

Nelson Amendments in Green

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 written explanation of the option for complete topsoil segregation, 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 reseeding 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~~ Cropland 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.

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.~~

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 monitoring obligations to the Commission will require them to begin and will end their monitoring responsibilities with the onset ~~and conclusion~~ of mainline construction activities and will ~~not include post construction restoration activities~~ end at the conclusion of initial reclamation activities.

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 and slope. 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. Dakota Access shall be responsible for repairing or replacing all damaged and disturbed drain tile in a manner that maintains the full integrity, function, and original slope of the drain tile. Dakota Access shall be responsible for making additional repairs or replacement should any drain tile cease to function properly because of the pipeline construction or operation.

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

New Paragraph: Dakota Access shall notify landowners in writing of their right to have their land parcel maintained for organic farming. If a landowner has established a land parcel as organic, the landowner must notify Dakota Access in writing of such fact prior to the beginning of construction on that parcel. Upon such notification Dakota Access will be required to maintain the parcel as organic throughout construction, reclamation, and operation.