



## **Dane County Zoning Division**

City-County Building  
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# **DANE COUNTY** **CONDITIONAL USE PERMIT #2291**

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT Conditional Use Permit #2291 for Petroleum Pumping Station pursuant to Dane County Code of Ordinances Section 10.123(3)(c) and subject to any conditions contained herein.

EFFECTIVE DATE OF PERMIT: **April 21, 2015**

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS: **5635 Cherry Lane, Section 14, Town of Medina, Dane County, Wisconsin (tax parcel ID: 0812-144-8002-0)**

### **CONDITIONS:**

1. The pumping station shall be located and constructed as depicted in the presented plans.
2. Enbridge shall be responsible for obtaining a road use agreement with the Town of Medina prior to the construction of the pumping station to ensure repairs for any damage to local roadways.
3. A spill containment basin shall be constructed around the pumping station to handle a minimum of a 60 minute flow prior to the operation of the pumping station.
4. The pumping station shall be designed and constructed to limit the operating noise to a maximum of 50 decibels dba as measured at property lines.
5. Exterior lighting shall be down-shrouded to limit light pollution onto adjoining property.
6. Enbridge shall agree to indemnify and hold harmless Dane County for pollution losses Per the terms as detailed in Enbridge's proposal titled "CONDITIONAL USE PERMIT ("CUP") CONDITIONS", submitted and entered into the public record on January 27, 2015, which is incorporated herein by reference.

7. Enbridge shall procure and maintain liability insurance as follows: \$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and \$25,000,000 of Environmental Impairment Liability insurance. Enbridge shall list Dane County as an Additional Insured on the total \$125,000,000 of combined liability insurance.
8. The required General Liability Insurance and Environmental Impairment Liability insurances shall meet the technical insurance specifications listed in Appendix A of the insurance consultant's report, which is incorporated herein by reference.
9. Applicant shall maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction. A copy of the Emergency Response Plan shall be made available to the Dane County Department of Emergency Management Hazardous Materials Planner within 30 days of permit approval.
10. The applicant warrants that it will at all times have available, on the county and/or regional level, sufficient emergency response staff, equipment, and materials to immediately and fully respond to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from applicant's facilities.
11. On a biennial basis, the applicant shall conduct training exercises for first responders in coordination with the Fire Chiefs in the Waterloo and Marshall area. The first such exercise shall be conducted within 30 days of completion of the pumping station, with future exercises scheduled in consultation with the Fire Chiefs. The applicant shall provide advance notice of the scheduled training exercises to the Dane County Hazardous Materials Planner and invite his/her participation and involvement at the exercises.
12. These emergency response conditions do not relieve the applicant of any applicable regulatory responsibilities related to safety and emergency response planning.

THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING  
AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE  
FOLLOWING FINDINGS OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed 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 will be made.

5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

#### EXPIRATION OF PERMIT

In addition to any time limit established as a condition in granting this CUP, Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance.

**CONDITIONAL USE PERMIT ("CUP") CONDITIONS**

**I. Liability and Indemnification.**

1. Enbridge shall defend, indemnify, protect, and hold harmless Dane County, Wisconsin, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively the "County") from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature, including, without limitation, reasonable attorneys' fees (collectively "Claim") arising out of or resulting from the negligent or intentionally wrongful acts or omissions of Enbridge, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to Enbridge's use of or installation of facilities governed by the CUP.
2. The County shall notify Enbridge promptly in writing of any such Claim and the method and means proposed by the County for defending or satisfying such Claim. The County shall cooperate with Enbridge in every reasonable way to facilitate the defense of any such Claim. The County shall consult with Enbridge respecting the defense and satisfaction of such Claim.
3. The County shall not settle any Claim subject to indemnification under this Part I without the advance written consent of Enbridge, which consent shall not be unreasonably withheld. Enbridge shall have the right to defend or settle, at its own expense, any Claim against the County for which Enbridge is responsible hereunder.
4. Nothing in this section shall impair any liability protection afforded the County pursuant to a claim of governmental immunity or limitation of damages under Wis. Stat. § 893.80 or any other provision of Wisconsin law, and any acknowledgement or concession of, or stipulation to, liability by the County shall be null and void where governmental immunity or limitation of damages would otherwise exist.

## **Appendix A: Recommended Liability Insurance Specifications**

### **General Liability Insurance**

Commercial General Liability Insurance or the equivalent

Insuring the operations and completed operations of the line 61 pumping station in Dane county.

Coverage shall be provided for Bodily Injury Liability, Property Damage Liability and Defense costs.

The pollution exclusion in this policy shall not apply to the escape or release of pollutants or contaminates that begin and are discovered in no less than 14 days and are reported to the insurer within no less than 30 days.

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

Coverage shall be extended to Dane County as an Additional Insured.

This insurance shall be Primary and Non-contributory to any insurance Dane County may have available.

Any rights of subrogation against Dane County shall be waived.

The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an Additional Insured

The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County

Minimum Limit of Liability \$100,000,000

### **Environmental Insurance Specification**

Environmental Impairment Liability Insurance, Site Pollution Liability Insurance or the equivalent

Insured Location: The pumping Station on Line 61 in Dane County (optionally the policy may insure the pipe line in Dane County)

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

#### **Coverages To Be Included:**

- On and off site Clean-up expenses
- Damages to Natural Resources
- Emergency response cost to at least \$1,000,000
- Bodily Injury Liability
- Property Damage Liability
- Contractual liability naming Dane County as an Additional Insured
- This policy must be Primary and Noncontributory to any insurance Dane County may have access to.
- The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an additional insured.
- This coverage can be excess over other collectable insurance and the deductible or self-insured retention amounts of the underlying insurances
- This policy shall provide difference in conditions coverage excess of the deductible or self-insured retentions in the primary General Liability insurance program.



- This insurance does not need to drop down below the Self Insured Retention amounts on the coverages provided by the Enbridge master insurance program.
- The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County.

**Limits of liability**

\$25,000,000 per loss and in \$25,000,000 Annual Aggregate for all losses over the course of the policy term.

The pumping station and the pipe line located in Dane County will be considered a single location for the purpose of determining the aggregate limit of liability required.

If said insurance policy insures more than Dane County properties the policy shall have an Annual Aggregate Limit of \$50,000,000.

**Self-Insured Retention**

The maximum self-insured retention on this policy shall be the underlying insurance including the Self Insured retention in the Enbridge Master General Liability insurance program or \$1,000,000.

**Evidence Of Insurance**

Upon request by Dane County, Enbridge shall furnish a certificate of insurance to the county which accurately reflects that the procured insurances fulfill these insurance requirements.