



Protecting the Common Waters of the Great Lakes Basin
Through Public Trust Solutions

VIA EMAIL to Braderv@michigan.gov and creaghk@michigan.gov

Mrs. Valerie Brader, Executive Director, Michigan Agency for Energy
Mr. Keith Creagh, Director, Michigan Department of Environmental Quality

RE: Recommendations on Request for Information and Proposals (RFIs) for Risk and Alternatives Analyses to the Michigan Pipeline Safety Advisory Board

Dear Co-chairs Brader and Creagh:

Thank you for extending the period to submit public comment on the Michigan Pipeline Safety Advisory Board's draft requests for information and proposals (RFIs) to conduct the Line 5 risk and alternatives analyses. FLOW's submission herein supplements our initial comments provided last week to the Advisory Board;¹ Section I focuses on procedural concerns, while Section II addresses the need to analyze climate change impacts and risks associated with each alternative to the Line 5 pipelines in the Straits of Mackinac.

I. COMMENTS ON PROCEDURAL CONCERNS

As a threshold matter, there is a lack of urgency governing the Advisory Board process specifically and the entire Line 5 investigation generally. For example, the Advisory Board's current timeframe to oversee the risk and alternative analyses will bring us into 2017 without any interim or conclusive measures to protect our Great Lakes from a catastrophic oil spill. Similarly, it has been nearly two full years since the State of Michigan initiated its investigation and Enbridge has yet to fully confirm whether it is in legal compliance with the terms of the 1953 Easement with the State of Michigan.² This lack of compliance and disclosure is unacceptable given the unique risk this 63-year-old underwater infrastructure poses to our Great Lakes and tributary waters.

The Advisory Board's current process does not address the fundamental question about how these two analyses will be integrated and analyzed by the State of Michigan to inform a final decision about the fate of Line 5 in the Straits of Mackinac. To date, neither the Advisory Board nor the implementing agencies (both the offices of the Attorney General and Department of Environmental Quality (DEQ)) has articulated a clear plan to assimilate, integrate, and act on these final reports. Understanding this process is critically important because the level of acceptable risk necessarily informs the alternatives considered, evaluated, and then selected. The public at large and the contractors must understand how these two related reports will be interpreted and utilized.

¹ A number of our recommendations in these comments reaffirm ones FLOW previously submitted in expert reports to the State of Michigan on critical issues concerning the risks, imminent harm, and alternatives to Enbridge's Line 5 pipelines in the Straits of Mackinac. See FLOW's website (www.FLOWforWater.org) for links to the April 2015 Report (A Composite Summary of Expert Comment, Findings, and Opinions on Enbridge's Line 5 Oil Pipeline in the Straits of Mackinac in Lake Michigan), the September 2015 Report (A Scientific and Legal Policy Report on the Transport of Oil in the Great Lakes: (1) Recommended Immediate Action on the Transport of Oil Through Line 5 Under the Straits of Mackinac; and (2) Supplemental Comments on the Michigan Petroleum Pipeline Task Force Report), and the December 2015 Report (Eliminating the Line 5 Oil Pipelines' Unacceptable Risk to The Great Lakes Through a Comprehensive Alternatives Analysis and Systems Approach).

² See Michigan Petroleum Pipeline Task Force Report, July 2015 p. 46. "The Easement requires coverage for *all* damages or losses arising from Enbridge's operations in the Easement. To date, Enbridge has not documented that it is in compliance with this requirement."

Furthermore, to ensure full public access and participation, this Advisory Board should consider establishing a central public website portal that integrates all the information and data submitted or made available to the Michigan Petroleum Pipeline Task Force, the Michigan Agency for Energy, the DEQ, and this Advisory Board. In addition, this central website should include all public comments, testimony, and reports, as well as contractor reports related to Line 5 and other pipelines in Michigan.

Finally, the public's role in the overall processes for conducting the risk and alternatives analyses remains largely vague and undefined. To ensure accountability and transparency in this process, the Advisory Board should provide ample opportunities for the public to comment on the draft and final reports on the Line 5 risk and alternatives analyses.

II. ADDITIONAL COMMENTS ON THE ALTERNATIVES AND RISK ANALYSES REQUESTS FOR INFORMATION AND PROPOSALS

1. Climate change impacts must be included as part of every alternative and risk considered.

In December 2015 at the United Nations' Paris Climate Conference (COP21), 195 countries, including the United States and Canada, adopted the first-ever universal, legally binding global climate deal. In the Paris Agreement, governments specifically committed to keeping average global temperature increases below 1.5 degrees Celsius.

In light of these national and global commitments, the State of Michigan must consider and evaluate climate change impacts as part of both the Line 5 risk and alternatives analyses. As a first step, the alternatives analysis should compare cumulative climate impacts for each alternative, and assess whether the alternative advances or hinders the Paris COP21 commitments to reduce carbon emissions. The contractor should assess each alternative's role in contributing to carbon emissions by examining its lifecycle of fossil fuel emissions, its economic viability in a rapidly changing global energy market, and its externalized social and environmental costs.

Fundamental to these analyses is the understanding that Line 5 is part of the larger Enbridge network of pipelines in our region, which collectively makes up the world's largest pipeline system transporting tar sands oil from Alberta, Canada, to the United States and beyond for international export. Moreover, the majority of the light crude oil passing through Line 5 is derived from the Canadian tar sands – the planet's dirtiest and most energy-intensive oil to extract, releasing about 20 percent more greenhouse gases than conventional oil. Line 5's energy intensive carbon profile must then be evaluated within the context of a global energy market that is now committed to keeping average global temperatures below 1.5 degrees Celsius.

2. This process should examine the risk Line 5 pipeline poses to the Great Lakes as well as the inland waterways and tributaries.

Evaluating the risk of the Line 5 pipeline to inland waterways and tributaries is also critical to the State of Michigan's overall analysis. With some sections of the pipeline's route in the Upper Peninsula located within a half-mile of Lake Michigan, Line 5's inland segment also poses a significant risk to the Great Lakes. Corrosion issues are already apparent with a pinhole-sized defect observed in the weld of Line 5 just north of Manistique near the Indian River during the winter of 2014.³ In fact, the U.S. Coast Guard has raised greater concerns about the probability of a spill along this 90-mile stretch of pipeline from Manistique to St. Ignace.⁴ Enbridge's 2010 Line 6B Kalamazoo spill and the 2015 Santa Barbara pipeline spill are important examples that illustrate how quickly undetected oil spills can travel and contaminate nearby bodies of water. While this analysis is based on the 1953 Easement and the state's public trust legal obligations to protect our waters, the state should consider expanding the scope and examine the risks to the Great Lakes posed by this and other vulnerable inland stretches of the Line 5 pipeline in Michigan.

³ Keith Matheny, "Pinhole leak in U.P. gas pipeline raises fears," Detroit Free Press (December 17, 2014) <http://www.freep.com/story/money/business/michigan/2014/12/17/enbridge-pipeline-gas-oil-leak-straits-mackinac/20500397/>

⁴ Michigan Radio, "Coast Guard oil spill specialist says he's more concerned about the UP section of Line 5." <http://michiganradio.org/post/coast-guard-oil-spill-specialist-says-hes-more-concerned-about-section-line-5#stream/0>

CONCLUSION

For the foregoing reasons, FLOW requests that the Advisory Board and implementing agencies incorporate these additional recommendations into the scopes of work for the alternatives analysis and risk of assessment of Line 5. Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Liz Kirkwood".

Liz Kirkwood,
Executive Director
FLOW