



Texas Pipeline Association

Thure Cannon
President

**RAILROAD COMMISSION OF TEXAS
PIPELINE SAFETY DIVISION**

**PROPOSED AMENDMENTS TO 16 §
TEX. ADMIN. CODE, CHAPTER 18, §
RELATING TO UNDERGROUND §
PIPELINE DAMAGE PREVENTION §**

**SECOND SET OF INFORMAL COMMENTS OF THE TEXAS PIPELINE
ASSOCIATION ON PROPOSED AMENDMENTS TO 16 TEX. ADMIN. CODE,
CHAPTER 18, RELATING TO UNDERGROUND PIPELINE DAMAGE
PREVENTION**

The Texas Pipeline Association (TPA) appreciates the opportunity to submit this second set of informal comments to the Railroad Commission of Texas (Commission) on the Proposed Amendments to 16 TEX. ADMIN. CODE, Chapter 18 relating to Underground Pipeline Damage Prevention. TPA also appreciates the opportunity that the Commission has provided for two workshops with stakeholders and for informal comments on these proposed rules. TPA and its members consider underground pipeline damage prevention a top priority and desire to work with the Commission to advance underground pipeline damage prevention for gas and hazardous liquid pipelines. Damage to underground pipelines from excavation remains one of the top causes of pipeline incidents in the State of Texas, and clear rules for underground pipeline operators and excavators are critical to addressing this problem and reducing the risk to the public.

TPA consists of 48 gas and hazardous liquid pipeline operators within the State of Texas. TPA's members operate a majority of the natural gas and hazardous liquids pipeline mileage within the State of Texas. TPA's members will be directly impacted by the proposed changes to the underground pipeline damage prevention rules both as pipeline operators and as excavators.

General Comments

As noted in its first set of informal comments on the proposed revisions, TPA supports the Commission's efforts to enhance pipeline damage prevention in Texas. These proposed amendments provide an opportunity for significant advancement in this critical

safety area as well as an opportunity to revise the Commission's regulations in light of the Pipeline Safety, Regulatory Certainty, and Jobs Creation Act of 2011.

In TPA's opinion, underground pipeline damage prevention is the single most important pipeline safety issue facing regulators and industry and the area with the greatest potential to achieve the greatest benefit for public safety. Because of that potential and the significant time and expense involved in rulemakings, it is essential that the Commission make as many improvements as possible in Chapter 18 at this time. The Commission, non-pipeline industry stakeholders and the pipeline industry have invested over a year in the current effort. It is in everyone's best interest to be forward-thinking in this effort and adopt revisions that will keep Texas in its historic position as a national leader in pipeline safety.

TPA appreciates the Commission's acceptance of several suggestions made in the first round of informal comments. Such changes as eliminating the exemption for oil and gas production facilities and revising the definition of "movement of earth" related to probing are definite moves to enhance safety and a good start towards addressing some practical issues in the locating process. The removal of the unnecessary definition of "stake" and the partial clarification of "tolerance zone" assist in providing needed clarity to the Chapter.

Although TPA supports the proposed amendments in general, it believes that a number of additional revisions to the proposed amendments will enhance their clarity and ease of use by excavators and operators. Further, some additional revisions will address some of the issues that have arisen since the original adoption of Chapter 18. To achieve these goals, TPA offers the following general comments as well as specific comments on portions of the proposed amendments.

TPA believes there are three general revisions that must be made in Chapter 18. These revisions are 1) elimination of most exemptions, 2) streamlining of the Chapter by consolidating definitions and eliminating duplicate provisions and 3) clarifying the Commission's enforcement powers. Addressing these revisions will strengthen the Chapter and advance public safety.

Exemptions

As noted at the second workshop, exemptions remain an issue of significant interest to all stakeholders. The request by AT&T for a total exemption or an exemption similar to the proposed exemption for the Texas Department of Transportation (TxDOT) when other stakeholders have requested elimination of the TxDOT exemption highlights the conflicting positions of the stakeholders. The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Reauthorization Act), mandates the elimination of exemptions for state, county and local agencies. Compliance with this mandate is needed to preserve the full level of federal funding for the Texas pipeline safety program and to assure continued findings by the Pipeline and hazardous materials Safety Administration (PHMSA) that the Commission's program for damage prevention is adequate.

AT&T's request for an exemption is grounded on a misreading of the statutory provisions concerning telecommunications entities and excavation damage prevention enforcement. A proper reading of all statutory provisions governing enforcement of damage prevention regulations and their legislative history clearly establishes the authority of the Commission to enforce excavation damage prevention standards on telecommunication providers.

TPA understands that the TxDOT exemption is based on a belief that the exempted activities are needed to respond to public safety concerns on the State highways and roads. All of the activities described in the proposed TxDOT exemption involve planned work on the roadways which could easily be scheduled to accommodate one-call notifications and subsequent line locating. In those instances when a highway emergency arises and work must be done immediately to protect the public safety, the proposed emergency locate provisions in the proposed Chapter should provide sufficient flexibility for the work to be timely performed and the public protected.

The only exemptions that need to be retained in Chapter 18 are items 1-3 of proposed 18.1(d). These exemptions do not violate the mandate of the 2011 Reauthorization Act. Any exemption creates a higher risk to the public of a pipeline incident, and only those exemptions deemed absolutely essential should be retained.

Consolidation

A second key revision is the consolidation of definitions and the elimination of multiple provisions on written protocols. As proposed, Chapter 18 has multiple definitions embedded in sections of the Chapter other than Section 18.2. The first example of this is in Section 18.1 (h) where the definition of ticket life is set forth. Another example is Section 18.10 (c) where the definition of excavation event is set forth. Operators and excavators should not be required to search the entire Chapter in order to read all applicable definitions when the Chapter contains a section dedicated to definitions. The Commission should carefully review the entire Chapter to assure it has placed all definitions within Section 18.2. Similarly, there are four different provisions on protocol agreements between excavators and operators. Although each of these provisions deals with a different situation, they could be consolidated into a single protocol standard for use in the different situations. Such consolidation would give excavators and operators a single source to look to for the requirements for such protocols thereby enhancing the clarity and ease of use of the Chapter. Such a consolidated protocol provision was included in the informal comments filed by the Texas Pipeline Safety Coalition (TPSC) earlier in this docket.

Enforcement

In discussions with staff during the informal comment period, it has been explained that proposed 18.1(j) and (k) were added to deal with operators who were claiming that the Commission could not enforce violations of Chapter 8 that were discovered during audits

initiated under Chapter 18. However, the proposed language in Chapter 18 could be construed to create a second regulatory obligation for operators already subject to Chapter 8 with an accompanying second penalty. Rather than address the enforcement concern by adopting language potentially creating redundant regulatory obligations or even imposing regulatory obligations related to Chapter 8 on operators who are not otherwise subject to those Chapter 8 obligations, TPA recommends a simple statement be adopted in Chapter 18 clearly stating the Commission's authority to enforce any violations of any of its rules discovered in the course of conducting audits or inspections related to Chapter 18. This statement could also include language reaffirming the obligation of operators to cooperate with the Commission in connection with enforcement efforts and the obligation to make records and facilities available to Commission personnel.

Internal References

One other general comment is the readability of the Chapter could be improved by deleting the titles of each Section when a Section is referenced in the Chapter. The alphanumeric reference should be sufficient to guide the reader to the appropriate location within the Chapter. TPA has noted that the current draft does not include such Section title references uniformly throughout the Chapter. Whether the Commission decides to retain the Section title references or to adopt TPA's suggestion to eliminate them, the Commission should adopt a consistent and uniform practice throughout the Chapter.

Specific Comments

18.1

TPA recommends that the first sentence of Section 18.1(b) be removed and only the second sentence be retained with appropriate edits. The presumption of compliance imposes no duty not otherwise imposed by the remaining portions of Chapter 18. The first sentence should be removed because it serves no meaningful purpose and merely lengthens the rule.

TPA suggests that the Commission retain the current language of paragraph (2) of 18.1(d) in the proposed rule and revise it by adding the words "by tillage" immediately following the word "earth." This would place all of the exemptions in one location within the Chapter and eliminate the need for subsection (e) of 18.1 which should be removed from the proposed rule.

In proposed Section 18.1(d)(2), TPA recommends that all of the proposed language following "inches" be deleted. That proposed language is unnecessary because neither Section 18.8 nor Section 18.11 requires movement of earth for compliance. While Section 18.5 (f) involves a protocol for situations where an excavation is required for an accurate line locate, these types of situations would be better handled through a troubled locate process than through a cross-reference in an exemption.

TPA recommends that the exemptions in paragraphs (4) and (5) of 18.1(d) be removed from the rule. The 2011 Reauthorization Act revised the requirements for state damage prevention programs to prohibit the provision of exemptions to state agencies or their contractors from one-call notification requirements. Those federal revisions take effect next year, and it makes sense to remove the exemptions now as part of the overall revision of Chapter 18. There is no reason to have a separate rulemaking at a later date to bring the Commission's program into compliance with the federal requirements and assure continued eligibility for funding from PHMSA for the Commission's damage prevention activities at the highest possible level.

Section 18.1(e) can be deleted in its entirety. All of the activities listed in this Section are specifically covered by the other portions of the Chapter and specifically listing those activities as covered by the Chapter serves no substantive purpose. In fact, such a listing may introduce confusion as to activities included but not specifically listed in this proposed subsection. If an activity is not expressly exempted, it should be considered covered.

Section 18.1(h) dealing with ticket life should be removed from this portion of Chapter 18 and be rewritten as a definition to be included in Section 18.2 as mentioned earlier. In addition, TPA strongly recommends that the life of a ticket be measured in calendar days, not working days. Working days introduces confusion and the opportunity for errors in calculating the expiration of a ticket. TPA also recommends that 21 calendar days be the life of a ticket. That would allow sufficient time for excavators to perform their work and would reduce the need for calls to refresh tickets.

Between the existing requirements of 49 CFR 192.614 and 49 CFR 192.616 as supplemented by the required guidance of RP 1162, operators are required to maintain and evaluate comprehensive public awareness programs that would include all of the items required by proposed Section 18.1(j) (2). There is no need to create a separate public awareness program within the excavation damage rules. The only gathering pipelines not already subject to these requirements are rural gathering lines that do not qualify as Type A or Type B gathering lines. The expansion of Commission jurisdiction under H.B. 2863 expressly limits the Commission's authority to adopt regulations for rural gathering lines to those addressing risk to the public. No such determination has been made to satisfy that requirement. The Commission's authority under H.B. 2863 is further constrained by the prohibition on adoption of rules applicable to such gathering lines prior to September 1, 2015. Unless the Commission can identify some other gap in the existing public awareness requirements, there is no justification for imposing the burden of developing a separate excavation damage public awareness program on operators.

Proposed Section 18.1(j) (3) would require massive investment by industry to address the ability to locate non-metallic pipelines installed prior to the effective date of the federal minimum requirements. The proposed requirement also ignores the fact that operators have no means of preventing the severing, damage or removal of tracer wire following installation of post-1970 non-metallic pipelines. In light of the Commission's proposal to

require operators to use at least two forms of location technology in order to comply with the revised Chapter, the proposed requirement to make non-metallic pipelines capable of location with tracer wire seems unnecessary. Even if proposed Section 18.1(j)(3) is retained, the reporting requirement in this provision seems unnecessary because of the requirement to promptly address non-locatable pipelines when they are discovered. Neither the Commission nor industry receives benefit when an issue that is required to be resolved promptly, and therefore no longer exists, is required to be reported. The only portion of proposed Section 18.1(j) (3) that should be retained is the sentence that reads as follows: “Pipeline operators shall also have a written quality assurance program with procedures for monitoring the locating and marking of underground pipeline facilities.

Proposed Section 18.1(j) (4) should be deleted because this requirement is already covered by 49 CFR Part 192. Proposed Sections 18.1(k) and (l) are also already covered by other provisions in Chapter 18 or 49 CFR 191,192, 193, and 195. All of these provisions should be deleted from the final rule.

Proposed Section 18.1(j) (5) and (6) do not belong in the excavation damage prevention rule. Instead, the Commission should adopt those provisions, if at all, as a supplement to the construction regulations in 49 CFR Part 192. The requirement in proposed Section 18.1(j) (6) that requires an operator to assure contractors are following safe practices essentially makes operators guarantee the compliance of individuals who are not legally within the control of the operator. Such a requirement could give rise to legal responsibility that is addressed otherwise in agreements between operators and their contractors. Operators are responsible for the end result being compliance with the regulations, not each step in the process of achieving compliance.

18.2

In TPA’s opinion, this section of proposed Chapter 18 presents the greatest opportunity for enhancing the clarity of the entire Chapter. By consolidating all definitions in a single section, the Commission eliminates the need for excavators and operators to search through the entire Chapter to find all of the applicable definitions. While the Commission has previously moved most of the definitions in Chapter 18 to Section 18.2, the current revisions to Chapter 18 should complete that task. In addition, the Commission should revise several of the existing and proposed definitions to make them more user-friendly and clearer.

As discussed later in these comments, TPA recommends exclusion of abandoned pipelines from the locating requirements of Chapter 18. Because of that recommendation, TPA requests that 18.2(1) be deleted.

Paragraphs (8), (9), and (10) of Section 18.2 should be shortened to “First Party Damage,” “Second Party Damage” and “Third Party Damage.” These are the terms used in Section 18.11 of the proposed Chapter 18. The definitions should match the terms used in the body of the Chapter.

TPA believes that the definition of excavation tolerance zone in Paragraph (11) of proposed Section 18.2 should be revised to make it easier for all stakeholders to understand the size of the tolerance zone for different sized pipelines. Besides the requirement for a line locate request, the tolerance zone is the most important feature of the damage prevention program in protecting pipelines. The tolerance zone for a pipeline creates the safety buffer for excavators and the operator. TPA recommends that the Commission revise Paragraph (11) of Section 18.2 by inserting a chart showing the tolerance zone for the various sizes of pipeline commonly used. Such a chart was shared by TPSC earlier in the Commission’s consideration of these proposed revisions. That chart utilized a tolerance zone standard of the nominal diameter of the pipeline plus 24 inches on either side of the approximate centerline of the pipeline. While using 24 inches would better assure protection of the largest pipelines currently operating in Texas, TPA is not opposed to the use of 18 inches which matches the current Common Ground Alliance (CGA) Practice. Utilizing a chart to define the tolerance zone would also simplify the determination of the appropriate tolerance zone in any specific situation. A chart would be conducive to replication for use by field personnel of excavators and operators. Anything that enhances the understanding of the tolerance zone for the individuals directly involved in the excavation activity promotes safety. For the Commission’s convenience, the TPSC proposed chart is included below which incorporates the real world effects of the definition proposed by the Commission and the CGA practice. TPA also recommends the Commission require measurements of the excavation tolerance zone to be made from the center line mark for the pipeline. The location of the mark is used to evaluate operator compliance with locate obligations and provides a common, easily identified point from which measurements of the limits of the excavation tolerance zone can be made when evaluating excavator compliance. TPA’s suggested language for the first sentence of proposed Section 18.1(11) and suggested chart follow:

“(11) Excavation Tolerance zone—The area on a horizontal plane within the excavation site that is within the distance designated below on both sides of the centerline mark for the size of pipeline involved at the excavation site:

Pipeline Size (diameter in inches)	Distance from Center Line Mark
2	20
4	22
6	24
8	26
10	28
12	30
18	36
20	38
24	42
30	48
36	54
42	60

For pipeline diameters not shown in the table above, the tolerance zone is equal to one-half the nominal diameter of the pipeline plus a minimum of 18 inches on a horizontal plane on both sides of the centerline mark of the pipeline.”

The definition of Extraordinary Circumstances in paragraph (13) of Section 18.2 should be revised to include additional situations that impair the ability of an operator to locate lines. TPA suggests that power outages and computer failures or malfunctions be included at a minimum. These are events that are beyond the control of the operator and could impact an operator’s ability to timely locate lines. Consideration should also be given to the inclusion of riots, war, terrorist acts and work stoppages.

If the specific holidays are to be listed in the Chapter as proposed in Section 18.2(15), TPA sees no need to retain the statutory reference. Listing the specific holidays adds clarity and ease of use to the Chapter.

TPA suggests replacing the word “location” in Section 18.2(16) with “approximate centerline”. This would conform to the language proposed for the definition of excavation tolerance zone and more accurately describe what operators are doing in response to locate requests.

TPA recommends that “at a depth exceeding 12 inches” be deleted from proposed Section 18.2(19). This language would effectively create an exemption for sign post and survey device installations that did not exceed 12 inches in depth by removing those activities from the definition of movement of earth. TPA assumes this language was added to assist in exempting TxDOT and municipal excavation activity from the coverage of Chapter 18. Such an indirect exemption for governmental entities is prohibited by the 2011 Reauthorization Act and must be removed if adverse funding consequences are to be avoided.

TPA recommends that the definition of Positive Response in Paragraph (25) of proposed Section 18.2 be revised in order to address the other types of information that may need to be communicated to an excavator in connection with a locate ticket. The existence of an extraordinary circumstance could be efficiently communicated through positive response as could the need for an operator to have more information in order to complete its response to the locate request. A more robust definition of positive response would provide benefits to excavators and operators. TPA suggests the following language as a revised definition of positive response:

“Positive response--Notification to an excavator by a pipeline operator that allows an excavator to know prior to the beginning of excavation that:

- a) Pipelines have been marked,
- b) There are no pipelines owned or operated by that operator in the vicinity of the excavation,
- c) More information is necessary,
- d) A troubled locate is involved, or

- e) An extraordinary circumstance prevents the operator from marking or clearing of notifications

Notification to an excavator can be made by:

- a) markings left at an excavation site,
- b) fax,
- c) phone,
- d) e-mail, or
- e) written notice.”

TPA also suggests that the language of Section 18.3(h) defining ticket size be moved to Section 18.2 for the same reasons as stated for moving other definitions to Section 18.2. However, TPA recommends that the language dealing with circumference be deleted. The proposed language on area should be sufficient. The proposed language of Section 18.3(h) (2) should be retained in Section 18.3.

TPA suggests that a new definition be added for “trouble locate.” There are locate situations where the operator cannot complete the locate request and mark the location of its pipeline because the operator cannot gain access to the excavation site or does not have sufficient information from the notification ticket to identify the excavation site. There may also be situations where the excavator thinks it has provided an adequate description of the excavation location, but the operator is unable to match the description to an actual location. Rather than create situations where the operator will be in violation of the rules despite exercising good faith efforts to complete the locate request within the allowed timeframe or an excavator assumes it has been given an all clear positive response because there are no marks when the reality is the operator could not complete the locate because of some trouble, the Commission should develop a process whereby the operator can notify the excavator of the need for more information or of the need for more time to access the site. Providing a “Trouble Locate” positive response would facilitate the needed communication between excavators and operators and provide adequate time to assure clear communication while maintaining the safety of the public and the individuals involved in the excavation activity.

The proposed definition of underground pipeline in proposed Paragraph (30) of Section 18.2 should be revised to read as follows: “A pipeline and all connected appurtenances, laterals, and service lines that are located partially or totally underground and that are used to produce, store, convey, transport, or distribute flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide..” This slight change would eliminate any indirect reference to abandoned pipelines and is a little clearer than the proposed wording.

18.3

As previously mentioned in connection with Section 18.2, TPA recommends that the language of proposed Section 18.3(h) be moved to Section 18.2 as a definition of ticket size. Such a move would enhance both the overall clarity and the ease of use of Chapter 18.

In proposed Section 18.3(b), TPA recommends that “the method or methods” be replaced with “at least two methods.” Many operators must respond to large numbers of notification tickets each year and need to retain the ability to only maintain a few standard methods of providing positive response. The suggested change would hopefully provide the needed flexibility for both parties to the positive response dialogue.

TPA recommends that proposed Section 18.3(c) be revised by deleting “and before the locator arrives on the excavation site.” In real life, the locator will not be on-site before a call is made to the notification center, and the white-lining should be done before the call. This clarifies when the white-lining must be done and simplifies the regulatory language. Section 18.3(c) should also be coordinated with Section 18.7 which provides the standards for white-lining. TPA suggests that inserting "as provided in Section 18.7" between "white-lining" and "to mark" would adequately provide this coordination.

Proposed Section 18.3(d) represents the first of four provisions in the proposed rule that deal with face-to-face meetings between excavators and operators to establish protocols or procedures for locating lines. Each of those provisions is slightly different from the others in wording, but virtually similar in requirements. Instead of repeating the requirements for such meetings multiple times throughout the Chapter, TPA suggests that the Commission develop a single provision dealing with all of the situations requiring face-to-face meetings. This would simplify the rule as well as providing consistent regulatory language. TPA proposes that the Commission adopt language similar to the following as a new Section 18.3 and renumber the remaining sections of the Chapter accordingly:

“(1) An operator and the excavator shall conduct a face-to-face meeting at a mutually agreeable time if the project:

- a) Exceeds the maximum ticket size,
- b) Is too large to mark using white-lining,
- c) Cannot be described on a line locate ticket, or
- d) Is considered complex or of high consequence by the operator or excavator.

(2) At the meeting, the operator and excavator shall discuss and attempt to agree upon procedures to be followed during the project, which may include the following:

- (a) the contact person or persons for each entity working at an excavation site;
- (b) the required mode or modes of communication among all entities working at an excavation site, e.g., telephone or other electronic means or face-to-face meetings at prescribed times or intervals;
- (c) the method for coordinating work activities among all entities working at an excavation site;
- (d) the ownership and/or possession of the locate ticket or tickets;
- (e) the schedule of work on the excavation and, if applicable, the chronological order in which applicable locate tickets are to be located;
- (f) the timeframe by which the proposed excavation area must be marked by the operator;

- (g) the extent of the tolerance zone, provided that it shall not be less than one-half of the nominal diameter of the pipeline plus a minimum of 18 inches on both sides of the center line mark of the pipeline on a horizontal plane and the type of excavation permitted within the tolerance zone; and
- (h) any other agreement with respect to excavation activities and/or marking.

(3) If an excavator and operator are not able to agree on procedures, or one of the parties to the excavation does not participate in the face-to-face meeting, the requirements of this Chapter apply.

(4) Both the excavator and the operator shall retain a signed copy or other documentation of any agreement made pursuant to Section 18.3.

(5) Unless otherwise agreed to by an excavator and operator, an operator must mark their lines within 48-hours of the adjournment of the face-to-face meeting required under this provision.”

With regard to proposed 18.3(f), TPA recommends that the requirements for agreements between excavators and operators on ticket lives be moved to the definition of ticket life that TPA has suggested be included in Section 8.2. Such a change would consolidate all provisions dealing with ticket life in one provision within the Chapter.

As discussed earlier in these comments, the language of Section 18.3(h) should be included in a definition of ticket size in Section 18.2.

TPA recommends replacing "serving" in proposed Section 18.3(i)(1) should be replaced with "making." In proposed Section 18.3(i)(4), "if one is available" should be replaced with "or alternative personnel contact information in compliance with proposed Section 18.3(j).

The language of proposed Section 18.3(k) suggesting that an excavator attempt to give at least 2-hours' notice of an emergency before beginning excavation is impractical. A gas pipeline operator would face extreme criticism for waiting 2 hours before responding to a blowing gas emergency. Operators of other underground facilities could also face similar situations where delay in initiating excavation would be viewed negatively by the public. Rather than creating a provision that might lead to delay by some operators in responding to an emergency, it is more appropriate to require a call to the notification center at the earliest possible time providing a description of the dangerous condition or situation that is causing the emergency. This would document the reasons for the emergency excavation and provide a disincentive for excavators to call in false emergencies. TPA suggests that 18.3(k) be revised to read as follows: "An excavator that requests the location of underground pipelines in an emergency as defined in §18.2 through a notification center should attempt to give notice before beginning excavation, but shall give notice at the earliest practical time, and shall provide a description of the dangerous condition or situation that is causing the emergency.

18.4

Proposed Section 18.4(c) should be revised to require the locate ticket to be available at the excavation site and to delete the option to produce the locate ticket within one hour of a request. In order to assure that the individuals actually performing the excavation work are able to verify that they are at the proper excavation site, they should be required to have the ticket on-site in their possession. A locate ticket left at a central office or other location away from the excavation site invites errors in excavation. There is the possibility of assumptions being made if an excavation crew shows up at a potential excavation site in reliance on instructions from a supervisor, but without the locate ticket. If no marks are present at that incorrect excavation site, the crew may assume the area is all clear of underground facilities, but actually hit such facilities. This could result in harm to the crew and the public as well as unnecessary damage to property. Requiring the locate ticket at the excavation site should eliminate such errors and enhance damage prevention.

TPA recommends that proposed Section 18.4(i) be revised to only allow an excavator to make repairs if the damage is first or second party damage and authorized by the operator. While there may be excavators working for operators, or operators excavating on their own facilities, who would be qualified to repair damaged facilities, the rule should not include any provision that a third-party excavator might utilize to construe some contact with the operator as permission to repair a damaged facility.

18.5

TPA recommends that the title of this section of the Chapter be changed to Operator Obligations because that is a more fitting description of the contents on this section.

TPA recommends that Section 18.5(a) be revised to focus on the time for an operator to provide a positive response. To achieve this revision, TPA suggests the following:

"(a) After being contacted by the notification system, an operator shall provide a positive response for all of the operator's underground pipelines at all depths for the location ticket at the excavation site not later than:

- (1) the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays;
- (2) 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a legal holiday; or
- (3) 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a legal holiday.

Proposed Section 18.5(b) should be deleted because this record retention requirement is already covered by Section 18.1.

Proposed Section 18.5(c) relates to reporting of potential violations and is already covered by Section 18.11 (c).

Proposed Section 18.5(f) deals with written agreements between excavators and operators. This Section should be deleted if TPA's suggestion of a single provision on excavator-operator agreements is adopted.

18.6

The language of proposed Section 18.6(b) addresses the time period during which locate marks remain valid. Because marks cannot be valid until made, stating a time at which the marks become valid is unnecessary. The key time that needs to be clarified is when the marks become invalid. Therefore, the words "from the time a positive response is given" are unnecessary and should be deleted.

18.7

Part of the subject matter of Section 18.7(a) is already adequately covered by proposed Section 18.3(c). TPA recommends that Section 18.7 be rewritten as follows to eliminate the unnecessary duplication and focus the provision on marking requirements: "If white-lining is required pursuant to Section 18.3, an excavator shall mark the excavation area using white paint, flags, or stakes, whichever is most visible for the terrain and use marking intervals indicating the direction of the excavation."

18.8

TPA suggests that Section 18.8(a) be revised to read as follows in order to clarify this portion of the Chapter: "A locator shall use all information necessary to mark all of an operator's underground pipelines at all depths for all locate tickets received by the operator from a notification center for excavation activities at a particular site."

The primary goal of damage prevention is to protect pipelines from third-party damage and thereby protect excavators and the public from injury. Accuracy of the marks for locating pipe is critical to achieving such protection. With today's locating technology, the accuracy proposed by the Commission's language in Section 18.8(b) is very difficult to achieve. Furthermore, if the concept of the tolerance zone is properly followed by excavators, there is no need for the level of accuracy required by the Commission's proposed language. TPA recommends that a mark be considered accurate if it is within the tolerance zone for the pipeline. If the excavator exercises due care within the tolerance zone, as required by Chapter 18, there should be no risk that the excavator would damage the pipeline before exposing the pipe. Once the pipeline is exposed, the excavator would be able to direct ongoing excavation activity to avoid damage to the pipeline if it is conducting prudent excavation activities.

To implement TPA's suggested approach; TPA proposes the following language be used in place of the Commission's proposed insertion in Section 18.8(b):

“An underground pipeline is accurately marked if the centerline mark is within the tolerance zone for the pipeline as defined in Section 18.2(11).”

Proposed Section 18.8(c) should be revised to read as follows: "If a locator discovers another party's pipeline in the course of marking a pipeline, the locator shall make a reasonable effort to advise the excavator of the presence of other pipelines.

Because the first portion of proposed Section 18.8(f) requires the direction of a pipeline to be clearly indicated by the marks, the last portion of the second sentence, "however, a short distance between marks maybe necessary because of site conditions or directional changes of the underground pipeline," should be deleted.

Proposed Section 18.8(k) should be deleted. The existing provisions of the pipeline safety regulations already cover the need for operator qualification and there is no need for a redundant operator qualification regulation.

Proposed Section 18.8(m) should also be deleted. Chapter 251 of the Texas Utilities Code already requires quarterly updates of the mapping information provided to the notification centers. The proposed 10-days prior to initiation of service requirement for updates is impractical and would result in delays in service to customers through new lines. Once a new pipeline is completed, it takes some time to have the construction information included in the electronic mapping systems that are utilized to transfer pipeline information to the notification centers. Delaying service to customers while this administrative function is ongoing would have a substantial impact on customer service. The notification centers utilize map grids to determine the operators who should be notified of a locate request. If an operator has other pipelines in a grid, the operator will be notified even though the notification center is not aware of a new pipeline within the affected grid. TPA is unaware of a problem with line locations related to mapping information at notification centers under the present updating standards.

18.9

Proposed Section 18.9 is the third provision in the proposed rule dealing with agreements between excavators and operators. As previously noted, the TPA's proposed language for a new Section 18.3 is sufficient to handle the matters covered by proposed Section 18.9 and the language of proposed Section 18.9 can be deleted.

18.10

The provisions of proposed Section 18.10(a) are already covered by proposed Section 18.4(a)(2). Therefore, proposed Section 18.10(a) can be deleted.

The provisions of proposed Section 18.10(b) should be moved to proposed Section 18.4 dealing with an excavator's duty to protect. That is a more logical place for this language to be placed in the overall proposed rule. TPA also recommends that the definition of

excavation event in proposed Section 18.10(c) be deleted and the reference to excavation event in proposed Section 18.10(b) be deleted. The fifth sentence of proposed Section 18.10(b) should be revised to read as follows: "Once an excavator has determined the location, route and depth of the underground pipeline by hand digging or other approved excavation methods, the excavator may continue excavation with caution using reasonable care and safe excavation practices."

If TPA's recommendations related to proposed Section 18.10 are adopted, Section 18.10 can be deleted or reserved for future regulatory language.

18.11

The first sentence of proposed Section 18.11(e) imposes a significant burden on operators to advise excavators of the reporting requirements of Chapter 18 within 10 days of each damage incident. Such a burden should not be placed on operators. Excavators should be held responsible for understanding the requirements of the excavation business that they have chosen to pursue in Texas. The first sentence of proposed Section 18.11(b) should be deleted.

The second sentence of proposed Section 18.11(e) can be retained if the time period for providing this information is longer than 10 days and some of the requirements of the proposed sentence are deleted. Such information could assist an excavator in completing its reporting of the damage incident in a manner that would facilitate the Commission staff in matching the respective reports. However, the operator needs to be provided adequate time to gather the necessary information to be provided to the excavator and the operator should not be required to provide information to the excavator that is clearly known to the excavator, such as the excavator's name and address or publicly available information like the instructions for filing through TDRF and the Commission's damage prevention contact telephone number or website address.

The language of proposed Section 18.11(f) permitting the excavator to decide whether or not to contact emergency response authorities must be eliminated. There is no assurance that the excavator will have the necessary expertise to determine whether a release may endanger life, cause serious bodily harm or damage to property or the environment. If product is released, emergency personnel should be contacted.

Proposed Section 18.11(g) should be revised by adding "if known" at the end of subsections (3) and (5).

TPA recommends that the provisions of proposed Sections 18.11(h) and (i) be revised to simply require the operator and the excavator to collect the required information and fully investigate the incident. The requirement that the excavation not be backfilled until both the excavator and operator complete their respective investigation should be removed. Excavations cannot remain open indefinitely if either party is delayed in completing their investigation. In urban areas, operators are typically required to backfill excavations within short time periods in order to assure public safety. If an excavator delays its

investigation efforts, an operator may be placed in the difficult position of either violating this provision of the Commission's regulations by backfilling before all investigation efforts are complete or violating local ordinances requiring backfilling within a specified time period. In addition, subsection (5) in each of these sections should be deleted. At the time of investigation of a damage incident, the Commission may not have made determinations of the additional information to be required. As written, these subsections present operators with an impossible task given the timing of the other required portions of these sections.

Conclusion

TPA appreciates the opportunity to provide these informal comments on the Commission's proposed amendments to the damage prevention rules. Safety and effective underground pipeline damage prevention regulations are of utmost importance to the members of TPA, and TPA is ready to work with the Commission in creating clear damage prevention regulations. If you have any questions concerning these comments, please do not hesitate to contact me at 512-478-2871 or Charles Yarbrough, Chair of the TPA Pipeline Safety Committee, at 214-206-2809.

Respectfully submitted,

TEXAS PIPELINE ASSOCIATION

By: 
Thure Cannon
President