

## PROPOSED PERMIT CONDITIONS

### I. Compliance with Laws, Regulations, Permits, Standards, and Commitments

1. Dakota Access shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R. Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.

2. Dakota Access shall obtain and shall thereafter comply with all applicable federal, state, and local permits, including but not limited to: Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; General Permit for Temporary Discharges and federal, state, and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. ~~To the extent that any condition, requirement or standard imposed by any federal agency differs from the requirements of these Conditions, the more stringent shall apply.~~ To the extent that any law, regulation, requirement, condition, or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.

3. The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.

4. Dakota Access shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.

### II. Reporting and Relationships

5. The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit DAPL-2. The Application filed by Dakota Access with the Commission indicates Dakota Access will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. Dakota Access shall do the following as it pertains to routing:

- a) File new aerial route maps that incorporate any route adjustments prior to construction.

b) Notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route and afford the Commission the opportunity to review and approve such modifications.

c) Notify affected landowners of any change in the route on their land.

d) Upon completion of the pre-construction route, Dakota Access shall file maps with the Commission depicting the final preconstruction route.

e) At the conclusion of construction, Dakota Access shall file detailed maps with the Commission depicting the final as-built location of the Project facilities.

6. Dakota Access shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Dakota Access, including its contractors, and landowners, local communities, and residents and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. Dakota Access shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Dakota Access without the approval of the Commission. The public liaison officer shall be afforded immediate access to Dakota Access's on-site project manager, its executive project manager, and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Dakota Access shall also implement and keep an updated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Dakota Access's public liaison officer has been appointed and approved, Dakota Access shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Dakota Access and the public liaison officer, take action to remove the public liaison officer.

7. Dakota Access shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, ~~(including when construction is expected to commence)~~, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management Plan development, and any other plan required pursuant to PHMSA regulations, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources (SDDENR) and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans, and standards. The first report shall be due for the period ending March 31, 2016. The reports shall be filed within 31 days after the end of each quarterly period

and shall continue until the project is fully operational. Once known, Dakota Access shall inform the Commission of the date construction will commence.

8. Continuing until landowner reclamation is complete, Dakota Access's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. The liaison officer shall collect all reports generated per Condition 13 and provide them to the Commission or Commission Staff upon request.

For the period of three years following completion of construction, Dakota Access shall report to the Commission annually on the status of road repairs, road reconstruction, and any problems or issues occurring during the course of the year.

9. Not later than two months prior to construction, Dakota Access shall commence a program of contacts with state, county, and municipal emergency response, law enforcement, and highway, road, and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.

10. Dakota Access shall conduct a preconstruction conference prior to the commencement of construction to ensure that Dakota Access, and its contractors, fully understand the conditions set forth in this order. At a minimum, the conference shall include a Dakota Access representative, Dakota Access's construction supervisor, and Commission Staff.

### **III. Construction**

11. Except as otherwise provided in the conditions of this Order and Permit, Dakota Access shall comply with all mitigation measures set forth in the Stormwater Pollution Prevention Plan, and Appendices, Agricultural Impact Mitigation Plan, Horizontal Directional Drill Contingency Plan, and Blast Plan as set forth in DAPL-5. If modifications to a plan are made by Dakota Access as it refines its construction plans or are required by any federal or state agency, the plan as so modified shall be filed with the Commission and shall be complied with by Dakota Access.

12. The probability of Dakota Access encountering karst features is low. However, if voids or other signs of karst topography are found during construction, Dakota Access shall conduct further site-specific evaluations by a qualified geologist or geotechnical engineer to provide input on mitigation measures. Dakota Access shall complete site-specific mitigation measures on a case by case basis for each karst feature encountered during construction. Any site specific mitigation plans completed for a karst feature shall be submitted to the Commission for review.

13. Dakota Access shall record and keep the following information: (i) landowner concerns or requests which differ from the Agricultural Impact Mitigation Plan, (ii) an indication of how Dakota Access responded to any such landowner requests (iii) environmental compliance concerns with regard to the Commission order or other law, rule, or regulation, (iv) unique reclamation activities based on landowner request or field factors such as

problematic soils, large weed plots, or other such unanticipated conditions, (v) any action items as ordered, directed, or recommended by the environmental inspector.

14. Dakota Access will coordinate all utility crossings in good faith with existing operators and will follow all One Call Procedures.

15. Prior to construction, Dakota Access shall consult with the South Dakota Department of Agriculture, the Natural Resources Conservation Service (NRCS), and local county officials to develop specific plans for the following: proper seed mix for pasture areas, identification of areas of noxious weed concern, and to develop control methods for those areas of noxious weed concern. Dakota Access shall conduct analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Dakota Access shall identify soils for which alternative handling methods are recommended. Dakota Access shall adequately identify and plan for areas susceptible to erosion and any areas with low reclamation potential. Records regarding these analyses, identifications, and plans shall be recorded and made available to the Commission and the affected property owner upon request.

16. Dakota Access shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation, and restoration method options for the landowner's property, a copy of the Agricultural Impact Mitigation Plan, and a copy of the Order and Conditions. Dakota Access shall follow the landowner's selected preferences as documented on any written agreements with the landowner, as modified by any subsequent amendments, or by other written agreements. Dakota Access shall take the following steps to mitigate reclamation challenges and assure proper reclamation occurs:

a) Dakota Access shall separate and segregate topsoil from subsoil in all areas where excavation occurs, as provided in the Agricultural Impact Mitigation Plan. If it is discovered during excavation that the topsoil depth is greater than 12 inches, Dakota Access shall inform the landowner of the actual depth of topsoil and afford the landowner the options of either stripping the entire depth of the topsoil or the 12 inches as set forth in the Agricultural Impact Mitigation Plan.

b) Dakota Access shall repair any damage to property that results from construction activities.

c) Dakota Access shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner in writing.

d) ~~Final grading and topsoil replacement and installation of permanent erosion control structures shall be completed as soon as possible.~~ Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Dakota Access' control cause delay, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation. In the event of unacceptable delay Dakota Access cannot comply with the 20-day time frame as provided in this Condition, Dakota Access shall give

notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed.

e) Dakota Access shall draft specific crop monitoring protocols for agricultural lands. If requested by the landowner, Dakota Access shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as the independent crop monitor shall deem appropriate. The independent monitor shall be a qualified agronomist, rangeland specialist, or otherwise qualified with respect to the species to be restored. The protocols shall be ~~available to~~ filed with the Commission ~~upon request~~ and may shall be evaluated for adequacy in response to a complaint or otherwise. If the landowner foregoes the opportunity to use the independent crop monitor provided by Dakota Access, the landowner retains the right to use an independent crop monitor of the landowner's choosing and at the landowner's own cost.

f) Dakota Access shall work closely with landowners, NRCS, and county governments in planning for noxious weed control. Landowner permission shall be obtained before the application of herbicides.

g) Throughout the construction duration, Dakota Access shall employ weed control measures as soon as reasonably practical and immediately when noxious weeds are observed to mitigate weeds on the temporary soil piles and within the construction right-of-way. To implement this additional weed control mitigation, the environmental inspector or agricultural inspector should be capable of identifying multiple species of weeds at a number of life stages, and be able to recommend and implement weed control measures early enough in the life cycle of the weed species in question to minimize or prevent the plant from setting seeds.

h) Section 6n of the Agricultural Impact Mitigation Plan regarding wet conditions shall apply to improved hay land and pasture lands in addition to crop lands.

i) The size, density, and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas. Dakota Access shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on the landowner's property in writing. In such case, the rock shall be placed in accordance with the landowner's directions.

j) Dakota Access shall employ adequate measures to de-compact subsoil as provided in its Agricultural Impact Mitigation Plan. Dakota Access shall conduct compaction testing of areas on and off the construction right-of-way, using a penetrometer or other equivalent measuring device, to provide an adequate means of determining whether such measures have reduced compaction to levels similar to adjacent sections of cropland undisturbed by construction. Topsoil shall be de-compacted if requested by the landowner.

k) Dakota Access shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected. Dakota Access shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation

or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative.

l) Dakota Access shall follow the Stormwater Pollution Prevention Plan. On site modifications shall be approved by the environmental inspector, documented by the inspector, and ~~provided to~~ filed with the Commission ~~upon request~~.

m) Dakota Access shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion.

n) Dakota Access shall reseed all impacted vegetated land, excluding commodity or row crops. This is intended to include, but is not limited to a reseeded of all pasture, hay, and native species areas with comparable seed or native species mix to be approved by landowner, in writing. Commodity or row crops shall be seeded with cover crops consistent with the Agricultural Impact Mitigation Plan. Dakota Access shall actively monitor revegetation on all disturbed areas for at least two years.

o) Dakota Access shall coordinate with landowners regarding their desires to protect cattle, shall implement protective measures as are reasonably requested by the landowner, and shall adequately compensate the landowner for any loss.

p) Prior to commencing construction, Dakota Access shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes.

q) Dakota Access shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off road vehicles, with a hand held fire extinguisher, portable compact shovel, and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Dakota Access's fire suppression resources and emergency services.

r) Temporary sediment barriers shall remain in place until the permanent revegetation coverage has reached a minimum of 70 percent cover as compared to similar cover in an adjacent area that is undisturbed by construction. This includes a comparative presence of noxious species such that the presence of noxious species shall not be more dominant on the revegetated area when compared to the adjacent undisturbed lands.

16A. Dakota Access shall implement the following sediment control practices:

a) Dakota Access shall use floating sediment curtains to maintain sediments within the construction right of way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is underwater at a depth greater than the top of a straw bale or silt fence.

b) Dakota Access shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the SWPPP regardless of the presence of flowing or standing water at the time of construction.

c) Dakota Access should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance.

16B. Dakota Access shall comply with the following conditions regarding construction across or near wetlands, water bodies, and riparian areas:

a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Dakota Access's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands, unless a different width is approve or required by the United States Army Corps of Engineers.

b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.

c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis.

d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules, and standards.

e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Dakota Access shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying, and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams.

f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly.

g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits.

h) The use of timber and slash to support equipment crossings of wetlands shall be avoided.

i) Subject to Condition 35, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of way.

17. Dakota Access shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.
18. Dakota Access shall position water trucks on gravel roads, for dust control, where conditions warrant.
19. Dakota Access shall require that its primary contractor ensure that all construction equipment is properly tuned and maintained and that idling be minimized during construction.
20. Dakota Access shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells.
21. If trees are to be removed that have commercial or other value to affected landowners, Dakota Access shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees.
22. Dakota Access shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur and file the plans with the Commission. The plan shall be followed in the event of a frac-out. If a frac-out event occurs, Dakota Access shall notify the Commission and all government agencies including but not limited to SDDENR as required by the plan and state and federal law.
23. Dakota Access shall comply with the following conditions regarding road protection and bonding:
- a) Dakota Access shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of state, county and township roads.
  - b) Dakota Access shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.
  - c) Prior to their use for construction, Dakota Access shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads.
  - d) After construction, Dakota Access shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition.
  - e) Dakota Access shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.



f) Pursuant to SDCL 49-41B-38, Dakota Access shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$24 million, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Dakota Access shall give notice of the existence and amount of these bonds to all counties, townships, and other governmental entities whose property is crossed by the Project.

g) All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway.

h) Dakota Access shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Dakota Access to reclaim those access roads.

24. In those areas where the Project passes within 500 feet of a residence or farmstead building:

- a) To the extent feasible, Dakota Access shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.
- b) Dakota Access shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Dakota Access and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible.
- c) Dakota Access shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
- d) Dakota Access shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- e) Dakota Access shall repair any damage to property that results from construction activities.
- f) Dakota Access shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.

g) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures, and repair of fencing and other structures shall be completed in residential areas within 14 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Dakota Access's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.

h) When reasonably requested by a landowner, Dakota Access shall evaluate the use of a chemical dust suppressant. If Dakota Access determines the use of a chemical dust suppressant is not feasible, the company shall notify the landowner of its decision and reason.

25. 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. At least two months prior to the start of construction in South Dakota, Dakota Access shall file with the Commission and provide to the landowners an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate.

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

27. If construction, reclamation, and final stabilization will not be completed prior to winter weather, Dakota Access shall put in place a winter stabilization plan to stabilize conditions for reclamation the following spring. The plan shall be ~~provided to~~ filed with the Commission and provided to landowners upon completion of the plan upon request.

28. Numerous Conditions of this Order, ~~including but not limited to~~ \_\_\_\_\_ relate to construction and its effects upon affected landowners and their property. Dakota Access may encounter physical conditions along the route during construction which make compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, Dakota Access and landowner agree in writing to modifications of one or more requirements specified in these conditions, Dakota Access may follow the alternative procedures and specifications agreed to between it and the landowner.

29. Dakota Access shall contract with an independent third-party, approved by the Commission, to monitor compliance with this permit. More specifically, prior to construction, Dakota Access shall file with the Commission its ~~selection of a monitor~~ proposed third-party monitor's credentials, which shall include the individual's name, qualifications, and a description of how Dakota Access proposes for the selected individual to monitor for compliance. After the third-party monitor has been approved by the Commission, the third-party monitor may not be removed by Dakota Access without approval of the Commission. If the Commission determines that the third-party monitor has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Dakota Access and the third-party monitor, take action to remove the third-party monitor. At least 30 days prior to construction, Dakota Access shall file with the Commission a plan that will

be developed jointly with the selected third-party monitor. The plan will outline the specific terms and conditions of the third-party monitoring program that will include a minimum of the following considerations:

a) The third-party monitor will be paid for by Dakota Access, but will report directly to the Commission.

b) The third-party monitor will work directly with the Public Liaison Officer, the Dakota Access Environmental Inspectors, and Agricultural Inspectors to ensure compliance with the various conditions of the permit. In the event of a noncompliance, the monitor will have the obligation to timely notify Dakota Access via the Environmental or Agricultural Inspector so as Dakota Access can take the appropriate action to mitigate or correct the noncompliance. Should the third-party monitor report any noncompliance to the Commission or Staff, the report shall simultaneously be shared with Dakota Access.

c) The third-party monitor will have direct access to the company construction manager, project manager, or other company management staff and will have the ability to communicate any noncompliance issues or concerns that are not addressed or mitigated by the Environmental or Agricultural Inspectors.

d) This condition will not include the monitoring of laws or processes that are otherwise under the inspection or jurisdiction of a different agency such as the USACE, USFWS, or PHMSA. The monitor will not inspect report on any technical design standard or requirement pursuant to 49 CFR Parts 194 and 195. However, should Dakota Access be notified in advance of a compliance inspection to be conducted by any regulatory agency, Dakota Access shall notify the third-party monitor of the inspection date, time, and location and afford the third-party monitor the opportunity to participate in the inspection for the purpose of submitting a summary report of the inspection to the Commission.

e) The third-party monitor's contractual obligation to the Commission will begin and will end their monitoring responsibilities with the onset and conclusion of mainline construction activities and will not include post construction restoration activities.

f) The third-party monitor will comply with all Dakota Access safety requirements. This includes the obligation to safely work, travel, and traverse within the limits of the construction work area and will be subject to Dakota Access safety standards and processes at all times, under no exceptions. The third-party monitor must comply with all access points, travel restrictions within the construction work areas, and any special conditions or safety exclusion areas throughout the duration of construction. The third-party monitor must comply with all local, state, and federal laws and regulations.

g) The monitor will not have any stop work authority.

h) The third-party monitor shall prepare a report to the Commission or Staff as determined by the Commission that will include, at a minimum, the work areas that were monitored, any concerns, noncompliances, any remediation or mitigation measures employed to ensure compliance with the various conditions of the permit, any additional steps to correct or remedy a noncompliance, and ~~last, provide~~ a list of any areas of concerns.

#### IV. Pipeline Operations, Detection, and Emergency Response

30. Dakota Access shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Dakota Access's exhibits, in accordance with DOT's PHMSA regulations, and in accordance with the conditions of this permit and the conditions of this Order and the construction permit granted herein.

31. Dakota Access shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.

32. Dakota Access's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline. In its surveillance and maintenance activities, Dakota Access shall, and shall cause its contractor to, equip each of its vehicles, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel, and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services.

33. In accordance with 49 C.F.R. 195, Dakota Access shall continue to evaluate and perform assessment activities regarding high consequence areas. Prior to Dakota Access commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan. In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Dakota Access shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.

34. Prior to putting the Dakota Access Pipeline into operation, Dakota Access shall prepare, file with PHMSA, and implement a facility emergency response plan as required under 49 CFR 194. Dakota Access shall also prepare and implement a set of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Dakota Access shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452.

At such time as Dakota Access files its Facility Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Dakota Access with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01:41 through 20:10:01:43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.

35. To facilitate periodic aerial patrol pipeline leak surveys during operation of the facilities: in wetland and riparian areas, a minimum corridor of 30 feet centered on the pipeline centerline (15 feet on either side), shall be maintained in an herbaceous state. Trees within the corridor greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.

## V. Environmental

36. Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Dakota Access's pump station and other noise-producing facilities will not exceed the LDN=55dbA standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Dakota Access. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Dakota Access shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.

37. At the request of any landowner or public water supply system that offers to provide the necessary access to Dakota Access over his/her property or easement(s) to perform the necessary work, Dakota Access shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX. Dakota Access shall not be required to replace that portion of any piping that passes through or under a basement wall or other wall of a home or other structure. At least 45 days prior to commencing construction, Dakota Access shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.

38. DAPL shall comply with all applicable state and federal laws pertaining to the protection of sensitive species, including the Endangered Species Act, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act, as well as the Programmatic Biological Opinion for the Issuance of Selected Nationwide Permits Impacting the Topeka Shiner in South Dakota. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service will determine the scope of DAPL's compliance with such laws and the Biological Opinion. Any correspondence received from U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service shall also be filed with the Commission.

39. Dakota Access shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available, or where not available by accurately documenting the pipeline station numbers of each exposed drain tile. Dakota Access shall maintain the drain tile location information and tile specifications and incorporate it into its Facility Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release. If drain tile relocation is necessary, Dakota Access shall work directly with the landowner to determine proper location. The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors and or persons shall be employed to repair drain tiles.

40. Waterbody crossing methods shall be determined prior to construction of each particular water body crossing, as a best management practice. The purpose of this requirement is to allow the construction contractor to plan ahead for the right equipment at the right locations and times, and provide Dakota Access's environmental inspectors sufficient time and ability to advise the contractor regarding potential changes to the planned crossing method based on field conditions.

## **VI. Cultural Resources**

41. Dakota Access shall follow the "Unanticipated Discoveries Plan," as reviewed and approved by the State Historical Preservation Office ("SHPO"). If during construction, Dakota Access or its agents discover what may be an archaeological resource, cultural resource, historical resource, or gravesite, Dakota Access or its contractors or agents shall immediately cease work at that portion of the site and follow the "Unanticipated Discoveries Plan." Dakota Access will notify the landowner of any unanticipated discovery. If the unanticipated discovery is of such a nature that a materially different route than that approved by the Commission is required, Dakota Access shall obtain Commission approval for the new route before proceeding with any further construction. Dakota Access shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Dakota Access's construction or maintenance activities.

42. Dakota Access shall provide and/or work with the lead Federal agency to provide data, avoidance plans, or mitigation plans to the SHPO that are agreed to for areas that are subject to jurisdiction under the National Historic Preservation Act. In the event archaeological resources are identified outside of Federal jurisdictional areas where the National Historic Preservation Act applies, Dakota Access shall provide SHPO any data, avoidance, or mitigation plans that are agreed upon or approved for release from the landowners for archaeological resources that have the potential to be or that have been listed as eligible for listing on the National Register of Historic Places.

43. Dakota Access shall have access to a certified archeologist in order to facilitate the training, identification, handling, and impact mitigation of archeological resources, cultural resources, historical resources, or gravesites encountered during construction of the pipeline.

## **VII. Enforcement and Liability for Damage**

44. Dakota Access shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation, or drainage systems. Dakota Access shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses, loss of organic certification, or loss of value to a paleontological resource damaged by construction or other activities.

45. In the event that a person's well is contaminated as a result of construction or pipeline operation, Dakota Access shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination.

46. Any damage that occurs as a result of soil disturbance on a person's property resulting from the construction or operations of Dakota Access shall be paid for by Dakota Access.

47. Dakota Access shall compensate the landowner for crop loss beyond the scheduled three years, if it is ~~proven~~ shown that Dakota Access caused the extended crop loss.

48. No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline.

49. Dakota Access shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim, or action resulting from Dakota Access's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim, or action results from the gross negligence or willful misconduct of the landowner or its agents.

50. The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Dakota Access's failure to abide by the conditions of this permit, or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.

#### STIPULATED CONDITIONS WITH SIOUX FALLS

1. The portion of the Dakota Access pipeline to be installed parallel to the west side of the Landfill, as presently proposed, would be subject to the standard conditions imposed by the Commission (including the conditions set forth in the Mahmoud Rebuttal testimony), except as specifically noted herein, and is also subject to the following conditions.

2. Dakota Access pipeline installation must be undertaken safely at appropriate depths and locations relative to the existing and future Landfill features and fixtures, so neither the installation nor the maintenance permanently damages Landfill property or temporarily damages Landfill property beyond that authorized by the City in easement(s).

3. Dakota Access may not install or maintain its pipeline in such a way as to obstruct or impede Landfill workers or customers from entering and using the Landfill for disposal of solid waste, unless specifically authorized by the City.

4. Dakota Access is responsible for locating and avoiding or protecting the Landfill monitoring well and gas pipeline during construction, including contacting One-Call.

5. Before commencing any construction on the Landfill property, Dakota Access must place barricades so as to protect against damage or intrusion into the immediate area of the Sioux Falls groundwater monitoring well located near the northwest corner of the Landfill. Dakota Access must maintain the barricades throughout construction. If the Landfill monitoring well is damaged by Dakota Access at any time, Dakota Access must pay for any repair or replacement and must cooperate with Sioux Falls and regulatory authorities regarding any additional sampling and testing of groundwater that may be required in the interim.

6. If petroleum is identified in the Landfill monitoring well in the northwest corner of the Landfill property at any time following installation and the initial use of the pipeline, then Dakota Access must cooperate with Sioux Falls and regulatory authorities regarding additional testing. If the City undertakes further testing to determine the source of the petroleum or oil and the tests show the petroleum or oil is attributable to the Dakota Access pipeline, Dakota Access pipeline will reimburse the City for the testing that the City has undertaken in that regard. If the DENR requires additional groundwater monitoring wells to detect and monitor the extent of Dakota Access's contribution to petroleum at this site, Dakota Access will pay the costs of installing such additional monitoring wells. Further, if petroleum from the Dakota Access pipeline infiltrates the Landfill monitoring well such that the landfill monitoring well malfunctions or can no longer be ~~used to~~ reliably used as part of the Landfill leachate detection system, Dakota Access will pay for repair or replacement of the groundwater monitoring well as recommended by the DENR. The City is not obligated to undertake any testing or other regulatory requirements that are properly the responsibility of Dakota Access.

7. Dakota Access and its Contractor(s) must follow all applicable safety regulations during installation and operation of the pipeline.

8. If Dakota Access disturbs any soil or vegetation on the Landfill property, it is responsible for all costs in restoring such areas to pre-disturbance level.

9. Dakota Access shall not, except as otherwise agreed upon by the parties (e.g. item 10 below) park, store, drive on, or use trucks or other construction equipment in any way on the surface above the Landfill gas pipeline and shall not disturb any valves or other appurtenances for the Landfill gas pipeline, expressly authorized by Sioux Falls.

10. Dakota Access may place spoils on the surface of the ground above the Landfill gas pipeline during construction, but must remove the spoils upon installation and completion of the pipeline. Such storage and use of the surface includes driving across and on the surface above the Landfill gas pipeline, but such use is (a) limited to pickups, skid steers, and similar light equipment as the Landfill gas pipeline lies along the west side of the landfill, and (b) as agreed by the Landfill Manager for the area where the Dakota Access pipeline will cross under the City's Landfill gas pipeline. Dakota Access shall take all necessary precautions when working on top of or crossing the Landfill gas pipeline.

11. Although 49 CFR Part 195 requires oil pipelines to be installed at least 30 inches below the surface in areas absent solid rock, Dakota Access has agreed to install its pipeline with the top at least four feet below the surface or as agreed upon in the easement conditions.

12. Dakota Access will cross the City's Landfill gas pipeline on the south side of 268th street near the Landfill. The Dakota Access pipeline must be installed under the Landfill gas pipeline at the proposed intersection with at least two feet of clearance between the Landfill gas pipeline and the Dakota Access pipeline. At this location, Dakota Access is allowed to cross the pipeline with its equipment and will employ necessary protection techniques to avoid impacts to the Landfill gas pipeline, as agreed upon by the Landfill manager.



13. Dakota Access must install its pipeline at sufficient depth (to be determined and agreed upon before construction) from the surface at three agreed upon locations to allow for haul roads/utility corridors to be designed and designated by the City, with the precise locations to be designated by the City prior to the beginning of Dakota Access construction.

14. Dakota Access must pay all costs associated with installing or maintaining the pipeline so as to maintain the clearances between the Dakota Access pipeline and other structures owned or operated by the Landfill or City of Sioux Falls, as required by this Permit.

15. The Dakota Access pipeline must maintain the above stated clearances from the gas pipeline and haul road/utility corridor during the life of this permit, regardless of any alteration, repair, and replacement of the Dakota Access pipeline, or sections thereof, except as expressly authorized by the Commission.

16. Any fences removed by Dakota Access on the Landfill property must be replaced or relocated at Dakota Access's cost.

17. Dakota Access is responsible for the operation, repair, maintenance, replacement, or removal of its oil pipeline and associated appurtenances at no cost to the City of Sioux Falls.

18. The Conditions set forth herein are binding on all officers, agents, employees, assigns, lessees, and successors in interest of Dakota Access.