

Railroad Commission of Texas: Temporary Exception Orders



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TEXAS LAND & MINERAL
OWNERS ASSOCIATION

PROTECTING AND ENHANCING PRIVATE PROPERTY RIGHTS

Overview of Topics

- Railroad Commission Enforcement Section
 - ❖ Legislative Sunset Review
- Gas Flaring Trends
- Railroad Commission Temporary Exception Orders to
 - ❖ Statewide Rule 8
 - ❖ Statewide Rule 13
 - ❖ Statewide Rule 14
 - ❖ Statewide Rule 78
 - ❖ Statewide Rule 95
 - ❖ Statewide Rule 107

Enforcement of Violations

➤ 2017 Sunset Review:

- ❖ Directs Commission to develop plan to assess and minimize damages to the environment.

Risk Factor (In Priority Order)	Impact	Possibility
Known Compliance Issues (Complaints, incidents, emergencies, etc.)	High	High
Length of time since last inspection (Minimum requirement: once every five years)	High/Medium	High
Proximity to Public or Sensitive Areas	High	Medium
Compliance History	Medium	High
Major Safety/Pollution Prevention Activities (Notices of well plugging, MIT, surface casing, etc.)	Medium	Medium
Area Knowledge/Unique District Office Concerns	Low	Medium
Routine/General Inspection Needs	Low	Low

Enforcement of Violations

Major safety/pollution prevention activities (non-sensitive areas): Includes safety and pollution prevention activities and lease/facility inspections in non-sensitive areas.

- Plugging of wells
- Setting and cementing of surface casing
- Reportable spills
- Drilling rig inspections/hydraulic fracturing operations in sensitive areas
- Mechanical-integrity testing
- SWR 36 inspections
- General complaints (required to be investigated within 24-72 hours unless other arrangements are made with the complainant)
- Commercial disposal operations (UIC wells and surface facilities, such as landfarms and pits)
- Minor permits

Enforcement of Violations: Major Violations

Appendix B: Definition of a Major Violation

A major violation is a safety or pollution related violation that causes a significant impact to public safety and/or the environment, is accompanied by conditions that indicate a significant impact to public safety and/or the environment is imminent, or is the result of deliberate disregard of Commission rules and regulations related to public safety or environmental protection.

Enforcement of Violations: Major Violations

➤ 11 named “major violations,” including, but not limited to:

- 16 Texas Administrative Code § 3.8(d)(1)—An unauthorized discharge of oil or gas waste into a sensitive area. A sensitive area is defined by 16 Texas Administrative Code § 3.91(a)(2) as the presence of factors, whether one or more, that make an area vulnerable to pollution. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas. Statewide Rule 8(d)(1).

Enforcement of Violations: Settlement Negotiations

- Typically limited to 50% of the SWR 107 penalty guidelines, but:

Legal Enforcement's primary goals are to achieve compliance and assess appropriate administrative penalties for proven violations. Legal Enforcement achieves this goal either through settlement, or a hearing. Based on the severity of the violation and/or the operator's history of prior violations, Legal Enforcement may initiate the process with reasonable attempts to settle the matter through voluntary compliance and reduced administrative penalties. The penalty guidelines provide a flexible structure for most—but not all—violations. See 16 Texas Administrative Code § 3.107. The Commission is authorized to assess administrative penalties up to \$10,000 per day per violation. See Tex. Nat. Res. Code § 81.0531(b). Legal Enforcement consults with the regulatory division to determine its penalty recommendation. Operators that comply with the settlement provisions enter an Agreed Order with Legal Enforcement that is submitted for the Commission's approval.

Enforcement of Violations: Comment Period

- Full copy of the plan is available on the Commission's website.
- Comment period closed on May 21, at 5 p.m.

Commissioner Craddick's Motion: Dewatering Pits

- Effective May 5, 2020, for 1 year, unless otherwise extended:

Statewide Rule 8

The Commission hereby grants an exception to 16 Texas Administrative Code § 3.8(d)(4)(H). As of the effective date of this document, a person maintaining 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 (collectively “authorized pit(s)”) may submit a notification to the appropriate Commission District Office of an extension of the deadline to dewater, backfill, and compact the authorized pit.

The operator shall maintain the pit so that all fluids are confined to the pit at all times, the landowner consents to the extended deadlines (or the operator provides an affidavit or other written statement attesting that no landowner consent is required), and the pit is otherwise maintained in compliance with all applicable Commission statutes and rules.

Commissioner Craddick's Motion: Alternative Tubing/Casing Programs

- Effective May 5, 2020, for 1 year, unless otherwise extended:

Statewide Rule 13

The Commission hereby grants an exception to 16 Texas Administrative Code § 3.13(d). As of the effective date of this document, Staff may administratively grant an exception to 16 Texas Administrative Code § 3.13 not to exceed a period of 365 days. No other provisions of 16 Texas Administrative Code § 3.13(d), other than the exception to the 180-day limitation, are affected by this exception.

Commissioner Craddick's Motion: Well Plugging Extensions/Shut-In Wells

- Effective May 5, 2020, for 1 year, unless otherwise extended:

Statewide Rule 14

The Commission hereby grants an exception to 16 Texas Administrative Code § 3.14(b)(2). As of the effective date of this document, plugging operations on wells reporting production in February 2020 and subsequently shut-in (no reported production from March 1, 2020 – March 1, 2021), shall commence no later than two (2) years after drilling or operations cease.

Commissioner Craddick's Motion: Legal Enforcement

- Effective May 5, 2020, for 1 year, unless otherwise extended:

Statewide Rule 107

The Commission hereby grants an exception to 16 Texas Administrative Code § 3.107(b). As of the effective date of this document, the Commission's Legal Enforcement Section may recommend administrative penalties in an amount less than the minimum penalties listed in 16 Texas Administrative Code § 3.107 for violations of Commission rules occurring between March 1, 2020 and March 1, 2021. In addition, the Legal Enforcement Section shall continue to seek compliance for violations of Commission rules.

Commissioner Craddick's Motion: Fees Waived

➤ To encourage alternative, additional oil storage capacity:

The Commission hereby grants an exception to 16 Texas Administrative Code § 3.78 for the following fees:

- The fee required to be filed with a Form P-17 (Application for Permit Exception to Statewide Rules 26 and/or 27). *See* 16 Tex. Admin. Code § 3.78(b)(4).
- The fee required to be filed with a Form W-14 (Application to Dispose Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas). *See* 16 Tex. Admin. Code § 3.78(b)(6).
- The fee required to be filed with a Form H-1 (Application to Inject Fluid into a Reservoir Productive of Oil & Gas). *See* 16 Tex. Admin. Code § 3.78(b)(7)
- The fee required to be filed with a Form H-4 (Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility). *See* 16 Tex. Admin. Code § 3.78(b)(7).
- The fee required to be filed with an application for exception to the surface equipment removal requirements, Form W-3C (Certification of Surface Equipment Removal for an Inactive Well). *See* 16 Tex. Admin. Code § 3.78(b)(4).

Commissioner Craddick's Motion: Underground Storage

- Unprecedented; feedstock typically stored in salt caverns:

An applicant for an underground hydrocarbon storage facility located in a geological formation other than an underground salt formation shall be required to demonstrate that the proposed storage facility will be created, operated, and maintained in a manner that will prevent waste of stored crude oil, uncontrolled escape of crude oil, pollution of subsurface water, and danger to life or property. *See* 16 Tex. Admin. Code § 3.95(d)(1); *see also* Tex. Nat. Res. Code § 91.202. An application to store crude oil in a formation other than an underground salt formation will need to demonstrate that the formation is confined so as to prevent the waste or uncontrolled escape of crude oil.

Commissioner Craddick's Motion: Underground Storage

- May use any formation, if suitable and will contain storage.
- Waives hearing requirement.
- Notice and opportunity for hearing to certain affected person, including surface owners, if protest received.
 - ❖ Notice period unclear.
- Stored oil must be removed within 5 years

Commissioner Craddick's Motion: Underground Storage

- Common law uncertainties:
 - ❖ Implied easement under oil and gas lease to use surface extend to underground storage?
 - ❖ Require surface use agreement?
 - ❖ Trespass?
- Statutory waste uncertainties:
 - ❖ "Waste," as defined by TNRC, would most likely prohibit storage.
 - ❖ I.e., recover all oil stored? Economic waste?

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Flaring Trends

- Governed by Rule 32
 - ❖ May flare in certain instances to conduct well testing after completion.
 - ❖ 180-day administrative exception.
 - ❖ >180-day flare requires notice and hearing.
- FY 2019
 - ❖ 6,972 exceptions granted.
- FY 2018
 - ❖ 5,488 exceptions granted.

Flaring Trends

- Exceptions needed in the event of pipeline system disruption, maintenance operations, or when infrastructure unavailable.
- Historically, the Commission examined only the “gas stream” of a well(s) to determine economic feasibility.
 - ❖ “Big” oil wells without pipeline infrastructure granted exceptions to flare based upon marginal gas revenue v. cost to construct infrastructure.

Flaring Trends: Application of EXCO

- Case of first impression; August 2019.
- EXCO operates 71 oil wells in Dimmit and Zavala Counties.
- Pipeline infrastructure owned by Williams connected to EXCO's wells.
- EXCO applies for an exception, and Williams protested the application.
- Williams claimed EXCO not entitled by law to permit because system available to EXCO, and Williams/EXCO could contract to use system.

Flaring Trends: Application of EXCO

- Approximately \$500k worth of oil production/day, compared to \$10k worth of gas production/day.
- Economics of Williams' proposed contract uneconomic for EXCO to use Williams as gatherer.
- Pipeline infrastructure owned by Williams connected to some EXCO's wells, but not all, including the well which was subject of hearing
- Commissioners Sitton and Craddick voted to approve exception.
- Chairman Christian voted to deny the exception, expressing significant concerns regarding the amount of resources flared in Texas.

Flaring Trends: Application of EXCO

- EXCO's current exception to flare expires July 6, 2020, at which time it must send notice of application and request a hearing to extend.
- Undetermined whether Williams will protest.
- Commissioner Sitton primaried.
 - ❖ Jim Wright (R); Chrysta Castaneda (D)

Flaring Trends: The Candidates

- Wright (R) appears to be in favor of flaring:
 - ❖ “If you do away with flaring today with no other technology, that would shut our oil business down and if you’re not producing oil, Texans don’t have jobs.”
- Castaneda (D) appears to be in favor of flaring:
 - ❖ “Might as well be burning cash . . . Texans deserve someone who will enforce the law and work for all of us," she said. "Let's stop wasting energy.”

Questions?

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