09/14/2024

Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

Dear Commissioners:

I am writing to express my deep concern regarding the recent updates to the proposed revisions of Statewide Rule 8 published on August 15, 2024, by the Railroad Commission of Texas (RRC). Specifically, I am urging the Commission to reconsider the removal of critical environmental safeguards, such as construction, closure standards, groundwater monitoring, and liner requirements for authorized pits, which were present in the October 2023 draft. The elimination of these protections poses a significant threat to Texas's environment, groundwater resources, and public health.

As a landowner and a geologist, I fully understand the impact that these reserve pits have on our environment, soil, groundwater, and health. Texas relies heavily on groundwater, with over 60% of Texans depending on it for their primary drinking water supply. Contamination of these critical water resources can have long-lasting consequences.

The claim that implementing these protections would place an unbearable burden on smaller oil and gas companies is clearly disproven by Mr. Paul Dubois' statement that the cost for a liner would be approximately $0.50 per square foot. This modest cost is far from being prohibitive, and if a company cannot manage this expense, it raises serious questions about whether they should retain their right to operate at all—especially considering that the costs of an emergency response are significantly higher than $0.50 per square foot. No individual or company has the right to knowingly cause harm simply because they claim they can't afford to prevent it. If they can't afford to avoid damaging other people's property, the environment, our soil, or our groundwater, then they should not be operating in Texas. This responsibility for protection cannot be waived, and the standards in the October 2023 draft are already the bare minimum needed to protect our vital resources.

Groundwater Contamination – a Known Risk

In Texas, groundwater contamination from oil and gas reserve pits can impact several major aquifers. Here is a breakdown by aquifer:

1. Ogallala Aquifer:
   - **Location**: Primarily in the Panhandle region.
   - **Concerns**: The Ogallala is particularly susceptible to contamination due to its shallow depth and the use of unlined reserve pits in drilling operations. Leaks or improper waste management from reserve pits can lead to chemical contaminants, such as hydrocarbons, salts, and heavy metals, infiltrating the aquifer, which provides crucial water resources for agriculture and municipal use.

2. Edwards Aquifer:
   - **Location**: South-central Texas, including the San Antonio and Austin areas.
   - **Concerns**: The Edwards Aquifer is especially vulnerable because it is a karst aquifer, meaning it has highly permeable limestone that allows for rapid movement of contaminants. Contaminants from reserve pits, like drilling muds and production fluids, can quickly spread through the aquifer, impacting water quality for cities that rely on it as a major source of drinking water.

3. Carrizo-Wilcox Aquifer:
   - **Location**: Extends across East Texas, from the Rio Grande to Arkansas.
   - **Concerns**: Reserve pits in this region pose risks to the Carrizo-Wilcox Aquifer, which serves as a major source of drinking water. Contaminants like chlorides and volatile organic compounds (VOCs) can migrate from improperly managed reserve pits, impacting groundwater quality.

4. Trinity Aquifer:
   - **Location**: Central Texas, stretching north to the Dallas-Fort Worth area.
   - **Concerns**: The Trinity Aquifer is often at risk when reserve pits leak. Given the widespread use of groundwater from the Trinity for rural and suburban supplies, contamination by hydrocarbons, salts, or other chemicals could have significant health impacts.

5. Gulf Coast Aquifer:
    - **Location:** Extends along the Gulf Coast, from the Texas-Mexico border up through East Texas.
    - **Concerns:** The Gulf Coast Aquifer is particularly susceptible to saltwater contamination due to the high chloride content of oil and gas waste. Improperly lined or abandoned reserve pits near drilling sites can introduce saline waters and other pollutants into this aquifer, jeopardizing its use for irrigation and municipal water supply.

6. Hueco-Mesilla Bolson Aquifer:
    - **Location:** Far West Texas, primarily around El Paso.
    - **Concerns:** This aquifer is already under stress due to limited recharge and high demand. Contaminants from reserve pits, such as heavy metals and hydrocarbons, can severely affect water quality in an area where water is scarce.

Summary of Contaminants

The primary contaminants associated with reserve pits include:

- **Salts (Chlorides):** High salinity levels can make groundwater unsuitable for drinking and irrigation.
- **Hydrocarbons:** Leakage can introduce benzene, toluene, ethylbenzene, and xylene (BTEX compounds), which are harmful to health.
- **Heavy Metals:** Contaminants like lead, arsenic, and cadmium can leach into aquifers from reserve pits.
- **Drilling Additives:** Chemical additives used in the drilling process can pose additional risks.

Properly managing reserve pits and ensuring they are lined and regulated to prevent seepage is critical to safeguarding these aquifers from contamination.

Impacts on Public Health and Landowner Rights

Unregulated oil and gas waste has long been recognized as a source of toxic pollutants. The Environmental Protection Agency (EPA) found that oilfield reserve pits can contain dangerous levels of heavy metals, volatile organic compounds (VOCs), and radioactive materials as seen above. The release of these pollutants into local environments—whether through unlined pits or unmonitored waste disposal—poses a grave risk to nearby communities. Groundwater contamination from these substances can lead to widespread public health concerns, particularly in rural areas where private wells may serve as the primary source of water.

In addition to the public health concerns, the August 2024 revisions also disregard the rights of Texas landowners. Many landowners rely on groundwater for agricultural and personal use, and any contamination from nearby oil and gas operations can directly impact their livelihood and property values. Furthermore, broader exemptions for operators, who now face fewer environmental responsibilities under the new rule, disproportionately shift the burden of risk onto landowners and communities.

Legislative and Industry Recommendations Overlooked

Statewide Rule 8 has historically played a pivotal role in maintaining Texas's leadership in energy production by balancing industry growth with environmental protection. The October 2023 draft rule, which proposed enhanced protections for groundwater and stricter standards for reserve pits, was crafted with input from a diverse group of stakeholders, including industry leaders and environmental experts. These stakeholders advocated for the implementation of Best Management Practices (BMPs), which would have provided a consistent and protective framework for waste management in Texas.

However, the August 2024 revisions disregard many of these BMPs, which were designed to safeguard both the environment and the long-term sustainability of the oil and gas sector. In particular, the decision to remove all pit standards, including the registration, liner, and monitoring requirements, undermines years of progress made by industry leaders who have already adopted modern waste management practices. The Commission's decision to weaken these standards was primarily influenced by a small group of outlier companies that have lobbied for lenient regulations to reduce operational costs. This backward shift fails to reflect the level of care and responsibility already demonstrated by much of the industry.

Long-Term Economic and Environmental Costs

While the August 2024 revisions may reduce short-term operational costs for a select group of operators, the long-term costs of inadequate waste management are far greater. Unlined and unmonitored reserve pits can lead to expensive clean-up efforts and significant damage to local ecosystems. As documented by the U.S. Geological Survey and various environmental economists, the financial burden of remediation, as well as the public health costs associated with contaminated groundwater, far outweigh the initial investment in preventative measures.

Moreover, Texas's legacy as an energy leader is tied not only to its production capabilities but also to its commitment to responsible and sustainable practices. Weakening environmental protections erodes public trust in industry and jeopardizes the state's reputation as a responsible steward of its natural resources.

Proposed Changes

I urge the Commission to reinstate the protective standards outlined in the October 2023 draft of SWR 8. Specifically, I propose the following:

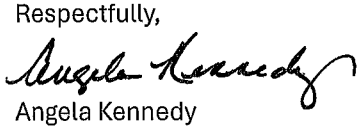
1. Reclassification:
   Reserve pits and mud circulation pits should be reclassified from "Schedule A Authorized Pits" to "Schedule B Authorized Pits," which have more stringent construction standards designed to better protect groundwater and soil.
2. Closure and Reasonable standards:
   Operators should be required to close pits using reasonable standards that ensure protection of the environment and groundwater. This should include groundwater monitoring for up to 5 years after pits have been closed.
3. Mandate Landowner Notification and Consent:
   Operators should be required to inform landowners and obtain their explicit consent before permanently burying waste on their property. Many landowners may be under the impression that these pits contain only drilling cuttings and mud, when in fact they often include trace amounts of hazardous substances such as benzene, arsenic, heavy metals, diesel, and high levels of chlorides. Once buried, these contaminants can inhibit vegetation regrowth, pose a serious risk to groundwater quality, and endanger livestock and wildlife. Since landowner permission is already required for landfarming, it is only logical that the same standard applies to the permanent burial of oil and gas waste.
4. Reinstate Groundwater Monitoring Requirements:
   Groundwater monitoring is essential to detect potential contamination early and prevent widespread damage to water supplies. This should be a non-negotiable component of any oil and gas waste management rule.
5. Require Liners and Construction Standards for Reserve Pits:
   Liner requirements and clear construction standards should be mandatory for all reserve pits to prevent toxic leachate from entering surrounding soils and aquifers.
6. Create Proportional Exemptions:
   The cost of providing safe operations is the responsibility of every operator, regardless of size. If exemptions must be made, then those exemptions for small operators should be specific and narrowly tailored, ensuring that only those with limited capacity to adhere to stringent standards are exempt, yet they must demonstrate need and progress towards implementation. Broad exemptions undermine the integrity of the rule.

Texas has the opportunity to set a precedent for responsible oil and gas production by ensuring that its waste management rules reflect modern environmental science and protect the state's invaluable water resources. I respectfully request that the RRC strengthen the current revisions to Statewide Rule 8 by incorporating the protections outlined above.

As a Texas landowner, I believe that implementing sensible regulations for authorized reserve pits is essential for safeguarding our groundwater and environment, while still enabling Texas' energy industry to continue leading the way. I respectfully urge you to consider strengthening the regulations as outlined above.

I know we all want what's best - for our state, our water, our health, our environment, and our legacy. Please send a clear message that you will protect these resources.

Respectfully,



Angela Kennedy
Geologist and Texas Landowner