pumpage and Export Report.
 - (1) Each permit holder shall maintain records of monthly production from each permitted well as required by the District Rules.
 - (2) Each permit holder shall submit an “Annual Well Production Report” to the District on forms approved by the District within 30 days of the end of the District’s pumpage reporting period. Reports received after the 30-day deadline will be considered late. If it has not already been provided to the District, the report shall include the driller’s log, a description of the casing and pumping equipment, and the capacity of the well.
 - (3) A permit holder who transports groundwater for use outside of the District shall submit an “Annual Export Report” to the District on forms approved by the District within 30 days of the end of the District’s export reporting period. Reports received after the 30-day deadline will be considered late. If it has

not already been provided to the District, the report shall include the total amount of groundwater transported outside of the District from each well during each month of the preceding period and the purposes for which the water was transported.

- (b) Water Quality Reports. All community water system permittees required by statute or regulation to conduct water quality analyses (including public water systems) shall, at the time of obtaining results of the analyses, submit to the District a duplicate copy of the report generated by such analysis, including Consumer Confidence Reports.

§3.31 FEES AND PAYMENT OF FEES.

- (a) Permit Application, Registration, and other Administrative Fees. The Board shall establish a schedule of administrative fees by resolution in accordance with H.B. No. 3602 of the 78th Texas Legislature, as amended by H.B. No. 4114 of the 80th Texas Legislature. The Board will attempt to set fees at an amount that does not unreasonably exceed the cost to the District of performing the function for which the fees are charged. Such costs may include maintenance of a fund balance for contingencies.
- (b) Export Fees. The Board shall establish a schedule of export fees by resolution in accordance with H.B. No. 3602 of the 78th Texas Legislature, as amended by H.B. No. 4114 of the 80th Texas Legislature. Export fees will not be applied to:
 - (1) the export of groundwater from the District for incidental use as defined in Chapter 2 of the District Rules;
 - (2) the export of groundwater for an agricultural operation that overlaps or is adjacent to the District boundary; and
 - (3) the export of groundwater that occurs as a result of the distribution of water within a single, aggregate system of a retail public water system that overlaps the District boundary.
- (c) Production Fees. The Board shall establish a schedule of production fees by resolution in accordance with H.B. No. 3602 of the 78th Texas Legislature, as amended by H.B. No. 4114 of the 80th Texas Legislature.
- (d) Payment of Fees. All administrative fees, Export fees, and Production fees shall be paid in accordance with the District's fee schedule. The validity of any permit is contingent upon payment of any applicable administrative fees, export fees, or production fees in accordance with the District's Fee Schedule. The Board, by resolution in accordance with the District's Fee Schedule, may establish procedures

for the payment of production fees or export fees in installments and/or quarterly payments.

- (e) **EXEMPTIONS. NO FEE OF ANY TYPE SHALL BE ASSESSED OR COLLECTED FROM A NEW OR EXISTING WATER WELL ON PRIVATE PROPERTY THAT SERVES ONLY A SINGLE-FAMILY DWELLING USED ONLY FOR DOMESTIC PURPOSES AND/OR A NEW OR EXISTING WATER WELL USED ONLY FOR AGRICULTURE.**

CHAPTER 4. MEASURING METHODS

§4.1 MEASUREMENT OF WATER USE BY PERMITTED WELLS.

- (a) **AN OWNER OR OPERATOR OF A NEW OR EXISTING WATER WELL ON PRIVATE PROPERTY THAT SERVES ONLY A SINGLE-FAMILY DWELLING USED ONLY FOR DOMESTIC PURPOSES AND/OR A NEW OR EXISTING WATER WELL USED ONLY FOR AGRICULTURE, IS EXEMPT FROM THE REQUIREMENTS OF THIS SECTION.**
- (b) Except as otherwise provided by the District Rules, each permitted well shall be equipped with a functioning water meter, meeting AWWA standards for line size, pressures, and flows.
- (c) Except as otherwise provided by the District Rules, each well owner or operator of each permitted well shall record on a District form and report the amount of groundwater withdrawn each month to the District. In addition, each well owner or operator of each permitted well shall record on a District form and report the following information annually to the District:
 - (1) the total amount of groundwater withdrawn each month; and
 - (2) the quantity of water necessary for mining activities; and
 - (1) the quantity of water withdrawn for other purposes.

§4.2 VIOLATION OF METERING AND REPORTING REQUIREMENTS.

False reporting or logging of water measurements or meter readings, intentionally tampering with or disabling a meter, or similar actions to avoid accurate reporting of groundwater use and pumpage shall constitute a violation of the District Rules and shall subject the person performing the action, as well as the well owner, and/or the operator who authorizes or allows that action, to such penalties as provided in the Act and the District Rules.

CHAPTER 5. GENERAL PROVISIONS AND PROHIBITIONS

§5.1 GENERAL PROHIBITION.

Groundwater produced from within the District shall not be used in such a manner or under such conditions as to constitute waste. No person shall intentionally or negligently commit waste.

§5.2 SUBSURFACE POLLUTION.

No person shall pollute or harmfully alter the character of the groundwater reservoirs of the District by operating any drilling activity and/or other activity in a manner that causes or allows the introduction of salt water pollutants or other deleterious matter from another stratum from the subsurface and/or the surface of the ground, or from the operation of any drilling activity and/or other activity.

§5.3 SURFACE POLLUTION.

No person shall pollute or harmfully alter the character of the groundwater reservoirs of the District by any activities on the surface of the ground which causes or allows pollutants to enter the groundwater reservoirs.

§5.4 ORDERS TO PREVENT WASTE/POLLUTION.

After providing notice to affected parties and opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste or pollution. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to entry of the order. If the Board determines that an emergency exists, requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, it may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) days or until a hearing can be conducted.

CHAPTER 6. REGULATION OF WELL SPACING AND PRODUCTION

SUBCHAPTER A: GENERAL PROVISIONS

§6.1 PURPOSE.

The purpose of this chapter is to achieve the District's statutory goals of conserving, preserving, protecting, and recharging the groundwater resources within the District by establishing aquifer management requirements consistent with Texas Water Code Chapter 36, and appropriate to the aquifer system.

§6.2 APPLICABILITY.

All wells are required to meet the well spacing regulations set forth under Title 16, Texas Administrative Code, Chapter 76, Water Well Drillers and Pump Installers Rules.

§6.3 BASIS FOR LIMITATION OF WELL SPACING AND PRODUCTION.

The requirements of this chapter are based on the District's statutory authority to regulate the spacing of water wells and the production of groundwater in order to minimize the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste.

SUBCHAPTER B: SPACING REQUIREMENTS

§6.10 DRILLING WELLS AT UNAPPROVED LOCATIONS PROHIBITED.

It is a violation of the District Rules for a well owner, well operator, or water well driller to drill a new well that does not comply with the spacing and location requirements of this subchapter.

§6.11 MINIMUM SPACING APPLICABLE TO ALL NEW WELLS.

All new wells must comply with the spacing and location requirements promulgated by the Texas Department of Licensing and Regulation and set forth under Title 16, Texas Administrative Code Chapter 76, Water Well Drillers and Pump Installers Rules. Any variance granted by the Texas Department of Licensing and Regulation shall be submitted with the Well Log.

§6.12 ADDITIONAL STANDARDS.

The Board may adopt additional spacing standards for wells drilled in the District. Approved well spacing standards will be made available to the public.

CHAPTER 7. DRILLING, EQUIPPING AND CONSTRUCTION

§7.1 RECORDS.

- (a) Complete records shall be kept and reports thereof made to the District, concerning the drilling, equipping, and completion of all wells drilled in the District. Such records shall include an accurate driller's log, depth to water, any electric log that shall have been made, and such additional data concerning the description of the well, its discharge, and its equipment as may be required by the Board. Such records shall be filed with the District within sixty (60) days after drilling of the well.

- (b) No person shall operate any well drilled and equipped within the District, except operations necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any special purpose log or data which have been generated during well development, and a registration of the well correctly furnishing all available information required on the forms

§7.2 DRILLING AND COMPLETION OF WELLS.

- (a) Drilling and completion of wells must satisfy all applicable requirements of the Commission and the Texas Department of Licensing and Regulation, and any additional well construction standards adopted by the District.
- (b) All wells must be completed in accordance with the well completion standards set forth under the requirements promulgated by the Texas Department of Licensing and Regulation and set forth under Title 16, Texas Administrative Code Chapter 76, Water Well Drillers and Pump Installers Rules.
- (c) The Board of Directors may adopt additional well construction standards for wells drilled within the District. Approved well construction standards will be made available to the public.

CHAPTER 8. ABANDONED, OPEN AND UNCOVERED WELLS

§8.1 REGISTRATION AND SEALING.

- (a) Except as otherwise provided by the District Rules, any owner or lessee of land, on which an open or uncovered well, or an abandoned well is located, must register the well with the District.
- (b) Any well not registered with the District shall be classified as abandoned.

§8.2 MINIMUM STANDARDS.

- (a) Capping of Open or Uncovered Wells.
 - (1) At a minimum, open or uncovered wells must be capped in accordance with the District Rules and in accordance with the standards set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Chapter 76, Texas Administrative Code.
 - (2) A copy of any capping report required by the Texas Department of Licensing and Regulation shall be submitted to the District.

- (3) The Board may adopt additional well capping standards for open or uncovered wells within the District. Approved well capping standards will be made available to the public.

(b) Plugging of Abandoned Wells.

- (1) All abandoned wells must be plugged in accordance with standards set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Chapter 76, Texas Administrative Code.
- (2) A copy of any plugging report required by Texas Department of Licensing and Regulation shall be submitted to the District.
- (3) The Board of Directors may adopt additional well plugging standards for abandoned wells within the District. Approved well capping standards will be made available to the public.

§8.3 ENFORCEMENT.

If the owner, lessee or operator of a well fails or refuses to cap or plug a well in compliance with this rule and District standards 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 onto the land (pursuant to Texas Water Code Section 36.118) and plug or cap the well safely and securely. Reasonable expenses incurred by the District in plugging or capping a well will be assessed to the landowner and shall constitute a lien on the land on which the well is located.

§8.4 PENALTIES.

Pursuant to the District Rules, penalties shall be applicable in cases of failure or refusal to plug abandoned wells or cap wells not currently in use.

CHAPTER 9. WATER CONSERVATION AND DROUGHT

§9.1 CONSERVATION POLICY.

The District may implement conservation policies through various programs initiatives and incentives including public education, technical assistance, special programs, through grants and loans, from support by various local, state, and federal programs, industries, foundations, non profits, public and private individuals, corporations, partnerships, and other interest groups that will further the District's goals of cost-effective water conservation, pollution prevention, and waste prevention of the District's water resources.

§9.2 WATER CONSERVATION PLANS.

Each permittee who is required to prepare, adopt, and implement a water conservation plan or drought contingency plan by another agency of the State of Texas or by any water wholesale provider shall submit a copy of such plan to the District for the District's files.

CHAPTER 10. ENFORCEMENT

§10.1 NOTICE AND ACCESS.

Pursuant to Texas Water Code Section 36.123, any authorized officer, agent, employee, or representative of the District, when carrying out technical and other investigations necessary to the implementation of the District Rules or the Act, and after reasonable notice to the owner or operator, may enter upon private property for the purpose of inspecting and investigating conditions relating to the withdrawal, waste, water quality, pollution, or contamination of groundwater or other acts covered by the District Rules or the Texas Water Code.

§10.2 SHOW CAUSE ORDERS AND COMPLAINTS.

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person owning or operating a well within the District, or any person in the District violating the Act, the District Rules, or an Order of the Board. Under the citation, that person is ordered to appear before the Board in a public hearing and require him to show cause why an enforcement action should not be initiated and/or why his procedure and/or operating authority and/or permit should not be suspended, cancelled, and/or otherwise restricted and limited, for failure to abide by the terms and provisions of the permit, and/or the District Rules, and/or the Act.

§10.3 CONDUCT OF INVESTIGATION.

When investigations or inspections require entrance upon private property, such investigations and such inspections shall be conducted at reasonable times, and shall be consistent with all applicable rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations shall identify themselves and present District identification upon request by the owner, operator, lessee, management in residence, or person in charge.

§10.4 SEALING OF WELLS.

- (a) The District may seal wells that are prohibited by the Act, Rules, or Board orders from withdrawing groundwater within the District when the Board, or its designated District employee, determines that such action is reasonably necessary to assure that a well is not operated in violation of the Act, Rules, or Board orders. This authorization to seal a well or to take other appropriate action to prohibit the withdrawal of groundwater extends to, but is not limited to, the following circumstances in which: (i) a permit has been granted, but the applicable fees have

not been paid within the time period provided for payment; (ii) representations have been made by the well owner or operator that no groundwater is to be withdrawn from a well during a particular period; (iii) no application has been made for a permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; (iv) the Board has denied, cancelled, or revoked a permit; (v) permit conditions have not been met; or (vi) a threat of, or potential for, contamination to the aquifer exists.

- (b) The well may be physically sealed by the District, and if sealed by the District, the well shall then be red-tagged to indicate that the well has been sealed. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.
- (c) Tampering with, altering, damaging, or removing the seal or red tag of a sealed or red tagged well, or in any other way violating the integrity of the seal or red tag, or the pumping of groundwater from a well that has been sealed or red tagged shall constitute a violation of the District Rules and shall subject the person performing that action, as well as any well owner and/or operator who authorizes or allows that action, to such penalties as provided by the Act and the District Rules.

§10.5 REQUEST FOR INJUNCTIVE RELIEF.

If it appears that a person has violated, is violating, or is threatening to violate any provision of the Act or any Rule, permit, Board order, or other order of the District, the Board may institute and conduct a suit in the name of the District for injunctive relief, for recovery of a civil penalty, or for both injunctive relief and penalty.

§10.6 PENALTIES FOR LATE PAYMENT OF FEES.

- (a) Failure to Make Production or Export Fee Payment. Failure to make the production or export fee payment within the time period specified shall constitute grounds for the District to declare the permit void.
- (b) Late Payment Penalties. Failure to make complete and timely payments of a fee will automatically result in a late payment penalty of 10 percent of the amount not paid. The fee payment plus the late payment fee must be made within thirty (30) days following the date the payment is due, otherwise the permit may be declared void by the Board.
- (c) Loss of Installment Payment Option. The option of making payment of a production or export fee in installments may be made available by the District in order to avoid causing cash flow problems for permittees. Any permittee who, two or more times during the permit term, makes late payment of fee installments, will be required to pay production or export fees during the following two (2) years as an annual payment upon permit issuance, without an installment payment option.

- (d) After a permit is declared void for failure to make payment of production or export fees, all enforcement mechanisms provided by this Rule and the Act shall be available to prevent unauthorized use of the well, and may be initiated by the District's designee, without further authorization from the Board.

§10.7 FAILURE TO REPORT PUMPAGE AND/OR EXPORTED VOLUMES.

The accurate reporting and timely submission of pumpage and/or exported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, export and water quality reports, as required by the District Rules, may result in forfeiture of the permit, civil penalties, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or exported volumes and water quality reports.

§10.8 EMERGENCY ORDERS.

The District will develop Emergency Contingency Plans to deal with water quality or water quantity emergencies. Public hearings on Emergency Contingency Plans shall be conducted by the Board prior to adoption. To implement Emergency Contingency Plans, the Board, or the District's designee, if specifically authorized by an Emergency Contingency Plan, may adopt emergency orders of either a mandatory or prohibitory nature, requiring remedial action by a permittee or other party responsible for the emergency condition.

§10.9 CIVIL PENALTIES.

- (a) The District may enforce the District Rules by injunction or other appropriate remedy in a court of competent jurisdiction.
- (b) Any person who violates any District Rule is subject to a civil penalty of up to \$10,000 for each violation and for each day of continuing violation. Each day a violation continues may be considered a separate violation.
- (c) All civil penalties recovered by the District shall be paid to the Brazoria County Groundwater Conservation District.
- (d) A penalty under this section may be enforced by complaints filed in the appropriate court of jurisdiction in Brazoria County.