



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

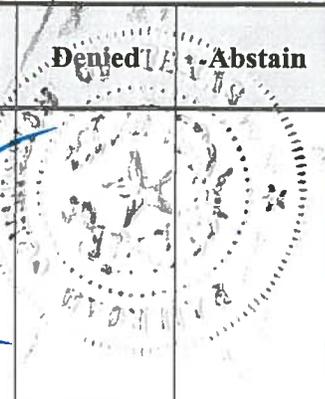
TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney 
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: February 4, 2020

SUBJECT: Proposed Amendments to 16 TAC §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)

February 11, 2020		
Approved	Denied	Abstain
 CC RR		

Attached is Staff's recommendation to amend 16 Texas Administrative Code §3.30 to implement changes made by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The proposed amendments also update the definition of underground source of drinking water.

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

cc: Wei Wang, Executive Director
Danny Sorrells, Assistant Executive Director and Director of the Oil and Gas Division
Leslie Savage, Chief Geologist
David Cooney, Attorney, Office of General Counsel

1 The Railroad Commission of Texas proposes amendments to §3.30, relating to Memorandum of
2 Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on
3 Environmental Quality (TCEQ). The amendments are proposed to implement changes made by House
4 Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The
5 proposed amendments also update the definition of underground source of drinking water.

6 The memorandum of understanding (MOU) between the TCEQ and the RRC was last amended in
7 May 2012. Proposed amendments in subsection (a)(4) and subsection (g) update the applicable dates of
8 MOU amendments. The proposed effective date of May 11, 2020, in subsection (g) may change
9 depending on the date of RRC adoption of the proposed amendments.

10 House Bill 2230 (84th Legislature, 2015) enacted Texas Water Code, Section 27.026, to allow
11 dual authorization of Class II and Class V injection wells for the disposal of nonhazardous brine from a
12 desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the
13 jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC. House Bill 2230 allows the
14 TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the
15 disposal of such brine or DWTR in a Class II well permitted by the RRC. Proposed new subsection
16 (e)(4)(E) implements the dual authority granted by House Bill 2230.

17 House Bill 2771 (86th Legislature, 2019) amended Texas Water Code, Section 26.131, to
18 transfer to TCEQ the RRC's responsibilities relating to regulation of discharges into surface water in the
19 state, as defined in 30 TAC §307.3(70) (relating to Definitions and Abbreviations), of produced water,
20 hydrostatic test water, and gas plant effluent resulting from the exploration, production and development
21 of oil, natural gas, or geothermal resources. House Bill 2771 authorizes the transfer of responsibilities
22 from the RRC to the TCEQ after TCEQ receives approval from the United States Environmental
23 Protection Agency (EPA) to supplement or amend TCEQ's Texas Pollutant Discharge Elimination
24 System (TPDES) program to include authority over these discharges. House Bill 2771 also establishes
25 September 1, 2021, as the deadline for TCEQ to submit its request to the EPA to supplement or amend

1 the TPDES program to include delegation of National Pollutant Discharge Elimination System (NPDES)
2 permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

3 Amendments proposed to implement House Bill 2771 are found in subsection (b)(1)(B),
4 (b)(2)(B), and (d)(12)(A). The definition of "produced water" proposed in subsection (b)(1)(B)(i) is
5 based on TCEQ's proposed definition of that term as published in the January 10, 2020, issue of the *Texas*
6 *Register* in proposed amendments to 30 TAC §305.541.

7 Amendments proposed in subsection (e)(1) correct references to the TCEQ Small Business and
8 Environmental Assistance (SBEA) Division, which is now the TCEQ External Relations Division.

9 Finally, proposed amendments in §3.30(e)(7)(B)(ii) update the definition of "underground source
10 of drinking water" to reference the definition in 40 Code of Federal Regulations §146.3.

11 The RRC notes that the proposed amendments to the MOU merely clarify the respective
12 jurisdictions of the RRC and TCEQ and the amendments do not have a direct fiscal impact. However, the
13 statutory changes that prompted the proposed amendments modify the authority of each agency, and the
14 fiscal effect of these modifications is described in the following paragraphs.

15 Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the
16 first five years after TCEQ receives approval to supplement or amend its TPDES program and assumes
17 responsibility for discharges of produced water, hydrostatic test water, and gas plant effluent and the
18 amendments as proposed are in full effect, the RRC's Oil and Gas Regulation and Cleanup Fund would
19 have revenue decreases of \$225,000 from revenue currently collected by the RRC for processing
20 applications that will be now be processed by the TCEQ under House Bill 2771. Also, transferring
21 responsibilities from the RRC to TCEQ would result in a decrease of RRC salary and operating expenses
22 of \$188,178 each year. There will be no fiscal effect on local government.

23 Ms. Savage has determined that for the first five years the proposed amendments are in full effect,
24 the primary public benefit will be a better understanding of the responsibilities of the RRC and the TCEQ,
25 as well as compliance with applicable state law.

1 Ms. Savage has determined that for each year of the first five years that the amendments will be
2 in full effect, there will be no economic costs for persons required to comply as a result of adoption of the
3 proposed amendments. The proposed amendments update the MOU between the RRC and the TCEQ, and
4 do not impose any new requirements on the regulated industry.

5 The RRC has determined that the proposed amendments to §3.30 will not have an adverse
6 economic effect on rural communities, small businesses or micro businesses. As noted above, there is no
7 anticipated additional cost for any person required to comply with the proposed amendments. Therefore,
8 the RRC has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to
9 Texas Government Code §2006.002.

10 The RRC has also determined that the proposed amendments will not affect a local economy.
11 Therefore, the RRC has not prepared a local employment impact statement pursuant to Texas
12 Government Code §2001.022.

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

16 During the first five years that the rules would be in full effect, the proposed amendments would
17 not: create or eliminate a government program; require an increase or decrease in future legislative
18 appropriations; create a new regulation; increase or decrease the number of individuals subject to the
19 rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. As noted
20 above, the proposed amendments to the MOU merely clarify the respective jurisdictions of the RRC and
21 TCEQ and the amendments do not have a direct fiscal impact. However, the statutory changes from
22 House Bill 2771 create positions at the TCEQ and eliminate approximately 2.5 FTEs at the RRC. Also
23 pursuant to House Bill 2771, application processing fees currently collected by the RRC will be collected
24 by the TCEQ.

1 The proposed rulemaking is subject to the Texas Coastal Management Program (CMP) in
2 accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and
3 therefore must be consistent with all applicable CMP goals and policies. In accordance with the Coastal
4 Coordination Act implementation rules, 31 TAC §505.22, the RRC reviewed the proposed rules and has
5 determined that the proposed rulemaking is consistent with the applicable CMP goals and policies.

6 CMP goals applicable to the proposed rule include protecting, preserving, restoring, and
7 enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs)
8 and ensuring sound management of all coastal resources by allowing for compatible economic
9 development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule
10 include policies for discharges of wastewater from oil and gas exploration and production.

11 The proposed rulemaking is consistent with the above goals and policies by requiring wastewater
12 discharges from oil and gas exploration and production facilities to comply with federal effluent
13 limitation guidelines to protect water resources.

14 Promulgation and enforcement of the rule will not violate or exceed any standards identified in
15 the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and
16 policies and the rule does not create or have a direct or significant adverse effect on any CNRAs.

17 Written comments on the consistency of this rulemaking with CMP goals may be submitted
18 according the comment procedure addressed below.

19 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
20 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
21 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
22 to rulescoordinator@rrc.texas.gov. The RRC will accept comments until 12:00 noon on Monday, March
23 30, 2020. The RRC finds that this comment period is reasonable because the proposal and an online
24 comment form will be available on the RRC's website more than two weeks prior to *Texas Register*
25 publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit

1 comments. The RRC cannot guarantee that comments submitted after the deadline will be considered. For
2 further information, call Ms. Savage at (512) 463-7308. The status of RRC rulemakings in progress is
3 available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are
4 posted on the RRC's website at <https://rrc.texas.gov/general-counsel/rules/proposed-rules/>. If you submit
5 a comment and do not see the comment posted at this link within three business days of submittal, please
6 call the Office of General Counsel at 512-463-7149. The RRC has safeguards to prevent emailed
7 comments from getting lost; however, your operating system's or email server's settings may delay or
8 prevent receipt.

9 The RRC proposes the amendments to 16 TAC §3.30 under: (1) Texas Water Code §26.131,
10 which transfers the responsibilities relating to regulation of discharges of produced water, hydrostatic test
11 water and gas plant effluent into surface water in the state from the RRC to the TCEQ; (2) Texas Water
12 Code Chapter 27, which authorizes the RRC to adopt and enforce rules relating to injection wells and,
13 specifically, Texas Water Code §27.026, as amended by House Bill 2230, which requires the RRC and
14 TCEQ by rule to amend the MOU to implement the statutory changes related to disposal of nonhazardous
15 brine from a desalination operation or nonhazardous drinking water treatment residuals (DWTR); (3)
16 Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for
17 governing persons and their operations under the jurisdiction of the RRC; and (4) Texas Natural
18 Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil
19 and gas and prevention of waste of oil and gas.

20 Statutory authority: Water Code §§26.131 and 27.026, and Natural Resources Code §§81.052 and
21 85.201.

22 Cross reference to statute: Water Code Chapters 26 and 27; Natural Resources Code Chapters 81
23 and 85.

24

1 §3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas
2 Commission on Environmental Quality (TCEQ).

3 (a) Need for agreement. Several statutes cover persons and activities where the respective
4 jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies
5 implement the division of jurisdiction.

6 (1) - (3) (No change.)

7 (4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th
8 Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987,
9 May 31, 1998, August 30, 2010, and again on May 1, 2012 [~~August 30, 2010~~], to reflect legislative
10 clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural
11 Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air
12 Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and
13 hazardous wastes.

14 (5) The agencies have determined that the revised MOU that became effective on May 1,
15 2012 [~~August 30, 2010~~], should again be revised to further clarify jurisdictional boundaries and to reflect
16 legislative changes in agency responsibility.

17 (b) General agency jurisdictions.

18 (1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the
19 Texas Natural Resource Conservation Commission).

20 (A) (No change.)

21 (B) Water quality.

22 (i) Discharges under Texas Water Code, Chapter 26. Under the Texas
23 Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state,
24 except for discharges regulated by the RRC. Upon delegation from the United States Environmental
25 Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state

1 of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in
2 Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the
3 purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all
4 wastewater associated with oil and gas exploration, development, and production activities, except
5 hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste
6 streams regulated by 40 CFR Part 435.

7 (ii) Discharge permits existing on the effective date of EPA's delegation
8 to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas
9 plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective
10 until revoked or expired. Amendment or renewal of such permits on or after the effective date of
11 delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace
12 the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the
13 TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

14 (iii) Discharge applications pending on the effective date of EPA's
15 delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water,
16 and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time
17 TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other
18 relevant information necessary to administratively and technically review and process the applications.
19 TCEQ will review and process these pending applications in accordance with TPDES requirements.

20 (iv) [(ii)] Storm water. TCEQ has jurisdiction over storm water
21 discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part
22 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may
23 be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a
24 general TPDES permit. These storm water permits may also include authorizations for certain minor
25 types of non-storm water discharges.

1 (I) Storm water associated with industrial activities. The TCEQ
2 regulates storm water discharges associated with certain industrial activities under individual TPDES
3 permits and under the TPDES Multi-Sector General Permit, except for discharges associated with
4 industrial activities under the jurisdiction of the RRC.

5 (II) Storm water associated with construction activities. The
6 TCEQ regulates storm water discharges associated with construction activities, except for discharges
7 from construction activities under the jurisdiction of the RRC.

8 (III) Municipal storm water discharges. The TCEQ has
9 jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

10 (IV) Combined storm water. Except with regard to storage of oil,
11 when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and
12 RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated
13 by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site.
14 Discharge of storm water from a facility that stores both refined products intended for off-site use and
15 crude oil in aboveground tanks is regulated by the TCEQ.

16 (v) [(iii)] State water quality certification. Under the Clean Water Act
17 (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for
18 activities that require a federal license or permit and that may result in a discharge to waters of the United
19 States, except for those activities regulated by the RRC.

20 (vi) [(iv)] Commercial brine extraction and evaporation. Under Texas
21 Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial
22 production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that
23 are not regulated by the RRC.

24 (C) (No change.)

25 (2) Railroad Commission of Texas (RRC).

1 (A) (No change.)

2 (B) Water quality.

3 (i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas
4 Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration,
5 development, or production of oil, gas, or geothermal resources, including transportation of crude oil and
6 natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ
7 of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test
8 water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the
9 TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or
10 adjacent to water in the state shall not cause a violation of the water quality standards. While water
11 quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation
12 of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not
13 require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water
14 quality standards. The TCEQ and the RRC may consult as necessary regarding application and
15 interpretation of Texas Surface Water Quality Standards.

16 (ii) - (iii) (No change.)

17 (C) (No change.)

18 (c) (No change.)

19 (d) Jurisdiction over waste from specific activities.

20 (1) – (11) (No change.)

21 (12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in
22 drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

23 (A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the
24 Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is
25 being used in connection with activities associated with the exploration, development, or production of oil

1 or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for
2 discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent
3 resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's
4 authority under this subsection.

5 (B) – (C) (No change.)

6 (e) Interagency activities.

7 (1) Recycling and pollution prevention.

8 (A) The TCEQ and the RRC encourage generators to eliminate pollution at the
9 source and recycle whenever possible to avoid disposal of ~~[solid]~~ wastes. Questions regarding source
10 reduction and recycling may be directed to the TCEQ External Relations ~~[Small Business and~~
11 ~~Environmental Assistance (SBEA)]~~ Division, or to the RRC. The TCEQ may require generators to
12 explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the
13 jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source
14 reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the
15 TCEQ at a facility regulated by the RRC.

16 (B) The TCEQ External Relations ~~[SBEA]~~ Division and the RRC will coordinate
17 as necessary to maintain a working relationship to enhance the efforts to share information and use
18 resources more efficiently. The TCEQ External Relations ~~[SBEA]~~ Division will make the proper TCEQ
19 personnel aware of the services offered by the RRC, share information with the RRC to maximize
20 services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make
21 the proper RRC personnel aware of the services offered by the TCEQ External Relations ~~[SBEA]~~
22 Division, share information with the TCEQ External Relations ~~[SBEA]~~ Division to maximize services to
23 industrial operators, and advise industrial operators of the TCEQ External Relations ~~[SBEA]~~ Division
24 services.

25 (2) - (3) (No change.)

1 (4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated
2 by the RRC.

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

4 (E) Under Texas Water Code, §27.026, by individual permit, general permit, or
5 rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well
6 authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous
7 drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class
8 II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization
9 prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water
10 treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from
11 TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC
12 and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water
13 treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ
14 as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the
15 Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements
16 or conditions to address the dual injection activity under Texas Water Code, §27.026.

17 (5) - (6) (No change.)

18 (7) Groundwater.

19 (A) (No change.)

20 (B) Groundwater protection letters. The RRC provides letters of recommendation
21 concerning groundwater protection.

22 (i) (No change.)

23 (ii) For recommendations related to injection [~~in a non-producing zone~~],
24 the RRC provides geologic interpretation of the base of the underground source of drinking water. The
25 term "underground source of drinking water" [Underground source of drinking water] is defined in 40
26 Code of Federal Regulations §146.3 (Federal Register, Volume 46, June 24, 1980) [as an aquifer or its
27 portions which supplies drinking water for human consumption; or in which the groundwater contains
28 fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer].

1 (8) - (9) (No change.)

2 (f) (No change.)

3 (g) Effective date. This Memorandum of Understanding, as of its May 11, 2020 [~~May 1, 2012~~],
4 effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May
5 1, 2012 [~~August 30, 2010~~].

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

8 Issued in Austin, Texas on February 11, 2020.

9 Filed with the Office of the Secretary of State on February 11, 2020.



Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas