

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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<p>SUMMIT CARBON SOLUTIONS, LLC,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No.</p>  <p style="text-align: center;"><b>PETITION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF</b></p>
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Summit Carbon Solutions, LLC (“Summit”), for its Petition for Temporary and Permanent Injunctive Relief, states:

**PARTIES AND JURISDICTION**

1. Summit is a Delaware limited liability company with its principal place of business in Iowa.
2. The Iowa Utilities Board (the “Board”) is a division of the Department of Commerce of the State of Iowa created and governed by Iowa Code chapter 474.
3. The Board is a government body within the meaning of Iowa Code chapter 22, Iowa’s Open Records Act.
4. This Court has subject-matter jurisdiction of this action.

**BACKGROUND**

5. Summit has proposed a carbon capture and storage project operating in five states that would partner with ethanol plants, including at least 12 in Iowa, to capture the carbon dioxide (“CO2”) from their fermentation process and transport it to unique geologic formations more than a mile underground in North Dakota for permanent storage.

6. The project would capture and store up to 12 million tons of CO<sub>2</sub> per year, the equivalent of removing the CO<sub>2</sub> emissions from 2.6 million automobiles.

7. The project will provide new capital investments, tax revenues, payments to landowners, thousands of construction jobs, and hundreds of good permanent jobs.

8. The project will also reduce the carbon intensity score of Iowa-produced ethanol by 30 points, making it much more competitive in growing low-carbon fuel markets – extending and increasing the market for Iowa’s ethanol, and for corn grown by tens of thousands of farmers across Iowa.

**Summit is required to mail notice of the project to each owner of each parcel in the corridor where the pipeline is proposed**

9. Under Iowa Code chapter 479B and the Board’s administrative rules implementing the statute, the first step in seeking a permit for the pipeline to transport the CO<sub>2</sub> is to hold a public meeting in each county where the pipeline is proposed to be constructed and operated.

10. Notice of such meetings, including a variety of specified information, must be sent via certified mail to “persons . . . responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements.” 199 Iowa Admin. Code 13.2(5). The corridor is wider than the initial proposed pipeline alignment to allow for minor modifications in the land acquisition and permitting process.

11. While the list for this mailing begins with county information on who is responsible for paying taxes on a given parcel, it also may include other persons, and more importantly it specifically identifies these persons, by name and with addresses, as persons whose parcels are in an area of interest to Summit.

12. The mailing lists relating to Summit's project involve over 15,000 records, reflecting each owner of each parcel in the pipeline corridor.

13. Nothing in statute nor the rule requires or contemplates the filing of the list on which the mailing was based to be filed with the Board. Nonetheless, as part of the process of planning for the Board-run public information meetings, Board staff requested that Summit file the mailing lists it used to provide notices.

14. Although filing of the list was not required by law, Summit did not want to refuse a request from the decision-maker on its permit. At the same time, Summit raised concerns about disclosing information about its potential host landowners and potentially exposing them to unwanted publicity.

15. To address both concerns, Summit filed the lists as requested, but with a request for confidential treatment, filed August 13, 2021, as is permitted under the Board's rules and consistent with the Iowa Open Records Act.

16. The individuals named in the mailing list had no input in the process and have never consented to having their names or addresses publicly disclosed.

17. On information and belief, many of the named individuals do not know about the threat of disclosure and have had no meaningful opportunity to protect their rights.

18. In the current environment, identification as persons who may be making a private decision on whether to sign an easement on their private property with Summit may subject them to harassment, and invasion of their privacy, peace and seclusion through no action of their own.

19. In addition to the threat to landowners' privacy rights, disclosure would aid Summit's competitors, including a proposed carbon capture pipeline in Iowa, called the "Navigator" project.

20. Disclosure of the individuals named in the mailing list would inform Navigator which landowners may also be negotiating with Summit for easements. It would also inform Navigator how much flexibility Summit has to move its line in a given area, based on being able to determine the exact width of Summit's notice corridor.

**The Board gives notice of pending release of the mailing lists but provides Summit the opportunity to seek an injunction**

21. Pipeline objectors promptly began to file objections to the confidential treatment, baselessly asserting that Summit's goal, rather than seeking to protect its landowners and neighbors, was instead to deter organizing by opponents by making it harder for such opponents to find each other.

22. No party filed any formal pleading resisting the motion for confidential treatment except for the Office of Consumer Advocate, who filed an objection to the motion on September 14.

23. Many of the non-pleading objections to the confidentiality of the lists had asked the Board not to rule until after the informational meetings.

24. After the last informational meeting on October 22, 2021, Summit filed a Reply to the objections on November 1, and a supplement to the reply on November 16.

25. On November 19, 2021, Sierra Club, Iowa Chapter filed a "Motion to Release Landowner List." As part of that motion, almost as an aside buried in the very last paragraph, Sierra appears to seek alternative relief that the Board took to be a request under Chapter 22:

Sierra Club also requests that this motion be considered an open records request pursuant to Chapter 22 of the Iowa Code.

WHEREFORE, Sierra Club Iowa Chapter requests that the Board deny Summit's Motion for Confidentiality and grant this Motion to Release Landowner List.

26. On November 23, 2021, the Board issued an “Order Granting in Part and Denying in Part Request for Confidential Treatment, With Dissenting Opinion.”

27. In that Order, the Board ruled that the lists were public records, and that they didn’t fall into the exception in Iowa Code §22.7(6). The Board went on to find, however, that because release of the records did not fall squarely within an open records exception but that it did implicate personal privacy interests, that under Iowa Supreme Court precedent the analysis had to consider those privacy interests.

28. A majority of the Board found that personal records of individuals are protected and should be withheld but found that the privacy interests of business and governmental entities is lesser and that *those* records should be released in 20 days (the time under Iowa Code chapter 17A to seek reconsideration). Summit has now moved for reconsideration seeking to protect either all or a larger set of the records.

29. One Board member dissented, but nonetheless acknowledged the privacy interests and expressed that it may be reasonable to release *all* of the addresses – individual or entity – but *none* of the names so uninvolved, nonconsenting parties would not be specifically identified.

30. Despite this ruling, on November 30, 2021, the Board issued a “Notice of Records Request” addressing the same subject matter – confidentiality of the mailing list filed by Summit. The November 30 Notice noted that as part of its Motion, Sierra Club has also made a records request.

31. The Board stated that in compliance with the Open Records Act and the Board’s rules, it was providing Summit with 14-days notice and opportunity to seek an injunction, otherwise after 14 days, despite the order protecting certain records, the Board would release *in their entirety* the lists as filed.

**COUNT I  
TEMPORARY AND PERMANENT INJUNCTION**

32. Summit repleads and realleges the preceding allegations.

33. The Iowa Open Records Act, including its exceptions, may be enforced by injunction.

34. Summit requests a temporary and permanent injunction prohibiting the Board from releasing the mailing lists Summit voluntarily provided and for which Summit sought confidential treatment because they are excluded from disclosure under Iowa law.

35. Summit would be aggrieved or adversely affected by examination or copying of the mailing lists.

36. Under Iowa Rule Code § 22.8(1) and Iowa Rule of Civil Procedure 1.1502(1), Summit's request for a temporary and permanent injunction is supported by the Declaration of Jake Ketzner attached as Exhibit 1.

37. As more fully set forth in the Ketzner Declaration, the examination of the mailing lists would clearly not be in the public interest and would substantially and irreparably injure both the persons on the mailing lists and Summit, entitling Summit to an injunction prohibit the lists' release.

38. Summit is likely to succeed on the merits of its claims and the balance of harms favors issuing a temporary injunction.

39. No petition for the same relief of part of it has previously been presented to and refused by any court or justice.

40. Summit requests a hearing on this matter and that the Court, as permitted by Iowa Code § 22.8(2), waive any bond requirement for an injunction.

Summit requests that the Court entering a temporary and permanent injunction prohibiting the Board from releasing the mailing lists Summit voluntarily provided and for which Summit sought confidential treatment and for such other relief as the Court deems appropriate.

Filed this 14th day of December, 2021.

*/s/ Bret A. Dublinske*

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