

CHRISTI CRADDICK, CHAIRMAN
RYAN SITTON, COMMISSIONER
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ALEXANDER C. SCHOCH, GENERAL COUNSEL

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Ryan Sitton
Commissioner Wayne Christian

FROM: Haley Cochran, Attorney *HC*
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel *AS*

DATE: December 4, 2018

SUBJECT: Proposed Amendments to 16 TAC §3.37 and §3.38,
relating to Statewide Spacing Rule and Well Densities

December 11, 2018		
Approved	Denied	Abstain
<i>CL</i> <i>RR</i> <i>MC</i>		

Attached is Staff's recommendation to amend 16 Texas Administrative Code §§3.37 and 3.38. The proposed amendments would add a specific notice by publication provision in §3.37 and §3.38 such that the general publication rule, §1.43, would no longer apply. The proposed notice by publication provisions in §3.37(a)(4) and §3.38(h)(2) would state that if, after diligent efforts, an applicant for an exception is unable to ascertain the name and address of one or more persons required to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The proposed amendments would require that the notice be published once each week for two consecutive weeks in a newspaper of general circulation in the county where the well will be located, with the first publication taking place at least 14 days before the protest deadline in the notice of application.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on December 11th, the proposal should appear in the December 28th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website by December 12th, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Danny Sorrells, Director, Oil and Gas Division
Jason Clark, Assistant Director of Administrative Compliance, Oil and Gas Division

1 The Railroad Commission of Texas proposes amendments to 16 Texas Administrative Code
2 §3.37, relating to Statewide Spacing Rule, and §3.38, relating to Well Densities. The amendments are
3 proposed to incorporate a specific timeline for notice by publication when an operator seeks an exception
4 to §3.37 or §3.38.

5 Currently, if an operator seeks an exception to §3.37 or §3.38 and is unable, after due diligence,
6 to identify the address of any person entitled to notice, the operator must publish notice of the exception
7 application. Because a specific notice by publication provision is not included in §§3.37 and 3.38, the
8 Commission's general publication rule, §1.43, relating to Notice by Publication, applies. The proposed
9 amendments would add a specific notice by publication provision in §3.37 and §3.38 such that §1.43
10 would no longer apply. The proposed notice by publication provisions in §3.37(a)(4) and §3.38(h)(2)
11 would state that if, after diligent efforts, an applicant for an exception is unable to ascertain the name and
12 address of one or more persons required to be notified, then the applicant shall notify such persons by
13 publishing notice of the application in a form approved by the Commission. The proposed amendments
14 would require that the notice be published once each week for two consecutive weeks in a newspaper of
15 general circulation in the county where the well will be located, with the first publication taking place at
16 least 14 days before the protest deadline in the notice of application. The proposed amendments would
17 also require that the applicant file a publisher's affidavit or other evidence of publication. As with other
18 Commission notice by publication processes, the Commission may request additional information to
19 show the applicant engaged in diligent efforts to locate persons to be notified.

20 The Commission also proposes other nonsubstantive amendments to correct outdated language.

21 Jason Clark, Assistant Director of Administrative Compliance, Oil & Gas Division, has
22 determined that for each year of the first five years the amendments as proposed will be in effect, there
23 will be minimal fiscal implications to the Commission as a result of enforcing or administering the
24 amendments. Any costs associated with the amendments would be due to minor programming to update
25 online systems. There will be no fiscal effect on local government.

26 Mr. Clark has determined that for the first five years the proposed amendments are in effect, the
27 primary public benefit will be clarification of the notice by publication process when an operator seeks an
28 exception to §3.37 or §3.38.

29 Mr. Clark has determined that for each year of the first five years that the amendments will be in
30 effect, there will be no economic costs for persons required to comply as a result of adoption of the
31 proposed amendments. The amendments decrease the number of weeks a notice must be published in a
32 newspaper of general circulation as currently required by §1.43.

33 The Commission has determined that the proposed amendments to §3.37 and §3.38 will not have
34 an adverse economic effect on rural communities, small businesses or micro businesses. As noted above,

1 there is no anticipated additional cost for any person required to comply with the proposed amendments.
2 Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility
3 analysis pursuant to Texas Government Code §2006.002.

4 The Commission has also determined that the proposed amendments will not affect a local
5 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
6 Texas Government Code §2001.022.

7 The Commission has determined that the amendments do not meet the statutory definition of a
8 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
9 analysis conducted pursuant to that section is not required.

10 During the first five years that the rules would be in effect, the proposed amendments would not:
11 create or eliminate a government program; create or eliminate any employee positions; require an increase
12 or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new
13 regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit,
14 or repeal an existing regulation; or effect the state's economy. The proposed amendments incorporate a
15 specific process for notice by publication when an exception to §3.37 or §3.38 is required.

16 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
17 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
18 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
19 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday,
20 January 28, 2019. The Commission finds that this comment period is reasonable because the proposal and
21 an online comment form will be available on the Commission's website more than two weeks prior to
22 *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze,
23 draft, and submit comments. The Commission cannot guarantee that comments submitted after the
24 deadline will be considered. For further information, call Mr. Clark at (512) 463-2655. The status of
25 Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)
26 [rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

27 The Commission proposes the amendments to §3.37 and §3.38 pursuant to Texas Natural
28 Resources Code §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons
29 owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all
30 necessary rules for governing and regulating persons and their operations under the jurisdiction of the
31 Commission; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to
32 adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and
33 specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be
34 kept and reports to be made.

1 Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, and 85.202.

2 Cross reference to statute: Texas Natural Resources Code Chapters 81 and 85.

3
4 §3.37. Statewide Spacing Rule.

5 (a) Distance requirements.

6 (1) No well for oil, gas, or geothermal resource shall hereafter be drilled nearer than
7 1,200 feet to any well completed in or drilling to the same horizon on the same tract or farm, and no well
8 shall be drilled nearer than 467 feet to any property line, lease line, or subdivision line; provided the
9 commission, in order to prevent waste or to prevent the confiscation of property, may grant exceptions to
10 permit drilling within shorter distances than prescribed in this paragraph when the commission shall
11 determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of
12 property.

13 (2) When an exception to this section is desired, application shall be made by filing the
14 proper fee as provided in §3.78 of this title (relating to Fees and Financial Security Requirements) and the
15 appropriate form according to the instructions on the form, accompanied by a plat as described in
16 subsection (c) of this section. A person acquainted with the facts pertinent to the application shall certify
17 that all facts stated in it are true and within the knowledge of that person.

18 (A) When an exception to only the minimum lease-line spacing requirement is
19 desired, the applicant shall file a list of the mailing addresses of all affected persons, who, for tracts closer
20 to the well than the greater of one-half of the prescribed minimum between-well spacing distance or the
21 minimum lease-line spacing distance, include:

22 (i) the designated operator;

23 (ii) all lessees of record for tracts that have no designated operator; and

24 (iii) all owners of record of unleased mineral interests.

25 (B) When an exception to the minimum between-well spacing requirement of
26 this section is desired, the applicant is required to file the mailing addresses of those persons identified in
27 subparagraph (A)(i)-(iii) of this paragraph for each adjacent tract and each tract nearer to the well than the
28 greater of one-half the prescribed minimum between-well spacing distance or the minimum lease-line
29 spacing.

30 (3) An exception may be granted pursuant to subsection (h)(2) of this section, or after a
31 public hearing held after at least 10 days notice to all persons described in paragraph (2) of this
32 subsection. At any such hearing, the burden shall be on the applicant to establish that an exception to this
33 section is necessary either to prevent waste or to prevent the confiscation of property. For purposes of
34 giving notice of an application for an exception, the commission will presume that every person described

1 in paragraph (2) of this subsection will be affected by the application, unless the Oil and Gas Division
2 director or the director's delegate determines they are unaffected. Such determination will be made only
3 upon written request and a showing by the applicant that:

4 (A) competent, conclusive geological or engineering data indicate that no
5 drainage of hydrocarbons from the particular tract(s) subject to the request will occur due to production
6 from the applicant's proposed well; and

7 (B) notice to the particular operator(s), lessee(s) of record, or owner(s) of record
8 of unleased mineral interest would be unduly burdensome or expensive.

9 (4) If, after diligent efforts, the applicant is unable to ascertain the name and address of
10 one or more persons required by this subparagraph to be notified, then the applicant shall notify such
11 persons by publishing notice of the application in a form approved by the Commission. The applicant
12 shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation
13 in the county where the well will be located. The first publication shall be published at least 14 days
14 before the protest deadline in the notice of application. The applicant shall file with the Commission a
15 publisher's affidavit or other evidence of publication.

16 (b) The distances mentioned in subsection (a) of this section are minimum distances to provide
17 standard development on a pattern of one well to each 40 acres in areas where proration units have not
18 been established.

19
20 (c) – (l) No change.

21
22 (m) Wells that were deviated, whether intentionally or otherwise, prior to April 1, 1949, and are
23 bottomed on the lease where permitted, are legal wells. The Rule 37 department will develop the record in
24 each reapplication for such deviated wells so that the commission can determine the condition of each
25 such well. The following will be adduced from sworn testimony and authenticated data at each such
26 hearing.

27 (1) That such well was deviated before April 1, 1949. Proof of completion of the well
28 prior to that date and its subsequent producing status is not adequate proof of deviation.

29 (2) That such well was completed on the lease where the surface location was permitted.
30 Such bottom hole location must be proven by the submission of an acceptable authenticated directional
31 survey.

32 (3) That such bottom hole location is one that either is not in direct violation of a
33 condition or limitation placed in the permit to drill, or is not in violation of a specific commission order.
34 Example: Denial order for a Rule 37 application for a comparable location.

1 (4) That the present operator of such well or its [~~his~~] predecessor has not filed either a
2 false inclination or a false directional survey with the commission.

3 (5) A well that is either bottomed off the lease, deviated after April 1, 1949, drilled in direct violation of
4 a specific condition or limitation placed in the Rule 37 permit, or is in violation of a specific commission
5 order, is an illegal well and it shall not be permitted, and such well where permit is refused shall not be
6 considered a replaceable well under commission replacement-well regulation.

7 (6) The provisions of this section do not preclude an operator from applying for approval of the bottom
8 hole location of a deviated well as a reasonable location under the rules and regulations now applicable,
9 provided, that such bottom hole location shall not be approved unless the applicant proves that a vertical
10 projection of the permitted surface location for such well is within the productive limits of the reservoir.

11
12 §3.38. Well Densities.

13 (a) – (g) No Change

14 (g) Filing requirements.

15 (1) Application. An application for permit to drill shall include the fees required in §3.78
16 of this title (relating to Fees and Financial Security Requirements) and shall be certified by a person
17 acquainted with the facts, stating that all information in the application is true and complete to the best of
18 that person's knowledge.

19 (2) Plat. When filing an application for an exception to the density requirements of this
20 section, in addition to the plat requirements in §3.5 of this title (relating to Application to Drill, Deepen,
21 Reenter, or Plug Back) (Statewide Rule 5), the applicant shall attach to each copy of the application a plat
22 that:

23 (A) depicts the lease, pooled unit, or unitized tract, showing thereon the acreage
24 assigned to the drilling unit for the proposed well and the acreage assigned to all current applied for,
25 permitted, or completed oil, gas, or oil and gas wells in the same field or reservoir which are located
26 within the lease, pooled unit, or unitized tract;

27 (B) on large leases, pooled units, or unitized tracts, if the established density is
28 not exceeded as shown on the face of the application, outlines the acreage assigned to the well for which
29 the permit is sought and the immediately adjacent wells on the lease, pooled unit, or unitized tract;

30 (C) on leases, pooled units, or unitized tracts from which production is secured
31 from more than one field, outlines the acreage assigned to the wells in each field that is the subject of the
32 current application;

33 (D) corresponds to the listing required under subsection (g)(1)(A) of this section.

1 (E) is certified by a person acquainted with the facts pertinent to the application
2 that the plat is accurately drawn to scale and correctly reflects all pertinent and required data.

3 (3) Substandard acreage. An application for a permit to drill on a lease, pooled unit, or
4 unitized tract composed of substandard acreage must include a certification in a prescribed form
5 indicating the date the lease, or the drillsite tract of a pooled unit or unitized tract, took its present size and
6 shape.

7 (4) Surplus acreage. An application for permit to drill on surplus acreage pursuant to
8 subsection (c) of this section must include a certification in a prescribed form indicating the date the lease,
9 pooled unit, or unitized tract took its present size and shape.

10 (5) Certifications. Certifications required under paragraphs (3) and (4) of this subsection
11 shall be filed on Form W-1A, Substandard Acreage Certification.

12 (A) The operator shall file the Form W-1A with the drilling permit application
13 and shall indicate the purpose of filing. The operator shall accurately complete all information required on
14 the form in accordance with instructions on the form.

15 (B) The operator shall list the field or fields for which the substandard acreage
16 certification applies in the designated area on the form. If there are more than three fields for which the
17 certification applies, the operator shall attach additional Forms W-1A and shall number the additional
18 pages in sequence.

19 (C) The operator shall file the original Form W-1A with the Commission's
20 Austin office and a copy with the appropriate district office, unless the operator files electronically
21 [~~through the Commission's Electronic Compliance and Approval Process (ECAP) system~~].

22 (D) The operator or the operator's agent shall certify the information provided on
23 the Form W-1A is true, complete, and correct by signing and dating the form, and listing the requested
24 identification and contact information.

25 (E) Failure to timely file the required information on the appropriate form may
26 result in the dismissal of the application.

27 (h) Procedure for obtaining exceptions to the density provisions.

28 (1) Filing requirements. If a permit to drill requires an exception to the applicable density
29 provision, the operator must file, in addition to the items required by subsection (g) of this section:

30 (A) a list of the names and addresses of all affected persons. For the purpose of
31 giving notice of application, the Commission presumes that affected persons include the operators and
32 unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral
33 interest owners of all tracts nearer to the proposed well than the prescribed minimum lease-line spacing

1 distance. The Commission designee may determine that such a person is not affected only upon written
2 request and a showing by the applicant that:

3 (i) competent, convincing geological or engineering data indicate that
4 drainage of hydrocarbons from the particular tracts subject to the request will not occur due to production
5 from the proposed well; and

6 (ii) notice to the particular operators and unleased mineral interest
7 owners would be unduly burdensome or expensive;

8 (B) engineering and/or geological data, including a written explanation of each
9 exhibit, showing that the drilling of a well on substandard acreage is necessary to prevent waste or to
10 prevent the confiscation of property;

11 (C) additional data requested by the Commission designee.

12 (2) Notice of application. Upon receipt of a complete application, the Commission will
13 give notice of the application by mail to all affected persons for whom signed waivers have not been
14 submitted. If, after diligent efforts, the applicant is unable to ascertain the name and address of one or
15 more persons required by this subsection to be notified, then the applicant shall notify such persons by
16 publishing notice of the application in a form approved by the Commission. The applicant shall publish
17 the notice once each week for two consecutive weeks in a newspaper of general circulation in the county
18 where the well will be located. The first publication shall be published at least 14 days before the protest
19 deadline in the notice of application. The applicant shall file with the Commission a publisher's affidavit
20 or other evidence of publication.

21 (3) Approval without hearing. If the Commission designee determines, based on the data
22 submitted, that a permit requiring an exception to the applicable density provision is justified according to
23 subsection (f) of this section, then the Commission designee may issue the exception permit
24 administratively if:

25 (A) signed waivers from all affected persons were submitted with the application;

26 or

27 (B) notice of application was given in accordance with ~~paragraph (2) of~~ this
28 subsection and no protest was filed within 21 days of the notice; or

29 (C) no person appeared to protest the application at a hearing scheduled pursuant
30 to paragraph (4)(A) of this subsection.

31 (4) Hearing on the application.

32 (A) If a written protest is filed within 21 days after the notice of application is
33 given in accordance with paragraph (2) of this subsection, the application will be set for hearing.

1 (B) If the application is not protested and the Commission designee determines
2 that a permit requiring an exception to the applicable density provision is not justified according to
3 subsection (f) of this section, the operator may request a hearing to consider the application.

4 (i) Duration. A permit is issued as an exception to the applicable density provision shall expire
5 two years from the effective date of the permit; unless drilling operations are commenced in good faith
6 within the two year period.

7 (j) The requirements for density exceptions for wells in a designated unconventional fracture
8 treated (UFT) field are set forth in §3.86(k) of this title (relating to Horizontal Drainhole Wells).

9 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
10 within the agency's authority to adopt.

11 Issued in Austin, Texas on December 11, 2018.

12 Filed with the Office of the Secretary of State on December 11, 2018.

13
14 

15 Haley Cochran

16 Rules Attorney, Office of General Counsel

17 Railroad Commission of Texas

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