

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ENVIROGAS LP	DOCKET NO. P-861
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued September 13, 2005)

On May 25, 2005, EnviroGas LP (EnviroGas) filed a petition and exhibits for a pipeline permit to allow it to construct, operate, and maintain a gas pipeline in Linn County, Iowa. EnviroGas filed revisions to its petition and additional information on June 21, 2005, and on August 16, 2005. The pipeline requires a permit because it is a transmission line. 199 IAC 10.16; 49 CFR § 192.3.

The petition seeks a permit for 1.201 miles of 12-inch diameter pipeline and 0.425 miles of 8-inch diameter pipeline. The pipeline would transport flammable landfill gas from the Bluestem Solid Waste Landfill to an industrial end user, Penford Products Company, all within the city of Cedar Rapids, Iowa.

On September 9, 2005, the Utilities Board (Board) assigned this proceeding to the undersigned administrative law judge to establish a procedural schedule and exercise the authority provided in 199 IAC 7.1(4).

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has the authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2005).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issue, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC 10. The requirements of Iowa Code § 479.29 and 199 IAC 9 regarding land restoration plans do not apply to this case because no agricultural land will be disturbed.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense.

Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

EnviroGas must file prepared testimony and exhibits prior to the hearing. At a minimum, EnviroGas' prepared testimony must address the issues listed above. In addition, as discussed further below, Mr. Don Stursma filed a staff report regarding

the petition on September 1, 2005. Mr. Stursma will be at the hearing and available for cross-examination regarding his report. In his report, Mr. Stursma raised a number of concerns and requested that EnviroGas be required to file a corrected petition exhibit and address the concerns in its prepared testimony.

EnviroGas must address each of the concerns raised in Mr. Stursma's September 1, 2005, report in its prepared testimony or exhibits filed in accordance with the procedural schedule set forth below. The following is a summary list of the evidence EnviroGas must file in response to Mr. Stursma's report.

1. A corrected petition exhibit C that contains the correction to the maximum allowable operating pressure (MAOP) discussed by Mr. Stursma in his report.
2. Financial information sufficient to show compliance with Iowa Code § 479.26 and 199 IAC 10.2(1)"d." EnviroGas must provide supporting documentation, such as company financial statements, and testimony to support the statements it makes in petition exhibit D. If EnviroGas wishes to have any of the information it files held confidential, it must meet the requirements of Iowa Code Chapter 22 and 199 IAC 1.9(5) and follow the procedures set forth in 199 IAC 1.9(6).
3. Testimony and exhibits to show EnviroGas has the necessary "consent or other showing of right" from the City of Cedar Rapids to construct

the 0.425-mile, 8-inch diameter section of pipeline as required by 199 IAC 10.2(1)"e."

4. In petition exhibit K, Statement on Damage Claims, EnviroGas states it has agreements with the Penford Products Company and the Linn County/Cedar Rapids Solid Waste Agency covering damage claims and payment of damage claims. It relies on this as part of its statement to show compliance with Iowa Code § 479.43 and 199 IAC 10.2(3). EnviroGas must file copies of these agreements with its prepared testimony.

5. Testimony and/or exhibits concerning EnviroGas' arrangement and right to purchase gas from the Bluestem Solid Waste Landfill.

6. Testimony and/or exhibits that show the qualifications and experience of Stevens Drilling and Environmental (Stevens) to construct the proposed pipeline in conformance with applicable federal requirements at 49 CFR Part 192.

7. Testimony and/or exhibits that show Stevens' knowledge, skills and ability to operate and maintain the proposed pipeline in conformance with applicable federal requirements at 49 CFR Parts 192 and 199.

8. Testimony and/or exhibits that show how EnviroGas will comply with the public education program, pipeline integrity management program, and annual and incident report filing requirements in 49 CFR Part 192.

9. Testimony and/or exhibits concerning EnviroGas' local presence and availability to comply with requirements regarding leaks and other emergencies, including information that shows personnel are appropriately qualified.

10. Testimony and/or exhibits regarding how EnviroGas will comply with the requirements of Iowa Code Chapter 480.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than EnviroGas who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

EnviroGas and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to

the petition as of the date of this order. EnviroGas does not request the right of eminent domain.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and that will show how these rights or interests will be affected by the pipeline or the grant of a permit. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have been filed with

the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa.
199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case, except that three copies must be sent to the Consumer Advocate. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given

the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code Chapter 479 and Board rules at 199 IAC 10 and 199 IAC 1.8 for other substantive and procedural statutes and rules that apply to this case. There is a link to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Don Stursma, manager of the Safety & Engineering Section for the Board, has prepared a report in the form of a memo dated September 1, 2005, concerning EnviroGas' petition. A copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report and of the facts contained therein, thus making it a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prepared testimony and at the hearing. Mr.

Stursma will be present at the hearing and available for cross-examination regarding his report.

The undersigned notes that Mr. Stursma refers to three websites in his report. These websites are not considered evidence in this case and the undersigned will not review them. If any person wishes to have evidence considered to be part of the record in this case, a hard copy must be filed with the Board's Records and Information Center.

DISCLOSURE OF PRIOR ATTORNEY-CLIENT RELATIONSHIP

The petition in this case states that the proposed pipeline will transport landfill gas to the Penford Products Company. The undersigned administrative law judge was an attorney in private practice from 1991 – 1997. During that time period, the Penford Products Company was a client of the undersigned. The existence of this prior attorney-client relationship will not affect the impartiality of the undersigned when conducting and deciding this case. The undersigned has examined the Code of Administrative Judicial Conduct at 481 IAC 10.29, and there are no grounds that require withdrawal. However, in the interest of full disclosure, this information is being provided to the parties.

Iowa Code § 17A.11(3) provides that any party may timely request disqualification of a person as presiding officer by filing a motion supported by affidavit asserting an appropriate ground for disqualification, after receipt of notice

indicating the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to EnviroGas' petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be served on the other parties and accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before October 4, 2005, EnviroGas must file prepared direct testimony and exhibits relating to its petition as discussed in the body of this order. If EnviroGas wishes to file a prehearing brief, it must do so on or before October 4, 2005.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before October 21, 2005. If the Consumer Advocate takes the position that a civil penalty should or

should not be imposed in this case, it must file prepared testimony or a brief in support of its position on or before October 21, 2005.

c. If EnviroGas wishes to file prepared rebuttal testimony or a reply brief, it must do so on or before October 31, 2005.

d. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Monday, November 14, 2005, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing. If any party wishes to be connected to the hearing by telephone conference call or have a witness connected by telephone conference call, the party must notify the Board as soon as possible, and no later than October 15, 2005, so that appropriate arrangements may be made. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than five days prior to the hearing to request that appropriate arrangements be made.

e. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d."

4. The undersigned administrative law judge proposes to take official notice of Mr. Stursma's report dated September 1, 2005, which is attached to this

order, and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon EnviroGas, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order. EnviroGas is not seeking eminent domain in this case.

6. EnviroGas must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 13th day of September, 2005.

IOWA UTILITIES BOARD
Safety & Engineering Section

Docket No.: P-861
Petitioner: EnviroGas LP
Date: September 1, 2005

TO: The File

FROM: Don Stursma

SUBJECT: Petition of EnviroGas LP for Pipeline Permit for a "Penford Pipeline" in Linn County

I. The Petition and Procedural Background

On May 25, 2005, EnviroGas LP (EnviroGas), of Chicago, Illinois, filed a petition for pipeline permit for approximately two miles of 10 to 8 inch diameter pipe in Linn County. Exhibits included with the petition identified the proposed pipeline as the Penford Pipeline. The pipeline would transport flammable landfill gas from the Bluestem Solid Waste Landfill in Cedar Rapids to an industrial end user, Penford Products Company.

On June 3, 2005, Board staff sent a deficiency letter to EnviroGas which identified deficiencies or discrepancies in the filing and asked questions concerning the project. EnviroGas responded with a new petition and exhibits filed on June 21, 2005. This petition requested a permit for approximately two miles of 12-inch diameter pipeline.

On July 6, 2005, Board staff sent a second deficiency letter seeking further corrections and/or clarifications. EnviroGas responded on August 16, 2005, again with a complete new petition and exhibit filing. This petition now seeks a permit for 1.201 miles of 12-inch and 0.425 miles of 8-inch pipeline, for a total of 1.626 miles. A difference between this and previous petitions is that the 8-inch pipe segment moves the end point beyond its original location.

The petition and exhibits as filed on August 16, 2005, contain the following content:

FORM OF PETITION

The form of petition is provided by the Board and completed by the petitioner. The document requests granting of a permit, introduces the exhibits, and makes certain statements and assurances concerning the project and process. 199 IAC 10.2(1).

In this docket the form of petition has been extensively modified by the petitioner, including language added or changed and additional exhibits introduced. However, it appears that between the petition content and attached exhibits the information required by Board rules can be extracted.

Exhibit A

This exhibit contains a legal description of the route based on the government land survey system (section, township, range). This information is included in the published notice of the petition, and is attached to permits issued by the Board as the record of the approved line location. 199 IAC 10.2(1) "a".

The filed Exhibit A also contains a lengthy metes and bounds type route description that utilizes line segment lengths and bearings. EnviroGas had been advised that this is not necessary, and is unlikely to provide useful information to persons reading the notice. However, in a letter accompanying the revised petition filed on June 21, 2005, EnviroGas indicated it prefers to include it. Staff is aware of no legal basis for refusing to accept such additional description if the petitioner insists (and is willing to pay the extra publication expense).

Exhibit B

This exhibit contains a map or maps of the route showing the proposed pipeline location and its relationship to natural, public, utility and private features of the area being crossed. 199 IAC 10.2(1) "b".

The exhibit filed with this petition is in two parts. One is a single map labeled Sheet No. T1 that shows the route on a topographic base map and includes the streets and roads in the area. The second part is a set of drawings labeled C1 through C10; ten pages of line drawings showing route and construction details in both the horizontal and vertical planes.

Exhibit C

This exhibit contains engineering and route information on Board-specified forms. 199 IAC 10.2(1) "c". Attachments were also included providing additional technical and road and railroad crossing location information. The nature and adequacy of the technical information provided will be discussed later in this report.

Exhibit D

This exhibit requires a showing of ability to pay damages of \$250,000 or more. 199 IAC 10.2(1) "d", see also Iowa Code § 479.26.

The filed exhibit states that EnviroGas is a solvent entity with the ability to pay damages in the sum of \$250,000 or more, and includes an affidavit that EnviroGas has property in Iowa, subject to execution, of a value in excess of \$250,000. It appears the property is the landfill gas collection system and related facilities. No financial statement was provided, nor was information provided on how the value of the listed facilities was determined.¹

¹ The original Exhibit D filing included a copy of EnviroGas's Illinois tax returns. Although confidential status was not requested for these documents, Board staff marked and filed them as Confidential. The returns did not identify property in Iowa.

The project as initially proposed would have been entirely on streets or property owned by the City of Cedar Rapids, or on publicly owned landfill property. Portions of the added 8-inch pipeline however, would apparently be on private property owned by Penford (Exhibit K). In Exhibit K, EnviroGas contends it has agreements with all three parties regarding damage claims and payment. Insurance carried by EnviroGas or its contractor appears a factor in these agreements.

In Exhibit E, EnviroGas filed a copy of a "Non-Franchise Utility License Agreement" with the City of Cedar Rapids. It requires EnviroGas maintain an aggregate limit of at least \$10,000,000 of liability insurance. However, the Exhibit A section of that agreement says it is "for the operation of the underground facility" and it is unclear if this insurance would cover construction damages. No copies of agreements with the other parties regarding damages were filed.

The law and rules on the matter of financial ability to pay damages appear to demand either a surety bond or other form of security, or satisfactory proof that the company has property, subject to execution, valued at \$250,000 or more. Insurance is not listed as a method accepted to meet this obligation.

EnviroGas also states that it has partners in this venture, and these partners could be tapped for additional capital contributions. It is unclear if "capital contributions" would include damage claims. Also, the law and rules do not include ability to raise capital from other sources as an option to show financial ability to pay damages. Further, the presence of partners with an unspecified ownership interest raises questions of whether the landfill property would be subject to attachment to pay claims against EnviroGas.

Staff is uncertain if the material in Exhibit D is sufficient to meet the "satisfactory proof" test. It appears a determination of whether the information filed meets the financial condition requirements of Iowa Code § 479.26 is an issue to be determined at hearing.

Exhibit E

This exhibit requires a showing of consent or other showing of right from appropriate highway or railroad authorities. This showing is required where a pipeline would be placed "longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway." 199 IAC 10.2(1)"e", see also Iowa Code § 479.24.

All public roads crossed appear to be city streets. The exhibit contains a copy of a "Non-Franchise Utility License Agreement" with the City of Cedar Rapids, which appears to give EnviroGas approval to construct the pipeline under city park property and streets. However, this Agreement states: "The project shall consist of 6,491 feet of 12-inch HDPE pipeline to transport landfill gas from the Bluestem Landfill to the Penford Processing Plant."

A distance of 6,491 feet (1.23 miles) appears about right for the original end point of the 12-inch line on Penford property. The current proposal adds 0.425 (2244 feet) of 8-inch pipe not described in the agreement with the city. It still terminates on Penford property, but at a location further west. The 8-inch extension runs parallel to Riverside Park Drive and along C Street near the Penford plant (although from the filing it cannot be determined if it is in street rights-of-way or not), and crosses 1st Street and 12th Avenue at other than an approximate right angle. (Several other road crossings are at an approximate right angle.) It is unclear if the Agreement with the city covers those locations.

The rules and law reference highways, while these are city streets. However, it is staff's understanding that under Iowa Code sections 306.3 and 321.1(48) the term highway as used in Iowa law includes virtually all public streets and roads.

It is unclear whether EnviroGas has the necessary authorization from the City of Cedar Rapids to construct the added 8-inch route section. Because the exact route is not uncertain (199 IAC 10.2(1)"e", second paragraph) it appears this will have to be resolved before a permit can be issued. Hearing testimony should be obtained on this question.

There is one crossing of the CRANDIC railroad. Portions of the route parallel former CRANDIC railroad right-of-way that has been converted to a bike and jogging path now owned by the city. In its letter filed June 21, 2005, EnviroGas stated that the railroad had no residual property rights in those areas that would require any crossing or occupancy approval be obtained.

Exhibit F

This exhibit contains certain project information required by Iowa Code § 479.6 not contained elsewhere. 199 IAC 10.2(1)"f". Information from this exhibit will be used later in this memorandum's description of the nature and purpose of the project.

Exhibit G

This exhibit is to be an affidavit as required by Iowa Code § 479.6(11) stating that, if required, informational meetings were held and providing copies of the forms of notice used. 199 IAC 10.2(1)"g".

Petition Article VIII was modified to state that under Iowa Code § 479.5 no informational meeting is required for this project. An Exhibit G with a similar statement was attached. Staff concurs that no informational meeting was necessary since the proposed pipeline is less than five miles long and the proposed operating pressure is less than 150 psig. (199 IAC 10.3, Iowa Code § 479.5)

Exhibit H

This exhibit is to contain property-specific information on the rights and extent of taking being sought through eminent domain. 199 IAC 10.2(1)"h". This exhibit is not required if eminent domain is not requested.

EnviroGas modified Article XI of the petition to say that eminent domain is not being requested, and did not file an Exhibit H.

Exhibit I

This exhibit is to contain the agricultural land restoration plan for the project. 199 IAC 10.2(1) "j". An exhibit was filed stating that no plan is required because no agricultural land would be affected. Staff's inspection of the route confirmed that no agricultural land is affected.

Exhibit J

Board rule 199 IAC 10.2(1) "j" lists additional information to be provided if underground gas storage is proposed. The Board's standard form of petition for pipeline permit does not request information about storage. However, an Exhibit J was filed stating that EnviroGas is not seeking permission for underground storage.

Exhibit K / Statement as to how damage claims will be determined and paid.

Petition Article XII is intended to be an acknowledgement that the petitioner has filed, or will file, a statement as to how damage claims will be determined and paid, and that copies have been or will be provided to affected parties. 199 IAC 10.2(3). Under Iowa Code § 479.43, a pipeline cannot be installed until this statement is on file. The law does not require the statement be submitted as an exhibit with a petition for permit, nor does the petition form request it, although filing it in the docket is one way to get it on file. EnviroGas modified this petition article and introduced an Exhibit K, "Statement on Damage Claims."

In this exhibit EnviroGas points to its "Non-Franchise Utility License Agreement" with the City of Cedar Rapids regarding how damages to city property would be resolved. This document was filed as part of Exhibit E. It also states EnviroGas has agreements with Penford and the Linn County/Cedar Rapids Solid Waste Agency covering damage claims and payment of damage claims. Copies of those agreements or appropriate excerpts have not been filed. It appears all these agreements rely heavily on insurance purchased by EnviroGas or its contractor. EnviroGas states that no other affected parties have been identified, which staff understands to mean that the route and construction activities are all on the property of these three entities.

Under the Board's rule, a petition for pipeline permit will not be acted upon by the Board if this statement is not on file. The rule requires that the statement include

- The type of damages which will be compensated for
- How the amount of damages will be determined
- The procedure by which disputes may be resolved
- The manner of payment

Exhibit K touches on all four subjects, albeit in very general terms. But it appears that EnviroGas is also relying upon separate agreements with the landfill agency and Penford to show compliance with this requirement.

If EnviroGas intends to rely on the agreements with the landfill agency and Penford to show that it has statements on damages, and that those statements have been provided to the landowners, those agreements, or the appropriate portions thereof, should be filed in the docket.

Although somewhat nonstandard in form and content, and although several issues remain that will require petition revision or eventual resolution at hearing, Board staff finds the petition in this docket to be sufficiently in order to be set for hearing.

II. Description of Project Purpose/Public Convenience and Necessity

The purpose of the project as stated in the petition is to transport landfill gas from the Bluestem Solid Waste landfill in Cedar Rapids, Iowa, to the Penford Products Company plant for use as fuel.

Landfill gas is a combustible gas consisting principally of methane and carbon dioxide create by the anaerobic decomposition of organic matter. This biological process is not unique to landfills; sewer gas is produced by the same process. The organic matter in a large landfill is a potentially significant source of combustible gas, commonly called landfill gas after the source. The gas produced normally has around half the heating value of natural gas (around 500 versus 1000 BTU per cubic foot), but this is enough to make the gas viable as a source of energy. This heating value is comparable to the manufactured gas once widely sold by gas utilities until supplanted by natural gas delivered from distant locations by interstate pipelines.

By order dated November 7, 1985, in Docket No. P-764, the Iowa State Commerce Commission granted Iowa Electric Light and Power Co. (n/k/a Interstate Power and Light) a pipeline permit to construct 1.3 miles of 6-inch pipeline for the transportation of landfill gas in Linn County, Iowa. The purpose of the pipeline was to transport gas from the Cedar Rapids landfill (n/k/a the Bluestem Landfill), which is located near and is visible from downtown Cedar Rapids (and locally known as Mt. Trashmore), to the petitioner's Prairie Creek generating station, where it would provide an additional source of boiler fuel for electric generation. The route was on the right-of way of the then-active CRANDIC (Cedar Rapids AND Iowa City) Railroad.

Staff understands that EnviroGas has purchased the rights to the gas from this landfill, now identified as the Bluestem Solid Waste Landfill. *For clarification, staff would like to see EnviroGas include a general description of this arrangement in the hearing record.*

As is more fully explained in Petition Exhibit F, the landfill gas would benefit Penford Products by providing an economically attractive alternate source of fuel. The fuel would actually be consumed in the Red Cedar Generating Plant, owned and operated by Alliant Energy. From conversations with Penford personnel, staff understands the gas would be used to fuel boilers that create steam that is piped to Penford for use in its industrial processes. Sale of this gas would also provide financial support for the landfill. In addition, the project would improve air quality and aid in compliance with air quality standards in the area.

Staff notes that methane is a greenhouse gas, more so than carbon dioxide, so its combustion would remove a source of a potent greenhouse gas into the environment. Also, the author was employed by the Board and was the staff witness during the 1985 permitting of this line, and recalls concerns that gas accumulating in the landfill could migrate underground to nearby homes and apartment buildings. Draining of the gas by commercial production alleviates that concern.

Iowa Code § 479.12 requires that an affirmative finding of “whether the services proposed to be rendered will promote the public convenience and necessity” before a permit can be granted. Staff believes that based on the benefits described above the project meets that test.

Description of Project Route

The proposed route of the 12-inch portion of this project was inspected by the author on July 13, 2005. The 8-inch route, which was not proposed at that time, was in the interest of time examined using aerial photographs from the Iowa State University Geographic Information Systems website.² The route inspected was as shown on the petitioner’s Drawing T1.

The entire route is within the corporate limit of the City of Cedar Rapids.

The route of the 12-inch pipeline begins at a connection to the existing gas collection system on the back (east) side of the landfill. From there it heads northwesterly paralleling the landfill property line and a tree-lined bike/jogging trail on what was formerly a railroad right-of way for approximately 1400 feet (0.27 mi). There are no buildings in this area. Working conditions will be tight as there is not much room available adjacent to the bike path.

² The photos viewed were viewed at http://cairo.gis.iastate.edu/client.cgi?zoom=1&x0=610368&y0=4647029&layer=naip_2004&action=zoomout&pwidth=600&pheight=600&x=300&y=166

When the Iowa Power and Light pipeline, which heads in the opposite direction, was built in 1985, considerable consolidated rock was encountered during trenching. (The landfill was once a hard rock quarry.) It could not be visually determined if the EnviroGas route would also encounter rock. In the cover letter filed June 21, 2005, EnviroGas stated, "The possibility of encountering rock has been investigated and accounted for in the project planning."

The route then enters landfill gas property, where it runs generally westerly alongside a landfill access road until approximately the point of the landfill access gate on A Street SW; a distance of approximately 1500 ft. (0.28 miles.) Field inspection confirmed that this is an operating, active landfill. Care will be needed during construction to prevent interference with landfill truck traffic, and vice versa. Other than some buildings related to landfill operations there is no nearby development.

Upon exiting the landfill the pipe would be in the mowed grass median strip between A Street SW and the bike trail. This strip was estimated at 20 feet wide and is often steeply sloped, as the bike trail is at a significantly higher elevation than the street. There was evidence that gas and water lines may also be in this strip. These factors will make construction more difficult. The south side of A Street SW is commercial buildings. These conditions persist for approximately 1350 ft. (0.26 mi.).

The bike trail then swerves away from A Street SW, with the pipeline remaining on its south side, and passes behind a building and outdoor storage area of the Cedar Rapids Parks Department. The pipe would apparently be 20-25 feet from the building. This segment is approximately 600 feet long.

All pipe prior to this point would be installed by open trenching (direct burial). After this point all pipe would be installed by boring. Other than periodic bore pits from which the boring is performed, there is no surface disturbance of the ground.

The pipeline route then leaves the bike path route and passes through Sokol Park, a city park, for about 470 feet, to the east side of the intersection of A Street SW and 16th Ave. This segment will be installed by boring, not an open trench, which would minimize disturbance to the park.

At this point the pipeline is in the Czech Village area of Cedar Rapids.

For the next 1038 feet the pipeline would be bored on a path alongside of and under A Street SW. Among other adjacent urban structures and features, it would run right in front of the National Czech and Slovak Museum and Library, and under the 12th Avenue Bridge. The plan and profile sheets show the pipe would have to be treaded between numerous existing water, sewer and steam pipelines.

This segment ends in Riverside Park, another city park, and across Riverside Park Road from the Penford Property. (A Street appears to become Riverside Park Road at the 12th

Ave. Bridge.) In previous filings, the pipeline would have terminated on Penford property in this vicinity. Under the current filing, at this point the transition from 12 to 8 inch pipe occurs.

All of the 8-inch pipe would be installed by boring.

The pipe would then be installed alongside Riverside Park Road to C Street SW, then alongside and under C Street to 11th Ave, then crossing 11th and 10th Avenues to ultimately end in what appears to be a complex of industrial buildings. According to Petition Exhibit K, all private property crossed east of Riverside Park Road belongs to Penford.

This is a difficult route, with congested work space, lengthy bores, and the problems inherent to constructing in an urban environment. But staff sees no readily apparent practical alternative. There is no realistic alternative to passing through the Czech Village area. Routes further north are precluded by the Cedar River. Other routes through developed areas would apparently be worse in terms of urban construction, congestion and lack of space for direct burial. Staff concludes the route proposed is reasonable under the circumstances.

Description of Project Design/Compliance with Safety Standards

The pipeline would consist of 1.201 miles of 12-inch and 0.425 miles of 8-inch pipeline, for a total of 1.626 miles, of polyethylene pipe. Of this, approximately 0.92 miles of the 12-inch pipe would be installed using open trench construction. The balance of the 12-inch and all of the 8-inch would be installed by boring. The route includes areas of no nearby structures or development; heavy residential, recreational and commercial land use; and industrial land use.

In 199 IAC 10.12, the Board has adopted standards for the design, construction, operation and maintenance of pipelines. The bulk of the standards listed are federal regulations. If the Utilities Board did not have a pipeline safety program, or had not adopted these standards, this pipeline would still be subject to those standards under direct U.S. Department of Transportation, Office of Pipeline Safety authority pursuant to 49 USCS § § 60101 et seq.

Under 199 IAC 10.12(2), a pipeline permit cannot be approved without a satisfactory showing by the petitioner that the facilities at issue are, or will be, in compliance with the Board's standards.

Iowa Code § 479.1 gives the Utilities Board authority over the transportation or transmission of any solid, liquid, or gaseous substance, except water, by intrastate pipeline. Landfill gas is a gaseous substance that would make this law applicable to a pipeline carrying it.

Board rule 199 IAC 10.16 states:

199—10.16(479) When a permit is required. A pipeline permit shall be required for any pipeline which will be operated at a pressure of over 150 pounds per square inch gage or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR Part 192. Questions on whether a pipeline requires a permit are to be resolved by the board.

One definition of a transmission line in 49 CFR 192.3 is a pipeline, other than a gathering line, that “Transports gas from a gathering line or storage facility to a distribution center, storage facility, or a large volume customer that is not downstream of a distribution center.” The Penford Pipeline would transport gas from the landfill gathering system to a large volume customer, and is therefore a transmission line that requires a Board permit.

Design and Materials

Polyethylene plastic is not subject to corrosion and is resistant to chemical attack. To the extent the landfill gas may contain moisture or chemical vapors, plastic pipe is an appropriate choice of pipe material.

Petition Exhibit C proposes use of polyethylene plastic pipe manufactured by Flying “W” Plastics of Glenville, West Virginia. To the author’s knowledge this brand of pipe has not previously been installed in Iowa. Contact with the federal Transportation Safety Institute and the manufacturer confirmed that this company makes gas pipe for use in pipelines subject to federal safety standards.³ Their pipe has reportedly been installed by natural gas utilities in eastern states.

The proposed operating pressure of the pipeline is 80 psig (pounds per square inch gauge, or above atmospheric pressure). EnviroGas calculated the Maximum Allowable Operating Pressure for the pipe to be used as 85 psig. However, this calculation was based on portions of 49 CFR 192.619 that were not properly applied. Using the design pressure formula specified in § 192.121, the pipe could be operated at 102 psig. But the MAOP is also based on the post-construction test pressure. EnviroGas proposes a test pressure of 125 psig. Under § 192.619(a)(2)(i), the MAOP cannot exceed the test pressure divided by 1.5, which in this instance equals 83 psig.

Because the MAOP determined by Board staff exceeds the proposed operating pressure, staff will not insist the exhibit be refilled before advancing the case. *However, EnviroGas should be directed to file a corrected Exhibit C before a permit is granted.*

The Exhibit C indicates the pipeline is in a Location Class 3 area, using the classification system of § 192.5. Class 3 indicates a developed area. Although the line in the landfill area appears far enough from structures to be Class 1 (few if any nearby structures), a substantial portion of the route is in or adjacent to urban residential, recreational,

³ The Flying “W” website showed gas pipe available only up to 6-inch diameter, but a company sales representative confirmed they do make 8 and 12 inch pipe – the website was not up to date.

commercial, and industrial areas. Classifying the entire line as Class 3, and designing/constructing it to Class 3 standards, in such circumstance is not unreasonable.

§ 192.625(a) and (b) require that combustible gas in a transmission pipeline in a Class 3 area “must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by persons with a normal sense of smell.” Because natural gas typically does not contain this level of natural odor, mercaptan odorant is artificially added to give natural gas its distinctive smell. Comments attached to Exhibit C state that the landfill gas contains a natural odor that allows it to meet this criteria, but the capability exists to add mercaptan odorant if necessary.

Construction

Construction methods and practices must comply with 49 CFR Part 192, in particular the general construction requirements of Subpart G and the joining and joiner qualification requirements of Subpart F. Filings in this docket have demonstrated the petitioner is not familiar with Part 192. For this reason staff seeks assurance that the pipeline would be constructed in accordance with Part 192.

In its letter filed June 21, 2005, EnviroGas states it has selected a contractor for the project; Stevens Drilling and Environmental (Stevens) from Maple Plain, MN, which has extensive experience installing pipelines and is a major contractor for UNOCAL Corp.

It unclear if Stevens' experience includes installing gas pipelines that are subject to 49 CFR Part 192. UNOCAL is an international oil company, and is primarily in the oil production business. It has some pipeline and gas assets but apparently does not operate them.⁴ It is not at all clear how Stevens Drilling and Environmental connection to UNOCAL would make it familiar with federal natural gas pipeline standards. The Stevens website⁵ says its services include gas piping installation (although that is apparently not its primary business), but it could not be determined if this includes pipe installation subject to Part 192.

Staff recommends EnviroGas be asked to provide additional information in hearing testimony on Stevens Drilling and Environmental's qualifications to install pipelines subject to 49 CFR Part 192.

Staff proposes to have an inspector present during construction. Petitioner should be prepared to provide this inspector with any necessary assistance. Staff will not hesitate to recommend that the Board order cessation of construction if compliant construction is not being performed.

Operation and Maintenance

⁴ http://www.unocal.com/umt/pipe_term.html

⁵ <http://www.stevensde.com/>

In addition to design and construction, the ongoing operation and maintenance of pipelines is extensively regulated by the federal pipeline safety standards.

Those standards will require an Operations, Maintenance and Emergency Response Plan (Part 192.603 and .615) be completed before the pipeline can be placed in service.

The persons responsible for the operation and maintenance of this line would have to be qualified under an Operator Qualification Program complying with Part 192 Subpart N, and be subject to drug and alcohol testing under Anti-Drug and Anti-Alcohol Plans complying with 49 CFR Part 199. In its letter filed June 21, 2005, EnviroGas states that Stevens Drilling and Environmental would be qualified to operate the pipeline, and "If EnviroGas is not ready to comply with all of the requirements of a pipeline operator at the time the pipeline is placed in service, EnviroGas will contract with Stevens Drilling and Environmental unless or until EnviroGas can meet the legal standards." Staff cannot accept this proposal without supporting evidence on Stevens' qualifications to be a pipeline operator. Construction is a different skill set than operations and maintenance. Construction personnel are not subject to the operator qualification requirements of Part 192 Subpart N, or the drug and alcohol testing requirements of 49 CFR Part 199.

If EnviroGas proposes to allow Stevens Drilling and Environmental to operate its pipeline, Staff recommends EnviroGas be instructed to provide additional information in hearing testimony on Steven's knowledge, skills and ability to operate and maintain a gas pipeline in compliance with Parts 192 and 199.

A new federal regulation effective June 20, 2005, § 192.616, requires each pipeline operator to develop and implement a written continuing public education program. The regulation is not specific on when this plan would have to be completed. Operators in existence on the effective date of the rule were given one year to complete their plans. It appears logical that EnviroGas be required to have its plan completed within one year of placing the pipeline in service.

EnviroGas may be required to prepare and implement a Pipeline Integrity Management Program pursuant to 49 CFR Part 192 Subpart O. Those regulations will apply if the pipeline, once constructed, contains one or more "high consequence areas" (HCA) within the "potential impact radius" (PIR) calculated for this pipeline. (See § 192.903 for definitions of these terms.) The review to determine if there are HCAs, and development of a Program if required, will need to be completed within one year of placing the pipeline in service.

It is noted that the formula for determining the PIR in § 192.903 contains a factor of 0.69. This is the factor for natural gas. Landfill gas has a lower heating value and therefore a smaller factor of 0.51 to 0.57 depending on the constituents of the gas.⁶ At

⁶ FINAL REPORT: Potential Impact Radius Formulae for Flammable Gases Other Than Natural Gas Subject to 49 CFR Part 192, C-FER Technologies, February 2005.

an MAOP of 83 psig as previously discussed, this produces PIRs of 56-62 feet for the 12-inch pipe and 37-42 feet for the 8-inch pipe.

EnviroGas will be required by Iowa Code Chapter 480 to register its facilities with Iowa One-Call for excavation damage prevention. It is recommended this be done before the pipeline is placed in service.

EnviroGas is also advised it will be required to file annual and incident report pursuant to 49 CFR Part 191.

EnviroGas will also need some kind of local presence. Many operations and maintenance functions could be by personnel who come to Cedar Rapids on a scheduled basis to perform those activities. But others will require a more rapid response. In the event of a leak or emergency involving this line, someone needs to be available who can be on the site quickly to evaluate the situation and take such action as is necessary to make the area safe and effectuate repairs. Also, a notice of proposed excavation in the line vicinity from Iowa One-Call will require the line location be marked within two working days. In its letter filed June 21, 2005, EnviroGas says it will have two local operators available for these purposes.

Staff suggests EnviroGas be asked to provide additional information in hearing testimony on how it intends to comply with the above described plan and program requirements, in particular those that must be in place before the pipeline can be placed in service.

Conclusions

The petition is sufficiently in order to be set for hearing. One correction to Exhibit C regarding the maximum allowable operating pressure (MAOP) should be made before a permit is issued.

Iowa Code § 479.12 requires that an affirmative finding of “whether the services proposed to be rendered will promote the public convenience and necessity” before a permit can be granted. The project as described appears to meet the public convenience and necessity test.

The route proposed is difficult, with confined work spaces and requiring that major segments be installed by boring under streets and public areas. But no superior alternative route is apparent.

Questions remain as to whether the information filed as Exhibit D provides satisfactory proof of solvency and financial ability to pay damages pursuant to 199 IAC 10.2(1)“d” and Iowa Code § 479.26. This will need to be resolved at hearing.

It is unclear whether EnviroGas has the necessary “consent or other showing of right” from the City of Cedar Rapids to construct the 0.425 mile 8-inch route section. Because the exact route is clearly specified and is not uncertain (see 199 IAC 10.2(1)”e”, second paragraph) it appears this must be demonstrated before a permit can be issued. This will need to be resolved at hearing.

The “Statement as to how damage claims will be determined and paid” filed as Exhibit K relies heavily on agreements between EnviroGas and the City of Cedar Rapids, Penford and the Linn County/Cedar Rapids Solid Waste Agency. As noted above, there is a question of whether the agreement with the City covers the 8-inch portion of the project. There is no information in the record on the nature of the agreements with the other two entities. A permit cannot be granted under 199 IAC 10.2(3) if a statement of damage claims is not on file, and under Iowa Code § 479.43 a pipeline cannot be installed until this statement is on file. The adequacy of what EnviroGas has filed will need to be resolved at hearing.

Staff has concerns about the ability of EnviroGas to construct, and subsequently to operate and maintain, this pipeline in compliance with federal safety standards. If after hearing it is concluded a permit should be granted, staff recommends that the order allow construction to commence but that the pipeline not be authorized to commence service until:

1. Board inspection staff reports that the completed construction complies with the applicable federal safety standards.
2. An acceptable Operation, Maintenance and Emergency Plan as required by federal pipeline safety standards is on file.
3. Personnel, including a local presence, are available for the operation and maintenance of this pipeline who are qualified and subject to drug and alcohol testing under plans or programs that comply with federal pipeline safety standards.
4. The necessary information regarding the pipeline has been filed with Iowa One Call.
5. There is satisfactory assurance that a written continuing public education program will be completed within one year.
6. There is satisfactory assurance that within one year an investigation for the presence of High Consequence Areas will be conducted, and if necessary a Pipeline Integrity Management Program prepared, pursuant to 49 CFR Part 192 Subpart O.