

PIPELINES AND UNDERGROUND GAS STORAGE

479.1 Purpose applicability.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

[C35, § 8338-f14; C39, § **8338.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.1; C77, 79, 81, § 479.1]

88 Acts, ch 1074, §27; 95 Acts, ch 192, § 5

479.2 Definitions.

As used in this chapter:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.
2. *"Pipeline"* means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.
3. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.
4. *"Underground storage"* means storage of gas in a subsurface stratum or formation of the earth.

[C31, § 8338-d1; C35, § 8338-f15; C39, § **8338.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.2; C77, 79, 81, § 479.2]

88 Acts, ch 1074, §28; 95 Acts, ch 192, § 6

479.3 Conditions attending operation.

No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter.

[C31, § 8338-d2; C35, § 8338-f16; C39, § **8338.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.3; C77, 79, 81, § 479.3]

479.4 Dangerous construction inspection.

The board is vested with power and authority and it shall be its duty to supervise all pipelines and underground storage and pipeline companies and shall from time to time inspect and examine the construction, maintenance and the condition of said pipelines and underground storage facilities and whenever said board shall determine that any pipeline and underground storage facilities or any apparatus,

device or equipment used in connection therewith is unsafe and dangerous it shall immediately in writing notify said pipeline company, constructing or operating said pipeline and underground storage facilities, device, apparatus or other equipment to repair or replace any defective or unsafe part or portion of said pipeline and underground storage facilities, device, apparatus or equipment.

All faulty construction, as determined by the inspector, shall be repaired immediately by the contractor operating for the pipeline company and the cost of such repairs shall be paid by said contractor. If such repairs are not made by contractor, the board shall proceed to collect under the provisions of section 479.26.

[C31, § 8338-d29; C35, § 8338-f17; C39, § **8338.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.4; C77, 79, 81, § 479.4]

Footnotes

See also § 479.29

479.5 Application for permit.

A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A. A formal record of the meeting shall not be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, "*landowner*" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "*pipeline*" means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a

right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[C31, § 8338-d3; C35, § 8338-f18; C39, § **8338.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.5; C77, 79, 81, § 479.5]

88 Acts, ch 1074, §29; 95 Acts, ch 192, § 7; 2000 Acts, ch 1179, §24, 30

479.6 Petition.

Said petition shall state:

1. The name of the individual, firm, corporation, company, or association asking for said permit.
2. The applicant's principal office and place of business.
3. A legal description of the route of said proposed line or lines, together with a map thereof.
4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.
5. The specifications of material and manner of construction.
6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.
7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:
 - a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.
 - b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.
8. The possible use of alternative routes.
9. The relationship of the proposed project to the present and future land use and zoning ordinances.
10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.
11. By affidavit, that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

[C31, § 8338-d4; C35, § 8338-f19; C39, § **8338.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.6; C77, 79, 81, § 479.6]

479.7 Hearing notice.

Upon the filing of said petition the board shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county through which said proposed line or lines or gas storage facilities will extend; said notice to be published for two consecutive weeks.

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A.

[C31, § 8338-d5; C35, § 8338-f20; C39, § **8338.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.7; C77, 79, 81, § 479.7]

2000 Acts, ch 1179, §25, 30

479.8 Time and place.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication and where the proposed new pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, shall be held in the county seat of the county located at the midpoint of the proposed line or lines or the county in which the proposed gas storage facility would be located.

[C31, § 8338-d6; C35, § 8338-f21; C39, § **8338.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.8; C77, 79, 81, § 479.8; 81 Acts, ch 159, § 10]

479.9 Objections.

Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit.

[C31, § 8338-d7; C35, § 8338-f22; C39, § **8338.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.9; C77, 79, 81, § 479.9]

479.10 Filing.

All such objections shall be on file in the office of said board not less than five days before the date of hearing on said application but said board may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections.

[C31, § 8338-d8; C35, § 8338-f23; C39, § **8338.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.10; C77, 79, 81, § 479.10]

479.11 Examination testimony.

The said board may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said board shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may

aid it in determining the propriety of granting such permit.

[C31, § 8338-d9; C35, § 8338-f24; C39, § **8338.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.11; C77, 79, 81, § 479.11]

479.12 Final order condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

[C31, § 8338-d10; C35, § 8338-f25; C39, § **8338.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.12; C77, 79, 81, § 479.12]

88 Acts, ch 1074, §30

479.13 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

[C31, § 8338-d11, -d12; C35, § 8338-f26; C39, § **8338.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.13; C77, 79, 81, § 479.13]

88 Acts, ch 1074, §31

479.14 Inspection fee.

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state, the inspection fee to be paid to the board for the calendar year in advance between January 1 and February 1 of each year.

[C31, § 8338-d13; C35, § 8338-f27; C39, § **8338.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.14; C77, 79, 81, § 479.14]

88 Acts, ch 1074, §32

479.15 Failure to pay.

It shall be the duty of the board to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit.

[C35, § 8338-f28; C39, § **8338.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.15; C77, 79, 81, § 479.15]

479.16 Receipt of funds.

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the general fund of the state as provided in section 476.10.

[C31, § 8338-d14; C35, § 8338-f29, -f30; C39, § **8338.37, 8338.38**; C46, 50, 54, 58, 62, 66, 71, § 490.16, 490.17; C73, 75, § 490.17; C77, 79, 81, § 479.16]

87 Acts, ch 234, § 432; 94 Acts, ch 1107, §83

479.17 Rules.

The said board shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter.

[C31, § 8338-d15; C35, § 8338-f31; C39, § **8338.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.18; C77, 79, 81, § 479.17]

479.18 Permit.

The board shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the board under which said permit is issued. It shall be signed by the chairperson of the board and the official seal of the board shall be affixed thereto.

[C31, § 8338-d16; C35, § 8338-f32; C39, § **8338.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.19; C77, 79, 81, § 479.18]

479.19 Limitation on grant.

No exclusive right shall ever be granted to any pipeline company to construct, maintain, and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years.

[C31, § 8338-d17; C35, § 8338-f33; C39, § **8338.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.20; C77, 79, 81, § 479.19]

479.20 Sale of permit.

No permit shall be sold until the sale is approved by the board.

[C35, § 8338-f34; C39, § **8338.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.21; C77, 79, 81, § 479.20]

479.21 Transfer of permit.

If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said board a notice in writing stating the date of such transfer and the name and address of said transferee.

[C31, § 8338-d11; C35, § 8338-f35; C39, § **8338.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.22; C77, 79, 81, § 479.21]

479.22 Records.

The board shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such

permit has been made as provided in this chapter the said board shall also note upon its record the date of such transfer and the name and address of such transferee.

[C31, § 8338-d20; C35, § 8338-f36; C39, § **8338.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.23; C77, 79, 81, § 479.22]

479.23 Extension of permit.

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

[C31, § 8338-d22; C35, § 8338-f37; C39, § **8338.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.24; C77, 79, 81, § 479.23]

95 Acts, ch 192, § 8

479.24 Eminent domain.

A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain* to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

[C31, § 8338-d23; C35, § 8338-f38; C39, § **8338.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.25; C77, 79, 81, § 479.24]

95 Acts, ch 192, § 9

Footnotes

*See 253 Iowa 1143

Eminent domain, chapter 6A et seq.

479.25 Damages.

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or

gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

[C31, § 8338-d26; C35, § 8338-f39; C39, § **8338.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.26; C77, 79, 81, § 479.25]

95 Acts, ch 192, § 10

479.26 Financial condition of permittee bond.

Before any permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its pipeline and gas storage facilities in the state of Iowa. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

[C31, § 8338-d27; C35, § 8338-f40; C39, § **8338.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.27; C77, 79, 81, § 479.26; 81 Acts, ch 159, § 11]

479.27 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

[C31, § 8338-d28; C35, § 8338-f41; C39, § **8338.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.28; C77, 79, 81, § 479.27]

95 Acts, ch 192, § 11

479.28 Orders enforcement.

If said pipeline company fails to obey an order within a time prescribed by the said board the said board may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions.

[C31, § 8338-d30; C35, § 8338-f42; C39, § **8338.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 490.29; C77, 79, 81, § 479.28]

Footnotes

479.29 Land restoration.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a.* Topsoil separation and replacement.
- b.* Temporary and permanent repair to drain tile.
- c.* Removal of rocks and debris from the right-of-way.
- d.* Restoration of areas of soil compaction.
- e.* Restoration of terraces, waterways, and other erosion control structures.
- f.* Revegetation of untilled land.
- g.* Future installation of drain tile or soil conservation structures.
- h.* Restoration of land slope and contour.
- i.* Restoration of areas used for field entrances and temporary roads.
- j.* Construction in wet conditions.
- k.* Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements.

An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, "*construction*" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

[C73, 75, 77, 79, § 479.4; C81, § 479.29; 81 Acts, ch 159, § 12, 13]

95 Acts, ch 192, § 12; 99 Acts, ch 85, §1, 11

479.30 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The

entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

[C81, § 479.30]

95 Acts, ch 192, § 13

479.31 Civil penalty.

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed ten thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

[C71, 73, 75, § 490.31; C77, 79, § 479.29; C81, § 479.31]

91 Acts, ch 112, § 3; 95 Acts, ch 192, § 14

479.32 Rehearing judicial review.

Rehearing procedure for any person, company or corporation aggrieved by the action of the board in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, § 490.32; C77, 79, § 479.30; C81, § 479.32]

2003 Acts, ch 44, § 114

Footnotes

See § 476.13

479.33 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 6010160125.

[C71, 73, 75, § 490.33; C77, 79, § 479.31; C81, § 479.33]

88 Acts, ch 1074, §33; 95 Acts, ch 49, §13

479.34 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of a pipeline shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.
2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.
3. Not record any agreement until after the period for cancellation has expired.
4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

[C81, § 479.34]

479.35 to 479.40 Reserved.

479.41 Arbitration agreements.

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "*landowner*" means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

[81 Acts, ch 159, § 2, 3]

95 Acts, ch 192, § 15

479.42 Subsequent pipelines.

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline

within one year of final cleanup on the real property.

[81 Acts, ch 159, § 2, 4]

95 Acts, ch 192, § 16

479.43 Damage agreement.

A pipeline company shall not install a pipeline until there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

[81 Acts, ch 159, § 2, 5]

479.44 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross the property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

[81 Acts, ch 159, § 2, 6]

479.45 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

- a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.
- b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.
- c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.
- d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.
- e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.
- f. Erosion on lands attributable to pipeline construction.
- g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

[81 Acts, ch 159, § 2, 7]

99 Acts, ch 85, §2, 11

479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "*damages*" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "*landowner*" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

[81 Acts, ch 159, § 2, 8]

95 Acts, ch 192, § 17; 2000 Acts, ch 1179, §26, 30

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

[81 Acts, ch 159, § 2, 9]

83 Acts, ch 128, § 1, 2; 87 Acts, ch 23, § 56; 92 Acts, ch 1103, § 9; 95 Acts, ch 192, § 18

479.48 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall,

within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479.49, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §3, 11; 2000 Acts, ch 1139, §1

479.49 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §2