



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

August 26, 2016

Ms. Heidi Grether
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Michigan Department of
Environmental Quality (“MDEQ”)
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U.S. Army Corps of Engineers
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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. 2HB-VGKO-35JE]

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

The Concerned Citizens of Emmet and Cheboygan Counties, Food & Water Watch, Groundwork Center for Resilient Communities, Michigan Clean Water Action, Michigan Environmental Council, Michigan League of Conservation Voters, Northern Michigan Environmental Action Council, Sierra Club, Straits Area Concerned Citizens for Peace, Justice, and the Environment, and Surfrider Foundation are Michigan nonprofit corporations or 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. These organizations 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 their members and supporters to eliminate the transport of crude oil through Line 5 in the Straits of Mackinac and near the Great Lakes or communities near and depending on the high quality and protection of the waters of the Great Lakes or its tributary lakes and streams.

For these reasons, these organizations for themselves and on behalf of their members and supporters submit the following comments:

ORGANIZATIONAL AND REPRESENTATIONAL INTERESTS

1. Each of these organizations have members and/or supporters who are threatened with a risk of substantial – indeed catastrophic - harm caused by the ~~a~~ 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. The harm from such a release will affect the interests or use and enjoyment of the 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. 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 Michigan Department of Environmental Quality (“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”).¹ 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.

¹ [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 Actins on The Transport of Oil Through Line 5 under the Straits of 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).

4. Based on these reports and other substantive reports,² 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. These reports³ and comments⁴ demonstrate that Line 5 is only a part of Enbridge's large 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. 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 bbl. /day to 800,000 bbl. /day. Enbridge has stated that the doubling of capacity Line 6B will meet the current and future needs of shippers or production facilities in the Midwest, Canada, and Michigan. Enbridge has also stated in proceedings before the Michigan Public Service Commission that the doubling of design capacity for Line 6B is preferable to Line 5. Line 5 is part of a larger expansion and project purpose for the Lakehead System and is likely no longer essential.
6. 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 the overall Great Lakes and North American system.
7. Based on the application submitted by Enbridge, Enbridge has not submitted adequate environmental impact, risk, and alternative studies and analyses for the MDEQ 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. 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 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.

² 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).

³ [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).

⁴ FLOW public comments in this proceeding filed on [August 24, 2016](#) and [August 25, 2016](#).

9. 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. 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. 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. Further because of the foregoing, and given the size and magnitude of the underlying issues in this matter, the MDEQ should set this matter for public hearing as required by MCL 324.32514 and GLSLA Rules, and issue proper notices and provide for additional public participation and comment.
13. Further, based on the application and information submitted, the Enbridge application is not administratively complete, and the permits cannot be granted.
14. Further, it is recognized as identified in the letter recently sent by the Attorney General, MDEQ Director Grether, and DNR Director Creagh, and as identified by previous letters submitted by O&WDM to these departments (e.g. April 13, 2016), that Enbridge is in violation of its 1953 Easement provision limiting unsupported spans to 75 feet, as well as the public trust duties and standards in these waters and bottomlands, and that accordingly emergency measures are required. The newest violation of the 75-foot support obligation underscores the original design defect with laying the twin pipes and the continuing nature of this unacceptable hazard. According to Dr. Ed Timm’s Technical Note titled, “***Regarding Enbridge Line 5 Non-Compliance with the 1953 Easement Requirements, A Mechanistic Analysis of Straits Pipeline Washout Phenomena,***” Enbridge cannot safety 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.

15. Therefore, it is recommended that the MDEQ either (1) conditionally terminate the transport of crude oil in the Straits pipelines segment until such time as the application herein has been finally considered, determined and decided as provided and required by law; or (2) exercise its authority and grant conditional permit for the four (4) supports in violation of the Easement, pending such final and full review, consideration and determination, subject to the recommended conditions in the separate comments filed by FLOW and National Wildlife Federation.

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.

Respectfully submitted,

Rev. Deb Hansen, Concerned Citizens of Cheboygan and Emmet County (CCCEC)

Wenonah Hauter, Executive Director, Food & Water Watch (F&WW)

Jim Lively, Program Director, Groundwork Center for Resilient Communities

Nic Clark, Director, Michigan Clean Water Action

Chris Kolb, President, Michigan Environmental Council (MEC)

Lisa Wozniak, Executive Director, Michigan League of Conservation Voters (MLCV)

Greg Reisig & Ann Rogers, Co-Chairs, Northern Michigan Environmental Action Council (NMEAC)

David Holtz, Executive Committee Chair, Sierra Club Michigan Chapter

Roger and Susan Gauthier (Benton Township), David and Anabel Dwyer (Mackinaw Township), Vince Lumetta and Linda Rogers (Beaugrand Township), Straits Area Concerned Citizens for Peace, Justice, and the Environment (SACCPJE)

Pete Stauffer, Environmental Director, Surfrider Foundation

CC: Michigan Governor Rick Snyder
Michigan Attorney General Bill Schuette
MDNR Director Keith Creagh
U.S. Senator and Hon. Gary Peters
U.S. Senator and Hon. Debbie Stabenow