

ORDINANCE NO. 23-01

AN ORDINANCE OF DAYTON TOWNSHIP, LINCOLN COUNTY, SD TO PROVIDE FOR THE REGULATION OF CARBON DIOXIDE PIPELINES.

BE IT ORDAINED BY DAYTON TOWNSHIP, LINCOLN COUNTY, SD:

Section 1. An Ordinance is established with the following terms and definitions:

CARBON DIOXIDE. A fluid consisting of carbon dioxide molecules compressed to a supercritical state and classified as a hazardous material by the federal government.

PIPE LINE PIPE OR PIPELINE. A tube, usually cylindrical, through which carbon dioxide flows from one point to another.

Section 2. In the event that Lincoln County or a municipality in Dayton Township (to the extent of its territorial jurisdiction in Dayton Township) has not assumed the regulation of carbon dioxide pipes and line pipes, and to the extent not contrary to said Lincoln County or municipal ordinance if it has assumed said regulation, be it ordained that in Dayton Township in order to protect the lives and property of townships inhabitants and property owners such carbon dioxide pipes, line pipes and pipelines:

- (a) Shall be setback a minimum of 1,855 feet from a dwelling, church, school, daycare, nursing home, hospital, business or other inhabited structure or a, public park or a permitted concentrated animal feeding operation. Said setback is based upon a six-inch (6") diameter pipe. If said pipeline is other than six inches (6") in diameter said pipeline owner shall provide the Township Board an application concerning said pipeline so that it can be determined what setback other than the minimum set forth herein may be required at the Dayton Township Board's discretion. The setback shall be measured from the pipeline to the closest point of the building or in the case of a public park or concentrated feeding operation the closest point of the property line. Any authorized governmental entity, business or person that has a use described above within the minimum setback may waive the setback through a written instrument to be filed with Lincoln County's Register of Deeds. This waiver would run with the land.
- (b) Shall be setback a minimum of 5,280 feet from an incorporated city. Said setback is based upon a six inch (6") diameter pipe. If said pipeline is other than six inches (6") in diameter said pipeline owner shall provide the Township Board an application concerning said pipeline so that it can be determined what setback other than the minimum set forth herein may be required at the Dayton Township Board's discretion. The setback shall be measured from the pipeline to the closest point of the municipal boundary as recorded with the Lincoln County Register of Deeds. Any incorporated city that is within the minimum setback may waive the setback through a written instrument to be filed with Lincoln County Register of Deeds. This waiver would run with the land.
- (c) Shall be at a depth of seven feet (7') to accommodate agricultural practices within the Township, including but not limited to cultivation practices such as drainage tiling, plowing and decompaction, and the potential long-term impacts of soil erosion. The default depth on agricultural lands within the Township is set at 7 feet (7') below grade. Landowners may assert that the level of cultivation extends deeper than 7 feet (7') upon presentation of supporting documents to the Township. Conversely, a landowner may choose to waive the default depth to a depth shallower than seven feet (7'), but no less than four feet (4'), through a written instrument to be filed with the Lincoln County Register of Deeds. This waiver would run with the land.
- (d) Any such waivers as set forth in Sections 2 (a), (b) and (c) are void if the pipeline fails to obtain the necessary permit(s) and authorization from the South Dakota Public Utilities Commission or other applicable federal agency for the construction of such Transmission Pipeline within five (5) years after the effective date of the waiver. This language shall be set forth in all waivers filed pursuant to Section 2 (a) (b) or (c).

(e) Shall not be constructed until all other Dayton Township permits, including right-of-way hazardous utility occupancy are approved regardless of whether Lincoln County or a municipality in Dayton Township has assumed the regulation of carbon dioxide pipes and line pipes.

(f) Shall be in compliance with all other Federal, State and Local rules, regulations and permitting requirements and shall provide Dayton Township with:

1. A complete copy of the application for a permit filed with the PUC pursuant to or within applicable statutory provisions, and as the application for the PUC permit is amended or changed, the Applicant shall simultaneously provide updated information and documents to the Township.
2. A map identifying each entry into the Township's right-of-way, and each proposed crossing of a Township road or other Township property.
3. A map and a list containing the names and addresses of all Affected Property Owners in the Township.
4. A set of plans and specifications showing the dimensions, pressures and other specifications and locations of the Transmission Pipeline, including plans and specifications for all related facilities, and above-ground structures, including without limitations: pumps, valve sites and shutoff valves.
5. Plume modeling for the proposed pipeline.
6. A copy of Applicant's emergency response and hazard mitigation plan as may be required pursuant to regulations adopted by PHMSA emergency preparedness, emergency response, and hazard mitigation.
7. A statement identifying any confidential information in the application and a request, if any, to withhold such information from public examination or disclosure. Any request to withhold such information from public examination or disclosure shall include the statutory basis for such claimed exemption. A failure to identify confidential information in the application may result in the Township treating such information as a public record.
8. Should Applicant's application to the PUC for a permit to construct, maintain, and operate a new Transmission Pipeline along, over, or across land in the jurisdiction of Dayton Township be denied, Applicant's application pursuant to this Article will be denied as moot.

(g) The Township Board may in its discretion consider such alternate set-backs as may be requested with supporting documentation.

(h) A fee of \$ 20,000 shall be charged for the filing of an application by a pipeline owner as set forth herein, any portion of which fee may be returned based upon the discretion of the Township Board taking into consideration the time and expenses and other economic considerations concerning said application.

Section 3. The requirements of this Ordinance and any setback required shall be binding upon the Applicant's heirs, successors, assigns and agents.

Section 4. The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

Adopted this 27th day of November, 2023.

Effective: Jan 15th 2024

DAYTON TOWNSHIP

By: 

Chair, Dayton Township