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October 9, 2024

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, TX 78711-2967

RE: Comments on Railroad Commission of Texas rules related to TAC 16 Chapters 3.8, Water Protection and 16 TAC 4 Subchapter A, Oil and Gas Waste Management

Dear Commissioners:

Texas Farm Bureau (TFB) is a general farm organization representing more than 550,000 member families in Texas. Our organization's goal is to benefit all Texans through the promotion of a healthy and vibrant agricultural sector, capable of producing a safe and affordable domestic supply of food, fuel, and fiber.

Affordable, reliable energy and dependable water supplies are essential for crops and livestock production. High-quality groundwater supplies are also needed for drinking water for many of our state's farmers and ranchers, as well as their neighbors.

For decades, TFB has been the loudest voice for the protection of private property rights. As such, we applaud the Railroad Commission of Texas (RRC) for promulgating rules to update and modernize oversight of oil and gas exploration in Texas. These rules should help ensure continued oil and natural gas extraction while providing additional protections for the surface estate, the environment, and water resources.

While TFB supports many of the proposed revisions, we have concerns regarding the continued approval of "authorized pits" without landowner consent, as well as the absence of enforceable construction guidelines/standards to ensure that an authorized pit will not impact groundwater or surrounding areas, prior to use.

Please consider the following comments:

Surface Owner Consent for Construction of Schedule A Authorized Pits:

It is our belief that operators should be required to notify and obtain the consent of surface owners prior to the construction and/or use of reserve pits or any other Schedule A pit that could impact water resources of any other future uses of the surface estate. Having such a requirement would be consistent with 16 TAC §4.111(c) pertaining to landfarming and 16 TAC §4.126(a) for permitted facilities.

In 2024, operators have a much higher degree of flexibility in siting projects. There are also viable alternatives to Schedule A, reserve pits, that could be employed that would not burden either the surface owners or operators with future environmental liabilities.

It makes very little sense to allow Schedule A pits to bypass landowner protections afforded in other sections of this rule.

Registration and Inspection of Authorized Pits:

In the Preamble (page 8, lines 8-9) RRC states that, "The proposed new rules will enable the Commission to identify and inspect these facilities and collect data regarding their operations."

TFB supports the proposed registration 16 TAC §4.113(e) and inspection of authorized pits. This would certainly provide a much greater degree of accountability for the construction, use, and closure of authorized pits.

Unfortunately, the rules do not stipulate if or under what conditions the RRC would inspect a facility. The only inspection discussed in the rule would be conducted by the operator. We understand the agency has budgetary constraints; however, for the rules to be enforceable, there must be accountability.

At a minimum, a percentage of authorized pits should be inspected annually by RRC to ensure consistency with information submitted under §4.113, §4.114, and §4.115 of this chapter. Authorized pits constructed or used by operators with poor compliance histories should be inspected with greater frequency.

Also, the new penalty structure outlined in §4.211 should include violations and significant penalties for submitting false or inadequate data for authorized pits - particularly if they are granted a "permit by rule" and authorized without prior RRC approval.

Construction and Management Considerations:

The stated justification for not requiring the same level of regulatory oversight of Schedule A authorized pits, prior to construction, is that they are smaller and pose less environmental risk. Often, the contents of these smaller pits are just as harmful. While impacts could be smaller in scale, they are no less of a threat to neighboring properties or nearby groundwater supplies.

It is imperative that adequate technical guidelines and standards are in place for Schedule A and Schedule B authorized pits, which are permitted by rule but not subject to prior approval, to ensure the protection of surface owners and nearby groundwater users. This also helps ensure that operators are minimizing their exposure to environmental liabilities.

For Schedule A authorized pits: (1) the distance to groundwater should be measured and submitted to RRC, rather than estimated, in determining the need for a liner; (2) compaction tests should be submitted to RRC if earthen liners are used; and (3) additional consideration for liners should be made for authorized pits overlying karst formations, similarly to the considerations made for groundwater, §4.114(2)(B), to prevent pollutants from leaching to underlying groundwater formations.

Proximity to surface water, groundwater wells, and other permanent structures should also be considered for all Schedule A and Schedule B authorized pits to minimize the risk of groundwater contamination and off-site movement.

At a minimum, TFB recommends mirroring the spatial considerations listed for Schedule B authorized pits in §4.115(e) for all Schedule A authorized pits.

Closure of Schedule A Authorized Pits:

TFB opposes allowing Schedule A authorized pits to remain open for up to one year after cessation of drilling operations. These pits should be closed as soon as possible to minimize risks. At a minimum they should be closed within 120 days, as is specified for Schedule B authorized pits.

Texas Farm Bureau appreciates the opportunity to provide comments on these rules. If you or your staff have questions regarding our position on these matters, we would be more than happy to meet to discuss them in further detail.

Sincerely,

A handwritten signature in black ink that reads "Jay Bragg". The signature is written in a cursive, flowing style.

Jay Bragg

JB:lsa