



June 10, 2021

Railroad Commission of Texas
Oil and Gas Division
1701 N. Congress
Austin, Texas 78701

Dear Railroad Commission Staff,

Thank you for the opportunity to submit comments on the Draft Oil and Gas Division Monitoring and Enforcement Plan for FY 2022 (“the plan”). We are pleased to see the Railroad Commission (RRC) continuing to fulfill its statutory charge to develop an annual plan for monitoring and enforcement.

Commission Shift is a new nonprofit in Texas with a goal of reforming oil and gas oversight in Texas. Our vision is to see the Railroad Commission become the most rigorous and advanced oil and gas regulatory body in the world.

Texas produces more than 40% of U.S. oil, contributing to our nation’s rank as the world’s largest oil producer. Our state’s primary oil and gas oversight body deserves to be well-resourced to carry out its mission.

In this spirit we are providing detailed comments on the plan following the sequence of the sections of the report. Commission Shift consulted with community members who have been impacted by oil and gas development and have had interactions with the RRC throughout complaint, investigation, and/or enforcement processes. In these comments, we have included a number of requests for clarification, proposals for the RRC to consider including in the plan, and descriptions of issues community members have shared with us.

Commission Shift appreciates the diligent and detailed work of RRC staff in preparing the report and carrying out the enormous task of monitoring and enforcement on Texas’ large population of oil and gas wells, facilities, and pipelines. Additionally, although the scope of this plan only includes the Oil and Gas Division, we propose that the RRC consider developing an annual monitoring and enforcement plan pertaining to the pipeline safety and gas services divisions in future years.

We hope that these comments provide helpful and informative insight toward accomplishing the goals of the plan and improving on the RRC’s delivery of its mission.

Sincerely,

Virginia E. Palacios
Executive Director
Commission Shift

I. MONITORING AND ENFORCEMENT OVERVIEW

I.a ORGANIZATION

- Please include maps of the ten district offices and the three regional districts in the plan.

I.b KEY REGULATORY COMPLIANCE MECHANISMS

- Please provide a definition of “common principals’ authority” in the text.
- Please describe the methods the RRC uses to track principals of multiple companies, and to verify that non-compliant principals remain barred from renewal for seven years.

I.c INSPECTIONS

- The number of staff conducting inspections is low compared to the number of wells the state is responsible for overseeing. RRC should consider developing a plan for increasing its capacity to conduct thorough and systematic inspections on each well once per year.
- It is great to see that the RRC has increased the percent of wells and facilities inspected in FY 2020. These data would be more meaningful if the RRC provided a uniform public database demonstrating each aspect of a facility that was reviewed by an inspector, and how it was graded, so that the public can be sure that these inspections were not merely “drive-by” but were following consistent procedures and protocols and were designed to identify potential non-compliance.
- Please report the total number of inspections with additional information identifying the number of unique wells inspected, whether the wells were active, shut-in, inactive and unplugged, orphaned and unplugged, or plugged. For other facilities, provide the number of unique facilities inspected by type of facility (e.g. well, waste disposal facility, gathering), and whether the facility is currently in use or abandoned.
- Did the pandemic affect the number of inspections in FY 2020? Would there have been more inspections if the pandemic had not occurred?
- The legislative target of inspecting 189,000 wells and other facilities is too low considering the improvement in last year’s performance. The goal should be higher in the next biennium.
- Commission Shift proposes that the RRC set a goal to inspect each at least once every year and construct a plan for detailing what resources would be needed to achieve this goal, and potential forms of revenue to serve those resources.
- Please link to the PDF of “Standard Operating Guidelines: Job Priorities for Field Inspectors.”
- Please provide a table listing the total number of wells in the state by category at the end of the Fiscal Year (active, shut-in, inactive and unplugged, orphaned and unplugged, or plugged).
- Is the ICE database publicly accessible? If so, please provide a link to the ICE system database in the plan. If not, the plan should discuss next steps to making the ICE database publicly accessible by FY 2022.
- Commission Shift recommends the RRC develop protocols for informing the community of violations, particularly those that present a potential threat to health or safety. Additionally, there should be a process for collecting community input. Community members have reported only finding out about violations if they were the individual who filed a formal complaint, but that they have been in the dark when their neighbors file complaints about violations that may also affect their health.
- A recent case involving Blackhorn Environmental waste disposal facility in Jim Wells County revealed that the facility had been accepting waste that did not meet the categories of waste

allowed in its permit. We recommend the RRC develop a way to efficiently cross-check waste manifests against permits so that this type of non-compliance is detected sooner.

I.d AUDIT PRIVILEGE ACT

- Please explain what mechanisms are in place to ensure that operators are not abusing the Audit Privilege Act. For example, intentionally failing to plan for compliance and then using the audit privilege act retrospectively to avoid penalization.

I.e COMPLAINTS

- Provide a link to the Commission's website where it provides information on how to file a complaint.
- The Commission's webpage <<https://www.rrc.state.tx.us/oil-and-gas/o-g-complaints/>> regarding complaints related to the oil and gas division needs improvement. First, the page does a better job of explaining what the Railroad Commission does not have jurisdiction over than what it does. Areas under the Railroad Commission's authority, including groundwater contamination, should be clearly described on the page without having to go to another link.
- It is not easy for members of the public to readily assess which district office they should call to file a complaint. There should be one phone number complainants can call to initiate a complaint.
- The Oil and Gas Division should provide an online customer complaint form, as does the Gas Services Division <<https://rrc.texas.gov/gas-services/complaint-filing/customer-complaint/>>.
- Information on how to file a complaint should be provided in Spanish, and language accommodation information should be made available on the RRC website in multiple languages.
- The Railroad Commission should have access to a professional translation service that it can use to provide language accommodation. "Microsoft Translate" or other digital translation services are not an acceptable form of language accommodation as these services may not properly translate the meaning of technical terms often used by the Railroad Commission.
- The draft plan states that "the public is encouraged to report problems or concerns" but it is not visible how the RRC accomplishes the task of encouraging public reporting. District offices should develop robust programs for public outreach including regular presentations, regular columns in local newspapers, television advertisements, and mailers informing the public what the Railroad Commission is, what it has jurisdiction over, and how to make complaints.
- The draft plan states "complaints involving an imminent threat to public health and safety or the environment are investigated immediately." Individuals who have called the RRC with emergency situations ranging from well blowouts to noxious odors causing vomiting and dizziness have reported not receiving timely responses from the RRC. The RRC should develop a plan for improving its handling of complaints from a customer service perspective.
- The RRC is charged with overseeing an industry that poses serious health, safety, and environmental hazards to the public. How agency staff handle day-to-day complaints, whether an emergency or not is a reflection of the quality of our state government and the oil and gas industry. The RRC has been doing this job for 130 years, and at least as much time and research has been dedicated to hazard mitigation in other fields ranging from fire safety to aviation. The agency's handling of potential incidents and interactions with the public should reflect modern, state of the art customer service and hazard management based on the best practices and insights from a variety of industries.
- The draft plan should provide information about how the RRC tracks its performance in responding to complaints within the stated time frames. Individuals have expressed that their

complaints were not investigated within the stated time frames, that they didn't receive a progress report, or any notification of when the complaint was closed.

- Table 1 should explain why the number of complaints resolved is higher than the number of complaints received.
- Table 1 should clarify if the number of complaints reported is only for the oil and gas division, or if it includes all complaints, including those for the pipeline division, TCEQ, or those related to railroads.
- Table 1 should indicate the number of complaints that indicated an imminent threat, were pollution related, or those not involving pollution.
- The RRC should consider making a complaint database publicly available on its website, similar to the TCEQ.
- RRC should consider active TCEQ investigations at facilities before allowing permit renewals.

I.f ENFORCEMENT ACTIVITIES

- The draft plan states "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 Legal Enforcement." The plan should outline how many months it takes for a matter to be referred for legal enforcement.
- The draft plan should provide a table of the number of permits modified, suspended, or terminated in the past fiscal year.
- The draft plan should provide a link to a list of companies, naming their officers and owners who have had a P-5 revoked in the past seven years.
- The draft plan should describe the process the commission uses to verify that the companies, their officers, and owners are not granted a future P-5 request.
- The draft plan should describe how the RRC ensures that the operators do not continue to operate beyond the current P-5 year.
- In the RRC's 2017 Sunset Review, the Sunset Commission's Staff Report with Final Results noted "In fiscal year 2015, the commission severed 7,936 leases and caught at least 1,552 leases that continued to produce oil and gas." This plan should include a description of methods the RRC is using to ensure compliance with seal and severance orders, and improve upon prior years.
- We recommend the RRC conduct an analysis of the cost of non-compliance compared to the \$10,000 cap on administrative penalties and report the results. This would be particularly meaningful for the rules that have high rates of violations and for major violations.

II. GOALS

- As the goals and action items have not changed from last year, consider using the same order for action items as was used last year.
- The draft plan reports that the Commission requested an appropriation of \$29,649,154 for fiscal year 2022 for its oil and gas monitoring and inspection strategy. It would be relevant to report the amount the legislature approved for both the oil and gas monitoring and inspection strategy and the oil and gas well plugging and remediation program, which pertains to this plan.
- Additionally, it would be helpful for the plan to include an appendix explaining the revenue sources that fund the oil and gas division, including those that fund the Oil and Gas Regulation and Cleanup Fund and any General Revenue Fund appropriations that are made to the oil and gas division.

- It would be helpful for the plan to include a recap of the outcomes of the legislative session that affect the oil and gas division. At a minimum, the recap could describe the Study on the Oil and Gas Regulation and Cleanup Fund Revenue Streams and the Strategic Plan on Flaring Data required in the appropriations bill.

II.a GOAL 1: ACCURATELY DEMONSTRATE THE COMMISSION'S OIL AND GAS MONITORING AND ENFORCEMENT ACTIVITIES

- Commission Shift supports Goal 1, and the associated action items. These improvements are long overdue, and we are happy to see the Railroad Commission modernizing its technology infrastructure and operationalizing implementing technological improvements.
- Beyond these existing action items, Commission Shift proposes two additional action items:
- 1. Develop a plan for continuous evaluation and improvement of the user experience with the RRC website, data, and public participation processes. The current technology improvements are essential, but upgrading these systems will be a continuous process and won't end after one project is complete. Additionally, upgrading the internal technology systems is only one part of accomplishing the goal. Improving the public's access and ease-of-use with the RRC's datasets requires an additional goal and workstream.
- 2. Include an evaluation of what tools would be necessary to capture real-time production data from operators. Such data availability could have allowed for additional flexibility and efficient resource deployment during Winter Storm Uri power outages and would likely serve numerous interests including oil and gas operators, the Texas Comptroller, royalty owners, and the public.

II.b GOAL 2: STRATEGICALLY USE THE OIL AND GAS MONITORING AND ENFORCEMENT RESOURCES OF THE COMMISSION TO ENSURE PUBLIC SAFETY AND PROTECT THE ENVIRONMENT

- Commission Shift supports Goal 2, and we encourage the RRC to develop a plan to assess additional potential revenue sources for the agency to improve monitoring and enforcement. The Railroad Commission and the state legislature have facilitated numerous fee and tax exemptions to operators, creating additional liabilities for the state as operators construct more facilities that do not lead to additional revenue to the Railroad Commission or the state but do lead to additional monitoring and enforcement responsibilities.
- Aside from interaction with the RRC's website and datasets, the RRC should outline its plan for improving outreach in communities with oil and gas development including how it will inform community members about comment opportunities, how to file complaints, and how to engage as a party in an RRC proceeding, and how to take advantage of the RRC's resources. Community members have expressed that they feel the current structure is tailored to industry, and is nearly impossible for a member of the public to comprehend and engage in without the high cost of hiring an attorney.
- Conspicuously missing from Goal 2 action items are plans to better assess compliance with the RRC's venting and flaring rules. New reports have indicated persistent non-compliance, and the RRC should address what new actions it is taking to ensure compliance and better monitor these activities. Additionally, the plan contains no action items to assess and improve upon prevention measures that would better protect groundwater resources.

II.b.1 ACTION ITEM 1: INSPECT WELL POPULATION

- We recommend the plan include an assessment of what the RRC would need to be able to inspect all wells at least once per year.

- The plan should include a breakdown of the schedule of wells including the number of wells in each category (active, shut-in, inactive and unplugged, orphaned and unplugged, or plugged).

II.b.2 ACTION ITEM 2: DEPLOY DRONES TO ASSESS LEAKS AND SPILLS

- Commission Shift commends the Railroad Commission for incorporating drone technology into its leak and spill assessment. We recommend broadening Action Item 2 to include an assessment of any technology resources such as remote sensors or mobile sensors that may aid in gathering compliance data between inspections.

II.b.3 ACTION ITEM 3: TRANSITION BOOTS ON THE GROUND TO AN ONGOING PROFESSIONAL DEVELOPMENT PROGRAM

- We are pleased to see the Commission communicating its internal training procedures to the public. We suggest making some form of this training available to the public to improve transparency.
- Overall, the public and oil and gas operators would benefit from assurances that inspections are taking place in a systematic format, consistently across oil and gas sites. Commission Shift requests that the RRC communicate its quality control process for assuring that inspections thorough and consistent, and share meaningful metrics summarizing these data to the public.

II.b.4 ACTION ITEM 4: STATE-MANAGED WELL PLUGGING PROGRAM

- Last year's plan provided a better description of revenue sources for the state managed plugging program. Please provide additional details for the current plan.
- Please update the number of orphan wells, as the number reported appears to be the same as last year.
- This draft monitoring and enforcement plan is an opportunity for the RRC to develop a more thorough analysis and plan for handling the state managed well plugging program under a prospective rise in oil and gas bankruptcies. A variety of economic indicators are showing that oil and gas companies are not rebounding as quickly as they have in past boom and bust cycles. Bankruptcies are a natural part of a free market approach to regulation, and the RRC should track, report, and plan for the consequences of bankruptcies on RRC responsibilities and resources.

The RRC could use this monitoring and enforcement plan to develop a strategic plan to ensure that the state is not left responsible for continuing to cover the cost of plugging wells and cleaning up orphaned sites. While the RRC's number of plugged wells per year is commendable compared to other states, the number of orphan wells in its backlog has not meaningfully declined since 2009. Moreover, the metric reported of the RRC exceeding its goal for plugging is not meaningful if the plugging goal is set lower, but the backlog of orphaned wells and aging inactive wells keeps growing. This is an indication that the RRC should reassess its internal policies that result in new orphan wells, such as allowing plugging extensions, and determining whether new well permits should be granted for operators with a backlog of inactive and unplugged wells.

Researchers at news publications The Texas Observer and Grist recently constructed a model identifying 12,000 wells that are likely to become orphaned in the next four years. This kind of an analysis is something that the RRC should be doing on its own and working into a strategy that assists staff in determining where and when to grant plugging extension requests or whether additional financial assurance should be required.

Additionally, the current presidential administration has made providing funds to states for orphan well cleanup a priority. While we await the passing of any federal measures, the RRC should communicate to the public its plans for prioritizing plugging orphan wells, and how it would deploy resources swiftly and efficiently, should federal funds become available.

III. EDUCATIONAL OPPORTUNITIES

- The educational opportunities the RRC lists are entirely directed toward the industry. Please develop an educational outreach program directed toward landowners, mineral owners, and people living in communities with oil and gas development.

IV. STAKEHOLDER PARTICIPATION PROCESS

- The RRC could reach more stakeholders by submitting a press release to major daily newspapers in Texas, as well as local newspapers within each of the RRC districts.
- Additional effort should be made to grow the Commission's email list to include people living near oil and gas development.
- Public hearings should be held virtually and in-districts to allow for dialogue with the RRC.
- Language accommodation should be offered. At a minimum, a Spanish language announcement on the RRC's website and a Spanish translation of the enforcement page. The draft should also be provided in Spanish, using the services of a professional translator.

V. DATA

- Rather than simply reporting data from the past year, it would be helpful to see an analysis from the RRC assessing trends in compliance over time, and identifying areas where improvement is needed.
- For example, several rules were violated thousands of times in the past year; some rules hundreds of times. An assessment of what the RRC could do to improve compliance in these areas would make a great addition to this plan.

V.a TABLE 2: SUMMARY OF ENFORCEMENT DATA FOR FISCAL YEAR 2020

- Please indicate the number of unique wells inspected, and create an additional table indicating the number of wells inspected by status (e.g. active, shut-in, inactive and unplugged, orphaned and unplugged, or plugged).
- For the number of statewide rule violations, please include a separate line item with the number of violations that are resolved on site during inspection.
- The number of major violations (12) appears to be incorrect, considering the definition of major violations provided in Appendix B.
- The plan should include an analysis of the number of penalties that are lower than the cost of compliance, and an assessment of the number of violations occurring in these cases.

V.b TABLE 3: FISCAL YEAR 2020 NUMBER OF VIOLATIONS PER RULE BY SUBSECTION, AS OF MARCH 16, 2021

- Clearly indicate which rules apply to the definition of a major violation.
- Include any rules in the table even if there were zero violations in the past year, especially rules included in the definition of major violations.
- Include a column with the violated rule description, as is provided in the violations data file on the RRC website.

- Please double-check the total number of violations reported for each rule. In last year's plan the number of violations for 16 TAC § 3.8(b) was on the same order of magnitude as those reported this year for 16 TAC § 3.8(d)(1), and vice versa.
- Over 2,200 violations were reported under 16 TAC § 3.13(b)(1)(B)(i) in last year's plan, but that rule is not listed in the table for this year's draft plan. It seems unlikely that there were not any violations of this rule in 2020. If that is the case, please explain what the RRC did differently to ensure better compliance.

V.c DEFINITION OF A REPEAT MAJOR VIOLATION

- The definition of a repeat major violation appears to be overly narrow and vague. It would be helpful to know if repeat violations by lease occurred in the past ten years, but also which operators have repeated the same violation across more than one lease and across multiple years. These data points could provide insight to the commission on the effectiveness of its current monitoring and enforcement activities, allowing it to adjust its procedures to better deter violations.

VI APPENDIX A: STANDARD OPERATING GUIDELINES: INSPECTION PRIORITIES

- Please clarify what is meant by "The only jobs that require 100 percent inspection response are incidents listed under "Known Compliance Issues" and jurisdictional complaints." Please also clarify what the "sweep" concept entails. The language implies that some inspections are not as thorough as others.
This is concerning, because it leaves the public wondering if the RRC is counting some of its less thorough inspections under the metric of inspecting each well once every 5 years. Commission Shift proposes that the RRC set a goal and establish a plan for conducting a systematic, thorough inspection on each well and facility at least once per year.
- Known Compliance Issues: some members of the public have reported that the RRC did not respond "immediately" or within 24 hours after they reported an emergency incident. The RRC needs to evaluate its processes for immediate response to incidents and consider ways to improve response times as well as the "customer service" aspects of its interactions with affected individuals and communities. Doing so would not only help to achieve faster resolution of potential health and safety issues, but would also improve the agency's image and that of the industry.
- Length of time since last inspection: This section refers to "performance measure output 3.1.1.7," but the document where this can be found is not referenced. In the RRC Strategic Plan for 2021 – 2025, there is no 3.1.1.7 performance measure output listed, but there is a similar outcome titled "3.1.2 Percent of Wells Not Inspected in Last Five Years," and the description mentions identifying wells inspected during the prior five-year period. Please clarify the intended performance measure output and reference the appropriate document.
- Proximity to public or sensitive areas: Please describe SWR 36 in text, so that it may be understandable members of the public. Additionally, the RRC should consider developing tracking methods for its response times and reporting those metrics in the monitoring and enforcement plan.
- Major safety/pollution prevention activities: Please describe SWR 36, so that the public can understand it. Please spell out UIC.

VII APPENDIX D: COMPLAINT PROCEDURES

VII.a SUBSEQUENT ACTION

- Are complainants who wish to remain anonymous made aware that they will not receive any follow up information about the complaint?
- Please define the number of hours that qualifies as “immediate.”
- Please describe the RRC’s protocol for responding to incidents that are reported outside of business hours.
- Please explain or provide a link to the Emergency Incident Report protocol.
- Please include “Attachment 1” described in the actions taken after an initial inspection.

VII.b COMMON COMPLAINTS

- The draft lists “private water wells” as being an example of a complaint that is usually not under the Commission’s jurisdiction (list item 3). This is followed by a sentence explaining that the Commission does have jurisdiction to protect surface and groundwater from oil and gas waste. Pollution of surface and subsurface water is under the jurisdiction of the commission as covered by statewide rule 8, including activities not related to oil and gas waste. Including “private water wells” in a list of complaints that are NOT under the RRC’s jurisdiction is not accurate.

VII.c CLOSURE OF COMPLAINTS REFERRED TO STATE-MANAGED PLUGGING

- Please provide a link to the “Procedure in State-Managed Plugging Manual for SMP vs. Show Cause Hearing Decision Tree.”
- Please clarify whether complainants are informed when a complaint is closed.