

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

Re: Comments on “Amend Ch. 5 re: enforcement primacy for the federal Class VI UIC program”

July 31, 2023

Dear Ms. Savage and Ms. Cochran,

We appreciate the opportunity to submit comments on the Railroad Commission’s proposed amendments to Chapter 5 rules relating to carbon dioxide, concerning the commission’s application for enforcement primacy for the federal Class VI underground injection control (UIC) program. We oppose the Railroad Commission’s application for primacy, we humbly ask that the commission will sincerely consider our concerns, incorporate our recommendations, and respond thoughtfully to our questions.

In this letter, we provide a summary of some of our comments by topic. Below this letter, we have attached detailed comments for each section of the rule. Our organizations represent Texas communities in oil and gas development regions that are expected to see the brunt of Class VI development and conversion of Class II wells to Class VI wells, whether authorized or not. Many of our communities in the Texas Gulf Coast, the Eagle Ford Shale, and the Permian Basin regions are predominantly people of color, low income, and/or are already overburdened by heavy industrial activity and poor state oversight. Environmental justice communities in Texas will continue to be disproportionately affected by carbon capture, use, and storage (CCUS) strategies, and our communities’ concerns and proposals deserve serious consideration.

Environmental Justice

- In EPA’s Memorandum of Agreement (MOA) with Louisiana for the Class VI UIC program,¹ the EPA set forth requirements for the state of Louisiana to consider environmental justice (EJ) and civil rights impacts on communities. We support the inclusion of the EPA’s recommended approach to EJ in the Railroad Commission’s rules, aside from the EPA’s potential future MOA with the state of Texas. We found several opportunities for the RRC to incorporate meaningful EJ provisions throughout the Chapter 5 rules other than simply requiring notice to certain communities. Addressing the legacy of environmental racism and the cumulative impacts of industrial development on susceptible communities means that the commission must require operators to plan and take actions to prevent and mitigate risks posed to these communities throughout the permit application process, during operation, and after closure. These mitigation actions should be considered by the commission before a permit is approved.

Language accommodation

- We recommend that the commission consider an alternative metric than “limited English-speaking households” to determine the presence of language accommodation needs in the Area of

¹ Memorandum of Agreement Addendum 3 Between The State of Louisiana And The United States Environmental Protection Agency Region 6 For the Class VI UIC Program.

Review (AOR). The current definition of limited-English speaking households would fail to ensure language accommodation where it is needed, and create situations where children are expected to translate and interpret technical jargon for their households.

Mechanical integrity

- The commission added a section to its rules that would allow facilities to continue to operate even if they fail a mechanical integrity test. We wholeheartedly disagree with this addition. Facilities should not be allowed to continue operating if they fail a mechanical integrity test.

Plugging

- While we appreciate that the commission clarified many sections related to well plugging and financial assurance requirements, we wish to reiterate previous comments that recommended the commission require cement plugging from the bottomhole to surface. Additionally, we would prefer that the commission require that wells be plugged after a specific number of years of inactivity, rather than the current vague incentives to plug.

PISC monitoring period

- The post-injection storage facility care (PISC) monitoring period continues to be vague, and no minimum time period is defined. We fear that the commission will allow operators to stop monitoring their facilities, even as new drilling, production, and injection activity is taking place throughout the AOR. It seems that the commission is not considering how the facility's surroundings will change over long periods of time and the ways that underground sources of drinking water will be impacted.

Geographic coordinates

- We have identified a few areas where the commission could improve its data collection from permit applicants, in order to ensure that accurate geographic coordinates (i.e. latitude and longitude) are collected early on in the permit application process. Collecting accurate location information will help to prevent risks to groundwater later on.

Please read our detailed comments and suggestions below. Thank you for your time and attention to our recommendations.

Sincerely,

Texas-based Organizations & Individuals:

Air Alliance Houston | Houston, Texas

Another Gulf Is Possible Collaborative | Brownsville, Texas

Bayou City Waterkeeper | Houston, Texas

Better Brazoria: Clean Air & Water | Brazoria County, Texas

Carrizo Comecrudo Tribe Of Texas | Texas

Chispa Texas | Corpus Christi, Texas

Clean Energy Now Texas | Driftwood, Texas
Clean Water Action | Houston, Texas
Coalition of Community Organizations | Houston, Texas
Coastal Alliance to Protect our Environment | Corpus Christi, Texas
Coastal Bend Sierra Club | Corpus Christi, Texas
Commission Shift | Laredo, Texas
Fair Housing and Neighborhood Rights | Houston, Texas
Fenceline Watch | Houston, Texas
For the Greater Good | Corpus Christi, Texas
G-Forensic | Dallas, Texas
Greater Edwards Aquifer Alliance | San Antonio, Texas
Healthy Gulf | Houston, Texas
Heiko Stang | Wimberley, Texas
Ingleside on the Bay Coastal Watch Association | Ingleside on the Bay, Texas
Lone Star Chapter, Sierra Club | Austin, Texas
Mi Familia Vota | Houston, Texas
New Liberty Road Community Development Corporation | Houston, Texas
Port Arthur Community Action Network | Port Arthur, Texas
Property Rights and Pipeline Center | Alpine, Texas
Public Citizen | Austin, Texas
Rio Grande International Study Center | Laredo, Texas
Sanbit, Inc. | Anson, Texas
Sister Elizabeth Riebschlaeger | Victoria, Texas
Texas Campaign for the Environment | Austin, Texas
Texas Environmental Justice Advocacy Services | Houston, Texas
Turtle Island Restoration Network | Galveston, Texas

Detailed Section-by-Section Comments

§5.102. Definitions.

The commission defines a limited English-speaking household as “a household in which all members 14 years and older have at least some difficulty with English,” adopting a definition used by the U.S. Census Bureau.

- Using this definition may fail to capture communities that need interpretation and translation services. For example, in many bilingual families, children under the age of 18 are the only English-speaking members in their household. It is unreasonable to assume that a child would be a sufficient translator for their parents or guardians to be able to understand a Class VI permit application notice. However, using the definition the commission has chosen, households that have a single member aged 14 or older who can speak English very well may not be counted as a limited English-speaking household.
- Additionally, there are some technical problems with acquiring these estimates from the U.S. Census Bureau. Specifically, the 1-year American Community Survey (ACS) data is often incomplete, and data is null in many counties for the 2021 1-year ACS, including Webb County where more than 95% of the population is Hispanic and limited English-speaking households are common. The 5-year ACS data includes more counties and should be considered as the more complete and comprehensive dataset by which an assessment is made.
- However, we propose that the commission adopt Limited English Proficiency (LEP) assessment guidelines aligned with those adopted by the Texas Commission on Environmental Quality (TCEQ). Title 30 of the Texas Administrative Code, Chapter 39, Subchapter H, Rule §39.426 outlines the Alternative Language Requirements that TCEQ has adopted for providing notice to LEP communities. Included in this statute are provisions pertaining to applicability when:
 - Either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) *and*
 - Students are enrolled in a program at that school; (B) students from that school attend a bilingual education program at another location; or (C) the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).

It is our suggestion that the commission consider adopting this metric as their definition of “limited English-speaking household” to ensure that, despite language barriers, all residents of Texas have access to relevant information which can help inform decisions about personal health and wellbeing.

§5.201 Applicability and Compliance.

§5.201(h)

- The commission will allow operators to drill a stratigraphic test well and convert that test well to a Class VI well later on. This would allow an initial borehole to be drilled before an operator confirms complete financial assurance for well plugging and before interested parties receive

notice of the well. This could result in additional groundwater contamination if the commission is allowing companies to create potential conduits for groundwater contamination before it ensures the companies or the commission have sufficient funds available to prevent groundwater contamination. The financial assurance requirements under 16 TAC 3.78 are insufficient to ensure that the well owners or the Railroad Commission will have enough funds on hand to plug the wells.

§5.202 Permit Required, and Draft Permit and Fact Sheet

§5.202(e) Draft Permit and Fact Sheet

- We recommend that §5.202(e)(2) require the fact sheet to include a description of the commission's EJ analysis considering the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and susceptible sub-populations, as well as the likely distribution of any environmental and public health benefits from the proposed Class VI project in affected communities. The director should identify in the fact sheet whether the project at the proposed location may create any new risks or exacerbate any existing impacts on lower income people and communities of color, and the director should list actions that the facility will be required to take to mitigate existing risks and potential new risks.

§5.203 Application Requirements.

§5.203(b)

- The applicant should be required to provide a table of latitude and longitude coordinates of all locations they are required to show within the area of review (AOR) under paragraph (b), and specify the coordinate system used.
- The surface map and information should include maps and tables of all census block groups that intersect the AOR, showing the number and percentage of
 - lower-income people
 - communities of color
 - susceptible sub-populations
 - environmental and social stressors
- Please also require the EPA's EJSCREEN to be employed to identify environmental and social stressors in specific communities. This should also allow other tools to be used to calculate impacts to communities, including but not limited to the most up-to-date versions of EPA-published EJ guidance documents.

§5.203(d)(2)(B)(i)

- We appreciate the addition of a maximum number of years at which the applicant may propose to re-evaluate the AOR. Will the director have the authority to require a shorter time frame than five years for re-evaluation?

§5.203(i) Operating information

- Please require the operating plan to include measures the operator will take to prevent creating any new risks or exacerbating any existing impacts on lower-income people and communities of color, based on an evaluation that considered the presence of

- existing environmental hazards,
- cumulative impacts,
- potential exposure pathways,
- and susceptible sub-populations.
- This language is consistent with the EPA’s MOA with Louisiana in the section “Considering Environmental Justice & Civil Rights Impacts on Communities.”

§5.203(j) Plan for monitoring, sampling, and testing after initiation of operation.

- The plan for monitoring, sampling, and testing after initiation of operation should also require operators to submit revised maps and tables every five years of all census block groups that intersect the AOR, showing the number and percentage of
 - lower-income people,
 - communities of color,
 - susceptible sub-populations; and
 - environmental and social stressors (as required in the recommended changes §5.203(b) above.)
- Additionally, the plan should include mitigating measures the operator will take if it creates any new risks or exacerbates any existing impacts on lower-income people and communities of color.

§5.203(j)(2)(C)

- We agree that more frequent corrosion monitoring is necessary for the plan for monitoring, sampling, and testing after initiation of operation. Quarterly monitoring with semi-annual reports is an improvement. Will RRC staff read the semi-annual reports to ensure that the facility remains in compliance and to identify any potential signs of risk for underground sources of drinking water (USDW)? Will the RRC potentially assign violations or penalties for non-compliance based on failure to submit reports, submitting incomplete reports, or reports indicating that a USDW is at risk without remedial actions having been described? Will the penalties be greater than the cost of noncompliance?
- The RRC should include a process in the rule that defines how users of a USDW will be notified if the USDW has potentially been contaminated.

§5.203(j)(2)(F)

- Mechanical integrity tests seem like a common sense provision for any aging wellbore. However, we believe that many operators may be taking advantage of the RRC’s weak oversight structures and may be disregarding failing tests until they are able to conduct a test that somehow passes. We recommend the commission consider conducting these tests itself or requiring independent third parties to conduct the tests. Additionally, the commission could consider allowing a landowner, or a qualified representative the landowner appoints, to witness the mechanical integrity test.

§5.203(k)

- The General Land Office previously commented that the commission should “require cement plugging for abandonment to be from bottomhole to surface consistent with Texas Class I practice.” The commission declined to do so. We are aware of several recent cases where recently

plugged oil and gas wells have failed, in part due to the inability of pluggers to achieve cement from bottomhole to surface. This lack of prescription from the commission gives us further concern for the efficacy of the Class VI program in protecting underground sources of drinking water.

§5.203(m)

- We are disappointed to see that there is still no minimum time period required for post-injection storage facility care (PISC) monitoring. Based on the commission's past oversight performance, we expect that the commission will be inappropriately lenient in allowing operators to stop monitoring too soon after a facility is closed. As we have seen all throughout the state, many unplugged wells have not exhibited groundwater contamination, blowouts, and leaks, until decades after they stopped producing -and with the advent of new subsurface activities in the area. It is not safe to assume that a Class VI well drilled today will always perform the way today's subsurface models predicted it would. Additionally, the commission has admitted that it does not have the authority to deny drilling permits within the AOR of a Class VI well, and merely requires unspecific "coordination" between the operators drilling an oil or gas well and an operator of a geologic storage facility.² Meanwhile the RRC has reported that it approves drilling permits in less than three days.³ How will the commission ensure that operators requesting oil and gas well drilling permits within a geologic storage facility AOR have conducted meaningful coordination if staff are pushed to approve oil and gas well drilling permits within three days?
- Future wells drilled within the AOR and through the strata of a Class VI well will have an impact on the accuracy of the PISC models. The commission does not consider the cumulative effects nor interactions of all the facilities it permits on one another, and so cannot faithfully guarantee that initial PISC models will be correct in perpetuity or even for a reasonable number of decades after a Class VI facility is closed.

§5.204 Notice of Permit Actions and Public Comment Period.

§5.204(a)(4)

- Content of notices should allow for application protests to be emailed. Owning a printer in the home is less common than it used to be, and is less likely for low-income individuals. Mailing a letter of protest requires extra steps that may waste time for many people, especially those who live in rural areas or who do not have easy access to the post office or a printer. Additionally, post offices tend to be closed outside of normal working hours (Mon - Fri, 9 am - 5 pm), reducing the opportunity for working people to access stamps needed to mail a letter.
- The content of notices the applicant provides should include a statement that "interested and affected persons may protest the application;"

² Railroad Commission of Texas. August 30, 2022. Adopted amendments to 16 TAC Chapter 5, relating to Carbon Dioxide (CO2). P. 59 of 133, lines 15 - 16.

³ "For two years in a row since 2018, Railroad Commission of Texas staff have set a historic record of taking just two days on average to process standard drilling permits, one day below the Legislative requirement." See Railroad Commission of Texas. January 17, 2020. RRC Staff Processing Standard Drilling Permits in Two Days. <https://www.rrc.texas.gov/news/rrc-staff-processing-standard-drilling-permits-in-two-days/>

- The commission should list some of the information that it needs to receive from persons who are protesting the application. For example: name, phone number, address, reason for protesting, and any other information the RRC would need when receiving and recording a protest.

§5.204(a)

- (2) *General notice by publication.*

- The commission should include information about how to access language accommodation related to the notice in all languages that are known to be spoken in the counties related to the area of review.

- (3)(A) *Individual notice.*

- Mailed copies of notice should include information about how to access language accommodation related to the notice in all languages that are known to be spoken in the counties related to the area of review.

- (6) *Notice to certain communities.*

- **Current language with recommended changes:**

- “The applicant shall identify whether any portions of the AOR encompass an Environmental Justice (EJ) or Limited English Speaking Household community populations that are lower income, communities of color, households with non-English language needs, or other susceptible subpopulations identified using the EPA’s EJSCREEN most recent U.S. Census Bureau American Community Survey data, or other tools including but not limited to those recommended in the most up-to-date versions of EPA-published environmental justice guidance documents. If the AOR includes populations that are lower income, communities of color, households with language access needs, or other susceptible subpopulations an EJ or Limited English Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities.”
- It is important for the commission to fully incorporate robust and ongoing opportunities for public participation, especially for lower-income people, communities of color and those experiencing a disproportionate burden of pollution and environmental hazards. We recommend that the commission provide ample notice of proposed Class VI wells and tailor public participation to specific community needs and interests. Tailored public participation activities may include scheduling public meetings at times convenient for residents with appropriate translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process, convening local stakeholders and community groups for safety planning, or supporting the development of community benefits agreements.
- **Language Access:** See notes above regarding the definition of a Limited English-Speaking Household community.
 - Please require that qualified interpreters who are familiar with the relevant technical jargon be used to provide interpretation and translation.

- Please require that mailed notices be sent in other relevant languages for the location, and not merely “published.”
- Applicants should provide written translation services upon request, not only verbal interpretation services. Please also specify that the applicant will be responsible for coordinating and paying for translation and interpretation related to the permit application and any documents associated with the hearing.
- **Auditing & Verification:** What process does the commission use to verify that notice was properly provided to all individuals and entities who should have received notice?

§5.204(b) Public Comment and Hearing Requirements

- How many times will permit applicants be able to modify their applications if the director determines that it cannot approve an application as written?
- Will the commission provide any financial assistance to protestants from low income communities during the hearing process? How will the commission ensure that low income protestants have a fair opportunity to participate and hire experts to help argue their side in a hearing?

§5.204(b)(2) Public Hearing

- Please require that public hearings be held in the same county where the facility is to be located; at times outside of normal working hours (e.g. Mon - Fri, 9 am - 5 pm) to allow for working people to attend; and online allowing for public comment from interested persons who may be unable to attend in person.

§5.204(b)(3)

- The rules allow the director to administratively approve an application if it receives no protest on the application. Does administrative approval include a critical review of whether the information presented in the application is true? To what extent does the commission verify that the facility plans and design are in compliance with commission rules if there are no protests?
- Please clarify that protests may be made by both interested persons and affected persons.

§5.205 Fees, Financial Responsibility, and Financial Assurance.

- We appreciate the many helpful additions and clarifications that were made to strengthen financial assurance requirements.
- While financial assurance is necessary, it is not an appropriate substitute for strong plugging requirements and enforcement. There is still no specific time requirement for when a well must be plugged. Does the commission intend for inactive Class VI wells to linger unplugged for decades just like the thousands of inactive unplugged oil and gas wells in the state?

§5.206 Permit Standards.

§5.206(b)

- We request that the commission include the following in the list of criteria that allows the director to issue a permit:

- “The siting of a Class VI project at the proposed location does not have the potential to create any new risks or exacerbate any existing impacts on lower-income people and communities of color, based on an evaluation that considered the presence of
 - existing environmental hazards,
 - cumulative impacts,
 - potential exposure pathways,
 - and susceptible sub-populations.”
- This language is consistent with the EPA’s MOA with Louisiana in the section “Considering Environmental Justice & Civil Rights Impacts on Communities.”

§5.206(f)(4)

- This new section allows continued operation of a well even if a mechanical integrity test fails, regardless of whether any repair or retest has taken place. This poses a threat to people living nearby or depending on the water supplies in the area. Please do not allow this. Requiring repair after a well fails mechanical integrity testing is a necessary step in preventing groundwater contamination. For too long, the commission has reacted to instead of preventing pollution. This is a perfect example of an ineffective and potentially dangerous reactive policy that will result in preventable harm to groundwater.

§5.206(k)(6)(A)

- While the commission is requiring latitude and longitude coordinates of the injection well to be depicted on a survey plat, we recommend requiring that the coordinate system (i.e. NAD 27, NAD 83, or WGS 84) be clearly noted on the plat map, rather than simply used. However, this requirement applies only to the storage facility closure report.
- At the initial filing of the permit application, coordinates for the facility and any other wells or relevant features located within and around the AOR should be provided in a table, indicating the coordinate system used, and the source of the coordinates should be noted (e.g. RRC database, physical on-site inspection, supervised mapping using satellite imagery, etc.).

§5.207 Reporting and Record-Keeping

- We appreciate the additional requirements added to this section.