



Annual Oil and Gas Division Monitoring and Enforcement Plan

For Fiscal Year 2019

By

Railroad Commission of Texas

Christi Craddick
Ryan Sitton
Wayne Christian

Dec. 17, 2012 to Dec. 31, 2018
Jan. 5, 2015 to Dec. 31, 2020
Jan. 9, 2017 to Dec. 31, 2022

Midland, Texas
Friendswood, Texas
Center, Texas

June 2018

Approved:

Christi Craddick
Chairman

Wei Wang
Interim Executive Director

Ryan Sitton
Commissioner

Lori Wrotenbery
Director, Oil and Gas Division

Wayne Christian
Commissioner

In 2017 the Texas Legislature (H.B. 1818, 85th Legislature, Regular Session, 2017) directed the Railroad Commission of Texas to develop an annual plan to assess the most effective use of its limited resources to ensure public safety and minimize damage to the environment. This first iteration of the *Annual Oil and Gas Division Monitoring and Enforcement Plan* will serve as the benchmark based on existing data from FY 2012 to 2017. The Commission will never cease to strengthen its capabilities to track, measure, and analyze the effectiveness of its oil and gas monitoring and enforcement program.

The purpose of this plan is to define and communicate the Oil and Gas Division's strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the Division's current priorities—to ensure public safety and protect the environment—as well as establishing direction for data collection, stakeholder input, and new priorities.

Table of Contents

Vision	4
About the Railroad Commission.....	4
Strategic Priorities for FY 2019.....	4
Railroad Commission Monitoring and Enforcement Overview.....	4
Monitoring Activities	5
Organization	5
Key Regulatory Compliance Mechanisms	5
Inspections.....	5
Enforcement Activities	6
Organization	6
Enforcement Mechanisms.....	6
Procedures.....	8
Goals and Measures	8
Goal 1: Accurately demonstrate the Commission’s oil and gas monitoring and enforcement activities.....	8
Action Item 1: Identification and Tracking of Major Violations	8
Action Item 2: Public Information Project.....	8
Performance Measures	8
Goal 2: Strategically use the oil and gas monitoring and enforcement resources of the Commission to ensure public safety and protect the environment	9
Action Item 1: Inspection/Enforcement Tracking and Reporting System.....	9
Action Item 2: Inspect Well Population.....	9
Action Item 3: State Managed Well Plugging Program	9
Performance Measures	9
Stakeholder Participation Process.....	10
Data	10
Appendix A: Definition of a Major Violation	12
Appendix B: Office of General Counsel Legal Enforcement Process.....	14
Appendix C: Performance Measure Definitions.....	16
Performance Measures Included in the Commission’s Budget Structure	16
Performance Measures Included in Rider 11 Report.....	20
Performance Measures Included in HB 1818 (detailed by number, type, and severity).....	22

Vision

The Railroad Commission of Texas serves Texas with its stewardship of natural resources and the environment, concern for personal and community safety, and support of enhanced development and economic vitality for the benefit of Texans.

The Commission works to protect the environment and consumers by ensuring that energy production, storage, and delivery minimize harmful effects on the state's natural resources. An effective monitoring and enforcement system depends on widespread compliance with statewide rules and permit conditions. To address non-compliance, the Commission relies on enforcement strategies that use appropriate tools. These tools are effective, efficient, and transparent, and will reduce the occurrence of environmental violations associated with fossil fuel extraction and energy production in Texas.

About the Railroad Commission

The Railroad Commission of Texas is the state agency with primary regulatory jurisdiction over the oil and natural gas industries, as well as pipeline transporters, natural gas and hazardous liquid pipeline industry, natural gas utilities, the LPG/LNG/CNG industries, and coal and uranium surface mining operations. The Commission exists under provisions of the Texas Constitution and exercises its statutory responsibilities under state and federal laws for regulation of the state's energy industries.

The Railroad Commission's highest priorities are protecting the public, the environment, and the state's natural resources through science-based rulemaking and effective enforcement of state and federal laws. The oil and gas industry is rapidly evolving in its development and use of technology, and the Commission regularly reviews and updates rules to ensure thorough, effective regulation of the industry. As a result of this comprehensive approach to rulemaking and enforcement, the Commission is widely recognized as a global leader in energy industry regulation.

Strategic Priorities for FY 2019

The Railroad Commission's *Annual Oil and Gas Division Monitoring and Enforcement Plan* includes two goals for FY 2019: to accurately demonstrate the Commission's oil and gas monitoring and enforcement activities; and to strategically use the oil and gas monitoring and enforcement resources of the Commission to ensure public safety and protect the environment. Later in this document those goals are further developed with action items that describe specific initiatives the Commission will implement during fiscal year 2019 and performance measures that will indicate success. The monitoring and enforcement activities described in this plan fully support the Railroad Commission's mission to serve as stewards of the state's natural resources and its environment, along with concern for personal and community safety.

Railroad Commission Monitoring and Enforcement Overview

The Railroad Commission's oil and gas regulatory program makes strategic use of a variety of monitoring and enforcement tools supported by Texas statutes and Commission rules. These tools work in concert to incentivize compliance and ensure violations are promptly resolved. To demonstrate the effectiveness of the monitoring and enforcement activities, the Commission continues to strengthen related tracking and reporting systems.

Monitoring Activities

Organization

The Oil and Gas Division monitors oil and gas operations in the state through the efforts of both the program offices in Austin and the nine district offices. Various permitting and reporting requirements enable the Commission to track the compliance status of oil and gas operations. In addition, 158 inspectors stationed throughout the oil and gas producing regions of the state devote their time to overseeing oil and gas operations in the field.

Key Regulatory Compliance Mechanisms

Before conducting any operation under the Commission's jurisdiction, a company must file an organization report providing basic information on the company and its principals (Form P-5). Along with this report, the company must provide financial security conditioned that the operator will plug wells and clean up pollution in accordance with Commission rules, permits, and orders. The organization report and associated financial assurance must be renewed annually.

The Commission uses the information provided with the organization report to identify and track the operations of the company within the state. For example, the Commission verifies compliance with the inactive well requirements (16 Tex. Admin. Code § 3.15, known as Statewide Rule 15) annually upon renewal of the organization report and suspends a company's authority to operate if the company does not achieve compliance. A company without a current organization report may not conduct operations in the State of Texas.

Beyond the organization report, Commission rules establish a variety of other permitting, testing, monitoring, and reporting requirements for different types and stages of oil and gas operations. Major examples of these requirements include certificates of compliance, drilling permits, completion reports, production reports, production tests, well integrity tests, and injection monitoring reports. The Commission uses the information gathered through these requirements to track operations around the state and ensure they remain in compliance with Commission rules, permits, and orders.

Inspections

This biennium, the Commission is strengthening recruitment efforts to maintain a staff of 158 oil and gas field inspectors. These inspectors work in the communities where they live and report to one of nine Oil and Gas Division district offices around the state. Some inspectors focus on specific operations such as state-managed plugging and site remediation, but all are available to conduct a variety of inspections as needed. The Commission averages more than 123,000 inspections of oil and gas operations each year over a ten-year period ending in FY 2017, and anticipates that 130,000 inspections will be conducted in FY 2019.

The main categories of inspections performed by the inspectors include responding to incidents and complaints, conducting general well inspections, and witnessing critical operations. To use their time most effectively, the inspectors focus attention on critical operations, including surface casing jobs, mechanical integrity tests, and well plugging. Beginning this biennium the Commission has instituted procedures to ensure that each well in the state is inspected regularly. Rider 14 of the Railroad Commission of Texas' Appropriation within the General

Appropriations Act (S.B. 1, 85th Legislature, Regular Session, 2017) requires the Commission to focus on inspecting all onshore wells at least every five years and offshore and bay wells every two years.

The large numbers of wells and associated facilities in the state require the inspectors to prioritize their work. Response to emergencies and complaints receives highest priority. Other inspections are prioritized based on factors including established performance goals, proximity to public or sensitive areas, compliance history of an operator, and knowledge or concerns specific to an area. Field inspectors schedule their time to cover as many high priority inspections as possible and incorporate lower priority inspections as time allows.

Inspectors use the Inspection, Compliance, and Enforcement (ICE) system to document inspections of oil and gas facilities electronically. The ICE system was implemented in 2015, allowing inspectors to record violations by rule number at the well level. ICE allows for tracking of well/lease inspection and violation history, and gives inspectors access to current operator, facility, and compliance information while onsite.

Enforcement Activities

Organization

Although external discussions of the Commission's compliance and enforcement efforts tend to focus on the assessment of administrative penalties by Commission order, the Commission's district offices are empowered to address most compliance issues through other mechanisms. All but a small percentage of violations are effectively resolved at the district level.

Compliance and enforcement action for violations of some permitting or reporting requirements may be initiated by one of the program offices in Austin, such as Underground Injection Control or Environmental Permitting. In these instances, inspectors assist the program offices by monitoring the status of compliance efforts in the field.

If a district office or program office is unsuccessful in obtaining compliance through other mechanisms, or if the severity or willfulness of a violation warrants further action, the Oil and Gas Division will refer the matter to the Legal Enforcement section of the Office of General Counsel (OGC). OGC may subsequently file a complaint seeking administrative penalties or other enforcement actions through a Commission order.

Enforcement Mechanisms

The following paragraphs briefly describe the enforcement mechanisms available to the Commission. These mechanisms may be used individually or in combination, sequentially or simultaneously, as appropriate to achieve a timely, full, and fair resolution.

Notices of violation

Except for certain violations that may be resolved quickly through a phone call, the district office will notify the operator of a violation in writing and specify a deadline for compliance. Shortly after the deadline for compliance, the inspector will return to the location to verify compliance. This follow-up inspection is called a back check.

Seals/severances

The designated operator of any well in the state must file a certificate of compliance (Form P-4). By filing this certificate, the operator certifies that the lease is being operated in compliance with Commission rules, permits, or orders. If the Commission identifies a violation on the lease, the Commission may cancel the certificate of compliance. See Tex. Nat. Res. Code Ann. §§ 91.701-91.707.

Before cancelling the certificate, the Commission must provide the operator notice of the violation and at least 10 calendar days to achieve compliance or request a hearing. The district office provides this notice by issuing a “notice of intent to cancel the P-4.”

The action of cancelling a certificate of compliance is commonly described as “sealing a well” or “issuing a pipeline severance.” In practice, a seal or severance is the most effective enforcement tool available to the Commission. Once the certificate of compliance is cancelled, the operator must cease operations on the lease and may not produce or sell any hydrocarbons. As a result, the operator suffers an immediate revenue impact and may not resume operations until the lease is returned to compliance and the operator pays a \$750 fee.

Permit actions

Commission rules authorize the agency to modify, suspend, or terminate a permit, including a drilling permit, injection or disposal well permit, or permit for a surface waste management facility, based on violations of Commission rules, permits, or orders. Unless agreed to by the permit holder and authorized to be handled administratively, these actions will be taken through Commission order after notice and opportunity for hearing.

Administrative penalties

The Commission has statutory authority to assess administrative penalties for violations related to safety or the prevention or control of pollution. See Tex. Nat. Res. Code Ann. §§ 81.0531-81.0533. The Commission may assess up to \$10,000 per day per violation. In determining the amount of the penalty, the Commission considers relevant factors including the seriousness of the violation and the operator’s history of compliance. The Railroad Commission’s Statewide Rule 107 (16 Tex. Admin. Code § 3.107) provides guidelines for the assessment of penalties for various types of violations.

Revocation of authority to operate

The Commission may not accept an organization report (Form P-5), certificate of compliance (Form P-4), or permit application and may revoke an organization report, certificate of compliance, or permit if: (1) the organization has an outstanding order finding a violation related to safety or the prevention or control of pollution; or (2) a person who holds a position of ownership or control in the organization has, within the preceding seven years, held a position of ownership or control in another organization that has an outstanding order finding a violation related to safety or the prevention or control of pollution that occurred during the period of ownership or control. Rejection or revocation of an organization report under this authority precludes an organization from conducting oil and gas operations within the State of Texas except as necessary to ensure public safety and protect the environment. The Commission tracks outstanding violations to ensure organizations and their officers and owners are held accountable under this authority. See Tex. Nat. Res. Code Ann. §91.114.

Procedures

The district offices closely monitor violations identified through inspections until they are resolved. They may use one or more of the available enforcement mechanisms depending on the nature of the violations and how quickly they are resolved. They may escalate the enforcement response if necessary to achieve compliance or if the severity or willfulness of the violation warrants further action. If necessary, the district offices may escalate the enforcement process by referring violations to the Commission's Office of General Counsel—Legal Enforcement Section. Legal Enforcement's process for adjudicating violations and assessing administrative penalties is detailed in Appendix B.

The Commission is currently reviewing its business processes related to inspections, compliance, and enforcement to identify opportunities for increased efficiency and consistency. These efforts will provide a basis for continuing enhancements to data collection, management, and reporting, following the multi-biennia, phased Information Technology Modernization Program (ITMP) begun by the Commission in 2013.

Goals and Measures

The Commission's ability to extract and analyze inspection, compliance, and enforcement data continues to improve as data management systems are enhanced. These enhancements make inspection, compliance, and enforcement data and trends more readily available to the agency, the industry, and the public. The Commission has an appropriation for FY 2019 of \$22,189,426 and 279.8 FTEs for its oil and gas monitoring and inspection strategy.

Goal 1: Accurately demonstrate the Commission's oil and gas monitoring and enforcement activities.

Action Item 1: Identification and Tracking of Major Violations

The Commission has reviewed and updated its working definition of the term "major violation." This definition appears in Appendix A of this document. The basic concept of a major violation has not changed, but the Commission has provided additional examples for use by staff in identifying violations as "major violations." Technical staff in the district offices are responsible for identifying and documenting any major violations in the process of reviewing each inspection report. Enhancements to the ICE system will provide more consistency in the tracking and communication of major violations.

Action Item 2: Public Information Project

The Commission will more effectively communicate its mission, goals, and achievements to all Texans by improving ease of access to the ever-increasing amounts of Commission data and information. While portions of compliance and enforcement data, such as seals/severances, are available on the Commission's website, improvements are needed. Enhancements will be identified to make inspection, compliance, and enforcement data and trends more readily available to the agency, the industry, and the public. Searchable public access to data, such as violations or final orders, will be provided to support agency data transparency goals.

Performance Measures

1. Number of statewide rule violations

2. Number of major statewide rule violations
3. Percent of violations corrected within 90 days
4. Amount of final oil and gas enforcement penalties assessed
5. Repeat major violations, categorized by individual oil or gas lease

Goal 2: Strategically use the oil and gas monitoring and enforcement resources of the Commission to ensure public safety and protect the environment

Action Item 1: Inspection/Enforcement Tracking and Reporting System

For the FY 2018-19 biennium the Commission has a capital appropriation to continue its modernization program with the Inspection/Enforcement Tracking and Reporting System. The project will focus on improving and centralizing the tracking and management of enforcement processes and contested cases.

Action Item 2: Inspect Well Population

The Commission has established new performance targets designed to ensure that the Commission inspects all wells periodically. For inland wells, the Commission will continue to focus its efforts on inspecting critical well operations, such as surface casing settings, mechanical integrity tests, and plugging, but will ensure that each well is inspected at least once every five years. In bays and offshore, the Commission will ensure that each well is inspected at least once every two years.

Action Item 3: State Managed Well Plugging Program

For the FY 2018-19 biennium, the Commission has received \$38.2 million from the Economic Stabilization Fund to supplement \$28.8 million from the Oil and Gas Regulation and Cleanup Fund for the state-managed well plugging program. The Commission's state-managed plugging workplan envisions an aggressive target of 1,500 wells each year of the biennium.

Performance Measures

1. Number of oil and gas inspections performed
2. Number of oil and gas facility inspections with no violation
3. Number of repeat oil and gas violators based on a seven-year look back of docketed cases
4. Number of oil and gas enforcement dockets
5. Number of alleged oil and gas violations sent to Office of General Counsel Legal Enforcement
6. Number of pipeline severances/seal orders issued
7. Number of district-initiated issuance of severance/seal orders
8. Percent of wells not inspected in last five years
9. Percent of total well population inspected

Stakeholder Participation Process

House Bill 1818 (85th Legislature, Regular Session) directed the Commission to seek input from stakeholders in the development of this plan. The Commission developed a communications plan to seek input from stakeholders, including posting the draft plan on the Commission's website for comment following discussion of the draft plan at the Commissioners' Conference on March 20, 2018. Availability of the plan for comment was announced via:

- Email using the Commission's Oil and Gas News list
- Email to associations and legislative entities
- Posts on Commission's social media via:
 - Facebook
 - Instagram
 - Twitter
 - LinkedIn
- Article in the Commission's *Texas Energy News* (RRC) newsletter
- Announcements on the Commission's website at:
 - <http://www.rrc.texas.gov/all-announcements>
 - <http://www.rrc.texas.gov/oil-gas/announcements/>
 - <http://www.rrc.texas.gov/whats-new/>

Data

Beginning in FY 2012, the Texas Legislature required the Commission to publish a quarterly report about Oil and Gas enforcement data on its website. Rider 17 of the General Appropriations Act (H.B. 1, 82nd Legislature, Regular Session, 2011) first prescribed the reporting of Enforcement and Compliance Data and Public Information. The Commission developed its *Oil and Gas Field Operations' Violations and Enforcement Report* to implement this directive. Subsequent Legislatures have continued this requirement, most recently with Rider 11 of the Railroad Commission of Texas' Appropriation within the General Appropriations Act (S.B. 1, 85th Legislature, Regular Session, 2017).

The *Oil and Gas Field Operations' Violations and Enforcement Report* is updated quarterly on the Commission's website at <http://www.rrc.state.tx.us/oil-gas/compliance-enforcement/enforcement-activities/>. The report is comprised of three data sets that provide an overview of enforcement activities, count specific violations by rule, and aggregate legal enforcement dockets. The legal enforcement docketing process is separate and distinct from field operations monitoring and enforcement processes.

The data provided in Figure 1 do not track the identification of a specific violation to enforcement action, as detailed in Figure 2, but rather is time-specific aggregate data.

Figure 1: Oil and Gas Field Operations Data

Measure	FY 2017 Actual	FY 2018 Estimated*	FY 2019 Projected
Number of oil and gas inspections performed	116,019		
Number of oil and gas facility inspections with no violation	98,908		
Number of statewide rule violations	44,578		
Number of major statewide rule violations	119		
Number of oil and gas complaints received	560		
Number of oil and gas complaints resolved	514		
Number of pipeline severances/seal orders issued	10,284		
Number of district-initiated issuance of severance/seal orders	438		
Number of alleged oil and gas violations sent to Office of General Counsel Legal Enforcement	1,309		

* FY 2018 Estimated is based on an extrapolation from six months of data, September 2017 to February 2018. Final numbers may differ from this estimate, and may be found on the Commission’s website in October 2018.

Figure 2: Oil and Gas Enforcement and Docket Data

Measure	FY 2017 Actual	FY 2018 Estimated*	FY 2019 Projected
Number of oil and gas enforcement dockets	310		
Number of repeat oil and gas violators based on a seven-year look back of docketed cases	127		
Amount of final oil and gas enforcement penalties assessed	\$5,048,940		

* FY 2018 Estimated is based on an extrapolation from six months of data, September 2017 to February 2018. Final numbers may differ from this estimate, and may be found on the Commission’s website in October 2018.

Appendix A: Definition of a Major Violation

A major violation is a safety or pollution related violation that causes a significant impact to public safety and/or the environment, is accompanied by conditions that indicate a significant impact to public safety and/or the environment is imminent, or is the result of deliberate disregard of Commission rules and regulations related to public safety or environmental protection.

This includes but is not limited to the following violations of the Commission's Oil and Gas Rules, found within Title 16 Texas Administrative Code Chapter 3, and known as *Statewide Rules*:

- Statewide Rule 5(a)—Drilling or reentering a well without a permit. 16 Tex. Admin. Code § 3.5(a).
- Statewide Rule 8(b)—Surface management of waste without a required permit or in violation of a permit that results in movement of waste or waste constituents that endangers surface or subsurface water or public health or safety. 16 Tex. Admin. Code § 3.8(b).
- Statewide Rule 8(d)(1)—A discharge of oil or gas waste into a sensitive area. A sensitive area is defined by the presence of factors, whether one or more, that make an area vulnerable to pollution. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas. 16 Tex. Admin. Code § 3.8(d)(1).
- Statewide Rule 9 or Statewide Rule 46—Violation of permit conditions where well operation at an injection pressure that exceeds the permitted or authorized injection pressure and causes the movement of fluid outside the authorized zone of injection, if such movement may have the potential for endangering an underground source of drinking water (USDW). 16 Tex. Admin. Code § 3.9 or 16 Tex. Admin. Code § 3.46.
- Statewide Rule 9(1) or Statewide Rule 46(a)—Operation of a disposal or fluid injection well without a permit. 16 Tex. Admin. Code § 3.9(1) or 16 Tex. Admin. Code § 3.46.
- Statewide Rule 9(12)(C) or Statewide Rule 46(j)—Operation of a well without mechanical integrity (failed MIT) which causes the movement of fluid outside the authorized zone of injection, if injection of such fluid may have the potential for endangering a USDW. 16 Tex. Admin. Code § 3.9(12)(c) or 16 Tex. Admin. Code § 3.46(j).
- Statewide Rule 13(a)(6)(B)(i)—Failure to install a blowout preventer system or control head and other connections to keep the well under control at all times as soon as surface casing is set. 16 Tex. Admin. Code § 3.13(a)(6)(B)(i).

- Statewide Rule 13(b)(1)(B)(i)—Failure to set and cement sufficient surface casing to protect all usable-quality water strata, as defined by the Groundwater Advisory Unit of the Oil and Gas Division. 16 Tex. Admin. Code § 3.13(b)(1)(B)(i).
- Statewide Rule 14(b)(2)—Failure to properly plug a well when there is endangerment of surface or subsurface water and there is a designated operator responsible for proper plugging. 16 Tex. Admin. Code § 3.14(b)(2)
- Statewide Rule 36(c)(9)—Engaging in hydrogen sulfide operations without a written contingency plan. 16 Tex. Admin. Code § 3.36(c)(9).
- Statewide Rule 91(e)(3)—Failure to report to the Commission any spill of crude oil into water immediately upon discovery. 16 Tex. Admin. Code § 3.91(e)(3).

DRAFT

Appendix B: Office of General Counsel Legal Enforcement Process

Governing Rules

The Commission adopts rules of practice pursuant to the requirements of the Administrative Procedure Act. *See* Tex. Gov't Code § 2001.004. The Commission's General Rules of Practice and Procedure are found in Texas Administrative Code, Title 16, Part 1, Chapter 1. These rules govern the service of process, notice of hearings, default judgments, and motions for rehearing in Legal Enforcement's contested cases. The Commission's rules for the Oil and Gas Division are found in Texas Administrative Code, Title 16, Part 1, Chapter 3. These rules (Statewide Rules) govern oil and gas operations within the State.

Attorney Evaluation

Incoming referrals from the district offices and various sections of the Oil and Gas Division are assigned to an enforcement attorney. The assigned attorney evaluates the legal sufficiency of the alleged violations based on the evidentiary support. The attorney proceeds with an enforcement action when solid evidentiary support exists. Questionable evidentiary support requires the attorney to contact the district or referring section to inquire about the existence of additional evidence or to formulate an alternative legal theory. Referrals with insufficient evidence are administratively closed.

Settlement Negotiations

Legal Enforcement's primary goals are to achieve compliance and assess appropriate administrative penalties for proven violations. Legal Enforcement achieves this goal either through settlement, or a hearing. Legal Enforcement generally initiates the process with reasonable attempts to settle the matter through voluntary compliance and reduced administrative penalties. The penalty guidelines provide a flexible structure for most—but not all—violations. Oil and gas penalty guidelines are in the Texas Administrative Code. *See* 16 Tex. Admin. Code § 3.107. Legal Enforcement consults with the regulatory division to determine its penalty recommendation. Operators that comply with the settlement provisions enter an Agreed Order with Legal Enforcement that is submitted for the Commission's approval.

Hearings and Default Judgments

If initial settlement attempts are unsuccessful, or if the facts do not warrant settlement negotiations, Legal Enforcement files a complaint and serves the operator with the complaint and a notice of opportunity for hearing. If the operator chooses to voluntarily bring the violation into compliance at this point, the frequency, severity, and intent of the violation weighs heavily in the settlement determinations. If the operator fails to answer the complaint or schedules a hearing and fails to appear, Legal Enforcement seeks a default order.

The Administrative Law Judge (ALJ) creates the final default order (Default Order) with findings of facts, conclusions of law, and the recommended penalty and compliance order terms. The Hearings Division Enforcement Master Default Order summarizes each Default Order and is submitted at conference for Commission approval and signature. The Order is appealable to the district court if an operator files a motion for rehearing with the Commission within 25 days of the Default Order being signed and that motion is denied either expressly or by operation of law. If the operator fails to file a motion for rehearing within this time, the Default Order is final and not appealable to the district courts. If the operator files a motion for rehearing within

the required time and the Commission grants the motion for rehearing, the Order is vacated, and the case is referred back to Legal Enforcement and the above-described settlement and hearings process repeats.

If the operator chooses not to settle, the case proceeds to hearing before an ALJ. This process begins with Legal Enforcement filing and serving upon the operator a notice of hearing and complaint. After a noticed hearing, at which the operator appears, the ALJ prepares a proposal for decision (PFD) for the Commissioner's consideration. The PFD is the ALJ's recommendation to the Commission on how the case should be decided based on applicable law and the facts presented at hearing. The PFD includes findings of fact and conclusions of law, as well as a penalty recommendation and compliance terms, if Legal Enforcement prevails. The PFD is circulated to the parties to allow time for exceptions and replies to be filed in accordance with the Commission's General Rules of Practice and Procedure prior to presentation to the Commission. The PFD and any exceptions and replies filed are provided to the Commission prior to conference. At a regularly noticed conference, the ALJ will present the PFD and discuss any exceptions and replies if necessary.

The Commissioners vote whether to accept, reject, or modify the PFD. Only two Commissioners must agree to determine the outcome. The PFD's recommendation—and any of the modifications by the Commission—are included in a final order (Final Order) signed by the Commissioners. The same procedure for motions for rehearing and appeals to the district court described about regarding default orders also applies to final orders. If the Commission grants a motion for rehearing, the case is referred to the Hearings Division and the above-described hearing process repeats consistent with any instructions contained in the order granting the rehearing.

Collections

Once the order becomes final, if the operator fails to timely comply with the order's terms, Legal Enforcement may refer the order to the Office of the Attorney General (OAG). The OAG may file suit in Travis County District Court seeking compliance and payment of administrative penalties per the terms of the order. The OAG may also seek civil penalties, attorneys' fees, court costs, and interest. Legal Enforcement advises the OAG regarding compliance and assists the OAG in trial preparation, hearings and appeals.

Legal Enforcement also works with the OAG to secure reimbursement of Oil and Gas Regulation and Cleanup Fund expenditures by the Oil and Gas Division to plug abandoned wells and remediate pollution. Once the final cost for remediation is calculated by the Oil and Gas Division, Legal Enforcement forwards the matter to the OAG's Bankruptcy and Collections Division. Alternatively, the reimbursement may be included in a Legal Enforcement complaint and become part of an order before the matter is referred to the OAG for collection.

Appendix C: Performance Measure Definitions

Performance Measures Included in the Commission's Budget Structure

Explanatory 3-1-1-2: Number of Statewide Rule Violations

Definition: This measure represents the total number of statewide rule violations reported by district office staff as a result of oil and gas facility inspections.

Data Limitations: None.

Data Source: The number of rule violations noted is maintained in the Inspection Compliance, and Enforcement (ICE) system.

Methodology: The number is generated by an automated report from the ICE system that tallies the number of inspections and violations during the reporting period. These reports are generated monthly. This measure counts unique violations at the initial point of discovery through field inspection.

Purpose: Oil and gas facility inspections are used to identify violations and initiate correction. The Commission takes appropriate enforcement action to achieve compliance on all reported rule violations including legal enforcement action, if necessary.

Explanatory 3-1-1-3: Number of Major Statewide Rule Violations

Definition: This figure represents the total number of major statewide rule violations reported by district office staff as a result of oil and gas facility and well inspections.

Data Limitations: None.

Data Source: The number of major statewide rule violations is maintained in the Inspection, Compliance & Enforcement (ICE) system.

Methodology: This number is generated by an automated report from the ICE system that tallies the number of inspections and major violations during the reporting period. These reports are generated monthly. This measure counts unique, major violations at the initial point of discovery through field inspection.

Purpose: Oil and gas facility inspections are used to identify major violations and initiate correction. The Commission takes appropriate enforcement action to achieve compliance on all reported major rule violations including legal enforcement action, if necessary.

Explanatory 3-1-1-4: Percent of Violations Corrected Within 90 Days

Definition: This figure represents the number of statewide rule violations documented by district staff inspections that were resolved within 90 days.

Data Limitations: None.

Data Source: Data is captured in the Inspection, Compliance, and Enforcement (ICE) system.

Methodology: Identify and tally all statewide rule violations documented by district staff initial inspection during the period beginning 90 days before the beginning of the reporting period and ending 90 days before the end of the reporting period. For all identified rule violation within this population, identify and tally all statewide rule violations corrected (brought into compliance) within 90 days following the initial inspection. The percentage of violations corrected within 90 days is the number of statewide rule violations corrected (brought into compliance) within 90 days divided by the total number of statewide rule violations identified.

Purpose: The percent of violations corrected within 90 days is an indicator of industry response to correct violations.

Output 3-1-1-1: Number of Oil and Gas Facility Inspections Performed

Definition: This measure is the total number of inspections performed at a lease or other oil and gas facility by district staff and documented by a work report during the reporting period.

Data Limitations: Many factors impact the amount of time required to perform an inspection including type of inspection, number of wells inspected during one job, number/magnitude of detected violations, travel time, and weather conditions. As the time required to perform inspections increases, the overall number of inspections performed decreases. Increases/decreases in personnel and priority of inspection assignments also affect this number.

Data Source: Data is captured in the Inspection, Compliance, and Enforcement (ICE) system. Statistical reports are generated monthly.

Methodology: This measure is generated monthly from the ICE system by an automated report that provides the total number of oil and gas facility inspections performed during the reporting period.

Purpose: The number of oil and gas facility inspections performed measures the level of activity for the Commission's district offices. A subset of this number measures the level of compliance (or non-compliance) by oil and gas operators.

Output 3-1-1-2: Number of Enforcement Referrals for Legal Action

Definition: The total number of statewide rule violations of oil and gas leases and facilities referred to the Office of General Counsel, Enforcement section, wherein the responsible operator failed to initiate timely action to bring the lease or facility in compliance with statewide rules.

Data Limitations: None.

Data Source: Statistics on referrals to the Enforcement section are maintained in a Field Operations section spreadsheet application.

Methodology: This number is generated monthly by summing the total number of statewide rule violations referred by the Field Operations section spreadsheet application for the reporting period.

Purpose: This measure represents the level of non-compliance at the district office level that requires further enforcement action by the Commission.

Output 3-1-1-4: Number of Actions Initiated through Issuance of Severance/Seal Orders (HQ)

Definition: This measure is the total number of actions initiated during the reporting period to terminate the authority of an operator to operate an oil lease or gas well through issuance of severance/seal orders due to violations of oil & gas rules.

Data Limitations: Many factors affect the level of lease severance/well seal activity. Universal compliance with the Commission rules or prompt resolution of any violations prior to initiation of action by the Commission is desirable and would result in lower reported counts; compliance and speed of resolution are matters within the control of industry rather than the agency.

Data Source: Data on each lease severance/well seal action is accumulated throughout the reporting period within the Commission's mainframe-based Severance/Seal system. Statistical reports are generated quarterly.

Methodology: This measure is generated quarterly by the Oil & Gas Division through a database query that provides the total number of lease severance/well seal processes initiated during the reporting period. Actions closed and reinitiated are excluded to avoid duplication of counts.

Purpose: The number of lease severances and well seals initiated is an indicator of industry compliance with existing and changing Commission rules. The severance/seal process is an early and effective response to rule violations and often leads to prompt compliance.

Output 3-1-1-5: Number of District-initiated Issuance of Severance/Seal Orders

Definition: This measure is the total number of district office actions initiated during the reporting period to terminate the authority of an operator to operate an oil lease or gas well through issuance of severance/seal orders due to violations of oil and gas rules identified through field inspections.

Data Limitations: Many factors affect the level of lease severance/well seal activity. Universal compliance with the Commission rules or prompt resolution of any violation prior to initiation of action by the district office is desirable and would result in lower reported counts; compliance and speed of resolution are matters within the control of industry rather than the agency.

Data Source: Data on each lease severance/well seal action is accumulated throughout the reporting period within the Commission's mainframe-based Severance/Seal system. Statistical reports are generated quarterly.

Methodology: This measure is generated quarterly by the Oil and Gas Division through a database query that provides the total number of lease severance/well seal processes initiated by the district office during the reporting period. Actions closed and reinitiated are excluded to avoid duplication of counts.

Purpose: The number of lease severances and well seals initiated by the district office is an indicator of industry compliance with the Commissions' pollution and safety related rules. The severance/seal process is an early and effective response to pollution and safety related rule violations and often lead to prompt compliance.

Output 3-1-1-6: Number of Oil and Gas Inspections with No Violation

Definition: This measure is the total number of inspections performed at a lease or other oil and gas facility by district staff where no violation of any statewide rule is documented.

Data Limitations: None.

Data Source: Data is captured in the Inspection, Compliance, and Enforcement (ICE) system. Statistical reports are generated monthly.

Methodology: This data is generated monthly from the ICE system by an automated report that provides the total number of oil and gas facility inspections performed by district staff where no violation of any statewide rule is documented.

Purpose: The purpose of this measure is to identify the level of compliance by oil and gas operators as identified through inspections conducted by Commission district offices.

Output 3-1-1-7: Percent of Wells Not Inspected in Last Five Years

Definition: This figure represents the percent of the wells completed more than five years prior to the end of the reporting period that have not been inspected by district staff within the five years prior to the end of the reporting period.

Data Limitations: Not all inspections require the same amount of time to complete due to the travel time required to reach the lease where the well is located, the complexity of the job, and the number of violations identified at the well. Some inspections (such as well casing cementing operations, well plugging operations, and injection/disposal well mechanical integrity tests) are more time consuming and are performed to verify compliance rather than identify violations. These factors impact the number of wells inspected by district office staff, which has a direct impact on number of wells not inspected. Increases/decreases in personnel and priority of inspection assignments also affect this number.

Data Source: Data is collected in the Inspection, Compliance, and Enforcement (ICE) system.

Methodology: From the ICE system, identify all wells inspected during the five-year period prior to the end of the reporting period. From wellbore records as of the end of the reporting period, identify all wells on schedule that were completed more than five years prior to the end of the reporting period (the reviewed population). By comparing the two data sets, exclude all wells in the reviewed population where an inspection occurred within the five-year period. The percentage of the well population not inspected in 5 years is the number of uninspected wells divided by the number of wells in the reviewed population.

Purpose: The percentage of the total well population not inspected in the last 5 years measures how efficiently the Commission's district office staff conducts inspections of all completed oil and gas wells. This measure serves as a management tool to predict future inspection assignments.

Efficiency 3-1-1-2: Percent of Total Well Population Inspected

Definition: This figure represents the percent of the total well population inspected by district staff for the reporting period.

Data Limitations: None.

Data Source: Data is collected in the Inspection, Compliance, and Enforcement (ICE) system. Statistical reports are generated monthly.

Methodology: This data is generated monthly from the ICE system by an automated report that provides the total number of oil and gas wells inspected during the reporting period and the number of oil and gas wells on schedule. The report determines the percentage of total well population inspected by dividing the number of wells inspected by the number of oil and gas wells on schedule. The denominator will be the number of wells as of 8/31 of the preceding fiscal year.

Purpose: The percent of the total well population inspected measures how efficiently the Commission's district office staff conducts inspections of oil and gas wells and measures the activity for the Commission's district office staff. By tracking the percent of total well population inspected, it is possible to determine the total number of wells that can be inspected during a specific period. This measure serves as a management tool to predict future inspection performance.

Performance Measures Included in Rider 11 Report

Amount of final oil and gas enforcement penalties assessed

Definition: The total amount of penalties assessed in Oil & Gas Enforcement dockets for which the Commission issued a final order, default order or agreed order during the reporting period.

Data Limitations: Data is compiled manually and may be subject to human error.

Data Source: Commission Oil & Gas Enforcement Final Orders, Master Agreed Orders, and Master Default orders, signed and issued by the Commission at periodic scheduled and noticed open meetings held for the purpose.

Methodology: Following each Commission conference, data (including docket number and penalty amount) for each Oil & Gas enforcement item for which the Commission issued a final order, agreed order, or default order are compiled on an Excel spreadsheet. The sum of the penalty amounts for all unique dockets appearing on this listing are totaled and reported quarterly.

Purpose: The amount of penalties assessed in Oil & Gas Enforcement Dockets during a period, taken together with the number of orders by which those penalties were assessed, is a proxy for the seriousness of industry violations prosecuted by the Enforcement section within the reporting period.

Number of repeat oil and gas violators based on a seven-year look back of docketed cases

Definition: The number of operators for whom an Oil & Gas Enforcement Final Order, Agreed Order, or Default Order was issued during the reporting period where that same operator had a previous Final Order, Agreed Order or Default Order issued prior to, but within seven years of, the reporting period.

Data Limitations: Some data is compiled manually and may be subject to human error. Computerized data is updated manually and may be subject to human error.

Data Source: Commission Oil & Gas Enforcement Final Orders, Master Agreed Orders, and Master Default orders, signed and issued by the Commission at periodic scheduled and noticed open meetings held for the purpose during the reporting period; mainframe historic records of Enforcement dockets recorded in the Commission's mainframe records. It should be noted that the formal Enforcement process is one portion of the

Commission's overall compliance efforts intending to correct behavior and bring violations into compliance with Commission rules and orders.

Methodology:

1. Following each Commission conference, data (including docket number and penalty amount) for each Oil & Gas enforcement item for which the Commission issued a final order, agreed order, or default order are compiled on an Excel spreadsheet. A unique listing of respondents for whom orders were issued during the reporting period is extracted from this listing.
2. At the end of the reporting period, a listing of all Enforcement dockets opened within 10 years prior to the reporting period is extracted from mainframe data using the Oracle BI Tool query of Docket data. The respondent and order issued date (if any) for each docket are identified through an automated macro query. All dockets for which no order was issued, or for which the order was issued more than seven years prior to the reporting period, are excluded. A listing of respondents for whom orders were issued during the seven years prior to the reporting period is extracted from this listing.
3. The listing of respondents against whom the Commission issued orders during the reporting period (identified in 1 above) is compared to the listing of respondents against whom the Commission issued orders within the seven-year period prior to the reporting period (identified in 2 above) to determine whether a respondent subject of an order during the current reporting period was also subject of an order within the seven years prior to the reporting period. The number of respondents who had both an order within the current reporting period and the seven-year period prior to the reporting period is reported.

Purpose: Operator recidivism has been recognized as an issue in the Enforcement process. Low levels of recidivism suggest that the Enforcement process is successful in its efforts to impress upon respondents the necessity of complying with agency rules and orders, as well as an indication as to the sufficiency of Commission penalty scales relative to the violations involved. It should be noted that the formal Enforcement process is one portion of the Commission's overall compliance efforts intending to correct behavior and bring violations into compliance with Commission rules and orders.

Number of oil and gas enforcement dockets

Definition: The number of Oil & Gas Enforcement dockets for which the Commission issued a final order, default order or agreed order during the reporting period.

Data Limitations: Data is compiled manually and may be subject to human error.

Data Source: Commission Oil & Gas Enforcement Final Orders, Master Agreed Orders, and Master Default orders, signed and issued by the Commission at periodic scheduled and noticed open meetings held for the purpose.

Methodology: Following each Commission conference, data (including docket number and penalty amount) for each Oil & Gas enforcement item for which the Commission issued a final order, agreed order, or default order

are compiled on an Excel spreadsheet. The number of unique dockets appearing on this listing are totaled and reported quarterly.

Purpose: The number of Oil & Gas Enforcement orders within a period, taken together with the aggregate amount of penalties assessed by those orders, is a proxy for the seriousness of industry violations prosecuted by the Enforcement section within the reporting period. Additionally, the number of orders alone indicates the general level of industry compliance within the period leading up to the report. It should be noted that the formal Enforcement process is one portion of the Commission's overall compliance efforts intending to correct behavior and bring violations into compliance with Commission rules and orders.

Performance Measures Included in HB 1818 (detailed by number, type, and severity)

Repeat major violations, categorized by individual oil or gas lease

Definition: A repeat major violation occurs when an individual oil or gas lease has more than one (1) major violation within a fiscal year or other designated period.

Data Limitations: None

Data Source: Statistics on major violations are currently maintained in a Field Operations spreadsheet pending enhancements to the Inspection, Compliance, and Enforcement (ICE) system.

Methodology: The number is generated by calculating the number of individual oil and gas leases that had more than one major violation during the reporting period.

Purpose: The number of repeat major violations is an indicator of an operator's non-compliance with Commission rules.