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Regulatory & Legislative Update

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Introduction

This Regulatory & Legislative Update¹ provides an update on selected aspects of the following activities at the Railroad Commission, along with any associated litigation and/or legislative activity. Specifically, this paper discusses permitting issues related to allocation wells, production-sharing-agreement (PSA) wells, Mineral Interest Pooling Act (MIPA) applications, and related litigation. The paper also provides an update on three issues related to underground injection: seismicity, carbon sequestration wells, and brine mining wells.

Also included is a section on some significant rulemaking activities associated with waste management that will amend the Commission's Statewide Rule 8 and Chapter 4 of the Commission's rules. The paper concludes with sections on legislation affecting the Railroad Commission as it relates to emissions from oil and gas facilities (flaring and venting and the EPA's recently published methane rule) and also to the Commission's jurisdiction over certain alternative energy sources (geothermal and hydrogen).

A. Permitting Issues

1. Allocation and PSA Wells

Allocation wells and production sharing agreement (PSA) wells continue to grow in popularity in Texas. In 2014, when permitting wells as allocation wells or PSA wells was still somewhat new,² only 3.7% of the approximately 24,000 wells permitted by the Railroad Commission ("RRC" or "Commission") were allocation wells or PSA wells. Since then, the percentage of wells permitted as allocation wells or PSA wells has grown every year but one. In 2023, over 43% of all wells permitted were either allocation wells or PSA wells. Of the two types, allocation wells have really taken off, growing from 0.7% of all wells permitted in 2013 to 38.2% in 2023. PSA wells, on the other hand, have seen

¹ For a purely legislative update of the oil, gas, and mineral bills enacted in 2023 by the 88th legislature, see John Bennett, *Legislative Update: Oil, Gas, and Mineral Bills Enacted by the 88th Texas Legislature*, State Bar of Texas 41st Annual Advanced Oil, Gas, and Energy Resources Law, September 7-8, 2023.

² Railroad Commission permitting records reveal "sharing agreement" wells permitted as early as 2005 (e.g. DP# 561031), and "allocation" wells permitted as early as 2010 (e.g. DP # 692453). However, there was not a reliable way to search for PSA or Allocation permits submitted prior to April 8, 2013, which is when the RRC added "PSA" and "Allocation" fields to the drilling-permits database and enabled searches based on those fields. See [Drilling Permit \(W-1\) Query \(texas.gov\)](#). Nonetheless, it appears from alternative searches there were over 700 wells permitted as "sharing agreement" ("SA") wells between April 25, 2005 and April 8, 2013, and at least 90 wells permitted as Allocation wells from March 8, 2010 and April 8, 2013.

much smaller growth, but growth nonetheless, from 0.6% of all wells permitted in 2013 to 5.0% in 2023.³ This growth is depicted in Fig. 1.

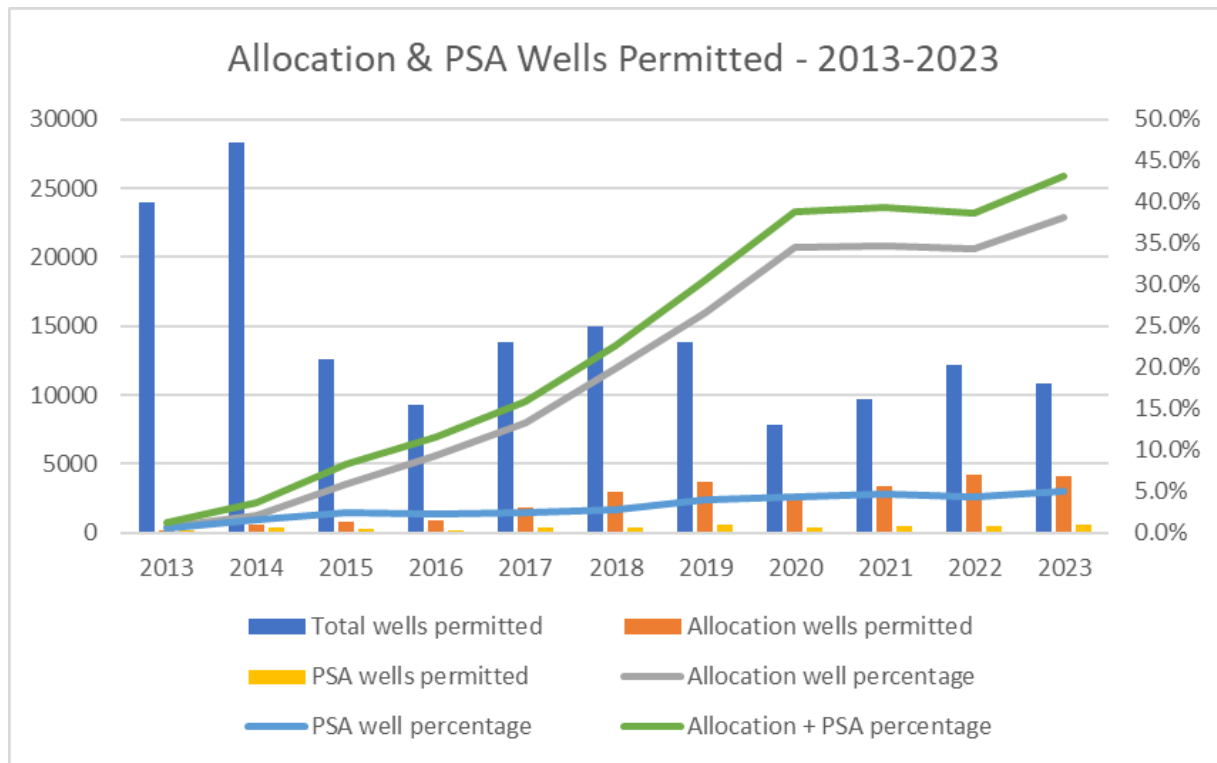


Fig. 1 – Allocation & PSA Wells Issued Drilling Permits (2013-2023)
(data from searches of [Drilling Permit \(W-1\) Query \(texas.gov\)](https://webapps2.rrc.texas.gov/EWA/drillingPermitsQueryAction.do))

The above data is to provide the reader with some context for the current litigation over PSA wells. *See R.R. Comm'n of Tex. v. Opiela*, 681 S.W.3d 397 (Tex. App.—Austin 2023, pet. filed). The *Opiela* case is technically a challenge to a PSA permit the Commission issued to Magnolia Oil & Gas Operating LLC, however some of the arguments apply to allocation wells. [**Disclosure:** The author's firm represents Magnolia in this case.]

The primary issue in *Opiela* is whether drilling and producing a horizontal well that crosses lease lines constitutes “pooling,” and, therefore, violates the anti-pooling provision of the lease in question. The *Opielas* say it is pooling in violation of the lease, while Magnolia says it is not because there is much more to pooling. The secondary issues are whether the RRC needed to formally adopt rules for its permitting of PSA wells based on 65% ownership and also whether Magnolia showed 65% ownership. The Austin Court of

³ All data provided in this paragraph, and depicted on Fig. 1, was derived from searches, by calendar year, of the RRC's Drilling Permit W-1 Query, at <https://webapps2.rrc.texas.gov/EWA/drillingPermitsQueryAction.do>. If a well had multiple drilling permits in a calendar year, it was counted only once.

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