

**Kellie Martinec**

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**From:** Laura Holland [REDACTED]  
**Sent:** Sunday, August 24, 2014 3:20 AM  
**To:** rulescoordinator  
**Subject:** Please publish on your website  
**Attachments:** Cullinan T-4 Comments.docx

Dear Rules Coordinator

Attached is a document that I would like posted in pdf format in response to your request for Comments on the T-4.

You now have my email, and my further contact information is on Page 4 of the document.

Thanks very much.

Laura Cullinan  
713-629-0700

**Gas Utility Docket 10366****Comments on Proposed Amendments to 16 TAC 3.70 Relating to Pipeline Permits Required**

The ultimate goal of the Commission as stated on Page 1, lines 2-5, "The Commission proposes the amendments in order to clarify and more specifically prescribe the procedure by which a pipeline operator may identify itself as a common carrier, gas utility, or private line operator when applying for a new T-4 permit to operate a pipeline or when renewing, amending or cancelling an existing T-4 permit."

*General overall comments to the entire proposal:*

1. *There is no mention of the specific criteria an applicant has to meet other than the basics of a contact, address, etc.*
2. *It provides that more paperwork be submitted with no mention of who will review the documents and be who will be accountable for accuracy and truth. There should be an independent review board that is not within the Commission nor be subject to conflicts of interest, such as campaign contributions.*
3. *There is no mention of any budget to provide for review of required documents. The applicant should be assessed a fee.*
4. *There is no protection or mention of landowner rights during the process of review nor does it provide for any announcement or forum for the public.*
5. *There's no specific detail of the rules and regulation of the Commission that are referenced or the laws of the state of Texas that will be followed.*
6. *The proposed amendment appears to be the Commission's attempt to address criticism and act on such, but it is really too vague and unclear which interest groups are able to see some relief.*

**SPECIFIC COMMENTS**

As stated on the Commission website in the FAQ section: "The Supreme Court opinion in *Texas Rice Partners, Ltd. v. Denbury Green Pipeline*, 363 S.W.3d 192 (Tex. 2012) accurately described the Commission's T-4 Permit process as one of **registration, not of application**, and that in accepting an entity's paperwork, the Commission performs a clerical rather than judicial-type act. The Court held that the T-4 Permit granted to Denbury by the Commission, standing alone, did not conclusively establish Denbury's status as a common carrier and confer the power of eminent domain."

*Comment: Revise to clarify that the described "permit" is merely "registration," not any positive determination of status with any legal force or effect, but that the refusal of common carrier classification conclusively denies common carrier status.*

New Rule (Page 8, lines 1-7): "If the Commission is satisfied from the application and the documentation and information in support thereof and its own review, that the proposed line is, or will be laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted."

*Comment: The Commission has disavowed any authority regarding eminent domain authority or even any connection. So if a common carrier imposter complies with the safety and tariff rule for intrastate pipelines, landowners are fair game, right?*

*There is no reference as to how the Commission determines 'satisfaction' or what their review process actually consists of. As stated in FAQ's on the RRC website – granting a permit is nothing more than a clerical act. This new proposed 'rule' shows nothing but to continue the over-reaching abusive use of the Commission's grant of permits for those companies that donate huge amounts of campaign contributions to get Commissioners elected. My husband's family has been in litigation with Denbury since 2008. The rule does nothing to address the operator checking a box incorrectly. In fact, when Denbury had a leak, the federal authorities (PHMSA) came in and made them change their 'checked box' from intrastate to interstate. Denbury Onshore has a private line but they checked "common carrier." Not one Commissioner or any other Commission employee has contacted any of the Holland family in the 6 years of litigation to find out what is going on with the landowners – even after the Texas Supreme Court ruled in their favor. I don't trust anything about this so called 'commission' proposed amendment.*

On the Commission's website: "Additionally, the Railroad Commission does not determine or confer common carrier status for pipelines. The pipeline operator reports to the Railroad Commission the status of a pipeline as a gas utility, common carrier or private line."

*Comment: How does this rule proposal interact with the above? Is there any interaction or do we just look at the two and attempt to figure out the apparent conflict for ourselves?*

On the Commission's website, this appears: "The Commission exercises its statutory responsibilities under provisions of the Texas Constitution, the Texas Natural Resources Code" etc. In the new proposed amendment, Page 5, Lines 15-17, it is stated that the amendment affects the following: The Commission proposes the amendments to 3.70 pursuant to the Texas Natural Resources Codes 81.051, 81.052, 86.041, 86.042, 111.131, 111.132, 117.001-117.101

*Comment: **None of the amendments relate to Texas Natural Resources Code 111.002 and 111.003 which is the heart of the T-4 debacle regarding checking a box that a pipeline is a common carrier instead of a private line to obtain the power of eminent domain under false pretext.** There is also no detail of how the proposed amendments relate to the affected Codes, so I did further research. The referenced Texas Natural Resources Codes and 49 USC 60101-60301 are outlined in pages 4-7 directly from their respective websites. It's like a giant puzzle to figure out what the proposed amendments do with these references.*

New Rule - Page 8, Line 16: "The Commission may delegate the authority to administratively issue pipeline permits."

*Comment: To whom may the Commission delegate authority to issue permits? Does this include the alleged pipeline company that wants the easement? Or maybe the other trade association—not the Commission—the one the industry pays for? This provision is too vague and clearly an invitation to maintain and/or increase the current abuse to landowners.*

New Rule – Page 9, Lines 1-3: "The pipeline permit, if granted, shall be revocable at any time after a hearing held after 10 days notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission."

*Comment: What are the conditions for a permit to be revoked? The pipeline has been built in accordance with safety rules and (as in Denbury) any tariff published was irrelevant so that issue could never come up. As far as the Commission knows, that's in accordance with the laws of the state and the rules of the Commission. What happens if the pipeline has been built, in use for several years and then has an 'incident' that was supposedly under the TRC jurisdiction—like when Denbury had checked the 'intrastate' box and obviously wasn't. But PHMSA took over because they clearly determined it was an 'interstate' line. How are the laws of state and rules and regulations of the Commission going to have an effect? What do these laws consist of? And what happens after the fact it is determined that it was an abuse all along?*

Submitted by

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**The Commission proposes the amendments to 3.70 pursuant to the Texas Natural Resources Codes 81.051, 81.052, 86.041, 86.042, 111.131, 111.132, 117.001-117.101**

**CHAPTER 81. RAILROAD COMMISSION OF TEXAS**

**Code 81.051 and 81.052**

**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.

**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.

**CHAPTER 86. REGULATION OF NATURAL GAS**

**Code 86.041 and 86.042**

**POWERS AND DUTIES OF THE COMMISSION**

**Sec. 86.041. IN GENERAL.** The commission has broad discretion in administering the provisions of this chapter and may adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter.

**Sec. 86.042. RULES AND ORDERS.** The commission shall adopt and enforce rules and orders to:

- (1) conserve and prevent the waste of gas;
- (2) prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas;
- (3) require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata;
- (4) provide for drilling wells and preserving a record of them;
- (5) require wells to be drilled and operated in a manner that prevents injury to adjoining property;
- (6) prevent gas and water from escaping from the strata in which they are found into other strata;
- (7) require records to be kept and reports made;
- (8) provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and
- (9) otherwise accomplish the purposes of this chapter.

**CHAPTER 111. COMMON CARRIERS, PUBLIC UTILITIES, AND COMMON PURCHASERS**

**Code 111.131 AND 111.132**

**POWERS AND DUTIES OF THE COMMISSION**

**Sec. 111.131. COMMISSION RULES FOR COMMON CARRIERS.** The commission shall establish and promulgate rules for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation and shall prescribe and enforce rules, in the manner provided by law, for the government and control of common carriers with respect to their pipelines and receiving, transferring, and loading facilities.

**Sec. 111.132. COMMISSION RULES FOR PUBLIC UTILITIES.** (a) The commission shall establish and enforce rules governing:

- (1) the character of facilities to be furnished by public utilities;
- (2) the forms of receipts to be issued by public utilities; and
- (3) the rates, charges, and rules for the storage of crude petroleum by public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, and the delivery of their products.

(b) The commission also shall exercise its authority to establish and enforce rules governing public utilities on petition of an interested person.

**CHAPTER 117. HAZARDOUS LIQUID OR CARBON DIOXIDE PIPELINE TRANSPORTATION INDUSTRY**

**Code: 117.001-117.101 AND 49 United States Code Annotated, 60101, et seq. (The Pipeline Safety Statute)**

**GENERAL PROVISIONS**

**Sec. 117.001. DEFINITIONS.**

**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.

**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., ETC., ETC.

**Sec. 117.013. RECORDS AND REPORTS.**

**Sec. 117.014. INSPECTION AND EXAMINATION OF RECORDS AND PROPERTY**

**Sec. 117.015. COMPLIANCE WITH FEDERAL LAW.**

**ENFORCEMENT**

**Sec. 117.051. CIVIL PENALTY.**

**Sec. 117.052. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL.**

**Sec. 117.054. CRIMINAL PENALTY FOR INJURING OR DESTROYING PIPELINE FACILITIES.**

## The Pipeline Safety Statute 49 USC 60101-60301

### § 60101. Definitions – Pages 1040 to 1044

These are general definitions located at this link:

[http://www.phmsa.dot.gov/pv\\_obj\\_cache/pv\\_obj\\_id\\_A352139EEBBE772240ED34C4DF41C5780B040500/filename/49US Code Chapters 601 Chapters 603.pdf](http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_A352139EEBBE772240ED34C4DF41C5780B040500/filename/49US Code Chapters 601 Chapters 603.pdf)

### § 60102. Purpose and general authority – Pages 1045-1046

- (a) **PURPOSE AND MINIMUM SAFETY STANDARDS.—** (1) **PURPOSE.—**The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.
- (b) (d) **FACILITY OPERATION INFORMATION STANDARDS.—**
- (c) The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain, to the extent practicable, information related to operating the facility as required by the standards prescribed under this chapter and, when requested, to make the information available to the Secretary and an appropriate State official as determined by the Secretary. The information (1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator; (2) accurate maps and a supplementary geographic description, including an identification of areas described in regulations prescribed under section 60109 of this title, that show the location in the State of— (A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and (B) major hazardous liquid pipeline facilities of the operator; (3) a description of— (A) the characteristics of the operator's pipelines in the State; and (B) products transported through the operator's pipelines in the State; (4) the manual that governs operating and maintaining pipeline facilities in the State; (5) an emergency response plan describing the operator's procedures for responding to and containing releases, including— (A) identifying specific action the operator will take on discovering a release; (B) liaison procedures with State and local authorities for emergency response; and (C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and (6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.
- (f) **STANDARDS AS ACCOMMODATING "SMART PIGS".—**
- (1) **MINIMUM SAFETY STANDARDS.—**The Secretary shall prescribe minimum safety standards requiring that—(A) the design and construction of new natural gas transmission pipeline or hazardous liquid pipeline facilities, and (B) when the replacement of existing natural gas transmission pipeline or hazardous liquid pipeline facilities or equipment is required, the replacement of such existing facilities be carried out, to the extent practicable, in a manner so as to accommodate the passage through such natural gas transmission pipeline or hazardous liquid pipeline facilities of instrumented internal inspection devices (commonly referred to as "smart pigs"). The Secretary may extend such standards to require existing natural gas transmission pipeline or hazardous liquid pipeline facilities, whose basic construction would accommodate an instrumented internal inspection device to be modified to permit the inspection of such facilities with instrumented internal inspection devices.(2) **PERIODIC INSPECTIONS.—**Not later than October 24, 1995, the Secretary shall prescribe, if necessary, additional standards requiring the periodic inspection of each pipeline the operator of the pipeline identifies under section 60109 of this title. The standards shall include any circumstances under which



an inspection shall be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline. (g) EFFECTIVE DATES.— A standard prescribed under this section and section 60110 of this title is effective on the 30th day after the Secretary prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard. (h) SAFETY CONDITION REPORTS.—(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any— (A) condition that is a hazard to life, property, or the environment; and (B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility. (2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State. When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(I) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

#### **§ 60104. Requirements and limitations**

(a) OPPORTUNITY TO PRESENT VIEWS.— The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted. (c) PREEMPTION.—A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

#### **§ 60105. State pipeline safety program certifications – Page 1051-1052**

(a) GENERAL REQUIREMENTS AND SUBMISSION.—

Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

#### **§ 60106. State pipeline safety agreements – Page 1053**

(a) AGREEMENTS WITHOUT CERTIFICATION.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action.

#### **§ 60108. Inspection and maintenance – Page 1056**

(a) PLANS.—(1) Each person owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person owning or operating a pipeline facility subject to this chapter to file a plan for inspection and maintenance for approval.