

From: [Texas Sunset Advisory Commission](#)
To: [Sunset Advisory Commission](#)
Subject: Public Input Form for Agencies Under Review (Private/Before Publication)
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Submitted by: Visitor

Submitted values are:

Choose the agency that you would like to provide input about
[Texas Commission on Environmental Quality](#)

Public Comments

1

First Name

Dan

Last Name

Snow

Title

President

Organization you are affiliated with

SnowOil&Gas, Inc.

Email

City

Andrews

State

Texas

Your Comments or Concerns

The TCEQ has authorized WCS under LIC R04100 Amd etal to dispose of Oil and Gas NORM waste and it does not have the authority to do so. The RRC has the sole authority to conduct such. See attachment.

Your Proposed Solution

Remove the erroneous language in any RCRA TCEQ facility permits and allow the RRC to fulfill its duties.

Attachment

[White Paper.pdf](#) (126.56 KB)

My Comments Will Be Made Public
Yes

Issue:

This white paper evaluates the assertion of the Texas Commission on Environmental Quality (“TCEQ”) that it has authority to grant a party the right to dispose of oil and gas NORM waste¹ independent of and to the exclusion of the Railroad Commission of Texas (“RRC”), and is doing such with Waste Control Specialists LIC R04100.

Answer:

The applicable statutory and regulatory authority, as well as supporting guidance documents, make clear that TCEQ does not have the right to authorize the disposal of oil and gas NORM waste independent of and to the exclusion of the RRC.

Discussion:

TCEQ asserts it has authority to permit the disposal of oil and gas NORM waste in a TCEQ-permitted landfill, independent of any requirement that the party obtain separate RRC authorization for that disposal. TCEQ relies on the memorandum of understanding between the TCEQ and RRC² (“MOU”) in support of its position. Particularly, TCEQ references § 3.30(e)(3)(B) of the MOU, which states:

A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase “that type of waste” does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste’s physical and chemical characteristics.

TCEQ emphasizes the language in that provision stating the TCEQ may accept waste under the jurisdiction of the RRC “without further individual concurrence.” TCEQ staff relies on that language to assert that a party may dispose of oil and gas NORM waste in a TCEQ-permitted facility without separate RRC authorization.

TCEQ’s position ignores the underlying statutory authority relating to oil and gas NORM waste. Specifically, Tex. Health & Safety Code § 401.415 provides that the RRC has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste.³ The

¹ Tex. Health & Safety Code Ann. § 401.003(27)

“Oil and gas NORM waste” means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) is not exempt by department rule adopted under Section 401.106; and

(D) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Section 91.1011 of the Natural Resources Code.

² 16 Tex. Admin. Code § 3.30

³ Tex. Health & Safety Code Ann. § 401.415(a) (“Notwithstanding any other provision of this chapter, the Railroad Commission of Texas: (1) has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and (2) may, in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to: (A) determine 16 Tex.

statute provides the RRC the authority to adopt rules reasonably necessary to exercise its authority.”⁴ The statute further provides:

To ensure that the State of Texas retains its Agreement Status with the federal commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the [RRC] shall issue rules on the management of oil and gas NORM waste . . . The rules of the [RRC] shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.⁵

The RRC has issued rules for the management and disposal of oil and gas NORM waste consistent with its authority under Tex. Health & Safety Code § 401.415.⁶ 16 Tex. Admin. Code § 4.611 provides that “[n]o person may dispose of oil and gas NORM waste except as provided in this subchapter.”⁷ 16 Tex. Admin. Code § 4.620 states that “[e]xcept in the case of onsite disposal . . . , no person may dispose of oil and gas NORM waste by burying it or by applying it to and mixing it with the land surface without first obtaining a permit under § 3.8 of this title (relating to Water Protection).”⁸

Further, the MOU itself confirms the RRC’s exclusive role in managing oil and gas NORM waste. Particularly, § 3.30(f)(2) provides:

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.⁹

Finally, TCEQ recognizes the RRC’s authority over oil and gas NORM waste in its policy guidance. For example, TCEQ Regulatory Guidance RG-003, relating to the “Disposal of Special Wastes Associated with the Development of Oil, Gas, and Geothermal Resources,” identifies

Admin. Code § 4.611 whether the equipment contains or is contaminated with oil and gas NORM waste; and (B) identify any equipment determined to contain or be contaminated with oil and gas NORM.”)

⁴ Tex. Health & Safety Code Ann. § 401.415(b)

⁵ Tex. Health & Safety Code Ann. § 401.415(e)

⁶ See 16 Tex. Admin. Code §§ 4.601-4.635

⁷ 16 Tex. Admin. Code § 4.611; referring to Subchapter F of 16 Tex. Admin. Code Part 1, Chapter 4

⁸ 16 Tex. Admin. Code § 4.620

⁹ 16 Tex. Admin. Code § 3.30(f)(2); see also, § 3.30(b)(2)(A) (“the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.”), § 3.30(f)(1)(B) (TCEQ has jurisdiction to regulate and license “the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste” (emphasis added))

numerous categories of oil and gas waste for which RRC authority is required for disposal in a TCEQ landfill.¹⁰

TCEQ Staff asserts that it has authority to grant a party the right to dispose of oil and gas NORM waste to the exclusion of RRC. It relies on the MOU for that position. The MOU can only grant or clarify such authority as is granted to the respective agencies by statute. The statute is clear in granting to the RRC the authority to regulate oil and gas NORM waste. Just as clearly, the legislature does not confer such authority to TCEQ. TCEQ's reading of the MOU to include oil and gas NORM waste conflicts with the respective statutory authority of each agency. The applicable statutory authority nowhere provides for the type of oil and gas NORM waste management TCEQ asserts the MOU provides. As discussed, it prohibits such waste management.

Consistent with its statutory authority, the RRC has issued rules regulating the management and disposal of oil and gas NORM waste. The MOU confirms, between the two agencies, the RRC's exclusive authority to regulate oil and gas NORM waste.

The MOU language TCEQ relies on for its position ("A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC . . .") cannot be read to include oil and gas NORM waste, precisely because it directly conflicts with the statute granting authority to the RRC for the management of oil and gas NORM waste. The provision has properly never been read to include oil and gas NORM waste. It would be improper to do so now because of the statutory conflict. The provision also conflicts with the RRC regulatory program regulating oil and gas NORM waste developed pursuant to the statutory authority granted to it and, it conflicts with the agreement between the RRC and the TCEQ set out in the MOU regarding the jurisdictions of the respective agencies over oil and gas NORM waste. For all those reasons, TCEQ staff's position is legally untenable.

¹⁰ TCEQ Regulatory Guidance RG-003, September 2006, "Disposal of Special Wastes Associated with the Development of Oil, Gas, and Geothermal Resources