



June 30, 2022

Railroad Commission of Texas (“RRC”)

Attn: Leslie Savage, Chief Geologist

rulescoordinator@rrc.texas.gov

RE: NARO-Texas Comments on 16 Texas Administrative Code Chapter 5 and the RRC’s Application for Class VI Primacy from the U.S. Environmental Protection Agency (“EPA”) (the “Proposed Carbon Sequestration Amendments” and “Primacy Application”).

Ms. Savage,

NARO-Texas is pleased to submit comments regarding the Proposed Carbon Sequestration Amendments and the RRC’s Primacy Application addressing statutory authority on the regulation of injection and geological sequestration and storage of anthropogenic carbon dioxide in Texas.

Our organization is a non-profit trade association organized under Texas law, representing—solely and without compromise—the interests of oil and gas royalty owners. A core tenant of NARO-Texas is to monitor Texas courts, the legislature, and the state’s regulatory bodies in order to offer perspective and balance to the industry on behalf of royalty owners, when necessary.

NARO-Texas’s primary concern with respect to the Proposed Carbon Sequestration Amendments is ensuring proper and sufficient notice of a company’s sequestration activities to affected mineral and royalty owners; owners both adjacent to and within proposed storage reservoirs.

To that end, NARO-Texas offers the following comments to the Proposed Carbon Sequestration Amendments:

Section 5.204 – Notice of Permit Actions and Public Comment



NARO-Texas recommends adding “**and mineral interest owners located within,**” following “each leaseholder of minerals” and before “lying above or below the proposed storage reservoir” to (a)(3)(A)(V) in order to ensure proper notice to mineral owners *within* the proposed storage reservoir, not just *adjacent* mineral owners, surface owners within the proposed storage reservoir, and leaseholders as currently required by the remaining subsections.

Section 5.206 – Notice of Permit Actions and Public Comment

NARO-Texas recommends adding the following to the end of (o)(2)(G): “**and take all reasonable steps necessary to minimize or correct any adverse impact on the operator’s ability to drill for and produce oil and gas or geothermal resources from above or below the geologic storage reservoir**”. This addition to the condition that requires coordination with an exploration and production company establishes an affirmative duty—similar to the duty to mitigate contained in subsection (E) immediately above—to lessen the impact on the production of hydrocarbons which will benefit exploration and production companies and mineral and royalty owners alike.

General Comment – “Good Faith Claim”

Throughout the Proposed Carbon Sequestration Amendments, reference is made to the “good faith claim to the necessary and sufficient property rights to operate the geologic storage facility.” The “Definitions” section in 5.102 does not define “good faith.”

In the context of obtaining an oil and gas well drilling permit, an operator must demonstrate a good faith claim to the right to drill, or more thoroughly stated, a “factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.” See *Opiela v. Railroad Commission of Texas*, Cause No. D-1-GN-20-000099, pending in the 53rd District Court of Travis County, Texas. NARO-Texas strongly encourages the RRC to define “good faith” in the Proposed Amendments to ensure that applicants properly demonstrate a continuing possessory right in a geologic storage facility based upon a factually supported and recognized legal theory.

For the CCUS industry to thrive in Texas, buy-in from all stakeholders is necessary; industry participants, surface owners, and mineral and royalty owners. NARO-Texas believes cooperation among all stakeholders is something this regulatory body should facilitate through its rulemaking authority. We



truly appreciate the opportunity to comment and are available at any time to further discuss the comments above, if needed.

Sincerely,

A handwritten signature in blue ink that reads "Reagan M. Marble". The signature is written in a cursive, flowing style.

Reagan M. Marble

Co-Chair, NARO-Texas Legislative Committee

A handwritten signature in blue ink that reads "John B. Collier V". The signature is written in a cursive, flowing style.

John B. Collier V

Co-Chair, NARO-Texas Legislative Committee