

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)
its Rules in Chapter 4901:1-16 of the Ohio)
Administrative Code, Regarding Gas Pipeline)
Safety.)

Case No. 13-2237-GA-ORD

**INITIAL COMMENTS OF
THE OHIO OIL AND GAS ASSOCIATION**

I. Introduction

In 2013, the Public Utilities Commission of Ohio ("Commission") initiated this docket to conduct its five-year review of its gas pipeline safety requirements contained in Chapter 4901:1-16, Ohio Administrative Code ("Pipeline Safety Rules").¹ A workshop was held on January 16, 2014, during which several members of the public including the Ohio Oil and Gas Association ("OOGA") made proposals for clarifications to the Pipeline Safety Rules. On March 5, 2014, the Commission issued proposed revisions to the Pipeline Safety Rules and requested all interested stakeholders to submit initial comments by March 28, 2014, which was extended to April 5, 2014 by entry dated March 26, 2014. OOGA hereby timely files the following initial comments in response to the proposed Pipeline Safety Rule amendments.

OOGA is one of the largest and most active state-based oil and natural gas trade associations in the country, which since 1947 has presented the views of Ohio oil and gas producers and allied industries to the public. OOGA members are involved in all aspects of exploration, production, transportation, midstream processing and marketing of oil and gas in the Appalachian Basin. The

¹ For ease, the rules in Chapter 4901:1-16, Ohio Administrative Code, will be simply referred to as 16-XX.

more than 3,000 OOGA members includes both family owned and run small businesses as well as Fortune five hundred corporations.

Upon review of proposed amendments to the Pipeline Safety Rules, OOGA found only one substantive issue and two drafting points which it would like to bring to the attention of the Commission. The substantive point concerns the new, proposed definition of “leak detection equipment.” The drafting corrections include the proper citation to the “Natural Gas Pipeline Safety Act” to ensure conformance with the statutory definition and an apparent redline error in Rule 16-15-(D)(8) as the proposed language remains the same as the language in the Commission’s October 2013 order initially approving Rule 16-15-(D)(8), and thus should not be listed as an amendment.

II. Definition of “leak detection equipment,” Rule 16-01(M)

The Staff proposes to add a definition for “leak detection equipment” which it defines as “any device used to detect the percentage of natural gas in air.” OOGA agrees with Staff that having a definition for leak detection equipment would add clarity to the rule, but the definition is too narrow. The Staff defines leak detection equipment as a device that detects leaks by “the percentage of natural gas in the air.” There are many types of leak detection equipment available to operators today that can detect free natural gas in the air without reference to the percentage of gas in the air. This could be something as simple as devices that measure gas concentration in parts per million as opposed to percentages, or use more elaborate processes. Further, the rules will likely be in place for at least five years and possibly a good deal longer. During that time period, other techniques may be developed or become best practices. To accommodate other types of leak detection equipment, OOGA recommends that the proposed definition of “leak detection equipment” be revised to read “any device used to detect ~~the percentage of~~ natural gas in air.”

III. Definition of “Natural Gas Pipeline Safety Act,” Rule 16-01(P)

The Staff proposes to modify the definition of “Natural Gas Pipeline Safety Act” in Rule 16-01(P) as follows:

“Natural Gas Pipeline Safety Act” means the Natural Gas Pipeline Safety Act of 1968, 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., ~~as amended~~, and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act of 1968, including 49 C.F.R. 40, 191, 192, and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the Administrative Code.

The Staff’s proposed removal of “as amended” will result in a discrepancy between the rule definition and the definition of the Natural Gas Pipeline Safety Act in Section 4905.90(I), Revised Code.

Although unintended, the proposed rule revision is not supported by Ohio law. As a state agency with no independent Ohio Constitutional authority, the Commission only has the authority directly conferred upon it by the General Assembly.² The Commission has been granted authority to promulgate regulations and rules of procedure, but that authority is limited to the exact grant of authority made by the General Assembly via the enabling statutes. The Commission is precluded from the promulgation of rules which are in excess with either the legislative policy or in direct conflict with the enabling statute.³ Retaining the original language in the rule will avoid a conflict with the current statutory definition under Section 4905.90(I), Revised Code, and accordingly the proposed rule revision should not be adopted.

IV. Redlining Mark in Rule 16-15-(D)(8)

The draft rules attached to the Commission’s March 5, 2013 Entry reflect that there is a proposed change to Rule 16-15(D)(8). However a review of the text does not show any change. The wording in the Staff’s proposal is the same as the language adopted by the Commission in its October 30, 2013 order. *See In the Matter of the Amendment of Chapter 4901:1-16, Ohio*

² Canton Storage and Transfer Co. v. Pub Util. Comm. (1995) 72 Ohio St. 3d 1, 5.

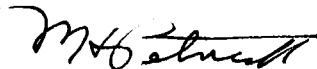
³ English v. Koster (1980) 61 Ohio St. 2d 17, 19.

Administrative Code, Regarding Gas Pipeline Safety, to Implement Am. Sub. S.B. 315, Case No. 12-2040-GA-ORD, Finding and Order (October 30, 2013). OOGA assumes that the redline mark in the Entry appears to be a typographical error, and should be removed from the document before submittal to the Joint Committee on Agency Rule Review. If some revision was intended to be proposed, the Commission should issue a revised proposed rule and allow interested stakeholders the opportunity to comment specifically on that proposal.

V. Conclusion

For all of the foregoing reasons, OOGA recommends (a) the definition of “leak detection equipment” be revised to read “any device used to detect natural gas in air;” (b) the definition of “Natural Gas Pipeline Safety Act” not be revised as proposed by Staff; and (c) the redline error in Rule 16-15(D)(8) be removed. OOGA appreciate the opportunity to provide comments in response to the Staff’s proposed revisions to Chapter 4901:1-16.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Comments were served this 4th day of April 2014, via email on the parties listed below who have appeared in this proceeding and will be served via email on all those who submit Initial Comments in this proceeding.



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Summary: Comments Initial Comments electronically filed by M HOWARD PETRICOFF on behalf of Ohio Oil and Gas Association