



**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION #1:** Admit that if any carbon dioxide is captured, transported, and ultimately stored and or sequestered in Illinois by you, you have no plan to attempt to use such stored and sequestered carbon dioxide for any purposes including but not limited to enhanced oil recovery.

**RESPONSE:** Objection. The form of the question is overbroad and unclear. Without waiving the objection, Navigator admits that it has no other purpose for the physical carbon dioxide that is stored and sequestered in Illinois by HG Carbon Storage LLC than storage and sequestration.

**REQUEST FOR ADMISSION #2:** Admit there is no requirement of the South Dakota Public Utilities Commission that you conduct surveys upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

**RESPONSE:** Objection. This request is outside the scope of the PUC's jurisdiction. Without waiving the objection, the request is denied. To obtain a siting permit under SDCL Ch. 49-41B, Navigator must satisfy a statutory burden of proof found at SDCL § 49-41B-22, which requires that Navigator present evidence supported by survey data. PUC Staff has asked Navigator to provide survey data in its discovery requests directed to Navigator.

**REQUEST FOR ADMISSION #3:** Admit there is no South Dakota state law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

**RESPONSE:** Objection. This request is outside the scope of the PUC's jurisdiction. Without waiving the objection, the request is denied. Under SDCL § 21-35-31, Navigator has a statutory right to conduct surveys related to its proposed pipeline, which is consistent with a long-established common-law right to conduct surveys. To obtain a siting permit under SDCL Ch. 49-41B, Navigator must satisfy a statutory burden of proof found at SDCL § 49-41B-22, which requires that Navigator present evidence supported by survey data. PUC Staff has asked Navigator to provide survey data in its discovery requests directed to Navigator.

**REQUEST FOR ADMISSION #4:** Admit there is no Federal law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

**RESPONSE:** Objection. This request is outside the scope of the PUC's jurisdiction. Without waiving the objection, the request is denied. While Navigator is not relying on federal law to obtain a siting permit from the PUC under SDCL Ch. 49-41B, any permit granted by the PUC is likely to include a condition that Navigator obtain all necessary federal, state, and local permits. Navigator cannot obtain all necessary federal permits and/or complete necessary consultations without data that can be obtained only by conducting surveys along the pipeline right of way.

**REQUEST FOR ADMISSION #5:** Admit that you failed to timely and properly notify multiple landowners owning property located within one-half mile of your proposed hazardous pipeline route in South Dakota.

**RESPONSE:** Admit that some landowners received notice under SDCL § 49-41B-5.2 more than 30 days after Navigator filed its application, as explained in the letter filed in the docket in this matter on December 9, 2022.

**REQUEST FOR ADMISSION #6:** Admit your survey and examination of landowners land may include drilling tools and activities such as continuous flight augers, hollow stem augers, wet rotary drills, or rock coring drills.

**RESPONSE:** Objection. This request is not relevant to any issue pending before the PUC. Without waiving the objection, deny that the listed tools may be used in connection with every survey for every landowner. Admit that the following tools may be used in conducting surveys. Tools used during typical environmental and civil surveys include: shovels and hand augers. Tools used for Geotechnical surveys in limited locations include a truck mounted boring/ drilling rig.

**REQUEST FOR ADMISSION #7:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good sold freely to the public.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. Without waiving the objection, deny that carbon dioxide is a waste product and that it does not have commercial value.



**REQUEST FOR ADMISSION #8:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the commodity market.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #9:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the commodity market.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #10:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the spot market.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #11:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the spot market.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #12:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. The request does not define "good." And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #13:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a ware.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request does not define "ware." The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #14:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not merchandise.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request does not define "merchandise." The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #15:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of trade.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request does not define "article of trade." The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.



**REQUEST FOR ADMISSION #16:** Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of commerce.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request does not define "article of commerce." The request is not specific to the carbon dioxide to be captured and transported on the proposed pipeline in South Dakota. And the request is beyond the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC.

**REQUEST FOR ADMISSION #17:** Admit that the State of South Dakota Legislature has not delegated the power of eminent domain to Carbon Dioxide pipeline companies.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny. *See* SDCL §§ 49-7-11, 49-2-12, and *Wyco Pipe Line Co. v. Hasselstrom*, 137 N.W.2d 584 (S.D. 1965).

**REQUEST FOR ADMISSION #18:** Admit that the act of transporting carbon dioxide emitted from Ethanol plants in South Dakota to be stored or sequestered in North Dakota is not a public use.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny that the transportation of carbon dioxide is not a public use, and deny that Navigator's pipeline in South Dakota will transport carbon dioxide to be stored or sequestered in North Dakota.

**REQUEST FOR ADMISSION #19:** Admit that NAVIGATOR HEARTLAND GREENWAY, LLC, is not a public utility.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. It is outside the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC. The request does not define "public utility." Under South Dakota law, an entity that must obtain a permit before construction of a transmission facility is defined by statute in SDCL Ch. 49-41B.

**REQUEST FOR ADMISSION #20:** Admit that NAVIGATOR HEARTLAND GREENWAY, LLC, is not an employee of a public utility.

**RESPONSE:** Objection. This request does not relate to statements or opinions of act, or the application of law to fact. It is outside the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC. The request does not define "public utility." Under South Dakota law, an entity that must obtain a permit before construction of a transmission facility is defined by statute in SDCL Ch. 49-41B.

**REQUEST FOR ADMISSION #21:** Admit that NAVIGATOR HEARTLAND GREENWAY, LLC, does not currently own or operate even one inch of an existing carbon dioxide pipeline.

**RESPONSE:** Objection. This request does not relate to statements or opinions of act, or the application of law to fact. It is outside the scope of discovery under SDCL 15-6-26(b) because it is not relevant to any issue before the PUC. Under South Dakota law, an entity that must obtain a permit before construction of a transmission facility is defined by statute in SDCL Ch. 49-41B. Without waiving the objection, admit that the Applicant does not currently own or operate a carbon-dioxide pipeline.

**REQUEST FOR ADMISSION #22:** Admit that based on the holding in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021) SDCL 21-35-31 is unconstitutional.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny that SDCL § 21-35-31 is unconstitutional under the cited case or for any other reason.

**REQUEST FOR ADMISSION #23:** Admit that if a South Dakota landowner refuses to sign an easement for your proposed hazardous carbon dioxide pipeline that you believe is necessary for your hazardous pipeline to be constructed, you would file a condemnation proceeding against such a landowner using the powers of eminent domain.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, the request is denied. It is Navigator's goal to acquire the necessary land rights to construct and operate the pipeline through good-faith voluntary negotiations with all landowners. Applicant has no desire to condemn the easements required for the pipeline and prefers to avoid condemnation, which is ideally reserved for situations such as when absentee owners cannot be located or there are large trusts, and all beneficiaries cannot be located or cannot agree. However, condemnation may be necessary under other certain circumstances, such as when a landowner refuses contact with Navigator or refuses to negotiate with Navigator. The use of condemnation authority could be critical to securing a route that effectively minimizes the collective impact of the HGPS and is optimally located for the environment, the public, pipeline safety, and landowners in the aggregate. Navigator does not and would not utilize condemnation unless and until all reasonable offers and efforts to acquire an easement by agreement have been refused or rejected.



**REQUEST FOR ADMISSION #24:** Admit that your proposed hazardous carbon dioxide pipeline's purpose is economic development to benefit your company and its owners and investors.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny. Navigator is a common carrier under SDCL § 49-7-11 and seeks to serve a demand to transport carbon dioxide for sequestration or commercial use. The purpose of the project is expressly stated in Section 1.1. of the Application.

**REQUEST FOR ADMISSION #25:** Admit that hazardous carbon dioxide pipelines are not defined as a condemning authority anywhere in South Dakota law.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny. Navigator is a common carrier under SDCL § 49-7-11.

**REQUEST FOR ADMISSION #26:** Admit that your proposed hazardous carbon dioxide pipeline is clearly and unambiguously for the constitutionally impermissible purpose of economic development to benefit private parties, i.e. your company and its owners and investors.

**RESPONSE:** Objection. This request does not relate to statements or opinions of fact, or the application of law to fact. The request is also outside the jurisdiction of the PUC. Without waiving the objection, deny. Navigator is a common carrier under SDCL § 49-7-11.

**REQUEST FOR ADMISSION #27:** Admit that none of the South Dakota located Ethanol Plants that you have either offtake agreements with or letters of intent or similar “need” your proposed hazardous Carbon Dioxide pipeline for any purpose.

**RESPONSE:** Deny. As reflected in the long-term agreements Navigator has entered into with its customers after conducting public open seasons in 2021, there is demand for the project as explained in section 1.2 of the application.

Dated this 15th day of February, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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### **OBJECTIONS**

The objections stated to Landowner/Intervenor Rick Bonander's First Set of Requests for Admission were made by James E. Moore, one of the attorneys for Navigator Heartland Greenway, for the reasons and upon the grounds stated therein.

/s/ James E. Moore

*One of the Attorneys for Navigator Heartland  
Greenway*

### CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2023, a true and correct copy of the foregoing Applicant's Responses to Landowner/Intervenor Rick Bonander's First Set of Requests for Admissions was served via e-mail transmission to the following:

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/s/ James E. Moore  
*One of the Attorneys for Navigator  
Heartland Greenway*