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## **FLARING ISSUES**

*A survey of current gas flaring regulations, practices, and concerns in Texas.*

### **I. INTRODUCTION**

Unconventional oil development plays have forever changed the nature of the energy industry in Texas. The surge in Texas' oil production has significantly contributed in making the United States a leading exporter of oil. Along with increased oil production in plays such as the Permian Basin and Eagle Ford Shale is the corresponding growth of casinghead gas. Significant casinghead gas volumes in geographically remote areas coupled with the speed of oil and gas development has resulted in a lack of gathering and midstream infrastructure necessary to bring this casinghead gas to market. Flaring gas provides a safe and reasonable alternative to shutting in a well when the gas is not connected to a pipeline or is forced to intermittently flare due to demand on gas gathering systems and plants resulting in intensified maintenance and repair periods.

The purpose of this paper is to look at the current regulatory framework governing gas flaring and the increased attention gas flaring has seen recently. In Texas, the Railroad Commission of Texas (the "Commission") and the Texas Commission on Environmental Quality ("TCEQ") regulate the flaring of natural gas and related air emissions.<sup>1</sup> Over the past two years contested cases related to permitting gas flaring and laser focus on flaring operations have caused an uptick in concentration on gas flaring practices, rules and policies.

### **II. REGULATORY FRAMEWORK**

#### **a. Railroad Commission of Texas**

The Commission is charged with the responsibility of conservation and prevention of waste of the State's natural resources such as oil and gas. The Commission's authority to regulate flaring

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<sup>1</sup> Regulation of air emissions is also governed at the federal level by the Environmental Protection Agency ("EPA") which sets standards for air quality under the Clean Air Act.

and venting comes from the Texas Natural Resources Code, where the legislature conferred power to the Commission to promulgate and enforce rules that conserve Texas' natural resources, prevent waste, and protect correlative rights.<sup>2</sup> To fulfill its statutory duties, the Commission has promulgated Statewide Rule 32 ("Rule 32") titled, "Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes."<sup>3</sup> Generally, Rule 32 prohibits venting and flaring, but provides exemptions and exceptions, including permitting gas flaring for extended periods of time, in recognition of the reality that not all gas produced can be captured and routed to sales when drilling and producing a well.

i. Exempt Gas Releases

Rule 32 identifies parameters within which produced gas releases are exempt under Rule 32 permitting and production reporting requirements.<sup>4</sup> In these cases, gas that is "not readily measured by devices routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants, such as meters, are not required to be reported and charged against lease allowable production" are not subject to the permitting requirements of Rule 32. Examples of these releases include tank vapors from crude oil storage tanks, fugitive emissions of gas, emissions from amine treaters and gas released at the wellsite during initial completion or recompletion of the well.<sup>5</sup>

ii. Authorized Gas Releases

In a few cases, Rule 32 authorizes an operator to immediately release gas without permitting the release. For instance, an operator may release gas for up to ten days after an initial completion, recompletion in another field, or workover operations in the same field, as Rule 32

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<sup>2</sup> See Tex. Nat. Res. Code §§81.052, 85.042, 85.201, 85.202, 86.042, 86.185, 141.012.

<sup>3</sup> See 16 Tex. Admin. Code §3.32.

<sup>4</sup> 16 Tex. Admin. Code §3.32(d).

<sup>5</sup> *Id.*

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