



6101 Holiday Hill Road
Midland, TX 79707

(432) 687-1777
jimmyc@forl.com

Jimmy D. Carlile
Regulatory and Government Affairs

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

Via Email: rulescoordinator@rrc.texas.gov

Re: Draft Rules for Comment
16 TAC 3.8 and Chapter 4, Subchapters A and B

Dear Rules Coordinator,

Fasken Oil and Ranch, Ltd. (Fasken) appreciates the opportunity to submit formal comments to the Railroad Commission of Texas (RRC/Commission) on the proposed rules to 16 TAC 3.8 and Chapter 4, Subchapters A and B. We appreciate the willingness of the RRC and its staff to work with operators, industry trade associations, and other stakeholders on these proposed rules. These proposed rules govern waste handling and disposal for our industry, and therefore, freshwater protection, both surface and subsurface. As a major landowner and oil and gas producer in the State of Texas Fasken is deeply concerned with protecting our surface and groundwater, and our comments reflect both our positions: landowner and oil and gas operator. We will be glad to provide any additional information to the RRC as needed.

We believe that some areas of the proposed rule need some additional work and have provided comments below that should help to clarify those concerns. Please understand we firmly believe industry must protect our surface and groundwater, and it can be done without adding substantial costs and paperwork to the oil and gas industry that provide no benefit to freshwater protection.

Following are areas of the proposed rules that provide issues or concerns specifically for Fasken.

4.110 Definitions

Industry utilizes a variety of water sources in operations other than fresh water. This water is stored in large volumes pits for use primarily in drilling and fracture treating operations. Where it is available most operators have begun utilizing water other than fresh as "makeup" water. The proposed rule as written does not authorize these makeup water pits with waters exceeding 3,000 mg/l TDS. We strongly request a new definition be added and utilized in these rules as a Schedule A Authorized Pit defined as "makeup water pits". The suggested definition for makeup water pit follows:

Makeup Water Pit – A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of non-fresh water used to makeup drilling fluid or completion fluid.

4.110 (47) Public Area

It is our understanding that the definition of public area was basically pulled from SWR 36 Hydrogen Sulfide Protection. We believe the language “public road” should be removed from this definition. SWR 36 language is based on an uncontrolled release of Hydrogen Sulfide gas from a single point source. The volume and concentration of an uncontrolled release are put into a prescribed calculation to develop a radius of exposure for potential exposure to 100/500 ppm H₂S. While H₂S may be entrained into produced water being recycled, the concentration and volume that could be released will be very small and have a radius of exposure that covers minimal distance. Should there be an instance where H₂S is a potential factor, existing SWR 36 would govern.

4.113(e) Registration of Authorized Pits

By definition a pit is a “container for which earthen materials provides structure, shape and foundation support.....” There are thousands of pits used every year for workovers and P&As that based on 4.113(e) will have to be registered under this rule. These pits are very small volume and very short term use pits. To have to register them is simply not necessary as there is no science or fact to support these as surface or groundwater contamination sources. Also, neither industry nor the RRC District Offices are manned to handle the overwhelming volume of paperwork that these proposed rules require. We believe only large volume pits that are in use for a longer period of time should be registered. Those pits include reserve pits, produced water recycle pits and makeup water pits.

4.113(e)(5) Authorized Pits (use of Scheule A pits for multiple purposes)

Operators utilize reserve pits as completion pits in the vast majority of operations. The rule as it stands will not allow this as closure standards are specific to reserve pits. We believe the rule should allow operators to utilize a reserve pit as a completion pit and would be governed under 4.114(3)(A)(i) or (ii). This not only is best for environmental reasons but is in the spirit of the RRC’s current and draft closure rules.

4.114 Schedule A Authorized Pits

As we discussed earlier in our comments, makeup water pits should be defined and included as a Schedule A Authorized Pit. Makeup water pits are not always tied to a single well or well pad, so their closure schedule should not be tied to cessation of drilling activity.

(1) Schedule A Pit Contents – Add new section (F)

(F) Makeup water pits. A person shall not deposit or cause to be deposited into a makeup water pit any oil and gas wastes or any oil field fluid other than, fresh water, brackish water, saline water, recycled produced water, or blended sources of water.

(2) Schedule A Pit Construction - To minimize potential for migration of materials in the pit into adjacent groundwater, we recommend adding Makeup Water Pits to the list of pits requiring a liner in areas where groundwater is present within 50 feet of the bottom of the pits.

(B) Reserve pits, mud circulation pits, and completion/workover pits, and makeup water pits located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined.

(3) Schedule A Pit Closure

(A) A person who maintains or uses a reserve pit, mud circulation pit, makeup water pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.

(i) Reserve pits and mud circulation pits, and makeup water pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled and compacted within one year of cessation of drilling operations.

(ii) Reserve pits, mud circulation pits, and makeup water pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.

(vi) Makeup water pits shall be dewatered, backfilled, and compacted within one year of final cessation of use of the pit.

4.115 Schedule B Authorized Pits

(b) Financial Security Requirements

We are greatly concerned over the excessive bonding requirements under these proposed rules for Schedule B Authorized Pits. These excessive bonding requirements will serve as a massive disincentive to recycle produced water for use in oil and gas operations. The goal of the rule is to protect surface and groundwater. Schedule B Authorized Pits have major components written into these rules, location requirements, general design and construction standards, general operating standards which include double liners with a leak detection system, that serve as the protective mechanisms for surface and groundwater protection. Adequate bonding is important and should be part of these rules. But for companies such as ours who operate on our own large landholdings, the bonding requirement of \$1 per volume barrel of our recycle pits runs our bond into the millions of dollars. That is simply not appropriate for operators such as ours who have been recycling produced water for many years and already have maximum bonding in place with the RRC under our P-5 Organization Report. We believe the following language is appropriate:

(b) Financial security requirements.

(1) Pursuant to Natural Resources Code §91.109(a), the operator of a produced water recycling pit shall maintain a performance bond or other form of financial security conditioned that the operator will operate and close the produced water recycling pit in accordance with this subchapter.

(2) Produced water recycling pits are exempt from sections (3) – (5) under the following conditions.

(A) the pit is located on an existing Commission-designated lease, pooled unit, or drilling unit associated with a Commission-issued drilling permit; or
B) upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs)

(3)(2)-For each produced water recycling pit not exempt under section 2 above, an operator shall file financial security in one of the following forms:

Renummer the following sections of this provision

(4)(3)

(5)(4)

(6)(5)

Fasken firmly believes making the changes we have addressed are important to both protecting our precious natural resources, and not adding unnecessary costs to industry.

Fasken has also been involved with the Permian Basin Petroleum Association, Texas Oil and Gas Association and Texas Independent Producers and Royalty Owners Association in the development of their comments. While each association has its own specific comments on these regulations, we believe the general direction these groups have focused on are on the proper path to help make these rules stronger in protecting our resources. While Fasken's comments above are specifically aimed at issues that we see affecting our specific businesses as a landowner and oil and gas operator, Fasken generally supports the comments of these trade associations.

Should you have any questions or concerns or would like additional information regarding our comments, please feel free to contact me at the letterhead number or email address.

Yours truly,



Jimmy D. Carlile
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