



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Ryan Sitton
Commissioner Wayne Christian

FROM: Natalie Dubiel, Attorney *N. Dubiel*
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel *AS*

DATE: January 23, 2018

SUBJECT: Adoption of amendments to 16 Tex. Admin. Code §18.1, §18.4 and §18.11

Attached is Staff's recommendation to adopt amendments to 16 Tex. Admin. Code §18.1, §18.4, and §18.11. The recommended amendment to §18.1 removes a reference to "intrastate" pipelines to clarify that, pursuant to House Bill 1818 (85th Legislature, 2017) the Commission now has damage prevention authority over interstate pipelines as well as intrastate pipelines. Additionally, Staff recommends amendments to §18.4 and §18.11 to require an excavator that damages a pipeline to notify the pipeline operator at the earliest practical moment, but not later than one hour, after the incident. Third, Staff recommends an amendment to §18.11 to requires an excavator to report any release of product from a damaged pipeline by calling 911. Finally, Staff recommends an amendment to §18.11 to allow excavators and operators 30 days after a damage incident to submit information regarding the incident to the Commission. Currently parties only have 10 days.

On November 7, 2017, the Commission approved the publication of the proposed amendments in the Texas Register for a 30-day comment period, which ended on January 2, 2018. The Commission received three comments on the proposal, one from an individual and two from associations. The individual expressed support for the requirement to notify 911, and the Texas Pipeline Safety Coalition also expressed support for the amendments. The Texas Pipeline Association suggested a change to §18.11(c), regarding the requirement to call 911 in certain instances, to exempt pipelines located in areas under the exclusive control of the pipeline operator; however, TPA's suggested change to §18.11(c) is not applicable to the proposed amendments because an underground facility as described in TPA's comment is not subject to Chapter 18.

Staff recommends that the Commission adopt the amendments to §18.1, §18.4, and §18.11 without changes to the proposed text published in the November 24, 2017 issue of the *Texas Register* (42 TexReg 6592).

cc: Wei Wang, Interim Executive Director
Kari French, Director, Oversight and Safety Division
Jim Osterhaus, Director of Pipeline Safety, Oversight and Safety Division

1 The Railroad Commission of Texas (Commission) adopts amendments to §18.1, relating to
2 Scope, Applicability, and General Provisions, to clarify the Commission's authority over interstate
3 pipelines. The Commission also adopts amendments to §18.4 and §18.11, relating to Excavator
4 Obligation to Avoid Damage to Underground Pipelines and Reporting Requirements, respectively, to
5 implement program requirements imposed by the Pipeline and Hazardous Materials Safety
6 Administration (PHMSA). The Commission adopts the amendments without changes to the proposed
7 text as published in the November 24, 2017, issue of the *Texas Register* (42 TexReg 6592).

8 House Bill 1818 (HB 1818), enacted by the 85th Legislature (Regular Session, 2017), amended
9 §117.012 of the Natural Resources Code, §756.126 of the Health and Safety Code, and §121.201 of the
10 Utilities Code to provide the Commission damage prevention authority over interstate pipelines. Thus, the
11 adopted amendments to §18.1 remove language in subsection (a) limiting the scope of Chapter 18 to
12 intrastate pipelines. The amendments also include minor corrections to the language in §18.1.

13 PHMSA recently conducted an evaluation of Texas's damage prevention enforcement program
14 pursuant to 49 United States Code (USC) §60114 and 49 Code of Federal Regulations (CFR) Part 198,
15 Subpart D. The evaluation criteria include whether a state's damage prevention program requires the
16 following when damage to a pipeline occurs: (1) the excavator to report damage to the operator at the
17 earliest practical moment; and (2) the excavator to call 911 if a release of product occurs. Therefore, the
18 Commission adopts the amendments to §18.4 and §18.11 to comply with PHMSA's standards.

19 In addition, the adopted amendments to §18.11 include extending the deadline for reporting a
20 damage incident from 10 days after an incident to 30 days after an incident. Extending the deadline will
21 allow parties time to conduct a thorough investigation of an incident.

22 The Commission received three comments on the proposal, one from an individual and two from
23 associations. The individual expressed support for the requirement to notify 911. The Texas Pipeline
24 Safety Coalition also expressed support for the amendments, stating that "the greatest external threat to
25 the safety and integrity of our industry's underground facilities is that of excavation damage." The
26 Commission thanks these two commenters for their support of the amendments.

1 The Texas Pipeline Association (TPA) also supported the Commission's efforts to implement the
2 new authority granted by the Legislature related to interstate pipelines, to comply with Congressional
3 mandates on notifications and federal requirements for damage notifications. TPA suggested a change to
4 §18.11(c), regarding the requirement to call 911 in certain instances, to exempt pipelines located in areas
5 under the exclusive control of the pipeline operator. Most of these types of facility operators have
6 internal emergency response teams that are trained for handling the specific substances that are present in
7 such facilities. The Occupational Safety and Health Administration requires chemical safety management
8 programs at such facilities including specific provisions on the management of release responses. Rather
9 than mandate a call to 911 in such situations, TPA suggests that the Commission provide an exception to
10 the requirement to call 911 for releases caused by pipeline damage at locations where a pipeline operator
11 has its own emergency response personnel.

12 The Commission disagrees with TPA's suggested change to §18.11(c) because an underground
13 facility as described in TPA's comment is not subject to Chapter 18. An underground facility operated by
14 the owner of a secured facility and located entirely within the secured facility is exempt under the Texas
15 Utilities Code, §251.003, adopted by reference in §18.1(d)(1).

16 The Commission adopts the amendments to §§18.1, 18.4, and 18.11 pursuant to Texas Natural
17 Resources Code, §117.012, and Texas Utilities Code, §121.201, which authorize the Commission to
18 adopt rules that include safety standards related to the prevention of damage to interstate and intrastate
19 gas, hazardous liquids or carbon dioxide pipeline facilities resulting from the movement of earth by a
20 person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16
21 inches. In addition, the Commission proposes the amendments pursuant to Texas Health and Safety Code,
22 §756.126, which authorizes the Commission to adopt and enforce safety rules prescribing standards and
23 best practices, including those described by 49 U.S.C. §6105 et. seq., relating to the prevention of damage
24 by a person to a facility under the jurisdiction of the Commission, including an interstate or intrastate
25 pipeline facility.

1 Statutory authority: Texas Natural Resources Code §117.012, Texas Utilities Code §121.201, and
2 Texas Health and Safety Code §756.126.

3 Cross-reference to statute: Texas Natural Resources Code §117.012; Texas Utilities Code
4 §121.201, and Texas Health and Safety Code §756.126.

5 §18.1. Scope, Applicability, and General Provisions.

6 (a) This chapter implements the authority of the Railroad Commission of Texas (Commission)
7 under Texas Natural Resources Code, §117.012, [and] Texas Utilities Code, §121.201 [~~as amended by~~
8 ~~House Bill 2161, Acts 2005, 79th Leg., R.S., ch. 267, §§6 and 13, eff. Sept. 1, 2005~~], and [under] Texas
9 Health and Safety Code, [~~§756.106 (as added by Senate Bill 9, Acts 2005, 79th Leg., R. S., ch. 1337, §19,~~
10 ~~and editorially renumbered as Health and Safety Code,~~] §756.126[)]. Except as provided in subsection (d)
11 of this section, this chapter applies to all persons engaged in or preparing to engage in the movement of
12 earth in the vicinity of an [~~intrastate~~] underground pipeline containing flammable, toxic, or corrosive gas,
13 a hazardous liquid, or carbon dioxide.

14 (b) The requirements of this chapter are based on the presumption that an excavator will notify a
15 notification center pursuant to, and that a pipeline operator will respond in accordance with, the
16 provisions of Texas Utilities Code, Chapter 251, and the requirements of the notification center. However,
17 compliance with the provisions of Texas Utilities Code, Chapter 251, and the requirements of a
18 notification center does not necessarily constitute compliance with the requirements of this chapter.

19 (c) Persons that are exempt from the provisions of Texas Utilities Code, Chapter 251, are required
20 to comply with this chapter, unless the person is exempt under the subsection (d) of this section.

21 (d) This chapter does not apply to:

22 (1) the exemptions in Texas Utilities Code, §251.003;

23 (2) the movement of earth that does not exceed a depth of 16 inches;

24 (3) surface mining operations;

25 (4) the following activities when performed by an employee of the Texas Department of
26 Transportation (TxDOT) [~~TxDOT~~] within TxDOT right-of-way:

- 1 (A) sampling and repair of pavement, base, and subgrade;
- 2 (B) repair of roadway embankment adjacent to pavement structure;
- 3 (C) reshaping of unpaved shoulders and drop-offs;
- 4 (D) installation and maintenance of guardrails, cable barriers, delineators, vehicle
- 5 attenuators, sign posts, mailboxes, and cables for traffic signals and luminaries;
- 6 (E) cleaning of ditches; and
- 7 (F) removal of silt from culverts; or
- 8 (5) hand digging by an employee or contractor of TxDOT for TxDOT's archeological
- 9 program.

10 (e) This chapter also applies to movement of earth by tillage that exceeds a depth of 16 inches.

11 (f) Unless otherwise specified, all time periods used in this chapter shall be calculated from the

12 time the original notification is given to the notification center.

13 (g) Unless otherwise specified, all time periods that are stated in days shall mean working days.

14 (h) Unless an excavator and an operator otherwise expressly agree in accordance with the

15 requirements set forth in §18.3 of this title, relating to Excavator Notice to Notification Center, the life of

16 a line locate ticket shall be 14 days.

17 (i) Unless otherwise expressly stated in this chapter, each excavator and each operator shall retain

18 required records for at least four years. At a minimum, each operator and each excavator shall retain

19 locate tickets and positive response notifications. Retention at a notification center is an acceptable

20 method of retention for locate tickets.

21 §18.4. Excavator Obligation to Avoid Damage to Underground Pipelines.

22 (a) An excavator shall comply with the requirements of §18.3 of this title, relating to Excavator

23 Notice to Notification Center. An excavator shall also comply with the requirements of Texas Health &

24 Safety Code, Subchapter H, relating to Construction Affecting Pipeline Easements and Rights-of-Way,

25 and shall plan an excavation in such a manner as to avoid damage to and minimize interference with all

1 underground pipelines in the vicinity of the excavation area and shall take all reasonable steps to protect
2 underground pipelines from damage.

3 (b) An excavator shall wait the time required by Texas Utilities Code, Chapter 251, before
4 beginning excavation.

5 (c) Prior to excavation, an excavator shall confirm that a copy of a valid locate ticket for the
6 location is in the possession of the excavator's designated representative and can be obtained from the
7 representative or can be provided within one hour of a request from the operator or the Commission.

8 (d) Prior to excavation, an excavator shall verify that it is at the correct location as specified on
9 the locate ticket; shall verify white-lining; and, to the best of the excavator's ability, shall make a visual
10 check for any unmarked underground pipelines. Checking for unmarked underground pipelines includes,
11 but is not limited to, looking for additional pipeline line markers, such as painted fence post-type markers,
12 aboveground pipeline valves, meter sets, regulator stations, or rectifier units.

13 (e) An excavator shall not begin excavating until a second notice is given to the notification
14 center for the area if:

15 (1) the excavator has knowledge of the existence of an underground pipeline and has
16 received an "all clear" or a "no conflict" response from an operator;

17 (2) the excavator observes clear evidence (such as a line marker or an above-ground
18 fixture) of the presence of an unmarked underground pipeline in the area of the proposed excavation, and
19 has received an "all clear" or a "no conflict" response from an operator;

20 (3) there is no positive response for the excavation area; or

21 (4) the positive response is unclear or obviously erroneous (for example, for a different
22 location or for a different type of underground facility).

23 (f) If an excavator has given a second notice in accordance with this section and there is no
24 positive response within four hours, the excavator may begin excavating.

1 (g) An excavator shall protect and preserve locate markings from the time the excavator begins
2 work until markings are no longer required for the proper and safe excavation in the vicinity of all
3 underground pipelines.

4 (h) Each excavator that damages an underground pipeline shall notify the operator of the damage
5 through the notification center at the earliest practical moment [~~immediately~~] but not later than one hour
6 [~~two hours~~] following the damage incident. An excavator that damages an underground pipeline shall not
7 cover the exposed pipeline without approval of the operator.

8 §18.11. Reporting Requirements.

9 (a) Each operator of an underground pipeline shall report to the Commission all damage to its
10 pipelines caused by an excavator. Within 30 [~~10~~] days of the damage incident or of the operator's actual
11 knowledge of the damage incident, an operator shall submit the information to the Commission through
12 TDRF, which may be accessed through the Commission's online reporting system using its assigned
13 operator identification code.

14 (b) Each excavator that damages an underground pipeline shall notify the operator of the damage
15 through the notification center at the earliest practical moment [~~immediately~~] but not later than one hour
16 [~~two hours~~] following the damage incident. The excavator shall also submit report of the damage incident
17 to the Commission using TDRF, which may be accessed through the Commission's online reporting
18 system and the excavator sign-in, within 30 [~~10~~] days of the incident.

19 (c) If damage to a pipeline from excavation activity causes the release of any flammable, toxic, or
20 corrosive gas, hazardous liquid, or carbon dioxide from the pipeline, the excavator shall promptly report
21 the release to appropriate emergency response authorities by calling 911.

22 (d) [~~(e)~~] Each excavator that makes an additional call to the notification center pursuant to
23 §18.4(e) of this title, relating to Excavator Obligation to Avoid Damage to Underground Pipelines,
24 because the excavator did not receive a positive response, shall report that fact to the Commission through
25 TDRF. An excavator shall also report an operator's failure to provide a positive response to a second call
26 to the Commission through TDRF.

1 (e) [(d)] An emergency response official, a member of the general public, or another person
2 aware of damage to an underground pipeline is encouraged to submit an incident form using TDRF,
3 which can be accessed through the Commission's online reporting system. Entries can be made through
4 the general public or emergency response official sign-in.

5 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and
6 found to be a valid exercise of the agency's legal authority.

7 Issued in Austin, Texas, on January 23, 2018.

8 Filed with the Office of the Secretary of State on January 23, 2018.

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Christi Craddick, Chairman

Ryan Sitton
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ATTEST:

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