STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
STATEMENT OF LEGAL AUTHORITY TO ADMINISTER THE STATE UNDERGROUND INJECTION CONTROL PROGRAM FOR CLASS V WELLS

I certify, on behalf of the Attorney General of Texas and pursuant to section 1422 of the Safe Drinking Water Act and 42 U.S.C. § 145.24(a), that in my opinion, the laws and regulations of the State of Texas provide adequate authority for the Railroad Commission of Texas (Railroad Commission or Commission) to carry out the program described in the State Underground Injection Control (UIC) Class V Program Description and to meet the requirements of 40 C.F.R. Part 145. This Statement of Legal Authority addresses the Railroad Commission's authority specific to its application to the United States Environmental Protection Agency (EPA) for primary enforcement responsibility for Class V underground injection wells under 40 C.F.R. § 145.1. The specific authorities discussed below appear in lawfully enacted statutes or promulgated regulations, all of which are in effect as of the date of this statement.

I further certify that the environmental audit privilege laws of the State of Texas, codified in the Texas Environmental, Health, and Safety Audit Privilege Act, Chapter 1101 of the Texas Health & Safety Code, do not affect the ability of State of Texas to meet enforcement and information-gathering requirements under the federal Safe Drinking Water Act (SDWA). The SWDA program set forth in the State UIC Class V Program Description is administered by the Railroad Commission, a regulatory agency of the State of Texas. Texas's environmental audit privilege does not apply to any document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law. Tex. Health & Safety Code § 1101.102. Thus, the Texas Environmental, Health, and Safety Audit Privilege Act does not affect the Railroad Commission's ability to administer the State UIC Class V Program, as set forth in the State UIC Program Description pursuant to 40 C.F.R. 145.23, in accordance with federal SWDA requirements.

I. Railroad Commission Jurisdiction Over Class V Injection Wells

The Railroad Commission has the necessary jurisdiction to regulate Class V injection wells in Texas. Underground injection in the state is governed by the Texas Injection Well Act, codified in Chapter 27 of the Texas Water Code (TWC). Section 27.036 of the TWC sets forth the Railroad Commission's jurisdiction over brine mining in Texas, as well as its ability to issue related permits and adopt rules as necessary to administer and regulate brine mining in the state. This section defines a "Class V brine injection well" as "a well that injects spent, naturally occurring brine produced by a brine mining operation into the same formation from which it was withdrawn after extraction of elements, salts, or other useful substances, including halogens or halogen salts." TWC § 27.036(a)(2). For the Railroad Commission's regulatory purposes, a Class V brine injection well is designated as a Class V well. *Id.* § 27.036(f). The Railroad Commission has further been delegated authority to seek primacy to administer and enforce the state program for Class V brine injection wells. *Id.* § 27.036(g).

Under the authority above, the Railroad Commission has adopted rules for its Class V UIC program at Title 16, Chapter 3 of the Texas Administrative Code (TAC). These rules apply to any brine production projects and associated brine production wells, including spent brine return injection wells, regardless of whether the well was initially completed for the purpose of brine production or Class V spent brine return injection, or was initially completed for another purpose and was converted for brine production or Class V spent brine return injection. 16 TAC § 3.82(a)(1-2). The purpose of this Chapter is to ensure that regulated projects are constructed, operated, and maintained such that they will not leak or cause an unauthorized discharge to surface or subsurface waters. *Id.* § 3.82(a)(4).

Federal authority: SDWA §§ 1421, 1422; 40 C.F.R. §§ 144.6, 144.80-81, 145.11, 145.12, 145.13.

State statutory and regulatory authority: TWC § 27.036; 16 TAC § 3.82.

Remarks: Federal rules define Class V wells broadly as "[i]njection wells not included in Class I, II, III, IV, or VI" and as "shallow wells used to place a variety of fluids directly below the land surface." 40 C.F.R. §§ 144.6; 144.80. Further, federal rules specifically state "[w]ells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts" are one example of a Class V well. 40 C.F.R. §144.81(13). Texas rules likewise define a Class V well as "not includ[ing] Class I, II, III, IV, or VI UIC well[s]." 16 TAC § 3.82(b)(13). In alignment with the federal rules, Texas rules specify that the rules only apply to "well[s] into which brine produced by a brine production project is re-injected into the same brine field from which it was withdrawn after the brine resources have been extracted." *Id.*; *see also* TWC 27.036(a)(2). This added specificity does not conflict with the relevant federal definitions for Class V wells, as it is one of the examples of a Class V well in the federal rules.

II. Prohibition of Unauthorized Injection

Texas law prohibits a person from beginning drilling an injection well without first obtaining a permit from the Railroad Commission. TWC § 27.036(c); 16 TAC §§ 3.82(c)(1); (e); (j)(1). Texas rules specifically state that unauthorized injection is prohibited, and further provide that: (1) "[n]o person may operate a Class V spent brine return injection well without obtaining a permit from the Commission under this section" and (2) "[n]o person may begin constructing a new Class V spent brine return injection well until the Commission has issued a permit to drill, deepen, plug back, or reenter the well … and a permit to operate the injection well under this section." *Id.* § 3.82(j)(1).

Federal authority: SDWA § 1421(b)(1)(A); 40 C.F.R. §§ 144.11, 144.31(a).

State statutory and regulatory authority: TWC § 27.036; 16 TAC §§ 3.82(c), (e), (j).

III. Prohibition of Movement of Fluid into Underground Sources of Drinking Water

The Railroad Commission has authority and has adopted rules prohibiting the movement of fluid into underground sources of drinking water (USDW). Such rules provide that no person may operate a Class V well in a manner that allows fluids to escape into USDWs. 16 TAC

TAC § 3.82(j)(2). Texas rules mirror federal standards in disallowing any injection activities that allow fluid to escape from the permitted brine field or the movement of fluids containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. *Id.* § 3.82(j)(3); *see also* 40 C.F.R. § 144.12(a). As under the federal requirements, Texas rules require the permitting applicant carry the burden of demonstrating compliance. *Id.* §§ 3.82(g)(1)(B), (j)(4)(A); *see also* 40 C.F.R. § 144.12(a).

Federal authority: SDWA § 1421(b)(1)(B)(i); 40 C.F.R. § 144.12(a).

State statutory and regulatory authority: 16 TAC §§ 3.82 (g)(1)(B), (j)(2-4).

IV. Authority to Issue Permits and Promulgate Rules

The Railroad Commission is authorized to issue permits for Class V brine injection wells. TWC §§ 27.036(b), (f). The Commission is also authorized to adopt rules and procedures reasonably required to carry out its powers, duties, and functions relating to Class V injection wells. *Id.* § 27.036(d). The Railroad Commission has further been delegated authority to seek primacy to administer and enforce the state program for Class V brine injection wells. *Id.* § 27.036(g). Regarding its authority to issue permits, the Railroad Commission has promulgated rules regarding permit applications, Commission actions on permit applications, and permit conditions. 16 TAC §§ 3.82(e), (g), (i). Further, Texas rules provide additional permit conditions for Class V spent brine return injection wells. *Id.* § 3.82(j).

Federal authority: SDWA § 1421(b)(1)(A)(i); 40 C.F.R. § 145.11(a); 40 C.F.R. Parts 124, 144, 145 and 146.

State statutory and regulatory authority: TWC §§ 27.034, 27.036(b), (d), (f-g); 16 TAC §§ 3.82(e), (g), (i-j).

V. Conditions of Permits

The Railroad Commission has authority to issue Class V injection well permits containing certain conditions referred to in 40 C.F.R. Part 144, Subparts D (Authorization by Permit) and E (Permit Conditions), and Part 146, Subpart F (Criteria and Standards Applicable to Class V Wells). *See* TWC §§ 27.036(b), (c); 16 TAC §§ 3.82(e), (g), (i).

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.11(a), (b)(1), 144.51, 144.52.

State statutory and regulatory authority: TWC § 27.051(b), (c); 16 TAC §§ 3.82(e), (g), (i).

The Texas statutes and regulations providing the various aspects of the Railroad Commission's Class V permitting authority are identified below:

Application for Permit: TWC §§ 27.032; 16 TAC §§ 3.80, 3.82(b)(2), (c)(6), (e).

Signatories: 16 TAC §§ 3.82(c)(2)(A)-(C).

Effect of Permit: 16 TAC §§ 3.82(h), (i), (j).

Duration: 16 TAC § 3.82(i)(9).

Remarks: While Texas rules do not reference the federal rule regarding a 10-year maximum for Class V permit duration under 40 C.F.R. § 144.36, the Texas rule is intended to be stricter, as it aligns with the federal rules for Class II and III wells. *See* 40 C.F.R. §144.36; *see also* 16 TAC §3.82(i)(9). The Railroad Commission will review each issued permit issued once every five years. In conducting such review, the Railroad Commission has the authority to modify, revoke, reissue, or terminate the permit at issue following notice and opportunity for a hearing.

Permit Transfer: 16 TAC § 3.82(i)(10).

Remarks: Under 40 C.F.R. § 144.38(a), a permit may only be transferred to a new owner or operator if the permit has been modified or revoked and reissued to identify the new permittee. Railroad Commission rules address this requirement by making permits not transferable to any person except by modification, or revocation and reissuance of the permit to change the name of the permittee and incorporate other necessary requirements associated with the permittee name change. 16 TAC § 3.82(i)(10). The Railroad Commission also incorporates reporting requirements that include notification to the Commission for changes to a permit (*Id.* § 3.82(j)(8)(E)) and its permit modification rules (*Id.* § 3.82(h)(1)(F)).

Permit Modification: 16 TAC § 3.82(h)(1)-(2).

Permit Termination: 16 TAC § 3.82(h)(3).

Schedule of Compliance: 16 TAC § 3.82(j)(8)(E).

Remarks: Texas rules do not contain a provision equivalent to 40 C.F.R. § 144.53(a)(2)(ii) specifying that if the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit must specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Rather, the Texas rules require all changes to permits, including schedules of compliance, be submitted to and approved by the Commission. 16 TAC § 3.82(j)(8)(E). As such, the Commission may set appropriate dates for permittees to report progress towards completion as needed and may also establish additional conditions to provide for and assure compliance. *Id.* § 3.82(j)(10).

Monitoring Requirements: 16 TAC § 3.82(j)(8), (i)(14).

Confidential Information: 16 TAC §§ 1.68(c), 3.82(d)(3)(iii); Tex. Gov't Code § 552.305

Draft Permit: 16 TAC § 3.82(g).

Remarks: The Texas rules do not contemplate or reference issuance of draft permits. Upon receipt of an application, the Railroad Commission will review same for administrative and technical completeness and, within 30 days, provide a response in writing stating whether the application is complete or deficient. 16 TAC § 3.82(g)(1)(A). A permit may not enter the processing stage and start the notice and comment procedures until the associated application is complete. *Id.* General requirements for a complete application are set forth in 16 TAC § 3.82(c-e). Deficient applications are subject to administrative denial, and, in the case of such denial, the applicant will have a right to request a hearing. *Id.* § 3.82(g)(1)(A), (3). A completed application then triggers the relevant notice and hearing requirements discussed further below. *Id.* § 3.82(f).

Fact Sheet: *See* Program Description.

Remarks: Texas rules do not specifically state that a fact sheet will be prepared for Class V draft permits because, as noted above, draft permits will not be issued as part of the application to permit timeline. *See* 40 C.F.R. § 124.8. Administrative review and technical evaluations will be conducted prior to the Commission deeming an application complete. *See* Program Description. However, the Railroad Commission will include a fact sheet compatible with these federal regulations if determined necessary on a well-by-well basis. *Id.*

VI. Public Participation in Permitting Process

Texas Law provides adequate authority for public participation in the permitting process for Class V injection wells consistent with SDWA requirements, including enhanced public outreach if the facility is located in an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. 16 TAC § 3.82(f)(1). That is, state authority exists to:

a. Notify the public, affected persons, and appropriate governmental agencies of proposed actions concerning the issuance of permits;

b. Transmit such documents and data to and from the EPA and to other appropriate governmental agencies as may be required; and

c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.[1]

See 16 TAC § 3.82(f); *see also* Tex. Gov't Code Chapters 551, 552, and 2001.

[1] In addition, Texas law provides an opportunity for judicial review in state court of the final approval or denial of permit following a contested case hearing. Tex. Gov't Code § 2001.171.

Once an application is administratively complete, the applicant is notified and must then give public notice—to certain identified persons, through certain identified methods, and containing certain identified information through a Railroad Commission provided form—that an administratively complete application has been prepared for a proposed Class V injection well. 16 TAC § 3.82(f)(2). General notice of the administratively complete application must be provided by publication in a newspaper of general circulation in each county where the facility is to be located, with evidence of proper publication provided to the Commission. *Id.* § 3.82(f)(2)(B)(ii). The applicant must also provide individual notice, via mail, to operators on adjacent tracts, lease owners, mineral owners, and surface owners within the brine field, all surface owners of tracts within the production project area, the appropriate city and county clerks where the facility is to be located, and any other class of persons that the Commission determines should receive notice. *Id.* § 3.82(2)(A). All notices must include a description of the facility location, including the county or counties where the brine production project area is located, a copy of the plat, the name of the brine field, the depth to the top of the brine field, the proposed life of the facility, and information on how to protest the application. *Id.* § 3.82(f)(2)(C). Copies of an administratively complete application are made available for inspection by the public, subject to any statutory privileges and claims of confidentiality. Tex. Gov't Code Chapter 552.

Railroad Commission rules provide the public with an opportunity to comment on an administratively complete application and to request a public hearing. *Id.* § 3.82(f)(3). The public comment period must last at least 30 days. *Id.* If one has not already been scheduled, the Commission shall hold a hearing if (1) it receives a timely written protest from an affected person; (2) the application is denied and the applicant timely requests a hearing; (3) the applicant wishes to contest certain permit conditions; or (4) the Commission determines a hearing is in the public interest. *Id.* § 3.82(f)(4)(A). Public notice of the public hearing must be given at least 30 days prior to the hearing. *Id.* § 3.82(f)(4)(B). The notice must include all information required by 40 C.F.R. § 124.10(d)(2) and Tex. Gov't Code § 2001.052 (Contents of Notice). 16 TAC § 1.42(b). At a hearing, the burden of proof lies with the applicant. *Id.* § 3.82(f)(4)(C). Following a hearing, the administrative law judge and technical examiner shall recommend final Commission action. *Id.* § 3.82(f)(4)(D). The Commission then considers the recommendation in a posted open meeting.

Federal authority: 40 C.F.R. §§ 124.10(a)(1)(ii), (a)(1)(iii), (b), (c), (d), (e), 124.11, 124.12(a), 124.17(a), (c).

State statutory and regulatory authority: 16 TAC § 3.82(f); Tex. Gov't Code Chapters 551, 552, 2001.

Remarks: Texas rules do not specifically state how the Railroad Commission will notify the public of the opportunity to be put on the mailing list for a Class V permit application. *See* 40 C.F.R. § 124.10(c)(1)(viii)(C). While not explicitly stated in the rules, the Railroad Commission intends to include information on its website notifying the public of the opportunity to be included on the mailing list, will hold public workshops, utilize outreach through public media, and other tailored approaches to engender public participation. *See* Program Description. Further, Commission rules do not specifically explain how the Commission will respond to public comments. *See* 40 C.F.R. § 124.17(a), (c). However, the Railroad Commission will consider,

address, and prepare a written response to comments when a final permit is issued that will identify and explain any changes from the administratively complete application and respond to all significant comments. *See* Program Description. The written response to comments will be made publicly available on the Commission's website. *Id.*

Additionally, while Texas rules do not explicitly require notice "by any other method reasonably calculated to give actual notice" to potentially affected persons, 40 C.F.R. § 124.10(c)(4), the notification methods required by Railroad Commission rules are adequate to accomplish the purpose of this directive. Commission rules require general notice of an administratively complete application by publication, once a week for two consecutive weeks, in a newspaper of general circulation in each county where a brine production project is proposed to be located. 16 TAC § 3.82(f)(2)(B)(ii). The Commission will also post notice of the administratively complete application on its website, in conjunction with the additional forms of outreach described in the Program Description. These methods are reasonably calculated to ensure that actual notice is given to anyone potentially affected by the administratively complete application.

VII. Compliance Evaluation

The Railroad Commission is authorized to enter onto any public or private property to inspect and investigate conditions relating to injection wells, and to monitor compliance with any of its rules, permit, or orders. TWC § 27.071; Tex. Nat. Res. Code § 91.1012; 16 TAC § 3.82(i)(1). The Railroad Commission and its employees also have authority to examine and copy records relating to the operation of an injection well or geologic storage facility, or any other records required to be maintained by law. TWC § 27.072; Tex. Nat. Res. Code § 91.1012; 16 TAC §§ 3.82(i)(1), (j)(8). The Commission has established reporting and record keeping requirements for regulated entities at 16 TAC §§ 3.82(i)(14-15), (j)(8).

Texas law also encourages public effort in reporting violations. The Railroad Commission accepts written complaints from the public regarding regulated entities and maintains a file on each complaint. Tex. Nat. Res. Code § 81.0591. The file must include, among other things, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and an explanation of the reason the file was closed, if it was closed without action other than to investigate the complaint. *Id.* The Commission must provide the complainant and each person who is a subject of the complaint with a copy of the Commission's policies and procedures relating to complaint investigation and resolution. *Id.*

Federal authority: SDWA § 1421(b)(1)(C); 40 C.F.R. §§ 144.51(i), (j), 145.12.

State statutory and regulatory authority: TWC §§ 27.071, 27.072; Tex. Nat. Res. Code §§ 81.0591, 91.1012; 16 TAC §§ 3.82 (i-j).

VIII. Enforcement Authority

A. Ability to Immediately Restrain Unauthorized Activity

The Railroad Commission is authorized to file suit in any court of competent jurisdiction to enforce, by injunction or other appropriate remedy, the provisions of the TWC and Railroad Commission rules relating to Class V injection wells, as well as the terms, conditions, or provisions of a Class V permit issued by the Railroad Commission. TWC §§ 27.102(a), 27.103; 16 TAC § 3.82 (i)(3). This includes the ability to seek a temporary restraining order to immediately restrain any unauthorized activity which is endangering or causing damage to public health or environment. *Id.*

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. § 145.13(a)(1).

State statutory authority: TWC §§ 27.102(a), 27.103; 16 TAC § 3.82 (i)(3).

B. Injunctive Relief

The Railroad Commission is authorized to sue in court to enjoin a threatened or continuing violation of the provisions of the TWC and Railroad Commission rules relating to Class V injection wells, as well as the terms, conditions, or provisions of a Class V permit issued by the Railroad Commission. TWC §§ 27.102(a), 27.103; 16 § TAC 3.82(i)(3).

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. § 145.13(a)(2).

State statutory authority: TWC §§ 27.102(a), 27.103; 16 § TAC 3.82(i)(3).

C. Civil Penalties and Criminal Fines

The Railroad Commission is authorized to sue in court to recover civil penalties against a person who violates the provisions of the TWC or Railroad Commission rules relating to injection wells, or any term, condition, or provision of a Class V permit issued by the Railroad Commission. TWC § 27.101(a). A person who commits such a violation is subject to a civil penalty of up to $5,000 per day for each violation. *Id.*

In addition, the Railroad Commission may assess an administrative penalty of up to $10,000 per day per violation against any person who violates a provision of the TWC relating to Class V injection wells, or any rule, permit, order license or certificate issued by the Railroad Commission thereunder. *Id.* § 27.1011. Each day of continuing violation may be considered a separate violation for purposes of penalty assessment. *Id.* § 27.1011(b). In determining the amount of an administrative penalty, the Railroad Commission must consider the seriousness of the violation; any hazard to the health or safety of the public; the permittee's history of previous violations; and the demonstrated good faith of the person charged. *Id.* § 27.1011(c). The penalty may be assessed only after the person charged has been given an opportunity for a public hearing. *Id.* § 27.1012(a).

A person who knowingly or intentionally violates the provisions of the TWC or Railroad Commission rules relating to injection wells, or any term, condition, or provision of a permit issued by the Railroad Commission thereunder is subject to a criminal fine of up to $5,000 per day for each violation. *Id.* § 27.105(a).

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.13(a)(3), (b), (c).

State statutory authority: TWC §§ 27.101, 27.1011, 27.1012, 27.103, 27.105.

D. Public Participation in the Enforcement Process

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 145.13(d).

State statutory and regulatory authority: Tex. Gov't Code Ch. 551; Tex. Nat. Res. Code § 81.0591; Tex. R. Civ. P. 60; 16 TAC §§ 1.124(a), 1.37.

40 C.F.R. § 145.13(d) requires that the State provide for public participation in state enforcement proceedings by allowing for intervention as of right in certain civil and administrative actions, or by implementing the three procedures described in 40 C.F.R. § 145.13(d)(2). By virtue of Texas Government Code Chapter 551, Texas Rule of Civil Procedure 60, Texas Natural Resources Code Section 81.0591, and 16 TAC §§ 1.124(a), 1.37, the Texas program meets these requirements.

Handling of Complaints: Section 81.0591 of the Texas Natural Resources Code provides for public participation in state enforcement proceedings, in conformance with 40 C.F.R. § 145.13(d)(2)(i) as follows: if a written complaint is filed with the Railroad Commission relating to an entity regulated by the Commission, the Commission must notify the parties to the complaint at least quarterly of the status of the complaint until final disposition of the complaint. This statute assures that the public will be kept regularly apprised of the enforcement case status and will have a meaningful opportunity to participate as enforcement cases progress.

Administrative Enforcement Actions: Texas complies with 40 C.F.R. § 145.13(d)(2)(ii) in the administrative context. Railroad Commission rules allow for intervention of any person who has a justiciable or administratively cognizable interest in a contested case, including those cases in which failure to obtain a UIC permit or violation of a UIC permit is alleged. 16 TAC § 1.37. Any party to a contested case may request oral argument on a matter before the Commissioners. 16 TAC § 1.124.

Additionally, certain enforcement actions at the administrative level must be set on the Commissioners' agenda for a final decision in compliance with the Open Meetings Act, Tex. Government Code, Chapter 551. The Commission must give public notice of the meeting and may provide interested parties with an opportunity to make written or oral comments. Tex. Gov't Code § 551.041; Railroad Commission Policy on Public Participation in Open Meetings. The Commission also includes, at every regular open meeting, an agenda item to provide the public with an opportunity to speak on any matter within the Commission's jurisdiction that has not been specifically posted in advance for that open meeting.

Judicial Enforcement: Texas also complies with 40 C.F.R. § 145.13(d)(2)(ii) in the judicial enforcement context. Texas law allows for a party to file a pleading to intervene in any civil action, subject to being stricken for sufficient cause on the motion of any party. Tex. R. Civ. P. 60. Under TWC § 7.110(d), the Office of the Attorney General may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Notice and Comment on Proposed Settlements: Final decisions in certain enforcement actions before the Railroad Commission must be set on the commissioners' agenda in compliance with the Open Meetings Act, Tex. Gov't Code, Chapter 551. The Commission must give public notice of the meeting and may provide interested parties with an opportunity to make written or oral comments. Tex. Gov't Code § 551.041; Railroad Commission Policy on Public Participation in Open Meetings. The Commission also includes, at every regular open meeting, an agenda item to provide the public with an opportunity to speak on any matter within the Commission's jurisdiction that has not been specifically posted in advance for that open meeting. Tex. Nat. Res. Code § 81.062; *see also* Program Description.

IX. Technical Criteria and Standards

The Railroad Commission has the authority to require by rule the application of technical criteria and standards consistent with 40 C.F.R. Part 146. *See* TWC §§ 27.034, 27.036. The Texas rules implementing the technical criteria and standards for Class V wells are located in Title 16, Chapter 3 of the Texas Administrative Code.

Federal authority: 40 C.F.R. §§ 146.1–.5, 146.81–.95.

State statutory and regulatory authority: TWC §§ 27.034, 27.036; 16 TAC Chapter 3.

X. Authority to Identify Aquifers that are USDWs and Exempted Aquifers

The Railroad Commission has the authority and has adopted rules to identify underground sources of drinking water and exempted aquifers. TWC § 27.033; 16 TAC Chapter 3; *see also* Program Description at XI. Aquifer exemptions are not anticipated to be necessary.

Federal authority: SDWA § 1421(b)(1); 40 C.F.R. §§ 144.7, 146.4.

State statutory authority: TWC § 27.033.

XI. Indian Lands

The Railroad Commission is not seeking authority over any federally recognized Indian Lands and does not currently administer wells subject to other UIC classifications in these areas.

XII. Attorney General Certification

I certify, on behalf of the Attorney General of Texas, in accordance with section 1422 of the Safe Drinking Water Act and 40 C.F.R. § 145.24(a), that it is my opinion that the laws and regulations of the State of Texas provide adequate authority for the Railroad Commission of Texas to carry out the program described in the State Underground Injection Control Class V Program Description and to meet the requirements of 40 C.F.R. Part 145. It is also my opinion that the specific laws and regulations of the State of Texas discussed in this statement are duly adopted and are enforceable. These laws and regulations are in the form of lawfully enacted statutes or regulations that are fully effective as of the date of this statement.

I further certify that the Texas Environmental, Health, and Safety Audit Privilege Act, Chapter 1101 of the Texas Health and Safety Code, does not affect the ability of the State of Texas to meet the enforcement and information-gathering requirements under the federal Safe Drinking Water Act.

DocuSigned by:
Austin Kinghorn
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AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

4/10/2026 | 8:22 PM CDT
Date