



EARTHWORKS

September 3, 2020

Texas Railroad Commission

Comments submitted online via RRC's proposed form amendments page

Dear Chairman Christian and Commissioners Craddick and Sitton:

On behalf of Earthworks, thank you for the opportunity to submit comments on the Railroad Commission's proposed amendments to the Application for Exception to Statewide Rule 32.

Earthworks is a national nonprofit organization committed to protecting communities and the environment from the impacts of mining and energy development while seeking sustainable solutions. For nearly 30 years, we have fulfilled our mission by working with communities and grassroots groups to reform government policies, improve corporate practices, influence investment decisions and encourage responsible materials sourcing and consumption.

Since 2015, Earthworks' trained and certified thermographers have conducted optical gas imaging (OGI) investigations at nearly 300 Texas well sites, compressor stations, processing facilities, and tank batteries, documenting significant pollution problems at many of them. Earthworks staff have filed over 140 complaints with Texas regulators, who unfortunately took action to reduce pollution in only 12% of these instances.

Earthworks appreciates the RRC's efforts to require operators to provide additional documentation and reduce some flaring timelines and offer specific comments to further strengthen the amendments.

Flaring has no place in communities and a warming world

Earthworks is disappointed that RRC and the Texas Commission on Environmental Quality (TCEQ) have continued to refuse to take meaningful action to rein in flaring and venting. Many researchers and policymakers are sounding the alarm about the significant damage to health and the climate caused by oil and gas pollution, which is a mix of health-harming volatile organic compounds (VOCs) and greenhouse gases.

Nowhere are these impacts more evident than in Texas. RRC should go much further than additional documentation requirements and conduct additional rulemakings. RRC should significantly reduce the frequency with which it grants exceptions for the practice to operators.

Importantly, RRC should heed the [August letter](#) from Texas state senators calling on RRC to end the practice of routine flaring of natural gas. This harmful and wasteful practice should be phased out and replaced by gas capture technologies and improved production planning and coordination with midstream operations--actions that industry could and should be required to take.

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

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A recent financial analysis found that gas flaring in Texas has become so extensive as to violate a state law that requires the RRC to address oversupply of product; in 2018 the gas Texas operators wasted was worth nearly \$750 million.¹ Earthworks' field investigations have revealed an even more pernicious problem: the direct venting to the atmosphere of pollution from unlit flare stacks.²

Yet both operators and Texas state agencies insist on underestimating the problem. A 2019 study in Texas compared emissions from flaring and venting in RRC records with National Oceanic and Atmospheric Administration (NOAA) records from satellites.³ Both data sets show a rapid increase in emissions from these practices in recent years, and the NOAA data indicate levels double those claimed by operators. The researchers attribute this in part to a regulatory loophole that allows operators to skip reporting pollution from certain production practices.⁴

A market research company has also identified wide discrepancies in emission volumes from flaring between operator self-reported data and satellite measurements taken by federal agencies, concluding that operators may be deliberately under-reporting pollution from flaring so they can keep producing oil unhindered by regulations.⁵

To put this problem in perspective, another analysis of reported versus measured flaring emissions concluded that twice as much natural gas is wasted in the Texas Permian Basin as industry claims, enough in fact to serve all the heating and cooking needs of the state's seven largest cities.⁶

Key terms should be strong and consistent

Both the current Application for Exception and the Texas Administrative Code require that all "legal" uses of casinghead gas be investigated and considered before flaring and venting can occur. Yet in Sections 5A and 7(10) of the proposed amendments, RRC asks operators to explain how they have exhausted options for "non-wasteful" uses of gas.

RRC's use of "non-wasteful" is appropriate because the agency is mandated to prevent the waste of oil and gas and (as described above) many operators persist in wasting gas for the sake of convenience and when gas prices are low. However, RRC could be more comprehensive and consistent with existing statutory requirements by using the wording "legal and non-wasteful" in both Sections 5A and 7(10).

When reviewing applications for exceptions based on the claim that all "legal and non-wasteful" options have been exhausted, RRC should consider whether upstream operators have sought to plan and coordinate their drilling and production activities with midstream development (i.e., takeaway capacity). Oil and gas regulators in neighboring New Mexico are likely to include planning requirements in upcoming pollution control rules, including with regard to flaring and venting. Texas should do the same.

The draft revision omits important information

In revising the Application for Exception, RRC appears to have omitted requirements for operators to document and report key information (compared to the 2012 version currently in use). These aspects have a direct bearing on health and safety impacts and must be included in the final version of the Application for Exception. Of particular concern are:

- Proximity to populated areas, including highways, roads, towns, and residential neighborhoods.
- Location of the site where flaring will occur and the nearest pipeline(s).
- Distance to nearest pipeline and operating conditions (e.g., sweet or sour or line pressure).

RRC should reduce, not increase, allowable reasons for an exception

In Section 5 of the proposed amendments, RRC seeks verification from operators regarding the necessity of flaring releases. However, RRC should provide greater specificity in the proposed language to prevent operators from seeking *more* exceptions than is currently allowed and thereby encourage *more* drilling and flaring/venting in some instances. Particular concerns include:

- The option of a 90-day release of casinghead gas; this prolonged period is an unnecessary exception.
- The option to flare/vent casinghead gas for up to 180 days with a simple RRC approval. RRC should specify the circumstances under which it would approve such releases. These should be very limited, i.e., only in instances where flaring and venting is necessary to prevent an imminent risk to worker and community safety. In addition, limiting such releases to 5 days per month could have the unintended consequence of allowing operators to use a "blanket" approval of an exception for years, without having to demonstrate ongoing "necessity."
- The option to flare/vent casinghead gas for up to 180 days with RRC approval if flare reduction technologies are used. RRC should specify the technologies that are acceptable and the metrics to be used by operators to determine and demonstrate successful flare reductions.
- Allowing operators to claim a lack of takeaway infrastructure and conduct a limited pipeline project review (with only a 2.5 mile radius) in order to drill in undeveloped areas outside of main reservoirs (i.e., step-out drilling). These weak requirements could encourage more flaring/venting rather than less.
- Allowing flaring/venting if it ensures gas recovery. RRC appears to be mirroring language in the Texas Administrative Code §32(f)(2)(E), but needs to add specific language regarding the limited instances in which operators can use this rationale and required supporting documentation.

Proposed improvements and data transparency are necessary

We support RRC's inclusion of new language in the Application for Exception requiring additional information from operators, including:

- Section 3 (2)(e), Gas Production and Requested Release Authority, asking operators if the exception request is for multiple sites and the number of associated flares and/or vents.
- Section 3B: Flare/Vent Information, asking operators to provide details on physical location where flaring will occur (e.g., latitude and longitude). This information should be made available to the public, which has a right to identify when and where pollution releases occurred that may

be associated with health symptoms and other problems they've experienced, and to track which operators and sites are the source of flaring and venting activities.

Doing so would be consistent with statements on the RRC statement website that it is a "priority of the Commission to ensure the availability of reliable and transparent data" and is therefore "developing an integrated online system that will allow flaring information from different types of users...to be accessible in one place."

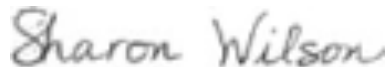
Additional definitions are needed

Several aspects of the proposed amendments remain vague. To improve the chances that operators will provide meaningful documentation, RRC should:

- Amend Section 3B(6) to require site managers, operators, and technicians to be trained and certified in flare operations. This can be accomplished through the Texas Commission on Environmental Quality's/University of Texas at Austin Supplemental Flare Operations Training, which was developed by a stakeholder group that included industrial flare experts and is available at no cost.
- Expand Section 7(1) to define the documentation required by operators to demonstrate a "good-faith attempt by the operator to direct the gas to or utilize the gas," as required by law.
- Clarify Section 7(6) regarding the components and outcomes of a required economic analysis. As written, the agency could potentially grant an exception for flaring and venting due to speculative, minimal increases in operator costs. RRC should also require operators to conduct thorough economic analyses, not just "good-faith" efforts.
- Specify in Section 7(7) which type of release reduction technologies are acceptable for use by operators, as well as the metrics used to determine and demonstrate successful flare reductions.
- Define in Section 7(10) the documentation and analysis that operators have to submit in order for RRC to determine that "sales of gas and other beneficial uses have been investigated and exhausted."
- Add to Section 7 a requirement that operators provide RRC with clear documentation (e.g., technical specifications, flare tip damage inspection records, and temperature/flow rate records) to verify that the flares for which exceptions are sought can achieve the expected 98% combustion efficiency. Such information would be similar to what TCEQ requires through its Air Site Visit Questionnaire.
- Allowing flaring/venting releases for numerous reasons, including "insufficient gas gathering capacity," "system upset (operator)," "system upset (third party)," "scheduled maintenance," and "unscheduled maintenance." However, RRC does not define these terms, which do not exist in the Texas Administrative Code. They need to be clarified and accompanied by requirements for operators to substantiate these reasons for operators to claim flaring/venting "necessity" and exceptions.

Thank you for your time and consideration. Earthworks looks forward to additional, meaningful action by RRC to reduce flaring and venting, and thereby the significant impacts of the Texas oil and gas industry on health and climate.

Sincerely,



Sharon Wilson
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Earthworks

¹ Institute for Energy Economics and Financial Analysis, "Flaring Burns Texas Economy: Commission's Failure to Stop Waste Runs Risk of Letting the State's Financial Future Go Off the Rails," June 2020.

² Sharon Wilson, "Pollution on Purpose? Unlit flares harm health and climate--during a public health and climate crisis," Earthworks, April 2, 2020, <https://earthworks.org/blog/pollution-on-purpose/>

³ Willyard, Katherine Ann and Schade, Gunnar W. "Flaring in Two Texas Shale Areas: Comparison of Bottom-Up With Top-Down Volume Estimates for 2012 to 2015," *Science of the Total Environment*, November 2019.

⁴ Texas Railroad Commission, exceptions to venting and flaring authorizations, <https://www.rrc.state.tx.us/about-us/resource-center/faqs/oil-gas/faqs/faq-flaring-regulation/>

⁵ Brian Collins, "Are some shale producers under-reporting gas flaring to keep oil flowing?" S&P Global, October 2018.

⁶ Colin Leyden, "Satellite data confirms Permian gas flaring is double what companies report." Environmental Defense Fund, January 2019.