

Eyes On Texas & Washington

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EPA Wrong In Issuing Emergency Order Against Range Resources

Two hearing examiners at the Texas Railroad Commission (RRC) has found that wells drilled by Range Resources into the Barnett Shale in Parker and Hood Counties could not have caused the contamination of water wells as alleged by Region 6 of the U.S. Environmental Protection Agency (EPA). The case drew national attention and praise from environmental extremists when EPA issued an emergency order against Range superseding the jurisdiction of the state oil and gas regulatory agency. The RRC had been investigating the allegation of contamination since August 2010 when EPA issued its order on December 7.

The examiners found that the water wells were contaminated by natural gas in the Strawn – which is about 400 feet deep and about 200 feet below the depth of the water wells – and not from the Barnett Shale wells, which are about 5,000 feet deep with a maximum frac length of about 400 feet.

Testimony also revealed that gas production in water wells in Parker and Hood Counties has occurred since at least 2003, and that the two wells in question flowed gas sufficient to flare for a few months when drilled in 2005.

EPA stated that it issued the emergency order because EPA Region 6 Administrator Al Armendariz feared that the house might explode because of the gas in the water wells. However, testimony at the RRC hearing on January 19-20 revealed that ambient air samples taken from various areas around the 25 water wells contained concentration of 0.29%, which is far below dangerous levels set by state and federal officials. Soil samples from 117 sites recorded concentration of 0.176% of the lower explosive limit.

The examiners also found fault of the testing EPA conducted regarding the “fingerprinting” of the gas, which will tell investigators the formation where the gas originated. EPA’s analysis alleged that the carbon isotopic fingerprint for Barnett Shale gas is expected to be similar to Strawn gas. However, the appropriate geochemical parameters for fingerprinting are nitrogen and carbon dioxide, not carbon.

“Gas from the Strawn has higher nitrogen concentration and lower carbon dioxide concentration than Barnett Shale gas,” the RRC report stated.

“Gas found in the 25 water wells, including the Lipsky and Hayley water wells, does not match the nitrogen isotopic fingerprinting of Barnett Shale gas. The gas found in the water wells matches Pennsylvanian gas,” the RRC found.

Cornyn: Time to End EPA’s Stranglehold on Texas’ Economy

WASHINGTON – U.S. Senator John Cornyn (R-TX) has cosponsored [The Energy Tax Prevention Act of 2011](#), introduced by Senator James Inhofe (R-OK), Ranking Member of the Senate Committee on Environment and Public Works, which stops the U.S. Environmental Protection Agency (EPA) from implementing backdoor cap-and-trade regulations.

Senator Cornyn said, “This measure is critical to ending the Obama Administration's energy takeover as they continue to force their command and control agenda on states through backdoor EPA regulations, which are crippling businesses and economic development throughout the nation. The EPA has enacted rules on greenhouse gases which the Congress never intended. Unfortunately, Texas is no stranger to this administrative overreach by the EPA which has taken over critical portions of our state's emissions permitting program. I hope that the Senate will quickly take up this bill and pass it to release the EPA's stranglehold on Texas and our nation's economy.”

The bill cosponsored by Senator Cornyn will protect jobs in America’s manufacturing sector, protect consumers from higher energy costs, put Congress in charge of nation’s climate change policies, and preserve the public health provisions of the *Clean Air Act*. House Energy and Commerce Committee Chairman Fred Upton (R-MI) and Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) today introduced the *Energy Tax Prevention Act of 2011* in the U.S. House of Representatives with 6 Republican and 3 Democratic cosponsors including Representatives Dan Boren (D-OK), Nick Rahall (D-WV), and Collin Peterson (D-MN).

Senator Cornyn serves on the Finance, Judiciary, Armed Services and Budget Committees. He serves as the top Republican on the Judiciary Committee’s Immigration, Refugees and Border Security subcommittee. He served previously as Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge.

EPA Examines Wastes Created In Drilling

WASHINGTON—The U.S. Environmental Protection Agency, as part of its review of a natural-gas drilling procedure, is looking at the radioactivity of wastewater used in the process.

Environmental Protection Agency Administrator **Lisa Jackson**, speaking at a congressional hearing, defended her agency's efforts to study the safety of natural-gas drilling and left the door open to further regulatory action on the issue. The process, known as hydraulic fracturing, is used to extract hard-to-reach natural-gas pockets in the ground.

Jackson suggested that if public water-treatment plants couldn't adequately treat wastewater from hydraulic fracturing to safe levels—a central concern of critics of extraction method—EPA could impose standards on drillers who send the waste to the plants.

"EPA can at any time set additional standards for what we call pretreatment, for waste that may go to a treatment plant," Ms. Jackson said.

Critics say environmental regulators and the industry have failed to ensure the practice is safe, particularly with respect to fracturing fluid contaminating drinking water.

"What we see here are deliberate attempts to shield from the public additional concerns expressed by EPA scientists," said Rep. Maurice Hinchey (D., N.Y.) said at a congressional hearing on EPA's budget.

Democrats: End Subsidies for Oil and Gas

WASHINGTON—House Democrats took aim at oil companies Monday, arguing that billions in subsidies for big oil would be put to better use in areas like clean energy technology and education.

"For too long we have given huge subsidies to the big five oil companies, increasing their profits and sending the bill to the American taxpayer," said House Minority Leader Nancy Pelosi (D-Calif.) at a well-attended House Democratic Steering & Policy Committee hearing Monday.

During the meeting, details emerged of how oil companies, after making record profits last year, are still getting tax breaks crafted in 1918, which were designed to offset production costs for the then-newly emerging industry.

Other subsidies, such as the Deep Water Royalty Relief Act, passed in 1995 when oil prices were just \$18/barrel, is still in effect today, while prices are topping \$100/barrel.

"Giving tax breaks to oil companies to drill for oil would be like subsidizing a fish to swim or a bird to fly," said Congressman Edward Markey (D-Mass).

Rep. Markey was co-author, together with Henry Waxman (D-Calif.), of the Clean Energy and Securities Act of 2009, which proposed a cap and trade system on carbon, and after intense debate failed to pass Congress.

Use Money to Create Jobs in Clean Energy

House Democrats heard from Thomas S. Carnahan, chairman of the Wind Capital Group, a leading industry advocate for wind power energy.

Carnahan testified that wind is now cost competitive with other new power sources such as solar, but the long-term viability of the industry is contingent on subsidies.

Over the past few years, subsidies have been available, but not without a fight, and they have been short term. The current Wind Production Tax Credit will expire next year if it is not renewed.

Carnahan asked Congress for predictable policies that give wind energy a level playing field and that would make it possible for companies to negotiate long-term contracts with utility companies. Energy suppliers want to bring wind onto their grids, he said.

New York Times Blames Oil Industry For Alleged Pollution

A recent story in the New York Times, with the headline of “Regulation Lax as Gas Wells’ Tainted Water Hits Rivers,” does a woeful job of trying to pin the pollution of the free world – or at least western Pennsylvania – on the exploration and production activities of the natural gas industry. The author, Ian Urbina, uses the magic of words to scare the public into thinking that they are drinking contaminated water with carcinogens like benzene and radioactive elements.

Urbina alleges that waste water from natural gas exploration activities is being improperly dumped into waste water treatment plants by greedy oil companies.

Why would these companies do such a terrible thing to their fellow Americans?

Urbina states in the story that the reason for such blatant and irresponsible activities is, you guessed it, GREED. The companies can cut cost and increase profits by poisoning the good citizens of Pennsylvania.

To substantiate his claim, Urbina quotes the former Secretary of the Pennsylvania Department of Environmental Protection John Hanger as saying there are business pressures to cut corners.

Hanger, however, says he has never talked to Urbina!

Hanger said after the story was published that “The article excludes information completely... [and] used misleading words to conceal important points, and consistently shaped information to advance [a certain] narrative.”

Urbina's "radioactive elements" are what the industry calls Naturally Occurring Radioactive Materials (NORM), and it is found naturally in rocks in the ground and other places, too. NORM is encountered NORM every day. The oil and gas industry in Texas has regulations covering NORM for more than 15 years. NORM is something the industry needs to be aware of, but it is in such small quantities that it is normally way below harmful level of exposure.

Urbina refers to a "confidential industry study" conducted in 1990 by the American Petroleum Institute that found that NORM posed "potentially significant risks" of cancer for people who eat fish from Louisiana because of the concentration of NORM in the water from drilling activities.

API says the study is not "confidential" and it has been available that the public since 1991, and "it can be concluded that the risks associated with the discharge of produce water to coastal Louisiana is small."

Why would a reporter go to such lengths to distort and even create a story to causes so much damage? There is a lot of competition at any newspaper and television news department to get printed, get a byline, get a big headline, get on page one. It is a much bigger story if it involves pollution by oil companies, willful disregard for the health and safety of your fellow human beings, regulators not doing their job, hiding "confidential" and damaging studies.

Stories, such as the one authored by Urbina, are not new and unfortunately will continue as long as reporters try to manipulate the facts to obtain more notoriety for their work. The same disregard of objectivity and fairness has been exhibited in reporting about the exploration in the Barnett Shale. One newspaper even wrote a series of stories several years ago exposing all this bad stuff resulting from exploration and production in the Barnett Shale called NORM. It later learned that the state had adopted regulations governing NORM years before. The New York Times is just now catching up with sensationalizing the news when it comes to the oil and gas industry and the environment.

Priority Bills In Texas Legislature

March 11 is the deadline for filing bills and joint resolutions other than local bills, emergency appropriations and bills that are declared an emergency by the governor. More than 3,500 bills and resolutions were filed. As the deadline loomed, some legislation was still in search of authors whereas in other situations, authors were delaying filing a bill as part of some sort of strategic plan to gain advantage, deflect opposition or win consensus. Of importance to the state is **H.B. 1 by Pitts**, the appropriations bill. Adequate funding for Articles VI, VII and VIII, pertaining to appropriations for the agencies charged with oversight of the oil and gas industry, is of major importance to the regulatory future of the oil and gas industry. In a reality check for conservatives, **Comptroller Susan Combs** said cuts alone will not balance the budget and suggested that raiding the "Rainy Day Fund" which is 75% funded by the oil and gas

industry might need to be considered. Legislation filed by Chairman Pitts will initiate that discussion.

Also of importance is the Railroad Commission Sunset bill which would could continue the agency for another twelve years –two separate bills were filed. In the Senate, the bill reflecting the recommendations of the Sunset Advisory Commission was filed by **Senator Glenn Hegar** (R-Katy), Chair of the Commission. In the House, Speaker **Joe Straus** selected **Jim Keffer** (R-Eastland), Chair of the Energy Committee, over Dennis Bonnam (R-Lake Jackson), to file the House version. Keffer’s bill will reflect the industry’s consensus positions on the key issues of governance and maintaining hearings at the Commission. In addition, the following are bills being tracked by the Alliance Government Relations team:

Appropriations/Budget

- **H.B. 1 by Pitts:** General Appropriations bill
- **H.B. 275 by Pitts:** Relating to making an appropriation of money from the economic stabilization fund aka “Rainy Day Fund” for expenditure during the current state fiscal biennium.

RRC/Regulatory

- **HB 1556 by Burnam:** Relating to a prohibition on the issuance of a drilling permit for an oil or gas well that is proposed to be located within a specified distance of a public school.
- **SB 772 by Davis:** Relating to the use of a tracer substance in performing a hydraulic fracturing treatment operation.
- **SB 1049 by Davis:** Relating to the disclosure of information regarding hydraulic fracturing treatment operations.
- **SB 1041 by Hegar:** Relating to the repeal of the goal for natural gas use.

TCEQ/EPA/Air Emissions

- **SB 527 by Fraser:** Relating to air monitors in TCEQ Regions 3 and 4 to be funded through the Texas emissions reduction plan. Companion bill: HB 1145 by Geren.
- **HB 1126 by Burnam:** Relating to the control of emissions from crude oil and condensate storage tanks in certain areas of the state.
- **HB 1145 by Geren :** Companion bill to SB 527 (Identical)
- **SCR 20 by Fraser:** Urging the U.S. Congress to prevent the EPA from regulating greenhouse gases for stationery sources.

TXDOT/Overweight vehicles

- **HB 441 by Guillen:** Relating to the fees for certain commercial vehicles: hearing held House Transportation Committee.
- **SB 556 by Davis:** Relating to a highway maintenance fee imposed in connection with the operation of overweight vehicles or vehicle combinations.

Appraisal/Tax Bills

- **HB 889 by Lewis:** Relating to the appraisal for ad valorem tax purposes of a real property interest in oil or gas in place; vehicle bill for possible changes.
- **HB 2001 by Burnam:** Relating to the exemption or tax reduction for certain high-cost gas.

Eminent Domain/Property rights

- **SB 18 by Estes:** Relating to the use of eminent domain authority.
- **HB 279 by Geren:** Identical to SB 18, also identical to SB 180 by Estes

Pipelines

- **HB 1124 by Burnam:** Relating to safety requirements applicable to gas pipelines in certain counties.
- **HB 1125 by Burnam:** Relating to a study regarding the odorization of natural gas transported in gathering and transmission lines located in populated areas.
- **HB 1968 by Chisum:** Relating to the regulation of gas pipelines.

Water Bills

- **SB 332 by Fraser:** Relating to the vested ownership interest in groundwater beneath the surface and the right to produce that groundwater.
- **SB 667 by Duncan:** Relating to the management of groundwater resources in this state and the rights of landowners in groundwater.
- **HB 1730 by Ritter:** Identical to SB 332 by Fraser.
- **HB 1731 by Ritter:** Identical to SB 667 by Duncan.

Below are a few bills that were filed recently:

- 1) HB 2001 by Burnam elimination of high cost gas incentive

We have known since last year's Interim Hearings of Ways & Means,

and the projected budget deficit that the industry incentives, particularly, that on high cost gas, would be under scrutiny. That remains the case and the threat is real. Now legislation has been filed to eliminate the filings for the high cost gas incentive as of September 1, 2011.

2) SB 1049 by Davis chemical disclosure

The bill directs the RRC to adopt rules requiring operator of well which has been completed by hydraulic fracturing to disclose information about the operation

to include: * type and volume of base stimulation fluids and proppants

- * general type of additives

- * special additives used and actual concentration of each additive

- * all chemical constituents and their CAS numbers and,

- * documentation to demonstrate accuracy.

The bill also contains a proviso that the operator/owner may establish a 'claim of entitlement' for proprietary protection.

3) HB 1968 by Chisum 47 page pipelines

Separates the statutes governing natural gas transmission and gathering pipelines from those governing natural gas distribution pipelines. Though the bill seems to be non-substantive in nature, it is very comprehensive and will deserve scrutiny.

4) SB 1134 by Hegar air permitting for oil and gas facilities

Under this legislation TCEQ would not adopt a new permit by rule or standard permit without: * conducting a required analysis of a major environmental

- rule and its impact

- * through credible data of air monitoring establish it is necessary to promulgate a new rule to protect public

health and physical property

- * establishes emissions limits and standards based on air monitoring and air quality modeling.

5) HB 2087 by Craddick non participating royalty Interest

The bill allows a pathway for allocation of non participating royal interest from horizontal drainhole wells.

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