

Scope and Responsibilities of Third-Party Monitoring Program

Dakota Access Pipeline Project

South Dakota Public Utilities Commission Order HP14-002

Agency Authority, Goals, and Objectives

The goal of this Third-Party Monitoring Program is to ensure compliance with the various conditions of the South Dakota Public Utilities Commission (Commission) Order HP14-002. Specifically, as required by Condition 31, at least 30 days prior to construction, Dakota Access will file with the Commission a plan developed jointly with the Third-Party Monitor (Monitor) which outlines the specific terms and conditions of the monitoring program. This document is intended to satisfy that requirement.

During the course of the Commission's review process, Dakota Access committed to complying with all applicable environmental regulations, permit requirements, various mitigation measures, and following their submitted plans and construction specifications to protect the public and environment during construction and operation of the authorized facilities. The Commission issued a Permit and Conditions which guide the construction of the pipeline in this state. The Monitor will act as the Commission's eyes and ears in the field to ensure compliance with these requirements and will report back to Commission staff on a regular basis by directing communications to the Commission Executive Director. The Monitor will work under the direct supervision and control of the Commission Executive Director. The Monitor's roles and responsibilities are to monitor compliance with the Permit and Conditions found in HP14-002, observe work activities, bring non-compliance with applicable law to the attention of the appropriate party, and offer recommendations on how to prevent or correct non-compliance. The Monitor will work with the Company Environmental Inspectors ("EIs") who have the primary responsibility to work with the construction contractor and with the Company to provide guidance and support to the Company to remain compliant with the various rules, regulations and permit conditions. During construction, the EIs will provide the below listed critical functions. The list is not all inclusive but are the critical areas of support to the project team throughout construction:

- Re-delineate and identify sensitive resources such as wetlands, streams, threatened and endangered species and other sensitive environmental features that require either special construction techniques, avoidance and/or adherence to time restrictions to mitigate adverse impacts.
- Identify areas where environmental controls and devices are necessary to insure compliance and to avoid, minimize or mitigate damage to the environment.
- Work with all construction related staff and teams to mitigate impacts associated with adverse weather conditions and identify and implement mitigation measures to protect the construction work area during severe weather events to minimize direct and indirect impacts to the environment and neighboring areas.
- Provide construction related guidance and recommendations to the Company and contractor for constructing within sensitive environmental conditions.

- Interface with and support the Agricultural Inspectors to minimize impacts to agricultural areas and to ensure compliance with the agricultural mitigation plan.
- Provide oversight and support to insure proper restoration of sensitive environmental areas as well as agricultural areas. Provide guidance and reference to the contractors to the various environmental plans that detail and specific proper restoration activities and insure compliance with those plans.
- Provide general housekeeping oversight and guidance to the contractors as well as report any problems back to the construction management team to implement remedial actions.
- Provide guidance and support and track the compliance with the various rules, regulations and permit conditions to maintain compliance.
- Interpret, implement and insure compliance with all the various environmental construction and mitigation plans such as the storm water management plan, agricultural mitigation plan, horizontal directional drilling plans, inadvertent spill and release plan, inclement weather plan and potentially any winter stabilization and construction plans that would be implemented if necessary.
- Provide daily and weekly reports to the construction management team documenting the compliance and adherence to the rules, regulations and permit conditions as well as to document any remedial or mitigation actions taken to minimize, avoid or mitigate any non-compliance issues or to further reduce impacts to the environment.

In addition to the above, the EIs will work the contractor and will make judgment decisions and calls in the field during construction to remediate work activities to minimize, avoid and mitigate negative impacts to the environment in compliance with the rules, regulations and permit conditions. This includes following the guidelines and permit conditions that the Company has committed to as part of the permitting process as well as any additional insight or guidance that is appropriate as identified during the construction period. The EIs will make recommendations in the field to the contractor as appropriate as well as to the construction management team and will have certain stop work authority to ensure irreparable harm to the environment does not occur. Furthermore, the EIs have a direct escalation pathway to Company management (in the field as well as Company corporate office) in the event remedial actions are not taken to insure compliance at all times.

The Monitor will work independently while conducting his/her duties in the field as delineated below. Further, the Monitor will advise but not direct the work of DAKOTA ACCESS's construction contractors or other personnel involved in Project construction. Pursuant to the Permit and Condition 31g, the Monitor will not have stop work authority.

The Monitor is responsible for monitoring all construction and restoration activities for the purpose of verifying compliance or non-compliance with the Project's environmental permitting and mitigation measures, and to fulfill daily reporting responsibilities. The Monitor is familiar with pipeline construction and reclamation, and with the affected natural and cultural resources in the Project area. His responsibilities include the following:

- Participating in the environmental compliance training;

- Monitoring construction activities for compliance (or non-compliance) with the Permit and Conditions;
- Maintaining open and frequent communication and coordination with Dakota Access's Environmental Inspectors;
- Maintaining open and frequent communication and coordination with the Third-Party Monitor and the Commission Staff;
- Preparing Daily and Weekly Compliance Monitoring Reports, including documentation of compliance (or non-compliance) with construction activities;

The Monitor shall focus on the following priority areas which include, but are not limited to:

1. Ensuring construction compliance with the Permit and Conditions
2. Reviewing crossings of ecologically and/or biologically sensitive areas as identified by the various construction drawings, permit conditions and plans or as identified by the EIs
3. Working to ensure construction compliance with and tracking of:
 - Agricultural Impact Mitigation Plan
 - Storm Water Pollution Prevention Plan
 - Spill Prevention, Containment, and Countermeasures
 - Adverse Weather Plan
 - Inadvertent Release Plan
 - With special consideration for critical components such as:
 - a. Top soil segregation
 - b. Noxious weed control
 - c. Permanent and temporary erosion control devices
 - d. Temporary and permanent drain tile repairs
 - e. Returning disturbed areas to pre-construction contours
 - f. Soil decompaction and restoration
 - g. Trench and hydrostatic test dewatering
 - h. Neck-down of right-of-way and set-back of workspaces relative to wetland and water body crossings
 - i. Appropriate dust control
 - j. Placement of spoil piles relative to sensitive resources
 - k. Horizontal directional drill monitoring and compliance observations in the event of a frac out
 - l. Monitoring for maintenance and housekeeping along right-of-way
 - m. Coordination and monitoring of any adverse weather land protection plans
 - n. Monitoring of right-of-way restoration, reseeding, and revegetation
4. Construction in or near populated areas.

The Monitor is expected to be in the field during construction activities. Administrative tasks should be conducted outside of construction activities as appropriate and as feasible. The Monitor will need to report to the Project site with all of the necessary equipment, including vehicles, in working order. If for some reason the Monitor must leave the Project for more than one day, Commission staff must be notified by the Monitor.

Environmental Compliance Training

The Monitor will be required to participate in the compliance training prior to beginning work.

Communication

The Monitor's actions as outlined here will provide an effective means of communication between the Commission, Dakota Access, the Public Liaison Officer and various public and private stakeholders affected by the Project. The Monitor will communicate compliance issues to Commission Staff and Dakota Access, and will work with Dakota Access to ensure compliance with the various commitments and requirements. The Monitor will work to communicate project requirements as found in the permit and conditions and to further identify alternate solutions, if necessary to resolve concerns along the construction right-of-way. In the event of a landowner complaint, the Monitor will investigate and attempt to resolve the complaint in coordination with various permit conditions and environmental construction plans. Depending upon the issue and resolution, the Monitor and Public Liaison Officer will communicate back to the landowner or other interested parties the resolution to the issue. However, the majority of the direct communication to landowners will be executed by the Public Liaison Officer but the Monitor will support as necessary.

The Monitor will be in frequent communication with the Commission Staff, the Public Liaison Officer, and environmental and agricultural inspection, and construction teams. They will work together to ensure timely and effective Project compliance, which will in turn, help to expedite Project construction. In the event of differences of opinion or disagreements about compliance issues, the Monitor will consult with the appropriate Commission Staff as directed by the Commission Executive Director and Staff will involve other agencies as necessary.

In the event of receipt of a compliance concern, the Monitor will investigate and report. If necessary, the Monitor will then work with Dakota Access to develop corrective or mitigative measures and report the effectiveness of those measures to the Commission Staff.

Reporting

As previously noted, the Monitor will generate and communicate reports directly to the Commission Staff. Normal communications will be in both written and oral format to provide a

seamless line of communication. Copies of all written reports shall be provided to Dakota Access representatives.

Third Party Monitor Reports

The Monitor provides compliance reports and documentation of the Project as a representative of the Commission Staff. His responsibilities also include preparing daily project reports that are available to Commission Staff, and authorized representatives of Dakota Access. Commission staff will provide access information to other federal, state, and local agency representatives as appropriate. Weekly summaries will be made available publicly as outlined here.

Daily Compliance Monitoring Reports

Each work day, the Monitor will each complete an electronic Daily Compliance Monitoring Report documenting the Project-related activities he inspected that day. All Daily Compliance Monitoring Reports, consisting of all compliance levels and photographic documentation, will be available each day and will provide Commission Staff and company representatives with a record of construction progress, photographic documentation, and documentation of compliance with the project environmental requirements. The Monitor will document the:

- Milepost and Station number;
- The presence of threatened or endangered species and habitat, if any;
- The presences of perennial, intermittent, and ephemeral surface water bodies including playas, playa lakes, springs and wetlands, if any;
- The presence of culturally sensitive sites, if any;
- The presence of paleontological findings, if any;
- A description of any landowner concerns, if any; and
- A brief description of the activities observed.

When appropriate, relevant digital photographs (documenting time, Universal Transverse Mercator coordinates and date) will be taken and included in the daily report. A sample Daily Compliance Monitoring Report is attached.

Each separate activity monitored and documented in a Daily Compliance Monitoring Report will be assigned a compliance level as described below.

- Communication
- Acceptable
- Problem Area
- Non-Compliance or

- Violation

When necessary, individual reports will be prepared to document the compliance level reporting as part of the project documentation. However, for Problem Areas or more, reports individual reports will be generated as detailed below.

Problem Area – The Monitor would prepare a Problem Area Report to record an observation that a location or activity does not meet the definition of acceptable but is not a non-compliance. The Problem Area category would be used to report on a range of events and observations, including:

- An incident that is accidental or unforeseeable but is not out of compliance with the Project specifications and the company’s response is appropriate and timely. An example would be a fuel leak where Project personnel respond properly by stopping, containing, and cleaning up the spill in accordance with the Project specifications.
- A location where the Project is not out of compliance with the specifications but, in the judgment of the Monitor, damage to resources could occur if corrective actions are not taken. Some examples include:
 - A silt fence with substantial buildup of soil that is not removed in a timely manner
 - A slope with insufficient waterbars that exhibits signs of erosion
 - A subsoil pile on the verge of covering a topsoil pile that I exhibiting signs of erosion, and
 - An improperly constructed/located dewatering structure
- An activity that the Monitor determines is an unintentional, isolated, departure from the Project specifications, with no damages to resources. An example would be a small amount of soil or slash off the ROW that has no effect on sensitive waterbodies such as wetlands, or waterbodies.

If a Problem Area is resolved in a timely manner, it will not be considered in non-compliance. If a Problem Area is found to be a repeat situation or multiple occurrences of a similar nature, is not corrected within the established timeframe, or results in resource damage because timely corrective action failed to occur, the Monitor may subsequently document the problem area as a non-compliance. The Monitor will inform the environmental inspection/construction staff about the problem before issuing the Problem Area report. Problem Areas would be documented by the Monitor and reported to the EI. The EI and Monitor shall discuss and agree upon a reasonable timeframe for resolution. The Monitor will maintain a list of identified Problem Areas, the corrective action timeframe, and the corrective actions taken in coordination with the EIs.

Non-Compliance – A non-compliance report would be issued when the Monitor observes an activity that violates (is not in compliance with) the Project permits, results in damage to resources that are not permitted by the rules, regulations or project –specific permits, or places sensitive resources at unnecessary risk. Some examples of Non-Compliance include:

- Failure to install maintain required erosion control devices,
- Ground disturbing activities conducted outside the approved ROW limits, or
- Use of unapproved access roads

The Monitor would notify an EI about a Non-Compliance before issuing a non-compliance report that would include the name of the environmental impact and time of notification. In a follow-up report, the Monitor would document the resolution/corrective action of the Non-Compliance. The EI will take immediate action to inform the appropriate contractor personnel, and to identify the required corrective action and appropriate priority and timeframe for completing the corrective action.

Resolution of Non-Compliance activities will involve close coordination between the EIs and contractor construction supervisory personnel to ensure that the corrective measures are properly understood and implemented. The Monitor will follow-up to confirm that corrective actions have been completed, and will document Non-Compliance activities and their resolution in the Daily Environmental Inspection Reports and Weekly Environmental Inspection Reports that will be compiled and submitted to Commission Staff as the weekly status report.

Violation- A Violation Report would be issued by the Monitor immediately upon observing an activity that is not in compliance with the Project permits and causes substantial harm to resources or poses a serious threat to sensitive resources not permitted by the laws, regulations or project specific permits. Some examples of Serious Violations include:

- Deliberately conducting an activity that results in disturbance within an exclusion zone for a sensitive resource
- Repeated or cumulative non-compliance activities that could lead to substantial impact on resources, and
- Failure to correct previously-identified non-compliance activities in an established timeframe

A Violation report requires that the Third-Party Monitor and the Commission staff participate in a conference call with the company's Environmental Project Manager and if warranted the Company Project Manager to discuss the violation and the proper corrective actions. If a Violation occurs, the designated agency representatives would participate in the conference call. Once the company documents the resolution of a Violation, the Monitor would inspect the area and verify that the issues has been adequately resolved.

The Daily Compliance Monitoring Reports and relevant photo documentation completed by the Monitor will be sent electronically at the end of each work day. The e-mail will summarize the compliance levels for the reports issued each day. Commission Staff, and authorized Dakota Access representatives will be included in the distribution of all compliance monitoring reports.

Weekly Compliance Monitoring Reports

The Third-Party Monitor will issue Weekly Compliance Monitoring Reports briefly describing the construction activities that occurred during the reporting period and summarizing by compliance level the number of Daily Compliance Monitoring Reports completed by the Monitor during the reporting period and cumulatively. The Weekly Compliance Monitoring Report will also summarize, in tabular format, the Problem Area and Non-Compliance Reports issued by the Monitor during the reporting period. A sample Weekly Compliance Monitoring Report is provided.

The Weekly Compliance Monitoring Report will be filed in the Docket, and thereby made available publicly.

Post Construction Inspections

The Monitor will conduct post construction inspections. The primary purpose of the post-construction inspection(s) is to:

- Evaluate the status of restoration and re-vegetation of the ROW;
- Monitor the effectiveness of erosion controls; and
- Document ROW areas that may need follow-up work

The Third-Party Monitor will participate in the post-construction inspections along with applicable agency staff as warranted. The Third-Party Monitor will be responsible for preparing a Post-Construction Inspection Report for each post-construction inspection completed, including recommendations for the ongoing restoration, revegetation, and erosion control efforts.

Final Construction Compliance Report

Within 30 days prior to the scheduled close of Project construction, the Third-Party Monitor will coordinate a construction closeout meeting with representatives of Dakota Access, to review and document that all compliance requirements have been met or will be met by the end of construction, identify areas of improvement, and ensure that all compliance issues have been satisfactorily resolved or will be close to resolution by the end of construction.

The Third-Party Monitor will then conduct construction compliance field inspections on each spread within 30 days of completing construction activities to assure that all work was finished in compliance with permitting and mitigation requirements.

Following this field inspection, the Third-Party Monitor will prepare a draft Construction Compliance Report. The draft Construction Compliance Report will be submitted within 30 days of completion of the field inspections. The draft report will be circulated for a 30-day review period.

Oral Reports

The Monitor will provide oral reports of non-compliance to Commission Executive Director and Dakota Access immediately or as soon as practical, especially if there is an imminent and substantial threat to the public or the environment.

Safety

The Monitor will comply with and be subject to Dakota Access's safety standards and requirements at all times. This includes the obligation to comply with all designated and approved access points, travel restrictions, and any special conditions or safety exclusion areas within the Project's construction limits. Additionally, the Monitor will comply with all local, state, and federal laws and regulations.

Term of Third-Party Monitoring Program

The Monitor's contractual monitoring obligations to the Commission will require him to begin his monitoring responsibilities at the onset of mainline construction activities and will terminate upon the completion of the construction restoration activities per SD Permit Condition Number 16.