

March 13, 2003

TO: Environmental Quality Board Members &
Technical Representatives

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SUBJECT: Amendment of Pipeline Routing Permit Issued to the City of Hutchinson
(Hutchinson Utilities Commission) for 90 Mile Natural Gas Pipeline from
Trimont to Hutchinson Traversing Martin, Watonwan, Brown, Nicollet,
Sibley and McLeod Counties (MEQB Docket No. 02-33-PRP-HUC)

Action: The Board issued a pipeline routing permit to the City of Hutchinson in December, 2002, for a 90 mile long natural gas pipeline. The Board is asked now to amend the routing permit to more specifically designate the route and to incorporate an Agricultural Impact Mitigation Plan and a Watershed Study Impact Mitigation Plan into the permit.

Background: On December 19, 2002, the Environmental Quality Board issued a pipeline routing permit to the City of Hutchinson (Hutchinson Utilities Commission) for a 90 mile long natural gas pipeline from Trimont, Minnesota, in Martin County, to Hutchinson, Minnesota, in McLeod County. The permit authorized Hutchinson to construct the pipeline along a route designated in the permit. The designated route followed the route proposed by Hutchinson for much of the entire distance, but through Sibley County and much of McLeod County, from milepost 55.5 to milepost 80.5, the route designated was an alternative route commonly referred to as the Farmers Route that followed county and township roads for much of the distance, while the Hutchinson route crossed a number of farm fields diagonally.

The permit also required the City of Hutchinson to develop an Agricultural Impact Mitigation Plan in consultation with the counties and interested landowners, and to develop a watershed mitigation plan to protect the integrity of an ongoing watershed study in Nicollet County.

Although neither Hutchinson nor any other person expressed disagreement with the Board's decision to designate the Farmers Route for the 25 mile stretch and to require Hutchinson to commit to mitigation plans when the Board issued the permit in December, once Hutchinson began to implement the permit, disagreements arose between the City and the interested landowners over the exact route to be followed and the terms of the mitigation plans. Over the last several weeks, the EQB staff has participated with the City and the interested landowners and Department of Agriculture staff in a series of meetings to try to resolve these differences.

The amended routing permit that is being presented to the Board modifies the designated route in Sibley and McLeod Counties from what was approved in December. In developing the amended route, the parties took into account safety, environmental impacts, landowner requests, county and township considerations, and engineering factors in determining the appropriate route and requirements of the mitigation plans. The amended routing permit not only more specifically identifies the route to follow, but it also designates how far the pipeline should be from road right-of-ways and section lines. Individual landowner requests and other considerations can still be taken into account when the City determines the precise location of the pipeline.

The City remains displeased with a four mile stretch of the amended route in the southern end of Sibley County and does not like certain restrictions on how far the pipeline can be from roads and pipelines, but it is unclear whether the City will contest the designation of the route. Also, there still are some landowners who are unhappy about the route location because the pipeline along the amended route crosses their property, whereas along other routes, it does not.

The various parties have also spent a substantial amount of time in the past few weeks negotiating the terms of an Agricultural Impact Mitigation Plan and a Watershed Study Impact Mitigation Plan. The Watershed Plan has some language that is unacceptable to the City, but there is no reason that this concern cannot be addressed with some wordsmithing. There are still some sections of the Agricultural Impact Mitigation Plan, however, that remain in dispute, particularly provisions relating to compensation for damages, and the parties will continue in the next few days to attempt to resolve their differences. The staff will advise the Board of the status of those negotiations at the Board meeting and make a recommendation to the Board regarding the Agricultural Plan.

Significant Issues: The two matters that were the subject of the discussions are the route to be followed in Sibley and McLeod Counties and the terms of the mitigation plans.

(1) Route. The December routing permit identified the Farmers Route as the designated route from milepost 55.5 in Sibley County to milepost 80.5 in McLeod County. The permit also provided that the route had a variable width up to 1.25 miles wide within which the actual right-of-way could be determined in order to accommodate landowner concerns and to minimize environmental impacts.

The Farmers Route referenced in the permit followed county and township roads for most of the distance between milepost 55.5 and milepost 80.5. The route selected by Hutchinson did not follow the county and township roads, but instead followed section and half-section lines for nearly the entire distance. Where the route did follow road right-of-way, Hutchinson intended to be at least 400 feet from the center of the road, well into the adjacent field. The interested landowners preferred locating the pipeline closer to the road right-of-way because they found that this route would not cut as much drain tile and not interfere with farming operations as much as the City's route through the fields. Hutchinson asserted that following the section lines would not result in a significantly larger number of drain tile lines that would have to be cut and would be cheaper to construct because it was somewhat shorter than the Farmers Route. The City also maintained that the highway engineers for Sibley and McLeod Counties preferred that the pipeline be installed at least 400 feet from the road center line to minimize any impact on possible future improvements to the roads.

The amended route follows county and township roads for a portion of the way and section lines for a portion of the way. When the pipeline follows the roadway, Hutchinson will install the pipeline within 100 feet of the center line, unless individual landowners prefer that the line be further from the road on their property or unless other reasons, such as the need to make a turn in the pipeline direction, necessitate that the pipeline be further from the road. The reason for locating the pipeline closer to the road right-of-way is to minimize the amount of drain tile that will be encountered. Less drain tile is expected closer to the road than in the field.

While the Sibley and McLeod County highway engineers would prefer that the pipeline be hundreds of feet from the roads to avoid any possible interference with future plans to widen certain roadways within existing road right-of-way, in most instances the flat agricultural land that traverses most of the length of the roads should minimize the amount of road construction activity that will need to take place in the adjacent field. Also, Hutchinson can minimize possible future problems with road construction by placing the pipeline at an appropriate depth. Further, MnDOT policy recognizes that road right-of-way is a proper location for utilities to be buried. The routing permit recognizes that Hutchinson can continue to accommodate individual landowner requests by installing the pipeline farther away from the road right-of-way if necessary to avoid homes or building sites and by taking into account other landowner desires.

There has been no compromise in federal and state pipeline safety standards with the proposed amended route. The pipeline will be constructed in accordance with all applicable safety standards, regardless of route the actual right-of-way location.

The proposed amended route minimizes impacts on landowners and farming operations by avoiding more drain tile than other routes. The route avoids the Robert Fisher property near the Sibley County/Nicollet County line, where Mr. Fisher plans to install pattern tile beginning this spring. In Bismarck Township in Sibley County, the selected route avoids crossing three county ditches that the City's route would cross. The route passes to the north of a wetland on the Ruth Klukas property in Bismarck Township. The amended route also contains a diagonal portion that leaves the road right-of-way, shortening the route and avoiding some sharper angles required in the Farmers Route. It avoids several turns that would have been required along the Farmers Route in Round Grove Township near the Sibley County/McLeod County line. Proceeding north into Collins Township, the amended route avoids the necessity to cross Township Road 7 several times by following the section line instead. Landowner Peter Kalenberg in Collins Township has many ridge tile lines on his farm, but he believes that the impact can be minimized by careful selection of the precise route. The selected route also avoids a home site on the Arnold Koenig property. Finally, proceeding from Collins Township into Lynn Township, the selected route accommodates some landowner requests and provides some more gentle turns for Hutchinson. The route then joins the City's preferred route that was designated in the December permit.

The proposed amended route deviates from the road right-of-way in certain stretches to follow section lines, which shortens the length slightly over what the landowners originally requested. The new route recognizes various engineering factors such as the need to make gentle sweeps when the direction of the pipe is to be changed. It takes into account certain landowner requests that have been identified. The proposed amended route passes to the east of the Pebbles Wildlife Management Area.

The City would prefer to follow its preferred route as it crosses from Nicollet County into Sibley County because it already has negotiated easements with some landowners along that stretch. However, these easements were negotiated before any route was authorized by the EQB. Also, the City does not hold easements with all the landowners along that stretch and some of the landowners who have signed easements own property that is crossed by both routes. One of the landowners who has not signed an agreement is Robert Fisher, who has plans to install drain tile this year.

For certainty and clarity for all parties, the amended routing permit identifies the new route with a great deal of specificity through Sibley and McLeod Counties. A map is also included that shows the designated route in the northern half.

(2) Agricultural Impact Mitigation Plan. The December 19 routing permit requires Hutchinson to develop an Agricultural Impact Mitigation Plan after consultation with the counties, the interested landowners, and the Department of Agriculture. While the negotiations have involved landowners who live in the northern end of the pipeline, the Mitigation Plan will apply along all 90 miles of the pipeline.

The Department of Agriculture has taken the lead in developing the Agricultural Mitigation Plan. A copy of a Mitigation Plan that the Department believes sets forth reasonable requirements to protect landowner interests is included in the Board packet. The City has a number of disagreements with various provisions in the Plan. The main points of contention have been the provisions relating to how deep the pipeline will be buried, the measure of damages to compensate the landowners, the procedures for determining damages, and the length of time the agreement will be applicable. The issue that seems the most difficult to resolve is the matter of compensation for damages.

The parties have attempted to include in the Plan a method for determining the appropriate amount of damages the City must pay landowners who are damaged by the pipeline. Damages include crop losses, property damage, damage to soils, and other losses caused by the pipeline. The Department of Agriculture has developed a "Schedule of Damage Compensation" in its version of the Plan. This Schedule is unacceptable to the City. The City will continue to work with the Department and the landowners to work out language that is acceptable to all interests.

The landowners believe that the City will be responsible for any damages incurred as a result of the pipeline for as long as the pipeline is in the ground, and they want the Mitigation Plan to say that. However, since the Mitigation Plan is an enforceable part of the routing permit, the EQB staff does not believe that it is appropriate for the permit to continue indefinitely. The EQB staff has included in the draft permit a deadline of October 1, 2008. The reason for this date is that it is five growing seasons after the pipeline is scheduled to be completed. This is a reasonable length of time to ensure that the City installs the pipeline in accordance with the requirements of the Plan and reimburses the landowners for damages caused by the pipeline. The City believes that this time is too long; the landowners think it is too short; hopefully both sides will accept it.

The landowners would prefer that the Agricultural Impact Mitigation Plan be incorporated into easement agreements negotiated with individual landowners. The EQB staff believes that it is not appropriate for the EQB to demand that certain language be included in individual easement

agreements. However, it is appropriate to require the City to advise landowners that the Agricultural Mitigation Plan is something the City has to comply with and to ensure that the landowner has a copy of the Plan prior to signing an easement agreement. The staff has included language in the permit to require the City to do that. Individual landowners can then determine whether they want the Mitigation Plan to be a part of the easement agreement. The parties have accepted this language.

Discussions will continue throughout the upcoming week. The staff will advise the Board at the Board meeting of the status of these discussions and make a recommendation to the Board on an appropriate Mitigation Plan to incorporate into the permit if the parties have not come to an agreement on a Plan. The major issues that are addressed are discussed below.

(3) Watershed Mitigation Plan. The December 19 routing permit also requires the City of Hutchinson to develop a plan to preserve the integrity of an ongoing watershed study in Nicollet County. The main point of contention here has been a provision that requires the City to pay any additional expenses that are incurred if the study must be extended for an additional year because construction of the pipeline invalidates monitoring data for this year. The City has agreed to pay the reasonable expenses up to \$90,000 if construction should interfere with the collection of data, but all parties anticipate that such a result can be avoided. The permit provides that the obligation to comply with the Watershed Plan expires on October 1, 2005, since by then either the study will have been completed or the City will have provided funds to extend the study for a year. There are a couple of minor wording issues to resolve but there is no reason that cannot be done by next Thursday.

EQB Staff Recommendation: EQB staff recommends that the Board adopt the proposed resolution, adopting the proposed findings of fact, conclusions and order granting the City of Hutchinson an amended permit for its 90 mile long natural gas pipeline. This action results in the designation of an amended new route in Sibley and McLeod Counties, the incorporation of a Watershed Study Impact Mitigation Plan into the Permit as a condition of the Permit, and incorporation of an Agricultural Impact Mitigation Plan into the Permit as a condition of the Permit, but the precise language of the two mitigation plans has not been determined yet. Hopefully, there will be agreement on the terms of the Plans by March 20 and the Board can incorporate those into the Permit. If there is not, the Board will decide what action to take.