

Kellie Martinec

From: Brian Sledge <bsledge@sledgelaw.com>
Sent: Monday, September 29, 2014 11:24 AM
To: rulescoordinator
Subject: Upper Trinity GCD Comments on Proposed Amendments to 16 TAC Secs 3.9 and 3.46
Attachments: Signed on Letter head Upper Trinity GCD comments to proposed RRC Rules 3....pdf

Please find attached for your consideration the comments of the Upper Trinity Groundwater Conservation District on the Commission's proposed amendments to Sections 3.9 and 3.46 of Title 16 of the Texas Administrative Code (Oil and Gas Docket No. 20-0290951). Thank you in advance for your consideration of these comments.

Sincerely,
Brian Sledge
Legal Counsel for Upper Trinity GCD



Brian L. Sledge, Partner

Sledge Fancher, PLLC

Attorneys at Law | Governmental Relations

919 Congress, Suite 460

Austin, Texas 78701

512.579.3600 main
512.579.3601 direct
512.579.3611 fax
512.773.8967 mobile

bsledge@sledgelaw.com

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P.O. BOX 1748
1280 E. HWY. 188
SPRINGTOWN, TX 76082

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September 29, 2014

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Box 12967
Austin, Texas 78711-2967

Re: Comments on Proposal to Amend 16 T.A.C. § 3.9 and 3.46; O&G Docket No. 20-0290951

To the Honorable Commissioners and Staff:

The Upper Trinity Groundwater Conservation District ("District") appreciates the work undertaken by the Railroad Commission of Texas (the "Commission") and its staff to propose changes to Rules 3.9 and 3.46 to incorporate requirements related to seismic events for disposal wells. The District has been following this rulemaking closely given its legislative mandate to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater throughout Hood, Montague, Parker, and Wise Counties.¹ Protecting Underground Sources of Drinking Water from oil and gas waste disposal is one of the District's primary focuses and is critical for the long-term sustainability of water supplies in Texas. Located in the Barnett Shale region, the District has experienced an explosion of oil and gas activity in recent years, including a substantial increase in disposal wells, as well as a tremendous increase in seismic activity.

Most notably, the residents of the towns of Azle and Reno in Parker County have suffered extensively from the multiple earthquakes experienced in the area, which many believe are a direct result of disposal and fracking activities. In fact, since November 5, 2013, the geographic area around the town of Azle has registered more than 30 earthquakes as evidenced by the U.S. Geological Survey. Thus, due to the District's mandate to preserve and protect groundwater, and based on the considerable seismic activity within the District and surrounding areas, the District finds it necessary to request further regulation of disposal wells in Texas in a manner that protects the surface and subsurface water resources and promotes public safety.

In general, we are pleased with the proposed amendments to Rules 3.9 and 3.46 and applaud the Commission in taking the first step towards addressing the issues associated with seismic activity in relation to disposal wells. We hope the Commission considers the following

¹ TEX. WATER CODE ANN. § 36.0015 (West 2013); Act of May 25, 2007, 80th Leg., R.S., ch. 1343, 2007 Tex. Gen. Laws 4583, codified as Chapter 8830 of the Texas Special District Local Laws Code.





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1250 E. HWY. 128
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comments, and we encourage the Staff to reach out to us for any additional information. The District has used red font for its recommended changes, and has included a brief explanation for each recommendation. For your consideration the District submits the following comments:

1. The District recommends 16 T.A.C. § 3.9 (3)(B) be amended to read as follows: “The applicant for a disposal well permit under this section shall include with the permit application the results of a review of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within the estimated radius of the 10-year, five pounds per square inch (psi) pressure front boundary of the proposed disposal well location. The pressure front is the zone of elevated pressure that is created by the injection of fluids into the subsurface. The applicant shall demonstrate the method by which the pressure front boundary was calculated using relevant site specific information.”

This additional language requiring the applicant to demonstrate how the pressure front boundary was calculated, including the identification of the site-specific information used to achieve this calculation, is recommended due to the fact that such calculations may vary depending on the subjective information the applicant chooses to use. While such variances may be permissible, it is essential that the Commission review the method by which these calculations were achieved to determine whether the information, formulas, assumptions, and approximations used are proper and permissible.

2. The District proposes 16 T.A.C. § 3.9(3)(C) be amended to read as follows: “~~[The commission may require a]~~An applicant for a disposal well permit under this section shall ~~te~~ provide to the commission ~~[with additional]~~ information such as logs, geologic cross-sections, and/or structure maps, to demonstrate that fluids will be confined ~~[if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined]~~ to the injection interval. ~~[Such conditions may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS.]”~~

The purpose for this comment is to require all applicants for a disposal well permit to demonstrate, as part of the application process, that the fluids injected will remain confined to the injection interval. This comment is most significant to the District because the confinement of fluids to the injection interval is essential to the protection of groundwater resources. And, the submission of additional information to the Commission by the applicant that demonstrate such confinement, such as logs, geologic cross-section, and/or structure maps, as listed in the proposed rule, enables the Commission to make well-educated decisions in reviewing disposal well application for





P.O. BOX 1748
1280 E. HWY. 198
SPRINGTOWN, TX 76082

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approval based on site-specific information and conditions. By always reviewing this type of information, the Commission will be able to effectively determine for each well whether conditions exist that increase the risk that fluids will not be confined to the injection interval.

If the proposed rule is not further modified to apply to all disposal permit applicant, then the Commission will be required to make this determination on a case-by-case basis. However, it is unlikely that the Commission will unilaterally determine whether conditions exist that would increase the risk that the fluid would not be confined to the injection interval; instead, such additional information demonstrating the confinement of the fluid may only be required if the application is protested before the Commission. The Commission may already require such additional information for an application that is protested. Thus, as the provision is currently proposed by the Commission, it does not necessarily further the Commission's goal of ensuring confinement of the fluids to the injection interval, specifically in conditions which the risk of migration is higher.

3. The District recommends that 16 T.A.C. § 3.9(6)(A)(v) be amended to read as follows: "A permit for saltwater or other oil and gas waste disposal may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing, if: . . . (v) injected fluids are escaping from the permitted injection interval [~~disposal zone~~] . . ."

The summary of this rulemaking included in the Texas Register provides that the Commission's proposes these amendment to clarify that it has the authority to modify, suspend, or terminate a permit if fluids are not confined to the *injection interval*. Additionally, the proposed amendments to 16 T.A.C. § 3.9(3)(C) as addressed above reference the confinement of fluid to the injection interval. Therefore, for consistency purposes, this provision should be amended from disposal zone to disposal interval (or injection interval).

4. The District supports the proposed amendment to 16 T.A.C. §3.9(6)(A) to include the list of reasons for which the Commission may modify, suspend, or terminate a permit for saltwater or other oil and gas waste disposal if "... injection is suspected of or shown to be causing seismic activity . . ." However, the District recommends that the Commission provide additional information in the proposed rule to better define the magnitude, depth, and proximity of the seismic activity to the injection well that could result in permit modification, suspension, or termination for clarification purposes.
5. To the extent practicable, the District recommends that all changes made pursuant to the comments submitted herein with regard to Rule 3.9 be similarly applied to Rule 3.46





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Again thank you for the opportunity to provide these comments and take part in the rulemaking process. We appreciate the work that the Commission and its staff have done in drafting the proposed amendments and requirements related to seismic activity, and taking steps in the right direction for protecting groundwater.

Sincerely,

A handwritten signature in cursive script that reads "Tracy Mesler".

Tracy Mesler
Board President



(817) 523-5200 PHONE (817) 523-7687 FAX TOLL FREE (877) 388-8423

