



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

### MEMORANDUM

**TO:** Chairman Christi Craddick  
Commissioner David Porter  
Commissioner Barry T. Smitherman

**FROM:** Cristina Self, Attorney <sup>ms</sup> General Counsel Section  
Office of General Counsel

**THROUGH:** Lindil C. Fowler, General Counsel <sup>LF</sup>

**DATE:** September 9, 2014

**SUBJECT:** Adoption of amendments to 16 Tex. Admin. Code §8.1, General Applicability and Standards; and §8.215, Odorization of Gas. [GUD No. 10350]

Attached are Staff's recommended preamble and rule text for the adoption of amendments to rule §8.1, relating to General Applicability and Standards, and rule §8.215, relating to Odorization of Gas.

The amendments to §8.1 as proposed update minimum safety standards by stating that the Commission adopts by reference certain federal pipeline safety regulations (promulgated by the U.S. Department of Transportation) as of the effective date of the amended rule. This ensures that recent amendments and corrections to the federal rules will be incorporated into the Commission's rules, as required by State Program Guidelines. The amendments to §8.215 were proposed in order to clarify that wick-type farm tap odorizers are exempt from certain equipment reporting requirements, but nonetheless must continue to comply with gas odorization requirements.

On June 17, 2014, the Commission approved the publication of the proposed amendments in the *Texas Register* for a 30-day public comment period, which ended on August 4, 2014. The Commission received one public comment on the proposal, which is addressed beginning on the first page of the adoption preamble in your notebook materials.

Staff recommends that the Commission adopt these amendments without changes to the proposed text published in the July 4, 2014, issue of the *Texas Register*.

cc: Jason Boatright, Director –General Counsel Section  
Polly McDonald, Director – Pipeline Safety Division  
Milton Rister, Executive Director  
Wei Wang, Chief Financial Officer

1           The Railroad Commission of Texas (Commission) adopts amendments to §8.1, relating to  
2           General Applicability and Standards, to update federal provisions and citations, and to §8.215, relating to  
3           Odorization of Gas, to clarify an exemption for certain farm tap odorizers. The Commission adopts the  
4           amendments without changes to the proposed text as published in the July 4, 2014, issue of the *Texas*  
5           *Register* (39 TexReg 5024).

6           The Commission received one comment from an individual regarding the proposed amendments.  
7           The commenter stated that the way he read and understood the amendment it would "exempt the  
8           maintenance requirements of the wick type farm taps (odorizers) on operators, thereby placing the  
9           ownership of maintenance and upkeep on the end user."

10          The Commission disagrees with this comment, which is a misapprehension of the plain meaning  
11          of the language change and the explanation in the proposal preamble. The proposal sought no change to  
12          anything other than the wording of the exemption itself.

13          Operators are currently complying with the full requirements of 49 CFR §192.625, and will  
14          continue to be required to do so. The Commission proposed to correct an *apparent* discrepancy between  
15          this regulation and the current wording of §8.215, which *seems* to permit operators to exempt farm tap  
16          odorizers from the odorization testing requirements. This rule has never been enforced in this manner;  
17          however, the wording appears to allow it.

18          To bring the wording of the Commission's rule into alignment with the requirements of 49 CFR  
19          §192.625, the Commission proposed to narrow the exemption to *only* wick-type farm tap odorizers, and  
20          to exempt wick-type farm tap odorizers *only* from the requirement to report the make, model, and serial  
21          number of the wick-type farm tap odorizer. This information would be impossible for an operator to  
22          report in any event, because a wick-type odorizer is not a meter; it is a bottle with a fabric wick in it.

23          Regardless of the type of odorizer, each operator has been and will continue to be required to  
24          conduct periodic sampling of combustible gases using an instrument capable of determining the

1 percentage of gas in air at which the odor becomes readily detectable. This has been a requirement since  
2 the regulations were adopted in 1970, and this is the standard that the Commission has adopted and  
3 currently enforces through its own rule, §8.215.

4 In §8.215(e) as adopted, operators have been and will continue to be required to do the  
5 following: (1) conduct concentration tests on the gas supplied through its facilities and required to be  
6 odorized; (2) ensure that the test points are sufficiently distant from odorizing equipment, so as to be  
7 representative of the odorized gas in the system; (3) perform the concentration tests at intervals not  
8 exceeding 15 months, but at least once each calendar year or at such other times as the Pipeline Safety  
9 Division may reasonably require; (4) record and retain the results of these tests in each company's files  
10 for at least two years; and (5) ensure that malodorant concentration test results include the odorizer name  
11 and location, the malodorant concentration meter make, model, and serial number, the date test  
12 performed, test time, odorizer tested, and distance from odorizer, the test results indicating the percent  
13 gas in air when malodor is readily detectable; and the signature of person performing the test.

14 For wick-type farm tap odorizers, the *only* thing an operator is not required to do is to report is  
15 the make, model, and serial number of the device.

16 In addition, the Commission is well aware of the hazards of unodorized gas mentioned by the  
17 commenter in a reference to the New London School tragedy in March 1937. This event spurred the  
18 Texas Legislature to enact and the Commission to begin enforcing in July 1937 one of the first pipeline  
19 safety regulations in the United States: the requirement to odorize gas.

20 The commenter stated "One of the biggest problems with farm taps is the undocumented or  
21 mapping of lines connected to the operators transmission lines in the field."

22 The Commission recognizes that there are myriad service configurations related to farm tap  
23 distribution service. Many farm tap service lines are customer-owned and are not within the control of  
24 the operator. That means that excavators who call for a line locate will not be given information about

1 service line location because these service lines are not the property of the operators.

2 While an operator may be aware of additional service locations and may attempt to notify users  
3 of the hazards of unodorized gas, that may not always be the case, and most operators welcome that  
4 information from property owners and/or customers who become aware of such situations. Because farm  
5 tap service is distribution service, there is no Commission requirement to map such lines. In any event,  
6 the Commission has no authority to regulate routing or siting of any pipeline, other than to require  
7 compliance with the design and construction requirements in the regulations.

8 The commenter also stated: "With all of the inherent hazards associated with farm taps and with  
9 the maintenance requirements being placed on the end user I feel that this hazard will significantly  
10 multiply if not regulated/standardized. One way to reduce this hazard is to standardize farm taps and  
11 regulate all service/transmission lines detailing the specifications (material used to construct these lines)  
12 of these lines. This requirement would also mandate the mapping of these lines, and also require these  
13 lines to be registered with the one call system."

14 The Commission notes that transmission lines serving farm tap customers are already regulated.  
15 To the extent that an operator owns the farm tap service line, there are materials, design, and construction  
16 standards that are already applicable, as are the one-call requirements. However, because these are  
17 distribution facilities, the operator may map them for its own purposes, but the Commission's mapping  
18 requirements do not apply to them. To the extent that these service lines are owned by customers, the  
19 Commission is without authority to extend pipeline safety regulation to them; that would have to be  
20 accomplished by statutory amendment.

21 The commenter stated that by imposing regulations that address not only the wick type odorizers  
22 but also regulate all the components of the system "we would be able to significantly reduce the exposure  
23 of this hazard."

24 The Commission has not proposed amendments other than to refine, narrow, and align the



1 exemption stated in §8.215(e)(2) and therefore may not adopt such changes in this rulemaking  
2 proceeding.

3 The Commission adopts the amendments in §8.1(b) to update the minimum safety standards by  
4 adopting by reference the United States Department of Transportation's (USDOT) pipeline safety  
5 standards found in 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191,  
6 Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-  
7 Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline:  
8 Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety  
9 Standards; 49 U.S.C. §§60101, et seq.; 49 CFR Part 195, Transportation of Hazardous Liquids by  
10 Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for  
11 Transportation Workplace Drug and Alcohol Testing Programs. The adopted amendment changes the  
12 date of the Commission's adoption of the federal pipeline safety standards to the effective date of this  
13 section.

14 The most significant change in the federal pipeline regulations since October 1, 2011, updated  
15 the administrative civil penalty maximums for violation of the safety standards to reflect current federal  
16 law; updated the informal hearing and adjudication process for pipeline enforcement matters to reflect  
17 current law; and made other technical corrections and updates to certain administrative procedures. The  
18 amendments did not impose any new operating, maintenance, or other substantive requirements on  
19 pipeline owners or operators, and became effective October 25, 2013. By amending the text of §8.1 to  
20 provide that the Commission adopts all federal pipeline safety regulations adopted by reference in this  
21 section as of the effective date of the section, the Commission ensures that all amendments and  
22 corrections to the federal rules have been incorporated into the Commission's rules, as required by State  
23 Program Guidelines.

24 The adopted amendments to §8.215(e)(2) clarify the exemption for reporting certain information

1 about certain types of farm tap odorizers. Currently, and consistent with the federal requirements for gas  
2 odorization set forth in 49 CFR §192.625, the Commission requires each gas company to conduct odorant  
3 concentration tests according to the requirements in the rule, and to record and maintain certain  
4 information regarding the tests in its files for at least two years. The reports must include the odorizer  
5 name and location; the malodorant concentration meter make, model, and serial number; the date the test  
6 was performed, test time, odorizer tested, and distance from odorizer; the test results indicating the  
7 percent of gas in air when the malodor was readily detectable; and the signature of the person performing  
8 the test. The provision in subsection (e)(2) appeared to exempt farm tap odorizers from the odorization  
9 testing requirements of paragraph (1) of this subsection. Such an exemption would not be consistent with  
10 the requirements of §192.625.

11 Historically, operators were not required to perform the testing of farm tap odorizers that is now  
12 required in §8.215(e)(1). Farm taps were assigned an odorizer ID number and the homeowner or operator  
13 was required to fill out certain forms for each farm tap and submit them to the Commission on a quarterly  
14 basis. Approximately ten years ago, the Commission moved the pipeline safety rules from Chapter 7 of  
15 the Texas Administrative Code, Title 16, to Chapter 8, simultaneously making a number of clarifying  
16 organizational changes. The intent of subsection (e)(2) at that time was to remove the requirement for  
17 odorizers to have ID numbers and to eliminate the requirement that odorizer equipment reports be  
18 performed on wick-type odorizers.

19 Typically, a wick-type odorizer is a small steel bottle, containing only a pint to a quart of  
20 odorant, and installed on the service line adjacent to the meter. Similar to those used in a kerosene  
21 lantern, one end of the wick extends through a hole in the container while the other end is placed directly  
22 in the stream of gas. The odorant is drawn up the wick from the container into the gas stream. There is no  
23 manufactured equipment and therefore no malodorant concentration meter make, model, and serial  
24 number to report.

1           When the rules were previously amended, there was no intent to remove the requirement that  
2 operators test for adequate odorization; the Commission has continued to require operators to conduct  
3 those tests. The intent was to exempt wick-type odorizers from the equipment reporting requirements.  
4 The adopted amendment expressly states the limit of the exemption.

5           The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and  
6 §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons  
7 owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the  
8 Commission to adopt all necessary rules for governing and regulating persons and their operations under  
9 the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may  
10 consider necessary and appropriate to implement state responsibility under any federal law or rules  
11 governing such persons and their operations; Texas Natural Resources Code, §§117.001 - 117.101, which  
12 give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide  
13 and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section  
14 60101, et seq.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt  
15 safety standards and practices applicable to the transportation of gas and to associated pipeline facilities  
16 within Texas to the maximum degree permissible under, and to take any other requisite action in  
17 accordance with, 49 United States Code Annotated, §§60101, et seq.

18           Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101; Texas Utilities Code,  
19 §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United States Code Annotated,  
20 §§60101, et seq., are affected by the adopted amendments.

21           Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101;  
22 Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United  
23 States Code Annotated, §§60101, et seq.

24           Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas

1 Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

2

3 §8.1. General Applicability and Standards.

4 (a) (No change.)

5 (b) Minimum safety standards. The Commission adopts by reference the following provisions,  
6 as modified in this chapter, effective as of the effective date of this section [~~October 1, 2011~~].

7 (1) - (4) (No change.)

8 (c) - (g) (No change.)

9

10 §8.215. Odorization of Gas.

11 (a) - (d) (No change.)

12 (e) Malodorant concentration tests and reports.

13 (1) (No change.)

14



1                   (2) Wick-type farm [Farm] tap odorizers shall be exempt from the odorization  
2 equipment reporting [testing] requirements of paragraph (1)(B) [(†)] of this subsection.

3                   (3) (No change.)

4                   This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and  
5 found to be a valid exercise of the agency's legal authority.

6                   Issued in Austin, Texas, on September 16, 2014.

7                   Filed with the Office of the Secretary of State on September 16, 2014.

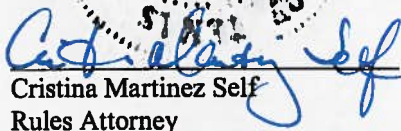
  
Christi Craddick, Chairman

  
David Porter, Commissioner

  
Barry T. Smithman, Commissioner

ATTEST

  
Secretary of the Commission

  
Cristina Martinez Self  
Rules Attorney  
Office of General Counsel  
Railroad Commission of Texas