

# **Attachment No. 12**



Serving South Dakota...  
from South Dakota since 1916

PO Box 9 | De Smet, SD 57231 | Office - 605.854.3337  
www.desmetfarmmutual.com | Fax - 605.854.3704

We have received multiple inquiries from De Smet Farm Mutual members regarding liability exposure related to the CO2 pipeline that is expected to run through or near their property. There are specific exclusions for liability protection (Coverage L) that apply to pollutants.

EXCLUSIONS THAT APPLY TO COVERAGE L – PERSONAL LIABILITY  
AND TO COVERAGE M – MEDICAL PAYMENTS TO OTHERS

This policy does not apply to **bodily injury** or **property damage** which results directly or indirectly from:

the discharge, dispersal, release, or the escape of **pollutants** into or upon land, water or air.

CO2 and other chemicals (whether in solid, liquid, or gaseous form) would be pollutants as defined by your policy.

While we are not personally privy to any contracts between pipeline owners and landowners, please be aware that members may have exposure to significant personal liability for any damages caused by issues related to the pipeline on their property that are not covered by their liability insurance.

In the future, technology may render the pipeline useless or ineffective, pipeline owners and operators may change, and other factors could change that would increase the potential that you may be personally liable for cleanup, removal, and other activities that cause damage as a result of the pipeline being installed. Having a pipeline running through a member's property, carrying a pollutant, subjects them to substantial uninsurable exposure.

# Stahl Insurance

PO Box 22  
Mellette, South Dakota 57461  
(605) 887-3604

April 4, 2022

Marty Francoli  
38519 158<sup>th</sup> Street  
Mellette, South Dakota 57461

RE: Farm and Umbrella Policies

Dear Marty:

In reviewing both your Farm and Umbrella Policies with Farmers Mutual Insurance Company of Nebraska, you had concerns. Concerning the question you have about the proposed pipeline wanting to go thru Section 28-120-64. While visiting with the Claims Department, they stated that there would be no coverage for any Liability Claims on that section or any section of land you own or rent, having anything to do with a claim concerning the pipeline.

Sincerely Yours,



Douglas L. Stahl



Dear [REDACTED]

Thank you for your liability coverage inquiry into the Navigator CO2 pipeline that is expected to run through your property. There is specific exclusions for liability protection involving the release of any contaminants per the following policy language:

*Coverage L (liability) does not apply to:*

*Bodily injury or property damage arising out of the actual, alleged, or threatened presence, discharge, dispersal, seepage, migration, release, escape of, or exposure to contaminants or pollutants at or from any source or location.*

*We also do not cover:*

*Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, dispose of, or in any way respond to or assess the effects of contaminants or pollutants;*

*Any loss, cost, or expense arising out of any claim or suit by or on behalf of a governmental authority of damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to or assessing the effects of contaminants or pollutants;*

While I am personally not privy to any proposed hold harmless agreements or the contract between the pipeline owners and yourselves; regardless of any agreements in place, there is significant personal liability exposure for yourselves while using your land for farming operations, for your own enjoyment and for your benefit renting the land out for others to do the same.

*For example, if you or your tenants or even someone without permission attempts to dig, plow, trench and pierces the pipeline causing a leak, the resulting damage may be argued to be your responsibility.*

As time passes, nearby landowners may change hands, the pipeline owners and operators may change, future technology may render the pipeline useless or ineffective. All of these factors among others, increase the potential that you may be held personally liable in the future for cleanup, removal and other activities that could cause damage as a result of this pipeline being installed.

As history has proved, any pipeline has a chance to fail, leak and seep resulting in significant damage to life and property. To place this type of risk or burden upon unwilling landowners, like yourselves, is tantamount to placing a risk to your livelihood without your permission.

In summary, having a pipeline running through your property, carrying CO2, a pollutant, subjects you to substantial uninsurable exposure.

Sincerely,

[REDACTED SIGNATURE]

**Renae Haug, Agent**

1471 Interstate Loop, Ste 1  
Bismarck, ND 58503  
Bus 701 255 4433 Fax 701 224 0715  
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www.renaehaug.com



5/18/2023

Leo & Susan Doppler  
5412 Superior Dr  
Bismarck ND 58503-6146

RE: CO2 line on your property

Dear Leo & Susan:

Thank you so much for stopping in and going over the Pipeline issue. I spoke with my underwriting department and they explained the following:

When a pipeline or service line is brought onto a person's property, there is no coverage to that service line due to it not being "owned" by our insured.

In several sections of the ND policy, there is language which explains who and what we (State Farm Fire & Casualty Company) insure, who/what is defined and there is also a section called exclusions, which are item not covered. Simply put, there would be no coverage for a loss if the pipeline were to enter/exit your land and seep and/or somehow disseminate any gases/debris/emanation or otherwise cause an "injury" to any person, animal, property and so on. One reason is due to you not "owning the pipeline" but furthermore, negligence would be a factor as well. Below are some references.

Insured, defined under our ND policy, is listed as follows:

**Under Definitions:**

9. "**insured**" means:

- a. **you**;
- b. **your relatives**; and
- c. any other person under the age of 21 in the care of a person described above.

Under Section II, **insured** also means:

21. "**you**" and "**your**" mean the person or persons shown as "Named Insured" in the **Declarations**.

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Susan Doppler Exhibit SD2 - State Farm Ins. Letter 5-18-23  
Susan Doppler



Under **SECTION II – EXCLUSIONS**

1. Coverage L and Coverage M do not apply to:
  - m. **bodily injury** or **property damage** arising out of the actual, alleged, or threatened presence, discharge, dispersal, seepage, migration, release, escape of, or exposure to contaminants or pollutants at or from any source or location. Contaminants and pollutants include but are not limited to any solid, liquid, gaseous, or thermal irritant, including smoke from agricultural smudging or industrial operations, smog, soot, vapor, fumes, acids, alkalis, chemicals, pathogens, noxious substances, fuel oil, asbestos, or lead.

Further, under the liability of the ND Homeowners policy, it states:

**We** also do not cover:

- (1) any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, dispose of, or in any way respond to or assess the effects of contaminants or pollutants;
- (2) any loss, cost, or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to or assessing the effects of contaminants or pollutants; or
- (3) contamination or pollution arising out of actually or allegedly defective building materials, nuclear substances, or waste. Waste includes materials to be recycled, reconditioned, or reclaimed;

Please refer to your ND Homeowners policy for the full language and details related to this matter. Again, thank you for bringing this to our attention and inquiring whether coverage would apply.

Sincerely,



Renae Haug, Agent

State Farm Fire & Casualty Company

 **NORTHERN STATES**  
**INSURANCE SERVICES LLC**

819 Hill Avenue • Grafton, ND 58237  
701-352-2038  
Fax 701-352-2037

04/10/2023

Marilyn Bryan  
621 W Ave C  
Bismarck, ND 58501

Dear Marilyn:

I got your letter asking about specific coverage on pollution, here is what I found:

I reached out to the home office at North Star Mutual Ins, PO Box 48, Cottonwood, Mn. 56229 where your current coverage is at. Listed below is the response to the questions you asked:

1. Yes, there is a pollution exclusion in our base liability form.
2. Yes, the CO2 being transported in the pipeline would be considered a pollutant.
3. We provide pollution coverage for "agricultural chemicals, liquids and gases intended for use in normal farming or ag operations. The CO2 in this pipeline is not considered an ag chemical, liquid or gas.
4. As the CO2 is a pollutant there would be no liability coverage or legal defense provided.
5. We do not offer an endorsement or rider that would provide this type of liability coverage.

I hope this helps clarify your coverage on this matter. I can shop around some for specific pollution coverage but not sure my vendors would provide this specific coverage.

Sincerely,



Chris L West / Agent





Farmers Union Insurance Company  
PO Box 2020  
Jamestown, ND 58401  
Phone: 701.252.2701  
Online: [www.fumic.com](http://www.fumic.com)

Dear Valued Policy Holder,

This letter acknowledges your inquiry into the CO2 pipeline that you expect to run through your property.

Farmers Union Insurance (FUI) is aware of the potential CO2 pipeline project in your area and wants you to be fully aware of the protections provided by your liability insurance policy's provisions, limitations, and coverages.

Your liability policy provides indemnity coverage and legal defense for any claim made against you as a result of your actions related to your farm liability or personal liability. It is first and foremost important to understand that your policy will only respond if you are legally liable for bodily injury or property damage as a result of your actions, inactions, or your alleged actions/inactions.

Please be aware that your liability policy contains exclusions for losses caused by pollutants. The policy may also exclude coverage for your responsibility to clean up, remove, treat, detoxify, remediate, or in any way respond to a loss caused by or due to pollutants. This means that there may be no coverage from your policy in the event that there is a release of pollutants.

You should understand that in the event that your land or property may be sold, leased, or transferred, any potential loss is subject to the insurance that is active at the time of the occurrence. Over time, the pipeline may become useless or ineffective, and if the policy is no longer in force at the time of the occurrence, you will be provided with no defense or legal indemnification.

FUI strongly recommends that you seek legal counsel prior to signing any contractual agreement. The contractual agreement will contemplate hold harmless agreements, waivers of subrogation, and potentially, the addition of outside parties as additional insureds on your policy. These contemplations are extremely important and could bind you to legal responsibilities in the event of a loss.

All claims are subject to their own merit, and as a result, it is not possible for FUI to provide you with a definitive summary of what may or may not be subject to coverage. As with all liability claims, FUI will provide coverage if you are legally liable, or deny coverage at the point it is determined that you have no coverage from your liability policy.

As always, any utility, pipeline, or other third-party exposure presents a substantial exposure to you from a liability perspective, unless the third party provides clear, contractual language which specifically holds you harmless. While no definitive coverage analysis can be provided until facts of a loss are contemplated, be aware that you may be at a substantially elevated risk of uninsurable exposure any time a third-party is allowed on your property.

Sincerely,

Brad Nold, AIC, AINS  
Chief Claims Officer





May 9, 2023

Insured: Marvin Abraham  
Policy #: FO233951

Dear Mr. Abraham,

Your agent Todd Newton has asked that we provide you with an assessment of the likely impact that a CO2 pipeline on your property might have on the insurability of your property with Northwest GF. First off, let me make the disclaimer that our assessments represent our analytical opinions only and are not purported to represent established science or fact. However, like all insurers, we group together homogeneous risks, meaning those having similar characteristics, in order that loss experience can be somewhat accurately predicted and adequate rates set accordingly. When risk characteristics become present that are not typically germane to a line of business, we must attempt to analyze and determine if these additional elements of risk would still be deemed insurable.

From an underwriting perspective, our research would indicate that CO2 pipelines likely present risk attributes that would not be present on other Farmowner accounts that we insure. Information that we have reviewed suggests that CO2 is an odorless, colorless asphyxiant, which can cause injury and death in sufficient concentrations. Additional literature indicated that pressurization on CO2 pipelines can be as high as 2800 psi, which is nearly double the pressurization of natural gas pipelines. Further articles suggested that it is difficult to eliminate moisture entirely from CO2, bringing the light the possibility of carbonic acid buildup (purported to have a ferocious appetite for carbon steel) thus making it possible/more probable that these pipelines may be susceptible to ductal fractures which could lead to the release of enormous amounts of CO2 as well as explosions which could entail the ejecting of large sections of pipe and shrapnel. In summary, an extensive release of CO2 could be reasonably interpreted to entail the risk of injury or death and damage to cropland, and adjacent structures.

Our concerns as an insurer would be that a policyholder could inadvertently damage an existing pipe or could be named in a lawsuit simply via the rupture/leak/explosion of a portion of the pipeline that would traverse under the insured premise. Concerns would be present that payment received for the existence of an easement could potentially make our policyholder a valid party to a lawsuit. Although your Northwest GF Farmowner policy does include pollution exclusions, there would be some ambiguity/uncertainty as to how these might apply in circumstances of injury and death. It is also never a good underwriting practice for insurers to accept risk with known significant non-covered liability exposures.

Additionally, from a first party perspective Northwest GF would likely have no coverage for CO2 damage to your owned and insured property.

We additionally are unaware if you or other policyholders with this exposure would be consulting with an attorney to explore unilateral Broad Form Indemnity Agreements in which the pipeline companies

would agree to indemnify and hold policyholders harmless for any and all damage that might occur to third parties stemming from the operation of the pipeline.

In view of the analysis and uncertainties expressed above, Northwest GF would likely elect to non-renew your policy if at the time of the renewal we were made aware of the introduction of a CO2 pipeline across your property. Until there is more experience and information available for us to analyze regarding how these arrangements are being executed and the degree of insulation protection being afforded to landowners by the pipeline companies, it would be difficult for us to intermix this exposure with other dissimilar farm accounts.

Mr. Abraham, we value your business and appreciate your loyalty to Northwest GF. I do hope you understand the concerns presented to us by this exposure.

Regards,

A handwritten signature in cursive script that reads "Brian Bowker". The signature is fluid and extends across the width of the page.

Brian Bowker, Pres/CEO  
Northwest GF Mutual Insurance Company