

# PROPOSED COUNTY MAJOR CRUDE OIL PIPELINE SITING ORDINANCE

## ARTICLE I: PURPOSE

**Section 1.1: Purpose.** The purpose of this ordinance is to:

1. Minimize the adverse economic impacts of construction and operation of Major Crude Oil Pipelines on County residents, landowners, and businesses;
2. Minimize adverse quality of life impacts of construction and operation of Major Crude Oil Pipelines on County residents;
3. Minimize adverse impacts to county roads caused by construction of Major Crude Oil Pipelines; and
4. Protect County first responders and residents in the event of a Major Crude Oil Pipeline spill.

## ARTICLE II: APPLICABILITY OF THIS ORDINANCE

**Section 2.1: Major Crude Oil Pipeline Permit Application Required.** The \_\_\_\_\_ [County Board of Commissioners/Supervisors/etc.], shall require the filing of a Major Crude Oil Pipeline Permit Application for any Major Crude Oil Pipeline that is proposed to be sited in \_\_\_\_\_ County.

**Section 2.2: Definition of Major Crude Oil Pipeline.** “Major Crude Oil Pipeline” means a pipeline that is larger than 20 inches in diameter, intended to transport crude oil of any type including but not limited to conventional, unconventional oil or bitumen, and proposed to be located within \_\_\_\_\_ County.

**Section 2.3: Definition of Applicant.** “Applicant” means any person, company, partnership, or other entity that proposes to construct a Major Crude Oil Pipeline in \_\_\_\_\_ County.

## ARTICLE III: MAJOR CRUDE OIL PIPELINE PERMIT APPLICATION CONTENTS AND PROCEDURE

**Section 3.1: Major Crude Oil Pipeline Application Required Contents.** Any Applicant that intends to construct a Major Crude Oil Pipeline in \_\_\_\_\_ County must file an original and seven copies of a Major Crude Oil Pipeline Application with the Planning & Zoning Administrator. Such application shall be accompanied by an application fee sufficient to pay for application review costs and shall include:

1. A general description of the proposed Major Crude Oil Pipeline, including the diameter of the pipe to be used, a description of the pipeline’s components and operation, and a description of the materials and equipment to be incorporated into the pipeline.
2. Plans and maps for the proposed Major Crude Oil Pipeline and any associated facilities within the County, such as pump or compression stations, electrical transmission lines, and other associated facilities needed for operation of the Major Crude Oil Pipeline, showing a preferred route for the Major Crude Oil Pipeline and the preferred location of all associated facilities, in the County. The Application must show alternative routes for the Major Crude Oil Pipeline and alternative

locations for any associated facilities considered by state agencies in the County, and include reasons why such alternative were rejected by the Applicant.

3. A general description of the size of and conditions to be included in proposed easements for the proposed Major Crude Oil Pipeline and all associated facilities in the County;
4. A general description of the right of way required for the proposed Major Crude Oil Pipeline and associated facilities in the County;
5. The location, type and size of all existing utilities, drainage pipes and other facilities, and roadways and related improvements, including existing rights-of-way, that will be crossed or may be adversely impacted by construction or operation of the proposed Major Crude Oil Pipeline in the County.
6. A description of construction activities including a proposed construction schedule, a detailed description of the sequence of construction activities, and a construction mitigation and reclamation plan for construction in the County.
7. For each property crossed by the Major Oil Pipeline, a description of all temporary or permanent limitations on access to or use of such properties resulting from construction or operation of the proposed Major Crude Oil Pipeline.
8. A description of pump or compressor stations or other facilities associated with the proposed Major Crude Oil Pipeline, including both a physical description of such facilities, an estimate of the volume of noise or other light or pollution emissions produced by such facilities, the distance of such facilities to homes, businesses , and other structures, and means to limit the volume of noise or other light or pollution emissions from such facilities.
9. A list of property owners, showing only the names and addresses of such owners, for land proposed to be acquired for construction or operation of the Major Crude Oil Pipeline or associated facilities.
10. A list of property owners, showing only the names and addresses of such owners, for land on which an applicant or its agents or affiliates has acquired easements, leases, options, or other interest in land related to the Major Crude Oil Pipeline.
11. A list of permit applications that Applicant must acquire prior to construction of the Major Crude Oil Pipeline required by the [State], the US government, \_\_\_\_\_ County, and should they be required, any applications submitted to counties immediately adjacent to \_\_\_\_\_ County.
12. A list of permits or approvals received from the [State], federal agencies, \_\_\_\_\_ County or counties immediately adjacent to \_\_\_\_\_ County.
13. A list and description of all proposed county road crossings in \_\_\_\_\_ County, any alternatives to such crossings, and detailed cross section drawings for all public street right-of-way and easement crossings.
14. A list of county roads in \_\_\_\_\_ County proposed to be used during construction, including haul routes, and any roads used for alternative routes.
15. Documents describing the environmental impacts of the proposed Major Crude Oil Pipeline, including any environmental impact statements prepared under state or federal law.
16. Evidence that the spill response plan for the Major Crude Oil Pipeline will comply with U.S. E.P.A. standards for spill response for a worst case discharge in \_\_\_\_\_ County.
17. A list of spill response equipment showing the type, capability, and ZIP code location of all equipment.

18. A description of the numbers, locations, and training of personnel necessary to respond to a worst case discharge in \_\_\_\_\_ County.
19. Material Safety Data Sheets for all substances that are approved under tariff for shipment in the Major Crude Oil Pipeline.
20. Proposed terms for reclamation of the right of way after abandonment, including a description of the rights of landowners to determine appropriate reclamation activities.
21. Proposed limits on noise from pipeline facilities.
22. Proposed construction mitigation conditions for activities in wetlands water bodies, and riparian areas.
23. Proposed construction mitigation conditions for soil and vegetation impacts.
24. Any other information that would assist the \_\_\_\_\_ County in its evaluation of the proposed Major Crude Oil Pipeline's adverse or positive economic impacts on County residents and businesses and methods and options to reduce such impacts.

**Section 3.2: Confidential Information.** At the time of filing of the Application, the Applicant shall identify any information within its application that it considers confidential business information, provide an explanation that describes the confidentiality of the information, and request that such information be treated as confidential by the County. The Applicant has the burden to prove that information is confidential. The Administrator shall determine whether or not such information is public information or confidential information. The County may release confidential information subject to protective order.

**Section 3.3: Notice.** Upon filing a Major Crude Oil Pipeline Permit Application, the Applicant shall mail notice of the Application to each owner of land crossed by its preferred route and, if the Applicant provides an alternative route or routes, to the owners of land crossed by such alternate route or routes. This notice shall include:

1. the identity of the Applicant, including a point of contact for public questions;
2. a general description of the proposed Major Crude Oil Pipeline;
3. a map of the preferred route and any alternative routes showing the route across the landowner's property;
4. an opportunity for each landowner to request a copy of the Major Crude Oil Pipeline Application;
5. an opportunity for each landowner to request a site visit with the Applicant to review the Application as it applies to that landowner's property;
6. a physical and world wide web location for the Application; and
7. a full description of the Major Crude Oil Pipeline Permit Application process.

The Applicant shall also mail a complete Application to all utilities in the County that own facilities that may be impacted by the proposed route or any alternative routes.

**Section 3.4: Duties of Administrator.** Upon receiving a Major Crude Oil Pipeline Permit Application from an Applicant, the [Zoning] Administrator shall review the Application for completeness. If the Application is incomplete the Administrator shall reject the Application and notify the Applicant of any deficiencies in the application. Upon receipt of a complete application, the Administrator shall provide a complete copy of the Application for public review in the \_\_\_ library as well as an internet site on which

the Application may be viewed and downloaded. The Administrator shall also publish notices of any County hearings on the Major Crude Oil Pipeline Permit Application at least ten days prior to such hearings in two legal newspapers of the County, the costs of which may be assessed against the Applicant.

**Section 3.5: Duties of Planning & Zoning Commission.** The \_\_\_\_\_ County Planning & Zoning Commission shall hold a hearing on an application for Major Crude Oil Pipeline Permit no sooner than 30 days after the filing of a complete Major Crude Oil Pipeline Permit Application, and shall accept public comment on the Application until completion of its hearing on the Application. The \_\_\_\_\_ County Planning & Zoning Commission shall:

1. confirm publication of notice;
2. review the Major Crude Oil Pipeline Permit Application information;
3. accept and review public comments;
4. identify reasonable terms and conditions necessary to minimize the economic and social impacts of construction and operation of the Major Crude Oil Pipeline.

**Section 3.6: Duties of Board of Commissioners.** Upon receiving recommended permit conditions from the \_\_\_\_\_ County Planning & Zoning Commission, the \_\_\_\_\_ County Board of Commissioners shall hold a public hearing on the Application no sooner than 60 days following receipt of such conditions and shall accept public comment on the Application and proposed permit conditions until completion of its hearing. The \_\_\_\_\_ County Board of Commissioners shall:

1. confirm publication of notice;
2. review the Major Crude Oil Pipeline Permit Application information;
3. review the recommended permit conditions provided by the \_\_\_\_\_ County Planning & Zoning Commission;
4. accept and review public comments; and
5. approve any permit conditions it finds necessary to limit the adverse economic and social impacts of construction or operation of the proposed Major Crude Oil Pipeline.

#### **ARTICLE IV: PERMIT TERMS AND CONDITIONS**

**Section 4.1: Required Permit Terms and Conditions: Construction and Reclamation.** All Major Crude Oil Pipeline Permits shall include the following terms and conditions:

1. the Applicant shall provide written notice fourteen days prior to the commencement of pipeline construction on a property to the owners and tenants of such property;
2. the Applicant shall provide written notice fourteen days prior to the commencement of pipeline construction in a township to residents and business establishments that are within such township and located within twenty six hundred forty feet (2640) of the proposed centerline of the pipeline;
3. the Applicant shall, to the greatest extent feasible, prevent limitations on access to property by the property's owner or tenant, prevent disruptions to businesses and agricultural operations, and

provide written notice and oral notice forty-eight (48) hours prior to any restriction on access to a property to that property's owners and tenants;

4. the Applicant shall provide in advance of any planned disruption of private, public, or rural water supplies an alternative water supply that meets [State] water drinking water quality standards, and provide such alternative water supplies within 24 hours of any accidental disruption;
5. the Applicant shall, within 90 days of completion of construction of the Major Crude Oil Pipeline, provide as-built survey maps of the Major Crude Oil Pipeline and associated facilities to all landowners in the County whose land is crossed by such pipeline, and provide GPS shape files of the Major Crude Oil Pipeline and associated facilities located in the County to the \_\_\_\_\_ County Planning & Zoning Administrator;
6. a plan for reclamation after abandonment of the Major Crude Oil Pipeline, and provision of a bond or fee-based fund to ensure that adequate financial resources are available for such reclamation; and
7. all terms and conditions proposed by landowners and businesses whose lands and operations may be disrupted by the proposed Major Crude Oil Pipeline, where the County finds that such terms and conditions limit disruption to use of land and to business and agricultural operation, limit adverse economic impacts, and are reasonable in view of existing technology, factors of cost, or economics, or the needs of affected parties.

**Section 4.2: Required Permit Terms and Conditions: Spill Response.** All Major Crude Oil Pipeline Permits shall include the following terms and conditions:

1. a spill response plan in compliance with U.S. E.P.A. spill response standards to the greatest extent practicable;
2. establishment of a spill response fund for use in promptly compensating County residents and landowners for economic damages, for which funds are provided by a per barrel fee on crude oil transported by the Major Crude Oil Pipeline, which fund shall be capped at \$ \_\_\_\_\_;
3. a plan for training County emergency personnel in appropriate response to pipeline spills; and
4. a plan for locating and updating emergency response information, including but not limited to the spill response plan required herein and material safety data sheets.

**Section 4.3: Other Permit Terms and Conditions.** The \_\_\_\_\_ County Board of Commissioners may include other permit terms and conditions needed to minimize the adverse economic and quality of life impacts of the proposed Major Crude Oil Pipeline.

**Section 4.4: Review of Road Usage and Construction; Required Permit Terms and Conditions: Road Use and Repair.** The \_\_\_\_\_ County Highway Superintendent shall review all information provided in a Major Crude Oil Pipeline Application related to cross-cuts, haul roads, or other construction activities related to public roads in \_\_\_\_\_ County. The \_\_\_\_\_ County Highway Superintendent shall estimate the cost of hiring an independent inspector to monitor and report on such construction activities related to roads and shall assess a fee on Applicant sufficient to pay for such inspection.

Before issuance of a Major Crude Oil Pipeline Permit the Applicant and its contractors shall tour and review all roads potentially impacted by preferred and alternative routes. The \_\_\_\_\_ County Highway Superintendent shall enter into a Haul Road Agreement or other necessary agreements with the Applicant, which agreements shall be included in the Major Crude Oil Pipeline Permit.

Within one day of damaging roads so that they become impassible by non-construction equipment or vehicles, the Applicant shall provide written and oral notice to the \_\_\_\_\_ County Highway Superintendent of such damage and provide an estimated date after which construction is unlikely to further damage such road. Upon receipt of such notice, the \_\_\_\_\_ County Highway Superintendent will inspect the damage and arrange for repair of the road and, if needed, order the Applicant to provide an alternate to such road.

Within two days of a complaint by a County resident that Applicant is in violation of a Haul Road Agreement or other road agreement, the \_\_\_\_\_ County Highway Superintendent shall investigate such complaint and issue any order needed to ensure compliance with road agreements, including issuance of an assessment against Applicant for the costs of damage to any road used in violation of the Major Crude Oil Pipeline Permit or any Haul Road Agreement or other road agreement therein. Applicant may challenge such costs only if they are grossly unreasonable.

Within 3 days after final use of a road for construction or completion of a cross-cut of a road, the Applicant will notify the \_\_\_\_\_ County Highway Superintendent who will review such work to determine compliance with Major Crude Oil Pipeline Permit conditions, including any Haul Road Agreements or other road agreements. Should the \_\_\_\_\_ County Highway Superintendent determine that a violation exists, the Superintendent may order Applicant to comply with the Permit and any included agreements. The \_\_\_\_\_ County Highway Superintendent will repair damaged roads at the earliest possible date.

## **ARTICLE V: VIOLATIONS**

**Section 5.1: Violations, Fines, Civil Injunctions.** Pursuant to SDCL 7-18A-2, the violation of this ordinance or of the terms contained in a Major Crude Oil Pipeline Permit shall be enforced by the following:

1. A fine not to exceed \$200 per day for each violation, or by imprisonment not to exceed 30 days for each violation, or by both the fine and imprisonment.
2. An action for civil injunction, pursuant to [cite state law].

## **ARTICLE VI: SEVERABILITY AND SEPARABILITY**

**Section 6.1: Severability and Separability.** Should any Article, Section, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.