TEXAS OIL & GAS ASSOCIATION | SINCE 1919

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November 23, 2026

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

Re: Comments on Proposed Amendments to 16 TAC Chapter 5, Subchapters A and B, Relating to Carbon Dioxide (CO2)

Dear Rules Coordinator:

The Texas Oil and Gas Association (TXOGA) appreciates the opportunity to comment on the Texas Railroad Commission's (RRC) proposed revisions to Chapter 5 governing geologic storage facilities and Class VI injection well permitting. TXOGA supports the Commission's efforts to establish a clear, transparent, and administratively efficient regulatory framework that protects underground sources of drinking water, provides meaningful opportunities for public participation, and supports the successful implementation of Texas's Class VI regulatory program.

As Texas continues to develop carbon capture and geologic sequestration projects, a permitting framework that is consistent and predictable will be critical to ensuring timely permit review while maintaining appropriate regulatory oversight. Regulatory certainty and clear rules benefit all stakeholders, including permit applicants, affected landowners, the public, and the Commission itself.

TXOGA generally supports the Commission's proposed revisions and appreciates the substantial effort invested in developing the draft rules. The proposed revisions, especially the definitions, remove ambiguity, enhance clarity and further drive efficiency in the permitting process, which is a hallmark of Texas. The recommended revisions below are intended to further improve clarity, better align the rules with the federal permitting framework and the practices adopted by other Class VI jurisdictions, and promote efficient permit administration without diminishing public participation or environmental protections.

TXOGA respectfully submits the following suggested revisions and supporting rationale for the Commission's consideration. Suggested revisions are shown in bold highlight.

Suggested revision 1

1. **5.202(d)(2):** Action by the Commission. The director may modify, revoke and reissue, or terminate a geologic storage facility permit after notice and opportunity for ~~hearing~~ a public meeting under any of the following circumstances.

To provide clarity and align with the proposed changes in §5.204, §5.202(d)(2) it is recommended that "hearing" be replaced with "public meeting." Section 5.202(d)(2) authorizes permit modifications, revocations, reissuances, or terminations after notice and opportunity for a "hearing." The use of the term "hearing" is ambiguous because RRC separately recognizes both public participation proceedings or "public meetings" and contested case hearings, each serving different purposes and governed by different procedural requirements.

Replacing "hearing" with "public meeting" would align with the proposed changes in §5.204, provide greater procedural clarity and avoid uncertainty regarding whether permit modifications require an adjudicative contested case process under the Texas Administrative Procedure Act or a non-adversarial public participation proceeding. The distinction is important because contested case hearings implicate formal party status, evidentiary procedures, and substantial expense and delay, while public meetings are intended to gather public input and inform agency decision-making.

The proposed revision would also better align §5.202(d)(2) with the federal Class VI permitting framework. EPA's permit modification procedures under 40 C.F.R. Part 124 contemplates public participation through notice-and-comment procedures and public hearings rather than adjudicative contested case proceedings to provide meaningful public input while preserving efficient permit administration. Consistent terminology will reduce the potential for confusion among Commission staff, applicants, affected persons, and the public and will also promote predictable implementation of the Commission's Class VI primacy program aligned with the federal framework.

Suggested revisions 2 through 4

2. 5.204(b)(2)(A). The Commission shall hold a public meeting if the director finds, on the basis of requests, a significant degree of public interest in a draft permit or that such a meeting might clarify one or more issues involved in the draft permit decision. The public meeting shall be structured for the receipt of oral or written comments. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.
3. ~~5.204(b)(3)(C) The Commission [director] may also hold a contested case [public] hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision or the director finds a significant degree of public interest in a draft permit.~~
4. 5.204(b)(3)(D) Notice ~~[Public notice]~~ of a contested case [~~public~~] hearing shall be given in accordance with Texas Government Code §2001.052 ~~[at least 30 days before the hearing]~~. ~~Notice [Public notice] of a contested case hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.~~

TXOGA proposes the above amendments because the proposals conflate two fundamentally different regulatory processes: public hearings (known as "public meeting" in the RRC) and contested case hearings.

Under the federal permitting framework, the phrases "significant degree of public interest" and "a hearing might clarify one or more issues involved in the permit decision" are expressly tied to the agency's authority to hold a public hearing. EPA's regulation at 40 C.F.R. §124.12 contains no contested case hearing mechanism. Rather, it authorizes a public hearing intended to facilitate public participation, which is akin to RRC's public meeting.

As drafted, proposed §5.204(b)(3)(C) incorrectly transfers these federal public hearing triggers into the Commission's contested case hearing process. That approach materially expands the function of the federal language and could create uncertainty regarding when an adjudicative proceeding is required. Public interest in a permit application and a desire for issue clarification are appropriate bases for a public meeting because they facilitate information exchange and public engagement. They are not necessarily indicators that a disputed factual or legal issue exists warranting a contested case hearing.

The Commission has similar language as 5.204(b)(3)(C) in Chapter 3.9(5)(E)(i) "… if the commission or its delegate determines that a hearing is in the public interest" (e.g. Statewide Rule 9). In this context, the RRC means "contested case hearing," which allows affected person(s) to protest an application. This is different from Chapter 5, where protests are against the draft permit. A protest against the *application* vs. the *draft permit* is different. In Chapter 3, where the public notice occurs at the very beginning of the permitting process, when the application is submitted, a potential protest comes before technical review by RRC Staff. In Chapter 5, public notice is given after the draft permit is issued, which occurs after a very comprehensive and thorough review of the application by the RRC. A Commission decision to hold a contested case hearing undermines the technical review staff conducts and adds to permitting uncertainty.

Furthermore, using broad and undefined concepts such as "significant degree of public interest" or whether a proceeding "might clarify" issues as triggers for a contested case hearing could introduce unnecessary unpredictability into the permit review process. "Significant degree of public interest" is difficult to define when the period of time an application is in the public domain differs. For example, a Class II application is in the public domain for 15 days before the comment period and the opportunity to protest closes. A Class VI application is in the public domain for months and sometimes years before the public comment period closes. Permit applicants, affected persons, and Commission staff would benefit from a clear distinction between public participation mechanisms, i.e., public meeting, and adjudicative proceedings, i.e., contested case hearing. Additionally, allowing a contested case hearing at the director's discretion in the absence of a timely protest filed by an affected party introduces uncertainty and potentially undermines the hearing process. A contested case hearing should be focused on material disputes between the applicant and an affected party rather than undefined "public interests," which cannot be resolved by the contested case hearing process.

The proposed revisions preserve the federal intent of 40 C.F.R. §124.12 while adapting it appropriately to Texas's regulatory structure. The federal provisions should be translated into Texas's public meeting process, not its contested case hearing process. This interpretation is further supported by other Class VI jurisdictions that adopted similar language from 40 C.F.R. §124.12. Louisiana, Wyoming, and West Virginia all apply these provisions to non-adversarial public participation hearings rather than adjudicative contested case proceedings. The proposed revisions

therefore improve consistency with the federal model, reduce procedural uncertainty, and promote efficient permit administration without limiting opportunities for public participation.

Please see the below regulatory examples. The other primacy states listed below, as well as Texas, borrowed the subject language from 40 CFR 124.12 and refer to public hearings. Federally and in the below states, this public hearing equates to RRC's public meeting.

> **Federal - 40 CFR 124.12(1)** The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s); (2) The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
>
> **Louisiana 3617.G.1** The commissioner shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in (a) draft permit(s). The commissioner also may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
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> **Wyoming - Chapter 24 §19(j)** The administrator shall hold a hearing whenever the administrator finds, on the basis of requests, a significant degree of public interest in a draft permit. The administrator has the discretion to hold a hearing whenever such a hearing may clarify issues involved in a permit decision.
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> Chapter 24 also defines under Section 2(kk) as: Public hearing means a non-adversary hearing held by the administrator or director of the department. The hearing is conducted pursuant to Chapter 3 of the Wyoming Department of Environmental Quality Rules of Practice and Procedure.
>
> **West Virginia - §22-11B-5(g)** The secretary and/or the commission shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit. The secretary and/or the commission may also hold a public hearing at his or her discretion if a hearing may assist in clarifying one or more issues involved in the permit decision. Should a public hearing be held, notice of the hearing shall be provided in the same manner as set forth above with respect to public notice of the preparation of a draft permit

Finally, in the published draft rule, it appears that in 5.204(b)(2)(B) a reference to "hearing" was not updated consistent with the rest of the section. A confirming change can be accomplished like this: "Notice of a public meeting shall be given at least 30 days before the ~~hearing~~ public meeting…"

Suggested revisions 5 through 8

5. 5.204(a)(4)(E)(i) …affected persons may protest[~~,~~] ~~and request a contested case hearing,~~ and interested persons may request a public meeting [~~hearing~~] on[,] the application;

6. 5.204(b)(1)(C) During the public comment period, any affected person may submit written comments on the draft permit and may protest the application ~~request a contested case~~

~~hearing~~. A protest by an affected person must include the basis for their status as an affected person as defined by §5.102(1).

7. 5.204(a)(4)(E)(iv) (iv) [(~~iii~~)] public comments, requests for a public meeting, and protests ~~requests for a contested case hearing~~ may be submitted at any time during the public comment period. Unless extended by the director for good cause, the public comment period ends 30 days after the notice of the draft permit, ~~30~~ 10 days from the date of the last publication of notice, or at the close of any public meeting [~~protests and requests for a hearing must be received by the director within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice~~], whichever is later.[~~; and~~]

8. 5.204(b)(1)(D) All comments, requests for a public meeting, and protests ~~requests for a contested case hearing~~ must be received by the director before the end of the public comment period. Unless extended by the director for good cause, the public comment period ends 30 days after the notice of the draft permit, ~~30~~ 10 days from the date of the last publication of notice, or at the close of any public meeting, whichever is later.

First, the proposed language should be revised to accurately reflect the procedural roles established elsewhere in §5.204. As reflected in §5.204(b)(3)(B), affected persons submit protests which may ultimately lead to referral of the matter for a contested case hearing under the Commission's procedures. Once a matter is referred to the Hearings Division, the applicant requests the contested case hearing. Referring to an affected person's action as a "request for a contested case hearing" is therefore imprecise and may create confusion regarding the administrative procedure of a contested case hearing.

Second, the proposed language would significantly broaden the public comment and protest period beyond both the federal framework and the Commission's apparent objective of creating an efficient and predictable permitting process.

Under the proposal, the public comment period would remain open until 30 days after the final publication of notice. Because notice is published once each week for three consecutive weeks, the final publication will occur approximately 21 days after the comment period begins. As a result, the proposed language creates a minimum comment period of approximately 51 days (21 days plus 30 additional days after the final publication), before accounting for any additional extensions granted by the director.

By contrast, EPA's permitting regulations require that public notice of a draft permit provide at least 30 days for public comment, while preserving agency discretion to allow a longer period when warranted by the circumstances. 40 C.F.R. §124.10(b)(1).

TXOGA is not aware of a corresponding federal requirement supporting a minimum 51-day comment period for Class VI permitting actions. The proposed revision still maintains Commission discretion to extend comment periods, but establishing such a lengthy minimum period for every permit application would unnecessarily prolong permit processing timelines

without providing additional procedural protections beyond those already required under the federal framework.

Revising the deadline from 30 days after the last publication to 10 days after the last publication preserves adequate notice to affected persons, maintains robust opportunities for public participation, and more closely aligns the Commission's process with the federal permitting framework on which Chapter 5 is based. This approach advances the Commission's stated goals of regulatory certainty, administrative efficiency, and timely permit review while preserving the director's authority to grant additional time for good cause.

Suggested revisions 9 and 10

9. §5.205(c)(2)(C)(i). The director must approve the dollar amount of the financial assurance. The amount of financial assurance required to be filed under this subsection must be equal to or greater than the maximum amount necessary to ~~cover the cost of~~ perform corrective action, emergency response, and remedial action, post-injection monitoring and site care, and closure of the geologic storage facility, including plugging of wells, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit. The amount of financial assurance required for emergency response and remedial action shall be the estimated maximum amount necessary to respond to a single emergency response event. The financial assurance instruments must be sufficient to address endangerment of USDWs. The cost estimate must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to perform the activities. A third party is a party who is not within the corporate structure of the owner or operator;

10. §5.205(c)(2)(D)(i) & (v). Qualifying financial assurance instrument(s) must be:
(i)
. . .
(VI) self Insurance (*i.e.*, financial test and corporate guarantee).
(VII) any other instrument(s) satisfactory to the director.
. . .
(v) When using self insurance (financial test or corporate guarantee) to demonstrate financial responsibility, the owner or operator must satisfy the requirements set forth in 30 TAC 37.251 for financial test or 30 TAC 37.261 for corporate guarantee.

First, the proposed amendments to §5.205(c)(2)(C)(i) should not use the phrase "cover the cost" instead of "perform." The preamble states that replacing the term "perform" with the phrase "cover the cost of" clarifies that the amount of financial assurance must be equal to or greater than the maximum amount necessary. However, the proposed change actually makes the regulation less clear.

The federal regulations at 40 CFR 146.85(c) use the term "perform," and "perform" has been used in §5.205 since Texas was delegated primacy, establishing a common understanding that to "perform" means to conduct a specific activity. Currently, to estimate future ERR costs, an applicant requests estimates from third parties based on the cost to "perform" anticipated ERR

actions. These estimates for the cost to "perform" are well-understood by industry participants and based on actual anticipated costs that could be incurred. In contrast, an estimate to "cover the cost" of responding to a particular ERR event is neither defined nor used by operators or third parties in the industry and introduces unnecessary uncertainty

Second, §5.205(c)(2)(C)(i) requires the amount of financial assurance to be equal to or greater than "the maximum amount necessary" to perform the ERR action. The cost estimate must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to perform the required activities. However, the regulations do not further define "maximum amount necessary" or specify whether the amount must cover the maximum amount necessary to respond to a single ERR event or multiple ERR events over the entire life of the project.

For UIC Class VI wells, financial assurance for the estimated single most costly ERR event is most appropriate. If a worst-case event were to occur, the permittee will be responsible for the maximum amount necessary for responding to the ERR event. If the permittee responds to the event itself and performs all required ERR response (the most likely scenario), the RRC's financial assurance instrument would not be called upon and would remain in place in the event another ERR event occurred in the future. In the very unlikely event that the permittee fails to conduct the emergency response and remedial action itself, the RRC would be able to call upon the permittee's financial assurance instrument, including the parent guarantee or self-insurance, to cover ERR costs. At that time, the RRC could then require that the permittee obtain new financial assurance to cover future potential ERR costs (See, §5.205(c)(H)(i) "The owner or operator must maintain financial responsibility until: (I) the director receives and approves the completed post-injection storage facility care and closure plan; and (II) the director issues the certificate of closure.") Additionally, financial assurance must already be updated annually. By requiring the permittee to carry financial assurance for ERR costs for multiple events over the life of the project, the regulations impose significant financial burdens on the permittee without a corresponding benefit to the RRC or the public, which is already protected under the existing regulations.

Third, self-insurance through either a parent guarantee or financial test should be allowed, provided the applicant is capable of complying with existing Texas regulations for those forms of financial assurance. We understand the Commission's concerns that self-insurance potentially creates a greater level of financial risk to the public; however, the RRC can mitigate this risk and allow operators greater flexibility to meet the financial assurance obligations by requiring operators to comply with existing regulations used by the Texas Commission on Environmental Quality for other classes of UIC wells.

The objective of the financial responsibility regulations is to ensure that adequate funds are available to satisfy corrective action, emergency response and remedial action, post-injection monitoring and site care, and closure of the geologic storage if an operator cannot perform itself. For a financially strong, creditworthy operator, requiring a letter of credit today does not materially enhance protection for the RRC or the public; it simply substitutes bank credit for an already strong corporate credit while consuming liquidity and bank capacity and imposing unnecessary costs. A more efficient approach is to allow a creditworthy operator to satisfy the requirement based on its financial strength, subject to objective credit tests and a requirement to post a letter of credit or

other liquid financial assurance if its credit quality deteriorates. This approach provides the RRC the protection it needs at the relevant time without unnecessarily encumbering liquidity while the operator remains financially sound.

Financial assurance by parent guarantee and financial test is allowed by both Texas and federal regulations (40 CFR 146.85). In Texas, 30 TAC 37.7021 allows either a financial test or a corporate guarantee as financial assurance for plugging and abandonment of Class I and Class III wells, Class I salt cavern disposal wells and associated salt caverns. Applying these same rules to UIC Class VI wells is appropriate and provides strong evidence to the RRC that an owner or operator, or its corporate parent, complying with these regulations can guarantee its ability to satisfy all of its financial obligations. Stringent self-insurance requirements, in addition to annual evaluations of the financial assurance, minimize the potential for an owner or operator to undergo financial difficulties that could hinder its ability to satisfy financial assurance requirements.

Suggested revisions 11 and 12

11. §5.204(b)(3)(B). If the director [~~Commission~~] receives a timely protest [~~regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility~~] from an affected person [~~a person notified pursuant to subsection (a) of this section or from any other affected person within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later~~], then the director will notify the applicant that the director cannot administratively approve the application. Upon the written request of the applicant, the director will schedule a contested case hearing on the application. When the director has received a timely-filed protest, the applicant shall have up to 60 days after the close of the public comment period, or such additional time as may be approved by the director, to request a contested case hearing. Only those affected persons who timely protested may participate in the contested case hearing.

12. §5.204(b)(4) If the Commission receives no timely protest regarding an application for a new permit or for the amendment of an existing permit for a geologic storage facility from an [~~a person notified pursuant to subsection (a) of this section or from any other~~] affected person, or if all timely protests are withdrawn by the protestant, the application shall be uncontested and the director may administratively approve the application. After commencement of the contested case hearing process, if all timely protests are withdrawn or denied, the examiner shall remand the application to the director, and the director may administratively approve the application.

These procedural amendments to §5.204(b)(3) are proposed to clarify the contested case timelines and the procedures for resolution of protests. These clarifications will benefit protestants, applicants, and the Commission by clarifying regulatory procedures and allowing additional time for protestants and applicants to resolve permit-related disputes without engaging in the expense and administrative burden of the contested case process.

Currently, the regulations do not specify a deadline by which time a contested case hearing must be requested. Allowing 60 days for the applicant to request a contested case hearing reduces

uncertainty about the hearing request process and allows Commission staff, the applicant, and protestants additional time to assess the potential options for protest resolution. Additionally, the contested case hearing process should be limited to only those protestants who timely filed their protest. Potentially allowing protestants to join the contested case process after the close of the public comment period materially prejudices the applicant by potentially allowing new protestants as well as new grounds for protest that weren't properly raised during the administrative notice and comment period.

Finally, the regulations as currently written are ambiguous and may create uncertainty for applicants, protestants, and Commission staff regarding the process for approval of a permit application after a protest has been timely filed. The proposed amendments to §5.204(b)(4) clarify that once a permit is no longer protested, it may be administratively approved by the director with no further action required by the Commission. This approach is consistent with the existing regulations, which allow the director discretion to approve unprotested permits and ensures the time and resources of the Commission are focused on contested applications.

Thank you for your effort to make important amendments to the current rules. We appreciate your consideration of our comments in trying to further improve those amendments.

Respectfully submitted,



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