

Public Comments

Kendra Eng

From: Marty Skroch
Sent: Monday, March 20, 2023 2:20 PM
To: Kendra Eng; Paul Lewis (paul@bruninglewis.com)
Subject: FW: March Commission Meeting-Pipeline Moratorium

From: Brinkman, Brian <Brian.Brinkman@valero.com>
Sent: Monday, March 20, 2023 12:39 PM
To: Marty Skroch <martys@moodycounty.net>
Subject: March Commission Meeting-Pipeline Moratorium

Hi Marty – I wanted to share the email below with the Commission ahead of their meeting tomorrow. Please let me know if you need any more info on this.

Thanks,
Brian

Good afternoon Commissioners,

I am emailing you today as I understand that an item has been added to tomorrow's commission meeting agenda on the pipeline moratorium adopted for Moody County in March of 2022.

Valero and Valero Renewables Aurora would urge you not to extend the moratorium for a second year.

As plant manager for the Valero Aurora Ethanol Plant, I'm proud that Valero is investing in low carbon fuels. Valero Renewables Aurora is working with Navigator CO2 as the anchor shipper for their Heartland Greenway which will play a vital role in further reducing the carbon intensity of liquid fuels, specifically the 150 million gallons of ethanol we produce annually in Aurora. With a lower carbon intensity ethanol product, every gallon produced at our plant becomes even more valuable, helping us to remain economically competitively, both locally and in growing markets around the world.

A thriving market for ethanol ensures a strong demand for corn, including the 52 million bushels we buy from area farmers, including those in Moody County, each year.

Any pipeline sited in Moody County, including the Heartland Greenway, may not proceed without a permit from the Public Utilities Commission in addition to other state and local permits which will ensure that the project operates safely moving forward. All interested parties are entitled to voice their concerns in the PUC process which oversees construction and operation of carbon pipelines.

Please don't hesitate to contact me via email or at the number below if you have any questions, or if we can provide any further information.

Thank you,

Brian Brinkman
Plant Manager



South Dakota Ethanol Producers Association
4615 N. Lewis Ave. Sioux Falls, SD 57104

March 20, 2023

Moody County Commissioners
101 East Pipestone Ave
Flandreau, SD 57028-0226

Dear Commissioners:

Thank you for your service to Moody County and your ongoing efforts to keep your county's economy moving forward. My name is Walter Wendland, and I serve as President of the South Dakota Ethanol Producers Association. Our organization advocates for the expansion of ethanol production, greater access to emerging markets, and state and federal policies that help our industry grow. Our member plants include Ringneck Energy, Dakota Ethanol, Redfield Energy, Red River Energy, Gevo and all POET Biorefining facilities in South Dakota.

According to the United States Department of Agriculture, corn production provides South Dakota with a total value of more than \$4 billion. Of course, ethanol is an important part of that equation, as our industry purchases more than half of all the corn grown in our state. With sixteen plants, South Dakota has become an ethanol production leader, ranking fourth in the nation, passing both Minnesota and Indiana the past year. However, just 3% of the more than 1.442 billion gallons we produce annually is utilized within the state, making our industry reliant upon outside markets for sustained value creation and growth. Many of our largest ethanol markets, both domestically and internationally, increasingly demand lower or net-zero carbon fuel options.

That is the opportunity that lies ahead with the commitments being made to carbon capture projects. These investments in our infrastructure will allow ethanol producers to reduce the carbon intensity of their products significantly and, in turn, ensure access to higher-value markets for decades. Accessing these markets represents an enormous, and in many ways essential, economic opportunity for the ethanol industry, which is why nearly every ethanol company operating in South Dakota and across America's Corn Belt has joined one of these projects.

Like other industries, ethanol producers have continued to invest and optimize their facilities, bringing additional value to the local communities where we operate and the farmer customers we serve. With ethanol contributing \$600 million to South Dakota's gross domestic product every year, we believe the long-term economic benefits of carbon capture projects are clear and overwhelming. A strong ethanol industry is good for South Dakota farmers, South Dakota businesses, and South Dakota as a whole.



South Dakota Ethanol Producers Association
4615 N. Lewis Ave. Sioux Falls, SD 57104

We respectfully ask the Commission to recognize the value of this technology for the county and state and support a permitting process that allows the landowners and ethanol partners involved in these projects to continue moving these projects forward.

Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Walter Wendland".

Walter Wendland
President of the South Dakota Ethanol Producers Association and
President & CEO of Ringneck Energy



American Petroleum Institute
Midwest Region

Lynn Granger
Regional Director
API
202.682.7177
grangerl@api.org

Via email to:

March 20, 2023

Moody County Commissioners
101 E. Pipestone Ave.
Flandreau, SD 57028

To Chair Doyle and members of the Moody County Commission:

On behalf of the American Petroleum Institute (API), I am writing this letter to express our concern with the current moratorium on local pipeline permitting that was passed on March 24, 2022.

API represents all segments of America's oil and natural gas industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our nearly 600 members produce, process, and distribute the majority of the nation's energy, and participate in the [API Energy Excellence® program](#), which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability. Through the [API Climate Action Framework](#) and related initiatives such as [The Environmental Partnership](#), significant efforts are being conducted by the oil and natural gas industry to balance the increasing demand for affordable and reliable energy products with environmental performance and stewardship.

The oil and natural gas industry is committed to the safe and environmentally responsible operation of U.S. energy infrastructure. U.S. pipelines safely deliver oil, natural gas, and their products to Americans every day, and the industry is committed to its goal of operating with zero incidents through the development and application of industry standards for the design, construction, and operation of energy pipeline systems. Additionally, the oil and natural gas industry supports the deployment of advanced technologies that improve methods of pipeline construction, operation, and inspection as part of robust safety programs to ensure safety and reliability of pipeline systems. Pipeline operators' proactive prevention, preparedness, and response efforts help ensure the safe transportation of energy across the U.S. and provide American consumers with affordable, reliable energy while protecting the communities and environment where operators live and work.

The current process for permitting pipeline infrastructure in South Dakota through the South Dakota Public Utility Commission (PUC) is well established, and through public hearings sponsored by the South Dakota PUC, the public has the opportunity to participate in the process. Moreover, the public elects officials to the PUC to represent their interests and the interests of South Dakota more broadly. With the increasing focus on reducing GHG emissions both nationally and in South Dakota, CCS projects, including CO2 pipelines, and sustaining the industries upon which South Dakotans rely to provide revenue and economic viability for its citizens, is clearly in the public interest.



American Petroleum Institute
Midwest Region

Lynn Granger
Regional Director
API
202.682.7177
grangerl@api.org

Pipeline operators need a clear, consistent, and transparent permitting and regulatory process to support the construction and safe operation of pipelines, including CO2 pipelines, which have been identified by the US DOE as a critical element in enabling the US to meet its targets for GHG emission reductions. There are existing federal and state regulations that are adequate in addressing pipeline siting, construction, and safe operations, including CO2 pipelines.

At a time of rising energy prices and geopolitical turmoil, we ask elected officials to focus on policies that support the production and development of America's energy resources, including expanding critical energy infrastructure like pipelines. With the increasing emphasis on CCS and CO2 pipelines being a key element of American energy production and development and GHG emission reductions, acknowledging the broad public good stemming from the benefits of CO2 pipeline infrastructure is critically important to permitting and building pipelines.

Thank you for the opportunity to share our concerns with the current moratorium and we hope you will decide that it is not necessary to extend. API stands ready to work with the county and its residents and provide education on best practices being implemented by the industry in the safe and responsible development and operation of pipelines and related infrastructure, and their importance to the South Dakota economy and attaining GHG emission reduction and climate goals. If we can be of any assistance on this or any other matter, please do not hesitate to contact us.

Sincerely,

Lynn Granger
Regional Director – Mountain/Midwest Region
American Petroleum Institute



13333 California Street
Suite 202
Omaha, NE 68154

www.navigatorco2.com

Board of Commissioners of Moody County, South Dakota
Moody County Courthouse
Office of Equalization
101 E. Piperstone Ave, Suite E
Flandreau, South Dakota 57028

Re: Ordinance No. 2023-01
Moody County Proposed Pipeline Ordinance

Dear Commissioners:

This letter is in response to proposed Ordinance No. 2023-01, which is scheduled for a second reading on June 26, 2023. We understand that public comment will not be allowed at the meeting, so the purpose of this letter is to provide the Board with Navigator Heartland Greenway LLC's ("Navigator") comments and concerns about proposed Ordinance No. 2023-01 (the "Ordinance"). Navigator appreciates the opportunity to provide information related to the comprehensive regulatory oversight of the Heartland Greenway Project.

Federal and State Regulatory Framework

The Pipeline Safety Act ("PSA") was enacted in 1994 "to recodify, without substantive change," the Natural Gas Pipeline Safety Act of 1968 ("NGPSA") and the Hazardous Liquids Pipeline Safety Act of 1979 ("HLPESA"). Specifically, the PSA's purpose "is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities." 49 U.S.C. § 60102(a)(1).

Pursuant to the PSA, the United States Department of Transportation ("DOT") must "prescribe minimum safety standards for pipeline transportation and for pipeline facilities," 49 U.S.C. § 60102(a)(2), "regulate carbon dioxide transported by a hazardous liquid pipeline facility", and "prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility." 49 U.S.C. § 60102(i)(1). The DOT delegates this authority to the Pipeline and Hazardous Materials Safety Administration ("PHMSA").

49 CFR Part 195 outlines the regulations and standards required by the PSA and are set forth in the Code of Federal Regulations, which contains a robust set of requirements on the safe design, operation, and maintenance of hazardous liquid pipelines. This comprehensive regulatory framework is the exclusive purview of the DOT and PHMSA.

PHMSA has stated that it regulates Navigator's proposed pipeline project, and Navigator agrees that its project is subject to PHMSA's regulations. Navigator has designed the project to meet, and in many cases exceed, all PHMSA safety regulations.



On September 27, 2022, Navigator filed an application with the South Dakota Public Utilities Commission (“PUC”). Per SDCL Ch. 49-41B, the PUC is provided with the authority to approve proposed projects subject to conditions imposed on hazardous liquid pipelines to protect landowners and tenants from environmental, social, and economic injury. The PUC’s role is to determine as part of the permitting process whether a proposed pipeline satisfies the burden of proof found at SDCL § 49-41B-22. Counties and landowners are welcome to participate in the PUC process regarding routing concerns. We note that Moody County has intervened in the PUC docket regarding Heartland Greenway and welcome the county’s participation in the PUC’s process.

It is Navigator’s position that attempts by local county governments to regulate in the areas of pipeline safety, location, and routing are preempted by federal law under the PSA and corresponding PHMSA regulations, and by the PUC’s authority under SDCL Ch. 49-41B to the extent that local regulation is unreasonably restrictive.

Draft Ordinance Comments and Observations

With the goal of working with the county throughout this process, Navigator submits the following comments and observations as examples of areas that are covered by applicable federal or state processes and regulations. This is not intended to be an exhaustive list.

Setbacks

The setbacks as currently proposed are unworkable and will result in Navigator being unable to route the pipeline through Moody County. As applied, these setbacks effectively result in a ban on pipeline construction in the county.

Landowner Waiver

The Ordinance states the Board of Adjustment “may allow” a setback of less than the established distance if the landowner provides a waiver. However, there is no criteria for Navigator to understand how, when, or if the county would approve a setback reduction even if the landowner granted a waiver, making this provision ambiguous. This provision appears to grant the county arbitrary authority which makes project planning extremely difficult.

Transfer of Ownership

Similar to the waiver issue above, there are no criteria for the county to consider in deciding whether to approve a transfer or not, which allows for an arbitrary decision on the part of the county. This ambiguous provision gives the county the power to prevent a pipeline operator from transferring ownership of a large, interstate infrastructure project if the county will not grant permission to transfer. This authority is also contrary to SDCL § 49-41B-29, which gives the PUC the authority to approve the transfer of a permit to a person who agrees to comply with the terms and conditions of the permit.

Conditional Use Permit Application

The Ordinance contains a requirement for a pipeline operator to submit an affidavit that necessary easement agreements have been obtained. This requirement implies that if Navigator determines it must seek eminent domain over any hold-out landowner, the county will not grant Navigator a conditional use permit. South Dakota law authorizes pipeline developers to exercise the right of eminent domain under SDCL § 49-7-13. Further, the requirement for proof of right-of-way easements



appears duplicative of the requirement for affidavits for easement agreements. As a practical matter, an operator is not likely to start construction until all necessary land has been acquired, so this provision is not necessary.

The Ordinance contains a requirement that a pipeline operator not bisect or disrupt or damage any existing tile lines or utility lines. Navigator reads this as a requirement to bore under existing drain tile and utility lines. While a bore will be used where appropriate, this is not standard construction practice and is not the planned construction method across the entire footprint of this project every time drain tile or utility lines are encountered. This requirement would greatly increase Navigator's cost to build the project and would deter further infrastructure development in the county. Navigator has committed to fully repairing any drain tile damaged in the construction process and will work with all landowners along the route to ensure all repairs are satisfactory. Navigator further plans to work directly with all utility providers on any crossings.

Abandonment

Abandonment of a pipeline that is no longer in service is governed by PHMSA regulations. Navigator will follow all applicable PHMSA regulations if the project is ever abandoned.

Navigator has served discovery responses and filed a robust set of witness testimony with the PUC, some of which address the areas the county is attempting to regulate in the Ordinance. Navigator invites the Board Members to review these materials that are publicly available on the PUC's website:

<https://puc.sd.gov/Dockets/HydrocarbonPipeline/2022/HP22-002.aspx>

As a party to the PUC docket, Moody County also has the ability to send discovery requests to Navigator, to the extent the county feels it needs additional information in order to make an informed decision about the project and raise any concerns to the PUC.

Navigator welcomes the opportunity to answer questions from the Board and remains willing to provide further information about the Heartland Greenway project.