

Objection to the form of the question; Moody County's enactment of Ordinance 2023-01 is for the creation of zoning performance standards applicable to all hazardous pipelines traversing through Moody County. Moody County has communicated with the following individuals: Doug Entringer, Carleen Wild, Roger Van Dyke, Clayton Rentschler, Rick Veldkamp, Moody County Farm Bureau, Brown County- Scott Bader, First District- Todd Kays, Banner- Joe Munson, Jodi Johanson-Big Sioux Rural Water, McPherson County Auditor's Office-Lindley Howard, Minnehaha Planning and Zoning Office, PUC Hearing held in Moody County-November 22,2022 See Minutes, Moody County Public Hearing- May 23rd, 2023 See Minutes and sign in sheet, Chase Jensen- Dakota Rural Action, Jason Glodt with Navigators, Kim Nelson- Town of Trent, and Gwen Reker.

2. Identify all persons employed by Moody County, including any Commissioner or elected official other than the State's Attorney, who have been involved with the research or writing related to any proposed ordinance to regulate the proposed Navigator Heartland Greenway pipeline in Moody County, including Ordinance 2023-01 and Resolution 22032401.

Objection to the form of the question; Moody County's enactment of Ordinance 2023-01 is for the creation of zoning performance standards applicable to all hazardous pipelines traversing through Moody County. The following individuals were involved with the research or writing of Moody County Ordinance 2023-01: Marty Skroch, Kendra Eng, Jerrick Charles, Carla Bruning, Randy Hemmer, Dave Reker, Jerry Doyle, Dan Miles, and Terry Albers,

3. Identify all subject-matter experts with whom Moody County has consulted about any proposed ordinance to regulate the proposed Navigator Heartland Greenway pipeline in Moody County, including Ordinance 2023-01 and Resolution 22032401.

Objection to the form of the question; Moody County's enactment of Ordinance 2023-01 is for the creation of zoning performance standards applicable to all hazardous pipelines traversing through Moody County. Other than the testimony presented, and documentation offered, to Moody County by Navigator Heartland Greenway's subject-matter experts, no further subject-matter experts were consulted.

4. State all facts establishing that the setback under consideration in Ordinance 2023-01 is necessary to protect the public health, safety, or welfare.

Objection to the form of the question. Moody County Ordinance 2023-01 is focused upon safeguarding land use within Moody County, South Dakota, and is not a usurpation of the South Dakota Public Utility Commission's regulatory oversight of pipelines.

5. State all facts, including any route you have identified, showing that it is possible for Navigator to construct its proposed pipeline in Moody County with a setback of 1,500 feet.

Objection to the form of the question. Moody County does not pick routes for hazardous or non-hazardous pipelines passing through it, Moody County simply applies its comprehensive plan and zoning ordinance to safeguard current land uses and to permit future uses.

6. State all facts why Ordinance 2023-01 was amended to establish a setback of 1,500 feet.

Moody County amended the draft of Ordinance 2023-01 to establish a setback of 1,500 feet as such a setback distance is consistent with zoning ordinances in other counties relative to hazardous pipelines.

7. State all facts establishing why Ordinance 2023-01 requires in paragraph 4 that an applicant submit some of the same information to Moody County as must be submitted to the South Dakota Public Utilities Commission under SDCL Ch. 49-41B.

The requirement that an applicant seeking a hazardous pipeline conditional use permit from Moody County submit the same information as the applicant would otherwise submit to the State of South Dakota is consistent with how Moody County handles its applicants seeking wind turbine conditional use permits and applicants seeking concentrated animal feeding operation (CAFO) conditional use permits. Respectfully, applicants dealing with the State of South Dakota's various agencies have not, until now, expressed a concern about either duplicating or providing a copy of those materials to Moody County for inclusion in the conditional use permit application.

8. State all facts establishing that the requirement in Ordinance 2023-01 that all pipelines shall be bored under all existing tile lines and utility lines is necessary to protect the public health, safety, or welfare.

Objection to the form of the question. Moody County views the requirement that hazardous pipelines be bored, such that they do not damage, disrupt, or bi-sect existing drain tile or utility lines, as being necessary to safeguard existing land uses and improvements, and to permit future land uses and improvements.

9. State the criteria by which Moody County will decide whether to allow a

setback/separation distance less than 1,500 feet under paragraph 2(b)(i) of Ordinance 2023-01.

An applicant is able to construct a hazardous pipeline within 1,500 feet of a cautionary use if the applicant obtains a waiver from the owner(s) of the cautionary use.

10. State the reasons why Ordinance 2023-01 prohibits a conditional use permit without “necessary easement agreements with landowners” having been obtained.

Moody County asserts that it cannot issue a conditional use permit for a hazardous pipeline running through multiple tracts of land within the County unless the applicant can show that they have obtained an easement from the landowner; whether said easement arises from the landowner’s voluntary execution of said easement, or as ordered by a court of law. Moody County respectfully asserts that such a requirement is not inconsistent with the expectations of other counties in South Dakota, and is not inconsistent with the expectations of the South Dakota Public Utilities Commission.

11. Define “necessary easement agreements with landowners” as used in paragraph 4(c) of Ordinance 2023-01.

Please see Moody County’s response to Interrogatory #10.

12. State the reasons for and meaning of paragraph 4(0) in Ordinance 2023-01.

Please see Moody County’s response to Interrogatory #10.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all written communications, including emails, between any person employed by, or any agent of, Moody County, including any Commissioner or elected official, and any person not employed by Moody County with whom Moody County has communicated or consulted about any proposed ordinance to regulate the proposed Navigator Heartland Greenway pipeline in Moody County, including Ordinance 2023-01 and Resolution 22032401.

Objection to the form of the question. Moody County does not view the enactment of Ordinance 2023-01 as existing exclusively for the purpose of regulating the Navigator Heartland Greenway pipeline, but all hazardous pipelines traversing Moody County. Further, the County would note that all written communications can be found on the Moody County website.

2. Produce all communications, including emails between and among employees of Moody County, including any Commissioner or elected official other than the State's Attorney, related to any proposed ordinance to regulate the proposed Navigator Heartland Greenway pipeline in Moody County, including Ordinance 2023-01 and Resolution 22032401.

Objection to the form of the question. Moody County does not view the enactment of Ordinance 2023-01 as existing exclusively for the purpose of regulating the Navigator Heartland Greenway pipeline, but all hazardous pipelines traversing Moody County. Further, the County would note that all written communications can be found on the Moody County website.

3. Produce all documents or research on which you rely to establish that a setback of 1,500 feet as currently proposed in Ordinance 2023-01 is necessary to protect the public health, safety, or welfare.

Objection to the form of the question. Moody County Ordinance 2023-01 is focused upon safeguarding land use within Moody County, South Dakota, and is not a usurpation of the South Dakota Public Utility Commission's regulatory oversight of pipelines. Moody County has no documents to offer relative to this request for production.

4. Produce all documents or research on which you rely to establish that Ordinance 2023-01 is necessary to protect public health, safety, or welfare.

Objection to the form of the question. Moody County Ordinance 2023-01 is focused upon safeguarding land use within Moody County, South Dakota, and is not a usurpation of the South Dakota Public Utility Commission's regulatory oversight of pipelines. Further, any documents or research pertaining to the enactment of the County's zoning ordinance may be obtained and reviewed on the County's website.

5. Produce all written communications, including emails, since Resolution 22032401 was first adopted, between any person employed by, or any agent of, Moody County, including any Commissioner or elected official, and the Pipeline Hazardous Materials Safety Administration about PHMSA's regulation of pipelines transporting carbon dioxide.

Moody County did not communicate with the Pipeline Hazardous Materials Safety Administration.

Dated this 27th day of June, 2023.

MOODY COUNTY COMMISSION



Carla Bruning
Moody County Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2023, I served a true and correct copy of the foregoing County's Response to Applicant's Interrogatories and Requests for Production of Documents (First Set) by email transmission to the following:

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Phone: (605) 773-3201


Paul M. Lewis
Moody County State's Attorney

ORDINANCE NO. 2023-01

AN ORDINANCE ENTITLED, AN ORDINANCE TO AMEND ARTICLE II "DISTRICT REGULATIONS", ARTICLE IV "SUPPLEMENTAL REQUIREMENTS", AND ARTICLE V "DEFINITIONS", ADOPTED BY ORDINANCE 2020-02, AS AMENDED, OF THE ZONING ORDINANCE OF MOODY COUNTY.

BE IT ORDAINED by the Board of County Commissioners of Moody County, South Dakota: that Article II, "DISTRICT REGULATIONS" Chapter 2.04 "Agricultural District" Section 2.04.05 "Conditional Uses", adopted by Ordinance 2020-02, as amended, of the Zoning Ordinance of the Moody County be amended by adding language in bold and underline:

#42. Pipeline Facility provided they meet the requirements of Chapter 4.36.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Moody County, South Dakota: that Article IV, "SUPPLEMENTAL REQUIREMENTS" Chapter 4.36. Pipelines, adopted by Ordinance 2020-02, as amended, of the Zoning Ordinance of the Moody County be amended by deleting the strikeout language and adding language in bold and underline:

CHAPTER 4.36. PIPELINES **FACILITY.**

1. Any pipeline **facility** requiring South Dakota Public Utilities Commission approval shall also require a conditional use permit. A conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Moody County recommendations regarding such issues such as but not limited to **setback/separation requirements**, right-of-way, haul roads, building permits, etc. **A pipeline facility cannot be approved until it meets the following standards:**

2. Setbacks.

- a. **Minimum setback shall be one thousand five hundred (1,500) feet from cautionary uses. Exception: Municipal Corporation boundaries shall be five thousand two hundred eighty (5,280) feet. Setback shall be the minimum horizontal distance measured from the closest municipal parcel boundary to the center line of the proposed pipeline.**
- b. **The setback shall be the minimum horizontal distance measured from the wall line of the structure of the neighboring "cautionary use" to the center line of the proposed pipeline or wall line of the structure of any above ground pipeline facility structure.**
 - i. **Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified if the applicant obtains waiver(s) from owners of property where the "cautionary use" is within the required separation/setback distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.**

- 3. Transferability. If a Pipeline Facility, which has a previously issued county permit, changes ownership, the new owner has sixty (60) calendar days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) calendar days, the new owner will be required to submit a new application for approval.**
- 4. The following required information is to be submitted and reviewed by the Board of Adjustment prior to the issuance, or as a condition to the issuance, of a conditional use permit for any pipeline facility:**

 - a. Owner's/Applicant(s) name, address, and telephone number.**
 - b. Final route of proposed pipeline facility;**
 - c. Site map related to any above-ground pipeline facility structures;**
 - d. Map of easements for pipeline facilities;**
 - e. Affidavit attesting that necessary easement agreements with landowners have been obtained;**
 - f. Map showing any "cautionary uses" within one (1) mile of the project area and ability to meet required setback/separation requirements;**
 - g. Preliminary map of sites for which haul road agreements will need to be secured;**
 - h. Location of other pipeline facilities within one (1) mile of proposed pipeline facility;**
 - i. Project schedule.**
 - j. Documentation of notification, by certified mail, of all landowners within one (1) mile of proposed pipeline facility.**
 - k. Documentation of notification, by certified mail, of all Road Authorities (municipal, township and State) where pipeline facility will traverse said Road Authority's right-of-way and submit proof of all approved permits;**
 - l. As a condition of approval for any pipeline facility by the Board of Adjustment, the documentation of an approved permit from the South Dakota Public Utilities Commission (SDPUC) is required. A conditional use permit may be issued by the Board of Adjustment prior to and conditioned upon SDPUC approval;**
 - m. Any other information as contained in the application and requested by the Administrative Official or Board of Adjustment;**
 - n. Final haul road agreements are to be submitted prior to construction;**
 - o. Proof of right-of-way easement for pipeline facility to be submitted prior to construction.**

- p. A set of plans and specifications showing the dimensions and locations of the pipeline facility, including plans and specifications for all related facilities, and above-ground structures, including without limitation: pump, valve sites and shutoff valves.
- q. All pipelines shall be bored and shall not bisect or disrupt or damage any existing tile lines or utility lines

5. Abandonment

- a. Each pipeline abandoned in place must be disconnected from all sources and supplies of hazardous liquids; purged of the hazardous liquids, and sealed at the ends. However, the pipeline need not be purged when the amount of hazardous liquid is so small that there is no potential hazard.
 - i. If air is used for purging, the operator shall insure that a combustible mixture is not present after purging.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Moody County, South Dakota: that ARTICLE V "Definitions", adopted by Ordinance 2020-02 as amended, of the Zoning Ordinance of the Moody County be amended by adding language in bold and underline:

Abandoned: means to permanently remove from service.

Cautionary Uses (In reference to a pipeline facility): means schools, daycares, churches, dwellings, manufactured homes and all permitted Concentrated Animal Feeding Operations.

Gas: means any flammable, toxic or corrosive gas not subject to the Natural Gas Act (15. U.S.C. 717 et seq.).

Hazardous liquids: means petroleum or a petroleum product, nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive; or would be harmful to the environment if released in significant quantities; carbon dioxide transported by a hazardous liquid pipeline facility; and any substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state; not subject to the Natural Gas Act (15. U.S.C. 717 et seq.).

Pipeline: A line of pipe with pumps, valves, and control devices for conveying liquids, gases, or finely divided solids.

Pipeline Facility: means a pipeline, facility, or building used in transporting or treating hazardous liquid, gas, or carbon dioxide not subject to the Natural Gas Act (15. U.S.C. 717 et seq.).

Adopted this ~~26th~~ day of June, 2023.

ATTEST:

Carla Briz
Chairperson
Moody County Board of County Commissioners

Janet Klein
Moody County Auditor



1st Reading: June 12, 2023
2nd Reading: June 26, 2023
Adopted: June 26, 2023