RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

M E M O R A N D U M

TO: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

FROM: Haley Cochran, Assistant General Counsel
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: December 17, 2024

SUBJECT: Adoption of amendments to 16 TAC §3.8 and various other rules in Chapter 3 and new rules and amendments in 16 TAC Chapter 4

Attached is Staff's recommendation to adopt amendments to various rules in 16 Texas Administrative Code Chapters 3 and 4 and new rules in Chapter 4, Subchapters A and B.

The new rules in Chapter 4, Subchapter A incorporate and update the requirements from §3.8, relating to Water Protection, and §3.57, relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials. Sections 3.8 and 3.57 are also amended to remove all substantive language from the rules and replace with a notice that the requirements are relocated to Chapter 4. Several other rules in Chapter 3 are amended to replace references to §3.8 and §3.57 with the corresponding provision in new Subchapter A of Chapter 4.

New Subchapter A is also adopted to ensure Commission rules adhere to statutory changes made in recent legislative sessions. Amendments and new rules in Subchapter B of Chapter 4 incorporate legislative requirements and make updates consistent with the new rules in Subchapter A.

On August 15, 2024, the Commission approved the publication of the amendments and new rules in the Texas Register for a public comment period, which ended on October 15, 2024. Staff recommends that the Commission adopt the amendments to rules in Chapter 3 without changes to the proposed text published in the August 30, 2024, issue of the Texas Register (49 TexReg 6559). Staff recommends the new rules and amendments proposed in Chapter 4 be adopted with changes to the proposed text. The recommended changes are described in the attached adoption preamble.

cc: Danny Sorrells, Acting Executive Director and Director of the Oil and Gas Division
Paul Dubois, Assistant Director, Technical Permitting, Oil and Gas Division

The Railroad Commission of Texas (Commission) adopts amendments to §§3.8, 3.14, 3.22, 3.30, 3.57, 3.91, and 3.98, relating to Water Protection; Plugging; Protection of Birds; Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ); Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials; Cleanup of Soil Contaminated by a Crude Oil Spill; and Standards for Management of Hazardous Oil and Gas Waste, without changes to the proposed text as published in the August 30, 2024, issue of the Texas Register (49 TexReg 6559); the rule text will not be republished. The Commission adopts amendments to §3.8 and §3.57 to remove all substantive language from the rules and replace with notice that the requirements are relocated to Chapter 4 of this title (relating to Environmental Protection) which is adopted in a concurrent rulemaking. Other adopted amendments update cross-references to certain Commission rules in conjunction with the new and amended rules in Chapter 4.

To align with the concurrent amendments and new rules in Chapter 4, the Commission adopts the amendments in §3.8 and §3.57 to go into effect July 1, 2025, which is approximately six months after the adoption of the amendments.

The Commission received numerous comments regarding the concurrent rulemaking in Chapter 4 which are addressed in that preamble, but only three comments from two individuals and one company addressing the proposed rules in Chapter 3.

One individual commented regarding distilled water, stating that the definition of distilled water was moved from §3.8 to Chapter 4, but the text in §3.8(d)(7)(B) did not appear to be moved to Chapter 4. The individual requested clarification regarding whether the activities allowed under §3.8(d)(7)(B) would continue to be allowed.

As stated in the Chapter 4 adoption preamble, the Commission notes that with the recent attention to the development of technology and logistics to treat and recycle produced water, some of which include distillation methods, a blanket authorization to allow distilled water to be reused for any purpose is unwise. Distilled water commonly contains low concentrations of constituents that have passed through distillation, and at this time, it is appropriate to limit the potential for harm from processes that are unproven. Therefore, the Commission does not incorporate the language from §3.8(d)(7)(B) into Chapter 4. The Commission also makes no changes to §3.8 in response to this comment.

One individual commented only that the term "storm water" should be "stormwater." The commenter did not specify a rule, but the term "storm water" is used frequently in §3.30 and other rules. Because the term appears in parts of §3.30 that were not proposed with any changes, the Commission declines to adopt this change in the amendments to rules in Chapter 3. It is unlikely confusion would be caused if the term appears as one word or two.

One company commented on several rules in Chapter 4 and also mentioned the definition of "disposal." Section 3.91 explicitly excludes crude oil spills or releases remediated in accordance with §3.91; however, the company believes these events that are in active remediation are appropriately regulated by §3.91 and should not be additionally governed by the waste disposal provisions in §3.8(d)(1), now moved to §4.103 in the concurrent Chapter 4 rulemaking.

The Commission generally agrees with the concept behind the comment and adopts §4.103(a)(2) to include "as authorized by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill)." The Commission disagrees that a change in needed in §3.91 and adopts it without change from the proposal.

The Commission adopts the amendments to pursuant to 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.

Statutory authority: Texas Natural Resources Code §§81.051 and 81.052.

Cross reference to statute: Texas Natural Resources Code Chapter 81.

§3.8. Water Protection.

Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management).

[~~(a) The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.~~]

[~~(1) Basic sediment pit--Pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank. Basic sediment pits were formerly referred to as burn pits.~~]

[~~(2) Brine pit--Pit used for storage of brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility.~~]

[~~(3) Collecting pit--Pit used for storage of saltwater or other oil and gas wastes prior to disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a skimming pit.~~]

[~~(4) Completion/workover pit--Pit used for storage or disposal of spent completion fluids, workover fluids and drilling fluid, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed or worked over.~~]

[~~(5) Drilling fluid disposal pit--Pit, other than a reserve pit, used for disposal of spent drilling fluid.~~]

[~~(6) Drilling fluid storage pit--Pit used for storage of drilling fluid which is not currently being used but which will be used in future drilling operations. Drilling fluid storage pits are often centrally located among several leases.~~]

[~~(7) Emergency saltwater storage pit--Pit used for storage of produced saltwater for limited period of time. Use of the pit is necessitated by a temporary shutdown of disposal well or fluid injection well and/or associated equipment, by temporary overflow of saltwater storage tanks on a producing lease or by a producing well loading up with formation fluids such that the well may die. Emergency saltwater storage pits may sometimes be referred to as emergency pits or blowdown pits.~~]

[~~(8) Flare pit--Pit which contains a flare and which is used for temporary storage of liquid hydrocarbons which are sent to the flare during equipment malfunction but which are not burned. A flare pit is used in conjunction with a gasoline plant, natural gas processing plant, pressure maintenance or repressurizing plant, tank battery, or a well.~~]

[~~(9) Fresh makeup water pit--Pit used in conjunction with a drilling rig for storage of fresh water used to make up drilling fluid or hydraulic fracturing fluid.~~]

[~~(10) Gas plant evaporation/retention pit--Pit used for storage or disposal of cooling tower blowdown, water condensed from natural gas, and other wastewater generated at gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants.~~]

[~~(11) Mud circulation pit--Pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.~~]

[~~(12) Reserve pit--Pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.~~]

[~~(13) Saltwater disposal pit--Pit used for disposal of produced saltwater.~~]

[~~(14) Skimming pit--Pit used for skimming oil off saltwater prior to disposal of saltwater at a disposal well or fluid injection well.~~]

[~~(15) Washout pit--Pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.~~]

[~~(16) Water condensate pit--Pit used in conjunction with a gas pipeline drip or gas compressor station for storage or disposal of fresh water condensed from natural gas.~~]

[~~(17) Generator--Person who generates oil and gas wastes.~~]

[(~~18) Carrier--Person who transports oil and gas wastes generated by a generator. A carrier of another person's oil and gas wastes may be a generator of his own oil and gas wastes.~~]

[(~~19) Receiver--Person who stores, handles, treats, reclaims, or disposes of oil and gas wastes generated by a generator. A receiver of another person's oil and gas wastes may be a generator of his own oil and gas wastes.~~]

[(~~20) Director--Director of the Oil and Gas Division or his staff delegate designated in writing by the director of the Oil and Gas Division or the commission.~~]

[(~~21) Person--Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.~~]

[(~~22) Affected person--Person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.~~]

[(~~23) To dewater--To remove the free water.~~]

[(~~24) To dispose--To engage in any act of disposal subject to regulation by the commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.~~]

[(~~25) Landfarming--A waste management practice in which oil and gas wastes are mixed with or applied to the land surface in such a manner that the waste will not migrate off the landfarmed area.~~]

[(~~26) Oil and gas wastes--Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in paragraph (30) of this subsection, and materials to be disposed of or reclaimed which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).~~]

[(~~27) Oil field fluids--Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The~~

~~term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes.]~~

~~[(28) Pollution of surface or subsurface water--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.]~~

~~[(29) Surface or subsurface water--Groundwater, percolating or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]~~

~~[(30) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:]~~

~~[(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;]~~

~~[(B) the production of oil or gas or geothermal resources, including:]~~

~~[(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;]~~

~~[(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;]~~

~~[(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;]~~

~~[(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;]~~

~~[(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and]~~

[(~~vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;~~]

[(~~C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and~~]

[(~~D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901, et seq.).~~]

[(~~31) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term "mined brine" does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.~~]

[(~~32) Brine mining pit--Pit, other than a fresh mining water pit, used in connection with activities associated with the solution mining of brine. Most brine mining pits are used to store mined brine.~~]

[(~~33) Fresh mining water pit--Pit used in conjunction with a brine mining injection well for storage of water used for solution mining of brine.~~]

[(~~34) Inert wastes--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, fiberglass, and trash.~~]

[(~~35) Coastal zone--The area within the boundary established in Title 31, Texas Administrative Code, §503.1 (Coastal Management Program Boundary).~~]

[(~~36) Coastal management program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at Title 31, Texas Administrative Code, Chapters 501, 505, and 506.~~]

[(~~37) Coastal natural resource area (CNRA)--One of the following areas defined in Texas Natural Resources Code, §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.~~]

[(~~38) Coastal waters--Waters under tidal influence and waters of the open Gulf of Mexico.~~]

[(~~39) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code, §33.203.~~]

[(~~40) Practicable--Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity.~~]

[(~~41) Non-commercial fluid recycling--The recycling of fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit or 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), where the operator of the lease, or drilling unit, or non-commercial disposal or injection well treats or contracts with a person for the treatment of the fluid, and may accept such fluid from other leases and or operators.~~]

[(~~42) Non-commercial fluid recycling pit--Pit used in conjunction with one or more oil or gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or unit and is located on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit, or 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 or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid.~~]

[(~~43) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title.~~]

[(~~44) Treated fluid-Fluid that has been treated using water treatment technologies to remove impurities such that the treated fluid can be reused or recycled. Treated fluid is not a waste but may become a waste if it is abandoned or disposed of rather than reused or recycled.~~]

[(~~45) Recyclable product--A reusable material as defined in §4.204(12) of this title (relating to Definitions).~~]

[(~~46) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year, as determined from maps or~~

~~other data from the Federal Emergency Management Administration (FEMA), or, if not mapped by FEMA, from the United States Department of Agriculture soil maps.]~~

~~[(47) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.]~~

~~[(b) No pollution. No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.]~~

~~[(c) Exploratory wells. Any oil, gas, or geothermal resource well or well drilled for exploratory purposes shall be governed by the provisions of statewide or field rules which are applicable and pertain to the drilling, safety, casing, production, abandoning, and plugging of wells.]~~

~~[(d) Pollution control.]~~

~~[(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.]~~

~~[(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits; skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; and gas plant evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using

~~the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.]~~

~~[(3) Authorized disposal methods.]~~

~~[(A) Fresh water condensate. A person may, without a permit, dispose of fresh water which has been condensed from natural gas and collected at gas pipeline drips or gas compressor stations, provided the disposal is by a method other than disposal into surface water of the state.]~~

~~[(B) Inert wastes. A person may, without a permit, dispose of inert and essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire, provided the disposal is by a method other than disposal into surface water of the state.]~~

~~[(C) Low chloride drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming, provided the wastes are disposed of on the same lease where they are generated, and provided the person has the written permission of the surface owner of the tract where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams per liter (mg/liter) or less; drill cuttings, sands, and silts obtained while using water base drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site.]~~

~~[(D) Other drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by burial, provided the wastes are disposed of at the same well site where they are generated: water base drilling fluid which had a chloride concentration in excess of 3,000 mg/liter but which have been dewatered; drill cuttings, sands, and silts obtained while using oil base drilling fluids or water base drilling fluids with a chloride concentration in excess of 3,000 mg/liter; and those drilling fluids and wastes allowed to be landfarmed without a permit.]~~

~~[(E) Completion/workover pit wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a completion/workover pit, provided the wastes have been dewatered, and provided the wastes are disposed of at the same well site where they are generated: spent completion fluids, workover fluids, and the materials cleaned out of the wellbore of a well being completed or worked over.]~~

~~[(F) Contents of non-commercial fluid recycling pit. A person may, without a permit, dispose of the solids from a non-commercial fluid recycling pit by burial in the pit, provided the pit has been dewatered.]~~

~~[(G) Effect on backfilling. A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud~~

~~circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.]~~

~~[(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits on the following conditions.]~~

~~[(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:]~~

~~[(i) drilling fluids, whether fresh water base, saltwater base, or oil base;]~~

~~[(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;]~~

~~[(iii) wash water used for cleaning drill pipe and other equipment at the well site;]~~

~~[(iv) drill stem test fluids; and]~~

~~[(v) blowout preventer test fluids.]~~

~~[(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.]~~

~~[(C) Basic sediment pits. A person shall not deposit or cause to be deposited into a basic sediment pit any oil field fluids or oil and gas wastes other than basic sediment removed from a production vessel or from the bottom of an oil storage tank. Although a person may store basic sediment in a basic sediment pit, a person may not deposit oil or free saltwater in the pit. The total capacity of a basic sediment pit shall not exceed a capacity of 50 barrels. The area covered by a basic sediment pit shall not exceed 250 square feet.]~~

~~[(D) Flare pits. A person shall not deposit or cause to be deposited into a flare pit any oil field fluids or oil and gas wastes other than the hydrocarbons designed to go to the flare during upset conditions at the well, tank battery, or gas plant where the pit is located. A person shall not store liquid hydrocarbons in a flare pit for more than 48 hours at a time.]~~

~~[(E) Fresh makeup water pits and fresh mining water pits. 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 used to make up drilling fluid or hydraulic fracturing fluid. A person shall~~

not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.]

[(F) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.]

[(G) Non-commercial fluid recycling pits.]

[(i) A person shall not deposit or cause to be deposited into a non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those fluids described in subsection (a)(42) of this section.]

[(ii) All pits shall be sufficiently large to ensure adequate storage capacity and freeboard taking into account anticipated precipitation.]

[(iii) All pits shall be designed to prevent stormwater runoff from entering the pit. If a pit is constructed with a dike or berm, the height, slope, and construction material of such dike or berm shall be such that it is structurally sound and does not allow seepage.]

[(iv) A freeboard of at least two feet shall be maintained at all times.]

[(v) All pits shall be lined. The liner shall be designed, constructed, and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit. The liner shall be installed according to standard industry practices, shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the pit. All liners shall have a hydraulic conductivity that is 1.0 x 10-7 cm/sec or less. A liner may be constructed of either natural or synthetic materials.]

[(I) Procedures shall be in place to routinely monitor the integrity of the liner of pit. If liner failure is discovered at any time, the pit shall be emptied and the liner repaired prior to placing the pit back in service. Acceptable monitoring procedures include an annual visual inspection of the pit liner or the installation of a double liner and leak detection system. Alternative monitoring procedures may be approved by the director if the operator demonstrates that the alternative is at least equivalent in the protection of surface and subsurface water as the provisions of this section.]

[(II) The liner of a pit with a single liner shall be inspected annually to ensure that the liner has not failed. This inspection shall be completed by emptying the pit and visually inspecting the liner.]

[(III) If the operator does not propose to empty the pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection

~~system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system must be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.]~~

~~[(IV) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to commission personnel upon request.]~~

~~[(vi) The operator of the pit shall provide written notification to the district director prior to construction of the pit, or prior to the use of an existing pit as a non-commercial fluid recycling pit. Such notification shall include:]~~

~~[(I) the location of the pit including the lease name and number or drilling permit number and the latitude and longitude;]~~

~~[(II) the dimensions and maximum capacity of the pit; and]~~

~~[(III) a signed statement that the operator has written permission from the surface owner of the tract upon which the pit is located for construction and use of the pit for such purpose.]~~

~~[(vii) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.]~~

~~[(viii) The pit shall be inspected periodically by the operator for compliance with the applicable provisions of this section.]~~

~~[(H) Backfill requirements.]~~

~~[(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.]~~

~~[(I) Reserve pits and mud circulation 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 drilling operations.]~~

~~[(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.]~~

[(~~III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.~~]

[(~~IV) Basic sediment pits, flare pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits.~~]

[(~~V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered.~~]

[(~~ii) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, non-commercial fluid recycling pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause (i) of this subparagraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.~~]

[(~~iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit backfill the pit sooner than the time prescribed by clause (i) of this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.~~]

[(~~iv) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit whose use or maintenance is authorized by this paragraph, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.~~]

[(~~I) Unless otherwise approved by the district director after a showing that the fluids will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in subsection (a) of this section. The operator may request a hearing if the district director denies approval of the request to construct a pit within a 100-year flood plain.~~]

[(II) In the event of an unauthorized discharge from any pit authorized by this paragraph, the operator shall take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.]

[(5) Responsibility for disposal.]

[(A) Permit required. No generator or receiver may knowingly utilize the services of a carrier to transport oil and gas wastes if the carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No carrier may knowingly utilize the services of a second carrier to transport oil and gas wastes if the second carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No generator or carrier may knowingly utilize the services of a receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. No receiver may knowingly utilize the services of a second receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the second receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. Any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver has all permits required by the Oil and Gas Division to transport, store, handle, treat, reclaim, or dispose of oil and gas wastes.]

[(B) Improper disposal prohibited. No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:]

[(i) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and]

[(ii) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.]

[(6) Permits.]

[(A) Standards for permit issuance. A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the commission determines that the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water. A permit to maintain or use any unlined brine mining pit or any unlined pit, other than an emergency

~~saltwater storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters may only be issued if the commission determines that the applicant has conclusively shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit, or because the surface or subsurface water in the area of the pit would be physically isolated by naturally occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit. Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to maintain or use a pit will state the conditions under which the pit may be operated, including the conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners.]~~

~~[(B) Application. An application for a permit to maintain or use a pit or to dispose of oil and gas wastes shall be filed with the commission in Austin. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the original application is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the commission on the date it is received by the commission in Austin. When a commission-prescribed application form exists, an applicant shall make application on the prescribed form according to the instructions on such form. The director may require the applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.]~~

~~[(C) Notice. The applicant shall give notice of the permit application to the surface owners of the tract upon which the pit will be located or upon which the disposal will take place. When the tract upon which the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official. Where disposal is to be by discharge into a watercourse other than the~~

~~Gulf of Mexico or a bay, the applicant shall also give notice to the surface owners of each waterfront tract between the discharge point and 1/2 mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within 1/2 mile of the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall determine the form of the notice to be published. The notice shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin. The director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required by this subparagraph to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.]~~

~~[(D) Protests and hearings. If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing. If the director has reason to believe that a person entitled to notice of an application has not received such notice within 15 days of the date an application is filed with the commission, then the director shall not take action on the application until reasonable efforts have been made to give such person notice of the application and an opportunity to file a protest to the application. If the director determines that a hearing is in the public interest, a hearing shall be held. A hearing on an application shall be held after the commission provides notice of hearing to all affected persons, or other persons or governmental entities who express an interest in the application in writing. If no protest from an affected person is received by the commission, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a~~

~~hearing upon request. After hearing, the hearings examiner shall recommend a final action by the commission.]~~

~~[(E) Modification, suspension, and termination. A permit granted pursuant to this subsection, may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:]~~

~~[(i) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;]~~

~~[(ii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;]~~

~~[(iii) the permittee has violated the terms and conditions of the permit or commission rules;]~~

~~[(iv) the permittee misrepresented any material fact during the permit issuance process;]~~

~~[(v) the permittee failed to give the notice required by the commission during the permit issuance process;]~~

~~[(vi) a material change of conditions has occurred in the permitted operations, or the information provided in the application has changed materially.]~~

~~[(F) Emergency permits. If the director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the director may issue an emergency permit. An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the commission in the appropriate district office. Notice of the application is not required. If warranted by the nature of the emergency, the director may issue an emergency permit based upon a verbal application, or the director may verbally authorize an activity before issuing a written permit authorizing that activity. An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of an emergency permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.]~~

~~[(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An~~

~~application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.]~~

~~[(7) Recycling.]~~

~~[(A) Prohibited recycling. Except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit.]~~

~~[(B) Authorized recycling.]~~

~~[(i) No permit is required if treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment(s), or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well.]~~

~~[(ii) Treated fluid may be reused in any other manner, other than discharge to waters of the state, without a permit from the Commission, provided the reuse occurs pursuant to a permit issued by another state or federal agency.]~~

~~[(iii) If treatment of the fluid results in distilled water, no permit is required to use the resulting distilled water in any manner other than discharge to waters of the state.]~~

~~[(iv) Fluid that meets the requirements of clause (i), (ii), or (iii) of this subparagraph is a recyclable product.]~~

~~[(C) Permitted recycling.]~~

~~[(i) Treated fluid may be reused in any manner, other than the manner authorized by subparagraph (B) of this paragraph, pursuant to a permit issued by the director on a case-by-case basis, taking into account the source of the fluids, the anticipated constituents of concern, the volume of fluids, the location, and the proposed reuse of the treated fluids. Fluid that meets the requirements of a permit issued under this clause is a recyclable product.]~~

~~[(ii) All commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B of this title (relating to Commercial Recycling).]~~

~~[(8) Used oil. Used oil as defined in §3.98 of this title, shall be managed in accordance with the provisions of 40 CFR, Part 279.]~~

~~[(e) Pollution prevention (reference Order Number 20-59,200, effective May 1, 1969).]~~

~~[(1) The operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage the aquatic life therein.]~~

~~[(2) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. Particularly, the following procedures shall be utilized to prevent pollution.]~~

~~[(A) The disposal of liquid waste material into the Texas offshore and adjacent estuarine zones shall be limited to saltwater and other materials which have been treated, when necessary, for the removal of constituents which may be harmful to aquatic life or injurious to life or property.]~~

~~[(B) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.]~~

~~[(C) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.]~~

~~[(D) Solid combustible waste may be burned and the ashes may be disposed of into Texas offshore and adjacent estuarine zones. Solid wastes such as cans, bottles, or any form of trash must be transported to shore in appropriate containers. Edible garbage, which may be consumed by aquatic life without harm, may be disposed of into Texas offshore and adjacent estuarine zones.]~~

~~[(E) Drilling muds which contain oil shall be transported to shore or a designated area for disposal. Only oil-free cutting and fluids from mud systems may be disposed of into Texas offshore and adjacent estuarine zones at or near the surface.]~~

~~[(F) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent emission of pollutants to the Texas offshore and adjacent estuarine zones prior to proper treatment.]~~

~~[(G) All deck areas on producing platforms subject to contamination shall be either curbed and connected by drain to a collecting tank or sump in which the containment will be treated and disposed of without causing hazard or pollution, or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape~~

into surrounding water. These drip pans must be piped to collecting tanks or sumps designed to accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps to prevent overflow.]

[(H) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action or notification shall be made to eliminate further pollution. The operator shall then transmit the report to the appropriate commission district office.]

[(I) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.]

[(3) The commission may suspend producing and/or drilling operations from any facility when it appears that the provisions of this rule are being violated.]

[(4) (Reference Order Number 20-60,214, effective October 1, 1970.) The foregoing provisions of Rule 8(D) shall also be required and enforced as to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.]

[(f) Oil and gas waste haulers.]

[(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title is excluded from this subsection. This subsection is not applicable to the non-commercial hauling of oil and gas wastes for non-commercial recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling.]

[(A) Application for an oil and gas waste hauler permit will be made on the commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied by:]

[(i) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements) (Statewide Rule 78);]

[(~~ii) vehicle identification information to support commission issuance of an approved vehicle list;~~]

[(~~iii) an affidavit from the operator of each commission-permitted disposal system the hauler intends to use stating that the hauler has permission to use the system; and~~]

[(~~iv) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.~~]

[(~~B) An oil and gas waste hauler permit may be issued for a term not to exceed one year, subject to renewal by the filing of an application for permit renewal and the required application fee for the next permit period. The term of an oil and gas waste hauler permit will be established in accordance with a schedule prescribed by the director to allow for the orderly and timely renewal of oil and gas waste hauler permits on a staggered basis.~~]

[(~~C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:~~]

[~~(i) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.~~]

[(~~ii) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. (For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.)~~]

[(~~iii) Each vehicle must carry a copy of the permit including those parts of the commission-issued attachments listing approved vehicles and commission-permitted disposal systems that are relevant to that vehicle's activities. This permit authority is limited to those vehicles shown on the commission-issued list of approved vehicles.~~]

[~~(iv) This permit is issued pursuant to the information furnished on the application form, and any change in conditions must be reported to the commission on an amended application form. The permit authority will be revised as required by the amended application.~~]

[(~~v) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.~~]

[(~~vi) This permit authorizes the permittee to use commission-permitted disposal systems for which the permittee has submitted affidavits from the disposal system operators stating that the permittee has permission to use the systems. These disposal systems are listed as an~~

~~attachment to the permit. This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the commission without submitting an affidavit from the disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title, provided the shipment is accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a disposal facility permitted by another agency or another state provided the commission has granted separate authorization for the disposal.]~~

~~[(vii) The permittee must file an application for a renewal permit, using the permittee's assigned permit number, before the expiration date specified in this permit.]~~

~~[(viii) The permittee must compile and keep current a list of all persons by whom the permittee is hired to haul and dispose of oil and gas waste, and furnish such list to the commission upon request.]~~

~~[(ix) Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.]~~

~~[(x) Each vehicle must be made available for inspection upon request by commission personnel.]~~

~~[(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.]~~

~~[(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:]~~

~~[(i) identity of the property from which the oil and gas waste is hauled;]~~

~~[(ii) identity of the disposal system or commercial recycling facility to which the oil and gas waste is delivered;]~~

~~[(iii) the type and volume of oil and gas waste received by the hauler at the property where it was generated; and]~~

~~[(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system or commercial recycling facility.]~~

~~[(B) Such record shall be kept open for the inspection of the commission or its representatives.]~~

~~[(C) Such record shall be kept on file for a period of three years from the date of operation and recordation.]~~

~~[(g) Recordkeeping.]~~

~~[(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off-lease disposal or recycling facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:]~~

~~[(A) identity of the property from which the oil and gas waste is hauled;]~~

~~[(B) identity of the disposal system or recycling facility to which the oil and gas waste is delivered;]~~

~~[(C) name and address of the hauler, and permit number (WHP number) if applicable; and]~~

~~[(D) type and volume of oil and gas waste transported each day to disposal or recycling.]~~

~~[(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the oil and gas waste hauler, provided the run tickets or other billing information contain all the information required by paragraph (1) of this subsection.]~~

~~[(3) Examination and reporting. The person keeping any records required by this subsection shall make the records available for examination and copying by members and employees of the commission during reasonable working hours. Upon request of the commission, the person keeping the records shall file such records with the commission.]~~

~~[(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) or violation of this section.]~~

~~[(i) Coordination between the Railroad Commission of Texas and the Texas Commission on Environmental Quality or its successor agencies. The Railroad Commission and the Texas Commission on Environmental Quality both have adopted by rule a memorandum of understanding regarding the division of jurisdiction between the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil. The memorandum of understanding is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).]~~

~~[(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection apply only to activities that occur in the coastal zone and that are subject to the CMP rules.]~~

~~[(1) Specific Policies.]~~

~~[(A) Disposal of Oil and Gas Waste in Pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone:]~~

~~[(i) no commercial oil and gas waste disposal pit constructed after the effective date of this subsection shall be located in any CNRA; and]~~

~~[(ii) all oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.]~~

~~[(B) Discharge of Oil and Gas Waste to Surface Waters. The following provisions apply to discharges of oil and gas waste that occur in the coastal zone:]~~

~~[(i) no discharge of oil and gas waste to surface waters may cause a violation of the Texas Surface Water Quality Standards adopted by the Texas Commission on Environmental Quality or its successor agencies and codified at Title 30, Texas Administrative Code, Chapter 307;]~~

~~[(ii) in determining whether any permit to discharge oil and gas waste that is comprised, in whole or in part, of produced water is consistent with the goals and policies of the CMP, the commission shall consider the effects of salinity from the discharge;]~~

~~[(iii) to the greatest extent practicable, in the case of any oil and gas exploration, production, or development operation from which an oil and gas waste discharge commences after the effective date this subsection, the outfall for the discharge shall not be located where the discharge will adversely affect any critical area;]~~

~~[(iv) in the case of any oil and gas exploration, production, or development operation with an oil and gas waste discharge permitted prior to the effective date of this subsection that adversely affects any critical area, the outfall for the discharge shall either:]~~

~~[(I) be relocated within two years after the effective date of this subsection, so that, to the greatest extent practicable, the discharge does not adversely affect any critical area; or]~~

~~[(II) the discharge shall be discontinued; and]~~

~~[(v) the commission shall notify the Texas Commission on Environmental Quality or its successor agencies and the Texas Parks and Wildlife Department upon receipt of an application for a permit to discharge oil and gas waste that is comprised, in whole or in part, of produced waters to waters under tidal influence.]~~

[(~~C) Development in Critical Areas. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(h)(1)(A) - (G), have been satisfied. The commission shall coordinate its efforts under this subparagraph with those of other appropriate state and federal agencies.~~]

[(~~D) Dredging and Dredged Material Disposal and Placement. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(j), have been satisfied.~~]

[~~(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (Agency Consistency Determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.~~]

[(~~A) The commission shall issue consistency determinations under this paragraph as an element of the permitting process for permits to dispose of oil and gas waste in a pit and permits to discharge oil and gas waste to surface waters.~~]

[(~~B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.~~]

[~~(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action~~

will not have a direct and significant adverse affect on any coastal natural resource area (CNRA) identified in the applicable policies."]

[(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse affects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.]

[(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."]

[(II) If the commission determines that the proposed activity would not meet the applicable requirements of paragraph (1) of this subsection, the commission shall not issue the permit or certification.]

[(3) Thresholds for Referral. Any commission action that is not identified in this paragraph shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to Title 31, Texas Administrative Code, §505.32 (Requirements for Referral of an Individual Agency Action), the thresholds for referral of consistency determinations issued by the commission are as follows:]

[(A) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;]

[(B) for discharges, any permit to discharge oil and gas waste consisting, in whole or in part, of produced waters into tidally influenced waters at a rate equal to or greater than 100,000 gallons per day;]

[(C) for certification of federal permits for development in critical areas:]

[(i) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:]

[(I) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or]

[(II) five acres or more of any other critical area; and]

~~[(ii) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area;]~~

~~[(D) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.]~~

§3.14. Plugging.

(a) - (c) (No change.)

(d) General plugging requirements.

(1) - (11) (No change.)

(12) The operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. The operator shall close all pits in accordance with the provisions of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8 of this title (relating to Water Protection (Statewide Rule 8))~~]. The district director or the director's delegate may grant a reasonable extension of time of not more than an additional 120 days for the removal of tanks, vessels and related piping.

(e) - (k) (No change.)

§3.22. Protection of Birds.

(a) (No change.)

(b) An operator must screen, net, cover, or otherwise render harmless to birds the following categories of open-top tanks and pits associated with the exploration, development, and production of oil and gas, including transportation of oil and gas by pipeline:

(1) open-top storage tanks that are eight feet or greater in diameter and contain a continuous or frequent surface film or accumulation of oil; however, temporary, portable storage tanks that are used to hold fluids during drilling operations, workovers, or well tests are exempt; and

(2) skimming pits or collecting pits that are used as skimming pits that are permitted under Chapter 4 of this title (relating to Environmental Protection), Subchapter A (relating to Oil and Gas

Waste Management). [~~as defined in §3.8 of this title (relating to Water Protection) (Statewide Rule 8); and~~]

[~~(3) collecting pits as defined in §3.8 of this title (relating to Water Protection) that are used as skimming pits.~~]

(c) If the commission finds a surface film or accumulation of oil in any other pit regulated under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8 of this title (relating to Water Protection)~~], the commission will instruct the operator to remove the oil. If the operator fails to remove the oil from the pit in accordance with the commission's instructions or if the commission finds a surface film or accumulation of oil in the pit again within a 12-month period, the commission will require the operator to screen, net, cover, or otherwise render the pit harmless to birds. Before complying with this requirement, the operator will have a right to a hearing upon request. In addition to the enforcement actions specified by this subsection, the commission may take any other appropriate enforcement actions within its authority.

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) (No change.)

(b) General agency jurisdictions.

(1) (No change.)

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found in §4.110 of this title (relating to Definitions) [~~at §3.8(a)(30) of this title (relating to Water Protection)~~] and at 30 TAC §335.1 (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the

disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) (No change.)

(B) Water quality.

(i) (No change.)

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8 of this title (relating to Water Protection)~~], the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over

storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8 of this title (relating to Water Protection)~~], the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) - (IV) (No change.)

(iii) (No change.)

(C) (No change.)

(c) (No change.)

(d) Jurisdiction over waste from specific activities.

(1) - (10) (No change.)

(11) Commercial service company facilities and training facilities.

(A) - (D) (No change.)

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8(f) of this title (relating to Water Protection)~~].

(12) (No change.)

(e) - (g) (No change.)

§3.57. Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials.

Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management).

~~[(a) Applicability. This section is applicable to reclamation of tank bottoms and other hydrocarbon wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The provisions of this section shall not apply where tank bottoms or other hydrocarbon-bearing materials are recycled or processed on-site by the owner/custodian and are returned to a tank or vessel at the same lease or facility. This section is not applicable to the practice of recycling or reusing drilling mud, except as to those hydrocarbons recovered from such mud recycling and sent to a permitted reclamation plant.]~~

~~[(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Tank bottoms--A mixture of crude oil or lease condensate, water, and other substances that is concentrated at the bottom of producing lease tanks and pipeline storage tanks (commonly referred to as basic sediment and water or BS&W).]~~

~~[(2) Other hydrocarbon wastes--Oily waste materials, other than tank bottoms, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The term "other hydrocarbon wastes" includes, but is not limited to, pit hydrocarbons, skim oil, spillage, and leakage of crude oil or condensate from producing lease or pipeline storage tanks, and crude oil or condensate associated with pipeline ruptures and other spills.]~~

~~[(3) Authorized person--A tank bottoms cleaner or transporter that is under contract for disposition of untreated tank bottoms or other hydrocarbon wastes to a person who has obtained a permit to operate a reclamation plant.]~~

~~[(4) Affected person--A person who has suffered or will suffer actual injury or economic damage other than as a member of the general public and includes surface owners of property on which a reclamation plant is located and surface owners of adjoining properties.]~~

~~[(5) Director--The director of the Oil and Gas Division or a staff delegate designated in writing by the director of the Oil and Gas Division or the commission.]~~

~~[(c) Permitting process.]~~

~~[(1) Removal of tank bottoms or other hydrocarbon wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant, or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the commission in Austin.]~~

[~~(2) The applicant shall give notice by mailing or delivering a copy of the application to the county clerk of the county where the reclamation plant is to be located, and to the city clerk or other appropriate city official of any city where the reclamation plant is located within the corporate limits of the city, on or before the date the application is mailed to or filed with the commission.~~]

[~~(3) In order to give notice to other local governments and interested or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the reclamation plant is to be located, in a form approved by the commission. Publication shall occur on or before the date the application is mailed to or filed with the commission. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.~~]

[~~(4) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, or if the commission determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons who express an interest in writing in the application.~~]

[~~(5) If no protest from an affected person or local government is received by the commission within the allotted time, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.~~]

[~~(6) Applicants must demonstrate they are familiar with commission rules and have the proper facilities to comply with the rules.~~]

[~~(7) Except as provided in subparagraphs (A) and (B) of this paragraph, a permit to operate a reclamation plant shall remain in effect until canceled at the request of the operator. Existing permits subject to annual renewal may be renewed so as to remain in effect until canceled. Such renewal shall be subject to the requirements of paragraph (10) of this subsection. A reclamation plant permit may be canceled by the commission after notice and opportunity for hearing, if:~~]

[~~(A) the permitted facility has been inactive for 12 months; or~~]

[~~(B) there has been a violation, or a violation is threatened, of any provision of the permit, the conservation laws of the state, or rules or orders of the commission.~~]

[~~(8) If the operator objects to the cancellation, the operator must file, within 15 days of the date shown on the notice, a written objection and request for a hearing to determine whether the permit should be canceled. If such written request is timely filed, the cancellation will be suspended until a final order is issued pursuant to the hearing. If such request is not received within the required time~~

~~period, the permit will be canceled. In the event of an emergency which presents an imminent pollution, waste, or public safety threat, the commission may suspend the permit until an order is issued pursuant to the hearing.]~~

~~[(9) A permit to operate a reclamation plant is not transferable. A new permit must be obtained by the new operator.]~~

~~[(10) Reclamation plants permitted under this section shall file financial security as required under §3.78(l) of this title (relating to Fees and Financial Security Requirements).]~~

~~[(d) Operation of a reclamation plant.]~~

~~[(1) The following provisions apply to any removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility.]~~

~~[(A) Notwithstanding the provisions of §3.85(a)(8) of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), an operator of a reclamation plant or an authorized person shall execute a manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), upon each removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), the operator of the reclamation plant or other authorized person shall also include on the manifest:]~~

~~[(i) the commission identification number of the lease or facility from which the material is removed; and]~~

~~[(ii) the gross and net volume of the material as determined by the required shakeout test.]~~

~~[(B) The operator of the reclamation plant or other authorized person shall fill out the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed, and shall retain a copy on file for two years.]~~

~~[(C) The operator of the reclamation plant or other authorized person shall leave a copy of the manifest in the vehicle transporting the material.]~~

~~[(2) The operator of a reclamation plant or other authorized person shall conduct a shakeout (centrifuge) test on all tank bottoms or other hydrocarbon wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility, to determine the crude oil content and lease condensate thereof.]~~

~~[(3) The shakeout test shall be conducted in accordance with the most current American Petroleum Institute or American Society for Testing Materials method.]~~

~~[(e) Reporting of reclaimed crude oil or lease condensate on commission required report.]~~

~~[(1) For wastes taken to a reclamation plant the following provisions shall apply.]~~

~~[(A) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.]~~

~~[(B) For other hydrocarbon wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.]~~

~~[(2) The net crude oil content or lease condensate of any tank bottoms or other hydrocarbon wastes removed from an active facility, including a pipeline facility, and disposed of on-site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection into Productive Reservoirs). Operators may be required to obtain a minor permit for such disposal using procedures set out in §3.8(d) and (g) of this title (relating to Water Protection). Prior to approval of the minor permit, the commission may require an analysis of the disposable material to be performed.]~~

~~[(f) General provisions applicable to materials taken to a reclamation plant.]~~

~~[(1) The removal of tank bottoms or other hydrocarbon wastes from any facility for which monthly reports are not filed with the commission must be authorized in writing by the commission prior to such removal. A written request for such authorization must be sent to the commission office in Austin, and must detail the location, description, estimated volume, and specific origin of the material to be removed, as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.]~~

~~[(2) The receipt of any tank bottoms or other hydrocarbon wastes from outside the State of Texas must be authorized in writing by the commission prior to such receipt. However, written approval is not required if another entity will indicate, in the appropriate monthly report, a corresponding delivery of the same material. If the request is denied, the applicant may request a hearing.]~~

~~[(3) The receipt of any waste materials other than tank bottoms or other hydrocarbon wastes must be authorized in writing by the commission prior to such receipt. The commission may require the reclamation plant operator to submit an analysis of such waste materials prior to a determination of whether to authorize such receipt. If the request is denied, the applicant may request a hearing.]~~

[~~(4) The operator of a reclamation plant shall file a report on the appropriate commission form for each reclamation plant facility by the 15th day of each calendar month, covering the facility's activities for the previous month. The operator of a reclamation plant shall file a copy of the monthly report in the district office of any district in which the operator made receipts or deliveries for the month covered by the report.~~]

[~~(5) All wastes generated by reclaiming operations shall be disposed of in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection into Productive Reservoirs). No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.~~]

[~~(g) Commission review of administrative actions. Administrative actions performed by the director or commission staff pursuant to this rule are subject to review by the commissioners.~~]

[~~(h) Policy. The provisions of this rule shall be administered so as to prevent waste and protect correlative rights.~~]

§3.91. Cleanup of Soil Contaminated by a Crude Oil Spill.

(a) (No change.)

(b) Scope. These cleanup standards and procedures apply to the cleanup of soil in non-sensitive areas contaminated by crude oil spills from activities associated with the exploration, development, and production, including transportation, of oil or gas or geothermal resources as defined in §4.110 of this title (relating to Definitions) [~~§3.8(a)(30) of this title (relating to Water Protection)~~]. For the purposes of this section, crude oil does not include hydrocarbon condensate. These standards and procedures do not apply to hydrocarbon condensate spills, crude oil spills in sensitive areas, or crude oil spills that occurred prior to the effective date of this section. Cleanup requirements for hydrocarbon condensate spills and crude oil spills in sensitive areas will be determined on a case-by-case basis. Cleanup requirements for crude oil contamination that occurred wholly or partially prior to the effective date of this section will also be determined on a case-by-case basis. Where cleanup requirements are to be determined on a case-by-case basis, the operator must consult with the appropriate district office on proper cleanup standards and methods, reporting requirements, or other special procedures.

(c) - (f) (No change.)

§3.98. Standards for Management of Hazardous Oil and Gas Waste.

(a) - (l) (No change.)

(m) Disposition of Hazardous Oil and Gas Waste.

(1) (No change.)

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section and subject to all other applicable requirements of state or federal law, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) - (v) (No change.)

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of paragraph (3) of this subsection [~~(m)(3) of this section~~].

(B) - (C) (No change.)

(D) For purposes of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8(f)(1)(C)(vi) of this title (relating to Water Protection)~~], the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

(3) (No change.)

(n) - (bb) (No change.)

This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on 12/17/2024, 2024.

Filed with the Office of the Secretary of State on 12/17/2024, 2024.

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Christi Craddick, Chairman

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Wayne Christian
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Secretary of the Commission

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Haley Cochran
Assistant General Counsel
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Railroad Commission of Texas

The Railroad Commission of Texas (Commission) adopts in Chapter 4, new Subchapter A, relating to Oil and Gas Waste Management, which includes the following new rules: In Division 1, General, the Commission adopts §4.101 (relating to Prevention of Pollution); §4.102 (relating to Responsibility for Oil and Gas Wastes); §4.103 (relating to Prohibited Waste Management Methods); §4.104 (relating to Coordination Between the Commission and Other Regulatory Agencies); §4.106 (relating to Fees); §4.107 (relating to Penalties); §4.108 (relating to Electronic Filing Requirements); and §4.109 (relating to Exceptions). In Division 2, Definitions, the Commission adopts §4.110 (relating to Definitions). In Division 3, Operations Authorized by Rule, the Commission adopts §4.111 (relating to Authorized Disposal Methods for Certain Wastes); §4.112 (relating to Authorized Recycling); §4.113 (relating to Authorized Pits); §4.114 (relating to Schedule A Authorized Pits); and §4.115 (relating to Schedule B Authorized Pits). In Division 4, Requirements for All Permitted Waste Management Operations, the Commission adopts §4.120 (relating to General Requirements for All Permitted Operations); §4.121 (relating to Permit Term); §4.122 (relating to Permit Renewals, Transfers, and Amendments); §4.123 (relating to Permit Modification, Suspension and Termination); §4.124 (relating to Requirements Applicable to All Permit Applications and Reports); §4.125 (relating to Notice and Opportunity to Protest); §4.126 (relating to Location and Real Property Information); §4.127 (relating to Engineering and Geologic Information); §4.128 (relating to Design and Construction); §4.129 (relating to Operation); §4.130 (relating to Reporting); §4.131 (relating to Monitoring); §4.132 (relating to Closure); §4.134 (relating to Application Review and Administrative Decision); and §4.135 (relating to Hearings. In Division 5, Additional Requirements for Commercial Facilities, the Commission adopts §4.140 (relating to Additional Requirements for Commercial Facilities); §4.141 (relating to Additional Notice Requirements for Commercial Facilities); §4.142 (relating to Operating Requirements Applicable to Commercial Facilities); and §4.143 (relating to Design and Construction Requirements for Commercial Facilities). In Division 6, Additional Requirements for Permitted Pits, the Commission adopts §4.150 (relating to Additional Requirements Applicable to Permitted Pits); §4.151 (relating to Design and Construction of Permitted Pits); §4.152 (relating to Monitoring of Permitted Pits); §4.153 (relating to Commercial Disposal Pits); and §4.154 (relating to Closure of Permitted Pits). In Division 7, Additional Requirements for Landfarming and Landtreating, the Commission adopts §4.160 (relating to Additional Requirements for Landfarming and Landtreating Permits); §4.161 (relating to Design and Construction Requirements for Landfarming and Landtreating Permits); §4.162 (relating to Operating Requirements for Landfarming and Landtreating Permits); §4.163 (relating to Monitoring); and §4.164 (relating to Closure). In Division 8, Additional Requirements for Reclamation Plants, the Commission adopts §4.170 (relating to Additional Requirements for Reclamation Plants); §4.171 (relating to Standard Permit Provisions); §4.172 (relating to Minimum Permit Provisions for Operations); and §4.173 (relating to

Minimum Permit Provisions for Reporting). In Division 9, Miscellaneous Permits, the Commission adopts §4.180 (relating to Activities Permitted as Miscellaneous Permits); §4.181 (relating to Emergency Permits); §4.182 (relating to Minor Permits); §4.184 (relating to Permitted Recycling); and §4.185 (relating to Pilot Programs). In Division 10, Requirements for Oil and Gas Waste Transportation, the Commission adopts §4.190 (relating to Oil and Gas Waste Characterization and Documentation); §4.191 (relating to Oil and Gas Waste Manifests); §4.192 (relating to Trans-Jurisdictional Waste Transfers; §4.193 (relating to Oil and Gas Waste Haulers); §4.194 (relating to Recordkeeping); and §4.195 (relating to Waste Originating Outside of Texas). In Division 11, Requirements for Surface Water Protection, the Commission adopts §4.196 (relating to Surface Water Pollution Prevention) and §4.197 (relating to Consistency with the Texas Coastal Management Program). Sections 4.101, 4.103, 4.104, 4.110, 4.113, 4.114, 4.115, 4.120, 4.128, 4.130, 4.131, 4.150, 4.152, 4.161, 4.190, 4.191, 4.192, 4.193, 4.195 and 4.196 are adopted with changes from the proposed text as published in the August 30, 2024, issue of the Texas Register (49 TexReg 6563). The remaining rules in Subchapter A are adopted without changes from the proposed text and will not be republished.

The new rules in Subchapter A are adopted to incorporate and update the requirements from §3.8 of this title, relating to Water Protection ("Rule 8"), which is amended concurrently with the new rules and amendments in Chapter 4. The new subchapter also ensures Commission rules adhere to statutory changes made in recent legislative sessions.

The Commission also adopts amendments and new rules in Subchapter B, relating to Commercial Recycling, to incorporate legislative requirements and make updates consistent with the new rules in Subchapter A. The Commission amends the following rules in Subchapter B, Division 1: §4.201 (relating to Purpose), §4.202 (relating to Applicability and Exclusions), §4.203 (relating to Responsibility for Management of Waste to be Recycled), §4.204 (relating to Definitions), §4.205 (relating to Exceptions), §4.206 (relating to Administrative Decision on Permit Application), §4.207 (relating to Protests and Hearings), §4.208 (relating to General Standards for Permit Issuance), §4.209 (relating to Permit Renewal), and §4.211 (relating to Penalties); in Division 2, §4.212 (relating to General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities), §4.213 (relating to Minimum Engineering and Geologic Information), §4.214 (relating to Minimum Design and Construction Information), §4.218 (relating to General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling), §4.219 (relating to Minimum Siting Information), §4.220 (relating to Minimum Permit Provisions for Design and Construction), §4.221 (relating to Minimum Permit Provisions for Operations), §4.222 (relating to Minimum Permit Provisions for Monitoring), §4.223 (relating to Minimum Permit Provisions for Closure), and §4.224 (relating to Permit Renewal); in Division 3, §4.230 (relating to General Permit Application Requirements for Off-Lease or

Centralized Commercial Solid Oil and Gas Waste Recycling), §4.231 (relating to Minimum Engineering and Geologic Information), §4.232 (relating to Minimum Siting Information), §4.234 (relating to Minimum Design and Construction Information), §4.238 (relating to Notice), §4.239 (relating to General Permit Provisions), §4.240 (relating to Minimum Permit Provisions for Siting), §4.241 relating to Minimum Permit Provisions for Design and Construction), §4.242 (relating to Minimum Permit Provisions for Operations), §4.243 (relating to Minimum Permit Provisions for Monitoring), and §4.245 (relating to Permit Renewal); in Division 4, §4.246 (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), §4.247 (relating to Minimum Engineering and Geologic Information), §4.248 (relating to Minimum Siting Information), §4.250 (relating to Minimum Design and Construction Information), §4.251 (relating to Minimum Operating Information), §4.254 (relating to Notice), §4.255 (relating to General Permit Provisions), §4.256 (relating to Minimum Permit Provisions for Siting), §4.257 (relating to Minimum Permit Provisions for Design and Construction), §4.258 (relating to Minimum Permit Provisions for Operations), §4.259 (relating to Minimum Permit Provisions for Monitoring), and §4.261 (relating to Permit Renewal); in Division 5, §4.262 (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), §4.263 (relating to Minimum Engineering and Geologic Information), §4.264 (relating to Minimum Siting Information), §4.266 (relating to Minimum Design and Construction Information), §4.267 (relating to Minimum Operating Information), §4.268 (relating to Minimum Monitoring Information), §4.269 (relating to Minimum Closure Information), §4.270 (relating to Notice), §4.271 (relating to General Permit Provisions), §4.272 (relating to Minimum Permit Provisions for Siting), §4.273 (relating to Minimum Permit Provisions for Design and Construction), §4.274 (relating to Minimum Permit Provisions for Operations), §4.275 (relating to Minimum Permit Provisions for Monitoring), §4.276 (relating to Minimum Permit Provisions for Closure), and §4.277 (relating to Permit Renewal); in Division 6, §4.278 (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), §4.279 (relating to Minimum Engineering and Geologic Information), §4.280 (relating to Minimum Siting Information), §4.282 (relating to Minimum Design and Construction Information), §4.283 (relating to Minimum Operating Information), §4.284 (relating to Minimum Monitoring Information), §4.285 (relating to Minimum Closure Information), §4.286 (relating to Notice), §4.287 (relating to General Permit Provisions), §4.288 (relating to Minimum Permit Provisions for Siting), §4.289 (relating to Minimum Permit Provisions for Design and Construction), §4.290 (relating to Minimum Permit Provisions for Operations), §4.291 (relating to Minimum Permit Provisions for Monitoring), §4.292 (relating to Minimum Permit Provisions for Closure), and §4.293 (relating to Permit Renewal).

The Commission also adopts new §4.301 (relating to Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings), and §4.302 (relating to Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings) in new Division 7, Beneficial Use of Drill Cuttings.

Sections 4.203, 4.219, 4.232, 4.248, 4.264, 4.272, 4.280, 4.288, 4.301 and 4.302 are adopted with changes from the proposed text as published in the August 30, 2024, issue of the Texas Register (49 TexReg 6563). The remaining rules in Subchapter B are adopted without changes from the proposed text and will not be republished.

The Commission received 658 comments, 13 of which were from associations. The following associations submitted comments: Commission Shift, the Energy Workforce and Technology Council (Energy Workforce), the Panhandle Producers and Royalty Owners Association (PPROA), the Permian Basin Petroleum Association (PBPA), the Lone Star Chapter of the Sierra Club, the Texas Alliance of Energy Producers (Alliance), the Texas Bankers Association – Agricultural & Rural Affairs Committee (TBA), the Texas Farm Bureau (TFB), the Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Industry Project (TIP), the Texas Land and Mineral Owners Association (TLMA), the Texas Oil and Gas Association (TXOGA), the Texas and Southwestern Cattle Raisers Association (TSCRA), and the Young Conservatives of Texas. Twenty-five companies or organizations also submitted comments. They include A.C.T. Operating Company (A.C.T.), American Energy Works, CrownQuest Operating, Inc. (CrownQuest), Deep Blue Midland Basin LLC (Deep Blue), Diamondback Energy (Diamondback), Dow Chemical Company, EPEC Energy, Fasken Oil and Ranch (Fasken), Galatea Technologies, Hance Scarborough, LLP, H&L Exploration, Mabee Ranch, Merit Energy Company (Merit Energy), Milestone Energy Services, Momentum Operating Co., Inc (Momentum), Northamerican Environmental Services, Inc. (NESCO), Pantera Energy Company (Pantera), Plains All American Pipeline, L.P., Recover USA, Inc., Stasney Well Service, LLC (Stasney), Texland Petroleum, United Environmental Services, LLC, Waste Control Specialists, Waste Management, Inc. (Waste Management), and Z&T Cattle Company. The remaining comments were submitted by individuals.

General Comments on Subchapter A

First, two comments requested that the Commission extend the effective date for the proposed new rules and amendments. Waste Management noted a later effective date would allow more time for training and communication on the new requirements, and Dow Chemical stated that facilities may need additional time to ensure compliance.

The Commission declines to extend the effective date further. The Commission specified in the proposal that the effective date for the rules would be July 1, 2025, which provides persons required to

comply with the rules six months from adoption to prepare for compliance. Additionally, several rule provisions are adopted with a later effective date of one year or more from July 1, 2025. The Commission notes that due to comments on §4.192, the Commission adopts that section with changes, including a later effective date of December 31, 2026.

Similarly, Deep Blue Midland Basin (Deep Blue), Diamondback, TIPRO, and TXOGA requested clarification regarding whether the new rules and amendments apply retroactively to existing pits.

The Commission notes that §4.113 details how the Commission will treat pits authorized under §3.8, relating to Water Protection, prior to the adoption of Chapter 4. The Commission adopts amendments to §3.8 and other rules in Chapter 3 concurrently with the rules being adopted in Chapter 4.

American Energy Works and 152 individuals filed comments expressing general support for the rules because they prioritize businesses that fuel Texas's economy and create energy security. Sierra Club also expressed its support for the increase in transparency accomplished by consolidating waste management rules into Chapter 4. Sierra Club believes these rules take a step in the right direction but also noted several specific concerns with rules that do not go far enough, which are addressed in more detail below. The Commission appreciates the support expressed by these commenters.

In addition, the Young Conservatives of Texas and 152 individuals stated they support regulations which prioritize job creation, economic growth, and energy security. The commenters urged the Commission not to be persuaded by comments that would ultimately hamper job creation and affordable energy. The Commission appreciates the support of these commenters.

Two landowners and the Texas and Southwestern Cattle Raisers Association (TSCRA) commented in opposition to the rules proposed in Subchapter A. TSCRA stated that, overall, the proposed rules fail to adequately protect the safety of Texas's land and water. One landowner agreed. The other landowner asked the Commission to implement reasonable solutions to protect Texas landowners. The landowner noted experience with bad operators on her property and stated not all operators operate in good faith. She asked the Commission to ensure all pits are held to higher standards.

NESCO and Commission Shift commented in general opposition to the rulemaking. NESCO stated that Texas's waste management rules should be at least as stringent as those in Louisiana and New Mexico, but they fall short of that standard because they omit key environmental protections and contain technical deficiencies. Z&T Cattle Company also requested the Commission bring its rules closer into alignment with New Mexico's. Commission Shift believes the proposed rules do not adhere to statutory requirements. The Commission notes that the following organizations joined in Commission Shift's comments: Clean Water Action Texas, LaSalle County Commissioners Court, Liveable Arlington, Lower Brazos Riverwatch, Middle Pecos Groundwater Conservation District, Reeves County Groundwater

Conservation District, and River Pierce Foundation. Each time a comment from Commission Shift is addressed, these organizations are included in that reference.

The Mabee Ranch, TLMA, Commission Shift, NESCO, Gabriel Rio, Recover USA, and 34 individuals asked the Commission to reconsider protections proposed in its 2023 informal rule draft. The Mabee Ranch and one individual commented that the current draft places landowners and water resources at risk to appease a few smaller oil and gas operators and asked the Commission to instead consider the long-term consequences of the rules it proposed. Gabriel Rio, NESCO, and 15 individuals noted they can no longer support the rules due to changes made since the 2023 draft. They pointed to the lack of standards for pits used in the drilling process (i.e., reserve pits and mud circulation pits) as the glaring issue with the current proposal. Similarly, Recover USA stated the 2023 draft modernized regulations whereas the current proposal dilutes the requirements to the extent that it allows substandard disposal practices. Recover USA and one landowner commented that the Commission traded the balance it achieved in the 2023 draft for weaker regulations motivated by a few companies who argue cost is more important than environmental protection.

The Commission notes that these general comments are related to several comments submitted on specific rule provisions and includes its response to these comments in the Division 3 section below.

Several comments addressed the impact of the proposed regulations on small operators. Stasney Well Service, Momentum Operating, and H&L Exploration requested the Commission withdraw the proposed changes because unnecessary regulations cause economic harm – impacting jobs and rural communities. Specifically, Stasney Well Service and Momentum requested that the Commission recognize the differences in geology throughout Texas and apply the requirements of former §3.8 to operators of shallow vertical and/or stripper wells.

One landowner opposed the smaller operators' claim that they should be relieved from higher standards. She pointed to these operators' statements that they contribute a substantial portion to oil and gas production in Texas and concluded that due to the volume of their activity, it is unreasonable to exempt them from standards that would protect our environment. Three other landowners questioned the claims of smaller operators; specifically, the claim that the costs of compliance are too high. These landowners understand that additional costs will be incurred to comply with new standards, but noted the significantly higher costs incurred when harm to the environment occurs because no preventative measures are in place.

Milestone Environmental, Recover USA, and Commission Shift noted that updated pit regulations are not prohibitively costly and will not put small operators out of business. These comments noted that offsite burial or closed-loop systems are often the same cost or less expensive than onsite burial.

The Texas Bankers Association, the Energy Workforce and Technology Council, and 165 individuals recommended closed-loop systems be implemented in Texas. Energy Workforce also requested the Commission require other industry best practices such as emphasizing no uncontrolled releases, minimizing the environmental footprint of operations, and protecting groundwater through baseline sampling and advanced waste management systems.

The Commission notes that closed-loop drilling systems may be used in Texas and many operators use this method. The Commission does not typically endorse or mandate the use of certain technology. Rather, it allows operators to use technology they deem appropriate for their operations as long as their methods comply with the Commission's rules. Thus, the Commission declines to require closed-loop drilling systems in these rules.

Commission Shift, Sierra Club, and 57 individuals requested that the Commission create an electronic mailing list for all applications related to waste management and allow anyone to join the list. These commenters also requested that all pieces of an application file be kept online and made searchable for easy access by members of the public. The comments expressed opposition to allowing operators to retain information and only provide it upon request by the Commission.

The Commission is currently developing an update to its LoneSTAR online application to incorporate permit applications under Chapter 4. LoneSTAR will provide better access to application materials for the public.

The Texas Farm Bureau, TLMA, Texas Bankers Association, Mabee Ranch, Energy Workforce and Technology Council, Commission Shift, NESCO, TSCRA, Sierra Club, Z&T Cattle Company and 458 individuals commented requesting that the Commission incorporate some form of landowner notification or consent before an operator may conduct waste management activities, specifically disposal, on the property.

The Commission understands this concern but finds it does not have statutory authority to prevent authorization of waste management activities based on an applicant's failure to obtain landowner consent. Private contractual agreements and common law principles govern surface use of property associated with hydrocarbon production under a valid mineral lease. The Commission understands that the mineral lease and surface use agreements often address landowner notification and consent.

Commission Shift commented generally regarding proposed rules that allow the Director or District Director discretion to grant exceptions or consider alternatives to the rule requirements. Commission Shift opposes director discretion because it removes transparency. Commission Shift also commented that the proposed rules often place the burden on the public to prevent pollution and protect public health. Instead, the burden should be on the applicant to prove facilities are safe.

The Commission disagrees that the rules should be revised to remove director discretion. The Commission supports flexibility in the statewide rules that allow for consideration of unique facts or circumstances.

The Commission disagrees that the burden is on the public to prevent pollution. The burden is on the operator or applicant to conduct operations in accordance with the Commission's rules, which aim to prevent pollution and protect public health. Commission staff inspects facilities and also reviews information provided by operators and applicants to ensure facilities are in compliance.

Subchapter A, Division 1 – General

Regarding §4.101, relating to Prevention of Pollution, Commission Shift commented that the Commission should expressly address pollution to land in addition to pollution to water. This is consistent with the definitions of "contaminant" and "pollution" in the Texas Natural Resources Code and the Texas Water Code.

The Commission declines to make any changes to §4.101 in response to this comment because the Texas Natural Resources Code explicitly references surface and subsurface waters. The Commission prefers to maintain consistency with the statutory language. Nevertheless, the Commission notes that action in response to crude oil spills under §3.91, relating to Cleanup of Soil Contaminated by a Crude Oil Spill, is required and the following rules also reference land or soil: §4.114(2)(A) for Schedule A pits, §4.132(b)(2)(D) for closure, §4.140(g)(1)(B) for commercial pits, §4.161(c)(5) for landfarming & landtreating, §4.241(c)(1) and (2) for design and construction, and §4.276(c)(5) and (d)(1) for closure. Section 3.91 is adopted with amendments in a concurrent rulemaking.

Commission Shift also commented regarding §4.101(c) and the use of the term "other wastes." Commission Shift asked that the Commission give examples of what types of waste are included in "other wastes" and specify how it will determine whether wastes are "physically similar to oil and gas wastes."

The Commission finds that "other wastes" may include wastes such as drilling fluids and drill cuttings when drilling a Class VI well for carbon sequestration and the wells that monitor the Class VI well. These drilling fluids and drill cuttings are similar in composition and volume to the drilling fluids and drill cuttings for oil and gas wells. These oil and gas waste drilling fluids and cutting wastes are disposed in landfarming operations.

Regarding §4.102, relating to Responsibility for Oil and Gas Wastes, Commission Shift requested the Commission require lab analysis rather than allow use of process knowledge for characterizing waste, especially when waste is generated at or will be transferred to a commercial facility. Commission Shift stated that process knowledge is not sufficient because it does not account for contaminants existing downhole or any constituents introduced during transfer.

Waste Management requested more guidance on what constitutes process knowledge and when lab testing is required. Waste Management also suggested the Commission require operators to retain documentation of process knowledge on site.

The Commission disagrees with Commission Shift that process knowledge is not sufficient for waste characterization. In most cases, process knowledge is sufficient to characterize a waste as an oil and gas waste and whether that waste is exempt from the Resource Conservation and Recovery Act (RCRA). The definition of "oil and gas waste" (from the §91.1011 of the Natural Resources Code and incorporated into §4.110(65)) is intrinsically defined based on the underlying process. That is, the term "means waste that arises out of or incident to…" and the statute lists a number of industrial processes that may generate waste. With regard to whether oil and gas waste is exempt from RCRA, the EPA provides this guidance document: "U.S. Envtl. Prot. Agency, Office of Solid Waste, EPA530-K-01-004, Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations (2002)," which also describes a process knowledge approach to determining waste classification. Permit provisions may require or may require laboratory analysis of waste for waste generated at a commercial facility or when waste is transferred from one commercial facility to another, as stated in §4.102(a). Regarding Waste Management's comment requesting process knowledge documentation, the Commission notes that Section 4.190(b) requires a generator to document the waste characterization by completing a Waste Profile Form that documents the characteristics of each waste stream generated. This documentation is required to be kept for three years.

Regarding §4.102(e), Commission Shift requested clarification regarding the change from the 2023 informal rule draft, which used the phrase "any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver holds the appropriate authority from the Commission . . ." The current proposal changed subsection (e) to state, "any person *who utilizes*" rather than "*plans to utilize*." Commission Shift expressed concern that operators will use this change to avoid investigating whether a carrier has a permit.

The Commission disagrees. Section 4.102(b) provides sufficient clarity to address the concern expressed in the comment. It states, "No person, operator, generator, receiver, or carrier may utilize the services of a carrier to transport oil and gas wastes if the carrier is required to have a permit to transport such wastes but does not have a valid permit." However, the Commission considered this comment in review of other rules and adopts §4.203(c) with changes to clarify similar language.

TXOGA and Diamondback requested the Commission add §4.103(a)(4) to authorize without a permit the temporary storage of oil and gas waste by the generator at a nearby facility owned or operated by the generator. When pipelines generate waste during construction or maintenance, waste must currently be stored on the right of way, which creates a safety and security hazard. Allowing oil and gas

waste generated on a third-party pipeline right of way to be transported and temporarily stored at the closest property owned by the generator will mitigate this hazard.

The Commission declines to make the requested change in §4.103(a)(4) because it notes the requested activity can be accomplished by following the requirements of §4.182 and obtaining a minor permit pursuant to that section. A waste hauler permit would still be required to move the waste.

Plains All American Pipeline also commented regarding §4.103. Plains All American stated that spills or releases in active remediation are appropriately regulated by strict adherence to §3.91 and do not need additional governance under §4.103. It suggested §4.103 be revised to reference §3.91.

The Commission agrees and adopts §4.103 with a change to reference §3.91 as recommended.

Dow Chemical Company submitted comments on §4.103 requesting clarification regarding whether the Commission considers waste management methods such as landfills and wastewater treatment to be authorized activities when the activities are regulated and/or permitted by the Texas Commission on Environmental Quality (TCEQ). Dow requested the Commission add language in §4.103(a) to address landfills and wastewater treatment facilities permitted by another state agency.

The Commission declines to adopt Dow's recommended changes in §4.103(a). The Commission notes that the waste management methods referred to in Dow's comments are already addressed by §4.103(e), which provides that some waste management methods are expressly governed by the Memorandum of Understanding (MOU) between the Commission and the TCEQ, which is found in §3.30. The MOU clarifies that waste management methods authorized by TCEQ include landfills and wastewater treatment. Relatedly, the disposal of trans-jurisdictional waste is addressed in §4.192 which is adopted with changes due to other comments as discussed further below.

Commission Shift requested clarification regarding changes to §4.103(b) made after the 2023 draft. The 2023 version prohibited "discharge of oil and gas wastes, geothermal resource waters, or other mineralized waters" unless certain exceptions applied. The newly proposed version removes reference to wastes other than oil and gas. Due to the change, Commission Shift questions whether subsection (b) applies to all waste under the Commission's jurisdiction, or only oil and gas waste.

The Commission agrees that §4.103(b) should reference all wastes under the Commission's jurisdiction and adopts §4.103(b) with that change.

Regarding §4.104, relating to Coordination between the Commission and Other Regulatory Agencies, Commission Shift requests that the Commission add a requirement for the applicant to provide the Commission with a copy of any authority required by a separate agency.

The Commission agrees that this information should be provided if requested by the Commission and adopts §4.104 with that change. The Commission notes that an operator may hold a valid TCEQ permit by rule even though it has not been acknowledged by the TCEQ. In that case, there may not be

anything in writing to provide to the Commission. The Commission also notes that requests for authorization under a separate authority are currently considered when Commission staff evaluate permit applications. For example, if an application indicates co-mingling of contact and non-contact stormwaters or the application shows an outlet/valve for any discharge, the Commission asks the operator to produce a TPDES permit issued by TCEQ.

Commission Shift sought clarification regarding the distinction between an underground tank over which the Commission does not have jurisdiction and a pit regulated by the Commission.

The Commission notes that it does not have primary regulatory authority from the EPA for underground storage tanks defined in 40 Code of Federal Regulations (CFR) §280.12. This definition differs significantly from the definition for pit in §4.110(70).

Nine organizations and 57 individuals submitted comments related to §4.107, which contains the penalty guidelines for violations of Subchapter A.

Diamondback, TIPRO, and TXOGA requested the Commission add a good faith effort provision similar to the penalty guideline table in §3.66 of this title (relating to Weather Emergency Preparedness Standards).

The Commission declines to make the requested changes because good faith is already addressed by §4.107(i), which states, “In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.”

Commission Shift requested a revision to proposed §4.107(a) to recognize that voluntary corrective action *can be* an effective component of enforcement but is not always effective. Commission Shift also expressed support for the provision in proposed §4.107(b) in which the Commission reserves the right to automatically enforce violations. Commission Shift stated the Commission should also reserve the right to enforce a violation even after it has been corrected. This type of enforcement will deter future violations.

The Commission appreciates Commission Shift’s support regarding §4.107(b). The Commission does not change the statement that encouraging operators to take “appropriate voluntary corrective and future protective action . . . *is* an effective component of the enforcement process.” The Commission understands Commission Shift’s concerns that this statement may be interpreted to mean that voluntary corrective action is the only method of enforcement. However, the statement is clear that corrective action

is only one component of the enforcement process. The Commission finds the statement is accurate and needs no revisions.

The Texas Industry Project (TIP) expressed its opinion that a facility's history of compliance should not be held against a new operator if the operator did not operate the facility at the time of the prior violation.

The Commission agrees that a facility's history of compliance will not be held against a new operator because the operator is the one who receives the violation, not the facility.

Stasney Well Service and Momentum Operating commented that the penalty amounts proposed in §4.107 are too high, especially for smaller operators. They also requested that the Commission only assess penalties when actual harm occurs, not when pollution is merely threatened.

Conversely, Commission Shift noted that penalty amounts should not be considered as part of the fiscal impact for persons required to comply, including small businesses, because the costs are avoidable. Also, minimizing the impact on small operators or micro-businesses is not consistent with the statutory provisions authorizing penalties, which direct that penalties be punitive. Commission Shift requested that penalty amounts be increased. Commission Shift noted that penalties have not been increased since 2012 and, at a minimum, inflation should be taken into account in assessing whether the penalty amounts from §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations) are appropriately incorporated into Chapter 4.

Relatedly, the Texas Farm Bureau asked that penalty amounts be increased when operators submit inadequate or false data, especially for operators of authorized pits. The comments noted that these violations should be strictly enforced because the operators will avoid most regulatory requirements and should at least provide accurate registration information.

Sierra Club asked that the Commission narrow the penalty ranges and clarify that penalties are assessed per violation, per day and not as a one-time fine.

Regarding the comments on penalty amounts from Stasney Well Service, Momentum, Commission Shift, the Texas Farm Bureau, and Sierra Club, the Commission notes the penalties are merely guidelines. The actual penalties recommended and assessed will be determined by the Enforcement Section of the Office of General Counsel, the Administrative Law Judge and Technical Examiner in the Hearings Division, and ultimately, the Commissioners.

The Commission agrees with Sierra Club's comment that the Commission is authorized to assess penalties up to $10,000 a day for each violation. Texas Natural Resources Code §81.0531(b) provides that authority and states, "Each day a violation continues may be considered a separate violation for purposes of penalty enforcement." The authority provided by this statute provides the Commission sufficient

flexibility to assess significant penalties when necessary. Thus, the Commission declines to make changes to increase the guideline penalty amounts.

Commission Shift and 57 individuals requested the Commission improve enforcement generally. They argued that the Commission's existing rules are not well-enforced and the penalties do not effectively deter bad actors.

The Commission notes that the 88th legislature provided the Commission funding for a "compliance team" to be established in the Environmental Permits Unit. Since its inception, this team has reviewed quarterly reports in a timely fashion, conducted inspections of permitted facilities, and increased the number of violation letters and enforcement actions initiated by staff.

Commission Shift requested the table in §4.107 be revised to include the following additional rule violations: failure to register an authorized pit within the time limit prescribed, failure to construct an authorized pit in accordance with requirements in Division 3, failure to close an authorized pit (including flare pits and basic sediment pits) in accordance with Division 3, failure to report discrepancies as required by §4.194(b), failure to maintain records for at least three years as required by §§4.194 and 4.195, and failure to comply with the rules in Subchapter B, Division 7.

The Commission declines to add the requested rule violations to the table because the items in the table are merely example penalty guidelines. The table does not contain the universe of possible violations.

Subchapter A, Division 2 – Definitions

TXOGA and Diamondback noted that the term "drilling fluids" is used in the proposed rules but is not defined. These commenters recommended the term be defined as "all non-hazardous, low-chloride liquids and drilling mud associated with drilling activities for oil and gas exploration, development, and production activities."

The Commission agrees that a definition for drilling fluid should be added and adopts §4.110 to include the term, which the Commission defines as "any of a number of liquid and gaseous fluids and mixtures of fluids and solids (as solid suspensions, mixtures and emulsions of liquids, gases and solids) used in operations to drill boreholes into the earth."

Commission Shift suggested the Commission require operators to submit a Construction Quality Control form and define the term Construction Quality Control to ensure permitted operations are constructed properly. Commission Shift proposed the following definition for Construction Quality Control: A planned system of inspections that is used to directly monitor and control the quality of a construction project. Construction quality control is normally performed by the geosynthetics installer and is necessary to achieve quality in the constructed or installed system. Construction quality control (CQC)

refers to measures taken by the installer or contractor to determine compliance with the requirements for materials and workmanship as stated in the plans and specifications for the project.

The Commission declines to adopt this recommendation. Section 4.124(e)(3)(A) provides that all geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by the American Society of Testing and Materials (ASTM) and certified by a professional engineer licensed in Texas. And, in many cases throughout the rule (especially for liners), the rules require adherence to manufacturer's instructions for installation and maintenance.

Regarding the term 100-year flood, Commission Shift requested that the Commission remove the phrase "significantly long period" or clarify what the phrase means.

The Commission agrees and adopts the recommended change in §4.110.

Regarding the term 100-year flood plain, TXOGA and Diamondback asked for clarification regarding whether the requirements apply in areas where maps do not exist. Commission Shift requested that references in the definition to the U.S. Army Corps of Engineers be removed because the Federal Emergency Management Agency (FEMA) is the primary authority for flood plain data.

The Commission disagrees with TXOGA and Diamondback. Even when maps are not available, the operator should be aware of the surface hydrology potential of a location. The Commission also declines to remove the reference to the U.S. Army Corps of Engineers because some areas of Texas have not been mapped by FEMA such that 100-year flood plains are identified.

Deep Blue, Diamondback, TXOGA, and Commission Shift commented on the proposed definition of "action leakage rate." Deep Blue, Diamondback, and TXOGA requested clarification that a leak is only an indication of a possible failure. Commission Shift requested changes to require an operator to find the cause of liner failure and repair the liner when the action leakage rate indicates severe failure of the primary liner.

The Commission declines to make changes to the definition of action leakage rate based on these comments. The Commission finds that exceeding the action leakage rate indicates a system failure until proven otherwise. The Commission also determines it is not appropriate to include requirements in the definition, such as the suggested requirement to find the cause of the failure and repair the liner.

Commission Shift requested that the Commission revise the definition of "affected person" to specify that the term includes surface owners, groundwater conservation districts, and residents within one mile of the facility's property boundary. The comment stated the change would assist the public in understanding who is affected.

The Commission declines to make the requested change. The rule does not limit the definition of an "affected person" to one who is explicitly entitled to notice. Instead, the definition provides flexibility

because affected person status is only based on whether the individual has suffered or may suffer actual harm.

Commission Shift commented that the term "alluvium and quaternary sand and gravel" should be removed from §4.110 because the term is not used in Chapter 4.

The Commission agrees and removes the term from §4.110.

Commission Shift asked that the Commission revise the definition of aquifer because the Commission should ensure protection of all subsurface water, not just aquifers capable of yielding significant quantities of groundwater.

The Commission declines to make any changes to the proposed definition of aquifer. The Commission's pollution standard is for no pollution of "surface or subsurface waters." An "aquifer" is a type of subsurface water. Defining aquifer as a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs does not limit or otherwise impact the Commission's protection of subsurface water. "Surface and subsurface water" are also defined and referenced in these rules.

Regarding the proposed definition of "authorized," Commission Shift requested clarification because the definition includes the term "permitted," which has a common meaning and a meaning under the Commission's rules. Thus, clarification regarding what the term means in the definition of "authorized" would be beneficial.

The Commission agrees that the proposed definition of "authorized" could create confusion. The term "authorized" when used in Subchapter A generally refers to a permit-by-rule approval such that the activity is allowed by the rule and the operator is not required to apply for and obtain a permit.

Several comments were submitted regarding the Commission's proposed definition of "commercial facility." The Alliance, American Energy Works, Deep Blue, Diamondback, Pantera Energy Company, PBPA, PPROA, TIP, and TIPRO commented requesting clarification and suggesting edits relating to how operator controlled/owned produced water recycling facilities will be regulated. These commenters expressed concern that produced water recycling facilities would be considered commercial when a parent company uses subsidiaries to operate water management aspects of its business.

The Commission notes that the definition of commercial facility states that a commercial facility is a facility permitted under Division 4 of Subchapter A. The other language in the definition ("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") only applies to facilities that meet the first part of the definition – those that are permitted under Division 4 of Subchapter A. Produced water recycling pits are authorized under Division 3 of Subchapter A so they are not considered commercial facilities under Subchapter A's requirements.

Commission Shift asked for revisions to clarify that waste management units located at commercial facilities must be included in the permit rather than authorized by rule.

The Commission declines to revise the definition of "commercial facility" in accordance with Commission Shift's suggestions but confirms that any waste management unit located on the same property as a commercial facility is required to be permitted. For example, a pit that is used for produced water recycling and is located at a commercial waste facility would be permitted and would be included on the commercial facility's permit. The Commission adopts §4.120 with a change to clarify this requirement.

The Alliance, American Energy Works, Pantera Energy, PBPA, PPROA, TXOGA, and TIP commented that the proposed definition of contact stormwater is too broad and should be revised to ensure operators are not required to manage water that has not come into contact with oil and gas waste. TXOGA and TIP noted that the proposed definition may encompass stormwater at facilities not yet commissioned.

Commission Shift expressed support for the proposed definition and recommended two minor edits to encompass stormwater at authorized facilities.

The Commission agrees that operators should not be required to manage water that has not come into contact with oil and gas waste or with areas that have contained oil and gas waste. The Commission adopts the definition of "contact stormwater" with changes to address these comments. The Commission defines contact stormwater as stormwater that has come into contact with any amount of oil and gas wastes or areas that contain or have contained oil and gas wastes. The Commission also adopts the definition of "non-contact stormwater" with changes to clarify that all stormwater is either contact or non-contact. The definition of stormwater will be adopted without changes.

One individual suggested that the Commission ensure consistency when using the term stormwater to ensure it is always one word rather than two (i.e., stormwater rather than storm water). The Commission agrees and makes minor changes throughout the rules to ensure consistent use of the term.

NESCO recommended that the paint filter test be referenced in the definition of "dewater." The Commission agrees and adopts §4.110 with a revised definition of dewater.

Relatedly, Commission Shift recommended that the Commission define the term "free liquids," which the used within the proposed definition of "dewater." The Commission agrees and adopts §4.110 with changes to add a definition of "free liquids" as §4.110(39).

Regarding the proposed definition of "disposal," Plains All American asked that the Commission clarify how the term, and regulation of disposal under Chapter 4 in general, relates to spills that are in active remediation in accordance with §3.91 (relating to Cleanup of Soil Contaminated by a Crude Oil

Spill). Plains recommended the definition of disposal expressly exclude a spill or release that is addressed under the requirements of §3.91.

The Commission agrees that disposal does not include a spill or release handled in accordance with §3.91. However, the Commission declines to amend the definition of disposal. Instead, the Commission adopts §4.103(a) with a revision stating that unless authorized by Subchapter A, no person may manage oil and gas wastes without obtaining a permit to manage such wastes, except for certain methods listed in subsection (a) including methods authorized by §3.91.

Diamondback and TXOGA requested that the proposed definition of drill cuttings be revised to encompass wells that are not oil and gas wells.

The Commission agrees and adopts the definition with a change to include other wells within the Commission's jurisdiction.

Regarding the proposed definition of "freeboard" NESCO and Commission Shift asked the Commission to revise the definition to ensure freeboard includes sufficient storage capacity to contain rainfall from a 25-year, 24-hour rainfall event.

The Commission disagrees that the standard suggested by NESCO and Commission Shift should be added in the definition. Freeboard is the measurement of the vertical distance between the top of a pit or berm and the highest point of the contents of the pit or berm. The required amount of freeboard is established in the rules, which require two feet of freeboard plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

The Commission received several comments about the proposed definition and concept of fresh makeup water pit. CrownQuest commented that the Commission should not regulate use or management of true fresh water. Merit Energy requested a new definition and requirements for fresh makeup water pits to allow operators to manage the total dissolved solids in the pit and continue operating as long as the water contained in the pit does not have constituents in concentrations exceeding those of groundwater in the area.

The Alliance, Deep Blue, Diamondback, Pantera Energy, PBPA, PPROA, TIP, TIPRO, and TXOGA noted that industry is working to reduce its fresh water use by sourcing water from brackish or saline aquifers. However, the proposed definition and regulation of fresh makeup water pit would discourage the use of alternative water sources. The commenters suggested that the term "fresh makeup water pit" be replaced with "makeup water pit." Merit Energy and Fasken Oil and Ranch also commented supporting a new definition and concept of "makeup water pit."

The Commission agrees and replaces "fresh makeup water pit" with "makeup water pit," which is adopted as §4.110(55). The Commission also incorporates the new pit type into §4.114, which is

discussed in more detail in the "Subchapter A, Division 3 – Operations Authorized by Rule" section below.

Deep Blue, Diamondback, Stasney Well Service, TIPRO, and TXOGA submitted comments regarding the proposed definition of "fresh water." Diamondback, TIPRO, and TXOGA asked that the Commission remove the definition's one-mile radius component, which would require additional research to determine what constitutes fresh water in a certain area. Deep Blue requested a straightforward definition that would provide clarity and reduce regulatory requirements. Deep Blue noted its concerns related to the impact of the definition of fresh water in the regulation of fresh makeup water pits. Stasney Well Service suggested the Commission define fresh water as water with less than 1,000 mg/l total dissolved solids (TDS) and add a definition of usable quality water, which would be defined as water with 3,000 mg/l TDS or less.

The Commission determines that due to changes relating to the removal of "fresh makeup water pits" and the creation of the new "makeup water pit" type, the definition of "fresh water" is no longer necessary. The Commission removes that term in the adopted version of §4.110.

Regarding the proposed definition of geomembrane, Commission Shift suggested the Commission revise the definition to remove "effectively" from the phrase "effectively impermeable" because the use of "effectively" may create a loophole for compliance.

The Commission adopts §4.110(43) with a change to remove "effectively" as suggested.

The Commission received eight comments related to the proposed definition of "groundwater." The Alliance, Diamondback, Pantera Energy, PBPA, and TXOGA asked that the definition specify that groundwater is subsurface water *in a confined or unconfined aquifer*.

The Commission declines to adopt the requested change. The definition states that groundwater is subsurface water in a zone of saturation. The Commission finds this definition easier to apply.

The Alliance, American Energy Works, EPEC Energy, PBPA, and PPROA also requested clarification regarding whether the definition of groundwater includes produced water.

The Commission does not consider groundwater to include produced water. Water that is present in a subsurface formation coincident with hydrocarbons is groundwater. When the coincident groundwater is produced with hydrocarbons, it becomes produced water, which is currently considered an oil and gas waste under Texas Natural Resources Code §91.1011, and the corresponding Commission rule §4.110(65). The Commission adopts §4.110 with a definition of "produced water" to help clarify this issue.

Stasney Well Service suggested the Commission define groundwater as "usable quality groundwater" because Commission-regulated operators are familiar with that term. Commission Shift

requested that the definition include any water under the surface of the ground (both aquifers and subsurface water) regardless of quality.

The Commission declines to make changes due to these comments. The adopted definition, which defines groundwater as subsurface water in a zone of saturation, references subsurface water. Subsurface water is defined in §4.110 and includes all subsurface water regardless of quality.

Stasney Well Service and Momentum Operating asked the Commission to add a definition for hazardous oil and gas wastes.

The Commission declines to adopt a definition of hazardous waste. The Commission's regulations in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) describe oil and gas wastes that are hazardous and govern management of these wastes. The Commission adopts §4.102 with changes to clarify that hazardous oil and gas waste must be managed pursuant to §3.98.

Regarding the proposed definitions of landfarming and landtreating, NESCO stated the two activities are not the same and should not be regulated as such. Landfarming should be applied only to disposal of oil and gas wastes at the well site, well location, or lease whereas land treatment is applicable to treatment and disposal at a commercial disposal facility. It is a dynamic process involving the controlled application of E&P waste onto or into the aerobic surface soil horizon in open cells by a commercial land treatment facility accompanied by continued monitoring and management to alter the chemical state of the waste. Commission Shift agreed regarding the definition of landtreating and suggested the definition of landtreating be revised to ensure the treatment process is included. NESCO also commented that landtreating is an incorrect term and the Commission should revise it throughout Subchapter A to refer to land treatment instead.

The Commission declines to change the term landtreating and also declines to change how it regulates these two activities. For several years, the Commission has applied the term "landfarming" to the integration of low-chloride water-based drilling fluids and cuttings into a soil horizon, and applied the term "landtreatment" (or "landtreating") to the similar management of oil-based drilling fluids in which bioremediation occurs. The Commission will continue this practice. The Commission agrees that the definition of landtreating should be revised to reference the treatment process and adopts the definition with those changes in §4.110(52). In addition, the Commission notes that in the past its Surface Waste Management Manual has provided guidance on the practices of landfarming and landtreating as well as other waste management activities. The Commission will update the manual to reflect these new rules, including the new definition of landtreating.

Diamondback and TXOGA also commented on the proposed definition of landfarming. They recommended the Commission use the term "water-based drill cuttings" rather than "water-based drilling

fluids" because the fluids should be addressed under land application, in which the fluids penetrate into the soil such that tilling or mixing into the soil by landfarming is not necessary. Stasney Well Service commented that tilling is not always possible or practicable due to native soil and plant life and asked the Commission to include burial as an accepted practice under the definition of landfarming.

The Commission disagrees with these commenters because both drilling fluids and drill cuttings can be landfarmed and burial is only authorized for certain wastes pursuant to §4.111. Landfarming and landtreating are different from burial – they include integration of the waste into the surficial soil horizon.

Diamondback and TXOGA commented regarding the proposed definition of land application. They suggested the Commission remove the reference to produced water and add "water-based drilling fluids." They noted water-based drilling fluids is referenced in the definition of landfarming and there are other Commission-regulated activities that would meet the criteria of being a low-chloride water fluid that is not a "produced water," such as de-watering of hydro-excavated soils or dewatered drilling mud. Therefore, replacing "produced water" with "water-based drilling fluid" will maintain the intent of the definition without limiting the scope to only well-sites.

The Commission adopts §4.110(49) with a change to address this comment. Land application will be defined as a method for the permanent disposition of low-chloride aqueous oil and gas waste by which the liquid waste is applied directly to the ground surface in a controlled manner via sprinkler or other irrigation systems without tilling or mixing with the native soils and without runoff to surface water or infiltration to groundwater.

Commission Shift requested clarification regarding changes to the definition of "natural gas or natural gas liquids processing plant" and asked whether the changes will impact regulation of these plants.

The Commission notes that the proposed definition intends to clarify that waste arising out of or incidental to activities associated with natural gas treatment or natural gas liquids processing plants are under the jurisdiction of the Commission, except natural gas liquids processing plant waste that is hazardous. The new definition does not impact the regulation of these plants. Rather it combines the statement from §3.1(a)(1)(D) of this title (relating to Organization Report; Retention of Records; Notice Requirements) that recognizes the Commission's jurisdiction over natural gas treatment or natural gas liquids processing plants with the concept from §3.98 that oil and gas waste excludes hazardous waste arising out of or incidental to activities associated with natural gas treatment or natural gas liquids processing plants.

Commission Shift, PBPA, and TXOGA suggested revisions to the proposed definition of "operator." These commenters focused on the list of activities referenced in the definition (e.g., permitting, physical operation, and closure) and either commented that the list was too specific or should include more activities.

The Commission understands that the list may create more questions than it resolves and so the Commission adopts the definition of "operator" with a change to ensure consistency with the definition in §3.79 of this title (relating to Definitions). The revised definition removes the list of activities and instead defines operator as a person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the Commission's rules and regulations in any acts subject to the Commission's jurisdiction.

Stasney Well Service requested revisions to the proposed definition of "pollution" to incorporate the concept of usable quality water and to state that pollution does not include nonhazardous oil and gas wastes exempt from the Resource Conservation and Recovery Act (RCRA).

The Commission disagrees. The proposed definition of pollution is consistent with the statutory definition in the Texas Water Code, Chapter 26.

Stasney Well Service and Momentum Operating requested that the Commission add a definition of process knowledge and Stasney provided the following proposed definition: Process knowledge is the combination of skills, understanding, experience, and expertise of an average oil and gas operator in a given geographic area concerning a given type of material, waste, well, or oil field operation.

The Commission disagrees with the language proposed by Stasney because the characterization of waste is a technical determination and the definition proposed by Stasney does not incorporate any specialized knowledge or analysis. The Commission notes that its position on process knowledge is addressed above in the "Subchapter A, Division 1 – General" section in the paragraph discussing §4.102.

The Commission received comments on the definition of "produced water recycling facility." However, the Commission notes that term is no longer used in the rules so it is removed from §4.110.

Regarding the proposed definition of "public area" Commission Shift requested clarification regarding whether the Commission interprets a day care to be a public area.

The Commission interprets "public area" to include a day care because the definition includes "school" as well as "place of business."

The Alliance, American Energy Works, Deep Blue, Diamondback, Fasken Oil and Ranch, Pantera Energy, PBPA, PPROA, TIP, TIPRO, TXOGA and Waste Management also commented on the proposed definition of "public area." The Alliance, American Energy Works, Diamondback, Pantera Energy, PBPA, TIP, and TXOGA requested that the Commission remove the reference in the definition to a public road because including public road makes the definition of "public area" overly broad and will unnecessarily restrain siting of operations. Relatedly, Deep Blue, TIPRO, and Waste Management recommended that the Commission reference §3.36 of this title (relating to Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas) rather than incorporating the definition of public area

into Chapter 4. These commenters stated that §3.36 is more comprehensive in addressing safety concerns related to hydrogen sulfide.

The Commission agrees that including "public road" may overly restrict siting and agrees to remove that term from the definition. The Commission disagrees with Deep Blue, TIPRO, and Waste Management regarding referencing §3.36 rather than defining "public area" in Chapter 4. The Commission incorporated the definition from §3.36 because Chapter 4 has siting requirements based on distance to public areas and defining the term is helpful for providing clarity. In Chapter 4, the definition of public area is unrelated to whether hydrogen sulfide requirements are implicated. Rather, it was incorporated because it is an established definition with which both the regulated industry and Commission staff are familiar.

TXOGA and Diamondback requested that the word "permit" be removed from the proposed definition of "recyclable product" in §4.110 because the term can apply in both authorized activities and activities for which an operator must obtain a permit.

The Commission agrees and adopts the definition of "recyclable product" with the requested change.

Waste Management asked that the Commission revise the definition of "secondary containment" to match the definition included in TCEQ's rules.

The Commission declines to make the requested change because it would create inconsistency in the structure and content of the Commission's rules. The Commission uses "primary containment" and "secondary containment" to describe the relationship between a container that performs the function of primary containment, and secondary containment which is intended to mitigate the damage from spills.

Regarding the proposed definition of "surface and subsurface water," Stasney Well Service commented that surface water should be the focus of this rule. The catch-all phrase "all other bodies of surface water, natural or artificial" is too broad and is subject to unlimited interpretations.

The Commission disagrees. Commission rules are consistent with applicable statutes, which are broadly protective of surface and subsurface waters of the state.

The final definition proposed in §4.110 is "wetland." Commission Shift commented that the Commission should include a reference to NWI maps and presume the existence of a wetland if so indicated by an NWI map unless an onsite wetlands determination by a wetlands expert concludes otherwise.

The Commission declines to adopt the definition with the suggested change because the proposed definition matches the definition in Texas Water Code §11.502. The Commission notes that it uses National Wetlands Inventory (NWI) when evaluating permit applications.

Subchapter A, Division 3 – Operations Authorized by Rule

Commission Shift commented generally regarding activities authorized under Division 3 that are located on the same site as a facility permitted under Division 4. Commission Shift stated that once a waste management unit on a facility requires a permit, then every waste management unit on the facility should be described in and covered by the permit, even if those activities are typically authorized under Division 3.

The Commission agrees and adopts §4.120(b) with changes to clarify this issue.

Commission Shift and Stasney Well Service also commented generally regarding the record-keeping requirements of Division 3. Commission Shift suggested that instead of three years, all documentation should be required to be retained permanently. Commission Shift also suggested that all construction, sampling, and closure documents be shared with the surface owner.

Stasney asked that pits with less than 50 barrels of waste be exempt from documentation requirements. Stasney also requested clarification regarding what types of documentation is required to be maintained.

The Commission disagrees that low volume pits should be exempt from maintaining documentation. The documentation required is documentation necessary to support compliance with Commission regulations. Regarding Commission Shift's comments, the Commission notes that the registration information will be maintained by the Commission through its online registration system, which will have a different retention timeframe than the operator's three-year requirement.

Regarding §4.111(a) which addresses land application of water condensate, Commission Shift requested that additional parameters be included in the Figure proposed in subsection (a). Commission Shift requests the Commission add testing for TPHs, BTEX, and replace chloride concentration with TDS or electrical conductivity.

The Commission disagrees that the constituents requested by Commission Shift are appropriate for water condensate, the material to which the Figure applies. The proposed constituents are sufficient and appropriate for water condensate.

Diamondback and TXOGA commented regarding §4.111(c)(10), which authorizes disposal of certain oil and gas wastes by landfarming and requested that the requirement in subsection (c)(10) be revised to take background levels into account.

The Commission declines to provide for background concentrations of total petroleum hydrocarbon content (TPH) in soil because the standard in subsection (c)(10) is 1% or less by weight.

Relatedly, Commission Shift commented that testing should be required prior to the application of waste under §4.111.

The Commission notes that because §4.111(c)(9) requires the waste-soil mixture to have "an electrical conductivity that does not exceed the background level for undisturbed soil before landfarm activities commence," the operator would need to establish background soil constituent concentrations prior to the landfarming activity.

Stasney Well Service asked that §4.111 be expanded to allow burial of nonhazardous oil and gas waste in place.

The Commission declines to expand §4.111. The section allows for limited on-lease disposal of certain oil and gas wastes generated on the lease.

Diamondback, TXOGA, and PBPA commented regarding §4.112, which relates to Authorized Recycling. These commenters requested changes to the rule so that it contemplates fluids that do not need to be treated to be recycled.

The Commission agrees that produced water used down the wellbore may be treated but is not required to be treated prior to being used in the wellbore and the Commission adopts §4.112 with a change to clarify that issue. All other recycling of liquid oil and gas waste requires a permit, either under Division 4 of Subchapter A, or under Subchapter B.

Commission Shift asked that the Commission expressly prohibit pooling of produced water from multiple leases without a permit.

The Commission disagrees. The commingling of produced water into water management pipeline and pit networks has become an essential element of oil and gas operations across the state. Such commingling is necessary to "encourage fluid oil and gas waste recycling," which is a state policy established in Natural Resources Code Chapter 122.

Regarding §4.112, Commission Shift also requested clarification regarding when produced water recycling pits are regulated under Subchapter A and when they are regulated under Subchapter B.

The Commission considers the only authorized method to recycle produced water is to use the produced water in a downhole operation. This position is consistent with the Commission's application of the requirements of the prior version of §3.8. All other recycling of liquid oil and gas waste requires a permit, either under Division 4 of Subchapter A, or under Subchapter B.

TETRA Technologies requested clarification regarding standards in §3.8 ("Rule 8") that were not incorporated into the current proposal. Rule 8 authorized recycling of treated fluid resulting in distilled water and did not require a permit for use of the resulting distilled water. That activity is not authorized in the current proposal, which limits companies like TETRA from directing R&D activities toward exploring opportunities for reuse of produced water recycled to that level of purity.

The Commission finds that §3.8's blanket authorization to allow distilled water to be reused for any purpose is now imprudent due to the recent attention to the development of technology and logistics

to treat and recycle produced water, some of which include unproven distillation methods and processes. Because the term “distilled water” is no longer used in these rules, the Commission adopts §4.110 with a change to remove that term.

The Commission received a number of comments regarding §4.113, which addresses authorized pits. Section 4.113(b) requires all authorized pits to be constructed, used, operated, and maintained at all times outside of a 100-year flood plain unless the District Director grants an exception after a showing that the contents of the pit will be confined in the pit at all times.

CrownQuest stated that the requirement for authorized pits to be constructed outside the 100-year flood plain makes sense for produced water pits or other pits that will operate for several years, but not for temporary reserve pits. CrownQuest stated this requirement massively increases costs and significantly affects the availability of pit locations.

The Commission disagrees. The prohibition on siting an authorized pit in a 100-year flood plain has been in §3.8 for many years. The Commission notes an operator may receive an exception.

As referenced in the general comments section above, Commission Shift opposes any provision that provides the Director or District Director with discretion to approve exceptions. Commission Shift commented in opposition to the proposed exception in §4.113(b) as well.

The Commission disagrees. The Commission supports flexibility in the statewide rules that allow for consideration of unique facts or circumstances. Discretion is not limitless. An exception may only be granted upon a showing that the contents of the pit will be confined to the pit at all times.

Section 4.113(c) contains instructions and requirements for authorized pits constructed pursuant to and compliant with §3.8 (“Rule 8”) as that rule existed prior to July 1, 2025.

Commission Shift stated that existing pits should be required to come into compliance with all new rules, and should not be limited to complying with the new rules at closure only. Commission Shift recommended that subsection (c)(1) should be revised to require all existing authorized pits to come into compliance with Division 3, not just those authorized pits that cause pollution.

The Commission notes that pursuant to §4.113(c)(3), a pit considered a non-commercial fluid recycling pit under prior §3.8 is required to register as a produced water recycling pit and submit the required financial security. Regarding other pits coming into compliance with the new rules, the Commission declines to make changes to §4.113 based on this comment, but notes that the other authorized pits generally have shorter operational lives. Thus, the Commission anticipates the pits will be closed due to inactivity and the normal course of operations. Closure must be accomplished in accordance with the new rules.

The Alliance, American Energy Works, Deep Blue, Diamondback, Pantera Energy, PBPA, PPROA, TIPRO, and TXOGA requested revisions to §4.113(c)(1) to remove the reference to pits

authorized under §3.8 that cause pollution and merely require authorized pits to be in compliance. The commenters note the statement that authorized pits that cause pollution shall be brought into compliance or closed would mandate the operator to conduct a site assessment to demonstrate pollution is not occurring, which requires proving a negative.

The Commission declines to adopt the suggested changes. Section 4.113(c) already addresses the importance of compliance. The purpose of §4.113(c)(1) is to address any pollution stringently.

The Commission received several general comments about authorized pits addressed in §4.113, §4.114, and §4.115. First, TLMA, the Mabee Ranch, Z&T Cattle Company, and Commission Shift commented that all types of pits should have the same standards for construction, operation, and closure due to their potential impact on the environment. One individual specifically requested that groundwater monitoring requirements be imposed for all pits. The Texas Bankers Association, NESCO, Commission Shift, and 74 individuals asked the Commission to require liners, leak detection, and groundwater monitoring for Schedule A pits similar to standards for commercial operations.

Commission Shift also stated that the Commission has no rational basis for imposing so few requirements for Schedule A pits and asked that the Commission set more protective rules for Schedule A pits in order to prevent pollution. Further, at the beginning of this comment summary, the Commission noted several sets of comments expressing opposition to the proposed new rules and amendments because the commenters believe the rules fail to adequately prevent pollution or adequately protect the safety of Texas's land and water.

The Commission adopts §4.114 with changes to address some of these concerns, as discussed in more detail below. However, at the outset, the Commission argues that this rulemaking marks a significant effort on the part of Commission and the industry to update our cornerstone rules for environmental protection and pollution prevention. These rules incorporate many of the current best practices employed by industry for authorized pits. For example, authorized pits that contain fluids with more than 3,000 mg/l total dissolved solids (TDS) must be lined, as must authorized pits whose pit bottoms are located within 50 feet of groundwater. In addition, because of the industry's expanding use of recycled produced water, and the proliferation of associated very large pits, produced water recycling pits have been identified as a special category of authorized pits. Operators will be required to post a financial security bond to enable the Commission to fund pit closure, if needed. Further, many of the standard permit conditions that are currently issued for permitted facilities have been incorporated into the rules. For example, the need for and manner of conducting groundwater monitoring to prevent pollution has been incorporated into the rules. The Commission has also created a Compliance Team that is responsible for ensuring waste facilities are compliant with the statewide rules and individual permits. Together—

more specific rule requirements and a dedicated compliance team—will enable the Commission to meet its statutory obligations to the people of Texas.

Regarding the regulation of Schedule A and Schedule B pits, the Commission concludes that Schedule A pits, which are designed for short-term use, present a lower risk than pits that are used for longer periods of time. Thus, the Commission adopts the rules relating to Schedule A pits with fewer requirements than Schedule B pits.

Regarding the categorization of pits as either Schedule A or Schedule B, Texland Petroleum and A.C.T. support how the proposal classified pits, commenting that the approach is a commonsense method for regulating different types of pits and that the regulations for each type are reasonable.

The Commission appreciates these comments.

The Texas and Southwestern Cattle Raisers Association commented that use of authorized pits should be rare, and when they are utilized, they should be closed as soon as possible and be required to undergo continued monitoring and oversight.

The Commission disagrees that use of authorized pits should be rare. By design, authorized pits are commonly built, used, and closed at active oil and gas exploration and production sites. It is because most of these pits have shorter temporal lives and are smaller in size that the Commission imposes fewer requirements for their operation.

Regarding how to categorize pits and apply requirements applicable to each pit type, NESCO commented that the Commission should separate non-commercial and commercial facilities (i.e., focus on difference in quantity of waste, the size of the facility, and the difference in duration of operation). The rules for commercial facilities that are larger in size and volume and operate longer should reflect the threat they pose. EPEC Energy also commented that the Commission should consider the size of the pit and noted that larger pits with higher toxicity contents or pits that will keep waste for a long time should be Schedule B.

The Commission notes that all authorized pits are non-commercial under the definitions adopted in §4.110. Generally, the distinction between Schedule A and Schedule B pits does incorporate an aspect of pit size and duration of operational life. Schedule A pits are generally smaller and have shorter operational lives than Schedule B pits. As discussed below, the Commission also adopts §4.114 with changes to impose liner requirements for pits with higher total dissolved solids content.

Section 4.113 provides that the following pits are considered Schedule A authorized pits: reserve pits, mud circulation pits, completion/workover pits, makeup water pits, fresh mining water pits, and water condensate pits. The pits are authorized without a permit only if they comply with the requirements of §4.113 and §4.114.

Commission Shift asked that the list of Schedule A pits be exclusive, so the rules are clear regarding which types of pits are authorized and which requirements apply.

The Commission agrees and finds §4.113(a) is worded such that only the pits listed in that subsection are considered Schedule A pits. However, proposed §4.114 states, "Schedule A authorized pits *include* reserve pits, mud circulation pits, completion/workover pits, freshwater makeup pits, fresh mining water pits, and water condensate pits." The Commission adopts §4.114 with a change to make this list exclusive in accordance with Commission Shift's comment.

Regarding proposed subsection (d) of §4.113, relating to unauthorized releases from authorized pits, Diamondback, TXOGA, and TIP requested that the Commission establish a reportable quantity for spills from authorized pits or reference existing §3.91.

The Commission declines to make the requested change. Section 3.91 relates to crude oil only, not oil and gas waste. The Commission has traditionally viewed spills of waste or other materials, which are not addressed in §3.91, to be "unauthorized or improper disposal" pursuant to the requirements of §3.8 effective prior to the adoption of these rules. The Commission will continue this approach and expects that waste spills will be managed on a case-by-case basis with coordination as needed from the District Office and Technical Permitting.

Section 4.113(e) requires registration of all authorized pits. The Texas Farm Bureau expressed support for the registration requirements but asked that the Commission specify how frequent it will perform inspections. The Bureau requested at least annual inspections.

The Commission appreciates the Bureau's support. The inspection schedule will be set by the district offices based on activity in each district. Most drilling locations are inspected when active and because most authorized pits are at active drilling locations, they will be inspected routinely.

Fasken Oil and Ranch commented in opposition to registration requirements for authorized pits other than reserve pits, produced water recycling pits, and makeup water pits, stating that neither the industry nor the Commission are equipped to handle the volume of paperwork the registration requirements will create. CrownQuest stated that registration should only be required for pits that are not located on a site with an existing Commission permit or other registration. Momentum Operating asked that pits with less than 80 barrels in total volume be exempt from registration. CrownQuest stated that the Commission should provide more information to operators so they can determine the shallowest expected water and include it on the registration. CrownQuest also expressed general opposition to new requirements for authorized pits, stating that the Commission already has most of the information, that new requirements are too costly and burdensome, and that the Commission has no reasonable basis for imposing the new regulations.

The Commission disagrees. The Commission finds that the pit location and other information required in the registration is necessary to ensure proper regulation of pits that are not required to obtain a permit. Further, it is an operator's responsibility to ensure its facilities do not cause pollution, so the operator should have sufficient knowledge about the groundwater resources in its areas of operations to provide that information on the registration. Generally, the Commission disagrees with CrownQuest that the new regulations are unreasonable or overly burdensome.

Similar to CrownQuest, TIPRO stated that workover and plugging type pits should be excluded from the registration requirement because registering these pits is too big of a burden. There are thousands of these used each year and they are small volume and short term.

The Commission declines to exempt workover and plugging type pits from the registration requirement. It is precisely because there are so many of these pits that the Commission finds they must be registered. When oil field fluids and wastes are placed in an earthen pit the Commission has an interest in knowing that the activity occurred as there is a potential for the pollution of surface or subsurface water.

Regarding the requirement to include in the registration the expected depth to groundwater from the bottom of the pit (proposed in §4.113(e)(4)(D)), EPEC Energy requested clarification regarding how operators should determine depth to groundwater.

The Commission expects an operator to know the occurrence of groundwater at an operational area, and expects an operator will take actions necessary to determine whether groundwater occurs within 50 feet of the bottom of a proposed pit (as required by §4.114 for certain pits). This may require a subsurface investigation, or it may be sufficient to do a records review from the Texas Water Development Board (TWDB) or other source. The TWDB has a website for the groundwater well data viewer and water well drilling reports that can be interpreted to provide groundwater depth. For example, by entering the pit's longitude and latitude, the water data viewer will show the location and water wells in the area. The user may access water well drilling reports for the located wells that will show the depths of the groundwater well screen intervals. By knowing the surface elevation of the pit site at issue, then subtracting the pit depth, an operator can determine the expected depth to the groundwater horizon from the bottom of the pit. For purposes of the liner requirements in §4.114, this method will also enable the operator to determine if the pit bottom is within 50 feet from the groundwater horizon.

The Alliance and Pantera Energy requested the Commission create a registration process that will not create an administrative burden. For example, the Commission could include pit registration requirements on the drilling permit application to consolidate filing requirements where possible.

The Commission intends registration to require minimal effort and be accomplished through a simple online system. The Commission notes that the only registration component subject to Commission

staff approval is the financial security requirement for Schedule B pits. The drilling permits system would not meet the Commission's needs because not all authorized pits are associated with a drilling permit.

Diamondback and TXOGA requested clarification regarding how registration and reclassification should be accomplished for pits associated with multiple wells/pads. Commission Shift asked the Commission to clarify whether redesignation of a pit will require re-registration. Commission Shift also requested that the Commission make the registration system publicly available and suggested several additional pieces of data that the Commission should collect via registrations.

The Commission notes that registration details will be addressed prior to the effective date of the rules, which will be July 1, 2025. The Commission intends that operators will be able to accomplish redesignation and other registration updates through the registration system. Other details of the system's capabilities are still under consideration and development.

Several comments were submitted regarding the categorization of reserve pits and mud circulation pits, asking that the Commission require liners and clearer construction standards for these pits. The commenters include Milestone Environmental Services, Gabriel Rio, NESCO, and 400 individuals. Milestone noted that reserve pit failures are the cause of many contamination issues. Similarly, Recover USA commented that operators using drilling fluid which contains at least 1% volume hydrocarbons (oil-based drilling fluid) or chlorides of at least 3000 ppm (brine or salt water drilling fluid) should not be able to utilize a pit unless the pit is built to the same standards as required for Schedule B pits. One individual requested that liners be required for all pits regardless of the pit's distance to the water source.

Several industry associations and operators also commented regarding the list of pits included in §4.113 as Schedule A authorized pits. First, Diamondback, Fasken Oil and Ranch, PBPA, TIPRO, and TXOGA asked that the Commission enable operators to use reserve pits for completion operations. They suggested the Commission change closure requirements to facilitate this practice so that the 30-day dewater and 120-day backfill requirements under §4.114(3)(A)(iii) do not kick in.

The Commission declines to adopt changes to §4.113 or §4.114 based on these comments. The operators is expected to maintain proper pit registration and close the pit with applicable requirements.

Second, the industry associations and operators commented requesting a new suggested pit type – the makeup water pit. The comment relates to the Commission's proposed definition of "fresh makeup water pit" and the associated requirements for fresh makeup water pits in §4.114. The Alliance, Deep Blue, Diamondback, Pantera Energy, PBPA, PPROA, TIP, TIPRO, and TXOGA noted that industry is working to reduce its fresh water use by sourcing water from brackish or saline aquifers. However, the proposed definition and regulation of fresh makeup water pit would discourage the use of alternative water sources. These and other industry commenters suggested that the term "fresh makeup water pit" be

replaced with “makeup water pit” and that makeup water pits be subject to the same requirements as mud circulation and reserve pits (e.g., liner requirements if groundwater is present within 50 feet of the bottom of the pit).

As noted above in the comments relating to the definition of “fresh makeup water pit,” the Commission agrees to include the new pit type. The Commission adopts Subchapter A with changes to remove the definition of “fresh makeup water pit,” add a new definition of “makeup water pit,” and replace “fresh makeup water pit” with “makeup water pit” throughout the rules.

Due to the addition of this new pit type and the definition of “makeup water pit” which is defined as “a pit used in conjunction with a drilling rig, completion operations, or a workover for storage of water used to make up drilling fluid or completion fluid” the Commission adopts §4.114 with additional changes to simplify liner and closure requirements for these pits and other Schedule A authorized pits. Revised §4.114(2) retains the requirement that all Schedule A pits be designed, constructed, and maintained to prevent any migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water at any time during the life of the pit. Section 4.114(2)(B) is adopted with changes to specify that any pit that contains fluid with more than 3,000 mg/liter of total dissolved solids (TDS), or any authorized pit located in areas where groundwater is present within 50 feet of the bottom of the pit, shall be lined. The liner requirements proposed in §4.114(2)(B)(i) and (ii) are adopted without changes. “Makeup water pit” is also added to §4.114(3) alongside reserve pits and mud circulation pits so that the closure requirements for reserve pits and mud circulation pits also apply to makeup water pits.

The change requiring liners for any authorized pit (1) containing fluid with more than 3,000 mg/liter of TDS; or (2) located in an area where groundwater is present within 50 feet of the bottom of the pit also attempts to address commenters’ concerns that the Commission’s regulations governing authorized pits will not prevent pollution. Under the requirements of Rule 8, most authorized pits were not required to be lined, and the proposed rules did not significantly improve the technical requirements of most authorized pits. There were many comments from individuals and organizations on this issue. In addition, there were other comments from some in industry that the proposed requirements for authorized pits were too stringent. The industry comments related to makeup water pits (discussed above) identified the need for water resource pits for brackish water, not just for fresh water. In the adopted rules, the Commission attempts to strike a balance between these interests. All Schedule A authorized pits, which include all authorized pits except for produced water recycling pits, are required to be lined if the pit contains fluid with a concentration of 3,000 mg/l total dissolved solids (TDS) or greater, or if the pit is located in an area where groundwater is present within 50 feet of the bottom of the pit. The Commission chose the 3,000 mg/l threshold because it is the value the Commission uses to identify the base of usable quality water (BUQW). Operators bear the responsibility to not pollute, and if a freshwater resource exists

and may be harmed by a pit containing fluid with a lower TDS quality, the operator is required to protect the freshwater resource. Operators have the flexibility to use liners made of natural or synthetic impermeable materials as governed by §4.114(2)(B)(i) and (ii). The Commission determines the requirements to line authorized pits in these situations are adequately protective while also providing some degree of flexibility to oil and gas operators.

Stasney Well Service and Momentum Operating requested the Commission add another pit type in §4.114. They suggested plugging pits be included as Schedule A authorized pits.

The Commission declines to make this change. The definition of "completion/workover pit" (a Schedule A pit) already indicates the pit can be used in plugging. Completion/workover pit is defined as "A pit used for storage or disposal of spent completion fluids and solids, workover fluids and solids, and drilling fluids and solids, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed, worked over, *or plugged*."

Regarding construction standards for authorized pits in §4.114, the Texas Farm Bureau suggested the Commission add requirements for (1) measuring and submitting to the Commission the distance to groundwater; (2) submitting compaction tests to the Commission to determine whether earthen liners can be used; and (3) conducting a more stringent review to liner compliance when a pit overlies a karst formation. Commission Shift requested that the Commission (1) require a minimum of 20 feet between the pit bottom and subsurface water and (2) require groundwater monitoring when subsurface water exists within 100 feet.

The Commission disagrees that this level of design and review is required for Schedule A authorized pits, which are lower volume and operate for a reduced amount of time.

The Texas Farm Bureau and the Texas Bankers Association commented that setbacks should be applied to Schedule A pits.

The Commission declines to impose setback requirements for Schedule A pits. These pits are utilized for drilling and production operations, and common law principles and private contractual agreements establish standards for surface use associated with a mineral lease.

Section 4.114(3) contains the closure requirements for Schedule A authorized pits. The Texas Farm Bureau opposes the provision that allows a pit to remain open for up to one year after cessation of drilling operations. The Bureau suggested the pits be closed as soon as possible but no later than 120 days, similar to Schedule B pits.

The Commission disagrees. The closure time frames are based on the relative risk posed by each type of authorized pit.

CrownQuest stated that there is little difference between a completion pit and a drilling pit. Completion pits should have the same time frame for closure as drilling pits.

The Commission disagrees. First, "drilling pits" are not a specified type of Schedule A authorized pit. Instead, §4.114 addresses reserve pits and mud circulation pits. Closure times for these pits are based on the chloride concentration of the fluids stored in the pit. Higher chlorides concentration requires a faster closure response.

EPEC Energy requested clarification regarding the application of the term dewater to the closure requirements in §4.114 based on the definition of dewater in §4.110. EPEC questioned whether reserve pit waste must meet the EPA paint filter test prior to closure.

The Commission notes that it adopts the definition of dewater with changes to state that dewater means "to remove free liquids from a media such that the remaining material passes a Paint Filter Liquids Test (EPA Method 9095B, as described in 'Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,' EPA Publication Number SW-846)."

EPEC also requested clarification regarding whether an operator is required to maintain liner integrity during closure and whether breaching the sidewall of a pit during closure for any reason, or using trenching to aid in the rapid disposal of fluids is considered a violation.

The Commission confirms that trenching is not considered a violation. However, closure activities shall not increase the potential for pollution. The Commission adopts changes in §4.114(3) to clarify this requirement.

Stasney Well Service and Momentum Operating commented regarding consistency between proposed §4.114 and §4.111. They stated the Commission should make the two rules the same where possible, especially with regard to defining what is authorized content. Similarly, CrownQuest stated that §4.114 (3)(D), which requires disposal of all wastes in a pit prior to backfilling, conflicts with §4.111 because it seems to require additional requirements than §4.111 and §4.111 is sufficient.

The Commission disagrees with these commenters that §4.111 and §4.114 should be consistent with regard to authorized contents and closure. Section 4.111 addresses specific materials that can be disposed of by burial in certain pits, and those materials are dewatered to remove free liquids. Materials placed in a pit during operational activities are not limited in the same way or for the same purpose.

Section 4.115 of Division 3 contains requirements for Schedule B authorized pits, which are produced water recycling pits. Several commenters requested changes to the financial security requirements for Schedule B pits proposed in §4.115(b), adopted in §4.115(c). The Alliance, CrownQuest, Diamondback, Fasken Oil and Ranch, Pantera Energy, PBPA, TIP, TIPRO, and TXOGA requested that produced water recycling pits located on an existing Commission lease be exempt from the financial security requirements because existing financial assurance associated with an operator's P-5 permit should be considered in those circumstances. PBPA, Diamondback, the Alliance, Pantera Energy,

Deep Blue, and TIPRO also requested the Commission incorporate other commonly used financial assurance mechanisms such as self-insurance and parental bonds.

The Commission declines to make any changes to the proposed financial security requirements. The Commission has revised its regulation of non-commercial fluid recycling pits into the Schedule B authorized pit category of produced water recycling pits. Produced water recycling pits are non-commercial; however, because these pits may be very large (1-million-barrel capacity or more), the Commission has determined that a financial security scheme in addition to the operator's normal well-based bonding is appropriate and necessary. The Commission has determined that an operator's well-based blanket bond for lease operations is grossly insufficient to cover the closure costs of produced water recycling pits as the closure requirements are described in §4.115. Some operators have dozens of these pits, and the pit capacities can be larger than 1 million barrels. The Commission estimates that based on closure cost estimates of similar pits that are permitted under Subchapter B, Division 6, closure of a produced water recycling pit may cost from $2 to $3 per barrel of capacity. In addition, the most recently constructed non-commercial fluid recycling pits have registered an average capacity of more than 350,000 barrels. A large operator's bond for well and lease operations is capped at $250,000 for statewide operations. Though the Commission does not alter the financial security requirements based on the comments, the Commission adopts §4.115(b) with changes to clarify that a produced water recycling pit may be located on a tract of land that is not on an oil and gas lease operated by the operator of the produced water recycling pit.

Regarding the suggestion related to parental bonds, the Commission's general regulatory scheme is oriented around an individual operator's Form P-5 organization report and the financial security for the activities undertaken by the operator. The Commission does not have the statutory authority to call in the bond of a parent company. Further, the Commission recognizes that corporate parent-child relationships can be complicated and can change, and the Commission is not in the position to monitor or keep track of those relationships or changes. The financial security system authorized by the Texas Natural Resources Code and incorporated into Commission rules ensures that the Commission can receive the security funding when necessary to step in and close operations at a bonded facility. A bond rating for a corporate entity does not provide that liquidity to the Commission.

PBPA, Diamondback, the Alliance, Pantera Energy, Deep Blue, and TIPRO requested clarification that only one blanket bond is required based on the cumulative number of produced water recycling pits for corporations with multiple subsidiaries.

The Commission will require one bond or blanket bond in the appropriate amount for each P-5 entity who operates one or more produced water recycling pit.

Deep Blue, Diamondback, PBPA, TIPRO, and TXOGA also commented regarding requirements for transfer of a Schedule B pit and recommended language to clarify how transfers must occur.

The Commission agrees that §4.115 should include language to specify how to transfer Schedule B pits and adopts §4.115 with changes to incorporate the requested language in new subsection (m).

CrownQuest commented requesting the Commission remove several provisions of §4.115 because they are overly prescriptive, unduly burdensome, and add no value.

The Commission disagrees. The detailed requirements added in §4.115 are necessary for produced water recycling pits which are large and intend to be operated for many years.

Regarding the proposed siting and setback requirements proposed in §4.115(e), Diamondback, Deep Blue, and TXOGA suggested that language be added in proposed subsection (e)(4) to address water supply wells that may supply water for other purposes besides drilling or workover operations.

The Commission agrees. The Commission notes that due to changes adopted in §4.115, proposed subsection (e)(4) will be adopted as subsection (f)(4) with the requested change.

CrownQuest suggested the words “or intake” be removed from the provision prohibiting produced water recycling pits within 500 feet of any public water system well or intake. CrownQuest noted this term could easily be interpreted as any aquifer used to provide water to a public water system. If the Commission’s intent was to limit the distance around a channel type, the Commission already limits these pits to be within 300 feet of surface water, and that should suffice.

The Commission disagrees. The word “intake” allows a 500-foot buffer distance from a public water system that draws from a well (i.e., groundwater) or an intake (i.e., from a surface water feature).

Commission Shift expressed support for the setback from a public area.

The Commission appreciates Commission Shift’s support.

Regarding the liner requirements in proposed §4.115(f), adopted in §4.114(g), Commission Shift recommends that when natural liners are allowed, each lift should be required to be properly seated to avoid failure routes. Commission Shift recommended the rules set a minimum thickness of authorized pit liners and require use of ASTM D638 for thicker liners. Also, proposed subsection (f) should require QA/QC documentation to be retained by the liner installer for three years after the pit is closed. As part of the leak detection system, Commission Shift recommends requiring operators to meter the incoming flow rate and use it as a mass-balance check that no leaks have been missed (compare incoming volumes against any volumes leaving the pit, accounting for precipitation and evaporation). These calculations should be reported to the Commission.

The Commission disagrees because it finds the proposed rules sufficiently capture appropriate design, construction, quality control, and records retention requirements. Also, the Commission disagrees that mass balance accounting will add value to the regulation of produced water recycling pits.

Regarding the leak detection requirements proposed in §4.115, Deep Blue, Diamondback, and TXOGA requested the leak detection monitoring frequency be revised to monthly rather than daily.

The Commission agrees and adopts §4.115(h)(4) with the requested change.

Deep Blue, Diamondback, and TXOGA also commented regarding the operating requirements proposed in §4.115(g). They stated that recycling pits generally include some form of treatment which may include separation of waste that can yield small quantities of skim oil, which is frequently removed. The commenters asked whether this activity is prohibited under subsection (g)(6).

The Commission notes that free oil shall not be allowed to accumulate in produced water recycling pits. The Commission understands that some skim oil will be recovered during operations. Recovery of skim oil is not prohibited under proposed subsection (g)(6), which is adopted as subsection (h)(6).

Section 4.115 contains closure requirements for Schedule B authorized pits in subsections (i), (j) and (k). Commission Shift requested that operators be prohibited from using soils or other materials to lower the concentration of pit contents. Commission Shift also noted that background concentrations should not be permissible as the clean-up standard when the background concentrations indicate existing contamination. If background concentrations are allowed, then a certified professional should be required to calculate background to ensure the levels are representative of native background and not previously contaminated soil.

The Commission agrees. Generally, background analysis should be conducted before industrial operations begin at a particular site, and the rules require this consideration (see, for example, §4.115(j)(3)(B), §4.115(k)(2)(C), §4.263(c), and §4.279(c)). If background has not been determined before activities commence, then an operator will be responsible for impacts to the land and surface or subsurface water.

TIPRO and Deep Blue also commented regarding use of background concentrations. They stated that operators should be allowed to follow a similar soil sampling protocol to determine background concentrations to close existing pits because there will be produced water recycling pits in operation when the rule goes into effect. Soil conditions near the pits should suffice for determining background concentrations at closure.

The Commission disagrees. Collecting baseline soil samples post-waste storage and/or disposal activities do not ensure adequate demonstration that waste has been properly managed.

Groundwater monitoring requirements for Schedule B authorized pits were proposed in §4.115(k) and are adopted in §4.115(l). Commission Shift commented that static water level should be measured during every sampling event and a potentiometric surface map created for every event. These measurements and maps should be retained and made public along with all the information required in

4.115(l)(5)(J). Commission Shift also requested the Commission modify proposed subsection (k), adopted as subsection (l), to require sampling of any additional parameter the director directs and to require a more frequent sampling schedule.

The Commission notes that static water levels are required for each sampling event, and operators are required to retain this information. However, the Commission will not require that this information be routinely provided to the Commission; thus, it will generally not be publicly available. The Commission declines to modify the sampling and observation requirements because the Commission believes they are sufficient as written. The Commission also finds that the rules in Division 3 provide sufficient authority for the Director to request additional information if needed.

TXOGA and Diamondback commented regarding proposed §4.115(k)(8), which is adopted as §4.115(l)(8), and the requirement for the operator to notify the Commission when the groundwater monitoring indicates *potential* pollution. They asked the Commission to define what constitutes "potential pollution," how background concentrations of groundwater constituents must be established, and how the source of the pollution must be established so the operator knows what corrective action is required. In the alternative, they suggest the Commission require installation of a downgradient monitoring well before the pit is constructed to determine a baseline and then monitoring of same well after the pit is constructed.

The Commission understands the concern with the term "potential" and adopts §4.115(l)(8) with changes to remove that term.

The Commission appreciates the input from commenters on the rules in Division 3.

Subchapter A, Division 4 – All Permitted Waste Management Operations

Division 4 of Subchapter A contains the general requirements for all other waste management activities that are not authorized under Division 3. These waste management activities require a permit before the operator may conduct the activity.

The Commission received several comments related to independent certified lab analysis and lab analysis generally. Diamondback and TXOGA asked the Commission to remove the requirement for independent lab analysis and professional engineer certification of a lab report. They stated that some Commission-regulated facilities have onsite NELAP certified labs. Using an independent NELAP certified lab provides no additional benefit and causes unnecessary delays. Similarly, there is no value in having an engineer who does not perform the sampling or conduct the analysis certify the report.

The Commission declines to remove requirements for independent certified lab analysis and professional engineer certification. For permitted operations, the Commission has long required laboratory analytical results submitted to the agency to be collected by an independent certified

laboratory. Similarly, geotechnical laboratory analysis should be overseen and certified by a licensed professional engineer.

NESCO and Commission Shift stated that an independent professional consultant should perform all environmental monitoring and an independent laboratory should perform all analytical testing.

The Commission agrees with NESCO and Commission Shift that in most cases this is true. The Commission recognizes field analysis performed by calibrated equipment can be sufficient.

Commission Shift also suggested that full lab reports and chains of custody be submitted to the Commission and made publicly available.

The Commission notes that when its rules require operators to submit laboratory analytical data, the Commission expects the data to be submitted as a complete package (with quality control data, chains of custody, etc.). The Commission collects chains of custody as part of quarterly reports. All filings made to the Commission are publicly available via the Texas Public Information Act.

NESCO requested Division 4 be revised to require operators of commercial facilities to report any noncompliance within 24 hours and then provide written notification of noncompliance within five calendar days.

The Commission notes the rules contain several provisions requiring operators to report issues such as leaks, spills, and contamination either immediately or within specified time frames. The Commission declines to incorporate additional language based on this comment.

Section 4.120 contains the general requirements for all permitted operations. CrownQuest asked for revisions to §4.120 to specify that Division 4 "does not apply to waste associated with drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, or natural gas per 40 CFR 261.4 (b)(5)."

The Commission disagrees. Division 4 expressly applies to these wastes. Oil and gas waste is exempt from RCRA hazardous waste rules but is not exempt from the Commission's rules that prohibit pollution and require waste management.

CrownQuest also commented regarding §4.121(a), which provides that a permit issued pursuant to Divisions 4 through 9 is valid for not more than five years. CrownQuest stated that adding a permit term creates uncertainty and burdens operators. Many of the applications costs hundreds of thousands of dollars. CrownQuest asked for the Commission to explain why a permit term matters.

The Commission makes no changes in response to this comment. Waste facilities that serve the oil and gas industry have a finite lifespan with finite capacities for waste treatment, storage, and disposal. It is appropriate then, that the authorization for the facility's activities also be limited in time, which provides an opportunity for the Commission, the facility, the public, and the industry to assess the efficacy of the specific facility and the waste management methods employed. A five-year term has been

traditionally adopted in practice by the Commission, and the Commission intends to continue that practice. Further, a perpetual permit for an activity or facility is not appropriate in a regulated industry with multiple classes of stakeholders.

Commission Shift requested clarification regarding whether permits issued under Rule 8 will be updated with the permit conditions required by new Division 4, as applicable, when the permits are required to be renewed or modified. Commission Shift asked whether the public will have an opportunity to participate in the renewal or modification process. Commission Shift also noted that all renewals, transfers, and amendments should comply with the rules in effect at the time a request is received by the Commission, and that notice should be required for all renewals, transfers, and amendments.

The Commission notes that pits permitted under §3.8 and operating at the time of the effective date of these rules (July 1, 2025) may continue to operate pursuant to their existing permits. When those permits expire, new permits will be issued pursuant to the new rules. Section 4.122(a) describes the considerations for transitioning permits from regulation under §3.8 to regulation under Subchapter A of Chapter 4. The Commission agrees that renewals, transfers, and amendments must comply with the rules in effect at the time. Section 4.122(a) describes how the Commission intends to ensure compliance when transitioning permits. However, some deviation will be necessary, as explained by §4.122(a)(1)-(4). Requiring facilities to meet the new rules is not always practical or possible. The Commission will amend permits when necessary to prevent pollution of surface or subsurface water or to prevent other risks to human health and safety. The new rules require notice upon renewal or amendment of a permit. So, notice will occur at least every five years alongside permit renewal. The Commission may require notice of a transfer if there is good cause.

Commission Shift also commented regarding §4.122(b), which requires the permittee to file an application for renewal at least 60 days before the permit expiration date. Commission Shift stated that 60 days is not enough to ensure renewal applications are filed and reviewed prior to the time the original permit expires. If an original permit is allowed to remain pending during review of the renewal, the operator can prolong the process by asking for repeat amendments and continuing to operate under the old permit.

The Commission agrees that 60 days may not be sufficient for processing a complex renewal. However, the Commission has increased staff and is committed to more efficient processing of permits and renewals, as well as improved compliance. The Commission is better equipped to manage permits and renewals and prevent operators from taking advantage of processing delays.

For good cause, §4.123 allows the Commission to modify, suspend, or terminate a permit issued pursuant to §3.8 prior to the effective date of new Subchapter A. The Commission received two

comments on good cause. CrownQuest asked that the factors proposed in subsection (b)(4)-(8) be removed, stating that the factors in subsection (b)(1)-(3) are the factors that matter.

The Commission declines to delete subsection (b)(4)-(8) because the Commission will consider those factors when determining good cause. Thus, the rule should provide certainty to operators regarding what will be considered.

Commission Shift asked whether evidence collected by the public and provided to the Commission can support a finding of good cause. The Commission acknowledges that information provided by the public may prompt the Commission to propose modification, suspension, or termination of a permit. The Commission notes that the modification, suspension, or termination is not effective until notice is provided and a hearing conducted. Whether the evidence provided by the public "supports a finding of good cause" is a legal question to be determined in the hearing.

NESCO and Commission Shift commented that the phrase "relevant calibration records" in §4.124 is too vague. They suggest that calibration be required before first use and then at least every 6 months in addition to after any repair.

The Commission disagrees. Section 4.124 states that all NORM instruments shall be "properly calibrated." Demonstration of "proper calibration" will be the burden of the operator/tester and includes compliance with the instrument manufacturer's recommendations. The requirement to submit information showing the last calibration date and the requirement to submit the manufacturer's specifications will allow the Commission to determine whether calibration frequency aligns with the manufacturer's specifications.

NESCO and Commission Shift also requested that the Commission require additional components to be included in permit applications submitted under Division 4. The additional components include: a community relations plan, a proposed inspection checklist, information on other permits within a 30-mile radius filed within the last ten years, the location of all public water supply wells and private water wells within a one-mile radius of the facility boundary, and the location of all residential, commercial, or public buildings and hospitals within one-half mile of the facility boundary.

The Commission declines to revise the application requirements in response to these comments. The Commission notes that Division 4 includes several provisions that provide the Director with authority to request additional information. The Commission also notes that it reviews permit applications and checks for water wells and sensitive features such as residential, commercial, or public buildings, and churches, schools, and hospitals located within a one-mile radius.

The Commission received several comments on §4.125, which contains the notice requirements for operations permitted under Subchapter A. The TSCRA commented that notice should be provided

well in advance of any action and should contain sufficient details about the activities and materials at issue.

The Commission understands these concerns. Section 4.125 provides 30 days from the date of notice for an affected person to file a protest. In addition, Section 4.125 requires the operator to provide a complete copy of its application as well as a letter providing more straightforward information about the proposed facility and the types of fluid or waste to be managed. The Commission finds that the notice period and contents proposed in §4.125 address the concerns expressed by TSCRA.

CrownQuest asked the Commission to remove the requirement to send a complete copy of the application with the notice because the applications are too large and will cause confusion for recipients.

The Commission disagrees. The Commission finds the public should be able to review the complete application. The Commission notes that a notice letter is also required to be sent with the application, and the straightforward information in the letter will assist recipients in understanding the permit application.

Regarding the 30-day protest period referenced in proposed §4.125(b), (d)(3)(F), (f), and (f)(1), TIP commented requesting the Commission clarify the date the protest period begins. Some references state, “the date notice is provided” while others state “the date of notice.” TIP stated it believes the intent is to use the date indicated on the notice itself.

The Commission agrees that the start date for the 30-day protest period should be clarified. The Commission adopts §4.125 and other notice provisions with changes to clarify that the 30-day period begins when notice is completed, which occurs upon deposit of the document postpaid and properly addressed to the person’s last known address with the United States Postal Service.

Sierra Club and 57 individuals requested that the Commission require two notices be sent to affected parties – one notice prior to filing the application and a second notice once the application is determined complete by the Commission.

The Commission disagrees. Section 4.125 ensures notice is not provided until the Commission determines the application is complete. This approach prevents protests to a permit based on contents that are no longer accurate.

CrownQuest asked the Commission to remove the requirement to notify adjacent surface owners, the district office, and any other people the Director determines should receive notice. CrownQuest believes that if the Commission wants certain persons to be notified then the Commission should notify those persons.

The Commission disagrees that it should be responsible for notifying certain persons of permit applications. The operator applying for a permit has responsibility and is in the best position to represent the operator’s proposal to persons required to be notified.

Sierra Club, Commission Shift, and 57 individuals asked that §4.125 be revised to require notice to all residents, landowners, and groundwater conservation districts within one mile of the proposed property. Commission Shift and the 57 individuals also commented that notice should not be limited to cities but should also be provided to towns and villages when proposed facilities are located within the jurisdiction of the town or village.

The Commission declines to expand §4.125 to require notice be provided to these persons.

NESCO commented that affected party status should be determined by distance rather than contiguity. The migration of pollutants does not stop at arbitrary boundaries like a highway. Commission Shift and 57 individuals asked that distance measured for notice purposes begin at the facility's boundary.

The Commission notes that §4.125(c) includes a notice provision based on distance in addition to a notice provision based on contiguity: subsection(c)(3) requires notice be provided to surface owners of tracts located within 500 feet of the facility's fence line or boundary, even if the tract is not adjacent to the tract on which the facility is located. The same provision specifies that the distance is measured from the facility boundary, in accordance with what Commission Shift and the individuals requested.

Regarding the method of notice, Commission Shift commented that published notice should be required for all facilities, not just commercial facilities permitted under Division 5. Commission Shift also requested that the Commission create a public notice website, so notice materials could be posted by applicants and viewed by the public online.

The Commission's online application LoneSTAR allows for the online filing and tracking of regulatory Oil and Gas Division functions. Technical Permitting functions, including permitting under new Subchapter A, are in development to be added to LoneSTAR. Though the application's functions have not yet been fully scoped, the system will provide the public better access to application materials and other filings. As development progresses, the Commission will consider whether an online notice component can be incorporated.

Regarding location and real property information required to be included in an application under §4.126, CrownQuest suggested the Commission remove the requirements proposed in subsection (a)(2)(A) and (a)(2)(B) relating to surface owners and the property's legal description. CrownQuest believes there is no value to this information for the Commission and it is not something the Commission should regulate. CrownQuest also requested the Commission refrain from specifying the required map size and scale and instead require the map be discernable.

The Commission declines to make changes in response to these comments. Information related to surface ownership is important so the Commission can confirm compliance with notice requirements. Map specifications are intended to ensure operators know what the Commission needs in advance to aid in quicker permit processing times.

Regarding §4.127, Commission Shift commented that site investigations should be required for all permitted operations. Thus, Commission Shift suggested revising language in subsection (b) that only requires a site investigation if engineering and geologic information is not available.

The Commission declines to make changes in response to this comment. The Commission notes that flexibility is required to address situations where a site investigation is not necessary.

Regarding §4.128, relating to Design and Construction, Waste Management requested that the Commission revise the requirement that letters and numerals on signage be at least six inches in height. Waste Management noted the change will require new signs, sign holders, and posts at all applicable facilities.

The Commission agrees and adopts §4.128(b)(1) to revise the requirement to three inches rather than six.

Waste Management also requested that the Commission allow double wall, above-ground fuel tanks that are inspected monthly for secondary containment rather than the requirements proposed in §4.128(b). Commission Shift asked that secondary containment be required to contain the maximum capacity of all tanks supported by the secondary containment, not just the capacity of the largest tank. In addition, the secondary containment should have freeboard to contain precipitation from a 25-year, 24-hour rainfall event.

The Commission declines to make changes in response to these comments. The Commission declines to allow double wall, above-ground fuel tanks because the secondary containment requirements in the proposed rule are consistent with permit conditions in current permits. The Commission disagrees with Commission Shift that §4.128 should be revised to specify secondary containment requirements when multiple tanks are at issue.

Regarding compaction requirements proposed in §4.128(b)(2), Waste Management commented that the requirements are excessive and asked for clarification regarding the Commission's purpose for proposing them.

The Commission disagrees the requirements are excessive and notes the proposed compaction requirements are consistent with current permit conditions.

Waste Management recommended the Commission revise the requirements related to security to prevent confusion.

The Commission agrees the language could benefit from revisions but declines to adopt Waste Management's proposed language, which the Commission believes does not communicate the intent of the provision. The Commission adopts §4.128 with changes to clarify that a facility is required to maintain security to prevent unauthorized access. Security requirements are met by (1) a 24-hour

attendant; or (2) if not attended, a six-foot-high security fence and locked gate to prevent livestock or vehicle access.

Section 4.129 addresses requirements for operation of permitted facilities in Division 4. TXOGA and Diamondback commented on proposed §4.129(b)(1), which states a permittee may only accept waste transported and delivered by a permitted waste hauler. The commenters note that a permitted waste hauler should not be required if the waste at issue is inert waste and requested a change to make that clear.

The Commission agrees that hauling of inert waste is excluded in §4.193, which is part of Division 10. Section 4.129(b)(1) already references Division 10. Thus, the exclusion under §4.193 is incorporated into subsection (b)(1) and the Commission does not agree that additional changes to subsection (b)(1) are necessary.

NESCO asked the Commission to ensure that wood chips are not allowed to be added to waste to make waste pass the paint filter test. Wood chips are only a bulking agent – they do not create any chemical change in the waste.

The Commission finds that wood chips are sometimes appropriate as a waste additive. Wood chips have unprocessed cellulose, hemi-cellulose, and lignin that may lower the pH of liquids and absorb liquids. The Commission will evaluate acceptable use of wood chips as a waste additive during the permitting process pursuant to §4.120, which states that a permit may be issued only if the Commission determines that the activity will not result in the endangerment of human health or the environment, the waste of oil, gas, or geothermal resources, or pollution of surface or subsurface water. If an applicant demonstrates that a waste additive furthers these objectives the Commission may approve its use.

TXOGA and Diamondback commented that the spill reporting requirements proposed in §4.129 appear to conflict with existing requirements in §3.91.

The Commission disagrees. Section 3.91 governs crude oil spills whereas §4.129 governs all oil and gas waste spills.

NESCO and Commission Shift stated that §4.129(b)(4)'s requirement that any spill of waste, chemical, or any other material be collected and containerized within 24 hours is too long. They recommend the permittee be required to "promptly containerize" waste or take immediate corrective action.

The Commission disagrees because it is not always feasible for an operator to reach the location of a spill within 24 hours.

Waste Management commented regarding §4.130, relating to Reporting. Waste Management noted that certification cannot be made electronically and suggested the term "application" in proposed §4.130(c) be changed to "report."

The Commission agrees and adopts §4.130(c) with the suggested change.

Commission Shift requested clarification regarding §4.130 and when permittees are required to submit reports. Commission Shift recommended the Commission state clearly if all reports are required to be filed electronically.

The Commission agrees that its intent is to require all reports to be filed electronically once an electronic system is established. All report requirements apply regardless of whether an electronic filing system exists. However, once an electronic filing system is established, operators are encouraged to use that system. One year after the electronic filing system is established, use of the electronic system will be mandatory – the Commission will no longer accept paper filings at that time. The Commission adopts §4.130 with changes to clarify this requirement.

The Commission received several comments on the monitoring requirements proposed in §4.131.

Dr. Brownlow and Dr. Rogers stated that distance to groundwater is not the most helpful measurement. The characteristics of the soil underlying the pit should be taken into account. They suggested the Commission require a site analysis to consider the lithology and aquifer characteristics beneath the site to better assess threat of groundwater contamination.

The Commission agrees and notes that Technical Permitting staff evaluate the soil characteristics when reviewing permit applications. The Commission makes no changes in response to this comment.

Commission Shift suggested several changes to §4.131(b) relating to groundwater monitoring. First, Commission Shift requested that language proposed in subsection (b)(2) be relocated to (b)(1) to ensure monitoring wells are required for all facilities. They also suggested deleting language stating that monitoring wells "may be required." Second, Commission Shift asked that BTEX be added to the list of constituents the permittee must sample under subsection (b)(4). Third, Commission Shift stated that monitoring well locations should be established only after the soil boring data has been fully analyzed by a certified professional because this will ensure the site's groundwater gradient is understood.

The Commission makes one change in response to these comments. Section 4.131(b)(4) is adopted with changes to add BTEX to the list of constituents. The Commission disagrees that the language in subsection (b)(2) should be moved to (b)(1). The Commission will not mandate monitoring wells for all sites but will review the need for monitoring wells on a case-by-case basis. Thus, requirements in §4.131(b)(2) are applicable to all required monitoring wells and §4.131(b)(1) describes how Commission staff will evaluate the need for groundwater monitoring wells. Regarding analysis of soil boring data, the Commission expects the operator to determine the groundwater depth and flow direction, and then locate the monitoring wells appropriately to assess conditions upgradient and downgradient from the waste activity. More than three soil borings may be required, and more than three monitoring wells may be required. It is the operator's burden to establish the groundwater conditions and monitor them accordingly.

NESCO also requested several changes to the proposed groundwater monitoring requirements. NESCO recommended that quarterly groundwater monitoring be required for all commercial facilities, that monitoring wells be protected from damage by vehicles and heavy equipment, that monitoring wells be maintained in good working condition with a lockable water tight expansion cap, and that the operator be required to measure groundwater levels monthly for a period of two years to determine seasonal fluctuations in the water table.

The Commission declines to make changes in response to these comments. Section 4.131(b)(2)(E) states that groundwater monitoring wells must be compliant with 16 TAC Part 4, Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Current groundwater permit conditions have existing protections for vehicles/heavy equipment and water tight caps. The Commission disagrees that groundwater monitoring should be required for all facilities. Not all facilities are located in an area with geological conditions necessitating mandatory groundwater monitoring. The Commission's staff will evaluate site specific conditions for permits. Regarding reporting related to groundwater levels, Commission permits require monitoring on a quarterly basis to evaluate any trends. The Commission does not agree this data should be collected monthly.

NESCO and Commission Shift requested clarification regarding requirements for upgradient groundwater monitoring wells.

The Commission notes upgradient wells are usually required but the Commission's staff will evaluate proposed monitoring well locations on a case-by-case basis to ensure the site properties are considered. Thus, a requirement for upgradient monitoring wells is not included in §4.131.

Commission Shift and NESCO also commented regarding situations in which an operator should be required to voluntarily cease operations such as when groundwater monitoring wells are not functional or cannot be sampled, if an operator fails to submit required information to the Commission, or when potential pollution or liner failure is detected.

The Commission declines to make changes due to these comments. The Commission has the authority to suspend operations and will consider whether to impose that authority on a case-by-case basis. The Commission agrees that continued operations at a facility are not permissible when the required groundwater monitoring program is not operable. Regarding liner failure, the Commission notes that response actions will be coordinated with the District Director, who has the authority to inspect a possible liner failure.

Section 4.132 contains closure requirements for permitted facilities. TXOGA and Diamondback asked that the Commission allow proposed soil sampling protocol to apply to closure for existing pits. Soil conditions near existing pits should suffice for determining background concentrations at closure.

The Commission disagrees. Collecting baseline soil samples post-waste storage and/or disposal activities does not adequately demonstrate that waste has been properly managed.

Commission Shift and NESCO recommended changes to require closure and post-closure estimates to be prepared by a licensed professional engineer or professional geoscientist and to require estimates to be based on R.S. Means Cost Data.

The Commission notes that closure cost estimates are not required for all permitted facilities, only commercial facilities. Division 5, which contains specific requirements for commercial facilities, states that the closure cost estimate must be prepared or supervised and approved by a licensed professional engineer and the estimate must show all assumptions and calculations used to develop the estimate.

Commission Shift stated that if closure plans are not equally protective of human health and the environment as the plans included in the permit (for which public notice was given) then the Commission should require additional public notice of the revised closure plans.

The Commission agrees that if a closure plan is not consistent with closure activities described in the permit, then a permit amendment would be required.

Commission Shift recommended a change in §4.132(b)(3) so that additional closure operations are required rather than optional when soil samples exceed the authorized limits.

The Commission declines to make the requested change. Commission staff will evaluate non-compliant facilities and determine the appropriate responses on a case-by-case basis.

Section 4.134 specifies that the Technical Permitting Section will review applications in accordance with §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively. CrownQuest commented that the rules incorrectly focus on technical compliance with paperwork requirements rather than the substance needed to determine whether to issue a permit. The Director should be given additional discretion not just to require more information (like in §4.135) but to accept less information.

The Commission disagrees. As just described in response to numerous comments requesting that the Commission impose additional permit requirements (both technical and paperwork-related), the Commission declined on the basis of maintaining flexibility to consider the specific facts of the proposed facility. Further, Section 4.109 gives the Director the authority to approve an exception, which could include a request to provide less information, provided the change is equally protective of public health, safety, and the environment as the provision to which the exception is requested.

NESCO and 57 individuals asked the Commission to prohibit additional changes in an application after it has been determined administratively complete. They also request that no changes be permissible once an application is submitted for a hearing.

The Commission disagrees because once a permit application is the subject of a hearing, the hearings procedures govern the permit's outcome.

NESCO and Commission Shift submitted comments related to timelines for issuing proposals for decision after a contested case, and suggested requirements for final orders that are adverse to the proposal for decision.

These suggestions are outside the scope of this rulemaking and are more appropriately addressed under the Commission's practice and procedure rules in Chapter 1.

NESCO asked the Commission to add a requirement that no more than two supplemental filings may be submitted during the permit application process. NESCO and Commission Shift stated that Commission staff should be able to deny an application as technically deficient without allowing the applicant an opportunity for a hearing.

The Commission notes the requirements for permit processing are addressed in §1.201. Commission staff will comply with these requirements. The opportunity for a hearing is standard practice at the Commission. The Commission declines to alter that practice for permits governed under Chapter 4 because it would be inconsistent with other permit processes at the Commission.

Subchapter A, Division 5 – Additional Requirements for Commercial Facilities

Divisions 5 through 9 contain requirements for certain waste management activities. Operators of facilities governed by these divisions must comply with the requirements set forth in the division in addition to the requirements set forth in Division 4. Facilities may be governed by more than one division in addition to the general requirements of Division 4. Division 5 contains the additional requirements for commercial facilities.

Generally, NESCO commented that a commercial facility's history of compliance should be considered when a new permit application, renewal, or amendment is filed. Commercial facilities that fail to comply with the rules or permit conditions should not be allowed to continue to operate.

The Commission notes that Texas Natural Resources Code §91.114 governs how the Commission must address new permit applications when the applicant has violated a statute, Commission rule, or an order, license, certification, or permit issued by the Commission that relates to safety or the prevention of pollution. The Commission will continue to adhere to §91.114.

CrownQuest also submitted general comments that the proposed rules for commercial facilities in Division 5 will cause many facilities to shut down to avoid the regulations and will decrease the amount of produced water recycled.

The Commission disagrees. The requirements in Division 5 are designed to incorporate pollution protections that are common permit conditions for commercial facilities.

NESCO commented that Commission inspectors should be able to shut down a commercial disposal facility on the spot for egregious violations or if any monitoring wells are not operational.

The Commission notes that Commission rules such as §4.150(f) require operators to take any measures necessary to stop or control an unauthorized release and report the release to the District Office within 24 hours. Further, Texas Water Code §26.131 provides the Commission authority to shut down activities that are causing harm to surface and subsurface water. The Commission has exercised this authority and will continue to do so when appropriate.

Waste Management and Commission Shift asked for clarification regarding the facilities subject to the requirements in Division 5 and how those facilities differ from the commercial facilities governed under Subchapter B.

The Commission notes that Subchapter B applies to commercial recycling facilities only. The facilities required to comply with Subchapter A, Division 5 are commercial facilities that conduct other waste management activities. In reviewing these comments and the proposed language in §4.140, the Commission noticed one reference to stationary commercial fluid recycling that should not be included in §4.140. The Commission adopts §4.140(h) to remove that reference. The Commission expects this will increase clarity regarding the application of Subchapter A and Subchapter B.

Commission Shift and NESCO commented that post-closure monitoring periods should be greatly increased to a minimum of 10 years.

The Commission disagrees and keeps five years as the minimum. The rules provide the Commission discretion to require a longer time period if needed.

Section 4.141 addresses additional notice requirements for commercial facilities. Commission Shift asked the Commission to expand the notice radius for commercial facilities to require notice for affected persons within one-half mile of the facility boundary. Commission Shift also requested notice be provided electronically similar to the suggestion in its comments on §4.125.

The Commission declines to make changes in response to these comments. As stated in its response regarding §4.125, the Commission will consider whether to incorporate a notice function in the LoneSTAR application while it is in development.

Regarding §4.142's requirement for a stormwater management plan, Waste Management requested "stormwater" be changed to "contact stormwater."

The Commission disagrees. The Commission expects the operator to manage all stormwater on the facility, which includes run-on, segregation of contact stormwater from non-contact stormwater, and run-off or discharge. Stormwater management plans submitted with an application must identify how both contact and non-contact water will be addressed so that Commission staff can ensure non-contact

water is appropriately separated from contact stormwater. This oversight includes the ability to require non-contact stormwater authorizations be provided to the Commission when deemed appropriate.

Regarding §4.143, Commission Shift and NESCO recommended as-built drawings be required prior to commencement of operations. Commission Shift recommended that vertical aerial photos be required every two years.

The Commission agrees it should have information regarding the as-built condition of the facility and those requirements were included in proposed §4.143, which states, "Prior to commencement of operations at a commercial facility, the permittee shall provide the Director with drawings documenting the as-built condition of the facility." In addition, Commission inspections evaluate the as-built condition of the facility and whether it complies with the permit. A requirement to submit photos every two years is not necessary because inspections will verify facility conditions in person.

Subchapter A, Division 6 – Additional Requirements for Permitted Pits

Regarding Division 6, NESCO commented requesting the Commission add a requirement that any spill of waste, chemical, or any other material, shall be promptly containerized and disposed of in an authorized manner. NESCO also requested additional requirement related to landfills, such as greater setbacks and more provisions related to waste tracking within the facility.

The Commission declines to adopt this specific language but notes that proposed §4.150(f) requires the operator to take any measures necessary to stop or control a release in the event an unauthorized release occurs. The operator must also report the release to the District Office within 24 hours. Regarding NESCO's comments on landfills, the Commission disagrees that additional requirements are needed. Disposal pit permits are integrated into overall facility designs and are regulated accordingly.

Commission Shift commented on the proposed setbacks in §4.150. Commission Shift requested the Commission add setbacks from sensitive residential, commercial and other buildings. This could be accomplished by using "public area" and incorporating a setback from public areas for all permitted facilities.

The Commission agrees and will adopt a setback prohibiting pits within 500 feet of a public area. Section 4.150(g) is adopted with this change.

Commission Shift requested that exceptions for setbacks not be allowed without public input and that setbacks be measured from the facility's property boundary.

The Commission believes the proposed rule ensures exceptions will not occur after notice has already been provided. The proposed rules require that notice be provided after the permit application is determined by Commission staff to be administratively complete. Any exception request would occur

prior to that determination. The Commission disagrees that setbacks should be measured from the facility's boundary. The setback distances are measured from the waste management unit, and the Commission finds this is appropriate.

Commission Shift commented regarding §4.150(f), which requires an operator to notify the District Office within 24 hours of an unauthorized release. Commission Shift asked that notice be provided to the public as well.

The Commission declines to make any changes in response to this comment. The Commission notes that any notification submitted to the District Office will be logged into the Commission's Inspection, Compliance, and Enforcement (ICE) system. Once the matter is processed, it is posted in the Commission's Online Inspection Lookup (OIL) system. Both of these systems are public and allow members of the public access to information related to §4.150. In addition, the Commission routinely works with emergency responders and other public officials on response situations that warrant broader and quicker public notification.

Regarding §4.152, Diamondback and TXOGA requested the Commission allow the director's designee to inspect a liner repair so there is not delay while waiting for inspection.

The Commission agrees that the director's designee may inspect the liner but notes that the definition of District Director contemplates authority delegated by the director. Thus, the requested change is not required.

Commission Shift also commented on §4.152, requesting that an operator be required to notify the Commission within 24 hours any time failure of the primary liner is indicated as described in §4.152(b)(1)(A)-(C).

The Commission declines to make the requested change because §4.152(b)(3) already requires the operator to notify the Director and the District Director within 24 hours of discovery of a liner failure. However, due to Waste Management's comments described in the next paragraph, the Commission adopts §4.152 with changes to address required corrective action upon discovery of a liner failure.

Waste Management recommended the Commission allow an alternative process in §4.152(b)(3) in the event the pit is a disposal pit and cannot be emptied.

The Commission agrees and adopts §4.152(b)(3) with changes to address this comment.

Subchapter A, Division 7 – Additional Requirements for Landfarming and Landtreating

Regarding Division 8 generally, Commission Shift requested several additions to the rules such as specifying which wastes may be landfarmed, setting size limits on landfarm cells, incorporating components of Commission guidance into the rules, and prohibiting landfarm permits where shallow groundwater is present.

The Commission declines to add these suggested requirements. Technical Permitting reviews each land application, landfarming and landtreating permit application on a case-by-case basis and issues permit provisions based on site-specific recommendations. Permits specify the type of waste that may be landfarmed. The Commission does not deny permit applications when shallow groundwater is present. Instead, the Commission determines whether the specific proposal will prevent pollution. The shallow geology may provide adequate confinement from downward migration of applied waste materials.

Commission Shift commented that the same setback provisions from Divisions 4-6 should be incorporated into Division 8.

The Commission agrees and adopts §4.161 with the requested change.

Regarding proposed §§4.161 and 4.162, Commission Shift requested the Commission require a topographic map and aerial photos depicting facility and constructed properties to ensure the facility complies with setbacks, more detailed soil sampling and increasing sampling frequency, documentation of amendments and microbes used to treat the soil, and more detailed requirements for berm maintenance.

The Commission declines to add the suggested requirements. The Commission determines that topographic maps and aerial photos are not needed for the shorter-term activities permitted under Subchapter A, several of which have required buffers/setbacks. For longer-term activities, the Commission finds the proposed permit application contents are sufficient. The permit application and review process will provide Commission staff a sufficient basis for evaluating the proposed location of a facility. The proposed sampling and analytical parameters provide the operator and the Commission sufficient information to make informed decisions regarding the operations of the facility and the protection of surface and subsurface water. The proposed rules require amendments and microbes information to be provided in the permit application, and the actual use of treatment amendments is required to be provided in quarterly reports. In addition, permits are written to ensure maintenance of the facility and required structures, such as berms.

Commission Shift commented regarding §4.163(d) and the ban on accepting waste once a parcel exceeds the parameter limitations after six months of sampling. Commission Shift questions the six-month timeframe and recommends the ban go into effect if sampling shows exceedances even one time.

The Commission declines to make the requested change. Exceedances in parameters may be due to a number of environmental factors that could be short-term (e.g., recent rainfall and/or drought) and those exceedances could be mitigated with soil amendments and tillage, which introduces oxygen, of the waste into the soil profile. The Commission aims to implement a holistic perspective that allows the operator to mitigate the exceedance and correct problems through additional operational measures rather than terminating the operation, especially considering the exceedance may not be caused by operations but by environmental factors.

Commission Shift requested clarification regarding closure parameters for landfarms and other specific closure requirements applicable to landfarms.

The Commission notes that closure requirements for all landfarming and landtreating facilities are contained in §4.164. Commission staff evaluates whether additional closure requirements are appropriate on a case-by-case basis and, if so, incorporates the additional requirements into the permit.

Subchapter A, Division 8 – Additional Requirements for Reclamation Plants

Division 8 describes the requirements applicable to permitted reclamation plants and is substantively similar to current §3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), which is amended concurrently with the new rules in Subchapter A.

United Environmental Services LLC commented opposing the requirement for reclamation plant pit permits to be renewed every five years. United stated, "Requiring permit renewal every five years will not prevent bad operators from bad practices. It will equally burden good and bad operators with administrative requirements, but will not encourage compliance with rules. If instead the point of the new requirement is to get updated information about the facility and surrounding landscape, the Commission can do that through a requirement for the operator to provide updated information. Going through the application process increases costs and creates uncertainty due to contested proceedings."

The Commission disagrees. Incorporating permit expiration dates ensures plant permits contain relevant requirements – requirements that reflect current facility operations and incorporate any regulatory updates.

Commission Shift suggested that reclamation plant permits existing on the date the rules go into effect expire one year after the effective date, rather than five years. Commission Shift also commented opposing the change that allows operators to transfer reclamation pit permits, an option that was not available under the prior rule §3.57.

The Commission disagrees. Because reclamation plant permits do not currently expire, the Commission considers a five-year term to be appropriate. This will provide operators and staff sufficient time to make the adjustment. Current reclamation plants remain subject to Commission permits and inspections. The Commission also disagrees that the ability to transfer a reclamation plant permit should be removed. The Commission proposed two main changes to reclamation plant requirements in Division 8: (1) incorporating a permit term; and (2) allowing permit transfers. The Commission finds these two new requirements create a balance for operators and staff and the Commission declines to make any changes based on the comments.

Hance Scarborough commented regarding the requirement for the waste generator to characterize waste. It noted that current reclamation plant permits require representative samples of waste from

commercial oil and gas facilities and reclamation plants to be analyzed for either Total Organic Halides (TOX) or Extractable Organic Halides (EOX) prior to receipt at the permittee's site. If TOX/EOX testing is to be required prior to receipt at a reclamation facility, such testing should be the responsibility of the generator of the waste stream as part of the characterization process, and not the responsibility of reclamation facility permittees.

The Commission agrees. Characterization is the responsibility of the generator when the generator is considering options for the disposition of the waste. When the waste arrives at a reclamation plant, it should already have been characterized. The reclamation plant operator, as a receiver, should only accept waste that has been characterized. No rule changes were made in response to this comment.

Relatedly, Commission Shift requested the rules be revised to require lab analysis for waste being received at reclamation plants.

The Commission disagrees. Process knowledge is sufficient to characterize most oil and gas waste that is subject to the RCRA exemption. In addition, the enhanced waste transportation requirements in Division 10 will help the Commission, generators, transporters, and receivers to ensure the integrity of the waste classification and receipt of transported waste.

Commission Shift commented regarding notice of reclamation plant permits stating that interested parties should be able to participate in the permitting process.

The Commission notes that reclamation plants are subject to the requirements of Divisions 4, 5, and 6 of Subchapter A in addition to the requirements of Division 7. The applicable notice requirements in those divisions, which include notice by publication, will ensure notice is provided and affected persons have an opportunity to protest.

Regarding §4.170(a)(3), Commission Shift requested information regarding how many facilities do not file monthly reports. Commission Shift is referring to the following statement in subsection (a)(3): "The removal of tank bottoms or other oil and gas wastes from any facility *for which monthly reports are not filed with the Commission* shall be authorized in writing . . ."

The Commission notes that it appears there is confusion regarding the meaning of subsection (a)(3). The facilities stated in this portion of subsection (a)(3) are not reclamation plants, they are oil and gas properties/facilities that are not otherwise required to submit monthly reports to the Commission. An example is a disposal well whose tank bottoms are sent to a reclamation plant. The disposal well is not required to file a monthly report. Therefore, the movement of the oil-bearing tank bottoms must be authorized individually by the Commission, and §4.170(a)(3) describes how such an operator would obtain an "Oil Movement Letter" authorizing this action. The Commission adopts no change to §4.170(a)(3).

Commission Shift made two suggestions related to §4.173. First, Commission Shift asked that the Commission establish an electronic filing system for reclamation plant reports within one year of the rules' effective date. Second, Commission Shift asked the Commission to reexamine the language in subsections (c)(1) and (c)(2). It is unclear if the intent is to differentiate based on whether the waste comes from a pipeline facility or from other sources or if it is to differentiate between tank bottoms and "other" waste.

As mentioned in response to other comments, the Commission's updates to the LoneSTAR system will provide more functionality for permitting and reporting. Regarding subsections (c)(1) and (c)(2), the former relates to how crude oil and condensate are reported on Form PR (Monthly Production Report) or Form T-1, (Monthly Transporter Report.). The latter (subsection (c)(2)) relates to crude oil and condensate from facilities that do not file Forms PR or T-1, such as gas plants and disposal wells. The Commission makes no changes in response to this comment.

Subchapter A, Division 9 – Miscellaneous Permits

Commission Shift expressed concern that the procedures for miscellaneous permits in Division 9 create loopholes. Commission Shift is also concerned that the District Director has authority to grant miscellaneous permits. The comments generally oppose the flexibility and discretion incorporated into the permitting process under Division 9 and request more transparency regarding the decisions and more detailed permit application requirements.

The Commission disagrees that the procedures in Division 9 create loopholes. The District Office staff is best positioned to evaluate and respond to emergency and minor permits. Technical Permitting staff do not have the appropriate resources to conduct reviews that have historically been completed by District Office staff. The nature of the permits in Division 9 requires the Commission to maintain flexibility and determine appropriate permit conditions based on the proposed activities. The Commission declines to adopt Commission Shift's suggestions to remove the permit types contemplated by Division 9.

Regarding Emergency Permits in §4.181, Commission Shift opposes the permit term of 30 days and suggests it be decreased to 15 days.

The Commission disagrees because it finds 30 days is appropriate in most circumstances. Emergency permits are rare and relate to extreme situations. Fifteen days is likely insufficient to allow the emergency to be addressed.

Regarding Pilot Programs under §4.185, Commission Shift requested the Commission clarify that pilot programs are limited to recycling by changing title to "Pilot Recycling Programs." The comments also stated pilot projects should not be exempt from Division 4-8 requirements. The comments suggested requiring notice and public input and setting metrics and goals for a project before issuing the permit. In

addition, the Commission should require at least quarterly reporting, make reports publicly available, and prohibit these permits from continuing past five years without hearing and public input.

The Commission notes proposed §4.185(a) expressly states that the rule pertains to recycling activities. Pilot project permits include the elements of Divisions 4-8, where applicable. However, the nature of a pilot project, which is short term and with a limited waste volume, renders some of the requirements in Divisions 4-8 excessive. The Commission makes no changes in response to these comments.

Subchapter A, Division 10 – Requirements for Oil and Gas Waste Transportation

Regarding Division 10, which addresses waste characterization, documentation, and transportation, Diamondback and TXOGA requested the Commission clarify (1) whether the operator may provide one general Waste Characterization Form for multiple facilities that share the same waste stream or waste type; and (2) what is the generator-assigned identifier.

The Commission agrees that the operator may provide one general Waste Characterization Form for multiple facilities that share the same waste stream or waste type. The generator-assigned identifier is the unique name that the generator uses to identify this particular waste stream. It should be specific enough to distinguish waste types (e.g., oil-based mud or water-based mud) but does not necessarily need to be specific to individual formations. However, the generator should give attention to limitations that may be carried with the waste stream. For example, synthetic drilling fluids should not be sent to recycling facilities that are not capable of processing the waste. The Commission will consider developing guidance to further clarify this and similar issues.

TIPRO, Diamondback, and TXOGA requested the Commission remove "estimated quantity of the waste" from §4.190(b)(1)(D) because that appears on the manifest as "type and volume of waste transported." These commenters also requested the Commission remove "domestic septage" and "rubbish" from list of example standard waste types because these wastes are regulated by the TCEQ.

The Commission agrees to remove "estimated quantity of the waste" from §4.190(b)(1)(D) but declines to remove "domestic septage" and "rubbish." Domestic septage and rubbish are merely optional waste profiles the operator may establish.

EPEC Energy, NESCO, and Commission Shift commented that process knowledge is not sufficient for waste characterization and so lab testing should be required.

The Commission disagrees. As stated above, process knowledge is sufficient to characterize most oil and gas waste that is subject to the RCRA exemption.

PBPA, TIPRO, Diamondback, and TXOGA requested whether electronic signatures will be accepted for the three signatures required by §4.191(b).

The Commission confirms that electronic signatures are allowed. The Commission notes this is addressed in §4.191(a)(2).

PBPA, TIPRO, Diamondback, and TXOGA also commented requesting a solution relating to signature requirements. They stated that the majority of produced water loads transported by truck to a receiver occur at un-staffed locations. Requiring a signature for every manifest will be overly burdensome at those un-staffed locations. The signature also adds little value. Diamondback and TXOGA requested that the Commission waive the signature requirement if the generator has entered into a contractual agreement with a transporter to haul the waste. PBPA and TIPRO asked that the signature requirement be removed.

The Commission notes that several comments request specific changes to the components of the manifest, waste profile form, or to the profile and manifest processes. For example, in addition to the comments above, Diamondback and TXOGA also asked for clarification regarding the identification number for midstream facilities, the Commission-assigned facility number, and the identifier for the facility to which waste is delivered. The Commission will begin to develop forms upon adoption of the rules but prior to the rules' effective date of July 1, 2025. The Commission will consider the commenters' suggestions related to specific profile and manifest requirements as it develops those forms and instructions. The Commission declines to remove the signature requirement altogether but will consider whether a contract that fulfills this requirement would be acceptable. The Commission also declines to make other changes to the lists of required profile and manifest elements (proposed in §4.190 (b)(1) and §4.191(b) respectively). These lists contain minimum requirements for the forms, so the Commission does not deem it necessary to amend the basic components in the rule based on the comments.

Regarding waste tracking in §4.191, NESCO recommended that facilities should be required to notify the Commission immediately if the facility refuses to accept a load of unauthorized waste. Similarly, Galatea Technologies and Waste Management requested additional requirements for how to handle and report discrepancies in manifests.

The Commission agrees and adopts §4.191 with new subsection (e) to require a commercial facility receiver that refuses to accept a load of waste that is not correctly characterized or manifested to notify Technical Permitting immediately. The notification shall include information necessary to identify the waste hauler and generator.

TXOGA, Diamondback, PBPA, TIPRO, and Deep Blue also commented on §4.191 requesting clarification regarding whether recycled produced water is subject to requirement of 4.191(d). The commenters note that recycled produced water is not considered a "waste."

The Commission concludes that produced water in a recycling system, as those systems are currently operated, is a waste. The Commission considers produced water a waste, though it agrees that a

waste that is recycled ceases to be a waste when legitimately reused (e.g., when produced water is used in a downhole reuse activity). Generally, the Commission deems most of the current produced water treatment and recycling activities to be waste management. Produced water is not a waste when it is used in a downhole activity pursuant to prior §3.8(d)(7)(B) and new proposed §4.112. However, the management of treated produced water in pits and pipelines, and the potential for spills or other releases, is currently governed as a waste per applicable statutes and rules. Therefore, the Commission concludes that produced water in a recycling system is a waste. The Commission is open to reconsidering this understanding as the industry progresses such that other non-downhole uses of treated produced water become available.

TXOGA, Diamondback, PBPA, and TIPRO commented regarding §4.191(d), asking the Commission to allow documentation in addition to metering for oil and gas waste moved by pipeline. Heritage oil and gas wells and central tank batteries are not equipped with metering technology, but the oil and gas waste moved could be documented. Requiring metering would impose a cost on industry that has not been considered.

The Commission adopts §4.191(d) with a change to address this comment.

NESCO also requested the Commission require testing records, type of truck and associated volumes, records of waste receipts, and records of paint filter testing be kept for three years and made available to the Commission for review.

The Commission notes that proposed subsection (a) of §4.194 requires generators, waste haulers, and receivers to keep all waste profiles, manifests, and other documentation for a period of at least three years. The person keeping any records required by this section must make the records available to the Commission upon request. The Commission declines to make any changes in response to NESCO's comment.

The Commission proposed §4.192, Special Waste Authorization (adopted with the new title, "Trans-jurisdictional Waste Transfers") to provide a process for tracking oil and gas waste transported to be managed at appropriate TCEQ-regulated facilities and for certain TCEQ-jurisdictional waste transported to be managed at appropriate Commission-regulated facilities.

Waste Control Specialists (WCS) asked the Commission to clarify that receivers may receive waste from other receivers. WCS noted that generators often give their oil and gas NORM waste to another receiver who aggregates that waste prior to disposal.

The Commission adopts the definition of receiver in §4.110 with a change to address this comment.

TXOGA and Diamondback requested that §4.192 be removed because this process is sufficiently addressed in the Memorandum of Understanding (MOU) between the Commission and TCEQ. The

proposed approval process will result in long wait times that may pose a risk to human health because of waste accumulation on site. Waste Control Specialists (WCS) also commented opposing a process that would require duplicate authorizations.

The Commission disagrees that §4.192 should be removed. It is important that the Commission know the disposition of waste under its jurisdiction. The Commission recognizes some waste may already have authorization for disposition at a TCEQ-regulated facility pursuant to the MOU in §3.30 of this title. However, the Commission needs to evaluate whether that waste achieves such disposition. Given the comments from TXOGA, Diamondback, and WCS, the Commission determines it is appropriate to adopt §4.192 with changes and delay the effective date to December 31, 2026. This will give the Commission and the TCEQ sufficient time to consider changes that will allow the Commission to track disposition of Commission-jurisdictional waste and ensure consistency with the MOU, which may require amendments consistent with adopted §4.192 and other rules adopted in this rulemaking.

Regarding §4.193, relating to Oil and Gas Waste Haulers, Commission Shift commented about the meaning of the term “incidental” in subsection (a). Commission Shift also suggested adding “at all times” in subsection (e)(10) to clarify spillage is never allowed, whether in transport or not. Further, Commission Shift suggested splitting inert waste and other wastes (asbestos, PCBs, and hazardous waste) into separate paragraphs.

The Commission notes that the “incidental” volume of waste cited in §4.193 is related to skim oil normally present in produced water or other oil and gas wastes. However, the Commission understands the term “incidental” may cause confusion or uncertainty and so that term is removed in adopted §4.193(a). The Commission also agrees with Commission Shift’s suggested change in subsection (e)(10) and adopts that change. The Commission declines to separate inert waste and other wastes into different paragraphs because those wastes are excluded from §4.193.

Regarding §4.195, relating to Waste Originating Outside of Texas, Diamondback and TXOGA asked whether this only applies to trucked waste or if it applies to piped waste as well.

The Commission notes this applies to waste moved by surface vehicles only and adopts §4.195 with a change to clarify that application.

Commission Shift requested clarification regarding the term “notwithstanding” in §4.195 and whether the record keeping requirements apply to out of state waste.

The Commission agrees the term “notwithstanding" may cause confusion and makes changes to §4.195 accordingly.

Subchapter A, Division 11 – Requirements for Surface Water Protection

Commission Shift submitted comments on §4.196, relating to Surface Water Pollution Prevention, and §4.197, relating to Consistency with the Texas Coastal Management Program.

Regarding §4.196, Commission Shift asked the Commission to clarify that all rules apply to activities on land that cause pollution of any state waters, whether inland, fresh, or offshore. Commission Shift also asked the Commission to specify that the requirements in these sections apply to all activities within Commission's jurisdiction, not just oil, gas, and geothermal.

The Commission adopts §4.196 with a change to include all activities under the Commission's jurisdiction. The Commission declines to add "on land" because this section is focused on Texas offshore waters and adjacent estuarian zones.

Regarding §4.197, Commission Shift asked why regulations regarding discharges were removed when the requirements of §3.8(j)(1)(B) and (j)(3)(B) were relocated to proposed new §4.197.

The Commission notes the regulations were removed because House Bill 2771 in 2019 removed the Commission's jurisdiction over all discharges.

The Commission appreciates the commenters who provided input on the proposed new rules in Subchapter A.

Subchapter B – Commercial Recycling

Chapter 4, Subchapter B governs commercial recycling activities and was originally adopted by the Commission in 2006. In this rulemaking, the Commission proposed amendment of numerous rules in Subchapter B.

Similar to their comments in Subchapter A, Diamondback and TXOGA asked the Commission to remove requirements for independent lab analyses and professional engineer certification of a lab report. They stated that some Commission-regulated facilities have onsite NELAP certified labs. Using an independent NELAP certified lab provides no additional benefit and causes unnecessary delays. Similarly, there is no value in having an engineer who does not perform the sampling or conduct the analysis certify the report.

The Commission declines to remove requirements for independent certified lab analysis and professional engineer certification. For permitted operations, the Commission has long required laboratory analytical results submitted to the agency to be collected by an independent certified laboratory. Similarly, geotechnical laboratory analysis should be overseen and certified by a Licensed Professional Engineer.

Regarding geosynthetic clay liners, Dr. Brownlow and Dr. Rogers stated that geosynthetic clay liners do not provide any significant impediment to fluid migration where the fluid is produced water-like with elevated salt concentrations. GCLs specifications are based on testing with distilled water.

The Commission agrees and adopts the following sections with changes to address the concerns with geosynthetic clay liners: §§4.219(b)(5), 4.232(b), 4.248(b)(1), 4.264(a). and 4.280(a)(1).

Sierra Club and Commission Shift commented regarding §4.272 and §4.288, which state that the Director will presume that an application meeting certain requirements does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise. The commenters asked that the provision be removed because applicants should be required to show their projects are safe. The responsibility should not fall to the public to disprove safety.

The Commission adopts §4.272 and §4.288 to remove the language quoted above in response to these comments.

Commission Shift noted generally that many of its comments expressed on Subchapter A apply to Subchapter B as well. These include suggestions to increase transparency and public participation, reduce director discretion, improve monitoring requirements, increase penalties, prevent revisions to applications during a hearing on the permit, increase setbacks, expand notice requirements, and require permits issued under prior rules to come into compliance with the amended rules by a specified date.

The Commission makes no changes to Subchapter B based on these comments and references its responses above to illustrate its position on these issues.

Finally, Sierra Club, 57 individuals, and Commission Shift commented regarding Subchapter B, Division 7, which applies to the Beneficial Use of Drill Cuttings. Generally, these commenters requested that the Commission remove Division 7 and study the issue more thoroughly before adopting rules. In the alternative, Commission Shift submitted comments suggesting several changes to Division 7.

Commission Shift requested that if Division 7 is adopted, the Commission at least remove the ability for processed drill cuttings to be used on county roads because this use goes beyond what the statute envisioned and does not set clear enough standards to ensure protection of public health and safety. Commission Shift also requested that the standards in proposed §4.301(b)(3)(A)-(B) apply to any proposed use of drill cuttings. Commission Shift commented regarding the definition of “legitimate commercial product,” which was proposed in §4.204 and relates to Division 7. Commission Shift stated the term should ensure the use of legitimate commercial products is actually beneficial.

The Commission adopts Division 7 with changes to address these comments. First, the Commission removes the language in §4.301(b) relating to use of treated drill cuttings on county roads or as a concrete bulking agent, oil and gas waste pit disposal cover or capping material, treated aggregate, closure or backfill material, berm material, or construction. Revised §4.301 allows the Commission to approve a permit for the treatment and recycling for beneficial use of drill cuttings if the drill cuttings are used in a legitimate commercial product for the construction of oil and gas lease pads or oil and gas lease

roads. The changes also contemplate permits for treated drill cuttings to be used in other legitimate commercial products, but only if the applicant can demonstrate the product meets the standards proposed in §4.301(b)(3)(A)-(B), which are adopted in §4.301(b)(2)(A)-(B). The Commission adopts an additional standard in §4.301(b)(2)(C), to require a demonstration that the product does not cause or contribute to the pollution of surface or subsurface water.

The Commission makes corresponding revisions to §4.302. The Commission also revises §4.302(b)(5) to require that the written report of the results of the trial run be prepared by a professional engineer licensed in Texas. This change is made in response to a comment from Commission Shift expressing concerns about the sufficiency of the trial run.

This concludes the description of comments and the Commission's response and recommended changes due to comments. The remaining paragraphs summarize the adopted rules.

The Commission adopts new Subchapter A to relocate and update the requirements in §3.8. Section 3.8 or "Statewide Rule 8" has existed in its current form since 1984 with only minor modifications since then. Expectations for environmental protection have evolved considerably over the past 40 years, and routine industry practices have changed significantly since the onset of shale extraction in the early 2000s. Within the last several years, additional industry growth, new technological advancements, and innovative solutions for resource development challenged the flexibility of these historic regulations. For example, there is a rapidly evolving need to encourage the treatment and recycling of produced water for beneficial uses within the oil and gas industry and for novel beneficial uses outside of the industry. The Legislature has directed the Commission to encourage fluid oil and gas waste recycling (House Bill 3516, 87th Legislature, 2021), and it has also created the Texas Produced Water Consortium (Senate Bill 601, 87th Legislature, 2021) to make recommendations to the Legislature on issues related to this potential activity. Already, many exploration and production operators and water midstream service providers are investing in infrastructure and pilot studies to assess the economic, logistical, environmental, and practical possibilities of produced water recycling. The Commission's rules need to address and support these developments.

In addition to House Bill 3516, House Bill 2201 (87th Legislature, 2021) directed the Commission to adopt rules governing permissible locations for pits used by commercial oil and gas disposal facilities and Senate Bill 1541 (85th Legislature, 2017) required the Commission to incorporate criteria for beneficial uses of recycled drill cuttings. The Commission adopts new requirements in Subchapter A to address House Bill 2201 and adopts new rules in Subchapter B to address the requirements of Senate Bill 1541.

Many of the requirements from Section 3.8 are incorporated into new rules in Subchapter A of Chapter 4. In some sections, the Commission allows compliance to be achieved by a future date after the new rules and amendments to Chapter 4 have become effective. The new rules and amendments go into effect July 1, 2025, which is approximately six months after the date the rules are adopted. Many provisions are adopted with a later effective date of six months to one year from July 1, 2025, to provide additional time for compliance. Effective dates are reflected in the following sections: 4.109, 4.113, 4.115, 4.121, 4.122, 4.123, 4.140, 4.170, 4.192, 4.202, 4.266, 4.273, 4.282, and 4.289.

Division 1 of Subchapter A addresses general requirements. New §4.101 communicates the subchapter's purposes - to prevent pollution and protect the public health, public safety, and the environment within the scope of the Commission's authority. Section 4.101 also clarifies that certain other wastes generated by activities under the Commission's jurisdiction may be managed in accordance with Subchapter A as long as the wastes are nonhazardous and chemically and physically similar to oil and gas wastes. The list of activities that may generate waste under the Commission's jurisdiction includes activities such as brine mining and injection wells and Class VI carbon sequestration program wells.

The Commission adopts §4.102 to require generators of oil and gas waste to characterize the waste. Generally, process knowledge may be used to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110. However, laboratory analysis of waste may be required for waste generated at a commercial facility or transferred from one commercial facility to another.

The Commission adopts §4.103 to specify waste management methods that are prohibited. Generally, a Commission authorization or permit to manage waste is required except in three instances: (1) as authorized by §4.111 (relating to Authorized Disposal Methods for Certain Wastes); (2) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or (3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs). Recycling oil and gas wastes without a permit is prohibited unless the recycling is conducted pursuant to §4.112 (relating to Authorized Recycling).

New §4.104 clarifies how the Commission will implement its authority over activities for which other regulatory agencies have related jurisdiction.

New §4.106 notifies persons required to comply with Subchapter A that fees and corresponding surcharges may apply pursuant to §3.78 (relating to Fees and Financial Security Requirements).

New §4.107 contains the guidelines for assessing penalties for violations of Subchapter A.

The Commission adopts §4.108 to ensure all required filings are made electronically if the Commission has provided an electronic version of a form or an electronic filing system. The section also clarifies that the standards for electronic filings are the same as those for filings in other formats.

New §4.109 allows applicants or permittees to request exceptions to the requirements of Subchapter A.

New §4.110 contains the definitions for Chapter 4, including Subchapters A and B.

New Division 3 of Subchapter A relates to Operations Authorized by Rule. The rules in this division allow operators to conduct certain waste management activities through a "permit by rule" system - the operator is not required to obtain a permit through a permit application and review process. Instead, the operator is authorized to engage in the activity as long as the applicable rule requirements are met.

New §4.111 provides that certain wastes may be disposed of without first obtaining a permit from the Commission if the disposal complies with the requirements of the section.

Similarly, §4.112 allows recycling without a permit in certain instances.

New §4.113 specifies types of waste management pits that may be operated without a permit if they comply with the requirements of §4.113. Subsection (c) provides instructions for pits authorized under the predecessor rule, §3.8. Most types of pits authorized by §3.8 and compliant with that section prior to July 1, 2025, may continue to operate unless they cause pollution. However, basic sediment pits, flare pits, and other pits not listed as authorized pits in §4.113 must obtain a permit or be closed in accordance with new Subchapter A by July 1, 2026. Also, as discussed in the paragraphs below regarding §4.114 and §4.115, new Subchapter A alters terminology and requirements related to non-commercial fluid recycling. New §4.113(c)(3) states that each non-commercial fluid recycling pit shall be registered and supported by financial security by January 1, 2026, or the pit must be closed.

New §4.113(d) contains new requirements for registration of all authorized pits.

The Commission adopts §4.114 to specify requirements for Schedule A authorized pits. Authorized pits (pits "permitted by rule") are divided into two categories: Schedule A and Schedule B. Each category imposes different requirements.

The Commission adopts §4.115 to create new terminology and requirements for produced water recycling pits, which are classified as Schedule B Authorized Pits.

The Commission adopts additional requirements for Schedule B authorized pits because these pits are generally larger in size, manage a larger volume of waste, and are operated for a longer time compared to Schedule A authorized pits. Subsection (c) provides additional time for compliance for non-commercial fluid recycling pits authorized prior to July 1, 2025. Under new §4.115, these pits continue to

be authorized, but must be registered and secured by a performance bond or other form of financial security as required by §4.115 by January 1, 2026.

Division 4 of Subchapter A contains the general requirements for all other waste management activities that are not authorized under Division 3. These waste management activities require a permit before the operator may conduct the activity. Many of the requirements in Divisions 4 through 9 are similar to permit conditions in permits currently issued by the Commission. The Commission adopts that these standards be incorporated into Divisions 4 through 9, as applicable. The Commission also adopts additional standards for permitted facilities to ensure the rules address the complex needs and requirements of contemporary waste management and environmental protection practices.

New §4.120 identifies the Commission's purpose in permitting -- the Commission will not issue a permit if the Commission determines the proposed activity will result in: (1) the endangerment of human health or the environment; (2) the waste of oil, gas, or geothermal resources; or (3) the pollution of surface or subsurface water. New §4.120 also clarifies that all permitted waste management activities are subject to financial security requirements. Finally, §4.120(e) provides a list of waste management activities governed by Subchapter A and specifies which division applies to each activity. For example, permitted pits must comply with the requirements in Division 6 in addition to the requirements of Division 4, which apply to all waste management activities that must obtain a permit.

The Commission adopts §4.121 to incorporate a permit term for all waste management permits, which shall be not more than five years.

New §4.122 outlines requirements for permit renewals, transfers, and amendments, while new §4.123 contains requirements for permit modification, suspension, or termination. A permit issued under new Subchapter A or pursuant to §3.8 prior to July 1, 2025, may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for a hearing.

The Commission adopts §4.124 to specify permit application filing requirements and contents.

Section 4.125 addresses notice requirements for all permitted facilities.

The Commission adopts §4.126 to outline the location and real property information required to be included in the permit application. New §4.127 contains the requirements for engineering and geologic information submitted in the permit application.

The Commission adopts §4.128, which contains requirements related to the facility's design and construction. Section 4.128 includes requirements for information to be included in the permit application as well as requirements for the constructing the facility. Section 4.129 includes requirements for information to be included in the permit application relating to the facility's operation, as well as requirements for operating the facility once permitted.

Section 4.130 specifies the requirements for retaining records and submitting periodic reports to the Commission.

The Commission adopts §4.131 to explain the factors the Commission will consider in determining whether groundwater monitoring is required when groundwater is present within 100 feet below the ground surface.

New §4.132 contains requirements related to closure.

The Commission adopts §4.134, which states that Technical Permitting reviews applications filed under Subchapter A in accordance with §1.201 (relating to Time Periods for Processing Applications and Issuing Permits Administratively).

New §4.135 contains the process for a hearing when a permit application is denied, a timely protest to the application is received, or when the applicant disagrees with permit conditions required by the Director.

Divisions 5 through 9 contain requirements for certain waste management activities. Operators of facilities governed by these divisions must comply with the requirements set forth in the division in addition to the requirements set forth in Division 4. Facilities may be governed by more than one division in addition to the general requirements of Division 4. For example, a commercial disposal pit would be subject to the requirements of Division 4 and the requirements of Division 5 (relating to Additional Requirements for Commercial Facilities) and the requirements of Division 6 (relating to Additional Requirements for Permitted Pits). This intent is clarified in §4.140, §4.150, and §4.160, which state that in addition to the requirements of the applicable division, the permittee shall comply with Division 4 and any other sections of Subchapter A applicable to the permittee's management of oil and gas wastes.

Division 5 contains the additional requirements for commercial facilities. Section 4.140(b) recognizes that new definitions and requirements in Subchapter A may alter a facility's classification such that a facility considered non-commercial prior to July 1, 2025 may be considered commercial after that date (the estimated effective date of the new rules). Such facilities are required to comply with the requirements of Division 5 or request an exception on or before July 1, 2026.

In addition to the notice requirements outlined in §4.125, the Commission adopts that commercial facilities provide notice by publication.

Additional operating requirements for commercial facilities are in §4.142. These requirements include a detailed waste acceptance plan, a site-specific spill control plan, and a stormwater management plan.

Division 6 specifies additional requirements for permitted pits. As mentioned above, §4.150(a) clarifies that in addition to the requirements of Division 6, the permittee shall comply with Division 4 and Division 5. Subsection (b) states that if at any time a pit no longer meets the requirements for authorized

pits under §4.113, the operator of the pit shall apply for a pit permit pursuant to the requirements of Division 6.

Section 4.151(a) contains information that must be included in a pit permit application in addition to the information required by §4.128. Pits permitted pursuant to Subchapter A are also subject to additional requirements that the Director determines are necessary to prevent pollution.

The Commission adopts §4.152 to require a permittee governed by Division 6 to implement a monitoring plan in which the permittee routinely monitors the integrity of the pit liner.

In accordance with House Bill 2201 from the 87th Legislative Session, the Commission adopts §4.153 to incorporate siting requirements for commercial disposal pits. Under subsection (a)(1), the application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area.

Closure requirements for all permitted pits are adopted in §4.154.

Division 7 applies to permits for landfarming and landtreating. Section 4.160 clarifies that the requirements in Division 4 must be adhered to in addition to the requirements of Division 7.

The Commission adopts §4.161 and §4.162 to require additional information in applications for landfarming and landtreating. The Commission adopts §4.163 to require monitoring of three soil zones in each active cell.

Section 4.164 contains closure requirements specific to landfarming and landtreating permits.

Division 8 describes the requirements applicable to permitted reclamation plants and is substantively similar to current §3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), which is amended concurrently with the new rules in Subchapter A. The Commission adopts two notable changes to its regulatory requirements for reclamation plants. First, new §4.170 and §4.171 limit a reclamation plant permit to a five-year term. Second, new §4.171(b) allows reclamation plant permits to be transferred, renewed, or amended in accordance with §4.122. Section 4.170(a)(7) states that reclamation plant permits issued under §3.57 before July 1, 2025 expire five years from July 1, 2025 but may be renewed pursuant to §4.122.

Division 9 specifies requirements for emergency permits (§4.181), minor permits (§4.182), and permitted recycling (§4.184) that are generally consistent with the requirements for these permits contained in current §3.8. However, the Commission adopts new §4.185 to allow the approval of pilot projects for certain activities, such as the recycling of treated produced water.

The Commission adopts Division 10 to incorporate requirements for transportation of oil and gas waste, including new regulations relating to oil and gas waste characterization and documentation. As specified in §4.102, the generator of oil and gas waste is responsible for characterizing the waste. Section

4.190(a) incorporates that requirement and also specifies that the generator must document the waste characterization using a Waste Profile Form prior to transportation.

New §4.191 requires oil and gas waste that is transported by vehicle from the location where it is generated to another facility to either be accompanied by a paper manifest or be documented and tracked by an electronic manifest system. Section 4.191(b) specifies the required components of a manifest.

Section 4.192 provides a process for waste transfers made across jurisdictional authorities to be reported to the Commission beginning December 31, 2026. Section 4.193 incorporates requirements for oil and gas waste haulers.

Section 4.194 requires all generators, waste haulers, and receivers to retain waste profiles, manifests and other documentation for at least three years and provide such records to the Commission upon request.

The Commission adopts §4.195 to address oil and gas waste generated outside the State of Texas and transported into Texas for management.

Division 11 includes new §4.196 and §4.197, which are mostly unchanged from current §3.8(e) and §3.8(j). These sections are incorporate the requirements from §3.8 into the new rules in Subchapter A.

Amendments to Subchapter B

The Commission also adopts conforming amendments to Subchapter B of Chapter 4. Many of the amendments replace references to §3.8 with the applicable provision now included in new Subchapter A. Other amendments ensure consistency between new Subchapter A and existing Subchapter B. Amendments in various sections update Division and Department names and ensure terms are used consistently throughout the Subchapter. In addition, amendments incorporate legislative requirements imposed by House Bill 3516 (87th Legislature, 2021) and Senate Bill 1541 (85th Legislature, 2017).

The following sections are amended to remove references to §3.8 or to make other non-substantive updates: §§4.203, 4.207, 4.209, 4.218, 4.220, 4.222, 4.223, 4.239, 4.242, 4.243, 4.245, 4.250, 4.251, 4.255, 4.258, 4.259, 4.261, 4.267, 4.277, 4.287, and 4.293.

The Commission adopts amendments in §4.201 to ensure consistency with the purpose stated in new §4.101.

Amendments in §4.202 replace references to §3.8 with references to new Subchapter A of Chapter 4. Amendments in subsection (h) outline requirements for permits issued prior to the effective date of the amendments, which is July 1, 2025.

Amendments in §4.204 clarify that the definitions in new §4.110 of Subchapter A, relating to Definitions, apply in Subchapter B as well. Terms that already appear in new §4.110 are removed from

§4.204 to reduce confusion. The terms amended or added to §4.204 are terms unique to Subchapter B or terms for which the meaning is altered for purposes of Subchapter B.

Amendments in §4.208(c) require that all chemical laboratory analyses be performed using the appropriate Environmental Protection Agency (EPA) method or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory.

The Commission adopts to amend §4.211 to incorporate new penalty guidelines and standard penalty amounts for violations of rules in Subchapter B.

Amendments in §4.212 update requirements for filing an application for on-lease solid oil and gas waste commercial recycling.

Amendments in §4.213 expand the scope of subsection (b) to contemplate geologic work products and allow such products to be sealed by a professional engineer or geoscientist licensed in Texas. Similar amendments are adopted in §§4.231, 4.247, 4.263, and 4.279.

Amendments in §4.219 remove outdated language that is no longer applicable and update location requirements for on-lease commercial solid oil and gas waste recycling to be consistent with Commission practices.

In addition to minor amendments to ensure consistent use of terms, amendments in §4.221 require additional information to be included in the written report of the trial run.

The Commission adopts amendments to §4.224 to require an operator to include the facility identification number assigned by Technical Permitting in the operator's application for a permit renewal. Facility identification numbers will assist Technical Permitting in identifying facilities that may have several different types of permits.

Amendments in §4.230 update requirements for filing an application for off-lease or centralized commercial solid oil and gas waste recycling.

The Commission adopts §4.232 with amendments to require a United States Geological Survey topographic map or an equivalent topographic map to be included with the permit application. Similar siting requirements are in §4.248 for stationary commercial solid oil and gas waste recycling, in §4.264 for off-lease commercial fluid recycling, and in §4.280 for stationary commercial fluid recycling.

Amendments in §4.234 allow the Technical Permitting Section to waive the requirement that a permit application include a plan for the installation of monitoring wells. Similarly, the Commission adopts amendments in §4.241(b), §4.257(b), §4.273(b), and §4.289(b) to provide the Technical Permitting Section discretion to evaluate the facts of the specific permit application and determine whether certain requirements are appropriate.

The Commission adopts amendments to §4.238 to ensure notice requirements in Subchapter B are consistent with notice requirements in new Subchapter A. The same amendments are adopted in §§4.254, 4.270, and 4.286.

Amendments in §4.240 remove outdated language that no longer applies and clarify certain factors the Commission will consider in assessing potential risk associated with an off-lease centralized commercial solid oil and gas waste recycling facility.

Amendments in §4.246 update requirements for filing an application for a stationary commercial solid oil and gas waste recycling facility.

Amendments in §4.254 ensure that notice recipients receive instructions for filing notice electronically if the Commission implements an electronic means for filing protests.

Amendments in §4.256 remove outdated language that is no longer applicable and update location requirements for a stationary commercial solid oil and gas waste recycling facility.

Amendments in §4.262 update requirements for filing an application for off-lease commercial recycling of fluid. Amendments in subsection (d) implement House Bill 3516 (87th Legislature, 2021), which requires the Commission to approve or deny a complete application that does not include a request for an exception not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed. Further, if the Commission does not approve or deny the application before the 90th day, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year.

The Commission adopts amendments in §4.263 to incorporate additional requirements for engineering, geological, and other information submitted in an application for an off-lease commercial fluid recycling permit.

Section 4.264 is amended to include House Bill 3516's requirement that the Commission establish minimum siting standards for fluid recycling pits.

New language in §4.266 incorporates requirements from House Bill 3516.

Amendments in §4.268 add a requirement that the sampling plan submitted with the permit application ensures compliance with reuse requirements in the permit in addition to other permit conditions.

Amendments in §4.269 comply with House Bill 3516's requirement that the Commission adopt rules establishing uniform standards for estimating closure costs. The requirements for closure cost estimates (CCEs) in §4.269 are consistent with the CCE standards for commercial facilities permitted under Subchapter A.

In addition to the minor updates described above, the Commission adopts to amend §4.273 to add new subsections (f), (g), and (h). Subsection (h) requires that any pit associated with an off-lease

commercial fluid recycling facility permitted after July 1, 2025, shall comply with the requirements of §4.265(a).

The Commission adopts new requirements in §4.274(e) to prohibit accumulation of oil on top of produced or treated water stored in the tanks and pits.

New requirements for operating an off-lease commercial fluid recycling facility are in §4.275(a) and (c). Existing language is renumbered as subsection (b). The Commission also adopts a figure in subsection (a)(6), which contains the required parameters for sampling.

New language in §4.276 replaces the minimum permit provisions for closure.

Amendments in §4.278 update requirements for filing an application for a stationary commercial fluid recycling facility.

The Commission adopts amendments in §4.279 to incorporate additional requirements for engineering, geological, and other information submitted in an application for a stationary commercial fluid recycling permit.

Section 4.280 is amended to include House Bill 3516's requirement that the Commission establish minimum siting standards for fluid recycling pits.

New language in §4.282 incorporates requirements from House Bill 3516. Subsection (a) establishes design and construction standards for pits at stationary commercial fluid recycling facilities. Subsection (a)(5) contains new liner requirements for such pits permitted after July 1, 2025.

Amendments in §4.283 clarify that the required waste acceptance plan shall identify specific types of oil and gas wastes and provides examples such as hydraulic fracturing flowback fluid and produced water.

Amendments in §4.284 add a requirement that the sampling plan submitted with the permit application ensures compliance with reuse requirements in the permit in addition to other permit conditions. Additionally, the application shall include a plan for monitoring groundwater based on the subsurface geology and hydrogeology.

Amendments in §4.285 conform to §4.269 and comply with House Bill 3516's requirement that the Commission adopt rules establishing uniform standards for estimating closure costs. The requirements for closure cost estimates (CCEs) are also consistent with the CCE standards for commercial facilities permitted under Subchapter A.

In addition to the minor updates described above, the Commission adopts to amend §4.289 to add new subsections (f), (g), and (h). Subsection (h) requires that any pit associated with a stationary commercial fluid recycling facility permitted after July 1, 2025, shall comply with §4.282(a).

The Commission adopts new requirements in §4.290(e) to prohibit accumulation of oil on top of produced or treated water stored in the tanks and pits.

New requirements for operating a stationary commercial fluid recycling facility are in §4.291(a) and (c). Existing language is renumbered as subsection (b).

New language in §4.292 replaces the minimum permit provisions for closure.

Finally, the Commission adopts new rules in Subchapter B, Division 7 (relating to Beneficial Use of Drill Cuttings) to satisfy requirements of Senate Bill 1541 (85th Legislature, 2017). Senate Bill 1541 instructed the Commission to adopt criteria for beneficial uses to ensure that a beneficial use of recycled drill cuttings is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without recycled drill cuttings. Section 4.301 includes requirements for treatment and recycling for beneficial use of drill cuttings. The requirements in §4.301 must be met in addition to the requirements of Divisions 3 and 4 of Subchapter B, which relate to Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities, respectively.

Section 4.302 includes requirements for showing there is a demonstrated commercial market for the treated drill cuttings.

The Commission adopts the new rules and the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission 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 §81.0531, which gives the Commission authority to assess penalties for violations of provisions of Title 3, Texas Natural Resources Code, which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under that title; Texas Natural Resources Code §§85.042, 85.202, and 86.042, which require the Commission to adopt rules to prevent waste of oil and gas; Texas Natural Resources Code §91.101, which gives the Commission authority to adopt and enforce rules and orders and issue permits to prevent pollution of surface water or subsurface water in the state; Texas Natural Resources Code §91.1017 (added by House Bill 2201, 87th Legislature), which requires the Commission to establish standards governing permissible locations for pits used by commercial oil and gas disposal facilities; Texas Natural Resources Code §122.004 (amended by House Bill 3516, 87th Legislature), which requires the Commission to adopt rules to govern the treatment and beneficial use of oil and gas waste, which shall encourage fluid oil and gas waste recycling for beneficial purposes and to establish standards for the issuance of permits for commercial recycling of oil and gas waste; and Texas Natural Resources Code §123.0015 (added by Senate Bill 1541, 85th Legislature), which requires the Commission to define "legitimate commercial product" and adopt criteria for

beneficial uses of recycled drill cuttings; and Texas Water Code Chapter 29, which gives the Commission authority to adopt rules, issue permits, and assess penalties related to transporters of oil and gas waste.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

SUBCHAPTER A. OIL AND GAS WASTE MANAGEMENT

DIVISION 1. GENERAL

§4.101. Prevention of Pollution.

(a) No person conducting activities subject to regulation by the Railroad Commission of Texas may cause or allow pollution of surface or subsurface water in the state.

(b) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting, operating, monitoring, and closure standards and requirements for the management of wastes associated with activities governed by the Commission including those governed under:

(1) Texas Natural Resources Code Title 3, Subtitle B;

(2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;

(3) Texas Natural Resources Code Title 5;

(4) Texas Health and Safety Code Chapter 382, Subchapter K; and

(5) Texas Water Code Chapters 26, 27 and 29.

(c) Other wastes described in subsection (b) of this section are included when this subchapter refers to oil and gas waste(s) and may be managed in accordance with the provisions of this subchapter at facilities authorized under this subchapter provided the wastes are nonhazardous and chemically and physically similar to oil and gas wastes.

(d) Hazardous waste as defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) shall be managed in accordance with the provisions of §3.98 of this title.

(e) Used oil as defined in §3.98 of this title ~~(relating to Standards for Management of Hazardous Oil and Gas Waste)~~ shall be managed in accordance with the provisions of 40 Code of Federal Regulations (CFR), Part 279.

§4.102. Responsibility for Oil and Gas Wastes.

(a) The generator of oil and gas waste is responsible for characterizing the waste.

(1) The generator may use process knowledge to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 of this title (relating to Definitions).

(2) Laboratory analysis of waste may be required for waste generated at a commercial facility, as that term is defined in §4.110 of this title, or when waste is transferred from one commercial facility to another.

(3) The generator of an oil and gas waste that is not exempt from regulation under Subtitle C of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et seq. as described in 40 CFR §261.4(b), shall determine if such waste is a hazardous oil and gas waste by applying process knowledge of the hazard characteristics of the waste in light of the materials or processes used or by testing the waste.

(b) No person, operator, generator, receiver, or carrier may utilize the services of a carrier to transport oil and gas wastes if the carrier is required to have a permit to transport such wastes but does not have a valid permit.

(c) No person, operator, generator, or carrier may utilize the services of a receiver to manage oil and gas wastes if the receiver is required to have a permit to manage such wastes but does not have such a permit.

(d) No receiver may utilize the services of a second receiver to manage oil and gas wastes if the second receiver is required to have a permit to manage such wastes but does not have a valid permit.

(e) Any person who utilizes the services of a carrier or receiver is under a duty to determine that the carrier or receiver holds the appropriate authority from the Commission to manage or transport oil and gas wastes.

(f) No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

(1) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and

(2) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.

(g) No person may manage oil and gas wastes in a manner that violates Commission rules.

(h) Pursuant to Texas Natural Resources Code §91.142(h), any person, operator, permittee, or entity conducting activities under the jurisdiction of the Commission shall notify the Commission if it files for bankruptcy.

§4.103. Prohibited Waste Management Methods.

(a) Unless authorized by this subchapter, no person may manage oil and gas wastes without obtaining a permit to manage such wastes, except for the following methods:

(1) as authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes);

(2) as authorized by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill);

(3) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or

(4) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(b) The discharge of **any** ~~oil and gas~~ waste **under the jurisdiction of the Commission** into any surface water defined under §4.110 of this title (relating to Definitions) is prohibited unless such discharge is authorized by and conducted in accordance with a Texas Pollutant Discharge Elimination System (TPDES) permit or authority issued by the Texas Commission on Environmental Quality (TCEQ) or another regulatory agency with jurisdiction over discharge of oil and gas wastes.

(c) No person may maintain or use any pit for storage of oil, oil products, or oil by-products.

(d) Except as authorized by this subchapter, no person may maintain or use any pit for storage of oil field fluids or for storage or disposal of oil and gas wastes without obtaining a permit to maintain or use the pit.

(e) Except as expressly provided by §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)), no person may dispose of oil and gas wastes at a facility not under the jurisdiction of the Commission unless the Director expressly authorizes such disposal in writing.

(f) Except for those recycling methods authorized for certain wastes by §4.112 of this title (relating to Authorized Recycling), no person may recycle any oil and gas wastes by any method without obtaining a permit.

§4.104. Coordination Between the Commission and Other Regulatory Agencies.

(a) The Commission and TCEQ have adopted by rule a Memorandum of Understanding stating how the agencies will implement the division of jurisdiction over wastes. The MOU is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

(b) Activities authorized or permitted by this subchapter may be subject to rules and regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act or the TCEQ under the Texas Clean Air Act. The applicant shall obtain any required authority from other regulatory agencies prior to the receipt of waste authorized under this subchapter **and provide evidence of such authority to the Commission upon request.**

§4.106. Fees.

Applications submitted under this subchapter may be subject to a fee and surcharge pursuant to §3.78 of this title (relating to Fees and Financial Security Requirements).

§4.107. Penalties.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement without cause. Operators may correct violations at a facility with approval of Commission staff before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the facility's history of previous violations;

(2) the operator's history of previous violations;

(3) the seriousness of the violation;

(4) any hazard to the health or safety of the public; and

(5) the demonstrated good faith of the operator charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §4.107(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Figure: 16 TAC §4.107(f)

(g) Penalty enhancements for certain violators. For violations in which the operator charged has a history of prior violations within seven years of the current enforcement action at any facility regulated by

the Commission, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §4.107(g)

Figure 2: 16 TAC §4.107(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §4.107(j)

§4.108. Electronic Filing Requirements.

(a) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system. The person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

(b) The Commission deems a person that files electronically or on whose behalf is filed electronically any form, or hard copy if the Commission has not approved a digital format, as of the time of filing, to have knowledge of and to be responsible for the information filed.

(c) All electronic filings that a person submits or that are submitted on behalf of a person shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(d) The Commission may provide notice electronically to a person, and may provide a person the ability to confirm electronically, the Commission's receipt of a filing submitted electronically by or on behalf of that person.

(e) The Commission deems that the signature of a person's authorized representative appears on each filing submitted electronically by or on behalf of the person, as if this signature actually appears, as of the time the filing is submitted electronically to the Commission.

(f) The Commission holds each person responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that a person files or that are filed on the person's behalf. The Commission charges each person with the obligation to review and correct, if necessary, all forms, information, or data that a person files or that are filed on the person's behalf.

§4.109. Exceptions.

(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:

(1) the requirements related to financial security found in §§4.122, 4.140, 4.150, and 4.171 of this title (relating to Permit Renewals, Transfers, and Amendments; Additional Requirements for Commercial Facilities; Additional Requirements Applicable to Permitted Pits; and Standard Permit Provisions, respectively);

(2) the notice requirements found in §§4.122, 4.123, 4.125 and 4.141 of this title (relating to Permit Renewals, Transfers, and Amendments; Permit Modification, Suspension, and Termination; Notice and Opportunity to Protest; and Additional Notice Requirements for Commercial Facilities, respectively); and

(3) the requirements related to sampling and analysis found in §§4.124, 4.129, 4.131, 4.132, 4.163, and 4.164 of this title (relating to Requirements Applicable to All Permit Applications and Reports; Operation; Monitoring; Closure; Monitoring; and Closure, respectively).

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) Notwithstanding subsections (a) and (b) of this section, until July 1, 2026 the director may grant special exceptions solely for the purpose of issuing permits for waste management units that were authorized pits pursuant to §3.8 of this title (relating to Water Protection) prior to July 1, 2025 but that are no longer authorized pursuant to this subchapter.

(d) The Director shall review each written request for an exception on a case-by-case basis.

(e) If the Director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not use the requested alternative until the alternative is approved by the Commission.

DIVISION 2. DEFINITIONS

§4.110. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) 25-year, 24-hour rainfall event--The maximum 24-hour precipitation event, in inches, with a probable recurrence interval of once in 25 years, as defined by the National Weather Service and published by the National Oceanic and Atmospheric Administration for the county in which the waste management activity is occurring.

(2) 100-year flood--A flood that has a 1.0% or greater chance of occurring in any given year ~~**or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period**~~.

(3) 100-year flood plain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood, as determined from maps or other data from the U.S. Army Corps of Engineers or the Federal Emergency Management Agency (FEMA).

(4) Action leakage rate--The calculated volume of waste liquid that has bypassed the primary liner into the leak detection layer at a rate of gallons per acre per day that if exceeded indicates failure of the primary liner.

(5) Active cell--A waste management unit that has received oil and gas waste and has not completed closure.

(6) Active life--The period of time beginning when a waste management unit first receives waste and ending when closure of the waste management unit is complete.

(7) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, injection wells, disposal wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including activities associated with:

(i) the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission to regulate the production of oil or gas or geothermal resources;

(iii) the drilling of seismic holes and core holes subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources;

(iv) gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(v) any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.173;

(vi) any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.201; and

(vii) the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the management of oil and gas waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended (42 USC §6901, et seq.).

(8) Affected person--A person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public or a competitor.

~~**(9) Alluvium and Quaternary sand and gravel--Unconsolidated sediments consisting of gravel, sand, and/or silt, which typically exhibit high porosity and high permeability.**~~

(9) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(10) ASTM--ASTM International (successor to the American Society for Testing and Materials).

(11) Authorized--An activity that is permitted or allowed by a rule.

(12) Authorized pit--A reserve pit, mud circulation pit, completion/workover pit, ~~**fresh**~~ makeup water pit, fresh mining water pit, water condensate pit, or produced water recycling pit that is permitted by rule and described and operated in accordance with Division 3 of this subchapter (relating to Operations Authorized by Rule).

(13) Basic sediment--A mixture of crude oil or lease condensate, water, sediment, and other substances or hydrocarbon-bearing materials that are concentrated at the bottom of tanks and pipeline storage tanks (also referred to as "basic sediment and water" or "tank bottoms").

(14) Brine pit--A pit used for storage of brine in connection with the solution mining of brine, the operation of an underground hydrocarbon storage facility, or other activities associated with oil and gas exploration, development, storage or production that involve the creation or use of a salt cavern.

(15) Buffer zone--The minimum distance allowed between a waste management unit and another feature, such as a property boundary, surface water, or water well.

(16) Carrier--A person who is permitted to transport oil and gas wastes. A carrier of another person's oil and gas wastes may be a generator of its own oil and gas wastes. A permitted waste hauler is a carrier.

(17) Coastal Management Program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at 31 Texas Administrative Code Chapters 26 through 29.

(18) Coastal Natural Resource Area (CNRA)--One of the following areas defined in Texas Natural Resources Code §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.

(19) Coastal waters--Waters along the coast under the jurisdiction of the State of Texas, including tidal influence and waters of the open Gulf of Mexico.

(20) Coastal zone--The area within the boundary established in 31 Texas Administrative Code §27.1 (relating to Coastal Management Program Boundary).

(21) Commercial facility--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.

(22) Commission--The Railroad Commission of Texas.

(23) Completion/workover pit--A pit used for storage or disposal of spent completion fluids and solids, workover fluids and solids, and drilling fluids and solids, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed, worked over, or plugged.

(24) Contact stormwater--Stormwater that has come into contact with any amount of oil and gas wastes or areas that ~~**are permitted to**~~ contain **or have contained** 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."

(25) Container--A means of primary containment used for the management of oil and gas waste such as a pit, sump, tank, vessel, truck, barge, or other receptacle.

(26) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code §33.203.

(27) Dewater--To remove free liquids **from a media such that the remaining material passes a Paint Filter Liquids Test (EPA Method 9095B, as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication Number SW-846). See also "Free liquids"**.

(28) Director--The Director of the Oil and Gas Division or the Director's delegate.

(29) Discharge--To allow a liquid, gas, or other substance to flow out from where it has been confined.

(30) Disposal--The act of conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, dumping, placing, abandoning, landfarming, allowing seepage, or causing or allowing any such act of disposal of any oil field fluid, oil and gas waste, or other substance or material subject to regulation by the Commission.

(31) Disposal pit--A pit used for the permanent storage of oil and gas waste.

~~**(33) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.**~~

(32) District Director--The Director of the Commission district where the management, disposal, or recycling of oil and gas wastes is located or the District Director's delegate.

(33) District Office--The Commission District Office in the Commission district where the waste management, disposal, and/or recycling is located.

(34) Drill cuttings--Bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling an oil or gas well **or other wells within the Commission's jurisdiction** and lifted to the surface by means of the circulation of drilling mud. The term includes any associated sand, silt, drilling fluid, spent completion fluid, workover fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the wellbore.

(35) Drilling fluid--Any of a number of liquid and gaseous fluids and mixtures of fluids and solids (as solid suspensions, mixtures and emulsions of liquids, gases and solids) used in operations to drill boreholes into the earth.

(36) Electrical conductivity--A numerical expression of the ability of a material to carry a current, normally expressed in millimhos/centimeter (the reciprocal of resistivity). It is frequently used to estimate salinity in terms of total dissolved solids. In soil analysis, electrical conductivity may be used as one measure to evaluate a soil's ability to sustain plant growth.

(37) Environmental Protection Agency (EPA)--The United States Environmental Protection Agency.

(38) Facility--A site that shares a common area, common access, and a common purpose where oil field fluids or oil and gas wastes are managed. It may include one or more waste management units, may include permitted or authorized activities, and may be designated as either commercial or non-commercial.

(39) Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(40) Freeboard--The vertical distance between the top of a pit or berm and the highest point of the contents of the pit or berm.

~~**(41) Fresh makeup water pit--A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of fresh water used to make up drilling fluid or completion fluid.**~~

~~**(42) Fresh water--The best quality of the surface or subsurface water, at any individual operational location, available for domestic or agricultural use within a one-mile radius of the location, or 3,000 milligrams per liter of total dissolved solids, whichever is less.**~~

(41) Fresh mining water pit--A pit used in conjunction with a brine mining injection well for storage of fresh water used for solution mining of brine.

(42) Generator--A person that generates oil and gas wastes.

(43) Geomembrane--An ~~**effectively**~~ impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(44) Geotextile--A sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes, or to provide structural support.

(45) Groundwater--Subsurface water in a zone of saturation.

(46) Hydrocarbon condensate--Hydrocarbon liquids that condense from a natural gas stream.

(47) Inert oil and gas waste--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, synthetic liners, fiberglass, soil, dirt, clay, sand, gravel, brick, and trash. The term excludes asbestos or asbestos-containing waste, and oil and gas naturally occurring radioactive material (NORM) waste.

(48) Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(49) Land application--**A method for the permanent disposition of low-chloride aqueous oil and gas waste by which the liquid waste is applied directly to the ground surface in a controlled manner** ~~**An authorized or permitted waste management practice in which effluent that does not meet the standards found in the figure in §4.111(a) of this title (relating to Authorized Disposal Methods for Certain Wastes) and is a low-chloride produced water may be applied to a controlled area of the ground surface**~~ via sprinkler or other irrigation systems without tilling or mixing with the native soils **and without runoff to surface water or infiltration to groundwater**.

(50) Landfarming--An authorized or permitted waste management practice in which low chloride, water-based drilling fluids, or oil and gas wastes are mixed with, or tilled into, the native soils in such a manner that the waste will not migrate from the authorized or permitted landfarming cell.

(51) Landfarming cell--The bermed area into which oil and gas waste is applied to the land and includes landfarming and landtreatment cells.

(52) Landtreating--An authorized or permitted waste management practice in which oil-based drilling fluids, oil impacted soils, and oil and gas wastes are mixed with or tilled into the native soil

to degrade oil, grease, or other organic wastes **through biological processes and** in such a manner that the waste will not migrate from the authorized or permitted landtreatment cell.

(53) Leak detection system--A system used to detect leaks below the liner of pits.

(54) Liner--A continuous layer of impervious materials, synthetic or natural, beneath and on the sides of a pit that restricts or prevents the downward or lateral release or migration of oilfield fluids or oil and gas wastes.

(55) Makeup water pit--A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of water used to make up drilling fluid or completion fluid.

(56) Manage or management of oil and gas waste--The receiving, handling, storage, treatment, processing, transportation, reclamation, recycling, and/or disposal of oil and gas wastes.

(57) Manifest--An electronic or paper document used to track shipments of oil and gas waste that is authenticated by all parties (the generator, carrier, and receiver) in the transfer of oil and gas waste, and contains information on the waste type, source, quantity, and instructions for handling.

(58) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.

(59) Mud circulation pit--A pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.

(60) Natural gas or natural gas liquids processing plant--A plant whose primary function is the extraction of natural gas liquids from field gas, the fractionation of natural gas liquids, and the production of pipeline-quality gas for transportation by a natural gas transmission pipeline. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall be considered a component of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids.

(61) Naturally occurring radioactive material (NORM)--Naturally occurring materials not regulated under the Atomic Energy Act whose radionuclide concentrations have been increased by or as a result of human practices. NORM does not include the natural radioactivity of rocks or soils, or background radiation, but instead refers to materials whose radioactivity is concentrated by controllable practices (or by past human practices). NORM does not include source, byproduct, or special nuclear material.

(62) Non-commercial facility--A facility authorized or permitted under this chapter that is not a commercial facility as defined in paragraph (21) of this section.

(63) Non-contact stormwater--Stormwater that, by design or direction, has not come into contact with any ~~**areas containing**~~ oil or gas wastes **and is not otherwise designated as contact stormwater pursuant to §4.110(24)** ~~or any areas permitted to contain oil and gas wastes~~. See also "Contact stormwater" and "Stormwater."

(64) Oil and gas NORM waste--Any solid, liquid, or gaseous material or combination of materials (excluding source material, special nuclear material, and by-product material) that in its natural physical state spontaneously emits radiation, is discarded or unwanted, constitutes, is contained in, or has contaminated oil and gas waste, and prior to treatment or processing that reduces the radioactivity concentration, exceeds exemption criteria specified in 25 Texas Administrative Code §289.259(d) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

(65) Oil and gas wastes--As defined in Texas Natural Resources Code §91.1011, the term:

(A) means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(i) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas Natural Resources Code §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(B) includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material; but

(C) does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(66) Oil field fluids--Fluid used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and other chemicals used in association with oil and gas activities, but does not include produced oil, condensate, gas, or water that is not oil and gas waste. Oil field fluids no longer used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, and oil field fluids that have been abandoned, are considered an oil and gas waste.

(67) Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the Commission's rules and regulations in any acts subject to the Commission's jurisdiction **~~including the permitting, physical operation, closure, and post-closure activities of a facility regulated under this chapter, or such person's authorized representative~~**.

(68) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.

(69) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(70) Pit--A container for which earthen materials provide structure, shape, and foundation support. A container that includes a concrete floor or sidewall is a pit. A tank, as defined in paragraph (89) of this section, is not a pit.

(71) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(72) Primary containment--Measures put into place to confine, control, and secure a material to a defined space. See also "Container."

(73) Produced water--The water that was present in a subsurface formation and was brought to the surface during oil and gas exploration and production activities.

(74) Produced water recycling--The recycling of produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities.

~~**(75) Produced water recycling facility--A facility at which produced water recycling activities are conducted. The facility may include one or more produced water recycling pits and ancillary equipment including tanks, piping, treatment systems, and other equipment that are used for produced water recycling.**~~

(75) Produced water recycling pit--An authorized pit used to manage produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities ~~**being recycled and treated fluids**~~.

(76) Public area--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.

(77) Public water system--A source of potable water for the public's use that has at least 15 service connections or serves at least 25 individuals for at least 60 days out of the year. This includes people that live in houses served by a system, but can also include employees, customers, or students.

(78) Pressure maintenance plant or repressurizing plant--A plant for processing natural gas for reinjection for reservoir pressure maintenance or repressurizing in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(79) Receiver--A person who manages oil and gas waste that is received from a generator**, another receiver,** or carrier. A receiver of another operator's oil and gas wastes may be a generator of its own oil and gas wastes.

(80) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by **the** ~~a~~ Commission ~~permit~~ and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

(81) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use. This term also includes the actual use or re-use of oil and gas wastes. For the purpose of this chapter, the term "recycle" does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(82) Reserve pit--A pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

(83) Secondary containment--Measures put into place to contain spills and prevent them from contaminating the surrounding area, such as dikes, berms, or other barriers. **See also "Container" and "Primary containment."**

(84) Sensitive area--An area defined by the presence of factors, whether one or more, that make it vulnerable to pollution from oil and gas surface waste management activities. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, water wells, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas.

(85) Solid oil and gas waste--Oil and gas waste that is determined not to contain "free liquids" as defined by EPA Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(86) Storage or storing--The keeping, holding, accumulating, or aggregating of oil and gas waste for a temporary or indeterminate period.

(87) Stormwater--Water that falls onto and flows over the ground surface and does not infiltrate into the soil. See also "Contact stormwater" and "Non-contact stormwater."

(88) Surface and subsurface water--Groundwater, percolating, perched or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(89) Tank--A rigid, non-concrete, non-earthen container that provides its own structure and shape.

(90) TCEQ--The Texas Commission on Environmental Quality or its successor agencies.

(91) Technical Permitting Section or Technical Permitting--The Technical Permitting Section within the Oil and Gas Division of the Railroad Commission of Texas, located in Austin, Texas.

(92) Treated fluid--Fluid oil and gas waste that has been treated to remove impurities such that the fluid can be reused or recycled. Treated fluid that is abandoned or disposed of is classified as an oil and gas waste. Once treated fluid is reused or recycled, it is not classified as an oil and gas waste.

(93) Unified Soil Classification System--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(94) Waste management unit--A container, structure, pad, cell, or area in or on which oil and gas wastes are managed.

(95) Water condensate pit--A pit used for storage or disposal of water condensed from natural gas.

(96) Wetland--An area including a swamp, marsh, bog, prairie pothole, or similar area having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland for which construction or creation commenced on or after August 28, 1989, and which was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation which has been approved or requested by soil and water conservation districts (Texas Water Code §11.502.).

DIVISION 3. OPERATIONS AUTHORIZED BY RULE

§4.111. Authorized Disposal Methods for Certain Wastes.

(a) Water condensate. A person may, without a permit, dispose of by land application water which has been condensed from natural gas and collected at gas pipeline drip stations or gas compressor stations. The disposal is authorized provided:

(1) the disposal is not a discharge to surface water and the waste will not reach surface water;

(2) prior to each land application event, representative samples are collected and analyzed for the list of parameters in the figure in this subsection;

(3) analytical methods used are documented and all parameters are in mg/liter unless otherwise specified;

(4) analyte concentrations do not exceed the concentration limits listed in the figure in this subsection;

(5) the water condensate is applied to the ground surface in such a manner that it will not leave the boundaries of the property; and

(6) the area where the water condensate will be land applied is at least 500 feet from a public water system well or intake, and 300 feet from any surface water or residential or irrigation water supply well.

Figure: 16 TAC §4111(a)(6)

(b) Inert oil and gas wastes. A person may, without a permit, dispose of inert oil and gas wastes on the property on which the waste was generated provided disposal is by a method other than:

(1) disposal into surface water; or

(2) a method that may present other health and safety hazards such as burning.

(c) Low chloride water-based drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming: water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; drill cuttings, sands, and silts obtained while using water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site. The disposal is authorized in accordance with the following:

(1) the waste is landfarmed on the same lease or unit, easement, or right-of-way where it was generated;

(2) the person has obtained written permission to landfarm the waste from the surface owner of the area to be landfarmed;

(3) the slope of the area to be landfarmed is three percent or less, or any greater slope is approved in writing by the District Director;

(4) the area where the waste will be landfarmed is at least 500 feet from a public water system well or intake, 300 feet from any surface water or other types of wells, and in an area with subsurface water at depths of more than 100 feet below land surface;

(5) any accumulation of hydrocarbons on top of the waste to be landfarmed is removed from the waste prior to spreading;

(6) the waste to be landfarmed has a pH of not less than six nor more than nine standard units;

(7) the waste is spread evenly and in a manner that will not result in a depth of greater than six inches of solids or six inches of fluids (six inches over an acre = 5,172 barrels/acre);

(8) the waste is spread in a manner that will not result in pooling, ponding, or runoff of the waste and the waste is then disked into the soil as necessary to distribute the waste within the soil;

(9) immediately after landfarming the waste, the waste-soil mixture has an electrical conductivity that does not exceed the background level for undisturbed soil established before landfarm activities commenced or four millimhos/centimeter, whichever is greater; and

(10) immediately after landfarming the waste, the waste-soil mixture has a total petroleum hydrocarbon content of one percent or less by weight when sampled using EPA SW-846 418.1 or equivalent.

(d) Other oil and gas wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a reserve pit or a completion/workover pit: solids from dewatered drilling mud and fluids generated during well drilling, completion, and workover activities, including drill cuttings, sand, silt, paraffin, and debris. The disposal is authorized provided:

(1) the wastes are disposed of at the same well site where they are generated;

(2) the wastes are dewatered;

(3) the burial complies with the closure requirements for authorized pits pursuant to §4.114 of this title (relating to Schedule A Authorized Pits); and

(4) the operator maintains documentation demonstrating closure requirements have been met. The operator shall maintain these records for at least three years from the date of closure and provide copies of these records to the Commission upon request.

§4.112. Authorized Recycling.

(a) Produced water recycling is authorized if:

(1) ~~**treated fluid**~~ **produced water** is recycled for use in drilling operations, completion operations, hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well;

(2) produced water recycling pits are operated in accordance with §4.113 and §4.115 of this title (relating to Authorized Pits, and Schedule B Authorized Pits); and

(3) recycling is limited to oil and gas waste; commingling of treated oil and gas waste with other treated fluid from sources outside of the Commission's jurisdiction may only be authorized at the Director's discretion.

(b) Treated fluid may be reused in any other manner without a permit from the Commission provided the reuse occurs pursuant to a permit issued by another state or federal agency.

(c) Fluid that meets the requirements of subsection (a) or (b) of this section is a recyclable product.

§4.113. Authorized Pits.

(a) An operator may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, ~~**fresh**~~ makeup water pits, fresh mining water pits, ~~**and**~~ water condensate pits**, and produced water recycling pits** if the pit complies with this division.

(b) Unless otherwise approved by the District Director after a showing that the contents of the pit will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in §4.110 of this title (relating to Definitions). The operator may request a hearing if the District Director denies approval of the request to construct an authorized pit within a 100-year flood plain.

(c) An authorized pit that was constructed pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025, is authorized to continue to operate subject to the following:

(1) Authorized pits that cause pollution shall be brought into compliance with or closed according to this division.

(2) By July 1, 2026, basic sediment pits, flare pits, and other unpermitted pits not authorized by this section shall be:

(A) permitted according to this subchapter; or

(B) closed according to this division.

(3) By January 1, 2026, an operator of a non-commercial fluid recycling pit shall:

(A) register the pit as a produced water recycling pit according to subsection (e) of this section and file the required financial security according to §4.115 of this tile (relating to Schedule B Authorized Pits); or

(B) close the pit according to this division.

(4) At the time of closure, authorized pits shall be closed according to this division.

(d) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit authorized by this section, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours of discovery of the release.

(e) The operator shall register all authorized pits with the Commission.

(1) The Director shall establish a registration system for authorized pits by July 1, 2025.

(A) New authorized pits constructed after July 1, 2025 shall register by mailing or emailing to Technical Permitting the registration form established by the Commission.

(B) By July 1, 2027, the Director will establish an online system for operators to register and for the Commission to maintain a record of authorized pits.

(C) The operator of an authorized pit shall register the pit using the online registration system once it is established by the Director.

(2) New pits shall be registered prior to operation of the pit.

(3) Authorized pits existing on July 1, 2025, shall be registered or closed within one year.

(4) Authorized pit registration shall include:

(A) the type of pit;

(B) the location of the pit including the lease name and number, drilling permit number or other Commission-issued identifier, and the latitude and longitude coordinates using the 1983 North American Datum (NAD);

(C) the pit dimensions and capacity in barrels;

(D) the expected depth to groundwater from the bottom of the pit; and

(E) for produced water recycling pits, the financial security required by §4.115 of this title.

(5) 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.

§4.114. Schedule A Authorized Pits.

~~**Schedule A authorized pits include**~~ **R**eserve pits, mud circulation pits, completion/workover pits, ~~**freshwater**~~ makeup **water** pits, fresh mining water pits, and water condensate pits **are Schedule A authorized pits**.

(1) Schedule A pit contents.

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes other than the following:

(i) drilling fluids that are freshwater base, saltwater base, or oil base;

(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;

(iii) wash water used for cleaning drill pipe and other equipment at the well site;

(iv) drill stem test fluids; and

(v) blowout preventer test fluids.

(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent

completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed**,** ~~**or**~~ worked over, **or plugged**.

(C) ~~**Fresh**~~ **M**akeup water pits. 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 used to make up drilling fluid or hydraulic fracturing fluid. **Produced water shall not be placed in a makeup water pit.**

(D) Fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.

(E) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.

(2) Schedule A pit construction.

(A) All pits shall be designed, constructed, and maintained to prevent any migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water at any time during the life of the pit.

(B) **Any authorized pit that contains fluid with more than 3,000 mg/liter of total dissolved solids, or any authorized pit** ~~**Reserve pits, mud circulation pits, and completion/workover pits**~~ located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined.

(i) All liners shall have a hydraulic conductivity that is 1.0 x 10-7 cm/sec or less.

(ii) A liner may be constructed of either natural or synthetic materials.

(3) Schedule A pit closure. **A person who maintains or uses a reserve pit, mud circulation pit, makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall ensure closure activities do not increase the potential for pollution.**

(A) **Schedule A pits** ~~A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit~~ **shall be** dewater**ed**, backfill**ed**, and compact**ed** ~~**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 drilling operations.

(ii) Reserve pits, ~~and~~ 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 and compacted within one year of cessation of drilling operations.

(iii) All completion/workover pits used when completing a well shall be dewatered within 30 days of well completion and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days of completion of workover operations and backfilled and compacted within 120 days of completion of workover operations.

(iv) Fresh mining water pits and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pit.

(v) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section shall be dewatered.

(B) A person who maintains or uses a reserve pit, mud circulation pit, **~~fresh~~** makeup water pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by subparagraph (A) of this paragraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.

(C) The Director may require that a person who uses or maintains a reserve pit, mud circulation pit, **~~fresh~~** makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit dewater and backfill the pit sooner than the time prescribed by subparagraph (A) of this paragraph if the Director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

(D) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, or water condensate pit authorized by this paragraph, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes), dispose of all oil and gas wastes which are in the pit.

§4.115. Schedule B Authorized Pits.

(a) Schedule B authorized pits. A produced water recycling pit is a Schedule B authorized pit.

(b) A produced water recycling pit may be located on a tract of land that is not on an oil and gas lease operated by the operator of the produced water recycling pit.

(c) 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) For each produced water recycling pit an operator shall file financial security in one of the following forms:

(A) a blanket performance bond; or

(B) a letter of credit or cash deposit in the same amount as required for a blanket performance bond.

(3) An operator required to file financial security under paragraph (1) of this subsection shall file one of the following types and amounts of financial security.

(A) A person operating five or less pits may file a performance bond, letter of credit, or cash deposit in an amount equal to $1.00 per barrel of total pit capacity.

(B) A person operating more than five pits may file a performance bond, letter of credit, or cash deposit in an amount equal to:

(i) the greater of $1.00 per barrel of water for ten percent of an operator's total produced water recycling pit capacity or $1,000,000; or

(ii) $200,000 per pit, capped at $5,000,000.

(4) The operator shall submit required financial security at the time the operator registers the produced water recycling pit.

(5) The operator shall submit bonds and letters of credit on forms prescribed by the Commission.

(**d**) Non-commercial fluid recycling pits authorized prior to July 1, 2025. Non-commercial fluid recycling pits that were authorized pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025 are authorized as produced water recycling pits under this section, provided the operator registers the pit and files the required financial **security** ~~assurance~~ by January 1, 2026.

(**e**) Produced water recycling pit contents. A person shall not deposit or cause to be deposited into a produced water recycling pit any oil field fluids or oil and gas wastes other than those fluids described in §4.110(**75**) of this title (relating to Definitions) and any fluids authorized by the Director pursuant to §4.112(a)(3) of this title (relating to Authorized Recycling).

(**f**) General location requirements for produced water recycling pits. No produced water recycling pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations **or any other process** for which the pit is authorized;

(5) within a 100-year flood plain; or

(6) within 500 feet of a public area.

(**g**) General design and construction requirements for produced water recycling pits. All produced water recycling pits shall comply with the following requirements.

(1) The operator shall design and construct a produced water recycling pit to ensure the confinement of fluids to prevent releases.

(2) A produced water recycling pit shall be large enough to ensure adequate storage capacity of the volume of material to be managed and to maintain two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) A produced water recycling pit shall be designed and constructed to prevent non-contact stormwater runoff from entering the pit. A berm, ditch, proper sloping, or other diversion shall surround a produced water recycling pit to prevent run-on of any surface waters including precipitation.

(4) A produced water recycling pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. The operator shall construct a produced water recycling pit so that the slopes are no steeper than three horizontal feet to one vertical foot (3H:1V). The District Director may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the produced water recycling pit in a safe manner to prevent **pollution** ~~**contamination**~~ of ~~**fresh**~~ **surface and subsurface** water and protect public health, public safety, and the environment.

(5) Produced water recycling pits shall be lined.

(A) The liner shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the produced water recycling pit due to pressure gradients (including static head and external hydrogeologic forces), physical contact with material in the pit or other materials to which the liner may be expected to be exposed, climatic conditions, stress of installation, and use.

(B) All of the pit shall be lined, including the dike or berm, and the liner shall be properly anchored or keyed into the native substrate to prevent erosion or washout of the dike, berm, or liner.

(C) A liner may be constructed of either natural or synthetic materials.

(D) A liner constructed of natural materials shall meet the following requirements:

(i) A natural liner shall only be used for a produced water recycling pit with an active life of less than one year.

(ii) A natural liner shall be constructed of a minimum of two feet of compacted fat clay, placed in continuous six-inch lifts compacted to a 95% standard proctor as defined in ASTM D698 and having a hydraulic conductivity of 1.0 x 10 7 cm/sec or less. Where natural liner materials are used, the operator shall perform appropriate testing to ensure compliance with these requirements and shall maintain copies of the test results for the life of the pit.

(iii) A produced water recycling pit with a natural liner shall not be used for waste disposal pursuant to §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes) unless the pit also has a synthetic liner.

(E) A synthetic liner shall meet the following requirements:

(i) A synthetic liner shall be placed upon a firm, unyielding foundation or base capable of providing support to the liner, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear.

(ii) A synthetic liner shall be underlain by a geotextile where needed to reduce localized stress, strain, or protuberances that may otherwise compromise the liner's integrity.

(iii) A synthetic liner shall be made of an impermeable geomembrane capable of resisting pressure gradients above and below the liner to prevent failure of the liner.

(iv) A synthetic liner shall have a breaking strength of 40 pounds per inch using test method ASTM D882.

(v) A synthetic liner shall have a puncture resistance of at least 15 pounds force using test method ASTM D4833.

(vi) The length of synthetic liner seams shall be minimized, and the seams shall be oriented up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams. A synthetic liner shall have a seam strength, if applicable, of at least 15 pounds per inch using test method ASTM D751 or ASTM D6392.

(**h**) General operating requirements for produced water recycling pits. All produced water recycling pits shall be operated in accordance with the following requirements.

(1) Freeboard of at least two feet plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event shall always be maintained in produced water recycling pits.

(2) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(3) Operators shall establish an inspection program to ensure compliance with the applicable provisions of this section taking into consideration the nature of the pit and frequency of use.

(4) If the operator does not propose to empty the produced water recycling pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system shall be monitored **monthly** ~~**daily**~~ to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

(5) The operator of a produced water recycling pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(6) Free oil shall not be allowed to accumulate on or in a produced water recycling pit.

(**i**) General closure requirements for produced water recycling pits. All produced water recycling pits shall comply with the following closure requirements.

(1) Prior to closure of the pit, the operator shall dewater the pit.

(2) Prior to closure of the pit, all waste shall be removed from the pit unless the requirements of subsection **(k)** of this section are met.

(**j**) Closure requirements for produced water recycling pits if all waste is removed for disposal.

(1) The contents of the pit, including synthetic liners, if applicable, shall be removed for disposal at an authorized or permitted waste facility.

(2) The operator shall verify whether oil and gas waste has migrated beyond the pit floor and sidewalls.

(3) The operator shall collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample.

(A) The samples shall be analyzed for the constituents and using the methods identified in the figure in this subsection to determine whether the constituent concentrations exceed the limit in the figure or background concentrations.

(B) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the constituents listed in the figure in this subsection.

(C) If the concentration of the constituents exceeds the limits in the figure in this subsection or the concentrations determined from background sampling and analysis, the operator shall notify the District Director within 24 hours of discovery of the constituent exceedance.

(i) The District Director may refer the matter to the Site Remediation Unit in Austin.

(ii) The operator shall follow instructions provided by the District Director or Site Remediation regarding further investigation, remediation, monitoring, closure, and reporting.

(D) If the concentration of the constituents does not exceed the limits in the figure in this subsection or background concentrations, the operator shall proceed with closure.

(i) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(ii) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(iii) The operator shall mound or slope the former pit site to encourage runoff and discourage ponding.

(iv) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(E) The operator shall notify the District Director a minimum of seven days prior to closure of the produced water recycling pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.

Figure: 16 TAC §4.115(**j**)(3)(E)

(**k**) Closure requirements for produced water recycling pits if waste will be buried in place pursuant to §4.111 of this title.

(1) The operator shall ensure that any oil and gas waste, including synthetic liners, that will be disposed of in the pit as authorized by §4.111 of this title is buried in a manner such that the waste will remain below the natural ground surface and be confined to the original dimensions of the pit.

(2) The operator shall determine the suitability of the waste material or mixture for disposal in the pit.

(A) The operator shall collect one five-point composite waste material or mixture sample for each acre of pit surface area. A fraction of an acre of pit surface area will require a composite sample.

(B) The samples shall be analyzed for the constituents and using the methods identified in the figure in this subsection to determine whether the constituent concentrations are below the limit in the figure or background concentrations.

(C) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the constituents listed in the figure in this subsection.

(3) Waste material that meets the constituent limits in the figure in subsection (**j**) of this section or background concentrations may be buried in the pit without additional disposal considerations.

(4) Untreated waste material that does not meet the constituent limits in the figure in subsection (**j**) of this section may be buried by containment in a pit if:

(A) the pit has a double liner with a leak detection system or has a single liner for which the operator demonstrates the liner is intact and maintains the liner intact;

(B) the waste material is covered with a geonet to support the overburden fill material; and

(C) the pit is backfilled, sufficiently compacted, and contoured to prevent water infiltration into the waste zone.

(5) Treated waste material that meets the constituent limits in the figure in this subsection based on the distance from the bottom of the pit to the shallowest groundwater may be buried in the pit. Liners in the pit may be removed from the pit or disposed of in the pit upon closure.

(6) The operator shall proceed with closure as follows:

(A) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(B) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(C) The operator shall mound or slope the burial pit site to encourage runoff and discourage ponding.

(D) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(7) The operator shall notify the District Director a minimum of seven days prior to closure of the produced water recycling pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.

(8) The Commission may require the operator to close a produced water recycling pit in a manner other than the manner described in this section if it determines that oil and gas wastes or oil field fluids are likely to escape from the pit, that oil and gas wastes or oil field fluids may cause or are causing pollution, and/or that the pit is being used in a manner inconsistent with Commission rules.

Figure: 16 TAC §4.115**(k)**(8)

(9) If groundwater monitoring wells are required pursuant to subsection (l) of this section, then groundwater monitoring shall continue on the same terms for at least five years after the produced water recycling pit has been closed.

(l) Groundwater monitoring requirements for Schedule B authorized pits.

(1) For all Schedule B authorized pits, the operator shall evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The operator shall review readily available public information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The presence of a water well within a one-mile radius of the pit that produced or produces water from a depth of 100 feet or less indicates groundwater is likely to be present within 100 feet of the ground surface. If the operator cannot determine whether groundwater is likely to be present within 100 feet of the ground surface based on a review of readily available public information, the operator shall obtain location-specific subsurface information to establish the presence or absence of groundwater within 100 feet of the ground surface.

(2) Operators of Schedule B authorized pits located in areas where groundwater is not likely to be present within 100 feet of the ground surface are not required to perform groundwater monitoring.

(3) Operators of Schedule B authorized pits located in areas where groundwater is likely to be present within 100 feet of the ground surface are required to perform groundwater monitoring in accordance with paragraph (4) of this subsection unless:

(A) the pit has a double synthetic liner with an operational leak detection system; or

(B) the pit has a liner and an active life of less than one year.

(4) When groundwater monitoring is required under this subsection, the operator shall install at least three groundwater monitoring wells, at least two of which are installed in a hydrologic downgradient location relative to the pit and at least one of which is installed in an upgradient location relative to the pit.

(5) The following is required for each soil boring or groundwater monitoring well drilled.

(A) The drilling method shall allow for periodic or continuous collection of soil samples for field screening and soil characterization in order to adequately characterize site stratigraphy and groundwater bearing zones.

(B) The groundwater monitoring wells shall be completed by a certified water well driller in accordance with 16 TAC Part 4, Chapter 76 (Water Well Drillers and Water Well Pump Installers).

(C) The groundwater monitoring wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

(D) The screened interval of the groundwater monitoring wells shall be designed to intercept at least five feet of groundwater.

(E) The groundwater monitoring well screen shall extend above the static water level.

(F) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(G) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(H) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(I) The groundwater monitoring wells shall be able to provide a sample that is representative of the groundwater underlying the site for the duration of pit operations.

(J) The operator shall retain the following information for three years after the monitoring wells are plugged:

(i) a soil boring lithological log for the well, with the soils described using the Unified Soil Classification System (USCS) (equivalent to ASTM D 2487 and ASTM D 2488); the method of drilling; well specifications; slotted screen type and slot size; riser and screen length;

bentonite and cement intervals; total depth; and the depth of the first encountered groundwater or saturated soils;

(ii) a well installation diagram, detailing construction specifications for each well;

(iii) a survey elevation for each well head reference point to the top of the casing relative to a real or arbitrary on-site benchmark or relative to mean sea level;

(iv) a table with recorded depth to water, depth to top of casing, and adjusted depth to water data;

(v) an updated Site Plan and a potentiometric surface map showing static water levels, the calculated gradient, and the estimated direction of groundwater flow; and

(vi) the laboratory analytical reports and the corresponding chain of custody from each groundwater sampling event.

(6) The operator shall sample the wells after installation of the wells is complete and shall then sample the wells on a quarterly schedule.

(7) The wells shall be monitored and/or sampled for the following parameters: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(8) If any of the parameters identified in paragraph (7) of this subsection indicate ~~**potential**~~ pollution:

(A) the operator shall notify the District Director by phone or email within 24 hours of receiving the analytical results; and

(B) the District Director will determine whether additional remediation, monitoring, or other actions are required.

(m) Transfers. To transfer a Schedule B authorized pit, the new operator of the pit shall:

(1) file a registration with the Commission 30 days in advance of the effective date of the transfer; and

(2) submit the financial security required by this section by the effective date of the transfer.

DIVISION 4. REQUIREMENTS FOR ALL PERMITTED WASTE MANAGEMENT OPERATIONS

§4.120. General Requirements for All Permitted Operations.

(a) A waste management activity **or facility** that is not authorized ~~by~~ **under Division 3 of** this subchapter shall require a permit.

(b) If an activity or facility requires a permit, then all waste management units associated with the activity or facility, including pits authorized by sections §4.113, §4.114, or §4.115 of this title (relating to Authorized Pits, Schedule A Authorized Pits, and Schedule B Authorized Pits) must be included in the permit. Authorized activities require a permit if associated with a permitted activity or facility.

(**c**) The Commission may issue a permit to manage oil and gas wastes only if the Commission determines that the activity will not result in the endangerment of human health or the environment, the waste of oil, gas, or geothermal resources, or pollution of surface or subsurface water.

(**d**) This division establishes the permit requirements applicable to all permitted waste management operations. Any person engaged in waste management authorized by permit shall comply with the requirements in this division.

(**e**) A person applying for or acting under a Commission permit to manage oil and gas waste may be required to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the management facility in accordance with state law, Commission rules, and the permit to operate the facility.

(**f**) In addition to the requirements in this division, any person engaged in the following waste management operations shall comply with the requirements of the following, as applicable.

(1) Requirements applicable to commercial facilities are found in Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(2) Requirements applicable to permitted pits are found in Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(3) Requirements applicable to landfarming and landtreating are found in Division 7 of this subchapter (relating to Additional Requirements for Landfarming and Landtreating).

(4) Requirements for reclamation operations are found in Division 8 of this subchapter (relating to Additional Requirements for Reclamation Plants).

(5) Miscellaneous permit requirements applicable to emergency permits, minor permits, and all other activities not otherwise authorized or addressed in this subchapter are found in Division 9 of this subchapter (relating to Miscellaneous Permits).

(6) Requirements applicable to oil and gas waste characterization, documentation, manifests, and transportation are found in Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(**g**) With regard to permits issued pursuant to Divisions 4 through 9 of this subchapter, the Director may impose additional permit conditions necessary to protect human health and the environment,

to prevent the waste of oil, gas, or geothermal resources, or to prevent pollution of surface or subsurface water.

§4.121. Permit Term.

(a) Unless otherwise provided, a permit issued pursuant to Divisions 4 through 9 of this subchapter shall be valid for a term of not more than five years.

(b) Any permit issued by the Commission under §3.8 of this title (relating to Water Protection) prior to July 1, 2025 shall remain in effect until it expires on its own terms, is renewed pursuant to the requirements of this subchapter, or is modified, suspended, or terminated by the Commission pursuant to §4.123 of this title (relating to Permit Modification, Suspension, and Termination).

(c) A permit shall remain in effect while a renewal application that was filed in a timely manner is pending review and evaluation by the Commission.

§4.122. Permit Renewals, Transfers, and Amendments.

(a) Compliance with rules in effect at the time of permit renewals, transfers, or amendments. To ensure compliance with the rules in effect at the time of a request to renew, transfer, or amend a permit, the Commission may review and revise permit conditions when it receives the request. When transitioning permits that were issued under §3.8 of this title (relating to Water Protection) prior to July 1, 2025 into permits that are issued under this subchapter, the Commission:

(1) will not require the operator to relocate existing permitted waste management units to conform to new siting requirements;

(2) will not require the operator to retrofit existing waste management units to conform to new standards if those waste management units are constructed and operating in compliance with their current permits;

(3) may require the operator to add to or improve the groundwater water monitoring systems at existing facilities; and

(4) may require the operator to combine all waste management units at a facility under one permit.

(b) Permit renewal. Permits issued pursuant to this subchapter may be renewed in accordance with the following requirements.

(1) The permittee shall file an application for a renewal permit at least 60 days before the expiration date specified in the permit. Bundling permit renewals with transfers and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements), the permittee shall file an updated closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter (relating to Oil and Gas NORM). The permittee shall conduct a NORM survey before the renewal is approved if a NORM survey has not been conducted within the last five years.

(3) Permit renewal applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest).

(4) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the renewal.

(5) The permit shall not be renewed unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(6) Permit renewals will be issued for a maximum of five years from the date of issuance.

(c) Permit transfer. Permits issued pursuant to this subchapter may be transferred in accordance with the following requirements.

(1) A permittee may request to transfer a permit to a new operator by notifying the Director in writing at least 60 days before the transfer takes place. Bundling permit transfers with renewals and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title, the transferee shall file a new closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter. The transferee shall conduct a NORM survey before the transfer is approved if a NORM survey has not been conducted within the last five years. The transferee shall file the required financial security in the approved amount with the Commission before the permit is transferred.

(3) If the proposed transferee operator does not own the surface property, the transferee operator shall provide evidence of the proposed transferee's authority to operate the facility in accordance with §4.126(b) of this title (relating to Location and Real Property Information).

(4) A request to transfer a commercial permit associated with a Form P-4 (Certificate of Compliance and Transportation Authority) shall be submitted on Form P-4. A request to transfer a commercial permit not associated with a Form P-4 shall be submitted in writing to the Director.

(5) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the transfer.

(6) The permit shall not be transferred unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(7) Permit transfers will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit amendment and/or permit renewal.

(d) Permit amendment. Permits issued pursuant to this subchapter may be amended in accordance with the following requirements.

(1) A permit amendment is required before a permittee may conduct any activities other than those activities specifically authorized by the permit.

(2) The permittee shall file an application for amendment at least 90 days before the proposed new operations are scheduled to commence. Bundling permit amendments with transfers and/or renewals is encouraged. The application shall include the following information as applicable.

(A) For pit permit amendments that change the pit construction, dimensions, or capacity, the permittee shall submit appropriate diagrams, cross-sections, and other supporting information.

(B) For any permit required to file financial security in accordance with §3.78 of this title, if the amendments to the permit would increase the cost of closure, the permittee shall submit an updated closure cost estimate.

(C) Permit amendment applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest). However, the Director may reduce or waive notice requirements for amendments that reflect minimal impact to facility operations, waste management volumes, closure cost estimates, or potential for pollution to surface or subsurface waters. The Director shall establish criteria for a determination of minimal impact and the criteria shall be published on the Commission's website and in appropriate guidance documents.

(D) The Director may request any additional information reasonably necessary to prevent pollution.

(3) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the amendment.

(4) The permit amendment shall not be approved unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(5) Permit amendments will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit transfer and/or permit renewal.

§4.123. Permit Modification, Suspension, and Termination.

(a) A permit issued pursuant to this subchapter, or a permit issued pursuant to §3.8 of this title (relating to Water Protection) before July 1, 2025, may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing.

(b) A finding of any of the following facts shall constitute good cause:

(1) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(3) continued operation of the facility presents an imminent danger to human health or property;

(4) the permittee has violated the terms and conditions of the permit or Commission rules;

(5) the permittee misrepresented any material fact during the permit issuance process;

(6) a material change of conditions has occurred in the permitted operations;

(7) the information provided in the application has changed materially; or

(8) the permittee failed to give the notice required by the Commission during the permit issuance, amendment, or renewal process.

§4.124. Requirements Applicable to All Permit Applications and Reports.

(a) Unless otherwise specified by rule, a permit application shall be filed with the Technical Permitting Section. The application shall be filed by mail, hand delivery, or by an electronic process approved by the Director. A permit application shall be considered filed with the Commission on the day it is date-stamped by the Commission's office in Austin.

(b) The permit application shall contain information addressing each applicable application requirement and all information necessary to initiate the final review by the Technical Permitting Section, including all information required by this division and the applicable provisions of Divisions 5 through 9 of this subchapter, as described in §4.120 of this title (relating to General Requirements for All Permitted Operations).

(c) When a Commission prescribed application form exists, either in paper or electronic form, an applicant shall apply on the prescribed form according to the form instructions. When a Commission prescribed application form does not exist, the permit application shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my

supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) The permit application shall contain the following information for the applicant:

(1) the applicant's organization name;

(2) the applicant's organization report (P-5) number;

(3) the applicant's physical address, and mailing address if different;

(4) the name, telephone number, and email address of a contact person for the application, which can be someone within the applicant's organization or an agent;

(5) the identifying name of the proposed facility; and

(6) a general narrative description of the proposed management of oil and gas wastes at the facility.

(e) The technical data in the permit application shall comply with the following requirements.

(1) All geographic coordinates submitted to the Technical Permitting Section shall use the North American Datum (NAD) 83, in decimal degrees to six decimal places of longitude and latitude.

(2) All maps, plans, and diagrams submitted to the Technical Permitting Section shall be drawn to scale and include a scale, north arrow, title block, and legend. Maps shall be of material suitable for a permanent record and shall be on sheets 8-1/2 inches by 11 inches or, alternatively, 8-1/2 inches by 14 inches or 11 inches by 17 inches folded to standard letter size.

(3) All chemical laboratory analyses submitted to the Technical Permitting Section are required to be performed in accordance with the following.

(A) All chemical laboratory analyses shall be conducted using appropriate EPA methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by ASTM and certified by a professional engineer licensed in Texas.

(B) All chemical laboratory analytical results shall include the full laboratory analytical report and the corresponding chain of custody.

(4) All NORM screening surveys submitted to the Technical Permitting Section shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. The manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken

around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a facility diagram showing where all readings, including the background, were taken;

(E) the readings (in microroentgens per hour); and

(F) the full name of the person conducting the survey.

(f) The application shall include a stormwater management plan that contains plans and diagrams to segregate, manage, and dispose of all contact stormwater and non-contact stormwater at the facility.

§4.125. Notice and Opportunity to Protest.

(a) Purpose. Applicants are encouraged to engage with their communities early in the waste facility planning process to inform the community of the plan to construct a facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is ~~provided~~ **completed** begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the facility will be located;

(2) the surface owners of tracts adjacent to the tract on which the facility will be located;

(3) the surface owners of tracts located within 500 feet of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the facility is located;

(4) the city clerk or other appropriate city official if any part of the tract on which the facility will be located lies within the municipal boundaries of the city;

(5) the Commission's District Office; and

(6) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail. **Notice is completed upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service.**

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed facility will be located;

(D) the location of the tract on which the proposed facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluid or waste to be managed at the facility;

(F) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date ~~of the~~ notice **is completed**;

(G) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(H) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(I) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(J) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director determines that the applicant, after diligent efforts, has been unable to ascertain the name and address of one or more persons required by this section to be notified, then the Director may authorize the applicant to notify such persons by publishing notice of the application in

accordance with the procedure and contents required by §4.141 of this title (relating to Additional Notice Requirements for Commercial Facilities). The Director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.

(e) Proof of notice.

(1) After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(A) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(B) the registered or certified mail receipts; and

(C) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(2) If the Director authorizes notice by publication in accordance with subsection (d)(4) of this section, the applicant shall provide the following as proof of notice:

(A) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(B) the tear sheets for each published notice.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date **notice is completed** ~~of notice~~ or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is ~~provided~~ **completed** or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

§4.126. Location and Real Property Information.

(a) The permit application shall contain the following information for the facility:

(1) the location of the proposed facility, including the physical address and geographic coordinates of the center of the facility; and

(2) a description of the property on which the facility is located, including:

(A) for each surface owner of the property, the application shall include the name, mailing address, and telephone number of each surface owner, or if any owner is not an individual, the name, mailing address, and telephone number of the contact person for that owner; and

(B) a legal description of the property, including the survey name, abstract number, and size in acres.

(b) A permit application shall include a statement regarding the authority by which the operator has the right to permit and operate the facility. Proper authority may include, but is not limited to:

(1) ownership of the property where the proposed facility is located;

(2) a leasehold interest in the oil and gas estate;

(3) written consent of the surface owner; or

(4) any other authority the Director determines is appropriate.

(c) The application shall include a general location map which shows the facility including the items listed in paragraphs (1)-(7) of this subsection and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet unless the size of a smaller facility is not discernable at that scale. The map shall show the following:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the location of each regulated feature in decimal degrees to six decimal places of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) the distance to the nearest property line or public road;

(5) the tracts of land adjacent to the facility requiring notice as prescribed by the Commission;

(6) the name of the surface owners of such adjacent tracts; and

(7) other information requested by the Director reasonably related to the prevention of pollution.

§4.127. Engineering and Geologic Information.

(a) A permit application shall include descriptions of the following elements and specify the sources of information:

(1) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) the subsurface geology, including an assessment of the presence and characteristics of permeable and impermeable strata;

(3) the subsurface hydrogeology, including the depth to the shallowest groundwater, an assessment of groundwater quality, the direction of groundwater flow, groundwater use in the area, and any major and minor aquifers (as defined by the Texas Water Development Board) in the facility area; and

(4) any engineering, geological, or other information which the Director deems necessary to show that issuance of the permit will not result in the endangerment of human health and the environment, the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) If information is not available to address subsection (a) of this section, a site investigation including soil boring, sampling, and analysis is required.

(c) If otherwise required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a professional engineer or geoscientist licensed in Texas shall conduct the geologic and hydrologic evaluations required under this section and shall affix the appropriate seal on the resulting reports of such evaluations.

§4.128. Design and Construction.

(a) Application. The following information shall be submitted with each permit application:

(1) a facility diagram clearly showing the items listed in subparagraphs (A)-(G) of this paragraph and any other pertinent information regarding the facility and associated activities. Diagrams shall be on a scale that shows the entire facility and activities within the Commission's jurisdiction on a single page. The diagram shall show the following:

(A) a clear outline of the proposed facility, areas where oil and gas waste will be managed, and property boundaries;

(B) all wells, pits, areas where oil and gas waste will be managed, and any other activity under the jurisdiction of the Commission that may occur at the proposed facility;

(C) the location of all tanks and equipment;

(D) all berms, dikes, or secondary containment;

(E) all fences, roads, and paved areas;

(F) the shortest distance between the facility and waste management unit boundary to the nearest property line or public road; and

(G) the location of any pipelines within the facility boundaries;

(2) a description of the type and thickness of liners (e.g., fiberglass, steel, concrete), if any, for all tanks, silos, pits, and storage areas or cells;

(3) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(4) a map view and two perpendicular cross-sectional views of pits and/or storage areas or cells to be constructed, showing the bottom, sides, and dikes and the dimensions of each; and

(5) a plan to control and manage all stormwater runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect stormwater during a 25-year, 24-hour rainfall event, and all calculations made to determine the required capacity and design.

(b) Design and construction requirements. All permittees shall comply with the following requirements.

(1) The permittee shall post signs at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least **three** ~~**six**~~ inches in height.

(2) Dikes or containment structures shall be constructed around all areas managing oil and gas wastes. All earthen dikes surrounding pits and constructed as perimeter berms shall be compacted or constructed of material that meets 95% Standard Proctor (ASTM D698) or 90-92% Modified Proctor (ASTM D1557) density and meets a permeability of 1 x 10-7 cm/sec or less when compacted. During construction, successive lifts shall not exceed nine inches in thickness, and the surface between lifts shall be scarified to achieve a good seal. These structures shall be used to divert non-contact stormwater around the waste management unit and contain and isolate contact stormwater within the bermed area.

(3) Secondary containment shall be provided for all above-ground storage tanks. Secondary containment for a minimum of 120% total storage capacity is recommended. Secondary containment that will contain the largest tank's maximum capacity plus two feet of freeboard and capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event is acceptable.

(4) Contact stormwater shall be collected within 24 hours of accessibility and disposed of in an authorized manner.

(5) The facility shall maintain security to prevent unauthorized access. **Fencing shall be required unless terrain or vegetation prevents vehicle or livestock access except through entrances with lockable gates**. Access shall be secured by

(A) a 24-hour attendant**;** or

(B) if not attended, a six-foot-high security fence and locked gate ~~when unattended~~ to prevent vehicle or livestock access. ~~Fencing shall be required unless terrain or vegetation prevents vehicle or livestock access except through entrances with lockable gates.~~

(6) All liner systems shall be installed and maintained in a manner that will prevent pollution and/or the escape of the contents of the pit.

§4.129. Operation.

(a) Application. All permit applications shall include the following operating information:

(1) a description of the sources and types of wastes to be received;

(2) a description of plans for waste sampling and analysis;

(3) a description of all waste management operations including receipt, handling, storage, treatment, recycling, reclamation, and disposal, and the location of each operation;

(4) a description of how wastes will be transferred between waste management units within the facility;

(5) a description of any operational limitations, including the maximum amount of oil field fluids or oil and gas wastes that will be stored in any area at one time less the volume required to maintain the required two feet of freeboard and the volume of precipitation from a 25-year, 24-hour rainfall event;

(6) a description of plans to prevent, report, and control unauthorized access;

(7) a list of all chemicals to be used and their associated safety data sheets;

(8) plans for routine inspections, maintenance, and monitoring;

(9) a description of plans to prevent, report, and control spills and leaks;

(10) plans for controlling contact and non-contact stormwater runoff;

(11) plans for managing incoming wastes during wet weather;

(12) a description of plans for recordkeeping, including records of waste receipts and dispositions; and

(13) safety data sheets for any chemical or component proposed to be used in the treatment of waste at the facility.

(b) Operating requirements. Each facility shall be operated in accordance with the following requirements.

(1) The permittee shall only accept waste it is permitted to receive. The permittee shall only accept waste transported and delivered by a Commission-permitted waste hauler permitted pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(2) No waste, treated or untreated, shall be placed directly on the ground.

(3) All storage tanks, equipment, and on-site containment shall be maintained in a leak-free condition. If inspection of a tank, on-site containment, or storage vessel reveals deterioration or leaks, the tank, on-site containment, or storage vessels shall be repaired or replaced before resuming use.

(4) Any spill of waste, chemical, or any other material shall be collected and containerized within 24 hours and processed through the treatment system or disposed of in an authorized manner.

(5) Any chemical used in the treatment process shall be stored in vessels designed for the safe storage of the chemical and these vessels shall be maintained in a leak-free condition.

(6) Any soil additives, stabilizers, bio-accelerators, or treatment chemicals shall be approved by the Director prior to use at the facility. Use of the chemical or component is contingent upon Director approval. All chemicals and components shall be stored according to the manufacturer's specifications.

§4.130. Reporting.

(a) The permittee shall maintain for a period of at least three years records of each Waste Profile Form and Waste Manifest described in §4.190 and §4.191 of this title (relating to Oil and Gas Waste Characterization and Documentation, and Oil and Gas Waste Manifests, respectively) that the permittee generated or received.

(b) The permittee shall make all records required by this section available for review and/or copying upon request.

(c) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted on a form prescribed by the Commission. If a Commission prescribed report form does not exist, the report shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this report, that

this **report** ~~**application**~~ was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted in accordance with the following requirements.

(1) ~~(2)~~ If a permit requires quarterly reports, the quarterly reporting periods shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year.

(2) ~~(3)~~ If a permit requires quarterly, semi-annual, or annual reports, reports shall be made on a Commission-designated form or electronic filing system and submitted to the Technical Permitting Section and the Commission District Office no later than the 30th day of the month following each reporting period.

(3) ~~(4)~~ If a permit requires monthly reports, the report shall be made on a Commission-designated form or electronic filing system and submitted to Technical Permitting Section and the District Office no later than the 15th day of the month following each reporting period.

(4) ~~(1)~~ Reports **may** ~~shall~~ be filed with the Commission **in paper form until** ~~electronically in a digital format acceptable to the Commission no later than~~ one year after the date the Commission has the technological capability to receive ~~the~~ electronic fili**ngs**, **at which time reports shall be filed electronically in a digital format acceptable to the Commission.**

§4.131. Monitoring.

(a) Application. The following information shall be submitted with each permit application:

(1) a plan and schedule for conducting periodic inspections, including plans to inspect pits, equipment, processing, and storage areas; and

(2) a potentiometric contour map showing static water levels and the estimated direction of groundwater flow and the calculated gradient.

(b) Groundwater monitoring requirements.

(1) If shallow groundwater is present within 100 feet below ground surface, groundwater monitoring wells may be required for some facilities, including but not limited to: brine pits, disposal pits, reclamation plants, commercial waste separation facilities, commercial recycling facilities, and commercial landfarming or landtreating facilities. Factors that the Commission will consider in assessing whether groundwater monitoring is required include:

(A) the volume and characteristics of the oil and gas waste to be managed at the facility;

(B) depth to and quality of groundwater within 100 feet below ground surface; and

(C) presence or absence of natural clay layers in subsurface soils.

(2) If the Director requires the operator to install groundwater monitoring wells, the operator shall comply with the following.

(A) The operator shall submit a plan for the installation, sampling, and analysis of monitoring wells at the facility. The plan shall include information on the monitor well drilling method. A mud rotary drilling method shall not be used unless the depth to water has been established.

(B) The monitor wells shall be able to provide representative samples of groundwater underlying the site for the duration of facility operations. If a monitor well is not capable of providing a representative sample, the operator shall notify the Technical Permitting Section.

(C) If groundwater is not observed during drilling of the monitor wells, the soil boring shall be advanced to 100 feet. Borings shall be left open for a minimum of 24 hours to determine if groundwater is present.

(D) If shallow groundwater is present within 100 feet below ground surface at the site, a minimum of three groundwater monitoring wells shall be installed. Wells shall be spaced around the facility or pit, close to the facility operational area, with at least two wells on the estimated down-gradient side of the operational area. Additional wells may be required for larger facilities.

(E) The monitor wells shall be completed by a certified water well driller in accordance with 16 Texas Administrative Code, Part 4, Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

(F) The monitor wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

(G) The screened interval of the groundwater monitoring wells shall be designed to intercept at least five feet of groundwater.

(H) The groundwater monitoring well screen shall extend above the static water level.

(I) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(J) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(K) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(L) After installation of the wells is complete, the applicant shall submit the following information:

(i) a soil boring lithologic log for each well, with the soils described using the Unified Soil Classification System (equivalent to ASTM D 2487 and 2488). The log shall also include the method of drilling, well specifications, slot size, riser and screen length, bentonite and cement intervals, total depth, and the top of the first encountered water or saturated soils; and

(ii) a survey elevation for each well head reference point (top of casing) relative to a real or arbitrary on-site benchmark and relative to mean sea level. **Surveys shall be conducted by a licensed land surveyor.**

(3) The applicant shall submit any other information necessary to address each of the operating requirements detailed in paragraph (4) of this subsection.

(4) If the Director requires the permittee to install groundwater monitoring wells, the permittee shall comply with the following requirements.

(A) The facility shall not manage oil and gas wastes at the facility until the groundwater monitoring wells are installed, the permittee submits the initial sample results to Technical Permitting Section, and Technical Permitting Section informs the permittee, in writing, that it may commence active operations.

(B) The permittee shall sample the wells after installation of the wells is complete and shall thereafter sample the wells in accordance with the schedule approved by the Technical Permitting Section, or as otherwise required by the Director.

(C) The following measurements and analyses shall be reported to Technical Permitting Section after any sampling event no later than 15 days after the permittee receives the laboratory analysis results: the static water level, pH, and concentrations of benzene, **toluene, ethylbenzene, and xylenes (BTEX)**, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(D) If any of the parameters identified in subparagraph (C) of this paragraph indicate pollution, or the potential failure of the liner system, the Commission may require additional monitoring events and/or may require analysis of additional parameters.

§4.132. Closure.

(a) Application. A permit application shall include a detailed plan for closure when operations at the facility or pit terminate. The closure plan shall include a general plan to:

(1) remove all wastes;

(2) demolish and/or remove any liners;

(3) remove dikes;

(4) backfill any excavations and contour and reseed disturbed areas;

(5) sample and analyze soil and, if applicable, groundwater throughout the facility;

(6) if applicable, plug groundwater monitoring wells; and

(7) have financial security released once post closure activities are completed and approved by the Technical Permitting Section.

(b) Closure requirements. The permittee shall close the facility or pit in accordance with the following requirements.

(1) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencement of any closure operations.

(2) The permittee shall submit a detailed closure plan to the Technical Permitting Section at least 30 days prior to commencement of any closure activity. The Technical Permitting Section must approve the detailed closure plan before the permittee may initiate closure operations. The permittee shall comply with the closure plan approved by the Technical Permitting Section. The closure plan shall include the following information:

(A) the processing and removal of all wastes, chemicals, and waste-related materials from the facility for authorized reuse or disposal in an authorized manner;

(B) the removal and salvage of all equipment, if possible, or disposal of all equipment in an authorized manner;

(C) unless otherwise authorized, the cleaning and demolishment of all equipment and storage areas, including concrete pads, at the facility; and the disposal in an authorized manner of all rubble, wash-water, and rinsate;

(D) the excavation, removal, and disposal of all contaminated soils from beneath the liners and concrete pads;

(E) a soil sampling plan; and

(F) if required by the Director, a post-closure monitoring plan.

(3) Once the permittee has removed all waste, equipment, concrete pads, contaminated soil, and any other material in accordance with the closure plan, the permittee shall conduct soil sampling in accordance with the approved soil sampling plan. Soil samples shall be analyzed for the parameters in the permit and/or soil sampling plan and submitted to the Technical Permitting Section no later than 30 days after the permittee receives the laboratory results. The Technical Permitting Section may require the permittee to conduct additional closure operations if the soil sample results exceed the authorized limits

and/or the Technical Permitting Section determines that additional remediation is required to prevent pollution caused or contributed to by operations at the facility.

(4) The permittee shall grade the pits, on site storage tanks, on site storage areas, and any other facility location to prevent rainfall from collecting at these locations.

(5) If the Director required a post-closure plan, the permittee shall conduct post-closure monitoring in accordance with the post-closure monitoring plan approved by Technical Permitting Section.

§4.134. Application Review and Administrative Decision.

The Technical Permitting Section reviews applications submitted under this subchapter in accordance with §1.201 of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively).

§4.135. Hearings.

(a) The applicant may request a hearing upon receipt of notice that:

(1) the application has been denied by the Director;

(2) the Director has determined the application to be administratively complete but a timely protest to the application has been received; or

(3) the Director has determined that additional permit conditions are required to prevent pollution and the applicant disagrees with the Director's determination.

(b) A request for hearing shall be made to the Technical Permitting Section within 30 days of the date of the notice of administrative denial or notice of a timely protest. If the Director receives a request for a hearing, the Director shall refer the matter to the Hearings Division for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

DIVISION 5. ADDITIONAL REQUIREMENTS FOR COMMERCIAL FACILITIES

§4.140. Additional Requirements for Commercial Facilities.

(a) In addition to the requirements of this division, all applicants for commercial facilities and permittees of commercial facility permits shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and any other sections of this subchapter applicable to the applicant's or permittee's management of oil and gas wastes.

(b) A facility authorized or permitted as a non-commercial facility prior to July 1, 2025 but that meets the definition of a commercial facility in §4.110 of this title (relating to Definitions) as of July 1,

2025 shall comply with the requirements of this division or request an exception on or before July 1, 2026.

(c) A facility that meets the definition of a commercial facility in §4.110 of this title is considered a commercial facility under §3.78 of this title (relating to Fees and Financial Security Requirements), and therefore, an applicant for a commercial facility permit shall submit the financial security required by Texas Natural Resources Code §91.109 and §3.78 of this title for each permit renewal, amendment, and/or transfer.

(d) A commercial facility shall not manage oil and gas waste or otherwise begin active operation until the required financial security is approved and accepted by the Commission.

(e) Pursuant to §3.78 of this title, the amount of the financial security shall be the maximum dollar amount necessary to close the facility.

(f) The full financial security shall be maintained:

(1) until all post-closure activities are completed and approved by the Technical Permitting Section; and

(2) while the facility has been referred to and remedial actions are being overseen by the Site Remediation Unit in the Oil and Gas Division.

(g) To determine the maximum dollar amount necessary to close the facility, a professional engineer licensed in Texas shall prepare or supervise the preparation of a closure-cost estimate (CCE).

(1) In addition to the assumptions and calculations specified in §3.78 of this title, the professional engineer shall make the following assumptions when determining the dollar amount necessary to close the facility.

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, including the sampling and analysis of soils to confirm compliance.

(C) None of the operator's other equipment or facilities (e.g., disposal wells, pits, trucks, bulldozers, and employees) are available at the time of closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste. Disposal pits are fully constructed.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not include a salvage or no cost value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and former pits.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed of. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. Solids held within permitted containments shall be reported in cubic yards. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the facility;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon all monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of well maintenance and monitoring. The length of monitoring shall be determined by the Director.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to Technical Permitting Section in Austin for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a facility diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on the form provided by the Commission. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third-party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the depth of the excavation is limited to what can be graded to prevent stormwater from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(h) A permit application for a ~~**stationary**~~ **commercial** ~~**fluid recycling**~~ **facility** shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.132 of this title (relating to Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment;

(3) remove dikes and equipment;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.141. Additional Notice Requirements for Commercial Facilities.

(a) In addition to the notice requirements detailed in §4.125 of this title (relating to Notice and Opportunity to Protest), an applicant for a commercial facility permit shall also provide notice by publication.

(b) The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(c) The published notice shall:

(1) be entitled "Notice of Application for Commercial Oil and Gas Waste Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid or solid waste to be managed at the facility;

(7) identify the proposed disposal, treatment, or storage method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(d) The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

§4.142. Operating Requirements Applicable to Commercial Facilities.

(a) An application for commercial facility shall include a detailed waste acceptance plan to ensure that the waste received at the facility has been fully and correctly documented by the generator and carrier, and characterized by the generator, including supporting laboratory analysis if necessary, and to ensure that prohibited oil field fluids, prohibited oil and gas wastes, and/or non-jurisdictional wastes are not received at the facility.

(b) The operator shall develop and maintain a site-specific spill control plan that details the processes in place to control and contain oil and gas waste in the event of a spill or release. The spill control plan shall be maintained on-site and made available to the Commission upon request.

(c) The operator shall develop and maintain a stormwater management plan to prevent stormwater from running onto the facility, the unauthorized discharge of stormwater, or deleterious impacts of stormwater from the facility to adjoining properties. The stormwater management plan shall be maintained on-site and made available to the Commission upon request.

§4.143. Design and Construction Requirements for Commercial Facilities.

Prior to commencement of operations at a commercial facility, the permittee shall provide the Director with drawings documenting the as-built condition of the facility, including all equipment and waste management units.

DIVISION 6. ADDITIONAL REQUIREMENTS FOR PERMITTED PITS

§4.150. Additional Requirements Applicable to Permitted Pits.

(a) In addition to the requirements of this division, all permitted pits are required to comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations). Commercial pits are also required to comply with Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(b) If at any time a pit no longer meets the requirements for authorized pits under §4.113 of this title (relating to Authorized Pits), the operator of the pit shall apply for a pit permit pursuant to the requirements of this division.

(c) No person may use a pit without the express permission of the permittee. A person who uses a pit without the express permission of the permittee may be subject to legal enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements.)

(d) Any person using or maintaining a pit without the required permit shall be immediately required to cease usage and close the pit in accordance with §4.154 of this title (relating to Closure of Permitted Pits). Any person using or maintaining a pit without the required permit may be subject to enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title.

(e) Permitted pits are subject to containment requirements to prevent pollution of surface or subsurface water and will be included as permit conditions at the sole discretion of the Commission.

(f) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit permitted by this subchapter, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours.

(g) Unless the Director approves a written request for an exception, no pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water, including wetlands;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized; ~~**or**~~

(5) within a 100-year flood plain**; or**

(6) within 500 feet of a public area.

(h) A minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the outer edge or toe of the pit walls or berms.

§4.151. Design and Construction of Permitted Pits.

(a) Application.

(1) Unless otherwise provided by permit, all permitted pits shall comply with the general construction requirements applicable to authorized pits in Division 3 of this subchapter (relating to Operations Authorized by Rule).

(2) In addition to the information required by §4.128 of this title (relating to Design and Construction), the facility diagram submitted with the application shall include the following information:

(A) the maximum length, width, and depth of the pit in feet;

(B) the maximum depth of the pit below grade in feet;

(C) the maximum and minimum height of walls or dikes above grade in feet;

(D) the dimensions of the dikes including the width at the base, height, and slope;

(E) the maximum volume of the pit in barrels and cubic yards;

(F) the maximum volume of the pit minus the volume to maintain the required freeboard in barrels and cubic yards;

(G) the volume of the pit below natural grade in barrels and cubic yards;

(H) information on the pit liner type and thickness, installation methods, and manufacturer's specification sheets;

(I) a plan view drawing of each pit, including all dimensions, and any trenches or structures used to separate and convey contact and non-contact stormwater;

(J) two perpendicular, sectional views of each pit showing the bottom, sides, dikes, and natural grade, including all dimensions; and

(K) the surface area and action leakage rate calculation for any pit with a leak detection system, that is prepared and sealed by a professional engineer licensed in Texas. The action leakage rate calculations shall include:

(i) all assumptions and dimensions used;

(ii) the size of the pump and pipes that will be used in the leak detection system; and

(iii) calculations demonstrating that the system is designed to sufficiently withdraw and manage the expected leakage rate.

(3) The permittee shall provide any other information necessary to address the operating requirements detailed in subsection (b) of this section.

(b) Operating requirements.

(1) Signage. The permittee shall post a sign at each permitted pit. The sign shall show the permit number in letters and numerals at least three inches in height.

(2) Freeboard. Unless otherwise required by permit or rule, the permittee shall maintain all pits such that each pit maintains a freeboard of at least two feet plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) Liners.

(A) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(B) Unless the permit specifically provides otherwise, the liner for any permitted pit required to be lined shall comply with the general requirements for lining in Division 3 of this subchapter (relating to Operations Authorized by Rule), except that the thickness of a high-density polyethylene liner in a permitted pit shall be a minimum of 60 mil and, for any other type of synthetic liner, a minimum of 30 mil.

(C) A brine pit permitted under this subchapter shall be constructed with a primary and secondary liner and a leak detection system.

(4) Additional requirements as determined by Director. Any pit permits issued pursuant to this subchapter may contain additional requirements concerning design and construction including requirements relating to construction materials, dike or berm design, liner material, liner thickness, procedures for installing liners, overflow warning devices, leak detection devices, monitor wells, and fences that the Director determines are necessary to prevent pollution.

§4.152. Monitoring of Permitted Pits.

(a) A pit permit application shall include a monitoring plan that establishes a procedure for the permittee to routinely monitor the integrity of the liner of a pit. The permittee shall comply with this section by implementing one of the following monitoring methods.

(1) The permittee shall empty the pit and conduct a visual inspection on an annual basis. The permittee shall photograph the interior of the pit and otherwise record each inspection. The permittee shall maintain the photographs and records from each inspection for the life of the pit and supply these records to the Commission upon request.

(2) The permittee shall install a double liner and leak detection system between the primary and secondary liner. The leak detection system shall be monitored on a daily or weekly basis as specified in the permit to determine if the primary liner has failed.

(3) The permittee may implement an alternative monitoring procedure if the permittee demonstrates that the alternative monitoring is at least as protective of surface and subsurface waters as the procedures outlined in paragraphs (1) and (2) of this subsection and if the alternative monitoring procedure is approved by the Director.

(b) The permittee shall monitor all pits for liner failure in accordance with the monitoring plan approved by the Commission pursuant to subsection (a) of this section. The permittee shall consider the following when implementing the monitoring plan.

(1) Failure of the primary liner in a double liner and leak detection system occurs if:

(A) a volume of fluid is withdrawn from the leak detection system that is greater than the calculated action leakage rate, the standard action leakage rate of 1,000 gallons per acre per day (GPAD) for pits that manage fluid waste, or 100 gallons per acre per day (GPAD) for pits that manage solid oil and gas wastes;

(B) any failure in the leak detection and return system or any component of the system occurs; or

(C) any detected damage to or leakage from the secondary liner occurs.

(2) The failure of a liner system may be indicated through results of groundwater monitoring.

(3) If liner failure is discovered at any time, the permittee shall:

(A) notify the Director and the District Director by phone or email within 24 hours of the failure;

(B) coordinate subsequent response actions with the input and approval of the District Director; and

(C) mitigate the potential for a release from the pit.

(i) Except as provided in clause (ii) of this subparagraph, mitigation requires reducing the waste level to below the elevation of the liner failure and then repairing the liner. The permittee shall notify the District Director once the repair is complete. The District Director shall inspect the repair before the permittee may place the pit back in active operation.

(ii) For disposal pits, waste should not be removed. The permittee shall take other appropriate steps to prevent release or pollution. Any steps must be approved by the District Director. ~~empty the pit as soon as possible, ensuring that all waste stored or contained in the pit is properly managed. Once the pit is emptied, the~~ **The** permittee shall ~~repair the liner and~~ notify the District Director once the **mitigation steps and repairs are** ~~repair is~~ complete. The District Director shall inspect the ~~repair~~ **pit** before the permittee may place the pit back in active operation.

§4.153. Commercial Disposal Pits.

(a) Siting.

(1) An application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area.

(2) In addition to the requirements of §4.150 of this title (relating to Additional Requirements Applicable to Permitted Pits), a commercial disposal pit shall not be located in:

(A) an area in which the disposal pit is not sufficiently isolated to prevent pollution of surface or subsurface waters;

(B) a prohibited location defined in Division 11 of this subchapter (relating to Requirements for Surface Water Protection); or

(C) any other location where there is an increased risk to surface or subsurface waters.

(3) An application for a commercial disposal pit shall include information to demonstrate that the pit will not be located in an area prohibited under paragraph (2) of this subsection.

(b) Design and construction. An application for a disposal pit permit shall include:

(1) the dimensions of all disposal pits;

(2) the locations and dimensions of all trenches used to separate and convey contact stormwater and non-contact stormwater;

(3) the maximum waste elevations and final cover; and

(4) details of the final cover anchor trench and final cover composition.

(c) Closure. Unless otherwise required by permit or if the Director determines that such post-closure monitoring is necessary to prevent pollution, a post-closure monitoring period of no less than five years is required for any commercial disposal pit and any facility where a commercial disposal pit is located.

§4.154. Closure of Permitted Pits.

In addition to the requirements outlined in §4.132 of this title (relating to Closure), the permittee is required to comply with the following when operations at the pit terminate.

(1) Unless otherwise required by permit, all pits shall be dewatered and emptied within 120 days of cessation of use.

(2) After the soil sampling analysis has been approved by the Director, the pit shall be backfilled and compacted within 120 days.

(3) Once backfilled, the pit shall be reseeded with vegetation natural to the geographic region to prevent erosion after pit closure. Use of treated produced water to establish a natural vegetative cover for the region requires prior approval from the Director pursuant to §4.184 or §4.185 of this title (relating to Permitted Recycling, and Pilot Programs, respectively).

DIVISION 7. ADDITIONAL REQUIREMENTS FOR LANDFARMING AND LANDTREATING

§4.160. Additional Requirements for Landfarming and Landtreating Permits.

In addition to the requirements of this division, all applications for landfarming and landtreating permits and all permittees conducting landfarming or landtreating shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations).

§4.161. Design and Construction Requirements for Landfarming and Landtreating Permits.

(a) Application for landfarming and landtreating permits.

(1) The facility diagram submitted with the permit application shall include:

(A) two perpendicular, sectional views of all landfarming cells to be constructed, showing the bottom, sides, and dikes or berms of the cell with dimensions indicated; and

(B) the locations and dimensions of all areas where landfarming and landtreating will occur, dikes, well locations, fences, and access roads, taking into consideration the following restrictions:

(i) a minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the treatment cells, measured from the toe of the constructed berm to the property boundary; and

(ii) a minimum 300-foot buffer zone shall be maintained between the toe of the constructed berms and any drainage features or surface waters.

(2) The applicant shall submit information to demonstrate that the area has at least 20 inches of tillable soil that is suitable for the application, treatment, and disposal of oil and gas waste.

(3) The applicant shall submit information sufficient for the Director to determine whether the proposed facility will pose a threat of pollution or a threat to public health or safety. The Director will consider the following factors when determining whether the proposed facility presents a threat of pollution or a threat to public health or safety:

(A) the volume and characteristics of the oil and gas waste to be managed at the landfarming facility;

(B) depth to and quality of the shallowest groundwater;

(C) distance to the nearest property line or public road;

(D) proximity to coastal natural resources, sensitive areas as defined by §4.110 of this title (relating to Definitions), water supplies, and/or public, domestic, or irrigation water wells; and

(E) any other factors reasonably necessary to determine whether issuance of the permit will pose a threat of pollution or a threat to public health or safety.

(b) Berm construction. All berms shall be constructed and maintained:

(1) to fully enclose each landfarming cell area;

(2) to a height of at least 36 inches above land surface with a slope no steeper than a one to three (vertical to horizontal) ratio on each side;

(3) so that at least two feet of freeboard plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event is available; and

(4) as otherwise required by the permit.

(c) Reasons for denial. The Director shall deny an application for a landfarming or landtreating permit if the proposed facility location is:

(1) within a 100-year flood plain;

(2) within 300 feet of surface water bodies;

(3) within 300 feet of domestic or irrigation water wells;

(4) within 500 feet of public water system wells or intakes;

(5) on unsuitable soils for depth or treatment of oil and gas waste;

(6) within any other sensitive area as defined by §4.110 of this title;

(7) within 500 feet of a public area; or

(**8**) non-compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

§4.162. Operating Requirements for Landfarming and Landtreating Permits.

(a) Application. The applicant shall submit the following operating information with each application for landfarming permit:

(1) the estimated chloride concentration of the waste to be accepted at the facility;

(2) the procedure by which waste will be mixed into the soil;

(3) waste to soil application rates;

(4) the frequency of soil tilling;

(5) the maximum depth to which waste will be tilled;

(6) documentation on any soil amendments or microbes to be used;

(7) plans for monitoring and testing the landfarming area, and other appropriate procedures to ensure the treatment of organic constituents and prevention of pollution;

(8) the estimated duration of landfarming activities;

(9) the total cumulative volume of waste, in barrels, to be landfarmed over the active life of the operation or active cells; and

(10) the total cumulative height of waste, in inches, to be landfarmed over the active life of the operation or active cells.

(b) Operating requirements. A landfarming or landtreating permittee shall comply with the following requirements.

(1) Prior to waste application, the permittee shall thoroughly disk the entire landfarming or landtreating area and shall otherwise prepare the area by adding fertilizer, lime, and/or other agricultural chemicals, if needed.

(2) A landfarming or landtreating permittee shall comply with the following waste application requirements.

(A) The permittee shall apply the waste to each landfarming cell to prevent the pooling or migration of the waste outside of the approved landfarming cell and to prevent the waste from entering any watercourses or drainageways, including any drainage ditch, dry creek, flowing creek, river, or any other surface water.

(B) The total cumulative volume of waste applied to any landfarming cell over its lifetime shall not exceed the permitted volume.

(C) The permittee shall maintain freeboard of at least two feet plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(D) The permittee shall ensure that the waste is uniformly dispersed across the landfarming or landtreating area and the waste is fully and evenly incorporated into the top six inches of soil. The waste shall be mixed with the soil within 24 hours of waste application. Any active cell shall be disked once a month thereafter until the cell is closed in accordance with the permit.

(E) The permittee is prohibited from applying waste to the cells during periods of rainfall.

(3) Any standing or pooled rainwater or other liquid in a landfarming cell or within the perimeter berm shall be removed within 72 hours and disposed of in an authorized manner. Contact stormwater may be disked into a landfarming cell with prior written approval from the Director.

(4) Land application of contact stormwater outside of a permitted landfarming cell is prohibited.

(5) Any spills of waste or any other materials shall be promptly containerized and disposed of in an authorized manner.

(6) Vehicle access into each cell shall be at a location where the stormwater surface flow cannot enter the treatment cells.

§4.163. Monitoring.

(a) The operator shall monitor three soil zones in each landfarming cell at the following frequency:

(1) the surface treatment zone from the ground surface to a depth of 12 inches below land surface shall be sampled and analyzed quarterly;

(2) the waste treatment zone from 12 to 24 inches below land surface shall be sampled and analyzed quarterly; and

(3) the compliance monitoring zone from 24 to 36 inches below land surface shall be sampled and analyzed annually.

(b) The operator shall collect samples from each active cell as follows:

(1) The District Office shall be notified by phone or email at least 48 hours prior to any sampling event.

(2) Each active cell shall be divided into four-acre plots or other plot size as defined in the permit.

(3) The applicant shall take at least one composite sample for each treatment zone in each plot by subdividing each plot into four equal-sized quadrants.

(A) One composite sample of the surface treatment zone in each plot shall be made from four individual grab samples collected from the surface treatment zone of each quadrant.

(B) One composite sample of the waste treatment zone in each plot shall be made from four individual grab samples collected from the waste treatment zone of each quadrant. (C) One composite sample of the compliance monitoring zone in each plot shall be made from four individual grab samples collected from the compliance monitoring zone of each quadrant.

(c) The operator shall analyze samples from each active cell according to the analysis requirements specified in the permit.

(d) If any composite sample exceeds any limitations specified by the permit or in the figure in this subsection, the operator shall remediate the parcel where the sample was collected as follows.

(1) The plot shall be tilled.

(2) The operator shall collect a composite sample from the four quadrants of the plot and re-analyze the sample for the parameter for which the limitations were exceeded.

(3) The operator shall re-till and resample the plot no less than once per month until the sample analyses indicate that the parameter limitations are not exceeded.

(4) If the parcel exceeds the limitation after six months of sampling, that plot is not authorized to accept additional waste until a sample analysis does not exceed the particular limitation.

Figure: 16 TAC §4.163(d)(4)

(e) Documentation of the sampling and analysis shall be filed with the Technical Permitting Section and the District Office as part of the quarterly report required by the permit. A summary of the soil sampling required by the permit shall include:

(1) a map drawn to scale with coordinates of the sampling locations;

(2) a table indicating the results of the parameters sampled;

(3) the date of sampling;

(4) the approximate depth of the sample below land surface and corresponding zone; and

(5) copies of the laboratory analytical reports and the corresponding chain of custody.

§4.164. Closure.

(a) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencing closure of any landfarming cell.

(b) The permittee shall submit a detailed closure plan to the Technical Permitting Section. The Technical Permitting Section must approve the closure plan before the permittee may commence closure of any cell. The composite samples required by §4.163 of this title (relating to Monitoring) shall not exceed the limitations specified by permit before the Technical Permitting Section will approve closure of the cell.

(c) Once the Technical Permitting Section approves closure of a cell, the permittee shall level any berms and grade the area in accordance with the following requirements.

(1) All landfarming cells shall be graded and contoured to prevent rain from collecting or pooling at the former cell locations after closure; and

(2) To the extent practicable, all landfarming cells shall be contoured to original grade and reseeded and/or revegetated with ground cover appropriate for the geographic region.

DIVISION 8. ADDITIONAL REQUIREMENTS FOR RECLAMATION PLANTS

§4.170. Additional Requirements for Reclamation Plants.

(a) Applicability.

(1) This section is applicable to reclamation of tank bottoms and other oil and gas wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §4.110 of this title (relating to Definitions).

(2) Removal of tank bottoms or other oil and gas wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the Technical Permitting Section. For purposes of this division, an "authorized person" is a tank bottoms cleaner or transporter that

is under contract for disposition of untreated tank bottoms or other oil and gas wastes to a person who has obtained a permit to operate a reclamation plant.

(3) The removal of tank bottoms or other oil and gas wastes from any facility for which monthly reports are not filed with the Commission shall be authorized in writing by an Oil Movement Letter issued by the Director or District Director prior to such removal. A written request for such authorization shall be sent to the District Director, and shall detail the location, description, estimated volume, and specific origin of the material to be removed as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.

(4) No person shall remove basic sediment from any producing lease tank, pipeline storage tank, or other production facility unless authorized to do so by a waste hauler permit pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(5) Unless expressly authorized by permit, no person shall reclaim basic sediment and waste without a reclamation plant permit.

(6) A reclamation plant is a commercial facility and is subject to Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(7) Reclamation plant permits that were issued pursuant to §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) before July 1, 2025 shall expire five years from July 1, 2025. Permits may be renewed pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments).

(8) This section does not apply where basic sediment is recycled or processed on-site by the operator and returned to a tank or vessel at the same lease or facility.

(9) This section does not apply to the recycling of drilling mud. This section does apply to unrefined hydrocarbons recovered from such mud that are sent to a permitted reclamation plant.

(10) All reclamation plants shall be permitted. Satellite reclamation facilities, including waste storage facilities, are strictly prohibited.

(b) Application.

(1) In addition to the requirements of this division, all applicants for reclamation plant permits and permittees operating reclamation plants shall comply with the following:

(A) Division 4 of this subchapter (relating to Requirements for all Permitted Waste Management Operations);

(B) Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities); and

(C) Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(2) Each application for reclamation plant permit shall include:

(A) a list of the waste types to be received;

(B) a detailed description of the treatment process, equipment, and pits, storage, or on-site containment at the facility;

(C) a description of the reclamation process rates and on-site storage capacity of waste and reclaimed material; and

(D) the spill control plan for the facility.

(3) Applicants for a reclamation plant permit shall file the application on the Commission-prescribed form or electronic system.

§4.171. Standard Permit Provisions.

(a) Reclamation plant permits shall be issued for a term of not more than five years.

(b) Reclamation plant permits may be renewed, transferred, or amended pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments). Reclamation plant permits are subject to the financial security requirements in §4.140 of this title (relating to Additional Requirements for Commercial Facilities) and may be subject to fees in accordance with §4.106 of this title (relating to Fees).

(c) If the waste hauler transporting tank bottoms or other oil and gas wastes to the reclamation plant does not comply with Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation), the reclamation plant permittee shall not accept the tank bottoms or other oil and gas wastes and shall report the violation to the District Office no later than 24 hours after the violation occurs.

(d) The receipt of any tank bottoms or other oil and gas wastes from outside the state of Texas shall be submitted on monthly reports to the Commission.

(e) The receipt of any waste materials other than tank bottoms or other oil and gas wastes shall be authorized in writing by the Commission prior to receipt. The Commission may require the reclamation plant operator to submit an analysis of the waste materials prior to a determination of whether to authorize receipt. If the request for authorization is denied, the applicant may request a hearing.

(f) All wastes generated by reclaiming operations shall be disposed of in accordance with this subchapter, §3.9 of this title (relating to Disposal Wells), or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(g) All reclamation facilities shall have in-person 24-hour security monitoring.

(h) Reclamation plant permits shall include enforceable limits on the processing capacity of treatment equipment and the storage volumes of waste and reclaimed oil.

§4.172. Minimum Permit Provisions for Operations.

(a) The following provisions apply to any removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility.

(1) Tank bottoms and other oil and gas wastes shall be reclaimed using the methods authorized in the permit.

(2) An authorized representative of the operator of a reclamation plant shall execute a manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle) upon each removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.85 of this title, the operator of the reclamation plant or other authorized person shall also include on the manifest:

(A) the Commission identification number of the lease or facility from which the material is removed; and

(B) the gross and net volume of the material as determined by the required shakeout test.

(3) The operator of the reclamation plant or other authorized person shall complete the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed and shall retain a copy for three years.

(4) The operator of the reclamation plant or other authorized person shall keep a copy of the manifest in the vehicle transporting the material.

(b) The operator of a reclamation plant or other authorized person shall conduct a shakeout test on all tank bottoms or other oil and gas wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility to determine the crude oil and/or lease hydrocarbon condensate content. The shakeout test shall be conducted in accordance with the most current API or ASTM method.

(c) Pursuant to §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation), waste characterization and profiling shall be performed before the waste is accepted at the reclamation plant.

§4.173. Minimum Permit Provisions for Reporting.

(a) An operator of a reclamation plant shall file a monthly report documenting the volumetric throughput of waste and reclaimed hydrocarbons.

(b) The Commission may establish a form or electronic system for filing monthly reports for reclamation plants.

(c) For wastes taken to a reclamation plant the following provisions shall apply.

(1) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.

(2) For other oil and gas wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.

(d) The net crude oil content or lease condensate of any tank bottoms or other oil and gas wastes removed from an active facility, including a pipeline facility, and disposed of on site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with this subchapter and §§3.9 and 3.46 of this title (relating to Disposal Wells; and Fluid Injection into Productive Reservoirs, respectively). Operators may be required to obtain a minor permit for such disposal pursuant to §4.182 of this title (relating to Minor Permits). Prior to approval of the minor permit, the Commission may require an analysis of the disposable material to be performed.

DIVISION 9. MISCELLANEOUS PERMITS

§4.180. Activities Permitted as Miscellaneous Permits.

This division contains permit requirements for some activities not otherwise addressed in this subchapter. Unless otherwise specified in this division or by the Director, the requirements of Divisions 4 through 8 of this subchapter do not apply to activities permitted under this division.

§4.181. Emergency Permits.

(a) If the District Director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the District Director may issue an emergency permit.

(b) An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the District Office. Notice of the application is not required.

(c) If warranted by the nature of the emergency, the District Director may issue an emergency permit based upon an oral application, or may orally authorize an activity before issuing a written permit authorizing that activity.

(d) An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.182. Minor Permits.

(a) If the District Director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the District Director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water.

(b) An application for a minor permit shall be filed with the Commission in the District Office. Notice of the application shall be given as required by the District Director. The District Director may determine that notice of the application is not required.

(c) A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.184. Permitted Recycling.

(a) For non-commercial recycling not otherwise authorized by this subchapter, the Director may authorize such recycling by permit. In determining appropriate permit conditions, the Director shall review the general permit requirements outlined in Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and determine which permit requirements, if any, are necessary to prevent pollution of surface and subsurface water. The Director shall consider the source of the waste, the anticipated constituents of concern, the volume of waste, the location, and the proposed reuse of the treated waste.

(b) Commercial recycling shall be permitted in accordance with Subchapter B of this title (relating to Commercial Recycling).

§4.185. Pilot Programs.

(a) For any recycling activities not otherwise authorized by rule or permit in this subchapter, an operator may propose a pilot program.

(b) A pilot program is a program implemented to assess:

(1) whether the recycled product can be reused in certain activities that are safe and protective of human health and the environment;

(2) the efficiency and effectiveness of the recycling project; or

(3) the appropriate regulatory requirements of a permitted recycling program.

(c) If the Director finds that the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas wastes, the Commission may authorize a pilot program. The duration

of the pilot program shall be sufficient to evaluate the pilot program objectives, which may include sufficient time to take an appropriate non-food based crop from seed through one complete growing cycle.

(1) If the Commission determines that the proposed pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling).

(2) If the Commission determines that more time is needed to fulfill the objectives of the pilot program, the Commission may extend the pilot program in increments of no more than one year.

DIVISION 10. REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION

§4.190. Oil and Gas Waste Characterization and Documentation.

(a) The generator of oil and gas waste is responsible for characterizing and documenting the waste prior to transportation.

(b) A generator of any waste subject to Commission jurisdiction shall document the waste characterization by completing and retaining a Waste Profile Form that documents the characteristics of each waste stream generated.

(1) A Waste Profile Form shall be made available by the Commission or an operator may use its own form that includes at least the following information for each oil and gas waste stream:

(A) the generator name and P-5 operator number, including the contact information of the person preparing the waste profile;

(B) a generator-assigned identifier (name and/or number) specific to the generated waste;

(C) a description of the waste, including physical and chemical characteristics and constituents;

~~**(D) the estimated quantity of the waste;**~~

(**D**) the basis for the characterization, which shall be made in accordance with §4.102(a) of this title (relating to Responsibility for Oil and Gas Wastes); and

(**E**) other information pertinent to characterization.

(2) A generator may establish standard waste profiles for common types of oil and gas waste that are often found at oil and gas sites, such as spent water-based drilling mud, oil-based cuttings, oil-contaminated soil, domestic septage, and rubbish.

(3) A generator of waste that chooses to dispose of or recycle such waste shall provide the Waste Profile Form to the waste hauler and receiver.

(4) The receiver of the oil and gas waste shall include the waste profile information in the periodic reporting requirements as described in the facility permit conditions.

§4.191. Oil and Gas Waste Manifests.

(a) Oil and gas waste that is transported by vehicle from the lease, unit, or other oil or gas property or facility where it is generated to an off-lease facility that manages oil and gas waste shall:

(1) be accompanied by a paper manifest that meets the requirements of this section; or

(2) be documented and tracked by an electronic manifest system that meets the requirements of this section and is accessible to the Commission and all parties involved in the management of the waste.

(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:

(1) identity of the waste generator, including operator name, Commission-issued operator number, and detailed contact information;

(2) identity of the property or facility where the oil and gas waste was generated, using Commission-issued identifiers including:

(A) operator name and Commission-assigned operator number of the generator;

(B) lease name and Commission-assigned lease number;

(C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and

(D) county name;

(3) the corresponding waste profile identifier prepared by the generator as required in §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation);

(4) identity of the facility to which the oil and gas waste is delivered including the identifier issued by the appropriate regulatory agency and detailed contact information for the facility;

(5) transporter name and waste hauler permit number with driver signature;

(6) type and volume of oil and gas waste transported;

(7) date of shipment;

(8) name and signature of generator; and

(9) date of acceptance with waste receiver signature.

(c) The generator of the oil and gas waste, the waste hauler, and the receiver shall keep for a period of three years from the date of shipment copies or electronic records of all manifests.

(d) Oil and gas waste that is moved by pipeline is not required to be accompanied by a manifest but an operator of an oil and gas waste pipeline system is required to:

(1) meter **or document** the fluid flow for mass balance into and out of the system;

(2) maintain the metering **or documentation** records for three years; and

(3) provide the records to the Commission upon request.

(e) A commercial facility receiver that refuses to accept a load of waste that is not correctly characterized or manifested shall notify Technical Permitting immediately. The notification shall include information necessary to identify the waste hauler and generator, if available.

§4.192. **Trans-jurisdictional Waste Transfers** ~~**Special Waste Authorization**~~.

(a) Section 3.30(e) of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)) provides a means by which certain **RRC-jurisdictional** ~~**oil and gas**~~ waste may be managed at an appropriate TCEQ-regulated facility and by which certain TCEQ-jurisdictional waste may be managed at an appropriate RRC-regulated facility. **Other statutes, rules, and permits may also authorize waste between jurisdictions.**

(b) Waste transfers across jurisdictional authorities must be reported to the Commission beginning December 31, 2026.

(1) TCEQ-jurisdictional waste or waste from another jurisdiction being received by a Commission-regulated facility shall be reported as follows:

(A) If the receiving facility is required by permit or rule to file a quarterly report with the Commission, then the quarterly report must identify and quantify the waste received from other jurisdictions.

(B) If the receiving facility is not required by permit to file a quarterly report with the Commission, then the receiving facility shall file a monthly report within 30 days of the end of each calendar month in which non-jurisdictional waste was received. The monthly report shall summarize the identity and quantity of waste received from the other jurisdiction and shall include a copy of all waste manifests and waste characterization documentation.

(2) RRC-jurisdictional waste that is transferred to be managed at a facility regulated by TCEQ or another authority shall be reported to the Commission by the generator of the waste within 30 days of the waste transfer and shall include a copy of all waste manifests and waste characterization documentation.

(c) ~~**A**~~ **Beginning December 31, 2026**, ~~**S**~~ special waste authorization ~~**approved by both agencies**~~ is required **for all waste transfers that are not otherwise authorized by statute, rule, or permit. The generator of the waste is required to obtain the special waste authorization from the appropriate**

authorities. ~~before oil and gas waste can be managed at a TCEQ-regulated facility or before TCEQ-jurisdictional waste can be received at an RRC-regulated facility.~~

~~(c)~~ The Commission shall create a Special Waste Authorization Form suitable for these purposes.

§4.193. Oil and Gas Waste Haulers.

(a) Prohibitions. A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated without a valid oil and gas waste hauler permit. A permittee under this division shall not gather oil, gas, or geothermal resources unless otherwise authorized by Commission rules. An oil and gas waste hauler shall not transport oil, gas, or geothermal resources in the same vehicle being used to transport oil and gas wastes other than **~~incidental~~** volumes of skim oil normally present in produced water or other oil and gas wastes.

(b) Exclusions.

(1) Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq.), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USC §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) is excluded from this section.

(2) Hauling of oil and gas NORM waste that is not exempt from Subchapter F of this title (relating to Oil and Gas NORM) and that exceeds the exemption criteria specified in 25 Texas Administrative Code §289.259(d)(1), (2), and (3) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), is excluded from this section.

(c) Application. An application for an oil and gas waste hauler permit shall be made in an electronic system established by the Commission. The application shall include:

(1) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements);

(2) vehicle identification information to support Commission issuance of an approved vehicle list;

(3) an affidavit from the operator of each commission-permitted waste facility the hauler intends to use stating that the hauler has permission to use the waste facility system;

(4) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul oil and gas waste are designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste; and

(5) any other information required by the Commission.

(d) Permit term.

(1) An oil and gas waste hauler permit may be issued for a term not to exceed one year.

(2) A waste hauler permittee may not apply to renew a permit using the permittee's assigned permit number and by paying the fee required by §3.78 of this title until a minimum of 60 days before the expiration date specified in the permit.

(3) A waste hauler permittee shall apply for a new waste hauler permit number if the permittee submits a renewal application more than six months after the expiration of its permit.

(e) Permit conditions. Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit, which are restated as follows.

(1) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.

(2) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.

(3) Each vehicle shall carry a copy of the permit including those parts of the Commission-issued attachments listing approved vehicles. This permit authority is limited to those vehicles shown on the Commission-issued list of approved vehicles.

(4) This permit is issued pursuant to the information furnished on the Commission-prescribed application form, and any change in conditions shall be reported to the Commission on an amended application form. The permit authority will be revised as required by the amended application.

(5) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.

(6) This permit authorizes the permittee to use Commission-permitted waste facilities provided the waste facilities are permitted to receive the specific type of waste being hauled.

(7) This permit also authorizes the permittee to use a waste facility operated under authority of a minor permit issued by the Commission.

(8) This permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) provided the shipment is accompanied by a manifest that meets the requirements of §3.98(o) or (w) of this title as applicable.

(9) This permit authorizes the transportation of non-hazardous oil and gas waste to a disposal facility permitted by another state agency, another state, or an agency of the federal government,

provided the shipment is accompanied by a manifest, run ticket, or shipping paper and the person submits a copy of such manifest, run ticket, or shipping paper showing the information specified in §4.191 of this title (relating to Oil and Gas Waste Manifests) to the appropriate Commission District Office within 30 days of shipment.

(10) Each vehicle shall be operated and maintained **at all times** in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation on or off any facility regulated by the Commission. Vehicles used to haul oil and gas waste shall be designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste.

(11) Each vehicle shall be made available for inspection upon request by the Commission.

§4.194. Recordkeeping.

(a) Generators, waste haulers, and receivers shall keep all waste profiles, manifests, and other documentation for a period of at least three years. The person keeping any records required by this section shall make the records available to the Commission upon request.

(b) Upon discovering any significant discrepancy in waste descriptions, volumes, place of origin, disposal locations or destinations, or other information based on personal observation or information contained in the manifest or electronic system, the receiver shall submit to the Commission, the generator, and the waste hauler a letter describing the discrepancy and a copy of the manifest or electronic system documentation.

§4.195. Waste Originating Outside of Texas.

~~**Notwithstanding the provisions of §4.190 through §4.192 of this title (relating to Oil and Gas Waste Characterization and Documentation; Oil and Gas Waste Manifests; and Special Waste Authorization, respectively),**~~ **O**il and gas waste that is generated outside of Texas and transported into Texas **by surface vehicle** for management shall be accompanied by documentation including the name of the generator, the location of origin, and any operator and facility identifiers issued by the appropriate regulatory agency of that state to ensure the origin of the waste is accurately identified and possession of the waste is tracked.

DIVISION 11. REQUIREMENTS FOR SURFACE WATER PROTECTION

§4.196. Surface Water Pollution Prevention.

(a) An operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage aquatic life therein.

(b) All **activities under the jurisdiction of the Commission** ~~**oil, gas, and geothermal resource well drilling and producing operations**~~ shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. The following procedures shall be utilized to prevent pollution.

(1) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.

(2) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans shall be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.

(3) Solid wastes such as cans, bottles, any form of trash, or ashes of combustible waste shall be transported to shore in appropriate containers.

(4) Drilling muds which contain oil shall be transported to shore or a designated area for disposal.

(5) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent discharge of pollutants to the Texas offshore and adjacent estuarine zones.

(6) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action shall be taken or notification made to eliminate further pollution. The operator shall then transmit the report to the appropriate Commission District Office.

(7) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.

(c) The Commission may suspend producing and/or drilling operations from any facility if the provisions of this rule are being violated.

(d) The requirements of this section shall also apply to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.

§4.197. Consistency with the Texas Coastal Management Program.

(a) Applicability. The provisions of this section apply only to activities that occur in the coastal zone and that are subject to the Coastal Management Program (CMP) rules in 31 Texas Administrative Code Chapters 26 through 29.

(1) Disposal of oil and gas waste in pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone.

(A) No commercial oil and gas waste disposal pit constructed after October 25, 1995, shall be located in any coastal natural resources area (CNRA).

(B) All oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Development in critical areas. The provisions of this paragraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.23(a)(1) - (7) (relating to Policies for Development in Critical Areas) have been satisfied. The Commission shall coordinate its efforts under this section with those of other appropriate state and federal agencies.

(3) Dredging and dredged material disposal and placement. The provisions of this section apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.25 (relating to Policies for Dredging and Dredged Material and Placement) have been satisfied.

(b) Consistency determinations. The provisions of this subsection apply to issuance of determinations required under 31 Texas Administrative Code §29.30 (relating to Agency Consistency Determination) for the following actions listed in 31 Texas Administrative Code §29.11(a)(3) (relating to Actions and Rules Subject to the Coastal Management Program): permits to dispose of oil and gas waste in a pit; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(1) The Commission shall issue consistency determinations under this subsection as an element of the permitting process for permits to dispose of oil and gas waste in a pit.

(2) Prior to issuance of a permit or certification covered by this subsection, the Commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of subsection (a) of this section that are applicable to such activity.

(A) If the Commission determines that issuance of a permit or a certification covered by this subsection would not result in direct and significant adverse effects to any coastal natural resource area (CNRA) identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse effect on any coastal natural resource area (CNRA) identified in the applicable policies."

(B) If the Commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse effects to a CNRA identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall determine whether the proposed activity would meet the applicable requirements of subsection (a) of this section.

(i) If the Commission determines that the proposed activity would meet the applicable requirements of subsection (a) of this section, the Commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(ii) If the Commission determines that the proposed activity would not meet the applicable requirements of subsection (a) of this section, the Commission shall not issue the permit or certification.

(c) Thresholds for referral. Any Commission action that is not identified in this subsection shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to 31 Texas Administrative Code §29.32 (relating to Requirements for Referral of a Proposed Agency Action), the thresholds for referral of consistency determinations issued by the Commission are as follows:

(1) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(2) for certification of federal permits for development in critical areas:

(A) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(i) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(ii) five acres or more of any other critical area; and

(B) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area; and

(3) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

SUBCHAPTER B. COMMERCIAL RECYCLING

DIVISION 1. GENERAL; DEFINITIONS

§4.201. Purpose.

(a) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting and operating standards and requirements for commercial recycling of [~~oil and gas~~] wastes associated with activities governed by the Commission including those governed under: [~~the jurisdiction of the Commission.~~]

(1) Texas Natural Resources Code Title 3, Subtitle B;

(2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;

(3) Texas Natural Resources Code Title 5;

(4) Texas Health and Safety Code Chapter 382, Subchapter K; and

(5) Texas Water Code Chapters 26, 27 and 29.

(b) Other wastes described in subsection (a) of this section are included when this subchapter refers to oil and gas waste(s) and may be managed in accordance with the provisions of this subchapter at facilities authorized under this subchapter provided the wastes are nonhazardous and chemically and physically similar to oil and gas wastes.

(c) [~~(b)~~] No person conducting activities subject to this subchapter may cause or allow pollution of surface or subsurface water in the state.

(d) [~~(c)~~] The provisions of this subchapter do not supersede other Commission regulations relating to oil field fluids or oil and gas waste.

§4.202. Applicability and Exclusions.

(a) The provisions of this subchapter apply to the following categories of commercial recycling:

(1) on-lease commercial recycling of solid oil and gas waste;

(2) off-lease or centralized commercial solid oil and gas waste recycling;

(3) stationary commercial solid oil and gas waste recycling;

(4) off-lease commercial recycling of fluid; and

(5) stationary commercial recycling of fluid.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by Subchapter A of this chapter [~~§3.8 of this title (relating to Water Protection); §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials);~~] or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste).

[~~(c) The provisions of this subchapter do not apply to non-commercial fluid recycling. Such recycling is subject to the requirements of §3.8 of this title.~~]

(c) [~~(d)~~] The permitting provisions of this subchapter do not apply to the recycling of fluid received at a commercial disposal well operated pursuant to permit issued under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).[~~,~~] Such recycling is authorized by this subchapter provided:

(1) the operator of the disposal well treats, or contracts with a person for the treatment of the fluid;

(2) the operator of the disposal well is responsible for all activities, including the recycling, that occurs on the lease;

(3) the operator has obtained the applicable permits for pits or waste management units at the lease;

(4) the operator [~~and~~] has obtained financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements);

(5) the operator provides written notification to the District Office [~~appropriate district office~~] seven days before recycling operations are expected to begin and includes information on how fluids will be controlled and contained during recycling operations; and

(6) the operator provides written notification to the District Office [~~appropriate district office~~] within seven days of concluding recycling operations. [~~Such recycling is authorized by this subchapter.~~]

(d) [~~(e)~~] The provisions of this subchapter are in addition to the permitting requirements of Subchapter A of this chapter [~~§3.8 of this title~~], which requires a permit for any pit not specifically authorized in Division 3 of Subchapter A of this chapter [~~the rule~~].

(e) [~~(f)~~] The provisions of this subchapter do not authorize discharge of oil and gas waste.

(f) [~~(g)~~] The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

(g) Permits issued pursuant to this subchapter prior to July 1, 2025, shall remain in effect pursuant to the rules in existence at the time the permits were issued and the requirements of the permits themselves, including the requirements for permit renewal. However, the Director may consider the operational, monitoring, and closure requirements on a case-by-case basis.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for commercial recycling permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §4.193 [~~§3.8(f)~~] of this title (relating to Oil and Gas Waste Haulers [~~Water Protection~~]).

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who **uses** **[~~plans to use~~]** the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

§4.204. Definitions.

Unless a word or term is defined differently in this section, the definitions in Subchapter A of this chapter [~~§3.8 of this title (relating to Water Protection)~~], §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), and §4.603 of this title (relating to Definitions), shall apply in this subchapter. In addition, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

[~~(1) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.~~]

(1) [~~(2)~~] Adjoining--Every tract of property surrounding the tract of property upon which the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

(2) Administratively complete--A complete application that the Director has determined meets all the administrative and technical requirements of the subchapter such that a permit shall be issued administratively or, if the application was protested, that the application will be referred to the Hearings Division.

(3) Berm (or dike)--A manmade barrier surrounding a pit, waste management unit, or facility, that is designed, constructed, and maintained to segregate materials, including waste and stormwater runoff, inside and outside of a pit, waste management unit, or facility.

(4) [~~(3)~~] Commercial recycling facility--A facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the primary business purpose of the facility is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility. The term includes [~~Includes~~] recycling of solid oil and gas wastes on or off lease. [~~Does not include non-commercial fluid recycling as defined in §3.8 of this title.~~]

[~~(4) Commission--The Railroad Commission of Texas.~~]

(5) Complete application--An application that contains information addressing each application requirement of the subchapter and all information necessary to initiate the final review by the Director.

[~~(5) Director--The director of the Commission's Oil and Gas Division or the director's delegate.~~]

(6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An analytical method used to evaluate the potential for leaching of metals and/or benzene into surface and subsurface water.

(7) Legitimate commercial product--A product of a type customarily sold to the general public for a specific use and for which there is a demonstrated commercial market.

(8) [~~(7)~~] Legitimate commercial use--Use or reuse of a recyclable product as authorized or defined in a permit issued pursuant to this subchapter:

(A) as an effective substitute for a commercial product or as an ingredient to make a commercial product; or

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(9) [~~(8)~~] Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(10) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is

generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.

(11) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(12) [~~(9)~~] On-lease commercial solid oil and gas waste recycling--Commercial recycling performed on an oil or gas lease or well site using equipment that moves from one location to another, at which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

(A) amount of time, generally less than one year, operations occur at any one location;

(B) volume and source of the waste that may be processed at any one location;

(C) the type and characteristics of the waste; and

(D) size of the area used for recycling.

[~~(10) Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).~~]

[~~(11) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.~~]

[~~(12) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste, but may become~~

~~a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.~~]

[(~~13) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).~~]

[(~~14) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.~~]

[(~~15) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.~~]

[~~(16) Solid oil and gas waste--Oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.~~]

(13) [~~(17)~~] Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location for a period of greater than two years that recycles solid oil and gas waste or wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(14) Treatment--The process of reconditioning oil and gas waste to a reusable form.

(15) Treatment of drill cuttings--A manufacturing, mechanical, thermal, or chemical process other than sizing, shaping, diluting, or sorting.

§4.205. Exceptions.

(a) Except for the requirements related to financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) of this title; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of this title; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this title, an applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director [~~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.

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) The Director [~~director~~] shall review each written request on a case-by-case basis.

(1) If the Director determines that a request for an exception to a rule in Divisions 5 or 6 of this subchapter (relating to Requirements for Off-Lease Commercial Recycling of Fluid, and Requirements for Stationary Commercial Recycling of Fluid, respectively) is substantially similar to previous exceptions approved by the Commission, the Director shall approve the requested exception.

(2) If the Director [~~director~~] denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not [~~may not~~] use the requested alternative until the alternative is approved by the Commission.

§4.206. Administrative Decision on Permit Application.

(a) If the Commission does not receive a protest to an application submitted under this subchapter, the Director [~~director~~] may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(b) The Director [~~director~~] may administratively deny the application if it does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The Director [~~director~~] shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the Director [~~director~~] within 30 days of the date on the notice of administrative denial. If the Director [~~director~~] receives a request for a hearing, the Director [~~director~~] shall refer the matter to the Docket Services Section of the Hearings Division [~~Office of General Counsel~~] for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

§4.207. Protests and Hearings.

(a) If a person who receives notice or other affected person files a proper protest with the Technical Permitting Section [~~Commission~~], the Director [~~director~~] shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the Director's [~~director's~~] notice to respond, in writing, by either requesting a hearing or withdrawing the application. In the absence of a

timely written response from the applicant, the Director [~~director~~] shall consider the application to have been withdrawn.

(b) Even if there is no protest filed, the Director [~~director~~] may refer an application to a hearing if the Director [~~director~~] determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the Director [~~director~~] will consider the characteristics and volume of oil and gas waste to be managed [~~stored, handled and treated~~] at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

§4.208. General Standards for Permit Issuance.

(a) A permit for a commercial recycling facility issued pursuant to this subchapter shall provide that the facility shall only receive, store, handle, treat, or recycle waste:

(1) under the jurisdiction of the Commission;

(2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title (relating to Definitions).

(b) A permit issued pursuant to this subchapter may be issued only if the Director [~~director~~] or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

(c) All chemical laboratory analyses shall be performed using appropriate Environmental Protection Agency methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the

standards specified by the ASTM International (ASTM) and certified by a professional engineer licensed in Texas.

§4.209. Permit Renewal.

Permits issued pursuant to this subchapter may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

§4.211. Penalties.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement without cause. Operators may correct violations at a facility with approval of Commission staff before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27,

and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the facility's history of previous violations;

(2) the operator's history of previous violations;

(3) the seriousness of the violation;

(4) any hazard to the health or safety of the public; and

(5) the demonstrated good faith of the operator charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §4.211(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Figure: 16 TAC §4.211(f)

(g) Penalty enhancements for certain violators. For violations in which the operator charged has a history of prior violations within seven years of the current enforcement action at any facility regulated by the Commission, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §4.211(g)

Figure 2: 16 TAC §4.211(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §4.211(j)

~~[Violations of this subchapter or a permit issued pursuant to this subchapter may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes or rules administered by the Commission.]~~

DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

§4.212. General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities.

(a) An application for a permit for on-lease solid oil and gas waste commercial recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin~~]. The Technical Permitting Section shall not begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~A permit~~

~~application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.213. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for on-lease commercial solid oil and gas waste recycling to provide the Commission with engineering[~~,~~] or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively [~~Chapter 1001~~].

§4.214. Minimum Design and Construction Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a facility diagram [~~the typical layout and design~~] of receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, and dikes.

(2) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(3) a map view and two perpendicular cross-sectional views of typical pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; and

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design.

§4.218. General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall specify the Commission districts within which recycling is authorized, shall be valid [~~issued~~] for a term of not more than five years, and shall authorize operations at any one lease for no more than one year. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~]. Any request for transfer of the [~~this~~] permit shall [~~should~~] be filed with the Technical Permitting Section on a Commission prescribed form [~~Oil and Gas Division in Austin~~] at least 60 days before the permittee requests [~~wishes~~] the transfer to take place.

(b) A permit for on-lease commercial solid oil and gas waste recycling shall include a condition requiring that the permittee obtain written permission from the surface owner of the lease upon which recycling will take place and notify the [~~appropriate~~] Commission District Office [~~district office~~] 72 hours before operations commence on each lease.

§4.219. Minimum [~~Permit Provisions for~~] Siting Information.

(a) A permit for on-lease commercial solid oil and gas waste recycling may be issued only if the Director [~~director~~] or the Commission determines that the operations will pose no unreasonable risk of pollution or threat to public health or safety.

(b) A pit [~~On-lease commercial solid oil and gas waste recycling~~] permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~]:

(1) within a 100-year flood plain;[~~, in a streambed, or~~]

(2) within [~~in~~] a sensitive area as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); [~~or~~]

(3) [~~(2)~~] within 300 [~~150~~] feet of surface water [~~or public~~], domestic supply wells, or irrigation water wells;[~~.~~]

(4) within 500 feet of any public water system wells or intakes;

(5) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL) **tested using fluids likely to be encountered in the operations of the facility and the test results demonstrated the GCL can sustain a hydraulic conductivity of 1.0 x 10-7cm/sec or less;**

(6) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of initial permitting; or

(7) within 500 feet of a wetland.

(c) A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and telephone number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this

paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

(d) [~~(c)~~] Factors that the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or[~~,~~] sensitive areas as defined by §4.110 [~~§3.91~~] of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(e) [~~(d)~~] All siting requirements in this section for on-lease commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.220. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for on-lease commercial solid oil and gas waste recycling shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the operator [~~permittee~~] control and remediate spills; and

(C) requiring that the operator [~~permittee~~] make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material.

(b) All storage cells at the site shall be:

(1) located above the top of the seasonal high water table;

(2) designed to prevent stormwater runoff from entering the area; and

(3) surrounded by berms with a minimum width at base of three times the height and the berms constructed such that the height, slope, and construction material are structurally sound and do not allow seepage.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall require that the operator [~~permittee~~] notify the [~~appropriate~~] Commission District Office [~~district office~~] prior to commencement of construction, including construction of any dikes, and again upon completion of construction, and that the permittee may commence operations under the permit 72 hours after notice to the District Office [~~appropriate district office~~].

§4.221. Minimum Permit Provisions for Operations.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit generated on-lease, including requirements that the permittee test incoming oil and gas waste and keep records of amounts of wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for on-lease commercial solid oil and gas waste recycling issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The permittee shall demonstrate the ability to successfully process a 1,000 cubic yard batch of solid oil and gas waste.

(A) The Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the [~~appropriate~~] District Office shall [~~must~~] be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles shall [~~may~~] not exceed 15 percent.

(C) A written report of the trial run shall be submitted to the Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office [~~appropriate district office~~] within 60 days of receipt of the analyses required in this section. The following information shall [~~must~~] be included:

(i) a summary of the trial run and description of the process;

(ii) [~~(i)~~] the actual volume of waste material processed;

(iii) [~~(ii)~~] the volume and type of stabilization material used;

(iv) [~~(iii)~~] the type of waste and description of the waste material [~~copies of all lab analyses required by this section~~]; and

(v) [~~(iv)~~] copies of all chemical and geotechnical laboratory analytical reports and chain of custody sheets for the samples specified in [~~the results of the analysis required under~~] subparagraph (B) of this paragraph.

(D) The final processed material shall [~~must~~] meet the limitations of this section.

(4) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the site, that the Technical Permitting Section [~~Commission~~] determines to be reasonably necessary to ensure that the permittee does not accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) Excess stormwater [~~rainwater~~] collected within a bermed area shall be removed and disposed of in an authorized manner.

(e) Appropriate measures shall be taken to control dust at all times.

(f) Processed material meeting or exceeding the engineering [~~process control~~] parameters listed in §4.222(d) of this title (relating to Minimum Permit Provisions for Monitoring) is suitable for use on lease roads, drilling pads, tank batteries, compressor station pads, and county roads.

§4.222. Minimum Permit Provisions for Monitoring.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste; and

(2) the intended use for the recyclable product.

(c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this subchapter or in a permit issued by the Commission.

(d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yard composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.222(d) (No change.)

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records shall [~~must~~] be kept of all waste treated for a period of three years from the date of treatment.

(B) These records shall [~~must~~] include the following:

(i) name of the generator;

(ii) source of the waste (lease number or gas I.D. number and well number, or API number);

(iii) date the waste was treated at the drill site;

(iv) volume of the waste treated at the drill site;

(v) name of the carrier;

(vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;

(vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and

(viii) documentation indicating the approximate location where recyclable product is used including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

§4.223. Minimum Permit Provisions for Closure.

A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division [~~subchapter~~] shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples; and post-closure monitoring.

§4.224. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include

the operator's [~~permittee's~~] permit number and facility identification number assigned by the Technical Permitting Section. The application for renewal shall include details of proposed changes or shall state that there are no changes proposed that would require amendment of the permit other than the expiration date.

DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

§4.230. General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.

(a) An application for a permit for off-lease or centralized commercial solid oil and gas waste recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin~~]. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.231. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for off-lease or centralized commercial solid oil and gas waste recycling to provide the Commission with engineering, geological, or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.232. Minimum Siting Information.

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address,[~~;~~] and telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[~~(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.~~]

(b) A pit permitted pursuant to this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL) **tested using fluids likely to be**

encountered in the operations of the facility and the test results demonstrated the GCL can sustain a hydraulic conductivity of 1.0 x 10-7cm/sec or less;

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(c) Factors that the Commission will consider in assessing potential risk from on off-lease or centralized commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste, and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for on-lease off-lease or centralized commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.234. Minimum Design and Construction Information.

(a) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

§4.238. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct an off-lease or centralized commercial solid oil and gas waste recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for an off-lease or centralized commercial solid oil and gas waste recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is **completed** ~~provided~~ begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail. **Notice is completed upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service**.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of solids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date ~~of the~~ notice **is completed**;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date **notice is completed** ~~of notice~~ or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is **completed** ~~provided~~.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

[~~(a) A permit applicant for off-lease or centralized commercial solid oil and gas waste recycling shall give personal notice and file proof of such notice in accordance with the following requirements.~~]

[(~~1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:~~]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should] be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recycled material.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.]

[(b) If the director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the

~~applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]~~

§4.239. General Permit Provisions.

(a) A permit for an off-lease or centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall be valid [~~issued~~] for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, the facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [~~appropriate~~] Commission District Office [~~district office~~] before recycling operations commence.

§4.240. Minimum Permit Provisions for Siting.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) An off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~] within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources or[~~,~~] sensitive areas as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.241. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for an off-lease centralized commercial solid oil and gas waste recycling facility shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment berms [~~dikes~~], and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the operator [~~permittee~~] control spills at the facility; and

(C) requiring that the operator [~~permittee~~] make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) submit to the Technical Permitting Section [~~Commission's office in Austin~~] a soil boring log and other information for each well, unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.242. Minimum Permit Provisions for Operations.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.243. Minimum Permit Provisions for Monitoring.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yards composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.243(d) (No change.)

§4.245. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.230 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), and the notice requirements of §4.238 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.231 - 4.237 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES

§4.246. General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility.

(a) An application for a permit for a stationary commercial solid oil and gas waste recycling facility shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A~~

~~permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.247. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for a stationary commercial solid oil and gas waste recycling facility to provide [~~the Commission with~~] engineering, geological, or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not

result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.248. Minimum Siting Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and[~~;~~] telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

~~[(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information].~~

(b) A pit permitted under this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL) **tested using fluids likely to be encountered in the operations of the facility and the test results demonstrated the GCL can sustain a hydraulic conductivity of 1.0 x 10-7cm/sec or less**;

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(c) Factors that the Commission will consider in assessing potential risk from stationary commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for stationary commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.250. Minimum Design and Construction Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.251. Minimum Operating Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission District Office [~~district~~];

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

§4.254. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct stationary commercial solid oil and gas waste recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for a stationary commercial solid oil and gas waste recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The

date notice is **completed** ~~provided~~ begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail. **Notice is completed upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service.**

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of solids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date ~~of the~~ notice **is completed**;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Notice by publication. In addition to the notice required by subsection (d) of this section, an applicant for a stationary commercial solid oil and gas waste recycling commercial facility permit shall also provide notice by publication.

(g) Newspaper of general circulation. The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(h) Contents of published notice. The published notice shall:

(1) be entitled "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid or solid waste to be managed at the facility;

(7) identify the proposed recycling method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(i) Proof of notice. The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

(j) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date **notice is completed** ~~of notice~~ or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is **completed** ~~provided~~ or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

(k) Director review. If the Director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

~~[(a) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall publish notice and file proof of publication in accordance with the following requirements.]~~

~~[(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.]~~

~~[(2) The published notice shall:]~~

~~[(A) be entitled, "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility";]~~

~~[(B) provide the date the applicant filed the application with the Commission for the permit;]~~

~~[(C) identify the name of the applicant;]~~

~~[(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;]~~

~~[(E) identify the owner or owners of the property upon which the proposed facility will be located;]~~

~~[(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and]~~

~~[(G) provide the address to which protests may be mailed.]~~

[(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.]

[(b) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.]

[(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recycled material.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.]

[(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]

§4.255. General Permit Provisions.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall be issued for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [director].

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, a stationary commercial solid oil and gas waste recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [appropriate] Commission District Office [district office] before recycling operations commence on each tract.

§4.256. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility may be issued only if the Director [director] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited [and after the effective date of this division shall not be located]:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); or

(2) within 300 [~~150~~] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) depth to and quality of the shallowest groundwater;

(3) distance to the nearest property line or public road;

(4) proximity to coastal natural resources or[~~,~~] sensitive areas as defined by §4.110 [~~§3.91~~] of this title, or surface water and/or public, domestic, or irrigation water wells; and

(5) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for a stationary commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.257. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial solid oil and gas waste recycling facility shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial solid oil and gas waste recycling facility pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.257(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) submit to the Technical Permitting Section [~~Commission's office in Austin~~] a soil boring log and other information for each well, if required by the Technical Permitting Section.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.258. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the District Office [~~appropriate district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall demonstrate the ability to successfully process a 1,000 [~~one thousand~~] cubic yard batch of solid oil and gas waste.

(A) The Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office shall [~~appropriate district office must~~] be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall [~~must~~] be collected and analyzed as required by §4.243 of this title (relating to Minimum Permit Provisions for Monitoring).

(C) Samples shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(3) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(4) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(6) A written report of the trial run shall be submitted to the Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office [~~appropriate district office~~] within 60

days of receipt of the analyses required in §4.243 of this title. The following information shall [~~must~~] be included:

(A) the actual volume of waste material processed;

(B) the volume of stabilization material used;

(C) copies of all lab analyses required by §4.243 of this title; and

(D) the results of the analysis required under paragraph (2)(C) of this subsection.

(7) The final recyclable material shall [~~must~~] meet the limitations of §4.243 of this title.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.259. Minimum Permit Provisions for Monitoring.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.259(d) (No change.)

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, shall [~~must~~] be monitored for the following parameters after installation and quarterly thereafter:

(A) static water level;

(B) benzene;

(C) total petroleum hydrocarbons (TPH);

(D) total dissolved solids (TDS);

(E) chlorides;

(F) bromides;

(G) sulfates;

(H) nitrates;

(I) carbonates;

(J) calcium;

(K) magnesium;

(L) sodium; and

(M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Technical Permitting Section [~~Oil and Gas Division~~] and the District Office [~~appropriate district office~~].

§4.261. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.246 of this title (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), and the notice requirements of §4.254 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.247 - 4.253 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure

Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID

§4.262. General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid.

(a) An application for a permit for off-lease commercial recycling of fluid shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall determine that the application is administratively complete prior to administratively approving an application or referring an application to hearing. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application.

(1) An applicant may make no more than two supplemental filings to complete an application.

(2) After the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be:

(A) approval if the application meets the requirements of this division and the application has not been protested;

(B) referral to the Hearings Division if the application meets the requirements of this division and the application has been protested; or

(C) denial if the application does not meet the requirements of this division.

(3) If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(4) The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The Director shall approve or deny a complete application for a permit issued under this division that does not include a request for an exception to the requirements of this division not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed with the Commission, in which case the Commission may extend the amount of time to approve or deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this title (relating to Practice and Procedure). If the Director does not approve or deny the application before that date, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year.

(e) [~~(d)~~] The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(f) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.263. Minimum Engineering and Geologic Information.

(a) A [~~The director may require a~~] permit applicant for off-lease commercial recycling of fluid shall include [~~to provide the Commission with~~] engineering, geological, or other information [~~which the director deems~~] necessary to:

(1) describe the subsurface geology underlying the facility to a depth of at least 100 feet, including the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100 feet, including an assessment of the presence and characteristics of permeable and impermeable strata; and

(3) evaluate the geology, hydrogeology, and proposed engineering design to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Information for engineering and geological site characterization may be obtained from available information or from a site investigation including installation of soil borings, soil and groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is considered more reliable and, therefore, will have a greater effect on the permit determination.

(c) If an operator intends to establish and later rely on actual background concentrations of contaminants in environmental media, then the operator shall collect site-specific soil and groundwater samples for analysis and include these findings with the application.

(d) [~~(b)~~] Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.264. Minimum Siting Information.

(a) A pit permitted under this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL) **tested using fluids likely to be encountered in the operations of the facility and the test results demonstrated the GCL can sustain a hydraulic conductivity of 1.0 x 10-7cm/sec or less**;

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(b) A permit application for off-lease commercial recycling of fluid shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address,[~~;~~] and telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to

be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[(~~7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that~~

~~underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.]~~

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for off-lease commercial recycling of fluid refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.266. Minimum Design and Construction Information.

(a) A pit permitted under this division shall be designed, built, and maintained as follows.

(1) The pit shall contain the material placed in the pit and prevent releases, overflow, or failure.

(2) The maximum depth from the natural surface elevation shall not exceed 22 feet.

(3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior and exterior surfaces of the pit shall be smooth drum rolled.

(4) The pit sides and berms shall have interior and exterior grades no steeper than three horizontal feet to one vertical foot (3H:1V). The top of the berm shall be wide enough to provide adequate room for inspection, maintenance, and any other structural or construction requirements.

(A) Fill for berms shall be placed and compacted in continuous lifts with a maximum loose lift thickness of 10 inches, compacted to eight inches.

(B) Berm fill shall be compacted to at least 95% of maximum dry density determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of optimum moisture content as determined by a standard proctor soil test on samples from the source area. One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide compaction testing results upon completion.

(5) Both primary and secondary liners in a pit shall be geomembrane liners composed of ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet

light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a minimum, a liner system as follows:

(A) The primary liner shall be constructed with a minimum 60-mil high density polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

(B) A leak detection system shall be placed between the primary and secondary geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The leak detection system shall be designed with the capability of removing a minimum of 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

(C) The secondary liner shall be constructed with a minimum 40-mil HDPE for any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet below the ground surface, the secondary liner shall include a geosynthetic clay liner.

(D) A geotextile (felt) liner shall be placed under the secondary liner and in contact with the prepared ground surface.

(6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's instructions.

(7) Field seams in geosynthetic material shall be performed in accordance with the manufacturer's instructions and include the following considerations:

(A) Field seams in geosynthetic material shall be minimized and oriented perpendicular to the slope of the berm, not parallel.

(B) Prior to field seaming, the operator shall overlap liners a minimum of four to six inches. The operator shall minimize the number of field seams and corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe.

(C) Qualified personnel shall perform field seam welding and testing. Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

(8) At a point of discharge into or suction from the pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage.

(9) All piping and equipment that is in contact with the liner shall be secured to prevent liner wear and damage.

(10) There shall be no penetrations of the liner system.

(11) The pit shall be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent run-on of any non-contact stormwater, precipitation, or surface water.

(12) The pit shall be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(b) Tanks and treatment equipment shall be located within a secondary containment system.

(c) [~~(a)~~] A permit application for off-lease commercial recycling of fluid shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(d) [~~(b)~~] A permit application for off-lease commercial recycling of fluid also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; [~~and~~]

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of berms [~~dikes~~] and/or storage basins that would collect stormwater [~~storm water~~] from the facility, at a minimum, during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and[~~.~~]

(5) a plan for the installation of monitoring wells at the facility.

§4.267. Minimum Operating Information.

A permit application for off-lease commercial recycling of fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of oil and gas wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the health, safety, and environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.268. Minimum Monitoring Information.

A permit application for off-lease commercial recycling of fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for sampling any monitoring wells at an off-lease commercial recycling of fluid facility as required by the permit and this division; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas

§4.269. Minimum Closure Information.

(a) A permit application for off-lease commercial recycling of fluid shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining

waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and all former pits unless closure of an individual pit was previously approved by the Technical Permitting Section.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the property;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon the monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of monitoring.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on a Commission prescribed form. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to

the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation shall show the depth of the excavation is limited to what can be graded to prevent storm water from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(b) A permit application for off-lease commercial recycling of fluid shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.276 of this title (relating to Minimum Permit Provisions for Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage pits, treatment equipment, and associated piping and other storage or waste processing equipment [~~areas/cells~~];

(3) remove berms [~~dikes~~] and equipment;

(4) contour and reseed disturbed areas with geographically appropriate vegetation including the source of water intended to establish the reseeded areas of the facility;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.270. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct a facility for off-lease commercial recycling of facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for a facility for off-lease commercial recycling of fluid is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date

notice is **completed** ~~provided~~ begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located.

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail. **Notice is completed upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service.**

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date ~~of the~~ notice **is completed**;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date **notice is completed** ~~of notice~~ or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is **completed** ~~provided~~.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

[~~(a) A permit applicant for off-lease commercial recycling of fluid shall give personal notice and file proof of such notice in accordance with the following requirements.~~]

[(~~1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:~~]

[(~~A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;~~]

[(~~B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;~~]

[(~~C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2 mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information); and~~]

[(~~D) any affected person or class of persons that the director determines should receive notice of a particular application.~~]

[(~~2) Personal notice of the permit application shall consist of:~~]

[(~~A) a copy of the application;~~]

[(~~B) a statement of the date the applicant filed the application with the Commission;~~]

[(~~C) a statement that a protest to the application should be filed with the Commission within 15 days of the date of receipt and the procedure for making a protest of the application to the Commission;~~]

[(~~D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;~~]

[(~~E) the name of the owner or owners of the property on which the facility is to be located;~~]

[(~~F) the name of the applicant;~~]

[~~(G) the type of fluid or waste to be handled at the facility; and~~]

[~~(H) the recycling method proposed and the proposed end-use of the recyclable product.~~]

[~~(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each person was notified of the application.~~]

[~~(b) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.~~]

§4.271. General Permit Provisions.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall be valid [~~issued~~] for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

(b) A permit issued pursuant to this division shall require that, prior to operating, off-lease commercial recycling of fluid comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for off-lease commercial recycling of fluid shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [~~appropriate~~] Commission District Office [~~district office~~] before recycling operations commence on each tract.

§4.272. Minimum Permit Provisions for Siting.

(a) A permit for off-lease commercial recycling of fluid may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety. **~~The Director will presume that an application meeting the requirements of §4.264(a) of this title (relating to Minimum Siting Information) does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise.~~**

(b) Off-lease commercial recycling of fluid permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~]:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); or

(2) within 300 [~~150~~] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §4.110 [~~§3.91~~] of this title, or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.273. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for off-lease commercial recycling of fluid pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.273(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers if required by the Technical Permitting Section; and

(2) if required by [~~submit to~~] the Technical Permitting Section, submit [~~Commission's office in Austin~~] a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) An operator shall not locate material excavated during construction:

(1) within 100 feet of a continuously flowing watercourse or significant watercourse;

(2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the ordinary high-water mark), or any other watercourse;

(3) within 100 feet of a wetland; or

(4) within a 100-year floodplain.

(g) The following requirements apply to signage, fencing, and security.

(1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least three inches in height.

(2) A sign shall be posted identifying the permit number of each pit using letters and numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not potable or suitable for consumption.

(3) The facility shall maintain security to prevent unauthorized access. Security shall be maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

(h) Any pit associated with an off-lease commercial fluid recycling facility permitted pursuant to this division after July 1, 2025, shall comply with the requirements of §4.265(a) of this title (relating to Minimum Design and Construction Information).

§4.274. Minimum Permit Provisions for Operations.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The operator [~~permittee~~] shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that

the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

(e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system when implemented by the Commission.

§4.275. Minimum Permit Provisions for Monitoring.

(a) Operational monitoring.

(1) The operator shall inspect the pits, tanks, and processing equipment weekly. The operator shall maintain a current log of such inspections and make the log available for review by the Commission upon request.

(2) The leak detection system shall be monitored on a weekly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is smaller.

(3) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(4) If the primary liner is compromised below the fluid level in the pit, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a minimum. The pit shall not be returned to service until the liner has been repaired or replaced and inspected by the District Office.

(5) If the pit's primary liner is compromised above the fluid level in the pit, the operator shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District Office.

(6) If groundwater monitoring wells are required, no waste shall be received at the facility until all permitted groundwater monitoring wells have been completed, developed, and sampled. The documentation of these activities shall be provided to the Commission within 30 days after

installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in Figure 1.

Figure: 16 TAC §4.275(a)(6)

(7) If an operator has determined the background analyte concentrations in soil and/or groundwater, those site-specific background levels shall be signed and sealed by a professional geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included in the permit as appropriate monitoring standards.

(b) Recyclable product monitoring.

(1) [~~(a)~~] A permit for off-lease commercial recycling fluid issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(2) [~~(b)~~] A permit under this division for use of the treated fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(c) Quarterly reporting. A permit issued under this division shall include provisions for filing quarterly reports documenting the fluid volumes into and out of the system in a form and manner prescribed by the Director.

§4.276. Minimum Permit Provisions for Closure.

(a) Notifications.

(1) The operator shall notify the Commission within 60 days after the cessation of operations.

(2) The operator shall notify the Commission 45 days before the commencement of closure activities.

(b) Time requirements for closure.

(1) Once the operations have ceased, the operator shall complete closure of the facility within one year.

(2) The Commission may grant an extension to close the facility not to exceed one additional year, provided all fluid has been removed and the operator attests to its plans for future operation.

(3) If the operator intends to use the pit for a purpose other than recycling, then the operator shall have that use approved or permitted by the Commission in accordance with the appropriate rules.

(c) Fluid and waste removal.

(1) The operator shall remove all fluids from the treatment equipment and tanks within 60 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or disposed of in an authorized manner.

(2) The operator shall remove all fluids from pits within six months of the date operations cease.

(3) All wastes, including the pit liners, shall be removed and disposed of in an authorized manner.

(4) Any concrete areas and access roads shall be cleaned and demolished, and the concrete rubble and wash water shall be disposed of in an authorized manner.

(5) All visibly contaminated soils shall be excavated and removed. The contaminated soil shall be disposed of in an authorized manner.

(d) Confirmation sampling and analysis.

(1) After the removal of wastes and visibly contaminated soils, grab samples shall be collected from around and underneath each pit, processing area, and waste storage, and the samples shall be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas underneath concrete.

Figure: 16 TAC §4.276(d)(1)

(2) The minimum number of grab samples required is as follows:

(A) for pits, five samples per acre of surface area, with a minimum of four samples; and

(B) for areas containing treatment equipment and storage tanks, five samples per acre of surface area.

(3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit is considered waste and shall be disposed of at an authorized disposal facility.

(4) If any soil samples exceed the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a plan for confirmation, delineation, and remediation, if necessary.

(e) The facility shall be restored to a safe and stable condition that blends with the surrounding land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term stability, and preservation of surface water flow patterns at locations where any surface water entered or exited the property boundary prior to waste management or recycling activities at the facility. Final surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that water will not collect at these former locations. The site shall be re-vegetated as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas.

(f) Within 60 days of closure completion, the operator shall submit a closure report, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping, or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct, and that the operator has complied with all applicable closure requirements and conditions specified in Commission rules or directives.

(g) The operator shall notify the Commission when closure and re-vegetation are complete. The Commission shall not release financial security to the operator until all post-closure activities are approved by the Commission.

(h) The Commission will inspect the site and verify compliance with closure requirements.

~~[A permit for off-lease commercial recycling fluid issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.]~~

§4.277. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. The application for renewal of an existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), and the notice requirements of §4.270 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction

Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF FLUID

§4.278. General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility.

(a) An application for a permit for a stationary commercial fluid recycling facility shall be filed with the Technical Permitting Section on a Commission prescribed form, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. [~~A permit for a stationary commercial recycling facility also shall contain the facility address.~~]

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application.

(1) An applicant may make no more than two supplemental filings to complete an application.

(2) After the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be:

(A) approval if the application meets the requirements of this division and the application has not been protested;

(B) referral to the Hearings Division if the application meets the requirements of this division and the application has been protested; or

(C) denial if the application does not meet the requirements of this division.

(3) If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(4) The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The Director shall approve or deny a complete application for a permit issued under this division that does not include a request for an exception to the requirements of this division not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed with the Commission, in which case the Commission may extend the amount of time to approve or deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this title (relating to Practice and Procedure). If the Director does not approve or deny the application before that date, the permit application is considered approved and the applicant may operate under the terms specified in the application for a period of one year.

(e) [~~(d)~~] The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(f) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.279. Minimum Engineering and Geologic Information.

(a) A [~~The director may require a~~] permit applicant for a stationary commercial fluid recycling facility shall include [~~to provide the Commission with~~] engineering, geological, or other information [~~which the director deems~~] necessary to:

(1) describe the subsurface geology underlying the facility to a depth of at least 100 feet, including the identification of the soil and subsoil by typical name and description of the approximate

proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100 feet, including an assessment of the presence and characteristics of permeable and impermeable strata; and

(3) evaluate the geology, hydrogeology, and proposed engineering design to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Information for engineering and geological site characterization may be obtained from available information or from a site investigation including installation of soil borings, soil and groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is considered more reliable and, therefore, will have a greater effect on the permit determination.

(c) If an operator intends to establish and later rely on actual background concentrations of contaminants in environmental media, then the operator shall collect site-specific soil and groundwater samples for analysis and include these findings with the application.

(d) [~~(b)~~] Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively,~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.280. Minimum Siting Information.

(a) A pit permitted under this division shall not be located:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL) **tested using fluids likely to be encountered in the operations of the facility and the test results demonstrated the GCL can sustain a hydraulic conductivity of 1.0 x 10-7cm/sec or less**;

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes.

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(b) A permit application for a stationary commercial fluid recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and[;] telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[(~~7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.~~]

(c) Factors that the Commission will consider in assessing potential risk from stationary commercial fluid recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for stationary commercial fluid recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.282. Minimum Design and Construction Information.

(a) A pit permitted under this division shall be designed, built, and maintained as follows.

(1) The pit shall contain the material placed in the pit and prevent releases, overflow, or failure.

(2) The maximum depth from the natural surface elevation shall not exceed 22 feet.

(3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior and exterior surfaces of the pit shall be smooth drum rolled.

(4) The pit sides and berms shall have interior and exterior grades no steeper than three horizontal feet to one vertical foot (3H:1V). The top of the berm shall be wide enough to provide adequate room for inspection, maintenance, and any other structural or construction requirements.

(A) Fill for berms shall be placed and compacted in continuous lifts with a maximum loose lift thickness of 10 inches, compacted to eight inches.

(B) Berm fill shall be compacted to at least 95% of maximum dry density determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of optimum moisture content as determined by a standard proctor soil test on samples from the source area. One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide compaction testing results upon completion.

(5) Both primary and secondary liners in a pit shall be geomembrane liners composed of ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a minimum, a liner system as follows:

(A) The primary liner shall be constructed with a minimum 60-mil high density polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

(B) A leak detection system shall be placed between the primary and secondary geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The leak detection system shall be designed with the capability of removing a minimum of 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

(C) The secondary liner shall be constructed with a minimum 40-mil HDPE for any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet below the ground surface, the secondary liner shall include a geosynthetic clay liner.

(D) A geotextile (felt) liner shall be placed under the secondary liner and in contact with the prepared ground surface.

(6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's instructions.

(7) Field seams in geosynthetic material shall be performed in accordance with the manufacturer's instructions and include the following considerations:

(A) Field seams in geosynthetic material shall be minimized and oriented perpendicular to the slope of the berm, not parallel.

(B) Prior to field seaming, the operator shall overlap liners a minimum of four to six inches. The operator shall minimize the number of field seams and corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe.

(C) Qualified personnel shall perform field seam welding and testing. Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

(8) At a point of discharge into or suction from the pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage.

(9) All piping and equipment that is in contact with the liner shall be secured to prevent liner wear and damage.

(10) There shall be no penetrations of the liner system.

(11) The pit shall be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent run-on of any non-contact stormwater, precipitation, or surface water.

(12) The pit shall be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(b) Tanks and treatment equipment shall be located within a secondary containment system.

(c) [~~(a)~~] A permit application for a stationary commercial fluid recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(d) [~~(b)~~] A permit application for a commercial fluid recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and berms [~~dikes~~], showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.283. Minimum Operating Information.

A permit application for a stationary commercial fluid recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of oil and gas wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the treatment process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the health, safety, and environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.284. Minimum Monitoring Information.

A permit application for a stationary commercial fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for monitoring groundwater based on the subsurface geology and hydrogeology, which may include the installation and sampling of [~~any~~] monitoring wells [~~at a commercial fluid recycling facility as required by the permit and this division~~]; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas.

§4.285. Minimum Closure Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and all former pits unless closure of an individual pit was previously approved by the Technical Permitting Section.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the property;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon the monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of monitoring.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on a Commission prescribed form. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface

owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation shall show the depth of the excavation is limited to what can be graded to prevent storm water from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(b) [~~(a)~~] A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.292 of this title (relating to Minimum Permit Provisions for Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment [~~storage areas/cells~~];

(3) remove berms and equipment; [~~dikes; and~~]

(4) contour and reseed disturbed areas with geographically appropriate vegetation including the source of water intended to establish the reseeded areas of the facility;[~~.~~]

[~~(b)~~] [~~A permit application for a stationary commercial fluid recycling facility also shall include in the closure plan information addressing how the applicant intends to:~~]

(5) [~~(1)~~] sample and analyze soil and groundwater throughout the facility; and

(6) [~~(2)~~] plug groundwater monitoring wells.

§4.286. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct stationary commercial fluid recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application stationary commercial fluid recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is **completed** ~~provided~~ begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail. **Notice is completed upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service.**

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed

facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date ~~of the~~ notice **is completed**;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Notice by publication. In addition to the notice required by subsection (d) of this section, an applicant for a stationary commercial fluid recycling facility permit shall also provide notice by publication.

(g) Newspaper of general circulation. The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(h) Contents of published notice. The published notice shall:

(1) be entitled "Notice of Application for Commercial Fluid Recycling Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid waste to be managed at the facility;

(7) identify the proposed recycling method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(i) Proof of notice. The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

(j) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date **notice is completed** ~~of notice~~ or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is **completed** ~~provided~~ or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the

application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

(k) Director review. If the Director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

[~~(a) A permit applicant for a stationary commercial fluid recycling facility shall publish notice and file proof of publication in accordance with the following requirements.~~]

[(~~1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.~~]

[(~~2) The published notice shall:~~]

[(~~A) be entitled, "Notice of Application for Stationary Commercial Fluid Recycling Facility";~~]

[(~~B) provide the date the applicant filed the application with the Commission for the permit;~~]

[(~~C) identify the name of the applicant;~~]

[(~~D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;~~]

[(~~E) identify the owner or owners of the property upon which the proposed facility will be located;~~]

[(~~F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and~~]

[(~~G) provide the address to which protests may be mailed.~~]

[(~~3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.~~]

[(~~b) A permit applicant for a stationary commercial fluid recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.~~]

[(~~1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:~~]

[(~~A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;~~]

[(~~B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;~~]

[(~~C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2 mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to Minimum Real Property Information); and~~]

[~~[(D) any affected person or class of persons that the director determines should receive notice of a particular application.~~]

[(~~2) Personal notice of the permit application shall consist of:~~]

[(~~A) a copy of the application;~~]

[(~~B) a statement of the date the applicant filed the application with the Commission;~~]

[(~~C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;~~]

[(~~D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;~~]

[(~~E) the name of the owner or owners of the property on which the facility is to be located;~~]

[(~~F) the name of the applicant;~~]

[~~(G) the type of fluid or waste to be handled at the facility; and~~]

[~~(H) the recycling method proposed and the proposed end-use of the recycled material.~~]

[~~(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.~~]

[~~(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.~~]

§4.287. General Permit Provisions.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall be valid for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

(b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial fluid recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [~~appropriate~~] Commission District Office [~~district office~~] before recycling operations commence on each tract.

§4.288. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial fluid recycling facility may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety~~.~~ **~~The Director will presume that an application meeting the requirements of §4.280(a) of this title (relating to Minimum Siting Information) does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise.~~**

(b) A stationary commercial fluid recycling facility permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~] within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial fluid recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.289. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial fluid recycling facility shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.289(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) if required by the Technical Permitting Section, submit [~~to the Commission's office in Austin~~] a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) An operator shall not locate material excavated during construction:

(1) within 100 feet of a continuously flowing watercourse or significant watercourse;

(2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the ordinary high-water mark) or any other watercourse;

(3) within 100 feet of a wetland; or

(4) within a 100-year floodplain.

(g) The following requirements apply to signage, fencing, and security.

(1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least three inches in height.

(2) A sign shall be posted identifying the permit number of each pit using letters and numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not potable or suitable for consumption.

(3) The facility shall maintain security to prevent unauthorized access. Security shall be maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

(h) Any pit associated with a stationary commercial fluid recycling facility permitted pursuant to this division after July 1, 2025, shall comply with the requirements of §4.282(a) of this title (relating to Minimum Design and Construction Information).

§4.290. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that results from the trial run[~~,~~] and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The operator [~~permittee~~] shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that

the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

(e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system when implemented by the Commission.

§4.291. Minimum Permit Provisions for Monitoring.

(a) Operational monitoring.

(1) The operator shall inspect the pits, tanks, and processing equipment weekly. The operator shall maintain a current log of such inspections and make the log available for review by the Commission upon request.

(2) The leak detection system shall be monitored on a weekly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is smaller.

(3) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(4) If the primary liner is compromised below the fluid level in the pit, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a minimum. The pit shall not be returned to service until the liner has been repaired or replaced and inspected by the District Office.

(5) If the pit's primary liner is compromised above the fluid level in the pit, the operator shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District Office.

(6) If groundwater monitoring wells are required, no waste shall be received at the facility until all permitted groundwater monitoring wells have been completed, developed, and sampled. The documentation of these activities shall be provided to the Commission within 30 days after

installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in Figure 1.

Figure: 16 TAC §4.291(a)(6)

(7) If an operator has determined the background analyte concentrations in soil and/or groundwater, those site-specific background levels shall be signed and sealed by a professional geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included in the permit as appropriate monitoring standards.

(b) Recyclable product monitoring.

(1) [~~(a)~~] A permit [~~issued~~] for a stationary commercial fluid recycling facility pursuant to this division may [~~shall~~] include requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(2) [~~(b)~~] A permit under this division for use of the treated fluid for any purpose other than as makeup water for hydraulic fracturing fluids or other down-hole uses may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(c) Quarterly reporting. A permit issued under this division shall include provisions for filing quarterly reports documenting the fluid volumes into and out of the system in a form and manner prescribed by the Director.

§4.292. Minimum Permit Provisions for Closure.

(a) Notifications.

(1) The operator shall notify the Commission within 60 days after the cessation of operations.

(2) The operator shall notify the Commission 45 days before the commencement of closure activities.

(b) Time requirements for closure.

(1) Once the operations have ceased, the operator shall complete closure of the facility within one year.

(2) The Commission may grant an extension to close the facility not to exceed one additional year, provided all fluid has been removed and the operator attests to its plans for future operation.

(3) If the operator intends to use the pit for a purpose other than recycling, then the operator shall have that use approved or permitted by the Commission in accordance with the appropriate rules.

(c) Fluid and waste removal.

(1) The operator shall remove all fluids from the treatment equipment and tanks within 60 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or disposed of in an authorized manner.

(2) The operator shall remove all fluids from pits within six months of the date operations cease.

(3) All wastes, including the pit liners, shall be removed and disposed of in an authorized manner.

(4) Any concrete areas and access roads shall be cleaned and demolished, and the concrete rubble and wash water shall be disposed of in an authorized manner.

(5) All visibly contaminated soils shall be excavated and removed. The contaminated soil shall be disposed of in an authorized manner.

(d) Confirmation sampling and analysis.

(1) After the removal of wastes and visibly contaminated soils, grab samples shall be collected from around and underneath each pit, processing area, and waste storage, and the samples shall be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas underneath concrete.

Figure: 16 TAC §4.292(d)(1)

(2) The minimum number of grab samples required is as follows:

(A) for pits, five samples per acre of surface area, with a minimum of four samples; and

(B) for areas containing treatment equipment and storage tanks, five samples per acre of surface area.

(3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit is considered waste and shall be disposed of at an authorized disposal facility.

(4) If any soil samples exceed the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a plan for confirmation, delineation, and remediation, if necessary.

(e) The facility shall be restored to a safe and stable condition that blends with the surrounding land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term stability, and preservation of surface water flow patterns at locations where any surface water entered or exited the property boundary prior to waste management or recycling activities at the facility. Final surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that water will not collect at these former locations. The site shall be re-vegetated as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas.

(f) Within 60 days of closure completion, the operator shall submit a closure report, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping, or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct, and that the operator has complied with all applicable closure requirements and conditions specified in Commission rules or directives.

(g) The operator shall notify the Commission when closure and re-vegetation are complete. The Commission shall not release financial security to the operator until all post-closure activities are approved by the Commission.

(h) The Commission will inspect the site and verify compliance with closure requirements.

~~[A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.]~~

§4.293. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.278 of this title (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), and the notice requirements of §4.286 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.279 - 4.285 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real

Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 7. BENEFICIAL USE OF DRILL CUTTINGS

§4.301. Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) The Commission encourages recycling of oil and gas waste. In addition to the requirements of Divisions 3 and 4 of this subchapter (relating to Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities, respectively), operators performing activities permitted under those divisions shall comply with the requirements of this division for activities related to the treatment and recycling for beneficial use of drill cuttings.

(b) The Commission may approve a permit for the treatment and recycling for beneficial use of drill cuttings if the treated drill cuttings are used:

(1) in a legitimate commercial product for the construction of oil and gas lease pads or oil and gas lease roads;

(2) in ~~a~~ **another type of** legitimate commercial product ~~for the construction of county roads; or~~

~~(3) in a legitimate commercial product used as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or construction fill~~ if the applicant can demonstrate that the product:

(A) meets the engineering **requirements** ~~and environmental standards~~ for the proposed use **as determined by a professional engineer licensed in Texas**; ~~and~~

(B) is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without treated drill cuttings; **and**

(C) does not cause or contribute to the pollution of surface or subsurface water.

(c) The application shall provide any other information requested by the Commission to determine the legitimacy and safety of an application.

§4.302. Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall show that there is a demonstrated commercial market for the treated drill cuttings. The applicant may make this showing by providing:

(1) evidence that the same product made with drill cuttings or a product that is substantially similar is commonly used in the area where the product is created;

(2) evidence of actual commitments from customers who intend to use the product made with drill cuttings, including information regarding the volume of product the customers intend to use annually; or

(3) other credible and verifiable means consistent with the rules in this chapter.

(b) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall perform a trial run in accordance with the following procedure.

(1) The applicant shall notify the Commission District Office for the county in which the facility is located prior to commencement of the trial run.

(2) The applicant shall demonstrate the ability to successfully process a 1,000 cubic yard batch of drill cuttings before the facility receives or processes any additional drill cuttings.

(3) The applicant shall collect samples of the treated drill cuttings from every 200 cubic yards of the first 1,000 cubic yard batch.

(4) Samples collected shall be analyzed and shall not exceed the parameters specified in Figure 1 or Figure 2 in subsection (c) of this section, as applicable.

(5) A written report of the results from the trial run **prepared by a professional engineer licensed in Texas** shall be submitted to the District Office and the Technical Permitting Section within 60 days of receipt of the analytical requirement in §4.258 of this title (relating to Minimum Permit Provisions for Operations). The report shall include:

(A) a summary of the trial run and description of the process;

(B) the actual volume of drill cuttings processed;

(C) the type of waste and description of the waste material;

(D) the volume and type of each stabilization material used; and

(E) copies of all chemical and geotechnical laboratory analytical reports and chain of custody sheets for the samples required in paragraph (3) of this subsection, as applicable.

(6) The applicant shall notify the District Office for the county in which the facility is located and the Technical Permitting Section at least 72 hours before processing begins. No additional drill cuttings shall be received or processed while the results of the trial run are being reviewed by the Technical Permitting Section. Any legitimate commercial product produced during the trial run shall not

be used until the Technical Permitting Section has received the trial run reports and provides written confirmation that the trial run requirements have been met.

(c) In addition to the permit standards under this subchapter, beneficial uses for treated and recycled drill cuttings shall meet the following criteria.

(1) For use of treated and recycled drill cuttings in a legitimate commercial product for the construction of oil and gas lease pads **and** ~~,~~ oil and gas lease roads~~, and county roads~~, the following requirements shall apply.

(A) Bench scale tests shall be performed as needed to determine optimum mixing composition. If the composition mixture changes from the treated drill cuttings produced during the trial run, the treated drill cuttings shall be analyzed for wetting and drying durability by ASTM 559-96, modified to provide samples that are compacted and molded from finished treated drill cuttings. Total weight loss after 12 cycles shall not exceed 15%.

(B) A sample of the treated drill cuttings shall be tested for the parameters listed in Figure 1 in this subsection for the trial run required by subsection (b) of this section and for every 800 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall have a complete chain of custody and shall be analyzed for the parameters on Figure 1 in this subsection.

(C) Any treated drill cuttings not meeting the limitations specified in Figure 1 in this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings meet the required parameters or shall be disposed of in accordance with Commission rules.

Figure: 16 TAC §4.302(c)(1)(C)

~~(2) For use of treated and recycled drill cuttings as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material as specified in §4.301(b) of this chapter (relating to Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings) the following requirements shall apply.~~

~~(A) Bench scale tests shall be performed as needed to determine optimum mixing composition if the composition mixture changes from the treated drill cuttings produced during the trial run.~~

~~(B) A sample of the treated drill cuttings shall be tested for the parameters listed in Figure 2 in this subsection for the trial run required by subsection (b) of this section and every 800 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall be analyzed for the parameters in Figure 2.~~

~~Figure: 16 TAC §4.302(e)(2)(B)~~

~~(C) Any treated drill cuttings not meeting the parameters specified in Figure 2 in this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings meet the required parameters or shall be disposed of in accordance with Commission rules.~~

~~(D) Copies of the laboratory analytical reports and chain of custody sheets demonstrating that the treated drill cuttings meet these requirements shall be submitted to the Technical Permitting Section as part of the quarterly report.~~

~~(E) Once the permit to produce the treated drill cuttings has been granted, the permittee shall submit a separate application to the Technical Permitting Section for a letter of authority authorizing the application of the product to each specific project and location. The following information shall be included in the letter of authority application:~~

~~(i) a map drawn to scale showing the location of the final disposition of the product with latitude and longitude coordinates for the site location;~~

~~(ii) a description of the purpose for the product, such as concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material;~~

~~(iii) the estimated volume of product to be used at the location;~~

~~(iv) the time frame needed for the production and application of the whole volume of treated material for this project; and~~

~~(v) landowner approval for the management and final disposition of the product at the final disposition location. If the treated drill cuttings are to be used as a concrete bulking agent at a concrete production plant, written approval from a company officer from the receiving facility or corporation is sufficient.~~

(~~3~~2) The Commission may require that use of treated drill cuttings in legitimate commercial products other than those described in paragraph~~s~~ (1) ~~and (2)~~ of this subsection comply with criteria in addition to those specified in this section.

This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on 12/17/2024, 2024.

Filed with the Office of the Secretary of State on 12/17/2024, 2024.

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