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RE: Proposed Changes to 16 TAC 3.8 and 3.57, and 16 TAC Chapter 4

The Texas Oil & Gas Association (TXOGA) appreciates the opportunity to participate and provide comments regarding 16 TAC 3.8 and 3.57, and 16 TAC Chapter 4 during the informal comment period.

TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas' crude oil and natural gas, operates nearly 90 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In fiscal year 2022, the Texas oil and natural gas industry supported 443,000 direct jobs and paid \$24.7 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

TXOGA's members recognize the importance of harmonizing and standardizing rules for commercial and non-commercial waste operations. While doing so we would like to ensure that the rules are consistent with the industry's, Commission's, and Legislature's goal of encouraging innovation with regards to waste management, recycling, and reuse.

Below includes a list of suggested changes and considerations for the Commission regarding the proposed amendments. TXOGA shares many of the same concerns as our allied trades as well.

### **Division 1**

- 4.102(a)(2) - (Page 1) - Consider clarifying when a waste generated at a commercial facility requires laboratory analysis.
- 4.102(f)(1) – (Page 2) - Modify to “the generator knowingly utilizes...”
- 4.102(f)(2) – (Page 2) - Consider revising the proposed rule language to “the generator knew ~~or reasonably should have known~~ that the carrier or receiver was ~~likely to~~ improperly ~~dispose~~ disposing of the wastes and failed to take reasonable steps to prevent the improper disposal.

- 4.102(g) – (Page 2) – Consider revising the proposed rule language to “No person may manage oil and gas wastes in a manner that ~~is inconsistent with~~ violates Commission rules.” The word “inconsistent” is too vague and is difficult for an operator to comply with.
- 4.103(a)(4) – (Page 2) – Consider adding authorization for temporary storage by the owner/operator at a nearby facility. This is needed due to concerns with leaving waste unsecured on pipeline right of way. Include an exclusion will allow for the temporary storage of oil and gas waste generated on a third-party pipeline right of way to be temporarily stored at the closest property owned by the generator.
- 4.108(f) – (Page 6) – Consider adding “at the time of filing” for additional clarity.  
Change: “The Commission charges each person with the obligation at the time of filing to review and correct, if necessary, all forms, information, or data that a person files or that are filed on the person’s behalf.”
- 4.109(a) – (Page 7) - We believe the rule is not clear that the exception provision applies to all authorized operations as well. Adding “operator” to the language to clarify that exceptions are available for all provisions of the rule including authorized pits is recommended. The current language of “applicant or permittee” implies applicability limited to permitted activities, not authorized activities.  
Change: An operator, applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request...”
- 4.109(c) – (Page 7) - Consider revising the proposed rule language such that the existing authorized facilities and waste management units which are no longer authorized pursuant to the new subchapters shall continue operators for one year unless the RRC takes specific action to cancel or suspend operations of a facility. This gives transition time and avoids interruptions of ongoing operations.

## **Division 2**

TXOGA has spent a significant amount of time considering the implications of the definitions relating to commercial activities. We recommend that RRC ensure that the definitions relating to commercial vs non-commercial recycling ensure recycling and reuse is still encouraged. Specific definitional concerns are listed below.

- Aquifer (Page 9) - Consider providing a quantitative lower bound on what constitutes “significant quantities”.
- Authorized pit (Page 9) - Current definition includes fresh makeup water pit and fresh mining water pit. Consider removing and stating elsewhere that this rule and the jurisdiction of the commission does not extend to freshwater use.
- Commercial Facility (Page 10) - The proposed definitions limitation to wholly owned subsidiaries create challenges with the current affiliate structures and other currently permissible structures that operators created under the current Rule 8 structure. We would like to ensure that proposed rules do no harm to the structures that were created that have had a positive impact and led to the innovation we currently see in water management practices including treatment, recycling and reuse. The current definition as

written could have unintended consequences with relation to recycling and reuse that is currently happening in the field. Two suggestions are listed below to address this concern. Proposed Change #1: In this paragraph, a third party does not include an entity that wholly owns or operates, or is affiliated with the owner or operators, of the facility permitted under this chapter. ~~wholly owns the operator of the facility permitted under this chapter.~~  
OR

Proposed Change #2: Remove “wholly owns” and replace with “partially owns.”

- Contact stormwater (Page 10) – The definition includes circumstances where rainwater comes in contact with areas that are permitted to contain oil and gas waste, where no oil and gas waste has yet been contained, or facilities have been constructed, or in areas that are constructed where waste has yet to be stored. It may be more appropriate to limit this definition to actual contact with oil and gas waste or areas where oil and gas waste has previously been stored to ensure that storm water is not treated as oil and gas waste unless contact is certain.
- Drill Cuttings (Page 11) - The definition was not included in Division 2, 4.110 definitions. It appears only in 4.204.
- Geomembrane (page 12) - Consider modifying to “effectively impervious” or “substantially impervious” or providing a numeric hydraulic conductivity value that constitutes impervious.
- Groundwater (Page 12) - The definition proposed is too broad and could unintentionally include produced water. We propose limiting the definition to subsurface water “in a confined or unconfined aquifer” (an already-defined term), in keeping with the intent of these rules.
- Inert oil and gas waste (Page 12) – Clarify that wet forms of soil, dirt, clay and sand are included as inert oil and gas wastes.  
Change: “Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, synthetic liners, fiberglass, soil, dirt, clay, sand, gravel, brick, trash, and wet forms of the previously listed wastes. The term excludes asbestos or asbestos containing waste, and oil and gas naturally occurring radioactive material (NORM) waste.”
- Non-commercial facility (Page 13) - Consider including language indicating that a non-commercial facility is any facility that does not meet all three commercial criteria as defined in §4.110(21).
- Non-commercial fluid recycling (Pages 13-14) – “Wholly owned subsidiary” in (B) could be an issue.  
Change: (A)(i) Consider revising the proposed rule language to “~~or~~ in conjunction with an existing Commission-designated lease, pooled unit, acreage, or drilling unit associated with a Commission-issued drilling permit.” This will account for NCFR facilities operated for a lease but that is located on a stand-alone surface.
- Non-Commercial Fluid Recycling Pit (Page 14) – Remove the words “constructed and maintained”. This will create alignment across the NCFR recycling and commercial pit

definitions. Operators should not be penalized if a pit is constructed or maintained by a third party.

Change: (A) Consider revising the proposed rule language to “~~or~~ in conjunction with an existing Commission-designated lease, pooled unit, acreage, or drilling unit associated with a Commission-issued drilling permit.” This will account for NCFR facilities operated for a lease but that is located on a stand-alone surface.

- NORM (Page 14) – Use definition from 25 Texas Administrative Code 289.259(c)(4)
- Oil field fluids (Page 15) – Consider adding the following to the definition, “... The term “oil field fluids” includes, but is not limited to, drilling fluids, completion fluids, surfactants, and other chemicals used in association with oil and gas activities, but does not include produced oil, condensate, or gas that is not oil and gas waste, or freshwater...”
- Pollution (Page 16) - The current definition of pollution begs the question, of what if the subsurface water is already considered "pollution" such as produced water, or low-quality perched groundwater bearing zones where concentrations of chloride and/or TDS render the water harmful to animals or property and is already impaired from useful public enjoyment.

Change: “the alteration of the natural physical, thermal...”

- Sensitive Area (Page 17) - As written, the factors that define a sensitive area are listed but without any quantification or constraints (e.g., what is shallow vs. deep groundwater; what distance is considered proximal to surface water).
- Small Sump (Page 17) – More detail is needed on what is and what is not a small sump. As currently written in the draft rule, a well head cellar would meet the definitions of pit and small sump.

The one-foot freeboard requirement significantly reduces the working capacity of a small sump. For example, a 6” deep secondary containment partially buried beneath a transfer pump, or a drip pan partially buried beneath a load line for containment could be defined as a small sump under this rule and would not meet the one-foot freeboard requirement. Sumps should be operated as engineered and designed which includes prevention of unauthorized discharges. Reporting of all unauthorized discharges maintains RRC oversight. Additionally, we request further interpretation in the preamble to provide clarity on how this applies to secondary containment.

Change: “A subsurface pit that is lined with concrete, corrosion resistant metal, or pre molded synthetic material, and that has a maximum working capacity of 500 gallons.” ~~or less while maintaining a freeboard of one foot.~~

### Division 3

- 4.111(a) – (Page 18) Consider including a definition of water condensate in §4.110 to complement and differentiate from the definition of hydrocarbon concentrate in §4.110(46).
- 4.111(b) – (Page 19) Change: “Inert oil and gas waste. A person may, without a permit, dispose of inert oil and gas waste on the property on which the waste was generated, or

nearby property owned by the generator by land application or landfarming provided disposal is by a method other than disposal into surface water.

- 4.111(c) – (Page 19) There is concern with the 3,000 mg/liter standard. Depending on where your operations are in the State, your “freshwater” chlorides are different. Particularly in West Texas, they tend to be higher. Often when an operator drills a freshwater well for makeup water, chlorides exceed 3,000 mg/liter. It would be our preference for this to be regulated by the District office so that they can regulate standards based upon the area of the State your operations are based in. Distilled water here is defined as water that “does not contain other substances” which is not consistent with the definition of distilled water in 4.110(33). Further, the proposed rule language providing that distilled water resulting from treating fluid may, without a permit, be used in any manner other than discharge to surface water is inconsistent with the recent draft guidance for Produced Water Recycling Framework.
- 4.113(b) – (Page 22) Industry supports the continued use of existing authorized pits constructed pursuant to and compliant with Rule 3.8 as that rule existed prior to the new draft rulemaking. There are thousands of authorized pits in use across the state which are compliant with Rule 3.8. As written, the only new provision of the draft rule which appears to apply to existing pits is the new draft closure requirements (4.113(b)(3)); however, later sections of the draft rule including pit registration requirements (4.114(a)(5)), general operating requirements (4.114(d)), and groundwater monitoring requirements (4.114(h)) are vague and lack clarity on whether they apply to grandfathered pits. The draft rule should be modified to clearly express that registration requirements, inspection requirements, and groundwater monitoring requirements do not apply to authorized pits constructed pursuant to and compliant with Rule 3.8 as that rule existed prior to [insert effective date of this rulemaking].
- 4.114(a)(5) – (Page 23) Practically, registration of authorized pits prior to construction is difficult because the exact location, dimensions and capacity may be approximate until construction occurs. We recommend modifying the proposed rule as follows, “(A) New pits shall be registered no later than 60 days following commencement of pit operations.” The draft rule should be modified to exclude small sumps from the registration requirement for authorized pits. While we understand the benefits that the Commission might realize to document the location and occurrence of authorized pits, placing registration requirements on small sumps will require significant manpower and resource burden on both the Commission and industry for little value. Small sumps present a significantly lower risk of environmental impact relative to other authorized pits due to their smaller capacity, relatively shallow nature (often < 5 ft deep), and requirement to be constructed of impermeable materials such as concrete, corrosion-resistant metal, or pre-molded synthetic material (4.115(f)(2)(A)). Given that there is no minimum volume threshold for a small sump, a 5-gallon drip pan installed below grade beneath a piece of equipment would be required to be registered under the draft rule as written.

- 4.114(b) – (Pages 23-24) This may be limiting in some regions (e.g., East Texas) where surface water features are abundant.  
There are concerns with the speed of district director approval. Should a time limit be in place for approval?  
Operators asked for some consideration for automatic approval for workovers where there may have been preexisting pits. Operators also stated fresh makeup water and fresh mining water pits should not require director approval.
- 4.114(b)(4) – (Page 24) Industry supports the general siting requirements for authorized pits to protect surface waters and other sensitive environments. While water wells placed near pits on oil and gas locations are often used for drilling or workover operations, they are often also utilized for completion operations; however, completion operations appears to be inadvertently omitted from the rule. The draft rule should be modified to state “...other than a well that supplies water for drilling, completions operations, or workover operations for which the pit is authorized.”
- 4.114(c)(6)(E)(ii) – (Page 25) Consider providing additional guidance regarding when a geotextile liner may be required. The proposed rule language indicating ‘where needed...’ may not provide sufficient direction to operators.
- 4.114(2)(2) – (Page 26) While we agree that equipment and machinery should not be placed in lined pits during the construction and operation of the lined pit. However, certain pits must be entered with equipment to properly close them. Under this proposed rule, the RRC requires dewatering of all fluids, allows for mixture of pit contents with clean material, requires stabilization, and requires the contents to pass a paint filter test. A common practice is to stage equipment within the pit to effectively meet these closure requirements. During the pit closure, the liner may be punctured by the equipment entering the pit. However, the combination of stabilization of the waste and a cap would prevent leaching. It is a widely accepted practice by various state and federal environmental agencies to allow soil capping. The cap is designed to restrict surface water and rainwater infiltration into the subsurface waste body. This further reduces the potential for leaching of site contaminants.  
Change: “Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits during construction and operation of the pit.”
- 4.114(d)(3) – (Page 26) We recommend clarifying that the contents of the authorized pit are not required to be removed for the periodic inspection. Complete removal of pit contents often requires equipment or heavy machinery that presents a risk of causing a puncture or tear in the pit liner, and 4.114(d)(2) expressly prohibits placing any equipment or machinery in the pit which could reasonably be expected to compromise the integrity of the liner.
- 4.114(c), (d), (e) and (h) – (Pages 24–30) We recommend exempting fresh makeup water and fresh mining water pits from all requirements, including registration, design, construction, operation, closure, and groundwater monitoring requirements.

Explanation: Fresh makeup water pits containing water with chloride concentrations less than 3,000 mg/l present insignificant risk of impacting groundwater or the environment if a pit release occurs. The draft Standard Soil Sampling Closure Parameter for chloride is 3,000 mg/kg (draft figure 16 TAC 4.114(f); page 86/87), indicating that 3,000 mg/kg chloride is an acceptable concentration of chloride in native soil that would not cause harm to human welfare or the environment. Requiring design, construction, operation, closure, and groundwater monitoring in these cases causes undue burden on industry and resource strain on the Commission for little value.

- 4.114(f)(3)(A) – (Page 26-27) Consider including analytical method TX 1005 in addition to EPA SW-846 418.1 for Total Petroleum Hydrocarbon analysis.
- 4.114(g)(2) – (Page 28) Solidification of the waste material for in place burial of waste may pose logistical challenges if the waste material does not meet the closure criteria and would thus require the liner to remain intact in accordance with §4.114(g)(5)(A)(ii). Physical blending of the in-place pit material to achieve stabilization without damaging the liner may be physically impossible.
- 4.114(g)(3)(A) – (Page 28) Collection of in situ samples of waste from within an existing pit poses logistical and safety challenges. Personnel cannot reasonably enter a pit to collect samples. We suggest an exclusion to sampling for waste buried under (g)(5) “untreated waste.”
- 4.114(g)(5)(A) – (Page 29) During the pit closure, the liner may be punctured by the equipment entering the pit. However, the combination of stabilization of the waste and a cap would prevent leaching. It is a widely accepted practice by various state and federal environmental agencies to allow soil capping. The cap is designed to restrict surface water and rainwater infiltration into the subsurface waste body. This further reduces the potential for leaching of site contaminants and provides equal to or superior protection compared to untreated waste with an intact bottom liner.

Change: Add (iii) – “(iii) install a liner cover over the waste material in the pit.

(a) The operator shall install the liner cover in a manner that prevents the collection of infiltration water over the pit and on the geomembrane cover after the soil cover is in place.

(b) The liner cover shall meet the requirements as described in §4.114(c)(6) of this section.”

- 4.114(g)(3)(C) – (Page 28) If background samples are collected, can operators use closure criteria from background samples and from the pit closure criteria in Figure §4.114(f) simultaneously? [i.e., could an operator utilize the background concentrations as closure criteria for Metals while simultaneously utilizing the closure criteria values for Chloride or TPH from Figure §4.114(f)]
- 4.114(g)(6) - (Page 29) The proposed rule language references ‘treated waste material’ but does not specify if this treatment occurs in situ or how such would be accomplished.
- 4.114(h)(3) – (Page 30) Groundwater monitoring requires significant resource allocation for the Commission and industry. To drill a monitoring well costs roughly 10k – 15k per well. If you add in cost to maintain and plug, you are adding more capital expense to every well an

operator drills. These wells should be subject to sensitive areas such as wetlands, protected areas, etc. and to commercial operations. These should not be a requirement of drill, reserve, frac or workover pits. Many pits are double lined with leak detection technology rendering the monitor wells pointless. If an operator is using a double lined pit there is an opportunity for us to create a formal leak detection program and reporting process instead of installing monitor wells.

The draft rule 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 (e.g., subsurface lithology indicating a low permeability/hydraulic conductivity zone) to indicate that there is no likely hydraulic connection between the surface and the shallowest groundwater zone and/or the groundwater is of low quality. Similar consideration is given by the Commission in 4.131(b)(1)(B) and 4.131(b)(1)(C), which states that the Commission will consider “quality of groundwater” and “presence or absence of natural clay layers in subsurface soils” in assessing whether groundwater monitoring is required for permitted pits. Groundwater monitoring provides insignificant value for cases in which shallow groundwater is of low quality or 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. Requiring groundwater monitoring in these cases causes undue burden on industry and resource strain on the Commission for little value.

- 4.114(h)(3)(B) – (Page 30) - Current practices for horizontal drilling include multi-well pads consisting of anywhere from 2 wells to over 20 wells per pad location, which could take 6 to 9 months, or even longer in some cases, to complete drilling all wells. Based on the lifespan of a horizontal drilling location, it is possible that a reserve pit would be required to be open for 18 months from initial use to allow for proper dewatering and stabilization of the drill cuttings.
- 4.114(h)(6) – (Page 31) States that sampling of the monitoring wells must be on a quarterly basis during. This could be an additional burden for operators when you can achieve the same results on an annual basis, especially for newly constructed pits. We suggest conducting annual sampling for the first 3 years then quarterly after that time period has ended. Alternatively, groundwater monitoring could only be conducted on an annual frequency until any potential ground water contamination is identified, at which point monitoring should change to a quarterly frequency.
- 4.114(h)(7) – (Page 32) The proposed rule language does not provide analytical methods or requirements for the required groundwater samples.
- 4.114(h)(8) – (Page 32) The proposed rule language requires an operator to notify the District Director if any groundwater analytical parameters “indicate potential pollution” but does not define any limits for those parameters or provide guidance on how an operator should determine what constitutes “potential pollution”.
- 4.115(b)(2)(A) – (Page 32) The proposed rule language provides for certain situations under which a reserve pit shall be lined, presuming then that if a reserve pit does not meet these specific criteria in 4.115(b)(2)(A), then a liner is not required. However, this seemingly



contradicts 4.114(c)(6) that states “authorized pits shall be lined”. Clarity may be needed to indicate that the proposed 4.114 rule language indicating “Requirements Applicable to All Pits” is exempting those authorized pits where the proposed rule language in 4.115 would apply.

- 4.115(b)(3)(B) – (Page 33) - Unlined reserve pits and mud circulation pits would be required to be dewatered within 30 days and closed within 90 days of cessation of drilling operations. This timeline could be difficult to meet, especially if contamination is suspected to have occurred. We would recommend the rule to maintain the requirement for closure within 1 year, but in any event allow a minimum of 120 days for closure.
- 4.115(d)(2)(A) – (Pages 33) Fresh makeup water pits are often filled with water from multiple sources to prevent unnecessary drawdown at a single groundwater point source or due to flowrate demands. Industry should be encouraged to continue utilizing multiple water sources to reduce impacts on individual sources. The draft rule should be modified to clarify that adding multiple water sources into a single pit does not constitute “mixing”, or the mixing prohibition should be removed from the rule.
- 4.115(f)(2)(B) – (Page 34) The definition of small sump in (80) states that sumps have a “working capacity of 500 gallons or less.” The draft rule should be modified to state “small sumps shall maintain an operational capacity of 500 gallons or less...” to prevent conflicting volume thresholds of small sumps.
- 4.115(f)(2)(C) – (Page 35) The draft rule should be modified to remove the annual inspection requirement for small sumps altogether. Placing annual inspection requirements on small sumps will require significant manpower and resource burden on both the industry to perform, and RRC to review, inspections for little value. Small sumps present a significantly lower risk of environmental impact relative to other authorized pits due to their smaller capacity, relatively shallow nature (often < 5 ft deep), and requirement to be constructed of impermeable materials such as concrete, corrosion-resistant metal, or pre-molded synthetic material (4.115(f)(2)(A)). Given that there is no minimum volume threshold for a small sump, a 5-gallon drip pan installed below grade beneath a piece of equipment would be required to be inspected and documented annually under the draft rule as written.

#### **Division 4**

- 4.120(f) – (Page 37) This seems very open ended and provides for a lack of clarity of permit requirements and regulatory certainty with respect to requirements for permit applications.
- 4.122(b)(1) – (Page 37) Consider adding the following to the proposed rule language: “If an application for a renewal permit is filed at least 60 days before the expiration date specified in the permit, the permit shall continue in effect so long as the application for a renewal permit is pending.”
- 4.126(b)(1) and §4.126(b)(2) – (Page 44) Add “a good faith claim to” before each of these items such that the proposed language reads:

(1) a good faith claim to ownership of the property where the proposed facility is located

(2) a good faith claim to a leasehold interest in the oil and gas estate.

- 4.129(b)(4) – (Page 49) Some spills may take longer than 24 hours to be collected and containerized.

Suggested Change: “Collection and containerization of any spill of waste, chemical or other material shall be initiated within 24 hours and processed...”

- 4.130(a)(2)(C) – (Page 49) Include T-4 number for possible generator identification. This will provide a RRC identifier for leaks from pipelines off lease.
- 4.130(a)(3) – (Page 49) Name and Commission permit number of the transporter or waste hauler if required. As specified in the regulation, there are activities that exempt a waste hauler permit number. 4.193 (b) specifics exclusions for a waste hauler permit. It includes inert waste and NORM waste. If someone is transporting either of these wastes a waste hauler permit is not required. However, the reporting requirements still require a Waste Hauler Permit number.
- 4.131(b)(1)(B) – (Page 51) – This section mentions the quality of the groundwater within 100’ will be taken into consideration regarding whether the RRC will require operators to monitor groundwater or not. Clarity is needed because an operator could have many locations here the potential groundwater source would not be classified as a Class I.
- 4.131(b)(4)(D) – (Page 53) The term potential pollution is overly vague and could lead to over reporting. Recommend reevaluating this condition.
- 4.134(e) – (Page 55) Consider for additional clarity revising the proposed rule language to “If the applicant failed to complete an application after it was provided no less than two notices and opportunity to provide supplemental information in response to an individual request by Technical Permitting for supplemental information, the Technical Permitting Section shall deny the application. There is no maximum to the cumulative number of individual requests for supplemental information that Technical Permitting can make for any application.”

### **Division 7**

- 4.162(b)(3) – (Page 68) This section would benefit with additional flexibility to release non-contaminated rainwater without disposal. We recommend that RRC consider conditions similar to hydrostatic water release.

### **Division 9**

TXOGA supports and appreciates the RRC establishing a pilot program for produced water recycling. Innovation is at the heart of this industry and these provisions allow for operators to work with the Commission to develop pilot projects consistent with the Commission’s and Legislature’s interest and goal of promoting treatment and recycling and utilizing new technologies for expanded options of beneficial reuse.

## **Division 10**

Industry supports waste characterization and proper documentation; however, we recommend that a Waste Profile Form (WPF) and manifest be allowed to be more generic and standardized when characterizing RRC oil and gas E&P exempt waste streams. Also, the provisions may be functionally difficult for operators to utilize while positing the creation of an online system that does not exist and may not exist for some time.

Typically, a waste profile is copied to each specific generator location when the same waste stream is generated at multiple generator locations, with the same process generating the waste. Most operators generate the same waste streams at hundreds or thousands of facilities. Requiring a unique WPF for the same waste streams generated at each facility would be over burdensome and provide little value, since the Waste Manifest includes all of the site-specific information requested (e.g., generator location, quantity, etc.).

At this time the new requirements could cause a backlog and reduce the ability of generators and haulers to move and dispose of waste safely and efficiently. More specific comments are included below.

- 4.190 – (Page 76) Clarify how this section contemplates waste managed for disposal via pipeline.
- 4.190(b) – (Page 76) Consider clarifying how the WPF will be used for routine, high volume oil and gas wastes (e.g., produced water disposal) and particularly in light of the requirement of 4.190(b)(1)(C) to complete a waste profile form at the lease level. At this scale, larger operators would be required to generate hundreds if not thousands of individual waste profile forms.

The draft rule should be modified to remove "origin" and "approximate quantity" from the WPF to allow for more generic WPFs when possible. Origin and quantity are most associated with a waste manifest. See General Comment on Waste Profiles Forms above.

- 4.90(b)(1) – (Page 76) The draft rule should be reworded and/or the intent clarified to state: The WPF will include the following information and be made available to the Commission. The wording in the draft rule as written is not clear and could lead the generator to unintended interpretation as in 4.190 (b) it clearly states that the generator will create and complete the WPF.
- 4.190(b)(1)(A) – (Page 76) The draft rule should be modified to remove P-5 operator number to allow for generic WPFs when possible. Operators can have multiple P-5#'s and this will duplicate if not triplicate WPFs for operators and be overly burdensome. P-5 operator numbers are most associated with a waste manifest. See General Comment on WPFs above.
- 4.190(b)(1)(C) – (Page 76) The draft rule should be modified to remove this clause altogether to allow for more generic WPFs when possible. Industry supports including for non-exempt waste. Identification of the lease or property is analogous to the Generator physical location and would be included on the waste manifest. See General Comment on WPFs above.
- 4.190(b)(1)(E) - (Page 76) The draft rule should be modified to remove the "estimated quantity" requirement from the WPF to allow for more generic WPFs when possible. Waste

quantity will be included on the waste manifest, in which a WPF would be associated with. See General Comment on WPFs above.

- 4.190(b)(2) – (Page 76) - The draft rule should be modified to remove this requirement altogether. This requirement for the generator to associate the WPF and a specific manifest or group of manifests for shipment is not sustainable for Industry without implementing an electronic waste manifest system that has this capability. This requirement potentially puts indirect cost on Industry that has not been evaluated under this rulemaking.
- 4.190(b)(3) – (Page 77) - The draft rule should be modified to clarify that the WPF should only be provided for waste being recycled or disposed of at a commercial facility. Oil and gas waste is often recycled by the same operator which generated the waste, such as when produced water is recycled at an operator’s Non-Commercial Fluid Recycling Pit. There is no requirement for an NCFR pit to report recycled volumes; therefore, this new draft requirement should not apply.
- 4.191(a)(2) – (Page 77) - The draft rule should be modified to state “...that meets the requirements of this section and is accessible to all parties involved in the generation, transportation, and receipt of the waste and made available to the Commission upon request.” Generators may produce thousands of waste manifests within a basin on an annual basis. It would be more effective to make the documentation available to the Commission on an as needed basis, rather than sending all waste manifests to the Commission, which would put a resource strain on the RRC.
- 4.191(b)(4) – (Page 76) - Industry supports properly identifying the waste facility on the waste manifest. The draft rule should be modified to remove "identifier issued by the appropriate Regulatory Agency". Commercial Waste Facilities can have multiple permit numbers and it would be burdensome to Generators/Operators to research/add to manifest. The majority of E&P Operators rely on the 3rd party waste vendors manifests, so possibly they could add it as required but not practical if the Generator creates their own waste manifest.
- 4.191 (b)(5)(8)(9) – (Page 77) – There is concern with what occurs when a waste hauler picks up from an unmanned facility.
- 4.192(b) – (Page 78) – Request the commission to clarify, does this invalidate the condition of the MOU where the only requirement to ship RRC waste to TCEQ regulated facilities was a notification to the RRC district within 30 days of the shipment outlining the types and quantities of waste shipped? Requiring written approval from both agencies prior to disposal would have a significant impact on the ability of numerous generators to profile and dispose of oil and gas waste in a timely and efficient manner. This provision may make it more onerous for industry to use a facility that is lower risk for the environment.
- 4.192 (c)(3)(D) – (Page 78) – This provision needs some clarification. Will the reason for the request have a bearing on its approval? What will the allowable reasons be?
- 4.193 (b) – (Page 79) Include exclusion for transportation of oil and gas waste from pipeline right of way to a nearby location owned by the generator. This exclusion is needed to

address the hauling of the waste to a facility for temporary storage as addressed in 4.103(a)(4).

- 4.193(e)(9) - The draft rule should be modified to allow submittal of a waste manifest “within 45 days of shipment” rather than 30 days. Additional time for submitting a waste manifest is needed to best align with current manifest practices, to allow sufficient time to access a copy of the final manifest from the disposal facility. Also need clarification if this requirement is for the initial manifest or final manifest after receipt at waste disposal facility.
- 4.195 – (Page 81) Does the requirement for documentation of waste transported into Texas from other states extend to waste transported via pipeline, or does that requirement only refer to trucked waste? If pipelines are included, how does the proposed rule contemplate documenting piped oil and gas waste?

### **Division 11 - Tables**

There are concerns about the proposed standards and their ability to appropriately consider geological differences of the state and operating basins within the state. TXOGA recommends creating a guidance document with a statewide standard but provided flexibility for District offices to apply necessary variances to this standard that can consider the states geographical diversity as well as be modified more easily than a table within a rule might be.

### **Subchapter B**

While TXOGA spent the majority of its efforts on reviewing Subchapter A, we did receive one comment with regards to Subchapter B. Please see the comment below.

- In the proposed Subchapter B rules, there are three references to “closure or backfill material” in Section 4.301, as though these words could be used interchangeably. This could cause confusion, so we would recommend clarifying what is meant by “closure or backfill material.” Elsewhere in the proposed regulations the terms “backfill”, and “closure” are not used interchangeably.

TXOGA thanks the Commission for their work and attention to this rulemaking and we appreciate the opportunity to provide comments.

Sincerely,



Tulsi Oberbeck  
Director of Government and Regulatory Affairs  
Texas Oil and Gas Association