

Print

Comments & Submissions - Submission #2987

Date Submitted: 11/24/2023

Name

Sara Steever

Email Address

[Redacted]

Address

[Redacted]

City

[Redacted]

State

[Redacted]

Zip Code

[Redacted]

Phone Number

[Redacted]

Fax Number

Comment or Concern

Submitting this updated ordinance for discussion during the Carbon Dioxide Transport and Storage Advisory Committee process. Thank you.

Submit a file

1855 County Ordinance
11.19.23.docx

ORDINANCE NO. _____

AN ORDINANCE OF LINCOLN COUNTY, SD, AMENDING CHAPTER 154 OF THE LINCOLN COUNTY CODE OF ORDINANCES TO PROVIDE FOR THE REGULATION OF CARBON DIOXIDE PIPELINES AND CARBON DIOXIDE PRODUCTION FACILITIES.

BE IT ORDAINED BY LINCOLN COUNTY, SD:

Section 1. That § 154.021 of the Lincoln County Code of Ordinances is hereby amended by adding the following terms and definitions:

CARBON DIOXIDE. A fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state. (Title 49, Code of Federal Regulations, Section 195.2)

PIPE OR LINE PIPE. A tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another. (Title 49, Code of Federal Regulations, Section 195.2)

PIPELINE OR PIPELINE SYSTEM. All parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. (Title 49, Code of Federal Regulations, Section 195.2)

PIPELINE FACILITY. New and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide. (Title 49, Code of Federal Regulations, Section 195.2)

PRODUCTION FACILITY. Piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum or carbon dioxide from the ground or from facilities where CO₂ is produced and preparing it for transportation by pipeline. This includes piping between treatment plants which extract carbon dioxide, and facilities utilized for the injection of carbon dioxide for recovery operations.) (Title 49, Code of Federal Regulations, Section 195.2)

RURAL AREA. Outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development. (Title 49, Code of Federal Regulations, Section 195.2)

Section 2. That the following definition in § 154.021 of the Lincoln County Code of Ordinances is hereby amended to read as follows:

NEIGHBORHOOD UTILITY FACILITY. Telephone, electric, and cable television lines, poles, and equipment; water, oil, or gas pipes; mains and valves; sewer pipes and valves; lift stations; telephone exchanges and repeaters; and all other facilities and equipment (excluding buildings that exceed 120 square feet of roof area) necessary for conducting a service by governmental agencies or commissions or public or private utilities. This definition does not include an electrical substation, carbon dioxide pipeline, or carbon dioxide production facility.

Section 3. That § 154.056, permissive uses in the A-1 Agricultural District, is hereby amended by adding a new use as follows:

(I) Carbon dioxide pipeline.

(1) Shall be set back a minimum of 1,855 feet for a 6-inch pipeline from a single-family dwelling, church, school, nursing home, hospital, business, public park, or a concentrated animal feeding operation. The setback shall be measured from the pipeline to the parcel line of the property. Any landowner, authorized person, business, or governmental entity that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. An easement signed and filed with the Lincoln County Registrar of Deeds prior to or after this ordinance takes effect shall constitute a waiver. This waiver would be subject to review every 10 years and will run with the land or as agreed upon by both parties.

(2) For pipelines larger than 6" to be considered for a permit, the company applying for the pipeline permit must submit their plume model research as part of the application and as part of the public record. The pipeline setback may then be adjusted to a larger distance and deeper depth at the discretion of the Commission.

(3) Any pipeline 6" in diameter or larger shall be set back a minimum of 10,560 feet from an incorporated city. The setback shall be measured from the pipeline to the closest point of the municipal boundary as recorded with the county's register of deeds. Any incorporated city that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. This waiver would run with the land or as agreed upon by both parties.

(4) Can only be sited and located outside of properties of historical or archaeological significance, or farms designated as Century Farms by the State of South Dakota Department of Agriculture and Natural Resources, and therefore may not be built upon without the explicit written consent of the landowner. Pipelines cannot be sited in areas within a floodplain, or areas with a steep grade, or areas with poor soil quality.

(5) Shall be buried at a depth of 7 ft. to accommodate agricultural practices within the county, including but not limited to cultivation practices such as drainage tiling, plowing, and decompaction, and the potential long-term impacts of soil erosion. The default depth of cultivation on agricultural lands within the county is set at 7 feet below grade. Landowners may assert that the level of cultivation extends deeper than 7 feet upon presentation of supporting evidence to the Applicant and the county. Conversely, a landowner may choose to waive the default level of cultivation to a depth shallower than 7 feet.

(6) If a Carbon dioxide pipeline is not able to abide by all of the regulations set forth in this section, then it shall be required to apply for a conditional use permit in accordance with § 154.058.GG

(7) The noise level from the normal operations of any valve associated with the pipeline cannot exceed 20 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park.

(8) During the construction phase of the pipeline installation, building activity must be done from Monday through Friday, 8:00 am to 5:00 pm local time. The noise level during the construction phase of the pipeline must not exceed 45 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park. Further, during construction and normal operations, no floodlights or other disruptive devices may be used that alter the characteristics of the neighborhood in which the pipeline is being installed.

(9) Any waiver obtained by the pipeline companies must be renegotiated every 5 years. Any existing waiver must wait a minimum of 3 years before requesting a variance.

(10) Any pipeline filing for a permit, must file for every parcel of land separately, and may not just file a single permit for one landowner.

(11) The pipeline companies must provide a plan for the expense to install and maintain CO2 detectors along the route of the pipeline as the landowner sees fit. Additionally, the CO2 pipeline companies must provide a plan to decommission the pipeline, and provide a surety bond to provide funds for both of those purposes. This surety bond, once established, must operate outside of the success or failure of the pipeline company and remain in place for use by affected landowners as long as the CO2 pipeline is present in Lincoln County.

(12) Volume Fee on the pipeline companies: The pipeline companies shall be subjected to a fee for the volume of CO2 transmitted by said companies. For every ton of CO2 that passes through the pipelines within Lincoln County, 4% of the current price of CO2 per ton on the open market will be remitted to Lincoln County. This fee will be paid quarterly by the CO2 pipeline companies to Lincoln County.

(13) Landowners with CO2 pipelines that intersect or travel across their land shall receive 50% of the Volume Fee as an ongoing stipend for the perpetual damage done to the value of their land, the ability to obtain income through farming and other business-related practices and the considerable expense of converting equipment to electric vehicles. These will be remitted annually by Lincoln County to each landowner based on the length and diameter of the pipeline crossing their land.

(14) Any parcel that has CO2 pipelines that intersect or travel across it shall be considered an Economic Dead Zone, and the tax on that parcel shall be paid by the pipeline company and assessed on the highest and best use of that land based on comparable land use at the time of the assessment. This assessment status will remain in place for each parcel as long as the pipeline and pipeline easements are in place, even if the pipeline is decommissioned.

(15) All applications for permits must be reviewed annually, and can be withdrawn if the CO2 pipeline company is not in compliance with a regulation within Lincoln County.

(16) The CO2 pipeline companies must provide a comprehensive Emergency Management Services (EMS) plan for dealing with CO2 pipeline leaks and ruptures for all EMS personnel whose purview includes land with CO2 pipelines. This plan must include quarterly training of EMS personnel, self-contained breathing apparatus for all personnel, and electric vehicles capable of evacuating residents that live within the identified setback zone. These plans must be reviewed and approved annually by EMS leadership and governing bodies.

(17) For parcels where livestock are pastured or housed, the CO2 pipeline companies shall provide, install and maintain annually, automatic gates for access to any of their easements by both the company and the landowner. For parcels where there livestock are not pastured or housed, the pipeline company is required to provide an agreement in writing with the landowner for respectful ongoing access to the easement.

(18) Shall be subject to all concerns and processes established by any city or township within Lincoln County when establishing an ordinance.

Section 4. That § 154.058, conditional uses, in the A-1 Agricultural District, is hereby amended by adding a new use as follows:

(FF) Carbon dioxide production facility.

(GG) Carbon dioxide pipeline

(1) A fee of \$25,000.00 shall be charged for filing an application for a conditional use permit for a Transmission Pipeline.

(2) If a conditional use is granted for a Transmission Pipeline, the Applicant or actual operator or their successors, assigns and agents shall pay to the County an annual fee of \$1.00 per linear foot of pipeline within the County. The fee shall be used to defray the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th of each year and deposited in the general fund of the County.

(3) If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

Section 5. That § 154.176, permissive uses in the RC Recreation/Conservation District, is hereby amended by adding a new use as follows:

(G) Carbon dioxide pipeline.

(1) Shall be set back a minimum of 1,855 feet for a 6-inch pipeline from a single-family dwelling, church, school, nursing home, hospital, business, public park, or a concentrated animal feeding operation. The setback shall be measured from the pipeline to the parcel line of the property. Any landowner, authorized person, business, or governmental entity that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. An easement signed and filed with the Lincoln County Registrar of Deeds prior to or after this ordinance takes effect shall constitute a waiver. This waiver would be subject to review every 10 years and will run with the land or as agreed upon by both parties.

(2) For pipelines larger than 6" to be considered for a permit, the company applying for the pipeline permit must submit their plume model research as part of the application and as part of the public record. The pipeline setback may then be adjusted to a larger distance and deeper depth at the discretion of the Commission.

(3) Any pipeline 6" in diameter or larger shall be set back a minimum of 10,560 feet from an incorporated city. The setback shall be measured from the pipeline to the closest point of the municipal boundary as recorded with the county's register of deeds. Any incorporated city that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. This waiver would run with the land or as agreed upon by both parties.

(4) Can only be sited and located outside of properties of historical or archaeological significance, or farms designated as Century Farms by the State of South Dakota Department of Agriculture and Natural Resources, and therefore may not be built upon without the explicit written consent of the landowner. Pipelines cannot be sited in areas within a floodplain, or areas with a steep grade, or areas with poor soil quality.

(5) Shall be buried at a depth of 7 ft. to accommodate agricultural practices within the county, including but not limited to cultivation practices such as drainage tiling, plowing, and decompaction, and the potential long-term impacts of soil erosion. The default depth of cultivation on agricultural lands within the county is set at 7 feet below grade. Landowners may assert that the level of cultivation extends deeper than 7 feet upon presentation of supporting evidence to the Applicant and the county. Conversely, a landowner may choose to waive the default level of cultivation to a depth shallower than 7 feet.

(6) If a Carbon dioxide pipeline is not able to abide by all of the regulations set forth in this section, then it shall be required to apply for a conditional use permit in accordance with § 154.058.GG

(7) The noise level from the normal operations of any valve associated with the pipeline cannot exceed 20 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park.

(8) During the construction phase of the pipeline installation, building activity must be done from Monday through Friday, 8:00 am to 5:00 pm local time. The noise level during the construction phase of the pipeline must not exceed 45 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park. Further, during construction and normal operations, no floodlights or other disruptive devices may be used that alter the characteristics of the neighborhood in which the pipeline is being installed.

(9) Any waiver obtained by the pipeline companies must be renegotiated every 5 years. Any existing waiver must wait a minimum of 3 years before requesting a variance.

(10) Any pipeline filing for a permit, must file for every parcel of land separately, and may not just file a single permit for one landowner.

(11) The pipeline companies must provide a plan for the expense to install and maintain CO2 detectors along the route of the pipeline as the landowner sees fit. Additionally, the CO2 pipeline companies must provide a plan to decommission the pipeline, and provide a surety bond to provide funds for both of those purposes. This surety bond, once established, must operate outside of the success or failure of the pipeline company and remain in place for use by affected landowners as long as the CO2 pipeline is present in Lincoln County.

(12) Volume Fee on the pipeline companies: The pipeline companies shall be subjected to a fee for the volume of CO2 transmitted by said companies. For every ton of CO2 that passes through the pipelines within Lincoln County, 4% of the current price of CO2 per ton on the open market will be remitted to Lincoln County. This fee will be paid quarterly by the CO2 pipeline companies to Lincoln County.

(13) Landowners with CO2 pipelines that intersect or travel across their land shall receive 50% of the Volume Fee as an ongoing stipend for the perpetual damage done to the value of their land, the ability to obtain income through farming and other business-related practices and the considerable expense of converting equipment to electric vehicles. These will be remitted annually by Lincoln County to each landowner based on the length and diameter of the pipeline crossing their land.

(14) Any parcel that has CO2 pipelines that intersect or travel across it shall be considered an Economic Dead Zone, and the tax on that parcel shall be paid by the pipeline company and assessed on the highest and best use of that land based on comparable land use at the time of the assessment. This assessment status will remain in place for each parcel as long as the pipeline and pipeline easements are in place, even if the pipeline is decommissioned.

(15) All applications for permits must be reviewed annually, and can be withdrawn if the CO2 pipeline company is not in compliance with a regulation within Lincoln County.

(16) The CO2 pipeline companies must provide a comprehensive Emergency Management Services (EMS) plan for dealing with CO2 pipeline leaks and ruptures for all EMS personnel whose purview includes land with CO2 pipelines. This plan must include quarterly training of EMS personnel, self-contained breathing apparatus for all personnel, and electric vehicles capable of evacuating residents that live within the identified setback zone. These plans must be reviewed and approved annually by EMS leadership and governing bodies.

(17) For parcels where livestock are pastured or housed, the CO2 pipeline companies shall provide, install and maintain annually, automatic gates for access to any of their easements by both the company and the landowner. For parcels where there livestock are not pastured or housed, the pipeline company is required to provide an agreement in writing with the landowner for respectful ongoing access to the easement.

(18) Shall be subject to all concerns and processes established by any city or township within Lincoln County when establishing an ordinance.

Section 6. That § 154.178, conditional uses, in the RC Recreation/Conservation District, is hereby amended by adding a new use as follows:

(S) Carbon dioxide production facility.

(T) Carbon dioxide pipeline Page 166 of 168

(1) A fee of \$25,000.00 shall be charged for filing an application for a conditional use permit for a Transmission Pipeline.

(2) If a conditional use is granted for a Transmission Pipeline, the Applicant or actual operator or their successors, assigns and agents shall pay to the County an annual fee of \$1.00 per linear foot of pipeline within the County. The fee shall be used to defray the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th of each year and deposited in the general fund of the County.

(3) If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

Section 7. That § 154.136, permissive uses in the I-1 Light Industrial District, is hereby amended by adding a new use as follows:

(H) Carbon dioxide pipeline.

(1) Shall be set back a minimum of 1,855 feet for a 6-inch pipeline from a single-family dwelling, church, school, nursing home, hospital, business, public park, or a concentrated animal feeding operation. The setback shall be measured from the pipeline to the parcel line of the property. Any landowner, authorized person, business, or governmental entity that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. An easement signed and filed with the Lincoln County Registrar of Deeds prior to or after this ordinance takes effect shall constitute a waiver. This waiver would be subject to review every 10 years and will run with the land or as agreed upon by both parties.

(2) For pipelines larger than 6" to be considered for a permit, the company applying for the pipeline permit must submit their plume model research as part of the application and as part of the public record. The pipeline setback may then be adjusted to a larger distance and deeper depth at the discretion of the Commission.

(3) Any pipeline 6" in diameter or larger shall be set back a minimum of 10,560 feet from an incorporated city. The setback shall be measured from the pipeline to the closest point of the municipal boundary as recorded with the county's register of deeds. Any incorporated city that is within the minimum set back may waive the set back through a written instrument to be filed with the county's register of deeds. This waiver would run with the land or as agreed upon by both parties.

(4) Can only be sited and located outside of properties of historical or archaeological significance, or farms designated as Century Farms by the State of South Dakota Department of Agriculture and Natural Resources, and therefore may not be built upon without the explicit written consent of the landowner. Pipelines cannot be sited in areas within a floodplain, or areas with a steep grade, or areas with poor soil quality.

(5) Shall be buried at a depth of 7 ft. to accommodate agricultural practices within the county, including but not limited to cultivation practices such as drainage tiling, plowing, and decompaction, and the potential long-term impacts of soil erosion. The default depth of cultivation on agricultural lands within the county is set at 7 feet below grade. Landowners may assert that the level of cultivation extends deeper than 7 feet upon presentation of supporting evidence to the Applicant and the county. Conversely, a landowner may choose to waive the default level of cultivation to a depth shallower than 7 feet.

(6) If a Carbon dioxide pipeline is not able to abide by all of the regulations set forth in this section, then it shall be required to apply for a conditional use permit in accordance with § 154.058.GG

(7) The noise level from the normal operations of any valve associated with the pipeline cannot exceed 20 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park.

(8) During the construction phase of the pipeline installation, building activity must be done from Monday through Friday, 8:00 am to 5:00 pm local time. The noise level during the construction phase of the pipeline must not exceed 45 dBA at the parcel line of any single-family dwelling, church, school, nursing home, hospital, business or public park. Further, during construction and normal operations, no floodlights or other disruptive devices may be used that alter the characteristics of the neighborhood in which the pipeline is being installed.

(9) Any waiver obtained by the pipeline companies must be renegotiated every 5 years. Any existing waiver must wait a minimum of 3 years before requesting a variance.

(10) Any pipeline filing for a permit, must file for every parcel of land separately, and may not just file a single permit for one landowner.

(11) The pipeline companies must provide a plan for the expense to install and maintain CO₂ detectors along the route of the pipeline as the landowner sees fit. Additionally, the CO₂ pipeline companies must provide a plan to decommission the pipeline, and provide a surety bond to provide funds for both of those purposes. This surety bond, once established, must operate outside of the success or failure of the pipeline company and remain in place for use by affected landowners as long as the CO₂ pipeline is present in Lincoln County.

(12) Volume Fee on the pipeline companies: The pipeline companies shall be subjected to a fee for the volume of CO₂ transmitted by said companies. For every ton of CO₂ that passes through the pipelines within Lincoln County, 4% of the current price of CO₂ per ton on the open market will be remitted to Lincoln County. This fee will be paid quarterly by the CO₂ pipeline companies to Lincoln County.

(13) Landowners with CO₂ pipelines that intersect or travel across their land shall receive 50% of the Volume Fee as an ongoing stipend for the perpetual damage done to the value of their land, the ability to obtain income through farming and other business-related practices and the considerable expense of converting equipment to electric vehicles. These will be remitted annually by Lincoln County to each landowner based on the length and diameter of the pipeline crossing their land.

(14) Any parcel that has CO₂ pipelines that intersect or travel across it shall be considered an Economic Dead Zone, and the tax on that parcel shall be paid by the pipeline company and assessed on the highest and best use of that land based on comparable land use at the time of the assessment. This assessment status will remain in place for each parcel as long as the pipeline and pipeline easements are in place, even if the pipeline is decommissioned.

(15) All applications for permits must be reviewed annually, and can be withdrawn if the CO₂ pipeline company is not in compliance with a regulation within Lincoln County.

(16) The CO₂ pipeline companies must provide a comprehensive Emergency Management Services (EMS) plan for dealing with CO₂ pipeline leaks and ruptures for all EMS personnel whose purview includes land with CO₂ pipelines. This plan must include quarterly training of EMS personnel, self-contained breathing apparatus for all personnel, and electric vehicles capable of evacuating residents that live within the identified setback zone. These plans must be reviewed and approved annually by EMS leadership and governing bodies.

(17) For parcels where livestock are pastured or housed, the CO2 pipeline companies shall provide, install and maintain annually, automatic gates for access to any of their easements by both the company and the landowner. For parcels where there livestock are not pastured or housed, the pipeline company is required to provide an agreement in writing with the landowner for respectful ongoing access to the easement.

(18) Shall be subject to all concerns and processes established by any city or township within Lincoln County when establishing an ordinance.

Section 8. That § 154.138, conditional uses, in the RC Recreation/Conservation District, is hereby amended by adding a new use as follows:

(G) Carbon dioxide production facility.

(H) Carbon dioxide pipeline

(4) A fee of \$25,000.00 shall be charged for filing an application for a conditional use permit for a Transmission Pipeline.

(5) If a conditional use is granted for a Transmission Pipeline, the Applicant or actual operator or their successors, assigns and agents shall pay to the County an annual fee of \$1.00 per linear foot of pipeline within the County. The fee shall be used to defray the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th of each year and deposited in the general fund of the County.

(6) If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

Adopted this _____ day of _____ 2023.

Applicant (Print): _____

Signature: _____

Date: _____ Phone: _____

Address: _____

City State Zip

Email: _____