

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 24.—Northwest Kansas Groundwater Management District No.

4

5-24-11. Investigation and enforcement.

The procedure set forth in this regulation shall be followed whenever enforcement action is taken by the district after it becomes aware that a person could be violating any of the regulations adopted by the chief engineer that relate to conservation and management of groundwater within the district.

(a) If a violation is discovered by the district's staff, the enforcement procedure shall begin with the step specified in subsection (c). In all other cases, a complaint may be filed with the district either verbally or in writing. The complaint shall describe and specify the following:

- (1) The nature of the alleged violation;
- (2) the location of the alleged violation;
- (3) the name of the complainant;
- (4) the mailing address of the complainant; and
- (5) any other information necessary for the staff to understand the alleged violation and assist the staff in investigating the complaint.

(b) Before the staff makes any field investigation of the complaint, the staff shall make at least one attempt to contact an owner, operator, or other responsible representative of the water right or approval of application to notify the individual that a field investigation will be made.

(c) The district's staff shall make an investigation under either of the following circumstances:

- (1) A complaint has been filed with the district, and the requirement specified in subsection (b) has been met.

(2) The district's staff discovers a violation of any regulation adopted by the chief engineer relating to conservation and management of groundwater within the district.

(d) A written report of the investigation shall be prepared by the staff. This report shall include any documents relied on or prepared by the staff in investigating the complaint or internally discovered violation. The report shall become a part of the official district record concerning the investigation. If a water right or an approval of application is involved, the report shall be made a part of that file.

(e) If the investigation shows that no violation has occurred or that enforcement action is not warranted, a copy of the report shall be sent to the complainant, if the investigation was prompted by a complaint, and the water right owner. A copy shall be retained in the district office. No further enforcement action shall be taken by the district at that time.

(f)(1) If the investigation determines or confirms that a violation has occurred, the report shall contain an order issued by the district staff, which shall be sent by restricted mail to the water right owner as shown in the district records and to any other person who is known by the district to have been committing the violation. The order shall specify and include the following:

(A) A description of the violation, including the specific regulations that are being violated;

(B) the actions necessary to correct the violation;

(C) a reasonable time frame to correct the violation;

(D) a statement that extensions of time to correct any violation may be granted by the staff if good cause is shown by the water right owner or other responsible party;

(E) a statement that the order is effective immediately;

(F) a statement that if the violation is corrected within the time specified by the order, the violator is required to notify the district, and an inspection will be conducted by the staff to determine if the violation has ceased;

(G) a statement that if any party desires to appeal an order issued by the staff, an appeal to the board is required to be requested within 15 days of the issuance of the order by a water right owner or violator;

(H) a statement that the request for an appeal may also request a stay of the order. If the requestor demonstrates good cause for a stay, a stay of the order may be granted by the staff or the board; and

(I) a statement that any subsequent violations of the same nature will be handled as a continuation of the current violation, not a new violation.

(2) A copy of the report shall be sent to the complainant.

(g) If the violation is corrected within the time frame specified by the order, the violator shall notify the district, and an inspection shall be conducted by the staff to determine if the violation has ceased. If the staff investigation determines that the violation has been corrected within the time frame specified by the order and in accordance with the district order, the enforcement activity by the district shall cease.

(h) If the violation has not been corrected within the time frame specified in the order and in the manner specified in the order, one or more of the following actions may be taken by the board:

(1) Seeking an injunction to stop the violation;

(2) requesting enforcement assistance from the chief engineer; or

(3) requesting enforcement assistance from the attorney general.

(Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Jan. 30, 2004.)

***** Authenticated Kansas Administrative Regulation *****