

Issued in Austin, Texas, on May 30, 2007.

§ 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 sub grade;
 - (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.

§18.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Damage--Includes but is not limited to:

(A) defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground pipeline or of any protective coating, housing, or other protective device of an underground pipeline;

(B) weakening of structural or lateral support of an underground pipeline that affects the integrity of the pipeline; or

(C) failure to properly replace the backfill surrounding an underground pipeline.

(2) Demolish or demolition--Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives.

(3) Emergency--A situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate reestablishment of service if services are interrupted compels immediate action.

(4) Excavate--Movement of earth by any means.

(5) Excavator--A person that engages in or is preparing to engage in the movement of earth.

(6) Hand digging--Any movement of earth using non-mechanized tools or equipment, soft digging, or vacuum excavation. Hand digging includes but is not limited to digging with shovels, picks, and manual posthole diggers.

- (7) Legal holiday--A holiday specified as a legal holiday by Subchapter B, Chapter 662, Texas Government Code.
- (8) Locate or marking--An operator's or its contract locator's physical demarcation of the location of an underground pipeline.
- (9) Locate ticket, line locate ticket, or ticket--The record of the notice of intent to excavate given by an excavator to a notification center in conformance with Texas Utilities Code, §§251.151 and 251.152.
- (10) Locator--A person charged with determining and marking the approximate horizontal location of underground pipeline that may exist within an area either specified by a notice served on a notification center or designated by white lining.
- (11) Movement of earth--Any operation in which earth, rock, or other, material in the ground, any structure, or any mass of material is moved, removed, disturbed, or otherwise displaced by hand digging, mechanized equipment or tools of any kind, or explosives, and includes but is not limited to augering, backfilling, boring, cable or pipe plowing and driving, compressing, cutting, demolition, digging, ditching, dragging, dredging, drilling, grading, plowing-in, pulling-in, razing, rendering, ripping, scraping, tilling of earth at a depth exceeding 16 inches, trenching, tunneling, or wrecking.
- (12) Mechanized equipment or tool--A piece of equipment or a tool operated by mechanical power, including but not limited to a tractor, trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow and/or driver, and other equipment used to plow in or pull in cable or pipe.
- (13) Notification center--A legal entity established and operated pursuant to Texas Utilities Code, Chapter 251, Subchapter C.
- (14) Notify, notice, or notification—The completed delivery of information to the person to be notified, and the receipt of that information by that person in accordance with this chapter. The delivery of information includes but is not limited to the use of any electronic or technological means of data transfer.
- (15) Operator--A person who operates on his or her own behalf, or as an agent designated by the owner, a pipeline containing flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide.
- (16) Person—Any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and includes any trustee, receiver, assignee, or personal representative thereof.
- (17) Positive response—Notification to an excavator by markings left at an excavation site, or by fax, phone, e-mail, pager, or written correspondence that allows an excavator to know prior to the beginning of excavation that underground pipelines have been located and marked or that there are no underground pipelines in the vicinity of the excavation.
- (18) Soft digging—Any movement of earth using tools or equipment that use air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

(19) Spot marking--Making a circle around the spot where excavation is to take place, typically used when standard marking techniques would be considered damaging to property or cannot be used because of limited space.

(20) Tillage--The manipulation of soil in preparation for planting and the cultivation by loosening or breaking up of soil around growing plants by hand digging or by use of a moldboard, disk, rotary, chisel or subsoil plow, a cultivator, a harrow, or a tiller.

(21) Tolerance zone--Half the nominal diameter of the underground pipeline plus a minimum of 18 inches on either side of the outside edge of the underground pipeline on a horizontal plane.

(22) TDRF--The Texas Damage Reporting Form, the on-line reporting system of the Railroad Commission for use in reporting damage to underground pipelines or violations of this chapter.

(23) Underground pipeline--A pipeline containing flammable, toxic, or corrosive gas, a hazardous liquid, or carbon dioxide that is located partially or totally underground.

(24) White-lining--An excavator's designation on the ground of the area to be excavated using white paint, white flags, white stakes, or any combination of these.

(25) Working day--Every day that is not a Saturday, a Sunday, or a legal holiday.

§18.3. Excavator Notice to Notification Center.

(a) An excavator shall request the location of underground pipelines at each excavation site by giving notice to the notification center as required by Texas Utilities Code, Chapter 251.

(b) An excavator shall include in the notice the method or methods by which the excavator will receive a positive response.

(c) When an excavation site cannot be clearly identified and described on a line locate ticket, the excavator shall use white-lining to mark the excavation area prior to giving notice to the notification center and before the locator arrives on the excavation site.

(d) If an excavation project is too large to mark using white-lining or is so expansive that a full description cannot be provided on a line locate ticket, then the operator and the excavator shall conduct a face-to-face meeting to discuss the excavation activities and to establish protocols for:

(1) the interval between each notice to the notification center;

(2) the scope of each line locate ticket;

(3) the life of each line locate ticket; and

(4) the schedule of work on the excavation and the chronological order in which applicable locate tickets are to be marked.

(e) If an excavation project is not completed at the time a line locate ticket expires, the excavator shall refresh the ticket by giving the notice described in subsection (a) of this section.

A request to refresh shall be limited to the area yet to be excavated.

(f) An excavator and an operator may agree that the life of a line locate ticket is more than 14 days provided that:

(1) the agreement is in writing; and

(2) the agreement is signed and dated by both the excavator and the operator.

(g) Both the excavator and the operator shall retain a copy of any agreement made pursuant to subsection (f) of this section.

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

(a) An excavator shall comply with the requirements of §18.3 of this title, relating to Excavator Notice to Notification Center. An excavator shall also comply with the requirements of Texas Health & Safety Code, Subchapter H, relating to Construction Affecting Pipeline Easements and Rights-of-Way, and shall plan an excavation in such a manner as to avoid damage to and minimize interference with all underground pipelines in the vicinity of the excavation area and shall take all reasonable steps to protect underground pipelines from damage.

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

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

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

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

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

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

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

(4) the positive response is unclear or obviously erroneous (for example, for a different

location or for a different type of underground facility).

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

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

(h) Each excavator that damages an underground pipeline shall notify the operator of the damage through the notification center immediately but not later than two hours following the damage incident. An excavator that damages an underground pipeline shall not cover the exposed pipeline without approval of the operator.

§18.5.Operator and Excavator Obligations with Respect to Positive Response.

(a) Upon being contacted by the notification system, an operator shall provide a positive response within the time frames specified in Texas Utilities Code, Chapter 251, by either:

(1) marking the operator's underground pipelines in accordance with the requirements of Texas Utilities Code, Chapter 251; and this chapter; or notifying the excavator that the operator has no underground pipelines in the vicinity of the proposed excavation area. The operator shall provide this "all clear" or "no conflict" notice using the method or methods that the excavator specified in accordance with §18.3 of this title, relating to Excavator Notice to Notification Center.

(b) Both the excavator and the operator shall make a record of the positive response regarding each line locate ticket received.

(c) An excavator that gives a second notice to the notification center pursuant to §18.4(e) of this title, relating to Excavator Obligation to Avoid Damage to Underground Pipelines, because an operator failed to provide a positive response to an excavator shall report that fact to the Commission through TDRF as set forth in §18.11 of this title, relating to Reporting Requirements. An excavator shall also report an operator's failure to provide a positive response to a second call to the Commission through TDRF as specified in §18.11.

(d) An operator that receives a notice of damage to its underground pipeline through a notification center pursuant to §18.11(b) of this title, relating to reporting requirements, shall respond within four hours.

§18.6.General Marking Requirements.

(a) At a minimum, all markings shall conform to the requirements of American Public Works Association (APWA) Uniform Color Code (ANSI Standard Z535.1, Safety Color Code).

(b) Markings shall be valid for an excavation site for 14 days from the time a positive response is given, unless the markings were placed in response to an emergency and the emergency condition has ceased to exist. If a line locate ticket has been refreshed pursuant to §18.3(e) of this title, relating to Excavator Notice to Notification Center, then the operator shall either ensure that markings are still visible and valid or shall re-mark. If the use of line marking may

permanently damage property (driveways, landscaping, historic locations to the extent boundaries are known), a locator shall use spot marking or another suitable marking method or methods.

§18.7. Excavator Marking Requirements.

(a) Prior to giving notice pursuant to §18.3 of this title, relating to Excavator Notice to Notification Center, an excavator shall mark, if applicable according to §18.3(c), the specific excavation area using white paint flags, or stakes, whichever is most visible for the terrain.

(b) An excavator shall mark the area of excavation using intervals that show the direction of the excavation.

§18.8. Operator Marking Requirements.

(a) A locator shall use all information necessary to mark underground pipelines accurately.

(b) Locators shall mark the approximate center line of an underground pipeline.

(c) If, in the process of marking an underground pipeline, a locator discovers a customer-owned underground pipeline, the locator shall make a reasonable effort to advise the excavator of the presence of the customer-owned underground pipeline.

(d) Where a proposed excavation crosses an underground pipeline, markings shall be at intervals that clearly define the route of the underground pipeline, to the extent possible.

(e) A locator shall mark underground pipelines by means of stakes, paint, flags, or a combination of two or more of these. The terrain, site conditions, and type and extent of the proposed excavation shall be considered in determining the most suitable means for marking underground pipelines.

(f) A locator shall mark at sufficient intervals to indicate clearly the approximate horizontal location and direction of the underground pipeline or pipelines. The distance between any two marks indicating the same line shall not exceed 20 feet; however, a shorter distance between marks may be necessary because of site conditions or directional changes of the underground pipeline.

(g) Markings of an underground pipeline greater than six inches in nominal outside dimension shall include the size in inches at every other mark.

(h) A locator shall extend all markings, if practical, at least one additional mark beyond the boundaries of the specific location of the proposed work as detailed on the line locate ticket.

(i) A locator shall make paint marks approximately eight to ten inches in length and one to two inches in width except when spot marking is necessary. A locator shall make a minimum of three separate marks for each underground pipeline marking.

§18.9.Options for Managing an Excavation Site in the Vicinity of an Underground Pipeline.

(a) After complying with the notice requirements of §18.3 of this title, relating to Excavator Notice to Notification Center, an excavator and an operator may jointly establish the protocols applicable to an excavation site in the vicinity of underground pipelines based on the particular characteristics of each job. The protocols applicable to an excavation site may:

- (1) designate the contact person or persons for each entity working at an excavation site;
 - (2) establish the required mode or modes of communication among all entities working at an excavation site, e.g., telephone or other electronic means or face- to-face meetings at prescribed times or intervals;
 - (3) provide the method for coordinating work activities among all entities working at an excavation site;
 - (4) provide for the ownership and/or possession of the locate ticket or tickets;
 - (5) declare which entity or entities must have the locate ticket or locate ticket number before beginning work;
 - (6) state the life of a locate ticket and the circumstances that require refreshing the locate ticket;
 - (7) state the schedule of work on the excavation and, if applicable, the chronological order in which applicable locate tickets are to be located;
 - (8) designate the extent of the tolerance zone, provided that it shall not be less than half the nominal diameter of the underground pipeline plus a minimum of 18 inches on either side of the outside edge of the underground pipeline on a horizontal plane and the type of excavation permitted within the tolerance zone; and
 - (9) provide for any other agreement with respect to excavation activities and/or marking requirements that will or will tend to ensure the proper and safe excavation in the vicinity of an underground pipeline.
- (b) If an excavator and an operator jointly establish protocols pursuant to this section, both the excavator and the operator shall make and retain a record of the agreement.

§18.10.Excavation within Tolerance Zone.

(a) An excavator shall comply with the requirements of Texas Health & Safety Code, Subchapter H, relating to Construction Affecting Pipeline Easements and Rights-of-Way.

(b) When excavation is to take place within the specified tolerance zone, an excavator shall exercise such reasonable care as may be necessary to prevent damage to any underground pipeline in or near the excavation area. Methods to consider, based on certain climate or geographical conditions, include hand digging when practical, soft digging, vacuum excavation methods, pneumatic hand tools. Other mechanical methods or other technical methods that may

be developed may be used with the approval of the underground pipeline operator. Hand digging and non-invasive methods are not required for pavement removal.

§18.11. Reporting Requirements.

(a) Each operator of an underground pipeline shall report to the Commission all damage to its pipelines caused by an excavator. Within 10 days of the damage incident or of the operator's actual knowledge of the damage incident, an operator shall submit the information to the Commission through TDRF, which may be accessed at <http://www.src.state.tx.us/formpr/index.html> using its assigned operator identification code.

(b) Each excavator that damages an underground pipeline shall notify the operator of the damage through the notification center immediately but not later than two hours following the damage incident. The excavator shall also submit report of the damage incident to the Commission using TDRF, which may be accessed at <http://www.rrc.state.tx.us/formpr/index.html> and the excavator sign- in, within 10 days of the incident.

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

(d) An emergency response official, a member of the general public, or another person aware of damage to an underground pipeline is encouraged to submit an incident form using TDRF, which can be accessed at <http://www.rrc.state.tx.us/formpr/index.html>. Entries can be made through the general public or emergency response official sign-in.

§18.12. Penalty Guidelines.

(a) The penalty amounts shown in the table in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of the requirements of this chapter. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(b) The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations or formal warnings, including the number of previous violations or formal warnings;

(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, including but not limited to the number of locate requests received and responded to by an operator and the number of location notifications given by an excavator in the previous year.

(c) The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic monetary penalty amount requested and not to any requested enhancements.

(d) In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes but is not limited to actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the rules in this chapter or to mitigate the consequences of a violation of the rules in this chapter.

(e) Depending upon the nature of and the consequences resulting from a violation of this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

Figure: 16 TAC §18.12(e)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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