



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Barry T. Smitherman
Commissioner David Porter
Commissioner Christi Craddick

FROM: Cristina Self, Attorney– General Counsel Section
Office of General Counsel

THROUGH: Lindil C. Fowler, General Counsel

DATE: March 18, 2014

SUBJECT: Proposal of amendments to 16 Tex. Admin. Code
§3.80, relating to Commission Oil and Gas Forms,
Applications, and Filing Requirements;
O&G Docket No. 20-0287605.

March 25, 2014		
Approved	Denied	Abstain

Attached are Staff's recommended preamble and rule text for the proposal of amendments to §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, in order to reflect the policy adopted by the Commission at its November 12, 2013, open meeting regarding forms required to be filed with the Commission.

Staff requests the Commission's approval to publish the proposed new rule in the *Texas Register* for a 30-day comment period. If approved at conference on March 25th, the proposal should appear in the April 11th issue of the *Texas Register*. This proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Jason Boatright, Director –General Counsel Section
Gil Bujano, Director – Oil & Gas Division
David Cooney, Director – Enforcement Section
Milton Rister, Executive Director
Leslie Savage, Chief Geologist – Oil & Gas Division
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes amendments to §3.80, relating to
2 Commission Oil and Gas Forms, Applications, and Filing Requirements. The Commission proposes the
3 amendments in order to reflect the policy adopted at its November 12, 2013, open meeting regarding
4 forms required to be filed with the Commission. The policy requires the Commission to promulgate,
5 abolish, or amend forms only upon the approval of a majority of Commissioners at a public meeting. The
6 policy will allow the Commission to be flexible and efficient in making any needed form changes, while
7 providing transparency in the form development process and an opportunity for public notice and
8 discussion of any form changes. Where required by Texas law to promulgate, abolish, or amend a certain
9 form through rulemaking procedures conducted under the Texas Administrative Procedure Act, the
10 Commission will continue to do so. Otherwise, the Commission will consider staff's recommended form
11 revisions in an open meeting. Staff will place the proposed form revisions on the Commission's website
12 for public review and comment for a period of time proportionate to the subject and degree of change.
13 After the period of time for public review and staff consideration of any submitted comments has elapsed,
14 the Commission will consider adoption of the form revisions in a second open meeting. Following the
15 second open meeting, Oil and Gas Division staff will update the forms pages as necessary on the
16 Commission's website.

17 The Commission proposes amendments in subsection (a) and subsection (e)(1) to delete Table 1
18 in subsection (a), entitled Railroad Commission Oil and Gas Division Forms, which lists the names of all
19 Oil and Gas Division forms and their creation or revision dates, as well as three references to that Table.
20 Table 1, while not legally required, was added to §3.80 in 2004 as part of a larger effort by the
21 Commission at that time to standardize the process of adopting and amending Commission forms. With
22 the adoption of the November 12, 2013 policy, the Commission will continue to make information
23 regarding form revisions (as well as the forms, themselves) publicly available on the Commission's
24 website.

1 Jeff Grymkoski, Budget Manager, Financial Services Division, has determined that for each year
2 of the first five years that the proposed amendments will be in effect there will be no fiscal implications
3 for state or local governments resulting from the enforcement of the proposed rule amendments.

4 Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the
5 first five years that the proposed amendments will be in effect, the public benefit expected as a result of
6 adopting the proposed amendments will be affording the public notice and opportunities for discussion of
7 proposed new forms or proposed changes to existing forms, as well as final approval of such forms at an
8 open meeting of the Commission. Further, there is no expected economic cost to persons required to
9 comply with the rule, as the proposed amendments add no new requirements to existing regulations.

10 The Commission finds that the proposed amendments will not affect a local economy. Therefore,
11 the Commission has not prepared a local employment impact statement pursuant to Texas Government
12 Code, §2001.022.

13 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
14 Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact
15 Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses
16 and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the
17 rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.
18 Ms. Savage has determined that the proposed amendments will not have an adverse economic effect on
19 small businesses or micro-businesses because the amendments add no new requirements on small
20 businesses or micro-businesses.

21 Ms. Savage has determined that the proposed amendments are not major environmental rules, as
22 the proposed amendments do not meet the criteria set forth in Texas Government Code, §2001.0225(a).
23 Accordingly, the Commission has not prepared the draft impact analysis or final regulatory analysis
24 required under that section.

1 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
2 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
3 www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us.
4 Comments should refer to O&G Docket No. 20-0287605 and will be accepted until 12:00 p.m. (noon) on
5 Monday, May 12, 2014, which is 31 days after publication in the *Texas Register*. The Commission finds
6 that this comment period is reasonable because the proposal and an online comment form will be
7 available on the Commission's website no later than the day after the open meeting at which the
8 Commission approves publication of the proposal, giving interested persons more than two additional
9 weeks to review and analyze the proposal and to draft and submit comments. The Commission
10 encourages all interested persons to submit comments no later than the deadline. The Commission cannot
11 guarantee that comments submitted after the deadline will be considered. For further information, call Ms.
12 Cristina Self in the Office of General Counsel at (512) 463-2299. The status of Commission rulemakings
13 in progress is available at www.rrc.state.tx.us/rules/proposed.php.

14 The Commission proposes the amendments to §3.80 pursuant to Texas Natural Resources Code,
15 §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in
16 drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority
17 to adopt all necessary rules for governing and regulating persons and their operations under Commission
18 jurisdiction; and §91.142, which requires the Commission to obtain specified information from a person,
19 firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating
20 wholly or partially in this state and acting as principal or agent for another for the purpose of performing
21 operations which are within the jurisdiction of the Commission.

22 Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and §91.142.

23 Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

24

1 §3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

2 (a) Forms. Forms required to be filed at the Commission shall be those prescribed by the
3 Commission [~~as listed in Table 1 of this subsection~~]. A complete set of all Commission forms [~~listed on~~
4 ~~Table 1~~] required to be filed at the Commission shall be kept by the Commission secretary and posted on
5 the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For
6 any required or discretionary filing, an organization may either file the prescribed form on paper or use
7 any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The
8 Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains
9 all required information and meets the requirements of subsection (e)(3) of this section.

10 [~~Figure: 16 TAC §3.80(a)~~]

11 (b) Definitions. The following words and terms, when used in this section, shall have the
12 following meanings, unless the context clearly indicates otherwise.

13 (1) Commission--The Railroad Commission of Texas.

14 (2) Electronic filing process--An electronic transmission to the Commission in a
15 prescribed form and/or format authorized by the Commission and completed in accordance with
16 Commission instructions.

17 (3) Form--A printed or typed paper document or electronic submission, including any
18 necessary instructions, with blank spaces for insertion of required or requested specific information.

19 (4) Organization--Any person, firm, partnership, joint stock association, corporation, or
20 other organization, domestic or foreign, operating wholly or partially within this state, acting as principal
21 or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

22 (5) Position of ownership or control--A person holds a position of ownership or control in
23 an organization if the person is:

24 (A) an officer or director of the organization;

- 1 (B) a general partner of the organization;
- 2 (C) the owner of an organization which is a sole proprietorship;
- 3 (D) the owner of more than a 25 percent ownership interest in the organization;
- 4 or
- 5 (E) the designated trustee of the organization.

6 (6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or
7 certificate relating to safety or the prevention or control of pollution.

8 (c) Organization eligibility. The Commission may not accept an organization report or an
9 application for a permit, or approve a certificate of compliance if:

10 (1) the organization that submitted the report, application, or certificate violated a statute
11 or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control
12 of pollution; or

13 (2) any person who holds a position of ownership or control in the organization has,
14 within the seven years preceding the date on which the report, application, or certificate is filed, held a
15 position of ownership or control in another organization, and during that period of ownership or control
16 the other organization violated a statute or Commission rule, order, license, permit, or certificate that
17 relates to safety or the prevention or control of pollution.

18 (d) Violations. An organization has committed a violation if there is either a Commission order
19 against an organization finding that the organization has committed a violation and all appeals have been
20 exhausted or an agreed order entered into by the Commission and an organization relating to an alleged
21 violation, and:

22 (1) the conditions that constituted the violation or alleged violation have not been
23 corrected;

24 (2) all administrative, civil and criminal penalties, if any, relating to the violation or

1 agreed settlement relating to an alleged violation have not been paid; or

2 (3) all reimbursements of costs and expenses, if any, assessed by the Commission relating
3 to the violation or to the alleged violation have not been collected.

4 (e) Authorization and standards for electronic filing.

5 (1) An organization may file electronically any form [~~listed on Table 1~~] for which the
6 Commission has provided an electronic version, provided that the organization pays all required filing
7 fees and complies with all requirements, including but not limited to security procedures, for electronic
8 filing.

9 (2) The Commission deems an organization that files electronically or on whose behalf is
10 filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the
11 information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in
12 and pertaining to:

13 (A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production,
14 and plugging);

15 (B) Texas Natural Resources Code, Title 5 (geothermal resources);

16 (C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

17 (D) Texas Utilities Code, Chapter 121, Subchapter 1 (sour gas pipeline facilities);

18 (E) Texas Water Code, §26.131 (discharge permits);

19 (F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class
20 III brine mining wells);

21 (G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

22 (H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring
23 radioactive material (NORM) waste); and

24 (I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and

1 Chapter 4 (Environmental Protection).

2 (3) All forms that an organization submits or that are submitted on behalf of an
3 organization shall be transmitted in the manner prescribed by the Commission that is compatible with its
4 software, equipment, and facilities.

5 (4) The Commission may provide notice electronically to an organization of, and may
6 provide an organization the ability to confirm electronically, the Commission's receipt of a form
7 submitted electronically by or on behalf of that organization.

8 (5) The Commission deems that the signature of an organization's authorized
9 representative appears on each form submitted electronically by or on behalf of the organization, as if this
10 signature actually appears, as of the time the form is submitted electronically to the Commission.

11 (6) The Commission holds each organization responsible, under the penalties prescribed
12 in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or
13 that are filed on its behalf. The Commission charges each organization with the obligation to review and
14 correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

15

1 (f) Other electronic transmissions. The Commission may at its discretion accept other documents
2 or data electronically transmitted.

3 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
4 within the agency's authority to adopt.

5 Issued in Austin, Texas on March 25, 2014.

6 Filed with the Office of the Secretary of State on March 25, 2014.



Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas