Via electronic mail

August 29, 2022

Mr. Chad Konickson, Chief
St. Paul District—U.S. Army Corps of Engineers
CEMVP-RD 180 Fifth Street East, Suite 700
Saint Paul, MN 55101-1678
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Re: Requesting Preparation of an EIS, Circulation of a Preliminary EA for Public Comment, and a Public Hearing on U.S. Army Corps of Engineers Permit Application No. 2020-00260-WMS

Dear Chief Konickson:

Midwest Environmental Advocates, Honor the Earth, Sierra Club – Wisconsin Chapter, Clean Wisconsin, Wisconsin's Green Fire, the League of Women Voters of Wisconsin, and 350 Wisconsin write to request that the U.S. Army Corps of Engineers (USACE) undertake a thorough environmental review of the proposed Enbridge Energy Line 5 Wisconsin Segment Relocation Project (the Project). Specifically, we emphasize the need for an environmental impact statement (EIS) that is independent of the state environmental review process and complies with the National Environmental Policy Act (NEPA), including an analysis of all cumulative impacts of the Project. Noting the premature closure of the public comment period on Enbridge's permit application and the inadequacy of the environmental information made available to the public at that time, we remind the USACE that if it decides to prepare an environmental assessment (EA) prior to preparing an EIS, that process should include the circulation of a draft EA that provides the public with an opportunity to offer informed comments. Finally, we reiterate our prior written request for a public hearing on the permit applications triggering environmental review.

The Project (Application No. 2020-00260-WMS) is a proposal to build a 41-mile-long pipeline segment that will skirt the border of the Bad River Reservation and cross through Ashland and Iron Counties in northern Wisconsin. Specifically, the Project is expected to impact hundreds of wetlands and waterways, and facilitate the continued transportation of, on average, 540,000 barrels per day of unconventional crude oil and/or natural gas liquid through these sensitive areas for the foreseeable future. Not only will this segment of new pipeline adversely impact the people and the environment of northern Wisconsin, it will also prolong the life of Line 5 as a whole. Constructed

in 1953, Line 5 is a 645-mile-long pipeline that begins in Superior, Wisconsin, crosses the Mackinac Straits, and ends in Sarnia, Ontario. Despite posing an increasingly high risk of an oil spill that would severely impact the water quality of the Great Lakes, Line 5 has never been subject to an environmental review under NEPA and continues to operate well past its designed life expectancy.

As these circumstances indicate, the Project will "significantly impact the quality of the human environment" and must be analyzed in an EIS. [1] Further, an EIS is required here because the Project's impacts will extend far beyond the immediate vicinity of the newly constructed pipeline segment. The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, that revised the definition of "impacts and effects" in 40 C.F.R.§ 1508.1 to once again include "direct, indirect, and cumulative effects."[2] The USACE's decision on Enbridge's application for a § 404 permit will determine whether Line 5 may continue to facilitate the combustion of fossil fuels and release of greenhouse gas (GHG) emissions. The projected GHG emissions directly related to the Project constitute cumulative impacts that are well above any established significance thresholds requiring analysis in a full EIS, and those impacts are even more significant when viewed in conjunction with the continued operation of the entirety of Line 5.

As the USACE begins to determine the scope of issues for analysis in its EIS, we remind the USACE of the CEQ's requirement that federal agencies invite the public to participate in the scoping process.[3] The Project and its implications for the entirety of Line 5 raise complex issues of scope that are unlikely to be addressed in sufficient depth without informed public involvement. For reference, the scoping process undertaken by the Wisconsin Department of Natural Resources (WDNR) in 2020 was informed by over 2,100 written comments and required a public hearing lasting over five hours. Although the CEQ's regulations require federal agencies to cooperate with state agencies "to the fullest extent practicable" by preparing joint EAs or EISs,[4] the USACE did not prepare a joint EA or EIS with the WDNR. As a result, the USACE must now independently solicit public feedback on the issues of scope related to Enbridge's permit application. In doing so, we specifically request that the USACE include a comment period and a public hearing in its scoping process.

Alternatively, if the USACE chooses to prepare an EA prior to preparing EIS, we request that it follow the CEQ's recommendation that agencies incorporate the scoping process into an EA "when an EA deals with uncertainty or controversy regarding…the environmental effects of the proposed action." [5] Such a process offers a "transparent way to…focus[] the analysis on the most pertinent

[1] National Environmental Policy Act, 42 U.S.C. § 4332(C) (2022).
[2] *See* National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453 (Apr. 20, 2022).
[3] *See* 40 C.F.R. § 1501.9(b).
[4] 40 C.F.R. § 1506.2.
[5] Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act, 77 Fed. Reg. 14473, 14477 (Mar. 12, 2012).

issues and impacts." Here, the demonstrated interest in the scoping process at the state level highlights the need for transparency as the USACE determines the degree to which it will address significant issues such as oil spills, climate change, and horizontal directional drilling, each of which the WDNR failed to adequately address in its Draft EIS. Demonstrating the high public interest in the Project, WDNR extended its public comment period on the Draft EIS and ultimately received more than 32,000 comments.

Regarding the USACE's potential preparation of an EA, we emphasize the CEQ's requirements for public involvement in that process and request that the public be given the opportunity to comment on a draft EA. The CEQ's NEPA regulations require that the USACE make a "diligent effort" to involve the public to the "extent practicable" when preparing an EA.[6] Specifically, this includes "[p]rovid[ing] public notice of…the availability of environmental documents so as to inform those persons…who may be interested," and "[s]olicit[ing] appropriate information from the public." The St. Paul District Office of the USACE held a 75-day public comment period for Enbridge's § 404 permit application that concluded on March 22, 2022, without any public hearings and prior to the WDNR issuance of a required § 401 Water Quality Certification and Final EIS. We doubt that the USACE's premature closure of the public comment period, without holding a public hearing, involved the public in the EA process to the "extent practicable," especially due to the lack of adequate environmental information available during the comment period. While we commend the USACE for highlighting the unavailability of environmental documents, such as the WDNR's pending § 401 Water Quality Certification and Final EIS, in its Public Notice of Permit Application, we question whether such an acknowledgment, taken alone, constitutes the USACE making a "diligent effort" to involve the public.[7]

Additionally, the USACE is currently tasked with independently evaluating the claims in Enbridge's incomplete permit application, such as its mischaracterization of wetland impacts as "temporary" and its inadequate analysis of the Project's cumulative impacts on the landscape, among other claims. We suspect that this evaluation will require the USACE to generate additional documents relevant to the environmental review process. While a permit application notice and comment period may in some circumstances constitute adequate public involvement during the EA phase, that is not the case when the comment period is closed prior to crucial environmental information being made available to the public and without a public hearing. Rather, to address these inadequacies, we request that the USACE circulate a draft EA for public comment after the WDNR has issued the § 401 Water Quality Certification and Final EIS and after the USACE has independently evaluated the claims in Enbridge's permit application so that the public may weigh

[6] 40 C.F.R. §§ 1501.5(e), 1506.6(a).

[7] The USACE has previously informed the public of its reliance on a state EIS by including a reference to the *Final* EIS in its notice of public comment. *E.g.*, U.S. Army Corps of Eng'rs, St. Paul Dist., Public Notice at 6 (Dec. 20, 2018) available at https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Enbridge/Combined%20PN%202014-01071_FINAL.12.20.18.a.pdf?ver=2018-12-21-083755-370.

in with *informed* comments. We do acknowledge that at this stage in the environmental review process the preparation of an EA would require the USACE to meet similar procedural requirements as the preparation of an EIS, yet would fail to satisfy NEPA's requirements for substantive analysis of the Project's environmental impacts, which will only be satisfied by a full EIS.

Finally, we reiterate the request previously made by many of the undersigned organizations for a public hearing pursuant to 33 CFR § 327.4(b) and part 7 of the USACE's public notice. We remind the USACE that such a request "shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is no otherwise valid interest to be served by a hearing."[8] Here, the issues raised relate to the environmental impacts of a permit that would authorize Enbridge to discharge fill material into 101.8 acres of wetlands and construct a pipeline crossing nearly 200 waterways, in addition to facilitating the continued operation of Line 5. These issues are substantial, particularly when viewed in relation to the CEQ's recent rulemaking concerning indirect and cumulative effects.

Therefore, the undersigned groups respectfully request that the USACE prepare an EIS addressing the significant environmental impacts that would result from the USACE's approval of Enbridge's permit application. In doing so, we request that the USACE remedy its inadequate involvement of the public thus far in the environmental review process by holding a public hearing and offering additional opportunities for public comment once all relevant environmental information is available. We emphasize that such involvement, particularly in the scoping context, will inform the need for a full EIS that addresses all direct, indirect, and cumulative impacts of the Project.

Respectfully submitted,

/s/

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[8] 33 C.F.R. § 327.4(b).

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