

ISSUE SUMMARY:

Enbridge's Line 5 pipeline, built in the 1950s, delivers crude oil and natural gas liquids (mostly originating in Alberta, Canada) from its distribution terminal in Superior, Wisconsin, through the Upper and Lower peninsulas of Michigan, to refineries in Sarnia, Ontario, with connections to pipelines serving other refineries in eastern Canada, Michigan, Ohio, and Pennsylvania. Line 5 is part of the Enbridge Lakehead System, the portion of the Canadian pipeline company's larger Mainline System located within the US. The Enbridge Mainline System is North America's largest crude oil pipeline network.

KEY POINTS:

STRAITS OF MACKINAC TUNNEL PROJECT:

- Enbridge proposes to construct a tunnel under the Straits of Mackinac (the waterbody connecting Lakes Michigan and Huron) to carry a replacement for the Line 5 Dual Pipelines, currently located on the lakebed connecting the Upper and Lower Peninsulas of Michigan, per several 2017/2018 agreements with then Michigan Governor Snyder (R). The tunnel would be owned by the Mackinac Straits Corridor Authority, a state agency, which would then lease it back to Enbridge.
- A 2017 Consent Decree, resolving US claims related to two 2010 oil spills from other Enbridge pipelines in Michigan and Illinois, contains requirements to prevent spills in the Straits. Requirements include periodic underwater visual inspections of the current Dual Pipelines, in-line inspections of the Dual Pipelines, and implementation of measures designed to reduce the risk of vessel anchors damaging the Dual Pipelines.
- The US Army Corps of Engineers (USACE) is preparing an Environmental Impact Statement (EIS) on the proposed tunnel project to inform its permitting decisions under Section 10 of the Rivers and Harbors Act (RHA) for construction above, in, or under navigable waterways, and under Section 404 of the Clean Water Act (CWA) for filling federal jurisdictional wetlands. EPA and several Tribal Nations are serving as Cooperating Agencies and participate in monthly USACE-led coordination meetings. In 2022 EIS scoping comments, EPA raised concerns about the significant environmental impacts of the project. EPA also informally voiced concerns after reviewing a 2020 USACE CWA 404 Public Notice.

WISCONSIN REROUTE PROJECT:

- Enbridge proposes a 41-mile reroute of the Line 5 pipeline around the Bad River Reservation in northern Wisconsin. The proposed reroute stems from a pending trespass and public nuisance lawsuit by the Bad River Band against Enbridge seeking removal of the pipeline from the Reservation.
- The Wisconsin Department of Natural Resources (WDNR) issued an EIS under the Wisconsin Environmental Policy Act (WEPA) on September 6, 2024. In 2022 Draft EIS comments, EPA shared concerns and recommendations around impacts to Tribal resources and treaty rights, waters, spill prevention and safety, among other impact categories.
- Wisconsin will have until January 18, 2025 to waive, issue or deny CWA 401 certification, such certification or waiver is a prerequisite to issuing the CWA 404 permit.
- In 2022 CWA 404 Public Notice comments, EPA raised concerns that the proposed project “*will result in substantial and unacceptable adverse impacts*” to an aquatic resource of national importance (ARNI) under Section 404(q) of the CWA. Under this process, EPA will have the opportunity to elevate and then start the veto process if USACE issues the 404 permit without addressing EPA's concerns. In May 2024, USACE published a Draft Combined Decision Document (DCDD), which includes a Draft Environmental Assessment, Draft CWA 404(b)(1) Guidelines Evaluation, and Draft Public Interest Review.

- On August 23, 2024, EPA provided comments to USACE on the DCDD pursuant to EPA authorities under NEPA; CEQ's implementing regulations, Section 309 of the Clean Air Act, and Section 404 of the Clean Water Act. USACE is currently reviewing comments that were received during public comment and has not yet finalized the environmental assessment or made a decision on permit issuance.

LEGAL CHALLENGES AND POLITICAL INTEREST

- In November 2020, current Michigan Governor Whitmer (D) revoked Enbridge's state lakebed easement and ordered Enbridge to cease operating the existing Dual Pipelines by May 2021 due to concerns about spill risks to the Great Lakes. For now, Enbridge continues to operate Line 5 and is engaged in litigation with the state over the continued operation of Line 5 in two separate cases – one in federal court and one in state court.
- In October 2021, Canada objected to the actions taken by Michigan and invoked the 1977 Transit Pipeline Treaty which guarantees uninterrupted transportation of oil and gas across the US-Canada border. The US and Canada are currently engaged in treaty negotiations, with the US seeking to avoid an action by Canada to invoke mandatory arbitration under the treaty. Canada has also invoked the same treaty in objection to actions being taken by the Bad River Band to shut down a portion of Line 5 that crosses the Band's reservation in northern Wisconsin. In addition, Enbridge has filed legacy claims against the US pursuant to the North America Free Trade Agreement (NAFTA) related to Line 5 and both Michigan's and the Band's efforts to shut down the pipeline.
- In June 2023, a federal district court in Wisconsin ordered Enbridge to cease operation of Line 5 on the Bad River Reservation within three years (by June 2026) after it earlier found Enbridge in trespass on the Reservation since 2013. Both parties appealed to the 7th Circuit Court of Appeals. In response to a request by the 7th Circuit, the US filed an amicus brief on 4/10/2024 in which it supported the district court's finding of trespass but argued in favor of reversing and remanding for further consideration the district court's judgment ordering injunctive relief (i.e., shut down Line 5 by June 2026).
- Multiple Great Lakes Tribes have written to the President and filed briefs in the ongoing litigation regarding Line 5 in both the Straits and on the Bad River Reservation. The Tribes argue for a permanent shutdown of Line 5 because of the threat that potential oil spills pose to Great Lakes water supplies, ecosystems, and treaty-protected fisheries.
- The State Department is currently leading an interagency group, which includes EPA, engaged in sensitive treaty negotiations with Canada and NAFTA claim resolution discussions with Enbridge. The highest levels of the US government are involved.
- Congressional Interest: Significant interest from all Reps. bordering Lake Michigan, especially Rep. Upton, Sens. Stabenow and Peters.

COORDINATION WITH STAKEHOLDERS ON SPILL PREPAREDNESS AND RESPONSE

- EPA serves on a multi-agency spill prevention and contingency team, called the Regional Response Team (RRT), that oversees spill prevention measures in Region 5 and includes Line 5.
- EPA has been coordinating with the RRT, relevant stakeholders, and Tribes to develop spill preparedness and response plans for areas potentially affected by Enbridge pipelines. In particular, EPA has conducted workshops and exercises with Tribes located near Line 5 to identify and protect culturally sensitive areas.

KEY EXTERNAL STAKEHOLDERS:

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| <input checked="" type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input checked="" type="checkbox"/> Tribes | <input checked="" type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input checked="" type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public | | | |

MOVING FORWARD:

- For the Straits tunnel project, EPA will review and comment on USACE's planned EIS and a potential amended CWA 404 Public Notice to inform USACE's permit decisions.
- For the Wisconsin reroute project, EPA will continue working through the CWA 404 comments and, if the Wisconsin DNR waives or issues a CWA Section 401 certification, EPA will perform an analysis under CWA Section 401(a)(2) to determine whether a discharge from the reroute may affect neighboring jurisdictions' water quality and EPA will take any required follow-up actions.
- EPA will continue to participate in the RRT and is currently planning additional spill preparedness and response exercises with relevant stakeholders, including Tribes.
- EPA will continue to oversee implementation of the 2017 Consent Decree and keep abreast of all the various aspects of Enbridge's Lakehead System, including updates on litigation.