

**STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**In The Matter of
the City of Hutchinson
(Hutchinson Utilities Commission)
Pipeline Project**

STIPULATION AGREEMENT

Part 1. PARTIES. This Stipulation Agreement ("Agreement") applies to and is binding upon the following parties:

- a. the Minnesota Environmental Quality Board (EQB); and
- b. the City of Hutchinson (Hutchinson Utilities Commission) (hereinafter referred to as the City).

Part 2. PURPOSE AND SCOPE OF STIPULATION AGREEMENT. The purpose of this Agreement is to resolve alleged violations of the permit issued by the EQB to the City in March 2003 for the construction of a pipeline by the City. Nothing in this Agreement is intended to amend the Stipulation Agreement entered into by the same parties in October 2003; that Agreement remains valid and in effect in accordance with its terms. By entering into this Agreement, the City is settling disputed matters between itself and the EQB, and the City does not admit that the alleged violations set out in Part 6 of this Agreement occurred. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement.

Part 3. AUTHORITY. This Agreement is entered into under the authority vested in the EQB by Minnesota Statutes § 116C.04, subd. 10.

Part 4. DEFINITIONS. Unless otherwise explicitly stated, the definitions in Minnesota Statutes Chapters 116C and 116I, and in Minnesota Rules chapters 4405 and 4415 apply, as appropriate, to the terms used in this Agreement.

Part 5. BACKGROUND. The following is the background of this Agreement:

In December 2002, the EQB issued a Pipeline Routing Permit to the City of Hutchinson (Hutchinson Utilities Commission) for a 90-mile long natural gas pipeline in Minnesota from the City of Trimont in Martin County to the City of Hutchinson in McLeod County. In March 2003, the EQB amended the permit to more specifically identify the route, to change some portions of the route (primarily in the northern reaches of the pipeline), and to incorporate an Agricultural Impact Mitigation Plan ("Mitigation Plan") into the Permit as an enforceable part of the Permit. The Permit requires the City to comply with certain construction practices described in the Mitigation Plan.

As soon as construction began the EQB began hearing complaints from landowners along the route about the construction practices of the City and its contractors. As construction progressed the complaints became allegations of violations of the permit by farmers and EQB staff. EQB staff conducted several visits and inspections of pipeline construction. The subject of the complaints and allegations included failure to provide plans and specifications for construction on the actual route utilized (Permit Part V), failure to protect and segregate topsoil, i.e., mixing topsoil and subsoil, in cultivated lands (VII.B.7), failure to minimize compaction of soil on cultivated lands (VII.B.8), failure to restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline (VII.B.17), failure of the City to set stakes or flags in a manner to clearly identify the depth of soil to be removed (Agricultural Impact Mitigation Plan para. 2.A.), failure to properly repair damaged and

adversely affected drainage tile lines (AIMP 3), failure to conduct rock removal in accordance with the Mitigation Plan (AIMP 5), failure to alleviate compaction on agricultural land traversed by construction equipment (AIMP 7), failure to meet with landowners within 45 days after completion of construction to investigate and measure losses caused by pipeline construction activities on the landowners' property (AIMP 19.B.3), and failure to respond within 48 hours to landowner issues or concerns (AIMP 19.D).

Some of the complaints were resolved by City contractors. Others were not verified by County inspectors or City inspectors. EQB staff verified some of the complaints.

In the first week of October 2003, the EQB learned that the City was repairing drain tile that was cut during construction by using unslotted full-round pipe rather than the slotted pipe specified in the Mitigation Plan. At its October 2003 meeting, the EQB Board heard a status report on the pipeline, the City reported on its activities and on the status of construction, and several landowners addressed the Board and described City practices that the landowners alleged were not in compliance with the Mitigation Plan. The City and the EQB negotiated, and at the end of October entered into, a Stipulation Agreement that resolved the alleged violations regarding the repair of drain tile that was cut during construction of the pipeline.

In December 2003, the EQB suspended the permit based on allegations of City failure to meet certain legal requirements. The City initiated review of the EQB's decision in the Minnesota Court of Appeals. After having been advised and verifying that the City had completed pipeline construction in December 2003 prior to the suspension, the EQB rescinded the suspension of the permit in February 2004. The parties entered into a voluntary stipulation of dismissal ending the Court of Appeals review.

Pursuant to further discussions between the parties in the spring and summer of 2004, the City agreed to pay up to \$50,000 to the EQB for purposes of hiring a consultant to conduct a soils investigation of a limited number of the parcels owned by landowners who had not settled with the City. The results of that investigation were reported to the EQB Board in November 2004. The City submitted to the EQB in late November its consultant's analysis of the soils investigation report, a discussion of the EQB's issues with the pipeline construction, its response to an EQB request for documents, the City's conclusion that the City substantially complied with the permit, a list of evidence the City intended to introduce into the record in addition to exhibits, testimony and argument already submitted, the City's argument supporting a contested case hearing, and a request for a contested case hearing or, in the alternative, an offer to participate in gathering additional factual information concerning actual pipeline construction.

Part 6. ALLEGED VIOLATIONS. The EQB alleges that the City has violated the following parts of the permit:

Part V by failing to submit to the EQB plans and profiles of actual pipeline construction, including substantial changes to initial plans and profiles;

Part VII.B.7 by failing to protect and segregate topsoil in cultivated lands resulting in mixing of topsoil and subsoil;

Part VII.B.8 by failing to minimize compaction of soil on cultivated lands and then by failing to alleviate that compaction; and

Part VII.B.17 by failing to restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline.

The EQB further alleges that the City has violated the following paragraphs of the Mitigation Plan incorporated in the permit incorporated in the permit in March 2003:

Paragraph 2.A by failing to set stakes or flags in a manner to clearly identify the depth of soil to be removed;

Paragraph 3 by failing to properly repair damaged and adversely affected drainage tile lines;

Paragraph 5 by failing to conduct rock removal in accordance with the Mitigation Plan;

Paragraph 7 by failing to alleviate compaction on all agricultural land traversed by construction equipment;

Paragraph 19.B.3 by failing to meet with landowners within 45 days after completion of construction to investigate and measure losses caused by pipeline construction activities on the landowners' property; and

Paragraph 19.D by failing to respond within 48 hours to landowner issues or concerns.

Part 7. **THE CITY'S REQUIREMENTS.** The City agrees to undertake the following actions for purposes of settling the disputed matters with the EQB:

A. The City acknowledges that the EQB has authority to enforce its permit.

B. The City shall pay \$150,000 into a fund to be administered by the EQB from which reimbursement payments can be made to Nonsettling Property Owners, as that term is defined in the Escrow Agreement, who are experiencing problems due to compaction that appears to result from pipeline construction. The City and the EQB agree that this agreement to alleviate compaction shall be administered in the following way:

1. No later than January 5, 2005, the City shall deposit in an interest-bearing escrow account the sum of \$150,000 to provide reimbursement to Nonsettling Property Owners for actual expenses incurred for decompaction of property that

was subject to pipeline construction. The Escrow Agreement, marked Attachment 1, is attached and incorporated in this Agreement by this reference.

2. The Commissioner of Agriculture (Commissioner) shall administer the fund, and shall determine whether requests for reimbursements from the fund should be granted.

3. To qualify for reimbursement, a Nonsettling Property Owner's request must satisfy the criteria set out in a protocol that will be developed by the Commissioner of Agriculture in consultation with the City.

4. Within ten days after receiving a reimbursement request, the Commissioner shall provide the City with notice of the request. The City shall have five working days after receiving notice of the reimbursement request to object to reimbursement. If the Commissioner grants a reimbursement request over City objection, the Commissioner shall notify the City in writing of his reasons for overriding the objection. All issues regarding whether any decompaction reimbursement should be allowed and paid shall be resolved by the Commissioner acting in the Commissioner's sole discretion reasonably exercised.

5. Decompaction eligible for reimbursement may be conducted only one time per growing season for the two growing seasons included in this program, growing seasons 2005 and 2006.

6. The Nonsettling Property Owner may use any qualified operator to perform decompaction so long as the fee for services is reasonable and the operator is not related by blood or marriage to the Nonsettling Property Owner or tenant of the property.

7. The Commissioner shall provide a monthly accounting of all expenditures from the fund to the EQB Board and the City.

C. The City shall use its best efforts to resolve the condemnation claims of the Nonsettling Property Owners through settlement by making, for example, an offer to those landowners more generous than the City's last best written offer extended on June 9, 2004.

D. At the end of the growing season 2006, any portion of the \$150,000 initial deposit remaining may be applied to a supplemental environmental project reviewed and approved by the EQB Board, or as the law applicable to settlement of state litigation matters requires or allows.

E. Upon the expiration of the obligations of this Agreement, the EQB will accept for filing a City application for termination of Board jurisdiction over the pipeline in accordance with paragraph VIII of the Permit and will process such application in accordance with paragraph VIII of the Permit.

Part 8. PAYMENT OF FEES. The costs of the negotiation of this Agreement and the execution of this Agreement by the EQB, including legal fees, will be paid to the EQB by the City as fees for administration of the permit. So long as the City has complied with Paragraphs 7.B.1 and 7.C above, the City will not have to reimburse the EQB for work performed after January 6, 2005.

Part 9. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES. With respect to the City, the EQB agrees that this Agreement resolves all violations alleged in Part 6 and agrees not to exercise any administrative, legal or equitable remedies (including specific performance of the terms of the Permit) available to the EQB to address the violations alleged in Part 6, as long as the City performs according to and has complied with the terms, covenants and

agreements contained in this Agreement. The parties reserve the right to enforce this Agreement or take any action authorized by law, if the other party fails to comply with the terms and conditions of this Agreement. Nothing in this Agreement shall prevent the parties from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

Part 10. RETENTION OF RECORDS. The City shall retain in its possession all records and documents related to this Agreement. The City shall preserve these records, documents, reports and data for a minimum of three years after the termination of this Agreement despite any document retention policy of the City to the contrary, and shall promptly make all such documentation available for review upon request by the EQB.

Part 11. APPLICABLE LAWS AND PERMITS. The City shall undertake all actions required to be taken pursuant to this Agreement in accordance with the requirements of all applicable state and federal laws and regulations. Nothing in this Agreement exempts or relieves the City of its obligation to comply with applicable local governmental requirements.

Part 12. OTHER CLAIMS. Neither the City nor the EQB shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

Part 13. LIABILITIES. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof.

Part 14. SUCCESSORS. This Agreement shall be binding upon the City and its successors and upon the EQB, its successors and assigns. If the City sells or otherwise conveys or assigns any of its rights, title or interests in the pipeline, the conveyance shall not release the City from any obligation imposed by this Agreement, unless the party to whom the right, title or interest

has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the EQB approves the transfer or assignment.

Part 15. AMENDMENTS. This Agreement may be amended only by written agreement between the parties.

Part 16. EFFECTIVE DATE. This Agreement shall be effective on the date it is approved by the EQB and signed by the EQB Chair.

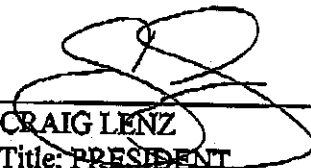
Part 17. TERMINATION. This Agreement shall terminate on the later of the following two dates--the date that the EQB determines that every landowner along the pipeline has either reached a settlement with the City or the landowner's condemnation award is final or the date that the Escrow Agreement established in accordance with Part 7.B.1 of this Agreement terminates.


Part 18. SURVIVAL. The provisions of Parts 2, 9, 10, 11, 12, 13, 14, 15, and 18 of this Agreement and the rights, duties and obligations of the EQB and the City created in those provisions shall survive termination of this Agreement.

BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, AND THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES

**CITY OF HUTCHINSON
(Hutchinson Utilities Commission)**

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

By: 
CRAIG LENZ
Title: PRESIDENT

By: 
ROBERT A. SCHROEDER
Title: CHAIR

Date: December 20, 2004

Date: December 23, 2004