



November 8, 2024

Kimbra Davis, Director
U.S. Department of the Interior
Orphaned Wells Program Office
via e-mail at: orphanedwells@ios.doi.gov

RE: Pennsylvania DEP Comments – Orphaned Wells Program Office
Draft State Regulatory Improvement Grants Guidance – October 2024

Dear Ms. Davis:

The Pennsylvania Department of Environmental Protection (Pennsylvania or DEP) submits the following comments on the Draft Orphaned Wells Program Office (OWPO) State Regulatory Improvement Grants Guidance – October 2024 (Guidance) under the Infrastructure Investment and Jobs Act (IIJA). We appreciate the opportunity to provide comments on OWPO's guidance for implementing this critical program and hope our comments will help in the development of better guidance for the states and OWPO.

As an initial matter, Pennsylvania notes and supports the Interstate Oil and Gas Compact Commission (IOGCC) and Pennsylvania's own comments previously submitted to OWPO in response to the Request for Information to Inform the Orphaned Wells Program Office's Development of Regulatory Improvement Grants Under the Bipartisan Infrastructure Law, originally published on October 20, 2023. In addition to that support, below are Pennsylvania's specific comments on the Guidance.

Calculating the Plugging Standards and Program Improvement RIG Amounts

General application framework

- The basis for applying the variable points to each subcategory should be explained.
- The scoring criteria applies more weight to total scores (~63%) for improvements and less to existing standards (~37%). The process for establishing regulatory and non-regulatory rulemaking is a lengthy process. This scoring process appears to penalize states with strong standards already in place who have already gone through this process versus states with poor standards. The scoring criteria should be reversed or, at minimum, be equal for both categories.
- Currently, the scoring criteria does not differentiate between the number of additions or improvements a state enacts in each category when points are assigned. A state that achieves multiple additions or improvements made to a single category should be assigned a higher score.

- Based upon the categories identified by DOI for both Plugging and Program improvement criteria, the level of effort required to make improvements may vary from simple modification to forms and websites, creation of guidance documents and policies, to regulation changes and/or legislative action. A weighted scoring system should be. For example:
 - For each item that requires a regulatory change, under the State recipient's current authority to do so, a higher weighting factor should be applied to increase the points gained.
 - For each item that would require a legislative change, not under the State recipient's authority to do so, there should be no negative impact for not being able to effect the change desired. Instead, OWPO should consider the State recipient's efforts to effect the change and not decrease the points/award if the State recipient was in the end unsuccessful. State recipients should not be penalized for circumstance not in their control.

Workforce Development

On Page 38, Category 7(D), the Guidance states that "A State may create or expand its related workforce training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions that the State intends to conduct outreach to, partner with, or fund." While Pennsylvania supports this and other workforce development categories, clarification of what section of 60601(c)(2)(A) permits the use of funds for these activities should be provided. In addition, clarification of States expenditures as project vs administrative expenses for both internal and external workforce development should be explained.

ESA/NHPA Comments (Page 52)

Endangered Species Act – Under the Formula Grant, OWPO has required the use of the USFWS's IPaC tool for ESA Section 7 purposes. In states where USFWS is a cooperating partner in the development and maintenance of a state-level online tool and has determined that an output addressing federally protected species and their habitats from the state tool is considered by USFWS to be an official response for ESA purposes, the requirement to use IPaC should be categorically waived.

The IPaC tool and/or individual correspondence with the resource agency should only be required when the state tool's output specifically requests/requires further coordination with the agency responsible for the federally listed species. Any output from the state tool stating, "No Known Impact" for federally listed species, or where "conservation measures" or "avoidance measures" are prescribed through the state tool's output, the OWPO should consider these instances to be a "project clearance" and an official response from the USFWS. No further consultations should be required.

A categorical waiver should be integrated into the award term addressing ESA and the OWPO should only require a copy of the receipt/output from the tool. To ensure ESA compliance, states which have such tools in place should pass-through any conservation measures or avoidance measures to contractors, subcontractors, and subrecipients through state contract documents or grant agreements.

Additionally, if the USFWS and the state enter into a cooperative agreement, such as an MOU/LOU/MOA, the OWPO should recognize and accept the terms of that agreement in satisfaction of ESA requirements if the USFWS also considers such an agreement as satisfactory.

National Historic Preservation Act – The OWPO should seek categorical exemption for well plugging activities, at least for below-ground cultural resources, since the activities are taking place almost entirely in areas that were previously disturbed, often significantly so. This would significantly reduce the administrative burdens on States by removing the Section 106 tribal consultation component. The OWPO should not require this for activities taking place off tribal lands.

For above-ground resources, OWPO should take a common-sense approach. The purpose of this program is to plug and remediate legacy oil and gas infrastructure. The temporary nature of well plugging projects is such that they have limited effects on nearby Nation Register Historic Places (NRHP) and potential NRHP's, since the removal of these wells will improve the viewshed and the enjoyment of those nearby resources. Only the historical oil & gas infrastructure should be considered under NHPA, and that infrastructure could be dealt with under standard treatments prescribed by the SHPO.

State Program Elements Flexibility

DEP continues to support prior IOGCC comments indicating that IIJA appears to grant states flexibility in how to best operate their abandoned and orphan (AO) well plugging programs. Pennsylvania supports the goals of IIJA, and the required practices contained in the Guidance. Pennsylvania will likely implement all of the required practices outlined in the document but believes that the discretion for states to do so is explicit in the IIJA and should be retained in any Grant guidance developed by OWPO to implement the Act, including this guidance. This comment should be considered repeated wherever the issue of requirements versus recommended practices is found in the Guidance.

Allocation of “Unclaimed” IIJA Funds

OWPO should consider seeking authority for a mechanism to award “unclaimed” funds under the various IIJA grant programs to states that are willing and able to obligate and expend those funds to meet the goals of the statute. These could be funds that were not applied for under the various IIJA grants, funds returned to the DOI due to the obligation deadlines, unmatched Grant funds, or funds that were not awarded because states did not meet the qualifications under the Performance Grant program. These funds should be awarded to carry out the purposes of the statute. This problem may be especially acute with the Regulatory Improvement Grant program.

OWPO will likely not know whether or not states will qualify for the entire \$20 million under each side of the Regulatory Improvement Grant program until 2030. States could conceivably request the entire \$40 million Regulatory Improvement Grant amount based on state program developments, which can take considerable time. This may be especially likely if states may obligate IIA funds after September 30, 2030, as was announced at the 2024 Interstate Oil and Gas Compact Commission annual conference.

State Access to Carbon Credit Markets for Well Plugging (Page 51)

Pennsylvania has had several inquiries concerning the ownership of “carbon credits” for plugging AO wells and eliminating methane emissions. Some plugging contractors have even indicated that they will plug AO wells at no cost to the state if the state would assign the rights to claim such credits to the plugging operator. The Department notes that the Guidance bars states from “monetizing” the plugging of AO wells through participation in carbon credit markets. Besides limiting the potential to generate additional funds to carry out AO well plugging, there does not appear to be legal support in IIA for this position.

Permissible Use of Funds

Significant staff time and resources will be required by States to complete regulatory and program improvements. The Guidance should clarify whether the development of improvements not yet in place to administer programs will be permissible expenses in accordance with section of 60601(c)(2)(A). In addition, clarification of States expenditures to complete regulatory and program improvements as project vs administrative expenses should be explained.

Conclusion

DEP appreciates the opportunity to supply this feedback on the Draft Orphaned Wells Program Office Regulatory Improvement Grants Guidance. Thank you for your consideration of these comments. Should you have questions or need additional information, please contact Kurt Klapkowski, Deputy Secretary for the DEP Office of Oil and Gas Management, by e-mail at kklapkowski@pa.gov or by telephone at 717.645.9588.

Sincerely,



Jessica Shirley
Acting Secretary