

EDWARDS AQUIFER AUTHORITY GENERAL MANAGER
COMPLIANCE AND SETTLEMENT GUIDELINES
(§717.108(6) OF EAA RULES)

MARCH 26, 2019

Introduction

This document describes general guidelines EAA staff follows in proposing settlement terms and conditions to resolve certain alleged violations of the EAA Act, the EAA rules, the terms of a permit issued by the EAA, or an order of the board. This document does not address when an enforcement action is initiated, but rather how EAA staff is to evaluate violations when offering settlement terms already acknowledged by the EAA's Board of Directors through this guidance.

These guidelines include a description of authorized *compliance requirements* necessary to resolve a violation, and any *settlement* that must be made to fully resolve the matter in lieu of initiating alternative enforcement proceedings. Generally, EAA staff works to ensure full compliance is achieved before offering a settlement.

These guidelines are not intended to address an exhaustive list of possible violations. Rather, they include only those matters where the cause and remedy of a violation is similar in nature and generally applicable to all regulated entities. It is intended that if these guidelines are applied and accepted by both parties (EAA and an alleged violator), the violation can be fully resolved and settled without additional involvement by the EAA board.

Certain settlements reference a workshop. "Workshop" can include, based on the nature of the violation, the EAA's *Well Owner's Workshop*, the EAA's *Tank Owner/Operator Workshop*, or alternative on-line presentation/testing programs established by the EAA to facilitate and further the education, conservation, or compliance goals of the EAA.

EAA staff can accept a "counter-offer" to the EAA settlement as developed under these guidelines. Settlement counter-offers can take many forms and consider a variety of factors, and since the range of considerations cannot be uniformly incorporated into standardized guidelines, most counter-offers will require board approval. In these circumstances, EAA staff will facilitate settlement counter-offer requests to the board, through the EAA's Permits/Enforcement Committee. In most cases, counter-offers are to be the exception, rather than the norm when it comes to settling enforcement matters.

Failing to resolve a violation using this settlement process will necessitate further enforcement through administrative penalty, by judicial civil enforcement, or any other action authorized by law to address the violation.

The use of this procedure is limited to those compliance matters listed herein. Other violations not specifically listed in this guidance may utilize a General Manager Settlement Agreement approach; however, the resulting agreement would ultimately require board approval.

This document is intended to provide guidance only and should not be construed as binding on the EAA's Board or staff.

Section 1.1 Registration and Reporting

Applicability:

- Edwards Aquifer Well Registration (§ 711.16);
- Regulated Facility Registration (§ 713.503);
- Regulated AST/UST Registration (§ 713.604);
- Annual Groundwater Use Reporting (§ 711.414);
- Meter Accuracy Test Reporting (§ 711.408);
- State of Texas Well Reporting (§ 713.241);
- State of Texas Plugging Reporting (§ 713.306);
- Critical Period Monthly Use Reporting (§ 715.210);
- Water Conservation Plans and Triennial Status Reports (§§ 715.106, 715.116).

Compliance Assistance (No Settlement Requirements)

Late Registration:

EAA staff may solicit and receive a registration up to 30 days past EAA written notification of the requirement to register and if received, no settlement is required.

Late Reporting:

EAA staff may solicit and receive a report up to 30 days past a reporting deadline or 30 days past EAA written notification of the requirement to file a report with the EAA. If received, no settlement is required.

Non-Reporting of No Use:

If EAA staff determines a non-reporting well owner made no groundwater withdrawals during the reporting period, no settlement is required.

Registration of Contributing Zone sites (713, Subch. F & G)

If an owner/operator of CZ facility fails to file a registration, but EAA staff is provided or can obtain sufficient information to meet minimum informational requirements, no settlement is required.

Settlement Requirements

Failing to File a Registration:

Following the solicitation of a registration, if the owner fails to file the required form, the owner is *in violation* for failing to register. EAA staff will attempt to obtain the required information. If EAA staff is able to collect the necessary information, compliance is achieved; however, a settlement is required to resolve the violation.

Failing to File a Report:

Following the solicitation of a report, if the owner fails to file the required form, the owner is *in violation* for failing to report. EAA staff will attempt to obtain the required information. If EAA staff is able to collect the necessary information, compliance is achieved; however, a settlement is required to resolve the violation.

State of Texas Water Well Reports

Water well contractors must file a copy of a State Well Report / State Plugging Report with the EAA following the completion of construction activities. Failing to file drilling reports requires additional efforts by EAA staff to ensure construction was completed as per approved plans. EAA staff will attempt to obtain the required information. If EAA staff is able to collect the necessary information, compliance is achieved; however, a settlement is required to resolve the violation.

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| Failing to File a Registration | Settlement: \$100 (or Workshop) |
| Failing to File a Report | |
| Failing to File a State Well Report | |

Groundwater Conservation Plans (GCPs)/Critical Period Management (CPM) Reporting

GCPs and CPM Monthly Use Reporting are important tools for EAA groundwater permit holders to effectively manage their groundwater use and to raise awareness of withdrawals during drought conditions. Consequently, failing to maintain these records with the EAA will be considered if the permit holder exceeds their annual authorized withdrawals amounts at the end of the year as described in Section 2.1.

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| Failing to File a GCP | Modified Over-pumping settlement (see Section 2.1) |
| Failing to File a Triennial Status Report | |
| Failing to File a CPM Use Report(s) | |

Inability of EAA Staff to collect Required Information

EAA requires registration and periodic reporting to collect information that is essential for the EAA to perform its mission. EAA staff must seek out this necessary information if it is not provided by the owner/operator. If EAA staff cannot obtain the required information because they are **denied access** by the owner/operator to locations or information necessary to resolve the matter, further enforcement may be required.

Section 1.2 Required Notifications

Applicability:

- Water Well Construction (§ 713.245);
- Water Well Closure (§ 713.306);
- Spill Notification (§ 713.403);
- Notification of Commencement of Construction (§ 713.610).

Compliance Assistance

Certain construction activities and spills have notification requirements that are outlined in EAA rules and included in approval letters and permits, as applicable, issued by the EAA. Generally, when proper notifications are not made, compliance assistance is not possible at the time of violation identification.

Settlement Requirements

Failing to Provide Required Notification:

Failing to provide required notification denies EAA staff the opportunity to observe construction activities or other actions deemed important and essential to fulfilling the EAA mission. Consequently, a settlement is required to resolve the violation.

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| Related to Water Well Construction | Settlement: \$500 (or Workshop) |
| Related to Spill Notification | |
| Related to Commencement of Construction | |

Additional Work required to achieve compliance

If construction was not performed in accordance with approved plans, or otherwise is not compliant with EAA requirements, those deficiencies must be corrected. With documented evidence submitted to the EAA, the costs of correcting deficiencies may be applied to a settlement.

Section 2.1 Exceeding Authorization

Applicability:

- Exceeding Authorized Withdrawals under a Permit (§§ 711.224, 711.228);
- Exceeding Authorized Withdrawals from a Limited Production Well (§ 711.61).

Note: Over pumping a permit less than 0.1 acre-feet is not penalized.

Compliance Assistance

Generally, exceeding authorization is determined after the conclusion of a calendar year, once the well owner files their annual use reports, and all applicable transfer applications have been processed. Since EAA staff cannot process a transfer application to be effective for a past calendar year, and since a limited production well cannot be granted additional withdrawal authorization, compliance assistance is not possible at the time of violation identification.

Settlement Requirements

Overpumping a Permit (Groundwater Rights Availability):

1. Demonstrated Intent Availability – a pre-deadline “intent” to transfer demonstrated by evidence of a transferor who acknowledges available and legally transferrable water rights for the intended purpose of use. As part of a settlement required to resolve the violation, the withdrawal rights obtained will be credited to the overpumped condition.
2. Post Deadline Availability – a post-deadline reconciliation by identification of and contracting with a transferor who acknowledges available and legally transferrable water rights for the intended purpose of use. As part of a settlement required to resolve the violation, the withdrawal rights obtained will be credited to the overpumped condition.

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| Demonstrated Intent | Settlement: \$100 |
| Post-Deadline, less than 10 AF | Settlement: \$200 |
| Post-Deadline, between 10 and 50 AF | Settlement: \$300 |
| Post-Deadline, over 100 AF | Settlement: \$500 |

CPM related violations (Section 1.1) increases the settlement outlined above by, +\$50 if failed to have updated GCP, and also +\$50 if failed to file CPM Use Report(s).

3. Groundwater Trust Availability – reconcile with (same year) unpumped withdrawal rights in the EAA Groundwater Trust, a GM settlement (of \$200 per acre-foot over-pumped) is authorized to resolve the matter. If there are insufficient groundwater trust withdrawal rights available to fully reconcile all overpumping needs, those available rights will be equally apportioned to entities needing them, with any remaining overpumping violations being resolved based on “groundwater rights non-availability”.

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| Groundwater Trust | Settlement: \$200 per AF (and Workshop) |
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CPM related violations (Section 1.1) adds to the settlement outlined above by:

- + Overall CPM percentage (%) is applied to the base settlement amount; and
- +5% per AF if failed to have updated GCP, and
- +5% per AF if failed to file CPM Use Report(s).

Overpumping a Permit (Groundwater Rights Non-Availability):

Settlement based on non-availability – used when the permit holder does not identify available pumping rights, and there are no remaining pumping rights in the Groundwater Trust for the calendar year required. If withdrawal rights are not available, a GM settlement (of \$350 per acre-foot over-pumped) is authorized to resolve the matter.

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| Groundwater Rights Non-Availability | Settlement: \$350 per AF (and Workshop) |
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CPM related violations (Section 1.1) increases the settlement outlined above by:

- + Overall CPM percentage (%) applied to the base settlement amount; and
- +5% per AF if failed to have updated GCP, and
- +5% per AF if failed to file CPM Use Report(s).

Authorized Additional Considerations:

- Deferred Settlement – (*first time violations only*) enter into a written settlement agreement to pay 5% of EAA settlement offer (or \$200 minimum payment, whichever is greater), attend workshop, and agree to not overpump in the following two (2) years; otherwise full payment of settlement is required.

- Purchasing Additional Withdrawal Rights – settlements can be placed towards the purchase only of additional groundwater withdrawal rights (at a rate of \$5,000 settlement credit per acre-foot purchased).
- Work Performed to Mitigate Wasting – with sufficient evidence, settlements can be placed towards the costs of actions taken to fix leaks or increase water efficiency that could be directly attributed to the overpumped condition, and that the repairs would allow continuing compliance with the permit.
- Workshop – after a \$200 minimum settlement payment, receives a \$1,000 attendance credit towards the total remaining settlement amount. If part of a deferred settlement, the workshop must be credited towards only the deferred amount.

Over-pumping a Limited Production Well:

By rule, authorized annual withdrawals from an LPW cannot exceed 1.4 acre-feet per year. There is no mechanism to allow additional withdrawals from an LPW, and an LPW must consistently maintain withdrawals below this threshold to maintain LPW status. Once an LPW is registered with the EAA, withdrawals may not exceed 1.4 acre-feet in any calendar year. When these provisions are violated:

- **First Occurrence** – attend a Workshop and enter into a written LPW Acknowledgment Agreement, attesting to the owner’s understanding of LPW requirements, implementing water conservation measures, and that subsequent over-pumping will require the well to be registered as a permitted well; no additional settlement is required.
- **Second Occurrence** – file an updated well registration to register the well as a permitted well and obtain necessary groundwater rights to meet annual needs by the end of the subsequent calendar year; no additional settlement is required.

Section 3.1 Unauthorized Groundwater Withdrawals

Applicability:

- Withdrawals from an un-metered (non-exempt) Edwards well (§§ 711.402, 711.61);
- Withdrawals not authorized by a groundwater withdrawal permit or LPW registration (§§ 711.224, 711.228, 711.61).

Compliance and Settlement Requirements:

During various outreach efforts, EAA staff encounters unregistered Edwards Aquifer wells that are determined to be making withdrawals that are not exempt from EAA metering and withdrawal authorization requirements. When found, the well owner must seek compliance by filing a well registration, installing a water well meter, obtaining authorization by registering as a Limited Production Well (LPW), or obtaining an adequate amount of permitted withdrawal rights and operating as a permitted well, depending on withdrawal amounts during the initial year of metered, monitored water use. Once the well is fully authorized, any delinquent fees that are owed during the time the well was in violation with that owner are collected as part of the overall settlement.

Unmetered Wells:

- 1) Install approved meter within 30 days of notification, or
- 2) Enter into a *Consent for EAA Meter Installation* agreement.

Unauthorized Groundwater Withdrawals:

- 1) Following meter installation, the well owner may choose to monitor metered groundwater withdrawals for a one-year period to determine annual groundwater needs, and immediately following the monitoring period, seek proper authorization as a limited production well, or as a permitted well, as applicable.
- 2) Pay a settlement for past fees (AMFs or LPW Administrative Fees) for use during the years (at the applicable AMF rate) of the unauthorized withdrawals violation with the well owner.

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| Past-due AMFs | AMF rate (per AF) for years in violation or for 5 years, whichever is less. |
| Past-due LPW Fees | LPW rate (per AF) for years in violation or for 5 years, whichever is less. |

Authorized Additional Considerations:

- If a well owner is confident in their annual use after metering the well, they may decline a one-year monitoring program, and seek immediate authorization for the well and fully resolve the violation.
- If a well owner uses more than 1.4 acre-feet during the one-year monitoring period, they will not be allowed to register the well as an LPW.
- If upon discovery of unauthorized withdrawals, the owner chooses to cease making unauthorized withdrawals by obtaining an EAA Well Capping Permit and properly capping the well, the violation is resolved, and no settlement is required.
- If upon discovery of unauthorized withdrawals, the owner chooses to cease making unauthorized withdrawals by obtaining an EAA Well Plugging Permit and properly closing the well, the violation is resolved, and no settlement is required.

Section 3.2 Unauthorized Water Well Construction

Applicability:

- Installing an Edwards Aquifer well without a Permit (§ 713.201);
- Plugging an Edwards Aquifer well without a Permit (§ 713.306).

Compliance and Settlement Requirements:

EAA staff sometimes encounters water well construction or closure activities that were performed without first obtaining a well construction or well plugging permit issued by the EAA. Well construction and closure performed without a permit denies EAA staff the opportunity to ensure completed activities are performed in compliance with EAA rules. This is an important safeguard for the well owner and water quality of the Aquifer. EAA recognizes the primary responsibility for obtaining a permit is with the State-licensed water well driller.

Unauthorized Well Construction/Plugging:

- 1) Obtain from the driller a copy of the State Well Report,
- 2) Obtain from the driller a completed application for the work that was performed.
- 3) From information collected, determine any additional construction requirements necessary to ensure construction results comply fully with EAA rules.
- 4) If required, allow water well driller to obtain a permit and perform necessary construction to fully achieve compliance with EAA rules.
- 5) Pay a settlement to resolve the matter.

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| Water Well Construction | \$500 (or Workshop) |
| Water Well Plugging | \$500 (or Workshop) |

Authorized Additional Considerations:

Work performed to achieve compliance – with sufficient evidence, settlements can be placed towards the costs of actions taken by the licensed driller to complete construction activities in full compliance with EAA rules.

Section 3.3 Unauthorized Regulated Tank Modification

Applicability:

- Operating an AST or UST without approval (§§ 713.605);
- Operating an AST or UST without meeting minimum containment requirements (§§ 713.606, 713.607, 713.608);
- Unauthorized Major Modification for Aboveground Storage Tanks (§ 713.609);
- Unauthorized Major Modification for Underground Storage Tanks (§ 713.609).

Compliance and Settlement Requirements:

EAA staff sometimes encounters ASTs and USTs that may require registration, and that were installed, removed, or otherwise modified in a manner that would have necessitated State or EAA approval. Sometimes, these tanks do not meet EAA containment requirements. Also, during routine inspections, EAA staff may observe major modifications of existing tank systems that would have required State or EAA pre-approval with either an approved State Tank Plan, or an EAA General Manager Approval Letter for Major Modification. For non-compliance with these provisions, collection of administrative penalties is recommended; a GM settlement is authorized to resolve the matter.

Unauthorized Operation of an AST or UST:

- 1) If necessary, file a tank registration with the EAA,
- 2) File an Application for Major Modification based on current construction, or to obtain approval for additional construction requirements necessary to meet EAA rules.

- 3) Obtain approval for planned construction, make required notifications of commencement of construction, and complete construction as per the approved plan.
- 4) Receive approval from EAA to operate the tank system.
- 5) Pay a settlement to resolve the matter.

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| Unauthorized Operation of an AST or UST | \$1,000 (or Workshop) |
| Operating an AST or UST without Meeting Minimum Containment Requirements | \$1,000 (or Workshop) |
| Performed Unapproved Major Modification | \$500 (or Workshop) |

Authorized Additional Considerations:

For regulated tanks discovered to be operating on the EARZ without proper containment, the owner/operator will have 30 days from discovery of the occurrence to achieve approved containment, or the tank must be drained. Failure to meet this requirement make the violator ineligible for a GM settlement opportunity. In such cases, further enforcement action to cease the ongoing violation would be implemented.

Table of Settlement Amounts

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| Failure to File | Registrations | \$100 | Workshop |
| | Reports | | |
| | State Well Reports | | |

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| Failure to Notify | Well Construction | \$500 | Workshop |
| | Well Plugging | | |
| | Spills | | |
| | Commencement of Construction | | |

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| Overpumping | Demonstrated Intent | \$100 | Workshop |
| | Post-Deadline, less than 20 AF | \$200 | |
| | Post-Deadline, less than 100 AF | \$300 | |
| | Post-Deadline, more than 100 AF | \$500 | |
| | Groundwater Trust | \$200 per AF | |
| | Non-Availability | \$350 per AF | |
| Overpumping CPM Modifiers | Post-Deadline Reconciliation | No GPC or Updates | + \$50 |
| | | No CPM Reports | + \$50 |
| | Groundwater Trust & Non-Availability | Overall Pool (%) CPM reduction | added to base settlement |
| | | No GCP or Updates | +5% |
| | | No CPM Reports | +5% |
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| Unauthorized Withdrawals | AMFs | AMF rate / year(s) | \$84 / \$2 |
| | LPW Fees | LPW rate / year(s) | \$25 |

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| Unauthorized Activities | Well Construction | \$500 | Workshop |
| | Well Plugging | \$500 | |
| | Operating unregistered tank | \$1,000 | |
| | Operating tank w/o containment | \$1,000 | |
| | Unapproved Major Modifications | \$500 | |