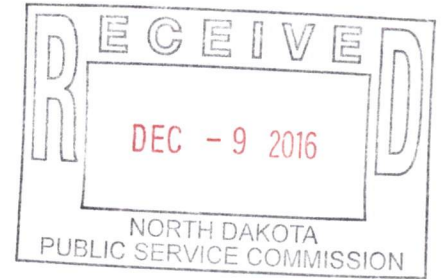




DAKOTA ACCESS, LLC  
An ENERGY TRANSFER Company

November 29, 2016

Julie Prescott  
Public Utilities Division Analyst  
North Dakota Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480



**RE: Dakota Access Pipeline Project, Case No. PU-14-842  
Response to November 15, 2016 Compliance Inquiry**

Dear Ms. Prescott:

Dakota Access (DAPL) is providing the following information in response to the referenced inquiry. DAPL's responses have been organized in the same manner as the inquiry. After review, should the Commission's staff have additional questions or concerns please feel free to contact us at your convenience.

Issue 1: Tree and shrub removal exceeding the 85 feet in width (8/24/16 and 9/29/16 reports).

Response 1: DAPL was following the project plans and workspace drawings that were submitted to and approved by the PSC in its "Order" dated January 20, 2016. Construction under those approved plans began immediately thereafter on the terminal portion of the project and on or around May 16, 2016 for the pipeline portion of the project. In the Commission's Order there was an apparent conflict between the approved project-specific Environmental Construction Plan, the DAPL provided various drawings and plan sheets, and the "generic" or "boiler plate" project conditions/provisions as provided in the North Dakota PSC Certification Relating to Order Provisions - Transmission Facility Siting ("Certification"), Provision 20, and corresponding Tree and Shrub Mitigation Specifications. Specification 8 states that workspace within windbreaks, shelterbelts, and all other wooded areas should be limited to 50-feet "unless otherwise approved by the Commission." As mentioned above and in compliance with Provision 9 of the Certification which states if there is a conflict in the "Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control", DAPL was adhering to the Specifications as well as the Conditions while resolving the conflict by following the chain of approvals and their interrelated references. In this situation, all the project plans and workspace requirements as well as the construction plans such as the Environmental Construction Plan clearly identified areas larger than 50 feet and since all of those plans were approved without comment or modification by the Commission in its Order, those plans became the basis of the construction plan as well as met the approval by the Commission as stated in Specification 8 which states "unless otherwise approved by the Commission." When DAPL received its Order, it was not thought that this was a mere discrepancy as would have been handled under Provision 9, but an approval of the workspace plans under Specification 8 of the Tree and Shrub Mitigation Specifications.

Subsequent to receiving contrary guidance from PSC's 3<sup>rd</sup> party inspection firm, DAPL raised the issue with the PSC and on June 22nd a motion was made and approved by the Commission revising the clearing limitation to 85 feet and to clarify any conflict in the Order. Prior to the motion, several areas along the ROW were cleared to the width as submitted and approved on the project plans and

drawings. All of these areas will be revegetated and subsequent replanting will occur in compliance with the tree and shrub mitigation plan.

Issue 2: Insufficient topsoil stripping and debris left on the right-of-way (9/26/16 report).

Response 2: DAPL has been in contact with the landowner and PSC contracted inspection staff regarding their concerns with the top soil segregation at very limited and specific locations as well as other issues that have occurred throughout construction. Although DAPL is not minimizing the concern, the behavior of the landowner has been to disrupt and create a premise of non-compliance although the individual signed an easement voluntarily with DAPL. In this regard, the landowner has made certain claims and the PSC inspector has also provided an opinion that is not consistent with the project plans and specifications that DAPL believes have led to this issue.

Adequate topsoil stripping, as required, has occurred throughout this area in compliance with the approved plans and Certification Condition 16. There are instances where the depth of the top soil stripping occurred at different depths as the grade and top soil stripping occurred over undulating landscapes, however the depth of the top soil was either to 12-inches or to the depth of cultivation from what the DAPL Agricultural Inspector could observe as well as the contractor observing the soil while grading and stripping the topsoil. This is articulated and identified in the DAPL 9/26/16 inspection report (attached).

Of note with this landowner and while discussing this with the PSC Inspector, in the 9/26/16 report, the PSC Inspector implies that all topsoil was required to be stripped; however, Certification Condition 16 clearly states that stripping of the first 12 inches or depth of cultivation is required over and along trench areas where cuts will be made or in areas where excavated subsoil will be placed. While there is much debate among soil scientists on how to visually define topsoil, the widely accepted practice and in accordance with the DAPL trained and educated soil scientist, in this instance the soils were stripped to the depth of the first color change or in instances where the top soil was greater than 12 inches, the soil was stripped to 12-inches or to the depth of cultivation.

The 9/26/16 report also contains photographs taken by the PSC Inspector. Report Photo #1 represents an area that is in active grading/top-soiling, not where grading is complete (as demonstrated by the 100% vegetation immediately adjacent to the area incompletely stripped). Report Photo #2 shows additional topsoil being stripped; however the first 12 inches was stripped in compliance with Condition 16. Report Photo # 3 demonstrates that topsoil remains; however the first 12 inches was stripped. Report Photo #4 demonstrates that one is likely to see topsoil under spoil since topsoil is greater than 12 inches. The remainder of the photos depict the compliance issues mentioned at the beginning of this response.

Issue 3: Subsoil stockpiled on top of topsoil (10/4/16 report).

Response 3: For this specific instance, the location is at a directional drill under a seed farm and 28<sup>th</sup> Ave. near MP 139. When the pit was excavated, the topsoil was stripped from the excavation area. However, the subsoil was inadvertently placed on top of the ground without first stripping the underlying topsoil. DAPL's environmental inspectors (EIs) worked with the contractor to mitigate the potential impacts and to prevent this issue from occurring again. Specifically, the EIs worked closely with the operator during backfill activities to ensure that the stockpiled subsoil material was properly stripped without mixing it with the underlying topsoil. DAPL is confident that the soils were properly separated during backfill and none or very little topsoil was mixed with subsoil. DAPL will

continue to monitor this area for revegetation and will mitigate any negative impacts that may have occurred.

Issue 4: A soil borrow area outside of the approved corridor (11/1/16 report).

Response 4: For all the terminal sites, fill material is required to establish the proper elevation and structural integrity of the soils for which the terminal is being built. When soils from a project site development property are not readily available, fill materials are often sourced from either willing landowners who are willing to sell soils for fill or other established commercial borrow pits. In this case at the Epping Terminal Site, the contractor worked out an agreement with the adjacent landowner to use a portion of his property for the sourcing of fill material. This borrow site was used in the same capacity as any offsite or third party soil sourcing location that could be located adjacent to or multiple miles from the project site. The siting criteria and associated regulations do not require PSC evaluation of such off-line locations as borrow sites, disposal sites, etc. Any questions as to the applicability of any permits or approvals for the borrow area should be directed to the borrow pit owner.

Issue 5: A lack of erosion control devices and impacts to a wetland (11/1/16 report).

Response 5: As part of the development of the project area, inclusive of the terminal locations and specifically the Epping Terminal, DAPL conducted multiple environmental investigations to determine the location of any wetlands or other sensitive environmental features on any of the terminal locations. Furthermore, for each construction site, a site-specific storm water management and discharge plan was created and employed throughout construction. The plan's intended purpose is to control runoff and minimize off-site sedimentation. Use of best management practices (BMPs) is adaptive to the site conditions; i.e. there is no requirement to install and maintain controls where there is no perceived risk of runoff. While the inspector documented that "few BMPs" were noted, no evidence of offsite sedimentation was documented. DAPL contends and is confident that no runoff or non-compliance has occurred.

Additionally, while the inspector indicated that there were impacts to a wetland, wetland delineations covering this area were performed by two separate environmental consultants for DAPL during the 2014 and 2015 survey seasons (see attached summary report dated March 24, 2016); no wetlands were documented within the Epping Terminal footprint and upland data points were taken to demonstrate the lack of a feature where a National Wetland Inventory map indicated one may be. No impacts to any wetland features have occurred as a result of project construction activities at Epping. DAPL is confident that no violation has occurred.

If the Commission requires any supplemental information, we are open to meet with Commission Staff December 06-09 in Bismarck to discuss those requirements.

Sincerely,



Mike Futch  
DAPL Project Manager, North Dakota