



IN THE PIPELINE

TEXAS PIPELINE ASSOCIATION NEWSLETTER

FALL 2018

FROM THE CHAIRMAN



On behalf of the Texas Pipeline Association board and staff, welcome to the Fall 2018 issue of *In the Pipeline*. As I look forward to the year ahead as Chairman, I want to thank John Loiacono for his great work and dedication as our Past Chairman. His leadership has been invaluable to our organization and I am grateful for his support. Additionally, we owe a great thanks to our members and partners for making TPA the impactful association that it is.

Among the featured articles in this issue, we highlight expectations for the upcoming 86th Legislative Session. With midterm elections just around the corner and preparation for the session already underway, we must not allow complacency to become the enemy of our success as an industry. From eminent domain to eco-terrorism, we are likely to face a myriad of challenges. However, your continued support and involvement will allow us to proactively engage with elected officials across the state, build coalitions to defend our legal right to operate and ensure that our industry has a bright future in the state of Texas.

As always, thank you to all our contributing authors. We have a great issue and I hope you find the topics covered beneficial to you and your companies.

Don Baldrige, DCP Midstream
Chairman, Texas Pipeline Association

MESSAGE FROM THE PRESIDENT



Friends,

Welcome to the Fall edition of *In the Pipeline*. We hope you have had a great summer. I want to send out a special

thanks to everyone who brought their family out to our July Board Meeting at Hyatt Lost Pines. It was wonderful to meet your families! I hope to continue the family-oriented environment for next summer's meeting.

This past summer was a busy time for TPA. Our association was highlighted in

numerous media outlets and I was honored to sit on a panel at the West Texas Legislative Summit to discuss our industry. We have maintained an active presence on social media and podcasts to spread our message of pipelines as an essential part of energy infrastructure. While we are proud to tell policymakers and the public about the benefits and need for pipeline infrastructure, another reason to reach out to these outlets is to educate and inform. By doing so, we counter any misperceptions and anecdotal stories by our opponents. We do this by using facts to illustrate that pipelines are safe, benefiting

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TEXAS PIPELINE ASSOCIATION

TEXAS PIPELINE ASSOCIATION

604 W 14TH ST., AUSTIN, TX 78701

512.478.2871

WWW.TEXASPIPELINES.COM

For comments or submissions, please contact:

Jeannine Wheeler at Pure Energy PR

JWheeler@pureenergypr.com

Editors: Jeannine Wheeler & Christian Goff

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the citizens of Texas and boosting our economy. As part of this, we encourage all of our member companies to share stories with us so we can spread the word and put them in our newsletter.

As we get closer to legislative session (less than 110 days away), TPA is refining and implementing strategies to deal with issues that may arise. We are all aware that various ideas of “eminent domain reform” will be introduced this Session. TPA is once again working with like-minded groups to advocate for results that will ensure that needed infrastructure can continue to be built and that landowners will continue to be treated fairly. At the time of this writing, there has been no specific proposal brought forth by landowner groups, but we certainly expect concepts to emerge. TPA and TXOGA have recently met with the executive leadership of three landowner associations. We will keep you updated on this dialogue.

Other issues are also being discussed with like-minded associations on potential legislation relating to enhanced penalties for damaging and trespassing on pipeline facilities, as well as discussing possible remedies for the *City of San Antonio v. Herral Construction* case, in which a summary was highlighted in the last edition of [In the Pipeline](#).

With the political season upon us, I want to encourage everyone to become active in the process. First, I encourage you to vote for candidates who support our industry. But I also encourage you to contribute directly to candidates or to Tex-Pipe PAC. An investment in a candidate who supports our industry truly makes a difference and allows our industry voice to be heard by policymakers.

Lastly, I want to thank John Loiacono for his service as Chairman of TPA for the past eight months. While Chairman Loiacono may be gone, we all wish him the best and hope that he can return in another capacity in the future. Thanks for your leadership, John!

I would also like to thank Don Baldrige for stepping up to the plate and look forward to working with him on the issues that are important to our industry.

I hope you enjoy this edition of *In the Pipeline* and I look forward to seeing you at our October Board Meeting at Atmos’ Charles K. Vaughan Center in Plano. I wish you and your families all the very best.

– Thure Cannon

IT’S GOING TO BE ANOTHER BIG YEAR IN TEXAS

PREVIEW OF THE 86TH LEGISLATIVE SESSION

By Aaron Saenz, Atmos Energy

Jan. 8, 2019 marks the beginning of the 86th regular session. With it comes certain trials and tribulations affecting our industry. During the 85th session, we accomplished great success, including reauthorization of the Texas Railroad Commission (RRC) and funding the state agencies that regulate the pipeline industry – RRC and the Texas Commission on Environmental Quality (TCEQ).

EMINENT DOMAIN

We also fought to protect our rights of eminent domain through a broad-based coalition of infrastructure builders, including cities, counties and water and electric infrastructure providers. TPA was a principal member of the Coalition for Critical Infrastructure (CCI), which negotiated with legislators and landowner groups to determine if there were any mutual areas in which we could all agree concerning condemnation law. In the end, after many hours of meetings and deliberations, CCI and the landowner groups were unable to come to a consensus. Landowner groups eventually withdrew their support, citing their inability to get behind any of the proposed eminent domain legislation.

As we enter the 86th session, we again anticipate dealing with eminent domain legislation, as the Texans for Property Rights coalition has vowed to re-propose reforms of current forms of it. The coalition includes the Texas and Southwestern Cattle Raisers Association, Texas Farm Bureau, Texas Wildlife Association, Texas Forestry Association, South Texans’ Property Rights Association, Texas Poultry Association, Texas Sheep and Goat Raisers Association, Independent Cattlemen’s Association, Texas Grain Sorghum Association, Plains Cotton Growers, Inc., Corn Producers Association of Texas, Riverside & Landowners Protection Coalition, Texas Land & Mineral Owners Association, Texas Association of Dairy-men and Texas Cattle Feeders Association.

The group is hosting meetings across the state to drum up grassroots support. In the meantime, as TPA President Thure Cannon has stated, “TPA will maintain its open line of communication with all constituencies on the issue of eminent domain reform and will always be open to finding areas of agreement for improvement of property rights, while being able to build the pipeline infrastructure Texas and our state economy needs to flourish.”

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ECO-TERRORISM

TPA will also be looking into what has been commonly referred to as “Eco-Terrorism,” people or organizations who block freeways and who intentionally damage pipelines or other utilities to delay or stop vital projects. Many states have already passed “Eco-Terrorism” legislation and TPA is considering advocating similar legislation in Texas to protect pipeline companies and their assets.

GET OUT THE VOTE

This November, Texas will see a larger number of general election seats in play than usual; however, most races are decided in the primary. In the short-term, the upcoming mid-term elections can be problematic for incumbents and this year is no different. Atmos and TPA encourage you and your companies to get your folks out to vote on Nov. 6. It couldn’t be more important!

ENBRIDGE AND KING RANCH TEAM UP WITH TEXAS A&M-KINGSVILLE TO SUPPORT MONARCH BUTTERFLY HABITAT

By Devin Hotzel, Enbridge

Where have all the butterflies gone?

Sadly, their numbers have fallen off sharply in the past 20 years. In fact, a recent study predicts that without serious action, there’s a 72 percent chance of their extinction in the next two decades.

So a unique coalition of organizations, including Enbridge, decided to do something about it, teaming up with King Ranch and Texas A&M-Kingsville to create a butterfly habitat that will help sustain this precious natural resource across Enbridge’s Valley Crossing Pipeline.

“In many ways, the monarch butterfly has become a poster child for the loss of native wildlife habitats,” says Forrest Smith, Texas native seeds director of the Caesar Kleberg Wildlife Research Institute (CKWRI), based at Texas A&M-Kingsville.

Smith and his colleagues are working hard to help save the monarch butterfly – as well as other pollinators and wildlife – through the South Texas Natives restoration and reclamation project.

This past year, the partnership developed a strategic “rest stop” for monarchs on their epic 2,500-mile journey from Canada to Mexico and back – 670 uninterrupted acres along a 46-mile stretch of Enbridge’s Valley Crossing Pipeline right-of-way.

The entire Kenedy County portion of the Valley Crossing Pipeline’s right-of-way is being planted with a South Texas native seed mix to provide:

- Much-needed nectar sources for monarchs, such as milkweed;
- Beneficial habitat for fellow pollinators, as well as wildlife such as bobwhite quail; and
- Grazing resources for livestock production.

Early this year, Enbridge and King Ranch, Inc., a significant landowner along the Valley Crossing Pipeline path, announced a joint \$100,000 donation to fund the restoration project.

This donation is one example of Enbridge’s commitment to sustainability, helping to meet North America’s growing energy needs in ways that are economically, environmentally and socially responsible.



ENBRIDGE AND KING RANCH, INC. OFFER A JOINT DONATION TO FUND THE TEXAS A&M-KINGSVILLE-LED RESTORATION PROJECT

BACK ROW: Robert Underbrink, President/CEO, King Ranch, Inc.; John Bremner, Director of Business Development, Enbridge; Scott Lange, Project Director, Valley Crossing Pipeline; Susan Waller, Director of Stakeholder Engagement, Enbridge.

FRONT ROW: Stephen J. “Tio” Kleberg, King Ranch Board Member/Chairman of CKWRI; Devin Hotzel, Manager of Stakeholder Engagement, Enbridge; Tina Faraca, Vice President of Project Execution, Enbridge; Dr. Steven Tallant, President, Texas A&M-Kingsville; Michael Bagale, Program Manager, Valley Crossing Pipeline; James Clement, Jr., King Ranch Board Member/Chairman of King Ranch Institute for Ranch Management.

“Restoring native plants to a pipeline right-of-way might seem like one small piece of conservation, but it’s a very important one,” said Smith. “This project represents one of the largest-scale and most ecologically significant monarch habitat restoration efforts ever attempted.”

Enbridge’s Valley Crossing Pipeline project is a 176-mile natural gas pipeline running from Agua Dulce, Texas, and terminating 14 miles off the shores of Brownsville, Texas, delivering clean-burning natural gas to CFE, Mexico’s state-owned utility.

Expected to enter service this October, the project will generate about 3,500 jobs, delivering a total economic impact of more than \$294 million to South Texas.

The joint \$100,000 grant will also fund CKWRI’s educational outreach with landowners for the monarch butterfly project, as well as monitoring efforts for three years after the native seed mix is planted.

Smith expects the project will serve as a model collaboration between academia, private landowners and the oil and gas industry to “provide effective natural resource conservation and energy to Texans.”

ENVIRONMENTAL REGULATORY INITIATIVES WATCHLIST

By Celina Romero, Duggins Wren Mann & Romero, LLP

In the [Fall 2017](#) edition of *In the Pipeline*, we noted that the U.S. Environmental Protection Agency (EPA) was set to make significant changes to existing environmental policies and regulations. We identified five regulatory initiatives to watch for:

- Subpart 0000a New Source Performance Standards for oil and gas sources;
- Efforts to develop a new definition of waters of the United States;
- Designation of non-attainment areas under the 2015 ozone NAAQS;
- Revisions to EPA's Risk Management Program rules; and
- Continued "inactive" status for the Obama Administration's proposal to extend Toxic Release Inventory requirements to all natural gas processing facilities.

Now that a year has passed, it is worthwhile to review these five areas and assess any new developments.

SUBPART 0000a

Last year at this time we were anticipating EPA action on petitions for reconsideration of Subpart 0000a New Source Performance Standards for oil and gas sources. Subpart 0000a, promulgated by the Obama Administration in 2016, increased regulatory burdens on owners and operators and imposed controls on methane emissions.

We have seen two EPA rulemakings on Subpart 0000a in the past year. First, in March 2018, EPA published a final rule amending two provisions of Subpart 0000a pertaining to fugitive emissions components at well sites and compressor stations. One change, not affecting operations in Texas, relates to the monitoring of fugitive emissions at well sites on the Alaskan North Slope. The other change reversed the requirement that "delayed repairs" had to be completed during unscheduled or emergency vent blowdowns on the grounds that making such repairs during emergency blowdowns would result in greater emissions than the leaks that are to be repaired. Those changes went into effect as of the date of publication. At the time EPA finalized these amendments, it stated that it was continuing to reconsider other aspects of Subpart 0000a, signaling that it would make additional revisions to Subpart 0000a in the future.

EPA followed through, and in September 2018, it proposed several new revisions to Subpart 0000a. The proposed amendments include modifications to the schedule for fugitive emissions monitoring and repairs at well sites and compressor stations; provisions allowing in-house engineers to evaluate designs of closed vent systems and certify the sufficiency of their design and capacity; and expanded opportunities to use alternative means of emissions limitation (AMEL) to comply with NSPS requirements and streamlining of the process to request use of AMELs. EPA is also proposing assorted changes to clarify and streamline implementation of the rules.

The proposed changes are favorable to industry and would substantially reduce regulatory burdens. EPA estimates that the revisions, if finalized, would reduce industry compliance costs by tens of millions of dollars per year. We can expect finalization of the proposed Subpart 0000a revisions some time in 2019 – followed, inevitably, by court challenges from environmental groups.

NEW DEFINITION OF "WATERS OF THE UNITED STATES"

EPA and the Army Corps of Engineers continue to work on a new and narrower definition of the waters and geographic features that constitute waters of the United States (WOTUS) and thus are subject to Clean Water Act protections and permitting requirements. The Obama EPA adopted an expansive definition for WOTUS in 2015, but the Trump Administration is seeking to finalize a new definition reflective of the narrower view articulated by Justice Scalia in the *Rapanos* case.

As part of its efforts to supersede the Obama Administration's WOTUS definition, EPA earlier this year finalized a delay rule providing that the Obama definition would not be implemented until February 2020. This had the effect of reinstating the pre-Obama definition of WOTUS while the Trump Administration acted to finalize its new, narrower definition. However, a federal court in South Carolina recently invalidated the Trump Administration's delay rule on a nationwide basis. The court's decision had the effect of putting back in place the Obama Administration's WOTUS definition in some states (such as

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(ENVIRONMENTAL REGULATORY INITIATIVES WATCHLIST continued from previous page)

Texas) but not others. EPA is appealing the South Carolina court's decision.

Subsequently, in September 2018, a federal court in Texas issued an order temporarily blocking implementation of the Obama WOTUS definition in Texas, Louisiana and Mississippi. So as of now, Texas should be back to the pre-Obama definition of WOTUS, pending further developments.

Meanwhile, EPA's rulemaking efforts to finalize a new WOTUS definition are ongoing. EPA's Unified Agenda indicates that it intends to have a new WOTUS definition in place by mid-2019. This would be a welcome development, as the current situation is marked by confusion, inconsistency and varying circumstances due to ongoing litigation developments.

NON-ATTAINMENT AREA DESIGNATIONS FOR THE 2015 OZONE NAAQS

Last year at this time, EPA had finalized a new and more stringent NAAQS for ozone (0.070 parts per million) but had not yet determined which Texas counties were in non-attainment under that new standard. Now, EPA has made those determinations.

Significant aspects of EPA's determinations are as follows: In the Dallas-Fort Worth area, Rockwall County is not a non-attainment county for the 2015 NAAQS, even though it is non-attainment for the 2008 ozone NAAQS. Similarly, the Houston-Galveston-Brazoria area counties of Liberty and Waller are non-attainment under the 2008 NAAQS, but are not non-attainment counties under the 2015 NAAQS. In another significant development, EPA for the first time designated Bexar County (San Antonio) as non-attainment for the 2015 NAAQS – a determination that the state of Texas is challenging in the Fifth Circuit Court of Appeals.

DELAYED EFFECTIVE DATE OF RISK MANAGEMENT PROGRAM REVISIONS

One of the last acts of the Obama Administration EPA was finalization of revisions to the Risk Management Program regulations in January 2017. The revisions imposed significant new regulatory requirements on covered facilities,

including requirements that facilities conduct root-cause analyses following catastrophic releases or near-misses, and requirements that facilities use independent third parties for compliance audits after reportable accidents.

The Trump Administration EPA delayed the effective date of these new rules until February 2019. However, the D.C. Circuit Court of Appeals recently ruled that EPA lacked the authority to delay the effective date of the rules. The court's decision means that the Obama Administration's revisions, issued in January 2017, are now in effect.

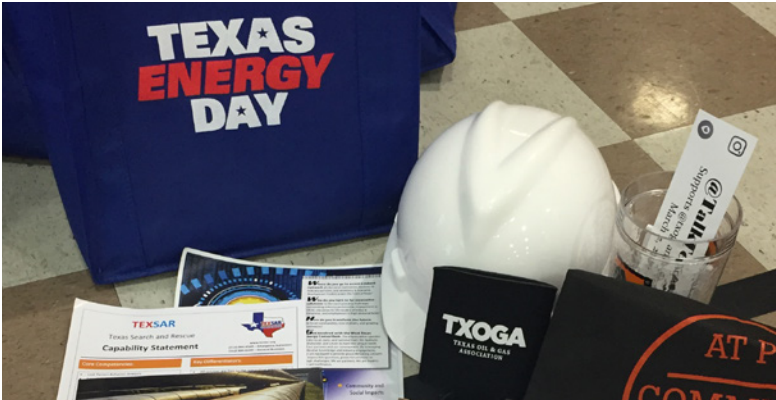
The Obama revisions may not be in effect for long, however. That is because the Trump Administration EPA is in the final stages of a rulemaking that would revise and rescind many of the provisions contained in the Obama EPA's January 2017 rules. Watch for EPA's finalization of this rulemaking in the upcoming months, which would largely negate the burdensome Obama revisions that, due to the D.C. Circuit's recent ruling, are now in effect.

TOXIC RELEASE INVENTORY REQUIREMENTS FOR NATURAL GAS PROCESSING PLANTS

Specified facilities must file reports with EPA on releases and waste management practices for listed toxic chemicals. This information goes into the Toxics Release Inventory (TRI), a publicly available database. In January 2017, the Obama EPA proposed to extend TRI requirements to all natural gas processing facilities, but upon taking office the Trump Administration EPA put this rulemaking on the "inactive" list in the federal Unified Agenda. The Unified Agenda continues to indicate that this rulemaking is "inactive." At this point it seems very unlikely that this proposal will be re-activated by the Trump Administration.

As the above discussion demonstrates, the Trump Administration has continued to take concrete steps to achieve its goal of reducing regulatory burdens on the U.S. energy industry. We can expect additional federal efforts on this front. As always, it will be important for companies in the midstream industry to monitor environmental regulatory developments and, where appropriate, provide input to relevant government officials.

INDUSTRY NEWS



TEXAS ENERGY DAY

Remember to mark your calendars for the next Texas Energy Day at the Texas State Capitol, which is planned for Feb. 20, 2019. This is a great way for the midstream sector to show its support for Texas' oil and natural gas industry.

And you can help! The planning committee is seeking the following:

- CEOs to speak to participants
- Event day participation, including legislator visits
- Member company displays

If you have interest in participating, please contact [Christian Goff](#) or [Jeannine Wheeler](#).



BAKER NAMED TCEQ EXECUTIVE DIRECTOR

TCEQ announced the appointment of Toby Baker as its new executive director, effective Aug. 20. Read the announcement [here](#).



LINDLEY APPOINTED AS NEW TCEQ COMMISSIONER

On Aug. 20, Gov. Greg Abbott announced the appointment of Emily Lindley as the next TCEQ commissioner. Read the announcement [here](#).

COLLATERAL UPDATES



Make sure to check TPA's website for the updated industry one-pagers you can find [here](#). These collateral pieces help industry representatives communicate the importance of Texas' pipeline industry to key stakeholders. Please share them far and wide.

NEWS BRIEFS



As featured in San Angelo LIVE! and the *Houston Business Journal*, TPA President Thure Cannon shares his thoughts in an [Op-Ed](#) on why the pipeline industry thinks the current eminent domain law is fair and reasonable.



[Listen](#) to Thure Cannon, TPA president, talk pipelines on the The Crude Life podcast.



[Read](#) about TPA's participation in the West Texas Legislative Summit, which was held on Aug. 2.

2018/2019 TPA BOARD MEETING DATES

Thursday, Oct. 11

Plano

Friday, Jan. 11, 2019

Houston - TPA Annual Meeting

THIS ISSUE'S CONTRIBUTORS

[Aaron Saenz, Atmos Energy](#)

[Devin Hotzel, Enbridge](#)

[Celina Romero, Duggins Wren Mann & Romero, LLP](#)

[Allison Newsum, Graphic Designer](#)