

## **UPDATE ON ISSUES**

### **IMPORTANT TO**

### **NARO-TX**

**MAY 8, 2008**

#### **LEGISLATIVE INTERIM CHARGE ACTIVITY:**

The House Energy Resources Committee has an interim charge to “research ways to maintain groundwater quality in relation to oil and gas exploration through economic incentives for innovative technology solutions”.

Their first hearing was Wednesday, March 19<sup>th</sup>. The main issues they are looking at are all related to groundwater and oil and gas activity primarily in the Barnett Shale region, and include:

- Fresh water usage in oil & gas exploration,
- Impact of drilling and enhanced oil recovery on groundwater sources, and
- Seeking ways to recycle water used in oil and gas activity.

The Texas Water Development Board (TWDB) has completed and updated a study entitled “*Assessment of Groundwater Use in the Northern Trinity Aquifer Due to Urban Growth and Barnett Shale Development*”. They have been asked to testify at the hearing and report on that study. The entire study is available on the TWDB’s website at

[http://www.twdb.state.tx.us/RWPG/rp gm\\_rpts/0604830613\\_BarnetShale.pdf](http://www.twdb.state.tx.us/RWPG/rp gm_rpts/0604830613_BarnetShale.pdf)

We will be monitoring the hearing and the issue as the committee continues its work leading up to next legislative session.

#### **IMPLEMENTATION OF BILLS PASSED IN THE 80<sup>TH</sup> LEGISLATIVE SESSION**

HB1920, by Jim Keffer - the ‘line loss’ bill. The Railroad Commission adopted the rules necessary for implementation of the “lost and unaccounted for gas” (LUG) or ‘line loss’ bill at their meeting on Tuesday, March 25<sup>th</sup>. It is our understanding that the bill sponsors and stakeholders are satisfied that the rule does meet the legislative intent. Some key changes from the rule as originally proposed are:

1. Excluding common purchasers who do not gather or transport gas from the rule altogether.
2. Removing a definition of LUG from the actual rule and stating that LUG will be defined according to how it is agreed upon in operator contracts.
3. Adding a provision for contracts which do not define “loss of or inability to account for gas” to instead give the Commission the ability to measure the difference between the amount of gas metered into a system and the amount of gas metered out of a system.
4. Adding the word “estimated” in front of the word “amount”.
5. Giving the Commission the discretion to choose what information the gatherer would have to provide to the producer. The Commission decides what is relevant and necessary.

HB3273 by Myra Crowover – the bill that began as the ‘gas gathering’ bill, and the final product is more accurately described as the ‘anti-discrimination’ bill. The Railroad Commission has adopted the rules necessary for implementation of this bill. It is our understanding that the bill sponsors and stakeholders

are satisfied that the rule does meet legislative intent. This rule essentially beefs up the informal complaint process and ensures that discrimination is not taking place. Key provisions of the rule include:

1. The Railroad Commission has new authority to impose an administrative penalty against:
  - a purchaser, transporter, gatherer, shipper, or seller of natural gas, common carrier pipelines, persons owning or operating pipelines, persons owning or engaged in drilling or operating oil or gas wells, common purchasers, or any other entity under the jurisdiction of the commission under this code that the commission determines has:
    - violated a commission rule adopting standards or a code of conduct for entities in the natural gas industry prohibiting unlawful discrimination; or
    - unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller;
  - a purchaser, transporter, or gatherer of natural gas if the commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the commission against the person relating to the person's purchase, transportation, or gathering of the gas; or
  - a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the commission to have failed to participate in the proceeding or failed to provide information requested by a mediator the proceeding.
2. Provides that an administrative penalty imposed under this section may not exceed \$5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
3. After notice and an opportunity for hearing, authorizes the RRC to issue any order necessary and reasonable to prevent discrimination from continuing.
4. Specifies that the above administrative remedies are cumulative of any other remedy the Commission may order.
5. Allows the RRC to appoint a commission staff member as the mediator of an informal complaint filed with the commission, and provides that the parties may agree to employ and pay an independent mediator for the purpose of mediating the complaint.
6. Requires that if the parties request that the mediation be conducted at a location other than the RRC offices in Austin, the parties shall reimburse the agency for any RRC costs related to travel to those other locations.
7. Does not prohibit the commission from requiring that the parties participate in a formal complaint resolution proceeding.
8. Requires the RRC, at least annually, to notify oil and gas producers of the existence of any informal complaint resolution process provided for by the Commission.
9. Provides that filing an informal complaint is not a prerequisite for filing a formal complaint.

10. Provides that a confidentiality provision may not be required in a producer's contract for the sale, transportation, or gathering of natural gas that is entered into on or after September 1, 2007. Makes a confidentiality provision in a contract for the sale, transportation, or gathering of natural gas that was entered into before September 1, 2007, unenforceable on the date the term of the contract expires.
11. Authorizes the Commission to set a transportation or gathering rate in a formal rate proceeding if, on the filing of a complaint by a shipper or seller of natural gas, the commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. Provides that the Commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.
12. Authorizes the RRC to use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding, other than for a rate established under Chapter 103, Utilities Code, or Subchapter C or G, Chapter 104, of that code.

Report provided by:

VA Stephens

The VA Stephens Company

[vaco@vastephens.com](mailto:vaco@vastephens.com)

512/347-8226

512/347-8224 (fax)

512/917-9148 (cell)