

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVIEW OF RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION RULES [199 IAC CHAPTER 9]	DOCKET NO. RMU-2016-0013
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ORDER PROVIDING NOTICE AND REQUESTING COMMENT

BACKGROUND

The Utilities Board (Board) is conducting a comprehensive review of its administrative rules in accordance with Iowa Code § 17A.7(2). The purpose of the comprehensive review is to identify and eliminate rules that are outdated, redundant, or inconsistent with statute or other administrative rules. The Board's review of its rules at 199 Iowa Administrative Code (IAC) chapter 9, Restoration of Agricultural Lands During and After Pipeline Construction, has been identified as Docket No. RMU-2016-0013.

The rules in chapter 9 apply to any pipeline construction where agricultural land is crossed. The rules require land restoration plans for pipeline projects that need a permit from the Board. Also, the rules constitute the minimum land restoration standards for pipelines that do not require a permit from the Board. The rules define terms, address filing requirements and the Board's review of plans, and contain standards for restoration of agricultural lands. Those standards apply to topsoil separation and replacement, repair of drain tile, restoration after soil compaction and

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rutting, and construction in wet conditions, among other topics. The rules also address the role of the county inspector.¹

On July 17, 2019, the Board issued an order requesting stakeholder comment on potential rule changes to its chapter 9 rules. Initial comments were filed in the docket by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company; Interstate Power and Light Company; Black Hill/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy; and the Iowa Utility Association (filing jointly as Joint Utilities); Iowa Farm Bureau Federation (Farm Bureau); American Petroleum Institute; and Northwest Iowa Landowners Association. On September 3, 2019, OCA, Farm Bureau, and Joint Utilities filed their respective responses to the comments.

Pursuant to Iowa Code §§ 479.29 and 479B.20, the Board is required to provide copies of the notice of intended action (NOIA) to each county board of supervisors, as well as allow each county the ability to present at the oral presentation. Prior to the Board issuing the NOIA, the Board is seeking comments from the county boards of supervisors and the Iowa State Association of Counties (ISAC).

Since the Board has already received comments from the OCA and industry prior to the commencement of a formal rule making, the Board is seeking to provide the county boards of supervisors and ISAC with the same opportunity. The Board would

¹ The role and authority of county boards of supervisors in inspecting a site for compliance with the standards is specified in Iowa Code §§ 479.29(2) and 479B.20(2).

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also like to allow all stakeholders and county boards of supervisors to reply to the initial comments filed. A copy of the draft NOIA is attached to this order for reference.

SUMMARY OF POTENTIAL CHANGES AND REQUESTS FOR COMMENT

The rules the Board is considering for potential amendment are as follows:

Item 1. Amend rule 9.1

Subrules 9.1(1) and 9.1(2), Authority and purpose. The Board is considering a potential amendment to streamline the rules by combining the statements of authority and purpose in subrules 9.1(1) and 9.1(2) into one subrule. The amendment under consideration also adds references to Iowa Code §§ 479.29(9) and 479B.20(9) to clarify the distinction between pipeline projects that require a permit from the Board and a specific land restoration plan and projects that do not require a permit from the Board but which still must adhere to the standards in 199 IAC chapter 9.

Subrule 9.1(3), Definitions. The Board is considering a potential amendment to subrule 9.1(3) that would renumber the subrule as subrule 9.1(2) and modify the definitions of terms included in the current rules and add definitions of new terms, including “surface drains” and “wet conditions.” The Board invites comment on whether additional terms should be defined and whether any current definitions should be modified or eliminated. For example, the Board asks for comment on whether a definition of “above-ground structures” should be added.

In another rule-making proceeding identified as Docket No. RMU-2016-0004, Review of Intrastate Gas and Underground Gas Storage Rules [199 IAC Chapter 10],

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the Board has adopted the following definition of the term “affected person” in the Board’s rules governing intrastate gas pipelines at 199 IAC chapter 10:

“Affected person” means any person with a recorded legal right or recorded interest in the property, including but not limited to a contract purchaser of record, a tenant occupying or possessing the property under a recorded lease, a record lienholder, and a record encumbrancer of the property. The term also includes persons in possession of or residing on the property and persons with unrecorded interests in property that have been identified through a good faith effort of the pipeline company.

Likewise, the Board is considering a potential amendment that would strike the definition of the term “landowner” from chapter 9 and replace it with a definition of the term “affected person.” The Board asks for comments about this potential amendment.

The Board is also considering potential amendments to the definition of “agricultural land” intended to clarify the current definition by providing more examples of the types of land included in the definition. The Board asks for comment on whether the definition of “agricultural land” should be limited to land that is presently devoted to agricultural use.

The Board is considering potential amendments to the definition of “pipeline construction” and asks for comments addressing what activities constitute construction. For example, the Board asks for comments addressing whether land preparation activities, including clearing, surveying, staking, or tree trimming, should be included in the definition of “pipeline construction.”

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Also, with respect to the definition of the term “proper notice,” the Board asks for comment on whether the Board should propose a separate rule on notice and whether the Board should also define “proper notice” to include notice to affected persons.

Item 2. Amend Rule 9.2, Filing of land restoration plans.

In addition to potential non-substantive editorial amendments to rule 9.2, the Board is considering potential amendments to subparagraph 9.2(1) that would add two items to the list of required contents of a land restoration plan: (1) a requirement that there be a unique identification number on each tract of land over which the pipeline will be constructed and (2) a requirement that stationing (the process of defining locations along the pipeline construction route) follow a linear progression along the entire pipeline.

Item 3. Amend Rule 9.3, Procedure for review of plan.

The Board is considering a potential amendment intended to streamline the rule and clarify that the Board reviews a land restoration plan as part of its review of the pipeline petition. The potential amendment also specifies that the pipeline company must provide a copy of the final plan approved by the Board to the county inspector, among the other parties listed.

Item 4. Adopt new rule 9.4, Staking and clearing of agricultural land.

The Board is considering a potential new rule 9.4 which would address staking and clearing of agricultural land. The potential new rule requires the county inspector to

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be present during the staking of the easement, and addresses removal of trees and brush and fencing from the easement.

Item 5. Renumber and amend rule 9.4, Restoration of agricultural lands.

The Board is considering potential amendments to current rule 9.4 (to be renumbered as rule 9.5) that would require the pipeline company to direct that a topsoil survey be performed across the easement and to provide the results of that survey to the county board of supervisors, county inspector, county engineer, and affected persons at least six weeks before construction. Other potential amendments address topsoil separation and replacement, topsoil stockpile stabilization, pumping of water from open trenches, repair of drain tile, and restoration of terraces, waterways, and other erosion control structures. The Board is considering a potential amendment to revised and renumbered subrule 9.5(6) which would specify a maximum standard penetration test reading of 300 psi pursuant to ASTM D1586-11 for tillage. That potential amendment also provides that decompaction shall not occur in wet conditions.

The Board is considering a potential amendment to renumbered paragraph 9.5(8)(c) that would require the pipeline company to provide for weed control to prevent the spread of weeds onto adjacent agricultural lands. The Board is also considering potential amendments to renumbered subrule 9.5(9) that would clarify the pipeline company's obligation to consult with landowners about plans for future drain tile improvements.

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Current subrule 9.4(10) provides that construction in wet soil conditions shall not begin or continue if the passage of heavy construction equipment would cause rutting or underground drainage structures would be damaged. The Board is considering a potential amendment to renumbered subrule 9.5(12) that would provide that the county inspector shall determine when construction should not proceed in a given area due to wet conditions.

Item 6. Renumber and amend rule 9.5, Designation of a pipeline company point of contact for landowner inquiries or claims.

The Board is considering potential amendments to current rule 9.5 (to be renumbered as rule 9.6) that would replace the references to “landowner” throughout the rule with references to “affected persons.” The potential amendment also would require the pipeline company to provide the name and contact information of the county inspector to affected persons prior to commencing construction.

Item 7. Renumber and amend rule 9.6, Separate agreements.

Landowners and pipeline companies are allowed to negotiate separate agreements with provisions different than those found in statute and rules. Currently, rule 9.6 provides that copies of easements or other agreements between the pipeline company and the landowner are to be provided to the county inspector. The Board understands that if the Board’s engineering staff is aware that a separate agreement exists, that fact will be mentioned in the staff report. However, Board staff does not always know if landowners and the company have entered into separate agreements.

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The Board is considering a potential amendment to rule 9.6 (to be renumbered as rule 9.7) which streamlines the rule. The Board asks for comment on whether it should amend the rule to provide that the pipeline company must file with the Board a copy of any separate agreement.

Item 8: Adopt new rule 9.8, Notice of violation and halting construction.

The Board is considering a potential amendment that would adopt new rule 9.8, which would specify the process by which the county inspector notifies the pipeline company of a violation of the standards adopted in chapter 9, Iowa Code §§ 479.29 or 479B.20, or a separate agreement between the pipeline company and the landowner, and halts construction.

Item 9: Renumber and amend Rule 9.9, Enforcement.

Current rule 9.7 provides that if a pipeline company does not comply with the requirements of Iowa Code §§ 479.29 or 479B.20, the county board of supervisors may petition the Board for an order requiring corrective action or seeking imposition of civil penalties, or both. The current rule directs the Board, upon receipt of a petition from the county board of supervisors, to schedule a hearing and other procedures. The Board is considering a potential amendment that would renumber and amend current rule 9.7 to clarify that the county board of supervisors can petition the Board for an order requiring the pipeline company to take corrective action and can also file a complaint with the Board seeking civil penalties.

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Item 10: Adopt new rule 9.10, Project completion.

The Board is considering a potential amendment that would adopt new rule 9.10, which would provide that the county inspector shall recommend to the county board of supervisors that the pipeline project is complete upon restoration of all affected agricultural lands and where growth has been established on 70 percent of the locations required to be reseeded.

Item 11: Adopt new rule 9.11, Document submittal.

The Board is considering a potential amendment that would adopt new rule 9.11, which would require the county inspector to submit to the county board of supervisors and the pipeline company copies of inspection reports, tile reports and maps, and other documents specified in the new rule. The potential amendment would also require the pipeline company to provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of tile.

Drawing No. IUB PL-1 (Restoration of Drain Tile) and Drawing No. IUB PL-2 (Restoration of Terrace).

The Board asks for comment on whether the information in these two drawings is still current. The Board also asks for comment on whether it should consider referring to other resources to depict standards relating to drain tile and terrace restoration.

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ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. County boards of supervisors and the Iowa State Association of Counties shall file comments regarding the potential amendments to 199 Iowa Administrative Code chapter 9, Restoration of Agricultural Lands During and After Pipeline Construction, attached to this order, no later than 30 days from the date of this order.
2. The county boards of supervisors or any other party shall file their reply comments no later than 45 days from the date of this order.

UTILITIES BOARD

Geri Huser Date: 2020.06.16
14:25:37 -05'00'

Nick Wagner Date: 2020.06.16
14:03:18 -05'00'

ATTEST:

Anna Hyatt Date: 2020.06.16
15:55:33 -05'00'

Richard W. Lozier, Jr. Date: 2020.06.16
13:22:35 -05'00'

Dated at Des Moines, Iowa, this 16th day of June, 2020.

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Item 1. Amend rule 199—9.1(479, 479B) as follows:

199—9.1(479,479B) General information.

9.1(1) *Authority and purpose.* ~~The standards contained herein~~ rules in this chapter are ~~prescribed~~ adopted by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29 and 479B.20, ~~relating to~~ to establish standards for the restoration of agricultural lands during and after pipeline construction. ~~land restoration standards for pipelines.~~ These rules constitute the minimum standards for restoration of agricultural lands disturbed by pipeline construction. ~~The rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction~~ These rules do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

9.1(2) *Purpose.* ~~The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules. The rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction for which a project-specific plan is not required. When a project-specific land restoration plan is required pursuant to Iowa Code section 479.29(9) or 479B.20(9), following notice and comment, the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project. Where a project-specific land restoration plan is not required pursuant to Iowa Code section 479.29(9) or 479B.20(9), the rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction.~~

9.1(3)9.1(2) *Definitions.* The following words and terms, when used in these rules, shall have the meanings indicated below:

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a. “Affected person” means any person with a recorded legal right or recorded interest in the property, including but not limited to a contract purchaser of record, a tenant occupying or possessing the property under a recorded lease, a record lienholder, and a record encumbrancer of the property. The term also includes persons in possession of or residing on the property and persons with unrecorded interests in property that have been identified through a good faith effort of the pipeline company.

~~a.b. “Agricultural land” shall mean:~~
~~—(1) Land which is presently under cultivation, or~~
~~—(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or~~
~~—(3) Cleared land capable of being cultivated.~~
means any land devoted to agricultural use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land in government set-aside programs.

c. “Board” means the utilities board within the utilities division of the department of commerce.

d. “County inspector” means a professional engineer that is licensed under Iowa Code section 542B and is familiar with agricultural and environmental inspection requirements, who is designated by the county board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

~~b.e.~~ “Drainage structures” or “underground improvements” means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

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~~f.~~ f. “Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

~~e.~~ “Landowner” means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

~~g.~~ “Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

~~h.~~ “Pipeline” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, or hazardous liquid, in intrastate or interstate commerce within or through Iowa.

~~i.~~ “Pipeline company” means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

~~j.~~ “Pipeline construction” means a substantial activity associated with installation, relocation, replacement, removal, operation or maintenance of a pipeline that disturbs disturbance to agricultural land associated with installation, replacement, removal, operation or maintenance of a pipeline, but shall not include work performed during an emergency conditions. Emergency means a condition involving clear and immediate danger to life or health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

~~k.~~ “Proper notice to the county inspector” to the county inspector means that the pipeline company or and its contractor or contractors shall keep the person responsible for the inspection continually informed of the work schedule and any schedule changes, and shall provide at least 24 hours’ written notice before trenching, permanent tile repair, or backfilling is undertaken at any specific location. The pipeline company may request that the county inspector designate a

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~~person to receive such notices;~~ county inspector continually informed of the work schedule and any changes to the schedule, and shall provide at least 24 hours' written notice before commencing or continuing any construction activity which requires inspection by the county inspector, including, but not limited to, right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, clean-up, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction shall not be delayed due to a county inspector's failure to be present on site.

~~h.l.~~ *"Soil conservation practices"* means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

~~i.m.~~ *"Soil conservation structures"* means any permanent structure recognized by federal or state soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

~~n.~~ *"Surface drains"* means any surface drainage system such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

~~j.o.~~ *"Till"* means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

~~k.p.~~ *"Topsoil"* means the ~~upper part of the soil which is the most favorable material for plant growth and which can ordinarily be distinguished from subsoil by its higher organic content and darker color.~~ uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the "A" horizon. In areas where the "A" horizon is determined by a certified professional soil scientist to be less than 12", the topsoil depth shall include both the

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“A” and the “Bw” horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

q. “Wet conditions” means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil; may prevent the effective removal or replacement of topsoil and subsoil; may prevent proper decompaction; or may damage underground tile lines.

Item 2. Amend rule 199—9.2(479, 479B) as follows:

199—9.2(479,479B) Filing of land restoration plans. ~~For intrastate natural gas and all hazardous liquid pipeline projects,~~ Pursuant to Iowa Code section 479.29 and section 479B.20, a land restoration ~~plans~~ plan is required for any pipeline construction project which requires a permit from the board and for any proposed amendment to an existing permit which involves pipeline construction, relocation, or replacement. The land restoration plan shall be filed with the appropriate petition and identified as Exhibit I. ~~shall be prepared and filed with the appropriate petition pursuant to Iowa Code section 479.29(9) or 479B.20(9) and this chapter for pipeline construction projects which require a pipeline permit from the Iowa utilities board, or for amendments to permits that propose pipeline construction or relocation.~~

9.2(1) Content of plan. A land restoration plan shall include, but not be limited to, the following:

- a. A brief description of the purpose and nature of the pipeline construction project.
- b. A description of the sequence of events that will occur during pipeline construction.
- c. A description of how ~~compliance with subrules 9.4(1) to 9.4(10) will be accomplished~~ the pipeline company will comply with rule 9.4 and 9.5.
- d. The point of contact for landowner inquiries or claims as provided for in rule

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9.5(479,479B).

e. A unique identification number that follows a linearly sequential pattern on each tract of land over which the pipeline will be constructed.

9.2(2) *Plan variations.* The board may by waiver ~~accept~~allow variations from the requirements in this chapter in such plans if the pipeline company requesting a waiver is able to satisfy the standards set forth in 199 IAC 1.3(17A,474,476) and if the alternative methods proposed by the pipeline company would restore the land to a condition as good as or better than provided for in this chapter.

9.2(3) *Mitigation plans and agreements.* Preparation of a separate land restoration plan may be waived by the board ~~if where a pipeline company enters into~~ an agricultural impact mitigation plan or similar agreement is reached by the pipeline company and with the appropriate agencies of the state of Iowa ~~and that satisfies~~ the requirements of this chapter. If a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

Item 3. Amend rule 199—9.3(479, 479B) as follows:

199—9.3(479,479B) Procedure for review of plan.

9.3(1) ~~An intrastate natural gas pipeline company, or a hazardous liquid pipeline company, that is subject to Iowa Code section 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of land restoration plan will be coincident with the board's review of~~ The board will review the proposed land restoration plan at the same time it reviews the application for permit, and objectionspetition. Objections to the proposed plan mayshall be filed

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as part of the permit proceeding. The pipeline company shall modify the plan as required by the board.

9.3(2) After the board has ~~accepted~~ approved the plan as part of the board's review and approval of the petition, but prior to construction, the pipeline company shall provide copies of the final plan approved by the board to all landowners of property that will be disturbed by the construction, ~~and to the~~ county board of supervisors in each county affected by the project, ~~and~~ the county engineer of each affected county, and to the county inspector in each affected county.

Item 4. Adopt the following new rule 199—9.4 (479,479B):

199—9.4(479,479B) Staking and clearing of agricultural land.

9.4(1) *Easement staking.* The county inspector shall be present during the staking of the easement.

9.4(2) *Trees and brush.* If trees are to be removed from the easement, the pipeline company shall consult with the landowner to determine if there are trees of commercial or other value to the landowner.

a. If there are trees of commercial or other value to the landowner, the pipeline company shall allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing. The pipeline company shall hire a forester with local expertise to appraise the commercial value of any timber to be cut for construction of the pipeline. The pipeline company shall compensate the landowner for the full appraised commercial value of any timber removed. In no event shall any trees be left on or adjacent to the easement. The pipeline company shall remove all cleared trees and debris from the easement.

b. If the trees to be cleared have been determined to have no commercial or other value to the landowner and there is no negotiated agreement between the pipeline company and the

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landowner for the disposition of the trees in advance of clearing of the easement, removal and disposal of the material shall be completed at the discretion of the pipeline company.

9.4(3) *Fencing.* The pipeline company may remove all field fences and gates during clearing of the easement and may construct temporary fences and gates where necessary.

Item 5. Renumber and amend rule 199—9.4 (479,479B) as follows:

~~199—9.4(479,479B)~~199—9.5 (479,479B) **Restoration of agricultural lands.**

9.5(1) Topsoil survey.

a. Prior to the removal of any topsoil, the pipeline company shall direct that a topsoil survey shall be performed under the supervision of a certified professional soil scientist across the full extent of the easement. A minimum of three soil depths shall be physically measured in the field at each cross section as follows: (1) one on the left edge of the easement; (2) one at 15 feet off of the centerline of the pipeline on the working side of the right-of-way; and (3) one on the right edge of the working easement. Cross sections shall be taken a minimum of every 500 linear feet for the full extent of the easement. Each parcel of land shall have a minimum of two cross sections.

b. The pipeline company shall provide the results of the topsoil survey to the county board of supervisors, county inspector, county engineer, and affected persons at least six weeks prior to commencing construction.

~~9.4(1)~~**9.5(2) Topsoil separation and replacement.**

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with ~~the construction of a pipeline~~ construction unless otherwise provided in these rules. The actual depth of the topsoil, ~~not to exceed 36 inches~~ as determined by a topsoil survey, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area shall be stripped from the full

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extent of the easement. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. ~~A pipeline company shall, upon a landowner's request, measure topsoil depth at selected locations before and after construction.~~ Topsoil removal shall not occur during wet conditions.

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Stockpile stabilization. Topsoil stockpiles shall be stabilized with seeding and mulch within fourteen calendar days of stockpiling. Between October 15 and March 15, soil tackifier shall be used in place of seeding and mulch.

ed. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods which do not require the opening of a trench. If provided for in a written agreement ~~with~~ between the pipeline company and the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

de. Backfill. The topsoil and subsoil shall be replaced ~~so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed~~ in the reverse order in which they were excavated from the trench. The depth of the replaced topsoil shall conform as nearly as possible to the depth of topsoil which was removed. Where excavations are made for road, stream, drainage ditch, or

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other crossings, the original depth of topsoil shall be replaced as nearly as possible.

9.5(3) Pumping of water from open trenches.

a. In the event it becomes necessary to pump water from open trenches, the pipeline company shall pump the water in a manner that avoids damaging adjacent agricultural land. Damages from pumping water from trenches include, but are not limited to, inundation of crops and depositing of sediment in fields, pastures, and surface drains.

b. If water-related damages result from pumping water from trenches, the pipeline company shall either compensate the landowner for the damages or restore the land, pasture, surface drains, or similar land, to their pre-construction condition, at the landowner's discretion.

c. Written permission from the landowner is required before the pipeline company can pump water from trenches onto adjacent land.

d. All pumping of water shall comply with existing state drainage laws, local ordinances, and federal statutes.

9.4(2)9.5(4) Temporary and permanent repair of drain tile.

a. Pipeline clearance from drain tile. Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

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~~(2) If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within ten days of the time the damage occurred. Any underground drain tile damaged, cut, or removed and found to not be flowing shall have the upstream exposed tile line screened or otherwise protected to prevent the entry of foreign material and small animals into the tile system. The downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if water level rises in the trench.~~

~~—(3) Temporary repair is not required if the angle between the trench and the tile lines places the tile end points too far apart for temporary repair to be practical.~~

~~—(4) If temporary repair of the line is not made, the upstream exposed tile line shall not be obstructed but shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system, and the downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.~~

c. Marking. Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed ~~as soon as is practical~~ within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. The county inspector shall inspect each permanent repair for compliance with this chapter. If proper notice is given, construction shall not be delayed due to a county inspector's failure to be present on site. Permanent repair and replacement of damaged drain tile

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shall be performed in accordance with the following requirements:

- (1) All damaged, broken, or cracked tile shall be removed.
- (2) Only unobstructed tile shall be used for replacement.
- (3) The tile furnished for replacement purposes shall be of a quality, size and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced using a laser transit, or similar instrument, to ensure that the tile's ~~proper so that its original~~ gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by ~~probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged~~ televising on both sides of the trench over the full extent of the working easement to check for tile that might have been damaged or misaligned by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

~~*e. Inspection.* Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.~~

fe. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The county inspector shall inspect the

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backfill ~~shall be inspected for compliance by the county inspector with this chapter.~~ If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

~~g.~~ *Subsurface drainage.* Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

~~9.4(3)~~**9.5(5)** *Removal of rocks and debris from the ~~right-of-way~~ easement.*

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris which may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or

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treated by appropriate in situ remediation.

9.4(4)9.5(6) *Restoration after soil compaction and rutting.*

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions which ~~permit effective working of the soil~~ result in a maximum standard penetration test (SPT) reading of 300 psi pursuant to ASTM D1586-11 performed by a qualified person. Decompression shall not occur in wet conditions. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. ~~On land from which topsoil was removed, the rutting~~ Rutting shall be remedied before the topsoil is replaced any topsoil that was removed is replaced.

9.4(5)9.5(7) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain ~~lines~~ tiles or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. ~~Such restoration shall be inspected for compliance by the county inspector.~~ The county inspector shall inspect restoration of terraces, waterways, and other erosion control structures for

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compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

9.4(6)9.5(8) *Revegetation of untilled land.*

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph ~~“b”~~ below 9.5(9)“b” shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

c. Weed control. On any easement, including, but not limited to, construction easements and easements relating to valve sites, metering stations, and compression stations, the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying shall be done by a pesticide applicator that is appropriately licensed for spraying of pesticide in Iowa. If the pipeline company fails to control weeds within 45 days after receiving written notice from the landowner, the pipeline company shall be responsible for reimbursing all reasonable costs of weed control incurred by

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owners of adjacent land.

9.4(7)9.5(9) *Future installation of drain tile or soil conservation practices and structures.*

a. Future drain tile. ~~At locations where the proposed installation of underground drain tile is made known in writing to the pipeline company prior to the securing of an easement, the pipeline shall be installed at a depth which will allow proper clearance between the pipeline and the proposed tile installation. The pipeline company shall consult with the landowner concerning the landowner's plans for future drain tile installation. The pipeline company shall consult with affected persons regarding plans for future drain tile installation. Where an affected person provides the pipeline company with written plans prepared by a qualified tile technician for future drain tile improvements before an easement is secured, the pipeline shall be installed at a depth which will allow proper clearance between the pipeline and the proposed future tile installation.~~

b. Future practices and structures. ~~At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such the soil conservation practices and structures and retain the integrity of the pipeline. The pipeline company shall consult with the landowner concerning the landowner's plans for future installation of soil conservation practices and structures. The pipeline company shall consult with any affected person's plans for future use or installation of soil conservation practices or structures. Where an affected person provides the pipeline company with a design for such practice or structure prepared by a qualified technician before an easement is secured, the pipeline shall be installed at a depth which will allow for future installation of the planned soil conservation practice or structure and which will retain the integrity of the pipeline.~~

9.4(8)9.5(10) *Restoration of land slope and contour.* Upon completion of construction, the

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slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by the pipeline company by means such as regrading and, if necessary, import of appropriate fill material. Topsoil from the adjacent agricultural land outside of the construction footprint shall not be used as fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished. ~~Restoration shall be inspected for compliance by the county inspector.~~ The county inspector shall inspect restoration of land slope and contour for compliance with this chapter.

~~9.4(9)~~9.5(11) *Restoration of areas used for field entrances ~~and~~ temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule ~~9.4(8)~~9.5(10) and deep tilled as required by subrule ~~9.4(4)~~9.5(6). If by agreement or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition. The county inspector shall inspect restoration of areas used for field entrances or temporary roads for compliance with this chapter.

~~9.4(10)~~9.5(12) *Construction in wet conditions.* The county inspector shall determine when construction should not proceed in a given area due to wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or

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underground drainage structures may be damaged. To facilitate construction in ~~soft~~wet soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule ~~9.4(1)~~9.5(2).

Item 6. Renumber and amend rule 199—9.5 (479,479B) as follows:

~~199—9.5(479,479B)~~199—9.6(479,479B) **Designation of a pipeline company point of contact for landowner inquiries or claims.** For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for ~~landowner~~ inquiries or claims from affected persons. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. The pipeline company shall also provide the name of and contact information for the county inspector. This information shall be provided to all ~~landowners of property that will be disturbed by the pipeline project~~ affected persons prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to ~~landowners~~ all affected persons. A designated point of contact shall remain available for all ~~landowners~~ affected persons for at least one year following completion of construction and for ~~landowners~~ affected persons with unresolved damage claims until such time as those claims are settled.

Item 7. Renumber and amend rule 199—9.6 (479,479B) as follows:

~~199—9.6(479,479B)~~199—9.7(479,479B) **Separate agreements.** This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. ~~The agreement shall be in writing and a copy provided to the county inspector. The pipeline company may request that the county~~

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~~inspector designate a specific person to receive the agreements. The agreement shall be in writing and the pipeline company shall provide a copy to the county inspector.~~

Item 8. Adopt new rule 9.8 (479,479B):

199—9.8(479,479B) Notice of violation and halting construction.

9.8(1) *Notice of violation.* If the county inspector identifies a violation of the standards adopted in this chapter, Iowa Code sections 479.29, or 479B.20, or a separate agreement between the pipeline company and the landowner, the county inspector shall give verbal notice, followed by written notice, to the pipeline company and the pipeline company's contractor and require the pipeline company to take corrective action.

9.8(2) *Halting construction.* A county inspector may temporarily halt construction if construction is not in compliance with the standards adopted in this chapter, the land restoration plan, or the terms of an independent agreement between the pipeline company and landowner regarding land restoration or line location until the county inspector consults with a supervisor of the pipeline company or contractor. If, after consultation with a supervisor of the pipeline company or contractor, agreement on corrective action to address the violation cannot be reached, the county inspector may submit a request to the county board of supervisors for resolution of the issue. Construction may not resume at the disputed location until either (1) the county inspector and a supervisor of the pipeline company reach agreement on a resolution or (2) where the board of supervisors has been contacted, until the board of supervisors has responded or after one business day after contact by the county inspector. If a resolution is not reached, construction may continue; however, the pipeline company will be responsible for any damages or for correcting any violation.

Item 9. Renumber and amend rule 9.7(479,479B) and follows:

~~199—9.7(479,479B)~~199—9.9(479,479B) **Enforcement.** A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29 and 479B.20, including giving proper notice ~~of~~before staking, clearing, boring, topsoil

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~~removal and stockpiling, trenching, permanent tile repair, tile marking, soil screening, tile repair or backfilling, decompaction, clean-up, restoration, or testing of any easement.~~ If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29 or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken ~~or seeking imposition of civil penalties, or both.~~ The county board of supervisors may also file a complaint with the board seeking imposition of civil penalties. ~~Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.~~

Item 10. Adopt new rule 9.10:

199—9.10(479,479B) Project completion. The county inspector for each county affected by the pipeline project shall recommend to the county boards of supervisors that the pipeline project be considered complete upon completion of restoration of all affected agricultural lands and seventy percent growth is established in locations requiring seeding. The county boards of supervisors shall determine whether the project is completed.

Item 11. Adopt new rule 9.11:

199—9.11(479,479B) Document submittal. Once a project is completed, project documents shall be submitted as follows:

9.11(1) Document turnover. The county inspector shall submit to the county board of supervisors and the pipeline company copies of inspection reports; tile reports and maps; punch lists; notice of violation documents; decompaction agreements; separate agreements, including those that excuse the pipeline company from certain construction responsibilities; and special landowner agreements. The documents shall also be available for inspection by the board upon

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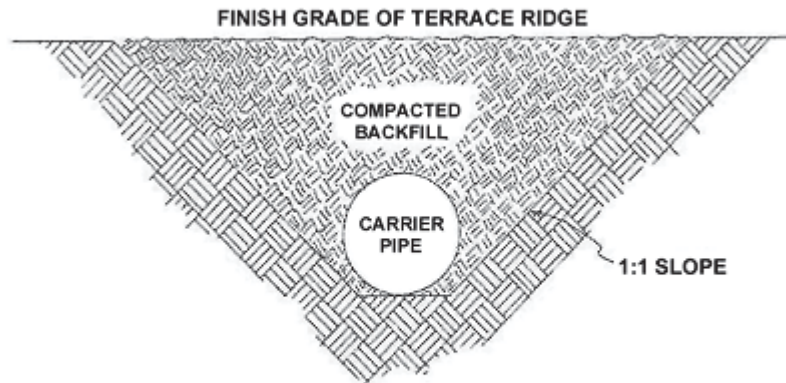
request.

9.11(2) *As-built drawings.* The pipeline company shall provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of tile.

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Drawing No. IUB PL-2

RESTORATION OF TERRACE



NOTE:

**COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED
ADJACENT SOIL.**

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29 and 479B.20.

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