



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney 
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: September 24, 2019

SUBJECT: Proposed Amendments to 16 TAC §3.70, relating to Pipeline Permits Required.

October 1, 2019		
Approved	Denied	Abstain
		

Attached is Staff's recommendation to amend 16 Texas Administrative Code Section 3.70. The proposed amendments reduce confusion regarding when production or flow lines do not leave a lease and, therefore, do not need a permit; clarify the fee requirements for gathering pipelines regulated under proposed new §8.110 (which is part of amendments to Chapter 8 proposed concurrently with the amendments to §3.70); and create a new annual permit renewal timeline beginning September 1, 2020.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on October 1st, the proposal should appear in the October 18th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website by October 2nd, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Kari French, Director, Oversight and Safety Division
Stephanie Weidman, Pipeline Safety Director

1 The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to Pipeline
2 Permits Required, to clarify language related to production and flow lines, to allow each operator to renew all its
3 permits in the same month, to clarify fee requirements for gathering pipelines, and to reduce late fees for operators
4 with 50 miles or less of pipeline.

5 The amendments in subsection (a) are proposed to reduce confusion regarding when production or flow
6 lines do not leave a lease and, therefore, do not need a permit. The current rule language only requires production or
7 flow lines to have a pipeline permit if the production or flow line leaves a lease. The proposed amendments remove
8 the language related to whether a production or flow lines leaves a lease in its entirety. Instead, the Commission
9 proposes to only require a permit for those production and flow lines over which the Commission has pipeline
10 safety jurisdiction. The Commission currently exercises pipeline safety jurisdiction over two categories of
11 production and flow lines: (1) certain onshore pipeline and gathering production facilities, as defined in
12 §8.1(a)(1)(B) of this title (relating to General Applicability and Standards); and (2) all pipeline facilities originating
13 in Texas waters, as defined in §8.1(a)(1)(D) of this title. The Commission does not have pipeline safety jurisdiction
14 over production and flow lines that are not defined in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, and therefore
15 proposes to no longer require a permit for those pipelines—even if the pipelines leave a lease. The Commission
16 proposes a definition of production and flow lines similar to the definition used in API RP 80 to help reduce
17 confusion.

18 The proposed amendments in subsection (i) clarify that the fee requirements for gathering pipelines
19 regulated under proposed new §8.110 (which is part of amendments to Chapter 8 proposed concurrently with the
20 amendments to §3.70) are still designated as Group B and will continue to pay an annual fee of \$10 per mile of
21 gathering pipeline permitted to the operator. Other non-substantive amendments are proposed to subsection (i).

22 Amendments proposed in subsection (j) create a new annual permit renewal timeline beginning September
23 1, 2020. Currently, each permit has a specific annual renewal date, which, generally, is based on the date of permit
24 application. Individual permit renewal is burdensome for both operators and Commission staff. The proposed
25 amendments maintain the current renewal process for one year, but beginning September 1, 2020, operators will
26 renew all their permits within a designated month assigned to operators alphabetically. Operators whose names
27 begin with the letters A through C shall file in February; operators whose names begin with the letters D through E

1 shall file in March; operators whose names begin with the letters F through L shall file in April; operators whose
2 names begin with the letters M through P shall file in May; operators whose names begin with the letters Q through
3 T shall file in June; and operators whose names begin with the letters U through Z and operators whose names
4 begin with numerical values or other symbols shall file in July. For example, beginning September 1, 2020, an
5 operator whose name begins with A shall pay all its permit renewals in February 2021.

6 Proposed new subsection (k) addresses renewal dates when permits are transferred or an operator adds a
7 new permit. Proposed subsection (k)(1) states that if a permit is transferred, in the Commission fiscal year of the
8 transfer the acquiring operator shall renew that permit in its designated month. If the acquiring operator receives the
9 transferred permit in a Commission fiscal year after its renewal month as passed, acquiring operator shall pay the
10 renewal fee upon transfer. Proposed subsection (k)(2) states that if an operator adds a new permit and pays the new
11 permit fee, it is not required to pay the renewal fee for that permit in the same Commission fiscal year. Proposed
12 subsection (k)(3) states that if an operator adds a new permit after its renewal month has passed, the new permit
13 shall be renewed the following Commission fiscal year in the operator's designated month.

14 Proposed amendments in subsection (l) reflect changes to the renewal process proposed in subsection (j).

15 Proposed new subsection (m) reduces the late fee for operators with a total mileage of 50 miles or less of
16 pipeline who fail to pay the annual mileage fee on time. Corresponding changes are proposed in subsection (n) such
17 that the existing late fees only apply to operators with a total mileage of more than 50 miles of pipeline.

18 Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five
19 years the amendments will be in effect there will be no fiscal implications to the Commission or to the regulated
20 industry as a result of the amendments. There will be no fiscal effect on local government.

21 Ms. French has determined that for each year of the first five years the proposed amendments are in effect,
22 the anticipated public benefit will be clarity regarding pipeline permit requirements and a more efficient permit
23 renewal process.

24 The Commission has determined that the proposed amendments will not have an adverse economic effect
25 on rural communities, small businesses or micro-businesses. Therefore, the Commission has not prepared the
26 economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

27 During the first five years that the rules would be in effect, the proposed amendments would not: create or

1 eliminate a government program; create or eliminate any employee positions; require an increase or decrease in
2 future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or
3 decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation;
4 or effect the state's economy.

5 The Commission has also determined that the proposed amendments will not affect a local economy.
6 Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government
7 Code §2001.022.

8 The Commission has determined that the amendments do not meet the statutory definition of a major
9 environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis
10 conducted pursuant to that section is not required.

11 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General
12 Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
13 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to
14 rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday,
15 November 18, 2019. The Commission finds that this comment period is reasonable because the proposal and an
16 online comment form will be available on the Commission's website more than two weeks prior to Texas Register
17 publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit
18 comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For
19 further information, call Kari French at (512) 463-8859. The status of Commission rulemakings in progress is
20 available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

21 The Commission proposes the amendments to §3.70 pursuant to Texas Natural Resources Code, §81.071,
22 enacted by the 85th Legislature (Regular Session, 2017) in House Bill 1818, which authorizes the Commission to
23 establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the
24 jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission proposes
25 the amendments pursuant to §81.051 and §81.052, which provide the Commission with jurisdiction over all persons
26 owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating
27 persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §81.0531,

1 which authorizes the Commission to assess a penalty for a violation of a provision of Title 3 of the Texas Natural
2 Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; §85.202, which
3 authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the
4 issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or
5 permission is necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Texas
6 Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to
7 prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the
8 issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or
9 incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Texas
10 Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the
11 government and control of common carriers and public utilities; Texas Natural Resources Code §§117.001 -
12 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon
13 dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, et
14 seq.; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and
15 practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum
16 degree permissible under, and to take any other requisite action in accordance with, 49 United States Code
17 Annotated, §§60101, et seq.

18 Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.0531, 81.071, 85.202, 86.041,
19 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210; and 49 United
20 States Code Annotated, §§60101, et seq.

21 Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117;
22 Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

23
24 §3.70. Pipeline Permits Required.

25 (a) Each operator of a pipeline or gathering system, other than ~~[a production or flow line that does not leave~~
26 ~~a lease or]~~ an operator excluded under §8.1(b)(4) of this title (relating to General Applicability and Standards),
27 subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed annually, from the

1 Commission as provided in this rule. Production or flow lines that are subject to §8.1(a)(1)(B) and (a)(1)(D) of this
2 title must comply with this section. All other production or flow lines as defined in this subsection are exempt from
3 complying with this section. A production or flow line is piping used for production operations that generally occur
4 upstream of gathering or other pipeline facilities. For the purposes of this subsection, piping used in “production
5 operations” means piping used for production and preparation for transportation or delivery of hydrocarbon gas
6 and/or liquids, and includes the following processes:

7 (1) extraction and recovery, lifting, stabilization, treatment, separation, production processing,
8 storage, and measurement; and

9 (2) associated production compression, gas lift, gas injection, or fuel gas supply.

10 (b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an operator
11 shall file an application for a pipeline permit on the Commission's online permitting system. The operator shall
12 include or attach the following documentation and information:

13 (1) the contact information for the individual who can respond to any questions concerning the
14 pipeline's construction, operation or maintenance;

15 (2) the requested classification and purpose of the pipeline or pipeline system as a common carrier,
16 a gas utility or a private line;

17 (3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting
18 the classification and purpose being sought for the pipeline, including, if applicable, an attestation to the applicant's
19 knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill
20 of Rights as published by the Office of the Attorney General of Texas; and

21 (4) documentation to provide support for the classification and purpose being sought for the
22 pipeline, if applicable; and

23 (5) any other information requested by the Commission.

24 (c) To renew an existing permit, to amend an existing permit for any reason other than a change in
25 classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit on the
26 Commission's online filing system. The operator shall include or attach:

27 (1) the contact information for the individual who can respond to any questions concerning the

1 pipeline's construction, operation, or maintenance; change in operator or ownership; or other change including
2 operator cessation of pipeline operation;

3 (2) a statement from the pipeline operator confirming the current classification and purpose of the
4 pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable; and

5 (3) any other information requested by the Commission.

6 (d) Upon receipt of a complete permit application, the Commission has 30 calendar days to issue, amend, or
7 deny the pipeline permit as filed. If the Commission determines that the application is incomplete, the Commission
8 shall promptly notify the applicant of the deficiencies and specify the additional information necessary to complete
9 the application. Upon receipt of a revised application, the Commission has 30 calendar days to determine if the
10 application is complete and issue, amend, or deny the pipeline permit as filed.

11 (e) If the Commission is satisfied from the application and the documentation and information provided in
12 support thereof, and its own review, that the proposed line is, or will be laid, equipped, managed and operated in
13 accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted.
14 The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline
15 based upon the information and documentation submitted by the applicant and the Commission's review of the
16 application.

17 (f) This rule applies to applications made for new pipeline permits and to amendments, renewals, and
18 cancellations of existing pipeline permits. The classification of a pipeline under this rule applies to extensions,
19 replacements, and relocations of that pipeline.

20 (g) The Commission may delegate the authority to administratively issue pipeline permits.

21 (h) The pipeline permit, if granted, shall be revocable at any time after a hearing, held after 10 days' notice,
22 if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules
23 and regulations of the Commission including if the permit is not renewed annually as required in subsection (a) of
24 this section.

25 (i) Each pipeline operator shall pay an annual fee based on the pipeline operator's permitted mileage of
26 pipeline by August 31, 2018, for the initial year that the requirement is in effect, and by April 1 for each subsequent
27 year.

1 (1) For purposes of calculating the mileage fee, the Commission will categorize pipelines into two
2 groups.

3 (A) Group A includes transmission and gathering pipelines that are required by
4 Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 CFR Parts 192 and
5 195, such as [~~Group A pipelines include~~] natural gas transmission and storage pipelines, natural gas gathering
6 pipelines, hazardous liquids transmission and storage pipelines, and hazardous liquids gathering pipelines.

7 (B) Group B includes [~~gathering~~] pipelines that are required by Commission rules to have a
8 valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195 such as [~~Group B~~
9 ~~pipelines include intrastate production and~~] gathering pipelines [~~leaving a lease~~]. Group B also includes gathering
10 pipelines required to comply with §8.110 of this title (relating to Gathering Pipelines).

11 (2) An operator of a Group A pipeline shall pay an annual fee of \$20 per mile of pipeline based on
12 the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in
13 effect and as of December 31 for each subsequent year.

14 (3) An operator of a Group B pipeline shall pay an annual fee of \$10 per mile of pipeline based on
15 the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in
16 effect and as of December 31 for each subsequent year.

17 (4) Any pipeline distance that is a fraction of a mile will be considered as one mile and will be
18 assessed a \$20 or \$10 fee, as appropriate.

19 (5) Fees due to the Commission for mileage transferred from one operator to another operator
20 pursuant to subsection (o) [~~(m)~~] of this section will be captured in the next mileage fee to be calculated on the
21 following December 31 and paid by the new operator.

22 (j) Beginning October 1, 2018, each pipeline operator shall pay a \$500 permit processing fee for each new
23 permit application and permit renewal.

24 (1) From October 1, 2018, to August 31, 2020, the [~~The~~] permit renewal date for a pipeline
25 operator who has an existing, valid permit in the Commission's online filing system will be the date shown in the
26 online filing system on June 29, 2018, when the pipeline mileage is calculated for purposes of paying the mileage
27 fee. A permit renewal date will not be affected or changed by an operator requesting or receiving a permit

1 amendment.

2 (2) Beginning September 1, 2020, operators shall file their annual renewals as follows:

3 (A) Companies with names beginning with letters A through C shall file in February;

4 (B) Companies with names beginning with letters D through E shall file in March;

5 (C) Companies with names beginning with letters F through L shall file in April;

6 (D) Companies with names beginning with letters M through P shall file in May;

7 (E) Companies with names beginning with letters Q through T shall file in June; and

8 (F) Companies with names beginning with letters U through Z and companies with names
9 beginning with numerical values or other symbols shall file in July.

10 (k) Beginning September 1, 2020, operators shall comply with the following:

11 (1) If a permit is transferred, in the Commission fiscal year of the transfer the acquiring operator
12 shall renew that permit in its designated month pursuant to subsection (j)(2) of this section. If the acquiring
13 operator receives a transferred permit in a Commission fiscal year and its renewal month has already passed, the
14 acquiring operator shall pay the renewal fee upon transfer.

15 (2) If an operator adds a new permit and pays the new permit fee, the operator is not required to pay
16 the renewal fee for that permit in the same Commission fiscal year.

17 (3) If an operator adds a new permit after its renewal month has passed, the new permit shall be
18 renewed the following Commission fiscal year in the operator's designated month pursuant to subsection (j)(2) of
19 this section.

20 (l) [(k)] A pipeline operator who fails to renew a permit on or before the renewal deadline which is the last
21 day of the operator's required filing month as specified in subsection (j) of this section [~~permit expiration date~~] shall
22 pay a late-filing fee as follows:

23 (1) \$250, if the renewal application is received within 30 calendar days after the renewal deadline
24 [~~expiration~~] date;

25 (2) \$500, if the renewal application is received more than 30 calendar days and no more than 60
26 calendar days after the renewal deadline [~~expiration~~] date; and

27 (3) \$700, if the renewal application is received more than 60 calendar days after the renewal

1 deadline [~~expiration~~] date.

2 (4) If the renewal application is not received within 90 calendar days of the renewal deadline
3 [~~expiration~~] date, the Commission may assess a penalty and/or revoke the operator's permit in accordance with
4 subsection (h) of this section.

5 (m) A pipeline operator with a total mileage of 50 miles or less of pipeline who fails to pay the annual
6 mileage fee as specified in subsection (i) of this section shall pay a late-filing fee as follows:

7 (1) \$125, if the fee is received within 30 calendar days of April 1;

8 (2) \$250, if the fee is received more than 30 calendar days and no more than 60 calendar days after
9 April 1; and

10 (3) \$350, if the fee is received more than 60 calendar days after April 1.

11 (4) If the fee is not received within 90 calendar days of April 1, the Commission may assess a
12 penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

13 (n) [(4)] A pipeline operator with a total mileage of more than 50 miles of pipeline who fails to pay the
14 annual mileage fee shall pay a late-filing fee as follows:

15 (1) \$250, if the fee is received within 30 calendar days of August 31 for the initial year that the
16 requirement is in effect and April 1 for each subsequent year;

17 (2) \$500, if the fee is received more than 30 calendar days and no more than 60 calendar days after
18 August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year; and

19 (3) \$700, if the fee is received more than 60 calendar days after August 31 for the initial year that
20 the requirement is in effect and April 1 for each subsequent year.

21 (4) If the fee is not received within 90 calendar days of August 31 for the initial year that the
22 requirement is in effect or April 1 for each subsequent year, the Commission may assess a penalty and/or revoke the
23 operator's permit in accordance with subsection (h) of this section.

24 (o) [(m)] A pipeline operator who has been issued a permit and is transferring the pipeline or a portion of
25 the pipeline included on the permit to another operator shall file a notification of transfer with the Commission
26 within 30 days following the transfer. An operator may file a fully executed Form T-4B as a notification of transfer.
27 The Commission may use a fully executed Form T-4B to remove the pipeline that is the subject of the transfer from

1 the transferor operator and assign the mileage to the transferee operator for calculation of the annual mileage fee.
2 The operator to which the pipeline has been transferred shall amend its permit to include the pipeline or portion of
3 the pipeline within 30 days following the transfer or the operator may be subject to a penalty for operating without a
4 permit pursuant to subsection (p) [(n)] of this section.

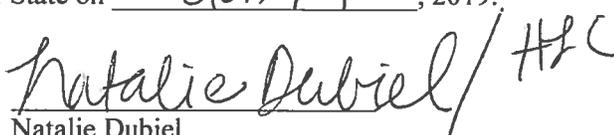
5 (p) [(n)] A pipeline operator who operates a pipeline without a permit, with an expired permit, or who
6 otherwise fails to comply with this section, may be assessed a penalty as prescribed in §8.135 of this title[;]
7 (relating to Penalty Guidelines for Pipeline Safety Violations).

8 (q) [(e)] Interstate pipelines are exempt from the fee requirements of this section.

9 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
10 within the agency's authority to adopt.

Issued in Austin, Texas on October 1, 2019.

Filed with the Office of the Secretary of State on October 1, 2019.


Natalie Dubiel
Attorney, Office of General Counsel
Railroad Commission of Texas