

# **A Summary of Regulatory Authority for Pipeline Wastes in the State of Texas**

**Susan J. Riebe**  
**Mobil Oil Corporation**  
**and**  
**Bart C. Sims**  
**Texas Railroad Commission**

**Presented to**

**The Fourth International Petroleum Environmental Conference**  
**September 9, 1997**

One of the first steps in determining how to manage a waste stream from a pipeline operation is to identify which regulatory agency has jurisdiction over the management of that waste stream. In the State of Texas, two state agencies and a federal agency have regulatory authority over different aspects of waste management.

A lack of familiarity with current regulations may result in some confusion for pipeline operators. This was demonstrated in the last year.\* It appears that many pipeline operators whose hazardous waste management activities are subject to RRC jurisdiction are actually registered through the Texas Natural Resources Conservation Commission (TNRCC).<sup>2</sup>

The following discussion is intended to clarify jurisdictional issues with respect to waste management for pipeline operations in Texas and alleviate any potential confusion within the regulated community. This discussion does not address other issues, like pipeline safety regulation (RRC) or air emissions (TNRCC), where the jurisdictional boundaries are different than for waste. Jurisdictional authority for all regulated activities should be fully evaluated for each facility.

## **Division of Regulatory Authority**

In the State of Texas, the regulatory authority for pipeline waste management is divided between the RRC and the TNRCC. The division of authority, or jurisdiction, is dependent on the specific source of the waste and its classification. A summary of state

\*The Railroad Commission of Texas (RRC) has received approximately eighty (80) registrations since Statewide Rule 98 ("Standards for Management of Hazardous Oil and Gas Waste") required notification to the RRC by Large Quantity Generators and Small Quantity Generators of hazardous oil and gas waste.<sup>1</sup>

agency jurisdiction is provided in Table 1.

RRC and TNRCC jurisdiction over waste is detailed in a Memorandum of Understanding (MOU) between the two agencies. The first version of the MOU was dated January 1, 1982.<sup>3</sup> It was revised on December 1, 1987.<sup>4</sup> A draft revision of the MOU was prepared in 1995, but has not yet been finalized.<sup>5</sup> The draft MOU addresses the change in each regulatory agency's jurisdiction following the creation of the TNRCC (the previous MOUs were between the RRC, Texas Water Commission, and the Texas Department of Health). Although not yet approved, the draft MOU between the RRC and the TNRCC provides valuable, detailed guidance on jurisdictional issues.

**Table 1. Summary of State Agency Jurisdiction**

	<b>Texas Natural Resource Conservation Commission (TNRCC)</b>	<b>Railroad Commission of Texas (RRC)</b>
<b>Generators:</b>	Refined Product Pipelines Refined Product Terminals	Pipelines and Storage Facilities for Crude Oil, Natural Gas, and Raw Mix NGL Underground Natural Gas Storage Underground Hydrocarbon Storage
<b>Transporters:</b>	Hazardous Waste Industrial Solid Waste Municipal Solid Waste	Oil & Gas Waste (Hazardous and Nonhazardous)
<b>Recyclers or Reclaimers:</b>	Recyclers Fuel Blenders Cement Kilns Used Oil Reclaimers	Crude Oil Reclaimers Oil and Gas Waste Recyclers
<b>Disposal Facilities:</b>	Municipal Landfills Industrial Landfills Hazardous Waste Landfills Class I, IV and V Injection Wells	Oil & Gas Waste Disposal Facilities (Pits and Landfarms) Class II Wells (Disposal and Injection for Enhanced Recovery)

**Waste Source and Classification.** The source and classification of the waste determines which agency regulates the generator of the waste. Regulatory requirements address classification, on-site management, storage, record keeping, registration, reporting, treatment, and disposition of the waste. The division of authority between the agencies is primarily dependent upon the State's definitions of "solid waste" and "oil and gas waste."

Solid wastes are subject to the jurisdiction of the TNRCC, and oil and gas wastes are subject to the jurisdiction of the RRC.

The state's definition of solid waste is generally consistent with the federal definition. It differs from the federal definition because it excludes most waste associated with oil and gas exploration, development, and production operations, including transportation of crude oil and natural gas by pipeline. These excluded wastes are "oil and gas wastes."<sup>6</sup>

Oil and gas wastes subject to the jurisdiction of the RRC are all wastes generated in connection with the following activities:

- drilling, operation, and plugging of wells associated with the exploration, development, or production of oil or gas, including oil or gas wells, fluid injection wells used in enhanced recovery projects, disposal wells, and injection water source wells;
- drilling of cathodic protection holes associated with wells and pipelines subject to RRC jurisdiction;
- natural gas treating and processing; including pressure maintenance plants and repressurization plants;
- transportation of crude oil or natural gas by pipeline, including any storage, handling, reclamation;
- underground storage of natural gas and hydrocarbons;
- solution mining of brine; and
- storage, hauling, disposal, or reclamation of wastes generated by these activities.

The definition of "oil and gas waste" includes waste arising from or incidental to activities associated with natural gas processing plants, pressure maintenance plants, or repressurization plants, unless that waste is a hazardous waste as defined by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended (42 USC §6901 et seq.). Upon EPA delegation of RCRA authority to the RRC, hazardous waste generated at natural gas processing plants, pressure maintenance plants, and repressurization plants will fall under RRC jurisdiction.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor or similar equipment is not considered a part of a natural gas processing plant unless such equipment is physically located within a natural gas processing plant site. Also, a pressure maintenance plant or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurizing) in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline or a pump station along a crude oil pipeline system, which are clearly under the jurisdiction of the RRC.

For pipeline operations this means that the RRC has jurisdiction over the management of wastes arising from the operation of a crude oil or natural gas pipeline prior to the point where the pipeline enters a refinery, a manufacturing plant, or a residential or

industrial fuel distribution system. These RRC-regulated pipeline operations include natural gas liquids (NGL) transportation prior to a manufacturing or refining facility. Wastes from CO<sub>2</sub> pipelines specifically associated with oil and gas exploration and production are included under RRC jurisdiction because they are generally associated with pipeline operations over which the RRC has waste jurisdiction. The pipeline operations over which the RRC has jurisdiction for wastes may be referred to as "upstream" pipelines.

The operation of upstream crude oil pipelines commonly includes crude oil storage terminals. The RRC has jurisdiction over wastes from such storage operations. However, wastes from storage of crude oil at marine terminals where both refined products and "upstream" crude oil are stored are under the jurisdiction of the TNRCC.

The RRC, as noted above, regulates under Rule 98 oil and gas waste that is also hazardous. Further, Rule 98 sets standards only for generators and transporters of hazardous oil and gas waste. Rule 98 has no provision for hazardous waste treatment, storage, or disposal facility permitting. The RRC has not been delegated RCRA authority by EPA; therefore, EPA retains federal authority over hazardous oil and gas waste in Texas. However, Rule 98 is as strict as the federal hazardous waste regulations. Therefore, an operator who complies with Rule 98 should be in compliance with the federal regulations (other than providing to the EPA regional administrator specified reports, certifications, and notices).

The TNRCC has jurisdiction over the management of solid wastes, which is divided into municipal and industrial wastes. For pipelines, the TNRCC jurisdiction covers waste arising from the operation of pipelines that transport refined product and manufactured petrochemicals. The pipeline operations over which the TNRCC has jurisdiction may be referred to as "downstream" pipelines.

TNRCC jurisdiction includes the management of municipal and industrial hazardous waste. TNRCC has been delegated authority by EPA to administer the federal regulations for hazardous waste. TNRCC authority currently includes hazardous waste generated at natural gas processing plants, because those wastes are excluded from the definition of "oil and gas waste."<sup>8</sup> However, it is important to remember that upon EPA delegation of RCRA authority to the RRC, hazardous waste generated at natural gas processing plants, pressure maintenance plants, and repressurization plants will fall under RRC jurisdiction.

Situations may exist where agency jurisdiction over a waste is not clear. One example is an onshore facility which has two pipelines running through it, one a crude oil pipeline and the other a refined product pipeline. Another example is a support facility for a pipeline operation, such as a pipe warehouse or machine shop. In these instances, the operator should consult the RRC for assistance. Situations such as these generally require jurisdictional determination on a case-by-case basis.

**Waste Destination.** The destination of the waste determines which agency establishes the requirements for the management of the waste at the receiving facility. If the waste management facility is dedicated to nonhazardous oil and gas wastes, it is regulated by the RRC. If the waste management facility is a municipal, industrial, or

hazardous waste management facility, it is regulated by the TNRCC. Wastes may be generated at a facility subject to the jurisdiction of one agency and disposed at a facility regulated by the other agency. The RRC and the TNRCC have each published a guidance document detailing the management of RRC-regulated nonhazardous oil and gas wastes at TNRCC-permitted municipal landfills.<sup>9,10</sup> Guidance for disposal of RRC-regulated hazardous oil and gas waste at TNRCC-permitted treatment, storage, and disposal facilities is given in the draft amended MOU.

## **State Regulations**

The TNRCC administers regulations for management of solid waste, which includes municipal and industrial hazardous waste. The RRC administers regulations for the management of oil and gas waste, which includes hazardous oil and gas waste.

Downstream pipeline wastes, under the jurisdiction of the TNRCC, are regulated under two primary statutes.<sup>11</sup> The Texas Solid Waste Disposal Act<sup>12</sup> regulates solid and hazardous waste activities for municipal and industrial wastes. The other primary regulation that governs solid waste management is the Injection Well Act<sup>13</sup> which regulates waste disposal by injection. Based on the TNRCC regulations, the EPA has delegated jurisdiction (or primacy) for RCRA<sup>14</sup> and Hazardous and Solid Waste Amendments of 1984<sup>15</sup> (HSWA) to the State of Texas. This means that facilities which are subject to TNRCC regulations do not have to separately comply with EPA requirements.

Upstream pipeline wastes are under the jurisdiction of the RRC. The scope of the RRC's environmental programs is outlined in section 91.101 of the Texas Natural Resources Code. Based on this authorization, the RRC has developed several Statewide Rules which are the primary state regulations for oil and gas wastes. The rules which focus on waste management in upstream pipeline operations are: Rule 8, "Water Protection,"<sup>16</sup> which governs nonhazardous oil and gas waste; Rule 9, "Disposal Wells,"<sup>17</sup> Rule 91, "Cleanup of Soil Contaminated by a Crude Oil Spill,"<sup>18</sup> Rule 94, "Disposal of Oil and Gas NORM (Naturally Occurring Radioactive Material) Waste,"<sup>19</sup> and Rule 98, "Standards for Management of Hazardous Oil and Gas Wastes."<sup>20</sup> Although the RRC has submitted Rule 98 to the EPA for review, the EPA has not yet delegated RCRA authority to the RRC. As noted in the previous section, until the EPA delegates RCRA authority to the RRC, facilities which are subject to RRC hazardous waste regulations must also comply with EPA regulations.

## **Historic Perspective**

The division of authority for waste management is best understood when viewed from a historic perspective. The RRC began regulating oil and gas waste in the early 1900's, and the scope of RRC jurisdiction with respect to oil and gas wastes generally has not changed since that time. However, more recent division of authority between the RRC and the TNRCC with respect to hazardous waste is an outgrowth of the history of the

Resource Conservation and Recovery Act (RCRA).<sup>21</sup> Specifically, jurisdictional issues were influenced by EPA's decisions concerning the status of oil and gas wastes subject to RCRA with respect to Texas's application for delegation of RCRA.

The 1980 amendments to RCRA<sup>22</sup> included an exemption from RCRA Subtitle C hazardous waste regulations for wastes resulting from and associated with petroleum exploration, development, and production activities. This exemption is commonly called the "oil and gas exemption" or the "E&P exemption." The oil and gas wastes that were exempted from regulation as hazardous wastes under Subtitle C of RCRA fell into three major categories: produced waters, drilling fluids, and associated wastes. The state interpreted the oil and gas exemption to include almost all wastes associated with upstream operations, with the possible exception of certain wastes generated at natural gas processing plants. EPA Region 6 agreed with this interpretation.<sup>23, 24, 25</sup> As a result, oil and gas wastes were excluded from the scope of the State's RCRA authorization, with the exception of hazardous wastes generated at natural gas processing plants, pressure maintenance plants, and repressurizing plants.

In 1988, EPA developed and published a document determining the scope of the E&P exemption for wastes resulting from and associated with petroleum exploration, development, and production.<sup>26</sup> In 1993, EPA further clarified the scope of the exemption.<sup>27</sup> Basically, the exemption covers wastes that are uniquely associated with primary field operations. The resulting scope of the federal exemption for oil and gas waste from hazardous waste regulation is less inclusive than the State's definition of oil and gas wastes. As a result, non-exempt, upstream oil and gas waste that is also hazardous is excluded from the RCRA-authorized TNRCC program. The RRC's Rule 98 fills that regulatory gap.

## Summary

The regulatory authority for management of waste associated with pipeline operations in the State of Texas is well defined. Because pipeline operations are potentially subject to the regulations of two State agencies and one federal agency, it is imperative that pipeline operators clearly understand which agencies have jurisdiction over their waste streams. This understanding is crucial for the proper management of wastes at pipeline facilities.

Because jurisdictional boundaries are different for other issues, like pipeline safety or air emissions, jurisdictional authority for all regulated activities should be fully evaluated for each facility.

## Cited References

1. From filings to the RRC
2. From TNRCC registration lists and industry SIC codes

3. Railroad Commission of Texas, Texas Water Commission, and Texas Department of Health, "Memorandum of Understanding Between The Railroad Commission of Texas, The Texas Water Commission, and The Texas Department of Health," Austin, Texas (January 1, 1982).
4. Railroad Commission of Texas, Texas Water Commission, and Texas Department of Health, "Memorandum of Understanding Between The Railroad Commission of Texas, The Texas Water Commission, and The Texas Department of Health," Austin, Texas (December 1, 1987).
5. Railroad Commission of Texas and Texas Natural Resource Conservation Commission, "Proposed Memorandum of Understanding Between The Railroad Commission of Texas and the Texas Natural Resource Conservation Commission," Austin, Texas (August 22, 1995).
6. Texas Natural Resources Code, Section 91.1011, ante
7. Texas Natural Resources Code, Section 91.1011, post
8. *ibid*
9. RRC, Oil and Gas Division, "Disposal of Oil and Gas Wastes at Municipal Landfills Permitted by the Texas Natural Resources Conservation Commission (formerly the Texas Water Commission)," Austin, Texas (January 1, 1994).
10. TNRCC, Industrial & Hazardous Waste, "Texas Natural Resources Conservation Commission Technical Guidance: Guidelines for Disposal of Some Special Wastes, RG-3," Austin, Texas, (March 1994).
11. Fulbright & Jaworski, L.L.P., Texas Environmental Law Handbook, Third Edition,: Government Institutes, Inc., Rockville, Maryland (December 1993) p. 88.
12. Texas Health & Safety Code Ann. chapter 361, amended by Tex. Rev. Civ. Stat. chapter 4477-7.
13. Texas Water Code Ann. chapter 27
14. Environmental Protection Agency, "Texas; Decision on Final Authorization of State Hazardous Waste Management Program," 49 *Federal Register* 48300 (December 12, 1984).
15. Environmental Protection Agency, "Texas; Final Authorization of State Hazardous Waste Management Program Revisions," 55 *Federal Register* 21383 (May 24, 1990).
16. Railroad Commission Statewide Rule 8, 16 Texas Administrative Code 3.8
17. Railroad Commission Statewide Rule 9, 16 Texas Administrative Code 3.9
18. Railroad Commission Statewide Rule 91, 16 Texas Administrative Code 3.91
19. Railroad Commission Statewide Rule 94, 16 Texas Administrative Code 3.94
20. Railroad Commission Statewide Rule 98, 16 Texas Administrative Code 3.98
21. Resource Conservation and Recovery Act of 1976, as amended
22. Congress, "Solid Waste Disposal Act Amendments of 1980," Section 3001(b)(2)(A), Washington, D.C.: U.S. EPA (1980).
23. Environmental Protection Agency, "Texas; Phase I Interim Authorization of State Hazardous Waste Management Program," 45 *Federal Register* 85016 (December 24, 1980), p. 85019-85020.
24. Environmental Protection Agency, "Approval of Texas Solid Waste Management Plan," 48 *Federal Register* 3986 (January 28, 1983), p. 3986.
25. Environmental Protection Agency, "Texas; Decision on Final Authorization of State Hazardous Waste Management Program," 49 *Federal Register* (December 12, 1984), p. 48301.

26. Environmental Protection Agency, "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development, and Production Wastes," *53 Federal Register* 25446 (July 6, 1988).
27. Environmental Protection Agency, "Clarification of the Regulatory Determination for Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas and Geothermal Energy," *58 Federal Register* 15284 (March 22, 1993).

**Other References:**

American Petroleum Institute, "Environmental Guidance Document: Waste Management in Exploration & Production Operations," API E5, Second Edition, Washington, D.C. (February 1997).

Hall, Ridgway M., et al, Cromwell & Moring Law Firm, RCRA Hazardous Wastes Handbook, 9th Edition, Government Institutes, Inc., Rockville, Maryland (1991).

Railroad Commission of Texas, Oil & Gas Division, "Statewide Rules for Oil , Gas and Geothermal Operations," Austin, Texas (1993).

Texas Natural Resource Conservation Commission, "Hazardous Waste Seminar for Generators," Odessa, Texas (July 20-21, 1994).

U.S. Environmental Protection Agency, "Protection of Environment," 40 Code of Federal Regulations Parts 260 to 269, Office of the Federal Register, National Archives and Records Administration (Revised as of July 1, 1996).