

Lane, Roger

From: Marybeth Elliott <gutsugua@gmail.com>
Sent: Sunday, April 05, 2015 3:11 PM
To: Salov, Robert; Kolar, Mary; Bollig, Jerome; Matano, Alfred; Miles, Patrick
Cc: Violante, Todd; Lane, Roger; Peter Anderson; Laura Hanson Schlachter; Beth Esser
Subject: information for ZLR re CUP 2291. re severe and lasting environmental devastation after spills; need for insurance
Attachments: Severe and Lasting Ecological Consequences after BP Deepwater Horizon Gulf Oil Spill.docx; Need for Dane County and other affected counties to have appropriate insurance to cover environmental remediation in the event of an Enbridge tar sands spill final.docx

Dear Supervisors

We have encountered news reports of severe and lasting ecological harm after the BP Deepwater Horizon Gulf Oil spill, some of which may never be rectified, despite rosy claims from the responsible parties.

We note that Enbridge also makes rosy claims after their 2010 Kalamazoo tar sands spill, despite concerns that not everything was restored as needed.

The new reports increase our conviction that in the event of a tar sands spill in Dane County, everything should already be in place to ensure full cleanup and recovery, thus the importance of proper insurance, including Environmental Impairment Liability Insurance with Dane County as the named insured.

I am therefore providing in this email the text of two documents. One is related to the above regarding the Gulf Oil Spill, entitled:

Severe and Lasting Ecological Consequences after BP Deepwater Horizon Gulf Oil Spill

The second document was written for 350Madison:

Need for Dane County and other counties on Enbridge Line 61 to have appropriate insurance to cover environmental remediation in the event of a tar sands spill.

I also provide the two documents as attachments.

Please post these two documents on the ZLR website for the CUP 2291 item.

Severe and Lasting Ecological Consequences after BP Deepwater Horizon Gulf Oil Spill

THE GUARDIAN

"Deepwater oil spill: BP steps up PR effort to insist all is well in the Gulf

Oil giant says area is making a rapid recovery but evidence mounts that wildlife is still struggling to rebound, five years after Deepwater Horizon spill

Critics say BP's insistence that everything is getting better merely acts as salt on a not-yet-healed wound Photograph: Reuters

Peter Moskowitz <<http://www.theguardian.com/profile/peter-moskowitz>> in New Orleans

<<http://www.theguardian.com/environment/2015/mar/31/bp-pr-effort-gulf-coast-deepwater>>

In the run-up to the five-year anniversary of the Deepwater Horizon spill this April, BP <<http://www.theguardian.com/business/bp>> is ramping up its effort to convince consumers that life is returning to normal on the Gulf coast.

Over the last month, the company has released PR materials that highlight the Gulf's resilience, as well as a report compiling scientific studies <https://www.thestateofthegulf.com/media/1508/bp_year-five-report-final.pdf> that suggest the area is making a rapid recovery.

But evidence is mounting that five years after millions of gallons of oil spilled into the Gulf of Mexico, wildlife is still struggling to rebound. A new report

<<http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2013/12-05-13-Forestry-Bioenergy-in-the-Southeast.aspx>> , released on Monday by the National Wildlife Federation (NWF), suggests that at least 20 species are still being affected by the spill.

"This report, more so than any, shows that science is certain that this is a long-term problem," said Ryan Fikes, a scientist with NWF. "But it's going to take even more time to understand the true magnitude of this."

The NWF report is the organization's fifth survey highlighting scientific research into the environmental impact of the spill. This year, the NWF found that higher-than-normal rates of death for many species continued, and are likely linked to the disaster: dolphins along Louisiana's coastline were found dead at four times historic rates last year, and research has shown the deaths of 12% of brown pelicans and 32% of a species of gull can be linked to the spill.

The NWF report also says the eggs of many animals - from trout in the Gulf to pelicans nesting as far away as Minnesota - have been found to contain oil and the dispersant used by BP in the wake of the spill.

A representative from BP sent a statement, attributed to senior vice-president Geoff Morrell, that read in part: "The National Wildlife Federation report is a work of political advocacy ... the dire predictions made in 2010 have fortunately not come to pass."

But even less political groups, like the US National Oceanic and Atmospheric Administration (NOAA), seem to agree that BP is underplaying the spill's continued impact. Earlier this month, NOAA said

<http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/statement-from-EC-to-BP-5-yr-3_16_15_with_contact.pdf> BP "misinterprets and misapplies" data to obscure the truth.

People on the ground seem to agree - activists and residents of the area surrounding the Gulf of Mexico say oil is still being found on beaches, on private land and in the water. They say that in addition to having to deal with economic hardships and environmental damage, BP's insistence that everything is getting better merely acts as salt on a not-yet-healed wound. "As a lifelong resident of Louisiana, it makes me really angry," said Colette Pichon Battle, an attorney with the Gulf Coast Center for Law and

Policy who helps low-income residents file claims against BP.

"As an attorney making these claims who has been out into the marsh many times, to see them act like this, it feels disingenuous at best."

Need for Dane County and other counties on Enbridge Line 61 to have appropriate insurance to cover environmental remediation in the event of a tar sands spill

It is vital that the citizens and taxpayers of Dane County, and of other affected WI counties, be listed as named insured parties in the event of a spill from the Enbridge line 61 tar sands pipeline. With this, the County would have an equal right to claim money from the insurance company so that county-hired contractors can undertake the remediation required by law, and, crucially for tar sands, in a timely fashion.

As documented below, cleanup by the company may stretch over many years, characterized by protracted dispute with the EPA and dilatory actions by company insurers. Moreover, history shows that efforts by Enbridge and other companies focus on what is most evident, cleaning up the obvious signs of oil or tar sands. Other crucial things have lesser priority: This includes immediate planning to provide a cleanup that most effectively removes all possible product, rather than just dispersing it. Most crucially, this also means providing prompt and ongoing outside professional environmental assessment and remediation.

The County cannot safely rely on Enbridge's vaguely defined current insurance, which does not include environmental coverage, nor on Enbridge's unspecified deep pockets. This would leave the County and its taxpayers liable for enormous costs if there were a spill. Sadly, any environmental impact, including damage to farmlands, rivers, streams, forests, wetlands, and to fish and other wildlife, would likely await years before being properly assessed and completely remediated, if that were possible.

➤ Seven key considerations underlie the need for Dane and other counties to be protected with adequate insurance:

What is at risk in Dane County if there is a tar sands spill?

A tar sands spill in Dane County could devastate rivers, lakes, and wetlands. According to the Dane County Lakes and Watershed Division, we have 69 named lakes, and more than 400 miles of streams and rivers including 14 miles of the Wisconsin River.¹ The total surface water coverage in Dane County is more than 23,000 acres, or 36 square miles and is home to 52,000 acres of wetlands, part of what makes Dane County treasured. Water-related recreation activities contribute substantially to the region's economy, and water resources contribute to business, to waterways, wetlands, and wildlife.

A tar sands spill could also wreak havoc on property owners and farmers. Dane County farmers own and manage 504,420 acres, or two-thirds, of the county's land. This includes cropland, rangeland, pasture, tree

farms and farm forests.² Dane county ranks first in total value of agricultural products sold. It is fifth ranked dairy producing county in the state and among the top three in corn for grain, soybeans, corn for silage, cattle and calves, and tobacco. Tar sands spilled on agricultural land would ruin crops and could lead to permanent damage.

Enbridge's dangerous safety record, including the Kalamazoo disaster

Enbridge is well-recognized for its very poor safety record, with more than 800 reported spills, including 6.8 million gallons of hydrocarbons into the land, water, and atmosphere³ and has been the focus of withering criticism and/or huge fines from the state of Wisconsin, the Environmental Protection Agency (EPA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the National Transportation Safety Board.^{4,5}

Included among Enbridge's 800+ spills is the July 2010 Kalamazoo River tar sands spill, the worst inland pipeline spill in US history (843,444 gallons of tar sands.) Notably, the Enbridge emergency response plan that was on file with PHMSA at the time of the spill stated that a rupture would be detected within five minutes and the damaged segment closed in three minutes. However, the leak was not discovered or addressed for over 17 hours. Thirty-five miles of the Kalamazoo River and eventually the river sediment were severely contaminated, with great loss of fish and wildlife. In March 2013, the EPA ordered Enbridge to continue the cleanup and dredge portions of the river to remove submerged oil and oil-contaminated sediment.⁶ Enbridge's continued sluggish response to EPA cleanup directives was evident in a November 2013 letter to Enbridge, insisting on further cleanup of submerged oil.⁷ EPA stated "Although we recognize that the work required by the Order is unlikely to be completed by December 31, 2013, U.S. EPA believes that had Enbridge taken appropriate steps earlier as requested, it would not require an extension now. In particular, U.S. EPA believes that Enbridge has continuously failed to prepare adequate contingency plans for a project of this nature."

Of special note, Enbridge declined to provide requested funds for assessing injuries to natural resources which had been submitted by Michigan authorities and US Fish and Wildlife Service.⁸ Critically, this tells the Zoning Committee that the EPA supervised cleanups of oil spills, almost certainly, will be significantly inadequate to meet Dane County's determination of what is necessary to restore its lands and waters to their original state.

Finally, PHMSA reports that from 2006 to 2014, Enbridge reported 15 spills in Wisconsin.⁹

Unprecedented magnitude of a potential tar sands spill

Enbridge will pump 1.2 million barrels of tar sands each day if the Dane County pump station is upgraded as planned. This will dwarf Keystone which would have been 830,000 barrels daily, and will be the highest pump rate of any pipeline in the USA. Each barrel is 42 gallons, so this is 50,400,000 gallons daily through line 61, which is 2.1 million gallons per hour or 35,000 gallons per minute. In other words, a line 61 pipeline rupture could spill as much as Enbridge spilled at Kalamazoo, in only 25 minutes.

Tar sands characteristics: nearly impossible to clean up, more environmentally damaging than crude oil

Tar sands are much more viscous than traditional crude oil and thus must be diluted with light, volatile organic chemicals to allow flow through a pipeline. When spilled, after the lighter chemicals evaporate, the heavy tar sands can sink to the bottom of waterways, making cleanup expensive. The Kalamazoo disaster is notable: it took nine days for most of the diluents to evaporate or dissolve into the water, although Enbridge did not move quickly enough to clean up when the tar sands remained afloat. Meanwhile, the heavier tar sands sank, which required an environmentally destructive dredging of the Kalamazoo River bottom. Once cleanup crews locate submerged oil, it is difficult to remove without destroying the riverbed. Cleanup workers in Marshall were forced to improvise less invasive procedures that balanced oil cleanup with protecting the ecosystem.¹⁰ According to Steve Hamilton, Professor of Ecosystem Ecology at Michigan State University, and advisor to EPA for the cleanup, "First, before it even got to the bottom, we learned that in the first year, it stuck to surfaces of plants and debris that made a tarry mess that largely had to be manually removed." It was the removal of the submerged oil that made the cleanup last as long as it has. "It is so incredibly difficult to remove submerged oil from a complex river, extending over nearly 40 miles."¹¹

The National Academy of Sciences is sufficiently concerned about the environmental risks of tar sands (diluted bitumen), that in November 2014 NAS assigned a committee of outside experts to analyze whether diluted bitumen's characteristics warrant modifications of the regulations governing spill response plans, spill preparedness, or cleanup. This study is underway.¹²

Costs for tar sands cleanup, greatly exceeding that for crude oil cleanup

Using figures from PHMSA's pipeline incident database, an attorney and researcher with the National Resources Defense Council calculated that the average cleanup cost of every crude oil spill from the past 10 years was \$2,000 per barrel, whereas the Enbridge Kalamazoo spill has cost upwards of \$29,000 per barrel.¹⁰

Thus, Dane and other Wisconsin counties "hosting" line 61, which carries tar sands, could be at much higher financial risk from a spill compared to a spill from conventional crude oil.

Extremely long delays between environmental events, cleanup, and inadequate restoration funding:

Inadequate and/or very slow restoration of areas devastated by spills of oil or tar sands are the rule rather than the exception, whether for Enbridge or other companies, as exemplified below.

These examples underscore the importance of funding from the responsible party, the extended lag time between an incident and a restoration agreement and then restoration funding, and the ultimate reality of inadequate restoration funding and poor or uncertain environmental restoration—a sad outcome for people, flora, and fauna in the area.

1996 San Francisco Drydock bunker fuel oil spill: The SS Cape Mohican discharged 96,000 gallons of fuel oil into a floating drydock at the San Francisco Shipyard, oiling a huge expanse of beaches and killing an estimated 593 birds and impacting recreational beach use, shoreline habitat, and fisheries.¹³ A trustee agreement and consent decree was not completed until 1998, with a restoration plan, in 2002. The proposed restoration costs totaled \$5,853,324, although only \$3,625,000 was provided.

1999 Genesis crude oil pipeline spill near Soso, MS: 336,000 gallons of crude oil contaminated wetlands, a stream, and the Leaf River. Wetlands, groundwater, and wildlife habitat, were affected, with fish and especially wood ducks oiled and killed, and the wetlands lost all function.¹⁴ Not until 2004 was there a settlement with the Department of Justice indicating Genesis was to pay \$2 million for restoration, and there was inadequate documentation as to adequacy of restoration.

2000 East Walker River fuel oil spill by Advanced Fuel Filtration Systems: A tanker truck of Advanced Fuel Filtration Systems, Inc. (AFFS) overturned on California State Route 182 releasing 3,608 gallons of fuel oil which contaminated the East Walker River, with substantial injury and mortality to plants and animals.¹⁵ There was a 2005 memorandum of understanding with AFFS and a 2009 restoration plan. Restoration costs exceeded the \$350,000 AFFS paid, and the US Forest Service was liable for \$162,600 for the remainder.

July 2002 Enbridge pipeline spill near Cohasset, MN: An Enbridge pipeline spilled 252,000 gallons of crude oil into wetlands, with the oil spill and subsequent one-day burn response causing near-complete loss of 11 acres of wetland vegetation and destroying migratory bird habitat.¹⁶ A 2004 draft restoration plan was developed, but no consent decree for restoration was finalized with Enbridge until 2008. In 2014, an interim report by the US Fish and Wildlife Service demonstrated that re-vegetation goals were still unmet, and with concerns that goals would not be met even within the agreed-upon 10-year time frame.

2010 BP Deepwater Horizon Gulf oil spill:¹⁷⁻²¹ On April 20, 2010, the mobile drilling unit Deepwater Horizon exploded, caught fire, and sank, killing 11 workers. Oil spewed for 87 days, a total of 210 million gallons. Environmental damage: Oil covered thousands of square miles, polluting beaches, bays, estuaries, and marshes from the Florida Panhandle to west of the Mississippi River Delta, with estuaries and marshes hard hit and difficult to clean, and with 340 miles of coast still not cleaned up three years after the spill. Thousands of birds, mammals, and sea turtles were plastered with oil and died. As of 2014, some 950 whales and dolphins had been found stranded, representing only a tiny percentage of the animals affected. Birds were particularly vulnerable, and many perished from ingesting oil in attempts to clean themselves, or from cold exposure. Many species remain sickened by oil exposure, and oil continues to wash up on beaches and into marshes. Oyster reproduction remains depressed, many sea turtles continue to be stranded, fish are found with damaged hearts. Dolphins continue to strand at very high rates and in one recent survey were underweight, anemic, with liver, adrenal, and lung disease, with half of dolphins found to be extremely sick. Remaining oil: Although most of the oil has been removed by cleanup operations and other natural mechanisms, **up to 35% of the hydrocarbons were trapped and transported in persistent deep-sea plumes**, which can harm the population recovery of exposed animals.

Restoration and Funding: In 2011, an Early Restoration Plan and Environmental Assessment was agreed upon between BP and trustees. Numerous funding mechanisms have been considered, but BP continues to battle in court. It is still early days in the lifetime of this spill and its aftermath, both in terms of funding and for recovery of the environment. The trustees stated, “Restoration work will take many years to complete, long-term monitoring and adaptive management of the Gulf ecosystem will likely continue for decades until the Trustees can be certain that the public has been fully compensated for its losses.”

It is very worrisome that, although BP did pledge monies for environmental restoration, it is now disputing some of the claims of continuing harm to animals, and it is by no means certain that BP will fund all necessary environmental restoration. In the same vein, BP is now disputing economic claims of people living along the Gulf Coast, as well as fighting court battles over assignment of blame for the disaster.

2013 Mayflower AR Exxon tar sands spill:²²⁻²⁷ An ExxonMobil pipeline ruptured in Mayflower, AR, spilling approximately 210,000 gallons of Canadian tar sands into a residential neighborhood and nearby waterways. The spill ruined 22 homes and other property, sickened residents, and killed birds, turtles, and other wildlife. Arkansas requested \$4 million from Exxon to pay for the state’s investigation, and the state and the Department of the Interior have filed a lawsuit against Exxon. The environmental impact is likely to be compounded by an evident failure to

follow best practices after the spill, with assessment, cleanup, and restoration largely left to the state, which lacks the requisite resources and expertise. Recently, a judge ruled against landowners in a class action lawsuit, indicating that right-of-way land contracts didn't require Pegasus to maintain its pipeline.

Risk versus benefits for Dane and other counties: ²⁸⁻²⁹

Although the focus in this paper is on risk to Dane County, the concept of risk without regard to benefit is incomplete. It is worth noting that Enbridge is a Canadian company, not a US company, and has a license to export unrefined petroleum products to other countries, which it does through the Gulf Coast. Moreover a recent report indicates that Gulf Coast refineries, which receive tar sands from Keystone as well as from Enbridge, now export 66% of refined products to foreign markets. Finally, although Enbridge does pay taxes in Wisconsin, these monies go into the general fund, not specifically to counties where Line 61 runs. Thus, little benefit accrues to potentially affected WI counties, which run all the risk.

In conclusion, the potential magnitude of an Enbridge line 61 tar sands spill in our valuable and pristine environment, coupled with the especially hazardous characteristics of tar sands, as well as Enbridge's poor safety record, is of great concern. Along with numerous instances of severely delayed environmental assessment, the documented drawn-out financial agreements and belated and/or incomplete restoration efforts after spills, whether from Enbridge or other companies, significantly heighten this concern. What is most clear in the event of a tar sands spill from Enbridge Line 61, is that Wisconsin's treasured environment will be at risk. Unless the County is a named insured, taxpayers and Wisconsin property owners will be at risk of footing much of the cost and at risking our environment and possibly livelihoods if a cleanup and ecological restoration is delayed too long or done poorly.

Taken together, these considerations make a strong case that Dane and other counties along Line 61 be listed as named insured parties in the event of a spill from the Enbridge tar sands pipeline, to achieve cleanup and environmental restoration as completely and expeditiously as possible.

Prepared by Mary Beth Elliott PhD, 350Madison

References:

¹The Waters of Dane County. <http://www.danewaters.com/resource/lakes.aspx>

² Dane County Agriculture: Value & Economic Impact.

https://www.countyofdane.com/pdf/ag_impact_dane.PDF

³ Girard, R. 2012. Out on the Tar Sands Mainline. [e-book] Ottawa: The Polaris Institute. Available through:

Tarsandswatch.org <http://www.tarsandswatch.org/files/Updated%20Enbridge%20Profile.pdf> [Accessed 3/20/15]

⁴ Pipeline builder to pay state \$1.1 million for violations. <http://www.jsonline.com/news/wisconsin/37009324.html>

⁵ Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010. Pipeline Accident Report NTSB/PAR-12/01. Washington, D.C

⁶ EPA Response to Enbridge Spill in Michigan. March 2013. Order for Removal under Section 311(c) of the Clean Water Act (PDF) <http://www.epa.gov/enbridgespill/documents.html>

⁷ EPA Response to Enbridge Spill in Michigan. November 2013. EPA denial of extension (PDF) <http://www.epa.gov/enbridgespill/documents.html>

⁸ Interim, Partial Claim for Assessment Costs Enbridge Line 6B Pipeline Discharge

<http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/>

⁹ Operator Information. Incident and Mileage Data. ENBRIDGE ENERGY

http://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_11169.html?nocache=8539#_Incidents_tab_3

¹⁰ A Dilbit Primer: How It's Different from Conventional Oil

<http://insideclimatenews.org/news/20120626/dilbit-primer-diluted-bitumen-conventional-oil-tar-sands-Alberta-Kalamazoo-Keystone-XL-Enbridge>

¹¹ After 4 years, major cleanup on the Kalamazoo River coming to a close.

<http://michiganradio.org/post/after-4-years-major-cleanup-kalamazoo-river-coming-close>

¹² Effects of Diluted Bitumen on the Environment: A Comparative Study

<https://www8.nationalacademies.org/cp/projectview.aspx?key=49662>

¹³ NRDAR Damage Case: M/V Cape Mohican/San Francisco Dry Dock

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=38

¹⁴ Department of Justice. U.S. Announces Settlement Worth Over \$3 Million for Leaf River Oil Spill in Mississippi from Genesis Pipeline. http://www.justice.gov/archive/opa/pr/2004/June/04_enrd_442.htm

¹⁵ The East Walker River Trustee Council. East Walker River fuel oil spill by Advanced Fuel Filtration Systems, final Restoration Plan Environmental Assessment. August 2009

<https://www.wildlife.ca.gov/OSPR/NRDA/east-walker-river>

¹⁶ NRDAR Damage Case: Enbridge Energy. Blackwater Creek Minnesota

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=134

¹⁷ NRDAR Damage Case: Deepwater Horizon BP Rig

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=272

[Deepwater Horizon Oil Spill Phase I Early Restoration Plan and Environmental Assessment](#)

www.gulfspillrestoration.noaa.gov/

¹⁸ Portal Maintained by NOAA as part of the Deepwater Horizon Natural Resource Damage Assessment Trustee Council. Phase III of Early Restoration.

<http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/phase-iii/>

¹⁹ Deepwater Horizon oil spill of 2010

<http://www.britannica.com/EBchecked/topic/1698988/Deepwater-Horizon-oil-spill-of-2010/296705/Cleanup-efforts>

²⁰ Four Years into the Gulf Oil Disaster: Still Waiting for Restoration

<http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2014/04-07-14-Gulf-Report-2014.aspx>

²¹ Health of Common Bottlenose Dolphins in Barataria Bay, Louisiana, Following the Deepwater Horizon Oil Spill. *Environmental Science & Technology* **2014**; 48, 93-103)

²² Mayflower Oil Spill. http://en.wikipedia.org/wiki/2013_Mayflower_oil_spill

²³ Nuss, J. (April 2, 2013). Arkansas Oil Spill Investigation: State Attorney General to Look into ExxonMobil Pipeline Rupture. *Huffington Post*.

http://www.huffingtonpost.com/2013/04/02/arkansas-oil-spill-investigation-exxonmobil_n_2999663.html

²⁴ Exxon faces \$2.7 million fine for Arkansas pipeline spill. Wed Nov 6, 2013

<http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>

²⁵ Arkansas Department of Environmental Quality. Available Reports. Mayflower Oil Spill.

http://www2.adeq.state.ar.us/hazwaste/mayflower_oil_spill_2013/oil_spill_available_reports.htm

²⁶ *Earthday Town Hall 4/22/13. Hosted by Faulkner County Citizens' Advisory Group.*

<http://www.carkw.com/exxonmobil-pegasus-pipeline/meetings/>

²⁷ Federal judge dismisses lawsuit over Mayflower oil spill.

<http://www.prsstelegram.com/business/20150318/federal-judge-dismisses-lawsuit-over-mayflower-oil-spill>

²⁸ Department of Energy data shows Keystone XL is an export pipeline

http://switchboard.nrdc.org/blogs/aswift/new_department_of_energy_data.html

²⁹ Gulf Coast event welcomes Canadian oil.

<http://full-timewhistle.com/business-2/gulf-coast-event-welcomes-canadian-oil-3650.html>

Please include the attached documents in the record for CUP 2291.

Thank you for your continuing care and diligence in this matter.

Mary Beth Elliott, PhD

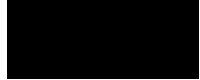
350Madison

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Mary Beth Elliott

Lane, Roger

From: Peter Anderson <anderson@recycleworlds.net>
Sent: Thursday, March 26, 2015 1:39 PM
To: Kolar, Mary; Matano, Alfred; Miles, Patrick; Salov, Robert; Bollig, Jerome
Cc: Violante, Todd; Lane, Roger
Subject: ZLR CUP #2291 - Enbridge Waterloo Pump Station - 2014 Annual Report



Enbridge Energy Partner's (EEP) Annual Report Form 10-K filed with the Securities and Exchange Commission provide a substantial body of information for the Committee to have at their disposal. Currently, the official file contains the 2013 Annual Report to FERC. Subsequently, the 2014 10-K Annual Report has been submitted, which we have attached for the Committee's convenience to add to the official record.

At the same time, there a few items that particularly stand out in relation to certain other facts that have previously been presented. As cited below, one such part of the report, contrary to the impression fostered by EEP, its parent entities do not stand legally behind it to pay for clean ups. Rather, the General Partners have amended the partnership agreement to disclaim any responsibility for any of EEP's liabilities. Also, Enbridge is carrying \$160 million more coverage to insure against loss of revenues in the event of an accident, than it has coverage to clean up from the oil spill. In addition, it appears that, possibly in response to the Kalamazoo accident, have increased the pollution deductible to \$30 million, which is very high and may portend a trend, in case of further major accidents, in insurance coverage which provides less and less coverage in order to not increase premiums. This speaks volumes about the need to consider what permit conditions will be needed when or if Enbridge's situation continues to deteriorate.

Anderson

Insurance Committee

350Madison

Peter

Chair,

Page 48 – General partners disclaims any responsibility for liabilities of Limited Partners

Our partnership agreement limits the fiduciary duties of our General Partner to our unitholders. These restrictions allow our General Partner to avoid conflicts of interest by considering the interests of all of the parties to the conflict, including Enbridge Management's interests, our interests and those of our General Partner. In addition, these limitations reduce the rights of our unitholders under our partnership agreement to sue our General Partner or Enbridge Management, its delegate, should its directors or officers act in a way that, were it not for these limitations of liability, would constitute breaches of their fiduciary duties.

We do not have any employees. In managing our business and affairs, we rely on employees of Enbridge, and its affiliates, who act on behalf of our General Partner as agents for us. A decrease in the availability of employees from Enbridge could adversely affect us.

Our partnership agreement and the delegation of control agreement limit the fiduciary duties that Enbridge Management and our General Partner owe to our unitholders and restrict the remedies available to our unitholders for actions taken by Enbridge Management and our General Partner that might otherwise constitute a breach of a fiduciary duty.

Our partnership agreement contains provisions that modify the fiduciary duties that our General Partner would otherwise owe to our unitholders under state fiduciary duty law. Through the delegation of control agreement, these modified fiduciary duties also apply to Enbridge Management as the delegate of our General Partner. For example, our partnership agreement:

- permits our General Partner to make a number of decisions, including the determination of which factors it will consider in resolving conflicts of interest, in its "sole discretion." This entitles our General Partner to consider only the interests and factors that it desires, and it has no duty or obligation to give consideration to any interest of, or factors affecting, us, our affiliates or any unitholder;
- provides that any standard of care and duty imposed on our General Partner will be modified, waived or limited as required to permit our General Partner to act under our partnership agreement and to make any decision pursuant to the authority prescribed in our partnership agreement as such action is reasonably believed by the General Partner to be in our best interests; and
- provides that our General Partner and its directors and officers will not be liable for monetary damages to us or our unitholders for any actions or omissions if they acted in good faith.

These and similar provisions in our partnership agreement may restrict the remedies available to our unitholders for actions taken by Enbridge Management or our General Partner that might otherwise constitute a breach of a fiduciary duty.

Potential conflicts of interest may arise among Enbridge and its shareholders, on the one hand, and us and our unitholders and Enbridge Management and its shareholders, on the other hand. Because the fiduciary duties of the directors of our General Partner and Enbridge Management have been modified, the directors may be permitted to make decisions that benefit Enbridge and its shareholders or Enbridge Management and its shareholders more than us and our unitholders.

Conflicts of interest may arise from time to time among Enbridge and its shareholders, on the one hand, and us and our unitholders and Enbridge Management and its shareholders, on the other hand. Conflicts of interest may also arise from time to time between us and our unitholders, on the one hand, and Enbridge Management and its shareholders, on the other hand. In managing and controlling us as the delegate of our General Partner, Enbridge Management may consider the interests of all parties to a conflict and may resolve those conflicts by making decisions that benefit Enbridge and its shareholders or Enbridge Management and its shareholders more than us and our unitholders. The following decisions, among others, could involve conflicts of interest:

- whether we or Enbridge will pursue certain acquisitions or other business opportunities;
- whether we will issue additional units or other equity securities or whether we will purchase outstanding units;
- whether Enbridge Management or Enbridge Partners will issue additional shares or other equity securities;
- the amount of payments to Enbridge and its affiliates for any services rendered for our benefit;
- the amount of costs that are reimbursable to Enbridge Management or Enbridge and its affiliates by us;
- the enforcement of obligations owed to us by Enbridge Management, our General Partner or Enbridge, including obligations regarding competition between Enbridge and us; and
- the retention of separate counsel, accountants or others to perform services for us and Enbridge Management.

In these and similar situations, any decision by Enbridge Management may benefit one group more than another, and in making such decisions, Enbridge Management may consider the interests of all groups, as well as other factors, in deciding whether to take a particular course of action.

The coverage limits and deductible amounts at December 31, 2014 for our insurance policies:

<u>Insurance Type</u>	<u>Coverage Limits</u>
Property and business interruption	Up to \$860.0
General liability	Up to \$700.0
Pollution liability (as included under General Liability)	Up to \$700.0

We can make no assurance that the insurance coverage we maintain will be available or adequate for any particular risk or loss or maintain adequate insurance in the future at rates we consider reasonable. Although we believe that our assets are adequately covered by substantial uninsured loss could have a material adverse effect on our financial position, results of operations and cash flows.

Peter Anderson, President
RECYCLEWORLDS Consulting
5749 Bittersweet Place | Madison, WI 53705
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Lane, Roger

From: Peter Anderson <anderson@recycleworlds.net>
Sent: Wednesday, March 04, 2015 11:16 PM
To: Kolar, Mary; Matano, Alfred; Miles, Patrick; Salov, Robert; Bollig, Jerome
Cc: 'David J. Dybdahl'; Violante, Todd; Lane, Roger; Gault, David
Subject: ZLR CUP#2291- Enbridge Waterloo Pump Station - Brief of Highly Related Minnesota Dept of Commerce on Insurance Issues
Attachments: DOC EER Brief on CON requiring Financial Assurance.pdf

Dear Chairman Miles and Members of the Committee—

We would like to bring to your attention that the Minnesota Department of Commerce (DOC) recently filed a brief with the Minnesota Public Utilities Commission (PUC) in its Docket No. PL-6668 on a certificate of need for Enbridge's Sandpiper pipeline through Minnesota to carry Bakken oil. This brief is critically relevant to the insurance questions that you are considering.

We urge that you read pages 70 to 74 of the agency's brief that we have attached for your convenience.

On page 70, the DOC describes its similar difficulties gaining access to the actual insurance policies that Enbridge claims to maintain, which raises very serious doubts about the practical value as protection for Dane County of whatever insurance they really do carry.

On page 73, because there was a quasi-judicial proceeding before the PUC that put Enbridge under oath, the DOC documents that the deliberate impression fostered by the Enbridge limited partnership, which is the sole applicant, is false in suggesting that, even though the master limited partnership is contractually obligated to pay out all cash and retain free cash to pay for a major clean up, its parent does and will commit to do so. In fact, DOC documents, Enbridge cleverly evaded ever being pinned down to put that ostensible commitment in writing.

This Minnesota example provides further evidence that Dane County cannot assume good faith and fair dealing on the part of this company, which federal regulators describe as "Keystone Kops." That epithet, it appears, no longer is limited to the fact that Enbridge is bumbling and accident prone. Now, it seems, the characterization also pertains to the cavalier manner in which it tosses around assurances that has no intention of fulfilling.

Clearly, the most explicit and unambiguous legally enforceable permit conditions are essential that give Dane County unfettered control over adequate funds for a clean up around the Waterloo Pump Station.

Peter Anderson
for 350Madison

Peter Anderson, Executive Director
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Lane, Roger

From: Peter Anderson <anderson@recycleworlds.net>
Sent: Tuesday, February 10, 2015 5:19 PM
To: Violante, Todd; Lane, Roger; Allan, Majid
Subject: FW: ZLR CUP#2291 - Response by Madison-350 to Enbridge Threat to Increase Capacity of Line 61 without New Waterloo Pump Station

Fyi – for file.

From: Peter Anderson [mailto:anderson@recycleworlds.net]
Sent: Tuesday, February 10, 2015 3:58 PM
To: 'kolar.mary@countyofdane.com'; 'matano@countyofdane.com'; 'miles@countyofdane.com'; 'salov@countyofdane.com'; 'bollig.jerry@countyofdane.com'
Subject: ZLR CUP#2291 - Response by Madison-350 to Enbridge Threat to Increase Capacity of Line 61 without New Waterloo Pump Station

Dear Chairman Miles and members of the Zoning and Land Regulation Committee--

Earlier in the Committee's consideration of the conditional use permit (CUP) for Enbridge's proposed Waterloo Pump Station, the company was understood to have threatened litigation if adequate insurance were required in order to protect the County from a possible accident.

Most recently, news accounts suggest that Enbridge is now threatening to expand the capacity of Line 61 to 1 million barrels per day (bpd), compared to its original proposal of 1.2 million bpd, without adding the Waterloo pumps, if the Committee proceeds to make that insurance requirement a condition. This may be meant to suggest a threat to the County to accept its wholly inadequate insurance offer or face the risks of higher capacity flows without any insurance.

Of course, it is unfortunate that the Company continues to seriously misgauge the Committee's legal obligation to impose essential conditions on construction of an otherwise incompatible use in exclusive Ag-1 land, in regard to which these collateral threats are legally irrelevant.

At the same time, we would like to also add to this discussion, were it to continue in the future, that the economic facts of this case belie the threat that seems to have been made, even if it were legally relevant, which it is not.

We say that because we understand that adequate insurance would cost far less than the money they will lose from their pipeline carrying 200,000 bpd less than they could with the new pumps.

In summary, that flow restriction from bypassing Waterloo will cost Enbridge far more than would insurance. The Company's published tariffs for heavy oil, like tar sands, from the International Boundary to Flanagan, IL, is \$15.6860 per cubic meter, which is equivalent to \$2.49 per barrel. (Enbridge's applicable tariff from FERC ICA Oil Tariff No. 43.14.0 is reproduced below.)

HEAVY CRUDE PETROLEUM

TABLE OF TRANSPORTATION RATES FOR HEAVY CRUDE PETROLEUM IN DOLLARS PER CUBIC METER			
FROM	TO		RATE
International Boundary near Neche, North Dakota	Clearbrook, Minnesota	(c),[C] (d) , (l)	3.2650
	Superior, Wisconsin	(c), (d), [C] (d) , (l)	7.0091
	Lockport, Illinois	(c), [C] (d) , (l)	15.6860
	Mokena, Illinois	(c), [C] (d) , (l)	15.6860
	Flanagan, Illinois	(c), (e), [C] (d) , (l)	15.6860
	Griffith, Indiana	(c), (e), [C] (d) , (l)	15.6860
	Stockbridge, Michigan	(c), [C] (d) , (l)	18.9315
	Marysville, Michigan	(c), [C] (d) , (l)	18.9315
	International Boundary near Marysville, Michigan	[C] (d) , (l)	18.6405
	West Seneca, New York	(c), [C] (d) , (l)	19.4007

The \$181 million loss from reduced carriage compares to a cost for the kind of comprehensive insurance that is needed of, we believe, between approximately \$37,500 per year (if one allocated a state-wide policy proportionately to the line segment in Dane County) to \$1,000,000/year (the minimum premium offered for \$100 million coverage, which is sufficient to, and should, cover the entire state).

That premium would be the additional annual premium for \$100 million of excess Environmental Impairment Liability (EIL) coverage in Dane County as an additional layer above the \$750 million General Liability policy that Enbridge already carries. Using EIL insurance in this way as excess coverage would constructively use insurance more efficiently in order to minimize the expense of coverage to Enbridge. For that layering means that Enbridge would effectively have a total annual coverage of \$850 million for all types of oil spills, not just ones that happen suddenly, for a substantially lower premium than if it purchased a first-dollar EIL policy by itself.

From that, let me take another moment to underscore how the insurance industry's minimum size coverage would have the effect of conferring the same coverage benefit as we seek for Dane County on all of the other 14 counties impacted by tripling Line 61's capacity, along with the consequences of an accident that could occur in any of those counties. Again, that is because the minimum size EIL policy that insurers would likely write would be roughly the same as securing coverage for the entire state, and we do hope that Enbridge would do the right thing for the entire state when it has no cost implications for the company. Because of all this, constructive action by Dane County Zoning Committee to act in concert with its ordinances (but not in conflict with the Pipeline Safety Act), would turn out to have a beneficial Wisconsin-wide payoff. That includes the counties that, we believe, granted pro-forma approval to the pump additions in their jurisdiction before we raised the flag that oil pipelines on exclusive Ag-1 zoned land require conditional use permits. In that regard, we would like to suggest that the Committee consider bringing all these considerations to the attention of its sister committees in the other affected counties.

Nonetheless, while all that is to the good, an annual coverage limit of \$850 million would be for all of the accidents it experienced in that year, not just in Dane County, leaving a coverage hole in the event of several major accidents in a single year. That is also significantly less than the \$1.2 billion cost of Enbridge's Kalamazoo accident, which could be higher in Wisconsin if it occurred in some of even more sensitive river crossings such as the St. Croix River nature preserve. Although, over time, we along with the state's other impacted counties need to work for higher limits that better reflect Enbridge's record, \$850 million of EIL coverage would be reasonable, albeit conservative, start for offering protection at a relatively minor cost, assuming the pipeline operator reclaims a credible operating record.

Unfortunately, the telling comments that Enbridge's president Mark Maki made privately to investors -- "We just don't see a lot of value in insuring against another Marshall" -- tells us that the Company is, at heart, antagonistic to the County's concerns about its fundamental interests. But, 350Madison continues to believe that the County is legally compelled under its ordinances to fully protect itself with the appropriate insurance from the extreme risks that this Company, with its execrable safety records, presents, and that the Committee has shown itself to have the commitment to follow this through.

Peter Anderson, Chair
Insurance Committee
350Madison

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Dane County Zoning and Land Regulation Committee #CUP 2291

**FURTHER SUPPLEMENTAL TESTIMONY BY 350-MADISON REGARDING THE ADEQUACY OF VOLUNTARY CLEAN UPS,
THE NEED
FOR INSURANCE AND THE COMPLETENESS OF THE NATIONAL ACADEMY OF SCIENCES STUDY IN REGARD TO A
CONDITIONAL USE PERMIT FOR
ENBRIDGE'S WATERLOO PUMPING STATION**

350-MADISON would like to supplement its earlier comments dated November 10, 2014, and its supplemental testimony dated December 1, 2014, in order to respond to Enbridge's letter to the Zoning and Land Regulation Committee dated January 6, 2015, and its inclusion in the record of the National Research Council's 2013 report, *Effects of Diluted Bitumen on Crude Oil Transmission Pipelines*.

The three issues included in this reply relate to:

- (1) Can Dane County rely on Enbridge voluntarily cleaning up a major oil spill on Line 61? **(pp. 1-3)**
- (2) Does Enbridge have the appropriate insurance to protect Dane County? **(pp. 3-6)**
- (3) Does tar sands oil pose no additional risks of an oil spill from a pipeline (NAS study)? **(pp.6-7)**

See also Appendix for further information on spill cleanups in US and on Enbridge record (pp. 7-18)

VOLUNTARY CLEAN UPS

A Somber Picture of "Cleanup and Restoration" Nationwide

— Summary — (SEE APPENDIX FOR ENBRIDGE RECORD AND FULL REPORT)

Environmental disasters make a splash on the news. Sadly, the extremely long-term, sometimes permanent, damage to the environment and people's lives—rivers, wetlands, residents' homes and livelihoods, birds, fish, mammals, and other precious wildlife—*doesn't even make the back page*.

What cleanup and ecological restoration actually happen after tar sands and crude oil spills, and how long does it take to finalize restoration plans and to actually carry out restoration? The examples below underscore the need for Enbridge to carry adequate pollution coverage, to expedite restoration in the event of a spill.

- **1993 fuel and lube oil spill in the Rose Atoll National Wildlife Refuge**

A vessel ran aground in the Rose Atoll National Wildlife Refuge, one of the most remote and pristine coral reefs in the world, spilling 100,000 gallons of fuel and oil, killing wildlife and threatening the coral reef's existence. The owners had little insurance, and thus there was no restoration plan until 2001. The US Fish and Wildlife Service (USFWS) spent millions for cleanup, restoration, and monitoring, allowing successful recovery. Rose Atoll is now a Marine National Monument. **This unusual and successful example illustrates the importance of federal agencies, the need for long-term monitoring, and especially the need for the responsible party to hold adequate insurance.**

- **1996 San Francisco Drydock bunker fuel oil spill**

The SS Cape Mohican discharged 96,000 gallons of heavy fuel oil into the San Francisco Drydock Shipyard, oiling beaches north to Point Reyes National Seashore and many miles south, killing 600 birds, and damaging

shoreline habitat, fisheries, and recreational beaches. After a 1998 consent decree with the responsible party and a 2002 restoration plan, efforts were undertaken to improve wetland habitat and shoreline, restore bird and fish habitat and health, and improve recreational use. Although restoration needs totaled \$5.8 million, only \$3.6 million was awarded, necessitating an unusually heavy use of volunteers for the project to succeed. **This case points to the importance of adequate funding after a disaster and the very long time between disaster and restoration.**

- **1999 Genesis crude oil pipeline spill near Soso, MS**

This 336,000 gallon oil spill contaminated wetlands and the Leaf River, affecting groundwater, killing fish and birds, and permanently destroying 11 acres of wetlands. A 2004 restoration plan was agreed upon between Genesis, the Mississippi Department of Environmental Quality (MDEQ), and USFWS, with Genesis responsible for \$2 million in restoration. The published plan was unclear on key matters, as most work was handed over to Genesis contractors. Annual monitoring by a contractor, with results submitted to MDEQ was required but documentation of this monitoring is not readily available. **This is another example of extended lag time between an oil spill and agreement by the responsible party to pay for restoration, as well as uncertain confirmation of restoration due to lack of readily available documentation.**

- **2000 East Walker River fuel oil spill by Advanced Fuel Filtration Systems (AFFS)**

An AFFS tanker truck overturned on California Route 182, spilling 3,608 gallons fuel oil, most into the East Walker River, spoiling 15 miles of stream habitat and killing vegetation and wildlife in the watershed. Not until 2009 was there a final Restoration Plan that AFFS agreed to. Restoration costs exceeded the \$350,000 AFFS paid, leaving the US Forest Service liable for the remaining \$162,600 needed. **Again, this example underscores the importance of adequate restoration funding from the responsible party, and the long lag time between an incident and a restoration agreement.**

- **2002 Enbridge pipeline spill near Cohasset, MN**

252,000 gallons spilled within the watershed of Blackwater Creek, a Mississippi River tributary, followed by a planned burn with a five mile long, one mile high smoke plume. The disaster destroying wetlands and migratory bird habitat. The pipe failed because it had been cracked even before Enbridge installed it, during transport by train beforehand. A 2004 draft restoration plan between trustees and Enbridge was followed by a 2005 final consent decree. The damaged land was judged not remediable, so restoration of 30 acres of degraded wetlands in Chippewa National Forest was planned, as well as a separate project to address air resource injuries. In 2014, an interim report by the USFWS demonstrated that re-vegetation goals were still unmet, with only 40% of the expected number of willows present. Biologists were hopeful but concerned that goals would not be met even within the agreed-upon 10-year time frame. **Thus, even with some cooperation, return of the environment to its pre-spill state can drag out for many years, with uncertain success—a sad outcome for people, flora, and fauna in the area.**

- **2010 BP Deepwater Horizon Gulf oil spill**

The event: On April 20, 2010, the mobile drilling unit Deepwater Horizon exploded, caught fire, and sank, killing 11 workers. Oil spewed for 87 days, a total of 210 million gallons, covering thousands of square miles and polluting beaches, bays, estuaries, and marshes from the Florida Panhandle to west of the Mississippi River Delta. This was an environmental disaster of unprecedented proportions, with 1,100 miles of shoreline oiled, with estuaries and marshes hard hit and difficult to clean, and with 340 miles of coast still not cleaned up three years after the spill. Thousands of birds, mammals, and sea turtles were plastered with oil and died. As of 2014, some 950 whales and dolphins had been found stranded, representing only a tiny percentage of the animals affected. Birds were particularly vulnerable, and many perished from ingesting oil in attempts to clean themselves, or from cold exposure.

Restoration efforts: In 2011, an Early Restoration Plan and Environmental Assessment was agreed upon between BP and trustees from the National Oceanic and Atmospheric Administration, the Department of the

Interior, and the five affected states. BP was to provide \$1 billion for projects to address injuries to birds, mammals and marine organisms and to compensate the public for lost recreational opportunities.

Remaining oil: Although most of the oil has been removed by cleanup operations and other natural mechanisms, **up to 35% of the hydrocarbons were trapped and transported in persistent deep-sea plumes**, which can harm the population recovery of exposed animals.

Ongoing harm to wildlife: Many species remain sickened by oil exposure, and oil continues to wash up on beaches and into marshes. Oyster reproduction remains depressed, many sea turtles continue to be stranded, fish are found with damaged hearts. Dolphins continue to strand at very high rates and in a one survey were underweight, anemic, with liver, adrenal, and lung disease, with half of dolphins found to be extremely sick.

Funding: It is still early days in the lifetime of this spill and its aftermath. The trustees stated, "Restoration work will take many years to complete, and long-term monitoring and adaptive management of the Gulf ecosystem will likely continue for decades until the Trustees can be certain that the public has been fully compensated for its losses." Aside from the above \$1 billion BP funding, other funding is possibly, although not certainly, available: This includes funding through Natural Resource Damage Assessment, from the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act, criminal settlements, the Gulf Environmental Benefit Fund, and the Migratory Bird Treaty Act.

In sum: The BP disaster is a strong example of the importance of adequate insurance for environmental restoration by oil companies. Only time will tell whether the funding is sufficient, how much payment will be contested, and how successful restoration efforts will be. It is very worrisome that, although BP did pledge monies for environmental restoration, it is now disputing some of the claims of continuing harm to animals, and it is by no means certain that BP will fund all necessary environmental restoration. In the same vein, BP is now disputing economic claims of people living along the Gulf Coast, as well as fighting court battles over assignment of blame for the disaster.

- **2013 Mayflower AR Exxon tar sands spill**

An ExxonMobil pipeline ruptured in Mayflower, AR, spilling approximately 210,000 gallons of Canadian tar sands into a residential neighborhood and nearby waterways. The spill ruined 22 homes and other property, sickened residents, and killed birds, turtles, and other wildlife. Some residents whose illness continued had to move away, as did those whose homes were destroyed. A Pipeline and Hazardous Materials Safety Administration (PHMSA) order prevented Exxon from restarting the pipeline until cleanup and safety concerns were adequately addressed, and as far as can be determined, the pipeline has yet to be restarted. Arkansas requested \$4 million from Exxon to pay for the state's investigation, and the state and the Department of the Interior have filed a lawsuit against Exxon. PHMSA found Exxon liable for nine probable violations of safety rules, imposing hefty fines and stating that Exxon did not adequately account for the risks. Uncertainty remains about the exact toll of the spill due to an FAA order closing airspace around the site and thus disallowing aerial photography in the critical early hours after the spill. The environmental impact is likely to be compounded by an evident failure to follow best practices after the spill, with assessment, cleanup, and restoration largely left to the state, which lacks the requisite resources and expertise. **This example again points to the importance of federal agency involvement and the importance of cooperation from the responsible party.**

Prepared by Mary Beth Elliott PhD, 350 Madison gutsugua@gmail.com

Edited by Cathy Loeb, 350 Madison

INSURANCE

Enbridge repeats several old arguments why their limited partnership should not be required to have the type of insurance that is intended to cover environmental cleanups. Enbridge, of course, is the company with the worst pipeline safety record in the country and the worst possible organizational structure to assign liability.

These were all dealt with previously, and its letter raises no new issues, but in order to ensure that we do not inadvertently appear to acquiesce, let us repeat what has previously been said.

First, Enbridge continues to misrepresent the type and value of insurance that it states it has. The general liability policy that they state they have is NOT intended to reliably cover environmental clean ups. The fact that these general liability policies contain a broad pollution *exclusion* (other than for “sudden and accidental” events) makes that clear.

Second, it is widely understood that a party seeking to protect itself from risk, or those who its action may injure, cannot properly do so with the “sudden and accidental” exception to the broad pollution exclusion.

As we noted before, the most litigated words in the history of the insurance business are lawsuits where the insurance companies and insureds argue over what “sudden and accidental” pollution is and what should be excepted from the pollution exclusion in General Liability insurance policies (as examples, can a pipeline as in Kalamazoo that weakened over the course of years of neglect be called “accidental,” or an oil spill that lasted 17 hours be called “sudden”?). These cases can extend for more than twenty years to resolve. *City of Edgerton v. General Cas. Co.*, 184 Wis. 2d 750, 517 N.W.2d 463 (1994).

The final crucible on which Enbridge’s misrepresentations fall is this fact. If there were any truth to its claim that general liability adequately covers clean ups, then it would not be necessary for Enbridge to have to sue its general liability insurers for payment for the Kalamazoo disaster, as it has had to do. Enbridge FERC Form-6, at pp. 123.9 to 123.11. Enbridge’s letter attempts to ignore that fatal fact that eviscerates its claim.

Obtaining coverage pay outs for sudden and accidental pollution events on a General Liability policy that otherwise absolutely excludes claims from all sources of pollution is a singularly unreliable policy for timely environmental cleanups. The type of coverage that unambiguously does cover cleanups that any company, and especially one so prone to accidents as Enbridge, should have purchased is Environmental Impairment Liability (EIL) insurance.

There is nothing ambiguous or uncertain about this: it is a completely settled fact in the insurance industry. Here are just three quotations from insurance guides as examples:

Environmental Liability Insurance

The large chemical spill from a storage facility owned by Freedom Industries Inc. in West Virginia in early January and other recent high-profile industrial accidents are leading to questions about the role that private insurance plays in such incidents.

Standard business general liability (GL) policies provide little coverage for pollution damage, including toxic spills like the one in West Virginia. Today most companies that store or handle potentially toxic materials purchase a separate environmental liability policy. These policies cover the exposure that the GL policy excludes.

Property owners purchase environmental impairment liability insurance. It covers property loss and liability arising from pollution-related damages for sites that have been inspected and found uncontaminated. It is usually written on a claims-made basis so policies pay only claims presented during the term of the policy or within a specified time frame after the policy expires. It limits liability insurers’ exposure to unknown future liabilities.

Generally coverage includes statutory clean-up requirements and bodily injury and property damage third-party claims and legal expenses resulting from pollution or contamination incidents. The coverage kicks in both for incidents that are “sudden and accidental” and “gradual.” Coverage also exists for business interruption losses.

— Insurance Information Institute

Environmental Liability Insurance

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Generally coverage includes statutory clean-up requirements and bodily injury and property damage third-party claims and legal expenses resulting from pollution or contamination incidents. The coverage kicks in both for incidents that are “sudden and accidental” and “gradual.” Coverage also exists for business interruption losses.

— A User’s Guide to Environmental Insurance (ARMR)

Confusion over coverage

There is significant confusion in the market over whether existing general liability policies cover environmental risks as highlighted in a report by the International Underwriting Association in London.

In most European countries traditional general liability policies provide only a basic level of coverage for environmental liabilities. They pay for damages suffered by a third party following a sudden and accidental event. However, these policies will in most cases fail to respond to liabilities established under the statutory / public law system, e.g. a clean-up notice from the authorities. Since the early 1990s virtually all public liability policies across the UK include “gradual pollution” exclusions.

This means that a GL policy will usually only indemnify for a “sudden, identifiable, unintended and unexpected incident,” leaving the insured exposed to gradual pollution conditions, such as the cumulative impact of a leaking underground storage tank, or the ongoing odour that can arise from waste management facilities.

— Insight International 2011

Enbridge attempts to suggest that EIL policies are only for spills of a slow, “seeping” nature. This, too, is another false misrepresentation by Enbridge.

What Enbridge does not state is the fact that presumably influences their decision to fly without a reliable insurance net. That is EIL policies cost more than GL policies, and they do not intend to provide any coverage for Dane County’s environment that is beyond that which they already cover to protect their property.

Third, Enbridge attempts to claim that Dane County is protected by the federal Oil Spill Liability Trust Fund, to which, incidentally, Enbridge makes no premium payments for the tar sands oil that it transports through its pipelines. This, too, is completely untrue. For one thing, the spill must impact navigable waterways to be covered. For another, and more important, the GAO has concluded that the fund is woefully underfunded for the liabilities it covers. (*Government Accounting Office, Cost of Major Spills May Impact Viability of Oil Spill Liability Trust Fund (2010)* www.gao.gov/pdfs/GAO-10-795T). Even more important, as documented in the prior section, the degree and speed of Trust Fund clean ups are heavily influenced by the polluters, whose main concern is reducing the visibility of the spill to the news media, not restoring the water and land to its prior condition.

In any event, the very nature of insurance will provide a dispositive answer from the free market to the question of whether this trust fund is adequate to restore Dane County’s water and land to their prior condition. This is because the actuaries will consider trust fund pay outs as first dollar payments in an accident, and the EIL coverage will be priced for what they consider left over. That is to say, EIL insurance will have whatever value should attach to the trust fund priced into the premium.

NAS STUDY

We noticed that the committee record now includes a link to the report by the National Academy of Sciences, “Effects of Diluted Bitumen on Crude Oil Transmission Pipelines.”

This report is sometimes erroneously read to state that there is no difference between tar sands oil (or diluted bitumen or dilbit) and the conventional oil typically shipped through US pipelines. That would be a wholly incorrect and unsupported reading of the report for the following reasons:

- (1) The report is confined to the quality of the oil in the pipeline and it explicitly ignores the salient question revealed by the Kalamazoo oil spill, which is the environmental and economic consequences of a spill from a tar sands pipeline when one occurs because of dilbit's tendency to sink instead of float, making the cleanup exceedingly more difficult.
- (2) As to the effects of carrying dilbit in a pipeline, the report compared dilbit to other Canadian heavy crude, whose composition is similar, instead of to the less abrasive and less corrosive conventional light grades of crude oil, which is the vast majority of what has historically been carried in US pipelines and, therefore, should have been the baseline for comparison.
- (3) As to the comparison of dilbit to other heavy grades, first, the overwhelming majority of the studies referenced are from industry sources; second, there are debilitating shortcomings in the accident data, which often fails to disclose the nature of the oil carried or cause of the spill; and, third, the composition of the NAS review panel was heavily stacked to industry representatives, which was mirrored in the strong bias to industry instead of independent or critical speakers invited to present testimony to the group.

For these reasons, the only thing that the NAS study can be used for is the conclusion that tar sands dilbit appears to resemble Canadian heavy crude oil, which is something that it was not necessary to conduct a study to find out.

Finally, serious concerns continue regarding the danger of tar sands spills, and how difficult they are to clean up compared to conventional crude oils So much so, that the National Academy of Sciences has initiated a new study on this very question.

Several facts underscore the need for such a study.

- a. Tar sands are diluted with toxic and volatile organic chemicals, such as benzene (a known carcinogen and teratogen) to allow flow through a pipeline. With a spill, these chemicals evaporate, exposing and sickening people in surrounding areas.
- b. Also, as these lighter chemicals evaporate, the heavy tar sands sink to the bottom of waterways, making cleanup expensive.
- c. Using figures from PHMSA's pipeline incident database, an attorney and researcher with the National Resources Defense Council calculated that the average cleanup cost of every crude oil spill from the past 10 years was \$2,000 per barrel, whereas the Enbridge Kalamazoo spill has cost upwards of \$29,000 per barrel.

<http://insideclimatenews.org/news/20120626/dilbit-primer-diluted-bitumen-conventional-oil-tar-sands-Alberta-Kalamazoo-Keystone-XL-Enbridge>

Here are links to critical references to the NAS study that we ask also be included in the Committee records:

The Natural Resources Defense Council:

http://switchboard.nrdc.org/blogs/aswift/diluted_bitumen_tar_sands_stud.html

Inside Climate News: <http://insideclimatenews.org/print/26538>

Prepared by

Peter Anderson 350 Madison

Mary Beth Elliott 350 Madison

APPENDIX: Dane County cannot rely upon voluntary compliance to clean up major spills

Enbridge, a \$43 billion Canadian company, proposes to expand the flow of tar sands through its Line 61 from the current 400,000 barrels per day to 1.2 million barrels per day—*45% more than the proposed Keystone XL*. The path the pipeline takes through Wisconsin runs through the northeast corner of Dane County. Enbridge is currently requesting a permit from the Dane County Zoning and Regulation Committee to upgrade its pump station in the town of Medina.

Why should Dane County citizens be concerned about the chance of an oil spill? Some reasons are obvious:

First, Enbridge has a terrible safety record, with more than 800 reported spills, and has been the focus of withering criticism and/or huge fines from the state of Wisconsin, the Environmental Protection Agency (EPA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the National Transportation Safety Board. Moreover, included among Enbridge's 800+ spills is the 2010 Kalamazoo River tar sands spill, the worst inland pipeline spill in US history (details below).

Second, Enbridge Limited Partnership operates Line 61 but has no “deep pockets” and inadequate insurance. (See pages 3-6 in this document)

What about Enbridge’s record in Wisconsin?

- Huge spills have occurred at Enbridge terminals themselves. In Wisconsin, 189,000 gallons of crude oil spilled into the Nemadji River in 2003 from the Enbridge Energy Terminal in Superior. Environmental damage was reportedly limited as the spill occurred in winter, with the river frozen, but that happenstance timing is hardly reassuring.
- PHMSA reports that from 2006 to 2014, Enbridge reported 15 spills in Wisconsin. Two Wisconsin spills in 2007 are notable: On January 1, an Enbridge pipeline ruptured and spilled more than 29,000 gallons of oil into a farm field in Clark County. On February 2, an Enbridge construction crew struck an Enbridge pipeline in Rusk County with equipment, spilling 200,000 gallons of crude oil, of which only 87,000 gallons were recovered. Some of the oil filled a hole more than 20 feet deep and was reported to have contaminated the local water table. To provide perspective, these two Wisconsin spills alone would represent 43% of the volume of total spills in North America in 2005. (Berquist L. 2007, February 16 .Oil spill tainted water table: Recent pipeline leak seeped into deep hole in northern Wisconsin. The Milwaukee Journal Sentinel.)
<http://www.jsonline.com/news/wisconsin/29343664.html>
- In 2008, the WI DNR charged Enbridge Energy with more than 100 environmental violations relating to the construction of a 320-mile pipeline across much of the state. The agency said that Enbridge workers illegally cleared and disrupted wooded wetlands and were responsible for other actions that resulted in discharging sediment into waterways. In January 2009, the company settled the charges by agreeing to pay \$1.1 million in penalties.
- An Enbridge crude oil pipeline ruptured July 27, 2012, in Grand Marsh, spilling 50,000 gallons. A corrective action order from PHMSA referred to this and other problems in Enbridge’s system in concluding **that the company’s integrity management program may be inadequate.**
- Finally, according to PHMSA, from 2006 to 2014 Enbridge spilled 350,000 gallons of tar sands or crude oil in Wisconsin, reporting that one third of the spilled material was not recoverable and is still in the environment.

The 2010 Enbridge Kalamazoo River tar sands oil spill

A devastating example of a company’s response to a large spill—such as could occur here in Dane County from a revved up line 61—is Enbridge’s action after the Kalamazoo River disaster of 2010. This spill of 843,000 gallons of tar sands into the Kalamazoo River, and Enbridge’s approach to the cleanup and restoration, are alarming—to wit:

According to the National Transportation Safety Board. 2012. *Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010*. Pipeline Accident Report NTSB/PAR-12/01. Washington, D.C:

“The rupture occurred during the last stages of a planned shutdown and was not discovered or addressed for over 17 hours. During the time lapse, Enbridge twice pumped additional oil (81 percent of the total release) into Line 6B during two startups; the total release was estimated to be 843,444 gallons of crude oil. The oil saturated the surrounding wetlands and flowed into the Talmadge Creek and the Kalamazoo River. Local residents self-evacuated from their houses, and the environment was negatively affected. Cleanup efforts continue as of the adoption date of this report, with continuing costs exceeding \$767 million. About 320 people reported symptoms consistent with crude oil exposure.”

Other serious concerns regarding this disaster included:

- The tar sands sank and coated the riverbed, necessitating extensive dredging, with consequent destruction of much riparian flora and fauna. Tar sands can float temporarily, as it takes some time for it to lose the highly volatile diluents, and to “weather” and sink.
- Enbridge’s 17-hour delay in recognizing the leak and in subsequently formulating suitable cleanup plans likely worsened outcomes.
- Federal and local officials didn't discover until more than a week after the spill that the pipeline was carrying tar sands, also called dilbit, rather than conventional oil. Why Enbridge would not let local authorities know this important fact is unclear.
- Only two weeks after the spill, Enbridge requested that the line be restarted. This is shocking in view of statements from Enbridge personnel emphasizing how safety-conscious the company became following the massive and unprecedented spill. Enbridge’s request was firmly refused by PHMSA as posing an unacceptable spill risk until other safety measures could be carried out.
- Enbridge continued to submit a multitude of inadequate and poorly thought out cleanup plans, which the EPA refused and sent back to the company for reworking. This pattern lasted years, throughout much of the cleanup, according to EPA correspondence.
- Enbridge dragged its feet on the cleanup. Even as late as November 2013, the company requested a delay in the completion date until October 2014, which was refused by the EPA.
- When duly authorized Michigan trustees submitted plans for vegetation and recreational use assessment due to the oil spill, Enbridge declined to fund these requests.
- When duly authorized Michigan trustees submitted to Enbridge in 2013 an Interim, Partial Claim for Assessment Costs in order to evaluate the condition of birds, turtles and other wildlife and to plan for their recovery, Enbridge declined to pay for this assessment. The projected cost was just \$980,091, a very tiny fraction of Enbridge’s yearly profits.

Questions and additional reasons for concern about tar sands or other spills

- What cleanup and ecological restoration actually happen after tar sands and crude oil spills? This information is not routinely and easily accessible, whether from the EPA, state EPAs, state DNRs, the US Fish and Wildlife Service (USFWS), or other sources.
- How long does it take to draft restoration plans after a cleanup? And how long to finalize plans between the parties so that restoration can begin? It has taken three years and six years on average, respectively, based on our review.

Some sobering examples of spills

In addition to evaluating the likelihood of Enbridge spills and potential damage, examination of spills’ aftermath is key. What exactly is done to reinvigorate oil-soaked wetlands or farmlands and to ensure that waterways, flora, and fauna can rebound? Robust, timely, and transparent cleanup plans are critical to environmental recovery and to those living and farming in surrounding communities. Examples from Enbridge spills in the US—and from other companies’ spills of tar sands, crude oil, and other environmental hazards—are concerning. Here are a select few:

- **1993 fuel and lube oil spill in the Rose Atoll National Wildlife Refuge**

In October 1993, the *Jin Shiang Fa*, a Taiwanese straight-line fishing vessel, ran aground in the Rose Atoll National Wildlife Refuge, broke up, and released more than 100,000 gallons of diesel and lube oil, killing a large area rich with the main reef-building organisms, crustose coralline algae. Prior to the grounding, the atoll was considered one of the most remote and pristine coral reefs in the world. The spill itself killed many giant clams, sea cucumbers, and sea urchins and altered the fish community. Over time and with further corrosion of the vessel, invasive species colonized the reef, encouraged by iron continually leached into the water.

Concerns arose that the weakened reef could be breached, which would change water circulation patterns across the atoll and eventually bring about the destruction of Rose and Sand Islands. This, in turn, would destroy the most important resting and nesting habitat for federally protected seabirds and the federally listed green sea turtle in the American Samoa archipelago.

In 1999, 100 tons of shipwreck debris were removed. The remaining 85 tons were removed in 2004 in accordance with the final restoration plan of 2001. The sum requested by the USFWS for further restoration was \$1,853,911, of which \$653,017 was provided. The ship's insurance carrier had paid for some debris removal but refused further payments as it was at the limit of its insurance liability. As a result of the debris removal, monitoring, predator removal, vegetation planting, lakeshore cleanup, and other measures, it has been established that the reefs are now recovering rapidly. The United States established Rose Atoll as a Marine National Monument in January 2009, thus banning commercial fishing within 50 nautical miles of the Atoll. The successful recovery of the reefs at Rose Atoll was due largely to the Atoll's status as an actively managed protected area, in combination with sufficient funding, effort, and expertise to monitor the injury to the atoll and its subsequent restoration.

This is an unusual example, but it illustrates the importance of the involvement of federal agencies, funding from the responsible party, and sufficiently long-term monitoring. It also underscores the importance of adequate insurance. Although a long time again intervened between accident and restoration, this was ultimately an important success story.

- **1996 San Francisco Drydock bunker fuel oil spill**

On October 28, 1996, the SS Cape Mohican, a 725-foot Maritime Administration vessel, discharged an estimated 96,000 gallons of a heavy bunker fuel oil into a floating drydock at the San Francisco Drydock Shipyard. Approximately 40,000 gallons of fuel spilled into the bay, oiling beaches as far north as the Point Reyes National Seashore and as far south as Pillar Point, and killing an estimated 593 birds. Recreational beach use, shoreline habitat, and fisheries were also affected.

A trustee agreement and consent decree were signed in 1998, and restoration plan, in 2002. Required measures included improved wetland habitat and shoreline, bird and fish restoration, and improved recreation opportunities. A total of \$3,625,000 was awarded to the trustees under the consent decree for the design, implementation, permitting, monitoring, and oversight of restoration projects. The proposed restoration costs totaled \$5,853,324.

The funds ultimately provided fell significantly short of what was proposed, and it appears that heavy use of volunteers was required to accomplish the restoration, which had good results in the end. This case again exemplifies the importance of adequate funding after a disaster and the significant time lag between spill and restoration efforts.

- **1999 Genesis crude oil pipeline spill near Soso, MS**

The Genesis crude oil pipeline spill near Soso, MS, released 336,000 gallons of crude oil, contaminating wetlands, a stream, and the Leaf River. Approximately 27 miles of the Leaf River were oiled to varying degrees. Several natural resources, including wetlands, groundwater, and wildlife habitat, were affected. Fish and birds, notably wood ducks, were oiled and killed. Due to the proximity of the wetlands to ground zero and the degree of impact from both the oil spill and the subsequent cleanup efforts, the wetlands lost all function.

It was not until five years after the spill that a final restoration plan was agreed upon between Genesis, the Mississippi Department of Environmental Quality (MDEQ), and the USFWS. This agreement was unclear on a number of key matters (e.g., agreed-upon restoration costs, compensation for damage to streambed and riparian zones, treatment of contaminated soils, purchase of new land, provision of wood duck nesting houses, and monitoring by the state and USFWS), as most work was to be done by Genesis contractors. However, a 2004 settlement with the Department of Justice clarified that Genesis was to pay \$2 million for

restoration. There was to be annual monitoring by a Genesis contractor, with results submitted to MDEQ, but we have found no documentation that these have occurred.

The Soso oil spill provides yet another example of an extended lag time between an oil spill and agreement by the responsible party to pay for restoration, as well as uncertain confirmation of restoration due to lack of readily available documentation.

- **2000 East Walker River fuel oil spill by Advanced Fuel Filtration Systems**

On December 30, 2000, a tanker truck operated by Advanced Fuel Filtration Systems, Inc. (AFFS), of Corona, CA, overturned on California State Route 182 north of Bridgeport, resulting in the release of approximately 3,608 gallons of #6 fuel oil, the majority of which entered the East Walker River. The fuel visibly oiled approximately 10 miles of stream habitat, 7 of which were in California (Mono County) and 3 in Nevada (Lyon County). Based on water and sediment samples taken downstream in Nevada, approximately 15 miles of stream were affected. The cleanup lasted throughout the winter months. This oil spill had an impact on natural resources along the spill path of the East Walker River watershed, causing injury and mortality to plants and animals.

A memorandum of understanding with AFFS was signed in 2005. The restoration plan was dated August 2009. Under a trustee agreement, AFSS agreed to pay a total of \$418,000, of which *only \$350,000* would go to the trustees for restoration, with the balance going to the California Department of Fish and Wildlife for assessment. Restoration costs exceeded the \$350,000 AFFS paid, and the US Forest Service was liable for \$162,600 for part of the recreational improvement project. Restoration projects included riparian enhancement and fuels reduction (fire prevention), improved trout fishing, and outdoor recreational improvements.

Again, this example underscores the importance of adequate restoration funding from the responsible party, and the long lag time between an incident and a restoration agreement.

- **July 2002 Enbridge pipeline spill near Cohasset, MN**

In July 2002, an Enbridge pipeline spilled 252,000 gallons of crude oil into wetlands near Cohasset, MN. The wetland was within the watershed of Blackwater Creek, a tributary of the Mississippi River. To minimize the risk for contamination of the Mississippi, response strategies included a controlled burn of the oil and a containment berm. The daylong burn created a smoke plume about one mile high and five miles long. The pipe failed because it had been cracked even before installation, when being transported by train beforehand.

The discharge of oil and subsequent response resulted in near-complete loss of 11 acres of wetland vegetation in the affected area, destroying migratory bird habitat. A draft restoration plan was developed between Minnesota trustees and Enbridge in 2004, with a final consent decree for restoration finalized in 2008. The trustees judged that restoration of wetland vegetative communities at the damaged site was not possible due to the extensive and very long-lasting damage to the area. Given that damage, an “off-site restoration alternative” was selected as the preferred means of addressing the loss of ecological resources. The plan called for restoration of approximately 30 acres of degraded forested and scrub-shrub wetlands at a site located within the Chippewa National Forest, including reestablishing appropriate forested and scrub-shrub wetland vegetation through natural regeneration and replanting. Air resource injuries associated with the discharge of oil and *in-situ* burning were to be addressed through a separate project to retrofit vehicles (school buses) having older diesel engines with improved emission controls to reduce air pollutant emissions.

In 2014, an interim report by the USFWS demonstrated that re-vegetation goals were still unmet, with only 40% of the expected number of willows present, although biologists were hopeful for the future. However, without a substantial infusion of reforestation funds, they expressed concerns that goals would not be met even within the agreed-upon 10-year time frame.

To sum up, there was no action until after 2008 on compensatory restoration of the wetlands and migratory bird habitat destroyed in 2002, and even today, restoration is incomplete and will likely need further funding.

This example indicates that even with cooperation, return of the environment to its pre-spill state can drag out for many years, with uncertain success—a sad outcome for people, flora, and fauna in the area.

- **2010 BP Deepwater Horizon Gulf oil spill**

The Event

On April 20, 2010, the mobile drilling unit Deepwater Horizon was drilling an exploratory well for BP Exploration and Production, Inc. (BP), when it violently exploded, caught fire, and eventually sank, killing 11 workers. Oil flowed unabated one mile below the surface. The well could not be capped for 87 days, and oil spewed into the Gulf, eventually covering thousands of square miles and polluting beaches, bays, estuaries, and marshes from the Florida Panhandle to west of the Mississippi River Delta. At one point, 37% of the Gulf was closed to fishing. Approximately 210 million gallons escaped from the well. Approximately 771,000 gallons of dispersants were used on the surface and at the well head one mile below. This was an environmental disaster of unprecedented proportions and a devastating blow to the resource-dependent economy of the region.

Oil contaminating Louisiana beaches in May was manually removed; more difficult to clean were the state's marshes and estuaries, the area knit together by delicate plant life. By June, oil and tar balls were found on Mississippi, Alabama, and Florida beaches, with 1,100 miles of shoreline polluted; nearly three years later, about 340 miles of coast were still in need of cleanup. Coast Guard cleanup patrols drew to a close in Alabama, Florida, and Mississippi in June 2013 and in Louisiana in April 2014, but crews remained available as needed.

Thousands of birds, mammals, and sea turtles were plastered with oil and died. As of 2014, some 950 whales and dolphins had been found stranded, representing only a tiny percentage of the animals affected. Birds were particularly vulnerable, and many perished from ingesting oil as they tried to clean themselves or because they could not regulate their body temperature. The brown pelican, recently delisted as an endangered species, was among the species most affected.

Restoration efforts

Restoration of damaged natural resources was urgent immediately following the spill. By April 2011, an Early Restoration Plan and Environmental Assessment was put in place between BP and trustees from the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior, as well as from Texas, Louisiana, Florida, Alabama, and Mississippi, with \$1 billion in funds from BP. Each state was to receive \$100 million, with the remainder to be used by the Department of the Interior and NOAA. The projects were to address an array of injuries throughout the Gulf. Included in Phase I of the Early Restoration Plan and Environmental Assessment were two oyster projects, two marsh projects, a nearshore artificial reef project, two dune projects, and a boat-ramp enhancement project. These projects were to address injuries to mammals and marine organisms, on the coast and offshore, and/or to compensate for lost recreational opportunities for the public.

Projects added in Phase II Early Restoration Plan and Environmental Assessment were titled (1) Enhanced Management of Avian Breeding Habitat Injured by Response in the Florida Panhandle, Alabama, and Mississippi and (2) Improving Habitat Injured by Spill Response: Restoring the Night Sky (to allow normal nesting habitat for loggerhead sea turtles). The more detailed October 2014 Phase III Early Restoration Plan and Environmental Assessment listed preferred alternatives intended to contribute to (1) restoring habitats and living coastal and marine resources and (2) providing and enhancing recreational opportunities. These included 44 projects totaling \$627 million, with 53% going to habitats and 37% to recreational opportunities. Within the ecological project category, barrier island restoration and dune projects account for \$319 million of estimated project costs, followed by living shoreline (\$66.6 million), oyster (\$8.6 million), and seagrasses (\$2.7 million).

Ongoing concerns

Funding: It is still early days in the lifetime of this spill and its aftermath and too soon to know how long restoration will take. The trustees have noted that “Restoration work will take many years to complete, and long-term monitoring and adaptive management of the Gulf ecosystem will likely continue for decades until the Trustees can be certain that the public has been fully compensated for its losses” ([*Deepwater Horizon Oil Spill Phase I Early Restoration Plan and Environmental Assessment*](#), p. ES-3). The trustees emphasized that the early restoration projects listed were not intended to provide the full extent of restoration needed to satisfy the trustees’ claims against BP, stating: “Restoration . . . will continue until the public is fully compensated for the natural resources and services that were lost as a result of the Spill” (*ibid.*, p. ES-5). The National Wildlife Federation has outlined several sources of funding that should, hopefully, be available:
<http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2014/04-07-14-Gulf-Report-2014.aspx>

- Early Natural Resource Damage Assessment Restoration Phases I-III with BP agreeing to \$1 billion in funding as described above.

Other potential funding is as follows:

- Natural Resource Damage Assessment (full amount still to be determined): Under the Oil Pollution Act, the responsible company must pay for cleanup and restoration of lost resources. The responsible parties could pay the amount defined in the restoration plan, or they could challenge it, initiating further legal action.
- Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act: The amount paid will depend on the outcome of the trial. BP could pay from \$3.6 billion to \$14 billion into the Gulf Coast Restoration Trust Fund. Transocean has settled, with \$800 million going to the trust fund.
- Criminal settlements through the Justice Department: \$2.544 billion in settlements against BP and Transocean goes to the National Fish and Wildlife Foundation for projects benefiting Gulf natural resources affected by the spill.
- Gulf Environmental Benefit Fund: This fund will invest a total of \$1.272 billion in barrier island and river diversion projects in Louisiana; \$356 million per state in ecosystem restoration in Alabama, Florida, and Mississippi; and \$203 million in restoration efforts in Texas.
- Migratory Bird Treaty Act: For criminal violations of this act, BP agreed to pay \$100 million for wetlands restoration and conservation in Gulf States or to otherwise benefit migratory birds affected by the Deepwater Horizon spill.

The above funding sources sound promising, but only time will tell whether the funding is sufficient, how much payment will be contested, and how successful restoration efforts will be.

Remaining oil: Although most of the oil has been removed by cleanup operations and other natural mechanisms, up to 35% of the hydrocarbons were trapped and transported in persistent deep-sea plumes, which can harm the population recovery of exposed animals.

Ongoing harm to wildlife: According to published research from NOAA researchers, the Deepwater Horizon blowout and subsequent oil spill adversely affected deep-sea animals living in bottom sediment, and recovery of deep-sea soft-bottom habitat and the associated communities in the vicinity of the blowout may take decades or longer. (*Montagna PA, et al. (2013) Deep-Sea Benthic Footprint of the Deepwater Horizon Blowout. PLoS ONE 8(8): e70540*). This is concerning as these organisms serve vital functions in the deep-sea ecosystem (e.g., organic matter decomposition and nutrient regeneration) and in carbon cycling, and are a critical part of the food web base. A recent report has shown that harmful aftereffects of the BP spill persist for many larger and better known animals, with 14 species showing symptoms of oil exposure, and that oil remains in the seabed, washing up on beaches, and in marshes. (Four Years Into the Gulf Oil Disaster: Still Waiting for

Restoration. <http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2014/04-07-14-Gulf-Report-2014.aspx> In 2013, dolphins were still stranding at more than three times the average annual rates before the spill, according to the report, and oyster reproductive rates were depressed. Many sea turtles continue to be found stranded in areas affected by the spill. In a recent report from Stanford, heart toxicity was noted in fish exposed in the Gulf Oil Spill. (*Block BA et al. Crude Oil Impairs Cardiac Excitation-Contraction Coupling in Fish. Science 14 February 2014: 772-776.*) A 2013 study by NOAA in Barataria Bay, LA, which was heavily oiled during the spill, found dolphins were underweight, anemic, and showing signs of liver and lung disease; roughly half were extremely sick, many suffering from lung and adrenal disorders known to be linked to oil exposure. (*Health of Common Bottlenose Dolphins in Barataria Bay, Louisiana, Following the Deepwater Horizon Oil Spill. Environmental Science & Technology 2014; 48, 93-103*)

Although BP has pledged or provided monies for initial restoration projects as described above, it will be many years before it is known if natural resources restoration is complete (or at least as complete as is possible after such a spill). Finally, it is very worrisome that, although BP did pledge monies for environmental restoration, it is now disputing some of the claims of continuing harm to animals, and it is by no means certain that BP will fund all necessary environmental restoration. In the same vein, BP is now disputing economic claims of people living along the Gulf Coast, as well as fighting court battles over assignment of blame for the disaster.

- **2013 Mayflower AK Exxon tar sands spill**

The event

The 2013 Mayflower oil spill occurred on March 29, 2013, when an ExxonMobil pipeline carrying Canadian tar sands ruptured in Mayflower, AR, spilling directly into a residential neighborhood and into nearby waterways, including an unnamed creek, wetlands, and Lake Conway. (Mayflower Oil Spill.

http://en.wikipedia.org/wiki/2013_Mayflower_oil_spill

Many residents were immediately forced to evacuate their homes. The 20-inch-diameter Pegasus pipeline was nearly 70 years old and carried 95,000 barrels per day for the 850 miles from Patoka, IL, to Nederland, TX. Company officials at the scene claimed the spill was simply "heavy oil," but when the EPA checked with an Exxon safety law attorney, it became clear the spill involved dilbit (diluted bitumen), otherwise known as oil sands or tar sands. The spill, approximately 210,000 gallons total, covered some streets and lawns, ruined 22 homes and other property in the neighborhood, sickened residents, and killed birds, turtles, and other wildlife in the surroundings.

Exxon shut two valves 18 miles apart to isolate the ruptured section, with the line leaking for 12 hours longer as it lost pressure, according to PHMSA. First responders built dikes and used containment booms in an attempt to minimize wetland contamination. Cleanup by company personnel continued, with approximately 600 people working for Exxon or its contractors, and five EPA employees on site as well. EPA and PHMSA officials initiated an investigation of the spill.

For some unknown reason, on April 1, 2013 the Federal Aviation Administration (FAA) closed the airspace for a five-mile radius around the site, up to 1000 feet, allowing only aircraft operations under the direction of the Exxon aviation advisor. The FAA later changed the restriction to allow outside media to observe (if they were indeed there), explaining that media should not have been restricted to begin with. It is not clear what really happened or why, but this baffling order did have the effect of disallowing aerial photography during the early spill, a critical interval. It should also be noted that Exxon strictly policed the area of the spill and would not allow any outsiders in, which lends an air of uncertainty to their dead animal counts and likely more.

For several weeks after the spill, local residents complained about the "horrible smell" in the area, and several were sickened with symptoms characteristic of exposure to petrochemicals (dizziness, headaches, nausea and vomiting). Some residents continued to be sickened for months, and some of these had to move away, in addition to those whose homes were destroyed.

The legal and regulatory front

On April 2, 2013, PHMSA issued a corrective action order preventing restarting of the pipeline until the agency was satisfied with repairs and all safety concerns had been addressed (not yet restarted as far as one can tell). Arkansas Attorney General Dustin McDaniel promised a state investigation into the cause and impact of the spill.

In a letter to ExxonMobil, McDaniel stated: "There are many questions and concerns remaining as to the long-term impacts, environmental or otherwise, from this spill." Nuss, J. (April 2, 2013). Arkansas Oil Spill Investigation: State Attorney General to Look into ExxonMobil Pipeline Rupture. *Huffington Post*. He asked ExxonMobil to preserve records pending his investigation. Mr. McDaniel noted that the rupture itself was 22 feet long and that a team of experts for the state were combing through pipeline documents and environmental samples. McDaniel also requested \$4 million from Exxon to immediately establish a fund to pay for the state's investigative expenses. He stated that this was consistent with federal law and the approach taken by the attorney generals for Gulf Coast states, which were advanced considerable sums right away by the responsible party, BP. There is currently a pending lawsuit by the Department of the Interior and the state of Arkansas against Exxon.

In assessing the pipeline rupture, PHMSA had previously noted that an original manufacturing defect by a now-defunct Youngstown steel pipe company had contributed to the accident. In November, PHMSA found Exxon liable for nine probable violations of safety rules, with accompanying hefty fines, stating that Exxon did not adequately account for risks posed by the pipeline: (Exxon faces \$2.7 Million fine for Arkansas pipeline spill. Wed Nov 6, 2013

<http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>

"Specifically, the operator failed to include the susceptibility of its Youngstown, pre-1970 . . . pipe seam to failures as a risk factor for the Pegasus Pipeline System in the implementation of its integrity management program." Exxon found PHMSA's reasoning flawed, but Senator Mark Pryor praised PHMSA's decision, stating, "Exxon has caused undue harm to Arkansas families and must be held accountable." (Exxon faces \$2.7 Million fine for Arkansas pipeline spill. Wed Nov 6, 2013

<http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>

Of real concern: Environmental assessment and restoration

The environment is expected to be significantly and negatively affected after the Exxon spill due to several factors. First, it was a tar sands spill—which is vastly more difficult to manage than a classic crude oil spill—involving approximately 210,000 gallons. Second, it appears that best practices have not been followed in the aftermath of the spill. It is crucial that environmental injuries be assessed starting immediately after any serious spill, especially of tar sands, which sink, stick to everything, and get “lost” in the environment. In the case of some other large spills—such as the Kalamazoo River spill and the BP Gulf oil spill—highly trained and experienced professionals, including biologists, from NOAA, USFWS, EPA, and the US Coast Guard, as appropriate, have been brought in quickly, even before full assessment, to initiate the Natural Resource Damage Assessment (NRDA) process and other measures likely to be urgently needed to save wildlife and other natural resources. This does not appear to have been done for the Mayflower spill. (Arkansas Oil Spill Damage Assessment: If Not the Feds, Then Who?

<http://insideclimatenews.org/news/20130425/arkansas-oil-spill-damage-assessment-if-not-feds-then-who>) States are not authorized to carry out an NRDA themselves and would not have the requisite expertise. The Arkansas Department of Environmental Quality and the Arkansas Game and Fish Commission are nominally in charge of surveying the damage to oil-hit wildlife, wetlands, soil, and groundwater along the mile-long spill site but are candid about having very little experience in handling restoration after such a major oil spill. A volunteer group there, the Faulkner County Citizens Advisory Group, is aware of these matters and has had meetings about the spill and the need for an NRDA, but has no significant funding. Finally, unfortunately,

there is evidence that oil which reached water is still remaining: The latest “sheen reports” from August of 2014 indicate there is still oil on the surface of water in the cove adjacent to the lake. Arkansas Department of Environmental Quality. Available Reports. Mayflower Oil Spill.

http://www2.adeq.state.ar.us/hazwaste/mayflower_oil_spill_2013/oil_spill_available_reports.htm

In sum

Although Enbridge has stated that it has a much improved safety culture since the Kalamazoo spill, its actions even during the four years of post-spill cleanup are not strongly reassuring to some Dane County citizens. Moreover, the proposed flow rate in Dane County—1.2 million barrels per day—means that a full rupture would equal the size of the Kalamazoo spill in *just 40 minutes*. It is imperative that Dane County be insured against such a catastrophe.

Given that Enbridge is a Master Limited Partnership, with profits distributed among partners and thus with little cash on hand; given that the Kalamazoo tar sands spill cost more than \$1.2 Billion, and that Enbridge’s current insurance (to cover any and all Enbridge spills) is well below that figure; and given that their insurance excludes pollution coverage, therefore Dane County residents and taxpayers should be protected against the expense of an Enbridge spill here by requiring Enbridge have adequate insurance coverage including Environmental Impairment Liability (EIL) insurance, with Dane County as a named insured.

Sources

USDOT. PHMSA. Operator Information. Incident and Mileage Data. ENBRIDGE ENERGY, LIMITED PARTNERSHIP.

http://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_11169.html?nocache=8539#_Incidents_tab_3

EPA Response to Enbridge Spill in Michigan

<http://www.epa.gov/enbridgespill/documents.html>

The impact of tar sands pipeline spills on employment and the economy.

https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/GLI_Impact-of-Tar-Sands-Pipeline-Spills.pdf

NRDAR Damage Case: Enbridge Energy. Blackwater Creek Minnesota

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=134

U. S. Department of the Interior. Natural resource damage assessment and restoration. Case Documents. Final Restoration Plan for Rose Atoll National Wildlife Refuge

<http://www.doi.gov/restoration/library/casedocs/index.cfm>

NRDAR Damage Case: F/V Jin Shiang Fa. Rose Atoll, Rose Atoll National Wildlife Refuge

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=11

American Samoa: Shipwreck at Rose Atoll National Wildlife Refuge

<http://www.wri.org/american-samoa-shipwreck-rose-atoll-national-wildlife-refuge#fn:2>

http://www.cerc.usgs.gov/orda_docs/DamageCases.aspx

Natural Resource Damage Assessment and Restoration. 2010 Enbridge Oil Spill in Michigan

<http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/>

The Keystone Kop of Tar Sands Oil. <http://dirtiggersdigest.org/archives/3751>

Berquist L. (2007, February 16) .Oil spill tainted water table: Recent pipeline leak seeped into deep hole in northern Wisconsin. The Milwaukee Journal Sentinel.

<http://www.jsonline.com/news/wisconsin/29343664.html>

Department of Justice. U.S Announces Settlement Worth Over \$3 Million for Leaf River Oil Spill in Mississippi from Genesis Pipeline. http://www.justice.gov/archive/opa/pr/2004/June/04_enrd_442.htm

NRDAR Damage Case: Deepwater Horizon BP Rig

http://www.cerc.usgs.gov/orda_docs/DamageCase.aspx?DamageCaseId=272

[Deepwater Horizon Oil Spill Phase I Early Restoration Plan and Environmental Assessment](#)

www.gulfspillrestoration.noaa.gov/

Portal Maintained by NOAA as part of the Deepwater Horizon Natural Resource Damage Assessment Trustee Council. Phase III of Early Restoration.

<http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/phase-iii/>

Deepwater Horizon oil spill of 2010

<http://www.britannica.com/EBchecked/topic/1698988/Deepwater-Horizon-oil-spill-of-2010/296705/Cleanup-efforts>

Montagna PA, et al. (2013) Deep-Sea Benthic Footprint of the Deepwater Horizon Blowout. PLoS ONE 8(8): e70540

<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0070540#pone.0070540->

Four Years into the Gulf Oil Disaster: Still Waiting for Restoration

<http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2014/04-07-14-Gulf-Report-2014.aspx>

Block BA et al. Crude Oil Impairs Cardiac Excitation-Contraction Coupling in Fish. Science 14 February 2014: 772-776.

Health of Common Bottlenose Dolphins in Barataria Bay, Louisiana, Following the Deepwater Horizon Oil Spill. *Environmental Science & Technology* 2014; 48, 93-103)

Mayflower Oil Spill. http://en.wikipedia.org/wiki/2013_Mayflower_oil_spill

Nuss, J. (April 2, 2013). Arkansas Oil Spill Investigation: State Attorney General to Look into ExxonMobil Pipeline Rupture. *Huffington Post*.

http://www.huffingtonpost.com/2013/04/02/arkansas-oil-spill-investigation-exxonmobil_n_2999663.html

Exxon faces \$2.7 million fine for Arkansas pipeline spill. Wed Nov 6, 2013

<http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>

Arkansas Department of Environmental Quality. Available Reports. Mayflower Oil Spill.

http://www2.adeq.state.ar.us/hazwaste/mayflower_oil_spill_2013/oil_spill_available_reports.htm

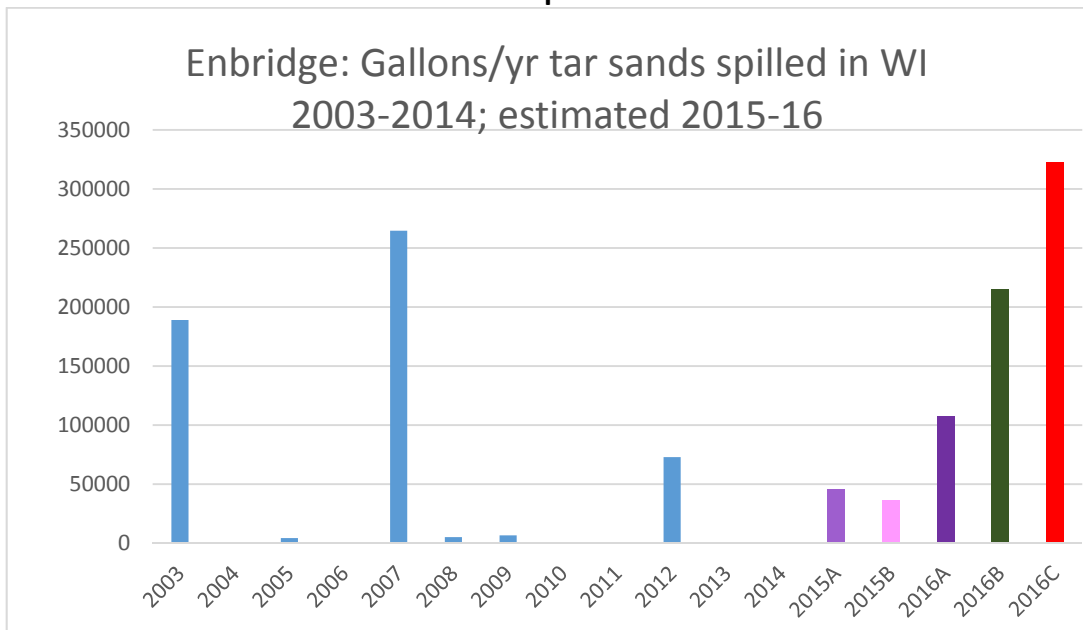
Earthday Town Hall 4/22/13. Hosted by Faulkner County Citizens' Advisory Group.

<http://www.carkw.com/exxonmobil-pegasus-pipeline/meetings/>

Prepared by Mary Beth Elliott PhD for 350 Madison gutsugua@gmail.com

Edited by Cathy Loeb for 350 Madison

What can we expect in the future?



KEY:

2006 thru 2014 are data from Pipeline & Hazardous Materials Safety Administration

http://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_11169.html?nocache=8539#_Incidents_tab_3

2003-2005 from Wikipedia http://en.wikipedia.org/wiki/List_of_pipeline_accidents_in_the_United_States_in_the_21st_century

2015A data: Predicted based on mean gallons spilled in WI 2003-2014 spills

2015B and all 2016 data: predicted values based on expected billion barrel-miles/yr on line 61, with historical Enbridge spill vol/unit throughput (bbl spilled/billion bbl-miles), 1996-2006

(<http://www.enbridge.com/AboutEnbridge/CorporateSocialResponsibility/CSRReports.aspx>)

2016B value included assumption of two fold increased spill risk due to increased operating pressure

2016C value included assumption of three fold increased spill risk due to increased operating pressure

Prepared by Mary Beth Elliott PhD 350 Madison

Dane County Zoning and Land Regulation Committee #CUP 2291
SUPPLEMENTAL TESTIMONY BY 350-MADISON REGARDING THE NEED
FOR INSURANCE AS A CONDITION FOR ANY PERMIT FOR
ENBRIDGE'S WATERLOO PUMPING STATION

350-MADISON would like to supplement its earlier comments dated November 10, 2014, relating to the need for insurance to assure the availability of funds to clean up after any future spill in a conditional use permit (CUP) for the Enbridge Energy Partners' Waterloo Pumping Station.

Since our prior testimony to the Committee, we have had the opportunity to do further research on the subject of the need for environmental impairment insurance in which Dane County is a named insured.

Appended is Enbridge's Form-6 to the Federal Energy Regulatory Commission (FERC) for 2013 (Annual Report). Among the matters of significant concern that are raised by the partnership's Annual Report are the following:

1. ***Limited Partnership.*** The parent company is Enbridge Energy, LP, a limited partnership. The particular subsidiary that has undertaken the Alberta Clipper expansion, which appears to include Line 61, is Series AC. Form-6, at p. 123.1.

In a partnership, the entity to which liability ultimately attaches is not the partnership itself, because there is no corporation as a single entity with an independent existence, in the legal sense. Nor is there any legal liability for the limited partners of Series AC, who provide most of the capital, but are insulated by law from responsibility.

Typically, the aggregation of the firm's general partners, with widely varying assets, should bear the liability for spills from the pipelines it owns. However, a partnership's amorphous form makes the task of assigning responsibility substantially more challenging than were the applicant a single large publicly traded corporation, with its published audited financials and substantial assets. Indeed, as the long 19-year journey through the courts of the [Exxon Valdez case](#) teaches, assurances are needed in all cases when environmental damages and third party losses from industrial activity may be significant, just more so with partnerships.

Of great concern, notwithstanding Enbridge lobbyist's oral, but legally non-binding, assurances, the Report also indicates that the general partners would strongly resist any assignment of liability for a spill on Line 61. It states the general partners *only accept liability for cleanup costs prior to 1991*, and thus, inferentially, would resist accepting liability for subsequent costs not covered by insurance or other responsible parties. Here is the actual reference:

“To the extent that we are unable to recover environmental liabilities through insurance or other potentially responsible parties, we [the limited partners] will be responsible for payment of liabilities arising from environmental incidents associated with the operating activities of our crude oil business. Our General Partner has agreed to indemnify us from and against any costs relating to environmental liabilities associated with our system assets prior to the transfer of these assets to us in 1991. This excludes any liabilities resulting from a change in laws after such transfer. We continue to voluntarily investigate past leak sites on our systems for the purpose of assessing whether any remediation is required in light of current regulations.” Form-6, p. 123.8 (emphasis added).

This reference does claim that, although the General Partners would not agree to indemnify the post-1991 Series AC Limited Partners, those limited partners would be responsible to pay for any cleanup. However, under the statutes that authorize partnerships, the limited partners, as individuals, [would not have any legal obligation](#) to pay for a cleanup beyond the incidental amounts of cash retained by the Series AC partnership left over from their investment.

Furthermore, even if the limited partners were legally liable, no information is provided about how they collectively could voluntarily finance any large non-revenue generating expenditure. As discussed next, Enbridge retains no cash beyond that needed for its normal operations and construction obligations. Also, per that discussion, any assets sales, assuming that they could be forced, would be complicated and uncertain.

As for the general partners, Dane County has no information on who they are, nor their financial assets, including other potential claimants on them. A partnership is designed to maximize after-tax profits to its investors, but also offload the societal risks attendant to its operations on the taxpayer – unless regulators intervene to interrupt such an untoward outcome. That is why comprehensive insurance for the County, and its taxpayers, is essential.

2. ***Master Limited Partnership.*** According to its website, Enbridge Energy Partners is a [Master Limited Partnership](#) (MLP) which is a specific type of partnership for natural resources intended to minimize tax liabilities. They are structured so the company pays no taxes, but instead taxes are due from the individual partners when dividends are paid out. If Enbridge’s partner agreements follow the usual practice, all of the partnership’s income is distributed to its partners.

That means no cash balance is left to facilitate the immediate commencement of major unexpected cleanup activities in the event the federal Oil Spill Liability Trust Fund was also short of cash because of other large competing obligations. According to the Congressional Reference Service's 2011 report, [*Liability and Compensation Issues Raised by the 2010 Gulf Oil Spill*](#) that is often the case:

“Although evidence indicates that the levels of current framework may be sufficient to address the more common mix of spills that have historically occurred, the current combination of liability limits and \$1 billion per-incident OSLTF cap is not sufficient to withstand a spill with damages/costs that exceed a responsible party's liability limit by \$1 billion.”

Enbridge's year-end 2013 financial report indicates that, after accounting for its internally funded capital needs, it had no cash on hand. See Form-6, at p. 121.

Whatever Enbridge's ostensible capacity is, in succeeding years, to levy true-up charges on its pipeline customers to pay for the uninsured part of the cost of a spill, Form-6, at p. 123.13, that procedure has serious limitations. From the perspective of the injured parties, the confidence that the cleanup will proceed competently and with dispatch is less than if the spill had been committed by a major corporation with significant liquid assets, all other things being equal.

For the ability of Enbridge to true up its remediation costs through higher tariffs in the following year may not always produce funds sufficient to pay the full amounts needed. It would be unusual for the shippers who purchase the service in a cost-plus contract to pay for all of the damages caused by negligence of the pipeline operator – and especially not for gross negligence. In the Kalamazoo oil spill case, where Enbridge's [*succession of errors*](#) would be considered grossly negligent, the total cleanup costs are estimated by Enbridge to be \$1.122 billion, which compares to the company's total 2012 revenues of \$1.084 billion. Form-6, p. 114. Even though part of the costs may be recovered from the firm's insurers, the true-up of the remainder nonetheless represents a substantial rate increase that is likely to elicit a less than enthusiastic response from shippers.

In the case where the cleanup costs are very significant, the shippers could in a future case consider that bankruptcy will best protect their dual interests in maintaining shipping capacity without paying enormous bailouts. For, even if the current pipeline owner is forced into bankruptcy, the liabilities from the spill could possibly be [*abandoned as burdensome*](#) for the restructured firm or for the new acquiring company that reemerges from Chapter 11 and keeps the line operating at rates that have been shorn of the cleanup costs.

Asset sales of other parts of Enbridge's pipeline system to pay for a major cleanup, if that is posited in reply, may also be legally challenging, even if Enbridge voluntarily pursued that option, which cannot be relied upon. Enbridge has certainly not legally pledged any of its assets as collateral to Dane County for unremediated damages, and is almost certain to refuse to do so. Such a sale would reduce the present value of the firm's future income, and its stock price. Indeed, just collateralizing the system as surrogate insurance for spills, even if asset sales never took place, would make it impossible to finance the company's planned expansions on attractive terms.

3. ***Insurance Adequacy.*** Enbridge states the 2010 [Kalamazoo spill](#) from Line 6B will cost it \$1.122 billion to remediate, exclusive of fines, penalties and lost revenues (upped to \$1.157 billion in its 2014Q2 report). It had an insurance policy with total limits of liability of \$650 million. The fact that its coverage was just 56% of this spill's cost is only one matter of concern. The other and more important matter is that it turned out to be the wrong kind of policy. Form-6, p. 123.12.

The Report's language on that page is intended to suggest that it had coverage "for pollution liability" intended for oil spills. That is deliberately and grossly misleading. Instead – to translate the Report's obfuscatory wording – Enbridge actually had a substantially less expensive, and less comprehensive, General Liability policy. These general policies contain a broad pollution *exclusion* (other than for "sudden and accidental" events).

The most litigated words in the history of the insurance business are lawsuits where the insurance companies and insureds argue over what "sudden and accidental" pollution is and what should be excepted from the pollution exclusion in General Liability insurance policies (as an example, can an oil spill that, like Kalamazoo, that lasted 17 hours be called "sudden," or is "sudden" limited to the initial release?). These cases [can extend for more than twenty years](#) to resolve.

Because that phrase has no predictable meaning in case law, it simply cannot be relied upon for environmental clean ups, and, as should have been anticipated, Enbridge has had to sue its insurers for payment. If it does not prevail for the first \$145 million now in litigation, Enbridge disclosed that many of its other insurers will refuse payment as well. Form-6, at pp. 123.9 to 123.11.

Obtaining coverage payouts for sudden and accidental pollution events on a General Liability policy that otherwise absolutely excludes claims from all sources of pollution is a singularly unreliable policy for timely environmental cleanups. The type of coverage that unambiguously does cover cleanups that any company, and especially one so prone to accidents as Enbridge, should have purchased is Environmental Impairment Liability (EIL) insurance

4. **Insurability.** In addition to Kalamazoo, there was a second Enbridge pipe line spill in 2010 in Illinois on Line 6A that caused further damages of \$48 million exclusive of fines, penalties and lost revenues. The damages for the second spill were also at least partially insured because the Annual Report refers to the renewal of the Enbridge liability insurance policy. In 2012, there was a third spill at Grand Marsh, Wisconsin, costing \$10.5 million, before fines, penalties and lost revenues. Form-6, at p. 123.10 to 123.13. Enbridge's continuing claims are costing its insurers far more in payouts than the \$7 million it reports paying each year in premiums. That is not sustainable.

Five lessons can be drawn from this discussion about the need for and shape of insurance:

First, Enbridge's structure as a master limited partnership is intended to maximize after-tax returns to investors, but that advantage comes at the price of significantly elevating the risks to Dane County. That compels the County to insist upon comprehensive EIL insurance in order to protect the public from the exposure to the enormous risks that Enbridge's structure and record creates.

Second, Enbridge appears to either seriously underestimate the amount of coverage it needs if it is to assure that there are the resources to complete the cleanups from the types of accidents it has caused, or it has been unwilling to pay higher premiums that would be required to secure excess coverage. Therefore, the County needs to mandate the amount of coverage its staff determines may be needed to restore the land and water crossed by Line 61 to its original condition after a spill, rather than have coverage limits be established by how much the partners decide that they want to pay in premiums. Stripped to its essentials, deference to the Enbridge partners' whims perpetuates their preferred practice to shift major pollution risks to the taxpayer.

Third, not only is the amount of coverage grossly inadequate, but also, in an apparent effort to reduce its premiums, Enbridge failed to secure the type of coverage for environmental impairment that it needs if there are to reliably be the necessary funds for the cleanup. A private profit-making entity should be expected to exert its best efforts to externalize costs, and the County needs to respond accordingly by insisting that the correct type of insurance policy for environmental impairment is purchased to place the pollution risk where it belongs – on the party who receives the profits from the pipeline's operations. Internalization of external costs is essential to correctly price goods and services so that the free market can function to optimize social welfare.

Fourth, any insured company that files claims that far exceed its insurance premiums will, over time, have difficulty renewing its insurance, nonetheless adequate coverage for a reasonably priced premium. Due to its past losses, the ability for Enbridge to purchase environmental impairment insurance at any price, and in any amount, is not certain. The company may be uninsurable for bonafide pollution coverage. But, if Enbridge cannot secure the insurance to which the citizens' of Dane County are entitled, the remedy ought not be to dumb down the

necessary insurance requirements in order to accommodate the company's self-inflicted infirmities. Instead, the marketplace should be allowed to sort out a new, competent management for those assets. Dane County needs to ascertain the details of what is happening with Enbridge's insurers if it is to protect its interests. The vague allusions and claims of confidentiality by the Enbridge's lobbyist should be firmly rejected. As a condition for continuing to process the CUP, full disclosure should be demanded of its relationship with insurers, beginning with a full and complete copy of all of its current insurance policies, and any current drafts of policies for renewals in 2015. Any valid confidentiality concerns, as determined by Corporation Counsel, can be dealt with by non-disclosure agreements.

Fifth, the disclosures here may lead Enbridge to offer self-insurance or fronted insurance – neither of which is actually insurance. True insurance is offered by a competent third party who has set premiums based upon a full evaluation of the risks. If either of the two is proposed, that sort of ersatz insurance should be summarily rejected. For one thing, self insurance fails to offer any assurance that is provided by third parties with verified assets that are adequate. For another, because Enbridge has no significant cash on hand, a master limited partnership cannot even make the invalid riposte that it has a strong balance sheet adequate to cover the risks (for adequate assets it does not assure willingness to perform). Similar, fronted insurance is only the shell of insurance because the nominally insured party commits to remitting any claims back to the insurance company. As such, they are not risk-rated and are erected on a house of cards to create the appearance, but not the substance, of true insurance.

For all of these reasons, Dane County should include a requirement to be a named insured party on comprehensive EIL insurance as one of the conditions for any zoning permit it issues for CUP 2291 for the Waterloo Pumping Station. See Attachment A for insurance specifications.

The very risk-based nature of insurance, and the way its premiums are calculated, by their very nature, refute all of the defenses that Enbridge has raised. For if, as its avers, the risks of major accidents, of the company having inadequate resources to remediate or of its being unwilling to apply whatever resources it possess to clean up the land and waters of Dane County to their original condition, are *de minimus*, then the premiums will be *de minimus*. Only if professional actuaries, who are the free market's experts in assessing risk, assess the situation contrary to Enbridge's bald representations – claims that are belied by its past conduct – will premiums be costly.

Peter Anderson
Chair, 350-Madison Insurance Task Force

Attachment A
RECOMMENDED INSURANCE PROVISIONS

1. **Type.** The type of insurance that should be purchased is Environmental Impairment Liability (EIL) insurance.
2. **Quality.** The EIL insurance policy should be written by a A M Best rated A or better insurance company.
3. **Provisions.** The EIL insurance policy shall have these coverage provisions:
 - a. Clean up expenses
 - b. Bodily injury liability
 - c. Property damage liability
 - d. Natural resource damage
4. **Named insured.** Dane County should be named as an additional insured.
5. **Primary.** The EIL policy should be Primary and non-contributory.
6. **Occurrence.** The policy should be occurrence and not claims made based.
7. **Coverage.** The limit of liability on the insurance policy coverage for property damage, bodily injury, clean up expenses and natural resource damage from Line 61 in Dane County should be the amount estimated by the County Planning Department to restore the land and water to its original condition in the case of a worst case accident of the magnitude that Enbridge has previously shown itself capable of causing.

**Request to the Dane County Zoning and Land Regulation Committee re CUP 2291
November 11 2014 Meeting**

350-Madison is the local chapter of 350.org, which is an international citizen organization working to encourage action that reduces the threat of global climate disruption.

350-Madison respectfully requests that the Dane County Zoning and Land Regulation Committee consider several conditions for approval of CUP 2291 by Enbridge, Inc. for construction of a pumping station in the Town of Medina, part of the Enbridge Phase 2 upgrade of Line 61 to increase pumping capacity. This line transports highly corrosive and toxic tar sands oil combined with a diluent (dilbit). It was put into operation in 2009, initially carrying 400,000 barrels daily. It is now proposed to increase to 1.2 million barrels daily of that uniquely corrosive mixture, a much greater flow rate than any US pipeline, although the original environmental assessment by the Department of Natural Resources addresses only the 400,000 barrels per day capacity.

Of note, Enbridge has one of the worst pipeline safety records and has repeatedly been found to make safety representations to decision makers that were unsound or not true. In fact, one and a half weeks prior to the Kalamazoo disaster, the worst in US history that has already cost \$1.21 billion in an attempt to remediate, Enbridge solemnly reassured Congress. "Our response time from our control center can be almost instantaneous, and our large leaks are typically detected by our control center personnel," Enbridge vice-president for US operations stated in a Congressional hearing. "They can view that there is a change in the operating system, and there are provisions that, if there is uncertainty, they have to shut down within a period of time, and that would include the closing of automatic valves." The Enbridge emergency response plan filed with the Pipeline and Hazardous Materials Safety Administration at that time stated that a rupture on the Lakehead system would be detected within five minutes and the damaged segment closed in three minutes. However, on July 25 2010, line 6B ruptured near the Kalamazoo River. High-priority alarms sounded repeatedly in the Edmonton Alberta control room, but the leak was not discovered or addressed for over 17 hours. During the time lapse, Enbridge twice pumped additional oil (81 percent of the total release) into Line 6B during two startups; the total release was estimated to be 843,444 gallons of crude oil.

Of the six conditions for a Conditional Use Permit in agricultural zones, conditions 1, 2, 3, and 6 are relevant to our requests

- 1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.*
- 2. The uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.*
- 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*
- 4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.*
- 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.*
- 6. That the conditional use shall conform to all applicable regulations of the district in which it is located.*

Background

Oil spills are toxic to the environment, wildlife, and humans, particularly spills of tar sands ("oil sands") carried by Line 61. Tar sands are viscous, dense, and require dilution with chemicals to allow flow through pipelines. These include benzene and other carcinogenic (cancer-causing) and teratogenic (causing birth defects) chemicals. These chemicals evaporate when spilled and lead to dangerously high concentrations in the air surrounding a spill. Enbridge has indicated that in the event of a spill at the pump station itself, berms will allow drainage of the tar sands into a holding area, designed to hold one hour's worth of flow (2.1 million gallons).

In 2009, Enbridge agreed to pay the state of Wisconsin \$1.1 million to settle claims that the company violated state laws governing waterway and wetlands protection during pipeline construction. Enbridge's poor safety record including more than 800 spills, including the 843,444 gallons into the Kalamazoo River in 2010, the largest inland spill in US history, is a warning to the zoning committee that the company's safety assurances cannot be treated seriously. The Kalamazoo spill caused environmental devastation, and 320 people experienced adverse health effects, attributed largely to benzene and other volatilized chemicals. The cleanup has taken more than four years and cost Enbridge \$1.21 billion.

Of special note, Enbridge declined to provide requested funds for assessing injuries to natural resources which had been submitted by Michigan authorities and US Fish and Wildlife Service. Critically, this tells the Zoning Committee that the EPA supervised cleanups of oil spills, almost certainly, will be significantly inadequate to meet Dane County's determination of what is necessary to restore its lands and waters to their original state.

Conditions recommended by 350Madison:

1. Bonding through insurance to cover accidents at or due to the pumping station.

Despite protestations from Enbridge, we assert that sufficient insurance to fully cover County costs in the event of a dilbit spill at-- or as a result of operation of-- the Waterloo pump station site is a reasonable and appropriate condition to protect "the uses, values and enjoyment of other property in the neighborhood for purposes already permitted."

With regard to **Conditions 1, 2, and 3**, we request that the Dane County Zoning Commission provide bonding through insurance to cover accidents at or due to the pumping station. The scope of concern for any CUP on the pumping station is *not* limited to the Waterloo pumping station, because the nine pumping stations being constructed or expanded on Line 61 effectively triple the actual throughput in the pipeline. That creates both that much more wear and tear on the pipe and triples the volume of dilbit that will escape anywhere in the pipe within Dane County in the event of a leak – all of which is of one piece and must be considered together for the purpose of a CUP. Insurance can meet legal requirements necessary to justify local actions and protects taxpayers from costs which should not accrue to them. Bonding has the potential to properly price the real risks of tar sands transport back to the responsible parties. This is because insurance premiums are probabilistic. If the actuaries see the risks as low, the premium will be low, with no burden on interstate commerce. However, if premiums were sufficiently high to appear burdensome, that indicates the marketplace has concluded that the actual risks of a major spill are high. In that situation, it is the market, rather than local individuals or the county stating that the risk is very high if the pump station and increased flow are actualized.

The insurance policy should be in effect for each year that Enbridge Line 61 through Dane County is operated to include:

- A. The Environmental Impairment Liability (EIL) insurance policy should be written by an A. M. Best rated A or better insurance company.
- B. The insurance policy shall have these coverage provisions
 - 1) Clean up expenses
 - 2) Bodily injury Liability
 - 3) Property damage Liability
 - 4) Natural resource damage
- C. Dane County should be named as an additional insured. The EIL policy should be Primary and non-contributory
- D. The limit of liability on the insurance policy coverage for property damage, bodily injury, clean up expenses and natural resource damage from Line 61 in Dane County should be in amount not less than \$50,000,000 needed to restore the land and water and air in Dane County to its original condition prior to the issuance of this CUP for the Waterloo Pumping Station.
- E. The Environmental Impairment Liability insurance coverage should have a dedicated limit of liability of \$50,000,000 for any damages in Dane County.

What about the question raised by Enbridge regarding, "does federal law pre-empt local authorities from imposing conditions on pipelines?"

The Dane County Corporation Counsel in a September 16 letter indicated that such bonding would be permissible under federal law; "If a surety bond is a safety standard, it would be the proverbial closing the barn door after the horse has bolted. Therefore, in my opinion, a surety bond condition is not preempted by the PSA"

Moreover, a cursory search of the website for PHMSA (Pipeline Hazardous Materials and Safety Administration) revealed the following, **'Except to the extent 49 CFR Part 195 is designed to prevent discharges from pipelines, the safety standards included therein are not for environmental protection purposes. Thus local requirements of an environmental nature would most likely regulate subjects not covered by the requirements of Part 195. So long as**

those local requirements would not unduly burden interstate commerce, conflict with Federal laws or regulations, or be preempted by Federal environmental or other statutes, we see no problem with their enactment. ‘

2. Independent evaluation of proposed retention area for two million gallons of spilled oil (one hour's worth as planned by Enbridge)

In Enbridge's written response to testimony at the October 28th CUP hearing, they in no way answered stated concern about the off-gassing of 700,000 gallons (one third of total dilbit spill content) of toxic chemicals which will undoubtedly enter the air in and around the town of Marshall in the event that the 2.1 million gallon open-air retention reservoir they've designed is needed. Given that over 300 people in the vicinity of the Kalamazoo spill site were sickened by breathing in these off-gassed chemicals including the carcinogen benzene, the condition below requiring that complete protection from these gasses is included their reservoir design is JUST as important as the earthen berm in protecting area citizens.

Public Health and Air Quality. The volume of dilbit that off-gassed and sickened so many people at the horrific Kalamazoo spill was less than half the amount of dilbit the retention pond at the Waterloo pump station will be designed to hold (2,000,000 gallons). **Nothing has been designed to hold in the volatile diluent gasses such a massive pool would emit.** Nothing has been designed to keep those gasses from sickening the majority of citizens in the community. Looking at the schematic drawing on page 13 of the application, only an open pit is apparent, referred to as a "retention pond/snow removal area." Protection from these carcinogenic gasses is at least as important than containment of the fluid bitumen. What is the point of assuring citizens will be protected from half the threat?

With regard to **Conditions 1 and 6**, we request that the Committee respond to the public health requirements and air quality requirements, respectively, stipulated by the conditional use permitting process to require an independent, and properly credentialed body to:

--- assess the health risks of such a potentially massive volume of airborne toxin,

----apply any and all appropriate Federal air-quality standards as they supervise Enbridge in construction of a holding facility which will fully guard against the off-gassing of retained dilbit which might violate those standards.

Potential threat to wetlands. As shown on the map on page 13 of the CUP application, there are wetlands North of and immediately adjacent to the land owned by Enbridge, with the setback information key indicating wetlands are 3.0 feet from the property. As the retention pond/snow removal area is very near the N boundary of Enbridge property as shown on this page, and as CUP 2291 map shows that wetlands extend N and well beyond Enbridge property, these wetlands could be threatened by a large spill, particularly if there were a 2 million gallon spill over an hour, which the retention pond is designed to hold.

Thus, with regard to **Condition 2**, considering the *uses, values and enjoyment of other property in the neighborhood*, we request that the Committee

---require an independent, and properly credentialed body to assess the threat to surrounding wetlands posed by their proximity to the retention pond in the event of a major spill.

3. Disclosure of chemicals present in Enbridge pipelines in Wisconsin which will pass through the proposed pump station, and in dispersants for spill cleanup

We were pleased that Enbridge expeditiously provided information regarding the diluent chemicals.

Related to that, and with regard to **Conditions 1, 2, and 3** above, we also request that the Committee

---- Require Enbridge to make explicit, to appropriate Dane County officials, the composition of all dispersant agents which they have used or plan to use in clean-up of oil spills, of particular concern in waterways. Composition of the dispersant should include the proper name of each chemical in the diluent, the proportion of each, and the Material Safety Data Sheet (MSDS) for each chemical should be provided. All the above should be made readily available to the public at large.

With regard to items 4 and 5 below, we judge these to be of great importance but understand that it may not be practical for the Committee to address these at this time. We state these for the record to indicate our position which we continue to adhere to but do not anticipate that the Committee will be addressing these at this time.

4. Environmental Impact Assessment

With regard to **Conditions 1, 2, and 3** above: Whereas no full environmental impact statement (EIS) has been performed on Enbridge line 61, and whereas Enbridge has had numerous spills in their pipeline system, including line 61, and whereas line 61 is proposed to be tripled in flow of tar sands, and whereas tar sands spills pose a considerable risk to people and the environment, we request that the Committee

---- Require Enbridge to fund a full EIS by an independent and properly credentialed body on the proposed expansion of line 61 before constructing the proposed pump station

5. Carbon sequestration or offset to account for impact the increased carbon emissions from the booster pump station/pipeline 61 expansion project:

The United Nations Intergovernmental Panel on Climate Change has just released another study citing hundreds of scientists' conclusions that climate change is real and caused by human activity, mainly the burning of fossil fuels. The Enbridge proposal to build a booster pump station in Dane County will enable the expansion of Enbridge Pipeline 61 by 800,000 BPD causing an additional 32,120,000 tons of CO₂ emissions per year that will increase the atmospheric CO₂ concentration, the primary cause of climate change. Agriculture will be one of the most adversely impacted activities by climate change and therefore is incompatible to the conditional use request by Enbridge unless a plan is required to sequester and offset the increased carbon emissions from the booster pump station/pipeline 61 expansion project. Thus, with regard to **Conditions 2 and 3** as noted above, we request that the Committee

---- Require Enbridge to submit a plan to sequester and offset the increased carbon emissions from the booster pump station/pipeline 61 expansion project

---- Require Enbridge to submit this plan to an independent and properly credentialed body to evaluate its efficacy in achieving the above offset

---- Require written agreement from Enbridge to carry out the approved plan, as a condition of permit approval

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Four Lakes Sierra Club Executive Committee

Please feel free to contact the authors with questions (P. Anderson away until Nov 11 morning)