

CHRISTI CRADDICK, *CHAIRMAN*
 WAYNE CHRISTIAN, *COMMISSIONER*
 JIM WRIGHT, *COMMISSIONER*



ALEXANDER C. SCHOCH, *GENERAL COUNSEL*

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
 Commissioner Wayne Christian
 Commissioner Jim Wright

FROM: Haley Cochran, Assistant General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: August 15, 2024

SUBJECT: Proposed amendments to 16 TAC §3.8 and various other rules in Chapter 3 and proposed new rules and amendments in 16 TAC Chapter 4

August 15, 2024		
Approved	Denied	Abstain
DS  DS  DS 		

Attached is Staff's recommendation to publish proposed amendments to various rules in 16 Texas Administrative Code Chapters 3 and 4 and proposed new rules in Chapter 4, Subchapters A and B.

The new rules in Chapter 4, Subchapter A are proposed to incorporate and update the requirements from §3.8, relating to Water Protection, and §3.57, relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials. Sections 3.8 and 3.57 are also proposed to be amended to remove all substantive language from the rules and replace with a notice that the requirements are relocated to Chapter 4. Several other rules in Chapter 3 are amended to replace references to §3.8 and §3.57 with the corresponding provision in new Subchapter A of Chapter 4.

New Subchapter A is also proposed to ensure Commission rules adhere to statutory changes made in recent legislative sessions. The Commission proposes amendments and new rules in Subchapter B of Chapter 4 to incorporate legislative requirements and make updates consistent with the new rules proposed in Subchapter A.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on August 15th, the proposal should appear in the August 30th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more than two additional weeks to review and submit comments to the Commission.

Cc: Danny Sorrells, Acting Executive Director and Director of the Oil and Gas Division
 Paul Dubois, Assistant Director, Technical Permitting, Oil and Gas Division

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

Page 1 of 37

1 The Railroad Commission of Texas (Commission) proposes amendments to §§3.8, 3.14, 3.22,
2 3.30, 3.57, 3.91, and 3.98, relating to Water Protection; Plugging; Protection of Birds; Memorandum of
3 Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on
4 Environmental Quality (TCEQ); Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste
5 Materials; Cleanup of Soil Contaminated by a Crude Oil Spill; and Standards for Management of
6 Hazardous Oil and Gas Waste.

7 The Commission proposes amendments to §3.8 and §3.57 to remove all substantive language
8 from the rules and replace with notice that the requirements are relocated to Chapter 4 of this title
9 (relating to Environmental Protection) which is proposed in a concurrent rulemaking. Other proposed
10 amendments update cross-references to certain Commission rules in conjunction with the proposed new
11 and amended rules in Chapter 4.

12 To align with the proposed amendments and new rules in Chapter 4, the Commission proposes
13 that the proposed amendments in §3.8 and §3.57 go into effect July 1, 2025, which is approximately six
14 months after the anticipated default effective date. The Commission notes that if the rulemaking timeline
15 changes, the rules may be adopted at a later date. If that occurs, the proposed effective dates will be
16 updated upon adoption.

17 Paul Dubois, Assistant Director, Technical Permitting, Oil & Gas Division, has determined that
18 for each year of the first five years the amendments as proposed will be in effect, there will be no
19 additional costs to state government as a result of enforcing or administering the amendments. There will
20 be no fiscal effect on local government.

21 Mr. Dubois has determined that for the first five years the proposed amendments are in effect, the
22 primary public benefit will be consistency of rule references within Commission rules.

23 Mr. Dubois has determined that for each year of the first five years that the amendments will be
24 in effect, there will be no economic costs for persons required to comply as a result of adoption of the
25 proposed amendments.

26 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
27 Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact
28 statement that assesses the potential impact of a proposed rule on rural communities, small businesses,
29 and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving
30 the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities,
31 small businesses, or micro-businesses. The proposed amendments will not have an adverse economic
32 effect on rural communities, small businesses, or micro-businesses. Therefore, the regulatory flexibility
33 analysis is not required.

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

Page 2 of 37

1 The Commission has also determined that the proposed amendments will not affect a local
2 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
3 Texas Government Code §2001.022.

4 The Commission has determined that the amendments do not meet the statutory definition of a
5 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
6 analysis conducted pursuant to that section is not required.

7 During the first five years that the amendments would be in effect, the proposed amendments
8 would not: create or eliminate any employee positions; require an increase or decrease in future
9 legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease
10 the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation;
11 or affect the state's economy.

12 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
13 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
14 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
15 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 pm on Monday,
16 September 30, 2024. The Commission finds that this comment period is reasonable because the proposal
17 and an online comment form will be available on the Commission's website more than two weeks prior to
18 Texas Register publication of the proposal, giving interested persons additional time to review, analyze,
19 draft, and submit comments. The Commission cannot guarantee that comments submitted after the
20 deadline will be considered. For further information, call Mr. Dubois at (512) 463-6778. The status of
21 Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)
22 [rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

23 The Commission proposes the amendments to pursuant to Texas Natural Resources Code
24 §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or
25 engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for
26 governing and regulating persons and their operations under the jurisdiction of the Commission.

27 Statutory authority: Texas Natural Resources Code §§81.051 and 81.052.

28 Cross reference to statute: Texas Natural Resources Code Chapter 81.

29
30 §3.8. Water Protection.

31 Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title
32 (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste
33 Management).

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

Page 3 of 37

1 ~~[(a) The following words and terms when used in this section shall have the following meanings,~~
2 ~~unless the context clearly indicates otherwise.]~~

3 ~~[(1) Basic sediment pit—Pit used in conjunction with a tank battery for storage of basic~~
4 ~~sediment removed from a production vessel or from the bottom of an oil storage tank. Basic sediment pits~~
5 ~~were formerly referred to as burn pits.]~~

6 ~~[(2) Brine pit—Pit used for storage of brine which is used to displace hydrocarbons from~~
7 ~~an underground hydrocarbon storage facility.]~~

8 ~~[(3) Collecting pit—Pit used for storage of saltwater or other oil and gas wastes prior to~~
9 ~~disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a~~
10 ~~skimming pit.]~~

11 ~~[(4) Completion/workover pit—Pit used for storage or disposal of spent completion fluids,~~
12 ~~workover fluids and drilling fluid, silt, debris, water, brine, oil seum, paraffin, or other materials which~~
13 ~~have been cleaned out of the wellbore of a well being completed or worked over.]~~

14 ~~[(5) Drilling fluid disposal pit—Pit, other than a reserve pit, used for disposal of spent~~
15 ~~drilling fluid.]~~

16 ~~[(6) Drilling fluid storage pit—Pit used for storage of drilling fluid which is not currently~~
17 ~~being used but which will be used in future drilling operations. Drilling fluid storage pits are often~~
18 ~~centrally located among several leases.]~~

19 ~~[(7) Emergency saltwater storage pit—Pit used for storage of produced saltwater for~~
20 ~~limited period of time. Use of the pit is necessitated by a temporary shutdown of disposal well or fluid~~
21 ~~injection well and/or associated equipment, by temporary overflow of saltwater storage tanks on a~~
22 ~~producing lease or by a producing well loading up with formation fluids such that the well may die.~~
23 ~~Emergency saltwater storage pits may sometimes be referred to as emergency pits or blowdown pits.]~~

24 ~~[(8) Flare pit—Pit which contains a flare and which is used for temporary storage of liquid~~
25 ~~hydrocarbons which are sent to the flare during equipment malfunction but which are not burned. A flare~~
26 ~~pit is used in conjunction with a gasoline plant, natural gas processing plant, pressure maintenance or~~
27 ~~repressurizing plant, tank battery, or a well.]~~

28 ~~[(9) Fresh makeup water pit—Pit used in conjunction with a drilling rig for storage of~~
29 ~~fresh water used to make up drilling fluid or hydraulic fracturing fluid.]~~

30 ~~[(10) Gas plant evaporation/retention pit—Pit used for storage or disposal of cooling~~
31 ~~tower blowdown, water condensed from natural gas, and other wastewater generated at gasoline plants,~~
32 ~~natural gas processing plants, or pressure maintenance or repressurizing plants.]~~

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

Page 4 of 37

1 ~~[(11) Mud circulation pit—Pit used in conjunction with drilling rig for storage of drilling~~
2 ~~fluid currently being used in drilling operations.]~~

3 ~~[(12) Reserve pit—Pit used in conjunction with drilling rig for collecting spent drilling~~
4 ~~fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the~~
5 ~~well site. Reserve pits are sometimes referred to as slush pits or mud pits.]~~

6 ~~[(13) Saltwater disposal pit—Pit used for disposal of produced saltwater.]~~

7 ~~[(14) Skimming pit—Pit used for skimming oil off saltwater prior to disposal of saltwater~~
8 ~~at a disposal well or fluid injection well.]~~

9 ~~[(15) Washout pit—Pit located at a truck yard, tank yard, or disposal facility for storage or~~
10 ~~disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.]~~

11 ~~[(16) Water condensate pit—Pit used in conjunction with a gas pipeline drip or gas~~
12 ~~compressor station for storage or disposal of fresh water condensed from natural gas.]~~

13 ~~[(17) Generator—Person who generates oil and gas wastes.]~~

14 ~~[(18) Carrier—Person who transports oil and gas wastes generated by a generator. A~~
15 ~~carrier of another person's oil and gas wastes may be a generator of his own oil and gas wastes.]~~

16 ~~[(19) Receiver—Person who stores, handles, treats, reclaims, or disposes of oil and gas~~
17 ~~wastes generated by a generator. A receiver of another person's oil and gas wastes may be a generator of~~
18 ~~his own oil and gas wastes.]~~

19 ~~[(20) Director—Director of the Oil and Gas Division or his staff delegate designated in~~
20 ~~writing by the director of the Oil and Gas Division or the commission.]~~

21 ~~[(21) Person—Natural person, corporation, organization, government or governmental~~
22 ~~subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.]~~

23 ~~[(22) Affected person—Person who, as a result of the activity sought to be permitted, has~~
24 ~~suffered or may suffer actual injury or economic damage other than as a member of the general public.]~~

25 ~~[(23) To dewater—To remove the free water.]~~

26 ~~[(24) To dispose—To engage in any act of disposal subject to regulation by the~~
27 ~~commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing,~~
28 ~~depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.]~~

29 ~~[(25) Landfarming—A waste management practice in which oil and gas wastes are mixed~~
30 ~~with or applied to the land surface in such a manner that the waste will not migrate off the landfarmed~~
31 ~~area.]~~

32 ~~[(26) Oil and gas wastes—Materials to be disposed of or reclaimed which have been~~
33 ~~generated in connection with activities associated with the exploration, development, and production of~~

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

Page 5 of 37

~~oil or gas or geothermal resources, as those activities are defined in paragraph (30) of this subsection, and materials to be disposed of or reclaimed which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).]~~

~~[(27) Oil field fluids—Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes.]~~

~~[(28) Pollution of surface or subsurface water—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state 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.]~~

~~[(29) Surface or subsurface water—Groundwater, percolating or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]~~

~~[(30) Activities associated with the exploration, development, and production of oil or gas or geothermal resources—Activities associated with:]~~

~~[(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;]~~

~~[(B) the production of oil or gas or geothermal resources, including:]~~

~~[(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;]~~

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

Page 6 of 37

~~[(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;]~~

~~[(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;]~~

~~[(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;]~~

~~[(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and]~~

~~[(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;]~~

~~[(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and]~~

~~[(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) -- (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901, et seq.);]~~

~~[(31) Mined brine -- Brine produced from a brine mining injection well by solution of subsurface salt formations. The term "mined brine" does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.]~~

~~[(32) Brine mining pit -- Pit, other than a fresh mining water pit, used in connection with activities associated with the solution mining of brine. Most brine mining pits are used to store mined brine.]~~

~~[(33) Fresh mining water pit -- Pit used in conjunction with a brine mining injection well for storage of water used for solution mining of brine.]~~

1 ~~[(34) Inert wastes—Nonreactive, nontoxic, and essentially insoluble oil and gas wastes,~~
2 ~~including, but not limited to, concrete, glass, wood, metal, wire, plastic, fiberglass, and trash.]~~

3 ~~[(35) Coastal zone—The area within the boundary established in Title 31, Texas~~
4 ~~Administrative Code, §503.1 (Coastal Management Program Boundary).]~~

5 ~~[(36) Coastal management program (CMP) rules—The enforceable rules of the Texas~~
6 ~~Coastal Management Program codified at Title 31, Texas Administrative Code, Chapters 501, 505, and~~
7 ~~506.]~~

8 ~~[(37) Coastal natural resource area (CNRA)—One of the following areas defined in Texas~~
9 ~~Natural Resources Code, §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore~~
10 ~~areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster~~
11 ~~reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water~~
12 ~~in the open Gulf of Mexico, and water under tidal influence.]~~

13 ~~[(38) Coastal waters—Waters under tidal influence and waters of the open Gulf of~~
14 ~~Mexico.]~~

15 ~~[(39) Critical area—A coastal wetland, an oyster reef, a hard substrate reef, submerged~~
16 ~~aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code, §33.203.]~~

17 ~~[(40) Practicable—Available and capable of being done after taking into consideration~~
18 ~~existing technology, cost, and logistics in light of the overall purpose of the activity.]~~

19 ~~[(41) Non-commercial fluid recycling—The recycling of fluid produced from an oil or gas~~
20 ~~well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced~~
21 ~~from the hydraulic fracturing process on an existing commission-designated lease or drilling unit~~
22 ~~associated with a commission-issued drilling permit or upon land leased or owned by the operator for the~~
23 ~~purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9~~
24 ~~of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit~~
25 ~~issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), where the operator~~
26 ~~of the lease, or drilling unit, or non-commercial disposal or injection well treats or contracts with a person~~
27 ~~for the treatment of the fluid, and may accept such fluid from other leases and or operators.]~~

28 ~~[(42) Non-commercial fluid recycling pit—Pit used in conjunction with one or more oil or~~
29 ~~gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or~~
30 ~~unit and is located on an existing commission-designated lease or drilling unit associated with a~~
31 ~~commission-issued drilling permit, or upon land leased or owned by the operator for the purposes of~~
32 ~~operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title~~

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

Page 8 of 37

1 ~~or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, for the~~
2 ~~storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid.]~~

3 ~~[(43) Recycle—To process and/or use or re-use oil and gas wastes as a product for which~~
4 ~~there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in~~
5 ~~this subsection, does not include injection pursuant to a permit issued under §3.46 of this title.]~~

6 ~~[(44) Treated fluid—Fluid that has been treated using water treatment technologies to~~
7 ~~remove impurities such that the treated fluid can be reused or recycled. Treated fluid is not a waste but~~
8 ~~may become a waste if it is abandoned or disposed of rather than reused or recycled.]~~

9 ~~[(45) Recyclable product—A reusable material as defined in §4.204(12) of this title~~
10 ~~(relating to Definitions).]~~

11 ~~[(46) 100-year flood plain—An area that is inundated by a 100-year flood, which is a~~
12 ~~flood that has a one percent or greater chance of occurring in any given year, as determined from maps or~~
13 ~~other data from the Federal Emergency Management Administration (FEMA), or, if not mapped by~~
14 ~~FEMA, from the United States Department of Agriculture soil maps.]~~

15 ~~[(47) Distilled water—Water that has been purified by being heated to a vapor form and~~
16 ~~then condensed into another container as liquid water that is essentially free of all solutes.]~~

17 ~~[(b) No pollution. No person conducting activities subject to regulation by the commission may~~
18 ~~cause or allow pollution of surface or subsurface water in the state.]~~

19 ~~[(c) Exploratory wells. Any oil, gas, or geothermal resource well or well drilled for exploratory~~
20 ~~purposes shall be governed by the provisions of statewide or field rules which are applicable and pertain~~
21 ~~to the drilling, safety, casing, production, abandoning, and plugging of wells.]~~

22 ~~[(d) Pollution control.]~~

23 ~~[(1) Prohibited disposal methods. Except for those disposal methods authorized for~~
24 ~~certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or §3.98 of this title~~
25 ~~(relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to~~
26 ~~be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title~~
27 ~~(relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and~~
28 ~~gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods~~
29 ~~prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines,~~
30 ~~geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or~~
31 ~~drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface~~
32 ~~water.]~~

1 ~~[(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil~~
2 ~~products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil~~
3 ~~field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use~~
4 ~~the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person~~
5 ~~complies with the terms of such permit while using the pit, and if the person has permission of the~~
6 ~~reeceiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to,~~
7 ~~the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits;~~
8 ~~skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits);~~
9 ~~drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; and gas plant~~
10 ~~evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage~~
11 ~~or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this~~
12 ~~subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in~~
13 ~~the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using~~
14 ~~the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose~~
15 ~~of all oil and gas wastes which are in the pit.]~~

16 ~~[(3) Authorized disposal methods.]~~

17 ~~[(A) Fresh water condensate. A person may, without a permit, dispose of fresh~~
18 ~~water which has been condensed from natural gas and collected at gas pipeline drips or gas compressor~~
19 ~~stations, provided the disposal is by a method other than disposal into surface water of the state.]~~

20 ~~[(B) Inert wastes. A person may, without a permit, dispose of inert and~~
21 ~~essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire,~~
22 ~~provided the disposal is by a method other than disposal into surface water of the state.]~~

23 ~~[(C) Low chloride drilling fluid. A person may, without a permit, dispose of the~~
24 ~~following oil and gas wastes by landfarming, provided the wastes are disposed of on the same lease where~~
25 ~~they are generated, and provided the person has the written permission of the surface owner of the tract~~
26 ~~where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams~~
27 ~~per liter (mg/liter) or less; drill cuttings, sands, and silts obtained while using water base drilling fluids~~
28 ~~with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and~~
29 ~~other equipment at the well site.]~~

30 ~~[(D) Other drilling fluid. A person may, without a permit, dispose of the~~
31 ~~following oil and gas wastes by burial, provided the wastes are disposed of at the same well site where~~
32 ~~they are generated: water base drilling fluid which had a chloride concentration in excess of 3,000~~
33 ~~mg/liter but which have been dewatered; drill cuttings, sands, and silts obtained while using oil base~~

drilling fluids or water base drilling fluids with a chloride concentration in excess of 3,000 mg/liter; and those drilling fluids and wastes allowed to be landfarmed without a permit.]

[~~(E) Completion/workover pit wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a completion/workover pit, provided the wastes have been dewatered, and provided the wastes are disposed of at the same well site where they are generated: spent completion fluids, workover fluids, and the materials cleaned out of the wellbore of a well being completed or worked over.~~]

[~~(F) Contents of non-commercial fluid recycling pit. A person may, without a permit, dispose of the solids from a non-commercial fluid recycling pit by burial in the pit, provided the pit has been dewatered.~~]

[~~(G) Effect on backfilling. A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.~~]

[~~(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits on the following conditions.~~]

[~~(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:~~]

[~~(i) drilling fluids, whether fresh water base, saltwater base, or oil base;~~]

[~~(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;~~]

[~~(iii) wash water used for cleaning drill pipe and other equipment at the well site;~~]

[~~(iv) drill stem test fluids; and~~]

[~~(v) blowout preventer test fluids.~~]

[~~(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.~~]

1 ~~[(C) Basic sediment pits. A person shall not deposit or cause to be deposited into~~
2 ~~a basic sediment pit any oil field fluids or oil and gas wastes other than basic sediment removed from a~~
3 ~~production vessel or from the bottom of an oil storage tank. Although a person may store basic sediment~~
4 ~~in a basic sediment pit, a person may not deposit oil or free saltwater in the pit. The total capacity of a~~
5 ~~basic sediment pit shall not exceed a capacity of 50 barrels. The area covered by a basic sediment pit shall~~
6 ~~not exceed 250 square feet.]~~

7 ~~[(D) Flare pits. A person shall not deposit or cause to be deposited into a flare pit~~
8 ~~any oil field fluids or oil and gas wastes other than the hydrocarbons designed to go to the flare during~~
9 ~~upset conditions at the well, tank battery, or gas plant where the pit is located. A person shall not store~~
10 ~~liquid hydrocarbons in a flare pit for more than 48 hours at a time.]~~

11 ~~[(E) Fresh makeup water pits and fresh mining water pits. A person shall not~~
12 ~~deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field~~
13 ~~fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid. A person shall~~
14 ~~not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field~~
15 ~~fluids other than water used for solution mining of brine.]~~

16 ~~[(F) Water condensate pits. A person shall not deposit or cause to be deposited~~
17 ~~into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed~~
18 ~~from natural gas and collected at gas pipeline drips or gas compressor stations.]~~

19 ~~[(G) Non-commercial fluid recycling pits.]~~

20 ~~[(i) A person shall not deposit or cause to be deposited into a non-~~
21 ~~commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those fluids described~~
22 ~~in subsection (a)(42) of this section.]~~

23 ~~[(ii) All pits shall be sufficiently large to ensure adequate storage~~
24 ~~capacity and freeboard taking into account anticipated precipitation.]~~

25 ~~[(iii) All pits shall be designed to prevent stormwater runoff from~~
26 ~~entering the pit. If a pit is constructed with a dike or berm, the height, slope, and construction material of~~
27 ~~such dike or berm shall be such that it is structurally sound and does not allow seepage.]~~

28 ~~[(iv) A freeboard of at least two feet shall be maintained at all times.]~~

29 ~~[(v) All pits shall be lined. The liner shall be designed, constructed, and~~
30 ~~installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water,~~
31 ~~or surface water at any time during the life of the pit. The liner shall be installed according to standard~~
32 ~~industry practices, shall be constructed of materials that have sufficient chemical and physical properties,~~
33 ~~including thickness, to prevent failure during the expected life of the pit. All liners shall have a hydraulic~~

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

Page 12 of 37

conductivity that is 1.0×10^{-7} cm/sec or less. A liner may be constructed of either natural or synthetic materials.]

[~~(I) Procedures shall be in place to routinely monitor the integrity of the liner of pit. If liner failure is discovered at any time, the pit shall be emptied and the liner repaired prior to placing the pit back in service. Acceptable monitoring procedures include an annual visual inspection of the pit liner or the installation of a double liner and leak detection system. Alternative monitoring procedures may be approved by the director if the operator demonstrates that the alternative is at least equivalent in the protection of surface and subsurface water as the provisions of this section.~~]

[~~(II) The liner of a pit with a single liner shall be inspected annually to ensure that the liner has not failed. This inspection shall be completed by emptying the pit and visually inspecting the liner.~~]

[~~(III) If the operator does not propose to empty the pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system must be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.~~]

[~~(IV) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to commission personnel upon request.~~]

[~~(vi) The operator of the pit shall provide written notification to the district director prior to construction of the pit, or prior to the use of an existing pit as a non-commercial fluid recycling pit. Such notification shall include:~~]

[~~(I) the location of the pit including the lease name and number or drilling permit number and the latitude and longitude;~~]

[~~(II) the dimensions and maximum capacity of the pit; and~~]

[~~(III) a signed statement that the operator has written permission from the surface owner of the tract upon which the pit is located for construction and use of the pit for such purpose.~~]

[~~(vii) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.~~]

~~[(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.]~~

~~[(I) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations.]~~

~~[(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.]~~

~~[(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.]~~

~~[(IV) Basic sediment pits, flare pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits.]~~

~~[(V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered.]~~

[(ii) A person who maintains or uses a reserve pit, mud-circulation pit, fresh makeup water pit, non-commercial fluid recycling pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause (i) of this subparagraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.]

~~[(iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit backfill the pit sooner than the time prescribed by clause (i) of this subparagraph if the director determines that oil and~~

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

Page 14 of 37

1 ~~gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper~~
2 ~~storage or disposal of oil and gas wastes or oil field fluids.]~~

3 ~~[(iv) Prior to backfilling any reserve pit, mud circulation pit,~~
4 ~~completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water~~
5 ~~condensate pit whose use or maintenance is authorized by this paragraph, the person maintaining or using~~
6 ~~the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose~~
7 ~~of all oil and gas wastes which are in the pit.]~~

8 ~~[(I) Unless otherwise approved by the district director after a~~
9 ~~showing that the fluids will be confined in the pit at all times, all authorized pits shall be constructed,~~
10 ~~used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in~~
11 ~~subsection (a) of this section. The operator may request a hearing if the district director denies approval of~~
12 ~~the request to construct a pit within a 100-year flood plain.]~~

13 ~~[(II) In the event of an unauthorized discharge from any pit~~
14 ~~authorized by this paragraph, the operator shall take any measures necessary to stop or control the~~
15 ~~discharge and report the discharge to the district office as soon as possible.]~~

16 ~~[(5) Responsibility for disposal.]~~

17 ~~[(A) Permit required. No generator or receiver may knowingly utilize the services~~
18 ~~of a carrier to transport oil and gas wastes if the carrier is required by this rule to have a permit to~~
19 ~~transport such wastes but does not have such a permit. No carrier may knowingly utilize the services of a~~
20 ~~second carrier to transport oil and gas wastes if the second carrier is required by this rule to have a permit~~
21 ~~to transport such wastes but does not have such a permit. No generator or carrier may knowingly utilize~~
22 ~~the services of a receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the receiver is~~
23 ~~required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such~~
24 ~~wastes but does not have such a permit. No receiver may knowingly utilize the services of a second~~
25 ~~receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the second receiver is required~~
26 ~~by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes~~
27 ~~but does not have such a permit. Any person who plans to utilize the services of a carrier or receiver is~~
28 ~~under a duty to determine that the carrier or receiver has all permits required by the Oil and Gas Division~~
29 ~~to transport, store, handle, treat, reclaim, or dispose of oil and gas wastes.]~~

30 ~~[(B) Improper disposal prohibited. No generator, carrier, receiver, or any other~~
31 ~~person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and~~
32 ~~gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:]~~

1 ~~[(i) the generator utilizes the services of a carrier or receiver who~~
2 ~~improperly disposes of the wastes; and]~~

3 ~~[(ii) the generator knew or reasonably should have known that the carrier~~
4 ~~or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent~~
5 ~~the improper disposal.]~~

6 ~~[(6) Permits.]~~

7 ~~[(A) Standards for permit issuance. A permit to maintain or use a pit for storage~~
8 ~~of oil field fluids or oil and gas wastes may only be issued if the commission determines that the~~
9 ~~maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the~~
10 ~~pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method,~~
11 ~~including disposal into a pit, may only be issued if the commission determines that the disposal will not~~
12 ~~result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water. A~~
13 ~~permit to maintain or use any unlined brine mining pit or any unlined pit, other than an emergency~~
14 ~~saltwater storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other~~
15 ~~mineralized waters may only be issued if the commission determines that the applicant has conclusively~~
16 ~~shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution~~
17 ~~of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit,~~
18 ~~or because the surface or subsurface water in the area of the pit would be physically isolated by naturally~~
19 ~~occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit.~~
20 ~~Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the~~
21 ~~waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to~~
22 ~~maintain or use a pit will state the conditions under which the pit may be operated, including the~~
23 ~~conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any~~
24 ~~permits issued pursuant to this paragraph may contain requirements concerning the design and~~
25 ~~construction of pits and disposal facilities, including requirements relating to pit construction materials,~~
26 ~~dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or~~
27 ~~replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to~~
28 ~~maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines,~~
29 ~~geothermal resource waters, or other mineralized waters will contain requirements relating to liner~~
30 ~~material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing~~
31 ~~liners.]~~

32 ~~[(B) Application. An application for a permit to maintain or use a pit or to~~
33 ~~dispose of oil and gas wastes shall be filed with the commission in Austin. The applicant shall mail or~~

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

Page 16 of 37

1 deliver a copy of the application to the appropriate district office on the same day the original application
2 is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the
3 commission on the date it is received by the commission in Austin. When a commission-prescribed
4 application form exists, an applicant shall make application on the prescribed form according to the
5 instructions on such form. The director may require the applicant to provide the commission with
6 engineering, geological, or other information which the director deems necessary to show that issuance of
7 the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or
8 subsurface water.]

9 [(C) Notice. The applicant shall give notice of the permit application to the
10 surface owners of the tract upon which the pit will be located or upon which the disposal will take place.
11 When the tract upon which the pit will be located or upon which the disposal will take place lies within
12 the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city
13 clerk or other appropriate official. Where disposal is to be by discharge into a watercourse other than the
14 Gulf of Mexico or a bay, the applicant shall also give notice to the surface owners of each waterfront tract
15 between the discharge point and 1/2 mile downstream of the discharge point except for those waterfront
16 tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront
17 tracts within 1/2 mile of the discharge point lie within the corporate limits of an incorporated city, town,
18 or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the
19 permit application shall consist of a copy of the application together with a statement that any protest to
20 the application should be filed with the commission within 15 days of the date the application is filed with
21 the commission. The applicant shall mail or deliver the required notice to the surface owners and the city
22 clerk or other appropriate official on or before the date the application is mailed or delivered to the
23 commission in Austin. If, in connection with a particular application, the director determines that another
24 class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority,
25 should receive notice of the application, the director may require the applicant to mail or deliver notice to
26 members of that class. If the director determines that, after diligent efforts, the applicant has been unable
27 to ascertain the name and address of one or more persons required by this subparagraph to be notified,
28 then the director may authorize the applicant to notify such persons by publishing notice of the
29 application. The director shall determine the form of the notice to be published. The notice shall be
30 published once each week for two consecutive weeks by the applicant in a newspaper of general
31 circulation in the county where the pit will be located or the disposal will take place. The applicant shall
32 file proof of publication with the commission in Austin. The director will consider the applicant to have
33 made diligent efforts to ascertain the names and addresses of surface owners required by this

1 subparagraph to be notified if the applicant has examined the current county tax rolls and investigated
2 other reliable and readily available sources of information.]

3 ~~[(D) Protests and hearings. If a protest from an affected person is made to the~~
4 ~~commission within 15 days of the date the application is filed, then a hearing shall be held on the~~
5 ~~application after the applicant requests a hearing. If the director has reason to believe that a person~~
6 ~~entitled to notice of an application has not received such notice within 15 days of the date an application~~
7 ~~is filed with the commission, then the director shall not take action on the application until reasonable~~
8 ~~efforts have been made to give such person notice of the application and an opportunity to file a protest to~~
9 ~~the application. If the director determines that a hearing is in the public interest, a hearing shall be held. A~~
10 ~~hearing on an application shall be held after the commission provides notice of hearing to all affected~~
11 ~~persons, or other persons or governmental entities who express an interest in the application in writing. If~~
12 ~~no protest from an affected person is received by the commission, the director may administratively~~
13 ~~approve the application. If the director denies administrative approval, the applicant shall have a right to a~~
14 ~~hearing upon request. After hearing, the hearings examiner shall recommend a final action by the~~
15 ~~commission.]~~

16 ~~[(E) Modification, suspension, and termination. A permit granted pursuant to this~~
17 ~~subsection, may be modified, suspended, or terminated by the commission for good cause after notice and~~
18 ~~opportunity for hearing. A finding of any of the following facts shall constitute good cause:]~~

19 ~~[(i) pollution of surface or subsurface water is occurring or is likely to~~
20 ~~occur as a result of the permitted operations;]~~

21 ~~[(ii) waste of oil, gas, or geothermal resources is occurring or is likely to~~
22 ~~occur as a result of the permitted operations;]~~

23 ~~[(iii) the permittee has violated the terms and conditions of the permit or~~
24 ~~commission rules;]~~

25 ~~[(iv) the permittee misrepresented any material fact during the permit~~
26 ~~issuance process;]~~

27 ~~[(v) the permittee failed to give the notice required by the commission~~
28 ~~during the permit issuance process;]~~

29 ~~[(vi) a material change of conditions has occurred in the permitted~~
30 ~~operations, or the information provided in the application has changed materially.]~~

31 ~~[(F) Emergency permits. If the director determines that expeditious issuance of~~
32 ~~the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the~~
33 ~~pollution of surface or subsurface water, the director may issue an emergency permit. An application for~~

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

Page 18 of 37

1 an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the
2 commission in the appropriate district office. Notice of the application is not required. If warranted by the
3 nature of the emergency, the director may issue an emergency permit based upon a verbal application, or
4 the director may verbally authorize an activity before issuing a written permit authorizing that activity. An
5 emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the
6 director at any time for good cause without notice and opportunity for hearing. Except when the
7 provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or
8 termination of an emergency permit shall be governed by the provisions of subparagraphs (A) — (E) of this
9 paragraph.]

10 [(G) Minor permits. If the director determines that an application is for a permit
11 to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and
12 gas waste, the director may issue a minor permit provided the permit does not authorize an activity which
13 results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An
14 application for a minor permit shall be filed with the commission in the appropriate district office. Notice
15 of the application shall be given as required by the director. The director may determine that notice of the
16 application is not required. A minor permit is valid for 60 days, but a minor permit which is issued
17 without notice of the application may be modified, suspended, or terminated by the director at any time
18 for good cause without notice and opportunity for hearing. Except when the provisions of this
19 subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor
20 permit shall be governed by the provisions of subparagraphs (A) — (E) of this paragraph.]

21 [(7) Recycling.]

22 [(A) Prohibited recycling. Except for those recycling methods authorized for
23 certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by
24 any method without obtaining a permit.]

25 [(B) Authorized recycling.]

26 [(i) No permit is required if treated fluid is recycled for use as makeup
27 water for a hydraulic fracturing fluid treatment(s), or as another type of oilfield fluid to be used in the
28 wellbore of an oil, gas, geothermal, or service well.]

29 [(ii) Treated fluid may be reused in any other manner, other than
30 discharge to waters of the state, without a permit from the Commission, provided the reuse occurs
31 pursuant to a permit issued by another state or federal agency.]

32 [(iii) If treatment of the fluid results in distilled water, no permit is
33 required to use the resulting distilled water in any manner other than discharge to waters of the state.]

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

Page 19 of 37

[~~(iv) Fluid that meets the requirements of clause (i), (ii), or (iii) of this subparagraph is a recyclable product.~~]

~~[(C) Permitted recycling.]~~

~~[(i) Treated fluid may be reused in any manner, other than the manner authorized by subparagraph (B) of this paragraph, pursuant to a permit issued by the director on a case-by-case basis, taking into account the source of the fluids, the anticipated constituents of concern, the volume of fluids, the location, and the proposed reuse of the treated fluids. Fluid that meets the requirements of a permit issued under this clause is a recyclable product.]~~

~~[(ii) All commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B of this title (relating to Commercial Recycling).]~~

~~[(8) Used oil. Used oil as defined in §3.98 of this title, shall be managed in accordance with the provisions of 40 CFR, Part 279.]~~

~~[(e) Pollution prevention (reference Order Number 20-59,200, effective May 1, 1969).]~~

~~[(1) The operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage the aquatic life therein.]~~

~~[(2) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. Particularly, the following procedures shall be utilized to prevent pollution:]~~

~~[(A) The disposal of liquid waste material into the Texas offshore and adjacent estuarine zones shall be limited to saltwater and other materials which have been treated, when necessary, for the removal of constituents which may be harmful to aquatic life or injurious to life or property.]~~

~~[(B) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.]~~

~~[(C) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.]~~

~~[(D) Solid combustible waste may be burned and the ashes may be disposed of into Texas offshore and adjacent estuarine zones. Solid wastes such as cans, bottles, or any form of trash~~

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

Page 20 of 37

1 must be transported to shore in appropriate containers. Edible garbage, which may be consumed by
2 aquatic life without harm, may be disposed of into Texas offshore and adjacent estuarine zones.]

3 [(E) Drilling muds which contain oil shall be transported to shore or a designated
4 area for disposal. Only oil-free cutting and fluids from mud systems may be disposed of into Texas
5 offshore and adjacent estuarine zones at or near the surface.]

6 [(F) Fluids produced from offshore wells shall be mechanically contained in
7 adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water
8 separation facilities at offshore and onshore locations shall contain safeguards to prevent emission of
9 pollutants to the Texas offshore and adjacent estuarine zones prior to proper treatment.]

10 [(G) All deck areas on producing platforms subject to contamination shall be
11 either curbed and connected by drain to a collecting tank or sump in which the containment will be treated
12 and disposed of without causing hazard or pollution, or else drip pans, or their equivalent, shall be placed
13 under any equipment which might reasonably be considered a source from which pollutants may escape
14 into surrounding water. These drip pans must be piped to collecting tanks or sumps designed to
15 accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps
16 to prevent overflow.]

17 [(H) Any person observing water pollution shall report such sighting, noting size,
18 material, location, and current conditions to the ranking operating personnel. Immediate action or
19 notification shall be made to eliminate further pollution. The operator shall then transmit the report to the
20 appropriate commission district office.]

21 [(I) Immediate corrective action shall be taken in all cases where pollution has
22 occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or
23 other pollution materials from the waters and the shoreline where it is found. Such removal operations
24 will be at the expense of the responsible operator.]

25 [(3) The commission may suspend producing and/or drilling operations from any facility
26 when it appears that the provisions of this rule are being violated.]

27 [(4) (Reference Order Number 20-60,214, effective October 1, 1970.) The foregoing
28 provisions of Rule 8(D) shall also be required and enforced as to all oil, gas, or geothermal resource
29 operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and
30 streams.]

31 [(f) Oil and gas waste haulers.]

32 [(1) A person who transports oil and gas waste for hire by any method other than by
33 pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it

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

Page 21 of 37

1 is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit
2 by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air
3 Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances
4 Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98
5 of this title is excluded from this subsection. This subsection is not applicable to the non-commercial
6 hauling of oil and gas wastes for non-commercial recycling. For purposes of this subsection, injection of
7 salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does
8 not qualify as recycling.]

9 [(A) Application for an oil and gas waste hauler permit will be made on the
10 commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied
11 by:]

12 [(i) the permit application fee required by §3.78 of this title (relating to
13 Fees and Financial Security Requirements) (Statewide Rule 78);]

14 [(ii) vehicle identification information to support commission issuance of
15 an approved vehicle list;]

16 [(iii) an affidavit from the operator of each commission-permitted
17 disposal system the hauler intends to use stating that the hauler has permission to use the system; and]

18 [(iv) a certification by the hauler that the vehicles listed on the
19 application are designed so that they will not leak during transportation. The certification shall include a
20 statement that vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid
21 oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.]

22 [(B) An oil and gas waste hauler permit may be issued for a term not to exceed
23 one year, subject to renewal by the filing of an application for permit renewal and the required application
24 fee for the next permit period. The term of an oil and gas waste hauler permit will be established in
25 accordance with a schedule prescribed by the director to allow for the orderly and timely renewal of oil
26 and gas waste hauler permits on a staggered basis.]

27 [(C) Each oil and gas waste hauler shall operate in strict compliance with the
28 instructions and conditions stated on the permit which provide:]

29 [(i) This permit, unless suspended or revoked for cause shown, shall
30 remain valid until the expiration date specified in this permit.]

31 [(ii) Each vehicle used by a permittee shall be marked on both sides and
32 the rear with the permittee's name and permit number in characters not less than three inches high. (For

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

Page 22 of 37

1 the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump
2 truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.~)]

3 [(iii) Each vehicle must carry a copy of the permit including those parts
4 of the commission issued attachments listing approved vehicles and commission permitted disposal
5 systems that are relevant to that vehicle's activities. This permit authority is limited to those vehicles
6 shown on the commission issued list of approved vehicles.]

7 [(iv) This permit is issued pursuant to the information furnished on the
8 application form, and any change in conditions must be reported to the commission on an amended
9 application form. The permit authority will be revised as required by the amended application.]

10 [(v) This permit authority is limited to hauling, handling, and disposal of
11 oil and gas waste.]

12 [(vi) This permit authorizes the permittee to use commission permitted
13 disposal systems for which the permittee has submitted affidavits from the disposal system operators
14 stating that the permittee has permission to use the systems. These disposal systems are listed as an
15 attachment to the permit. This permit also authorizes the permittee to use a disposal system operated
16 under authority of a minor permit issued by the commission without submitting an affidavit from the
17 disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and
18 gas waste to any facility in accordance with the provisions of §3.98 of this title, provided the shipment is
19 accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a
20 disposal facility permitted by another agency or another state provided the commission has granted
21 separate authorization for the disposal.]

22 [(vii) The permittee must file an application for a renewal permit, using
23 the permittee's assigned permit number, before the expiration date specified in this permit.]

24 [(viii) The permittee must compile and keep current a list of all persons
25 by whom the permittee is hired to haul and dispose of oil and gas waste, and furnish such list to the
26 commission upon request.]

27 [(ix) Each vehicle must be operated and maintained in such a manner as
28 to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to
29 haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be
30 operated and maintained to prevent the escape of oil and gas waste.]

31 [(x) Each vehicle must be made available for inspection upon request by
32 commission personnel.]

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

Page 23 of 37

~~[(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.]~~

~~[(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:]~~

~~[(i) identity of the property from which the oil and gas waste is hauled;]~~

~~[(ii) identity of the disposal system or commercial recycling facility to which the oil and gas waste is delivered;]~~

~~[(iii) the type and volume of oil and gas waste received by the hauler at the property where it was generated; and]~~

~~[(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system or commercial recycling facility.]~~

~~[(B) Such record shall be kept open for the inspection of the commission or its representatives.]~~

~~[(C) Such record shall be kept on file for a period of three years from the date of operation and recordation.]~~

~~[(g) Recordkeeping.]~~

~~[(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off lease disposal or recycling facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:]~~

~~[(A) identity of the property from which the oil and gas waste is hauled;]~~

~~[(B) identity of the disposal system or recycling facility to which the oil and gas waste is delivered;]~~

~~[(C) name and address of the hauler, and permit number (WHP number) if applicable; and]~~

~~[(D) type and volume of oil and gas waste transported each day to disposal or recycling.]~~

~~[(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the oil and gas waste hauler, provided the run tickets or other billing information contain all the information required by paragraph (1) of this subsection.]~~

~~[(3) Examination and reporting. The person keeping any records required by this subsection shall make the records available for examination and copying by members and employees of~~

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

Page 24 of 37

1 ~~the commission during reasonable working hours. Upon request of the commission, the person keeping~~
2 ~~the records shall file such records with the commission.]~~

3 ~~[(h) Penalties. Violations of this section may subject a person to penalties and remedies specified~~
4 ~~in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The~~
5 ~~certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner~~
6 ~~provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance;~~
7 ~~Severance) (Rule 73) or violation of this section.]~~

8 ~~[(i) Coordination between the Railroad Commission of Texas and the Texas Commission on~~
9 ~~Environmental Quality or its successor agencies. The Railroad Commission and the Texas Commission~~
10 ~~on Environmental Quality both have adopted by rule a memorandum of understanding regarding the~~
11 ~~division of jurisdiction between the agencies over wastes that result from, or are related to, activities~~
12 ~~associated with the exploration, development, and production of oil, gas, or geothermal resources, and the~~
13 ~~refining of oil. The memorandum of understanding is adopted in §3.30 of this title (relating to~~
14 ~~Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas~~
15 ~~Commission on Environmental Quality (TCEQ)).]~~

16 ~~[(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection~~
17 ~~apply only to activities that occur in the coastal zone and that are subject to the CMP rules.]~~

18 ~~[(1) Specific Policies.]~~

19 ~~[(A) Disposal of Oil and Gas Waste in Pits. The following provisions apply to oil~~
20 ~~and gas waste disposal pits located in the coastal zone:]~~

21 ~~[(i) no commercial oil and gas waste disposal pit constructed after the~~
22 ~~effective date of this subsection shall be located in any CNRA; and]~~

23 ~~[(ii) all oil and gas waste disposal pits shall be designed to prevent~~
24 ~~releases of pollutants that adversely affect coastal waters or critical areas.]~~

25 ~~[(B) Discharge of Oil and Gas Waste to Surface Waters. The following~~
26 ~~provisions apply to discharges of oil and gas waste that occur in the coastal zone:]~~

27 ~~[(i) no discharge of oil and gas waste to surface waters may cause a~~
28 ~~violation of the Texas Surface Water Quality Standards adopted by the Texas Commission on~~
29 ~~Environmental Quality or its successor agencies and codified at Title 30, Texas Administrative Code,~~
30 ~~Chapter 307;]~~

31 ~~[(ii) in determining whether any permit to discharge oil and gas waste~~
32 ~~that is comprised, in whole or in part, of produced water is consistent with the goals and policies of the~~
33 ~~CMP, the commission shall consider the effects of salinity from the discharge;]~~

~~[(iv) in the case of any oil and gas exploration, production, or development operation with an oil and gas waste discharge permitted prior to the effective date of this subsection that adversely affects any critical area, the outfall for the discharge shall either:]~~

~~[(I) be relocated within two years after the effective date of this subsection, so that, to the greatest extent practicable, the discharge does not adversely affect any critical area; or]~~

~~[(II) the discharge shall be discontinued; and]~~

~~[(v) the commission shall notify the Texas Commission on Environmental Quality or its successor agencies and the Texas Parks and Wildlife Department upon receipt of an application for a permit to discharge oil and gas waste that is comprised, in whole or in part, of produced waters to waters under tidal influence.]~~

[(C) Development in Critical Areas. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(h)(1)(A) — (G), have been satisfied. The commission shall coordinate its efforts under this subparagraph with those of other appropriate state and federal agencies.]

~~[(D) Dredging and Dredged Material Disposal and Placement. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(i), have been satisfied.]~~

~~[(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (Agency Consistency Determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for~~

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

Page 26 of 37

~~development in critical areas and dredging and dredged material disposal and placement in the coastal area.]~~

~~[(A) The commission shall issue consistency determinations under this paragraph as an element of the permitting process for permits to dispose of oil and gas waste in a pit and permits to discharge oil and gas waste to surface waters.]~~

~~[(B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.]~~

~~[(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse affect on any coastal natural resource area (CNRA) identified in the applicable policies."]~~

~~[(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse affects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.]~~

~~[(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."]~~

~~[(H) If the commission determines that the proposed activity would not meet the applicable requirements of paragraph (1) of this subsection, the commission shall not issue the permit or certification.]~~

~~[(3) Thresholds for Referral. Any commission action that is not identified in this paragraph shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant~~

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

Page 27 of 37

to Title 31, Texas Administrative Code, §505.32 (Requirements for Referral of an Individual Agency Action), the thresholds for referral of consistency determinations issued by the commission are as follows:]

[~~(A) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;~~]

[~~(B) for discharges, any permit to discharge oil and gas waste consisting, in whole or in part, of produced waters into tidally influenced waters at a rate equal to or greater than 100,000 gallons per day;~~]

[~~(C) for certification of federal permits for development in critical areas:]~~

[~~(i) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:~~]

[~~(I) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or~~]

[~~(II) five acres or more of any other critical area; and~~]

[~~(ii) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area;~~]

[~~(D) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.~~]

§3.14. Plugging.

(a) - (c) (No change.)

(d) General plugging requirements.

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

(12) The operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. The operator shall close all pits in accordance with the provisions of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title

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

Page 28 of 37

~~(relating to Water Protection (Statewide Rule 8))~~. The district director or the director's delegate may grant a reasonable extension of time of not more than an additional 120 days for the removal of tanks, vessels and related piping.

(e) - (k) (No change.)

§3.22. Protection of Birds.

(a) (No change.)

(b) An operator must screen, net, cover, or otherwise render harmless to birds the following categories of open-top tanks and pits associated with the exploration, development, and production of oil and gas, including transportation of oil and gas by pipeline:

(1) open-top storage tanks that are eight feet or greater in diameter and contain a continuous or frequent surface film or accumulation of oil; however, temporary, portable storage tanks that are used to hold fluids during drilling operations, workovers, or well tests are exempt; and

(2) skimming pits or collecting pits that are used as skimming pits that are permitted under Chapter 4 of this title (relating to Environmental Protection), Subchapter A (relating to Oil and Gas Waste Management) [as defined in §3.8 of this title (relating to Water Protection) (Statewide Rule 8); and]

~~[(3) collecting pits as defined in §3.8 of this title (relating to Water Protection) that are used as skimming pits].~~

(c) If the commission finds a surface film or accumulation of oil in any other pit regulated under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title (relating to Water Protection)], the commission will instruct the operator to remove the oil. If the operator fails to remove the oil from the pit in accordance with the commission's instructions or if the commission finds a surface film or accumulation of oil in the pit again within a 12-month period, the commission will require the operator to screen, net, cover, or otherwise render the pit harmless to birds. Before complying with this requirement, the operator will have a right to a hearing upon request. In addition to the enforcement actions specified by this subsection, the commission may take any other appropriate enforcement actions within its authority.

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

(a) (No change.)

(b) General agency jurisdictions.

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

Page 29 of 37

(1) (No change.)

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found in §4.110 of this title (relating to Definitions) ~~[at §3.8(a)(30) of this title (relating to Water Protection)]~~ and at 30 TAC §335.1 (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) (No change.)

(B) Water quality.

(i) (No change.)

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) ~~[§3.8 of this title (relating to Water~~

1 ~~Protection~~], the RRC prohibits operators from causing or allowing pollution of surface or subsurface
2 water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to
3 minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface
4 water quality during storm events.

5 (II) Storm water associated with construction activities. Where
6 required by federal law, discharges of storm water associated with construction activities under the RRC's
7 jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction
8 include construction of a facility that, when completed, would be associated with the exploration,
9 development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage
10 facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing
11 facility; compressor station; terminal facility where crude oil is stored prior to refining and at which
12 refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under
13 the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport
14 crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural
15 gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over
16 storm water from land disturbance associated with a site survey that is conducted prior to construction of
17 a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot
18 require a permit for discharges of storm water from "field activities or operations associated with {oil and
19 gas} exploration, production, processing, or treatment operations, or transmission facilities, including
20 activities necessary to prepare a site for drilling and for the movement and placement of drilling
21 equipment, whether or not such field activities or operations may be considered to be construction
22 activities" unless the discharge is contaminated by contact with any overburden, raw material,
23 intermediate product, finished product, byproduct, or waste product located on the site of the facility.
24 Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to
25 Oil and Gas Waste Management) [~~§3.8 of this title (relating to Water Protection)~~], the RRC prohibits
26 operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to
27 implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water
28 during construction activities to help ensure protection of surface water quality during storm events.

29 (III) - (IV) (No change.)

30 (iii) (No change.)

31 (C) (No change.)

32 (c) (No change.)

33 (d) Jurisdiction over waste from specific activities.

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

Page 31 of 37

(1) - (10) (No change.)

(11) Commercial service company facilities and training facilities.

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

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8(f) of this title (relating to Water Protection)~~].

(12) (No change.)

(e)- (g) (No change.)

§3.57. Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials.

Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management).

~~[(a) Applicability. This section is applicable to reclamation of tank bottoms and other hydrocarbon wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The provisions of this section shall not apply where tank bottoms or other hydrocarbon-bearing materials are recycled or processed on site by the owner/custodian and are returned to a tank or vessel at the same lease or facility. This section is not applicable to the practice of recycling or reusing drilling mud, except as to those hydrocarbons recovered from such mud recycling and sent to a permitted reclamation plant.]~~

~~[(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Tank bottoms—A mixture of crude oil or lease condensate, water, and other substances that is concentrated at the bottom of producing lease tanks and pipeline storage tanks (commonly referred to as basic sediment and water or BS&W).]~~

~~[(2) Other hydrocarbon wastes—Oily waste materials, other than tank bottoms, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The term "other hydrocarbon wastes" includes, but is not limited to, pit hydrocarbons, skim oil, spillage, and leakage of crude oil or condensate from producing lease or pipeline storage tanks, and crude oil or condensate associated with pipeline ruptures and other spills.]~~

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

Page 32 of 37

1 ~~[(3) Authorized person—A tank bottoms cleaner or transporter that is under contract for~~
2 ~~disposition of untreated tank bottoms or other hydrocarbon wastes to a person who has obtained a permit~~
3 ~~to operate a reclamation plant.]~~

4 ~~[(4) Affected person—A person who has suffered or will suffer actual injury or economic~~
5 ~~damage other than as a member of the general public and includes surface owners of property on which a~~
6 ~~reclamation plant is located and surface owners of adjoining properties.]~~

7 ~~[(5) Director—The director of the Oil and Gas Division or a staff delegate designated in~~
8 ~~writing by the director of the Oil and Gas Division or the commission.]~~

9 ~~[(e) Permitting process.]~~

10 ~~[(1) Removal of tank bottoms or other hydrocarbon wastes from any producing lease~~
11 ~~tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless~~
12 ~~such person has either obtained a permit to operate a reclamation plant, or is an authorized person.~~
13 ~~Applicants for a reclamation plant operating permit shall file the appropriate form with the commission in~~
14 ~~Austin.]~~

15 ~~[(2) The applicant shall give notice by mailing or delivering a copy of the application to~~
16 ~~the county clerk of the county where the reclamation plant is to be located, and to the city clerk or other~~
17 ~~appropriate city official of any city where the reclamation plant is located within the corporate limits of~~
18 ~~the city, on or before the date the application is mailed to or filed with the commission.]~~

19 ~~[(3) In order to give notice to other local governments and interested or affected persons,~~
20 ~~notice of the application shall be published once by the applicant in a newspaper of general circulation for~~
21 ~~the county where the reclamation plant is to be located, in a form approved by the commission.~~
22 ~~Publication shall occur on or before the date the application is mailed to or filed with the commission.~~
23 ~~The applicant shall file with the commission in Austin proof of publication prior to the hearing or~~
24 ~~administrative approval.]~~

25 ~~[(4) If a protest from an affected person or local government is made to the commission~~
26 ~~within 15 days of receipt of the application or of publication, or if the commission determines that a~~
27 ~~hearing is in the public interest, then a hearing will be held on the application after the commission~~
28 ~~provides notice of hearing to all affected persons, local governments, or other persons who express an~~
29 ~~interest in writing in the application.]~~

30 ~~[(5) If no protest from an affected person or local government is received by the~~
31 ~~commission within the allotted time, the director may administratively approve the application. If the~~
32 ~~director denies administrative approval, the applicant shall have a right to a hearing upon request. After~~
33 ~~hearing, the examiner shall recommend a final action by the commission.]~~

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

Page 33 of 37

1 ~~[(6) Applicants must demonstrate they are familiar with commission rules and have the~~
2 ~~proper facilities to comply with the rules.]~~

3 ~~[(7) Except as provided in subparagraphs (A) and (B) of this paragraph, a permit to~~
4 ~~operate a reclamation plant shall remain in effect until canceled at the request of the operator. Existing~~
5 ~~permits subject to annual renewal may be renewed so as to remain in effect until canceled. Such renewal~~
6 ~~shall be subject to the requirements of paragraph (10) of this subsection. A reclamation plant permit may~~
7 ~~be canceled by the commission after notice and opportunity for hearing, if:]~~

8 ~~[(A) the permitted facility has been inactive for 12 months; or]~~

9 ~~[(B) there has been a violation, or a violation is threatened, of any provision of~~
10 ~~the permit, the conservation laws of the state, or rules or orders of the commission.]~~

11 ~~[(8) If the operator objects to the cancellation, the operator must file, within 15 days of~~
12 ~~the date shown on the notice, a written objection and request for a hearing to determine whether the~~
13 ~~permit should be canceled. If such written request is timely filed, the cancellation will be suspended until~~
14 ~~a final order is issued pursuant to the hearing. If such request is not received within the required time~~
15 ~~period, the permit will be canceled. In the event of an emergency which presents an imminent pollution,~~
16 ~~waste, or public safety threat, the commission may suspend the permit until an order is issued pursuant to~~
17 ~~the hearing.]~~

18 ~~[(9) A permit to operate a reclamation plant is not transferable. A new permit must be~~
19 ~~obtained by the new operator.]~~

20 ~~[(10) Reclamation plants permitted under this section shall file financial security as~~
21 ~~required under §3.78(l) of this title (relating to Fees and Financial Security Requirements).]~~

22 ~~[(d) Operation of a reclamation plant.]~~

23 ~~[(1) The following provisions apply to any removal of tank bottoms or other hydrocarbon~~
24 ~~wastes from any oil producing lease tank, pipeline storage tank, or other production facility.]~~

25 ~~[(A) Notwithstanding the provisions of §3.85(a)(8) of this title (relating to~~
26 ~~Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), an operator of a~~
27 ~~reclamation plant or an authorized person shall execute a manifest in accordance with §3.85 of this title~~
28 ~~(relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), upon each~~
29 ~~removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage~~
30 ~~tank, or other production facility. In addition to the information required pursuant to §3.85 of this title~~
31 ~~(relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), the operator of~~
32 ~~the reclamation plant or other authorized person shall also include on the manifest:]~~

[(ii) the gross and net volume of the material as determined by the required shakeout test.]

~~[(B) The operator of the reclamation plant or other authorized person shall fill out the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed, and shall retain a copy on file for two years.]~~

~~[(C) The operator of the reclamation plant or other authorized person shall leave a copy of the manifest in the vehicle transporting the material.]~~

~~[(2) The operator of a reclamation plant or other authorized person shall conduct a shakeout (centrifuge) test on all tank bottoms or other hydrocarbon wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility, to determine the crude oil content and lease condensate thereof.]~~

~~[(3) The shakeout test shall be conducted in accordance with the most current American Petroleum Institute or American Society for Testing Materials method.]~~

~~[(e) Reporting of reclaimed crude oil or lease condensate on commission required report.]~~

~~[(1) For wastes taken to a reclamation plant the following provisions shall apply.]~~

~~[(A) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.]~~

~~[(B) For other hydrocarbon wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.]~~

~~[(2) The net crude oil content or lease condensate of any tank bottoms or other hydrocarbon wastes removed from an active facility, including a pipeline facility, and disposed of on-site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection into Productive Reservoirs). Operators may be required to obtain a minor permit for such disposal using procedures set out in §3.8(d) and (g) of this title (relating to Water Protection). Prior to approval of the minor permit, the commission may require an analysis of the disposable material to be performed.]~~

~~[(f) General provisions applicable to materials taken to a reclamation plant.]~~

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

Page 35 of 37

1 ~~[(1) The removal of tank bottoms or other hydrocarbon wastes from any facility for~~
2 ~~which monthly reports are not filed with the commission must be authorized in writing by the~~
3 ~~commission prior to such removal. A written request for such authorization must be sent to the~~
4 ~~commission office in Austin, and must detail the location, description, estimated volume, and specific~~
5 ~~origin of the material to be removed, as well as the name of the reclaimer and intended destination of the~~
6 ~~material. If the authorization is denied, the applicant may request a hearing.]~~

7 ~~[(2) The receipt of any tank bottoms or other hydrocarbon wastes from outside the State~~
8 ~~of Texas must be authorized in writing by the commission prior to such receipt. However, written~~
9 ~~approval is not required if another entity will indicate, in the appropriate monthly report, a corresponding~~
10 ~~delivery of the same material. If the request is denied, the applicant may request a hearing.]~~

11 ~~[(3) The receipt of any waste materials other than tank bottoms or other hydrocarbon~~
12 ~~wastes must be authorized in writing by the commission prior to such receipt. The commission may~~
13 ~~require the reclamation plant operator to submit an analysis of such waste materials prior to a~~
14 ~~determination of whether to authorize such receipt. If the request is denied, the applicant may request a~~
15 ~~hearing.]~~

16 ~~[(4) The operator of a reclamation plant shall file a report on the appropriate commission~~
17 ~~form for each reclamation plant facility by the 15th day of each calendar month, covering the facility's~~
18 ~~activities for the previous month. The operator of a reclamation plant shall file a copy of the monthly~~
19 ~~report in the district office of any district in which the operator made receipts or deliveries for the month~~
20 ~~covered by the report.]~~

21 ~~[(5) All wastes generated by reclaiming operations shall be disposed of in accordance~~
22 ~~with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection~~
23 ~~into Productive Reservoirs). No person conducting activities subject to regulation by the commission may~~
24 ~~cause or allow pollution of surface or subsurface water in the state.]~~

25 ~~[(g) Commission review of administrative actions. Administrative actions performed by the~~
26 ~~director or commission staff pursuant to this rule are subject to review by the commissioners.]~~

27 ~~[(h) Policy. The provisions of this rule shall be administered so as to prevent waste and protect~~
28 ~~correlative rights.]~~

29
30
31 §3.91. Cleanup of Soil Contaminated by a Crude Oil Spill.

32 (a) (No change.)

(b) Scope. These cleanup standards and procedures apply to the cleanup of soil in non-sensitive areas contaminated by crude oil spills from activities associated with the exploration, development, and production, including transportation, of oil or gas or geothermal resources as defined in §4.110 of this title (relating to Definitions) [~~§3.8(a)(30) of this title (relating to Water Protection)~~]. For the purposes of this section, crude oil does not include hydrocarbon condensate. These standards and procedures do not apply to hydrocarbon condensate spills, crude oil spills in sensitive areas, or crude oil spills that occurred prior to the effective date of this section. Cleanup requirements for hydrocarbon condensate spills and crude oil spills in sensitive areas will be determined on a case-by-case basis. Cleanup requirements for crude oil contamination that occurred wholly or partially prior to the effective date of this section will also be determined on a case-by-case basis. Where cleanup requirements are to be determined on a case-by-case basis, the operator must consult with the appropriate district office on proper cleanup standards and methods, reporting requirements, or other special procedures.

(c) - (f) (No change.)

§3.98. Standards for Management of Hazardous Oil and Gas Waste.

(a) - (l) (No change.)

(m) Disposition of Hazardous Oil and Gas Waste.

(1) (No change.)

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section and subject to all other applicable requirements of state or federal law, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) - (v) (No change.)

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of paragraph (3) of this subsection [~~(m)(3) of this section~~].

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

(D) For purposes of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [~~§3.8(f)(1)(C)(vi) of this title (relating to Water Protection)~~], the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

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

Page 37 of 37

1 (3) (No change.)

2 (n) - (bb) (No change.)

3

4 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
5 within the agency's authority to adopt.

6 Issued in Austin, Texas on 8/15/2024, 2024.

7 Filed with the Office of the Secretary of State on 8/15/2024, 2024.

Signed by:



98D34EBEE36C479...
Haley Cochran

Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas

1 The Railroad Commission of Texas (Commission) proposes new Subchapter A of Chapter 4,
2 relating to Oil and Gas Waste Management, which includes the following proposed new rules: In
3 Division 1, General, the Commission proposes §4.101 (relating to Prevention of Pollution); §4.102
4 (relating to Responsibility for Oil and Gas Wastes); §4.103 (relating to Prohibited Waste Management
5 Methods); §4.104 (relating to Coordination Between the Commission and Other Regulatory Agencies);
6 §4.106 (relating to Fees); §4.107 (relating to Penalties); §4.108 (relating to Electronic Filing
7 Requirements); and §4.109 (relating to Exceptions). In Division 2, Definitions, the Commission proposes
8 §4.110 (relating to Definitions). In Division 3, Operations Authorized by Rule, the Commission proposes
9 §4.111 (relating to Authorized Disposal Methods for Certain Wastes); §4.112 (relating to Authorized
10 Recycling); §4.113 (relating to Authorized Pits); §4.114 (relating to Schedule A Authorized Pits); and
11 §4.115 (relating to Schedule B Authorized Pits). In Division 4, Requirements for All Permitted Waste
12 Management Operations, the Commission proposes §4.120 (relating to General Requirements for All
13 Permitted Operations); §4.121 (relating to Permit Term); §4.122 (relating to Permit Renewals, Transfers,
14 and Amendments); §4.123 (relating to Permit Modification, Suspension and Termination); §4.124
15 (relating to Requirements Applicable to All Permit Applications and Reports); §4.125 (relating to Notice
16 and Opportunity to Protest); §4.126 (relating to Location and Real Property Information); §4.127 (relating
17 to Engineering and Geologic Information); §4.128 (relating to Design and Construction); §4.129 (relating
18 to Operation); §4.130 (relating to Reporting); §4.131 (relating to Monitoring); §4.132 (relating to
19 Closure); §4.134 (relating to Application Review and Administrative Decision); and §4.135 (relating to
20 Hearings. In Division 5, Additional Requirements for Commercial Facilities, the Commission proposes
21 §4.140 (relating to Additional Requirements for Commercial Facilities); §4.141 (relating to Additional
22 Notice Requirements for Commercial Facilities); §4.142 (relating to Operating Requirements Applicable
23 to Commercial Facilities); and §4.143 (relating to Design and Construction Requirements for Commercial
24 Facilities). In Division 6, Additional Requirements for Permitted Pits, the Commission proposes §4.150
25 (relating to Additional Requirements Applicable to Permitted Pits); §4.151 (relating to Design and
26 Construction of Permitted Pits); §4.152 (relating to Monitoring of Permitted Pits); §4.153 (relating to
27 Commercial Disposal Pits); and §4.154 (relating to Closure of Permitted Pits). In Division 7, Additional
28 Requirements for Landfarming and Landtreating, the Commission proposes §4.160 (relating to Additional
29 Requirements for Landfarming and Landtreating Permits); §4.161 (relating to Design and Construction
30 Requirements for Landfarming and Landtreating Permits); §4.162 (relating to Operating Requirements for
31 Landfarming and Landtreating Permits); §4.163 (relating to Monitoring); and §4.164 (relating to
32 Closure). In Division 8, Additional Requirements for Reclamation Plants, the Commission proposes
33 §4.170 (relating to Additional Requirements for Reclamation Plants); §4.171 (relating to Standard Permit
34 Provisions); §4.172 (relating to Minimum Permit Provisions for Operations); and §4.173 (relating to

1 Minimum Permit Provisions for Reporting). In Division 9, Miscellaneous Permits, the Commission
2 proposes §4.180 (relating to Activities Permitted as Miscellaneous Permits); §4.181 (relating to
3 Emergency Permits); §4.182 (relating to Minor Permits); §4.184 (relating to Permitted Recycling); and
4 §4.185 (relating to Pilot Programs). In Division 10, Requirements for Oil and Gas Waste Transportation,
5 the Commission proposes §4.190 (relating to Oil and Gas Waste Characterization and Documentation);
6 §4.191 (relating to Oil and Gas Waste Manifests); §4.192 (relating to Special Waste Authorization);
7 §4.193 (relating to Oil and Gas Waste Haulers); §4.194 (relating to Recordkeeping); and §4.195 (relating
8 to Waste Originating Outside of Texas). In Division 11, Requirements for Surface Water Protection, the
9 Commission proposes §4.196 (relating to Surface Water Pollution Prevention) and §4.197 (relating to
10 Consistency with the Texas Coastal Management Program).

11 The new rules are proposed to incorporate and update the requirements from §3.8 of this title,
12 relating to Water Protection, which is proposed to be amended concurrently with the new rules and
13 amendments in Chapter 4. The new subchapter also ensures Commission rules adhere to statutory
14 changes made in recent legislative sessions. The Commission also proposes amendments and new rules in
15 Subchapter B of Chapter 4, relating to Commercial Recycling, to incorporate legislative requirements and
16 make updates consistent with the new rules proposed in Subchapter A. The Commission proposes to
17 amend the following rules in Subchapter B: §§4.201 (relating to Purpose), 4.202 (relating to Applicability
18 and Exclusions), 4.203 (relating to Responsibility for Management of Waste to be Recycled), 4.204
19 (relating to Definitions), 4.205 (relating to Exceptions), 4.206 (relating to Administrative Decision on
20 Permit Application), 4.207 (relating to Protests and Hearings), 4.208 (relating to General Standards for
21 Permit Issuance), 4.209 (relating to Permit Renewal), 4.211 (relating to Penalties), 4.212 (relating to
22 General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling
23 Facilities), 4.213 (relating to Minimum Engineering and Geologic Information), 4.214 (relating to
24 Minimum Design and Construction Information), 4.218 (relating to General Permit Provisions for On-
25 Lease Commercial Solid Oil and Gas Waste Recycling), 4.219 (relating to Minimum Siting Information),
26 4.220 (relating to Minimum Permit Provisions for Design and Construction), 4.221 (relating to Minimum
27 Permit Provisions for Operations), 4.222 (relating to Minimum Permit Provisions for Monitoring), 4.223
28 (relating to Minimum Permit Provisions for Closure), 4.224 (relating to Permit Renewal), 4.230 (relating
29 to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas
30 Waste Recycling), 4.231 (relating to Minimum Engineering and Geologic Information), 4.232 (relating to
31 Minimum Siting Information), 4.234 (relating to Minimum Design and Construction Information), 4.238

(relating to Notice), 4.239 (relating to General Permit Provisions), 4.240 (relating to Minimum Permit Provisions for Siting), 4.241 relating to Minimum Permit Provisions for Design and Construction), 4.242 (relating to Minimum Permit Provisions for Operations), 4.243 (relating to Minimum Permit Provisions for Monitoring), 4.245 (relating to Permit Renewal), 4.246 (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), 4.247 (relating to Minimum Engineering and Geologic Information), 4.248 (relating to Minimum Siting Information), 4.250 (relating to Minimum Design and Construction Information), 4.251 (relating to Minimum Operating Information), 4.254 (relating to Notice), 4.255 (relating to General Permit Provisions), 4.256 (relating to Minimum Permit Provisions for Siting), 4.257 (relating to Minimum Permit Provisions for Design and Construction), 4.258 (relating to Minimum Permit Provisions for Operations), 4.259 (relating to Minimum Permit Provisions for Monitoring), 4.261 (relating to Permit Renewal), 4.262 (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), 4.263 (relating to Minimum Engineering and Geologic Information), 4.264 (relating to Minimum Siting Information), 4.266 (relating to Minimum Design and Construction Information), 4.267 (relating to Minimum Operating Information), 4.268 (relating to Minimum Monitoring Information), 4.269 (relating to Minimum Closure Information), 4.270 (relating to Notice), 4.271 (relating to General Permit Provisions), 4.272 (relating to Minimum Permit Provisions for Siting), 4.273 (relating to Minimum Permit Provisions for Design and Construction), 4.274 (relating to Minimum Permit Provisions for Operations), 4.275 (relating to Minimum Permit Provisions for Monitoring), 4.276 (relating to Minimum Permit Provisions for Closure), 4.277 (relating to Permit Renewal), 4.278 (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), 4.279 (relating to Minimum Engineering and Geologic Information), 4.280 (relating to Minimum Siting Information), 4.282 (relating to Minimum Design and Construction Information), 4.283 (relating to Minimum Operating Information), 4.284 (relating to Minimum Monitoring Information), 4.285 (relating to Minimum Closure Information), 4.286 (relating to Notice), 4.287 (relating to General Permit Provisions), 4.288 (relating to Minimum Permit Provisions for Siting), 4.289 (relating to Minimum Permit Provisions for Design and Construction), 4.290 (relating to Minimum Permit Provisions for Operations), 4.291 (relating to Minimum Permit Provisions for Monitoring), 4.292 (relating to Minimum Permit Provisions for Closure), and 4.293 (relating to Permit Renewal). The Commission also proposes new §4.301 (relating to Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings), and §4.302 (relating to

1 Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use
2 of Drill Cuttings).

3 The Commission proposes new Subchapter A to relocate and update the requirements in §3.8.
4 Section 3.8 or “Statewide Rule 8” has existed in its current form since 1984 with only minor
5 modifications since then. Expectations for environmental protection have evolved considerably over the
6 past 40 years, and routine industry practices have changed significantly since the onset of shale extraction
7 in the early 2000s. Within the last several years, additional industry growth, new technological
8 advancements, and innovative solutions for resource development challenged the flexibility of these
9 historic regulations. For example, there is a rapidly evolving need to encourage the treatment and
10 recycling of produced water for beneficial uses within the oil and gas industry and for novel beneficial
11 uses outside of the industry. The Legislature has directed the Commission to encourage fluid oil and gas
12 waste recycling (House Bill 3516, 87th Legislature, 2021), and it has also created the Texas Produced
13 Water Consortium (Senate Bill 601, 87th Legislature, 2021) to make recommendations to the Legislature
14 on issues related to this potential activity. Already, many exploration and production operators and water
15 midstream service providers are investing in infrastructure and pilot studies to assess the economic,
16 logistical, environmental, and practical possibilities of produced water recycling. The Commission’s rules
17 need to address and support these developments.

18 In addition to House Bill 3516, House Bill 2201 (87th Legislature, 2021) directed the Commission
19 to adopt rules governing permissible locations for pits used by commercial oil and gas disposal facilities
20 and Senate Bill 1541 (85th Legislature, 2017) required the Commission to incorporate criteria for
21 beneficial uses of recycled drill cuttings. The Commission proposes new requirements in Subchapter A to
22 address House Bill 2201 and proposes new rules in Subchapter B to address the requirements of Senate
23 Bill 1541.

24 Many of the requirements from Section 3.8 are incorporated into proposed new rules in
25 Subchapter A of Chapter 4. In some sections, the Commission proposes that compliance be achieved by a
26 future date after the new rules and amendments to Chapter 4 have become effective. The Commission
27 proposes that the new rules and amendments go into effect July 1, 2025, which is approximately six
28 months after the anticipated default effective date. Many provisions are proposed with a later effective
29 date of six months to one year from July 1, 2025, to provide additional time for compliance. Effective
30 dates are reflected in the following sections: 4.109, 4.113, 4.115, 4.121, 4.122, 4.123, 4.140, 4.170, 4.202,

4.266, 4.273, 4.282, and 4.289. The Commission notes that if the rulemaking timeline changes, the rules may be adopted at a later date. If that occurs, the proposed effective dates will be updated upon adoption.

Proposed New Rules in Subchapter A

Proposed Division 1 of Subchapter A addresses general requirements. Proposed §4.101 communicates the subchapter's purposes – to prevent pollution and protect the public health, public safety, and the environment within the scope of the Commission's authority. Section 4.101 also clarifies that certain other wastes generated by activities under the Commission's jurisdiction may be managed in accordance with Subchapter A as long as the wastes are nonhazardous and chemically and physically similar to oil and gas wastes. The list of activities that may generate waste under the Commission's jurisdiction includes activities such as brine mining and injection wells and Class VI carbon sequestration program wells.

The Commission proposes §4.102 to require generators of oil and gas waste to characterize the waste. Generally, process knowledge may be used to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 (relating to Definitions). However, laboratory analysis of waste may be required for waste generated at a commercial facility or transferred from one commercial facility to another. Proposed subsections (b) through (e) prohibit persons from using waste management or transport services if those services are not properly permitted or authorized. Any person who uses the services of a carrier or receiver has a duty to determine whether the carrier or receiver has appropriate authority to manage or transport oil and gas wastes. Proposed subsections (f) and (g) prohibit management or disposal of oil and gas wastes in a manner that violates Commission rules. Proposed subsection (h) requires that the Commission be notified if a person conducting activities under the Commission's jurisdiction files for bankruptcy.

The Commission proposes §4.103 to specify waste management methods that are prohibited. Generally, a Commission authorization or permit to manage waste is required except in three instances: (1) as authorized by §4.111 (relating to Authorized Disposal Methods for Certain Wastes); (2) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or (3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs). Recycling oil and gas wastes without a permit is prohibited unless the recycling is conducted pursuant to §4.112 (relating to Authorized Recycling).

1 Proposed §4.104 clarifies how the Commission will implement its authority over activities for
2 which other regulatory agencies have related jurisdiction.

3 Proposed §4.106 notifies persons required to comply with Subchapter A that fees and
4 corresponding surcharges may apply pursuant to §3.78 (relating to Fees and Financial Security
5 Requirements).

6 Proposed §4.107 contains the guidelines for assessing penalties for violations of Subchapter A.
7 The structure and content of proposed §4.107 is similar to the Commission's other penalty rules such as
8 §8.135 (relating to Penalty Guidelines for Pipeline Safety Violations), §9.15 (Penalty Guidelines for LP-
9 Gas Safety Violations), and §18.12 (relating to Penalty Guidelines). Importantly, proposed §4.107 is
10 substantively similar to §3.107, which is the rule the Commission utilized to recommend penalties for
11 violations of §3.8, the predecessor to proposed Subchapter A.

12 The Commission proposes §4.108 to ensure all required filings are made electronically if the
13 Commission has provided an electronic version of a form or an electronic filing system. The section also
14 clarifies that the standards for electronic filings are the same as those for filings in other formats.

15 Proposed §4.109 allows applicants or permittees to request exceptions to the requirements of
16 Subchapter A if the applicant or permittee can show that the requested alternative is at least equivalent in
17 the protection of public health and safety and the environment as the provision to which the exception is
18 requested. Proposed subsection (a) clarifies that exceptions to financial security requirements, notice
19 requirements, and certain sampling and analysis requirements will not be considered.

20 Proposed §4.110 contains the proposed definitions for Chapter 4, including Subchapters A and B.
21 Several definitions are proposed consistent with terms defined in the predecessor rule, §3.8. Other terms
22 are added or modified. For example, the proposed terms "authorized" and "authorized pit" clarify that an
23 authorized activity is one that is permitted by rule. Also, the proposed definitions of the terms
24 "commercial facility" and "non-commercial facility" are altered to reduce confusion regarding these types
25 of facilities.

26 "Commercial facility" is proposed as a facility permitted under Division 4, whose owner or
27 operator receives compensation from others for the management of oil field fluids or oil and gas wastes
28 and whose primary business purpose is to provide these services for compensation. Conversely, "non-
29 commercial facility" is proposed as a facility authorized or permitted under Subchapter A that is not a
30 commercial facility. This new definition corresponds to proposed changes for produced water recycling
31 pits, some of which were previously classified as non-commercial fluid recycling pits. "Produced water

1 recycling” is proposed as the recycling of produced water and other aqueous fluid wastes produced from a
2 wellbore during oil and gas exploration and production activities. The Commission also proposes
3 corresponding definitions of “produced water recycling facility” and “produced water recycling pit.”
4 These new terms and definitions are proposed to replace “non-commercial fluid recycling” and “non-
5 commercial fluid recycling pit.” The term “drill cuttings” is proposed to be defined as the term is defined
6 in Texas Natural Resources Code §123.001. “Public area” is proposed to be defined as a dwelling, place
7 of business, church, school, hospital, school bus stop, government building, a public road, all or any
8 portion of a park, city, town, village, or other similar area that can expect to be populated, which is the
9 same definition that appears in §3.36 (relating to Oil, Gas, or Geothermal Resource Operation in
10 Hydrogen Sulfide Areas).

11 Proposed Division 3 of Subchapter A relates to Operations Authorized by Rule. The rules
12 proposed in this division allow operators to conduct certain waste management activities through a
13 “permit by rule” system – the operator is not required to obtain a permit through a permit application and
14 review process. Instead, the operator is authorized to engage in the activity as long as the applicable rule
15 requirements are met.

16 Proposed §4.111 provides that certain wastes may be disposed of without first obtaining a permit
17 from the Commission if the disposal complies with the requirements of the section. Proposed subsection
18 (a) addresses water condensate, proposed subsection (b) addresses inert oil and gas wastes, proposed
19 subsection (c) addresses low-chloride water-based drilling fluid, and subsection (d) addresses other
20 specific wastes generated during drilling, completion, and workover activities.

21 Similarly, proposed §4.112 allows recycling without a permit in certain instances. Produced water
22 recycling is authorized if treated fluid is recycled for use in drilling operations, completion operations,
23 hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil,
24 gas, geothermal, or service well; produced water recycling pits are operated in accordance with §§4.113
25 and 4.115; and recycling is limited to oil and gas waste.

26 Proposed §4.113 specifies types of waste management pits that may be operated without a permit
27 if they comply with the requirements of §4.113. These pits include reserve pits, mud circulation pits,
28 completion/workover pits, fresh makeup water pits, fresh mining water pits, and water condensate pits.
29 Proposed subsection (c) provides instructions for pits authorized under the predecessor rule, §3.8. Most
30 types of pits authorized by §3.8 and compliant with that section prior to July 1, 2025 may continue to
31 operate unless they cause pollution. However, basic sediment pits, flare pits, and other pits not listed as

1 authorized pits in proposed §4.113 must obtain a permit or be closed in accordance with proposed new
2 subchapter A by July 1, 2026. Also, as discussed in the paragraphs below regarding proposed §4.114 and
3 §4.115, proposed new Subchapter A alters terminology and requirements related to non-commercial fluid
4 recycling. Proposed §4.113(c)(3) states that each non-commercial fluid recycling pit shall be registered
5 and supported by financial assurance by January 1, 2026, or the pit must be closed.

6 Proposed §4.113(d) contains new requirements for registration of all authorized pits. The
7 Commission currently collects minimal information about authorized pits (i.e., pits “permitted by rule”).
8 The proposed new rules will enable the Commission to identify and inspect these facilities and collect
9 data regarding their operations. The Commission notes that the proposed registration process will not
10 require prior approval for pits authorized under proposed §4.113. Proposed subsection (d) contains
11 timelines for when authorized pits must be registered. Proposed subsection (e) requires the operator to
12 submit five pieces of information prior to operating the pit: (1) the type of pit; (2) the location of the pit
13 and its Commission-issued identifier; (3) the pit dimensions and capacity; (4) the expected depth to
14 groundwater from the bottom of the pit; and (5) for produced water recycling pits, the financial security
15 required by §4.115. Once the registration is submitted, the operator may begin operations – the operator is
16 not required to wait for Commission review or approval of the submitted information. Produced water
17 recycling pits have a slightly different process, as described in the paragraph on proposed §4.115.

18 The Commission proposes §4.114 to specify requirements for Schedule A authorized pits. The
19 Commission proposes that authorized pits (pits “permitted by rule”) be divided into two categories:
20 Schedule A and Schedule B. Each category imposes different requirements. Schedule A pits include
21 reserve pits, mud circulation pits, completion/workover pits, freshwater makeup pits, fresh mining water
22 pits, and water condensate pits. Proposed §4.114(1) specifies the contents for each type of Schedule A
23 authorized pit. Proposed §4.114(2) contains construction requirements for Schedule A pits. Specifically,
24 the Commission proposes liner requirements for reserve pits, mud circulation pits, and
25 completion/workover pits located in areas where groundwater is present within 50 feet of the bottom of
26 the pit. Proposed §4.114(3) provides requirements for closure of pits authorized under the section.

27 The Commission proposes §4.115 to create new terminology and requirements for produced
28 water recycling pits, which are classified as Schedule B Authorized Pits. Under the current version of
29 §3.8, some produced water recycling pits are classified as non-commercial fluid recycling pits and are
30 considered authorized pits. However, the current definition of non-commercial includes several
31 conditions that lead to confusion and create an overly complex regulatory scheme. The proposed changes

1 classify as produced water recycling pits all pits used to manage produced water and other aqueous fluid
2 wastes produced from a wellbore during oil and gas exploration and production activities. The intent of
3 the proposed changes is to eliminate confusion and treat pits with similar waste management activities
4 and contents the same.

5 The Commission proposes additional requirements for Schedule B authorized pits because these
6 pits are generally larger in size, manage a larger volume of waste, and are operated for a longer time
7 compared to Schedule A authorized pits. First, proposed §4.115(b) requires an operator of a produced
8 water recycling facility to maintain a performance bond or other form of financial security conditioned
9 that the permittee will operate the pit in accordance with Commission rules. The amount of financial
10 security an operator must file is dependent on the number and total volume of the operator's pits. The
11 financial assurance must be filed with the Commission when the produced water recycling pits are
12 registered with the Commission. Proposed subsection (c) provides additional time for compliance for
13 non-commercial fluid recycling pits authorized prior to July 1, 2025. Under proposed new §4.115, these
14 pits continue to be authorized, but must be registered and secured by a performance bond or other form of
15 financial security as required by §4.115 by January 1, 2026. Proposed subsection (d) clarifies which types
16 of fluids and wastes are authorized to be deposited into a produced water recycling pit.

17 Second, Schedule B authorized pits are subject to siting requirements. These requirements are
18 proposed in §4.115(e). No produced water recycling pit shall be located on a barrier island or a beach,
19 within 300 feet of surface water, within 500 feet of any public water system well or intake, within 300
20 feet of or any domestic water well or irrigation water well (other than a well that supplies water for
21 drilling or workover operations for which the pit is authorized), within a 100-year flood plain, or within
22 500 feet of a public area.

23 Third, proposed subsection (f) imposes general design and construction requirements for
24 Schedule B authorized pits including that the pit is large enough to ensure adequate storage of the
25 material to be managed and to maintain two feet of freeboard plus the capacity to contain the volume of
26 precipitation from a 25-year, 24-hour rainfall event. Proposed subsection (f) also contains design and
27 construction requirements for managing non-contact stormwater runoff. In proposed subsection (f)(5),
28 the Commission proposes more stringent liner requirements for Schedule B authorized pits. All Schedule
29 B authorized pits shall be lined in accordance with proposed (f)(5).

30 Proposed subsection (g) contains general operating requirements for Schedule B pits, such as
31 maintaining sufficient capacity, ensuring liner integrity, establishing a schedule of inspections to be

1 conducted by the operator at least annually or installing a double liner and leak detection system, and
2 maintaining required records.

3 Fourth, the Commission proposes additional closure requirements for Schedule B authorized pits
4 in §4.115(h) through (j). Proposed subsection (h) contains general closure requirements for all Schedule B
5 pits, regardless of whether the waste is removed for disposal or buried in place in accordance with
6 proposed §4.111. Proposed subsection (i) provides additional requirements for closure when all waste
7 from a produced water recycling pit is removed for disposal at an authorized or permitted waste facility.
8 The proposed requirements in subsection (i) include a requirement to collect a five-point composite soil
9 sample for each acre of pit surface area and analyze the sample for the constituents identified in the
10 Figure proposed in subsection (i). Alternatively, the operator may use background soil concentrations at
11 closure. However, to use background soil concentrations, the operator is required to establish the
12 background concentrations before or during pit construction in accordance with proposed §4.115(i)(3)(B).
13 Proposed subsection (j) provides closure requirements in addition to those proposed in subsection (h)
14 when waste will be buried in place pursuant to §4.111. These requirements also address collecting a five-
15 point composite sample and analyzing in accordance with the Figure or using background concentrations
16 established prior to operations.

17 Finally, proposed subsection (k) specifies groundwater monitoring requirements for Schedule B
18 authorized pits. Proposed subsection (k)(1) requires the operator to review readily available public
19 information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface.
20 If the evaluation determines that groundwater is likely to be present within 100 feet of the ground surface,
21 then groundwater monitoring is required unless the pit has a double synthetic liner with an operational
22 leak detection system or the pit has a liner and an active life of less than one year. Groundwater
23 monitoring standards are proposed in subsection (k)(4) through (k)(8).

24 Proposed Division 4 of Subchapter A contains the general requirements for all other waste
25 management activities that are not authorized under Division 3. These waste management activities
26 require a permit before the operator may conduct the activity. Many of the requirements in Divisions 4
27 through 9 are similar to permit conditions in permits currently issued by the Commission. The
28 Commission proposes that these standards be incorporated into Divisions 4 through 9, as applicable. The
29 Commission also proposes additional standards for permitted facilities to ensure the rules address the
30 complex needs and requirements of contemporary waste management and environmental protection
31 practices.

1 Proposed §4.120 identifies the Commission's purpose in permitting – the Commission will not
2 issue a permit if the Commission determines the proposed activity will result in: (1) the endangerment of
3 human health or the environment; (2) the waste of oil, gas, or geothermal resources; or (3) the pollution of
4 surface or subsurface water. Proposed §4.120 also clarifies that all permitted waste management activities
5 are subject to financial security requirements. Finally, §4.120(e) provides a list of waste management
6 activities governed by Subchapter A and specifies which division applies to each activity. For example,
7 permitted pits must comply with the requirements in Division 6 in addition to the requirements of
8 Division 4, which apply to all waste management activities that must obtain a permit.

9 The Commission proposes §4.121 to incorporate a permit term for all waste management permits,
10 which shall be not more than five years. Currently, some Commission permits do not expire. Permits
11 issued pursuant to §3.8 prior to the proposed effective date for new Subchapter A (July 1, 2025), are
12 proposed to remain in effect until they expire on their own terms, are renewed pursuant to the proposed
13 new requirements, or are modified, suspended or terminated by the Commission. Proposed §4.121 also
14 clarifies that permits remain in effect while a timely-filed renewal application is under review by the
15 Commission.

16 Proposed §4.122 outlines requirements for permit renewals, transfers, and amendments. Proposed
17 subsection (a) addresses situations in which a permit issued prior to the effective date of proposed new
18 Subchapter A is renewed, transferred, or amended. The Commission will review the permit conditions
19 and may revise them to ensure compliance with the rules in effect at the time of the renewal, transfer, or
20 amendment. However, proposed subsection (a) states that for permits issued under the predecessor rule
21 §3.8, the Commission will not require an operator to relocate or retrofit existing waste management units
22 to conform to new siting or construction standards. The Commission may require operators to add or
23 improve groundwater monitoring at those existing facilities or to combine all waste management units at
24 a facility under one permit. Proposed §4.122(b) contains the requirements to renew permits, including the
25 requirement to file a renewal application at least 60 days prior to the permit's expiration date and the
26 requirement to comply with notice in accordance with §4.125. Proposed §4.122 clarifies that permit
27 renewals, transfers, and amendments will generally be issued for 5-year terms, though transfers will be
28 issued through the current permitted expiration date unless the transfer is combined with a permit renewal
29 or amendment. Like renewals, proposed subsection (c) states that a transfer shall be filed 60 days in
30 advance of the transfer. Proposed subsection (d) requires that amendments be filed at least 90 days before
31 the proposed new operations are scheduled to commence. Amendments are generally subject to the notice

requirements of §4.125, but the Director may modify or waive those requirements if the proposed permit amendments will have a minimum impact as described in proposed §4.122(d)(2)(C).

Proposed §4.123 contains requirements for permit modification, suspension, or termination. A permit issued under proposed new Subchapter A or pursuant to §3.8 prior to July 1, 2025, may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for a hearing. Proposed subsection (b) outlines the factors that constitute good cause.

The Commission proposes §4.124 to specify permit application filing requirements and contents. The Commission also proposes requirements for technical data required to be filed with the application, such as requirements for submitting geographic coordinates, maps, plans, diagrams, chemical laboratory analyses, and NORM screening surveys.

Proposed §4.125 addresses notice requirements for all permitted facilities. Generally, the proposed notice requirements are not dissimilar to Commission notice requirements in other areas. However, proposed subsection (b) alters the traditional timing of notice to require a permit applicant to provide notice after Commission staff determines that a permit application is complete under §1.201(b) (relating to Time Period for Processing Applications and Issuing Permits Administratively). This change will ensure that notice recipients receive an accurate copy of the permit application after Technical Permitting has completed the initial review. It will also reduce the potential for re-notification due to changes made at the request of Technical Permitting after the original permit application is filed. Proposed subsection (c) specifies the required notice recipients and proposed subsection (d) contains the required method and contents of the notice. Importantly, the notice must state that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice. Proposed subsection (d)(4) states that the Director may authorize notice by publication in accordance with §4.141 (relating to Additional Notice Requirements for Commercial Facilities) if the applicant, after diligent efforts, is unable to determine the persons to be notified. Proposed subsection (e) requires an applicant to provide proof of notice to the Commission, and proposed subsection (f) outlines the process for filing a protest. A timely protest will prompt a hearing on the permit application.

The Commission proposes §4.126 to outline the location and real property information required to be included in the permit application. This information includes the physical address, geographic coordinates, property description, a statement regarding the authority by which the operator has a right to permit and operate the proposed facility, and a general location map containing the components required by proposed subsection (c).

1 Proposed §4.127 contains the requirements for engineering and geologic information submitted in
2 the permit application.

3 The Commission proposes §4.128, which contains requirements related to the facility's design
4 and construction. Proposed §4.128 includes requirements for information to be included in the permit
5 application as well as requirements for the constructing the facility. The permit application shall include a
6 facility diagram that complies with proposed subsection (a)(1), a description of any liners or
7 engineering/geologic information demonstrating that liners are not necessary, a map view and two
8 perpendicular cross-sectional views of pits and storage areas to be constructed, and a plan to control and
9 manage all stormwater runoff. Proposed subsection (b) contains requirements for designing and
10 constructing the permitted facility.

11 Similar to §4.128, proposed §4.129 includes requirements for information to be included in the
12 permit application relating to the facility's operation, as well as requirements for operating the facility
13 once permitted.

14 Proposed §4.130 specifies the requirements for retaining records and submitting periodic reports
15 to the Commission.

16 The Commission proposes §4.131 to explain the factors the Commission will consider in
17 determining whether groundwater monitoring is required when groundwater is present within 100 feet
18 below the ground surface. The factors include the volume and characteristics of the oil and gas waste to
19 be managed, the depth to and quality of groundwater, and the presence or absence of natural clay layers in
20 subsurface soils. If groundwater monitoring is required, the operator shall comply with the requirements
21 of proposed subsection (b)(2) through (b)(4).

22 Proposed §4.132 contains requirements related to closure. The section includes requirements for a
23 closure plan to be included in the permit application and specifies the contents of the closure plan. The
24 section also specifies how facilities shall be closed. Importantly, in addition to specifying requirements
25 for closure, proposed subsection (b) requires that a permittee notify Technical Permitting and the District
26 Office in writing at least 45 days prior to commencement of closure operations. The permittee is then
27 required to submit a detailed closure plan to Technical Permitting 30 days prior to commencing closure
28 operations. Proposed subsection (b)(2) lists the required contents of the closure plan.

29 The Commission proposes §4.134, which states that Technical Permitting reviews applications
30 filed under Subchapter A in accordance with §1.201 (relating to Time Periods for Processing Applications
31 and Issuing Permits Administratively).

1 Proposed §4.135 contains the process for a hearing when a permit application is denied, a timely
2 protest to the application is received, or when the applicant disagrees with permit conditions required by
3 the Director.

4 Proposed Divisions 5 through 9 contain requirements for certain waste management activities.
5 Operators of facilities governed by these divisions must comply with the requirements set forth in the
6 division in addition to the requirements set forth in Division 4. Facilities may be governed by more than
7 one division in addition to the general requirements of Division 4. For example, a commercial disposal pit
8 would be subject to the requirements of Division 4 and the requirements of Division 5 (relating to
9 Additional Requirements for Commercial Facilities) and the requirements of Division 6 (relating to
10 Additional Requirements for Permitted Pits). This intent is clarified in §4.140, §4.150, and §4.160, which
11 state that in addition to the requirements of the applicable division, the permittee shall comply with
12 Division 4 and any other sections of Subchapter A applicable to the permittee's management of oil and
13 gas wastes.

14 Proposed Division 5 contains the additional requirements for commercial facilities. Proposed
15 §4.140(b) recognizes that new definitions and requirements proposed in Subchapter A may alter a
16 facility's classification such that a facility considered non-commercial prior to July 1, 2025 may be
17 considered commercial after that date (the estimated effective date of the new rules). Such facilities are
18 required to comply with the requirements of Division 5 or request an exception on or before July 1, 2026.
19 Proposed subsections (c) through (g) contain financial security requirements, including requirements for
20 preparing a closure-cost estimate (CCE) and obtaining Commission approval of the CCE prior to
21 beginning operations at the subject facility. Proposed subsection (h) contains additional closure
22 requirements for stationary commercial fluid recycling facilities.

23 In addition to the notice requirements outlined in §4.125, the Commission proposes that
24 commercial facilities provide notice by publication. The notice shall be published in a newspaper of
25 general circulation in the county in which the proposed facility will be located at least once each week for
26 two consecutive weeks, with the first publication occurring not earlier than the date staff determines that
27 an application is complete pursuant to §1.201(b) but before the final review is completed. Proposed
28 subsection (c) contains the requirements for the notice form and contents. One required component of the
29 notice is a statement that an affected person may protest the application by filing a protest with the
30 Commission within 30 calendar days of the last date of publication. Proposed subsection (d) requires the

1 applicant to submit proof of publication, which shall consist of an affidavit from the newspaper publisher
2 and the tear sheets for each published notice.

3 Additional operating requirements for commercial facilities are proposed in §4.142. These
4 requirements include a detailed waste acceptance plan, a site-specific spill control plan, and a stormwater
5 management plan.

6 The Commission proposes §4.143 to require a permittee of a commercial facility to provide
7 drawings documenting the as-built condition of the facility prior to commencement of operations.

8 Division 6 is proposed to specify additional requirements for permitted pits. As mentioned above,
9 proposed §4.150(a) clarifies that in addition to the requirements of Division 6, the permittee shall comply
10 with Division 4 and Division 5. Proposed subsection (b) states that if at any time a pit no longer meets the
11 requirements for authorized pits under §4.113, the operator of the pit shall apply for a pit permit pursuant
12 to the requirements of Division 6. Proposed subsections (c) and (d) prohibit unauthorized use of a pit and
13 specify the consequences of unauthorized use. The Commission proposes subsection (f) to outline
14 required action by an operator in the event of an unauthorized release of pit substances. Proposed
15 subsections (g) and (h) contain specific location requirements for pits. Subsection (g) states that a pit shall
16 not be located on a barrier island or a beach, within 300 feet of surface water including wetlands, within
17 500 feet of any public water system well or intake, within 300 feet of any domestic water well or
18 irrigation water well (other than a well that supplies water for drilling or workover operations for which
19 the pit is authorized), or within a 100-year flood plain. Proposed subsection (h) requires a minimum 50-
20 foot buffer zone be maintained between the boundaries of the property and the outer edge or toe of the pit
21 walls or berms.

22 Proposed §4.151(a) contains information that must be included in a pit permit application in
23 addition to the information required by §4.128. Proposed §4.151(b) specifies additional operating
24 requirements related to signage, freeboard, and liners. Pits permitted pursuant to Subchapter A are also
25 subject to additional requirements that the Director determines are necessary to prevent pollution.

26 The Commission proposes §4.152 to require a permittee governed by Division 6 to implement a
27 monitoring plan in which the permittee routinely monitors the integrity of the pit liner. The permittee may
28 implement one of three methods: (1) emptying the pit and conducting a visual inspection on an annual
29 basis; (2) installing a double liner and leak detection system between the primary and secondary liner that
30 is monitored on a daily or weekly basis; or (3) proposing an alternative monitoring method by
31 demonstrating the alternative method is at least as protective of surface and subsurface waters as the other

1 two methods. Proposed subsection (b) specifies how to determine if a primary liner in a double liner and
2 leak detection system has failed. If a liner failure is discovered at any time, the permittee must comply
3 with the requirements in proposed subsection (b)(3).

4 In accordance with House Bill 2201 from the 87th Legislative Session, the Commission proposes
5 §4.153 to incorporate siting requirements for commercial disposal pits. Under proposed subsection (a)(1),
6 the application for a pit at a commercial disposal facility shall include documentation of a good faith
7 investigation of the 10-year flooding history of the property to determine whether the facility is located in
8 a flood-prone area. Proposed subsection (a)(2) contains the siting requirements for a commercial disposal
9 pit. Such a pit shall not be located in an area in which the disposal pit is not sufficiently isolated to
10 prevent pollution of surface or subsurface waters, a prohibited location defined in Division 11 (relating to
11 Requirements for Surface Water Protection), or any other location where there is an increased risk to
12 surface or subsurface waters. The application shall contain information to demonstrate that the pit will not
13 be located in one of the areas prohibited under proposed subsection (a)(2). Proposed subsections (b) and
14 (c) contain the requirements for design and construction of the disposal pit and closure of the disposal pit.
15 Specifically, for commercial disposal pits, a post-closure monitoring period of no less than five years is
16 required.

17 Closure requirements for all permitted pits are proposed in §4.154.

18 Proposed Division 7 applies to permits for landfarming and landtreating. Proposed §4.160
19 clarifies that the requirements in Division 4 must be adhered to in addition to the requirements of Division
20 7.

21 The Commission proposes §4.161(a) to require additional information in applications for
22 landfarming and landtreating such as facility diagrams including two perpendicular, sectional views of all
23 landfarming cells to be constructed and depicting the locations and dimensions of all areas where
24 landfarming and landtreating will occur. The Commission notes that the proposed definition of
25 landfarming cell in §4.110 includes landtreating cells. Proposed subsection (a)(1)(B) restricts the areas
26 where landfarming and landtreating will occur by requiring that a minimum 50-foot buffer zone be
27 maintained between the boundaries of the property and the treatment cells, measured from the toe of the
28 constructed berm to the property boundary, and a minimum 300-foot buffer zone be maintained between
29 the toe of the constructed berms and any drainage features or surface waters. Proposed subsection (a)(2)
30 requires an applicant for a landfarming or landtreating permit to demonstrate that the area has at least 20
31 inches of tillable soil suitable for the application, treatment, and disposal of oil and gas waste. Additional

1 information is required in proposed subsection (a)(3) to enable the Director to determine whether the
2 proposed facility will pose a threat of pollution or a threat to public health or safety. Berm construction
3 requirements are proposed in subsection (b). Proposed subsection (c) contains the reasons the Director
4 may deny an application for a landfarming or landtreating permit, which include that the facility is
5 proposed to be located in a sensitive area such as those listed in proposed subsection (c)(1) through (c)(6).

6 Proposed §4.162 requires additional information in a landfarming or landtreating application such
7 as the estimated chloride concentration of the waste to be accepted at the facility, the procedure by which
8 waste will be mixed into the soil, plans for monitoring and testing the landfarming area, and the total
9 cumulative height and volume of the waste to be landfarmed over the active life of the operation.

10 Operating requirements specific to landfarming and landtreating permits are proposed in §4.162(b).

11 The Commission proposes §4.163 to require monitoring of three soil zones in each active cell.
12 Subsection (a) contains required monitoring frequencies for the surface treatment zone, the waste
13 treatment zone, and the compliance monitoring zone. Proposed subsections (b) and (c) contain
14 requirements for collecting and analyzing soil samples. Proposed subsection (d) specifies the limitations
15 for which the samples must be analyzed in a Figure proposed in the subsection, and outlines the process
16 an operator must follow if the sample exceeds those limitations. Proposed subsection (e) requires that
17 documentation of the sampling and analysis be filed with Technical Permitting and the District Office as
18 part of the quarterly report required by the permit.

19 Section 4.164 is proposed to contain closure requirements specific to landfarming and
20 landtreating permits.

21 Division 8 is proposed to describe the requirements applicable to permitted reclamation plants
22 and is substantively similar to current §3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon
23 Wastes, and Other Waste Materials), which is proposed to be amended concurrently with the proposed
24 new rules in Subchapter A. The Commission proposes two notable changes to its regulatory requirements
25 for reclamation plants. First, under current §3.57, reclamation plant permits do not expire. Proposed new
26 §4.170 and §4.171 would limit a reclamation plant permit to a five-year term. Second, §3.57 prohibits
27 reclamation plant permits from being transferred to another operator. Proposed new §4.171(b) allows
28 reclamation plant permits to be transferred, renewed, or amended in accordance with §4.122. Proposed
29 §4.170(a)(7) states that reclamation plant permits issued under §3.57 before July 1, 2025 expire five years
30 from July 1, 2025 but may be renewed pursuant to §4.122.

1 Division 9 is proposed to specify requirements for emergency permits (§4.181), minor permits
2 (§4.182), and permitted recycling (§4.184) that are generally consistent with the requirements for these
3 permits contained in current §3.8. However, the Commission proposes new §4.185 to allow the approval
4 of pilot projects for certain activities, such as the recycling of treated produced water. Pilot programs may
5 be proposed to assess: (1) whether a recycled product can be reused in certain activities that are safe and
6 protective of human health and the environment; (2) the efficiency and effectiveness of the recycling
7 project; or (3) the appropriate regulatory requirements of a permitted recycling program. The pilot
8 program may be authorized for a duration to be determined by the Commission if the Director finds that
9 the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas
10 wastes. The duration of the pilot program shall be sufficient to evaluate the pilot program objectives,
11 which may include sufficient time to take an appropriate non-food-based crop from seed through one
12 complete growing cycle. If after the approved duration, the Commission determines that the proposed
13 pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission
14 may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling).
15 Under proposed §4.185(c)(2), the Commission may also extend the pilot program in increments of no
16 more than one year.

17 The Commission proposes Division 10 to incorporate requirements for transportation of oil and
18 gas waste, including new regulations relating to oil and gas waste characterization and documentation. As
19 specified in proposed §4.102, the generator of oil and gas waste is responsible for characterizing the
20 waste. Proposed §4.190(a) incorporates that requirement and also specifies that the generator must
21 document the waste characterization using a Waste Profile Form prior to transportation. Proposed
22 subsection (b) states that an operator may use the form provided by the Commission or the operator's own
23 form, provided the form includes the information listed in subsection (b)(1). To characterize waste, a
24 generator may establish standard waste profiles for common types of oil and gas waste as described in
25 proposed subsection (b)(2). Proposed §4.190(b)(3) requires a generator that chooses to dispose of or
26 recycle its waste to provide the Waste Profile Form to the waste hauler and receiver, and proposed
27 subsection (b)(4) requires the receiver to then include the waste profile information in the periodic
28 reporting requirements specified in the facility permit conditions.

29 Proposed new §4.191 requires oil and gas waste that is transported by vehicle from the location
30 where it is generated to another facility to either be accompanied by a paper manifest or be documented
31 and tracked by an electronic manifest system. Proposed §4.191(b) specifies the required components of a

1 manifest. Proposed subsection (c) requires that generator of the oil and gas waste, the waste hauler, and
2 the receiver keep for a period of three years from the date of shipment copies or electronic records of all
3 manifests. Proposed subsection (d) excepts oil and gas waste moved by pipeline from the manifest
4 requirement but incorporates other requirements for operators of oil and gas waste pipeline systems.

5 Proposed §4.192 provides a process for obtaining approval for certain oil and gas waste to be
6 managed at appropriate TCEQ-regulated facilities and for certain TCEQ-jurisdictional waste to be
7 managed at appropriate RRC-regulated facilities. The process requires approval from both agencies on a
8 special waste authorization form made available by the Commission.

9 Proposed §4.193 incorporates requirements for oil and gas waste haulers. These regulations are
10 mostly unchanged from the current requirements of §3.8. However, proposed new §4.193(c) requires that
11 an application for a waste hauler permit be made using the Commission's electronic system. In addition,
12 proposed subsection (d) states the waste hauler permittee may not apply to renew its permit using the
13 permittee's assigned permit number and by paying the fee required by §3.78 of this title until a minimum
14 of 60 days before the expiration date specified in the permit. A waste hauler permittee is required to apply
15 for a new permit number if the permittee submits a renewal application more than six months after the
16 expiration of its permit. Proposed subsection (e) contains the permit conditions for oil and gas waste
17 hauler permittees.

18 Proposed §4.194 requires all generators, waste haulers, and receivers to retain waste profiles,
19 manifests and other documentation for at least three years and provide such records to the Commission
20 upon request.

21 The Commission proposes §4.195 to ensure oil and gas waste generated outside the State of
22 Texas and transported into Texas for management is accompanied by documentation to identify and track
23 the waste.

24 Proposed in Division 11 are new §4.196 and §4.197, which are mostly unchanged from current
25 §3.8(e) and §3.8(j). These sections are proposed to incorporate the requirements from §3.8 into the new
26 rules in Subchapter A.

27
28 *Proposed Amendments to Subchapter B*

29 The Commission also proposes conforming amendments to Subchapter B of Chapter 4. Many of
30 the amendments are proposed to replace references to §3.8 with the applicable provision now proposed to
31 be included in new Subchapter A. Other amendments are proposed to ensure consistency between new

Subchapter A and existing Subchapter B. For example, each time “appropriate district office” appears in Subchapter B, the term “appropriate” is proposed to be removed because “district office” is defined in Subchapter A to mean the district office where the waste management, disposal, and/or recycling is located. Amendments are also proposed in various sections to update Division and Department names and ensure terms are used consistently throughout the Subchapter. In addition, amendments are proposed to incorporate legislative requirements imposed by House Bill 3516 (87th Legislature, 2021) and Senate Bill 1541 (85th Legislature, 2017).

The following sections are proposed to be amended to remove references to §3.8 or to make other non-substantive updates: §§4.203, 4.207, 4.209, 4.218, 4.220, 4.222, 4.223, 4.239, 4.242, 4.243, 4.245, 4.250, 4.251, 4.255, 4.258, 4.259, 4.261, 4.267, 4.277, 4.287, and 4.293.

The Commission proposes amendments in §4.201 to ensure consistency with the purpose stated in proposed new §4.101.

Amendments proposed in §4.202 replace references to §3.8 with references to new Subchapter A of Chapter 4. Other proposed changes break out requirements into a list to improve readability and clarify that pits and waste management units at commercial facilities are required to be permitted. Proposed amendments in subsection (h) outline requirements for permits issued prior to the effective date of the proposed amendments, which is estimated to be July 1, 2025.

Amendments proposed in §4.204 clarify that the definitions proposed in new §4.110 of Subchapter A, relating to Definitions, apply in Subchapter B as well. Terms that already appear in proposed new §4.110 are removed from §4.204 to reduce confusion. The terms proposed to be amended or added to §4.204 are terms unique to Subchapter B or terms for which the meaning is altered for purposes of Subchapter B.

The Commission proposes amendments in §4.205(b) to clarify that a fee and surcharge are required to be submitted with a request for an exception to Commission rules. Proposed amendments in subsection (c) allow approval of a requested exception to a rule in Divisions 5 or 6 if the Director determines the request is substantially similar to previous exceptions approved by the Commission.

Amendments proposed in §4.208(c) require that all chemical laboratory analyses be performed using the appropriate Environmental Protection Agency (EPA) method or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory.

The Commission proposes to amend §4.211 to incorporate new penalty guidelines and standard penalty amounts for violations of rules in Subchapter B. The structure and content of proposed §4.211 is

1 similar to the Commission's other penalty rules such as §3.107 (relating to Penalty Guidelines for Oil and
2 Gas Violations), proposed new §4.107 in Subchapter A, §8.135 (relating to Penalty Guidelines for
3 Pipeline Safety Violations), §9.15 (Penalty Guidelines for LP-Gas Safety Violations), and §18.12
4 (relating to Penalty Guidelines). The proposed figures also match the Commission's other penalty rules
5 except that the figures proposed in §4.211 include references to rules in Subchapter B.

6 Proposed amendments in §4.212 update requirements for filing an application for on-lease solid
7 oil and gas waste commercial recycling. The amendments proposed in subsection (a) ensure that an
8 application is filed on a Commission prescribed form and that it is filed with Technical Permitting in
9 addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an
10 application is considered complete and provide that an application will be administratively denied if it is
11 still incomplete after the second supplemental submission. An applicant may request a hearing if an
12 application is administratively denied. Proposed subsection (e) clarifies that filings are required to be
13 made electronically if an electronic version or electronic filing system is available.

14 Proposed amendments in §4.213 expand the scope of subsection (b) to contemplate geologic
15 work products and allow such products to be sealed by a professional engineer or geoscientist licensed in
16 Texas. Similar amendments are proposed in §§4.231, 4.247, 4.263, and 4.279.

17 The Commission proposes to amend §4.214 to update the section, correct an error, and ensure
18 consistent terms are used throughout Chapter 4.

19 Proposed amendments in §4.219 remove outdated language that is no longer applicable and
20 update location requirements for on-lease commercial solid oil and gas waste recycling to be consistent
21 with Commission practices. Amendments are also proposed to ensure that pits at an on-lease commercial
22 solid oil and gas waste recycling facility are not located where there has been observable groundwater
23 within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);
24 within a sensitive area as defined by §4.110 of this title (relating to Definitions); within 300 feet of
25 surface water, domestic supply wells, or irrigation water wells; within 500 feet of any public water system
26 wells or intakes; within 1,000 feet of a permanent residence, school, hospital, institution or church in
27 existence at the time of the initial permitting; within 500 feet of a wetland; or within a 100-year
28 floodplain. Proposed amendments also add required information to be included in a permit application for
29 on-lease commercial solid oil and gas waste recycling.

30 In addition to minor amendments proposed to ensure consistent use of terms, proposed
31 amendments in §4.221 require additional information to be included in the written report of the trail run

1 such as a summary of the trial run and description of the process, the type of waste and description of the
2 waste material, and copies of all chemical and geotechnical laboratory reports and chain of custody sheets
3 for required samples.

4 The Commission proposes amendments to §4.224 to require an operator to include the facility
5 identification number assigned by Technical Permitting in the operator's application for a permit renewal.
6 Facility identification numbers will assist Technical Permitting in identifying facilities that may have
7 several different types of permits.

8 Proposed amendments in §4.230 update requirements for filing an application for off-lease or
9 centralized commercial solid oil and gas waste recycling. The amendments proposed in subsection (a)
10 ensure that an application is filed on a Commission prescribed form and that it is filed with Technical
11 Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when
12 an application is considered complete and provide that an application will be administratively denied if it
13 is still incomplete after the second supplemental submission. An applicant may request a hearing if an
14 application is administratively denied. Proposed subsection (e) clarifies that filings are required to be
15 made electronically if an electronic version or electronic filing system is available.

16 The Commission proposes §4.232 with amendments to require a United States Geological Survey
17 topographic map or an equivalent topographic map to be included with the permit application. The map
18 shall show the items proposed in subsection (a)(7)(A) through (a)(7)(K). New subsection (b) is proposed
19 consistent with §4.219 to ensure pits at off-lease or centralized commercial solid oil and gas waste
20 recycling are not located (1) where there has been observable groundwater within 100 feet of the ground
21 surface unless the pit design includes a geosynthetic clay liner (GCL); (2) within a sensitive area as
22 defined by §4.110 of this title (relating to Definitions); (3) within 300 feet of surface water, domestic
23 supply wells, or irrigation water wells; (4) within 500 feet of any public water system wells or intakes; (5)
24 within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time
25 of the initial permitting; (6) within 500 feet of a wetland; or (7) within a 100-year floodplain. New
26 subsections (c) and (d) are proposed to include language from §4.219 which specifies the factors the
27 Commission will consider in assessing potential risk from the proposed recycling activities and clarifies
28 that the siting requirements apply to conditions at the time equipment and tanks are placed. Similar siting
29 requirements are proposed in §4.248 for stationary commercial solid oil and gas waste recycling, in
30 §4.264 for off-lease commercial fluid recycling, and in §4.280 for stationary commercial fluid recycling.

1 Amendments proposed in §4.234 allow the Technical Permitting Section to waive the
2 requirement that a permit application include a plan for the installation of monitoring wells. Similarly, the
3 Commission proposes amendments in §4.241(b), §4.257(b), §4.273(b), and §4.289(b) to provide the
4 Technical Permitting Section discretion to evaluate the facts of the specific permit application and
5 determine whether certain requirements are appropriate.

6 The Commission proposes amendments to §4.238 to ensure notice requirements in Subchapter B
7 are consistent with notice requirements proposed in new Subchapter A. The same amendments are
8 proposed in §§4.254, 4.270, and 4.286.

9 Amendments proposed in §4.239 correct an error and update language to ensure consistency.

10 Amendments proposed in §4.240 remove outdated language that no longer applies and clarify
11 certain factors the Commission will consider in assessing potential risk associated with an off-lease
12 centralized commercial solid oil and gas waste recycling facility. Specifically, the Commission proposes
13 to clarify that it will consider the distance to any surface water body, whether wet or dry.

14 Proposed amendments in §4.246 update requirements for filing an application for a stationary
15 commercial solid oil and gas waste recycling facility. The amendments proposed in subsection (a) ensure
16 that an application is filed on a Commission prescribed form and that it is filed with Technical Permitting
17 in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an
18 application is considered complete and provide that an application will be administratively denied if it is
19 still incomplete after the second supplemental submission. An applicant may request a hearing if an
20 application is administratively denied. Proposed subsection (e) clarifies that filings are required to be
21 made electronically if an electronic version or electronic filing system is available.

22 Proposed amendments in §4.254 ensure that notice recipients receive instructions for filing notice
23 electronically if the Commission implements an electronic means for filing protests.

24 Proposed amendments in §4.256 remove outdated language that is no longer applicable and
25 update location requirements for a stationary commercial solid oil and gas waste recycling facility. The
26 proposed amendments prohibit such facilities within 300 feet of surface water or public, domestic, or
27 irrigation water wells.

28 Proposed amendments in §4.262 update requirements for filing an application for off-lease
29 commercial recycling of fluid. The amendments proposed in subsection (a) ensure that an application is
30 filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the
31 district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered

complete. Proposed changes in subsection (c) clarify that after the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be to approve the application if it meets requirements and has not been protested, to refer the application to the Hearings Division if the application meets requirements and the application has been protested, or to deny the application if it does not meet the requirements. If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. Additional amendments are proposed in subsection (d) to implement House Bill 3516 (87th Legislature, 2021), which requires the Commission to approve or deny a complete application that does not include a request for an exception not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed. Further, if the Commission does not approve or deny the application before the 90th day, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year. Proposed subsection (f) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

The Commission proposes amendments in §4.263 to incorporate additional requirements for engineering, geological, and other information submitted in an application for an off-lease commercial fluid recycling permit. Information filed with the application shall be sufficient to describe the subsurface geology and hydrogeology underlying the facility to a depth of at least 100 feet and evaluate the geology, hydrogeology, and proposed engineering design. Proposed subsections (b) and (c) specify how an operator may obtain information for engineering and geological site characterization, and how an operator may establish background concentrations if the operator intends to rely on those concentrations during operations or at closure.

Section 4.264 is proposed to be amended to include House Bill 3516's requirement that the Commission establish minimum siting standards for fluid recycling pits. The proposed amendments ensure that pits at off-lease commercial fluid recycling facilities are not located (1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL); (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions); (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells; (4) within 500 feet of any public water system wells or intakes; (5) within 1,000 feet of a permanent residence, school, hospital, institution or church in existence at the time of the initial permitting; (6) within 500 feet of a wetland; or (7) within a 100-year floodplain. Proposed amendments in §4.264(b)(7)

1 require a United States Geological Survey topographic map or an equivalent topographic map to be
2 included with the permit application. The map shall show the items proposed in subsection (b)(7)(A)
3 through (b)(7)(K).

4 New language is proposed in §4.266 to incorporate requirements from House Bill 3516. Proposed
5 subsection (a) establishes design and construction standards for pits at off-lease commercial fluid
6 recycling facilities. Proposed subsection (a)(5) contains new liner requirements for such pits permitted
7 after July 1, 2025. Proposed subsection (a)(6)-(a)(10) outline requirements for installation of liners and
8 requirements to ensure liner integrity is maintained. Proposed subsection (a)(11) requires the pit to be
9 designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. Proposed
10 subsection (a)(12) requires pits to be designed to operate with a minimum two feet of freeboard plus the
11 capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event. Proposed
12 subsection (b) requires tanks and treatment equipment to be located within a secondary containment
13 system. Subsections (c) and (d) are renumbered due to the new requirements proposed in subsections (a)
14 and (b). Minor updates are also proposed in subsections (c) and (d), including a new requirement that the
15 permit application for off-lease commercial recycling of fluid include a plan for installing monitoring
16 wells.

17 Amendments proposed in §4.268 add a requirement that the sampling plan submitted with the
18 permit application ensures compliance with reuse requirements in the permit in addition to other permit
19 conditions. Additionally, the application shall include a plan to verify that fluid oil and gas wastes are
20 confined to the facility pits, tanks, and processing areas. Proposed amendments in §4.268(3) clarify that
21 the required schedule for conducting periodic inspections shall include plans to inspect pits and liner
22 systems, equipment, processing, and other waste storage areas.

23 Amendments are proposed in §4.269 to comply with House Bill 3516's requirement that the
24 Commission adopt rules establishing uniform standards for estimating closure costs. The requirements for
25 closure cost estimates (CCEs) in §4.269 are consistent with the CCE standards proposed for commercial
26 facilities permitted under Subchapter A. The existing language in §4.269 is proposed to be amended as
27 subsection (b) and contains amendments to include additional information in the permit application
28 relating to closure, including information to address the requirements of §4.276 (relating to Minimum
29 Permit Provisions for Closure), a plan to close all storage pits, treatment equipment, and associated piping
30 and other storage or waste processing equipment, and information to show how the disturbed areas of the
31 facility will be contoured and reseeded with geographically appropriate vegetation.

1 Proposed amendments in §4.271 correct an error and update terms to ensure consistency
2 throughout the chapter.

3 The Commission proposes amendments in §4.272 to add a presumption that an applicant's
4 proposed location for an off-lease commercial fluid recycling facility does not present an unreasonable
5 risk of pollution or threat to public health or safety if the permit application complies with §4.264(a). The
6 proposed amendments also remove outdated language that no longer applies, increase the required
7 distance a facility may be located from surface water or certain water wells, and clarify certain factors the
8 Commission will consider in assessing potential risk associated with an off-lease commercial fluid
9 recycling facility. Specifically, the Commission proposes to clarify that it will consider the distance to any
10 surface water body, whether wet or dry.

11 In addition to the minor updates described above, the Commission proposes to amend §4.273 to
12 add new subsections (f), (g), and (h). Proposed subsection (f) limits where an operator may locate
13 material excavated during construction of an off-lease commercial fluid recycling facility. Proposed
14 subsection (g) contains signage, fencing, and security requirements. Proposed subsection (h) requires that
15 any pit associated with an off-lease commercial fluid recycling facility permitted after July 1, 2025, shall
16 comply with the requirements of §4.265(a).

17 The Commission proposes new requirements in §4.274(e) to prohibit accumulation of oil on top
18 of produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed
19 off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with
20 the Commission on the appropriate forms or through an electronic filing system.

21 New requirements for operating an off-lease commercial fluid recycling facility are proposed in
22 §4.275(a) and (c). Existing language is renumbered as subsection (b). Proposed new requirements relate
23 to monitoring, such as weekly inspections, inspection logs, and weekly monitoring of the leak detection
24 system, and also contain standards for determining when the primary liner has failed and required steps if
25 the primary liner is compromised. Proposed subsection (a)(6) prohibits the facility from receiving waste
26 until groundwater monitoring wells are completed, developed, and sampled if groundwater monitoring
27 wells are required. The Commission also proposes a figure in subsection (a)(6), which contains the
28 required parameters for sampling. Proposed subsection (c) contains a quarterly reporting requirement.

29 New language is proposed in §4.276 to replace the minimum permit provisions for closure.
30 Proposed new subsection (a)(1) requires an operator to notify the Commission within 60 days after
31 cessation of operations. Proposed new subsection (a)(2) requires an operator to notify the Commission 45

1 days before the commencement of closure activities. Proposed subsection (b) requires that complete
2 closure of a facility occur within one year from the date operations cease. An extension to the required
3 one-year timeframe may be granted but shall not exceed one additional year. Proposed subsection (c)
4 requires that the operator remove all fluids from treatment equipment and tanks within 60 days of the date
5 operations cease and dispose of the contents in an authorized manner. All fluid from pits shall be removed
6 within six months of the date operations cease. Proposed subsections (c)(3) through (c)(5) contain
7 requirements for other wastes, liners, concrete areas and access roads, and visibly contaminated soils.
8 Requirements for sampling and analysis of the area around and underneath each pit, processing area, and
9 waste storage are proposed in subsection (d). The Commission also proposes a figure in subsection (d)(1),
10 which contains the required parameters for sampling. Proposed subsection (e) requires that the facility be
11 restored to a safe and stable condition that blends with the surrounding land, and the subsection includes
12 requirements for replacing and contouring topsoil and subsoils to achieve erosion control, long-term
13 stability, and preservation of surface water flow patterns. The Commission also proposes to require the
14 operator to re-vegetate the site as appropriate for the geographic region and include a planned water
15 source to establish the re-vegetated areas. Proposed subsection (f) requires an operator to submit a closure
16 report within 60 days of closure completion and specifies the contents of the report. Proposed subsection
17 (g) states that the operator shall notify the Commission when closure and re-vegetation are complete and
18 proposed subsection (h) states that the Commission will inspect the site to verify compliance with closure
19 requirements. As stated in proposed subsection (g), financial security will not be released to the operator
20 until all post-closure activities are approved by the Commission, including Technical Permitting and Site
21 Remediation as applicable.

22 Proposed amendments in §4.278 update requirements for filing an application for a stationary
23 commercial fluid recycling facility. The amendments proposed in subsection (a) ensure that an application
24 is filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the
25 district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered
26 complete. Proposed changes in subsection (c) clarify that after the second supplemental submission, if the
27 application is complete, the Director shall act on the application. The Director's action on the application
28 shall be to approve the application if it meets requirements and has not been protested, to refer the
29 application to the Hearings Division if the application meets requirements and the application has been
30 protested, or to deny the application if it does not meet the requirements. If after the second supplemental
31 submission the application is still incomplete, the Director shall administratively deny the application.

1 Additional amendments are proposed in subsection (d) to implement the requirements of House Bill 3516
2 (87th Legislature, 2021), which require the Commission to approve or deny a complete application that
3 does not include a request for an exception not later than the 90th day after the date the complete
4 application was received by the Commission, unless a protest is filed. Further, if the Commission does not
5 approve or deny the application before the 90th day, the permit application is considered approved, and
6 the applicant may operate under the terms specified in the application for a period of one year. Proposed
7 subsection (f) clarifies that filings are required to be made electronically if an electronic version or
8 electronic filing system is available.

9 The Commission proposes amendments in §4.279 to incorporate additional requirements for
10 engineering, geological, and other information submitted in an application for a stationary commercial
11 fluid recycling permit. Information filed with the application shall be sufficient to describe the subsurface
12 geology and hydrogeology underlying the facility to a depth of at least 100 feet and evaluate the geology,
13 hydrogeology, and proposed engineering design. Proposed subsections (b) and (c) specify how an
14 operator may obtain information for engineering and geological site characterization, and how an operator
15 may establish background concentrations if the operator intends to rely on those concentrations during
16 operations or at closure.

17 Section 4.280 is proposed to be amended to include House Bill 3516's requirement that the
18 Commission establish minimum siting standards for fluid recycling pits. The proposed amendments
19 ensure that pits at stationary commercial fluid recycling facilities are not located (1) where there has been
20 observable groundwater within 100 feet of the ground surface unless the pit design includes a
21 geosynthetic clay liner (GCL); (2) within a sensitive area as defined by §4.110 of this title (relating to
22 Definitions); (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells; (4)
23 within 500 feet of any public water system wells or intakes; (5) within 1,000 feet of a permanent
24 residence, school, hospital, institution or church in existence at the time of the initial permitting; (6)
25 within 500 feet of a wetland; or (7) within a 100-year floodplain. Proposed amendments in §4.280(b)(7)
26 require a United States Geological Survey topographic map or an equivalent topographic map to be
27 included with the permit application. The map shall show the items proposed in subsection (b)(7)(A)
28 through (b)(7)(K).

29 New language is proposed in §4.282 to incorporate requirements from House Bill 3516. Proposed
30 subsection (a) establishes design and construction standards for pits at stationary commercial fluid
31 recycling facilities. Proposed subsection (a)(5) contains new liner requirements for such pits permitted

1 after July 1, 2025. Proposed subsection (a)(6)-(a)(10) outline requirements for installation of liners and
2 requirements to ensure liner integrity is maintained. Proposed subsection (a)(11) requires the pit to be
3 designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. Proposed
4 subsection (a)(12) requires pits to be designed to operate with a minimum two feet of freeboard plus the
5 capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event. Proposed
6 subsection (b) requires tanks and treatment equipment to be located within a secondary containment
7 system. Subsections (c) and (d) are renumbered due to the new requirements proposed in subsections (a)
8 and (b). Minor updates are also proposed in subsections (c) and (d).

9 Proposed amendments in §4.283 clarify that the required waste acceptance plan shall identify
10 specific types of oil and gas wastes and provides examples such as hydraulic fracturing flowback fluid
11 and produced water.

12 Amendments proposed in §4.284 add a requirement that the sampling plan submitted with the
13 permit application ensures compliance with reuse requirements in the permit in addition to other permit
14 conditions. Additionally, the application shall include a plan for monitoring groundwater based on the
15 subsurface geology and hydrogeology, which may include the installation and sampling of monitoring
16 wells, and a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and
17 processing areas. Proposed amendments in §4.284(3) clarify that the required schedule for conducting
18 periodic inspections shall include plans to inspect pits and liner systems, equipment, processing, and other
19 waste storage areas.

20 Amendments proposed in §4.285 conform to proposed §4.269 and comply with House Bill
21 3516's requirement that the Commission adopt rules establishing uniform standards for estimating closure
22 costs. The requirements for closure cost estimates (CCEs) are also consistent with the CCE standards
23 proposed for commercial facilities permitted under Subchapter A. The existing language in §4.285 is
24 proposed to be amended as subsection (b) and contains amendments to include additional information in
25 the permit application relating to closure, including information to address the requirements of §4.292
26 (relating to Minimum Permit Provisions for Closure), a plan to close all storage pits, treatment equipment,
27 and associated piping and other storage or waste processing equipment, and information to show how the
28 disturbed areas of the facility will be contoured and reseeded with geographically appropriate vegetation.

29 The Commission proposes amendments in §4.288 to add a presumption that an applicant's
30 proposed location for a stationary commercial fluid recycling facility does not present an unreasonable
31 risk of pollution or threat to public health or safety if the permit application complies with §4.280(a). The

1 proposed amendments also clarify certain factors the Commission will consider in assessing potential risk
2 associated with a stationary commercial fluid recycling facility. Specifically, the Commission proposes to
3 clarify that it will consider the distance to any surface water body, whether wet or dry.

4 In addition to the minor updates described above, the Commission proposes to amend §4.289 to
5 add new subsections (f), (g), and (h). Proposed subsection (f) limits where an operator may locate
6 material excavated during construction of a stationary commercial fluid recycling facility. Proposed
7 subsection (g) contains signage, fencing, and security requirements. Proposed subsection (h) requires that
8 any pit associated with a stationary commercial fluid recycling facility permitted after July 1, 2025, shall
9 comply with §4.282(a).

10 The Commission proposes new requirements in §4.290(e) to prohibit accumulation of oil on top
11 of produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed
12 off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with
13 the Commission on the appropriate forms or through an electronic filing system.

14 New requirements for operating a stationary commercial fluid recycling facility are proposed in
15 §4.291(a) and (c). Existing language is renumbered as subsection (b). Proposed new requirements relate
16 to monitoring, such as weekly inspections, inspection logs, and weekly monitoring of the leak detection
17 system, and also contain standards for determining when the primary liner has failed and required steps if
18 the primary liner is compromised. Proposed subsection (a)(6) prohibits the facility from receiving waste
19 until groundwater monitoring wells are completed, developed, and sampled if groundwater monitoring
20 wells are required. The Commission also proposes a figure in subsection (a)(6), which contains the
21 required parameters for sampling. Proposed subsection (c) contains a quarterly reporting requirement.

22 New language is proposed in §4.292 to replace the minimum permit provisions for closure.
23 Proposed new subsection (a)(1) requires an operator to notify the Commission within 60 days after
24 cessation of operations. Proposed new subsection (a)(2) requires an operator to notify the Commission 45
25 days before the commencement of closure activities. Proposed subsection (b) requires that complete
26 closure of a facility occur within one year from the date operations cease. An extension to the required
27 one-year timeframe may be granted but shall not exceed one additional year. Proposed subsection (c)
28 requires that the operator remove all fluids from treatment equipment and tanks within 60 days of the date
29 operations cease and dispose of the contents in an authorized manner. All fluid from pits shall be removed
30 within six months of the date operations cease. Proposed subsections (c)(3) through (c)(5) contain
31 requirements for other wastes, liners, concrete areas and access roads, and visibly contaminated soils.

1 Requirements for sampling and analysis of the area around and underneath each pit, processing area, and
2 waste storage are proposed in subsection (d). The Commission also proposes a figure in subsection (d)(1),
3 which contains the required parameters for sampling. Proposed subsection (e) requires that the facility be
4 restored to a safe and stable condition that blends with the surrounding land, and the subsection includes
5 requirements for replacing and contouring topsoil and subsoils to achieve erosion control, long-term
6 stability, and preservation of surface water flow patterns. The Commission also proposes to require the
7 operator to re-vegetate the site as appropriate for the geographic region and include a planned water
8 source to establish the re-vegetated areas. Proposed subsection (f) requires an operator to submit a closure
9 report within 60 days of closure completion and specifies the contents of the report. Proposed subsection
10 (g) states that the operator shall notify the Commission when closure and re-vegetation are complete and
11 proposed subsection (h) states that the Commission will inspect the site to verify compliance with closure
12 requirements. As stated in proposed subsection (g), financial security will not be released to the operator
13 until all post-closure activities are approved by the Commission, including Technical Permitting and Site
14 Remediation as applicable.

15 Finally, the Commission proposes new rules in Subchapter B, Division 7 (relating to Beneficial
16 Use of Drill Cuttings) to satisfy requirements of Senate Bill 1541 (85th Legislature, 2017). Senate Bill
17 1541 instructed the Commission to adopt criteria for beneficial uses to ensure that a beneficial use of
18 recycled drill cuttings is at least as protective of public health, public safety, and the environment as the
19 use of an equivalent product made without recycled drill cuttings. Proposed §4.301 includes requirements
20 for treatment and recycling for beneficial use of drill cuttings. The requirements in §4.301 must be met in
21 addition to the requirements of Divisions 3 and 4 of Subchapter B, which relate to Requirements for Off-
22 Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary
23 Commercial Solid Oil and Gas Waste Recycling Facilities, respectively.

24 Proposed §4.301(b) states that a permit for the treatment and recycling for beneficial use of drill
25 cuttings may be approved if the drill cuttings are used (1) in a legitimate commercial product for the
26 construction of oil and gas lease pads or oil and gas lease roads; (2) in a legitimate commercial product
27 for the construction of county roads; or (3) in a legitimate commercial product used as a concrete bulking
28 agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill
29 material, berm material, or construction fill if the applicant can demonstrate the requirements proposed in
30 subsection (b)(3)(A) and (B). Legitimate commercial product is defined in §4.204 as a product of a type
31 customarily sold to the general public for a specific use and for which there is a demonstrated commercial

1 market. Proposed §4.302 includes requirements for showing there is a demonstrated commercial market
2 for the treated drill cuttings. Proposed subsection (b) of §4.302 contains a requirement for the applicant
3 for a permit under Division 7 to perform a trial run that complies with proposed subsection (b)(1) through
4 (b)(6). The Commission proposes §4.302(c)(1) to impose specific requirements for use of treated and
5 recycled drill cuttings in a legitimate commercial product for the construction of oil and gas lease pads,
6 oil and gas lease roads, and county roads. The Commission proposes a figure in subsection (c)(1), which
7 contains required parameters for sampling of the treated drill cuttings.

8 Section 4.302(c)(2) imposes specific requirements for use of treated and recycled drill cuttings as
9 a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate,
10 closure or backfill material, berm material, or other construction fill material as specified in §4.301(b). A
11 figure is also proposed in subsection (c)(2) to list required parameters for sampling of treated and recycled
12 drill cuttings used for those purposes. The Commission proposes §4.302(c)(2)(E) to require an additional
13 application to be submitted to the Technical Permitting Section after the section approves the initial
14 permit to produce the treated drill cuttings. The separate application requests a letter of authority
15 authorizing the application of the product to each specific project and location. Proposed
16 §4.302(c)(2)(E)(i) through (v) list the requirements of the application requesting the letter of authority.
17 Proposed §4.302(c)(3) allows the Commission discretion to require additional criteria prior to approving
18 use of treated drill cuttings in other legitimate commercial products not listed in §4.302(c)(1) and (c)(2).

19 Paul Dubois, Director, Technical Permitting, Oil and Gas Division, has determined that for each
20 year of the first five years that the proposed new rules and amendments will be in effect, there will be no
21 foreseeable implications relating to cost or revenues for local governments as a result of enforcing or
22 administering the new rules and amendments. There will, however, be a one-time cost of approximately
23 \$2 million for the Commission to create an online registration system for authorized pits. Other activities
24 under the proposed rules, such as permitting and enforcing waste management activities, will be
25 performed by existing personnel and within current budget constraints, resulting in no additional costs to
26 the agency.

27 Mr. Dubois has determined that for each year of the first five years that the new rules and
28 amendments will be in effect, there will be additional economic costs for some required to comply with
29 the proposed new rules and amendments. However, these proposed new rules are generally consistent
30 with current Commission practices, and the Commission finds that they are necessary to meet the existing
31 "no pollution" standard incorporated into proposed new §4.101. Primary sources of new costs for

1 operators include new siting restrictions, which may prohibit pits and disposal methods at certain
2 locations, thereby requiring the use of above-ground tanks and, possibly, off-site disposal of certain
3 wastes. In addition, new numerical criteria for the waste/soil mixture after authorized landfarming and
4 authorized disposal of wastes by burial may result in the need for additional soil analysis. Compliance
5 with the new requirements to use liners in certain authorized and permitted pits will result in increased
6 costs. Also, new financial security requirements for produced water recycling pits represent a significant
7 change from current §3.8.

8 Mr. Dubois has calculated the following estimates concerning potential changes in cost for
9 specific activities in the amendments. Several of the proposed rules require new analytical requirements
10 for soil, waste, or water media. For activities covered by proposed new §4.111, analytical costs for water
11 condensate for benzene, toluene, ethylbenzene and xylene are estimated to be \$35 per sample. Total
12 petroleum hydrocarbons analysis of soil in a landfarm cell is estimated to be \$45 per sample. Closure of
13 Schedule B authorized pits in §4.115 may require analytical costs for soil of about \$208 per sample.
14 Analysis of groundwater samples from monitoring wells may cost about \$198 per sample. The cost for
15 soils analysis at a permitted landfarming or landtreating facility is estimated to be about \$285 and \$355
16 per sample, respectively. Although these sampling requirements and corresponding costs are new in
17 Commission rules, they are currently required by Commission permits.

18 Groundwater monitoring wells are currently required by Commission guidance and permits when
19 groundwater is expected to be encountered at depths of less than 100 feet below ground surface. This
20 requirement is now proposed in §4.131 for all permitted pits, and in §4.115 for produced water recycling
21 pits that do not have double synthetic liners and leak detection systems. Because produced water
22 recycling pits are large, long-term infrastructure pits that may pose a risk to groundwater, the Commission
23 understands the risks to groundwater warrant extra measures to monitor the potential for a release. The
24 cost to drill and complete a 100-foot-deep groundwater monitoring well is estimated to be about \$15,000
25 per well. However, most produced water recycling pits are built with double liners and leak detection
26 systems and, therefore, would not be required to install groundwater monitoring wells.

27 Two types of pits that were authorized by §3.8 are no longer authorized by proposed §4.113—
28 flare pits and basic sediment pits. An operator may choose to use these pits, but they must be permitted;
29 the requirement to obtain a permit may introduce a cost to the operator. The Commission understands that
30 flare pits are rarely used, and in many cases portable containers are used in lieu of basic sediment pits. In
31 addition, §4.114 requires Schedule A authorized pits to be lined if groundwater is likely to be encountered

1 less than 50 feet from the bottom of the pit. The liner must have a hydraulic conductivity that is 1.0×10^{-7}
2 cm/sec or less, and the liner can be of natural or synthetic material. Synthetic liners cost from \$0.50 per
3 square foot. Many operators have informed the Commission that native soils meet the proposed hydraulic
4 conductivity requirements in many instances, and operators install synthetic liners when needed as a
5 current practice. It is not expected that this requirement will significantly affect operators' costs.

6 Mr. Dubois has determined that the proposed financial security requirements for produced water
7 recycling pits in §4.115, as authorized by the Natural Resources Code §91.109(a), is a significant change,
8 as operators of non-commercial fluid recycling pits are not required to carry additional financial security
9 for these pits under the predecessor rule §3.8. Currently, Mr. Dubois estimates there are 588 non-
10 commercial fluid recycling pits in the three districts that comprise the Permian Basin that would qualify
11 as produced water recycling pits. These pits are operated by 85 different operators; 36 operators have one
12 pit, and 18 operators have more than five pits. The average size of a non-commercial fluid recycling pit is
13 about 500,000 bbl. The proposed rule provides operators flexibility, allowing several options for filing the
14 appropriate financial security for the size and number of produced water recycling pits. An operator of
15 one average pit of 500,000 bbl could file financial security in the amount of \$1/bbl, or \$500,000. Mr.
16 Dubois estimates a bond of \$500,000 would cost an operator about 3%, or \$15,000, per year. In another
17 scenario, an operator of 10 pits with a total capacity of 7,000,000 bbl could choose to file a maximum
18 bond of \$5,000,000, which, at an estimated cost of 3% would be \$150,000 per year.

19 The proposed rules will set a permit term for reclamation plant permits. Currently, reclamation
20 plant permits do not expire, but under the proposed rules these permits will expire in five years. There
21 will likely be costs associated with permit renewal for stand-alone reclamation plants. However, the
22 proposed rules also allow reclamation plant permits to be transferred to another operator, which is
23 something that is not currently allowed in the governing rule, §3.57. Many reclamation plants are located
24 at stationary treatment facilities with permits that renew every five years. In these cases, renewing the
25 reclamation plant permit should not significantly affect the cost of permit renewal for the entire facility.

26 Activities covered by proposed new §4.121 are not anticipated to result in increased costs due to
27 siting restrictions because the proposed construction, operation and closure provisions in the proposed
28 rule are consistent with current Commission practice under §3.8 and the Commission's guidance
29 documents published online in the Surface Waste Management Manual ([https://www.rrc.texas.gov/oil-](https://www.rrc.texas.gov/oil-and-gas/publications-and-notices/manuals/surface-waste-management-manual/)
30 [and-gas/publications-and-notices/manuals/surface-waste-management-manual/](https://www.rrc.texas.gov/oil-and-gas/publications-and-notices/manuals/surface-waste-management-manual/)).

1 Mr. Dubois anticipates that any increase in cost as a result of the proposed new rules will be
2 offset, at least in part, by more specific permit application requirements that should result in more
3 complete and acceptable permit applications, which will reduce correspondence, time, and effort involved
4 in completing and processing an application.

5 Mr. Dubois does not expect that changes to the rules in Subchapter B will result in significant
6 cost changes. Instead, Mr. Dubois anticipates that the changes to §4.115 (relating to Schedule B
7 Authorized Pits) will encourage the recycling of fluid oil and gas waste and may actually reduce
8 industry's reliance upon, Subchapter B, Divisions 5 and 6 (relating to Requirements for Off-Lease
9 Commercial Recycling of Fluid and Requirements for a Stationary Commercial Fluid Recycling Facility,
10 respectively).

11 Mr. Dubois has determined that for each year of the first five years that the new rules and
12 amendments will be in effect, the public benefit will be having more specific standards for waste
13 management and the prevention of pollution from waste associated with oil and gas exploration,
14 production, and development. These standards will aid operators in eliminating or reducing potential
15 sources of pollution and are consistent with industry practices. In addition, the proposed rules will create
16 more transparency in industry waste management operations, especially through the requirements to
17 register authorized pits and the additional requirements for waste manifest documentation. Further, the
18 proposed rules for notice of permit applications (§§4.125, 4.141, 4.238, 4.254, 4.270, and 4.286) increase
19 from 15 to 30 days the period of time an affected person has to protest a permit application. Finally, the
20 Commission finds that the costs of compliance are more than offset by the public benefit of enhanced
21 protection of surface and subsurface water arising from implementation of the proposed new rules.

22 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
23 Effect, requires that, before adopting a rule that may have an adverse economic effect on rural
24 communities, small businesses, or micro-businesses, a state agency prepare an economic impact statement
25 and a regulatory flexibility analysis. The economic impact statement must estimate the number of rural
26 communities and small businesses subject to the proposed rule and project the economic impact of the
27 rule on those stakeholders. A regulatory flexibility analysis must include the agency's consideration of
28 alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety,
29 and environmental and economic welfare of the state, the analysis must consider the use of regulatory
30 methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on
31 small businesses. Government Code §2006.001(2) defines "small business" as a legal entity, including a

1 corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is
2 independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual
3 gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole
4 proprietorship, that is formed for the purpose of making a profit; is independently owned and operated;
5 and has no more than 20 employees. A "rural community" means a municipality with a population of less
6 than 25,000. The Commission does not anticipate any impact on rural communities due to the proposed
7 new rules and amendments.

8 Entities that perform activities under the jurisdiction of the Commission are not required to report
9 to the Commission their number of employees or their annual gross receipts, which are elements of the
10 definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore,
11 the Commission has no factual bases for determining whether any persons who drill and complete wells
12 under the jurisdiction of the Railroad Commission will be classified as small businesses or micro-
13 businesses, as those terms are defined. The North American Industrial Classification System (NAICS)
14 sets forth categories of business types. Operators of oil and gas wells fall within the category for crude
15 petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts
16 website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small
17 Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in
18 Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-
19 businesses as defined in Texas Government Code, §2006.001.

20 Based on this information available to the Commission regarding oil and gas operators, the
21 Commission has concluded that, of the businesses that could be affected by the proposed amendments,
22 some may be classified as small businesses or micro-businesses, as those terms are defined in Texas
23 Government Code, §2006.001. In addition, during development of the proposed rules, the Commission
24 received input from many operators that consider themselves small businesses, at least compared to other
25 larger oil and gas operators. These smaller operators strongly voiced concerns about initial changes that
26 the Commission was considering regarding requirements for authorized pits at drilling and production
27 locations. During October and November 2023, the Commission circulated a draft of these new rules and
28 amendments for informal public comment. The draft proposed significant changes to its regulation of
29 authorized pits that included new requirements for liners, groundwater monitoring, and closure. These
30 proposed requirements placed additional burdens, and costs, on operators of all sizes. The smaller
31 operators stated that the costs were disproportionate to the environmental and safety benefits offered by

1 the proposed changes. Several of the smaller operators argued that there was little to no evidence of harm
2 from existing practices. After due consideration, the Commission agreed that lessening the impact to
3 smaller operators was warranted and the current proposed new rules and amendments incorporate changes
4 for authorized pits to achieve that goal.

5 The Commission has also determined that the proposed amendments will not affect a local
6 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
7 Texas Government Code §2001.022.

8 The Commission has determined that the amendments do not meet the statutory definition of a
9 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
10 analysis conducted pursuant to that section is not required.

11 The Commission reviewed the proposed amendments and found that they encompass certain
12 individual actions identified in Coastal Coordination Act implementation rules (e.g., 31 TAC §29.11).
13 The proposed new rules are consistent with Coastal Management Program policies because the proposed
14 new rules merely relocate existing practices and standards from §3.8 to proposed new §4.197 (relating to
15 Consistency with the Texas Coastal Management Program). The only changes proposed in §4.197 are
16 updates to ensure correct citation of Coastal Management Program Rules. Comments on consistency of
17 the proposed rules with the Coastal Management Program may be submitted in addition to any
18 substantive comments on the proposed new rules and amendments.

19 During the first five years that the rules would be in full effect, the proposed new rules and
20 amendments would create new regulations – new rules are proposed which update the Commission's
21 regulation of waste management. Though some of the requirements exist in current §3.8, the new rules
22 also update and modify waste management requirements. The proposed new rules and amendments also
23 increase responsibility for some persons under the Commission's jurisdiction. The proposed new rules and
24 amendments would not increase or decrease the number of individuals subject to the rules. The activities
25 and persons regulated under the proposed new rules and amendments were already required to comply
26 with Commission regulations in §3.8, §3.57, and Subchapter B of Chapter 4. The proposed new rules and
27 amendments do not create an increase in fees paid to the Commission, but do require additional financial
28 security to be provided in accordance with Texas Natural Resources Code Section 91.109. Finally, the
29 proposed new rules and amendments would not affect the state's economy and would not require a change
30 in employee positions.

1 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
2 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
3 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
4 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday,
5 September 30, 2024. The Commission finds that this comment period is reasonable because the proposal
6 and an online comment form will be available on the Commission's website more than two weeks prior to
7 Texas Register publication of the proposal, giving interested persons additional time to review, analyze,
8 draft, and submit comments. The Commission cannot guarantee that comments submitted after the
9 deadline will be considered. For further information, call Mr. Dubois at (512) 463-6778. The status of
10 Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)
11 [rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules). Once received, all comments are posted on the Commission's website at
12 <https://rrc.texas.gov/general-counsel/rules/proposed-rules/>. If you submit a comment and do not see the
13 comment posted at this link within three business days of submittal, please call the Office of General
14 Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting
15 lost; however, your operating system's or email server's settings may delay or prevent receipt.

16 The Commission proposes the amendments pursuant to Texas Natural Resources Code, §§81.051
17 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or
18 operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and
19 regulating persons and their operations under the jurisdiction of the Commission; Texas Natural
20 Resources Code §81.0531, which gives the Commission authority to assess penalties for violations of
21 provisions of Title 3, Texas Natural Resources Code, which pertain to safety or the prevention or control
22 of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the
23 prevention or control of pollution and are issued under that title; Texas Natural Resources Code §§85.042,
24 85.202, and 86.042, which require the Commission to adopt rules to prevent waste of oil and gas; Texas
25 Natural Resources Code §91.101, which gives the Commission authority to adopt and enforce rules and
26 orders and issue permits to prevent pollution of surface water or subsurface water in the state; Texas
27 Natural Resources Code §91.1017 (added by House Bill 2201, 87th Legislature), which requires the
28 Commission to establish standards governing permissible locations for pits used by commercial oil and
29 gas disposal facilities; Texas Natural Resources Code §122.004 (amended by House Bill 3516, 87th
30 Legislature), which requires the Commission to adopt rules to govern the treatment and beneficial use of
31 oil and gas waste, which shall encourage fluid oil and gas waste recycling for beneficial purposes and to

1 establish standards for the issuance of permits for commercial recycling of oil and gas waste; Texas
2 Natural Resources Code §123.0015 (added by Senate Bill 1541, 85th Legislature), which requires the
3 Commission to define "legitimate commercial product" and adopt criteria for beneficial uses of recycled
4 drill cuttings; and Texas Water Code Chapter 29, which gives the Commission authority to adopt rules,
5 issue permits, and assess penalties related to transporters of oil and gas waste.

6 Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202,
7 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004;
8 Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

9 Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123;
10 Texas Water Code Chapter 29.

13 **SUBCHAPTER A OIL AND GAS WASTE MANAGEMENT**

14 **DIVISION 1 GENERAL**

15 **§4.101. Prevention of Pollution**

16 (a) No person conducting activities subject to regulation by the Railroad Commission of Texas
17 may cause or allow pollution of surface or subsurface water in the state.

18 (b) This subchapter establishes, for the purpose of protecting public health, public safety, and the
19 environment within the scope of the Commission's statutory authority, the minimum permitting,
20 operating, monitoring, and closure standards and requirements for the management of wastes associated
21 with activities governed by the Commission including those governed under:

- 22 (1) Texas Natural Resources Code Title 3, Subtitle B;
- 23 (2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;
- 24 (3) Texas Natural Resources Code Title 5;
- 25 (4) Texas Health and Safety Code Chapter 382, Subchapter K; and
- 26 (5) Texas Water Code Chapters 26, 27 and 29.

27 (c) Other wastes described in subsection (b) of this section are included when this subchapter
28 refers to oil and gas waste(s) and may be managed in accordance with the provisions of this subchapter at
29 facilities authorized under this subchapter provided the wastes are nonhazardous and chemically and
30 physically similar to oil and gas wastes.

(d) Used oil as defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) shall be managed in accordance with the provisions of 40 Code of Federal Regulations (CFR), Part 279.

§4.102. Responsibility for Oil and Gas Wastes

(a) The generator of oil and gas waste is responsible for characterizing the waste.

(1) The generator may use process knowledge to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 of this title (relating to Definitions).

(2) Laboratory analysis of waste may be required for waste generated at a commercial facility, as that term is defined in §4.110 of this title, or when waste is transferred from one commercial facility to another.

(3) The generator of an oil and gas waste that is not exempt from regulation under Subtitle C of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et seq. as described in 40 CFR §261.4(b), shall determine if such waste is a hazardous oil and gas waste by applying process knowledge of the hazard characteristics of the waste in light of the materials or processes used or by testing the waste.

(b) No person, operator, generator, receiver, or carrier may utilize the services of a carrier to transport oil and gas wastes if the carrier is required to have a permit to transport such wastes but does not have a valid permit.

(c) No person, operator, generator, or carrier may utilize the services of a receiver to manage oil and gas wastes if the receiver is required to have a permit to manage such wastes but does not have such a permit.

(d) No receiver may utilize the services of a second receiver to manage oil and gas wastes if the second receiver is required to have a permit to manage such wastes but does not have a valid permit.

(e) Any person who utilizes the services of a carrier or receiver is under a duty to determine that the carrier or receiver holds the appropriate authority from the Commission to manage or transport oil and gas wastes.

(f) No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

1 (1) the generator utilizes the services of a carrier or receiver who improperly disposes of
2 the wastes; and

3 (2) the generator knew or reasonably should have known that the carrier or receiver was
4 likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper
5 disposal.

6 (g) No person may manage oil and gas wastes in a manner that violates Commission rules.

7 (h) Pursuant to Texas Natural Resources Code §91.142(h), any person, operator, permittee, or
8 entity conducting activities under the jurisdiction of the Commission shall notify the Commission if it
9 files for bankruptcy.

11 **§4.103. Prohibited Waste Management Methods**

12 (a) Unless authorized by this subchapter, no person may manage oil and gas wastes without
13 obtaining a permit to manage such wastes, except for the following methods:

14 (1) as authorized by §4.111 of this title (relating to Authorized Disposal Methods for
15 Certain Wastes);

16 (2) as authorized by §3.98 of this title (relating to Standards for Management of
17 Hazardous Oil and Gas Waste); or

18 (3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating
19 to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

20 (b) The discharge of oil and gas waste into any surface water defined under §4.110 of this title
21 (relating to Definitions) is prohibited unless such discharge is authorized by and conducted in accordance
22 with a Texas Pollutant Discharge Elimination System (TPDES) permit or authority issued by the Texas
23 Commission on Environmental Quality (TCEQ) or another regulatory agency with jurisdiction over
24 discharge of oil and gas wastes.

25 (c) No person may maintain or use any pit for storage of oil, oil products, or oil by-products.

26 (d) Except as authorized by this subchapter, no person may maintain or use any pit for storage of
27 oil field fluids or for storage or disposal of oil and gas wastes without obtaining a permit to maintain or
28 use the pit.

29 (e) Except as expressly provided by §3.30 of this title (relating to Memorandum of Understanding
30 between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality

(TCEQ)), no person may dispose of oil and gas wastes at a facility not under the jurisdiction of the Commission unless the Director expressly authorizes such disposal in writing.

(f) Except for those recycling methods authorized for certain wastes by §4.112 of this title (relating to Authorized Recycling), no person may recycle any oil and gas wastes by any method without obtaining a permit.

§4.104. Coordination Between the Commission and Other Regulatory Agencies

(a) The Commission and TCEQ have adopted by rule a Memorandum of Understanding stating how the agencies will implement the division of jurisdiction over wastes. The MOU is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

(b) Activities authorized or permitted by this subchapter may be subject to rules and regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act or the TCEQ under the Texas Clean Air Act. The applicant shall obtain any required authority from other regulatory agencies prior to the receipt of waste authorized under this subchapter.

§4.106. Fees

Applications submitted under this subchapter may be subject to a fee and surcharge pursuant to §3.78 of this title (relating to Fees and Financial Security Requirements).

§4.107. Penalties

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement without cause. Operators may correct violations at a facility with approval of Commission staff before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the facility's history of previous violations;
- (2) the operator's history of previous violations;
- (3) the seriousness of the violation;
- (4) any hazard to the health or safety of the public; and
- (5) the demonstrated good faith of the operator charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §4.107(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Figure: 16 TAC §4.107(f)

(g) Penalty enhancements for certain violators. For violations in which the operator charged has a history of prior violations within seven years of the current enforcement action at any facility regulated by the Commission, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §4.107(g)

Figure 2: 16 TAC §4.107(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the

1 filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences
2 of a violation.

3 (j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the
4 guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of
5 a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty
6 and the amount of the reduction.

7 **Figure: 16 TAC §4.107(j)**

8 **§4.108. Electronic Filing Requirements.**

9 (a) A person shall file electronically any form or application for which the Commission has
10 provided an electronic version or an electronic filing system. The person shall comply with all
11 requirements, including but not limited to fees and security procedures, for electronic filing.

12 (b) The Commission deems a person that files electronically or on whose behalf is filed
13 electronically any form, or hard copy if the Commission has not approved a digital format, as of the time
14 of filing, to have knowledge of and to be responsible for the information filed.

15 (c) All electronic filings that a person submits or that are submitted on behalf of a person shall be
16 transmitted in the manner prescribed by the Commission that is compatible with its software, equipment,
17 and facilities.

18 (d) The Commission may provide notice electronically to a person, and may provide a person the
19 ability to confirm electronically, the Commission's receipt of a filing submitted electronically by or on
20 behalf of that person.

21 (e) The Commission deems that the signature of a person's authorized representative appears on
22 each filing submitted electronically by or on behalf of the person, as if this signature actually appears, as
23 of the time the filing is submitted electronically to the Commission.

24 (f) The Commission holds each person responsible, under the penalties prescribed in Texas
25 Natural Resources Code, §91.143, for all forms, information, or data that a person files or that are filed on
26 the person's behalf. The Commission charges each person with the obligation to review and correct, if
27 necessary, all forms, information, or data that a person files or that are filed on the person's behalf.

28
29 **§4.109. Exceptions.**

30 (a) An applicant or permittee may request an exception to the provisions of this subchapter by
31 submitting to the Director a written request and demonstrating that the requested alternative is at least

equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The following provisions are ineligible for exceptions:

(1) the requirements related to financial security found in §§4.122, 4.140, 4.150, and 4.171 of this title (relating to Permit Renewals, Transfers, and Amendments; Additional Requirements for Commercial Facilities; Additional Requirements Applicable to Permitted Pits; and Standard Permit Provisions, respectively;

(2) the notice requirements found in §§4.122, 4.123, 4.125 and 4.141 of this title (relating to Permit Renewals, Transfers, and Amendments; Permit Modification, Suspension, and Termination; Notice and Opportunity to Protest; and Additional Notice Requirements for Commercial Facilities, respectively); and

(3) the requirements related to sampling and analysis found in §§4.124, 4.129, 4.131, 4.132, 4.163, and 4.164 of this title (relating to Requirements Applicable to All Permit Applications and Reports; Operation; Monitoring; Closure; Monitoring; and Closure, respectively).

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) Notwithstanding subsections (a) and (b) above, until July 1, 2026 the director may grant special exceptions solely for the purpose of issuing permits for waste management units that were authorized pits pursuant to §3.8 of this title (relating to Water Protection) prior to July 1, 2025 but that are no longer authorized pursuant to this subchapter.

(d) The Director shall review each written request for an exception on a case-by-case basis.

(e) If the Director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not use the requested alternative until the alternative is approved by the Commission.

DIVISION 2 DEFINITIONS

§4.110. Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) 25-year, 24-hour rainfall event--The maximum 24-hour precipitation event, in inches, with a probable recurrence interval of once in 25 years, as defined by the National Weather Service and

published by the National Oceanic and Atmospheric Administration for the county in which the waste management activity is occurring.

(2) 100-year flood--A flood that has a 1.0% or greater chance of occurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(3) 100-year flood plain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood, as determined from maps or other data from the U.S. Army Corps of Engineers or the Federal Emergency Management Agency (FEMA).

(4) Action leakage rate--The calculated volume of waste liquid that has bypassed the primary liner into the leak detection layer at a rate of gallons per acre per day that if exceeded indicates failure of the primary liner.

(5) Active cell--A waste management unit that has received oil and gas waste and has not completed closure.

(6) Active life--The period of time beginning when a waste management unit first receives waste and ending when closure of the waste management unit is complete.

(7) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, injection wells, disposal wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including activities associated with:

(i) the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission to regulate the production of oil or gas or geothermal resources;

(iii) the drilling of seismic holes and core holes subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources;

(iv) gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(v) any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.173;

(vi) any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.201; and

(vii) the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the management of oil and gas waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended (42 USC §6901, et seq.).

(8) Affected person--A person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public or a competitor.

(9) Alluvium and Quaternary sand and gravel--Unconsolidated sediments consisting of gravel, sand, and/or silt, which typically exhibit high porosity and high permeability.

(10) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(11) ASTM--ASTM International (successor to the American Society for Testing and Materials).

(12) Authorized--An activity that is permitted or allowed by a rule.

1 (13) Authorized pit--A reserve pit, mud circulation pit, completion/workover pit, fresh
2 makeup water pit, fresh mining water pit, water condensate pit, or produced water recycling pit that is
3 permitted by rule and described and operated in accordance with Division 3 of this subchapter (relating to
4 Operations Authorized by Rule).

5 (14) Basic sediment--A mixture of crude oil or lease condensate, water, sediment, and
6 other substances or hydrocarbon-bearing materials that are concentrated at the bottom of tanks and
7 pipeline storage tanks (also referred to as "basic sediment and water" or "tank bottoms").

8 (15) Brine pit--A pit used for storage of brine in connection with the solution mining of
9 brine, the operation of an underground hydrocarbon storage facility, or other activities associated with oil
10 and gas exploration, development, storage or production that involve the creation or use of a salt cavern.

11 (16) Buffer zone--The minimum distance allowed between a waste management unit and
12 another feature, such as a property boundary, surface water, or water well.

13 (17) Carrier--A person who is permitted to transport oil and gas wastes. A carrier of
14 another person's oil and gas wastes may be a generator of its own oil and gas wastes. A permitted waste
15 hauler is a carrier.

16 (18) Coastal Management Program (CMP) rules--The enforceable rules of the Texas
17 Coastal Management Program codified at 31 Texas Administrative Code Chapters 26 through 29.

18 (19) Coastal Natural Resource Area (CNRA)--One of the following areas defined in
19 Texas Natural Resources Code §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal
20 shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs,
21 oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats,
22 water in the open Gulf of Mexico, and water under tidal influence.

23 (20) Coastal waters--Waters along the coast under the jurisdiction of the State of Texas,
24 including tidal influence and waters of the open Gulf of Mexico.

25 (21) Coastal zone--The area within the boundary established in 31 Texas Administrative
26 Code §27.1 (relating to Coastal Management Program Boundary).

27 (22) Commercial facility--A facility permitted under Division 4 of this subchapter
28 (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator
29 receives compensation from others for the management of oil field fluids or oil and gas wastes and whose
30 primary business purpose is to provide these services for compensation.

31 (23) Commission--The Railroad Commission of Texas.

1 (24) Completion/workover pit--A pit used for storage or disposal of spent completion
2 fluids and solids, workover fluids and solids, and drilling fluids and solids, silt, debris, water, brine, oil
3 scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed,
4 worked over, or plugged.

5 (25) Contact stormwater--Stormwater that has come into contact with any amount of oil
6 and gas wastes or areas that are permitted to contain oil and gas wastes, regardless of whether oil and gas
7 waste is currently being contained in the area. See also "Non-contact stormwater" and "Stormwater."

8 (26) Container--A means of primary containment used for the management of oil and gas
9 waste such as a pit, sump, tank, vessel, truck, barge, or other receptacle.

10 (27) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged
11 aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code §33.203.

12 (28) Dewater--To remove free liquids.

13 (29) Director--The Director of the Oil and Gas Division or the Director's delegate.

14 (30) Discharge--To allow a liquid, gas, or other substance to flow out from where it has
15 been confined.

16 (31) Disposal--The act of conducting, draining, discharging, emitting, throwing,
17 releasing, depositing, burying, dumping, placing, abandoning, landfarming, allowing seepage, or causing
18 or allowing any such act of disposal of any oil field fluid, oil and gas waste, or other substance or material
19 subject to regulation by the Commission.

20 (32) Disposal pit--A pit used for the permanent storage of oil and gas waste.

21 (33) Distilled water--Water that has been purified by being heated to a vapor form and
22 then condensed into another container as liquid water that is essentially free of all solutes.

23 (34) District Director--The Director of the Commission district where the management,
24 disposal, or recycling of oil and gas wastes is located or the District Director's delegate.

25 (35) District Office--The Commission District Office in the Commission district where
26 the waste management, disposal, and/or recycling is located.

27 (36) Drill cuttings--Bits of rock or soil cut from a subsurface formation by a drill bit
28 during the process of drilling an oil or gas well and lifted to the surface by means of the circulation of
29 drilling mud. The term includes any associated sand, silt, drilling fluid, spent completion fluid, workover
30 fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the wellbore.

1 (37) Electrical conductivity--A numerical expression of the ability of a material to carry a
2 current, normally expressed in millimhos/centimeter (the reciprocal of resistivity). It is frequently used to
3 estimate salinity in terms of total dissolved solids. In soil analysis, electrical conductivity may be used as
4 one measure to evaluate a soil's ability to sustain plant growth.

5 (38) Environmental Protection Agency (EPA)--The United States Environmental
6 Protection Agency.

7 (39) Facility--A site that shares a common area, common access, and a common purpose
8 where oil field fluids or oil and gas wastes are managed. It may include one or more waste management
9 units, may include permitted or authorized activities, and may be designated as either commercial or non-
10 commercial.

11 (40) Freeboard--The vertical distance between the top of a pit or berm and the highest
12 point of the contents of the pit or berm.

13 (41) Fresh makeup water pit--A pit used in conjunction with a drilling rig, completion
14 operations, or a workover for storage of fresh water used to make up drilling fluid or completion fluid.

15 (42) Fresh water--The best quality of the surface or subsurface water, at any individual
16 operational location, available for domestic or agricultural use within a one-mile radius of the location, or
17 3,000 milligrams per liter of total dissolved solids, whichever is less.

18 (43) Fresh mining water pit--A pit used in conjunction with a brine mining injection well
19 for storage of fresh water used for solution mining of brine.

20 (44) Generator--A person that generates oil and gas wastes.

21 (45) Geomembrane--An effectively impermeable polymeric sheet material that is
22 impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered
23 structure designed to limit the movement of liquid or gas in a system.

24 (46) Geotextile--A sheet material that is less impervious to liquid than a geomembrane
25 but more resistant to penetration damage, and is used as part of an engineered structure or system to serve
26 as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for
27 drainage, to serve as a cushion to protect geomembranes, or to provide structural support.

28 (47) Groundwater--Subsurface water in a zone of saturation.

29 (48) Hydrocarbon condensate--Hydrocarbon liquids that condense from a natural gas
30 stream.

1 (49) Inert oil and gas waste--Nonreactive, nontoxic, and essentially insoluble oil and gas
2 wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, synthetic liners,
3 fiberglass, soil, dirt, clay, sand, gravel, brick, and trash. The term excludes asbestos or asbestos-
4 containing waste, and oil and gas naturally occurring radioactive material (NORM) waste.

5 (50) Karst terrain--An area where karst topography, with its characteristic surface and/or
6 subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other
7 soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to,
8 sinkholes, sinking streams, caves, large springs, and blind valleys.

9 (51) Land application--An authorized or permitted waste management practice in which
10 effluent that does not meet the standards found in the Figure in §4.111(a) of this title (relating to
11 Authorized Disposal Methods for Certain Wastes) and is a low-chloride produced water may be applied
12 to a controlled area of the ground surface via sprinkler or other irrigation systems without tilling or
13 mixing with the native soils.

14 (52) Landfarming--An authorized or permitted waste management practice in which low
15 chloride, water-based drilling fluids, or oil and gas wastes are mixed with, or tilled into, the native soils in
16 such a manner that the waste will not migrate from the authorized or permitted landfarming cell.

17 (53) Landfarming cell--The bermed area into which oil and gas waste is applied to the
18 land and includes landfarming and landtreatment cells.

19 (54) Landtreating--An authorized or permitted waste management practice in which oil-
20 based drilling fluids, oil impacted soils, and oil and gas wastes are mixed with or tilled into the native soil
21 to degrade oil, grease, or other organic wastes in such a manner that the waste will not migrate from the
22 authorized or permitted landtreatment cell.

23 (55) Leak detection system--A system used to detect leaks below the liner of pits.

24 (56) Liner--A continuous layer of impervious materials, synthetic or natural, beneath and
25 on the sides of a pit that restricts or prevents the downward or lateral release or migration of oilfield fluids
26 or oil and gas wastes.

27 (57) Manage or management of oil and gas waste--The receiving, handling, storage,
28 treatment, processing, transportation, reclamation, recycling, and/or disposal of oil and gas wastes.

29 (58) Manifest--An electronic or paper document used to track shipments of oil and gas
30 waste that is authenticated by all parties (the generator, carrier, and receiver) in the transfer of oil and gas
31 waste, and contains information on the waste type, source, quantity, and instructions for handling.

1 (59) Mined brine--Brine produced from a brine mining injection well by solution of
2 subsurface salt formations. The term does not include saltwater produced incidentally to the exploration,
3 development, and production of oil or gas or geothermal resources.

4 (60) Mud circulation pit--A pit used in conjunction with drilling rig for storage of drilling
5 fluid currently being used in drilling operations.

6 (61) Natural gas or natural gas liquids processing plant--A plant whose primary function
7 is the extraction of natural gas liquids from field gas, the fractionation of natural gas liquids, and the
8 production of pipeline-quality gas for transportation by a natural gas transmission pipeline. The term does
9 not include a separately located natural gas treating plant for which the primary function is the removal of
10 carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator,
11 dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall be considered a
12 component of a natural gas or natural gas liquids processing plant only if it is located at a plant the
13 primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural
14 gas liquids.

15 (62) Naturally occurring radioactive material (NORM)--Naturally occurring materials not
16 regulated under the Atomic Energy Act whose radionuclide concentrations have been increased by or as a
17 result of human practices. NORM does not include the natural radioactivity of rocks or soils, or
18 background radiation, but instead refers to materials whose radioactivity is concentrated by controllable
19 practices (or by past human practices). NORM does not include source, byproduct, or special nuclear
20 material.

21 (63) Non-commercial facility--A facility authorized or permitted under this chapter that is
22 not a commercial facility as defined in paragraph (22) of this section.

23 (64) Non-contact stormwater--Stormwater that, by design or direction, has not come into
24 contact with any areas containing oil or gas wastes or any areas permitted to contain oil and gas wastes.
25 See also "Contact stormwater" and "Stormwater."

26 (65) Oil and gas NORM waste--Any solid, liquid, or gaseous material or combination of
27 materials (excluding source material, special nuclear material, and by-product material) that in its natural
28 physical state spontaneously emits radiation, is discarded or unwanted, constitutes, is contained in, or has
29 contaminated oil and gas waste, and prior to treatment or processing that reduces the radioactivity
30 concentration, exceeds exemption criteria specified in 25 Texas Administrative Code §289.259(d)
31 (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

1 (66) Oil and gas wastes--As defined in Texas Natural Resources Code §91.1011, the
2 term:

3 (A) means waste that arises out of or incidental to the drilling for or producing of
4 oil or gas, including waste arising out of or incidental to:

5 (i) activities associated with the drilling of injection water source wells
6 which penetrate the base of useable quality water;

7 (ii) activities associated with the drilling of cathodic protection holes
8 associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the
9 Commission;

10 (iii) activities associated with gasoline plants, natural gas or natural gas
11 liquids processing plants, pressure maintenance plants, or repressurizing plants;

12 (iv) activities associated with any underground natural gas storage
13 facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas
14 Natural Resources Code §91.173;

15 (v) activities associated with any underground hydrocarbon storage
16 facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the
17 meanings set out in Texas Natural Resources Code §91.201; and

18 (vi) activities associated with the storage, handling, reclamation,
19 gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of
20 such gas in any manufacturing process or as a residential or industrial fuel;

21 (B) includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid,
22 or solid waste material; but

23 (C) does not include waste arising out of or incidental to activities associated
24 with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or
25 repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United
26 States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by
27 the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

28 (67) Oil field fluids--Fluid used or reused in connection with activities associated with
29 the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or
30 reused in connection with activities associated with the solution mining of brine, and mined brine. The
31 term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and

1 other chemicals used in association with oil and gas activities, but does not include produced oil,
2 condensate, gas, or water that is not oil and gas waste. Oil field fluids no longer used or reused in
3 connection with activities associated with the exploration, development, and production of oil or gas or
4 geothermal resources, and oil field fluids that have been abandoned, are considered an oil and gas waste.

5 (68) Operator--A person, acting for itself or as an agent for others, designated to the
6 Railroad Commission of Texas as the person with responsibility for complying with the Commission's
7 rules and regulations in any acts subject to the Commission's jurisdiction including the permitting,
8 physical operation, closure, and post-closure activities of a facility regulated under this chapter, or such
9 person's authorized representative.

10 (69) Partially treated waste--Oil and gas waste that has been treated or processed with the
11 intent of being recycled, but which has not been determined to meet the environmental and engineering
12 standards for a recyclable product established by the Commission in this subchapter or in a permit issued
13 pursuant to this subchapter.

14 (70) Person--A natural person, corporation, organization, government or governmental
15 subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

16 (71) Pit--A container for which earthen materials provide structure, shape, and foundation
17 support. A container that includes a concrete floor or sidewall is a pit. A tank, as defined in paragraph
18 (90) of this section, is not a pit.

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

23 (73) Primary containment--Measures put into place to confine, control, and secure a
24 material to a defined space. See also "Container."

25 (74) Produced water recycling--The recycling of produced water and other aqueous fluid
26 wastes produced from a wellbore during oil and gas exploration and production activities.

27 (75) Produced water recycling facility--A facility at which produced water recycling
28 activities are conducted. The facility may include one or more produced water recycling pits and ancillary
29 equipment including tanks, piping, treatment systems, and other equipment that are used for produced
30 water recycling.

1 (76) Produced water recycling pit--An authorized pit used to manage produced water and
2 other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production
3 activities being recycled and treated fluids.

4 (77) Public area--A dwelling, place of business, church, school, hospital, school bus stop,
5 government building, a public road, all or any portion of a park, city, town, village, or other similar area
6 that can expect to be populated.

7 (78) Public water system--A source of potable water for the public's use that has at least
8 15 service connections or serves at least 25 individuals for at least 60 days out of the year. This includes
9 people that live in houses served by a system, but can also include employees, customers, or students.

10 (79) Pressure maintenance plant or repressurizing plant--A plant for processing natural
11 gas for reinjection for reservoir pressure maintenance or repressurizing in a natural gas recycling project.
12 These terms do not include a compressor station along a natural gas pipeline system or a pump station
13 along a crude oil pipeline system.

14 (80) Receiver--A person who manages oil and gas waste that is received from a generator
15 or carrier. A receiver of another operator's oil and gas wastes may be a generator of its own oil and gas
16 wastes.

17 (81) Recyclable product--A reusable material that has been created from the treatment
18 and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets
19 the environmental and engineering standards established by the permit or authorization for the intended
20 use, and is used as a legitimate commercial product. A recyclable product is not a waste but may become
21 a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

22 (82) Recycle--To process and/or use or re-use oil and gas wastes as a product for which
23 there is a legitimate commercial use. This term also includes the actual use or re-use of oil and gas wastes.
24 For the purpose of this chapter, the term "recycle" does not include injection pursuant to a permit issued
25 under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

26 (83) Reserve pit--A pit used in conjunction with drilling rig for collecting spent drilling
27 fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the
28 well site. Reserve pits are sometimes referred to as slush pits or mud pits.

29 (84) Secondary containment--Measures put into place to contain spills and prevent them
30 from contaminating the surrounding area, such as dikes, berms, or other barriers.

1 (85) Sensitive area--An area defined by the presence of factors, whether one or more, that
2 make it vulnerable to pollution from oil and gas surface waste management activities. Factors that are
3 characteristic of sensitive areas include the presence of shallow groundwater or pathways for
4 communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry
5 or flowing creeks, irrigation canals, water wells, stock tanks, and wetlands; proximity to natural wildlife
6 refuges or parks; or proximity to commercial or residential areas.

7 (86) Solid oil and gas waste--Oil and gas waste that is determined not to contain "free
8 liquids" as defined by EPA Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for
9 Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

10 (87) Storage or storing--The keeping, holding, accumulating, or aggregating of oil and
11 gas waste for a temporary or indeterminate period.

12 (88) Stormwater--Water that falls onto and flows over the ground surface and does not
13 infiltrate into the soil. See also "Contact stormwater" and "Non-contact stormwater."

14 (89) Surface and subsurface water--Groundwater, percolating, perched or otherwise, and
15 lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, wetlands,
16 inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface
17 water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and
18 including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially
19 inside or bordering the state or inside the jurisdiction of the state.

20 (90) Tank--A rigid, non-concrete, non-earthen container that provides its own structure
21 and shape.

22 (91) TCEQ--The Texas Commission on Environmental Quality or its successor agencies.

23 (92) Technical Permitting Section or Technical Permitting--The Technical Permitting
24 Section within the Oil and Gas Division of the Railroad Commission of Texas, located in Austin, Texas.

25 (93) Treated fluid--Fluid oil and gas waste that has been treated to remove impurities
26 such that the fluid can be reused or recycled. Treated fluid that is abandoned or disposed of is classified as
27 an oil and gas waste. Once treated fluid is reused or recycled, it is not classified as an oil and gas waste.

28 (94) Unified Soil Classification System--The standardized system devised by the United
29 States Army Corps of Engineers for classifying soil types.

30 (95) Waste management unit--A container, structure, pad, cell, or area in or on which oil
31 and gas wastes are managed.

(96) Water condensate pit--A pit used for storage or disposal of water condensed from natural gas.

(97) Wetland--An area including a swamp, marsh, bog, prairie pothole, or similar area having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland for which construction or creation commenced on or after August 28, 1989, and which was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation which has been approved or requested by soil and water conservation districts (Texas Water Code §11.502.).

DIVISION 3 OPERATIONS AUTHORIZED BY RULE

§4.111. Authorized Disposal Methods for Certain Wastes

(a) Water condensate. A person may, without a permit, dispose of by land application water which has been condensed from natural gas and collected at gas pipeline drip stations or gas compressor stations. The disposal is authorized provided:

(1) the disposal is not a discharge to surface water and the waste will not reach surface water;

(2) prior to each land application event, representative samples are collected and analyzed for the list of parameters in the Figure in this subsection;

(3) analytical methods used are documented and all parameters are in mg/liter unless otherwise specified;

(4) analyte concentrations do not exceed the concentration limits listed in the Figure in this subsection;

(5) the water condensate is applied to the ground surface in such a manner that it will not leave the boundaries of the property; and

(6) the area where the water condensate will be land applied is at least 500 feet from a public water system well or intake, and 300 feet from any surface water or residential or irrigation water supply well.

Figure: 16 TAC §4.111(a)

(b) Inert oil and gas wastes. A person may, without a permit, dispose of inert oil and gas wastes on the property on which the waste was generated provided disposal is by a method other than:

(1) disposal into surface water; or

(2) a method that may present other health and safety hazards such as burning.

(c) Low chloride water-based drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming: water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; drill cuttings, sands, and silts obtained while using water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site. The disposal is authorized in accordance with the following:

(1) the waste is landfarmed on the same lease or unit, easement, or right-of-way where it was generated;

(2) the person has obtained written permission to landfarm the waste from the surface owner of the area to be landfarmed;

(3) the slope of the area to be landfarmed is three percent or less, or any greater slope is approved in writing by the District Director;

(4) the area where the waste will be landfarmed is at least 500 feet from a public water system well or intake, 300 feet from any surface water or other types of wells, and in an area with subsurface water at depths of more than 100 feet below land surface;

(5) any accumulation of hydrocarbons on top of the waste to be landfarmed is removed from the waste prior to spreading;

(6) the waste to be landfarmed has a pH of not less than six nor more than nine standard units;

(7) the waste is spread evenly and in a manner that will not result in a depth of greater than six inches of solids or six inches of fluids (six inches over an acre = 5,172 barrels/acre);

(8) the waste is spread in a manner that will not result in pooling, ponding, or runoff of the waste and the waste is then disked into the soil as necessary to distribute the waste within the soil;

(9) immediately after landfarming the waste, the waste-soil mixture has an electrical conductivity that does not exceed the background level for undisturbed soil established before landfarm activities commenced or four millimhos/centimeter, whichever is greater; and

(10) immediately after landfarming the waste, the waste-soil mixture has a total petroleum hydrocarbon content of one percent or less by weight when sampled using EPA SW-846 418.1 or equivalent.

(d) Other oil and gas wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a reserve pit or a completion/workover pit: solids from dewatered drilling mud and fluids generated during well drilling, completion, and workover activities, including drill cuttings, sand, silt, paraffin, and debris. The disposal is authorized provided:

(1) the wastes are disposed of at the same well site where they are generated;

(2) the wastes are dewatered;

(3) the burial complies with the closure requirements for authorized pits pursuant to §4.114 of this title (relating to Schedule A Authorized Pits); and

(4) the operator maintains documentation demonstrating closure requirements have been met. The operator shall maintain these records for at least three years from the date of closure and provide copies of these records to the Commission upon request.

§4.112. Authorized Recycling

(a) Produced water recycling is authorized if:

(1) treated fluid is recycled for use in drilling operations, completion operations, hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well;

(2) produced water recycling pits are operated in accordance with §4.113 and §4.115 of this title (relating to Authorized Pits, and Schedule B Authorized Pits); and

(3) recycling is limited to oil and gas waste; commingling of treated oil and gas waste with other treated fluid from sources outside of the Commission's jurisdiction may only be authorized at the Director's discretion.

(b) Treated fluid may be reused in any other manner without a permit from the Commission provided the reuse occurs pursuant to a permit issued by another state or federal agency.

(c) Fluid that meets the requirements of subsection (a) or (b) of this section is a recyclable product.

§4.113. Authorized Pits

(a) An operator may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, fresh makeup water pits, fresh mining water pits, and water condensate pits if the pit complies with this division.

(b) Unless otherwise approved by the District Director after a showing that the contents of the pit will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in §4.110 of this title (relating to Definitions). The operator may request a hearing if the District Director denies approval of the request to construct an authorized pit within a 100-year flood plain.

(c) An authorized pit that was constructed pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025, is authorized to continue to operate subject to the following:

(1) Authorized pits that cause pollution shall be brought into compliance with or closed according to this division.

(2) By July 1, 2026, basic sediment pits, flare pits, and other unpermitted pits not authorized by this section shall be:

(A) permitted according to this subchapter; or

(B) closed according to this division.

(3) By January 1, 2026, an operator of a non-commercial fluid recycling pit shall:

(A) register the pit as a produced water recycling pit according to subsection (e) of this section and file the required financial security according to §4.115 of this title (relating to Schedule B Authorized Pits); or

(B) close the pit according to this division.

(4) At the time of closure, authorized pits shall be closed according to this division.

(d) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit authorized by this section, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours of discovery of the release.

(e) The operator shall register all authorized pits with the Commission.

(1) The Director shall establish a registration system for authorized pits by July 1, 2025.

(A) New authorized pits constructed after July 1, 2025 shall register by mailing or emailing to Technical Permitting the registration form established by the Commission.

(B) By July 1, 2027, the Director will establish an online system for operators to register and for the Commission to maintain a record of authorized pits.

(C) The operator of an authorized pit shall register the pit using the online registration system once it is established by the Director.

(2) New pits shall be registered prior to operation of the pit.

(3) Authorized pits existing on July 1, 2025, shall be registered or closed within one year.

(4) Authorized pit registration shall include:

(A) the type of pit;

(B) the location of the pit including the lease name and number, drilling permit number or other Commission-issued identifier, and the latitude and longitude coordinates using the 1983 North American Datum (NAD);

(C) the pit dimensions and capacity in barrels;

(D) the expected depth to groundwater from the bottom of the pit; and

(E) for produced water recycling pits, the financial security required by §4.115 of this title.

(5) An authorized pit may be designated as more than one type of pit provided it meets the requirements in this section for each type of pit. An authorized pit of one type may be redesignated as an authorized pit of another type (for example, a reserve pit may be redesignated as a completion pit) provided the pit was constructed to meet the design and construction requirements of the pit type to which it will be redesignated.

§4.114. Schedule A Authorized Pits

Schedule A authorized pits include reserve pits, mud circulation pits, completion/workover pits, freshwater makeup pits, fresh mining water pits, and water condensate pits.

(1) Schedule A pit contents.

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes other than the following:

- (i) drilling fluids that are freshwater base, saltwater base, or oil base;
- (ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;
- (iii) wash water used for cleaning drill pipe and other equipment at the well site;
- (iv) drill stem test fluids; and
- (v) blowout preventer test fluids.

(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.

(C) Fresh makeup water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid.

(D) Fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.

(E) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.

(2) Schedule A pit construction.

(A) All pits shall be designed, constructed, and maintained to prevent any migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water at any time during the life of the pit.

(B) Reserve pits, mud circulation pits, and completion/workover pits located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined.

(i) All liners shall have a hydraulic conductivity that is 1.0×10^{-7} cm/sec or less.

(ii) A liner may be constructed of either natural or synthetic materials.

(3) Schedule A pit closure.

(A) A person who maintains or uses a reserve pit, mud circulation pit, fresh

1 makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall dewater,
2 backfill, and compact the pit according to the following schedule.

3 (i) Reserve pits and mud circulation pits which contain fluids with a
4 chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered,
5 backfilled, and compacted within one year of cessation of drilling operations.

6 (ii) Reserve pits and mud circulation pits which contain fluids with a
7 chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and
8 compacted within one year of cessation of drilling operations.

9 (iii) All completion/workover pits used when completing a well shall be
10 dewatered within 30 days of well completion and backfilled and compacted within 120 days of well
11 completion. All completion/workover pits used when working over a well shall be dewatered within 30
12 days of completion of workover operations and backfilled and compacted within 120 days of completion
13 of workover operations.

14 (iv) Fresh mining water pits and water condensate pits shall be
15 dewatered, backfilled, and compacted within 120 days of final cessation of use of the pit.

16 (v) If a person constructs a sectioned reserve pit, each section of the pit
17 shall be considered a separate pit for determining when a particular section shall be dewatered.

18 (B) A person who maintains or uses a reserve pit, mud circulation pit, fresh
19 makeup water pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and
20 compacting the pit within the time prescribed by subparagraph (A) of this paragraph, even if the time
21 allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the
22 land where the pit is located.

23 (C) The Director may require that a person who uses or maintains a reserve pit,
24 mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water
25 condensate pit dewater and backfill the pit sooner than the time prescribed by subparagraph (A) of this
26 paragraph if the Director determines that oil and gas wastes or oil field fluids are likely to escape from the
27 pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

28 (D) Prior to backfilling any reserve pit, mud circulation pit, completion/workover
29 pit, or water condensate pit authorized by this paragraph, the person maintaining or using the pit shall, in
30 a permitted manner or in a manner authorized by §4.111 of this title (relating to Authorized Disposal
31 Methods for Certain Wastes), dispose of all oil and gas wastes which are in the pit.

§4.115. Schedule B Authorized Pits

(a) Schedule B authorized pits. A produced water recycling pit is a Schedule B authorized pit.

(b) Financial security requirements.

(1) Pursuant to Natural Resources Code §91.109(a), the operator of a produced water recycling pit shall maintain a performance bond or other form of financial security conditioned that the operator will operate and close the produced water recycling pit in accordance with this subchapter.

(2) For each produced water recycling pit an operator shall file financial security in one of the following forms:

(A) a blanket performance bond; or

(B) a letter of credit or cash deposit in the same amount as required for a blanket performance bond.

(3) An operator required to file financial security under paragraph (1) of this subsection shall file one of the following types and amounts of financial security.

(A) A person operating five or less pits may file a performance bond, letter of credit, or cash deposit in an amount equal to \$1.00 per barrel of total pit capacity.

(B) A person operating more than five pits may file a performance bond, letter of credit, or cash deposit in an amount equal to:

(i) the greater of \$1.00 per barrel of water for ten percent of an operator's total produced water recycling pit capacity or \$1,000,000; or

(ii) \$200,000 per pit, capped at \$5,000,000.

(4) The operator shall submit required financial security at the time the operator registers the produced water recycling pit.

(5) The operator shall submit bonds and letters of credit on forms prescribed by the Commission.

(c) Non-commercial fluid recycling pits authorized prior to July 1, 2025. Non-commercial fluid recycling pits that were authorized pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025 are authorized as produced water recycling pits under this section, provided the operator registers the pit and files the required financial assurance by January 1, 2026.

1 (d) Produced water recycling pit contents. A person shall not deposit or cause to be deposited into
2 a produced water recycling pit any oil field fluids or oil and gas wastes other than those fluids described
3 in §4.110(76) of this title (relating to Definitions) and any fluids authorized by the Director pursuant to
4 §4.112(a)(3) of this title (relating to Authorized Recycling).

5 (e) General location requirements for produced water recycling pits. No produced water recycling
6 pit shall be located:

- 7 (1) on a barrier island or a beach;
- 8 (2) within 300 feet of surface water;
- 9 (3) within 500 feet of any public water system well or intake;
- 10 (4) within 300 feet of any domestic water well or irrigation water well, other than a well
11 that supplies water for drilling or workover operations for which the pit is authorized;
- 12 (5) within a 100-year flood plain; or
- 13 (6) within 500 feet of a public area.

14 (f) General design and construction requirements for produced water recycling pits. All produced
15 water recycling pits shall comply with the following requirements.

16 (1) The operator shall design and construct a produced water recycling pit to ensure the
17 confinement of fluids to prevent releases.

18 (2) A produced water recycling pit shall be large enough to ensure adequate storage
19 capacity of the volume of material to be managed and to maintain two feet of freeboard plus the capacity
20 to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

21 (3) A produced water recycling pit shall be designed and constructed to prevent non-
22 contact stormwater runoff from entering the pit. A berm, ditch, proper sloping, or other diversion shall
23 surround a produced water recycling pit to prevent run-on of any surface waters including precipitation.

24 (4) A produced water recycling pit shall have a properly constructed foundation and
25 interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or
26 irregularities to prevent the liner's rupture or tear. The operator shall construct a produced water recycling
27 pit so that the slopes are no steeper than three horizontal feet to one vertical foot (3H:1V). The District
28 Director may approve an alternative to the slope requirement if the operator demonstrates that it can
29 construct and operate the produced water recycling pit in a safe manner to prevent contamination of fresh
30 water and protect public health, public safety, and the environment.

31 (5) Produced water recycling pits shall be lined.

1 (A) The liner shall be constructed of materials that have sufficient chemical and
2 physical properties, including thickness, to prevent failure during the expected life of the produced water
3 recycling pit due to pressure gradients (including static head and external hydrogeologic forces), physical
4 contact with material in the pit or other materials to which the liner may be expected to be exposed,
5 climatic conditions, stress of installation, and use.

6 (B) All of the pit shall be lined, including the dike or berm, and the liner shall be
7 properly anchored or keyed into the native substrate to prevent erosion or washout of the dike, berm, or
8 liner.

9 (C) A liner may be constructed of either natural or synthetic materials.

10 (D) A liner constructed of natural materials shall meet the following
11 requirements:

12 (i) A natural liner shall only be used for a produced water recycling pit
13 with an active life of less than one year.

14 (ii) A natural liner shall be constructed of a minimum of two feet of
15 compacted fat clay, placed in continuous six-inch lifts compacted to a 95% standard proctor as defined in
16 ASTM D698 and having a hydraulic conductivity of 1.0×10^{-7} cm/sec or less. Where natural liner
17 materials are used, the operator shall perform appropriate testing to ensure compliance with these
18 requirements and shall maintain copies of the test results for the life of the pit.

19 (iii) A produced water recycling pit with a natural liner shall not be used
20 for waste disposal pursuant to §4.111 of this title (relating to Authorized Disposal Methods for Certain
21 Wastes) unless the pit also has a synthetic liner.

22 (E) A synthetic liner shall meet the following requirements:

23 (i) A synthetic liner shall be placed upon a firm, unyielding foundation or
24 base capable of providing support to the liner, smooth and free of rocks, debris, sharp edges, or
25 irregularities to prevent the liner's rupture or tear.

26 (ii) A synthetic liner shall be underlain by a geotextile where needed to
27 reduce localized stress, strain, or protuberances that may otherwise compromise the liner's integrity.

28 (iii) A synthetic liner shall be made of an impermeable geomembrane
29 capable of resisting pressure gradients above and below the liner to prevent failure of the liner.

30 (iv) A synthetic liner shall have a breaking strength of 40 pounds per
31 inch using test method ASTM D882.

(v) A synthetic liner shall have a puncture resistance of at least 15 pounds force using test method ASTM D4833.

(vi) The length of synthetic liner seams shall be minimized, and the seams shall be oriented up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams. A synthetic liner shall have a seam strength, if applicable, of at least 15 pounds per inch using test method ASTM D751 or ASTM D6392.

(g) General operating requirements for produced water recycling pits. All produced water recycling pits shall be operated in accordance with the following requirements.

(1) Freeboard of at least two feet plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event shall always be maintained in produced water recycling pits.

(2) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(3) Operators shall establish an inspection program to ensure compliance with the applicable provisions of this section taking into consideration the nature of the pit and frequency of use.

(4) If the operator does not propose to empty the produced water recycling pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system shall be monitored daily to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

(5) The operator of a produced water recycling pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(6) Free oil shall not be allowed to accumulate on or in a produced water recycling pit.

(h) General closure requirements for produced water recycling pits. All produced water recycling pits shall comply with the following closure requirements.

(1) Prior to closure of the pit, the operator shall dewater the pit.

(2) Prior to closure of the pit, all waste shall be removed from the pit unless the requirements of subsection (j) of this section are met.

1 (i) Closure requirements for produced water recycling pits if all waste is removed for disposal.

2 (1) The contents of the pit, including synthetic liners, if applicable, shall be removed for
3 disposal at an authorized or permitted waste facility.

4 (2) The operator shall verify whether oil and gas waste has migrated beyond the pit floor
5 and sidewalls.

6 (3) The operator shall collect one five-point composite soil sample for each acre of pit
7 surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A
8 fraction of an acre of pit surface area will require a composite sample.

9 (A) The samples shall be analyzed for the constituents and using the methods
10 identified in the Figure in this subsection to determine whether the constituent concentrations exceed the
11 limit in the Figure or background concentrations.

12 (B) If the operator intends to use background soil concentrations as a closure
13 standard, then constituent concentrations in background soil shall be determined before or during pit
14 construction. To establish background concentrations, the operator shall:

15 (i) sample soil in the pit floor locations before or during pit construction;

16 (ii) collect one five-point composite soil sample for each acre of pit
17 surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A
18 fraction of an acre of pit surface area will require a composite sample; and

19 (iii) analyze the soil samples for the constituents listed in the Figure in
20 this subsection.

21 (C) If the concentration of the constituents exceeds the limits in the Figure in this
22 subsection or the concentrations determined from background sampling and analysis, the operator shall
23 notify the District Director within 24 hours of discovery of the constituent exceedance.

24 (i) The District Director may refer the matter to the Site Remediation
25 Unit in Austin.

26 (ii) The operator shall follow instructions provided by the District
27 Director or Site Remediation regarding further investigation, remediation, monitoring, closure, and
28 reporting.

29 (D) If the concentration of the constituents does not exceed the limits in the
30 Figure in this subsection or background concentrations, the operator shall proceed with closure.

1 (i) The operator shall backfill the pit with non-waste containing,
2 uncontaminated, earthen material.

3 (ii) The backfill shall be compacted in a manner that minimizes future
4 consolidation, desiccation, and subsidence.

5 (iii) The operator shall mound or slope the former pit site to encourage
6 runoff and discourage ponding.

7 (iv) The operator shall, where necessary to ensure ground stability and
8 prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in
9 undisturbed soil in the vicinity of the pit.

10 (E) The operator shall notify the District Director a minimum of seven days prior
11 to closure of the produced water recycling pit and shall maintain documentation for a period of three
12 years to demonstrate that the requirements of this section have been met.

13 **Figure: 16 TAC §4.115(i)**

14 (j) Closure requirements for produced water recycling pits if waste will be buried in place
15 pursuant to §4.111 of this title.

16 (1) The operator shall ensure that any oil and gas waste, including synthetic liners, that
17 will be disposed of in the pit as authorized by §4.111 of this title is buried in a manner such that the waste
18 will remain below the natural ground surface and be confined to the original dimensions of the pit.

19 (2) The operator shall determine the suitability of the waste material or mixture for
20 disposal in the pit.

21 (A) The operator shall collect one five-point composite waste material or mixture
22 sample for each acre of pit surface area. A fraction of an acre of pit surface area will require a composite
23 sample.

24 (B) The samples shall be analyzed for the constituents and using the methods
25 identified in the Figure in this subsection to determine whether the constituent concentrations are below
26 the limit in the Figure or background concentrations.

27 (C) If the operator intends to use background soil concentrations as a closure
28 standard, then constituent concentrations in background soil shall be determined before or during pit
29 construction. To establish background concentrations, the operator shall:

30 (i) sample soil in the pit floor locations before or during pit construction;

1 (ii) collect one five-point composite soil sample for each acre of pit
2 surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A
3 fraction of an acre of pit surface area will require a composite sample; and

4 (iii) analyze the soil samples for the constituents listed in the Figure in
5 this subsection.

6 (3) Waste material that meets the constituent limits in the Figure in subsection (i) of this
7 section or background concentrations may be buried in the pit without additional disposal considerations.

8 (4) Untreated waste material that does not meet the constituent limits in the Figure in
9 subsection (i) of this section may be buried by containment in a pit if:

10 (A) the pit has a double liner with a leak detection system or has a single liner for
11 which the operator demonstrates the liner is intact and maintains the liner intact;

12 (B) the waste material is covered with a geonet to support the overburden fill
13 material; and

14 (C) the pit is backfilled, sufficiently compacted, and contoured to prevent water
15 infiltration into the waste zone.

16 (5) Treated waste material that meets the constituent limits in the Figure in this
17 subsection based on the distance from the bottom of the pit to the shallowest groundwater may be buried
18 in the pit. Liners in the pit may be removed from the pit or disposed of in the pit upon closure.

19 (6) The operator shall proceed with closure as follows:

20 (A) The operator shall backfill the pit with non-waste containing,
21 uncontaminated, earthen material.

22 (B) The backfill shall be compacted in a manner that minimizes future
23 consolidation, desiccation, and subsidence.

24 (C) The operator shall mound or slope the burial pit site to encourage runoff and
25 discourage ponding.

26 (D) The operator shall, where necessary to ensure ground stability and prevent
27 significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in
28 undisturbed soil in the vicinity of the pit.

29 (7) The operator shall notify the District Director a minimum of seven days prior to
30 closure of the produced water recycling pit and shall maintain documentation for a period of three years
31 to demonstrate that the requirements of this section have been met.

(8) The Commission may require the operator to close a produced water recycling pit in a manner other than the manner described in this section if it determines that oil and gas wastes or oil field fluids are likely to escape from the pit, that oil and gas wastes or oil field fluids may cause or are causing pollution, and/or that the pit is being used in a manner inconsistent with Commission rules.

Figure: 16 TAC §4.115(j)

(k) Groundwater monitoring requirements for Schedule B authorized pits.

(1) For all Schedule B authorized pits, the operator shall evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The operator shall review readily available public information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The presence of a water well within a one-mile radius of the pit that produced or produces water from a depth of 100 feet or less indicates groundwater is likely to be present within 100 feet of the ground surface. If the operator cannot determine whether groundwater is likely to be present within 100 feet of the ground surface based on a review of readily available public information, the operator shall obtain location-specific subsurface information to establish the presence or absence of groundwater within 100 feet of the ground surface.

(2) Operators of Schedule B authorized pits located in areas where groundwater is not likely to be present within 100 feet of the ground surface are not required to perform groundwater monitoring.

(3) Operators of Schedule B authorized pits located in areas where groundwater is likely to be present within 100 feet of the ground surface are required to perform groundwater monitoring in accordance with paragraph (4) of this subsection unless:

(A) the pit has a double synthetic liner with an operational leak detection system;
or

(B) the pit has a liner and an active life of less than one year.

(4) When groundwater monitoring is required under this subsection, the operator shall install at least three groundwater monitoring wells, at least two of which are installed in a hydrologic downgradient location relative to the pit and at least one of which is installed in an upgradient location relative to the pit.

(5) The following is required for each soil boring or groundwater monitoring well drilled.

1 (A) The drilling method shall allow for periodic or continuous collection of soil
2 samples for field screening and soil characterization in order to adequately characterize site stratigraphy
3 and groundwater bearing zones.

4 (B) The groundwater monitoring wells shall be completed by a certified water
5 well driller in accordance with 16 TAC Part 4, Chapter 76 (Water Well Drillers and Water Well Pump
6 Installers).

7 (C) The groundwater monitoring wells shall be completed to penetrate the
8 shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater
9 zone.

10 (D) The screened interval of the groundwater monitoring wells shall be designed
11 to intercept at least five feet of groundwater.

12 (E) The groundwater monitoring well screen shall extend above the static water
13 level.

14 (F) The sand pack size shall be compatible with the well screen slot size, as well
15 as the local lithology.

16 (G) The groundwater monitoring well heads shall be protected from damage by
17 vehicles and heavy equipment.

18 (H) The groundwater monitoring wells shall be maintained in good condition
19 with a lockable watertight expansion cap.

20 (I) The groundwater monitoring wells shall be able to provide a sample that is
21 representative of the groundwater underlying the site for the duration of pit operations.

22 (J) The operator shall retain the following information for three years after the
23 monitoring wells are plugged:

24 (i) a soil boring lithological log for the well, with the soils described
25 using the Unified Soil Classification System (USCS) (equivalent to ASTM D 2487 and ASTM D 2488);
26 the method of drilling; well specifications; slotted screen type and slot size; riser and screen length;
27 bentonite and cement intervals; total depth; and the depth of the first encountered groundwater or
28 saturated soils;

29 (ii) a well installation diagram, detailing construction specifications for
30 each well;

(iii) a survey elevation for each well head reference point to the top of the casing relative to a real or arbitrary on-site benchmark or relative to mean sea level;

(iv) a table with recorded depth to water, depth to top of casing, and adjusted depth to water data;

(v) an updated Site Plan and a potentiometric surface map showing static water levels, the calculated gradient, and the estimated direction of groundwater flow; and

(vi) the laboratory analytical reports and the corresponding chain of custody from each groundwater sampling event.

(6) The operator shall sample the wells after installation of the wells is complete and shall then sample the wells on a quarterly schedule.

(7) The wells shall be monitored and/or sampled for the following parameters: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(8) If any of the parameters identified in paragraph (7) of this subsection indicate potential pollution:

(A) the operator shall notify the District Director by phone or email within 24 hours of receiving the analytical results; and

(B) the District Director will determine whether additional remediation, monitoring, or other actions are required.

DIVISION 4 REQUIREMENTS FOR ALL PERMITTED WASTE MANAGEMENT OPERATIONS

§4.120. General Requirements for All Permitted Operations.

(a) A waste management activity that is not authorized by this subchapter shall require a permit.

(b) The Commission may issue a permit to manage oil and gas wastes only if the Commission determines that the activity will not result in the endangerment of human health or the environment, the waste of oil, gas, or geothermal resources, or pollution of surface or subsurface water.

(c) This division establishes the permit requirements applicable to all permitted waste management operations. Any person engaged in waste management authorized by permit shall comply with the requirements in this division.

1 (d) A person applying for or acting under a Commission permit to manage oil and gas waste may
2 be required to maintain a performance bond or other form of financial security conditioned that the
3 permittee will operate and close the management facility in accordance with state law, Commission rules,
4 and the permit to operate the facility.

5 (e) In addition to the requirements in this division, any person engaged in the following waste
6 management operations shall comply with the requirements of the following, as applicable.

7 (1) Requirements applicable to commercial facilities are found in Division 5 of this
8 subchapter (relating to Additional Requirements for Commercial Facilities).

9 (2) Requirements applicable to permitted pits are found in Division 6 of this subchapter
10 (relating to Additional Requirements for Permitted Pits).

11 (3) Requirements applicable to landfarming and landtreating are found in Division 7 of
12 this subchapter (relating to Additional Requirements for Landfarming and Landtreating).

13 (4) Requirements for reclamation operations are found in Division 8 of this subchapter
14 (relating to Additional Requirements for Reclamation Plants).

15 (5) Miscellaneous permit requirements applicable to emergency permits, minor permits,
16 and all other activities not otherwise authorized or addressed in this subchapter are found in Division 9 of
17 this subchapter (relating to Miscellaneous Permits).

18 (6) Requirements applicable to oil and gas waste characterization, documentation,
19 manifests, and transportation are found in Division 10 of this subchapter (relating to Requirements for Oil
20 and Gas Waste Transportation).

21 (f) With regard to permits issued pursuant to Divisions 4 through 9 of this subchapter, the
22 Director may impose additional permit conditions necessary to protect human health and the environment,
23 to prevent the waste of oil, gas, or geothermal resources, or to prevent pollution of surface or subsurface
24 water.

25
26 **§4.121. Permit Term**

27 (a) Unless otherwise provided, a permit issued pursuant to Divisions 4 through 9 of this
28 subchapter shall be valid for a term of not more than five years.

29 (b) Any permit issued by the Commission under §3.8 of this title (relating to Water Protection)
30 prior to July 1, 2025 shall remain in effect until it expires on its own terms, is renewed pursuant to the

requirements of this subchapter, or is modified, suspended, or terminated by the Commission pursuant to §4.123 of this title (relating to Permit Modification, Suspension, and Termination).

(c) A permit shall remain in effect while a renewal application that was filed in a timely manner is pending review and evaluation by the Commission.

§4.122. Permit Renewals, Transfers, and Amendments.

(a) Compliance with rules in effect at the time of permit renewals, transfers, or amendments. To ensure compliance with the rules in effect at the time of a request to renew, transfer, or amend a permit, the Commission may review and revise permit conditions when it receives the request. When transitioning permits that were issued under §3.8 of this title (relating to Water Protection) prior to July 1, 2025 into permits that are issued under this subchapter, the Commission:

(1) will not require the operator to relocate existing permitted waste management units to conform to new siting requirements;

(2) will not require the operator to retrofit existing waste management units to conform to new standards if those waste management units are constructed and operating in compliance with their current permits;

(3) may require the operator to add to or improve the groundwater water monitoring systems at existing facilities; and

(4) may require the operator to combine all waste management units at a facility under one permit.

(b) Permit renewal. Permits issued pursuant to this subchapter may be renewed in accordance with the following requirements.

(1) The permittee shall file an application for a renewal permit at least 60 days before the expiration date specified in the permit. Bundling permit renewals with transfers and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements), the permittee shall file an updated closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter (relating to

Oil and Gas NORM). The permittee shall conduct a NORM survey before the renewal is approved if a NORM survey has not been conducted within the last five years.

(3) Permit renewal applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest).

(4) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the renewal.

(5) The permit shall not be renewed unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(6) Permit renewals will be issued for a maximum of five years from the date of issuance.

(c) Permit transfer. Permits issued pursuant to this subchapter may be transferred in accordance with the following requirements.

(1) A permittee may request to transfer a permit to a new operator by notifying the Director in writing at least 60 days before the transfer takes place. Bundling permit transfers with renewals and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title, the transferee shall file a new closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter. The transferee shall conduct a NORM survey before the transfer is approved if a NORM survey has not been conducted within the last five years. The transferee shall file the required financial security in the approved amount with the Commission before the permit is transferred.

(3) If the proposed transferee operator does not own the surface property, the transferee operator shall provide evidence of the proposed transferee's authority to operate the facility in accordance with §4.126(b) of this title (relating to Location and Real Property Information).

(4) A request to transfer a commercial permit associated with a Form P-4 (Certificate of Compliance and Transportation Authority) shall be submitted on Form P-4. A request to transfer a commercial permit not associated with a Form P-4 shall be submitted in writing to the Director.

(5) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the transfer.

(6) The permit shall not be transferred unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(7) Permit transfers will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit amendment and/or permit renewal.

(d) Permit amendment. Permits issued pursuant to this subchapter may be amended in accordance with the following requirements.

(1) A permit amendment is required before a permittee may conduct any activities other than those activities specifically authorized by the permit.

(2) The permittee shall file an application for amendment at least 90 days before the proposed new operations are scheduled to commence. Bundling permit amendments with transfers and/or renewals is encouraged. The application shall include the following information as applicable.

(A) For pit permit amendments that change the pit construction, dimensions, or capacity, the permittee shall submit appropriate diagrams, cross-sections, and other supporting information.

(B) For any permit required to file financial security in accordance with §3.78 of this title, if the amendments to the permit would increase the cost of closure, the permittee shall submit an updated closure cost estimate.

(C) Permit amendment applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest). However, the Director may reduce or waive notice requirements for amendments that reflect minimal impact to facility operations, waste management volumes, closure cost estimates, or potential for pollution to surface or subsurface waters. The Director shall establish criteria for a determination of minimal impact and the criteria shall be published on the Commission's website and in appropriate guidance documents.

(D) The Director may request any additional information reasonably necessary to prevent pollution.

(3) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the amendment.

(4) The permit amendment shall not be approved unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(5) Permit amendments will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit transfer and/or permit renewal.

§4.123. Permit Modification, Suspension, and Termination.

1 (a) A permit issued pursuant to this subchapter, or a permit issued pursuant to §3.8 of this title
2 (relating to Water Protection) before July 1, 2025, may be modified, suspended, or terminated by the
3 Commission for good cause after notice and opportunity for hearing.

4 (b) A finding of any of the following facts shall constitute good cause:

5 (1) pollution of surface or subsurface water is occurring or is likely to occur as a result of
6 the permitted operations;

7 (2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result
8 of the permitted operations;

9 (3) continued operation of the facility presents an imminent danger to human health or
10 property;

11 (4) the permittee has violated the terms and conditions of the permit or Commission
12 rules;

13 (5) the permittee misrepresented any material fact during the permit issuance process;

14 (6) a material change of conditions has occurred in the permitted operations;

15 (7) the information provided in the application has changed materially; or

16 (8) the permittee failed to give the notice required by the Commission during the permit
17 issuance, amendment, or renewal process.

18
19 **§4.124. Requirements Applicable to All Permit Applications and Reports.**

20 (a) Unless otherwise specified by rule, a permit application shall be filed with the Technical
21 Permitting Section. The application shall be filed by mail, hand delivery, or by an electronic process
22 approved by the Director. A permit application shall be considered filed with the Commission on the day
23 it is date-stamped by the Commission's office in Austin.

24 (b) The permit application shall contain information addressing each applicable application
25 requirement and all information necessary to initiate the final review by the Technical Permitting Section,
26 including all information required by this division and the applicable provisions of Divisions 5 through 9
27 of this subchapter, as described in §4.120 of this title (relating to General Requirements for All Permitted
28 Operations).

29 (c) When a Commission prescribed application form exists, either in paper or electronic form, an
30 applicant shall apply on the prescribed form according to the form instructions. When a Commission
31 prescribed application form does not exist, the permit application shall contain a signature, printed name,

1 contact telephone number or email address, the date of signing, and the following certification: "I certify
2 that I am authorized to make this application, that this application was prepared by me or under my
3 supervision and direction, and that the data and facts stated herein are true, correct, and complete to the
4 best of my knowledge."

5 (d) The permit application shall contain the following information for the applicant:

- 6 (1) the applicant's organization name;
- 7 (2) the applicant's organization report (P-5) number;
- 8 (3) the applicant's physical address, and mailing address if different;
- 9 (4) the name, telephone number, and email address of a contact person for the
10 application, which can be someone within the applicant's organization or an agent;
- 11 (5) the identifying name of the proposed facility; and
- 12 (6) a general narrative description of the proposed management of oil and gas wastes at
13 the facility.

14 (e) The technical data in the permit application shall comply with the following requirements.

15 (1) All geographic coordinates submitted to the Technical Permitting Section shall use
16 the North American Datum (NAD) 83, in decimal degrees to six decimal places of longitude and latitude.

17 (2) All maps, plans, and diagrams submitted to the Technical Permitting Section shall be
18 drawn to scale and include a scale, north arrow, title block, and legend. Maps shall be of material suitable
19 for a permanent record and shall be on sheets 8-1/2 inches by 11 inches or, alternatively, 8-1/2 inches by
20 14 inches or 11 inches by 17 inches folded to standard letter size.

21 (3) All chemical laboratory analyses submitted to the Technical Permitting Section are
22 required to be performed in accordance with the following.

23 (A) All chemical laboratory analyses shall be conducted using appropriate EPA
24 methods or standard methods by an independent National Environmental Laboratory Accreditation
25 Program certified laboratory neither owned nor operated by the permittee. Any sample collected for
26 chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical
27 method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be
28 performed by a laboratory certified to conduct geotechnical testing according to the standards specified by
29 ASTM and certified by a professional engineer licensed in Texas.

30 (B) All chemical laboratory analytical results shall include the full laboratory
31 analytical report and the corresponding chain of custody.

(4) All NORM screening surveys submitted to the Technical Permitting Section shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. The manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

- (A) the date of the survey;
- (B) the instrument used and the last calibration date;
- (C) a background reading;
- (D) a facility diagram showing where all readings, including the background, were taken;
- (E) the readings (in microroentgens per hour); and
- (F) the full name of the person conducting the survey.

(f) The application shall include a stormwater management plan that contains plans and diagrams to segregate, manage, and dispose of all contact stormwater and non-contact stormwater at the facility.

§4.125. Notice and Opportunity to Protest

(a) Purpose. Applicants are encouraged to engage with their communities early in the waste facility planning process to inform the community of the plan to construct a facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

- (1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and
- (2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

1 (c) Notice recipients. The applicant shall provide notice to:

- 2 (1) the surface owners of the tract on which the facility will be located;
3 (2) the surface owners of tracts adjacent to the tract on which the facility will be located;
4 (3) the surface owners of tracts located within 500 feet of the facility's fence line or
5 boundary, even if the surface owner's tract is not adjacent to the tract on which the facility is located;
6 (4) the city clerk or other appropriate city official if any part of the tract on which the
7 facility will be located lies within the municipal boundaries of the city;
8 (5) the Commission's District Office; and
9 (6) any other person or class of persons that the Director determines should receive notice
10 of an application.

11 (d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant
12 shall provide direct notice to the persons specified in subsection (c) of this section as follows.

- 13 (1) The applicant shall provide notice by registered or certified mail.
14 (2) The notice of the permit application shall consist of a complete copy of the
15 application and any attachments. The copy shall be of the application and attachments after staff
16 determines the application is complete pursuant to §1.201(b) of this title but before the final review is
17 completed.

- 18 (3) The notice shall include a letter that contains:
19 (A) the name of the applicant;
20 (B) the date of the notice;
21 (C) the name of the surface owners of the tract on which the proposed facility
22 will be located;
23 (D) the location of the tract on which the proposed facility will be located
24 including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county,
25 original survey, abstract number, and the direction and distance from the nearest municipality or
26 community;
27 (E) the types of fluid or waste to be managed at the facility;
28 (F) a statement that an affected person may protest the application by filing a
29 written protest with the Commission within 30 calendar days of the date of the notice;
30 (G) a statement that a protest shall include the protestant's name, mailing address,
31 telephone number, and email address;

1 (H) the address to which protests may be mailed or the location and instructions
2 for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

3 (I) the definition of "affected person" pursuant to §4.110 of this title (relating to
4 Definitions); and

5 (J) the signature of the operator, or representative of the operator, and the date the
6 letter was signed.

7 (4) If the Director determines that the applicant, after diligent efforts, has been unable to
8 ascertain the name and address of one or more persons required by this section to be notified, then the
9 Director may authorize the applicant to notify such persons by publishing notice of the application in
10 accordance with the procedure and contents required by §4.141 of this title (relating to Additional Notice
11 Requirements for Commercial Facilities). The Director will consider the applicant to have made diligent
12 efforts to ascertain the names and addresses of surface owners required to be notified if the applicant has
13 examined the current county tax rolls and investigated other reliable and readily available sources of
14 information.

15 (e) Proof of notice.

16 (1) After the applicant provides the notice required by this section, the applicant shall
17 submit to the Commission proof of delivery of notice which shall consist of:

18 (A) a copy of the signed and dated letters required by subsection (d)(3) of this
19 section;

20 (B) the registered or certified mail receipts; and

21 (C) a map showing the property boundaries, surface owner names, and parcel
22 numbers of all notified parties.

23 (2) If the Director authorizes notice by publication in accordance with subsection (d)(4)
24 of this section, the applicant shall provide the following as proof of notice:

25 (A) an affidavit from the newspaper publisher that states the dates on which the
26 notice was published and the county or counties in which the newspaper is of general circulation; and

27 (B) the tear sheets for each published notice.

28 (f) Protest process. Any statement of protest to an application must be filed with the Commission
29 within 30 calendar days from the date of notice or from the last date of publication if notice by
30 publication is authorized by the Director.

1 (1) The Technical Permitting Section shall notify the applicant if the Commission
2 receives an affected person's timely protest. A timely protest is a written protest date-stamped as received
3 by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of
4 the last date of publication, whichever is later.

5 (2) The applicant shall have 30 days from the date of the Technical Permitting Section's
6 notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the
7 application. If the applicant fails to timely file a written response, the Technical Permitting Section shall
8 consider the application to have been withdrawn.

9 (3) The Technical Permitting Section shall refer all protested applications to the Hearings
10 Division if a timely protest is received and the applicant requests a hearing.

11 (4) The Commission shall provide notice of any hearing convened under this subsection
12 to all affected persons and persons who have requested notice of the hearing.

13 (5) If the Director has reason to believe that a person entitled to notice of an application
14 has not received notice as required by this section, then the Technical Permitting Section shall not take
15 action on the application until notice is provided to such person.

16 (6) The Commission may issue a permit if no timely protests from affected persons are
17 received.

18
19 **§4.126. Location and Real Property Information**

20 (a) The permit application shall contain the following information for the facility:

21 (1) the location of the proposed facility, including the physical address and geographic
22 coordinates of the center of the facility; and

23 (2) a description of the property on which the facility is located, including:

24 (A) for each surface owner of the property, the application shall include the
25 name, mailing address, and telephone number of each surface owner, or if any owner is not an individual,
26 the name, mailing address, and telephone number of the contact person for that owner; and

27 (B) a legal description of the property, including the survey name, abstract
28 number, and size in acres.

29 (b) A permit application shall include a statement regarding the authority by which the operator
30 has the right to permit and operate the facility. Proper authority may include, but is not limited to:

31 (1) ownership of the property where the proposed facility is located;

- (2) a leasehold interest in the oil and gas estate;
- (3) written consent of the surface owner; or
- (4) any other authority the Director determines is appropriate.

(c) The application shall include a general location map which shows the facility including the items listed in paragraphs (1)-(7) of this subsection and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet unless the size of a smaller facility is not discernable at that scale. The map shall show the following:

- (1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;
- (2) the location of each regulated feature in decimal degrees to six decimal places of longitude and latitude;
- (3) a clear outline of the proposed facility's boundaries;
- (4) the distance to the nearest property line or public road;
- (5) the tracts of land adjacent to the facility requiring notice as prescribed by the Commission;
- (6) the name of the surface owners of such adjacent tracts; and
- (7) other information requested by the Director reasonably related to the prevention of pollution.

§4.127. Engineering and Geologic Information

(a) A permit application shall include descriptions of the following elements and specify the sources of information:

- (1) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;
- (2) the subsurface geology, including an assessment of the presence and characteristics of permeable and impermeable strata;
- (3) the subsurface hydrogeology, including the depth to the shallowest groundwater, an assessment of groundwater quality, the direction of groundwater flow, groundwater use in the area, and any major and minor aquifers (as defined by the Texas Water Development Board) in the facility area; and

(4) any engineering, geological, or other information which the Director deems necessary to show that issuance of the permit will not result in the endangerment of human health and the environment, the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) If information is not available to address subsection (a) of this section, a site investigation including soil boring, sampling, and analysis is required.

(c) If otherwise required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a professional engineer or geoscientist licensed in Texas shall conduct the geologic and hydrologic evaluations required under this section and shall affix the appropriate seal on the resulting reports of such evaluations.

§4.128. Design and Construction

(a) Application. The following information shall be submitted with each permit application:

(1) a facility diagram clearly showing the items listed in subparagraphs (A)-(G) of this paragraph and any other pertinent information regarding the facility and associated activities. Diagrams shall be on a scale that shows the entire facility and activities within the Commission's jurisdiction on a single page. The diagram shall show the following:

(A) a clear outline of the proposed facility, areas where oil and gas waste will be managed, and property boundaries;

(B) all wells, pits, areas where oil and gas waste will be managed, and any other activity under the jurisdiction of the Commission that may occur at the proposed facility;

(C) the location of all tanks and equipment;

(D) all berms, dikes, or secondary containment;

(E) all fences, roads, and paved areas;

(F) the shortest distance between the facility and waste management unit boundary to the nearest property line or public road; and

(G) the location of any pipelines within the facility boundaries;

(2) a description of the type and thickness of liners (e.g., fiberglass, steel, concrete), if any, for all tanks, silos, pits, and storage areas or cells;

1 (3) for storage areas where tanks and/or liners are not used, credible engineering and/or
2 geologic information demonstrating that tanks or liners are not necessary for the protection of surface and
3 subsurface water;

4 (4) a map view and two perpendicular cross-sectional views of pits and/or storage areas
5 or cells to be constructed, showing the bottom, sides, and dikes and the dimensions of each; and

6 (5) a plan to control and manage all stormwater runoff and to retain wastes during wet
7 weather, including the location and dimensions of dikes and/or storage basins that would collect
8 stormwater during a 25-year, 24-hour rainfall event, and all calculations made to determine the required
9 capacity and design.

10 (b) Design and construction requirements. All permittees shall comply with the following
11 requirements.

12 (1) The permittee shall post signs at each entrance to the facility. The sign shall be readily
13 visible and show the operator's name, facility name, and permit number in letters and numerals at least six
14 inches in height.

15 (2) Dikes or containment structures shall be constructed around all areas managing oil
16 and gas wastes. All earthen dikes surrounding pits and constructed as perimeter berms shall be compacted
17 or constructed of material that meets 95% Standard Proctor (ASTM D698) or 90-92% Modified Proctor
18 (ASTM D1557) density and meets a permeability of 1×10^{-7} cm/sec or less when compacted. During
19 construction, successive lifts shall not exceed nine inches in thickness, and the surface between lifts shall
20 be scarified to achieve a good seal. These structures shall be used to divert non-contact stormwater around
21 the waste management unit and contain and isolate contact stormwater within the bermed area.

22 (3) Secondary containment shall be provided for all above-ground storage tanks.
23 Secondary containment for a minimum of 120% total storage capacity is recommended. Secondary
24 containment that will contain the largest tank's maximum capacity plus two feet of freeboard and capacity
25 to contain the volume of precipitation from a 25-year, 24-hour rainfall event is acceptable.

26 (4) Contact stormwater shall be collected within 24 hours of accessibility and disposed of
27 in an authorized manner.

28 (5) The facility shall maintain security to prevent unauthorized access. Access shall be
29 secured by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended to
30 prevent vehicle or livestock access. Fencing shall be required unless terrain or vegetation prevents vehicle
31 or livestock access except through entrances with lockable gates.

(6) All liner systems shall be installed and maintained in a manner that will prevent pollution and/or the escape of the contents of the pit.

§4.129. Operation

(a) Application. All permit applications shall include the following operating information:

- (1) a description of the sources and types of wastes to be received;
- (2) a description of plans for waste sampling and analysis;
- (3) a description of all waste management operations including receipt, handling, storage, treatment, recycling, reclamation, and disposal, and the location of each operation;
- (4) a description of how wastes will be transferred between waste management units within the facility;
- (5) a description of any operational limitations, including the maximum amount of oil field fluids or oil and gas wastes that will be stored in any area at one time less the volume required to maintain the required two feet of freeboard and the volume of precipitation from a 25-year, 24-hour rainfall event;
- (6) a description of plans to prevent, report, and control unauthorized access;
- (7) a list of all chemicals to be used and their associated safety data sheets;
- (8) plans for routine inspections, maintenance, and monitoring;
- (9) a description of plans to prevent, report, and control spills and leaks;
- (10) plans for controlling contact and non-contact stormwater runoff;
- (11) plans for managing incoming wastes during wet weather;
- (12) a description of plans for recordkeeping, including records of waste receipts and dispositions; and
- (13) safety data sheets for any chemical or component proposed to be used in the treatment of waste at the facility.

(b) Operating requirements. Each facility shall be operated in accordance with the following requirements.

(1) The permittee shall only accept waste it is permitted to receive. The permittee shall only accept waste transported and delivered by a Commission-permitted waste hauler permitted pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(2) No waste, treated or untreated, shall be placed directly on the ground.

(3) All storage tanks, equipment, and on-site containment shall be maintained in a leak-free condition. If inspection of a tank, on-site containment, or storage vessel reveals deterioration or leaks, the tank, on-site containment, or storage vessels shall be repaired or replaced before resuming use.

(4) Any spill of waste, chemical, or any other material shall be collected and containerized within 24 hours and processed through the treatment system or disposed of in an authorized manner.

(5) Any chemical used in the treatment process shall be stored in vessels designed for the safe storage of the chemical and these vessels shall be maintained in a leak-free condition.

(6) Any soil additives, stabilizers, bio-accelerators, or treatment chemicals shall be approved by the Director prior to use at the facility. Use of the chemical or component is contingent upon Director approval. All chemicals and components shall be stored according to the manufacturer's specifications.

§4.130. Reporting

(a) The permittee shall maintain for a period of at least three years records of each Waste Profile Form and Waste Manifest described in §§4.190 and 4.191 of this title (relating to Oil and Gas Waste Characterization and Documentation, and Oil and Gas Waste Manifests, respectively) that the permittee generated or received.

(b) The permittee shall make all records required by this section available for review and/or copying upon request.

(c) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted on a form prescribed by the Commission. If a Commission prescribed report form does not exist, the report shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this report, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted in accordance with the following requirements.

(1) Reports shall be filed with the Commission electronically in a digital format acceptable to the Commission no later than one year after the date the Commission has the technological capability to receive the electronic filing.

(2) If a permit requires quarterly reports, the quarterly reporting periods shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year.

(3) If a permit requires quarterly, semi-annual, or annual reports, reports shall be made on a Commission-designated form or electronic filing system and submitted to the Technical Permitting Section and the Commission District Office no later than the 30th day of the month following each reporting period.

(4) If a permit requires monthly reports, the report shall be made on a Commission-designated form or electronic filing system and submitted to Technical Permitting Section and the District Office no later than the 15th day of the month following each reporting period.

§4.131. Monitoring

(a) Application. The following information shall be submitted with each permit application:

(1) a plan and schedule for conducting periodic inspections, including plans to inspect pits, equipment, processing, and storage areas; and

(2) a potentiometric contour map showing static water levels and the estimated direction of groundwater flow and the calculated gradient.

(b) Groundwater monitoring requirements.

(1) If shallow groundwater is present within 100 feet below ground surface, groundwater monitoring wells may be required for some facilities, including but not limited to: brine pits, disposal pits, reclamation plants, commercial waste separation facilities, commercial recycling facilities, and commercial landfarming or landtreating facilities. Factors that the Commission will consider in assessing whether groundwater monitoring is required include:

(A) the volume and characteristics of the oil and gas waste to be managed at the facility;

(B) depth to and quality of groundwater within 100 feet below ground surface; and

(C) presence or absence of natural clay layers in subsurface soils.

(2) If the Director requires the operator to install groundwater monitoring wells, the operator shall comply with the following.

1 (A) The operator shall submit a plan for the installation, sampling, and analysis
2 of monitoring wells at the facility. The plan shall include information on the monitor well drilling
3 method. A mud rotary drilling method shall not be used unless the depth to water has been established.

4 (B) The monitor wells shall be able to provide representative samples of
5 groundwater underlying the site for the duration of facility operations. If a monitor well is not capable of
6 providing a representative sample, the operator shall notify the Technical Permitting Section.

7 (C) If groundwater is not observed during drilling of the monitor wells, the soil
8 boring shall be advanced to 100 feet. Borings shall be left open for a minimum of 24 hours to determine if
9 groundwater is present.

10 (D) If shallow groundwater is present within 100 feet below ground surface at the
11 site, a minimum of three groundwater monitoring wells shall be installed. Wells shall be spaced around
12 the facility or pit, close to the facility operational area, with at least two wells on the estimated down-
13 gradient side of the operational area. Additional wells may be required for larger facilities.

14 (E) The monitor wells shall be completed by a certified water well driller in
15 accordance with 16 Texas Administrative Code, Part 4, Chapter 76 (relating to Water Well Drillers and
16 Water Well Pump Installers).

17 (F) The monitor wells shall be completed to penetrate the shallowest
18 groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

19 (G) The screened interval of the groundwater monitoring wells shall be designed
20 to intercept at least five feet of groundwater.

21 (H) The groundwater monitoring well screen shall extend above the static water
22 level.

23 (I) The sand pack size shall be compatible with the well screen slot size, as well
24 as the local lithology.

25 (J) The groundwater monitoring well heads shall be protected from damage by
26 vehicles and heavy equipment.

27 (K) The groundwater monitoring wells shall be maintained in good condition
28 with a lockable watertight expansion cap.

29 (L) After installation of the wells is complete, the applicant shall submit the
30 following information:

(i) a soil boring lithologic log for each well, with the soils described using the Unified Soil Classification System (equivalent to ASTM D 2487 and 2488). The log shall also include the method of drilling, well specifications, slot size, riser and screen length, bentonite and cement intervals, total depth, and the top of the first encountered water or saturated soils; and

(ii) a survey elevation for each well head reference point (top of casing) relative to a real or arbitrary on-site benchmark and relative to mean sea level.

(3) The applicant shall submit any other information necessary to address each of the operating requirements detailed in paragraph (4) of this subsection.

(4) If the Director requires the permittee to install groundwater monitoring wells, the permittee shall comply with the following requirements.

(A) The facility shall not manage oil and gas wastes at the facility until the groundwater monitoring wells are installed, the permittee submits the initial sample results to Technical Permitting Section, and Technical Permitting Section informs the permittee, in writing, that it may commence active operations.

(B) The permittee shall sample the wells after installation of the wells is complete and shall thereafter sample the wells in accordance with the schedule approved by the Technical Permitting Section, or as otherwise required by the Director.

(C) The following measurements and analyses shall be reported to Technical Permitting Section after any sampling event no later than 15 days after the permittee receives the laboratory analysis results: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(D) If any of the parameters identified in subparagraph (C) of this paragraph indicate pollution, or the potential failure of the liner system, the Commission may require additional monitoring events and/or may require analysis of additional parameters.

§4.132. Closure

(a) Application. A permit application shall include a detailed plan for closure when operations at the facility or pit terminate. The closure plan shall include a general plan to:

- (1) remove all wastes;
- (2) demolish and/or remove any liners;

- (3) remove dikes;
- (4) backfill any excavations and contour and reseed disturbed areas;
- (5) sample and analyze soil and, if applicable, groundwater throughout the facility;
- (6) if applicable, plug groundwater monitoring wells; and
- (7) have financial security released once post closure activities are completed and

approved by the Technical Permitting Section.

(b) Closure requirements. The permittee shall close the facility or pit in accordance with the following requirements.

(1) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencement of any closure operations.

(2) The permittee shall submit a detailed closure plan to the Technical Permitting Section at least 30 days prior to commencement of any closure activity. The Technical Permitting Section must approve the detailed closure plan before the permittee may initiate closure operations. The permittee shall comply with the closure plan approved by the Technical Permitting Section. The closure plan shall include the following information:

(A) the processing and removal of all wastes, chemicals, and waste-related materials from the facility for authorized reuse or disposal in an authorized manner;

(B) the removal and salvage of all equipment, if possible, or disposal of all equipment in an authorized manner;

(C) unless otherwise authorized, the cleaning and demolishment of all equipment and storage areas, including concrete pads, at the facility; and the disposal in an authorized manner of all rubble, wash-water, and rinsate;

(D) the excavation, removal, and disposal of all contaminated soils from beneath the liners and concrete pads;

(E) a soil sampling plan; and

(F) if required by the Director, a post-closure monitoring plan.

(3) Once the permittee has removed all waste, equipment, concrete pads, contaminated soil, and any other material in accordance with the closure plan, the permittee shall conduct soil sampling in accordance with the approved soil sampling plan. Soil samples shall be analyzed for the parameters in the permit and/or soil sampling plan and submitted to the Technical Permitting Section no later than 30 days after the permittee receives the laboratory results. The Technical Permitting Section may require the

1 permittee to conduct additional closure operations if the soil sample results exceed the authorized limits
2 and/or the Technical Permitting Section determines that additional remediation is required to prevent
3 pollution caused or contributed to by operations at the facility.

4 (4) The permittee shall grade the pits, on site storage tanks, on site storage areas, and any
5 other facility location to prevent rainfall from collecting at these locations.

6 (5) If the Director required a post-closure plan, the permittee shall conduct post-closure
7 monitoring in accordance with the post-closure monitoring plan approved by Technical Permitting
8 Section.

10 **§4.134. Application Review and Administrative Decision**

11 The Technical Permitting Section reviews applications submitted under this subchapter in
12 accordance with §1.201 of this title (relating to Time Periods for Processing Applications and Issuing
13 Permits Administratively).

15 **§4.135. Hearings**

16 (a) The applicant may request a hearing upon receipt of notice that:

17 (1) the application has been denied by the Director;

18 (2) the Director has determined the application to be administratively complete but a
19 timely protest to the application has been received; or

20 (3) the Director has determined that additional permit conditions are required to prevent
21 pollution and the applicant disagrees with the Director's determination.

22 (b) A request for hearing shall be made to the Technical Permitting Section within 30 days of the
23 date of the notice of administrative denial or notice of a timely protest. If the Director receives a request
24 for a hearing, the Director shall refer the matter to the Hearings Division for assignment of a hearings
25 examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and
26 Procedure).

28 **DIVISION 5 ADDITIONAL REQUIREMENTS FOR COMMERCIAL FACILITIES**

29 **§4.140. Additional Requirements for Commercial Facilities**

30 (a) In addition to the requirements of this division, all applicants for commercial facilities and
31 permittees of commercial facility permits shall comply with Division 4 of this subchapter (relating to

Requirements for All Permitted Waste Management Operations) and any other sections of this subchapter applicable to the applicant's or permittee's management of oil and gas wastes.

(b) A facility authorized or permitted as a non-commercial facility prior to July 1, 2025 but that meets the definition of a commercial facility in §4.110 of this title (relating to Definitions) as of July 1, 2025 shall comply with the requirements of this division or request an exception on or before July 1, 2026.

(c) A facility that meets the definition of a commercial facility in §4.110 of this title is considered a commercial facility under §3.78 of this title (relating to Fees and Financial Security Requirements), and therefore, an applicant for a commercial facility permit shall submit the financial security required by Texas Natural Resources Code §91.109 and §3.78 of this title for each permit renewal, amendment, and/or transfer.

(d) A commercial facility shall not manage oil and gas waste or otherwise begin active operation until the required financial security is approved and accepted by the Commission.

(e) Pursuant to §3.78 of this title, the amount of the financial security shall be the maximum dollar amount necessary to close the facility.

(f) The full financial security shall be maintained:

(1) until all post-closure activities are completed and approved by the Technical Permitting Section; and

(2) while the facility has been referred to and remedial actions are being overseen by the Site Remediation Unit in the Oil and Gas Division.

(g) To determine the maximum dollar amount necessary to close the facility, a professional engineer licensed in Texas shall prepare or supervise the preparation of a closure-cost estimate (CCE).

(1) In addition to the assumptions and calculations specified in §3.78 of this title, the professional engineer shall make the following assumptions when determining the dollar amount necessary to close the facility.

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, including the sampling and analysis of soils to confirm compliance.

(C) None of the operator's other equipment or facilities (e.g., disposal wells, pits, trucks, bulldozers, and employees) are available at the time of closure.

1 (D) The facility is at maximum capacity. All tanks and pits are full of waste.
2 Disposal pits are fully constructed.

3 (E) Storage tanks and pits contain basic sediment and water in normal operating
4 proportions, with a minimum volume of at least 10% basic sediment.

5 (2) The CCE shall not include a salvage or no cost value for any material or equipment at
6 the facility.

7 (3) The CCE shall include costs for sampling and analysis of soil for the areas around
8 each waste management unit, including tank batteries, pads, and former pits.

9 (4) The CCE shall show unit costs for all material, equipment, services, and labor needed
10 to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed
11 of. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. Solids held
12 within permitted containments shall be reported in cubic yards. The CCE shall be specific and shall state
13 the source or basis for the specific unit cost, including the following:

14 (A) the permitted waste hauler to be used and the hauler's mileage rate;

15 (B) the distance that waste will be transported for disposal;

16 (C) the name of each facility where waste will be taken and the disposal costs for
17 that facility;

18 (D) the source of any material being brought to the facility, such as clean fill
19 material;

20 (E) calculations for earth-moving equipment time and cost needed to move the
21 fill dirt if fill dirt will be taken from the facility;

22 (F) the total labor costs, including the titles and billing rates for personnel; and

23 (G) the quantity of each unit cost item and how the total quantity was determined
24 (for example, cubic yards of material divided by size of load equals total number of loads).

25 (5) The CCE shall include maps and illustrations such as facility plans and photographs
26 that show the current condition of the facility, and/or the condition of the facility upon reaching maximum
27 permit conditions.

28 (6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug
29 and abandon all monitoring wells.

1 (7) For facilities that will require post-closure monitoring, the CCE shall include costs for
2 a minimum of five years of well maintenance and monitoring. The length of monitoring shall be
3 determined by the Director.

4 (8) The CCE shall show all calculations used to arrive at total maximum closure costs.

5 (9) For all estimates submitted for existing facilities, a NORM screening survey of the
6 facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated
7 scintillation meter with a sodium iodide detector (or equivalent), with the results reported in
8 microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted
9 to Technical Permitting Section in Austin for all devices used for NORM detection. All equipment,
10 including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference
11 of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall
12 be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

- 13 (A) the date of the survey;
14 (B) the instrument used and the last calibration date;
15 (C) a background reading;
16 (D) a facility diagram showing where all readings, including the background,
17 were taken; and
18 (E) the readings (in microroentgens per hour).

19 (10) If fill dirt will be excavated from the property to achieve closure, a restrictive
20 covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the
21 CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the
22 following requirements shall be met whether the operator owns or leases the property:

23 (A) The operator shall provide a letter from the property owner specifically
24 stating that the owner agrees that the material, which is described with specificity as to location, type and
25 amount consistent with what is in the closure plan, will be available for closure whether the operator or
26 the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for
27 closure.

28 (B) The operator shall submit an unsigned draft restrictive covenant on the form
29 provided by the Commission. Once the Commission approves the closure cost and closure plan, the
30 operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign
31 its portion of the restrictive covenant and return it to the operator for filing in the real property records of

the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third-party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the depth of the excavation is limited to what can be graded to prevent stormwater from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(h) A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.132 of this title (relating to Closure). The closure plan shall address how the applicant intends to:

- (1) remove waste, partially treated waste, and/or recyclable product from the facility;
- (2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment;
- (3) remove dikes and equipment;
- (4) contour and reseed disturbed areas;
- (5) sample and analyze soil and groundwater throughout the facility; and
- (6) plug groundwater monitoring wells.

§4.141. Additional Notice Requirements for Commercial Facilities.

(a) In addition to the notice requirements detailed in §4.125 of this title (relating to Notice and Opportunity to Protest), an applicant for a commercial facility permit shall also provide notice by publication.

(b) The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an

1 application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing
2 Applications and Issuing Permits Administratively) but before the final review is completed.

3 (c) The published notice shall:

4 (1) be entitled "Notice of Application for Commercial Oil and Gas Waste Facility" if the
5 proposed facility is a commercial facility;

6 (2) provide the date the applicant filed the application with the Commission;

7 (3) identify the name of the applicant;

8 (4) provide the location of the tract on which the proposed facility will be located
9 including the legal description of the property, latitude/longitude coordinates of the proposed facility,
10 county, name of the original survey and abstract number, and location and distance in relation to the
11 nearest municipality or community;

12 (5) identify the owner or owners of the property on which the proposed facility will be
13 located;

14 (6) identify the type of fluid or solid waste to be managed at the facility;

15 (7) identify the proposed disposal, treatment, or storage method;

16 (8) state that affected persons may protest the application by filing a protest with the
17 Commission within 30 calendar days of the last date of publication;

18 (9) include the definition of "affected person" pursuant to §4.110 of this title (relating to
19 Definitions); and

20 (10) provide the address to which protests shall be mailed. If the Commission implements
21 an electronic means for filing protests, then the location to instructions for electronic submittal shall be
22 included.

23 (d) The applicant shall submit to the Commission proof that notice was published as required by
24 this section. Proof of publication shall consist of:

25 (1) an affidavit from the newspaper publisher that states the dates on which the notice
26 was published and the county or counties in which the newspaper is of general circulation; and

27 (2) the tear sheets for each published notice.
28

29 **§4.142. Operating Requirements Applicable to Commercial Facilities**

30 (a) An application for commercial facility shall include a detailed waste acceptance plan to ensure
31 that the waste received at the facility has been fully and correctly documented by the generator and

1 carrier, and characterized by the generator, including supporting laboratory analysis if necessary, and to
2 ensure that prohibited oil field fluids, prohibited oil and gas wastes, and/or non-jurisdictional wastes are
3 not received at the facility.

4 (b) The operator shall develop and maintain a site-specific spill control plan that details the
5 processes in place to control and contain oil and gas waste in the event of a spill or release. The spill
6 control plan shall be maintained on-site and made available to the Commission upon request.

7 (c) The operator shall develop and maintain a stormwater management plan to prevent
8 stormwater from running onto the facility, the unauthorized discharge of stormwater, or deleterious
9 impacts of stormwater from the facility to adjoining properties. The stormwater management plan shall
10 be maintained on-site and made available to the Commission upon request.

11 12 **§4.143 Design and Construction Requirements for Commercial Facilities.**

13 Prior to commencement of operations at a commercial facility, the permittee shall provide the
14 Director with drawings documenting the as-built condition of the facility, including all equipment and
15 waste management units.

16 17 **DIVISION 6 ADDITIONAL REQUIREMENTS FOR PERMITTED PITS**

18 **§4.150. Additional Requirements Applicable to Permitted Pits**

19 (a) In addition to the requirements of this division, all permitted pits are required to comply with
20 Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations).
21 Commercial pits are also required to comply with Division 5 of this subchapter (relating to Additional
22 Requirements for Commercial Facilities).

23 (b) If at any time a pit no longer meets the requirements for authorized pits under §4.113 of this
24 title (relating to Authorized Pits), the operator of the pit shall apply for a pit permit pursuant to the
25 requirements of this division.

26 (c) No person may use a pit without the express permission of the permittee. A person who uses a
27 pit without the express permission of the permittee may be subject to legal enforcement action regardless
28 of whether the person maintains an active Organization Report pursuant to §3.1 of this title (relating to
29 Organization Report; Retention of Records; Notice Requirements.)

30 (d) Any person using or maintaining a pit without the required permit shall be immediately
31 required to cease usage and close the pit in accordance with §4.154 of this title (relating to Closure of

Permitted Pits). Any person using or maintaining a pit without the required permit may be subject to enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title.

(e) Permitted pits are subject to containment requirements to prevent pollution of surface or subsurface water and will be included as permit conditions at the sole discretion of the Commission.

(f) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit permitted by this subchapter, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours.

(g) Unless the Director approves a written request for an exception, no pit shall be located:

- (1) on a barrier island or a beach;
- (2) within 300 feet of surface water, including wetlands;
- (3) within 500 feet of any public water system well or intake;
- (4) within 300 feet of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized; or
- (5) within a 100-year flood plain.

(h) A minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the outer edge or toe of the pit walls or berms.

§4.151. Design and Construction of Permitted Pits

(a) Application.

(1) Unless otherwise provided by permit, all permitted pits shall comply with the general construction requirements applicable to authorized pits in Division 3 of this subchapter (relating to Operations Authorized by Rule).

(2) In addition to the information required by §4.128 of this title (relating to Design and Construction), the facility diagram submitted with the application shall include the following information:

- (A) the maximum length, width, and depth of the pit in feet;
- (B) the maximum depth of the pit below grade in feet;
- (C) the maximum and minimum height of walls or dikes above grade in feet;
- (D) the dimensions of the dikes including the width at the base, height, and slope;
- (E) the maximum volume of the pit in barrels and cubic yards;

(F) the maximum volume of the pit minus the volume to maintain the required freeboard in barrels and cubic yards;

(G) the volume of the pit below natural grade in barrels and cubic yards;

(H) information on the pit liner type and thickness, installation methods, and manufacturer's specification sheets;

(I) a plan view drawing of each pit, including all dimensions, and any trenches or structures used to separate and convey contact and non-contact stormwater;

(J) two perpendicular, sectional views of each pit showing the bottom, sides, dikes, and natural grade, including all dimensions; and

(K) the surface area and action leakage rate calculation for any pit with a leakage detection system, that is prepared and sealed by a professional engineer licensed in Texas. The action leakage rate calculations shall include:

(i) all assumptions and dimensions used;

(ii) the size of the pump and pipes that will be used in the leakage detection system; and

(iii) calculations demonstrating that the system is designed to sufficiently withdraw and manage the expected leakage rate.

(3) The permittee shall provide any other information necessary to address the operating requirements detailed in subsection (b) of this section.

(b) Operating requirements.

(1) Signage. The permittee shall post a sign at each permitted pit. The sign shall show the permit number in letters and numerals at least three inches in height.

(2) Freeboard. Unless otherwise required by permit or rule, the permittee shall maintain all pits such that each pit maintains a freeboard of at least two feet plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) Liners.

(A) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(B) Unless the permit specifically provides otherwise, the liner for any permitted pit required to be lined shall comply with the general requirements for lining in Division 3 of this

subchapter (relating to Operations Authorized by Rule), except that the thickness of a high-density polyethylene liner in a permitted pit shall be a minimum of 60 mil and, for any other type of synthetic liner, a minimum of 30 mil.

(C) A brine pit permitted under this subchapter shall be constructed with a primary and secondary liner and a leakage detection system.

(4) Additional requirements as determined by Director. Any pit permits issued pursuant to this subchapter may contain additional requirements concerning design and construction including requirements relating to construction materials, dike or berm design, liner material, liner thickness, procedures for installing liners, overflow warning devices, leak detection devices, monitor wells, and fences that the Director determines are necessary to prevent pollution.

§4.152. Monitoring of Permitted Pits

(a) A pit permit application shall include a monitoring plan that establishes a procedure for the permittee to routinely monitor the integrity of the liner of a pit. The permittee shall comply with this section by implementing one of the following monitoring methods.

(1) The permittee shall empty the pit and conduct a visual inspection on an annual basis. The permittee shall photograph the interior of the pit and otherwise record each inspection. The permittee shall maintain the photographs and records from each inspection for the life of the pit and supply these records to the Commission upon request.

(2) The permittee shall install a double liner and leak detection system between the primary and secondary liner. The leak detection system shall be monitored on a daily or weekly basis as specified in the permit to determine if the primary liner has failed.

(3) The permittee may implement an alternative monitoring procedure if the permittee demonstrates that the alternative monitoring is at least as protective of surface and subsurface waters as the procedures outlined in paragraphs (1) and (2) of this subsection and if the alternative monitoring procedure is approved by the Director.

(b) The permittee shall monitor all pits for liner failure in accordance with the monitoring plan approved by the Commission pursuant to subsection (a) of this section. The permittee shall consider the following when implementing the monitoring plan.

(1) Failure of the primary liner in a double liner and leak detection system occurs if:

(A) a volume of fluid is withdrawn from the leak detection system that is greater than the calculated action leakage rate, the standard action leakage rate of 1,000 gallons per acre per day (GPAD) for pits that manage fluid waste, or 100 gallons per acre per day (GPAD) for pits that manage solid oil and gas wastes;

(B) any failure in the leak detection and return system or any component of the system occurs; or

(C) any detected damage to or leakage from the secondary liner occurs.

(2) The failure of a liner system may be indicated through results of groundwater monitoring.

(3) If liner failure is discovered at any time, the permittee shall:

(A) notify the Director and the District Director by phone or email within 24 hours of the failure; and

(B) empty the pit as soon as possible, ensuring that all waste stored or contained in the pit is properly managed. Once the pit is emptied, the permittee shall repair the liner and notify the District Director once the repair is complete. The District Director shall inspect the repair before the permittee may place the pit back in active operation.

§4.153. Commercial Disposal Pits

(a) Siting.

(1) An application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area.

(2) In addition to the requirements of §4.150 of this title (relating to Additional Requirements Applicable to Permitted Pits), a commercial disposal pit shall not be located in:

(A) an area in which the disposal pit is not sufficiently isolated to prevent pollution of surface or subsurface waters;

(B) a prohibited location defined in Division 11 of this subchapter (relating to Requirements for Surface Water Protection); or

(C) any other location where there is an increased risk to surface or subsurface waters.

(3) An application for a commercial disposal pit shall include information to demonstrate that the pit will not be located in an area prohibited under paragraph (2) of this subsection.

(b) Design and construction. An application for a disposal pit permit shall include:

- (1) the dimensions of all disposal pits;
- (2) the locations and dimensions of all trenches used to separate and convey contact stormwater and non-contact stormwater;
- (3) the maximum waste elevations and final cover; and
- (4) details of the final cover anchor trench and final cover composition.

(c) Closure. Unless otherwise required by permit or if the Director determines that such post-closure monitoring is necessary to prevent pollution, a post-closure monitoring period of no less than five years is required for any commercial disposal pit and any facility where a commercial disposal pit is located.

§4.154. Closure of Permitted Pits

In addition to the requirements outlined in §4.132 of this title (relating to Closure), the permittee is required to comply with the following when operations at the pit terminate.

(1) Unless otherwise required by permit, all pits shall be dewatered and emptied within 120 days of cessation of use.

(2) After the soil sampling analysis has been approved by the Director, the pit shall be backfilled and compacted within 120 days.

(3) Once backfilled, the pit shall be reseeded with vegetation natural to the geographic region to prevent erosion after pit closure. Use of treated produced water to establish a natural vegetative cover for the region requires prior approval from the Director pursuant to §§4.184 or 4.185 of this title (relating to Permitted Recycling, and Pilot Programs, respectively).

DIVISION 7 ADDITIONAL REQUIREMENTS FOR LANDFARMING AND LANDTREATING

§4.160. Additional Requirements for Landfarming and Landtreating Permits

1 In addition to the requirements of this division, all applications for landfarming and landtreating
2 permits and all permittees conducting landfarming or landtreating shall comply with Division 4 of this
3 subchapter (relating to Requirements for All Permitted Waste Management Operations).

4
5 **§4.161 Design and Construction Requirements for Landfarming and Landtreating Permits**

6 (a) Application for landfarming and landtreating permits.

7 (1) The facility diagram submitted with the permit application shall include:

8 (A) two perpendicular, sectional views of all landfarming cells to be constructed,
9 showing the bottom, sides, and dikes or berms of the cell with dimensions indicated; and

10 (B) the locations and dimensions of all areas where landfarming and landtreating
11 will occur, dikes, well locations, fences, and access roads, taking into consideration the following
12 restrictions:

13 (i) a minimum 50-foot buffer zone shall be maintained between the
14 boundaries of the property and the treatment cells, measured from the toe of the constructed berm to the
15 property boundary; and

16 (ii) a minimum 300-foot buffer zone shall be maintained between the toe
17 of the constructed berms and any drainage features or surface waters.

18 (2) The applicant shall submit information to demonstrate that the area has at least 20
19 inches of tillable soil that is suitable for the application, treatment, and disposal of oil and gas waste.

20 (3) The applicant shall submit information sufficient for the Director to determine
21 whether the proposed facility will pose a threat of pollution or a threat to public health or safety. The
22 Director will consider the following factors when determining whether the proposed facility presents a
23 threat of pollution or a threat to public health or safety:

24 (A) the volume and characteristics of the oil and gas waste to be managed at the
25 landfarming facility;

26 (B) depth to and quality of the shallowest groundwater;

27 (C) distance to the nearest property line or public road;

28 (D) proximity to coastal natural resources, sensitive areas as defined by §4.110 of
29 this title (relating to Definitions), water supplies, and/or public, domestic, or irrigation water wells; and

30 (E) any other factors reasonably necessary to determine whether issuance of the
31 permit will pose a threat of pollution or a threat to public health or safety.

(b) Berm construction. All berms shall be constructed and maintained:

- (1) to fully enclose each landfarming cell area;
- (2) to a height of at least 36 inches above land surface with a slope no steeper than a one to three (vertical to horizontal) ratio on each side;
- (3) so that at least two feet of freeboard plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event is available; and
- (4) as otherwise required by the permit.

(c) Reasons for denial. The Director shall deny an application for a landfarming or landtreating permit if the proposed facility location is:

- (1) within a 100-year flood plain;
- (2) within 300 feet of surface water bodies;
- (3) within 300 feet of domestic or irrigation water wells;
- (4) within 500 feet of public water system wells or intakes;
- (5) on unsuitable soils for depth or treatment of oil and gas waste;
- (6) within any other sensitive area as defined by §4.110 of this title; or
- (7) non-compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

§4.162. Operating Requirements for Landfarming and Landtreating Permits.

(a) Application. The applicant shall submit the following operating information with each application for landfarming permit:

- (1) the estimated chloride concentration of the waste to be accepted at the facility;
- (2) the procedure by which waste will be mixed into the soil;
- (3) waste to soil application rates;
- (4) the frequency of soil tilling;
- (5) the maximum depth to which waste will be tilled;
- (6) documentation on any soil amendments or microbes to be used;
- (7) plans for monitoring and testing the landfarming area, and other appropriate procedures to ensure the treatment of organic constituents and prevention of pollution;
- (8) the estimated duration of landfarming activities;

1 (9) the total cumulative volume of waste, in barrels, to be landfarmed over the active life
2 of the operation or active cells; and

3 (10) the total cumulative height of waste, in inches, to be landfarmed over the active life
4 of the operation or active cells.

5 (b) Operating requirements. A landfarming or landtreating permittee shall comply with the
6 following requirements.

7 (1) Prior to waste application, the permittee shall thoroughly disk the entire landfarming
8 or landtreating area and shall otherwise prepare the area by adding fertilizer, lime, and/or other
9 agricultural chemicals, if needed.

10 (2) A landfarming or landtreating permittee shall comply with the following waste
11 application requirements.

12 (A) The permittee shall apply the waste to each landfarming cell to prevent the
13 pooling or migration of the waste outside of the approved landfarming cell and to prevent the waste from
14 entering any watercourses or drainageways, including any drainage ditch, dry creek, flowing creek, river,
15 or any other surface water.

16 (B) The total cumulative volume of waste applied to any landfarming cell over
17 its lifetime shall not exceed the permitted volume.

18 (C) The permittee shall maintain freeboard of at least two feet plus capacity to
19 contain the volume of precipitation from a 25-year, 24-hour rainfall event.

20 (D) The permittee shall ensure that the waste is uniformly dispersed across the
21 landfarming or landtreating area and the waste is fully and evenly incorporated into the top six inches of
22 soil. The waste shall be mixed with the soil within 24 hours of waste application. Any active cell shall be
23 disked once a month thereafter until the cell is closed in accordance with the permit.

24 (E) The permittee is prohibited from applying waste to the cells during periods of
25 rainfall.

26 (3) Any standing or pooled rainwater or other liquid in a landfarming cell or within the
27 perimeter berm shall be removed within 72 hours and disposed of in an authorized manner. Contact
28 stormwater may be disked into a landfarming cell with prior written approval from the Director.

29 (4) Land application of contact stormwater outside of a permitted landfarming cell is
30 prohibited.

(5) Any spills of waste or any other materials shall be promptly containerized and disposed of in an authorized manner.

(6) Vehicle access into each cell shall be at a location where the stormwater surface flow cannot enter the treatment cells.

§4.163. Monitoring.

(a) The operator shall monitor three soil zones in each landfarming cell at the following frequency:

(1) the surface treatment zone from the ground surface to a depth of 12 inches below land surface shall be sampled and analyzed quarterly;

(2) the waste treatment zone from 12 to 24 inches below land surface shall be sampled and analyzed quarterly; and

(3) the compliance monitoring zone from 24 to 36 inches below land surface shall be sampled and analyzed annually.

(b) The operator shall collect samples from each active cell as follows:

(1) The District Office shall be notified by phone or email at least 48 hours prior to any sampling event.

(2) Each active cell shall be divided into four-acre plots or other plot size as defined in the permit.

(3) The applicant shall take at least one composite sample for each treatment zone in each plot by subdividing each plot into four equal-sized quadrants.

(A) One composite sample of the surface treatment zone in each plot shall be made from four individual grab samples collected from the surface treatment zone of each quadrant.

(B) One composite sample of the waste treatment zone in each plot shall be made from four individual grab samples collected from the waste treatment zone of each quadrant.

(C) One composite sample of the compliance monitoring zone in each plot shall be made from four individual grab samples collected from the compliance monitoring zone of each quadrant.

(c) The operator shall analyze samples from each active cell according to the analysis requirements specified in the permit.

(d) If any composite sample exceeds any limitations specified by the permit or in the Figure in this subsection, the operator shall remediate the parcel where the sample was collected as follows.

(1) The plot shall be tilled.

(2) The operator shall collect a composite sample from the four quadrants of the plot and re-analyze the sample for the parameter for which the limitations were exceeded.

(3) The operator shall re-till and resample the plot no less than once per month until the sample analyses indicate that the parameter limitations are not exceeded.

(4) If the parcel exceeds the limitation after six months of sampling, that plot is not authorized to accept additional waste until a sample analysis does not exceed the particular limitation.

Figure: 16 TAC §4.163(d)

(e) Documentation of the sampling and analysis shall be filed with the Technical Permitting Section and the District Office as part of the quarterly report required by the permit. A summary of the soil sampling required by the permit shall include:

(1) a map drawn to scale with coordinates of the sampling locations;

(2) a table indicating the results of the parameters sampled;

(3) the date of sampling;

(4) the approximate depth of the sample below land surface and corresponding zone; and

(5) copies of the laboratory analytical reports and the corresponding chain of custody.

§4.164. Closure.

(a) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencing closure of any landfarming cell.

(b) The permittee shall submit a detailed closure plan to the Technical Permitting Section. The Technical Permitting Section must approve the closure plan before the permittee may commence closure of any cell. The composite samples required by §4.163 of this title (relating to Monitoring) shall not exceed the limitations specified by permit before the Technical Permitting Section will approve closure of the cell.

(c) Once the Technical Permitting Section approves closure of a cell, the permittee shall level any berms and grade the area in accordance with the following requirements.

(1) All landfarming cells shall be graded and contoured to prevent rain from collecting or pooling at the former cell locations after closure; and

(2) To the extent practicable, all landfarming cells shall be contoured to original grade and reseeded and/or revegetated with ground cover appropriate for the geographic region.

DIVISION 8 ADDITIONAL REQUIREMENTS FOR RECLAMATION PLANTS

§4.170. Additional Requirements for Reclamation Plants

(a) Applicability.

(1) This section is applicable to reclamation of tank bottoms and other oil and gas wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §4.110 of this title (relating to Definitions).

(2) Removal of tank bottoms or other oil and gas wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the Technical Permitting Section. For purposes of this division, an "authorized person" is a tank bottoms cleaner or transporter that is under contract for disposition of untreated tank bottoms or other oil and gas wastes to a person who has obtained a permit to operate a reclamation plant.

(3) The removal of tank bottoms or other oil and gas wastes from any facility for which monthly reports are not filed with the Commission shall be authorized in writing by an Oil Movement Letter issued by the Director or District Director prior to such removal. A written request for such authorization shall be sent to the District Director, and shall detail the location, description, estimated volume, and specific origin of the material to be removed as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.

(4) No person shall remove basic sediment from any producing lease tank, pipeline storage tank, or other production facility unless authorized to do so by a waste hauler permit pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(5) Unless expressly authorized by permit, no person shall reclaim basic sediment and waste without a reclamation plant permit.

(6) A reclamation plant is a commercial facility and is subject to Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(7) Reclamation plant permits that were issued pursuant to §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) before July 1, 2025 shall expire five years from July 1, 2025. Permits may be renewed pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments).

(8) This section does not apply where basic sediment is recycled or processed on-site by the operator and returned to a tank or vessel at the same lease or facility.

(9) This section does not apply to the recycling of drilling mud. This section does apply to unrefined hydrocarbons recovered from such mud that are sent to a permitted reclamation plant.

(10) All reclamation plants shall be permitted. Satellite reclamation facilities, including waste storage facilities, are strictly prohibited.

(b) Application.

(1) In addition to the requirements of this division, all applicants for reclamation plant permits and permittees operating reclamation plants shall comply with the following:

(A) Division 4 of this subchapter (relating to Requirements for all Permitted Waste Management Operations);

(B) Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities); and

(C) Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(2) Each application for reclamation plant permit shall include:

(A) a list of the waste types to be received;

(B) a detailed description of the treatment process, equipment, and pits, storage, or on-site containment at the facility;

(C) a description of the reclamation process rates and on-site storage capacity of waste and reclaimed material; and

(D) the spill control plan for the facility.

(3) Applicants for a reclamation plant permit shall file the application on the Commission-prescribed form or electronic system.

§4.171. Standard Permit Provisions.

(a) Reclamation plant permits shall be issued for a term of not more than five years.

1 (b) Reclamation plant permits may be renewed, transferred, or amended pursuant to §4.122 of
2 this title (relating to Permit Renewals, Transfers, and Amendments). Reclamation plant permits are
3 subject to the financial security requirements in §4.140 of this title (relating to Additional Requirements
4 for Commercial Facilities) and may be subject to fees in accordance with §4.106 of this title (relating to
5 Fees).

6 (c) If the waste hauler transporting tank bottoms or other oil and gas wastes to the reclamation
7 plant does not comply with Division 10 of this subchapter (relating to Requirements for Oil and Gas
8 Waste Transportation), the reclamation plant permittee shall not accept the tank bottoms or other oil and
9 gas wastes and shall report the violation to the District Office no later than 24 hours after the violation
10 occurs.

11 (d) The receipt of any tank bottoms or other oil and gas wastes from outside the state of Texas
12 shall be submitted on monthly reports to the Commission.

13 (e) The receipt of any waste materials other than tank bottoms or other oil and gas wastes shall be
14 authorized in writing by the Commission prior to receipt. The Commission may require the reclamation
15 plant operator to submit an analysis of the waste materials prior to a determination of whether to authorize
16 receipt. If the request for authorization is denied, the applicant may request a hearing.

17 (f) All wastes generated by reclaiming operations shall be disposed of in accordance with this
18 subchapter, §3.9 of this title (relating to Disposal Wells), or §3.46 of this title (relating to Fluid Injection
19 into Productive Reservoirs).

20 (g) All reclamation facilities shall have in-person 24-hour security monitoring.

21 (h) Reclamation plant permits shall include enforceable limits on the processing capacity of
22 treatment equipment and the storage volumes of waste and reclaimed oil.

23
24 **§4.172. Minimum Permit Provisions for Operations.**

25 (a) The following provisions apply to any removal of tank bottoms or other oil and gas wastes
26 from any oil producing lease tank, pipeline storage tank, or other production facility.

27 (1) Tank bottoms and other oil and gas wastes shall be reclaimed using the methods
28 authorized in the permit.

29 (2) An authorized representative of the operator of a reclamation plant shall execute a
30 manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of
31 Liquid Hydrocarbons by Vehicle) upon each removal of tank bottoms or other oil and gas wastes from

any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.85 of this title, the operator of the reclamation plant or other authorized person shall also include on the manifest:

(A) the Commission identification number of the lease or facility from which the material is removed; and

(B) the gross and net volume of the material as determined by the required shakeout test.

(3) The operator of the reclamation plant or other authorized person shall complete the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed and shall retain a copy for three years.

(4) The operator of the reclamation plant or other authorized person shall keep a copy of the manifest in the vehicle transporting the material.

(b) The operator of a reclamation plant or other authorized person shall conduct a shakeout test on all tank bottoms or other oil and gas wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility to determine the crude oil and/or lease hydrocarbon condensate content. The shakeout test shall be conducted in accordance with the most current API or ASTM method.

(c) Pursuant to §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation), waste characterization and profiling shall be performed before the waste is accepted at the reclamation plant.

§4.173. Minimum Permit Provisions for Reporting.

(a) An operator of a reclamation plant shall file a monthly report documenting the volumetric throughput of waste and reclaimed hydrocarbons.

(b) The Commission may establish a form or electronic system for filing monthly reports for reclamation plants.

(c) For wastes taken to a reclamation plant the following provisions shall apply.

(1) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.

1 (2) For other oil and gas wastes, the net crude oil content or lease condensate of the
2 wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a
3 pipeline facility, shall also be reported as a disposition or delivery from the facility.

4 (d) The net crude oil content or lease condensate of any tank bottoms or other oil and gas wastes
5 removed from an active facility, including a pipeline facility, and disposed of on site or delivered to a site
6 other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such
7 disposal shall be in accordance with this subchapter and §§3.9 and 3.46 of this title (relating to Disposal
8 Wells; and Fluid Injection into Productive Reservoirs, respectively). Operators may be required to obtain
9 a minor permit for such disposal pursuant to §4.182 of this title (relating to Minor Permits). Prior to
10 approval of the minor permit, the Commission may require an analysis of the disposable material to be
11 performed.

12 13 **DIVISION 9 MISCELLANEOUS PERMITS**

14 **§4.180. Activities Permitted as Miscellaneous Permits**

15 This division contains permit requirements for some activities not otherwise addressed in this
16 subchapter. Unless otherwise specified in this division or by the Director, the requirements of Divisions 4
17 through 8 of this subchapter do not apply to activities permitted under this division.

18 19 **§4.181. Emergency Permits**

20 (a) If the District Director determines that expeditious issuance of the permit will prevent or is
21 likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface
22 water, the District Director may issue an emergency permit.

23 (b) An application for an emergency permit to use or maintain a pit or to dispose of oil and gas
24 wastes shall be filed with the District Office. Notice of the application is not required.

25 (c) If warranted by the nature of the emergency, the District Director may issue an emergency
26 permit based upon an oral application, or may orally authorize an activity before issuing a written permit
27 authorizing that activity.

28 (d) An emergency permit is valid for up to 30 days, but may be modified, suspended, or
29 terminated by the District Director at any time for good cause.

30 31 **§4.182. Minor Permits**

1 (a) If the District Director determines that an application is for a permit to store only a minor
2 amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the District
3 Director may issue a minor permit provided the permit does not authorize an activity which results in
4 waste of oil, gas, or geothermal resources or pollution of surface or subsurface water.

5 (b) An application for a minor permit shall be filed with the Commission in the District Office.
6 Notice of the application shall be given as required by the District Director. The District Director may
7 determine that notice of the application is not required.

8 (c) A minor permit is valid for 60 days, but a minor permit which is issued without notice of the
9 application may be modified, suspended, or terminated by the District Director at any time for good
10 cause.

11 12 **§4.184. Permitted Recycling**

13 (a) For non-commercial recycling not otherwise authorized by this subchapter, the Director may
14 authorize such recycling by permit. In determining appropriate permit conditions, the Director shall
15 review the general permit requirements outlined in Division 4 of this subchapter (relating to Requirements
16 for All Permitted Waste Management Operations) and determine which permit requirements, if any, are
17 necessary to prevent pollution of surface and subsurface water. The Director shall consider the source of
18 the waste, the anticipated constituents of concern, the volume of waste, the location, and the proposed
19 reuse of the treated waste.

20 (b) Commercial recycling shall be permitted in accordance with Subchapter B of this title
21 (relating to Commercial Recycling).

22 23 **§4.185. Pilot Programs**

24 (a) For any recycling activities not otherwise authorized by rule or permit in this subchapter, an
25 operator may propose a pilot program.

26 (b) A pilot program is a program implemented to assess:

27 (1) whether the recycled product can be reused in certain activities that are safe and
28 protective of human health and the environment;

29 (2) the efficiency and effectiveness of the recycling project; or

30 (3) the appropriate regulatory requirements of a permitted recycling program.

(c) If the Director finds that the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas wastes, the Commission may authorize a pilot program. The duration of the pilot program shall be sufficient to evaluate the pilot program objectives, which may include sufficient time to take an appropriate non-food based crop from seed through one complete growing cycle.

(1) If the Commission determines that the proposed pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling).

(2) If the Commission determines that more time is needed to fulfill the objectives of the pilot program, the Commission may extend the pilot program in increments of no more than one year.

DIVISION 10 REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION

§4.190. Oil and Gas Waste Characterization and Documentation

(a) The generator of oil and gas waste is responsible for characterizing and documenting the waste prior to transportation.

(b) A generator of any waste subject to Commission jurisdiction shall document the waste characterization by completing and retaining a Waste Profile Form that documents the characteristics of each waste stream generated.

(1) A Waste Profile Form shall be made available by the Commission or an operator may use its own form that includes at least the following information for each oil and gas waste stream:

(A) the generator name and P-5 operator number, including the contact information of the person preparing the waste profile;

(B) a generator-assigned identifier (name and/or number) specific to the generated waste;

(C) a description of the waste, including physical and chemical characteristics and constituents;

(D) the estimated quantity of the waste;

(E) the basis for the characterization, which shall be made in accordance with §4.102(a) of this title (relating to Responsibility for Oil and Gas Wastes); and

(F) other information pertinent to characterization.

(2) A generator may establish standard waste profiles for common types of oil and gas waste that are often found at oil and gas sites, such as spent water-based drilling mud, oil-based cuttings, oil-contaminated soil, domestic septage, and rubbish.

(3) A generator of waste that chooses to dispose of or recycle such waste shall provide the Waste Profile Form to the waste hauler and receiver.

(4) The receiver of the oil and gas waste shall include the waste profile information in the periodic reporting requirements as described in the facility permit conditions.

§4.191. Oil and Gas Waste Manifests

(a) Oil and gas waste that is transported by vehicle from the lease, unit, or other oil or gas property or facility where it is generated to an off-lease facility that manages oil and gas waste shall:

(1) be accompanied by a paper manifest that meets the requirements of this section; or

(2) be documented and tracked by an electronic manifest system that meets the requirements of this section and is accessible to the Commission and all parties involved in the management of the waste.

(b) The Commission shall establish a standard oil and gas waste manifest that may be used in Texas, or operators may use their own forms provided they include at least the following information:

(1) identity of the waste generator, including operator name, Commission-issued operator number, and detailed contact information;

(2) identity of the property or facility where the oil and gas waste was generated, using Commission-issued identifiers including:

(A) operator name and Commission-assigned operator number of the generator;

(B) lease name and Commission-assigned lease number;

(C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and

(D) county name;

(3) the corresponding waste profile identifier prepared by the generator as required in §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation);

(4) identity of the facility to which the oil and gas waste is delivered including the identifier issued by the appropriate regulatory agency and detailed contact information for the facility;

(5) transporter name and waste hauler permit number with driver signature;

(6) type and volume of oil and gas waste transported;

(7) date of shipment;

(8) name and signature of generator; and

(9) date of acceptance with waste receiver signature.

(c) The generator of the oil and gas waste, the waste hauler, and the receiver shall keep for a period of three years from the date of shipment copies or electronic records of all manifests.

(d) Oil and gas waste that is moved by pipeline is not required to be accompanied by a manifest but an operator of an oil and gas waste pipeline system is required to:

(1) meter the fluid flow for mass balance into and out of the system;

(2) maintain the metering records for three years; and

(3) provide the records to the Commission upon request.

§4.192. Special Waste Authorization

(a) Section 3.30(e) of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)) provides a means by which certain oil and gas waste may be managed at an appropriate TCEQ-regulated facility and by which certain TCEQ-jurisdictional waste may be managed at an appropriate RRC-regulated facility.

(b) A Special Waste Authorization approved by both agencies is required before oil and gas waste can be managed at a TCEQ-regulated facility or before TCEQ-jurisdictional waste can be received at an RRC-regulated facility.

(c) The Commission shall create a Special Waste Authorization Form suitable for these purposes.

§4.193. Oil and Gas Waste Haulers

(a) Prohibitions. A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated without a valid oil and gas waste hauler permit. A permittee under this division shall not gather oil, gas, or geothermal resources unless otherwise authorized by Commission rules. An oil and gas waste hauler shall not transport oil, gas, or geothermal resources in the same vehicle being used to transport oil and gas wastes other than incidental volumes of skim oil normally present in produced water or other oil and gas wastes.

(b) Exclusions.

1 (1) Hauling of inert waste, asbestos-containing material regulated under the Clean Air
2 Act (42 USC §§7401 et seq.), polychlorinated biphenyl (PCB) waste regulated under the Toxic
3 Substances Control Act (15 USC §§2601 et seq), or hazardous oil and gas waste subject to regulation
4 under §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) is
5 excluded from this section.

6 (2) Hauling of oil and gas NORM waste that is not exempt from Subchapter F of this title
7 (relating to Oil and Gas NORM) and that exceeds the exemption criteria specified in 25 Texas
8 Administrative Code §289.259(d)(1), (2), and (3) (relating to Licensing of Naturally Occurring
9 Radioactive Material (NORM)), is excluded from this section.

10 (c) Application. An application for an oil and gas waste hauler permit shall be made in an
11 electronic system established by the Commission. The application shall include:

12 (1) the permit application fee required by §3.78 of this title (relating to Fees and Financial
13 Security Requirements);

14 (2) vehicle identification information to support Commission issuance of an approved
15 vehicle list;

16 (3) an affidavit from the operator of each commission-permitted waste facility the hauler
17 intends to use stating that the hauler has permission to use the waste facility system;

18 (4) a certification by the hauler that the vehicles listed on the application are designed so
19 that they will not leak during transportation. The certification shall include a statement that vehicles used
20 to haul oil and gas waste are designed to transport oil and gas wastes and shall be operated and
21 maintained to prevent the escape of oil and gas waste; and

22 (5) any other information required by the Commission.

23 (d) Permit term.

24 (1) An oil and gas waste hauler permit may be issued for a term not to exceed one year.

25 (2) A waste hauler permittee may not apply to renew a permit using the permittee's
26 assigned permit number and by paying the fee required by §3.78 of this title until a minimum of 60 days
27 before the expiration date specified in the permit.

28 (3) A waste hauler permittee shall apply for a new waste hauler permit number if the
29 permittee submits a renewal application more than six months after the expiration of its permit.

30 (e) Permit conditions. Each oil and gas waste hauler shall operate in strict compliance with the
31 instructions and conditions stated on the permit, which are restated as follows.

1 (1) This permit, unless suspended or revoked for cause shown, shall remain valid until the
2 expiration date specified in this permit.

3 (2) Each vehicle used by a permittee shall be marked on both sides and the rear with the
4 permittee's name and permit number in characters not less than three inches high. For the purposes of this
5 permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or
6 other container in which oil and gas waste will be hauled by the permittee.

7 (3) Each vehicle shall carry a copy of the permit including those parts of the
8 Commission-issued attachments listing approved vehicles. This permit authority is limited to those
9 vehicles shown on the Commission-issued list of approved vehicles.

10 (4) This permit is issued pursuant to the information furnished on the Commission-
11 prescribed application form, and any change in conditions shall be reported to the Commission on an
12 amended application form. The permit authority will be revised as required by the amended application.

13 (5) This permit authority is limited to hauling, handling, and disposal of oil and gas
14 waste.

15 (6) This permit authorizes the permittee to use Commission-permitted waste facilities
16 provided the waste facilities are permitted to receive the specific type of waste being hauled.

17 (7) This permit also authorizes the permittee to use a waste facility operated under
18 authority of a minor permit issued by the Commission.

19 (8) This permit authorizes the permittee to transport hazardous oil and gas waste to any
20 facility in accordance with the provisions of §3.98 of this title (relating to Standards for Management of
21 Hazardous Oil and Gas Waste) provided the shipment is accompanied by a manifest that meets the
22 requirements of §3.98(o) or §3.98(w) of this title as applicable.

23 (9) This permit authorizes the transportation of non-hazardous oil and gas waste to a
24 disposal facility permitted by another state agency, another state, or an agency of the federal government,
25 provided the shipment is accompanied by a manifest, run ticket, or shipping paper and the person submits
26 a copy of such manifest, run ticket, or shipping paper showing the information specified in §4.191 of this
27 title (relating to Oil and Gas Waste Manifests) to the appropriate Commission District Office within 30
28 days of shipment.

29 (10) Each vehicle shall be operated and maintained in such a manner as to prevent
30 spillage, leakage, or other escape of oil and gas waste during transportation on or off any facility

regulated by the Commission. Vehicles used to haul oil and gas waste shall be designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste.

(11) Each vehicle shall be made available for inspection upon request by the Commission.

§4.194. Recordkeeping

(a) Generators, waste haulers, and receivers shall keep all waste profiles, manifests, and other documentation for a period of at least three years. The person keeping any records required by this section shall make the records available to the Commission upon request.

(b) Upon discovering any significant discrepancy in waste descriptions, volumes, place of origin, disposal locations or destinations, or other information based on personal observation or information contained in the manifest or electronic system, the receiver shall submit to the Commission, the generator, and the waste hauler a letter describing the discrepancy and a copy of the manifest or electronic system documentation.

§4.195. Waste Originating Outside of Texas

Notwithstanding the provisions of §4.190 through §4.192 of this title (relating to Oil and Gas Waste Characterization and Documentation; Oil and Gas Waste Manifests; and Special Waste Authorization, respectively), oil and gas waste that is generated outside of Texas and transported into Texas for management shall be accompanied by documentation including the name of the generator, the location of origin, and any operator and facility identifiers issued by the appropriate regulatory agency of that state to ensure the origin of the waste is accurately identified and possession of the waste is tracked.

DIVISION 11 REQUIREMENTS FOR SURFACE WATER PROTECTION

§4.196. Surface Water Pollution Prevention

(a) An operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage aquatic life therein.

(b) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. The following procedures shall be utilized to prevent pollution.

1 (1) No oil or other hydrocarbons in any form or combination with other materials or
2 constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.

3 (2) All deck areas on drilling platforms, barges, workover unit, and associated equipment
4 both floating and stationary subject to contamination shall be either curbed and connected by drain to a
5 collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of
6 without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any
7 equipment which might reasonably be considered a source from which pollutants may escape into
8 surrounding water. These drip pans shall be piped to collecting tanks, sumps, or enclosed drilling slots to
9 prevent overflow or prevent pollution of the surrounding water.

10 (3) Solid wastes such as cans, bottles, any form of trash, or ashes of combustible waste
11 shall be transported to shore in appropriate containers.

12 (4) Drilling muds which contain oil shall be transported to shore or a designated area for
13 disposal.

14 (5) Fluids produced from offshore wells shall be mechanically contained in adequately
15 pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation
16 facilities at offshore and onshore locations shall contain safeguards to prevent discharge of pollutants to
17 the Texas offshore and adjacent estuarine zones.

18 (6) Any person observing water pollution shall report such sighting, noting size, material,
19 location, and current conditions to the ranking operating personnel. Immediate action shall be taken or
20 notification made to eliminate further pollution. The operator shall then transmit the report to the
21 appropriate Commission District Office.

22 (7) Immediate corrective action shall be taken in all cases where pollution has occurred.
23 An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other
24 pollution materials from the waters and the shoreline where it is found. Such removal operations will be at
25 the expense of the responsible operator.

26 (c) The Commission may suspend producing and/or drilling operations from any facility if the
27 provisions of this rule are being violated.

28 (d) The requirements of this section shall also apply to all oil, gas, or geothermal resource
29 operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and
30 streams.

31

§4.197. Consistency with the Texas Coastal Management Program

(a) Applicability. The provisions of this section apply only to activities that occur in the coastal zone and that are subject to the Coastal Management Program (CMP) rules in 31 Texas Administrative Code Chapters 26 through 29.

(1) Disposal of oil and gas waste in pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone.

(A) No commercial oil and gas waste disposal pit constructed after October 25, 1995, shall be located in any coastal natural resources area (CNRA).

(B) All oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Development in critical areas. The provisions of this paragraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.23(a)(1) - (7) (relating to Policies for Development in Critical Areas) have been satisfied. The Commission shall coordinate its efforts under this section with those of other appropriate state and federal agencies.

(3) Dredging and dredged material disposal and placement. The provisions of this section apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.25 (relating to Policies for Dredging and Dredged Material and Placement) have been satisfied.

(b) Consistency determinations. The provisions of this subsection apply to issuance of determinations required under 31 Texas Administrative Code §29.30 (relating to Agency Consistency Determination) for the following actions listed in 31 Texas Administrative Code §29.11(a)(3) (relating to Actions and Rules Subject to the Coastal Management Program): permits to dispose of oil and gas waste in a pit; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

1 (1) The Commission shall issue consistency determinations under this subsection as an
2 element of the permitting process for permits to dispose of oil and gas waste in a pit.

3 (2) Prior to issuance of a permit or certification covered by this subsection, the
4 Commission shall determine if the proposed activity will have a direct and significant adverse effect on
5 any CNRA identified in the provisions of subsection (a) of this section that are applicable to such activity.

6 (A) If the Commission determines that issuance of a permit or a certification
7 covered by this subsection would not result in direct and significant adverse effects to any coastal natural
8 resource area (CNRA) identified in the provisions of subsection (a) of this section that are applicable to
9 the proposed activity, the Commission shall issue a written determination of no direct and significant
10 adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action
11 for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the
12 proposed action will not have a direct and significant adverse effect on any coastal natural resource area
13 (CNRA) identified in the applicable policies."

14 (B) If the Commission determines that issuance of a permit or certification
15 covered by this paragraph would result in direct and significant adverse effects to a CNRA identified in
16 the provisions of subsection (a) of this section that are applicable to the proposed activity, the
17 Commission shall determine whether the proposed activity would meet the applicable requirements of
18 subsection (a) of this section.

19 (i) If the Commission determines that the proposed activity would meet
20 the applicable requirements of subsection (a) of this section, the Commission shall issue a written
21 consistency determination which shall read as follows: "The Railroad Commission has reviewed this
22 proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies,
23 and has determined that the proposed action is consistent with the applicable CMP goals and policies."

24 (ii) If the Commission determines that the proposed activity would not
25 meet the applicable requirements of subsection (a) of this section, the Commission shall not issue the
26 permit or certification.

27 (c) Thresholds for referral. Any Commission action that is not identified in this subsection shall
28 be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to 31 Texas
29 Administrative Code §29.32 (relating to Requirements for Referral of a Proposed Agency Action), the
30 thresholds for referral of consistency determinations issued by the Commission are as follows:

(1) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(2) for certification of federal permits for development in critical areas:

(A) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(i) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(ii) five acres or more of any other critical area; and

(B) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area; and

(3) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

SUBCHAPTER B COMMERCIAL RECYCLING

DIVISION 1. GENERAL; DEFINITIONS

§4.201. Purpose

(a) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting and operating standards and requirements for commercial recycling of ~~oil and gas~~ wastes associated with activities governed by the Commission including those governed under: [the jurisdiction of the ~~Commission.]~~

(1) Texas Natural Resources Code Title 3, Subtitle B;

(2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;

(3) Texas Natural Resources Code Title 5;

(4) Texas Health and Safety Code Chapter 382, Subchapter K; and

(5) Texas Water Code Chapters 26, 27 and 29.

(b) Other wastes described in subsection (a) of this section are included when this subchapter refers to oil and gas waste(s) and may be managed in accordance with the provisions of this subchapter at

facilities authorized under this subchapter provided the wastes are nonhazardous and chemically and physically similar to oil and gas wastes.

(c) ~~[(b)]~~ No person conducting activities subject to this subchapter may cause or allow pollution of surface or subsurface water in the state.

(d) ~~[(e)]~~ The provisions of this subchapter do not supersede other Commission regulations relating to oil field fluids or oil and gas waste.

§4.202. Applicability and Exclusions.

(a) The provisions of this subchapter apply to the following categories of commercial recycling:

- (1) on-lease commercial recycling of solid oil and gas waste;
- (2) off-lease or centralized commercial solid oil and gas waste recycling;
- (3) stationary commercial solid oil and gas waste recycling;
- (4) off-lease commercial recycling of fluid; and
- (5) stationary commercial recycling of fluid.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by Subchapter A of this chapter ~~[§3.8 of this title (relating to Water Protection); §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials);]~~ or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste).

~~[(e) The provisions of this subchapter do not apply to non-commercial fluid recycling. Such recycling is subject to the requirements of §3.8 of this title].~~

(c) ~~[(d)]~~ The permitting provisions of this subchapter do not apply to the recycling of fluid received at a commercial disposal well operated pursuant to permit issued under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).^[5] Such recycling is authorized by this subchapter provided:

(1) the operator of the disposal well treats, or contracts with a person for the treatment of the fluid;

(2) the operator of the disposal well is responsible for all activities, including the recycling, that occurs on the lease;

(3) the operator has obtained the applicable permits for pits or waste management units at the lease;

(4) the operator ~~[and]~~ has obtained financial security in accordance with §3.78 of this title

(relating to Fees and Financial Security Requirements);

(5) the operator provides written notification to the District Office ~~[appropriate district office]~~ seven days before recycling operations are expected to begin and includes information on how fluids will be controlled and contained during recycling operations; and

(6) the operator provides written notification to the District Office ~~[appropriate district office]~~ within seven days of concluding recycling operations. ~~[Such recycling is authorized by this subchapter.]~~

(d) ~~[(e)]~~ The provisions of this subchapter are in addition to the permitting requirements of Subchapter A of this chapter ~~[§3.8 of this title]~~, which requires a permit for any pit not specifically authorized in Division 3 of Subchapter A of this chapter ~~[the rule]~~.

(e) ~~[(f)]~~ The provisions of this subchapter do not authorize discharge of oil and gas waste.

(f) ~~[(g)]~~ The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

(g) Permits issued pursuant to this subchapter prior to July 1, 2025, shall remain in effect pursuant to the rules in existence at the time the permits were issued and the requirements of the permits themselves, including the requirements for permit renewal. However, the Director may consider the operational, monitoring, and closure requirements on a case-by-case basis.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for commercial recycling permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §4.193 ~~[§3.8(f)]~~ of this title (relating to Oil and Gas Waste Haulers ~~[Water Protection]~~).

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

1 **§4.204. Definitions.**

2 Unless a word or term is defined differently in this section, the definitions in Subchapter A of this
3 chapter [~~§3.8 of this title (relating to Water Protection)~~], §3.98 of this title (relating to Standards for
4 Management of Hazardous Oil and Gas Waste), and §4.603 of this title (relating to Definitions), shall
5 apply in this subchapter. In addition, the following words and terms when used in this subchapter shall
6 have the following meanings, unless the context clearly indicates otherwise:

7 ~~[(1) 100 year flood plain--An area that is inundated by a 100 year flood, which is a flood~~
8 ~~that has a one percent or greater chance of occurring in any given year.]~~

9 (1) [(2)] Adjoining--Every tract of property surrounding the tract of property upon which
10 the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

11 (2) Administratively complete--A complete application that the Director has determined
12 meets all the administrative and technical requirements of the subchapter such that a permit shall be
13 issued administratively or, if the application was protested, that the application will be referred to the
14 Hearings Division.

15 (3) Berm (or dike)--A manmade barrier surrounding a pit, waste management unit, or
16 facility, that is designed, constructed, and maintained to segregate materials, including waste and
17 stormwater runoff, inside and outside of a pit, waste management unit, or facility.

18 (4) [(3)] Commercial recycling facility--A facility whose owner or operator receives
19 compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the
20 primary business purpose of the facility is to provide these services for compensation, whether from the
21 generator of the waste, another receiver, or the purchaser of the recyclable product produced at the
22 facility. The term includes [includes] recycling of solid oil and gas wastes on or off lease. [Does not
23 include non-commercial fluid recycling as defined in §3.8 of this title.]

24 ~~[(4) Commission--The Railroad Commission of Texas.]~~

25 (5) Complete application--An application that contains information addressing each
26 application requirement of the subchapter and all information necessary to initiate the final review by the
27 Director.

28 ~~[(5) Director--The director of the Commission's Oil and Gas Division or the director's~~
29 ~~delegate.]~~

30 (6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An
31 analytical method used to evaluate the potential for leaching of metals and/or benzene into surface and

1 subsurface water.

2 (7) Legitimate commercial product--A product of a type customarily sold to the general
3 public for a specific use and for which there is a demonstrated commercial market.

4 (8) [(7)] Legitimate commercial use--Use or reuse of a recyclable product as authorized
5 or defined in a permit issued pursuant to this subchapter:

6 (A) as an effective substitute for a commercial product or as an ingredient to
7 make a commercial product; or

8 (B) as a replacement for a product or material that otherwise would have been
9 purchased; and

10 (C) in a manner that does not constitute disposal.

11 (9) [(8)] Louisiana Department of Natural Resources Leachate Test Method--An
12 analytical method designed to simulate water leach effects on treated oil and gas wastes included in
13 "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May
14 2005.

15 (10) Off-lease or centralized commercial solid oil and gas waste recycling facility--A
16 commercial recycling facility that is capable of being moved from one location to another, but which is
17 generally in operation in one location for a period of time longer than one year, but less than two years
18 that shall recycle solid oil and gas waste.

19 (11) Off-lease commercial fluid recycling facility--A commercial recycling facility that is
20 capable of being moved from one location to another, but which is generally in operation in one location
21 for a period of time longer than one year, but less than two years that shall recycle wellbore fluid
22 produced from an oil or gas well, including produced formation fluid, workover fluid, and completion
23 fluid, including fluids produced from the hydraulic fracturing process.

24 (12) [(9)] On-lease commercial solid oil and gas waste recycling--Commercial recycling
25 performed on an oil or gas lease or well site using equipment that moves from one location to another, at
26 which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

27 (A) amount of time, generally less than one year, operations occur at any one
28 location;

29 (B) volume and source of the waste that may be processed at any one location;

30 (C) the type and characteristics of the waste; and

31 (D) size of the area used for recycling.

1 ~~[(10) Oil and gas wastes—For purposes of this subchapter, this term means materials~~
2 ~~which have been generated in connection with activities associated with the exploration, development,~~
3 ~~and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, and~~
4 ~~materials which have been generated in connection with activities associated with the solution mining of~~
5 ~~brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water,~~
6 ~~sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or~~
7 ~~solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities~~
8 ~~associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance~~
9 ~~plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of~~
10 ~~the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as~~
11 ~~amended (42 United States Code §6901 et seq.).]~~

12 ~~[(11) Partially treated waste—Oil and gas waste that has been treated or processed with~~
13 ~~the intent of being recycled, but which has not been determined to meet the environmental and~~
14 ~~engineering standards for a recyclable product established by the Commission in this subchapter or in a~~
15 ~~permit issued pursuant to this subchapter.]~~

16 ~~[(12) Recyclable product—A reusable material that has been created from the treatment~~
17 ~~and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets~~
18 ~~the environmental and engineering standards established by the permit or authorization for the intended~~
19 ~~use, and is used as a legitimate commercial product. A recyclable product is not a waste, but may become~~
20 ~~a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or~~
21 ~~authorization.]~~

22 ~~[(13) Recycle—To process and/or use or re-use oil and gas wastes as a product for which~~
23 ~~there is a legitimate commercial use and the actual use of the recyclable product for the purposes~~
24 ~~authorized in this subchapter or a permit. 'Recycle,' as defined in this subsection, does not include~~
25 ~~injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive~~
26 ~~Reservoirs).]~~

27 ~~[(14) Off lease or centralized commercial solid oil and gas waste recycling facility—A~~
28 ~~commercial recycling facility that is capable of being moved from one location to another, but which is~~
29 ~~generally in operation in one location for a period of time longer than one year, but less than two years~~
30 ~~that shall recycle solid oil and gas waste.]~~

31 ~~[(15) Off lease commercial fluid recycling facility—A commercial recycling facility that~~

1 is capable of being moved from one location to another, but which is generally in operation in one
2 location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid
3 produced from an oil or gas well, including produced formation fluid, workover fluid, and completion
4 fluid, including fluids produced from the hydraulic fracturing process.]

5 [(16) Solid oil and gas waste--Oil and gas waste that is not typically capable of being
6 injected into a disposal well without the addition of fluids.]

7 (13) [(47)] Stationary commercial recycling facility--A commercial recycling facility in
8 an immobile, fixed location for a period of greater than two years that recycles solid oil and gas waste or
9 wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and
10 completion fluid, including fluids produced from the hydraulic fracturing process.

11 (14) Treatment--The process of reconditioning oil and gas waste to a reusable form.

12 (15) Treatment of drill cuttings--A manufacturing, mechanical, thermal, or chemical
13 process other than sizing, shaping, diluting, or sorting.

15 §4.205. Exceptions.

16 (a) Except for the requirements related to financial security found in §§4.239(b), 4.255(b),
17 4.271(b), and 4.287(b) of this title; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of
18 this title; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242,
19 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this title, an applicant or permittee may request an
20 exception to the provisions of this subchapter by submitting to the Director [~~director~~] a written request
21 and demonstrating that the requested alternative is at least equivalent in the protection of public health
22 and safety, and the environment, as the provision of this subchapter to which the exception is requested.

23 (b) Each application for an exception to a rule in this subchapter shall be accompanied by the
24 exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial
25 Security Requirements).

26 (c) The Director [~~director~~] shall review each written request on a case-by-case basis.

27 (1) If the Director determines that a request for an exception to a rule in Divisions 5 or 6
28 of this subchapter (relating to Requirements for Off-Lease Commercial Recycling of Fluid, and
29 Requirements for Stationary Commercial Recycling of Fluid, respectively) is substantially similar to
30 previous exceptions approved by the Commission, the Director shall approve the requested exception.

31 (2) If the Director [~~director~~] denies a request for an exception, the applicant or permittee

1 may request a hearing consistent with the hearing provisions of this subchapter relating to hearings
2 requests but shall not ~~[may not]~~ use the requested alternative until the alternative is approved by the
3 Commission.

4
5 **§4.206. Administrative Decision on Permit Application.**

6 (a) If the Commission does not receive a protest to an application submitted under this
7 subchapter, the Director ~~[director]~~ may administratively approve the application if the application
8 otherwise complies with the requirements of this subchapter.

9 (b) The Director ~~[director]~~ may administratively deny the application if it does not meet the
10 requirements of this subchapter or other laws, rules, or orders of the Commission. The Director ~~[director]~~
11 shall provide the applicant written notice of the basis for administrative denial.

12 (c) The applicant may request a hearing upon receipt of notice of administrative denial. A request
13 for hearing shall be made to the Director ~~[director]~~ within 30 days of the date on the notice of
14 administrative denial. If the Director ~~[director]~~ receives a request for a hearing, the Director ~~[director]~~
15 shall refer the matter to the Docket Services Section of the Hearings Division ~~[Office of General Counsel]~~
16 for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this
17 title (relating to Practice and Procedure).

18
19 **§4.207. Protests and Hearings.**

20 (a) If a person who receives notice or other affected person files a proper protest with the
21 Technical Permitting Section ~~[Commission]~~, the Director ~~[director]~~ shall give the applicant written notice
22 of the protest and of the applicant's right to either request a hearing on the application or withdraw the
23 application. The applicant shall have 30 days from the date of the Director's ~~[director's]~~ notice to respond,
24 in writing, by either requesting a hearing or withdrawing the application. In the absence of a timely
25 written response from the applicant, the Director ~~[director]~~ shall consider the application to have been
26 withdrawn.

27 (b) Even if there is no protest filed, the Director ~~[director]~~ may refer an application to a hearing if
28 the Director ~~[director]~~ determines that a hearing is in the public interest. In determining whether a hearing
29 is in the public interest, the Director ~~[director]~~ will consider the characteristics and volume of oil and gas
30 waste to be managed ~~[stored, handled and treated]~~ at the facility; the potential risk posed to surface and
31 subsurface water; and any other factor identified in this subchapter relating to siting, construction, and

operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

§4.208. General Standards for Permit Issuance.

(a) A permit for a commercial recycling facility issued pursuant to this subchapter shall provide that the facility shall only receive, store, handle, treat, or recycle waste:

(1) under the jurisdiction of the Commission;

(2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title (relating to Definitions).

(b) A permit issued pursuant to this subchapter may be issued only if the Director [~~director~~] or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

(c) All chemical laboratory analyses shall be performed using appropriate Environmental Protection Agency methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by the ASTM International (ASTM) and certified by a professional engineer licensed in Texas.

1 **§4.209. Permit Renewal.**

2 Permits issued pursuant to this subchapter may be renewed, but are not transferable to another
3 operator without the written approval of the Director [~~director~~].
4

5 **§4.210. Modification, Suspension, and Termination.** (No change.)
6

7 **§4.211. Penalties.**

8 (a) Policy. Improved safety and environmental protection are the desired outcomes of any
9 enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective
10 actions once a violation has occurred is an effective component of the enforcement process. Deterrence of
11 violations through penalty assessments is also a necessary and effective component of the enforcement
12 process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related
13 violations is consistent with the central goal of the Commission's enforcement efforts to promote
14 compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and
15 equitable assessment of penalties throughout the state, while also enhancing the integrity of the
16 Commission's enforcement program.

17 (b) Only guidelines. This section complies with the requirements of Texas Natural Resources
18 Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce
19 rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in
20 this section are provided solely as guidelines to be considered by the Commission in determining the
21 amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3;
22 Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or
23 the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural
24 Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate
25 automatic enforcement without cause. Operators may correct violations at a facility with approval of
26 Commission staff before being referred to legal enforcement.

27 (c) Commission authority. The establishment of these penalty guidelines shall in no way limit the
28 Commission's authority and discretion to cite violations and assess administrative penalties. The guideline
29 minimum penalties listed in this section are for the most common violations cited; however, this is neither
30 an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains
31 full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat.

1 Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and
2 issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27,
3 and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an
4 order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water
5 Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory
6 maximum when warranted by the facts in any case, regardless of inclusion in or omission from this
7 section.

8 (d) Factors considered. The amount of any penalty requested, recommended, or finally assessed
9 in an enforcement action will be determined on an individual case-by-case basis for each violation, taking
10 into consideration the following factors:

- 11 (1) the facility's history of previous violations;
- 12 (2) the operator's history of previous violations;
- 13 (3) the seriousness of the violation;
- 14 (4) any hazard to the health or safety of the public; and
- 15 (5) the demonstrated good faith of the operator charged.

16 (e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is
17 calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for
18 violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26,
19 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or
20 an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas
21 Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

22 **Figure: 16 TAC §4.211(e)**

23 (f) Penalty enhancements for certain violations. For violations that involve threatened or actual
24 pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of
25 the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The
26 enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

27 **Figure: 16 TAC §4.211(f)**

28 (g) Penalty enhancements for certain violators. For violations in which the operator charged has a
29 history of prior violations within seven years of the current enforcement action at any facility regulated by
30 the Commission, the Commission may assess an enhancement based on either the number of prior
31 violations or the total amount of previous administrative penalties, but not both. The actual amount of any

penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §4.211(g)

Figure 2: 16 TAC §4.211(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §4.211(j)

~~[Violations of this subchapter or a permit issued pursuant to this subchapter may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes or rules administered by the Commission].~~

DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

§4.212. General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas

Waste Recycling Facilities.

(a) An application for a permit for on-lease solid oil and gas waste commercial recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the ~~[Commission's headquarters office in Austin. The]~~ applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located ~~[on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin].~~ The Technical Permitting Section shall not begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). ~~[A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.]~~

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; telephone number; ~~[and facsimile transmission (fax) number;]~~ and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director ~~[director]~~. The Director ~~[director]~~ shall neither administratively approve an application nor refer an application to hearing unless the Director ~~[director]~~ has determined that the application is administratively complete. If the Director ~~[director]~~ determines that an application is incomplete, the Director ~~[director]~~ shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The permit application shall contain ~~[an original signature in ink, the date of signing, and]~~ the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

1 (e) A person shall file electronically any form or application for which the Commission has
2 provided an electronic version or an electronic filing system or by hard copy if no digital format
3 acceptable to the Commission has been enacted. The operator or person shall comply with all
4 requirements, including but not limited to fees and security procedures, for electronic filing.
5

6 **§4.213. Minimum Engineering and Geologic Information.**

7 (a) The Director [~~director~~] may require a permit applicant for on-lease commercial solid oil and
8 gas waste recycling to provide the Commission with engineering[~~ing~~] or other information which the
9 Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil,
10 gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health
11 or safety.

12 (b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall
13 be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas as required by the
14 Texas Occupations Code, Chapters 1001 and 1002, respectively [~~Chapter 1001~~].
15

16 **§4.214. Minimum Design and Construction Information.**

17 A permit application for on-lease commercial solid oil and gas waste recycling shall include:

18 (1) a facility diagram [~~the typical layout and design~~] of receiving, processing, and storage
19 areas and all equipment (e.g., pug mill), tanks, silos, and dikes.

20 (2) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if
21 any, for all tanks, silos, pits, and storage areas/cells;

22 (3) a map view and two perpendicular cross-sectional views of typical pits and/or storage
23 areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; and

24 (4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain wastes
25 during wet weather, including the location and dimensions of dikes and/or storage basins that would
26 collect, at a minimum, stormwater [~~storm water~~] during a 25-year, 24-hour [~~maximum~~] rainfall event, and
27 all calculations made to determine the required capacity and design.
28

1 **§4.215. Minimum Operating Information.** (No change.)

2 **§4.216. Minimum Monitoring Information.** (No change.)

3 **§4.217. Minimum Closure Information.** (No change.)

6 **§4.218. General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling.**

7 (a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this
8 division shall specify the Commission districts within which recycling is authorized, shall be valid
9 ~~[issued]~~ for a term of not more than five years, and shall authorize operations at any one lease for no more
10 than one year. Permits issued pursuant to this division may be renewed, but are not transferable to another
11 operator without the written approval of the Director ~~[director]~~. Any request for transfer of the ~~[this]~~
12 permit shall ~~[should]~~ be filed with the Technical Permitting Section on a Commission prescribed form
13 ~~[Oil and Gas Division in Austin]~~ at least 60 days before the permittee requests ~~[wishes]~~ the transfer to
14 take place.

15 (b) A permit for on-lease commercial solid oil and gas waste recycling shall include a condition
16 requiring that the permittee obtain written permission from the surface owner of the lease upon which
17 recycling will take place and notify the ~~[appropriate]~~ Commission District Office ~~[district office]~~ 72 hours
18 before operations commence on each lease.

20 **§4.219. Minimum ~~[Permit Provisions for]~~ Siting Information.**

21 (a) A permit for on-lease commercial solid oil and gas waste recycling may be issued only if the
22 Director ~~[director]~~ or the Commission determines that the operations will pose no unreasonable risk of
23 pollution or threat to public health or safety.

24 (b) A pit ~~[On-lease commercial solid oil and gas waste recycling]~~ permitted pursuant to this
25 division is prohibited ~~[and after the effective date of this division shall not be located]~~:

26 (1) within a 100-year flood plain; ~~[or]~~

27 (2) within ~~[in]~~ a sensitive area as defined by §4.110 ~~[§3.91]~~ of this title (relating to
28 Definitions ~~[Cleanup of Soil Contaminated by a Crude Oil Spill]~~); ~~[or]~~

29 (3) ~~[(2)]~~ within 300 ~~[150]~~ feet of surface water ~~[or public]~~, domestic supply wells, or
30 irrigation water wells;

31 (4) within 500 feet of any public water system wells or intakes;

1 (5) where there has been observable groundwater within 100 feet of the ground surface
2 unless the pit design includes a geosynthetic clay liner (GCL);

3 (6) within 1,000 feet of a permanent residence, school, hospital, institution, or church in
4 existence at the time of initial permitting; or

5 (7) within 500 feet of a wetland.

6 (c) A permit application for on-lease commercial solid oil and gas waste recycling shall include:

7 (1) a description of the proposed facility site and surrounding area;

8 (2) the name, physical address and, if different, mailing address, and telephone number of
9 every owner of the tract on which the facility is to be located. If any owner is not an individual, the
10 applicant shall include the name of a contact person for that owner;

11 (3) the depth to the shallowest subsurface water and the direction of groundwater flow at
12 the proposed site, and the source of this information;

13 (4) the average annual precipitation and evaporation at the proposed site and the source of
14 this information;

15 (5) the identification of the soil and subsoil by typical name and description of the
16 approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent
17 characteristics, and the source of this information;

18 (6) a copy of a county highway map with a scale and north arrow showing the location of
19 the proposed facility; and

20 (7) a United States Geological Survey (USGS) topographic map or an equivalent
21 topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this
22 paragraph and any other pertinent information regarding the regulated facility and associated activities.
23 Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

24 (A) a scale and north arrow showing the tract size in square feet or acres, the
25 section/survey lines, and the survey name and abstract number;

26 (B) a clear outline of the proposed facility's boundaries;

27 (C) the location of any pipelines within 500 feet of the facility;

28 (D) the distance from the facility's outermost perimeter boundary to public and
29 private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

30 (E) for disposal only, the location of all residential and commercial buildings
31 within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;
(G) the location of the 100-year flood plain and the source of the flood plain information;
(H) surface water bodies within the map area;
(I) the location of any major and minor aquifers within the map area;
(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and
(K) any other information requested by the Director reasonably related to the prevention of pollution.

(d) ~~(e)~~ Factors that the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling include:

- (1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;
- (2) proximity to coastal natural resources or ~~[;]~~ sensitive areas as defined by §4.110~~[3.94]~~ of this title; and
- (3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(e) ~~(f)~~ All siting requirements in this section for on-lease commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.220. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for on-lease commercial solid oil and gas waste recycling shall contain any requirement that the Director ~~[director]~~ or the Commission determines to be reasonably necessary to ensure that:

- (1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;
- (2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater ~~[storm-water]~~ runoff, to the land surface at

1 and adjacent to the facility or to surface and subsurface water;

2 (B) requiring that the operator [~~permittee~~] control and remediate spills; and

3 (C) requiring that the operator [~~permittee~~] make regular inspections of the
4 facility; and

5 (3) the design and construction of the facility allows for monitoring for, and detection of,
6 any migration of oil and gas waste or other substance or material.

7 (b) All storage cells at the site shall be:

8 (1) located above the top of the seasonal high water table;

9 (2) designed to prevent stormwater runoff from entering the area; and

10 (3) surrounded by berms with a minimum width at base of three times the height and the
11 berms constructed such that the height, slope, and construction material are structurally sound and do not
12 allow seepage.

13 (c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this
14 division shall require that the operator [~~permittee~~] notify the [~~appropriate~~] Commission District Office
15 [~~district office~~] prior to commencement of construction, including construction of any dikes, and again
16 upon completion of construction, and that the permittee may commence operations under the permit 72
17 hours after notice to the District Office [~~appropriate district office~~].

18
19 **§4.221. Minimum Permit Provisions for Operations.**

20 (a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this
21 division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

22 (1) only wastes and other materials authorized by the permit generated on-lease,
23 including requirements that the permittee test incoming oil and gas waste and keep records of amounts of
24 wastes; and

25 (2) the processing operation and resulting recyclable product meet the environmental and
26 engineering standards established in the permit.

27 (b) A permit for on-lease commercial solid oil and gas waste recycling issued under this division
28 may require the permittee to perform a trial run in accordance with the following procedure.

29 (1) The permittee shall notify the Commission District Office [~~district office~~] for the
30 county in which the facility is located prior to commencement of the trial run.

31 (2) The permittee shall sample and analyze the partially treated waste that results from

the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The permittee shall demonstrate the ability to successfully process a 1,000 cubic yard batch of solid oil and gas waste.

(A) The Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the [~~appropriate~~] District Office shall [~~must~~] be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles shall [~~may~~] not exceed 15 percent.

(C) A written report of the trial run shall be submitted to the Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office [~~appropriate district office~~] within 60 days of receipt of the analyses required in this section. The following information shall [~~must~~] be included:

- (i) a summary of the trial run and description of the process;
- (ii) [~~(i)~~] the actual volume of waste material processed;
- (iii) [~~(ii)~~] the volume and type of stabilization material used;
- (iv) [~~(iii)~~] the type of waste and description of the waste material [~~copies of all lab analyses required by this section~~]; and
- (v) [~~(iv)~~] copies of all chemical and geotechnical laboratory analytical reports and chain of custody sheets for the samples specified in [~~the results of the analysis required under~~] subparagraph (B) of this paragraph.

(D) The final processed material shall [~~must~~] meet the limitations of this section.

(4) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially

1 treated waste, and recyclable product stored at the site, that the Technical Permitting Section
2 [~~Commission~~] determines to be reasonably necessary to ensure that the permittee does not accumulate oil
3 and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing
4 the oil and gas waste and putting the recyclable product to legitimate commercial use.

5 (d) Excess stormwater [~~rainwater~~] collected within a bermed area shall be removed and disposed
6 of in an authorized manner.

7 (e) Appropriate measures shall be taken to control dust at all times.

8 (f) Processed material meeting or exceeding the engineering [~~process control~~] parameters listed in
9 §4.222(d) of this title (relating to Minimum Permit Provisions for Monitoring) is suitable for use on lease
10 roads, drilling pads, tank batteries, compressor station pads, and county roads.

11
12 **§4.222. Minimum Permit Provisions for Monitoring.**

13 (a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this
14 division shall include monitoring requirements the Director [~~director~~] or Commission determines to be
15 reasonably necessary to ensure that the recyclable product meets the environmental and engineering
16 standards established by the Director [~~director~~] or the Commission and included in the permit.

17 (b) Consistent with the requirements of §4.208 of this title (relating to General Standards for
18 Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for
19 on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste
20 is to be tested, and the limitations on those parameters based on:

21 (1) the type of oil and gas waste; and

22 (2) the intended use for the recyclable product.

23 (c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory
24 testing. A permit that requires laboratory testing shall require that the permittee use an independent third
25 party laboratory to analyze a minimum standard volume of partially treated waste for parameters
26 established in this subchapter or in a permit issued by the Commission.

27 (d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this
28 division from which the recycled product will be used as road base or other similar uses shall include a
29 requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be
30 collected and analyzed for every 800 cubic yard composite for the following minimum parameters and
31 meet the following limits:

Figure: 16 TAC §4.222(d) (No change.)

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records shall [~~must~~] be kept of all waste treated for a period of three years from the date of treatment.

(B) These records shall [~~must~~] include the following:

(i) name of the generator;

(ii) source of the waste (lease number or gas I.D. number and well number, or API number);

(iii) date the waste was treated at the drill site;

(iv) volume of the waste treated at the drill site;

(v) name of the carrier;

(vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;

(vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and

(viii) documentation indicating the approximate location where recyclable product is used including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

§4.223. Minimum Permit Provisions for Closure.

A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division [~~subchapter~~] shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples; and post-closure monitoring.

1 **§4.224. Permit Renewal.**

2 Before the expiration of a permit issued pursuant to this division, the permittee may submit an
3 application to renew the permit on a Commission prescribed form. An application for renewal of an
4 existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be
5 submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the
6 operator's [~~permittee's~~] permit number and facility identification number assigned by the Technical
7 Permitting Section The application for renewal shall include details of proposed changes or shall state that
8 there are no changes proposed that would require amendment of the permit other than the expiration date.

10 **DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL**
11 **SOLID OIL AND GAS WASTE RECYCLING.**

12 **§4.230 General Permit Application Requirements for Off-Lease or Centralized Commercial Solid**
13 **Oil and Gas Waste Recycling.**

14 (a) An application for a permit for off-lease or centralized commercial solid oil and gas waste
15 recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on
16 the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy
17 of the application to the Commission District Office for the county in which the facility is to be located
18 [~~on the same day the original application is mailed or delivered to the Commission's headquarters office~~
19 ~~in Austin~~]. The Technical Permitting Section shall not administratively begin final review of an
20 application unless the Director has determined that the application is complete in accordance with
21 §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits
22 Administratively). [~~A permit application shall be considered filed with the Commission on the date it is~~
23 ~~received by the Commission's headquarters in Austin.~~]

24 (b) The permit application shall contain the applicant's name; organizational report number;
25 physical office address and, if different, mailing address; facility address; telephone number; [~~and~~
26 ~~facsimile transmission (fax) number;~~] and the name of a contact person.

27 (c) The permit application shall contain information addressing each applicable application
28 requirement of this division and all information necessary to initiate the final review by the Director
29 [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an
30 application to hearing unless the Director [~~director~~] has determined that the application is administratively
31 complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~]

1 shall notify the applicant in writing and shall describe the specific information required to complete the
2 application. An applicant may make no more than two supplemental filings to complete an application.
3 After the second supplemental submission, if the application is complete, the Director shall either approve
4 or deny the application. If the application is still incomplete after the second supplemental submission, the
5 Director shall administratively deny the application. The Director shall notify the applicant in writing of
6 the administrative decision and, in the case of an administrative denial, the applicant's right to request a
7 hearing on the application as it stands at the time of administrative denial. An application that was
8 administratively denied may be refiled with the Commission on a Commission prescribed form and shall
9 contain all information necessary to initiate the final review by the Director.

10 (d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the
11 following certification signed and dated by an authorized representative of the applicant: "I certify that I
12 am authorized to make this application, that this application was prepared by me or under my supervision
13 and direction, and that the data and facts stated herein are true, correct, and complete to the best of my
14 knowledge."

15 (e) A person shall file electronically any form or application for which the Commission has
16 provided an electronic version or an electronic filing system or by hard copy if no digital format
17 acceptable to the Commission has been enacted. The operator or person shall comply with all
18 requirements, including but not limited to fees and security procedures, for electronic filing.
19

20 **§4.231 Minimum Engineering and Geologic Information.**

21 (a) The Director [~~director~~] may require a permit applicant for off-lease or centralized commercial
22 solid oil and gas waste recycling to provide the Commission with engineering, geological, or other
23 information which the Director [~~director~~] deems necessary to show that issuance of the permit will not
24 result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a
25 threat to the public health or safety.

26 (b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall
27 be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~]
28 as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.
29

30 **§4.232 Minimum Siting Information.**

31 (a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling

shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, [:] and telephone number~~[; and facsimile transmission (fax) number]~~ of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

1 (I) the location of any major and minor aquifers within the map area;

2 (J) the boundaries of any prohibited areas defined under §4.153 of this title
3 (relating to Commercial Disposal Pits); and

4 (K) any other information requested by the Director reasonably related to the
5 prevention of pollution [a complete, original 7 1/2 minute United States Geological Survey topographic
6 quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that
7 underlay the facility but are not included on the topographic map; and the location of the 100-year flood
8 plain and the source of the flood plain information].

9 (b) A pit permitted pursuant to this division is prohibited:

10 (1) where there has been observable groundwater within 100 feet of the ground surface
11 unless the pit design includes a geosynthetic clay liner (GCL);

12 (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

13 (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

14 (4) within 500 feet of any public water system wells or intakes;

15 (5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in
16 existence at the time of the initial permitting;

17 (6) within 500 feet of a wetland; or

18 (7) within a 100-year floodplain.

19 (c) Factors that the Commission will consider in assessing potential risk from on off-lease or
20 centralized commercial solid oil and gas waste recycling include:

21 (1) the volume and characteristics of the oil and gas waste, partially treated waste, and
22 recyclable product to be stored, handled, treated and recycled at the facility;

23 (2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this
24 title; and

25 (3) any other factors the Commission deems reasonably necessary in determining
26 whether or not issuance of the permit will pose an unreasonable risk.

27 (d) All siting requirements in this section for on-lease off-lease or centralized commercial solid
28 oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling
29 are placed.

30

§4.233 Minimum Real Property Information. (No change.)

§4.234 Minimum Design and Construction Information.

(a) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

§4.235 Minimum Operating Information. (No change.)

§4.236 Minimum Monitoring Information. (No change.)

§4.237 Minimum Closure Information. (No change.)

§4.238 Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial

1 recycling facility planning process to inform the community of the plan to construct an off-lease or
2 centralized commercial solid oil and gas waste recycling facility and allow those who may be affected by
3 the proposed activities to express their concerns. The purpose of the notice required by this section is to
4 inform notice recipients:

5 (1) that an applicant has filed a permit application with the Commission, seeking
6 authorization to conduct an activity or operate a facility; and

7 (2) of the requirements for filing a protest if an affected person seeks to protest the permit
8 application.

9 (b) Timing of notice. The applicant shall provide notice after staff determines that an application
10 for an off-lease or centralized commercial solid oil and gas waste recycling facility is complete pursuant
11 to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits
12 Administratively). The date notice is provided begins a 30-day period in which an affected person may
13 file a protest of the application with the Commission.

14 (c) Notice recipients. The applicant shall provide notice to:

15 (1) the surface owners of the tract on which the commercial recycling facility will be
16 located;

17 (2) the surface owners of tracts located within a distance of 1/2-mile from the fence line
18 or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum
19 Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not
20 adjacent to the tract on which the commercial recycling facility is located;

21 (3) the city clerk or other appropriate city official if any part of the tract on which the
22 commercial recycling facility will be located lies within the municipal boundaries of the city;

23 (4) the Commission's District Office; and

24 (5) any other person or class of persons that the Director determines should receive notice
25 of an application.

26 (d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant
27 shall provide direct notice to the persons specified in subsection (c) of this section as follows.

28 (1) The applicant shall provide notice by registered or certified mail.

29 (2) The notice of the permit application shall consist of a complete copy of the
30 application and any attachments. The copy shall be of the application and attachments after staff
31 determines the application is complete pursuant to §1.201(b) of this title but before the final review is

1 completed.

2 (3) The notice shall include a letter that contains:

3 (A) the name of the applicant;

4 (B) the date of the notice;

5 (C) the name of the surface owners of the tract on which the proposed
6 commercial recycling facility will be located;

7 (D) the location of the tract on which the proposed commercial recycling facility
8 will be located including a legal description of the tract, latitude/longitude coordinates of the proposed
9 facility, county, original survey, abstract number, and the direction and distance from the nearest
10 municipality or community;

11 (E) the types of solids to be recycled at the commercial recycling facility;

12 (F) the recycling method proposed and the proposed end-use of the recycled
13 material;

14 (G) a statement that an affected person may protest the application by filing a
15 written protest with the Commission within 30 calendar days of the date of the notice;

16 (H) a statement that a protest shall include the protestant's name, mailing address,
17 telephone number, and email address;

18 (I) the address to which protests may be mailed or the location and instructions
19 for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

20 (J) the definition of "affected person" pursuant to §4.110 of this title (relating to
21 Definitions); and

22 (K) the signature of the operator, or representative of the operator, and the date
23 the letter was signed.

24 (4) If the Director finds that a person to whom the applicant was required to give notice
25 of an application has not received such notice, then the Director shall not take action on the application
26 until the applicant has made reasonable efforts to give such person notice of the application and an
27 opportunity to file a protest to the application with the Commission.

28 (e) Proof of notice. After the applicant provides the notice required by this section, the applicant
29 shall submit to the Commission proof of delivery of notice which shall consist of:

30 (1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

31 (2) the registered or certified mail receipts; and

1 (3) a map showing the property boundaries, surface owner names, and parcel numbers of
2 all notified parties.

3 (f) Protest process. Any statement of protest to an application must be filed with the Commission
4 within 30 calendar days from the date of notice or from the last date of publication if notice by
5 publication is authorized by the Director.

6 (1) The Technical Permitting Section shall notify the applicant if the Commission
7 receives an affected person's timely protest. A timely protest is a written protest date-stamped as received
8 by the Commission within 30 calendar days of the date notice is provided.

9 (2) The applicant shall have 30 days from the date of the Technical Permitting Section's
10 notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the
11 application. If the applicant fails to timely file a written response, the Technical Permitting Section shall
12 consider the application to have been withdrawn.

13 (3) The Technical Permitting Section shall refer all protested applications to the Hearings
14 Division if a timely protest is received and the applicant requests a hearing.

15 (4) The Commission shall provide notice of any hearing convened under this subsection
16 to all affected persons and persons who have requested notice of the hearing.

17 (5) If the Director has reason to believe that a person entitled to notice of an application
18 has not received notice as required by this section, then the Technical Permitting Section shall not take
19 action on the application until notice is provided to such person.

20 (6) The Commission may issue a permit if no timely protests from affected persons are
21 received.

22 ~~[(a) A permit applicant for off lease or centralized commercial solid oil and gas waste recycling~~
23 ~~shall give personal notice and file proof of such notice in accordance with the following requirements.]~~

24 ~~[(1) The applicant shall mail or deliver notice to the following persons on or after the date~~
25 ~~the application is filed with the Commission's headquarters office in Austin:]~~

26 ~~[(A) the surface owner or owners of the tract upon which the commercial~~
27 ~~recycling facility will be located;]~~

28 ~~[(B) the city clerk or other appropriate official, if the tract upon which the facility~~
29 ~~will be located lies within the corporate limits of an incorporated city, town, or village;]~~

30 ~~[(C) the surface owners of tracts adjoining the tract on which the proposed~~
31 ~~facility will be located, unless the boundary with the adjoining tract is a distance of 1/2 mile or greater~~

1 from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title
2 (relating to Minimum Real Property Information); and]

3 [~~(D) any affected person or class of persons that the director determines should~~
4 ~~receive notice of a particular application.~~]

5 [(2) Personal notice of the permit application shall consist of:]

6 [(A) a copy of the application;]

7 [(B) a statement of the date the applicant filed the application with the
8 Commission;]

9 [(C) a statement that a protest to the application should]be filed with the
10 Commission within 15 days of the last date of published notice, a statement identifying the publication in
11 which published notice will appear, and the procedure for making a protest of the application to the
12 Commission;]

13 [(D) a description of the location of the site for which the application was made,
14 including the county in which the site is to be located, the name of the original survey and abstract
15 number, and the direction and distance from the nearest municipality;]

16 [(E) the name of the owner or owners of the property on which the facility is to
17 be located;]

18 [(F) the name of the applicant;]

19 [(G) the type of fluid or waste to be handled at the facility; and]

20 [(H) the recycling method proposed and the proposed end use of the recycled
21 material.]

22 [(3) The applicant shall submit to the Commission proof that personal notice has been
23 given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a
24 statement signed by the applicant that includes the names and addresses of each person to whom the
25 notice was sent, and the date that each was notified of the application.]

26 [(b) If the director finds that a person to whom the applicant was required to give notice of an
27 application has not received such notice, then the director shall not take action on the application until the
28 applicant has made reasonable efforts to give such person notice of the application and an opportunity to
29 file a protest to the application with the Commission.]

30

§4.239 General Permit Provisions.

(a) A permit for an off-lease or centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall be valid ~~issued~~ for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director ~~director~~.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, the facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the ~~appropriate~~ Commission District Office ~~district office~~ before recycling operations commence.

§4.240 Minimum Permit Provisions for Siting.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the Director ~~director~~ or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) An off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited ~~and after the effective date of this division shall not be located~~ within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources or ~~or~~ sensitive areas as defined by §4.110~~[3.91]~~ of this title (relating to Definitions ~~Cleanup of Soil Contaminated by a Crude Oil Spill~~), or water

supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.241 Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for an off-lease centralized commercial solid oil and gas waste recycling facility shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment berms [~~dikes~~], and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the operator [~~permittee~~] control spills at the facility; and

(C) requiring that the operator [~~permittee~~] make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) submit to the Technical Permitting Section [~~Commission's office in Austin~~] a soil boring log and other information for each well, unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director ~~[director]~~ may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office ~~[district office]~~ for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.242 Minimum Permit Provisions for Operations.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and

1 engineering standards established in the permit.

2 (b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility
3 issued under this division may require the permittee to perform a trial run in accordance with the
4 following procedure.

5 (1) The permittee shall notify the Commission District Office [~~district office~~] for the
6 county in which the facility is located prior to commencement of the trial run.

7 (2) The permittee shall sample and analyze the partially treated waste that results from
8 the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to
9 commencing operations.

10 (3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the
11 recyclable product meets or exceeds the environmental and engineering standards established in the
12 permit.

13 (4) The permittee shall not use the recyclable product until the Director [~~director~~]
14 approves the trial run report.

15 (c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility
16 issued pursuant to this division shall include any requirements, including limits on the volumes of oil and
17 gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission
18 determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil
19 and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing
20 the oil and gas waste and putting the recyclable product to legitimate commercial use.

21
22 **§4.243 Minimum Permit Provisions for Monitoring.**

23 (a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility
24 issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or
25 Commission determines to be reasonably necessary to ensure that the recyclable product meets the
26 environmental and engineering standards established by the Director [~~director~~] or the Commission and
27 included in the permit.

28 (b) Consistent with the requirements of §4.208 of this title (relating to General Standards for
29 Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for
30 an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the

partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yards composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.243(d) (No change.)

§4.244 Minimum Permit Provisions for Closure. (No change.)

§4.245 Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.230 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), and the notice requirements of §4.238 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.231 - 4.237 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS

WASTE RECYCLING FACILITIES.

§4.246 General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility

(a) An application for a permit for a stationary commercial solid oil and gas waste recycling facility shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the ~~[Commission's headquarters office in Austin. The]~~ applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located ~~[on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin].~~ The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). ~~[A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.]~~

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; ~~[and facsimile transmission (fax) number;]~~ and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director ~~[director]~~. The Director ~~[director]~~ shall neither administratively approve an application nor refer an application to hearing unless the Director ~~[director]~~ has determined that the application is administratively complete. If the Director ~~[director]~~ determines that an application is incomplete, the Director ~~[director]~~ shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(d) The permit application shall contain ~~[an original signature in ink, the date of signing, and]~~ the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.247 Minimum Engineering and Geologic Information.

(a) The Director ~~[director]~~ may require a permit applicant for a stationary commercial solid oil and gas waste recycling facility to provide ~~[the Commission with]~~ engineering, geological, or other information which the Director ~~[director]~~ deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application ~~[by the applicant]~~ shall be sealed by a professional ~~[registered]~~ engineer or geoscientist licensed in Texas ~~[geologist, respectively]~~ as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.248 Minimum Siting Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

- (1) a description of the proposed facility site and surrounding area;
- (2) the name, physical address and, if different, mailing address, [;] and telephone number~~[; and facsimile transmission (fax) number]~~ of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;
- (3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;
- (4) the average annual precipitation and evaporation at the proposed site and the source of

1 this information;

2 (5) the identification of the soil and subsoil by typical name and description of the
3 approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent
4 characteristics, and the source of this information;

5 (6) a copy of a county highway map with a scale and north arrow showing the location of
6 the proposed facility; and

7 (7) a United States Geological Survey (USGS) topographic map or an equivalent
8 topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this
9 paragraph and any other pertinent information regarding the regulated facility and associated activities.
10 Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

11 (A) a scale and north arrow showing the tract size in square feet or acres, the
12 section/survey lines, and the survey name and abstract number;

13 (B) a clear outline of the proposed facility's boundaries;

14 (C) the location of any pipelines within 500 feet of the facility;

15 (D) the distance from the facility's outermost perimeter boundary to public and
16 private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

17 (E) for disposal only, the location of all residential and commercial buildings
18 within a one-mile radius of the facility boundary;

19 (F) all water wells within a one-mile radius of the facility boundary;

20 (G) the location of the 100-year flood plain and the source of the flood plain
21 information;

22 (H) surface water bodies within the map area;

23 (I) the location of any major and minor aquifers within the map area;

24 (J) the boundaries of any prohibited areas defined under §4.153 of this title
25 (relating to Commercial Disposal Pits); and

26 (K) any other information requested by the Director reasonably related to the
27 prevention of pollution ~~[a complete, original 7 1/2 minute United States Geological Survey topographic~~
28 ~~quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that~~
29 ~~underlay the facility but are not included on the topographic map; and the location of the 100-year flood~~
30 ~~plain and the source of the flood plain information].~~

31 (b) A pit permitted under this division is prohibited:

1 (1) where there has been observable groundwater within 100 feet of the ground surface
2 unless the pit design includes a geosynthetic clay liner (GCL);

3 (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

4 (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

5 (4) within 500 feet of any public water system wells or intakes;

6 (5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in
7 existence at the time of the initial permitting;

8 (6) within 500 feet of a wetland; or

9 (7) within a 100-year floodplain.

10 (c) Factors that the Commission will consider in assessing potential risk from stationary
11 commercial solid oil and gas waste recycling include:

12 _____ (1) the volume and characteristics of the oil and gas waste, partially treated waste and
13 recyclable product to be stored, handled, treated and recycled at the facility;

14 _____ (2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this
15 title; and

16 _____ (3) any other factors the Commission deems reasonably necessary in determining
17 whether or not issuance of the permit will pose an unreasonable risk.

18 (d) All siting requirements in this section for stationary commercial solid oil and gas waste
19 recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

20
21 **§4.249 Minimum Real Property Information.** (No change.)

22
23 **§4.250 Minimum Design and Construction Information.**

24 (a) A permit application for a stationary commercial solid oil and gas waste recycling facility
25 shall include the layout and design of the facility by including a plat drawn to scale with north arrow to
26 top of the map showing the location and information on the design and size of all receiving, processing,
27 and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access
28 roads.

29 (b) A permit application for a stationary commercial solid oil and gas waste recycling facility also
30 shall include:

31 (1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if

any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater ~~[storm-water]~~ runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater ~~[storm-water]~~ from the facility during a 25-year, 24-hour ~~[maximum]~~ rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.251 Minimum Operating Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission District Office ~~[district]~~;

(6) a general description of the recycling process to be employed; a flow diagram

showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the ~~[Material]~~ Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

§4.252 Minimum Monitoring Information. (No change.)

§4.253 Minimum Closure Information. (No change.)

§4.254 Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct stationary commercial solid oil and gas waste recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for a stationary commercial solid oil and gas waste recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

1 (2) the surface owners of tracts located within a distance of 1/2-mile from the fence line
2 or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum
3 Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not
4 adjacent to the tract on which the commercial recycling facility is located;

5 (3) the city clerk or other appropriate city official if any part of the tract on which the
6 commercial recycling facility will be located lies within the municipal boundaries of the city;

7 (4) the Commission's District Office; and

8 (5) any other person or class of persons that the Director determines should receive notice
9 of an application.

10 (d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant
11 shall provide direct notice to the persons specified in subsection (c) of this section as follows.

12 (1) The applicant shall provide notice by registered or certified mail.

13 (2) The notice of the permit application shall consist of a complete copy of the
14 application and any attachments. The copy shall be of the application and attachments after staff
15 determines the application is complete pursuant to §1.201(b) of this title but before the final review is
16 completed.

17 (3) The notice shall include a letter that contains:

18 (A) the name of the applicant;

19 (B) the date of the notice;

20 (C) the name of the surface owners of the tract on which the proposed
21 commercial recycling facility will be located;

22 (D) the location of the tract on which the proposed commercial recycling facility
23 will be located including a legal description of the tract, latitude/longitude coordinates of the proposed
24 facility, county, original survey, abstract number, and the direction and distance from the nearest
25 municipality or community;

26 (E) the types of solids to be recycled at the commercial recycling facility;

27 (F) the recycling method proposed and the proposed end-use of the recycled
28 material;

29 (G) a statement that an affected person may protest the application by filing a
30 written protest with the Commission within 30 calendar days of the date of the notice;

31 (H) a statement that a protest shall include the protestant's name, mailing address,

1 telephone number, and email address;

2 (I) the address to which protests may be mailed or the location and instructions
3 for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

4 (J) the definition of "affected person" pursuant to §4.110 of this title (relating to
5 Definitions); and

6 (K) the signature of the operator, or representative of the operator, and the date
7 the letter was signed.

8 (4) If the Director finds that a person to whom the applicant was required to give notice
9 of an application has not received such notice, then the Director shall not take action on the application
10 until the applicant has made reasonable efforts to give such person notice of the application and an
11 opportunity to file a protest to the application with the Commission.

12 (e) Proof of notice. After the applicant provides the notice required by this section, the applicant
13 shall submit to the Commission proof of delivery of notice which shall consist of:

14 (1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

15 (2) the registered or certified mail receipts; and

16 (3) a map showing the property boundaries, surface owner names, and parcel numbers of
17 all notified parties.

18 (f) Notice by publication. In addition to the notice required by subsection (d) of this section, an
19 applicant for a stationary commercial solid oil and gas waste recycling commercial facility permit shall
20 also provide notice by publication.

21 (g) Newspaper of general circulation. The permit applicant shall publish notice of the application
22 in a newspaper of general circulation in the county in which the proposed facility will be located at least
23 once each week for two consecutive weeks, with the first publication occurring not earlier than the date
24 staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time
25 Periods for Processing Applications and Issuing Permits Administratively) but before the final review is
26 completed.

27 (h) Contents of published notice. The published notice shall:

28 (1) be entitled "Notice of Application for Commercial Solid Oil and Gas Waste
29 Recycling Facility" if the proposed facility is a commercial facility;

30 (2) provide the date the applicant filed the application with the Commission;

31 (3) identify the name of the applicant;

1 (4) provide the location of the tract on which the proposed facility will be located
2 including the legal description of the property, latitude/longitude coordinates of the proposed facility,
3 county, name of the original survey and abstract number, and location and distance in relation to the
4 nearest municipality or community;

5 (5) identify the owner or owners of the property on which the proposed facility will be
6 located;

7 (6) identify the type of fluid or solid waste to be managed at the facility;

8 (7) identify the proposed recycling method;

9 (8) state that affected persons may protest the application by filing a protest with the
10 Commission within 30 calendar days of the last date of publication;

11 (9) include the definition of "affected person" pursuant to §4.110 of this title (relating to
12 Definitions); and

13 (10) provide the address to which protests shall be mailed. If the Commission implements
14 an electronic means for filing protests, then the location to instructions for electronic submittal shall be
15 included.

16 (i) Proof of notice. The applicant shall submit to the Commission proof that notice was published
17 as required by this section. Proof of publication shall consist of:

18 (1) an affidavit from the newspaper publisher that states the dates on which the notice
19 was published and the county or counties in which the newspaper is of general circulation; and

20 (2) the tear sheets for each published notice.

21 (j) Protest process. Any statement of protest to an application must be filed with the Commission
22 within 30 calendar days from the date of notice or from the last date of publication if notice by
23 publication is authorized by the Director.

24 (1) The Technical Permitting Section shall notify the applicant if the Commission
25 receives an affected person's timely protest. A timely protest is a written protest date-stamped as received
26 by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of
27 the last date of publication, whichever is later.

28 (2) The applicant shall have 30 days from the date of the Technical Permitting Section's
29 notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the
30 application. If the applicant fails to timely file a written response, the Technical Permitting Section shall
31 consider the application to have been withdrawn.

1 (3) The Technical Permitting Section shall refer all protested applications to the Hearings
2 Division if a timely protest is received and the applicant requests a hearing.

3 (4) The Commission shall provide notice of any hearing convened under this subsection
4 to all affected persons and persons who have requested notice of the hearing.

5 (5) If the Director has reason to believe that a person entitled to notice of an application
6 has not received notice as required by this section, then the Technical Permitting Section shall not take
7 action on the application until notice is provided to such person.

8 (6) The Commission may issue a permit if no timely protests from affected persons are
9 received.

10 (k) Director review. If the Director has reason to believe that a person to whom the applicant was
11 required to give notice of an application has not received such notice, then the Director shall not take
12 action on the application until the applicant has made reasonable efforts to give such person notice of the
13 application and an opportunity to file a protest to the application with the Commission.

14 ~~[(a) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall~~
15 ~~publish notice and file proof of publication in accordance with the following requirements.]~~

16 ~~[(1) A permit applicant shall publish notice of the application in a newspaper of general~~
17 ~~circulation in the county in which the proposed facility will be located at least once each week for two~~
18 ~~consecutive weeks with the first publication occurring not earlier than the date the application is filed with~~
19 ~~the Commission and not later than the 30th day after the date on which the application is filed with the~~
20 ~~Commission.]~~

21 ~~[(2) The published notice shall:]~~

22 ~~[(A) be entitled, "Notice of Application for Commercial Solid Oil and Gas Waste~~
23 ~~Recycling Facility";]~~

24 ~~[(B) provide the date the applicant filed the application with the Commission for~~
25 ~~the permit;]~~

26 ~~[(C) identify the name of the applicant;]~~

27 ~~[(D) state the physical address of the proposed facility and its location in relation~~
28 ~~to the nearest municipality or community;]~~

29 ~~[(E) identify the owner or owners of the property upon which the proposed~~
30 ~~facility will be located;]~~

31 ~~[(F) state that affected persons may protest the application by filing a protest with~~

1 ~~the Railroad Commission within 15 days of the last date of publication; and]~~

2 ~~[(G) provide the address to which protests may be mailed.]~~

3 ~~[(3) The applicant shall submit to the Commission proof that the applicant published~~
4 ~~notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from~~
5 ~~the newspaper publisher that states the dates on which the notice was published and the county or~~
6 ~~counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the~~
7 ~~published notices.]~~

8 ~~[(b) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall~~
9 ~~give personal notice and file proof of such notice in accordance with the following requirements:]~~

10 ~~[(1) The applicant shall mail or deliver notice to the following persons on or after the date~~
11 ~~the application is filed with the Commission's headquarters office in Austin:]~~

12 ~~[(A) the surface owner or owners of the tract upon which the commercial~~
13 ~~recycling facility will be located;]~~

14 ~~[(B) the city clerk or other appropriate official, if the tract upon which the facility~~
15 ~~will be located lies within the corporate limits of an incorporated city, town, or village;]~~

16 ~~[(C) the surface owners of tracts adjoining the tract on which proposed facility~~
17 ~~will be located, unless the boundary with the adjoining tract is a distance of 1/2 mile or greater from the~~
18 ~~fenceline or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to~~
19 ~~Minimum Real Property Information); and]~~

20 ~~[(D) any affected person or class of persons that the director determines should~~
21 ~~receive notice of a particular application.]~~

22 ~~[(2) Personal notice of the permit application shall consist of:]~~

23 ~~[(A) a copy of the application;]~~

24 ~~[(B) a statement of the date the applicant filed the application with the~~
25 ~~Commission;]~~

26 ~~[(C) a statement that a protest to the application should be filed with the~~
27 ~~Commission within 15 days of the last date of published notice, a statement identifying the publication in~~
28 ~~which published notice will appear, and the procedure for making a protest of the application to the~~
29 ~~Commission;]~~

30 ~~[(D) a description of the location of the site for which the application was made,~~
31 ~~including the county in which the site is to be located, the name of the original survey and abstract~~

number, and the direction and distance from the nearest municipality;]

[~~(E) the name of the owner or owners of the property on which the facility is to be located;~~]

[~~(F) the name of the applicant;~~]

[~~(G) the type of fluid or waste to be handled at the facility; and]~~

[~~(H) the recycling method proposed and the proposed end use of the recycled material.~~]

[~~(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.~~]

[~~(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.~~]

§4.255 General Permit Provisions.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall be issued for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, a stationary commercial solid oil and gas waste recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [~~appropriate~~] Commission District Office [~~district office~~] before recycling operations

commence on each tract.

§4.256 Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~]:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110 [3.91] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); or

(2) within 300 [~~150~~] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) depth to and quality of the shallowest groundwater;

(3) distance to the nearest property line or public road;

(4) proximity to coastal natural resources or [~~7~~] sensitive areas as defined by §4.110[3.91] of this title, or surface water and/or public, domestic, or irrigation water wells; and

(5) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for a stationary commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.257 Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial solid oil and gas waste recycling facility shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent

1 pollution of surface and subsurface water;

2 (2) the pollution of surface and subsurface water from spills, leachate, and/or discharges
3 from the facility is prevented by:

4 (A) prohibiting the unauthorized discharge of oil and gas waste and other
5 substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the
6 land surface at and adjacent to the facility or to surface and subsurface water;

7 (B) requiring that the permittee control and remediate spills at the facility; and

8 (C) requiring that the permittee make regular inspections of the facility; and

9 (3) the design and construction of the facility allows for monitoring for, and detection of,
10 any migration of oil and gas waste or other substance or material from the facility.

11 (b) A permit issued for a stationary commercial solid oil and gas waste recycling facility pursuant
12 to this division shall require that the permittee, unless waived by the Technical Permitting Section under
13 §4.257(d) of this title (relating to Minimum Permit Provisions for Operations):

14 (1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4,
15 Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical
16 Permitting Section; and

17 (2) submit to the Technical Permitting Section [~~Commission's office in Austin~~] a soil
18 boring log and other information for each well, if required by the Technical Permitting Section.

19 (c) The soil boring log and other information required in subsection (b) of this section shall:

20 (1) describe the soils using the Unified Soils Classification System (equivalent to ASTM
21 D 2487 and 2488);

22 (2) identify the method of drilling, total depth, and the top of the first encountered water
23 or saturated soils;

24 (3) include a well completion diagram for each monitoring well;

25 (4) include a survey elevation for each wellhead reference point; and

26 (5) include a potentiometric map showing static water levels and the direction of
27 groundwater flow.

28 (d) The Commission or the Director [~~director~~] may waive any or all of the requirements in
29 subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum
30 depth of 100 feet recovers no water during a 24-hour test.

31 (e) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant

1 to this division shall require that the permittee notify the Commission District Office [~~district office~~] for
2 the county in which the facility is located prior to commencement of construction, including construction
3 of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence
4 operations under the permit only after the facility has been inspected by the Commission to ensure that
5 construction of all elements of the facility is consistent with the representations in the application and the
6 requirements of the permit.

7 (f) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant
8 to this division that requires the installation of monitoring wells shall require that the permittee comply
9 with subsections (b) and (c) of this section prior to commencing recycling operations.

10
11 **§4.258 Minimum Permit Provisions for Operations.**

12 (a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant
13 to this division shall contain requirements the Commission determines to be reasonably necessary to
14 ensure that:

15 (1) only wastes and other materials authorized by the permit are received at the facility,
16 including requirements that the permittee test incoming oil and gas waste and keep records of amounts
17 and sources of incoming wastes; and

18 (2) the processing operation and resulting recyclable product meet the environmental and
19 engineering standards established in the permit.

20 (b) A permit for a stationary commercial solid oil and gas waste recycling facility issued under
21 this division may require the permittee to perform a trial run in accordance with the following procedure.

22 (1) The permittee shall notify the District Office [~~appropriate district office~~] for the
23 county in which the facility is located prior to commencement of the trial run.

24 (2) The permittee shall demonstrate the ability to successfully process a 1,000 [~~one~~
25 ~~thousand~~] cubic yard batch of solid oil and gas waste.

26 (A) The Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the
27 District Office shall [~~district office must~~] be notified in writing at least 72 hours before waste processing
28 begins.

29 (B) Samples of the partially treated waste shall [~~must~~] be collected and analyzed
30 as required by §4.243 of this title (relating to Minimum Permit Provisions for Monitoring).

31 (C) Samples shall be collected from every 200 cubic yards of an 800 cubic yard

batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(3) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(4) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(6) A written report of the trial run shall be submitted to the Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office [~~appropriate district office~~] within 60 days of receipt of the analyses required in §4.243 of this title. The following information shall [~~must~~] be included:

(A) the actual volume of waste material processed;

(B) the volume of stabilization material used;

(C) copies of all lab analyses required by §4.243 of this title; and

(D) the results of the analysis required under paragraph (2)(C) of this subsection.

(7) The final recyclable material shall [~~must~~] meet the limitations of §4.243 of this title.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.259 Minimum Permit Provisions for Monitoring.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering

standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.259(d) (No change.)

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, shall [~~must~~] be monitored for the following

parameters after installation and quarterly thereafter:

- (A) static water level;
- (B) benzene;
- (C) total petroleum hydrocarbons (TPH);
- (D) total dissolved solids (TDS);
- (E) chlorides;
- (F) bromides;
- (G) sulfates;
- (H) nitrates;
- (I) carbonates;
- (J) calcium;
- (K) magnesium;
- (L) sodium; and
- (M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Technical Permitting Section [~~Oil and Gas Division~~] and the District Office [~~appropriate district office~~].

§4.260 Minimum Permit Provisions for Closure. (No change.)

§4.261 Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.246 of this title (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), and the notice requirements of §4.254 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.247 - 4.253 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information),

1 depending on any changes made or planned to the construction, operation, monitoring, and/or closure of
2 the facility.

3
4
5 **DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID.**

6 **§4.262 General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid**

7 (a) An application for a permit for off-lease commercial recycling of fluid shall be filed on a
8 Commission prescribed form with the Technical Permitting Section, and on the same day the
9 ~~[Commission's headquarters office in Austin. The]~~ applicant shall mail or deliver a copy of the
10 application to the Commission District Office for the county in which the facility is to be located ~~[on the~~
11 ~~same day the original application is mailed or delivered to the Commission's headquarters office in~~
12 ~~Austin]. The Technical Permitting Section shall not administratively begin final review of an application~~
13 ~~unless the Director has determined that the application is complete in accordance with §1.201(b) of this~~
14 ~~title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [A~~
15 ~~permit application shall be considered filed with the Commission on the date it is received by the~~
16 ~~Commission's headquarters office in Austin.]~~

17 (b) The permit application shall contain the applicant's name; organizational report number;
18 physical office address and, if different, mailing address; facility address; telephone number; ~~[and~~
19 ~~facsimile transmission (fax) number;]~~ and the name of a contact person. A permit for a stationary
20 commercial recycling facility also shall contain the facility address.

21 (c) The permit application shall contain information addressing each applicable application
22 requirement of this division and all information necessary to initiate the final review by the Director
23 ~~[director]~~. The Director ~~[director]~~ shall determine that the application is administratively complete prior to
24 administratively approving an application or referring an application to hearing. If the Director ~~[director]~~
25 determines that an application is incomplete, the Director ~~[director]~~ shall notify the applicant in writing
26 and shall describe the specific information required to complete the application.

27 (1) An applicant may make no more than two supplemental filings to complete an
28 application.

29 (2) After the second supplemental submission, if the application is complete, the Director
30 shall act on the application. The Director's action on the application shall be:

31 (A) approval if the application meets the requirements of this division and the

1 application has not been protested;

2 (B) referral to the Hearings Division if the application meets the requirements of
3 this division and the application has been protested; or

4 (C) denial if the application does not meet the requirements of this division.

5 (3) If after the second supplemental submission the application is still incomplete, the
6 Director shall administratively deny the application. An application that was administratively denied may
7 be refiled with the Commission on a Commission prescribed form and shall contain all information
8 necessary to initiate the final review by the Director.

9 (4) The Director shall notify the applicant in writing of the administrative decision and, in
10 the case of an administrative denial, the applicant's right to request a hearing on the application as it
11 stands at the time of administrative denial.

12 (d) The Director shall approve or deny a complete application for a permit issued under this
13 division that does not include a request for an exception to the requirements of this division not later than
14 the 90th day after the date the complete application was received by the Commission, unless a protest is
15 filed with the Commission, in which case the Commission may extend the amount of time to approve or
16 deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this
17 title (relating to Practice and Procedure). If the Director does not approve or deny the application before
18 that date, the permit application is considered approved, and the applicant may operate under the terms
19 specified in the application for a period of one year.

20 (e) [(d)] The permit application shall contain [an original signature in ink, the date of signing,
21 and] the following certification signed and dated by an authorized representative of the applicant: "I
22 certify that I am authorized to make this application, that this application was prepared by me or under my
23 supervision and direction, and that the data and facts stated herein are true, correct, and complete to the
24 best of my knowledge."

25 (f) A person shall file electronically any form or application for which the Commission has
26 provided an electronic version or an electronic filing system or by hard copy if no digital format
27 acceptable to the Commission has been enacted. The operator or person shall comply with all
28 requirements, including but not limited to fees and security procedures, for electronic filing.

29
30 **§4.263 Minimum Engineering and Geologic Information**

31 (a) A ~~[The director may require a]~~ permit applicant for off-lease commercial recycling of fluid

1 ~~shall include [to provide the Commission with]~~ engineering, geological, or other information [~~which the~~
2 ~~director deems~~] necessary to:

3 (1) describe the subsurface geology underlying the facility to a depth of at least 100 feet,
4 including the identification of the soil and subsoil by typical name and description of the approximate
5 proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent
6 characteristics;

7 (2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100
8 feet, including an assessment of the presence and characteristics of permeable and impermeable strata;
9 and

10 (3) evaluate the geology, hydrogeology, and proposed engineering design to show that
11 issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of
12 surface or subsurface water, or a threat to the public health or safety.

13 (b) Information for engineering and geological site characterization may be obtained from
14 available information or from a site investigation including installation of soil borings, soil and
15 groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is
16 considered more reliable and, therefore, will have a greater effect on the permit determination.

17 (c) If an operator intends to establish and later rely on actual background concentrations of
18 contaminants in environmental media, then the operator shall collect site-specific soil and groundwater
19 samples for analysis and include these findings with the application.

20 (d) [(b)] Engineering and geologic work products prepared for the application [by the applicant]
21 shall be sealed by a professional [registered] engineer or geoscientist licensed in Texas [geologist,
22 respectively] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

25 **§4.264 Minimum Siting Information**

26 (a) A pit permitted under this division is prohibited:

27 (1) where there has been observable groundwater within 100 feet of the ground surface
28 unless the pit design includes a geosynthetic clay liner (GCL);

29 (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

30 (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

31 (4) within 500 feet of any public water system wells or intakes;

1 (5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in
2 existence at the time of the initial permitting;

3 (6) within 500 feet of a wetland; or

4 (7) within a 100-year floodplain.

5 **(b)** A permit application for off-lease commercial recycling of fluid shall include:

6 (1) a description of the proposed facility site and surrounding area;

7 (2) the name, physical address and, if different, mailing address, [;] and telephone
8 number[; ~~and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to
9 be located. If any owner is not an individual, the applicant shall include the name of a contact person for
10 that owner;

11 (3) the depth to the shallowest subsurface water and the direction of groundwater flow at
12 the proposed site, and the source of this information;

13 (4) the average annual precipitation and evaporation at the proposed site and the source of
14 this information;

15 (5) the identification of the soil and subsoil by typical name and description of the
16 approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent
17 characteristics, and the source of this information;

18 (6) a copy of a county highway map with a scale and north arrow showing the location of
19 the proposed facility; and

20 (7) a United States Geological Survey (USGS) topographic map or an equivalent
21 topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this
22 paragraph and any other pertinent information regarding the regulated facility and associated activities.
23 Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

24 (A) a scale and north arrow showing the tract size in square feet or acres, the
25 section/survey lines, and the survey name and abstract number;

26 (B) a clear outline of the proposed facility's boundaries;

27 (C) the location of any pipelines within 500 feet of the facility;

28 (D) the distance from the facility's outermost perimeter boundary to public and
29 private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

30 (E) for disposal only, the location of all residential and commercial buildings
31 within a one-mile radius of the facility boundary;

1 (F) all water wells within a one-mile radius of the facility boundary;
2 (G) the location of the 100-year flood plain and the source of the flood plain
3 information;
4 (H) surface water bodies within the map area;
5 (I) the location of any major and minor aquifers within the map area;
6 (J) the boundaries of any prohibited areas defined under §4.153 of this title
7 (relating to Commercial Disposal Pits); and
8 (K) any other information requested by the Director reasonably related to the
9 prevention of pollution [a complete, original 7 1/2 minute United States Geological Survey topographic
10 quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that
11 underlay the facility but are not included on the topographic map; and the location of the 100-year flood
12 plain and the source of the flood plain information].

13 (c) Factors that the Commission will consider in assessing potential risk from off-lease
14 commercial recycling of fluid include:

15 (1) the volume and characteristics of the oil and gas waste, partially treated waste and
16 recyclable product to be stored, handled, treated and recycled at the facility;
17 (2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this
18 title; and
19 (3) any other factors the Commission deems reasonably necessary in determining
20 whether or not issuance of the permit will pose an unreasonable risk.

21 (d) All siting requirements in this section for off-lease commercial recycling of fluid refer to
22 conditions at the time the equipment and tanks used in the recycling are placed.

23
24 **§4.265 Minimum Real Property Information** (No change.)

25
26 **§4.266 Minimum Design and Construction Information**

27 (a) A pit permitted under this division shall be designed, built, and maintained as follows.
28 (1) The pit shall contain the material placed in the pit and prevent releases, overflow, or
29 failure.
30 (2) The maximum depth from the natural surface elevation shall not exceed 22 feet.
31 (3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth

1 and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior
2 and exterior surfaces of the pit shall be smooth drum rolled.

3 (4) The pit sides and berms shall have interior and exterior grades no steeper than three
4 horizontal feet to one vertical foot (3H:1V). The top of the berm shall be wide enough to provide
5 adequate room for inspection, maintenance, and any other structural or construction requirements.

6 (A) Fill for berms shall be placed and compacted in continuous lifts with a
7 maximum loose lift thickness of 10 inches, compacted to eight inches.

8 (B) Berm fill shall be compacted to at least 95% of maximum dry density
9 determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of
10 optimum moisture content as determined by a standard proctor soil test on samples from the source area.
11 One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide
12 compaction testing results upon completion.

13 (5) Both primary and secondary liners in a pit shall be geomembrane liners composed of
14 ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet
15 light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a
16 minimum, a liner system as follows:

17 (A) The primary liner shall be constructed with a minimum 60-mil high density
18 polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

19 (B) A leak detection system shall be placed between the primary and secondary
20 geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak
21 detection system shall consist of a properly designed drainage and collection and removal system placed
22 above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak
23 detection. The leak detection system shall be designed with the capability of removing a minimum of
24 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

25 (C) The secondary liner shall be constructed with a minimum 40-mil HDPE for
26 any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet
27 below the ground surface, the secondary liner shall include a geosynthetic clay liner.

28 (D) A geotextile (felt) liner shall be placed under the secondary liner and in
29 contact with the prepared ground surface.

30 (6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled
31 trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's

1 instructions.

2 (7) Field seams in geosynthetic material shall be performed in accordance with the
3 manufacturer's instructions and include the following considerations:

4 (A) Field seams in geosynthetic material shall be minimized and oriented
5 perpendicular to the slope of the berm, not parallel.

6 (B) Prior to field seaming, the operator shall overlap liners a minimum of four to
7 six inches. The operator shall minimize the number of field seams and corners and irregularly shaped
8 areas. There shall be no horizontal seams within five feet of the slope's toe.

9 (C) Qualified personnel shall perform field seam welding and testing.
10 Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

11 (8) At a point of discharge into or suction from the pit, the operator shall ensure that the
12 liner is protected from excessive hydrostatic force or mechanical damage.

13 (9) All piping and equipment that is in contact with the liner shall be secured to prevent
14 liner wear and damage.

15 (10) There shall be no penetrations of the liner system.

16 (11) The pit shall be designed to prevent run-on of any non-contact stormwater,
17 precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent
18 run-on of any non-contact stormwater, precipitation, or surface water.

19 (12) The pit shall be designed to operate with a minimum two feet of freeboard plus the
20 capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

21 (b) Tanks and treatment equipment shall be located within a secondary containment system.

22 (c) [(a)] A permit application for off-lease commercial recycling of fluid shall include the layout
23 and design of the facility by including a plat drawn to scale with north arrow to top of the map showing
24 the location and information on the design and size of all receiving, processing, and storage areas and all
25 equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

26 (d) [(b)] A permit application for off-lease commercial recycling of fluid also shall include:

27 (1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if
28 any, for all tanks, silos, pits, and storage areas/cells;

29 (2) for storage areas where tanks and/or liners are not used, credible engineering and/or
30 geologic information demonstrating that tanks or liners are not necessary for the protection of surface and
31 subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; ~~and~~

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of berms ~~[dikes]~~ and/or storage basins that would collect stormwater ~~[storm water]~~ from the facility, at a minimum, during a 25-year, 24-hour ~~[maximum]~~ rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.267 Minimum Operating Information

A permit application for off-lease commercial recycling of fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of oil and gas wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the ~~[Material]~~ Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the health, safety, and environmental standards

for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.268 Minimum Monitoring Information

A permit application for off-lease commercial recycling of fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for sampling any monitoring wells at an off-lease commercial recycling of fluid facility as required by the permit and this division; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas

§4.269 Minimum Closure Information

(a) A permit application for off-lease commercial recycling of fluid shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around

1 each waste management unit, including tank batteries, pads, and all former pits unless closure of an
2 individual pit was previously approved by the Technical Permitting Section.

3 (4) The CCE shall show unit costs for all material, equipment, services, and labor needed
4 to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed.
5 For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE
6 shall be specific and shall state the source or basis for the specific unit cost, including the following:

7 (A) the permitted waste hauler to be used and the hauler's mileage rate;
8 (B) the distance that waste will be transported for disposal;
9 (C) the name of each facility where waste will be taken and the disposal costs for
10 that facility;

11 (D) the source of any material being brought to the facility, such as clean fill
12 material;

13 (E) calculations for earth-moving equipment time and cost needed to move the
14 fill dirt if fill dirt will be taken from the property;

15 (F) the total labor costs, including the titles and billing rates for personnel; and

16 (G) the quantity of each unit cost item and how the total quantity was determined
17 (for example, cubic yards of material divided by size of load equals total number of loads).

18 (5) The CCE shall include maps and illustrations such as facility plans and photographs
19 that show the current condition of the facility, and/or the condition of the facility upon reaching maximum
20 permit conditions.

21 (6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug
22 and abandon the monitoring wells.

23 (7) For facilities that will require post-closure monitoring, the CCE shall include costs for
24 a minimum of five years of monitoring.

25 (8) The CCE shall show all calculations used to arrive at total maximum closure costs.

26 (9) For all estimates submitted for existing facilities, a NORM screening survey of the
27 facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated
28 scintillation meter with a sodium iodide detector (or equivalent), with the results reported in
29 microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted
30 to the Technical Permitting Section for all devices used for NORM detection. All equipment, including
31 piping, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and

1 to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a
2 systematic grid pattern. At a minimum, the following information shall be reported:

3 (A) the date of the survey;

4 (B) the instrument used and the last calibration date;

5 (C) a background reading;

6 (D) a site diagram showing where all readings, including the background, were
7 taken; and

8 (E) the readings (in microrentgens per hour).

9 (10) If fill dirt will be excavated from the property to achieve closure, a restrictive
10 covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the
11 CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the
12 following requirements shall be met whether the operator owns or leases the property:

13 (A) The operator shall provide a letter from the property owner specifically
14 stating that the owner agrees that the material, which is described with specificity as to location, type and
15 amount consistent with what is in the closure plan, will be available for closure whether the operator or
16 the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for
17 closure.

18 (B) The operator shall submit an unsigned draft restrictive covenant on a
19 Commission prescribed form. Once the Commission approves the closure cost and closure plan, the
20 operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign
21 its portion of the restrictive covenant and return it to the operator for filing in the real property records of
22 the county where the property is located. Once filed in the real property records, the operator shall
23 provide the Commission with a certified copy.

24 (C) If the facility operator leases the property, the operator shall provide to the
25 Commission a copy of an amendment or addendum to the lease between the operator and the surface
26 owner with a clause that specifically reserves use of material and states that the reservation shall inure to
27 the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to
28 close the facility.

29 (D) The operator shall submit supporting documentation showing that the
30 dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil
31 will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation

1 shall show the depth of the excavation is limited to what can be graded to prevent storm water from
2 ponding in the excavated area.

3 (11) After the CCE has been calculated, an additional 10% of that amount shall be added
4 to the total amount of the CCE to cover contingencies.

5 (b) A permit application for off-lease commercial recycling of fluid shall include a detailed plan
6 for closure of the facility when operations terminate and include the required elements of §4.276 of this
7 title (relating to Minimum Permit Provisions for Closure). The closure plan shall address how the
8 applicant intends to:

- 9 (1) remove waste, partially treated waste, and/or recyclable product from the facility;
10 (2) close all storage pits, treatment equipment, and associated piping and other storage or
11 waste processing equipment [areas/cells];
12 (3) remove berms [dikes] and equipment;
13 (4) contour and reseed disturbed areas with geographically appropriate vegetation
14 including the source of water intended to establish the reseeded areas of the facility;
15 (5) sample and analyze soil and groundwater throughout the facility; and
16 (6) plug groundwater monitoring wells.

17
18 **§4.270 Notice.**

19 (a) Purpose. Applicants are encouraged to engage with their communities early in the commercial
20 recycling facility planning process to inform the community of the plan to construct a facility for off-lease
21 commercial recycling of facility and allow those who may be affected by the proposed activities to
22 express their concerns. The purpose of the notice required by this section is to inform notice recipients:

- 23 (1) that an applicant has filed a permit application with the Commission, seeking
24 authorization to conduct an activity or operate a facility; and
25 (2) of the requirements for filing a protest if an affected person seeks to protest the permit
26 application.

27 (b) Timing of notice. The applicant shall provide notice after staff determines that an application
28 for a facility for off-lease commercial recycling of fluid is complete pursuant to §1.201(b) of this title
29 (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date
30 notice is provided begins a 30-day period in which an affected person may file a protest of the application
31 with the Commission.

1 (c) Notice recipients. The applicant shall provide notice to:

2 (1) the surface owners of the tract on which the commercial recycling facility will be
3 located;

4 (2) the surface owners of tracts located within a distance of 1/2-mile from the fence line
5 or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum
6 Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not
7 adjacent to the tract on which the commercial recycling facility is located.

8 (3) the city clerk or other appropriate city official if any part of the tract on which the
9 commercial recycling facility will be located lies within the municipal boundaries of the city;

10 (4) the Commission's District Office; and

11 (5) any other person or class of persons that the Director determines should receive notice
12 of an application.

13 (d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant
14 shall provide direct notice to the persons specified in subsection (c) of this section as follows.

15 (1) The applicant shall provide notice by registered or certified mail.

16 (2) The notice of the permit application shall consist of a complete copy of the
17 application and any attachments. The copy shall be of the application and attachments after staff
18 determines the application is complete pursuant to §1.201(b) of this title but before the final review is
19 completed.

20 (3) The notice shall include a letter that contains:

21 (A) the name of the applicant;

22 (B) the date of the notice;

23 (C) the name of the surface owners of the tract on which the proposed
24 commercial recycling facility will be located;

25 (D) the location of the tract on which the proposed commercial recycling
26 facility will be located including a legal description of the tract, latitude/longitude coordinates of the
27 proposed facility, county, original survey, abstract number, and the direction and distance from the
28 nearest municipality or community;

29 (E) the types of fluids to be recycled at the commercial recycling facility;

30 (F) the recycling method proposed and the proposed end-use of the
31 recycled material;

1 (G) a statement that an affected person may protest the application by
2 filing a written protest with the Commission within 30 calendar days of the date of the notice;

3 (H) a statement that a protest shall include the protestant's name, mailing
4 address, telephone number, and email address;

5 (I) the address to which protests may be mailed or the location and
6 instructions for electronic submittal of a protest if the Commission implements an electronic means for
7 filing protests;

8 (J) the definition of "affected person" pursuant to §4.110 of this title
9 (relating to Definitions); and

10 (K) the signature of the operator, or representative of the operator, and
11 the date the letter was signed.

12 (4) If the Director finds that a person to whom the applicant was required to give notice
13 of an application has not received such notice, then the Director shall not take action on the application
14 until the applicant has made reasonable efforts to give such person notice of the application and an
15 opportunity to file a protest to the application with the Commission.

16 (e) Proof of notice. After the applicant provides the notice required by this section, the applicant
17 shall submit to the Commission proof of delivery of notice which shall consist of:

18 (1) a copy of the signed and dated letters required by subsection (d)(3) of this
19 section;

20 (2) the registered or certified mail receipts; and

21 (3) a map showing the property boundaries, surface owner names, and parcel
22 numbers of all notified parties.

23 (f) Protest process. Any statement of protest to an application must be filed with the Commission
24 within 30 calendar days from the date of notice or from the last date of publication if notice by
25 publication is authorized by the Director.

26 (1) The Technical Permitting Section shall notify the applicant if the Commission
27 receives an affected person's timely protest. A timely protest is a written protest date-stamped as received
28 by the Commission within 30 calendar days of the date notice is provided.

29 (2) The applicant shall have 30 days from the date of the Technical Permitting Section's
30 notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the
31 application. If the applicant fails to timely file a written response, the Technical Permitting Section shall

1 consider the application to have been withdrawn.

2 (3) The Technical Permitting Section shall refer all protested applications to the
3 Hearings Division if a timely protest is received and the applicant requests a hearing.

4 (4) The Commission shall provide notice of any hearing convened under this
5 subsection to all affected persons and persons who have requested notice of the hearing.

6 (5) If the Director has reason to believe that a person entitled to notice of an
7 application has not received notice as required by this section, then the Technical Permitting Section shall
8 not take action on the application until notice is provided to such person.

9 (6) The Commission may issue a permit if no timely protests from affected persons are
10 received.

11 ~~[(a) A permit applicant for off lease commercial recycling of fluid shall give personal notice and~~
12 ~~file proof of such notice in accordance with the following requirements:]~~

13 ~~[(1) The applicant shall mail or deliver notice to the following persons on or after the date~~
14 ~~the application is filed with the Commission's headquarters office in Austin:]~~

15 ~~[(A) the surface owner or owners of the tract upon which the commercial~~
16 ~~recycling facility will be located;]~~

17 ~~[(B) the city clerk or other appropriate official, if the tract upon which the facility~~
18 ~~will be located lies within the corporate limits of an incorporated city, town, or village;]~~

19 ~~[(C) the surface owners of tracts adjoining the tract on which the proposed~~
20 ~~facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater~~
21 ~~from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title~~
22 ~~(relating to Minimum Real Property Information); and]~~

23 ~~[(D) any affected person or class of persons that the director determines should~~
24 ~~receive notice of a particular application.]~~

25 ~~[(2) Personal notice of the permit application shall consist of:]~~

26 ~~[(A) a copy of the application;]~~

27 ~~[(B) a statement of the date the applicant filed the application with the~~
28 ~~Commission;]~~

29 ~~[(C) a statement that a protest to the application should be filed with the~~
30 ~~Commission within 15 days of the date of receipt and the procedure for making a protest of the~~
31 ~~application to the Commission;]~~

1 ~~[(D) a description of the location of the site for which the application was made,~~
2 ~~including the county in which the site is to be located, the name of the original survey and abstract~~
3 ~~number, and the direction and distance from the nearest municipality;]~~

4 ~~[(E) the name of the owner or owners of the property on which the facility is to~~
5 ~~be located;]~~

6 ~~[(F) the name of the applicant;]~~

7 ~~[(G) the type of fluid or waste to be handled at the facility; and]~~

8 ~~[(H) the recycling method proposed and the proposed end use of the recyclable~~
9 ~~product.]~~

10 ~~[(3) The applicant shall submit to the Commission proof that personal notice has been~~
11 ~~given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a~~
12 ~~statement signed by the applicant that includes the names and addresses of each person to whom the~~
13 ~~notice was sent, and the date that each person was notified of the application.]~~

14 ~~[(b) If the director has reason to believe that a person to whom the applicant was required to give~~
15 ~~notice of an application has not received such notice, then the director shall not take action on the~~
16 ~~application until the applicant has made reasonable efforts to give such person notice of the application~~
17 ~~and an opportunity to file a protest to the application with the Commission.]~~

19 **§4.271 General Permit Provisions**

20 (a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall be
21 valid ~~[issued]~~ for a term of not more than two years. Permits issued pursuant to this division may be
22 renewed, but are not transferable to another operator without the written approval of the Director
23 ~~[director]~~.

24 (b) A permit issued pursuant to this division shall require that, prior to operating, off-lease
25 commercial recycling of fluid comply with the financial security requirements of Texas Natural
26 Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than
27 Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security
28 Requirements).

29 (c) A permit for off-lease commercial recycling of fluid shall include a condition requiring that
30 the permittee notify the surface owner of the tract upon which recycling will take place and the
31 Commission District Office ~~[appropriate district office]~~ before recycling operations commence on each

tract.

§4.272 Minimum Permit Provisions for Siting

(a) A permit for off-lease commercial recycling of fluid may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety. The Director will presume that an application meeting the requirements of §4.264(a) of this title (relating to Minimum Siting Information) does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise.

(b) Off-lease commercial recycling of fluid permitted pursuant to this division [~~and after the effective date of this division~~] is prohibited [~~shall not be located~~]:

- (1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110[3.94] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); or
- (2) within 300 [~~150~~] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

- (1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;
- (2) distance to any surface water body, wet or dry;
- (3) depth to and quality of the shallowest groundwater;
- (4) distance to the nearest property line or public road;
- (5) proximity to coastal natural resources, sensitive areas as defined by §4.110 [3.94] of this title, or water supplies, and/or public, domestic, or irrigation water wells; and
- (6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.273 Minimum Permit Provisions for Design and Construction

(a) A permit issued pursuant to this division shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

- (1) the design and construction of storage areas, containment dikes, and processing areas

1 minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent
2 pollution of surface and subsurface water;

3 (2) the pollution of surface and subsurface water from spills, leachate, and/or discharges
4 from the facility is prevented by:

5 (A) prohibiting the unauthorized discharge of oil and gas waste and other
6 substances or materials, including contaminated stormwater [~~storm-water~~] runoff, from the facility to the
7 land surface at and adjacent to the facility or to surface and subsurface water;

8 (B) requiring that the permittee control spills at the facility; and

9 (C) requiring that the permittee make regular inspections of the facility; and

10 (3) the design and construction of the facility allows for monitoring for, and detection of,
11 any migration of oil and gas waste or other substance or material from the facility.

12 (b) A permit issued for off-lease commercial recycling of fluid pursuant to this division shall
13 require that the permittee, unless waived by the Technical Permitting Section under §4.273(d) of this title
14 (relating to Minimum Permit Provisions for Operations):

15 (1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4,
16 Chapter 76, relating to Water Well Drillers and Water Well Pump Installers if required by the Technical
17 Permitting Section; and

18 (2) if required by [~~submit to~~] the Technical Permitting Section, submit [~~Commission's~~
19 ~~office in Austin~~] a soil boring log and other information for each well.

20 (c) The soil boring log and other information required in subsection (b) of this section shall:

21 (1) describe the soils using the Unified Soils Classification System (equivalent to ASTM
22 D 2487 and 2488);

23 (2) identify the method of drilling, total depth, and the top of the first encountered water
24 or saturated soils;

25 (3) include a well completion diagram for each monitoring well;

26 (4) include a survey elevation for each wellhead reference point; and

27 (5) include a potentiometric map showing static water levels and the direction of
28 groundwater flow.

29 (d) The Commission or the Director [~~director~~] may waive any or all of the requirements in
30 subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum
31 depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) An operator shall not locate material excavated during construction:

- (1) within 100 feet of a continuously flowing watercourse or significant watercourse;
- (2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the ordinary high-water mark), or any other watercourse;
- (3) within 100 feet of a wetland; or
- (4) within a 100-year floodplain.

(g) The following requirements apply to signage, fencing, and security.

(1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least three inches in height.

(2) A sign shall be posted identifying the permit number of each pit using letters and numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not potable or suitable for consumption.

(3) The facility shall maintain security to prevent unauthorized access. Security shall be maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

(h) Any pit associated with an off-lease commercial fluid recycling facility permitted pursuant to this division after July 1, 2025, shall comply with the requirements of §4.265(a) of this title (relating to Minimum Design and Construction Information).

§4.274 Minimum Permit Provisions for Operations

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

- (1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts

1 and sources of incoming wastes; and

2 (2) the processing operation and resulting recyclable product meet the environmental and
3 engineering standards established in the permit.

4 (b) A permit for a facility issued under this division may require the permittee to perform a trial
5 run in accordance with the following procedure.

6 (1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~]
7 for the county in which the facility is located prior to commencement of the trial run.

8 (2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that
9 results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial
10 run prior to commencing operations.

11 (3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the
12 recyclable product meets or exceeds the environmental and engineering standards established in the
13 permit.

14 (4) The operator [~~permittee~~] shall not use the recyclable product until the Director
15 [~~director~~] approves the trial run report.

16 (c) A permit issued pursuant to this division shall include any requirements, including limits on
17 the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that
18 the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively
19 accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without
20 actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

21 (d) A permit issued pursuant to this division shall include a requirement that the operator of the
22 facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim
23 Hydrocarbons), if applicable.

24 (e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits.
25 Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules.
26 Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through
27 an electronic filing system when implemented by the Commission.

29 **§4.275 Minimum Permit Provisions for Monitoring**

30 (a) Operational monitoring.

31 (1) The operator shall inspect the pits, tanks, and processing equipment weekly. The

1 operator shall maintain a current log of such inspections and make the log available for review by the
2 Commission upon request.

3 (2) The leak detection system shall be monitored on a weekly basis to determine if the
4 primary liner has failed. The primary liner has failed if the volume of water passing through the primary
5 liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre
6 per day, whichever is smaller.

7 (3) The operator of the pit shall keep records to demonstrate compliance with the pit liner
8 integrity requirements and shall make the records available to the Commission upon request.

9 (4) If the primary liner is compromised below the fluid level in the pit, the operator shall
10 remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and
11 repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a
12 minimum. The pit shall not be returned to service until the liner has been repaired or replaced and
13 inspected by the District Office.

14 (5) If the pit's primary liner is compromised above the fluid level in the pit, the operator
15 shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels
16 of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District
17 Office.

18 (6) If groundwater monitoring wells are required, no waste shall be received at the
19 facility until all permitted groundwater monitoring wells have been completed, developed, and sampled.
20 The documentation of these activities shall be provided to the Commission within 30 days after
21 installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in
22 Figure 1.

23 Figure: 16 TAC §4.275(a)(6)

24 (7) If an operator has determined the background analyte concentrations in soil and/or
25 groundwater, those site-specific background levels shall be signed and sealed by a professional
26 geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included
27 in the permit as appropriate monitoring standards.

28 (b) Recyclable product monitoring.

29 (1) [(a)] A permit for off-lease commercial recycling fluid issued pursuant to this division
30 shall include monitoring requirements the Director [director] or Commission determines to be reasonably
31 necessary to ensure that the recyclable product meets the environmental and engineering standards

established by the Director [~~director~~] or the Commission and included in the permit.

(2) [(b)] A permit under this division for use of the treated fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(c) Quarterly reporting. A permit issued under this division shall include provisions for filing quarterly reports documenting the fluid volumes into and out of the system in a form and manner prescribed by the Director.

§4.276 Minimum Permit Provisions for Closure

(a) Notifications.

(1) The operator shall notify the Commission within 60 days after the cessation of operations.

(2) The operator shall notify the Commission 45 days before the commencement of closure activities.

(b) Time requirements for closure.

(1) Once the operations have ceased, the operator shall complete closure of the facility within one year.

(2) The Commission may grant an extension to close the facility not to exceed one additional year, provided all fluid has been removed and the operator attests to its plans for future operation.

(3) If the operator intends to use the pit for a purpose other than recycling, then the operator shall have that use approved or permitted by the Commission in accordance with the appropriate rules.

(c) Fluid and waste removal.

(1) The operator shall remove all fluids from the treatment equipment and tanks within 60 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or disposed of in an authorized manner.

(2) The operator shall remove all fluids from pits within six months of the date operations

1 cease.

2 (3) All wastes, including the pit liners, shall be removed and disposed of in an authorized
3 manner.

4 (4) Any concrete areas and access roads shall be cleaned and demolished, and the
5 concrete rubble and wash water shall be disposed of in an authorized manner.

6 (5) All visibly contaminated soils shall be excavated and removed. The contaminated soil
7 shall be disposed of in an authorized manner.

8 (d) Confirmation sampling and analysis.

9 (1) After the removal of wastes and visibly contaminated soils, grab samples shall be
10 collected from around and underneath each pit, processing area, and waste storage, and the samples shall
11 be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas
12 underneath concrete.

13 Figure: 16 TAC §4.276(d)(1)

14 (2) The minimum number of grab samples required is as follows:

15 (A) for pits, five samples per acre of surface area, with a minimum of four
16 samples; and

17 (B) for areas containing treatment equipment and storage tanks, five samples per
18 acre of surface area.

19 (3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this
20 subsection or in site-specific limitations established in the permit is considered waste and shall be
21 disposed of at an authorized disposal facility.

22 (4) If any soil samples exceed the parameter limitations specified in Figure 1 in this
23 subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a
24 plan for confirmation, delineation, and remediation, if necessary.

25 (e) The facility shall be restored to a safe and stable condition that blends with the surrounding
26 land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term
27 stability, and preservation of surface water flow patterns at locations where any surface water entered or
28 exited the property boundary prior to waste management or recycling activities at the facility. Final
29 surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that
30 water will not collect at these former locations. The site shall be re-vegetated as appropriate for the
31 geographic region and include a planned water source to establish the re-vegetated areas.

1 (f) Within 60 days of closure completion, the operator shall submit a closure report, including
2 required attachments, to document all closure activities including sampling results and the details on any
3 backfilling, capping, or covering, where applicable. The closure report shall certify that all information in
4 the report and attachments is correct, and that the operator has complied with all applicable closure
5 requirements and conditions specified in Commission rules or directives.

6 (g) The operator shall notify the Commission when closure and re-vegetation are complete. The
7 Commission shall not release financial security to the operator until all post-closure activities are
8 approved by the Commission.

9 (h) The Commission will inspect the site and verify compliance with closure requirements.

10 ~~[A permit for off lease commercial recycling fluid issued pursuant to this division shall~~
11 ~~include closure standards and any requirement reasonably necessary to ensure that the permittee can meet~~
12 ~~the standards. The Commission shall determine the closure standards for a particular facility based on the~~
13 ~~type of materials stored, handled and treated at the facility, and the design and construction of the facility.~~
14 ~~A permit may include requirements for removal of all waste, partially treated waste, and recyclable~~
15 ~~product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and~~
16 ~~analyzing of soil and groundwater samples from the facility property; and post closure monitoring.]~~

18 **§4.277 Permit Renewal**

19 Before the expiration of a permit issued pursuant to this division, the permittee may submit an
20 application to renew the permit on a Commission prescribed form. The application for renewal of an
21 existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before
22 the expiration date of the permit and shall include the permittee's permit number. The application shall
23 comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements
24 for Off-Lease Commercial Recycling of Fluid), and the notice requirements of §4.270 of this title
25 (relating to Notice). The Director ~~[director]~~ may require the applicant to comply with any of the
26 requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information;
27 Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction
28 Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure
29 Information), depending on any changes made or planned to the construction, operation, monitoring,
30 and/or closure of the facility.

**DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF
FLUID.**

**§4.278 General Permit Application Requirements for a Stationary Commercial Fluid Recycling
Facility**

(a) An application for a permit for a stationary commercial fluid recycling facility shall be filed with the Technical Permitting Section on a Commission prescribed form, and on the same day the ~~[Commission's headquarters office in Austin. The]~~ applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located ~~[on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin].~~ The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). ~~[A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.]~~

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; ~~[and facsimile transmission (fax) number;]~~ and the name of a contact person. ~~[A permit for a stationary commercial recycling facility also shall contain the facility address.]~~

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director ~~[director]~~. The Director ~~[director]~~ shall neither administratively approve an application nor refer an application to hearing unless the Director ~~[director]~~ has determined that the application is administratively complete. If the Director ~~[director]~~ determines that an application is incomplete, the Director ~~[director]~~ shall notify the applicant in writing and shall describe the specific information required to complete the application.

(1) An applicant may make no more than two supplemental filings to complete an application.

(2) After the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be:

(A) approval if the application meets the requirements of this division and the application has not been protested;

1 (B) referral to the Hearings Division if the application meets the requirements of
2 this division and the application has been protested; or

3 (C) denial if the application does not meet the requirements of this division.

4 (3) If after the second supplemental submission the application is still incomplete, the
5 Director shall administratively deny the application. An application that was administratively denied may
6 be refiled with the Commission on a Commission prescribed form and shall contain all information
7 necessary to initiate the final review by the Director.

8 (4) The Director shall notify the applicant in writing of the administrative decision and, in
9 the case of an administrative denial, the applicant's right to request a hearing on the application as it
10 stands at the time of administrative denial.

11 (d) The Director shall approve or deny a complete application for a permit issued under this
12 division that does not include a request for an exception to the requirements of this division not later than
13 the 90th day after the date the complete application was received by the Commission, unless a protest is
14 filed with the Commission, in which case the Commission may extend the amount of time to approve or
15 deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this
16 title (relating to Practice and Procedure). If the Director does not approve or deny the application before
17 that date, the permit application is considered approved and the applicant may operate under the terms
18 specified in the application for a period of one year.

19 (e) [(d)] The permit application shall contain [an original signature in ink, the date of signing,
20 and] the following certification signed and dated by an authorized representative of the applicant: "I
21 certify that I am authorized to make this application, that this application was prepared by me or under my
22 supervision and direction, and that the data and facts stated herein are true, correct, and complete to the
23 best of my knowledge."

24 (f) A person shall file electronically any form or application for which the Commission has
25 provided an electronic version or an electronic filing system or by hard copy if no digital format
26 acceptable to the Commission has been enacted. The operator or person shall comply with all
27 requirements, including but not limited to fees and security procedures, for electronic filing.

28
29
30 **§4.279 Minimum Engineering and Geologic Information.**

31 (a) A ~~[The director may require a]~~ permit applicant for a stationary commercial fluid recycling

facility shall include ~~[to provide the Commission with]~~ engineering, geological, or other information
~~[which the director deems]~~ necessary to:

(1) describe the subsurface geology underlying the facility to a depth of at least 100 feet,
including the identification of the soil and subsoil by typical name and description of the approximate
proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent
characteristics;

(2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100
feet, including an assessment of the presence and characteristics of permeable and impermeable strata;
and

(3) evaluate the geology, hydrogeology, and proposed engineering design to show that
issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of
surface or subsurface water, or a threat to the public health or safety.

(b) Information for engineering and geological site characterization may be obtained from
available information or from a site investigation including installation of soil borings, soil and
groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is
considered more reliable and, therefore, will have a greater effect on the permit determination.

(c) If an operator intends to establish and later rely on actual background concentrations of
contaminants in environmental media, then the operator shall collect site-specific soil and groundwater
samples for analysis and include these findings with the application.

(d) [(b)] Engineering and geologic work products prepared for the application [by the applicant]
shall be sealed by a professional [registered] engineer or geoscientist licensed in Texas [geologist,
respectively,] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.280 Minimum Siting Information.

(a) A pit permitted under this division shall not be located:

(1) where there has been observable groundwater within 100 feet of the ground surface
unless the pit design includes a geosynthetic clay liner (GCL);

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes.

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in

1 existence at the time of the initial permitting;

2 (6) within 500 feet of a wetland; or

3 (7) within a 100-year floodplain.

4 (b) A permit application for a stationary commercial fluid recycling facility shall include:

5 (1) a description of the proposed facility site and surrounding area;

6 (2) the name, physical address and, if different, mailing address, [;] and telephone
7 number [; and facsimile transmission (fax) number] of every owner of the tract on which the facility is to
8 be located. If any owner is not an individual, the applicant shall include the name of a contact person for
9 that owner;

10 (3) the depth to the shallowest subsurface water and the direction of groundwater flow at
11 the proposed site, and the source of this information;

12 (4) the average annual precipitation and evaporation at the proposed site and the source of
13 this information;

14 (5) the identification of the soil and subsoil by typical name and description of the
15 approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent
16 characteristics, and the source of this information;

17 (6) a copy of a county highway map with a scale and north arrow showing the location of
18 the proposed facility; and

19 (7) a United States Geological Survey (USGS) topographic map or an equivalent
20 topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this
21 paragraph and any other pertinent information regarding the regulated facility and associated activities.
22 Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

23 (A) a scale and north arrow showing the tract size in square feet or acres, the
24 section/survey lines, and the survey name and abstract number;

25 (B) a clear outline of the proposed facility's boundaries;

26 (C) the location of any pipelines within 500 feet of the facility;

27 (D) the distance from the facility's outermost perimeter boundary to public and
28 private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

29 (E) for disposal only, the location of all residential and commercial buildings
30 within a one-mile radius of the facility boundary;

31 (F) all water wells within a one-mile radius of the facility boundary;

1 (G) the location of the 100-year flood plain and the source of the flood plain
2 information;

3 (H) surface water bodies within the map area;

4 (I) the location of any major and minor aquifers within the map area;

5 (J) the boundaries of any prohibited areas defined under §4.153 of this title
6 (relating to Commercial Disposal Pits); and

7 (K) any other information requested by the Director reasonably related to the
8 prevention of pollution [a complete, original 7 1/2 minute United States Geological Survey topographic
9 quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that
10 underlay the facility but are not included on the topographic map; and the location of the 100-year flood
11 plain and the source of the flood plain information].

12 (c) Factors that the Commission will consider in assessing potential risk from stationary
13 commercial fluid recycling include:

14 (1) the volume and characteristics of the oil and gas waste, partially treated waste and
15 recyclable product to be stored, handled, treated and recycled at the facility;

16 (2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this
17 title; and

18 (3) any other factors the Commission deems reasonably necessary in determining
19 whether or not issuance of the permit will pose an unreasonable risk.

20 (d) All siting requirements in this section for stationary commercial fluid recycling refer to
21 conditions at the time the equipment and tanks used in the recycling are placed.

22
23 **§4.281 Minimum Real Property Information.** (No change,)

24
25 **§4.282 Minimum Design and Construction Information.**

26 (a) A pit permitted under this division shall be designed, built, and maintained as follows.

27 (1) The pit shall contain the material placed in the pit and prevent releases, overflow, or
28 failure.

29 (2) The maximum depth from the natural surface elevation shall not exceed 22 feet.

30 (3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth
31 and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior

1 and exterior surfaces of the pit shall be smooth drum rolled.

2 (4) The pit sides and berms shall have interior and exterior grades no steeper than three
3 horizontal feet to one vertical foot (3H:1V). The top of the berm shall be wide enough to provide
4 adequate room for inspection, maintenance, and any other structural or construction requirements.

5 (A) Fill for berms shall be placed and compacted in continuous lifts with a
6 maximum loose lift thickness of 10 inches, compacted to eight inches.

7 (B) Berm fill shall be compacted to at least 95% of maximum dry density
8 determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of
9 optimum moisture content as determined by a standard proctor soil test on samples from the source area.
10 One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide
11 compaction testing results upon completion.

12 (5) Both primary and secondary liners in a pit shall be geomembrane liners composed of
13 ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet
14 light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a
15 minimum, a liner system as follows:

16 (A) The primary liner shall be constructed with a minimum 60-mil high density
17 polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

18 (B) A leak detection system shall be placed between the primary and secondary
19 geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak
20 detection system shall consist of a properly designed drainage and collection and removal system placed
21 above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak
22 detection. The leak detection system shall be designed with the capability of removing a minimum of
23 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

24 (C) The secondary liner shall be constructed with a minimum 40-mil HDPE for
25 any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet
26 below the ground surface, the secondary liner shall include a geosynthetic clay liner.

27 (D) A geotextile (felt) liner shall be placed under the secondary liner and in
28 contact with the prepared ground surface.

29 (6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled
30 trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's
31 instructions.

1 (7) Field seams in geosynthetic material shall be performed in accordance with the
2 manufacturer's instructions and include the following considerations:

3 (A) Field seams in geosynthetic material shall be minimized and oriented
4 perpendicular to the slope of the berm, not parallel.

5 (B) Prior to field seaming, the operator shall overlap liners a minimum of four to
6 six inches. The operator shall minimize the number of field seams and corners and irregularly shaped
7 areas. There shall be no horizontal seams within five feet of the slope's toe.

8 (C) Qualified personnel shall perform field seam welding and testing.
9 Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

10 (8) At a point of discharge into or suction from the pit, the operator shall ensure that the
11 liner is protected from excessive hydrostatic force or mechanical damage.

12 (9) All piping and equipment that is in contact with the liner shall be secured to prevent
13 liner wear and damage.

14 (10) There shall be no penetrations of the liner system.

15 (11) The pit shall be designed to prevent run-on of any non-contact stormwater,
16 precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent
17 run-on of any non-contact stormwater, precipitation, or surface water.

18 (12) The pit shall be designed to operate with a minimum two feet of freeboard plus the
19 capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

20 (b) Tanks and treatment equipment shall be located within a secondary containment system.

21 (c) [(a)] A permit application for a stationary commercial fluid recycling facility shall include the
22 layout and design of the facility by including a plat drawn to scale with north arrow to top of the map
23 showing the location and information on the design and size of all receiving, processing, and storage areas
24 and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

25 (d) [(b)] A permit application for a commercial fluid recycling facility also shall include:

26 (1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if
27 any, for all tanks, silos, pits, and storage areas/cells;

28 (2) for storage areas where tanks and/or liners are not used, credible engineering and/or
29 geologic information demonstrating that tanks or liners are not necessary for the protection of surface and
30 subsurface water;

31 (3) a map view and two perpendicular cross-sectional views of pits and/or storage

1 areas/cells to be constructed, showing the bottom, sides, and berms [~~dikes~~], showing the dimensions of
2 each;

3 (4) a plan to control and manage stormwater [~~storm-water~~] runoff and to retain incoming
4 wastes during wet weather, including the location and dimensions of dikes and/or storage basins that
5 would collect, at a minimum, stormwater [~~storm-water~~] from the facility during a 25-year, 24-hour
6 [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

7 (5) a plan for the installation of monitoring wells at the facility.
8

9 **§4.283 Minimum Operating Information.**

10 A permit application for a stationary commercial fluid recycling facility shall include the
11 following operating information:

12 (1) the estimated maximum volume of untreated oil and gas waste and partially treated oil
13 and gas waste to be stored at the facility;

14 (2) the estimated maximum volume and time that the recyclable product will be stored at
15 the facility;

16 (3) a plan to control unauthorized access to the facility;

17 (4) a detailed waste acceptance plan that:

18 (A) identifies anticipated volumes and specific types of oil and gas wastes (e.g.,
19 hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and
20 recycling; and

21 (B) provides for testing of wastes to be processed to ensure that only oil and gas
22 waste authorized by this division or the permit will be received at the facility;

23 (5) plans for keeping records of the source and volume of wastes accepted for recycling
24 in accordance with the permit, including maintenance of records of the source of waste received by well
25 number, API number, lease or facility name, lease number and/or gas identification number, county, and
26 Commission district;

27 (6) a general description of the treatment process to be employed; a flow diagram
28 showing the process and identifying all equipment and chemicals or additives to be used in the process;
29 and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

30 (7) a description of any testing to be performed to demonstrate that the proposed
31 processing will result in a recyclable product that meets the health, safety, and environmental standards

for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.284 Minimum Monitoring Information.

A permit application for a stationary commercial fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for monitoring groundwater based on the subsurface geology and hydrogeology, which may include the installation and sampling of [any] monitoring wells [at a commercial fluid recycling facility as required by the permit and this division]; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas.

§4.285 Minimum Closure Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

1 (3) The CCE shall include costs for sampling and analysis of soil for the areas around
2 each waste management unit, including tank batteries, pads, and all former pits unless closure of an
3 individual pit was previously approved by the Technical Permitting Section.

4 (4) The CCE shall show unit costs for all material, equipment, services, and labor needed
5 to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed.
6 For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE
7 shall be specific and shall state the source or basis for the specific unit cost, including the following:

8 (A) the permitted waste hauler to be used and the hauler's mileage rate;
9 (B) the distance that waste will be transported for disposal;
10 (C) the name of each facility where waste will be taken and the disposal costs for
11 that facility;

12 (D) the source of any material being brought to the facility, such as clean fill
13 material;

14 (E) calculations for earth-moving equipment time and cost needed to move the
15 fill dirt if fill dirt will be taken from the property;

16 (F) the total labor costs, including the titles and billing rates for personnel; and

17 (G) the quantity of each unit cost item and how the total quantity was determined
18 (for example, cubic yards of material divided by size of load equals total number of loads).

19 (5) The CCE shall include maps and illustrations such as facility plans and photographs
20 that show the current condition of the facility, and/or the condition of the facility upon reaching maximum
21 permit conditions.

22 (6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug
23 and abandon the monitoring wells.

24 (7) For facilities that will require post-closure monitoring, the CCE shall include costs for
25 a minimum of five years of monitoring.

26 (8) The CCE shall show all calculations used to arrive at total maximum closure costs.

27 (9) For all estimates submitted for existing facilities, a NORM screening survey of the
28 facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated
29 scintillation meter with a sodium iodide detector (or equivalent), with the results reported in
30 microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted
31 to the Technical Permitting Section for all devices used for NORM detection. All equipment, including

1 pipings, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and
2 to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a
3 systematic grid pattern. At a minimum, the following information shall be reported:

4 (A) the date of the survey;

5 (B) the instrument used and the last calibration date;

6 (C) a background reading;

7 (D) a site diagram showing where all readings, including the background, were
8 taken; and

9 (E) the readings (in microrentgens per hour).

10 (10) If fill dirt will be excavated from the property to achieve closure, a restrictive
11 covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the
12 CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the
13 following requirements shall be met whether the operator owns or leases the property:

14 (A) The operator shall provide a letter from the property owner specifically
15 stating that the owner agrees that the material, which is described with specificity as to location, type and
16 amount consistent with what is in the closure plan, will be available for closure whether the operator or
17 the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for
18 closure.

19 (B) The operator shall submit an unsigned draft restrictive covenant on a
20 Commission prescribed form. Once the Commission approves the closure cost and closure plan, the
21 operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign
22 its portion of the restrictive covenant and return it to the operator for filing in the real property records of
23 the county where the property is located. Once filed in the real property records, the operator shall
24 provide the Commission with a certified copy.

25 (C) If the facility operator leases the property, the operator shall provide to the
26 Commission a copy of an amendment or addendum to the lease between the operator and the surface
27 owner with a clause that specifically reserves use of material and states that the reservation shall inure to
28 the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to
29 close the facility.

30 (D) The operator shall submit supporting documentation showing that the
31 dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil

1 will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation
2 shall show the depth of the excavation is limited to what can be graded to prevent storm water from
3 ponding in the excavated area.

4 (11) After the CCE has been calculated, an additional 10% of that amount shall be added
5 to the total amount of the CCE to cover contingencies.

6 (b) [(a)] A permit application for a stationary commercial fluid recycling facility shall include a
7 detailed plan for closure of the facility when operations terminate and include the required elements of
8 §4.292 of this title (relating to Minimum Permit Provisions for Closure). The closure plan shall address
9 how the applicant intends to:

10 (1) remove waste, partially treated waste, and/or recyclable product from the facility;

11 (2) close all pits, treatment equipment, and associated piping and other storage or waste
12 processing equipment [areas/cells];

13 (3) remove berms and equipment [dikes]; [and]

14 (4) contour and reseed disturbed areas with geographically appropriate vegetation
15 including the source of water intended to establish the reseeded areas of the facility;[-]

16 ~~[(b) A permit application for a stationary commercial fluid recycling facility also shall include in~~
17 ~~the closure plan information addressing how the applicant intends to:]~~

18 ~~(5) [(4)] sample and analyze soil and groundwater throughout the facility; and~~

19 ~~(6) [(2)] plug groundwater monitoring wells.~~

20
21 **§4.286 Notice.**

22 (a) Purpose. Applicants are encouraged to engage with their communities early in the commercial
23 recycling facility planning process to inform the community of the plan to construct stationary
24 commercial fluid recycling facility and allow those who may be affected by the proposed activities to
25 express their concerns. The purpose of the notice required by this section is to inform notice recipients:

26 (1) that an applicant has filed a permit application with the Commission, seeking
27 authorization to conduct an activity or operate a facility; and

28 (2) of the requirements for filing a protest if an affected person seeks to protest the permit
29 application.

30 (b) Timing of notice. The applicant shall provide notice after staff determines that an application
31 stationary commercial fluid recycling facility is complete pursuant to §1.201(b) of this title (relating to

1 Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is
2 provided begins a 30-day period in which an affected person may file a protest of the application with the
3 Commission.

4 (c) Notice recipients. The applicant shall provide notice to:

5 (1) the surface owners of the tract on which the commercial recycling facility will be
6 located;

7 (2) the surface owners of tracts located within a distance of 1/2-mile from the fence line
8 or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum
9 Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not
10 adjacent to the tract on which the commercial recycling facility is located;

11 (3) the city clerk or other appropriate city official if any part of the tract on which the
12 commercial recycling facility will be located lies within the municipal boundaries of the city;

13 (4) the Commission's District Office; and

14 (5) any other person or class of persons that the Director determines should receive notice
15 of an application.

16 (d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant
17 shall provide direct notice to the persons specified in subsection (c) of this section as follows.

18 (1) The applicant shall provide notice by registered or certified mail.

19 (2) The notice of the permit application shall consist of a complete copy of the
20 application and any attachments. The copy shall be of the application and attachments after staff
21 determines the application is complete pursuant to §1.201(b) of this title but before the final review is
22 completed.

23 (3) The notice shall include a letter that contains:

24 (A) the name of the applicant;

25 (B) the date of the notice;

26 (C) the name of the surface owners of the tract on which the proposed
27 commercial recycling facility will be located;

28 (D) the location of the tract on which the proposed commercial recycling facility
29 will be located including a legal description of the tract, latitude/longitude coordinates of the proposed
30 facility, county, original survey, abstract number, and the direction and distance from the nearest

1 municipality or community;

2 (E) the types of fluids to be recycled at the commercial recycling facility;

3 (F) the recycling method proposed and the proposed end-use of the recycled
4 material;

5 (G) a statement that an affected person may protest the application by filing a
6 written protest with the Commission within 30 calendar days of the date of the notice;

7 (H) a statement that a protest shall include the protestant's name, mailing address,
8 telephone number, and email address;

9 (I) the address to which protests may be mailed or the location and instructions
10 for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

11 (J) the definition of "affected person" pursuant to §4.110 of this title (relating to
12 Definitions); and

13 (K) the signature of the operator, or representative of the operator, and the date
14 the letter was signed.

15 (4) If the Director finds that a person to whom the applicant was required to give notice
16 of an application has not received such notice, then the Director shall not take action on the application
17 until the applicant has made reasonable efforts to give such person notice of the application and an
18 opportunity to file a protest to the application with the Commission.

19 (e) Proof of notice. After the applicant provides the notice required by this section, the applicant
20 shall submit to the Commission proof of delivery of notice which shall consist of:

21 (1) a copy of the signed and dated letters required by subsection (d)(3) of this
22 section;

23 (2) the registered or certified mail receipts; and

24 (3) a map showing the property boundaries, surface owner names, and parcel
25 numbers of all notified parties.

26 (f) Notice by publication. In addition to the notice required by subsection (d) of this section, an
27 applicant for a stationary commercial fluid recycling facility permit shall also provide notice by
28 publication.

29 (g) Newspaper of general circulation. The permit applicant shall publish notice of the application
30 in a newspaper of general circulation in the county in which the proposed facility will be located at least
31 once each week for two consecutive weeks, with the first publication occurring not earlier than the date

1 staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time
2 Periods for Processing Applications and Issuing Permits Administratively) but before the final review is
3 completed.

4 (h) Contents of published notice. The published notice shall:

5 (1) be entitled "Notice of Application for Commercial Fluid Recycling Facility" if the
6 proposed facility is a commercial facility;

7 (2) provide the date the applicant filed the application with the Commission;

8 (3) identify the name of the applicant;

9 (4) provide the location of the tract on which the proposed facility will be located
10 including the legal description of the property, latitude/longitude coordinates of the proposed facility,
11 county, name of the original survey and abstract number, and location and distance in relation to the
12 nearest municipality or community;

13 (5) identify the owner or owners of the property on which the proposed facility will be
14 located;

15 (6) identify the type of fluid waste to be managed at the facility;

16 (7) identify the proposed recycling method;

17 (8) state that affected persons may protest the application by filing a protest with the
18 Commission within 30 calendar days of the last date of publication;

19 (9) include the definition of "affected person" pursuant to §4.110 of this title (relating to
20 Definitions); and

21 (10) provide the address to which protests shall be mailed. If the Commission implements
22 an electronic means for filing protests, then the location to instructions for electronic submittal shall be
23 included.

24 (i) Proof of notice. The applicant shall submit to the Commission proof that notice was published
25 as required by this section. Proof of publication shall consist of:

26 (1) an affidavit from the newspaper publisher that states the dates on which the notice
27 was published and the county or counties in which the newspaper is of general circulation; and

28 (2) the tear sheets for each published notice.

29 (j) Protest process. Any statement of protest to an application must be filed with the Commission
30 within 30 calendar days from the date of notice or from the last date of publication if notice by

1 publication is authorized by the Director.

2 (1) The Technical Permitting Section shall notify the applicant if the Commission
3 receives an affected person's timely protest. A timely protest is a written protest date-stamped as received
4 by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of
5 the last date of publication, whichever is later.

6 (2) The applicant shall have 30 days from the date of the Technical Permitting Section's
7 notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the
8 application. If the applicant fails to timely file a written response, the Technical Permitting Section shall
9 consider the application to have been withdrawn.

10 (3) The Technical Permitting Section shall refer all protested applications to the Hearings
11 Division if a timely protest is received and the applicant requests a hearing.

12 (4) The Commission shall provide notice of any hearing convened under this subsection
13 to all affected persons and persons who have requested notice of the hearing.

14 (5) If the Director has reason to believe that a person entitled to notice of an application
15 has not received notice as required by this section, then the Technical Permitting Section shall not take
16 action on the application until notice is provided to such person.

17 (6) The Commission may issue a permit if no timely protests from affected persons are
18 received.

19 (k) Director review. If the Director has reason to believe that a person to whom the applicant was
20 required to give notice of an application has not received such notice, then the Director shall not take
21 action on the application until the applicant has made reasonable efforts to give such person notice of the
22 application and an opportunity to file a protest to the application with the Commission.

23 ~~[(a) A permit applicant for a stationary commercial fluid recycling facility shall publish notice~~
24 ~~and file proof of publication in accordance with the following requirements:]~~

25 ~~[(1) A permit applicant shall publish notice of the application in a newspaper of general~~
26 ~~circulation in the county in which the proposed facility will be located at least once each week for two~~
27 ~~consecutive weeks with the first publication occurring not earlier than the date the application is filed with~~
28 ~~the Commission and not later than the 30th day after the date on which the application is filed with the~~
29 ~~Commission.]~~

30 ~~[(2) The published notice shall:]~~

31 ~~[(A) be entitled, "Notice of Application for Stationary Commercial Fluid~~

1 ~~Recycling Facility";]~~

2 ~~[(B) provide the date the applicant filed the application with the Commission for~~
3 ~~the permit;]~~

4 ~~[(C) identify the name of the applicant;]~~

5 ~~[(D) state the physical address of the proposed facility and its location in relation~~
6 ~~to the nearest municipality or community;]~~

7 ~~[(E) identify the owner or owners of the property upon which the proposed~~
8 ~~facility will be located;]~~

9 ~~[(F) state that affected persons may protest the application by filing a protest with~~
10 ~~the Railroad Commission within 15 days of the last date of publication; and]~~

11 ~~[(G) provide the address to which protests may be mailed.]~~

12 ~~[(3) The applicant shall submit to the Commission proof that the applicant published~~
13 ~~notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from~~
14 ~~the newspaper publisher that states the dates on which the notice was published and the county or~~
15 ~~counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the~~
16 ~~published notices.]~~

17 ~~[(b) A permit applicant for a stationary commercial fluid recycling facility shall give personal~~
18 ~~notice and file proof of such notice in accordance with the following requirements:]~~

19 ~~[(1) The applicant shall mail or deliver notice to the following persons on or after the date~~
20 ~~the application is filed with the Commission's headquarters office in Austin:]~~

21 ~~[(A) the surface owner or owners of the tract upon which the commercial~~
22 ~~recycling facility will be located;]~~

23 ~~[(B) the city clerk or other appropriate official, if the tract upon which the facility~~
24 ~~will be located lies within the corporate limits of an incorporated city, town, or village;]~~

25 ~~[(C) the surface owners of tracts adjoining the tract on which proposed facility~~
26 ~~will be located, unless the boundary with the adjoining tract is a distance of 1/2 mile or greater from the~~
27 ~~fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to~~
28 ~~Minimum Real Property Information); and]~~

29 ~~[(D) any affected person or class of persons that the director determines should~~
30 ~~receive notice of a particular application.]~~

31 ~~[(2) Personal notice of the permit application shall consist of:]~~

1 ~~[(A) a copy of the application;]~~

2 ~~[(B) a statement of the date the applicant filed the application with the~~
3 ~~Commission;]~~

4 ~~[(C) a statement that a protest to the application should be filed with the~~
5 ~~Commission within 15 days of the last date of published notice, a statement identifying the publication in~~
6 ~~which published notice will appear, and the procedure for making a protest of the application to the~~
7 ~~Commission;]~~

8 ~~[(D) a description of the location of the site for which the application was made,~~
9 ~~including the county in which the site is to be located, the name of the original survey and abstract~~
10 ~~number, and the direction and distance from the nearest municipality;]~~

11 ~~[(E) the name of the owner or owners of the property on which the facility is to~~
12 ~~be located;]~~

13 ~~[(F) the name of the applicant;]~~

14 ~~[(G) the type of fluid or waste to be handled at the facility; and]~~

15 ~~[(H) the recycling method proposed and the proposed end use of the recycled~~
16 ~~material.]~~

17 ~~[(3) The applicant shall submit to the Commission proof that personal notice has been~~
18 ~~given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a~~
19 ~~statement signed by the applicant that includes the names and addresses of each person to whom the~~
20 ~~notice was sent, and the date that each was notified of the application.]~~

21 ~~[(c) If the director has reason to believe that a person to whom the applicant was required to give~~
22 ~~notice of an application has not received such notice, then the director shall not take action on the~~
23 ~~application until the applicant has made reasonable efforts to give such person notice of the application~~
24 ~~and an opportunity to file a protest to the application with the Commission.]~~

25
26 **§4.287 General Permit Provisions.**

27 (a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division
28 shall be valid for a term of not more than five years. Permits issued pursuant to this division may be
29 renewed, but are not transferable to another operator without the written approval of the Director
30 ~~[director]~~.

31 (b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall

1 comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to
2 Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by
3 §3.78 of this title (relating to Fees and Financial Security Requirements).

4 (c) A permit for a stationary commercial fluid recycling facility shall include a condition
5 requiring that the permittee notify the surface owner of the tract upon which recycling will take place and
6 the ~~[appropriate]~~ Commission District Office ~~[district office]~~ before recycling operations commence on
7 each tract.

8
9 **§4.288 Minimum Permit Provisions for Siting.**

10 (a) A permit for a stationary commercial fluid recycling facility may be issued only if the Director
11 ~~[director]~~ or the Commission determines that the facility is to be located in an area where there is no
12 unreasonable risk of pollution or threat to public health or safety. The Director will presume that an
13 application meeting the requirements of §4.280(a) of this title (relating to Minimum Siting Information)
14 does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting,
15 unless extraordinary circumstances indicate otherwise.

16 (b) A stationary commercial fluid recycling facility permitted pursuant to this division ~~[and after~~
17 ~~the effective date of this division]~~ is prohibited ~~[shall not be located]~~ within a 100-year flood plain.

18 (c) Factors that the Commission will consider in assessing potential risk from a stationary
19 commercial fluid recycling facility include:

20 (1) the volume and characteristics of the oil and gas waste, partially treated waste and
21 recyclable product to be stored, handled, treated and recycled at the facility;

22 (2) distance to any surface water body, wet or dry;

23 (3) depth to and quality of the shallowest groundwater;

24 (4) distance to the nearest property line or public road;

25 (5) proximity to coastal natural resources, sensitive areas as defined by §4.110 ~~[3.94]~~ of
26 this title (relating to Definitions ~~[Cleanup of Soil Contaminated by a Crude Oil Spill]~~), or water supplies,
27 and/or public, domestic, or irrigation water wells; and

28 (6) any other factors the Commission deems reasonably necessary in determining
29 whether or not issuance of the permit will pose an unreasonable risk.

30 (d) All siting requirements in this section refer to conditions at the time the facility is constructed.
31

§4.289 Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial fluid recycling facility shall contain any requirement that the Director ~~[director]~~ or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.289(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) if required by the Technical Permitting Section, submit ~~[to the Commission's office in Austin]~~ a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

1 (5) include a potentiometric map showing static water levels and the direction of
2 groundwater flow.

3 (d) The Commission or the Director [~~director~~] may waive any or all of the requirements in
4 subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum
5 depth of 100 feet recovers no water during a 24-hour test.

6 (e) A permit for a stationary commercial fluid recycling facility issued pursuant to this division
7 shall require that the permittee notify the Commission District Office [~~district office~~] for the county in
8 which the facility is located prior to commencement of construction, including construction of any berms
9 [~~dikes~~], and again upon completion of construction and that the permittee may commence operations
10 under the permit only after the facility has been inspected by the Commission to ensure that construction
11 of all elements of the facility is consistent with the representations in the application and the requirements
12 of the permit.

13 (f) An operator shall not locate material excavated during construction:

- 14 (1) within 100 feet of a continuously flowing watercourse or significant watercourse;
15 (2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the
16 ordinary high-water mark) or any other watercourse;
17 (3) within 100 feet of a wetland; or
18 (4) within a 100-year floodplain.

19 (g) The following requirements apply to signage, fencing, and security.

20 (1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible
21 and show the operator's name, facility name, and permit number in letters and numerals at least three
22 inches in height.

23 (2) A sign shall be posted identifying the permit number of each pit using letters and
24 numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not
25 potable or suitable for consumption.

26 (3) The facility shall maintain security to prevent unauthorized access. Security shall be
27 maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

28 (h) Any pit associated with a stationary commercial fluid recycling facility permitted pursuant to
29 this division after July 1, 2025, shall comply with the requirements of §4.282(a) of this title (relating to
30 Minimum Design and Construction Information).

31

§4.290 Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that results from the trial run⁵ and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The operator [~~permittee~~] shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

(e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through

1 an electronic filing system when implemented by the Commission.

2
3 **§4.291 Minimum Permit Provisions for Monitoring.**

4 (a) Operational monitoring.

5 (1) The operator shall inspect the pits, tanks, and processing equipment weekly. The
6 operator shall maintain a current log of such inspections and make the log available for review by the
7 Commission upon request.

8 (2) The leak detection system shall be monitored on a weekly basis to determine if the
9 primary liner has failed. The primary liner has failed if the volume of water passing through the primary
10 liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre
11 per day, whichever is smaller.

12 (3) The operator of the pit shall keep records to demonstrate compliance with the pit liner
13 integrity requirements and shall make the records available to the Commission upon request.

14 (4) If the primary liner is compromised below the fluid level in the pit, the operator shall
15 remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and
16 repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a
17 minimum. The pit shall not be returned to service until the liner has been repaired or replaced and
18 inspected by the District Office.

19 (5) If the pit's primary liner is compromised above the fluid level in the pit, the operator
20 shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels
21 of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District
22 Office.

23 (6) If groundwater monitoring wells are required, no waste shall be received at the
24 facility until all permitted groundwater monitoring wells have been completed, developed, and sampled.
25 The documentation of these activities shall be provided to the Commission within 30 days after
26 installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in
27 Figure 1.

28 Figure: 16 TAC §4.291(a)(6)

29 (7) If an operator has determined the background analyte concentrations in soil and/or
30 groundwater, those site-specific background levels shall be signed and sealed by a professional
31 geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included

1 in the permit as appropriate monitoring standards.

2 (b) Recyclable product monitoring.

3 (1) ~~[(a)]~~ A permit ~~[issued]~~ for a stationary commercial fluid recycling facility pursuant to
4 this division may ~~[shall]~~ include requirements the Director ~~[director]~~ or Commission determines to be
5 reasonably necessary to ensure that the recyclable product meets the environmental and engineering
6 standards established by the Director ~~[director]~~ or the Commission and included in the permit.

7 (2) ~~[(b)]~~ A permit under this division for use of the treated fluid for any purpose other
8 than as makeup water for hydraulic fracturing fluids or other down-hole uses may require laboratory
9 testing. A permit that requires laboratory testing shall require that the permittee use an independent third
10 party laboratory to analyze a minimum standard volume of partially treated waste for parameters
11 established in this division or in a permit issued by the Commission.

12 (c) Quarterly reporting. A permit issued under this division shall include provisions for filing
13 quarterly reports documenting the fluid volumes into and out of the system in a form and manner
14 prescribed by the Director.

15
16 **§4.292 Minimum Permit Provisions for Closure.**

17 (a) Notifications.

18 (1) The operator shall notify the Commission within 60 days after the cessation of
19 operations.

20 (2) The operator shall notify the Commission 45 days before the commencement of
21 closure activities.

22 (b) Time requirements for closure.

23 (1) Once the operations have ceased, the operator shall complete closure of the facility
24 within one year.

25 (2) The Commission may grant an extension to close the facility not to exceed one
26 additional year, provided all fluid has been removed and the operator attests to its plans for future
27 operation.

28 (3) If the operator intends to use the pit for a purpose other than recycling, then the
29 operator shall have that use approved or permitted by the Commission in accordance with the appropriate
30 rules.

31 (c) Fluid and waste removal.

1 (1) The operator shall remove all fluids from the treatment equipment and tanks within 60
2 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be
3 disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or
4 disposed of in an authorized manner.

5 (2) The operator shall remove all fluids from pits within six months of the date operations
6 cease.

7 (3) All wastes, including the pit liners, shall be removed and disposed of in an authorized
8 manner.

9 (4) Any concrete areas and access roads shall be cleaned and demolished, and the
10 concrete rubble and wash water shall be disposed of in an authorized manner.

11 (5) All visibly contaminated soils shall be excavated and removed. The contaminated soil
12 shall be disposed of in an authorized manner.

13 (d) Confirmation sampling and analysis.

14 (1) After the removal of wastes and visibly contaminated soils, grab samples shall be
15 collected from around and underneath each pit, processing area, and waste storage, and the samples shall
16 be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas
17 underneath concrete.

18 Figure: 16 TAC §4.292(d)(1)

19 (2) The minimum number of grab samples required is as follows:

20 (A) for pits, five samples per acre of surface area, with a minimum of four
21 samples; and

22 (B) for areas containing treatment equipment and storage tanks, five samples per
23 acre of surface area.

24 (3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this
25 subsection or in site-specific limitations established in the permit is considered waste and shall be
26 disposed of at an authorized disposal facility.

27 (4) If any soil samples exceed the parameter limitations specified in Figure 1 in this
28 subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a
29 plan for confirmation, delineation, and remediation, if necessary.

30 (e) The facility shall be restored to a safe and stable condition that blends with the surrounding
31 land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term

1 stability, and preservation of surface water flow patterns at locations where any surface water entered or
2 exited the property boundary prior to waste management or recycling activities at the facility. Final
3 surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that
4 water will not collect at these former locations. The site shall be re-vegetated as appropriate for the
5 geographic region and include a planned water source to establish the re-vegetated areas.

6 (f) Within 60 days of closure completion, the operator shall submit a closure report, including
7 required attachments, to document all closure activities including sampling results and the details on any
8 backfilling, capping, or covering, where applicable. The closure report shall certify that all information in
9 the report and attachments is correct, and that the operator has complied with all applicable closure
10 requirements and conditions specified in Commission rules or directives.

11 (g) The operator shall notify the Commission when closure and re-vegetation are complete. The
12 Commission shall not release financial security to the operator until all post-closure activities are
13 approved by the Commission.

14 (h) The Commission will inspect the site and verify compliance with closure requirements.

15 ~~[A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall~~
16 ~~include closure standards and any requirement reasonably necessary to ensure that the permittee can meet~~
17 ~~the standards. The Commission shall determine the closure standards for a particular facility based on the~~
18 ~~type of materials stored, handled and treated at the facility, and the design and construction of the facility.~~
19 ~~A permit may include requirements for removal of all waste, partially treated waste, and recyclable~~
20 ~~product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and~~
21 ~~analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.]~~

22
23 §4.293 Permit Renewal.

24 Before the expiration of a permit issued pursuant to this division, the permittee may submit an
25 application to renew the permit on a Commission prescribed form. An application for renewal of an
26 existing permit issued pursuant to this division ~~[or §3.8 of this title (relating to Water Protection)]~~ shall be
27 submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the
28 permittee's permit number. The application shall comply with the requirements of §4.278 of this title
29 (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling
30 Facility), and the notice requirements of §4.286 of this title (relating to Notice). The Director ~~[director]~~
31 may require the applicant to comply with any of the requirements of §§4.279 - 4.285 of this title (relating

to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

DIVISION 7. BENEFICIAL USE OF DRILL CUTTINGS.

§4.301. Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) The Commission encourages recycling of oil and gas waste. In addition to the requirements of Divisions 3 and 4 of this subchapter (relating to Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities, respectively), operators performing activities permitted under those divisions shall comply with the requirements of this division for activities related to the treatment and recycling for beneficial use of drill cuttings.

(b) The Commission may approve a permit for the treatment and recycling for beneficial use of drill cuttings if the treated drill cuttings are used:

(1) in a legitimate commercial product for the construction of oil and gas lease pads or oil and gas lease roads;

(2) in a legitimate commercial product for the construction of county roads; or

(3) in a legitimate commercial product used as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or construction fill if the applicant can demonstrate that the product:

(A) meets the engineering and environmental standards for the proposed use; and

(B) is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without treated drill cuttings.

§4.302. Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall show that there is a demonstrated commercial market for the treated drill cuttings. The applicant may make this showing by providing:

(1) evidence that the same product made with drill cuttings or a product that is

1 substantially similar is commonly used in the area where the product is created;

2 (2) evidence of actual commitments from customers who intend to use the product made
3 with drill cuttings, including information regarding the volume of product the customers intend to use
4 annually; or

5 (3) other credible and verifiable means consistent with the rules in this chapter.

6 (b) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall perform a
7 trial run in accordance with the following procedure.

8 (1) The applicant shall notify the Commission District Office for the county in which the
9 facility is located prior to commencement of the trial run.

10 (2) The applicant shall demonstrate the ability to successfully process a 1,000 cubic yard
11 batch of drill cuttings before the facility receives or processes any additional drill cuttings.

12 (3) The applicant shall collect samples of the treated drill cuttings from every 200 cubic
13 yards of the first 1,000 cubic yard batch.

14 (4) Samples collected shall be analyzed and shall not exceed the parameters specified in
15 Figure 1 or Figure 2 in subsection (c) of this section, as applicable.

16 (5) A written report of the results from the trial run shall be submitted to the District
17 Office and the Technical Permitting Section within 60 days of receipt of the analytical requirement in
18 §4.258 of this title (relating to Minimum Permit Provisions for Operations). The report shall include:

19 (A) a summary of the trial run and description of the process;

20 (B) the actual volume of drill cuttings processed;

21 (C) the type of waste and description of the waste material;

22 (D) the volume and type of each stabilization material used; and

23 (E) copies of all chemical and geotechnical laboratory analytical reports and
24 chain of custody sheets for the samples required in paragraph (3) of this subsection, as applicable.

25 (6) The applicant shall notify the District Office for the county in which the facility is
26 located and the Technical Permitting Section at least 72 hours before processing begins. No additional
27 drill cuttings shall be received or processed while the results of the trial run are being reviewed by the
28 Technical Permitting Section. Any legitimate commercial product produced during the trial run shall not
29 be used until the Technical Permitting Section has received the trial run reports and provides written
30 confirmation that the trial run requirements have been met.

31 (c) In addition to the permit standards under this subchapter, beneficial uses for treated and

1 recycled drill cuttings shall meet the following criteria.

2 (1) For use of treated and recycled drill cuttings in a legitimate commercial product for
3 the construction of oil and gas lease pads, oil and gas lease roads, and county roads, the following
4 requirements shall apply.

5 (A) Bench scale tests shall be performed as needed to determine optimum
6 mixing composition. If the composition mixture changes from the treated drill cuttings produced during
7 the trial run, the treated drill cuttings shall be analyzed for wetting and drying durability by ASTM 559-
8 96, modified to provide samples that are compacted and molded from finished treated drill cuttings. Total
9 weight loss after 12 cycles shall not exceed 15%.

10 (B) A sample of the treated drill cuttings shall be tested for the parameters listed
11 in Figure 1 in this subsection for the trial run required by subsection (b) of this section and for every 800
12 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be
13 composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall
14 have a complete chain of custody and shall be analyzed for the parameters on Figure 1 in this subsection.

15 (C) Any treated drill cuttings not meeting the limitations specified in Figure 1 in
16 this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings
17 meet the required parameters or shall be disposed of in accordance with Commission rules.

18 Figure: 16 TAC §4.302(c)(1)

19 (2) For use of treated and recycled drill cuttings as a concrete bulking agent, oil and gas
20 waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm
21 material, or other construction fill material as specified in §4.301(b) of this chapter (relating to Activities
22 Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings) the following requirements
23 shall apply.

24 (A) Bench scale tests shall be performed as needed to determine optimum mixing
25 composition if the composition mixture changes from the treated drill cuttings produced during the trial
26 run.

27 (B) A sample of the treated drill cuttings shall be tested for the parameters listed
28 in Figure 2 in this subsection for the trial run required by subsection (b) of this section and every 800
29 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be
30 composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall be
31 analyzed for the parameters in Figure 2.

Figure: 16 TAC §4.302(c)(2)

(C) Any treated drill cuttings not meeting the parameters specified in Figure 2 in this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings meet the required parameters or shall be disposed of in accordance with Commission rules.

(D) Copies of the laboratory analytical reports and chain of custody sheets demonstrating that the treated drill cuttings meet these requirements shall be submitted to the Technical Permitting Section as part of the quarterly report.

(E) Once the permit to produce the treated drill cuttings has been granted, the permittee shall submit a separate application to the Technical Permitting Section for a letter of authority authorizing the application of the product to each specific project and location. The following information shall be included in the letter of authority application:

(i) a map drawn to scale showing the location of the final disposition of the product with latitude and longitude coordinates for the site location;

(ii) a description of the purpose for the product, such as concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material;

(iii) the estimated volume of product to be used at the location;

(iv) the time frame needed for the production and application of the whole volume of treated material for this project; and

(v) landowner approval for the management and final disposition of the product at the final disposition location. If the treated drill cuttings are to be used as a concrete bulking agent at a concrete production plant, written approval from a company officer from the receiving facility or corporation is sufficient.

(3) The Commission may require that use of treated drill cuttings in legitimate commercial products other than those described in paragraphs (1) and (2) of this subsection comply with criteria in addition to those specified in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on 8/15/2024, 2024.

Filed with the Office of the Secretary of State on 8/15/2024, 2024.

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 233 of 275

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Signed by:

98D34EBFE36C479
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas

Figure: 16 TAC §4.107(e)

Table 1. Penalty Guideline

Rule	General Description	Guideline Minimum Penalty Amount or Range
DIVISION 1. GENERAL		
	§4.101 Prevention of Pollution	
16 TAC §4.101(a)	Pollution of surface or subsurface water	\$2,500 to \$10,000
	§4.102 Responsibility for Oil and Gas Wastes	
16 TAC §4.102(a)(1)(2)(3)	Failure to provide and perform field testing as required by the Commission	\$2,500
16 TAC §4.102(b)(c)(d)(f)(1)(2)	Failure to utilize the services of a carrier with a valid permit	\$2,500
16 TAC §4.102(g)	Manage oil and gas wastes in a manner that violates Commission rules.	\$2,500
	§4.103 Prohibited Waste Management Methods	
16 TAC §4.103(a)	Manage oil and gas wastes without a permit.	\$2,500
16 TAC §4.103(b)	Improper disposal of oil and gas waste; enhance for actual or threatened pollution: Dry pit area	\$500 base penalty plus \$0.30/sq.ft.
16 TAC §4.103(b)	Improper disposal of oil and gas waste; enhance for actual or threatened pollution: Wet pit area	\$500 base penalty plus \$0.50/sq.ft.
16 TAC §4.103(c)(d)(e)(f)	Use of prohibited pits: Fresh water pit area	\$2,500 base plus \$0.25/sq.ft.
16 TAC §4.103(c)(d)(e)(f)	Use of prohibited pits: Salt water or other fluid area	\$2,500 base plus \$0.75/sq.ft.
DIVISION 3. OPERATIONS AUTHORIZED BY RULE		
	§4.111 Authorized Disposal Methods for Certain Wastes	
16 TAC §4.111(a)(b)(c)(d)	Improper waste disposal method for water condensate, inert oil and gas, low chloride water-based drilling fluid, and other oil and gas wastes that pertain land apply and landfarming	\$2,500
16 TAC §4.111(d)(4)	Failure to maintains documentation for 3 years demonstrating closure requirements have been met	\$1,000

	§4.112 Authorized Recycling	
16 TAC §4.112 (a)(1)	Improper use of the recycled treated fluid	\$2,500
16 TAC §4.112 (a)(3)	Recycling of unauthorized oil and gas waste	\$2,500
	§4.113 Authorized Pits	
16 TAC §4.113(a)	Failure to maintain authorized pits in compliance with the Commission	\$5,000
16 TAC §4.113 (e)(5)	Improper use of pits other than what they are designated for	\$2,500
	§4.114 Schedule A Authorized Pits	
16 TAC §4.114(1)(A)	Reserve pits: Fresh water pit area	\$2,500 base plus \$0.25/sq.ft.
16 TAC §4.114(1)(A)	Reserve pits: Salt water or other fluid area	\$2,500 base plus \$0.75/sq.ft.
16 TAC §4.114(1)(B)(2)(A)(B)(i)(ii)	Workover and other pits: Dry	\$2,500
16 TAC §4.114(1)(B)(2)(A)(B)(i)(ii)	Workover and other pits: Wet	\$5,000
	§4.115 Schedule B Authorized Pits	
16 TAC §4.115	Produced water pit: Fresh water pit area	\$2,500 base plus \$0.25/sq.ft.
16 TAC §4.115	Produced water pit: Salt water or other fluid area	\$2,500 base plus \$0.75/sq.ft.
DIVISION 4. REQUIREMENTS FOR ALL PERMITTED WASTE MANAGEMENT OPERATIONS		
	§4.122 Permit Renewals, Transfers, and Amendments	
16 TAC §4.122(b)(1)	Failure to apply for a renewal, transfer or amendments permits within Commission's time frames.	\$1,000
	§4.123 Permit Modification, Suspension, and Termination	
16 TAC §4.123(b)(4)	The permittee has violated the terms and conditions of the permit or Commission rules	\$5,000
16 TAC §4.123(b)(9)	The permittee failed to give the notice required by the Commission during the permit issuance, amendment, or renewal process	\$1,000

	§4.128 Design and Construction	
16 TAC §4.128(b)(1)	Failure to only accept waste transported and delivered by a Commission-permitted waste hauler	\$2,500
	§4.129 Operation	
16 TAC §4.129(b)(1)	Failure to receive only authorized waste	\$2,500
16 TAC §4.129(b)(2)	Treated or untreated, waste placed directly on the ground	\$2,500
16 TAC §4.129(b)(3)	Failure to maintained storage tanks, equipment, and on-site containment in a leak-free condition	\$2,500
16 TAC §4.129(b)(4)	Failure to dispose spill of waste, chemical, or any other material within 24 hours in an authorized manner	\$2,500
	§4.130 Reporting	
16 TAC §4.130 (d)	Failure to submit of monthly, quarterly, semi-annual, or annual reports, containing all requested information within the Commission's timeframe	\$1,000
	§4.131 Monitoring	
16 TAC §4.131 (b)(4)(D)	Failure to report or indicate potential pollution, or the potential failure of the liner system to the Commission	\$2,500
	§4.132 Closure	
16 TAC §4.132 (a)(b)(1)(2)(A)(B)(C)(D)(E) (F)	Failure to follow recommended closure procedures	\$2,500
DIVISION 5. ADDITIONAL REQUIREMENTS FOR COMMERCIAL FACILITIES		
	§4.142 Operating Requirements Applicable to Commercial Facilities	
16 TAC §4.142(c)	Failure to develop and maintain a stormwater management plan to prevent stormwater from running onto the facility	\$2,500
DIVISION 6. ADDITIONAL REQUIREMENTS FOR PERMITTED PITS		
	§4.150 Additional Requirements Applicable to Permitted Pits	
16 TAC §4.150(e)	Failure to comply with containment requirements to prevent pollution of surface or subsurface water	\$2,500
16 TAC §4.150(f)	Failure to report unauthorized release of oil and gas	\$2,500

	waste, treated fluid, or other substances from any pit	
	§4.151 Design and Construction of Permitted Pits	
16 TAC §4.151(b)(1)	Failure to comply with sign requirements.	\$1,000
16 TAC §4.151(b)(2)	Failure to comply with freeboard requirements	\$2,500
16 TAC §4.151(b)(3)	Failure to comply with liner requirements	\$2,500
16 TAC §4.151(b)(3)(A)	Failure to maintain the integrity of the liner	\$2,500
16 TAC §4.151(b)(3)(C)	Brine pit permitted not constructed with a primary and secondary liner and a leakage detection system	\$2,500
	§4.152 Monitoring of Permitted Pits	
16 TAC §4.152(a)(2)	Failure to install appropriate leak detection system	\$2,500
16 TAC §4.152(b)(3)(A)(B)	Failure to monitor and report and repair all pits for liner failure	\$2,500
	§4.153 Commercial Disposal Pits	
16 TAC §4.153(c)	Failure to monitor the pits after a post-closure period of no less than five years	\$2,500
	§4.154 Closure of Permitted Pits	
16 TAC §4.154(1)	Failure to dewater and empty the pit within 120 days of cessation of use	Dry: \$2,500 base plus \$0.25 sq. ft.; wet: \$2,500 base plus \$0.75 sq. ft.
16 TAC §4.154(2)	Failure to backfill and compacted the pit in a timely manner	Dry: \$2,500 base plus \$0.25 sq. ft.; wet: \$2,500 base plus \$0.75 sq. ft.
16 TAC §4.154(3)	Failure to reseeded with vegetation natural to the region after closure	\$1,000
DIVISION 7. ADDITIONAL REQUIREMENTS FOR LANDFARMING		
	§4.161 Design and Construction Requirements for Landfarming and Landtreating Permits	
16 TAC §4.161(a)	Failure to obtain a Landfarm permit	\$5,000
	§4.162 Operating Requirements for Landfarming and Landtreating Permits	

16 TAC §4.162(a) (b)	Failure comply and follow the operating requirements for Landfarm permit	\$5,000
	§4.163 Monitoring	
16 TAC §4.163(a)(b)(c)(d)(e)	Failure to collect, test, monitor, analyze, remediate according to the requirements in the permit.	\$1,000
	§4.164 Closure	
16 TAC §4.164(a)	Failure to notify the Commission at least 45 days prior to commencing closure activities	\$1,000
DIVISION 8. ADDITIONAL REQUIREMENTS FOR RECLAMATION PLANTS		
	§4.170 Additional Requirements for Reclamation Plants	
16 TAC §4.170(a) (9)	Failure to obtain a permit to reclaim unrefined hydrocarbons recovered from drilling mud	\$5,000
	§4.171 Standard Permit Provisions	
16 TAC §4.171(b)	Failure to renew, transfer, or amend reclamation plant permits	\$2,500
16 TAC §4.171(g)	Improper monitoring of a reclamation plant	\$2,500
16 TAC §4.171(h)	Use of a satellite facility which is prohibited	\$2,500
16 TAC §4.171(i)	Unpermitted reclamation using tanks	\$2,500
	§4.172. Minimum Permit Provisions for Operations	
16 TAC §4.172(a)(1)	Failure to use authorized permit methods to reclaim tank bottoms and other oil and gas wastes	\$2,500
	§4.173 Minimum Permit Provisions for Reporting	
16 TAC §4.173(d)	Failure to obtain a minor permit and provide an analysis of the disposable material to be performed	\$1,000
DIVISION 9. MISCELLANEOUS PERMITS		
	§4.181 Emergency Permits	
16 TAC §4.181(a)	Failure to apply for emergency permit to prevent the waste of oil, gas, or geothermal resources and/or pollution	\$1,000

	§4.184 Permitted Recycling	
16 TAC §4.184(b)	Failure to recycle in accordance with Subchapter B of this title (relating to Commercial Recycling)	\$1,000
DIVISION 10. REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION		
	§4.190 Oil and Gas Waste Characterization and Documentation	
16 TAC §4.190(a)	Failure to characterizing and documenting the waste prior to transportation	\$1,000
	§4.193 Oil and Gas Waste Haulers	
16 TAC §4.193(a)	Hauling oil and gas waste without a valid waste hauler permit, and/or commingling other oil and gas wastes via vehicle	\$2,500
16 TAC §4.193(b)(1)(2)	Failure to hold necessary permits for wastes excluded from this section	\$1,000
16 TAC §4.193(e) (1)(2)(3)(4)(5)(6)(7)(8) (9)(10)(11)	Failure to operate in strict compliance with the instructions and conditions stated in the oil and gas waste hauler permit	\$2,500

Figure: 16 TAC §4.107(f)

Table 2. Calculation of Additional Guideline Penalty Amounts for Violations of 16 Tex. Admin. Code Chapter 4, relating Prevention of Pollution Cancellation of Certificate of Compliance; Severance

Length of Violation Low: < 3 mos. Medium: High: > 1 yr.	Production Value Low: < \$5,000 Medium: High: > \$100,000	Unresolved Severances Low: < 2 Medium: High: > 6	Basis of Severance N: non-pollution related Y: pollution related	Factor
low	low	low	N	1.0
low	low	medium	N	1.5
low	low	high	N	1.5
low	medium	low	N	1.5
low	medium	medium	N	3.5
low	medium	high	N	5.0
low	high	low	N	4.5
low	high	medium	N	7.0
low	high	high	N	7.5
medium	low	low	N	1.5
medium	low	medium	N	2.5
medium	low	high	N	3.5
medium	medium	low	N	3.5
medium	medium	medium	N	5.0
medium	medium	high	N	8.0
medium	high	low	N	8.5
medium	high	medium	N	9.0
medium	high	high	N	10.0
high	low	low	N	2.5
high	low	medium	N	3.5
high	low	high	N	3.5
high	medium	low	N	4.5
high	medium	medium	N	7.5
high	medium	high	N	8.0
high	high	low	N	10.0
high	high	medium	N	10.0
high	high	high	N	10.0
low	low	low	Y	1.5
low	low	medium	Y	2.0
low	low	high	Y	2.5
low	medium	low	Y	3.0
low	medium	medium	Y	5.0
low	medium	high	Y	7.5
low	high	low	Y	5.0

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 241 of 275

low	high	medium	Y	8.0
low	high	high	Y	8.5
medium	low	low	Y	2.0
medium	low	medium	Y	3.5
medium	low	high	Y	7.0
medium	medium	low	Y	7.0
medium	medium	medium	Y	7.5
medium	medium	high	Y	8.5
medium	high	low	Y	9.0
medium	high	medium	Y	9.5
medium	high	high	Y	10.0
high	low	low	Y	3.0
high	low	medium	Y	4.0
high	low	high	Y	5.0
high	medium	low	Y	5.0
high	medium	medium	Y	8.5
high	medium	high	Y	9.0
high	high	low	Y	10.0
high	high	medium	Y	10.0
high	high	high	Y	10.0

Figure 1: 16 TAC §4.107(g)

Table 3. Penalty Enhancements

Evidentiary Factors	Threatened or Actual Pollution	Safety Hazard	Severity of Violation
Agricultural land or sensitive wildlife Habitat	\$1,000 to \$5,000		
Endangered or threatened species	\$2,000 to \$10,000		
Bay, estuary or marine habitat	\$5,000 to \$25,000		
Minor surface and subsurface water source (minor aquifers designated by the Texas Water Development Board, intermittent or dry watercourses, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state)	\$2,500 to \$7,500		
Major surface and subsurface water source (major aquifers designated by the Texas Water Development Board, lakes, ponds, impounding reservoirs, springs, rivers, streams, creeks, marshes, wetlands, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state)	\$5,000 to \$25,000		
Impacted residential/public areas		\$1,000 to \$15,000	
Hazardous material release		\$2,000 to \$25,000	
Reportable incident/accident		\$5,000 to \$25,000	
Well in H ₂ S field		up to \$10,000	
Time out of compliance			\$100 to \$2,000 / month

Reckless conduct of operator			double total penalty
Intentional conduct of operator			triple total penalty

Figure 2: 16 TAC §4.107(g)

Table 4. Penalty Enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than \$10,000	\$1,000
Between \$10,000 and \$25,000	\$2,500
Between \$25,000 and \$50,000	\$5,000
Between \$50,000 and \$100,000	\$10,000
Over \$100,000	10% of total amount

Figure: 16 TAC §4.107(j)

Table 5. Penalty Calculation Worksheet

	Rule	General Description	Guideline Minimum Penalty Amount or Range	Penalty Tally
		§4.101. Prevention of Pollution		
1	16 TAC §4.101(a)	Pollution of surface or subsurface water	\$2,500 to \$10,000	\$
		§4.102. Responsibility for Oil and Gas Wastes		
2	16 TAC §4.102(a)(1)(2)(3)	Failure to provide and perform field testing as required by the Commission	\$2,500	\$
3	16 TAC §4.102(b)(c)(d)(f)(1)(2)	Failure to utilize the services of a carrier with a valid permit	\$2,500	\$
4	16 TAC §4.102(g)	Manage oil and gas wastes in a manner that violates Commission rules.	\$2,500	\$
		§4.103. Prohibited Waste Management Methods		
5	16 TAC §4.103(a)	Manage oil and gas wastes without a permit.	\$2,500	\$
6	16 TAC §4.103(b)	Improper disposal of oil and gas waste; enhance for actual or threatened pollution: Dry pit area	\$500 base penalty plus \$0.30/sq.ft.	\$
7	16 TAC §4.103(b)	Improper disposal of oil and gas waste; enhance for actual or threatened pollution: Wet pit area	\$500 base penalty plus \$0.50/sq.ft.	\$
8	16 TAC §4.103(c)(d)(e)(f)	Use of prohibited pits: Fresh water pit area	\$2,500 base plus \$0.25/sq.ft.	\$
9	16 TAC §4.103(c)(d)(e)(f)	Use of prohibited pits: Salt water or other fluid area	\$2,500 base plus \$0.75/sq.ft.	\$
		§4.111. Authorized Disposal Methods for Certain Wastes		
10	16 TAC §4.111(a)(b)(c)(d)	Improper waste disposal method for water condensate, inert oil and gas, low chloride water-based drilling fluid, and other oil and gas wastes that pertain land apply and landfarming	\$2,500	\$

11	16 TAC §4.111(d)(4)	Failure to maintains documentation for 3 years demonstrating closure requirements have been met	\$1,000	\$
		§4.112. Authorized Recycling		\$
12	16 TAC §4.112 (a)(1)	Improper use of the recycled treated fluid	\$2,500	\$
13	16 TAC §4.112 (a)(3)	Recycling of unauthorized oil and gas waste	\$2,500	\$
		§4.113. Authorized Pits		
14	16 TAC §4.113(a)	Failure to maintain authorized pits in compliance with the Commission	\$5,000	\$
15	16 TAC §4.113 (e)(5)	Improper use of pits other than what they are designated for	\$2,500	\$
		§4.114. Schedule A Authorized Pits		
16	16 TAC §4.114(1)(A)	Reserve pits: Fresh water pit area	\$2,500 base plus \$0.25/sq. ft.	\$
17	16 TAC §4.114(1)(A)	Reserve pits: Salt water or other fluid area	\$2,500 base plus \$0.75/sq. ft.	\$
18	16 TAC §4.114(1)(B)(2)(A)(B)(i)(ii)	Workover and other pits: Dry	\$2,500	\$
19	16 TAC §4.114(1)(B)(2)(A)(B)(i)(ii)	Workover and other pits: wet	\$5,000	\$
		§4.115. Schedule B Authorized Pits		
20	16 TAC §4.115	Produced water pit: Fresh water pit area	\$2,500 base plus \$0.25/sq.ft.	
21	16 TAC §4.115	Produced water pit: Salt water or other fluid area	\$2,500 base plus \$0.75/sq.ft	
		§4.122. Permit Renewals, Transfers, and Amendments		
22	16 TAC §4.122(b)(1)	Failure to apply for a renewal, transfer or amendments permits within Commission's time frames.	\$1,000	\$
		§4.123. Permit Modification, Suspension, and Termination		
23	16 TAC §4.123(b)(4)	The permittee has violated the terms and conditions of the permit or Commission rules	\$5,000	\$

24	16 TAC §4.123(b)(9)	The permittee failed to give the notice required by the Commission during the permit issuance, amendment, or renewal process	\$1,000	\$
		§4.128. Design and Construction		
25	16 TAC §4.128(b)(1)	Failure to only accept waste transported and delivered by a Commission-permitted waste hauler	\$2,500	\$
		§4.129. Operation		
26	16 TAC §4.129(b)(1)	Failure to receive only authorized waste	\$2,500	\$
27	16 TAC §4.129(b)(2)	Treated or untreated, waste placed directly on the ground	\$2,500	\$
28	16 TAC §4.129(b)(3)	Failure to maintained storage tanks, equipment, and on-site containment in a leak-free condition	\$2,500	\$
29	16 TAC §4.129(b)(4)	Failure to dispose spill of waste, chemical, or any other material within 24 hours in an authorized manner	\$2,500	\$
		§4.130. Reporting		
30	16 TAC §4.130 (d)	Failure to submit of monthly, quarterly, semi-annual, or annual reports, containing all requested information within the Commission's timeframe	\$1,000	\$
		§4.131. Monitoring		\$
31	16 TAC §4.131 (b)(4)(D)	Failure to report or indicate potential pollution, or the potential failure of the liner system to the Commission	\$2,500	\$
		§4.132. Closure		\$
32	16 TAC §4.132 (a)(b)(1)(2)(A)(B)(C)(D)(E) (F)	Failure to follow recommended closure procedures	\$2,500	\$
		§4.142. Operating Requirements Applicable to Commercial Facilities		
33	16 TAC §4.142(c)	Failure to develop and maintain a stormwater management plan to prevent stormwater from running onto the facility	\$2,500	\$
		§4.150. Additional Requirements Applicable to Permitted Pits		

34	16 TAC §4.150(e)	Failure to comply with containment requirements to prevent pollution of surface or subsurface water	\$2,500	\$
35	16 TAC §4.150(f)	Failure to report unauthorized release of oil and gas waste, treated fluid, or other substances from any pit	\$2,500	\$
		§4.151. Design and Construction of Permitted Pits		
36	16 TAC §4.151(b)(1)	Failure to comply with sign requirements.	\$1,000	\$
37	16 TAC §4.151(b)(2)	Failure to comply with freeboard requirements	\$2,500	\$
38	16 TAC §4.151(b)(3)	Failure to comply with liner requirements	\$2,500	\$
39	16 TAC §4.151(b)(3)(A)	Failure to maintain the integrity of the liner.	\$2,500	\$
40	16 TAC §4.151(b)(3)(C)	Brine pit permitted not constructed with a primary and secondary liner and a leakage detection system	\$2,500	\$
		§4.152. Monitoring of Permitted Pits		
41	16 TAC §4.152(a)(2)	Failure to install appropriate leak detection system	\$2,500	\$
42	16 TAC §4.152(b)(3)(A)(B)	Failure to monitor and report and repair all pits for liner failure	\$2,500	\$
		§4.153. Commercial Disposal Pits		\$
43	16 TAC §4.153(c)	Failure to monitor the pits after a post-closure period of no less than five years	\$2,500	\$
		§4.154. Closure of Permitted Pits		
44	16 TAC §4.154(1)	Failure to dewater and empty the pit within 120 days of cessation of use	Dry: \$2,500 base plus \$0.25 sq. ft.; wet: \$2,500 base plus \$0.75 sq. ft.	\$
45	16 TAC §4.154(2)	Failure to backfill and compacted the pit in a timely manner	Dry: \$2,500 base plus \$0.25 sq. ft.; wet: \$2,500 base plus \$0.75 sq. ft.	\$
46	16 TAC §4.154(3)	Failure to reseeded with vegetation natural to the region after closure	\$1,000	\$
		§4.161. Design and Construction Requirements for Landfarming and Landtreating Permits		
47	16 TAC §4.161(a)	Failure to obtain a Landfarm permit	\$5,000	\$

		§4.162. Operating Requirements for Landfarming and Landtreating Permits		
48	16 TAC §4.162(a) (b)	Failure comply and follow the operating requirements for Landfarm permit	\$5,000	\$
		§4.163. Monitoring		\$
49	16 TAC §4.163(a)(b)(c)(d)(e)	Failure to collect, test, monitor, analyze, remediate according to the requirements in the permit	\$1,000	\$
		§4.164. Closure		
50	16 TAC §4.164(a)	Failure to notify the Commission at least 45 days prior to commencing closure activities	\$1,000	\$
		§4.170. Additional Requirements for Reclamation Plants		
51	16 TAC §4.170(a) (9)	Failure to obtain a permit to reclaim unrefined hydrocarbons recovered from drilling mud	\$5,000	\$
		§4.171. Standard Permit Provisions		
52	16 TAC §4.171(b)	Failure to renew, transfer, or amend reclamation plant permits	\$2,500	\$
53	16 TAC §4.171(g)	Improper monitoring of a reclamation plant	\$2,500	\$
54	16 TAC §4.171(h)	Use of a satellite facility which is prohibited	\$2,500	\$
55	16 TAC §4.171(i)	Unpermitted reclamation using tanks	\$2,500	\$
		§4.172. Minimum Permit Provisions for Operations		
56	16 TAC §4.172(a)(1)	Failure to use authorized permit methods to reclaim tank bottoms and other oil and gas wastes	\$2,500	\$
		§4.173. Minimum Permit Provisions for Reporting		
57	16 TAC §4.173(d)	Failure to obtain a minor permit and provide an analysis of the disposable material to be performed	\$1,000	\$
		§4.181. Emergency Permits		
58	16 TAC §4.181(a)	Failure to apply for emergency permit to prevent the waste of oil, gas, or geothermal resources and/or pollution	\$1,000	\$
		§4.184. Permitted Recycling		
59	16 TAC §4.184(b)	Failure to recycle in accordance with Subchapter B of this title (relating to Commercial Recycling)	\$1,000	\$
		§4.190. Oil and Gas Waste Characterization and		

		Documentation		
60	16 TAC §4.190(a)	Failure to characterizing and documenting the waste prior to transportation	\$1,000	\$
		§4.193. Oil and Gas Waste Haulers		
61	16 TAC §4.193(a)	Hauling oil and gas waste without a valid waste hauler permit, and/or commingling other oil and gas wastes via vehicle	\$2,500	\$
62	16 TAC §4.193(b)(1)(2)	Failure to hold necessary permits for wastes excluded from this section	\$1,000	\$
63	16 TAC §4.193(e) (1)(2)(3)(4)(5)(6)(7)(8) (9)(10)(11)	Failure to operate in strict compliance with the instructions and conditions stated in the oil and gas waste hauler permit	\$2,500	\$
64	Subtotal of guideline penalty amounts from Table 1 (lines 1-63, inclusive)			\$
65	Reduction for settlement before hearing: up to 50% of line 64 amt.		_____ %	\$
66	Subtotal: amount shown on line 64 less applicable settlement reduction on line 65			\$
Penalty enhancement amounts for threatened or actual pollution from Table 3				
67	Agricultural land or sensitive wildlife habitat		\$1,000 to \$5,000	\$
68	Endangered or threatened species		\$2,000 to \$10,000	\$
69	Bay, estuary or marine habitat		\$5,000 to \$25,000	\$
70	Minor freshwater source (minor aquifer, seasonal watercourse)		\$2,500 to \$7,500	\$
71	Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)		\$5,000 to \$25,000	\$
Penalty enhancement amounts for safety hazard from Table 3				
72	Impacted residential/public areas		\$1,000 to \$15,000	\$
73	Hazardous material release		\$2,000 to \$25,000	\$
74	Reportable incident/accident		\$5,000 to \$25,000	\$
75	Well in H2S field		up to \$10,000	\$
Penalty enhancement amounts for severity of violation from Table 3				
76	Time out of compliance		\$100 to \$2,000 each month	\$
77	Subtotal: amount shown on line 66 plus all amounts on lines 67 through 76, inclusive			\$
Penalty enhancements for culpability of person charged from Table 3				
78	Reckless conduct of operator		double line 75 amount	\$

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 250 of 275

79	Intentional conduct of operator	triple line 75 amount	\$
Penalty enhancements for number of prior violations within past seven years from Table 4			
80	One	\$1,000	\$
81	Two	\$2,000	\$
82	Three	\$3,000	\$
83	Four	\$4,000	\$
84	Five or more	\$5,000	\$
Penalty enhancements for amount of penalties within past seven years from Table 4			
85	Less than \$10,000	\$1,000	\$
86	Between \$10,000 and \$25,000	\$2,500	\$
87	Between \$25, 000 and \$50,000	\$5,000	\$
88	Between \$50,000 and \$100,00	\$10,000	\$
89	Over \$100,000	10% of total amt.	\$
90	Subtotal: Line 66 amt. plus amts. on line 78 and/or 97 plus the amt. shown on any line from 80 through 89, inclusive		\$
91	Reduction for demonstrated good faith of person charged		\$
92	TOTAL PENALTY AMOUNT: amount on line 90 less any amount shown on line 91		\$

Figure: 16 TAC §4.111(a)

Limitation for Authorized Land Application of Water Condensate

Parameter	Method	Limitation
Benzene	EPA 8260 or 8021B	0.005 mg/L
Toluene	EPA 8260 or 8021B	1 mg/L
Ethylbenzene	EPA 8260 or 8021B	0.7 mg/L
Xylene	EPA 8260 or 8021B	10 mg/L

Figure: 16 TAC §4.115(i)

Standard Soil Sampling Closure Parameters		
If Waste is Removed from the Pit in Accordance with 16 TAC Chapter 4		
Constituent	Method (or equivalent)	Limit
pH	EPA Method 9045C	6 to 10 standard units
Chloride	SW-846 9056A	≤ 3,000 mg/kg
Total Petroleum Hydrocarbons	EPA SW-846 418.1	≤ 10,000 mg/kg or 1% by weight
BTEX	EPA Method 5035A/8021/8260B	≤ 30 mg/kg
Metals	EPA Method 6010/6020/7471A	
Arsenic		≤ 10 mg/kg
Barium		≤ 10,000 mg/kg
Cadmium		≤ 10 mg/kg
Chromium		≤ 100 mg/kg
Lead		≤ 200 mg/kg
Mercury		≤ 10 mg/kg
Selenium		≤ 10 mg/kg
Silver		≤ 200 mg/kg

Figure: 16 TAC §4.115(j)

Standard Waste Sampling Closure Parameters If Waste is Treated and Buried in the Pit in Accordance with 16 TAC Chapter 4		
Constituent	Method (or equivalent)	Limit
pH	EPA Method 9045C	6 to 10 standard units
Chloride - if the depth below the bottom of the pit to groundwater is ≤ 50 feet - if the depth below the bottom of the pit to groundwater is 51 feet to 100 feet - if the depth below the bottom of the pit to groundwater is > 100 feet	SW-846 9056A	$\leq 20,000$ mg/kg $\leq 40,000$ mg/kg $\leq 80,000$ mg/kg
Total Petroleum Hydrocarbons	EPA SW-846 418.1	$\leq 10,000$ mg/kg or 1% by weight
BTEX	EPA Method 5035A/8021/8260B	≤ 30 mg/kg
Metals - Arsenic - Barium - Cadmium - Chromium - Lead - Mercury - Selenium - Silver	EPA Method 6010/6020/7471A	≤ 10 mg/kg $\leq 10,000$ mg/kg ≤ 10 mg/kg ≤ 100 mg/kg ≤ 200 mg/kg ≤ 10 mg/kg ≤ 10 mg/kg ≤ 200 mg/kg

Figure: 16 TAC §4.163(d)

Landfarming, Landtreating, and Land Application Permits: Standard Soil Sampling Closure Parameters		
Parameter	Method (or equivalent)	Limitation
pH	EPA Method 9045C	6 to 10 standard units
Electrical Conductivity (EC)	LDNR Lab Procedures for Extraction and Analysis of E&P Waste	≤ 4.0 mmhos/cm
Sodium Adsorption Ratio (SAR)	Saturated Paste Method using EPA Method 300, 6010, or 6020	≤ 12
Cation-Exchange Capacity (CEC)	EPA Method 9080/9081	Site-specific based on background analytical data
TPH	EPA Method 5035A/TX1005	≤ 10,000 mg/kg or 1% by weight
Total Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) ¹	EPA Method 5035A/8021/8260B	≤ 30 mg/kg
Metals (Total)		
Arsenic	EPA Method 6010/6020/7471A	≤ 10 mg/kg
Barium	EPA Method 6010/6020/7471A	≤ 10,000 mg/kg
Cadmium	EPA Method 6010/6020/7471A	≤ 10 mg/kg
Chromium	EPA Method 6010/6020/7471A	≤ 100 mg/kg
Lead	EPA Method 6010/6020/7471A	≤ 200 mg/kg
Mercury	EPA Method 6010/6020/7471A	≤ 10 mg/kg
Selenium	EPA Method 6010/6020/7471A	≤ 10 mg/kg
Silver	EPA Method 6010/6020/7471A	≤ 200 mg/kg

¹ BTEX testing is only required for landtreating facilities.

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 255 of 275

Figure: 16 TAC §4.211(e)

Table 1. Penalty Guideline

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
	DIVISION 1. GENERAL; DEFINITIONS	
	§4.201 Purpose	
16 TAC §4.201(a)	Pollution of surface or subsurface water	\$2,500 to \$10,000
	§4.203 Responsibility for Management of Waste to be Recycled	
16 TAC §4.203(a)(b)	Failure to utilize the services of a carrier with a valid permit	\$2,500
16 TAC §4.203(c)	Failure to utilize the services of a commercial recycling facility that is permitted by the Commission	\$2,500
	§4.209 Permit Renewal	
16 TAC §4.209	Failure to transfer a permit without approval of the Commission	\$2,500
	DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING	
	§4.212 General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities	
16 TAC §4.212(a)(b)(c)(d)	Failure to obtain a permit for on lease commercial solid oil and gas waste recycling facilities	\$2,500
	§4.221 Minimum Permit Provisions for Operations	
16 TAC §4.221(a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for on-lease commercial solid oil and gas waste recycling	\$2,500
	§4.222 Minimum Permit Provisions for Monitoring	
16 TAC §4.222(a)(b)(c)(d)(e)	Failure to follow the Monitoring requirements for on-lease commercial solid oil and gas waste recycling	\$2,500
	§4.223 Minimum Permit Provisions for Closure	
16 TAC §4.223	Failure to follow recommended closure procedures	\$2,500

	§4.224 Permit Renewal	
16 TAC §4.224	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000
	DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING.	
	§4.230 General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling	
16 TAC §4.230 (a)(b)(c)(d)(e)	Failure to obtain a permit for off-Lease or Centralized commercial solid oil and gas waste recycling facilities	\$2,500
	§4.238 Notice	
16 TAC §4.238	Failure to follow notice requirements for off-lease or centralized commercial solid oil and gas waste recycling	2,500
	§4.239 General Permit Provisions	
16 TAC §4.239(a)	Failure to renew the permit for an off-lease or centralized commercial solid oil and gas waste recycling facility	\$1,000
16 TAC §4.239(c)	Failure to notify the surface owner of the tract upon which recycling will take place	\$1,000
	§4.242 Minimum Permit Provisions for Operations	
16 TAC §4.242 (a)(b)(c)	Failure to follow the operation requirements for off-lease centralized commercial solid oil and gas waste recycling	\$2,500
	§4.243 Minimum Permit Provisions for Monitoring	
16 TAC §4.243 (a)(b)(c)(d)	Failure to follow the Monitoring requirements for off-lease centralized commercial solid oil and gas waste recycling	\$2,500
	§4.244 Minimum Permit Provisions for Closure	
16 TAC §4.244	Failure to follow recommended closure procedures	2,500
	§4.245 Permit Renewal	
16 TAC §4.245	Failure to apply for a renewal, of the permit within Commission's time frames	1,000

	DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES.	
	§4.246 General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility	
16 TAC §4.246 (a)(b)(c)(d)(e)	Failure to obtain a permit for a Stationary Commercial Solid Oil and Gas Waste	\$2,500
	§4.254 Notice	
16 TAC §4.254 (a)(b)(c)	Failure to follow notice requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500
	§4.255 General Permit Provisions	
16 TAC §4.255 (a)(b)(c)	Failure to renew the permit for a Stationary Commercial Solid Oil and Gas Waste	\$1,000
	§4.258 Minimum Permit Provisions for Operations	
16 TAC §4.258 (a)(b)(c)	Failure to follow the operation requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500
	§4.259 Minimum Permit Provisions for Monitoring	
16 TAC §4.259 (a)(b)(c)(d)(e)	Failure to follow the Monitoring requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500
	§4.260 Minimum Permit Provisions for Closure	
16 TAC §4.2.60	Failure to follow recommended closure procedures	\$2,500
	§4.261 Permit Renewal	
16 TAC §4.2.61	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000
	DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID.	
	§4.262 General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid	
16 TAC §4.262(a)(b)(c)(d)(e)(f)	Failure to obtain a permit for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.270 Notice	
16 TAC §4.270(a)(b)	Failure to follow notice requirements for Off-Lease Commercial Recycling of Fluid	\$2,500

	§4.271 General Permit Provisions	
16 TAC §4.271(a)(b)(c)	Failure to renew the permit Off-Lease Commercial Recycling of Fluid	\$1,000
	§4.274 Minimum Permit Provisions for Operations	
16 TAC §4.274(a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.275 Minimum Permit Provisions for Monitoring	
16 TAC §4.275(a)(b)(c)	Failure to follow the Monitoring requirements for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.276 Minimum Permit Provisions for Closure	
16 TAC §4.276(a)(b)(c)(d)(e)(f)(g)(h)	Failure to follow recommended closure procedures	\$2,500
	§4.277 Permit Renewal	
16 TAC §4.277	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000
	DIVISION 6 REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF FLUID	
	§4.278 General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility	
16 TAC §4.278(a)(b)(c)(d)(e)(f)	Failure to obtain a permit for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.286 Notice	
16 TAC §4.286(a)(b)(c)	Failure to follow notice requirements for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.287 General Permit Provisions	
16 TAC §4.287(a)(b)(c)	Failure to renew the permit Off-Lease Commercial Recycling of Fluid	\$1,000
	§4.290 Minimum Permit Provisions for Operations	
16 TAC §4.290(a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.291 Minimum Permit Provisions for Monitoring	
16 TAC §4.291(a)(b)(c)	Failure to follow the Monitoring requirements for Off-Lease Commercial Recycling of Fluid	\$2,500
	§4.292 Minimum Permit Provisions for Closure	

16 TAC §4.292(a)(b)(c)(d)(e)(f)(g)(h)	Failure to follow recommended closure procedures	\$2,500
§4.293 Permit Renewal		
16 TAC §4.293	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000

Figure: 16 TAC §4.211(f)

Table 2. Calculation of Additional Guideline Penalty Amounts for Violations of 16 Tex. Admin. Code Chapter 4, relating Prevention of Pollution Cancellation of Certificate of Compliance; Severance

Length of Violation Low: < 3 mos. Medium: High: > 1 yr.	Production Value Low: < \$5,000 Medium: High: > \$100,000	Unresolved Severances Low: < 2 Medium: High: > 6	Basis of Severance N: non-pollution related Y: pollution related	Factor
low	low	low	N	1.0
low	low	medium	N	1.5
low	low	high	N	1.5
low	medium	low	N	1.5
low	medium	medium	N	3.5
low	medium	high	N	5.0
low	high	low	N	4.5
low	high	medium	N	7.0
low	high	high	N	7.5
medium	low	low	N	1.5
medium	low	medium	N	2.5
medium	low	high	N	3.5
medium	medium	low	N	3.5
medium	medium	medium	N	5.0
medium	medium	high	N	8.0
medium	high	low	N	8.5
medium	high	medium	N	9.0
medium	high	high	N	10.0
high	low	low	N	2.5
high	low	medium	N	3.5
high	low	high	N	3.5
high	medium	low	N	4.5
high	medium	medium	N	7.5
high	medium	high	N	8.0
high	high	low	N	10.0
high	high	medium	N	10.0
high	high	high	N	10.0
low	low	low	Y	1.5
low	low	medium	Y	2.0

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 261 of 275

low	low	high	Y	2.5
low	medium	low	Y	3.0
low	medium	medium	Y	5.0
low	medium	high	Y	7.5
low	high	low	Y	5.0
low	high	medium	Y	8.0
low	high	high	Y	8.5
medium	low	low	Y	2.0
medium	low	medium	Y	3.5
medium	low	high	Y	7.0
medium	medium	low	Y	7.0
medium	medium	medium	Y	7.5
medium	medium	high	Y	8.5
medium	high	low	Y	9.0
medium	high	medium	Y	9.5
medium	high	high	Y	10.0
high	low	low	Y	3.0
high	low	medium	Y	4.0
high	low	high	Y	5.0
high	medium	low	Y	5.0
high	medium	medium	Y	8.5
high	medium	high	Y	9.0
high	high	low	Y	10.0
high	high	medium	Y	10.0
high	high	high	Y	10.0

Figure 1: 16 TAC §4.211(g)

Table 3. Penalty Enhancements

Evidentiary Factors	Threatened or Actual Pollution	Safety Hazard	Severity of Violation
Agricultural land or sensitive wildlife habitat	\$1,000 to \$5,000		
Endangered or threatened species	\$2,000 to \$10,000		
Bay, estuary or marine habitat	\$5,000 to \$25,000		
Minor surface and subsurface water source (minor aquifers designated by the Texas Water Development Board, intermittent or dry watercourses, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state)	\$2,500 to \$7,500		
Major surface and subsurface water source (major aquifers designated by the Texas Water Development Board, lakes, ponds, impounding reservoirs, springs, rivers, streams, creeks, marshes, wetlands, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state)	\$5,000 to \$25,000		
Impacted residential/public areas		\$1,000 to \$15,000	
Hazardous material release		\$2,000 to \$25,000	
Reportable incident/accident		\$5,000 to \$25,000	
Well in H ₂ S field		up to \$10,000	
Time out of compliance			\$100 to \$2,000 / month
Reckless conduct of operator			double total penalty
Intentional conduct of operator			triple total penalty

Figure 2: 16 TAC §4.211(g)

Table 4. Penalty Enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than \$10,000	\$1,000
Between \$10,000 and \$25,000	\$2,500
Between \$25,000 and \$50,000	\$5,000
Between \$50,000 and \$100,000	\$10,000
Over \$100,000	10% of total amount

Figure: 16 TAC §4.211(j)

Table 1. Penalty Calculation Worksheet

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range	Penalty Tally
		§4.201 Purpose		
1	16 TAC §4.201(a)	Pollution of surface or subsurface water	\$2,500 to \$10,000	\$
		§4.203 Responsibility for Management of Waste to be Recycled		
2	16 TAC §4.203(a)(b)	Failure to utilize the services of a carrier with a valid permit	\$2,500	\$
3	16 TAC §4.203(c)	Failure to utilize the services of a commercial recycling facility that is permitted by the Commission	\$2,500	\$
		§4.209 Permit Renewal		
4	16 TAC §4.209	Failure to transfer a permit without approval of the Commission	\$2,500	\$
		§4.212 General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities		
5	16 TAC §4.212 (a)(b)(c)(d)	Failure to obtain a permit for on lease commercial solid oil and gas waste recycling facilities	\$2,500	\$
		§4.221 Minimum Permit Provisions for Operations		
6	16 TAC §4.221 (a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for on-lease commercial solid oil and gas waste recycling	\$2,500	\$
		§4.222 Minimum Permit Provisions for Monitoring		
7	16 TAC §4.222 (a)(b)(c)(d)(e)	Failure to follow the Monitoring requirements for on-lease commercial solid oil and gas waste recycling	\$2,500	\$
		§4.223 Minimum Permit Provisions for Closure		
8	16 TAC §4.223	Failure to follow recommended closure procedures	\$2,500	\$
		§4.224 Permit Renewal		
9	16 TAC §4.224	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000	\$
		§4.230 General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas		

		Waste Recycling		
10	16 TAC §4.230 (a)(b)(c)(d)(e)	Failure to obtain a permit for off-Lease or Centralized commercial solid oil and gas waste recycling facilities	\$2,500	\$
		§4.238 Notice		
11	16 TAC §4.238	Failure to follow notice requirements for off-lease or centralized commercial solid oil and gas waste recycling	\$2,500	\$
		§4.239 General Permit Provisions		
12	16 TAC §4.239(a)	Failure to renew the permit for an off-lease or centralized commercial solid oil and gas waste recycling facility	\$1,000	\$
13	16 TAC §4.239(c)	Failure to notify the surface owner of the tract upon which recycling will take place	\$1,000	\$
		§4.242 Minimum Permit Provisions for Operations		
14	16 TAC §4.242 (a)(b)(c)	Failure to follow the operation requirements for off-lease centralized commercial solid oil and gas waste recycling	\$2,500	
		§4.243 Minimum Permit Provisions for Monitoring		
15	16 TAC §4.243 (a)(b)(c)(d)	Failure to follow the Monitoring requirements for off-lease centralized commercial solid oil and gas waste recycling	\$2,500	\$
		§4.244 Minimum Permit Provisions for Closure		
16	16 TAC §4.244	Failure to follow recommended closure procedures.	\$2,500	\$
		§4.245 Permit Renewal		
17	16 TAC §4.245	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000	\$
		§4.246 General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility		
18	16 TAC §4.246 (a)(b)(c)(d)(e)	Failure to obtain a permit for a Stationary Commercial Solid Oil and Gas Waste	\$2,500	\$
		§4.254 Notice		
19	16 TAC §4.254 (a)(b)(c)	Failure to follow notice requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500	\$
		§4.255 General Permit Provisions		
20	16 TAC §4.255 (a)(b)(c)	Failure to renew the permit for a Stationary Commercial Solid Oil and Gas Waste	\$1,000	\$
		§4.258 Minimum Permit Provisions for Operations		
21	16 TAC §4.258 (a)(b)(c)	Failure to follow the operation requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500	\$

		§4.259 Minimum Permit Provisions for Monitoring		
22	16 TAC §4.259 (a)(b)(c)(d)(e)	Failure to follow the Monitoring requirements for a Stationary Commercial Solid Oil and Gas Waste	\$2,500	\$
		§4.260. Minimum Permit Provisions for Closure		
23	16 TAC §4.260	Failure to follow recommended closure procedures	\$2,500	\$
		§4.261 Permit Renewal		
24	16 TAC §4.261	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000	\$
		§4.262 General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid		
25	16 TAC §4.262 (a)(b)(c)(d)(e)(f)	Failure to obtain a permit for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.270 Notice		
26	16 TAC §4.270(a)(b)	Failure to follow notice requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.271 General Permit Provisions		
27	16 TAC §4.271 (a)(b)(c)	Failure to renew the permit Off-Lease Commercial Recycling of Fluid	\$1,000	\$
		§4.274 Minimum Permit Provisions for Operations		
28	16 TAC §4.274 (a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.275 Minimum Permit Provisions for Monitoring		
29	16 TAC §4.275 (a)(b)(c)	Failure to follow the Monitoring requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.276 Minimum Permit Provisions for Closure		
30	16 TAC §4.276 (a)(b)(c)(d)(e)(f)(g)(h)	Failure to follow recommended closure procedures	\$2,500	\$
		§4.277 Permit Renewal		
31	16 TAC §4.277	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000	\$
		§4.278 General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility		
32	16 TAC §4.278	Failure to obtain a permit for Off-Lease Commercial	\$2,500	\$

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 267 of 275

	(a)(b)(c)(d)(e)(f)	Recycling of Fluid		
		§4.286 Notice		
33	16 TAC §4.286 (a)(b)(c)	Failure to follow notice requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.287 General Permit Provisions		
34	16 TAC §4.287 (a)(b)(c)	Failure to renew the permit Off-Lease Commercial Recycling of Fluid	\$1,000	\$
		§4.290 Minimum Permit Provisions for Operations		
35	16 TAC §4.290 (a)(b)(c)(d)(e)(f)	Failure to follow the operation requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.291 Minimum Permit Provisions for Monitoring		
36	16 TAC §4.291(a)(b)(c)	Failure to follow the Monitoring requirements for Off-Lease Commercial Recycling of Fluid	\$2,500	\$
		§4.292 Minimum Permit Provisions for Closure		
37	16 TAC §4.292 (a)(b)(c)(d)(e)(f)(g)(h)	Failure to follow recommended closure procedures	\$2,500	\$
		§4.293 Permit Renewal		
38	16 TAC §4.293	Failure to apply for a renewal, of the permit within Commission's time frames	\$1,000	\$
39	Subtotal of guideline penalty amounts from Table 1 (lines 1-38, inclusive)			\$
40	Reduction for settlement before hearing: up to 50% of line 39 amt.		_____ %	\$
41	Subtotal: amount shown on line 39 less applicable settlement reduction on line 40			\$
Penalty enhancement amounts for threatened or actual pollution from Table 3				
42	Agricultural land or sensitive wildlife habitat		\$1,000 to \$5,000	\$
43	Endangered or threatened species		\$2,000 to \$10,000	\$
44	Bay, estuary or marine habitat		\$5,000 to \$25,000	\$
45	Minor freshwater source (minor aquifer, seasonal watercourse)		\$2,500 to \$7,500	\$
46	Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)		\$5,000 to \$25,000	\$
Penalty enhancement amounts for safety hazard from Table 3				

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 268 of 275

47	Impacted residential/public areas	\$1,000 to \$15,000	\$
48	Hazardous material release	\$2,000 to \$25,000	\$
49	Reportable incident/accident	\$5,000 to \$25,000	\$
50	Well in H2S field	up to \$10,000	\$
Penalty enhancement amounts for severity of violation from Table 3			
51	Time out of compliance	\$100 to \$2,000 each month	\$
52	Subtotal: amount shown on line 41 plus all amounts on lines 32 through 51, inclusive		\$
Penalty enhancements for culpability of person charged from Table 3			
53	Reckless conduct of operator	double line 108 amount	\$
54	Intentional conduct of operator	triple line 108 amount	\$
Penalty enhancements for number of prior violations within past seven years from Table 4			
55	One	\$1,000	\$
56	Two	\$2,000	\$
57	Three	\$3,000	\$
58	Four	\$4,000	\$
59	Five or more	\$5,000	\$
Penalty enhancements for amount of penalties within past seven years from Table 4			
60	Less than \$10,000	\$1,000	\$
61	Between \$10,000 and \$25,000	\$2,500	\$
62	Between \$25, 000 and \$50,000	\$5,000	\$
63	Between \$50,000 and \$100,00	\$10,000	\$
64	Over \$100,000	10% of total amt.	\$
65	Subtotal: Line 41 amt. plus amts. on line 53 and/or 54 plus the amt. shown on any line from 55 through 64, inclusive		\$
66	Reduction for demonstrated good faith of person charged		\$
67	TOTAL PENALTY AMOUNT: amount on line 65 less any amount shown on line 66		\$

Figure: 16 TAC §4.275(a)(6)

FIGURE 1: PARAMETERS AND UNITS FOR GROUNDWATER MONITORING	
PARAMETER	UNITS
Static Water Level	Feet (ft)
Total Depth	ft
pH EPA Method 150.1, 150.2, or equivalent	s.u
Total Dissolved Solids (TDS) EPA Method 2540C or equivalent	mg/L
Total Petroleum Hydrocarbon (TPH) Method TX1005	mg/L
Benzene EPA Method 602 or equivalent	mg/L
Soluble Cations: Calcium, Magnesium, Potassium, and Sodium EPA Method 6010/6020 or equivalent	mg/L
Soluble Anions: Bromides, Carbonates, Chlorides, Nitrates, and Sulfates EPA Method 300/9056 or equivalent	mg/L

Figure: 16 TAC §4.276(d)(1)

FIGURE 1: STANDARD SOIL SAMPLING CLOSURE PARAMETERS	
PARAMETER	LIMITATION
pH <i>EPA Method 9045C or equivalent</i>	6 to 10 standard units
Chlorides	≤ 3,000 mg/kg
Total Petroleum Hydrocarbons (TPH) <i>EPA Method 5035A/TX1005</i>	≤ 10,000 mg/kg or 1% by weight
Total benzyne, Toluene, Ethylbenzene, Xylenes (BTEX) <i>EPA Method 5035A/8021/8260B or equivalent</i>	≤ 30 mg/kg
Metals (Total) <i>EPA Method 6010/6020/7471A or equivalent</i> Arsenic Barium Cadmium Chromium Lead Mercury Selenium Silver	≤ 10.00 mg/kg ≤ 10,000 mg/kg ≤ 10 mg/kg ≤ 100 mg/kg ≤ 200 mg/kg ≤ 10 mg/kg ≤ 10 mg/kg ≤ 200 mg/kg

Figure: 16 TAC §4.291(a)(6)

FIGURE 1: PARAMETERS AND UNITS FOR GROUNDWATER MONITORING	
PARAMETER	UNITS
Static Water Level	Feet (ft)
Total Depth	ft
pH EPA Method 150.1, 150.2, or equivalent	s.u
Total Dissolved Solids (TDS) EPA Method 2540C or equivalent	mg/L
Total Petroleum Hydrocarbon (TPH) Method TX1005	mg/L
Benzene EPA Method 602 or equivalent	mg/L
Soluble Cations: Calcium, Magnesium, Potassium, and Sodium EPA Method 6010/6020 or equivalent	mg/L
Soluble Anions: Bromides, Carbonates, Chlorides, Nitrates, and Sulfates EPA Method 300/9056 or equivalent	mg/L

Figure: 16 TAC §4.292(d)(1)

FIGURE 1: STANDARD SOIL SAMPLING CLOSURE PARAMETERS	
PARAMETER	LIMITATION
pH <i>EPA Method 9045C or equivalent</i>	6 to 10 standard units
Chlorides	≤ 3,000 mg/kg
Total Petroleum Hydrocarbons (TPH) <i>EPA Method 5035A/TX1005</i>	≤ 10,000 mg/kg or 1% by weight
Total benzyne, Toluene, Ethylbenzene, Xylenes (BTEX) <i>EPA Method 5035A/8021/8260B or equivalent</i>	≤ 30 mg/kg
Metals (Total) <i>EPA Method 6010/6020/7471A or equivalent</i>	
Arsenic	≤ 10.00 mg/kg
Barium	≤ 10,000 mg/kg
Cadmium	≤ 10 mg/kg
Chromium	≤ 100 mg/kg
Lead	≤ 200 mg/kg
Mercury	≤ 10 mg/kg
Selenium	≤ 10 mg/kg
Silver	≤ 200 mg/kg

Figure: 16 TAC §4.302(c)(1)

FIGURE 1: PARAMETERS AND LIMITATIONS FOR ROADBASE	
PARAMETER	LIMITATION
Minimum Compressive Strength by <i>ASTM D 698</i> , <i>ASTM D 1557</i> , or <i>TxDOT Methods Tex-113-E</i> , <i>Tex-120-E</i> , <i>Tex-121-E</i> , <i>Tex-117-E</i> or equivalent	35 psi
Synthetic Precipitation Leaching Procedure (SPLP) <i>EPA Method 1312</i> Metals <i>EPA Method 6010</i> , <i>6020</i> , or <i>7471A</i> Arsenic Barium Cadmium Chromium Lead Mercury Selenium Silver Zinc	≤ 5.00 mg/L ≤ 100.0 mg/L ≤ 1.00 mg/L ≤ 5.00 mg/L ≤ 5.00 mg/L ≤ 0.20 mg/L ≤ 1.00 mg/L ≤ 5.00 mg/L ≤ 5.00 mg/L
Benzene <i>EPA Method 1312</i> , <i>8021</i> , or <i>8260B</i>	≤ 0.50 mg/L
Leachate Test ² Total Chlorides Total Petroleum Hydrocarbons (TPH) pH	≤ 700 mg/L ≤ 100 mg/L 6-12.49 s.u.

²Use the methodology described in "Laboratory Procedures for Analysis of Exploration and Production Waste," Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, May 2005, or similar.

Figure: 16 TAC §4.302(c)(2)

FIGURE 2: PARAMETERS AND LIMITATIONS FOR REUSABLE PRODUCT	
PARAMETER	LIMITATION
Moisture Content <i>ASTM D2216</i> or equivalent	<50% (by weight) or zero free moisture
pH ³ <i>EPA Method 9045</i> or equivalent	6.5 - 9 s.u.
Chlorides	≤ 3,000 mg/kg
Sodium Adsorption Ratio (SAR) ²	≤ 12
Exchangeable Sodium Percentage (ESP) ²	≤ 15
Total Barium ²	≤ 100,000 ppm
LDNR Leachate Test Method, 1:4 Solid:Solution ⁴ TPH ² Chlorides ²	≤ 10.0 mg/L ≤ 500 mg/L
Leachable Metals ² <i>EPA Method SW-846, 6010, 6020, 7000, 7470, or 7471</i> Arsenic Barium Cadmium Chromium Copper Lead Mercury Molybdenum Nickel Selenium Silver Zinc	≤ 0.5 mg/L ≤ 10.0 mg/L ≤ 0.1 mg/L ≤ 0.5 mg/L ≤ 0.5 mg/L ≤ 0.5 mg/L ≤ 0.02 mg/L ≤ 0.5 mg/L ≤ 0.5 mg/L ≤ 0.1 mg/L ≤ 0.5 mg/L ≤ 5.0 mg/L
TCLP Benzene <i>EPA Method SW-846/1311/8021/8260B</i>	≤ 0.50 mg/L

³ In addition to the criteria set forth, exploration and production waste, when chemically treated (fixated) shall be acceptable as reusable material with a pH range of 6.5 to 12 s.u. and an electrical conductivity of up to 50 mmhos/cm, provided such reusable material passes leachate testing requirements for chlorides and metals, and dependent on site conditions.

⁴ Use the methodology described in "Laboratory Procedures for Analysis of Exploration and Production Waste," Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, May 2005, or similar.

Railroad Commission of Texas
16 TAC Chapter 4--Environmental Protection

Page 275 of 275