

## **WHAT IS ISSUE MANAGEMENT?**

### **Why It Is Important To Your Business!**

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Issue management is a process everyone engages in everyday. You may not think of it as issue management but consider it problem solving or crisis management. Issue management, as discussed in this paper, is the process used to identify, analyze, evaluate, and act on regulations, legislation, public concerns, actions by others, and decisions that affect all aspects of your business. The process may be accomplished as “part of the job” or it may be a specific, deliberate action. Issue management is not limited to oil and gas operators. It is important for all oil and gas entities including service companies, independent contractors and processing facilities.

Issue management is extremely important to business because internal and external actions affect the manner in which business conducts its activities, from day-to-day operations to long-range planning. Specific choices must also be made by each company as to whether it will take a proactive or reactive role in dealing with outside influences and challenges. Issue management, or the lack thereof, is an economic decision. It affects daily operations and profitability.

How you choose to be involved in the issue management process will impact the effectiveness of your participation. Are you proactive or reactive? In general, most companies and their managers and employees react to arising issues that could affect how they operate. With respect to the oil and gas industry, proactive issue management has historically been left to major oil and gas companies with staffs dedicated to the process or independents that have chosen to be more involved. Many companies who are not directly involved in managing important issues affecting their business rely upon those in industry who are dedicated to preserving reasonable business practices and on the trade associations to represent them and their interests. Those who are uninformed or choose to not be part of the process react to the changes, often not realizing that they could have influenced the outcome.

#### **Overview**

Issue Management as discussed here encompasses broad categories, such as public Concerns, legislation, regulations, enforcement, compliance, reporting, accounting practices, private property rights and even co-owner and royalty interest concerns. Each of these categories has many facets that substantially affect your business, either directly or indirectly.

The public sector is more aware, knowledgeable and sophisticated with regard to their involvement in oil and gas industry activities. That is not to say the public’s involvement is based upon accurate information or that reasonable assumptions are made in support of their position. Often environmental

or other special interest groups distribute incomplete or flawed information to their constituents in order to stir the public into action, usually in opposition to a proposed oil and gas activity. Nevertheless, opportunities for public participation in state and federal decisions related to oil and gas activities are increasing due to expanded public notice processes. It is important to note that in order to carry out activities such as drilling, plugging, plant or pipeline construction, water injection, access and operations that result in emissions, permits are required from a regulating agency. Incorporated into many of the statutes and regulations related to these permits, particularly on federal land, is a waiting and posting period where the public may view the request and comment on the proposed action. An application for a permit is a proposed action. In the case of certain other activities, such as water injection, a notice must be published in the local newspaper. Other areas where the public sector is becoming an influential participant is in any activity that might have the potential to result in surface disturbance or impacts to surface or ground water, air quality, noise, visual quality, and wildlife including threatened or endangered species.

Many public interest and environmental groups have ample funds to hire employees to research and track oil and gas activities. These include nationwide groups such as the Sierra Club, Wilderness Society, Forest Guardians, National Wildlife Federation and the Nature Conservancy. Many of these large organizations have field offices that are effective in organizing local public participation in the public comment process. Hence, single use organizations are able to substantially influence broad public perceptions through the initial efforts of a few highly organized individuals. The increasing ability to quickly share information and mobilize support for their position has and will continue to result in widening public influence on oil and gas operations.

While public participation is not new, its impact is ever increasing. Whether this is positive or negative is often hotly debated. For example, industry is held to higher operating standards than in the past. However, these same public actions may also help the industry improve its public image. Regardless of the fact that industry has often improved its operating procedures through voluntary and regulatory processes, these improvements generally go unnoticed until some event becomes an "issue". This creates an opportunity for industry to showcase, to the general public and industry opponents, advances in technology and strides made in mitigation of impacts to sensitive resource values.

Legislation often directly impacts oil and gas operations. Legislation may be proposed by industry itself, business groups, special interest groups, regulatory entities, or any other interested group, company or individual. Of course, a critical element of obtaining new legislation or changes to existing legislation is the ability to find a legislator willing to consider the proposal. Legislation can pass as a law that requires action on industry's part, requires action by others that affects the industry, directs regulations to be promulgated or directs a study to be conducted with the subsequent report to include specific recommendations. All of these actions include public hearings at which public interest groups have an opportunity to influence the final piece of legislation, which could negatively impact industry operations. Only a few possible outcomes of legislative action are cited. Benefits or hindrances stemming from new legislation are limited only by the creativity and perseverance of the "interested parties".

Proposed legislation places the issue before the public thereby instigating public opinion and attitudes. Even if the proposed legislation does not proceed to enactment, the fact remains that an issue was brought forth and it is very possible it will be brought forth again. Those who fail to track important legislative activities and remain unaware of a critical issue at its inception and its progress through the system will undoubtedly be plagued with unwanted and unnecessary impacts on their businesses.

Statutes currently in place having significant impact on the oil and gas business include the Endangered Species Act (ESA), Clean Water Act (CWA), Clean Air Act (CAA), National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Antiquities Act, Federal Land and Policy Management Act (FLPMA), National Forest Management Act (NFMA), Mineral Leasing Act (MLA), Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), Royalty Fairness Act, along with a host of others addressing environmental justice, access to public lands and minerals, private property rights and employment requirements. The operating and reporting requirements included in legislation and associated regulation impact every aspect of the oil and gas business.

Regulations, often required as a result of legislation, can have a substantial impact on oil and gas operations. Regulations typically direct how operations must be conducted and can increase administrative burdens or impose fines and actions for non-compliance. They can even force a halt of operations in extreme cases. On the positive side regulations can protect a project proponent from encroachment by another operator, balance production, and enforce a degree of fairness in competition. They can also be promulgated due to an identified need, public pressure, or special interest.

Industry has in the past sought new regulations to better self regulate, address specifically identified problems and to affect proactive measures when potential future concerns and impacts are identified. Regulatory categories having a significant impact on the oil and gas industry include state and federal rules – both specific and non-specific to the oil and gas industry, as well as zoning and other regional, county and city government regulations. Industry is increasingly confronted with regional, county and city entities enacting and trying to enforce their own regulations on oil and gas operations. The issue of jurisdiction has already been tested. Industry can expect to repeatedly face similar challenges.

There has been considerable discussion within agencies and industry about the need to reduce or streamline existing regulations including the elimination of unnecessary and obsolete regulations. While some progress has been made, new regulations often amplify details to higher levels. One only needs to compare the size and complexity of the federal rewrite of Section 43 Code of Federal Regulations Part 3100 pertaining to oil and gas or compare the bulk of the current state rules or any federal Environmental Impact Statement and Resource Management Plan to prior rules to recognize that they are all more detailed and complex with added provisions. Good intentions aside, the trend is toward more rules with increasing detail. Much of this is driven by the public sector as previously noted.

There are differences of opinion about the need and effectiveness of all of these new, comprehensive rules. Some of the rules have in fact identified problems and provide a menu of reasonable solutions. This can be helpful; however, broadly prescribed or specific solutions may not fit every situation. The opportunity to creatively address specific problems on-site in a timely manner must be preserved, especially where certain prescribed solutions have the effect of driving up operating costs or where the

solution is not a standard operating practice. The cliché “one size does not fit all” applies to the regulatory arena.

Some operators advocate elimination of all regulations. This must be considered “wishful thinking” because, in reality, it will not happen. However, the increasingly detailed regulations currently being proposed or adopted are often considered excessive. Those involved in the issue management process have the opportunity to influence the outcome of each regulatory rule making action.

Upon implementation of a new rule, an operator usually must meet new compliance obligations. If the operator already conducts his operations in a manner consistent with the rule, there is minimal impact. However, required changes in operating practices can increase operating costs, impacting individual job economics and the company’s bottom line. Many new regulations require additional reporting or documentation. This increases the administrative burden and the overhead cost. New regulations or changes to existing regulations rarely result in cost reductions. A couple of exceptions are changes in testing and reporting associated with marginal wells.

Failure to comply with these new rules can result in an enforcement action by the regulatory agency. Enforcement actions may even include a trip through the legal system. Enforcement actions include letters demanding compliance, fines, loss of the right to produce and sell the minerals and even jail time. Fines can be a set amount or accumulate at a rate of thousands of dollars per day per incident until the non-compliance is corrected.

Reporting requirements are a significant issue management action item. Production reporting, payment of taxes and royalties, permit applications, reports of actions taken, safety concerns, air quality reports and the multitude of other reporting requirements have resulted in an increasing burden on all operators. Most reporting requirements are also time sensitive. Permits must be obtained before work commences. Production reports must be filed within a specified number of days from the end of the month of production. Annual reports, such as for air emissions, may be due on a staggered basis. All of this takes time and planning. Changes to the regulations can have a significant impact on the administrative burden. Moreover, now that many operators rely on computers for much of their reporting, even minor changes in the requirements can result in a significant cost to change the computer programming. Failure to participate in the rulemaking process can adversely affect not only your own business but industry’s financial health, as well.

Production reporting and the marketing of that production are receiving increased attention from states and the federal government who want to maximize their income from oil and gas minerals. Therefore, the determination of the sales point, price, cost of delivery, overhead and all other associated costs are often subject to increasing scrutiny and legal challenge.

Private property rights and the relationship to the mineral estate are an issue being raised more frequently. Landowners who do not also own the mineral estate are questioning the right of the mineral lessee to the use of the surface. Some states have proposed and even adopted legislation and regulations in an attempt to address concerns on both sides. Industry can expect to deal with this sensitive issue

more frequently as more and more land is subdivided. This is also a prime example of where the actions of one member of industry will have significant impact on the future actions of others.

Co-owner and royalty interest issues continue to be of concern. These issues are not limited to the federal and state governments that want to ensure they receive their fair share of mineral revenues; they also include private royalty interests. Accounting practices are regularly reviewed and audits are conducted to ensure proper payments are made. Interest owners' participation goes well beyond the monthly check or bill. Activities such as unitization, pooling, secondary recovery, and commingling may often require consent from both co-owners and royalty owners. Notice requirements and the required percentage necessary to proceed are also burgeoning issues. As royalty interests are increasingly fragmented through a division of estates and the sale of interests, the administrative burden to track these interests and secure approval becomes more difficult. A division of interest does not diminish the rights of each interest owner. Operators must consider opportunities to better manage these interests and even consider efforts to consolidate interests.

### **Need For Involvement**

Why should industry and you, specifically, be involved in the issue management process? All of the issues briefly discussed above affect industry operations regardless the size of the company. It should be recognized that potential issues affecting your business are countless, going beyond those discussed here. The choices made regarding involvement are economic decisions, directly or indirectly. It is also important to note that these issues not only impact operators, they also impact all of the service companies and contractors associated with the industry.

Most operators have chosen to be principally reactive to new legislative and regulatory proposals and depend on other operators and the trade associations to represent their interests, regardless of whether or not they are members of the associations. This is clearly evident if one checks the public record to determine who has commented on proposed action. Historically, this has worked fairly well. However, the magnitude of changes that currently face the industry, the diminished size of many companies and the narrowed focus of individual company operations have greatly changed how issues are addressed and the success of issue management activities. This is particularly true in light of the diminished representation of industry interests.

Many larger companies, both majors and independents, have maintained a significant presence in the trade associations. Working committees are primarily comprised of representatives from these companies. Participation may be a part of the representative's job as an engineer or environmental coordinator or production supervisor. In some cases, issue management is the individual's job. The position may be considered to be part of public affairs, regulatory or external affairs functions. The level of participation of a company often depends on whether or not it has someone, internal or external, dedicated to identifying and managing issues on its behalf.

As companies consolidate and the focus of their interests changes, fewer people are available to represent industry directly and through the trade associations. If a company has relinquished most or all of its mineral interest in a state, the benefit of being active in that state's issues becomes much more limited. The same can be said for issues with nationwide implications. Who then manages these issues?

The immediate answer might be the trade association. However, the trade association is only as strong and as active as its members, those willing to participate in the process. Participation also means membership and funding. If members are not active, the message to the association leadership may indicate a lack of industry interest in the issue. If there is no established interest, time will not be spent working the issue. Trade associations, like companies, must prioritize their efforts.

Representatives of companies are not paid to be altruistic. Their job is to work out the best deal for their company or client. If it protects your interest as well, you are a winner. Larger companies have more money to spend on addressing issues and complying with the rules. They also get much more adverse media exposure when something goes wrong. Negotiating requirements or actions that they can easily meet may be costly to smaller companies. That is why it is critical for all companies to participate in the issue management process.

It is not uncommon to hear oil and gas industry personnel complain that they did not know about a rule change or that legislation was being proposed until they must comply with it. Failure to be proactive and part of the process could result in a company having to comply with a new rule or regulation they might have been able to successfully modify.

In some cases, participation in the process is necessary to retain the right to appeal implementation of a decision, new operating requirement, access restrictions or a non-compliance assessment. One area this is seen in is the development of federal land management plans. Federal land management plans dictate where and how industry is able to operate on federal lands in accordance with lease stipulations, operating standards and guidelines, and the use of mitigation measures on both Bureau of Land Management and Forest Service management units. An operator has legal standing to challenge an onerous planning decision only if he was involved in the land management planning process. Even though an operator retains the right to challenge a specific requirement placed on a specific project, the opportunity to achieve a favorable resolution may have been diminished or lost if the requirement has been incorporated into the provisions of an adopted land management plan. Participation in the planning process allows industry as a whole and individuals to influence the decisions being made and to protect their interests before binding decisions are made.

### **How Do I Become Involved**

How can industry become more involved in the issue management process? Issue management begins with tracking regulatory and legislative actions; reading newspapers, industry newsletters and trade journals to know what is new, what is not working, who is doing what; being sensitive to public concerns; identifying regulatory trends in other parts of the country and other industries. Only by staying abreast of the news and issues can industry successfully manage issues that can affect its short- and long-term opportunities and operations.

Principally, companies must decide to dedicate one or more company employees to address issue management or hire a consultant. Participation in local, regional, state and national trade associations will broaden your exposure to issues, others' opinions and opportunities to influence the issues. Trade associations, by virtue of the fact that they represent a multitude of members, can offer greater influence

to change onerous legislative or regulatory proposals than can a single company. Clearly, issue management is much more than knowing your local elected official.

Once legislation or rules are proposed, opportunities for active participation arise. Often preliminary discussions are limited to only a few representatives from industry. It is expected that these representatives will share the information with others. When rules and legislation are under consideration, the first call for industry representation often goes to the trade associations. They are asked to send one or more individuals to a meeting to discuss the issue. This information is then shared with the association members and possibly with other associations. If you are not a member, you may not receive critical information. As an issue develops, one or more industry committees are either formed or adopt the issue to develop a strategy and a position. This position then becomes the position of the association, assuming agreement can be reached. Generally, the association position is a compromise by the working members. If there is strong disagreement and a compromise can not be worked out the association may have to not present a position.

Trade associations are the focus for development of industry positions. Moreover, they are sought out by state and federal agencies for industry's input on specific proposals. Participation in associations can be lucrative to a company's operations and interests and offers considerable networking opportunities associated with the issue management process that are extremely helpful in minimizing surprises and offer help in optimizing opportunities to influence the outcome of all issues. Companies may still depend on trade associations to represent them. However, if company representatives are knowledgeable and actively participate in the process, they will be better prepared to protect their interests if and when they differ from those members who participate on the committees developing association positions on issues. This is also an ideal setting in which to try to influence others in the industry without it being a public event. Trade association participation also provides a large degree of anonymity for a company that wishes to stay clear of the public spotlight.

Typically, industry can rely upon associations to notify them when an issue is breaking. Members often bring issues to the association for action, taking advantage of the influence an association can bring to bear on state and federal agencies, even Congress, to resolve perceived conflicts. Nonetheless, trade associations must adopt the consensus opinions of its members. If a company chooses not to be a member of an association, it is possible its specific interests could be compromised when association policy decisions are made. These policy decisions provide the framework for how an association takes proactive action on an issue.

Despite involvement in an association(s), individuals and companies are encouraged to submit their own comments and positions on important issues. This also protects an entity's right to challenge regulations on its own behalf, not just through an association. Submission of company comments also provides the company with an opportunity to comment on items it does not necessarily agree with in terms of the association's position or that may have been left out due to a lack of consensus. Support of the association position is always welcome. The more comments on a proposal, particularly when it differs from the regulatory agency position, the more likely the concerns will be addressed.

One must not be lulled into a false sense of security that trade associations are the only avenue in the initial stages of issue development. It is not uncommon for individuals to approach a regulatory agency or legislator with a proposal. The issue may have gained a considerable amount of momentum before it becomes public knowledge. Outside interests, such as the environmental groups, have no obligation to share their issues or concerns and resulting plans of action with the oil and gas industry.

Obviously, issue management can be time consuming since there is a considerable amount of necessary reading is required. Also, research must be done on issues to understand the legal, public policy, regulatory, business and operating ramifications. Meetings are typically a significant part of active issue management, which often includes travel. The use of communication tools such as facsimiles, conference calls and email has augmented the sharing of information and participation without travel. Needless to say, face to face discussions are often best when industry consensus is being sought and when lengthy discussions are necessary to achieve an acceptable industry position on an issue or a variety of issues.

### **Conclusion**

Proactive problem solving and crisis management has become a critically essential component of the oil and gas industry's day-to-day operations because there are fewer companies and individuals participating in the process. Furthermore, public interest groups have become much more powerful in negatively influencing state and federal actions relating to oil and gas activities over the last decade. Historically, the oil and gas industry has attempted to maintain a relatively low profile on many important issues in an effort to improve its public image. It is more crucial than ever for industry as a whole to amplify its proactive role in the legislative and regulatory arenas. Only by expanding its role in issue management will industry be successful in staving off the plethora of onerous changes promoted by public interest groups, state and federal agencies, and even Congress, in how and where oil and gas operations may be conducted. Only by broadening its role will industry be successful in reducing the ever-increasing costs of operating on private, state and federal lands.

Clearly, issue management choices are business decisions that impact the financial health of your company. Neither proactive nor reactive issue management is cost free. A proactive position requires personnel and associated costs, either internally or externally, funding of the trade associations and funding of special studies to successfully influence the manner in which oil and gas activities are managed and regulated. Whereas, a reactive approach consists of seeking changes to actions already influenced and created by others and absorbing the financial costs associated with them. Obviously, it is industry's choice as to the approach it is willing to take to manage issues affecting its opportunities. The only way for industry to successfully influence activities is to take a proactive role in issue management.

Note: A list of current issues will be handed out at the time of the presentation.