

Response to Public Comments - Enbridge EA

The Enbridge EA was public-noticed and released for public review and comment on October 31, 2006. The public comment period expired November 16. DNR received 44 total responses during that period. Most comments were submitted by private individuals. Most of those individuals identified themselves as landowners. A few non-landowners were responding to an issue alert from at least one conservation group.

Two local government agencies responded (Taylor County Zoning Dept. and the Ashland-Bayfield-Douglas-Iron Water Conservation Department). Seven state and local conservation groups submitted comments: Midwest Environmental Advocates (on behalf of the John Muir Chapter of the Sierra Club, Wis. Wetlands Assoc., and the River Alliance); the Midwest Office of the Sierra Club; Wisconsin Wildlife Federation; and the Washburn Co. Lakes and Rivers Association. GLIFWC and the U.S. Fish and Wildlife Service (USFWS) Green Bay office also submitted comments.

Fourteen comments were submitted via letter, eleven were via telephone, and nineteen were via e-mail.

Following is a summary of the comments received, and DNR staff responses to those comments and concerns. *Please note that DNR comments regarding wetlands and waterways pertain only to DNR regulations and not to federal wetland compensatory mitigation programs administered by U.S. Army Corps of Engineers (USACE).*

The public comment period is too short and precludes an adequate response

DNR chose a customary length of public comment period for public review of the EA (15 days). There is no legal requirement to provide a longer review period. During that time, we received 43 public and agency responses covering a full range of topics. Few people participated in the public information hearings held over three days in September, and there was little media interest. Riparian landowners along the right-of-way (ROW) were individually notified about the public review period. Also, DNR has been in contact with statewide conservation groups and tribal authorities for a many months or longer, regarding this project.

The EA is inadequate to justify not to do an EIS and to disclose potential impacts in adequate detail

Under NR 150 an EIS is not "a more thorough evaluation of impacts" than is an EA (see NR 150.22).

Based on comments, we amended the EA to help readers understand important issues regarding potential impacts and the means used to minimize or prevent them. The Department feels that requiring the extra public informational hearing and added response time associated with an EIS process would not reveal additional information.

Categorization of wetland types and discussion of effects on each type (as opposed to looking at each specific wetland individually) is a standard and effective analysis technique. More detail on preventing and minimizing wetland impacts will be provided in the project permit.

The EA fails to specifically document how mandatory construction practices and mitigation requirements will reduce... impacts below a threshold of significance

Comments of this nature in general appeared to be based on the discussion of *potential* impacts of construction activities, and not on the subsequent discussion in the EA of the measures that DNR would take or require of the applicant to avoid and minimize those impacts.

Enbridge would restore the existing easement to its current, cleared condition for routine monitoring and maintenance. Enbridge would also restore the TWS to its preconstruction land use, unless some other treatment is required by individual landowner through their agreements with the applicant.

Permit conditions for the proposed project are being developed that will provide more detail regarding impacts will be avoided and minimized, through the use of horizontal directional drilling, push-pull pipe installation methods, and other means.

The EA does note the role and importance of construction inspectors working to uphold permit conditions, with DNR oversight. This will help ensure that impacts are limited to an insignificant level, as envisioned in the permit process.

DNR should complete an EIS for this major action, to deal with spill concerns, to act as an overall plan, to prescribe the most ecologically sound method of crossing each stream and wetland, to provide more detailed analysis of climate change and other impacts, and to detail all locations of endangered resources

The DNR believes the level of review in the EA is adequate to disclose relevant impacts. DNR evaluates the appropriate level of WEPA analysis by using an 'action type list' in NR 150, the controlling administrative rule. No activities in this project rise to a Type I (EIS required) level under NR 150. The EA has been amended to add detail to help further explain the significance of impacts and the role of measures (usually in the form of permit conditions) to avoid and minimize environmental impacts.

NR 150 requires an Environmental Assessment (EA) for the types of activities DNR regulates for this project. When the original pipeline was proposed in 1998, an EA was completed; not an Environmental Impact Statement (EIS). This project builds on the 1998 EA. The department is working within its statutory authority and its preliminary determination is that an EIS is not required. The code requires an EIS process for few activities: metallic mining, hazardous waste, and 1000-acre property acquisition with change in land use.

It is important to note that an EIS process differs from an EA process only in requiring a public hearing and a longer public comment period. The content requirement for documents produced is the same between the two processes. Three public meetings held in September served the role of scoping meetings on the EA.

Midwest Environmental Advocates (MEA) cites several sections of the EA as deficient in the analysis of endangered resources. The EA provides 13 pages on this topic (one tenth of the document). Specific location information on NHI data can not be released to the public.

The available information allows us to describe the nature of the impact, estimate its magnitude and describe the effect it may have. Surveys were completed for some state- or federally-listed wildlife species where the habitat, recorded occurrences and the nature of the project actions indicated that “incidental take” as defined by Wisconsin’s Endangered Species Law may occur.

For the species cited in the MEA comment (gray wolf, Kirtland’s Warbler, and bald eagle), all three are federally-listed species; only the gray wolf is a state-listed threatened or endangered species protected under Wisconsin’s Endangered Species Law. For the gray wolf, DNR experts concluded that given the existing monitoring data, the nature of the habitat along the ROW, the proposed actions, and the measures that are outlined in the EA, it is unlikely that “incidental take” of this species will occur.

Enbridge is a utility that is exempt from the protections for state-listed plant species under Wisconsin’s Endangered Species Law, even on public land. The EA provides information on the kinds of listed plant species that may be present. The Department will encourage Enbridge to work cooperatively to avoid and minimize impacts to rare plant species.

For federally-listed species the USFWS is the lead agency for determining compliance under the Federal Endangered Species Act. The EA may provide recommendations for species that are federally listed as threatened or endangered, but the Department defers to USFWS regarding whether actions should be pursued under the Act.

Some loss of individuals of other rare species, not protected by Wisconsin’s Endangered Species Law, may occur. This is a negative impact. Because of biological variability, inherent difficulty in surveying rare species, limited access on private lands, size and nature of the project, and the limits of regulatory authority, we do not know the full extent of this impact to these species. Permit conditions, use of best management practices, and oversight by inspectors will help to avoid and minimize impacts.

Crossing methods will be specified for each wetland and waterbody crossing in the project permit for wetland and waterbody crossings. The combination of the application materials, and the DNR permit, constitute the “plan” for this project. An EIS process would result in a document with the same level of detail.

Providing a detailed evaluation of the contribution of this project to the release of global warming gases would reveal that the construction of the pipeline would not contribute an appreciable portion of current global, national, or state-wide release of these gasses. Further analysis would likely reveal that stricter controls on fuel efficiency, investments in efficient public transportation, and other energy use reduction measures are more important measures to limiting human-induced climate change.

Once an EIS is prepared, monitoring and enforcement programs for any mitigation are adopted in the Record of Decision, where applicable. 40 C.F.R. § 1505.2. These mitigation plans are enforceable

WEPA findings are not enforceable under NR 150 unless they are also within DNR's permitting authority.

The use of future permit conditions to establish mitigation measures undermines the NEPA/WEPA process.

Avoidance and minimization through permitting is not the same as mitigation for impacts that occur.

The impacts of the timber harvest alone should require an EIS

No timber harvest activities of any scale rise above a Type III action (no EA or EIS required) in NR 150.

The EA fails to adequately address the increased erosion caused by the 1930.5-acre clear cut

Removing the tree cover from the TWS will not create anything like the impact of a "1930.5 acre clearcut." The woodlots affected are spread out over more than 320 miles and are not interconnected. Agricultural lands, wetlands, other forested lands, rural residential land, roadways, and other lands separate the affected woodlands. The interspersion with upland buffer and adjacent uncut woodland will, along with forestry BMPs, help minimize erosion due to tree removal.

The EA does not provide "quantified or detailed information" regarding cumulative impacts, for example, regarding the truncation of an analysis of the cutting of forested lands

The EA states that a full width of timber cutting will likely not occur in every wooded area crossed, and that revegetation will make the impact temporary in at least some areas.

The EA fails to document how mandatory construction practices and mitigation requirements will reduce impact below threshold of significance

Enbridge will restore the existing easement and temporary workspace (TWS) to preconstruction land uses, following the mitigation and restoration measures outlined in the Environmental Mitigation Plan that was included as part of the Project Application materials (EIR and Chapter 30 Application). Enbridge does not have direct control over the long term land use within the temporary workspace, because it has no controlling interest. However, the restoration measures will help the land return to its pre-construction land use. In addition, under federal wetland regulations, Enbridge will provide compensatory mitigation for temporary wetland impacts.

Regarding mitigation and impact assessment, it is important to note that impact prevention through avoidance, permit conditions, BMPs, and use of construction inspectors is not mitigation in the sense of compensation for impacts. The impacts are already prevented and minimized to the extent practicable by DNR permit conditions.

It is also important to note that significant impacts did not occur as a result of construction of the existing pipelines on this ROW.

Additional research is not an adequate mitigation measure for listed species

Adaptive management is an appropriate management technique for minimizing impacts

to listed and other rare species. It is not a mitigation measure. Also, no management activity proposed for this project (whether or not it will affect Threatened or Endangered resources) rises to a Type I action under NR 150.

According to the EA, a catastrophic spill is “unlikely” due to Enbridge’s detection measures

The EA describes the kinds of impacts that are possible and the various measures to be used to prevent or minimize those potential impacts.

While basic mitigation measures are mentioned, the EA does not identify the decibel level that may be heard by neighboring communities

Department experience with blasting does not indicate that this is an important issue. Blasting of this type is not typically excessively loud, and only occurs a few times over a short period of time in any given area.

In 2006 alone, the Federal Energy Regulatory Commission (FERC) has prepared EISs for at least 6 pipeline projects that are smaller than the proposed Enbridge expansion. Despite affecting much less land than the Enbridge proposal and involving smaller permanent and temporary right-of-ways, FERC determined that the impacts were “significant.”

FERC and COE have their own NEPA compliance rules, and DNR has its own WEPA rules. EISs are done for several reasons, not just because impacts are considered significant.

The Enbridge EA fails to support the Corps/DNR FONSI determination

DNR does not issue FONSI, but uses its regulatory authority to avoid and minimize impacts wherever possible. USACE may consider the offsetting benefits of mitigation – wetland mitigation in particular in this project – to conclude that no significant impact would occur.

The EA acknowledges that wetlands will be disturbed temporarily. Based on evaluation of similar previous projects, degradation would be limited to changes in wetland plant community in some of the affected acreage.

The EA fails to set forth a sufficiently broad “Purpose and Need” and practicable alternatives analysis

Purpose and Need, and Practicable Alternatives Analysis for the project was provided as part of the Environmental Impact Report (EIR) and Chapter 30 Application prepared for the project. A ‘No Action’ alternative was included in the EIR and Practicable Alternatives Analysis. A “No Action” alternative section was inadvertently omitted from the original EA, but has now been added to the EA.

The action under review in the EA is DNR's permitting decision regarding wetlands and waterways, not the supply, end use, or health and environmental impacts of commercial fuels. DNR's waterway and wetland permitting authority does not extend to energy policy. The alternatives analysis in the EA is sufficient for purposes of public disclosure

of fuel use and transportation.

As summarized in the Enbridge Environmental Impact Report Section 2.0 and the Practicable Alternative Analysis included in the Chapter 30 Application, an extensive routing alternatives analysis, which included 'No Action' alternative and system alternatives was completed for the Southern Access Project. This analysis began at a National 'macro' scale to determine the best pipeline route considering project objectives and proposed start and terminus points.

The analysis considered Environmental, Engineering and Land related criteria including: miles of wetlands crossed, number of streams crossed, proximity to urban areas, miles of HCAs crossed, etc. Once a preliminary preferred route was selected, a finer Regional 'micro' routing analysis was conducted. In the case of the Southern Access Project, due to the existence of an established Enbridge easement in the proposed project area, the environmental impacts associated with collocating or using the current easement resulted in the lowest impacts to a multi-suite of parameters, including wetland impacts. Additionally, the use of existing station and power facilities also result in no new auxiliary utility corridors for the associated power utilities that would be required for the project.

The EIR, Chapter 30 Application materials and the EMP developed for the project detail construction best management practices for construction through wetlands and associated restoration measures.

Enbridge will have a robust environmental inspection team that reports directly to the Enbridge Environmental Project Manager. Enbridge will have a minimum of three Environmental Inspectors per construction spread that will ensure compliance to permits and company mitigation/restoration commitments. In addition, the WDNR will have 3rd Party monitors to provide oversight on behalf of the regulatory agencies during construction.

Enbridge has provided information to the WDNR and ACOE which illustrates the construction layout for scenarios where opportunities may exist to reduce the temporary workspace at the time of construction based on site specific soil conditions (i.e. saturated wetlands). Enbridge will submit a monthly workspace reduction analysis report to the WDNR/ACOE to document field conditions at time of construction and any workspace reductions.

Site-specific impacts to wetland functions were under-reported

Wetland determinations were made using the criteria and methods outlined in the USACE Manual (USACE 1987), subsequent guidance documents (USACE 1991, 1992), Guidelines for Submitting Wetland Delineations in Wisconsin to the St. Paul District Corps of Engineers (USACE 1996), and the Basic Guide to Wisconsin's Wetlands and their Boundaries (Wisconsin Department of Administration Coastal Management Program 1995).

All wetland acreages were captured during field delineations and included in the Chapter 30 Application submitted to the USACE/WDNR.

Compensatory mitigation ratios were agreed to by the USACE and Enbridge during the

scoping process due to the longer term impacts to forested wetlands (temporal loss of Functions and Values). Subsequent meetings with the USEPA, USFWS, USACE and WDNR have developed alternative compensatory mitigation ratios for other wetland types impacted by the project. The final compensatory mitigation plan will be required by the USACE prior to Enbridge receiving any benefits from the proposed project.

The proposed project appears to violate water quality standards set forth in NR 103, Wis. Admin. Code, and thus DNR should not grant Section 401 Water Quality Certification

Enbridge will employ recognized construction best management practices and restoration measures for the Project as detailed in the application materials.

a. Waterway Impacts

Enbridge conducted site specific crossing evaluations for each waterway crossed by the project and developed site specific crossing plans for each which have been included in four supplemental binders to the Chapter 30/Utility Water Crossing Application. These plans also highlight site-specific clearing, vegetative buffers, and use of erosion and sediment control structures. As part of Enbridge's site specific planning for waterbody crossings, Enbridge conducted a risk assessment for waterbody crossings that is outlined in detail in Section 3.3 – Water Resources, Environmental Impact Report, in attempt to pre-identify those water crossings with “sensitive” characteristics.

As diagramed on EIR figure 3.3.2-1, and additionally in the enhanced Water Crossing Evaluation Flowchart in the application, each waterbody was first characterized as either perennial or intermittent. It was determined that intermittent waterbodies will be crossed using the wet-trench method. Perennial streams that have been designated as trout streams or exceptional resource waters will be crossed, where technically feasible, with the use of dry-crossing techniques, including flume or dam and pump methods. Other designated waterbodies that have non-course grained substrate material and are characterized by either a significant downstream resource or high public exposure will also be crossed by dry-crossing techniques. However, crossings with conditions that make these methods technically infeasible or those not characterized as above will be crossed using the wet-trench method.

The specific waterbody crossing methods Enbridge proposes to implement at each waterbody are identified in Chapter 30 Application Materials. These methods are described in the text and drawings of Enbridge's EMP.

DNR and Enbridge agree that the most reliable method for mitigation is to do each waterbody crossing as quickly as possible. Enbridge recognizes the FERC standard guidelines for single pipeline installation as a reference for Best Management Practices and generally follows many of those guidelines. Since Enbridge's Southern Access Expansion Program – STAGE 1 Project consists of installing two pipelines, Enbridge believes that the additional stream crossing time is needed to properly install the crossings as per the EMP. Enbridge has modeled many of the best management practices in its EMP after the FERC guidelines.

The 80 foot wide current easement is well vegetated and/or stabilized and no adverse impacts at Enbridge waterway crossing are documented. The extra workspace (EWS)

at waterway crossings has been minimized through the development of site-specific water crossing plans and will be set back from the waterway to provide adequate vegetated buffers to help control sedimentation and impacts to waterways. The impact area for waterway crossings will primarily be isolated to the trench line and will be cleared of vegetation just prior to constructing the crossing. Impacts to waterways will be temporary with no long term impacts expected.

Enbridge will adhere to construction timing windows per the regulatory permits.

Destruction of soil structure and vegetation canopy structure will occur

Enbridge will recontour the wetland topography and hydrology to preconstruction conditions. The four year wetland monitoring program conducted following the 1998 SEP-II project demonstrated wetlands in the restored pipeline ROW in Wisconsin are in good to excellent condition and have successfully recovered from construction. Hydrology has been successfully restored to all of the wetlands. The wetlands have revegetated naturally with dense and robust hydrophytic vegetation. All of the inspected wetlands would meet the federal wetland delineation criteria for jurisdictional wetlands (ref. NRG Summary of 2002 Wetland Inspection in Wisconsin, September 23, 2002) There will be a permanent conversion of forested to non-forested wetland on the ROW.

The purpose and need should focus on the State's needs, not commercial opportunities.

This statement is not true in a permitting context. The action under review in the EA is DNR's permitting decision, not the supply of commercial fuels. The WEPA requirement in a permitting action is to disclose the stated purpose and need.

The discussion of "alternative" modes of transport, such as oil tankers, ships, and trains, reads more like a document of justification than an objective view of various expansion projects.

The relative environmental costs of pipelines versus other forms of transportation are well known and do not need extensive analysis here. DNR's permitting action cannot force Enbridge to choose another form of transportation, but we are required to act on the application under established law.

There are deficiencies in the Scope of Inquiry, especially regarding cumulative impacts

The overall effects of the proposed project are discussed throughout the EA. The EA and EIR provide systematic alternatives which also address cumulative effects.

According to Enbridge, the Stage 2 project is at the concept stage. Whether or not it becomes a proposal will depend upon market demand forecasts. Discussion of the potential for other petroleum pipelines would be purely speculative.

Stage 2 could cross approximately 30 miles of Wisconsin, primarily through Walworth County. Assuming it followed an existing ROW, the impacts would be expected to be very similar to those of the southern-most 30 miles of the Stage 1 project.

The plan also proposes 7,500 square foot “temporary extra work spaces” near over 200 rivers. This clearing will increase sedimentation and water temperature. These impacts will significantly affect aquatic life over time

The temporary workspace adjacent to streams with wetland borders will be narrower through the wetland, to conform to wetland impact minimization practices. This will apply to a large percentage of wetland crossings. The temporary workspace approaching streams that do not have a wetland border will be configured to leave at minimum a 10-foot vegetated buffer. The extra temporary workspace will maintain a 50-foot vegetated buffer back away from the stream bank.

Stream banks will therefore not be denuded, and maintain some bank shade and cover, in the form of shrubs, forbs and grasses. Required sedimentation control measures will prevent impacts from sedimentation. Past experience with similar utility construction and maintenance has not revealed any significant impacts from this activity. Again, inspection and enforcement of BMPs will play a key role in minimizing impacts.

Enbridge will use construction best management practices that have been detailed in the Chapter 30 Application, EIR and EMP.

Estimates quoting soil erosion and runoff amounts from the construction site are estimated values based on generic conditions without the use of erosion control practices.

Concerns expressed in comments consider the potential impacts from construction without considering the mitigation plans and controls that will be employed for the project. These measures have been documented in the project application materials that have been made available for public review.

Reference to use of silt fence and straw bales only as erosion control measures along waterways is not completely accurate, as vegetative buffers and immediate restoration practices will also reduce the sedimentation to waterbodies. Enbridge will employ industry recognized construction best management practices (BMPs).

Enbridge will have a team of environmental inspectors, craft inspectors and construction supervisors and auditors to ensure environmental mitigation measures are being employed effectively and as per permit conditions. In addition, agency 3rd party monitors will provide regulatory and compliance oversight on behalf of the WDNR.

DNR estimates that 30 tons of sediment per acre can erode from a typical construction site

This project is not "typical construction", rather there is considerably more oversight, planning, permitting, and construction inspection than occurs on many sites. Also, modeling estimates referred to in this comment were developed for large-area projects such as shopping malls and subdivisions, and are not relevant to a narrow corridor.

"Evidence of stream bank erosion and stream widening is often very evident on streams where landowners have removed trees and replaced them with grasses or manicured lawns." This is exactly what is proposed along the Enbridge construction.

Revegetation plans and practices for streambank areas will not be conducive to developing manicured lawns, and are designed to restore erosion control functions soon after construction. In the interim, BMPs will provide adequate protection. DNR does not anticipate significant sedimentation, due to the permitting requirements and construction-inspection process. Again, experience with similar projects in Wisconsin grants assurance that erosion impacts will be minimized and have no significant impact.

The EA ignores the 2002 Enbridge pipeline break in Cohasset, MN spilled 252,000 gallons of crude oil in to nearby natural areas, and ignores Murphy Oil operations in Superior

DNR acknowledges that spill potential exists and the EA includes Enbridge's spill record in Wisconsin. It is not often useful to compare problems in Canada or other states with the potential for problems in Wisconsin, or problems experienced by one company versus another, due to differences in environments, maintenance programs, and environmental management. DNR and other units of government have enacted spill response plans, in recognition that despite all construction, operational safety and maintenance requirements, spills do occur and need to be addressed rapidly.

The EA does not adequately address community interest regarding loss of prime agricultural land, forest products harvest, tax revenues, and labor sources

The EA provides six pages on this topic. Regarding the loss of prime farmland, Enbridge has developed an Agricultural Mitigation Plan and associated Best Management Practices to protect agricultural resources. These BMPs will be implemented with oversight from the independent construction managers. The conclusion is that prime agricultural lands will not be lost.

To ensure proper use of the merchantable timber removed from the TWS, Enbridge will purchase the merchantable timber from landowners and will market the resource, unless the landowner makes arrangement to the contrary. This is within the purview of Enbridge's contracts with landowners. Enbridge cannot simply declare that the timber belongs to them.

Regarding tax revenues, the EA has been edited to reflect that the State of Wisconsin, not local governments, receive the tax revenues collected against the value of both the pipeline and the goods it transports annually.

Especially given that Enbridge will contract with various pipeline construction companies, predictions of the makeup of the workforce are difficult to make with any degree of certainty.

There is no real plan for replanting trees and vegetation

Enbridge provided DNR with a draft Revegetation Plan in September, 2006. DNR permit conditions will require additional detail to ensure that revegetation will successfully protect stream banks and wetland values, as well as streamside and in-stream habitat values. On state and local public lands, each land manager is working with Enbridge to restore vegetation according to the applicable property management plans. Private landowners, for their lands outside of riparian and wetland zones, have the right to negotiate any type of plant cover they wish.

Construction may pose a health hazard from blastomycosis.

Over the past 30 years, there have been numerous cases of this fungal disease, which exhibits flu-like symptoms and may develop into skin lesions, in Wisconsin. A few cases have been fatal. This disease is world-wide, but is sometimes known locally as "Namekagon River Fever." It is believed to exist in the sandy soil banks along this river, and may exist elsewhere in the project area. Infections are acquired through inhaling the spores of the fungus. It is possible that disrupting soil during trench excavation at stream crossings and elsewhere along the ROW may expose people, especially construction workers, to this infectious organism. Currently, there is no way to identify areas where the organism exists. Therefore, until more is known about the existence of *B. dermatitidis* in nature, it will be difficult to avoid and cannot be successfully controlled in the environment. More effective skin and blood tests are needed to diagnose blastomycosis and to survey individuals in areas where blastomycosis is suspected to be prevalent. Through such surveys, high risk areas in the environment could be identified and the necessary environmental conditions for the growth of *B. dermatitidis* could be characterized. Control efforts may then be possible. Currently, there is no evidence that construction would expose river recreationists to any greater risk of this disease than they currently bear.

Enbridge should eliminate or reduce use of temporary work space on private land

Enbridge has provided detailed engineering work diagrams that illustrate how the temporary work space would be used, coupled with a description of the construction sequencing. DNR staff have reviewed them, and in working with Enbridge staff, reached an agreement that Enbridge will direct its contractors to reduce use of temporary workspace as much as possible, while maintaining adequate safety margins for workers, and maintaining sufficient trench slope angle to prevent collapse, especially in wet soil conditions.

DNR has proposed that the applicant restrict use of the TWS to 60 to 80 feet in places (pending final permit decisions), and proposes to require that the applicant demonstrate those specific instances where more TWS is necessary for engineering and safety reasons, and to seek DNR authorization to use more than the permitted 60 to 80 feet outside their permanent easement.

Landowners concerned about protecting valued trees need to negotiate with Enbridge

and ask them to use “stove-piping” and other construction techniques wherever possible to minimize clearing and disruption in the TWS.

Independent inspectors should be selected jointly by the state and GLIFWC for inspection of work done within the ceded territories. Inspector reports should be made available to GLIFWC as well as DNR and Enbridge

DNR will work with GLIFWC to obtain their input in hiring, and will request that reports be sent also to GLIFWC.

The EA fails to address how it will respond in the event that over-wintering bears are disturbed by construction activities

DNR will ensure that standard procedures are used to avoid disturbance of any over-wintering bears encountered during construction.

The tribes should be notified immediately if any new archaeological artifacts or sites are discovered as a result of construction

DNR will work with Enbridge and the independent construction inspectors to ensure that tribal authorities are notified of any new archeological finds.

Unconscious and profligate use of energy resources creates damage from infrastructure, and also releases enormous volumes of greenhouse gases that contribute greatly to global warming

DNR's authority over this proposed project consists only of waterway crossing permits, wetland water quality certification, water use and discharge permits, and easements for crossing state-owned lands. DNR has no authority over energy use or greenhouse gas emissions associated with this project.

A stream bottom or stream bank through my property was not restored to its pre-construction profile following construction by Lakehead in 1998

DNR is extremely concerned about the potential for changes to stream characteristics, because such changes can contribute to excess erosion, silt deposition, habitat loss, and other negative impacts. It can be very difficult to prove causation after-the-fact. That is why for this project, we would require the use of DNR-supervised environmental inspectors. These inspectors will work closely with DNR staff to ensure that permit conditions pertaining to restoration of streams are enforced.

Is there a specific permit condition for the revegetation of trout stream banks?

No, the conditions revegetating stream banks will be the same regardless of whether or not a stream is a designated trout water. All streams will receive protection to maintain their existing habitat and other values.

It appears DNR may allow activities that wipe out fish reproduction in streams for a year

The EA has been edited to specify that protections for streams, as well as additional permit conditions, will also protect the reproduction of fish, and other stream functions and characteristics.

Source water and method and rates of withdraw for hydrostatic test water have been regulated in the past and much more detail is needed to evaluate this impact

The discharge and treatment of hydrostatic test water remains a regulated activity and requires a Wisconsin Pollution Discharge Elimination System (WPDES) permit under a separate application from the construction application now under consideration. Past sampling of test water has shown elevated levels of benzene. Test water may be dyed and could dissolve chemicals from the pipe wall. These issues will be addressed in the separate WPDES permit. Hydrostatic test water WPDES permitting has been included in the permits table of the EA.

Is there a permit condition that would prevent the occurrence of flood conditions washing stockpiled soil into a stream?

There are several permit conditions that deal with this issue. It is covered by general erosion control and spoil placement conditions that will be in many locations within the permit.

I want DNR to tell the pipeline company to return to the original 1969 ROW across my property, and ditch through an archeological site to avoid clearing of more trees on my land

DNR consults with the State Historical Preservation Officer (SHPO) at the State Historical Society of Wisconsin regarding avoidance of known, significant archeological sites. The site in question is a candidate for nomination to the National Register for significant archeological sites. Even though DNR can request such route changes to go through some sites, it is highly likely that such a decision in this case would be successfully appealed by the State Historical Preservation Officer.

I object to the Lac Courte Oreilles (LCO) re-route. The pipeline should remain in the existing corridor in that area, and not clear new land

The LCO tribal officials and the applicant were unable to reach agreement on granting an easement for new TWS along the existing Right-of-Way (ROW) across the LCO reservation, in what they considered to be a timely manner. Enbridge was able to obtain new easements to avoid this route. The pipeline will parallel the ATC transmission line in the re-route around this area.

I object to the "abandon-in-place" provision in landowner agreements

The pipeline would be emptied to the extent possible and then cleaned and sealed before abandonment. The potential for leaks and contamination of soil or groundwater after abandonment should be very low.

Refineries should be built near the source of petroleum and the products transported by rail or truck

Where to locate refineries has been a private industry decision, subject to local zoning and other applicable regulation. The EA notes that transportation of such large volumes of liquids would require a very large fleet of trucks and rail cars. This would in turn

increase wear on highways and rail lines, burn more fossil fuels, and add to levels of air pollution in the Midwest that already pose a health hazard to millions of residents.

There are undue risks to streams and wetlands

The EA notes that streams and wetlands would be impacted temporarily to some extent. However, long-term impacts would be limited to some loss of wet soils to upland disposal, and wetland functions should remain as they are at present. The project will not involve gravel placement in the trench as alleged by the MEA comment letter. Permit conditions and the work of environmental inspectors would ensure that stream crossing are restored to their pre-construction condition. The EA reports up to 1266 acres of wetland (262 acres forested) impacted by work in temporary workspace. Because approximately 40 miles of the portion of the project that follows the ATC Arrowhead-Weston powerline route (MP 6 to MP 136) would involve using the ATC ROW for TWS, the reported acreages of wetland impacts are likely to be less. An additional figure 5 has been added to the EA to clarify this. In addition permit conditions will require additional minimization of wetland impacts along the entire route.

Object to shipping oil from the Canadian tar sands, due to the impacts that are occurring there

Unlike the situation with Great Lakes water, there exists no binational agreement on energy resources. Within the existing regulatory constraints and trade agreements, companies that obtain mineral rights to fossil energy are free to engage in this type of development and trans-shipment of petroleum. A number of conservation groups and research partnerships are advocating for and conducting research on means to reduce the impacts to the boreal region that contains these oil reserves.

Aren't wild and scenic rivers protected from all development?

This issue is addressed on pages 94 and 95 of the EA. Also, the NPS has prepared an additional document, a Section 7(a) evaluation, to further evaluate the impact of the crossing on the purposes for which the Namekagon was designated under the WSRA, and to identify avoidance and mitigation measures. These measures include restoring the river bed and bank to preconstruction contours, a site-specific revegetation plan to re-establish vegetation in the crossing corridor and provide a visual buffer of the crossing corridor as viewed from the river. These avoidance and mitigation measures will be included as conditions to the Corps permit as well as the Special Use Permit required by the NPS for use of NPS lands for "temporary work space."

The pipeline would not be on "existing right-of-way" in the area of the crossings of Hauser and Summit Creeks

The reroute is due to the inability of Enbridge and LCO tribal authorities to reach an easement agreement. This will require clearing of a new ROW corridor for 3.5 miles, as noted in the EA. The blanket statement about using all existing ROW on pages 5 and 10 of the EA has been amended.

Is a bond required of the applicant to cover costs of spill and leak clean-up?

DNR will require bonding for the costs of restoration and monitoring of pipeline projects,

but not for operating and spill or leak clean-up costs. Generally, when spills occur, the pipeline company uses its own spill response teams to perform clean-up, at company expense. In the event that a company lacks sufficient staff resources for these emergency needs, DNR will conduct clean-up using the state's Environmental Repair Fund, and then bill the company for reimbursement. No other state or federal bonding requirement appears to exist to cover the costs of cleanup.

DNR is very scared to do anything to help the environment and go against business

A review of our agency's history shows that Wisconsin DNR has ushered in significant progress in a broad range of areas of environmental clean-up and protection since the 1960s. The Wisconsin legislature fashions the laws that both direct and limit what DNR is able to do to manage and protect the state's natural resources. Public involvement in elections and public policy arena are essential to ensure progress in improving government policies that support the vital functions of our natural environment.

I have lost crop production along this ROW due to the failure of Lakehead to replace topsoil, to reverse soil compaction, and to remove large rocks and log mats as stipulated in my landowner agreement, and I don't want this to happen again

The dual-function agricultural/environmental inspectors who will be directed by DNR, in consultation with the DATCP, will work with landowners and the applicant's contractors to ensure that landowner stipulations for use of both the permanent easement and TWS will be enforced.

I am concerned about the potential for environmental damage and explosions due to petroleum leaks, especially regarding the very volatile diluent

DNR shares this concern for safety for all citizens, as well as for our state's natural resources. Pipeline safety, however, is under the regulation of the federal Department of Transportation. The DNR and local governments share responsibility for preparedness and response to spill and leak incidents, and have successfully responded to such incidents in several areas across the state. Unfortunately, there is no means yet devised to ensure that no such spills or leaks occur along pipelines and storage terminals.

Here is Enbridge's statement regarding pipeline safety, from their documents:

"Leak prevention is addressed through Enbridge's initial system design and materials, construction practices, and operation, maintenance, and inspection procedures. These functions are regulated by the 49 CFR Part 195. EMERGENCY PREPAREDNESS.

Enbridge is committed to operating and maintaining the pipeline system in a manner that protects the environment and ensures the safety of the public, contractors, and employees. The three main elements of emergency preparedness, leak prevention, leak detection, and leak response, are discussed below.

Leak Prevention

Leak prevention is addressed through Enbridge's initial system design and materials, construction practices, and operation, maintenance, and inspection procedures. These functions are regulated by the 49 CFR Part 195.

Route Selection

Enbridge does extensive surveys and research to identify the optimal route for a new pipeline. Typically, the safest and least environmentally damaging route is within an existing pipeline corridor, but in some cases, it is advantageous to deviate from an existing corridor in congested or developing areas.

Pipeline Materials

The manufacture of various components of a pipeline system (e.g., pipe, valves, and gaskets) is guided by specific standards, which include substantial margins of safety. Mainline pipe is subject to the API Standard Specification 5L, which includes stringent requirements for non-destructive and destructive testing, hydrostatic testing, welding, and tolerances. New fusion bonded epoxy coatings have been developed which bond much better than the field-applied hot and cold wraps. Further, these coatings are now typically applied at the mill in a controlled environment, which enhances the overall quality of the coating system. Technology and quality control in the areas of the pipe milling, coating, component manufacturing, and shipment have improved significantly over the years, resulting in high quality, leak resistant materials.

Compliance with PHMSA Regulations

The PHMSA regulates and inspects new pipeline construction to ensure compliance with the applicable pipeline regulations (49 CFR Part 195 for liquid petroleum lines). Enbridge's specifications typically augment PHMSA requirements with more stringent requirements.

Coating

Enbridge has precise specifications for the field coating of welds. Thorough inspections are conducted of field coating and the entire fusion bonded epoxy system. The coating is the primary line of defense for external corrosion, so ensuring field coating is a key factor in construction and leak prevention.

Post Construction Testing

Once pipeline installation is complete, two tests are performed to verify the integrity of the pipeline. First, a "caliper pig" is run through the line to assure that the pipeline was not dented or buckled during the construction process. On completion of a successful pig run, water is placed into the line and the line is pressurized to between 90 percent and 100 percent of the specified minimum yield strength of the pipeline, which is considerably higher than the maximum 72 percent of yield at which the pipeline may be operated. Hydrostatic testing is guided by rigorous specifications, and a successful test verifies the pipeline is ready to be put in service.

Operation, Maintenance, and Inspection

Many of Enbridge's ongoing operation and maintenance procedures focus on leak prevention. Company procedures, which are guided by over 200 industry standards, meet and generally exceed government requirements, and Enbridge provides comprehensive training for employees and contractors. Enbridge is subject to inspections by federal and state pipeline safety regulatory agencies, including on-site compliance reviews of operating facilities and/or construction activities. The following is a brief overview of operation and maintenance practices.

Pipeline Operation and Control

The Enbridge Control Center is staffed by pipeline operators 24 hours per day. The computerized pipeline control system allows operators to monitor and control remotely the pipeline and related facilities. Landlines and satellite communications are used to exchange computerized data for pipeline monitoring and control. The Company maintains a UHF radio system, supplemented by cellular phones as needed to facilitate personnel communications during operation, maintenance, and emergency activities.

Protection of the Pipe from Outside Force Damage

The pipeline is typically buried 3 or more feet deep to prevent damage to the pipeline from normal use of the land. The Company has an aggressive program to inform excavators and landowners about the location of the pipeline and about requirements to call state excavation one-call systems prior to excavation. The pipeline right-of-way is well marked by signs at strategic locations.

Protection of the Pipeline from Corrosion

Enbridge's pipelines are protected from corrosion by protective coating of the pipeline and weld areas, and construction and maintenance of a cathodic protection system. Cathodic protection systems, which prevent corrosion of the pipeline, are regularly monitored, and adjustments to the cathodic protection system are made on an ongoing basis.

Maintenance

Enbridge makes major investments each year in ongoing maintenance of its pipeline system. The Company conducts on-site inspections as specified by pre-established preventive maintenance requirements. Examples of components inspected on site include isolating valves, overpressure safety devices, pipe coating where pipe is exposed, vapor monitoring equipment, etc. Inspection records are often reviewed by government pipeline agencies during scheduled and unscheduled inspections.

Patrol

The pipeline right-of-way is patrolled by air at least once every 3 weeks or at least 26 times per year. The Company-employed pilot notes unusual excavation activity or conditions that could be petroleum leaks. If abnormal conditions are noted, ground crews are immediately dispatched for further investigation. In the event of a suspected leak, the pilot will notify the Control Center by radio and the pipeline will be shut down pending on-site investigation. As a supplement to the aerial patrol, Enbridge employees visually inspect the right-of-way from the ground in selected locations on a periodic basis.

In addition to visual inspections, Enbridge uses sophisticated internal inspection devices to clean the walls of the pipe, and to detect corrosion or dents. Such defects may not be large or deep when detected, but may have the potential to result in a rupture or weeping leak over time if not repaired. Enbridge is an industry leader in the application of these devices.

Pipeline aerial patrol, inspection, and landowner awareness requirements are included in the federal pipeline regulations. Enbridge's activities meet and often exceed these minimum requirements.

Leak Detection

In the unlikely event of a spill, the Company has several provisions to enable early detection. Aerial patrols, foot patrols, and internal inspections are described in the previous section. The Company's public awareness program, which includes information on how to recognize and respond to pipeline leaks, is also a key component in Enbridge's pipeline leak identification and notification program.

Pipeline Control System

Enbridge's Supervisory Control and Data Acquisition (SCADA) system is the central component of the Company's pipeline control system. The SCADA system includes pipeline sensing devices (e.g., pressure, temperature, density, and flow sensors), a remote computer at each site, a real-time communication network, a centralized data processing system, and a complete data display available to the pipeline control operator through a computer display and keyboard. The SCADA system includes automated alarms to warn operators of abnormal conditions when measurements exceed or fall below pre-determined maximum and minimum limits.

The SCADA system prevents errors and can automatically initiate pump station shutdowns to maintain the pipeline within safe operating pressures. Pipeline control operators can also initiate pipeline shutdown when they observe abnormal conditions. Since 1991, Enbridge has enforced a strict "10-minute rule" that requires operators to shut down the pipeline if an abnormal condition is observed that cannot be attributed to the normal fluctuations in pressures and operating conditions within 10 minutes. Enbridge is a leader in the industry in applying advanced SCADA systems. Studies using SCADA simulations indicate that the system can reliably identify a rupture as low as approximately 5 percent of product leakage.

(Small) Leak Detection System

Since even sophisticated SCADA systems cannot accurately detect very small leaks, the pipeline industry has been researching and developing approaches to improve remote detection of small leaks. Enbridge implemented a subsystem, referred to as a Computational Pipeline Monitoring System (CPM), which refines data monitoring to better analyze much smaller deviations in flow than is possible with the existing SCADA system. Enbridge installed these additional components, such as pressure transmitting devices, in sensitive areas to increase the ability to remotely and swiftly detect very small leaks through the leak detection subsystem.

Leak Response

While Enbridge's goal is to prevent emergencies on the pipeline, it is imperative that the Company be prepared to respond to an emergency should one occur. The Company's emergency response program includes pre-planning, equipment staging, notifications, and emergency and leak containment procedures. Some key components of Enbridge's leak response program are discussed below.

Emergency Response Plan

The Company's emergency response plan for the existing pipeline system has been approved by the DOT. The plan demonstrates the Company's response capabilities in accordance with the interim final rule set forth in 49 CFR Part 194.

The Company's plan is also influenced by requirements set forth in the OSHA final rules on Hazardous Waste Operations and Emergency Response. The plan addresses compliance with public and employee safety issues including implementation of the

Incident Command System, training of response personnel, protection requirements, site control procedures, and decontamination. Through the use of USGS quadrangle maps depicting the pipeline system and surrounding areas, Enbridge can evaluate these areas based on public and environmental sensitivities and, where appropriate, develop site-specific plans.

The emergency plan is maintained at District, Area, and PLM offices. In addition, Company employees are provided a copy of an Emergency Response Directory that provides checklists, summaries from the plan, internal and external contacts, and notification/reporting procedures.

Staffing

In Wisconsin, the Company employs three PLM crews, strategically located along the pipeline system. Each PLM employee is trained and equipped to respond to an emergency. Each maintenance facility has available mobile response units (equipped for both land- and water-based releases) and heavy equipment. In addition, pre-staged containment and recovery equipment is maintained and available at several other locations along the pipeline route.

The Company has pre-defined response contractors to supplement Company resources if necessary. Further, Enbridge is active in several industry and government co-operatives and mutual aid groups to facilitate emergency response.

Training

Enbridge personnel receive classroom and practical training in safety and emergency response procedures. Employees must demonstrate knowledge and proficiency in these areas as appropriate to their responsibilities. All PLM, electrical, and mechanical staff are trained to a "Hazardous Materials Technician" designation (per the OSHA final rules on Hazardous Waste Operations and Emergency Response (1910.120(q)). In addition, Enbridge employees receive job specific training as dictated by the DOT operator's qualification program.

Enbridge's resources and response capabilities are subject to periodic inspection by agencies with jurisdiction to enforce the Oil Pollution Act of 1990 through on-site inspections or performance of unannounced drills conducted by the appropriate agency."

I object to agents of Enbridge coming onto my land without my authorization, and for the high-pressured and misleading way I may be treated now, or have been treated in the past

Incidents of trespass are best reported to local law enforcement authorities. Difficulties regarding negotiations for easement conditions and compensation may best be handled through a legal practitioner experienced in supporting landowner rights. Landowners may also want to work with their legislators to establish a state Ombudsman to help them in these situations, with industry funding.

The collocation of the pipeline adjacent to the ATC high-voltage electrical transmission line poses a hazard

An engineering study of the potential for electrical current hazards has concluded that electrical current hazards ("induced AC interference" or "HVAC") could exist to workers. The report recommends the replacement of 180 CP test stations, protecting steel vents

with non-metallic shields, and adding ground mats and DC decoupling devices at 22 mainline block valves.

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