



SIERRA CLUB

LONE STAR CHAPTER

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The Sierra Club supports the need for rulemaking related to brine mining for lithium and other elements. We supported the bill since we recognize the need both for the product - which can be important in battery storage technology for power and electric vehicles - but also recognize the need for a strong regulatory framework to protect surface and groundwater and assures that areas are returned to their original or near original status once the mining ends.

Deep brine aquifers in Texas contain substantial lithium and other valuable deposits, but an incomplete regulatory framework surrounding the brine mining industry presently inhibits the investment required to extract it. The Legislature passed SB 1186 to clarify and complete the Commission's jurisdiction over brine mining to enable this new industry to develop in Texas.

As laid out in the preamble to the rule, the proposed rules assure Commission jurisdiction over brine mining and authorize the Commission to issue permits for brine production wells and injection wells used for brine mining, and also instruct the Commission to adopt rules necessary to administer and regulate brine mining; Texas Natural Resources Code §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells.

Again, the Commission already has obtained primary enforcement authority for the Class III Underground Injection Control (UIC) program under the federal Safe Drinking Water Act from

the United States Environmental Protection Agency (EPA) for such operations and is therefore authorized to issue permits for those brine mining injection wells.

However the Commission does not yet have primacy for the Class V UIC program from the EPA required to permit the spent brine return injection wells. Spent brine return injection wells currently are not subject to any specific regulations, but rather are subject to the federal UIC regulations that exist for all Class V wells.

SB 1186 added a definition of "brine mining" to Texas Water Code §27.036, to clarify the Commission's jurisdiction over both types of brine mining under state law. The bill also instructed the Commission to seek primacy from the EPA for Class V injection wells designed to inject spent brine into the same formation from which it was withdrawn after the extraction of minerals. Additionally, the bill clarified that the Commission's jurisdiction over brine mining includes the authority to regulate brine production wells and brine injection wells.

The Sierra Club generally supports the proposed rule

The rule is well crafted and includes specific provisions for notice to landowners and mineral rights owners that are located close to the proposed mining area, includes specific operational and construction requirements, includes strong financial requirements to assure that wells are plugged and areas cleaned up and also includes the potential for contesting permits by affected persons. The Sierra Club is very appreciative of what we believe is an improved regulatory and enforcement regime for brine mining.

Slight Improvements needed in some areas

While the Sierra Club supports the rule overall we believe there are two areas where it could be improved. First well there appears to be a fee of \$100 for each individual well within a brine production mining area, there does not appear to be a fee listed for the application for the brine mining production area itself. The Sierra Club suggests given the complex nature and approval process a fee of \$1,000 for a brine mine would make sense.

While we appreciate the very detailed requirements for notice to nearby landowners and mineral rights owners, we would suggest that notice also be provided to groundwater districts and the county in which the brine mining operation is intended to take place. Finally we would suggested having a copy of the permit application on the RRC's website so any member of the public can view the proposed mine. Commercially sensitive information could be redacted.

The Sierra Club appreciates the opportunity to make these brief comments on the proposed rulemaking. We support the rule but believe it could be improved in these two areas.