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ATTORNEYS AT LAW

September 12, 2013

Via Email: veronica.larson@rrc.state.tx.us
Veronica Larson
Oil & Gas Division
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

Re: Comments on Draft Rule Amendments to Statewide Rules 9 and 46

Dear Ms. Larson:

On behalf of Cabot Oil & Gas Corporation ("Cabot"), we submit the following comments regarding the Railroad Commission's draft rule amendments to Statewide Rules 9 and 46, made available for informal comment on August 12, 2013 ("Draft Amendments").

Cabot appreciates the Commission Staff's decision to invite informal comments on the Draft Amendments, as well as the Staff's decision to hold the workshops on the Draft Amendments at multiple locations during the informal comment period. Cabot's representatives found the workshops to be very beneficial.

Cabot adopts TxOGA's Comments

Cabot adopts the comments and proposed changes submitted by TxOGA.

Cabot's additional Comments

In addition, Cabot submits the following comments and proposed changes:

1. "Grandfathering" issues

A. Existing injection/disposal wells

At the workshops, the Staff indicated that all existing wells and permits would be "grandfathered" such that the new rules would not invalidate them, with the possible exception of the draft requirements for commercial disposal well facilities. The rules should expressly state that existing disposal/injection wells and permits are not invalidated by the new

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requirements contained within the amendments, except for the specific requirements, if any, the Commission decides should apply to existing wells and permits.

Aside from the Staff-proposed exception to grandfathering for lining tanks at a commercial disposal well facility, Cabot opposes any exceptions to grandfathering existing wells and permits.

B. Amendments to existing disposal/injection wells

Closely related to the grandfathering of existing disposal/injection wells and permits is the issue of amending the existing permit. Other than the notice requirements specified for amendments, the new requirements to be implemented by the Proposed Amendments rules should not apply to an amendment to a disposal/injection well that was properly permitted under the rules then in effect. If this were not the case, it is questionable whether any amendment at all would be possible to an existing disposal/injection well with producing wells within ¼ mile that are not cemented across the injection interval.

C. Commercial disposal well facilities

With regard to lining storage tanks at commercial disposal well facilities, Cabot supports a phase-in period for operators of commercial disposal wells to install tank liners in accordance with the Proposed Amendments.

The Staff also asked for comments on the following question: "Should a disposal well that is owned and operated by an oil or gas producer on that producer's lease be required to be permitted as a Commercial Disposal Well if the operator allows adjacent operators to dispose of their water in the well, regardless of whether a fee is charged?" The answer is No. Such a well is not a commercial disposal well primarily operated to provide disposal services to operators other than the operator of the disposal well.

Cabot generally disagrees with expanding the definition of "commercial disposal well" other than the proposed expansion to include the storage and receiving facilities if on a different tract. Other than the concerns with remote surface facilities that the Staff identified at the workshop, the Staff has not explained what is wrong with the existing definition providing that the primary business purpose for the well is to provide, for compensation, disposal of oil field fluids or wastes that are trucked or hauled to the well. The Draft Amendments, without explanation, would wholly abandon both parts of that carefully crafted language from the existing rule and expand regulation.

D. Proposed additional language regarding "grandfathering" for Rules 9 and 46:

"Disposal/injection wells permitted under the prior version of the rules are not invalidated if they do not comply with the new requirements, with the following exception. Operators of commercial disposal well facilities permitted under a prior versions of this rule must comply with the requirement of section (j)(1)(K)(v). In addition, an application for amendment to a disposal/injection well permit issues under the prior version of the rules need not satisfy newly implemented requirements for the area of review."

2. Review of wells within ¼ mile radius [Rule 9(d)(3)(F), 9(g)(1); Rule 46(d)(3)(E), 46(g)(1)]

A. Vertical portion within ¼ mile

At the Midland workshop the Staff confirmed that the review requirement applies to vertical wells within ¼ mile and to horizontal wells for which the vertical portion is within ¼ mile. In other words, if the horizontal leg is within ¼ mile of the disposal/injection well but the vertical section of that horizontal well is not, then the applicant is not required to review that well.

> Proposed revised language for 9(d)(3)(F) and 46(d)(3)(E): "A table of all wells of public record that penetrate the top of the proposed disposal interval and [the vertical section of which] are within a one-quarter mile radius of the proposed disposal well."
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> Proposed revised language for 9(g)(1) and 46(g)(1): ". . . for wells that penetrate the top of the proposed disposal interval [and the vertical section of which are] within a 1/4 mile radius of the proposed disposal well . . ."

B. Definition of "improperly plugged"

The rules should be more specific regarding what it means to be "improperly plugged." Specifically, if the well in question was plugged in accordance with the RRC rules in place at the time, even though the applicable rules have since been changed, that well's status should be "grandfathered in" as properly plugged. At the Midland workshop, the Staff indicated that this was their expectation, but the rules should be specific on this point.

> Proposed additional language for section 9(d)(3)(F), 9(g)(1), 46(d)(3)(E), and 46(g)(1): "A well that was plugged in accordance with the RRC rules in place at the time is considered properly plugged unless the applicant has actual knowledge of a problem associated with the plugging of such well."

C. Definition of "not adequately cased and/or cemented"

The rules should be more specific and what it means to be "not adequately cased and/or cemented." Specifically, if the well in question was cased and/or cemented in accordance with the RRC rules in place at the time, even though the applicable rules have since been changed, that well's status should be "grandfathered in" as adequately cased and or/or cemented.

> Proposed additional language for section 9(d)(3)(F), 9(g)(1), 46(d)(3)(E), and 46(g)(1): "A well that was cased and/or cemented in accordance with the RRC rules in place at the time is considered adequately cased and/or cemented unless the applicant has actual knowledge of a problem associated with the casing and/or cemented of such well."

3. Open hole logging requirements [Rule 9(d)(3)(C)(ii)-(iii), 9(j)(1)(D)

Cabot opposes the blanket requirement for operators to take an open hole spontaneous potential log, resistivity log, a natural gamma ray log, and a porosity log prior to setting the surface casing and intermediate of newly drilled wells. Such an expensive, completely new requirement needs to be properly justified.

In addition, the logging exception procedure needs more specificity. At the workshop, the Staff indicated that an operator would be relieved from the open hole logging requirement if the Commission had a log for a well within one mile. The rules should identify this, along with the other "pertinent information" for an exception.

Cabot suggests the Staff be more specific regarding the objective(s) it hopes to meet with this requirement and allow industry the opportunity to suggest ways to meet the objective(s).

4. Drilling permit before disposal/injection application [Rule 9(d)(3)(B) and 9(b)(2); Rule 46?]

Cabot does not oppose the new requirement to obtain a drilling permit prior to applying for a disposal permit under Rule 9, but the rule should expressly provide that the term of the drilling permit is extended to match the term of the disposal permit. This extension of the drilling permit term is implied by the discussion in section 9(b)(2) on "permit expiration," but the rule should expressly state.

In addition, Cabot does not see the same requirement to obtain a drilling permit prior to applying for an injection permit under Rule 46. On this point, the rules should be consistent.

Proposed additional language for section 9(b)(2) and 46(b)(2): "The drilling permit obtained in order to apply for the disposal/injection permit will expire no earlier than the expiration of the disposal/injection permit."

5. Notice

A. Two methods of delivering notice of application [Rule 9(e)(1), 9(g)(4)(B)(i); Rule 46(e)(1), 46(g)(2)(C)(i)]

The Draft Amendments' proposed requirement to send the notice of application via both United States Postal Service (USPS) mail and either USPS certified mail, return receipt requested or a private commercial carrier with documented delivery confirmation appears to suggest that both methods of delivery are required to achieve adequate notice of application. The implications of this are far-reaching. For example, this strongly implies that the Commission's method of delivering notices of hearing via USPS mail is not adequate. Similarly, it strongly implies that the Commission's method of delivering notices of Rule 37 applications is not adequate. For this reason, Cabot opposes the Draft Amendments' proposed requirement for dually mailing the notice of application.

Cabot is aware of no principled reason to distinguish between the methods by which the Commission addresses notices of application in Rule 37 and in Rules 9 and 46. Accordingly, Cabot recommends that the Commission handle Rule 9 and Rule 47 notices of application in the same manner it handles Rule 37 notices of application: the applicant should provide a service list and the Commission should send out the notices of application. This way, the Commission will know what was sent, it will receive any returned envelopes indicating the notice was not received, and there will be no question about whether the recipient was more likely to open a letter from the Commission than from the applicant.

B. Affected persons [Rule 9(a)(2)(A); 9(e)(2); Rule 46(a)(2)(A), 46(e)(2)]

i. Definition

The Draft Amendments unnecessarily change the definition of "affected person" in sections 9(a)(2)(A) and 46(a)(2)(A). There is nothing wrong with the current rules' definition of affected person, and it should not be changed. The proposed definition actually describes a potentially affected person (i.e. "may suffer actual injury or economic harm") and forecloses any opportunity for an applicant to ask the Commission to limit a protest to actual affected persons. Accordingly Cabot believes the existing definition of affected person is superior to that in the Draft Amendments and should not be changed without a good reason.

ii. List of potentially affected persons

For similar reasons, Cabot opposes the language in Rule 9(e)(2) and Rule 46(e)(2) that refers to "the following affected persons and local governments." Instead, that language should say "the following potentially affected persons and local governments." The addition of "potentially" before affected is significant, because not everybody who receives notice is actually affected by the application. The example notices in the Draft Amendments properly refer to the recipient of the notice as a "potentially affected person."

iii. Lessees without an operator and mineral interest owners within ½ mile

The Draft Amendments adds the lessees for tracts without a designated operator and all unleased mineral interest owners within ½ mile to the list of "affected persons." Cabot opposes this unjustified change to the rule for two reasons: (1) it adds an onerous and expensive requirement to scour the property records for the lessees and mineral interest owners within ½ mile of the well; and (2) it unnecessarily opens the door to a much larger list of persons who are not actually affected persons but will nonetheless protest based on reasons that are not within the jurisdiction of the Commission.

As every notice of application is published, Cabot suggests this additional expensive requirement is unnecessary. Accordingly, Cabot recommends these lessees and mineral owners be deleted from the list of persons to receive notice of the application. In the alternative Cabot recommends that the radius be reduced to ¼ mile and that the requirement be limited to notices of commercial disposal wells.

6. Injection Limitations [Rule 46(c)(1)]

The Draft Amendment to Rule 46 would limit injection into a productive zone above the base of the underground source of drinking water to fluids produced from that zone. A literal reading of that requirement would foreclose injection of CO2 and other enhanced recovery methods using anything but the produced water from the zone. For that reason, Cabot opposes the new language in section 46(c)(1).

7. Other comments

In conjunction with the implementation of newly amended Rule 13 and the eventual adoption of amendments to Rules 9 and 46, Cabot recommends that the Commission push the cementing requirements to the front end and incorporate them into the W-1 and drilling permit process. As the regulatory body with the best visibility of the cementing requirements in a given location, the Commission can help operators avoid significant economic waste resulting

from missing a new cementing requirement. If the drilling permit would include the required intervals that must be isolated, that could be a significant benefit to all concerned.

Thanks to the Staff for their efforts to solicit input on the Draft Amendments. Please do not hesitate to call or email if you have any questions regarding these comments and suggested changes.

Very truly yours,

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c: Kim Dillard, via email (kim.dillard@cabotog.com)

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