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BY E-MAIL (RULESCOORDINATOR@RRC.TEXAS.GOV)

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Railroad Commission of Texas
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Re: Proposed Changes to 16 TAC §3.8 and §3.57 and 16 TAC Chapter 4

Dear Rules Coordinator:

The Texas Industry Project (“TIP”) appreciates the opportunity to submit the following comments to the Railroad Commission of Texas (“RRC”) on the informally proposed changes to 16 Texas Administrative Code (“TAC”) §3.8 and §3.57 and 16 TAC Chapter 4. TIP is comprised of 58 companies across different industries, including oil and gas refining, midstream, and upstream companies with operations in Texas.

The RRC has stated that its intention with the proposed changes is to update the primary rule for regulating oil and gas waste management, encourage oil and gas waste recycling, and promote investment in infrastructure and pilot studies to assess potential recycling solutions. TIP is providing this preliminary input and looks forward to an ongoing stakeholder process as the initial proposal is refined to further the stated goals and avoid unintended consequences.

TIP supports, and asks that the RRC give serious consideration to, those comments submitted by the Texas Oil and Gas Association (“TXOGA”). As detailed therein, there are longstanding operational practices that need more consideration and regional variation in background conditions warrants more flexibility than appears in some aspects of this initial proposal. For example, new constraints on authorized pits, registration requirements, and pit location and design criteria, including blanket provisions for groundwater monitoring, appear to sweep further and create burdens beyond what is needed or appropriate to support protection of human health and the environment. Consistent with the TXOGA comments, TIP is highlighting a few issues for consideration.

1. Rule §4.110(21): Definition of “Commercial Facility”

The RRC is proposing a definition for “commercial facility” that includes a facility “whose operator receives compensation from third parties for the management of oil and gas wastes, whose primary business purpose is to provide such services for compensation, and receives oil and gas wastes by truck” but excludes “an entity that wholly owns the operator of the facility.” As written, the meaning of “third party” could be read to include business affiliates, including subsidiaries or joint venture partners. Including business affiliates as “third parties,” and therefore including facilities where oil and gas waste management is shared between multiple business affiliates as “commercial facilities,” does not reflect operational reality. It is common for business affiliates

or partners to divide oil and gas waste management responsibilities at the same facility without the facility being termed a “commercial facility.”

To avoid this potential interpretation, TIP requests that the RRC amend the definition and provides the following suggestion for consideration:

Commercial facility--A facility permitted under this chapter, whose operator receives compensation from third parties for the management of oil and gas wastes, whose primary business purpose is to provide such services for compensation, and receives oil and gas wastes by truck. In this paragraph, a third party does not include an entity that ~~wholly owns the operator of the facility permitted under this chapter~~ owns or operates, or is affiliated with the owner or operator of, the facility permitted under this chapter.

2. Rule §4.110(61): Definition of “Non-Commercial Fluid Recycling Pit”

The proposed rules include a definition for “non-commercial fluid recycling pit” that requires the pit to be “constructed, maintained, and operated by the operator of record of the lease or unit.” Although the term “operator of record” is not defined, if it is assumed that the operator of record is the permittee, this definition does not take into account the standard practice of contracting construction, maintenance, or operating activities to a third party. The definition assumes that the pit will be exclusively constructed, maintained, and operated by the operator of record. TIP requests that this definition be amended to take into account that operators will often engage third parties to assist with pit construction, operations, and maintenance activities.

3. Rule §4.111(e): Completion/Workover Pit Wastes

The RRC is proposing to allow a person to dispose of certain materials in an authorized pit without a permit, including “water.” However, the rules do not clarify the meaning of the term “water” in this context. In other rules, the term is more specific. *See e.g.*, “water condensate” in Rule §4.111(a), “wash water for cleaning drill pipe and other equipment at the well site” in Rule §4.111(c), and “hydrostatic test water from a new pipeline” in Rule §4.111(g). TIP asks that the RRC clarify the term “water” in Rule §4.111(e) to avoid any confusion regarding the materials that can be disposed in completion/workover pits without a permit.

4. Rule §4.113(b)(2): Authorized Pits

Water condensate pits are appropriately authorized by rule and existing water condensate pits should fall within the continued authorization allowed by (b)(1). The reference to water condensate pits in (b)(2) would require permitting or closure and is requested to be deleted.

5. Rule §4.114: Requirements Applicable to All Authorized Pits

TIP refers to the broader collection of detailed comments provided by TXOGA but reiterates that fresh makeup water and fresh mining water pits do not warrant the same location, design, construction, operation, closure, and groundwater monitoring requirements as other types of pits. Please consider appropriate differentiation to maximize operational flexibility and minimize administrative burdens; that differentiation would remain consistent with protection of human health and the environment.

In addition, regional variability and site-specific conditions warrant reconsideration or refinement of the groundwater monitoring requirements.

6. Rule §4.115(b)(3)(B): Unlined Reserve and Mud Circulation Pits

Rule §3.8 currently requires reserve pits and mud circulation pits to be backfilled and compacted within one year of cessation of drilling operations. Under proposed Rule §4.115, the RRC is proposing that unlined reserve and mud circulation pits must be dewatered within 30 days and closed within 90 days. This substantially shorter timeline could be infeasible for operators. TIP requests that the RRC adopt the timelines currently included in Rule §3.8 for closure of unlined reserve and mud circulation pits. In the alternative, TIP asks that the RRC provide at least 120 days for operators to close unlined reserve and mud circulation pits, which better provides time to address contamination, if any, or other post-closure obligations that may arise.

7. Rule §4.121: Permit Term

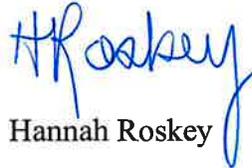
Please reconsider the five-year limitation on permit terms and retain additional flexibility to avoid unnecessary administrative effort where appropriate to set a longer term. The phrasing should at least accommodate continuance of permit coverage during the processing of a timely filed renewal.

8. General Comment: References to “Closure” and “Backfill”

The proposed rules use the terms “closure” and “backfill” interchangeably. *See e.g.*, Rule §4.154, which sets out the “closure” requirements for pits authorized by permit. The rule references backfilling as a component of pit closure (*i.e.*, “the pit shall be backfilled and compacted within 120 days”). However, the rule also appears to suggest that, once a pit has been backfilled, the pit has been closed (*i.e.*, “Once backfilled, the pit shall be reseeded with vegetation natural to the region to prevent erosion after pit closure”). TIP requests that the RRC clarify the language regarding pit “closure” and “backfill” to avoid any potential confusion.

We appreciate the RRC's time spent in reviewing and considering these comments. If you have any questions, please do not hesitate to contact me at hannah.roskey@bakerbotts.com or (713) 229-1359.

Respectfully,



Hannah Roskey

cc: Paulina Williams, Baker Botts