

From: robert@everyactioncustom.com on behalf of [Robert Howard](#)
To: [Rules Coordinator](#)
Subject: Re: Comments on "Amend 3.8 and new/amended Chapter 4 waste management"
Date: Tuesday, October 15, 2024 3:22:22 PM

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Dear Rules Coordinator,

I am concerned about the changes to Statewide Rule 8 & Chapter 4.

The Commission must: (1) Better protect human & environmental health from waste & recycling operations; (2) Make operators protect communities from bad practices; (3) Improve the Commission & public's ability to enforce the rules.

While I support some of the rule changes, e.g., that data will finally be collected on on-lease pits; more are needed. For example:

Public Participation

- 1) Require explicit surface landowner consent before a pit can be built and waste buried in it.
- 2) Create a more participatory permit process:
 - require multiple notices, at least 30 days before an application or hearing;
 - send notice to all residents, landowners & groundwater districts within at least one mile of a facility's property boundary;
 - at hearings, let anyone ask questions, participate, present testimony, facts, or evidence
- 3) Create an electronic mailing list for all applications that anyone can join

Good Projects

- 4) Don't presume a project will protect Texans & Texas; make them prove it. Applicants must bear the actual & financial responsibility to show with credible evidence that their projects will be safe. As is, it falls to the public to disprove this, which is costly & backwards. Don't let an applicant modify its application during a hearing — if it's deficient, deny it.
- 5) Increase setbacks from sensitive places. Negative effects extend beyond the setbacks proposed; sometimes over a mile. Measure from the property boundary, not the pit.
- 6) Improve design, operating & monitoring for all facilities. Once polluted, soil and groundwater is basically impossible to clean. This proposal lets pits that hold drilling muds, cuttings, or completions fluids avoid the permit process & not install a true liner even if groundwater exists just below the pit. Even at permitted facilities, there isn't enough groundwater investigation, protection, or monitoring.
- 7) Test waste before it's left onsite. This rule would leave 1,000s of acres of waste in on-lease pits, with no testing to confirm that it's not toxic & won't harm property, waters, or wildlife. Clean-up should be required.

Data & Enforcement

- 8) Make public all data. Make all data tracked by rule easily & timely publicly accessible. Release full text-searchable documents, not summaries.
- 9) Create a database of prior applications. Retain & make public these files & comments. Make subsequent applicants distinguish themselves from this data.
- 10) Improve enforcement. Communities agree—the existing rules aren't well enforced & the penalties don't deter bad actors. Also, the origin, type & disposal of waste as it moves across Texas needs better tracking.

Also, the Commission must withdraw Subchapter B Division 7: these new rules would let treated drill cuttings be used as construction fill anywhere, or in county roads. Cuttings can contain hazardous, radioactive & carcinogenic chemicals, but the rule doesn't test enough for them, creating potential environmental hazards & risking public funds to clean up these materials. More study is needed before this rule is re-proposed.

Finally, I'm upset that the Commission excluded the public, groundwater districts, localities & community groups from most of the drafting process. It rejected calls to hold public workshops across the state & instead consulted only industry for years. It declined to solicit comments at times & locations accessible to the public. The Commission should have allowed for meaningful participation before proposing these rules.

Sincerely,
Mr. Robert Howard
2315 Westforest Dr Austin, TX 78704-5809
robert@roberthowardandassociates.com