

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of the Application of the City of Hutchinson (Hutchinson Utilities Commission) for a Pipeline Routing Permit and for a Partial Exemption from Pipeline Route Selection Procedures Pursuant to Minnesota Rules Chapter 4415

**FINDINGS OF FACT,
CONCLUSIONS, AND ORDER
AMENDING PERMIT**

MEQB DOCKET NO. 02-33-PRP-HUC

The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regularly scheduled meeting to consider amendment of the pipeline routing permit issued to the City of Hutchinson (Hutchinson Utilities Commission) by the EQB on December 19, 2002, for a 90 mile long natural gas pipeline traversing portions of Martin, Watonwan, Brown, Nicollet, Sibley and McLeod Counties.

STATEMENT OF ISSUE

The issue before the Environmental Quality Board is whether the route designated for a 90 mile natural gas pipeline should be modified and whether other terms of the permit should be amended to incorporate two mitigation plans that have been developed pursuant to requirements of the original permit issued by the EQB.

Based on the information that has been compiled during the course of discussions by the City, interested landowners, the counties, the Department of Agriculture staff, and the EQB staff over the past several weeks, and the entire record herein including the Findings of Fact the Board adopted on December 19, 2003, when it issued the pipeline routing permit, the EQB makes the following Findings of Fact.

FINDINGS OF FACT

Background

1. On December 19, 2002, the Environmental Quality Board issued a permit to the City of Hutchinson (Hutchinson Utilities Commission) for a 90 mile long natural gas pipeline between the City of Trimont in Martin County and the City of Hutchinson in McLeod County. The permit approved the route proposed by the City of Hutchinson except for a 25 mile stretch in Sibley and McLeod Counties, where the EQB approved a route commonly referred to as the Farmers Route.
2. Once Hutchinson began to implement the terms of the permit, disagreements arose between the City and interested landowners over the exact route to be followed by the City and over the terms of the mitigation plans that were being developed as a requirement of the permit.

3. Several meetings were held involving the City, interested landowners, the Department of Agriculture staff, and the EQB staff in February and March 2003 to discuss the various disagreements over the route and the mitigation plans.
4. As a result of the discussions between the various parties, a modified route that follows the Farmers Route for part of the way and follows the City's proposed route part of the way has been identified that attempts to minimize impacts on agricultural land. A number of the landowners who participated in the discussions and have been involved in this matter from the outset are willing to accept this route. The City is satisfied with most of the route but prefers a different route in the southern end of Sibley County. Other landowners along the route are displeased with the route and prefer that the pipeline be located elsewhere.
5. The same parties have also attempted to negotiate an Agricultural Impact Mitigation Plan. Such a Plan was required by the EQB in the permit issued on December 19, 2002. The parties have not been able to agree on the terms of such a Plan.
6. The City is prepared to accept a Watershed Study Impact Mitigation Plan that has been developed in consultation with the counties, interested landowners, the EQB staff, the Department of Agriculture staff, and the watershed study participants.

The Route

7. In deriving a route for the proposed pipeline, the EQB has considered factors relating to safety, impacts on the environment including agricultural land and operations, landowner requests, engineering factors, and county and township preferences.
8. The proposed pipeline, regardless of route, must be constructed and operated in accordance with all applicable pipeline safety standards. The City is required to comply with all applicable safety standards and there is nothing about any of the possible routes that would preclude the City from complying with all safety standards.
9. A route that follows county and township roads will minimize the impact on agricultural land and on farming operations by minimizing the number of drain tile that will be cut and the amount of agricultural land that will be traversed by heavy equipment. The Minnesota Department of Transportation has adopted a policy statement that recognizes that it is in the public interest for utility facilities to be accommodated on the right of way of trunk highways. Mn/DOT Policy No. 90-1 (July 27, 1990).
10. Counties and townships that are responsible for road maintenance often prefer that utilities not be located in or along road right-of-way to minimize any potential impacts on road construction in the future. In this case Sibley County has long range plans to widen and blacktop County Road 3 within its 100 foot wide right-of-way, although no definite date has been set for such work and financing is uncertain. Round Grove Township and Collins Township may also at some point expand certain township roads in McLeod County, but nothing definite has been developed, and the final route follows township roads for only about 2.5 miles.

11. Even if Sibley County Road 3 or township roads in McLeod County were upgraded, the required right-of-way would be no more than 100 feet, fifty feet from center in both directions. Constructing the pipeline between 50 and 100 feet from center should keep the pipeline out of the necessary right-of-way and yet minimize the number of drain tiles encountered in the adjacent landowner's field.
12. To the extent that counties are concerned about the location of the pipeline along road right-of-way, burying the pipe deeper in certain locations will minimize potential problems with future road construction. These kinds of concerns can be addressed by the City and the counties at the time the City is getting ready to install the pipeline. It will cost more to bury the pipe deeper but there are no estimates at this time of the amount, and certainly it is preferable to bury the pipe deeper at the time the trench is dug than to have to move the pipe at a later time.
13. The City and landowners both want to minimize the impact of the pipeline on landowners and upon farming operations, including minimizing the number of drain tile that will have to be cut when the pipeline is being laid. Several farmers along various possible routes have more extensive tile than others. The designated route, by following road right-of-way where possible, and section lines in other stretches since section lines often delineate property boundaries, will impact less drain tile than routes that cut through farmers' fields. Also, some farmers have employed ridge till, which is difficult to reconstruct if ruptured by pipeline construction. The route designated here avoids those farmlands employing ridge till where possible or takes into account the preferences of the landowner.
14. The City and landowners and counties also prefer that county ditches not be crossed if possible. The route designated here crosses at least three less county ditches than the route preferred by the City.
15. Individual landowner concerns must be taken into account as the specific location for the pipeline is being determined. This does not mean that a permittee can avoid the route designated by the EQB through accommodating landowners who do not want the pipeline on their property, but it does afford the permittee flexibility to avoid homes and buildings and building sites and other features along the route designated by the EQB. An individual landowner could certainly elect to cut additional drain tile to avoid other amenities on the property.
16. Engineering considerations must be taken into account in constructing a pipeline. Generally sharp angles are avoided in laying the pipe. In this case the route designated affords the City the ability to build in gentle angles when turning directions along the route. In some instances it may be necessary for the City to be more than 100 feet from the center line of an adjacent roadway or to deviate from a section line in order for the City to make a turn in the direction of the pipe or to accommodate some other landowner preference or environmental factor.

17. The longer the pipeline, generally the more expensive the project. In this case the route selected is slightly longer than the route preferred by the City. The exact increase in length of the pipeline is difficult to determine, but the best estimate is that it is less than two miles longer. Some accommodations have been made in the route selection to shorten the overall length. Also, there may be some cost savings incurred by the City by avoiding more farm fields and drain tile.
18. The Minnesota Department of Natural Resources has pointed out that the Peebles Wildlife Management Area in McLeod County is just to the west of the pipeline route. The DNR has already approved a pipeline crossing of Buffalo Creek near the Wildlife Management Area and no impacts on the Area from the pipeline are anticipated.

Agricultural Impact Mitigation Plan

19. The December 19 permit required the City of Hutchinson to develop an Agricultural Impact Mitigation Plan after consultation with the counties, interested landowners, and the Department of Agriculture. The primary purpose of an Agricultural Impact Mitigation Plan is to set forth measures the permittee will follow in installing the pipeline and restoring the land after the pipeline is in the ground. It is appropriate to include in the permit certain obligations the permittee must follow in installing the pipeline, such as requiring the pipeline to be installed at a certain depth, or requiring the City to set aside a certain amount of topsoil, or to implement measures to minimize the amount of soil that is compacted by construction equipment.
20. The Department of Agriculture has developed an Agricultural Impact Mitigation Plan with the assistance of the City, the landowners, and the counties that describes certain practices that the City should follow in installing the pipeline and restoring the disrupted land. The terms of this Plan are acceptable to the City and the landowners and the counties.
21. The Agricultural Impact Mitigation Plan sets forth a process the City has established for determining just compensation for damages that result from construction of the pipeline. Landowners would prefer that the Agricultural Impact Mitigation Plan include provisions for determining the amount of damages that a landowner has incurred as a result of the pipeline. The EQB finds that the matter of compensation is one for a landowner and a pipeline owner to resolve outside the terms of an EQB routing permit. The City has agreed as a part of the Mitigation Plan to develop a "Schedule of Damage Compensation" that sets forth a reasonable method for calculating damages incurred by a landowner for crop damage, property damage, increased production costs, and other losses.
22. Any landowner who is dissatisfied with the City's offer may elect to pursue other remedies.
23. One of the primary issues of concern regarding the Agricultural Impact Mitigation Plan is the period of time in which the Plan will be effective. The EQB finds that the permit should not continue indefinitely and at some point in time, the permit, and the obligation to comply with the Mitigation Plan and other permit conditions, should expire.

24. An expiration date of October 1, 2008, would make the Plan effective over five growing seasons after the pipeline is installed. That should be sufficient time to ensure that the City has complied with the provisions of the Plan since landowners will have those years to work the land that has been impacted by the pipeline and to compare crop production and other factors.
25. Landowners would also prefer that the terms of the Agricultural Impact Mitigation Plan be included in any easement agreement entered into between the City and an individual landowner. Some easement agreements have already been signed by landowners and are not affected by the incorporation of the Plan into the permit. It is not appropriate to require certain terms in an easement agreement as part of a routing permit, but it is reasonable to require the City to advise landowners with whom the City is negotiating an easement in the future of the existence of the Mitigation Plan and to provide the landowner with a copy of the Plan before the easement agreement is finalized. The permit language imposes those obligations on the City.

Wetland Study Impact Mitigation Plan

26. The December 19 permit required the City of Hutchinson to develop a Wetland Study Impact Mitigation Plan to protect the integrity of an ongoing watershed study in Nicollet County. The City has consulted with Nicollet County, the study participants, and the Department of Agriculture and has submitted a Mitigation Plan that addresses the concerns of the interested parties.
27. It is reasonable to require the City of Hutchinson to fund an additional year of study if construction of the pipeline should invalidate the monitoring results for this year. However, by delaying the start of construction in the area of the watershed until at least July 1, 2003, the parties anticipate that there will not be any interference with the study. If an additional year of study is determined to be necessary, it is reasonable to expect the study participants to minimize the costs incurred.
28. As with the Agricultural Impact Mitigation Plan, the obligation to comply with the Watershed Plan should not continue indefinitely. Since the concern is the impact pipeline construction might have on the collection of data during 2003, and the Plan requires the City to pay the reasonable costs of an additional year of monitoring up to a maximum amount, if the Plan expires in October 2005, the parties would have sufficient time to determine the reasonable costs and to resolve the matter.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS

1. The Minnesota Environmental Quality Board has the authority to amend a pipeline routing permit.
2. The EQB has considered safety, environmental impacts, impacts on landowners and farming operations, landowner preferences, engineering considerations, and preferences of local governmental bodies in determining the appropriate route for the pipeline. Based

on its consideration of the criteria for granting a routing permit for a new natural gas pipeline, the Board concludes that a permit for construction of a natural gas pipeline of approximately 90 miles between Trimont, Minnesota, and Hutchinson, Minnesota, along the following route will minimize human and environmental impacts:

- a. From the point of connection with the Northern Border Pipeline at Trimont, Minnesota (milepost 0) to the Sibley County/Nicollet County border, the route designated is the Permittee's preferred route described in the Permittee's Application for a Pipeline Routing Permit dated March 2002.
- b. From the Sibley County/Nicollet County border through Cornish and Bismarck Townships, the route shall follow Sibley County Road 3 on the west side of the road up to the northern end of Section 20 in Bismarck Township (the Harold Anderson property), to approximately milepost 63. From there the pipeline shall follow a northerly route into the Ambrose Bastain property in Section 17 in Bismarck Township, and then turn in a northeasterly direction for approximately two miles to the intersection with the Section line bordering Sections 9 and 10 in Bismarck Township. At that point the pipeline shall follow 581st Avenue on the east side for one-half mile and then follow the Section line northerly to the McLeod County line.
- c. At the McLeod County line, the pipeline shall proceed northward along the east side of the section line bordering Sections 33 and 34 in Round Grove Township to 30th Street. At the intersection with Sections 27 and 28, the pipeline shall proceed in a northerly direction on the east side of Vale Avenue to approximately milepost 69.5, where it intersects 50th Street. At that point, the pipeline shall continue north along the east side of the section line into Collins Township and continue to Buffalo Creek where the City has been authorized by the Minnesota Department of Natural Resources to cross the Creek. After crossing Buffalo Creek, the pipeline shall proceed in a northeasterly direction on the Peter Kalenberg property before turning to the north and continuing into Section 15 in Collins Township, passing to the west of a home site on the Arnold Koenig property, then proceeding northeasterly to the half-section line in Section 10 in Collins Township. At that point the pipeline shall proceed in a northerly direction along the half section line to the intersection with Section 3. The pipeline shall then proceed in a north and easterly direction to a point in Section 2 of Collins Township near the property boundary of Darel Henke and Kurt Knutson, where the route will join the City's preferred route described in its application.
- d. There the pipeline shall proceed in a northerly direction to a point near the half section line in Section 35 of Lynn Township and then turn northeasterly along a diagonal following the City's preferred route to its termination at milepost 90 in the City of Hutchinson.
- e. The designated right-of-way from the Nicollet County/Sibley County line to approximately milepost 80 in McLeod County is shown on the maps attached hereto as Exhibit 1.

3. The Board concludes that it is appropriate to provide some flexibility for the City to make minor changes in the location of the pipeline when the actual installation is occurring. This will give the City of Hutchinson the ability to accommodate landowner desires and engineering demands and to address specific issues in the field, but it is not intended to allow the City to select a different route.
4. The Agricultural Impact Mitigation Plan developed by the Department of Agriculture, the City, and interested landowners contains reasonable requirements that should be implemented by the City.
5. The Watershed Study Impact Mitigation Plan developed by the City, Nicollet County, the study participants, interested landowners, and the Department of Agriculture, contains reasonable requirements that should be implemented by the City.
6. Any Finding of Fact more properly considered a Conclusion, or any Conclusion more properly considered a Finding of Fact, is hereby expressly adopted as such.

Based on the Findings of Fact and Conclusions contained herein and the entire record of this proceeding, the Environmental Quality Board hereby makes the following

ORDER

1. The Minnesota Environmental Quality Board hereby amends the pipeline routing permit issued to the City of Hutchinson (Hutchinson Utilities Commission) on December 19, 2002, to more specifically designate the route through Sibley and McLeod Counties as specified in the findings and conclusions. The route through Martin, Watonwan, Brown, and Nicollet Counties remains as designated.
2. The Minnesota Environmental Quality Board hereby amends the pipeline routing permit issued to the City of Hutchinson (Hutchinson Utilities Commission) on December 19, 2002, to incorporate an Agricultural Impact Mitigation Plan and a Watershed Study Impact Mitigation Plan into the permit and to require the City to comply with both Plans.
3. The Minnesota Environmental Quality Board hereby amends the pipeline routing permit issued to the City of Hutchinson (Hutchinson Utilities Commission) on December 19, 2002, to specify that when the designated route follows a road right-of-way, the City shall install the pipeline within 100 feet of the centerline, and when the designated routes follows a section line the City shall stay as close as possible to the section line, except when necessary to accommodate landowners requests or to make turns in the direction of the pipeline

Dated this 20th day of March, 2003

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD

Bruce Bomier, Vice Chair