

[Service Date March 23, 2012]

March 23, 2012

NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS
(By Monday, April 23, 2012)
and
NOTICE OF WORKSHOP
(Set for Thursday, May 10, 2012, at 1:30 p.m.)

Re: Rulemaking to Consider Damage Reporting Requirements for Hazardous Liquids Pipeline Companies in WAC 480-75, Docket PL-120350

TO ALL INTERESTED PERSONS:

On March 21, 2012, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to consider establishing requirements for hazardous liquid pipeline operators to report data and documentation to the Commission of damage to pipeline facilities in violation of Chapter 19.122 RCW. The Commission filed the CR-101 under Docket PL-120350.

The 2011 Legislature amended the underground utilities law, Chapter 19.122 RCW.¹ These changes take effect on January 1, 2013. This new law assigns to the Commission authority to enforce violations of the underground utilities law as these related to pipelines. The Commission initiates this rulemaking to determine whether hazardous liquids pipeline companies need to report additional information about damage to their facilities caused by excavators that have violated the underground utilities law.

¹ The bill, the Underground Utility Damage Prevention Act (E2SHB-1634), was passed unanimously by the Legislature and signed by the Governor on May 5, 2011.

The Commission's Authority to Enforce Violations of Chapter 19.122 RCW

The amended underground utilities law grants the Commission authority² to investigate violations of the dig law related to pipeline companies in the following situations:

- An excavator, who did not first obtain a locate for the underground facilities prior to digging, damages pipeline facilities (RCW 19.122.055);
- An excavator is digging within 35 feet of a transmission pipeline and did not first obtain a locate for underground facilities (RCW 19.122.090); or
- When someone damages or removes marks indicating the location or presence of pipeline facilities (RCW 19.122.075).

The 2011 amendments also grant the Commission authority to investigate and enforce violations when an allegation of a violation of Chapter 19.122 RCW is referred to the Commission by the safety committee.³ In the event of such a referral, the Commission must consider the committee's recommendation as to enforcement action.⁴

If the safety committee refers an allegation against an entity that is not regulated by the Commission, the Commission may refer that matter to the Office of the Attorney General for enforcement in Superior Court.⁵

The fine for damaging pipeline facilities without first obtaining a locate⁶ or digging within 35 feet of a transmission pipeline without first obtaining a locate⁷ is not more than \$10,000 per instance. The fine for violating other provisions of the underground utilities

² RCW 19.122.140 and .150.

³ The safety committee created by the act is to be comprised of representatives of local government, a natural gas utility, contractors, excavators, a privately-owned electric utility, a consumer-owned utility, a pipeline company, the insurance industry, the commission and a telecommunications company. See RCW 19.122.130.

⁴ See RCW 19.122.150(3).

⁵ See RCW 19.122.140(2).

⁶ See RCW 19.122.055.

⁷ See RCW 19.122.055(2).

law is up to \$1,000 for each violation and up to \$5,000 in the event of a subsequent violation within a three-year period.⁸

Additional Damage Incident Reporting May Be Needed

The Commission does not have data about how often someone damages a hazardous liquids pipeline without first obtaining a locate, excavates within 35 feet of a hazardous liquid transmission pipeline without first obtaining a locate or damages or removes marks indicating the location or presence of pipeline facilities.

The Commission needs to amend its reporting rules if it is to enforce violations of RCW 19.122.055, .075 and .090 in an efficient and timely manner.

Hazardous liquid pipeline operators currently report incidents involving injury, death or damage in excess of \$25,000 as these occur. Operators must also report other significant incidents such as spills of five gallons or more of product from a pipeline, media reports, and occurrences that in the judgment of the pipeline company should be reported.⁹ However, pipeline operators do not currently report instances where an excavator damages their facilities unless the damage also results in death, injury, a building evacuation, etc.

The amended underground utilities law requires excavators and facility operators to begin reporting all damage events within 45 days beginning January 1, 2013.¹⁰ However, that reporting is intended to give the Commission and stakeholders descriptive data about the number and kinds of damage events. It was not intended to provide sufficient, timely documentation required to sustain an action enforcing violations of Chapter 19.122 RCW. For the Commission to obtain that information in a timely manner, we believe we may need to revise hazardous liquids pipeline incident reporting rules.

⁸ See RCW 19.122.070(1).

⁹ Incident reporting rules for petroleum pipelines are contained in WAC 480-75-630.

¹⁰ RCW 19.122.053.

To assist in determining whether to establish additional incident reporting requirements, as well as the specifics of such requirements, the Commission requests that interested persons provide written comments on the benefits and costs associated with additional incident reporting requirements generally and address the following questions:

1. When an excavator damages your pipeline facilities, describe the investigation your company conducts and the documentation you typically develop about the damage event.
2. How long does it typically take you to complete your investigation of damage events?
3. What do you estimate it would cost your company to expand its current incident reporting to cover all instances of: (1) damage to your facilities by excavators that have not obtained a locate, (2) excavators digging within 35 feet of your transmission line without a locate, and (3) damage to or removal of marks indicating the location or presence of your facilities?
4. What could the Commission do to reduce costs associated with the additional incident reporting suggested above?

The CR-101, as filed with the Code Reviser, is available for inspection on the Commission's website at <http://www.utc.wa.gov/120350>. If you are unable to access the Commission's web page and would like a copy of the CR-101 mailed to you, please contact the Records Center at (360) 664-1234.

WRITTEN COMMENTS

Written comments on the CR-101 and the questions listed above to consider damage reporting rules for intrastate hazardous liquids pipeline operators must be filed with the Commission no later than **5:00 p.m., Monday, April 23, 2012**. The Commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. You may submit comments via the Commission's Web portal at www.utc.wa.gov/e-filing or by electronic mail to the Commission's Records Center at records@utc.wa.gov. Please include:

- The docket numbers of this proceeding (Docket PL-120350).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments is mailing or delivering an electronic copy to the Commission's Records Center on a 3 ½ inch, IBM-formatted, high-density disk, in .pdf Adobe Acrobat format or in Word 97 or later format. Include all of the information requested above. The Commission will post on its web site all comments that are provided in electronic format. The web site is located at <http://www.utc.wa.gov/120350>.

If you are unable to file your comments electronically the Commission will accept a paper document. If you have questions regarding this rulemaking, you may contact staff lead, David Lykken, at (360) 664-1219, or by email at dlykken@utc.wa.gov.

STAKEHOLDER WORKSHOP

In addition to filing written comments, interested persons are invited to attend a stakeholder workshop on **Thursday, May 10, 2012, beginning at 1:30 p.m., in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** At the workshop, Commission staff will review and discuss comments with the stakeholders.

Stakeholders will have further opportunity for comment. Information about the schedule and other aspects of the rulemaking, including comments, will be posted on the Commission's website as it becomes available. If you wish to receive further information on this rulemaking you may:

- Call the Commission's Records Center at (360) 664-1139
- Email the Commission at records@utc.wa.gov
- Mail written comments to the address below

When contacting the Commission, please refer to Docket PL-120350 to ensure that you are placed on the appropriate service list. The Commission's mailing address is:

Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

NOTICE

If you do not want to comment now, but do want to receive future information about this rulemaking, please notify the Executive Director and Secretary in one of the ways described above and ask to be included on the mailing list for Docket PL-120350. If you do not do this, you might not receive further information about this rulemaking.

Sincerely,

DAVID W. DANNER
Executive Director and Secretary