PPROA
PANHANDLE PRODUCERS
& ROYALTY OWNERS
ASSOCIATION

Friday, November 3, 2023

Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

Re: Proposed Modifications Statewide Rule 8 (16 TAC, Chapters 3 & 4)

Chairman and Commissioners,

The Panhandle Producers and Royalty Owners Association (PPROA) appreciates the opportunity to submit our informal comments on draft amendments to 16 Texas Administrative Code (TAC) §3.8 (also known as Statewide Rule 8) and 16 TAC Chapter 4. We know the Railroad Commissioners and staff have put in a lot of hard work throughout this process, and we look forward to continue working with the agency to ensure our state's rules continue to protect the environment while providing a reasonable regulatory environment for Texas oil and gas operators to conduct business.

PPROA has represented the interests of the producers and royalty owners of Railroad Commission (RRC) District 10, the Texas Panhandle, and the State as a whole for the last ninety-three years. Our membership includes over 500 members, many of whom are small operators that cannot afford their own personal representation in Austin and Washington D.C.

The vast majority of oil and gas wells in the Panhandle and in Texas are marginal wells. In fact, approximately 70% of all the active oil and gas wells in Texas are marginal wells — producing less than 10 barrels of oil per day and less than 250 MCF of gas per day. While individually these wells might not seem like much, collectively the production adds up and provides an important contribution to our state's energy portfolio. Keeping these wells in production not only reduces waste and the state's plugging liability but provides funding for our schools, protects the stability of our electricity grid, and puts food on the table for thousands of Texas producers and royalty owners.

From the impending methane tax created in the Inflation Reduction Act to the ESG movement crippling financing on Wall Street, it is getting harder and harder for the "little guy" to survive. The Texas oil and gas industry is at a crossroads, and the regulatory decisions made over the next few years will determine whether or not small independent producers will continue to exist by 2030.

Texas is the top producer of oil and gas in the nation because of our consistent, predictable, business-friendly regulatory environment. It is our fear that certain portions of these rules as currently written would have a detrimental impact on marginal producers in the Texas Panhandle and discourage future production in our region and beyond.

The water contamination concerns these regulations are designed to address are not a significant issue in the Panhandle. In our region, deep water tables are the norm – with a depth to surface groundwater depth

approximately 300-500 feet deep in most areas of the region. Under the current Rule 8, our operators have a strong track record of environmental stewardship and to our knowledge there is no existing data that confirms the necessity for such comprehensive one-size-fits-all statewide rules.

Some of our members have expressed that the proposed rules as drafted are similar to ones that exist in New Mexico and will surely lead to closed-loop drilling. They have indicated these changes would increase costs 25-30% and make the drilling of vertical wells economically unviable. **Below are some exact quotes from our members:**

"We operate in both the Texas Panhandle and New Mexico and there are some vast differences. First off, the depth to groundwater is much more shallow in New Mexico than it is in the Panhandle. In New Mexico, we are forced to do closed loop drilling, adding another $120,000 per well. Cost aside, to implement this in the Texas Panhandle would be difficult because we lack the commercial recycling and waste facilities up here that are readily available throughout the basin in New Mexico."

"I want to tell you what New Mexico looks like versus Texas and why this is so important that we differentiate. In Texas, the top 20 operators – the majors, produce 52% of the oil production. The independents, of which there are 3000-something of us in Texas, we produce 48% of oil production. In New Mexico, 90% of the oil production is produced by the majors, and the independents only produced 10%. Their pit rule and other excessive regulations make it to where you cannot even operate."

"This rule might work for the big guys, but if you're talking about somebody like me, who's trying to put together a six well drilling program for 2024, and I've got operations in Oklahoma, and I've got them in Texas… if it's going to cost me $80-150,000 more to drill the wells in Texas, I'm just going to drill another well in Oklahoma. So that's kind of a caution that I would offer as this rule is modified going forward."

Universally, the section of the proposed rule causing the most concern for our members are the new pit requirements in Division 3, primarily the cost involved with the requirements regarding synthetic liners and groundwater / soil monitoring.

The pit registration and approval process could prove very problematic for operators, particularly when a time sensitive work-over becomes necessary on the weekend or over a holiday. If an operator is unable to get in contact with the district office and receive approval it could pose a safety risk and increase costs as the operator sits on a rig for additional days. We would prefer this requirement be eliminated entirely, but at a minimum guardrails must be put in place to ensure a timely approval and/or exceptions for emergency work-overs.

We also believe Division 3 is problematic from a landowner perspective. Most of our members have surface use agreements with landowners that specify strict construction and closure requirements. It makes sense to govern these decisions by private contract because most land in Texas utilized by oil and gas producers is privately owned. For most farmers and ranchers their top concern is that we back fill the pit and return the area to plowable farm land as quickly as possible. Under current rule, this can be done quite quickly, but the proposed rules will slow this down considerably. Additionally, the pit registration coupled with the pre and post sampling will create litigation liabilities and turmoil with landowners in the region, particularly when trying to sell their land.

A lot has changed in the oil field since the advent of fracking, horizontal drilling, and commercial recycling, and we understand the need to modernize this rule for commercial operations. When you are dealing with permanent facilities and impoundments treating hundreds of thousands of barrels of water over the course of years, many of these requirements make a lot of sense. However, as currently written, the rule lumps temporary oil and gas reserve pits, completion pits, workover pits, and even fresh water pits into that same category. The temporary pits used by oil and gas operators have a short lifespan, contain relatively small quantities of fluids and pose

little to no risk to groundwater. Differentiating these two very different operations in the rule would solve a lot of the aforementioned issues. We also recommend moving closure tables into a guidance document.

One solution we have heard proposed is to differentiate temporary pits from commercial ones by creating an exception for pits with a lifespan of less than eighteen months used by oil and gas producers. We support this. It will ensure small operators are not burdened with the requirement to pay for expensive synthetic liners and both groundwater and soil monitoring.

In summation, we recommend making the following changes:

- Division 1, (21) - Clarify the definition of "commercial facility" by changing wholly owned to "partially owned."
- Division 1, (24) - Clarify the definition of "contact stormwater" to include only those areas that do contain, have contained, or have been constructed to contain oil and gas waste.
- Division 1, (45) - Clarify the definition of "ground water" by adding "in a confined or unconfined Aquifer."
- Division 3, §4.113 / §4.114 - Differentiate between more permanent commercial facilities and temporary pits utilized by oil and gas operations. This can be done by exempting pits that are closed within eighteen months of the end of drilling activities. Consider modifying rules in a way that eliminates:
    - Fresh Water Pit Regulation
    - Pit Registration
    - Synthetic Liner Requirements
    - Groundwater Monitoring Requirements
    - Soil Monitoring Requirements
    - Prescriptive closure requirements (details should instead be worked out contractually in surface use agreements with landowners to meet their individual needs)

For decades, the oil and gas industry has successfully worked hand-in-hand with the Railroad Commission to protect the environment and our groundwater while ensuring regulations in Texas were not overburdensome on our thriving energy sector. As a result, Texas is the largest producer of oil and natural gas in the nation.

We do not want to see Texas become more like New Mexico and put small independent oil and gas producers out of business. This would not only harm the livelihoods of thousands of families, but it would also result in less production, reduced taxes and royalties, and an increase in inactive/abandoned wells. This would be in direct conflict with the Railroad Commission's statutory duty to "prevent waste."

Thank you for accepting our comments. We hope you take our concerns into consideration as you modify the rules before posting them with the Secretary of State. Operational flexibility is necessary for innovation and will ensure we can continue to protect the environment and produce energy for the state, nation, and world. If you have any questions, please contact our Government Affairs Representative, Travis McCormick.

Sincerely,

Judy Stark

President
Panhandle Producers & Royalty Owners Association