

Bruce Bodson, Lower Brazos Riverwatch, Texas

April 29, 2022 Annual Oil and Gas Division Monitoring and Enforcement Plan Railroad Commission of Texas P.O. Box 12967 Austin, Texas 78711-2967 Re: Comments on the 2023 Annual Oil and Gas Monitoring and Enforcement Plan

Dear Commissioners: Lower Brazos Riverwatch appreciates the opportunity to provide the following comments on the 2023 Annual Oil and Gas Monitoring and Enforcement Plan. Introduction These comments are being submitted on behalf of Lower Brazos Riverwatch. Lower Brazos Riverwatch is 501 (c) (3) river protection organization formed to protect water quality, riparian habitats and river access on the Brazos River, from Waco to the Gulf of Mexico.

In our capacity as river stewards we regularly see the entire 425 river miles below Waco. In doing so, we frequently encounter impacts to the river from active and inactive oil and gas facilities. These impacts include overturned and leaking tanks, exposed and seeping well casings, abandoned drilling pits eroding into the river, exposed and leaking field lines, and general oilfield debris dumped into the river. These impacts result in direct discharge of hydrocarbon material, heavy metals, and other oilfield chemistry to the surface waters of the state. The dumping of large debris also frequently poses a hazard to recreational users of the river.

Our experience with reporting observed problems to the Commission staff is uneven at best. Usually, there is some initial interest and response, typically contacting the operator, and then very little follow up. We have situations under observation where dangerous wells have been brought to the attention of the commission and over two years later they remain unaddressed. Seeing enforcement actions through to a final conclusion should be an enforcement priority. While most operators are responsible, to far too great a degree, out of sight is out of out of mind. The less accessible portions of our Texas Rivers are used by the industry as a convenient disposal location for anything they find no longer useful. It is, frankly, a disgrace to the State of Texas.

General Comments

Lower Brazos Riverwatch formally requests that a public hearing be held specifically on this Monitoring and Enforcement Plan. While we appreciate the opportunity to provide comments in writing, many affected parties, particularly impacted land owners are not going to be heard. This is too important to limit participation. Lower Brazos Riverwatch again requests that the Commission rerelease the public notice and the Monitoring and Enforcement Plan in Spanish. We made a similar request last year and it does not appear to have done as of yet. Many of the impacted landowners and other affected parties speak primarily Spanish in the home and should be accommodated. Clear instructions for those requiring access in other languages should also be provided.

Specific Comments

Lower Brazos Riverwatch is limiting its specific comments to those aspects of the plan relevant to our interests in the rivers of Texas. We have observed that impacts to the river and floodplain occur at least as frequently from inactive or abandoned facilities as from active facilities. The Railroad Commission should give equal priority to inspecting inactive and abandoned facilities, particularly in the floodplains and floodways of rivers. In discussions with landowners along the river we have observed a repeated pattern in the transfer of producing properties from one operator to another. As the property's

production diminishes, the producing assets are transferred to ever smaller operators. The majority of the wells that are not producing economically are considered to be inactive rather than closed and are not plugged and abandoned, but rather continue to transfer until ultimately, the last operator simply turns off the equipment and disappears, leaving the wells as orphans. The Railroad Commission needs to set a time for which a well can be considered inactive. We would propose ten years. After that the operator needs to either demonstrate that the well is in fact capable of producing or move immediately to plug and abandon. This should be an enforcement priority. While this is primarily a policy issue, the transfer of environmental liability in the oil field without remediation, should not be allowed. Operators should be required to post a surface damage bond as well as a well plugging bond. The current manner of doing business is a fraud on the surface rights owner, contrary to basic principles of environmental law and leaves us all holding the bag.

We reiterate that all oil and gas facilities situated in the floodway or hundred-year flood plain of any Navigable Water of the State of Texas, need to be inspected annually. Any required remediation needs to be on an accelerated schedule to prevent contamination from entering the waters. Having experienced several 100 year floods in the last few years on the river, it is apparent that every five years is not sufficiently frequent for facilities in these areas. Having watched the results of flooded facilities, our preferred position is that oil and gas facilities should not be permitted in the floodways of Navigable Waters of the State of Texas, and those in the 100 year floodplain should be bermed against inundation.

In the event of a flood event, all oil and gas facilities in the affected floodway and floodplain should be inspected by air, as soon as weather conditions permit and by field inspectors as soon as the flood flows subside. In many cases, the released material has left the releasing facility before any inspection can occur, and is contaminating downstream properties. Lower Brazos Riverwatch believes that the floodplains and floodways of the Navigable Waters of the State of Texas and the rivers themselves meet the definition of a Sensitive Area as defined in 16 TAC § 3.91 (a) (2).

Since our observation is that impacts to these Sensitive Areas are occurring constantly, we disagree with the Commission's determination that as a risk factor proximity to a Sensitive Area has only medium possibility of occurrence. We believe a more accurate characterization would be that the both the impact and possibility should be considered high. We also believe that given the other factors, such as erosion and flooding that impact facilities in these areas that Proximity to Public or Sensitive Areas should move up on the priority order, replacing Length of Time Since Last Inspection as the number two priority.

In regard to Appendix F of this plan, Well Plugging Prioritization Methodology, we believe that Section 3 of the ranking matrix, Well location with respect to sensitive areas, should be revised. We believe that item 3 C, wells located within 100 feet of a river, creek, lake, or domestic use freshwater well should be given a weighting factor of 10. We base this on the frequency with which we observe wells within 100 feet of a river being captured by erosion and becoming free-standing casings in the stream bed and appurtenant facilities also falling into the rivers.

Since we commented on this plan last year, we have observed several wells in the Thompsons and Raccoon Bend fields, along with abandoned pits and flow lines-some of which are still leaking oil to the river, to be eroded free of all surrounding substrate. These wells and other infrastructure become both contamination sources and hazards to the public. In addition we believe that item 3 D, wells located between 100 feet and ¼ mile of a river, creek, lake, or domestic use freshwater well should be changed

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to "wells located within the 100 year flood plain of a river or creek or 100 feet to ¼ of a mile of any lake or domestic use freshwater well". It makes little sense on rivers to set arbitrary distances since once the flood plain elevation is exceeded, all area of that elevation will be inundated.

While we recognize that the Commission's authority over pipelines is limited, it is our understanding that they do have authority over pipeline safety on those oil and gas pipelines not regulated by the USDOT Office of Pipeline Safety. Safety inspection of field lines, gathering lines and intrastate pipelines used to transport oil and gas needs to be a Monitoring and Enforcement priority.

On our river alone there are hundreds of exposed and damaged pipelines associated with oil and gas fields. An exposed pipeline in a lotic system is a safety issue. These lines are frequently broken during flood events releasing material and are often left exposed in the rivers creating potentially life threatening hazards to recreational users, livestock and wildlife. We continue to see exposed and leaking lines and improperly abandoned pipelines in the rivers. No pipelines should ever be abandoned in place in a lotic system.

Closing

We appreciate the opportunity to submit these comments on the 2023 Annual Oil and Gas Division Monitoring and Enforcement Plan. We will provide a hard copy by mail to the address provided.
Sincerely, Lower Brazos Riverwatch Bruce R. Bodson, J.D. President/Executive Director