



Texas Independent Producers and Royalty Owners Association

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Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, Texas 78711-2967
Via Email: rulescoordinator@rrc.texas.gov

RE: Draft Rules for Informal Comment, §3.8 and Chapter 4, Subchapters A and B

Dear Rules Coordinator,

The Texas Independent Producers and Royalty Owners Association (TIPRO) is a trade association representing the interests of nearly 3,000 producers and royalty owners. Collectively, our members produce approximately 90 percent of the oil and natural gas in Texas and own mineral interests in millions of acres across the state.

On behalf of TIPRO, please find below our comments regarding the draft Chapter 4, Subchapter A proposal being developed by the Railroad Commission of Texas (the Commission). We would also like to thank the Texas operators and our allied trade associations that have submitted comments. The Commission should pay close attention to the collective concerns and recommendations provided on behalf of the Texas oil and natural gas industry.

4.110(21) – *Definition of Commercial Facility*

The Commission should consider including the word “affiliate” in 4.110(21), the definition for a commercial facility, to account for scenarios where an operator may have a joint venture or other subsidiary partnered at a Non-Commercial Fluid Recycling pit.

4.110(60) – *Definition of Non-Commercial Fluid Recycling*

The Commission should consider a third option be provided under 4.110(60)(A)(iii) that allows for use of Non-Commercial Fluid Recycling in conjunction with an existing Commission-designated lease, pooled unit, acreage, or drilling permit to account for NCFR facilities located on surface properties that do not have a unique RRC identifier assigned. Implementing this change will further the Commission’s progress in adopting regulations that encourage water reuse and recycling and will eliminate unnecessary time delays associated with the H-11 permitting process simply based on location, not purpose of the pit.

4.110(61) – *Definition of Non-Commercial Fluid Recycling Pit*

See comments above under 4.110(60). Again, the Commission should consider including pits strategically located to support an operator’s development in the area on an existing Commission-designated lease, pooled unit, acreage, or drilling permit. Operators should not be penalized if a pit is constructed or maintained by a third party.

4.114 and 4.115 – Requirements Applicable to Authorized Pits

In TIPRO's review of the language, our members, small producers in particular, are concerned about the financial impacts of the proposed changes and whether the Commission has thought through the necessity of certain requirements on operators who are generating a minimal amount of waste.

Equally important to the costs of increased standards, some pit operations do not warrant the proposed requirements, including fresh makeup water and fresh mining water pits referenced in the rule and specifically in 4.115(d). Fresh makeup water and fresh mining water pits should be exempt from design, construction, operation, closure and monitoring requirements. Placing requirements on industry in a blanket manner without resolving necessity based on specific operations will lead to unnecessary regulatory requirements that impact industry production with no environmental gain.

With regard to costs, small operators who are running conventional operations with two to four rigs per year are estimating the proposed changes will cost them around \$70,000-\$85,000 to line a standard reserve pit, install monitoring similar to a leak detection system, and truck and dispose of all drilling fluids and cuttings, with the two big variables being cost of disposal and trucking depending on where the operator is located.

Another option, the implementation of a complete closed-loop waste management system, which we know is not being mandated but would accomplish the same as the Commission's proposed changes, will cost small, conventional operators somewhere between \$100,000-\$120,000 per pit, \$250,000-\$300,000 per well. The reason we mention a closed-loop cost is that industry trends in practices and related costs of those practices will eventually make a closed-loop waste management system the standard while other practices will become more costly, outlier practices. Ultimately, those practices will be eliminated from the typical process in Texas.

With this knowledge, it is reasonable to comment that some operators who are running a small number of rigs per year with AFE (Authorized for Expenditure, i.e. total cost of well) of approximately \$1,200,000 per conventional well, will eventually find the proposed standards to be cost-prohibitive to their continued operation, putting some operators out of business and making other projects uneconomic. We know this not the intent of the Commission; however, this knowledge should encourage the agency to review the requirements in 4.114 and make specific considerations for operators managing small volumes of waste and operations where there is no actual threat of groundwater contamination, whether in relation to the proximity of groundwater to the authorized pit or geology. The Commission should ultimately consider requirements based on identified risk at specific sites, localized areas, or regions through District Director review or recommendations.

4.114(a)(5) – Registration of Authorized Pits

The registration of authorized pits prior to their construction creates unnecessary delays and inaccurate submission of information to the Commission as exact locations, dimensions and capacity of those pits would not be determined until the pit construction is complete. The Commission should consider allowing for the registration of new pits either before they are put into use or within a certain timeframe after commencement of the pit's operation.

4.114(d)(2) – *General Operating Requirements for Authorized Pits; Practices that Compromise Liner*

It is common practice and necessary for an operator to use equipment that could puncture a pit's liner during the closure of a pit. While equipment should not be placed in the pit during its construction and operation, equipment should be allowed during closure procedures. When a pit is closed, the stabilization of the waste and a cap would prevent leaching, making the liner and any puncture in it irrelevant.

Figures: 4.114(f) and 4.114(g) – *Standard Waste Sampling Closure Parameters; If Waste is Buried in the Pit in Accordance with 16 TAC Chapter 4*

Because closure standards should vary based on specific operations, TIPRO would encourage the Commission to consider either removing the tables (Figures: 16 TAC 4.114(f) and (g)) so that industry has the flexibility they need to make necessary decisions specific to their operations, moving the tables to a guidance document, or include separate tables for 4.114(g) for lined versus unlined pits to ensure the most appropriate standards are applied for these two unique scenarios.

Because the Commission should be focused on outcome rather than process, TIPRO requests that the Commission also consider an option for a variance by rule by including an exception to the pit closure requirements specified in 4.114(g)(5) and Figure 16 TAC 4.114(g) similar to the language in recently developed 16 TAC 3.65. See suggested language below.

Pit-closure exception:

An authorized pit may apply for an exception to 4.114(g)(5) if, in addition to the requirements in 4.114, the following conditions are met:

- A review of surrounding shallow lithology and groundwater data indicates that either (1) groundwater is deeper than 100ft, or (2) shallow lithology and boring logs indicate there is an impermeable layer (caliche, clay, etc.) between the bottom of the pit contents and the top of the first groundwater bearing unit, demonstrating a reduced possibility for pit contents to migrate to groundwater over time;
- The site-specific location has minimal risk exposure to public receptors; No potable water wells within a ¼ mile radius; No residential or commercial properties within a ¼ mile radius; and
- The pit is constructed with a double liner.

4.114(h)(3) – *Groundwater Monitoring Requirements*

Groundwater monitoring requires significant resource allocation for the Commission and industry, and insignificant value for cases in which there is no reasonable expectation of a hydraulic connection between the ground surface and groundwater zone due to low potential for an authorized pit to impact groundwater. The proposal should be modified to exclude groundwater monitoring for cases where groundwater may be present within 100 feet of the ground surface but the operator provides sufficient evidence, such as subsurface lithology indicating a low permeability or hydraulic conductivity zone, to indicate that there is no likely hydraulic connection between the surface and the shallowest groundwater zone.

4.115(b)(3) – Closure Timeline for Reserve and Mud Circulation Pits

The requirement to dewater unlined reserve pits and mud circulation pits within 30 days and close the pit within 90 days of cessation of drilling operations will be difficult if not impossible in certain scenarios related to drilling plans in areas of new development, and with constraints around personnel and even weather challenges during certain times of year. TIPRO recommends the Commission consider extending closure timelines for all pits to a minimum of 120 days and up to a year with just cause.

4.185 – Pilot Programs

TIPRO is encouraged to see the recent proposal for Produced Water Recycling Framework for Pilot Study Authorization released for industry review. We believe the Commission is on the right track to ensure companies have the regulatory certainty they need as well as the flexibility to further produced water recycling to potable standard.

4.191 – Oil and Gas Waste Manifests

The Commission should consider establishing a standardized Waste Manifest to eliminate confusion and streamline reporting of manifest details. Ultimately, this would save industry time and money as they document waste hauled from a lease.

TIPRO appreciates the work of the Commission in addressing these important issues. If you should have any questions, I can be reached directly at 512-477-4452, or via email at elonganecker@tipro.org. Thank you.

Sincerely,



Ed Longanecker
President
Texas Independent Producers and Royalty Owners Association

cc: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright