



DEPARTMENT OF THE INTERIOR

Office of the Secretary

[220D2641EA; DS61830000; DEA100000.000000; DX61801; Docket No. DOI-2023-0014]

Request for Information to Inform the Orphaned Wells Program Office's Development of Regulatory Improvement Grants under the Bipartisan Infrastructure Law

AGENCY: Orphaned Wells Program Office, Department of the Interior.

ACTION: Request for Information.

SUMMARY: The Orphaned Wells Program Office (OWPO) invites public comment to help inform its efforts in determining how to best structure the Regulatory Improvement Grant (RIG) program, pursuant to section 40601 of the Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law (Act).

DATES: Respondents are invited to submit comment to the OWPO by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted through <https://www.regulations.gov> and will be available for public viewing and inspection. This request can be located by typing the Docket number DOI-2023-0014 in the regulations.gov search box. For best results, do not copy and paste the number. Instead, type the Docket number into the search box, including the hyphens. Comments are submitted by clicking "Comment."

FOR FURTHER INFORMATION CONTACT: Susan Lee, Division Chief, State Orphaned Wells Program, OWPO, (202) 579-1907 or by email at susan_lee@ios.doi.gov. Or contact the OWPO by email at orphanedwells@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

The Act is a once-in-a-generation investment in our nation's infrastructure and economic competitiveness. The Act, which is codified at 42 U.S.C. 15907, creates a plugging, remediation, and restoration program within the Department of the Interior (DOI) to address orphaned wells,

well sites, associated pipelines, facilities, infrastructure, habitats, soil remediation, tracking emissions of methane and other gases, tracking of ground and surface water contamination, located on Federal lands, Tribal lands, and state and private lands.

Under the Act, states may be eligible to receive the following types of grants awarded, administered, and overseen by the OWPO: Initial Grants, Formula Grants, and Performance Grants. There are two categories of Performance Grants: Matching Grants and RIGs. The Act makes \$1.5 billion available to DOI for distribution to eligible states for Performance Grants. A state that received an Initial Grant is eligible to apply for and receive two separate RIGs, if the state meets one or both of the following conditions during the 10-year period that precedes its application:

- (I) The state has strengthened plugging standards and procedures designed to ensure that wells located in the state are plugged in an effective manner that protects groundwater and other natural resources, public health and safety, and the environment (Plugging Standards).
- (II) The state has made improvements to state programs designed to reduce future orphaned well burdens, such as financial assurance reform, alternative funding mechanisms for orphaned well programs, and reforms to programs relating to well transfer or temporary abandonment (Program Standards).

A state may apply for and receive one RIG of up to \$20 million for each of the above Standards, meaning a state may receive up to a total of \$40 million in RIGs. RIGs are subject to available appropriations and grant application window deadlines. All RIG funds must be obligated by the state within five years of the effective date of the award.

On January 10, 2023, Secretary Haaland issued Order 3409, which established the OWPO to ensure effective, accountable, and efficient implementation of the Act. The OWPO invites public comment to inform the OWPO's efforts as to how to best structure the RIG program. This

includes information from the public regarding factors the OWPO may use in evaluating RIG applications.

Questions:

Applicable to both RIG Criteria:

1. Should a specific amount of the \$1.5 billion in Performance Grant funds be set aside for Regulatory Improvement Grants? Similarly, should a specific amount be set aside for Plugging Standards and Program Standards?
2. A state that receives a RIG shall reimburse the United States the amount of the grant if, during the 10-year period beginning on the date of receipt of the grant, the state enacts a law or regulation that, if in effect on the date of submission of the application, would have prevented the state from being eligible to receive the grant. What would be the most effective and administratively prudent way to address this requirement (*e.g.*, an annual audit, certifications to attest to compliance, on-site reviews, etc.)?
3. Different states may require different standards, financial reform methodology, and policies or procedures. Is there a recommended amount of time that the revised standards, methodologies, policies, or procedures should be in effect prior to applying for a RIG?
4. What metrics or factors should the OWPO use for measuring and evaluating the improvements a state makes to its plugging standards or procedures (Plugging Standard RIG) and actions a state may take to reduce future orphaned well burdens (Program Standard RIG)? How can the OWPO ensure for the public that actions states take will achieve the intended purposes?
5. Should a RIG be an all-or-nothing grant, whereby an applying state either receives the full \$20 million or nothing based on a threshold criteria? Or, should a RIG award be some portion of \$20 million based on how the state's application scores on a series of factors?

6. What are the best practices pertaining to effective methods, policies, plugging approaches, or actions a state may use to avoid future issues or address past issues with failed partial plugging of wells (*e.g.*, oil and gas wells partially plugged and converted to water wells)?

Applicable to Plugging Standards RIGs:

1. What should be considered as “standards and procedures” when evaluating grant applications and awarding RIG grants (*e.g.*, laws or regulations, taxes or tax incentives, utilization of public funds, and fees or assessments, state personnel and staffing)?
2. What factors or elements should be considered in evaluating whether a standard or procedure is intended to ensure that orphaned wells are plugged “in an effective manner”? Should specific factors or elements be weighed more heavily than others? Are there best practices for determining effective well plugging?
3. Is there a specific regulatory entity (*i.e.*, Federal agency, state agency, Tribal agency, non-United States jurisdictions) that has performed the best in ensuring oil or gas wells are properly plugged and abandoned, and that the associated surface has been restored?
4. What are the standards and procedures used by the above specific entity that were most effective in ensuring that oil or gas wells were properly plugged and abandoned, and that the associated surface has been restored?
5. What elements or factors should be considered in determining whether an entity has plugged a well effectively? Similarly, what elements or factors should be considered in determining whether the associated surface has been restored? Do standards or best practices exist? If so, what are they?
6. Are there any particular standards or procedures, or lack of addressing certain aspects in standards or procedures, that should disqualify a state from receiving a Plugging Standards RIG? If so, what are they and why?

7. What is the best approach for identifying the ways in which a state's plugging standards and processes have been strengthened to achieve proper plugging and abandoning of oil and gas wells? What is the best approach for measuring or quantifying the ways in which a state's previous standards and processes were adequate or inadequate?
8. What factors or elements should be considered when evaluating whether a standard or procedure will affect each of the following: 1) groundwater; 2) public health and safety; and 3) natural resources or the environment?
9. Should the evaluation of a state's application be based on a criteria that focuses on the text and structure of the state's plugging standards and procedures that are specifically identified in the application, or should an approach be taken whereby an applicant state is free to implement any standards or procedures, and take any resulting action, so long as the state can demonstrate how its actions will protect groundwater and other natural resources, public health and safety, and the environment? If the later approach is taken, how might a state demonstrate effectiveness in protection of groundwater, natural resources, public health and safety and the environment?
10. Are there any other thoughts, innovative approaches, or comments pertaining to the administration of the RIG program?

Applicable to Program Standards RIGs:

1. What changes to state programs designed to reduce orphaned well burdens should be considered in evaluating a state's Program Standards RIG application? Should the improvements include changes to procurement, budgeting, staffing, or other actions of state governance?
2. What factors, elements, or benchmarks should be used to evaluate a state's financial assurance reforms? Is there a state or other entity that has the best financial assurance requirements to reduce the orphaning of wells?

3. What factors, elements, or benchmarks should be used to evaluate a state's alternative funding mechanisms for orphaned well programs? Is there a state or other entity that has strong alternative funding mechanisms for orphaned well programs?
4. What factors, elements, or benchmarks should be used to evaluate a state's reforms to programs relating to well transfer or temporary abandonment? Is there a state or other entity that has strong programs related to well-transfer or temporary abandonment?
5. What state actions are likely to *increase* future orphaned well burdens on the state, and why? How should those actions be reversed?
6. Should the evaluation of a state's application be based on criteria that focuses on the text and structure of the programs identified in the application, or should an approach be taken whereby an applicant state is free to implement any programs it sees fit, so long as the state can show how its programs are designed to reduce future orphaned well burdens?
7. What are the most effective methods or best practices a state may use to compel companies to properly plug and abandon wells at the end of their useful life? Are there states or other entities that are currently implementing those?
8. What are effective methods or best practices a state may use to prevent a company from transferring its liability for plugging and reclamation to another party that may become financially insolvent, or will otherwise be unable to properly plug and abandon a well?
9. What types of state enforcement actions, policies, and procedures have been found to result in timely well plugging and how might they be applicable in evaluating a RIG application?
10. Is joint and several liability an effective means to prevent taxpayers from eventually paying for plugging and reclaiming orphaned wells, and how could or should joint and several liability be incorporated into Program Standards? Similarly, is an assignor's retention of well-plugging liability an effective means to prevent a State's taxpayers from

being liable, in the future, for plugging orphaned wells? Why or why not? And if so, how could or should retention of assignor liability be incorporated into Program Standards?

11. Are financial strength tests an effective method to gauge whether operators will likely meet plugging, remediation, and decommissioning requirements? If so, are there specific criteria a state should incorporate into its financial strength tests?
12. How should idle wells and a state's approach to managing idle wells be factored into the development and administration of Program Standards for RIGs?
13. Are there any other thoughts or comments that should be considered pertaining to the administration of the RIG program?

Kimbra Davis,

U.S. Department of the Interior,

Director Orphaned Wells Program Office.

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