

The Honorable Rick Snyder  
Office of the Governor  
P.O. Box 30013  
Lansing, Michigan 48909

August 5, 2015

Attorney General Bill Schuette  
G. Mennen Williams Building, 7th Floor  
525 West Ottawa Street  
P.O. Box 30212  
Lansing, Michigan 48909

Director Dan Wyant  
Michigan Department of Environmental Quality (DEQ)  
525 West Allegan Street  
P.O. Box 30473  
Lansing, Michigan 48909

Director Keith Creagh  
Michigan Department of Natural Resources (DNR)  
Executive Division  
P.O. Box 30028  
Lansing, MI 48909

**Re: The State Trustee's Duty Coupled with Imminent Risk and Harm Demands the Shut Down of Line 5 Through the Straits of Mackinac**

Dear Governor Snyder, Attorney General Schuette, Director Wyant, and Director Creagh:

The undersigned groups join in this letter responding to the July 2015 Michigan Petroleum Pipeline Task Force Report. While we appreciate the efforts of the Task Force in creating the Report, its recommendations contain no specific actions, timelines, or processes needed to prevent an oil spill that would cause devastating harm to the environment and the public health. We believe further action is required in order to address the clear and imminent threat posed to the Great Lakes by Enbridge's Line 5 oil pipeline under the Mackinac Straits – namely, the decommissioning of Line 5 as relating to the transport of oil.

Our groups request that the State make a prompt commitment to developing a public, transparent, process and aggressive timetable for the shutdown of Line 5 to the transport of oil in acknowledgement of the clear and present danger to public health and safety, and the environment of a catastrophic oil spill, as described in the Report.

Despite incomplete information about the structural integrity of Enbridge's oil pipelines in the Straits, one thing is clear: there is sufficient information to trigger the State's duty to act now and shut down these oil pipelines given: (1) the imminent risk and magnitude of harm, (2) the known condition and age of Enbridge's Line 5 pipelines underwater in the Straits, and (3) the Coast Guard's inability to respond effectively to an open water oil spill in the heart of the Great Lakes, according to the Coast Guard Commandant's April testimony to Congress.

Taking action to shut down Line 5 to stop the flow of oil is the only reasonable and prudent course of action the State of Michigan can take to fully satisfy its legal and fiduciary duty as state trustee under the 1953 Easement with Enbridge, public trust common law, and state environmental laws. Anything less puts the Great Lakes at an unacceptable risk and is a breach of the State's trustee duties.

Moreover, failure to take such definitive and immediate action shifts control of Great Lakes public trust waters from the State to a private interest, Enbridge, and allows Enbridge to continue operating even though the State has documented that Enbridge has not fully disclosed or presented sufficient information. For example, with respect to the insurance requirement, the Report states: "To date, Enbridge has not documented that it is in compliance with this requirement [to provide coverage for *all* damages or losses arising from Enbridge's operations in the Easement]."

Under the terms of the 1953 Easement, Enbridge has a continuing obligation to provide all relevant information about Line 5 and to operate the line in the manner of a reasonably prudent person. Under the terms of the easement and the State's obligations to its citizens as trustee of our public waters, the State of Michigan has a continuing obligation to ensure that Enbridge is in full compliance with the easement and that no harm will come to the Great Lakes. The State should not allow Enbridge to continue to transport oil through Line 5 while its duties have not been met, particularly given the Task Force's reasoned conclusion that a reasonably prudent person might not place Line 5 through the Straits in the first place. It is not the intent of the Easement or public trust in the Great Lakes that a company can continue to operate when it has not met its obligations and the conditions under which it was granted permission to use these public trust Great Lakes bottomlands and waters.

If, in fact, the Line 5 oil pipelines' "days are numbered," as the Attorney General has emphatically said, it necessarily follows that the State has determined that continuing to allow these oil pipelines in the Straits is not acceptable and that the State has the authority to terminate Enbridge's use *before, not pending*, implementation of the four Task Force recommendations.

Accordingly, we urge you to act immediately under the State's legal authority of the 1953 Easement, the common law of the public trust, and the state's environmental laws to shut down the Enbridge oil pipelines in the Straits of Mackinac to ensure no leaks or ruptures occur during the State's review and implementation of the Report. The life of the Line 5 oil pipelines in the Mackinac Straits cannot last indefinitely, as the Task Force has acknowledged, and the lack of planning and preparation by Enbridge to develop and pursue contingency plans to continue meeting energy needs is not a proper basis for continuing to permit undue risk to the Great Lakes, public trust uses thereof, and the Straits-area economy.

We look forward to working with you to ensure that the Great Lakes, and the Straits of Mackinac in particular, remain the pristine jewels that our State and our citizens hold so dear.

Sincerely,

Phil Bellfy, Executive Director, Article32.org

Jane A. TenEyck, Executive Director, Chippewa Ottawa Resource Authority (CORA)

Rev. Deb Hansen, Concerned Citizens of Cheboygan and Emmet Counties

Nic Clark, Executive Director, Michigan Clean Water Action

Liz Kirkwood, Executive Director, FLOW (For Love of Water)

Wenonah Hauter, Executive Director, Food & Water Watch (FWW)

Stephanie Karisny, Staff Attorney, Great Lakes Environmental Law Center (GLELC)

Hans Voss, Executive Director, Groundwork Center for Resilient Communities

Peggy Case, President, Michigan Citizens for Water Conservation (MCWC)

Charlotte Jameson, Policy Manager, Michigan League of Conservation Voters (MLCV)

Ann Rogers, Chair, Northern Michigan Environmental Action Council (NMEAC)

Anne Woiwode, Conservation Director, Sierra Club Michigan Chapter