



**RE: CO2 Storage Pipeline**

1 message

Chris Bushbaum <chris@heardins.com>

Wed, Feb 7, 2024 at 10:02 AM

To: Candice Brandau Larson <candibrandau@gmail.com>

**Here are the responses on the pipeline. Basically no one is willing to touch this. Almost all of the responses below say to reach out to legal council.**

**The responses provided:**

We can't offer an opinion on an issue that has no documentation provided that indicates what the pipeline company would do under various circumstances that involve different causes of failures of the pipeline. These are likely legal questions, and attorneys should provide the answers.

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Your question is impossible to answer without a lot more information: exactly what's in the contract/easement, what are the facts in the case you're asking about, and what is the specific nature of the coverages you're asking about. Moreover, there is a huge legal issue involved here that requires the attention of the client's attorney. But there is a teachable moment here: If you're approached by a client for insurance advice concerning this activity, what's your strategy? Mine would be to sit down with the client and create a detailed narrative: who, what, when, where, etc. Then I'd explore all the coverages available to me and recommend appropriate forms and limits. Then I'd explain (and thoroughly document) any uninsured exposures or exclusions that could cause harm to the client. And finally, I'd suggest that the client take my insurance recommendations and seek a detailed legal analysis for the situation by the client's attorney.

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May I suggest that you contact legal counsel that specializes in those various fields of expertise. With that information then members may be able to assist you with a coverage analysis of forms provided.

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The farmers' liability would depend on whether they were negligent in causing the rupture. I have not been involved in any CO2 pipelines. In my early career I worked in TX and AR through which oil and gas pipelines run. The oil and gas companies were always monitoring the flow and often responded more quickly than the landowner when there was a rupture or spill. When a rupture occurred, they were immediately involved in handling mitigation, publicity, and pay for damages. I would expect the same to be true for CO2 lines. It would be worthwhile to have some legal advice from attorneys knowledgeable about state and federal environmental laws.

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Legal liability would be based on a specific fact pattern considering negligence issues and contractual obligations. Is it possible for the party wanting the easement to contractually assume liability for maintenance, all issues and claims no matter how caused. Damages to the pipeline and arising out of the pipeline might or might not be covered. It depends on the fact pattern and the content of the applicable policies and type of damage or injury. Also consider that many policies contain exclusions and limitations applying to pollutants and environmental matters that could arise. Qualified lawyers should be consulted to determine if the owner of the pipeline could escape state and federal laws. But even if they are held liable the innocent landowners could suffer significant bodily injury and property damage. You are wise to recognize it is a potential problem, but you are unlikely to provide satisfactory answers to coverage questions.

There are lots of online articles on the topic that likely will give you a CO2 headache and more questions than answers – a few examples are below. Tell inquiring parties to confer with legal counsel.

<https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>

<https://apnews.com/article/carbon-dioxide-spill-federal-order-b9bf4510e7538dfe9c42a2cd85143441>

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Whether the property owner could be held liable or not is a legal question a lawyer should answer. As for coverage, I would talk to your underwriters. It should be readily available for agricultural properties, but perhaps not for other landowners without hitting a specialty market.

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Who is responsible for damaging a gas line, a water line or any other utility (including any resulting damage)? The answer is the same here.

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Landowners who either are negligent and cause bodily injury and/or property damage obviously can be held legally liable. That financial responsibility for the bodily injury and/or property damage could be transferred to the pipeline companies through a contractual arrangement. It is impossible to comment on the coverage of a liability policy for a landowner without perusal of the coverage form. BUT it is likely that the liability insurance policies purchased by the landowners could contain a total pollution exclusion that would preclude coverage for that type of claim – and no coverage means no defense.



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**From:** Candice Brandau Larson <[candibrandau@gmail.com](mailto:candibrandau@gmail.com)>  
**Sent:** Thursday, February 1, 2024 3:57 PM  
**To:** Chris Bushbaum <[chris@heardins.com](mailto:chris@heardins.com)>  
**Subject:** Re: CO2 Storage Pipeline

Dear,

We have recently had some customers direct questions at us about the insurance liability coverages pertaining to a CO2 Pipeline. There have been several hearings in our area and many landowners and farmers have raised concerns about the easements proposed on their land.

The general consensus with the questions stem around whether coverages would be available under their policies. The pipeline company is stating they will cover all damages in the event of a rupture, but what if the rupture is caused due to the landowner, farmer, employee, or a contractor damaging the pipeline? Would the owner/operator be primarily or secondarily liable? And can they even obtain liability coverages for a hazardous pipeline?

I understand this is a newer development, but I would appreciate any feedback or claims knowledge that can be relayed to us as we continue to get questions on the matter. There are several individuals in our area that are affected by the

proposed pipelines and we would like to be prepared to give them some information on how this impacts their insurance.

Thank you!

On Thu, Feb 1, 2024 at 3:33 PM Chris Bushbaum <[chris@heardins.com](mailto:chris@heardins.com)> wrote:

Let me know your thoughts? I will send this to the farm managers at Nationwide, Secura, and Auto Owners to see what kind of feedback I get. If something needs to be added or deleted please let me know. It won't hurt my feelings as I'm really not educated on the subject living in town and all.

Dear,

We have recently had some farm owners direct questions at us about the insurance coverage pertaining to a Carbon Pipeline. There have been several hearings in our area and many farmers have raised concerns about the potential easements proposed on their land. The general consensus with the questions steams around coverage not being afforded under their policies. They are worried about liability claims in the event of a carbon pipe rupture being denied. I understand this a newer development but I would appreciate any feedback or claims knowledge that can be relayed to us as we continue to get questions on the matter. There are several individuals in our area that are affected by the proposed pipelines and we would like to be prepared to give them some information on how this impacts their insurance.

Thank you!

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