



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

May 11, 2018

<p>Ms. Heidi Grether Director Michigan Department of Environmental Quality P.O. Box 30458 Lansing, Michigan 48909-7958 GretherH@michigan.gov</p>	<p>Ms. Kim Fish Acting Chief Water Resources Division Michigan Department of Environmental Quality P.O. Box 30458 Lansing, Michigan 48909-7958 fishk@michigan.gov</p>
<p>Mr. James Milne, Env Manager Mr. Thomas Graf, Env. Specialist Great Lakes Submerged Lands Unit Michigan Department of Environmental Quality P.O. Box 30458 Lansing, Michigan 48909-7958 milnej@michigan.gov</p>	<p>Mr. Scott Rasmusson Great Lakes Shorelands Unit Gaylord District Office Michigan Department of Environmental Quality 2100 West M-32 Gaylord, Michigan 49735 rasmussons@michigan.gov</p>
<p>Mr. Charles Simon Chief, Regulatory Office, Corps Detroit District US Army Corps of Engineers, Detroit District 477 Michigan Avenue Detroit, MI 48226 Charles.M.Simon@usace.army.mil</p>	<p>Ms. Kerrie Kuhne Chief, Permits, Corps Detroit District US Army Corps of Engineers, Detroit District 477 Michigan Avenue Detroit, MI 48226 Kerrie.E.Kuhne@usace.army.mil</p>
<p>Ms. Katie Otanez Regulatory Project Manager Permit Evaluation Western Branch Regulatory Office US Army Corps of Engineers, Detroit District 477 Michigan Avenue Detroit, MI 48226 Katie.L.Otanez@usace.army.mil</p>	

VIA ELECTRONIC SUBMISSION

FLOW (FOR LOVE OF WATER) PUBLIC COMMENTS ON THE JOINT APPLICATION OF ENBRIDGE ENERGY TO OCCUPY GREAT LAKES BOTTOMLANDS FOR ANCHORING SUPPORT STRUCTURES AND IMPROVEMENTS FOR LINE 5 PIPELINES IN THE STRAITS OF MACKINAC AND LAKE MICHIGAN [HNC-AR90-WAHM0]

Dear Michigan Department of Environmental Quality Director Grether; GLSL Unit Chief Milne; and GLSL Unit Specialist Graf; Acting Chief Fish; Analyst Rasmusson; other State Officials; and U.S. Army Corps of Engineers Chief Simon, Chief Kuhne, and Regulatory Project Manager Otanez:

For Love of Water (“FLOW”) is submitting formal public comments to object to Enbridge’s brand new joint permit application to install 48 new anchor screws on the lakebed to stabilize the Line 5 pipelines. This new permit application comes right on the heels of a prior Enbridge anchor permit approval for 22 anchor supports that took over 10 months to evaluate in part because of Enbridge’s previously undisclosed evidence that revealed these very anchors caused bare metal spots and pipeline coating delamination on Line 5. The fact that the Michigan Department of Environmental Quality (“DEQ”) and the U.S. Army Corps of Engineers (“USACE”) continue to approve Enbridge’s anchor supports on the lakebed of the Lake Michigan as “repair” and “maintenance” is simply untenable. The highly increased risks of and alternatives to a completely modified design under both state and federal permitting laws requires a new agreement of occupancy and permits under the Great Lakes Submerged Lands Act (“GLSLA”), the Michigan Environmental Protection Act (“MEPA”), the Clean Water Act (“CWA”), and the National Environmental Protection Act (“NEPA”).

If this application for another 48 anchors to the original pipeline design is permitted as a “repair” or “maintenance,” the DEQ and USACE will have authorized Enbridge to install a total of 198 anchor brackets to the Line 5 pipelines on public trust bottomlands and waters without the state or federal agencies ever demanding a comprehensive review of risks, impacts, or alternatives under the law. *Structurally, this means that approximately 3 miles of pipeline are elevated in public trust waters above the bottomlands.* And given the recent anchor dents in the twin lines and rupture of the electrical line and release of toxic fluids, the risks to the Great Lakes are totally unacceptable.

For these reasons and as described in more detail below, the application for 48 anchors should be rejected or suspended as administratively incomplete, and Enbridge should be ordered to do the following:

- (1) file a full and comprehensive application under the GLSLA and its rules, including study of potential effects and feasible and prudent alternatives to Line 5 in Straits in its entirety;
- (2) suspend the flow of oil in Line 5 unless and until Enbridge files such application and evidence and obtains proper occupancy agreements, permits, or other approvals for this new or completely modified pipeline design; and
- (3) consolidate into one application and examine the risks, impacts, and alternative analyses of the entire 645 miles of Line 5 because of the direct and inextricably relationship between: (a) the request for nearly 3 miles of lines in the Straits supported by a total of 198 anchors, (b) the application for a new or replacement tunnel for Line 5 under the St. Clair River, and (c) the proposed tunnel, horizontal directional drilling or trench options at the Straits contemplated by Governor Snyder’s and Enbridge’s November 2017 agreement, which concedes that all legal requirements have not been met; they include all authorizations under the GLSLA, with comprehensive risk, impact, and alternatives analyses for locations, siting, modifications or adjustments in the Enbridge system not requiring Line 5.¹

Consistently, throughout all of our submissions dating back to 2014, FLOW has documented ongoing easement violations, and urged the State of Michigan to properly construe the GLSLA to require Enbridge to apply for a new occupancy agreement or permit; this is because the new screw-anchor and bracket

¹ See [FLOW “Non-Segmentation” letter to MDEQ, MPSC](#), et al., dated April 11, 2018, which is incorporated herein by reference and made a part of this record.

design structures for the dual Line 5 pipelines in the Straits are new material changes from the [original design](#) authorized by the [state's 1953 easement](#).

FLOW incorporates by reference its previous comments and supporting exhibits and documents submitted in connection with the previous requests for anchor permits that change the design of the twin pipelines in the Straits, all part of the public record. Because of the incremental nature of these past requests, the public record regarding them is also incorporated by reference. Further, although the public record amply demonstrates the new or altered design and need for a new GLSLA agreement, FLOW is submitting new additional information about the condition of Line 5 as it related to the state's evaluation of Enbridge's pending GLSLA permit request to install another 48 saddles or brackets, supports, and screw anchors to suspend large segments of its underwater Line 5 pipelines located in the Straits of Mackinac.

New Evidence of Anchor Damage to Line 5 and Inspection Violations Trigger Full Scope of Review.

Since Enbridge's March anchor application, highly damaging information about the condition of Line 5 from an anchor strike has emerged and must be considered by the State of Michigan and U.S. Army Corps of Engineers under the Great Lakes Submerged Lands Act ("GLSLA"), the Michigan Environmental Protection Act ("MEPA"), Clean Water Act ("CWA") and other relevant federal statutes. On April Fools' day, a tugboat [anchor struck](#) and ruptured two electric transmission cables owned and operated by American Transmission Company ("ATC") that are located adjacent to Enbridge's Line 5 pipelines in the Straits. This same anchor hit and dented Line 5 in three locations.

Due to severe winter weather and ice, however, Enbridge was unable to conduct underwater autonomous vehicle inspections of the dented sites for two weeks and a visual inspection for three weeks. Enbridge temporarily shut down the flow of oil on two occasions during the Coast Guard's emergency response to the ATC's dielectric fluid spill; however, the details concerning Enbridge's temporary shutdowns remain unknown to the public. What did the inspections during the shutdown reveal about the integrity of the line? We do not know. The federal Pipeline Hazardous Materials and Safety Administration ("PHMSA") also responded by requesting Enbridge to reduce its flow to 40 percent of the 600 maximum psi. Typically, however, Enbridge operates Line 5 at 150-200 psi, so how did a 40 percent reduction of pressure affect the flow of oil during this effort? Again, the public remains uninformed. [PHMSA's pressure reduction request](#) mirrored the agency's actions just ten days before the Enbridge Kalamazoo Line 6B spill.

In May, Enbridge then was [fined \\$1.8 million by the US EPA](#) as part of its Line 6B consent decree for failing to meet its pipeline safety inspection obligations (including 2 locations on land-based portions of Line 5), In sum, these recent events in April and May 2018 sound a clarion call for the State of Michigan to revoke the public trust easement that authorize Enbridge to occupy these waters.

From Clay Pillars to Grout Bags to Screw-Anchors: An Overview of Enbridge's Historic Efforts to Address the Easement's Maximum Span Requirement and to Develop a New Screw-Anchor Design on the Bottomlands of the Straits of Mackinac.

In 1953, Bechtel engineers designed the dual Line 5 pipelines to rest on the lake bottom with no maximum spans to exceed 75 feet. This provision is an express term of the easement. Enbridge even

admits that it was “originally engineered for sand bag supports.”² The history of the pipeline clearly demonstrates that Enbridge struggled to comply with this 75-foot maximum span requirement and often was in violation of this provision due to a combination of strong currents and erosion forces on the lake bottom in the Straits of Mackinac. For nearly the first 50 years of Line 5 occupying the public trust waters of Lake Michigan, Enbridge attempted to remedy this lakebed washout problem by installing sand bags, clay pillars, and grout bags.

Enbridge’s efforts, however, failed to stabilize Line 5 on the lakebed given the dynamic scouring effects of the lakebed floor. For example, based on the “As-Built” drawings of the Straits legs of Line 5 updated through the 1979 underwater inspection, Dr. Timm calculated a total of 17 spans that exceed the 75-foot maximum unsupported span distance and three spans that exceed the 140 foot structural damage threshold.³ Commissioned as part of its EPA Consent Decree, Enbridge’s 2016 Kiefner Report also documented a previously undisclosed 2003 survey of Line 5 that identified 16 unsupported spans between 140 feet and 224 feet on the east pipeline, and 286 feet on the west pipeline (nearly four times the allowable length under the Easement).⁴ In 2001, Line 5 experienced significant washouts, leading to Enbridge to characterize the situation as an “emergency” on its permit application for grout bags.

The lakebed continues to shift, as Enbridge acknowledged in an August 2016 letter to the State of Michigan, explaining that the company anticipated future changes and additional requests to install anchor supports: “Enbridge continues to believe that our ability to predict growth of spans is reliable. However, due to the dynamic nature of the lake bed, there could be further changes in span length that are not currently expected that could result in a future decision to seek to install additional screw anchors.”⁵

Then, starting in 2002, Enbridge developed a new design for the pipeline that would literally anchor the pipeline down to the lake bottom with permanent screw anchors and saddle supports around the pipeline.⁶ This new design transformed the entire pipeline infrastructure by elevating it off the lakebed floor. Instead of the pipeline resting in a trench on the lake bottom, Enbridge engineered Line 5 to be elevated off the lakebed floor so that an “average span clearance depth underneath the pipe is about 1.35 ft,”⁷ ranging from a 0.5 ft minimum span clearance to a 4 ft maximum span clearance. Enbridge estimates that approximately 14% of the whole crossing length is now supported by anchors.⁸ Almost two decades later with 128 screw anchors installed, Enbridge’s new design solution appears to be causing fundamental structural problems with the pipeline protective coating with bare metal spots and potential loss of cathodic protection.

² Appendix 1: Enbridge presentation to the Michigan Petroleum Pipeline Task Force (2015) http://www.michigan.gov/documents/deq/deq-pipeline-task-force-brief-line-5_470547_7.pdf

³ Dr. Ed Timm, “Technical Note: Regarding Enbridge Line 5 Non-Compliance with 1953 Easement Requirements A Mechanistic Analysis of Straits Pipeline Washout Phenomena,” August 20, 2016 <https://www.epa.gov/sites/production/files/2017-01/documents/enbridge-consent-decree-public-comments-part3-353pp.pdf>

⁴ http://www.mlive.com/news/index.ssf/2017/06/line_5_unsupported_spans.html

⁵ Letter to State of Michigan from Enbridge dated August 11, 2016 <https://www.enbridge.com/~media/Enb/Documents/Projects/line5/08112016LTRENB%20Line%205%20Pipeline%20Supports%20Response.pdf>

⁶ Letter to State of Michigan from Enbridge dated June 27, 2014, p. 23. http://www.michigan.gov/documents/deq/Appendix_B.2_493988_7.pdf

⁷ Appendix 2. Letter to State dated April 13, 2017 from Enbridge.

⁸ *Id.*

Since 2002, Enbridge has continued requesting joint permit authorization from DEQ and U.S. Army Corps of Engineers (“USACE”) for what it termed “maintenance” and “repair” work to locate 128 permanent screw anchors with saddle supports on the bottomlands on the Great Lakes at least nine more times in 2003, 2005, 2006, 2010, 2012, 2014, 2016, 2017/2018. These requests typically coincided with discovering pipeline spans that violated the 75-foot maximum requirement following biannual remote operator vehicle (“ROV”) inspections.⁹ In each of these joint applications to the DEQ and USACE, Enbridge maintained that these additional anchor supports were stand-alone “repairs” without submission of studies, reports, and information within its possession that the original design in the Straits and new screw anchor support and pipeline design were not working to stabilize this entire infrastructure in the Straits of Mackinac. Enbridge has never applied for and DEQ has never comprehensively reviewed, considered, or authorized the new, material and substantially changed design with 150 screw anchors elevating the Line 5 pipelines off the lakebed. Moreover, Enbridge has never conducted a new engineering study to evaluate the impact of 150 anchor braces on a pipeline design that contemplated lateral movement of the structure on the lakebed floor. This new design was not contemplated by the Bechtel engineers in 1953. In addition, the Great Lakes Submerged Lands Act does not authorize “activity” permits that actually constitute a new design, permanent structures, and improvements on bottomlands or suspended in water areas above the bottomlands; rather, a new application for an agreement pertaining to water over and the filling in of bottomlands is required in conformance with the public trust. MCL 324.32502; 32503; 32505; R. 322.1008.

New Evidence of Enbridge’s Own Anchors Causing Pipeline Coating Damage for Over Three Years Requires New GLSLA Application and Full Scope of Review Under the Law.

In May 2017, Enbridge submitted its original joint permit application to DEQ and USACE to authorize 22 new additional anchors on the lake’s bottomlands to stabilize the Line 5 pipelines. FLOW initially submitted [formal comments](#), together with technical reports and other attachments, during the public comment period on the above matter ending June 29, 2017. FLOW then submitted [supplemental comments](#) on August 4, 2017, laying out the State of Michigan’s legal duty to broaden the scope of review beyond the lake bed where the anchors connect and require Enbridge to submit a comprehensive environmental impact and alternatives analysis demonstrating no harm to the waters and no feasible and prudent alternatives. Moreover, FLOW introduced a technical report, identifying more evidence of damage to Line 5 in the Straits, including bends, ovalities, and coating damage.

As part of a consent decree with the federal government over the 2010 Line 6B oil spill into the Kalamazoo River, Enbridge conducted an underwater inspection of Line 5 pipelines on August 30, 2017, which revealed that the screw-anchors themselves are causing damage to the pipeline coating and creating bare metal gaps in the cathodic protection. Seven bare areas on the pipeline were identified the size of dinner plates. In September 2017, Enbridge downplayed these seven exposed metal gaps, describing them the size of Band-Aids and explaining that the coating on the east leg of the dual 20-inch underwater pipeline was scratched by an abandoned 3-inch, 750-foot cable that was “inadvertently snagged during the recent inspection.”¹⁰

In light of this new evidence, the [DEQ](#) quickly requested additional information from Enbridge regarding its permit application, including compliance with Rule 15 of Part 325, Great Lakes Submerged Lands, of

⁹ Letter to State of Michigan from Enbridge dated June 27, 2014, p. 23.
http://www.michigan.gov/documents/deq/Appendix_B.2_493988_7.pdf

¹⁰ Garret Ellison, “Inspections show Line 5 coating gaps larger than disclosed,” MLive, September 14, 2017
http://www.mlive.com/news/index.ssf/2017/09/line_5_coating_inspection.html

the Natural Resources and Environmental Protection Act, 1994 PA 451 to show no adverse effects to the environment and public trust and no feasible and prudent alternative.¹¹

In October 2017, news broke that Enbridge had acted in bad faith and knew about damage to Line 5's protective coating in the Straits of Mackinac as early as 2014 but did not disclose this knowledge to state or federal officials until late in the summer of 2017.¹² The state further elaborated that: "Enbridge knew about the damage three years ago and that it occurred while anchors were being installed to better secure the pipeline to the lake bottom."¹³ This information could have altered previous state and federal authorization in 2016 and 2017 that allowed additional "maintenance" screw anchors to be placed on the lake bed permits.

This new evidence also expressly contradicted Enbridge's public testimony to the Michigan Pipeline Safety Advisory Board ("PSAB"), where Enbridge officials made a presentation in March 2017, denying there were any gaps in the coating around the dual underwater pipelines,¹⁴ but later disclosed that there were numerous patches of bare metal on Line 5 larger than dinner plates.¹⁵ In October 2017, Enbridge claimed that it was an "internal reporting issue" that led to the company's false assurance at the PSAB meeting.¹⁶

The State of Michigan appropriately expressed grave concern and demanded a work schedule for the repairs to Line 5's coating gaps and inspections of each of the 128 anchor locations. Executive Director Brader from the Michigan Agency for Energy ("MAE") also raised the important factor of human error in pipeline disasters, noting that Enbridge's Line 6B massive oil spill was caused in large part by operators' 17-hour delay. The Line 5 human error evidence coupled with Enbridge's corporate culture of withholding information about the true condition of their aging 64-year-old dual pipelines is entirely unacceptable given that Enbridge has already installed 128 similar screw-anchor supports around the Line 5 pipelines since 2002.¹⁷

On October 12, 2017, FLOW submitted [supplemental comments](#) regarding new evidence to show that the anchor structures themselves were causing damage to Line 5's pipeline coating. On November 2, 2017, FLOW then sent a related letter to the Governor, Attorney General, and the Directors of the Michigan DEQ, the Michigan Department of Natural Resources ("DNR"), and the MAE, expressing grave concern about Enbridge knowingly misleading both state and federal agencies in authorizing past anchor permits and entering into federal consent decrees *when the company knew about bare steel spots* adjacent to anchor locations as early as 2014.

¹¹ Letter from DEQ to Enbridge dated September 13, 2017, http://www.michigan.gov/documents/deq/2017-09-13_Enbridge_Pipelines_325_Application_Ltr_600615_7.pdf

¹² Garret Ellison, "Enbridge knew about Line 5 coating damage in 2014," MLive, Oct. 27, 2017 http://www.mlive.com/news/index.ssf/2017/10/enbridge_line_5_damage_2014_de.html

¹³ Id.

¹⁴ Garret Ellison, "Outer wrap coating has failed on parts of Line 5, Enbridge confirms," MLive, March 14, 2017 http://www.mlive.com/news/index.ssf/2017/03/enbridge_line_5_delamination.html

¹⁵ Garret Ellison, "Enbridge knew about Line 5 coating damage in 2014," MLive, Oct. 27, 2017 http://www.mlive.com/news/index.ssf/2017/10/enbridge_line_5_damage_2014_de.html

¹⁶ Garret Ellison, "Enbridge knew about Line 5 coating damage in 2014," MLive, Oct. 27, 2017 http://www.mlive.com/news/index.ssf/2017/10/enbridge_line_5_damage_2014_de.html

¹⁷ Letter to Enbridge from State of Michigan dated March 11, 2016 https://www.michigan.gov/documents/ag/Enbridge_Request_for_Information_518071_7.pdf This letter reveals that Enbridge had withheld important information since 2014 about the pipeline's conditions by providing information to the state through a "read-only data portal."

On November 13, 2017, Enbridge informed the state that the majority of the 48 out of 128 locations inspected by actual divers had gaps;¹⁸ three were bare metal and 42 had calcareous deposits. Notably, both state-of-the-art technologies Enbridge relies on to detect corrosion - external ROV inspection and the Baker Hughes CPCM tool – had failed to identify the gaps in the pipeline’s asphalt enamel based coating system. The same day, the PSAB directed Enbridge to make a [full accounting](#) at the December 11, 2017 board meeting about the pipeline’s condition, its protective coating and anchors, the results of its video inspection, automated in-line tests, and recent hydrostat and biota testing. MAE’s Executive Director Brader commented: “A year ago, Enbridge said there were no coating gaps in the Straits pipeline. Now, there are dozens. When will we know the full accounting of what Enbridge knows about Line 5? I sincerely hope there are no more surprises when Enbridge gives their presentation to the Pipeline Safety Advisory Board in December. We and the people of Michigan deserve nothing less, and the State will be bringing on additional experts to examine Enbridge’s information and challenge it where necessary.”

In 2017, Enbridge had three locations where grout bags were still being used as actual pipe supports. The 2017 pending permit was intended to replace these grout bags with anchor supports; however, following the discovery of metal bare loss adjacent to the anchor support locations, the DEQ postponed Enbridge’s permit request until March 2018.

According to Enbridge’s [Semi-Annual Report to the EPA](#) as part of the Consent Decree, Enbridge completed seven out of the eight bare metal coating repairs in the 2017 construction season. The outstanding bare metal spot (1.64 square feet) is in the location where Enbridge’s barge anchor snagged a 3-inch cable that hit the pipeline in August 2017.

On November 20, 2017, the PSAB’s independent contractor, Dynamic Risk, released its Final Alternatives Analysis for public comment and hearings until December 22, 2017. Related to this pending permit application, the Final Report failed to analyze new evidence disclosed by Enbridge affecting the pipeline’s integrity, including external corrosion, bends, 48 bare metal spots and/or coating gaps caused by the installation of screw anchors (another 80 locations will be visually inspected by divers in 2018), compromised cathodic protection, and historic excessive pipeline spans greater than the 75-foot limit (including a 286-foot span that was unsupported for years), as required by the legal operating agreement with the State of Michigan. Dynamic Risk’s rationale for not analyzing new information related to the 48 bare metal spots was: “it would be inappropriate to speculate on any of the above aspects of the coating condition.” (Final Report ES12).

Just one week later on November 27, 2017, without informing or consulting with the PSAB, Governor Snyder unilaterally entered into an [agreement with Enbridge](#) that circumvented and narrowed the scope of alternative analysis to three options for a replacement line in the Straits: a tunnel, trench, or new line on the bottomlands. There was no mention of Enbridge’s outstanding permit application for 22 screw anchors or for another 48 screw anchors or any investigation into Enbridge’s ongoing easement violations, including but not limited to inadequate insurance liability and emergency response capability and span exceedances.

On December 11, 2017, the PSAB passed three resolutions that called on the state to reject the narrowing of the alternatives to a replacement pipeline in the Straits, and demanded that the alternatives assessment consider existing pipeline design capacity and other modification to any crude oil pipeline in the Straits of Mackinac.

¹⁸ Mark Tower, “Enbridge finds issues at 42 of 48 sites along underwater oil pipeline,” MLive, November 15, 2017 http://www.mlive.com/news/grand-rapids/index.ssf/2017/11/enbridge_finds_issues_with_42.html

In the [January 26, 2018 letter](#) to the PSAB, the Governor rejected all three resolutions on amending his November 27, 2017 Agreement with Enbridge, citing inability to conduct further inspections and pipeline coating repairs until the summer of 2018, to renegotiate adverse weather conditions, and evaluate all alternatives. The Governor's letter also extended the final date for a final agreement with Enbridge from August 15, 2018 to September 30, 2018.

On February 9, 2018, FLOW submitted [supplemental comments](#) to document the ongoing easement violations, and Enbridge's deliberate efforts to evade a comprehensive review of its failing infrastructure complete with bare metals spots, dents, bends, mussel corrosive growth.

Ten months after Enbridge's original application, on March 22, 2018, the DEQ and the USACE jointly authorized Enbridge's 22 anchor supports with full knowledge that this engineering redesign would not adequately stabilize Line 5 on the lakebed floor and actually could cause additional pipeline coating damage and bare metal exposure.

The totality of this new and damaging pipeline evidence triggers the need for a proper scope and extensive review that includes the entire 4.6-mile span of the pipelines, not just the lakebed footprint for 48 new screw anchors. This evidence triggers DEQ's duty under GLSLA and MEPA to demand that Enbridge file a comprehensive assessment examining and demonstrating no adverse risk, endangerment, impacts, and no feasible and prudent alternatives.

Conclusion

It is hard to believe that Enbridge is filing yet another permit application for 48 additional anchor brackets. This 2018 permit application is a completely new engineering design with material modifications, new structures, and fill material that was never contemplated under the terms of the 1953 state easement. Accordingly, the DEQ and USACE must reject the narrow, segmented, and piecemeal applications by Enbridge for upgrades and improvements to Line 5 and Line 6B that were calculated to narrow and avoid the demonstration, review, and determinations of potential adverse effects and impacts or impairment of air, water, natural resources, public trust, and public and private property and health.

In light of these recent and significant evidentiary disclosures, we urge the DEQ and the USACE to exercise their full legal authority to re-examine the scope of review and demand Enbridge to file a new GLSLA application and satisfy CWA requirements and NEPA Section 102(2)(C) as required under state and federal laws.

In the case of the DEQ, the Department must then determine both existing and potential adverse environmental effects. The DEQ is not authorized to grant or permit the occupancy, use and structures unless Enbridge shows and the department has determined both of the following:

- (a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible.
- (b) That there is no feasible and prudent alternative to the applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare.

Mich. Admin. Code R 322.1015.

Accordingly, the burden rests with Enbridge – not the State of Michigan or its citizens – to establish that there are no unacceptable risks or likely effects to waters, fishing, navigation, commerce, and public and private uses, *and* that no feasible and prudent alternatives to Line 5 based on existing or feasible capacity of overall pipeline system in the Great Lakes; the required scope of this showing of no alternatives includes determination of whether existing or improved pipeline infrastructure within the Enbridge system into and out of Michigan are a feasible and prudent alternative. This includes consideration of potential impacts, likely impairment, pollution, risks to air, water, natural resources and public trust, and determination that there exists or does not exist an alternative to Line 5 in its entirety, as required by the GLSLA and its rules, the MEPA, and as set forth in the non-segmentation letter as to all of Line 5 described and incorporated into this submission at the outset.¹⁹

In addition, the DEQ should set this matter for public hearing once the application is complete or adequate to proceed as required by the GLSLA, its Rules, and MEPA. Section 32514 and Rule 1017 grant the DEQ to notice and set the matter for public hearing; GLSLA Rule 1017 encourages public hearings where the “project appears to be controversial” and “where additional information is required” before action can be taken by the department. Given the seriousness of the risk, level of harm, government and public attention, community resolutions and involvement, and citizen and organization involvement in this matter, a public hearing for Line 5 is both necessary and in the public interest. Once the public hearing is scheduled, the DEQ should notice and extend and/or set a new and adequate time period for public comment before and for a period of time after the public hearing.

FLOW appreciates every effort moving forward that the State of Michigan makes to adhere to the highest duties and standards in complying with the laws and public trust duties and principles that apply to this matter. This includes evaluating the risk, impacts, and alternatives to a potential catastrophic oil spill in our lakes. A recent [economic impact study](#) of a potential Line 5 oil spill in the Straits of Mackinac, conducted by Michigan State University professor Robert B. Richardson on behalf of FLOW, estimated [\\$6.3 billion dollars in impacts and damages](#) to natural resources, tourism, property values, commercial fishing, and municipal drinking water.

Should you have any questions or desire further information, we are willing to meet with you and technical experts to discuss the above. Thank you.

Sincerely yours,



James Olson
President



Elizabeth R. Kirkwood
Executive Director

cc: 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

¹⁹ See [FLOW “Non-Segmentation” letter to MDEQ, MPSC](#), et al., dated April 11, 2018.