

## **HAZARDOUS LIQUID PIPELINE INFORMATIONAL MEETING PRESENTATION**

In accordance with Iowa Code § 479B.4, the following is a summary of the hazardous liquid pipeline permit process before the Iowa Utilities Board (IUB), and of the legal rights of affected landowners.

[Iowa Code Chapter 479B](#) is the law governing the construction of hazardous liquid pipelines in Iowa. A link to the laws or rules referenced during this presentation can be found on the IUB's website at [iub.iowa.gov](http://iub.iowa.gov).

### **THE PERMIT PROCESS**

1. Any hazardous liquid pipeline must be permitted by the IUB prior to construction. A company seeking to build a pipeline<sup>1</sup> can also request that the IUB grant the right of eminent domain (condemnation) to obtain the right-of-way needed for the project.
2. If a proposed pipeline extends five miles long or longer, before the company can request a permit from the IUB, an informational meeting must be held in each affected county. The company proposing the pipeline is required to notify all persons listed on the tax rolls as responsible for the payment of real estate taxes imposed on the property and each person in possession of or residing on the property.<sup>2</sup>
3. At informational meetings a representative of the IUB presents a summary of the legal rights of affected landowners, and a representative of the company explains the proposed project. The company cannot begin right-of-way negotiations with landowners until after this meeting, and cannot petition the IUB for a permit until at least 30 days after the final informational meeting.
4. An informational meeting is not an evidentiary hearing upon which the IUB will base a decision. At the time of the informational meeting, there is no petition before the IUB. The purpose of the informational meeting is to provide you with information relative to a proposed project, not to receive evidence on its merits. No formal record of the informational meeting is made.
5. A public evidentiary hearing on pipeline permit petitions is required by Iowa Code § 479B.6. After a proper petition is filed and review is completed, a notice is published for two consecutive weeks in a newspaper located in each affected county. The notice will identify the time, date, and place of the hearing. The hearing will be the opportunity for interested parties to present their evidence in favor of or opposing the project. The IUB's decision will be based on the record created at that hearing.

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<sup>1</sup> Defined in Utilities Board rules as "any pipe or pipeline and necessary appurtenances used for the transportation or transmission of any hazardous liquid."

<sup>2</sup> Iowa Code § 479B.4

6. If the pipeline is more than five miles long, Iowa Code § 479B.6(2) requires the hearing be held in the county seat of the county located at the midpoint of the proposed line.
7. The IUB is not an advocate for any person, landowner, or party. The IUB acts as a neutral decision maker to determine whether a proposed pipeline promotes the public convenience and necessity and meets other requirements of Iowa law. The IUB cannot serve as a legal advisor to any party. If you believe you have need for a lawyer, you may retain one at your own expense.
8. IUB proceedings are conducted pursuant to Iowa Code chapters 479B and 17A and 199 Iowa Administrative Code (IAC) chapter 13. The decision whether to grant a permit and, if requested, the right of eminent domain, will be made by the IUB. The IUB may appoint an administrative law judge to preside over the hearing and issue a proposed decision. The administrative law judge's proposed decision will become the final decision of the IUB unless it is appealed to the IUB.
9. When the IUB issues a final order deciding the case, either initially or on appeal from a proposed decision, any party to the proceeding may file for rehearing within 20 days.<sup>3</sup> Once a final decision has been made, any party may appeal to District Court within 30 days.<sup>4</sup>
10. All case documents, including the company's filings, IUB orders, notices, objections, and appeals, will be posted to the IUB's electronic filing system (EFS) at [efs.iowa.gov](https://efs.iowa.gov).

## **COMMENTS AND OBJECTIONS**

1. Any person whose rights or interests may be affected has the right to file a written comment or objection to the proposed project with the IUB.<sup>5</sup>
2. Written comments or objections may be filed at any time but not later than five days prior to the hearing.<sup>6</sup> The IUB may, but is not required to, allow late filed objections, in which case the company must be given reasonable time to respond. Verbal objections, other than statements made on the record during a hearing, will not be part of the official case record.
3. A suggested form of objection is attached to this document and is available electronically on the IUB's website. The form, which is not required, is provided for your convenience and to show the type of information an objection should include.
4. The IUB strongly prefers that objections be filed using EFS at [efs.iowa.gov](https://efs.iowa.gov); however, written objections sent by mail will be accepted.
5. At evidentiary hearings, parties will be given a reasonable opportunity to cross-examine company witnesses and to present witnesses on their own behalf. The burden is on the company to prove the necessary elements of its petition.
6. IUB evidentiary hearings are quasi-judicial in nature. Hearings are comparable to courtroom proceedings and follow similar rules of testimony, cross-examination, and presentation of evidence. The person presiding over the hearing will assist participants unfamiliar with such proceedings, but cannot assist any party with presentation of its case.

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<sup>3</sup> Iowa Code § 479B.22

<sup>4</sup> Iowa Code § 479B.22

<sup>5</sup> Iowa Code § 479B.7

<sup>6</sup> Iowa Code § 479B.7(2)

## **RIGHT-OF-WAY**

1. To locate a pipeline on private property, the company must obtain the necessary rights from the landowner or owners. The legal document providing such rights is called an easement. An easement may be a voluntary easement, which means the landowner agrees to sign it after negotiations with the company, or it may be obtained through the use of eminent domain.
2. Generally speaking, an easement is an acquired privilege of the company for the use of a property. The landowner retains ownership, but use of the easement area is restricted by conditions set forth in the easement or by law. The rights sought by the company will be similar whether obtained by voluntary easement or by eminent domain.
3. The IUB does not supervise or control negotiations for the purchase or acquisition of voluntary right-of-way easements. Once this informational meeting is completed, negotiations are strictly between you and the company, either with or without your use of private counsel.
4. Landowners should carefully read the form of easement provided by the company and be thoroughly aware of the rights the company seeks. The landowner has the right to negotiate with the company over the terms of the easement.
5. If future installation of drain tile or soil conservation practices and structures on a property is contemplated, this information needs to be provided to the company, in writing, prior to the securing of an easement. If plans defined by a qualified technician showing this intended work are provided to the pipeline company in advance, IUB rules require that the pipeline be installed in a manner that avoids interference with those plans.<sup>7</sup>
6. If you decide to sign a voluntary easement, you have for a limited time the right to cancel the agreement. Cancellation must be by certified mail with return receipt requested, mailed to the company's principal place of business.<sup>8</sup> The company must receive the cancellation within seven days, excluding Saturday and Sunday, of the date the agreement was signed. The company must inform you in writing of your right to cancel and provide you with a form for the notice of cancellation. The right of cancellation may be exercised only once.
7. If you have not allowed company surveyors on your property up to this time, following completion of this informational meeting, the company will have the right to enter upon land for making land surveys to determine direction or depth of pipelines. If permission has not been obtained voluntarily, the company must give the landowner ten days written notice by restricted certified mail of its intent, after which it may enter the land. The entry for authorized surveys is not trespass and may be aided by injunction. The company must pay for any damages incurred by the entry and survey.<sup>9</sup>
8. If pipeline right-of-way is wholly abandoned for pipeline purposes by relocation of the pipeline, is not used or operated for five consecutive years, or if construction is begun but ceases and is not resumed for five years, the right-of-way may revert to the current landowner.<sup>10</sup>

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<sup>7</sup> 199 IAC 9.5(9)

<sup>8</sup> Iowa Code § 479B.24

<sup>9</sup> Iowa Code § 479B.15

<sup>10</sup> Iowa Code § 479B.32

## **EMINENT DOMAIN (CONDEMNATION)**

1. If the company cannot obtain the rights it seeks by voluntary easement, it may petition the IUB for authority to take those rights by eminent domain, or condemnation. Condemnation is the process of taking private property for public use through the power of eminent domain.
2. Under state law, private property cannot be taken for a pipeline unless a) the pipeline is needed to serve a public use and b) just compensation is paid. The IUB determines whether the company has shown the pipeline will serve a public use and promote the public convenience and necessity. The IUB does not determine the matter of just compensation for property rights taken by eminent domain. That issue is determined by a compensation commission appointed from your county under Iowa Code chapter 6B.
3. At this time the company does not have the right of eminent domain; that is, it does not have the power to condemn. The right of eminent domain may only be granted by the IUB after an evidentiary hearing on the eminent domain request.
4. Iowa Code § 479B.4 requires that at informational meetings the IUB representative distribute and review a Statement of Property Owner's Rights prepared by the Iowa Attorney General. These have been adopted as Administrative Rules in 61 IAC chapter 34. In these rules, an "acquiring agency" is not limited to government agencies; it can include private entities that by law have the right of eminent domain. The rules primarily address acquisition of property ownership, but some provisions apply to condemnation of easements.
5. There are 12 property rights set forth in chapter 34. These rights pertain to owners of record who may have property acquired by condemnation. The rights specified in chapter 34 are derived from Iowa Code chapters 6A, 6B, and 316. These statutory rights are not applicable when a landowner voluntarily negotiates for an easement.
6. If an easement on your property would be condemned, the first right on the statement, Number 1, would apply. The Iowa Constitution guarantees the right to just compensation for the taking of property. Rights 5, 6, and 10 could also apply to property condemned for a utility easement. These rights address procedures in condemnation proceedings taken by the court-appointed compensation commission in determining the amount to be paid to the landowner. Other rights may only apply if property ownership is to be obtained by condemnation. An easement is a right of use over the property of another, but does not transfer ownership.

The rights set out in chapter 34 are not a full and complete list or explanation of a landowner's rights under condemnation law. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

## **DAMAGES**

1. In addition to payment for easement rights, the company is required to pay for actual property damages caused by constructing and maintaining the pipeline.<sup>11</sup> Payment for damages, including those incurred before, during, or after construction, is different than and separate from the payment for the easement. However, the easement may include provisions covering the determination and payment of damages.
2. In this context, "damages" means compensation for adverse physical impacts to the land, crops, livestock, and other property. The law is mainly oriented toward damages to agricultural

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<sup>11</sup> Iowa Code § 479B.17 and 479B.29

lands and provides a list of primarily agricultural damages that are specifically eligible for compensation. However, those are not the only damages that may be claimed. Any type of physical damage to agricultural or urban property is subject to compensation.

3. The damage settlement may include an allowance for a temporary reduction in crop yield in the disturbed area. If in future years the owner believes the settlement made for future crop deficiency was inadequate, Iowa Code § 479B.29 allows renegotiation. The landowner must notify the company in writing 14 days before harvest each year to assess crop deficiency.

4. In the context of damages, the term “owner” may refer to the tenant of the land if the tenant is the owner of the crops, livestock, or other property affected.

5. The company must provide you with a written statement explaining how damages resulting from pipeline construction will be determined and paid.<sup>12</sup> You have the right to negotiate with the company for more specific or additional terms.

6. The pipeline company must designate a point of contact for landowner inquiries or claims.<sup>13</sup> The information provided must include a name, address, and toll-free phone number. This information must be provided in writing prior to construction to all landowners with property that will be disturbed by the construction. When construction is completed, a point of contact shall remain available for at least one year for all landowners, and for individual landowners, until their claims are settled.

7. Damage settlements are not decided by the IUB but are subject to negotiation between the owner and the company.

8. The easement or other written agreement between the owner and company may provide that the damage amount be determined by an arbitrator.<sup>14</sup>

9. If the parties cannot agree on a settlement and no other means of resolving disputes has been agreed to, the landowner or tenant may petition the county board of supervisors to have the damages determined by a compensation commission.<sup>15</sup> The petition must be filed not less than 90 days after completion of installation of the pipeline.

If the award of the compensation commission is more than 110% of the company’s final offer for damages, the company must pay for the cost of the assessment by the commissioners, plus reasonable attorney fees and costs incurred by the owner as determined by the commissioners. If the award is 110% or less of the company’s final offer, the owner must pay the fees and costs incurred by the pipeline company.

10. If you find additional damage after you have already been paid for any construction or maintenance damages caused by the pipeline company, and the additional damage was not apparent when the first damages were paid, you have five years from the date of payment to renegotiate the damages.<sup>16</sup> The pipeline company is required to give you written notice of this right at the time of settlement of damages.

11. If the company has previously constructed a pipeline on a property, Iowa Code § 479B.26 forbids construction of another pipeline under that same easement if there is an outstanding,

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<sup>12</sup> Iowa Code § 479B.27

<sup>13</sup> 199 IAC 9.6

<sup>14</sup> Iowa Code § 479B.25

<sup>15</sup> Iowa Code chapter 6B and Iowa Code § 479B.30

<sup>16</sup> Iowa Code § 6B.52

unpaid damage claim remaining from the previous construction. This does not apply if that claim is in the process of being settled through arbitration or litigation. Also, for this section to apply, except for claims for damage to drain tile and future crop deficiency, landowners and tenants must have submitted written claims for damages to the pipeline company within one year after final cleanup of the property.

12. Iowa law gives the company the right of reasonable access to its pipelines for purposes of constructing, operating, maintaining, and locating.<sup>17</sup> The company must pay the owner of the land and crops for all damages resulting from such entry and action. The law allows the parties to enter into a separate agreement to cover such situations.

13. Iowa law requires that you call the Iowa One Call system at 811 (or 800-292-8989) before any excavating is done.<sup>18</sup> Excavation does not include normal farm operations (tillage up to 15 inches deep) or gardening, but it does include tiling and construction of erosion control structures. The call must be made at least 48 hours before excavation begins, not including weekends and legal holidays. The owners of any underground utilities in the area, including the proposed pipeline if it is approved and constructed, will mark the location within 48 hours (or notify you that the company's facilities are not in the area where you will be excavating). There is no charge for the call or for marking the lines. Failure to call will expose you to possible hazards and potential liability.

14. If new tile is installed after the pipeline is constructed and additional costs are incurred due to the presence of a pipeline, the company must pay those additional costs provided the county engineer or soil and water conservation district conservationist verifies that the pipeline is the specific cause; or, you can negotiate an agreement with the pipeline company on the project design and the share of the cost to be paid. Either way, you are encouraged to discuss your plans with the pipeline company well in advance of tile installation.<sup>19</sup>

## **AGRICULTURAL LAND RESTORATION/COUNTY INSPECTOR**

1. The IUB has adopted rules establishing standards for the restoration of agricultural lands during and after pipeline construction. These rules are found in 199 IAC chapter 9. A copy of chapter 9 is attached. During construction, these regulations will be enforced by inspectors hired by the county, not by the IUB.<sup>20</sup>

2. When a petition for a pipeline permit is filed, it must include a land restoration plan showing how the requirements of the land restoration laws and rules will be met. The IUB will consider this plan as part of the permit proceeding. The company must provide affected landowners with a copy of this plan prior to starting construction.

3. Landowners have the right to negotiate independent land restoration agreements with provisions different from those of the IUB rules or the land restoration plan, provided they are not inconsistent with the rules. Such agreements may be part of the easement or separate. They must be in writing and a copy must be provided to the county inspector.

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<sup>17</sup> Iowa Code § 479B.17

<sup>18</sup> Iowa Code chapter 480

<sup>19</sup> Iowa Code § 479B.31

<sup>20</sup> Iowa Code § 479B.20

4. The company must allow landowners and county inspectors to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in its proper location.
5. The county inspector may temporarily halt construction if the construction is not in compliance with the land restoration rules, the land restoration plan, or an independent agreement on land restoration or line location, until the inspector consults with the supervisory personnel of the pipeline company. If any special provisions in those areas were made during the easement negotiations, you should make sure the county inspector is aware of them before construction begins on your land.
6. If the company does not comply with requirements of the statute, the land restoration plan, or with an independent agreement, the county board of supervisors may petition the IUB for an order requiring corrective action and may file a complaint seeking imposition of civil penalties.<sup>21</sup>

Attached to this presentation is a summary of events entitled Appendix A. It is provided to give you an overview of the process in the sequence that it may occur.

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<sup>21</sup> Iowa Code § 479B.20(5)

## APPENDIX A

**NOTE:** A typical sequence of events, as it may affect the landowner, is set forth below. You should not attach any rigid significance to this sequence. It is merely an example to aid you in understanding the process.

1. Company planning determines the need for the line between termination points.
2. Prime route, and possibly alternative routes, are tentatively selected.
3. Route landowner and tenant names and addresses collected.
4. Informational meeting notices mailed.
5. Informational meeting held.
6. Company right-of-way personnel contact landowners to solicit voluntary easements.
7. Company may enter land for land survey to determine depth and direction of pipeline.
8. The company files petition for permit with IUB. Eminent domain may be requested at this time or later.
9. Newspaper publishes notices of hearing.
10. Evidentiary hearing held by IUB.
11. IUB decision denying or granting permit. If the petition requested eminent domain, a ruling granting or denying that right will also be issued.
12. If the petition and/or eminent domain is denied, the company may petition for rehearing or appeal the IUB denial to the courts. If the petition and/or eminent domain is granted, the landowner may petition for rehearing or appeal the IUB decision to the courts.

To simplify the balance of the list, it is assumed that the IUB granted the permit and the right of eminent domain, and the decision was not appealed.

13. The pipeline company shows the landowner exactly where the pipeline will be placed.
14. The company may commence construction where it has obtained voluntary easements.
15. If eminent domain actions are taken, the company petitions the chief judge of the judicial district for the county involved to appoint a compensation commission. (Iowa Code chapter 6B).
16. The compensation commission sets compensation amounts, the company pays landowners who will accept, posts payment with the sheriff for those who won't, and may commence construction over the balance of the route.
17. Either the landowners of the company may appeal the amount determined by the compensation commission to the courts.
18. Line construction and cleanup completed.



19. Company pays agreed-to construction damages to eminent domain parcel owners and gives written notice (Iowa Code section 6B.52) of renegotiation right.
20. If the landowner or tenant and company cannot agree on the amount of construction damages, and there is no provision in the easement or other agreement calling for such disputes to be settled by an arbitrator or other means, the landowner or tenant may petition the county board of supervisors to establish a compensation commission to determine the damages.
21. Either the landowners or the company may appeal the amount determined by the compensation commission to the courts.