

**A Pocket Guide on the Rules Governing Dakota Access' Pipeline
Iowa
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Welcome to this guide for monitoring the construction of the Dakota Access Pipeline (DAPL) in Iowa. The company has to follow a set of rules that have been set out by the Iowa Utilities Board and in some cases, other agencies. This guide is designed to help you know what those rules are, how to watch for violations and how to report violations or problems.

It is an experiment! As far as we know, nobody has ever created a pipeline watchdog team. So we are relying on your creativity and observation skills.

Monitoring the construction of the pipeline is more than just watching for violations of the law, it is holding the pipeline company accountable. We do this for our neighbors, future generations and the land and water.

Landowners have some special rights and county boards have the responsibility and power to protect landowners, drainage districts, county road crossings and the public wellbeing.

The counties have hired county inspectors who are charged with carrying out the Agriculture Mitigation Plan and will be the eyes and ears of the counties.

DAPL has begun construction in areas where they have easements. They cannot begin construction in areas where they do not have Army Corps permits, or the condemnation process for eminent domain has not been completed. In a few counties, final sign-off on drainage district permits is also not done.

Here's the process for monitoring construction:

- 1) Locate the construction route in your area. You will see stakes and flags marking where the pipeline will cross a road. Often there is a pile of tires at a crossing.
- 2) Visit the site everyday at least once to see when DAPL begins to move equipment in and then monitor construction.
- 3) Look for bad behavior and violations of the rules set out by the Iowa Utilities Board. The key things to monitor are:
 - a. No construction when it is too wet for a farmer to be in her field;
 - b. No soil erosion into waterways;
 - c. No unsafe construction practices;
 - d. That they follow strict erosion protocols when they come to a river.
- 4) Post pictures, videos or notes on our Facebook group page at: DAPL Pipeline Construction Watchdogs
(<https://www.facebook.com/groups/832826370185364/>)

- 5) The direct action team will use this information for organizing a direction action or a blockade at land taken by eminent domain and river crossings.

Iowa does not have any really effective way to report violations. You can try to report violations to the Iowa Utilities Board, but they are remarkably unprepared for this. Any really terrible problems you can report to the sheriff and the county board in your community.

Requirements for Dakota Access:

Most of the requirements for DAPL are environmental and agricultural protections. DAPL is required to protect waterways, prevent soil erosion, and not do heavy work when it is too wet. Other requirements such as archaeological finds or endangered or threatened species should be reported to county boards and the IUB.

Below are the things to look for. They first appear as a check list and then they are listed with the cite so you have the rules as established by the Iowa Utilities Board.

Soil:

---soil cover must be 48" above the pipeline with a few exceptions.

---DAPL will use best management practices to prevent soil erosion. It will file a storm water pollution prevention plan.

---soil, terracing and other land features will be restored after construction.

---no construction when the soil is wet.

Water protection:

---soil "spoilage" near streams must be 30' back from the stream and should not be on a gradient steeper than 5%. However, the IUB didn't make this a hard and fast rule, just a guideline.

--- County inspectors need to be informed of the water crossing methods prior to construction so the inspector can consult with Dakota Access if the inspector sees a problem with the method to be used for crossing the water body.

Debris, Waste and Hazardous Materials:

--- Monitor waste from the site. Don't let DAPL dump their junk. All debris attributable to the pipeline construction and related activities will be removed and

disposed of properly; such debris includes spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil will be removed for proper disposal or treated by appropriate in situ remediation.”

Notifications:

--- DAPL will fully cooperate with county inspectors. If DAPL or its contractor does not comply with this plan, Chapter 9, Iowa Code § 479B.20, or an independent agreement with a landowner, the county board of supervisors may petition the Iowa Utilities Board for an order requiring correction action to be taken, imposing civil penalties, or both. The county will be responsible for investigation and prosecution of the case before the Iowa Utilities Board.

--- DAPL will provide notice to landowners. DAPL shall, at least two weeks prior to commencement of construction on the landowner's property, provide each landowner with written notice (the “Two Week Notice”) of the pending construction that includes: (1) the name, address, telephone number, and email address of the DAPL geographic area representative; (2) the name, address, telephone number, and email address for the county inspector designated by the county; and (3) a request that the landowner provide DAPL and the county inspector with any drain tile diagrams for the landowner’s parcel(s) prior to construction. Dakota Access shall also provide a notice to each landowner 48 hours prior to the start of construction on that landowner’s property.”

--- Proof of notice sent to county inspector. Proof of sending the Two Week Notice shall be delivered to the county inspector and shall be a condition to proceeding with construction. Landowners may designate their own point of contact by providing DAPL with the name, address, telephone number, and email address (if applicable) of their designee.

--- Watch it! The burden is on the county inspector for things like damage tiles. Any underground drain tile damaged, cut, or removed will be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker will not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. *If proper notice is given (24 hours), construction will not be delayed due to an inspector’s failure to be present on the site.”*

DAPL’s designated statewide contact for any landowner inquiries or claims is:
Urbandale Project Office

11103 Aurora Avenue Building 5
Urbandale, IA 50322 Toll free: (844) 708-2635

The revised Agricultural Impact Mitigation Plan from which most of these rules are derived, can be found here.

- 1) **48” of soil cover above the pipeline.** “Dakota Access will place the pipeline underground in Iowa with no less than 48 inches of cover to the top of the pipe in all agricultural lands except (a) where less cover is requested by the landowner and Dakota Access determines the request is prudent and otherwise lawful or (b) where there is a subsurface obstruction that would prevent Dakota Access from utilizing the 48- inch depth, in which case the depth will be in accordance with applicable federal and state rules.” Pg 1.

- 2) **DAPL will fully cooperate with county inspectors.** “DAPL shall fully cooperate with county inspectors in the performance of their duties, including providing the notice required by law and under this plan. If DAPL or its contractor does not comply with this plan, Chapter 9, Iowa Code § 479B.20, or an independent agreement with a landowner, the county board of supervisors may petition the Iowa Utilities Board for an order requiring correction action to be taken, imposing civil penalties, or both. The county will be responsible for investigation and prosecution of the case before the Iowa Utilities Board. “ pg 1

- 3) **Notice to Landowners.** “In addition to any other notice required by law, DAPL shall, at least two weeks prior to commencement of construction on the landowner's property, provide each landowner with written notice (the “Two Week Notice”) of the pending construction that includes: (1) the name, address, telephone number, and email address of the DAPL geographic area representative; (2) the name, address, telephone number, and email address for the county inspector designated by the county; and (3) a request that the landowner provide DAPL and the county inspector with any drain tile diagrams for the landowner’s parcel(s) prior to construction. Dakota Access shall also provide a notice to each landowner 48 hours prior to the start of construction on that landowner’s property.”
Pg. 3

- 4) **Proof of notice sent to county inspector.** “Proof of sending the Two Week Notice shall be delivered to the county inspector and shall be a condition to proceeding with construction. Landowners may designate their own point of contact by providing DAPL with the name, address,

telephone number, and email address (if applicable) of their designee.” Pg 2

- 5) **Erosion and sediment control:** “DAPL will follow best management practices and industry standards for erosion and sedimentation control during construction and post-construction. DAPL will develop a Storm Water Pollution Prevention Plan (SWPPP) that will detail the project specific stormwater and soil erosion prevention measures. All applicable federal and state regulations and conditions associated with surface water quality criteria will require the DAPL full compliance.”pg, 7

- 6) **Watch it! The burden is on the county inspector for things like damage tiles.** “Marking: Any underground drain tile damaged, cut, or removed will be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker will not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given (24 hours), construction will not be delayed due to an inspector’s failure to be present on the site.” Pg 10

- 7) **Need to monitor waste from the site.** “All debris attributable to the pipeline construction and related activities will be removed and disposed of properly; such debris includes spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil will be removed for proper disposal or treated by appropriate in situ remediation.” Pg 11

- 8) **Restoration after construction.** “In accordance with Chapter 9 paragraph 9.4(5), existing soil conservation practices and structures damaged by pipeline construction, such as surface drains, embankments and terraces, grass waterways will be restored to pre-construction elevation, grade and condition. Any drain lines or flow diversion devices impacted by pipeline construction will be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation will be reestablished, including a cover crop when appropriate. Restoration of terraces will be in accordance with Drawing No. IUB PL-2 in Chapter 9 (Appendix B). Such restoration will be inspected for compliance by the county inspector.” Pg. 12

“In accordance with Chapter 9 paragraph 9.4(8), the slope, contour, grade, and drainage pattern of the disturbed area will be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. DAPL will remediate areas of excessive or insufficient settlement in the trench area where it visibly affects land contour or alters surface drainage. Disturbed areas where erosion causes excessive rills or channels or areas of heavy sediment deposition, will be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching will be used as necessary to control erosion until vegetation can be reestablished.” Pg 13

- 9) **Construction during wet times forbidden.** “construction in wet soil conditions will not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged. To facilitate construction in soft soils, DAPL may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to minimize rutting or offsite erosion/sedimentation.”pg.13

The remainder of the requirements are taken from the Iowa Utilities Board’s final order, which can be found here:

https://iub.iowa.gov/sites/default/files/files/board_activity/board-meetings/2016/Dakota-Access/20160310-Dakota-Access-Final-Decision-Order.pdf

- 10) **Stream spoilage set backs. Spoil Storage From Streams.** Proposed Condition No. 30 is a recommendation that excavated material from streams should be set back farther than the ordinary high water mark, so the edge of the workspace in those areas should be placed 50 feet back from the ordinary high water mark. (OCA Exh. Flo Direct at 9-10.) Further, the storage area should be in an area with little slope (less than 5 percent). (Id.) Dakota Access disagrees....The Board will approve the 30-foot setback and use of slopes greater than 5 percent as proposed by Dakota Access, with the understanding that Dakota Access will follow best management practices and use a greater setback distance and no greater than a 5 percent slope where those best management practices require those limitations. Pg. 95-96 final order

- 11) **Water body crossing methods:** all information regarding construction plans and waterbody crossing methods should be provided to the Board and the county inspectors designated by each county's Board of Supervisors prior to commencement of construction. There are four potential waterbody crossing methods (horizontal directional drilling or HDD, wet open cut, and two dry open cuts, flume and dam and pump), and the specific method should be determined on site at the time of construction. (Exh. MH Reply at 16-17.) The Board will require that information about the intended method to be used in crossing a waterbody or waterway be provided to the county inspector prior to construction. The county inspector is to be informed prior to any construction over the crossing if the initial method is changed. County inspectors need to be informed of the crossing methods so the inspector can consult with Dakota Access if the inspector sees a problem with the method intended to be used for crossing the waterbody. Pg. 97-98

Rules duplicated in the Ag Impact Mitigation Plan and the final rule.

- 12) Dakota Access will place the pipeline underground with no less than 48 inches of cover to the top of the pipe in all agricultural lands except (a) where less cover is requested by the landowner and Dakota Access determines the request is prudent and otherwise lawful or (b) where there is a subsurface obstruction that would prevent Dakota Access utilizing the 48-inch depth, in which case the depth will be in accordance with applicable federal and state rules. Pg. 69 final order
- 13) Iowa Code § 479B.20 contains express language regarding the role of the county inspector and the obligations of the county inspector during pipeline construction. It is the Board's understanding that all but a few counties have contracted for a qualified engineer to act as the county inspector to ensure the construction of this pipeline is consistent with the AIMP, as modified by this order, the standards in Iowa Code chapter 479B, and any agreement with the landowner. The inspector has the authority to order corrective action be taken by Dakota Access or a Dakota Access contractor for violation of the statutory standards, the AIMP, or an independent agreement with the landowner. The county inspector also has the authority to temporarily halt construction and consult with Dakota Access or the Dakota Access contractor if a violation is discovered.

Dakota Access is correct that pursuant to Iowa Code § 479B.20(7) a county inspector may only halt construction temporarily; however, there is no time period prescribed in that section for such a temporary halt in construction. Since the statute also provides that the county Board of

- Supervisors may petition the Board for civil penalties, it appears the temporary period may be long enough for the County Board of Supervisors to decide whether to file a complaint with the Board if the violation is not corrected. Pg. 77-78 final order
- 14) As indicated above, the Board will require Dakota Access to give notice to the landowner two weeks before construction is to begin on the landowner's property and a second notice 48 hours before construction is to begin. After the two week notice is given, Dakota Access, its contractor, the inspector, and the landowner will then each be responsible for being ready to observe and discuss any issues regarding trenching, tile repair, dewatering, and backfilling, if necessary. The 48 hours' notice is required since Iowa Code § 479B.20(6) provides that Dakota Access shall allow landowners and county inspectors to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in the correct location. Finally, the Board agrees that landowners may also designate their own point of contact. Pg. 80 final order.
 - 15) The Board will require that Dakota Access file by August 1, 2016, a plan for construction during winter conditions. Pg. 94 final order
 - 16) Stream spoilage set backs. Spoil Storage From Streams. Proposed Condition No. 30 is a recommendation that excavated material from streams should be set back farther than the ordinary high water mark, so the edge of the workspace in those areas should be placed 50 feet back from the ordinary high water mark. (OCA Exh. Flo Direct at 9-10.) Further, the storage area should be in an area with little slope (less than 5 percent). (Id.) Dakota Access disagrees....The Board will approve the 30-foot setback and use of slopes greater than 5 percent as proposed by Dakota Access, with the understanding that Dakota Access will follow best management practices and use a greater setback distance and no greater than a 5 percent slope where those best management practices require those limitations. Pg. 95-96 final order
 - 17) Water body crossing methods: all information regarding construction plans and waterbody crossing methods should be provided to the Board and the county inspectors designated by each county's Board of Supervisors prior to commencement of construction. There are four potential waterbody crossing methods (horizontal directional drilling or HDD, wet open cut, and two dry open cuts, flume and dam and pump), and the specific method

should be determined on site at the time of construction. (Exh. MH Reply at 16-17.) The Board will require that information about the intended method to be used in crossing a waterbody or waterway be provided to the county inspector prior to construction. The county inspector is to be informed prior to any construction over the crossing if the initial method is changed. County inspectors need to be informed of the crossing methods so the inspector can consult with Dakota Access if the inspector sees a problem with the method intended to be used for crossing the waterbody.
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DAKOTA ACCESS PIPELINE: LIST OF COUNTY INSPECTORS

County	County Inspector
Boone	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
Buena Vista	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
Calhoun	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
Cherokee	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
Jasper	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
Jefferson	Heather A. Thomas, PE French-Reneker-Associates, Inc. 1501 South Main Street PO Box 135 Fairfield, IA 52556 Telephone: (641) 472-5145 Email: heathert@french-reneker.com

Keokuk	Evan Del Val, PE
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Lee	Ryan Drenner, Chief Inspector Chippewa Resources 1875 Lawrence Street Suite 875 Denver, CO 80202 Telephone: (970) 430-3937 Email: rdrenner@chippewaresources.com
Lyon	[Lyon County has not yet retained an inspector]
Mahaska	Evan Del Val, PE I & S Group 510 East Locust Street, Suite 104 Des Moines, IA 50309 Telephone: (515) 518-7097 Email: evan.delval@is-grp.com
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