

FRIO COUNTY PIPELINE PERMIT PROCESS

SECTION I. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

County shall mean the County of Frio in the State of Texas.

Adjustment means the horizontal or vertical repositioning of a permitted or unpermitted pipeline due to reasons unrelated to pipeline operations.

Gas leak means any accidental release of hydrocarbons or other chemicals which are a gas or vapor in the pipeline.

Interstate pipeline means a pipeline used in the transportation of a natural gas, flammable gas or a gas which is toxic or corrosive, which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Pipeline Safety Act, except that it shall not include any pipeline within a state which transports gas from an interstate gas pipeline to a direct-sales customer within such state purchasing gas for its own consumption. Also a pipeline used in the transportation of hazardous liquids in interstate or foreign commerce which are subject to the Hazardous Liquid Pipeline Safety Act of 1979, as amended.

Intrastate pipeline means pipelines which are not interstate pipelines.

Liquid leak means any accidental release of more than five barrels (42 gallons each) of hydrocarbons or any other chemicals, excluding water, which are a liquid in the pipeline.

Owner or operator means the individual, partnership, corporation or other entity that operates the pipeline. As used in this article, one term is always inclusive of the other unless otherwise specified.

Pipeline means any pipe used in the transportation of gaseous or liquid hydrocarbons or any other chemicals, except pipelines located within any oil refining or petrochemical plant.

Relocation means moving an existing pipeline to a new location that is substantially different from the location from which it is moved.

Repair means restoration or replacement of any broken, leaking or defective part of a pipeline which involves excavation or boring, or any work involving excavation or boring for replacement of any portion of the corrosion protection system, save and except for any routine, periodic maintenance on the pipeline itself that does not endanger public safety, health and welfare.

Replacement means one of the following:

- (1) Changing the size of a line or section thereof.
- (2) Size-for-size renewal for a line or section thereof.

Replacement in subsections (1) and (2) of this definition must occur in the same easement as the line being replaced or be relocated to locations in keeping with the provisions herein.

SECTION II. - Permit required.

No pipeline work, other than emergency repairs or routine, periodic maintenance of the pipeline itself shall be commenced within or on county property prior to the application for and issuance of a permit to perform the work. Permits regarding emergency repairs are to be applied for and issued as soon as reasonably possible after the emergency work begins. Routine, periodic maintenance work on a pipeline itself does not require any permit under this article. However, any and all types of work done to any County Road or property does require a permit before any type of work is conducted. Should such work involve damage to any County Road or property, the County reserves the right to seek the appropriate amount of damages for such work.

Section III. – Pipeline permit application.

- (a) The following pipeline activities to be conducted on property owned or controlled by the county require a permit application, a copy of which is attached hereto as Exhibit A:
 - (1) New pipeline along, on or under or in any way intersecting any property owned or controlled by the county;
 - (2) New pipeline along, on or under or in any way intersecting a county road or on property owned or controlled by the county;
 - (3) Relocation of any existing pipeline to a location on county property;
 - (4) Size-for-size replacement of an existing pipeline on county property;
 - (5) Change-in-size replacement of an existing permitted pipeline on county property;
 - (6) Change-in-size replacement of an existing pipeline on county property and in the same location; or
 - (7) Any maintenance work on a pipeline on or off county property requiring excavation or digging on county property.
- (b) Prior to any site preparation for or the beginning of any work on any pipeline on county property as described in subsection (a) of this section within the county, an application for a permit to do so, in the manner described in this section, must be filed at the county clerk and county judge's offices, and such applications shall include the furnishing of all items that meet the permit application requirements.
- (c) All permit applications, a copy of which is attached as Exhibit A, submitted pursuant to this section shall include the following information:
 - (1) The name, business address and telephone number of the applicant and of the pipeline owner in cases where the applicant is the operator but not the owner;

- (2) The names, titles and telephone numbers of the following persons:
 - a. The person preparing the application;
 - b. The person designated as the principal contact for information; and
 - c. The person or firm which will operate the pipeline if other than the applicant;
 - (3) The origin and destination of the pipeline;
 - (4) The material to be transported through the pipeline;
 - (5) The maximum allowable operating pressure on the pipeline as determined according to the applicable U.S. Department of Transportation or state railroad commission procedure;
 - (6) The normal pressure at which the pipeline is to be operated;
 - (7) Engineering plans, drawings, plats and/or maps with summarized specifications showing the specific and detailed horizontal and vertical location of the pipeline so that the conflict with and the impact upon the existing use of the county property and future contemplated use of that property by the county can be determined;
 - (8) Complete and detailed cross sections for all public street, right-of-way and easement crossings;
 - (9) The design criteria under which the pipeline will be constructed;
 - (10) An affidavit, on a form to be provided by the county, to the effect that the pipeline will be constructed, operated and maintained in accordance with the lawful requirements of this article;
 - (11) A hold-harmless and indemnity agreement, on a form to be provided by the county;
 - (12) Bond and liability insurance policy as set forth in Section VII herein;
 - (13) The required permit fee as set forth in Section XVI herein.
- (d) If such applications or revised applications, as the case may be, are acceptable to the engineer to be designated by the county and acceptable to the commissioners' court of Frio County, Texas, and any director of planning of the county, and meets all permit requirements, the Commissioners' court at their discretion may schedule a public hearing before the commissioners' court at their first available regularly scheduled meeting date or at a special meeting as may be determined by the commissioners' court. Notice of such public hearing will be published by the county in the legal notices section of the local newspaper or posted at the Frio County courthouse or at such other place as otherwise determined by the commissioners' court. Following such hearing the commissioners' court shall either approve or deny the permit request. If the issuance of a permit is denied by the commissioners' court, the county shall explain at the meeting or in writing to the applicant the reasons for denying the permit request

Section IV – Emergency Repairs

In case of emergency repairs, a prior permit shall not be required; however, telephone notification to the county judge's office or designated county engineer of such emergency repairs shall be made within 24 hours of such emergency, but in no case later than the next working day. A written affidavit certifying to the emergency repairs shall be furnished to the county judge's office and county clerk as soon as reasonably possible, but within ten (10) days of the

emergency, together with all the items required in the case of an application for permit except a bond after which a permit will be issued.

Section V. - Notice; transfer of ownership, lease or assignment.

Notice of proposed transfer of ownership, lease or assignment of any pipeline must be given by the owner to the county judge's office or designated county engineer in each instance of the transfer of ownership, lease or assignment of an existing pipeline on or within the county property. Such notice shall include:

- (1) If previously permitted:
 - a. Original permit number;
 - b. Materials to be transported through the pipeline;
 - c. An affidavit from the new owner, lessee or assignee on a form to be provided by the County that the pipeline will comply with the standards and permit required by this article;
 - d. A fee from the new owner, lessee or assignee as prescribed in this permit process to cover the administrative costs in enforcing this article;
 - e. Hold-harmless and Indemnity agreement from the new owner, lessee or assignee on a form to be provided by the county as prescribed by this agreement and attached hereto as an exhibit;
 - f. Certificate of existing liability insurance or a new insurance certificate from the new owner, lessee or assignee as prescribed herein.
- (2) If not previously permitted:
 - a. Origin and destination of the pipeline;
 - b. Materials to be transported through the pipeline;
 - c. Engineering drawings and a plat of the location, depth and alignment of the pipeline;
 - d. An affidavit from the new owner, lessee or assignee on a form to be provided by the county that the pipeline will comply with the standards required by this article;
 - e. A fee from the new owner, lessee or assignee as prescribed herein to cover the administrative costs in enforcing this article;
 - f. Hold-harmless agreement and insurance from the new owner, lessee or assignee on a form and amount to be provided by the County as prescribed herein;
 - g. Certificate of existing liability insurance or a new insurance certificate from the new owner, lessee or assignee as prescribed in Section VII.

Section VI. - Locations and routing for new or relocated pipelines to be established.

The acceptable locations and routings for new or relocated pipelines, as may be recommended by the designated county engineer and the designated director of planning and approved by the Commissioners' court, shall meet the following criteria:

- (1) Where economically and physically feasible new or relocated pipelines shall be

located within or immediately adjoining preferred and designated routes, with the limitation that the acquisition of any additional easements or rights-of-way for the pipelines must minimize encroachment on existing development or anticipated uses of the land. Permit requests meeting this criteria shall be handled under Section III herein.

- (2) Where economically and physically feasible, new or relocated pipelines may be located within or immediately adjoining existing pipeline easements or rights-of-way that are not part of a preferred or designated route and are not part of a nonpreferred route, with the limitation that the acquisition of any additional easements or rights-of-way for the pipelines must minimize encroachment on existing development and existing uses of the land. Permit requests meeting this criteria shall be handled under Section III herein.
- (3) Where it is not economically and physically feasible for new or relocated pipelines to be located in keeping with the provisions herein, they should:
 - a. Follow property boundary lines;
 - b. Avoid new fragmentation of land;
 - c. Avoid diagonal routes except if following manmade or topographical features;
 - d. Avoid the creation of additional slivers of land within the county limits;
 - e. Avoid areas of unique recreational or aesthetic importance, environmentally sensitive areas and areas of historical or cultural significance; and
 - f. Avoid being placed within or immediately adjoining nonpreferred routes, the use of which is strongly discouraged, with the further limitation that the acquisition of any easements or rights-of-way for the pipelines must minimize encroachment on existing development existing and anticipated uses of the land.

Permit requests meeting this criteria shall be handled under Section III herein.

- (4) Permits issued under this article shall authorize the location of new or relocated pipelines only in accordance with vertical and horizontal routings as approved by the commissioners' court of Frio County, Texas. Permits shall be issued subject to all necessary easements or rights-of-way being acquired by the applicant, and if requested by the Commissioners' court, applicant shall furnish proof of said easements or rights-of-way in advance of issuing any permit.

Section VII. - Liability protection.

- (a) Any person, firm or corporation making an application for any permit under this article, which shall include a pipeline within, under, across or along a public street, alley or other public way or easement, shall, as a condition precedent to the granting of the permit, execute a hold-harmless and indemnity agreement, on a county form approved by the Commissioners' court, indemnifying the county for any liability arising out of or connected with the granting of the permit or any construction or operating pursuant thereto as it pertains to a public street, alley or other public way or easement except for

the negligence of the county. In addition, the applicant shall furnish a bond on a county form and with corporate surety satisfactory to the county, in an amount of \$25,000.00 for each location involving the crossing of all or a part of a county road, public street, alley, way or easement, and \$10.00 per linear foot of line within the county road, public street, alley, way or easement in cases other than a crossing. An aggregate total bond shall not be required in excess of \$50,000.00, regardless of the number of crossings or linear feet of line within a public street, alley, way or easement. The bond shall inure to the benefit of the county and any person who may suffer a loss or injury as a result of the applicant's operations under his permit as it pertains to a public street, alley or other public way or easement during the period until completion of installation of the line or lines and which completion date shall be approved in writing by the Commissioners' court or its designated representative. The applicant shall further maintain at all times during the life of the permit and the existence of the pipeline on county property or property controlled by the county comprehensive public general liability insurance for bodily injury and property damage, including explosion, collapse and underground hazard coverage, in the minimum combined single limit amount of at least \$3,000,000.00.

- (b) A certificate of insurance on a form to be provided by the county specifying the coverage required in subsection (a) of this section with an insurance company having an acceptable insurance rating shall be furnished to the county engineer or Commissioners' court prior to the issuance of any permit. The certificate of insurance shall provide that at least 15 days' prior written notice of the termination of insurance or any modification of insurance shall be given to the county. No self-insurance is acceptable.
- (c) Any bond provided pursuant to this section may be terminated upon completion of the installation of the pipelines to which it relates upon the written certification of completion by the designated county engineer or Commissioners' court, and provided that the permittee shall maintain liability insurance as required under subsections (a) and (b) of this section. The termination of a bond shall not affect any claim, damage, injury or cause of action arising thereon prior to the date of termination.

Section VIII. - Minimum standards and specifications.

- (a) All new pipelines, relocated pipelines, replacement of pipelines, adjustment of pipelines, or repairs to pipelines within the county shall be designed and constructed in accordance with the latest approved minimum standards established by the U.S. Department of Transportation or the state railroad commission, whichever is applicable, and any special requirements established as a condition of permit approved by the county.
- (b) The operation and maintenance of all pipelines including, without limitation, existing pipelines, within the county shall conform to the standards established by the U.S. Department of Transportation or the state railroad commission, whichever is applicable.
- (c) The county cannot establish any safety standards on pipelines transporting natural gas since these lines clearly fall under the jurisdiction of the state railroad commission by virtue of Senate Bill 480, but permittee agrees to fully abide with all requirements of all state and federal agencies having jurisdiction.

Section IX. - Application to existing pipelines.

- (a) The owner or operator of any existing pipeline on county property or property controlled by the county shall furnish the county designated engineer or county judge's office with the following:
 - (1) Schematic drawings showing the location of each pipeline;
 - (2) A description of the materials transported, their source and their destination;
 - (3) The normal and maximum operating pressures on the line;
 - (4) The name, title and telephone number of the persons responsible for the operation of the pipelines;
 - (5) The name, title and telephone number of the persons to be contacted in case of an emergency;
 - (6) An affidavit that each pipeline complies with the applicable standards required by this article;
 - (7) Certificate of current insurance in the amount required by Section VII;
 - (8) An affidavit as to whether the pipeline is an interstate or intrastate pipeline.
- (b) This information shall be furnished within 90 days following the effective date of this article. It shall be unlawful for any person, corporation or other entity to operate and maintain a pipeline in the county after the expiration of such 90 days unless or until the information enumerated in subsection (a) of this section has been provided to the county engineer or the county judge. This information shall further be furnished on each anniversary date of the original permit issued under this article or on each anniversary date of the information provided under this section

Section X. - Markers to indicate location.

- (a) The owner or operator of any pipeline within the county shall place and maintain line markers with clear visibility as close as practical over each pipeline at each crossing of a public street, utility easement, railroad, navigable or non-navigable, creek, waterway or drainage canal to fully identify the location of the pipeline. The markers and posts shall be of a permanent type construction made of any materials which will ensure adequate strength, stiffness, visibility and durability. These permanent markers may include metal, concrete, straight posts made from debarked trees treated with pressure-applied chemical preservatives, PVC, polyethylene, fiberglass, etc. The marker shall contain a permanent label identifying the pipeline owner or operator, telephone number and type of product in the line and the depth of the pipeline. Products may be broadly classified as crude oil, products, natural gas or light hydrocarbons.
- (b) Line markers shall not be required for pipelines located under inland navigable waterways; however, markers shall be located as close as practical to the cut-bank line of these waters or waterways.

Section XI. - Hazardous material spill, discharge or release.

- (a) *Telephone notification required.*
- (1) The operator or owner of any pipeline, or any employee, who discovers any spill, discharge or release of any flammable liquid, combustible liquid or other material that is reportable pursuant to any federal or state laws and regulations, or other local laws or regulations, or which produces a risk to the health, safety or welfare of the public, shall immediately notify by telephone the county's office of emergency management, the county judge's office and the Frio County Sheriff's office, Department of Public Safety authorities, and Frio County Fire Department.
 - (2) This notification shall include the following information:
 - a. Name and address of operator.
 - b. Name and telephone number of the reporter.
 - c. Location of the spill, discharge or release.
 - d. Type and amount of material released, if known.
 - e. Any other significant information.
 - f. Assessment of danger to the public.
 - g. Taking immediate steps to advise the public of the danger and eliminating the risk to the general public.
- (b) *Survey of facilities.* It shall be the responsibility of the owner and/or operator of any pipeline to cooperate with the county in any scheduled survey of such facilities or premises by the fire chief and any other county official or party deemed necessary. Such survey shall not relieve the owner and/or operator of their independent responsibility for meeting the standards or requirements of any applicable laws or regulations, nor shall the survey be construed to create any duty, assume any responsibility for or constitute any representation as to the condition of the facility or premises for the owner, operator or third party.
- (c) *Response plan.* Upon notification of a hazardous material spill, discharge or release, the county's office of emergency management, sheriff's office or other appropriate agency shall implement the response plan which has been developed to provide proper notification to all county departments and to coordinate all activities and to direct the activities necessary to control, eliminate and restore normal conditions to the area. The permittee who caused such spill shall also assist with implementing the response plan as developed.

Section XII. - Required leak reports; all pipelines.

- (a) All persons, firms or companies operating pipelines within the county limits shall, within 24 hours of an event, but in no case later than the next working day, give verbal notification to the designated county engineer or county judge's office of the discovery of any liquid or gas leak (as defined in section XI(1)above), and shall file a written liquid or

gas leak report with the designated county engineer or the county judge's office within 10 days of the discovery of such leak. The county engineer, upon receiving verbal notification of a leak, shall immediately inform the county judge and Commissioners' court of the reported leak and shall furnish them with a copy of the written liquid or gas leak report. The written report shall provide at a minimum the information required on the most current Department of Transportation or state railroad commission leak report form. Upon request such companies shall make available for inspection the following:

- (1) Operating procedure and maintenance plan;
 - (2) Emergency plan;
 - (3) Construction records and test reports.
- (b) Emergency notification regarding leaks that represent an imminent danger to the public shall be made to the county's office of emergency management, county judge's office and other appropriate county, state and federal agencies.

Section XIII. - Pipeline permitting and inspection.

- (a) The county commissioners' court and with the assistance of engineer designated by the Commissioners' court is given the powers required to perform the duties necessary to carry out the intent of the Sections herein including, but not limited to, the following duties:
- (1) Develop, receive and process pipeline permit applications;
 - (2) Receive and review all required reporting outlined herein;
 - (3) Enforce all articles and Sections herein; and
 - (4) Implement a reasonable program for the inspection of pipelines to ensure that new pipelines and existing pipelines within the county are constructed, maintained and operated in accordance with standards required by these Sections.
- (b) It shall be the duty of pipeline owners and operators to cooperate with the county in these inspections. These inspections shall not relieve the owners or operators of their independent responsibility for meeting the standards required by these Sections nor shall the inspections be construed to create any duty, assume any responsibility for or constitute any representation as to the condition of the pipelines for the benefit of the owner, operator or third parties nor impose any obligation whatsoever on the county.

Section XIV. - Penalty; revocation of permit; nuisance; individual's responsibility.

- (a) Except as otherwise specified, any person, firm, corporation or agent, who shall violate or fail or refuse to comply with any of the provisions of this article, or of any permit issued under this article, or fail to comply therewith, or with any of the requirements thereof in violation of this article shall be guilty of a misdemeanor. Each and every day or portion of a day during which any violation of any of the provisions of the Sections herein is committed or continues constitutes a separate offense and, upon conviction, shall be punished at \$100.00 per day per offense. In addition, the county may at its option revoke any permit granted under this article and order the cessation of operations of any pipeline or pipeline system constructed or maintained pursuant to the permit and have the immediate right to seek injunctive relief to prevent further violations of the provisions

herein. Prior to the revocation of any permit, the Commissioners' court shall set a time and place for a hearing on revocation of the permit. The County Clerk or County Judge's office shall be directed to give written notice to the holder of the permit by certified mail at least 15 days prior to the date set for the hearing. The following shall be grounds for revocation of permit by the Commissioners' Court:

- (1) The permit was obtained by fraud or misrepresentation.
 - (2) The owner or operator of the pipeline has violated any of the provisions of the Sections set out herein.
- (b) The Commissioners' court further finds, determines and ordains that the operation of any pipeline in violation of any of the provisions of this article constitutes a condition which imperils and threatens the public health, safety and welfare, which interferes with and endangers the reasonable and peaceful use of public and private property, and which is a nuisance and shall be subject to all of the remedies available at law or equity.
- (c) Each permit shall specify, and each permittee, by its written acceptance of the permit, shall agree that the permittee shall be liable to the county for the county's reasonable attorney fees, expert witness fees, other direct expenses and court costs in any legal proceedings resulting in a finding of any violation of its permit.
- (d) A person or individual is criminally responsible, under this article, for conduct that he performs in the name of or on behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf. An agent having primary responsibility for the discharge of a duty to act imposed by this article on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by this article directly on him. If a person or individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the penalty authorized by this article for an individual convicted of the offense.

Section XV. - Effect of other laws.

The provisions of this article shall be subject to all federal and state legislation, rules or regulations presently or hereafter enacted or adopted to the extent that such laws and regulations preempt or supersede the authority of the county with respect to this article or its provisions.

Section XVI. - Fees.

The permit fees and record maintenance fees are fixed and established for the respective purposes at the following charges:

- (1) Permit Fee -- \$500.00
- (2) Transfer of ownership, lease or assignment fee 200.00
- (3) Annual records maintenance fee (per owner or operator) 200.00

Section XVII. - Abandonment and removal from service.

- (a) If any pipeline is no longer used for its intended purpose, it shall be purged with nitrogen and capped at appropriate locations, or shall be handled as otherwise required by U.S. Department of Transportation or state railroad commission regulations.
- (b) If the pipeline owner or operator intends to use an inactive line at any time in the future, the owner or operator shall continue to prove the operability of the unused pipeline in a satisfactory manner to the designated county engineer or Commissioners' court in the annual reporting required of the owner or operator.
- (c) If an active or inactive pipeline is deemed to be inoperable by the owner or operator due to safety considerations or the inability to comply with this article, the owner or operator, with the approval of the designated county engineer or commissioners' court, shall prevent its further use or abandon the pipeline in a manner consistent with U.S. Department of Transportation or state railroad commission regulations.

Section XVIII. - Notifications to other parties.

Any applicants for a permit issued hereunder, or performing emergency repairs shall be required to utilize an appropriate "one-call" system to notify all other interested parties before proceeding with any excavation activities as part of their permit, unless such prior notice is not practical.

Section XIX. Execution of Application.

Any applicant for a permit to be issued hereunder agrees to complete and file with the County Clerk of Frio County, the Frio County pipeline application as may be determined by the Commissioners' Court of Frio County and shall agree to execute the necessary pipeline easement and right-of-way documents as may be approved by the Commissioners' Court of Frio County and copies of which may be obtained through the Commissioners' Court, the Office of the County Judge, and the County's designated attorney.

Sections XX to Section XXI. Reserved for future expansion.