

October 1, 2004

RULES AND REGULATIONS
FOR THE ENFORCEMENT OF THE NEBRASKA
GROUNDWATER MANAGEMENT AND PROTECTION ACT
IN THE LEWIS & CLARK NATURAL RESOURCES DISTRICT

GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT

**RULES & REGULATIONS
FOR THE ENFORCEMENT OF THE NEBRASKA GROUND WATER
MANAGEMENT AND PROTECTION ACT
in the Lewis & Clark Natural Resources District**

GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT

RULE 1

Definitions. As used in these rules and regulations of the Lewis & Clark Natural Resources District for administration of the Nebraska Ground Water Management and Protection Act:

Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep.

Act shall mean the Nebraska Ground Water Management and Protection Act, R.R.S. Sections 46-656.01 to 46-656.67 as amended.

Alleged violator shall mean any person against which a complaint has been filed in accordance with Rule 5.

Best Management Practices shall mean schedules of activities, maintenance procedures, or other management practices utilized to prevent or reduce groundwater depletion, as well as present and future contamination of groundwater which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs, and water conservation programs.

Board, Board of Directors, or Directors shall mean the Board of Directors of the Lewis & Clark Natural Resources District and/or its employees and agents *acting at the direction* of the Board of Directors.

Certification shall mean a current certificate of completion issued by the District to the operator for completion of the necessary educational programs outlined by the District.

Certified Operator shall mean the person or persons responsible for making decisions on any type of applications of nitrogen fertilizer on an area greater than one acre and applying more than 50 pounds per acre of actual nitrogen fertilizer on any agricultural land within the District, either commercially or privately, who must be certified by the District once every four years by attending and participating in a Nitrogen Management Certification class given by the District or by neighboring Natural Resources Districts

Complainant shall mean any person who files a complaint alleging violation of these rules and regulations in accordance with Rule 5.

Compliance Officer shall mean an employee, agent, or director of the District authorized to perform the functions assigned thereto by these rules and regulations.

Contamination or contamination of groundwater shall mean nitrate-nitrogen or other material which enters the groundwater due to the action of any person and causes degradation of the quality of groundwater sufficient to make such groundwater unsuitable for present or reasonably foreseeable beneficial uses.

District shall mean the Lewis & Clark Natural Resources District.

Educational Programs shall mean informational and educational training sessions designed to acquaint landowners and operators with best management practices in the operation of their irrigation and cropping systems.

Groundwater shall mean that water which occurs in, or moves, seeps, filters, or percolates through ground under the surface of the land. Such water may also be referred to as "ground water" in these Rules and Regulations, and, wherever the same may appear, the definition shall be the same, whether the spelling is one word or two.

Groundwater Reservoir Life Goal shall be the goal of the District to preserve and maintain the natural quality and quantity of groundwater for the sustained use of the resource for an indefinite period of time.

Groundwater user shall mean a person who at any time extracts, withdraws, or confines groundwater for any use by him/herself or allows such use by other persons. Whenever the landowner and operator are different, groundwater user shall mean both the owner and the operator.

Illegal well shall mean:

- a) Any water well operated or constructed without or in violation of a permit required by Nebraska Statutes, 46-602
- b) Any water well not in compliance with the rules and regulations adopted and promulgated pursuant to Nebraska Statutes,
- c) Any water well not properly registered in accordance with Nebraska Statutes,
- d) Any water well not in compliance with other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws.

Improper irrigation runoff shall mean the occurrence of irrigation runoff water after January 1, 1977 (a) which causes or contributes to the accumulation of water upon or beneath the surface of the lands of any other person(s) to their detriment; or (b) which causes or contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in surface waters within the area.

Inspector shall mean an employee, agent, or director of the District authorized to perform the functions assigned thereto by these rules and regulations.

Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the District and is capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of allocation.

Irrigation run-off water shall mean groundwater used for irrigation purposes which escapes from land owned, leased, or otherwise under the direct supervision and control of a groundwater user.

Irrigation Well shall mean a registered water well with pumping capacity of 50 gallons per minute or more.

Landowner shall mean any person who owns or is in the process of purchasing land.

Management Area shall mean any area designated by a Natural Resources District pursuant to Section 46-656.20 R.R.S., 1995; by the Director of the Nebraska Department of Environmental Quality pursuant to Section 46-656.39 R.R.S., 1995; or by the Director of the Nebraska Department of Natural Resources pursuant to Section 46-656.52 R.R.S., 1995.

Management Plan shall mean a groundwater management plan developed by a Natural Resources District and approved by the Director of the Nebraska Department of Natural Resources pursuant to Sections 46-656.12 to 46.656.15 R.R.S., 1995.

Maximum Contaminant Level or MCL shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public or private water system as established by the Environmental Protection Agency (EPA). The MCL represents a level of a contaminant beyond which serious health problems have occurred or can occur.

Operator shall mean that person who has the most direct control over day-to-day farming operations of the land.

Person shall mean a natural person, partnership, limited liability company, association, corporation, municipality, irrigation district, and any agency or political subdivision of the State of Nebraska, or a department, agency or bureau of the United States.

Point source pollution shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance over which the Nebraska Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of groundwater is discharging or may discharge.

Replacement water well shall mean a water well which replaces an abandoned water well within three (3) years of the last operation of the abandoned water well and is constructed to provide water to the same tract of land as the abandoned water well being replaced.

Sub-area shall mean a geographical area within the District subject to various actions and controls pursuant to these rules and regulations.

Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. A water well shall not include any excavation made for obtaining or prospecting for oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Commission.

Water well permit shall mean the authorization given by the District for construction of water wells capable of pumping greater than 50 gallons per minute in accordance with section 46-656.29.

RULE 2

General. The District shall enforce the provisions of the Nebraska Ground Water Management and Protection Act and all rules and regulations adopted pursuant thereto by issuance of cease and desist orders in accordance with the procedure hereinafter specified and by bringing appropriate actions in the District Court of the county in which any violations occur for enforcement of such orders. Cease and desist orders may be issued for the following reasons:

- a) Construction or operation of an illegal well as defined in these rules and regulations.
- b) Noncompliance with Board adopted controls, rules, and regulations in a designated management area by operators, landowners, or other persons required to abide by such controls, rules, and regulations.
- c) Using or operating an irrigation system in a manner which causes improper irrigation run-off as defined in these rules and regulations.

To assist in carrying out these Rules and Regulations, the District shall have the right to make any necessary inspections and other actions allowed under 2-3232, RRS 1943 together with any other authorized actions at law or equity.

RULE 3

Water Well Permits. Any person intending to construct a water well on land which he/she owns, leases, or controls in any manner at any location within a Lewis & Clark Natural Resources District groundwater management area shall, before commencing construction, apply for a permit on forms provided by the District, with the following exemptions:

- a) no permit shall be required for test holes or dewatering wells with an intended use of ninety (90) days or less;
- b) no permit shall be required for water wells designed and constructed to pump fifty (50) gallons per minute (gpm) or less; and
- c) no permit shall be required for replacement water wells as defined in these rules and regulations.

A well which falls under exemptions a), b), or c) above, shall be required to have a permit if such well is modified into a well for which a permit is required in these rules and regulations. The permit shall be obtained prior to commencement of modification.

The applicant for such a permit shall pay a **nonrefundable filing fee** to the District upon filing the permit application. Any person who fails to obtain a permit as required by this rule shall apply for a **late permit** on forms provided by the District, accompanied by a **nonrefundable late filing fee**. The District shall review permit applications and either issue or deny permits within thirty days after the application is filed (Section 46-656.29).

A permit provided for by this rule, whether late or otherwise, shall be granted unless the District finds:

- 1) the location or operation of the proposed water well in question or other work would conflict with any regulations or controls adopted by the District;

- 2) the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes; or
- 3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.

If the District finds that the application for a permit is incomplete or needs corrections, it shall return the application to the applicant for any necessary corrections. Corrections must be made within sixty (60) days or the application will be cancelled.

A permit issued shall specify all regulations and controls adopted by the District relevant to the construction or utilization of the proposed water well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The District shall transmit one copy of each permit issued to the Director of the Nebraska Department of Natural Resources.

The issuance by the District of a permit shall not vest in any person the right to violate any District rule, regulation, or control, whether in effect on the date of issuance of the permit or adopted thereafter. Obtaining a permit pursuant to this rule shall not relieve any person from the requirement to register a well with the Nebraska Department of Natural Resources, pursuant to Nebraska law.

When any permit is approved, the applicant shall commence construction of the water well as soon as possible after the date of permit approval and shall complete such construction and equip the water well prior to the date specified in the conditions of approval, which date shall not be more than one (1) year after the date of approval, unless it is clearly demonstrated in the application that (1) one year is an insufficient period of time for such construction. If the applicant fails to complete the project under the terms of the permit, the District may cancel the permit.

RULE 4

Groundwater Management Area Regulation. Following a public hearing, the District may, by issuance of an order (held in accordance with sections 46-656.19 and 46-656.20), manage the use of water in a management area for water quality purposes by any of the following means:

- (1) Require educational programs designed to protect water quality;
- (2) Requiring the analysis of deep soil for nitrate-nitrogen content;
- (3) Requiring the analysis of water for nitrate-nitrogen content;
- (4) Requiring the submittal of reports or forms;
- (5) Restriction on fall fertilizer applications
- (6) Encouraging Best Management Practices;
 - a. Proper rates of fertilizer application
 - b. Responsible waste application procedures
 - c. Flow meters or other devices for measuring groundwater withdrawal

RULE 5

Complaints. Any person who owns land, leases land, or resides within the District; or any non-resident person who can show that the actions of any landowner or operator within the District directly affects

him/her; or the District Compliance Officer; or the Board of Directors on its own motion, may file a written complaint. Said complaint shall be filed against a landowner or operator alleging a violation of these rules and regulations or other violations of laws governed by these rules and regulations.

Complaints shall be filed at the office of the District at 608 N Robinson Ave, PO Box 518, Hartington, Nebraska 68739 on complaint forms prepared and provided by the District. Forms shall be made available at such office or other offices designated by the Board of Directors.

RULE 6

Inspections. In the case of a formal, written complaint alleging a violation of these rules and regulations where the Compliance Officer determines that an inspection is necessary to determine whether or not the landowner or operator is, at the time of inspection, or was, at the time alleged in complaint, in violation of these rules and regulations, then the land where the alleged violation occurred shall be inspected by the Inspector within five (5) days after the complaint is filed (excluding Saturdays, Sundays, and legal holidays). The Inspector, upon proper identification and after informing the person in control of the land either in person or by certified, restricted mail, of the complaint and the Inspector's purpose, is authorized to enter upon the land, if necessary, for the purpose of making an inspection of the alleged violation. Upon completion of the inspection, the Inspector shall file a report of his/her findings in the District office and shall deliver a copy of the complaint and said report to the alleged violator and then to the complainant, if other than the Compliance Officer or the Board, in person or shall transmit the same by certified, restricted mail.

RULE 7

Submission of Inspection Report Alleging Violation and Alleged Violator's Alternatives. If the Inspector finds in his/her report that there is reasonable cause to believe that a landowner or operator is, at the time of inspection, or was at the time alleged in the complaint, in violation of these rules and regulations, then said Inspector's report, prepared and delivered in accordance with Rule 6, shall be accompanied by a formal notice of the alternative actions available to the alleged violator. Alternative actions shall be:

- a) Agree with and accept as true and correct, the Inspector's findings that the alleged violation has, in fact, occurred or is occurring; and consent in writing to cease and desist from continuing or allowing the reoccurrence of such violation; or
- b) Reject the findings of the Inspector's report and request in writing that a formal hearing be scheduled and conducted in accordance with the rules and regulations of the District.

The alleged violator shall be granted not less than seven (7) days (excluding Saturdays, Sundays, and legal holidays) from the date that said report and notice is provided to respond and to chose an alternative action as stated above.

RULE 8

Board Action Subsequent to Landowner, Operator, Groundwater User, Complainant, Compliance Officer, or Board Member Request for Hearing. In accordance with Rule 7, part b), the Board shall hold a formal hearing when requested by an alleged violator, complainant, compliance officer, or board member.

In the case of a written complaint alleging a violation of these rules and regulations where the compliance officer determines that an inspection is not necessary to determine whether or not the landowner, operator, or groundwater user is, at the time alleged in the complaint, in violation of these rules and regulations, the Board shall hold a formal hearing when requested by an alleged violator, complainant, compliance officer, or board member.

Notice of the hearing shall be delivered to the alleged violator and the complainant, in person or shall be transmitted to the same by certified, restricted mail.

RULE 9

Board Action Following a Hearing. Following a hearing as requested by an alleged violator, complainant, compliance officer, or board member, the Board shall determine either:

- a) the alleged violator has not violated or is not violating any of the rules, regulations, or controls outlined herein; or
- b) a violation of the rules, regulations, or controls has occurred or is occurring.

If the Board determines that no violation has occurred or is occurring, no further action will be taken by the Board against the alleged violator.

If the Board determines that a violation of these rules, regulations, or controls contained herein has occurred or is occurring, it shall adopt an order directing such violator to immediately cease and desist from all activities determined by the Board to be violations, specifying any actions deemed necessary and appropriate. Said order shall be transmitted to the violator in person or by certified restricted mail.

RULE 10

Board Action if Alleged Violator Fails to Respond or Appear. When an alleged violator has been notified of the alternative actions available in accordance with Rule 7 and such alleged violator has failed to respond, or when an alleged violator has been notified of board action to hold a properly scheduled formal hearing in accordance with Rule 8 and has failed to appear at such hearing, the Board shall:

- a) Review the complaint and the Inspector's Report, if an inspection was necessary, as well as any other pertinent information; and
- b) Issue such order or orders in accordance with these rules and regulations as it deems necessary.

RULE 11

Alleged Violator's Actions Following the Issuance of Cease and Desist Order. Once a cease and desist order has been issued by the District and transmitted to the alleged violator either in person or by restricted, certified mail, the alleged violator shall be given seven (7) working days (excluding Saturdays, Sundays, and Holidays) to comply with said order. If, after seven (7) working days, the alleged violator does not respond or responds stating that he/she refuses to comply with said order, the order will be filed with the District Court

for prosecution in the county in which the violation occurred. Violation of a cease and desist order is punishable by a fine of up to \$5000 per day.(Neb Rev Statute 46-656.10).

RULE 12

Board Authorization to Initiate Court Action. The Board may initiate appropriate legal actions in the District Court of the county in which the violation has occurred whenever necessary to enforce any actions or orders of the District in accordance with these rules and regulations.

RULE 13

Groundwater Quality Management Area Designation and Controls.

Prior to the establishment of any groundwater quality management area or sub-area there will be a public hearing held to allow testimony in favor or against the proposal, and to define appropriate boundaries. Following the hearing, the District may designate an area, or sub area, if it determines action is necessary to achieve its Groundwater Goal. It may then implement its rules and regulations as provided in Phase III of the Groundwater Management Plan. The areas defined under Phase III for the Lewis & Clark NRD shall be subject to the following controls:

- 1) All operators applying fertilizer containing nitrate-nitrogen must attain certification of attendance at district approved educational programs designed to inform operators about management practices that minimize pollution (valid 4 years)
- 2) All operators shall perform deep soil testing (3 feet) annually for residual quantities of nitrate-nitrogen. These tests are required on each field or 40-acre tract; whichever is smaller, where a corn on corn rotation crop will be raised. The analysis will be conducted by a laboratory registered with the Nebraska Department of Agriculture.
- 3) All irrigation wells shall be tested biennially (every two years) for the nitrate-nitrogen content of the water. The analysis must be conducted by a laboratory using United States Environmental Protection Agency approved methods for the analysis of nitrate-nitrogen in water and must be reported as nitrate-nitrogen in units of milligrams per liter (mg/L) or parts per million (ppm).
- 4) All operators applying fertilizer (or other possible sources of contaminants that the management area is addressing) must annually submit reports to the District, due by December 31st, that will include soil test results, irrigation water test results, and other information required by the Board of Directors.
- 5) Fall (Sept 23 to Dec 30) or Winter (Dec 21-March 1) application of commercial nitrogen fertilizer will be prohibited on all soils. Spring applications greater than 100 pounds of actual nitrogen fertilizer per acre will be encouraged through split applications.
- 6) All irrigators shall employ some form of Best Management Practices acceptable to the District,
 - a. Proper fertilizer application timing is encouraged including split nitrogen applications or use of N-inhibitors.

- b. The District will encourage certified operators to incorporate credits from application of animal waste (solid or effluent) into the total nitrogen requirement for the specific crop where this application of waste is made. An analysis of waste slurry will be encouraged to determine nitrogen content. Operators are encouraged to apply animal and municipality waste evenly over as many acres as possible. The following rules and regulations apply to the application of animal and municipal waste, accordingly:
- 1) A nitrogen analysis of animal waste slurry will be encouraged during the growing season if the slurry is applied through an irrigation distribution system
 - 2) Nitrogen application including livestock waste (solid or effluent) should not exceed crop need.
 - 3) The application of animal waste on frozen or snow covered ground or tilled ground with greater than 10% slope is discouraged unless adequate erosion control practices are present.
- c. All irrigation wells in Phase III areas are encouraged to have the volume output certified to the District.
- d. Other management practices designed to prevent or reduce groundwater contamination.