



PERMIAN BASIN
PETROLEUM ASSOCIATION

October 15, 2024

Rules Coordinator
Railroad Commission of Texas
Submitted via email

RE: 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

The Permian Basin Petroleum Association (“PBPA”) greatly appreciates the opportunity to provide feedback on these proposed rules and thanks the Commissioners and staff for their work throughout this important process. As you know, our membership includes the smallest exploration, service and support companies as well as some of the largest oil and natural gas companies with world-wide operations. We firmly believe that Texas, the United States, and our allies benefit from a vibrant and diverse oil and gas sector. To maintain these benefits, we are committed to continuing the development of these resources for generations to come.

Regarding this proposed rule our members recognize the importance of modernizing certain provisions of Chapter 3, Rule 8 (“Rule 8”) as well as complying with legislative mandates in order to establish efficient, consistent, and orderly permitting for commercial disposal facilities. Our members would like to ensure that these efforts are consistent with the goals of the industry, the Commission, the Legislature and the public at large to ensure the safe and responsible development of the natural resources in the Permian Basin.

To be clear, our members support these efforts and encourage the Commission and industry to continue working together to modernize waste practices. PBPA does not believe that environmental protection and natural resource development are mutually exclusive. Texas can, and has long been, a leader in both.

PBPA agrees with the Railroad Commission’s characterization of this rulemaking one year ago, that this is a major overhaul for water protection and oil and gas waste management rules. In that description the Commission noted that “for the first time in nearly 40 years, the Railroad Commission’s Statewide Rule 8 will undergo a substantial overhaul to better reflect modern waste management practices and recent advancements in production method.

This proposed rulemaking is a meaningful change from current rules and the complexity of this rulemaking requires careful scrutiny to ensure that we continue to modernize practices while not creating unreasonable burdens on industry.

Over the last 40 years the industry has made significant gains and increased efficiencies in water and waste management. Our members would note that the existing provisions of Rule 8, and its enforcement, have effectively protected public health and safety for many decades. It is also worth noting that one of the primary reasons to update these rules is the significant investment and advancement in industry practices to manage produced water, reduce the use of fresh water resources, and create value from products that have historically been viewed as merely waste.

Our comments are offered with expanded suggestions to follow; however, this summary serves as a focus on key provisions PBPA memberships would like to address. Our goals include the modernization of the management of waste, encouraging the recycling of oil and gas wastes, and the promotion of the beneficial reuse of produced water.

With regard to definitions, our membership has made a painstaking effort to ensure that the definitions best match both the current practice and the potential future operational flexibility necessary.

The crux of this rule has become the definition of what constitutes a “commercial facility.” Our members are comfortable with the definition provided in the proposed rule with the clarification that this definition would not constrain existing operations, potentially in situations where others may manage an operator’s facility. Additionally, removing “permitting, physical operation” from the definition of “operator” would provide clarity to the commercial facility definition.

We understand and share the Commission’s interest in modifying financial assurance requirements. We recommend expanding the options allowed to include coverage to an operator’s existing financial assurance to include the items contemplated in the proposed rule, including parental bonds and self-insurance, rather than requiring separate and additional requirements. We expand on these suggestions in our attached document as well.

Our members would also appreciate clarity that the requirements for produced water recycling pits are consistent and not subject to commercial requirements in Divisions 4 through 6. The use of these pits are critical to industry commitments to increase water reuse and recycling.

We also offer consideration regarding fresh makeup water pits to best address existing practices. As we have offered in previous comments, a distinction between makeup water pits that is based on the type/concentration of fluid would provide greater flexibility for operators while continuing to advance improved environmental practices.

PBPA members would like to express our support for the provisions related to pilot projects. We encourage the Commission to continue to permit these pilot projects and review the data and projects expeditiously to encourage these projects to expand beyond the pilot phase.

PBPA appreciates this opportunity to comment on the Commission’s proposal. The above and other comments are further detailed in the attached. We look forward to visiting with you and other stakeholders to establish the best version of this rule possible.

Regards,

A handwritten signature in blue ink that reads "Ben Shepperd". The signature is written in a cursive, flowing style.

Ben Shepperd
President

§4.109 (a) (Exceptions) Page 45 of 275

§4.109(a) An applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The following provisions are ineligible for exceptions:

Comment: We believe the rule is not clear that the exception provision applies to all authorized operations as well. Adding “operator” to the language to clarify that exceptions are available for all provisions of the rule, including authorized pits, is recommended. The current language of “applicant or permittee” implies applicability limited to permitted activities, not authorized activities.

Propose: “An operator, applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request...”

§4.110 (Definitions) Page 46 of 275

§4.110 (22) Commercial Facility Page 49 of 275

(22) A facility permitted under Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation.

§4.110 (25) Contact stormwater Page 50 of 275

(25) Stormwater that has come into contact with any amount of oil and gas wastes 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. See also “Non-contact stormwater” and “Stormwater”

Comment: Requiring operators to manage water in areas that are permitted but do not contain oil and gas wastes is unnecessary.

Proposed: Stormwater that has come into contact with any amount of oil and gas wastes or areas that are permitted to contain oil and gas wastes.

§4.110 (47) Groundwater Page 51 of 275

Comment: Exclude produced water, include language in a confined or unconfined aquifer; or Subsurface water in a zone protected by a current Groundwater Advisory Letter issued by the RRC.

Proposed: --Subsurface water in a zone of saturation. Groundwater does not include produced water nor any other oil and gas waste.

§4.110 (68) Operator Page 55 of 275

Propose: Remove “permitting, physical operation”

§4.110 (47) Public Area Page 56 of 275

Comment: The preamble notes the definition for this term is that definition located in Statewide Rule 3.36 and that this definition should govern safety concerns associated with hydrogen sulfide. In this instance, “public road”

should be removed from the definition or, in the very least, “public road” should be defined as follows: “any federal, state, county, or municipal street or road owned or maintained for public access or use.”

§4.112 Authorized Recycling Page 60 of 275

Comment: As listed, fluid that is not required to be treated is unintentionally left off as an authorized recycling practice. While some fluids may need to be treated, some may not and limiting certain fluids that do not need to be treated would inhibit recycling of those fluids if they are not explicitly authorized.

§4.113(c)(1) Authorized Pits Page 61 of 275

Comment: There is concern that the language in 4.113 (c)(1) could trigger a requirement for an operator to perform a site assessment on any authorized pit without cause to demonstrate pollution is not occurring, as opposed to action required under current rules to address alleged/identified pollution. This issue is also discussed in the preamble on page 7, line 31.

Proposal: 4.113 (c)(1) Authorized pits that cause pollution not in compliance with applicable rules under 16 TAC Chapter 3 shall be brought into compliance with or closed according to this division.

§4.113(e)(5) Authorized Pits (Use of Schedule A pits for multiple purposes) Page 62 of 275

Comments: These comments are regarding utilizing reserve pits for completion operations. Operators will gain efficiencies with the ability to utilize one single pit for multiple different operations which is recognized by the language in section (5) below. However, if doing so then kicks in the 30-day dewater and 120-day backfill requirements under 4.114(3)(iii), this essentially eliminates an operator's ability to co-utilize a reserve pit as a completion pit because the pit contents need to be worked and dried out to properly manage the waste. The material placed in reserve pits and completions pits does not differ significantly from a waste characterization or risk level standpoint. Furthermore, this also reduces surface development/environmental impact and damages adjacent to the well pad, which in most cases are owned by private landowners.

Comment: An authorized pit may be designated as more than one type of pit provided it meets the requirements in this section for each type of pit. An authorized pit of one type may be redesignated as an authorized pit of another type (for example, a reserve pit may be redesignated as a completion pit) provided the pit was constructed to meet the design and construction requirements of the pit type to which it will be redesignated.

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

§4.114. Schedule A Authorized Pits Page 63 of 275

§4.114 (C) Fresh makeup water pits

Comment: Industry supports the continued authorized use of fresh makeup water pits. However, industry is working to reduce fresh water use by sourcing water from brackish or saline groundwater aquifers. As written, the draft rule only allows water up to 3,000 mg/l total dissolved solids (TDS) to be stored in a fresh makeup water pit, and there are no other proposed authorized pits which can be utilized to store brackish or saline groundwater or surface water with TDS exceeding 3,000 mg/l.

Requiring operators to store this water in a permitted pit would discourage the use of alternative water sources. In addition, the draft Rule does not establish a maximum TDS threshold for other Schedule A authorized pits (e.g. reserve pits, mud circulation pits, completion/workover pits, fresh mining water pits); therefore, it appears that the storage of surface or subsurface water with TDS exceeding 3,000 mg/l in a Makeup Water Pit would not present any greater risk to the environment or public than the use of other Schedule A authorized pits.

Propose: The draft rule should be modified to clearly express that:

“A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water or other surface or subsurface waters with total dissolved solids exceeding 3,000 mg/l, used to make up drilling fluid or hydraulic fracturing fluid.”

OR

As an alternative to allowing waters with TDS > 3,000 mg/l to be stored in Fresh Makeup Water Pits, we recommend creating an additional type of Schedule A authorized pit, herein referred to as a “Makeup Water Pit”, to be regulated under §4.114. Makeup Water Pits shall be authorized to contain surface or subsurface waters with total dissolved solids exceeding 3,000 mg/l. To minimize potential for migration of materials in the pit into adjacent groundwater, we recommend adding Makeup Water Pits to the list of pits in §4.114(2)(B) requiring a liner in areas where groundwater is present within 50 feet of the bottom of the pits. A proposed definition for “Makeup Water Pit” is “A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of surface and subsurface water with total dissolved solids exceeding 3,000 mg/l used to make up drilling fluid or completion fluid.”

§4.114 (C) Fresh Makeup Water Pits

Comments: There is a significant need to have a pit category for makeup water pits that are not considered fresh water based on definition (42). These makeup water pits could contain brackish and saline water sources, recycled produced water, or blended water sources.

Propose: new definition and operating requirements under Schedule A Pits Under §4.110 Definitions, Makeup Water Pit – A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of non-fresh water used to make up drilling fluid or completion fluid. Under §4.114 Schedule A Authorized Pits, (1) Schedule A Pit Contents (F) Makeup water pits. A person shall not deposit or cause to be deposited into a makeup water pit any oil and gas wastes or any oil field fluid other than, fresh water, brackish water, saline water, recycled produced water, or blended sources of water. (2) Schedule A Pit Construction (B) Reserve pits, mud circulation pits, and completion/workover pits, and makeup water pits located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined. (3) Schedule A Pit Closure (A) A person who maintains or uses a reserve pit, mud circulation pit, makeup water pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule. (i) Reserve pits and mud circulation pits, and makeup water pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of use. (ii) Reserve pits, mud circulation pits, and makeup water pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled

Propose: Eliminate definition/category of “fresh makeup water pit” and add new definition “makeup water pit.” Within this section, exempt pits that contain only fresh water as defined by definition (42) from the requirements of this section except for registration and closure time limit.

§4.115 Schedule B Authorized Pits Page 65 of 275

§4.115 (b) Financial Assurance

Comment: Operators have noted that financial assurance requirements are important and would like to continue to utilize financial assurance mechanisms that exist as well as expanded concepts that protect the state and environment.

Proposed: Self-insurance language:

“The owner or operator may demonstrate financial responsibility to the RRC of Texas through self-insurance or corporate guarantee provided that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard & Poor’s, Aaa, Aa, A, or Baa as issued by Moody’s or AAA, AA, A or BBB as issued by Fitch. The owner or operator must submit a report of its bond rating upon pit registration.”

And while the modified language below is derived from Colorado and is not specific to Texas it does offer a framework for parental bonds:

Proposed: “Consolidation of Related Operators: Where a registered Operator owns, holds, or controls one or more other registered Operators, that parent company Operator and its subsidiary Operators may be consolidated, at their discretion, for purposes of determining financial assurance obligations for itself and the consolidated subsidiary entities. Consolidation under this Rule will include all of a parent Operator's subsidiary Operators.”

OR

Proposed: No additional bonding for the following under new section (b)(2) (b) Financial security requirements. (1) Pursuant to Natural Resources Code §91.109(a), the operator of a produced water recycling pit shall maintain a performance bond or other form of financial security conditioned that the operator will operate and close the produced water recycling pit in accordance with this subchapter. (2) Produced water recycling pits are exempt from sections (3) – (5) under the following conditions. (A) the pit is located on an existing Commission-designated lease, pooled unit, or drilling unit associated with a Commission-issued drilling permit; or (B) upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (3)(2) For each produced water recycling pit not exempt under section 2 above, an operator shall file financial security in one of the following forms: Renumber the following sections of this provision (4)(3) (5)(4) (6)(5)

Comment: Some corporations have multiple entities covered under separate P-5s and financial assurance that may be required to each file a \$5,000,000 financial security as proposed in the rule.

Propose: Clarify in preamble or in the rule only one blanket bond is required based on cumulative number of produced water recycling pits for corporations with multiple subsidiary entities (P-5 Operators).

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

§4.115 (b)(4) The operator shall submit required financial security at the time the operator registers the produced water recycling pit. Page 65 of 275

Comment: In practice we propose the following to better address the timelines as suggested below.

Propose: (A) The new operator of an existing produced water recycling pit must, (i) file notice with the Commission 30-days in advance of the effective date of transfer; and (ii) submit the required financial assurance by the date the transfer is effective.

§4.115 (e) General location requirements for produced water recycling pits. Page 66 of 275

Comment: “Public area” is proposed to be defined as a dwelling, place of business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can expect to be populated, which is the same definition that appears in §3.36 The setback

requirement from a public road is more restrictive than that under Subchapter B for commercial operations and may limit available locations for industry to continue efforts to increase produced water recycling.

Propose: See comments above related to definition of “Public” area under §4.110 (77).

§4.115(e)(6) General location requirements for produced water recycling pits. No produced water recycling pit shall be located:

(6) within 500 feet of a public area.

Propose: Earlier comments recommended removing “public road” from the definition of public area. If that recommendation is not accepted by the RRC, then we recommend §4.115(e)(6) Proximity to a public area be changed as follows:

Proposal: (e)(6) within 500 feet of a public area, except a public road. DIVISION 10: REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION §4.191(a)(2) allows for the use of an electronic manifest system. Clarify in the rule that the three signatures required under subsection (b) may be electronic signatures. §4.191(d) Oil and Gas Waste moved by pipeline. This section records the metering of fluid flow for mass balance into and out of the system. Clarify if this section is applicable to movement of recycled produced water which under the definition of Treated fluid, §4.110 (93) is not considered a waste.

§4.191 Oil and Gas Waste Manifests Page 118 of 275

§4.191 (b) The Commission shall establish a standard oil and gas waste manifest that may be used in Texas, or operators may use their own forms provided they include at least the following information:

§4.191(b)(8) name and signature of generator; and

Comment: A waste generator signature is not required on a waste manifest under the current Rule §3.8(g)(1) Record Keeping. In our industry today, the majority of produced water loads transported by truck to a receiver (disposal/recycler) occur at un-staffed oil and gas production locations. Thousands of produced water loads are picked up and transported to a receiver (disposal/recycler) each day in Texas; therefore, requiring a generator signature on a waste manifest will be an overly burdensome challenge for Industry at un-staffed locations. Additionally, requiring a generator signature on these manifests provides little value to the Commission relative to the standard recordkeeping practice that is in effect under the existing Rule 3.8(g)(1) today.

Propose: Recommend the Commission consider reducing the waste manifest requirements for waste being transported by truck to a receiver (disposal/recycler).

Propose: Recommend removing 4.191(b)(8) from the Waste Manifest requirement section in the draft Rule in its entirety.

Propose: Alternatively, we would recommend the Commission consider including language that when a waste generator hires a hauler to transport produced water for disposal/recycling, a contractual agreement satisfies the requirements of a generator signature under 4.191(b)(8), such as “(8) name and signature of generator. The generator signature is not required on a waste manifest when the generator has entered into a contractual agreement with a transporter to haul the waste.”

Comment: The requirement of a generator signature at un-staffed locations potentially puts indirect cost on Industry that has not been evaluated under this rulemaking.

At bare minimum, these changes should be made for waste manifests documenting produced water transportation, as this waste stream is the overwhelming majority of waste being moved from unstaffed oil and gas locations within our state.

§4.191(d)

Comment: In this section, “metering” is listed as the means for tracking waste, and while we support measurement, utilizing documentation is equally effective and should be included where legacy production may not have metering currently.