

ORDINANCE 23-1

AN ORDINANCE ESTABLISHING PERMITTING REQUIREMENTS FOR HAZARDOUS MATERIAL PIPELINES TO THE MCPHERSON COUNTY PLANNING AND ZONING ORDINANCE #10-2.

McPherson County Planning and Zoning Ordinance #10-2, adopted the 6th day of December, 2010 and effective 1st day of January, 2011, shall hereby be amended to add number 14 to Article 7, Section 703, and to include the following Article 26.

ARTICLE 7 **AGRICULTURAL DISTRICT (AG)**

Section 703. Special Exceptions. After notice and appropriate safeguards, the Board of Adjustment may permit the following as a special exception in the Agricultural District (AG):

1. Fairgrounds, racetracks, and amusement parks;
2. Utility substations and transmission facilities;
3. Airports;
4. Golf courses, country clubs, and golf driving ranges;
5. Schools, churches, and cemeteries;
6. Recreational area and activities, both private and public;
7. Commercial feedlots;
8. Operational and maintenance terminal for trucks and other equipment;
9. Mineral exploration;
10. Sanitary landfill sites in accordance with South Dakota Environmental Protection Agency regulations;
11. Concentrated Animal Feeding Operations – refer to Article 23 for standards;
12. Farm-owned, farm-related bulk commodities;
13. Farm-owned agri-business and agri-processing; and
14. Hazardous Material Pipelines.

The remainder of Article 7 shall not be amended and shall remain in full force and effect.

ARTICLE 26 **HAZARDOUS MATERIAL PIPELINE ORDINANCE**

Section 2601. Title.

1. This Ordinance may be known and may be cited and referred to as the “McPherson County Hazardous Material Pipeline Ordinance,” or the “Hazardous Material Pipeline Ordinance” to the same effect as if the full title were stated.

Section 2602. Intent.

1. The intent of these regulations is to strike an appropriate balance between our Nations, States, and local needs to develop energy recourses and the county’s commitment to protect the public health, safety, and welfare within the zoning jurisdiction of McPherson County, South Dakota pursuant to South Dakota Codified Law Chapters 7-8 and 11-2, as well as any other relevant South Dakota Codified Law(s).

The McPherson County Board of Adjustment and McPherson County Board of County Commissioners recognize: (1) that oil and gas transmission pipelines are federally regulated, including 49 Code of Federal Regulations (CFR) 190 through 195, and that oil and gas transmission pipelines and pipelines which transport gas from methane digesters are state regulated, through South Dakota Codified Laws (SDCL) Chapter 49-34B and SDCL Chapter 49-41B.

It is further recognized that, unless preempted by federal law, state and local governmental agencies have the right to set aesthetic and other standards for oil and gas transmission pipelines to both protect citizens and ensure property values are not harmed.

Section 2603. Application of Standards.

1. The definitions, processes, fees, requirements, timelines, and any other language found herein the Hazardous Material Pipeline Ordinance shall only be applicable to Article 26, herein referred to as the Hazardous Material Pipeline Ordinance, and no other part, section, subsection, or article of the McPherson County Planning and Zoning Ordinances. If any language in the Hazardous Material Pipeline Ordinance conflicts with any other language in the McPherson County Planning and Zoning Ordinances, the language in the Hazardous Material Pipeline Ordinance shall be controlling to the Hazardous Material Pipeline Ordinance but not the remainder of the McPherson County Planning and Zoning Ordinances.

Section 2604. Violation and Penalty.

1. Violations of Article 26, herein referred to as the Hazardous Material Pipeline Ordinance, shall be subject to Article 21 of the McPherson County Planning and Zoning Ordinances and, if applicable, the following:
 - a. If a required application and/or inspection fee for a permit, variance, authorization, and/or approval is not timely filed in accordance with the requirements herein, there shall be imposed an administrative fee in the amount of ten (10) times the normal

fee for the associated application and/or inspection plus the cost of postage for mailing the aforementioned notice and/or any personal service fees charged by the applicable sheriff's office.

- b. In the event that any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of McPherson County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation
- c. McPherson County reserves the right to take all legal actions afforded by law to uphold this ordinance.

Section 2605. Definitions.

1. Agricultural Use. "Agricultural Use" The use of land and/or water for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating, or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition includes intensive agricultural activities such as concentrated animal feeding operations but not commercially based agribusiness activities.
2. Applicant. "Applicant" An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity who requests or seeks application approval under the terms of this ordinance.
3. Decommissioning. To return the property to its pre-installation state or better as approved in the decommissioning plan.
4. Development. The carrying out of any surface, subsurface, or structure construction, reconstruction or alteration of land use or intensity of use.
5. Drivable Surface. See "Highway."
6. Easement. An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.
7. Excavation. Any operation in which earth, rock or other material, in or on the ground, is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, pulverizing, rubblizing, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing in, pulling-in, ripping, driving, and demolition of structures, except that,

the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation.

8. Facility: Something built, installed or established for a particular purpose.
9. In-service date. "In-service date" is the date any hazardous material is first transported through any portion of a pipeline located in McPherson County.
10. Hazardous Material. Petroleum, petroleum products, anhydrous ammonia, ethanol or other non-petroleum fuel, including biofuel, and carbon dioxide, which is flammable, toxic, or would be harmful to the environment if released in significant quantities as well as any other material defined by and/or under 49 CFR 195 and any amendments thereto.
11. Hazardous Material Pipeline. "Hazardous Material Pipeline," and for purposes of this Ordinance also "Pipeline," is a pipeline, below or above ground, intended to transport hazardous material with any portion proposed to be located within McPherson County. The pipeline, (1) transports hazardous material from a storage facility or a producer of such hazardous material, to a distribution center, storage facility, or large-volume customer or transports hazardous material within a storage field. A Hazardous Material Pipeline includes all parts of those physical facilities through which hazardous material moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
12. Hazardous Material Pipeline Permit. The permit required to be obtained by any Pipeline Owner before beginning construction on any Hazardous Material Pipeline in McPherson County.
13. Hazardous Material Pipeline Permit Application. The process and related documents any Applicant of a Hazardous Material Pipeline Permit shall abide by and furnish to McPherson County as stated within this ordinance to ensure the health, convenience, order, and welfare of the community is upheld.
14. Hazardous Material Distribution Pipeline. A hazardous material pipeline other than a gathering or transmission line. A hazardous material distribution pipeline is generally used to supply goods to the consumer and is found in a network of piping located downstream of a transmission pipeline.
15. Highway. Every way or place of whatever nature open to the public, as a matter of right, for the purposes of vehicular travel.

16. Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used mainly for residential purposes.
17. Dwelling, Occupied. A dwelling that has been inhabited any time within the previous twelve (12) month period.
18. Maximum Allowable Operating Pressure (MAOP). The maximum pressure at which a pipeline or segment of a gas transmission pipeline may be operated under Title 49, Code of Federal Regulations, Part 192.
19. Maximum Operating Pressure (MOP). The maximum pressure at which a hazardous liquid pipeline or segment of a pipeline may be normally operated under 49 CFR Part 195.
20. PIPA Report. A document available through the U. S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) that provides recommended practices for land use and planning in the vicinity of transmission pipelines.
21. Pipeline Owner. A person or entity that engages in owning a hazardous material pipeline or part of a hazardous material pipeline.
22. Pipeline Operator. A person or entity that engages in operating or managing a hazardous material pipeline or part of a hazardous material pipeline.
23. Potential impact radius (PIR). is defined as the radius of a circle within which the worst-case failure of a gas transmission pipeline could have significant instantaneous impact on people or property not protected by structures or other obstructions. The PIR is calculated by the formula:

$$r = 0.69 * (\text{square root of } (p * d^2))$$

‘r’ is the radius of a circular area in feet surrounding the point on the pipeline of a potential failure

‘p’ is the pipeline’s maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch

‘d’ is the nominal diameter of the pipeline in inches

The 0.69 factor is appropriate for natural gas pipelines. Different factors apply for other gases, depending upon their heat of combustion (see ASME B31.8-2004, Managing System Integrity of Gas Pipelines, 2005).

24. Property Owner. The person(s) or legal entity(ies) holding interests of record to the real property or any portion of the real property.
25. Reclamation. The restoration of the areas through which something is constructed, or from where it is removed, as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction or prior to removal whichever is applicable.
26. Reclamation Costs. The costs to restore and repair any roads, bridges, or county property and the restoration of real and personal property, including, but not limited to, the costs of restoration of natural resources, the costs of rehabilitation of habitat or wildlife, and the costs of vegetation.
27. Right-of-way. (1) A piece of property, usually consisting of a narrow, unobstructed strip or corridor of land of a specific width, which the public as well as the fee simple landowners both have legal rights to use and occupy; (2) A defined strip of land on which an easement holder has the right to construct, operate and maintain a specified use.
28. Screening Fence. A wall, fence, or barrier constructed of brick, stone, reinforced concrete products, or other approved materials by McPherson County or its designee to sufficiently block unsightly and hazardous materials, equipment, and noise from the public, found at or emanating from any substation, control equipment, or pipeline related facility.
29. South Dakota One Call. The South Dakota One Call system provides for communication between excavators and underground facility operators so buried utilities can be marked in advance of any digging. Following the One Call procedure works to reduce damages to underground infrastructure, helps to ensure public and worker safety, and protects the integrity of utility services. South Dakota Codified Law (SDCL) Chapter 49-7A authorizes the use of South Dakota One Call in South Dakota.
30. Water Well. An excavated hole that is dug or drilled in the ground that reaches an underground aquifer or stream to access water for use by humans, livestock, or agricultural purposes.

Section 2606. Exemptions.

1. Only Hazardous Material Pipelines, as defined above, are bound by this Ordinance. Any Hazardous Material Pipeline within the County that is completely constructed and operational prior to the effective date of this Ordinance shall be exempt from this Ordinance but shall be bound by the Ordinance in effect at the time of construction.

Section 2607. Hazardous Material Pipeline Permit Application.

1. Pre-Construction Filing Requirements.
 - a. An Applicant desiring to construct a Hazardous Material Pipeline, as defined by this Ordinance, shall file with the McPherson County Board of Adjustment, or its designee, a Hazardous Material Pipeline Permit Application, all associated plans of the proposed Pipeline, State and Federal approval documentation, if any; all copies of the most recent Material Safety Data Sheets related to the product(s) contemplated to be transported through the Hazardous Material Pipeline; proposed County Road and/or County right-of-way crossings; the current Facility Response Plan filed with PHMSA and a County specific spill and/or leak response plan; a County-wide economic risk analysis; a County-wide economic benefit analysis; a County-wide water risk analysis; a County carbon pollution estimate; a County-wide water testing schedule; proposed County haul routes; any voluntary submittal of other information that would assist the McPherson County Board of Adjustment or its designee in evaluation of the proposed Pipeline project as Pre-Construction Requirements; a list of permit applications that Applicant must acquire prior to construction of the Hazardous Material Pipeline required by the State of South Dakota, the US government, McPherson County, and should they be required, any applications submitted to counties immediately adjacent to McPherson County shall be included. This list shall be updated throughout the planning and construction process.
 - b. Applicant shall also file with the McPherson County Board of Adjustment, or its designee, the location of the Pipeline right-of-way or easement area by recording a “Notice of Location” referring to the right-of-way or easement and setting forth the legal description of the right-of-way or easement and the location of the pipeline contained therein, which description shall be set forth by GIS/GPS mapping attached to the Notice of Location. A copy of the Notice of Location shall promptly be delivered to each Property Owner whose property the proposed route crosses as well as any adjoining landowners of the proposed route. No construction or installation of the Pipeline shall occur until the GIS/GPS mapping Notice of

Location has been filed with the Planning and Zoning Committee, or its designee, and delivered to the Property Owner. Prior to construction, Property Owner shall be contacted by Applicant's project manager or designated agent to review the timing of construction and discuss site-specific issues and implementation of mitigation and reclamation measures.

- c. Each Hazardous Material Pipeline Permit Application shall be accompanied by at least two (2) sets of plans showing the following:
 - i. Dimension and locations of the Pipeline;
 - ii. Related items or facilities within the subject right-of-way or easement;
 - iii. All proposed above ground and below ground lift stations, pumps or other service structures related to such Pipeline;
 - iv. The location, type and size of all existing utilities, drainage, right-of-way, and roadway improvements;
 - v. Cross-section drawings for all public street/road right-of-way and easement crossings; and
 - vi. The proposed maximum operating pressure (MOP), expressed in pounds per square inch gauge.
- d. The McPherson County Board of County Commissioners shall, by resolution, establish a Hazardous Material Pipeline Permit Application fee. This fee shall be reviewed and may be adjusted on an annual basis. This fee shall be payable to the McPherson County Treasurer and paid at the time the Hazardous Material Pipeline Permit Application is submitted. This fee shall be sufficient to offset county review of the application, organization, third-party consulting, holding of public hearings and other additional costs incurred related to Pipeline project. Such payments are necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.
- e. The Pipeline Owner shall reimburse McPherson County for any and all reasonable expenses in excess of the Permit Review Fee for review of the Pipeline Permit Application, organization, third-party consulting, holding of public hearings and

other additional costs incurred by the county related to the Pipeline Permit Application.

Section 2608. Hearings

1. McPherson County Board of Adjustment Review

- a. The McPherson County Board of Adjustment will review the Hazardous Material Pipeline Permit Application and the documents, materials, and reports in a timely manner.

2. McPherson County Board of Adjustment Review Hearing

- a. As soon as practicably possible, the Hazardous Material Pipeline Permit Application shall be brought forth in front of the McPherson County Board of Adjustment for a review hearing.
- b. Appearance by the Applicant, or the Applicant's designee, before the McPherson County Board of Adjustment's Review Hearing is required for any Hazardous Material Pipeline Permit Application.
- c. The McPherson County Board of Adjustment Review Hearing shall be an informational hearing meant for the McPherson County Board of Adjustment to ask questions to the Applicant, or the Applicants designee, and vice versa. Approval or denial of the Hazardous Material Pipeline Permit Application shall not be required at or during the Review Hearing.

3. Public Hearing

- a. After the McPherson County Board of Adjustment's Review Hearing, a Public Hearing date will be set by the McPherson County Board of Adjustment and notice thereof shall be given and published in accordance with South Dakota state law and the McPherson County Hazardous Material Pipeline Ordinance. The Applicant shall be responsible for the cost of notice and cost of publication.
- b. At least two (2) weeks prior to the Public Hearing, the Applicant shall mail written notification of the Public Hearing to all property owners whose land the hazardous material pipeline is planned to be constructed on or under as well as all adjacent landowners via certified mail, return receipt requested. The Applicant shall be

responsible for the cost of written notification to the affected Property Owners and adjacent landowners.

- c. Applicant shall provide copies of all certified mail, return receipt requested, mailed to affected Property Owners and adjacent property owners as proof of mailing. Said copies shall be delivered to the McPherson County Board of Adjustment, or its designee, at least forty-eight (48) hours before the Public Hearing.
- d. An affected Property Owners and/or adjacent landowners refusal to accept and/or sign for the written notice shall not be viewed as a violation of the written notice requirement.
- e. The written notice shall specify the Hazardous Material Pipeline Permit Application number, a general description of the pipeline, the type of material the pipeline will be transporting, the name and contact information for Applicant, as well as the time, date, and location of the Public Hearing.
- f. The Applicant has the burden of proof to establish that the proposed Pipeline complies with all applicable ordinances along with applicable local, state, and federal laws and regulations and that the proposed route is the least disruptive to the property owners of McPherson County when taking into consideration all economic, environmental, and social impacts.
- g. The McPherson County Board of Adjustments ability to approve, deny, and/or direct any modifications pursuant to Hazardous Material Pipeline Permit Application shall be limited to county zoning powers, powers related to county roads and/or right-of-ways, and any/all other powers vested within the county not preempted by State or Federal law.

Section 2609 Confidential Information.

1. At the time of filing of the Pipeline Permit Application, the Applicant shall identify any information within its application that it considers confidential business information, provide an explanation that describes the confidentiality of the information, and request that such information be treated as confidential by the County. The Applicant has the burden to prove that information is confidential under South Dakota and/or Federal law. The McPherson County Board of County Commissioners, or its designee, shall determine if such information is public information or confidential information.

Section 2610. Public Road Impacts.

1. McPherson County's general supervision and control of county roads shall ensure the appropriate and timely maintenance of all county roads pursuant to SDCL Chapter 31.
2. A County Road and Right of Way Haul Road agreement shall be a condition of approval for a Hazardous Material Pipeline Permit.
3. The Applicant shall complete a County Road and Right of Way Application Form including each county, township, or municipal road or street to be crossed under, over, or across for the purposes of transporting Gas, Pipelines, substation parts, or equipment for transportation, construction, and/or maintenance.
4. The Applicant shall, in coordination with a representative from McPherson County and other appropriate jurisdictions, conduct a pre-construction survey of roadways and related improvements, drainage pipes and similar structures, and bridge(s) that may be used during construction, including haul roads, and any roads used for alternative routes. Such survey shall include photographs and written agreement(s) documenting the condition of the public roads, to determine all county, township, or municipal roads or streets to be used for the purposes of transporting pipelines, substation parts, equipment for construction and/or maintenance, and to determine all applicable weight and size permits from the impacted jurisdictions prior to construction.
5. All proposed haul roads within McPherson County shall be inspected by a third-party highway engineer selected by the County prior to Pipeline construction. The inspection shall be completed again by the third-party highway engineer upon completion of Pipeline construction to ensure the haul road locations are brought back to their original condition after use. The Pipeline Owner shall reimburse the County for all expenses related to the third-party inspections. The Pipeline Owner shall also be responsible for any expenses necessary to restore the condition of the haul road terrain.
6. The Pipeline Owner shall be responsible, at its sole expense, for restoring all other roads, streets and bridges to pre-construction conditions. A County representative shall determine the need for and extent of repair and direct Pipeline Owner to make such repairs.
7. The McPherson County Board of County Commissioners shall, by resolution, establish a one-time, nonrefundable, County Road and Right of Way Application fee Hazardous Material Pipeline Permit Application fee. This fee shall be reviewed and may be adjusted on an annual basis. This fee shall be payable to the McPherson County Treasurer and paid at the time the County Road and Right of Way Application Form is submitted.

8. The McPherson County Board of County Commissioners shall, by resolution, establish a County Road and Right of Way renewal fee per drivable surface crossed that shall be paid annually by the Pipeline Owner on the anniversary of the In-Service date of the Hazardous Material Pipeline. This fee shall be paid every year that any portion of the pipeline or related facilities are located in the County. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners. This fee shall be payable to the McPherson County Treasurer.
9. Such payments are necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 2611. Pipeline Location

1. The Pipeline shall not pass within one (1) mile of any occupied dwelling, mobile home, or manufactured home.
2. The Pipeline shall not pass within five hundred (500) feet from any adjoining property line of a non-participating landowner.
3. The owner of any occupied dwelling, mobile home, manufactured home, and an adjoining non-participating landowner shall have the right to sign a Pipeline Setback Waiver waiving the one (1) mile and/or five hundred (500) foot setback. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.
4. If the Pipeline passes within two hundred and fifty (250) feet of any occupied dwelling, mobile home, or manufactured home, Applicant shall implement the following:
 - a. To the extent feasible, Pipeline Owner shall coordinate construction work schedules with affected owner of the dwelling, mobile home, or manufactured home prior to the start of construction in the area of the residences so as to minimally affect said owner.
 - b. Pipeline Owner shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Pipeline Owner and owner of the dwelling, mobile home, or manufactured home. Such periods shall be restricted to the minimum duration possible and shall be coordinated with the affected owner of the occupied dwelling, mobile home, or manufactured home to the extent possible.

- c. Pipeline Owner shall install temporary safety fencing to control access and minimize hazards associated with an open trench and heavy equipment.
 - d. Pipeline Owner shall notify affected residents no less than twenty-four (24) hours in advance of any scheduled disruption of utilities and limit the duration of such disruption.
 - e. Except where practicably infeasible, final grading, topsoil replacement, installation of permanent erosion control structures, repair of fencing and other structures shall be completed in residential areas within ten (10) days after backfilling the trench or after any subsequent repair work. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Pipeline Owner's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigating measures shall be maintained until conditions allow completion of cleanup and reclamation.
 - f. Should a water well, or water supply, be damaged, diminishing the quality and/or quantity of water, by Pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the water well and the water well shall be restored or replaced at Pipeline Owner's expense.
5. A Hazardous Material Pipeline shall not pass within one thousand (1,000) feet of a water well that is documented and/or mapped with the South Dakota Department of Natural Resources Water Well Completion Reports.
 6. The owner of any water well shall have the right to sign a Water Well Setback Waiver waiving the one thousand (1,000) foot setback. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.
 7. In no event can a Hazardous Material Pipeline pass thru any water source designated as "sole source aquifer" by the Environmental Protection Agency.
 8. Baseline water testing for water wells within one thousand (1,000) feet of the proposed Hazardous Material Pipeline Route shall be conducted at the expense of Applicant prior to construction of the Pipeline with the results delivered to the McPherson County Board of Adjustment, or its designee, and made available to the public upon request. This initial baseline water testing shall test the water well for the quality and quantity of water produced. In subsequent years, the Pipeline Owner or Pipeline Operator shall reimburse the County for any water testing done by the County or a third party selected by the County for purposes of measuring against the baseline water test originally performed. If, due to the Hazardous Material Pipeline, the tested water well diminishes in quality or quantity, the Pipeline Owner shall provide an alternative water supply and/or take any necessary steps to bring the water well back to its original condition at the expense of the Pipeline Owner.
 9. In the event any water well of any kind is to be found compromised by a spill and/or leak attributable to a Hazardous Material Pipeline in any way, the Pipeline Owner shall provide

an alternative water supply and take any necessary steps to bring the contaminated water supply back to its original condition.

Section 2612. Pipeline Depth of Cover

1. The depth of cover of any Hazardous Material Pipeline shall meet all local, state, and federal requirements.
2. The depth of cover of a Hazardous Material Pipeline shall be measured from the top of the pipeline, or other appurtenances, to the surface on a vertical line directly above the Hazardous Material Pipeline.
3. The depth of cover for a Hazardous Material Pipeline in Right of Ways shall be:
 - a. Bottom of a Ditch: Depth of the Pipeline shall be at least six (6) feet from the ground surface to the top of the Pipeline.
 - b. Maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline. It is required that the Pipeline be bored under any maintained drivable surface, and not cut or trenched in.
 - c. Non-maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline.

Section 2613. Related Structures and Facilities.

1. The Pipeline Owner shall provide a description of pump or compressor stations or other facilities associated with the proposed Hazardous Material Pipeline, including both a physical description of such facilities, an estimate of the volume of noise or other light or pollution emissions of any kind produced by such facilities, the distance of such facilities to homes, businesses, and other structures, and means to limit the volume of noise or other light or pollution emissions from such facilities.
2. Pump stations and any related facilities must be located at least one thousand (1,000) feet from any public right of way and at least five hundred (500) feet from any property line.
3. A property owner shall have the right to sign a Hazardous Material Pipeline Facility Setback Waiver waiving the five hundred (500) foot setback. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.

4. Screening of substations, other control equipment, and any related facilities from public roads and occupied buildings on abutting properties shall be provided by means of Screening Fence and/or landscaping, or a combination thereof, in accordance with the definitions in this Ordinance. The wall, fence, or barrier shall be a maximum of fifty (50) percent open material, such as chain-link. If greater than thirty (30) percent open, landscaping or trees for additional blockage is required. Any plants used for a landscaping screen shall not be considered an invasive species.
5. The pipeline facility systems shall not exceed sixty (60) decibels using the “A” scale (dBA), as measured at the nearest property lines or right of way, except during short-term events such as emergency repairs.
6. A sound level analysis for all substations and related pipeline facilities within McPherson County shall be conducted by a third-party engineer selected by the County to ensure noise compliance. Pipeline Owner shall reimburse the County for any and all expenses related to the third-party engineer.
7. The McPherson County Board of County Commissioners shall, by resolution, establish a Screening Fence Inspection fee to be paid by the Pipeline Owner per substation or related above-ground pipeline structure or facility. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners. This fee shall be payable to the McPherson County Treasurer at the commencement of construction on any substation or related pipeline structure or facility.
8. The McPherson County Board of County Commissioners shall, by resolution, establish an Annual Facility Inspection Fee per substation or related above-ground pipeline structure or facility that shall be paid annually by the Pipeline Owner on the anniversary of the In-Service date of the Hazardous Material Pipeline. This fee shall be payable to the McPherson County Treasurer and shall be paid every year that any portion of the pipeline or related facilities are located in the County. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners.
9. Such inspections are necessary and reasonable to permit the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 2614. Emergency Response Plan

1. The Applicant shall provide a copy of the project description, site plan, and any other pertinent documentation and/or information to the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s). The Applicant shall coordinate with such local entities in the development of an Emergency Response Plan.
2. The Emergency Response Plan shall include a description of the numbers, locations, and training of personnel necessary to respond to a worst-case discharge in McPherson County. The plan shall also include all Material Safety Data Sheets for all substances that are approved for shipment in the pipeline.
3. All necessary training and equipment for a worst-case discharge in McPherson County for local fire departments, sheriff's office, first responder organizations, and the McPherson County Emergency Manager shall be paid for by the Pipeline Owner.
4. The Emergency Response Plan shall comply with all state and federal standards for spill response for a worst-case discharge in McPherson County.
5. The Emergency Response Plan shall be submitted to the McPherson County Board of County Commissioners or its designee not less sixty (60) before construction is to begin.
6. The Emergency Response Plan shall include a list of all spill response equipment; showing the type and capability of said equipment, as well as the equipment's location.
7. All spill response equipment shall be accessible by the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s).

Section 2615. Public Inquires and Complaints.

1. The Pipeline Owner and/or Pipeline Operator shall maintain a publicly available telephone number and identify a responsible person or position for the public to contact with inquiries or complaints throughout the life of the project. Pipeline Owner and/or Pipeline Operator shall make a reasonable effort to respond to the public's inquiries and complaints and shall maintain a database of such inquiries and complaints, together with actions taken and dates thereof and shall make such database available to the McPherson County Board of Adjustment or its designee.

Section 2616. Decommissioning, Restoration, or Abandonment of Pipeline.

1. The Pipeline Owner and/or Pipeline Operator shall be responsible for decommissioning a Hazardous Material Pipeline, including all related facilities, and for all costs associated with decommissioning a Hazardous Material Pipeline and for all related facilities.
2. At least thirty (30) days prior to construction, the Applicant shall file a decommissioning plan with the McPherson County Board of Adjustment in accordance with the requirements of Section 12 herein. The decommissioning plan shall include an acceptable financial assurance plan which estimates the decommissioning cost of the Hazardous Material Pipeline in McPherson County and a description of the manner in which the Pipeline Owner will ensure that it has the financial capability to carry out these decommissioning and restoration requirements when they go into effect. The Pipeline Owner shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the Pipeline Owner is fulfilling this obligation.
3. The McPherson County Board of Adjustment shall require a performance bond, surety bond, or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the Hazardous Material Pipeline. The financial assurance plan is subject to the following provisions:
 - a. Said performance bond, surety bond, or other form of financial assurance acceptable to the Board shall be for an amount twenty percent (20%) greater than the estimated cost of decommissioning submitted with the decommissioning plan;
 - b. Said performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i) shall be payable to McPherson County in the event the Pipeline Owner abandons the Hazardous Material Pipeline or fails to meet any and all local, state, or federal decommissioning requirements;
 - c. Two percent (2%) of the amount required for the performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i) shall be deposited into a decommissioning account on an annual basis by the Pipeline Owner under the following requirements:
 - i. The decommissioning account shall be held in the name of McPherson County;
 - ii. At the request of the Pipeline Owner, the Pipeline Owner shall have the right to view, inspect, and copy any decommissioning account statements;

- iii. The decommissioning account shall only be used for decommissioning purposes in the event that the Pipeline Owner abandons the Hazardous Material Pipeline or fails to meet local, state, or federal decommissioning requirements.
- d. If the decommissioning account reaches an amount equal to or greater than the amount required for the performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i), the performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i) shall no longer be required.
- e. If the Pipeline Owner abandons the Hazardous Material Pipeline or fails to meet local, state, or federal decommissioning requirements:
 - i. The performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i), if still required, shall be paid to McPherson County and deposited into the decommissioning account;
 - ii. McPherson County shall first use the decommissioning account to reimburse McPherson County for all costs McPherson County incurs for decommissioning on County property, rights-of-way, County highways, and any other costs incurred by McPherson County for decommissioning;
 - iii. The remaining funds in the decommissioning account, if any, shall be dispersed to Property Owners. Property Owners shall apply to McPherson County for reimbursement of any reasonable costs incurred to them for the decommissioning of the Hazardous Material Pipeline;
 - iv. After McPherson County and Property Owners are reimbursed for decommissioning costs, any remaining funds in the decommissioning account shall be held by McPherson County for a period of five (5) years and shall be used for any further costs of decommissioning by McPherson County or Property Owners;
 - v. After the five (5) year period, the Pipeline Owner, within one (1) year, may request, in writing, for any remaining funds in the decommissioning account to be returned to the Pipeline Owner. Upon such request, any remaining funds in the decommissioning account shall be returned to the Pipeline Owner. If the Pipeline Owner makes no such request within one (1) year

timeframe, any remaining funds in the decommissioning account shall be retained by McPherson County, considered McPherson County property, and transferred to the McPherson County General Fund.

- f. All interest earned by the decommissioning account shall remain in said account and be subject to the provisions of Section 12 (c).
 - g. The decommissioning account shall not be subject to foreclosure, lien, judgment, or bankruptcy by, of, placed upon, or filed against the Pipeline Owner.
 - h. If the decommissioning account is not sufficient for its intended purpose, McPherson County reserves the right to take any legal action to hold the Pipeline Owner responsible for any remaining decommissioning costs.
 - i. If the Pipeline Owner does not abandon the Hazardous Material Pipeline and meets local, state, or federal decommissioning requirements, the performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i), if still required, shall be discontinued and any funds in the decommissioning account shall be returned to the Pipeline Owner.
4. If the Pipeline Owner abandons or fails to meet local, state, or federal decommissioning requirements, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the performance bond, surety bond, or other form of financial assurance acceptable to the Board under Section 12(c)(i).
 5. At least six (6) months prior to the commencement of decommissioning, Pipeline Owner shall give notice, in writing, to the McPherson County Board of Adjustment of the date decommissioning is to begin.
 6. Pipeline Owner shall physically dismantle all below and above ground components of the Hazardous Material Pipeline within three-hundred and sixty-five (365) days from the date decommissioning is to begin.
 7. Such removal and dismantling period can be extended upon written agreement between Pipeline Owner and Property Owner. However, in no event can this period extend beyond two (2) years from the date decommissioning is to begin. Any agreement to extend removal and dismantling shall be filed at the McPherson County Registrar of Deeds office and a copy thereof shall be delivered by the Pipeline Owner to the McPherson County Board of County Commissioners or its designee.

8. A Hazardous Material Pipeline shall be deemed abandoned if it is out of service or no longer in use for twenty-four (24) consecutive months.
9. If a Hazardous Material Pipeline is deemed abandoned:
 - a. The McPherson County Board Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the Pipeline Owner. The Pipeline Owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Pipeline has not been abandoned.
 - b. The McPherson County Board Adjustment shall review any such response to determine if the Pipeline has or has not been.
 - c. If it is determined the Pipeline has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of same shall be provided to the Pipeline Owner.
 - d. If, after review of Pipeline Owner's response, it is determined that Hazardous Material Pipeline has been abandoned, notice of such finding shall be provided by certified mail to the Pipeline Owner.
 - e. If the Hazardous Material Pipeline is deemed to have been abandoned, the Pipeline Owner shall have one hundred twenty (120) days from the date of receipt of such notice to dismantle all above and below ground components of the Pipeline. If Pipeline Owner fails to dismantle the Pipeline within the prescribed time period, such shall be considered a violation of this ordinance and shall be subject to any and all legal remedies.

Section 2617. Construction Related Debris.

1. Construction related debris and material which is not an integral part of the Pipeline will be promptly removed from the Property Owner's property at Pipeline Owner's expense. Such material to be removed includes all litter generated by the Pipeline Owners employees, agents, contractors, or invitees, including construction crews. Following the completion of Pipeline Owner's construction activities on the Property Owner's property, Pipeline Owner shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by Pipeline Owner or its employees, agents, contractors, invitees, or its operations on the property. Under no circumstances shall Pipeline Owner, or its employees, agents, contractors, or invitees bury or burn any trash, debris or foreign material of any nature on the Property Owner's property.

Section 2618 - Post-Construction Filing Requirements.

1. Once installation of the Pipeline is complete, Pipeline Owner shall deliver to the McPherson County Board of County Commissioners, or its designee, within six (6) months of completion, an “as-built” map that will show the exact location of the Pipeline using GIS/GPS mapping. The “as built” map shall also depict other improvements or facilities, whether located above-ground or below-ground, and any modifications, improvements or facilities owned by Property Owner, such as waterlines or fences.

Section 2619. Reclamation Obligations.

1. Following the completion of the Pipeline construction, or upon removal of the Pipeline at the expiration, termination, abandonment, or surrender of the Pipeline, Pipeline Owner shall restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour.
2. Pipeline Owner, at its own expense shall, unless otherwise requested by Property Owner, abide by all guidelines and recommendations of the local or regional field office of the United States Natural Resources Conservation Service or the Construction, Mitigation and Reclamation Plan, whichever is more stringent, regarding the removal, storage, and replacement of top soil.
 - a. At a minimum, Pipeline Owner shall strip the topsoil from the ditch line in the Pipeline right-of-way or easement area and segregate all topsoil from the other excavated soil material, prior to construction and installation of any section of the Pipeline placed in the Pipeline right-of-way or easement area. Following the construction and installation of each section of the Pipeline, the top soil shall be replaced, to the extent feasible, as near as practicable to its original location and condition. Topsoil deficiency shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the Property. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement in accordance with recommendations of the United States Natural Resources Conservation Service.
3. A Pipeline Owner owning, operating, or managing a pipeline or part of a Pipeline for the transportation of hazardous material in McPherson County shall be responsible for all reclamation costs necessary as a result of constructing the Pipeline as well as reclamation costs resulting from maintaining, operating, and removing the Pipeline and, except if the proximate cause necessitating the reclamation efforts is unrelated party’s intentional bad acts.

4. The Pipeline Owner shall commence reclamation of the area through which a Pipeline is constructed, either post construction or post removal as applicable, as soon as reasonably practicable, as provided:
 - a. Pipeline Owner shall complete final grading, topsoil replacement, installation of erosion control structures, seeding, and mulching within thirty days after backfill except when weather conditions, extenuating circumstances including landowner preference of delay due to personal or agricultural land use, or unforeseen developments do not permit the work to be done within such thirty-day period.
 - b. Pipeline Owner shall ensure that all reclamation, including, but not limited to, choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring, is conducted in accordance with the Federal Seed Act, 7 USC 1551 et seq., SDCL Chapter 38, and any other applicable state and federal law.
 - c. Pipeline Owner shall ensure that genetically appropriate and locally adapted native plant materials and seeds are used based on site characteristics surrounding vegetation as determined by a pre-reclamation site inventory.
 - d. Pipeline Owner shall ensure that mulch is installed as required by site contours, seeding methods, or weather conditions or when requested by a landowner.
5. A Pipeline Owner's obligation for reclamation and maintenance of the Pipeline right-of-way shall continue until the pipeline is permanently decommissioned or until all post-removal duties are complete.

Section 2620. Variances.

1. Hardship.
 - a. If extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with these regulations, Applicant may request a variance of the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent or purpose of the Hazardous Material Pipeline Permit Application and the Hazardous Material Pipeline Ordinance, and will not be detrimental to the public health, safety or welfare or injurious to other property in the county in which Pipeline is situated.

2. Application Required.

- a. A Hazardous Material Pipeline Variance Application shall be submitted in writing by the Applicant at the time the Hazardous Material Pipeline Permit Application is filed with the McPherson County Board of Adjustment, or its designee, and shall state fully and clearly all facts relied upon by the Applicant and shall be supplemented with maps, plans or other additional data which may aid the McPherson County Board of Adjustment in the analysis of the proposed project.
- b. The McPherson County Board of Adjustment will review the Hazardous Material Pipeline Variance Application and any accompanying documents, materials, and reports in a timely manner.

3. McPherson County Board of Adjustment Review Hearing

- a. As soon as practicably possible, the Hazardous Material Pipeline Variance Application shall be brought forth in front of the McPherson County Board of Adjustment for a review hearing.
- b. Appearance by the Applicant, or the Applicant's designee, before the McPherson County Board of Adjustment's Review Hearing is required for any Hazardous Material Pipeline Variance Application.
- c. The McPherson County Board of Adjustment Review Hearing shall be an informational hearing meant for the McPherson County Board of Adjustment to ask questions to the Applicant, or the Applicants designee, and vice versa. Approval or denial of the Hazardous Material Pipeline Variance Application shall not be required at or during the Review Hearing.

4. Public Hearing

- a. After the McPherson County Board of Adjustment's Review Hearing, a Public Hearing date will be set by the McPherson County Board of Adjustment and notice thereof shall be given and published in accordance with South Dakota state law and the McPherson County Hazardous Material Pipeline Ordinance. Notice of the Hazardous Material Pipeline Variance Application Public Hearing may be included with notice of the Hazardous Material Pipeline Permit Application Public Hearing. The Applicant shall be responsible for the cost of notice and cost of publication.

- b. At least two (2) weeks prior to the Public Hearing, the Applicant shall mail written notification of the Public Hearing to all property owners whose land the hazardous material pipeline variance would affect as well as all adjacent landowners via certified mail, return receipt requested. The written notification for the Hazardous Material Pipeline Variance Application Public Hearing may be included with any required notice for the Hazardous Material Pipeline Permit Public Hearing notice. The Applicant shall be responsible for the cost of written notification to the affected Property Owners and adjacent landowners.
- c. Applicant shall provide copies of all certified mail, return receipt requested, mailed to affected Property Owners and adjacent property owners as proof of mailing. Said copies shall be delivered to the McPherson County Board of Adjustment, or its designee, at least forty-eight (48) hours before the Public Hearing.
- d. An affected Property Owners and/or adjacent landowners' refusal to accept and/or sign for the written notice shall not be viewed as a violation of the written notice requirement.
- e. The written notice shall specify the Hazardous Material Pipeline Permit Application number, a general description of the pipeline, the type of material the pipeline will be transporting, a brief description of the applied for variance, the name and contact information for Applicant, as well as the time, date, and location of the Public Hearing.
- f. The McPherson County Board of Adjustment shall have the right to attach such conditions to variances as they deem necessary to further the purposes and objectives of this Ordinance.
- g. A Hazardous Material Pipeline Variance Application shall be considered with, and under the same process as, the Hazardous Material Pipeline Permit Application.
- h. The McPherson County Board of County Commissioners shall, by resolution, establish a Hazardous Material Pipeline Variance Application fee. This fee shall be reviewed and may be adjusted on an annual basis. Such fee is necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation. The Hazardous Material Pipeline Variance Application fee shall be payable to the McPherson County Treasurer.

5. Conditions.

- a. In granting a variance, the McPherson County Board of Adjustment may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any variance, the McPherson County Board of Adjustment shall prescribe only conditions that are deemed necessary to, or desirable for, the public interest. These conditions may include, without being limited to, personal, surety, performance, or maintenance bonds, or other legal instruments.
- b. In making their findings, as required herein, McPherson County Board of Adjustment shall take into account the nature of the existing use of the land in the vicinity of the proposed Hazardous Material Pipeline and any probable effects of the proposed Pipeline on the health, safety and welfare of the surrounding residents and environment.
- c. The McPherson County Board of Adjustment, or its designee, must ensure the preservation and enjoyment of the property rights of the Property Owner. The County is responsible for promoting the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 2621. Indemnification.

1. The Pipeline Owner and/or Pipeline Operator, and their heirs and assigns and successor owner and/or operator shall indemnify, defend and hold harmless McPherson County and any Property Owners from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by McPherson County and/or the Property Owner in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline and/or related facilities, and the products contained and transferred through, released or escaped from said pipeline and appurtenant facilities, including the reasonable costs of assessing such damages, and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any law, including all applicable environmental laws. This shall be true in all instances except for those individuals or companies who damage the Pipeline or related facility through their intentional bad acts. No Property Owner or tenant thereof shall be held responsible for a Pipeline leak that occurs as a result of his/her/its related

Agricultural Use over the top of or near the Pipeline or related facilities, provided no tillage or other agricultural method is used which intentionally penetrates the soil by more than two (2) feet from the undisturbed surface and they do not physically strike or impact the surface structures such as valves, etc. with machinery, equipment, or other objects. This shall in no way relieve any Property Owner or tenant, agent, or contractor of such Property Owner from their obligation to comply with the South Dakota One Call system and any amendments thereto (*SDCL Chapter 49-7A*), or relieve them of liability for their failure to do so.

Section 2622. Compliance with Applicable Laws.

1. Pipeline Owners, operators and/or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state and federal laws and regulations in construction and operation of the Pipeline.

Section 2623. Severability and Separability.

1. Should any portion of this act be deemed unlawful for any reason or conflict with any existing state or federal law, that fact shall not affect any other portion or section of this act and any unaffected sections or portions of this act shall stand in effect.

Section 2624. Posting of Fees.

1. All fees set by resolution by the McPherson County Board of County Commissioners herein shall be posted in the office of the County Zoning Officer and may be altered or amended only by the McPherson County Board of County Commissioners.

Section 2625. Effective Date.

1. This Ordinance shall take effect and be in force from and after the statutorily required time period from the date of adoption by the McPherson County Board Adjustment.

Dated this 15th day of August, 2023

ATTEST:

Lindley Howard
McPherson County Auditor

Rick Beilke
Chairman of the McPherson Co. Board of
County Commissioners

FIRST READING: August 1st, 2023

SECOND READING: August 15th, 2023

ADOPTED: August 15th, 2023

PUBLICATION DATE: August 24th, 2023

EFFECTIVE DATE: September 14th, 2023