

# TEXAS BRINE COMPANY, LLC

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November 27, 2024

VIA E-MAIL ([RULESCOORDINATOR@RRC.TEXAS.GOV](mailto:RULESCOORDINATOR@RRC.TEXAS.GOV))

Rules Coordinator  
Railroad Commission of Texas  
Office of General Counsel  
P.O. Drawer 12967  
Austin, TX 78711-2967

RE: Proposed Rule 16 TAC §3.82 and Amendments to Various Rules in Chapter 3

Dear Rules Coordinator,

Texas Brine Company, LLC and its related entities, Underground Storage, LLC, Underground Services Markham, LLC, Texas Brine Beaumont, LLC, and Pure Salt Baytown, LLC (collectively, "Texas Brine") appreciate the opportunity to submit the following comments to the Railroad Commission of Texas (the "Commission") on the proposed Rule 16 Texas Administrative Code ("TAC") §3.82 approved for publication by the Commission on October 15, 2024, and published in the November 1, 2024 issue of the *Texas Register*.

Texas Brine is a leading provider in the brine and salt industry, primarily engaged in the production and supply of brine, particularly for chlor-alkali processes, and underground storage markets. As such, Texas Brine engages in brine mining operations regulated under existing Statewide Rule §3.81. Texas Brine's operations focus on what is traditionally referenced as solution mining or brine mining for the extraction of brine by the solution of a subsurface salt formation.

While the Commission's efforts to establish clear regulatory guidelines for the emerging field of lithium and mineral extraction from brine resources are appreciated, there are concerns

that certain aspects of Rule §3.82 may inadvertently apply to traditional solution mining or brine mining operations under Rule §3.81. Despite a statement in proposed Rule §3.82 noting it does not apply to operations under Rule §3.81, some shared terminology and definitions could create unnecessary confusion and regulatory overlap, affecting companies like Texas Brine, who operate exclusively within the scope of Rule §3.81.

To ensure the intent of both rules is maintained without ambiguity, Texas Brine respectfully submits the following comments for your consideration:

### **I. Comments on Clarification of Proposed Rule’s Scope**

We respectfully request a clear statement regarding the exclusion of Rule §3.81 operations from the scope and requirements of Rule §3.82. Specifically, we seek clarification that Class III wells, as defined under Rule §3.81, are intended solely for operations related to extraction of brine by the solution of a subsurface salt formation, while brine production projects and Class V wells under Rule §3.82 are explicitly focused on the extraction of brine from naturally occurring aquifers and the reinjection of fluids post-mineral extraction. This distinction is critical to ensure proper regulatory compliance and avoid confusion when applying the rules. Furthermore, we request specific clarification that the requirements under §3.81 and §3.82 do not apply to the injection of fluid for the purpose of leaching a cavern for the underground storage of hydrocarbons.

A clear understanding of the applicable operations and scenarios will help provide greater certainty for project operators and ensure that both classes of wells, extraction of brine operations and leaching of caverns for underground hydrocarbon storage are appropriately enforced under the applicable rules.

### **II. Comments related to Definitions under the Proposed Rule.**

#### **A. Rule § 3.82(b)(5): Definition of “Brine”**

The Commission is proposing a definition of “brine” that states “[t]he term does not include brine produced as an incident to the production of oil and gas.” As written, this sentence may be ambiguous, as it could create confusion regarding the scope of brine and its relationship to various production and extraction methods. Clarification of the definition is needed to help ensure that brine produced from oil and gas operations and brine produced from a brine mining injection well by solution of a subsurface salt formation pursuant to §3.81 are clearly differentiated from

naturally occurring brine under §3.82, reducing potential regulatory uncertainty and ensuring more precise application of the rules.

To clarify the distinction and avoid potential regulatory overlap, Texas Brine suggests amending the definition of “brine” to include “and does not include brine produced by solution of a subsurface salt formation from a brine mining injection well or Class III well as defined under §3.81” or a similar clarifying statement.

#### **B. Rule § 3.82(b)(7): Definition of “Brine production project”**

Texas Brine believes the distinction between a “Brine Production Project” under Rule §3.82 and a “Brine Mining Facility” under Rule §3.81 should be clarified to address potential overlap in operations that may include elements of both definitions. To avoid confusion, it would be helpful to specify that a “Brine Production Project,” as defined in proposed Rule §3.82(e)(7), refers to extraction of brine resources in naturally occurring brine located in aquifers as opposed to traditional extraction of brine by the solution of a subsurface salt formation, and explicitly excludes brine mining operations regulated under Rule §3.81.

#### **C. Rule § 3.82(b)(11): Definition of “Brine Resource”**

Further clarification on the definitions of "brine resource" as outlined in Rule §3.82(b)(11) is needed. Proposed Rule §3.82(e)(11), defines "brine resource" as:

"Elements, minerals, salts, or other useful substances dissolved or entrained in brine, including, but not limited to, lithium, lithium ions, lithium chloride, halogens, or other halogen salts, but not including oil, gas, or any product of oil or gas."

Given the potential overlap between traditional brine mining projects under Rule §3.81 and proposed projects under Rule §3.82, it is crucial to specify the terminology, particularly concerning the use of brine and brine resources in connection with "salts." To prevent confusion, we propose that "brine resource" be distinctly defined to encompass mineral extraction activities from naturally occurring brine from an aquifer and not extraction of brine by the solution of a subsurface salt formation. This definition should explicitly exclude operations covered under Rule §3.81, which pertains to conventional brine mining. Such a distinction is vital to accurately differentiate projects that involve brine for purposes such as lithium extraction from those projects that solely involve solution of a subsurface salt formation.

Additionally, Texas Brine also seeks clarification on other language in the definition of “brine resource.” Specifically, it is unclear whether "gas" refers to (1) oil and gas production or (2) naturally occurring gas that may be associated with brine deposits. Given the significant implications for regulating brine production projects, we recommend providing further explanation to ensure a consistent and accurate interpretation of this Rule.

### **III. Comments on Other Procedural and Substantive Provisions**

#### **A. Rule § 3.82(c)(9):**

In examining the proposed language of §3.82(c)(9), we respectfully seek to clarify the reasoning behind the requirement for "an amount estimated to plug each well" within a brine production project. Specifically, we would like to understand the Commission's rationale for mandating individual financial security for estimated plugging of each well instead of requiring comprehensive financial security to cover all wells and equipment collectively as referenced in §3.82(i)(8). Gaining this clarification is crucial for ensuring both compliance and a clear understanding of the financial security obligations of operators engaged in brine production projects.

#### **B. Rule § 3.82(d)(2)(D): Acreage and Density – Well Spacing & Lease Size**

We would like to request clarification regarding the language in proposed subsection (d)(2)(D), which requires that the two farthestmost points of acreage assigned to a brine production well not exceed 23,760 feet, with the acreage assignment assuming a rectangular shape of 5,120 acres (2 miles by 4 miles).

#### **C. Rule § 3.82(d)(3)(B): Temporary Brine Field Rules – Offset Operator Notification**

We would like to express our concern regarding the proposed requirement in §3.82(d)(3)(B), which mandates that applicants for temporary brine field rules provide a list of operators within five miles of the brine discovery well. If a “brine field” as defined in §3.82(b)(6) were to include a subsurface salt formation that would be solution mined by a brine mining injection well, it would result in overlap and ambiguity of notification requirements set forth in §3.81 and §3.82 and potentially §3.95 and §3.97 (as it relates to leaching of caverns in salt formations for purposes of underground hydrocarbon storage). We respectfully request a revised

definition for “brine field” to clarify such brine fields are inapplicable to subsurface salt formations that are solution mined under §3.81 or leached for caverns for purposes of underground hydrocarbon storage.

#### **IV. Comments for Further Clarification**

##### **A. Rule § 3.82(c)(8):**

Further clarity is needed in the Rule regarding the applicability of the requirement for well operators to plug all wells associated with a brine production project and remove all associated wastes, storage vessels, and equipment within one year of cessation of operations. While it appears that this provision pertains specifically to Class V wells, we recommend introducing flexibility similar to that found in SWR 81(c)(8), which allows the Commission to grant extensions of time for plugging. Providing a comparable mechanism would enable operators to address logistical challenges and ensure compliance without unnecessary burdens, promoting operational continuity and effective resource management.

##### **B. Rule § 3.82(e): Application Requirements for a Brine Production Project Permit**

In reviewing proposed Rule § 3.82(e), we urge careful reconsideration of the application requirements for brine production project permits, particularly § 3.82(e)(3)(T). This provision grants the Director broad discretion to demand “any other information the Director may reasonably require to enable the Commission to determine whether to issue a permit.” While flexibility is important, this language may lead to uncertainty in preparing a brine production project permit application and associated timelines for Commission review and determination.

The Commission could demand information not explicitly outlined in the rules, creating inefficiencies and potential conflicts. By refining the language of § 3.82(e) and addressing these concerns proactively, the Commission can foster a clearer, more predictable permitting process that benefits both regulators and operators.

We appreciate the Commission’s time in reviewing and considering these comments. If you have any questions, please do not hesitate to contact Renee Bayer at (713) 986-2646 or [rbayer@tum.com](mailto:rbayer@tum.com).

Respectfully,

/s/ M. Renee Bayer

Texas Brine Company, LLC

Vice President – General Counsel