

Consent Agenda

December 12, 2023**MET IN REGULAR SESSION**

The Board of Supervisors met in regular session at 9:45 A.M. All members present. Chairman Shea presiding.

PLEDGE OF ALLEGIANCE**1. CONSENT AGENDA**

After discussion was held by the Board, a motion was made by Miller, and second by Jorgensen, to approve:

- A. December 5, 2023, Minutes as read.
- B. November 2023 Vendor Publication Report.
- C. Sheriff – Employment of Joseph Jennings, Noah Hahn, and Lucas Budrow as Deputy Sheriffs.

UNANIMOUS VOTE. Motion Carried.

2. SCHEDULED SESSIONS

Motion by Wichman, second by Belt, to canvass City of Avoca, and to authorize Auditor to pay election costs.

UNANIMOUS VOTE. Motion Carried.

Motion by Belt, second by Miller, to open Public Hearing on **Ordinance No. 2023 -06**, and Ordinance to amend Chapter 8 “Zoning Ordinance” of the Pottawattamie County, Iowa, Code by adding a definition of Agricultural Experiences to Section 8.002.020 A and amending Agricultural Uses Exempt Section 8.001.050 and setting date of Second Consideration.

Roll Call Vote: AYES: Shea, Belt, Wichman, Miller, Jorgensen. Motion Carried.

The following citizens appeared before the Board and spoke in regard to Ordinance No. 2023 -06, and Ordinance to amend Chapter 8 “Zoning Ordinance” of the Pottawattamie County, Iowa, Code by adding a definition of Agricultural Experiences to Section 8.002.020 A and amending Agricultural Uses Exempt Section 8.001.050 – Heath Hoppes, John Piniarski, Nate Kleffman, Doreen Blakely, and Quetin Carritt.

Motion by Belt, second by Miller, to close public hearing.

Roll Call Vote: AYES: Shea, Belt, Wichman, Miller, Jorgensen. Motion Carried.

Motion by Wichman, second by Jorgensen, to approve First Consideration of **Ordinance No. 2023-06**, an Ordinance to amend Chapter 8 “Zoning Ordinance” of the Pottawattamie County, Iowa, Code by adding a definition of Agricultural Experiences to Section 8.002.020 A and amending Agricultural Uses Exempt Section 8.001.050, and to set the date for Second Consideration for December 19th, 2023, at 10:00 A.M.

Roll Call Vote: AYES: Shea, Belt, Wichman, Miller, Jorgensen. Motion Carried.

Motion by Wichman, second by Miller, to approve funding request for Western Iowa Development Association in the amount of \$50,000 for FY 24/25 from gaming.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Jorgensen, to approve funding request and letter of intent for the Pottawattamie County Fair Association in the amount of \$125,000.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Miller, to have Snyder and Associates work on a contract for the County to be the inspector on the CO2 pipeline.

UNANIMOUS VOTE. Motion Carried.

3. OTHER BUSINESS

Motion by Belt, second by Jorgensen, to approve Application for Use of Pottawattamie County Grounds for the Veteran Affairs Building for the Iowa Veterans Foundation (FY24 Scheduled Meetings).

UNANIMOUS VOTE. Motion Carried.

Motion by Jorgensen, second by Miller, to approve updates to the Rules and Application for Use of Pottawattamie County Property to three years.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, and second by Belt, to approve pay range increase for Environmental Education Position in Conservation to be \$13.00 - \$15.00 per hour.

UNANIMOUS VOTE. Motion Carried.

4. COMMITTEE APPOINTMENTS

Board discussed Committee meetings from the past week.

Discussion only. No action taken.

5. RECEIVED/FILED

A. Report(s):

- 1) Sheriff Report of Fees Disbursed and Collected for October 2023.
- 2) Annual Urban Renewal Report, Fiscal Year 2022-2023.
- 3) HB – 718 Mailing Approximate 51,000 statements.

B. Salary Action(s):

- 1) Conservation – Employment of Saul Rodriguez and Amelia Chapdelaine as Chair Lift Operators.
- 2) Conservation – Employment of Blaine Hamilton as a Chair Lift Attendant.
- 3) Conservation – Employment of Brody Applegate, Jacqueline Aguilar, Gretchen Livingston, Zachary Hardy, Joseph Brunow, Anthony Diaz-Gomez, Alex Graeve, Mariah Varguez, and Simone Goodwin as Rental Shop Team Members.
- 4) Conservation – Employment of Clayton Bohnenkamp, Jayce Mussack, Daulton Garrison, Cason Wickersham, Christian Leland, Melissa Gates, Maximillian Leland, and Harper Turgeon as Kitchen Staff Team Members.
- 5) Conservation – Employment of Luis Perez, Scott Miller, Luz Buss, John Skinner, Kevin Hess, Tanner Sasse, Courtney Rohnstock, and Colby Laughhunn, Lauren Hargreaves, Christopher Jackson, William Spagnotti, and Isabel Livingston as Ski/Snowboard Instructors.
- 6) Conservation – Employment of Mary Graeve, Makenzie Stephens and Gracie Goodwin as Hospitality and Guest Service Workers.
- 7) Conservation – Employment of Charles Starkovich as a Snowmaking Team Member.
- 8) Conservation – Employment of Jake Hamilton as a Cleaning and Support Team Member.
- 9) Conservation – Employment of Kylie Elbin as a Social Media Strategist & Content Creator Intern.
- 10) Attorney – Payroll status change for Lyndze Thompson.
- 11) Community Services – Payroll status change for Kristina Richey.

6. PUBLIC COMMENTS

The following individuals appeared before the Board:

Doreen Blakely

7. ADJOURN

Motion by Belt, second by Jorgensen, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 11:47 A. M

Brian Shea, Chairman

ATTEST:

Melvyn Houser, County Auditor

APPROVED: Amended December 26, 2023

PUBLISH: X

December 19, 2023**MET IN REGULAR SESSION**

The Board of Supervisors met in regular session at 10:00 A.M. All members present, except Supervisor Belt and Supervisor Jorgensen. Chairman Shea presiding.

PLEDGE OF ALLEGIANCE

Let the minutes reflect that today's Agenda is being amended to add an item to the Consent Agenda for approval for Class B Retail Alcohol License for Desoto Bend Mini Mart that was not received before the agenda was posted.

After discussion was held by the Board, a motion was made by Wichman, and second by Miller to approve today's amended Agenda items.

UNANIMOUS VOTE. Motion Carried.

1. CONSENT AGENDA

After discussion was held by the Board, a motion was made by Wichman, and second by Miller, to approve:

- A. December 12, 2023, Minutes as read.
- B. Information Technology – Employment of Devin Koesters as a Help Desk Technician II.
- C. Renewal of Class B Retail Alcohol License by Donald Rief d/b/a Desoto Bend Mini Mart, with privileges of Class B Retail Alcohol License.

UNANIMOUS VOTE. Motion Carried.

2. SCHEDULED SESSIONS

Motion by Wichman, second by Miller, to approve Second Consideration of **Ordinance No. 2023-06**, an Ordinance to amend Chapter 8 "Zoning Ordinance" of the Pottawattamie County, Iowa, Code by adding a definition of Agricultural Experiences to Section 8.002.020 A and amending Agricultural Uses Exempt Section 8.001.050; and to adopt **Ordinance No. 2023-06** into law.

**POTTAWATTAMIE COUNTY, IOWA
ORDINANCE NO. 2023-06**

AN ORDINANCE to amend the following Chapter 8, Pottawattamie County, Iowa Zoning Ordinance:

- Repeal a definition for AGRICULTURE: The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary *accessory uses* for packing, treating, or storing the produce; provided, however, that the operation of such *accessory use* shall be secondary to that of normal agricultural activities. If the tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes. and replace with a definition for AGRICULTURE: The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary *accessory uses* for packing, treating, or storing the produce; provided, however, that the operation of such *accessory use* shall be secondary to that of normal agricultural activities.
- Add a definition for AGRICULTURAL EXPERIENCES: Any agriculture-related activity, as a secondary use in conjunction with agricultural production, on a farm which activity is open to the public with the intended purpose of promoting or educating the public about agriculture, agricultural practices, agricultural activities, or agricultural products.
- Repeal Section 8.001.050 AGRICULTURAL USES EXEMPT: In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. WHILE SO USED; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto.
 - .01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located.

- .02 If a tract of land is less than thirty-five (35) acres, it shall be presumed that the tract is not primarily used for agricultural purposes.
- .03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes.

and replace with Section 8.001.050 AGRICULTURAL USES EXEMPT: In accordance with the provisions of Chapter 335, Code of Iowa, as amended, no regulations or restrictions adopted under the provisions of this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes. WHILE SO USED; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposits or excavation in or on the flood plains of any river or stream shall apply thereto.

- .01 No Building Permit or Certificate of Occupancy shall be required for the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located.
- .02 Land enrolled in a soil or water conservation program shall be considered land primarily adapted for use for agricultural purposes.
- .03 It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes.
- .04 The factors which may be considered when determining whether land or structures are primarily used for agricultural purposes include, but are not limited to: the number of acres used for agricultural activities, the nature of those activities, the financial input by the owner or occupant, the role of the occupant in the agricultural activities, the time spent engaged in these activities, and the income derived from agricultural activities.
- .05 No conditional use permit, special use permit, special exception, or variance shall be required for agricultural experiences on property of which the primary use is agricultural production.

BE IT ORDAINED BY THE COUNTY BOARD OF POTTAWATTAMIE COUNTY, IOWA

SECTION 1 - AMENDMENTS: That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing a definition for AGRICULTURE and replacing it thereto with the following new definition, to be codified as Section 8.002.020 A .030, definition of AGRICULTURE:

8.002.020 A

.030 The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, apiculture, horticulture, floriculture, viticulture, aquatic farming, and animal and poultry husbandry, and the necessary *accessory uses* for packing, treating, or storing the produce; provided, however, that the operation of such *accessory use* shall be secondary to that of normal agricultural activities.

SECTION 2 - AMENDMENTS: That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding a NEW definition for AGRICULTURAL EXPERIENCES, to be codified as Section 8.002.020 A .035, definition of AGRICULTURAL EXPERIENCES:

8.002.020 A

.035 AGRICULTURAL EXPERIENCES: Any agriculture-related activity, as a secondary use in conjunction with agricultural production, on a farm which activity is open to the public with the intended purpose of promoting or educating the public about agriculture, agricultural practices, agricultural activities, or agricultural products.

SECTION 3a – REPEAL OF CONFLICTING ORDINANCES: That Section 8.001.050 AGRICULTURAL USES EXEMPT is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECOND CONSIDERATION: December 19, 2023
 PUBLICATION: December 28, 2023
 RECORD: December 29, 2023

Roll Call Vote: **AYES: Shea, Wichman, Miller. Motion Carried.**

Motion by Miller, second by Wichman, to approve the transfer of the Liquor license and Tobacco permits from the Auditor's Office to the Planning and Development Department.

UNANIMOUS VOTE. Motion Carried.

David Bayer/Chief Information Officer, Information Technology appeared before the Board to discuss the Agreement with the City of Avoca Police Department for computer purchase.
 Discussion only. No action taken.

Jason Slack/Director, Buildings and Grounds appeared before the Board to discuss the removal of tree from Parcel #74441238000. Jason asked for this to be tabled because the property may not be owned by the County.

Discussion only. No action taken.

Motion by Wichman, second by Miller, to relocate building material from current location to jail property.

UNANIMOUS VOTE. Motion Carried.

3. OTHER BUSINESS

Motion by Wichman, and second by Miller, to approve pay range to be \$14 -\$15 for Natural Areas Management Intern, Position in Conservation.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, and second by Miller, to approve pay range increase to be \$16-\$18 for Natural Areas Management Intern, Crew Lead, Position in Conservation.

UNANIMOUS VOTE. Motion Carried.

4. COMMITTEE APPOINTMENTS

Board discussed Committee meetings from the past week.

Discussion only. No action taken.

5. RECEIVED/FILED

A. Salary Action(s):

- 1) Conservation – Employment of Konatsu Taira as a Ski/Snowboard Instructor.
- 2) Conservation – Employment of Trentyn Jansen and Ezekiel Leichtner as Chair Lift Attendants.
- 3) Conservation – Employment of Garbiel Castro, Joey Eisan, and Kimberly Starkovich as Rental Shop Team Members.
- 4) Conservation – Payroll status change for John Huebscher.
- 5) Conservation – Employment of Abigail Ridder as a Natural Areas Management Intern-Crew Lead.
- 6) Conservation – Employment of Roger Clark as a Snowmaking Team Member.

6. PUBLIC COMMENTS

The following individuals appeared before the Board:

Doreen Blakely

7. CLOSED SESSION

Motion by Wichman, second by Miller, to go into Closed Session pursuant Iowa Code 21.5(1)(j) for discussion and/or decision on labor negotiations/collective bargaining matters.

Roll Call Vote: **AYES: Shea, Wichman, Miller. Motion Carried.**

Motion by Miller, second by Wichman, to go out of Closed Session.

Roll Call Vote: **AYES: Shea, Wichman, Miller. Motion Carried.**

8. BUDGET STUDY SESSION

Mitch Kay/Director, Finance and Budget appeared before the Board for a Budget Study Session.
Discussion only. No action taken.

9. STUDY SESSION

Motion by Miller and second by Wichman to remove study session on Ordinance No. 2023-05 to amend Chapter 8 “Zoning Ordinance” by adding Wind Energy and Solar Energy Systems (Case #ZTA-2023-03).
No action taken.

10. ADJOURN

Motion by Miller, second by Wichman, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 12:56 P. M.

Brian Shea, Chairman

ATTEST: _____
Marilyn Kennedy, Elections Administrator, Auditor’s Office

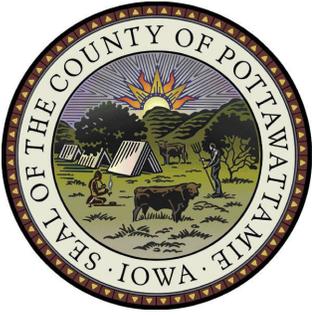
APPROVED: December 26, 2023

PUBLISH: X

Scheduled Sessions

John Rasmussen/Engineer

Discussion and/or to approve and authorize Board to sign Secondary Roads Department's Road Improvement Policy.



Pottawattamie County Secondary Roads

223 South 6TH Street
Council Bluffs, Iowa, 51501

REVISED 12/26/23

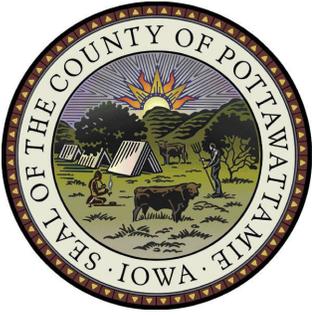
Road Improvement Policy

Pottawattamie County desires to uniformly participate with property owners who seek to improve their road by petitioning for a “Secondary Road Assessment District” or a “Special Secondary Road Assessment District”. This type of petition is a proposal by property owners to pay some or all of the costs to improve a county road along their property. Petitioners should refer to Iowa Code Chapter 311 for the definitions and lawful application of this road improvement tool.

Procedures and Information for Petitioners:

- 1) Interested parties should contact the Secondary Roads Department for assistance in meeting the petition requirements and to schedule a pre-petition meeting to identify the Secondary Roads Assessment District and resolve questions prior to the petition being distributed.
- 2) The Secondary Road Assessment District shall terminate at a Public Road Intersection or at a Cul-de-Sac and shall not extend more than ½ mile from each side of the road.
- 3) The Petition shall indicate one of the following options:
 - a) The Petitioners may request to establish a Special Assessment District; in which case the costs will be assessed against the lands included in the district over a 10-year period with simple interest.
 - b) The Petitioners may request improvement of the road by Donation in lieu of assessment. The petitioners may deposit the portion provided for in the petition with the County Treasurer in lieu of the Special Assessment. Upon the completion of the road, and the satisfaction of all claims in relation to the road, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by the sponsors have been fulfilled.
- 4) Petitions must be signed by at least 75% of the parcel owners to be accepted by the Board of Supervisors. Each parcel shall be counted as having one owner, even if owned jointly, as tenants in common, under contract for purchase, or in a life estate; more than one signature may be provided for such parcels. Corporations, trusts, and partnerships require the signature of a corporate officer, trustee, or partner, respectively. Life estates require the signature of the estate holder, and not remaindermen. Signatures provided under a power of attorney must accompany a copy of the power of attorney. A parcel under the jurisdiction of any probate court should be noted on the signature page(s).

Pottawattamie County in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders or consultants that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids and proposals as appropriate in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



Pottawattamie County Secondary Roads

223 South 6TH Street
Council Bluffs, Iowa, 51501

REVISED 12/26/23

- 5) The petition and all signature pages shall be filed with the County Engineer on or before October 1st to be constructed in the following season. The Engineer shall have the petition reviewed by the County Attorney's Office to determine whether the petition meets legal criteria for consideration under Iowa Code Chapter 311.
- 6) Once reviewed by the County Attorney's Office the County Engineer will place the petition on the agenda for the Board of Supervisors to consider. A petition for improvement by Donation In Lieu of Assessment will not be considered until sufficient funds have been deposited; or if sufficient funds have not been deposited, the petition will be rejected, and funds returned to the sponsors after the second regular Board of Supervisors meeting in January.
- 7) The petition may not be withdrawn by the petitioners after it has been submitted. The Board of Supervisors may reject, approve, or modify and approve the petition, including excluding or adding parcels to the proposed district during the approval process.
- 8) Final Costs, while estimated and provided, are not apportioned until the final public hearing and may change as a result of public comment presented in the initial Public Hearing(s). Estimates are subject to change during the process.
- 9) County Participation is limited to no more than 50% of the total project cost as provided for in Iowa Code Chapter 311.
 - a) The sum of maintenance credits and County participation shall not exceed 50% of the project costs.
 - b) The County contribution shall be 30% on roads designated as Farm to Market routes; 20% on local thru routes; and 10% on dead-end roads.

- 10) The initial proposal will provide for apportionment of costs in the following manner:

Apportionment of the costs may be changed by the Board of Supervisors as a result of comments at the Public Hearings and in an effort to have apportionments meet the requirements of Iowa Code Chapter 311.

Apportionment shall be calculated as follows:

- a) The total district value shall be determined based on the sum of published assessed values.
- b) The individual assessed value shall be divided by the total district value to determine a percentage of the district value, this is the individual assessment percentage.
- c) The individual assessment percentage shall be multiplied by the estimated cost to determine each property's apportioned cost.

- 11) Parcels owned by public entities are to be included to the extent allowed by Iowa Code §311.10.

Pottawattamie County in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders or consultants that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids and proposals as appropriate in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

John Rasmussen/Engineer

Discussion and/or to approve and authorize Board to sign Iowa DOT funding agreement 4-23-HBP-S-010 for the Pigeon Creek Bridge on 210th Street in the amount of \$1.8 million.

**IOWA DEPARTMENT OF TRANSPORTATION
Federal-aid Agreement
for a County Highway Bridge Program Project**

RECIPIENT: Pottawattamie County

Project No: BROS-C078(177)—8J-78

Iowa DOT Agreement No: 4-23-HBP-S-010

CFDA No. and Title: 20.205 Highway Planning and Construction

This is an agreement between the Pottawattamie County, Iowa (hereinafter referred to as the RECIPIENT) and the Iowa Department of Transportation (hereinafter referred to as the DEPARTMENT). Iowa Code Sections 306A.7 and 307.44 provide for the RECIPIENT and the DEPARTMENT to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa with Federal funds.

The Bridge Formula Program (BFP) and the Surface Transportation Block Grant (STBG) Program make Federal funds available for replacement or rehabilitation of highway bridges on public roads on and off the Federal-aid System. A portion of BFP or STBG funds have been set aside for this purpose and designated as the County Highway Bridge Program (HBP). In the event Highway Infrastructure Program (HIP) funding is available, it may be included for this same purpose.

Pursuant to the terms of this agreement, applicable statutes, and 761 Iowa Administrative Code (IAC) Chapter 161, the DEPARTMENT agrees to provide County HBP funding to the RECIPIENT for the authorized and approved costs for eligible items associated with the project.

Under this agreement, the parties further agree as follows:

1. The RECIPIENT shall be the lead local governmental agency for carrying out the provisions of this agreement.
2. All notices required under this agreement shall be made in writing to the appropriate contact person. The DEPARTMENT's contact person will be the Local Systems Project Development Engineer, Christy VanBuskirk, and the Western Region Local Systems Field Engineer, Zachary A. Gunsolley. The RECIPIENT's contact person shall be the County Engineer.
3. The RECIPIENT shall be responsible for the development and completion of the following bridge project:
 - A. FHWA Structure Number: 290830
 - B. Location: On 210th Street over Pigeon Creek
 - C. Preliminary Estimated Total Eligible Construction Costs: \$1,800,000
4. The eligible project construction limits shall include the bridge plus grading and/or paving to reach a "touchdown point" determined by the DEPARTMENT. Within the eligible project construction limits, eligible project activities will be limited to actual construction costs.
5. Costs associated with work outside the eligible project construction limits, routine maintenance activities, operations, and monitoring expenses are not eligible. In addition, administrative costs, engineering, inspection, legal, right of way, utility relocations, activities necessary to comply with Federal and State environmental or permit requirements, and fees or interest associated with bonds or loans are not eligible.
6. 100% of the eligible construction project costs incurred after the effective date of this agreement shall be paid from County HBP funds. The RECIPIENT shall pay 100% of the non-eligible project costs. Reimbursed costs will be limited to County HBP funds that are made available to counties through the HBP Funds outlined in 761 Iowa Administrative Code, Chapter 161 and Local Systems Instructional Memorandum [\(I.M.\) 1.100](#) in place at the time of this agreement being fully executed.
7. The RECIPIENT shall pay for all project costs not reimbursed with Highway Bridge Program funds.

8. The RECIPIENT shall let the project for bids through the DEPARTMENT.
9. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.
10. It is the intent of both parties that no third-party beneficiaries be created by this agreement.
11. Responsibility for compliance with the Federal and State laws, regulations, policies, or procedures required by this agreement is not assignable without the prior written consent of the DEPARTMENT.
12. The project shall be let to contract within 3 years of the date this agreement is approved by the DEPARTMENT. If not, this agreement may become null and void, unless the RECIPIENT submits a written request for extension to the DEPARTMENT at least 30 days prior to the 3-year deadline. If approved, this agreement may be extended for a period of time as determined by the DEPARTMENT, but not less than 6 months.
13. This agreement and the attached Exhibit 1 constitute the entire agreement between the DEPARTMENT and the RECIPIENT concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written approval of the DEPARTMENT and the RECIPIENT.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date shown opposite its signature below.

RECIPIENT: Pottawattamie County

This agreement was approved by official action of the Pottawattamie County Board of Supervisors in official session on the _____ day of _____, _____.

County Auditor

Chair, Board of Supervisors

IOWA DEPARTMENT OF TRANSPORTATION
Highway Administration

By _____
Zachary A. Gunsolley, P.E.
Local Systems Field Engineer
Western Region

Date _____, _____

EXHIBIT 1

General Agreement Provisions for use of Federal Highway Funds on Non-primary Projects

Unless otherwise specified in this agreement, the RECIPIENT shall be responsible for the following:

1. General Requirements.

- a. The RECIPIENT shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the RECIPIENT, the DEPARTMENT has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: https://www.iowadot.gov/local_systems/publications/im/lpa_ims.htm. The RECIPIENT shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.
- b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the RECIPIENT shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the RECIPIENT shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability. The RECIPIENT agrees to comply with the requirements outlined in [I.M. 1.070](#), Title VI and Nondiscrimination Requirements, which includes the requirement to provide a copy of the Subrecipient's Title VI Plan or Agreement and Standard DOT Title VI Assurances to the Department.
- c. The RECIPIENT shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the associated Code of Federal Regulations (CFR) that implement these laws, and the guidance provided in [I.M. 1.080](#), ADA Requirements. When bicycle and/or pedestrian facilities are constructed, reconstructed, or altered, the RECIPIENT shall make such facilities compliant with the ADA and Section 504, which includes following the requirements set forth in Chapter 12A for sidewalks and Chapter 12B for Bicycle Facilities of the Iowa DOT Design Manual.
- d. To the extent allowable by law, the RECIPIENT agrees to indemnify, defend, and hold the DEPARTMENT harmless from any claim, action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the DEPARTMENT's application review and approval process, plan and construction reviews, and funding participation.
- e. As required by the 2 CFR 200.501 "Audit Requirements," a non-Federal entity expending \$750,000 or more in Federal awards in a year shall have a single or program-specific audit conducted for that year in accordance with the provision of that part. Auditee responsibilities are addressed in Subpart F of 2 CFR 200. The Federal funds provided by this agreement shall be reported on the appropriate Schedule of Expenditures of Federal Awards (SEFA) using the Catalog of Federal Domestic Assistance (CFDA) number and title as shown on the first page of this agreement. If the RECIPIENT will pay initial project costs and request reimbursement from the DEPARTMENT, the RECIPIENT shall report this project on its SEFA. If the DEPARTMENT will pay initial project costs and then credit those accounts from which initial costs were paid, the DEPARTMENT will report this project on its SEFA. In this case, the RECIPIENT shall not report this project on its SEFA.
- f. The RECIPIENT shall supply the DEPARTMENT with all information required by the Federal Funding Accountability and Transparency Act of 2006 and 2 CFR Part 170.
- g. The RECIPIENT shall comply with the following Disadvantaged Business Enterprise (DBE) requirements:
 - i. The RECIPIENT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The RECIPIENT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
 - ii. The RECIPIENT shall comply with the requirements of [I.M. 5.010](#), DBE Guidelines.

- iii. The DEPARTMENT's DBE program, as required by 49 CFR Part 26 and as approved by the Federal Highway Administration (FHWA), is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the RECIPIENT of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- h. Termination of funds. Notwithstanding anything in this agreement to the contrary, and subject to the limitations set forth below, the DEPARTMENT shall have the right to terminate this agreement without penalty and without any advance notice as a result of any of the following: 1) The Federal government, legislature or governor fail in the sole opinion of the DEPARTMENT to appropriate funds sufficient to allow the DEPARTMENT to either meet its obligations under this agreement or to operate as required and to fulfill its obligations under this agreement; or 2) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the DEPARTMENT to make any payment hereunder are insufficient or unavailable for any other reason as determined by the DEPARTMENT in its sole discretion; or 3) If the DEPARTMENT's authorization to conduct its business or engage in activities or operations related to the subject matter of this agreement is withdrawn or materially altered or modified. The DEPARTMENT shall provide the RECIPIENT with written notice of termination pursuant to this section.

2. Programming.

- a. The RECIPIENT shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The RECIPIENT shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the DEPARTMENT, includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.
- b. Upon receipt of Federal Highway Administration (FHWA) authorization a Federal Award Identification Number (FAIN) will be assigned to this project by the FHWA based on a methodology that incorporates identifying information about the federal award such as the federal funding program code and the federal project number. This FAIN will be used to identify this project and award on the federal government's listing of financial assistance awards consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) at usaspending.gov.
- c. A period of performance for this federal funding award will be established at the time of FHWA authorization. The start date of the period of performance will be the FHWA authorization date. The project end date (PED) will be determined according to the methodology in I.M. 1.200, Federal Funds Management. Costs incurred before the start date or after the PED of the period of performance will not be eligible for reimbursement.

3. Design and Consultant Services

- a. The RECIPIENT shall be responsible for the design of the project, including all necessary plans, specifications, and estimates (PS&E). The project shall be designed in accordance with the design guidelines provided or referenced by the DEPARTMENT in the Guide and applicable I.M.s.

4. Environmental Requirements and other Agreements or Permits.

- a. The RECIPIENT shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The RECIPIENT shall complete any mitigation agreed upon in the FHWA approval document. These procedures are set forth in [I.M. 3.020](#), Concept Statement Instructions; [4.020](#), NEPA Process; [4.110](#) Threatened and Endangered Species; and [4.120](#), Cultural Resource Regulations.
- b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the RECIPIENT shall follow the procedures in I.M. [4.170](#), Farmland Protection Policy Act.

- c. The RECIPIENT shall obtain project permits and approvals, when necessary, from the Iowa DEPARTMENT of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the DEPARTMENT, or other agencies as required. The RECIPIENT shall follow the procedures in I.M. [4.130](#), 404 Permit Process; [4.140](#), Storm Water Permits; [4.150](#) Iowa DNR Floodplain Permits and Regulations; [4.190](#), Highway Improvements in the Vicinity of Airports or Heliports; and [4.160](#), Asbestos Inspection, Removal, and Notification Requirements.
- d. In all contracts entered into by the RECIPIENT, and all subcontracts, in connection with this project that exceed \$100,000, the RECIPIENT shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the RECIPIENT shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

5. Right-of-Way, Railroads and Utilities.

- a. The RECIPIENT shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in [I.M. 3.600](#), Right-of-Way Acquisition, and the DEPARTMENT's Right of Way Bureau Local Public Agency Manual. The RECIPIENT shall contact the DEPARTMENT for assistance, as necessary, to ensure compliance with the required procedures, even though no Federal funds are used for right-of-way activities. If Federal-aid will not be used in the cost of acquiring right-of-way, acquisition activities may begin prior to FHWA Environmental Concurrence. However, such acquisitions cannot affect the National Environmental Policy Act (NEPA) decision making process.
- b. If a railroad crossing or railroad tracks are within or adjacent to the project limits, the RECIPIENT shall obtain agreements, easements, or permits as needed from the railroad. The RECIPIENT shall follow the procedures in [I.M. 3.670](#), Work on Railroad Right-of-Way and [I.M. 3.680](#), Federal-aid Projects Involving Railroads.
- c. The RECIPIENT shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way for projects on non-primary Federal-aid highways. For projects connecting to or involving some work inside the right-of-way for a primary highway, the RECIPIENT shall follow the DEPARTMENT's Policy for Accommodating Utilities on Primary Road System. The RECIPIENT should also use the procedures outlined in [I.M. 3.640](#), Utility Accommodation and Coordination, as a guide to coordinating with utilities.

6. Contract Procurement.

The following provisions apply only to projects involving physical construction or improvements to transportation facilities:

- a. The project plans, specifications, and cost estimate (PS&E) shall be prepared and certified by a professional engineer, architect, or landscape architect, as applicable, licensed in the State of Iowa.
- b. For projects let through the DEPARTMENT, the RECIPIENT shall be responsible for the following:
 - i. Prepare and submit the PS&E and other contract documents to the DEPARTMENT for review and approval in accordance with [I.M. 3.700](#), Check and Final Plans and [I.M. 3.500](#), Bridge or Culvert Plans, as applicable.
 - ii. The contract documents shall use the DEPARTMENT's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the RECIPIENT for individual construction items shall be approved by the DEPARTMENT.
 - iii. Follow the procedures in [I.M. 5.030](#), Iowa DOT Letting Process, to analyze the bids received, make a decision to either award a contract to the lowest responsive bidder or reject all bids, and if a contract is awarded, and execute the contract documents in Doc Express.

- c. For projects that are let locally by the RECIPIENT, the RECIPIENT shall follow the procedures in [I.M. 5.120](#), Local Letting Process- Federal-aid.
- d. The RECIPIENT shall forward a completed Project Development Certification (Form 730002) to the DEPARTMENT in accordance with [I.M. 5.050](#), Project Development Certification Instructions. The project shall not receive FHWA Authorization for construction or be advertised for bids until after the DEPARTMENT has reviewed and approved the Project Development Certification.
- e. If the RECIPIENT is a city, the RECIPIENT shall comply with the public hearing requirements of the Iowa Code section 26.12.
- f. The RECIPIENT shall not provide the contractor with notice to proceed until after receiving notice in Doc Express that the Iowa DOT has concurred in the contract award.

7. Construction.

- a. A full-time employee of the RECIPIENT shall serve as the person in responsible charge of the construction project. For cities that do not have any full-time employees, the mayor or city clerk will serve as the person in responsible charge, with assistance from the DEPARTMENT.
- b. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.
- c. For projects let through the DEPARTMENT, the project shall be constructed under the DEPARTMENT's Standard Specifications for Highway and Bridge Construction and the RECIPIENT shall comply with the procedures and responsibilities for materials testing according to the DEPARTMENT's Materials I.M.s. Available on-line at: <http://www.iowadot.gov/erl/current/IM/navigation/nav.htm>.
- d. For projects let locally, the RECIPIENT shall provide materials testing and certifications as required by the approved specifications.
- e. If the DEPARTMENT provides any materials testing services to the RECIPIENT, the DEPARTMENT will bill the RECIPIENT for such testing services according to its normal policy as per [Materials I.M. 103](#), Inspection Services Provided to Counties, Cities, and Other State Agencies.
- f. The RECIPIENT shall follow the procedures in [I.M. 6.000](#), Construction Inspection, and the DEPARTMENT's Construction Manual, as applicable, for conducting construction inspection activities.

8. Reimbursements.

- a. After costs have been incurred, the RECIPIENT shall submit to the DEPARTMENT periodic itemized claims for reimbursement for eligible project costs. Requests for reimbursement shall be made at least once every six months, but not more than bi-weekly.
- b. To ensure proper accounting of costs, reimbursement requests for costs incurred prior to June 30 shall be submitted to the DEPARTMENT by August 1.
- c. Reimbursement claims shall include a certification that all eligible project costs, for which reimbursement is requested, have been reviewed by an official or governing board of the RECIPIENT, are reasonable and proper, have been paid in full, and were completed in substantial compliance with the terms of this agreement.
- d. Reimbursement claims shall be submitted on forms identified by the Department along with all required supporting documentation. The DEPARTMENT will reimburse the RECIPIENT for properly documented and certified claims for eligible project costs. The DEPARTMENT may withhold up to 5% of the Federal share of construction costs or 5% of the total Federal funds available for the project, whichever is less. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the DEPARTMENT determines the RECIPIENT has been

overpaid, the RECIPIENT shall reimburse the overpaid amount to the DEPARTMENT. After the final audit or review is complete and after the RECIPIENT has provided all required paperwork, the DEPARTMENT will release the Federal funds withheld.

- e. The total funds collected by the RECIPIENT for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, any special assessments made by the RECIPIENT (exclusive of any associated interest or penalties) pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties), proceeds from the sale of excess right-of-way, and any other revenues generated by the project. The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the RECIPIENT do exceed the total project costs, the RECIPIENT shall either:
 - i. In the case of special assessments, refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or
 - ii. Refund to the DEPARTMENT all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the DEPARTMENT will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the RECIPIENT.

9. Project Close-out.

- a. Within 30 days of completion of construction or other activities authorized by this agreement, the RECIPIENT shall provide written notification to the DEPARTMENT. The RECIPIENT shall follow and request a final audit, in accordance with the procedures in [I.M. 6.110](#), Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects. Failure to comply with the procedures will result in loss of federal funds remaining to be reimbursed and the repayment of funds already reimbursed. The RECIPIENT may be suspended from receiving federal funds on future projects.
- b. For construction projects, the RECIPIENT shall provide a certification by a professional engineer, architect, or landscape architect as applicable, licensed in the State of Iowa, indicating the construction was completed in substantial compliance with the project plans and specifications.
- c. Final reimbursement of Federal funds shall be made only after the DEPARTMENT accepts the project as complete.
- d. The RECIPIENT shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The RECIPIENT shall also make these materials available at all reasonable times for inspection by the DEPARTMENT, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the RECIPIENT if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final closure document. Upon receipt of FHWA approval of the final closure document, the DEPARTMENT will notify the RECIPIENT of the record retention date.
- e. The RECIPIENT shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the DEPARTMENT and the FHWA.

**Discussion and/or decision to approve and authorize
Board Chairman to sign the Professional Service
Agreement for the project identified as Summit Carbon
Solution Carbon Express Pipeline – County Inspector
Services with Snyder and Associates.**



STANDARD PROFESSIONAL SERVICES AGREEMENT

(Long Form - modified)

NOW ON THIS 18 day of December, 2023, **Snyder & Associates, Inc.**, 1751 Madison Avenue, Council Bluffs, IA 51503, (hereinafter, Professional), and POTTAWATTAMIE COUNTY BOARD OF SUPERVISORS, 227 S. 6th Street, Council Bluffs, IA 51501

(hereinafter, Client) do hereby agree as follows:

1. **PROJECT:** Professional agrees to provide Professional Services (Services) for Client's project known and identified as: Summit Carbon Solutions Carbon Express Pipeline – County Inspector Services
2. **SCOPE and FEES:** The Scope of and the fees to be paid for said Services are set forth on Exhibit A attached hereto and by this reference made a part of this Agreement. Any Services not shown on Exhibit A shall be considered Additional Services. Additional Services may only be added by written change order, amendment or supplement to this agreement signed by both parties.
3. **STANDARD OF CARE:** In providing Services under this Agreement, the Professional shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same professional discipline currently practicing under similar circumstances at the same time and in the same or similar locality. Professional makes no warranty, express or implied, as to its professional services rendered under this Agreement.
 - 3.1. Client shall promptly report to Professional any defects or suspected defects in the Professional's Services of which Client becomes aware so that the Professional may take measures to minimize the consequences of such a defect.
 - 3.2. Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement.
 - 3.3. Professional shall correct any reported defects in Professional's Services at Professional's cost.
 - 3.4. No withholdings, deductions or offsets shall be made from the Professional's compensation for any reason unless the professional has been found to be legally liable for such amounts by a court of competent jurisdiction.
4. **CODE COMPLIANCE:** Professional shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after the date of this Agreement shall entitle the Professional to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement.
 - 4.1. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over this Project, the Professional shall notify the Client of the nature and impact of such conflict. The Client agrees to cooperate and work with the Professional in an effort to resolve this conflict.

5. **ESTIMATES OF PROBABLE CONSTRUCTION COST:** Should Professional be requested and it is included in the Scope of Services to provide an estimate of probable construction cost, Client understands that the Professional has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Professional's estimates of probable construction costs are made on the basis of the Professional's professional judgment and experience. The Professional makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Professional's estimate of probable construction cost.
6. **INFORMATION PROVIDED BY OTHERS:** All information, requirements, instructions, criteria, reports, data, findings, plans, specifications, and surveys required by this Agreement and furnished by Client, may be used by Professional in performing its services and Professional is entitled to rely upon the accuracy and completeness thereof. Professional shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.
7. **TIMELINESS:** Professional will perform its services with reasonable diligence and expediency consistent with sound professional practices.
8. **SCHEDULE OF SERVICES:** Professional is authorized to begin providing the Services as of the date Professional receives a fully executed original signature copy of this Agreement.
 - 8.1. Professional shall complete its services within a reasonable time; or, within the specific period(s) of time, if any, set forth in Exhibit A which are hereby agreed to be reasonable.
 - 8.2. Professional shall not be responsible for delays and/or for damages, if any, arising directly or indirectly from causes beyond the Professional's control. Such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure by the Client or the Client's contractors or consultants to timely perform; or discovery of any hazardous substances or differing site conditions.
 - 8.3. If Professional is delayed, through no fault of its own, and the orderly and continuous progress of Professional's services is impaired or suspended; or, the Client authorizes or directs changes in the scope, extent, or character of the Project, then the time for the completion of Professional's services, and the rates and amounts of Professional's compensation, shall be equitably adjusted.
 - 8.4. If Professional is unable, through its own fault, to timely complete its services as required in this Agreement, including any adjustments thereto, then Client shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
9. **CLIENT'S RESPONSIBILITIES:** Client understands and agrees that it will be responsible for and in a timely manner:
 - 9.1. Provide to Professional, at Client's cost, all known and existing information, plans, specifications and data pertaining to or affecting the Project; all criteria and full information as to Client's requirements for the Project; all construction standards which Client will require to be included in the plans and specifications; copies of all other entities findings and reports generated for Client with respect to this Project; and such other information as may be requested and reasonably required to enable Professional to complete its services under this Agreement.
 - 9.2. Provide for safe access to and make all provisions for Professional to enter upon public and private property as required for Professional to perform its services under this Agreement.

- 9.3. Coordinate the timing and sequence of Professional's services with the services of others to the Project.
 - 9.4. Provide reviews, certifications, authorizations, approvals, licenses and permits from all governmental authorities having jurisdiction over the Project or any part thereof and such reviews, certifications, authorizations, approvals, easements, rights-of-way and consents from others as may be necessary for Professional to complete its services under this Agreement.
 - 9.5. Review and examine (and shall seek the advice of an attorney, insurance counselor, financial and other advisors or consultants, as Client deems necessary relative to such review and examination) all studies, reports, sketches, drawings, specifications, proposals, alternate solutions, sample or proposed legal documents and other documents submitted by Professional and render to Professional written interim and/or final decisions thereto.
 - 9.6. Give written notice to Professional whenever Client observes or otherwise becomes aware of any Project Site concerns, any defect or nonconformance in the performance of any Contractor or other Consultant working on the Project, or of any other event or development that may affect the scope or time of performance of Professional's services; and, also, give written notice of any defect or nonconformance of Professional's services.
 - 9.7. Provide services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment as may be required prior to the design of the Project, during the design and/or construction of the Project, or upon completion of the Project with appropriate professional interpretation thereof, unless such services are included within Professional's scope of services under this Agreement.
 - 9.8. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment Project Site visits.
10. **INVOICING AND PAYMENTS:** Professional shall prepare invoices in accordance with its standard invoicing practices and submit the invoice(s) to Client on a monthly basis. Client agrees to timely pay each invoice within 45-60 days of the invoice date.
- 10.1. Payments not paid within said 60 days shall accrue interest on unpaid balances at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said 60th day. In addition, Professional may, after giving 7 days written notice to Client, suspend services under this Agreement until Professional has been paid in full for Services, interest, expenses and other related charges rendered, accrued, advanced and/or incurred by Professional to the date of suspension. **Client waives any and all claims against Professional arising out of or resulting from said suspension.** Payments will be credited first to accrued interest and then to unpaid principal.
 - 10.2. In the event legal action is necessary to enforce the payment terms of this Agreement, Professional shall be entitled to collect from Client and Client agrees to pay to Professional any judgment or settlement sum(s) due, plus reasonable attorneys' fees, court costs and other expenses incurred by Professional for such collection action and, in addition, the reasonable value of the Professional's time and expenses spent for such collection action, computed according to the Professional's prevailing fee schedule and expense policy. The formal mediation requirements in Paragraph 18, Dispute Resolution, shall not apply and are hereby waived for purposes of this subparagraph 10.2.
 - 10.3. Professional will be paid within 45 days of the Client receiving payment from the Pipeline. It is understood that the County will be reimbursed from the Pipeline (as per IUB Mitigation Plan & Iowa Code) via forward of the Professional's Invoice in a timely manner and that when the County receives payment for the Professional Services, the County will issue payment to the Professional.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, the Professional hereby agrees as follows:

11.1. With regard to the professional services performed and to be performed hereunder by or through the Professional, Professional agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the proportionate extent that Claims are caused by Professional's negligent services or willful misconduct. The indemnity obligations provided under this section shall only apply to the extent such Claims are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligence or willful misconduct of Professional. The Professional shall have no duty to defend but shall reimburse defense costs to the same extent as the overall indemnity obligations herein. These indemnity obligations shall not apply to the extent said Claims arise out of, pertain to, or relate to the negligence of Client or Client's agents, or other independent contractors, including the contractor, subcontractors of contractor or other consultants of Client, or others who are directly responsible to Client, or for defects in design or construction furnished by those persons and/or entities.

11.2. With regard to any acts or omissions of the Professional in connection with this Agreement which do not comprise professional services, the Professional further agrees to indemnify, defend and hold harmless the Client from and against any and all claims, demand actions, causes of action, losses, liabilities, costs, reasonable attorneys' fees and litigation expenses (all of the foregoing being hereinafter individually and collectively called "claims") provided that any such claim is attributable to bodily injury, death, or property damage suffered or incurred by, or asserted against, the Indemnified Parties to the extent, but only to the extent, that the claims are the result of any negligent act or omission by the Professional, its consultants or subconsultants or anyone for whom the Professional is responsible under this agreement, excluding, however, bodily injury, death or property damage arising out of the rendering or failure to render any professional services by the Professional (which is covered by subparagraph 11.1.1 above).

11.3. To the fullest extent permitted by law, the Client agrees to indemnify and hold Professional harmless from any loss, damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Client's willful misconduct or negligent acts, errors or omissions.

11.4. Neither Client nor Professional shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or willful misconduct or for the negligence or willful misconduct of others.

12. **MUTUAL WAIVERS:** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Professional, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement.

13. **LIMITATION:** In allocating the risks of this Project, Client agrees that: **To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Professional and the Professional's officers, directors, partners, employees and subconsultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed, in the aggregate, the total compensation received by the Professional under this Agreement. This limitation shall apply regardless of the cause of action or legal theory pled or asserted unless otherwise prohibited by law.**

14. **OWNERSHIP OF INSTRUMENTS OF SERVICE:** The Client acknowledges the Professional's plans, specifications, and other documents, including electronic files, as the work papers of the Professional and the Professional's instruments of professional service. Nevertheless, the final printed hard copy construction

documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Professional. The Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Professional. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Professional, its officers, directors, employees and subconsultants (collectively, Professional) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Professional.

14.1. Under no circumstances shall the transfer of said instruments of service be deemed a sale by the Professional, and the Professional makes no warranties, either express or implied, of merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the Professional's copyrights in any of the foregoing, full ownership of which shall remain with the Professional, absent the Professional's express prior written consent.

14.2. Should Professional agree to delivery of electronic files to Client, Client agrees, as a condition precedent, to sign Professional's Electronic Media Transfer Agreement prior to said delivery and further agrees that such delivery is for convenience, not reliance by the receiving party.

14.3. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Professional and the electronic files, the signed or sealed hard-copy construction documents shall govern.

14.4. The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer any of the delivered electronic files to others without the prior written consent of the Professional. The Client further agrees to waive all claims against the Professional resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Professional.

15. **CERTIFICATIONS, GUARANTEES AND WARRANTIES:** The Professional shall not be required to sign any documents, no matter by whom requested, that would result in the Professional's having to certify, guarantee or warrant the existence of conditions whose existence the Professional cannot ascertain or in the sole judgment of the Professional, increase the Professional's risk or the availability or cost of its professional or general liability insurance. The Client also agrees not to make resolution of any dispute with the Professional or payment of any amount due to the Professional in any way contingent upon the Professional signing any such certification.

16. **RIGHT TO RETAIN SUBCONSULTANTS:** The Professional may engage the services of any professional as a subconsultant when, in the Professionals' sole opinion, it is appropriate to do so. Such subconsultants may include both general and specialized professional services deemed necessary by the Professional to carry out the scope of the Professional's services. Professional shall not be required by the Client to retain any subconsultant not fully acceptable to the Professional.

17. **SUSPENSION OF SERVICES:** If the Project or the Professional's services are suspended by the Client for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the Professional shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the Client shall compensate the Professional for expenses incurred as a result of the suspension and resumption of its services, and the Professional's schedule and fees for the remainder of the Project shall be equitably adjusted.

17.1. If the Professional's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Professional may terminate this Agreement upon giving not less than seven (7) calendar days' written notice to the Client.

17.2. If the Client is in breach of the payment terms or otherwise is in material breach of this Agreement, the Professional may suspend performance of services upon seven (7) calendar days' notice to the Client. The Professional shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client, or curing of such other breach which caused the Professional to suspend services, the Professional will resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

18. **DISPUTE RESOLUTION:** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Professional agree that all disputes between them shall be negotiated in good faith for a reasonable period of time. If the parties fail to resolve all of the issues, then those issues not so resolved shall be submitted to formal nonbinding mediation prior to either party exercising their rights under the law. Each party shall be responsible for their own attorney fees, mediation costs and litigation costs. The cost of the mediator shall be shared equally by the parties.

18.1. The Client and the Professional shall endeavor to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to encourage all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation, prior to the exercise of their respective legal rights, as the primary method for dispute resolution among the parties to all those agreements.

18.2. The Client and the Professional agree that this Agreement and any legal actions concerning its validity, interpretation and/or performance shall be governed by the laws of the State of Iowa without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

18.3. It is further agreed that any legal action between the Client and the Professional arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in the State of Iowa.

19. **TERMINATION:** In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Professional for all services rendered and all reimbursable costs incurred by the Professional up to the date of termination, in accordance with the payment provisions of this Agreement.

19.1. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Professional not less than seven (7) calendar days' written notice.

19.2. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- 19.2.1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- 19.2.2. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- 19.2.3. Suspension of the Project or the Professional's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- 19.2.4. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

19.3. In the event of any termination that is not the fault of the Professional, the client shall pay the Professional, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Professional in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

20. **THIRD-PARTY BENEFICIARIES:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Professional. The Professional's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Professional because of this Agreement or the performance or nonperformance of services hereunder.

21. **ASSIGNMENT:** Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Professional as a generally accepted business practice, shall not be considered an assignment or sublet for purposes of this Agreement (See paragraph 16 above).

22. **SEVERABILITY AND SURVIVAL:** If any term or provision of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, such holding shall be applied only to the provision so held, and the remainder of this Agreement shall remain in full force and effect. Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

23. **ENTIRE AGREEMENT AND MODIFICATIONS:** This Agreement and the following Exhibits which are incorporated by this reference and made a part of this Agreement:

Exhibit A Scope of Services
Exhibit

Exhibit B Standard Fee Schedule
Exhibit

contain the entire understanding between the Parties, superseding all prior or contemporaneous communications, agreements, and understandings between the Parties with respect to the subject matter hereof. This Agreement may not be modified in any manner except by written amendment, addendum, change order, or supplement executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the day and year first above written.

Pottawattamie County, Iowa (Client)

SNYDER & ASSOCIATES, INC. (Professional)

By: _____
(Authorized agent)

By: Michael G. Geier
(Authorized agent)

(Printed or typed signature)

Michael G. Geier, PLS, Business Unit Leader
(Printed or typed signature)

Route executed copy to: Wade A. Greiman, P.E.

EXHIBIT A**SUMMIT CARBON SOLUTIONS CARBON EXPRESS PIPELINE – COUNTY
INSPECTOR SERVICES**

CLIENT: POTTAWATTAMIE COUNTY, IOWA
BOARD OF SUPERVISORS
POTTAWATTAMIE COUNTY COURTHOUSE
SECOND FLOOR
227 S. 6TH STREET
COUNCIL BLUFFS, IOWA 51501

PROFESSIONAL: SNYDER & ASSOCIATES, INC.
231 BENNETT AVENUE
COUNCIL BLUFFS, IOWA 51503

DATE: DECEMBER 18, 2023

SCOPE OF SERVICES:**I. GENERAL**

Pursuant to Iowa Utilities Board “Guidelines for County Inspectors” dated September 2021, and according to 199 Iowa Administrative Code (IAC) Chapter 10 and Iowa Code Chapter 479, this Scope of Services is provided by the appointed County Inspector (hereinafter referred to as “PROFESSIONAL”) for Pottawattamie County, Iowa (hereinafter referred to as “CLIENT”). Pipeline Company and Pipeline Company Contractor are one and the same for the purposes of this document (hereinafter referred to as “PIPELINE”). The Scope of Work will be as follows:

1. PROFESSIONAL will obtain a copy of the PIPELINE’s written and approved Land Restoration Plan.
2. PROFESSIONAL will perform on-site observation and documentation for compliance with the Iowa Utility Board (IUB) standards for restoration of agricultural lands in accordance with the restoration plan, or the written independent company and landowner agreements provided to the PROFESSIONAL.
3. PROFESSIONAL will communicate with project stakeholders and landowners, adhere to the IUB’s recommended reporting standards, and consistently maintain observation documentation.

4. PROFESSIONAL will, prior to the commencement of construction, obtain the following information from the PIPELINE:
 - a. Alignment sheets showing tract information, project route, and right of way limits
 - b. Project specifications and procedural manuals
 - c. List of Affected Persons
 - d. Independent landowner agreements
 - e. Topsoil survey depth results
 - f. Available tile maps received from landowners
 - g. Pipeline company or pipeline company contractor contact information
5. PROFESSIONAL will provide the CLIENT, the PIPELINE, and the PIPELINE's contractors with a list of CLIENT's personnel and representatives' contact information.
6. PROFESSIONAL will, prior to construction, develop reporting templates and observation procedures that will be used throughout the project in accordance with IUB requirements. As observations occur and reports are completed, these records will be stored in separate folders for each tract with subfolders within the tract folders for specific types of reports.
7. PROFESSIONAL will maintain all Separate Agreements that are provided to PROFESSIONAL by the PIPELINE between the PIPELINE and Affected Persons. These Agreements will be included in the final documentation turnover.
8. PROFESSIONAL will provide a point of contact to the PIPELINE and its contractors to receive proper notification of construction schedules and/or changes. Upon receiving proper notification from the PIPELINE, the PROFESSIONAL will ensure the work is properly observed and reported.
9. PROFESSIONAL will intervene if PIPELINE is not adhering to the requirements detailed in 199 IAC Chapter 9 and/or Iowa Code SS 479.B20, the pipeline company's approved land restoration plan, and separate agreements. Such intervention may include a Stop Work Order or Notice of Violation and the IUB procedure for these interventions will be utilized by the PROFESSIONAL.
10. Pursuant to 199 IAC 9.5(12), the PROFESSIONAL will determine when construction should not proceed in each area due to wet conditions.
11. PROFESSIONAL will issue a Stop Work Order or Notice of Violation according the IUB process if ineffective separation of topsoil from subsoil is observed. See 199 IAC 9.5(2).
12. PROFESSIONAL will issue a Stop Work Order or Notice of Violation if mixing of topsoil and subsoil is observed as per 199 IAC 9.5(13).
13. During the respreading of topsoil process, the PROFESSIONAL will observe that the subsoil moisture content is at a level that allows topsoil to be spread effectively, without subsoil pushing up and causing mixing.
14. PROFESSIONAL will observe dewatering activities to ensure compliance with 199 IAC 9.5(3).
15. PROFESSIONAL will review PIPELINE's staking location for consistency with the original plan and review the existing condition of the right-of-way.
16. PROFESSIONAL will document the pre-construction condition of the lands that will be impacted. Notable features such as fence lines, topography, contours, tile lines and tile intake locations will be included in the pre-construction report.

17. PROFESSIONAL will observe clearing activities by PIPELINE and any agreement made between the landowner and PIPELINE regarding ownership of any cleared items. Compliance with 199 IAC 9.4(2) and 9.4(3) shall be monitored.
18. PROFESSIONAL will observe the locations where the PIPELINE has indicated the pipe is to be bored. Inspections of topsoil, tile lines, and pre-construction condition of roadway or waterway crossings will be documented, and photographs will be included. The PROFESSIONAL will observe bore pits to ensure topsoil has been properly removed and stockpiled according to 199 IAC 9.5(2). Dewatering of the bore pits will be observed per 199 IAC 9.5(3).
19. PROFESSIONAL will observe PIPELINE immediately mark and screen any tile line that is damaged during excavation of bore pits. PROFESSIONAL will observe and document permanent repair of cut tiles for compliance with 199 IAC 9.5(4).
20. PROFESSIONAL will observe the crossing at the surface during boring operations and will document any impacts from the bore. Damage caused by the boring operation will be reported to the PIPELINE or its contractor when discovered.
21. PROFESSIONAL will observe the prerequisite topsoil survey to establish the depth of topsoil to be removed and stockpiled. PROFESSIONAL will observe and report the condition of the stockpiled material for stabilization within 14 days of removal.
22. PROFESSIONAL will be continuously observing topsoil removal operations and identifying all areas of possible discrepancies with the topsoil surveys.
23. PROFESSIONAL will observe trenching operations for impacts to subsurface tile lines and proper stockpiling of subsoil spoils.
24. PROFESSIONAL will observe compliance with 199 IAC 9.5(4) and provide a daily report listing all tile lines cut or disturbed during construction per tract per day and ensure marking and screening compliance.
25. PROFESSIONAL will observe all permanent tile repairs for proper support and document any variation to the original tile and review it is properly sized for the change in drainage capacity. Documentation of compliance with the provisions of 199 IAC 9.5(4)(d) and Drawing IUB PL-1 is also the responsibility of the PROFESSIONAL.
26. PROFESSIONAL will observe backfilling operations when tile lines are being covered to ensure compliance with 199 IAC 9.5(4)(f).
27. PROFESSIONAL will ensure that decompaction of soils is completed by PIPELINE in accordance with 199 IAC 9.5(6) and any executed decompaction agreements made between the PIPELINE and landowner. The PROFESSIONAL will verify that a signed copy of any decompaction agreement is included within the final document turnover.
28. When a separate agreement allows the PIPELINE to replace topsoil prior to decompaction, PROFESSIONAL will observe that the total depth of decompaction includes both the subsoil decompaction depth and the depth of the replaced topsoil per 199 IAC 9.5(6)(a) and that mixing does not occur.
29. PROFESSIONAL will observe and document cleanup operations for compliance with 199 IAC 9.5(5).
30. PROFESSIONAL will observe and document restoration and revegetation for compliance with 199 IAC 9.4(3), 9.5(6), 9.5(7), 9.5(8), 9.5(10), and 9.5(11) and IUB PL-2.

31. PROFESSIONAL will be present for hydrostatic testing of the pipeline. Where a repair to the pipeline is required due to test failure, PROFESSIONAL will observe compliance with IUB regulations regarding additional topsoil removal and stockpiling, trenching, impact and final repair to tiles, replacement of topsoil, and final restoration.
32. PROFESSIONAL will observe the area of the pipeline easement and roadway right of way following restoration and revegetation to determine when final restoration has been completed and vegetation across the project has reach 70% coverage. The CLIENT will be notified when 70% coverage has been achieved for project completion.
33. PROFESSIONAL will finalize all project documentation upon declaration of project completion by the CLIENT and the final document turnover will be submitted to the Board of Supervisors and the pipeline company per 199 IAC 9.11.

II. PROJECT ADMINISTRATION

For the duration of the project, PROFESSIONAL will confer with the CLIENT for the purpose of accomplishing the following:

- A. The PROFESSIONAL will provide to the CLIENT a monthly project status report. This written report will be submitted in such a way that is suitable for the use as a public information item. Accompanying this report at monthly intervals, the PROFESSIONAL will submit a certified invoice for allowable fees incurred for the performance of the project agreement. Invoice statements will be based on actual fees and allowable expenses incurred by the PROFESSIONAL per invoice period. All invoices will detail the work performed by the PROFESSIONAL during the invoice period.

III. COMPENSATION AND TERMS OF PAYMENT

The CLIENT shall pay the PROFESSIONAL in accordance with the terms and conditions of this Agreement.

- A. The PROFESSIONAL services fee shall be on the basis of an hourly fee and fixed expenses with no maximum as outlined in the Engineer's Standard Fee Schedule. The current fee schedule is shown in the attached Exhibit "B".

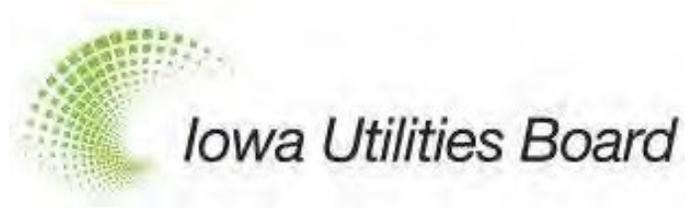
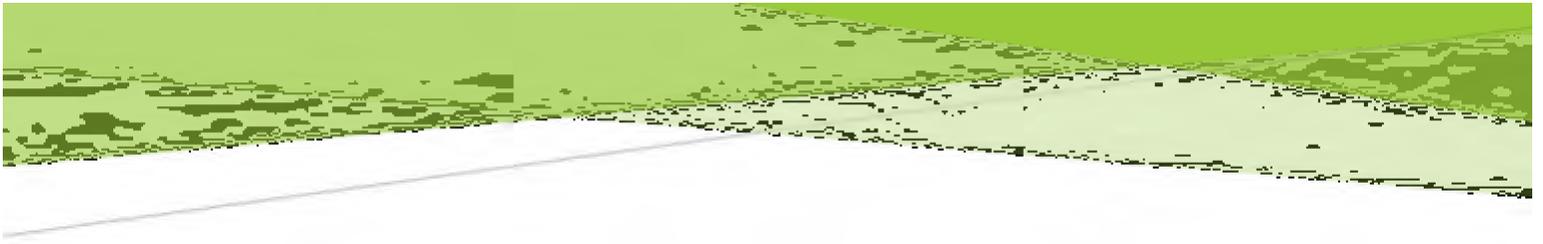
The PROFESSIONAL will be paid within 30 days of the CLIENT receiving payment by the PIPELINE.

The PROFESSIONAL may suspend work on the project if invoices are not paid within 60 days.

EXHIBIT B

**SNYDER & ASSOCIATES, INC.
2024
STANDARD FEE SCHEDULE**

Billing Classification/Level	Billing Rate
Professional	
<i>Engineer, Landscape Architect, Land Surveyor, GIS, Environmental Scientist Project Manager, Planner, Archaeologist, Right-of-Way Agent, Graphic Designer</i>	
Principal II	\$252.00 /hour
Principal I	\$237.00 /hour
Senior	\$216.00 /hour
VIII	\$198.00 /hour
VII	\$187.00 /hour
VI	\$178.00 /hour
V	\$166.00 /hour
IV	\$153.00 /hour
III	\$141.00 /hour
II	\$128.00 /hour
I	\$115.00 /hour
Technical	
<i>CADD, Survey, Construction Observation</i>	
Lead	\$150.00 /hour
Senior	\$144.00 /hour
VIII	\$134.00 /hour
VII	\$124.00 /hour
VI	\$111.00 /hour
V	\$101.00 /hour
IV	\$91.00 /hour
III	\$82.00 /hour
II	\$75.00 /hour
I	\$66.00 /hour
Administrative	
II	\$77.00 /hour
I	\$63.00 /hour
Reimbursables	
Mileage	<i>current IRS standard rate</i>
Outside Services	<i>As Invoiced</i>



INSTRUCTIONS FOR COUNTY INSPECTORS

Pipeline Construction Projects
Rules, Statutes, and Responsibilities

September 2021



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1.0 INTRODUCTION

Iowa Code §§ 479.29(1) and 479B.20(1) require the Iowa Utilities Board (IUB) to adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. Iowa Code §§ 479.29(8) and 479B.20(8) require the IUB to “instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors’ responsibility to require construction conforming with the standards provided by this chapter.” This document, “Instructions for County Inspectors” (Instructions), was prepared by the IUB to assist in developing a consistent county inspection program for pipeline projects within the state of Iowa. The Instructions are based on the requirements of the IUB’s rules at 199 Iowa Administrative Code (IAC) chapters 9, 10, and 13 and Iowa Code chapters 479 and 479B. Those administrative rules and statutes are attached to this document.

This document presents a general overview of pipeline construction, specifies the duties of the county inspector, and offers suggestions for various inspection practices. The Instructions are not intended to be comprehensive, but instead provide minimum guidelines and recommended best practices for county inspectors and a general framework for a successful inspection program.

Any questions should be directed to:

Iowa Utilities Board
1375 E. Court Ave.
Des Moines, Iowa 50319-0069
Phone: (515) 725-7300
Email: iub@iub.iowa.gov

2.0 DEFINITIONS

The following words and terms are defined in the IUB's administrative rules at 199 IAC 9.1(2) and, when used in this document, shall have the meanings indicated below:

“Affected person” means any person with a legal right or interest in the property, including, but not limited to, a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

“Agricultural land” means any land devoted to agricultural use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land used to implement management practices and structures for the improvement or conservation of soil, water, air, and related plant and animal resources.

“County inspector” means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements, and who is designated by the county board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

“Drainage structures” or **“underground improvements”** means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code § 4.1(20).

“Pipeline” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, gaseous substance, except water, or hazardous liquid, within or through Iowa.

“Pipeline company” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

“Pipeline construction” means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

“Proper notice to the county inspector” means that the pipeline company and its contractors shall keep the county inspector continually informed of the work schedule and any changes to the schedule, and shall provide at least 24 hours’ written notice before commencing or continuing any construction activity which requires inspection by the county inspector, including, but not limited to, right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, cleanup, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction shall not be delayed due to a county inspector’s failure to be present on site.

“Soil conservation practices” means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

“Soil conservation structures” means any permanent structure recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, tree plantings, toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

“Surface drains” means any surface drainage system such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

“Till” means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

“Topsoil” means the uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the “A” horizon. In areas where the “A” horizon is determined by a certified professional soil scientist to be less than 12 inches, the topsoil depth shall include both the “A” and the “Bw” horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

“Underground storage” means storage of either natural gas or hazardous liquid in a subsurface stratum or formation of the earth.

“Wet conditions” means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines.

WE NEED A WAY TO MEASURE THIS. kp

3.0 THE IUB'S PIPELINE PERMITTING PROCESS

The following flowchart presents the general sequence of the IUB's Pipeline Permitting Process.

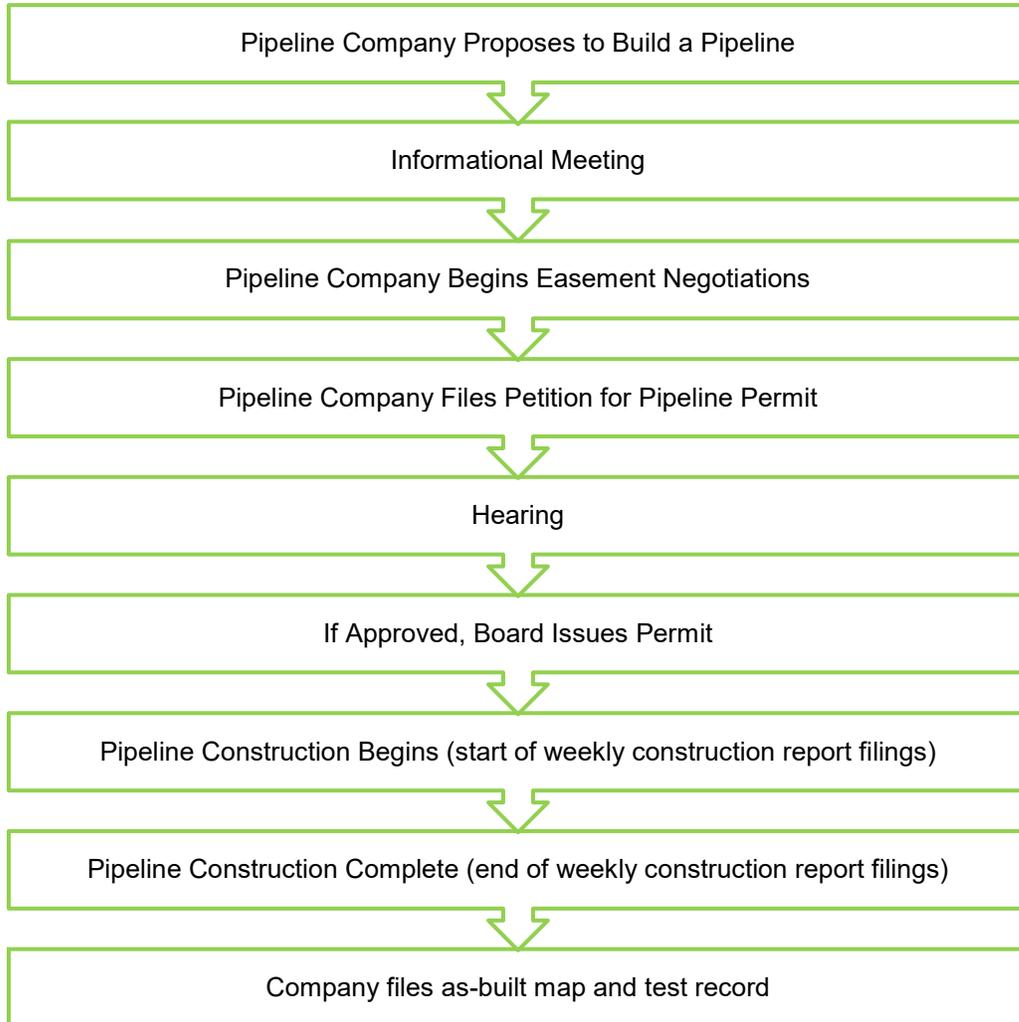


Figure 1: The Board's pipeline permitting process

4.0 GUIDELINES FOR COUNTY BOARD OF SUPERVISORS

4.1 County Inspections for Compliance with Land Restoration Standards

Iowa Code §§ 479.29(9) and 479B.20(9) require any pipeline company petitioning the IUB for a permit to construct a pipeline to file a written land restoration plan with the petition for pipeline permit. The land restoration plan does not apply to land located within city boundaries unless the land is used for agricultural purposes.

The county board of supervisors shall cause an on-site inspection for compliance with the IUB's standards for restoration of agricultural lands in accordance with the restoration plan, or the written independent company and landowner agreements provided to the county inspector. The county board of supervisors shall designate a County Inspector that will be responsible for the inspection. A county board of supervisors may designate its county engineer as the county inspector or may contract for the services of a licensed professional engineer to serve as the county inspector.

After receiving notice from a pipeline company of the pipeline company's intent to build a pipeline in the county, the county board of supervisors should appoint a county inspector for the project. The county inspector may be present at the informational meeting.

The reasonable costs of the inspection shall be borne by the pipeline company.

4.2 Pipeline Project Affecting Several Counties

If a pipeline project affects several counties, the boards of supervisors in the affected counties may consider working together and hire one county inspector for the entire project.

4.3 Change of County Inspector

Whenever there is a change of county inspector, the county inspector or the county board of supervisors shall notify the pipeline company. The pipeline company shall be responsible for filing the updated information with the IUB.

5.1 Informational Meeting

The pipeline company shall send notice of the request for an informational meeting to the county board of supervisors in each county where the pipeline is proposed to be located requesting the county board of supervisors appoint a county inspector. The county inspector for the county affected by a pipeline project may be present during the public informational meeting. The purpose of the informational meeting is to discuss the pipeline project and the legal rights of affected persons, and to introduce the county inspector to affected persons, if a county inspector has been appointed at that time.

5.2 IS CRITICAL TO SUCCESS.

5.2 Recommended Practice

A successful inspection program includes effective communication between the county inspector and the various project stakeholders, development of detailed reporting standards, and consistent document organization practices. Before any construction commences, the program begins by gathering pertinent information on the anticipated schedule and layout of the project.

Prior to commencing construction, the county inspector should obtain the following information from the pipeline company:

- Alignment sheets showing tract information, project route, and right-of-way limits
- Project specifications and procedural manuals
- A list of affected persons
- Independent landowner agreements
- Topsoil survey depth results
- Available tile maps received from landowners
- Pipeline company or pipeline company contractor contact information

The county inspector should provide the following information to the county board of supervisors, the pipeline company, and the pipeline company's contractors:

- List of county inspector personnel and contact information

The reporting templates and inspection procedures that will be used throughout the project should be developed prior to construction. These templates will be used to gather information in the field for the various construction activities being inspected and should include, but not be limited to, the following information:

- IUB Docket Number
- Report ID Number
- Project Number
- County Inspector Name
- Date of the Inspection

- County
- Specific tract number(s)
- Weather and soil conditions
- Detailed records of all work performed throughout the day
(It is recommended that a separate report be completed for each permanent tile repair.)
- Non-conformance work
- Any deviation in work due to landowner agreement
- Photos reflecting what is included in the report with a description and location of where the photo was taken
- Documentation of any communication or interaction with landowners
- County inspector's signature

Throughout the project, the county inspector will generate a significant number of reports. A detailed plan for organizing and storing all reports is critical to ensuring the success of the inspection program and accurate turnover of the reports to the county board of supervisors and pipeline company following the completion of the project. These reports may also be requested by the IUB.

The following are suggestions for organizing reports throughout the project (assuming reports are in electronic format):

- Create an electronic folder for each tract along the project to store all pertinent reports
- Within the overall tract folder, create sub-folders for specific inspection templates
- Save documents using a consistent naming convention some combination of the following:
 - Date created
 - Tract
 - Report ID number
 - Type of report

6.0 NOTICE, ENFORCEMENT, AND RELATED CONSTRUCTION ISSUES

6.1 Separate Agreements – 199 IAC 9.7 and 9.8 & Iowa Code §§ 479.29(10) and 479B.20(10)

The pipeline company shall supply the county inspector with the information from private landowner agreements that pertain to the restoration of agricultural lands. For agreements made before construction begins, the pertinent information can be included in a construction line list or similar document. Agreements made after construction has begun shall be supplied to the County Inspector before construction can proceed on the item(s) detailed within the agreement.

Separate agreements, including those that excuse the pipeline company of certain construction responsibilities (e.g., decompaction, abandoned tile lines, tile separation,

etc.) should be maintained throughout the project for easy reference and included as part of the final document turnover.

6.2 Proper Notice – 199 IAC 9.1(2) & Iowa Code §§ 479.29(4) and 479B.20(4)

The pipeline company shall keep the county inspector continuously aware of its construction schedule. A minimum of 24 hours' advance notice is required for any construction activity that the county inspector is responsible for inspecting.

If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on site.

The county inspector may provide a point of contact to the pipeline company and its contractors to receive proper notification of construction schedules and/or changes. Daily scatter sheets provide the most reliable information for future scheduling.

As a means of establishing good, open lines of communication, county inspectors should communicate throughout the day with the contracting crews whose work they are inspecting.

6.3 Enforcement – 199 IAC 9.9 & Iowa Code §§ 479.29(7) and 479B.20(7)

If the pipeline company is not adhering to the requirements detailed in 199 IAC Chapter 9 and/or Iowa Code §§ 479.29 and 479B.20, the approved land restoration plan, or an independent agreement, the county inspector shall intervene including, but not limited to, issuing a stop work order and, if necessary, a Notice of Violation.

6.3.1 Stop Work Order

A stop work order may be issued at locations where construction activities are not adhering to the approved land restoration plan. It is important to note that a stop work order applies only to the activity and the location of the issue and does not pertain to any portion of the construction project outside the area in question. The county inspector should communicate the concern to the pipeline company and attempt to remedy the issue immediately in the field.

6.3.2 Notice of Violation Process

If the pipeline company does not remedy the concern brought up with a stop work order, the county inspector shall proceed with the Notice of Violation process.

Step #1: Verbal Notice of Violation

If the county inspector determines that there has been a violation of the standards adopted by the state, the land restoration plan, or an independent agreement, the inspector shall do the following:

- Temporarily halt construction at the specific location of violation
- Issue a verbal notice to the pipeline company that includes the following:
 - Description of the specific violation
 - Requirement for remediation
 - Timeframe for remediation, not to exceed 24 hours from the time verbal notice is issued unless a written extension is agreed upon between the pipeline company and county inspector

If the pipeline company complies with the remediation steps in the given timeframe, the issue can be considered resolved and construction can continue. If not, the county inspector should proceed to Notice of Violation step #2.

Step #2: Written notice to pipeline company and contractor

If a verbal notice does not result in the proper remediation of the identified issue within 24 hours from the issuance of verbal notice (or agreed upon extension), the county inspector shall provide written notice to the pipeline company and, if applicable, the pipeline company's contractor regarding the outstanding violation. The written notice shall contain the following:

- Unique Notice of Violation identification number
- Description of the specific violation
- Date the original violation was identified
- Date verbal notice was given to the pipeline company
- Name(s) of personnel notified verbally of violation
- Requirement for remediation
- Timeframe for remediation, not to exceed 72 hours from the time written notice is issued unless a written extension is agreed upon between the pipeline company and county inspector
- Supporting photographs of violation

If remediation of the issue is resolved within the given timeframe, the Notice of Violation can be considered closed and construction can continue. If not, the county inspector should proceed to Notice of Violation step #3.

Step #3: Notice to County Board of Supervisors

If a written notice does not result in the proper remediation of the identified issue within 72 hours from the issuance of written notice (or agreed upon extension), the county inspector shall provide written notice to the applicable county board of supervisors outlining the violation. The notice to the county board of supervisors shall contain the following:

- Location of violation
- Explanation of violation
- Summary of timeframe for violation
- Attach original written Notice of Violation

The county board of supervisors will decide whether to proceed with the Notice of Violation. If the county board of supervisors decides to move forward, proceed to Notice of Violation step #4. If not, the county inspector should do the following:

- Provide applicable landowner with original written Notice of Violation
- Notify pipeline that landowner has been informed
- Include violation on inspector's restoration punch list

The project should not be considered complete until the violation has been fully remediated or a signed agreement between the landowner and the pipeline company has been provided to the county inspector.

Step #4: Petition to the IUB

Following submittal of the written notice, the county board of supervisors may elect to file a petition with the IUB for an order requiring corrective action be taken on the violation in accordance with Iowa Code §§479.29(5) or 479B.20(5).

MEASURE TO DETERMINE "WET CONDITIONS"?

6.4 Construction in Wet Conditions – 199 IAC 9.5(12)

A number of potential concerns arise from construction in wet conditions including, but not limited to, mixing due to deep rutting, ineffective topsoil removal and replacement, insufficient decompaction, and disturbance to underground tile lines from equipment.

In locations where topsoil has not been removed, rutting from construction equipment can mix topsoil and subsoil, which is a violation of 199 IAC 9.5(13). Where topsoil has been removed, mixing from rutting is no longer a concern and work can continue.

Removing topsoil in wet conditions may result in ineffective separation of topsoil from subsoil and is not allowed under 199 IAC 9.5(2). The county inspector should be aware that soils are more cohesive in wet conditions, which makes proper separation more difficult. If the pipeline company is unable to properly separate the soils, a stop work order should be issued.

In addition to the concerns with mixing, deep rutting from construction equipment can impact the underground tile lines along the project right-of-way by misaligning, crushing, or otherwise disturbing their location. For work to proceed in wet conditions, the county inspector may require that all known tile lines be protected from equipment traffic by utilizing matting, bridging, or approved equivalents when crossing.



Photo 1: Stripping topsoil in wet conditions may cause soil mixing



Photo 2: After topsoil has been removed, tracking through saturated subsoil may cause damage to drain tile

A key component of restoration is the decompaction of subsoils impacted by equipment traffic. IUB rule 199 IAC 9.5(6) details the specific requirements for decompaction, but it is worth noting here that soils ripped in wet conditions are unlikely to achieve the decompaction results required by the IUB rule.

Finally, when replacing topsoil, it is important that the subsoil moisture content be at a level that allows for topsoil to be spread effectively. In wet conditions, subsoil can push up and bleed into the topsoil, creating mixing. Additionally, rutting in wet subsoils creates challenges in achieving original grade, contour, and depth of topsoil as required by rule.

6.5 Pumping of Water (Dewatering) – 199 IAC 9.5(3)

Water cannot be directly discharged off right-of-way without written landowner approval.

The county inspector should be aware of various issues related to dewatering activities. These include, but are not limited to:

- Excessive discharge rates may expel sediment onto adjacent grounds, resulting in soil mixing.
- Excessive duration of discharge may create downstream flooding concerns.
- Sediment bags are never to be located on the top of soil stockpiles as this may increase soil loss due to erosion.
- Full or damaged sediment bags are ineffective at removing sediment and may result in soil mixing. Full sediment bags should be properly disposed of and, if necessary, replaced immediately.
- Secondary containment (e.g., sediment basin, straw bale perimeter, etc.) at the location of discharge may be necessary.



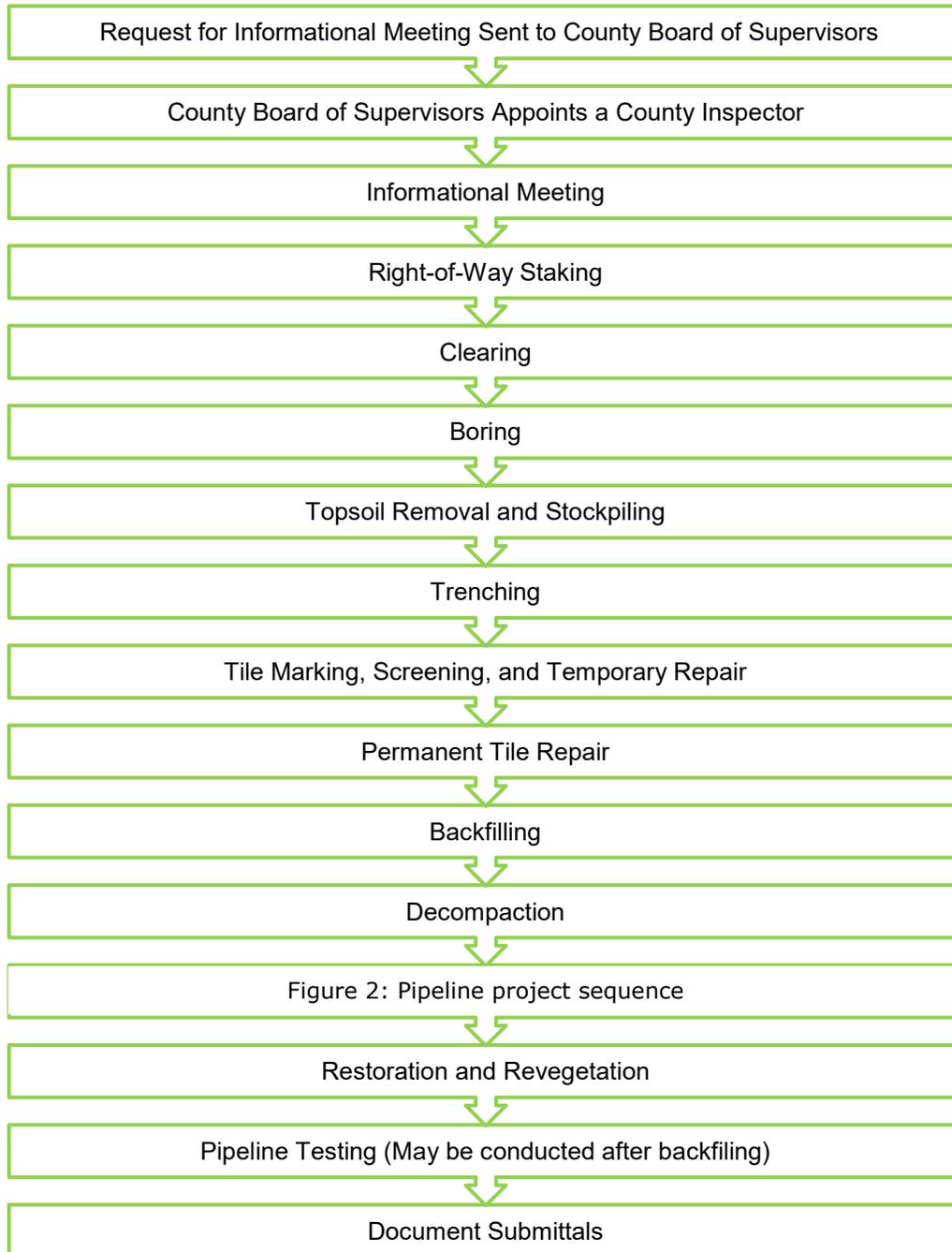
Photo 3: Impacts of improper dewatering practices



Photo 4: Using erosion logs as a secondary containment can greatly reduce the deposition of silts onto adjacent lands

7.0 PIPELINE PROJECT SEQUENCE

The following presents the general sequence of project activities that will require inspection by the county inspector. There are other construction activities that occur throughout construction (e.g., pipe bending, pipe welding, etc.) that do not require inspection by the county inspector.



8.1 Right-of-Way or Easement Staking – 199 IAC 9.4(1)



Photo 5: Right-of-way staking

The pipeline company will stake the limits of the right-of-way or easement prior to clearing. The county inspector shall review the staking location for consistency with the original plan and review the existing condition of the right-of-way.

The county inspector should document the pre-project condition of the lands that will be impacted by construction. Attention should be paid to conservation features, fence lines, general field topography and contours, tile lines and tile intake locations, forested areas, waterway conditions, and other notable features.

8.2 Clearing – 199 IAC 9.4(2) and 9.4(3)



Photo 6: Right-of-way clearing

The right-of-way or easement is cleared of all crops, trees, shrubs, etc. Fences will be cut and temporary fencing will be placed at this time.

The county inspector should be aware of any agreement made between the landowner and the pipeline company regarding ownership of any cleared items, including timber identified as marketable or useful. No trees or debris should be left on or adjacent to the right-of-way or easement.

8.3 Boring Locations



Photo 7: Conventional bore under a roadway

At certain locations along the pipeline route (e.g., roadways, water bodies, wetlands, railroads, utility crossings, etc.), the pipeline company may choose to bore the pipe instead of open cut. At these locations the county inspector shall inspect for topsoil, tile lines, and the condition of the crossing.

The county inspector shall ensure that topsoil has been properly removed and stockpiled during excavation of the bore pits (the entrance and exit point of the bore). Removal and stockpiling shall be done in accordance with 199 IAC 9.5(2). Dewatering of the bore pits shall be inspected pursuant to the requirements of 199 IAC 9.5(3).

Any tile line that is cut during excavation of the bore pits shall be immediately marked and screened. Permanent repair of these facilities will be in accordance with 199 IAC 9.5(4).

During boring operations, the county inspector shall inspect the condition of the crossing and document any impacts from the bore.

The county inspector should take photos of the crossing before and after the boring operation. In case of any damage to the crossing, the county inspector should notify the pipeline company or its contractor immediately.

8.4 Topsoil Removal and Stockpiling – 199 IAC 9.5(2) & Iowa Code §§ 479.29 and 479B.20

Prior to the removal of any topsoil, a topsoil survey shall be performed under the supervision of a certified professional soil scientist across the full extent of the right-of-way or easement. The survey will be used to establish the depth of topsoil to be removed.

Topsoil removal occurs when construction equipment (bulldozers, track hoes, scrapers, etc.) strip, dig, or scrape the full depth of topsoil and separate it from the subsoil. Based on the depths determined by the topsoil survey, the pipeline company will remove topsoil across the entire right-of-way or easement (trench line, working side, travel side, and extra workspace). The removed topsoil will be stockpiled and the stockpile will be stabilized within 14 days of removal. Stabilization will consist of covering the stockpile with seeding and mulch, tackifier, hydro-mulch, and/or an approved equivalent.

Topsoil shall not be used to construct field entrances or drives, or be otherwise removed



Photo 7: Topsoil removal and stockpiling

from the property without the landowner's written consent.

The topsoil survey depths should be included in the construction line list or equivalent field documents to ensure inspectors are aware of the tract/site specific depths to be removed. It is important to note that between the sample locations, topsoil depths are interpolated. County inspectors should be continuously inspecting the removal operations and identifying areas of possible discrepancy. Instances of discrepancy that cannot be resolved in the field between the county inspector and the pipeline company

should be brought to the attention of the soil scientist before removal operations continue.

8.5 Trenching



Photo 8: Trenching of the ditch line

Trenching is the opening of the ditch line, which is where the pipeline will be placed. During trenching operations, the county inspector will inspect for impacts to subsurface tile lines and proper stockpiling of subsoil spoils. All tile lines that are encountered during trenching shall be marked and screened on both sides of the trench pursuant to the rules and regulations identified in Section 8.6 of this document.



Photo 9: Proper separation of the topsoil and subsoil stockpiles

Subsoil stockpiles should have sufficient separation to prevent mixing during the storage period. Subsoil stockpiles do not require stabilization.

The trench is to remain open at each tile line location until permanent repairs have been properly completed and inspected pursuant to the rules and regulations identified in Section 8.6 of this document. The county inspector should look for evidence of tile debris in the subsoil stockpile.

8.6 Tile Marking, Screening, Temporary Repair – 199 IAC 9.5(4)



Photo 10: All impacted drain tiles are properly marked with stakes and screened with white filter bags

All tile lines found to be cut or disturbed during construction shall be marked and screened immediately after disruption. Marking should consist of staking, flagging, or approved equivalent.

Proper screening should allow water to pass freely while keeping debris and animals from entering the tile lines.

Disturbed tile lines that are found to be flowing shall be temporarily repaired by the end of the work day to maintain drainage functionality for adjacent lands. Temporary repairs shall be maintained in good working condition until permanent repairs are made.



Photo 11: Impacted drain tiles that have been temporarily repaired allowing them to function until permanent repairs can be made

The trench is to remain open at each tile line location until permanent tile repairs have been properly completed and inspected pursuant to the rules and regulations identified in section 8.7 of this document.

The county inspector should document the number of tile lines impacted on each individual tract and ensure that they have all been marked and screened by the end of the work day. It is suggested that the pipeline company contact the survey crew to document the exact location (e.g., station number) of each cut or damaged tile.

8.7 Permanent Tile Repair – 199 IAC 9.5(4)(d)



Photo 12: The permanent tile repair has been properly supported by sandbags and with a rigid pipe that spans across the ditch line



Photo 12: The original alignment of the tile has been altered to cross the ditch line at a more favorable angle

All tile lines across the right-of-way or easement that are found to be impacted during construction shall be televised and repaired to the same condition or better than before the project commenced. This includes matching existing grades, alignment, drainage capacity, and pipe material.

For tile lines being permanently repaired across the trench line, the county inspector should ensure that proper support is being provided at all tile crossings, including the use of rigid pipes, sandbags, bridges, etc.

Tile lines that are found to cross the trench at an unfavorable angle may be realigned to cross perpendicular to the trench. For reference, refer to Drawing IUB PL-1 found in Appendix I.

A tile's drainage capacity is dependent on size, shape, and material. The County Inspector should ensure that any variation to the original tile has been sized for the change in drainage capacity. For instance, a 6-inch clay tile at 0.005% grade has a larger drainage capacity than a 6-inch corrugated pipe at the same grade due to the material roughness. In this case, the diameter of the proposed tile line should be increased to account for the capacity loss of the changed material.

Another consideration is the use of single-wall corrugated pipe versus dual-wall corrugated pipe. For example, if the tile line to be replaced is a smooth interior surfaced pipe (e.g., clay or reinforced concrete pipe), the diameter of the proposed dual-wall pipe can match that of the existing structure and will maintain a similar drainage capacity. On the other hand, if single-wall pipe of the same diameter were used, the drainage capacity of the pipe would be less than

that of the original tile line, due to the increased roughness of the material, and the diameter would need to be increased.

8.8 Backfilling – 199 IAC -9.5(4)(f)



Photo 12: Subsoil being used to backfill the ditch line

Backfilling consists of placing soil from the subsoil stockpile back into the open trench. Backfilling shall occur following completion of the permanent tile repair and shall be done in such a manner as to not impact or misalign the tile lines. When covering the tile lines, the county inspector should closely monitor that the soils being placed in the trench are free from any large stones, boulders, or clods of dirt that could disrupt the alignment or integrity of the tile line.

8.9 Decompaction – 199 IAC 9.5(6)



Photo 13: Alleviating compaction of the subsoil with the use of deep tillage equipment

Decompaction is the breaking up of the hardpan created by heavy equipment compressing the soils during construction. Prior to the topsoil being replaced, vertical rippers shall make a minimum of three passes over the compacted soils.

The county inspector should ensure that the soil moisture conditions are suitable for proper decompaction. If the conditions are too wet, ripping will not alleviate soil compaction. If the county inspector and pipeline company disagree regarding acceptable decompaction, a Standard Penetration Test shall be performed by a qualified party to determine if the penetrometer reading is below 300 pound per square inch. In areas where

decompaction cannot be successfully completed, topsoil shall not be allowed to be replaced without a signed agreement from the landowner. Where the pipeline company has negotiated a decompaction agreement and a signed copy has been provided to the county inspector, it is important that the signed document be included with the final document turnover, pursuant to Section 8.14 of this document.

I have discussed the Standard Penetration Test with Toni and she swears this is not the correct method for determination of 300 per square inch compaction.

There may be instances where a separate agreement allows the pipeline company the ability to replace topsoil prior to decompaction. In these situations, the total depth of decompaction should include both the required depth of subsoil ripping pursuant to 199 IAC 9.5(6)(a) and the depth of replaced topsoil. It is important to ensure that the ripping equipment does not pull subsoil toward the surface and cause mixing.

8.10 Clean-up – 199 IAC 9.5(5)



Photo 14: Some of the many activities of the clean-up process

Cleanup of the right-of-way or easement includes removal of construction debris and large rocks, grading the sub-soil to restore pre-project contours, and replacing and grading the topsoil. The county inspector should pay attention to the edges of the right-of-way or easement to ensure that the replaced topsoil matches the grade and contour of the soils on the adjacent land just off the right-of-way or easement.

8.11 Restoration and Revegetation – 199 IAC 9.4(3), 9.5(6), 9.5(7), 9.5(8), 9.5(10), and 9.5(11)

Restoration addresses the final stages of returning the right-of-way or easement to its pre-project condition. During this phase, the impacted lands are revegetated; waterways, terraces (refer to Drawing IUB PL-2 found in Appendix I) and conservation areas are restored; and fences and gates are replaced. Field entrances and temporary roads will be removed during this phase. Following final restoration, the soil over the trench line may be crowned, or raised slightly, which will allow for settlement.

8.12 Testing

The pipeline company will hydrostatically test the integrity of the pipeline. In instances where there is a test failure, the county inspector shall be present to inspect for topsoil removal and stockpiling, impact and final repair for tile lines, replacement of topsoil, and final restoration.

8.13 Project Completion – 199 IAC 9.10, Iowa Code §§ 479.46(1) and 479B.30(1)

The county board of supervisors, under the recommendation of the county inspector, shall determine when installation of a pipeline has been completed in that county. The county inspector shall give their recommendation when final restoration has been completed and vegetation across the project has reached 70% of its growth.

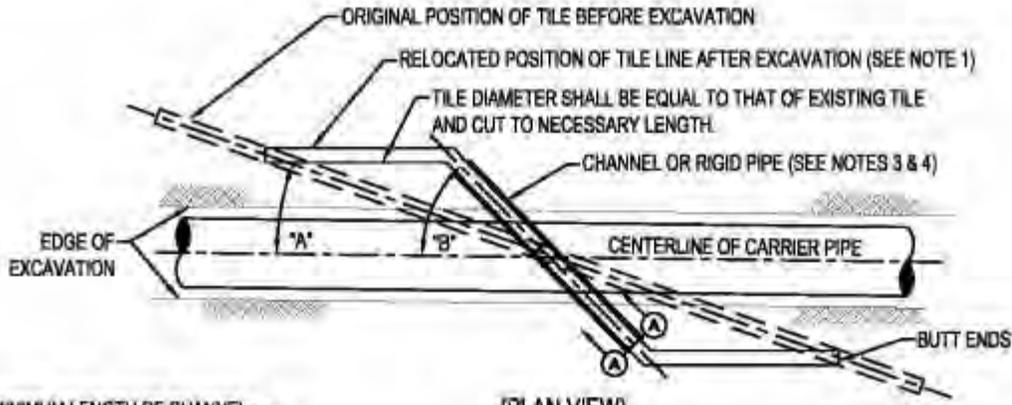
8.14 Document Submittal – 199 IAC 9.11

Once the project has been declared complete by the county board of supervisors, the county inspector shall finalize all project documentation for turnover. Document turnover will consist of all inspection reports, tile reports and maps, punch lists, Notice of Violation documents, and special landowner agreements. The county inspector will submit the finalized documents to the county board of supervisors and the pipeline company. These documents are also available for inspection by an affected person or the IUB.

APPENDIX I

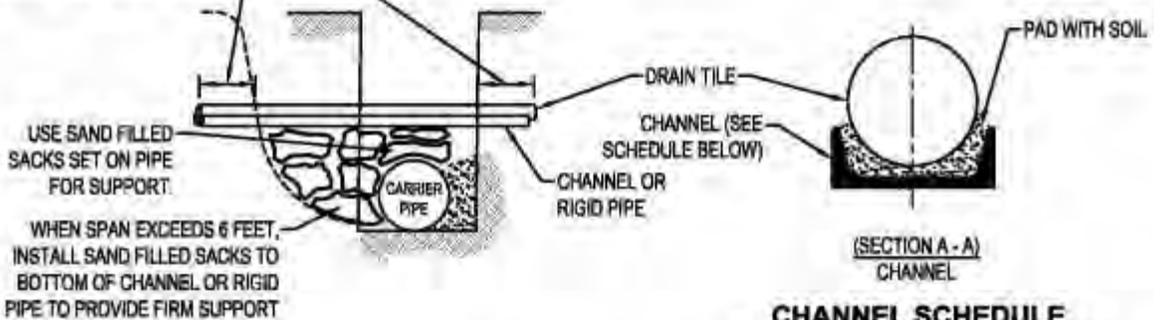
Restoration Drawings IUB PL-1 + IUB PL-2

RESTORATION OF DRAIN TILE



(PLAN VIEW)

20" MINIMUM LENGTH OF CHANNEL OR RIGID PIPE SUPPORT ON SOLID SOIL. EACH SIDE OF EXCAVATION



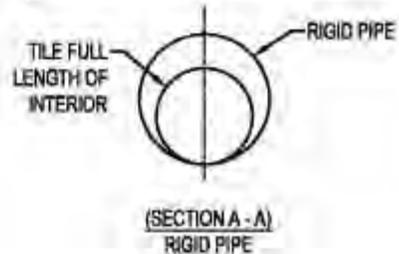
(METHOD OF SUPPORT -- ELEVATION)

CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

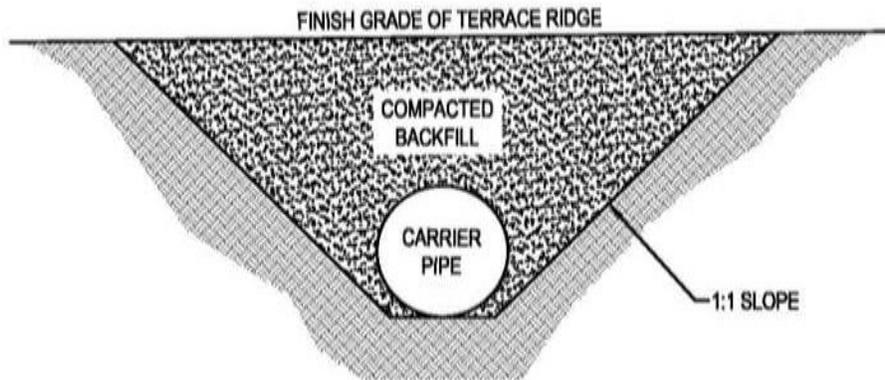
NOTES:

1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



DRAWING NO. IUB PL-2

RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

APPENDIX II

199 Iowa Administrative Code Chapter 9

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199—9.1(479,479B) General information.

9.1(1) Authority and purpose. The rules in this chapter are adopted by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29 and 479B.20 to establish standards for the restoration of agricultural lands during and after pipeline construction. These rules constitute the minimum standards for restoration of agricultural lands disturbed by pipeline construction. These rules do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

When a project-specific land restoration plan is required pursuant to Iowa Code section 479.29(9) or 479B.20(9), following notice and comment, the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project. Where a project-specific land restoration plan is not required pursuant to Iowa Code section 479.29(9) or 479B.20(9), the rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction.

9.1(2) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

“Affected person” means any person with a legal right or interest in the property, including, but not limited to, a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

“Agricultural land” means any land devoted to agricultural use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land used to implement management practices and structures for the improvement or conservation of soil, water, air, and related plant and animal resources.

“Board” means the utilities board within the utilities division of the department of commerce.

“County inspector” means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements, and who is designated by the county board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

“Drainage structures” or *“underground improvements”* means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Pipeline” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, or hazardous liquid, within or through Iowa.

“Pipeline company” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

“Pipeline construction” means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

“Proper notice to the county inspector” means that the pipeline company and its contractors shall keep the county inspector continually informed of the work schedule and any changes to the schedule, and shall provide at least 24 hours’ written notice before commencing or continuing any construction activity which requires inspection by the county inspector, including, but not limited to, right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, cleanup, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction shall not be delayed due to a county inspector’s failure to be present on site.

“Soil conservation practices” means any land conservation practice recognized by federal or state soil conservation agencies, including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

“Soil conservation structures” means any permanent structure recognized by federal or state soil conservation agencies, including, but not limited to, toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

“Surface drains” means any surface drainage system, such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

“Till” means to loosen the soil in preparation for planting or seeding by plowing, chiseling, disking, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

“Topsoil” means the uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the “A” horizon. In areas where the “A” horizon is determined by a certified professional soil scientist to be less than 12 inches, the topsoil depth shall include both the “A” and the “Bw” horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

“Underground storage” means storage of either natural gas or hazardous liquid in a subsurface stratum or formation of the earth.

“Wet conditions” means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.2(479,479B) Filing of land restoration plans. Pursuant to Iowa Code sections 479.29 and 479B.20, a land restoration plan is required for any pipeline construction that requires a permit from the board and for any proposed amendment to an existing permit that involves pipeline construction, relocation, or replacement. The land restoration plan shall be filed with the appropriate petition and be identified as Exhibit I. For pipelines that do not need a permit from the board and that are constructed across agricultural land, the pipeline company shall have on file with the board a general land restoration plan covering pipelines that do not need a permit from the board.

9.2(1) Content of plan. A land restoration plan shall include, but not be limited to, the following:

a. A brief description of the purpose and nature of the pipeline construction project.

b. A description of the sequence of events that will occur during pipeline construction.

c. A description of how the pipeline company will comply with rules 199—9.4(479,479B) and 199—9.5(479,479B).

d. The point of contact for landowner inquiries or claims as provided for in rule 199—9.5(479,479B).

e. A unique identification number that follows a linearly sequential pattern on each parcel of land over which the pipeline will be constructed.

9.2(2) Plan variations. The board may by waiver allow variations from the requirements in this chapter if the pipeline company requesting a waiver is able to satisfy the standards set forth in rule 199—1.3(17A,474,476) and if the alternative methods proposed by the pipeline company would restore the land to a condition as good or better than provided for in this chapter.

9.2(3) Mitigation plans and agreements. Preparation of a separate land restoration plan may be waived by the board where a pipeline company enters into an agricultural impact mitigation plan or similar agreement with the appropriate agencies of the state of Iowa that satisfies the requirements of this chapter. If a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.3(479,479B) Procedure for review of plan.

9.3(1) Timing. The board will review the proposed land restoration plan, as established in rule 199—9.2(479,479B), at the same time it reviews the petition. Objections to the proposed plan shall be filed as part of the permit proceeding. The pipeline company shall modify the plan as required by the board.

9.3(2) Distributing approved plan. After the board has approved the plan as part of the board's review and approval of the petition, but prior to construction, the pipeline company shall provide copies of the final plan approved by the board to all landowners of property and persons in possession of the property under a lease that will be disturbed by the construction, the county board of supervisors in each county affected by the

project, the county engineer of each affected county, and to the county inspector in each affected county.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.4(479,479B) Staking and clearing of agricultural land.

9.4(1) Easement staking. The pipeline company shall allow the county inspector and the landowner to be present during the staking of the easement. Written notice of the staking shall be provided to the landowner and the county inspector in the same manner as provided for in proper notice to the county inspector. Pipeline construction may not occur until seven days after the easement is staked unless the landowner waives the seven-day period after the easement staking has been completed. If proper notice is given, easement staking shall not be delayed due to a county inspector or landowner's failure to be present on site.

9.4(2) Trees and brush. If trees are to be removed from the easement, the pipeline company shall consult with the landowner to determine if there are trees of commercial or other value to the landowner.

a If there are trees of commercial or other value to the landowner, the pipeline company shall allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, or if the landowner does not want to retain ownership of the trees, the pipeline company shall hire a forester with local expertise to appraise the commercial value of any timber to be cut for construction of the pipeline. The pipeline company shall compensate the landowner for the full appraised commercial value of any timber removed. The pipeline company shall remove all cleared trees and debris left on or adjacent to the easement.

b If the trees to be cleared have been determined to have no commercial or other value to the landowner and there is no negotiated agreement between the pipeline company and the landowner for the disposition of the trees in advance of clearing of the easement, removal and disposal of the material shall be completed at the discretion of the pipeline company.

9.4(3) Fencing. The pipeline company may remove all field fences and gates, located within the pipeline company's easement, during clearing of the easement and may construct temporary fences and gates where necessary. Upon completion of the pipeline construction, the pipeline company shall replace any temporary field fences or gates with permanent field fences or gates. The pipeline company and landowner may negotiate separate agreements regarding field fences and gates. If livestock is present, the pipeline company shall construct any temporary or permanent fences and gates in a manner which will contain livestock.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.5(479,479B) Restoration of agricultural lands.

9.5(1) Topsoil survey.

a Prior to the removal of any topsoil, the pipeline company shall direct that a topsoil survey be performed under the supervision of a certified professional soil scientist across the full extent of the easement for any pipeline that requires a board permit. A minimum of three soil depths shall be physically measured in the field at each cross section as follows: (1) one on the left edge of the easement; (2) one at 15 feet of the

centerline of the pipeline on the working side of the right-of-way; and (3) one on the right edge of the working easement. Cross sections shall be taken a minimum of every 500 linear feet for the full extent of the easement. Each parcel of land shall have a minimum of two cross sections.

b The pipeline company shall provide the results of the topsoil survey to the county board of supervisors, county inspector, county engineer, and affected persons at least six weeks prior to commencing construction.

9.5(2) Topsoil separation and replacement.

a Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with pipeline construction unless otherwise provided in these rules. The actual depth of the topsoil, as determined by a topsoil survey, shall be stripped from the full extent of the easement. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. Topsoil removal shall not occur during wet conditions.

b Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c Stockpile stabilization. Topsoil stockpiles shall be stabilized with seeding and mulch within 14 calendar days of stockpiling. Between October 15 and March 15, soil tackifier shall be used in place of seeding and mulch.

d Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods that do not require the opening of a trench. If provided for in a written agreement between the pipeline company and the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

e Backfill. The topsoil and subsoil shall be replaced in the reverse order in which they were excavated from the trench. The depth of the replaced topsoil shall conform as near as possible to the depth of topsoil that was removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as near as possible.

9.5(3) Pumping of water from open trenches.

a. In the event it becomes necessary to pump water from open trenches, the pipeline company shall pump the water in a manner that avoids damaging adjacent agricultural land. Damages from pumping water from trenches include, but are not limited to, inundation of crops and depositing of sediment in fields, pastures, and surface drains.

b. If water-related damages result from pumping water from trenches, the pipeline company shall either compensate the landowner for the damages or restore the land, pasture, surface drains, or similar land, to their preconstruction condition, at the landowner's discretion.

c. Written permission from the landowner is required before the pipeline company can pump water from trenches onto land outside of the pipeline company's easement.

d. All pumping of water shall comply with existing state drainage laws, local ordinances, and federal statutes.

9.5(4) Temporary and permanent repair of drain tile.

a. *Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. *Temporary repair.* The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) Any underground drain tile damaged, cut, or removed and found to not be flowing shall have the upstream exposed tile line screened or otherwise protected to prevent the entry of foreign material and small animals into the tile system. The downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if water level rises in the trench.

c. *Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

d. *Permanent repairs.* Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. The county inspector shall inspect each permanent repair for compliance with this chapter. If proper notice is given, construction shall not be delayed due to a county inspector's failure to be present on site. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size, and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced using a laser transit, or similar instrument or method, to ensure that the tile's proper gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

e. Inspection. Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on site prior to backfilling.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The county inspector shall inspect that backfill for compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.5(5) Removal of rocks and debris from the easement.

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris that may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock that cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

9.5(6) Restoration after soil compaction and rutting.

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the

topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions that result in a maximum standard penetration test (SPT) reading of 300 psi pursuant to ASTM D1586-11 performed by a qualified person. Decompaction shall not occur in wet conditions. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. Rutting shall be remedied before any topsoil that was removed is replaced.

9.5(7) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain tiles or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. The county inspector shall inspect restoration of terraces, waterways, and other erosion control structures for compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

9.5(8) Revegetation of untilled land.

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph 9.5(9)“b” shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

c. Weed control. On any easement, including, but not limited to, construction easements and easements relating to valve sites, metering stations, and compression stations, the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying shall be done by a pesticide applicator that is appropriately licensed for spraying of pesticide in Iowa. If the pipeline company fails to control weeds within 45 days after receiving written notice from the landowner, the pipeline company shall be responsible for reimbursing all reasonable costs of weed control incurred by owners of adjacent land.

9.5(9) *Future installation of drain tile or soil conservation practices and structures.*

a Future drain tile. The pipeline company shall consult with affected persons regarding plans for future drain tile installation. Where an affected person provides the pipeline company with written plans prepared by a qualified tile technician for future drain tile improvements before an easement is secured, the pipeline shall be installed at a depth which will allow proper clearance between the pipeline and the proposed future tile installation.

b Future practices and structures. The pipeline company shall consult with any affected person's plans for future use or installation of soil conservation practices or structures. Where an affected person provides the pipeline company with a design for such practice or structure prepared by a qualified technician before an easement is secured, the pipeline shall be installed at a depth that will allow for future installation of the planned soil conservation practice or structure and that will retain the integrity of the pipeline.

9.5(10) *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as near as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by the pipeline company by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished. The county inspector shall inspect restoration of land slope and contour for compliance with this chapter.

9.5(11) *Restoration of areas used for field entrances or temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.5(10) and deep tilled as required by subrule 9.5(6). If by agreement, or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition. The county inspector shall inspect restoration of areas used for field entrances or temporary roads for compliance with this chapter.

9.5(12) *Construction in wet conditions.* The county inspector, in consultation with the pipeline company and the landowner or person in possession of the land pursuant to a lease, if present, shall determine when construction should not proceed in a given area due to wet conditions. The county inspector shall have the sole authority to determine whether construction should be halted due to wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed or underground drainage structures may be damaged. To facilitate construction in wet soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable

to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.5(2).

9.5(13) Access to land. Nothing in this rule shall prohibit a landowner or person in possession of the land pursuant to a lease from having access to the property. A landowner or person in possession of the land pursuant to a lease shall not disrupt ongoing construction and shall not compromise the safety considerations of the construction. A landowner or person in possession of the land pursuant to a lease shall abide by any and all safety instructions established by the pipeline company during construction.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.6(479,479B) Designation of a pipeline company point of contact for landowner inquiries or claims.

9.6(1) For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for inquiries or claims from affected persons. The designation shall include the name of an individual to contact and a toll-free telephone number, an email address, and an address through which that person can be reached. The pipeline company shall also provide the name of and contact information for the county inspector. This information shall be provided to all affected persons prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to affected persons. A designated point of contact shall remain available for all affected persons for at least one year following project completion and for affected persons with unresolved damage claims until such time as those claims are settled.

9.6(2) If requested by an affected person, any notice required to be given to the county inspector shall also be given to the affected person.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.7(479,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing, and the pipeline company shall provide a copy to the county inspector and the board.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.8(479,479B) Notice of violation and halting construction.

9.8(1) Notice of violation. If the county inspector identifies a violation of the standards adopted in this chapter, Iowa Code section 479.29 or 479B.20, or a separate agreement between the pipeline company and the landowner, the county inspector shall give verbal notice, followed by written notice, to the pipeline company and the pipeline company's contractor and require the pipeline company to take corrective action.

9.8(2) Halting construction. A county inspector may temporarily halt construction at the location of the dispute if construction is not in compliance with the standards adopted in this chapter, the land restoration plan, or the terms of an independent

agreement between the pipeline company and landowner regarding land restoration or line location until the county inspector consults with a supervisor of the pipeline company or contractor. If, after consultation with a supervisor of the pipeline company or contractor, agreement on corrective action to address the violation cannot be reached, the county inspector may submit a request to the county board of supervisors for resolution of the issue. Construction may not resume at the disputed location either (1) until the county inspector and supervisor of the pipeline company reach an agreement on a resolution or (2) where the board of supervisors has been contacted, until the board of supervisors has responded or after one business day after contact by the county inspector. If a resolution is not reached, construction may continue; however, the pipeline company will be responsible for any damages or for correcting any violation.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.9(479,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29 and 479B.20, including giving proper notice before staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, silt screening, tile repair or backfilling, decompaction, cleanup, restoration, or testing of any easement. The pipeline company shall pay the reasonable costs for any work provided during the pipeline construction by the county inspector. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29 or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken. The county board of supervisors may also file a complaint with the board seeking imposition of civil penalties.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

199—9.10(479,479B) Project completion. The county inspector for each county affected by the pipeline project shall recommend to the county board of supervisors that the pipeline project be considered complete upon completion of restoration of all affected agricultural lands and 70 percent growth is established in locations requiring seeding after receiving written notification by the pipeline company to the same effect. The county board of supervisors shall determine whether the project is completed.

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

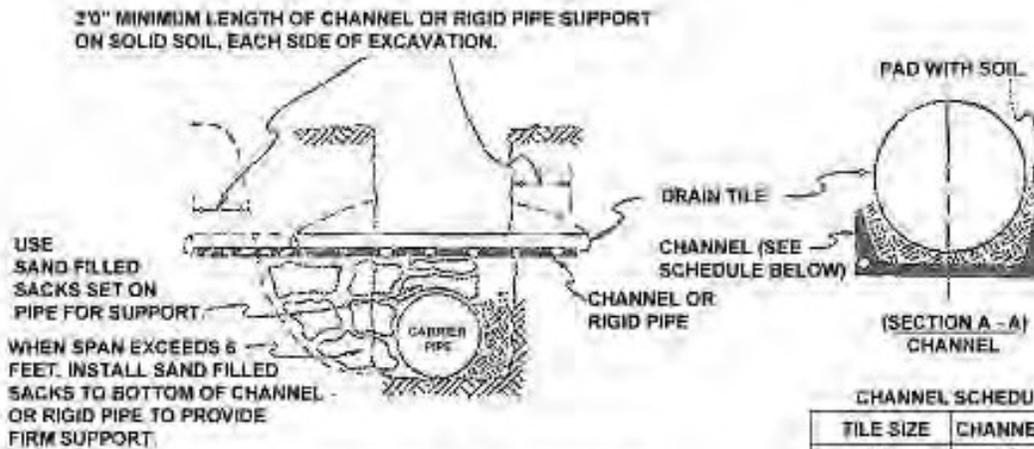
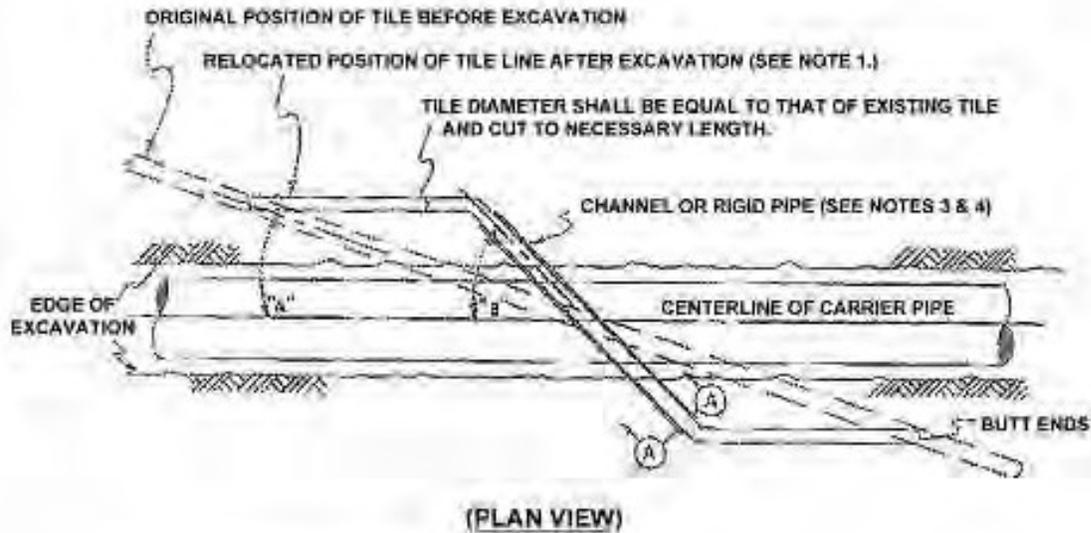
199—9.11(479,479B) Document submittal. Once a project is completed, project documents shall be submitted as follows:

9.11(1) Document turnover. The county inspector shall submit to the county board of supervisors and the pipeline company copies of inspection reports; tile reports and maps; punch lists; notice of violation documents; decompaction agreements; separate agreements, including those that excuse the pipeline company from certain construction responsibilities; and landowner agreements. The documents shall also be available for inspection by the board or an affected person upon request.

9.11(2) As-built drawings. The pipeline company shall provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of drain tile.

Drawing No. IUB PL-1

RESTORATION OF DRAIN TILE

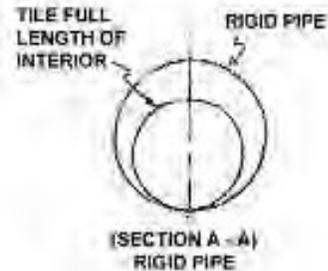


CHANNEL SCHEDULE

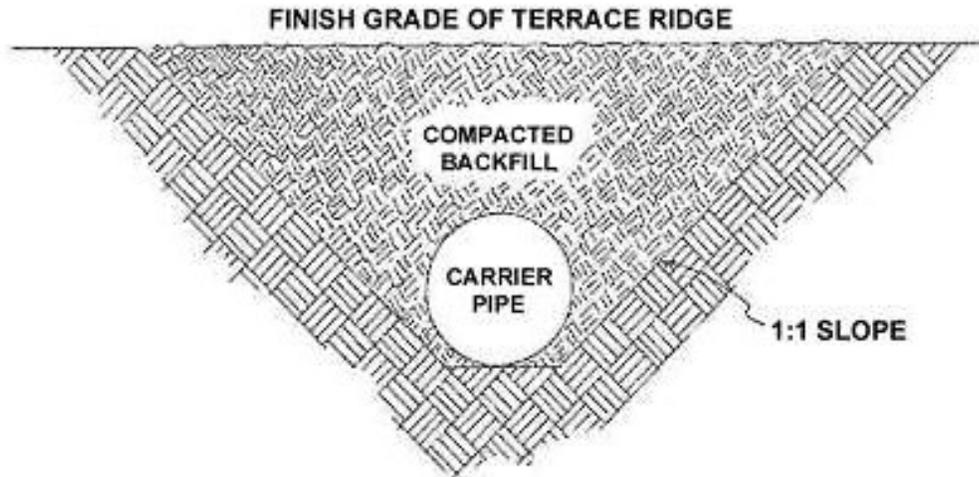
TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 8.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 19.3#

NOTES:

1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

[ARC 5685C, IAB 6/16/21, effective 7/21/21]

These rules are intended to implement Iowa Code sections 479.29 and 479B.20.

[Filed 1/4/80, Notice 10/17/79—published 1/23/80, effective 2/27/80]

[Filed 4/23/82, Notice 11/25/81—published 5/12/82, effective 6/16/82]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 2/1/91, Notice 6/27/90—published 3/6/91, effective 4/10/91]

[Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]

[Filed 1/18/01, Notice 6/14/00—published 2/7/01, effective 3/14/01]

[Filed 7/18/01, Notice 6/13/01—published 8/8/01, effective 9/12/01]

[Filed 8/31/01, Notice 7/25/01—published 9/19/01, effective 10/24/01]

[Filed 6/28/06, Notice 5/24/06—published 7/19/06, effective 8/23/06]

[Filed ARC 5685C (Notice ARC 5266C, IAB 11/4/20), IAB 6/16/21, effective 7/21/21]

APPENDIX III

199 Iowa Administrative Code Chapter 10

CHAPTER 10
INTRASTATE GAS PIPELINES AND UNDERGROUND GAS STORAGE
[Prior to 10/8/86, Commerce Commission[250]]

199—10.1(479) General information.

10.1(1) Purpose and authority. The purpose of this chapter is to implement the requirements in Iowa Code chapter 479 and to establish procedures and filing requirements for a permit to construct, maintain, and operate an intrastate gas pipeline, for an amendment to an existing permit, and for renewal of an existing permit. This chapter also implements the requirements in Iowa Code chapter 479 for permits for underground storage of natural gas. The rules relating to intrastate gas pipelines and underground gas storage in this chapter are adopted by the Iowa utilities board (board) pursuant to Iowa Code section 479.17. The rules in this chapter do not apply to interstate pipe, pipes, or pipelines used in the transportation or transmission of natural gas or hazardous liquids.

10.1(2) When a permit is required. A pipeline permit shall be required for any pipeline which will operate at a pressure in excess of 150 pounds per square inch gauge (psig) or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR 192.3. Using the factors set out in rule 199—10.14(479), the board shall determine whether a pipeline is a transmission line and requires a permit.

10.1(3) Definitions. Technical terms not defined in this chapter shall be as defined in the appropriate standard adopted in rule 199—10.12(479). For the administration and interpretation of this chapter, the following words and terms shall have the following meanings:

“Affected person” means any person with a recorded legal right or recorded interest in the property, including but not limited to a contract purchaser of record, a tenant occupying the property under a recorded lease, a record lienholder, and a record encumbrancer of the property. The term also includes persons in possession of or residing on the property and persons with unrecorded interests in the property that have been identified through a good-faith effort of the pipeline company.

“Amendment of permit” means that changes to the pipeline permit or pipeline require the filing of a petition to amend an existing pipeline permit as described in rule 199—10.9(479).

“Approximate right angle” means within 5 degrees of a 90 degree angle.

“Board” means the utilities board within the utilities division of the department of commerce.

“County inspector” means a professional engineer licensed under Iowa Code chapter 542B who is familiar with agricultural and environmental inspection requirements and has been employed by a county board of supervisors to do an on-site inspection of a proposed pipeline for compliance with 199—Chapter 9 and Iowa Code chapter 479.

“Multiple line crossing” means a point at which a proposed pipeline will either cross over or under an existing pipeline.

“Negotiating” means contact between a pipeline company and a person with authority to negotiate an easement that involves the location, damages, compensation, or other matter that is prohibited by Iowa Code section 479.5(5). Contact for purposes of obtaining

addresses and other contact information from a landowner or tenant is not considered negotiation.

“Permit” means a new, amended, or renewal permit issued by the board.

“Person” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“Pipeline” means any pipe, pipes, or pipelines used for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“Pipeline company” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“Underground storage” means storage of natural gas in a subsurface stratum or formation of the earth.

10.1(4) Railroad crossings. Where these rules call for the consent or other showing of right from a railroad for a railroad crossing, an affidavit filed by a petitioner which states that proper application for approval of railroad crossing has been made, that a one-time crossing fee has been paid as provided for in rule 199—42.3(476), and that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad will be accepted as a showing of consent for the crossing.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.2(479) Informational meetings. Informational meetings shall be held for any proposed pipeline project five miles or more in length, including both the current project and future anticipated extensions, and which is to be operated at a pressure in excess of 150 pounds per square inch. A separate informational meeting shall be held in each county in which real property or property rights would be affected.

10.2(1) Time frame for holding meeting. Informational meetings shall be held not less than 30 days nor more than two years prior to the filing of the petition for pipeline permit.

10.2(2) Facilities. A pipeline company shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act Standards for Accessible Design, including both the Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR Part 1191, Appendices B and D (as amended through April 1, 2020), where such a building or facility is reasonably available.

10.2(3) Location. The informational meeting location shall be reasonably accessible to all persons who may be affected by the granting of a permit or who have an interest in the proposed pipeline.

10.2(4) Board approval. A pipeline company proposing to schedule an informational meeting shall file a request to schedule the informational meeting and shall include a proposed time and date for the informational meeting, an alternate time and date, and a description of the proposed project and route. The pipeline company shall be notified within ten days of the filing of the request whether the request is approved or

alternate times and dates are required. Once a date and time for the informational meeting have been approved, the pipeline company shall file the location of the informational meeting and a copy of the pipeline company's presentation with the board.

10.2(5) Notices. Announcement by mailed and published notice of each informational meeting shall be given to persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements.

a. The notice shall include the following:

- (1) The name of the pipeline company;
- (2) The pipeline company's principal place of business;
- (3) The general description and purpose of the proposed project;
- (4) The general nature of the right-of-way desired;
- (5) The possibility that the right-of-way may be acquired by condemnation if approved by the board;
- (6) A map showing the route of the proposed project;
- (7) A description of the process used by the board in making a decision on whether to approve a permit, including the right to take property by eminent domain;
- (8) That the landowner and any other affected person have a right to be present at the meeting and to file objections with the board;
- (9) Designation of the time, date and place of the meeting;
- (10) A copy of the statement of damage claims as required by paragraph 10.3(3)"b"; and

(11) The following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)725-7300 in advance of the scheduled date to request accommodations.

b. The pipeline company shall cause a written copy of the meeting notice to be served, by certified United States mail with return receipt requested, on all persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and persons in possession of or residing on the property whose addresses are known. The certified meeting notice shall be deposited in the United States mail not less than 30 days prior to the date of the meeting.

c. The pipeline company shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in each county where the pipeline is proposed to be located at least one week and not more than three weeks prior to the date of the meeting. Publication shall be considered as notice to persons listed on the tax assessment rolls as responsible for paying the real estate taxes imposed on the property whose addresses are not known, provided a good-faith effort to obtain the addresses can be demonstrated by the pipeline company. The maps used in the published notice shall clearly delineate the pipeline route.

d. The pipeline company shall file an affidavit that describes the good-faith effort the pipeline company undertook to locate the addresses of all affected persons. The affidavit shall be signed by an attorney representing the pipeline company.

10.2(6) Personnel. The pipeline company shall provide qualified personnel to present the following information at the informational meeting:

- a. Service requirements and planning which have resulted in the proposed project.
- b. When the pipeline will be constructed.
- c. In general terms, the elements involved in pipeline construction.
- d. In general terms, the rights which the pipeline company will seek to acquire through easements.
- e. Procedures to be followed in contacting the affected persons for specific negotiations in acquiring voluntary easements.
- f. Methods and factors used in arriving at an offered price for voluntary easements, including the range of cash amount for each component.
- g. Manner in which voluntary easement payments are made, including discussion of conditional easements, signing fees and time of payment.
- h. Other factors or damages not included in the easement for which compensation is made, including features of interest to affected persons but not limited to computation of amounts and manner of payment.

10.2(7) Notice to county board of supervisors. The pipeline company shall send notice of the request for an informational meeting to the county board of supervisors in each county where the pipeline is proposed to be located. The pipeline company shall request from the board of supervisors the name of the county inspector, a professional engineer who shall conduct the on-site inspection required in Iowa Code section 479.29(2). The pipeline company shall provide the name and contact information of the county inspector to the landowners and other affected persons at the meeting, if known. [Editorial change: IAC Supplement 12/29/10; **ARC 4957C**, IAB 2/26/20, effective 4/1/20]

199—10.3(479) Petition for permit.

10.3(1) A petition for a permit shall be filed with the board upon the form prescribed and shall include all required exhibits. The petition shall be considered filed with the board on the date accepted by the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official or attorney with authority to represent the pipeline company. Required exhibits shall be in the following form:

- a. *Exhibit A.* A legal description showing at a minimum:
 - (1) The beginning and ending points of the proposed pipeline.
 - (2) The general direction of the proposed route through each quarter section of land to be crossed, including township and range.
 - (3) Whether the proposed pipeline will be located on private or public property, public highway or railroad right-of-way.
 - (4) Other pertinent information.
 - (5) When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name.
- b. *Exhibit B.* Maps showing the proposed routing of the pipeline. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile, and shall be legible when printed on paper no larger than 11 × 17 inches. Maps based on satellite imagery are preferred. A map of the entire route, if the route is located in more than one county or there is more than one map for a county, shall be filed in this exhibit on paper no larger than 11 × 17 inches without regard to scale. The following minimum information shall be provided on the maps:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side it is on. Multiple pipelines on the same right-of-way shall be indicated, and the distance between paralleling pipelines shall be shown.

(2) The name of the county, county lines, section lines, section numbers, township numbers, and range numbers.

(3) The location and identity of adjacent or crossed public roads, railroads, named streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities, and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

(6) Any buildings or places of public assembly within the potential impact radius of the transmission pipeline as defined in 49 CFR 192.903.

c. *Exhibit C.* A showing of engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline, its approximate length, diameter and the name and location of each railroad and primary highway and the number of secondary highways to be crossed, if any, and such other information as may be deemed pertinent on forms prescribed by the board, which are located on the board's website. In addition, the maximum and normal operating pressure of the proposed pipeline shall be provided.

d. *Exhibit D.* Satisfactory proof of solvency and financial ability to pay damages in the sum of \$250,000 or more; or surety bond satisfactory to the board in the penal sum of \$250,000 with surety approved by the board, conditioned that the pipeline company will pay any and all damages legally recovered against it growing out of the construction and operation of its pipeline or gas storage facilities in the state of Iowa; security satisfactory to the board as a guarantee for the payment of damages in the sum of \$250,000; or satisfactory proofs that the pipeline company has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. The board may require additional surety or insurance policies to ensure the payment of damages growing out of the construction and operation of a transmission pipeline that will be constructed in more than one county.

e. *Exhibit E.*

(1) Consent or documentation of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when such consent is obtained prior to filing of the petition, shall be filed with the petition.

(2) If any consent is not obtained at the time the petition is filed, the pipeline company shall file a statement that it will obtain all necessary consents or file other documentation of the right to commence construction prior to commencement of construction of the pipeline. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

(3) Whether there are permits that will be required from other state agencies for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

f. Exhibit F. This exhibit shall contain the following:

(1) A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.

(2) A general statement covering each of the following topics:

1. The nature of the lands, waters, and public or private facilities to be crossed;
2. The possible use of alternative routes;
3. The relationship of the proposed pipeline to present and future land use and zoning ordinances; and
4. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

(3) For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.

g. Exhibit G. If informational meetings were required, an affidavit that such meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter, the corridor map, and the published notice(s) of the informational meeting shall be attached to the affidavit.

h. Exhibit H. This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. However, this exhibit must be in final form before a hearing is scheduled. It shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought and for each property:

(1) The legal description of the property.

(2) The legal description of the desired easement.

(3) A specific description of the easement rights being sought.

(4) The names and addresses of all affected persons based upon a title search conducted for the property over which eminent domain is requested.

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the pipeline to the rights being sought.

(6) An overview map showing the location of the property over which eminent domain is requested filed with the property identified as required in 199—paragraph 9.2(1)“e.”

i. Exhibit I. If pipeline construction on agricultural land as defined in 199—subrule 9.1(3) is proposed, a land restoration plan shall be prepared and filed as provided in rule 199—9.2(479,479B). The name and contact information of each county inspector designated by county boards of supervisors pursuant to Iowa Code section 479.29(2) shall be included in the land restoration plan, if known.

j. Underground storage. If permission is sought to construct, maintain and operate facilities for underground storage of gas, the petition shall include the following information, in addition to that stated above:

(1) A description of the public or private highways, grounds and waters, streams and private lands of any kind under which the storage is proposed, together with a map.

(2) Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the facilities.

k Exhibit K. The pipeline company shall file additional information as follows:

(1) An affidavit affirming that the company undertook a review of land records to determine all affected persons for all parcels over which the pipeline is proposed to be located before easements were signed or eminent domain requested.

(2) Whether any private easements will be required for the proposed pipeline and, if a private easement is anticipated to be required, when the easement negotiations will be completed and whether all affected persons associated with the property have been notified.

(3) Whether there are any agreements or additional facilities that need to be constructed to receive natural gas.

(4) Projected date when construction of the pipeline will begin.

(5) Whether the pipeline will have pressure-relieving or pressure-limiting devices that meet the requirements of 49 CFR 192.199 and 192.201.

l Other exhibits. The board may require filing of additional exhibits if further information on a particular project is deemed necessary.

10.3(2) Construction on an existing easement.

a Petitions proposing new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall include a statement indicating whether any unresolved damage claims remain from the previous pipeline construction, and if so shall provide the name of each landowner or tenant, a legal description of the property involved, and the status of proceedings to settle the claim.

b A petition for permit proposing new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall not be acted upon by the board if a damage claim from the installation of the previous pipeline has not been resolved by negotiation, arbitration, or court action. The board may take action on the petition if the damage claim is under litigation or arbitration.

10.3(3) Statement of damage claims.

a A petition for permit proposing new pipeline construction shall not be acted upon by the board if the pipeline company does not file with the board a written statement in compliance with Iowa Code chapter 479 as to how damages resulting from the construction of the pipeline shall be determined and paid.

b The statement shall contain the following information: the type of damages which will be compensated for, how the amount of damages will be determined, the procedures by which disputes may be resolved, the manner of payment, and the procedures that the affected person is required to follow to obtain a determination of damages by a county compensation commission.

c The statement shall be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

d A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 479.5. Where no informational meeting is required, a copy shall be provided to each affected person prior to entering into negotiations for payment of damages.

e. Nothing in this rule shall prevent a person from negotiating with the pipeline company for terms which are different, more specific, or in addition to the statement filed with the board.

10.3(4) Negotiation of easements. The pipeline company is not prohibited from responding to inquiries concerning existing or future easements or from requesting and collecting tenant and affected person information, provided that the pipeline company is not “negotiating” as defined in subrule 10.1(3).

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.4(479) Notice of hearing.

10.4(1) When a petition for permit is filed with the board, the petition shall be reviewed by board staff for compliance with applicable laws and regulations. Once board staff has completed the review and filed a report regarding the proposed pipeline and petition, the petition shall be set for hearing. This subrule does not apply to renewal petitions filed pursuant to rule 199—10.8(479) that do not require a hearing.

10.4(2) The pipeline company shall be furnished copies of the official notice of hearing, which the pipeline company shall cause to be published once each week for two consecutive weeks in a newspaper of general circulation in each county in or through which construction is proposed. The second publication shall be not less than 10 nor more than 30 days prior to the date of the hearing. Proof of such publication shall be filed prior to the hearing.

10.4(3) The published notice shall include a map showing either the pipeline route or the area affected by underground gas storage, or a telephone number and an address through which interested persons may obtain a copy of a map from the pipeline company at no charge. If a map other than that filed as Exhibit B will be published or provided, a copy shall be filed with the petition.

10.4(4) If a petition for permit seeks the right of eminent domain, the pipeline company shall, in addition to the published notice of hearing, serve a copy of the notice of hearing on the landowners and any affected person with interest in the property over which eminent domain is sought. A copy of the Exhibit H filed with the board for the affected property shall accompany the notice. Service shall be by certified United States mail, return receipt requested, addressed to the person’s last known address, and this notice shall be mailed no later than the first day of publication of the official notice of hearing on the petition. Not less than five days prior to the date of the hearing, the petitioner shall file with the board a certificate of service showing all persons and addresses to which notice was sent by certified mail and the date of the mailing, and an affidavit that all affected persons as defined in subrule 10.1(3) were served.

10.4(5) If a petition does not seek the right of eminent domain but all required interests in private property have not yet been obtained at the time the petition is filed, a copy of the notice of hearing shall be served upon any affected person as defined in subrule 10.1(3). Service shall be by ordinary mail, addressed to the last known address, mailed no later than the first day of publication of the official notice. A copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all persons to which the notice was mailed, the date of mailing, and an affidavit that all affected persons were served, shall be filed with the board not less than five days prior to the hearing.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.5(479) Objections. Any person whose rights or interests may be affected by a proposed pipeline or underground storage facility may file a written objection with the board. Written objections shall be filed with the board not less than five days prior to the date of hearing. The board may, for good cause shown, permit filing of objections less than five days prior to hearing, but in such event the pipeline company shall be granted a reasonable time to respond to a late-filed objection.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.6(479) Hearing. A petition for a pipeline permit or amendment to a pipeline permit shall be scheduled for hearing not less than 10 nor more than 30 days from the date of last publication of the notice of hearing.

10.6(1) Representation of a pipeline company at a pipeline permit hearing shall comply with the requirements of 199—subrule 7.4(8).

10.6(2) The board or presiding officer may schedule a prehearing conference to consider a procedural schedule for the petition and a hearing date.

10.6(3) One or more petitions may be consolidated for hearing.

10.6(4) Hearings shall be scheduled and held in the office of the board or at any other place within the state of Iowa as the board may designate pursuant to Iowa Code section 479.8. Requests for conducting a hearing or taking testimony by telephone or electronic means may be approved by the board or presiding officer.

10.6(5) The hearing requirements in this rule also apply to petitions for underground storage permits or amendments to underground storage permits.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.7(479) Pipeline permit.

10.7(1) A pipeline permit shall be issued once an order granting the permit is final and all the compliance requirements have been met. A pipeline company may request board approval to delay obtaining consent to cross railroad right-of-way until after the pipeline permit is issued.

10.7(2) The issuance of the permit authorizes construction on the route or location as approved by the board, subject to deviation within the permanent route easement right-of-way. If a deviation outside of the permanent route easement right-of-way becomes necessary, construction of the pipeline in that location shall be suspended and the pipeline company shall follow the procedures for filing of a petition for amendment of a permit, except that the pipeline company need only file Exhibits A, B, E, and F reflecting the proposed deviation. In case of any deviation from the approved permanent route easement, the pipeline company shall secure the necessary easements before construction may commence on the altered route. The right of eminent domain shall not be used to acquire any such easement except as specifically approved by the board, and a hearing will not be required unless the board determines a hearing is necessary to complete review of the petition for amendment.

10.7(3) If the construction of facilities authorized by a permit is not commenced within two years of the date the permit is granted, or within two years after final disposition of judicial review of a permit order or of condemnation proceedings, the permit shall be

forfeited unless the board grants an extension of the permit filed prior to the expiration of the two-year period.

10.7(4) Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline, in compliance with 199—Chapter 9 and revised Exhibits A, B, and C, shall be filed with the board.

10.7(5) The board shall set the term of the permit. The term of the permit may be less than, but shall not exceed, 25 years from the date of issuance.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.8(479) Renewal permits.

10.8(1) A petition for renewal of an original or previously renewed pipeline permit may be filed at any time subsequent to issuance of the permit and shall be filed at least one year prior to expiration of the permit. This requirement is not applicable to renewal of permits that expire within one year of April 1, 2020. The petition shall be made on the form prescribed by the board. Instructions for the petition are included as a part of the form, and the form is available on the board's website. The petition shall include the name of the pipeline company requesting renewal of the permit, the pipeline company's principal office and place of business, a description of any amendment or reportable change since the permit or previous renewal permit was issued, and the same exhibits as required for a new permit, as applicable. The petition shall be considered filed with the board on the date accepted into the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company.

10.8(2) The procedure for petition for permit shall be followed with respect to publication of notice, objections, and assessment of costs.

10.8(3) If there are unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the board shall set the matter for hearing. If a hearing is not required, and the petition satisfies the requirements of this rule, a renewal permit will be issued upon the filing of the proof of publication required by rule 199—10.4(479).

10.8(4) The board shall set the term of a renewal permit. The term may be less than, and shall not exceed, 25 years from date of issue. The same procedure shall be followed for subsequent renewals.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.9(479) Amendment of permits.

10.9(1) An amendment of a pipeline permit by the board is required in any of the following circumstances:

a. Construction of an additional pipeline paralleling all or part of an existing pipeline of the pipeline company.

b. Extension of an existing pipeline of the pipeline company outside of the permit easement.

c. Relocation or replacement of an existing pipeline of the pipeline company outside of the permit easement approved by the board. If the relocation or replacement is for five miles or more of pipe to be operated at over 150 psig, an informational meeting as provided for by rule 199—10.2(479) shall be held for these relocations and replacements.

- d. Contiguous extension of an underground storage area of the pipeline company.
- e. Modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the pipeline permit or previous renewal of the permit.

10.9(2) Petition for amendment.

a. The petition for amendment of an original or renewed pipeline permit shall include the docket number and issue date of the permit for which amendment is sought and shall clearly state the purpose of the petition. If the petition is for construction of additional pipeline facilities or expansion of an underground storage area, the same exhibits as required for a petition for permit shall be attached.

b. The applicable procedures for a petition for permit, including hearing, shall be followed. Upon appropriate determination by the board, an amendment to the permit shall be issued. Such amendment shall be subject to the same conditions with respect to commencement of construction within two years and the filing of final routing maps as required for pipeline permits.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.10(479) Fees and expenses.

10.10(1) Permit expenses. The pipeline company shall pay the actual unrecovered cost incurred by the board attributable to the informational meeting, processing, investigation, hearing, and inspection related to a petition requesting a pipeline permit or any other activity of the board related to a pipeline permit.

10.10(2) Construction inspection. The pipeline company shall reimburse the board for the actual unrecovered expenses incurred due to inspection of pipeline construction or testing activities following from the granting of a pipeline permit.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.11(479) Inspections. The board shall from time to time examine the construction, maintenance, and condition of pipelines, underground storage facilities, and equipment used in connection with pipelines and facilities in the state of Iowa to determine whether they comply with the appropriate standards of pipeline safety. One or more members of the board, or one or more duly appointed representatives of the board, may enter upon the premises of any pipeline company within the state of Iowa for the purpose of making the inspections.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.12(479) Standards for construction, operation and maintenance.

10.12(1) All pipelines, underground storage facilities, and equipment shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through April 1, 2020.

b. 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through April 1, 2020.

c. 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through April 1, 2020.

d. ASME B31.8 - 2016, “Gas Transmission and Distribution Piping Systems.”

e. 199—Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction.”

f. At railroad crossings, 199—42.7(476), “Engineering standards for pipelines.”

Conflicts between the standards established in paragraphs 10.12(1)“a” through “f” or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

10.12(2) If review of Exhibit C, or inspection of facilities which are the subject of a permit petition, finds noncompliance with the standards adopted in this rule, the pipeline company shall provide satisfactory evidence showing the noncompliance has been corrected prior to the board taking final action on the petition or will be corrected as a result of the board taking final action on the petition.

10.12(3) Pipelines in tilled agricultural land shall be installed with a minimum cover of 48 inches.

[**ARC 7962B**, IAB 7/15/09, effective 8/19/09; **ARC 9501B**, IAB 5/18/11, effective 6/22/11; **ARC 1359C**, IAB 3/5/14, effective 4/9/14; **ARC 2711C**, IAB 9/14/16, effective 10/19/16; **ARC 4380C**, IAB 3/27/19, effective 5/1/19; **ARC 4957C**, IAB 2/26/20, effective 4/1/20]

199—10.13(479) Crossings of highways, railroads, and rivers.

10.13(1) Iowa Code chapter 479 gives the board primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction of crossings of highway or railroad right-of-way, or rivers or other bodies of water.

10.13(2) Approval of other authorities need not be obtained prior to petitioning the board for a pipeline permit. It is recommended that the appropriate other authorities be contacted to determine what restrictions or conditions may be placed on the crossing by those authorities and to obtain information on any proposed reconstruction or relocation of existing facilities which may impact the routing of the pipeline. Approvals and any restrictions, conditions, or relocations of existing facilities are required to be filed with the board prior to the granting of the permit. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

10.13(3) Pipeline routes which include crossings of highway or railroad right-of-way longitudinally on such right-of-way shall not be constructed unless a showing of consent by the appropriate authority has been provided by the pipeline company as required in paragraph 10.3(1)“e.”

[**ARC 4957C**, IAB 2/26/20, effective 4/1/20]

199—10.14(479) Transmission line factors. Factors considered by the board in determining whether a pipeline is a transmission line and is therefore required to have a permit are set out in this rule. These factors are part of the board’s consideration,

especially when a request has been made to reclassify a pipeline from transmission to distribution. These factors are to provide guidance for determining whether a pipeline needs a permit under this chapter, but there may be other factors not included in this rule:

1. The definitions of a transmission line in ASME B31.8 and 49 CFR 192.3.
2. Pipeline Hazardous Material Safety Administration interpretations.
3. The location of a distribution center.
4. Interconnection with an interstate pipeline.
5. Location of distribution regulator stations downstream of a proposed distribution center.
6. Whether a proposed distribution center has more than one source of supply and the type of pipeline that provides the supply.
7. Transfer of ownership of gas.
8. Reduction in pressure of pipeline at a meter.
9. No resale of gas downstream of a distribution center.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.15(479) Reports to federal agencies.

10.15(1) Upon submission of any incident, annual, or other report to the U.S. Department of Transportation pursuant to 49 CFR Part 191 or Part 192, a pipeline company shall file a copy of the report with the board. The board shall also be advised of any telephonic incident report made by the pipeline company.

10.15(2) In addition to incident reports required by 49 CFR Part 191, the board shall be notified of any incident or accident where the economic damage exceeds \$15,000 or which results in loss of service to 50 or more customers. The pipeline company shall notify the board, as soon as possible, of any incident by emailing the duty officer at dutyofficer@iub.iowa.gov or, if email is not available, by calling the board duty officer at (515)745-2332. The cost of gas lost due to the incident shall not be considered in calculating the economic damage of the incident.

10.15(3) Utilities operating in other states shall provide to the board data for Iowa only.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 1623C, IAB 9/17/14, effective 10/22/14; ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.16(479) Reportable changes to pipelines under permit.

10.16(1) A pipeline company shall file prior notice with the board of any of the following actions affecting a pipeline under permit:

- a. Abandonment or removal from service. The pipeline company shall also notify the landowners prior to the abandonment or removal of the pipeline from service.
- b. Pressure test or increase in maximum allowable or normal operating pressure.
- c. Replacement of a pipeline or significant portion thereof, not including short repair sections of pipe at least as strong as the original pipe.

10.16(2) The notice shall include the docket and permit numbers of the pipeline, the location involved, a description of the proposed activity, anticipated dates of commencement and completion, revised maps and technical specifications, where

appropriate, and the name and telephone number of a person to contact for additional information.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.17(479) Sale or transfer of permit.

10.17(1) No permit shall be sold or transferred without written approval of the board. A petition for approval of the sale or transfer shall be jointly filed by the buyer, or transferee, and the seller, or transferor, shall include assurances that the buyer, or transferee, is authorized to transact business in the state of Iowa; is willing and able to construct, operate, and maintain the pipeline in accordance with these rules; and if the sale, or transfer, is prior to completion of construction of the pipeline shall show that the buyer, or transferee, has the financial ability to pay up to \$250,000 in damages associated with construction or operation of the pipeline, or any other amount the board has determined is necessary when granting the permit.

10.17(2) For purposes of this rule, reassignment of a pipeline permit as part of a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer and requires prior board approval.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 1623C, IAB 9/17/14, effective 10/22/14; ARC 4957C, IAB 2/26/20, effective 4/1/20]

199—10.18(479) Termination of petition for pipeline permit proceedings. If a pipeline company fails to publish the official notice within 90 days after the official notice is provided by the board, the board may dismiss the petition.

[ARC 4957C, IAB 2/26/20, effective 4/1/20]

These rules are intended to implement Iowa Code sections 476.2, 479.5, 479.17, 479.23, 479.26, 479.42, 479.43 and 546.7.

[Filed 7/19/60; amended 8/23/62, 11/14/66]

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APPENDIX IV

199 Iowa Administrative Code Chapter 13

CHAPTER 13
HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

199—13.1(479B) General information.

13.1(1) Purpose and authority. The purpose of this chapter is to implement the requirements of Iowa Code chapter 479B to establish procedures and filing requirements for a permit to construct, maintain, and operate an interstate hazardous liquid pipeline, for an amendment to an existing permit, and for renewal of an existing permit. This chapter also implements the requirements of Iowa Code chapter 479B for permits for underground storage of hazardous liquids. The rules in this chapter relating to hazardous liquid pipelines and underground storage of hazardous liquids are adopted by the Iowa utilities board pursuant to Iowa Code chapter 479B.

13.1(2) When a permit is required. A hazardous liquid pipeline permit shall be required for any hazardous liquid pipeline to be constructed in Iowa, regardless of length or operating pressure of the pipeline.

13.1(3) Definitions. Words and terms not otherwise defined in this chapter shall be understood to have their usual meaning. For the administration and interpretation of this chapter, the following words and terms shall have the following meanings:

“Affected person” means any person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

“Amendment of permit” means changes to the pipeline permit or pipeline that require the filing of a petition to amend an existing pipeline permit as described in rule 199—13.9(479B).

“Approximate right angle” means within 5 degrees of a 90-degree angle.

“Board” means the utilities board within the utilities division of the department of commerce.

“CFR” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of October 13, 2021, unless a separate effective date is identified in a specific rule.

“County inspector” means a professional engineer licensed under Iowa Code chapter 542B, familiar with agricultural and environmental inspection requirements, who has been employed by a county board of supervisors to do an on-site inspection of a proposed pipeline for compliance with 199—Chapter 9 and Iowa Code chapter 479B.

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

“Multiple line crossing” means a point at which a proposed pipeline will either cross over or under an existing pipeline.

“Negotiating” means contact between a pipeline company and a person with authority to negotiate an easement or other interest in land that involves the location, damages, compensation, or other matter that is restricted by Iowa Code section 479B.4(6). Contact for purposes of obtaining addresses and other contact information from a landowner or tenant is not considered negotiation.

“Permit” means a new, amended, or renewal permit issued by the board.

“*Person*” means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Pipeline*” means any pipe or pipeline and necessary appurtenances used for the transportation or transmission of any hazardous liquid.

“*Pipeline company*” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

“*Underground storage*” means storage of hazardous liquid in a subsurface stratum or formation of the earth.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.2(479B) Informational meetings. Informational meetings shall be held for any proposed pipeline project five miles or more in length, including both the current project and future anticipated extensions, and which is to be operated at a pressure in excess of 150 pounds per square inch. A separate informational meeting shall be held in each county in which real property or property rights would be affected.

13.2(1) *Time frame for holding meeting.* Informational meetings shall be held not less than 30 days nor more than two years prior to the filing of the petition for pipeline permit.

13.2(2) *Facilities.* A pipeline company shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act Standards for Accessible Design, including both Title II regulations at 28 CFR part 36, subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR part 1191, appendices B and D (as amended through October 13, 2021), where such a building or facility is reasonably available.

13.2(3) *Location.* The informational meeting location shall be reasonably accessible to all persons who may be affected by the granting of a permit or who have an interest in the proposed pipeline.

13.2(4) *Board approval.* A pipeline company proposing to schedule an informational meeting shall file a request to schedule the informational meeting and shall include a proposed date and time for the informational meeting, an alternate time and date, and a description of the proposed project and map of the route. The pipeline company shall be notified within ten days of the filing of the request whether the request is approved or alternate times and dates are required. Once a date and time for the informational meeting have been approved, the pipeline company shall file the location of the informational meeting and a copy of the pipeline company’s presentation with the board. The pipeline company shall file a copy of its presentation with the board 14 days prior to the date the informational meeting is to be held.

13.2(5) *Notices.* Announcement by mailed and published notice of each informational meeting shall be given to persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons

in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements.

a. The notice shall include the following:

- (1) The name of the pipeline company;
- (2) The pipeline company's principal place of business;
- (3) The general description and purpose of the proposed project;
- (4) The general nature of the right-of-way desired;
- (5) The possibility that the right-of-way may be acquired by condemnation if approved by the board;
- (6) A map showing the route of the proposed project;
- (7) A description of the process used by the board in making a decision on whether to approve a permit, including the right to take property by eminent domain;
- (8) A statement that an affected landowner and any other affected person with a legal interest in the property, or residing on the property, has the right to be present at the informational meeting and to file objections with the board;
- (9) The following statement: "Persons with disabilities requiring assistive services or devices to observe or participate should contact the board at (515) 725-7300 in advance of the scheduled date to request accommodations";
- (10) Designation of the date, time, and place of the meeting; and
- (11) A copy of the statement of damage claims as required by paragraph 13.3(3)"b."

b. The pipeline company shall cause a written copy of the meeting notice to be served, by certified United States mail with return receipt requested, on all persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and persons in possession of or residing on the property, whose addresses are known. The certified meeting notice shall be deposited in the United States mail not less than 30 days prior to the date of the meeting.

c. The pipeline company shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in each county where the pipeline is proposed to be located at least one week and not more than three weeks prior to the date of the meeting. Publication shall be considered as notice to affected persons listed on the tax assessment rolls as responsible for paying the real estate taxes imposed on the property and persons in possession of or residing on the property whose addresses are not known, provided a good faith effort to obtain the address can be demonstrated by the pipeline company. The map used in the published notice shall clearly delineate the pipeline route.

d. The pipeline company shall file prior to the informational meeting an affidavit that describes the good faith effort the pipeline company undertook to locate the addresses of all affected persons. The affidavit shall be signed by a corporate officer or an attorney representing the pipeline company.

13.2(6) Personnel. The pipeline company shall provide qualified personnel to present the following information at the informational meeting:

- a. Service requirements and planning which have resulted in the proposed project.
- b. When the pipeline will be constructed.
- c. In general terms, the elements involved in pipeline construction.

d. In general terms, the rights which the pipeline company will seek to acquire through easements.

e. Procedures to be followed in contacting the affected persons for specific negotiations in acquiring voluntary easements.

f. Methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount for each component.

g. Manner in which voluntary easement payments are made, including discussion of conditional easements, signing fees, and time of payment.

h. Other factors or damages not included in the easement for which compensation is made, including features of interest to affected persons but not limited to computation of amounts and manner of payment.

13.2(7) Notice to county board of supervisors. The pipeline company shall send notice of the request for an informational meeting to the county board of supervisors in each county where the proposed pipeline is to be located. The pipeline company shall request from the board of supervisors the name of the county inspector, a professional engineer who shall conduct the on-site inspection required by Iowa Code section 479B.20(2). The pipeline company shall provide the name and contact information of the county inspector to the board, landowners, and other affected persons at the meeting, if known.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.3(479B) Petition for permit.

13.3(1) A petition for a permit shall be filed with the board upon the form prescribed and shall include all required exhibits. The petition shall be considered filed with the board on the date accepted by the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company. Required exhibits shall be in the following form:

a. *Exhibit A.* A legal description showing, at minimum:

(1) The beginning and ending points of the proposed pipeline.

(2) The general direction of the proposed route through each quarter section of land to be crossed, including township and range.

(3) Whether the proposed pipeline will be located on private or public property, public highway, or railroad right-of-way.

(4) Other pertinent information.

(5) When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name.

b. *Exhibit B.* Maps showing the proposed routing of the pipeline. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile, and shall be legible when printed on paper no larger than 11 by 17 inches. Maps based on satellite imagery are preferred. An additional map of the entire route, if the route is located in more than one county or there is more than one map for a county, shall be filed in this exhibit on paper no larger than 11 by 17 inches without regard to scale. The pipeline company shall also provide the board with a KMZ file showing the proposed route of the pipeline. Data files necessary to provide mapping of the route through the use of a geographic information system application shall be provided upon

the request of the board. The following minimum information shall be provided on the maps:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side the pipeline is on. Multiple pipelines on the same right-of-way shall be indicated, and the distance between paralleling pipelines shall be shown.

(2) The name of the county, county lines, section lines, section numbers, township numbers, and range numbers.

(3) The location and identity of adjacent or crossed public roads, railroads, named streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

(6) Any buildings or places of public assembly within six tenths of a mile of the pipeline.

c. *Exhibit C.* A showing of engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline; its approximate length, diameter and the name and location of each railroad and primary highway and the number of secondary highways to be crossed, if any; and such other information as may be deemed pertinent on forms prescribed by the board, which are located on the board's website. In addition, the maximum and normal operating pressure and maximum capacity of the proposed pipeline shall be provided.

d. *Exhibit D.* Satisfactory proof of solvency and financial ability to pay damages in the sum of \$250,000 or more; or surety bond satisfactory to the board in the penal sum of \$250,000 with surety approved by the board, conditioned that the pipeline company will pay any and all damages legally recovered against the pipeline company growing out of the construction and operation of its pipeline or hazardous liquid storage facilities in the state of Iowa; security satisfactory to the board as a guarantee for the payment of damages in the sum of \$250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. The board may require additional surety or insurance policies to ensure the payment of damages resulting from the construction and operation of a hazardous liquid pipeline in a county.

e. *Exhibit E.*

(1) Consent or documentation of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when consent is obtained prior to filing of the petition, shall be filed with the petition.

(2) If any consent is not obtained at the time the petition is filed, the pipeline company shall file a statement that it will obtain all necessary consents or file other documentation of the right to commence construction prior to commencement of construction of the pipeline. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

(3) Whether there are permits that will be required from other state agencies for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained shall be included.

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained shall be included.

f. Exhibit F. This exhibit shall contain the following information:

(1) A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.

(2) A general statement covering each of the following topics:

1. The nature of the lands, waters, and public or private facilities to be crossed;
2. The possible use of alternative routes;
3. The relationship of the proposed pipeline to present and future land use and zoning ordinances; and
4. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

(3) For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.

g. Exhibit G. If informational meetings were required, an affidavit that the meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter, the corridor map, and the published notice(s) of the informational meeting shall be attached to the affidavit.

h. Exhibit H. This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. However, the exhibit must be in final form before a hearing is scheduled. The exhibit shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought and the following information for each property:

- (1) The legal description of the property.
- (2) The legal description of the desired easement.
- (3) A specific description of the easement rights being sought.
- (4) The names and addresses of all affected persons for the property over which eminent domain is requested based upon a good faith effort to identify all affected persons.
- (5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the pipeline to the rights being sought.
- (6) An overview map showing the location of the property over which eminent domain is requested, with the property identified as required by 199—Chapter 9.
- (7) An updated KMZ file required by paragraph 13.3(1)“b” to show the locations of the property over which the pipeline company is seeking eminent domain.

i. Exhibit I. If pipeline construction on agricultural land as defined in 199—subrule 9.1(3) is proposed, a land restoration plan shall be prepared and filed as provided for in

rule 199—9.2(479,479B). The name and contact information of each county inspector designated by county boards of supervisors pursuant to Iowa Code section 479B.20(2) shall be included in the land restoration plan, when known.

j. Underground storage. If permission is sought to construct, maintain, and operate facilities for underground storage of hazardous liquid, the petition shall include the following information, in addition to that stated above:

(1) A description of the public or private highways, grounds and waters, streams, and private lands of any kind under which the storage is proposed, together with a map.

(2) Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the facilities.

k. Exhibit K. The pipeline company shall file additional information as follows:

(1) An affidavit describing the good faith effort the company has undertaken to identify all affected persons in the property for all parcels over which the pipeline is proposed to be located before easements were signed or eminent domain requested. The affidavit shall be signed by an attorney representing the pipeline company.

(2) Whether any private easements will be required for the proposed pipeline and, if a private easement will be required, when the easement negotiations will be completed and whether all affected persons associated with the property have been notified.

(3) Whether there are permits that will be required from other state agencies for the construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

(5) Whether there are any agreements or additional facilities that need to be constructed to transport or receive hazardous liquids.

(6) Projected date when construction of the pipeline will begin.

l. Exhibit L. Other exhibits. The board may require filing of additional exhibits if further information on a particular project is deemed necessary.

13.3(2) Construction on an existing easement.

a. Petitions proposing new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall include a statement indicating whether any unresolved damage claims remain from the previous pipeline construction and, if so, shall include the name of each landowner or tenant, a legal description of the property involved, and the status of proceedings to settle the claim.

b. A petition for permit proposing a new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall not be acted upon by the board if a damage claim from the installation of the previous pipeline has not been resolved by negotiation, arbitration, or court action. The board may take action on the petition if the damage claim is under litigation or arbitration.

13.3(3) Statement of damage claims.

a. A petition for permit proposing new pipeline construction shall not be acted upon by the board if the pipeline company does not file with the board a written statement in compliance with Iowa Code chapter 479B as to how damages resulting from the construction of the pipeline shall be determined and paid.

b. The statement shall contain the following information: the type of damages which will be compensated, how the amount of damages will be determined, the procedures by which disputes may be resolved, the manner of payment, and the procedures that the affected person is required to follow to obtain a determination of damages by a county compensation commission.

c. The statement shall be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

d. A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 479B.4. If no informational meeting is required, a copy shall be provided to each affected person prior to entering into negotiations for payment of damages.

e. Nothing in this rule shall prevent a person from negotiating with the pipeline company for terms which are different, more specific, or in addition to the statement filed with the board.

13.3(4) Negotiation of easements. The pipeline company is not prohibited from responding to inquiries concerning existing easements or from requesting and collecting tenant and affected person information, provided that the pipeline company is not “negotiating” as defined at subrule 13.1(3).

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.4(479B) Notice of hearing.

13.4(1) When a petition for permit is filed with the board, the petition shall be reviewed by board staff for compliance with applicable laws. Once board staff has completed the review and filed a report regarding the proposed pipeline and petition, the petition shall be set for hearing. This subrule does not apply to renewal petitions filed pursuant to rule 199—13.8(479B) which do not require a hearing.

13.4(2) The pipeline company shall be furnished copies of the official notice of hearing, which the pipeline company shall cause to be published once each week for two consecutive weeks in a newspaper of general circulation in each county in or through which construction is proposed. The second publication shall be not less than 10 and no more than 30 days prior to the date of the hearing. Proof of publication shall be filed prior to the hearing.

13.4(3) The published notice shall include a map showing either the pipeline route or the area affected by underground hazardous liquid storage, or a telephone number and an address through which interested persons may obtain a copy of a map from the pipeline company at no charge. If a map other than that filed as Exhibit B will be published or provided, a copy shall be filed with the petition.

13.4(4) If a petition for permit seeks the right of eminent domain, the pipeline company shall, in addition to the published notice of hearing, serve a copy of the notice of hearing on the landowners and any affected person with an interest in the property over which eminent domain is sought. A copy of the Exhibit H filed with the board for the affected property shall accompany the notice. Service shall be by certified United States mail, return receipt requested, addressed to the person’s last-known address, and this notice shall be mailed no later than the first day of publication of the official notice of hearing on the petition. Not less than five days prior to the date of the hearing, the pipeline company shall file with the board a certificate of service showing all persons and

addresses to which notice was sent by certified mail, the date of the mailing, and an affidavit that all affected persons were served.

13.4(5) If a petition does not seek the right of eminent domain, but all required interests in private property have not yet been obtained at the time the petition is filed, a copy of the notice of hearing shall be served upon any affected person with interests in the property. Service shall be by ordinary mail, addressed to the last-known address, and mailed no later than the first day of publication of the official notice. A copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all persons to whom the notice was mailed, the date of mailing, and an affidavit that all affected persons were served, shall be filed with the board not less than five days prior to the hearing.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.5(479B) Objections. Any person whose rights or interests may be affected by a proposed pipeline or underground storage facility may file a written objection with the board. Written objections shall be filed with the board not less than five days prior to date of hearing. The board may, for good cause shown, permit filing of objections less than five days prior to hearing, but in such event the pipeline company shall be granted a reasonable time to respond to a late-filed objection.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.6(479B) Hearing. A petition for a pipeline permit, or amendment to a pipeline permit, shall be scheduled for hearing not less than 10 nor more than 30 days from the date of last publication of the notice of hearing.

13.6(1) Representation of a pipeline company at a pipeline permit hearing shall comply with the requirements of 199—subrule 7.4(8).

13.6(2) The board or presiding officer may schedule a prehearing conference to consider a procedural schedule for the petition and a hearing date.

13.6(3) One or more petitions may be consolidated for hearing.

13.6(4) Hearings shall be scheduled and held in the office of the board or at any other place within the state of Iowa as the board may designate pursuant to Iowa Code section 479B.6. Requests for conducting a hearing or taking testimony by telephone or electronic means may be approved by the board or presiding officer.

13.6(5) The hearing requirements in this rule also apply to petitions for hazardous liquid underground storage permits and amendments to hazardous liquid underground storage permits.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.7(479B) Pipeline permit.

13.7(1) A pipeline permit shall be issued once an order granting the permit is final and the compliance requirements have been met. A pipeline company may request board approval to delay obtaining consent to cross railroad right-of-way until after the pipeline permit is issued.

13.7(2) The issuance of the permit authorizes construction on the route or location as approved by the board, subject to deviation within the permanent route easement right-of-way. If a deviation outside the permanent route easement right-of-way becomes

necessary, construction of the line in that location shall be suspended and the pipeline company shall follow the procedures for filing a petition for amendment of a permit, except that the pipeline company need only file Exhibits A, B, E and F, reflecting the proposed deviation. In case of any deviation from the approved permanent route easement, the pipeline company shall secure the necessary easements before construction may commence on the altered route. The right of eminent domain shall not be used to acquire any such easement except as specifically approved by the board, and a hearing will not be required unless the board determines a hearing is necessary to complete a review of the petition for amendment.

13.7(3) If the construction of facilities authorized by a permit is not commenced within two years of the date the permit is granted, or within two years after final disposition of judicial review of a permit or of condemnation proceedings, the permit shall be forfeited, unless the board grants an extension of the permit filed prior to the expiration of the two-year period.

13.7(4) Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline, in compliance with 199—Chapter 9 and revised Exhibits A, B, and C, shall be filed with the board.

13.7(5) The board shall set the term of the permit. The term of the permit may be less than, but shall not exceed, 25 years from the date of issuance.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.8(479B) Renewal permits.

13.8(1) A petition for renewal of an original or previously renewed pipeline permit may be filed at any time subsequent to issuance of the permit and shall be filed at least one year prior to expiration of the permit. This requirement is not applicable to renewal of permits that expire within one year of October 13, 2021. The petition shall be made on the form prescribed by the board. Instructions for the petition are included as part of the form, and the form is available on the board's website. The petition shall include the name of the pipeline company requesting renewal of the permit, the pipeline company's principal office and place of business, a description of any amendment or reportable change since the permit or previous renewal permit was issued, and the same exhibits as required for a new permit. The petition shall be considered filed with the board on the date accepted into the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company.

13.8(2) The procedure for a petition for permit shall be followed with respect to publication of notice, objections, and assessment of costs.

13.8(3) If there are unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the board shall set the matter for hearing. If a hearing is not required, and the petition satisfies the requirements of this rule, a renewal permit will be issued upon the filing of the proof of publication as required by rule 199—13.4(479B).

13.8(4) The board shall set the term of a renewal permit. The term may be less than, but shall not exceed, 25 years from the date of issuance. The same procedure shall be followed in subsequent renewals.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.9(479B) Amendment of permits.

13.9(1) An amendment of a pipeline permit by the board is required in any of the following circumstances:

- a.* Construction of an additional pipeline paralleling all or part of an existing pipeline of the pipeline company.
- b.* Extension of an existing pipeline of the pipeline company outside of the permitted permanent route easement.
- c.* Relocation or replacement of an existing pipeline of the pipeline company which:

(1) Relocates the pipeline outside of the permitted permanent route easement approved by the board; or

(2) Involves relocation or replacement requiring new or additional interests in property. If the relocation or replacement is for five miles or more of pipe to be operated in excess of 150 pounds per square inch gauge, an informational meeting, as provided in rule 199—13.2(479B), shall be held.

d. Contiguous extension of an underground storage area of the pipeline company.

e. Modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the pipeline permit or previous renewal of the permit.

13.9(2) Petition for amendment.

a. The petition for amendment shall include the docket number and issue date of the permit for which amendment is sought and shall clearly state the purpose of the petition. If the petition is for construction of additional pipeline facilities, or expansion of an underground storage area, the same exhibits as required for a petition for permit shall be attached.

b. The applicable procedures for petition for permit, including hearing, shall be followed. Upon appropriate determination by the board, an amendment to a permit shall be issued. The amendment shall be subject to the same conditions with respect to commencement of construction within two years and the filing of final routing maps as required for pipeline permits.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.10(479B) Fees and expenses. The pipeline company shall pay the actual unrecovered cost incurred by the board attributable to the informational meeting, processing, investigation, hearing, inspection related to a petition requesting a pipeline permit, and any other activity of the board related to a pipeline permit, pursuant to 199—Chapter 17.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.11(479B) Land restoration. Pipelines shall be constructed in compliance with 199—Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction.”

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.12(479B) Crossings of highways, railroads, and rivers.

13.12(1) Iowa Code chapter 479B gives the board primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction for crossings of highway or railroad right-of-way, or rivers or other bodies of water.

13.12(2) Approval of other authorities need not be obtained prior to petitioning the board for a pipeline permit. The pipeline company shall file with the petition information that shows the pipeline company contacted the other necessary authorities in advance of filing the petition to determine what restrictions or conditions may be placed on the crossing by those authorities and to obtain information on any proposed reconstruction or relocation of existing facilities which may impact the routing of the pipeline. Approvals and any restrictions, conditions, or relocations of existing facilities are required to be filed with the board prior to the grant of the permit. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

13.12(3) Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on the right-of-way, shall not be constructed unless a showing of consent by the appropriate authority has been provided by the pipeline company as required in paragraph 13.3(1)“e.”

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.13(479B) Reportable changes to pipelines under permit.

13.13(1) A pipeline company shall file prior notice with the board of any of the following actions affecting a pipeline under permit:

- a. Abandonment or removal from service. The pipeline company shall also notify the landowners of the abandonment or removal of the pipeline from service.
- b. Pressure test or increase in maximum allowable operating pressure.
- c. Replacement of a pipeline or significant portion thereof, not including short repair sections of pipe at least as strong as the original pipe.

13.13(2) The notice shall include the docket and permit numbers of the pipeline, the location involved, a description of the proposed activity, anticipated dates of commencement and completion, revised maps and facility descriptions, where appropriate, and the name and telephone number of a person to contact for additional information.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.14(479B) Sale or transfer of permit.

13.14(1) No permit shall be sold or transferred without written approval of the board. A petition for approval of the sale or transfer shall be jointly filed by the buyer, or transferee, and the seller, or transferor, and shall include assurances that the buyer, or transferee, is authorized to transact business in the state of Iowa and is willing and able to construct, operate, and maintain the pipeline in accordance with these rules. If the sale, or transfer, is prior to completion of construction of the pipeline, the buyer, or transferee, shall demonstrate it has the financial ability to pay, for damages associated with construction or operation of the pipeline, up to \$250,000 or any other amount the board determined necessary when granting the permit.

13.14(2) For the purposes of this rule, reassignment of a pipeline permit as part of a name change or a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer and requires prior board approval.
[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.15(479B) Reports to federal agencies.

13.15(1) Upon submission of any incident, annual, or other report to the U.S. Department of Transportation pursuant to 49 CFR Part 195, a pipeline company shall file a copy of the report with the board. The board shall also be advised of any telephonic incident report made by the pipeline company. The pipeline company shall notify the board, as soon as possible, of any incident by emailing the duty officer at dutyofficer@iub.iowa.gov or, if email is not available, by calling the board duty officer at (515)745-2332.

13.15(2) Pipeline companies operating in other states shall provide to the board data for Iowa only.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

199—13.16(479B) Termination of petition for pipeline permit proceedings. If a pipeline company fails to correct an identified deficiency within six months after written notification by the board, or after such shorter period as the board may specify in the written notification, to cure an incomplete or deficient permit petition, or a pipeline company fails to publish the official notice within 90 days after the official notice is provided by the board, the board may dismiss the petition.

[ARC 5894C, IAB 9/8/21, effective 10/13/21]

These rules are intended to implement Iowa Code chapter 479B.

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[Filed ARC 5894C (Notice ARC 5403C, IAB 1/27/21), IAB 9/8/21, effective 10/13/21]

APPENDIX V

Iowa Code Chapter 479

CHAPTER 479
PIPELINES AND UNDERGROUND GAS STORAGE

Referred to in §6B.2A, 6B.42, 306A.3, 318.9, 428.24, 428.26, 428.28, 437A.3, 437A.5, 438.1,
438.2, 455B.471, 474.1, 474.9, 546.7

479.1 Purpose — applicability.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

[C35, §8338-f14; C39, §**8338.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.1; C77, 79, 81, §479.1]

88 Acts, ch 1074, §27; 95 Acts, ch 192, §5

479.2 Definitions.

As used in this chapter:

1. “*Board*” means the utilities board within the utilities division of the department of commerce.

2. “*Pipeline*” means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.

3. “*Pipeline company*” means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.

4. “*Underground storage*” means storage of gas in a subsurface stratum or formation of the earth.

[C31, §8338-d1; C35, §8338-f15; C39, §**8338.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.2; C77, 79, 81, §479.2]

88 Acts, ch 1074, §28; 95 Acts, ch 192, §6

Referred to in §352.6

479.3 Conditions attending operation.

No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter.

[C31, §8338-d2; C35, §8338-f16; C39, §**8338.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.3; C77, 79, 81, §479.3]

479.4 Dangerous construction — inspection.

1. The board is vested with power and authority and it shall be the board's duty to supervise all pipelines and underground storage and pipeline companies and, from time to time, to inspect and examine the construction, maintenance, and condition of the pipelines and underground storage facilities. Whenever the board shall determine that any pipeline and underground storage facilities or any apparatus, device, or equipment used in connection therewith is unsafe and dangerous, the board shall immediately in writing notify the pipeline company which is constructing or operating the pipeline and underground storage facilities, device, apparatus, or other equipment to repair or replace any defective or unsafe part or portion of the pipeline and underground storage facilities, device, apparatus, or equipment.

2. All faulty construction, as determined by the inspector, shall be repaired immediately by the contractor operating for the pipeline company and the cost of such repairs shall be paid by the contractor. If such repairs are not made by the contractor, the board shall proceed to collect under the provisions of section 479.26.

[C31, §8338-d29; C35, §8338-f17; C39, §**8338.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.4; C77, 79, 81, §479.4]

2018 Acts, ch 1041, §101; 2019 Acts, ch 24, §67

See also §479.29

479.5 Application for permit.

1. A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

2. A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

3. *a.* A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A. A formal record of the meeting shall not be required.

b. The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

4. *a.* The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, "*landowner*" means a person listed on the tax

assessment rolls as responsible for the payment of real estate taxes imposed on the property and “*pipeline*” means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

b. The notice shall set forth the name of the applicant; the applicant’s principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

5. A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[C31, §8338-d3; C35, §8338-f18; C39, §8338.26; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.5; C77, 79, 81, §479.5]

88 Acts, ch 1074, §29; 95 Acts, ch 192, §7; 2000 Acts, ch 1179, §24, 30; 2014 Acts, ch 1026, §109

Referred to in §6B.2A, 479.30

479.6 Petition.

Said petition shall state:

1. The name of the individual, firm, corporation, company, or association asking for said permit.

2. The applicant’s principal office and place of business.

3. A legal description of the route of said proposed line or lines, together with a map thereof.

4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.

5. The specifications of material and manner of construction.

6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.

7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

8. The possible use of alternative routes.

9. The relationship of the proposed project to the present and future land use and zoning ordinances.

10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

11. By affidavit, that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

[C31, §8338-d4; C35, §8338-f19; C39, §8338.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.6; C77, 79, 81, §479.6]

Referred to in §479.5, 479.23

479.7 Hearing — notice.

1. Upon the filing of the petition, the board shall fix a date for hearing on the petition and shall cause notice of hearing to be published in some newspaper of general circulation in each county through which the proposed line or lines or gas storage facilities will extend. The notice shall be published for two consecutive weeks.

2. Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A.

[C31, §8338-d5; C35, §8338-f20; C39, §8338.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.7; C77, 79, 81, §479.7]

2000 Acts, ch 1179, §25, 30; 2018 Acts, ch 1026, §148

479.8 Time and place.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication and where the proposed new pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, shall be held in the county seat of the county located at the midpoint of the proposed line or lines or the county in which the proposed gas storage facility would be located.

[C31, §8338-d6; C35, §8338-f21; C39, §8338.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.8; C77, 79, 81, §479.8; 81 Acts, ch 159, §10]

479.9 Objections.

Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit.

[C31, §8338-d7; C35, §8338-f22; C39, §**8338.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.9; C77, 79]

479.10 Filing.

All such objections shall be on file in the office of said board not less than five days before the date of hearing on said application but said board may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections.

[C31, §8338-d8; C35, §8338-f23; C39, §**8338.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.10; C77, 79, 81, §479.10]

479.11 Examination — testimony.

The said board may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said board shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C31, §8338-d9; C35, §8338-f24; C39, §**8338.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.11; C77, 79, 81, §479.11]

479.12 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

[C31, §8338-d10; C35, §8338-f25; C39, §**8338.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.12; C77, 79, 81, §479.12]

88 Acts, ch 1074, §30

Referred to in §479.18

479.13 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

[C31, §8338-d11, -d12; C35, §8338-f26; C39, §**8338.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.13; C77, 79, 81, §479.13]

88 Acts, ch 1074, §31

479.14 Inspection fee.

The board may, in accordance with section 476.10, charge a pipeline company with an annual inspection fee that is directly attributable to the costs of conducting annual inspections pursuant to this chapter.

[C31, §8338-d13; C35, §8338-f27; C39, §**8338.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.14; C77, 79, 81, §479.14]

88 Acts, ch 1074, §32; 2018 Acts, ch 1160, §25

479.15 Failure to pay.

It shall be the duty of the board to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit.

[C35, §8338-f28; C39, §**8338.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.15; C77, 79, 81, §479.15]

479.16 Receipt of funds.

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

[C31, §8338-d14; C35, §8338-f29, -f30; C39, §**8338.37**, **8338.38**; C46, 50, 54, 58, 62, 66, 71, §490.16, 490.17; C73, 75, §490.17; C77, 79, 81, §479.16]

87 Acts, ch 234, §432; 94 Acts, ch 1107, §83; 2009 Acts, ch 181, §54

Referred to in §476.10

479.17 Rules.

The said board shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter.

[C31, §8338-d15; C35, §8338-f31; C39, §**8338.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.18; C77, 79, 81, §479.17]

479.18 Permit.

The board shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the board under which said permit is issued. It shall be signed by the chairperson of the board and the official seal of the board shall be affixed thereto.

[C31, §8338-d16; C35, §8338-f32; C39, §**8338.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.19; C77, 79, 81, §479.18]

479.19 Limitation on grant.

No exclusive right shall ever be granted to any pipeline company to construct, maintain, and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years.

[C31, §8338-d17; C35, §8338-f33; C39, §**8338.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.20; C77, 79, 81, §479.19]

479.20 Sale of permit.

No permit shall be sold until the sale is approved by the board.

[C35, §8338-f34; C39, §8338.42; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.21; C77, 79, 81, §479.20]

479.21 Transfer of permit.

If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said board a notice in writing stating the date of such transfer and the name and address of said transferee.

[C31, §8338-d11; C35, §8338-f35; C39, §8338.43; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.22; C77, 79, 81, §479.21]

479.22 Records.

The board shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such permit has been made as provided in this chapter the said board shall also note upon its record the date of such transfer and the name and address of such transferee.

[C31, §8338-d20; C35, §8338-f36; C39, §8338.44; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.23; C77, 79, 81, §479.22]

479.23 Extension of permit.

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

[C31, §8338-d22; C35, §8338-f37; C39, §8338.45; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.24; C77, 79, 81, §479.23]

95 Acts, ch 192, §8

479.24 Eminent domain.

1. A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain* to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

2. A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to

be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

[C31, §8338-d23; C35, §8338-f38; C39, §**8338.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.25; C77, 79, 81, §479.24]

95 Acts, ch 192, §9; 2018 Acts, ch 1041, §127

*See *Mid-America Pipeline Company v. Iowa State Commerce Commission*, 253 Iowa 1143 (1962)

Eminent domain, chapters 6A and 6B

479.25 Damages.

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

[C31, §8338-d26; C35, §8338-f39; C39, §**8338.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.26; C77, 79, 81, §479.25]

95 Acts, ch 192, §10

479.26 Financial condition of permittee — bond.

Before any permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its pipeline and gas storage facilities in the state of Iowa. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

[C31, §8338-d27; C35, §8338-f40; C39, §**8338.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.27; C77, 79, 81, §479.26; 81 Acts, ch 159, §11]

Referred to in §479.4, 479.23

479.27 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

[C31, §8338-d28; C35, §8338-f41; C39, §**8338.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.28; C77, 79, 81, §479.27]
95 Acts, ch 192, §11

479.28 Orders — enforcement.

If said pipeline company fails to obey an order within a time prescribed by the said board the said board may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions.

[C31, §8338-d30; C35, §8338-f42; C39, §**8338.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.29; C77, 79, 81, §479.28]

Appeal in civil actions, chapter 625A

479.29 Land restoration.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
 - b. Temporary and permanent repair to drain tile.
 - c. Removal of rocks and debris from the right-of-way.
 - d. Restoration of areas of soil compaction.
 - e. Restoration of terraces, waterways, and other erosion control structures.
 - f. Revegetation of untilled land.
 - g. Future installation of drain tile or soil conservation structures.
 - h. Restoration of land slope and contour.
 - i. Restoration of areas used for field entrances and temporary roads.
 - j. Construction in wet conditions.
 - k. Designation of a pipeline company point of contact for landowner inquiries or claims.
2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A professional engineer familiar with the standards adopted under

this section and licensed under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the

landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, “*construction*” includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

[C73, 75, 77, 79, §479.4; C81, §479.29; 81 Acts, ch 159, §12, 13]

95 Acts, ch 192, §12; 99 Acts, ch 85, §1, 11; 2007 Acts, ch 126, §85; 2008 Acts, ch 1032, §64

Referred to in §331.303

479.30 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days’ written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

[C81, §479.30]

95 Acts, ch 192, §13

479.31 Civil penalty.

1. A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed one hundred thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed one million dollars for any related series of violations. Civil penalties collected pursuant to this section shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

2. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

[C71, 73, 75, §490.31; C77, 79, §479.29; C81, §479.31]

91 Acts, ch 112, §3; 95 Acts, ch 192, §14; 2013 Acts, ch 2, §1; 2017 Acts, ch 169, §45, 49; 2018 Acts, ch 1160, §26

Referred to in §479.29

479.32 Rehearing — judicial review.

Rehearing procedure for any person, company or corporation aggrieved by the action of the board in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, §490.32; C77, 79, §479.30; C81, §479.32]
2003 Acts, ch 44, §114

479.33 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. §60101 – 60125.

[C71, 73, 75, §490.33; C77, 79, §479.31; C81, §479.33]
88 Acts, ch 1074, §33; 95 Acts, ch 49, §13

479.34 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of a pipeline shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.
2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.
3. Not record any agreement until after the period for cancellation has expired.
4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

[C81, §479.34]

479.35 through 479.40 Reserved.

479.41 Arbitration agreements.

1. If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other

party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

2. For purposes of this section only, “*landowner*” means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

[81 Acts, ch 159, §2, 3]

95 Acts, ch 192, §15; 2018 Acts, ch 1041, §127

479.42 Subsequent pipelines.

1. A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

2. With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of final cleanup on the real property.

[81 Acts, ch 159, §2, 4]

95 Acts, ch 192, §16; 2018 Acts, ch 1041, §127

479.43 Damage agreement.

A pipeline company shall not install a pipeline until there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

[81 Acts, ch 159, §2, 5]

479.44 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross the property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

[81 Acts, ch 159, §2, 6]

479.45 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:
 - a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.
 - b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

[81 Acts, ch 159, §2, 7]

99 Acts, ch 85, §2, 11

479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. a. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

b. The application shall contain the following:

(1) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(2) A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

(3) The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. a. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

(1) That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "*damages*" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "*landowner*" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

[81 Acts, ch 159, §2, 8]

95 Acts, ch 192, §17; 2000 Acts, ch 1179, §26, 30; 2011 Acts, ch 25, §143; 2018 Acts, ch 1160, §27

Referred to in §479.42

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district

conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

[81 Acts, ch 159, §2, 9]

83 Acts, ch 128, §1, 2; 87 Acts, ch 23, §56; 92 Acts, ch 1103, §9; 95 Acts, ch 192, §18
Referred to in §479.48

479.48 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479.49, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §3, 11; 2000 Acts, ch 1139, §1
Manner of service,
R.C.P. 1.302 – 1.315

479.49 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §2

Referred to in §479.48

APPENDIX VI

Iowa Code Chapter 479B

CHAPTER 479B
HAZARDOUS LIQUID PIPELINES
AND STORAGE FACILITIES

Referred to in §6B.42, 306A.3, 474.1, 474.9, 479.1, 546.7

479B.1 Purpose — authority.

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

95 Acts, ch 192, §28

479B.2 Definitions.

As used in this chapter, unless the context appears otherwise:

1. *“Board”* means the utilities board within the utilities division of the department of commerce.
2. *“Hazardous liquid”* means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.
3. *“Pipeline”* means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.
4. *“Pipeline company”* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.
5. *“Underground storage”* means storage of hazardous liquid in a subsurface stratum or formation of the earth.
6. *“Utilities division”* means the utilities division of the department of commerce.

95 Acts, ch 192, §29

Referred to in §214A.1

479B.3 Conditions attending operation.

A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

95 Acts, ch 192, §30

479B.4 Application for permit — informational meeting — notice.

1. A pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state. Any pipeline company now owning or operating a pipeline or underground storage facility in this state shall be issued a permit by the board upon supplying the information

as provided for in section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

2. A pipeline company doing business in this state and proposing to store hazardous liquid underground within this state shall file with the board a verified petition asking for a permit to construct, maintain, and operate facilities for the underground storage of hazardous liquid which includes the construction, placement, maintenance, and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance, and operation of the underground storage facilities.

3. The pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board, or a person designated by the board, shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required. The meeting shall be held at a location reasonably accessible to all persons who may be affected by granting the permit.

4. The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, "*landowner*" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "*pipeline*" means a line transporting a hazardous liquid under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

5. a. The notice shall set forth the following:

- (1) The name of the applicant.
- (2) The applicant's principal place of business.
- (3) The general description and purpose of the proposed project.
- (4) The general nature of the right-of-way desired.
- (5) A map showing the route or location of the proposed project.
- (6) That the landowner has a right to be present at the meeting and to file objections with the board.
- (7) A designation of the time and place of the meeting.

b. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

6. A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.

95 Acts, ch 192, §31; 2018 Acts, ch 1160, §28; 2019 Acts, ch 24, §68

Referred to in §479B.15

479B.5 Petition.

A petition for a permit shall state all of the following:

1. The name of the individual, firm, corporation, company, or association applying for the permit.
2. The applicant's principal office and place of business.
3. A legal description of the route of the proposed pipeline and a map of the route.
4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.
5. If permission is sought to construct, maintain, and operate facilities for the underground storage of hazardous liquids the petition shall include the following additional information:
 - a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.
 - b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.
6. The possible use of alternative routes.
7. The relationship of the proposed project to the present and future land use and zoning ordinances.
8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.
9. An affidavit attesting to the fact that informational meetings were held in each county affected by the proposed project and the time and place of each meeting.

95 Acts, ch 192, §32

Referred to in §479B.4, 479B.14

479B.6 Hearing — notice.

1. After the petition is filed, the board shall fix a date for a hearing and shall publish notice for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline or hazardous liquid storage facilities will extend.
2. The hearing shall not be less than ten days nor more than thirty days from the date of the last publication of the notice. If the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline or the county in which the proposed hazardous liquid storage facility would be located.

95 Acts, ch 192, §33; 2018 Acts, ch 1041, §127

479B.7 Objections.

1. A person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.
2. All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.

95 Acts, ch 192, §34; 2019 Acts, ch 24, §104

479B.8 Examination — testimony.

The board may examine the proposed route of the pipeline and location of the underground storage facility. At the hearing the board shall consider the petition and any objections and may hear testimony to assist the board in making its determination regarding the application.

95 Acts, ch 192, §35

479B.9 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.

95 Acts, ch 192, §36

479B.10 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to inspections conducted by the board.

95 Acts, ch 192, §37

479B.11 Inspection fee.

1. If the board enters into agreements with the United States department of transportation pursuant to section 479B.23, a pipeline company shall pay an annual fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state. The inspection fee shall be paid to the board between January 1 and February 1 for the calendar year.

2. The board shall collect all fees. Failure to pay any fee within thirty days from the due date shall be grounds for revocation of the permit or assessment of civil penalties.

95 Acts, ch 192, §38; 2018 Acts, ch 1041, §127

479B.12 Use of funds.

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12.

95 Acts, ch 192, §39; 2009 Acts, ch 181, §56

479B.13 Financial condition of permittee — bond.

Before a permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory

proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

95 Acts, ch 192, §40

Referred to in §479B.4, 479B.14

479B.14 Permits — limitations — sale or transfer — records — extension.

1. The board shall prepare and issue permits. The permit shall show the name and address of the pipeline company to which it is issued and identify the decision and order of the board under which the permit is issued. The permit shall be signed by the chairperson of the board and the official seal of the board shall be affixed to it.

2. The board shall not grant an exclusive right to any pipeline company to construct, maintain, or operate its pipeline along, over, or across any public or private highway, grounds, waters, or streams. The board shall not grant a permit for longer than twenty-five years.

3. A permit shall not be sold until the sale is approved by the board.

4. If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

5. The board shall keep a record of all permits granted by it, showing when and to whom granted and the location and route of the pipeline or underground storage facility, and if the permit has been transferred, the date and the name and address of the transferee.

6. A pipeline company may petition the board for an extension of a permit granted under this section by filing a petition containing the information required by section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

95 Acts, ch 192, §41; 2019 Acts, ch 24, §104

479B.15 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land. The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

95 Acts, ch 192, §42

479B.16 Eminent domain.

1. A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

2. A pipeline company granted a permit for underground storage of hazardous liquid shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of hazardous liquid any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of hazardous liquid, and may appropriate other interests in property, as may be required adequately to examine, prepare, maintain, and operate the underground storage facilities.

3. This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

95 Acts, ch 192, §43; 2018 Acts, ch 1041, §127

479B.17 Damages.

A pipeline company operating a pipeline or an underground storage facility shall have reasonable access to the pipeline or underground storage facility for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon the pipeline or underground storage facility. A pipeline company shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the lands and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section does not prevent the execution of an agreement between the pipeline company and the owner of the land or crops with reference to the use of the land.

95 Acts, ch 192, §44, 62

479B.18 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving the pipeline company.

95 Acts, ch 192, §45

479B.19 Orders — enforcement.

If the pipeline company fails to obey an order within the period of time determined by the board, the board may commence an equitable action in the district court of the county where the pipeline, device, apparatus, equipment, or underground storage facility is located to compel compliance with its order. If, after trial, the court finds that the order is reasonable, equitable, and just, the court shall decree a mandatory injunction compelling obedience to and compliance with the order and may grant other relief as may be just and proper. Appeal from the decree may be taken in the same manner as in other actions.

95 Acts, ch 192, §46

479B.20 Land restoration standards.

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline or underground storage facility construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance

with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of the pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted under this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "*construction*" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

95 Acts, ch 192, §47; 99 Acts, ch 85, §7, 11

479B.21 Civil penalty.

1. A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

2. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §48; 2017 Acts, ch 169, §46, 49; 2018 Acts, ch 1160, §29

Referred to in §479B.12, 479B.20

479B.22 Rehearing — judicial review.

Rehearing procedure for any person aggrieved by actions of the board under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of chapter 17A.

95 Acts, ch 192, §49

479B.23 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by 49 U.S.C. §60101 et seq.

95 Acts, ch 192, §50

Referred to in §479B.11

479B.24 Cancellation.

A pipeline company seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline or underground storage facility shall do all of the following:

1. Allow the landowner or a person serving in a fiduciary capacity on the landowner's behalf to cancel an agreement granting an easement or other interest by restricted certified mail to the pipeline company's principal place of business if received by the pipeline company within seven days, excluding Saturday and Sunday, of the date of the agreement and inform the landowner or the fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or the fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record an agreement until after the period for cancellation has expired.
 4. Not include in the agreement a waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.
- 95 Acts, ch 192, §51

479B.25 Arbitration agreements.

1. If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline or underground storage facility, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition.

2. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

3. For purposes of this section only, "*landowner*" means the person who signed the easement or other written agreement, or the person's heirs, successors, and assigns.

95 Acts, ch 192, §52, 62; 2018 Acts, ch 1041, §127

479B.26 Subsequent pipeline or underground storage facility.

1. A pipeline company shall not construct a subsequent pipeline or underground storage facility upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration, or is the subject of a proceeding pursuant to section 479B.30.

2. With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit their claims in writing for damages caused by construction of the pipeline or underground storage facility within one year of final cleanup on the real property by the pipeline company.

95 Acts, ch 192, §53; 2018 Acts, ch 1041, §127

479B.27 Damage agreement.

A pipeline company shall not construct a pipeline or underground storage facility until a written statement is on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The pipeline company shall provide a copy of the statement to the landowner.

95 Acts, ch 192, §54

479B.28 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property or allowing underground storage of hazardous liquids, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

95 Acts, ch 192, §55

479B.29 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:
 - a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.
 - b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.
 - c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.
 - d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.
 - e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.
 - f. Erosion on lands attributable to pipeline construction.
 - g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.
2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing fourteen days prior to harvest in each year to assess crop deficiency.

95 Acts, ch 192, §56, 62; 99 Acts, ch 85, §8, 11

479B.30 Determination of construction damages.

1. The county board of supervisors shall determine when construction of a pipeline or underground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. a. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

(1) That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, “*damages*” means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and “*landowner*” includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §57, 62; 2000 Acts, ch 1179, §28, 30; 2011 Acts, ch 25, §143; 2018 Acts, ch 1160, §30

Referred to in §479B.26

479B.31 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline or underground storage facility shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

95 Acts, ch 192, §58, 62

Referred to in §479B.32

479B.32 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of the pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real

estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479B.33, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479B.31, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §9, 11; 2000 Acts, ch 1139, §5

Service of original notice,

R.C.P. 1.302 – 1.315

479B.33 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §6

Referred to in §479B.32

APPENDIX VII

Iowa Attorney General Opinion #81-8-4(L)

1981 WL 315381 (Aug. 6, 1981)

1981 Iowa Op. Atty. Gen. 189 (Iowa A.G.), 1981 WL 315381
Office of the Attorney General
State of Iowa
Opinion No. 81-8-4 (L)
August 6, 1981

*1 PIPELINES; COMMERCE COMMISSION; DRAINAGE DISTRICTS. Chapter 455, §§ 455.1, 455.199(1); Chapter 479, §§ 479.1, 479.29(1), The Code 1981. Federal law (Natural Gas Pipeline Safety Act of 1968 and Alaska Natural Gas Transportation Act of 1976) totally preempt state law with respect to regulation of interstate gas pipelines. Sections 455.199(1) and 479.29(1) are constitutionally valid, but subordinate to preemptive federal law. Section 479.29(1) prevails over § 455.199(1). County home rule amendment does not give county authority to enforce ordinance inconsistent with state law. (Ewald to Craft, State Senator, 8/6/81)

The Honorable Rolf V. Craft
State Senator
R.R. # 4

Decorah, Iowa 52101

Dear Senator Craft:

You have requested the Attorney General's opinion concerning the authority of counties to adopt standards for the laying of pipeline which are more stringent than those required by the Natural Gas Pipeline Safety Act. You also ask whether this federal law conflicts with certain state laws, and whether those state laws conflict with each other.

Your first question is as follows:

Is federal legislation (specifically the Natural Gas Pipeline Safety Act) pre-emptive over any additional or more stringent standards that may be adopted by the state or counties?

The Natural Gas Pipeline Safety Act of 1968 (Safety Act) reads, in pertinent part, as follows:

[T]he Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas and pipeline facilities Any state agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force . . . any such standards applicable to interstate transmission facilities. 49 U.S.C. § 1672(b) (1968).

The legislative history of the Safety Act makes it clear that Congress intended to avoid dual safety regulation of interstate transmission facilities:

The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case of interstate transmission lines.

On the other hand, in the case of local lines exempted from the economic regulatory authority of the Federal Power Commission under the Natural Gas Act, States may establish additional or more stringent standards, provided they are not inconsistent with the Federal minimum standards. The committee has provided for this different treatment because each State authority is uniquely equipped to know best the special aspects of local pipeline safety which are particularly applicable to that community.

*2 3 U.S. Cong.Admin.News, 1968 at page 3241.

The constitutional basis for federal preemption with respect to interstate pipelines is the commerce clause, U.S. Const., art. I, § 8, and the supremacy clause, U.S. Const., art. VI. The validity of the preemption doctrine and the federal law in question is not challenged.

In United Gas Pipeline Company v. Terrebonne Parish Police Jury, 319 F.Supp. 1138 (E.D.La. 1970), aff'd, 445 F.2d 301 (5th Cir. 1971), a parish ordinance regulating the construction, installation and operation of pipelines was challenged. The U.S. District Court held that, “[a]s applied to interstate transmission pipelines, the Safety Act must prevail over and preempt any state or state political sub-division law, ordinance or similar mandate.” 319 F.Supp. at 1139. The Court of Appeals affirmed, but implied that the parish could enact a valid ordinance requiring permits with reasonable conditions. 445 F.2d at 302.

In Tenneco, Inc. v. Public Service Commission of West Virginia, 352 F.Supp. 719 (S.D.W.Va. 1973), aff'd, 489 F.2d 334 (4th Cir. 1973), the court recognized Congress’ clear attempt in the Safety Act to develop a cooperative program with the states for gas pipeline safety administration. The court upheld a West Virginia statute which assessed fees against interstate lines to help defray the cost of administering the safety program. The statute was not unconstitutional because it did not conflict with the safety provisions of the Safety Act. 352 F.Supp. at 722; 489 F.2d at 335, 337.

More recently and closer to home, in Northern Border Pipeline Company v. Jackson County, Minnesota, 512 F.Supp. 1261 (D.Minn. 1981), the court held that the Safety Act preempts the entire field of gas pipeline safety. Id. at 1264. Its legislative history indicates that Congress unmistakably ordained that federal law preempt state law. Id. at 1265. Thus, a Minnesota county is without authority to regulate cover requirements for interstate pipelines which are part of the Alaska Natural Gas Transportation System established under the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. § 719 et seq. (1976). 512 F.Supp. at 1266.

Similarly, in Federal Energy Regulatory Commission v. Public Service Commission of North Dakota, 513 F.Supp. 653 (D.N.D. 1981), it was held that North Dakota statutes, insofar as they conflict with routing and construction provisions of ANGTA, must yield to overriding federal law. Id. at 656. The court found that the Act, as a whole, described “a pervasive scheme of federal regulation directed to every aspect of this unique pipeline, . . .” Id.

We agree with the holdings in these two 1981 cases. We conclude that interstate gas pipelines subject to the safety regulations of the Safety Act or ANGTA are exempt from state and local regulation. With respect to intrastate pipelines, states may adopt additional or more stringent standards only if they are not incompatible with federal minimum standards.

***3** We also call to your attention the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 2001 et seq. (1979). This Act establishes minimum federal safety standards for the transportation of hazardous liquids (excluding liquified natural gas) and pipeline facilities. Like the Safety Act, it differentiates between intrastate and interstate pipeline facilities: Any State agency may adopt additional or more stringent safety standards for intrastate pipeline facilities and the transportation of hazardous liquids associated with such facilities, if such standards are compatible with the Federal standards issued under this chapter. No State agency may adopt or continue in force any safety standards applicable to interstate pipeline facilities or the transportation of hazardous liquids associated with such facilities.

49 U.S.C. § 2002(d) (1979).

Your second question now reads:

Given that federal legislation is pre-emptive, are Sections 455.199(1) and 479.29(1), Code of Iowa 1981, in conflict with federal legislation?

The two statutes are set out, in pertinent part, below:

When any person proposes to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary.

§ 455.199(1), The Code 1981.

The [Commerce Commission] shall, pursuant to chapter 17A, adopt rules establishing standards for the protection of underground improvements during the construction of pipelines, to protect soil conservation and drainage structures from being permanently damaged by pipeline construction and for the restoration of agricultural lands after pipeline construction. * * * Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rule-making proceedings, petition under those provisions for additional rule making to establish standards to protect soil conservation practices, structures and drainage structures within that county. * * *

§ 479.29(1), The Code 1981.

Section 455.199(1) authorizes drainage districts to attach necessary conditions before granting an easement for a pipeline to cross the district's right of way. Section 479.29(1) authorizes the Commerce Commission to establish standards for pipeline construction. On the other hand, we have concluded above that federal law is totally preemptive with respect to interstate pipelines, and partially preemptive with respect to intrastate pipelines.

Thus, both state statutes would violate the United States Constitution if they were construed to authorize state or local governing bodies to regulate interstate pipeline safety, an area that has been explicitly preempted by federal legislation. And both would be unconstitutional if construed to permit states to regulate intrastate pipelines in a way incompatible with federal minimum standards.

***4** However, all Iowa statutes are presumed to be in compliance with the United States Constitution. § 4.4(1), The Code 1981. They should, if reasonably possible, be construed to avoid unconstitutionality. State v. Sullivan, 298 N.W.2d 267 (Iowa 1980); State v. Rassmussen, 213 N.W.2d 661 (Iowa 1973); State v. Lavin, 204 N.W.2d 844 (Iowa 1973).

By construing both §§ 455.199(1) and 479.29(1) to apply to interstate and intrastate pipelines only to the extent that they do not conflict with preemptive federal legislation, we can reasonably avoid a finding of unconstitutionality.

In its rules, the Commerce Commission adopted the federal minimum safety standards as the minimum safety standards of the State of Iowa. 250 I.A.C. § 10.12(479). This is consistent with federal law and not violative of the preemption doctrine.

We conclude, then, that §§ 455.199(1) and 479.29(1) should be construed to be consistent with, yet subordinate to, the Safety Act and ANGTA, with respect to interstate and intrastate pipeline safety. Given this construction, we find no conflict among the state laws, Commerce Commission rules, and federal pipeline legislation.

Your final question reads:

Is there a conflict between Section 455.199(1) and Section 479.99(1)?

Our conclusions above substantially moot this question with respect to interstate gas pipeline regulation, since both statutes are federally preempted.

However, disregarding federal preemption, several principles of statutory construction appear to be relevant. One is that unless statutes are in direct conflict, they will be read together and, if possible, harmonized. Hardwick v. Bublitz, 253 Iowa 49, 111 N.W.2d 304 (1962). Another states that if the statutes cannot be harmonized, the more specific provision prevails over the more general. § 4.7, The Code 1981. Finally, the more recently enacted of two irreconcilable statutes shall prevail. § 4.8, The Code 1981.

Chapter 455 deals with levee and drainage districts. It authorizes counties to:

establish . . . drainage districts, and . . . levees, and cause to be constructed . . . any levee, ditch, drain, or watercourse, or settling basins, . . . or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience and welfare.

Section 455.1, The Code 1981.

Subsection 455.199(1) concerns easements through drainage districts, with respect to construction of pipelines, underground service lines, or other similar installations. It was enacted in 1969 and amended in 1970. 1969 Session, 63rd G.A., ch. 260, § 21; 1970 Session, 63rd G.A., ch. 1219, § 1.

Chapter 479 deals specifically with pipelines and underground gas storage. It confers upon the Commerce Commission:

the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned herein or not, and the power and authority to supervise the underground storage of gas, so as to protect the safety and welfare of the public in its use of any public or private highways, grounds, waters and streams of any kind in this state.

*5 § 479.1, The Code 1981. Section 479.29(1) specifically authorizes the Commerce Commission to adopt rules establishing safety standards for pipeline construction. It also provides specific procedures by which counties may participate in rulemaking.

Section 479.29 was enacted in 1979. 1979 Session, 68th G.A., ch. 118, § 4. Chapter 479 was extensively amended by the General Assembly in 1981. See 1981 Session, 69th G.A., Senate File 531. The amendments include numerous provisions relating to damage resulting from pipeline construction. See, e.g., the as yet unnumbered new sections of Chapter 479 relating to arbitration agreements, damage agreements, negotiated fees, particular damage claims, determination of installation damages, subsequent filing, financial condition of permittee--bond. See also the as yet unnumbered new subsections of § 479.29 relating to inspection and repair of damaged drain tile, and the additions to §§ 479.29(4) and (5) relating to topsoil replacement and inspection.

It appears to us that § 455.199(1) and § 479.29(1) can be harmonized. Looking at those subsections and the sections and chapters of which they are a part, we see that § 455.199(1) was intended primarily as a means to protect certain proprietary interests of drainage districts. Section 479.29(1), on the other hand, is an integral part of a chapter intended by the legislature to govern pipeline construction. Peffer v. City of Des Moines, 299 N.W.2d 675 (Iowa 1980) (all parts of statute should be considered together); State v. Charlson, 261 Iowa 497, 154 N.W.2d 829 (Iowa 1967) (parts of statute should be interpreted in light of relation to whole). We conclude that, with respect to the regulation of gas pipelines, Chapter 479 and § 479.29(1) do not conflict with, but rather prevail over Chapter 455 and § 455.199(1).

Even if we were not able to thus harmonize the statutes by limiting each to its specific area of concern, and again disregarding federal preemption, application of the second and third principles mentioned above would readily reveal that, with respect to regulation of gas pipeline construction and damages resulting therefrom, § 479.29(1) is both more specific and more recently enacted than § 455.199(1); therefore, § 479.29(1) should prevail. See Northern Border Pipeline Company v. Jackson County, Minnesota, 512 F.Supp. 1261, 1264 (D.Minn. 1981) (to extent that conflict exists, latter more specific statute expressly exempting interstate pipelines from state and local regulation regulating cover controls over former, more general county zoning statute).

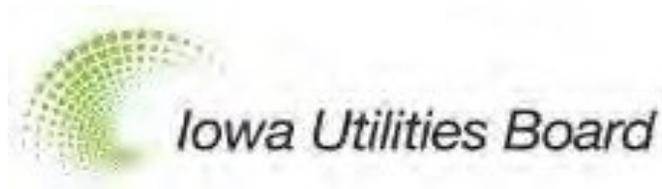
The County Home Rule Amendment to the Iowa Constitution does not affect this conclusion, inasmuch as it specifically provides that home rule power and authority may not be inconsistent with the laws of the General Assembly. Iowa Const. amend. 37. See Bryan v. City of Des Moines, 261 N.W.2d 685, 687 (Iowa 1978) (state law limitations on city home rule power must be expressly imposed); Chelsea Theater Corporation v. City of Burlington, 258 N.W.2d 372, 373 (Iowa 1977) (state law preempts irreconcilable city home rule ordinance); Green v. City of Cascade, 231 N.W.2d 882, 890 (Iowa 1973) (same); Op.Att’yGen. # 79-4-7 (county home rule power cannot be “inconsistent” with laws of General Assembly, as term is defined in Bryan, Chelsea, Green, supra; intent to vest exclusive subject matter jurisdiction in state may be implied from legislative history). Thus, a county could not enforce any ordinance inconsistent or irreconcilable, in this case, with Chapter 479, § 479.29, or any rules promulgated pursuant thereto. See 250 I.A.C. §§ 10.10 to 10.12 (479).

Yours truly,

*6 Robert P. Ewald

Assistant Attorney General

1981 Iowa Op. Atty. Gen. 189 (Iowa A.G.), 1981 WL 315381

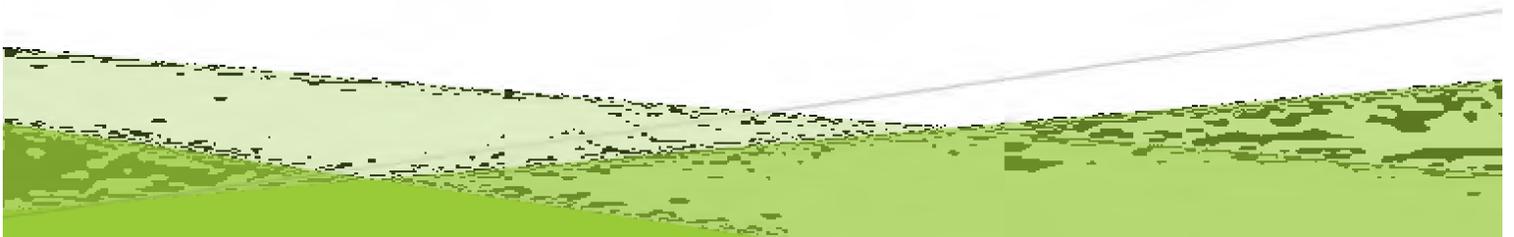


INSTRUCTIONS FOR COUNTY INSPECTORS

Pipeline Construction Projects
Rules, Statutes, and Responsibilities

Iowa Utilities Board
1375 E. Court Ave.
Des Moines, IA 50319-0069
Toll Free: (877) 565-4450
Local: (515) 725-7300

iub.iowa.gov





Welcome to the Iowa Utilities Board

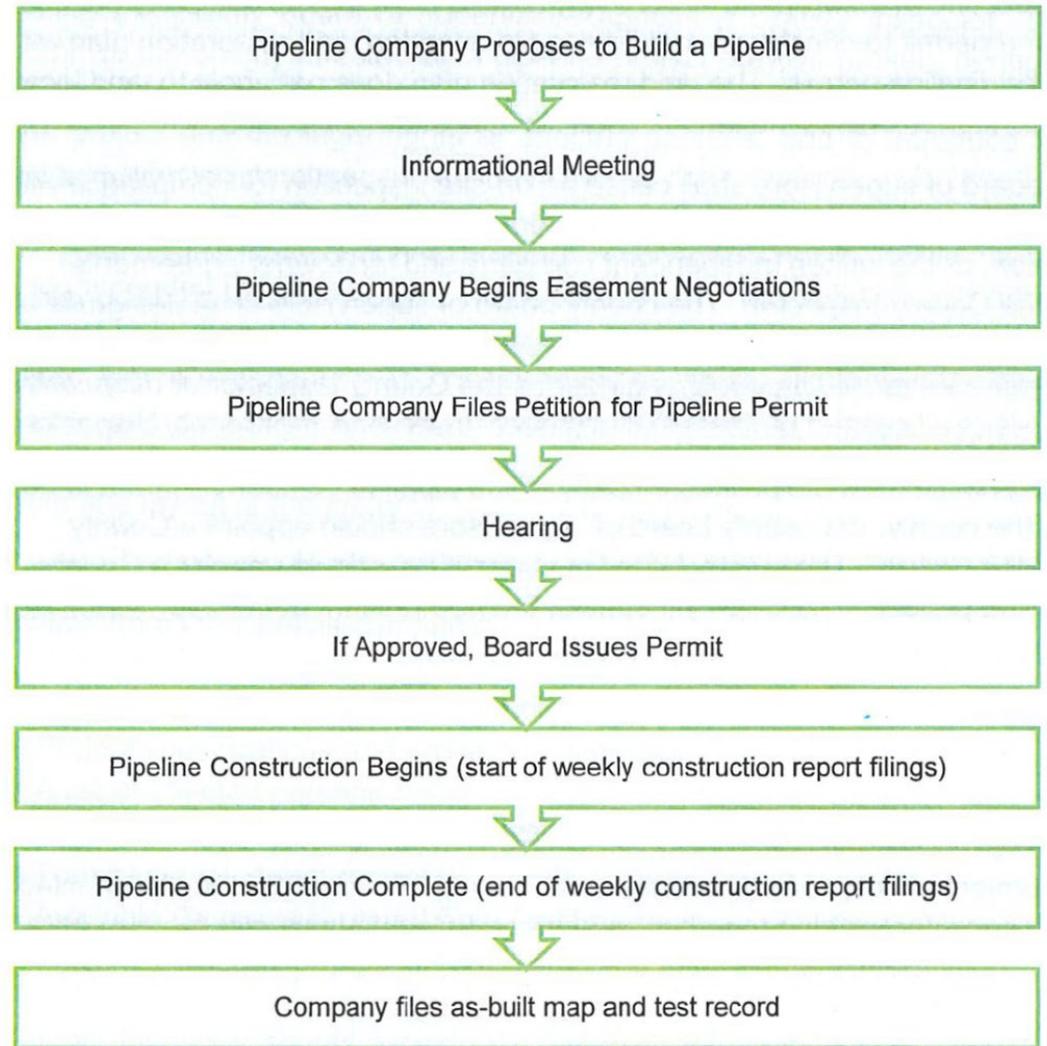
County's Role in the IUB's Pipeline Permit Process



Iowa Utilities Board

Pipeline Permitting Process

This flowchart presents the general sequence of the IUB's Pipeline Permitting Process.



Designating County Inspector

- Pipeline company will send notice of request for informational meeting to county board of supervisors of each affected county along with a request for the board of supervisors to appoint a county inspector. The county inspector may be present at the informational meeting.
- The board of supervisors shall designate a county inspector for each project after they receive notice of the intent to build the pipeline from the pipeline company. The county inspector can be the county engineer or an independent licensed professional engineer.
- If the proposed pipeline project affects several counties, the board of supervisors of each county can work together and hire one county inspector for the entire project.
- If the county inspector changes, the board of supervisors shall notify the pipeline company, who will file the updated information with the IUB.
- All reasonable costs of inspection are borne by the pipeline company.

Reporting Templates

- Successful inspection programs will include detailed reporting standards and consistent document organization practices, all of which can be contained within reporting templates and inspection procedures developed prior to construction.

Reporting templates should include, but are not limited to, the following information:

- IUB Docket Number
- Report ID Number
- Project Number
- County Inspector Name
- Date of Inspection
- County
- Specific Tract Number
- Weather and Soil Conditions
- Documented Communication of any interaction with landowners
- County Inspector's Signature
- Detailed Records of all work performed throughout the day; recommended that a separate report be completed for each permanent tile repair
- Non-Conformance Work
- Deviations in work due to landowner agreement
- Photos reflecting what is included in the report with a description and location of where the photo was taken

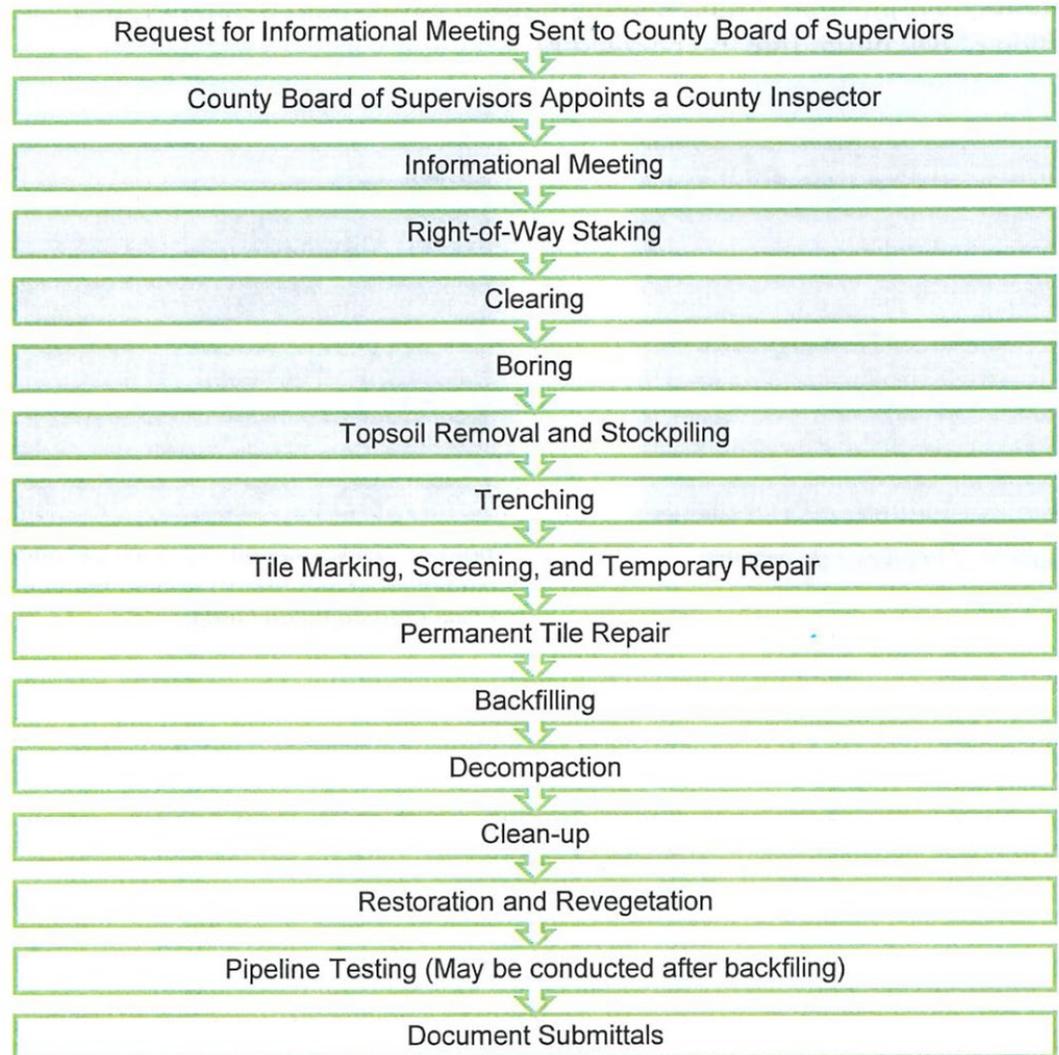
Document Organization

The following is a suggested method for organizing county inspector reports during the project (assuming reports are in electronic format):

- Create an electronic folder for each tract along the project to store all pertinent reports
- Within each tract folder, create sub-folders for specific inspection/report types
- Documents should be saved using a consistent naming convention consisting of some combination of the following:
 - Date Created
 - Tract
 - Report ID Number
 - Type of Report

Pipeline Project Sequence

This flowchart includes only those project activities that will require inspection by the county inspector.



County Inspectors (before construction)

- Before construction begins, the county inspector should obtain the following information from the pipeline company:
 - Alignment Sheets showing tract information, project route, and right-of-way limits
 - Project Specifications and Procedural Manuals
 - List of affected persons
 - Independent Landowner Agreements already obtained
 - Topsoil survey depths results
 - Available tile maps received from landowners
 - Pipeline company, or pipeline company's contractor, contact information
- County inspector should provide a list of county inspector personnel and their contact information to the pipeline company, the pipeline company's contractors, and the county board of supervisors.

County Inspectors (during construction)

- County inspectors will generate a significant number of reports. Having a detailed plan for organization and storage of these reports is critical to ensuring the success of the inspection program and accurate communication of the reports to the board of supervisors.
- Open communication between the county inspector and the board of supervisors, in the form of ongoing status reports and updates, can help keep the board of supervisors informed of the work being done and any potential issues as they arise.
- If there are violations of the standards adopted by the state, land restoration plan, or independent agreements, the county inspector will follow the Notice of Violation process, by first contacting the pipeline company and contractor. If the violation is corrected, construction may continue. If the violation is not corrected, the county inspector shall issue a Stop Work Order, applicable only to the activity and location of the violation. If the pipeline company does not remedy the violation in accordance with the Stop Work Order, the county inspector will provide written notice of the violation to the board or supervisors.
- The written notice of the violation shall include:
 - Location of the violation
 - Explanation of the violation
 - Timeframe of the violation
 - Original written Notice of Violation provided to the pipeline company

Board of Supervisors Notice of Violation Process

- After receiving written Notice of Violation from the county inspector, the board of supervisors will decide whether or not to proceed with the Notice of Violation.
- If the board of supervisors decides not to move forward with the Notice of Violation, the county inspector should:
 - Provide the applicable landowner with original written Notice of Violation
 - Notify pipeline company that landowner has been informed
 - Include violation on inspector's restoration punch list
- If the board of supervisors decides to move forward with the Notice of Violation, they will file a petition with the IUB for an order requiring corrective action to be taken on the violation in accordance with Iowa Code sections 479.29(5) or 479B.20(5).
- It is recommended that the board of supervisors not consider the construction complete until each violation has been fully remediated or a signed agreement between the landowner and the pipeline company has been provided to the county inspector.

Completion of Projects

- County inspector shall give recommendation when final restoration has been completed and vegetation across the project has reached 70% of its growth.
- The board of supervisors shall determine when construction of a pipeline has been completed in that county.
- After the board of supervisors officially closes the project, the county inspector shall finalize all project documentation in preparation for turnover. Document turnover to include all:
 - Inspection Reports
 - Tile Reports and Maps
 - Punch Lists
 - Stop Work Orders
 - Notice of Violation documents
 - Special Landowner Agreements

REQUEST FOR DAMAGES

- The statutes provide that 90 days after the board of supervisors determine construction is complete, a landowner may request a compensation commission be appointed to determine damages from construction when the landowner and the pipeline company have not been able to reach agreement.
- If the board of supervisors approves the petition, the landowner or pipeline company may commence the proceeding by filing an application with the chief judge to appoint a compensation commission.
- The remainder of the process is set out in Iowa code 479.46 and 479B.30.

Questions

Contact Information:

Iowa Utilities Board

1375 E. Court Ave.

Des Moines, IA 50319-0069

515.725.7300

iub@iub.iowa.gov

Jason Slack/Director, Buildings and Grounds

**Discussion and/or decision to remove tree from
Parcel #744412380001.**



Certified Arborist: Justin

Date: 12/8/23

HUGHES Tree Service

Trusted Tree Care!

402-558-8198 • www.HughesTree.com

PO Box 6781 • Omaha, NE 68106

Name: Pottawattamie Court House (Jason Slack)

Address: 22756th St

City: _____ St: 19 Zip: 51501

Phone: (712) 310-5257 Cell: (____) _____

E-mail: Jason.Slack@pottcounty-ia.gov Acct: N44597



Nebraska's first accredited tree care company



- Pruning
 Tree Removal
 Fertilizing
 Plant Health Care
 Tree Planting
 Cabling
 Stump Grinding
 Consultation
 Mulching
 Other: _____

DESCRIPTION OF WORK:

Service address: 802 Wright Road CB 19 51501

Removal of Rear Ash & rear Maple

- north of chainlink fence and powerlines
- west of building/condo

removal cut flush and haul away \$2000

Stump grinding

\$ 150	1 Ash
\$ 200	1 Maple
\$ 175	2 Stumps (old) by driveway in back

SPECIAL CONDITIONS OR EQUIPMENT:

Ang

TOTAL COST: \$ 2525

Total Due on Completion. Please see reverse side of form for terms and conditions.

SITE MAP

Service Drop: Yes No

Assist: Yes No

Satisfaction Guaranteed

If you are not satisfied with our service, Hughes' Tree Service will continue working until you are pleased.

Customer's Signature Authorizing Work:

X

Please return signed copy.

Konfrst Tree Service
1501 Avenue P
Council Bluffs, IA 51501 US
(402)813-5821
wayne.konfrst@gmail.com



Estimate

ADDRESS

Pottawattamie County
Attn: Jason Slack
227 South 6th Street
Council Bluffs, IA 51501

ESTIMATE # 1673
DATE 12/07/2023

DATE	ACTIVITY	AMOUNT
	Land Parcel located between 802 Wright Rd and Lake shore condos on Wright Rd, Lake Manawa	3,150.00T
	(1) Ash tree remove to ground level, as low as possible, roughly 6" above ground	
	(1) Silver Maple remove to ground level, as low as possible final height of stump/trunk will depend on neighboring fence	
	haul away all brush and logs, clean work areas *does not include stump grinding *will need access to lawn for equipment such as man lift and skid loader, some lawn damage may occur *price estimate is for winter months only (before leaves develop in spring)	

PAYMENT IS DUE WITHIN 21 DAYS OF JOB COMPLETION	SUBTOTAL	3,150.00
	TAX	220.50
	TOTAL	\$3,370.50

Accepted By

Accepted Date

Tree Musketeers LLC

Tree Musketeers LLC
504 Forest Drive
Council Bluffs IA 51503

blrhvac@hotmail.com
P: 712-355-0095

INVOICE

Invoice No.: 1026
Invoice Date: 12/10/2023
Due Date: Bid

BILL TO: Pottawattamie County
Wright Road Property
Council Bluffs Ia 51501

SHIP TO:
NA

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Cut and remove large maple tree		\$2,700.00
2	Cut and remove large ash tree		\$1,000.00
3	grind stumps near chain fence		\$1,000.00

#REF!

Thank you for your business!

SHIPPING

TOTAL

\$4,700.00



INVOICE

Kathy's Tree & Stump Removal

2037 23rd Ave
 Kathy Goff / Brandi Hanson
 (712) 322-8888 (Phone)
 (712) 310-0054 (Cell)
 crndyhansn@gmail.com
 (712) 322-8888
 null
 null
 kathygoff70@gmail.com
 null
 2037 23rd Ave

Bill to	Building & Grounds Pottawattamie County 227 south 6th street job address VFA Council Bluffs	Invoice #	INV153
		Date	12/01/2023
		Terms	30 days
		Due Date	12/31/2023

Description	Quantity	Rate	Amount
1 large Maple Tree removed and wood hauled away and stump grinded out.	1	\$4,500.00	\$4,500.00
1 ash tree remove and grind stump haul away	1	\$1,800.00	\$1,800.00

Thank you for your business.	Subtotal	\$6,300.00
	Tax(0.0%)	\$0.00
	Total	\$6300.00
	Paid	\$0.00
	Balance Due	\$6300.00

Other Business

Jana Lemrick/Director, Human **Resources**

Discussion and/or decision on appointments to fill vacancies on the Boards and Commission for the following: Zoning Board of Adjustment, Planning and Zoning Commission, Board of Health, and Magistrate Appointing Commission.

Committee Appointments

Update from Board members on Committee meetings from the past week.

Received/Filed

Public Comments

BUDGET STUDY SESSIONS