

# NEBRASKA NRD MODEL ENFORCEMENT RULES AND REGULATIONS

## CHAPTER X: ENFORCEMENT OF RULES AND REGULATIONS

- I. Any Person who violates any controls or Rules and Regulations adopted by the District shall be subject to the issuance of a cease-and-desist order and such other legal action as is necessary to bring about compliance.
  
- II. Any Person who violates a cease-and-desist order, or who violates the Rules and Regulations of the District, may be subject to a penalty, including but not limited to the following: (1) a reduction in the number of Certified Irrigated Acres; and/or (2) a permanent forfeiture (revocation) of Certified Irrigated Acres; and/or (3) a reduction in Allocation; and/or (4) disqualification from participation in certain District programs. Such penalties may be permanent or for a specified period of time. The Board shall consider the seriousness of the violation when determining the nature of the penalty to be imposed.
  - a. The circumstances for imposing penalties include, but are not limited to, the following: (1) a violation of any particular Rule or Regulation; (2) repeated violations of these Rules and Regulations; (3) severity of the violation; and (4) being in violation of more than one Rule at any particular time. The Board may also pursue a penalty if a Person has been warned in writing on more than one occasion that they are in violation of these Rules and Regulations.
  - b. Notice and a hearing shall be provided to any such Person before the District imposes any penalties.
  
- III. Any Person subject to these Rules and Regulations has full knowledge of their contents, requirements, and prohibitions. No Person shall be able to use ignorance of the provisions of these Rules and Regulations as a defense in any enforcement action or penalty proceeding.

### **SECTION 1: COMPLAINT**

- I. Any Person may file a complaint with the District against a Groundwater User, Landowner, or Operator alleging that they are in violation of these Rules and Regulations; the Nebraska Ground Water Management and Protection Act (the "Act"); and/or other Nebraska law, the violation of which is within the jurisdiction of the District.

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### **SECTION 2: INSPECTIONS**

- I. Pursuant to Neb. Rev. Stat. §46-707, District staff may conduct investigations, document reviews, and field inspections to confirm compliance with these Rules and Regulations; the Act; and/or other Nebraska law.
- II. District staff shall notify the Groundwater User, Landowner, or Operator, either in person, by United States mail, by electronic communication, or by leaving notice posted at the Groundwater User's last known address, of any suspected violation(s), of the District's intent to conduct an inspection, and of the purpose of such inspection.
- III. District staff shall be authorized to enter upon the land to investigate complaints and alleged violations, and to conduct field inspections, upon showing proper identification, and after providing the Groundwater User, Landowner, or Operator with notice as described above.
- IV. Following the investigation, document review and/or field inspection, the District staff responsible for the investigation, review, and/or inspection shall complete a report detailing their findings.

### **SECTION 3: SUBMISSION OF INSPECTION REPORT ALLEGING VIOLATION AND ALLEGED VIOLATOR'S ALTERNATIVES**

- I. If the District finds that the Groundwater User, Landowner, or Operator is in violation of these Rules and Regulations, the Act and/or other Nebraska law, the staff report described above shall be sent to the Groundwater User, Landowner, and Operator, accompanied by a formal notice of intent to issue a cease-and-desist order as approved and executed by the Board Chairman or the District Manager. The staff report and notice of intent to issue a cease-and-desist order shall be provided to the Groundwater User, Landowner, and Operator by hand delivery, or via certified mail, return receipt requested, and by postage prepaid, First-Class U.S. Mail.
- II. If the Groundwater User, Landowner, or Operator believes the staff report is in error and no violation has or is occurring, he/she may make a written request for a hearing before the District Board of Directors. Any written request for a hearing must be received at the District office within ten (10) business days (excluding

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Saturdays, Sundays, and legal holidays), of receipt of the staff report and notice of intent to issue a cease-and-desist order.

- III. If no hearing is requested, the Board Chairman may issue a cease-and-desist order against the Groundwater User, Landowner, and/or Operator. The cease-and-desist order shall be provided to the Groundwater User, Landowner, and Operator by hand delivery, or via certified mail, return receipt requested, and by postage prepaid, First-Class U.S. Mail.

### **SECTION 4: COMPLIANCE**

- I. When a Groundwater User, Landowner, or Operator achieves compliance, the District shall lift the cease-and-desist order or modify it to ensure future compliance. Notwithstanding compliance, the District may impose penalties including, but not limited to, revoking the certification for the irrigated parcel(s) that is the subject of the violation.

### **SECTION 5: HEARING**

- I. If the Groundwater User, Landowner, or Operator makes a timely, written request for a hearing, the Board shall schedule such hearing at the District office. Such hearing shall be held no sooner than ten (10) days and not more than forty-five (45) days after receipt of the notice provided pursuant to Rule X.
- II. Notice of the hearing shall be provided to the Groundwater User, Landowner, and Operator and any other necessary person. Such notice shall be provided via certified mail, return receipt requested, or hand delivery, and by postage prepaid First-Class U.S. Mail. The notice shall inform the Groundwater User, Landowner, and Operator that, if he or she fails to respond to any notice and/or fails to appear at the scheduled hearing, the Board shall proceed to make a final determination as to the alleged violation of these Rules and Regulations, the Act and/or other Nebraska law, and as to whether to issue a cease-and-desist order against the Groundwater User, Landowner, or Operator.
- III. The Board shall conduct the hearing to provide due process and receive all relevant information regarding the alleged violation, from the District and from the Groundwater User, Landowner, or Operator. The Board shall keep a record of the hearing and shall base its decision on whether to issue a cease-and-desist order solely on the information received at the hearing. The Board shall render its decision in writing and provide the same to the Groundwater User, Landowner,

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and Operator via certified mail, return receipt requested, or hand delivery, and via postage prepaid First Class, U.S. Mail.

- IV. In the event of multiple or repeated violations or a violation of the cease-and-desist order by the same Groundwater User, Landowner, or Operator, the District may hold a separate hearing to determine whether to impose additional penalties. The Board shall provide written notice of the separate hearing to impose additional penalties on the Groundwater User, Landowner, and Operator via certified mail, return receipt requested, or hand delivery, and by prepaid First-Class U.S. Mail. Such notice shall specify the date, time, and location of any such hearing and advise the Groundwater User, Landowner, and Operator that they may be represented by counsel of their choosing. The hearing shall be conducted to provide the appropriate due process and ensure all relevant information from the Groundwater User, Landowner, or Operator is considered before rendering a written decision. Only information received at the hearing shall be considered by the Board to determine whether to impose any penalty. The District shall keep a record of that hearing and provide its written decision to the Groundwater User, Landowner, and Operator via certified mail, return receipt requested, or hand delivery, and via postage prepaid, First-Class U.S. Mail.

### **SECTION 6: BOARD AUTHORIZATION TO INITIATE COURT ACTION**

- I. The Board may initiate appropriate legal actions to enforce any action or order of the District.

### **SECTION 7: CEASE AND DESIST ORDER, VIOLATION, PENALTY**

- I. As provided by the Act, any violation of a cease-and-desist order issued by the District pursuant to the Act shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day an intentional violation occurs, per Neb. Rev. Stat. § 46-745(1).
- II. Nothing contained in these Rules and Regulations shall exempt a Person from the provisions of applicable state laws.