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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: June 16, 2020

SUBJECT: Amendments to 16 TAC §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)

Attached is Staff's recommendation to adopt amendments to 16 Texas Administrative Code §3.30, which implement changes made by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The amendments also update the definition of underground source of drinking water.

The amendments were proposed at conference on February 11, 2020 and published in the February 28, 2020 issue of the *Texas Register* (45 TexReg 1290). The Commission received no comments. Staff recommends adoption of the amendments to the Memorandum of Understanding with one change: to specify a July 15, 2020 effective date in subsection (g).

cc: Wei Wang, Executive Director
Danny Sorrells, Assistant Executive Director and Director of the Oil and Gas Division
Leslie Savage, Chief Geologist
David Cooney, Attorney, Office of General Counsel

1 The Railroad Commission of Texas adopts amendments to §3.30, relating to Memorandum of
2 Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on
3 Environmental Quality (TCEQ), with changes to the proposed text as published in the February 28, 2020,
4 issue of the *Texas Register* (45 TexReg 1290). The amendments are adopted to implement changes made
5 by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively.
6 The adopted amendments also update the definition of underground source of drinking water. The
7 Commission received no comments on the proposed amendments.

8 The memorandum of understanding (MOU) between the TCEQ and the RRC was last amended in
9 May 2012. Amendments in subsection (a)(4) and subsection (g) update the applicable dates of MOU
10 amendments. The proposed effective date of May 11, 2020, in subsection (g) was changed to reflect the
11 date of RRC adoption of the proposed amendments. The new effective date is July 15, 2020.

12 House Bill 2230 (84th Legislature, 2015) enacted Texas Water Code, Section 27.026, to allow
13 dual authorization of Class II and Class V injection wells for the disposal of nonhazardous brine from a
14 desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the
15 jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC. House Bill 2230 allows the
16 TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the
17 disposal of such brine or DWTR in a Class II well permitted by the RRC. New subsection (e)(4)(E)
18 implements the dual authority granted by House Bill 2230.

19 House Bill 2771 (86th Legislature, 2019) amended Texas Water Code, Section 26.131, to transfer
20 to TCEQ the RRC's responsibilities relating to regulation of discharges into surface water in the state, as
21 defined in 30 TAC §307.3(70) (relating to Definitions and Abbreviations), of produced water, hydrostatic
22 test water, and gas plant effluent resulting from the exploration, production and development of oil,
23 natural gas, or geothermal resources. House Bill 2771 authorizes the transfer of responsibilities from the
24 RRC to the TCEQ after TCEQ receives approval from the United States Environmental Protection
25 Agency (EPA) to supplement or amend TCEQ's Texas Pollutant Discharge Elimination System (TPDES)
26 program to include authority over these discharges. House Bill 2771 also establishes September 1, 2021,
27 as the deadline for TCEQ to submit its request to the EPA to supplement or amend the TPDES program to
28 include delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for
29 discharges of produced water, hydrostatic test water, and gas plant effluent.

30 Amendments implementing House Bill 2771 are found in subsection (b)(1)(B), (b)(2)(B), and
31 (d)(12)(A). The definition of "produced water" in subsection (b)(1)(B)(i) is based on TCEQ's definition of
32 that term as published in the January 10, 2020, issue of the *Texas Register* in proposed amendments to 30
33 TAC §305.541.

1 Amendments in subsection (e)(1) correct references to the TCEQ Small Business and
2 Environmental Assistance (SBEA) Division, which is now the TCEQ External Relations Division.

3 Finally, amendments in §3.30(e)(7)(B)(ii) update the definition of "underground source of
4 drinking water" to reference the definition in 40 Code of Federal Regulations §146.3.

5 The RRC adopts the amendments to 16 TAC §3.30 under: (1) Texas Water Code §26.131, which
6 transfers the responsibilities relating to regulation of discharges of produced water, hydrostatic test water
7 and gas plant effluent into surface water in the state from the RRC to the TCEQ; (2) Texas Water Code
8 Chapter 27, which authorizes the RRC to adopt and enforce rules relating to injection wells and,
9 specifically, Texas Water Code §27.026, as amended by House Bill 2230 (84th Legislature, 2015), which
10 requires the RRC and TCEQ by rule to amend the MOU to implement the statutory changes related to
11 disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment
12 residuals (DWTR); (3) Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all
13 necessary rules for governing persons and their operations under the jurisdiction of the RRC; and (4)
14 Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the
15 conservation of oil and gas and prevention of waste of oil and gas.

16 Statutory authority: Water Code §§26.131 and 27.026, and Natural Resources Code §§81.052 and
17 85.201.

18 Cross reference to statute: Water Code Chapters 26 and 27; Natural Resources Code Chapters 81
19 and 85.

20 §3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas
21 Commission on Environmental Quality (TCEQ).

22 (a) Need for agreement. Several statutes cover persons and activities where the respective
23 jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies
24 implement the division of jurisdiction.

25 (1) - (3) (No change.)

26 (4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th
27 Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987,
28 May 31, 1998, August 30, 2010, and again on May 1, 2012 [~~August 30, 2010~~], to reflect legislative
29 clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural
30 Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air
31 Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and
32 hazardous wastes.

1 (5) The agencies have determined that the revised MOU that became effective on May 1, 2012
2 [~~August 30, 2010~~], should again be revised to further clarify jurisdictional boundaries and to reflect
3 legislative changes in agency responsibility.

4 (b) General agency jurisdictions.

5 (1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas
6 Natural Resource Conservation Commission).

7 (A) (No change.)

8 (B) Water quality.

9 (i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water
10 Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except
11 for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection
12 Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of
13 produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in
14 Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the
15 purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all
16 wastewater associated with oil and gas exploration, development, and production activities, except
17 hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste
18 streams regulated by 40 CFR Part 435.

19 (ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ
20 of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant
21 effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until
22 revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation
23 shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC
24 permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES
25 permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

26 (iii) Discharge applications pending on the effective date of EPA's delegation to
27 TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant
28 effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives
29 delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant
30 information necessary to administratively and technically review and process the applications. TCEQ will
31 review and process these pending applications in accordance with TPDES requirements.

32 (iv) [(ii)] Storm water. TCEQ has jurisdiction over storm water discharges that
33 are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except

1 for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by
 2 an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES
 3 permit. These storm water permits may also include authorizations for certain minor types of non-storm
 4 water discharges.

5 (I) Storm water associated with industrial activities. The TCEQ regulates
 6 storm water discharges associated with certain industrial activities under individual TPDES permits and
 7 under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities
 8 under the jurisdiction of the RRC.

9 (II) Storm water associated with construction activities. The TCEQ
 10 regulates storm water discharges associated with construction activities, except for discharges from
 11 construction activities under the jurisdiction of the RRC.

12 (III) Municipal storm water discharges. The TCEQ has jurisdiction over
 13 discharges from regulated municipal storm sewer systems (MS4s).

14 (IV) Combined storm water. Except with regard to storage of oil, when a
 15 portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm
 16 water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ,
 17 and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of
 18 storm water from a facility that stores both refined products intended for off-site use and crude oil in
 19 aboveground tanks is regulated by the TCEQ.

20 (v) [~~(iii)~~] State water quality certification. Under the Clean Water Act (CWA)
 21 Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities
 22 that require a federal license or permit and that may result in a discharge to waters of the United States,
 23 except for those activities regulated by the RRC.

24 (vi) [~~(iv)~~] Commercial brine extraction and evaporation. Under Texas Water
 25 Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production
 26 of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not
 27 regulated by the RRC.

28 (C) (No change.)

29 (2) Railroad Commission of Texas (RRC).

30 (A) (No change.)

31 (B) Water quality.

32 (i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water
 33 Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration,

1 development, or production of oil, gas, or geothermal resources, including transportation of crude oil and
2 natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ
3 of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test
4 water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the
5 TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or
6 adjacent to water in the state shall not cause a violation of the water quality standards. While water
7 quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation
8 of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not
9 require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water
10 quality standards. The TCEQ and the RRC may consult as necessary regarding application and
11 interpretation of Texas Surface Water Quality Standards.

12 (ii) - (iii) (No change.)

13 (C) (No change.)

14 (c) (No change.)

15 (d) Jurisdiction over waste from specific activities.

16 (1) - (11) (No change.)

17 (12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling
18 operations for exploring or exploiting subsea oil, gas, or mineral resources.

19 (A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas
20 General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being
21 used in connection with activities associated with the exploration, development, or production of oil or
22 gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges
23 into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting
24 from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority
25 under this subsection.

26 (B) - (C) (No change.)

27 (e) Interagency activities.

28 (1) Recycling and pollution prevention.

29 (A) The TCEQ and the RRC encourage generators to eliminate pollution at the source
30 and recycle whenever possible to avoid disposal of [solid] wastes. Questions regarding source reduction
31 and recycling may be directed to the TCEQ External Relations [~~Small Business and Environmental~~
32 ~~Assistance (SBEA)] Division, or to the RRC. The TCEQ may require generators to explore source
33 reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the~~

1 RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling
2 alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility
3 regulated by the RRC.

4 (B) The TCEQ External Relations [~~SBEA~~] Division and the RRC will coordinate as
5 necessary to maintain a working relationship to enhance the efforts to share information and use resources
6 more efficiently. The TCEQ External Relations [~~SBEA~~] Division will make the proper TCEQ personnel
7 aware of the services offered by the RRC, share information with the RRC to maximize services to oil
8 and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC
9 personnel aware of the services offered by the TCEQ External Relations [~~SBEA~~] Division, share
10 information with the TCEQ External Relations [~~SBEA~~] Division to maximize services to industrial
11 operators, and advise industrial operators of the TCEQ External Relations [~~SBEA~~] Division services.

12 (2) - (3) (No change.)

13 (4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the
14 RRC.

15 (A) - (D) (No change.)

16 (E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the
17 TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well
18 authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous
19 drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class
20 II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization
21 prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water
22 treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from
23 TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC
24 and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water
25 treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ
26 as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the
27 Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements
28 or conditions to address the dual injection activity under Texas Water Code, §27.026.

29 (5) - (6) (No change.)

30 (7) Groundwater.

31 (A) (No change.)

32 (B) Groundwater protection letters. The RRC provides letters of recommendation
33 concerning groundwater protection.

Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

1 (i) (No change.)
 2 (ii) For recommendations related to injection [~~in a non-producing zone~~], the RRC
 3 provides geologic interpretation of the base of the underground source of drinking water. The term
 4 "underground source of drinking water" [~~Underground source of drinking water~~] is defined in 40 Code of
 5 Federal Regulations §146.3 (*Federal Register*, Volume 46, June 24, 1980) [~~as an aquifer or its portions~~
 6 ~~which supplies drinking water for human consumption; or in which the groundwater contains fewer than~~
 7 ~~10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer~~].

8 (8) - (9) (No change.)

9 (f) (No change.)

10 (g) Effective date. This Memorandum of Understanding, as of its July 15, 2020 [~~May 1, 2012~~],
 11 effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May
 12 1, 2012 [~~August 30, 2010~~].

13 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found
14 to be a valid exercise of the agency's legal authority.

15 Issued in Austin, Texas, on June 16, 2020.

16 Filed with the Office of the Secretary of State on June 16, 2020.

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 Wayne Christian, Chairman

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