

# Regulation of Natural Gas Pipelines

June 23, 2008

# Federal and State Regulations

- Federal:
  - 49 United States Code §60101. et. seq.
  - Title 49 Code of Federal Regulations
  - The Office of Pipeline Safety (OPS), within the U. S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), has overall regulatory responsibility for hazardous liquid and gas pipelines under its jurisdiction in the United States.
  - OPS inspects, regulates and enforces *interstate* gas and liquid pipeline safety requirements in Texas.
- State:
  - Through certification by OPS, the State of Texas regulates, inspects, and enforces all *intrastate* gas and liquid pipeline safety requirements.
  - This work is performed by the Pipeline Safety Section, Gas Services Division of the Texas Railroad Commission.
  - The RRC has primary jurisdiction over all persons owning or operating pipelines in Texas.

# Texas Railroad Commission

The Texas Railroad Commission **acquired jurisdiction** over oil and gas in a 1917 Act designed to prevent monopolistic practices, unfair pricing and discrimination in oil and gas pipelines.

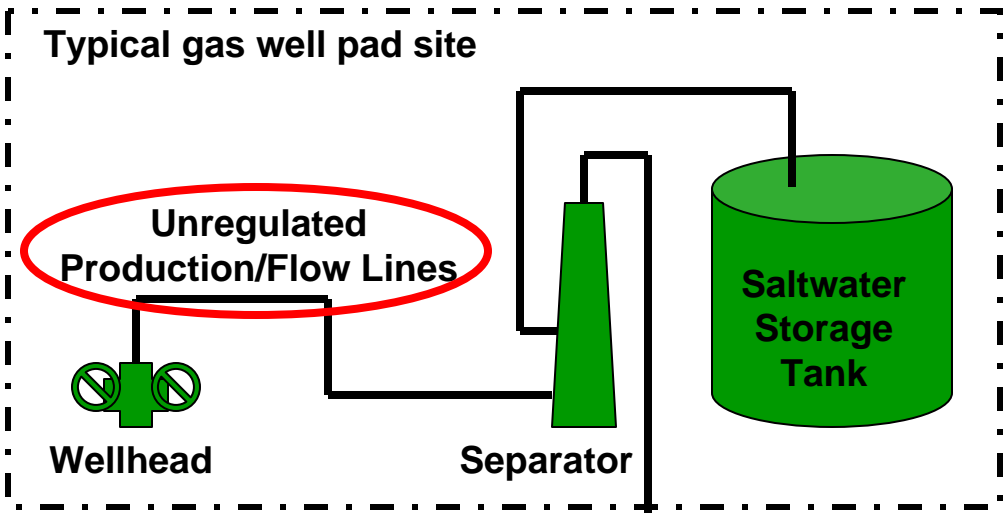
The 1917 Act declared oil and gas pipelines to be **common carriers** and gave the Railroad Commission power to enforce common carrier provisions for oil and gas pipelines.

In 1919, the Texas Legislature passed a law which established the “core” regulations governing oil and gas, and gave the Railroad Commission authority to regulate oil and gas production to prevent waste.

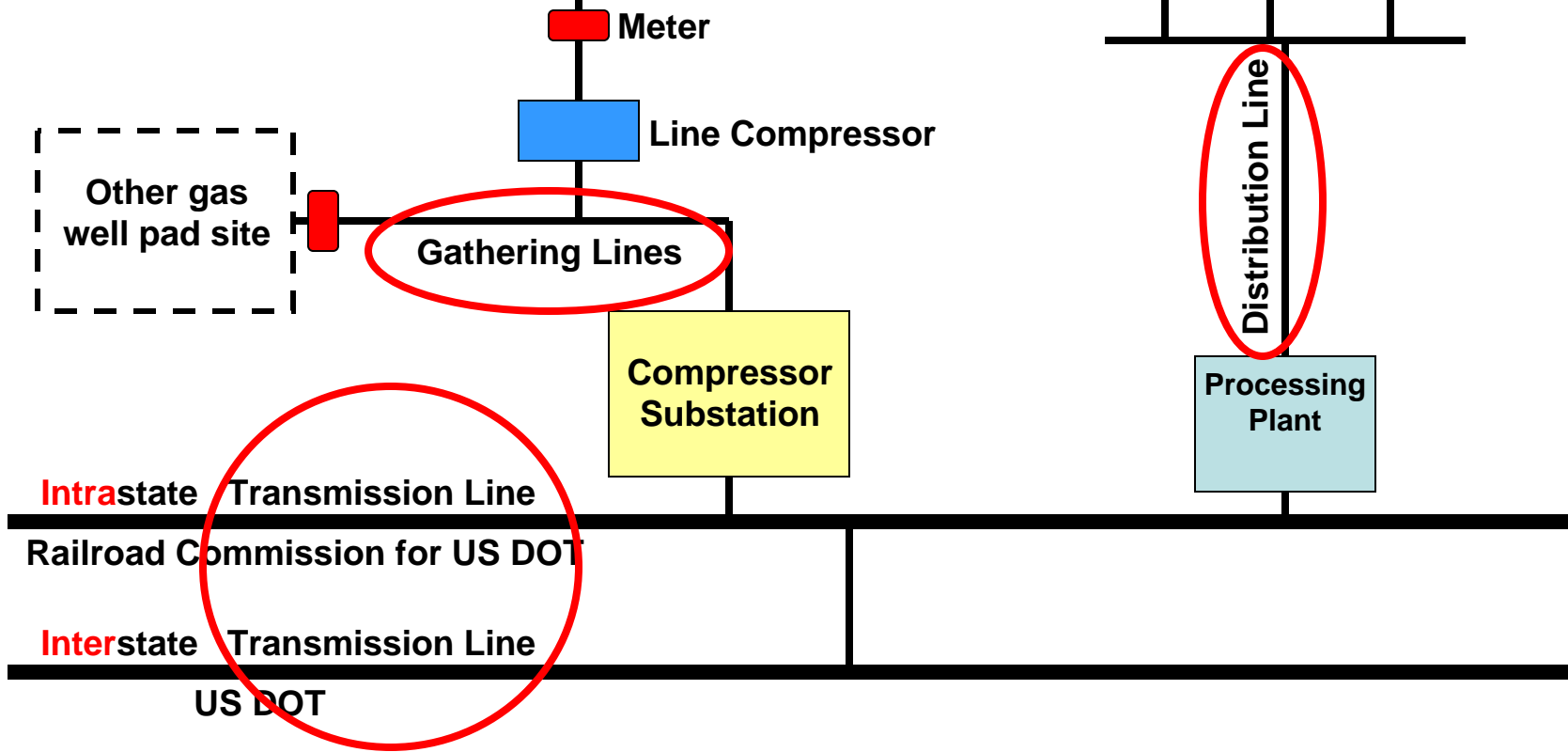
Railroad Commission has regulatory authority over common carrier pipelines, whether oil or gas, and over natural gas pipelines (Natural Resources Code and the Texas Utilities Code).

# Types of Pipelines

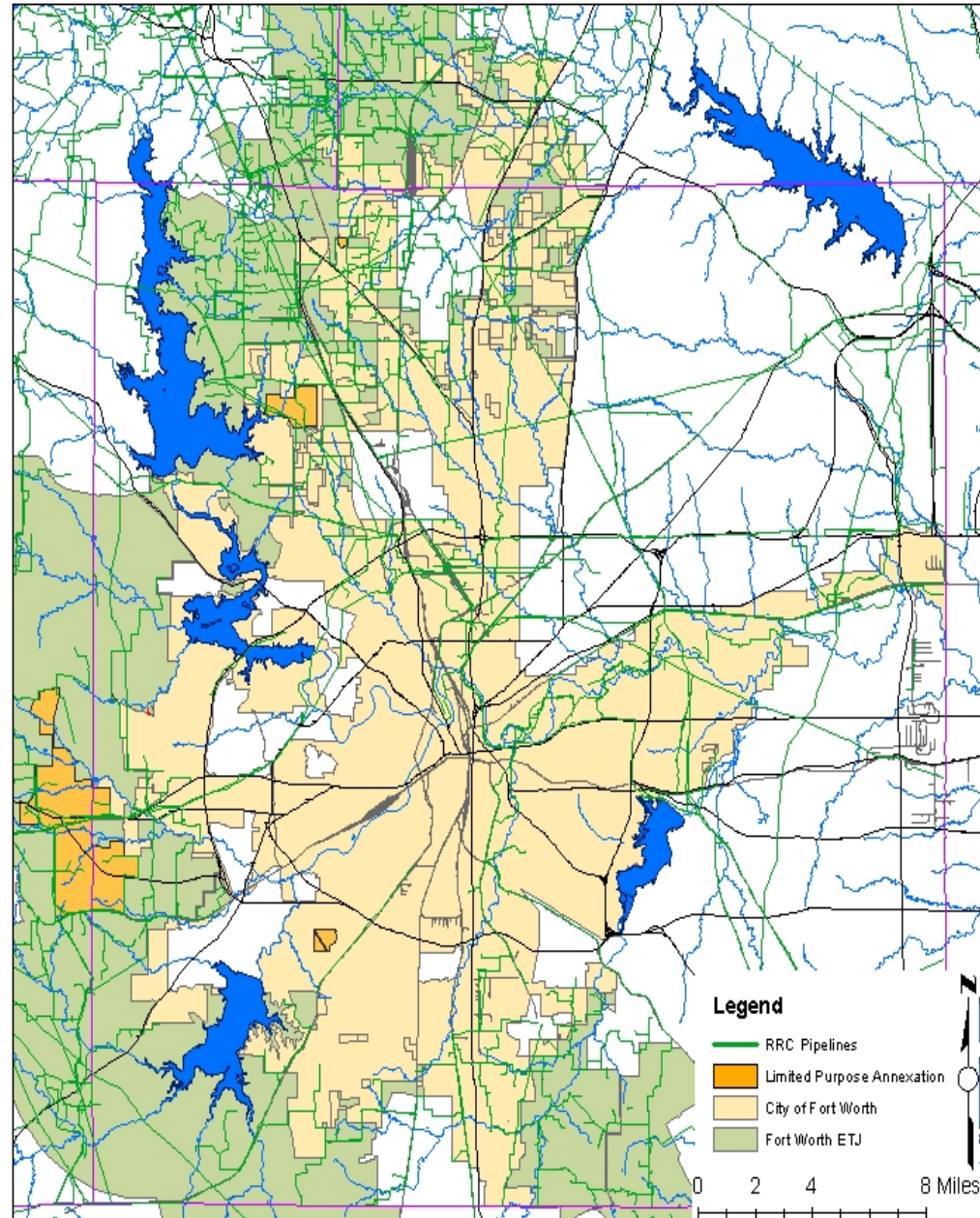
- **Production lease/flow lines:** Pipelines located **within the lease** of production.
- **Gathering lines:** run from the well site to compressor station and other well sites. Lines located **before the point of sale** are not regulated and there are no construction specifications. *Rural gathering lines* are located outside a municipality while *urban gathering lines* are located within the city limits of a designated residential or commercial area.
- **Distribution lines:** Pipelines serving both as a common source of supply and associated branch lines **serving consumers** and are the source of supply for residential and small commercial users. These lines are regulated by the RRC.
- **Transmission lines:** transport gas from a gathering line or storage facility to a distribution center. *Intrastate* lines are regulated by the RRC and *interstate* lines are regulated by US DOT.



# NATURAL GAS PIPELINE SYSTEM in TEXAS



# Existing Gas Transmission Pipelines



# Classes of Pipelines

- Pipelines are classed based on location to building density.
- “Class Location Unit” (CLU) is defined as that area that extends **220 yards** on either side of the centerline of a **continuous mile length** of pipe.
- The **higher the class**, the **greater the number of buildings** intended for human occupancy located within the continuous mile.
- Class of pipe can change along the length of the pipeline.

There is no width requirement for pipeline easements- unless specified otherwise, statute sets the width at 50 feet.

Minimum depth of 3 feet, although waived if erosion occurs after pipeline’s installation.

No distance requirements between pipelines in each easement.

AND

THERE ARE NO DISTANCE SETBACK REQUIREMENTS FROM BUILDINGS OR OTHER USES REQUIRED UNDER FEDERAL OR STATE LAW.

# Classes of Pipelines

- **Class 1:**
  - Off shore pipelines or any CLU that has **10 or fewer buildings** intended for human occupancy.
- **Class 2:**
  - Any CLU that has **greater than 10 but less than 46 buildings** intended for human occupancy.
- **Class 3:**
  - Any CLU that has **greater than 46 buildings** or is within 100 yards of an area occupied by 20 or more persons on at least 5 days per week for 10 weeks in any 12 month period.
- **Class 4:**
  - Any CLU where there is a **4- or more story building**.

# Why Classify Pipelines?

- The class determines the design criteria of the pipeline.
- Pipeline must be designed with sufficient wall thickness to withstand anticipated external pressures and loads.
- The higher the class, the more yield strength is required for the maximum design pressure.

# Who Determines the Route and the Class and What Happens Next?

- Pipeline company has the right to enter upon the property to be condemned for the purpose of surveying and conducting non-invasive soil density, anthropological and ecological tests. Deep core boring is not permitted.
- The pipeline company determines the route of the pipeline and assesses jurisdictional status to determine class of pipeline.
- Pipeline company obtains necessary easements.
- Pipeline company:
  - Submits a **PS-48 Construction Report** 30 days prior to the commencement of construction (requirement waived if pipeline less than five miles) to the RRC if pipeline is a Class 2 or greater.
  - **T4 permit** required to be filed with the RRC unless pipeline never leaves the production lease or is a distribution line to homes/businesses as part of a gas utility. T4 permit is updated on a quarterly basis and contains a digitized map of the pipeline.
  - Required to submit a **P-5 Organization Report and financial security** (bond, letter of credit, cash deposit, insurance policy).

# Railroad Commission Oversight

- Regulatory oversight is achieved by auditing the pipeline companies.
- Not regulated until the product is placed into the line.
- The number of inspections for leak surveys, patrols, valve maintenance, cathodic protection, and solar panels are based on the class of pipeline.
- Integrity Reports are only required for Classes 2, 3, and 4 transmission or gathering lines. Integrity tests require the use of a “smart pig,” hydrologic test or digging up around the pipe.

# Common Carriers and Gas Utilities

- Pipeline company may be both a gas utility and a common carrier.
- **Gas Utility:**
  - Section 121 of the Utilities Code
  - Person who owns, manages, operates, leases or controls property, equipment, or a pipeline, plant, facility, franchise, license or permit for a business that: *owns, operates or manages a pipeline* that is for transporting or carrying natural gas, whether for public hire or not; and for which the right-of-way has been or is hereafter acquired by exercising the right of eminent domain.
- **Common Carrier:**
  - Section 111 of the Natural Resources Code and the Texas Business Organizations Code
  - Must hold itself out and be available to **transport gas to all who may hire its services** for such purpose under rules established by the RRC, **must publish its tariffs** and it **must transport gas without discrimination.**

# Gas Utilities

- § 121.202. MUNICIPAL AND COUNTY AUTHORITY.

(a) A municipality or a county **may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a facility that is regulated under this subchapter, another state law, or a federal law.**

(b) Except as provided by Subsection (a) and by Section 121.2025, this subchapter does not reduce, limit, or impair:

(1) a power vested by law in:

(A) a county in relation to a county road; or

(B) a municipality;

OR

(2) the ability of a municipality to:

(A) adopt an ordinance that establishes conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; or

(B) establish conditions for mapping or taking an inventory in an area in a municipality's extraterritorial jurisdiction.

# Rights of Way

- **AUTHORITY TO LAY AND MAINTAIN GAS FACILITY.**

A gas utility or common carrier has the right to lay and maintain a gas facility through, under, along, across, or over a public highway, a public road, a public street or alley, or public water.

- **CONSENT REQUIRED IN MUNICIPALITY.**

A gas utility or common carrier may exercise authority to lay and maintain a gas facility in public rights of way in a municipality with the consent of and subject to the direction of the governing body of the municipality.

# Eminent Domain

- **Fifth Amendment** to the United States Constitution and **Article I, Section 17** of the Texas Constitution allow the taking of private property for a public purpose/use provided adequate compensation is paid.
- A public concern/use is one which concerns the whole community, not an individual.
- Adequate compensation is the difference between the market value of the land before and after the taking.

# Power of Eminent Domain for Private Property

- As common carriers or gas utilities, pipeline companies have the power of eminent domain to obtain property for the construction, maintenance, and operation of pipelines.
- Surveying and other preliminary assessments are not considered a “takings” and the landowner is not entitled to compensation for these events.
- Usually, a landowner who is approached by a pipeline company for an easement across his property reaches an agreement with the company for compensation.
- Most agreements prohibit any construction across the easement.
- A landowner who refuses the company’s offer or doesn’t want a pipeline across his property can appeal to the county court.
- A judge will appoint a commission of three private citizens to mediate a settlement between the landowner and the pipeline company.
- If mediation is not successful, the case is presented to a jury to consider the fair market value of the land.

# Eminent Domain for Public Property

Generally, property appropriated to public purpose cannot be taken for another public use when the taking results in practical destruction of prior use,

UNLESS

the subsequent taking is for a public purpose of greater or paramount importance which cannot be accomplished in any other way.

# Eminent Domain For Public Property

Test:

Will the taking result in the practical destruction of prior public use?

If no:

then the rule against taking public property for another public use does not apply and the property is subject to a taking under eminent domain.

If yes:

the property can still be taken if the subsequent taking is for a public purpose of greater or paramount importance which cannot be accomplished in any other way.