October 15, 2024

Rules Coordinator
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Railroad Commission of Texas
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Submitted electronically to rulescoordinator@rrc.texas.gov

RE: Proposed Changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4

The Texas Alliance of Energy Producers (Alliance) represents over 2,600 individuals and member companies in the upstream oil and gas industry; our members are oil and gas operators/producers, service and drilling companies, royalty owners, and a host of affiliated companies and industries in Texas and beyond.

Thank you for the opportunity to provide comments on the draft amendments to SWRs 8 and 57 and Chapter 4. We greatly appreciate the Commission's diligent work on this issue to find a rule that is workable for all stakeholders, and that ultimately allows for greater safeguards in place to protect groundwater while ensuring our member companies can continue to produce the oil and gas our country and our allies need.

As you know, by Railroad Commission count the number of active oil and gas wells in Texas totals about 280,000. Of those, the high majority would be classified as low-volume wells.

Of the roughly 158,000 crude oil producing wells, 63% of those are producing less than 10 barrels per day, and an astounding 89% are producing less than 100 bpd.

Of the nearly 84,000 active natural gas producing wells, some 83% are producing less than 250 mcf per day (with the high majority of those classified as stripper wells by federal definition at 90 mcf/day or less), and a whopping 92% are producing less than 1,000 mcf/day.

Obviously, low volume wells truly comprise the makeup and fabric of the oil and gas industry across the state, from north to south, east to west, and all points in between. By our last count, there is a measurable, reportable volume of crude oil and/or natural gas production in nearly 85% of the state's 254 counties.

The vast majority of these wells are operated by independent producers, and smaller private independents most especially. These are the companies – and the wells – at greatest risk of going away with the imposition of additional costs on those operations. The revenue from that production simply does not provide sufficient wiggle room to absorb

those costs, and could easily result in the elimination of companies, and/or the wells they operate. Keeping these wells in operation for years and years – even decades – means performing workovers and other actions required to keep them producing.

And, as you are aware, there is an emerging renaissance of drilling shallow, vertical, conventional wells in producing regions across the state, even as the extraordinary growth in Texas production in the last 15 years has been driven by deep wells with long laterals (horizontal drilling and hydraulic fracturing).

Each of these wells, new and existing, comes with beneficial economic activity in the form of private, small, independent drilling and service companies, and employees and contractors to manage those wells and their production. With each of these wells comes taxes paid to school districts, hospital districts, and local municipalities, as well as severance taxes and other tax revenue to the state of Texas. We are fiercely protective of this group of operators, drillers, service companies, the wells they operate, the production they represent, and the economic activity that is vital to the production regions of our great state.

Increases in the cost of doing business for these companies results in a commensurate loss in activity – fewer operating wells, fewer companies in business, fewer new wells drilled, and a reduction crude oil and natural gas delivered to the marketplace for the benefit of consumers in the U.S. and beyond.

With that in mind, we want to express our gratitude to the Commission for the changes and improvements that were made in the current rule proposal compared to the original draft released in the fall of 2023.

The Alliance and our members understand the need for greater scrutiny and safeguards to be in place for permanent disposal cells and for pits that may be handling wastes for longer periods of time. We are grateful to the Commission for understanding and reflecting the differences between these types of facilities and temporary pits that will be used for shorter periods of time and believe this draft amendment appropriately takes these differences into account.

The Alliance and its members would like to provide some constructive feedback that would allow the major objectives of this rulemaking process to still be accomplished, while providing some clarifications that may help provide more regulatory certainty for the regulated entities operating under these guidelines.

The suggested language made throughout these comments is underlined.

Definitions

The Alliance has a few suggestions for clarification we believe is needed in the Definitions section:

- **Commercial Facility -** Clarify the definition of "Commercial Facility" to include a broader agreement between operators and third parties. Suggested language: A facility permitted under this chapter, whose operator receives compensation from third parties for the management of oil and gas wastes, whose primary business purpose is to provide such services for compensation and receives oil and gas wastes by truck. In this paragraph, a third party does not include an entity that owns or operates, or is affiliated with the owner or operator, of the facility permitted under this chapter.
- **Contact Stormwater -** Amend the definition of "Contact stormwater" to resolve the concerns that this definition is overly broad and will require operators to manage water that has not come into contact with oil and gas waste: Stormwater that has come into contact with oil and gas wastes or areas that are permitted and contain oil and gas wastes.
- **Groundwater -** Narrow the definition of "Groundwater" so that produced water and/or oil and gas waste are not included in the definition. As it is currently written, this definition could be overly restrictive for purposes of siting pits. Our suggestion is to define it as follows: Subsurface water in a zone of saturation or in a confined or unconfined aquifer; or subsurface water in a zone protected by a current Groundwater Advisory Letter issued by the Railroad Commission. Groundwater does not include produced water nor any other oil and gas waste.
- **Public Area –** The preamble to this current draft states that the definition of "public area" was taken from Statewide Rule 36 (relating to Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas). Our members are concerned that including "public road" in the definition of public area is overly broad and will greatly restrain potential siting of their operations due its inclusion. Given that concerns over H2S migrating through the air are very different than concerns over the solid and liquid waste management practices being addressed by this rule, the Alliance suggests removing "public road" from this definition altogether.

Authorized Pits

Proving a negative vs. compliance driven

There is a general concern amongst many of our members that this rule draft may put operators in a position to "prove a negative," which is a departure from the traditional Commission practice of being more "compliance driven."

For example, §4.113(c)(1) states: "An authorized pit that was constructed pursuant to and compliant with §3.8 of this title 14 (relating to Water Protection) as that rule existed prior to July 1, 2025, is authorized to continue to operate subject to the following: (1) Authorized pits that cause pollution shall be brought into compliance with or closed according to this division."

This language could be construed to read that upon adoption of this rule draft, an operator has an obligation to go out and prove that every pit they currently operate under the previous Statewide Rule 8 is not causing pollution, i.e. having to "prove a negative." Today,

operators only must take action to ensure pollution is not occurring if there is an allegation or identified actual pollution, at which point they remedy the issue and come into compliance and deal with the possible violations and actions coming out of that incident.

The Alliance would like to encourage the Commission to ensure this rule is more "compliance driven" and would like to specifically suggest changing §4.113(c)(1) to read: Authorized pits that cause pollution not in compliance with applicable rules under 16 TAC Chapter 3 shall be brought into compliance with or closed according to this division.

Schedule A Pit Contents

The Alliance received feedback from several members over concerns related to inconsistencies between the authorized wastes allowed to be disposed of under §4.111(d) and the pit contents allowed under §4.114(1)(A) for Schedule A authorized pits. We would like to recommend that these contents be uniform so that there is no confusion about what may be put into these pits. A simple solution would be to duplicate the list under §4.111(d) and put that into §4.114(1)(A).

Fresh Makeup Water Pits

Pursuant to the current draft of §4.114 (C) related to fresh makeup water pits, the rule only allows water up to 3,000 mg/l total dissolved solids (TDS) to be stored in a fresh makeup water pit, and there are no other proposed *authorized* pits which can be utilized to store brackish or saline groundwater or surface water with TDS exceeding 3,000 mg/l. At a time when industry and the state are doing everything we can to encourage more use of brackish water and less fresh water, the Alliance believes it would be appropriate to either provide an additional type of Schedule A makeup water pit that would allow operators to use water with higher than 3,000 mg/l TDS with appropriate standards. Or, alternatively, to eliminate "fresh makeup water pit" from the rule altogether and add a new definition for "makeup water pit". Within this section, you could then exempt pits that contain only fresh water as defined by definition (42) from the requirements of this section except for the registration and closure time limit.

Financial Assurance for Schedule B Pits

We do not need to tell the Railroad Commission how urgently the need is to our state for all industries, including ours, to be utilizing water recycling as broadly as possible. The Alliance fully appreciates how large Schedule B pits can be and understand why the Commission feels the need to have some sort of financial assurance in place to ensure dollars are available for remediation in the instance the need occurs. However, increasing the costs for non-commercial operators to recycle the produced water they are responsible for at the level that is currently in this rule draft is of concern to our members. We would

like to make several suggestions that we believe could create more flexibility and options for operators while still ensuring that the Commission has financial assurance in place for Schedule B pits.

1. Exempt from additional financial security requirements Schedule B pits that are located on an existing Commission-designated lease, pooled unit, or drilling unit associated with a Commission-issued drilling permit; or located upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well or injection well. Operators already have financial security in place for these facilities.
2. Clarify in the preamble or in the rule that only one blanket bond is required based on the cumulative number of produced water recycling pits for corporations with multiple subsidiary entities. This is not clear in the current draft.
3. Allow for certain operators to self-insure provided that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard & Poor's, Aaa, Aa, A, or Baa as issued by Moody's or AAA, AA, A or BBB as issued by Fitch. The owner or operator must submit a report of its bond rating upon pit registration.

Pit Registration

Many Alliance members are concerned that authorized pit registration is an unnecessary burden, especially when the locations of the leases and drilling permits where these temporary pits will be located are already known to the public and Commission. Registration of these types of pits seems duplicative and unnecessary given the circumstances. That being said, we appreciate the concerns the Commission has and would like to suggest a process that could allow pit registration to be a minimal burden for operators and help to ensure that this requirement does not become an undue paperwork burden for Commission staff. We believe a simple solution could be to include a box on the W1 drilling permit application for authorized pits. This way you aren't creating a whole new form and paper stream that has to be managed by the operators and Commission staff.

We would like to thank the Railroad Commission for their hard work on this rulemaking and for providing the Alliance the opportunity to provide comments. We appreciate your serious consideration of our members' concerns and look forward to working with the Commission as it continues forward with this rulemaking process.

Sincerely,

Karr Ingham, President