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Coordinator:

I am pleased to submit these comments in response to the Railroad Commission of Texas (the "Commission") proposal for amendments to Chapter 5 of Title 16 of the Texas Administrative Code (TAC). 48 Tex. Reg. 3452 (June 30, 2023). The proposal includes revisions to §5.102 (relating to Definitions) in Subchapter A; and in Subchapter B proposes amendments to §§5.201 and 5.203 - 5.207 (relating to Applicability and Compliance; Application Requirements; Notice of Permit Actions and Public Comment Period; Fees, Financial Responsibility, and Financial Assurance; Permit Standards; and Reporting and Record-Keeping, respectively).

The attached table presents detailed comments along with specific recommendations for revisions. Please let me know if you have any questions about these comments.

Respectfully submitted,



Robert F. Van Voorhees

Comments on Texas RRC Proposed Revisions to 16 TAC Chapter 5 – 48 Tex. Reg. 3452 (June 30, 2023)

Citation	Language in Proposal	Recommendation	Comment
16 TAC §5.102(2) 48 Tex. Reg. 3459	(2) Anthropogenic carbon dioxide (CO2)-- (A) CO2 that has been captured from or would otherwise have been released into the atmosphere	Adopt as proposed - No revision recommended	This is a very important revision to clarify that direct air capture (DAC) is included as a means of capturing anthropogenic CO ₂ .
16 TAC §5.102(20) 48 Tex. Reg. 3459	(20) EPA--The United States Environmental Protection Agency.	Adopt as proposed - No revision recommended	This is a good addition. With this addition, however, there are places in the existing regulations that require revision to change “the United States Environmental Protection Agency” to “EDF”.
16 TAC §5.102(28) 48 Tex. Reg. 3460	(28) [(27)] Geologic storage--The long-term containment of gaseous, liquid, or supercritical anthropogenic CO2 in subsurface geologic formations.	Adopt as proposed - No revision recommended	Agree - It is important to clarify that the regulations apply to the various phases of carbon dioxide (gaseous, liquid, or supercritical) for consistency with the federal Class VI UIC regulations.
16 TAC §5.102(30) 48 Tex. Reg. 3460	(30) [(29)] Good faith claim--A factually supported claim based on a recognized legal theory to a perpetual property interest [continuing possessory right] in pore space to be used for geologic storage of carbon dioxide, such as: (A) [evidence of] a currently valid lease evidenced by a recorded memorandum of lease;	Adopt as proposed - No revision recommended	Agree – It is important to acknowledge that an operator and the owner of the pore space may use various mechanisms to grant the legal right to access and use the pore space.

Citation	Language in Proposal	Recommendation	Comment
	(B) a recorded perpetual easement; or (C) a recorded deed conveying a fee interest in the pore space.		
16 TAC §5.102(47) 48 Tex. Reg. 3461	(47) Stratigraphic test well--An exploratory well drilled for the purpose of gathering information in connection with a proposed carbon dioxide geologic storage project, including formation testing to obtain information on the chemical and physical characteristics of the injection zones and confining zones. Such testing may include injectivity testing.	Adopt as proposed - No revision recommended	This revision is important and the RRC should adopt the revision as proposed to recognize the importance of allowing injectivity testing in a stratigraphic test well to improve the success of geologic sequestration projects.
16 TAC §5.201(h) 48 Tex. Reg. 3463	(h) An operator shall apply for a permit to drill (Form W-1) prior to drilling a stratigraphic test well, notify the UIC Section of the application, and submit a completion report (Form W-2/G-1) once the well is completed. If the operator plans to convert the stratigraphic test well to a Class VI injection well, the well construction shall meet all of the requirements of this subchapter for a Class VI injection well. Any stratigraphic test well drilled for exploratory purposes only shall be governed	Adopt as proposed - No revision recommended	This is a very useful provision that clarifies the availability of conversion for stratigraphic test wells to Class VI wells. It also provides useful guidance on what compliance is required for construction of the wells.

Citation	Language in Proposal	Recommendation	Comment
	<p>by the provisions of Commission rules in Chapter 3 of this title (relating to Oil and Gas Division) applicable to the drilling, safety, casing, production, abandoning, and plugging of wells.</p>		
<p>48 Tex. Reg. 3453</p>	<p>The Commission proposes to amend §5.203(f) to amend the title of the subsection to clarify that the plan for logging, sampling, and testing applies to logging, sampling and testing before injection. There are two separate authorizations associated with Class VI wells: (1) authorization to drill the well and perform logging, sampling and testing, and (2) authorization to inject. The applicant must submit a plan for logging, sampling, and testing of each injection well after the Commission has granted authority to drill a well but prior to authorization to inject carbon dioxide.</p>	<p>The Commission proposes to amend §5.203(f) to amend the title of the subsection to clarify that the plan for logging, sampling, and testing applies to logging, sampling and testing before injection. There are two separate authorizations associated with Class VI wells: (1) authorization to drill the well and perform logging, sampling and testing, and (2) authorization to inject. The applicant must submit a plan for logging, sampling, and testing of each injection well after the Commission has granted authority to drill a well but prior to authorization to inject carbon dioxide.</p>	<p>The proposed amendment to §5.203(f) is correct and important. It recognizes that the operator must submit a plan for logging, sampling, and testing prior to the authorization to inject. The language in the preamble is incorrect, however, and the RRC should revise the preamble language because it should not matter whether the operator submits the plan before or after the Commission has granted authority to drill a well.</p>
<p>16 TAC §5.203(f) 48 Tex. Reg. 3466</p>	<p>(f) Plan for logging, sampling, and testing of injection wells [after permitting but] before injection. The applicant must submit a plan for logging, sampling, and testing of each injection well [after permitting]</p>	<p>Adopt as proposed - No revision recommended</p>	<p>The proposed rule revision is correct and clarifies that it should not matter whether the operator submits the plan before or after the Commission has granted authority to drill a well.</p>

Citation	Language in Proposal	Recommendation	Comment
	but] prior to injection well operation.		
16 TAC §5.204(a)(3)(A)(ii) 48 Tex. Reg. 3470	(ii) the United States Environmental Protection Agency;	(ii) the United States Environmental Protection Agency EPA	“EPA’ has been added as a defined term in 16 TAC §5.102(20). Accordingly, the RRC should make this change.
16 TAC §5.206(k)(6)(A) 48 Tex. Reg. 3477	(A) documentation of appropriate injection and monitoring well plugging. The operator must provide a copy of a survey plat that has been submitted to the Regional Administrator of Region 6 of the United States Environmental Protection Agency. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks including the Latitude/Longitude or X/Y coordinates of the surface location in the NAD 27, NAD 83, or WGS 84 coordinate system, a labeled scale bar, and northerly direction arrow;	(A) documentation of appropriate injection and monitoring well plugging. The operator must provide a copy of a survey plat that has been submitted to the Regional Administrator of Region 6 of the United States Environmental Protection Agency EPA. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks including the Latitude/Longitude or X/Y coordinates of the surface location in the NAD 27, NAD 83, or WGS 84 coordinate system, a labeled scale bar, and northerly direction arrow;	“EPA’ has been added as a defined term in 16 TAC §5.102(20). Accordingly, the RRC should make this change.
16 TAC §5.207(b)(2) 48 Tex. Reg. 3480	(2) The operator must submit all required reports, submittals, and notifications under this subchapter to the director and to the Environmental Protection Agency in an electronic format approved by the director.	(2) The operator must submit all required reports, submittals, and notifications under this subchapter to the director and to the Environmental Protection Agency EPA in an electronic format approved by the director.	“EPA’ has been added as a defined term in 16 TAC §5.102(20). Accordingly, the RRC should make this change.
16 TAC §5.205(c)(2)(H) 48 Tex. Reg. 3473	(H) The requirement to maintain adequate financial responsibility is directly enforceable	(H) The requirement to maintain adequate financial responsibility is directly enforceable	The RRC should revise this provision to eliminate an inconsistency and

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	<p>regardless of whether the requirement is a condition of the permit. (i) The operator must maintain financial responsibility until: (I) the director receives and approves the completed post-injection storage facility care and closure plan; and (II) the director approves storage facility closure.</p>	<p>regardless of whether the requirement is a condition of the permit. (i) The operator must maintain financial responsibility until: (I) the director receives and approves the completed post-injection storage facility care and closure plan; and (II) the director approves storage facility issues a certificate of closure.</p>	<p>potential cause of confusion as to exactly when the RRC will release operators from the requirement to maintain financial responsibility and assurance. In addition, the regulations use both “financial responsibility” and “financial assurance”, which could potentially lead to some confusion. It is noted, however, that both terms are also used in the EPA promulgated Class VI regulations apparently interchangeably. If the RRC intends these terms to have different meanings, please clarify the meanings and check for consistency in use.</p>
<p>16 TAC §5.206(k)(7) 48 Tex. Reg. 3477</p>	<p>(7) Certificate of closure. Upon completion of the requirements in paragraphs (3) - (6) of 30 this subsection, the director will issue a certificate of closure. At that time, the operator is released from the requirement in §5.205(c) of this title to maintain financial assurance.</p>	<p>Adopt as proposed - No revision recommended</p>	<p>The regulations use both “financial responsibility” and “financial assurance”, which could potentially lead to some confusion. It is noted, however, that both terms are also used in the EPA promulgated Class VI regulations apparently interchangeably. If the RRC intends these terms to have different meanings, please clarify the meanings and check for consistency in use.</p>