Occidental Oil and Gas Corporation
A subsidiary of Occidental Petroleum Corporation

5 Greenway Plaza, Suite 110, Houston, Texas 77046-0521
P.O. Box 27757, Houston, Texas 77227-7757
Phone 713.215.7000

September 12, 2013

Railroad Commission of Texas
Oil and Gas Division
P.C. Box 12967
Austin, Texas 78701-2967

Delivered via email

Attention: Veronica Larson

Dear Veronica:

Occidental Oil and Gas Corporation and its operating affiliates, OXY USA Inc., OXY USA WTP LP and Occidental Permian Ltd. (Oxy) hereby submit comments in response to the Texas Railroad Commission's (Commission) draft amendments to 16 TAC §3.9, relating to Disposal Wells; §3.36, relating to Oil, Gas or Geothermal Resource Operations in Hydrogen Sulfide Areas; and §3.46, relating to Fluid Injection into Productive Reservoirs. We urge the Commission to carefully consider these comments and proposed suggestions. As the operator of the largest number of injection wells in the State, Oxy would like to call attention to our concerns about the proposed expansion of notice and Area of Review (AOR) provisions in these rules. We believe that these proposed changes raise significant practical difficulties and delays, without providing countervailing regulatory, safety or environmental benefits.

Potential Changes to Notice Requirements under Rules 9 and 46

Oxy is fully committed to providing appropriate public notice of injection wells under existing Rules 9 and 46. We believe these existing notice requirements are clear, well understood and provide appropriate information in an efficient and effective manner to all stakeholders, including local residents, property owners, the community and its representatives, the Commission and the general public. Under the current notice requirements for injection (Rule 46) applications, applicants are required to give notice to:

i. The surface owner of the tract where the well is located
ii. Commission-designated operators of wells within a ½ mile of the proposed well
iii. Government entities (city and county clerks)
iv. Notice by publication in a newspaper of general circulation in the county where the well is located

The Commission's draft amendments propose to expand these notice requirements to include all of the above, plus lessees and unleased Mineral Interest Owners (MIO) for all tracts that have no designated operator within a ½ mile of the proposed well. The Commission has indicated that the amendments to the notice requirements are driven, in part, by a desire to incorporate the Rule 37/38 notice requirements in Rules 9 and 46. However, harmonizing the notice provisions is not appropriate where, as in this case, one set of rules is designed to protect a party's correlative property rights in a property's mineral interests and another set of rules is applicable to activities that conserve oil and gas reserves.

Rules 37 and 38 apply to producing wells. For producing wells, there are due process and public policy reasons for ensuring that a party is provided notice when an activity might affect its property interest in a mineral estate. In contrast, there is no such property interest at stake where injection wells are concerned. Prior Texas Supreme Court decisions have recognized that deep subsurface injection does not result in a trespass to a nearby subsurface property interest. *R.R. Comm'n of Tex. v. Manziel*, 361 S.W.2d 560 (Tex. 1962); *Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1 (Tex. 2008). The due process concerns protected by the notice provisions of Rules 37 and 38 for producing wells are absent in injection wells under Rule 46. In the absence of these due process concerns, notice by publication under current Rule 46 more than suffices to protect nearby lessees and unleased MIO.

Further, Rules 9 and 46, including the notice provisions, were adopted after careful study by the Commission and extensive commenting from the industry and the public. In delegating the Underground Injection Control (UIC) program to Texas, the Environmental Protection Agency (EPA) approved these rules. The Rule 9 and 46 notice provisions were designed to give potentially affected parties and the public adequate notice of a proposed injection or disposal well so that those with questions or concerns could contact the Commission and participate in the permitting process. The Commission properly identified potentially affected parties as the surface owner on the tract where the well is located and well operators in the vicinity of an injection or disposal well. Consistent with the EPA UIC programs, notice to others, including the general public is effected by publication of a legal notice in a local newspaper and delivery of the application to the county and city clerks.

In addition, this expansion of the notice requirements is unnecessary and costly, as it would require applicants to hire a broker to search land records at the county courthouse. Currently, the parties entitled to direct notice are identified by Commission records (operators) or, like surface owners, readily discovered via the operator's records or public information. Many injection wells are located in units or large leases under waterflood or tertiary recovery, so identifying all offsetting tracts and their ownership could introduce a significant delay in obtaining permits. Oxy recommends that the Rule 9 and 46 notice provisions remain unchanged.

Potential Changes to Area of Review Requirements

The Commission has also proposed an expansion of the Area of Review Requirements for injection permits. Currently the applicant must provide the Commission data of record for wells that penetrate the proposed injection zone within ¼ mile of the subject well. The applicant must also confirm that these wells are either active or have been plugged in a manner that confines injected fluid to the authorized injection zone and prevents the movement of injected fluids into other strata.

Per 3.46(d)(3)(E) and 3.46(g)(1), the proposed new Area of Review process would involve multiple overlapping standards as follows:

1. "not adequately cased and/or cemented and unplugged"
2. "improperly plugged"

3. "orphaned"
4. "lack cement behind the casing through the proposed injection interval"
5. "cased and cemented or plugged in a manner that will prevent the movement of fluids from the injection interval into usable-quality water" *[Note: only* found in *3.46(g)(1)];* and,
6. "cemented across the injection interval in such a manner to prevent the movement of fluids from the injection interval into usable-quality water."

Oxy agrees that the applicant should be required to conduct research to verify that wellbores penetrating the injection zone within the Area of Review do not pose a threat to usable-quality waters, using all available information (Commission records, operator's records, industry databases, etc.). However, Oxy believes that a single standard articulated throughout these rules will be easier to administer and will provide the protection for usable-quality waters that is vital to the successful operation of injection projects. If the Commission believes that the Area of Review Requirements should be supplemented, Oxy would support Standard #5 -- where the well is configured with casing and cement to prevent the movement of injected fluids into usable quality waters, regardless if it is plugged or not. We do not believe that the other five standards are warranted.

If the Commission retains the second standard, it should be clarified to confirm that wells that were plugged in accordance with Commission rules ***at the time they were plugged*** are not deemed to be "improperly plugged" wells. We do not believe the Commission should require applicants to revisit whether wells previously plugged would be plugged differently today, even recognizing that depths of usable-quality groundwater can change over time.

The third standard should be narrowed in scope so wells that are inadvertently deemed orphaned by an operator's P-5 problems do not create undue hardship on the applicant by causing a denial or delay of an injection permit application. Oxy suggests this be narrowed to wells that have been orphaned for five consecutive years.

The fourth standard is perhaps the most problematic. Commission records may not demonstrate the presence of cement behind the casing through the proposed injection interval on all existing wells, such as by calculation, temp survey or bond log, and remedial or squeeze cementing to place cement across the injection zone may not have been uniformly communicated to the Commission in the past. Of course, a lack of cement across the injection zone does not mean that the well will provide a communication path for injectant to move into other strata or usable-quality water zones, because cement may exist above the injection zone, another string of casing with cement may be in place, or bridge plugs or other well constructs may provide the level of protection necessary. While an Area of Review variance process, codified in 3.46(g)(2)(A), could address these circumstances and apply the normal Area of Review submissions (such as pressure tests) to show protection of usable-quality waters, the proposal seems to impose an additional standard regarding "material risk of fluid movement into ***underground sources of drinking water (USDW)***" [emphasis added]. The sixth standard seems to be the same as Standard #4, just stated a different way.

Potential Changes to Notice Requirement of Section 3.36

In §3.36, the Commission also proposes to expand notice requirements for injection applications that involve H_2S as a component of the injectant. Oxy operates more of these projects in the Permian Basin than any other operator, and is concerned about unnecessary and burdensome notice requirements. Currently these projects are treated as injection wells per §3.36(c)(10) and a public hearing is required. Also, since this always involves injection or disposal activities, the following Rule 9/46 notice requirements already apply:

i. The surface owner of the tract where the well is located
ii. Commission-designated operators of wells within a ½ mile of the proposed well
iii. Government entities (city and county clerks)
iv. Notice by publication in a newspaper of general circulation in the county where the well is located

In §3.36(c)(10)(C)(I)(II)(-b-), the Commission proposes to require additional notice to "each adjacent landowner located within the area of exposure." According to verbal clarifications offered at the Commission workshop, the "area of exposure" is intended to be the same as the 100 ppm Radius of Exposure (ROE) as in Rules 36 and 106, although it is unclear if staff intends this ROE to be based on the injection well, or related facilities or pipelines. Staff implied that direct notice to landowners along sour gas pipelines is already required by Rule 106. Rule 106 defines "affected persons" to be owners or occupants of property within the 100 ppm ROE of the proposed route of the pipeline (see §3.106(a)(1)). However, Rule 106 requires direct notice be given to county clerks, while notice to others, including "affected persons", is accomplished by publication. Since direct notice is not required to the owners and occupants of property within the 100 ppm ROE, the Commission's proposed expansion of the notice requirements in §3.36 for injection operations is not already required by Rule 106. Expanding this notice to landowners would be burdensome, as it would require a broker to search land records at the county courthouse. It is also ambiguous, since injection projects that include H_2S have lines, tanks and other related facilities associated with them, some of which have a 100 ppm ROE. Oxy already informs residents (occupants, not necessarily landowners) within the 100 ppm ROE as part of the Contingency Plan (see §3.36(c)(9) Contingency Plan Provisions):

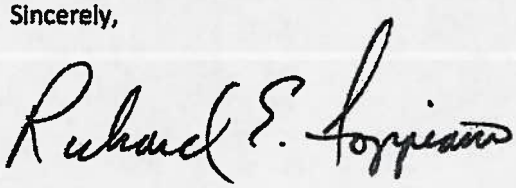
"(I) The plan shall include names and telephone numbers of residents within the area of exposure, except in cases where the reaction plan option has been approved by the commission in accordance with subparagraph (L) of this paragraph.
(J) The plan shall include a list of the names and telephone numbers of the responsible parties for each of the possibly occupied public areas, such as schools, churches, businesses, or other public areas or facilities within the area of exposure.
(K) The plan shall include provisions for advance briefing of the public within an area of exposure. Such advance briefing shall include the following elements:
(i) the hazards and characteristics of hydrogen sulfide;
(ii) the necessity for an emergency action plan;
(iii) the possible sources of hydrogen sulfide within the area of exposure;

(iv) instructions for reporting a gas leak;
(v) the manner in which the public will be notified of an emergency;
(vi) steps to be taken in case of an emergency."

In addition to direct Contingency Plan notification of occupants, notice is already required by publication under Rules 9 and 46 to inform the general public, including landowners in the area of the proposed well of the plan to inject fluids that contain H_2S. In conclusion, we believe that the existing notice provisions from Rules 9 and 46 and the existing Contingency Plan requirements provide important information directly to the local residents and officials, while providing notification by publication to the general public, so that additional proposed notice requirements are not warranted.

Oxy thanks the Commission for their consideration of these comments and the efforts to communicate with the public, industry and other affected parties through the workshops and draft informal comment process before rule changes are formally proposed.

Sincerely,



Richard E. Foppiano

Director, Regulatory Affairs

Occidental Oil and Gas Corporation