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In Re: Comments on the Informal Draft Rules and Proposed Changes to 16 Tex. Admin. Code §3.8 and §3.57, and 16 Tex. Admin. Code Chapter 4(A) and (B)

Dear Rules Coordinator:

The Railroad Commission of Texas ("Commission") recently published its Informal Draft Rules and Proposed Changes to 16 Tex. Admin. Code §3.8 and §3.57, and 16 Tex. Admin. Code Chapter 4(A) and (B) ("Draft Rules").

The practitioners in this office have presided over hearings, represented applicants and represented protestants before the Commission in complex contested cases pertaining to commercial waste disposal facilities and stationary treatment facilities pursuant to 16 Tex. Admin. Code §3.8.

The existing Commission Rules and the Draft Rules are inadequate to handle the well documented contamination and pollution events caused by bad actors who operate commercial waste disposal facilities and stationary treatment facilities in Texas.

Therefore, our comments will relate to consistency in the language and in the application of the rules as they apply to commercial waste disposal facilities and stationary treatment facilities. It is not our intent to increase the burden on any operators who operate other pits, whether authorized, non-commercial or commercial. As such, the following comments are respectfully submitted for consideration:

Inconsistent Citations and References

The current iteration of the Draft Rules contains many inconsistent citations and references. The Commission is strongly urged to revisit the Draft Rules to ensure that these citations and references within Chapter 4 are accurate.

As an example of an inconsistent reference, "sensitive area(s)" in Chapter 4(A), Division 7 §4.161 cite to the term "as defined by §4.110(77) of this title." The correct reference should be to §4.110(79) of the title.

As another example, references to "sensitive area(s)" in Chapter 4(B) §4.264 and §4.280 cite to "§4.204 of this title." However, "sensitive area(s)" is not a defined term under Chapter 4(B) §4.204.

There are many other similar issues throughout the Draft Rules, such as references to §4.112(a)(4), despite the fact that §4.112(a)(4) does not exist in Chapter 4(A).

There are also references in Chapter 4(A) §4.115 to "fluids described in §4.110(58)" but §4.110(58) provides the definition of "Natural gas or natural gas liquids processing plant" and is therefore, inapplicable.

The above examples are not intended to serve as an exhaustive list of the inconsistencies contained within the Draft Rules. Rather, they are included to highlight the types of issues that may cause the Draft Rules to be unworkable if they remain as presently drafted.

Definitions

The current iteration of the Draft Rules does not contain definitions for certain terms and activities that the Commission regulates or intends to regulate. We request that the Commission define all necessary terms and activities and incorporate the respective management of those items into the Draft Rules.

As an example, commercial waste disposal facilities generate significant quantities of waste fluids that must be properly managed. The Draft Rules define and/or require the management of "contact stormwater" and "runoff" but do not contemplate management of "leachate" or other "free fluids" that are generated during the management of a commercial waste disposal facility. Those terms must be defined and the Draft Rules must include the management of those terms.

These suggestions will not create any additional burden on responsible operators since they already properly manage waste and they already design and operate their facilities in a manner that will reduce the possibility of generating incidental waste. However, without more comprehensive requirements, it is a foreseeable certainty that bad actors will attempt to circumvent the intent of the Draft Rules thereby jeopardizing the entire oil and gas industry.

Inconsistent Burden

Under the existing Commission Rules and the Draft Rules, a "pit" can be a small pit used for the temporary storage of drilling mud and it can also be a 300-acre landfill cell. The Draft Rules must clearly distinguish between those different types of pits. Otherwise, certain activities will be

over regulated while others are severely under regulated. For instance, requiring a liner system and a groundwater monitoring program for a simple temporary pit is over burdensome while those same requirements may be insufficient to prevent pollution at a massive waste facility.

One notable inconsistency in the current Commission Rules, which the Draft Rules also fail to address, are the siting requirements. In particular, under the existing Commission Rules and proposed Chapter 4(A) Division 7, landfarms are required to be sited at a minimum distance from "sensitive areas." Those same requirements exist for recycling activities under the existing and proposed provisions of Chapter 4(B). However, those siting requirements do not exist for commercial waste disposal facilities and stationary treatment facilities.

It is simply unreasonable to have less stringent requirements for permanent landfills where waste will be stored for eternity. Thus, the Commission should implement the same "sensitive area" siting requirement, if not a more demanding requirement, for oil and gas waste landfills. This will increase the likelihood that waste materials will be utilized for beneficial reuse while also removing the incentive to dump waste into landfills.

Notice

The notice language for permit renewals in Chapter 4(A) §4.122 is flawed. Currently, the language states:

> §4.122. Permit Renewals, Transfers, and Amendments.
> [...]
> (b) **Permit renewal**. Permits issued pursuant to this subchapter may be renewed in accordance with the following requirements.
> [...]
> (3) If the initial application for the permit type required notice, **notice of the renewal shall be made in the same manner as in the initial application**.
> [...]

This language creates a perverse incentive for bad actors to exploit and evade notice requirements. As an explanation:

The term "in the same manner as in the initial application" is vague and potentially restricts the authority of the Commission to revise notice requirements during a renewal. The Draft Rules allow an existing permit to be amended. For instance, a permit for a facility with a single pit may be amended multiple times to increase the total number of pits. Thus, what started as a single pit, requiring only minimal notice, may end as a large facility with multiple pits or landfill cells. Based upon the language in these Draft Rules, when the facility is set to be renewed, the Commission has no authority to require increased notice requirements despite the fact that the facility, which once contained only a single pit, is now a massive stationary treatment facility. The Commission should not make it easier for bad actors to hide their activities from operators or persons that are entitled to

notice. Furthermore, the converse is also true, in that a former multi-pit facility that has been amended to lessen the total number of pits, will still be required to issue notice that is now over-inclusive during its renewal.

Ultimately, the term "same manner" may likely be misconstrued by bad actors who will narrowly interpret the notice requirements. Bad actors could easily claim that providing notice at the time of renewal to the former adjacent surface owner instead of the current adjacent surface owner is proper since it was made in the "same manner." The Draft Rules should not be written in a way that is so easily abused.

Thank you for the opportunity to comment on these Draft Rules. If you have any questions please let me know.

Respectfully submitted,

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