TEXAS OIL & GAS ASSOCIATION | SINCE 1919

Alan L. Smith
Chairman

D. Todd Staples
President

October 15, 2024

Rules Coordinator
Office of General Counsel
Railroad Commission of Texas

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 Oil & Gas Association (TXOGA) submits the following comments regarding Texas Railroad Commission's proposed changes to 16 TAC §3.8, §3.57 and 16 TAC Chapter 4.

TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas' crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2023, the Texas oil and natural gas industry supported over 480,000 direct jobs and paid $26.3 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

A significant concern brought up by many of TXOGA's member companies is the definition of fresh makeup water pits. While industry supports the continued authorized use of fresh makeup water pits, industry is working to reduce fresh water use by sourcing water from brackish or saline groundwater aquifers. As written, the draft 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. Requiring operators to store this water in a permitted pit would discourage the use of alternative water sources. In addition, the draft Rule does not establish a maximum TDS threshold for other Schedule A authorized pits (e.g. reserve pits, mud circulation pits, completion/workover pits, fresh mining water pits); therefore, it appears that the storage of surface or subsurface water with TDS exceeding 3,000 mg/l in a makeup water pit would not present any greater risk to the environment or public than the use of other Schedule A authorized pits. To address this significant disincentive to transition away from fresh water supplies, TXOGA proposes both modifications to the freshwater definition and a new Schedule A pit called "makeup water pit". These proposed changes and other recommendations are covered further in this letter.

Subchapter A Oil and gas Waste Management

Division 1 General

- **4.103 Prohibited Waste Management Methods**
  Recommend amending paragraph to add (a)(4) to authorize without permit the temporary storage of oil and gas waste by the generator at a nearby facility owned or operated by the generator. Pipelines produce RRC regulated waste during maintenance, mechanical integrity, and construction activities. Under current regulations, this waste must be left on the Right of Way (ROW) and creates a safety hazard as the waste awaits characterization. There is no feasible way to secure the waste on the ROW. The inclusion of temporary storage of oil and gas waste generated on a third-party pipeline right of way to be transported and temporarily stored at the closest property owned by the generator will mitigate this hazard.

  > (a)(4) Pipeline generated waste on the Right of Way can be moved to the nearest property owned or operated by the generator.

- **4.109(a) Exceptions**
  Recommend clarifying the rule to ensure it is clear that the exception provision applies to all authorized operations as well. Adding "operator" to the language to clarify that exceptions are available for all provisions of the rule including authorized pits is recommended. The current language of "applicant or permittee" implies applicability limited to permitted activities, not authorized activities.

  > An operator, applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request…

Division 2 Definitions

- **100-year flood plain (3)** – For areas where maps do not exist, we recommend clarification that the requirements related to the 100-year flood plain will not apply.
- **Action leakage rate (4)** - Amend the definition to clarify that a leak is not absolute but one indication of a possible failure.

  > Action leakage rate - The calculated volume of waste liquid that has bypassed the primary liner into the leak detection layer at a rate of gallons per acre per day that if exceeded indicates a possible failure of the primary liner.

- **Commercial Facility (22)** – The definition is too vague and could result in a reduction of operator controlled/owned produced water recycling if such operations are deemed commercial. A parent company may use subsidiaries to focus on water management aspects of its business. The P-5 Organization Report and facility permits would be in the name of the subsidiary. The definition of "commercial facility" does not clearly tie the subsidiary to the parent company or any sister companies.
  There is uncertainty in when the RRC will deem a facility as commercial. In addition to the proposals addressed in the comments below under 4.115 the proposed amendments could be a step back from the Commission's progress in adopting regulations that encourage

water reuse and recycling. We suggest utilizing the modified definition provided by TXOGA during the 2023 informal comment period.

> Commercial facility - 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.

- **Contact stormwater (25)** – The definition as written would include stormwater from new facilities not yet commissioned. Amend definition as follows:

  > Contact stormwater – Stormwater that has come into contact with any amount of oil and gas wastes or areas that ~~are permitted to~~ contain or have contained oil and gas wastes.,~~ regardless of whether oil and gas waste is currently being contained in the area.~~

- **Drilling Fluids (New Definition)**
  The term 'Drilling fluids' is referenced in many of the definitions in 4.110 and within numerous other sections of the proposed rule but is not defined in either the proposed rule language or otherwise in existing RRC rule. Suggest including a definition in 4.110 that clarifies the meaning of drilling fluids specifically as related to Subchapter A, such as:

  > Drilling fluid – All non-hazardous, low-chloride liquids and drilling mud associated with drilling activities for oil and gas exploration, development, and production activities.

- **Drill Cuttings (36)** - Amend the definition to remove "oil and gas well" and change "wellbore" to drill boring. Drill cuttings are produced from a variety of TRRC regulated activity, including but not limited to creation of new underground storage caverns and horizontal drilling for new pipelines. The definition as written limits the scope to only the process of drilling oil and gas wells.

  > Drill cuttings - Bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling ~~oil and gas well~~ and lifted to the surface by means of circulation of drilling mud. The term includes any associated sand, silt, drilling fluid, spent completion fluid, workover fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the drill boring. ~~wellbore~~.

- **Fresh water (42)** – The definition adds an extra research step for possible water quality data within a one-mile radius, with little impact added to the requirements. A straight-forward simple definition would provide the greatest clarity to separate regulatory requirements.
  - "The ~~best quality of the~~ surface or subsurface water, ~~at any individual operational location~~, available for domestic or agricultural use, ~~within a one-mile radius of the location, or~~ containing less than 3,000 milligrams per liter of total dissolved solids, ~~whichever is less.~~"

- **Land Application (51) -** Amend the definition to remove produced water and add Water-based drilling fluids. Water-based drilling fluids is currently referenced in the definition of

Landfarming. These fluids are non-hazardous and better managed by land application. These fluids will penetrate the soil, rendering tilling or mixing into the soil by land farming unnecessary and redundant.

There are other Railroad Commission regulated activities that would meet the criteria of being a low-chloride water fluid that is not a "produced water", such as de-watering of hydro-excavated soils or dewatered drilling mud. Therefore, replacing "produced water" with "water based drilling fluid" will still maintain the intent of the definition without limiting the scope to only well-sites.

The definition of Land Application should not include the reference to the Authorized Disposal Method Section, but instead define the practice of Land Application. Authorized activity should be addressed in the regulatory text, not the definition.

> Land Application- An authorized or permitted waste management practice in which effluent ~~that does not meet the standards found in the Figure in 4.111(a) of this title (relating to Authorized Disposal Methods of Certain Wastes)~~ ~~and~~ that is a low-chloride ~~produced water~~ water based drilling~~-~~fluids or produced water may be applied to a controlled area of the ground surface via sprinkler or other irrigation system without tilling or mixing with the native soils.

- **Land Farming (52) -** Remove "water-based drilling fluids" and replace with "water-based drill cuttings". These fluids should be included in the definition of land application. Land application of these fluids will penetrate into the soil. Therefore, tilling or mixing into the soil by land farming is not necessary. The addition of water based drill cuttings allows the solids to be managed under this definition. The separation of these terms allows for the fluids to be managed by land application and the solids to be managed under Landfarming.

> Landfarming - An authorized or permitted waste management practice in which low chloride, water-based~~-drilling fluids-~~drill cuttings, or oil and gas wastes are mixed with, or tilled into, the native soils in such a manner that the waste will not migrate from the authorized or permitted landfarm cell.

- **Groundwater (47)** The definition is too broad and could unintentionally include produced water as well as perched water tables (common in South Texas). Propose limiting the definition to subsurface water "in a confined or unconfined aquifer."
- **Non-contact stormwater (64) –** End sentence after wastes and delete the rest to the sentence.

> Non-contact stormwater – Stormwater that, by design or direction, has not come into contact with any areas containing oil or gas wastes. ~~Or any areas permitted to contain oil and gases wastes.~~

- **Operator (68)** - Recommend the following change to ensure the discussion is limited to closure and what bonding will cover, specifically in scenarios where a third party operates a facility on an operator's behalf

> Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the Commission's rules and regulations in any acts subject to the Commission's jurisdiction ~~including the permitting, physical operation, closure, and post-closure~~

~~activities of a facility regulated under this chapter, or sch person's authorized representative~~.

- **Public Area (77)** – The preamble states (page 7, Line 6) that this definition is the same as that in SWR 3.36 (relating to Oil, Gas, or Geothermal Resource Operations in Hydrogen Sulfide Areas). SWR 3.36 should govern safety concerns associated with hydrogen sulfide operations in relation to public roads. Recommend 'public road' be removed from the definition.

  Public Area - A dwelling, place of business, church, school, hospital, school bus stop, government building, ~~a public road~~, all or any portion of a park, city, town, village, or other similar area that can expect to be populated.

  Alternately, if the RRC elects not to remove public road from the definition, then it should be defined and general location requirements for produced water recycling pits should not have a 500-foot setback:

  Public Road - Any federal, state, county, or municipal street or road owned or maintained for public access or use.

- **Makeup Water Pit (New Definition)**

  Makeup Water Pit – A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of non-fresh water used to make up drilling fluid or completion fluid.

- **Recyclable Product (81)** - The new pilot program section references the term "recyclable product". For clarity, we recommend the following change to that definition.

  Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by ~~a~~ the Commission ~~permit~~ and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

Division 3 Operations Authorize by Rule

- **4.111(a) Authorized Disposal Methods for Certain Wastes -** Amend paragraph to allow for water based drilling fluids to be land applied without permit. Low-chloride water and water based drill cuttings are non-hazardous and do not pose a risk to the environment.

  Water condensate, low-chloride water and water based drilling fluids. A person may, without permit, dispose of by land, low chloride fluids generated by Railroad Commission regulated activities…

- **4.111(c) Authorized Disposal Methods for Certain Wastes -** Amend paragraph to remove "drilling fluid" and allow for disposal via landfarming at the site, not limited to the well site

  Low chloride water-based ~~drilling fluid~~ drill cuttings. A person may, without permit, dispose of the following oil and gas wastes by landfarming~~: water based drilling fluids with a chloride concentration of 3,000 mg/liter or less~~; drill cuttings, sand, and silts obtained while using a water-based drilling fluids with a chloride

concentration of 3,000 mg/liter or less; and wash water used for drill pipe and other equipment at the ~~well~~ site….

- **4.111(c)(10) Authorized Disposal Methods for Certain Wastes**
  Amend paragraph to take background levels into account. As written, the soil would have to have a petroleum hydrocarbon content of one percent or less by weight. This does not take into account soil that is above 1% petroleum hydrocarbon prior to the TRRC regulated activity. Background readings should be taken into account when determining the impact of the TRRC regulated activity.

  Immediately after landfarming the waste, the waste-soil mixture has a total petroleum hydrocarbon content of one percent or less by weight <u>above background</u>…
- **Section 4.112 (a) (1)** "**Treated fluid is recycled for use in drilling operations, completion operations, ….”**
  The definition of treated fluids in Section 4.110 suggests that waste must be treated to remove impurities such that the fluid can be recycled. What if the fluid does not need to be treated to be recycled? We recommend removing the treated fluid wording here in the event that the fluids are of a quality that does not require any treatment prior to the recycling in the allowed oil and gas activities. As the rule is currently written it could unintentionally limit the application of produced water recycling programs if all water must be treated.

  ~~Treated~~ Fluid <u>oil and gas waste</u> is recycled for use in drilling operations, completion operations, …
- **4.113 Authorized Pits** - For pit registration, will operators be able to register multiple wells/pads for the pits? If not, we recommend having the option of pit registration be connected to drilling permit submittal to simplify reporting but not mandatory since drilling permits may be approved well in advance of the final pad/pit location layout. We believe that clarification is also needed on reclassification of pits from Reserve pit to Completion/Workover pits and what the registration process would entail.
- **4.113(c)(1)** There is concern that language in this section could trigger a requirement for an operator to perform a site assessment on any authorized pit without cause to demonstrate pollution is not occurring, as opposed to action required under current rules to address alleged/identified pollution. This issue is also discussed in the preamble on page 7, line 31.

  Authorized pits ~~that cause pollution~~ not in compliance with application rules under 16 TAC Chapter 3 shall be brought into compliance with or closed according to this division.
- **4.113(d)** We recommend establishing reportable quantity for spills from authorized pits. Recommend referencing existing regulation, Chapter 3, SWR 91(e)(1)
- **4.113(e)(5) Use of Schedule A pits for multiple purposes –** We recommend the following to enable operators to utilize reserve pits for completion operations. Operators will gain efficiencies with the ability to utilize one single pit for multiple different operations which is recognized by the language in section (5) below. However, if doing so then kicks in the 30-day dewater and 120-day backfill requirements under 4.114(3)(iii), this essentially

eliminates an operator's ability to co-utilize a reserve pit as a completion pit because the pit contents need to be worked and dried out to properly manage the waste. The material placed in reserve pits and completions pits does not differ significantly from a waste characterization or risk level standpoint. Furthermore, this also reduces surface development/environmental impact and damages adjacent to the well pad, which in most cases, are owned by private landowners.

4.113(e)(5)(A) If a reserve pit is converted to a workover/completion pit, then the closure requirements shall follow those specified under section 4.114 (3)(A)(i) or (ii) based on chloride concentration.

- **4.114 Schedule A Authorized Pits**

  Makeup water pits are not always tied to a single well or well pad, so their closure schedule should not be tied to cessation of drilling activity.
  - (1) Schedule A Pit Contents – Add new section (F)

    (F) Makeup water pits. A person shall not deposit or cause to be deposited into a makeup water pit any oil and gas wastes or any oil field fluid other than, fresh water, brackish water, saline water, recycled produced water, or blended sources of water.
  - (2) Schedule A Pit Construction - To minimize potential for migration of materials in the pit into adjacent groundwater, we recommend adding Makeup Water Pits to the list of pits requiring a liner in areas where groundwater is present within 50 feet of the bottom of the pits.

    (B) Reserve pits, mud circulation pits, and completion/workover pits, and makeup water pits located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined.
  - (3) Schedule A Pit Closure

    (A) A person who maintains or uses a reserve pit, mud circulation pit, makeup water pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.

    (i) Reserve pits and mud circulation pits, and makeup water pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled and compacted within one year of cessation of drilling operations.

    (ii) Reserve pits, mud circulation pits, and makeup water pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.
- **4.115 Schedule B Authorized Pits**
  - (**b) Financial security requirements** – Existing financial assurance associated with an active P-5 operator in good standing should be considered under certain circumstances.

    No additional bonding for the following under new section (b)(2)

(b) Financial security requirements.

(1) Pursuant to Natural Resources Code §91.109(a), the operator of a produced water recycling pit shall maintain a performance bond or other form of financial security conditioned that the operator will operate and close the produced water recycling pit in accordance with this subchapter.
(2) Produced water recycling pits are exempt from sections (3) – (5) under the following conditions.

(A) the pit is located on an existing Commission-designated lease, pooled unit, or drilling unit associated with a Commission-issued drilling permit; or

B) upon land leased or owned by the operator for the purposes of operation of a on-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs)

(3)~~(2)~~ For each produced water recycling pit not exempt under section 2 above, an operator shall file financial security in one of the following forms:

Renumber the following sections of this provision
(4)~~(3)~~
(5)~~(4)~~
(6)~~(5)~~

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

  Proposal: 4.115 (b)(4) The operator shall submit required financial security at the time the operator registers the produced water recycling pit.
  (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.

- **(e) General location requirements for produced water recycling pits.** "Public area" is proposed to be defined as a dwelling, place of business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can expect to be populated, which is the same definition that appears in 3.36 Any H2S concerns, should point to 3.36 or be addressed explicitly within the rule.
  The setback requirement from a public road is more restrictive than that under Subchapter B for commercial operations and may limit available locations for industry to continue efforts to increase produced water recycling.

See comments above related to definition of "Public" area under 4.110(77). Earlier comments recommended removing public road from the definition of public area. If that recommendation is not accepted by the RRC, then recommend that section 4.115(e)(6) Proximity to a public area be changed as follows:

(e)(6) within 500 feet of a public area, <u>except a public road</u>.

- **(e)(4)** Pits are not allowed within 300' of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized.

  other than a well that supplies water for drilling or workover operations, <u>or any other process</u> for which the pit is authorized.

  There may be water wells that are drilled for the purposes of industrial sources, so this exception language should be written in a way that allows siting within 300' of that source.
- **(g) General operating requirements** The purpose of recycling pits generally includes some form of treatment which may include separation of waste that can yield small quantities of skim oil, this skim is frequently removed but does not appear currently stated in (g)(6). It would be helpful to clarify this in the preamble.
- **(g)(4) The leak detection system shall be monitored daily…**
  Recommend this be decreased to monthly.
- **(g)(5) Free oil shall not be allowed to accumulate on or in a produced water recycling pit…**
  Clarification and further definition of free oil is needed. Recommend including language which would allow operators to respond and remedy if discovered.

  Upon discovery operator respond within 72 hours.

- **4.115 Schedule B Authorized Pits and §4.131 Monitoring (for Permitted Waste Management Operations)**. The groundwater monitoring provisions in 4.115 and 4.131 do not provide sufficient clarity with respect to how an operator is intended to identify potential pollution via groundwater monitoring, nor how an operator or the RRC is intended to identify the source or responsibility for such potential pollution, nor under what circumstances an operator would be required to remediate, monitor, or otherwise address identified pollution.
  - Suggest including clarifying language to define what constitutes 'potential pollution', how background concentrations of groundwater constituents are to be established, and how provenance of potential pollution is to be established such that an operator would be required to implement corrective actions.
    OR
  - One way to clarify "potential pollution" could be to install a monitoring well before the pit is constructed or commercial facility begins operations to determine a baseline of what exists before operations begin. This could be installed directly downgradient of the pit/facility and monitored after establishing the baseline. Suggesting only one well downgradient and none upgradient would reduce some of the costs of monitoring.

Division 4 Requirements for All Permitted Waste Management Operations

- **4.124 (e)(3)(A) Requirements Applicable to All Permit Applications and Reports** - Amend paragraph to remove the requirement to use independent labs and certification by professional engineer. Some RRC regulated facilities may have onsite NELAP certified labs. This certification is rigorous process and ensures the integrity of the lab and sample protocol. The current requirement to utilize an independent NELAP certified laboratory provides no additional benefit and cause unnecessary delays.
  Additionally, the requirement for a professional engineer to certify a NELAP certified lab report is overly burdensome and provides no benefit. The physical sampling is performed in the field by a technician and the analysis performed by the certified lab. An engineer does not perform the sampling or conduct the analysis. Therefore, there is no value in their certification of the process. The sampling procedure and analysis are prescribed by the ASTM and 40 CFR Part 136.

  > All chemical laboratory analyses shall be conducted using appropriate EPA methods or standard methods by an ~~independent~~ National Environmental Laboratory Accreditation Program certified laboratory ~~neither owned nor operated by the permittee~~. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by ASTM ~~and certified by a professional engineer licensed in Texas~~

- **4.129(b)(1) Operation -** Add "unless otherwise allowed by this Chapter".
  Currently, the rule requires all oil and waste to be transported by a waste hauler with a Waste Hauler Permit number. Other subsections specify a waste hauler permit number is not applicable to inert waste.

  > The permittee shall only accept waste it is permitted to receive. The permittee shall only accept waste transported and delivered by a commission permitted waste hauler permitted pursuant to Division 10 of this subpart (relating to Requirements for Oil and Gas Transportation), <u>unless otherwise allowed by this Chapter.</u>

- **4.129(b)(4) –** Unauthorized releases reporting requirements appear to be in conflict with the spill rules in 3.91. Recommend aligning spill reporting requirements with requirements in 3.91.
- **4.132 Closure** - The Commission should allow operators to follow a similar soil sampling protocol to determine background concentrations to close existing pits. There will be numerous pits in operation when the rule is put into effect. Soil conditions near the pits should suffice for determining background concentrations at closure for these pits.

Division 6 Additional Requirements for Permitted Pits

- **4.152 (b)(3)(B) –** The requirement of the District Director inspecting the repair of the liner could cause delays in operations.

  Recommend that this be changed to a designee of the District Director not the District Director and an addition of a reasonable time for the inspection.

Division 10 Requirements for Oil and Gas Waste Transportation

- **4.190 Oil and Gas Waste Characterization and Documentation**
  It is our understanding that an operator can provide one general Water Characterization Form for multiple facilities that share the same waste stream or waste type. Suggest RRC clarify that in these rules.
- **4.190(b)(1)(B) Oil and Gas Waste Characterization and Documentation**
  A generator-assigned identifier (name and/or number) specific to the generated waste
  - Request the commission clarify the generator assigned identifier. Is this requesting the generator to issue their own profile numbers to their own waste or can we utilize the vendor profile number?
- **4.190(b)(1)(D) - Oil and Gas Waste Characterization and Documentation** - Waste quantities are documented on location-specific waste manifests, rather than waste profile forms; therefore, industry recommends removing (D) "the estimated quantity of the waste;" from the waste profile form requirements. The volume of waste is documented on an O&G Waste Manifest - 4.191 (b)(6) line 1 p. 119 – "type and volume of oil and gas waste transported;".
- **4.190(b)(2) - Oil and Gas Waste Characterization and Documentation** - Industry is appreciative of standard waste profiles for common types of oil and gas wastes but respectively requests the RRC to remove domestic septage and rubbish from the text in 4.190(b)(2) since these two waste streams are regulated by TCEQ.
  - Domestic septage is regulated by TCEQ Title 30, Part 1, Chapter 312, Subchapter A; Rule 312.1 (excerpt below).

    "This chapter establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge or biosolids generated during the treatment of domestic sewage in a treatment works, and for the final use or disposal of domestic septage."
  - Rubbish is regulated by TCEQ 30 TAC 330.3 (90) as Municipal Solid Waste as defined by the following: "(90) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.
- **4.191(a)(2)** allows for allows for the use of an electronic manifest system. Clarify in the rule that the three signatures required under subsection (b) may be electronic signatures.

- **4.191(b)(2) Oil and Gas Waste Manifests**
  Identity of the property or facility where the oil and gas waste was generated, using Commission-issued identifiers including:
  (B) lease name and Commission-assigned lease number;
  (C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and
    - Request the commission to clarify what identification midstream facilities should provide given that they are not associated with a lease.
    - Request the commission to clarify on the commission assigned identifier, will this be our EPA ID# or a newly issued commission ID# similar to the SWR# at TCEQ?
- **4.191(b)(4) Oil and Gas Waste Manifests**
  Identity of the facility to which the oil and gas waste is delivered including the identifier issued by the appropriate regulatory agency and detailed contact information for the facility;
    - Request the commission clarify what they mean by identifier (R9 permit number, EPAID#).
- **4.191 (b)(8) Electronic Waste Manifest System** 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. We 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. <u>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."</u> The requirement of a generator signature at un-staffed locations potentially puts indirect cost on Industry that has not been evaluated under this rulemaking.
- **4.191(d) Oil and Gas Waste moved by pipeline.**
    - This section records the metering of fluid flow for mass balance into and put of the system. Clarify if this section is applicable to movement of recycled produced water which under the definition of Treated fluid, Section 4.110 (93) is not considered a waste.
    - 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 <u>or document</u> the fluid flow for mass balance into and out of the system;

(2) maintain the <u>documentation or</u> metering records for three years; and

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

- **4.192 Special Waste Authorization -** Section should be removed. Although the memorandum of Understanding required approval from both TCEQ and RRC prior to disposal of waste at a TCEQ regulated facility, this requirement was removed by TCEQ and RRC in the past. Guidance documents from RRC require notification to the district office within 30 days after a shipment. TCEQ guidance (RG-003) addresses "Disposal of Special Wastes Associated with the Development of Oil, Gas, and Geothermal Resources" which list commonly disposed of oil and gas waste disposed of at TCEQ landfills. The approval process will result in long wait times. These wait times may pose a risk to human health and the environmental by allowing waste to accumulate onsite for long periods of time.
- **4.193 (b) Oil and Gas Waste Haulers -** Allow an exclusion from obtaining waste hauler permit for pipeline generated waste on the Right of Way be moved to the nearest facility owned or operated by the generator. This exclusion is needed to address the hauling of the waste to a facility for temporary storage as addressed in the proposed 4.103(a)(4).

  Pipeline generated waste on the Right of Way can be moved to the nearest property owned or operated by the generator.
- **4.195 Waste Originating Outside Texas**. The proposed rule language indicates that waste generated outside Texas and transported into Texas for management shall be accompanied by documentation. Suggest clarifying the methods of transportation that are subject to this requirement. Presumably the provisions apply only to trucked waste, but that should be explicitly stated. And if not, include clarification on expectations for how piped waste would be documented.

<u>Other Comments</u>

- Preamble language should clarify that these requirements do not retroactively apply to existing closed pits at the effective date of the rule.
- Penalty tables should include a good faith effort provision similar to the weatherization penalty tables in 3.66.

Subchapter B Commercial Recycling

- **4.208(c) Chemical Laboratory Analysis**
  This section calls for all chemical lab analysis to be performed using EPA methods or standard methods. There are some analytes that cannot be properly quantified using standard National Environmental Laboratory Accreditation Program (NELAP) or EPA methods in high TDS produced water waste, this requirement should be reconsidered in light of technical difficulties. It may be more appropriate to ensure that a NELAP certified lab perform the analysis as methodology exceptions may be necessary to quantify select analytes.

Thank you for the opportunity to provide comments. If you have any questions, please reach out to Tulsi Oberbeck at toberbeck@txoga.org.

Sincerely,

Tulsi Oberbeck
Vice President of Government and Regulatory Affairs
Texas Oil and Gas Association