

TO: Rules Coordinator/Changes to Subchapter A (Rule 8), Texas Railroad Commission

COMMENTS FROM NORDHEIM/CAP (Citizens Against Pollution)

DATE: November 1, 2023

Referenced: Petrowaste Solid Waste Facility, Hohn Rd. Nordheim, TX/Dewitt County

Permit No. STF-062 (TRANSFERRED/AMENDED); Associated Permits LT-0343, PO 1119994, PO 111995, PO 11996, PO11997, PO 11998A, PO 11998B, PO11998C, PO11998D PO11998E and PO111998F

**RE: Changes to Subchapter A (Rule 8)**

### Part I

**INTRODUCTION AND BACKGROUND FOR THESE COMMENTS:** This background is provided as the basis for our later comments on the changes to Rule 8 being proposed by the TRC. Some of the proposed changes relate directly to our experiences of the Petrowaste site choice, design and operations.

- A. These comments on the changes are the result of discussions of these changes among lifelong citizens of Nordheim and Dewitt County; some qualify as legal stakeholders. **All bring to this discussion and response their shared community experience, including concerns about the site before, during and after the Permitting process.**
- **Knowledge of the local topography, drainage patterns, history of stormwater** and flooding events on and around the site
  - **Experience in working with the inferior material** to be used to construct the berms on the site.
  - **Experience and knowledge of toxic substances** in some members whose work history includes supervisory positions in chemical plants and refineries;
  - **Experiences of the Oct. 19, 1998 500-year Flood Event** along the Guadalupe and San Antonio River drainage areas and creeks in Dewitt and Karnes Counties.
  - **Experience of the subsequent remapping of Flood Plains by FEMA** working with other authorities
  - **Awareness of current official scientific predictions of future increases in rainfall amounts** due to Climate Change, i.e. stronger tropical storms and hurricane remnants passing through the area, increasing stormwater runoff (both contact and non-contact) on site. Subsequent changes in the plans were negotiated through the 3-year Protest Process and associated lawsuit.
- B. **The original major concerns re stormwater retention on site were:**
- **Capacity for stormwater storage** on site (TRC agreed and required increased capacity)
  - **Insufficient strength of the materials** to be used in construction of the berms: the excavated materials acquired from digging the pits for waste storage
  - **Angle of the hill** on which the site is located, since in the past, previous terracing had been constructed to retain soil in heavy rains
- C. **Other community concerns were:**
- **the size of the site** (equal to the entire town of Nordheim)
  - **volume of waste** that it is intended to process and store
  - **proximity of the site** to the residents of Nordheim, including the school children;
  - **Potential for noise, diesel emissions, dust and light pollution**

- **Potential for residents' exposure to toxic emissions (BTEX)** being aerated from the solid waste, drifting into town
- **Potential for aquifer and water well contamination** from tears in the liner and leaks
- **Placement of double liners with monitors and monitor wells** on site would be properly placed to detect leaks and potential for water contamination.

These concerns of the residents before the Permit was approved have been well justified during its years in operation.

**D. The following violations and incidents that have occurred since this site began operations.**

They bear witness to the fact that strict requirements in the design and specific regulations and enforcement during operations are necessary for such a site.

- **Noise heard in town, day and night, depending on rig operations**, even by persons living at the point in Nordheim farthest from the site. (Two children of one family required counseling due to sleep loss and impacted academic performance due to lack of sleep from operations.)
- **Lack of security of the site.** (On one occasion, a herd of cattle somehow left their adjacent pasture, crossed through the site of operations, out the entrance of the site and wandered down the road into another private pasture.)
- **Light pollution** for those living around the site
- **Dust leaving the site** and blowing onto private property nearby
- **Toxic emissions detected by foul odors drifting onto farms and into town**, including onto the school campus and into private homes, depending on wind direction.
- **Mud and solid waste from the site being left on Hohn Rd.** as trucks exit the site
- **Road spills being shoved off the road and into the bar ditch** and dry creek bed leading to a stock tank
- **Berm materials eroding and being washed onto a private pasture** across from the site
- **Failure to maintain the berm by planting vegetation**, as directed;
- Exposure of the liners through large gaps in the eroded berm
- **Collapse of a berm supporting one wall of the non-contact stormwater retention pond after heavy rains, causing all the contents of the pond to run out, washing berm materials off the property to fill the bar ditches on either side of the road, and into a private pasture.** The force of the water flow tore down the chain link fence of the Petrowaste site, allowing free entry onto the site for wildlife and anyone who wanted to enter the site. The stormwater drained off the site, across the road, and across the private pasture into a creek about ½ mile away. It took 24-36 hours for the pond to completely empty. This incident confirmed the objections to the use of excavated materials to construct the berms. The material did not prove to be up to the strength needed, as the residents had warned during the Protest Process. But TRC officials did not listen to local citizens, some of whom were stakeholders.
- **The original entrance to the site proved to be hazardous both for commercial haulers and local drivers passing the site.** The entrance was of smooth concrete and at a steep angle. Dirt and waste materials ran down it when it rained, making the entrance slick so that trucks had difficulty entering and leaving the site safely. **During the process for Permit Renewal, the TRC required Petrowaste to move and redesign the entrance site, resolving the problems.**

**CONCLUSION OF INTRODUCTION:** It is clear that too many owners and operators in the oil and gas industry are concerned primarily with one purpose: to process and store as much waste as possible and to cut operations costs as much as possible in order to maximize profits. To them, Public Health and Safety are only secondary concerns. Therefore, in many cases, if a company is not closely monitored, they will cut corners, violate regulations and in general, take chances and display social irresponsibility toward the communities where they are located.

**Any changes in Rule 8 regulations for design, construction and operation of all sites should require more, not less of them.**

In fact, below, we are suggesting some changes of our own, to assure greater protection of our water, and of public health and safety when a solid oilfield waste facility moves into proximity of our homes, businesses, educational, health care and elder care facilities. Those socially responsible and conscientious operators will not object to regulations that help them protect Public Health and Safety, because they are probably now using best practices as their standard. But other operators who put profit over human quality of life values will complain and object. These are the entities for whom regulations must continue to exist and be enforced rigorously.

## Part II

### CAP'S FORMAL COMMENTS ON TRC'S PROPOSED CHANGES IN RULE 8 AND OUR PROPOSALS FOR IMPROVED REGULATION OF THE SOLID WASTE TREATMENT AND STORAGE SITE:

#### A. On TRC proposed changes to Rule 8/Operations needing Permits:

1. **Setbacks (cf. 4.150 (g) (h):** We believe that setbacks should take into consideration **not only the presence of surface water and groundwater, but also the potential for movement of toxic emissions off site and into populated areas.** That is because, while a setback may be thought sufficient to protect nearby surface waters, it may not assure a sufficient distance from human or animal life to protect them from toxic emissions moving into their private or commercial spaces. If water is groundwater is contaminated and rendered non-potable, bottled water can be used. And there may be remediation procedures to clean up contaminated ground water. But people must breathe the air around them and when contaminated, they must wear breathing apparatus to protect their health or be told to shelter in place.

Therefore, any setback distances should be set with protecting **both water and air quality protections in mind.** A certain distance may be sufficient to protect surface water, but not enough to protect safe air quality. Both water and air safety considerations should be made in collaborative decision-making between the TRC and the TCEQ.

Our recommendation is based on Nordheim's experience of having toxic emissions/odors traveling off site onto school property and into private homes one mile from the site. Also, operations at a distance of one mile from the farthest home in town has still not been enough to disallow noise and light pollution also to invade the peace of the community.

This history makes clear to us that **a setback of 300 or even 500 feet is woefully insufficient.** We are convinced that to be truly effective, any setback from surface water as well as for air quality's sake must be **at least 2 miles and prefer 5 miles.**

The peace and public health of any community requires also, that they be protected from noise and light pollution, and dust raised by truck traffic and site operations that will invade the peace or threaten the public health of the community. **Allowing any site close enough to disturb the peace is allowing the corporation's invasion of private lives and homes.**

2. **Section 4.114 (h): Less groundwater monitoring for authorized pits.** We do not support reducing the number of monitors. The changes of liner leaks that will contaminate groundwater and private water wells are too great, making monitors critical for their protections. We understand that industry's primary objective is commercial profit, and that involves eliminating costs. It is understandable that they want to cut back on these monitor

wells. However, it would seem that operators and owners of these facilities would realize that these monitors also protect them, because it will enable them to address any signs of contamination sooner. This would be to their own advantage as their financial liability might be diminished.

**While good business management is always a good thing, it should also be socially responsible.** Given that currently, there are critical issues associated with potable groundwater availability for private, commercial and municipal purposes, it is a major priority that water quality be maintained. Population increases and new industries needs are creating demands that are proving to be a challenge. At the same time, Climate Change is making water less abundant. Longer and more frequent drought periods are predicted by climatologists.

**Aquifers are at risk, and some are depleted to the critical stage (e.g. the Ogallala Aquifer that is the principal water source from New Mexico to Kansas.)** Everyone, especially the solid waste management industry must make protection of water one of their primary objectives. This is no time for them to become less responsible.

**Waste Pits and the risks they pose for groundwater are a major concern for anyone who appreciates the importance of aquifers and water wells. Therefore, this is no time to ask for fewer monitor wells on these sites.**

- 3. Sec. 4.111 (e) (f) Pit liners and burial-in-place. (Authorized Pits/no Permits Needed) We are against any liners being buried in place, including on production sites.** There is no guarantee that in the future, buried liners with waste may tear or deteriorate, allowing the waste to enter groundwater sources. For this reason, some ranchers have included in their leases that open lined pits for flowback not be used, but rather flowback stored in roll-off tanks. They also included in their leases that no liners be buried on site, even when they are allowed during the drilling and fracking phases. But this was because of their leases. **We ask the TRC to consider mandating these procedures for handling waste at drill sites as part of the Rule. We also ask that the TRC mandate double liners with sensors installed between the layers for earlier detection, making them standard for all solid waste sites.**

- 4. "Commercial" vs. "private" designation. [4.111 (21); /Div. 5 and 10 (4.197 (a))]**

The distinction between "private" and "commercial" facilities seem to be a moot point. Regulations for both should be set by requirements for safe air, water and preventing noise and air pollution. Both facilities should be bound by the same standards because both are handling the same waste.

- 5. [ Section 4.140(b) ] New facilities Permitting, regardless of "statement of need".** Given the problematic nature of these facilities for communities and the threat they have proven to be to environmental, public health and safety, we object to the permitting of any new facilities without requiring proof of need. Too many individuals and companies are eager to build and operate these facilities for the purpose of profit.
- 6. [Section 4.153(a)(1)] Flood Plain considerations: We do not support the proposed changes in the required documentation, i.e. that "less guidance" be given for considering the flood history of a site. More guidance, not less, is needed now.**

**Complete historic documentation is critical even more so in current changing conditions.** If eliminated, this would allow an applicant to avoid realistic considerations of possible

flooding of a site, and to ignore the possibilities at the moment, but taking a chance in order to obtain a Permit. **In fact, not only should past floodplain history be considered, but scientific projections by credible, certified entities re: increased potential for future flooding due to Global Warming should also be a required.**

*Example of disastrous miscalculation: In Seguin, TX during the Oct. 1998 Flood, we saw what can happen when the flood potential was dismissed by failure to consider the history of flooding. As one lifelong resident stated after the disaster: "Everyone knew that this area always floods. We were surprised when we saw them building a new subdivision in that area." The site was approved and a Building Permit awarded for a new suburb, only to have every home in that suburb reduced to a clean concrete slab during the historic flood of Oct. 1998.*

The same miscalculation or dismissal of important flood history will most likely result in having a major flood wash out toxic hazardous waste onto downstream properties or into a creek, river or stock tank. That would be an even worse disaster than washing away a complete housing development—a disaster of the TRC's making by its failure to protect private property, ground and surface waters.

Two new considerations must be included in decisions about these rule changes:

- FEMA created new Flood Plain maps for Dewitt County as a result of the October 1998 500-year flood. All regulations must be made with these in mind. Distances become even more important.
- Ongoing Climate Change impacts are predicted to increase in the decades ahead: record high temperatures, warming of the Gulf of Mexico, increasing rate of evaporation resulting from this rise and therefore, greater amounts of rainfall from tropical storms and hurricanes with their inland remnants frequently crossing into shale production areas where these waste pits exist.

7. Section 4.109. Exemptions to many rules without guaranteeing public review. Any proposal or request for a permit that may involve impact to any aspect of the Public Good must always involve a period of public input. It is not the role of the TRC nor of the Applicant for a Permit, to determine what does or not involve the Public Good. That is for the Public and their local officials to determine from their viewpoint. The value of the Public Good and the Public comment mechanisms for defending and promoting it are a foundational element in any democracy. It is unthinkable (but also typical of the current industry and legislative trends) that it be simply eliminated to the advantage of industry and commercial interests.
8. Section 4.193 (b). RE: Haulers records of destinations. The proposal that haulers no longer identify on their applications each facility it will be working with creates a loophole for haulers to dispose of its waste in an unapproved manner. If, for some reason, a hauler needs to change their destination to another, the Application info can be edited or updated.

All oilfield waste, liquid or solid is hazardous, and no exceptions to any Hazmat Rule changes the facts of waste chemistry, even if by that exception, solid hazardous waste is no longer handled as hazardous waste.

It is critical, therefore, that all waste be properly identified, tracked and disposed of at the proper, legal sites. If a driver does not have to specify a destination, there is no way to

track where that waste is being or has been taken for disposal. Often, drivers are not fully aware of the toxicity to human health and the environment of their loads. Removing this tracking requirement many create the possibility that they develop a dangerously casual disposition toward how and where they choose to dispose of their loads.

In addition, for the TRC to exempt a hauler from this requirement is to put the Commission in direct conflict with the Oil and Gas Waste Haulers Act (Tex. Water Code §29.013), which requires such an affidavit.

9. Section 4.193(e). This removes the need for a hauler to carry the above paperwork. This is contrary to best practices for all of the above reasons. The only justification for removal of this paperwork requirement would be that the equivalent record is maintained by the hauler in an electronic program.

**SUMMARY OF THE NORDHEIM CAP GROUP'S RECOMMENDATIONS BASED ON OUR EXPERIENCE OF A SOLID WASTE TREATMENT AND STORAGE FACILITY IN OUR COMMUNITY:**

1. **Setbacks.** Any setback distances should be set with protecting both water and air quality protections in mind. A certain distance may be sufficient to protect surface water, but not enough to protect safe air quality. Both water and air safety considerations should be made in collaborative decision-making between the TRC and the TCEQ.

Since a distance of one mile from Nordheim's western most city limit has not been sufficient to keep odors/toxic emissions, noise and light nuisances from invading our privacy in town, we believe that the recommended setback distances (from 300 to 500 feet) are not sufficient.

We recommend that such facilities be at least 2 to 5 miles from any home, business or community as well as at least one mile from any surface water such as creeks, rivers, stock tanks, lakes or reservoirs.

2. **Site construction:** Initial design, especially with regard to increased capacity for stormwater retention on site and materials used to construct berms.
  - a. There is a need for increased capacity for retention of storm water, especially contact water. If the capacity for storage is not increased by taking the predictions for increased rainfall amounts in mind, current capacity requirements (for both contact and non-contact retention ponds) will not be sufficient. Overflows will be a man-made contamination disaster endangering human, livestock and wildlife, risking surface water contamination and damaging other agricultural resources. Such spills and overflows, especially of contact water, require expensive cleanup. "An ounce of prevention is worth a pound of cure." (Benjamin Franklin)
  - b. It will also require strict standards for assuring that berm materials will be of sufficient strength so that berms do not collapse, as happened at the Nordheim facility. More specific requirements or oversight of the makeup of materials to be used should be established. Strengthening of berms is needed, as well as making sure the Operator is in compliance with all Permit requirements, e.g. assuring that vegetation or other methods are sufficient to prevent erosion of berms.
  - c. Another consideration should be the plane or lay of the land at the site under consideration. Any facility of this kind that is located on a hillside defies the law of gravity. This makes runoff and berm collapse potential even more possible. There should be a clear description of the surface topography that is suitable for such a site, indicated by the angle of the plane of any hill at the location upon which the facility is to be built.

3. Solid Oilfield Waste Treatment Facility Technology. We believe that the current design of such sites is outdated, that more efficient and safer technology already exists and should become the new industry standard. Current "pit filling processes" should be ended.

*In fact, a newer disposal technology does exist and has been in successful operation. It employs the use of a centrifuge to remove the liquid waste from the solids brought in to the site, transporting the liquid waste to an injection well site and use of a double incineration process to burn the remaining solid waste. The second incineration destroys the toxic emissions created by the first incineration. The result is no toxic emissions leaving the site. This process has been described by an air quality expert, as the best and most effective method for disposing of solid oilfield waste currently available.*

We call on the TRC to plan the phase-out of this older design that aerates toxic chemicals into the air, and to require adoption of a new design that has proven superior in design because of its high performance and its effectiveness in eliminating any possibility of either surface water, ground water and production of contaminated air emissions. We call for the adoption of this newer, more efficient and cleaner technology in future permitting as soon as possible.

4. Section 4.114 (h): We see monitor wells as a major factor protecting groundwater under these solid waste processing facilities, even if the industry devalues their worth. We believe that there should be more monitoring wells, specifically, monitor wells that are located off the site, above the downdip groundwater flow to assure that no contamination is coming from the site, in addition to the ones on site.

Also, we propose that the results of groundwater monitors be reported every three months on a site's commercial webpage and also on the TCEQ's website, and that results be made available to stakeholders and the public.

End of Comments from CAP Members, Nordheim, Dewitt County, TX

Contact Person: Lyn Janssen, Hohn Rd. Nordheim, TX

[lynjanssen@att.net](mailto:lynjanssen@att.net)

361-564-6748 (cell)

Signatures of CAP Members participating in these discussions and submitting these Comments follow:

Signatures of CAP Members participating in these discussions and submitting these Comments:

| Signature                           | Printed Name/Contact info  |
|-------------------------------------|--|
| Paul Bauman CAP Pres.               | PAUL BAUMAN 957 Rummel Rd Northheim TX                               |
| Ruth Newman                         | Ruth Newman 1239 Bachle Rd Northheim TX 78141                        |
| Ron Pilswier                        | RON PILSWIER 1158 HOHN Rd. Northheim TX 78141                        |
| Lyn Janssen                         | Lyn Janssen 2597 Hohn Rd Northheim TX 78141                          |
| Jim Osterloh                        | Tim Osterloh 4570 Scheffler Rd. Northheim TX 78141                   |
| Margaret Vargas                     | Margaret Vargas - Northheim, TX 78141<br>P.O. Box 36                 |
| Lisa Karnei                         | Lisa Karnei 2322 Hohn Rd Northheim TX 78141                          |
| Robby W. Karnei & Shirley L. Karnei | Shirley L. Karnei<br>ROBBY W. KARNEI 201 mesquite Northheim TX 78141 |
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TO: Rules Coordinator/Changes to Rule 8/Texas Railroad Commission

rulescoordinator@rrc.texas.gov