Comments to RRC Rules Coordinator 11/3/2023

By Stasney Well Service, LLC
Lance Thomas, Manager
Albany, Texas 76430

Dear Commissioners and Rules Coordinator,

The proposed rules titled “16 TAC Chapter 4 – Environmental Protection” hereinafter referred to as the “proposed pit rules” rules should not be adopted unless and until several false assumptions have been addressed and corrected.

1. The drafters of the proposed pit rules falsely assume that existing Rule 8 (TAC Title 16, Part 1, Ch 3, Rule 3.8) does not work to protect the environment (aquifer or surface water)

Response: TCEQ GIS Groundwater Contamination website indicates that there is not a water contamination problem related to temporary drilling, completion, and workover pits. The RRC confirmed this fact in 2014.

In 2019, the EPA studied environmental issues and found no reason to change their longstanding exemption of “drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy,” under the Resource Conservation and Recovery Act (RCRA).

EPA’s findings, released on **April 23, 2019, are set forth in a report titled, Management of Oil and Gas Exploration, Development and Production Wastes: Factors Informing a Decision on the Need for Regulatory Action (Report).**

In light of the above track record and positions of the TCEQ, RRC and EPA, the “Penalties” section of the proposed rule states, **“Section 4.107 Policy: Improved safety and environmental protection are the desired outcomes of any enforcement action.”** It goes on to state, “

First, what outcome could be better than no issues in for 40 years? In our case, what outcome could be better than no negative environmental pit issues in 100 years?

Section 4.107 goes on to state, “Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process.” Again, what corrective actions should an operator be forced to take where there has been NO ENVIRONMENTAL ISSUES for 40 years according to the RRC and 100 years in our case? Also, what, “future protective actions” could improve a perfect record?

No penalties should not be assessed against ANY OPERATOR and/or operation unless proven environmental harm has occurred. It is a longstanding legal requirement that damages must be proven before fees, fines, penalties and/or legal damages can be awarded.

Forcing operators to purchase expensive goods and services from special interest groups that for conventional well operators and large swaths of Texas are unnecessary and wasteful is not right, legal or fair. In that light, what statutory authority does the RRC have to force an operator or land owner by fees, fines and penalties to purchase expensive goods and services from special interest groups where there is no pollution, no overriding public health concern and no environmental damage has been done?

2. The drafters of the proposed pit rules falsely assume that all lands in Texas contain aquifers.

Response: This assumption is patently false. Come and visit Stasney’s Cook Ranch in Shackelford County, Texas. Where there is no proven drinking or usable quality ground water; therefore, the Existing Rule 8 should remain in effect.

3. The drafters of the proposed pit rules falsely assume that all lands in Texas have the same lithology and/or hydrologic characteristics.

Response: This assumption is patently false. Our property has no shallow sands, gravels or friable material. Our stock tanks hold water because our surface lithology is alternating layers of clay and solid rock. Therefore, there is no risk of ground or surface water contamination because in-situ lithology prevents fluid migration.

Under the proposed pit rule, we could mine and sell pit lining clay material for operators to line their pits but we could not dig a shallow temporary pit in the same clay for use in drilling, completing or servicing our shallow vertical wells because the proposed rule makes no provision or exception for in-situ native materials that are better than manmade synthetic or hauled in materials. Therefore, the proposed rule 4.114(c)(6) should be deleted and/or amended to authorize pits dug in native in-situ materials.

The persons who drafted the proposed rules copied part of 30 TAC 217.203 concerning the design and construction of natural wastewater treatment facilities, **but failed to consider and copy (d)(2)(B) regarding "Unamended In-situ Soil Liner Construction."**

The material in which we dig stock tanks and pits is solid clay. As the proposed rule stands, we could sell clay liner material to other operators to line their pits with, but could not dig a pit in our in-situ clay to use! Although I do not believe that vertical well pits are in the same league as wastewater treatment facilities in terms of volume, duration and biohazard; there is a simple, practical and easy solution to the omission of in-situ materials. If the in-situ material pits pass a simple inexpensive field line perc test (water drops less than an inch in 30 minutes), they should be authorized under the proposed rule.

We have 1900 examples of temporary in-situ pits that have served their purpose operationally, environmentally and economically. Adding lots of regulation, administrative hassle, extra time, man-power and expense with liners is simply a waste as stated above.

Native clay pits are permitted under the current rule and should continue to be in any proposed or future pit rule. In fact, native clay pits should be the preferred method of pit construction as they do not add plastic pollution to the property. Any question regarding liquid retention of native in-situ clay pits should be easily resolved by the local RRC field inspector doing a simple,

quick and low-tech percolation test that is done for septic system field lines all over Texas. With this simple test, there would be no need to drive a sample 200 miles away to determine if the native clay soil sufficiently holds liquids.

There should be no need for an exception to use in-situ native clay soils that have been used successfully for over 100 years particularly on land with no proven usable ground water. In the event that an exception must be employed, it should be plainly stated in the proposed rule under Section 4.109 that, “Pits constructed in in-situ clay laden and/or other material that percolates water at a rate less than one inch in 30 minutes shall be treated as authorized and permitted pits under these rules.”

4. The drafters of the proposed pit rules falsely assume that persons that have never seen our land can do a better job managing the surface use of our land than we have done for 100 years.

Response: This is a basic property rights issue. If the RRC intends to limit the free exercise of our property rights in any manner without objective proof that there has been or is a substantial need to protect the public interest, it amounts to an unconstitutional taking of our property. Without proof of harm, a private landowner should be able to use their own land as they please. We have received land steward awards by the water district and the TPWD. In the last 100 years, there have been 1900 wells drilled on the Cook Ranch drilled and serviced over the past 100 years. The oilfield operations have improved our property, paid our taxes without harm to anyone or anything. While there may be some areas in Texas that need synthetic liners we do not. And, we do not want the RRC to force us to add wasteful and harmful plastic pollution to our property or anywhere else. We just do not have a problem that needs to be fixed!

5. The drafters of the proposed pit rules falsely assume that ALL oil and gas operations are equal in size, man power and economic capacity.

Response: Regulators and regulations should recognize the difference between long-term and temporary pits regarding the potential for groundwater contamination. The TCEQ, RRC and EPA admit that there is not a congenital ground water contamination issue under the existing pit rule.

Regulators and regulations should recognize the difference between drilling and completed a shallow vertical well that uses less than 500 barrels of fresh water verses drilling and completing a horizontal well that uses hundreds of thousands of barrels to drill and complete a well. The synopsis written and given by the RRC at the two brief hearings focuses on the need to modernize rules based on onset of shale extraction in the early 2000's. The existing SWR 8 works perfectly well for vertical conventional well operations.

Regulators and regulations should recognize the massive economic difference between a drilling a completing a shallow conventional vertical well less than 2000' and much deeper horizontal well with a ten to twenty thousand foot lateral. Again, the synopsis written and given by the RRC at the hearings focuses on the need to modernize rules based on onset of shale extraction in the early 2000's. The existing SWR 8 works perfectly well for vertical conventional well operations.

As mentioned in the attached Texland comments, adding costs of $250,000 to $590,000 to a shallow vertical well in Shackelford County would halt all new drilling operations and would kill most, if not all existing operations resulting in massive WASTE OF OIL AND GAS NATURAL RESOURCES. The economic destruction of these wells will result in loss of jobs, loss of income and loss of tax revenue for the schools, county sheriff, court house and commissioners. These losses do not include loss of severance taxes paid to the State of Texas.

6. Proposed pit rule section 4.109. Exceptions. I have previously sent to the rules coordinator a list of exemptions and exceptions that should be incorporated in to 4.109 and include them here as if fully set out herein.

Exceptions should be determined at the district level by people most familiar with the local geology, hydrology, existence, or lack thereof of water and other local operational characteristics.

7. Problems with definitions.

The proposed pit rules begin with 4.101(a) stating that, ”No person conducting activities subject to regulation by the Railroad Commission of Texas may cause or allow pollution of surface or subsurface water in the state.” The problem starts with the overly broad definition of and application of the word “pollution.”

4.110 (71) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

First, since the vast majority of land in Texas is private property, the definition of pollution should not include the phrase, “or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.” The RRC does not have the right to regulate the surface use of private property for “public enjoyment.”

Second, purpose of the SWR 8 and proposed pit rule is to manage “oil and gas waste.” The proposed pit rule conflates “oil and gas waste,” pollution and hazardous waste as defined by the EPA (42 USC §6901, et seq.). Oil and gas waste is not hazardous waste and is not “pollution.” As defined, “oil and gas waste” includes fresh water, fresh water mud, natural plant products, inert solids, inert cuttings and circulated cement that are not hazardous, that do not pose a public health or safety hazard. The EPA specifically excludes/exempts all “drilling fluids, produced waters, and other wastes associated with the exploration,

development, or production of crude oil or natural gas or geothermal energy," under the Resource Conservation and Recovery Act (RCRA) hazardous waste laws. See 42 U.S.C. Sec 6921 (b)(2)(A) and/or its successor act or codification.

Third, all "oil and gas waste" be excluded as "pollution" when confined to an in-site pit or other container.

Finally, "pollution" should be as narrowly defined as possible. As it stands, if an oilfield hand stepped into a puddle of water with a single atom of anything deemed to be "harmful, detrimental, or injurious to humans, animal life, vegetation, or property" the operator would be subject to a penalty or worse under the proposed pit rule.

8. Notification process. The proposed pit rule adds additional layers of administrative burden on the operator and the RRC staff. Notification processes for a new drill or re-entry are already handled by the drilling permit. Other existing notifications should be included with casing setting notifications and the plugging notification process. Adding additional layers of administrative burden does not help the environment, the regulators or the regulated.

Comments on Rule 8 Proposal on Texas Oil & Gas Industry Economics

10/23/2023

- These comments are based on experience operating in New Mexico where a similar pit rule as the RRC proposed Rule 8 exists.
- Because of mandatory soil sampling if a temporary inground pit is used, operators are unwilling to assume the risk of having expensive cleanups if a liner leak occurs. Any liner leak, no matter the size, will result in additional soil sampling, excavation and replacement of the soil at very high cost (risk-adjusted average cost of a liner leak is about $590,000 in New Mexico). This additional cost has greatly decreased development by independent operators because of the unfavorable economics.

Statistics

- There are currently about 3,049 oil and gas operators in the state of Texas.
- The top 20 large operators (ie. Anadarko, Apache, Chevron, COG, Diamondback, Marathon, Occidental, Pioneer, XTO, etc.) operate about 21.4% of the wells while producing about 52% of the oil and 40% of the gas.
- The remaining 3,029 operators operate about 78.6% of the wells while producing about 48% of the oil and 60% of the gas.
- Many of the 3,029 operators are small independents who support the state and their communities through local purchases, tax payments and employment opportunities.
- There are currently about 304 rigs running in Texas on any given day, with about 289 rigs drilling horizontally (95% of the total) and 15 rigs drilling vertically (5% of the total).
- Many of the horizontal rigs are using equipment to remove cuttings from oil-based mud systems so that the mud can be reused. The cuttings are typically buried at a well's location. In this analysis, 90% of horizontal rigs are assumed to be using oil-based mud while the remainder utilize water-based systems without the cuttings removal equipment.
- Additionally, because most oil and gas producers have fixed budgets for capital projects, added costs will result in a proportional drop in drilling activity. Although this assumption was made for both horizontal projects and vertical projects, increases in vertical well expenses will likely have a much larger impact due to lower budgets and marginal economics.

Winners/Losers

- The proposed Rule 8 with its mandatory soil sampling and pit registration creates a market for numerous businesses. When all of the potential gross revenue for disposal facilities, trucking companies, closed loop system equipment suppliers and environmental remediation companies is tallied, this new regulation-driven market will be worth $513,310,000 annually. There is little wonder that disposal facility & environmental companies are filing for permits even before the proposed Rule 8 is finalized.
- However, the losses to oil and gas operators, service and equipment companies, landowners, working and mineral interest owners, and the state of Texas and its local governments, will be about $1,588,770,000 annually.
- With 3767 horizontal wells drilled and 456 vertical wells drilled annually in Texas, the proposed Rule 8 will result in a cost of $513,310,000 to the oil and gas industry annually. Vertical wells will be most affected and will cost at least 20% or more on average.
- With budgets constrained by either stockholder expectations, cashflow or limited access to capital markets, the added expense will result in a reduction of at least 47 horizontal wells and 80 vertical wells per year. This reduction in drilling and production means a loss of about $54,100,000 in state severance tax and about $36,800,000 in local taxes (ad valorem) annually.
- The reduction in drilling will also directly affect working and royalty interest owners. Working interest owners stand to lose a whopping $367,200,000 annually and royalty owners will lose about $99,600,000 annually.

Conclusions

- The Oil & Gas Industry has a shared goal with the TCEQ and Texas Railroad Commission of preventing water contamination.
- Because of the economic cost to the State of Texas and to its energy producers, regulations should be based on real problems and not perceived problems.
- It has been clearly shown that the current Rule 8 Chapter 3.8 has served the RRC and its citizens well since no cases of groundwater contamination have been identified by the TCEQ with regard to temporary pits over the last 40 years.
- Despite the potentially large profit for environmental services and Closed Loop equipment companies that would come with the proposed Rule 8 pit regulations, there is a serious question concerning equipment and services availability (including cuttings control equipment, haul trucks, roll-off bins, fluids storage tanks, commercial waste disposal facilities, environmental services and lab resources). The costs of delayed projects were not part of the analysis but could lead to larger losses for state severance and ad valorem taxes.
- As experienced in New Mexico, real damage has been caused by increased truck traffic on roads and highways while hauling cuttings. Based on the required additions of Closed Loop Systems and cuttings haulers, the new regulations will lead to an additional $\pm$300 haul trucks on the road daily and about 40,000,000 miles driven between locations and disposal facilities annually. The miles for Closed Loop equipment delivery were not

included. Also, about 5,000,000 gals of diesel would be burned while hauling drill cuttings or soil. When drilling in areas close to or in towns or cities occurs, this can lead to nuisance issues and lots of road repairs.

- Lastly, landowners are concerned that a pit registration system would lead to a loss in the real value of their land, especially in areas where developers are active. Landowners, who already could lose millions of dollars in damage payments because of fewer wells drilled, would also face the prospect of having lower land valuations and forfeited sales because of a registered temporary pit. All of this occurring despite the fact that there was no impact on groundwater in the area.

Recommendations

- Based on current experience, knowledge, and a proven track record over the last 40 years, the current Rule 8 guidelines in Chapter 3.8 on **temporary** drilling, completion and workover pits should be followed for most of the state. Temporary pits should be defined as having a service life of the drilling operation plus no more than a year. The RRC Districts should modify the temporary pit rules only in the event that there is a clear, demonstrable risk to the water table.
- Pit registration for **temporary** drilling, completion and workover pits should be eliminated. Pit registration mimics 40 CFR 280 and should not apply to temporary pits unless there is a clear, demonstrable risk. Pit registration can easily lead to litigation. This was clearly demonstrated In New Mexico.

Summary of Revenue Changes

	Horizontal Wells			*Vertical Wells*			Total
Winners	Wells Drilled/Yr	Gross Add'l Rev Per Well	Δ Gross Rev Per Year	Wells Drilled/Yr	Gross Add'l Rev Per Well	Δ Gross Rev Per Year	Δ Gross Rev Per Year
Disposal Facilities =	3,767	$27,149	$102,270,904	456	$11,328	$5,165,778	$107,436,683
Trucking Companies =	3,767	$14,661	$55,226,288	456	$6,117	$2,789,520	$58,015,809
Closed Loop Equipment Suppliers =	376	$504,000	$189,504,000	387	$216,000	$83,592,000	$273,096,000
Env Remediation Companies =	377	$188,317	$70,995,547	20	$188,317	$3,766,342	$74,761,889
Winners Total =	3,767	$110,963	$417,996,739	456	$209,021	$95,313,640	$513,310,380

	Horizontal Wells			*Vertical Wells*			Total
Losers	Wells Drilled/Yr	Gross Add'l Rev Per Well	Δ Gross Rev Per Year	Wells Drilled/Yr	Gross Add'l Rev Per Well	Δ Gross Rev Per Year	Δ Gross Rev Per Year
Oil & Gas Operators =	3,767	($110,963)	($417,996,739)	456	($209,021)	($95,313,640)	($513,310,380)
Service & Equipment Companies =	3,767	($111,867)	($421,402,000)	456	($206,316)	($94,080,000)	($515,482,000)
State of Texas Severance Tax =	3,720	($12,420)	($46,203,321)	376	($20,916)	($7,864,395)	($54,067,716)
Local Government Ad Valorem Tax =	3,720	($8,449)	($31,428,534)	376	($14,227)	($5,349,538)	($36,778,072)
Landowners =	3,767	($312)	($1,175,000)	456	($2,632)	($1,200,000)	($2,375,000)
Working Interest Owners =	3,720	($81,962)	($304,898,400)	376	($165,631)	($62,277,120)	($367,175,520)
Mineral Interest Owners =	3,720	($20,490)	($76,224,600)	376	($62,111)	($23,353,920)	($99,578,520)
Losers Total =	3,767	($344,924)	($1,299,328,595)	456	($634,734)	($289,438,613)	($1,588,767,208)

Net Gain (Loss) From Proposed Rule 8	(47)	($233,961)	($881,331,855)	(80)	($425,713)	($194,124,973)	($1,075,456,828)

Assumptions:	Numbers in the chart above reflect net changes
	Annual Drilling Projects continue at same rig count (304) and budgets
	Horizontals continue to make up 95% of new drills
	Horizontals are 2 mile laterals with $9,000,000 budgets with 28 days of drilling
	Vertical wells assume $1,200,000 budgets with 12 days of drilling
	Tax Calculations are based on $85 WTI and $3.12 HH Gas
	Assumes 90% of Horizontal wells are already using Closed Loop Systems because of oil-based mud systems
	Assumes all Horizontal and Vertical wells are currently burying cuttings
	Assumes Closed Loop System spill risk is 10% per project
	Tax decreases are based on well drilling reductions due to fixed budgets
	(i.e. more capitol required, less drilling proportionately)
	Landowner losses are based on loss of damage payments because of decreased drilling activity
	Average statewide statistics for tract size and land value were used