



August 30, 2024

**Via email:** [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)

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

**Re: Request for Extension of Comment Period and Additional Opportunities for Public Input on Proposed Changes to SWR8 / Chapter 4 (“Amend 3.8 and new/amended Chapter 4 waste management”)**

Dear Rules Coordinator:

Commission Shift appreciates the opportunity to comment on the proposed changes to 3.8 / Chapter 4. Changes to these rules are sorely needed to protect human health and the environment, but the Commission has thus far failed to engage the public as equal partners in the rulemaking process. The proposed timeline and process for submitting comments on the formal rulemaking continues to marginalize all but industry voices. Commission Shift thus requests that:

- (1) the Commission extend the comment period to **November 14 at 5 pm**; and
- (2) the Commission hold six public workshops and at least two additional virtual public hearings, including a week before the close of the comment period.

Commission Shift is a nonpartisan non-profit focused on reforming oil and gas oversight in Texas by building public support to hold the Railroad Commission of Texas accountable to its mission in a shifting energy landscape. We have met with numerous community members and groups affected by oil and gas waste management operations, many of whom are frustrated by the one-sided nature of this rulemaking process. The suggestions below reflect their concerns.

In addition, the following individuals and organizations in particular join Commission Shift’s request for extensions to the comment period and additional opportunities for public input:

Terry Allen | Joaquin, TX  
Paul Baumann | Nordheim, TX  
Jerry Cargill | Waskom, TX  
Jennifer Green | Orange Grove, TX  
Geoffrey Reeder | San Augustine, TX  
Sister Elizabeth Riebschlaeger | Victoria, TX  
Hector Zertuche | Alice, TX  
Clean Water Action | Austin, TX

Environment Texas Research and Policy Center | Austin, TX  
Lower Brazos Riverwatch | Missouri City, TX  
Middle Pecos Groundwater Conservation District | Fort Stockton, TX  
Perales, Allmon, & Ice, P.C. | Austin, TX  
Reeves County Groundwater Conservation District | Pecos, TX

**I. The Commission has failed to meaningfully involve the public in the rulemaking process, elevating industry and operator voices over all else.**

Throughout the multiyear process of drafting revisions to SWR8 and Chapter 4, the Commission has systematically excluded the public from participating as an equal partner. Instead, closed-door, industry-only workshops were held for years prior to the informal draft's release. The Commission routinely invited industry and industry associations to send feedback on and line-item edits to draft proposals, hosting multiple biweekly virtual working meetings to solicit comment and circulate new drafts as they evolved. None of those meetings (or circulation of drafts) were open to the public or included representatives of local entities like groundwater conservation districts, towns or counties, or nonprofit groups that represent these interests.

Even once the informal draft was published for public review, the Commission flatly rejected Commission Shift's calls to hold open public workshops across the state, something it had seen fit to do during previous waste management rulemakings prior to publishing any proposed rule changes in the Texas Register.

Specifically, in 2002, when the Commission first attempted to move Statewide Rule 8 into Chapter 4 and to adopt significant rule changes like those being contemplated today, a series of workshops to solicit informal public comment were held, which included a six-city tour (Midland, Wichita Falls, Houston, Kilgore, Austin, and Amarillo). A total of 188 people attended these meetings, including industry, landowners, groundwater conservation districts and others. Written comments were also solicited and 120 comments in total were received. 27 Tex. Reg. 4264-4301 (2012). The Commission found the feedback so valuable that many comments were incorporated into the proposal published in the Texas Register.

More recently, in 2012, when the Commission contemplated much narrower changes to Chapter 4's commercial recycling rules, the Commission posted the draft proposed amendments online for informal comment *and* held at least one public workshop before the draft was proposed for publication in the Texas Register. 37 Tex. Reg. 7555 (Sept. 28, 2012).

In contrast, not a single public workshop was held during the drafting of these rules. The informal comment period granted the public and community groups a mere 30 days to absorb and comment on a 161-page proposal. As Commission Shift detailed in its informal comments, the Commission's public hearings did not allow for meaningful public participation at all. And not a single public workshop was held.

This failure to provide for meaningful public participation runs contrary to the Commission's stated mission, which is not only to regulate private industry, but also to fiercely defend the public's

interests.<sup>1</sup> While industry input is important in these rulemakings, it cannot replace feedback from the public and from local entities, who bring unique concerns and perspectives not shared by industry. Industry's focus is on the day-to-day business and operation of these facilities, which for most operations is oil & gas production, not waste management. Industry necessarily has less motivation to be concerned about potential contamination and hazards created to landowners and residents living near these sites, especially post-closure or after these facilities change hands. But these are the very hazards these water-protection and waste rules<sup>2</sup> are intended to address.

The public also has a unique perspective on what makes public notice and participation successful, and the difficulties in holding accountable bad actors and remedying the harms those bad actors create for landowners and communities. Likewise, local entities like groundwater conservation districts, towns, counties, and community nonprofits can help the Commission incorporate community-wide safety and health concerns that should be considered in the drafting process. There is no substitute for the first-hand experience these groups can share with Commission Staff. Thus both of these stakeholders—the public and local entities—should have had equal opportunity alongside industry to provide input to the rulemaking, which has not happened.

Instead, the Commission continues to refuse an equal seat at the table for the public, including by limiting the comment period and opportunities for public input.

## **II. The current comment period is too short to allow for meaningful public input.**

The Commission's proposed comment deadline of September 30 does not allow for meaningful public input. The proposal's 313 pages that were released for input regulate the entire lifespan of oil and gas waste generation, management, transport, disposal, and recycling through a variety of permitting schemes. These are incredibly complex topics regulating activities that can have a huge impact on the health and safety of landowners, communities, and the environment but they are wrapped in so much technical and legal jargon that it is often incomprehensible without the help of regulators, attorneys, or technical professionals, who are seldom available at the drop of a hat to concerned members of the public, who must also figure out how to pay for their services. In addition, no Spanish-language translation or synopsis has been offered, further stifling public participation from many Texans.

In short, meaningful input by the public is simply not possible with such an abbreviated comment period. Commission Shift requests that at least 90 days be given for the comment period and that all materials be translated into Spanish, including a synopsis. Given that a copy of the proposal was not made public online until August 16, 2024, Commission Shift urges the Commission to extend the comment period to at least November 14, 2024, **and** to notify the public of its decision to extend the deadline as soon as possible.

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<sup>1</sup> Railroad Commission of Texas. "About Us." <https://www.rrc.texas.gov/about-us/> ("As the state's oldest regulatory agency, RRC has had a critical role of protecting the interests of the public, and as long as it exists the commissioners and employees will fiercely defend the public's interests.")

<sup>2</sup> 16 TAC 3.8 is titled "Water Protection" and "[p]ollution control [is] [t]he heart of Rule 8." Railroad Commission. "Summary of Statewide Rule 8." <https://www.rrc.texas.gov/oil-and-gas/publications-and-notices/manuals/surface-waste-management-manual/swr8-summary/> In addition, the Commission is tasked by statute to protect against pollution. See e.g., Tex. Nat. Res. Code § 91.101; Tex. Water Code § 26.131.

### III. The current hearing schedule is too abbreviated to allow for meaningful hearings.

The Commission's proposal to hold only two public hearings on this rule, on September 5 and 6th, is insufficient and pales in comparison to its outreach done in previous rulemakings.<sup>3</sup> More opportunities must be set to solicit feedback through additional public hearings. Additionally, the Commission should host public workshops, in which the public can ask questions of regulators as to the meaning of the proposals and thus provide more informed feedback. Some of these events should take place during evening hours to increase potential turnout from those who are not paid to provide feedback.

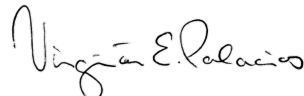
Commission Shift specifically recommends that the Commission add:

- (1) six public workshops, with at least one in-person in Austin and the rest throughout the state where commercial waste facilities exist, similar in number to what was offered during the 2002 rulemaking, during which the public would be able to ask questions and get answers from Staff about the rulemaking; and
- (2) at least two additional virtual public hearings to be held at times that the public is more likely to be able to attend (i.e., after 5 pm) and scheduled for approximately one week before the close of comments, so that the public will have had additional time to digest the rules.

### IV. Closing remarks

Commission Shift appreciates the opportunity to provide these comments on the rulemaking process and strongly urges the Commission to improve its public engagement practices during rulemaking going forward. Commission Shift welcomes the opportunity to work with the Commission to increase public engagement on this proposal and address any concerns the Commission may have with these recommendations.

Respectfully,



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Co-signers:

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Paul Baumann | Nordheim, TX

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<sup>3</sup> Of added concern is that the only two hearings currently scheduled will take place a mere 4-5 days after publication in the Texas Register, and barely three weeks since the draft was online. While Commission Shift supports soliciting public feedback early & often, if these are the only hearings offered it is unrealistic to expect the public to digest 313 pages and have all relevant feedback ready for oral comment in at most three weeks.

Jerry Cargill | Waskom, TX  
Jennifer Green | Orange Grove, TX  
Geoffrey Reeder | San Augustine, TX  
Sister Elizabeth Riebschlaeger | Victoria, TX  
Hector Zertuche | Alice, TX  
Clean Water Action | Austin, TX  
Environment Texas Research and Policy Center | Austin, TX  
Lower Brazos Riverwatch | Missouri City, TX  
Middle Pecos Groundwater Conservation District | Fort Stockton, TX  
Perales, Allmon, & Ice, P.C. | Austin, TX  
Reeves County Groundwater Conservation District | Pecos, TX

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