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December 2, 2024

Rules Coordinator
Office of General Counsel
Railroad Commission of Texas

Submitted via Email to rulescoordinator@rrc.texas.gov

Re: Proposed new 16 TAC §3.82 relating to Brine Production Projects

The Texas Land & Mineral Owners Association ("TLMA") submits the following comments regarding the Texas Railroad Commission's (the "Commission") proposed new 16 Texas Administrative Code §3.82 relating to Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Injection Wells including corresponding amendments to various rules in Chapter 3.

Created in 1999 by 54 founding members who wanted to reinstate a sense of fairness between those that use the land and the generations that live on it, TLMA is made up of many of the largest land and mineral owners across the State of Texas. TLMA seeks to monitor political trends, regulatory and legislative action, and court decisions by directly advocating for land and mineral owners' interests.

COMMENTS¹

Section 3.82(a)(1)(A): Page 23, Lines 28-32.

The "scope and purpose" of brine production wells, specifically the reference to the type of elements and minerals to be extracted, should be expanded. This is particularly true given that we know there are additional elements and minerals being commercially extracted in Arkansas from the same geologic stratum which is found in Northeast Texas. Accordingly, TLMA requests the Commission modify this section in order to clarify that these proposed rules apply to more than just lithium, salts, and halogens as follows:

¹ References to line and page numbers are to the attachment used in the Memorandum from Haley Cochran, Assistant General Counsel, to Chairman Christi Craddick, Commissioner Wayne Christian, and Commissioner Jim Wright dated October 15, 2024.

“(A) brine production projects and the associated brine production wells for the 28 extraction of elements, minerals, mineral ions, salts, or other useful substances, including, but not limited 29 to, lithium, lithium ions, lithium chloride, halogens, ~~or~~ halogen salts, bromine, calcium, iodine, magnesium, or potassium, from a subsurface formation but not 30 including oil, gas, or any product of oil or gas, as defined by Section 85.001 of the Natural Resources 31 Code, or fluid oil and gas waste, as defined by Section 122.001 of the Natural Resources Code; and”

Section 3.82(a)(4): Page 24, Lines 7-9.

Brine production will include more than just “pipelines, flowlines, storage, and other brine containers”. Idiosyncratic to the production of brine and the extraction of elements and minerals from it, brine production projects will include facilities for the direct extraction of elements and minerals including lithium. As such, TLMA requests the Commission modify this section in order to clarify that the obligation to construct, operate, and maintain equipment to prevent leaks or unauthorized discharge includes the following:

“(4) Any pipelines, flowlines, storage, or any other brine containers including but not limited to facilities utilized for the direct extraction of elements and minerals from the brine at the brine production 7 project shall be constructed, operated, and maintained such that they will not leak or cause an 8 unauthorized discharge to surface or subsurface waters.”

Section 3.82(b)(3): Page 24, Lines 29-30.

Because of our state’s significant interest in freshwater resources, TLMA does not believe the definition of “Aquifer” should be limited to only formations capable of producing a “significant” amount of water. Instead, any formation “capable of yielding water to a well or spring” should qualify as an aquifer. We suggest the following modification:

“(3) Aquifer--A geological formation, group of formations, or part of a formation that is 30 capable of yielding ~~a significant amount of~~ water to a well or spring.”

Section 3.82(b)(4): Page 24, Lines 31-32.

The nature of subsurface water is extremely fugacious. Due to the highly fugacious nature of water, TLMA suggests the area of review be increased from one-quarter mile from the perimeter of the brine production area to one-half mile. This would be consistent with the spacing rule promulgated by Section 3.82(d), which is also set to one-half mile.

Section 3.82(b)(5): Page 25, Lines 1-3.

TLMA agrees with the Railroad Commission that the term “Brine” should not be defined to include brine produced as an incident to the production of oil and gas. However, TLMA would note that the Commission does need to promulgate a rule or rules tying the extraction of minerals and elements from brine produced incidentally with oil and gas to various portions of Section 3.82. For example, brine produced incidentally with oil and gas will be treated in a direct lithium extraction project facility in a substantially similar manner to brine produced from a brine production project. The Commission should evaluate whether that treated brine, despite being produced incidentally to oil and gas, should be subject to the same rules “spent brine” is subject to under this proposal because they will be nearly identical in the end.

Section 3.82(b)(7): Page 25, Lines 6-7.

The Railroad Commission should add the following:

“(7) Brine production project--A project the purpose of which is the extraction of brine resources from a brine field. The term includes brine production wells, Class V spent brine return 7 injection wells, monitoring wells, brine flowlines, facilities utilized for the direct extraction of elements and minerals from the brine, and any equipment associated with the project.”

Section 3.82(b)(11): Page 25, Lines 15-17.

(11) Brine resource--Elements, minerals, salts, or other useful substances dissolved or 15 entrained in brine, including, but not limited to, lithium, lithium ions, lithium chloride, halogens, ~~or other~~ 16 halogen salts, or bromine, calcium, iodine, magnesium, or potassium but not including oil, gas, or any product of oil or gas.

Section 3.82(b)(30): Page 27, Lines 27-29.

Statewide Rule 15(a)(5), which is limited to the traditional oil and gas context, includes additional language that should be utilized here. A “good faith claim” is defined in Commission Statewide Rule 15(a)(5) as “A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, *such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.*” 16 TEX. ADMIN. CODE 3.15(a)(5) (emphasis ours). Here, the definition of “Good faith” should be modified as follows:

“(30) Good faith claim--A factually supported claim based on a recognized legal theory to 28 a continuing possessory right in an estate that includes the brine resources sought to be extracted through 29 a brine production well, such as

evidence of a currently valid brine extraction lease or a recorded deed conveying a fee interest in an estate that includes brine resources.”

Section 3.82(c)(9): Page 31, Lines 1-9.

The Commission has continued to improve its monitoring and plugging of orphaned oil and gas wells throughout the State of Texas. However, to prevent taxpayers from shouldering the burden of plugging and abandoning orphaned brine production wells, TLMA suggests modifying this portion of Section 3.82 to allow a refund only in the scenario that the Commission has financial security sufficient to plug all remaining wells in all brine production projects associated with the operator, not just the applicable brine production project for said well. The modification should be as follows:

“(9) All operators of wells drilled and operated in association with a brine production 1 project shall comply with the requirements of §3.78 of this title (relating to Fees and Financial Security 2 Requirements), as the requirements are applicable to brine production projects, except that, prior to 3 spudding, the operator shall provide financial security in an amount estimated to plug each well in the 4 brine production project after cessation of brine production project operations. Notwithstanding the 5 provisions of §3.78(i), for an operator of a brine production project who has satisfied its financial security 6 requirements by filing a cash deposit, the Commission shall refund to the operator the amount estimated 7 to plug each well following its plugging if the amount of the deposit remaining after the refund would be 8 sufficient to plug all remaining wells in all of the brine production projects associated with said operator.”

Section 3.82(d)(2)(B): Page 31, Lines 29-30 and Page 32, Lines 1-2.

The assignment of acreage to a brine production well, and not just a brine production project, should be mandatory as opposed to optional. This is consistent with, and should be encouraged, to enforce the Commission’s stated goals in Section 3.82(d)(2)(C) and (D). Therefore, TLMA recommends the following change:

“(B) Upon completion of a brine production well in a brine production project 29 area and filing the completion report with the Commission, the applicant ~~may elect to~~ shall file a plat assigning 30 acreage in the brine production project area to the brine production well. ~~; however, the applicant is not 31 required to assign acreage to an individual brine production well, provided t~~The total number of acres 32 assigned to the brine production project area divided by the total number of brine production wells shall be equals 33 to or exceeds 1,280 acres, unless special field rules provide different well 1 density requirements or the 2 applicant obtains an exception to the density requirements pursuant to paragraph (4) of this subsection.”

Section 3.82(i)(15)(B): Page 48, Lines 9-11.

Due to the fact that brine production for the extraction of elements and minerals is in its infancy in Texas, TLMA would encourage the Commission to extend the period for record retention from 5 years to 7 years.

CONCLUSION

TLMA is excited to see the Commission take affirmative steps for the responsible development of this burgeoning industry in Texas. We thank you for the opportunity to provide comments to these proposed rules.

If you have any questions, please do not hesitate to contact Jennifer Bremer at execdir@tlma.org.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bremer". The signature is written in a cursive, flowing style.

Jennifer Bremer Owen
Executive Director
Texas Land & Mineral Owners Association