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CREATE CHANGE

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Jurisdictional Review of Other Resource Production Tenures

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Introduction

The Queensland Government has asked the Queensland Law Reform Commission (QLRC) to review and make recommendations about the processes to decide contested mining leases in Queensland. The QLRC is currently preparing a consultation paper to consider whether the process recommended for mining should also apply to other resource production tenures.

We were asked to undertake a cross-jurisdictional review on regulatory frameworks for petroleum activities, greenhouse gas storage activities and geothermal activities in each of Western Australia, Victoria, British Columbia and Texas to assist the QLRC. This document outlines the regulatory frameworks and associated environmental approval processes for the production tenures for petroleum activities, greenhouse gas storage activities and geothermal activities across those multiple jurisdictions.

Summary of Key Findings

Western Australia

In Western Australia, geothermal and petroleum are regulated under the same legislation, being the *Petroleum and Geothermal Energy Resources Act 197* (PGER). No greenhouse gas storage activities currently occur in the state; however, this is targeted in the upcoming amendment to the Act. The regulatory framework for petroleum and geothermal activities in Western Australia confers quite broad powers, and the environmental approval process is similar to other Australian jurisdictions.

Victoria

In Victoria, the governing legislation for petroleum production includes the *Petroleum Act 1998* and *Petroleum Regulations 2021*. To obtain a production licence, there is a requirement for public notification to the community. However, the public interest is not a factor in the Minister's decision-making process to grant the licence.

Geothermal activities in Victoria are regulated under the *Geothermal Energy Resources Act 2000* and *Geothermal Energy Resources Regulations 2006*, which stipulate that the public interest is a key consideration in granting a production licence, although public notification is not required.

The production of greenhouse gases is governed by the *Greenhouse Gas Geological Sequestration Act 2008* and *Greenhouse Gas Geological Sequestration Regulations 2009*, neither of which mandate public interest consideration and public notification.

For all three types of production tenure, the rights and interests of Aboriginal and Torres Strait Islander peoples are recognised and protected. Additionally, the *Climate Change Act 2017* may guide the Minister's decision-making process, as it requires the consideration of climate change impacts.

British Columbia

In British Columbia, petroleum, greenhouse gas storage, and geothermal activities are regulated under various acts, including the *Petroleum and Natural Gas Act 1996* and the *Energy Resource Activities Act (ERAA)*. The ERAA covers all exploration and development of natural gas activities. The BC Energy Regulator (BCER) oversees these activities, including permit issuance and compliance.

Public and landholder notifications are required before submitting applications, ensuring stakeholders have the opportunity to provide input. Indigenous rights are considered, with legal obligations for

consultation under Section 35 of the *Canadian Constitution Act*. Decision-making often involves balancing public interest, energy conservation, and safety. Reviews of decisions can be sought through the Energy Resource Appeal Tribunal, providing a merits review process for eligible applicants. Recent regulatory changes, such as those introduced by Bill 37, have expanded the scope of the BCER's responsibilities to include renewable resources, reflecting a shift towards a low-carbon economy.

Texas

In Texas, resource production tenures are governed by multiple pieces of legislation and regulatory bodies. The Railroad Commission of Texas (RRC), in particular, is given a broad jurisdiction to regulate activities related to all three of the resource tenure types discussed in this paper. Generally, Texas appears to have a strong focus on environmental protection, with various bodies overseeing the regulation of oil and gas production. Certain public interests are acknowledged, particularly in relation to greenhouse gas storage. However, we were unable to find legislative provisions in relation to consideration of indigenous rights.

Western Australia

In WA, the same process/regulatory framework apply to petroleum and geothermal activities. The provision for geothermal energy exploration and production was incorporated into WA's *Petroleum Act 1967* in 2007 which was then renamed the *Petroleum and Geothermal Energy Resources Act 1967* (PGER).

There is also incoming reform which will add greenhouse gas storage within the existing regime.

Review of the Regulatory Framework

a) The governing legislation and associated regulations

Petroleum and Geothermal Energy Resources Act 1967 (PGER)

Petroleum (Submerged Lands) Act 1982

Petroleum Pipelines Act 1969

The Petroleum and Geothermal Energy Resources (Environment) Regulations 2012

b) Any requirement to publicly notify the application

Although there is no **direct** requirement to publicly notify the application, the Petroleum Tenure and Land Access Branch of the DMP publishes a gazette notice advertising receipt of applications.

c) Any requirement to directly notify landholders or other affected parties of the application

The PGER defines private land as being:²

- a) Any land alienated from the Crown for any estate or freehold;
- b) Land held by any person on conditional purpose under the *Land Administration Act 1997*; or
- c) Any lease or concession with or without acquiring the fee simple, other than pastoral and grazing leases, diversification leases, timber leases and leases for the use and benefit of Aboriginal inhabitants.

Access to private land by a holder of a petroleum title cannot be denied unless it is referred to in **s 16** of the PGER, in which case the title holder must first obtain consent in writing and negotiate a compensation package, if any, with the private land holder. Land covered by s 16 includes small holdings less than 2000 sq metres, cemeteries and burial places, and areas adjacent to water reservoirs including springs, wells and bores.

Under **s 20** PGER, a petroleum or geothermal energy title holder shall not commence operations on private land until compensation, if any, is paid to the owner and occupier of the land or an agreement has been reached as to payment of compensation.

However, under the *Petroleum Pipelines Act 1969* (PP Act), which regulates the construction and operation of petroleum pipelines in onshore WA, pipelines can be licensed to cross any land including private land. Where a pipeline route is being considered, entry onto the land will likely be necessary.

² Part 1 of Act - Definitions

The Minister for Mines and Petroleum can authorise entry onto land and reasonable notice must be given to landowners and occupiers.³

d) Any third-party participation opportunities provided as part of the application

There are some provisions for third party participation during the Screening and Assessment stages.

Screening Stage

- a) Petroleum Tenure and Land Access Branch
- b) Dangerous Goods and Petroleum Safety Branch

Assessment Stage

- a) Department Minerals and Petroleum
 - a. Petroleum Tenure and Land Access Branch
 - b. Dangerous Goods and Petroleum Safety Branch
 - c. Environment Division
- b) Resources branch
- c) DPaW
- d) National Native Title Representative Bodies and Claimant Groups

e) The relevant decision maker on the application

The Minister is the relevant decision maker on the application.

f) The decision-making criteria for the application, particularly noting if the public interest is a consideration

No decision-making criteria is present in any of the Acts. Additionally, there is no mention of the public interest being a consideration.

g) Any specific considerations for Aboriginal peoples and Torres Strait Island peoples rights and interests

Under s 7(2) PGER - The conferral by or under this Act or by any permit, drilling reservation, lease, licence, special prospecting authority or access authority of rights over any land to which Part III of the *Aboriginal Affairs Planning Authority Act 1972* applies does not prevent or in any way affect the application of section 31 of that Act to any person exercising those rights.

Aboriginal Affairs Planning Authority Act 1972 (WA)

Section 31. *Trespass on Reserved Land*

- (1) *A person who enters or remains on any land to which this Part applies, or is shown to have been within the boundaries of that land, shall be guilty of an offence, unless he establishes to the satisfaction of the court that he is —*
- (a) *a person of Aboriginal descent; or*

³ *Petroleum Pipelines Act 1969* s 3.

- (b) *a member of either House of the Parliament of the State or of the Commonwealth; or*
 - (c) *a person lawfully exercising a function under this Act or otherwise acting in pursuance of a duty imposed by law; or*
 - (d) *a person authorised in that behalf under the regulations.*
- (2) *A prosecution for an offence under subsection (1) must not be commenced without the authority of the CEO.*

Native Title Act 1993 (Cth)

The *Native Title Act 1993* (Cth) also is relevant because it also prescribes, among other requirements, the giving of notice to native title holders and the public in respect of any act done after 1 January 1994 which may affect native title by extinguishing or being otherwise wholly or partly inconsistent with the continues existence, enjoyment or exercise of native title rights and interests.

h) Any available review mechanisms (including internal review or appeal)

There is no formal review mechanism (including internal review of appeal). The PGER (Resource Management and Administration) Regulations 2015 provide for certain objections:

- Regulation 25 – objection to requirement to revise approved well management plan
- Regulation 55 – objection to requirement to revise approved field management plan
- Regulation 86 – objection to the classification of the information under reg 85. Regulation 85 classifications affect disclosure and confidentiality of information given to the Minister.

i) Where review of the decision is available, please provide the following details

N/A

j) any other unique aspects of framework

Geothermal energy exploration and production is accommodated under Western Australia's PGER Act.

A Geothermal production licence authorises a holder to recover geothermal energy from the licence area, explore for geothermal energy, and carry on such operations as are necessary for that purpose. Production licences for geothermal energy are granted over blocks comprising a commercial geothermal energy resource and usually stem from a Geothermal Exploration Permit or Drilling Reservation or Retention Lease.

The provision for geothermal energy exploration and production was incorporated into WA's *Petroleum Act 1967* in 2007 which was then renamed to become the PGER Act.

k) any recent reforms of proposed changed to the regulatory framework

Petroleum Legislation Amendment Bill 2023 (WA)

Earlier this year, Parliament passed the ***Petroleum Legislation Amendment Bill 2023 (WA)*** which purports to establish a carbon capture and storage (CCS) regulatory regime on and under the lands, coastal waters and territorial seas within Western Australia's jurisdiction. The bill is designed to amend

the petroleum legislation to provide a regulatory regime for the storage of greenhouse gas, which will be predominantly carbon dioxide.

The Bill establishes a CCS regulatory regime that is substantially similar to the regime that applies to offshore waters under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)

The PGER will become the Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967 (WA).

Associated environmental approval

Environmental Protection

The Department of Mines and Petroleum (DMP) Environment Division conducts environmental assessments and compliance audits of petroleum and geothermal activities in WA including assessing and actioning Environmental Plans and Environmental Impact Statement. Environmental approvals may also be required from agencies other than DMP under State or Federal environmental legislation namely:

Environmental Protection Act 1986 (WA) ('EP Act'), through a state Environmental Impact Assessment (State EIA) conducted by the Environmental Protection Authority (EPA) or

Environmental Protection and Biodiversity Conservation Act 1999 (Cth) ('EPBC Act') through an assessment and approval process conducted by the Department of the Environment (DoE)

An approval from DMP does not remove the need for necessary approvals under the *EP Act* or the *EPBC Act*.

Environmental Assessment under Petroleum and Geothermal Energy Legislation

Environmental regulations under these acts have been in force since 29 August 2012. Under regulation 4 of the *Petroleum Environment Regulations*, petroleum and geothermal activities that require approval from DMP include activities such as drilling, storage, processing or transport of petroleum etc. The regulations require an operator to have an approved **Environment Plan** (EP) in place prior to commencement of any petroleum or geothermal activity. At a minimum an EP must contain the following information:

- Corporate Environmental Policy;
- Environmental legislation and other requirements;
- Referrals to other agencies;
- Description of the activity;
- Description of the environment;
- Environmental impact and risk assessment;
- Risk management practices;
- Environmental performance objectives, standards and measurement criteria;
- Implementation strategy;
- Recording and reporting arrangements; and
- Consultation.

The Guidelines for the Preparation and Submission of an Environmental Plan – 2012 (the Guidelines) were developed to assist operators in meeting the requirements of the Petroleum Environment Regulations. The content and level of detail of an EP will depend on the scale of the activity and environmental impacts associated with the proposal. Operators are required to submit an EP to the DMP Environment Division at **least three months prior** to the planned commencement date of an activity and at least six months prior to the planned commencement date of an activity within proximity to environmental sensitivities. An Oil Spill Contingency Plan (OSCP) is also required under the Petroleum Environment Regulations and may be incorporated into an operator's EP, or be a standalone document.

The Assessment Process

First the assessment of an EP is under the State Petroleum and Geothermal legislation by DMP. Following this an assessment is completed under the EPBC Act. Finally, an assessment under the EP Act or the equivalent state act is completed. These last two processes are separate assessment processes and may not be necessary depending on the nature of the specific proposal. It is the responsibility of the operators to refer their proposals for assessment under the EPBC Act if required. Otherwise, if necessary, the Environment Division will refer proposals for assessment under the EP Act. An operator needs to:

- Secure relevant petroleum or geothermal titles under the PGER Act, *Petroleum (Submerged Lands) Act 1982* or PP Act
- Consult with DMP, Environmental Agencies and other stakeholders
- Prepare an Environment Plan (EP), as required by the Petroleum Environment Regulations
Operator submits EP

Once the operator has prepared and submitted an EP to the Environment Division, the adequacy of the EP will be considered, and an Environmental Officer will contact the operator within 30 days. If it is determined that the EP does not meet the requirements of the Petroleum Environment Regulations, the Environment Division will request a revision of the EP or additional information. After this is submitted the Environment Division has an additional 30 days to assess the information. If the EP is deemed acceptable, the Environment Division, Director of Operations will issue an environmental approval letter. Under reg 11(7), within 10 days of receiving approval, operators must submit a summary of their approved EP for public disclosure. If during the initial assessment, the Environment Division, finds that the proposal must be forwarded to the EPA for assessment under their EP Act. This is known as a State Environmental Impact Assessment (EIA)

State Environmental Impact Assessment under the EP Act

The EP Act provides for an EPA, an independent five-member authority charged with advising the Minister for the Environment on environmental protection. Proposals within State jurisdiction that are likely to have significant environmental impacts have to undergo EIA under the EP Act. A proposal may be submitted to the EPA for assessment by the Environment Division (criteria are outlined in a Memorandum of Understanding between DMP and the EPA) or an operator.

Assessment under the EPBC Act

The EPBC Act is the 'national environmental law' and applies to activities under both Commonwealth and State jurisdiction. Under the EPBC Act, actions that have or are likely to have a significant impact on a matter of National Environmental Significance (NES), require approval from the Australian

Government Minister for the Environment. The Department of Environment administers and conducts the assessment under the Act. The matters of NES under the Act are:

- World Heritage properties;
- National Heritage places;
- wetlands of international importance / RAMSAR wetlands;
- listed threatened species and ecological communities;
- migratory species protected under international agreements;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park;
- nuclear actions (including uranium mines); and
- A water resource, in relation to coal seam gas development and large coal mining development.

It is the operator's responsibility to refer their proposal for assessment under the EPBC Act. They can also refer the proposal for a decision by the Australian Government Minister for the Environment.

Useful Resources

<https://www.dmp.wa.gov.au/Petroleum/Greenhouse-gas-storage-1593.aspx>

<https://www.dmp.wa.gov.au/Documents/Petroleum/PD-RES-PUB-100D.pdf>

Victoria

Petroleum Activities

a) The governing legislation and associated regulations

Petroleum Act 1998 (Vic): provides the regulatory framework for onshore petroleum (i.e. oil and gas) exploration and development activities, excluding transmission pipelines. The Act addresses licensing, approvals and other issues including compensation, rehabilitation, access to Victoria's petroleum geological information and royalties.

Unless specified, the sections of legislation referred to below are from the *Petroleum Act 1998*.

Climate Change Act 2017 (Vic): the minister must consider climate change impacts in determining whether to grant or refuse authorities.

Petroleum Regulations 2021 (Vic)

b) Requirement to publicly notify

S 48A Notice of application for production licence

(1) The applicant for a production licence must cause notice of the application to be published—

(a) in a newspaper circulating generally in Victoria; and

(b) on an Internet site maintained by the applicant.

S 50A Public consultation before tender invitation— production licences

(1) If the Minister proposes to invite applications for the grant of a production licence under section 50(1), the Minister must publish notice of the proposed invitation on an Internet site maintained by the Department.

c) Requirement to directly notify landholders or other affected parties of the application

NA

d) Any third-party participation opportunities

Under section 48B the Minister must take into account any submission received in accordance with s 48A.

S 50 Minister may invite tender applications

(1) The Minister may invite applications for the grant of a production licence in respect of an area if—

(a) in the opinion of the Minister, there is petroleum or a reservoir in the area; and

(b) the area—

(i) is not the subject of an exploration permit, a retention lease or a production licence; or

(ii) was the subject of an exploration permit, a retention lease or a production licence that has expired or that has been surrendered or cancelled in respect of that area.

e) The relevant decision-maker on the application

The Minister

f) The decision-making criteria for the application

S 49 Factors determining grant of application

(1) The Minister must grant a production licence if—

- (a) the applicant for the licence has provided all the information required by the Minister and has otherwise complied with section 48; and*
- (b) the applicant has complied with the conditions of its exploration permit and its retention lease (if any) and all applicable laws in relation to that permit and lease; and*
- (c) the Minister is satisfied that the applicant has addressed the matters raised in any submission received under section 48A or taken reasonable steps to do so; and*
- (d) the Minister is satisfied that the applicant has addressed any prescribed factor or taken reasonable steps to do so.*

(2) The Minister may grant a production licence if—

- (a) subsection (1)(a), (c) and (d) apply; and*
- (b) she or he is satisfied that there are special circumstances concerning the failure to comply with the conditions of the exploration permit or retention lease, or with an applicable law, that justify the granting of the licence.*

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander peoples rights and interests

Section 146 Areas of aboriginal significance

*Before carrying out any petroleum operation on any land, the holder of the authority under which the operation is to be carried out must take reasonable steps to ensure that the operation will not contravene the **Aboriginal Heritage Act 2006**.*

h) Any available review mechanisms (internal review or appeal)

Although no internal appeal mechanism is established through the Act, some decisions regarding licences and permits can be externally reviewed through VCAT – Environment and Resources List. <https://www.vcat.vic.gov.au/case-types/environment-and-resources>

i) Details of review mechanisms

Petroleum Act 1998

134 Determination of disputes—private/native title land

(1) Subject to section 136, the owner or occupier of land or the holder of an authority may—

(a) apply to the Tribunal for the determination of a disputed claim for compensation in relation to private land or native title land (other than a claim for just terms compensation under section 53(1) of the Native Title Act); or

(b) refer a disputed claim referred to in paragraph (a) to the Supreme Court for determination—in accordance with Part 10 of the Land Acquisition and Compensation Act 1986 as if it were a claim for compensation under that Act and as if the authority holder were the Authority referred to in that Part.

135 Determination of disputes—Crown land

(1) The holder of an authority may apply to the Tribunal for a review of any requirement made by the Minister under section 132.

(2) A person who is authorised to undertake activities on Crown land under a lease, licence, permit or other authority granted under an Act may apply to the Tribunal for a review of any decision made by the Minister under section 132 that affects the person.

(3) An application for a review under this section must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given

Geothermal Energy

a) The governing legislation and associated regulations

- *Geothermal Energy Resources Act 2005*
- *Geothermal Energy Resources Regulations 2006*

Production/exploitation of geothermal energy in Victoria requires an 'extraction licence'. Extraction licences are only granted to exploration permit or retention lease holders. Some of the relevant consultation and considerations occur during the application and decision processes for those preliminary tenure types. Although outside the scope of this report, student researchers have included some notes about these types of resource tenures in the annexure to this report.

Unless otherwise specified, the sections of legislation referred to below are from the *Geothermal Energy Resources Act 2005*.

b) Requirement to publicly notify

N/A

c) Requirement to directly notify landholders or other affected parties of the application

N/A

d) Any third party participation opportunities

N/A

e) The relevant decision-maker on the application

The Minister

f) The decision-making criteria for the application

Section 46 **Chief factors to be considered in deciding applications**

(1) *The chief factors the Minister must take into account in determining whether an applicant under this Division is to be granted a licence are—(a) the merits of the work program proposed by an applicant; and*

(b) the likelihood that the work program will be carried out; and

(c) in the case of an application responding to an invitation under section 44, any other factors specified in the invitation.

(2) *Nothing in this section requires the Minister to grant an application that, in the opinion of the Minister, is deficient or defective or not in the best interests of the people of Victoria.*

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander peoples rights and interests

Section 87 **Areas of aboriginal significance**

*Before carrying out any geothermal energy operation on any land, the holder of the authority under which the operation is to be carried out must take reasonable steps to ensure that the operation will not contravene the **Aboriginal Heritage Act 2006**.*

h) Any available review mechanisms (internal review or appeal)

Yes, to VCAT.

i) Details of review mechanisms

95 **Determination of disputes—Crown land**

(1) *The holder of an authority may apply to the Tribunal for a review of any requirement made by the Minister under section 91.*

(2) *A person who is authorised to undertake activities on Crown land under a lease, licence, permit or other authority granted under an Act may apply to the Tribunal for a review of any decision made by the Minister under section 91 that affects the person.*

(3) *An application for a review under this section must be made within 28 days after the later of—*

(a) the day on which the decision is made;

(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

Greenhouse Gas

Like the production tenure for other resources in Victoria, the sequestration stage for greenhouse gases follows earlier exploration tenures for specific sites. Those earlier tenure types provide additional notification etc requirements. While those are outside the scope of this report, notes from the student researchers about those earlier stage requirements are contained in the annexure to this report.

a) The governing legislation and associated regulations

- *Greenhouse Gas Geological Sequestration Act 2008*
- *Greenhouse Gas Geological Sequestration Regulations 2009*

b) Requirement to publicly notify

Yes, see below.

c) Requirement to directly notify landholders or other affected parties of the application

N/A

d) Any third-party participation opportunities

Consultation is provided for in similar terms for both injective testing (in section 46) and for injection and monitoring (in section 102). Both sections apply to applications that are not otherwise required to undertake an Environmental Effects Statement in accordance with the *Environment Effects Act 1978* in respect of the works proposed in the plan and provide that:

The Minister must, on receiving an application for approval of an injection testing plan, cause to be published in a newspaper circulating generally throughout Victoria a notice providing—

(a) that the Minister has received an application for approval of an injection testing plan; and

(b) details of the place or places at which a copy or a summary of the application and a copy or summary of the accompanying plan may be examined; and

(c) that any person or body interested in the application may request and on payment of the prescribed fee receive from the Minister a summary of the application; and

(d) that any person or body interested in the application may within 21 days of the publication of the notice comment in writing on the application; and

(e) that any person or body interested in the application may ask the Minister in writing to be notified if the Minister approves the injection testing plan.

Further details about consultation requirements are found in Part 9, Division 2 – Community Consultation.

e) The relevant decision-maker on the application

The Minister

f) The decision-making criteria for the application

62 **Grant of lease**

...

(2) The Minister must grant a retention lease if he or she is satisfied that—

(a) the applicant has discovered an underground geological storage formation in the lease area that is likely to be geologically suitable for the injection and permanent storage of a greenhouse gas substance; and

(b) the applicant has demonstrated that any greenhouse gas substance injected into the underground geological storage formation is likely to be contained in the underground geological storage formation; and

(c) the applicant did not have access to a commercially viable volume of greenhouse gas substance for injection and permanent storage on the day that the application for the lease was made but is likely to have access to such a volume within the next 15 years.

S 82 Grant of licence

...

(2) In determining whether to grant an injection and monitoring licence, the chief factors the Minister must take into account are—

(a) the merits of the work program proposed by the applicant; and

(b) the likelihood that the work program will be carried out; and

(c) the applicant's assessment of the suitability of the underground geological storage formation for the storage of the identified greenhouse gas substance; and

(d) the likelihood that the greenhouse gas substance will be permanently contained in the licence area; and

(e) if the application is made in response to an invitation under section 74, any other factors specified in the invitation.

S 83 Minister to be satisfied of certain matters

(1) The Minister must not grant an injection and monitoring licence unless the Minister is satisfied that—

(a) the applicant has access to a commercially viable volume of greenhouse gas substance; and

(b) the underground geological storage formation is likely to be geologically suitable for the injection and permanent storage of the identified greenhouse gas substance; and

(c) the greenhouse gas substance is likely to be permanently contained in the area for which the licence is proposed to be granted.

(2) In granting an injection and monitoring licence, the Minister must also consider the chief factors specified in section 82

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander Peoples' rights and interests

150 Native title

If there is a native title holder in relation to land that is subject to an application for an authority, the

Minister must not issue the authority in respect of that land unless the Minister is satisfied that the relevant procedures under the Native Title Act have been followed.

201 What compensation is payable for—private/native title land

...

(6) (a) a person is entitled to compensation on just terms (within the meaning of the Native Title Act) in respect of any loss or damage in relation to any native title land under subsections (1) and (2); and

(b) the compensation the person receives under this section (apart from this subsection) does not amount to compensation on just terms—

the person is entitled to any additional compensation that is necessary to ensure that compensation is paid on just terms

206 Determination of disputes—private/native title land

...

(5) In determining how much compensation is due to a native title holder in any dispute concerning native title land, VCAT or the Court must take into account any relevant amount that has been determined or agreed as compensation under the Native Title Act in relation to that land.

208 Native Title Act rights prevail

If—

(a) the right to negotiate provisions of the Native Title Act have applied; or

(b) an indigenous land use agreement within the meaning of the Native Title Act applies—

in relation to native title land in respect of the approval, or the carrying out, of any greenhouse gas sequestration operation, the provisions of this Act that provide for similar processes do not apply except to the extent that the parties otherwise agree in writing.

h) and i) Any available review mechanisms (internal review or appeal)

Greenhouse Gas Geological Sequestration Act 2008

206 Determination of disputes—private/native title land

(1) Subject to section 208, the owner or occupier of land or the holder of an authority may—

(a) apply to VCAT for the determination of a disputed claim for compensation in relation to private land or native title land (other than a claim for just terms compensation under section 53(1) of the Native Title Act); or

(b) refer a disputed claim referred to in paragraph (a) to the Supreme Court for determination

207 Determination of disputes—Crown land

(1) The holder of an authority may apply to VCAT for a review of any requirement made by the Minister under section 204.

(2) A person who is authorised to undertake activities on Crown land under a lease, licence, permit or

other authority granted under an Act may apply to VCAT for a review of any decision made by the Minister under section 204 that affects the person.

(3) An application for a review under this section must be made within 28 days after the later of—

- (a) the day on which the decision is made;
- (b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

j. Unique aspects of the framework

Under Victoria's Climate Change Act 2017 the minister must consider climate change impacts in determining whether to grant or refuse authorities in respect of all three categories - petroleum, geothermal energy and greenhouse gas sequestration.

(Reference: <https://resources.vic.gov.au/licensing-approvals/oil-and-gas-permits-leases-and-licences/onshore-oil-gas>)

S 17 Decision makers must have regard to climate change

(1) This section applies to any decision made or action taken that is authorised by—

- (a) the provision of an Act specified in Schedule 1; or
- (b) any other prescribed provision of an Act specified in Schedule 1; or
- (c) any prescribed provision of a subordinate instrument made under an Act specified in Schedule 1.

(2) A person making a decision or taking an action referred to in subsection (1) must have regard to—

- (a) the potential impacts of climate change relevant to the decision or action; and
- (b) the potential contribution to the State's greenhouse gas emissions of the decision or action; and
- (c) any guidelines issued by the Minister under section 18.

(3) In having regard to the potential impacts of climate change, the relevant considerations for a person making a decision or taking an action are—

- (a) potential biophysical impacts; and
- (b) potential long and short term economic, environmental, health and other social impacts; and
- (c) potential beneficial and detrimental impacts; and
- (d) potential direct and indirect impacts; and
- (e) potential cumulative impacts.

(4) In having regard to the potential contribution to the State's greenhouse gas emissions, the relevant considerations for a person making a decision or taking an action are—

- (a) potential short-term and long-term greenhouse gas emissions; and
- (b) potential direct and indirect greenhouse gas emissions; and
- (c) potential increases and decreases in greenhouse gas emissions; and
- (d) potential cumulative impacts of greenhouse gas emissions.

British Columbia

Petroleum Activities

a) The governing legislation and associated regulations

Energy Resource Activities Act [SBC 2008] (ERAA)

Petroleum and Natural Gases Act (PNGA)

S1 of the ERAA defines "**energy resource activity**" the exploration for or development of petroleum or natural gas.

b) Any requirement to publicly notify the application

No.

c) Any requirement to directly notify landholders and affected parties.

Section 22 ERAA: Consultation and Notification

(2) Before submitting an application under section 24, a person must notify the land owner of the land on which the person intends to carry out an energy resource activity of the person's intention to submit the application, and the notice must advise the land owner that the land owner may make a submission to the regulator under subsection (5) of this section with respect to the application or proposed application.

(3) Subject to subsection (4), before submitting an application under section 24, a prescribed applicant must carry out the prescribed consultations or provide the prescribed notices, or both, as applicable, with respect to the energy resource activities and related activities, if any, that will be the subject of the prescribed applicant's application.

Section 24 outlines the process and requirements for applying for a permit to carry out energy resource activities. It details the necessary steps and conditions an applicant must meet to receive authorization from the regulator.

"**land owner**" means:

- a person registered in the land title office as the registered owner of the land surface or as its purchaser under an agreement for sale, and
- a person to whom a disposition of Crown land has been issued under the [Land Act](#),

But does not include the government or a person referred to in paragraph (b) of the definition of "unoccupied Crown land" in section 1 of the *Petroleum and Natural Gas Act*. "**Unoccupied Crown land**" is Crown land for which there is either no disposition of interest: there has been no allocation of an interest in the surface of the land under the *Land Act*, or land which is subject to specific licences (under section 39 of the *Land Act*) for non-intensive occupation or use of the land, or occupation and use of Crown land for commercial recreational purposes.

Under s168 of the *Petroleum and Natural Gas Act* "landholder" means an owner of land or occupant who is a party to an application under this Part.

The Consultation and Notification Regulation (CNR) requires applicants to undergo a consultation and notification process. Additionally, landowners receive notification of decisions if the activity is on their land.

d) Third-party participation opportunities

Third-party participation opportunities are not explicitly mentioned. However, the consultation and notification process suggests that affected parties have some opportunity to provide input or raise concerns about proposed activities.

e) Relevant decision-maker on the application

Statutory Decision Makers at the BC Energy Regulator (formerly BC Oil and Gas Commission) make decisions regarding issuing or denying permits, compliance, and other operational details.

f) Decision-making criteria and public interest consideration:

Petroleum and Natural Gas Act:

S 41 (1) *The minister may issue or refuse to issue a permit, whether or not the requirements of this Act have been complied with, and the minister's refusal is final.*

Eg. The Minister may consider the miners capabilities.

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander peoples rights and interests

Under Section 35 of the *Canadian Constitution Act, 1982*, the Crown (both federal and provincial governments) has a legal obligation to consult with Indigenous communities when proposed projects may impact their rights. This consultation aims to address potential adverse effects and, where necessary, accommodate concerns. S35 (2) defines Aboriginal peoples of Canada to include the Indian, Inuit and Métis peoples of Canada.

h) Any available review mechanisms (including internal review or appeal)

Under Chapter 8 of the Oil and Gas Application Manual the BC Energy Regulator provides processes for reviews and appeals. Applicants can request a review of decisions made by the Regulator, and there are specific procedures outlined for such requests.

Section 72 of the *Energy and Resource Activities Act* provides for the right to appeal decisions to the Energy Resource Appeal Tribunal, allowing eligible persons to challenge determinations. Section 19 relates to this by continuing the Tribunal (formerly the Oil and Gas Appeal Tribunal) and outlining its composition and role in hearing these appeals.

i) Where review of the decision is available, please provide the following details:

i. type of review (merits or judicial)

The review is a **merits review**:

Section 72(6) states that the appeal tribunal may "confirm, vary, or rescind the decision made under section 71 or the determination, or send the matter back, with directions, to the review official who made the decision or to the person who made the determination, as applicable."

ii. standing to seek review

Any eligible person may seek for review (S72(1) of the ERAA)

Under s69 of the ERAA,

"eligible person" means

- (a) an applicant for a permit,
- (b) a permit holder or former permit holder,
- (b.1) an authorization holder or former authorization holder,
- (c) a land owner of land on which an operating area is located,
- (d) a person to whom an order under section 49 (1) has been issued, and
- (e) a person with respect to whom the regulator has made a finding of a contravention under section 62;

S72: A **landowner** can only request a review if it specifically relates to the effect on their land, such as the issuance or amendment of a permit that affects their land.

iii. the review body

Energy Resource Appeal Tribunal

j) any other unique aspects of framework

Petroleum and Natural Gas Act:

Integration with other legislation: The Act references and aligns with other relevant legislation, such as the *Energy Resource Activities Act* and the *Land Act*, creating an integrated regulatory framework.

BCER:

The regulatory framework has evolved to address the unique challenges of unconventional resource development, including hydraulic fracturing and horizontal drilling.

The BCER provides a detailed Land Owner's Information Guide for Oil and Gas Activities, explaining the life cycle of oil and gas activities and consultation processes.

The BCER maintains a Resource Centre in Dawson Creek where land owners can access information about oil and gas development

<https://www.bc-er.ca/what-we-regulate/oil-gas/wells/>

<https://www.bc-er.ca/files/documents/BC-Oil-and-Gas-Commission-Land-Owner-Guide.pdf>

k) Any recent reforms of proposed changes to the regulatory framework.

Effective Sept. 1, 2023, the *Energy Statutes Amendment Act* replaced the *Oil and Gas Activities Act* with the *Energy Resources Activities Act* (ERAA) and expanded the BCER's responsibilities to overseeing geothermal energy as well as other renewable resources like hydrogen and carbon storage. The definition of "oil and gas activity" was repealed and replaced with "energy resource activity".

<https://www.bc-er.ca/files/application-manuals/Oil-and-Gas-Activity-Application-Manual/OGAAM-Chapter-1.pdf>

This expansion of authority supports B.C.'s broader goals of transitioning to a low-carbon economy while ensuring that geothermal and other energy activities adhere to modern environmental and safety standards.

Greenhouse gas activities

a) The governing legislation and associated regulations

The primary legislation and regulations governing greenhouse gas emissions and related activities in British Columbia are:

- *The Greenhouse Gas Industrial Reporting and Control Act (GIRCA)*
- *BC Laws – Interpretation Act*
- BC Greenhouse Gas Emission Administrative Penalties and Appeals Regulation
- *Energy Resources Activities Act (ERAA)*

Section 1 of the ERAA states that "**energy resource activity**" includes the exploration for or development or use of a storage reservoir for the purposes of storing or disposing of carbon dioxide or a prescribed substance, whether or not in relation to another energy resource activity.

b) Any requirement to publicly notify the application

As for petroleum, see above.

c) Any requirement to directly notify landholders or other affected parties of the application

As for petroleum, see above.

d) Any third-party participation opportunities provided as part of the application

N/A.

e) The relevant decision-maker on the application

The director is the primary decision-maker for many aspects under the *Greenhouse Gas Industrial Reporting and Control Act* (GIRCA). This is evident in section 40(1) of the Act, which outlines decisions that may be appealed.

f) The decision-making criteria for the application, particularly noting if the public interest is a consideration

As for petroleum, see above.

In addition, Section 46 of the GIRCA empowers the Lieutenant Governor in Council to make regulations, which may include establishing criteria for the director's decision-making.

General regulation-making powers

46 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

Under the *Interpretation Act*

Powers to make regulations

41 (1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it.

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander peoples rights and interests

As for petroleum, see above.

h) Any available review mechanisms (including internal review or appeal)

ERAA: (same as above)

Greenhouse Gas Emission Administrative Penalties and Appeals Regulation:

Section 12 applies the appeal provisions of the *Environmental Management Act* (specifically Section 103), allowing the Environmental Appeal Board to conduct a merits review, confirming, varying, or rescinding decisions.

Section 40 of the *Greenhouse Gas Industrial Reporting and Control Act*: Allows for appeals to the Environmental Appeal Board regarding decisions related to administrative penalties and other prescribed decisions.

i) Where review of the decision is available, please provide the following details:

i. type of review (merits or judicial)

The review is a **merits review** as the Environmental Appeal Board has the authority to confirm, vary, or rescind the decision.

ii. standing to seek review

s 40 of the GIRCA - A person served with an administrative penalty notice or relevant decision document has standing to seek a review.

Individuals directly affected by the decision, such as those who have received administrative penalty notices, have standing to seek a review.

iii. the review body

The Environmental Appeal Board.

j) Any other unique aspects of framework

British Columbia has implemented numerous regulatory and legislative measures to reduce GHG emissions across the province since 2008.

The province has a carbon offset system, which some First Nations have participated in through forest carbon projects.

<https://www.bcafn.ca/priority-areas/environment/climate-emergency/first-nations-carbon-offsets>

k) Any recent reforms of proposed changes to the regulatory framework.

Energy Statutes Amendment Act, 2022:

Bill 37 introduced changes to the then *Oil and Gas Activities Act (OGAA)* and *Petroleum and Natural Gas Act (PNGA)*. It included new definitions such as "energy storage activity," which clarifies that storage reservoirs can be used for carbon capture and storage (CCS).

<https://nortonrosefulbright.com/en-ca/knowledge/publications/44fb2fca/new-regulator-in-town-more-than-a-name-change>

Section 125.4 of the PNGA expanded the government's rights to access, develop, and use storage reservoirs without compensation under specific conditions.

<https://www.blg.com/en/insights/2022/12/bc-introduces-new-rules-for-carbon-capture-and-storage>

The BC government announced on 14 March 2023, a New Energy Action Framework. The framework outlines B.C.'s approach to meeting its climate commitments, with a particular focus on the oil and gas sector. It includes an emissions cap for the oil and gas industry, targeting net-zero emissions by 2030 for new projects. While primarily focused on LNG projects, this framework impacts all major energy projects, including those involving GHG storage. The framework also includes provisions for offsetting emissions through carbon credits and encourages further investments in clean energy.

<https://news.gov.bc.ca/releases/2023PREM0018-000326>

Geothermal activities

a) The governing legislation and associated regulations

Geothermal Resources Act

Associated regulations include:

- *Geothermal Resources General Regulation*
- *Geothermal Operations Regulation*

The BC Energy Regulator (BCER) is responsible for overseeing aspects of geothermal well operations under these regulations.

b) Any requirement to publicly notify the application

Under s 1 of the *Geothermal Resource Act*

"geothermal exploration" means investigation of the subsurface of land for the presence of a geothermal resource by means of

(a) seismic, gravimetric, magnetic, radiometric, electric, geological or geochemical operations,

(b) well drilling, or

(c) any other method approved by the regulator;

Permits are required to drill, access land, harvest trees, and construct or operate geothermal facilities and pipelines. All these activities must meet the OGC's standards for health and safety, personnel certification, environmental protection, notifications to the public and regulator, ongoing monitoring, and record keeping.

c) Any requirement to directly notify landholders or other affected parties of the application

Section 1 (2) of the *Geothermal Resource Act* provides that:

Parts 16 and 17 of the [Petroleum and Natural Gas Act](#) apply in respect of entry onto and use of land for the purpose of exploring for and producing geothermal resources. S1 - "holder of a location" means, in accordance with the context, a permittee or lessee;

Those parts contain a range of requirements for leasing of land, consent and payments of rent.

d) Any third-party participation opportunities provided as part of the application

N/A.

e) The relevant decision-maker on the application

The Ministry of Energy, Mines and Low Carbon Innovation (BC MELCI): Regulates geothermal licensing and oversees the competitive bidding process for geothermal tenure.

The British Columbia Oil and Gas Commission (OGC): Delegated by BC MELCI to regulate geothermal wells.

<https://cassels.com/insights/the-landscape-of-geothermal-energy-as-a-renewable-energy-source/> (For 1 and 2)

The BC Energy Regulator (BCER): Responsible for overseeing aspects of geothermal well operations. <https://www.bc-er.ca/what-we-regulate/geothermal/>

Before the BCER considers an application to drill a geothermal well, the applicant must first acquire geothermal subsurface tenure through a competitive bidding process from the Ministry of Energy, Mines and Low Carbon Innovation.

f) The decision-making criteria for the application, particularly noting if the public interest is a consideration

Section 4 of the *Geothermal Resources Act* (GRA) outlines some key prohibitions and requirements:

4 (1) No person may produce a geothermal resource other than for testing purposes unless

(a) the person does so in accordance with a plan for the production of the geothermal resources underlying the location of a lease,

(b) the plan is approved, with respect to matters of energy conservation and operational safety, by the regulator, and

(c) the person is the lessee of the location where the well that produces the geothermal resource is located."

Section 1 of the GRA states that: regulator" has the same meaning as in the *Energy Resource Activities Act*.

Section 3 of the ERAA- Regulator is an agent of the government.

Section 5 of the *Geothermal Resource Act* permits the Minister of Energy, Mines and Low Carbon Innovation is the relevant decision-maker for issuing geothermal permits. The decision-making criteria include public tender requirements and publication of notice.

Permit requirements: Permits are required for drilling, land access, tree harvesting, and construction or operation of geothermal facilities and pipelines.

Regulatory compliance: All activities must meet standards for health and safety, personnel certification, environmental protection, public and regulator notifications, ongoing monitoring, and record keeping.

Environmental assessment: Projects exceeding 50 MW require environmental assessments by both provincial and federal governments.

<https://cassels.com/insights/the-landscape-of-geothermal-energy-as-a-renewable-energy-source/>

Consultation: The BCER has the responsibility and authority to ensure the Crown's legal obligations to consult and accommodate Indigenous peoples are fulfilled with respect to decision-making on oil and gas activities, which includes geothermal activities.

Environmental objectives: The Environmental Protection and Management Regulation guides the BCER in protecting and managing resource values, including water, streams, lakes, wildlife, habitat, and forest health. <https://www.bc-er.ca/what-we-regulate/geothermal/>

g) Any specific considerations for Aboriginal peoples and Torres Strait Islander peoples rights and interests

See above as for petroleum.

h) Any available review mechanisms (including internal review or appeal)

Refer to above.

i) Where review of the decision is available, please provide the following details:

i. type of review (merits or judicial)

See above, petroleum section

ii. standing to seek review

See above, petroleum section

iii. the review body

Energy Resource Appeal board

BCER

j) Any other unique aspects of framework

Geothermal facilities and pipelines used for geothermal purposes fall under the Oil and Gas Activities Act (OGAA) and are regulated by the BCER as such. This integration allows geothermal projects to be managed alongside other energy resources, which streamlines regulatory oversight for operators involved in multiple energy sectors. See <https://www.bc-er.ca/what-we-regulate/geothermal/>.

The BC Energy Regulator (BCER) is responsible for overseeing aspects of geothermal well operations in British Columbia under the Geothermal Resources Act (GRA).

Projects exceeding 50 MW are subject to review under the BC Environmental Assessment Act and Canadian Environmental Assessment Act <https://cleanenergybc.org/sector/geothermal/>.

k) Any recent reforms of proposed changes to the regulatory framework.

The BC government has committed to significant investments to bolster British Columbia's electricity infrastructure, which presents opportunities for the geothermal industry.

There's a call for regulatory overhaul to streamline project applications and fiscal reform to carve out geothermal in existing incentive programs¹.

The Geothermal Resources Act is reportedly due for a mandated review soon, according to industry news.

Texas

Governing legislation and associated regulations – all three tenure types

The governing legislation for all three of the production tenure types are:

- The ***Texas Natural Resources Code***:
 - Title 3 – Oil and Gas
 - Title 5 – Geothermal Energy and Associated Resources
 - Chapter 119 -121 contain some aspects of carbon dioxide sequestration
- ***The Texas Water Code*** (Chapter 27) is known as the ***Injection Well Act*** includes oil and gas and carbon dioxide related injection activities.
- In addition, Administrative Rules promulgated under these statutes under 16 ***Texas Administration Code*** Part 1:
 - Chapter 3: Oil and Gas Division
 - Chapter 4: Environmental Protection
 - Chapter 5: Carbon Dioxide

Petroleum Activities

a) The governing legislation and associated regulations

Note: Texas does not use the term 'petroleum'. The state refers to these activities as 'oil and gas'.

The *Texas Natural Resources Code* grants the Railroad Commission of Texas (RRC) jurisdiction to regulate the production of oil and gas (s 81.051). Its statutory role includes:

- Preventing waste of the state's natural resources,
- Protecting the correlative rights of various interest holders,
- Preventing pollution, and
- Ensuring safety in matters such as hydrogen sulphide.

In addition, the RRC has regulatory and enforcement responsibilities under federal law including:⁴

- Surface Coal Mining Control and Reclamation Act
- Safe Drinking Water Act
- Pipeline Safety Acts
- Resource Conservation Recovery Act
- Clean Water Act

The RRC has a broad power to implement and enforce rules it deems necessary to fulfill its duties (s 81.052 *Natural Resources Code*). The *Natural Resources Code* grants power for it to:

⁴ [RRC Authority and Jurisdiction \(texas.gov\)](https://www.texas.gov/legislation/railroad-commission-of-texas)

- Institute suits,
- Hear and determine complaints,
- Require the attendance of witnesses (to attend proceedings),
- Obtain writs and process necessary to enforce its decision and rulings, and
- Punish for contempt or disobedience of its orders.

The RRC has provided comprehensive guides for different types of applications and permits. For drilling permits, see here: [Drilling Permits w-1 Online Filing User Guide \(texas.gov\)](#). This document also provides a general flowchart of applying for a drilling permit: [dp-app-process-flow.pdf \(texas.gov\)](#).

b) Any requirement to publicly notify the application

There is no general, direct requirement to publicly notify the application, but certain situations do involve public notification.

For example, circumstances regarding off lease penetration point require notification. In the context of oil and gas, off lease penetration point might describe the location where drilling or transport operations extend beyond the boundaries of a leased land parcel, potentially impacting areas not covered by the original lease agreement.

Another example – lease line exception. This refers to an applicant wishing to get allowance/variance for permitting a well to be drilled closer to the boundary of a lease than normally allowed by standard rules. There are a range of other exceptions listed in the user guide (link provided above).

By rule, the applying operator is required to provide the affected operator or mineral interest owner a 21-day notification. If notice has been served to the affected offset, and there is a conflict between the two parties that cannot be resolved, a hearing can be requested to resolve the situation.⁵

Usually, the applicant is required to make a good faith effort to determine all parties required to be notified. If one or more parties are unable to be located, the applicant must publish a Commission-supplied notice once a week for two consecutive weeks in a newspaper of general circulation in the county of the well location.⁶

Note: Permit applications are Open Records under the *Texas Public Information Act* (Texas Government Code, Chapter 552).

c) Any requirement to directly notify landholders or other affected parties of the application

See above.

d) Any third-party opportunities provided as part of the application

While this is not directly related to the application part, section 86.081 of the *Natural Resources Code* provides that:

- (a) For the protection of public and private interests, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall

⁵ Drilling Permits (W-1) User Guide Page 32.

⁶ Drilling Permits (W-1) User Guide Page 42.

prorate and regulate the daily gas well production from a common reservoir if the commission finds that action to be necessary to:

- (1) prevent waste; or
- (2) adjust the correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas as permitted in this chapter.

Additionally, the U.S. Department of the Interior (DOI) plays a significant role in overseeing oil and gas operations in Texas through several bureaus. These include the U.S. Fish & Wildlife Service, which handles issues related to the Endangered Species Act, the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement, which manage offshore drilling safety, and the Bureau of Land Management, which governs mineral production on federal lands.⁷

e) The decision-making criteria for the application, particularly noting if the public interest is a consideration.

No set criteria. Decision-making at the discretion of the RRC.

f) Any available review mechanisms (including internal review or appeal)

Section 86.225 of the *Natural Resources Code* states:

Any person affected by an order of the commission adopted under the authority of this chapter is entitled to *judicial review* of that order in a manner other than trial de novo.

Additionally, Chapter 1 of the *Texas Administrative Code* provides some guidance on resolving contested cases (same provisions apply to greenhouse gas and geothermal activities). The RRC's policy is to promote the fair and timely resolution of both internal and external disputes within its jurisdiction through alternative dispute resolution (ADR). ADR encompasses procedures outlined in *Texas Civil Practice and Remedies Code* Chapter 154, including mediation, arbitration, and mini-trials. Relevant chapters of the *Administrative Code* include:

- Subchapter B: Initiation of contested case proceeding
- Subchapter C: Pleadings, motions and other documents
- Subchapter D: Notice and service
- Subchapter G: Hearings
- Subchapter H: Decision
 - Section 1.129 - Effect of Order Granting Rehearing

An order granting a motion for rehearing vacates the preceding final order. When the Commission renders a new final decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.
- Subchapter I: Permit processing

More generally, section 3.72 of the *Administrative Code* provides some information on contested case hearing. But this appears to be more related to contract disputes.⁸

Section 3.73 outlines the rules for mediation in a claim but does not specify whether it involves application claims. It seems to relate more broadly to the regulation of oil and gas activities.⁹

⁷ [who-regulates-oil-and-gas-in-texas - Tipro](#)

⁸ [Section 3.72 - Request for Contested Case Hearing, 16 Tex. Admin. Code § 3.72 | Casetext Search + Citor.](#)

⁹ [Section 3.73 - Agreement to Mediate; Conduct of Mediation, 16 Tex. Admin. Code § 3.73 | Casetext Search + Citor](#)

The RRC is open for complaints related to exploration of oil and gas that are within the Commission's authority and jurisdiction.¹⁰

g) Any other unique aspects of framework

Chapter 85 of the *Texas Natural Resources Code* sets provide provisions for the conservation of oil and gas. Pursuant to s 85.241, any interested person affected by the conservation laws of Texas or orders of the RRC relating to oil or gas and the waste of oil or gas, and who is dissatisfied with those laws or orders, may bring a lawsuit against the Commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

h) Any recent reforms of proposed changes to the regulatory framework

N/A.

Greenhouse Gas Storage Activities

a) The governing legislation and associated regulations

Texas Water Code (Chapter 27): Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide – s 27.041:

The railroad commission (RRC) has jurisdiction over the onshore and offshore injection and geologic storage of carbon dioxide in Texas.

The RRC's permit application requirements can be found in 16 Texas Administrative Code.

- s 5.101:

The purpose of this chapter is to implement the state program for geologic storage of anthropogenic CO₂ consistent with state and federal law related to protection of underground sources of drinking water.

- s 5.203:

Amongst other requirements, a person making an application for a permit must submit to the director of RRC a copy of the application to the Texas Commission on Environmental Quality (TCEQ) and must submit a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO₂ injection well for geologic storage will not impact or interfere with any previous or existing well.

b) Any requirement to publicly notify the application

Section 5.204 of the Texas Administrative Code outlines notice of permit actions and public comment period. In general, the RRC gives notice when:

- (1) a draft permit has been prepared; and
- (2) a hearing has been scheduled.

General notice by publication

The RRC shall publish notice of a draft permit once a week for three consecutive weeks in a newspaper of general circulation in each county where the storage facility is located or will be located. Additionally, the Commission shall post the draft permit notice on its website. The method of notification

¹⁰ [Oil & Gas Complaints \(texas.gov\)](https://www.texas.gov)

Individual notice

Subsection (a)(3) specifies that notice of a draft permit or a public hearing shall be sent by mail to a list of parties, which includes certain environmental agencies, leaseholders and other interest owners.

Subsection (a)(5): The applicant must make diligent efforts to ascertain the name and address of relevant parties. If an applicant cannot identify relevant parties despite diligent efforts, they shall be treated as satisfying the notice requirement.

Notice to certain communities

Subsection (a)(6): In some circumstances, the applicant will need to take extra public outreach to certain communities. This particularly applies to an Environmental Justice (EJ) and Limited English-Speaking Household community.

Public comment and hearing

Subsection (b): A 30-day period is provided for public comments on a draft permit. If there is significant public interest or a protest, a public hearing is held. The director of the RRC can also call a hearing to clarify permit issues.

More information regarding hearing on permit application can be found in s 27.018 of the Texas Water Code.

Administrative Approval and Response to Comments

Subsection (b)(5): If no protests are received, the director may approve the application administratively. After a final permit decision, a response to comments must be issued, detailing any changes to the draft permit and addressing significant comments raised (to be posted on the Commission's website).

Note: Permit applications are Open Records under the *Texas Public Information Act* (Texas Government Code, Chapter 552).

c) Any requirement to directly notify landholders or affected parties of the application

See above.

d) Any third-party participation opportunities provided as part of the application

See above.

e) The relevant decision-maker on the application

RRC.

f) The decision-making criteria for the application, particularly noting if the public interest is a consideration relevant decision-maker on the application

There are no set criteria for approving an application other than the requirements listed under the relevant provisions. However, it appears that the Commission does consider public interest. See above for more information.

General Criteria under s 5.206 – provides an extensive list of conditions, including:

- Must not endanger or injure any existing or prospective oil, gas, geothermal, or other mineral resource, or cause waste as defined by Texas Natural Resources Code, s 85.046(11)
- Have proper safeguards, both surface water can be adequately protected from CO2 migration or displaced formation fluids
- The injection of anthropogenic CO2 will not endanger or injure human health and safety

g) Any review mechanisms (including internal review or appeal)

No specific review mechanisms other than Chapter 1 of the Texas Administrative Code (same as petroleum activities from above and geothermal activities).

h) Any recent reforms of proposed changes to the regulatory framework

In June 2021, Texas enacted House Bill (H.B.) 1284 to give the RRC sole jurisdiction over carbon storage wells. However, the agency is still in the phase of seeking authority from the EPA to regulate carbon dioxide wells for geological storage.

In August 2023, the RRC adopted additional amendments to its carbon storage rules. However, they are not closely related to the current context. Detailed amendments can be found here: [Texas Railroad Commission Adopts Additional Amendments to Carbon Storage Rules | Practical Law](#).

Geothermal Activities

a) The governing legislation and associated regulations

Similar to the other types of activities, Chapter 141 of the *Natural Resources Code* imposes a general duty on the RRC to regulate exploration, development and production of geothermal energy.

An applicant for a geothermal injection well permit must submit information that covers both the typical requirements for injection or disposal wells, and details specific to the proposed geothermal operation. The applicant is required to comply with all relevant RRC rules, including those governing oil and gas wells (Chapter 3 of the *Texas Administrative Code*), unless exceptions are specifically provided.

b) Any requirement to publicly notify the application

General information on the application process can be found here: [Geothermal \(texas.gov\)](#). As part of the application, regarding relevant attachments, the RRC require proof of notice of application:

- (i) Published notice
- (ii) Notice of application to all Operators within one-half mile
- (iii) Notice of application to all adjacent surface owners

Not much information was found on other affected parties and third-party participation opportunities as part of the application.

Note: Permit applications are Open Records under the *Texas Public Information Act* (Texas Government Code, Chapter 552).

c) Any requirement to directly notify landholders or affected parties of the application

See above.

d) Any third-party participation opportunities provided as part of the application

See above.

e) The relevant decision-maker on the application

RRC.

f) Any review mechanisms (including internal review or appeal)

Same as the other two types of activities - Chapter 1 of the *Texas Administrative Code*.

g) Any recent reforms of proposed changes to the regulatory framework

As of September 1, 2023, Senate Bill 786 transferred all jurisdiction over geothermal wells in Texas to the RRC, including closed-loop geothermal wells (use the earth as a heat sink for heating or cooling buildings). Previously, the Texas Commission on Environmental Quality (TCEQ) regulated closed-loop geothermal wells, but under this new legislation, the RRC now assumes full control.

All TCEQ rules, standards, and forms related to these wells stayed in place until the RRC modify them. Additionally, TCEQ transferred any pending permit applications for closed-loop geothermal wells to the RRC by 1 September 2023. By 1 December 2023 the RRC became responsible for issuing substitute permits for all closed-loop geothermal wells previously permitted by the TCEQ. This transition centralised regulation under the RRC to streamline oversight of geothermal wells in Texas.

Furthermore, the RRC has announced public comment on new proposed rules for geothermal energy on 2 October 2024. Details of the proposed rules can be accessed here: [100224 RRC Announces Public Comment on New Proposed Rules for Geothermal Energy](#).

Relevant Environmental Authorities and Agencies

Texas Commission on Environmental Quality (TCEQ): plays an important role in the areas of air quality, surface water management, water quality, and waste management. *e.g. Oil and Gas Methane Rule Compliance Reminder, soil gas handling compliance*

U.S. Environmental Protection Agency (EPA): Controls air pollution from oil and natural gas operations

- EPA's Clean Air Act: regulates oil and natural gas operations to help combat climate change and reduce air pollution that harms public health. The regulations apply to equipment and activities used for the onshore oil and natural gas industry.

Texas Parks and Wildlife Department (TPWD):¹¹ Landowners and operators should establish a foundational framework that emphasises the need to balance the development of oil and gas infrastructure with the protection of a property's unique or sensitive resources.

- Implementing voluntary best practices reflects a commitment to strategic and thorough planning, ensuring that both economic growth and environmental stewardship are prioritized. Key considerations may include conducting comprehensive environmental assessments, engaging with local stakeholders, employing adaptive management strategies, and implementing mitigation measures to minimize impacts on ecosystems and wildlife. This proactive approach not only enhances sustainability but also fosters positive relationships with the community and regulatory agencies.

Relevant articles on how indigenous communities in Texas are affected by oil and gas operations:

- [Life in the Oilfields - Fossil Fuels and Indigenous Populations](#)
- [In Texas, Indigenous Land Protectors Face Off Against the Fossil Fuel Industry | Sierra Club](#)

¹¹ [Texas Parks & Wildlife Department: Voluntary Conservation Practices](#)



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