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November 1, 2023

Chairman Christi Craddick  
Commissioner Wayne Christian  
Commissioner Jim Wright  
Railroad Commission of Texas  
Austin TX 78701

Via Email, [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)

Re: Proposed Changes to 16 TAC §3.8 and §3.57,  
and 16 TAC Chapter 4

Dear Chairman Craddick, Commissioner Christian, and Commissioner Wright:

First, thank you for accepting comments on this important rule revision, and thank you for informally publishing before proposing formal rulemaking. This is too important not to comment on, and this opportunity to comment is appreciated.

Statewide Rule 8 ("SWR 8") was last amended in significant fashion when the Commission approved the use of rule-authorized non-commercial fluid recycling pits ("NCFR"), which was one of the most enlightened rules ever supported by the Commission. Prior to that, the current form of SWR 8 was essentially created in 1984, near the start of my 30-year career with the Commission in 1982. Since 1984, the rule has functioned to protect water, regulate waste disposal, and prevent pollution through inappropriate fluid and waste management practices. The rule has been very successful over the past 40 years.

I do not operate wells or any facilities under Railroad Commission jurisdiction. But, after a 30-year career working in the district offices for the Commission, the last 20 of which were in Midland, I have the benefit of experience on "both sides of the desk" when it comes to rule enforcement and compliance. My current business is advising oil and gas operators on regulatory matters, most of which are related to the Statewide Rules implemented over the years by the Commission. So, even though I do not operate, I believe I have a "dog in the hunt" based on my current consultancy. These general comments are based on my experience. I will leave it up to the operators and the Associations to make more specific comments as they see fit.

- *Efficient regulation.* The current SWR 8 consists of only 12 pages. The proposed rules, as Chapter 4, Subchapters A and B, total 161 pages. After reviewing both proposed subchapters, I believe that there is a loss of opportunity to create concise, easy to follow (and enforce) regulations.

There should be an attempt to maintain a rule or rules that are easy for lay citizens to read and understand, which have the additional benefit of being more readily enforced.

- *Unintended consequences.* Be aware of changes that may be made that lead to effects not anticipated.

For instance, if the revisions were to require that NCFR pits be permitted rather than authorized by rule (essentially a permit-by-rule practice, or “PBR”), then the farsighted changes made in 2013 to encourage produced water recycling may be reversed. The six-to-ten-month process to permit a NCFR facility may not allow the flexibility the operator needs to adjust to the changing economic conditions, as most operators seem to work on very short rig schedule lines. Permitting burdens for NCFR facilities may not be huge, but the Commission’s permitting timelines and processes may not fit the operator’s planning process. The result would be operators resorting *en masse* to freshwater sources for well completions simply based on availability. This would not be good public policy, especially in West Texas. While the current draft version of the rule does not require such permitting, earlier versions of the draft rule appeared to have such requirements.

Nothing has done more to encourage recycling of produced water than authorizing NCFR pits under SWR 8.

Another example would be the post-closure sampling required for authorized pit closure. The table (g) would allow burial of drilling wastes, for example, of up to 20,000 mg/kg to 80,000 mg/kg of chlorides, depending on groundwater depth. Nearly all wells in the Permian Basin are drilled with a salt-saturated mud system due to the thick salt sections which must be drilled. Pit contents can range from 100,000 mg/kg to a saturated mud, up to approximately 28% salt, or 280,000 ppm (which is approximately mg/kg) sodium chloride. Limiting chloride will effectively cause closed loop drilling to be the most effective option, at additional cost to the operator and additional exposure to the operator being required to haul mud and cutting to permitted commercial disposal sites. There is, in my opinion, not enough commercial capacity to accept the potential volume of high-chloride mud and cutting which may be required to be disposed off-site.

Proper drilling pit closure is not harmful to surface or subsurface water. Current best practices are dewatering and deep burial on-site, as practiced by most operators in the Permian Basin. This method of closure should be recognized as a best practice by the Commission.

- *One size does not fit all.* Texas is a large state. Implementing statewide rules to work across a state that’s over 800 miles east-to-west and 800 miles north-to-south is difficult, at best. Based on my personal experience as a District Director for 20 years, the best approach is often to provide guidance to the district management and let the district exert authority under existing rules as they see necessary. Two examples of this come to mind that show how local implementation is often the best solution.

First, in the early 1990s, it was common practice to use unlined workover and plugging pits in West Texas. No regulations required lining these pits. But it was clear to the field staff, and district management, that these pits were being used as a means of disposal of their fluid contents. Over a short period of time, the fluid (brine water for plugging, produced water, etc.) would simply soak into the soil. With the backing of the Commission's Field Operations staff, the Midland district under my supervision informed operators and pluggers that the use of unlined workover or plugging pits would no longer be authorized. After this, unlined pits were not used, and the Commission's duty to prevent contamination of groundwater was upheld. This is an example of the local district making the right decision for the district using the authority already provided in the rules, with the support of the Austin management. I am proud that this policy remains in effect to this day.

Another example that illustrates this point, from my experience, concerns drilling and reserve pits in areas where use of these pits may not be appropriate. When the Knott area in Howard County was being fully developed with vertical wells in the late 1990s and early 2000s, Commission field staff became aware of extremely shallow groundwater in this area. It was clear that constructing a drilling or reserve pit would require excavation into the shallow groundwater, a situation that was best avoided. Again, with the support of Field Operations, the district informed operators that the use of in-ground drilling and reserve pits within this defined area would be prohibited due to the risk of impact to groundwater, based on the water protection standards in SWR 8. Again, pits were effectively managed locally by the district in a manner that was more effective and more timely than was possible with a rule of statewide application. The Knott area pit restriction remains in effect now under current district management.

- *Pit Registration.* In §4.114, it is clear that the Commission intends for operators to "register" their authorized pits with a system to be operated by the Commission. This section may be premature in that the Commission does not have this capability, and likely will not for some time after adoption of a new rule. This registration system will likely be audited by the District Offices. The District offices do not have the staff necessary to manage such systems.

The need for registration has not been fully discussed. What problem is registration trying to solve? It's possible to envision pit registration leading to effective condemnation of a landowner's surface estate, or devaluing the surface estate and causing harm to the landowner. This is not the goal of the registration cited in the draft rule but may be one of the consequences of such a requirement.

- *Other comments.* Section 4.122 outlines the procedure for transferring or renewing a permitted pit. In this section, notifications to the landowner are required for transfers or renewals. For an existing pit with a valid permit, such notice may be excessive.

Groundwater monitoring for certain pits may not be justified. For instance, for a fresh makeup water pit with a single liner, simply assuming groundwater monitoring is needed based on chloride content of the pit is not necessary. In many areas of West Texas, native groundwater is very

mineralized and may contain 5000-10,000 ppm TDS. Requiring groundwater monitoring for a pit which contains locally-produced groundwater is not justifiable.

Texas does not want to follow the example of several western states in overregulation of activities covered by SWR 8. One state effectively requires closed-loop drilling systems because pit closure requires remediation to background, for example. There is not enough commercial waste disposal capacity in Texas should a similar rule be implemented, not to mention that such stringent regulations will effectively choke the industry and not add any useful water protections.

Thank you for the opportunity to comment on this rule draft, and thanks to the Commission's staff for their time and effort to produce a quality, well-written rule that truly encourages compliance and environmental protection.

If you have any questions, please feel free to contact me at 432-894-1857 or via email, [mark@permianregulatory.com](mailto:mark@permianregulatory.com). Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Henkhaus", with a stylized, cursive script.

R. Mark Henkhaus, PE  
Permian Regulatory Solutions, PLLC