

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Hawthorn Oil Transportation (North Dakota), Inc.
8-inch Crude Oil Pipeline – Mountrail County
Siting Application**

Case No. PU-09-153

ORDER GRANTING CORRIDOR CERTIFICATE AND ROUTE PERMIT

December 10, 2009

Appearances

Commissioners: Kevin Cramer, Tony Clark, and Brian P. Kalk.

Lawrence Bender, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Hawthorn Oil Transportation (North Dakota), Inc.

Illona Jeffcoat-Sacco, General Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Patrick Fahn, Director - Compliance and Competitive Markets Division, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Bonny M. Fetch, Office of Administrative Hearings, 1707 North Ninth Street, Bismarck, North Dakota 58501-1882, as Administrative Law Judge.

Preliminary Statement

On September 28, 2009, Hawthorn Oil Transportation (North Dakota), Inc. (Hawthorn) filed an application to site an approximately six-mile, eight-inch crude oil pipeline (the pipeline) from a storage site south of Stanley, North Dakota to a facility northeast of Stanley, all in Mountrail County, North Dakota.

Hawthorn requests that the Commission issue a Certificate of Corridor Compatibility and a Route Permit. Hawthorn also requests that the Commission waive the following requirements: (1) that the Commission holds a separate hearing; (2) the three month period specified in Section 49-22-08(5) of the North Dakota Century Code and the six month period specified in Section 49-22-08.1(5) of the North Dakota Century Code; (3) the requirement of separate filing applications for a Corridor Certificate and a Route Permit, and insofar as they require separate publication of notice of filing applications; (4) that a Ten-Year Plan is to be included in the Application; and, (5) the

requirements for mylar maps and stereo-pair aerial photographs per the Commission's Application Guidelines for a Corridor Certificate and a Route Permit.

On October 14, 2009, the Commission deemed the application of Hawthorn complete and issued a Notice of Filing and Notice of Hearing scheduling a hearing for November 30, 2009, at 12:00 noon in the Mountrail County Courthouse, Community Room, 101 North Main Street, Stanley, North Dakota.

The Notice of Hearing identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?
4. Is it appropriate for the Commission to waive procedures and time schedules as requested, including the requests for single consolidated applications for corridor certificates and route permits?

On December 10, 2009, Hawthorn filed a letter requesting that the Commission consider additional affidavits of Lawrence Bender, attorney for Hawthorn, and Gust Benninger, Construction Superintendent for Hawthorn.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Hawthorn, a subsidiary of EOG Resources, Inc., (EOG Resources) is a Delaware corporation, headquartered in Houston, Texas, and is authorized to transact business in the State of North Dakota.
2. Hawthorn is coordinating construction with EOG Resources Railyard (North Dakota), Inc., ("EOG") a Delaware corporation, headquartered in Houston, Texas, and authorized to transact business in the State of North Dakota, that is in the process of constructing a rail transportation facility north of Stanley, North Dakota to transport crude oil and, potentially, oilfield equipment and supplies. Transportation of crude oil to the storage site at the EOG Railyard will be conducted by truck and pipeline for further

transportation by train to the Stroud, Oklahoma area and further pipeline transportation from Stroud, Oklahoma to markets in Cushing, Oklahoma.

3. Oil produced in the Mountrail County area is currently being transported primarily via a pipeline system owned by Enbridge Pipelines (North Dakota) LLC (Enbridge) to Clearbrook, Minnesota. The Enbridge pipeline, however, is running at capacity, and a growing volume of crude oil is being transported out of North Dakota by truck. The Hawthorn pipeline, which is the subject of this hearing, will provide a means to transport approximately 40,000 barrels per day of oil from a collection point at the terminus of a third party crude oil gathering system, southeast of Stanley, to an existing storage facility at EOG's Railyard, northeast of Stanley, for loading onto railcars headed for Oklahoma. In the absence of the Hawthorn pipeline, the only practical means to transport the oil volumes surpassing Enbridge's capacity is by truck. Truck transportation of the 40,000 barrels per day would require approximately 200 truck runs per day. The pipeline is needed to provide for efficient transportation of crude oil from the storage site to the EOG Railyard facility and to minimize the cost and adverse impact of excessive truck traffic. It is anticipated that the transportation of crude oil to additional markets will have a positive economic effect upon mineral interest owners, royalty interest owners, the State of North Dakota and EOG Resources.

Pipeline Integrity

4. The maximum allowable operating pressure of the Hawthorn pipeline is 740 pounds per square inch. The estimated operating pressure of the pipeline will be 475 pounds per square inch. The maximum design flow rate is 60,000 barrels per day.

5. Hawthorn affirms that the design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation regulations governing the transportation of hazardous liquids as prescribed under 49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline: Minimum Federal Safety Standards.

Exclusion and Avoidance Areas

6. North Dakota Administrative Code Chapter 69-06-08, sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor compatibility and Route Permit. The criteria as set forth in North Dakota Administrative Code Section 69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route must not be sited within an Exclusion Area. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area shall be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. In accordance with the Commission's Selection Criteria, a transmission route shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, and maintenance of the transmission facility. In accordance with

the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility.

7. Hawthorn retained HDR Engineering, Inc. (HDR) of Minneapolis, Minnesota, to coordinate environmental studies and reports. As part of the environmental studies and reports, HDR reviewed a one-mile wide study corridor centered on the Proposed Pipeline Route (Hawthorn Pipeline Corridor). Hawthorn also retained HDR to evaluate for the presence of wetlands within the Hawthorn Pipeline Corridor. In addition, Hawthorn retained HDR to conduct a Class III Archaeological and Historic Facilities Resources Inventory within the Hawthorn Pipeline Corridor.

8. HDR staff contacted the following state and federal agencies: North Dakota Game and Fish Department, U.S. Fish and Wildlife Service, United States Army Corps of Engineers, State Historical Society of North Dakota, North Dakota Geological Survey, North Dakota Parks and Recreation Department, North Dakota Office of Attorney General, North Dakota Department of Commerce, North Dakota Department of Health, North Dakota Department of Transportation, North Dakota State Water Commission, Natural Resources Conservation Service, North Dakota State Land Department, North Dakota Aeronautics Commission, North Dakota Department of Agriculture, North Dakota Department of Human Services, North Dakota Department of Labor, Job Service North Dakota, North Dakota Department of Career and Technical Education, North Dakota Governor, North Dakota Indian Affairs Council, North Dakota Office of Management and Budget, North Dakota Soil Conservation Committee, and North Dakota Farm Service Agency.

Exclusion Areas

9. No exclusion areas were identified in the Hawthorn Pipeline Corridor.

10. The only exclusion areas identified were Piping Plover Critical Habitats within the broader study area (generally, the 36 square mile Idaho Township). But, there are no Piping Plover Critical Habitats in the actual Hawthorn Pipeline Corridor or Route. The nearest designated exclusion area is located approximately 0.1 miles from the Hawthorn Pipeline Corridor and about 0.6 miles from the Route.

Avoidance Areas

11. No avoidance areas were identified within the Route. There were residences located within the Corridor, however, all residences are further than 500 feet from the Route.

12. Other Avoidance areas identified in the broader study area include Waterfowl Production Areas, Private Lands Open to Sportsmen, and North Dakota Game and Fish Lands. None of these avoidance areas are located in the Hawthorn Pipeline Corridor or the Route.

13. Wetlands are scattered through the study area. Hawthorn selected a route trying to avoid wetlands where practicable, and where wetlands could not be avoided,

Hawthorn plans to directionally drill under them where practicable or required by U.S. Fish and Wildlife Service.

14. Agencies were contacted via letter on May 8, 2009 to comment on the Hawthorn Pipeline Corridor and the Route. On May 27, 2009, the North Dakota Game and Fish Department indicated their primary concern pertained to the possible disturbance of native prairie. The U.S. Fish and Wildlife Service commented in a June 1, 2009 letter, and it focused on high value habitat avoidance, threatened and endangered species, grassland restoration, and wetlands. Hawthorn has consulted with these agencies and others and has implemented measures to avoid and minimize effects to biological resources in the vicinity of the Pipeline.

15. There is one parcel of Private Land Open to Sportsmen (PLOTS) crossed by the Hawthorn Pipeline Corridor located in the NW/4 of Section 24, T456N-R91W. The Route does not cross the PLOTS parcel.

16. Hawthorn completed a Class I Literature Search. The results of the Class I Literature Search led to the decision to prepare a Class III Intensive Cultural Resource Inventory report. The reports disclosed seven previous cultural resources investigations within one-half mile of the Hawthorn Pipeline Corridor. Investigations in the study area documented 31 cultural resources. Hawthorn contacted the North Dakota State Historic Preservation Office (NDSHPO), and the NDSHPO recommended Hawthorn sponsor an archival records search consisting of the project boundary plus a one-half mile buffer area around the project area to determine the nature of previous cultural resource investigations and the location of known cultural resources in the proposed project vicinity. The NDSHPO also stated there is a potential for unrecorded cultural properties to exist in the project area; therefore, the NDSHPO suggested that a field survey, primarily pedestrian, take place in the study area. The NDSHPO confirmed tribal consultations were not necessary, because the project lacks the federal component that would require compliance with Section 106 of the National Historic Preservation Act. Hawthorn understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.

17. No residences, schools or businesses are within 500 feet of the Hawthorn pipeline route.

18. Hawthorn agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in rangeland, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

19. Hawthorn understands and agrees that all crossings of graded roads must be bored unless the responsible governing agency specifically permits Hawthorn to open cut the road.

20. Attached is a document entitled Tree and Shrub Mitigation Specifications. Hawthorn agrees to comply with the Tree and Shrub Mitigation Specifications from this attachment that the Commission requires in its Order.

21. There will be no significant long-term irreversible effects to the environment or to cultural resources by construction of the pipeline.

22. Impacts to wildlife resulting from clearing and construction will involve habitat removal and modification. The project will have no significant impact on fish and wildlife resources and no endangered or threatened plant or animal species are known to occupy the Route.

23. The Commission finds the location, construction, and operation of the Pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

24. The Commission finds the proposed project compatible with environmental preservation and the efficient use of resources.

25. The Commission finds that the proposed project minimizes adverse human and environmental impact while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

26. The Commission finds the proposed project is of such length, design, location and purpose that it will produce minimal adverse effects, so that procedures and time schedules may be waived.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Hawthorn, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.

2. Hawthorn is a utility as defined in North Dakota Century Code Section 49-22-03(13).

3. The proposed pipeline is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. The location, construction, and operation of the pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The location, construction and operation of the pipeline are compatible with environmental preservation and the efficient use of resources.

6. The pipeline will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

7. The project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-07.2.

8. It is appropriate for the Commission to waive those requirements as requested in the Application and provided under North Dakota Century Code Section 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders:

1. Hawthorn's request that the Commission waive the following requirements is **GRANTED**: (1) that the Commission holds a separate hearing; (2) the three month period specified in Section 49-22-08(5) of the North Dakota Century Code and the six month period specified in Section 49-22-08.1(5) of the North Dakota Century Code; (3) the requirement of separate filing applications for a Corridor Certificate and a Route Permit, and insofar as they require separate publication of notice of filing applications; (4) that a Ten-Year Plan is to be included in the Application; and, (5) the requirements for mylar maps and stereo-pair aerial photographs per the Commission's Application Guidelines for a Corridor Certificate and a Route Permit.

2. Certificate of Corridor Compatibility Number 110, attached to this order, is issued to Hawthorn, designating a corridor for its proposed pipeline project.

3. Route Permit Number 120, attached to this order, is issued to Hawthorn, granting authority to construct and operate an 8-inch crude oil pipeline in Mountrail County.

4. The Certificate of Corridor Compatibility Number 110 and Route Permit Number 120 are effective for the life of the pipeline, but are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

5. Hawthorn must obtain approval from the Commission prior to any changes in the facility route or structure locations.

6. Hawthorn shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed pipeline, shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction of the pipeline.

7. Hawthorn shall conduct a preconstruction conference prior to the commencement of construction, which must include a Hawthorn representative, its

construction supervisor, and a representative of Commission staff to ensure that Hawthorn fully understands the conditions set forth in the Commission's order.

8. Hawthorn shall inform the Commission of its intent to start construction on the pipeline prior to the commencement of construction, report to the Commission on the date construction has started, and once construction has started, it shall keep the Commission updated on construction activities on a weekly basis.

9. Hawthorn shall construct and operate the pipeline in the manner described in its application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.

10. The pipeline shall be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in rangeland, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

11. All crossings of graded roads shall be bored unless the responsible governing agency specifically permits Hawthorn to open cut the road.

12. Hawthorn shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Hawthorn becomes aware of and which were not previously reported to the Commission.

13. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

14. All cultural resource mitigation plans must be submitted to the NDSHPO and approved prior to the start of any fieldwork and any further construction activity.

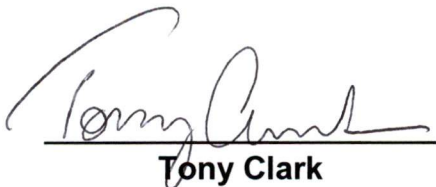
15. If any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the NDSHPO, and clearance to proceed is given by the Commission.

16. All topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

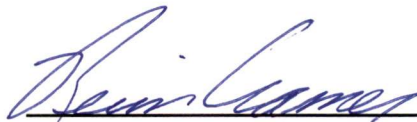
17. Reclamation and clean up along the right-of-way must be continuous and coordinated with construction.

18. All pre-existing roads and lanes used during any further construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads or working areas during construction must be restored to their original condition.
19. Reclamation, fertilization, and reseeding are to be done by Hawthorn according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
20. Hawthorn shall comply with the Tree and Mitigation Specifications attached to this order.
21. Hawthorn shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the route of the pipeline.
22. Hawthorn shall provide the Commission, within 3 months of the Commission's order approving a corridor, a map of the corridor as approved (in both paper and electronic form) and an electronic version of the corridor as approved that can be imported into ESRI GIS mapping software.
23. Hawthorn shall provide the Commission, within 3 months of the completion of the construction, a copy of the facility alignment drawings with alignment data showing the facility as built (in both paper and electronic form) and an electronic version of the as-built facility that can be imported into ESRI GIS mapping software.
24. Hawthorn's obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the pipeline.
25. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.
26. The December 10, 2009 filing by Hawthorn is made part of the record.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Hawthorn Oil Transportation (North Dakota), Inc.
8-inch Crude Oil Pipeline – Mountrail County
Siting Application**

Case No. PU-09-153

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (*e.g.*, *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height ("dbh") or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.

6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs must be planted with stem cuttings for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. An annual report must be submitted to the Commission by October 1 of each year, documenting the condition of replacement plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Corridor Compatibility

Number 110

This is to certify that the Commission has designated a transmission facility corridor for Hawthorn Oil Transportation (North Dakota), Inc. to construct and operate approximately six miles of eight-inch crude oil pipeline with associated facilities and pipeline interconnections in Mountrail County, North Dakota.

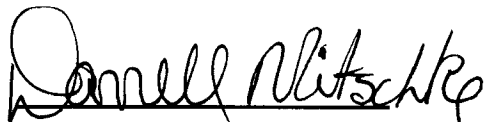
The transmission facility corridor is designated by the Commission's December 10, 2009 Order in Case No. PU-09-153.

The Certificate is subject to the conditions and limitations noted in that Order.

Bismarck, North Dakota, December 10, 2009.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

STATE OF NORTH DAKOTA

Route Permit

Number 120

This is to certify that the Commission has designated a transmission facility route for Hawthorn Oil Transportation (North Dakota), Inc. to construct and operate approximately 6 miles of eight-inch crude oil pipeline with associated facilities and pipeline interconnections in Mountrail County, North Dakota.

The transmission facility route is designated by the Commission's December 10, 2009 Order in Case No. PU-09-153.

The Permit is subject to the conditions and limitations noted in that Order.

Bismarck, North Dakota, December 10, 2009.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner