



## **Railroad Commission of Texas**

### **Proposed Changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4**

#### **Preface**

16 Texas Administrative Code (TAC) §3.8 (relating to Water Protection), also known as Statewide Rule (SWR) 8, is the Railroad Commission of Texas' primary rule for regulating the management of oil and gas waste. This rule has existed in its current form since 1984 with several minor modifications since then. The Commission now seeks informal public input on a proposal to significantly revise this cornerstone waste management rule, as well as its existing rules for commercial recycling of oil and gas waste that can be found in 16 TAC Chapter 4, Subchapter B.

This document provides the rationale, proposed structure, and key content elements of the draft rule proposal. In addition, this document describes the informal comment process, including how the public is invited to participate.

#### **Introduction**

There are four important reasons to undertake this effort now.

First, the content and requirements of SWR 8 are dated. Expectations for environmental protection have evolved considerably over the past 40 years, and routine industry practices have changed significantly since the onset of shale extraction in the early 2000's. Currently, most waste management permit application requirements and permit conditions are described in Commission staff guidance documents or are matters of practice; as these are now standard practices with recognized benefits to the entire stakeholder community, it is appropriate to incorporate them into the Commission's rules.

Second, legislative changes require the Commission to update certain rules in SWR 8 and Chapter 4 Subchapter B. Specifically, legislation requires:

- the Commission to adopt rules governing permissible locations for pits used by commercial oil and gas disposal facilities;
- the Commission adopt rules to encourage fluid oil and gas waste recycling for beneficial purposes and set standards for issuing permits for commercial recycling of fluid oil and gas waste;
- changes to Chapter 4 to incorporate criteria for beneficial uses of recycled drill cuttings; and
- changes to the definition of drill cuttings.

Third, there is a rapidly evolving need to encourage the treatment and recycling of produced water for beneficial uses within the oil and gas industry and for novel beneficial uses outside of the industry. The Legislature has directed the Commission to encourage fluid oil and gas waste recycling (House Bill 3516, 87<sup>th</sup> Legislature, regular session, and it has also created the Texas Produced Water Consortium (Senate Bill 601, 87<sup>th</sup> Legislature, regular session to make recommendations to the Legislature on issues related to this potential activity. Already, many exploration and production operators and water midstream service providers are investing in infrastructure and pilot studies to assess the economic, logistical, environmental, and practical possibilities of produced water recycling. The Commission's rules need to be revised to support these developments.

Fourth, the style and language in the existing SWR 8 is dated and does not reflect the complex needs and requirements of contemporary waste management and environmental protection practices. That is, the text of the rule needs to be modernized.

## **Structure**

The regulatory content of SWR 8 and 16 TAC §3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) (SWR 57) will be moved to a new Subchapter A in Chapter 4; and SWR 8 and SWR 57 will remain in Chapter 3 but their wording will be changed to point toward the applicable rules in Chapter 4.

New Chapter 4 Subchapter A will be structured as follows:

- Division 1 – General
- Division 2 – Definitions
- Division 3 – Operations Authorized by Rule
- Division 4 – Requirements for All Permitted Waste Management Operations  
*Divisions 5 through 8 will apply for permitted facilities as appropriate.*
- Division 5 – Additional Requirements for Commercial Facilities
- Division 6 – Additional Requirements for Permitted Pits
- Division 7 – Additional Requirements for Landfarming
- Division 8 – Additional Requirements for Reclamation Plants
- Division 9 – Miscellaneous Permits
- Division 10 – Requirements for Oil and Gas Waste Transportation
- Division 11 – Requirements for Surface Water Protection

Chapter 4, Subchapter B will be amended with significant changes to Divisions 5 and 6 (relating to Requirements for Off-Lease Commercial Recycling of Fluid and Requirements for Stationary Commercial Recycling of Fluid, respectively) and will include a new Division 7 (relating to Beneficial Use of Drill Cuttings). Minor conforming changes will be made to other divisions of Subchapter B.

## Key Content Elements

The following is a summary of key new or changed elements that are reflected in the proposed draft rules. Rule citations are included for referencing convenience.

### *Chapter 4, Subchapter A*

Division 1 contains provisions that are generally applicable.

- §4.102(a) states that the generator of the oil and gas waste is responsible for characterizing the waste.
- §4.103(b) states that the Texas Commission on Environmental Quality has jurisdiction for the discharge of oil and gas waste to the surface waters in the State.
- §4.106 is a placeholder in the event the Legislature authorizes the Commission to collect fees associated with Chapter 4 Subchapter A. Currently the only authorized fees are for waste hauler permits.
- §4.107 states the Commission's authority to levy penalties for violations of Chapter 4 rules. *Note that this section is substantively similar to 16 TAC §3.107, and provides a parallel penalty scheme for Chapter 4.*
- §4.108 anticipates the Commission developing and implementing an electronic filing and management system for applications, permits, and regular reporting requirements.
- §4.109 provides a means for an operator to request limited exceptions to Chapter 4 rules.

Division 2 contains 93 definitions applicable to Chapter 4. SWR 8 included 47 definitions and Chapter 4, Subchapter B included 17 definitions. Some existing definitions have been changed.

Division 3 describes the activities that an operator may conduct as authorized by rule without a permit from the Commission and the conditions and requirements associated with those activities. Note that 16 TAC §4.113 through 16 TAC §4.115 contain significant revisions regarding the use of authorized pits. Specifically, the proposed rules establish construction, operation, and closure standards for all authorized pits and those standards applicable to certain authorized pits. Among other things, these standards require operators to register all authorized pits, conduct a preliminary evaluation of the groundwater conditions at the pit location, and to conduct further groundwater monitoring in circumstances when certain conditions are met.

Division 4 describes the requirements applicable to all permit applications and permitted activities.

Division 5 describes the requirements applicable to commercial facilities, as the term "commercial facility" is defined in 16 TAC §4.110(21).

Division 6 describes the requirements applicable to permitted pits. In particular, 16 TAC §4.153 contains specific requirements for commercial disposal pits pursuant to House Bill 2201(87<sup>th</sup> Legislature, regular session).

Division 7 describes the requirements applicable to permitted landfarming activities.

Division 8 describes the requirements applicable to permitted reclamation plants and is substantively similar to the current SWR 57, with two notable changes:

- Pursuant to the current SWR 57, reclamation plant permits do not expire. Under this proposal, reclamation plants will have terms of five (5) years pursuant to 16 TAC §4.121.
- Pursuant to the current SWR 57, reclamation plant permits may not be transferred to another operator. Under this proposal, reclamation plant permits may be transferred to another operator provided the requirements of 16 TAC §4.122 and other relevant requirements are met.

Division 9 contains provisions for emergency permits, minor permits, miscellaneous permits, and permitted recycling that are generally consistent with the current SWR 8. However, 16 TAC §4.185 also includes a provision allowing the Commission to issue pilot projects for certain activities, such as the recycling of treated produced water.

Division 10 contains several changes to rules that govern the transportation of oil and gas waste, including the following:

- §4.190 relating to oil and gas waste characterization and documentation
- §4.191 relating to oil and gas waste manifests
- §4.192 relating to special waste authorizations
- §4.193 relating to oil and gas waste haulers
- §4.194 relating to recordkeeping
- §4.195 relating to waste originating outside of Texas

Division 11 contains requirements for surface water protection that are generally consistent with the current SWR 8(e) and (j).

#### *Chapter 4, Subchapter B*

Divisions 1 through 4 are substantively unchanged except for several definitions and conforming text for consistency with the other divisions.

Divisions 5 and 6 are substantively changed to accommodate House Bill 3516's requirement for the Commission to encourage fluid oil and gas waste recycling.

Division 7 is new and contains Senate Bill 1541 (87<sup>th</sup> Legislature, regular session) and Senate Bill 502 (87<sup>th</sup> Legislature, regular session) requirements regarding the beneficial reuse of drill cuttings.

#### **Timeline for the Informal Public Comment Period**

The Commission is providing this opportunity for the public to provide informal comments to rules being considered by the Commission. This will not be the public's only opportunity to review and comment on the proposed rules, and the Commission is not obligated to not respond in writing to public comments submitted during an informal comment period. However, the Commission intends to use the informal comments to consider additional changes for formal

rulemaking proposal, which will likely happen in early 2024. At that time, the Commission is obligated under state law to respond to each comment received during the formal rulemaking process.

To view the draft amendments and submit comments online by 5 p.m. on Friday, November 3, 2023, visit the RRC website at <https://rrc.texas.gov/general-counsel/rules/draft-rules/>.

## Hearings

In addition to providing an opportunity for the public to submit written comments, the Commission plans to hold in-person and virtual hearings as well.

- At 10 a.m. on Thursday, October 26, 2023, the RRC will hold an in-person hearing in Room 1.111 of the William B. Travis Building, 1701 N. Congress in Austin. For information on the visiting the RRC, visit the RRC website at <https://www.rrc.texas.gov/about-us/organization-and-activities/visiting-the-railroad-commission/>.
- At 9 a.m. on Friday, October 27, 2023, the RRC will hold a virtual hearing using an internet meeting service. Individuals who plan to participate in the hearing by providing verbal comments or who want their participation on record must register by submitting the following information to Paul DuBois at [Paul.DuBois@rrc.texas.gov](mailto:Paul.DuBois@rrc.texas.gov):
  - request to provide verbal comment,
  - name, title, affiliation, and
  - contact information to include email address and daytime telephone number.

The first part of each hearing will consist of a brief overview by RRC staff regarding the proposed rule amendments. The second part of the hearing will consist of informal public comment on the draft rule amendments.

Both hearings can be viewed via live webcast on the AdminMonitor website at <https://adminmonitor.com/tx/rrc/>.

## Comment Submission Guidance

The informal comment period will end at 5 p.m. on Friday, November 3, 2023. Comments may be submitted to the Commission by any method or format provided the comments are accessible to Commission staff by the deadline. However, to assist Commission staff in compiling and understanding the comments, we request that:

1. Comments be submitted to the Commission via email or mail:
  - a. Email: [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov) (preferred)
  - b. Mail:  
Rules Coordinator  
Railroad Commission of Texas  
1701 Congress Avenue

Austin, TX 78701

2. Structure of an individual comment:
  - a. Cite the specific section to appropriate detail [such as 16 TAC §4.100(b)(3)(D)(ii)] for which your comment pertains. General, non-specific comments may also be provided;
  - b. State and explain your comment regarding the citation (i.e., whether you agree, disagree, request the Commission to take more or less action, etc.); and
  - c. If applicable, provide an example of your preferred resolution of the comment.
3. If submitting comments via email, the comments document be in a common electronic format such as text, Microsoft Word, or PDF.