

**TITLE 16**

ECONOMIC REGULATION

**PART 1**

RAILROAD COMMISSION OF TEXAS

**CHAPTER 3**

OIL AND GAS DIVISION

**RULE §3.30**

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

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

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEQ to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

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

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

(b) General agency jurisdictions.

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

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal, solid wastes.

(i) Under Texas Health and Safety Code, §361.003(34), solid waste under the jurisdiction of the TCEQ is defined to include "garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities."

(ii) Under Texas Health and Safety Code, §361.003(34), the definition of solid waste excludes "material which results from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code. . . ."

(iii) Under Texas Health and Safety Code, §361.003(34), the definition of solid waste includes the following until the United States Environmental Protection Agency (EPA) delegates its authority under the Resource Conservation and Recovery Act, 42 United States Code (U.S.C.) §6901, et seq., (RCRA) to the RRC: "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the EPA. . . ."

(iv) After delegation of RCRA authority to the RRC, the definition of solid waste (which defines TCEQ's jurisdiction) will not include hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, or reservoir pressure maintenance or repressurizing plants. The term natural gas or natural gas liquids processing plant refers to a plant the primary function of which is the extraction of natural gas liquids from field gas or

fractionation of natural gas liquids. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment is considered a part of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. Further, a pressure maintenance or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurization) in a natural gas recycling project. A compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system is not a pressure maintenance or repressurizing plant.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC.

(ii) Storm water. TCEQ has jurisdiction over storm water discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

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

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

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

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

(iii) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications

for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

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

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC.

Injection wells under TCEQ's jurisdiction are identified in 30 TAC §331.11 (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(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 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) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(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.

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