

1 The Railroad Commission of Texas (Commission) adopts amendments to §3.8, relating
2 to Water Protection, with changes to the proposed text as published in the September 28, 2012,
3 issue of the *Texas Register* (37 TexReg 7555). The adopted amendments authorize certain
4 recycling activities, clarify permitting of other recycling activities, and update the rule.

5 At its open meeting on February 28, 2012, the Commission directed staff to circulate
6 draft proposed amendments, solicit informal comments, and hold a workshop with interested
7 parties to get feedback on certain proposed amendments to the Commission's commercial
8 recycling rules found in 16 TAC Chapter 4, Subchapter B. The existing rules in Chapter 4
9 contemplate two categories of commercial recycling facilities: mobile facilities and stationary
10 facilities. Since adoption of the rules in 2006, the Commission has received an increasing
11 number of applications for permits for facilities that fit neither category. Therefore, the
12 Commission proposed to create a third category--a semi-mobile commercial recycling facility--to
13 accommodate such requests. Commission staff subsequently posted the draft proposed
14 amendments on the Commission's website with a request for informal comments and held a
15 public workshop on March 16, 2012.

16 After consideration of the informal and workshop comments, the Commission proposed,
17 and now adopts, amendments in §3.8 to authorize non-commercial recycling of fluids. In addition
18 to these adopted amendments in §3.8, the Commission adopts concurrent amendments to
19 Chapter 4, Subchapter B, in a separate rulemaking action. Certain comments addressed both
20 proposals, while other comments addressed one or the other; therefore, the Commission notes
21 that interested persons may wish to review both adoption preambles.

22 The Commission received 10 comments, one of which was from a government agency,
23 Texas Parks and Wildlife ("TPWD"), four of which were from groups or associations (Texas Oil &
24 Gas Association ("TxOGA"); Environmental Texas, Earthworks, Public Citizen, and Sustainable
25 Energy and Economic Development Coalition (submitted jointly; the "Joint Commenters");
26 Environmental Defense Fund; and Texas Water Recycling Association ("TWRA")), and five of
27 which were from companies (Geologic Environmental; P&F Water Solution, LLC ("P&F");
28 Pioneer Natural Resources ("Pioneer"); Seven Seas Water Company, and R360 Environmental
29 Solutions ("R360")).

30 On February 11, 2013, the Commission received notice from Seven Seas Water
31 Company that it wished to withdraw its comments filed with the Commission on October 29,

1 2012.

2 COMMENT: The Environmental Defense Fund commended the Commission for
3 addressing the issues raised in this rulemaking, and encourages the Commission to continue in
4 its efforts to deal proactively with challenges arising from evolving oil and gas technology and
5 practices.

6 RESPONSE: The Commission agrees with this comment.

7 COMMENT: TPWD commented that the treatment levels to protect humans are not
8 necessarily the same as those needed to protect terrestrial or aquatic habitat and it may be
9 necessary to consider additional provisions beyond drinking water standards. TPWD further
10 commented that other factors to consider beyond only drinking water standards include boron,
11 sodium absorption ratio, barium, selenium, and phosphorus.

12 In similar comments, TxOGA requested that the drinking water standards be clearly
13 identified as those from the Safe Drinking Water Act.

14 RESPONSE: The Commission agrees with TPWD's comment. Federal drinking water
15 standards alone do not fully address all potential risks from treated fluids. As such, the
16 Commission adopts a revised version of §3.8(d)(7)(B) and (C). The Commission establishes a
17 tiered approach to the reuse of treated fluids. In order to remove any confusion on the type of
18 fluids that are authorized to be recycled, the Commission has removed the use of the terms
19 "produced water and/or hydraulic fracturing flowback fluid," as they relate to recycling,
20 throughout the rule and replaced them with the more inclusive term "fluids."

21 Treated fluids reused in the wellbore of an oil, gas, geothermal, or service well are
22 authorized by the Commission and no further individual permit is needed. The Commission
23 also authorizes non-wellbore uses of treated fluids, except discharge to waters of the state which
24 requires an individual permit by statute, as long as the reuse occurs pursuant to a permit issued
25 by another state or federal agency. If the treatment of the fluids results in distilled water, the
26 Commission authorizes any reuse other than discharge to water of the state. Lastly, the
27 Commission will consider issuing a permit for other reuses, beyond those previously discussed,
28 on a case by case basis based on the volume and source of the fluids, the anticipated
29 constituents of concern, and the proposed reuse of the treated fluid. The Commission's adopted
30 change renders TxOGA's comment moot.

31 COMMENT: In similar comments, Geologic Environmental commented that partial

1 treatment of hydraulic fracturing flowback fluid and the subsequent land application or release to
2 surface water should be allowed if the treated fluid meets the ambient quality of the receiving
3 water as opposed to the proposed "national drinking water standard."

4 TxOGA commented the Commission should allow treated produced water and/or
5 hydraulic fracturing flowback fluid to be discharge to surface water or be used to irrigate food
6 crops.

7 P&F commented that Safe Drinking Water Act standards may exceed allowable
8 standards for National Pollutant Discharge Elimination Systems (NPDES) permitting and the
9 discharge of fluids should be allowed if authorized by an NPDES permit.

10 RESPONSE: The Commission disagrees with these comments. In Texas, the
11 discharge of produced water and completion fluids, including hydraulic fracturing flowback water,
12 treated or not, into waters of the United States, is prohibited by federal effluent limitations
13 guidelines and general permits issued by the U.S. Environmental Protection Agency (EPA)
14 under the National Pollutant Discharge Systems (NPDES) program under the federal Clean
15 Water Act. It may be possible to obtain an individual NPDES permit from EPA for discharge of
16 produced water and/or completion fluids to waters of the United States west of the 98th
17 Meridian, as long as the water is for agricultural and wildlife beneficial use. The Commission is
18 not banning the land application of treated fluids as discussed in the previous comment. The
19 Commission has established a framework for reusing treated fluids as prescribed in §3.8(d)(7).

20 COMMENT: TxOGA and P&F requested clarification as to whether a permit is required
21 when an operator conducts the recycling of produced water solely by and for the operator's
22 purposes entirely on the operator's lease.

23 RESPONSE: The Commission agrees a permit is not required for an operator to
24 conduct recycling of produced water on its own lease. In order to eliminate confusion, the
25 Commission has simplified the framework of authorized fluid recycling and authorized fluid
26 recycling pit. The Commission has combined the concepts of non-commercial on-lease
27 produced water and/or hydraulic fracturing flowback fluid recycling and non-commercial
28 centralized produced water and/or hydraulic fracturing fluid as found in the proposal into a new,
29 more inclusive, term: "non-commercial fluid recycling." Non-commercial fluid recycling is
30 defined as the recycling of wellbore fluid produced from an oil or gas well, including produced
31 formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic

1 fracturing process on an existing commission-designated lease or drilling unit associated with a
2 commission-issued drilling permit or upon land leased or owned by the operator for the purposes
3 of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9
4 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a
5 permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) ,
6 where the operator of the lease, drilling unit, or non-commercial disposal or injection well, treats
7 or contracts with a person for the treatment of the fluid and may accept such fluid from other
8 leases or operators, Furthermore, the Commission has combined the concepts of
9 non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit
10 and non-commercial off-lease or centralized produced water and/or hydraulic fracturing flowback
11 fluid recycling pit into the new term "non-commercial fluid recycling pit," Non-commercial fluid
12 recycling pit is defined as a pit used in conjunction with one or more oil or gas leases or units,
13 and is located on an existing commission-designated lease or drilling unit associated with a
14 commission-issued drilling permit, or upon land leased or owned by the operator for the
15 purposes of operation of a non-commercial disposal well operated pursuant to a permit issued
16 under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued
17 under §3.46 of this title, that is constructed, maintained, and operated by the operator of record
18 of the lease or unit for the storage of fluid for the purpose of non-commercial fluid recycling or for
19 the storage of treated fluid that is a recyclable product. The new terms are more specific and
20 attempt to eliminate ambiguity in the rule.

21 COMMENT: TxOGA requested further clarification as to whether an operator needs
22 additional authority from the Commission to transport treated water to another site for beneficial
23 reuse within its operations.

24 RESPONSE: The scenario described by TxOGA of an operator engaging in the
25 recycling of its own waste would be classified as non-commercial fluid recycling under §3.8
26 because the generator of the waste is engaging in the recycling activity. The Commission
27 agrees that no additional authority is needed for such non-commercial hauling of oil and gas
28 wastes for non-commercial recycling. The Commission makes no change in response to this
29 comment.

30 COMMENT: TxOGA recommended that the Commission delete the term "hydraulic
31 fracturing flowback fluid" throughout the rule because hydraulic fracturing flowback fluid is just

1 produced water and the language implying otherwise is confusing.

2 RESPONSE: Produced water and hydraulic fracturing flowback fluid are terms commonly
3 used in oil and gas regulation. However, the Commission agrees that for the purposes of
4 regulating wellbore fluid recycling, referring to hydraulic fracturing flowback fluid and produced
5 water as separate waste streams is not necessary. The Commission therefore replaces the
6 terms "hydraulic fracturing flowback fluid" and "produced water," throughout the new sections of
7 the rule relating to authorized non-commercial recycling, with the more inclusive term, "fluid."

8 COMMENT: TxOGA and TWRA suggested the definition of "commercial recycling"
9 found in proposed §3.8(a)(42) be consistent with the definitions found in Chapter 4, Subchapter
10 B.

11 RESPONSE: The Commission agrees but has removed the term "commercial recycling"
12 from §3.8, eliminating any inconsistencies.

13 COMMENT: TxOGA recommended that "produced water" be defined in §3.8 as "water
14 produced in connection with activities associated with the exploration, development, and
15 production of oil or gas or geothermal resources, as those activities are defined in subsection
16 (a)(30). Produced water is also referred to as 'brine,' 'saltwater,' 'hydraulic fracturing flowback
17 fluid,' or 'formation fluid'."

18 RESPONSE: The Commission disagrees that this change is necessary and declines to
19 adopt the suggested definition of "produced water," instead using the more inclusive term "fluid"
20 as it relates to authorized non-commercial recycling.

21 COMMENT: TxOGA recommended the term "recycle" as proposed in §3.8(a)(47) be
22 replaced with "produced water reuse," which would be defined as "to process and use either
23 treated or untreated produced water as a product for which there is an authorized use under this
24 subchapter. For purposes of this section, injection of produced water or other oil and gas waste
25 into an oil and gas reservoir for purposes of enhanced recovery under authorization and permit
26 under §3.46 does not qualify as reuse."

27 RESPONSE: The Commission agrees in part with the comment. To be consistent with
28 Chapter 4, Subchapter B, the Commission declines to adopt the term "produced water reuse"
29 and delete the term "recycle," but has amended the definition of "recycle." Enhanced oil and
30 gas recovery by fluid injection (EOR) has a long, productive and successful history in Texas.
31 The Commission recognizes that what operators have been doing for generations with produced

1 water for EOR in a literal sense likely fits within the elements of oil and gas waste recycling in
2 this rulemaking. However, the Commission specifically excludes an operator's re-use of
3 produced water for its EOR from this rule because EOR is regulated by §3.46 of this title, which
4 the Commission administers consistent with the federal Underground Injection Control program
5 under the Safe Drinking Water Act and because the Commission does not want to interrupt a
6 long-standing successful and safe practice. As this comment relates to §3.8, the Commission
7 has modified the definition of "recycle" to read: "To process and/or use or re-use oil and gas
8 wastes as a product for which there is a legitimate commercial use and the actual use of the
9 recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant
10 to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs)."

11 COMMENT: TxOGA commented that "recyclable product" as proposed in §3.8(a)(49)
12 should be deleted from the rule.

13 RESPONSE: The Commission disagrees with this comment. Because the
14 Commission declined to delete the term "recycle" as discussed in the previous comment, the
15 term "recyclable product" still has a purpose in §3.8 and should be defined. The definition of
16 recyclable product in Chapter 4, Subchapter B, has been slightly altered to clarify that a
17 recyclable product may be created under either a permit or authorization from the Commission.

18 COMMENT: TxOGA recommended that §3.8(d)(3)(F) be simplified by removing the
19 distinction between untreated wastes and recyclable products and inserting requirements for "pit
20 contents".

21 RESPONSE: The Commission agrees with this comment and has revised the rule to
22 reflect the suggested changes. References in §3.8(d)(3)(F) to untreated waste and recyclable
23 product have been removed and §3.8(d)(3)(F) now consolidates the requirements for disposing
24 of the solid pit contents that remain after dewatering a non-commercial fluid recycling pit in a
25 single subsection.

26
27 COMMENT: TxOGA recommended that additional wording be added to §3.8, following
28 the definitions, to clearly state that all commercial recycling operations require a permit under
29 Chapter 4.

30 RESPONSE: The Commission disagrees with this comment and finds the rule is clear
31 in this regard. Section 3.8(d)(7)(C)(ii) states all commercial recycling requires the commercial

1 recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B.
2 The Commission makes no change with regard to this comment.

3 COMMENT: TxOGA commented that the provisions in §3.8(f)(1)(A)(iv) and
4 §3.8(f)(1)(C)(ix) are too stringent as the equipment needed to haul non-solid waste is not widely
5 available and is significantly more expensive than other vehicles that would be appropriate for
6 use. TxOGA commented that the certification by the waste hauler and the requirement in the
7 rule that spillage shall be prevented are sufficient.

8 RESPONSE: The Commission partly agrees with this comment. The Commission has
9 witnessed widespread hauling of oil and gas waste in inappropriate vehicles resulting in the
10 spillage and leakage of oil and gas waste onto roads. As such, the certification by the
11 wastehauler that its vehicles are designed not to leak during transportation has proven
12 insufficient. The Commission finds the hauling of non-solid waste in open-topped containers,
13 such as dump trucks, presents unacceptable risks of spillage or leakage during transportation.
14 The Commission finds additional guidance is needed in this area to ensure the proper hauling of
15 oil and gas waste at all time. As such, the Commission includes requirements in the rule that
16 vehicles used to haul non-solid oil and gas waste be designed to transport non-solid oil and gas
17 waste. These changes implement Commission policy based on this history and the importance
18 of proper containment of oil and gas waste during transportation.

19 COMMENT: The Joint Commenters recommended that the Commission consider
20 mandating the recycling of produced water and/or hydraulic fracturing fluid.

21 RESPONSE: The Commission does not intend to require oil and gas operators to
22 recycle such fluids at this time. With the adoption of this rulemaking, the Commission sets up a
23 regulatory framework in which recycling is a viable alternative to disposal, but allows the
24 operators to make their own water and waste management decisions. The Commission makes
25 no change in regard to these comments.

26 COMMENT: TWRA requested clarification as to whether non-commercial on-lease
27 produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(43) is
28 authorized in both §3.8 and Chapter 4, Subchapter B, and refers to a single operator and a
29 single contractor dedicated to that operator on a single lease.

30 In a similar comment, Pioneer requested clarification on the definition of "lease" and
31 "unit" as they apply to §3.8(d)(4)(G)(i).

1 RESPONSE: The Commission agrees in part with these comments. Non-commercial
2 on-lease produced water and/or hydraulic fracturing flowback fluid recycling, which has been
3 replaced with the more inclusive term, "non-commercial fluid recycling," is authorized by §3.8,
4 but falls outside the scope of Chapter 4, Subchapter B, as that subchapter addresses
5 commercial recycling activities. The definition in proposed §3.8(a)(43) does not necessarily
6 refer to a single lease or a single operator. In order to eliminate confusion, the Commission has
7 provided additional guidance within the rule. Fluid recycling conducted on an oil and gas lease
8 is authorized by §3.8, and is not limited by the number of operators or leases from which the fluid
9 to be treated originated. The Commission declines to adopt a definition of "lease" or "unit" as
10 these terms would be more appropriately defined in other Commission rules.

11 COMMENT: TWRA requested clarification as to whether non-commercial centralized
12 produced water and/or hydraulic fracturing flowback fluid recycling as proposed in §3.8(a)(44) is
13 the same type of facility referenced in Chapter 4, Subchapter B, Division 5, as off-lease or
14 centralized water recycling.

15 RESPONSE: The Commission disagrees with this comment. Non-commercial fluid
16 recycling as adopted in §3.8(a)(41) may be conducted by the generator of the waste or a
17 contractor, but the recycling activity remains under the control of the generator of the waste and
18 must occur on an oil and gas lease, drilling unit, or on the site of a non-commercial disposal or
19 injection well. Off-lease commercial recycling of fluid, as discussed in Chapter 4, Subchapter B,
20 Division 5, covers commercial recycling that is done under the control of a third-party,
21 commercial entity off of an oil and gas lease, drilling unit, or non-commercial disposal or injection
22 well and is outside the control of the generator of the waste.

23 COMMENT: TWRA requested clarification as to whether "lease" specifically refers to a
24 lease as identified in Commission regulations and may contain multiple oil wells.

25 RESPONSE: The Commission agrees with this statement, but makes no change in
26 response to the comment.

27 COMMENT: TWRA requested that the Commission consider that multiple gas wells
28 require multiple leases but may have a common operator and one contractor operating on them.

29 RESPONSE: The Commission has considered this situation and agrees that additional
30 guidance is warranted. The Commission has amended §3.8 to cover all non-commercial fluid
31 recycling. Non-commercial fluid recycling must occur on a Commission designated oil or gas

1 lease, drilling unit, or on the site of a non-commercial disposal or injection well, but is not limited
2 to only one fluid generator or fluid originating from only one lease.

3 COMMENT: Geologic Environmental commented that the words "waste" and "oil and
4 gas waste" should be removed and replaced with "material", "substance", or "fluid" as it should
5 not be called a waste until it is destined for disposal. Geologic Environmental further
6 commented that if the material is recycled, it should not be called a "waste."

7 RESPONSE: The Commission disagrees with this comment because the Commission
8 considers oil and gas waste destined for recycling and recyclable product that has been
9 abandoned to be waste. The Commission agrees that recyclable product put to a legitimate
10 commercial use as authorized by §3.8 or pursuant to a permit issued under Chapter 4,
11 Subchapter B, is not a waste. The Commission makes no change in response to this comment.

12 COMMENT: Geologic Environmental commented that two feet of freeboard on pits, as
13 proposed in §3.8(d)(4)(G)(iv), is excessive and wasteful of storage space. The commenter
14 recommended that the Commission replace the phrase "two feet of freeboard" with the phrase
15 "adequate freeboard."

16 RESPONSE: The Commission disagrees with this comment. The Commission has
17 authorized pits to store large volumes of treated fluid and untreated fluid to be treated, that if
18 stored improperly or released into the environment will cause or allow pollution. As such, the
19 Commission must establish standard pit construction and operation parameters to ensure that
20 this waste will remain confined within the pit. Freeboard requirements are one of these
21 parameters. Two feet of freeboard is a verifiable, reasonable standard to assure that significant
22 rain events will not result in the fluid in the pit overflowing the berms and subsequently escaping
23 into the environment. The Commission makes no change in response to this comment.

24 COMMENT: Geologic Environmental commented that pits should not be held to the
25 same standard as Subtitle D landfills, and the 1×10^{-7} centimeter per second permeability
26 standard is excessive and should be eliminated.

27 RESPONSE: The Commission disagrees with this comment. The Commission has
28 authorized pits to store large volumes of treated and untreated fluids that if stored improperly or
29 released into the environment will cause or allow pollution. As such, the Commission must
30 establish standard pit construction and operation parameters to ensure that this waste will
31 remain confined within the pit. A minimum liner permeability standard is one of these

1 parameters. The permeability standard of 1×10^{-7} centimeters per second or less for the liner is
2 reasonable and ensures the liner is capable of meeting the Commission's goal of preventing
3 pollution. The Commission makes no change in response to this comment.

4 COMMENT: Pioneer requested clarification and the possible deletion of the phrase "for
5 use in a new well" in the definition of "fresh makeup water pit" in §3.8(a)(9).

6 RESPONSE: The Commission agrees with this comment and removed the phrase "for
7 use in a new well" from the definition of a fresh makeup water pit in §3.8(a)(9).

8 COMMENT: Pioneer commented that the definition of hydraulic fracturing flowback fluid
9 in §3.8 is slightly different than the definition in Chapter 4, Subchapter B, and requested that the
10 two definitions be identical.

11 RESPONSE: The Commission has deleted the term "hydraulic fracturing flowback fluid"
12 as proposed in §3.8(a)(41) of the proposal and replaced it with the more inclusive term "fluid."

13 COMMENT: Pioneer requested consistency in the use of the term "off-lease." The
14 term "off-lease" is used in §3.8(a)(46) but is not used in other places throughout the rule,
15 including the definition of non-commercial centralized produced water and/or hydraulic fracturing
16 flowback fluid recycling in proposed §3.8(a)(44), or the section regarding prohibited pits.

17 RESPONSE: The Commission agrees with this comment and has removed "off-lease"
18 from §3.8.

19 COMMENT: TxOGA and Pioneer request clarification on the definition and applicability
20 of 100-year flood plain. In the definition for 100-year flood plain, the commenters requested that
21 the source of the flood plain data be included in the definition, specifically Federal Emergency
22 Management Administration (FEMA) regulatory maps. The commenters also requested
23 clarification that the requirements proposed in §3.8(d)(4)(H)(iv)(I) regarding siting of pits in a
24 100-year flood plain not be retroactive to existing pits. Lastly, the commenter requests that
25 provisions for exceptions to the 100-year flood plain siting requirement be incorporated into the
26 rule.

27 RESPONSE: The Commission agrees that FEMA regulatory maps are the preferred
28 source for obtaining 100-year flood plain data. However, not all counties within the state have
29 been mapped by FEMA. As such, other sources, such as United States Department of
30 Agriculture soil maps, are also suitable alternative sources of flood plain data. The Commission
31 adopts a definition of "100-year flood plain" that makes acceptable sources of the floodplain data

1 clear.

2 The Commission agrees that the proposed provision prohibiting authorized pits within a
3 100-year flood plain should only apply to pits constructed after the effective date of this rule.
4 Section 3.8 exists to protect surface and subsurface water. Regular storage of quantities of oil
5 and gas waste in flood-prone areas heightens risk to water, and the Commission has realized
6 this risk in the past. Commission experience and the potential for pollution due to chemicals of
7 concern in the waste, its proximity to surface and subsurface water, and the unpredictability of
8 rain events justify the provisions in the proposed rule. However, the Commission adopts the
9 rule with a change to allow the district director to approve such pit construction in a 100 year
10 flood plain if the operator demonstrates the pit is constructed in a manner that will confine fluids
11 at all times.

12 COMMENT: Pioneer requested that hydrostatic test water be included under the
13 descriptions of water and other materials that can be stored in an authorized pit, as referenced in
14 §3.8(d)(4).

15 RESPONSE: The Commission declines to incorporate this request. Section 3.8 is
16 being amended for only limited purposes. The storage of hydrostatic test water is outside the
17 scope of this rulemaking. The Commission makes no change in response to this comment.

18 COMMENT: Pioneer made several comments on §3.8(d)(7) regarding recycling.
19 Pioneer recommended that the Commission make the language in proposed §3.8(d)(7)(B)(i) and
20 (C)(i)(I), and (B)(ii) and (C)(i)(II) consistent. In §3.8(d)(7)(B)(i), the phrase "or other oilfield fluid
21 to be used in the wellbore" is used, and in §3.8(d)(7)(C)(i), the phrase "or as another type of
22 oilfield fluid to be used in the wellbore." There are slight differences in §3.8(d)(7)(B)(ii) and
23 (C)(i)(II).

24 In proposed subsection (d)(7)(B)(i) regarding partial treatment, Pioneer suggested that
25 specifying that no other permit be required "for the recycling process" may be helpful to
26 distinguish the recycling process from the pit permitting process. Pioneer commented that it
27 would be helpful to explicitly indicate that a pit permit, obtained by submitting a complete Form
28 H-11, is the specific permit that an operator would be required to obtain.

29 Pioneer also requested clarification on the complete treatment scenario. Pioneer
30 requested clarification on how an operator would demonstrate compliance with the Safe Drinking
31 Water Act, including direction on sampling parameters, frequency, if the reporting must be filed

1 with the Commission, and what documentation must be kept.

2 RESPONSE: In response to multiple comments received on this proposed wording, the
3 Commission has revised the structure of the rule as it relates to the reuse of treated fluids.
4 Adopted §3.8(d)(7) addresses Pioneer's comments by establishing a tiered approach to the
5 reuse of treated fluids resulting from non-commercial fluid recycling. The language states that:
6 (1) if the treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid
7 treatment, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal,
8 or service well, no other permit is required; (2) if the treated fluid is reused in any manner other
9 than discharge to waters of the state and another state or federal agency has permitted such
10 reuse, no other permit from the Commission is required; and (3) if the treatment of the fluid
11 results in distilled water, the fluid may be reused in any manner other than discharge to water of
12 the state with no other permit required.

13 COMMENT: Pioneer requested clarification whether §3.8(f)(1) excludes a waste hauler
14 from transporting untreated waste off-lease.

15 RESPONSE: The Commission agrees that §3.8(f)(1) does not exclude a waste hauler
16 from transporting untreated waste off-lease. The Commission makes no change in response to
17 this comment.

18 COMMENT: R360 commented that unpermitted and standardless pit storage and
19 disposal of produced water and hydraulic fracturing flowback fluid should not be allowed.

20 RESPONSE: The Commission agrees with this comment and finds the requirements for
21 periodic inspections of non-commercial fluid recycling pits addressed in §3.8(d)(4)(G)
22 should be more detailed. The proposed amendments to §3.8 did generally establish standards
23 for pit storage, including monitoring. However, in response to this comment, the Commission
24 adds to the rule language to clarify that the operator has the option to monitor the pit by
25 emptying it and performing a visual inspection of the liner integrity on an annual basis, or to
26 double-line the pit and install and monitor a leak detection system. The Commission also
27 clarifies that before a non-commercial fluid recycling pit can be put into operation, the operator
28 on whose lease the pit is located must notify the appropriate district office of the location of the
29 pit, the dimensions and maximum capacity of the pit, and provide a signed statement that the
30 operator has written permission to construct and use the pit from the surface owner of the tract
31 upon which the pit is located. Lastly, the Commission clarifies that the operator of a

1 non-commercial fluid recycling pit notify the district office of the location, dimension, and volume
2 of the pit and the operator provides a signed statement that it has written permission from the
3 surface owner of the tract upon which the pit is located for the construction and use of the pit.
4 These requirements are conditions in the Commission's existing recycling pit permits. Now that
5 these pits are authorized by rule (i.e., the operator no longer needs to apply for a permit), the
6 Commission adds these conditions to the rule. The Commission further clarifies the pit shall
7 only store fluid if the monitoring procedures do not detect liner failure.

8 The Commission also establishes additional standards in §3.8(d)(4)(H)(iv) to require that
9 all authorized pits not be constructed in a 100-year flood plain unless approved by the district
10 director, as previously discussed.

11 The Commission also clarifies that a bottomless above-ground fluid storage structure in
12 which only a synthetic liner separates the fluid from the ground surface is considered a pit under
13 §3.8 and must either be authorized or permitted in accordance with the provisions of §3.8.

14 The Commission amends existing definitions and adds new definitions in §3.8(a). The
15 Commission amends the definition of collecting pit to delete the phrase "prior to disposal at a
16 tidal disposal facility, or pit used for storage of saltwater" because tidal discharge is now
17 prohibited.

18 As previously discussed, the Commission adopts wording to delete the phrase "for use in
19 a new well" from the definition of "fresh makeup water pit," as it added confusion to the intent of
20 the definition.

21 The Commission amends the definition of a "skimming pit" to delete the reference to tidal
22 disposal, which is now prohibited.

23 The Commission adds new definitions for the terms "non-commercial fluid recycling,"
24 "non-commercial fluid recycling pit," "recycle," "treated fluid," "recyclable product," "100-year
25 flood plain," and "distilled water." These definitions, some of which are adopted with changes as
26 previously discussed, and are consistent with the definitions of these terms as adopted in the
27 concurrent Chapter 4 amendments.

28 The Commission amends §3.8(d)(2) to delete a reference to current §3.8(d)(8), which is
29 being deleted.

30 The Commission amends subsection (d)(3) to add new subparagraph (F). The new
31 subparagraph authorizes the burial of solids from a non-commercial fluid recycling pit within the

1 dewatered pit. The Commission redesignates existing subparagraph (F) as subparagraph (G).

2 The Commission amends subsection (d)(4), relating to authorized pits, to include
3 non-commercial fluid recycling pits. The amendment authorizes such a pit provided that certain
4 conditions are met, among them, a person shall not deposit or cause to be deposited into a
5 non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those
6 authorized in §3.8(a)(42); the pit is sufficiently large to ensure adequate storage capacity and
7 freeboard taking into account anticipated precipitation; the pit is designed to prevent stormwater
8 runoff from entering the pit; a freeboard of at least two feet is maintained at all times; the pit is
9 lined and the liner designed and installed to prevent any migration of materials from the pit into
10 adjacent subsurface soils, ground water, or surface water at any time during the life of the pit;
11 precautions are taken and procedures installed to ensure the integrity of the liner; the pit is
12 inspected periodically by the operator for compliance with the applicable provisions of this
13 section; and the operator notifies the appropriate district office of the location, dimension, and
14 volume of the pit and the operator provides a signed statement that it has written permission
15 from the surface owner of the tract upon which the pit is located for the construction and use of
16 the pit.

17 The Commission redesignates and amends subsection (d)(4)(H), currently subsection
18 (d)(4)(G), relating to backfill requirements, to include requirements for backfilling authorized
19 non-commercial fluid recycling pits. The Commission also adopts new subparagraph (H)(iv)(I)
20 and (II) to require that all authorized pits be constructed, used, operated, and maintained at all
21 times so as to prevent pollution. The Commission adopts a requirement that non-commercial
22 fluid recycling pits and other authorized pits not be located in a 100-year floodplain unless
23 specifically approved by the district director, as previously discussed. The adopted amendments
24 also state that, in the event of an unauthorized discharge from any pit authorized by this
25 paragraph, the operator must take any measures necessary to stop or control the discharge and
26 report the discharge to the district office as soon as possible.

27 In August 1998, the Commission implemented various regulatory cost-cutting measures.
28 One of these measures was to increase the term of a minor permit from 30 to 60 days.
29 Accordingly, the Commission amends subsection (d)(6)(G), relating to minor permits, to update
30 the term of such permits from 30 days to 60 days.

31 The Commission adopts new subsection (d)(7), relating to recycling. New subparagraph

1 (A) states that, except for those recycling methods authorized for certain wastes by
2 subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any
3 method without obtaining a permit. Subparagraph (B), adopted with changes as previously
4 discussed, authorizes the tiered reuse structure of treated fluids resulting from non-commercial
5 fluid recycling. The language states that: (1) if the treated fluid is recycled for use as makeup
6 water for a hydraulic fracturing fluid treatment, or as another type of oilfield fluid to be used in the
7 wellbore of an oil, gas, geothermal, or service well, no other permit is required; (2) if the treated
8 fluid is reused in any manner other than discharge to waters of the state and another state or
9 federal agency has permitted such reuse, no other permit from the Commission is required; and
10 (3) if the treatment of the fluid results in distilled water, the fluid may be reused in any manner
11 other than discharge to water of the state with no other permit required.

12 The Commission deletes language in current subsection (d)(7)(A) - (D) and (8), relating
13 to existing permits and pits, because with this rulemaking, the language is obsolete. The
14 Commission renumbers the remaining paragraph.

15 The Commission adopts new subsection (d)(7)(C), relating to permitted recycling, with
16 changes previously discussed. The new language states that treated fluid may be reused in any
17 manner other than those authorized in (d)(7)(B) pursuant to terms of a permit issued by the
18 director, which will be reviewed on a case by case basis. In reviewing the application, the
19 volume and source of the fluid, the location, and the proposed reuse will all be considered. This
20 subparagraph further clarifies that all commercial recycling requires the commercial recycler of
21 the oil and gas waste to obtain a permit in accordance with Chapter 4 of this title (relating to
22 Environmental Protection), Subchapter B.

23 The Commission amends subsection (f), relating to oil and gas waste haulers, to clarify
24 that a waste hauler permit is not required for non-commercial hauling of oil and gas wastes for
25 non-commercial recycling.

26 The Commission amends subsection (f)(1)(A)(iv) to include a requirement that the
27 certification required in subsection (f)(1)(A) include a statement that vehicles used to haul
28 non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and
29 shall be operated and maintained to prevent the escape of oil and gas waste. The Commission
30 adopts conforming amendments in subsection (f)(1)(A)(ix).

31 The Commission amends subsection (f)(2)(A) to add references to commercial recycling

1 facilities where appropriate, and subsection (g) to add references to recycling facilities where
2 appropriate.

3 The Commission amends subsection (j), relating to consistency with the Texas Coastal
4 Management Program, pursuant to Senate Bill 656, enacted by the 82nd Texas Legislature,
5 which abolished the Coastal Coordination Council and transferred the council's duties to the
6 Texas General Land Office.

7 The Commission adopts amendments to §3.8 under Texas Natural Resources Code,
8 §33.205 and §33.2053, which direct the Commission to comply with the goals and policies of the
9 Coastal Management Program when issuing certain types of permits; Texas Water Code,
10 §26.131, and Texas Natural Resources Code §§91.101, 91.1011, and 91.109, which provide
11 that the Commission is solely responsible for the prevention and abatement of water and
12 subsurface water pollution attributable to activities the Commission regulates, and that the
13 Commission may adopt rules related to the discharge, storage, handling, transportation,
14 processing, or disposal of oil and gas waste, or of any other substance or material associated
15 with operations or activities regulated by the Commission pursuant to Texas Natural Resources
16 Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a),
17 provides that the Commission may require a bond or other form of financial security from
18 persons applying for or acting under a Commission permit to store, handle or treat oil and gas
19 waste.

20 The partially treated waste and recyclable product resulting from processing and/or
21 treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or
22 material associated with any operation or activity regulated by the Commission" under Texas
23 Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with
24 operation or activity regulated by the Commission because it was created using oil and gas
25 waste over which the Commission has exclusive jurisdiction, and which the Commission no
26 longer considers to be an oil and gas waste if the recyclable product will be used as intended
27 pursuant to permit conditions.

28 Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053,
29 91.101, 91.1011, and 91.109, are affected by the adopted amendments.

30 Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code,
31 §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

1 Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources
2 Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

3
4 NOTE: RULE TEXT CHANGED FROM THE PROPOSAL INDICATED IN HIGHLIGHTING.

5
6 §3.8. Water Protection.

7 (a) The following words and terms when used in this section shall have the following
8 meanings, unless the context clearly indicates otherwise.

9 (1) - (2) (No change.)

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

14 (4) Completion/workover pit--Pit used for storage or disposal of spent completion
15 fluids [~~(including hydraulic fracturing flowback fluids)~~], workover fluids and drilling fluid, silt,
16 debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the
17 wellbore of a well being completed or worked over.

18 (5) - (8) (No change.)

19 (9) Fresh makeup water pit--Pit used in conjunction with a drilling rig for storage
20 of fresh water used to make up drilling fluid or [used in conjunction with] hydraulic fracturing of
21 an oil or gas well for the storage of fresh water or treated hydraulic fracturing flowback fluid used
22 to make up hydraulic fracturing fluid for use in a new well.

23 (10) - (13) (No change.)

24 (14) Skimming pit--Pit used for skimming oil off saltwater prior to disposal of
25 saltwater at a [~~tidal disposal facility,~~] disposal well[~~;~~] or fluid injection well.

26 (15) - (40) (No change.)

27 ~~(41) Hydraulic fracturing flowback fluid--The fluid, including spent hydraulic~~
28 ~~fracturing fluid and produced water, that returns from a well on which a hydraulic fracturing~~
29 ~~treatment has been performed.~~

30 ~~(42) Commercial recycling--The storage, handling, treatment, and recycling of oil~~
31 ~~and gas waste from more than one operator for compensation from the generator of the waste.~~

1 ~~another receiver, or the purchaser of the recyclable product for recycling.~~

2 ~~(43) Non-commercial on-lease produced water and/or hydraulic fracturing~~
3 ~~flowback fluid recycling--The recycling of produced water and/or hydraulic fracturing flowback~~
4 ~~fluid by the generator of the waste or by a contractor of the generator of the waste on the oil or~~
5 ~~gas lease or unit on which the waste was generated.~~

6 ~~(44) Non-commercial centralized produced water and/or hydraulic fracturing~~
7 ~~flowback fluid recycling--The recycling of produced water and/or hydraulic fracturing flowback~~
8 ~~fluid by the generator of the waste or by a contractor of the generator of the waste at a~~
9 ~~centralized facility operated and controlled by the generator of the waste.~~

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

20 ~~[(45) Non-commercial on-lease produced water and/or hydraulic fracturing~~
21 ~~flowback fluid recycling pit--Pit used in conjunction with an oil or gas lease or unit that is~~
22 ~~constructed, maintained, and operated by the operator of record of the lease or unit for the~~
23 ~~storage of hydraulic fracturing flowback fluid and produced water for the purpose of~~
24 ~~non-commercial on-lease recycling or for the storage of treated produced water and/or hydraulic~~
25 ~~fracturing flowback fluid that is a recyclable product as defined in §4.204(15) of this title (relating~~
26 ~~to Definitions).]~~

27 ~~(46) Non-commercial off-lease or centralized produced water and/or hydraulic~~
28 ~~fracturing flowback fluid recycling pit--Pit used in conjunction with multiple oil or gas leases or~~
29 ~~units that is constructed, maintained, and operated by the operator of record of the lease or unit~~
30 ~~for the storage of hydraulic fracturing flowback fluid and produced water for the purpose of~~
31 ~~non-commercial centralized recycling or for the storage of treated hydraulic fracturing flowback~~

1 ~~fluid and produced water that is a recyclable product as defined in §4.204(15) of this title.~~

2 (42) Non-commercial fluid recycling pit--Pit used in conjunction with one or more
3 oil or gas leases or units that is constructed, maintained, and operated by the operator of record
4 of the lease or unit and is located on an existing commission-designated lease or drilling unit
5 associated with a commission-issued drilling permit, or upon land leased or owned by the
6 operator for the purposes of operation of a non-commercial disposal well operated pursuant to a
7 permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection
8 well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into
9 Productive Reservoirs), for the storage of fluid for the purpose of non-commercial fluid recycling
10 or for the storage of treated fluid.

11 (43) [(47)] Recycle--To process and/or use or re-use oil and gas wastes as a
12 product for which there is a legitimate commercial use and the actual use of the recyclable
13 product for the purposes authorized in this subchapter or a permit. 'Recycle,' as defined in this
14 subsection, does not include injection pursuant to a permit issued under §3.46 of this title
15 (relating to Fluid Injection into Productive Reservoirs).

16 (44) [(48)] Treated [produced water and/or hydraulic fracturing flowback]
17 fluid—[Produced water and/or hydraulic fracturing flowback fluid] Fluid that has been treated
18 using water treatment technologies to remove impurities such that the treated fluid can be
19 reused or recycled [used as a makeup fluid for a hydraulic fracturing treatment or as a makeup
20 fluid for drilling fluid]. Treated fluid is not a waste but may become a waste if it is abandoned or
21 disposed of rather than reused or recycled.

22 (45) [(49)] Recyclable product--A reusable material as defined in §4.204(12) of
23 this title.

24 (46) [(50)] 100-year flood plain--An area that is inundated by a 100-year flood,
25 which is a flood that has a one percent or greater chance of occurring in any given year, as
26 determined from maps or other data from the Federal Emergency Management Administration
27 (FEMA), or, if not mapped by FEMA, from the United States Department of Agriculture soil
28 maps.

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

1 (b) - (c) (No change.)

2 (d) Pollution control.

3 (1) (No change.)

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

22 (3) Authorized disposal methods.

23 (A) - (E) (No change.)

24 (F) Contents of non-commercial [Non-commercial on-lease produced-
25 water and/or hydraulic fracturing flowback] fluid recycling pit [contents].

26 [(i) Untreated wastes.] A person may, without a permit, dispose of
27 the solids from a non-commercial fluid recycling pit [untreated hydraulic fracturing flowback fluid-
28 waste] by burial in the [a non-commercial on-lease hydraulic fracturing flowback fluid recycling]
29 pit, provided the pit has been dewatered [; and provided the wastes are disposed of at the same-
30 well site where they are generated].

31 [(ii) Recyclable product. A person may, without a permit, dispose of

1 ~~produced water and/or hydraulic fracturing flowback fluid that is a recyclable product by burial in~~
2 ~~a non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling~~
3 ~~pit, provided the pit has been dewatered].~~

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

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

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

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

19 (F) (No change.)

20 (G) ~~Non-commercial [on-lease produced water and/or hydraulic fracturing~~
21 ~~flowback] fluid recycling pits.~~

22 (i) ~~A person shall not deposit or cause to be deposited into a~~
23 ~~non-commercial fluid [on-lease] recycling pit any oil field fluids or oil and gas wastes other than~~
24 ~~those fluids described in subsection (a)(42) [produced water and/or hydraulic fracturing flowback~~
25 ~~fluid generated on the lease or unit on which the pit is located].~~

26 (ii) ~~All pits shall be sufficiently large to ensure adequate storage~~
27 ~~capacity and freeboard taking into account anticipated precipitation.~~

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

1 (iv) A freeboard of at least two feet shall be maintained at all times.

2 (v) All pits shall be lined. The liner shall be designed, constructed,
3 and installed to prevent any migration of materials from the pit into adjacent subsurface soils,
4 ground water, or surface water at any time during the life of the pit. The liner shall be installed
5 according to standard industry practices, shall be constructed of materials that have sufficient
6 chemical and physical properties, including thickness, to prevent failure during the expected life
7 of the pit. All liners shall have a hydraulic conductivity that is 1.0×10^{-7} cm/sec or less. A liner
8 may be constructed of either natural or synthetic materials.

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

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

19 (III) If the operator does not propose to empty the pit and
20 inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak
21 detection system. A leak detection system shall be installed between a primary and secondary
22 liner. The leak detection system must be monitored on a monthly basis to determine if the
23 primary liner has failed. The primary liner has failed if the volume of water passing through the
24 primary liner exceeds the action leakage rate, as calculated using accepted procedures, or
25 1,000 gallons per acre per day, whichever is larger.

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

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

1 (I) the location of the pit including the lease name and
2 number or drilling permit number and the latitude and longitude;

3 (II) the dimensions and maximum capacity of the pit; and

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

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

10 (viii) [(vii)] The pit shall be inspected periodically by the operator for
11 compliance with the applicable provisions of this section.

12 (H) [(G)] Backfill requirements.

13 (i) A person who maintains or uses a reserve pit, mud circulation
14 pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit,
15 flare pit, non-commercial [on-lease produced water and/or hydraulic fracturing flowback] fluid
16 recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the
17 following schedule.

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

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

24 (III) All completion/workover pits used when completing a
25 well shall be dewatered within 30 days and backfilled and compacted within 120 days of well
26 completion. All completion/workover pits used when working over a well shall be dewatered
27 within 30 days and backfilled and compacted within 120 days of completion of workover
28 operations.

29 (IV) Basic sediment pits, flare pits, fresh mining water pits,
30 non-commercial [on-lease produced water and/or hydraulic fracturing flowback] fluid recycling
31 pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days

1 of final cessation of use of the pits.

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

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

11 (iii) The director may require that a person who uses or maintains
12 a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit,
13 completion/workover pit, basic sediment pit, flare pit, non-commercial [on-lease produced water
14 and/or hydraulic fracturing flowback] fluid recycling pit, or water condensate pit backfill the pit
15 sooner than the time prescribed by clause (i) of this subparagraph if the director determines that
16 oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used
17 for improper storage or disposal of oil and gas wastes or oil field fluids.

18 (iv) Prior to backfilling any reserve pit, mud circulation pit,
19 completion/workover pit, basic sediment pit, flare pit, non-commercial [on-lease produced water
20 and/or hydraulic fracturing flowback] fluid recycling pit, or water condensate pit whose use or
21 maintenance is authorized by this paragraph, the person maintaining or using the pit shall, in a
22 permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all
23 oil and gas wastes which are in the pit.

24 (I) Unless otherwise approved by the district director after a
25 showing that the fluids will be confined in the pit at all times, all [All] authorized pits shall be
26 constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that
27 term is defined in subsection (a) of this section [and so as to prevent pollution].

28 (II) In the event of an unauthorized discharge from any pit
29 authorized by this paragraph, the operator shall take any measures necessary to stop or control
30 the discharge and report the discharge to the district office as soon as possible.

31 (5) (No change.)

1 (6) Permits.

2 (A) - (F) (No change.)

3 (G) Minor permits. If the director determines that an application is for a
4 permit to store only a minor amount of oil field fluids or to store or dispose of only a minor
5 amount of oil and gas waste, the director may issue a minor permit provided the permit does not
6 authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of
7 surface or subsurface water. An application for a minor permit shall be filed with the commission
8 in the appropriate district office. Notice of the application shall be given as required by the
9 director. The director may determine that notice of the application is not required. A minor permit
10 is valid for 60 [30] days, but a minor permit which is issued without notice of the application may
11 be modified, suspended, or terminated by the director at any time for good cause without notice
12 and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary,
13 the issuance, denial, modification, suspension, or termination of a minor permit shall be
14 governed by the provisions of subparagraphs (A) - (E) of this paragraph.

15 (7) Recycling.

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

19 (B) Authorized recycling.

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

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

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

1 (iv) Fluid that meets the requirements of clause (i), (ii), or (iii) is a
2 recyclable product.

3 (C) Permitted recycling.

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

10 (ii) All commercial recycling requires the commercial recycler of the
11 oil and gas waste to obtain a permit in accordance with Chapter 4 of this title (relating to
12 Environmental Protection), Subchapter B.

13 ~~[(7) Existing permits and pits (other than existing brine mining pit permits and~~
14 ~~brine mining pits.)~~

15 ~~[(A) Existing permits. Each permit to maintain or use a lined or unlined pit~~
16 ~~for storage or disposal of oil field brines, geothermal resource water, or other mineralized waters,~~
17 ~~which has been issued by the commission prior to the effective date of this subsection, shall~~
18 ~~expire 180 days after the effective date of this subsection. Every other permit to store oil field~~
19 ~~fluids or oil and gas wastes or to dispose of oil and gas wastes, which permit has been issued by~~
20 ~~the commission prior to the effective date of this subsection, shall remain in effect until modified,~~
21 ~~suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection.~~
22 ~~The permits which will expire pursuant to this paragraph include, but are not limited to, permits~~
23 ~~for the following types of pits: saltwater disposal pits, emergency saltwater storage pits,~~
24 ~~skimming pits, and brine pits.]~~

25 ~~[(B) Renewal permits. Any person holding a permit scheduled to expire~~
26 ~~pursuant to subparagraph (A) of this paragraph may apply to the commission for renewal of the~~
27 ~~permit. If a person makes timely and sufficient application for renewal of a permit, then,~~
28 ~~notwithstanding the provisions of subparagraph (A) of this paragraph, the permit shall not expire~~
29 ~~until final commission action renewing or denying renewal of the permit. An application for~~
30 ~~renewal of a permit shall be filed with the commission in Austin within 180 days of the effective~~
31 ~~date of this subsection. No notice of the application is required. The director may administratively~~

1 approve an application for renewal of a permit. No hearing shall be held on an application for
2 renewal of a permit unless the applicant requests a hearing or the director determines that a
3 hearing is necessary. No renewal permit will be issued unless the standards for permit issuance
4 stated in paragraph (6)(A) of this subsection have been met.]

5 [(C) Operating existing unpermitted pits. If, as of the effective date of this
6 subsection, a person is maintaining or using a pit, which is required by this subsection to be
7 permitted but which was not required to be permitted prior to the effective date of this
8 subsection, then the person maintaining or using the pit may continue to maintain or use the pit
9 for 180 days after the effective date of this subsection. If a person makes timely and sufficient
10 application for a permit to maintain or use such an existing but unpermitted pit, then the person
11 may continue to use the pit until final commission action denying the permit. An application for a
12 permit shall be considered timely if it is filed with the commission within 180 days of the effective
13 date of this subsection. The issuance or denial of the permit shall be governed by the provisions
14 of paragraph (6) of this subsection. The unpermitted pits, whose use or maintenance is
15 authorized by this subparagraph, include, but are not limited to, the following types of pits: drilling
16 fluid storage pits, gas plant evaporation/retention pits, and washout pits.]

17 [(D) Backfilling existing pits. If, as of the effective date of this subsection, a
18 person is maintaining or using a basic sediment pit which does not meet the 50-barrel size
19 limitation of paragraph (4)(C) of this subsection, then that person shall dewater, backfill, and
20 compact the pit or rebuild the pit to comply with the 50-barrel size limitation within 180 days of
21 the effective date of this subsection. Any person who, as of the effective date of the subsection,
22 is maintaining or using a lined or unlined pit for storage or disposal of oil field brines, geothermal
23 resource waters, or other mineralized waters, which pit was permitted prior to the effective date
24 of this subsection, shall dewater, backfill, and compact the pit within 270 days of the effective
25 date of this subsection unless the person applies for a renewal permit pursuant to subparagraph
26 (B) of this paragraph. If a person applies for a renewal of a permit to maintain or use a lined or
27 unlined pit for storage or disposal of oil filled brines, geothermal resource waters, or other
28 mineralized waters, the director may extend the time for dewatering, backfilling, and compacting
29 the pit to up to 90 days after final commission action denying renewal of the permit. If, as of the
30 effective date of this subsection, a person is maintaining or using a pit, which is required by this
31 subsection to be permitted but which was not required to be permitted prior to the effective date

1 of this subsection, then the person maintaining or using the pit shall dewater, backfill, and
2 compact the pit within 270 days of the effective date of this subsection unless the person applies
3 for a permit to maintain or use the pit within the 180-day period allowed by subparagraph (C) of
4 this paragraph. If a person applies for such a permit to maintain or use a previously unpermitted
5 pit, the director may extend the time for dewatering, backfilling, and compacting the pit to up to
6 90 days after final commission action denying issuance of the permit. The director may require
7 that pits required to be backfilled by this subparagraph be dewatered, backfilled, and compacted
8 sooner than the time prescribed by this subparagraph if the director determines that oil and gas
9 wastes are likely to escape from the pit or that the pit is being used for improper disposal of oil
10 and gas wastes.]

11 ~~[(8) Existing brine mining pit permits and brine mining pits. Existing brine mining~~
12 ~~pit permits and brine mining pits will be governed by the provisions of this paragraph rather than~~
13 ~~the provisions of paragraph (7) of this subsection.]~~

14 ~~[(A) Existing brine mining pit permits. Any permit to maintain or use a brine~~
15 ~~mining pit, which permit has been issued by the commission prior to January 6, 1987, will remain~~
16 ~~in effect until modified, suspended, or terminated by the commission pursuant to paragraph~~
17 ~~(6)(E) of this subsection.][(B) Existing brine mining pits. If, as of January 6, 1987, a person is~~
18 ~~maintaining or using a brine mining pit and has not obtained a permit from the commission to~~
19 ~~maintain or use the pit, then the person may continue to use the pit through January 30, 1987. If~~
20 ~~the person makes timely and sufficient application for a permit to maintain or use the pit, then~~
21 ~~the person may continue to use the pit until final commission action denying the permit. An~~
22 ~~application for a permit to maintain or use the pit will be considered timely if it is filed with the~~
23 ~~commission by January 30, 1987. The issuance or denial of the permit will be governed by the~~
24 ~~provisions of paragraph (6) of this subsection. Unless the person maintaining or using the pit~~
25 ~~makes timely and sufficient application for a permit to maintain or use the pit, the person shall~~
26 ~~close the pit by May 1, 1987. If the person maintaining or using the pit makes timely and~~
27 ~~sufficient application for a permit to maintain or use the pit, but the permit is denied, then the~~
28 ~~person shall close the pit within 90 days after final commission action denying the permit. A pit~~
29 ~~required by this subparagraph to be closed shall be closed in accordance with a plan approved~~
30 ~~by the director. A closure plan must be submitted to the director for approval at least 60 days~~
31 ~~before the pit is required to be closed. The closure plan must describe the manner in which the~~

1 pit will be dewatered or emptied, backfilled, and compacted. The director may require that a pit
2 required to be closed by this subparagraph be closed sooner than the time prescribed by this
3 subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to
4 escape from the pit or that the pit is being used for improper storage or disposal of oil and gas
5 wastes or oil field fluids.]

6 (8) [(9)] Used oil. Used oil as defined in §3.98 of this title (relating to Standards for
7 Management of Hazardous Oil and Gas Waste), shall be managed in accordance with the
8 provisions of 40 CFR, Part 279.

9 (e) (No change.)

10 (f) Oil and gas waste haulers.

11 (1) A person who transports oil and gas waste for hire by any method other than
12 by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas
13 property where it is generated unless such transporter has qualified for and been issued an oil
14 and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing
15 material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl
16 (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or
17 hazardous oil and gas waste subject to regulation under §3.98 of this title [~~relating to Standards
18 for Management of Hazardous Oil and Gas Waste~~], is excluded from this subsection. This
19 subsection is not applicable to the non-commercial hauling of oil and gas wastes for
20 non-commercial recycling. For purposes of this subsection, injection of salt water or other oil and
21 gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as
22 recycling. [~~A person who has a salt water hauler permit does not need to apply for an oil and gas
23 waste hauler permit until the person is scheduled to file an application for permit renewal.~~]

24 (A) Application for an oil and gas waste hauler permit will be made on the
25 commission-prescribed form, and in accordance with the instructions thereon, and must be
26 accompanied by:

27 (i) - (iii) (No change.)

28 (iv) a certification by the hauler that the vehicles listed on the
29 application are designed so that they will not leak during transportation. The certification shall
30 include a statement that vehicles used to haul non-solid oil and gas waste shall be [have totally
31 enclosed waste storage compartments] designed to transport non-solid oil and gas wastes, and

1 shall be operated and maintained to prevent the escape of oil and gas waste.

2 (B) (No change.)

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

5 (i) - (viii) (No change.)

6 (ix) Each vehicle must be operated and maintained in such a
7 manner as to prevent spillage, leakage, or other escape of oil and gas waste during
8 transportation. Vehicles used to haul non-solid oil and gas waste shall be [have totally enclosed
9 waste storage compartments] designed to transport non-solid oil and gas wastes, and shall be
10 operated and maintained to prevent the escape of oil and gas waste.

11 (x) (No change.)

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

14 (A) Such daily record shall be dated and signed by the vehicle driver and
15 shall show the following information:

16 (i) (No change.)

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

19 (iii) (No change.)

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

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

23 (g) Recordkeeping.

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

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

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

31 (C) name and address of the hauler, and permit number (WHP number) if

1 applicable; and

2 (D) type and volume of oil and gas waste transported each day to disposal
3 or recycling.

4 (2) - (3) (No change.)

5 (h) - (i) (No change.)

6 (j) Consistency with the Texas Coastal Management Program. The provisions of this
7 subsection apply only to activities that occur in the coastal zone and that are subject to the CMP
8 rules.

9 (1) (No change.)

10 (2) Consistency Determinations. The provisions of this paragraph apply to
11 issuance of determinations required under Title 31, Texas Administrative Code, §505.30
12 (Agency Consistency Determination), for the following actions listed in Title 31, Texas
13 Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to
14 discharge oil and gas wastes to surface waters; and certifications of compliance with applicable
15 water quality requirements for federal permits for development in critical areas and dredging and
16 dredged material disposal and placement in the coastal area.

17 (A) (No change.)

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

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

31 (ii) If the commission determines that issuance of a permit or

1 certification covered by this paragraph would result in direct and significant adverse affects to a
2 CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the
3 proposed activity, the commission shall determine whether the proposed activity would meet the
4 applicable requirements of paragraph (1) of this subsection.

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

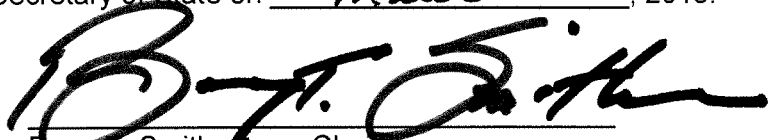
12 (II) (No change.)

13 (3) (No change.)

14 This agency hereby certifies that the sections as adopted have been reviewed by legal
15 counsel and found to be a valid exercise of the agency's legal authority.

16 Issued in Austin, Texas, on March 26, 2013.

17 Filed with the Office of the Secretary of State on March 26, 2013.

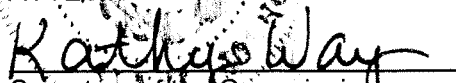


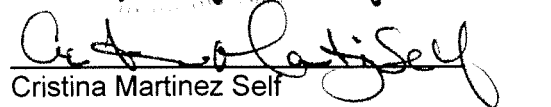
Barry T. Smitheman, Chairman

David Porter, Commissioner

Christi Craddick, Commissioner

ATTEST:



Kathryn Way
Secretary of the Commission

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