



Written by [Steve Kenkel](#) on February 20, 2024

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CO2 Pipelines: Trampling on Property Rights & Local Control

Warning: Local elected officials and landowners, your ability to protect the public and preserve private-property rights is under siege! If you choose to sit tight, watch from afar, and hope someone else will fight carbon-capture pipelines, you may wake up one day and find that the tools officials presently have in their toolbox to protect county home rule and enact local zoning ordinances will be things of the past. For ordinary landowners, the freedoms and rights you take for granted will also be in jeopardy.



I know because I've been fighting this battle for nearly two years. I have been surprised and disappointed that so many county supervisors throw up their hands and say, "There's not much we can do. This is a federal pipeline; it's just going to happen." But county supervisors are empowered to protect and preserve the rights, privileges, and property of the county and its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and conveniences of its residents. They just need to try!

The general public and local landowners often wrongly believe that county supervisors can prevent carbon-capture corporations from being granted eminent domain over the land of others. However, in Iowa, counties have no authority to grant or deny eminent domain for CO₂ and other hazardous pipelines. That authority rests solely with the Iowa Utilities Board (IUB). Iowa law instead empowers supervisors with the local tools of county home rule and zoning power to protect their citizens. High-pressure, hazardous CO₂ pipelines and sequestration projects are lining up around our nation to trample on our constitutionally protected property rights and the local tools we have long used to protect them. Greed and a sense of entitlement by wealthy and politically influential investors seeking to capitalize on billions in federal tax credits are causing a stampede of CO₂ pipelines racing toward the finish line in the Midwest.

The federal Inflation Reduction Act, passed in August 2022, increased these tax credits from \$50 to \$85 per ton for carbon permanently stored underground, further exacerbating the mad dash to build private pipelines for corporate profit at public expense. This almost literally amounts to throwing money down a hole, and one day we will recognize it as an epic boondoggle.

We have one shot to stop this corporate cronyism and theft of our private property. Putting CO₂ in a pipeline and transporting it thousands of miles across other people's land only to bury it makes no sense and serves no public purpose. However, if they are successful, it will set a bad precedent and open a floodgate that could forever change property rights in our nation.

I am completing my 11th year as a supervisor — as well as my last two years as the chairperson — of



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Shelby County in western Iowa. I'm a fifth-generation farmer living on our family farm. If you told me just three years ago that a hazardous CO₂ pipeline project, whose sole justification is "saving" the ethanol industry, would attempt to force its way through a county that doesn't even have an ethanol plant, I wouldn't have believed it. This pipeline serves no public purpose and provides no service or benefits to my county's residents. Boy, have my eyes been opened. I never anticipated this assault on rural life, local control, and our federal Constitution.

The company proposing the hazardous pipeline in my county did not even coordinate with our board of supervisors before announcing its proposed route. We seem to have been the last to know, and it appears they planned it that way.

In October 2021, Summit Carbon Solutions announced plans to build a high-pressure, hazardous CO₂ pipeline through 29 counties in Iowa. Since then, five counties have passed land-use and zoning ordinances to help mitigate the health risks and protect their growth areas for future economic development projects, especially housing development. Four of those counties have had lawsuits filed against them by the pipeline companies challenging their traditional local zoning powers. These lawsuits are likely intended to intimidate supervisors and forestall the adoption of similar ordinances by other counties.

In November 2022, Shelby County became the first to pass such an ordinance in Iowa. It requires pipeline companies to comply with setbacks from cities, residents, schools, hospitals, parks, animal confinements, and other locations. The ordinance also requires landowners to apply for a conditional use permit before signing an easement with the pipeline company. This allows for verification of compliance with the required setbacks, and ensures all parts of the ordinance are followed.

Iowa law, in the statute governing the approval and routing of pipelines at the state level, requires all pipeline companies petitioning for a permit to "state the relationship of the proposed project to the present and future land-use and zoning ordinances." That's all it says. All a pipeline company must do to comply is work with county supervisors to obtain zoning permits before proposing a route to the IUB. It's not impossible or even difficult to obtain both state and local permits. The pipeline companies must obtain dozens of other federal, state, and local permits for such a huge project.

Shelby County's local land-use policies have been on the books for 25 years. Its 1998 comprehensive plan states the importance to the county of ensuring that cities can continue to develop unimpeded in the buffer zone surrounding their boundaries. That's why the zoning ordinance requires all industrial users (including pipelines) to submit an application to the county for a conditional use permit if they seek to construct a pipeline in any agricultural-zoned area of Shelby County. The purpose of this regulation is to protect economic development areas around our cities and promote economic growth, especially new housing development. Without these two-mile buffer zones, our county risks losing out on future economic growth, leading to a stagnant or declining tax base. Obviously, this isn't good for property owners, taxpayers, businesses, or the county.

Summit Carbon's proposed pipeline doesn't just violate the county's two-mile setback; the proposed route also comes within 131 feet of the City of Earling. Earling's mayor and city council have filed objections with the IUB, requesting the pipeline be moved to honor the county setbacks and reduce health risks if a rupture should occur. The city also objected that no public notice was issued to the city by the pipeline company. Except in the case of a bigger city such as Bismarck, North Dakota, Summit is



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likely to ignore all requests by local governments to change the proposed route.

Just days after Shelby County approved its hazardous liquid pipeline ordinance, Summit Carbon Solutions filed a federal lawsuit against the county claiming the ordinance is preempted by state and federal law. While Summit representatives attended three of the four public hearings on the zoning ordinance, the company never filed comments — except for a brief letter on an earlier proposed ordinance — or voiced an objection to the setbacks in the ordinance. In February 2023, Summit also filed a federal injunction requesting a temporary stay preventing the county from enforcing its ordinance. In July, a federal judge granted Summit’s request until a final decision is made on the preemption issues.

The injunction ruling found the ordinance’s setbacks are likely to be preempted under state law, but it did not find the setbacks preempted under federal law as the pipeline company had urged. Shelby County has appealed the injunction ruling to the 8th U.S. Circuit Court of Appeals and hopes to prevail in the overreaching litigation being brought against the county. The sole goal of the county is to use its traditional land-use and zoning authority to protect its residents’ safety, property, and economic well-being. The county has had such authority from the Iowa Legislature since the 1950s.

These issues are also arising in other states in the pipeline footprint. In September 2023, the South Dakota Public Utility Commission (PUC) denied a request by Navigator CO₂ Ventures, another pipeline company, to preempt county ordinances. Because Summit had also requested that the PUC preempt local ordinances, the company attempted to withdraw its request but was unable to show that it could comply with a local county ordinance. As a result, Summit’s permit application in South Dakota was also denied. Claims by these pipeline companies that federal law preempts local zoning ordinances also ring hollow. In a September 15, 2023 letter to Summit Carbon Solutions CEO Lee Blank, the federal Pipeline and Hazardous Material Safety Administration (PHMSA) clarified its authority over siting and routing, stating it “continues to support and encourage all three levels of government — federal, state, and local — working collaboratively to ensure the nation’s pipeline systems are constructed and operated in a manner that protects public safety and the environment.”

Fighting back: Landowners in the Midwest are taking action to prevent CO₂ pipelines from defiling their property. They’re seeing some success, with several permit applications already being denied. (AP Images)





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PHMSA also stated that “the responsibility for siting new carbon dioxide pipelines rests largely with the individual states and counties through which the pipelines will operate and is governed by state and local law.” The agency further clarified that “local governments have traditionally exercised broad powers to regulate land use, including setback distances and property development that includes development in the vicinity of pipelines. Nothing in the federal pipeline safety law impinges on these traditional prerogatives of local — or state — government, so long as officials do not attempt to regulate the field of pipeline safety.” Indeed, PHMSA stated it has seen localities consider measures such as restricting land use and development along pipeline rights-of-way through zoning, setbacks, and similar measures. Even a federal agency admits that localities have primary authority over land use regarding carbon-capture pipelines.

I want to help others who are concerned about this issue. That’s why I have laid out a 12-point checklist of what local officials can do to better prepare themselves for the complex challenges they will face when implementing local land-use and zoning ordinances, and what they can do to better educate community leaders and the public about the risks of CO₂ pipelines:

- 1. Revise or implement a land-use and zoning ordinance to include hazardous liquid pipelines with setbacks.* Land-use and zoning ordinances protect the county’s land-use intentions, especially for growth areas such as industrial parks and housing development. Protecting the growth of a county’s tax base spreads out the property tax burden among a larger pool of property owners, thus keeping property tax levies low. Setbacks can also protect neighboring residents from CO₂ releases. To implement this, consult with an experienced land-use and zoning attorney.
- 2. Obtain legal counsel for intervention in your state utility commission regulatory permit proceedings.* When your state considers issuing a CO₂ pipeline permit, legal representation is vital to communicate your position, concerns, and local laws. If you are not at the table, you are on the menu.
- 3. Organize an intervention team of the counties affected by the pipeline.* Being proactive in recruiting other affected counties will lead to a unified coalition working together toward the same goals and addressing the same challenges — resulting in a stronger and more influential voice. Numbers matter! (Legal counsel recommended in point #2 can represent all counties, saving costs and redundancy.)
- 4. Revise or implement county road-crossing and utility right-of-way permits to include hazardous pipelines.* Pipeline companies must receive consent or approval from county supervisors to cross county roads. Making sure your right-of-way permits are up to date is essential. Are your bonding requirements and fee charges appropriate? Will you allow your roads to be open cut, or will boring be required? These up-front decisions can save taxpayer dollars on the back end.
- 5. Hire an experienced pipeline inspector for your county during pipeline construction.* Do not try doing this in-house with county personnel. This is a big job, requiring expertise in pipeline construction, dealing with pipeline contractors, and a ton of documentation. Landowners depend on the inspector to protect their land and get it right. (Inspector costs will be reimbursed by the pipeline company.)
- 6. Document the time and costs accrued by your county engineer addressing the pipeline project and road crossings.* Pipeline companies rely on county engineers for a lot of information relating to road crossings, inspections, and permitting. Pipeline companies — not local taxpayers — should bear the costs.



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7. *Communicate the proposed route with cities, local utility companies, rural water districts, and wind and solar companies within your county.* Many assume their local municipalities, utilities, and agencies are served notice of these proposed projects. In reality, they often aren't, leaving them racing to protect their residents and customers before it's too late. Proactively communicating with them allows ample time to submit objections and concerns with the state utility board.

8. *Serve notice to your county emergency management commission of the proposed route and cities affected.* These first responders are our friends and neighbors. They are here to protect us, but they must understand the health risks and safety concerns from the very beginning. (Most rural counties have emergency response volunteers, and they need time to assess their base and equipment needed.)

9. *Help organize informed public meetings for affected landowners.* Property owners are greatly affected by these pipelines. They depend on our leadership to help educate them about their rights and how the process works. Holding public meetings also creates an opportunity to build trust between property owners and elected officials.

10. *Continually update your board of supervisors and the public of your concerns and pipeline progress at county meetings.* Keeping the board and public updated helps everyone understand the process, what is working, and what is not. Adequate communication is essential.

11. *Work closely with your economic development director and board to ensure development areas are protected, leading to future tax-base and population growth.* If county supervisors don't communicate directly with their economic development director, they risk undermining the county's economic vision, potentially leading to a decline in population or future job growth.

12. *Encourage everyone with concerns about a proposed carbon-capture pipeline — from government entities to the public — to file objections with your state utility board.* Numbers matter; getting more local people involved raises awareness and creates more problem-solving conversations at the state level, resulting in more favorable outcomes locally. (This documentation is vital for establishing your case during the pipeline permit proceedings.)

Most of the proposed CO₂ pipeline routes cross multiple states. Local officials and landowners should pay attention to these projects. Pipeline companies want local officials to believe their pipelines are safe and that counties play no role in the siting process. Property rights are being challenged nationwide. If it can happen in one of the most conservative states in the Midwest, it can happen in your state. Having a Republican governor and legislature is no guarantee against the risk of proposed CO₂ pipeline projects entering your state. Just look at what has happened in Iowa, Nebraska, South Dakota, and North Dakota.

Your immediate intention to respond is critical to protecting your county, property, and communities from these risky CO₂ pipelines. PHMSA's recent letter should give local officials, including county supervisors and commissioners, encouragement to respond responsibly.

It's been said that life is 10 percent what happens to us, and 90 percent how we respond. Let's respond appropriately to protect private-property rights and local control.



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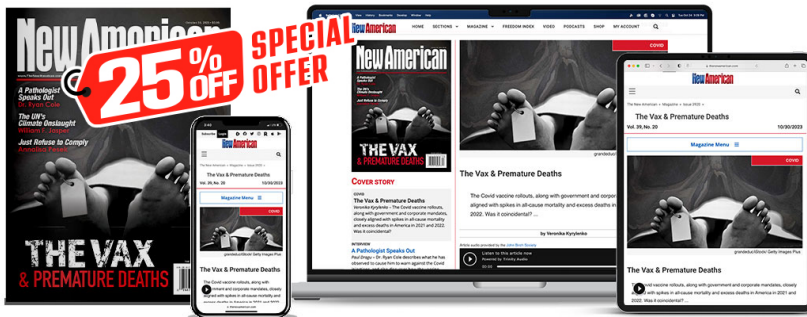
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