

THE TEXAS LEGAL LIABILITY ADVISOR

INFORMATION TO AVOID LIABILITY

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A T T O R N E Y S

ENTERING THE TOLERANCE ZONE: TEXAS LAW ON EXCAVATING NEAR UNDERGROUND UTILITIES

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INTRODUCTION

Most contractors who work around underground utilities are aware that utility operators in Texas aggressively pursue claims for damage to their underground facilities. Knowledge of the rules governing excavating around underground utilities is essential to prevent claims. This article explores the legal requirements for excavators working around underground utilities and provides some helpful guidelines to follow when a damage event happens.

In 1997, the Texas legislature enacted the Underground Facility Damage and Prevention Act (the "Act") which established the Texas Underground Facility Notification Corporation,¹ a nonprofit corporation tasked with establishing and monitoring a system of notification centers through which excavators notify class A utility operators of proposed excavation work.² The Act, also known as the One-Call Statute, sets out time deadlines for notifications and responsibilities for marking underground utilities. A Class A underground facility is defined under the Act to mean any underground facility that conveys electrical energy, natural or synthetic gas, petroleum products, steam, any form of telecommunications including voice, cable, data, video, or any other liquid or material not defined as a Class B facility.³ At this time there are two notification centers in operation in Texas where excavators can



submit notifications, Lone Star 811⁴ and Texas 811.⁵ In 2007, The Texas Railroad Commission ("RRC") adopted additional, more detailed rules regarding excavation near underground pipelines.⁶ The RRC rules apply 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.⁷

This would include small gas service lines in residential areas. The RRC rules are in addition to the requirements of the Act, and compliance with the Act does not ensure compliance with the RRC rules.⁸ While not every excavation involves work near a pipeline, excavators need to be aware of these additional rules. The best advice is to follow both the Act and the RRC rules when there is any chance of working near an underground pipeline.

IMPORTANCE OF COMPLIANCE

For an excavator, compliance with the Act is paramount. Obviously, the first and foremost concern is the prevention of personal injuries or property damage that can occur from contact with underground utilities. Second, excavators generally have a legal duty to take reasonable steps to avoid damage to underground facilities.⁹ Third, many utilities aggressively pursue claims for damage to their underground facilities, which can be prove costly and time consuming for any contractor. The Act provides that an excavator who has

fully complied with the Act may not be liable for damage to an underground facility that was not marked in accordance with the Act,¹⁰ so compliance with the Act is the essential first step to escape liability for a damage incident. The fact that an underground utility is not marked correctly will not usually relieve an excavator of at least partial liability for a damage incident when the excavator has not complied with the Act.¹¹ Finally, there are civil and criminal penalties that can be imposed for violations of the Act and RRC rules.

WHO IS AN EXCAVATOR?

The current RRC rules have a much broader definition of excavator than the Act. The RRC rules define an excavator as anyone who engages in or prepares to engage in any movement of earth at a depth exceeding 16 inches by any means, whether by hand or mechanized.¹² The Act's definition does not include hand digging, and defines an excavator as anyone who uses explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind to remove or otherwise disturb soil at a depth of 16 or more inches.¹³

DUTIES OF EXCAVATOR

A. Required Notice. Except in limited circumstances, any person who intends to excavate must notify a notification center *no earlier* than 14 days before *or later* than 48 hours before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.¹⁴ If notice is given on a Saturday, the excavator may begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday, when the excavator may begin the excavation the following Wednesday at 11:59 a.m.¹⁵ If the utility operator wants to have a representative present during the excavation, the operator is required to 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.¹⁶ If the excavator wants to change the start time, the excavator is required to notify the operator to set a mutually agreed-to time to begin the excavation.¹⁷ It is essential that any communications or agreements regarding an operator's request to be present at the site be put into writing and confirmed by the parties.¹⁸ Even an excavator's simple email to the operator confirming

discussions of what was agreed to can be extremely helpful when defending a damage claim later. Finally, the fact that an excavator has a legal permit or permission from the property owner to conduct the excavation operation does not relieve the excavator from providing the required notice to a notification center.¹⁹ There are some limited exceptions to the notice requirement and special rules apply if the excavation is necessary due to an emergency.²⁰



B. Contents of Notice. An excavator is required to provide very specific information to the notification center.²¹ (See endnotes for information required in the notice.) The notification center should advise the excavator that operators of water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive notice of the proposed excavation.²² Within two hours of receiving the

excavator's notice of proposed excavation, the notification center is required to provide notice to all other notification centers in the state and its member operators.²³

C. White-lining. White-lining is the process by which an excavator uses white paint or flags to outline the area of proposed excavation. The Act does not mandate white-lining but the RRC rules do in certain situations. Even when pipelines are not in the area, the use of white-lining to mark the intended excavation area is advisable when the area of proposed excavation is difficult to articulate in the locate ticket. Pursuant to RRC rules, if the site to be excavated cannot be clearly identified and described on a locate ticket, then the RRC rules require an excavator to white-line the area of excavation prior to making the notification to the notification center.²⁴ The excavator is to mark the excavation area using white paint, flags, or stakes, whichever is most visible for the terrain,²⁵ using intervals between marks that show the direction of the excavation.²⁶ 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 are **required** to conduct a face-to-face meeting to discuss the excavation activities and to establish protocols for: 1) the interval between subsequent notices 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 the locate tickets are to be marked.²⁷ Agreements reached during the meeting should be confirmed in a written agreement between the excavator and operator before any work is performed. Written protocols agreed to by the excavator and operator are critical for the excavator when defending any subsequent damage incident.

D. Excavation. For excavations not around pipelines, once an excavator has made the required notification and waited the appropriate time, the excavator can begin the excavation. However, there are additional requirements imposed on excavators working around underground pipelines. Prior to any excavation near a pipeline, an excavator has to confirm they have a valid locate ticket for the location which they can produce for inspection within one hour of a request from the operator or the Commission.²⁸ Prior to excavation, an excavator has to also verify that it is at the correct location as specified on the locate ticket; verify white-lining; and perform a **visual check** for any unmarked underground pipelines.²⁹ 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.³⁰ As a practical matter, no excavation should take place if there is any indication that the an underground utility has not been marked.

An excavator is not to 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 that operator; (2) the excavator observes clear evidence (such as a line marker or an above-ground 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 that 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).³¹ If an excavator has given a second notice as required, and there is no positive response within four hours, the excavator may begin excavating.³² Finally, an excavator is required to 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.³³

E. Excavating Within the Tolerance Zone. Many times excavation work is part of a larger project which has already received prior municipal and utility approval to do the work. In fact, no construction in a pipeline easement or right-of-way is permitted until specific utility approval has been obtained.³⁴ Excavators should confirm that permission from the utility operator has been obtained doing any work in a pipeline easement or right-of-way, and should abide by the plans and specifications. Permission should be obtained before doing any material deviations from the engineering plans or specifications. The plans and specification will help identify the presence of underground utilities.

The Act does not specifically define a tolerance zone, except to indicate that the Operator shall mark the "**approximate location**" of its underground facilities and shall refer to the American Public Works Association ("APWA") color coding standards when marking.³⁵ The APWA recommended tolerance zone is the width of the facility plus 18 inches measured horizontally from each side of the facility.³⁶ The RRC rules also defines the tolerance zone as being the nominal width of the underground pipeline plus 18 inches on each side of the pipeline.³⁷ It has been our experience litigating these matters that the accepted tolerance zone is 18 inches on both sides of the ground markings. When excavation is to

take place within the specified tolerance zone, an excavator is required to exercise such reasonable care as may be necessary to prevent damage to any underground pipeline in or near the excavation area.³⁸ Methods to consider, based on certain climate or geographical conditions, include hand digging when practical, soft digging, vacuum excavation methods, and pneumatic hand tools, or any other way approved by the underground pipeline operator.³⁹

E. Life of the Locate Ticket - 14 days. While the Act does not define the life of a locate request, the RRC rules provide that the life of a locate request is 14 days.⁴⁰ If an excavation project is not completed at the time a line



locate ticket expires, the excavator must make continuous notifications to the notification center for a line locate or re-locate, giving all of the required information, but a request to refresh can be limited to the area yet to be excavated.⁴¹ An excavator and an operator may agree that the life of a line locate ticket is more than 14 days but the agreement must be: 1) in writing; and 2) signed and dated by both the excavator and the operator.⁴² Both the excavator and the operator must retain a copy of such an agreement.⁴³ For any excavation, even if the marks can still be seen, it is essential that any work being performed at the site be done under an active current line locate request ticket for the specific area of excavation, that is, the locate request must not be any older than 14 days for that area. This means that contractors working on any delayed, or large ongoing projects involving any underground excavation, need to make notification calls every 10 days to make sure the area where work is being performed has a current valid locate ticket.

DUTY OF THE UNDERGROUND FACILITY OPERATOR









Once contacted by a notification system, an underground facility operator must timely mark the *approximate* location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking is necessary.⁴⁴ The operator is required to have the facility marked no later than 48 hours after the time the excavator gives the notification system notice of intent to excavate excluding Saturdays, Sundays, and legal Holidays. For any Saturday notification, the facility must be marked by 11:59 am of the following Tuesday or by 11:59 am of the following Wednesday if that Monday is a legal holiday.⁴⁵ The excavator and the operator may also agree on a different time that the facility is to be marked.⁴⁶ If the operator does not plan to mark the approximate location of an underground facility near the site of the proposed excavation, the operator must provide the excavator with such written notice by email or facsimile within 48 hours of the excavator's notice to the notification center.⁴⁷ The RRC rules require pipeline operators to provide a positive response to the excavator by either: 1) marking the operator's underground pipelines, or 2) giving the excavator an "all clear" or "no conflict"

notice that the operator has no underground pipelines in the vicinity of the proposed excavation area through the method(s) identified by the excavator in its notice to the notification center.⁴⁸ Both the excavator and the operator shall make a record of the positive response regarding each line locate ticket received.⁴⁹ If an excavator has to provide a **SECOND** notice to the notification center because an operator failed to provide a positive response to the excavator, then the excavator is required to file a report with the RRC.⁵⁰ Operators are required to respond within 4 hours of a second request.⁵¹ If an operator is experiencing extraordinary circumstances making it difficult for the operator to comply with the marking time deadlines, the operator can notify the notification system of the circumstance and suspend its marking activities, and special rules apply.⁵²

OPERATOR MARKING REQUIREMENTS

Utility operators are to mark the "approximate location" of its underground facilities and shall refer to the American Public Works Association ("APWA") color coding standards when marking.⁵³ The color coding standards identify the specific colors to be used for each type of utility. The approximate center line of any underground pipeline is required to be marked,⁵⁴ and 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.⁵⁵ The APWA recommends that utility markings should be 18-24 inches in length, 2 inches in width, identify the utility operator, and use corridor or duct markings where appropriate.⁵⁶ What types of marks are required to mark an underground facility are not mandated by Texas statute, but are mandated for pipelines by RRC rule, and most utilities have their own established guidelines regarding what is expect in terms of marking their facilities. The RRC rules regarding pipelines are typical of what is normally found in the field for most utilities.

Pipelines are to be: 1) marked using a combination of stakes, paint, or flags depending on the terrain at the scene;⁵⁷ 2) marked at sufficient intervals not to exceed a distance of twenty feet apart to indicate clearly the approximate horizontal location and direction of the underground pipeline(s), but a

| 8 APWA UNIFORM COLOR CODES ⁸² | |
|---|---|
|  | Proposed Excavation |
|  | Temporary Survey Markings |
|  | Electric Power Lines, Cables, Conduits |
|  | Gas, Oil, Steam, Petroleum, Gaseous Materials |
|  | Communications, Alarms or Signal Lines, Cables, or Conduit |
|  | Potable Water |
|  | Reclaimed Water, Irrigation, Slurry Lines |
|  | Sewers and Drains Lines |

shorter distance between marks may be necessary because of site conditions or directional changes;⁵⁸ 3) marked giving the outside dimension of the pipeline at every marking for any underground pipeline greater than six inches;⁵⁹ 4) marked by extending the markings, if practical, at least one additional mark beyond the boundaries of the specific location of the proposed excavation area as detailed on the line locate ticket;⁶⁰ 5) marked with paint marks approximately eight to ten inches in length and one to two inches in width except when spot marking is necessary;⁶¹ and 6) marked with a minimum of three separate marks for each underground pipeline marking.⁶² Markings are valid for pipeline locates 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.⁶³ For any request to refresh a ticket for a pipeline, the pipeline operator shall either ensure that markings are still visible and valid or shall re-mark.⁶⁴ 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.⁶⁵ If there is any question as to what or where a utility is marked, excavators are recommended to make a call to the notification center advising them of the failure to mark clearly.

DAMAGE INCIDENTS

If an excavation results in damage to an underground facility, the excavator must immediately, not later than 2 hours after the incident, contact the underground facility operator⁶⁶ or a notification center⁶⁷ to report the damage. Only the operator or a person authorized by the operator may perform repairs to an underground utility, and the repairs must be made in an expeditious manner.⁶⁸ The excavator must delay backfilling in the immediate area of the damage, if exposed, until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.⁶⁹ If the damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.⁷⁰ An excavator that damages an underground pipeline shall not cover the exposed pipeline without approval of the operator.⁷¹ Operators and excavator are both required to file a damage report with the RRC within 10 days of the incident using a form from the RRC's website.⁷² Excavators are also required to report to the RRC through its form TDRF any time the excavator fails to receive a positive response from a pipeline operator requiring an additional call to a notification center.⁷³

Actions an excavator can take following an incident to protect their interests are: 1) notify the utility operator if known, or notification center, within two hours of the incident; 2) before any repair work is done or the locator puts additional marks on the ground following the damage incident, document the damage and surrounding area with clear photographs showing the point of damage in relation to all locate marks (use a yard stick or measuring tape to show actual distances) and continue to photograph until the actual point of damage is exposed; 3) keep track of identity of the persons present at the scene; 4) photograph the re-marking of the site by any locate company that responds to the damage site; 5) photograph the repairs; 6) keep track of your lost time and damages incurred because of your work being delayed by the damage incident; 7) have the persons involved fill out an incident report with specific information about what happened and why; 8) open and maintain in a safe place a file on the damage incident; and 9) make a report to the RRC if damage is to a pipeline.

Many utilities aggressively pursue excavators for damages incidents, including the cost of their personnel having to respond to the incident. Excavators will be sent a bill by the utility whether it is the excavator's fault or not. Excavators can usually turn these claims over to their insurance carrier for response. Depending on the amount of the deductible in the excavator's insurance policy, it may make more sense to handle the claim internally. If the excavator has a lawyer, the lawyer can respond to the claim. If a lawsuit is ultimately brought against the excavator promptly forward it to your lawyer and insurance company for response. In a lawsuit, the utility will claim the excavator was negligent or committed a trespass causing damage to its underground facilities. Evidence that the excavator failed to comply with some requirement of the Act, may be offered to show the excavator was negligent or even negligent per se. Typically, unless there was an agreement with the utility about the specific project at hand, the excavator's main defense boils down to the adequacy of the markings on the ground. Even if the marks were not correct, utilities will argue that the excavator's negligence played a role in causing the damage. The only way to avoid total liability for a mis-marked utility is to show the excavator fully complied with the Act.

CIVIL AND CRIMINAL PENALTIES

An excavator who fails to timely provide the required notice, or who fails to report damage as required, may be

fined up to \$1,000 for a violation if the county or district attorney decides to prosecute a civil penalty action against the excavator. Alternatively, the excavator may be sent a warning letter from the board of directors of the Texas Underground Facility Notification Corporation and require the excavator to attend a safety training course approved by the board.⁷⁴ If the violation relates to misreporting an emergency situation, then the excavator may be fined up to \$2,000, or receive a similar warning form the Corporation.⁷⁵ If there is evidence of one or more prior violations by the excavator within the year prior to the current violation, the fines increase and can go up to as much as \$10,000 per violation.⁷⁶ Penalties are not applicable to a residential owner excavating on the property owner's own residential lot.⁷⁷ A person commits a criminal offense if that person without authorization from the owner or operator of an underground facility intentionally removes, damages, or conceals a marker or sign giving information about the location of a Class A underground facility; and the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.⁷⁸ It is also a criminal offense to intentionally or recklessly misreport an emergency situation related to an underground facility.⁷⁹ The RRC has also established administrative fines and penalties.⁸⁰ If the incident results in threatened or actual pollution or safety hazard the penalty can go up to \$25,000, or even higher if the incident was the result of reckless or intentional conduct or there is a history of violations or penalties in the prior seven years.⁸¹

RECOMMENDATIONS

For excavators, the following practices are recommended to avoid damage incidents and claims relating to underground utilities: 1) all field personnel should attend safety training on the requirements of the Act and how to read markings; 2) one person should be responsible for making all timely notification calls for locates on a particular project; 3) keep all documentation related to the notification, all responses received, and all communications with a utility or locator; 4) provide timely and accurate information to the notification center correctly identifying the streets and locations of the proposed excavation; 5) white-line

the area of the proposed excavation if necessary; 6) make repeated phone calls to the notification center every 10 days if the work will not be completed within 14 days of the last call; 7) visually survey the excavation site and surrounding areas for all utility markings, and any signs of utilities that are present but not marked; 8) do not start the excavation until waiting the required time; 9) call the notification center to report any utility that is not marked; 10) if possible wait until all utilities are marked; 11) attempt to stay at least 18 inches away from both sides of any locate markings; 12) if work is necessary in the tolerance zone, use hand digging, or non-mechanized equipment to expose the utility in place so as to avoid hitting it; and 13) actively investigate and photograph every damage incident.

CONCLUSION

The Texas One Call law and the rules established by the Texas Railroad Commission create burdens on excavators to make repeated notifications to the notification centers, to pay constant attention to what is in the work area including any markings showing underground utilities, and to take due care when working near or within the tolerance zone. Compliance with these rules help excavators avoid time consuming damage incidents, lawsuits, and fines. Proper investigation of all incidents will assist in the defense of any possible claims made by a utility

NOTES

¹ WWW.ONECALLTEXAS.COM.

² TEX. UTIL. CODE ANN. § 251.001 et seq. Each Class A underground facility operator is required to be a member of a notification center. *Id.* at 251.107.

³ *Id.* at 251.002 (1). A class B facility is an underground facility that carries water, slurry, or sewage. *Id.* at 251.002 (2).

⁴ WWW.LONESTAR811.COM.

⁵ WWW.TEXAS811.ORG.

⁶ 16 TEX. ADMIN. CODE § 18 (2007) (TEX. R.R. COMM'N, Underground Pipeline Damage Prevention) (In November of 2012, the Commission released for comment draft proposed amendments to Chapter 18, which as of this time have not yet been adopted by the Commission. Accordingly, this article discusses the rules in effect at the time this article was written.)

⁷ *Id.* § 18.1(a).

⁸ *Id.* § 18.1(b).

⁹ *Id.* § 18.4(a).

¹⁰ TEX. UTIL. CODE ANN. § 251.157 (c).

¹¹ See *Bechtel Corp v. Citgo Prods. Pipeline Co.*, 271 S.W.3d. 898, 913 (Tex. App. — Austin 2008, no pet.).

¹² 16 TEX. ADMIN. CODE § 18.2(5), (11); The RRC rules do not apply to the movement of earth for surface mining operations, and certain activities of the

Texas Department of Transportation. *Id.* § 18.1(d).

¹³ TEX. UTIL. CODE ANN. § 251.002 (5). This includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling.

¹⁴ *Id.* § 251.151(a); 16 TEX. ADMIN. CODE § 18.4(b).

¹⁵ *Id.* § 251.151(b).

¹⁶ *Id.* § 251.151(c).

¹⁷ *Id.*

¹⁸ See *Bechtel Corp.*, 271 S.W.3d at 913.

¹⁹ TEX. UTIL. CODE ANN. § 251.006.

²⁰ If the excavation is necessary due to an emergency, such as where work is necessary to respond to a situation that endangers life, health, or property, or where a public utility needs immediate repair, then the excavator may begin immediate emergency excavation taking reasonable care to protect the underground facilities and shall notify the notification center as promptly as practically possible. TEX. UTIL. CODE ANN. § 251.155. But note that excavators may be fined or penalized if they misrepresent a fact or circumstance used to declare that an emergency situation exists. *Id.* § 251.151(d). Other exceptions to the notification requirement apply to cemetery operations; operations at a secured facility where the excavator operates all the underground facilities at the facility; routine railroad maintenance within 15 feet or either side of the midline of the track if the maintenance will not disturb more than 18 inches in depth, agricultural operations on private property; oil and gas operations not conducted in a underground facility easement or right-of-way; and county road right-of-way maintenance by county employees to depth of not more than 24 inches. *Id.* § 251.156. The Act also does not apply to contractors working in the public right-of-way under a contract with the Texas Department of Transportation, or excavations done by employees of the Texas Department of Transportation on a segment of state highway system if it is more than 10 feet from the right-of-way line. *Id.* § 251.004.

²¹ *Id.* § 251.152. The notice information must include: 1) the name of the person serving the notice; 2) the location of the proposed area of excavation, including the street address, if available, and the location of the excavation at the street address, or 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 other electronic number or address approved by the board to which an operator may send the notification of its intent to not mark the site; 6) the starting date and time and the anticipated completion date of excavation; and 7) a statement as to whether explosives will be used.

²² *Id.* § 251.153(a).

²³ *Id.* § 251.153(b) and (c).

²⁴ 16 TEX. ADMIN. CODE § 18.3.

²⁵ *Id.* § 18.7(a).

²⁶ *Id.* § 18.7(b).

²⁷ *Id.* § 18.3(d).

²⁸ *Id.* § 18.4(c).

²⁹ *Id.* § 18.4(d).

³⁰ *Id.* § 18.4(d).

³¹ *Id.* § 18.4(e).

³² *Id.* § 18.4(f).

³³ *Id.* § 18.4(f).

³⁴ No construction of any kind is permitted in a pipeline easement or right-of-way unless notice of the construction is provided to the pipeline operator, and: 1) the operator of the pipeline determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline; 2) the contractor pays the reasonable and necessary costs for changes or improvements to the pipeline in the event the pipeline operator determines that the construction will increase the risk of injury or damage to the public; 3) the construction is conducted under an existing written agreement; or 4) the construction is by a regulated utility made necessary due to a natural disaster. TEX. HEALTH & SAFETY CODE ANN. § 756.123.

³⁵ TEX. UTIL. CODE ANN. § 251.157.

³⁶ AMERICAN PUBLIC WORKS ASSOC., *Guidelines For Uniform Temporary Markings of Underground Facilities* (1999).

³⁷ 16 TEX. ADMIN. CODE § 18.2(21).

³⁸ *Id.* § 18.10(b).

³⁹ *Id.*

⁴⁰ *Id.* § 18.1(h).

⁴¹ *Id.* § 18.3(e).

⁴² *Id.* § 18.3(f).

⁴³ *Id.* § 18.3(g).

⁴⁴ TEX. UTIL. CODE ANN. § 251.157(a).

⁴⁵ *Id.* § 251.157(a).

⁴⁶ *Id.* § 251.157(a)(4).

⁴⁷ *Id.* § 251.157(d).

⁴⁸ 16 TEX. ADMIN. CODE § 18.5.

⁴⁹ *Id.* § 18.5(b).

⁵⁰ *Id.* § 18.10(b).

⁵¹ *Id.*

⁵² TEX. UTIL. CODE ANN. § 251.158. An extraordinary circumstance is something due to an act of God, including a weather related event, a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill the operator's obligations under the Act. *Id.* § 251.158(a). The operator must provide the notification system of: 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. *Id.* § 251.158(b). In addition, the operator is required to provide any excavator that has a pending location request in the location where an extraordinary circumstance is being experienced a notification including: 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. *Id.* § 251.158(c). The notification center is tasked with informing the excavator that the operator's location request activities are suspended within the affected location. *Id.* § 251.158(d). An excavator is relieved from all provisions of the Act until the operator notifies the notification center that the operator has resumed location request activities within the affected location. *Id.* § 251.158(e).

⁵³ TEX. UTIL. CODE ANN. § 251.157; 16 TEX. ADMIN. CODE § 18.6(a).

⁵⁴ 16 TEX. ADMIN. CODE § 18.8(b).

⁵⁵ *Id.* § 18.8(d).

⁵⁶ AMERICAN PUBLIC WORKS ASSOC., *Recommended Marking Guidelines For Underground Facilities* (2001).

⁵⁷ 16 TEX. ADMIN. CODE § 18.8(e).

⁵⁸ *Id.* § 18.8(f).

⁵⁹ *Id.* § 18.8(g).

⁶⁰ *Id.* § 18.8(h).

⁶¹ *Id.* § 18.8(i).

⁶² *Id.* § 18.8(i).

⁶³ *Id.* § 18.6(b).

⁶⁴ *Id.* § 18.6(b).

⁶⁵ *Id.* § 18.6(c).

⁶⁶ TEX. UTIL. CODE ANN. § 251.159(a).

⁶⁷ *Id.* § 251.159(b).

⁶⁸ *Id.* § 251.159(c).

⁶⁹ *Id.* § 251.159(d).

⁷⁰ *Id.* § 251.159(e).

⁷¹ 16 TEX. ADMIN. CODE §§ 18.4(g); 18.11(b).

⁷² *Id.* § 18.11(a) and (b).

⁷³ *Id.* § 18.6(c).

⁷⁴ TEX. UTIL. CODE ANN. § 251.201(a).

⁷⁵ *Id.* § 251.201(a-1).

⁷⁶ *Id.* § 251.201.

⁷⁷ *Id.* § 251.201(g).

⁷⁸ *Id.* § 251.203(a).

⁷⁹ *Id.* § 251.203(a-1).

⁸⁰ 16 TEX. ADMIN. CODE § 18.12.

⁸¹ *Id.* § 18.12.

⁸² AMERICAN PUBLIC WORKS ASSOC., *Guidelines For Uniform Temporary Markings of Underground Facilities* (1999).





"We should've just dropped off our lists and taken our chances. But no, you had to bring a lawyer into the negotiations."

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