

ORDINANCE NO. 2024-_____
AN ORDINANCE REGULATING HAZARDOUS LIQUID PIPELINES
IN WARREN COUNTY, INDIANA

WHEREAS, the Natural Gas Pipeline Safety Act of 1968, as amended, (NGPSA) authorizes the United State Department of Transportation (DOT) to regulate pipeline transportation of natural (flammable, toxic or corrosive) gas and other gases, as well as the transportation and storage of liquefied natural gas (LNG); and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, (HLPESA) authorizes DOT to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, anhydrous ammonia and carbon dioxide), both of which are re-codified at 49 United State Code (U.S.C.) Chapter 601 and implemented at 49 Code of Federal Regulations (CFR) Parts 190-199; and

WHEREAS, 49 U.S.C. 601 provides that the federal government is primarily responsible for developing, promulgating, and enforcing minimum uniform pipeline safety standards throughout the United States; and

WHEREAS, federal and state courts have determined that the DOT exercises exclusive jurisdiction over safety standards regulating interstate transmission pipelines. *See, e.g. Colorado Interstate Gas Co. v. Wright*, 707 F.Supp.2d 1169 (D.Kansas, 2010); *Snedden v. Torch Energy Services, Inc.*, 102 Cal.App.4th 181, (2nd Dist., 2002); and

WHEREAS, so long as a state participates in and is certified under the Federal/State Cooperative Gas and Hazardous Liquid Pipeline Safety Program in accordance with 49 U.S.C. 60105(a) (a “Certified Program”), 49 U.S.C. 60104(c) allows for exemption from federal preemption where states assume regulatory, inspection and enforcement responsibility for intrastate pipelines; and

WHEREAS, the State of Indiana is participant in and has certification under the Certified Program for intrastate natural gas pipelines; and

WHEREAS, 49 U.S.C. 60104(e), does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility, instead leaving the issue subject to state and local regulation, *see Washington Gas Light Company v. Prince George’s County Council*, 711 F.3d 412, 422 (4th Cir. 2013); and

WHEREAS, the County is not preempted from enacting zoning regulations which regulate land uses, setbacks, environmental hazards, as well as aesthetics with respect to intrastate pipelines by either state or federal law. *Washington Gas Light Co., supra; Texas*

Midstream Gas Services LLC v. City of Grand Prairie, 608 F.3d 200 (5th Cir. 2010); *ANR Pipeline Company v. Iowa State Commerce Commission*, 828 F.2d 465 (8th Cir. 1987); and

WHEREAS, pursuant to a certain letter from Jeffrey D. Wiese, Associate Administrator, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration to TransCanada Corporation, dated May 28, 2014, local governments are authorized to regulate excavation, adjacent land uses, setbacks and emergency response plans for both inter- and intrastate pipelines; and

WHEREAS, the Warren County Commissioners previously adopted the Zoning Ordinance pertaining to county zoning and land use controls (the “Ordinance”); and

WHEREAS, the County may lawfully regulate and restrict the use of land for trade, industry, residence or other purposes in accordance with a comprehensive plan and in designs to further the health, safety, convenience and welfare of its citizens as set forth in Indiana Code §36-7-4-201; and

WHEREAS, the Supreme Court has cautioned that “the presence of an express preemption clause in a federal statute does not immediately end the inquiry because the question of the substance and scope of Congress’s displacement of state law still remains. Indeed, when courts are called upon to address questions of express or implied preemption, the analysis always begins with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Island Park, LLC v. CSX Transportation and Consolidated Rail Corporation*, 559 F.3d 96, 101 (2d Cir. 2009) (citations omitted); and

WHEREAS, pursuant to Indiana Code § 36-1-3, et. seq. a government unit has all powers necessary and desirable in the conduct of its affairs, though not granted by statute, for the effective operation of government as to its local affairs; and

WHEREAS, the transport of hazardous liquid through a hazardous liquid pipeline constitutes a threat to public health and general welfare; and

WHEREAS, the County intends to establish a process for permitting and approving the use of land in the County for the transport of hazardous liquids through a hazardous liquid pipeline that is not inconsistent with federal and state law;

WHEREAS, the adoption of an ordinance regulating the hazardous liquid pipelines is necessary and appropriate to achieve and secure the benefits of these projects and to avoid and/or

minimize the risks, dangers, and inconvenience to health, safety and general welfare of the citizens of the County;

NOW, THEREFORE BE IT ORDAINED by the Warren County Commissioners that the following standards are required for the approval and permitting of a Hazardous Liquid Pipeline in Warren County, Indiana.

EXECUTIVE SUMMARY

This Ordinance has been promulgated to lawfully regulate and restrict the use of land in the County for the transport of hazardous liquids through a Hazardous Liquid Pipeline to secure the public health and general welfare of its citizens.

I. DEFINITIONS

For purposes of this Article, unless the context otherwise requires:

"Affected Person" means any Person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a Person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

"Applicant" means a Pipeline Company who applies for a Special Exception Permit for a Hazardous Liquid Pipeline pursuant to this Ordinance.

"Application" means the documents and information an Applicant submits to the County for purposes of obtaining a Special Exception Permit as well as the related process and procedures for considering the application pursuant to this Ordinance.

"Blast Zone" means the geographic area in County that would be subject to a shock wave from rupture of a Hazardous Liquid Pipeline, including of a Carbon Dioxide Pipeline, that could harm or kill persons or animals due solely to physical trauma, for example from flying debris or the physical impact of a pressure wave resulting from a rupture.

"Board of Zoning Appeals" means the Warren County Board of Zoning Appeals established pursuant to Indiana Code Chapter 36-7-4 900 series and Article XIII of this Zoning Ordinance.

"Carbon Dioxide Pipeline" means a Hazardous Liquid Pipeline intended to transport liquified carbon dioxide and includes a Pipeline of 4 inches or more in diameter used to transport a gas, liquid, or supercritical fluid comprised of 50 percent or more of carbon dioxide (CO₂).

"Confidential Information" means information or records allowed to be treated confidentially and withheld from public examination or disclosure pursuant to Indiana Code § 14-39-1-5 or other applicable law.

"County" or "the County" means Warren County, Indiana.

"Emergency" means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property.

"Facility" is any structure incidental or related to the Hazardous Liquid Pipeline and any space, resource, or equipment necessary for the transport, conveyance, or pumping of a Hazardous Liquid through a Hazardous Liquid Pipeline located in the County, including all related substations.

"Fatality Zone" means the geographic area in the County in which residents of the County would face a significant risk of loss of life due to a rupture of a Hazardous Liquid Pipeline, taking into consideration, in the case of a Carbon Dioxide Pipeline, the dispersion of CO₂ from a rupture, CO₂ concentration and the duration of exposure.

"Hazard Zone" means, in the case of a Carbon Dioxide Pipeline, the geographic area in the County in which residents of the County would likely become carbon dioxide intoxicated or poisoned or otherwise suffer significant adverse health impacts due to a rupture of a Carbon Dioxide Pipeline, taking into consideration the dispersion of CO₂ from a rupture, taking into consideration CO₂ concentration and the duration of exposure.

"Hazardous Liquid" means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

"Hazardous Liquid Pipeline," means a Pipeline intended to transport Hazardous Liquids, and also includes Class 3, Class 6, Class 8, or Class 9 hazardous materials, as defined by 49 C.F.R. § 173.120, et seq., with any portion proposed to be located within the County.

"In-Service date" is the date any Hazardous Liquid is first transported through any portion of a Pipeline located in the County.

"Independent Agreement" means alternative provisions regarding land restoration or Line Location contained in agreements independently executed by a Pipeline Company and a Landowner or a Property Owner.

"Line Location" means the location or proposed location or route of a Pipeline on a Landowner's property.

"Landowner" means a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant.

"Occupied Structure" means a Building or Structure that has been inhabited or used for residential, commercial, industrial, educational, healthcare-related or agricultural purposes at any time during the twelve (12) months preceding an application for a Conditional Use Permit pursuant to this Article.

"PHMSA" means Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.

"Person" means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity.

"Pipeline" means an intrastate or interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.

"Pipeline Company" means any Person engaged in or organized for the purpose of owning, operating, or controlling Pipelines for the transportation or transmission of any Hazardous Liquid or underground storage facilities for the underground storage of any Hazardous Liquid.

"Pipeline Construction" means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs real estate, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner.

"Property Owner" means the owner or owners, together with his, her, its or their heirs, successors and/or assigns, of the land or property over, under, on, or through which, a Pipeline, or any part of it, including any related facilities, may be located and which is subject to the regulations and restriction of this Zoning Ordinance. Property Owner includes a Landowner and also includes a Person with whom a Pipeline Company negotiates or offers to execute an Independent Agreement with respect to a Pipeline.

"Reclamation" means the restoration and repair of damaged real property, personal property, land or other areas through which a Pipeline is constructed or from where it is removed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to the construction or prior to the removal of the Pipeline, as applicable.

"Reclamation Cost" means the cost of Reclamation and includes the cost to restore or repair roads, bridges, or county property as well as the cost to restore or repair all real and personal property of Property Owners and Affected Persons.

"Special Exception Permit" means a special exception or conditional use or use limitation authorized and approved by the Board of Zoning Appeals in the manner and according to the standards provided in Article X of this Zoning Ordinance.

"Zoning Ordinance" or "the Zoning Ordinance" means the collection of land use and zoning regulations known as the Warre County Zoning Ordinance, as provided and made effective in Article 1 of the ordinance known as the Warren County Zoning Ordinance.

II. APPLICABILITY

The special exception requirement and setback requirements of this ordinance shall not apply to a Hazardous Liquid Pipeline that is already permitted, constructed and placed in service on or before the effective date of this Ordinance, however, a pipeline company shall comply with the abandonment and decommissioning requirements for a pipeline that is decommissioned on or after the effective date of this Ordinance.

III. PROHIBITION

No Person shall construct or operate a Hazardous Liquid Pipeline without having fully complied with the provisions of this Ordinance. No Hazardous Liquid Pipeline shall be permitted in a residential zoning district (R-1, R-2 or R-3).

IV. APPLICATION REQUIREMENTS

Prior to the construction of a Hazardous Liquid Pipeline, the Pipeline Company shall obtain approval for the following: (1) a Special Exception Permit from the Warren County Board of Zoning Appeals to permit a Hazardous Liquid Pipeline and (2) a Request for Variance for any variances anticipated on the Hazardous Liquid Pipeline project as described below and in Article XIII of the Zoning Ordinance.

A. Application for a Special Exception Permit

1. The application shall be filed with the County Building Commissioner's Office and shall include the following items:

a. The information required for a Special Exception Permit as described in Article X of this Zoning Ordinance, including all required forms prescribed by the County Building Commissioner.

b. A complete copy of any applications for a permit filed with the Indiana Utility Regulation Commission. This requirement is an ongoing requirement, and as any applications are amended or changed, the Pipeline Company shall provide updated information and documents to the County.

c. A map identifying each proposed crossing of a County road, County regulated drain, or other County property.

d. A map and a list containing the names and addresses of all Affected Persons in the County. The map and list shall include all Property Owners who have executed an Independent Agreement or who have been or will be contacted about the execution of an Independent Agreement.

e. A set of plans and specifications showing the dimensions and locations of the Pipeline, including plans and specifications for all related facilities and above-ground structures, such as pumps, lift-stations, or substations.

f. A copy of the standard or template Independent Agreement the Pipeline Company proposes to execute with Property Owners in the County. The standard or template for the Independent Agreement shall include terms and conditions that comply with the Abandonment, Discontinuance, and Removal requirements of Section VIII of this Article.

g. An Emergency Response and Hazard Mitigation Plan as required pursuant to Section VII of this Ordinance.

h. An Economic Development Agreement approved by the Warren County Commissioners.

i. All applicable fees required pursuant to Section V of this Ordinance.

j. A statement identifying any Confidential Information in the Application and a request, if any, to withhold such information from public examination or disclosure as provided in, and to the extent permitted by, Indiana Code § 14-39-1-5. A failure to identify Confidential Information in the Application may result in the County treating such information as a public record.

B. The Application for Variance

1. Contemporaneously with the Application for a Special Exception, the Applicant shall submit an Application for Variance for any variances sought as part of the Hazardous Liquid Pipeline Project. A single Application for Variance may be submitted for all variances sought.

2. In determining whether to approve the Application for Variance, the BZA shall determine whether the Application satisfies each of criteria set forth in §134 of the Zoning Ordinance, and make written findings thereof.

3. The fee for any variances is included in the Application fee for the Special Exception Permit.

V. FEES

A. The fee for the Special Exception shall be payable at the time of submission of the Application. The fee shall be \$20,000.00. The Application fee shall be used to defray the costs associated with the Application for a Special Exception, including professional fees and expenses.

B. An annual assessment fee shall be payable at the time of commencement of pipeline construction in the County in the amount of \$116.92 per mile of Pipeline constructed, operated, and maintained in the County, or an amount equal to the most current user fee assessed to the operators of Hazardous Liquid Pipelines by PHMSA, whichever is greater, and shall be due each year on the anniversary of the commencement of pipeline construction..

C. All other applicable user or permit fees required for road cuts, crossing County roads or using the public right-of-way in the County.

VI. SETBACKS

A Hazardous Liquid Pipeline shall not be constructed, used, sited, or located, in violation of the setback requirements listed below. In addition, the terms of an Independent Agreement regarding a Line Location shall conform to the setback requirements listed below. All distances

shall be measured from the centerline of the proposed Hazardous Liquid Pipeline to the portion of the existing use nearest the centerline of the proposed Hazardous Liquid Pipeline. The minimum setback distances for a Hazardous Liquid Pipeline are:

- A. From the town limits of an incorporated town or boundaries of a school building, not less than one mile.
- B. From the town limits of an unincorporated town, not less than one-half of one mile.
- C. From a church, nursing home, long-term care facility, or hospital, not less than one-half of one mile.
- D. From a public park or public recreation area, not less than one-quarter of one mile.
- E. From any Occupied Structure, not less than one-quarter of one mile.
- F. From a confined animal feeding operation or facility, not less than 1,000 feet.
- G. From an electric power generating facility with a nameplate capacity of 5MW or more, an electric transmission line operating at 69kV or higher, an electric transmission substation, a public drinking water treatment plant, or a public wastewater treatment plant, not less than 1,000 feet.

If a Property Owner has executed an Independent Agreement prior to the effective date of this Article and the Independent Agreement provides for setback requirements that are greater than the setback requirements this Article, then the Pipeline Company shall comply with the terms of the Independent Agreement with the Property Owner.

Additionally, all wellheads associated with Hazardous Liquid Pipelines shall be setback no less than four hundred (400) feet from the property lines of any parcel on which a wellhead is located.

VII. EMERGENCY RESPONSE AND HAZARD MITIGATION PLANS

A. If the Pipeline is a Carbon Dioxide Pipeline and PHMSA has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Dioxide Pipelines, then the Pipeline Company operating the Carbon Dioxide Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include: (1) documentation of compliance with the PHMSA regulations; and (2) a detailed plan describing how the Pipeline Company will work with the

County's law enforcement, emergency management personnel, and first responders in the event of a spill, leak, rupture or other emergency or disaster related to the Pipeline.

B. If the Pipeline is a Carbon Dioxide Pipeline and PHMSA has not adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Dioxide Pipelines, then the Pipeline Company operating the Carbon Dioxide Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include the following:

1. A map and legal description of the proposed route for a Carbon Dioxide Pipeline showing all human occupied structures and animal husbandry facilities, by type, within two miles of the centerline of the proposed route including addresses.

2. A description of the health risks resulting from exposure of humans and animals to carbon dioxide released from a pipeline, considering the concentrations of carbon dioxide in the air near to a rupture, the duration in time of exposure, and the presence of other harmful substances released from a rupture. The description shall identify the exposure level and duration of time that may cause a fatality of persons or animals, and the exposure level and duration that may cause intoxication or other significant adverse health effects.

3. An estimate of the worst-case discharge of carbon dioxide released in metric tons and standard cubic feet from a rupture of a pipeline considering the interior volume of the pipeline, the location of emergency valves that limit release of carbon dioxide, the location of crack arrestors, operating pressures, operating temperatures, and other relevant factors.

4. A rupture dispersion modeling report containing the results of computational fluid dynamic computer model estimates of the maximum geographic ranges of the Fatality Zone and Hazard Zone for the Carbon Dioxide Pipeline in the event of its rupture in a range of weather conditions and representative topography in County, as well as in low elevation areas of the County where released carbon dioxide may settle.

5. A computer model report showing the Blast Zone for the Carbon Dioxide Pipeline.

6. A list of structures and facilities within the Hazard Zone, Fatality Zone, and Blast Zone for the proposed route of a Carbon Dioxide Pipeline that in the preceding year have contained humans or livestock, and an estimate of the numbers of persons and livestock in each structure and facility.

7. A list of High Consequence Areas. A High Consequence Area is any area within the Hazard Zone, the Fatality Zone, or the Blast Zone where a single rupture would have the potential to adversely affect 10 or more persons or a facility with 100 or more livestock.

8. A description of the potential adverse impacts of a rupture of a Carbon Dioxide Pipeline on the humans, livestock, and other real and personal property within the Hazard Zone, the Fatality Zone, and the Blast Zone for the route of a Carbon Dioxide Pipeline.

9. Identification of alternative routes through the County designed to minimize risks to humans and animals from a rupture of the Carbon Dioxide Pipeline with County, and an analysis of the risks of these alternative routes relative to the proposed route.

10. All information needed by county first responders, emergency response personnel, and law enforcement personnel in order to engage in local emergency management and hazard mitigation planning, equipment, and training needs. Such information includes but is not limited to:

- a. a material data safety sheet for the materials transported in the Carbon Dioxide Pipeline;
- b. agency-specific response plans for law enforcement, emergency medical responders, and other response agencies;
- c. carbon dioxide detectors and evacuation plans for each human occupied structure;
- d. response equipment needs for emergency response personnel, such as carbon dioxide and other chemical detectors; respirators; personal protective equipment; communications equipment; road barriers and traffic warning signs; and non- internal combustion engine evacuation vehicles;
- e. a Carbon Dioxide Pipeline rupture emergency response training program to ensure safe and effective response by county and municipal law enforcement, emergency medical services, and other responders during the operational life of the Carbon Dioxide Pipeline.

11. Identification of residential and business emergency response needs, including but not limited to:

- a. a Mass Notification and Emergency Messaging System;
- b. evacuation plans;
- c. evaluation equipment needs especially for mobility impaired individuals;
- d. carbon dioxide detectors, and respirators.

C. If the Pipeline is a Hazardous Liquid Pipeline of a type other than a Carbon Dioxide Pipeline, then the Pipeline Company operating the Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include: (1) documentation of compliance with PHMSA regulations for the applicable type of Pipeline; and (2) a detailed plan describing how the Pipeline Company will work with the

County's law enforcement, emergency management personnel, and first responders in the event of a spill, leak, rupture or other emergency or disaster related to the Pipeline.

VIII. ABANDONMENT AND DECOMMISSIONING

A Hazardous Liquids Pipeline in the County that is abandoned shall comply with the requirements of this section. A Hazardous Liquid Pipeline shall be deemed abandoned for purposes of this section whenever the use of the Hazardous Liquid Pipeline has been discontinued such that there is no longer regulatory oversight of the Pipeline by PHMSA.

For purposes of the land restoration standards, the term "construction" includes the removal of a previously constructed pipeline, and the County will treat the removal of a Pipeline in the same manner as the Pipeline's original construction for purposes of the County's obligations under this Ordinance.

A. A Pipeline Company granted a Special Exception Permit pursuant to this Ordinance shall by certified mail notify the County and all Affected Persons in the County of the Pipeline Company's intent to discontinue the use of the Pipeline. The notification shall state the proposed date of the discontinuance of use.

B. Upon abandonment or discontinuance of use, the Pipeline Owner shall offer to each Property Owner the option to have the Pipeline and all related facilities physically dismantled and removed, including both the below and above ground facilities. The removal of the Pipeline and the related Reclamation and Reclamation Costs shall be the Pipeline Company's responsibility and shall be completed within one-hundred eighty (180) days from the date of abandonment or discontinuation of use unless a Property Owner agrees to extend the date of removal. Such an extension must be by written agreement between the Pipeline Company and the Property Owner, and the agreement shall be filed at the Warren County Recorder's office and a copy delivered to the County by the Pipeline Owner.

C. A Property Owner shall not be required to have the Pipeline removed, but if the Property Owner agrees to the removal and Reclamation, the Property Owner shall allow the Pipeline Company reasonable access to the property.

D. Upon the removal of the Pipeline and the Reclamation, the Pipeline Owner shall restore the land which shall include the removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements.

IX. TRANSFER

A Hazardous Liquid Pipeline special exception granted to a Pipeline Company pursuant to this Ordinance is not transferrable. A Pipeline Company, or its successors in interest, shall apply for a new Hazardous Liquid Pipeline Permit whenever the Hazardous Liquid Pipeline is transferred, or its use is materially or substantially changed or altered.

X. PENALTY

Any person, persona, firms, partnerships or corporations, whether acting alone or in concert with any other, who violates this Ordinance shall be subject to a fine of \$2,500.00 per day, each day the violation occurs, until such violation is corrected.

XI. SEVERABILITY

Should any section or provision of this Ordinance be declared to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or unconstitutional.

XII. EFFECTIVE DATE

This Ordinance shall be in effect after its final passage, approval and publication as required by law.

So Ordained this ____ day of _____, 2024.

BOARD OF COMMISSIONERS OF
WARREN COUNTY

Craig Greenwood, President

John Comer

Clay Andrews

ATTEST:

Robin Weston-Hubner, Warren County Auditor

