

MEMORANDUM

Plains Pipeline, L.P. Buford Expansion/McKenzie & Williams Counties Siting Application	Case No. PU-05-185
--	--------------------

To: Commissioners, Illona Jeffcoat-Sacco
From: Bill Binek and Patrick Fahn
Date: January 31, 2006

Subject: Staff report on route inspection

BACKGROUND:

On or about Friday, January 6, 2006, Pat Fahn received a call from Rex Niles, who rents farmland from Clinton Filler in McKenzie County. The farmland is near the river and will be crossed by the route of the Buford Expansion, Case No. PU-05-185. Mr. Niles called to inquire about the depth of topsoil that must be removed before trenching for the pipe. He indicated that very little topsoil was being removed before trenching in the area north of the southernmost irrigation canal in section 20 and up to Hwy 58. He also stated that Plains had been doing some boring and was spreading the excavated clay on top of the field. Pat suggested that Mr. Niles visit with Plains personnel about his concerns and call the Commission again if concerns continue.

Monday morning, January 9, 2006, Pat advised Dan Holli, Environmental Specialist for Plains Pipeline, L.P., of Rex Niles concerns. Late Monday afternoon Pat received a call from Mrs. Filler indicated that Plains was only removing 3-inches of topsoil and had spread excavated clay from boring operations on the field. Just before 5:00 pm central, Pat advised Dan Holli to contact both the tenant and the landowner and report back to the Commission on the situation. Dan Holli indicates in Plains' January 18, 2006 Report of Landowner Complaint Investigation (Report) that he drove to the construction site and observed that topsoil segregation was commencing between Hwy 58 and the Missouri River (see Area 4 on the map). Areas 1 through 3 had already been trenched. Mr. Holli states that the construction crew had been asked to remove topsoil to a depth of at least 12 inches or to a color change.

Tuesday morning, January 10, 2006, Dan Holli reported to Pat that Plains was removing enough topsoil in the area currently being worked. Mr. Holli stated that Plains would take measurements in the areas that already been trenched to determine the depth of topsoil that had been segregated prior to trenching. Mr. Holli mentioned that Plains had placed excavated clay from boring on top of a field and that they would remove it. Later that day Pat and Bill visited with Dan Holli and Ed Shypkoski about topsoil removal. A field visit was arranged with Ed Shypkoski. Pat prepared a memorandum to the Commission summarizing the events.

INSPECTION:

On Thursday, January 12, 2006, Bill and Pat held a field visit with Plains' personnel: Ed Shypkoski (District Manager of Operations), Dan Holli (Environmental Specialist), Ron McCreery (Construction Supervisor), James Wright (Chief Inspector); Contractor personnel: C.D. Calvin (Contractor Superintendent-Joe Max Construction); landowners: Clinton Filler and Tim Langwald; and tenant: Rex Niles.

In Section 30, south of the railroad tracks (south of map Area 1), on the hilltop is a location where Plains placed equipment to bore under the railroad tracks. Mr. Langwald, landowner, indicated that mud removed during the boring process had not been removed and had washed down the hillside. Mr. Shypkoski indicated the contractor would clean the area.

The inspection included the route in T 152N, R 104W, Sections 20, 17, 16 (map Areas 1 through 5). Pipeline construction was proceeding from Section 20 in a northeasterly direction to Section 16 (from map Area 1 to Area 5).

The pipeline route in section 20 crosses several irrigation canals, the southernmost canal divides land owned by Tim Langwald to the south (map Area 1) and Clinton Filler to the north (map Areas 2 and 3). Tim Langwald owns the land between Hwy 58 and the Missouri River (map Area 4). Tim Langwald also rents land along the route in Section 16 on the northeast side of the Missouri River (map Area 5). Mr. Langwald and Mr. Filler indicated that their fields are tilled to at least 18 (up to 24) inches. Evidence of till depth includes the straw that is mixed with the soil and is visible in the walls of the pipe trench.

In Area 1 the pipe trench was open in various locations. Bill and Pat observed that 6 to 8 inches of soil on the top layer of the trench wall was mixed with straw. This indicates that approximately 10 to 12 inches of topsoil was removed before trenching (see Plains' pictures 12 and "Picture of Topsoil Strata on South end of Section 20 near the railroad tracks." It was difficult to determine a definite topsoil/subsoil color change in the trench. Plains' report indicates that topsoil extends to the bottom of the trench. Landowners indicated that topsoil that has not been tilled or worked does not support a crop to the same degree as tilled topsoil.

In Areas 2 and 3, up to the site for boring under Hwy 58, a surveyor's level was used to determine the amount of topsoil removed since the trench had been backfilled but the topsoil had not been returned (see Plains' picture 9). It was determined that 3 inches or less topsoil was removed before trenching operation.

Some or most of Area 4, the land between Hwy 58 and the Missouri River, was trenched on Tuesday, January 10 and the trench was still open. Bill and Pat observed that 12 to 14 inches of soil on the top layer of the open trench wall was

mixed with straw, indicating that approximately 4 to 6 inches of topsoil was removed before trenching. It was still difficult to observe color change in the trench, but the topsoil pile was a different color than the subsoil pile (see Plains' picture 3).

Trenching in Area 5 on the northeast side of the river crossing began on Tuesday or Wednesday. Bill and Pat observed that Plains had removed 19 to 23 inches of topsoil and it was visually obvious that topsoil had been removed to the depth where a definite color change appeared. Plains' pictures of this area are a good indicator of the size of the topsoil windrow vs. size of subsoil windrow when 19 to 23 inches of topsoil is segregated (see Plains' pictures 1 and 2). (Compare to picture 9 as an indication of amount of topsoil segregated in Areas 2 and 3).

The Commission's November 22, 2005 order states: "[d]uring construction, topsoil will be stripped and stockpiled separately of subsoil. Any area on which excavated subsoil will be placed will also be stripped of topsoil. After backfilling is completed, any excess subsoil will be placed over the excavation area, blending the grade into existing topography. Topsoil will then be replaced over areas from which it was stripped."

SUMMARY:

In Areas 1 through 4, for spots where the trench had not been backfilled, we observed that topsoil was not removed to the depth of cultivation. Where the trench had been backfilled in Areas 2 and 3, less than 3 inches of topsoil had been removed.

The order does not specify the depth of topsoil to be stripped, such as 12 inches. Therefore, all topsoil is required to be stripped.

RECOMMENDATION:

It is staff's opinion that in those areas where it is difficult to observe topsoil/subsoil color differences, the topsoil should have been removed to the depth of cultivation. Depth of cultivation can be determined by contacting the landowner and, as is the case in this area, by observing the plant material (e.g. straw) in the cultivated soil.

It is staff's opinion that Plains' is in violation of the Commission's order. We recommend that a staff complaint be filed against Plains for violation of the Commission's order.

c. Lawrence Bender
Ed Shypkoski
Dan Holli