



RAILROAD COMMISSION OF TEXAS

OVERSIGHT AND SAFETY DIVISION

PIPELINE SAFETY DEPARTMENT

February 27, 2018

Dear Ms. Gunaratnam:

In response to your request for the Railroad Commission of Texas (Commission) to affirm the necessary State statutory requirements for participating in the pipeline safety program with the Pipeline and Hazardous Materials Safety Administration (PHMSA), we offer the following:

The Commission was created by the Texas Constitution in Article 15, Section 30. The Commission's regulatory authority is provided under Texas Natural Resource Code §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set for in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under federal laws or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq., including safety standards related to the prevention of damage to such facilities resulting from the movement of earth by a person in the vicinity of the facility; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas, including safety standards related to the prevention of damage to such facilities resulting from the movement of earth by a person in the vicinity of the facility, to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United State Code Annotated, §§60101, et seq.; and Health and Safety Code, §756.126, which authorizes the Commission to adopt safety standards and practices, including those described by 49 U.S.C. Section 6105, et seq., related to the prevention of damage by a person to a facility under the jurisdiction of the Commission.

The Commission, thus the State of Texas, complies with the pipeline safety statutory requirements necessary for participation in the pipeline safety program as outlined below:

Under the Constitution and laws of the State, the Commission has regulatory jurisdiction over the safety standards and practices of all intrastate pipeline transportation within the State under:

1. Texas Constitution, Article 16
2. Texas Natural Resources Code, Chapter 81
3. Texas Natural Resources Code, Chapter 117
4. Texas Utilities Code, Chapter 121
5. Texas Health and Safety Code, Chapter 756

The Commission has adopted into State law, each Federal safety standard (Federal pipeline safety regulations) that is applicable to the intrastate pipeline facilities under the State's safety jurisdiction under:

6. Texas Administrative Code, Title 16, Chapter 8 – Pipeline Safety
 - The Commission adopted by reference PHMSA minimum safety standards and accompanying amendments effective October 30, 2017
7. Texas Administrative Code, Title 16, Chapter 18 - Pipeline Damage Prevention

8. Texas Utilities Code, Chapter 251

If you have any questions, please do not hesitate to contact me by phone at 512-463-2519 (O)/ 512-964-0206 (C) or by email at stephanie.weidman@phmsa.dhs.gov.

Sincerely,

A black rectangular redaction box covering the handwritten signature of Stephanie Weidman.

Stephanie Weidman
PHMSA Program Director

THE TEXAS CONSTITUTION

ARTICLE 16. GENERAL PROVISIONS

Sec. 30. DURATION OF OFFICES; RAILROAD COMMISSION.

- (a) The duration of all offices not fixed by this Constitution shall never exceed two years.
- (b) When a **Railroad Commission** is created by law it shall be composed of three Commissioners who shall be elected by the people at a general election for State officers, and their terms of office shall be six years. And one Railroad Commissioner shall be elected every two years. In case of vacancy in said office the Governor of the State shall fill said vacancy by appointment until the next general election.
- (c) The Legislature may provide that members of the governing board of a district or authority created by authority of Article III, Section 48-e, Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of this Constitution serve terms not to exceed four years.
- (d) The Legislature by general or special law may provide that members of the governing board of a hospital district serve terms not to exceed four years.

(Amended Nov. 6, 1894, and Nov. 2, 1982; Subsec. (d) added Nov. 7, 1989; Subsec. (b) amended Nov. 2, 1999; Subsec. (c) amended Nov. 3, 2009.) (TEMPORARY TRANSITION PROVISIONS for Sec. 30: See Appendix, Note 1.)

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm#16.30>

NATURAL RESOURCES CODE

TITLE 3. OIL AND GAS

SUBTITLE A. ADMINISTRATION

CHAPTER 81. RAILROAD COMMISSION OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commissioner" means any member of the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.002. DEFINITION OF PERSON FOR CERTAIN PROVISIONS. In this chapter:

(1) "person" includes a corporation, as provided by Section 312.011, Government Code; and

(2) the definition of "person" assigned by Section 311.005, Government Code, does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.01, eff. April 1, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 81.01001. SUNSET PROVISION. (a) The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2017.

(a-1) The review of the Railroad Commission of Texas by the Sunset Advisory Commission in preparation for the work of the 85th Legislature in Regular Session is not limited to the appropriateness of recommendations made by the Sunset Advisory Commission to the 83rd Legislature. In the Sunset Advisory Commission's report to the 85th

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 1, eff. Sept. 1, 1981.

Sec. 81.018. PAYMENT OF SALARIES AND OTHER EXPENSES. (a) Salaries and other expenses necessary in the administration and enforcement of the oil and gas laws shall be paid by warrants drawn by the comptroller on the State Treasury from funds provided under Section 81.112 of this code.

(b) Warrants for expenses shall be issued only on duly verified statements of the persons entitled to the funds and on approval of the chairman of the commission.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.019. DUTIES OF CHIEF SUPERVISOR, CHIEF DEPUTY SUPERVISOR, DEPUTY SUPERVISORS, AND OTHER EMPLOYEES. The chief supervisor, chief deputy supervisor, deputy supervisors, and other employees shall perform the duties prescribed by the commission in conformity with rules of the commission relating to the production, transportation, and conservation of crude oil and natural gas.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.020. ADDITIONAL DUTIES OF CHIEF SUPERVISOR AND HIS DEPUTIES. (a) The chief supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and shall follow the rules of the commission relating to the production and conservation of oil and gas.

(b) The chief supervisor shall gather information and assist the commission in the performance of its duties under this title.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

Sec. 81.051. JURISDICTION OF COMMISSION. (a) The commission has jurisdiction over all:

- (1) common carrier pipelines defined in Section 111.002 of this code in Texas;
- (2) oil and gas wells in Texas;
- (3) persons owning or operating pipelines in Texas; and
- (4) persons owning or engaged in drilling or operating oil or gas wells in Texas.

(b) Persons listed in Subsection (a) of this section and their pipelines and oil and gas wells are subject to the jurisdiction conferred by law on the commission.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 5, eff. Sept. 1, 1977.

Sec. 81.052. RULES. The commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission as set forth in Section 81.051, including such rules as the commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 19, ch. 12, Sec. 1, eff. March 15, 1979.

Sec. 81.0521. FEE FOR APPLICATION FOR EXCEPTION TO RAILROAD COMMISSION RULE. (a) With each application for an exception to any commission rule contained in Chapter 3 of Part I of Title 16 of the Texas Administrative Code, the applicant shall submit to the commission a fee of \$150.

(b) The application fee for an exception to any commission rule may not be refunded.

(c) Two-thirds of the proceeds from this fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.01, eff. September 28, 2011.

Sec. 81.0522. NATURAL GAS POLICY ACT APPLICATION FEE. (a) With each Natural Gas Policy Act (15 U.S.C. Sections 3301-3432) application, the applicant shall submit to the commission a fee. The commission shall set the application fee in an amount necessary to cover the cost of the commission's well category determination program but not to exceed \$150.

(b) The fee for any Natural Gas Policy Act application may not be refunded.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 4, eff. Sept. 1, 2001.

Sec. 81.053. COMMISSION POWERS. In the discharge of its duties and the enforcement of its jurisdiction under this title, the commission shall:

- (1) institute suits;
- (2) hear and determine complaints;
- (3) require the attendance of witnesses and pay their expenses out of funds provided for that purpose;
- (4) obtain the issuance of writs and process which may be necessary for the enforcement of its orders; and
- (5) punish for contempt or disobedience of its orders in the manner provided for the district courts.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.0531. ADMINISTRATIVE PENALTY. (a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule,

order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed:

(1) \$10,000 a day for each violation that is not related to pipeline safety; or

(2) \$200,000 a day for each violation that is related to pipeline safety.

(b-1) Each day a violation continues may be considered a separate violation for purposes of penalty assessments, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed \$2 million.

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

- (1) the permittee's history of previous violations, including the number of previous violations;
- (2) the seriousness of the violation and of any pollution resulting from the violation;
- (3) any hazard to the health or safety of the public;
- (4) the degree of culpability;
- (5) the demonstrated good faith of the person charged; and
- (6) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1089, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 1, eff. September 1, 2013.

Sec. 81.0532. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 81.0531 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983.

Sec. 81.0533. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the commission shall inform the person charged within 30 days of the amount of the penalty.

(b) Within the 30-day period immediately following the day on which the decision or order is final as provided in Subchapter F,

3

NATURAL RESOURCES CODE

TITLE 3. OIL AND GAS

SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS

CHAPTER 117. HAZARDOUS LIQUID OR CARBON DIOXIDE PIPELINE
TRANSPORTATION INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Railroad Commission of Texas.
- (2) "Hazardous liquid" means:

- (A) petroleum or any petroleum product;

- (B) nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive or would be harmful to the ~~environment if released in significant quantities; and~~

- (C) a substance or material, other than liquefied natural gas, determined by the United States secretary of transportation to pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state.

- (3) "Transportation of hazardous liquids or carbon dioxide" means the movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

- (4) "Pipeline facilities" includes new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids or carbon dioxide.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 3, eff. September 1, 2013.

SUBCHAPTER B. JURISDICTION, POWERS, AND DUTIES

Sec. 117.011. JURISDICTION UNDER DELEGATED FEDERAL AUTHORITY.

(a) The commission has jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(b) The commission may seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate hazardous liquid or carbon dioxide pipeline facilities located in this state.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 951, Sec. 1, eff. June 18, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 4, eff. September 1, 2013.

Sec. 117.012. RULES AND STANDARDS. (a) The commission shall adopt rules that include safety standards applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches. Rules adopted under this subsection that apply to the intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations and intrastate hazardous liquid and carbon dioxide

gathering pipeline facilities in rural locations must be based only on the risks the transportation and the facilities present to the public safety, except that the commission shall revise the rules as necessary to comply with Subsection (c) and to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts rules that include safety standards applicable to the transportation and facilities.

(b) Rules that adopt safety standards do not apply to production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

(c) The safety standards adopted by the commission in its rules must be compatible with those standards established by the United States secretary of transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d) The commission may adopt rules that require a hazardous liquid pipeline facility to prepare and submit for commission approval a facility response plan for all or any part of a hazardous liquid pipeline facility located landward of the coast. Rules shall require the facility response plan to include plans for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of hazardous liquids that could reasonably be expected to cause substantial harm to the environment by discharging into navigable waters.

(e) Rules relating to facility response plans shall be consistent with the provisions of the federal Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). Rules shall provide that, in lieu of submitting a plan for approval under Subsection (a), a facility may submit a facility response plan prepared in compliance with the Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). A plan approved or pending approval by the United States Department of Transportation Office of Pipeline Safety shall be deemed approved by the commission for the purposes of this section.

(f) Rules relating to facility response plans do not apply to a hazardous liquid pipeline facility that is required to implement a discharge prevention and response plan under the Oil Spill

Prevention and Response Act of 1991, Chapter 40, Natural Resources Code.

(g) The commission shall adopt rules regarding:

- (1) public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities; and
- (2) community liaison for the purpose of responding to an emergency concerning a hazardous liquid or carbon dioxide pipeline facility.

(h) The commission shall require operators of hazardous liquid and carbon dioxide pipeline facilities or the designated representatives of such operators to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made an effort, by one of the following methods, to conduct a community liaison meeting in person with the officials:

- (1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;
- (2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or
- (3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall conduct community liaison activities by one of the following methods:

- (1) holding a telephone conference with the appropriate officials; or
- (2) delivering the community liaison information required to be conveyed by certified mail, return receipt requested.

(j) Expired.

(k) The commission by rule shall require the owner or operator of each intrastate hazardous liquid or carbon dioxide pipeline

facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

(1) on written request from the school district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:

(A) a description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;

(B) a list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) the designated emergency number for the pipeline facility operator;

(D) information on the state's excavation one-call system; and

(E) information on how to recognize, report, and respond to a product release; and

(2) mail a copy of the requested items by certified mail, ~~return receipt requested, to the superintendent of the school~~ district in which the school building or facility is located.

(1) A pipeline operator or the operator's representative shall appear at a regularly scheduled meeting of the school board to explain the items listed in Subsection (k) if requested by the school board or school district.

(m) The commission may not require the release of parts of an emergency response plan that include security sensitive information including maps or data. Security sensitive information shall be made available for review by but not provided to the school board.

(n) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter H, Chapter 756, Health and Safety Code.

(o) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

(p) Expired.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 616, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 951, Sec. 2, eff. June 18, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 61, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1082, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 6, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1197 (H.B. 4300), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 17.003, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 5, eff. September 1, 2013.

Sec. 117.013. RECORDS AND REPORTS. (a) Each owner or operator of a pipeline engaged in the transportation of hazardous liquids or carbon dioxide within this state shall maintain records, make reports, and provide any information the commission may require under the jurisdiction granted by this chapter and 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(b) The commission, by rule, shall designate the records that are required to be maintained and the reports that are to be filed by the owner or operator and shall provide forms for reports if necessary.

(c) The commission may require the owners or operators of hazardous liquid or carbon dioxide pipeline facilities to prepare

and make available for inspection by its employees or agents or file for approval a procedural manual for each such facility in accordance with the requirements of Title 49, Part 195.402, Code of Federal Regulations.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 5, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 6, eff. September 1, 2013.

Sec. 117.014. INSPECTION AND EXAMINATION OF RECORDS AND PROPERTY. (a) The commission and its employees and designated agents may enter property on which is located pipeline facilities or any other property relating to the transportation of hazardous liquids or carbon dioxide by pipeline and may inspect and examine ~~the records and property to the extent relevant to determine if a~~ person is acting in compliance with this chapter and rules adopted by the commission under this chapter.

(b) Before the commission or its employees or designated agents enter property for the purposes of this section, the person requesting entry must present proper credentials to the person in charge at the property.

(c) Entry, examination, and inspection under this section may be made only at reasonable times and in a reasonable manner.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 6, eff. Sept. 1, 1993.

Sec. 117.015. COMPLIANCE WITH FEDERAL LAW. The commission shall make reports and certifications to the United States Department of Transportation and shall take any other actions necessary to comply with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 7, eff. September 1, 2013.

SUBCHAPTER C. ENFORCEMENT

Sec. 117.051. CIVIL PENALTY. A person who violates this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not more than \$200,000 for each act of violation and for each day of violation, provided that the maximum civil penalty that may be assessed for any related series of violations may not exceed \$2 million.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1991, 72nd Leg., ch. 724, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 92, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 2, eff. September 1, 2013.

Sec. 117.052. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL.

(a) If it appears that a rule of the commission has been or is being violated, the commission may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 117.051 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission adopted under this chapter, the district court shall grant the injunctive relief the facts so warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief to recover the civil penalty, or for both injunctive relief and the civil penalty.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Sec. 117.053. CRIMINAL PENALTY FOR VIOLATION OF CHAPTER AND RULES. (a) A person who intentionally violates this chapter or a rule adopted under this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not more than \$2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a ~~single offense under this section.~~

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.137, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 3, eff. September 1, 2013.

Sec. 117.054. CRIMINAL PENALTY FOR INJURING OR DESTROYING PIPELINE FACILITIES. (a) A person who intentionally injures or destroys or attempts to injure or destroy any pipeline facility in this state commits an offense.

(b) An offense under this section is punishable by a fine of not more than \$2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal

Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.138, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 4, eff. September 1, 2013.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 117.101. LIMITATIONS ON POWERS OF CITIES. (a) Except as otherwise provided by this subchapter, this chapter may not be construed to reduce, limit, or impair the authority provided by law to any city.

(b) Except as provided by Subsection (c) of this section, a city may not adopt or enforce an ordinance that establishes safety standards or practices applicable to the pipeline transportation of hazardous liquids or carbon dioxide or hazardous liquid or carbon dioxide pipeline facilities that are subject to regulation by federal or state law.

(c) A city may adopt ordinances that establish conditions for installing or relocating pipelines over, under, along, or across public streets and alleys within the boundaries of the city.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 7, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 1, eff. September 1, 2005.

Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES. (a)
Except as otherwise provided by this section, a city may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A city may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a hazardous liquid or carbon dioxide pipeline facility on, along, or across the public roads, highways, streets, alleys, streams, canals, or other public ways located within the city and maintained by the city; and

(2) recover the reasonable cost of repairing damage to a public road, highway, street, alley, stream, canal, or other public way located within the city and maintained by the city that is ~~caused by the placement, construction, maintenance, repair,~~ replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility if the owner or operator of the facility does not repair the damage in accordance with generally applicable paving standards or other applicable standards in the city.

(c) A charge authorized by Subsection (b)(1) may not exceed the cost to the city of administering, supervising, inspecting, and otherwise regulating the location of the pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) The owner or operator of a pipeline facility may appeal the assessment of a charge under Subsection (b)(1) to the commission. The commission shall hear the appeal de novo. Unless the city that assessed the charge establishes that the charge is authorized by this section, the commission shall declare the charge invalid or reduce the charge to an amount authorized by this section. The commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. The owner or operator of the pipeline facility and the

city shall share equally the costs incurred by the commission in connection with the appeal.

(e) A city must file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. The running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) This section may not be construed to prevent a city from:

(1) recovering the reasonable cost of repairing damage to a city facility, other than a public way, caused by acts of the owner or operator of a pipeline facility; or

(2) requiring the owner or operator of a pipeline facility to relocate the pipeline facility, at the owner's or operator's expense, to permit the construction, maintenance, modification, or alteration of a city facility.

(g) Notwithstanding Subsection (f)(2), the city shall pay the ~~cost of relocating a pipeline facility if the pipeline facility is~~ authorized by a property right that has priority over the city's right to use the public way for the city facility.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 4, eff. June 17, 2005.

Added by Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 2, eff. September 1, 2005.

(4)

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE B. REGULATION OF TRANSPORTATION AND USE

CHAPTER 121. GAS PIPELINES

SUBCHAPTER A. GAS UTILITY DEFINED

Sec. 121.001. DEFINITION OF GAS UTILITY. (a) In this chapter, "gas utility" means a person who owns, manages, operates, leases, or controls in this state property or equipment or a pipeline, plant, facility, franchise, license, or permit for a business that:

(1) transports, conveys, distributes, or delivers natural gas:

(A) for public use or service for compensation;

(B) for sale to municipalities or persons engaged in distributing or selling natural gas to the public, in a situation described by Subdivision (3);

(C) for sale or delivery to a person operating under a franchise or contract with a political subdivision of this state; or

(D) for sale or delivery to the public for domestic or other use;

(2) owns, operates, or manages a pipeline:

(A) that is for transporting or carrying natural gas, whether for public hire or not; and

(B) for which the right-of-way has been or is hereafter acquired by exercising the right of eminent domain; or

(3) produces or purchases natural gas and transports or causes the transportation of natural gas by a pipeline to or near the limits of a municipality in which the gas is received and distributed or sold to the public by another gas utility or by the municipality in a situation in which the business is the only or practically the only agency of supply of natural gas to the gas utility or municipality.

(b) In this subchapter, "person" means an individual, company, limited liability company, or private corporation and includes a

Sec. 121.157. RAILROAD COMMISSION EMPLOYEES. (a) The railroad commission may employ or appoint persons as necessary to:

(1) inspect and audit records or receipts, disbursements, vouchers, prices, payrolls, time cards, and books;

(2) inspect the property and records of a gas utility subject to this chapter; and

(3) perform other services as directed by, or under the authority of, the railroad commission.

(b) The railroad commission shall set the amount of compensation for persons employed by the railroad commission.

(c) The chief supervisor of the oil and gas division of the railroad commission shall assist the railroad commission in the performance of the railroad commission's duties under this chapter, as directed by, and under the rules of, the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.158. PAYMENT FROM THE GENERAL REVENUE FUND. All expenses, including witness fees and mileage, employee wages and fees, and the salary and expenses of the chief supervisor of the oil and gas division of the railroad commission incurred by or under authority of the railroad commission or a railroad commissioner in administering and enforcing, or exercising a power under, this chapter shall be paid from the general revenue fund.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PIPELINE SAFETY

Sec. 121.201. SAFETY RULES; RAILROAD COMMISSION POWER UNDER DELEGATED FEDERAL AUTHORITY. (a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources

Code, to provide the information to the commission in the form of an application;

- (3) by rule require record maintenance and reports;
- (4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);
- (5) make certifications and reports from time to time;
- (6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state;
- (7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law; and
- (8) by rule establish safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5:

(A) based only on the risks the facilities and activities present to the public safety, to the extent consistent with federal law; or

(B) as necessary to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5.

(b) The power granted by Subsection (a):

(1) does not apply to the transportation of gas or to gas facilities subject to the exclusive control of the United States but applies to the transportation of gas and gas pipeline facilities in this state to the maximum degree permissible under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law; and

(2) is granted to provide exclusive state control over safety standards and practices applicable to the transportation of gas and gas pipeline facilities within the borders of this state to the maximum degree permissible under that law.

(c) A term that is used in this section and defined by 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law has the meaning assigned by that law.

(d) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the railroad commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter H, Chapter 756, Health and Safety Code.

(e) The power granted by Subsection (a) does not apply to:

- (1) surface mining operations; or
- (2) other entities or occupations if the railroad

commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

- (A) is in the public interest; or
- (B) is not likely to cause harm to the safety and

welfare of the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.12(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1272, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 13, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 25.002, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 11, eff. September 1, 2013.

Sec. 121.2015. REQUIRED SAFETY RULES. (a) The railroad commission shall adopt rules regarding:

- (1) public education and awareness relating to gas pipeline facilities; and
- (2) community liaison for responding to an emergency relating to a gas pipeline facility.

(b) The railroad commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (c) only if the operator or the operator's representative has made an effort to conduct a community liaison meeting in person with the officials by one of the following methods:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(c) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (b), the operator or the operator's representative shall conduct community liaison activities by one of the following methods:

(1) holding a telephone conference with the appropriate officials; or

(2) delivering the community liaison information required to be conveyed by certified mail, return receipt requested.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.12(b), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 70, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1197 (H.B. 4300), Sec. 1, eff. September 1, 2009.

Sec. 121.202. MUNICIPAL AND COUNTY AUTHORITY. (a) A municipality or a county may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a facility

that is regulated under this subchapter, another state law, or a federal law.

(b) Except as provided by Subsection (a) and by Section 121.2025, this subchapter does not reduce, limit, or impair:

(1) a power vested by law in:

(A) a county in relation to a county road; or

(B) a municipality; or

(2) the ability of a municipality to:

(A) adopt an ordinance that establishes conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; or

(B) establish conditions for mapping or taking an inventory in an area in a municipality's extraterritorial jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 5, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 3, eff. September 1, 2005.

Sec. 121.2025. AUTHORITY OF MUNICIPALITY TO ASSESS CHARGES.

(a) Except as otherwise provided by this section or Section 182.025, Tax Code, a municipality may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a gas pipeline facility on, along, under, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A municipality may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a gas pipeline facility on, along, or across the public roads, highways, streets, alleys, streams, canals, or other public ways located within the municipality and maintained by the municipality; and

(2) recover the reasonable cost of repairing damage to a public road, highway, street, alley, stream, canal, or other public way located within the municipality and maintained by the municipality that is caused by the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a gas pipeline facility if the owner or operator of the facility does not repair the damage in accordance with generally applicable paving standards or other applicable standards in the municipality.

(c) A charge authorized by Subsection (b)(1) may not exceed the cost to the municipality of administering, supervising, inspecting, and otherwise regulating the location of the gas pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) The owner or operator of a gas pipeline facility may appeal the assessment of a charge under Subsection (b)(1) to the railroad commission. The railroad commission shall hear the appeal de novo. ~~Unless the municipality that assessed the charge establishes that the~~ charge is authorized by this section, the railroad commission shall declare the charge invalid or reduce the charge to an amount authorized by this section. The railroad commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. The owner or operator of the gas pipeline facility and the municipality shall share equally the costs incurred by the railroad commission in connection with the appeal.

(e) A municipality must file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. The running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) This section may not be construed to prevent a municipality from:

(1) recovering the reasonable cost of repairing damage to a municipal facility, other than a public way, caused by acts of the owner or operator of a gas pipeline facility; or

(2) requiring the owner or operator of a gas pipeline facility to relocate the pipeline facility, at the owner's or

operator's expense, to permit the construction, maintenance, modification, or alteration of a municipal facility.

(g) Notwithstanding Subsection (f)(2), the municipality shall pay the cost of relocating a gas pipeline facility if the pipeline facility is authorized by a property right that has priority over the municipality's right to use the public way for the municipal facility.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 6, eff. June 17, 2005.

Added by Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1311 (H.B. 2572), Sec. 1, eff. June 19, 2009.

Sec. 121.203. ENFORCEMENT: INJUNCTION. The attorney general, on behalf of the railroad commission, is entitled to injunctive relief to restrain a violation of a safety standard adopted under this subchapter, including an injunction that restrains the transportation of gas or the operation of a pipeline facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.204. CIVIL PENALTY. Each day of each violation of a safety standard adopted under this subchapter is subject to a civil penalty of not more than \$200,000, except that the maximum penalty that may be assessed for any related series of violations may not exceed \$2 million. The penalty is payable to the state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 6, eff. September 1, 2013.

Sec. 121.205. SETTLEMENT BY ATTORNEY GENERAL. A civil penalty under Section 121.204 may be compromised by the attorney general who in determining a compromise shall consider:

- (1) the appropriateness of the penalty in relation to the size of the business of the person charged;
- (2) the gravity of the violation; and
- (3) the good faith of the person charged in attempting to achieve compliance after notification of the violation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.206. ADMINISTRATIVE PENALTY FOR VIOLATION OF PIPELINE SAFETY STANDARD OR RULE. (a) The railroad commission may assess an administrative penalty against a person who violates Section 121.201 or a safety standard or other rule prescribed or adopted under that section.

(b) The penalty for each violation may not exceed \$200,000. Each day a violation continues may be considered a separate violation for the purpose of penalty assessment, provided that the maximum penalty that may be assessed for any related series of violations may not exceed \$2 million.

(c) In determining the amount of the penalty, the railroad commission shall consider the guidelines adopted under Subsection (d).

(d) The railroad commission by rule shall adopt guidelines to be used in determining the amount of a penalty under this subchapter. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

- (1) the person's history of previous violations of Section 121.201 or a safety standard or other rule prescribed or adopted under that section, including the number of previous violations;
- (2) the seriousness of the violation and of any pollution resulting from the violation;
- (3) any hazard to the health or safety of the public;
- (4) the degree of culpability;
- (5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(b), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 71, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 14, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 7, eff. September 1, 2013.

Sec. 121.207. PIPELINE SAFETY ADMINISTRATIVE PENALTY: ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged under Section 121.206 has been given an opportunity for a public hearing.

(b) If a public hearing is held, the railroad commission shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the penalty amount warranted by the violation, incorporating, if appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the railroad commission shall consolidate the hearings with other proceedings under Section 121.206.

(d) If a person charged under Section 121.206 fails to take advantage of the opportunity for a public hearing, an administrative penalty may be assessed by the railroad commission after it has determined:

- (1) that a violation occurred; and
- (2) the penalty amount warranted by the violation.

(e) After assessing an administrative penalty, the railroad commission shall issue an order requiring the penalty to be paid.

(f) Not later than the 30th day after the date an order is issued finding that a violation described under Section 121.206 occurred, the railroad commission shall inform the person found in violation of the amount of the penalty.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.208. PIPELINE SAFETY ADMINISTRATIVE PENALTY: PAYMENT OF PENALTY. Not later than the 30th day after the date the railroad commission's decision or order imposing an administrative penalty becomes final as provided by Section 2001.144, Government Code, the person charged with the violation shall:

- (1) pay the penalty in full; or
- (2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:
 - (A) pay the penalty to the railroad commission for placement in an escrow account; or
 - (B) give to the railroad commission a supersedeas bond in a form approved by the railroad commission for the amount of the penalty that is effective until all judicial review of the order or decision is final.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.209. PIPELINE SAFETY ADMINISTRATIVE PENALTY: REFUND OF PAYMENT OR RELEASE OF BOND. If through judicial review of a decision or order regarding an administrative penalty it is determined that a violation did not occur or that the amount of the penalty should be reduced or not assessed, the railroad commission shall, not later than the 30th day after the date of that determination:

- (1) remit the appropriate amount to the person, with accrued interest if the utility paid the penalty to the railroad commission; or
- (2) execute a release of the bond if the utility posted a supersedeas bond.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.210. RECOVERY BY ATTORNEY GENERAL. An administrative penalty owed under Sections 121.206-121.208 may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

5

HEALTH AND SAFETY CODE

TITLE 9. SAFETY

SUBTITLE A. PUBLIC SAFETY

CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS

SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY. (a) The owner or operator of a well or cistern that is at least 10 feet deep and not less than 10 inches nor more than six feet in diameter shall keep it entirely covered at all times except when the owner or operator is actually using the well or cistern.

(b) The cover required by this section must be capable of sustaining at least 200 pounds of weight.

(c) A person commits an offense if the person fails to cover a well or cistern as required by this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY. (a) A person who drills, digs, or otherwise creates or causes to be drilled, dug, or otherwise created a well or hole that is at least 10 feet deep and less than 10 inches in diameter may not abandon the hole unless the person first:

(1) completely fills the well or hole from its total depth to the surface; or

(2) plugs the well or hole with a permanent plug not less than 10 feet from the surface and completely fills the well or hole from the plug to the surface.

(b) A person commits an offense if the person abandons a well or hole in violation of this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

- (1) identify the problem requiring the need for providing municipal landscaping services;
- (2) identify the public health, safety, or welfare concern;
- (3) describe any reasonable actions previously taken to alleviate the problem; and
- (4) specify a period of definite duration necessary to address the problem.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.103. EXCEPTION. The limitations and requirements of this subchapter do not apply to a municipality in times of emergency, catastrophe, or other calamity.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER H. CONSTRUCTION AFFECTING PIPELINE EASEMENTS AND RIGHTS-OF-WAY

Sec. 756.121. DEFINITIONS. In this subchapter:

- (1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.125. INJUNCTIVE RELIEF. (a) A suit for injunctive relief to prevent or abate the violation of this subchapter may be brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) The court in which the suit is brought may grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

~~Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The~~
Railroad Commission of Texas shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility under the jurisdiction of the commission.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 19, eff. June 18, 2005.

Renumbered from Health and Safety Code, Section 756.106 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(49), eff. September 1, 2007.

<<Prev Rule

6

Next Rule>>

Texas Administrative Code

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 8</u>	PIPELINE SAFETY REGULATIONS
<u>SUBCHAPTER A</u>	GENERAL REQUIREMENTS AND DEFINITIONS
<u>RULE §8.1</u>	General Applicability and Standards

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §§60101, *et seq.*; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline and gathering and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. The gathering and production beyond this first point of measurement shall be subject to 49 CFR ~~Part 192.8 and shall be subject to the rules as defined as Type-A or Type-B gathering lines as those~~ Class 2, 3, or 4 areas as defined by 49 CFR Part 192.5;

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §§60101, *et seq.*; and Texas Natural Resources Code, §117.011 and §117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §§717, *et seq.*; or 49 U.S.C. §§60101, *et seq.*

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective as of the effective date of this section.

(1) Natural gas pipelines, including LPG distribution systems and master metered systems, shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §§60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §§60101, *et seq.*; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §§60101, *et seq.* the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Concurrent filing. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall file a copy of that document or information with the Pipeline Safety Division.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B)

of this section shall comply with the applicable requirements of this section no later than the stated date:

- (A) for cathodic protection (49 CFR Part 192), March 1, 2012;
- (B) for damage prevention (49 CFR 192.614), September 1, 2010;
- (C) to establish an MAOP (49 CFR 192.619), March 1, 2010;
- (D) for line markers (49 CFR 192.707), March 1, 2011;
- (E) for public education and liaison (49 CFR 192.616), March 1, 2011; and
- (F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), March 1, 2011.

Source Note: The provisions of this §8.1 adopted to be effective November 24, 2004, 29 TexReg 10733; amended to be effective May 15, 2005, 30 TexReg 2849; amended to be effective January 30, 2006, 31 TexReg 480; amended to be effective March 2, 2009, 34 TexReg 1414; amended to be effective August 30, 2010, 35 TexReg 7743; amended to be effective August 6, 2012, 37 TexReg 5738; amended to be effective October 6, 2014, 39 TexReg 7916

[Next Page](#) [Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

<u>TITLE 16</u>	ECONOMIC REGULATION
<u>PART 1</u>	RAILROAD COMMISSION OF TEXAS
<u>CHAPTER 18</u>	UNDERGROUND PIPELINE DAMAGE PREVENTION
RULE §18.1	Scope, Applicability, and General Provisions

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

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

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

(d) This chapter does not apply to:

- (1) the exemptions in Texas Utilities Code, §251.003;
- (2) the movement of earth that does not exceed a depth of 16 inches;
- (3) surface mining operations;
- (4) the following activities when performed by an employee of TxDOT within TxDOT right-of-way:
 - (A) sampling and repair of pavement, base, and subgrade;
 - (B) repair of roadway embankment adjacent to pavement structure;
 - (C) reshaping of unpaved shoulders and drop-offs;
 - (D) installation and maintenance of guardrails, cable barriers, delineators, vehicle attenuators, sign posts, mailboxes, and cables for traffic signals and luminaries;
 - (E) cleaning of ditches; and

- (F) removal of silt from culverts; or
- (5) hand digging by an employee or contractor of TxDOT for TxDOT's archeological program.
- (e) This chapter also applies to movement of earth by tillage that exceeds a depth of 16 inches.
- (f) Unless otherwise specified, all time periods used in this chapter shall be calculated from the time the original notification is given to the notification center.
- (g) Unless otherwise specified, all time periods that are stated in days shall mean working days.
- (h) Unless an excavator and an operator otherwise expressly agree in accordance with the requirements set forth in §18.3 of this title, relating to Excavator Notice to Notification Center, the life of a line locate ticket shall be 14 days.
- (i) Unless otherwise expressly stated in this chapter, each excavator and each operator shall retain required records for at least four years. At a minimum, each operator and each excavator shall retain locate tickets and positive response notifications. Retention at a notification center is an acceptable method of retention for locate tickets.

Source Note: The provisions of this §18.1 adopted to be effective September 1, 2007, 32 TexReg 3545

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)

UTILITIES CODE

TITLE 5. PROVISIONS AFFECTING THE OPERATION OF UTILITY FACILITIES

CHAPTER 251. UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. SHORT TITLE. This chapter may be cited as the Underground Facility Damage Prevention and Safety Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) electrical energy;
- (B) natural or synthetic gas;
- (C) petroleum or petroleum products;
- (D) steam;
- (E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or
- (F) any other liquid, material, or product not defined as a Class B underground facility.

(2) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

- (A) water;
- (B) slurry; or
- (C) sewage.

(3) "Corporation" means the Texas Underground Facility Notification Corporation.

(4) "Damage" means:

- (A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground

facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(5) "Excavate" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(6) "Excavator" means a person that excavates or intends to excavate in this state.

(7) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(8) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(9) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(10) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(11) "Operator" means a person that operates an underground facility.

(12) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(13) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or

or municipality to require an operator to relocate, replace, or repair its underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.008. EFFECT ON CIVIL REMEDIES. Except as otherwise specifically provided by this chapter, this chapter, including Section 251.201, does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.009. PROVISION OF GENERAL INFORMATION. At least once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this chapter and the statewide toll-free telephone number established by the corporation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION

Sec. 251.051. PURPOSE. The Texas Underground Facility Notification Corporation provides statewide notification services under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.052. NONPROFIT CORPORATION. The corporation is a public nonprofit corporation and has all the powers and duties

incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except that the corporation:

- (1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;
 - (2) may not merge or consolidate with another corporation;
 - (3) is not subject to voluntary or involuntary dissolution;
- and
- (4) may not be placed in receivership.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.053. APPLICATION OF OPEN MEETINGS AND OPEN RECORDS LAWS. The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.054. EXPENSES AND LIABILITIES OF CORPORATION. (a) All expenses of the corporation shall be paid from income of the corporation.

(b) A liability created by the corporation is not a debt of this state, and the corporation may not secure a liability with funds or assets of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.055. BOARD OF DIRECTORS. (a) The board of directors of the corporation is composed of the following 12 members appointed by the governor:

- (1) six representatives of the general public;
- (2) one representative of the gas industry;

- (3) one representative of the telecommunications industry;
- (4) one representative of the electric industry;
- (5) one representative of cable television companies;
- (6) one representative of municipalities; and
- (7) one representative of persons who engage in excavation operations who are not also facility operators.

(b) Board membership is voluntary and a director is not entitled to receive compensation for serving on the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.056. TERMS. (a) Directors serve staggered three-year terms, with the terms of four directors expiring each August 31.

(b) A director serves until the director's successor is appointed by the governor and assumes office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.057. DECLARATION OF BOARD VACANCY. (a) The board may declare a director's office vacant if the director ceases to be associated with the industry or an operator the director represents.

(b) Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.058. OFFICERS. (a) The board shall elect from among its directors a chair and vice chair.

(b) The chair and vice chair serve for a term of one year and may be reelected.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.059. ENTITLEMENT TO VOTE. The corporation's bylaws must provide that each director is entitled to one vote.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.060. DUTIES OF CORPORATION. The corporation shall develop and implement processes to:

- (1) maintain a registration of:
 - (A) notification centers as provided by Section 251.101(a)(3);
 - (B) operators who elect to convert facilities to Class A facilities under Section 251.005(a); or
 - (C) operators who elect to become Class A underground facility operators under Section 251.005(b);
- (2) establish minimum technical standards used by notification centers;
- (3) establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;
- (4) oversee the bid process and select the vendor for the statewide toll-free telephone number;
- (5) oversee the bid process and select the vendor for the call router system;
- (6) determine before May 1 of each year the cost-sharing between the notification centers of:
 - (A) the toll-free telephone number; and
 - (B) the call router system prescribed by Section 251.102(4);
- (7) develop public service announcements to educate the public about statewide one-call notification and its availability;
- (8) establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;
- (9) on a complaint concerning charges, investigate and determine appropriate charges;

(10) recommend a civil penalty against a notification center that does not meet the requirements of this chapter of not less than \$1,000 or more than \$5,000 for each violation;

(11) refer the recommended penalty to the attorney general, who shall institute a suit in a court of competent jurisdiction to recover the penalty;

(12) assist in dispute resolution among notification centers or between a notification center and an operator;

(13) assist any operator who encounters difficulty in joining a notification center; and

(14) review and study design standards for the placement of underground facilities throughout this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.061. CONTRACT FOR STATEWIDE TOLL-FREE NUMBER AND CALL ROUTER SYSTEM. (a) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this chapter.

(b) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is acceptable.

(c) After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.062. FEES AND RATES. (a) Except as provided by this section, the corporation may not, for any reason, impose an

assessment, fee, or other charge, including a charge for inputting data, against an operator.

(b) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of \$50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER C. NOTIFICATION CENTERS

Sec. 251.101. NOTIFICATION CENTER. (a) A notification center is a legal entity that:

(1) operates a notification system capable of serving excavators and operators statewide;

(2) is created to:

(A) receive notification of an intent to excavate and ~~of damage to an underground facility and disseminate that information~~ to member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and

(B) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and

(3) registers the following information with the corporation:

(A) its name, address, and telephone number;

(B) the name of a contact person;

(C) a statement of compliance with Section 251.104;

and

(D) a listing of the counties in which it operates.

(b) A notification center operating on September 1, 1997, may continue to operate if the notification center complies with this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.102. GENERAL DUTIES OF NOTIFICATION CENTER. A notification center shall:

- (1) operate 24 hours a day every day of the year;
- (2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate operators and to all registered and affected notification centers operating in this state;
- (3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers;
- (4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router;
- (5) provide, on request of an excavator, a contact name and telephone number of a representative of the operator for special circumstances; and
- (6) have personnel capable of assisting Spanish-speaking customers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.103. RECORDS. (a) A notification center shall maintain for not less than four years a record to document:

- (1) the receipt of a notice of:
 - (A) intent to excavate;
 - (B) damage to an underground facility;
 - (C) an emergency excavation; and
 - (D) an extraordinary circumstance;
 - (2) the information the excavator is required to provide to the notification center under this chapter;
 - (3) contact with operators and other notification centers;
- and
- (4) the information the notification center provided to the excavator.

cents. The corporation shall waive this charge for the remainder of any year in which the corporation receives \$250,000 under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 1, eff. Sept. 1, 2001.

Sec. 251.107. DUTY TO PARTICIPATE IN NOTIFICATION CENTER. (a) Each operator of a Class A underground facility, including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

(b) Each operator of a Class A underground facility shall provide to the notification center:

(1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;

(2) the name and telephone number of a contact person or persons; and

(3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations or other identifiers or in the person or persons designated as the operator's contact person or persons.

(c) The notification center may not require an operator to conduct a survey of the operator's underground facilities or alter the operator's existing signage.

(d) A notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER D. REQUIREMENTS RELATING TO EXCAVATION

Sec. 251.151. DUTY OF AN EXCAVATOR. (a) Except as provided by Sections 251.155 and 251.156, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the

date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.

(b) Notwithstanding Subsection (a), if an excavator makes a Saturday notification, the excavator may begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, the excavator may begin the excavation the following Wednesday at 11:59 a.m.

(c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the excavator wants to change the start time, the excavator shall notify the operator to set a mutually agreed-to time to begin the excavation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.152. INFORMATION INCLUDED IN NOTICE. The excavator shall include in the notice required under Section 251.151:

- (1) the name of the person serving the notice;
- (2) the location of the proposed area of excavation, including:
 - (A) the street address, if available, and the location of the excavation at the street address; or
 - (B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;
- (3) the name, address, and telephone number of the excavator or the excavator's company;
- (4) the excavator's field telephone number, if one is available;
- (5) a telephone facsimile number, e-mail address, or another electronic number or address approved by the board to which an operator may send the notification required by Section 251.157(d);
- (6) the starting date and time and the anticipated completion date of excavation; and
- (7) a statement as to whether explosives will be used.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 1, eff. Nov. 1, 2001.

Sec. 251.153. DUTY OF NOTIFICATION CENTER. (a) At the time an excavator provides a notification center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

(b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide to every other affected notification center operating in this state the information required by Section 251.152 and received from the excavator. The notification center shall provide the information by the use of high speed data transmission.

~~(c) Not later than two hours after the time the notification~~
center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.154. NOTIFICATION BY AN EXCAVATOR. (a) A person required to provide notice under this chapter is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this chapter.

(b) A person may deliver information required under this chapter by any appropriate method, including the use of any electronic means of data transfer.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

(4) activities performed on private property in connection with agricultural operations;

(5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement or right-of-way;

(6) excavations by or for a person that:

(A) owns, leases, or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(B) operates all underground facilities located at the excavation site; or

(7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.

(b) If a person excepted under Subsection (a)(4) elects to comply with this chapter and the operator fails to comply with this chapter, the person is not liable to the underground facility owner for damages to the underground facility.

(c) In this section:

(1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.

(2) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.157. DUTY OF OPERATOR TO PERSON EXCAVATING. (a) Each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary. The operator shall mark the location 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 holiday;

(3) 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a holiday; or

(4) a time agreed to by the operator and the excavator.

(b) An operator shall refer to the American Public Works Association color coding standards when marking.

(c) An excavator who has fully complied with this chapter may not be liable for damage to an underground facility that was not marked in accordance with this chapter.

(d) Not later than the 48th hour after the time the excavator gives to the notification center notice of intent to excavate, an operator contacted by the notification center shall notify the excavator of the operator's plans to not mark the proximate location of an underground facility at or near the site of the proposed excavation. The operator must provide the notification by e-mail or facsimile or by another verifiable electronic method approved by the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. ~~Amended~~ by Acts 2001, 77th Leg., ch. 858, Sec. 2, eff. Nov. 1, 2001.

Sec. 251.158. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. (a) The deadline prescribed by Section 251.157(a) does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane, an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill the operator's obligations under this chapter.

(b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:

(1) the nature and location of the extraordinary circumstance;

(2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and

(3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the operator's immediate attention.

(c) In addition to the notification required by Subsection (b), the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:

(1) the fact that the operator is experiencing an extraordinary circumstance; and

(2) the approximate time at which the operator will mark the requested location.

(d) A notification center shall inform each excavator notifying the system under Section 251.151 that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.

(e) An excavator is relieved from all provisions of this chapter until the operator notifies the notification center that the operator has resumed location request activities within the affected location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999

Sec. 251.159. EXCAVATION DAMAGE. (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.

(b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.

(c) Only the operator or a person authorized by the operator may perform repairs, and the repairs must be made in an expeditious manner.

(d) An excavator shall delay backfilling in the immediate area of the damage until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.

(e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER E. PENALTIES

Sec. 251.201. CIVIL PENALTY OR WARNING LETTER. (a) An excavator that violates Section 251.151, 251.152, or 251.159 is liable for a civil penalty of not less than \$500 or more than \$1,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.

~~(a-1) An excavator that violates Section 251.155(d) is liable for a civil penalty of not less than \$1,000 or more than \$2,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.~~

(b) Except as provided by Subsection (b-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$1,000 or more than \$2,000.

(b-1) If it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c) Except as provided by Subsection (c-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c-1) If it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$5,000 or more than \$10,000.

(d) In assessing the civil penalty the court shall consider the actual damage to the facility, the effect of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(e) Venue for a proceeding to collect a civil penalty under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(f) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty.

(g) This section does not apply to a residential property owner excavating on the property owner's own residential lot.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 2, eff. Sept. 1, 2001.

Amended by: