CROWNQUEST
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Via email
Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
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RE: Comments on proposed amendments to 16 TAC §3.8 and various other rules in Chapter 3 and proposed new rules and amendments in 16 TAC Chapter 4

CrownQuest Operating appreciates the opportunity to comment on the proposed changes.

Executive Summary

CrownQuest appreciates the opportunity to comment on the Commission's proposed rules of the new Chapter 4 rules. The Commission's intention to clarify and improve the safety and prevention of pollution and waste management is laudable. Unfortunately, this rule suffers from many of the same issues as the draft rule last year. We do not think this can be surgically repaired and needs to be rewritten and reevaluated for the following reasons:

1 – This is a Major Environmental Rule that has hundreds of pages dedicated to existing oil and gas activities and should be treated as such.

2 – This rule ignores House Bill 3516's admonishment to promote recycling; all this rule does is make that harder and less likely to occur.

3 – The Commission relies on an overly broad standard to justify the proposed rule's existence. This standard is all-encompassing and gives the Commission carte blanche to justify any regulations and requirements without considering the costs or benefits. Furthermore, this standard is part of the proposed rulemaking and the Commission is using circular reasoning for the justification by citing this standard in the preamble's justification of these rules. The Commission should not adopt this standard, which promulgates rules significantly outside the industry and the Commission's current and prior practices and is not supported by State law.

4 – The Commission significantly understates the costs to operators and the Commission. It has not considered the ramifications this hundred-plus-page rule will have on operators. It also doesn't really attempt to quantify the benefit or how this will even protect the environment and from what.

5 – This rule will promulgate the creation of cottage industries to necessitate compliance with no real benefit to the public.

In this same rulemaking, the Commission has revised rule 3.70 by adding only the bare minimum federal text to classify pipelines from the recent PHISMA rule. This revision is necessary as a new federal rule was made, and the Commission did a laudable job of understanding what had to be done and the benefit that information would provide. The Commission was able to adapt to that hundreds-of-page federal rule by making a few changes and inserting only about five paragraphs into the existing rule. We encourage the Commission to take that same approach with Chapter 4. Rather than rewrite from scratch how the Commission regulates the oil and gas industry, instead balance preventing waste, protecting correlative rights, and protecting the environment.

Comments on the Preamble Discussion

Relating to the costs of this rule, the Commission states:
"There will, however, be a one-time cost of approximately $2 million for the Commission to create an online registration system for authorized pits. Other activities under the proposed rules, such as permitting and enforcing waste management activities, will be performed by existing personnel and within current budget constraints, resulting in no additional costs to the agency."

This statement by the Commission does not appear to be credible. For example, the Commission is taking over two weeks to review simple P5 renewals and six to nine months for permitting for existing pits. It is unreasonable for the Commission not to expect significant staff additions with a rule that borrows from a rule that takes over six months to review. If the Commission really expects not to add a significant number of staff, it should significantly reduce the amount of information requested and the types of pits registered. We fear that if a major rule like this gets enacted, the Commission can't provide the staff to process it as quickly as the industry needs. Then, the Commission goes back to the industry or taxpayers and requests more fees to hire more staff. This major rule has the potential to do that, and the Commission should put guardrails in place to ensure that it doesn't happen rather than simply assert it will not happen.

Relating to the reasons for writing this rule, the Commission states:

"However, these proposed new rules are generally consistent with current Commission practices, and the Commission finds that they are necessary to meet the existing "no pollution" standard incorporated into proposed new §4.101."

This stance is a circular justification and a dangerous regulatory stance to take. Adopting a "no pollution" standard without explaining what that means gives the Commission carte blanche to justify any standard it wishes, even if that standard only might prevent some pollution someday. Almost all environmental regulations acknowledge a zero standard is unrealistic. It is important to keep the cost-benefit of all new regulations in mind. The Commission identified the reason for this rule as "Expectations for environmental protection have evolved considerably over the past 40 years". Rule 8 has been highly successful in preventing environmental damage over the past 40 years, as comments on the original draft of this rule pointed out. The Commission should explain what specific risks they are addressing with these rules or at least what expectation of environmental protection this rule addresses so the regulated community has an opportunity to address the concerns and propose reasonable regulations. Most of this rule is about following processes; very little is about actual operating practices and structures. It is hard for the industry to adequately address the Commission's concerns when they don't explain them.

Relating to the benefits of this rule, the Commission states:

"…the public benefit will be having more specific standards for waste management and the prevention of pollution from waste associated with oil and gas exploration, production, and development. These standards will aid operators in eliminating or reducing potential sources of pollution and are consistent with industry practices."

More specific does not mean better. The Commission assumes that any new rule will create better results without taking the time to understand the impacts and likely behaviors this will drive. This rule is a fundamental change in the Commission's permit-by-rule approach. It will require a significant staff increase to handle the volume of applications and permit reviews the Commission has envisioned in this rule.

The uncertainty and complexity of these rules alone could cause massive backlogs in activity. The large pits can take months to build and fill. An unexpected two-month delay to completion could add millions of dollars to operators. This rule has so much complexity built into it that both staff and industry will struggle to keep everything straight.

When the Commission implemented the new P-5 process several years ago, it turned a simple form and financial security review into a long process that changes from year to year. This rule is significantly more complex and gives significantly more leeway to the Commission to reject or send back applications that change year over year. This rule rewrite is significantly more complex than the financial assurance rule the Commission changed. Also, this rule will likely change every aspect of how the industry and the Commission interact and how the Commission functionally regulates activity. This is a major environmental rule, not a minor update of operating practices. The complexity of the rule construction and internal references will require most operators to hire consultants to get permits and ensure they comply with the rules' text, making actual compliance and the protection of the environment more difficult.

The industry feedback has been about what can be done to stay out of Division B and modify Division A to where it is tolerable. This rulemaking is not a minor change to the industry that will give massive new benefits to the public. Again, the Commission needs to specify what level of pollution or harm will be mitigated by this rule. The industry has demonstrated it can work effectively with flexible regulations. The Commission has always used recycled-produced water and pit management, and most of what the rule proposes is currently regulated within existing systems.

Relating to the costs of this rule, the Commission states:

The Commission determined that "there will be additional economic costs for some required to comply with the proposed new rules and amendments." The Commission does not even attempt to understand what those costs are. The Commission mentions some unit costs, such as the cost of a liner in $/ sq ft, the cost of a water well construction, and the cost of individual tests. However, these are woefully short of the rules' actual compliance costs. For example, it costs 15-20% more to construct and permit an H-11-produced water pit than a standard double-lined leak detection pit that's not H-11-compliant. The industry views both of these pits to have almost the same level of environmental protection. The Commission risks

adding millions of dollars annually to operators' budgets by putting recycle pits and effectively all oil and gas pits into this category for little to no additional environmental protection. We would like to agree with the Commission that "these proposed new rules are generally consistent with current Commission practices," but that is simply not the case with anything other than Subchapter B. The sheer number of words added to the text and newly permitted facilities should show this is untrue.

The Commission should carefully plan their implementation of a rule like this by getting an estimate of the cost to the industry and balancing that with the actual risk these rules would limit. The Commission should treat this as a major environmental rule per Texas Government Code, §2001.0225(a). The rule also only covers the barest costs to operators as there is a high administrative cost the Commission is not considering for financial security.

The Commission has not explained what risks they are attempting to bond against. $1/ bbl is an arbitrary number that will encourage operators to build smaller pits and discourage recycling or make operations less bulked up. The $1/bbl would be insignificant for a 500,000 bbl pit that is moving 5,000,0000 bbls per year through it. However, if the pit is only used once and has 350,000 bbls used, then $0.05/ bbl for that year would be a significant cost. This is likely to reduce the amount of fluid.

Relating to encouraging fluid recycling, the Commission states:

"Mr. Dubois does not expect that changes to the rules in Subchapter B will result in significant cost changes. Instead, Mr. Dubois anticipates that the changes to §4.115 (relating to Schedule B Authorized Pits) will encourage the recycling of fluid oil and gas waste"

The Commission fails to address how adding hundreds of pages of new rules, regulations, and costs will encourage produced water recycling. The only thing in this rule that would "encourage" the use of recycled water is the Commission's new regulation of freshwater activities it has no reason to regulate. This rule will do quite the opposite and might bring out many other potential unintended consequences. A common practice is to tie produced water pits into disposal systems and move portable treating equipment (generally a portable settling tank and chemical/ biocide injection ports) in and out between fracs. The pit is used for storage and, depending on the timing, might store injection or recycling. Between the prohibition of using recycle pits for only recycling and the potential strictness on what a treatment plant is, this type of operation could be prohibited with these new expansive rules. If this type of operation were prohibited, it would significantly discourage recycling, making fresh water more common for completion work and promoting the expansion of SWD pipelines and networks. There could be other significant unintended consequences depending on how the Commission interprets and enforces these rules. Justifying a new rule by making it harder for operators to use one type of pit so they will use another does not "encourage fluid oil and gas waste recycling for beneficial purposes," as House Bill 3516 instructs the Commission.

The Commission also says the public benefit will be "having more specific standards." More specific does not mean better. The Commission assumes that any new rule will create better results without taking the time to understand the impacts and likely behaviors this will drive.

This rule is a fundamental change in the Commission's permit-by-rule approach. It will require a significant staff increase to handle the volume of applications and permit review the Commission has envisioned in this rule.

The uncertainty and complexity of these rules alone could cause massive backlogs in activity. The large pits can take months to build and fill. An unexpected two-month delay could cost operators millions if the delay is not handled quickly.

The Commission will require the waste management generator to keep records along with the transporter and the receiver. The Commission took the approach that if two entities are already keeping records, then adding a third would be even better. The Commission did not even bother to attempt to quantify their reasoning or the benefit other than to say this creates more transparency. The waste collection sites already collect this information, and the Commission can see it anytime. The Commission did not bother to quantify the cost of developing an electronic system that it claims will bolster transparency. Also, the Commission could get the same level of transparency by building an electronic system that publishes the existing manifests required by the carrier and receiver.

The feedback from industry meetings has been on what can be done to stay out of Subchapter B and modify Subchapter A to where it is tolerable. This rule is not a minor change to the industry that will give massive new benefits to the public. Again, the Commission should explain what specific pollution or harm is not currently mitigated and needs additional guardrails.

Finally, the Commission said, "the Commission finds that the costs of compliance are more than offset by the public benefit of enhanced protection of surface and subsurface water arising from implementation of the proposed new rules." The Commission decided it can define "no pollution standard" in these rules. Therefore, any conceivable limit on potential pollution will be to the public's benefit, no matter the cost to industry or how minor that limit on potential pollution is. This is not good public policy. Instead, it is the first step towards the Commission regulating the oil and gas industry by requiring no oil and gas activity as that is the surest way to have "no pollution." The Commission needs to remove that standard and do the actual work of cost versus benefit of their proposed rules.

Relating to the effect on small business, the Commission stated:

"After due consideration, the Commission agreed that lessening the impact to smaller operators was warranted and the current proposed new rules and amendments incorporate changes for authorized pits to achieve that goal."

However, taking draft rules that were onerous and overbearing for minor environmental impacts and making them less onerous and overbearing for minor environmental impacts does not justify the current rulemaking. It is difficult for smaller operators to comply with commercial facility requirements, and the new Subchapter A imposes many commercial process rules on normal upstream oil and gas operations. However, even after the change from the previous draft, many commercial requirements are still imposed on small businesses in this draft. The Commission is basically saying, “This rule isn’t as bad as it could have been. Therefore, we created flexibility for small operators. “To avoid this, the Commission should

detail how the existing exploration and production activities potentially threaten the environment and how much these rules will effectively cost.

Relating to the determination that these rules do not meet the definition of a major environmental rule:

The Commission does not explain why these rules do not meet the definition of a major environmental rule. Below are the factors that make a major environmental rule and how this proposed rule addresses those:

(1) exceed a standard set by federal law, unless the rule is specifically required by state law. This rule requires significant additional handling of exempt oil and gas wastes under the 40 CFR 261.4 (b)(5) exemption codes.

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law. The justification was this rule's own proposed standard of no pollution. None of the referenced House bills, Senate bills, or other government codes direct the Commission to make these rules.

(3) adopt a rule solely under the agency's general powers instead of a specific state law.

This new rule should be considered a major environmental rule because it triggers multiple conditions under the Texas law, which would define it as such. The Commission should have treated its analysis as such.

Relating to no new individuals subjected to these rules, the Commission states:

"The proposed new rules and amendments would not increase or decrease the number of individuals subject to the rules."

This is not true. According to the Commission's analysis, some currently produced water pits are expected to become Division B pits. It is unlikely that these operators will own existing Subchapter B permits. Also, this rule will affect almost every operator in a new way, which is significant and not a minor change.

Specific Comments on Rule Text
While we think this rule needs to be completely reevaluated, the comments below are specific issues with the proposed text. We encourage the Commission to consider these questions when performing a full cost and benefit analysis of this major environmental rule.

4.101 – This definition is nebulous to "prevent pollution." Oil and gas components considered "waste" are generally naturally present in most water (for example, chlorides), creating an almost impossible standard to live up to. Any water analysis will show some level of the components in both the waste and water. The point seems to be not letting oil and gas wastes into the state's waters. This goal is better than no pollution, as pollution is not really defined.

4.102 – This entire section creates uncertainty as to what is being regulated. 4.102(a)(3) seems to exempt "Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy," which is already exempted by the federal government. However, this rule seems to blur the lines and attempts to regulate ALL oil and gas wastes, even though most are exempt from federal regulation.

This creates a problem because the Commission claims this is not a major environmental rule. Still, if the Commission requires new regulations beyond what is federally required, by definition, it would be a major environmental rule.

To address this, the Commission should put the exclusion listed 4.102(a)(3) into the General section of Chapter 4 to clarify what these rules apply to for the regulated community. This change would also ensure this rulemaking does not unintentionally create a major environmental rule without considering the costs and benefits of such a rule.

(a) – This section is vague in that it could create a significant regulatory burden and cost based on interpretations by the Commission on what is acceptable "characterization." The Commission should add: "that is being transferred for disposal and not exempt, i.e., drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy."

(e) – "under duty to determine" - This is a significant departure from existing Commission rules. Currently, there is only a duty to not transport if it is known the transporter is not authorized. This change will likely have significant and expensive ramifications for operators if a duty to check is open-ended. Significant legal work and paperwork would be required to ensure compliance with this clause.
What is the Commission's concern with the existing system? Are there significant instances of waste inappropriately hauled and causing environmental harm?
Section (e) is not necessary with section (f). It adds an undefined standard when the Commission gets the same basic certainty with (f). The Commission should remove (e).

4.103(d) – This section should be removed. It is confusing because section 4.115 has authorized pits for which no permit will be granted. This creates a needless catchall clause that could create conflicts in the future and stifle recycling without understanding the ramifications of the words. The proposed rule already covers what pits need permits.

Chapter 4 Division 1: "The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt."

This statement should cause the rule to fall under a Major Environmental Rule. One of the criteria for a Major Environmental Rule is that it exceeds the federal standards. 40 CFR261.4(b)(5) exempts federal waste handling standards for "Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy."

The Commission is creating new waste management standards that are well beyond what is required in the federal standard (as they are exempted). Nothing in any of the bills they reference refers to solid (or

even fluid) waste management. While this section may seem fairly straightforward, it incorporates the rules and definitions in Division 2, which create waste-handling practices not mandated by legislation that exceed federal standards.

4.110

(7)(D) – Is this definition intended to include waste management exempted in 40 CFR 261.4(b)(5)? The Commission should clarify what it means by this definition.

(9) – This definition doesn't appear in the rule proposed by the Commission and should be removed.

(10) – This definition doesn't appear in the rule proposed by the Commission and should be removed.

(22) – This definition should remove the word "operator." It is common for an owner (and oil and gas operator) to contract a company to manage a pit for their sole or primary use. Including "or operator" will needlessly discourage produced water recycling by making simple pits onerous to operate.

(25) – "or areas that are permitted to contain oil and gas wastes, regardless of whether oil and gas waste is currently being contained in the area."

What is the benefit of adding this? It will have a burden and cost to operators with an ipso facto of no benefit to the public or protection to the environment. Again, this is part of a Major Environmental Rule as this is above and beyond the federal and legislative requirements.

(26) – This is not used as a defined term except in the definition of "Primary Containment" and is unnecessary and should be removed.

(33) – This definition doesn't appear in the rule proposed by the Commission and should be removed.

(37) – This definition doesn't appear in the rule proposed by the Commission and should be removed.

(41) – This should be removed as these pits pose no threat to the public or environment. There is no reason for the Commission to regulate these pits. The Commission will bring in many people and entities that are landowners that own or operate freshwater pits that are not bonded or registered with the Commission. This practice creates bureaucracy with no benefit to the public or the environment.

(42) – This should also be removed because, like with freshwater pits, it is not used outside of that context.

(47) – The Commission could clear up many issues the regulated community has with this rule by better defining "groundwater." This current definition would catch any surface after it rains. By using the definition "A class 1 or 2 Groundwater Resource per 350.52(1)(A) or (B)", it would significantly address potential environmental issues the Commission should be concerned with without making every piece of ground in Texas a potential extra-regulated source.

(48) – This is only used once in 4.172 and is unnecessary to be included.

(50) – This is not used in this rule and should be removed.

(55) – The Commission should add a system used to detect leaks below or between the liner of pits.

(64) – "or any areas permitted to contain oil and gas wastes." See also "Contact stormwater" and "Stormwater."

What is the benefit of adding this? This definition will burden and cost operators with an ipso facto of no benefit to the public or environmental protection. Again, this is part of a Major Environmental Rule as this is above and beyond the federal and legislative requirements.

(75) – This should be removed because it is not used in the rule.

(81) – By far, the most common recycled product is produced water. If the Commission intends to consider all recycled produced water in this category and have all the existing Chapter 4 applications, this will be a significant deterrent to recycling produced water. The Commission should include "this is not intended to apply to produced water" in this definition.

(85) – This vague definition will functionally include every location. The Commission should change to: "An area where groundwater is less than 100' or within two miles of surface waters, wetlands, state parks, or within 500' of a dwelling."

(89) – The Commission should not include the vague definition of non-navigable waters in this rule. The WOTUS has been litigated over this issue with little definition for decades. Please remove this as it serves no purpose but to confuse the permitting and open the Commission for future lawsuits. Non-navigable waters should be undertaken as a Major Environmental Rule, not a quickly added new definition.

(93) – This definition should not include "to remove impurities such" but should insert a "so" instead. Produced water is often treated by adding biocide or a similar chemical and is reused functionally raw. Implying that impurities must be removed to have a treated fluid is a misunderstanding of how most fluid recycling works.

4.112(a)(3) – This section exempts operators from using recycled and produced water or recycled water with fresh water. This section serves no purpose and should be removed or clarified to allow normal reuse operations.

4.113

(a) – Regulating "freshwater pits" has no environmental benefit and should not be regulated by the Commission. Any reference to freshwater pits that only hold fresh water should be struck.

(b) – This section limits reserve pits that can be used in 100-year floodplains (and freshwater pits). This limitation makes sense for long-term-produced water pits but not for temporary reserve pits. This section

should only apply to pits that hold produced water or are expected to remain in use for several years and not temporary pits.

This one change to the rule could significantly affect the number of locations that can be drilled. It could massively increase the cost of developing oil and gas minerals in the state for little to no environmental protection.

The Commission should make this only a requirement for large produced-water recycling pits or other major treating operations.

(c)(2) – The most common pits are freshwater pits, which pose no environmental threat. So, the Commission should remove those from the regulations entirely.

(c)(3) – HB 3516 authorized the Commission to create financial security for "commercial recycling of oil and gas fluids." This legislation does not apply to the non-commercial pits and goes against subsection (b)(1) to encourage recycling for beneficial purposes.

Non-commercial pits, by definition, must be operator-owned. Therefore, there are already bonds on file for these pits. The Commission should study the cost and expected benefit from this rule and treat it as a major issue rather than incidental.

(e) – Pre-registering pits is a significant new requirement for operators, which will also require a significant time investment from Commission staff to review, track, and close out each pit registration. There has been a significant change in the length of most pits, and they are still on sites registered with the Commission.

Also, the Commission already requires us to get a GWP letter for the deepest depth in which fresh water occurs. It would be much easier for the Commission to start putting the shallowest expected water on the GWP letters if the Commission wants that data. None of this other information is relevant, nor does the Commission explain how it will use this information as the Commission already has access to it with the drilling permits.

This registration process should only be required for sites not on locations with existing Commission permits or registered sites. The Commission already checks these sites at least annually. This new registration creates a significant recordkeeping and paperwork requirement with no benefit.

Also, this registration and designation proposed system will limit how operators remove waste. Solid waste must first be dried before it is transferred. This rule would prohibit using drying lanes for waste before transferring, or it would require additional registration. Most likely, this will create cottage industries, like steel drying lanes that are considered tanks instead of pits, at a significant cost to operators with no benefit to the environment or the public.

The Commission has not considered the ramifications of this rule. The Commission considers it a minor rule, but it is so specific and inclusive it is likely to severely limit how operators work.

(e)(1) – The Commission seems to be using the estimation that there are only a few hundred produced-water recycling pits, but this new rule will create one new pit for each drilling permit approved. This change will add thousands every year. The effect will not be a minor IT system setup or a minor addition to existing staff time. Instead, this will require a whole new IT system and many staff to review and track this information, for no additional appreciable oversight the Commission currently uses on pits.

(e)(5) – The Commission acknowledges that the important issue is the type of construction. Other than that, the exemption for oil field waste listed in 40 CFR 261 A (b)(5) is the same.
Definitively authorizing these pits and using the existing system of inspections tied to drilling permit numbers or API numbers is a much more efficient application of government policy than a pointless designation system. The Commission should use this system only for pits not adjacent to permitted or registered locations.

4.114 – The Commission has no legitimate environmental or correlative rights reason for regulating these pits.

(1)(C) – Putting produced water in a "freshwater pit" would make it a produced water pit. It serves no purpose to regulate freshwater pits.

(3)(A)(iii) – This requirement is new, but as the Commission has already pointed out, there is little difference between reserve and completion pits. Completion pits should have the same time frame to close as drilling pits.

(3)(B) and (C) – The Commission should remove "fresh makeup water pit" as they should not be regulated.

(D) – This section needs to be removed. While it is helpful that section 4.111 allows for the burying of solids on site, this section will likely create a conflict at some point with section 4.111. It serves no purpose and confuses the regulations.

If applied over the allowance of 4.111, this requirement will add between $50,000 and $400,000 per new drilled well. This new requirement could add over a billion dollars per year to oil and gas operators in Texas (7,000 wells at $250,000 per well).

This would result in a major environmental rule. This rule significantly exceeds the federal waste treatment standards in 40 CFR part 261 A. This rule could very easily cause significantly more environmental harm than potential benefit. The vast majority of waste generated in the pits the Commission seeks to add regulations to is the equivalent of a small accumulation of mine tailings. It is rocks or sand, which is why these solid wastes are exempted from federal regulations. The idea of burying these relatively harmless rocks and sand in place is to keep them dispersed throughout an area rather than have a super concentrated area that could potentially cause harm.

This new rule will require all drill cuttings to be transported (a potential source of contamination) and stored in one supersite. There is significantly more potential harm and cost to the state by concentrating waste rather than continuing the successful historical practice of keeping this waste dispersed and diluted.

The Commission should encourage the dispersion of minor oil and gas wastes rather than concentrating them. This section should be removed to avoid conflicts between this and section 4.111.

4.115

(b) –This section adds a significant cost, as even the Commission staff showed. The Commission has not shown why the current annual bonds that operators file are insufficient to cover the exposure of such pits. The Commission listed Texas Natural Resources Code §91.109 as their justification for adding this requirement. However, the code states, "A person applying for or acting under a Commission permit" and "may be required by the Commission to maintain a performance bond." The code also prohibits requiring bonds for "saltwater disposal pits… used in the conjunction with the operation of an individual oil and gas lease". These pits are proposed to be authorized by rule rather than under a permit by the Commission. Also, the "may be required" statement shows the Commission thinks extra bonding is necessary. As the Commission has neither given a reason for this extra bonding of operators nor made this a permit to apply TNRC 91.109, the Commission should not include these bonding rules.

If the Commission wants to encourage the use of produced water recycling, undertaking a major cost and painful process like the P5 for EVERY pit is the opposite of encouraging that. Operators will look for ways to avoid using recycled water with this change.

Regarding other recent legislation, HB 3516 only directed the Commission to create financial security requirements for commercial pits. As good public policy should dictate, this is because commercial operators might not have other surety with the state, whereas, by definition, non-commercial operators would.

A significant cost is associated with the Commission's rule to return sites to their native state, which should not be required as that is between the surface owner and the operator, not the Commission. The Commission should only apply the financial security to commercial pits as non-commercial pit operators and owners already have bonds in place and significant operations.

(e)(3) – The phrase "or intake" should be removed. This phrase could easily be interpreted as any "aquifer" used to provide water to a public water system, making anything in the Ogalala or Edwards off-limits.

If the intent was to limit the distance around a channel type, the Commission already limits these pits to be within 300' of surface water, and that should suffice.

(e)(4) – This section should be removed. Requiring pits to already be out of a flood plain and double line means they are highly unlikely ever to have a major release or failure. Keeping these pits away from public water systems makes sense as that doesn't limit many areas, but it would be significantly disruptive and could cause great harm should a release occur. However, the requirement to stay away from small-use water wells will restrict a large area with little environmental protection for the slight chance of a significant release.

(f) – The "General design" is copied from the requirements of commercial pits, many of which are only relevant for a design-type permit. As these are authorized, the Commission should only specify the specifics rather than pre-required plan types. (f) could be significantly simplified by only using (1), (4) only the slope, (5)(A) & (B),

Examples include the reference to non-contact stormwater. There is no environmental benefit or reason to prevent rainwater from entering a produced water pit. Rainwater entering a pit will always be a minor inclusion, and as the recycled pits are injected into a well, there is no better way to handle that water. As these pits only hold water, "runoff" is unnecessary and provides no benefit because anything around the pits is similar to the ground outside the pits.

(f)(4) – We suggest the following changes for a simplified version: "A produced water recycling pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. The operator shall construct…"

There are unintended consequences that can arise from these clarifiers, and the Commission should leave the description as "properly constructed." An example is that all dirt is just small rocks. So, this description creates a needless ambiguity if an inspector sees two-inch "rocks" in the berm, but there is a smooth liner with no visible undulations. However, if there are obvious three-foot-diameter rocks and the liner sides are bulging, the inspector does not need this extra text to make that determination.

(f)(5) – Sections (C)-(E) should be removed as they are overly prescriptive, and (A) and (B) suffice for construction standards. This section is a similar reason to what was given in (f)(4) above.

(g)(4) and (5) – These requirements should not be in this rule. If an operator chooses to double line a pit out of caution, this rule requires significantly more intensive, burdensome, and expensive maintenance and record keeping. This change will encourage operators to do the minimum instead of rewarding operators who go above what is required. Requirements (4) and (5) will have the opposite effect of what the legislature mandated: to encourage recycling and protect the environment. The proposed operation standards of (1)-(3) are sufficient for the industry.

(h)(i) – This requirement should be removed. This type of testing should only be done if there are reasons to suspect there has been migration. It is concerning the Commission's approach to this rulemaking is to assume pollution has been caused and will result in significant harm. These spot tests are not foolproof and can potentially create significant cost issues without any material benefit to the public or environment. This kind of waste is exempted from federal regulations in 40 CRF 261.4 (b)(5) as the concentration and contaminant type are unlikely to cause significant harm. The harm they would cause, if any, would be to groundwater, not the dirt they reside in. These tests are not likely to discover something that a general inspection doesn't cover. Still, they are likely to hit testing thresholds, which could cause significant costs to operators with little benefit to the public or the environment. If the Commission wants to inspect for potential damage, they have ample opportunity to do so during the life of the pits and the closure time frame. Keeping (E) as a new (2) would get almost the same level of protection at a significantly reduced cost to the industry.

(j)(2) – The extent of this section should be (1) and the direction to bury these pits. The specifics will not be effective at minimizing pollution in the groundwater. If a pit is to be closed with only a few yards of solids, but the liner tests over 80,000 ppm chlorides, then the burial has significant costs and restrictions. If 5,000 yards of solids are in the same pit with concentrations of 19,900 chlorides, then that pit has little to no restrictions. Even though a pit with 5,000 yards has significantly more total volume of contaminants than the small amount of 80,000+ waste.

The Commission should allow the district office discretion in overseeing the burial and the operator discretion in determining if the volume and type of waste suits the burying conditions. Alternatively, the Commission could allow for burying waste irrespective of the testing in (2) if it was double-lined, or the operator can demonstrate that the liner was held intact. If condition (4) is met, the operator should not have to do the testing in (2) except if there is evidence the liner leaked.

(j)(4)(B) and (C) – (B) and (C) are unnecessary if (A) has to be done. B and C support A. A does not support B and C. Pits not leaking should be the encouragement of the rule, not the process of construction or testing. It also appears there are references to solid waste disposal. (B) references covering the waste material with a geonet, but that's not something most pits do. (B) and (C) should be removed.

(j)(6)(A) – This section references "backfill the pit." It appears the Commission is assuming pits are ground level (completely dug into the ground), but most large pits have walls that are significantly higher than ground level. The Commission should specify that the backfill will return any excavated hole to ground level.

The Commission also uses the term "contaminated." This phrase is troublesome. Some levels of "non-waste containing, contaminated" listed in Figure 16 TAC §4.115(i)(3)(E) exist naturally in almost all dirt. The Commission should use "nearby or commercially earthen material" instead.

(j)(7) – We suggest, "The operator shall notify the District Director a minimum of seven days prior to closure of the produced water recycling pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met."

Documentation on most of these pits is not relevant or necessary. The Commission should supervise the closure of pits they are concerned with and use common sense to determine if there are issues with the closure, like subsidence. The Commission should not create cottage industries without real environmental benefit in rulemaking.

(j)(8) – The Commission should alter, "The Commission may require the operator to close a produced water recycling pit in a manner other than the manner described in this section if it determines that oil and gas wastes or oil field fluids are likely to escape from the pit, that oil and gas wastes or oil field fluids may cause or are causing pollution, and/or that the pit is being used in a manner inconsistent with Commission rules."

The Commission should not penalize operators for something they determine "likely" to happen. If the Commission is concerned a pit has been constructed in a way fluids are "likely" to escape, they should

shut down pit operations and require it to be closed. Suspecting something may happen should not lead to a special closure route.

(k)(5) and (6) – If groundwater is less than 100', these wells are not complicated to drill or test. If rates are low, there is little reason to be concerned with groundwater pollution. These requirements increase the cost with little to no benefit other than to create the need to use expensive consultants in the environmental industry. If testing shallow groundwater is a concern, getting samples and evaluating if contaminates are getting into it is not hard. This section should be removed.

(k)(7) – This section is needlessly complicated. Tests for chlorides and TPH are sufficient to notice any potential contamination from produced-water pits and should suffice for any testing.

Division 4 – This section has long-term interpretation concerns as it seems to be open-ended about what it applies to. It seems reasonable that this would not apply to Division 3 activities, but this rule pulls in many minor activities. It would be very helpful to the industry to specify that this is not for permitted waste management operations but for permitted commercial waste management operations.

If this section is intended to apply to many current minor oil and gas operations, then this would be a major environmental rule. The Commission should fully account for this rule's time, cost, and benefit to the environment, public, and operators.

This section will most certainly have a chilling effect on recycling should the Commission put this rule in place. The Commission stated it wanted to take similar commercial and non-commercial activities and give them the same requirements. However, they have not considered the scale difference between non-commercial and commercial operations. There might be some non-commercial produced-water recycle pits similar in size and scope to commercial recycling pits, but many others are nowhere near the scale of a commercial pit. These rules treat them the same, making other water sources more attractive than recycled produced water. The Commission should ensure they have fully studied this rather than just assert that this major rule will not affect how operators act.

4.120(a) – It would help the industry a lot if this were inserted:
"In general, Division 4 will not apply to waste associated with drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas per 40 CFR 261.4 (b)(5)."

4.121 – This section will add a lot of uncertainty to activities, knowing you only have five years, which could stifle the desire to put in the types of facilities the Commission is trying to regulate. What is the Commission's concern with rule 8's lack of term? If it is the operation, then the Commission generally can cancel permits if they are not followed. The Commission should explain why it is putting this burden on operators. Many of these applications are hundreds of thousands of dollars. This addition appears to be a way to increase the profits of consultants rather than serve any actual regulatory function.

4.122 – This section should only apply to permits with specific reasons for the term. This extra bureaucracy generally creates extra work for environmental consultants with little or no benefit to the environment, public, or regulated community.

The Commission's stated reason for requiring permits and registrations in the first place was so the Commission could have a better monitoring system. As was stated in the preamble: "The Commission will review the permit conditions and may revise them to ensure compliance with the rules in effect at the time of the renewal, transfer, or amendment." The point of permits and registration is so the Commission can monitor compliance. Putting in another mandatory review time frame would be reasonable if the Commission did not intend to inspect and ensure compliance during the general work of the permit. We have seen cost estimates for Commission permit prep work (just preparing the required planning or paperwork) ranging from $25,000 to six figures. These applications can be over 300 pages (like this proposed rule). This is a significant review that likely will take weeks to look through. The Commission should focus its personnel on inspecting the actual work in the field instead of focusing on this massive paperwork review. Removing this section is a good start.

4.123 – The Commission should focus on this section rather than the painful paperwork details of 4.122. In the order of magnitude, what happens in the field is more important than reports and plans prepared hundreds of miles away from the actual operations.

(4) – This section should be removed, as this should only require intervention by the Commission if 1-3 is occurring or likely to occur. The Commission should not add requirements to permits that don't already promote and protect the ultimate goal of regulating waste, which is what is described in 1-3.

(5), (6), (7), and (8) – All of these should be removed as the major impact of any of these should only be an effect of 1-3. These focus on the process rather than the actual results. These changes would lead the Commission to focus on paperwork errors or irrelevant changes that don't affect 1-3 but require operators to spend much time and resources on non-critical aspects of waste management.

4.124 – This section seems straightforward, but its application to commercial permits resulted in hundreds of pages for each application. The Commission could significantly improve this section by making the requirement only a permit application that clearly and adequately explains who the operator is, what the proposed operations will entail, and how the operation will not result in waste releases.

4.125

(c)(2) – This section should not be included. If a facility is located on a 5,000-acre ranch, this could increase the notice range to 10-plus miles and require notification of owners who are not adjacent. #1 and #3 should be sufficient for notification.

(c)(5) – This report currently has to be filed with the Commission. Why can't the Commission notify itself if the permit has been filed with the Commission? If the Commission does not consult the district personnel where the waste facility resides, it does not review these permits well. This section should not be in the rule.

(c)(6) – If the Commission wants additional notification, they should handle it themselves. This process is not a significant issue for the Commission. Still, it could significantly delay permits being reviewed and issued if the Commission has to internally review who should be notified.

(d)(2) – The requirement that this include a complete copy is unworkable. These can be hundreds of pages, which is unnecessary and burdensome. The Commission's concern is notifying the public, most of whom will not have the expertise to read hundreds of pages of technical permits. To help the public, a short and plain explanation of the waste managed and processes used would be significantly more helpful (which the Commission should focus on anyway).

The Commission should adapt these notice requirements to give a simple and clear notice of what is proposed to affected and potentially affected persons. By doing so, the Commission can easily discuss the submitted permit. The goal should be to get clear communication before requiring a formal protest. Formal protests should be for when an affected person truly has a problem, not fear. These current notification requirements will encourage fear, and most of the public will have to hire an environmental expert or lawyer to understand what these permits are.

4.126 – (A) and (B) of (a)2 should be removed as well as (b). This information is over-prescriptive for no benefit. If someone permits a facility on a surface location they don't have permission to be on, the owner will protest, and the Commission will shut down. This is a basic business risk the Commission does not need to regulate.

(c) – The map requirement could be simplified for the Commission and applicants by just saying "discernable." It will likely require more than one map to show this information. The Commission should not be requiring 4'x4' maps with a scale.

(c)(7) – Once the location has been given, the Commission can review it using its own GIS system for concerns. Adding this only potentially delays applicants with no benefit. This section should be removed.

4.128 (a)(3) and (4) – There are always changes made during construction that deal with the inherent unknowns of geologic conditions. On an application, these imply that exact conditions and plans can and will be followed, but most pits will vary some. This section adds nothing material to an application and should be removed.

4.129 (a) – This section will end up being needless paperwork. If there are certain best practices, they should be in the rules to follow rather than a permit by application standard. This section should be removed unless the Commission has a reason it wants to review this information. If the Commission has that reason, it should clearly state how that information will be used to evaluate permits.

4.131

(a) – If there are certain best practices, they should be in the rules to follow rather than a permit by application standard. This section should be removed unless the Commission has a reason it wants to review this information. If the Commission has that reason, it should clearly state how that information will be used to evaluate permits.

(b) – This section is a very intensive and restrictive process even for the Commission. It is probably appropriate for facilities close to significant aquifers, but this is overkill for some minor localized groundwater. The Commission should either remove this or explain why it is needed as a minimum

standard and not just say that it will be their minimum standard (which will become the de facto standard they always use).

4.132

(a) – If there are certain best practices, they should be in the rules to follow rather than a permit by application standard. This section should be removed unless the Commission has a reason it wants to review this information. If the Commission has that reason, it should clearly state how that information will be used to evaluate permits. For example, why does the Commission want to evaluate how a non-government company will release its security bonds once a project has been closed? This makes no sense to include in a permit application as it has no bearing on the public or the environment. The Commission already requires a closure plan in (b) of this section, which it intends to enforce. This section should be removed.

(b)(1) – The Commission should require this plan within 45 days of cessation of operations and not discourage good housekeeping and proactive cleanup and remediation by prohibiting a broad category of actions. The Commission is more concerned with the process than the actual results.

(b)(2)(E) – Soil samples should only be required if there is a reason to suspect pollution has occurred, not as a standard assumption for any permitted activity.

4.134 – The Commission should include what the admin review process will return on an approved permit. The way this rule is written is likely to mainly be "technically complete." The Commission should have a standard such as "reasonably not expected to cause pollution" or something similar. The Commission's permit reviews tend to spend a lot of time focusing on whether every box has been checked rather than if the application is sufficient for the Commission to know if it should grant it. 4.135(a)(3) gives the Director the discretion to ask for more information, so it should also give him and the technical review department leniency not to require information that isn't important.

4.140

(b) – This section will likely decrease the amount of produced water recycled. As pointed out, many requirements are very expensive and not even achievable. This section will likely cause pits that have been in safe operation for years to be closed earlier to avoid these regulations. The Commission did not consider this interpretation, which could be a major rule. This section should be evaluated before enacting a major environmental rule.

(g) – This section is a reasonable method for large-scale sites such as solid waste facilities that hold millions of yards of solids. However, this is massively overkill for smaller facilities, especially the restriction on using their other equipment or facilities.

CROWNQUEST

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Thank you for your consideration of our comments. Please don't hesitate to contact the undersigned should you have any questions.

Sincerely,

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