



CITY OF AMARILLO

LEGAL DEPARTMENT

March 14, 2014

Railroad Commission of Texas
Austin TX
Via: David.Ferguson@rrc.state.tx.us

**RE: Comment on Discussion draft of 16 TAC, ch. 18;
Underground Pipeline Damage Prevention**

To the Honorable Commissioners and Staff:

The City of Amarillo appreciates this opportunity to comment on the referenced amendments now pending at your agency.

The City of Amarillo shares your concern for pipeline safety and supports measures that promote safety for the gas industry while also acknowledging the real challenges of crowded public rights of way managed by municipalities. We believe that the interests of all parties can be fairly balanced and accrue the benefits sought by the proposal.

We believe the comments filed by the City of Denton, Texas accurately describe both our municipal concerns and, appropriate amendments that give needed balance to the draft rules. In the interest of brevity, the City of Amarillo adopts by this reference the comments and concerns filed by the City of Denton in this matter, as though we had stated each one verbatim here. For your convenience a copy of the Denton comments are enclosed with this letter, with emphasis added to the key thoughts.

We reserve the right to make further comments in the course of this proceeding as opportunity is allowed.

Thank you for considering our concerns.

Sincerely,

Marcus W. Norris
City Attorney

cc: Sen. Kel Seliger
Rep. Four Price
Rep. John Smithee

City of Denton comments on the proposed new Railroad Commission (RRC) rule changes to Chapter 18

The City's goal is to furnish each employee a place of employment which is free of recognized hazards that are causing or are likely to cause death or serious physical harm to our employees. The City supports any safety and health initiative that assists with the City achieving this goal. *[emphasis added by Amarillo]*

1. ***TxDOT is exempt from Chapter 18. All municipalities be exempt as well. This law creates an undue financial burden on municipalities performing routine maintenance on infrastructure.*** Municipalities provide essential services to their citizens that and are not profit generating entities. Therefore, municipalities should have the same exemptions that TxDOT has.
2. ***The new 12" rule is inconsistent with 49 CFR 192.361 Subpart H which requires all gas lines to have 18" of cover.*** Referring back to number 1, municipalities cannot soft dig, and/or hand dig, pot hole, street milling, or street repair operations. This should be exempt from the chapter as well. Stricter rules should be in place to ensure that gas pipelines do not interfere with existing public utilities such as water, electricity, and waste water collection lines.
3. Section 18.1(l)(4) provides for a 6" variance in the location of a tracer wire for pipeline operators. ***There should be no variance.*** Operators should know how to mark their lines accurately, within the centerline of the pipeline (per American Public Works Association (APWA) and the Common Ground Practices (CGA) best practices), so that excavators can avoid the lines. There is no 6" variance for other utilities. The proposal basically increases the tolerance zone to 24" on either side of a mark, in essence creating a 48" tolerance zone. ***Many public easements are only 48" wide, thus, the RRC is effectively stating that no mechanized equipment can be used in a public easement.*** Again, there should be stricter rules for non-public utilities for minimal intrusion into public utility infrastructure (water, sewer, and electricity).
4. Under 18.2(19) it states the movement of earth now includes "probing." The City of Denton utilizes hand probes to determine the location of underground utilities. ***In essence the RRC is creating a potential fine for utilizing any soft digging technique*** (hand shovel or, now, hand probes) to determine the location of a pipeline. ***This contradicts what the RRC is asking excavators to do elsewhere*** in the proposal.
5. 18.1(h) defines the life of a ticket to be 14 *working* days. The RRC creates confusion regarding the old rule and, extends the life of a ticket well beyond 14 days, depending on how many legal holidays and weekends there are in this 14 day range. Most excavators are not aware of holidays such as LBJ Day, Confederate Hero Day, San Jacinto Day and Veterans Day. ***The RRC should use 21 calendar days.***
6. Rule 18.4(4)(e)(1) states the excavator may not continue work until the operator identifies and marks their pipeline. Municipalities, other governmental entities, and contractors are generally under strict time constraints during excavation and construction. This creates an undue hardship on the excavator. ***The rule should allow the excavator to continue but shall utilize soft digging techniques to excavate around the pipeline.***

Finally, the RRC fines over the years have increased from \$50.00 to \$1,250.00. There seems to be no limit and what purpose they serve. Chapter 18 was initially created to enhance the safety of operators and excavators, but it now appears it is becoming a source of revenue for the State of Texas. If the RRC's true purpose is to enhance worker and pipeline safety, then ***we suggest that you require safety training or investments in equipment, in lieu of fines.***