

From: [Lance Thomas](#)
To: [Rules Coordinator](#)
Cc: [Christi Craddick](#); [Wayne Christian](#); [Jim Wright](#)
Subject: Comments to Proposed Rule - 16 TAC Chapter 4--Environmental Protection.
Date: Sunday, October 29, 2023 3:44:26 PM
Attachments: [Comments on Rule 8 Proposal Concerning O&G Industry Economics 10-23-2023.pdf](#)
[Exceptions to Proposed Rule lkt 10-27-23.pdf](#)

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Dear Rules Coordinator and Commissioners,

Please see my attached proposed Exceptions/exemptions, comments, recommendations and requests regarding the proposed pit rules together with consequential economic analysis of the proposed rule by Texland.

I plan to submit other comments before the Nov. 3rd deadline. I drove 5 hours in the pouring rain to make oral comments at the oral hearing in Austin; however, the 3 minutes that I was allotted to comment on this 100 page proposal was not nearly adequate to share all of our concerns regarding this wasteful and economically devastating proposal.

I would appreciate the opportunity to speak to any Commissioner.

Sincerely,
Lance Thomas, Manager
Stasney Well Service, LLC
P.O. Box 3190
Albany, Tx. 76430
O: (325) 762-3311

**Lance Thomas, Manager
Stasney Well Service, LLC
Albany, Texas 76430
325-762-3311**

Exceptions to Proposed Rule - 16 TAC Chapter 4--Environmental Protection.

First, the proposed pit rules should be tabled until more study has been done and local stakeholders have had ample opportunity to contribute. **TODAY, the vast majority of independent operators and royalty owners HAVE NO IDEA THIS ECONOMICALLY DEVESTATING AND RESOURCE WASTING RULE has been proposed** (See attached Texland economic analysis). Giving stakeholders 30 days notice and 3 minutes to speak at a meeting in Austin or 3 minutes to speak on a ZOOM meeting to address significant concerns regarding a 100 page economically devastating rule is grossly inadequate and is not just.

Second, RRC administrator Mr. Dubois stated or implied in the oral and zoom hearings that the purpose of revising the existing pit rules was to address issues raised by the horizontal well revolution. Regardless, the existing pit rules have worked extremely well for conventional vertical wells and operations as stated by the TCEQ and RRC in 2014 (well after horizontal drilling had been in existence for years) and affirmed by the EPA in 2019. Based on the exemplary environmental record of the current rule; the tremendously negative economic impact on vertical well operations; **and the massive WASTE of natural resources that will ensue upon shutting down stripper well operations across the state due to heavy and unnecessary costs of pit liner regulation, installation and testing,** I find it remarkably illogical that those in charge of eliminating waste of oil and gas resources in Texas would promulgate a rule that will most assuredly do so. To avoid the loss of natural resources and the ensuing loss of jobs, I propose the following general and specific exceptions and/or exemptions from the new proposed pit rule:

- A. General Exceptions/Application (Section 4.109):** The existing pit/waste rules shall remain in place for ALL conventional vertical wells and operations (See Tx RRC Existing Rule 8 -- TAC Title 16,

Part 1, Ch 3, Rule 3.8).

Since the TCEQ, RRC and the EPA find no resulting environmental faults or issues with the existing Rule 8, if the proposed rules must go forward, **the proposed rules should be limited to horizontal well operations only.**

B. Specific Exceptions: Also, if the proposed rules must go forward, the following specific exceptions and/or exemptions should be plainly stated in the proposed rule (Section 4.109) for the following wells, operations and circumstances:

1. Conventional vertical wells, operations and maintenance
2. All permitted vertical wells existing before the proposed rules take effect.
3. No proven aquapor exists on the location or lease.
4. No proven drinkable ground water or drinking water table exists on the location or lease.
5. Aquapor exists on the location or lease, but there is no actual proven evidence of damage or pollution to said Aquapor in relation to the existence of existing wells, drilling, completion, or workover pit(s).
6. No friable sand or loose gravel layer exists in the pit(s).
7. **Pits contain in-situ clay, rock or soil type** that passes a simple field line perc test (water level drops less than one inch in 30 minutes after adequate saturation). Any district field inspector should be trained and authorized to observe and/or conduct this test. **If in-situ clay, rock or soil type exists that pass the field perc test, synthetic liners should be prohibited as unnecessary and wasteful pollution.**
8. The well is not located in a “sensitive” area.
9. The surface owner/tenant signs waiver for stock tank proximity and/or the stock tank, water body, pond is dry and/or not usable.
10. As long as, “drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy,” are exempt under the Resource Conservation and Recovery Act (RCRA) hazardous

waste laws. See 42 U.S.C. Sec 6921 (b)(2)(A) and/or its successor act or codification.

11. Pits designed or dug to hold less than 500 barrels of fluid.
12. The use of earthen pits for the exploration, development, or production of crude oil or natural gas or geothermal energy Drilling pits only use water-based mud systems, to move and collect cuttings, cement and/or completion materials and fluids. (All of these are exempted by EPA RCRA)
13. Earthen plugging pit(s). Without this exception the orphan well plugging will halt and/or slow considerably and costs will increase significantly.
14. Any earthen pit in use less than 120 days.

Other case specific exceptions: Because of tremendous variations in lithologic and hydrologic properties across the state of Texas and the advancement of new technologies or techniques, exceptions and exemptions in addition to the ones listed above should be determined by local district inspectors, district field engineers and/or administrators. Appeals from the field should be handled by the District Director or engineer.

Essentially, removing the exception/exemption process to Austin would remove the decision from persons most familiar with local conditions and operations.

Again, operators and other stakeholders have had very little time to respond to the proposed one-size-fits-all pit rules. Frankly, the proposed rules will devastate oil and gas production by independent operators on which rule communities, schools and counties heavily rely for jobs, income and property tax revenue. (See attached Texland economic evaluation).

Texland Comments on Rule 8 Proposal on Texas Oil & Gas Industry Economics

10/23/2023

- These comments are based on experience operating in New Mexico where a similar pit rule as the RRC proposed Rule 8 exists.
- Because of mandatory soil sampling if a temporary inground pit is used, operators are unwilling to assume the risk of having expensive cleanups if a liner leak occurs. Any liner leak, no matter the size, will result in additional soil sampling, excavation and replacement of the soil at very high cost (risk-adjusted average cost of a liner leak is about \$590,000 in New Mexico). This additional cost has greatly decreased development by independent operators because of the unfavorable economics.

Statistics

- There are currently about 3,049 oil and gas operators in the state of Texas.
- The top 20 large operators (ie. Anadarko, Apache, Chevron, COG, Diamondback, Marathon, Occidental, Pioneer, XTO, etc.) operate about 21.4% of the wells while producing about 52% of the oil and 40% of the gas.
- The remaining 3,029 operators operate about 78.6% of the wells while producing about 48% of the oil and 60% of the gas.
- Many of the 3,029 operators are small independents who support the state and their communities through local purchases, tax payments and employment opportunities.
- There are currently about 304 rigs running in Texas on any given day, with about 289 rigs drilling horizontally (95% of the total) and 15 rigs drilling vertically (5% of the total).
- Many of the horizontal rigs are using equipment to remove cuttings from oil-based mud systems so that the mud can be reused. The cuttings are typically buried at a well's location. In this analysis, 90% of horizontal rigs are assumed to be using oil-based mud while the remainder utilize water-based systems without the cuttings removal equipment.
- Additionally, because most oil and gas producers have fixed budgets for capital projects, added costs will result in a proportional drop in drilling activity. Although this assumption was made for both horizontal projects and vertical projects, increases in vertical well expenses will likely have a much larger impact due to lower budgets and marginal economics.

Winners/Losers

- The proposed Rule 8 with its mandatory soil sampling and pit registration creates a market for numerous businesses. When all of the potential gross revenue for disposal facilities, trucking companies, closed loop system equipment suppliers and environmental remediation companies is tallied, this new regulation-driven market will be worth \$513,310,000 annually. There is little wonder that disposal facility & environmental companies are filing for permits even before the proposed Rule 8 is finalized.
- However, the losses to oil and gas operators, service and equipment companies, landowners, working and mineral interest owners, and the state of Texas and its local governments, will be about \$1,588,770,000 annually.
- With 3767 horizontal wells drilled and 456 vertical wells drilled annually in Texas, the proposed Rule 8 will result in a cost of \$513,310,000 to the oil and gas industry annually. Vertical wells will be most affected and will cost at least 20% or more on average.
- With budgets constrained by either stockholder expectations, cashflow or limited access to capital markets, the added expense will result in a reduction of at least 47 horizontal wells and 80 vertical wells per year. This reduction in drilling and production means a loss of about \$54,100,000 in state severance tax and about \$36,800,000 in local taxes (ad valorem) annually.
- The reduction in drilling will also directly affect working and royalty interest owners. Working interest owners stand to lose a whopping \$367,200,000 annually and royalty owners will lose about \$99,600,000 annually.

Conclusions

- The Oil & Gas Industry has a shared goal with the TCEQ and Texas Railroad Commission of preventing water contamination.
- Because of the economic cost to the State of Texas and to its energy producers, regulations should be based on real problems and not perceived problems.
- It has been clearly shown that the current Rule 8 Chapter 3.8 has served the RRC and its citizens well since no cases of groundwater contamination have been identified by the TCEQ with regard to temporary pits over the last 40 years.
- Despite the potentially large profit for environmental services and Closed Loop equipment companies that would come with the proposed Rule 8 pit regulations, there is a serious question concerning equipment and services availability (including cuttings control equipment, haul trucks, roll-off bins, fluids storage tanks, commercial waste disposal facilities, environmental services and lab resources). The costs of delayed projects were not part of the analysis but could lead to larger losses for state severance and ad valorem taxes.
- As experienced in New Mexico, real damage has been caused by increased truck traffic on roads and highways while hauling cuttings. Based on the required additions of Closed Loop Systems and cuttings haulers, the new regulations will lead to an additional ± 300 haul trucks on the road daily and about 40,000,000 miles driven between locations and disposal facilities annually. The miles for Closed Loop equipment delivery were not

included. Also, about 5,000,000 gals of diesel would be burned while hauling drill cuttings or soil. When drilling in areas close to or in towns or cities occurs, this can lead to nuisance issues and lots of road repairs.

- Lastly, landowners are concerned that a pit registration system would lead to a loss in the real value of their land, especially in areas where developers are active. Landowners, who already could lose millions of dollars in damage payments because of fewer wells drilled, would also face the prospect of having lower land valuations and forfeited sales because of a registered temporary pit. All of this occurring despite the fact that there was no impact on groundwater in the area.

Recommendations

- Based on current experience, knowledge, and a proven track record over the last 40 years, the current Rule 8 guidelines in Chapter 3.8 on temporary drilling, completion and workover pits should be followed for most of the state. Temporary pits should be defined as having a service life of the drilling operation plus no more than a year. The RRC Districts should modify the temporary pit rules only in the event that there is a clear, demonstrable risk to the water table.
- Pit registration for temporary drilling, completion and workover pits should be eliminated. Pit registration mimics 40 CFR 280 and should not apply to temporary pits unless there is a clear, demonstrable risk. Pit registration can easily lead to litigation. This was clearly demonstrated In New Mexico.

Summary of Revenue Changes							
	<i>Horizontal Wells</i>			<i>Vertical Wells</i>			Total Δ Gross Rev Per Year
	Wells	Gross Add'l Rev	Δ Gross Rev	Wells	Gross Add'l Rev	Δ Gross Rev	
	Drilled/Yr	Per Well	Per Year	Drilled/Yr	Per Well	Per Year	
Winners							
Disposal Facilities =	3,767	\$27,149	\$102,270,904	456	\$11,328	\$5,165,778	\$107,436,683
Trucking Companies =	3,767	\$14,661	\$55,226,288	456	\$6,117	\$2,789,520	\$58,015,809
Closed Loop Equipment Suppliers =	376	\$504,000	\$189,504,000	387	\$216,000	\$83,592,000	\$273,096,000
Env Remediation Companies =	377	\$188,317	\$70,995,547	20	\$188,317	\$3,766,342	\$74,761,889
Winners Total =	3,767	\$110,963	\$417,996,739	456	\$209,021	\$95,313,640	\$513,310,380
	<i>Horizontal Wells</i>			<i>Vertical Wells</i>			Total Δ Gross Rev Per Year
	Wells	Gross Add'l Rev	Δ Gross Rev	Wells	Gross Add'l Rev	Δ Gross Rev	
	Drilled/Yr	Per Well	Per Year	Drilled/Yr	Per Well	Per Year	
Losers							
Oil & Gas Operators =	3,767	(\$110,963)	(\$417,996,739)	456	(\$209,021)	(\$95,313,640)	(\$513,310,380)
Service & Equipment Companies =	3,767	(\$111,867)	(\$421,402,000)	456	(\$206,316)	(\$94,080,000)	(\$515,482,000)
State of Texas Severance Tax =	3,720	(\$12,420)	(\$46,203,321)	376	(\$20,916)	(\$7,864,395)	(\$54,067,716)
Local Government Ad Valorem Tax =	3,720	(\$8,449)	(\$31,428,534)	376	(\$14,227)	(\$5,349,538)	(\$36,778,072)
Landowners =	3,767	(\$312)	(\$1,175,000)	456	(\$2,632)	(\$1,200,000)	(\$2,375,000)
Working Interest Owners =	3,720	(\$81,962)	(\$304,898,400)	376	(\$165,631)	(\$62,277,120)	(\$367,175,520)
Mineral Interest Owners =	3,720	(\$20,490)	(\$76,224,600)	376	(\$62,111)	(\$23,353,920)	(\$99,578,520)
Losers Total =	3,767	(\$344,924)	(\$1,299,328,595)	456	(\$634,734)	(\$289,438,613)	(\$1,588,767,208)
Net Gain (Loss) From Proposed Rule 8	(47)	(\$233,961)	(\$881,331,855)	(80)	(\$425,713)	(\$194,124,973)	(\$1,075,456,828)

<u>Assumptions:</u>	Numbers in the chart above reflect net changes		
	Annual Drilling Projects continue at same rig count (304) and budgets		
	Horizontals continue to make up 95% of new drills		
	Horizontals are 2 mile laterals with \$9,000,000 budgets with 28 days of drilling		
	Vertical wells assume \$1,200,000 budgets with 12 days of drilling		
	Tax Calculations are based on \$85 WTI and \$3.12 HH Gas		
	Assumes 90% of Horizontal wells are already using Closed Loop Systems because of oil-based mud systems		
	Assumes all Horizontal and Vertical wells are currently burying cuttings		
	Assumes Closed Loop System spill risk is 10% per project		
	Tax decreases are based on well drilling reductions due to fixed budgets		
	(i.e. more capitol required, less drilling proportionately)		
	Landowner losses are based on loss of damage payments because of decreased drilling activity		
	Average statewide statistics for tract size and land value were used		