



RAILROAD COMMISSION OF TEXAS

March 30, 2022

Mr. Steve Feldgus
Deputy Assistant Secretary for Land and Minerals Management
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Mr. Steve Tryon
Director, Office of Environmental Policy and Compliance
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Via: orphanedwells@ios.doi.gov

Re: Draft State Initial Grant Guidance under the Infrastructure Investment and Jobs Act

Dear Mr. Feldgus and Mr. Tryon:

We appreciate the opportunity to provide comments on the draft State Initial Grant Guidance for funding provided under the Infrastructure Investment and Jobs Act (IIJA).

The Railroad Commission of Texas (RRC) has effectively regulated the oil and natural gas industry in the state of Texas since 1919. The RRC's primary statutory responsibilities in the regulation of Texas oil, gas, and geothermal resources are to conserve the state's natural resources; prevent the waste of natural resources; protect the correlative rights of mineral interest owners; protect the environment from pollution associated with oil, gas, and geothermal activities; and ensure safety by mitigating hazards inherent to the oil and gas industry, including but not limited to, hydrogen sulfide in wells.

Texas is the nation's largest producer of oil and natural gas with over 160,000 active oil wells and nearly 87,000 active gas wells. This energy production supports 2 million jobs in Texas and a quarter of the state's economy. The industry not only benefits Texas, but the entire United States. Nationally, the energy industry supports over 9.2 million jobs that provide billions of dollars in employee wages.

The RRC's well plugging program began in 1983 with the creation of the Well Plugging Fund, used to pay for plugging abandoned oil and gas wells that cause or threaten to cause pollution of the state's surface and ground waters by leaking saltwater or residual hydrocarbon fluids. The more comprehensive Oil Field Cleanup Fund replaced the Well Plugging fund in 1991. In 1993, the Texas Legislature authorized the RRC to recover some of its well plugging expenses through the sale of salvageable equipment. From the program's inception in 1983 through February 28, 2022, the RRC has plugged

43,118 orphaned wells, with 8,642 wells currently in orphaned status, an increase of 1,246 wells since the Commission submitted its Notice of Intent to Apply for Formula Grants in December.

The Railroad Commission concurs with the IOGGC comments submitted previously. Our additional comments on the draft guidance are presented by section.

SECTION I. INTRODUCTION

The draft guidelines “strongly” recommend numerous best practices. Section 40601 of the IIA does not authorize the Department of the Interior (DOI) to require states to modify their programs to incorporate DOI's best practices. Many of these recommended best practices would greatly increase the cost of well plugging and site remediation, while reducing the efficiency of the Commission’s well plugging program and the number of wells we will be able to plug. For initial grants, this draft guidance appropriately allows states to decide whether to incorporate any of the recommended DOI best practices. Further discussion of this issue should be deferred to later guidance for the performance and formula grants.

SECTION II. DEFINITIONS

The draft guidance defines “Date of receipt of funds” - as identified in Sec. 40601(c)(3)(A)(i)(II)(cc) - as “the date on which the awarded grant is available for obligation in the receiving State’s financial system of record. For purposes of this guidance, the date of receipt shall refer to the date when a recipient organization initiates its first drawdown of funds from the Automated Standard Application for Payment (ASAP).”

We recommend that DOI clarify in the definition of “Date of receipt of funds” whether the grants are reimbursement grants or if funding will be advanced. Section 40601(c)(3)(C) implies that funding will be advanced; if so DOI should clarify the allowable timeframe (30 days, 60 days) before taking the advance. We also recommend that DOI clarify whether interest from the grant funding is considered program income.

SECTION IV. INSTRUCTIONS FOR INITIAL GRANT APPLICATIONS

Section C (Recommended Elements) states that, although not required in relation to initial grant funding, many of the listed elements are expected to be required for subsequent grants. Section 40601 does not require this information for initial grant applications, and only some of this information is required for formula and performance grant applications by Section 40601(c)(4)(B) and (c)(5)(B). While some of these items pertain to activities that are optional for the states under (c)(2)(A), for many there is no basis in Section 40601. DOI should work closely with states to address these issues in the drafting of future guidance.

Draft element (j) under Subsection C recommends Latitude/Longitude and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template that accompanies this guidance. Section 40601 does not require a state to provide a list of wells with location information as part of a grant application. Formula and performance grant applications must include an estimate of the number of wells to be plugged, remediated, or reclaimed, but it is up to the state whether to provide a list of wells.

Other elements included in the Orphan Well Data Reporting Template are not appropriate identifying characteristics of the responsible party associated with an orphaned well. If the aim of these elements is to identify a responsible party in the context of Texas oil and natural gas production the last Lease Holder on file is the responsible party, while “Surface Managing Entity” and “Subsurface Managing Entity” are not

terms used in Texas to identify the responsible party. We recommend adjusting these data elements to allow states to use the terminology appropriate to their jurisdiction to identify a responsible party.

Draft element (m) recommends training programs, registered apprenticeships, and local and economic hire agreements for workers the State intends to conduct or fund in well plugging or site remediation. We recommend that the guidance account for workforce development programs that may already be in place with other, existing funding sources, rather than imply that this funding should be used for workforce development.

SECTION V. RECOMMENDED STANDARDS FOR MEASUREMENT, PLUGGING, AND REMEDIATION

Section V recommends a best practice for pre- and post-plugging measurement or estimation of air and water pollution. The narrative in subsection I. states that “As a best practice, States are encouraged to conduct an inspection of each orphaned well site being considered under this grant to measure or estimate current contamination of surface water and groundwater and to measure or estimate current emissions of methane, hydrogen sulfide, and other gas emissions.” Though the highlighted language appears in a section of the guidance that is recommended, but not required, the vague statement of expectations should be clarified.

Verifying the lack of groundwater contamination, in particular, may require extensive monitoring measures. We recommend that the highlighted language be cut and revised to read “to verify the lack of releases of oil, gas, water, or other fluids at the surface.”

With the scale of the Texas well plugging program and the proximity of orphaned wells to actively producing wells measurement of emissions is not always accurate, appropriate, or practicable.

The draft guidance document encourages states to follow a third-party methodology for emissions measurement and verification, such as the American Carbon Registry’s Methodology for the Quantification, Monitoring, Reporting and Verification of Greenhouse Gas (GHG) Emissions Reductions from the Plugging Abandoned & Orphaned Oil and Gas (AOOG) Wells (once finalized). This draft methodology outlines the eligibility requirements and accounting framework for the creation of carbon offset credits from the reduction in methane emissions by plugging abandoned and orphaned wells. The proposed methodology requires numerous emissions measurements for both pre-plugging and post-plugging conditions for every well in the project boundary:

For pre-plugging monitoring,

- a 24-hour continuous-in-time measurement at least one to two months before plugging;
- a second continuous-in-time measurement one to two months after the first; and
- one point-in-time measurement at least six days before or after the continuous-in-time measurements.

For post-plugging measurements,

- a 24-hour continuous-in-time measurement at least three days after the plugging date;
- a second continuous-in-time measurement in the second or third month post-plugging;
- one point-in-time measurement at least six days before or after the continuous-in-time measurements; and
- one additional methane assessment is required approximately five years after plugging, which can be done with a handheld sensor or multi-gas sensor with a lower detection

limit of 2 ppmv methane. If methane concentrations exceeding 3 ppmv are detected during the test, methane flow rate using a chamber-based method shall be used.

Additional sets of measurements are required until methane emission rates are stabilized.

This emissions measurement protocol would add significant costs to the plugging effort. State agency personnel (or its contractors) would have to visit each well site a minimum of eleven times in addition to the time spent on actual well plugging and site remediation., adding greatly to the cost of plugging each well. Most state oil and gas regulatory agencies are authorized to regulate emissions of methane and hydrogen sulfide for the purposes of prevention of waste of natural resources and protection of human health and safety. They are not generally authorized under the federal Clean Air Act for the regulation of air quality and, therefore, do not have the expertise, equipment, or contracts for such monitoring. As a result, overly complex and redundant monitoring requirements will result in fewer wells will being plugged with these federal funds.

Before the next grant guidance documents are drafted, we request that DOI clarify whether it will allow verification that the plugging reduced emissions (VOCs) or whether it will require that the state quantify (measure) the actual reduction using flow rate. The added cost of “plugging” will greatly increase if the states are required to measure the actual reduction of methane using flow rate.

The same is true with respect to measurement or estimation of the current contamination of surface water and groundwater. Drilling, completion, and monitoring of monitor wells would greatly increase the time and expense of well plugging and decreased the number of wells plugged with the limited federal funds.

The cost of monitoring activities was not included in the Commission’s Notice of Intent to Apply for Formula Grants, and the cost per well will increase substantially given these monitoring requirements.

SECTION VI. FEDERAL AND TRIBAL COORDINATION

Section VI places the onus on states to contact relevant offices of Tribal or Federal land management agencies. We recommend that DOI coordinate this outreach initially. The burden should not be on the state as they implement this program. The Federal agency should be responsible for data collection at these sites.

SECTION VII. REPORTING REQUIREMENTS

Subsection E, data collection and reporting, lists data elements that will be incorporated in the guidance being developed for the forthcoming Formula grants and Performance grants. We recommend that DOI meet with the states before drafting future guidance to discuss these data elements.

SECTION VIII. DOI STANDARD AWARD TERMS AND CONDITIONS

We request DOI provide states with guidance on the well plugging and site restoration and remediation activities that are considered "construction, alteration, or repair" under Davis-Bacon. DOI should clarify the Davis-Bacon requirements relative to well plugging and any differences with site remediation work.

Subsection C requires states to provide the federal awarding agency access to project sites, “to the extent necessary and appropriate”. The Railroad Commission has no authority to grant access to private property to a federal agency.

We recommend that Item G be revised to make it explicit that IIA section 70917(c) excludes cement and cementitious materials from Buy American clauses.

We look forward to working with you as implement this once in a lifetime opportunity to alleviate potential threats to surface and subsurface waters that orphaned wells may pose by providing a pathway for the migration of fluids from hydrocarbon bearing zones into formations containing usable quality water and into surface waters, while also alleviating any potential fugitive emissions from orphaned wells located across Texas. Thank you for the opportunity to provide comments on the draft State Initial Grant Guidance for well plugging funding provided under the Infrastructure Investment and Jobs Act.

Please contact Colleen Forrest at (512) 463-2645 or colleen.forrest@rrc.texas.gov with any questions you may have related to the Commission's Infrastructure funding implementation efforts. Thank you again for the opportunity to share our thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "Wei Wang". The signature is fluid and cursive, with the first name "Wei" and last name "Wang" clearly distinguishable.

Wei Wang
Executive Director