



110 N. Marienfeld Street | Midland, Texas 79701

Office: 432.687.1575 | Fax: 432.687.5874

www.endeavorenergylp.com

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Railroad Commission of Texas
Attn: Rules Coordinator
Post Office Box 12967
Austin, Texas 78711-2967

Sent via email: rulescoordinator@rrc.texas.gov

RE: *Informal Comments on Proposed Changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4*

Endeavor Energy Resources, L.P. ("**Endeavor**") is a privately held exploration and production company with more than 35 years of experience, 1,200 employees, and approximately 370,000 net acres in six core Midland Basin counties. Given our role in the industry and constant interaction with the rules, we appreciate the opportunity to comment on the Railroad Commission of Texas's ("**RRC**") proposed changes to 16 TAC §3.8 and §3.57, and 16 TAC Chapter 4.

1. General Applicability

- a. In Proposed Subchapter A, §§ 4.113-4.115 for Authorized Pits and §§ 4.150-4.154 for Permitted Pits, RRC proposes many new pit requirements but does not clarify which requirements apply to pits constructed prior to the enactment of the final rule. As there are certain requirements that would overly burdensome and impractical for pre-existing pits to comply with, we recommend that RRC clarify from which requirements it exempts these pits.
- b. *Proposed additional language:* Notwithstanding the requirements of this Subchapter, the requirements of [insert appropriate sections, as determined by RRC] do not apply to pits constructed prior to [the effective date of this rulemaking].

2. Monitoring Pits

- a. In Proposed Subchapter A, § 4.114(h), RRC proposes that, if operators determine that groundwater is likely present within 100 feet of the surface, that operators install at least three groundwater monitoring wells and take quarterly samples for various parameters, unless liners are used and certain conditions are met. However, certain types of pits are not generally associated with causing pollution events (e.g. temporary drilling, completion and workover pits) and should not be subject to

stringent groundwater monitoring requirements. Further, the quality of the water source and any isolating geological features should also be taken into account when determining whether or not groundwater monitoring may be warranted. The requirements of this section are overbroad and potentially overly burdensome for operators and may provide little environmental benefit. Annual or semi-annual groundwater monitoring should provide sufficient data on groundwater contaminants, especially where there are technical arguments to support reducing monitoring frequency.

- b. *Proposed additional language:* Notwithstanding the requirements of this Subchapter, temporary drilling, completion and workover pits are excepted from the requirements of § 4.114(h).
- c. *Proposed alternate language:* 4.114(h)(1) - “The operator shall review readily **all reasonably available sources, including** available public information, to evaluate whether groundwater **that is used either for drinking water purposes or agricultural purposes** is likely to be present within 100 feet of the ground surface.” 4.114(h)(6) – “To the extent that site features, hydrogeological characteristics, or other factors do not reduce the risk of potential impacts to groundwater, the operator shall sample the wells after installation of the wells is complete and shall then sample the wells on ~~a quarterly~~ **an annual** schedule.”

3. Responsible Parties for Pits

- a. In Proposed Subchapter A, § 4.114(a)(3), the RRC proposes that the operator responsible for any authorized pit shall be the operator of record or a wholly owned subsidiary of the operator of record. RRC should not designate legally distinct corporate entities as responsible parties unless they otherwise qualify as a responsible party under applicable Texas law (i.e., because they are co-operator/co-permittee).
- b. *Proposed alternate language:* 4.114(a)(3) - “The operator responsible for the authorized pit shall be the operator of record ~~or a wholly owned subsidiary of the operator of record~~ of the oil lease, gas well, unit, drilling permit, disposal well, injection well, or other property under the Commission's jurisdiction where the authorized pit is located.”

4. Liner Requirements for Authorized Pits

- a. In Proposed Subchapter A, § 4.114(c)(6), the RRC proposes to require that all authorized pits be lined. RRC should clarify that pits authorized under the version of SWR 8 in effect prior to the promulgation of any final rules do not need to comply with the liner requirements for authorized pits, except as expressly required under the rule revisions.
- b. *Proposed additional language:* Notwithstanding the requirements of this Subchapter, pits constructed prior to [the effective date of this rulemaking] are not

required to comply with the requirements of § 4.114(c)(6). Alternatively, [Notwithstanding the requirements of this Subchapter, the requirements of § 4.114(c)(6) do not apply to pits constructed prior to [the effective date of this rulemaking]].

5. Authorized Pit Closure Requirements

- a. In Proposed Subchapter A, § 4.114(f)(3), the RRC proposes to raise the number of point samples for composite analysis up to 5 from 4. In § 4.114(f)(3)(B) RRC further requires that, if an operator proposes to close an authorized pit consistent with background environmental conditions, that the operator must have obtained pre-pit samples from the same area where the pit will be located. RRC should take a less proscriptive approach to establishing background conditions, such as utilizing any pre-drilling data taken from the lease site, prior site studies, or other reasonable sources of data for establishing background environmental conditions.
 - i. *Proposed alternate language:* 4.114(f)(3)(B) – “If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall **either:** (i) sample soil in the pit floor and sidewall locations before or during pit construction and collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor and 10 sidewalls and a fraction of an acre of pit surface area will require a composite sample; **or (ii) utilize pre-drilling data taken from the lease site, prior site studies that identify background conditions, or other reasonable sources of readily available data...**”

6. Penalties and Enforcement

- a. In Proposed Subchapter A, § 4.102(b), RRC should define “knowingly” when determining penalties for the knowing use of an unpermitted waste hauler to mean “actual knowledge” so that only reasonable due diligence of waste haulers is required. Additionally, in Proposed Subchapter A, § 4.107(h), RRC should add a provision that cooperation after enforcement has been initiated to expeditiously settle the matter be explicitly taken into account when examining factors that would warrant up to a 50% penalty relief.
- b. *Proposed alternate language:* “Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if, **after enforcement is initiated,** the person charged **cooperates with the Commission and** agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.”

Endeavor supports efforts to improve the application of these rules and appreciates the opportunity to provide comment with respect to the same. We respectfully submit these comments for RRC's consideration as it continues to develop these rules while at the same time taking into account the impacts the proposed revisions could have on Texas's oil and gas industry, including operators like Endeavor.

Sincerely,
ENDEAVOR ENERGY RESOURCES, L.P.



Zachary J. Brandl
Senior Counsel