



Oil & Water Don't Mix
Keep Oil Out of the Great Lakes

Thursday, June 29, 2017

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VIA ELECTRONIC SUBMISSION

RE: PUBLIC COMMENTS ON THE JOINT APPLICATION OF ENBRIDGE ENERGY TO OCCUPY GREAT LAKES BOTTOMLANDS FOR ANCHORING SUPPORTS TO TRANSPORT CRUDE OIL IN LINE 5 PIPELINES IN THE STRAITS OF MACKINAC AND LAKE MICHIGAN [NO. 2RD-DFDK-Y35G]

Dear Michigan Department of Environmental Quality Director Grether, MDEQ Officials, and Staff and U.S. Army Corps of Engineers Chief Simon and Chief Kuhn:

We are writing in reference to Enbridge's joint application to the Michigan Department of Environmental Quality ("MDEQ") and United States Army Corps of Engineers ("Corps") (No. 2RD-DFDK-Y35G) to install 22 anchor supports on the Line 5 pipelines in the Mackinac Straits.

We are Michigan organizations dedicated to the protection of Michigan's water, natural resources, public trust in those resources, the environment, communities, and the health, safety and general welfare of citizens. Our organizations, including nonprofit Michigan corporations, have separately and in conjunction with the Oil & Water Don't Mix ("O&WDM") campaign, provided significant education, advocacy, and taken other actions on behalf of our members and supporters to eliminate the transport of crude oil through Line 5 in the Straits of Mackinac and the Great Lakes and to support communities that depend on the high quality and protection of the waters of the Great Lakes or its tributary lakes and streams.

Our organizations on behalf of ourselves, our members and our supporters, formally request that the Michigan Department of Environmental Quality ("MDEQ") and the U.S. Army Corps of Engineers ("Corps") take the following actions with regard to Enbridge's joint application (No. 2RD-DFDK-Y35G) to install 22 anchor supports on the Line 5 pipelines in the Mackinac Straits:

1. Reject as incomplete due to its overly narrow scope of review;
2. Require a comprehensive review of Line 5 in the Straits that includes an assessment of adverse environmental impacts, risks, and feasible and prudent alternatives;
3. Temporarily terminate the transport of crude oil in the Line 5 pipelines during this comprehensive review; and
4. Hold a formal public hearing given that Enbridge Line 5 occupies publicly owned waters and bottomlands and the threat of a catastrophic oil pipeline rupture to the Great Lakes are of tremendous controversy and have generated an extraordinary level of public engagement.

O&WDM supports the placement of anchors to eliminate gaps or stabilize sections of the twin pipelines that have been damaged. Such safety repairs should be implemented expeditiously. However, the ongoing need for additional anchors to shore up the pipeline's stability on the lake bottom underscores how the original 1953 engineering plan underestimated the powerful underwater currents and dynamic nature of the lake bed. Enbridge's application for 22 anchor supports is not mere maintenance but evidence that points to the need for a comprehensive review and public hearings focused on the entire twin pipeline section of Line 5 in the Straits of Mackinac.

Enbridge's permit application, rather than a proposed maintenance operation, is actually a larger effort to expand capacity to transport crude oil in Line 5 and throughout its entire Lakehead

System in the Great Lakes. This strategy has previously enabled the company to avoid State of Michigan review of the safety and necessity of the pipeline itself, and dodge the legally required full consideration of alternative routes and methods that do not threaten the Great Lakes.

In addition, it has recently come to light that Enbridge has for years, perhaps decades, systematically violated the provision of the 1953 easement with the State of Michigan that limits unsupported stretches of Line 5 to 75 feet for the pipeline’s structural integrity and longevity.¹ Much more needs to be learned about the resulting pipeline metal fatigue and heightened risk of failure before considering significant structural alterations to Line 5 such as installing nearly two dozen anchor supports.

MDEQ has a separate, affirmative legal duty to apply the standards and requirements of the Great Lakes Submerged Lands Act and the Michigan Environmental Protection Act. The independent studies on risk and alternatives commissioned by the State of Michigan are not a substitute for this agency to review the proper scope of this permit application to occupy the public trust waters of the Great Lakes.

Specifically, our organizations submit the following comments:

ORGANIZATIONAL AND REPRESENTATIONAL INTERESTS

1. **Threat to Members and Supporters** – Each of our organizations have members and/or supporters who are threatened with a risk of substantial – indeed catastrophic – harm caused by the release of crude oil from Line 5 in the Straits of Mackinac or in communities located near or next to the Great Lakes or their tributary lakes and streams.
2. **Harm to Use and Enjoyment** – The harm from such a release will affect the interests or use and enjoyment of our organizations’ members and/or supporters, including but not limited to: (a) use and enjoyment of their riparian property; (b) availability of safe drinking water and the protection of public health; (c) use and enjoyment as legal beneficiaries of the public trust in the Great Lakes, including Lake Michigan and Lake Huron and their tributary lakes or streams; (d) use and enjoyment as beneficiaries of the public trust for boating, fishing, navigation, swimming, bathing, sustenance, birding, surfing, kayaking, canoeing, or other recreational activities dependent on these waters; and, (f) for some, their tourism-related businesses and/or jobs.

FACTUAL STATEMENTS AND LEGAL REQUIREMENTS

3. **High Risk** – Through the Oil & Water Don’t Mix campaign, we or For Love or Water (“FLOW”) have submitted substantive legal and technical letters and reports to Governor Snyder, Attorney General Schuette, the Director of the MDEQ, the Director of the Michigan Department of Natural Resources (“MDNR”), the Michigan Petroleum Pipeline Task Force (“Task Force”), and Michigan Pipeline Safety Advisory Board (“Advisory Board”).²

¹ See [O&WDM’s June 5, 2017](#), letter to Gov. Snyder and Attorney General Schuette, and the October 12, 2016, [Kiefner & Associates report](#), *Assessment of Span Exposures on the 20-inch Petroleum Pipelines Crossing the Straits of Mackinac*.

² [FLOW Composite Report on Line 5 Risks and Recommendations, with Appendices, submitted to Michigan Petroleum Pipeline Task Force](#) (FLOW, Apr. 30, 2015); [A Scientific and Legal Policy Report on the Transport of Oil in the Great Lakes: \(1\) Recommended Actions on The Transport of Oil Through Line 5 under the Straits of](#)

Specifically, these reports address the high risk, endangerment, likely pollution and impairment of the high-public-value waters and the protected public trust uses of the Straits of Mackinac, shorelines, and northern areas of Lake Huron and Lake Michigan. In addition, the University of Michigan’s 2014³ and 2016⁴ oil spill simulations in the Straits concluded that the Mackinac Straits are the “worst possible place” for an oil spill and potentially threaten over 700 coastal miles along Lakes Michigan and Huron.

4. **Likely Degradation** – Based on these reports and other substantive reports,⁵ there is likely degradation of the environment, water, natural resources, and the public trust, including but not limited to, fish and fish spawning habitat, shoreline aquatic habitat, drinking water of municipalities, public health risks, and recreational, boating and boating infrastructure, marinas, docking or other facilities.
5. **Purpose Tied to Larger System** – These reports⁶ and comments⁷ demonstrate that Line 5 is only a part of Enbridge’s much larger Lakehead Crude Oil Pipeline System in North America, which transports crude oil, including heavy and synthetic light crude oil, from Canada through and to the Midwest (including Michigan) and Canada. In 2013, Enbridge expanded Line 5’s capacity another 10 percent to transport 540,000 barrels per day (bbl/day) so that the pipeline now operates at 80 percent over original design.⁸ Recently, Enbridge shut down Line 6B after the Kalamazoo River rupture and disaster and replaced it with a new Line 6B that doubled its design capacity from approximately 400,000 barrels per day (bbl./day) of crude oil to 800,000 bbl./day (a barrel is equal to 42 U.S. gallons). Enbridge has stated that doubling the capacity of Line 6B will meet the current and future needs of shippers or production facilities in the Midwest, Canada, and Michigan. Enbridge also has stated in proceedings before the Michigan Public Service Commission that the doubling of design capacity for Line 6B is preferable to doing so with Line 5. In summary, Line 5 is part of a larger expansion and project purpose for Enbridge’s Lakehead System and likely is no longer essential.
6. **Feasible Alternatives** – Based on the above, these reports demonstrate that there are feasible and prudent alternatives to the transport of crude oil in Line 5 including transport through the Straits segment, through alternative pipeline routes, capacities, or adjustments in

[Mackinac; \(2\) Supplemental Comments to the Michigan Petroleum Pipeline Task](#) (FLOW, Sept. 21, 2015); [A Report on the Legal and Pipeline Systems Framework for the Alternatives Analysis of the Pipeline Transport of Crude Oil in the Great Lakes Region, Including Line 5 under the Straits of Mackinac, submitted to Michigan Pipeline Advisory Board](#) (FLOW, Dec. 2015).

³ <http://graham.umich.edu/water/project/mackinac-oil-spill>

⁴ <http://graham.umich.edu/media/pubs/Mackinac-Line-5-Worst-Case-Spill-Scenarios.pdf>

⁵ See FLOW’s two public comments filed with the MDEQ on [August 24, 2016](#) and [August 25, 2016](#); National Wildlife Federation’s report filed with the MDEQ dated August 24, 2016, University of Michigan dispersion modeling (March 31, 2016); Straits Area Concerned Citizen Report to PHMSA to de-certify Enbridge’s Contingency Plan for Line 5 (May 2016).

⁶ [A Report on the Legal and Pipeline Systems Framework for the Alternatives Analysis of the Pipeline Transport of Crude Oil in the Great Lakes Region, Including Line 5 under the Straits of Mackinac, submitted to Michigan Pipeline Advisory Board](#) (FLOW, Dec. 2015).

⁷ FLOW public comments in this proceeding filed on [August 24, 2016](#) and [August 25, 2016](#).

⁸ [Michigan Public Service Commission, Opinion and Order, In the matter of the Application of Lakehead Pipe Line Company for approval of construction and operation of a common carrier oil pipeline \(Case D-3903-53.1, page 6, March 31, 1953\)](#). (“The capacity of the pipe line with no pumping station in Michigan will be 120,000 barrels per day and when all the above pumping stations (6 are identified) are constructed and in operation the capacity will be 300,000 barrels per day.”).

the overall Great Lakes and North American system.

7. **Incomplete Application** – We call on the MDEQ to reject the Enbridge application as incomplete. Based on the application submitted by Enbridge, Enbridge has not submitted adequate environmental impact, risk, and alternative studies and analyses for the MDEQ and Corps to consider or determine the impairment to public trust as required by the Great Lakes Submerged Lands Act (“GLSLA”), MCL 324.32501 *et seq.* or its Rules, R 322.1015, or for the U.S. Army Corps of Engineers (“Corps”) to consider environmental impacts and alternatives under the Rivers and Harbors Act (“RHA”), the Clean Water Act (“CWA”), and the National Environmental Protection Act (“NEPA”).
8. **Public Purpose and No Alternatives** – The Great Lakes Submerged Lands Act requires a showing of public purpose and/or no significant impairment to the public trust waters and bottomlands and public trust uses of the Mackinac Straits and Lake Huron and Lake Michigan. MCL 324.32502, 32503, *et seq.*; Rule 322.1015 requires submission of information and demonstration that there are minimal impacts to the waters, public trust, public health, and the environment, and that there exist no feasible and prudent alternatives to the basic purpose of the occupancy or activity to the waters and bottomlands of the Great Lakes (i.e. the expanded capacity to transport crude oil in Line 5 and throughout Enbridge’s entire Lakehead System in the Great Lakes).
9. **Determination on Likely Effects** – Based on the foregoing, Section 1705(2) of the Michigan Environmental Protection Act (“MEPA”), MCL 324.1705(2), requires that in considering whether to approve the permit request, the MDEQ shall consider and determine the likely effects on the air, water, and natural resources and/or public trust of such basic purpose and conduct, (i.e. the expanded capacity to transport crude oil in Line 5 and throughout Enbridge’s entire Lakehead System in the Great Lakes).
10. **Impacts and Alternatives** – We call for the MDEQ’s full review of the environmental impact of the Enbridge request and feasible and prudent alternatives to Line 5, as required by law. Given the scope and purpose of Enbridge Line 5, the current application before the MDEQ and the Corps must be comprehensively reviewed to include risks, impacts, and alternatives, which are required by the GLSLA and the MEPA and their respective rules, and the federal laws and regulations of the RHA, CWA, and NEPA.
11. **Public Trust Waters** – Because the applications and structures applied for in connection with Line 5 involve occupancy and activities regarding these public trust Great Lakes bottomlands and waters, and given the fact that these supports are related to the basic purpose and conduct to transport substantially more crude oil under increased pressure in Line 5, the application does not qualify for a general or minor category under the GLSLA and/or its rules, the MEPA, RHA, CWA, and NEPA. In fact, application does not qualify for such minor or general treatment given the highly valuable public trust waters in the Straits and the potential or likely magnitude of harm from the occupancy, activity or conduct.
12. **Formal Public Hearing Requested** – Further because of the foregoing, and given the size and magnitude of the underlying issues in this matter, we formally request that the MDEQ set this matter for public hearings as required by MCL 324.32514 and Rule 17 of the GLSLA, and issue proper notices and provide for additional public participation and comment. The decision on Line 5 in the Straits clearly satisfies the regulation’s test of “when

a proposed project appears to be controversial.” Any anchoring permit decision that would extend the lifespan of this aging oil pipeline occupying our public waters in the Great Lakes certainly meets the controversial test.

13. **Incomplete Application** – Further, based on the application and information submitted, the Enbridge application is not administratively complete, and the permits cannot be granted. Therefore, again, we call on the MDEQ to reject the Enbridge application as incomplete.
14. **Years of Anchor Support Violations** – Further, it is now known⁹ that Enbridge has for years, perhaps decades, systematically violated the provision of the 1953 easement with the State of Michigan that limits unsupported stretches of Line 5 to 75 feet for the pipeline’s structural integrity and longevity. Much more needs to be learned about the resulting pipeline metal fatigue and heightened risk of failure before considering significant structural alterations to Line 5 such as “proactively” installing nearly two dozen anchor supports.

According to the Kiefner report, large, potentially damaging gaps in anchor support protection existed in 16 spans. Incredibly, this included a gap of 286 feet – nearly four times the 75 feet required in Enbridge’s binding agreement with the State of Michigan. The Kiefner report, moreover, makes it stunningly clear that Enbridge’s violations grow out of a corporate policy to blatantly ignore the 75-foot anchor support requirement in the easement agreement.

The repeated violations of the 75-foot support obligation underscore not only Enbridge’s willful disregard for legal compliance, but also reveal the original design defect with laying the twin pipes and the continuing nature of this unacceptable hazard. According to Dr. Ed Timm’s Technical Note¹⁰ titled, “*Regarding Enbridge Line 5 Non-Compliance with the 1953 Easement Requirements, A Mechanistic Analysis of Straits Pipeline Washout Phenomena,*” Enbridge cannot safely comply with the easement’s 75-foot support requirement because no predictive model exists to reliably predict future erosion and washouts underneath the pipelines following extreme weather events in the Straits of Mackinac. Accordingly, emergency measures are required.

15. **Shut Down Line 5’s Oil Flow** – Therefore, it is recommended that the MDEQ take emergency action and terminate the transport of crude oil in the Line 5 pipelines in the Mackinac Straits until such time as the application herein has been finally considered, determined, and decided as provided and required by law.

Please place these comments into the record of each agency on this matter.

We the undersigned organizations thank you for your serious consideration and protection of the public trust, waters, environment, and public health associated with your obligations under the GLSLA, MEPA, the public trust doctrine, RHA, CWA, and NEPA.

⁹ See [O&WDM’s June 5, 2017](#), letter to Gov. Snyder and Attorney General Schuette, and the October 12, 2016, [Kiefner & Associates report](#), *Assessment of Span Exposures on the 20-inch Petroleum Pipelines Crossing the Straits of Mackinac*. See news coverage at http://www.mlive.com/news/index.ssf/2017/06/line_5_unsupported_spans.html.

¹⁰ See <http://flowforwater.org/wp-content/uploads/2016/08/FLOW-FINAL-Supplemental-Letter-to-DEQ-USCOE-with-Technical-Note-Dr.-Ed-Timm-08-25-16.pdf> (FLOW, Aug. 2016).

Respectfully submitted,

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Michigan Attorney General Bill Schuette

MDNR Director Keith Creagh

U.S. Senator and Hon. Gary Peters

U.S. Senator and Hon. Debbie Stabenow