



TEXAS OIL & GAS ASSOCIATION



January 26, 2011

*via Hand Delivery*

Mr. John Tintera  
Executive Director  
Railroad Commission of Texas  
Post Office Box 12967  
Austin, Texas 78711-2967

*Re: Petition of the Texas Oil and Gas Association (TxOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Alliance of Energy Producers (The Alliance), Panhandle Producers and Royalty Owners Association (PPROA), Permian Basin Petroleum Association (PBPA), and Historic Texas Ranches for Rulemaking and Emergency Rulemaking*

*Proposed Adoption of Amendment to Statewide Rule 3.15 (1)(3)*

Dear Mr. Tintera:

Please consider this letter as the Petition of The Texas Oil and Gas Association (TxOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Alliance of Energy Producers (The Alliance), Panhandle Producers and Royalty Owners Association (PPROA), Permian Basin Petroleum Association (PBPA), and Historic Texas Ranches (hereinafter referred to as the "Texas Associations") for Emergency Rulemaking and for Rulemaking.

- The Texas Oil & Gas Association (TxOGA) is the largest and oldest petroleum organization in Texas, representing over 4,000 members. The membership of TxOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates nearly 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipeline mileage.
- Texas Independent Producers & Royalty Owners Association (TIPRO) is a trade association representing the interests of more than 2,100 independent oil and natural gas producers and royalty owners throughout Texas. Started in 1946, it is one of the nation's oldest and largest associations of this kind. Its members range from small

family-owned businesses to the largest publicly traded independent producers and mineral owners, as well as estates and trusts comprising millions of acres of production in Texas. These members own and produce more than 85% of the natural gas and 70% of the oil within Texas.

- Texas Alliance of Energy Producers (The Alliance) represents 3,349 members from 31 states, with 90% of those residing in Texas. Though the membership includes most of the largest domestic exploration corporations, most of the members are the owner, co-owner, or CEO of a small, independent exploration and production company. Six out of 10 member companies have 10 or less employees and 95% have less than 100 employees.
- Panhandle Producers & Royalty Owners Association (PPROA) is the trade association representing independent oil and gas producers, mineral royalty owners, and support companies in the Texas Panhandle, western Oklahoma, and southwestern Kansas since 1929.
- Permian Basin Petroleum Association (PBPA) is a regional trade association headquartered in Midland, Texas. It serves as an informed voice for all segments of the oil and gas industry in Austin and Santa Fe as well as Washington D.C.
- Kerry Knorpp represents numerous historic family ranches in the Upper and Lower Panhandle of Texas, consisting of more than three million oil and gas producing acres.

*A state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency:*

*(1) finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice; and*

*(2) states in writing the reasons for its findings under Subdivision (1).<sup>1</sup>*

As stated above, an emergency rule may be adopted to protect against a threat to the public welfare or to satisfy the requirements of a state law. As noted by the Texas Supreme Court,<sup>2</sup> the Commission has the statutory duty to prevent waste and to protect correlative rights.<sup>3</sup> Therefore, the Commission may adopt an emergency rule in order to prevent waste and to protect correlative rights because such waste is a threat to the public welfare and is prohibited by state law.

For the reasons set out below, the current provisions of 16 T.A.C. §3.15(l)(3) can result in the premature plugging of wells which could otherwise be used to enhance the recovery of oil and gas resources in this state. The loss of those wells would result in the waste of recoverable reserves. In addition to being prohibited by statute, such waste deprives the public of the use of those resources, deprives the state of the tax revenues attributable to those resources, and

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<sup>1</sup> TEX. GOV'T CODE § 2001.034(a).

<sup>2</sup> *Texaco, Inc. v. R.R. Comm'n*, 583 S.W.2d 307, 310(Tex. 1979).

<sup>3</sup> Nat. Res. Code §§85.045,85.046.

injures the correlative rights of the owners of those resources, thereby harming the general welfare of the public.

Moreover, the current provisions of §3.15(l)(3) are not consistent with the language of the enacting statute<sup>4</sup> and an emergency rule is authorized to ensure consistency with the requirements of that statute and to prevent waste. The provisions of Nat. Res. Code §89.023 allow the Commission to grant an extension to the plugging deadline for an inactive well if, *inter alia*, the operator files documentation of a fluid level or hydraulic pressure test of the inactive well. However, Statewide Rule 3.15(l)(3)<sup>5</sup> does not provide for the use of a fluid level test to obtain such an extension. Instead, it provides that:

*(3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must have performed a hydraulic pressure test and obtained the approval of the Commission or its delegate once every five years.*

The same rule provides that other inactive wells, including wells 25 years old,<sup>6</sup> may be granted an extension if either a fluid level test or hydraulic pressure test has been performed.

Many of the wells which come under the provisions of §3.15(l)(3) cannot be hydrostatically tested without using a workover rig. Not only can the cost be prohibitive but rigs are often not available. It may not be physically possible to hydrostatically test all inactive wells prior to the deadline contained in the statute.

Given the fact that an operator must either plug such inactive wells or obtain an exception as a condition to renewal of its organization report required by Nat. Res. Code §91.142, there is a substantial risk that operators will be required to pre-maturely plug inactive wells in order to avoid being prohibited from conducting oil and gas operations in Texas.

The result is that inactive wells that would otherwise be used in enhanced oil recovery projects (EOR) or other types of production activities will be pre-maturely plugged as a result of the rule. Oil that would otherwise be recovered in such EOR projects will not be recovered because it will be impractical to drill new wells to replace the inactive wells. The failure to recover otherwise recoverable oil reserves results in waste and failure to protect the correlative rights of the interest owners.

Organization reports become due every month. Therefore there is an ongoing, current and existing threat of pre-mature plugging of wells that would otherwise be used to enhance oil and gas recovery in Texas. The Commission may, under these circumstances, enact an emergency rule to temporarily amend Rule 3.15(l)(3) so that the rule tracks the statutory language contained in Nat. Res. Code §89.023.

The adoption of an emergency rule is therefore authorized because the emergency rule can prevent waste, protect correlative rights, and prevent a threat to the public interest in the production of oil and gas, as required by state law.

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<sup>4</sup> Nat. Res. Code §89.023.

<sup>5</sup> 16 T.A.C. §3.15.

<sup>6</sup> See, for example, the provisions of 3.15(c)(4) and 3.15 (d)(5).

The text of the proposed rule is contained in the Attachment to this letter.

We respectfully request that the Commission promptly adopt this proposed rule both as an emergency rule effective immediately and as a permanent rule.

Please contact us if you have any questions or if you require any additional information.

Sincerely,



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Attachments

CC: Elizabeth Ames Jones, Chair, Railroad Commission of Texas  
Michael Williams, Commissioner, Railroad Commission of Texas  
David Porter, Commissioner, Railroad Commission of Texas

## Fluid Level Test Amendment

(1) (3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must have performed either a fluid level test once every 12 months or a hydraulic pressure test once every five years and obtained the approval of the Commission or its delegate of the results of said tests once every five years.