

**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. ‘

<http://phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=b928aafe780c7410VgnVCM100000d2c97898RCRD&vgnnextfmt=default>]=

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)