

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

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**IN THE MATTER OF THE PETITION  
OF TRANSCANADA KEYSTONE  
PIPELINE, LP FOR ORDER  
ACCEPTING CERTIFICATION OF  
PERMIT ISSUED IN DOCKET HP09-  
001 TO CONSTRUCT THE KEYSTONE  
XL PIPELINE**

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**STAFF'S RESPONSE TO  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
FROM CINDY MYERS, R.N.**

**HP14-001**

COMES NOW, Commission Staff by and through its attorney of record, Kristen N. Edwards, and hereby provides the following response to Cindy Myers, R.N.'s Interrogatories and Requests for Production of Documents.

Dated this 10<sup>th</sup> day of March, 2015.

  
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Kristen N. Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

**1-1) As a health professional, I'm concerned about the health community being educated and prepared to treat people adversely affected from tar sands spills. I've requested a copy of TransCanada's Emergency Response Plan to identify specific components of medical emergency response planning. This information was not divulged. How may I obtain a copy of the emergency health plan? If this hasn't been completed for KXL, would it be possible to obtain a copy of the ERP for Keystone I?**

**Who is responsible for emergency medical response planning in the situation of spillage from TransCanada's KXL project?**

**Response:** OBJECTION. Staff objects to this question on the grounds that it attempts to shift the burden from the company to staff, as well as on the grounds that it attempts to shift the regulatory burden from the federal government to commission staff for the purpose of inspecting Emergency Response Plans of an interstate pipeline.

Subject to and without waiving its objection, staff provides the following answer. It is staff's understanding that the Emergency Response Plan is not completed until close to the time a pipeline is ready to begin operations. All information submitted to the PUC regarding Keystone I's ERP is available in 7.0 of the company's Quarterly Report. For the last Quarterly Report filed by TransCanada for Keystone I, view the report at <http://www.puc.sd.gov/commission/dockets/HydrocarbonPipeline/2007/HP07-001/4thquarterly2010.pdf>.

Additionally, the final version of the Keystone Pipeline Emergency Response Plan will be amended to include Keystone XL. A redacted version of the ERP is available in Appendix I of the Final Supplemental Environmental Impact Study, which is publicly available. The company may choose to redact information for public viewing due to the sensitive nature of the information contained in the ERP.

**1-2) Re. Amended Permit Condition #40: According to TransCanada, the SD PUC made the decision to designate the concern of BTEX being hazardous if polyethylene and PVC water pipe is being used near this compound of chemicals. Is this correct? How was it decided that residents could request for their water piping to be changed if they lived within 500 feet of the project? How come this idea was not mandatory, and instead only at the request of the landowner?**

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**Response:** OBJECTION. This question calls for a legal opinion from the commission, which Staff is unable to provide. Staff is unable to answer for the commission, as Staff is separate from the commissioners, who are the decision-makers in the process.

**1-3) I understand that that TransCanada must obtain permits from the US Army Corps of Engineers before crossing water bodies with their project. Does the US Army Corps of Engineers document studies of benzene migration in water before granting these permits? Does the Army Corps of Engineers rely on the FSEIS for this information? Who will be enforcing the Clean Water Act regulations re. this project?**

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**Response:** OBJECTION. This question attempts to shift the regulatory burden from the US Army Corps of Engineers to PUC staff. Furthermore, this information is more appropriately sought from the company or from the US Army Corps of Engineers. Subject to and without waiving its objection, staff provides the following answer.

It is staff's understanding that TransCanada has not submitted any permit applications to the US Army Corps of Engineers. As such, staff does not have any information as to what information would be analyzed should the company apply for a permit.

Enforcement of the Clean Water Act does not fall under the PUC's purview, and therefore, will not be responsible for enforcing the Clean Water Act. It is Staff's understanding that enforcement of the Clean Water Act would be done by the SD DENR and the EPA.

**1-4) How did the PUC determine "the facility will not substantially impair the health, safety or welfare of the inhabitants."?**

**Response:** The Commission made that determination after carefully reviewing all of the evidence in HP09-001. See Amended Final Decision and Order and transcript of formal hearing available online in Docket No. HP09-001. However, in HP09-001, as in this and any proceeding before the Commission, staff is a party to the docket and does not take part in Commission decisions. Therefore, staff has no more information than any other party or member of the public.

**1-5) Has the PUC considered that toxins from KXL spillage could migrate via flowing water into public water intakes along the Missouri River? Where can I discover information as to locations of public water intakes along the Missouri River?**

**Response:** Staff would rely on DENR's expert testimony on this matter. Staff has not received this information from DENR as of the due date of these responses. However, Staff will supplement this answer if and when this information is received from Staff's DENR witness.

**1-6) Who is responsible for testing water for those expected/undetected leaks? Particularly in Tripp County where the pipeline will be immersed in groundwater?**

**Response:** Staff would rely on DENR's expert testimony on this matter. Staff has not received this information from DENR as of the due date of these responses. However, Staff will supplement this answer if and when this information is received from Staff's DENR witness.

**1-7) If high consequence areas are kept confidential by TransCanada, how can residents be assured of their safety? I feel residents are entitled to know this information.**

**Response:** Similar to the ERP, the Integrity Management Plan could also contain sensitive information that the company may choose to keep confidential. The HCAs per se are not confidential, but TransCanada could be choosing to keep confidential the locations of the sections of pipe that have the ability to impact an HCA due to the sensitive nature of the information. Per code, an HCA is defined as:

- (1) A commercially navigable waterway, which means a waterway where a substantial likelihood of commercial navigation exists;
- (2) A high population area, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;
- (3) An other populated area, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;
- (4) An unusually sensitive area, as defined in §195.6.

This information is readily available on census bureau websites and other sources.

**1-8) What actions has the PUC taken to assure the South Dakota Health Care Community has been educated and trained to treat patients adversely affected from KXL spillage? Has there been communication with IHS and other health centers in SD?**

**Response:** OBJECTION. This question attempts to shift the regulatory burden from DENR and the federal government, specifically the EPA or PHMSA, to Staff. This information is covered by the Emergency Response Plan, which is under the jurisdiction of the aforementioned agencies.

**1-9) What education and training has been completed for SD public water treatment utilities to prepare them for tar sands spillage into SD waterways?**

**Response:** OBJECTION. This question attempts to shift the burden from the company to Staff. It is the burden of the company to produce this information. Subject to and without waiving its objection, should Staff acquire any information from our experts to answer this question, we may supplement this answer at that time.

**1-10) Please explain the reroute in Tripp County. How did the reroute improve safety?**

**Response:** OBJECTION. This question attempts to shift the burden from the company to staff. Subject to and without waiving its objection, staff provides the following answer.

It is staff's understanding that the each route revision in Tripp County was made for the follow reason or reasons:

1. To minimize landowner impacts and reduce crossing of varying terrain features;
2. To minimize constructability and safety concerns with current Interstate 90, Hwy 16, and State Railroad crossings;
3. Per landowner requests to avoid a row of trees and minimize landowner impacts;
4. To minimize multiple creek crossings;
5. To avoid a well and impacts to a fence;
6. To avoid road crossing within a wetland area;
7. To minimize side slope construction;
8. To avoid a well and construction footprint impacts to a fence surrounding a historical site;
9. To avoid a drainage crossing and accommodate a road crossing;
10. To avoid side slop construction and sudden terrain changes;
11. To accommodate pump station design;
12. To accommodate pump station design;
13. To avoid any well impacts;
14. To avoid any well impacts; and
15. To avoid swampy low lying area near a pond.

**1-11) What information have you shared with water treatment plants which access the Missouri River about oil spills into the Missouri River or tributaries of the Missouri River?**

**Response:** OBJECTION. This question is outside of the scope of discovery as established by the commission's order, dated, December 17, 2014. Furthermore, water system operators had the opportunity to intervene in this proceeding, as well as HP09-001 if they had concern that their potable water intakes could be adversely impacted by the pipeline. Subject to and without waiving its objection, Staff will provide more information from its DENR witness when such information is received.

**1-12) What information about tar sands spills into waterways has TransCanada provided the Department of Environment and Natural Resources?**

**Response:** OBJECTION. This question is outside of the scope of discovery as established by the commission's order, dated, December 17, 2014. This question does not draw from a condition change, as required by the commission Order. Subject to and without waiving its objection, Staff will provide more information from its DENR witness when such information is received.

**1-13) What plan do you have in place to respond to tar sands oil spills into the Missouri River or tributaries of the Missouri River?**

**Response:** OBJECTION. This question attempts to shift the regulatory burden from DENR, PHMSA, and the EPA to Staff. The PUC does not have jurisdiction over interstate pipelines and would, therefore, not be involved with spill cleanup. Subject to and without waiving its objection, Staff will provide more information from its DENR witness when such information is received.

**1-14) What education and training has been provided to water treatment facilities accessing Missouri River water regarding how to adequately respond to tar sands oil spills into the Missouri River or tributaries of the Missouri River?**

**Response:** OBJECTION. This question attempts to shift the burden from the company to Staff. It is the burden of the company to produce this information. Subject to and without waiving its objection, Staff has asked this question of its DENR witness and will supplement its response if and when that information is received.

**1-15) How do you plan to clean up a tar sands spill into the High Plains Aquifer in Tripp County?**

**Response:** The PUC is not involved in cleanup. This would be the responsibility of the company, with the oversight of DENR and the EPA. The company must have a plan, subject to the approval or agreement of DENR and the EPA.

**1-16) Describe the experience the State of South Dakota has had using “sparging” to clean up an aquifer. Has “sparging” ever been used to clean tar sands oil product from an aquifer?**

**Response:** This is outside the technical expertise of Staff. Staff does not have knowledge of sparging. Should we acquire such information from one of our experts, Staff may supplement this answer at that time.