

Rules and Regulations of West Central Texas Municipal Water District for Private On-Water Facilities

Board Approved 11/09/2016

Purpose / Overview

The following Rules and Regulations (“Rules”) apply to all present and future Private On-Water Facilities (POWF) extending or constructed on, over or into Hubbard Creek Reservoir (HCR) to preserve and protect the quality of water in HCR, as well as to provide for public safety, access, navigation, and management of flood water on or about HCR.

No POWF shall be constructed or placed in, on, or over the waters of HCR without a permit from the District. Any POWF constructed or installed without a permit from the District shall be subject to removal at the owner’s expense. The permit application process provided in these Rules shall be completed with the assistance from a District Field Representative (Field Rep), prior to construction of any POWF into, on, or over HCR. The application process shall be carried out on forms provided by the District. The District reserves the right to grant or deny a POWF permit for any reason or cause considered necessary or advisable by District, in its sole discretion. An Applicant will have 12 months from date a temporary permit is issued by District to complete construction/installation of Applicant’s POWF. When completed, a District Field Rep will make a final inspection of Applicant’s POWF and, if all District criteria/standards have been met, the temporary permit and number issued to Applicant will become permanent. Failure to meet a construction deadline may result in the unfinished POWF being declared “deficient”, “defective”, “unacceptable” or “unapproved” and subject to removal.

Habitable floating piers, docks or other structures are prohibited on HCR. Houseboats or other watercraft with living quarters or sleeping quarters that are designed for navigation are exempt from these Rules.

Other structures, such as duck blinds, casting targets, slalom courses, etc., though not intended for providing access to or from HCR, may still not be placed or erected on HCR without the prior written consent of the District.

Definitions

Note: Words used in these Rules that are not defined in this Section shall have their ordinarily accepted meaning. For the purposes of these Rules, the following words and phrases are defined:

Abandoned Private OWF: A Private OWF that (1) exceeds the maximum distance from shore set forth in these Rules without a variance granted or (2) is not properly anchored and adrift.

Existing POWF: A Private OWF that, on or before the effective date of these Rules, was constructed and placed in, on or over the waters of HCR. Except as otherwise provided herein, all existing, previously permitted POWF's shall be exempt from these Rules; but only until or unless a replacement for, or Improvement or Upgrade is made to, the Existing POWF. If an Existing POWF does not have a valid or effective permit, then a permit from the District is still required.

Field Office Coordinator: Coordinator of District's Hubbard Creek Reservoir Lake Office.

Field Representative (Field Rep): A District employee, staff member, or other authorized agent.

Fixed POWF: A rigid structure (or portion of a rigid structure) supported by pilings, retaining wall or other materials creating a permanent foundation that is either resting or embedded in the HCR Lakebed in such manner as to make removal or relocation impracticable.

Floating POWF: A structure (or portion of a structure) supported by flotation materials or devices allowing for removal and relocation of the POWF.

Flotation: Material such as Styrofoam, polystyrene, wood, or other material used to support floating structures placed on the water.

Gangway or Walkway: A ramp or structure extending from a POWF to the shore that, because of its short length, does not require support by floats or outriggers and which does not exceed 6 feet in width.

Improvement or Upgrade: Any substantial modification, renovation, addition, or other alteration of a POWF on HCR. All Improvements or Upgrades to a POWF, whether presently existing or hereafter constructed, requires the prior written consent of the District; and, if previously exempt, the POWF, after such Improvement or Upgrade, must conform to the construction and safety standards prescribed in these Rules.

Navigable Passage: A dedicated space to allow the passage of watercraft that is at least 40-feet wide with a minimum depth from the water surface to the HCR Lakebed of at least 8 feet.

Private On-Water Facility (POWF): Any structure, fixed or floating, located in, on or over the water surface of HCR and intended for private use. This includes docks, piers, wharves, swimming platforms, boathouses, and any other similar structure, whether affixed to the Shoreline, connected to the Shoreline by a gangway or walkway, or attached to the HCR Lakebed and/or to a Waterfront Property adjoining HCR.

Reasonable Regular Maintenance: Painting, staining, repair, maintenance and/or replacement of boards, hardware, electrical components, flotation devices/materials, railings, or other components of a POWF that have deteriorated from normal wear and tear and usage.

Shoreline: The line at which the water surface of HCR intersects the land at any given time. The Shoreline will move as the surface elevation of HCR rises and falls. For purposes of these Rules, the maximum elevation of the Shoreline of HCR, when HCR is deemed to be full, is 1183 ft. above mean sea level (msl).

Safety Standards: The standards applicable to POWF's placed in, on or over HCR, either by these Rules and other applicable federal or state law.

Structure: Anything constructed, installed, placed or located in, on or over the water surface, or that extends over the water surface; that is affixed to something that is or will be located on the ground and covered by water; or that is located on land and is an essential part of a POWF, such as an electrical system.

Watercraft: Any craft, vessel or boat used (or capable of being used) as a means of transportation on, over, through or under water, including vessels such as houseboats and other vessels not used primarily for transportation.

Waterfront Property: Property that adjoins the Shoreline of HCR when the water surface elevation of HCR is at 1,183 feet msl.

West Central Texas Municipal Water District (District): Owner and managing authority of HCR.

Application

The owner of Waterfront Property must submit an application to the District before any construction or installation of a new POWF, or any substantial renovation, repair or maintenance of an existing POWF, may begin. Applications are available from the Field Office Coordinator. The application must include a detailed plan of the proposed POWF (with a scaled drawing showing the location and dimensions) and requires payment of a \$100 non-refundable application fee. Once the application is completed and accepted by the District, a signed copy will be returned to the Applicant; a temporary POWF permit will be issued to Applicant; and a unique number assigned to the permit.

Applicant shall have 12 months from the date the Application is accepted and returned to complete the described and permitted construction or modification of the POWF. Applicant understands the District, both during and following its construction, installation or modification shall have authority to enter upon the POWF and Applicant's adjoining land at all reasonable times for the purpose of making inspections of the construction, condition, sanitation, and safety procedures.

Once the construction or modification has been completed, a final inspection of the POWF will be conducted by a District employee or other authorized agent. If all approved criteria, standards and conditions in these Rules, as well as any additional requirements/conditions contained in the temporary POWF permit, are satisfied, a permanent POWF permit with the same identification number shall be issued to Applicant; and the permit number shall be prominently displayed on the lakeside and landside of the POWF.

Construction Requirements

Liability

Notwithstanding any provisions in these Rules to the contrary, the POWF owner is at all times responsible for the safety and structural soundness of any POWF placed in, on or over HCR from the owner's property. District approval and/or inspection relating to POWF's shall not constitute a warranty of functionality, structural integrity, safety, workmanship, materials, or water worthiness of any POWF. No District action or inaction shall in any way release or discharge the POWF owner from liability regarding, or related to, the design, installation, repair and maintenance of the POWF by its owner.

Anchoring

All POWF's shall be permanently anchored in a manner which allows no lateral movement; and in no event shall a POWF extend further into HCR than is authorized by the District's permit for the POWF. Anchoring may be by steel or concrete pilings, buttresses or rigid booms anchored in concrete, subject to prior approval by the District.

Anchor cables for a floating dock or pier must (1) not create a hazard to navigation or block ingress or egress by watercraft to neighboring docks or piers or to lots adjoining the property to which the dock or pier is attached; (2) be maintained in good condition; and (3) have approved thimbles or other chafing protection.

Anchoring must be designed to prevent excessive submergence or damage in the event HCR water surface elevation rises above 1183 feet msl.

Flotation

Buoyancy for all floating POWF's installed after the effective date of these Rules shall be provided by Styrofoam, polystyrene or a similar flotation material that is encased or encapsulated in an approved rustproof, non-corrosive shell (e.g., high impact polyethylene). Barrels, drums, pontoons, or other similar improvised flotation equipment shall NOT be used in constructing or renovation of floating POWF's.

Design Requirements

1. POWF's must be designed to insure the entire top surface of the POWF remains level or has a maximum slope of 1:10 when HCR is at its conservation elevation (1183 feet msl). If

the design includes an enlarged area, such as that intended for the storage of watercraft, slips, closet or storage, fishing or sun deck, then adequate flotation or other stabilization must be provided for the first or lowest floor to remain level regardless of HCR's water elevation, so long as the structure is able to float.

2. In addition to any other requirements in these Rules, every POWF (and every portion thereof) shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards.
3. POWF's shall not extend more than 100 feet into or toward the body of HCR from the Shoreline at (or above) elevation 1,184 feet msl, without prior written approval from District's Board of Directors.
4. Lake level fluctuations shall not constitute a basis for extending a POWF further into HCR. No POWF shall be extended beyond its permitted length without the prior written consent of the District.
5. A POWF shall not be taller than one (1) story; however, a POWF may include a gabled or flat roof usable as a sun deck. Sun decks located on the roof of a POWF may also include a covering for shade; however, such coverings may not be occupied or used as a third story.
6. One storage closet, no larger than 40 square feet, will be allowed for a POWF; provided, that any proposed storage closet is included in the POWF Application and in the approved design for the POWF.
7. Living quarters, kitchens (any space intended for cooking or preparing food), plumbing for bathing, or toilet facilities are NOT allowed in or on any structures (including POWF's) constructed or placed in, over or on HCR. Sink fixtures exclusively used for the cleaning of fish are exempt from such restriction so long as the drain discharge for such sink does not constitute or create a nuisance or create a hazard to the quality of HCR water.
8. The floor area for a POWF (including areas for watercraft, slips, or storage) shall not exceed a total of 2,000 square feet. A gangway or walkway to a POWF, 6 feet or less in width, may be constructed from the adjoining Waterfront Property to the POWF, but shall not be included in calculation of the total area for the POWF. All of a POWF's structural elements, other than piling or other submerged facilities, shall be constructed at 1,184 feet msl or higher.
9. If a POWF is equipped with electric lights, receptacles, or equipment, the electrical system shall be designed and installed in accordance with the National Electric Code (NEC), as amended. The electrical system must include proper grounding, circuit breakers between the power source and the POWF, Ground-Fault Circuit Interrupters (GCFIs) at the point of power use, and grounding in accordance with the NEC.
10. All construction or improvements of or to a POWF must be done in accordance with applicable building codes and is subject to prior review and approval by the District.

Lighting

A POWF (including a swim platform) must be lighted continuously from sunset to sunrise, and also during periods of restricted visibility, if the POWF: (1) extends beyond 100 feet from Shoreline at water surface elevation 1183 MSL, or (2) otherwise poses a navigational hazard.

The minimum safety lighting required under these standards shall adequately display and define the presence of all structures located in, on or over the water surface and be lighted so as to

clearly identify the entire structure, including any gangway or walkway. Lighting shall be so located and configured or shielded so as not to present a hazard to navigation, or to create a nuisance for neighboring landowners.

Permit Number Display

The POWF's permit identification number (Permit ID) assigned by District, after permitting, construction and final inspection have been completed, shall be posted conspicuously and legibly on both the lakeside and landside of the POWF. Letters and numbers must be highly visible, a minimum of 4 inches high, and may be posted vertically or horizontally.

Property Ownership

Applicant must own or lease the Water Front Property along the Shoreline of HCR at the location of the proposed POWF and provide the District, at the time of permit application, documentation establishing the Applicant's ownership or leasehold interest in the Property to which the proposed POWF shall be affixed, or in front of which the proposed POWF, will be placed in HCR.

Safety

1. A POWF must be constructed and maintained in a structurally sound manner which does not create a safety, navigational, or environmental hazard.
2. A POWF may not be situated in a manner that unreasonably interferes with, or obstructs access to, other permitted facilities, or neighboring properties or POWF's.
3. Amber or red reflectors (at least 3 inches in diameter) must be installed on all sides of a POWF, and along gangways or walkways, at no greater than 10 foot intervals.
4. Personal water craft may be stored on the sides of a permitted POWF; however, watercraft storage shall be managed in a manner that does not cause unreasonable hazards or overcrowding of the POWF when in use.
5. Privately-operated fuel/oil dispensing systems on a POWF are strictly prohibited. Automatic shutoff valves are required for any pre-existing systems.
6. Flammable liquids for use on a POWF must be stored in approved containers made for such purpose and must be stored in a secure location to prevent accidental entry into the water.
7. No open flames are allowed on a POWF.
8. Overhead wire spans (electrical, cable/internet, telephone, etc.) above open water surfaces are prohibited.
9. All electrical wiring must be encased in rigid or flexible conduit in accordance with applicable provisions of the NEC.
10. Safety railings are required on all gangways or walkways.

Spacing

1. There shall be no more than one POWF extending from a Waterfront Property, without prior written approval of the District's General Manager.

2. In narrow sections of HCR Shoreline, where the distance between piers/docks or other structures on opposite points on the Shoreline is 120 feet or less, a navigable passage or channel (at least 40 feet in width) shall be maintained between the structures on opposite points on the Shoreline, with the location of such channel, if possible, being over the deepest water between the two structures in that section.

Modifications, Upgrades, and Maintenance

Modification, improvement, renovation, replacement or relocation of a POWF (an Improvement or Upgrade) shall only be permitted with the prior written consent from the District. A detailed, scaled drawing showing all proposed modifications, renovations or improvements shall be submitted to District staff prior to construction. All proposed modifications, renovations or improvements shall be subject to the standards in these Rules.

Reasonable Regular Maintenance of a POWF (as above defined) is required. However, if more than 25% of a POWF structure, or of the value of the POWF, will be modified, renovated, improved or replaced, such shall be considered an Improvement or Upgrade subject to the preceding paragraph of this section.

Variances

The District, in its sole discretion, may grant a variance to the provisions of these Rules where strict adherence to one or more of the provisions in these Rules would, in the judgment of the District's General Manager, result in an unreasonable hardship to the owner of the POWF, or that granting of the variance would be in the best interest of the District. A POWF longer than 100 feet, or which would violate any other spacing requirements, must be approved by the District's Board of Directors. Structures constructed or installed in violation of these Rules and which are still in violation 60 days following District's written notification of such violation, may be subject to removal by the District, at the expense of the owner of the POWF.

A request for a variance shall be made in writing at the time of application for a POWF, or at any time when an existing POWF is discovered or determined to be in violation. The request shall be delivered to the District Field Office Coordinator or the District General Manager.

Variances requiring Board action will not be considered earlier than the next Board meeting which is at least 30 days following receipt of the variance request. All other variances will be considered by the General Manager, who will endeavor to respond within 30 working days by providing the POWF owner or applicant with a written decision.

All Board or General Manager decisions shall be final and without right of appeal.

Existing Structures

An existing POWF constructed without a permit from the District will be “grandfathered” as to both its design and construction, but will still require a permit from the District; and the POWF owner shall make application for the permit at the HCR Lake Office in the same manner as for a new POWF.

Notwithstanding the foregoing, the owner of a “grandfathered” POWF shall perform Reasonable Regular Maintenance on the POWF and endeavor, over time, to bring the POWF into compliance with these Rules, including (if applicable) upgrading the POWF with approved flotation materials. All Improvements and Upgrade to a grandfathered POWF must conform to the permitting, construction and safety standards, specifications and procedures for a new POWF.

The owner of an existing, previously-permitted POWF that exceeds 2,000 square feet may rebuild or replace the existing POWF with a structure of the same square footage; but the replacement/renovation of such POWF must comply with the standards and specifications of these Rules.

Inspections

At least annually, or upon receipt of a report or complaint (or District’s suspicion) of any possible violation of these Rules, a District employee or other authorized agent will inspect the POWF. Except in an emergency involving actual or potential personal injury or property damage, the District shall provide advance notice of its inspections and the owner of a POWF (or owner’s representative) shall, whenever possible, be present during the inspection. Except in an emergency, inspections will be done during regular business hours, unless other arrangements are made.

Right of Entry

District staff, employees and authorized agents shall have the right to enter property, whether public or private, at all reasonable times, for the purpose of inspecting and investigating each POWF, gangway or walkway, and related structures or facilities. However, except in an emergency, District employees and authorized agents shall not enter private property without first notifying (if present on the property) the owner, occupant or other person present at the property at the time of the inspection and shall exhibit proper credentials.

Nothing in this section shall preclude a law enforcement officer from entering the property with or without notice to investigate suspected criminal activity to the extent allowed under any federal or state law.

The rights and privileges granted herein are subject to all applicable rules and regulations of the District, as they now exist or may be amended in the future; including (but not limited to) the District’s right to revise the fees or other charges by the District for issuance of new, or renewal of existing, POWF permits.

Notice of Violation

Whenever any violation of these Rules occurs, an employee or authorized agent of the District shall issue a Notice of Violation (NOV) describing the nature of the violation(s) and shall cause the NOV to be delivered in person to the owner of the POWF (with a signature required for receipt), or by sending the NOV via certified mail to the last known address of the owner of the POWF, as reflected in the District's records.

Opportunity to Correct Violations

Except when necessary to prevent personal injury or property damage, or for public safety, or to remove a navigation or environmental hazard, a POWF owner shall have 30 days from the date of the delivery of the NOV to cure the violation stated in the NOV and to bring the owner's POWF into compliance with these Rules. A request for an extension of time to cure the violation shall be made in writing and shall explain in detail the reason for the additional time requested and what measures are being (or will be) taken to ensure that the health and safety of the public, and the quality of the waters of HCR, will not be compromised while the violation is being corrected. The District General Manager shall have the discretion to grant (or deny) a request for extension, which decision shall be made in writing.

Penalties

If a violation is not corrected within 30 days, and no extension of time to correct the same is granted, a fine of \$50 shall be imposed by District. The fine shall double for each additional 30 days that the violation is not corrected, up to a cumulative total of \$350 (\$50-\$100-\$200). The POWF owner will be notified of each fine by certified mail; and payment will be due within 30 days after receipt of the notice.

Failure or refusal to comply with these POWF Rules, after notice from the District, shall be sufficient grounds for the District to prohibit, to the extent permitted by applicable law, the POWF owner and any other user of the POWF, or of the Waterfront Property to which the OWF is attached, the use and benefits of Hubbard Creek Reservoir that might otherwise be enjoyed.

The District reserves the right to have a POWF owner remove, at the owner's expense, any POWF found to be in violation of these Rules. Violations of these Rules (in addition to those set forth elsewhere herein) shall include (but are not limited to): failure to obtain a permit for the POWF or any modification, replacement or renovation thereof; and failure to meet required submittals or completion within the required time; and unanchored or unmoored POWF's.

In addition to a fine imposed by the District, a violation of these Rules is a misdemeanor under the Texas Penal Code and, if prosecuted by the District, conviction of a person in a court of competent jurisdiction may be punished by a fine of up to \$500.

Navigational Hazard, Public Safety Hazards, POWF Adrift

A District Field Rep or other District employees and authorized agents may immediately remove from HCR and place in storage any POWF that is adrift or, at the discretion of the District staff or authorized agent, otherwise presents a danger or hazard to public safety or navigation on, or the waters of, HCR.

If the POWF owner can be identified, the District shall take reasonable steps to issue a NOV within three (3) working days after removal and storage of the POWF. Such NOV shall inform the owner that the POWF has been removed and stored and, if applicable, shall include procedures for the owner's recovery and return of the POWF, all of which will be at owner's expense. The owner of the POWF shall also pay a recovery and return fee to the District of \$_____.

If a POWF falls into disrepair due to the owner's failure to undertake/perform Reasonable Regular Maintenance to a degree that the POWF creates a danger or hazard to public safety or navigation on or to the waters of HCR, a NOV shall be issued by a District Field Rep or authorized agent; and such action shall be at the sole discretion of the District. The foregoing provisions regarding notification of violations, fines, timelines, penalties, etc., will also be applied.

The District reserves the right, at its sole discretion, to further restrict placement of, or remove, at the owner's expense, any POWF on HCR, if such structure creates a hazard to navigation or public safety, is or creates a nuisance, becomes defective or dangerous in condition or operation, impairs the District's ability to operate and maintain HCR, or interferes with, or restricts access to, adjacent Waterfront Property or neighboring POWFs.

Injunction

Nothing in these Rules shall prevent the District from seeking a temporary restraining order, mandatory injunction or any other relief or remedy, whether at law or in equity, at any time, against any person believed to have violated, or to be violating, these Rules.

Indemnification

Each owner of a POWF located on or over the waters of HCR, as additional consideration to the District for the rights and privileges granted by the District to owners and users of POWF's on HCR, agrees to indemnify, hold harmless and, if requested, defend the District, its directors, officers, employees and agents, from and against any claim made, or suit filed, against any of the indemnified persons arising out of, or resulting from, the construction or condition of the owner's POWF, or the use thereof by the owner or any other person (whether with or without the knowledge or consent of the owner), as well as any loss, cost, damage or expense (including, without limitation, attorney's fees, court costs and related expenses) in connection with any such claim or suit, whether in defense of such claim or suit, settlement or other resolution of such claim or suit, or otherwise; provided, that this indemnification shall not be required in connection with any personal injury or property damage resulting solely from the gross negligence or other

intentional tort committed by the District director, officer, employee or agent seeking indemnification by or from the POWF owner.

Authority

Pursuant to the authority granted in the District's enabling legislation and Chapters 49 and 51 of the Texas Water Code, the provisions outlined in these Rules apply to allow POWFs along the Shoreline of HCR, or otherwise extending into, or placed upon, the waters of HCR, including but not limited to docks, piers, wharves, swimming platforms, boathouses and any other similar structures; and these Rules have been adopted and approved by the Board of Directors of the District.

Effective Date

These Rules, except for the provisions herein for assessment of fines by the District or a court, shall be effective as of the date of adoption by District's Board of Directors. The provisions pertaining to assessment of civil and/or criminal fines or penalties shall not be effective until notice of the adoption of these Rules has been published in the manner prescribed by law.

Contact Information

Hubbard Creek Reservoir Lake Office
4164 WDR #277
Breckenridge, TX 76424
Off: (254) 559-3677
Fax: (254) 559-7125

WCTMWD Abilene Office
410 Hickory
Abilene, TX 79601
Off: (325) 673-8254
Fax: (325) 673-8272

<http://www.wctmwd.org/>

These Rules were approved by the Board of Directors of the West Central Texas Municipal Water District on the _____ day of _____, 20____.

Chris Wingert, General Manager

Date