

October 15, 2024

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 Formal Comment, 16 TAC 3.8 and Chapter 4, Subchapters A and B

Dear Rules Coordinator,

Deep Blue Midland Basin LLC (together with its subsidiaries Deep Blue Operating I LLC and Deep Blue Central LLC, "Deep Blue") is a midstream water infrastructure company that develops, owns, and operates integrated water infrastructure networks for exploration and production companies throughout the Midland Basin.

First, Deep Blue would like to thank the Railroad Commission of Texas (the Commission) for the amount of thought and work put into developing the proposed changes to current 3.8 that will makeup Chapter 4, Subchapters A and B. We greatly appreciate the many discussions the agency has had with stakeholders who will be impacted by these changes. The Commission has very thoughtfully proposed updates to a rule that has not been revised in more than four decades, and we applaud your efforts.

On behalf of Deep Blue, please find below our comments regarding the proposal before us.

Preamble – *Application of New Requirements to Existing Facilities*

Because of the significant changes made in this proposal, the Commission should clarify that new requirements do not retroactively apply to existing closed pits at the effective date of the rule.

4.109(a) – *Exceptions*

It is not clear that the exception provision applies to authorized operations.

The Commission should add "operator" to the language to clarify that exceptions are available for all provisions of the rule including authorized pits. The current language of "applicant or permittee" implies applicability is limited to permitted activities, not authorized activities.

4.110(4) – *Definition of Action Leakage Rate*

Amend the definition to clarify that a leak is not absolute but one indication of a possible failure.

The Commission should consider utilizing the below definition:

“The calculated volume of waste liquid that has bypassed the primary liner into the leak detection layer at a rate of gallons per acre per day that if exceeded indicates a possible failure of the primary liner.”

4.110(22) – *Definition of Commercial Facility*

The definition for Commercial Facility is vague and could cause a reduction in produced water recycling if such operations are considered commercial.

If a parent company uses subsidiaries for the management of water, that subsidiary’s P-5 Organization Report and facility permits would be in the name of the subsidiary. In that case, the current definition would fail to tie the subsidiary to the parent company or any sister companies and the facilities would be considered commercial.

The Commission should consider utilizing one of the below definitions:

Option 1—“A facility permitted under this chapter, whose operator receives compensation from third parties for the management of oil and gas wastes, and whose primary business purpose is to provide such services for compensation. 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.”

Option 2—“A facility permitted under Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation. A commercial facility does not include a facility that accepts waste only from facilities owned or effectively controlled by the same person (From 30 TAC 331.2 Definition 30); and who is operating in accordance with SWR 3.1 Organization Reports, SWR 3.78 Fees and Financial Security, and 4.115(b) of this section.”

4.110(42) – *Definition of Fresh Water*

A straight-forward, simple definition for Fresh Water would provide clarity and reduce regulatory requirements.

We should ensure we are encouraging using higher TDS water rather than water that is otherwise useful. The Commission should remove reference to water that might be “available for domestic or agricultural use” as it is irrelevant and distracts from the purpose under the definition of Fresh Makeup Water Pit.

The Commission should note that University Lands has a 3,000 TDS limit in their rules but allows for submitting exceptions if the water wells in the area come in above 3,000 ppm. The Commission should note that Santa Rosa Aquifer water, an often-used source in the Midland Basin, can get as high as approximately 8,000-10,000 TDS. In addition to the revised definition below, the Commission should allow for an exception for use of this higher TDS water in Fresh Makeup Water Pits so that industry is able to utilize this water with greater ease.

The Commission should adjust this definition to the following:

“The surface or subsurface water containing less than 3,000 milligrams per liter of total dissolved solids.”

Or, in the alternative, add a new category of Schedule A Pit, a “Makeup Water Pit” defined as follows:

“A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of non-fresh water used to make up drilling fluid or completion fluid.”

4.110(77) – Definition of Public Area

The proposed definition of Public Area is the same definition used in 3.36, Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas. 3.36 offers additional protection when H₂S conditions are within certain distances to a public area and should govern safety concerns associated with hydrogen sulfide operations in relation to public areas.

For that reason, the Commission should omit public road, park and “other similar area that can expect to be populated” from this definition and instead reference 3.36.

4.113(c)(1) – Compliance from Authorized Pits Constructed under 3.8

The language in 4.113 (c)(1) should not require an operator to perform a site assessment on an authorized pit without cause to demonstrate pollution is not occurring.

The Commission should adjust this language to state the following:

“Authorized pits not in compliance with applicable rules under 16 TAC 3 shall be brought into compliance with or closed according to this division.”

4.115(b) – Financial Security Requirements for Schedule B, Produced Water Recycling Pits

Considering the difficulty of obtaining bonding for industry operations, an option for self-insurance should be included as an option for financial security requirements required for Produced Water Recycling Pits. The Commission could consider the following language:

“The owner or operator may demonstrate financial responsibility to the Commission through self-insurance or corporate guarantee provided that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard & Poor’s Global Ratings, AAA, AA, A, or BAA as issued by Moody’s Ratings or AAA, AA, A or BBB as issued by Fitch Ratings. The owner or operator must submit a report of its bond rating upon pit registration.”

Secondly, it is not uncommon for companies to have more than one operating entity in the state of Texas. For this reason, the Commission should include a parent company bonding provision to avoid acquiring multiple financial instruments for additional entities.

Additionally, some operators prefer securing a max blanket bond to simplify their bonding exercise. Allowing a parent company bonding framework would provide those operators an opportunity to secure a max blanket bond that would cover all operating entities. Colorado has a framework that could be considered for this request and the Commission could consider the below general language:

“Consolidation of Related Operators: Where a registered Operator owns, holds, or controls one or more other registered Operators, that parent company Operator and its subsidiary Operators may be consolidated, at their discretion, for purposes of determining financial security requirements, provided the parent Operator guarantees all obligations for itself and the consolidated subsidiary entities. Consolidation under this Rule will include all parent Operator's subsidiary Operators.”

For P-5 bonding, we submit a bond with an RRC form. The RRC should create a Produced Water Recycling pit form to allow for entity consolidation.

4.115(b)(4) – Financial Security Requirements for Transfer of Schedule B, Produced Water Recycling Pits

The proposed rules do not address requirements associated with transfer to a new operator for Schedule B pits which require financial assurance.

The Commission should consider adding the following language under this section:

“(A) The new operator of an existing produced water recycling pit must,
(i) file notice with the Commission 30-days in advance of the effective date of transfer; and
(ii) submit the required financial assurance by the date the transfer is effective.”

4.115(e)(4) – Siting for Produced Water Recycling Pits Within 300 Feet of Any Domestic Or Irrigation Water Well, Other Than...

There may be water wells that are drilled for the purposes of industrial sources. Considering this, exception language should allow for siting within 300 feet of that source.

The Commission should expand this language to state “... other than a well that supplies water for drilling or workover operations, or any other process for which the pit is authorized.”

4.115(e)(6) – Siting for Produced Water Recycling Pits Within 500 Feet of a Public Area

As mentioned in the above comments, the proposed definition of Public Area is the same definition used in 3.36, Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas. 3.36 offers additional protection when H₂S conditions are within certain distances to a public area. Any H₂S concerns should point to 3.36 or be addressed explicitly within the rule.

For that reason, the Commission should omit the public area siting provision and simply reference 3.36 requirements or outline specific protections for H₂S conditions.

4.115(g)(4) – Operating Requirements for Produced Water Recycling Pits; Leak Detection System

Leak detection system equipment, specifically pumps and monitors, break down frequently. Even for automated monitoring at pits with permanent power, we cannot manage daily monitoring as it means we would need to have someone onsite almost constantly, which is not practical. Many pits do not have permanent power, so to do daily or even weekly monitoring, generators would need to be maintained at those sites, which will be cost prohibitive.

The Commission should keep current monthly Non-Commercial Fluid Recycling Pit monitoring rates for Produced Water Recycling pits as it is manageable and practical.

4.115(g)(6) – Operating Requirements for Produced Water Recycling Pits; Free Oil

The purpose of recycling pits is to conduct water treatment which may include separation of waste that can yield small quantities of skim oil. This skim is frequently removed but does not appear authorized as currently stated in (g)(6).

The Commission should clarify this section to indicate skim oil in limited quantities is allowed as long as the skim is being operationally managed and does not sit and accumulate. Insertion of a clause to provide for a process in which an operator will manage free oil accumulation within 7 days of discovery would be reasonable.

4.115(i)(3)(B) and 4.115(j)(2)(C) – Closure Requirements for Produced Water Recycling Pits

There will be Produced Water Recycling Pits in operation when this rule is put into effect with no opportunity to determine constituent concentrations in background soil before or during pit construction to close those pits.

The Commission should allow operators to follow a similar soil sampling protocol to determine background concentrations to close existing pits. Soil conditions near the pits should suffice for determining background concentrations at closure.

4.191(d) – Requirements for Movement of Waste by Pipeline

This section records the metering of fluid flow for mass balance into and out of the system. Clarify if this section is applicable to movement of recycled produced water which under the definition of Treated fluid, Section 4.110 (93) is not considered a waste.

Deep Blue appreciates the attention of the Commission to these remaining important issues as you finalize the rule. If you should have any questions, please contact Isaac Griesbaum via email at igriesbaum@deepbluewater.com. Thank you.

Sincerely,



Isaac Griesbaum
General Counsel
Deep Blue Midland Basin LLC

cc: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright