



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2021

The Honorable M. Brian Evans
Freestone County Attorney
110 South Keechi
Fairfield, Texas 75840

Opinion No. KP-0371

Re: Whether section 81.066 of the Natural Resources Code authorizes the Railroad Commission to address noise generated from oil and gas equipment as part of its annual plan (RQ-0388-KP)

Dear Mr. Evans:

You ask about section 81.066 of the Natural Resources Code, which requires the oil and gas division of the Railroad Commission (“Commission”) to develop and publish an annual plan regarding the Commission’s use of monitoring and enforcement resources to ensure public safety and protect the environment (“Annual Plan”).¹ You state that the Annual Plan² “does not address the noise generated by the oil and gas equipment and facilities” such as compressor stations, which you explain that “citizens believe is severely harmful.” Request Letter at 1. You inquire whether the control of noise generated from oil and gas equipment and systems must be included in the Annual Plan to ensure public safety. *Id.*

Section 81.066 requires the Commission’s oil and gas division to “develop and publish an [A]nnual [P]lan for each state fiscal year to use the oil and gas monitoring and enforcement resources of the [C]ommission strategically to ensure public safety and protect the environment.” TEX. NAT. RES. CODE § 81.066(a); *see also id.* § 81.066(b) (requiring the Commission to seek input from stakeholders when developing each annual plan); *id.* § 81.066(e) (requiring the Commission to publish the plan on its website).

The Commission “shall collect and maintain information that accurately shows the [C]ommission’s oil and gas monitoring and enforcement activities.” *Id.* § 81.066(c). The Annual Plan “must include a report of the information collected by the [C]ommission that shows the

¹See Letter from Honorable M. Brian Evans, Freestone Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Nov. 18, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0388KP.pdf> (“Request Letter”).

²R.R. COMM’N OF TEX., OIL & GAS MONITORING & ENFORCEMENT PLAN, FISCAL YEAR 2021 at 31 (2020), <https://trc.state.tx.us/media/k1sdgewz/og-s-plan-fy-2021.pdf> (“The following examples of complaints are usually not under the Commission’s jurisdiction, with some exceptions: . . . noise . . .”).

[C]ommission's oil and gas monitoring enforcement activities." *Id.* § 81.066(c). Subsection 81.066(d) then requires that the information collected and maintained under subsection 81.006(c)

must include data regarding violations of statutes or [C]ommission rules that relate to oil and gas, including:

- (1) the number, type, and severity of:
 - (A) violations the [C]ommission found to have occurred;
 - (B) violations the [C]ommission referred for enforcement to the section of the [C]ommission responsible for enforcement; and
 - (C) violations for which the [C]ommission imposed a penalty or took other enforcement action;
- (2) the number of major violations for which the [C]ommission imposed a penalty or took other enforcement action; and
- (3) the number of repeat major violations, categorized by individual oil or gas lease, if applicable.

Id. § 81.066(d).

With respect to the contents of the Annual Plan, subsections (c) and (d) use the phrase "must include." *Id.* § 81.066 (c), (d). Texas courts often characterize the word "must" as having a mandatory effect. *See, e.g., Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing *Wright v. Ector Cnty. Indep. Sch. Dist.*, 867 S.W.2d 863, 868 (Tex. App.—El Paso 1993, no writ)). Subsections (c) and (d) are not "mere suggestion[s] that can be disregarded at will." *AC Interests, L.P. v. Tex. Comm'n on Env't Quality*, 543 S.W.3d 703, 714 (Tex. 2018). These two subsections identify the information the Legislature directs the Commission to consider as it examines the strategic use of its resources and develops the Annual Plan. *See* TEX. NAT. RES. CODE § 81.066(a), (c), (d). Accordingly, the Commission must include in the Annual Plan information relating to the Commission's oil and gas division's monitoring and enforcement activities. *Id.* § 81.066(c). Similarly, it must include information relating to a violation of a statute or Commission rule that relates to oil and gas, particularly information relating to the enumerated violation data. *Id.* § 81.066(d). Conversely, the Commission is not required to include information not identified in section 81.066.

You ask whether the Commission must include information related to the control of noise generated from oil and gas equipment in the plan. *See* Request Letter at 1. You describe the noise as low frequency noise generated from compressor stations, gas treating facilities, and pipelines, but you do not identify any monitoring and enforcement activities of the Commission's oil and gas division that involve the control of such noise. *See id.* Nor do you identify a specific statute or Commission rule that concerns the control of noise, the violation of which would be required to

be included in the Annual Plan.³ *See id.* We find no express provision in the statutes governing the Railroad Commission that requires the Commission to enforce noise controls in oil and gas operations. *See generally* TEX. NAT. RES. CODE §§ 81.001–123.005 (Natural Resources Code, Title 3, Oil and Gas). And we find no Commission rule that specifically relates to the control of noise in oil and gas operations. *See generally* 16 TEX. ADMIN. CODE §§ 3.1–.107 (R.R. Comm’n of Tex., Oil & Gas Div.). Absent such, section 81.066 does not require the Commission to include information on noise control in the Annual Plan produced.

³Though the Federal Energy Regulatory Commission has set a standard with respect to compressor station noise, it is not a standard enforced by the Texas Railroad Commission. *See* 18 C.F.R. § 157.206(b)(5)(i).

S U M M A R Y

Natural Resources Code section 81.066 requires the Railroad Commission's oil and gas division to develop and publish an Annual Strategic Plan concerning its oil and gas division's monitoring and enforcement activities. Section 81.066 identifies specific information that the Commission's oil and gas division must include in the Annual Plan. Information not identified in section 81.066 need not be included in the Annual Plan.

Under the plain language of section 81.066, absent any monitoring and enforcement activities of the Commission's oil and gas division relating to the control of noise, or any statute or Commission rule concerning the Commission's control of noise, the Commission is not required to include information on noise control in its Annual Plan.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee