

Hazardous Liquid Pipeline Permit Process

The Iowa Utilities Board (IUB) has primary jurisdiction over hazardous liquids pipeline routing/siting in Iowa. Unlike interstate natural gas pipelines which are approved by the Federal Energy Regulatory Commission, there is no federal siting or permitting for hazardous liquids pipelines. The IUB does not have safety jurisdiction over hazardous liquids pipelines. The U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration (PHMSA) has that authority.

Before a pipeline for the transportation of hazardous liquids can be built in Iowa, the company proposing the pipeline must obtain a permit from the IUB under Iowa Code chapter 479B. Hazardous liquids include crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries. The process the IUB uses to consider whether to issue a permit for a proposed pipeline is summarized as follows:

1. Informational Meetings

If the proposed line will be more than five miles long and will operate at a pressure of more than 150 pounds per square inch, the first step in the process is an informational meeting to be held in each affected county. Once informational meetings are scheduled, these meetings are added to the IUB's Hearing and Meeting Calendar webpage.

- a. The company that proposes to build the line must give notice of the informational meeting to all persons with an ownership interest in land that might be affected by the line.
- b. The meeting will be held in a public location that is accessible to all. When multiple meetings are being held, they are usually scheduled to provide the public with a choice of times.
- c. A representative of the IUB will preside over the meeting and present an explanation of the permitting process and a summary of the legal rights of affected landowners.
- d. A company representative will explain the proposed project and discuss easement acquisition and landowner compensation.
- e. An open question and answer period will follow the presentations.
- f. By law, the company cannot begin negotiating with landowners for right-of-way (easements) for the proposed line until after this meeting.
- g. By law, the company cannot file a petition for a permit with the IUB until at least 30 days after the last informational meeting.
- h. The informational meeting is not a hearing. No record is made and no evidence is received. The purpose of the meeting is to provide the public and landowners with information about the proposed line and their rights, not to consider the merits of the project.

2. Petition for Permit

Not less than 30 days after the last informational meeting, the company may file with the IUB a petition for a permit for the proposed line. Once the petition is filed and when it is to be substantially complete, a hearing will be scheduled by the IUB. Notice of the hearing will be published in a newspaper of general circulation in the county. Notice will also be mailed to objectors and owners of property for which easements have not been obtained.

3. Public Hearing

When a proposed line is more than five miles long, the public hearing must be held in the county seat of the county that is located at the midpoint of the proposed line. (If the line is less than five miles long, the hearing may be held at the IUB's offices in Des Moines.)

- a. The IUB or an administrative law judge will preside at the hearing.
- b. IUB hearings are similar to court cases, with similar rules of order and evidence.
- c. At the hearing, all parties may present evidence and testimony in support of or opposition to the line.
- d. Ultimately, the IUB will decide whether the proposed line will promote the public convenience and necessity and meets all other legal requirements, and may adopt terms, conditions and restrictions as to location and route.
- e. If the company requests the right of eminent domain, the IUB will also decide the extent to which that right should be granted.
- f. At the hearing, the IUB (or the administrative law judge) is not the advocate for any particular party as the IUB must remain neutral. If a party believes it needs to be legally represented at the hearing, it should consult with its own attorney.
- g. After the IUB makes its final decision in the case, any party may file for judicial review of the decision in District Court.

4. Right-of-Way Concern

In order to construct a line on private property, the company must obtain necessary rights from the owner of the land, typically by means of an easement. An easement may be voluntarily negotiated or, in some cases, it may be obtained through condemnation (also known as the power of eminent domain).

The company cannot begin to negotiate with landowners for easements until after the informational meeting. The IUB does not supervise or control negotiations for the purchase of voluntary easements. After the informational meeting is held, the company and the landowners are free to negotiate.

If the company cannot obtain all needed easements voluntarily, it may ask the IUB for the authority to take those rights through condemnation. Under federal and state law, private property cannot be taken for public use without 1) a need to serve a public use and 2) just compensation to the landowner. Under Iowa law, the IUB will determine whether a company has shown a need to serve a public use, but the IUB does not determine the question of just compensation. If condemnation is necessary, compensation will be determined in an entirely separate proceeding by a Compensation Commission appointed for each county for which condemnation authority has been granted, under Iowa Code chapter 6B.

The IUB has adopted standards for the restoration of agricultural land after pipeline construction, including topsoil replacement and drain tile repair. Iowa law also provides for landowner compensation for property damage, such as crop loss and the expense of moving livestock.