



EARTHWORKS

Comments on Proposed Changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4

Dear Rules Coordinator,

Thank you for the opportunity to provide comments on the proposed changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4. Please accept these comments on behalf of Earthworks.

Founded in 1988, Earthworks is a nonprofit organization dedicated to protecting communities and the environment from oil, gas, and mineral development while seeking sustainable solutions. Core aspects of our work include investigating and documenting the adverse effects of hydraulic fracturing in partnership with fenceline communities to expose persistent gaps in the enforcement and regulation. Our comment concerns the informal draft amendments to Statewide Rule 8 and Chapter 4.

Public Participation

Please require a more participatory permitting process. Consider requiring applicants to publish “notice of intent” to apply for a permit at least 30 days before applying. Set all applications for a hearing once the application is complete, regardless if a protest is received (i.e., remove the need to protest in 15 days, 4.125(a),(b), 4.133, 4.134(g),(h), 4.135(a),(b)). Give at least 30 days notice of the hearing (same time frame applicants have to respond to protests) (4.125(a), (b)). Prohibit modifications or supplements to the application once it is set for hearing (add to 4.134, 4.135). Allow all interested persons the opportunity to present testimony, facts, or evidence related to the application or to ask questions (add to 4.135). The above suggestions are based on Louisiana’s rules. See LAC. tit. 43 § XIX-519, 527, 529.

Require explicit surface landowner consent before a pit can be built onsite. Landowners should get to approve what types of waste are going to be put in any pit on their property before it happens. (add this back into 4.111(a)). The immediate harms faced by frontline communities can be mitigated by shifting power to those who bear the brunt of pollution. Texas can create immediate improvements by protecting people, land, and water from oil and gas waste pollution by ensuring landowners and communities give free prior informed consent.

We would also like to see the RRC create an electronic mailing list for anyone to subscribe to so that we can be automatically notified of applications in our area.

Approving Good Projects

Make the applicant, not communities, bear the burden of showing whether a project is protective of human or environmental health and safety. Applicants should have the actual & financial responsibility to collect accurate information to prove that their projects will be protective. Under the current and draft rules, it falls to landowners and communities to pay to prove when projects won’t protect health and safety. Prohibiting modifications of an application once it is set for a hearing should help, but the the rules should say that if a complete application “does not meet the requirements of [Chapter A] or other laws, rules, or orders of the Commission” the Commission “must” deny it; not “may deny,” as the current draft proposes. 4.134 and 4.206(b). See also 4.204(2), 4.262(c), 4.278(c).

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environment from the
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Improve setbacks from sensitive sites and places. Setbacks should be measured from the fence line, not from an individual pit. 4.150(g), 4.219(b)(2), 4.256(b)(2), 4.272(b)(2). The Commission and Commissioners should not be granting exemptions without public input. 4.109 (and 4.205).

These measures are essential to mitigate the potential harms from these projects. There are many cases of pits alone polluting surrounding areas:

- A document published by the New Mexico Oil Conservation Division in 2008 revealed 369 cases of groundwater contamination from waste pits.¹ The findings led to a ban on the use of pits in 2009, but the industry pushed back hard enough to win back the use of some pits in 2013.²
- In 2011, a comprehensive investigation of groundwater contamination from oil and gas development in Ohio found that improper construction or maintenance of production pits was the primary cause, accounting for nearly 44% (63) of all documented contamination incidents.³
- In 2014, the Pennsylvania Department of Environmental Protection and Range Resources reached a settlement over several violations of five state laws, following investigations into soil and groundwater contamination at eight centralized waste impoundments in Washington County (for which the driller was fined a record \$4.15 million).⁴

These troubling trends have even led some oil and gas industry trade groups to recommend moving away from the use of pits. The Marcellus Shale Coalition urges operators to consider “[u]sing ‘closed loop’ fluids management systems (i.e., eliminating the need for lined earthen pits at the drilling site) where practicable.”⁵ Likewise The American Petroleum Institute states, “Consideration should be given to the use of tanks or lined pits to protect soil and groundwater, especially for brines and oil-based fluids,”⁶ and The Center for Sustainable Shale Development states that operators “shall contain drilling fluid and flowback water in a closed loop system at the well pad, eliminating the use of pits for all wells.”⁷

Data Access and Enforcement

To identify bad actors, full documents on pits, waste, and waste hauling data collected by operators should be sent to the RRC and made public, instead of just being available upon request. This will allow for transparency and accountability.

Every oil and gas well produces waste, and in Texas, the total volume of all oil and gas wastes generated is unknown. It would be more transparent and facilitate the public’s

¹ Kyle Ferrar, “Groundwater Threats in Colorado.” FracTracker Alliance, September 20, 2016.

² “New Mexico Pit Rule Changes Agreeable to Industry.” Natural Gas Intelligence, June 13, 2013.

³ Scott Kell. Groundwater Investigations and their Role in Advancing Regulatory Reforms. A Two-State Review: Ohio and Texas. Groundwater Protection Council, 2011.

⁴ Commonwealth of Pennsylvania, Department of Environmental Protection and Range Resources- Appalachia. Consent Order and Agreement. September 17, 2014.

⁵ Marcellus Shale Coalition. Recommended Practices: Drilling and Completions. 2013.

⁶ API, Environmental Protection for Onshore Oil and Gas Production Operations and Leases. Recommended Practce 51R, 2009.

⁷ Center for Sustainable Shale Development. Performance Standards and Regulatory Standards across the Appalachian Basin. Water Standards. 2014.

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oversight of public agencies for the RRC to require digital reporting that aggregated that data for industry, the agency, and the public.

All application files—including public comments—should be kept and made public so similarly bad projects don’t get proposed in sensitive areas. Applicants should be required to review this data and analyze it in their applications. 4.124, 4.212, 4.230, 4.246, 4.262, 4.278, 4.302.

Improve enforcement and apply meaningful penalties. The penalty section, which is copied from 3.107, should strongly commit the Commission to vigorous, transparent, and speedy enforcement of the new rules. The remaining rules should be drafted to provide no wiggle room for bad actors to escape liability.

We hope to see the Railroad Commission incorporate this feedback in the final SWR8 Waste Pits rule as the protection of our collective health & safety along with the protection of our environment is of utmost importance.

Produced Water for Novel Uses

Oil and gas wastewaters contain varying amounts of salts, heavy metals, hydrocarbons, carcinogens and naturally-occurring radioactive material. As a result, reusing produced water for novel uses outside of the oil and gas fields presents a number of risks that need to be addressed. We don’t know everything that is in the industry’s wastewater, because operators are allowed to keep the chemicals they use a “trade secret.” This chemical cocktail ends up in wastewater and makes it impossible to guarantee adequate treatment before spreading the waste through the environment. To address this problem, oil and gas companies should be required to disclose the specific chemicals and the concentrations they use in their operations. This way, regulators and the public will know exactly what must be tested to see whether wastewater treatment is working. Further, after the state requires companies to disclose all chemicals and concentrations used by companies, standards for treatment of waste for reuse must include limits for all chemicals present in order to prevent pollution.

Until the proper safeguards are in place to accurately assess the quality of treated water, Texas should adopt the restrictive approach endorsed in New Mexico’s most recent draft rule concerning the use of treated and untreated wastewater for purposes outside of the oil and gas sector. The New Mexico rule prohibits discharges of even treated produced water “[u]ntil such a time that water quality criteria based on scientifically defensible information about the composition, toxicity, fate and transport of treated produced water is adopted by the commission.” NMAC 20.6.8.400—DRAFT 10.25.2023 (SRCA).

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Thank you for your consideration,
Charlie Palladino, Policy Advocate