



# TEXAS LAND & MINERAL OWNERS ASSOCIATION

## OFFICIAL NEWSLETTER

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### RAILROAD COMMISSION OF TEXAS CONSIDERS PRORATIONING OIL PRODUCTION FOR THE FIRST TIME IN 50 YEARS

In late March, as stay at home orders began to impact the demand for oil products and other factors started impacting the price of oil futures, Pioneer and Parsley Energy filed a motion at the Railroad Commission of Texas asking the Commissioners to consider prorating oil production in Texas. Their specific ask was to “conduct a hearing to determine whether the waste of oil and gas is taking place in Texas or is reasonably imminent and, if so, then adopt any rule or order to correct, prevent, or lessen the waste.”

The Railroad Commission requested comments on the motion and held a virtual meeting with testimony on April 14, 2020. TLMA submitted comments and testified. The hearing was over ten hours long and witnesses providing testimony included operators of all sizes, companies from all areas of the industry, mineral owner representatives, and most of the oil and gas associations in Texas.

As a result of the hearing, Chairman Wayne Christian formed the Blue Ribbon Task Force and tasked them with providing other means of regulatory relief to assist operators. While prorating was not off the table, based on testimony given, it was fairly evident it would not be included in the task force’s recommendations. After the task force presented their report, Chairman Christian made several motions to pass emergency rule relief. Commissioner Christi Craddick then joined with additional motions. All motions passed and the motion by Parsley and Pioneer was officially voted down 2-1. Commissioner Ryan Sitton was the lone no vote.

Ryan Lammert of Uhl, Fitzsimons, Jewett, Burton, Wolff, and Rangel, PLLC has gone provided greater detail of the motions’ impact to landowners beginning on page 3.

If you would like to see the comments TLMA filed or any documents related to the meeting, they can be viewed at [www.rrc.texas.gov/general-counsel/open-meetings/](http://www.rrc.texas.gov/general-counsel/open-meetings/) and selecting the links to the April 14, 2020 meeting or calling or emailing the TLMA office.

An additional development from the hearing is the potential to have a discussions on ways to reducing the amount of flaring in Texas. Chairman Christian asked for the Blue Ribbon Task Force to continue to meet to present ways to reduce flaring in Texas. The task force and the Texas Methane & Flaring Coalition presented their recommendations at an open meeting in June. You can find a link to the recommendations on our website.

#### **IN THIS ISSUE**

- **UPDATE FROM THE EXECUTIVE DIRECTOR**
- **STATEWIDE MEMBERS MEETING UPDATE**
- **UPCOMING DATES OF INTEREST**
- **STATEWIDE MEMBERS MEETING REGISTRATION FORM**
- **RAILROAD COMMISSION OF TEXAS REGULATORY UPDATE**

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## **UPDATE FROM THE EXECUTIVE DIRECTOR**

Hello, Members!

Between COVID-19 and oil markets dipping negative for the first time, the past three months have been unlike anything I could imagine experiencing in my lifetime.

While we should be in the thick of preparing for the next legislative session, all interim hearings, with the exception of a few, have been cancelled. Like many things right now, we are unsure what session will look like, but we do know that impacts from COVID-19 will be at the forefront of the session. Based on issues that have come up recently, there are a few that we expect to see as bills during the legislative session—flaring and proration. TLMA was also notified that the title dispute bill by Chairman Tom Craddick will be filed again.

As you have likely seen, TLMA launched a new website. You can still find us at [www.tlma.org](http://www.tlma.org). The launch did not come without issues, but I believe we have most of them resolved. There are minor updates we will be making based on feedback from our members. If you have any suggestions or find any edits, you can email them to me at [excdir@tlma.org](mailto:excdir@tlma.org).



Another result of COVID-19 is extremely delayed mail service. When you mail a check to the P.O. Box, it goes directly to the bank (who is also delayed). This just means it's taking longer for us to receive checks to be able to enter them into our membership database. If you mail a check but continue to receive the membership renewal emails, please know it's likely just a delay in mail service.

The TLMA Board of Directors has chosen to move the Statewide Members Meeting to a virtual event. There's more on that on page 6. I will miss seeing all of you in San Antonio, but hope we can be together soon!

I hope you all have enjoyed the time at home with family and found the good in these times.

A handwritten signature in black ink that reads "Jennifer". The signature is written in a cursive, flowing style.

## **UPCOMING DATES OF INTEREST**

June 16, 2020—RRC Open Meeting

August 4, 2020—RRC Open Meeting

September 1, 2020—RRC Open Meeting

October 8, 2020—TLMA Statewide Members Meeting

# RAILROAD COMMISSION OF TEXAS REGULATORY UPDATE

By: Ryan Lammert—Uhl, Fitzsimons, Jewett, Burton, Wolff, & Rangel, PLLC

On May 5, 2020, the Railroad Commission of Texas issued orders providing for temporary exceptions to certain Commission Statewide Rules which could affect Texas land and mineral owners. In particular, the Commission issued “exception orders” for Statewide Rules 8 (Water Protection), 13 (Casing, Cementing, Drilling, Well Control, and Completion Requirements), 14 (Plugging), 78 (Fees and Financial Security Requirements), 95 (Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations), and 107 (Penalty Guidelines for Oil and Gas Violations).

This article addresses those Commission exceptions which may affect oil and gas operations on your property and those which could impact your surface estate directly. Each of the granted exceptions automatically terminate on May 5, 2021, “unless earlier terminated or continued by subsequent Commission action,” or as otherwise provided for below.

## **Statewide Rule 8 – Water Protection**

In part, Statewide Rule 8 requires an oil and gas operator to dewater and backfill certain pits according to a schedule prescribed by the Commission. For instance, reserve pits and mud circulation pits must be dewatered and backfilled within one year of cessation of drilling operations or dewatered within 30 days of cessation of drilling operations, depending on chloride levels of fluids stored therein. In the case of completion or workover pits, the Commission requires an operator to dewater such pits within 30 days after the completion/workover of a well and to backfill within 120 days after such completion/workover.

However, effective May 5, 2020, an operator “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 . . . may submit notification to the appropriate Commission District Office of an extension of the deadline to dewater, backfill, and compact the authorized pit.” An operator is required to secure a landowner’s consent if it seeks an extension to its dewater or backfill obligations. But, in certain instances, an operator may “provide[] an affidavit or other written statement attesting that no landowner consent is required.”

In any event, an “operator shall maintain the pit so that all fluids are confined to the pit at all times . . . and the pit is otherwise maintained in compliance with all applicable Commission statutes and rules.”

The practical effect of this exception is to provide an operator relief from expending capital to complete these operations during the recent industry “downturn,” resulting, in part, from COVID-19 and increased production from OPEC-affiliated countries.

## **Statewide Rule 14 – Plugging**

Statewide Rule 14(b)(2) requires an operator to perform plugging operations on dry or inactive wells “within a period of one year after drilling or operations cease[.]” In certain instances, an operator can secure a “plugging extension” to delay plugging a well if the operator performs certain tests on the well, such as a mechanical integrity test demonstrating that the inactive or dry well does not pose a risk to subsurface resources. If the well fails such tests, then an operator cannot secure an extension and will be required to plug and abandon the well.

The Commission defines an “inactive well” as an “unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.” Accordingly, legacy wells with little to no production are

oftentimes classified as “inactive,” and an operator is required to take the actions described above.

The Commission’s May 5 exception order provides that for any well that reported “production in February 2020 and subsequently shut-in (no reported production from March 1, 2020 – March 1, 2021)” will not be required to be plugged until “no later than two (2) years after drilling or operations cease.” Again, an operator is required to “notify the applicable District Office,” but, in this case, an operator is *not* required to provide notice to a landowner.

The exception is meant to mitigate plugging obligations that an operator would be required to perform on an otherwise productive well that is shut-in for lack of market demand. But, for those wells with little-to-no reported production, a less scrupulous operator could take advantage of the well-intended exception by reporting production in February 2020 (whether actually produced or not), thereby extending its plugging obligations for an additional two years. Oil and gas production records are available to the public on the Commission’s website: <https://rrc.texas.gov/>

But, the Commission makes clear that this “exception in no way limits [its] authority to require an operator to plug a well that is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas[.]”

### **Statewide Rule 95 – Underground Storage of Liquid Hydrocarbons**

The Texas Natural Resources Code grants the Commission the authority to regulate “activities associated with any underground hydrocarbon storage facility.” The Commission codified that authority in Statewide Rule 95, titled *Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations*.

As the title implies, Statewide Rule 95 has historically applied to salt dome storage facilities located mostly along the upper Texas Gulf Coast. These salt dome facilities are usually used to store hydrocarbon feedstock necessary for oil and gas refinery operations. When operated properly, these facilities pose little threat to surface or subsurface resources.

The Commission’s May 5, 2020 exception order provides:

The Commission hereby grants an exception to [Statewide Rule 95]. As of [May 5, 2020], an applicant for a permit to store *crude oil* underground may submit an application for an underground storage facility located in geological formation *other than an underground salt formation*.

(emphasis added). The author is unaware of any other instance where the Commission has permitted such storage.

An applicant must 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.” It is suspected that potential facilities might include depleted, legacy oil reservoirs in East and North Texas.

Notice to affected parties (i.e., a landowner) is implied in the exception order, although it is not expressly stated. The Commission is in the process of identifying those affected parties that may be entitled to notice of such applications and, also, any deadline which would apply to protest an application. But, in any event, an opportunity to protest such applications will be provided. If the Commission does not receive a protest of these applications, then no hearing is required, and an application may be administratively approved by Commission staff. This is in contrast to Statewide Rule 95 which requires both an administrative review by Commission staff and a hearing before a Commission Administrative Law Judge and Technical Examiner. In other

words, an application for this type of exception is more “streamlined” than an application submitted pursuant to Statewide Rule 95.

The exception provides that “any crude oil stored in a hydrocarbon storage facility located in a geological formation other than an underground salt formation must be removed from the storage facility no later than five (5) years after” May 5, 2020.

Commentators have suggested that this type of underground storage is impractical from engineering and legal standpoints. As a practical matter, it has been suggested that for every 100 barrels of oil injected into such facility, an operator may be only capable of recovering 25 barrels of oil upon retrieval. The balance of any oil may be unrecoverable and would remain in the reservoir because of various reservoir characteristics. Additionally, other commentators have suggested that an operator may not be permitted to conduct such storage operations under a traditional oil and gas lease or surface use agreement, but would be required to secure a contract from the surface owner prior to performing such operations. Also, underground commingling of oil produced from different properties may also present another legal hurdle.

### **Statewide Rule 107 – Penalty Guidelines for Oil and Gas Violations**

The Commission employs in-house attorneys who are tasked with prosecuting operators who have failed to comply with Commission rules and orders. As alluded to above, the Commission maintains an internal “judiciary” division (the Hearings Division) which holds various types of administrative hearings, including enforcement cases that the Commission brings against operators. Enforcement cases usually involve an operator causing pollution to surface resources, or other environmental violations, and are heard before the Hearings Division.

Oftentimes, however, these cases result in a settlement where an operator is required to pay an administrative monetary penalty and to correct its rule violation, negating the need to proceed to a hearing before the Hearings Division. Settlement typically involves an operator to pay an administrative penalty equal to 50% of the minimum penalty shown in Statewide Rule 107. For instance, the minimum penalty relating to “pollution of surface or subsurface water” is \$1,000. Enhanced penalties are available depending on the circumstances.

The Commission’s exception order permits “the Commission’s Legal Enforcement Section [to] recommend administrative penalties in an amount less than the minimum penalties listed in [Statewide Rule 107] for violations of Commission rules occurring between March 1, 2020 and March 1, 2021.” Under the exception, an operator may be less inclined to maintain strict compliance with Commission rules because monetary penalties are likely lessened for the period. But, “[i]n addition, the Legal Enforcement Section shall continue to seek compliance for violations of Commission rules.”

Landowners should be aware of these temporary exceptions to Commission rules which may affect their ownership in land and minerals situated in Texas. Electronic copies of the temporary exception orders are available on the Commission’s website: [https://www.rrc.texas.gov/media/57599/notice-to-operators\\_05-05-2020.pdf](https://www.rrc.texas.gov/media/57599/notice-to-operators_05-05-2020.pdf)

**Disclaimer: Nothing herein constitutes legal advice or forms an attorney-client relationship with any reader of the content provided in this article.**

## 2020 STATEWIDE MEMBERS MEETING INFORMATION



Due to the ongoing uncertainties caused by the COVID-19 pandemic, the Texas Land & Mineral Owners Association Board of Directors has chosen to host the 2020 Statewide Members Meeting **virtually instead of in-person at the Pearl Stable in San Antonio.**

Details are still being worked out, but here's what we do know:

- It will still be on Thursday, October 8, 2020
- Registration will be required.
- You can join by telephone or computer. Internet is **NOT** required.
- We are still seeking sponsors and exhibitors, but the benefits will be different.
- There will be opportunities to ask questions of our speakers.

**As decisions pertaining to the details of the Statewide Members Meeting are made, they will be announced on the website and included in the September newsletter.**

Registration is **NOW OPEN online** at [www.tlma.org](http://www.tlma.org). There's a "Quick Link" to the registration on the Home page or you can click "Statewide Members Meeting" under "News & Events". You may also register by filling out the registration form on the next page and mail with payment to the TLMA office: 1005 Congress Ave., Ste. 360, Austin, TX 78701. If they mail in the application, please make sure they mail in the correct amount. *If the registration price decreases after you submit your registration, Jennifer Bremer will contact you to resolve.*

**We are still seeking sponsors!** A virtual conference doesn't come without costs. If you or someone you know is interested in sponsoring the event, please email [execdir@tlma.org](mailto:execdir@tlma.org) for a sponsorship form and more details for the opportunities available.

**A by-law amendment and Board of Directors vote will occur via proxy sent to you by mail.** The by-law update will allow for corporations to join TLMA. These corporations cannot receive the majority of their income from "working interests in oil, gas, or other mineral leases or operations" as required by our existing by-laws and must be approved for membership.

# PLACEHOLDER FOR STATEWIDE MEMBERS MEETING REGISTRATION FORM

SEPARATE FILE



Texas Land & Mineral Owners Association  
1005 Congress Avenue, Suite 360  
Austin, TX 78701



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**TLMA Membership Information Form**

I would like to join TLMA     I am a member, please update my contact info

*Please return to: TLMA, 1005 Congress Ave., Suite 360, Austin, TX 78701*

Name \_\_\_\_\_

Organization/Ranch Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Referred by \_\_\_\_\_

**Don't forget!**

If your contact information changes, be sure to update TLMA and avoid delays in receiving your newsletters, renewal notices, and other correspondence.

To change your address or any other membership information, contact Robbie Quemer at (512) 479-5000, mail in this form, or log in to your membership account online at [www.tlma.org](http://www.tlma.org).

**Find more information, join TLMA, or renew your membership online at [www.tlma.org](http://www.tlma.org)**