



**Oil & Water Don't Mix**  
Keep Oil Out of the Great Lakes

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VIA ELECTRONIC SUBMISSION

**Re: Recommendation to State of Michigan and its Departments to (1) Impose Interim Measures on Line 5 Pipelines in the Straits of Mackinac and Lake Michigan to Protect the Great Lakes Pending Completion of Studies and (2) Request MDEQ to Conduct Full Review of Impacts and Alternatives of Enbridge Energy's Joint Application to Occupy Great Lakes Bottomlands for Anchoring Supports to Transport Crude Oil in Line 5 Pipelines [No. 2HB-VGKO-35JE]**

Dear Michigan Pipeline Safety Advisory Board Co-Chairs:

It's been since July of 2015 that Michigan Attorney General Bill Schuette said the days of Line 5 pipeline in the Straits of Mackinac are numbered. He explained: "you would not build a Straits pipeline in this decade. I'm doubtful it will be open in future decades . . . Its days are numbered."<sup>1</sup> Since then, however, the State of Michigan has not taken any specific preventative measures to protect the Great Lakes from a catastrophic oil spill. Line 5 continues to pump 23 million gallons of light crude oil and natural gas liquids through the heart of the Great Lakes each day.

Following the year-long Task Force that issued the [July 2015 report](#) with four recommendations on Line 5, the Governor created the Pipeline Safety Advisory Board to oversee two independent studies to evaluate risk and alternatives to Line 5 in the Straits. Both reports are not expected until the winter of 2017, with the Attorney General's office overseeing the risk report and the Department of Environmental Quality ("DEQ") overseeing the alternatives report. At the end of this lengthy process, no alternatives will have been secured and no clear decommissioning plan will have been crafted.

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<sup>1</sup> Andy Balaskovitz, "Michigan officials: Straits of Mackinac pipeline's 'days are numbered'" Midwest Energy News (July 14, 2015) <http://midwestenergynews.com/2015/07/14/straits-of-mackinac-pipelines-days-are-numbered-michigan-ag-says/>; Jim Lynch, "Schuette: Days numbered for Mackinac straits' pipelines," Detroit News (July 14, 2015) <http://www.detroitnews.com/story/news/politics/2015/07/14/schuette-pipelines-straits-mackinac/30128275/>

Yet, the magnitude of harm and risk to our Great Lakes is unprecedented. The Straits of Mackinac are the “worse possible place” for an oil spill in the Great Lakes according to the [University of Michigan’s studies](#). Over 700 miles of coastline in Lakes Michigan and Huron are at risk, where more than 400,000 Michigan citizens rely on the Great Lakes for their primary public drinking water source.

As public trustee of the Great Lakes, comprising some 20 percent of the world’s fresh surface water, the State of Michigan has an affirmative legal duty to protect these waters. The Attorney General issued a formal [notice of violation letter to Enbridge on August 3, 2016](#), identifying four span provision violations and requesting critical information about predictive modeling to avoid future washouts along the pipeline. Enbridge has until November 3, 2016, to demonstrate compliance with the four, current pipeline span violations where segments exceed 75 feet without support.

In addition to Enbridge’s current violation of span provisions, [Oil & Water Don’t Mix’s April 13, 2016, letter](#) identified seven other known violations of easement provisions relating to the structural integrity of the pipelines themselves (75-foot maximum span provision, outer pipeline coating, curvature, and wall thickness), and violations of state and federal laws (Great Lakes Submerged Lakes Act (“GLSLA”), Michigan Environmental Protection Act (“MEPA”), public trust law, Clean Water Act (“CWA”), and National Environmental Protection Act (“NEPA”)).

The State of Michigan, however, has the power and authority to do more while the public awaits the final risk and alternatives studies due in the winter of 2017. The following list outlines interim measures for the Advisory Board to recommend that the State of Michigan implement immediately:

1. **Temporarily shut down the flow of oil in Line 5 in the Straits during the winter months.**<sup>2</sup> Enbridge’s federally approved emergency oil spill plan does not adequately address how an oil spill would be cleaned up if waves were greater than three feet, if it is dark, or if there are winter conditions freezing over the Straits. The risk of a winter spill is underscored by Enbridge’s failure to provide predictive modeling to avoid washouts on the lakebed. Without such modeling, and without an adequate oil spill response plan, it is not reasonable or prudent for Enbridge to operate Line 5 in the Straits during winter months. This temporary shutdown is a reasonable and necessary position for the State of Michigan to take during winter conditions. Natural gas liquids, such as propane, could continue to flow to market via Line 5 because they do not pose the same imminent harm to the Great Lakes as oil does.
2. **Continue to Enforce the Express Terms of the 1953 Easement.** The Attorney General’s office should continue to exercise its public trustee duty, investigate, and enforce *all* express terms and provisions of the 1953 easement with Enbridge. In previous communications with the DEQ and Attorney General, we have

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<sup>2</sup> At a minimum, the temporary shut down should coincide with the navigation season at the Soo Locks, from January 15<sup>th</sup> to March 25<sup>th</sup>.

documented at least eight specific easement violations by Enbridge that require action and accountability by the State of Michigan.

3. **Encourage the DEQ to Issue a Conditional Permit Subject to Full Review of Alternatives and Impacts (discussed below).** Under Section MCL 324.32514(2) of the GLSLA, the DEQ can issue Enbridge a conditional permit to address the pipeline's vulnerability from current washouts in four locations and to then conduct a full impact and alternative analysis under rule of law for the rest of the pipeline supports Enbridge is seeking.<sup>3</sup> As part of this conditional permit, the DEQ should consider requiring implementation of the following recommendations outlined in Dr. Edward Timm's attached Technical Note, titled: *"Regarding Enbridge Line 5 Non-Compliance with 1953 Easement Requirements, A Mechanistic Analysis of Straits Pipeline Washout Phenomena"*:
  - Clean the Line 5 pipelines at the Straits of all marine growth (biofouling) and conduct full external inspection to evaluate the extent of external corrosion and condition of the protective coating.
  - Calculate the weight, drag, and curvature of pipelines due to the biofouling from mussels, algae and silt that were not anticipated as part of the original engineering design.
  - Install multiple current profilers on the twin pipelines to measure the maximum current velocities and compare this data to the original, current design calculations in the Straits (2.26 mph maximum).
  - Hire an independent, third-party contractor to recalculate the safety margins of the pipelines' unsupported length requirements given unanticipated powerful underwater currents, historic events, and biofouling stresses.
  - Install a continuous weather-and-current monitoring system that shuts down oil transport in Line 5 during extreme weather events in the Straits of Mackinac.
4. **Demand DEQ Conduct a Comprehensive Review of Potential Adverse Impacts and Alternatives under Rule of Law for Remaining 18 Anchors.** Enbridge's application for 22 new screw anchor supports are not mere "preventative maintenance," but rather demonstrate a pattern of easement violations and concerted effort to expand Line 5 and Enbridge's entire 1,900-mile Lakehead System around and in the Great Lakes. The frequency of washouts along the pipeline appears to be increasing, opening Enbridge up to ongoing easement violations and a much-needed full risk and alternative review under the GLSLA, MEPA, public trust law, CWA, and NEPA.

The State of Michigan should require Enbridge to come to the table and implement interim measures, given that their use of the bottomlands is only conditional, subject to the public trustee obligations to protect the water and uses from pollution, harm, or impairment. It

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<sup>3</sup> Following the AG's notice of violation letter request, the DEQ likewise should demand: (a) a detailed description of the predictive maintenance model that Enbridge relied upon and referred to in its November, 2014 letter; (b) a detailed explanation of how and why that model failed; and (c) a new span monitoring and preventative maintenance plan to ensure future and continuing compliance with the Easement pipeline support requirement. That plan should include, as needed, increased inspection frequency and proactive pipeline support repair, installation and replacement to prevent any spans greater than 75 feet before they occur.

will take an unknown amount of time for alternative oil supplies to be secured and implemented, likely via other pipelines owned by Enbridge and its competitors serving the same regional refineries in Detroit, Toledo, and primarily Sarnia, Ontario. Thus, it is critical for the State of Michigan to know this timeframe well in advance of the completion of the current studies underway.

We appreciate the Advisory Board's oversight role and responsibility to protect the public interest in the Great Lakes and to comply with state and federal laws and applicable public trust duties and principles. Thank you.

Sincerely yours,

Chris Kolb, Michigan Environmental Council  
David Holtz, Sierra Club Michigan Chapter  
Liz Kirkwood, For Love of Water  
Jim Lively, Groundwork Center for Resilient Communities  
Lynna Kauchek, Food & Water Watch  
Greg Reisig and Ann Rogers, Northern Michigan Environmental Action Council  
Rev. Deb Hansen, Concerned Citizens of Cheboygan and Emmet County  
Bill Latka, TC350  
Nic Clark, Clean Water Action

CC: Charles Simon, Chief, Regulatory Office, Corps Detroit District  
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Michigan Governor Rick Snyder  
Michigan Attorney General Bill Schuette  
MDNR Director Keith Creagh  
U.S. Senator and Hon. Gary Peters  
U.S. Senator and Hon. Debbie Stabenow