November 3, 2023

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

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 informal draft amendments to SWRs 8 and 57 and Chapter 4. We 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.

Our comments today will focus exclusively on the proposed Subchapter A and can be summarized as focusing mainly on ensuring that temporary pits and pits that contain freshwater are not regulated the same in the rules as permanent disposal cells, which should be treated under the rules with more scrutiny and safeguards. Alliance members have empirically shown that these types of temporary pits have not impacted groundwater, but the rule as proposed would drive up costs for drilling and work over of vertical and marginal wells by an estimated 20%. A cost increase, which given the very tight margins on vertical wells, would undoubtedly lead to wells not being drilled and marginal wells not being worked over, therefore leading to widespread waste of oil and gas resources. This would also create an additional strain on plugging liabilities for the State, that the industry, Commission, and Legislature have worked diligently to eliminate. Additionally, every landowner who has oil and gas operations on their land has the authority (and in most cases we are aware of, robustly exercises that authority) to include important safeguards in their surface use agreements with the oil and gas companies conducting the operations on their land in producing the mineral estate. We have heard from some landowners who state that the requirements in this new rule could lead to delays closing pits and getting the land back to a condition that it can be used timely for agricultural production.

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

ensuring that the rule does not create unnecessary costs that will lead to wells being shut-in and not drilled.

Definitions

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

- 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."
- Amend the definition of "Contact stormwater" to resolve the concerns that this definition is overly broad regarding the construction phase or pre-operation. We suggest amending the definition to read as follows: "Stormwater that has come into contact with oil and gas wastes or areas that are permitted and contain oil and gas wastes."
- Narrow the definition of "Groundwater" so that brackish, non-potable is not included in the definition. As it's currently written, this definition could be overly restrictive for purposes of siting pits. We agree with the recommendation to amend this definition to add "in a confined or unconfined Aquifer."

Temporary Pit Exception

The Alliance recommends that an exception be crafted in Section 4.109 (Exceptions) that would exempt pits that are opened, operated, and closed within 18 months from the registration, liner, soil sampling, groundwater monitoring, and closure standards requirements found in the new rule. Alternatively, we would suggest that individual exceptions for pits with lives shorter than 18 months be written into each applicable provision of Subchapter A that contains these heightened requirements.

Freshwater Pit Exception

The Alliance recommends that the rules allow for operators to construct, operate, and close freshwater pits as they see appropriate in collaboration with the surface owner. The pits covered are defined in this proposal as fresh makeup water pits and fresh mining water pits. Placing closure and liner requirements on these types of pits limits the flexibility between two parties contracting on a fundamental and constitutionally protected right to groundwater use. We do not believe the Commission should extend its authority to this type of private contract.

Pit Registration

The Alliance recommends deleting the pit registration requirements altogether for authorized pits. Given the temporary nature of all the different types of pits listed under Authorized Pits in Section 4.113, we believe registration of these pits will lead to an unnecessary administrative burden for the operator community, as well as an unnecessary expense for the Railroad Commission to develop and maintain a pit registry for pits that will only be there for a few months. Registration of these types of pits seems duplicative and unnecessary given the circumstances, 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.

Flexibility on Liners and Construction Requirements

General design requirements (including for liners), found in Section 4.114(c) create a significant undue burden for operators handling freshwater and should be exempt from these requirements. As mentioned above, the Alliance has heard from operators that have produced cost estimates based on the requirements in this subsection, that would make drilling shallow vertical wells cost prohibitive. This will result in significant waste to the state and deprive mineral owners in many parts of this state from development.

Several small operators estimated that the new design requirements will increase costs from an average $5,400 to triple that cost. One operator relayed: “The cost of single lining the pits with synthetic liners is going to add $5,000-10,000 to our workover costs, which effectively doubles our costs. The equipment, materials, labor, and testing for a natural liner is around 4 times that.” Large operators have estimated that the new design requirements will increase cost from an average of $32,000 to double that cost.

It is unclear if most liner suppliers in the state would meet the proposed standards, resulting in significant time delays and cost increases as producers search out new suppliers. The Alliance suggests considering a base standard that can be met or exceeded or a thickness requirement, rather than a specific ASTM-type standard. Operators we have discussed this standard with have suggested a 20MM thickness for a synthetic liner would be more than sufficient. Additionally, Alliance members believe a one-foot compaction standard for natural liners is sufficient for temporary operations to protect groundwater rather than the two-foot requirement currently found in the draft.

Challenges with Closed-Loop Systems

The Alliance would like to point out the challenges of requiring closed-loop systems in certain parts of the state, particularly those with older fields, which these requirements will financially harm disproportionately. For instance, in the Texas Panhandle where well economics are much more challenging than in the Permian, the increased costs for liners and methods outlined in the new rule will force operators to seek out other fields to invest limited capital where their costs will be lower, such as the Anadarko in Oklahoma. One operator shared that they can land farm their waste in a much more economic manner in

Oklahoma and would likely invest their drilling dollars there to avoid the additional cost burden of the closed-loop system in this proposed rule.

As an alternative to mandating the closed-loop system statewide, the Alliance would like to recommend amending the rule to allow for a district waiver process for siting, notices, liners, soil sampling, groundwater monitoring, and closure standards so that the economic challenges these requirements introduce can be considered in conjunction with unique soil lithologies, groundwater depths, and the like. As part of this process, the district directors could be given the option to establish field guidelines to reflect depth to groundwater in their districts, trucking, and other unique characteristics of their area.

Soil Sampling

Along the same lines of Alliance members' concerns with this draft, the soil sampling requirements are very challenging for small operators from both a time and cost perspective. One operator estimated each five-point composite soil sample will exceed $2,500. They objected to the necessity for this mandate in all instances but understood if district staff found compelling reasons following a spill. We believe that a blanket requirement per acre, per pit, before and after construction and closure is overburdensome.

Tables

The Alliance believes it makes sense to move the closure tables at the end of the proposed rule to a guidance document. If that is not amenable to the Commission, we would suggest including separate tables for lined versus unlined pits or an option for a variance by rule.

Monitoring Burdens on Small Operators

Throughout our outreach to Alliance members, we heard a great deal of concern with small operators waiting for Commission approval on siting, registration or closure while rigs or other heavy equipment are on location. This will unnecessarily lead to added cost for authorized pits, delays in workover operations, and ultimately, reduced operations in Texas. This will have a negative impact on local and state tax revenues, lower mineral royalty payments, and an outsized negative impact to small operators. The Alliance would ask that as the Commission moves forward with this rulemaking, the Commission closely monitor the burden these rules will place on small operators and work with trade associations like the Alliance for additional feedback from operators.

The negative effects of the provisions discussed in these comments are not limited to smaller operators, marginal wells, and vertical drilling. Raising the cost structure to drill wells and bring more crude oil and natural gas production to market will lower those activities at rates commensurate with the cost increases. Simply put, fewer wells will be drilled, existing wells will be shut in, production will be lower, and the positive economic impacts of these activities will be lower.

The state, and its various producing regions will endure the negative economic impacts of absorbing the costs associated with adopting the rule as proposed. That means that statewide activity will be lower than it otherwise would, with the various impacts on employment, severance taxes, and property taxes implied by lower levels of exploration and production activity.

These impacts will not be incurred uniformly across the upstream oil and gas industry, however; the worst of that will be to smaller, private independent operators, and to the state's producing marginal well inventory.

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
Executive Vice President