



# In Development

*Staying up-to-date with the  
Railroad Commission and General Land Office.*

BY H. PHILIP WHITWORTH AND OLGA KOBZAR

## **RAILROAD COMMISSION OF TEXAS**

The Oil & Gas Division of the Railroad Commission of Texas is charged with regulating the drilling and production of oil and gas wells in Texas. The following recent developments are noteworthy:

### **PROPOSED INJECTION/DISPOSAL WELL AND CEMENTING/CASING RULE AMENDMENTS**

Applications for subsurface injection/disposal<sup>1</sup> of produced and treated water, especially from hydraulic fracturing of horizontal wells, has been the subject of extensive RRC litigation despite general agreement that it is the most environmentally and economically effective disposal method. RRC Rules 9 and 46 governing these opera-

tions require a determination whether the injected fluids will remain confined to the injection/disposal interval to protect useable quality water and producible hydrocarbons.

The RRC has recently proposed amendments to these rules, including the requirement that all unplugged wells in the area of review be properly cemented across the entire injection interval. The amendments would require that notices provide the reason for application, information regarding protesting, and a map of the proposed well's location and would prohibit automatic commercial well transfer from operator to operator prior to RRC review and approval. The RRC has also proposed amendments to Rule 13 concerning casing, cementing, drilling, and completion requirements. All proposed amendments are pending.



## HORIZONTAL DRILLING AND PERMITTING

RRC statewide field rules were generally adopted in contemplation of vertical wells and apply to all fields except those with special field rules. The advent of horizontal drilling has necessitated a number of regulatory changes.

**Statewide and Special Horizontal Field Rules**—Statewide Rule 86 applies to horizontal wells in fields for which the RRC (a) has adopted special field rules for vertical wells only and (b) that are subject to statewide regulation. In fields with special horizontal rules, Rule 86 governs to the extent special rules are not in conflict with this rule. Rule 86 allows the assignment of additional acreage based upon the well's horizontal length to obtain additional allowable. Special field rules, adopted after notice and hearing, may provide a different formula for determining additional acreage assignment to horizontal wells in that specific field.

The RRC has adopted increasingly sophisticated special field rules to accommodate drilling of horizontal wells without incurring unnecessary regulatory obstacles. These rules are needed because Rule 86 took effect in 1990 when horizontal wells were drilled “open hole” but not cased, cemented, and fracture stimulated like most are today.

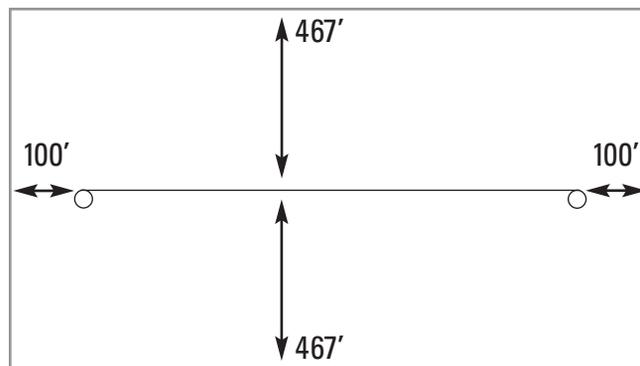
**Take Point Rule**—The RRC has frequently adopted what is known as a Take Point Rule for horizontal wells. Rather than requiring that all points along a horizontal drainhole comply with the minimum leaseline spacing distance from the nearest property line, the Take Point Rule only requires that portions of the horizontal drainhole actually open to the formation (take points or perforations in a cased and cemented well) satisfy spacing rule distances.

**Off-Lease Penetration Point Rule**—Rule 86(a)(4) requires that a horizontal well's drilling and proration unit include all points from the penetration point to the terminus. Requiring wells' penetration points to be within the producing tract, instead of on an adjacent tract, would reduce the drainhole length exposed to the reservoir and potentially preclude drilling that would otherwise prevent waste of valuable hydrocarbons. To address this issue, the RRC has adopted an Off-Lease Penetration Point Rule for more than 60 fields across Texas.

**Stacked Lateral Rule**—To allow different horizontal drainholes to be drilled on top of each other in the same field/reservoir from different surface locations, the RRC has adopted a special field rule known as a Stacked Lateral Rule. To avoid assignment of the same acreage to different wells in the same field, the RRC created a regulatory fiction with the Stacked Lateral Rule that treats all of the wellbores comprising the stacked lateral as a single well. The stacked lateral is a single well for

density and allowable purposes, and there are no maximum or minimum distance limitations between such well's drainholes.<sup>2</sup>

**Dual Property Line Rule**—In recognition of the fact that horizontal wells drain in a pattern perpendicular to their orientation, the RRC has adopted a Dual Property Line Rule as shown:



For example, the RRC may adopt a 467-foot minimum distance for property lines perpendicular to the well's orientation and a 100-foot minimum setback from property lines at non-perpendicular points, allowing longer drainholes without spacing exceptions.

**PSA Permits**—A production sharing agreement provides a means for mineral interest owners in multiple pooled units and/or unpooled leases to agree to an allocation of production from horizontal wells traversing their lands. Rather than pooling two or more leases into a single unit, PSAs may combine pooled units and/or unpooled tracts together into “super units” or otherwise allocate production for horizontal wells drilled across tracts with mineral interest owners who had not previously agreed to production allocation. The RRC will issue a PSA permit if the operator represents that at least 65 percent of the working interest owners and 65 percent of the royalty interest owners in each component tract have agreed to the PSA.

**Allocation Well Permits**—Allocation well permits allocate production from multiple leases or units, but unlike PSAs, do not require operators to obtain agreement from the interest owners. To date, the RRC has issued more than 60 allocation well permits, but the future of this practice is uncertain.

In November 2012, the Texas Land and Mineral Owners Association filed a petition for proposed rulemaking to amend Statewide Rule 40 and establish procedures for permitting a horizontal wellbore across multiple leaseholds. Under TLMA's proposal, an operator would be allowed to drill an allocation well only after obtaining consent to participate in a PSA by at least 65 percent of



the affected interest holders, effectively abolishing allocation wells. While the RRC denied TLMA's petition on Jan. 29, 2013, a contested hearing addressing whether to issue an allocation well permit for a well that would cross oil and gas leases covering different tracts without pooling authority is pending.<sup>3</sup> The agency's decision in this case may determine whether, and to what extent, allocation well permits will continue to be granted at the RRC.

## GENERAL LAND OFFICE

One of the primary responsibilities of the General Land Office is overseeing the leasing and development of state lands for oil and gas. Recent GLO developments of importance are discussed below.

## GLO COMPLAINTS REGARDING STATE FREE ROYALTY TRACTS

The GLO has recently stepped up its efforts to challenge what it believes to be unlawful treatment of state free royalty tracts. These nonexecutive royalty interests, usually a one-sixteenth but occasionally a one-eighth, are normally found as scattered, smaller tracts or scrap files within the lease boundaries of private leases covering much larger areas. The GLO has asserted that operators

have improperly failed to pool these tracts into production or properly account if the well traverses the state's interest. In a few instances, the GLO has also filed complaints with the RRC, alleging that the operator's drilling permit is invalid for failing to obtain School Land Board pooling authority for the state interest or Rule 37 exception permits for the well.

## FORCE POOLING UNLEASED RIVERBED TRACTS

Since October 2011, the School Land Board has authorized 50 force pooling applications involving various unleased state river tracts, mostly in the Eagle Ford trend in South Texas and in Reeves and Ward counties near the Pecos River. If approved, these applications would force pool unleased river acreage into existing producing wells on nearby tracts to prevent drainage of the state's riverbed. Although too early to determine how these complaints will be resolved, operators and lessees throughout Texas should review their acreage near unleased riverbeds and free royalty tracts to avoid these challenges.

## CONCLUSION

As the oil and gas industry continues to evolve, so does the scope and nature of the regulation by the RRC and GLO. Both agencies continuously review and revise policies and develop new rules that affect all mineral interest holders in Texas. **TBJ**

## NOTES

1. "Injection wells" per RRC Rule 46 references injecting fluids into reservoirs productive of hydrocarbons and "disposal wells" per RRC Rule 9 references injecting fluids into unproductive reservoirs. 16 Tex. Admin. Code §3.9; §3.46. References to "Rule(s)" refer to the RRC rules as published in 16 Tex. Admin. Code.
2. Multiple horizontal drainholes drilled from a single vertical wellbore are already treated as a single well under Rule 86(e).
3. Complaint File No. 2012-132; EOG Resources Inc.'s Application to Drill Klotzman (Allocation) Well 1-H, Eagleville (Eagle Ford 2) Field, DeWitt County, Texas.

## State Bar of Texas Government Law Section



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The award will be presented at the State Bar of Texas Suing and Defending Governmental Entities Course, Government Law Boot Camp, held on July 17, 2013, at the Doubletree Hotel in Austin, Texas.

Completed nomination forms must be submitted by **Tuesday, April 30, 2013** by e-mail to Penny.Wilkov@soah.state.tx.us, by fax to (512) 475-4996 or by mail to 300 West 15th Street, Austin, Texas 78711-3025.

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