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Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, Texas 78711-2967
Via Email: rulescoordinator@rrc.texas.gov

RE: Draft Rules for Formal Comment, 16 TAC 3.8 and Chapter 4, Subchapters A and B

Dear Rules Coordinator,

The Texas Independent Producers and Royalty Owners Association (TIPRO) is a trade association representing the interests of nearly 3,000 producers and royalty owners. Collectively, our members produce approximately 90 percent of the oil and natural gas in Texas and own mineral interests in millions of acres across the state.

First, TIPRO would like to acknowledge that the Railroad Commission of Texas (the Commission) has put a significant amount of work into developing the proposed changes to current 3.8 that will make up Chapter 4, Subchapters A and B. We greatly appreciate the many discussions the agency has had with industry, landowners and other stakeholders who will be impacted by this rulemaking and for adopting changes that will both protect the environment and important contributions made by the Texas oil and natural gas industry from an economic and energy security perspective.

There are several remaining concerns and recommendations that have been expressed by our members for your review and consideration. On behalf of TIPRO, please find below our comments regarding the Chapter 4, Subchapter A proposal. We have limited our comments to Subchapter A changes as Subchapter B has little impact on our members and their current operations.

Preamble – *Application of New Requirements to Existing Facilities*

Because of the significant changes made in this proposal, the Commission should clarify that new requirements do not retroactively apply to existing closed pits at the effective date of the rule.

4.107 – *Penalties*

Penalty tables should include a good faith effort provision similar to the weatherization penalty tables in 3.66, Weather Emergency Preparedness Standards.

4.109(a) – *Exceptions*

It is not clear that the exception provision applies to authorized operations.

The Commission should add "operator" to the language to clarify that exceptions are available for all provisions of the rule including authorized pits. The current language of "applicant or permittee" implies applicability is limited to permitted activities, not authorized activities.

4.110(21) – *Definition of Commercial Facility*

The definition for Commercial Facility is vague and could cause a reduction in produced water recycling if such operations are considered commercial.

If a parent company uses subsidiaries for the management of water, that subsidiary's P-5 Organization Report and facility permits would be in the name of the subsidiary. In that case, the current definition would fail to tie the subsidiary to the parent company or any sister companies and the facilities would be considered commercial.

The Commission should consider utilizing one of the below definitions:

Option 1—A facility permitted under this chapter, whose operator receives compensation from third parties for the management of oil and gas wastes, and whose primary business purpose is to provide such services for compensation. In this paragraph, a third party does not include an entity that wholly owns or operates, or is affiliated with the owner or operators, of the facility permitted under this chapter.

Option 2—A facility permitted under Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation. A commercial facility does not include a facility that accepts waste only from facilities owned or effectively controlled by the same person (From 30 TAC 331.2 Definition 30); and who is operating in accordance with SWR 3.1 Organization Reports, SWR 3.78 Fees and Financial Security, and 4.115(b) of this section.

4.110(42) – *Definition of Fresh Water*

A straight-forward, simple definition would provide clarity and reduce regulatory requirements.

The Commission should adjust this definition to the following:

"The surface or subsurface water, available for domestic or agricultural use, containing less than 3,000 milligrams per liter of total dissolved solids."

4.110(77) – *Definition of Public Area*

The proposed definition of Public Area is the same definition used in 3.36, Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas. 3.36 offers additional protection when H2S conditions are within certain distances to a public area and should govern safety concerns associated with hydrogen sulfide operations in relation to public areas.

For that reason, the Commission should omit public road, park and "other similar area that can expect to be populated" from this definition and instead reference 3.36.

4.113(c)(1) – *Compliance from Authorized Pits Constructed under 3.8*

The language in 4.113 (c)(1) should not require an operator to perform a site assessment on an authorized pit without cause to demonstrate pollution is not occurring.

The Commission should adjust this language to state the following:

"Authorized pits not in compliance with applicable rules under 16 TAC 3 shall be brought into compliance with or closed according to this division."

4.113(e) – *Registration of Authorized Pits*

There are thousands of pits used every year for workovers and plugging that will have to be registered under this rule. These pits are very small volume and very short-term use pits. Neither industry nor the RRC District Offices are manned to handle the large load of paperwork that will come along with registering these pits. The only pits that should be registered under this section should be large volume or longer use pits; i.e., reserve pits, produced water recycle pits, makeup water pits.

The Commission should include language specifically excluding workover and plugging type pits from registration.

4.113(e)(5) – *Use of Schedule A Pits for Multiple Purposes*

If conversion of authorized pits from one type to another requires the 30-day dewater and 120-day backfill requirements under 4.114(3)(A)(iii), an operator's ability to co-utilize a reserve pit as a completion pit would be eliminated.

Because the contents of reserve pits and completions pits does not differ significantly as far as waste characterization or risk level, the Commission should adjust the language to allow for closure requirements specified under 4.114(3)(A)(i) or (ii) based on chloride concentration for these pits.

4.114 – *Schedule A Authorized Pits; Add Makeup Water Pits*

Industry sources water from brackish or saline groundwater aquifers to reduce use of fresh water. To do so, industry needs to store water that is well above 3,000 mg/l and prohibited from storage in fresh makeup water pits per the current draft. These pits typically contain brackish and saline water sources or blended water sources.

The Commission should create an additional type of Schedule A pit, referred to as a Makeup Water Pit. Makeup Water Pits would be authorized to contain surface or subsurface waters with total dissolved solids exceeding 3,000 mg/l. A Makeup Water Pit could be defined as:

"A pit used in conjunction with a drilling rig during drilling, completion, recomplete operation, or remedial well work for the storage of non-fresh water exceeding 3,000 mg/l used to make up drilling fluid or completion fluid."

Makeup Water Pits should be included in regulations under 4.114(1)(F), (2)(B), (3)(A), (3)(A)(iv).

4.114(3) – *Closure of Fresh Makeup Water Pits*

If water in a Fresh Makeup Water Pit would not cause any concern for contamination of groundwater, there is nothing gained by requiring a fresh makeup water pit to be closed. In addition to costs to an Operator, landowners become frustrated that a pit has to be closed and rebuilt.

The Commission should provide an exemption from closure standards if an operator of a Fresh Makeup Water Pit can present data that shows local groundwater quality remains consistent over the life of the pit and total dissolved solids (TDS) levels do not exceed those consistent with groundwater in the area. Specifically, the Commission should consider implementing the below:

"(6) A lined authorized fresh makeup water pit may continue operating beyond the closure timelines set out by this division, subject to the following:

(A) such fresh makeup water pit is otherwise designed, constructed, and maintained to prevent the migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water during the extended life of the pit, including a liner system for Schedule A Pits, as required by 4.114 (2) of this title.

(B) the operator of such qualifying fresh makeup water pit shall submit to the District Office a copy of the surface use agreement or other proof of lease or contractual authorization for the continued use of such pit.

(C) the operator of such qualifying fresh makeup water pit shall submit annual reports of local groundwater quality and an annual lab water quality analysis of pit contents to the District Office for the duration of extended pit use.

(D) Provided that the following criteria are met, no further action will be required to continue qualifying fresh makeup water pit operations:

(i) Area groundwater total dissolved solids (TDS) levels remain within 20% of originally sampled values.

(ii) Pit content TDS levels do not exceed 5,000 parts per million (ppm).

(iii) In the event that the above limits are exceeded, the operator shall have 180 days to either (a) re-test and submit to the District Office test results within acceptable range; or (b) inform the District Office of its intent to close the pit according to this division and complete such closure no later than 180 days after informing the District Office of such decision."

This same closure exception should be provided to Fresh Makeup Water Pits as both pits are typically used for long lengths of time and their contents are closely managed.

4.115(b) – *Financial Security Requirements for Schedule B, Produced Water Recycling Pits*

Considering the difficulty of obtaining bonding for industry operations, an option for self-insurance should be included as an option for financial security requirements required for Produced Water Recycling Pits. The Commission could consider the following language:

"The owner or operator may demonstrate financial responsibility to the Commission through self-insurance or corporate guarantee 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 Global Ratings, AAA, AA, A, or BAA as issued by Moody's Ratings or AAA, AA, A or BBB as issued by Fitch Ratings. The owner or operator must submit a report of its bond rating upon pit registration."

Secondly, it is not uncommon for companies to have more than one operating entity in the state of Texas. For this reason, the Commission should include a parent company bonding provision to avoid acquiring multiple financial instruments for additional entities.

Additionally, some operators prefer securing a max blanket bond to simplify their bonding exercise. Allowing a parent company bonding framework would provide those operators an opportunity to secure a max blanket bond that would cover all operating entities. Colorado has a framework that could be considered for this request and the Commission could consider the below general language:

"Consolidation of Related Operators: Where a registered Operator owns, holds, or controls one or more other registered Operators, that parent company Operator and its subsidiary Operators may be consolidated, at their discretion, for purposes of determining financial security requirements, provided the parent Operator guarantees all obligations for itself and the consolidated subsidiary entities. Consolidation under this Rule will include all parent Operator's subsidiary Operators."

For P-5 bonding, we submit a bond with an RRC form. The RRC should create a Produced Water Recycling pit form to allow for entity consolidation.
Lastly, Produced Water Recycling pits should be exempt from section (3) – (5) if the pit is located on an existing Commission designated lease, pooled unit, or drilling unit associated with a Commission issued drilling permit.

4.115(b)(4) – *Financial Security Requirements for Transfer of Schedule B, Produced Water Recycling Pits*

The proposed rules do not address requirements associated with transfer to a new operator for Schedule B pits which require financial assurance.

The Commission should consider adding the following language under this section:

"(A) The new operator of an existing produced water recycling pit must,
(i) file notice with the Commission 30-days in advance of the effective date of transfer; and
(ii) submit the required financial assurance by the date the transfer is effective."

4.115(e)(4) – *Siting for Produced Water Recycling Pits Within 300 Feet of Any Domestic Or Irrigation Water Well, Other Than…*

There may be water wells that are drilled for the purposes of industrial sources. Considering this, exception language should allow for siting within 300 feet of that source.

The Commission should expand this language to state "… other than a well that supplies water for drilling or workover operations, or any other process for which the pit is authorized."

4.115(e)(6) –*Siting for Produced Water Recycling Pits Within 500 Feet of a Public Area*

As mentioned in the above comments, the proposed definition of Public Area is the same definition used in 3.36, Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas. 3.36 offers additional protection when H2S conditions are within certain distances to a public area. Any H2S concerns should point to 3.36 or be addressed explicitly within the rule.

For that reason, the Commission should omit the public area siting provision and simply reference 3.36 requirements or outline specific protections for H2S conditions.

4.115(i)(3)(B) and 4.115(j)(2)(C) – *Closure Requirements for Produced Water Recycling Pits*

There will be Produced Water Recycling pits in operation when this rule is put into effect with no opportunity to determine constituent concentrations in background soil before or during pit construction to close those pits.

The Commission should allow operators to follow a similar soil sampling protocol to determine background concentrations to close existing pits. Soil conditions near the pits should suffice for determining background concentrations at closure.

4.190(b)(1)(D) – *Oil and Gas Waste Characterization and Documentation; Profile Form*

Waste quantities are documented on location-specific waste manifests, rather than waste profile forms. Therefore, the Commission should remove (D) "the estimated quantity of the waste" from the waste profile form requirements. The volume of waste is documented on a waste manifest (see 4.191 (b)(6), "type and volume of oil and gas waste transported."

4.190(b)(2) – *Oil and Gas Waste Characterization and Documentation; Remove TCEQ Regulated Wastes*

Industry is appreciative of standard waste profiles for common types of oil and gas wastes but respectively requests the Commission remove domestic septage and rubbish from 4.190(b)(2) as these waste streams are regulated by TCEQ; Domestic Septage (30 TAC 312); Rubbish (30 TAC 330).

4.191(b)(5), (8) and (9) – *Electronic Manifest System Tracking; Allow for Electronic Signatures*

The Commission should clarify that the three signatures required under subsection (b) may be electronic signatures.

4.191 (b)(8) – *Waste Manifest Generator Signature*

A waste generator signature is not required on a waste manifest under the current Rule §3.8(g)(1) Record Keeping. In our industry today, the majority of produced water loads transported by truck to a receiver (disposal/recycler) occur at un-staffed oil and gas production locations. Thousands of produced water loads are picked up and transported to a receiver (disposal/recycler) each day in Texas; therefore, requiring a generator signature on a waste manifest will be an overly burdensome challenge for Industry at un-staffed locations. Additionally, requiring a generator signature on these manifests provides little value to the Commission relative to the standard recordkeeping practice that is in effect under the existing Rule 3.8(g)(1) today. We recommend the Commission consider reducing the waste manifest requirements for waste being transported by truck to a receiver (disposal/recycler).

> We recommend removing 4.191(b)(8) from the Waste Manifest requirement section in the draft Rule in its entirety.

~~(8) name and signature of generator~~

Alternatively, we would recommend the Commission consider including language that when a waste generator hires a hauler to transport produced water for disposal/recycling, a contractual agreement satisfies the requirements of a generator signature under 4.191(b)(8), such as "(8) name and signature of generator. The generator signature is not required on a waste manifest when the generator has entered into a contractual agreement with a transporter to haul the waste." The requirement of a generator signature at un-staffed locations potentially puts indirect cost on Industry that has not been evaluated under this rulemaking.

At bare minimum, these changes should be made for waste manifests documenting produced water transportation, as this waste stream is the overwhelming majority of waste being moved from unstaffed oil and gas locations within our state, and represents a lower risk than hazardous oil and gas waste or other special waste streams, such as oil and gas NORM waste.

4.191(d) – *Requirements for Movement of Waste by Pipeline*

The Commission should clarify if this section is applicable to movement of recycled produced water which under the definition of Treated Fluid (4.110 (93)) is not considered a waste.

In addition, Industry recommends that RRC allow "documentation" as a means of tracking oil and gas waste moved by pipeline. Heritage oil and gas wells and central tank batteries are not all equipped with metering technology but have a means of documenting the oil and gas waste volumes moved by pipeline. Requiring metering would be a cost impact to Industry that would need to be considered under this rule making. Proposed changes to the draft text are below:

(d) Oil and gas waste that is moved by pipeline is not required to be accompanied by a manifest but an operator of an oil and gas waste pipeline system is required to:

(1) meter or document the fluid flow for mass balance into and out of the system;

(2) maintain the documentation or metering records for three years; and

(3) provide the records to the Commission upon request.

TIPRO greatly appreciates the work of the Commission in addressing these important issues. If you should have any questions, I can be reached directly at 512-477-4452, or via email at elonganecker@tipro.org. Thank you.

Sincerely,

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cc: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright