

October 7, 2024
Rules Coordinator
Railroad Commission of Texas

RE: Proposed Changes to Section 3.8 and Chapter 4

Dear Commissioners,

Thank you for the opportunity to comment on the proposed updates to Rule 8 (Ch. 3 & 4) on oil and gas waste management. After 40 years, these updates are critical to address industry innovations and the increasing complexity of waste streams. As an active stakeholder in the oil and gas sector, a 20-year professional in the energy waste management space, and a small business owner, I've seen firsthand the need for regulatory changes that address the increasing volume, toxicity and complexity of oil and gas waste streams. However, some aspects of the proposed revisions fall short and need immediate attention.

Oil and gas waste impacts landowners, operators, and host communities. This rule should address waste created from modern drilling practices and protect Texas' natural resources, landowner rights, and environmental health. While I appreciate the work done by Staff, key areas of the draft need strengthening to ensure a balanced approach between operations and environmental protection. I trust the final rule will reflect these necessary improvements to build a responsible framework.

General comments

- Since the rise of the shale revolution, foreign companies have poured billions of dollars into US-based energy companies, not just for profit but to learn how to unlock their own oil and gas reservoirs. In fact, one study showed that over 40% of M&A deals within the industry involve foreign-based companies, with the overwhelmingly largest share coming from China.

Texas Legislature recently proposed the Foreign Ownership Act, which was backed by 95% percent of Republican voters. In quoting the author Sen. Kolkhorst, "Private property rights are extremely important to maintaining liberty," and "Unfortunately, some of the authoritarian regimes that pose a threat to the United States do not respect private property rights and are willing to use these rights to undermine our constitutional republic."

Reserve pits built and waste buried on Texas farmland are a form of a taking backed by the RRC (The Government), where notification and consent are not required.

If we are not allowing members of the Chinese Communist Party to buy Texas farmland, why is the Railroad Commission allowing them to take it?

The same types of companies that sparked the Lone Star Infrastructure Act have drilled nearly 2000 wells in Texas. Does the Commission approve of these companies taking thousands of acres of Texas farmland and using it as a dump?

- **Primacy:** As you know, In Texas, the Commission holds primacy for regulating oil and gas waste, including disposal and recycling methods, under Statewide Rule 8. The commission's authority was granted to regulate oil and gas waste within Texas borders rather than being governed directly by federal regulations. Under this model, Texas can develop and enforce its own regulations under the framework of the Resource Conservation and Recovery Act (RCRA).

However, this does not mean that primacy cannot be revoked. There have been several instances of the EPA stepping in and revoking a state of their primacy for rulemaking, for example.

Wyoming in the early 2010's, faced challenges to its primacy in regulating Class II underground injection wells While the state's primacy was not fully revoked, EPA raised concerns about the state's enforcement practices and forced Wyoming to address regulatory gaps in well integrity, waste management, and protection of drinking water sources.

Alaska faced scrutiny over its oil and gas waste regulations and their compliance with federal standards. The EPA stepped in to oversee certain activities, particularly where the state's practices were seen as potentially endangering surface water and groundwater. The state had to address these issues to maintain primacy in regulating oilfield waste.

Utah in 2019 (under the Trump Administration), the Utah Oil Gas and Mining division lost its primacy over aspects of oil and gas waste management. The EPA forced the primacy to be transferred to the Utah Department of Environmental Quality, specifically to their hazardous and radiation control division. In quoting the UDEQ "For many years, the Division of Oil, Gas, and Mining at the Utah Department of Natural Resources, provided regulatory oversight of wastes generated from the exploration and production (E&P) of crude oil and natural gas throughout the State. With DOGM's oversight, these wastes were formerly excluded from the Solid and Hazardous Waste Act, which is administered by the Division of Waste Management and Radiation Control (DWMRC). However, in 2019, the Utah Legislature made important changes to the Solid and Hazardous Waste Act in response to a U.S. EPA requirement for state solid waste programs to have primary responsibility for management of E&P wastes.

Texas (current) In response to a petition from environmental groups, the EPA stated that it would review Texas' implementation of the Underground Injection Control (UIC) Class II program. The EPA said that the petition raised concerns about the sufficiency of Texas' implementation and that the EPA Region 6 would evaluate the issues through a technical and legal review.

A better Texas Rule 8 is essential for the state to retain its regulatory primacy over oil and gas waste management. To maintain primacy under RCRA, Texas must ensure that its regulations go further in protecting public health, groundwater, and the environment. Failing to do so could invite the EPA to intervene, potentially revoking Texas's authority to regulate oil and gas waste. Something that would be horrible for the state and the industry.

- Free markets: The freest, most efficient markets are also the most transparent markets. When a market is transparent, all relevant information is readily accessible to everyone, allowing for quick price adjustments based on new information and preventing situations where some participants have privileged knowledge. This is why all waste should be tested, categorized, and recorded, including volumes and place of disposal. These types of activities would lower the cost of disposal for the industry. Give the landowner the information, and they will make the right decision. However, the current system seeks to hide decisions and practices leading to lawsuits and other cost-increasing activities.

Questions

Introduction Pg. 5 – The Commission states that oil and gas waste generators are able to use “process knowledge” to categorize waste, yet in the next sentence states that laboratory analysis of waste may be required for waste generated at a commercial facility or transferred from one commercial facility to another.

Question- Why is process knowledge allowed to categorize waste at the well site, but laboratory analysis is required for commercial facilities? In *Forrest Oil v. McAllen Trust*, the operator allowed NORM-contaminated tubing to be used for a livestock pen and other untested waste to be spread on his property, leading to damages. In order to preserve the Commission's primary jurisdiction over claims for environmental contamination and to reduce the number of lawsuits, shouldn't the Commission require all waste to be tested?

Introduction pg. 9- The Commission states that it proposes additional requirements for Schedule B authorized pits due to the fact that they are larger in size and manage a larger volume of waste.

Question- Does the Commission put a size limit on Schedule A pits?

Question—Does the Commission take into account the waste type in a pit when determining its scheduling? Does the waste's toxicity make a difference to the Commission? If so, the Commission should look at both size and waste profiles when determining whether a pit is Schedule A or B.

Question- Does the Commission allow for the permanent disposal of waste in a Schedule B pit? The commission should consider not just the timeframe for a pit's active life but also the timeframe for how long waste will remain in the pit, even after closure.

*Definitions (28) Dewater – To remove **free liquids**.*

*(86) Solid oil and gas waste - Oil and gas waste that is determined not to contain “**free liquids**” as defined by EPA Method 9095B (Paint Filter Liquids Test), as described in “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods” (EPA Publication Number SW-846).*

Question- According to 4.114 (3) (A) among other places it states that prior to closure of an authorized pit a person who maintains a pit shall dewater the pit prior to closure. If the definition of dewater is to remove free liquids and the definition of free liquids is in compliance with EPA method

9095B, does that mean that the waste in all reserve pits must meet EPA paint filter standards prior to closure?

Definitions (47) Groundwater – Subsurface water in a zone of saturation

Question- Does this include produced water?

Question- If the Commission excludes produced water or waste, but in the future, produced water is re-defined for purposes of future reuse, will this impact this definition?

Question- Does the Commission have the ability to define groundwater differently than other agencies or the Natural Resources Code?

4.114 (2) (B)

Question- How is depth to groundwater to be determined by an operator?

Question- If depth to groundwater is 51' or greater is the operator required to use any sort of liner or containment to prevent the leaching of fluids outside the dimensions of the reserve pit?

Question- If the depth to groundwater is 51' or greater, could an operator build a pit in sand using no compaction?

Question- if there are no construction requirements for reserve pits built 51' or greater to groundwater how is the commission to ensure compliance with 4.114 (2)(A)?

4.114

Question- Does the Commission require any siting requirements for reserve pits similar to those found in 4.153?

Question- If no, could a reserve pit be built 100' from a residence? 10' from a residence?

Question- If no, could a reserve pit be built 50' from a community water well, or 10' from a private water well?

Question- Does the commission require any freeboard for waste in a schedule A pit?

Question- if no freeboard is required, does that mean waste in a schedule A pit can be one inch from the top of the pit even when a major rain event is imminent?

4.114 (2) (B) (i)

Question – If an operator uses a liner that complies with this section, could they build a reserve pit 1' above groundwater?

4.114 (3)

Question- During the closure of the reserve pit is there any requirement of the operator to maintain the integrity of the liner, where one is required? Meaning, can the operator intentionally tear the bottom of the liner in order to meet paint filter standards in 4.114(3)(A)?

Question- If any part of the liner below the waste line is compromised during the closure of a reserve pit does that violate the requirements of 4.114(2)(A)

Question- According to the Commissions Fiscal Year 2025 oil and gas monitoring and enforcement plan cutting of a pit wall is considered an example of a violation where automatic referral is warranted. Additionally in 4.114 (2)(A) states that all pits shall be maintained to prevent any migration of materials from the pit into adjacent subsurface soils. So if an operator intentionally breaches the sidewall of a pit during closure for any reason, or uses a method commonly known as trenching to aid in the rapid disposal of fluids as seen in the image below would this be considered a violation?



Image google earth.

Thank you for the opportunity to comment.

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