

LANDOWNER NOTIFICATION UNDER RAILROAD COMMISSION SPILL REPORTING RULES¹

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I. INTRODUCTION

In recent years, significant media coverage has been given to accidental releases from pipelines. A topic of discussion within that media coverage has been the issue of timely notice of the occurrence of the release being given to the landowner or residents. Frequently, the existence of a pipeline release is well-known, even to the general public, such as the 1994 pipeline breaks in the San Jacinto River near Houston.² Many pipeline releases have not, however, been reported to the owners of land impacted by the release, and a landowner's learning of a release through the media or a person other than the pipeline only further antagonizes the landowner beyond the impact to the property.

The ever-increasing awareness of environmental issues and the rising recognition of landowner rights further fuel this friction between pipeline owners and landowners, and have resulted in legislation and Railroad Commission rulemaking on the notification to be made to landowners and residents of land impacted by pipeline releases. In the Spring of 1995, in response to action by the 1993 Legislature, the Texas Railroad Commission (hereinafter "Railroad Commission" or "Commission") adopted a resident and landowner spill notification requirement for certain pipeline releases. The rule requires that copies of all spill reports filed with the Railroad Commission by crude petroleum common carrier pipelines be delivered to residents and owners of affected land who have registered with the Railroad Commission. Because the rule does not specify what reports must be filed with the Commission, crude petroleum common carrier pipelines must carefully review all of the spill reporting rules of the Railroad Commission to determine whether a particular release must be reported to the Railroad Commission and the reports required to be filed with the Commission for that release. Only then can a crude petroleum common carrier pipeline ensure it has complied with the new spill reporting rule.

This article examines the spill notification requirement and the underlying Railroad Commission spill reporting rules for purposes of identifying the reports that may

be required to be delivered to affected landowners and residents.

II. THE LEGISLATION AND THE RULE

A. BACKGROUND

In 1993, the Texas Legislature amended the Natural Resources Code and directed the Railroad Commission to implement a landowner notification requirement for certain releases from pipelines.³

Section 111.139(c) of the Texas Natural Resources Code now provides as follows:

The commission shall require each common carrier to mail, return receipt requested, a copy of all spill or leak reports required by the commission to residents or owners of land upon which a spill or leak has occurred within 30 days of filing the report with the commission. If a resident or owner of land has not registered with the commission, the common carrier is relieved of the requirement to mail copies of spill or leak reports to the resident or landowner. The commission shall provide a procedure for residents and owners of land crossed by a common carrier pipeline to voluntarily register their names and mailing addresses with the commission.⁴

"Common carrier", as used in this spill notification legislation, is defined to include certain pipelines for the transportation of crude petroleum, carbon dioxide or hydrogen, or the transportation for hire of coal, but excluding pipelines limited in use to wells, stations, plants, and refineries and which are not part of the pipeline transportation system of a common carrier.⁵

In February 1995, following the Legislature's mandate, the Texas Railroad Commission amended 16 TEX. ADMIN. CODE section 3.66 (Statewide Rule 71) to create a landowner spill notification requirement for pipeline releases.⁶ As amended, section 3.66 now provides, in relevant part, as follows:

Section 3.66 Pipeline Tariffs. Every person owning, operating, or managing any pipeline, or any part of any pipeline, for the gathering, receiving, loading, transporting, storing, or delivering of crude petroleum as a common carrier shall be subject to and governed by the following provisions. Common carriers specified in this section shall be referred to as

"pipelines," and the owners or shippers of crude petroleum by pipelines shall be referred to as "shippers."

(19) Reports of loss from fires, lightning, and leakage.

(C) Common carrier pipelines shall mail (return receipt requested) or hand deliver to landowners (persons who have legal title to the property in question) and residents (persons whose mailing address is the property in question) of land upon which a spill or leak has occurred, all spill or leak reports required by the commission for that particular spill or leak within 30 days of filing the required reports with the commission. Registration with the commission by landowners and residents for the purpose of receiving spill or leak reports shall be required every five years, with renewal registration starting January 1, 1999. If a landowner or resident is not registered with the commission, the common carrier is not required to furnish such reports to the resident or landowner.⁷

B. PARAMETERS OF THE LANDOWNER SPILL NOTIFICATION RULE

Under this landowner spill notification rule, each crude petroleum common carrier pipeline must now hand deliver or mail with a return receipt requested a copy of all spill or leak reports required by the Railroad Commission for that particular spill or leak to all residents and owners of land upon which that spill or leak occurred. The reports must be mailed or hand delivered within thirty days of their initial filing with the Railroad Commission.⁸

Section 3.66(19)(C) applies to releases from pipelines gathering, receiving, loading, transporting, storing or delivering crude petroleum as a common carrier.⁹ The Railroad Commission has orally indicated that it uses the definition of "common carrier" in Chapter 111 of the Natural Resources Code¹⁰ for purposes of section 3.66(19)(C). The spill notification rule does not apply to releases from well heads, well field gathering lines, tanker trucks or railcars, for example, nor does it apply to releases from pipelines transporting substances such as chemicals, gasoline, or other refined products since those pipelines fall outside the jurisdiction of the Railroad Commission. Consequently, the spill notification requirement under section 3.66(19)(C) applies exclusively to crude petroleum common carrier pipelines.

Additionally, spill reports must be provided to those landowners or residents who have registered with the Railroad Commission. Registration is required every five years. If, however, a landowner or resident fails to register with the Railroad Commission and maintain that registration every five years, a report is not required to be provided to that person.¹¹

Section 3.66(19)(C) does not specify the reports to be provided to affected landowners. Instead, the rule speaks in terms of "all spill or leak reports required by the commission for that particular spill or leak."¹² The particular

spill reporting requirements for common carrier crude petroleum pipelines are set forth in other Railroad Commission rules, and a careful analysis of those rules is required to ensure compliance with the spill notification requirements of section 3.66(19)(C).

C. SPILLS TO BE REPORTED TO THE COMMISSION

1. Section 3.66(19)(A)

Under section 3.66(19)(A), each crude petroleum common carrier pipeline must immediately notify the Railroad Commission District Office, by telephone or electronic means, of each break or leak in any of its tanks or pipelines from which more than five barrels of crude petroleum escapes.¹³ Written notification to the Railroad Commission using Form H-8 must be completed within thirty days of the date of the spill or leak.¹⁴

Consequently, to comply with section 3.66(19)(C), a crude petroleum common carrier pipeline must provide to an affected landowner or resident the Form H-8 reports of spills involving more than five barrels of crude petroleum on that property as required by section 3.66(19)(A). This rule does not distinguish between spills of crude petroleum to water and spills of crude petroleum to soil only.

2. Section 3.20

Section 3.20¹⁵ (Statewide Rule 20) is the Railroad Commission's general rule concerning spill reporting in connection with oil and gas exploration activities. Under section 3.20, operators of oil, gas and geothermal wells, pipelines, and receiving and storage tanks or receptacles are required to notify the appropriate Railroad Commission District Office immediately of all fires, leaks, spills or breaks. That notification is to be followed by a Railroad Commission Form H-8 providing the specifics of the spill and the efforts taken or in progress to remedy the situation.¹⁶

Spills of five barrels or less of crude petroleum need not be reported to the Commission, either orally or on Form H-8.¹⁷ This is the same reporting threshold as set forth in section 3.66(19)(A). There is no requirement to report to the Railroad Commission any spills of salt water or produced water.

For releases of natural gas, geothermal resources, other well liquids and associated products, including hydrocarbon condensates, section 3.20(a) implies that all such releases, regardless of volume, must be reported telephonically and on Form H-8. The Instructions to Form H-8, however, provide that only releases of greater than five barrels "of crude oil, gas well liquids, or associated products . . ." need be reported on the Form H-8. As a practical matter, the Railroad Commission appears to follow the In-

structions to Form H-8, and not the literal language of section 3.20, thereby excluding releases of less than five barrels of gas well liquids and associated products from the spill reporting requirements. This distinction is critical for purposes of complying with section 3.66(19)(C) in that all written reports required to be filed with the Commission must be provided to registered landowners and residents.

In summary, the reports required under section 3.20 to be provided to affected landowners and residents under section 3.66(19)(A) are the Form H-8 reports of releases in excess of five barrels from crude petroleum common carrier pipelines.

3. Section 3.91(e)

Section 3.91(e) (Statewide Rule 91) generally expands and clarifies section 3.20, and adds to the reports required to be provided to affected landowners. Section 3.91(e) provides, in relevant part, as follows:

(e) Reporting requirements.

(1) Crude oil spills over five barrels. For each spill exceeding five barrels of crude oil, the responsible operator must comply with the notification and reporting requirements of section 3.20 of this title . . . and submit a report on a Form H-8 to the appropriate district office. The following information must be included . . .

(2) Crude oil spills over 25 barrels. For each spill exceeding 25 barrels of crude oil, in addition to the report required in paragraph (1) of this subsection, the operator must submit to the appropriate district office a final report upon completion of the cleanup of the site. Analyses of samples representative of the spill site must be submitted to verify that the final cleanup concentration has been achieved.

(3) Crude oil spills of five barrels or less. Spills into the soil of five barrels or less of crude oil must be remediated to these standards, but are not required to be reported to the commission. All spills of crude oil into water must be reported to the commission.¹⁸

Section 3.91(e) is limited only to releases of crude petroleum; it does not apply to releases of salt water, produced water, gas, geothermal resources, well liquids or associated products, including hydrocarbon condensates.¹⁹ It also does not apply to releases of crude petroleum in sensitive areas, which are to be handled on a case by case basis.²⁰

Section 3.91(e) also impliedly alters section 3.20 by distinguishing between releases to water and releases to soil. Under section 3.91(e), all releases of crude petroleum to water, whether surface water or groundwater, and regardless of quantity, must be reported immediately and be followed with a written report on Form H-8.²¹ Section 3.20 does not except releases to water from the five barrel exclusion.

This rule does not provide any specific written reporting requirement for releases to water beyond use of Form

H-8. However, the cleanup requirements for releases to water are set on a case by case basis, and in such cases "the operator must consult with the appropriate District Office [of the Railroad Commission] on proper cleanup standards and methods, reporting requirements, or other special procedures."²²

Section 3.91 also expands the Form H-8 reporting requirements of section 3.20 by requiring that parties who release more than five barrels of crude petroleum must also provide in the Form H-8 report (i) the area, maximum depth, and volume of soil contaminated with greater than 1.0% by weight total petroleum hydrocarbons, (ii) a signed statement that all soil containing over 1.0% by weight total petroleum hydrocarbons was brought to the surface for remediation or disposal, (iii) a signed statement that all soil containing over 5.0% by weight total petroleum hydrocarbons has been mixed in place to 5.0% by weight or less total petroleum hydrocarbons or has been removed to an approved disposal site or to a secure interim storage location, (iv) a detailed description of the disposal or remediation method used or planned to be used for cleanup of the site, and (v) the estimated date of completion of site cleanup.²³ In that the current Form H-8 does not provide space for this additional information, Railroad Commission Interim Form H-8 is to be attached to the existing Form H-8 until an amended Form H-8 is issued.²⁴

For releases of more than twenty-five barrels of crude petroleum, the operator must also submit to the Railroad Commission a final report upon completion of the cleanup and include soil sample analyses to verify the final cleanup concentrations set in sections 3.91(c) and (d) have been achieved.²⁵

In summary, section 3.91 expands the number of written reports a crude petroleum common carrier pipeline is required to provide to an affected landowner or resident. Besides the Form H-8 reports of crude petroleum releases onto land in excess of five barrels, a crude petroleum common carrier pipeline must also provide to affected landowners copies of Interim Form H-8 reports of releases of crude petroleum onto land in excess of five barrels, Form H-8 reports of all releases to water, the closure reports for all releases onto land in excess of 25 barrels, and any additional reports required by the Commission concerning releases of crude petroleum into water or other sensitive areas.

4. Sections 7.81 and 7.84

Finally, the Gas Utilities Division of the Railroad Commission has imposed spill reporting requirements for all intrastate pipelines and pipeline facilities, including crude petroleum common carrier pipelines.

Under section 7.81,²⁶ the Railroad Commission has adopted by reference the provisions of 49 C.F.R. part 195, Transportation of Hazardous Liquids by Pipeline. Under these federal regulations, an operator is required to report to the U.S. Department of Transportation on Form DOT 7000-1 each failure in a pipeline system subject to part 195 that causes a release of a hazardous liquid resulting in explosion or fire, a loss of fifty or more barrels of hazardous liquid (including crude petroleum), escape to the atmosphere of more than five barrels of highly volatile liquids, death, certain instances of personal injury, and estimated property damages exceeding \$50,000.²⁷ Certain of these releases must also be reported to the Department of Transportation immediately by telephone.²⁸

Section 7.84 then requires that, for any release of crude petroleum required to be reported to the Department of Transportation by telephone, the operator also notify the Pipeline Safety Section of the Railroad Commission by telephone within two hours of discovering the release.²⁹ In addition, within thirty days of discovering the incident, the operator must file a Form H-8 with the Oil and Gas Division of the Railroad Commission and file with the Pipeline Safety Section duplicate copies of the DOT Form 7000-1 that were filed with the DOT.³⁰

This reporting obligation under sections 7.81 and 7.84 exists only if the release must be reported to the Department of Transportation under 49 C.F.R. section 195.50; e.g., failure of a pipeline system subject to part 195 that causes a release of a hazardous liquid resulting in explosion or fire, a loss of fifty or more barrels of hazardous liquid (including crude petroleum), escape to the atmosphere of more than five barrels of highly volatile liquids, death, cer-

tain instances of personal injury, and estimated property damages exceeding \$50,000. Accordingly, crude petroleum common carrier pipelines will also have to provide to affected landowners and residents copies of any DOT Form 7000-1 reports required to be filed with the Department of Transportation and the Railroad Commission.

III. CONCLUSION

The recent amendments to section 3.66(19) require that copies of all spill reports filed with the Railroad Commission by crude petroleum common carrier pipelines be delivered to residents and owners of affected land who have registered with the Railroad Commission. Because the spill reporting rule does not specify what reports must be filed with the Commission, crude petroleum common carrier pipelines must carefully review all of the spill reporting rules of the Railroad Commission to determine whether a particular release must be reported to the Railroad Commission and the reports required to be filed with the Commission for that release. Only then can a crude petroleum common carrier pipeline ensure it has complied with the new spill reporting rule.

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ENDNOTES

¹ This article was previously published in similar form. Gregory P. Crinion and Lori L. Elam, *Landowner Notification Under Railroad Commission Spill Reporting Rules*, 20 ST. B. TEX. OIL, GAS & MINERAL LAW SECT. REP. 3 (1995).

² *Deadly Deluge; 20-mile trail of crude oil invades bay; Another ruptured pipe compounds flood woes*, HOUS. CHRON., Oct. 22, 1994 at A-1.

³ TEX. NAT. RES. CODE ANN. § 111.139(c) (Vernon Supp. 1995), enacted by Acts of 1993, 73rd Legis., ch. 630 at § 2, 1993 Tex. Gen. Laws 2375, 2376, eff. Sept. 1, 1993.

³ *Id.*

⁵ TEX. NAT. RES. CODE ANN. §§ 111.002 and 111.003 (Vernon 1993).

⁶ Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.66(19)(C) (West 1995), 19 Tex. Reg. 9949-50 (Dec. 16, 1994) adopted 20 Tex. Reg. 1261 (Feb. 21, 1995), eff. March 8, 1995. Before adopting the final rule, the Railroad Commission went through two earlier proposed rules. See 19 Tex. Reg. 4305 (June 3, 1994), *withdrawn* 19 Tex. Reg. 6999 (Sept. 6, 1994), *new rule proposed*, 19 Tex. Reg. 6975 (Sept. 6, 1994), *withdrawn* 20 Tex. Reg. 1523 (Mar. 3, 1995).

⁷ 19 Tex. Reg. at 9949-50.

⁸ 16 TEX. ADMIN. CODE § 3.66(19)(C); 19 Tex. Reg. at 9950.

⁹ 16 TEX. ADMIN. CODE § 3.66(19); Commentary, 19 Tex. Reg. at 9949-50 and 20 Tex. Reg. at 1261.

¹⁰ TEX. NAT. RES. CODE ANN. §§ 111.002 and 111.003.

¹¹ 16 TEX. ADMIN. CODE § 3.66(19)(C); 19 Tex. Reg. at 9950.

¹² *Id.*

¹³ 16 TEX. ADMIN. CODE § 3.66(19)(A); 19 Tex. Reg. at 9950. Section 3.66(19)(A), as amended, provides as follows:

(A) Each pipeline shall immediately notify the commission district office, electronically or by telephone, of each fire that occurs at any oil tank owned or controlled by the pipeline, or of any tank struck by lightning. Each pipeline shall in like manner report each break or leak in any of its tanks or pipelines from which more than five barrels escapes. Each pipeline shall file the required information with the commission in accordance with the appropriate commission form within 30 days from the date of the spill or leak.

¹⁴ *Id.*; Instructions to Railroad Commission Form H-8.

¹⁵ 16 TEX. ADMIN. CODE § 3.20. Section 3.20 provides, in relevant part, as follows:

(a) General requirements.

(1) Operators shall give immediate notice of a fire, leak, spill, or break to the appropriate commission district office by telephone or telegraph. Such notice shall be followed by a letter giving the full description of the event, and it shall include the volume of crude oil, gas, geothermal resources, other well liquids, or associated products lost.

(2) All operators of any oil wells, gas wells, geothermal wells, pipelines[,] receiving tanks, storage tanks, or receiving and storage receptacles into which crude oil, gas or geothermal resources are produced, received, stored, or through which oil, gas, or geothermal resources are piped or transported, . . . shall immediately report [to the Railroad Commission] by letter any breaks or leaks in or from tanks or other receptacles and pipelines from which oil, gas, or geothermal resources are escaping or have escaped. . . . In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak.

(b) The report hereby required as to oil losses shall be necessary only in case such oil loss exceeds five barrels in the aggregate.

¹⁶ 16 TEX. ADMIN. CODE § 3.20(a)(1), (2).

¹⁷ *See id.* § 3.20(b).

¹⁸ *See id.* § 3.91(e).

¹⁹ *See id.* § 3.91(b) and Commentary to 1993 amendment to § 3.91, 18 Tex. Reg. 6835, 6836 (Oct. 5, 1993).

²⁰ Commentary to 1993 amendment to § 3.91, 18 Tex. Reg. at 6835.

²¹ 16 TEX. ADMIN. CODE § 3.91(e)(3); Commentary to 1993 amendment to § 3.91, 18 Tex. Reg. at 6836.

²² 16 TEX. ADMIN. CODE § 3.91(b).

²³ *See id.* § 3.91(e)(1)(A) - (E).

²⁴ Commentary to 1993 amendment to § 3.91(e), 18 Tex. Reg. at 6836 (Instructions to Railroad Commission Interim Form H-8).

²⁵ 16 TEX. ADMIN. CODE § 3.91(e)(2).

²⁶ 16 TEX. ADMIN. CODE § 7.81, adopted 20 Tex. Reg. 4407 (June 16, 1995) as proposed at 20 Tex. Reg. 2766-67 (April 18, 1995).

²⁷ 49 C.F.R. §§ 195.50 and 195.54(a) (1994). "Hazardous liquid" is defined in these regulations to include petroleum which, in turn, is defined to include crude oil. *See* 49 C.F.R. § 195.2 (1995). 49 C.F.R. § 195.50 provides as follows:

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

(a) Explosion or fire not intentionally set by the operator.

(b) Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

(c) Escape to the atmosphere of more than five barrels a day of highly volatile liquids.

(d) Death of any person.

(e) Bodily harm to any person resulting in one or more of the following:

(1) Loss of consciousness.

(2) Necessity to carry the person from the scene.

(3) Necessity for medical treatment.

(4) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.

(f) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

²⁸ 49 C.F.R. § 195.52.

²⁹ 16 TEX. ADMIN. CODE § 7.84(a)(1)(A). Section 7.84(a) provides, in relevant part, as follows:

Accident reporting. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid is released, if the failure or accident is required to be reported by 49 Code of Federal Regulations, Part 195, the operator shall report to the commission as follows.

(1) Incidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify, by telephone, the Pipeline Safety Section of the commission at the earliest practicable moment following discovery of the incident (within two hours) and then the Pipeline

Safety Section will notify the appropriate Oil and Gas District office; and

(B) within 30 days of discovery of the incident, submit a completed Form H-8 (available from the commission) to the Oil and Gas Division of the commission. In situations specified in

the 49 Code of Federal Regulations, Part 195, the operator must also file duplicate copies of the required Department of Transportation form with the Pipeline Safety Section.

³⁰ 16 TEX. ADMIN. CODE § 7.84(a)(1)(B).