

PRESENTED AT

48th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute and
Fundamentals

April 21- 22, 2022

Houston, Texas

In-Person and Live Webcast

Railroad Commission of Texas Basics and Updates

Ryan M. Lammert

Author Contact Information:

Ryan M. Lammert
Uhl, Fitzsimons, Burton,
Wolff & Rangel, PLLC
4040 Broadway, Ste. 430
San Antonio, Texas 78209
rlammert@uhlfitzsimons.com
210-829-1660

RAILROAD COMMISSION OF TEXAS BASICS AND UPDATES

Ryan M. Lammert

I. INTRODUCTION – A BRIEF HISTORY	1
II. JURISDICTION, ADOPTION OF RULES, AND POWERS	2
<i>A. Jurisdiction and Adoption of Rules.....</i>	<i>2</i>
<i>B. Powers.....</i>	<i>4</i>
III. ORGANIZATION.....	6
IV. THE STATEWIDE RULES (OR AT LEAST SOME OF THEM)	8
<i>A. Statewide Rule 1 – Organization Report or “License to Operate”</i>	<i>8</i>
<i>B. Statewide Rule 5 – Drilling and Other Operational Applications.....</i>	<i>9</i>
<i>C. Statewide Rule 7 – Strata to Be Sealed Off and Prevention of “Waste”</i>	<i>9</i>
<i>D. Statewide Rules 8 and 91 – Water Protection and Remediation of Crude Oil Spills</i>	<i>11</i>
<i>E. Statewide Rules 9 and 46 – Disposal and Injection Wells.....</i>	<i>14</i>
<i>E. Statewide Rules 14 and 15 – Inactive Wells and Good Faith Claim Complaints.....</i>	<i>18</i>
<i>F. Statewide Rule 32 – Gas Flaring.....</i>	<i>20</i>
<i>G. Statewide Rules 37, 38, 39, 40, and 86 – Spacing, Density, and Proration</i>	<i>21</i>

RAILROAD COMMISSION OF TEXAS BASICS AND UPDATES

I. INTRODUCTION – A BRIEF HISTORY

The Railroad Commission of Texas is the State's first regulatory agency, being created in April 1891 with then-jurisdiction over rates and operations relating to railroads, terminals, wharves, and other companies providing express transportation of merchandise (i.e., common carriers) within the State. At the time, the public perceived that railroad companies and other shippers were abusing their near-monopoly powers and charging exorbitant rates.

With a platform to regulate the industry and to better control prices, Governor James Hogg was elected to office and, shortly thereafter, the legislature adopted laws to create the Commission. The Commission came into existence on April 3, 1891, with Governor Hogg appointing John Reagan, the Honorable William McLean, and Lafayette Foster as the agency's first Commissioners.

Later, in 1894, Texas passed legislation mandating the election of Commissioners, with each Commissioner serving overlapping, six-year terms. This elective process survives through today. Presently, the elected Commissioners are Chairman Wayne Christian, Commissioner Christi Craddick, and Commissioner Jim Wright.

In the early-20th century, Texas' oil and gas industry was in its infant phases of development, but industry infrastructure began to emerge, including pipelines transporting crude oil. The pipelines—like railroads—were deemed to be common carriers and came under the jurisdiction of the Commission. Accordingly, in 1917, the Commission made its first foray into the oil and gas industry through adoption of the Pipeline Petroleum Law.¹

Two years later, the Texas legislature passed the Oil and Gas Conservation Law, providing the Commission with jurisdiction to regulate the production of oil and gas.² By this time, Texas fully understood the implications of overproducing an oil and gas resource (Spindletop came in on January 10, 1901) and the concomitant, deleterious effects on underground oil and gas resources and owners' correlative rights which resulted from having no "rules" present. This phenomenon is sometimes referred to as the "tragedy of the commons."³

The Commission adopted its first "spacing rule" (i.e., Statewide Rule 37) in the same timeframe to address congested conditions in Texas' oil and gas fields in an effort to provide some regulatory framework for the production of hydrocarbons—ostensibly, to avoid the "tragedy" of overproduction.

¹ S.B. 68, 35th Leg., Reg. Sess. (Tex. 1917).

² S.B. 350, 36th Leg., Reg. Sess. (Tex. 1919).

³ Garrett Hardin, *The Tragedy of the Commons*, 162 Sci. 1243 (1968).

Over the next several decades, the Commission continued to fine tune its oil and gas regulatory framework, all the while transferring its rail and transportation responsibilities to various agencies, including the Texas Department of Transportation. In 2005, the Legislature adopted legislation formally transferring the Commission’s “Rail Division”—its sole surviving connection to its namesake—to the Texas Department of Transportation.⁴

Today, the Railroad Commission does not have any relation to the original industry it was created to regulate. Despite the lack of nexus, legislative recommendations to change the agency’s name have failed, and the agency continues its historical designation. In 2021, the Commission celebrated 130 years of service to the State of Texas.

The Commission’s current mission statement is reflective of its statutory authority:

Our mission is to serve Texas by our stewardship of natural resources and the environment, our concern for personal and community safety, and our support of enhanced development and economic vitality for the benefit of Texans.⁵

II. JURISDICTION, ADOPTION OF RULES, AND POWERS

The Commission derives its regulatory authority largely from the Texas Natural Resources Code and the Texas Water Code. Historically, the Commission has also maintained memoranda of understanding and agreement with other agencies, including the Texas Commission on Environmental Quality and the U.S. Environmental Protection Agency, to better define the scopes of the various agencies’ areas of responsibility.

A. *Jurisdiction and Adoption of Rules*

The Texas Natural Resources Code provides for the Commission’s statutory jurisdiction:

The commission has jurisdiction over all: (1) *common carrier pipelines* defined in Section 111.002 of this code in Texas; (2) *oil and gas wells* in Texas; (3) *persons owning or operating* pipelines in Texas; and (4) *persons owning or engaged in drilling or operating* oil or gas wells in Texas.⁶

The Commission’s jurisdiction over oil and gas operations, then, is fairly comprehensive. Pursuant to such statutory authority, the Commission has promulgated certain rules relating to its jurisdiction. The Commission interprets its statutory jurisdiction to include the following, non-exhaustive oil and gas activities:

- (A) drilling, operating, or producing any oil, gas, geothermal resource, brine mining injection, fluid injection, or oil and gas waste disposal well;

⁴ H.B. 2702, 79th Leg., Reg. Sess. (Tex. 2005).

⁵ Railroad Commission of Texas, <https://www.rrc.texas.gov/about-us/> (last visited Mar. 19, 2022).

⁶ TEX. NAT. RES. CODE § 81.051 (emphasis added).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Railroad Commission of Texas Basics and Updates

Also available as part of the eCourse

[2022 Fundamentals of Oil, Gas and Mineral Law eConference](#)

First appeared as part of the conference materials for the
2022 Fundamentals of Oil, Gas and Mineral Law session

"Railroad Commission Updates and Basics"