STASNEY WELL SERVICE, LLC.

441 SOUTH SECOND
PO BOX 3190
ALBANY, TEXAS 76430

TEL: (325) 762-3311
FAX: (325)762-3312
EMAIL: LKTHOMAS@STASNEY.COM

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Rules Coordinator, Office of General Counsel
Railroad Commission of Texas
PO Box 12967
Austin, Tx 78711-2967
Via email: rulescoordinator@rrc.texas.gov

Re: Amend §3.8 and other rules in Chapter 3, and new and amended rules in Chapter 4 to update oil and gas waste management procedures

Dear RRC Rules Coordinator and RRC Commissioners,

Stasney Well Service is a **micro-business** with 14 employees located in **rural** Shackelford County, Texas. The population of Shackelford County is just under 3,200 and no city or town has over 2,000 inhabitants. We raise cattle and operate stripper wells almost exclusively on land owned by our parent company, H.R. Stasney & Sons, Ltd. Almost all of the wells we operate are located on Stasney's Cook Ranch which consists of about 25,000 acres and is located 6 miles north of Albany, Texas. **The lithology of the Cook Ranch is alternating layers of dense clay and limestone. There is no sand on the ranch and very little top soil. There is no fresh or usable quality groundwater on the Cook Ranch.** Our cattle drink from rain water caught in man-made stock tanks. Potable water is piped from Albany.

Oil was discovered on the Cook Ranch on Feb. 18, 1926 (almost 100 years ago). Since then, over 1900 shallow vertical wells have been drilled on the Cook Ranch utilizing pits dug next to the well. Oil and gas wastes in the pit dry quickly in our arid environment. Once dried, our pits are covered. Native prairie grasses and mesquite trees grow in and around covered pits. We have not had any environmental problems with earthen pits utilized in the past 100 years. **We strenuously object to disturbing any additional native soil to landfarm oil and gas wastes on a different location as a complete waste of time, precious resources, and which will cause unnecessary damage to native grasses that are utilized by cattle and wildlife. We also strenuously object to any and all additional unnecessary regulatory, administrative, economic, and/or operational burdens placed on our small business and land because every additional burden placed on stripper well operations results in decreased well numbers, wasted natural resources, decreased jobs, decreased local revenues, and decrease taxes generated and paid to the State of Texas, Shackelford County, and the various taxing entities such as the school and hospital district.**

Finally, we have been on the harsh business-end of the poorly worded and poorly interpreted critical infrastructure (CID/CIX) rules. Regardless of the absolute and incontrovertible fact that we do not have a single well or lease that has anything to do with critical infrastructure, it took weeks of time and the waste of valuable resources including the unnecessary plugging of wells to extricate our small company from the guillotine of improper application of the rules and threats of crushing penalties. **Every comment that I have made below comes from that bad experience. Loose, overbroad and poorly worded rules and the harsh penalties they inflict have an outsized detrimental effect on rural small business operators that do not have an a floor full of litigators dedicated to combat regulatory error.**

COMMENTS / AMENDMENTS & REDACTIONS

1. Government Code violations:

Rural Communities/Small and Micro-Business: RRC failed to follow Texas Government Code, §2006.002 ("GC2006"): "**A state agency considering adoption of a rule that would have an adverse economic effect on small businesses, micro-businesses, or rural communities shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.**

GC2006 requires that, **before adopting a rule** that ***may have*** *an adverse economic effect on rural communities, small businesses, and/or micro-businesses*, a state agency ***MUST*** prepare an economic impact statement and a regulatory flexibility analysis.

The RRC admits that almost 93% of the operators are small business and by the same report, the RRC knows that many, if not most, of these operators are in rural communities. As stated above, **Stasney Well Service, LLC is a micro-business in a rural community.**

Based on the additional financial, operational and administrative burdens created by these proposed rules, every small/micro business operator in rural communities will suffer an outsized and ongoing negative impact which will, in turn, **waste the natural resources the RRC is charged with protecting**.

2. In Commissioner Wright's recent testimony to the US House Natural Resource Committee, Subcommittee on Energy & Mineral Resources, he testified, "There are some requirements in the current

draft that would likely significantly drive up the costs and time needed to plug wells and could materially reduce the number of wells states will be able to plug…Of particular concern is the requirement to measure and quantify methane emissions before and after plugging…. Simply put, spending 10% or more for methane detection and monitoring means 10% fewer wells that could ultimately be plugged in Texas. That does not account for the additional time needed to conduct the pre- and post-testing requirements, which can also add significant costs. While this extra expenditure may provide some data, it does nothing to change the necessary solution…"

Commissioner Wright's analysis and logic is correct! If you add 10% to the cost of drilling, servicing and plugging wells with unnecessary administrative pit rules, pit registration, pit monitoring, and land farming oil and gas waste, there will be 10% fewer wells drilled, serviced and plugged!

Profit margins are already razor thin for small and micro-sized businesses in rural communities operating shallow stripper wells. If you have 10% fewer wells drilled, serviced and operated, you will lose 10% of the operators of these wells; 100% of the oil and gas they produce; 100% of their employees; and 100% of the severance and ad valorem taxes they generate! Compound the additional out-of-pocket expenses with additional overhead, administrative time and the imposition of extreme penalties listed at the end of the proposed pit rules and you have added an additional 25-40% cost on stripper well operations.

Bottom line: If added unnecessary regulatory steps, rules and requirements negatively affect the RRC's economic ability to plug wells, then added unnecessary regulatory steps, rules and requirements will certainly cause greater economic and operational harm to rural small businesses operators in the oil patch which will diminish and waste natural resources.

3. The stated reason for these proposed pit rules is to address the massive volumes of fluids used in horizontal well drilling and operations. Shallow vertical wells and/or stripper wells handle a tiny fraction of fluids and associated oil and gas wastes compared to horizontal wells and should be exempted from the proposed rules.

4. Existing casing rules already protect alleged usable quality groundwater even in areas such as ours where there is none. There is no need for the RRC to impose additional regulations and administrative costs on small rural businesses to protect surface and usable quality groundwater.

5. The proposed rules ignore significant regional and local geographic, geologic and ecologic differences in Texas. They also ignore physical, economic and operational differences between large corporate horizontal oil-mining operations and small conventional vertical stripper well operations. So, to address the absence of rules regulating horizontal well pits and the fluids that handle, the proposed rules now ignore the vast differences stated above. The proposed rules assume that all geographic, ecologic, geologic, and lithologic are the same and should be treated the same whether they cause waste of natural resources, administrative resources, and economic resources. The overwhelming weight of the evidence is that the existing pit rules are more than adequate for vertical wells and particularly stripper wells in our area. Therefore, **conventional vertical wells or stripper wells in North-central and Northwest Texas should be excluded from the proposed pit rules. Rules that cause more ecologic and environmental damage than they create *should not* be adopted and/or should have exceptions to prevent unnecessary waste and damage. In our case, as the land owner, cattle owner and wildlife manager, we want oil and gas wastes buried on location with no further damage or disruption to native grasses, plants and habitat.**

6. The following sections contain our proposed additions to proposed rules in red lettering, deletions noted by strikethrough marks, and reasoning and/or comments in blue lettering.

Page 40, line 5: Section 4.102 "Responsibility of Oil and Gas Wastes"

lines 6 -17:Section 4.102 (a) (1) uses the terms "process knowledge" and in (3) "hazardous oil and gas waste." The EPA/ RCRA (Resource Conservation and Recovery Act) does not deem oil and gas wastes as hazardous. If the RRC now intends to treat nonhazardous oil and gas wastes as hazardous, the RRC

should specifically define the terms "process knowledge" and "hazardous oil and gas waste."

These definitions should be inserted in 4.102 or in 4.110.

Suggested language for these terms is as follows:

"Process knowledge" -- the combination of skills, understanding, experience, and expertise of an average oil and gas operator in a given geographic area concerning a given type of material, waste, well, or oil field operation.

"Hazardous oil and gas waste"-- oil and gas waste in a sufficient quantity to render or cause immediate physical injury to an average adult human. Example: High concentration of H2S gas.

Page 45, line 29: §4.109. Exceptions. (insert items in red)

30 (a) An applicant or permittee may request an exception to the provisions of this subchapter regarding Schedule A Authorized pits by

31 submitting to the District Director a written request and demonstrating that the requested alternative is at least

Page 46 line 2 (insert items in red)

2 subchapter to which the exception is requested. All other requests for exceptions are to be submitted to the Director of the RRC. The following provisions are ineligible for exceptions:

Reasoning: This is a simple matter of logistics and geography. District Directors and district field inspectors are in a much better position to make a determination regarding a requested exception for a Schedule A pits because of their proximity to the well or lease, knowledge of local geography, conditions, and operations.

DIVISION 2 DEFINITIONS (insert items in red)

Page 51 line 28: (47) Groundwater -- usable quality groundwater found below the surface of the ground in a zone of saturation having a total dissolved solids (TDS) level of 3,000 milligrams

per liter or less and other waters known to be used or identified as sources of desalinization water.

Reasoning: The RRC and operators are very familiar with the term "usable quality groundwater." There is no need to use different terms in this proposed rule.

Page 52 line 14-15: (Add "buried or")

(52) Landfarming--An authorized or permitted waste management practice in which low 14 chloride, water-based drilling fluids, or oil and gas wastes are mixed with, **buried or** tilled into, the native soils in....

Reasoning: There are areas (like ours) where there is very little soil on top of solid rock and clay layers. Our clays meet the definition of "in-situ" clay liners. Burying dewatered oil and gas wastes should be allowed in these areas where "tilling" is not possible, not practicable, and/or would cause unnecessary damage to native plants.

ADD DEFINITION on page 53 or 54 :

(65) Nonhazardous Oil and gas waste-- oil and gas wastes of a type or quantity that does not cause immediate or lasting physical injury to the health of an average adult human. This term excludes asbestos or asbestos-3 containing waste and naturally occurring radioactive material (NORM) waste.

Reasoning: Since the term "nonhazardous" is used in association with oil and gas wastes on page 5, the term should be defined.

Additionally, since the RCRA DOES NOT classify oil and gas wastes as hazardous. The RRC should not conflate nonhazardous oil and gas waste in a pit with harmful pollution unless it has or is likely to harm people's health. In our case, oil and gas waste in pits has not caused harm to any person or animal for 100 years.

Page 55 line 19 definition (72) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any **usable quality surface** ~~subsurface~~ water that ***causes*** ~~renders the water~~ harm~~ful~~, detriment~~al~~, or injury ~~ious~~ to

humans, animal life, vegetation, or property. ~~or to public health, safety, or welfare, or impairs 22 the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.~~ **Pollution does not include nonhazardous oil and gas wastes that are exempt pursuant to Resource Conservation and Recovery Act (RCRA) Subtitle C codified at 40 CFR 261.4 (b)(5).**

Reasoning: (1) The stated reason for these proposed rules is to address alleged issues generated by the massive amounts of fluids handled in large pits on the surface of the ground associated with horizontal well operations. Usable quality subsurface water is already addressed in RRC casing and plugging requirements and should not be included in the proposed pit rule.

(2) Penalties listed in Table 1 page 234 are $2,500 -$10,000 for "pollution of surface or subsurface water." Penalties of this amount and particularly with enhanced penalties found in Table 2 on page 240 Table 2 and "Enhanced" penalties found in Table 3 on page 242 will be the end of small rural operators and a waste of production of natural resources for Texas. These issues should have been discussed, assessed and evaluated pursuant to Texas Government Code, §2006.002.

(3) Usable quality water has always been protected and should always be protected. Usable quality water found on the surface should be the focus of this proposed pit rule not any water anywhere.

(4) *Causation* is omitted from the application of the penalties. Penalties should only be assessed if harm has been caused.

(5) Finally, exorbitant fines for alleged pollution will put the small rural oil and gas operator out of business! These issues should have been discussed, assessed and evaluated had the RRC followed Texas Government Code, §2006.002

Page 57 Lines 14-19 (89) Surface ~~and subsurface~~ water – A permanent body of fresh or salt water usable by humans or animals ~~groundwater~~ on the surface of the ground greater than one-acre feet that is not a man-made pit, puddle, depression, or temporary erosion control reservoir. Surface water also does

not include *waters in Schedule A and B Authorized Pits pursuant to 16 TAC Ch 4 and in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state."*

Reasoning: (1) The stated reason for these proposed rules is to address alleged issues generated by the massive amounts of fluids handled in large pits on the surface of the ground associated with horizontal well operations. So, bodies of surface water should be the focus of this rule. When defining surface water, the catch-all phrase, "all other bodies of surface water, natural or artificial," is too broad and makes this rule subject to unlimited interpretations that most likely will work against the oil and gas operator or service provider. For example, as written, this rule would include a temporary puddle of water created by water truck tire as "surface water."

Usable quality subsurface water is already addressed in RRC casing and plugging requirements and should not be included in this rule.

(2) The term "surface water in the state" is defined by the Texas Commission on Environmental Quality as follows in the stormwater general permits TXR040000, TXR050000 and TXR150000.

> **"Surface Water in the State" — Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHWM) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; *except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.***

The proposed RRC pit rule *should include* the TCEQ exception highlighted above. Also, for clarity, the RRC should add the following to the "except that waters in *Schedule A and B Authorized Pits pursuant to 16 TAC Ch 4 and* treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state."

Add Definitions (94) Fresh Water: water with less than 1,000 mg/L total dissolved solids (TDS)

(95) Usable Quality Water: water with 3,000 mg/L TDS or less and other waters known to be used or identified as sources of desalinization water.

Note: TAC Rule 3:13 (P) Usable quality water--Water as defined in §3.30(e)(7)(B)(i) of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

4.111. Authorized Disposal Methods for Certain Wastes

Page 59 line 20 (c)(4) According to this proposed rule, the operator could not mix, cover and bury nonhazardous oil and gas waste if it is too close to the operator's own man-made stock tank that may or may not have water in it. This is a property rights issue and should be addressed by the landowner not the RRC. The RRC was not created to rewrite legacy oil and gas leases. *At minimum, the rule needs an exception for burial of "nonhazardous oil and gas wastes in place" and/or "with landowner's permission*."

Also, as stated above, "landfarming" should include mixing and/or burial *in place*. In geographic locations such as ours, there is little or no soil; so, landfarming on a different location will destroy native vegetation and/or do more harm than good.

Page 59 lines 5 -6, §4.111(b) ~~Inert~~ **Nonhazardous** oil and gas waste. A person may, without a permit, dispose of ~~inert~~ **nonhazardous** oil and gas wastes…

Note: EPA/RCRA exempts oil and gas waste as non hazardous. There is no reason that nonhazardous wastes should not be disposed of on the property on which it was generated. Any other solution leads to a waste of natural resources, unnecessary expense which results in fewer wells and loss of revenue for small rural businesses and communities.

Page 60 lines 15 -17. (4) the operator maintains documentation demonstrating closure requirements have been met. The operator shall maintain these records for at least three years from the date of closure and provide copies of these records to the Commission upon request.

Comment: Over the lifetime of a shallow well, the same small pit may be opened and closed many times. I agree that pits should be dewatered and closed but, as a matter of practice and practicality. However, "maintain documentation" is really vague. It begs several questions like, 'What documentation is enough?'; or, more importantly, 'What documentation is not enough?!'. Again, there should be an exception for all of these proposed rules including "maintaining documentation" for pits less than 50 barrels.

Page 61 §4.113. Authorized Pits

Line 31 (e) The operator shall register all authorized pits **with a volume greater than 50 barrels** with the Commission.

Reasoning: As previously stated, vertical conventional wells should be excluded from rules that were allegedly created to address horizontal well operations with massive fluid volumes. If vertical wells and/or stripper-wells cannot be completely excluded, then there should be an automatic exclusion for small temporary pits with a volume of less than 50 barrels. If that cannot be done, then pit "registration" should be addressed and included with the W1 drilling permit with a simple check box for "authorized pit." Navigating the various RRC electronic filing systems is difficult enough without adding another system.

Page 62 4.114 Schedule A Authorized Pits (add "plugging" pits)

Lines 26-27 Schedule A authorized pits include reserve pits, mud circulation pits, completion/workover/**plugging** pits, freshwater makeup pits fresh mining water pits, and water condensate pits.

Reasoning: Plugging pits are a necessity for plugging a well and are open for a very short period of time. Excluding plugging pits seems like an oversight.

Page 62 Line 28-31 (1) Schedule A pit contents. (add language in red)

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes **other than the following**:

Page 63 line 8 (add language in red below)

(vi) Other oil and gas wastes listed in Sec 4.111(d) including solids from dewatered drilling mud and fluids generated during well drilling including drill cuttings, sand, silt, paraffin, and debris.

Reasoning: 4.111 and 4.114 should be the same. Adding the above language makes 4.111 and 4.114 the same.

Penalties: Tables 1-4 starting on pages 234 - 243

Penalties listed in Tables 1-4 page 234-243 start high and get extremely high. As discussed at length above, loose, and broad definitions of pollution, surface and subsurface water create a minefield of hazards into which a good faith operator can easily be put out of business with business ending penalties. Penalties of this amount and particularly with enhanced penalties found in Table 2 on page 240 Table 2 and "Enhanced" penalties found in Table 3 on page 242 will be the end of small rural operators and a waste of the natural resources for Texas they produce. These issues should have been thoroughly discussed, assessed, and evaluated pursuant to Texas Government Code, §2006.002. Regardless, the TCEQ, EPA and RRC have more than enough tools existing in their box today to regulate vertical well oil and gas operations. Therefore, for the reasons stated in my oral comments via the RRC Zoom call and the comments listed above, as a small business in rural northwest Texas, we strenuously object to the Government code

violations and the inclusion of traditional vertical wells in these proposed pit rules and demand that the laws of the State of Texas found in Texas Government Code, §2006.002 be followed to the letter.

Penalties should ONLY be assessed if ACTUAL harm has been caused. Causation of actual damage or harm is completely omitted from the application of draconian penalties listed in the proposed rules. To add salt to the wound, a good faith oil and gas operator can apparently be penalized for, "Threatened…Pollution!" (see Table 3 column heading titled "Threatened or Actual Pollution.") Nowhere in the rules is "threatened pollution" defined or even mentioned regarding oil and gas operations. And yet, the operator can be hit with additional fines for it. Again, as stated above, overbroad, vague, nebulous wording leads to wildly variable and detrimental application to the harm and destruction of rural small businesses.

I appreciate your full consideration of our comments, suggestions, and objections. Please call if you have any questions. I will be more than happy to discuss this directly with the rules coordinator, RRC attorneys and the RRC Commissioners.

Sincerely,

Lance Thomas, Manager
Stasney Well Service, LLC. and
H.R. Stasney & Sons, Ltd. and