

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  ENVIROGAS LP	DOCKET NO. P-861
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**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued November 9, 2005)

**APPEARANCES:**

MR. VERLE W. NORRIS, Attorney at Law, 300 West Marion, P.O. Box 256, Corydon, Iowa 50060, appearing on behalf of EnviroGas LP.

MR. JOHN DWYER, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Consumer Advocate Division of the Department of Justice.

**STATEMENT OF THE CASE**

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. (petition for permit; Stursma report.) EnviroGas filed amendments to its petition on June 21, August 16, October 6 and 24, and November 1 and 4, 2005. (petition for permit.) The petition seeks a permit for 1.201 miles of 12-inch diameter pipeline and 0.425 miles of 8-inch diameter pipeline. (petition for permit; Stursma report; Tr. 35.) The proposed pipeline will transport flammable landfill gas from the Cedar Rapids/Linn County Solid Waste Agency (the landfill), formerly doing business as the Bluestem Solid Waste Agency, to an industrial end user, Penford Products

Company (Penford) and the Red Cedar Generating Station. (petition for permit; Stursma report; Tr. 33-34, 104, 135-136; Ex. DSO-1.) The gas will be used as fuel in the Red Cedar Generating Station, which supplies steam and electricity to Penford. (Ex. DSO-1; Stursma report; Tr. 30, 135-136.) The entire pipeline will be located within the city of Cedar Rapids. (petition for permit.)

On September 9, 2005, the Utilities Board (Board) assigned this case to the undersigned administrative law judge, who issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing on September 13, 2005. In that order, the undersigned set November 14, 2005, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the proposed pipeline prepared by Mr. Don Stursma, manager of the Board's Safety and Engineering Section, dated September 1, 2005.

At the request of EnviroGas, in a revised procedural order issued September 21, 2005, the procedural schedule was amended and the hearing date changed to October 20, 2005. Mr. Verle W. Norris filed an appearance on behalf of EnviroGas on September 26, 2005. EnviroGas filed prepared direct testimony of Mr. John Foubert, Mr. Allen R. Paulson, and Mr. David S. O'Neill, and Exhibits DSO-1 through DSO-6 on October 4, 2005.

The hearing was held on October 20, 2005, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. EnviroGas was represented by its attorney, Mr. Verle W. Norris. Witnesses John Foubert, Allen R. Paulson, David S. O'Neill,

and Bruce Nelson testified on behalf of EnviroGas. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John Dwyer. Representatives of Interstate Power and Light Company (IPL) were connected to the hearing by telephone conference call, although IPL is not a party to this case and its representatives did not participate in the hearing. Mr. Don Stursma testified as the engineer selected by the Board to examine the proposed route pursuant to Iowa Code § 479.11. At the hearing, EnviroGas agreed to file a revised petition Exhibit C making corrections to the maximum allowable operating pressure value shown on the exhibit and to the pipeline specification. It also agreed to file a copy of the executed agreement EnviroGas planned to sign with Montana-Dakota Utilities Company (Montana-Dakota) regarding construction, operation, and maintenance of the proposed pipeline.

EnviroGas filed revisions to petition Exhibit C on October 24, and November 1 and 4, 2005. EnviroGas filed an executed copy of the Line Construction, Operation, and Maintenance Agreement between EnviroGas and Montana-Dakota on October 28, 2005.

### **FINDINGS OF FACT**

1. EnviroGas is a pipeline company within the meaning of Iowa Code § 479.2 (2005). (Tr. 28-34, 103-107; Ex. DSO-1.)
2. 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. (petition for permit; Stursma report.) EnviroGas filed amendments to its petition on June 21, August 16, October 6 and 24, and November 1 and 4, 2005. (petition for permit.) The petition seeks a permit for 1.201 miles of 12-inch diameter pipeline and 0.425 miles of 8-inch diameter pipeline. (petition for permit; Stursma report; Tr. 35.) The proposed pipeline will have a maximum allowable operating pressure of 100 psig. (petition for permit; Stursma report; Tr. 10-11, 105-106, 117-119, 127.)

3. The proposed pipeline will follow a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit (as amended). (petition Exhibits A and B.) It will begin at a connection with the existing landfill gas collection system on the east side of the landfill, then run in a generally northwesterly and westerly direction to the Penford property and the Red Cedar Generating Station, all in the city of Cedar Rapids, Iowa. (petition Exhibits A and B; Stursma report; Tr. 31-34; Ex. DSO-7.)

4. The proposed pipeline will transport flammable landfill gas from the landfill to an industrial end user, Penford and the Red Cedar Generating Station. (petition for permit; Stursma report; Tr. 33-34, 104, 135-136; Ex. DSO-1.) The gas will be used as fuel in the Red Cedar Generating Station, which supplies steam and electricity to Penford. (Ex. DSO-1; Stursma report; Tr. 30, 135-136.)

5. EnviroGas caused notice of the hearing to be published in Linn County in THE GAZETTE, a newspaper of general circulation in the county, on October 1 and 8, 2005. (proof of publication).

6. This pipeline is necessary to transport landfill gas to Penford and the Red Cedar Generating Station, where it will be burned in a boiler to produce steam. (Exhibit DSO-1; petition for permit; Tr. 30, 135; Stursma report.) This project will help Penford address the challenge of high natural gas costs and therefore help keep Penford a viable business. (Tr. 35, 136.) Penford is a corn wet milling company that makes products from Iowa corn. (Tr. 134.) The company is a major market for corn in eastern Iowa. (Tr. 134.) Corn milling is an energy-intensive industry, and over the past ten years, energy has grown to be Penford's second highest cost, behind only corn purchases. (Tr. 135.) Penford employs over 300 people in good-paying jobs. (Tr. 134.) Collection of the gas generated at the landfill and its use as an alternative fuel will reduce fugitive emissions of the gas and/or the need to flare the gas, thereby improving air quality in Cedar Rapids. (Tr. 36-37; Exs. DSO-1, DSO-4; petition Ex. F.) Therefore, the proposed pipeline promotes the public convenience and necessity. (petition for permit; Tr. 30-31, 35-37, 134-136; Stursma report; Exs. DSO-1, DSO-4.)

7. As of the date of the hearing, EnviroGas and its employees do not have the experience, training, or ability to construct, operate, and maintain the proposed pipeline in conformance with the design, construction, and safety requirements of

Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (Stursma report; Tr. 10-22, 25-32, 35, 39-43, 46-57, 59-62, 71-98, 101-130, 140-141; petition for permit; Ex. DSO-8; Line Construction, Operation and Maintenance Agreement (Agreement).) Therefore, EnviroGas originally proposed to contract with IPL to provide necessary services so that EnviroGas could comply with the requirements. (Stursma report; Tr. 41-43.) At the hearing, Mr. O'Neill testified that EnviroGas was unable to reach an agreement with IPL, and EnviroGas would therefore contract with Montana-Dakota to provide the necessary services. (Tr. 46-48, 80-98; Ex. DSO-8.) Montana-Dakota is a natural gas and electric distribution company based in Bismark, North Dakota. (Tr. 80-81.) It has considerable experience with construction, operation, and maintenance of gas pipelines in compliance with applicable standards, including those in 49 C.F.R. Part 192. (Tr. 73, 81-83.) EnviroGas has contracted with Montana-Dakota to assist it with construction, operation, and maintenance of the pipeline facilities and to provide services such as development of required manuals and plans and training of EnviroGas employees, all in conformance with applicable state and federal law. (Agreement; Tr. 46-53, 59, 72-79, 80-98.)

8. Section 1(b) of the Agreement provides that: "In conjunction with EnviroGas, Montana-Dakota will maintain pertinent pipeline records required hereunder in a separate file at its choice of offices, such information to be available, with 48 hours prior notice, at Montana-Dakota's Office located at 909 Airport Road, Bismarck, ND 58504." (Agreement.) It is not clear whether EnviroGas plans to keep

required pipeline records at its Cedar Rapids location in addition to those kept by Montana-Dakota. (Agreement.) The rules require that certain pipeline records must also be kept in Iowa at locations where operations and maintenance activities are conducted and must be available to appropriate operating personnel and Board inspectors. 199 IAC 10.12, 18.2, 18.3; 49 C.F.R. § 192.605.

9. Section 14 of the Agreement provides that EnviroGas will be solely responsible for compliance with applicable drug and alcohol requirements with respect to its employees, contractors, and their agents. (Agreement.) Apparently, Montana-Dakota will not assist EnviroGas with this compliance. (Agreement.) Therefore, it is not clear from the evidence in the record that EnviroGas will be able to comply with the applicable drug and alcohol requirements contained in federal regulations at 49 C.F.R. Part 199 and adopted by reference at 199 IAC 10.12(1)"c." (Tr. 14-15, 25-29, 74-78, 95, 140-141; Stursma report; Agreement.) Therefore, prior to commencement of operation of the pipeline, EnviroGas must file information with the Board sufficient to show how it will comply with these requirements. In addition, personnel who are subject to drug and alcohol testing as required by 49 C.F.R. Part 199, including local personnel, must be available for the operation and maintenance of the pipeline.

10. In addition to its Agreement with Montana-Dakota, EnviroGas contracted with Mr. Paulson of Altec Engineering to assist it in the preparation of petition Exhibit C. (petition for permit; Tr. 104-105.) The engineer in charge of the

design of the proposed pipeline will be Mr. Matthew D. Wright of Red Barn Design and Engineering, S.C., of Deforest, Wisconsin. (Tr. 34-35.) Stevens Drilling and Environmental (Stevens) will be responsible for the construction of the proposed pipeline. (Tr. 39-41, 107-110.) Stevens will subcontract with Terrell Construction, Inc. of Swisher, Iowa, to perform directional boring for installation of some of the pipeline. (Tr. 109-110.)

11. Given the Agreement EnviroGas has with Montana-Dakota, and if the Agreement is followed, it appears that the proposed pipeline will comply with the design, construction, and safety requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; Tr. 12-16, 20-21, 46-53, 59, 72-98, 140-141; Stursma report; Exhibit DSO-8; Agreement.) Without this Agreement, it does not appear that the proposed pipeline would comply with the requirements. (Stursma report; Tr. 10-22, 25-32, 35, 39-43, 46-57, 59-62, 71-98, 101-130, 140-141; petition for permit; Ex. DSO-8; Agreement.) Therefore, in order to be assured that the proposed pipeline will comply with the requirements, if EnviroGas does not continue its contractual relationship with Montana-Dakota or significantly modifies its contractual relationship during the period of construction or during the initial two-year "primary term" of the Agreement, EnviroGas must immediately notify the Board and explain how it intends to comply with applicable state and federal requirements regarding the pipeline contained in Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. Furthermore, certain conditions must be met prior

to commencement of operation of the pipeline to assure that it will be operated safely and in conformance with applicable requirements. (Stursma report; Tr. 10-22, 25-32, 35, 39-43, 46-57, 59-62, 71-98, 101-130, 140-141; petition for permit; Ex. DSO-8; Agreement.) These conditions include the following:

- a) Board inspection staff files a report stating that the completed construction complies with applicable federal safety standards;
- b) EnviroGas files an acceptable Operation, Maintenance and Emergency Plan as required by federal pipeline safety standards with the Board;
- c) Personnel who are qualified under applicable federal pipeline safety standards at 49 C.F.R. Part 192, including local personnel, are available for the operation and maintenance of the pipeline;
- d) EnviroGas files the necessary information regarding the pipeline with Iowa One Call;
- e) EnviroGas files satisfactory assurance that a written continuing public education program that conforms with 49 C.F.R. § 192.616 will be completed within one year of placement of the pipeline into service; and
- f) EnviroGas files satisfactory assurance that it will conduct, or cause to be conducted, an investigation for the presence of High Consequence Areas within one year of placement of the pipeline into service, and that if necessary, EnviroGas will prepare, or cause to be prepared, a

Pipeline Integrity Management Program that complies with 49 C.F.R. Part 192 Subpart O.

(Stursma report; Tr. 10-22, 25-32, 35, 39-43, 46-57, 59-62, 71-98, 101-130, 140-141; petition for permit; Ex. DSO-8; Agreement.)

12. Other than the safety-related conditions listed above in paragraphs eight, nine, and eleven, no other terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; Tr. Tr. 12-16, 20-21, 46-53, 59, 72-98, 140-141; Stursma report; Exhibit DSO-8; Agreement.)

13. The location and route of the proposed pipeline are reasonable and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; Stursma report; Tr. 15, 32-34; Exs. DSO-2, DSO-3, DSO-7.)

14. EnviroGas did not present evidence sufficient to show it owns property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. (Tr. 28-29, 37-39, 57, 60-68, 99-100, 106-107; petition exhibit D; Ex. DSO-5.) However, EnviroGas has filed satisfactory proof of its solvency and ability to pay damages sufficient to meet the requirements of Iowa Code § 479.26 and 199 IAC 10.2(1)"d". (petition Exhibit D; Tr. 28-30, 35-39, 53-54, 57, 60-68, 99-100, 106-107; Exs. DSO-1, DSO-4, DSO-5; confidential tax return.)

15. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (Tr. 18; Docket P-861 file.)

16. EnviroGas has obtained all necessary easements and the license it needs for the proposed pipeline. (petition for permit; Tr. 32-34; Exs. DSO-2, DSO-3, DSO-7.)

17. The proposed pipeline will not impact any agricultural land. (petition for permit; Stursma report.)

### **CONCLUSIONS OF LAW**

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation of any gaseous substance, including the landfill gas that will be transported by the proposed pipeline at issue in this case. Iowa Code §§ 479.1, 479.3, 479.4, 479.5, 479.6, 479.12, and 479.18; 199 IAC 10.

2. The Board has jurisdiction over EnviroGas and over the petition for a pipeline permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12, and 479.18.

3. The petition of EnviroGas for issuance of a permit for the pipeline in this docket should be granted with the safety restrictions discussed above. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 10.

4. Since the proposed pipeline will not impact any agricultural land, EnviroGas is not required to comply with the requirements of Iowa Code § 479.29 and 199 IAC 9.

5. EnviroGas must comply with the requirements of all applicable statutes and rules regarding the construction, operation, and maintenance of the proposed pipeline. Iowa Code Chapter 479; 199 IAC 10.12; 49 C.F.R. Parts 192 and 199.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated September 1, 2005, filed in this docket by Mr. Don Stursma, manager of the Board's Safety & Engineering Section.

2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by EnviroGas in this docket is granted, with the following safety restrictions:

a. As required by state and federal rules, certain pipeline records must be kept in Iowa at locations where operations and maintenance activities are conducted and must be available to appropriate operating personnel and Board inspectors. 199 IAC 10.12, 18.2, 18.3; 49 C.F.R. § 192.605.

b. Prior to commencement of operation of the pipeline, EnviroGas must file information with the Board sufficient to show how it will comply with applicable drug and alcohol testing requirements contained in federal regulations at 49 C.F.R. Part 199 and adopted by reference at 199 IAC 10.12(1)"c." Personnel who are subject to drug and alcohol testing as required by 49 C.F.R. Part 199, including local personnel, must be available for the operation and maintenance of the pipeline.

c. If EnviroGas does not continue its contractual relationship with Montana-Dakota or significantly modifies its contractual relationship during the period of construction of the pipeline or during the initial two-year "primary term" of the Agreement, EnviroGas must immediately notify the Board and explain how it intends to comply with applicable state and federal requirements regarding the pipeline contained in Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192.

d. Although construction of the proposed pipeline may commence once the Board issues a permit, EnviroGas may not begin operating the pipeline until the following conditions are met:

1) Board inspection staff files a report stating that the completed construction complies with applicable federal safety standards;

2) EnviroGas files an acceptable Operation, Maintenance and Emergency Plan as required by federal pipeline safety standards with the Board;

3) Personnel who are qualified under applicable federal pipeline safety standards at 49 C.F.R. Part 192, including local personnel, are available for the operation and maintenance of the pipeline;

4) EnviroGas files the necessary information regarding the pipeline with Iowa One Call;

5) EnviroGas files satisfactory assurance that a written continuing public education program that conforms with 49 C.F.R. § 192.616 will be completed within one year of placement of the pipeline into service; and

6) EnviroGas files satisfactory assurance that it will conduct, or cause to be conducted, an investigation for the presence of High Consequence Areas within one year of placement of the pipeline into service, and that if necessary, EnviroGas will prepare, or cause to be prepared, a Pipeline Integrity Management Program that complies with 49 C.F.R. Part 192 Subpart O.

e. A permit will be issued with these safety restrictions if this proposed decision and order becomes the final order of the Board.

3. EnviroGas must provide timely notice to the Board before beginning construction of the pipeline and must also file weekly progress reports during construction of the pipeline with the Board.

4. After EnviroGas completes construction of the new pipeline, it must file a construction completion report with the Board. This report must include information regarding any unusual construction problems or occurrences, and a copy of the pressure test procedures used and the results obtained.

5. Within 180 days after completion of the construction of the new pipeline, EnviroGas must file a map that accurately shows the location of the pipeline route as constructed. The map will be a part of the record in this case and will represent the final route as authorized by the permit.

6. The Board retains jurisdiction of the subject matter in this docket.

7. Ordinarily, this proposed decision would become the final decision of the Board unless appealed to the Board within 15 days of its issuance. Iowa Code § 17A.15(3); 199 IAC § 7.8(2). However, under appropriate circumstances, it is possible to reduce the time for appeal. Iowa Code § 17A.15(3); 199 IAC 1.3, 7.8(2). EnviroGas has requested expedited treatment of this case so it can proceed with construction. No objections to this petition were filed. The Consumer Advocate does not object to a reduced appeal period. There are no unresolved issues that indicate a need for the 15-day appeal period. Therefore, this proposed decision will become the final decision of the Board unless appealed to the Board within five (5) days of its issuance.

**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 9<sup>th</sup> day of November, 2005.