

2018 Fundamentals of Oil, Gas and Mineral Law

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What You Need to Know About the Railroad Commission of Texas

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WHAT YOU NEED TO KNOW ABOUT THE RAILROAD COMMISSION OF TEXAS

Day to day, the typical Texas oil and gas lawyer must have a working knowledge of basic Railroad Commission rules and requirements. Questions can come up when considering an operator's rule compliance, when leasehold or joint development documents reference or incorporate a rule or specification, or when information is needed for negotiations or for evidence at trial. This paper addresses common Railroad Commission topics of interest to the typical Texas oil and gas lawyer.¹

I. RRC JURISDICTION

A. Overview of RRC Jurisdiction and Authority

RRC jurisdiction extends to most of the in-the-field activities of upstream and midstream oil and gas operators in Texas. RRC jurisdiction over Texas oil and gas operators begins with the oil, gas, and water in underground geologic formations; continues through wells, gathering lines, pipelines, and underground storage; and ends as the oil and gas enter facilities downstream for refining, processing, and manufacturing. The RRC's authority over Texas oil and gas operators includes:

- oil and gas well drilling, completion, production, and abandonment;
- protection of water resources from oil and gas operations;
- oil and gas waste disposal and clean up;
- underground injection for:
 - disposal of salt water or other oil and gas waste,
 - secondary or enhanced recovery, and
 - storage of gas or liquid hydrocarbons;
- gathering line and pipeline design, installation, maintenance, and operation; and
- transportation and takes by intrastate gas utilities, common carriers, and common purchasers.

RRC jurisdiction over oil and gas operators in these subject areas comes from specific authority granted by enabling statutes in Chapters 81 through 111 of Texas Natural Resources Code and Chapter 27 of the Texas Water Code. Under these delegations of authority from the Legislature, the RRC has broad statutory authority to require operators to conduct oil and gas activities in ways that will prevent waste and protect correlative rights, and it also has authority to

¹ This is an update of a paper with the same title presented at the *2016 Fundamentals of Oil, Gas and Mineral Law*.

regulate operator activities to prevent pollution of surface water and groundwater. Also, as a state agency under the Texas Government Code,² the RRC has authority to conduct rulemaking proceedings to adopt rules of general applicability across the State and to conduct evidentiary hearings to enforce rules or to resolve specific disputes between competing parties.

In addition to its jurisdiction over the activities of Texas oil and gas operators, the RRC also has some limited jurisdiction over mineral property development in Texas:

- force pooling under the Mineral Interest Pooling Act;³
- approval of unitization agreements for secondary and enhanced recovery;⁴ and
- approval of operations sites and access for oil and gas development in real property subdivisions.⁵

B. RRC Statewide Rules

Most day-to-day interactions between the RRC staff and the typical oil and gas operator involve administrative processing of permits, approvals, and reports under authority of the RRC's Statewide Rules. These Statewide Rules are agency rules of general applicability that the RRC adopts in administrative rulemaking proceedings. Rulemaking involves proceedings that are similar in conduct and effect to the proposal of bills and adoption of statutes by the Legislature, with formal proposals published in the Texas Register, the opportunity for comments by interested parties and the public, and the potential for education and influence efforts by industry, by the public, and by individuals. The RRC Statewide Rules are published in the Texas Administrative Code, and a link to its rules and proposed rules is available on the RRC's webpage.⁶

C. Evidentiary Hearings at the RRC

The RRC also conducts contested case evidentiary hearings. These hearings are similar to non-jury trials. Notice is given to interested parties, who have an opportunity to appear in opposition or support at the hearing. If there is no opposition or dispute, the applicant presents evidence to support its request, and the hearings officers⁷ submit a report and recommended order to the Commissioners that is routinely adopted in a master order with numerous other undisputed applications. If there is a dispute between the interested parties to an application, the contested case can be similar to a non-jury civil trial, with pre-hearing document discovery and depositions. At a disputed contested case hearing, the parties can offer sworn testimony subject to cross

² TEX. GOVT. CODE §2001.001 et. seq.

³ TEX. NAT. RES. CODE §102.001 et. seq.

⁴ TEX. NAT. RES. CODE §101.001 et. seq.

⁵ Statewide Rule 76, 16 TAC § 3.76; TEX. NAT. RES. CODE §92.001 et. seq.

⁶ www.rrc.texas.gov

⁷ The RRC's hearing officers are geologists or engineers (Technical Examiners) or lawyers (Administrative Law Judges) employed by the Commission.

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