



The Voice of the Permian Basin
Since 1961

November 3, 2023

Rules Coordinator
Railroad Commission of Texas
Submitted via email

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

The members of the Permian Basin Petroleum Association appreciate the opportunity to share our informal feedback on the proposed changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4.

Our membership includes the smallest exploration, service and support companies as well as some of the largest oil and natural gas companies with world-wide operations. We firmly believe that Texas, the United States, and our allies benefit from a vibrant and diverse oil and gas sector and are committed to continuing the development of these resources for generations to come.

General concerns:

Our members recognize the importance of modernizing certain provisions of Rule 3.8 as well as complying with legislative mandates in order to establish efficient, consistent, and orderly permitting for waste management in the industry. Our members would like to ensure that these efforts are consistent with the goals of the industry, the Commission, the Legislature, and the public at large to ensure the safe and responsible development of the natural resources in the Permian Basin.

The industry has made great gains and efficiencies in water and waste management and our members would note that existing provisions of Rule 3.8 and its enforcement have effectively protected public health and safety.

Our concerns expressed here are the highest priority of issues that our membership has to share and we join our sister trade associations in their concerns as well. Of general importance is our concern that as the Commission considers implementation of this rule, they offer greater clarity about how operators will be required to shift between governing sections of these rules as well as provide great flexibility for continued operations as operators begin to implement any new

provisions. Our members would appreciate the Commissions consideration of facilities constructed prior to the effective date of the act being subject to the applicable rules when these facilities were authorized or permitted.

Division 1

The exception offered by Section 4.109(a) afford the opportunity for an applicant or permittee to request an exception in certain circumstances and our membership would appreciate the

Division 2

It is imperative that the definitions set forth in this chapter are narrowly tailored to avoid implicating the wide range of infrastructure that has been developed in good faith under the existing provisions of Rule 3.8.

Specifically the definition of “commercial facility” has the potential to unduly impact the affiliations and networks that operators have established under existing regulations. These agreements have facilitated more effective waste management and encouraged innovation in the water management sector, including agreements which promote treatment, recycling, and reuse of waste.

We urge the Commission to consider these operators and are highly concerned that the language limiting this definition to a wholly owned subsidiary does not capture these operators.

Further the Commission has established in existing rules language that explicitly exempts “non-commercial fluid recycling” from the definition of commercial facilities to allow for the longstanding practice of multiple operators sharing non-commercial recycling pits for cost savings. Without this change the Commission proposal has the potential to inadvertently adversely impact the efficiencies gained through this sharing and the added environmental benefit of promoting fluid recycling.

The definition of “groundwater” is broad and as written could include a far more expansive universe, including produced water. We suggest limiting the definition to subsurface water “in a confined or unconfined Aquifer.” The definition of aquifer should also provide bounds on what constitutes “significant quantities” and address the water quality of wells or springs.

We also have concerns that the definition of “contact stormwater” would capture too many locations, including areas that have not been constructed, and this should be tightly confined to only those areas that do contain, have contained, or have been constructed to contain oil and gas waste.

Our members would also note that the definition of “non-commercial fluid recycling pit” would best be amended to remove that the requirement that the pit must be “constructed, maintained and operated” by the operator of record. Given an operators needs at given times, the requirements that limit the flexibility and standard practice of contracting with a third party should remain an option.

Division 3

Section 4.114(a)(5) establishes the registration of pits, with an unknown time or method of implementation. Our members would note that while the registration system would be authorized, it is unknown how it may work in practice and operators may not be able to provide comment or propose modifications to the registration system once it is in place.

Additionally, the rule establishes certain requirements for authorized pits considered temporary with a life of a year, and we would note for several considerations, including staffing, weather, and new field developments, that allowing the extension of these pits to 18 months alleviates the challenge that one year limitations create for operators. In addition to extending those timeframes, the current closure requirements are especially constraining. Lined reserve pits are appropriately offered a year, while others are offered 90 days. For those that are limited to less than 120 days in the proposal, we would encourage that they be treated consistently at 120 days, with the potential for extension for cause up to one year.

Requirements of 4.114(h) resulted in several comments from our members. The 100ft depth to groundwater that triggers certain requirements is arbitrary and could best be tied a depth that includes usable quality groundwater instead of a static depth for the entire state.

Further, absent any evidence of compromised linings or the detection of leaks, the monitoring that may be required in certain circumstances is excessive. We would encourage the Commission to require these instances in sensitive areas or where there is evidence of lining failure. Additionally, we would recommend that freshwater makeup pits below 3,000 mg/L be delinked from the requirements for closure in Sections 4.114(e-g) and monitoring in 4.114(h), as it is freshwater and there is no risk for these pits.

With regard to risk, operators have in practice buried inert waste without threatening groundwater and the possibility that some of the requirements offered in this proposal seem to limit that ability to bury this waste concerns our members. We would encourage the Commission to continue allowing operators to continue this safe practice. In addition to those efforts, it would seem prudent to also allow operators to consider and utilize alternative cap methods similar to liner requirements.

Broadly, in Division 3, in almost all instances, we encourage the Commission to consider risk, and allow operators to engage in practices that reduce those risks, rather than broad requirements that are process as opposed to outcome based. This would include the tables and figures that are referenced in Division 3, but contained at the end of the informal publication. Our members feel that the Commission should consider removing these from the rule proper, and consider establishing a guidance that takes into account the diversity of the state of Texas including the consideration of variances by the District to address localized concerns.

For example, the conditions in the Permian Basin are far different than those in East Texas, or South Texas, or North Texas. The Commission should take into consideration these vast and dynamic geological and ecological differences and work with operators to understand which standards should be taken into consideration. Aside from that practical matter, our members recognize that this rule has not been amended in quite some time and if at a future date a modification is required it is far more functional to amend those guidance documents.

Division 4

Our members would broadly appreciate if the Commission would authorize the express electronic submission of required documents as well as allow operators to submit additional information for technical review if requested by the Commission. Members also note that clarity should be provided for observable groundwater, including whether this includes perched water, saturated soils, or any free water after a 24-hour test.

Division 9

We would like to express our thanks to the Commission for the language established in Division 9 related to pilot projects for recycling. As you know, this is a priority for the industry, the Commission, the Legislature, and the public at large. There is no doubt that the industry continues to look at new and innovative ways to develop beneficial reuse practices. As is evidenced by our engagement, including with stakeholders in the Texas Produced Water Consortium, our goal remains to move toward greater understanding of technologies and options and this language will enable operators to approach the Commission and develop technologies that help secure Texas' water future.

Our members would appreciate clarity as to what would constitute the qualifications of a minor permit.

Division 10

The Commission considers a new Waste Profile Form and its use with manifests of waste and we would like to consider working with the Commission to ensure that this does not create delays and challenges in what is a routine and established method for waste hauling. We recommend that the Waste Profile Form be generic to waste streams, and all site-specific information be maintained on the Commission-required waste manifests. In addition to that concern, we would like to ensure that the characterization required by a generator is one that is clear and consistent for operators as this is a typical waste category.

Conclusion

PBPA members greatly appreciate the opportunity to provide these comments to Commissioners and staff so that we may address the highest concerns we share. Further, we continue to work through the proposal to address concerns as we see them and appreciate the opportunity to continue to express those concerns as they arise. Our state greatly benefits from regulators and industry working together to achieve progress on important issues and this effort is no different.

Thank you for your time and consideration, and please don't hesitate to let us know if you have any questions,

Best,

Ben Shepperd
President