

MODEL HAZARDOUS LIQUID PIPELINE LEVEL OF CULTIVATION RESOLUTION

Whereas, federal pipeline safety regulations for hazardous liquid pipelines state in 49 C.F.R. § 195.248 that “all pipe must be buried so that it is below the level of cultivation;”

Whereas, federal pipeline safety regulations do not define the meaning of the term “level of cultivation;”

Whereas, no other federal regulation defines the meaning of the term “level of cultivation;”

Whereas, no federal court has defined the meaning of the term “level of cultivation” for the purposes of pipeline safety;

Whereas, no Iowa statute defines the meaning of the term “level of cultivation” or the minimum depth of cover required for hazardous liquid pipeline construction in Iowa’s agricultural lands;

Whereas, the neither Iowa Administrative Code 199, Chapter 9 (Restoration of Agricultural Lands During and After Pipeline Construction), nor Iowa Administrative Code 199, Chapter 13 (Hazardous Liquid Pipelines and Underground Storage), define the term “level of cultivation” or otherwise specify a minimum depth of cover for hazardous liquid pipelines in agricultural land;

Whereas, the County may under the home rule powers granted to it by Iowa Const. Art. III, § 39A enact and enforce ordinances “not inconsistent with the laws of the general assembly;”

Whereas, the State of Minnesota defines depth of cover for hazardous liquid pipelines in Minn. Stat. 216G.07, subd. 1, as follows:

Unless waived in the manner provided in subdivisions 2 or 3, any pipeline installed after May 26, 1979, shall be buried with a minimum level cover of not less than 4-1/2 feet in all areas where the pipeline crosses the right-of-way of any public drainage facility or any county, town or municipal street or highway and where the pipeline crosses cultivated agricultural land. Where the pipeline crosses the right-of-way of any drainage ditch, the pipeline shall be at least 4-1/2 feet below the authorized depth of the ditch, unless waived in the manner provided in subdivisions 2 and 3;

Whereas, the State of New York defines the minimum cover in farmlands for liquid petroleum pipelines in 16 NYCRR 258.5 as follows:

Notwithstanding the requirements of 49 CFR 195.248(a) for cover over buried pipelines in cultivated areas, all pipe installed in areas actively cultivated for commercial farm purposes in at least two out of the last five years, as identified by the farmland operator, shall be installed with a minimum cover of 40 inches unless the farmland operator agrees to or requires a different depth.

Whereas, no litigation has challenged the right of Minnesota and New York to define depth of cover over a pipeline in agricultural lands;

Whereas, the term “level of cultivation” is not subject to state-wide definition, much less a nationwide federal definition, but rather is highly dependent on location-specific factors including soil type, drainage, topography, and the nature of the crops produced, it is reasonable and necessary to define the term “level of cultivation” at a county level;

Whereas, a county-level definition of the term “depth of cultivation” will benefit the residents and lands of County through limiting the damage caused to farmland and tiles systems by the construction of hazardous liquid pipelines, preventing future conflicts caused by excessively shallow installation of hazardous liquid pipelines, and preventing possible future harm by ensuring that operating hazardous liquid pipelines are installed deep enough to prevent harm to farmers and pipelines resulting from accidental damage resulting from pipeline strikes during normal farming operations;

Whereas, neither the federal government, the general assembly of the State of Iowa, nor the Iowa Utility Board have determined the “level of cultivation” or the depth of cover for hazardous liquid pipelines in agricultural lands in County, yet such determination is critical to continued farming productivity and safety within County; and

Whereas, a determination of the “level of cultivation” by County is neither preempted by federal law nor inconsistent with Iowa’s hazardous liquid pipeline statutes;

Now, therefore be it resolved, by the County Board of Supervisors for _____ County, Iowa, that the “level of cultivation” in the County for the purpose of determining hazardous liquid pipeline depth of cover under 49 C.F.R. § 195.248(a) shall be [COUNTY TO SPECIFY; suggested language: *two feet below the depth of plowing, decompaction, drainage tiles, or other physical modification of the subsurface soils undertaken in the normal course of agriculture, but in no event less than 4-1/2 feet*], unless otherwise agreed to by mutual agreement between a landowner subject to an easement for a hazardous liquid pipeline and the company that proposes to construct a pipeline on landowner’s land.