

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**Dredging, Grading, Bridge/WQC Permit
(Dockets Listed in Permit Table 1)**

Enbridge Energy, LP, Enbridge Pipelines (Southern Lights, LLC, and Enbridge Pipelines (Wisconsin) Inc., referred to collectively as “Enbridge” (“applicant”), is hereby granted under Sections 182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wisconsin Statutes, and Chapters NR 102, 103, 115, 116, 117, 150, 299, 216, 320, 341, 345, Wisconsin Administrative Code, a permit to place temporary bridges and related structures in or adjacent to navigable waterways listed in Table 1, a permit to grade in excess of 10,000 sq. ft. on the bank of navigable waterways, a permit to remove materials from below the ordinary high water mark of navigable waterways, and a wetland water quality certification to discharge fill in wetlands listed in Table 1, for the purpose of constructing a pump station, and a 13 mile long, 36-inch diameter petroleum pipeline, 20-inch diluent return pipeline from Superior, Wisconsin, to the Minnesota – Wisconsin border.

PERMIT CONDITIONS

General Conditions

1. This permit is predicated on a worst-case analysis of impacts and thus the most protective measures practicable for each waterway and wetland crossing are prescribed. Changes to the prescribed crossing techniques may occur only if approved by the Department in writing as described in conditions below.
2. You shall hire the Independent Environmental Monitor (IEM) approved by the Department.
3. You must supply a copy of this permit to every contractor associated with this project.
4. You must post a copy of this permit at a conspicuous location on the project web site for at least five days prior to construction, and remaining at least five days after construction. You must also keep a copy of the permit and approved plan available at all times until the project is complete at all field offices and construction sites. All employees, consultants and contractors who are working on the project must be made aware of the permit and its conditions and all appropriate managers and supervisors in charge of or working on construction or compliance must be provided with copies of the permit.
5. You must submit a detailed Environmental Construction Plan (ECP) to the Department for written approval before work begins.

6. The ECP shall include, at a minimum:
 - A. Any proposed modifications to the construction activities by this approved permit.
 - B. Final construction plan including wetland pre-construction elevation data, proposed method (including any blasting locations), final sequencing plan, and narrative, detailing additional measures to avoid or minimize waterway or wetland impacts;
 - C. Alignment Sheets, overlaid on an aerial photograph, showing environmental resources, including wetlands, waterways;
 - D. Final endangered resources management plan;
 - E. Final comprehensive wetland restoration and revegetation plan that includes an extensive native plant list, and addresses impacts to red clay plain wetlands, the Pokegama-Carnegie wetland complex, and general wetlands disturbed by construction;
 - F. Final invasive species management plan;
 - G. 10-year post-construction restoration and monitoring plan.
7. The Department will issue a decision to approve or require changes to the ECP within 30 days of receipt. Upon receipt of an ECP for any spread, the Department will meet with the applicants within 20 days to provide comments and work with the applicants to resolve any issues.
8. If the applicant needs to modify the approved ECP, the applicant must submit an updated ECP or formal Variance Request (VR) to the Department for review and written approval. The Department can modify permit conditions as needed based on the Department review and approval of the ECP or VR.
9. You shall post an electronic version of all final plans and ECPs on the applicant's project website when the hard copy documents are submitted to the Department. These plans shall be organized, including a table of contents, and remain on the website until the project is completed.
10. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
11. Site specific waterway and wetland restoration and management plans that are approved by the Department must be implemented by the permittee.

12. You must notify the Department Water Management Specialist Benjamin Callan (at phone 608.266.3524, or at email Benjamin.Callan@Wisconsin.gov), before starting construction and again not more than 5 days after the project is complete.
13. You must complete construction of the project, including site stabilization, as described in this permit, on or before December 31, 2012. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
14. The applicant and/or its contractor shall provide financial assurance mechanism(s) in a form satisfactory to the Department and in an amount sufficient to assure performance of restoration and monitoring requirements of this permit.
15. You are responsible for obtaining all federal, state and local permits or approvals that may be required for your project.
16. You are not authorized to do any work other than what is specifically described in your application and supplemental materials submitted during the application review, and as modified by the conditions of this permit and reflected in Table 1. Final Department approved plans and accompanying documents, as well as plans developed and approved pursuant to conditions of this permit, are a part of, and are conditions of, this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department. Permit conditions are based on information included in the "Construction Project Consolidated Permit Application" (including all site specific plans and maps), dated June, 2009, and Permit Table 1.
17. If any of the horizontal directional drills (HDD) fail, you must obtain written Department approval through a VR to open cut a waterway or wetland.
18. You must follow field protocols for activities in proximity to known landfills and any solid waste encountered shall be disposed of in accordance with NR 500, solid waste regulations.
19. All construction activities shall be conducted in accordance with the avoidance and minimization measures for rare species agreed to by Enbridge and the Department and/or included in an Incidental Take Authorization, if needed.
20. You shall allow access to your project site during reasonable hours to any Department employee or state-authorized monitor who is investigating the project's construction, operation, maintenance or permit compliance.

21. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
22. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
23. Nothing in the plans, or the financial assurance mechanism(s) as specified in conditions above, substitutes for or restricts the Department statutory authority to enforce its permits or Wisconsin laws and environmental regulations, including its authority to require the cessation of unlawful activities causing environmental harm.
24. No more than 30 days after the project is completed, you must submit to the Department (through the state-authorized independent environmental monitor (IEM)), clear photographs of all waterway crossings, in .jpg format on a CD or DVD.
23. This permit does not authorize any future work within the existing Right-of-way (ROW), TWS, or extra workspace (EWS).
24. You assume all responsibility and liability for any direct or indirect damage caused or resulting from the installation and maintenance of these pipelines and hold the State of Wisconsin, and its employees, harmless.
25. Upon completion of pipeline installation, all wetland elevations and streambed elevations must be restored to pre-existing conditions.
26. Dewatering of excavated work areas shall be conducted in accordance with the standards of the applicable general permit under Wisconsin's Pollutant Discharge Elimination System, measures in Wisconsin's Construction Site Best Management Practices handbook, or any Department approved technical standards.
27. At no time shall dewatering activities directly discharge to wetlands or waterways without prior effective water quality treatment. If dewatering discharging to wetlands or waterways is cloudy or exceeds 40 mg/l of total suspended solids (TSS), you shall immediately stop dewatering and contact the IEM to determine an adequate dewatering method.
28. You are required to have all necessary equipment available on site prior to commencing any waterway or wetland crossing.
29. The fish restrictions in Table 1 only apply to waterways that have standing or flowing water.

30. You are required to maintain the pipelines to ensure that they cannot cause deleterious impacts to waterways, wetlands, and groundwater.

Sensitive Species – *in addition to conditions above*

31. Enbridge shall adhere to the partial or complete avoidance of rare plant occurrences as illustrated in the Environmental Plan sheets dated May 11, 2009 or the Rare Plant Comparison Plan Sheets submitted on April 8, 2009.
32. Enbridge shall employ a qualified botanist with experience in the area and with the rare plant species of concern identified within the project ROW to serve as a Rare Plant Monitor (RPM) to verify partial or complete avoidance of all rare plant occurrences as illustrated in the Environmental Plan sheets dated May 11, 2009 or the Rare Plant Comparison Plan Sheets submitted on April 8, 2009. Monitoring reports from this individual shall be made available to the Department via electronic posting.
33. The Enbridge RPM shall re-verify the boundary of all state-listed threatened or endangered plant species identified on public lands during the 2008 survey prior to initiating ground disturbance. The objective of this effort is to determine if there are any new occurrences or the boundaries of known occurrences have extended into the construction workspace or the permanent ROW that were not identified in 2008. If any occurrences are identified within the construction workspace or permanent ROW that were not accounted for in the May 11, 2009 Environmental Plan sheets or the Rare Plant Comparison Plan Sheets submitted on April 8, 2009. The Department shall be notified prior to proceeding with any ground disturbance to ensure that unauthorized incidental take does not occur.
34. For the rare plant occurrence between MP 1085 and 1086, construction fencing and signage shall be placed no closer than five feet outside the mapped boundary of the occurrence. Absolutely no construction activities can take place within five feet of the boundary of this occurrence.
35. For the state-listed threatened plant occurrence between MP 1093.4 and MP 1093.6, construction fencing and signage shall be placed no closer than five feet outside the mapped boundary of the occurrence. Absolutely no construction activities can take place within five feet of the boundary of this occurrence.
36. For the state-listed threatened plant occurrence between MP 1095.5 and MP 1095.7, construction fencing and signage shall be placed no closer than five feet outside the mapped boundary of the occurrence. Absolutely no construction activities can take place within five feet of the boundary of this occurrence. The Southern Lights Diluent pipeline shall be installed via the guided bore method for a length equal to the length of ROW occupied by the occurrence plus an additional five feet on either end.

37. For the state-listed threatened plant occurrences identified in conditions 31 to 36 above, Enbridge shall provide the Department with GIS files identifying the boundaries of the occurrences in 2009 prior to construction and in the first growing season after construction.
38. For the state-listed threatened plant occurrence between MP 1097.5 and MP 1097.7 Enbridge shall work with the Department to determine if the occurrence can be feasibly relocated to another location to improve chances of survival.
39. For the state-listed special concern species occurrences between MP 1094.9 and 1095.53 Enbridge shall work with the Department to determine if partial avoidance of the occurrences can be achieved or indicate to the Department why this is not technically feasible.
40. Enbridge shall provide the final results of the bird surveys per the protocol and amendments submitted in May, 2009 at least five working days prior to initiating construction of the pipeline. Any potential impacts to state-listed threatened or endangered bird species shall be addressed under Wisconsin's Endangered Species Law.

General Erosion Control – *in addition to conditions above*

41. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and as specified in plans and procedures that are part of or approved pursuant to this permit. All erosion control measures must meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook, or any Department approved technical standards.
42. Any area where topsoil is exposed during construction shall be stabilized to prevent soil from being eroded and washed into a sensitive resource.
43. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to any IEM and Department personnel upon request.
44. You may not remove vegetative cover earlier than authorized under the applicable ECP or on-site changes approved by the Department or the state-authorized monitor pursuant to this permit.
45. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount necessary for construction. Areas where soil is exposed must be protected from erosion as soon as possible after removal of the original ground cover as described in the Wisconsin Construction Site Handbook (BMP's) or any Department approved technical standards, or site-specific erosion control plan approved by the Department.

46. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.
47. All erosion control matting used on this project must be made from natural fiber only, without any synthetic mesh or netting.
48. You must not deposit or store any of the dredged or graded materials in any wetland, below the ordinary high water mark, or in the floodway of any waterway unless specifically authorized by this permit or plans or on-site changes approved pursuant to this permit.
49. You must minimize the need to operate any construction equipment on the bed (below the ordinary high water mark) of any waterway.
50. Appropriate erosion control measures must be in-place and effective during every phase of this project.
51. Erosion control measures must be in place at the end of each working day.
52. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding ½-inch and at least once per week.
53. No portion of the bank or upland which is altered or disturbed, and as a result unstable, may remain unprotected for more than 7 days.
54. Site stabilization between October 1 and April 15 requires sodding or seeding and mulching (with a non-toxic tackifier).
55. After the site is 70% stabilized, or prior to at the direction of the Department, all temporary erosion control measures must be removed and disposed of properly.
56. Any temporary erosion control devices, construction debris, or waste remaining after construction constitutes littering and may be enforced as determined necessary by the department.

Temporary Bridge Conditions – *in addition to conditions above*

57. This permit authorizes the placement of temporary bridges (TB) and is not an approval for channel relocation.
58. This permit does not authorize the removal of any material below the ordinary high water mark (OHWM) for the placement of TBs.

59. You must inspect the bridge openings periodically for debris, and following any rainfall exceeding ½-inch, and must remove any restriction of flow. Any debris must be deposited in an upland site and out of any floodplain.
60. You must securely anchor each bridge with cables or some other Department-approved method to prevent it from being transported downstream during flood conditions.
61. No approach fill shall be placed in the floodway or below the OHWM of any navigable waterway. If an approach must be located in the floodway, it shall be open ramp style construction only.
62. All bridges must be placed and removed in compliance with timing restrictions, and no later than 7 days after the final waterway crossing activities (associated with clean up and restoration) have been completed.
63. All bridges across navigable waterways shall maintain a clearance of not less than 5 feet, or comply with the requirements of NR320.04, Wis. Adm. Code.
64. All clear span bridges shall completely span the waterway from top of channel to top of channel with no support pilings in the waterway.
65. Construction or placement of all TBs shall minimize the removal of trees, shrubs and other shoreline vegetation.

Dredging Conditions – *in addition to conditions above*

66. Bottom materials must be removed by equipment which is designed to minimize the amount of sediment that can escape into the water. Equipment must be properly sized so that excavation conforms to the plans submitted and allows the work to be done from the banks rather than in the waterway.
67. The stream bed backfill material shall be consistent with the pre-existing and adjacent bed material. If the stream bed in the crossing location has a unique substrate feature, it shall be replaced (i.e. cobbles, boulders, riffles, etc).
68. For all dredged waterways, you shall provide the Department with documentation that streambed elevations and slope have not changed due to the construction of this project.
69. The bank slopes must be no steeper than 2-feet horizontal to 1-foot vertical after construction.
70. All dewatering activities, including dredging, must comply with Department Technical Standard 1061

<http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/techstds.htm#Construction>).

71. If the water discharged from the dredge site exceeds the limits identified above, you shall submit and implement a stream restoration plan that must be authorized by the Department in writing.
72. You shall not dredge deeper than 10 feet below pre-existing streambed elevation in any waterway unless approved by the IEM.
73. You shall not permanently place any dredged material below the OHWM or in any wetland unless specifically authorized in the approved plans, the ECP or by the IEM.
74. You are not allowed to do construction during periods of high water levels or flooding if it could overwhelm the proposed crossing technique.
75. For each waterway crossing, the contractor shall have appropriate equipment available to handle high flow conditions.
76. Construction of the pipeline across waterways shall be completed as quickly as possible in order to minimize disruption.
77. Construction of the pipelines shall minimize the removal of trees, shrubs and other shoreline vegetation above the OHWM.
78. Spills of hazardous or toxic materials that pose a threat to human health, safety or the environment must be cleaned up to the extent practicable. All spills should be reported immediately to the DNR using the 24-hour toll free hot line, **1-800-943-0003**. For more information, please visit the spills program web page: www.dnr.state.wi.us/org/aw/rr/spills/index.htm.
79. You shall follow the prescribed waterway crossing method listed in Permit Table 1. Any proposed changes to approved waterway crossing method must be approved by the IEM or Department. Crossing definitions are described in the Permit Table 1 notes.
80. Waterways that are dry during the entire crossing process can be constructed using a “wet trench” technique.
81. Waterways that have standing water but no flow during the entire crossing process shall not be crossed by “wet trenching” unless a VR is approved by the IEM or Department.

82. Crews that install the pipeline across any waterway with standing water by “wet trenching” must properly install and maintain a minimum of one sediment control device (e.g. silt curtain) downstream of the trenching location.
83. You must inspect and maintain the dam, pumps, and flumes daily for debris, and within 12 hours following any rainfall exceeding ½ inch.
84. You shall remove any restriction of flow affecting the stream bypass system. Any debris must be deposited in an upland site and out of any floodplain.
85. Pump intakes shall prevent impacts to fisheries, wildlife, and their habitat.
86. Pump intakes shall be placed to avoid the disturbance and removal of bed material.
87. Pump discharges shall have energy dissipation devices installed to prevent disturbance and scour of bed material.
88. Flume discharges shall be designed, installed and maintained to prevent bed disturbance and scour.
89. Quantity and placement of flumes must minimize the disturbance and scour of bed material.
90. No earthen coffer dams are allowed.
91. You must ensure that all machinery and equipment used for the project has been adequately de-contaminated for aquatic invasives prior to being used in non-infested waters of the state. All equipment that comes in contact with infested waters including, but not limited to, pumps, hoses, tracked vehicles, barges, boats, turbidity curtain, aquabarrier bladders, and sheet pile must be thoroughly disinfected.
92. You shall remove all coffer dams gradually, in such a way that minimizes the release of sediment and other downstream impacts.

Wetland Conditions – *in addition to conditions above*

93. Preconstruction wetland elevation data must be collected prior to any topsoil stripping or grading. This data will be utilized to ensure post-construction wetland elevations are properly restored.
94. You shall follow the prescribed wetland crossing method listed in Permit Table 1. Any proposed changes to approved wetland crossing method must be approved by the IEM or Department.

95. If any of the HDDs for the Pokegama – Carnegie complex fail, you must obtain written Department approval through a VR to implement trenching.
96. No wetlands may be disturbed other than where specifically authorized in the ECP or by the IEM pursuant to this permit.
97. You shall not create more than 14,000-linear feet of open trench at any one time during construction.
98. This permit does not authorize any permanent or temporary gravel roads in wetlands.
99. You shall prevent the transport and spread of non-native and invasive species in wetlands.
100. The Temporary Work Space (TWS) for all wetlands shall be no more than 45 feet. The IEM may grant a waiver to use more if needed upon consultation and guidance from the Department.
101. Justification to modify approved wetland impacts must include, but is not limited to, characterizations of soil, hydrology, construction alternatives, and construction logistics.
102. The boundaries of each wetland shall be clearly marked (with stakes or signs) in the field prior to clearing activities, and shall remain during construction. If markings need to be temporarily removed, they must be replaced by the end of the working day.
103. Unless conditions are frozen or stable (rutting < 6 inches), construction equipment passage in wetlands shall be limited and must travel on construction mats.
104. Mats placed in wetlands shall not be removed until final cleanup.
105. To the greatest extent practicable, construction shall utilize the existing permanent ROW to minimize TWS wetland impacts.
106. Any Extra Work Space (EWS) in wetlands (beyond those listed in Table 4.3-2 of the application) must be approved by the Department or state-authorized IEM through a VR.
107. Any springs encountered in the ROW that cannot be avoided by construction must be characterized and documented prior to disturbance. These springs must be restored to pre-existing flow regimes and conditions.

108. You shall submit the final acreage of actual wetland impacts associated with this project. This information shall be submitted in a new column added to Permit Table 1.
109. This permit does not authorize placement of fill material in wetlands over existing pipelines that are exposed or have inadequate cover.
110. Unless in conflict with federal safety requirements, deciduous wooded wetlands in the ROW outside of the trenchline shall be allowed to grow back by stump sprouting. This precludes stump grinding, cutting below grade, or herbicide treatment.

Restoration and Monitoring - *in addition to conditions above*

111. All wetlands must be restored to pre-construction topographic elevations and flow regimes for the purpose of restoring pre-construction wetland functions, unless specifically authorized by site-specific plans or on-site changes pursuant to this permit.
112. You shall monitor and address all areas where stabilization techniques have been implemented after the first 3 months within the first growing season.
113. The restoration plan (per condition #6E) must address stabilization and revegetation of streambanks, wetlands, and uplands.
114. Within 60 days of completion of pipeline installation, you shall provide a summary of the construction method utilized and document any problems encountered for every waterway and wetland crossing.
115. Final site stabilization in wetlands shall include an approved comprehensive seed mix, and requires the re-establishment of vegetation at least 70 percent of the type, density, and distribution of the vegetation that was documented in the pre-construction field delineation.
116. The monitoring plan (per condition #6G) shall include post-construction waterway and wetland monitoring. All wetlands shall be monitored within 3 months after the first growing season following completion of construction to ensure that the vegetation in it has been properly stabilized. The monitoring plan shall propose specific waterways and wetlands requiring monitoring beyond the first year after construction. At a minimum, 50% of the wetland crossings shall be monitored annually for 3 years. At a minimum, 40% of non-wooded wetlands shall be monitored for 5 years post construction. At a minimum, 25% of wooded wetland sites must have annual monitoring for at least 10 years. The monitoring plan shall outline the parameters to be measured each year of the plan and a clear timeline for annual monitoring report submittals to the Department.

117. If construction activities result in wetland violations of this permit, the Department will determine if these areas shall require additional post-construction monitoring beyond those described in Condition 116.
118. You must notify the Department's Office of Energy (OE) if you become aware of unauthorized access or disturbance to waterways or wetlands on this project.

IEM Responsibilities - *in addition to conditions above*

119. IEM shall confirm that all wetland boundaries have been accurately marked by Enbridge in accordance with the project delineations prior to clearing and construction.
120. IEM shall process VR as determined by the Department.
121. Additional IEM responsibilities will be determined by the Department after the IEM is hired.

Other Conditions – *in addition to conditions above*

122. This permit does not authorize any harvesting, collection, possession of, or degradation to any wild rice plants.
123. Spills which are below the following threshold quantities have to be cleaned up but do not have to be reported unless human health, safety or the environment is threatened. Spill reporting thresholds are:
- Petroleum reportable quantities:
- A. Lightweight petroleum (gasoline, kerosene, aviation fuel) - one gallon or more released must be reported.
 - B. Heavyweight petroleum (fuel oil, diesel, waste oil, hydraulic oil, mineral oil, etc) - five gallons or more released must be reported.
- Agricultural Chemical reportable quantities:
- A. 250 pounds or more of dry fertilizer is released
 - B. 25 gallons or more of liquid fertilizer is released
 - C. any pesticide which, when diluted per label instructions, would cover one acre or more for field application.
124. Pipeline easements must not include language that prevents waterway and wetland restoration and management activities as required by this permit.
125. You must notify the IEM within 30 minutes of identifying any frac-out during directional drilling or directional boring.

126. You shall immediately report any violations of this permit that you become aware of to the Department's OE. You shall include the Enbridge response and proposed resolution to permit violations.

127. You are required to collect data on at least three streams for pre-construction, construction, and post-construction water quality monitoring (including at least: flow, TSS, BOD, conductivity).

FINDINGS OF FACT

1. Enbridge Energy, LP, Enbridge Pipelines (Southern Lights), LLC, and Enbridge Pipelines (Wisconsin) Inc., affiliates of Enbridge Inc., ("Enbridge") have filed an application for permits to place temporary clear span bridges across waterways, temporary bridges with supports or culverts in waterways, to grade in excess of 10,000 square feet on the bank of waterways, to dredge in waterways, to place riprap below the ordinary high water mark, to authorize equipment to drive on the bed of waterways, and to discharge fill in wetlands listed in Table 1 for the purpose of constructing a 36-inch diameter liquid petroleum pipeline (known as "Alberta Clipper"), a 20-inch diameter diluent return pipeline (known as "Southern Lights"), and a pump station on the Superior terminal facility, collectively referred to as the "Alberta Clipper Project," or the "project."
2. The proposed project is part of a larger project to transport crude oil approximately 330-miles from Hardisty, Alberta, Canada, to the Enbridge terminal facility in Superior, WI, then on to petroleum refineries in the U.S. Midwest, and to transport diluent from the U.S. Midwest to Western Canada.
3. The Wisconsin portion of the project involves the construction of a new pump station, and approximately 13 miles of new 36-inch diameter liquid petroleum pipeline and new 20-inch diluent return pipeline from the Minnesota - Wisconsin state line to the Enbridge terminal facility in Superior, WI. The project will start at the terminal facility in Superior, and run in a generally southwest direction approximately 13 miles to the Wisconsin - Minnesota state line. The lines pass through parts of Sections 2, 9, 10, 11, 16, 17, 18, 20 (T48N R14W), 24, 25, 26, 27, 31, 32, 33, 34 (T48N R15W), and 35, 36 (T49N R14W), in Douglas County, Wisconsin.
4. Enbridge is also proposing to construct 5 new 250,000-gallon petroleum tanks at their terminal facility in the City of Superior, Douglas County, also described as parts of Sections 25, 30, 31, and 36 in Township 49 North, Range 14 West. This project includes approximately 11.5 acres of permanent wetland impacts and approximately 3.5 acres of temporary wetland impacts to construct five break-out tanks and associated containment berms, and piping. Department Docket #IP-NO-2008-16-72116.
5. Enbridge currently owns and operates four existing liquid petroleum pipelines within an approximately 125-foot permanent easement. Line 1 (18-inch diameter) was installed in 1950, Line 2 (26-inch diameter) was installed in 1957, Line 3 (34-inch

diameter) was installed in 1967, and Line 4 (36-inch diameter) was installed in 2002. The two new pipelines will be placed within, or immediately adjacent to, the existing right-of-way (ROW). After installation of the two new lines, the permanent ROW width within wetlands will be 140-feet to 165-feet in width.

6. The fundamental project purpose stated by the applicant is to provide increased capacity on the Enbridge system to transport crude petroleum to markets in the United States from the growing crude oil production in Canada, and in turn, help satisfy increasing demand for refined petroleum products in the Midwestern United States and lessen reliance on overseas sources.
7. The Department provided Enbridge with information relative to Department authorities, the need to avoid or minimize waterway and wetland impacts, endangered and threatened species and habitats, and other areas of concern prior to the submittal of their application.
8. The Department informed Enbridge that additional permits or approvals may be necessary from the Army Corps of Engineers (ACOE), the U.S. State Department, and local units of government.
9. The Department had numerous pre-application and post-application meetings and discussions with Enbridge to address waterway, wetland, and listed species concerns.
10. The Department received application materials in December 2008, January, March, April, May, and June, 2009, relative to a Chapter 30 permit and wetland water quality certification.
11. The Department issued a letter dated April 15, 2009, that the application appeared to be complete for purposes of initial review. This letter also indicated that Enbridge would be required to submit additional information before the Department could issue a permit decision.
12. The Department issued a letter, including a public notice, to Enbridge on May 15, 2009. The notice indicated that the Department determined the application complete, pursuant to s. 30.208, Wis. Stats., and chs. NR 103, 299, 300, 310, 320, and 345, Wis. Adm. Code. By requirement of the Department, the applicants published the notice as a Class 1 Notice in the Superior Telegram, and mailed the notice to all affected property owners and interested parties.
13. Any wetland compensatory mitigation plan proposed by Enbridge is intended to address federal requirements. The Department has not considered wetland mitigation under the requirements of NR103 and NR350. The Department can act as a consulting agency to the ACOE on its review of a wetland compensation mitigation plan.

14. The May 15, 2009, Public Notice included language regarding a tentative decision on WEPA compliance pursuant to s. 1.11, Wis. Stats., (WEPA) and ch. NR 150, Wis. Admin. Code.
15. Pursuant to s. 30.208, Wis. Stats., the Department scheduled a public informational hearing to receive public comment on the waterway application and the draft Environmental Assessment (EA). The hearing was held on Thursday, June 4, 2009, at the City of Superior Public Library. The comment period for the waterway portion of the project closed at 4:30 pm on June 19, 2009. The comment period for the EA closed at 4:30 pm on June 8, 2009.
16. Public statements made during the hearing were recorded. In addition, written comments were received at the hearing, via US Mail, and via email. Comments received were both in support and opposition to the proposed project. Concerns were expressed regarding: the abbreviated timeframe for public comments, long-term impacts to wetlands, impacts to wild rice waters, the completeness of the EA, the potential impacts from a petroleum release or spill, impacts to resources associated with bitumen extraction, processing, and transport, impacts to wildlife, impact to groundwater, and property owner complaints regarding their experience with Enbridge, among other issues.
17. Public comments received relevant to the Department's waterway and wetland jurisdictions were considered in this decision document.
18. The Department communicated with Peter David from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) regarding the project activities in ceded territory. Mr. David determined that formal consultation with the Voigt Task Force is not necessary, and stressed that great care is needed to protect the Pokegama River, to prevent impacts to rice waters in the receiving waters of Pokegama Bay.
19. To avoid disruption to fish species and their habitat, the Department has considered limiting construction timeframes or methods during specific time periods listed in Table 1.
20. Impacts to aquatic resources and wetlands are considered to be temporary, and the resources are expected to fully recover after pipeline installation.
21. The Department has reviewed and considered information presented in the application materials including: air photos of existing ROW and adjacent lands, proposed waterway crossing locations, wetland fill (stockpile and backfill) locations, TWS impacts associated with clearing and construction, EWS impacts associated with clearing and construction; field investigations of the waterways and wetlands along the existing ROW and proposed route; and digital photos of specific access routes.

22. Department Office of Energy staff consulted with Department resource staff, federal regulators, and pipeline construction and inspection experts.
23. This project will include up to 17 waterway crossings. Waterway crossings include placement of equipment bridges, placement of coffer dams, dredging, grading on the bank, placement of the pipelines below the ordinary high water mark, backfilling to the pre-construction elevations with appropriate substrate, and bank restoration.
24. Pipeline construction across waterways can be completed by horizontal directional drill (HDD), directional bore, open-cut dry trench, and open-cut wet trench.
25. The approval of dredging for waterway crossings is limited to waterways within the project right-of-way that cannot be avoided by horizontal directional drill, directional bore, or jack and bore.
26. Work below the ordinary high water mark and the placement of temporary bridges (TB's) is limited to the timeframes established in NR320 and NR345, unless otherwise approved by the Department's local fisheries biologists.
27. In general, impacts to water quality and aquatic habitat are minimized if the construction zone is isolated from the waterway by HDD, directional bore, or dry trenching.
28. Silt curtain use provides a water quality benefit during wet trench construction only where flow is 1 foot per second or faster.
29. Clear span bridges are expected to have less impact on water quality and stream flow patterns than the use of bridges with supports, culverts or fords.
30. The project will not result in the direct filling of wetlands. Total wetland impacts include approximately 79-acres of temporary disturbance within approximately 83 wetland complexes.
31. The project will involve no more than 19 acres of wetlands impacts for the cutting of trees and woody vegetation in wetlands, excavation and stockpiling of wetland soils, placement of a 36-inch diameter petroleum pipeline and a 20-inch diameter diluent pipeline, the backfilling of excavated soil over the pipelines, and impacts to wetland areas associated with construction equipment access.
32. Based on Department review of the application materials, modifications have been made in the construction footprint, construction techniques and restoration measures to avoid or minimize wetland impacts.
33. If constructed according to the permit, no wetlands will be converted to uplands. The impacts are of a temporary nature and the only fill will result from the pipes being

placed in wetlands. The top of each pipe will be placed a minimum of 3 feet below ground surface.

34. Based on the information provided by the applicants and the conditions of this permit, the Department has determined that there are not practicable alternatives to the wetland impacts.
35. The project will cross 7 wetland areas associated with areas of special natural resource interest pursuant to s. NR 103.04. The Department considered the potential adverse impacts to these wetlands and determined that the impacts have been avoided and minimized to the greatest extent practicable if the provisions of this permit are met.
36. Pursuant to s. NR 103.08, Wis. Adm. Code, the proposed project, if constructed in accordance with this permit, will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences.
32. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
33. The proposed project, if constructed in accordance with this permit and protection measures required and recommended by the Department's Office of Energy and Bureau of Endangered Resources, will avoid or minimize impacts to endangered resources. Specifically, impacts to state-listed threatened or endangered species will be avoided if the measures detailed in the permit conditions are successfully implemented. As such, an incidental take authorization pursuant to Wisconsin's Endangered Species Law (29.604, Wis. Stats.), was not required.
34. The Department developed an Environmental Assessment (EA) that provided a description of the proposed project, described the existing environment, evaluated alternatives, and described the socio-economic and environmental impacts expected from the various alternatives. After release of the EA on May 20, 2009, the Department received several comments. The Department summarized the public comments and responded to these comments. The EA was certified on June 18, 2009. The certified EA, the public comment summary and response document for the EA are available at the following website: <http://dnr.wi.gov/org/es/science/eis/eis.htm>
35. It is the final decision of the Department that preparation of an Environmental Impact Statement (EIS) is not required and that WEPA compliance has been completed pursuant to s. 1.11, Wis. Stats., (WEPA) and ch. NR 150, Wis. Admin. Code.
36. The Department and the applicants have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11,

182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wis. Stats., and Chapters NR 102, 103, 115, 116, 117, 150, 299, 320, 341, and 345 of the Wis. Adm. Code.

37. The attached Permit Table 1 prescribes construction requirements for each waterway and wetland crossing.

CONCLUSIONS OF LAW

1. The Department and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wis. Stats., and Chapters NR 102, 103, 115, 116, 117, 150, 299, 320, 341, and 345 of the Wis. Adm. Code.
2. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

NOTICE OF APPEAL RIGHTS

Waterway Permit

If you believe that you have a right to challenge this waterway decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted, and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Wetland Permit

If you believe that you have a right to challenge this wetland decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats. and s. NR 299.05, Wis. Admin. Code, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

A request for a contested case hearing must follow the service requirements found in s. NR 2.03 and the form prescribed in s. NR 2.05(5), Wis. Admin. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request;
2. The substantial interest of the petitioner which is injured in fact or threatened with injury by the Department's action or inaction;
3. Specific information explaining why the petitioner's interests are adversely affected by the Department's determination;
4. Evidence of a lack of legislative intent that this interest is not to be protected;
5. An explanation of how the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department's action or inaction;
6. That there is a dispute of material fact, and what the disputed facts are;
7. The statute or administrative rule other than s. 227.42, Wis. Stats., which accords a right to a hearing;
8. Specific reasons why the proposed activity violates the standards under s. NR 299.04(1)(b), Wis. Admin. Code;
9. A statement that the petitioner will appear and present information supporting its objections in a contested case hearing.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Admin. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Madison, Wisconsin on June 19, 2009.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By _____
Benjamin Callan
Water Management Specialist