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VIA E-MAIL (RULESCOORDINATOR@RRC.TEXAS.GOV)

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, TX 78711-2967

Re: Proposed Changes to 16 TAC §3.8 and §3.57 and 16 TAC Chapter 4; 16 TAC §3.70

Dear Rules Coordinator:

The Texas Industry Project ("TIP") appreciates the opportunity to submit the following comments to the Railroad Commission of Texas ("RRC") on the proposed changes to 16 Texas Administrative Code ("TAC") §3.8 and §3.57 and 16 TAC Chapter 4. TIP is comprised of 58 companies across different industries, including oil and gas refining, midstream, and upstream companies with operations in Texas.

TIP previously provided input on the pre-proposed rules in 2023. While TIP appreciates the adjustments made by the RRC since that initial stakeholder process, the proposed rules would benefit from further changes. As the RRC has noted, §3.8 has existed in its current form since 1984 with only minor modifications, and industry growth, new technological advancements, and innovative solutions for resource development have all challenged the flexibility of these historic regulations. Importantly, as the RRC highlighted, there is a rapidly evolving need to encourage the treatment and recycling of produced water for beneficial uses in both the oil and gas industry and in other fields. The Texas Legislature has also directed the RRC to encourage fluid oil and gas waste recycling (through House Bill 3516) and created the Texas Produced Water Consortium (through Senate Bill 601) to make recommendations to the Legislature on this subject.

In light of these important developments, TIP supports those comments submitted by the Texas Oil and Gas Association ("TXOGA"). TXOGA has conducted a thorough review of the proposed rules and suggested numerous changes to strike a balance between making the rules workable for operators and ensuring that the rules meet the RRC's stated goals. TIP requests that the RRC give serious consideration to the TXOGA comments.

In addition, the TIP comments are structured in three pieces: First, we comment on some non-exclusive aspects of the proposal that do not yet meet the RRC's stated intent and legislative mandate to encourage the treatment and recycling of produced water for beneficial uses. Second, in addition to the support of TXOGA's comments, TIP highlights a few substantive areas for particular attention. Third, we provide an overview of refinements to procedural changes for the RRC to consider for clarity and consistency.

Finally, TIP asks that the RRC carefully reevaluate its statements about the economic effects of the proposal and conduct required analyses. This appears to be a major environmental rule adopted under the general statutory authorities of the RRC with requirements that are not in many cases mandated by specific statutes. Tex. Gov't Code§ 2001.0225(a); *see e.g.*, 49 Tex. Reg. 6546 (*citing* Tex. Nat'l Res. Code § 81.051 and 81.051). The proposal includes substantial new requirements for design, monitoring, and reporting that necessarily involve costs to the regulated community and to the RRC. Accordingly, it is unclear how it could possibly be the case that for the first five years "there will be additional costs to state government" and "there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments." 49 Tex. Reg. 6546. Further, given the nature of this industry, an analysis of the impacts to rural communities and small businesses is warranted. Tex. Gov't Code§ 2006.002. Such information is important to this very significant rulemaking.

I. Comments Related to Facilitating Produced Water Treatment and Recycling

A. Rule §4.110 (22): Definition of "Commercial Facility"

The RRC is proposing a definition of "commercial facility" that includes a facility "whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation." As written, this broad definition creates ambiguity around certain common industry practices. For example, if a business that manages its own reuse pits were to allow another company to use its pits during periods when the business is not actively using them, and the other company compensates the business for such use, the RRC should confirm this would not cause the pits to be reclassified as "commercial facilities." The act of receiving compensation under these circumstances would not change the primary business purpose of the pits and so should not convert the facility into a commercial operation. Clarification in the rule or in the preamble would provide needed certainty for this real-world scenario that aligns with the State's goal of encouraging produced water recycling.

Further, the reality of oil and gas operations is that subsidiaries and affiliates are regularly engaged together at a site for specific functions. The proposed definition does not expressly accommodate affiliates where there may be compensation within the corporate structure, and thus would create a new impediment to produced water recycling if these recycling operations are deemed "commercial" despite being within the same corporate family. Such an outcome would disincentivize recycling efforts and increase regulatory burdens.

To accommodate existing recycling operations and incentivize cooperative and efficient recycling efforts, TIP requests that the RRC amend the definition and provides the following suggestion for consideration:

> "Commercial facility—A Facility permitted under Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator's primary business purpose is to receive~~s~~ compensation from ~~others~~ unaffiliated entities (not owned or effectively controlled by the same person) for the management of oil field fluids or oil and gas wastes~~ and whose primary business purpose is to provide these services for compensation~~."

B. Rule §4.110 (77); § 4.115(e): Public Area Definition

The proposal indicates that produced water recycling pits cannot be located "within 500 feet of a public area." A "public area" carries the same definition used for hydrogen sulfide areas, and so includes public roads. Produced water recycling pits do not pose a significant hazard and thus this restriction is unnecessarily restrictive. TIP proposes revising the definition of "public area" to exclude public roads altogether, either by deleting public roads from the definition or editing 16 TAC § 4.115(e) to specify that the location limitation is "…public areas, other than public roads." By doing so, the rules would maintain operational flexibility while remaining protective of public health and safety.

C. Rule §4.115(b): Bonding Requirements

The proposed rules require operators of produced water recycling pits to file financial security without providing reasonable exemptions and considering an operator's existing financial assurance. TXOGA has provided detailed comments on this issue, and TIP reiterates that imposing an additional financial security requirement, without recognizing existing protections, creates unnecessary redundancy and financial burden for operators who are already providing appropriate financial protections.

II. Comments on Other Substantive Provisions

A. Rule §4.107(d): Penalties for Non-Compliance, Factors Considered

The proposed rules expand the factors considered in penalty assessments to include the *facility's* history of violations. The factor that currently says, "the person's history of previous violations" is now omitted and replaced with both "the operator's history of previous violations" and "the facility's history of previous violations." The facilities' history of violations should not be held against a new operator and could unfairly penalize new operators for actions in the past that were not within their control. TIP proposes omitting the facility's history as a penalty factor or clarifying that this factor for penalties will only apply to facility non-compliances that occurred under the current operator's control.

B. Rule §4.110 (25), (64): Contact stormwater, Non-contact stormwater Definitions

The definition of contact stormwater as written erases the concept of "contact" and would include stormwater from new facilities not yet commissioned. While its usage is tied to land application rather than discharge to waters, it is worth noting that this approach would be inconsistent with the Clean Water Act exemption, which emphasizes that it is not necessary for environmental protection. TXOGA's recommended edits to both the definitions of contact and non-contact stormwater provide a sound approach to addressing the RRC's goal of regulating areas that may not be in current use but have in fact stored oil and gas wastes in the past and therefore present the potential for contact with such materials.

C. Rule §4.110 (42): Fresh Makeup Water Pits, Proposed addition of Makeup Water Pits

Under the proposed rules, the total dissolved solids ("TDS") level in fresh makeup water pits are capped at 3,000 mg/L. There are many circumstances where brackish water with TDS levels as high as 6,000 mg/L is used in operations. Additional flexibility for brackish water is warranted either by inclusion under freshwater makeup pits or as another form of authorized pit.

TXOGA has provided detailed comments on this issue, and TIP urges the RRC to recognize the need for greater level of flexibility to accommodate makeup water sources with a wider range of TDS in a reasonable and streamlined fashion. Authorization by rule provides that balance and would create the right framework for continued progress toward reducing freshwater use.

III. Comments on Procedural Clarifications

A. Rule § 4.113(d): Spill Reporting

Proposed § 4.113(d) require release reporting of "oil and gas waste, treated fluid, or other substances from any" authorized pit within 24 hours of a release. Without adopting reportable quantities, this blanket requirement will be incredibly burdensome to the regulated community and to the RRC. Does "other substances" include fresh water? Please consider deleting this ambiguous term. If one teaspoon, one gallon, one barrel, or 5 barrels of *treated* fluid spills, the operator still has an obligation to prevent pollution but what value is added by a 24-hour reporting requirement?

The RRC has established reportable quantities for crude oil and condensate spills under 16 TAC §3.91, §3.20 and field guides. Other agencies like TCEQ and EPA have also recognized that reportable quantities are entirely appropriate to avoid administrative burdens that do not have corresponding environmental benefit. We ask that the RRC align with §3.91 or otherwise work with stakeholders to evaluate reasonable reportable quantities.

B. Rule §4.125 (f)(1): Notice to Public

Under the proposed rules, some references are to "the date of the notice" where (b) and (f)(1) reference the "date notice is provided." When the notice is mailed per (d)(1), the notice will contain that date. TIP recommends consistent reference to the "date of the notice" throughout §4.125 to avoid any ambiguity.

C. Rule §4.125(f)(5): Notice to Public

Under section (f)(5), if the director has reason to believe that an affected person has not "received notice," the Technical Permitting Section is prohibited from acting on the application. This rule introduces the concept of "receipt," which places an undue burden on the applicant. Applicants must provide the notice per the rules and cannot control how intended recipients behave. TIP requests the following revision for consideration:

> "If the Director has reason to believe that a person entitled to notice of an application has not ~~received notice~~ been provided notice as required by this section, the Technical Permitting Section shall not take action on the application until proper notice is given to that person."

D. Pipeline Proposal 16 TAC §3.70

Under the proposed §3.70(r)(1), amendments "shall be filed on the Commission's online permitting system by March 31, 2025." Following this, §3.70(r)(2) provides that "A gas permit will not be eligible for renewal if the permit has not been amended by March 31, 2025, in accordance with paragraph (1) of this subsection." We recommend clarifying that the renewal requirements under (r)(2) is directly tied to the submission of the permit shapefile filing. Also, additional time is needed because shapefile requirements were changed in 2024 without a public review process. TIP requests the following revision for consideration:

> "A gas permit will not be eligible for renewal if the permit amendment shapefile has not been ~~amended~~ filed by ~~March~~ December 31, 2025, in accordance with paragraph (1) of this subsection."

We appreciate the RRC's time in reviewing and considering these comments. If you have any questions, please do not hesitate to contact Paulina Williams at 512.322.2543 or paulina.williams@bakerbotts.com or Teresa Jones at Teresa.Jones@bakerbotts.com or 713.229.1630.

Respectfully,

Paulina Williams

Paulina Williams

cc: TIP Members
Teresa Jones, Baker Botts