
OLSON, BZDOK & HOWARD

May 18, 2018

Michigan Administrative Hearing System
611 W. Ottawa Building St. 2nd Floor
PO Box 30695
Lansing, MI 48909

Via Federal Express
OVERNIGHT DELIVERY

RE Petition for Contested Case Hearing
In the Matter of: Straits of Mackinac Alliance on the permit issued
to Enbridge Pipelines (Lakehead), LLC
Application No. 2RD-DFDK-Y35G
Permit No. WRP008225 v.1

Dear Clerk:

I enclose the following for filing with respect to this matter:

- Petition for Contested Case Hearings with attached Addendum and attachments.

Sincerely,



Karla Gerds
Legal Assistant

Enc: as stated
xc w/encl:
Clients



PETITION FOR CONTESTED CASE HEARING

Permit or Application No: (On permit or application as assigned by MDEQ)

Permit No. WRP008225 v.1

The procedural authority for a contested case hearing is the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq. Information requested on this form may be provided in an alternative written format or additional pages may be attached.

Form fields for Petitioner's Name (checked), Agent's Name, Street Address (7749 Cordwood Shores Drive), City (Cheboygan), State (MI), ZIP Code (49721), Telephone No. ((231) 946-0044), and E-Mail Address (ross@envlaw.com / rebecca@envlaw.com).

Form fields for Mailing Address (OLSON, BZDOK & HOWARD, PC), Street Address (420 East Front Street), City (Traverse City), State (MI), and ZIP Code (49686).

Main petition body with sections: Statement of Authority (checked Part 325), Statement of matters asserted (See Attached Addendum), Petitioner's relationship/interest (See Attached Addendum), Relief sought (See Attached Addendum), and Signature/Date fields.

Submit this completed petition and attachments to: MICHIGAN ADMINISTRATIVE HEARING SYSTEM, OTTAWA BUILDING, SECOND FLOOR, 611 WEST OTTAWA STREET, P.O. BOX 30695, LANSING, MI 48909-8195, TELEPHONE: 517-335-2484

NOTICE: A COPY OF MDEQ'S FINAL ACTION ON AN APPLICATION OR PERMIT MUST BE ATTACHED TO THIS OR ANY ALTERNATIVE WRITTEN PETITION.

ADDENDUM TO PETITION FOR CONTESTED CASE

The following is the Addendum to Petition for Contested Case by the STRAITS OF MACKINAC ALLIANCE (SMA). (This Statement is attached to and supplements the Petition for Contested Case Hearing form as completed and executed by the undersigned counsel.)

Petitioner:

STRAITS OF MACKINAC ALLIANCE
7749 Cordwood Shores Drive
Cheboygan, Michigan 49721

Permit / Application Number:¹

Application N^o. 2RD-DFDK-Y35G
Permit N^o. WRP008225 v.1

Attorneys for Petitioner:

Ross A. Hammersley
Rebecca L. Millican
OLSON, BZDOK & HOWARD, P.C.
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
ross@envlaw.com
rebecca@envlaw.com

Statement of Authority:

This petition for a contested case hearing is initiated under the authority of the Administrative Procedures Act, 1969 PA 306 (MCL §24.201 *et seq.*), and the rules promulgated thereunder (Michigan Administrative Code, R. 324.1 *et seq.*) pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL §324.101 *et seq.*, including (but not limited to) the Great Lakes Submerged Lands Act (GLSLA), Part 325, MCL §324.32501, *et seq.*, and the rules promulgated thereunder (Michigan Admin. Code, R. 322.1001 *et seq.*, including, but not limited to, R. 322.1015), and the common law public trust doctrine (*Obrecht v National Gypsum Co*, 361 Mich 399; 105 NW2d 143 (1960); *Illinois Central R Rd v Illinois*, 146 US 387 (1892)), the principles of which are incorporated into the Great Lakes Submerged Lands Act and its associated rules.

¹ See Application for 2017 Line 5 Anchor Installation Project (Mackinac and Emmett Counties, Michigan) from Enbridge Pipelines (Lakehead), LLC to Michigan Dept. of Environmental Quality (May 9, 2017), Application No. 2RD-DFDK-Y35G, available at <https://miwaters.deq.state.mi.us/miwaters/#/external/publicnotice/info/2861858022734864912/details> (hereinafter, the "Application"). The Application was granted on March 22, 2018, and a copy of this final agency action is attached to this Petition and Addendum as **Attachment 1**.

PETITIONER'S RELATIONSHIP/INTEREST TO THE ACTIVITY OR PROPOSED PROJECT

1. Petitioner, the Straits of Mackinac Alliance (SMA) is a not-for-profit corporation in the State of Michigan with its resident office located in the County of Cheboygan, State of Michigan at 7749 Cordwood Shores Drive, Cheboygan. The SMA is a coalition of individuals and organizations working cooperatively to protect, preserve, enhance, and restore the natural resources of the Straits of Mackinac and adjacent waters of the upper Great Lakes, conducting activities intended to protect the natural environmental and ecological conditions of the region, bolster sustainable commercial uses of and recreational opportunities with said resources, enhance human resiliency to a changing climate, and maintain and improve the quality of life in the Straits of Mackinac and surrounding areas and communities.

2. Petitioner consists of Michigan residents, taxpayers, and property owners who own riparian property on Lake Huron,² all of whom have assembled together for common purposes, including (*inter alia*):

- a. Protecting the water quality of Lake Michigan & Lake Huron;
- b. Preserving the natural character of and enhancing and restoring the wildlife habitat, coastal wetlands, and other ecological functions and natural resources of the Straits of Mackinac, as well as connecting and adjacent waters of the upper Great Lakes;
- c. Supporting sustainable commercial uses of and recreational opportunities within the Straits of Mackinac and the adjacent waters of the upper Great Lakes; and
- d. Maintaining the quality of life of communities in the vicinity of the Straits of Mackinac and surrounding areas.

3. Some of Petitioner's members also use and enjoy the waters of Lakes Huron and Lake Michigan at the Straits of Mackinac for recreational purposes, including swimming, boating, fishing, and observation of wildlife, plants, and other aquatic resources.

4. The Applicant's proposed permit activity threatens harm or will adversely affect or impair the use and enjoyment by the Petitioner's members of their riparian properties, the local aquatic resources of both Lakes Huron and Michigan at the Straits of Mackinac, and Petitioner's members' use and enjoyment of those aquatic resources, wildlife, plants, and related natural resources.

² See, for example, the attached affidavits of certain SMA members (**Attachments 2 - 5**), which are incorporated by reference as if fully set forth herein.

5. The interests of Petitioner's members are represented by the Petitioner, and Petitioner is authorized to pursue this action and all related to it, on behalf of and for its members and their interests. As such, the Straits of Mackinac Alliance has representational standing in this matter as a petitioner.³

6. Furthermore, the proposed activity and the continued operation of the pipelines at issue in this matter pose significant threats to all of the riparian property owners along the Straits of Mackinac that are members of the SMA, in a manner that is separate and apart from that of the general public. As such, there is no question that the SMA is aggrieved by the action (or failure to act in accordance with the requirements of the GLSLA) of the DEQ in this matter as required by Rule 322.1017(2) of the Michigan Administrative Code.

Other Parties

7. The Michigan Department of Environmental Quality (DEQ and/or Respondent) is the administrative agency responsible for the administration of the public trust bottomlands of the Great Lakes and any permitting thereupon in the state of Michigan under MCL 324.32501 *et seq.*, the Great Lakes Submerged Lands Act (Part 325).

8. Upon information and belief, the Applicant, Enbridge Pipelines (Lakehead), LLC is a Delaware corporation that owns – either directly or through a related corporate entity or subsidiary – property along West Boulevard Drive, St. Ignace, Michigan (Property ID No. 008-720-056-00), and which maintains a registered office at 40600 Ann Arbor Road E., Suite 201, in Plymouth, Michigan 48170 (Applicant).

9. The Petition for Contested Case and this Addendum thereto relate to the Applicant's May 9, 2017 Application for a permit to "install[] 22 helical anchor support structures at 22 locations [along the "Line 5" pipeline] within the Straits of Mackinac,"⁴ which was assigned by Respondent DEQ as Application/File No. 2RD-DFDK-Y35G and which was issued by the Respondent on March 22, 2018 as Permit No. WRP008225 v.1.

³ See *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 373, n 21; 792 NW2d 686 (2010) ("It is not disputed that, under Michigan law, an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest. See, e.g., *Trout Unlimited, Muskegon-White River Chapter v White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992).").

⁴ See *supra*, note 1 (May 9, 2017 Application No. 2RD-DFDK-Y35G).

**STATEMENT OF MATTERS ASSERTED, INCLUDING THE SITE
LOCATION AND OTHER PERTINENT FACTS**

10. The Great Lakes are a globally unique resource, containing 20% of the Earth's fresh water – this includes roughly 84% of the fresh surface water for all of North America, with greater than 30 million citizens of Canada & the United States living along the lakes' coastlines.⁵

11. Lake Michigan is the second largest Great Lake by volume, providing drinking water for both the Milwaukee and Chicago metropolitan areas, which together comprise roughly 8 million American citizens. Lake Huron is the third largest Great Lake by volume, although it is actually hydrologically connected with Lake Michigan at the Straits of Mackinac, making the two lakes collectively one of the largest bodies of fresh water in the world.⁶

12. Lakes Michigan and Huron at the Straits of Mackinac and surrounding areas have a rich mosaic of high-quality natural habitats and varied shoreline features (such as alvars, sand dunes, coastal marshes and fens, and bedrock shores) that support a diversity of fish, birds, and other wildlife, as well as plant communities.⁷ This region provides suitable habitat for a variety of federal and state endangered, threatened, and special concern species, including some established in field surveys conducted by the Michigan Natural Features Inventory (MNFI) program.⁸

13. The bottomlands of Lakes Michigan and Huron at the Straits of Mackinac have also been established as the Straits of Mackinac Great Lakes State Bottomland Preserve, indicating that the DEQ shall protect these bottomlands as an area of historic and recreational value.⁹

14. The Straits of Mackinac and the associated shoreline habitats and ecosystems provide critical ecosystem services, including water catchment and purification, maintenance and protection of wildlife, recreation, research, and more. The Great Lakes and their coastal ecosystems are easily disrupted, yet essential to the integrity of the critical ecosystem services, due to the water quality and the diverse array of plant and animal species found in the area.

15. The Applicant, its predecessor(s) in interest, and its various related corporate entities is in the business of transporting fossil fuels and operating pipeline infrastructure.¹⁰

⁵ U.S. Environmental Protection Agency & Environment Canada, The Great Lakes: An Environmental Atlas and Resource Book, 1995 (3rd. Ed.), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004ICU.PDF?Dockey=P1004ICU.PDF>.

⁶ *Id.*; see also The Great Lakes, U.S. Environmental Protection Agency, available at <https://www.epa.gov/greatlakes>.

⁷ See R. Reid, K. Rodriguez, and A. Mysz, Biodiversity Investment Areas – Nearshore Terrestrial Ecosystems, Environmental Protection Agency (July 1999), available at https://archive.epa.gov/solec/web/pdf/nearshore_terrestrial_ecosystems_biodiversity_investment_areas.pdf.

⁸ See Michigan Natural Features Inventory, available at <https://mnfi.anr.msu.edu/> (including the endangered Great Lakes population of the Piping Plover, the Dwarf Lake Iris, and the Lapland Buttercup, among others).

⁹ See Michigan Admin. Code, R. 299.6003; MCL §324.76111.

¹⁰ See Enbridge, Inc. – About us, available at <https://www.enbridge.com/about-us>.

16. The “Line 5” pipeline is the pipeline at issue in the Application. Line 5 is a 645-mile long pipeline and is part of the Applicant’s “Lakehead” pipeline system.¹¹

17. Line 5 is utilized primarily for the transport of oil, natural gas liquids, propane, and other products from Alberta, Canada to Superior, Wisconsin, through Michigan’s upper peninsula, under the Straits of Mackinac, and then overland in Michigan to Sarnia, Canada.¹²

18. Given the placement of the Straits of Mackinac in relation to the rest of each of these lakes, it is estimated that at least 3,528 square miles of Lake Michigan’s open water, and 13,611 square miles of Lake Huron’s open water could be at risk in the event of an oil spill in the Straits.¹³

The 1953 Agreement

19. In the early 1950’s, the Applicant (or its predecessor in interest) sought to build additional pipeline capacity in the Lakehead system, either by way of a pipeline route around Lake Michigan and through Chicago or via a pipeline through the Straits of Mackinac.¹⁴

20. In 1953, the Applicant’s predecessor in interest, Lakehead Pipe Line Company, Inc., entered into an agreement with the State of Michigan entitled “Straits of Mackinac Pipe Line Easement” (hereinafter, the “1953 Agreement”).¹⁵

21. In 1969, the Applicant (or its predecessor in interest), went ahead and built the other pipeline route anyway, routing it around Lake Michigan through Chicago in what became known as Line “6B.” Therefore, while Line 5 may be convenient for the Applicant, it is by no means necessary to the continued operation of the Lakehead pipeline system the Applicant maintains. As shown below, the risks to the Great Lakes, the communities, businesses, and industries who depend on them, and the public trust in the Great Lakes are much too great to further allow what is ultimately a mere convenience for the Applicant.

22. The 1953 Agreement purports to give the Applicant “an easement to construct, lay, maintain, use and operate two (2) pipe lines, one to be located within each of the two parcels of [Great Lakes] bottom lands ... together with anchors and other necessary appurtenances and fixtures....” See Attachment 6, page 2

23. The 1953 Agreement imposes certain conditions upon the Applicant, including (*inter alia*) the following:

¹¹ See Enbridge – Crude oil and liquids pipelines (and associated interactive map), available at <https://www.enbridge.com/about-us/our-work/transportation-and-transmission/liquids-pipelines>.

¹² See Enbridge Liquid Pipeline Assets Map, available at <https://www.enbridge.com/~media/Enb/Documents/Projects/US/Exhibit%20A%20-%20Enbridge%20Liquid%20Pipeline%20Map.pdf>.

¹³ Graham Sustainability Institute (University of Michigan), Worst Case Oil Spill Straits of Mackinac (2016), available at <http://graham.umich.edu/water/project/mackinac-oil-spill> (hereinafter referred to as the “Michigan Spill Analysis”).

¹⁴ See Bechtel Corporation Job 200 Lakehead Extension Final Report (February 1, 1954), available at http://www.michigan.gov/documents/ag/A1b2_Final_Report_1954_Part_1_Pages_1-15_523790_7.pdf.

¹⁵ See Attachment 6.

- a. “Grantee ... at all times shall exercise the due care of a reasonably prudent person for the safety and welfare of all persons and of all public and private property” (See Att. 6, pp. 3-4);
- b. Grantee “shall comply with all laws of the State of Michigan and of the Federal Government” (See Attachment 6, p. 3); and
- c. Grantee “shall comply with the following minimum specifications, conditions, and requirements, unless compliance therewith is waived or the specifications modified in writing by the Grantor,” including (*inter alia*):
 ...
 “(10) The maximum span or length of pipe unsupported shall not exceed seventy-five (75) feet.” (See Attachment 6, pp. 4-5).

24. The 1953 Agreement further provides that “C. The easement herein conveyed may be terminated by Grantor: (1) If, after being notified in writing by Grantor of any specified breach of the terms and conditions of this easement, Grantee shall fail to correct said breach within ninety (90) days, or, having commenced remedial action within such ninety (90) day period, such later time as it is reasonably possible for the Grantee to correct said breach by appropriate action and the exercise of due diligence in the correction thereof...” (See Attachment 6, p. 7).

25. As early as 1963, a mere ten years after its construction, Line 5 was found to be out of compliance with the 1953 Agreement, with unsupported spans in excess of 75 feet.¹⁶

26. In 2001, as Line 5 was nearing 50 years of continuous underwater operation in the Straits, the Applicant filed sought permission to install grout bags on Straits bottomlands as an “emergency preventative maintenance repair.”¹⁷ The permit was sought only two days before Enbridge planned to commence work. The “emergency” nature of the 2001 application raised concerns that the Applicant had been operating the pipeline in violation of the 1953 Easement.

27. Since 2001, the Applicant has identified more unsupported spans of pipeline necessitating the installation of more than 100 additional support structures on the Straits bottomlands.

¹⁶ Enclosure to June 27, 2014 Letter To Hon. Schuette & Hon. Wyant Responses to Questions and Requests for Information Regarding the Straits Pipelines, Table 2 ROV inspection and span support installation history of Line 5 Straits of Mackinac p. 9 (available at: http://mediad.publicbroadcasting.net/p/michigan/files/201410/Attachment_to_Response_letter_State_of_Michigan_Final.pdf).

¹⁷ September 14, 2001, Letter from Adam J. Erickson (Enbridge) to John Arevalo (DEQ), and 2001 Joint Permit Application (DEQ File No. 01-24-0046P), collectively attached as **Attachment 7**.

28. In October 2016, a report commissioned by the Applicant and prepared by Kiefner & Associates revealed that an internal 2003 survey identified 16 unsupported spans greater than 140 feet, the longest being 224 feet on the east line and 286 feet on the west line.¹⁸

29. Despite sporadic attempts to add structural supports, the Applicant was and/or continues to apparently be in violation of the 1953 Agreement on an ongoing basis due to the numerous spans of unsupported pipeline exceeding 75 feet.

30. There appear to be no records demonstrating that the Applicant notified the State of Michigan of its violation of the terms of the 1953 Agreement, thereby preventing the state from exercising its right(s) under Paragraph "C." to terminate the 1953 Agreement.

Lax State Oversight

31. Until the emergency permit application submitted by the Applicant in 2001, seemingly little interaction occurred between the Applicant and the Department.

32. Around 2009-2010, the Department (then operating as "DNRE") apparently began taking a harder look at the Applicant's regular requests for permits to conduct maintenance and repairs and considered whether Line 5 is subject to the requirements and procedures of the GLSLA.

33. In September 2010, the Applicant withdrew a pending application to install supports, ostensibly due to this increased scrutiny and consideration of GLSLA and/or the recent Line 6B rupture.

34. Documents obtained through FOIA reveal the Department's internal debate as to whether the Applicant should be allowed to discharge dewatering wastewater during a maintenance project, and whether and how that activity might be regulated.¹⁹

35. Documents obtained through FOIA demonstrate that the Applicant has failed to meet, and the Department has failed to apply, requirements of the GLSLA to the Applicant's Agreement and its many applications to install additional supports under Line 5. In particular, the Department and the Applicant have seemingly ignored the fact that the Applicant has no ownership in the lands upon which Line 5 rests and no dominant land estate to which the bottomlands "easement" appertains.²⁰

¹⁸ See Michael J. Rosenfeld, PE (Kiefner & Associates), Assessment of Span Exposures on the 20-inch Petroleum Pipelines Crossing the Straits of Mackinac (October 12, 2016), available at <http://davidholtz.org/wp-content/uploads/2017/06/Current-Data-Kiefner-Final-Report.pdf> (hereinafter referred to as the "Kiefner Report").

¹⁹ See Appendix B to FLOW Public Comments submitted August 26, 2016, p. B-62 (available at: http://flowforwater.org/wp-content/uploads/2016/08/Appendix-B_8_26_16-Comments-to-DEQ_FINAL-1.pdf).

²⁰ See Appendix B, pp. B-9 – B-11; B-17-B-20; B-24-B-25; B-27-B-28; B-43-B-45; B-58-B-60 (prior permit applications omitting information about the property owner) and Appx B, pp. B-54-B-57 (emails between Enbridge and DEQ officials concerning Enbridge's lack of ownership interest and need to obtain consent); But see Appx B, pp. B-33-B-34 (DEQ Project Review Report noting that a Part 325 conveyance would be required for the proposed project, but erroneously concluding that it was "likely obtained when pipelines installed.").

36. In at least one instance, a Department official simply improvised a substitution for the ownership/consent requirement, stating that “because you [Enbridge] have crossing easements which presumably have language about maintaining the properties, you could provide me with those specific pages of the easement documents in lieu of getting letters of authorization . . .”²¹

37. Since the 2001 emergency permit applications, the Applicant has continued to submit, and the Department has continued to approve, “maintenance” permits designed to ensure the “integrity” of Line 5. The Department has allowed this piecemeal approach, which has enabled the Applicant to avoid comprehensive review of risks and alternatives.

Line 6B Spill

38. As the Department is aware, in July of 2010, another part of the Applicant’s “Lakehead” pipeline system - Line 6B – suffered a catastrophic rupture near Talmadge Creek (a tributary to the Kalamazoo River). The Applicant failed to notice or shut off the flow of product through Line 6B after the rupture for at least 17 hours, and the resultant six-foot gash in the pipeline ultimately released more than 843,000 gallons of Alberta tar sands oil/heavy crude into the creek and riverine ecosystems.²²

39. The consequences of the Kalamazoo spill were severe. Approximately 39 miles of the Kalamazoo River and the nearby Morrow Lake, Mill Pond, and Ceresco Dam were contaminated; clean-up and remedial efforts lasted more than four years and required the use of booms to collect oil along the surface of the water and dredging to collect the heavy crude off the riverbed; nearby residents were evacuated, and several hundred suffered adverse health effects from exposure to benzene; a several-mile span of river was closed to public use for nearly two years.²³ The United States Environmental Protection Agency estimated that 760,000 gallons of oil were captured through clean-up efforts.²⁴

40. The National Transportation Safety Board (NTSB) concluded that the Applicant knew for *five years* prior to the spill that the section of Line 6B that eventually ruptured had suffered from cracks, and that the Applicant’s officials had ignored many opportunities to lessen the risk of a spill. In its words, the disaster was the result of a “complete breakdown of safety at Enbridge.” NTSB Chairwoman Deborah Hersman commented that the Applicant’s employees had acted like a troop of “Keystone Kops” as they worked to address the spill.²⁵

²¹ See Appendix B, *supra*, p. B-54.

²² June 2013 EPA Fact Sheet, Oil Cleanup Continues on Kalamazoo River (*available at*: <https://www.epa.gov/sites/production/files/2016-06/documents/enbridge-fs-20130624.pdf>).

²³ Alex Mitchell, Timeline of major events in Kalamazoo River oil spill (July 20, 2015), *available at* http://www.mlive.com/news/kalamazoo/index.ssf/2015/07/kalamazoo_river_oil_spill_time.html

²⁴ April 2011 EPA Fact Sheet, Cleanup Continues; Focus on Submerged Oil (*available at*: https://www.epa.gov/sites/production/files/2016-06/documents/enbridge_fs_201104.pdf).

²⁵ Press release, National Transportation Safety Board, Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations (July 10, 2010) (attached as **Attachment 8**). The entire NTSB report is available at: [https://www.nts.gov/investigations/Accident Reports/Reports/PAR1201.pdf](https://www.nts.gov/investigations/Accident%20Reports/Reports/PAR1201.pdf).

41. The Applicant spent more than \$1.2 billion in clean-up costs²⁶; its insurance coverage was only \$650 million.²⁷

Applicant's "Major Expansion" of Lakehead System

42. Incredibly, as the Applicant was still cleaning up and remediating the Kalamazoo River disaster, it announced "Major Expansions of its Lakehead System,"²⁸ which would involve numerous small-scale projects "requir[ing] only the addition of pumping horsepower," as well as a 50,000 barrel per day "expansion" of Line 5, all to "drive distributable cash flow growth" and to help the Applicant "achieve the higher end of our distribution growth target." In short, the company announced plans to maximize flow rates and product distribution throughout the Lakehead system by undertaking numerous small scale projects that would ultimately have the effect of, in some cases, more than doubling the capacity of portions of the system.²⁹

43. This announcement coincided with additional permit requests to the Michigan Public Service Commission (MPSC) for activities that were later undertaken by the Applicant along Line 5, including the addition of numerous pump stations and anti-friction injection facilities, which allow the Applicant to increase the flow and volume of petroleum products through Line 5 and the Straits.³⁰

44. It is unknown whether the Applicant intended to utilize Line 5 to transport tar sands (aka. "heavy crude" oil) at that time, but the Applicant and the State of Michigan ultimately reached a separate agreement in September of 2015 that such products would not presently be transported via Line 5 under the Straits of Mackinac.³¹

45. The Applicant's "improvements" to protect the "integrity" of Line 5, together with the replacement of Line 6B (now Line 78) and other parts of the Lakehead system represent a massive expansion of the Applicant's ability and capacity to move petroleum products through this state, the majority of which are destined for Sarnia, Ontario, and points beyond – not Michigan residents and consumers.

²⁶ Garret Ellison, New Price Tag for Kalamazoo River Cleanup: Enbridge Says \$1.2 Billion (November 5, 2014), *available at* http://www.mlive.com/news/grand-rapids/index.ssf/2014/11/2010_oil_spill_cost_enbridge_1.html).

²⁷ Fritz Klug, Enbridge's Estimated Cost of Kalamazoo River Oil Spill Cleanup Exceeds its \$650 million Insurance Policy (September 27, 2011), *available at* http://www.mlive.com/news/kalamazoo/index.ssf/2011/09/enbridges_estimated_cost_to_cl.html.

²⁸ See Press Release, Enbridge Energy Partners, L.P., Enbridge Energy Partners Announces Major Expansions of Its Lakehead System (May 16, 2012) (attached as **Attachment 9**).

²⁹ For example, 75 miles of Line 6B were replaced, along with further work transforming former Line "6B" into what is now Line "78," all of which "increase[d] capacity from 240,000 bpd to 500,000 bpd." *Id.*

³⁰ See Attachment 9.

³¹ See Agreement Between the State of Michigan and Enbridge Energy, Limited Partnership Regarding the Transportation of Heavy Crude Oil Through the Straits of Mackinac Pipelines (Sept. 3, 2015), *available at* https://www.michigan.gov/documents/snyder/Final_Agreement_Line_5_Heavy_Crude_Transport_FINAL_complete_090315_499169_7.pdf. The Applicant was provided two escape clauses, however, including one that is solely in the Applicant's discretion; in the event the Applicant elects "to change the current engineering configuration or operating parameters of the Straits Pipelines in order to transport heavy crude oi" it may provide written notice to the State, which must respond within 180 days.

Unacceptable Risks to Great Lakes

46. The Line 6B spill was a wake-up call to Michiganders about the risks that the pipelines traversing the state pose to the waters of the state, in particular, the potential threat to the Straits of Mackinac from Line 5.

47. The Line 6B disaster was the worst inland oil spill in US history, and one of the worst pipeline spills to have ever occurred in the United States. It is crucial to note in this context that many of the same risk factors that led to the Line 6B rupture are present with Line 5, with the added caveat that those risks are greatly exacerbated by, among other things, Line 5's underwater location in the Straits of Mackinac, at the heart of the Great Lakes.³²

48. Since its construction in 1953, the Applicant has increased the flow through Line 5 from its design capacity of 300,000 barrels per day to 540,000 barrels per day – an increase of 80%.³³ This increase has occurred (a) without any environmental assessment as to the potential impacts of such expansion and continued activities, (b) outside of the requirements of the public trust doctrine (c) outside of the requirements of the Great Lakes Submerged Lands Act (GLSLA), and (d) without any affirmative findings or demonstration by the State or the Applicant concluding that any risks or potential adverse effects to the environment, public trust, and riparian interests from these expansion activities would be minimal and that no feasible and prudent alternative to the operation of Line 5 in this manner exists.

49. In response to questions posed by state officials, the Applicant reported in 2014 that it had no plans for pipeline replacement of Line 5 in the Straits because, according to its Procedure

³² Other risk factors related to Line 5 are (without limitation) the Applicant's inability to effectively inspect the outside of the pipeline along the entirety of its underwater length, due to the presence of invasive mussels and its underwater location, as well as the excessive age of the pipeline itself. Further risk factors were expected to be the subject of a report that was to be completed by/on behalf of the State of Michigan in the summer of 2017, but the study leading to that expected report was recently terminated by the State (*See* Press Release, Michigan Department of Environmental Quality, State Terminates Independent Contractor Analyzing Line 5 Risks (June 21, 2017), available at <http://www.michigan.gov/deq/0,4561,7-135--424437--,00.html>) and no further information as to whether or when those risks will ever be evaluated has been forthcoming since that termination.

³³ MPSC documents reveal that Line 5 was designed with a capacity of 120,000 barrels per day, with the potential to increase to 300,000 barrels per day with the addition of four pump stations. The expansion to 540,000 barrels per day represented a **\$100 million investment** by Enbridge. See MPSC Opinion and Order, p. 6, March 31, 1953; Appendix 2A to FLOW's September 21, 2015 Comment (available at: <http://flowforwater.org/wp-content/uploads/2015/09/Final-Appendices-9-21-15.pdf>) This piecemeal, bit-by-bit approach by the Applicant means that the State of Michigan never undertakes a comprehensive review of the full range of alternatives to the operation of Line 5 as a whole, including the portions that are located under the surface of the Straits of Mackinac. The Applicant's decision to seek and add pump stations and anti-friction injection systems up and down Line 5 have been characterized as "maintenance and integrity" measures. However, these changes have fundamentally modified the nature of Line 5, where the Applicant has essentially built its own version of the controversial Keystone XL pipeline through the heart of the Great Lakes and has done so without prompting the State of Michigan to exercise its public trust duties in an official capacity, thereby evading a consideration of the risks and alternatives to Line 5's continued operation. As has been stated at earlier Pipeline Safety Advisory Board meetings, were the Applicant to have disclosed its true intentions to massively increase Line 5's capacity, the public, the federal government, and/or the State of Michigan could have more fully evaluated the risk of harm to the natural resources of the state and could have taken action long before it got to the point where the Applicant has had to now apply for 22 anchor supports under the present circumstances.

for Pipeline Replacement Assessments, replacement is unnecessary to “maintain the pipeline safety, integrity, and overall reliability.” Yet the same Assessment tool caused the Applicant to replace the much younger Line 6B, belying the company’s objective to expand its system and increase its capacity to transport heavier Bakken and Alberta tar sands products.³⁴ The prioritization of Line 6B over Line 5 – an older and partially underwater pipeline – also demonstrates the Applicant’s disregard for the condition and safety of Line 5 and the preservation of the Straits.

50. Chief among the concerns about Line 5 are the many documented instances of unsupported spans of pipeline exceeding 75 feet (in violation of the 1953 Agreement), sometimes by tens or even 100 feet or more.³⁵

51. Long spans of unsupported pipeline are susceptible to movement and shifting from the Straits’ strong currents, which in turn creates concerns that abrasion will occur, compromising the pipeline coating. Damage to the outer coating increases the risk of bare pipe being exposed, which is vulnerable to corrosion due to its underwater location.

52. Not only do the unsupported spans along Line 5 violate the terms of the 1953 Agreement, but some unsupported spans may not comply with the required safety factor for oil pipelines under ASME B31.8.³⁶

53. Further, the design and materials used for Line 5 have proven less robust than projected and, in some cases, have become obsolete.³⁷

54. Other concerns about the condition of the pipeline exist, such as delamination of the pipe coatings or missing coatings, noticeable cracks and dents in the pipe, missing slats protecting the lines, and documented instances of bends or curvature in the line. The presence of colonies of invasive mussels along vast portions of the line makes the pipeline difficult to inspect, and those mussels add weight, increase the gravitational and drag loading, and create an environment of corrosive acidity.³⁸

55. Similar to the Applicant’s five year delay in notifying the NTSB prior to the Line 6B spill that the Applicant knew of cracks in the section of Line 6B that eventually ruptured, the Applicant knew in 2014 yet failed to disclose to the State and federal officials for 3 years (until November 2017) the fact that the Applicant was aware that its newly implemented anchor design (with saddle supports, as suggested for implementation in this instance) was actually causing damage to the Line 5 pipeline coating and to the overall integrity of the pipelines themselves. In

³⁴ See Enclosure to June 27, 2014 Letter to Hon. Schuette & Hon. Wyant, *supra*, note 16, p. 3.

³⁵ See Kiefner Report, *supra*, note 18.

³⁶ See A Composite Summary of Expert Comment, Findings, and Opinions on Enbridge’s Line 5 Oil Pipeline in the Straits of Mackinac in Lake Michigan, submitted April 30, 2015 on behalf of FLOW (For Love of Water), pp. 11-12 (*available at*: <http://flowforwater.org/wp-content/uploads/2015/09/FINAL-FLOW-9-21-15-REPORT-ON-ACTION-PLAN-AND-COMMENTS.pdf>).

³⁷ *Id.* at 11-14.

³⁸ Timm, Dr. Edward, “Technical Report: An Investigation into the Effect of Near Bottom Currents on the Structural Stability of Enbridge Line 5 in the Straits of Mackinac” (March 5, 2017), *available at* <http://blog.nwf.org/wp-content/blogs.dir/11/files/2017/03/2017-Edward-Timm-Currents-and-Stresses-Report.pdf>.

fact, the Applicant negotiated a 2016 Consent Decree (with respect to the Line 6B spill) and secured two joint DEQ and US Army Corps of Engineers anchor permits while it had knowledge of these problems with the anchor design but without disclosing that critical information to the state or federal government.³⁹

56. Moreover, the Applicant's underwater ROV inspections are scheduled only every two years, leaving open the possibility that small areas of damage could go unnoticed for dangerously long periods. Both the 2014 and 2016 ROV inspections revealed easement span violations.

57. Further, the Applicant's simulated spill scenarios are understated and lead to inadequate response planning.⁴⁰

58. Under the terms of the 1953 Agreement, the Applicant is required to maintain insurance or a bond in the amount of only \$1 million – nowhere near enough to cover the costs of cleanup. In the wake of the Line 6B spill, the Applicant reportedly increased its coverage to \$700 million,⁴¹ a number that still pales in comparison to the \$1.2 billion the company expended cleaning up the Kalamazoo River.

59. In 2016, researchers at the University of Michigan completed a simulation of 840 different spill scenarios under different spill volumes covering a wide range of weather and water current conditions, factoring in differences between different types of petroleum products that are transported through Line 5.⁴² Hydrodynamics expert David Schwab concluded that up to 152 miles of Lakes Michigan and Huron coastline could be affected by a single spill in the Straits, and that more than 700 miles of shoreline should be considered vulnerable to a spill. More than 17,000 square miles of open water surface area were demonstrated to be vulnerable.⁴³

60. A Line 5 spill threatens the pristine waters of the Straits of Mackinac, would irreparably tarnish the shorelines of Lakes Michigan and Huron, and would harm or kill innumerable waterfowl, fish, marine mammals, and aquatic plants.

61. A recent Michigan State University study predicts that the economy of the state of Michigan would lose \$6.3 billion if there were a significant Line 5 oil pipeline rupture in the Straits of Mackinac, including catastrophic economic impacts on tourism (\$4.8 billion in economic

³⁹ Garret Ellison, "Enbridge knew about Line 5 coating damage in 2014," MLive, Oct. 27, 2017, *available at* http://www.mlive.com/news/index.ssf/2017/10/enbridge_line_5_damage_2014_de.html.

⁴⁰ A Scientific and Legal Policy Report on the Transport of Oil in the Great Lakes, September 21, 2015, at 9 (compiled in Appendix A to FLOW Public Comments submitted August 26, 2016, p A-44) (*available at*: http://flowforwater.org/wp-content/uploads/2016/08/Appendix-A_-8-26-16-Comments-to-DEQ_FINAL.pdf).

⁴¹ New Price Tag for Kalamazoo River Cleanup: Enbridge Says \$1.2 Billion (http://www.mlive.com/news/grand-rapids/index.ssf/2014/11/2010_oil_spill_cost_enbridge_1.html).

⁴² See Michigan Spill Analysis, *supra*, note 13, and associated materials.

⁴³ *Id.*

impacts), property values (\$485 million), municipal water systems (\$233 million), and commercial fishing (\$61 million), among others.⁴⁴

62. A Line 5 spill would also contaminate the drinking water of communities along Michigan's upper and lower peninsulas.

63. Oil spills also expose humans and wildlife to toxic chemicals such as benzene and create potentially noxious fumes from VOCs (volatile organic compounds).

64. A Line 5 spill would devastate Michigan's tourist economy, which depends heavily on outdoor recreation, sightseeing and a "Pure Michigan" reputation.

65. As recounted above, a Line 5 spill would also irreparably harm the property rights of SMA's members, catastrophically diminish their property values, potentially cause adverse health effects, and impose untold costs and mental distress upon SMA's membership.

66. If the Applicant is permitted to install the 22 anchor supports as requested in its application,⁴⁵ it will surely argue that the State has impliedly authorized the continued operation of Line 5 indefinitely, despite the fact that such operation represents conduct that has or is likely to have the effect of polluting, impairing, or destroying the aquatic and other natural resources of the State, as well as the public trust in those resources.

Line 5 Alternatives

67. In response to calls to shut down or decrease the volume of petroleum products transported through the Straits, the Applicant has often countered that Michigan refineries rely on Line 5 to supply crude oil, and that Line 5 is also necessary to supply Upper Peninsula residents with natural gas liquids for propane. The Applicant also claims Line 5 is integral to supplying two refineries in Toledo, Ohio.

68. However, Michigan's demand for light crude oil transported through Line 5 is overstated by the Applicant. Marathon's Detroit refinery processes primarily heavy crude, and in-state demand for light or medium crude makes up only approximately 5.6% of product transported through Line 5 daily.⁴⁶

⁴⁴ R. Richardson, N. Brugnone, *Oil Spill Economics: Estimates of the Economic Damages of an Oil Spill in the Straits of Mackinac in Michigan*, May 2018, available at http://flowforwater.org/wp-content/uploads/2018/05/FLOW_Report_Line-5_Final-release-1.pdf

⁴⁵ See MCL §324.32503(1) and §324.32505(2). The Applicant's proposed activity ("installation of a helical anchoring system with saddle mounts around the pipeline in each of the [22] proposed locations," which will be "augured directly into the lakebed using 10-inch-diameter screws (total of 44 screws)") is arguably in the nature of the installation of a "filling" of "other materials" such as "pilings," as those terms are defined in R. 322.1001(j) and (k). See also MCL §324.32512(1). However, the SMA does not concede, and reserve the right to object to, this characterization/definition as established and apparently utilized by the Department.

⁴⁶ FLOW report, *Eliminating the Line 5 Oil Pipelines' Unacceptable Risk to the Great Lakes Through a Comprehensive Alternatives Analysis and Systems Approach*, December 14, 2015, p. 18 (available at: <http://flowforwater.org/wp-content/uploads/2015/12/FLOW-Composite-Report-12-14-15-FINAL-1.pdf>).

69. The BP-Husky refinery in Toledo currently receives light crude via Line 5, in addition to the Mid-Valley and Capline pipelines. However, BP-Husky is reportedly converting to all heavy crude refining around 2020 and will no longer demand product from Line 5.⁴⁷

70. The PBF Energy refinery in Toledo likely utilizes the Mid-Valley and Capline pipelines to supply light crude, not Line 5.⁴⁸

71. Natural Gas Liquids (NGLs) destined for the Upper Peninsula are already removed from Line 5 and purified at Superior, WI and then piped to the existing distribution station in Rapid River. This transport does not require the use of the lines through the Straits.⁴⁹

72. The vast majority of petroleum products transported through Line 5 are destined for refineries in Sarnia, Ontario and are then shipped on to other parts of Canada or the east coast for export.⁵⁰

73. As demonstrated herein, Line 5 has little to do with supplying Michigan's energy needs.

PROPOSED PROJECT AND APPLICATION

74. The Application was filed and received by the DEQ on May 9, 2017 and was assigned DEQ File No. 2RD-DFDK-Y35G. A Public Notice was issued by the DEQ on June 9, 2017.

75. Multiple groups requested a public hearing, and the DEQ issued Notice of a Public Hearing on July 12, 2017 for a July 25, 2017 public hearing in St. Ignace, Michigan.

76. Numerous public comments were submitted to and received by the DEQ in conjunction with its consideration of this Application.

77. The original permit application's description of "All Proposed Activity" states that the Applicant "plans to conduct maintenance on its existing 20-inch-diameter Line 5 pipelines by installing helical anchor support structures at 22 locations" on the Lake Michigan bottomlands in the Straits of Mackinac "between Point La Barbe in the Upper Peninsula and McGulpin Point in the Lower Peninsula under authority of Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environment Protection Act, 1994 PA 451, as amended"⁵¹ (being MCL §324.32501, *et seq.*).

78. According the Supplemental Information attached to the Application by the Applicant, the 22 anchor support structures would provide support to the pipeline "with saddle

⁴⁷ *Id.* at 19.

⁴⁸ *Id.*

⁴⁹ See Appendix 1 to FLOW's September 21, 2015 Report (*available at: <http://flowforwater.org/wp-content/uploads/2015/09/Final-Appendices-9-21-15.pdf>*).

⁵⁰ See FLOW Report (Dec. 14, 2015), *supra*, note 46, p. 20.

⁵¹ See *supra*, note 1, p. 1 (May 9, 2017 Application No. 2RD-DFDK-Y35G); July 12, 2017 Notice of Public Hearing.

mounts” that “will be augured directly into the lake bed using 10-inch diameter screws (total of 44 screws).”⁵² The Applicant further characterizes this “maintenance” activity as causing a “total lake bottom impact [of] approximately 9 cubic yards, with the proposed locations indicated in several tight groupings as shown in Figures 1a, 1b, 2a, 2b, 3a, and 3b on “Attachment A” to the Supplemental Information.

79. The Applicant’s Supplemental Information goes on to characterize the project as “pipeline maintenance” that simply allows the Applicant to “maintain[] the previously authorized pipelines”⁵³

80. Despite the Applicant’s characterization, it is important to point out that there are no relevant sections of the GLSLA that provide exceptions to any of the requirements set forth in the statute or its associated rules for activities that an applicant may characterize as “maintenance.” See MCL §324.32501, *et seq.*

81. Petitioner contends that the Applicant’s sought-after activity constitutes a substantial modification of the design of the pipeline into something more closely approximating a suspension bridge along the lake bottom. The 1953 Agreement between the State and Enbridge’s predecessor-in-interest specifically provides for the twin pipelines to be laid along the lake bottom, with the pipelines engineered in accordance with that location and the lower amount of current stress that would accompany that location. With these new activities, the Applicant’s aging and damaged pipelines would be elevated amidst the water-column, subjected to vastly stronger currents, and at *greater* risk of anchor strikes similar to that which damaged the pipelines on April 1, 2018.⁵⁴

82. As more fully set forth below, there has never been any review of such a radically altered design or the risks that are or could be associated with it, meaning that the State and the Applicant have failed to fulfill the requirements of state law.

⁵² See Attachment 1, p. 16.

⁵³ *Id.* at 17. The word “maintenance” is used 4 times in the statute, including with respect to lighthouses (MCL §324.32504a), marina dredging (MCL §324.32513(2)(c)(v)), and artificial waterways (MCL §324.32515).

⁵⁴ Press Release, Schuette Statement on the Anchor Strike to Cables and Pipelines Running the Straits of Mackinac, April 11, 2018, available at <https://www.michigan.gov/som/0,4669,7-192-47796-466161--,00.html>.

THE GREAT LAKES SUBMERGED LANDS ACT

83. The State of Michigan passed the Great Lakes Submerged Lands Act (“GLSLA”) in 1955.⁵⁵

84. The Great Lakes are public trust resources.⁵⁶

85. As set forth in Section 32502, the GLSLA covers “all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes ... belonging to the state or held in trust by it....” MCL §324.32502.

86. The Applicant’s request in this matter pertains to unpatented bottomlands of the Great Lakes, and therefore, its application must meet the requirements of the GLSLA, both under the express statutory terms thereof, but also as a legislative expression of the State’s public trust duties, which predate the 1953 Agreement and date back at least to the admission of Michigan into the United States in 1837.⁵⁷

87. Under Section 32502, the Michigan legislature provided that the GLSLA “shall be construed so as to preserve and protect the interests of the general public in the lands and waters” described in Section 32502, while allowing for “the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands” so long as the Department reaches a determination that “the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition.” MCL §324.32502.

88. Section 32503 requires that the State/Department undertake an effort to reach an affirmative determination / finding(s) “that the public trust in the waters will not be impaired or substantially affected,” and only after doing so may it “lease ... unpatented lands, after approval of the state administrative board.” MCL §324.32503(1).

⁵⁵ MCL §324.32501 *et seq.*

⁵⁶ *Id.* See also, e.g., *Illinois Central Rail Co v State of Illinois*, 146 US 387 (1892); MICH. CONST. art. IV, §52.; and *infra*, note 57. For example, the U.S. Supreme Court states in *Illinois Central Rail Co* (146 US at 437) that “the same doctrine as to the dominion and sovereignty over and ownership of lands under the navigable waters of the Great Lakes applies which obtains at the common law as to the dominion and sovereignty over and ownership of lands under tide waters in the borders of the sea, and that the lands are held by the same right in the one case as in the other, and subject to the same trusts and limitations.”)

⁵⁷ *Illinois Central Rail Co v State of Illinois*, 146 US 387 (1892); *Obrecht v Nat’l Gypsum Co*, 361 Mich 399, 412; 105 NW2d 143 (1960) (“This Court, equally with the legislative and executive departments, is one of the sworn guardians of Michigan’s duty and responsibility as trustee of the above delineated beds of five Great Lakes.”); *Collins v Gerhardt*, 237 Mich 38, 60; 211 NW 115 (1926); and *Glass v Goeckel*, 473 Mich 667, 677-681 (discussing the history of the public trust doctrine and reaching the conclusion that “the public trust doctrine is alive and well in Michigan...”). See also R. 322.1001(1)(m) (“Public trust” means the perpetual duty of the state to secure to its people the prevention of pollution, impairment or destruction of its natural resources, and rights of navigation, fishing, hunting, and use of its lands and waters for other public purposes.”); MICH. CONST. art. IV, §52.

89. Clear requirements for environmental assessments that are to be conducted in conjunction with the GLSLA are also set forth in Rule 15 of the rules promulgated pursuant thereto (R. 322.1015):

In each application for a permit, lease, deed, or agreement for a bottomland, existing and potential adverse environmental effects shall be determined. Approval shall not be granted unless 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.⁵⁸

90. Section 32504 requires the application to include a "surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. MCL §324.32504(1).

91. Section 32504 further requires that the "applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land." MCL §324.32504(1).

92. Section 32504(1) further requires that "the application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property" or those having such interests in the lands or waters applied for (MCL §324.32504(1)(clause 5); again, no such information is contained in the instant Application.

93. Section 32504(1) further requires that "the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application (MCL §324.32504(1)(clause 6); again, no such information is contained in the instant Application.

94. Section 32504(2) states that "[b]efore an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent." MCL §324.32504(2).

95. Under the public trust doctrine, the State of Michigan has an affirmative, perpetual, and inalienable duty to protect the Great Lakes and their bottom lands from pollution, impairment,

⁵⁸ MICH. ADMIN. CODE R. 322.1015.

or destruction, and to protect the public's rights of navigation, fishing, commerce, swimming, recreational, ecological and aquatic resources, and other public purposes.⁵⁹

96. The public has utilized Lakes Michigan and Huron, along with the other Great Lakes, since the inception of Michigan's statehood, and at all times since its admission to the Union in 1837, the public's rights and the state's public trust duty have applied.⁶⁰

97. Since the State of Michigan cannot surrender, abdicate, or otherwise alienate its duty to preserve public rights in the Great Lakes under the public trust doctrine,⁶¹ any agreement entered into after statehood—including the 1953 Agreement between the State and the Applicant—remains subject to the duties, obligations, and responsibilities of the State of Michigan as trustee of that public trust.

98. As recognized in Michigan common law, “no part of the beds of the Great Lakes ... can be alienated or otherwise devoted to private use in the absence of a due finding of one of two exceptional reasons.... One exception exists where the State has, in due recorded form, determined that a given parcel of such submerged land may and should be conveyed ‘in the *improvement* of the interest thus held’ (referring to the public trust). The other is present where the State has, in similar form, determined that such disposition may be made ‘without detriment to the public interest in the lands and waters remaining.’”⁶²

99. In order for the Department to approve the Applicant's permit application, it must reach a determination on these narrow exceptions. *Buggs v MPSC*, Unpublished Opinion, January 13, 2015, Docket No. 315058 (**Attachment 10**). Namely, the state must:

- a. Affirmatively determine that approval of this permit application to allow the Applicant to continue operating this 65-year-old underwater pipeline is primarily related to the actual “improvement” and promotion of the public trust, and will result in the protection of the Great Lakes and public trust interests therein;
- b. The Department must determine that allowing the continued use and operation of Line 5 beyond the end of its expected useful life⁶³ by granting a permit for the applied-for anchor supports will not result in an unacceptable risk of pollution, impairment, destruction, or harm to the public trust waters, the Great Lakes bottomlands, or other public trust uses.

⁵⁹ See *supra*, note 57 (including discussion of *Illinois Central Rail Co v State of Illinois*, 146 US 387 (1892)).

⁶⁰ See *Illinois Central Rail Co*, 146 US at 437; *Glass*, 473 Mich at 677-681.

⁶¹ *Glass*, 473 Mich at 679.

⁶² *Obrecht*, 361 Mich at 412-13 (emphasis added).

⁶³ Previously described as a “50-year” useful life, the State of Michigan has asked for (and to date, upon information and belief, has not received) updated information from the Applicant as to the “estimated useful life” that is left in Line 5. See Letter from Attorney General B. Schuette (April 29, 2014), available at https://www.michigan.gov/documents/deq/Appendix_B.1_493986_7.pdf. SMA contends that the pipeline is beyond its useful life at present.

100. Neither the State nor the Applicant can satisfy either of these exceptions, and therefore, the Application cannot be approved until after the fulfillment of the requirements specified herein has been demonstrated.

APPLICATION REVIEW & DEFICIENCIES

101. Based on the requirements of Section 32502 as described above, the DEQ must have, among other things, analyzed and reached a determination on the following points; namely:

- a. That the public use of the waters of the Straits of Mackinac will not be substantially affected by the continued use of Line 5 by the Applicant as potentially enabled by way of the approval of the instant permit application; and
- b. That the public trust in the aquatic and natural resources will not be impaired by the continued use of Line 5 by the Applicant as potentially enabled by way of the approval of the instant permit application.

102. Furthermore, based on the requirements of Rule 15 as recounted above, the DEQ must have analyzed and reached a determination as to the existing adverse environmental effects of the operation of Line 5, as well as the potential adverse environmental effects of the continued operation of Line 5 in the event this new design for the pipeline is implemented and installed on the lakebed.

103. It appears, however, that rather than reach such an affirmative determination, the State circumvented the requirements of the statute and the rule by conducting an unreasonably narrow assessment of the risk(s) inherent in the continued operation of Line 5, improperly limiting its review only to the impact related to the forty-four (44) bore-holes for the 10-in-diameter screws that will be directly augured into the lake bed.⁶⁴

104. As described above with respect to Rule 15 (R. 322.1015), the DEQ is required to determine the “existing and potential adverse environmental effects” related to this Application. However, although the DEQ is now aware that the Applicant’s previous installations of this exact anchor support design caused damage to the pipeline coating and to the overall integrity of the pipelines, the DEQ has unfortunately failed to analyze the potential adverse environmental effects related to these proposed 22 anchor supports.⁶⁵ Instead, the DEQ has enabled the Applicant to operate and utilize Line 5 in the Straits of Mackinac in a manner that is far in excess of the scope of operation authorized by the 1953 Agreement.

105. Despite the clear language of Section 32503, there is nothing in the record of this matter demonstrating that an affirmative determination that the public trust in the waters will not be impaired or substantially affected has been made, nor that “the state administrative board” has granted any approval. Furthermore, there is nothing in the record pertaining to this Application

⁶⁴ See Application, *supra*, n. 1.

⁶⁵ See *supra*, ¶ 55.

which would bring the 1953 Agreement under the definition of a patent that was or has been conveyed, despite the fact that the Applicant is proposing to occupy additional bottomlands of the Great Lakes with its 22 anchor supports.

106. The Applicant has failed to include such surveyed descriptions as required by Section 32504.

107. The Applicant's permit application (*See* note 1, *supra*) contains zero information relating to the ownership of riparian or other property necessary to fulfill the requirements of Section 32504(1)(clause 4).

108. No information fulfilling the requirements of Section 32504(1)(that "the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application (MCL §324.32504(1)(clause 6)) is contained in the instant Application.

109. No approval from any of the applicable governmental entities required to be obtained in Section 32504(2) is evidenced in the Application or the Permit, and upon information and belief, all such approval has not been obtained by the Applicant to date.

110. The Applicant's Application and accompanying materials do not include information that would fulfill the requirements of Rule 15, and the Department has not made any of the requisite findings or reached a determination(s) as to both of the required issues set forth in Rule 15.

111. The Applicant has improperly submitted an Application that so narrowly defines the purpose of the project as to limit a complete analysis of whether the continued use of Line 5 after its requested anchor supports are installed will not result in an unacceptable risk of pollution, impairment, destruction, or harm to the public trust waters, the Great Lakes bottomlands, or other public trust resources.

112. Moreover, the Applicant has failed to show, and the State has failed to require a showing of whether there are feasible and prudent alternatives to the continued operation of Line 5 as facilitated by this project as proposed that will not result in an unacceptable disruption to the public trust waters, the Great Lakes bottomlands, or other public trust resources, or are otherwise contrary to law.

113. As a result of the preceding paragraphs, it is clear that, at a minimum, the DEQ has improperly approved this Application without completing the necessary reviews and reaching all required affirmative determinations. Therefore, the Permit as granted must be withdrawn unless and until the Applicant and DEQ can correct all of the deficiencies identified herein.

114. If, in the determination of the DEQ and/or the State of Michigan, the risk of the continued operation of the Line 5 pipelines without the requested 22 anchor supports is too great (which Petitioner would contend that it very well could be), then the state should impose an operational delay of product through Line 5, at least until such time as the Applicant complies with

all applicable legal requirements, or should impose an alternate, temporary method by which damaged sections of pipeline would be addressed.

115. The Department and the Applicant must proceed at all times with the understanding that the GLSLA represents an exercise of Michigan's inalienable property and police powers over public trust waters and bottomlands, which has existed at least as long as Michigan has been a state.⁶⁶ Therefore, despite having been enacted two years following the execution of the original 1953 Agreement between the State of Michigan and the Applicant, the GLSLA is not subject to the presumption against retroactivity found in various common law rulings related to contracts or general legislation.⁶⁷

116. Petitioner contends that the Application and Permit record does not meet Part 325 standards because it is not in the public interest; there are feasible and prudent alternatives; it would result in an unacceptable disruption to ecological resources; and the Application, Permit, and record accumulated by the DEQ in this review process is not consistent with law.

117. In sum, the Applicant and State have failed to meet the requirements of the GLSLA as set forth above, namely:

- a. Failure to demonstrate the public use of the waters of the Straits of Mackinac will not be substantially affected by the continued use of Line 5 (MCL §324.32502(1));
- b. Failure to demonstrate that the public trust in the aquatic and natural resources of the Great Lakes will not be impaired by the continued use of Line 5 (MCL §324.32502(1) and §324.32503(1));
- c. Failure to provide any risk assessment or analysis of the potential risks inherent in such operation (MCL §324.32502(1));
- d. Failure to provide information sufficient with which to properly classify its request for permit under MCL §324.32503;
- e. Applicant has failed, under MCL §324.32504(1)-(2), to provide any of the following:
 - i. Surveyed description of the lands or water area applied for;
 - ii. Surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor;

⁶⁶ *Illinois Central Rail Co*, 146 US at 453-56.

⁶⁷ *Cf. Lynch & Co v Flex Technologies Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001); and *Franks v White Pine Copper Div*, 422 Mich 636, 683-83; 375 NW2d 715 (1985).

- iii. Information related to the Applicant's status as riparian or littoral owner or occupant of property touching or situated opposite the unpatented land or water area over patented lands applied for;
- iv. Names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or those having such interests in the lands or waters applied for;
- v. Written consent of all persons having an interest in the lands or water areas applied for in the Application; and
- vi. Approval or permission for the Applicant's proposed use of such lands or water area from any (A) federal agency as provided by law; (B) the DEQ, with the advice of the Michigan Waterways Commission; and (C) the legislative body of all local units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent.

118. Furthermore, as it has operated its pipeline under the authorization granted in the 1953 Agreement, the Applicant has failed to meet the requirements of that Agreement in several respects.

- a. First, as noted in the Kiefner report cited above, numerous sections of the Line 5 pipeline have been without the necessary supports in compliance with condition A.(10), requiring such supports no more than every 75 feet. Presumably the Applicant will characterize this permit Application as an attempt to fulfill that requirement, but the schematics accompanying the permit application appear to indicate an alternate reason for the installation of these anchors (perhaps to structurally support known weaknesses or abnormalities detected in the lines, rather than to "minimize the potential of having any spans exceed 75 feet" as suggested in the Application), as they are grouped closely together in certain sections of the pipeline(s).⁶⁸
- b. Second, the Applicant has known that its operation of the Line 5 pipeline has been out of compliance with condition A.(10) since at least 2001-03.⁶⁹ Despite the Applicant's knowledge of that fact, it failed to shut-down (even on a temporary basis) the operation of Line 5 until it could come into compliance with its legal obligations under the 1953 Agreement. Therefore, the Applicant has also failed to meet the requirement of the 1953 Agreement that it "at all times shall exercise the due care of a reasonably prudent person for the safety and welfare of all persons and of all public and private

⁶⁸ See Application, *supra*, note 1, Figure 2a (proposed anchors W-11a, W-11b, W-11c, W-11d, and W-11e appear to be directly adjacent to one another, with similar clusters for W-43A, W-42A, and W-42B, and W-49, W-48A, and W-48B).

⁶⁹ See Kiefner Report, *supra*, note 18.

property....” A reasonably prudent person would have (and still should) shut down the pipeline’s operation, at least until the proper procedures for review of its safety and possible continued operation have been completed by the State of Michigan in compliance with its legal duties as trustee of the public trust inherent in the Great Lakes. At the conclusion of the time period declared for a fossil fuel pipeline’s “end of life,” especially for on in such a highly critical geographic and ecological location, a reasonably prudent person would similarly make and then publicize plans for the end of the operation of that pipeline, and its eventual decommissioning.⁷⁰

119. The Applicant has failed to show that there are no feasible and prudent alternatives to the use and occupancy of the Great Lakes bottomlands beneath the Straits of Mackinac as part of the Lakehead pipeline system.

120. Upon information and belief, the Applicant could easily accommodate the product volume in other portions of the Lakehead pipeline system it currently operates, thereby reducing the pollution, impairment, and destruction risks to (a) waters, coastal wetlands, coastal forests, riparian properties, and other aquatic and natural resources in the Straits of Mackinac, (b) interference with SMA members’ use of the those resources and riparian property rights in the Straits of Mackinac, and (c) the public’s use of those resources and the public trust therein.

Claims Asserted

121. Petitioner is aggrieved by the decision of the DEQ to allow the Applicant to improperly and unlawfully:

- a. Mischaracterized its proposed alteration of the pipeline design as “maintenance” activity;
- b. Narrowed the scope of the potential adverse impacts of the project so as to prevent a meaningful review of all existing and potential adverse environmental effects impacts caused by the proposed project under Part 325, and
- c. Narrowed the scope of review of feasible and prudent alternatives to the Applicant’s proposed activities in a manner which precludes consideration of existing feasible and prudent alternatives that are compliant with the reasonable requirements of the public health, safety, and welfare.

122. The DEQ has processed the Application without objecting to the improperly narrow scope of the proposed project’s impacts on regulated Great Lakes bottomlands.

⁷⁰ A reasonably prudent person would not continue to push the boundaries of allowable pressure for such a pipeline, seek to increase the flow and volume through that pipeline at increased risk to the public (and in the immediate aftermath of that person’s direct responsibility for the worst inland oil spill in US history), and work behind closed doors to continue operating that pipeline at the heart of the Great Lakes and in the face of mounting public pressure in order to “drive distributable cash flow” to its Canadian executives and shareholders.

123. The Application and the scope of the state’s review was improperly narrowed to “maintenance” purposes, which is incorrect as a matter of law and does not take into account the full extent of the activities required by the purpose of the permit.

124. The DEQ failed to require an occupancy agreement as required by MCL §324.32502 and §324.32503.

125. The DEQ failed to require the Applicant show the consent of adjacent landowners.

126. The Permit does not contain a finding or any evidence of an assessment that there is no likely impairment, degradation, or harm to the Straits of Mackinac from the transmission of fossil fuel products in the volumes the Applicant is utilizing after consideration of the public trust duties of the state and its requirements under the GLSLA.

127. The DEQ failed to fully analyze the potential for impairment or substantial injury to the public trust as a result of the Applicant’s proposed activity and the continued operation of the Line 5 pipeline the proposed activity will facilitate.

128. The Applicant’s project, as proposed, will or is likely to pollute, impair or destroy the natural resources of the State of Michigan.

RELIEF SOUGHT BY PETITIONER

Based on the foregoing, Petitioner respectfully requests that this Honorable Tribunal take the following actions:

1. Reverse the DEQ’s decision to grant the Applicant’s in accordance with the Great Lakes Submerged Lands Act, its associated regulations, and relevant state law⁷¹;
2. Require the Applicant to submit all required GLSLA analyses and materials as set forth in the Permit Application Deficiencies section above;
3. Require the DEQ to undertake an affirmative review and analysis of:
 - a. The risks involved in the continued operation of the Line 5 pipeline(s) as presently constituted; and
 - b. Feasible and prudent alternatives to the Applicant’s continued operation of Line 5.

⁷¹ Including, but not limited to, long-standing jurisprudence such as *Obrecht v Nat’l Gypsum Co*, 361 Mich 399, 413; 105 NW2d 143 (1960) and *Michigan State Hwy Comm’n v Vanderkloot*, 392 Mich 159, 187; 220 NW2d 416 (1974)

4. Order a temporary shut-down, or – at a minimum – a restriction of the product that the Applicant can transport through Line 5 at this location for such time as the DEQ requires in order to conduct and complete the reviews/analyses required by law and requested above.
5. Grant or order such other relief as is authorized by law, including costs and attorney fees.

OLSON, BZDOK & HOWARD, P.C.
Attorneys for Petitioner

Dated: May 18, 2018.

By: 

Ross A. Hammersley (P70105)

Rebecca L. Millican (P80869)

Attachment 1



AGENCY USE	Previous USACE File Number	Date Received 05/09/2017	DEQ File Number 2RD-DFDK-Y35G
	USACE File Number		Fee received \$ \$500.00

Validate that all parts of this checklist are submitted with the application package. Fill out application and additional pages as needed.

All items in Sections 1 through 9 are completed.

Project-specific Sections 10 through 20 are completed.

Dimensions, volumes, and calculations are provided for all impact areas.

All information contained in the headings for the appropriate Sections (1-20) are addressed, and identified attachments (➔) are included.

Map, site plan(s), cross sections; one set must be black and white on 8 ½ by 11 inch paper; photographs.

Application fee is attached.

1 Project Location Information For Latitude, Longitude, and TRS info anywhere in Michigan see www.mcgi.state.mi.us/wetlands/

Project Address (road, if no street address) Enbridge Pipelines (Lakehead), L.L.C.; Lake Michigan (all work in-water) between Upper and Lower Michigan	Zip Code NA	Municipality (Township/Village/City) NA	County Mackinac and Emmet (in Straits)
Property Tax Identification Number(s) NA	Latitude _____ N		Township/Range/Section (TRS) T 40N & 39N N or S; R 4W E or W;
Subdivision/Plat and Lot Number NA	Longitude - _____ W		Sec 24 & 10/11 OR Private Claim # _____

2 Applicant and Agent Information

Owner/Applicant (individual or corporate name) Easement - Enbridge Pipelines (Lakehead), L.L.C.	Agent/Contractor (firm name and contact person)		
Mailing Address 26 East Superior Street, Suite 309	Mailing Address		
City Duluth State MN Zip Code 55802	City	State	Zip Code
Contact Phone Number Fax 218-464-5632	Contact Phone Number	Fax	
Email shane.yokom@enbridge.com	E-mail		
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Is the applicant the sole owner of all property on which this project is to be constructed and all property involved or impacted by this project? ➔ If no, attach letter(s) of authorization from all property owners including the owner of the disposal site.			
Property Owner's Name (If different from applicant) State of Michigan (see the attached easement document [Attachment E of the Supplemental Information])	Mailing Address		
Contact Phone Number	City	State	Zip Code

3 Project Description

Project Name 2017 Line 5 Anchor Installation Project	Preapplication File Number - - -P
Name of Water body Lake Michigan	Date project staked/flagged NA

The proposed project is on, within, or involves (check all that apply)		Project Use
<input type="checkbox"/> an inland lake (5 acres or more)	<input checked="" type="checkbox"/> a Great Lake or Section 10 Waters	<input checked="" type="checkbox"/> private
<input type="checkbox"/> a pond (less than 5 acres)	<input type="checkbox"/> a wetland	<input type="checkbox"/> commercial
<input type="checkbox"/> a stream, river, ditch or drain	<input type="checkbox"/> a 100-year floodplain	<input type="checkbox"/> public/government
<input type="checkbox"/> a legally established County Drain Date Drain was established	<input type="checkbox"/> a dam	<input type="checkbox"/> project is receiving federal/state transportation funds
<input type="checkbox"/> a channel/canal	<input type="checkbox"/> a designated high risk erosion area	<input type="checkbox"/> Wetland Restoration
<input type="checkbox"/> 500 feet of an existing water body	<input type="checkbox"/> a designated critical dune area	<input type="checkbox"/> other
	<input type="checkbox"/> a designated environmental area	

Indicate the type of permit being applied for: General Permit Minor Project Individual (All other projects.) ➔ See Appendix C.

Written Summary of All Proposed Activities **Enbridge plans to conduct maintenance on its existing 20-inch-diameter Line 5 pipelines, by installing helical anchor support structures at 22 locations within the Straits of Mackinac. See the attached Supplemental Information.**

Construction Sequence and Methods **A marine infrastructure and utility contractor will be used to execute the anchor installations and the work activity will be conducted from barges. Any equipment staging will be done at existing port facilities, no temporary workspaces, or new access routes will be required for the Project. See the attached Supplemental Information.**

**4 Project Purpose, Use and Alternatives** *Attach additional sheets as necessary.*

Describe the purpose of the project and its intended use; include any new development or expansion of an existing land use.

The purpose of the project is to install 22 anchor supports on the dual pipelines to decrease the span distance at these locations. See the attached Supplemental Information.

Describe the alternatives considered to avoid or minimize resource impacts. Include factors such as, but not limited to, alternative locations, project layout and design, and construction technologies. For utility crossings include alternative routes and construction methods.

A no-build alternative would not meet the Project need. See the attached Supplemental Information.**5 Locating Your Project Site** *Attach a legible black and white map with a North arrow.*Names of roads of closest intersection **NA - work conducted entirely in water**Directions from main intersection to the project site, with distances from the best and nearest visible landmark and water body **See the attached Supplemental Information**

Description of buildings on the site (color; 1 or 2 story, other)

NA

Description of adjacent landmarks or buildings (address; color; etc)

NAHow can your site be identified if there is no visible address? **NA****6 Easements and Other Permits** No Yes Is there a conservation easement or other easement, deed restriction, lease, or other encumbrance upon the property?

➤ If yes, attach a copy. Provide copies of court orders and legal lake levels if applicable.

List all other federal, interstate, state, or local agency authorizations including required assurances for Critical Dune Area projects.

Agency	Type of Approval	Number	Date Applied	Date approved /denied	Reason for denial
U.S. Coast Guard	Notification				
Mackinac Bridge Authority	Notification				

7 Compliance

If a permit is issued, when will the activity begin? (M/D/Y)

Proposed completion date (M/D/Y)

 No Yes Has any construction activity commenced or been completed in a regulated area?

➤ If Yes, identify the portion(s) underway or completed on drawings or attach project specifications and give completion date(s).

 No Yes Were the regulated activities conducted under a DEQ and/or USACE permit?

➤ If Yes, list the permit numbers

 No Yes Are you aware of any unresolved violations of environmental law or litigation involving the property?

➤ If Yes, attach explanation.

8 Adjoining Property Owners *Provide current mailing addresses. Attach additional sheets/labels for long lists.* Established Lake Board

Contact Person

Mailing Address

City

State and Zip Code


 Lake Association

List all adjoining property owners.

If you own the adjoining lot, provide the requested information for the first adjoining parcel that is not owned by you.

Property Owner's Name	Mailing Address	City	State and Zip Code
County of Emmet	200 Division Street	Petoskey	MI 49770
City of St. Ignace	396 N. State Street	St. Ignace	MI 49781



9 Applicant's Certification		<i>Read carefully before signing.</i>	
<p>I am applying for a permit(s) to authorize the activities described herein. I certify that I am familiar with the information contained in this application; that it is true and accurate; and, to the best of my knowledge, that it is in compliance with the State Coastal Zone Management Program. I understand that there are penalties for submitting false information and that any permit issued pursuant to this application may be revoked if information on this application is untrue. I certify that I have the authority to undertake the activities proposed in this application. By signing this application, I agree to allow representatives of the DEQ, USACE, and/or their agents or contractors to enter upon said property in order to inspect the proposed activity site before and during construction and after the completion of the project. I understand that I must obtain all other necessary local, county, state, or federal permits and that the granting of other permits by local, county, state, or federal agencies does not release me from the requirements of obtaining the permit requested herein before commencing the activity. I understand that the payment of the application fee does not guarantee the issuance of a permit.</p>			
<input type="checkbox"/> Property Owner <input type="checkbox"/> Agent/Contractor <input checked="" type="checkbox"/> Corp. or Public Agency / Title	Printed Name Justin Hoffman, Supervisor, Special Projects	Signature 	Date May 9, 2017



10 Projects Impacting Inland Lakes, Streams, Great Lakes, Wetlands or Floodplains			
<ul style="list-style-type: none"> Complete only those sections A through M applicable to your project. If your project impacts wetlands also complete Section 12. If your project impacts regulated floodplains also complete Section 13. To calculate volume in cubic yards (cu yd), multiply the average length in feet (ft) times the average width (ft) times the average depth (ft) and divide by 27. Example: (25 ft long x 10 ft wide x 2 feet deep) / 27 = 18.5 cubic yards Some projects on the Great Lakes require an application for conveyance prior to Joint Permit Application completeness. <ul style="list-style-type: none"> Provide a black and white overall site plan, with cross-section and profile drawings. Show existing lakes, streams, wetlands, and other water features; existing structures; and the location of all proposed structures, land change activities and soil erosion and sedimentation control measures. Review Appendix B and EZ Guides for aid in providing complete site-specific drawings. Provide tables for multiple impact areas or multiple activities such as multiple fill areas or multiple culverts. Include your calculations. 			
Water Level Elevation			
On inland waters		<input type="checkbox"/> NAVD 88	<input type="checkbox"/> other
On a Great Lake		<input type="checkbox"/> IGLD 85	<input type="checkbox"/> converted from observed still water elevation.
<input type="checkbox"/> A. PROJECTS REQUIRING FILL (See All Sample Drawings)			
<ul style="list-style-type: none"> Attach a site plan and cross-section views to scale showing maximum and average fill dimensions with calculations. For multiple impact areas on a site provide a table with location, dimensions and volumes for each fill area. 			
Purpose	<input type="checkbox"/> bioengineered shore protection	<input type="checkbox"/> boat ramp	<input type="checkbox"/> boat well
	<input type="checkbox"/> riprap	<input type="checkbox"/> seawall	<input type="checkbox"/> swim area
		<input type="checkbox"/> bridge or culvert	<input type="checkbox"/> crib dock
Dimensions of fill (ft)		Total volume (cubic yards)	Volume below OHWM (cubic yards)
Length	Width	Maximum Depth	
Maximum water depth in fill area (ft)		Area filled (sq ft)	Will filter fabric be used under proposed fill? <input type="checkbox"/> No <input type="checkbox"/> Yes (If Yes, type)
Fill will extend	feet into the water from the shoreline and upland	feet out of the water.	
Type of clean fill	<input type="checkbox"/> peastone	% <input type="checkbox"/> sand	% <input type="checkbox"/> gravel
		% <input type="checkbox"/> other	
Source of clean fill	<input type="checkbox"/> commercial	<input type="checkbox"/> on-site	<input type="checkbox"/> other
		<input type="checkbox"/> If on-site, show location on site plan.	<input type="checkbox"/> If other, attach description of location.
<input type="checkbox"/> B. PROJECTS REQUIRING DREDGING OR EXCAVATION (See Sample Drawings)			
<ul style="list-style-type: none"> Refer to www.mi.gov/jointpermit for spoils disposal and authorization requirements. Attach a site plan and cross-section views to scale showing maximum and average dredge or excavation dimensions with calculations. For multiple impact areas on a site provide a table with location, dimensions and volumes for each dredge/excavation area. 			
Purpose	<input type="checkbox"/> boat ramp	<input type="checkbox"/> boat well	<input type="checkbox"/> bridge or culvert
	<input type="checkbox"/> navigation	<input type="checkbox"/> pond/basin	<input type="checkbox"/> maintenance dredge
		<input type="checkbox"/> other	
Dimensions (ft)		Total volume (cu yds)	Volume below OHWM (cu yds)
Length	Width	Maximum Depth	
Has this same area been previously dredged?	<input type="checkbox"/> No <input type="checkbox"/> Yes	If Yes, provide date and permit number:	
Will the previously dredged area be enlarged?	<input type="checkbox"/> No <input type="checkbox"/> Yes	If Yes, when and how much?	
Is long-term maintenance dredging planned?	<input type="checkbox"/> No <input type="checkbox"/> Yes	If Yes, how often?	
Dredge or Excavation Method <input type="checkbox"/> Hydraulic <input type="checkbox"/> Mechanical <input type="checkbox"/> other			
Spoils Disposal	Dredged or excavated spoils will be placed <input type="checkbox"/> on-site <input type="checkbox"/> landfill <input type="checkbox"/> USACE confined disposal facility <input type="checkbox"/> other upland off-site		
	For disposal, provide a <input type="checkbox"/> Detailed spoils disposal area location map and site plan with property lines. <input type="checkbox"/> Letter of authorization from property owner of spoils disposal site, if disposed off-site.		
For volumes less than 5,000 cu yards, has proposed dredge material been tested for contaminants within the past 10 years? <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> If Yes, provide test results with a map of sampling locations.			
<input type="checkbox"/> C. PROJECTS REQUIRING RIPRAP (See Sample Drawings 2, 3, 8, 12, 14, 22, and 23)			
Riprap water ward of the ordinary high water mark: dimensions (ft)			Volume(cu yd)
length	width	depth	
Riprap landward of the ordinary high water mark: dimensions (ft)			Volume(cu yd)
length	width	depth	
Type and size of riprap (inches)		Will filter fabric or pea stone be used under proposed riprap?	
<input type="checkbox"/> field stone	<input type="checkbox"/> angular rock	<input type="checkbox"/> other	<input type="checkbox"/> No <input type="checkbox"/> Yes, Type



<input type="checkbox"/> D. SHORE PROTECTION PROJECTS (See EZ Guides and Sample Drawings 2, 3, and 17. Complete Sections 10A, B, and/or C.)			
➔ For bioengineering projects include the list of native plants/seeds, if available.			
Type and length (ft)	<input type="checkbox"/> bioengineering (ft)	<input type="checkbox"/> revetment (ft)	<input type="checkbox"/> riprap (ft) <input type="checkbox"/> seawall/bulkhead (ft)
Structure is <input type="checkbox"/> new <input type="checkbox"/> repair <input type="checkbox"/> replacement of an existing structure		Will the existing structure be removed? <input type="checkbox"/> No <input type="checkbox"/> Yes	
Proposed Toe Stone (linear feet)		Distance of project from adjacent property lines (ft)	
Distance of project from an obvious fixed structure (example - 50 ft from SW corner of house)			
For bioengineering projects indicate the structure type <input type="checkbox"/> brush bundles <input type="checkbox"/> coir log <input type="checkbox"/> live stakes <input type="checkbox"/> tree revetment <input type="checkbox"/> other			
<input type="checkbox"/> E. DOCK - PIER – MOORING PILINGS (See Sample Drawing 10)			
➔ Attach a copy of the property legal description, mortgage survey, or a property boundary survey report.			
Dock Type <input type="checkbox"/> open pile <input type="checkbox"/> filled <input type="checkbox"/> crib <input type="checkbox"/> floating <input type="checkbox"/> cantilevered <input type="checkbox"/> spring piles <input type="checkbox"/> piling clusters <input type="checkbox"/> other			
Is the structure within the applicant's riparian area interest area? <input type="checkbox"/> No <input type="checkbox"/> Yes ➔ Show parcel property lines on the site plan.			
Proposed structure dimensions (ft) length width		Use <input type="checkbox"/> private <input type="checkbox"/> public <input type="checkbox"/> commercial	
Dimensions of nearest adjacent structures (ft) length width		Distance of dock from adjacent property lines (ft)	
<input type="checkbox"/> F. BOAT WELL (See EZ Guide. Complete Sections 10A and 10B)			
Dimensions (ft) length width depth		Number of boats	
Type of sidewall stabilization <input type="checkbox"/> concrete <input type="checkbox"/> riprap <input type="checkbox"/> steel <input type="checkbox"/> vinyl <input type="checkbox"/> wood <input type="checkbox"/> other			
Volume of backfill behind sidewall stabilization (cu yd)		Distance of boat well from adjacent property lines (ft)	
<input type="checkbox"/> G. BOAT RAMP (See EZ Guide. Complete sections 10A, 10B, and 10C for mattress and pavement fill, dredge, and riprap)			
Type <input type="checkbox"/> new <input type="checkbox"/> existing <input type="checkbox"/> maintenance/improvement		Use <input type="checkbox"/> private <input type="checkbox"/> public <input type="checkbox"/> commercial	
Existing overall boat ramp dimensions (ft) length width depth		Type of construction material <input type="checkbox"/> concrete <input type="checkbox"/> wood <input type="checkbox"/> stone <input type="checkbox"/> other	
Proposed overall ramp dimensions (ft) length width depth		Proposed ramp dimensions (ft) below ordinary high water mark length width depth	
Number of proposed skid piers	Proposed skid pier dimensions (ft) length width		Distance of ramp from adjacent property lines (ft)
<input type="checkbox"/> H. BOAT HOIST – ROOFS (See EZ Guide)			
Type <input type="checkbox"/> cradle <input type="checkbox"/> side lifter <input type="checkbox"/> other		Located on <input type="checkbox"/> seawall <input type="checkbox"/> dock <input type="checkbox"/> bottomlands	
Hoist dimensions, including catwalks (ft) length width			
Area occupied, including cat walks (sq ft)		Distance of hoist from adjacent property lines (ft)	
Permanent Roof <input type="checkbox"/> No <input type="checkbox"/> Yes ➔ If Yes, how is the roof supported?		Maximum Roof Dimensions (ft): length width height	
<input type="checkbox"/> I. BOARDWALKS and DECKS in WETLANDS or FLOODPLAINS (See Sample Drawings 5 and 6. Complete Sections 12 and/or 13)			
➔ Provide a table for multiple boardwalks and decks proposed in one project; include locations and dimensions.			
Wetlands		Floodplains	
Boardwalk <input type="checkbox"/> on pilings <input type="checkbox"/> on fill	Deck <input type="checkbox"/> on pilings <input type="checkbox"/> on fill	Boardwalk <input type="checkbox"/> on pilings <input type="checkbox"/> on fill	Deck <input type="checkbox"/> on pilings <input type="checkbox"/> on fill
Dimensions (ft) length width	Dimensions (ft) length width	Dimensions (ft) length width	Dimensions (ft) length width
<input type="checkbox"/> J. INTAKE PIPES (See Sample Drawing 16) or OUTLET PIPES (See Sample Drawing 22)			
If outlet pipe, discharge is to <input type="checkbox"/> inland lake <input type="checkbox"/> stream, drain or river <input type="checkbox"/> overland flow <input type="checkbox"/> Great Lake <input type="checkbox"/> wetland <input type="checkbox"/> other			
Number of pipes	Pipe diameters and invert elevations	Does pipe discharge below the OHWM?	<input type="checkbox"/> No <input type="checkbox"/> Yes
		Is the water treated before discharge?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Type <input type="checkbox"/> headwall <input type="checkbox"/> end section <input type="checkbox"/> other		Dimensions of headwall OR end section (ft) length width height	



<input type="checkbox"/> K. MOORING and NAVIGATION BUOYS (See EZ Guide for Sample Drawing)			
➔ Provide a site plan showing the distances between each buoy and from the shore to each buoy, and depth (ft) of water at each location. ➔ Provide cross-section drawing(s) showing anchoring system(s) and dimensions.			
Purpose of buoy <input type="checkbox"/> mooring <input type="checkbox"/> navigation <input type="checkbox"/> scientific structures <input type="checkbox"/> swimming <input type="checkbox"/> other			
Number of buoys	Dimensions of buoys (ft)		Boat Lengths
	width	height	swing radius
			chain length
Buoy Location: Latitude . N Longitude -- . W. ➔ Provide a table for multiple buoys.			
Do you own the property along the shoreline?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➔ If No, attach an authorization letter from the property owner(s).
Do you own the bottomlands?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➔ If No, attach an authorization letter from the property owner(s).
<input type="checkbox"/> L. FENCES			
➔ Provide an overall site plan showing the proposed fencing through streams, wetlands or floodplains. ➔ Provide a drawing of fence profile showing the design, dimension, post spacing, mesh, and distance from ground to bottom of fence.			
Purpose of fence <input type="checkbox"/> Airport <input type="checkbox"/> Cervidae <input type="checkbox"/> Livestock <input type="checkbox"/> Residential <input type="checkbox"/> Security <input type="checkbox"/> Other			
Total length (ft) of fence through		Fence height (ft)	Fence type and material
streams wetlands floodplains			
<input type="checkbox"/> M. OTHER - e.g., structure removal, maintenance or repair, aerator, dry fire hydrant, gold prospecting, habitat structures, scientific measuring devices, soil borings, or survey activities.			
Structure description, dimensions and volumes. Complete Sections 10A-C as applicable.			
11 Expansion of an Existing or Construction of a New Lake or Pond (See Sample Drawings 4 and 15)			
➔ Complete Section 10J for outlets and Section 17 for water control structures. ➔ Provide elevations, cross-sections and profiles of outlets, dams, dikes, water control structures and emergency spillways to nearest water bodies.			
Which best describes your proposed water body use (check all that apply)			
<input type="checkbox"/> mining <input type="checkbox"/> recreation <input type="checkbox"/> storm water retention basin <input type="checkbox"/> wastewater basin <input type="checkbox"/> wildlife <input type="checkbox"/> other			
Water source for lake/pond			
<input type="checkbox"/> groundwater <input type="checkbox"/> natural springs <input type="checkbox"/> Inland Lake or Stream <input type="checkbox"/> storm water runoff <input type="checkbox"/> pump <input type="checkbox"/> sewage <input type="checkbox"/> other			
Location of the lake/basin/pond <input type="checkbox"/> floodplain <input type="checkbox"/> wetland <input type="checkbox"/> stream (inline) <input type="checkbox"/> upland			
Maximum dimensions (ft)		Maximum Area: <input type="checkbox"/> acres <input type="checkbox"/> sq ft	
length	width	depth	
Has the there been a hydrologic study performed on the site?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➔ If Yes, provide a copy.
Has the DEQ conducted a wetland assessment for this parcel?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➔ If Yes, provide a copy or WIP number:
Has a professional wetland delineation been conducted for this parcel?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➔ If Yes, provide a copy with data sheets.
Spoils Disposal	Dredged or excavated spoils will be placed <input type="checkbox"/> on-site <input type="checkbox"/> landfill <input type="checkbox"/> USACE confined disposal facility <input type="checkbox"/> other upland off-site For disposal, provide a ➔ Detailed spoils disposal area location map and site plan with property lines. ➔ Letter of authorization from property owner of spoils disposal site, if disposed off-site.		



12 Activities That May Impact Wetlands (See Sample Drawings 8 & 9). Complete other Sections as applicable.

- Locate your site and wetland information with the DEQ Wetlands Map Viewer at www.mcgi.state.mi.us/wetlands/
- For information on the DEQ's Wetland Identification Program (WIP) visit www.mi.gov/wetlands.
 - Provide a detailed site plan with labeled property lines, upland and wetland areas, and dimensions and volumes of wetland impacts.
 - Complete the wetland dredge and wetland fill dimension information below for each impacted wetland area.
 - Attach tables for multiple impact areas or activities.
 - Attach at least one cross-section for each wetland dredge and/or fill area; show wetland and upland boundaries on the cross-section.

Has the DEQ conducted a wetland assessment for this parcel?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, provide a copy or WIP number:	
Has a professional wetland delineation been conducted for this parcel?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, provide a copy with data sheets	
Is there a recorded DEQ easement on the property?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, provide the easement number	
Did the applicant purchase the property before October 1, 1980?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, provide documentation.	
Is any grading or mechanized land clearing proposed?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, label the locations on the site plan.	
Has any of the proposed grading or mechanized land clearing been completed?		<input type="checkbox"/> No <input type="checkbox"/> Yes	➤ If Yes, label the locations on the site plan	
Proposed Activity				
<input type="checkbox"/> boardwalk or deck (Section 10I)		<input type="checkbox"/> bridges and culverts (Section 14)	<input type="checkbox"/> designated environmental area	
<input type="checkbox"/> dewatering		<input type="checkbox"/> draining surface water	<input type="checkbox"/> driveway / road	
<input type="checkbox"/> fences (Section 10L)		<input type="checkbox"/> fill or dredge	<input type="checkbox"/> restoration	
<input type="checkbox"/> septic system		<input type="checkbox"/> stormwater discharge (Section 10J)	<input type="checkbox"/> other	
FILL	Dimensions	Area	Average depth (ft)	Volume (cu yd)
	maximum length (ft) maximum width (ft)	<input type="checkbox"/> acres <input type="checkbox"/> sq ft		
DREDGE	Dimensions	Area	Average depth (ft)	Volume (cu yd)
	maximum length (ft) maximum width (ft)	<input type="checkbox"/> acres <input type="checkbox"/> sq ft		
Spoils Disposal	Dredged or excavated spoils will be placed <input type="checkbox"/> on-site <input type="checkbox"/> landfill <input type="checkbox"/> USACE confined disposal facility <input type="checkbox"/> other upland off-site			
	For disposal, provide a ➤ Detailed spoils disposal area location map and site plan with property lines. ➤ Letter of authorization from property owner of spoils disposal site, if disposed off-site.			
Septic System	The proposed project will be serviced by: <input type="checkbox"/> public sewer <input type="checkbox"/> private septic system ➤ Show system on plans.		If a private septic system is proposed, has an application for a permit been made to the County Health Department? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, has a permit been issued? <input type="checkbox"/> No <input type="checkbox"/> Yes ➤ Provide a copy of the permit.	
	Describe the wetland impacts, the proposed use or development, and the alternatives considered:			
Does the project impact more than 1/3 acre of wetland? <input type="checkbox"/> No <input type="checkbox"/> Yes ➤ If Yes, submit a Mitigation Plan with the type and amount of mitigation proposed. For more information go to www.mi.gov/wetlands				
Describe how impacts to waters of the United States will be avoided and minimized:				
Describe how the impact to waters of the United States will be compensated. OR Explain why compensatory mitigation should not be required for the proposed impacts.				



13 Floodplain Activities (See Sample Drawing 5 and others. Complete other applicable sections.)

- For more information go to www.mi.gov/floodplainmanagement. This site also lists the projects and requirements for an expedited floodplain review under "Expedited Review Information for Minor Floodplain Projects."
- Examples of projects proposed within the non-floodway portions of the 100-year-floodplain which may qualify for an expedited review: Open pile decks and boardwalks; residences, commercial/industrial facilities, garages and accessory structures; parking lots; pavilions, gazebos, large community playground structures; residential swimming pools
- Examples of projects proposed within the floodway portions of the floodplain which may qualify for an expedited review: Open pile decks and boardwalks, (non-enclosed) that are anchored to prevent floatation and that do not extend over the bed and bank of a watercourse; parking lots constructed at grade or resurfacing that is no more than 4 inches above the existing grade; dry hydrants that do not require fill placement; scientific structure such as staff gauges, water monitoring devices, water quality testing devices, and core sampling devices which meet specific design criteria and fish structures that meet specific design criteria.
- For expedited review include:
 - Photographs of the work site labeled to identify what is being shown and with the direction of the photo clearly indicated. Include photographs of any river or stream adjacent to the project.
 - A letter or statement from the local unit of government acknowledging your proposed application. See the website for sample wording.
- A hydraulic analysis or hydrologic analysis may be required to fully assess floodplain impacts.
- The state building code requires an Elevation Certificate for any building construction or addition in a floodplain. A sample form can be found at www.fema.gov/nfip/elvinst.shtm.
 - Attach additional sheets or tables for multiple proposed floodplain activities and provide hydraulic calculations.
 - Show reference datum used on plans.

Proposed Activity	<input type="checkbox"/> fill <input type="checkbox"/> excavation or cut <input type="checkbox"/> other	100-year floodplain elevation (ft) (if known) Datum <input type="checkbox"/> NGVD 29 <input type="checkbox"/> NAVD 88 <input type="checkbox"/> other
-------------------	--	---

Site is _____ feet above ordinary high water mark (OHWM) OR observed water level. Date of observation (M/D/Y)

Fill volume below the 100-year floodplain elevation (cu yds)	Compensating cut volume below the 100-year floodplain elevation (cu yds)
--	--

Buildings and/or Additions	Type of construction is <input type="checkbox"/> residential <input type="checkbox"/> garage/pole barn <input type="checkbox"/> non residential <input type="checkbox"/> other	
	Construction is <input type="checkbox"/> new <input type="checkbox"/> addition AND Serviced by <input type="checkbox"/> public sewer <input type="checkbox"/> private septic <input type="checkbox"/> other	
	Lowest adjacent grade (ft): existing _____ proposed _____ datum <input type="checkbox"/> NGVD 29 <input type="checkbox"/> NAVD 88 <input type="checkbox"/> other	
	Existing Structure Information	Proposed Structure Information
	Foundation type <input type="checkbox"/> basement <input type="checkbox"/> concrete slab on grade <input type="checkbox"/> pilings <input type="checkbox"/> crawl space <input type="checkbox"/> other	Foundation type <input type="checkbox"/> basement <input type="checkbox"/> concrete slab on grade <input type="checkbox"/> pilings <input type="checkbox"/> crawl space <input type="checkbox"/> other
	Foundation floor elevation (ft)	Foundation floor elevation (ft)
	Height of crawl space/basement from finished foundation floor to bottom of floor joists (ft)	Height of crawl space/basement from finished foundation floor to bottom of floor joists (ft)
	Elevation of 1st floor above basement floor/crawl space (ft)	Elevation of 1st floor above basement floor/crawl space (ft)
	For enclosed areas below the flood elevation, such as a crawl space, garages and accessory structures: Area of proposed foundation (sq ft) Elevation of proposed enclosed area (ft) datum <input type="checkbox"/> NGVD 29 <input type="checkbox"/> NAVD 88 <input type="checkbox"/> other	
	Number of flood vents	net opening of each vent (sq inches)



14	Bridges and Culverts Including Foot and Cart Bridges. (See EZ Guides and Sample Drawings 5, 14A, 14B, 14C, 14D.)			
<ul style="list-style-type: none"> • Complete other applicable Sections, including 10A-C. • A hydraulic analysis or hydrologic analysis may be required to fully assess impacts. → Attach hydraulic calculations. • High Water Elevation - describe reference point and highest known water level above or below reference point and date of observation. <ul style="list-style-type: none"> → Attach additional sheets for multiple bridges and/or culverts. → Provide detailed site-specific drawings of existing and proposed Plan and Elevation View at a scale adequate for detailed review. → Provide all information in the boxes below; do not write in a reference to plan sheets. Show reference datum used on plans. 				
Stream Information	The site has a high water elevation (ft) <input type="checkbox"/> above or <input type="checkbox"/> below the Reference Point of _____ Date observed _____			
	Reference datum used <input type="checkbox"/> NGVD 29 <input type="checkbox"/> NAVD 88 <input type="checkbox"/> IGLD 85 (Great Lakes coastal areas) <input type="checkbox"/> other			
	Average stream width (ft) at the ordinary high water mark (OHWM) outside the influence of any ponding or scour holes around the structure		Upstream _____ Downstream _____	
	Cross-sectional area of primary channel (sq ft) _____ (See Sample Drawing 14C for more information)			
	The width of the stream where the water begins to overflow its banks. Bankfull width (ft)			
	The invert of the stream 100-feet from structure (ft)		Upstream _____ Downstream _____	
	Is the existing culvert perched? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, provide a profile of the channel bottom at the high and low points for a distance of 200 feet upstream and downstream of the culvert.			
Complete this form for each bridge / culvert location.			Existing	Proposed
Bridge	Number of bridge spans			
	Bridge type (concrete box beam, concrete I-beam, timber, etc.)			
	Bridge span (length perpendicular to stream) (ft)			
	Bridge width (parallel to stream) (ft)			
	Bottom of bridge beam (ft)		Upstream _____ Downstream _____	
	Stream invert elevation at bridge (ft)		Upstream _____ Downstream _____	
	Bridge rise from bottom of beam to streambed (ft)			
	Culvert	Number of culverts		
Culvert type (arch, bottomless, box, circular, elliptical, etc.)				
Culvert material (concrete, corrugated metal, plastic, etc.)				
Culvert length (ft)				
Culvert <input type="checkbox"/> width <input type="checkbox"/> diameter (ft)				
Culvert height prior to any burying (ft)				
Depth culvert will be buried (ft)				
Elevation of culvert crown (ft)		Upstream _____ Downstream _____		
Higher elevation of <input type="checkbox"/> culvert invert OR <input type="checkbox"/> streambed within culvert (ft)		Upstream _____ Downstream _____		
Complete for both Bridges and Culverts		Entrance design (mitered, projecting, wingwalls, etc.)		
	Total structure waterway opening above streambed (sq ft)			
	Total structure waterway area below the 100-year elevation (sq ft) (if known)			
	Elevation of road grade at structure (ft)			
	Elevation of low point in road (ft)			
	Distance from low point of road to mid-point of bridge crossing (ft)			
	Length of approach fill from edge of bridge/culvert to existing grade (ft)			
	<p>A Licensed Professional Engineer may certify that your project will not cause a harmful interference for a range of flood discharges up to and including the 100-year flood discharge. The "Required Certification Language" is found under "forms" on the "maps, forms and documents" link from the www.mi.gov/jointpermit page or a copy may be requested by phone, email, or mail. A hydraulic report supporting this certification may also be required.</p> <p>Is Certification Language attached? <input type="checkbox"/> No <input type="checkbox"/> Yes</p>			



15 Stream, River, or Drain Construction , Relocation and Enclosure Activities

- Complete Section 10C for riprap activities.
- If side casting or other proposed activities will impact wetlands or floodplains, complete Sections 12 and 13, respectively.
 - ➔ Provide a scaled overall site plan showing existing lakes, streams, wetlands, and other water features; existing structures; and the location of all proposed structures and land change activities.
 - ➔ Provide scaled cross-section (elevation) drawings necessary to clearly show existing and proposed conditions.
 - ➔ For activities on legally established county drains, provide original design and proposed dimensions and elevations.

Stream Information	Water elevation (ft) datum <input type="checkbox"/> NGVD 29 <input type="checkbox"/> NAVD 88 <input type="checkbox"/> IGLD 85 (Great Lakes coastal areas) <input type="checkbox"/> other	
	➔ Show elevation on plans with description.	
	Dimensions (ft) of existing stream/drain channel (ft)	length width depth
Existing channel average water depth in a normal year (ft)		
Proposed Activity <input type="checkbox"/> enclosure <input type="checkbox"/> improvement <input type="checkbox"/> maintenance <input type="checkbox"/> new drain <input type="checkbox"/> relocation <input type="checkbox"/> wetlands <input type="checkbox"/> other		
If an enclosed structure is proposed, check material type <input type="checkbox"/> concrete <input type="checkbox"/> corrugated metal <input type="checkbox"/> plastic <input type="checkbox"/> other		
Dimensions (ft) of the structure: diameter length		Volume of fill (cu yds)
Will old/enclosed stream channel be backfilled to top of bank grade? <input type="checkbox"/> No <input type="checkbox"/> Yes		
Length of channel to be abandoned (ft)		Volume of fill (cu yds)
Dimensions (ft) of improved, maintained, new, relocated or wetland stream/drain channel. length width depth		Volume of dredge/excavation (cu yds)
How will slopes and bottom be stabilized?		Proposed side slopes (vertical / horizontal)
Spoils Disposal	Dredged or excavated spoils will be placed <input type="checkbox"/> on-site <input type="checkbox"/> landfill <input type="checkbox"/> USACE confined disposal facility <input type="checkbox"/> other upland off-site	
	For disposal, provide a ➔ Detailed spoils disposal area location map and site plan with property lines. ➔ Letter of authorization from property owner of spoils disposal site, if disposed off-site.	

16 Drawdown of an Impoundment

- If wetlands will be impacted, complete Section 12.

Type of drawdown <input type="checkbox"/> over winter <input type="checkbox"/> temporary <input type="checkbox"/> one-time event <input type="checkbox"/> annual event <input type="checkbox"/> permanent (dam removal) <input type="checkbox"/> other		
Reason for drawdown		
Has there been a previous drawdown? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, provide date (M/D/Y)		Previous DEQ permit number, if known
Does waterbody have established legal lake level? <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Not Sure		Dam ID Number, if known
Extent of vertical drawdown (ft)	Impoundment design head (ft)	Number of adjoining or impacted property owners
Date drawdown would start (M/D/Y)	Date drawdown would stop (M/D/Y)	Rate of drawdown (ft/day)
Date refilling would start (M/D/Y)	Date refill would end (M/D/Y)	Rate of refill (ft/day)
Type of outlet discharge structure to be used <input type="checkbox"/> surface <input type="checkbox"/> bottom <input type="checkbox"/> mid-depth	Impoundment area at normal water level (acres)	Sediment depth behind impoundment discharge structure (ft)



17 Dam, Embankment, Dike, Spillway, or Control Structure Activities (See Sample Drawing 15)

- For more information go to www.mi.gov/damsafety. If wetlands will be impacted, complete Section 12.
- Information on removing a dam is available at www.mi.gov/damsafety and following the Related Link –Dam Management.
 - ➔ Attach detailed signed and sealed engineering plans for a Part 315 dam repair, dam alteration, dam abandonment, or dam removal.
 - ➔ Part 315 Dam Safety application fees are added to all other application fees.
 - ➔ Mail applications for dams regulated under Part 315 to DEQ, WRD, P.O. BOX 30458, LANSING, MI 48909-7958, attention Dam Safety.

Proposed Activity	<input type="checkbox"/> abandonment	<input type="checkbox"/> alteration	<input type="checkbox"/> enlargement of an existing dam
	<input type="checkbox"/> removal	<input type="checkbox"/> repair	<input type="checkbox"/> reconstruction of a failed dam
	<input type="checkbox"/> new dam construction	<input type="checkbox"/> other	

Dam ID Number, if known	Type of outlet discharge structure <input type="checkbox"/> surface <input type="checkbox"/> bottom <input type="checkbox"/> mid-depth
-------------------------	--

Will proposed activities require a drawdown of the waterbody to complete the work? No Yes ➔ If Yes, complete Section 16.

Structural height (difference between embankment top elevation and streambed elevation at downstream embankment toe) (ft) _____

Hydraulic Height (difference between design flood elevation and streambed elevation at downstream embankment toe) (ft) _____	Impoundment size at design flood elevation (acres) _____
--	--

Does dam meet the criteria for regulation under Part 315? (i.e. hydraulic height of 6 feet or more and an impoundment size at the design flood of 5 surface acres or more) No Yes

Dredging/excavation volume (cu yd)	Fill volume (cu yd)	Riprap volume (cu yd)
------------------------------------	---------------------	-----------------------

Will a water diversion during construction be required? No Yes

If Yes, describe how the stream flow will be controlled through the dam construction area during the proposed project activities:

Complete the following for a new dam, reconstruction of a failed dam or enlargement of an existing dam

For Part 315 regulated dams, the following must be attached:

- ➔ Site-specific conceptual plans of the dam for resource impact review (An engineering report and detailed engineering plans are not required until the project has been determined to be permissible).
- ➔ A description and evaluation of the loss of natural resources associated with the project.
- ➔ A description of the natural resources that are associated with or created by the impoundment and how they offset the natural resources lost by the creation of the impoundment.
- ➔ An assessment of all known existing and potential adverse effects within the scope of the project.

Embankment dimensions	length (ft)	top width (ft)	bottom width (ft)	slopes (vertical / horizontal)	Upstream Downstream
-----------------------	-------------	----------------	-------------------	--------------------------------	------------------------

Have soil borings been taken at dam location? No Yes ➔ If Yes, attach results.

Do you have flowage rights to all proposed flooded property at the design flood elevation? No Yes ➔ If No, provide a letter of authorization from the property owner.

Applications for Part 315 regulated dam removal projects must also include the following:

- An evaluation of the capacity of the remaining structure to pass flood flows.
- An evaluation of the quantity and quality of the sediments behind the impoundment.
- A description of the methods to be employed to control sediments.
- An assessment of all known existing and potential adverse impacts within the scope of the project.



18 Utility Crossings (See Sample Drawings 12 and 13, and EZ Guide)

- If side casting is proposed, complete Sections 10A and 10B. If spoils will be placed in or impact wetlands, complete Section 12.
 - ➔ Attach additional sheets or tables with the requested information as needed for multiple crossings.
 - ➔ For wetland crossings using the open trench method show clay plugs at the wetland/upland boundaries on the plans.

Crossing of Inland Lake or Stream floodplain Great Lake wetlands (also complete Section 12)

What method will be used to construct the crossings? directional boring jack and bore open trench plow / knife flume

Utility Type	Number of lake or stream crossings	Number of wetland crossings	Pipe diameter with casing (in)	Pipe length per crossing (ft)	Distance below streambed or wetland (in)	Trench width (ft)
<input type="checkbox"/> sanitary sewer						
<input type="checkbox"/> storm sewer						
<input type="checkbox"/> watermain						
<input type="checkbox"/> cable						
<input type="checkbox"/> electric						
<input type="checkbox"/> fiber optic cable						
<input type="checkbox"/> oil/gas pipeline						

19 Marina Construction, Expansion and Reconfiguration (See Sample Drawing 21)

- For more information go to www.mi.gov/marinas
- Marinas located on the Great Lakes, including Lake St. Clair, may be required to secure leases or conveyances from the state of Michigan to place structures on the bottomlands. If a conveyance is necessary, an application must be submitted before the Joint Permit Application can be determined complete.
 - ➔ Fully complete Section 10 E. For multiple structures provide a table with the requested information.
 - ➔ Enclose a copy of any current pump-out agreement with another marina facility, if on-site sanitary pump out facilities are not available.
 - ➔ Attach a copy of the property legal description, mortgage survey, or a property boundary survey to your application.
 - ➔ The WRD may require a riparian interest area (RIA) estimate survey, sealed by a licensed surveyor, in order to determine whether the proposed project will adversely impact riparian rights. Include any available sealed RIA estimate survey and/or written authorizations from affected adjoining riparian owners with your application.

Proposed Marina Activity New construction Expansion Reconfiguration

Do you have an existing Great Lake Conveyance? No Yes For more information visit www.mi.gov/deqgreatlakes.

Are sanitary pump-out facilities available? No Yes Is there a pump out agreement? No Yes If Yes, provide a copy.

Marina Description	Current Count	Final Count
Number of boat slips/wells (do not include broadside dockage or mooring buoys)		
Lineal feet of broadside dockage		
Maximum number of boats at broadside dockage		
Number of mooring buoys		
Number of launch ramps/lanes		



20 Critical Dune Areas and High Risk Erosion Areas (See Sample Drawings 19 and 20)

Critical Dune Areas (See Sample Drawing 20)

- Although not required, submitting **PHOTOGRAPHS** of the site may provide for a faster application review.
- For more information go to www.mi.gov/jointpermit, select "Sand Dune Protection" under "Related Links."
- All property boundaries and proposed structure corners, including decks, septic systems, water wells, driveways, grading, and terrain alteration locations must be staked before the WRD site inspection.
- Scaled overhead and cross-section plans must include all property boundaries, locations, and dimensions of all existing structures and impacted areas, and all proposed structures, terrain alterations, and construction access. Cross-sections must show existing and proposed grades, including foundations.
- Construction in critical dune areas on slopes greater than 33 percent (1 vertical: 3 horizontal) is prohibited without a special exception.
- Construction in critical dune areas on slopes that measure from 25 percent (1 vertical: 4 horizontal) to less than 33 percent requires sealed plans prepared by a registered architect or licensed professional engineer.

High Risk Erosion Areas (See Sample Drawing 19)

- For more information go to www.mi.gov/jointpermit, select "HREA" under "Related Links."
- All property boundaries, proposed structure corners, and septic system locations must be staked before the WRD site inspection.
- Scaled overhead plans must include all property boundaries, and the location and dimensions of all structures and septic systems must be included.
- Additional information, including the building construction plans, may be required to complete the application review.

Critical Dune Areas	Parcel dimensions (ft) width depth		Date project staked (M/D/Y)	
	Property is a <input type="checkbox"/> platted lot <input type="checkbox"/> unplatted parcel		Year current property boundaries created	
	Dune habitat present in Building Site and access route (check all that apply): <input type="checkbox"/> Wooded <input type="checkbox"/> Open Dune <input type="checkbox"/> Shrubs <input type="checkbox"/> Bare Sand <input type="checkbox"/> Lakefront Lot <input type="checkbox"/> MNFI Community if known: _____			
	Type of construction activities <input type="checkbox"/> addition <input type="checkbox"/> driveway <input type="checkbox"/> garage <input type="checkbox"/> new home <input type="checkbox"/> renovation <input type="checkbox"/> septic <input type="checkbox"/> deck(s) <input type="checkbox"/> other			
	<input type="checkbox"/> Provide a sand relocation plan with location and dimensions of disposal area. Indicate <input type="checkbox"/> on-site OR <input type="checkbox"/> off-site If on-site show location and how the disposal site will be accessed on the plans. Indicate the depth of the disposed sand on the plans.			
	<input type="checkbox"/> Provide the permit or letter from the County Enforcing Agent stating the project complies with Part 91 (Soil Erosion and Sedimentation Control).			
	The proposed project will be serviced by <input type="checkbox"/> public sewer <input type="checkbox"/> private septic system. ➔ On the plans, show the location and dimensions of the private septic system. If a private septic system is proposed, has a permit been issued by the health department? <input type="checkbox"/> No <input type="checkbox"/> Yes ➔ If Yes, provide a copy of the permit for all Critical Dune Area projects.			
	<input type="checkbox"/> Provide a copy of the vegetation assurance letter. <input type="checkbox"/> Provide a re-vegetation plan, including # _____ of trees to be removed and # _____ of trees to be replanted.			
	Proposed Utility Installation		Proposed New Construction	
	Utility Installation Method <input type="checkbox"/> directional bore <input type="checkbox"/> plowing in <input type="checkbox"/> open trench <input type="checkbox"/> other		Foundation type <input type="checkbox"/> concrete slab <input type="checkbox"/> pilings <input type="checkbox"/> crawl space <input type="checkbox"/> other	
	➔ Show utility locations and dimensions on the site plan.		Area of existing structure (sq ft)	
	➔ Show construction access route on the site plan.		Area of proposed structure (sq ft)	
	➔ Show existing and proposed grades on the cross-section.		Area of existing deck (sq ft)	
	➔ Show locations of vegetation to be removed on the site plan.		Area of proposed deck (sq ft)	
Provide the following information for special use projects: (a) Lot size, width, density, and front and side setbacks. (b) Storm water drainage that provides for disposal of drainage water without serious erosion. (c) Methods for controlling erosion from wind and water. (d) Re-stabilization plan. (e) Environmental Impact Statement.				



High Risk Erosion Areas	Parcel dimensions (ft) width depth		Date project staked (M/D/Y)	
	Existing Structure Information		Proposed New Construction	
	Foundation type <input type="checkbox"/> basement <input type="checkbox"/> concrete slab <input type="checkbox"/> pilings <input type="checkbox"/> crawl space <input type="checkbox"/> other		Foundation type <input type="checkbox"/> basement <input type="checkbox"/> concrete slab <input type="checkbox"/> pilings <input type="checkbox"/> crawl space <input type="checkbox"/> other	
	Material above foundation wall <input type="checkbox"/> block <input type="checkbox"/> log <input type="checkbox"/> stud frame <input type="checkbox"/> other		Material above foundation wall <input type="checkbox"/> block <input type="checkbox"/> log <input type="checkbox"/> stud frame <input type="checkbox"/> other	
	Siding material <input type="checkbox"/> block <input type="checkbox"/> vinyl <input type="checkbox"/> wood <input type="checkbox"/> other		Siding material <input type="checkbox"/> block <input type="checkbox"/> vinyl <input type="checkbox"/> wood <input type="checkbox"/> other	
	Area of the foundation, excluding attached garage (sq ft)		Area of the foundation, excluding attached garage (sq ft)	
	Area of the garage foundation (sq ft)		Area of the garage foundation (sq ft)	
	If renovating or restoring an existing structure, indicate the renovation or restoration cost \$			
	Current structure replacement value \$			
	Tax assessed value of existing structure excluding land value \$		Assessment Year	
Provide the number of individual living units in the proposed building				



Enbridge Pipelines (Lakehead) L.L.C.

MDEQ/USACE JOINT PERMIT APPLICATION 2017 Line 5 Anchor Installation Project

Supplemental Information

PRESENTED BY MERJENT, INC.
May 9, 2017

**Supplemental Information
Enbridge Pipelines (Lakehead) L.L.C.
2017 Line 5 Anchor Installation Project
Mackinac and Emmet Counties, Michigan**

PROJECT SUMMARY

3 – Proposed Activities and Construction Methods

Enbridge Pipelines (Lakehead) L.L.C. (Enbridge) is planning to conduct maintenance on its existing dual 20-inch-diameter pipelines beneath the Straits of Mackinac. Enbridge is proposing to install anchors at 22 locations along the pipelines to decrease the span distances at these locations.

Enbridge, considering the history of previous anchor installation work, is seeking authorization to complete this project from the Michigan DEQ under Act 451, Section 325 and from USACE under Nationwide Permit 3.

Project activities will involve the installation of a helical anchoring system with saddle mounts around the pipeline in each of the proposed locations. The 22 anchors will be augured directly into the lake bed using 10-inch-diameter screws (total of 44 screws). The total lake bottom impact will be approximately 9 cubic yards considering the number and dimensions of the screws to be installed. The proposed locations for installation of the anchors are provided in Figures 1, 2, and 3 in Attachment A. Attachment B contains typical drawings depicting the auguring apparatus, as well as equipment that will be utilized for installation. Attachment C contains the anchor installation methodology.

A marine infrastructure and utility contractor, working from barges, will be used to complete the anchor installation. No new on-land staging, temporary workspaces, or new access routes will be required for the Project. The Project is scheduled to begin in July 2017 and is expected to take approximately 3 weeks, depending on weather.

Once selected, the contractor will prepare a safety plan and an environmental protection plan for this work activity. In the unlikely event of pipeline damage during this project, Enbridge will implement a repair plan and if needed follow the company Integrated Contingency Plan and Straits Tactical Response Plan.

4 – Project Purpose, Use and Alternatives

As part of an ongoing pipeline integrity and maintenance program, Enbridge monitors the length of pipeline spans on Line 5 to ensure that the dual pipelines are adequately supported and compliant with the State of Michigan easement agreement (Attachment D).

**Supplemental Information
Enbridge Pipelines (Lakehead) L.L.C.
2017 Line 5 Anchor Installation Project
Mackinac and Emmet Counties, Michigan**

All 22 proposed anchors to be installed in 2017 are preventative and proactive in nature to minimize the potential of having any spans exceed 75 feet in the interim until the next underwater inspection is completed in 2018.

This Project is pipeline maintenance and is not associated with a new utility installation. The proposed activities are for the sole purpose of maintaining the previously authorized pipelines, and are consistent with those activities authorized under the recently reissued Nationwide Permit 3. The method of anchor installation is anticipated to incur no environmental impacts. The no-build alternative presents a future potential that the pipelines may exceed easement span distances between visual inspections.

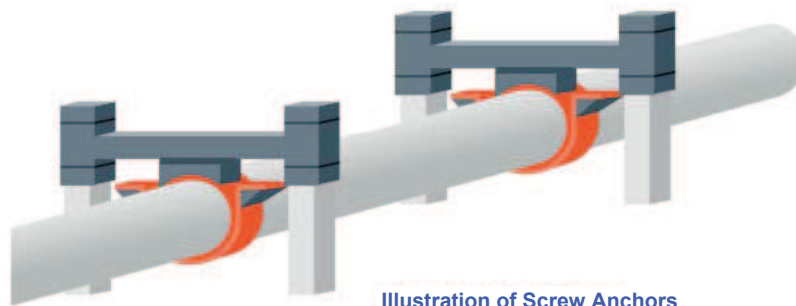


Illustration of Screw Anchors
installed on a lake bottom

**Supplemental Information
Enbridge Pipelines (Lakehead) L.L.C.
2017 Line 5 Anchor Installation Project
Mackinac and Emmet Counties, Michigan**

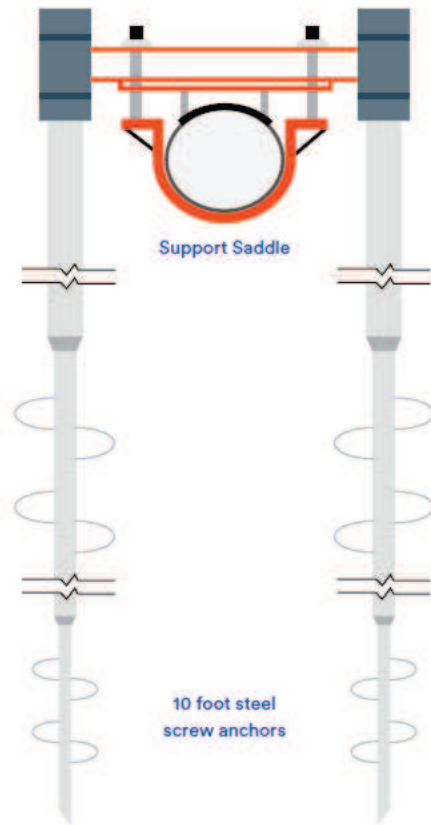
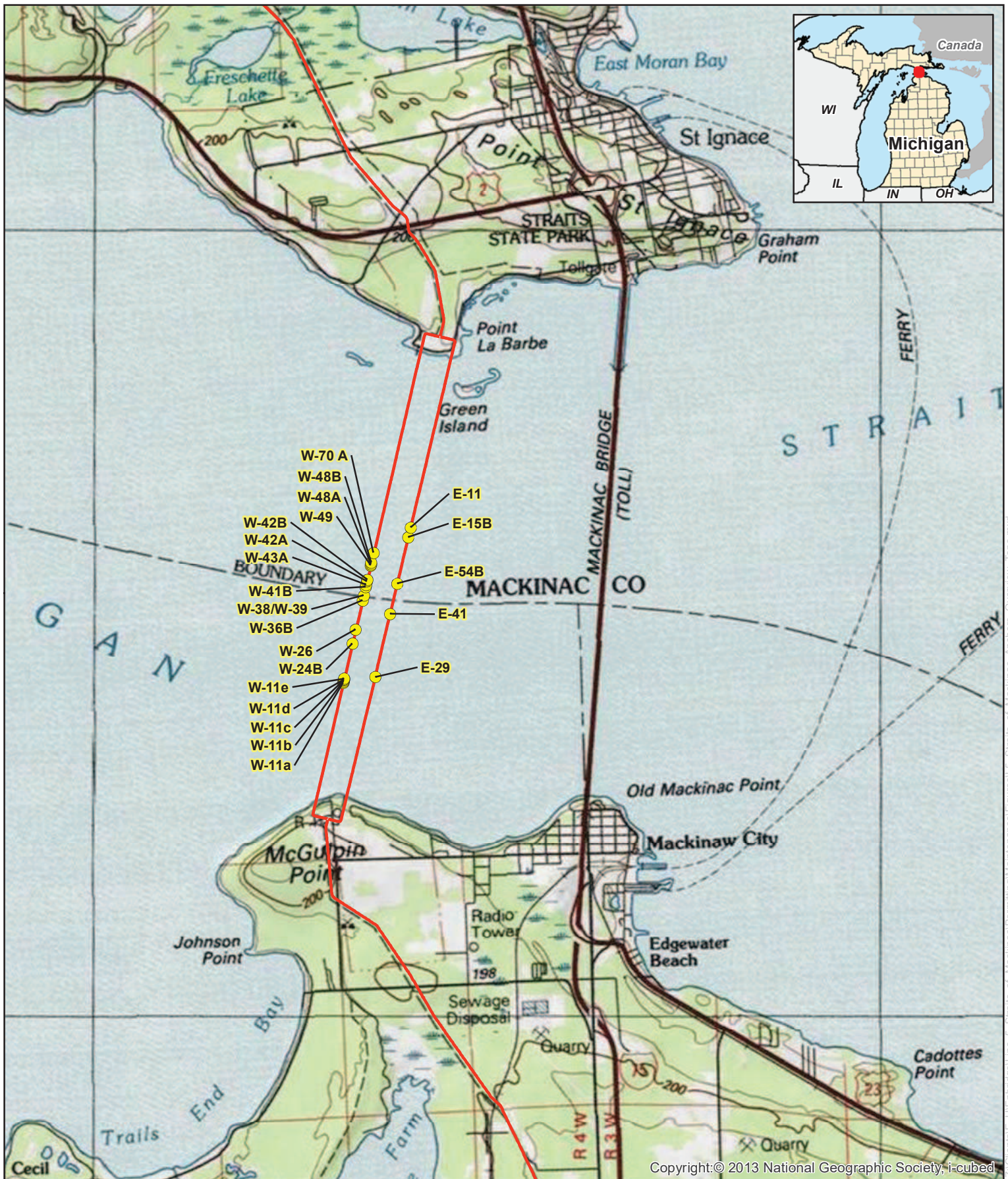


Illustration of Screw Anchor Technology
(viewed in direction of pipeline)

ATTACHMENT A
FIGURES



Copyright: © 2013 National Geographic Society, i-cubed

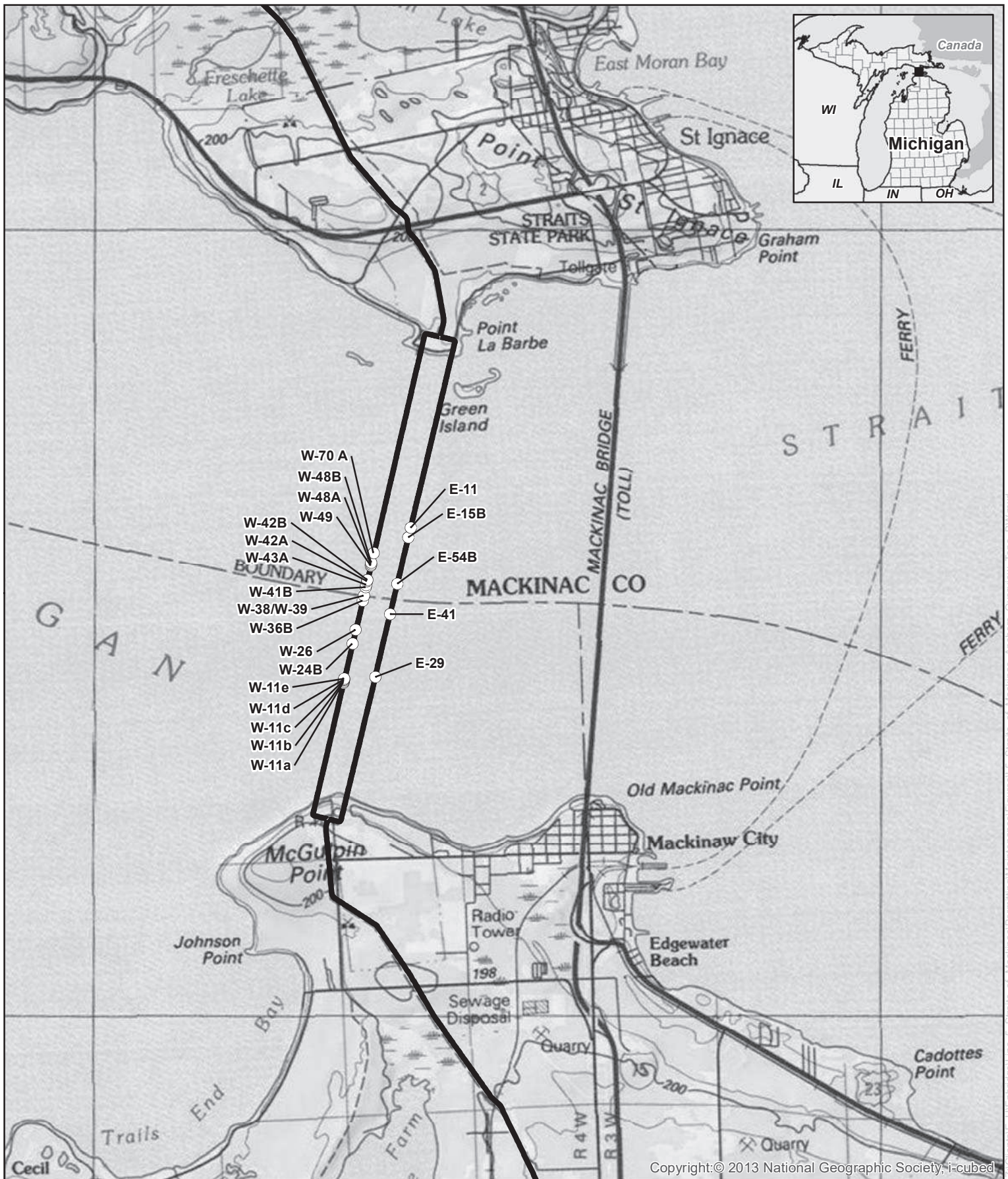
0 0.5 1 Miles
1 inch = 1 miles



Figure 1a
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

● 2017 Proposed Anchor Locations
— Line 5

Date: 6/6/2017 Source: Z:\Client\State_HLenbridge\Line_5_Straits_of_Mackinac\Permitting\Maintenance\figures\Line_5_Straits_of_Mackinac_Anchors_Overview_topo.mxd



Copyright: © 2013 National Geographic Society, i-cubed

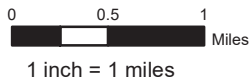
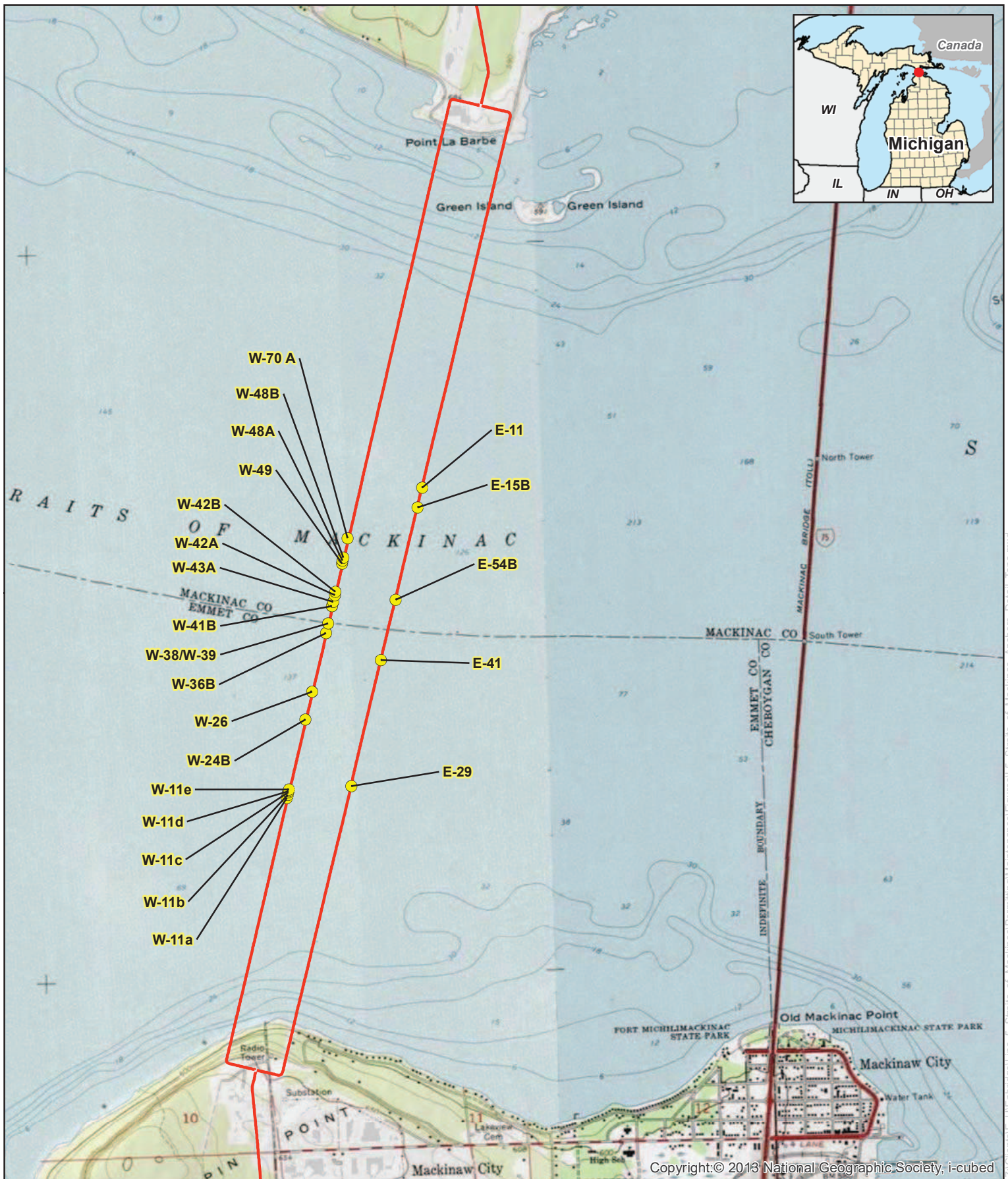


Figure 1b
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

- 2017 Proposed Anchor Locations
- Line 5

Date: (6/6/2017) Source: Z:\Client\Site_H\Enbridge\Line_5_Straits_of_Mackinac\Permitting\Maintenance\figures\5_Straits_of_Mackinac_Anchors_Overview_topo_BW.mxd



0 0.25 0.5 Miles
1 inch = 0.5 miles

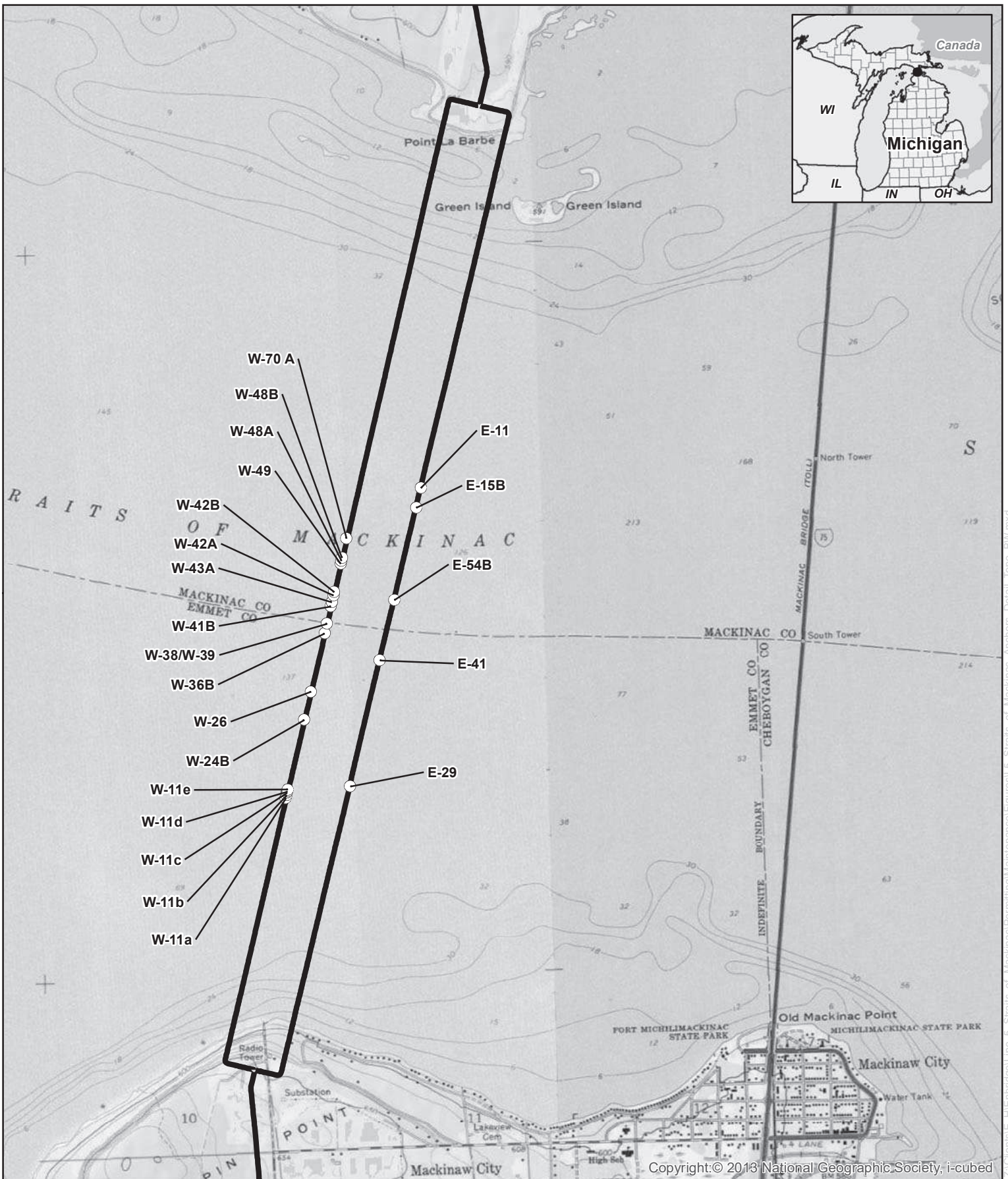
ENBRIDGE
For Environmental Review Purposes Only

Figure 2a
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

● 2017 Proposed Anchor Locations
— Line 5

Date: (6/6/2017) Source: Z:\Client\EL_Hlenbridge\Permitting\Maintenance\figures\L5_Straits_of_Mackinac_Pipelines_Detail_Topomxd

Copyright: © 2013 National Geographic Society, i-cubed



0 0.25 0.5 Miles
1 inch = 0.5 miles

ENBRIDGE
For Environmental Review Purposes Only

Figure 2b
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

○ 2017 Proposed Anchor Locations
— Line 5

Date: (6/6/2017) Source: Z:\ClientSite_HLenbridge\Line_5_Straits_of_Mackinac\Permitting\Maintenance\figures\L5_Straits_of_Mackinac_Anchors_Detail_topo_BW.mxd

Copyright:© 2013 National Geographic Society, i-cubed

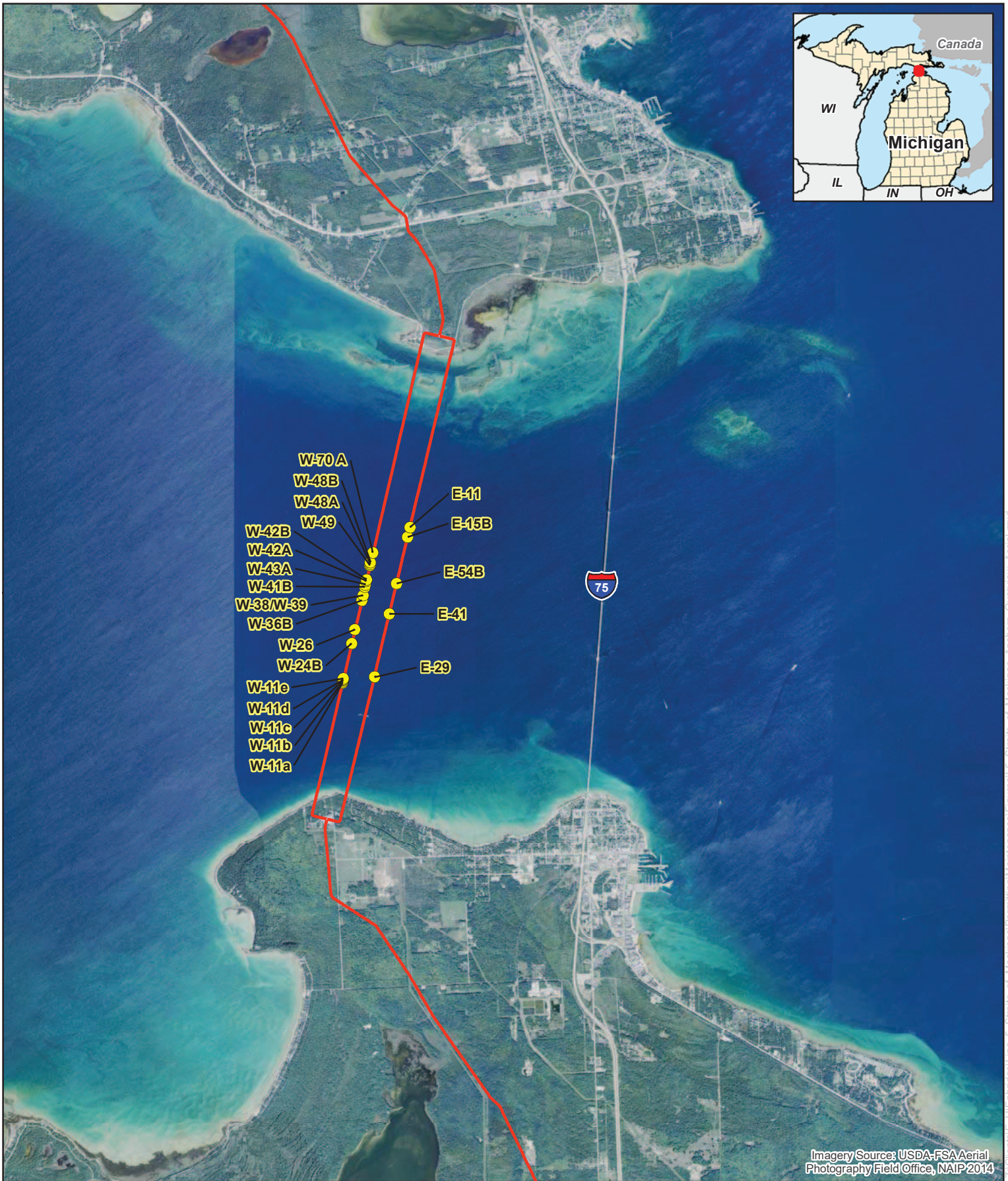


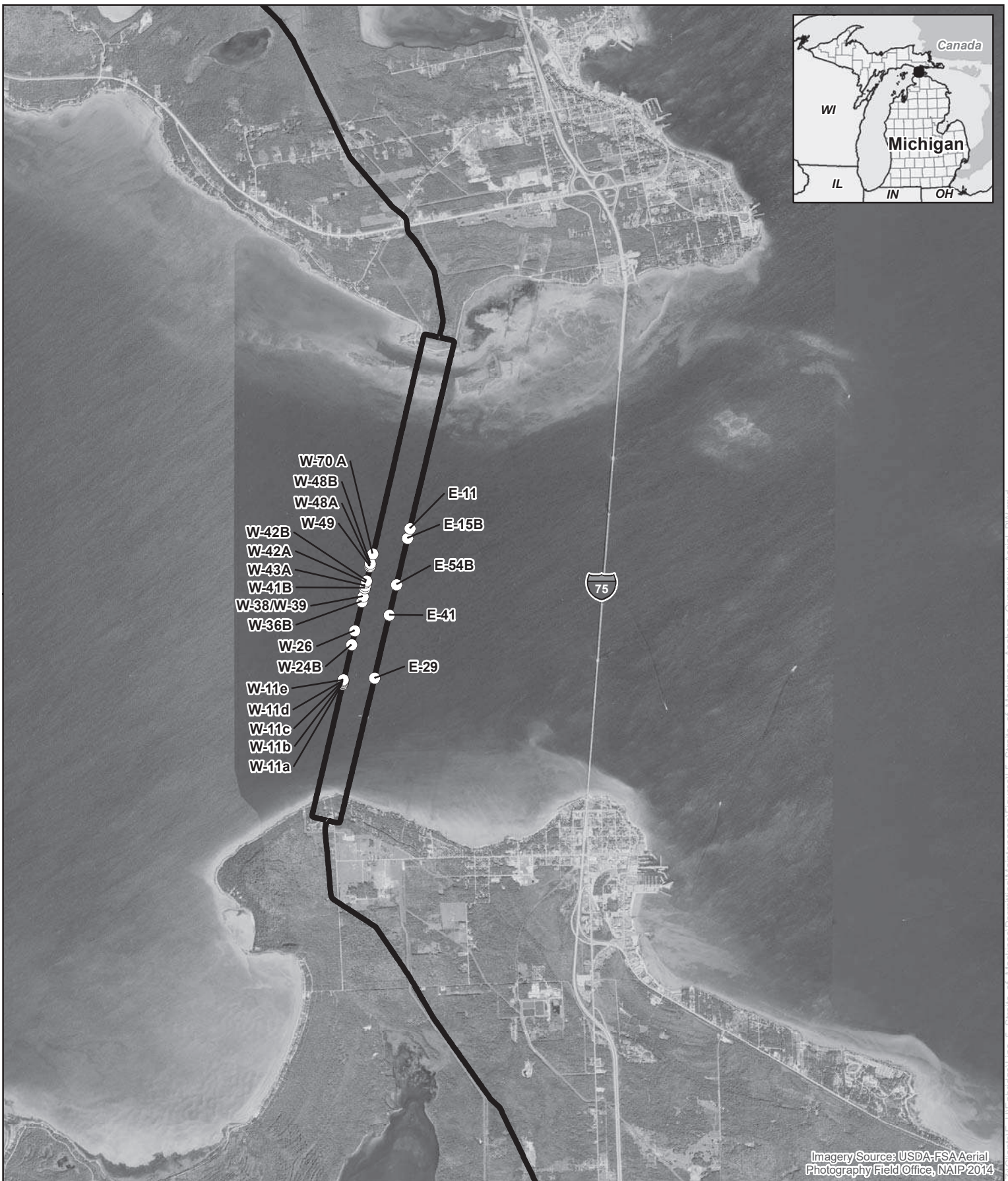
Figure 3a
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

- 2017 Proposed Anchor Locations
- Line 5

0 0.5 1 Miles
 1 inch = 1 miles

ENBRIDGE
 For Environmental Review Purposes Only

Date: (6/6/2017) Source: Z:\Client\State_HLenbridge\Line_5_Straits_of_Mackinac\Permitting\Maintenance\cell\figures\5_Straits_of_Mackinac_Anchors_Overview_Aerial.mxd



Imagery Source: USDA-FSA Aerial
Photography Field Office, NAIP 2014

0 0.5 1
Miles
1 inch = 1 miles

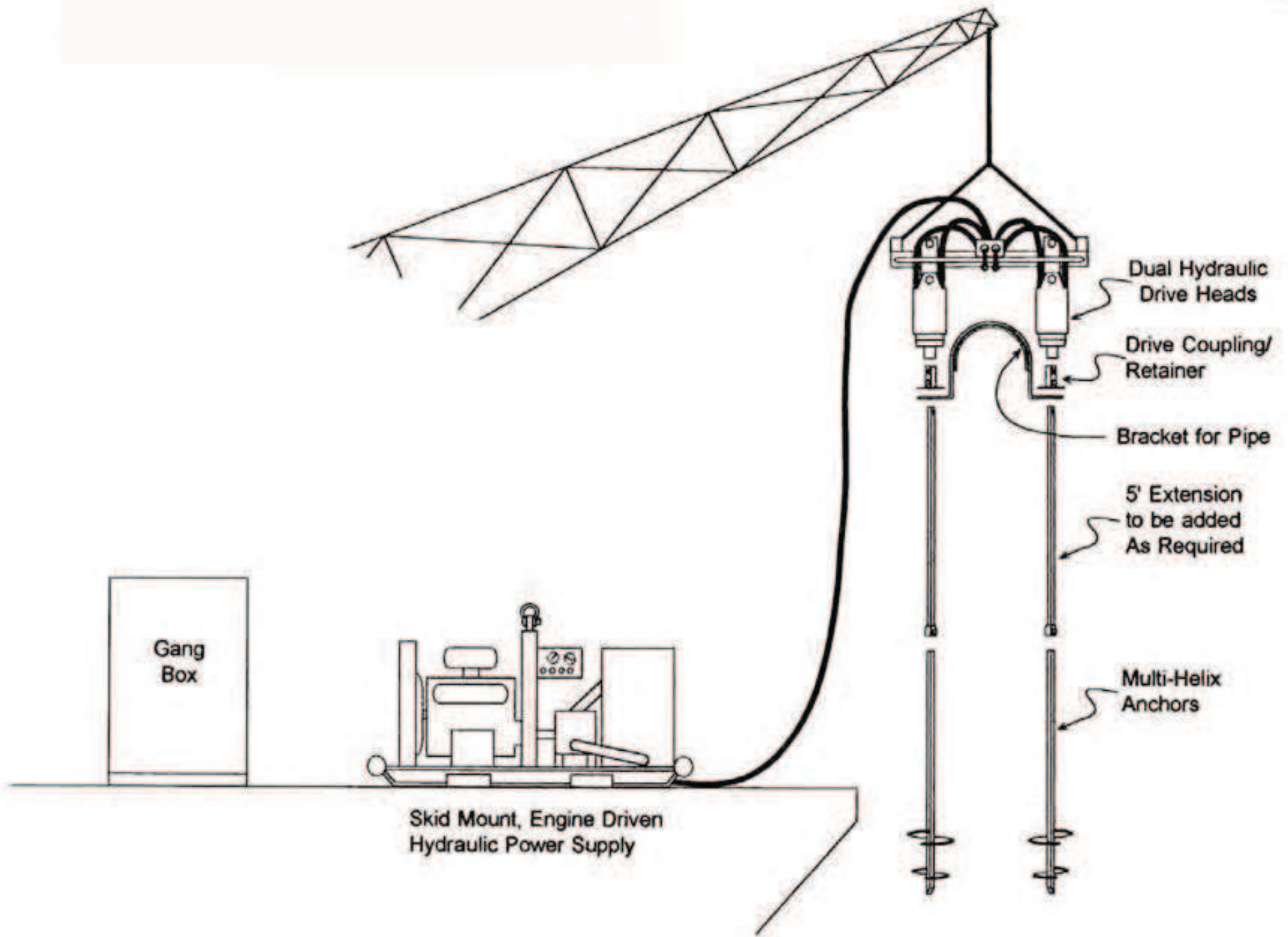


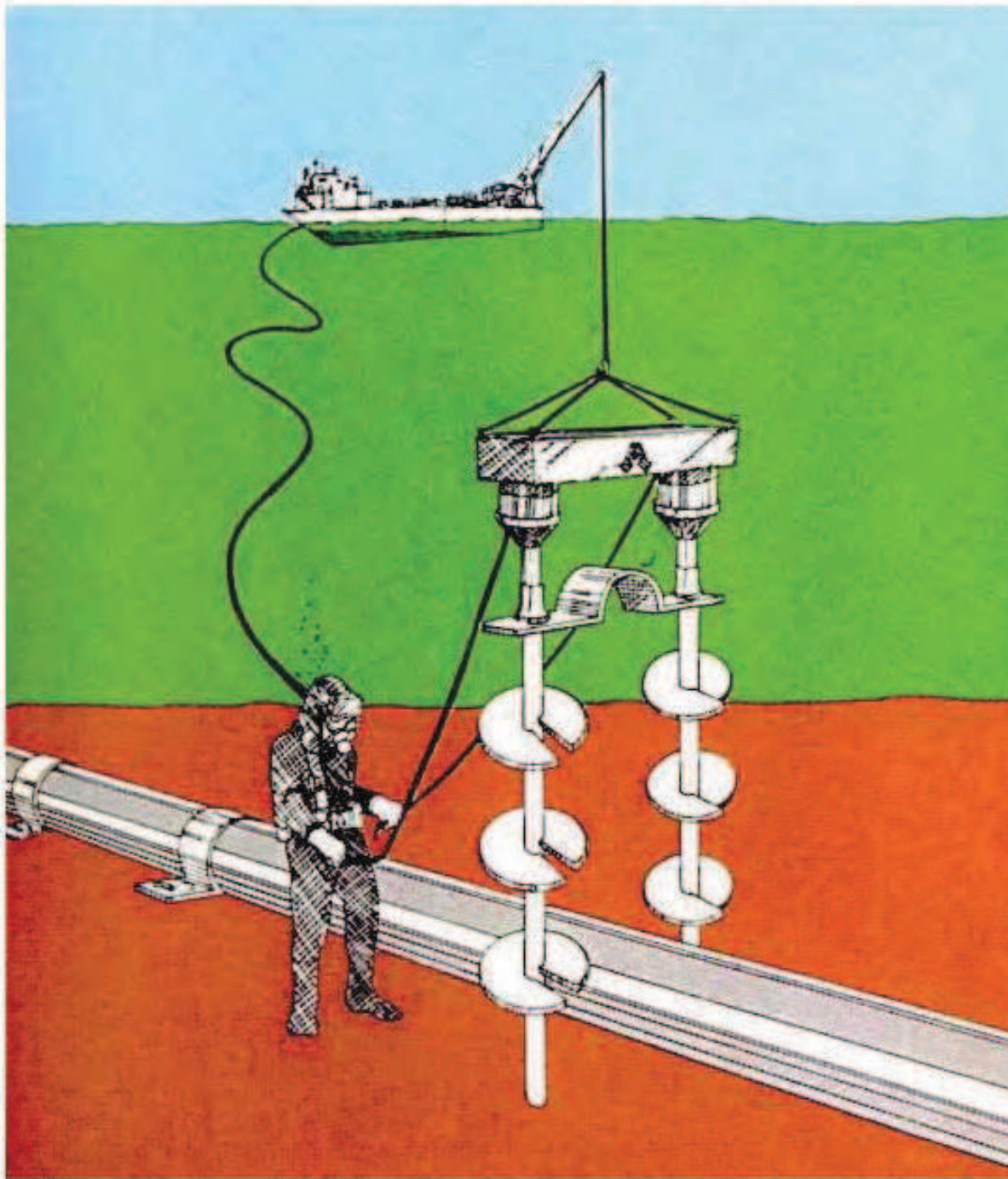
Figure 3b
Line 5 Straits of Mackinac
Enbridge Pipelines (Lakehead) L.L.C.
2017 Proposed Anchor Locations

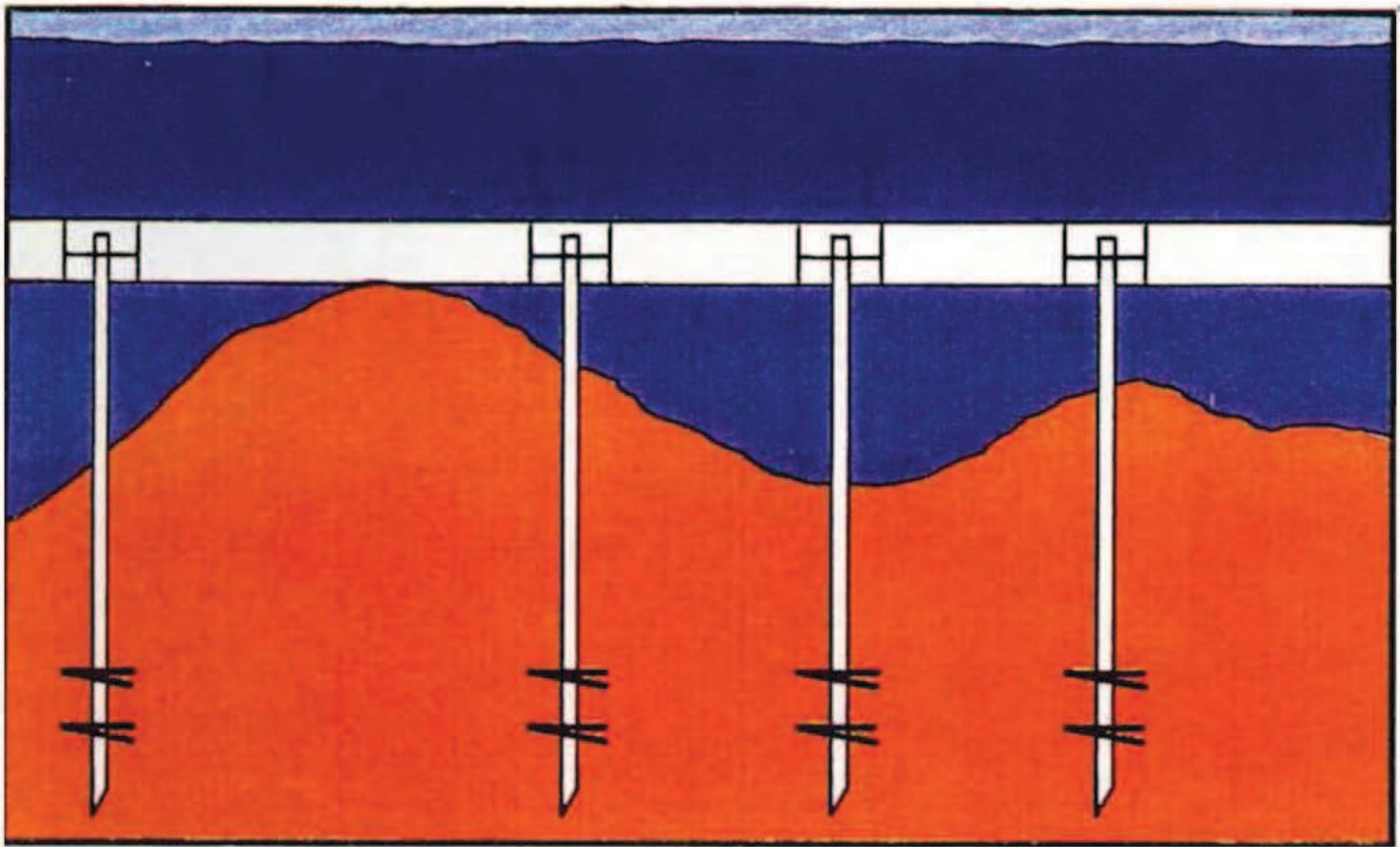
- 2017 Proposed Anchor Locations
- Line 5

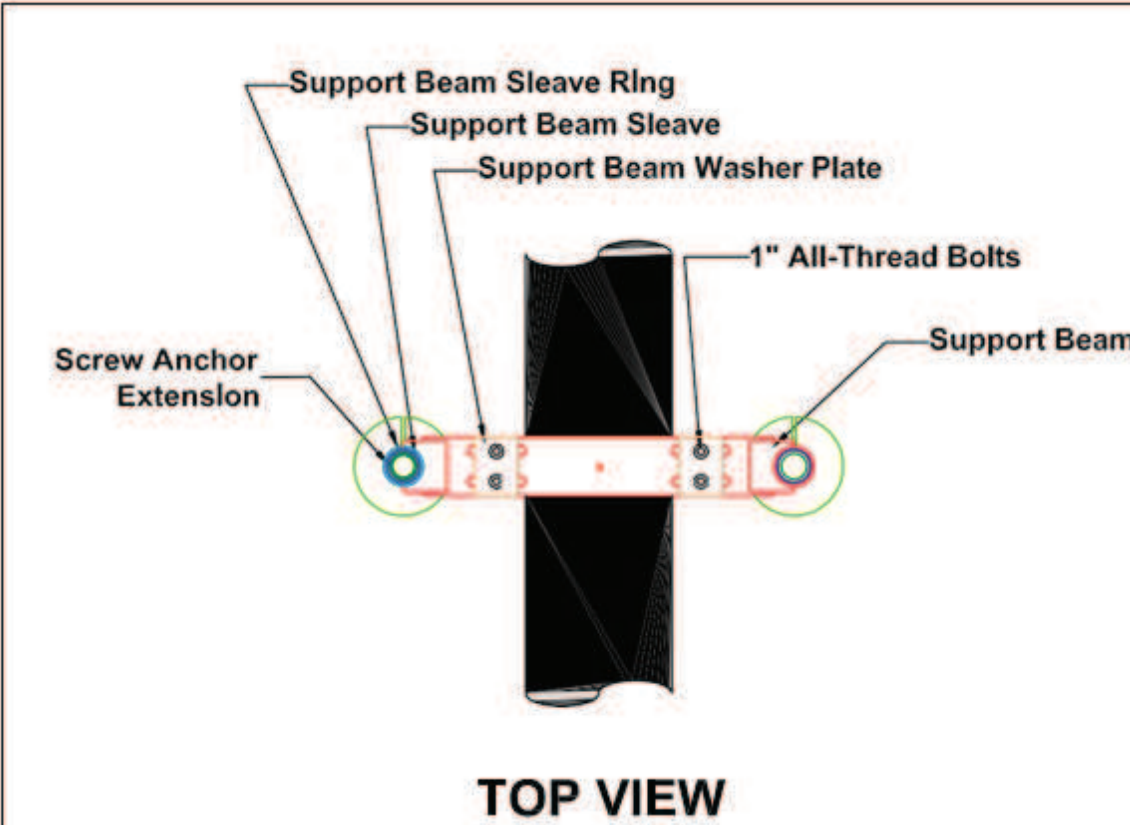
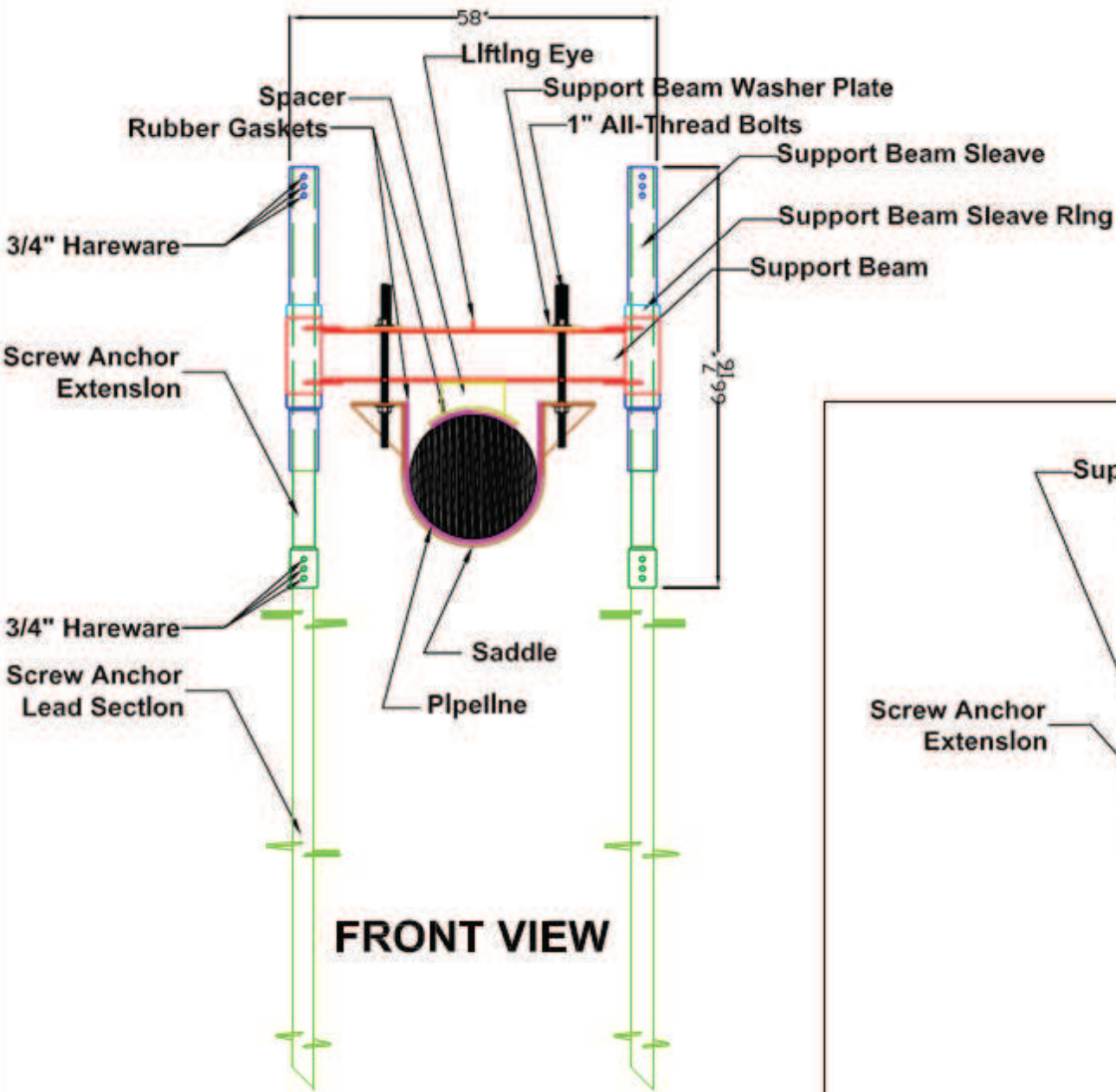
Source: (6/6/2017) Source: Z:\Clientstate_Hlenbridge\Permitting\Maintenance\cell\figures\5_Straits_of_Mackinac_Anchors_Overview_Aerial_BW.mxd

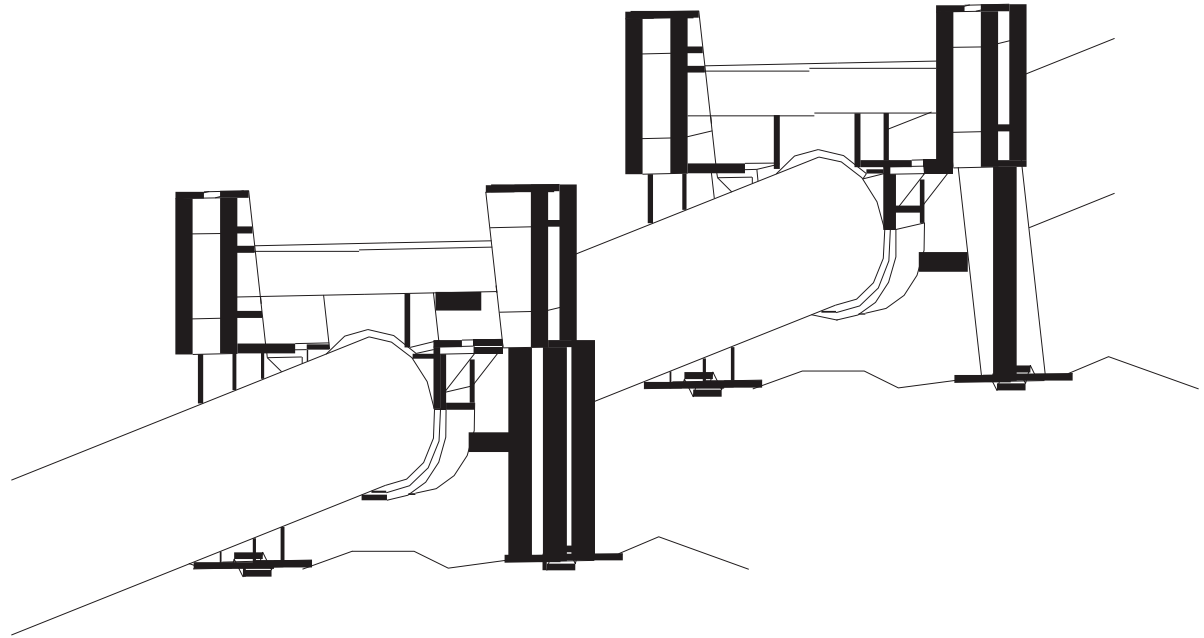
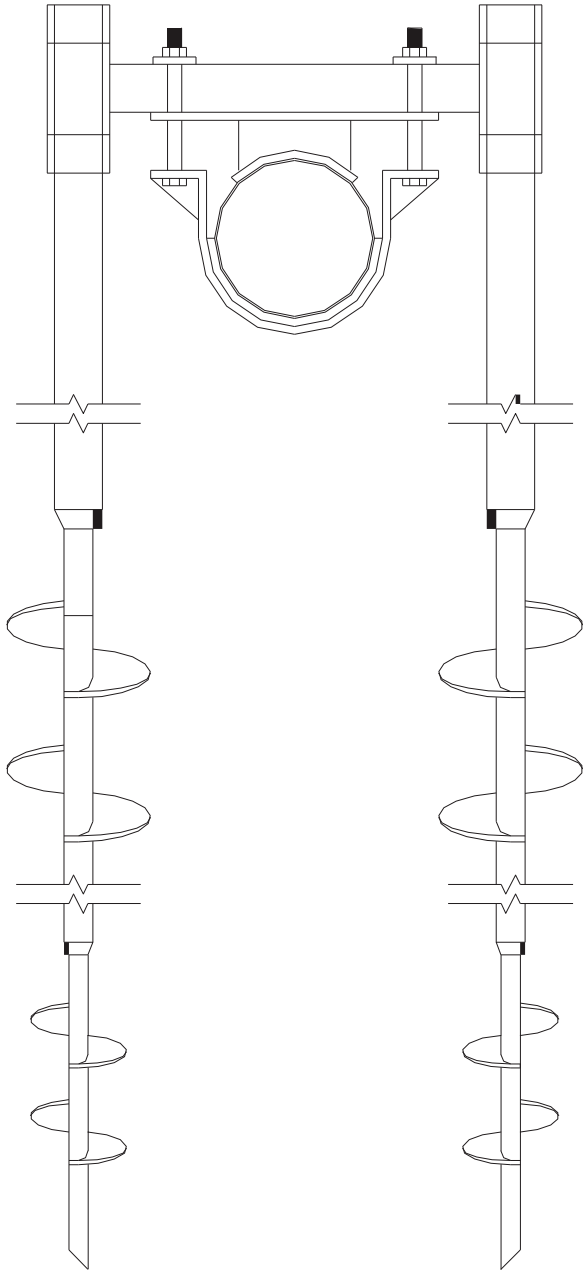
ATTACHMENT B
CONSTRUCTION TYPICALS











ATTACHMENT C
ANCHOR INSTALLATION METHODOLOGY

Anchor Installation Methodology

1. The work crew conducts a visual survey to determine exact anchor locations based on lake bed topography.
2. The work barge is positioned for each anchor location and moored to create a stable work platform.
3. A functional test of installation equipment is completed.
4. The work crew lowers the installation equipment and positions it above the lake floor approximately 50 feet from the pipeline.
5. Using the ROV's camera, the anchor and tool are moved into position for installation over the pipeline.
6. Using the ROV's camera, the anchors are hydraulically screwed into the lake bed.
7. Once the anchor is installed, a diver descends and completes the final installation of the pipe saddle to the anchor. The torques values of the saddle fasteners are recorded for each anchor to document proper installation.
8. Using the ROV, a 360 degree inspection is completed for each location.

ATTACHMENT D
EASEMENT DOCUMENT

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings v. Chicago*, 188 U. S., 410.) 10-19103-2

PERMIT Office of the District Engineer
 Detroit District
 Corps of Engineers.
 2 July Detroit 26, Michigan
 1953

Lakehead Pipe Line Company, Inc.
 510 - 22nd Avenue East
 Superior, Wisconsin

Gentlemen:

Referring to written request dated 14 May 1953

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army.

to place two (2) twenty-inch (20") submarine pipe lines for transporting crude oil
(Here describe the proposed structure or work.)

across the Straits of Mackinac
(Here to be named the river, harbor, or waterway concerned.)

at Mackinaw City, Michigan (McGulpin Point) to St. Ignace, Michigan (Point LaBarbe)
(Here to be named the nearest well-known locality preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans shown on the drawing attached hereto marked: "Proposed
(Or drawings; give file number or other definite identification marks.)
 Two 20" O.D. Crude Oil Pipe Lines Across the Straits of Mackinac Between McGulpin Pt. Emmet Co. and Pt. LaBarbe, Mackinac Co. Application by Lakehead Pipe Line Co., Inc. Mar 14, 1953"

subject to the following conditions:

(a) That the work shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material in the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Whitehall Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interest of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.


(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before the thirty-first day of December, 1956, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of the Army:



ARTHUR C. NAUMAN
Colonel, Corps of Engineers
District Engineer

STRAITS OF MACKINAC PIPE LINE EASEMENT
CONSERVATION COMMISSION OF THE STATE OF MICHIGAN
TO
LAKEHEAD PIPE LINE COMPANY, INC.

THIS EASEMENT executed this twenty-third day of April, A.D. 1953, by the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting under and pursuant to a resolution adopted by the Conservation Commission at its meeting held on February 13, 1953, and by virtue of the authority conferred by Act No. 10, P A 1953, hereinafter referred to as Grantor, to Lakehead Pipe Line Company, Inc., a Delaware corporation, of 510 22nd Avenue East, Superior, Wisconsin, hereinafter referred to as Grantee,

W I T N E S S E T H:

WHEREAS, application has been made by Grantee for an easement authorizing it to construct, lay and maintain pipe lines over, through, under and upon certain lake bottom lands belonging to the State of Michigan, and under the jurisdiction of the Department of Conservation, located in the Straits of Mackinac, Michigan, for the purpose of transporting petroleum and other products; and

WHEREAS, the Conservation Commission is of the opinion that the proposed pipe line system will be of benefit to all of the people of the State of Michigan and in furtherance of the public welfare; and

WHEREAS, the Conservation Commission duly considered the application of Grantee and at its meeting held on the 13th day of February, A.D. 1953, approved the conveyance of an easement.

NOW, THEREFORE, for and in consideration of the sum of Two Thousand Four Hundred Fifty Dollars (\$2,450.00), the receipt of which is hereby acknowledged, and for and in consideration of the undertakings of Grantee and subject to the terms and conditions set forth herein, Grantor hereby conveys and quit claims, without warranty express or implied, to Grantee an easement to construct, lay, maintain, use and operate two (2) pipe lines, one to be located within each of the two parcels of bottom lands hereinafter described, and each to consist of twenty inch (20") O.D. pipe, together with anchors and other necessary appurtenances and fixtures, for the purpose of transporting any material or substance which can be conveyed through a pipe line, over, through, under and upon the portion of the bottom lands of the Straits of Mackinac in the State of Michigan, together with the right to enter upon said bottom lands, described as follows:

All bottom lands of the Straits of Mackinac, in the State of Michigan, lying within an area of fifty (50) feet on each side of the following two center lines:

(1) Easterly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South twenty-four degrees, no minutes and thirty-six seconds East (S 24° 00' 36" E) and distant one thousand seven hundred and twelve and eight-tenths feet (1,712.8') from United States Lake Survey Triangulation Station "Green" (United States Lake Survey, Latitude 45° 50' 00", Longitude 84° 44' 58"), said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence, on a bearing of South fourteen degrees thirty-seven minutes and fourteen seconds West (S 14° 37' 14" W) a distance of nineteen thousand one hundred and forty-six and no tenths feet (19,146.0') to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line; and is distant seven hundred and seventy-four and seven tenths feet (774.7') and on a bearing of South thirty-six degrees, eighteen minutes and forty-five seconds West (S 36° 18' 45" W) from United States Lake Survey Triangulation Station "A. Mackinac West Base" (United States

Lake Survey, Latitude 45° 47' 14", Longitude 84° 46' 22").

(2) Westerly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South forty-nine degrees, twenty-five minutes and forty-seven seconds East (S 49° 25' 47" E) and distant two thousand six hundred and thirty-four and nine tenths feet (2,634.9') from United States Triangulation Station "Green" (United States Lake Survey, Latitude 45° 50' 00", Longitude 84° 44' 58") said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence on a bearing of South fourteen degrees, thirty-seven minutes and fourteen seconds West (S 14° 37' 14" W), a distance of nineteen thousand four hundred and sixty-five and no tenths feet (19,465.0') to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line and is distant one thousand no hundred and thirty-six and four tenths feet (1,036.4') on a bearing of South sixty-three degrees, twenty minutes and fifty-four seconds East (S 63° 20' 54" E) from United States Lake Survey Triangulation Station "A. Mackinac West Base" (United States Lake Survey, Latitude 45° 47' 14", Longitude 84° 46' 22").

TO HAVE AND TO HOLD the said easement unto said Grantee, its successors and assigns, subject to the terms and conditions herein set forth, until terminated as hereinafter provided.

This easement is granted subject to the following terms and conditions:

A. Grantee in its exercise of rights under this easement, including its designing, constructing, testing, operating, maintaining, and, in the event of the termination of this easement, its abandoning of said pipe lines, shall follow the usual, necessary and proper procedures for the type of operation involved, and at all times shall exercise the due care of a reasonably prudent person for the safety and welfare

of all persons and of all public and private property, shall comply with all laws of the State of Michigan and of the Federal Government, unless Grantee shall be contesting the same in good faith by appropriate proceedings, and, in addition, Grantee shall comply with the following minimum specifications, conditions and requirements, unless compliance therewith is waived or the specifications or conditions modified in writing by Grantor:

(1) All pipe line laid in water up to fifty (50) feet in depth shall be laid in a ditch with not less than fifteen (15) feet of cover. The cover shall taper off to zero (0) feet at an approximate depth of sixty-five (65) feet. Should it be discovered that the bottom material is hard rock, the ditch may be of lesser depth, but still deep enough to protect the pipe lines against ice and anchor damage.

(2) Minimum testing specifications of the twenty inch (20") OD pipe lines shall be not less than the following:

Shop Test -----	1,700 pounds per square inch gauge
Assembly Test -----	1,500 pounds per square inch gauge
Installation Test --	1,200 pounds per square inch gauge
Operating Pressure -	600 pounds per square inch gauge

(3) All welded joints shall be tested by X-Ray.

- (4) The minimum curvature of any section of pipe shall be no less than two thousand and fifty (2,050) feet radius.
- (5) Automatic gas-operated shut-off valves shall be installed and maintained on the north end of each line.
- (6) Automatic check valves shall be installed and maintained on the south end of each line.
- (7) The empty pipe shall have a negative buoyancy of thirty (30) or more pounds per linear foot.
- (8) Cathodic protection shall be installed to prevent deterioration of pipe.
- (9) All pipe shall be protected by asphalt primer coat, by inner wrap and outer wrap composed of glass fiber fabric material and one inch by four inch (1" x 4") slats, prior to installation.
- (10) The maximum span or length of pipe unsupported shall not exceed seventy-five (75) feet.
- (11) The pipe weight shall not be less than one hundred sixty (160) pounds per linear foot.
- (12) The maximum carbon content of the steel, from which the pipe is manufactured, shall not be in excess of .247 per cent.

(13) In locations where fill is used, the top of the fill shall be no less than fifty (50) feet wide.

(14) In respect to other specifications, the line shall be constructed in conformance with the detailed plans and specifications heretofore filed by Grantee with Lands Division, Department of Conservation of the State of Michigan.

B. Grantee shall give timely notice to the Grantor in writing:

(1) Of the time and place for the commencement of construction over, through, under or upon the bottom lands covered by this easement, said notice to be given at least five (5) days in advance thereof:

(2) Of compliance with any and all requirements of the United States Coast Guard for marking the location of said pipe lines;

(3) Of the filling of said pipe lines with oil or any other substance being transported commercially;

(4) Of any breaks or leaks discovered by Grantee in said pipe lines, said notice to be given by telephone promptly upon discovery and thereafter confirmed by registered mail;

(5) Of the completion of any repairs of said pipe lines, and time of testing thereof, said notice to be given in sufficient time to permit Grantor's authorized representatives to be present at the inspection and testing of the pipe lines after said repairs; and

(6) Of any plan or intention of Grantee to abandon said pipe lines, said notice to be given at least sixty (60) days prior to commencement of abandonment operations.

C. The easement herein conveyed may be terminated by Grantor:

(1) If, after being notified in writing by Grantor of any specified breach of the terms and conditions of this easement, Grantee shall fail to correct said breach within ninety (90) days, or, having commenced remedial action within such ninety (90) day period, such later time as it is reasonably possible for the Grantee to correct said breach by appropriate action and the exercise of due diligence in the correction thereof;

or

(2) If Grantee fails to start construction of the pipe lines authorized herein within two years from date of execution of this instrument; or

(3) If Grantee fails for any consecutive three-year period to make substantial use of said pipe lines commercially and also fails to maintain said pipe lines during said period in such condition as to be available to commercial use within thirty

(30) days.

D. Construction of the pipe lines contemplated by this instrument shall not be commenced until all necessary authorization and assent of the Corps of Engineers, United States Army, so far as concerns the public rights of navigation, shall have been obtained.

E. In the event of any relocation, replacement, major repair, or abandonment of either of the pipe lines authorized by this easement, Grantee shall obtain Grantor's written approval of procedures, methods and materials to be followed or used prior to commencement thereof.

F. The maximum operating pressure of either of said pipe lines shall not exceed six hundred (600) pounds per square inch gauge.

If there is a break or leak or an apparent break or leak in either of said pipe lines, or if Grantor notifies Grantee that it has good and sufficient evidence that there is or may be a break or leak therein, Grantee shall immediately and completely shut down the pipe line involved and said pipe line shall not be placed in [✓]operation until Grantee has conducted a shut-in two (2) hour pressure test of six hundred (600) pounds per square inch gauge showing that no substance is escaping from a break or leak in said pipe line.

G. If oil or other substance escapes from a break or leak in the said pipe lines, Grantee shall immediately take all usual, necessary and proper measures to eliminate any oil or other substance which may escape.

H. In the event the easement herein conveyed is terminated with respect to either or both of said pipe lines, or if any part or portion of a pipe line is abandoned, Grantee shall take all of the usual, necessary and proper abandonment procedures as required and approved by Grantor. Said abandonment operations shall be completed to the satisfaction of Grantor within one year after any abandonment of any part or portion of a pipe line; or in event of termination of this easement, within one year thereafter. After the expiration of one year following the termination of this easement, Grantee

shall at the option of Grantor quit claim to the State of Michigan all of its right, title and interest in or to any pipe line, appurtenances or fixtures remaining over, through, under or upon the bottom lands covered by this easement. Abandonment procedures as used herein include all operations that may be reasonably necessary to protect life and property from subsequent injury.

I. Grantee shall permit Grantor to inspect at reasonable times and places its records of oil or any other substance being transported in said pipe lines and shall, on request, submit to Grantor inspection reports covering the automatic shut-off and check valves and metering stations used in connection with the Straits of Mackinac crossing.

J. (1) Grantee shall indemnify and hold harmless the State of Michigan from all damage or losses caused to property (including property belonging to or held in trust by the State of Michigan), or persons due to or arising out of the operations or actions of Grantee, its employees, servants and agents hereunder. Grantee shall place in effect prior to the construction of the pipe lines authorized by this easement and shall maintain in full force and effect during the life of this easement, and until Grantor has approved completion of abandonment operations, a Comprehensive Bodily Injury and Property Damage Liability policy, bond or surety, in form and substance acceptable to Grantor in the sum of at least One Million Dollars (\$1,000,000.00), covering the liability herein imposed upon Grantee.

(2) Grantee, prior to commencing construction of the pipe lines authorized by this easement, shall provide the State of Michigan with a surety bond in the penal sum of One Hundred Thousand Dollars (\$100,000.00) in form and substance acceptable to Grantor, and surety or sureties approved by Grantor, to well, truly and faithfully perform the terms, conditions and requirements of this easement. Said bond shall be maintained in full force and effect during the life of this easement and until Grantor has approved completion of Grantee's abandonment operations. Said bond shall not be reduced in amount except with the written consent of Grantor.

K. Grantee shall within sixty (60) days thereafter notify Grantor in writing of any assignment of this easement.

L. The terms and conditions of this easement shall be binding upon and inure to the benefit of the respective successors and assigns of Grantor and Grantee.

M. All rights not specifically conveyed herein are reserved to the State of Michigan.

N. Grantee shall not improvise, construct or maintain ship-to-shore or ship-to-pipe line loading or unloading facilities over, through, under or upon any of the bottom lands herein described for the purpose of removing material from or injecting material into said pipe lines.

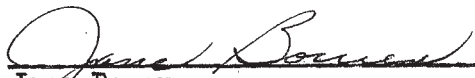
O. Grantor shall have the right at all reasonable times and places to inspect the pipe lines, appurtenances and fixtures authorized by this easement.

P. It shall not be a breach of the terms and conditions of this easement if for operating or maintenance reasons Grantee shall make use of only one of said pipe lines at a time.

Q. Where provision is made herein that Grantee shall obtain the authorization, approval or consent of Grantor, Grantor agrees that it will not unreasonably withhold the same.



IN WITNESS WHEREOF, the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting pursuant to authority specifically conferred upon him, has caused this instrument to be executed this twenty-third day of April, A.D. 1953.

Signed, Sealed and Delivered
in the Presence of:


Jane Bower

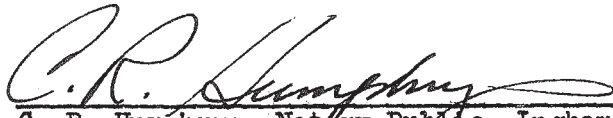

Elizabeth Soule

STATE OF MICHIGAN
BY THE CONSERVATION COMMISSION

By  
Wayland Osgood, Deputy Director,
pursuant to resolutions of the
Conservation Commission dated
February 13, 1953 and July 10,
1951

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) ss.

On this twenty-third day of April, A.D. 1953, before me a Notary Public, in and for said county, personally appeared Wayland Osgood, Deputy Director, known by me to be the person who executed the within instrument and who, being duly sworn, deposes and says that he is the duly appointed deputy director of the Conservation Commission and that he executed the within easement under authority specifically conferred upon him by law and by the Conservation Commission at its meetings held on February 13, 1953 and July 10, 1951, and who acknowledged the same to be his free act and deed and the free act and deed of the State of Michigan by the Conservation Commission, in whose behalf he acts.


C. R. Humphrys, Notary Public, Ingham County, Michigan
My commission expires September 20, 1954

Examined and approved *4/27/53*
as to legal form and effect:


Assistant Attorney General

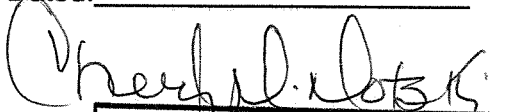
Attachment 2

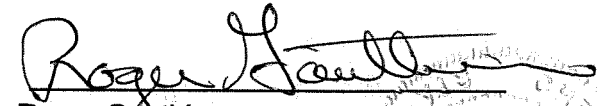
Affidavit of Roger Gauthier

Roger Gauthier, being duly sworn, state as follows:

1. My name is Roger Gauthier. I live on Grass Bay, on Lake Huron, east of the City of Cheboygan at 7749 Cordwood Shores Drive. I have lived here since 2011 on a 100 foot lakefront lot.
2. The current State Equalized Valuation of my home is \$143,600. In 2015, the SEV was \$161,200 I believe the decline in my home value is due to the threat of a Line 5 oil spill.
3. My family goes back four generations in Cheboygan County. I grew up on Duncan Bay just east of Cheboygan. My vocation has the same as my advocation - protect the waters of the Great Lakes. My entire life centers of those waters. I drink, swim, boat, and fish in the Straits of Mackinac. I walk the beaches, I chose to retire on Lake Huron and I want to continue to enjoy the natural beauty of the area.
4. My life and home would be directly affected by an oil spill in the Straits of Mackinac. My drinking water is from a shallow well and I have a septic system connected to my home. I believe both systems would be damaged by an oil spill. My use and enjoyment of the Great Lakes would also would be substantially impacted by an oil spill from Enbridge's Line 5 in the Straits. An attempted cleanup would necessarily involve workers and equipment on my beach. Such a spill would probably force me to move and make my home unsellable for the foreseeable future.
5. I had a 30 year career dealing with the waters of our Great Lakes. I worked 30 years for the Federal Government; 3 years with the National Oceanic and Atmospheric Administration and 27 years with the U.S. Army Corp of Engineers. I was a Program Director for the Great Lakes Commission for 8 years managing projects dealing with regional oil spill coordination and habitat protection. At the Corps, I managed a lakewide economic damage study for Lake Michigan from extreme water levels.
6. I am currently a Director of the Les Chenaux Watershed Council which focuses on both the waters and economic development in the Les Chenaux Islands area. I am currently the Chair of Restore our Waters International - a group of shoreline property owners and environmental organizations in Canada and Michigan concerned about Great Lakes Lakes waters.
7. I am a member of the Straits Area Concerned Citizens for Peace, Justice and the Environment and have been active in their program seeking to keep oil out the the Great Lakes. In these efforts, my focus has been on promoting oil spill response capabilities, evaluating risk and economic impacts and questioning the integrity of the pipeline.
8. This statement is based on my personal knowledge and if called as a witness, I would so testify.

Dated: 6/23/2017


CHERYL D DOTSKI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CHEBOYGAN
My Commission Expires Oct. 30, 2021
Acting in the County of Cheboygan


County of Cheboygan
State of Michigan
On this 23 day of JUNE, 2017, before me,
the undersigned officer, personally appeared Roger Gauthier
known to me (or provided ID) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged that
he/she/they executed the same for the purposes therein contained.
I hereby certify I have set my hand and official seal.

Attachment 3

Affidavit of Susan Alice Topping Gauthier

Susan Alice Topping Gauthier, being sworn, states as follows:

1. My name is Susan Alice Topping Gauthier. I reside at 7749 Cordwood Shores Drive in Cheboygan County.
2. I have lived here since 2011 and my lakefront house is located on Lake Huron, east of the City of Cheboygan.
3. I have my business office in this house and while working I have a view of Bois Blanc Island and the frequent lake freighters passing through the Straits of Mackinac.
4. I have worked in Michigan for 40 years and am currently a partner/owner in Mark Kamin and Associates providing high-performance business consulting to top leaders and executives. I have done consulting work for General Motors, Electronic Data Systems, Hewlett Packard, Comerica Bank and other businesses with Michigan-based interests. The ability to work from my home in a beautiful, peaceful setting is very important to me.
5. Because of my concerns about a possible oil spill from Enbridge Line 5, I became a member of Straits Area Concerned Citizens for Peace, Justice and the Environment. I support their efforts to have the State enforce the 1953 Easement which gives Enbridge the right to have pipelines on state bottomland in the Straits. In my opinion, the risk of an oil spill is high and the impact on me of an oil spill would be life changing.
6. I walk on the Lake Huron beach along Cordwood Shores and I swim there. I also enjoy boating on Grass Bay. I enjoy the beauty of the Great Lakes in all its seasons and weather conditions. Those activities would be adversely affected by an oil spill.
7. My drinking water is from a well on the property and sewage is handled by a septic system. These systems would be affected by an oil spill. The presence of oil would adversely affect the very air I breathe and the waterfowl I enjoy viewing from my home.
8. In the event of an oil spill and the multi-year attempt to clean up some of the oil, I believe I would be forced to relocate and move my home and home office. This will affect not only my income but my enjoyment of the area. The presence of oil on my beach and the presence of cleanup crews and equipment would make my home unsellable. It would also destroy all of the pleasures and benefits from living on Lake Huron. I might even have to move out of the county since economic recovery from the great recession of 2008 still impacts this area. I do not want to be forced off my Great Lake property or forced to move and relocate my business office. An oil spill would be a life-altering catastrophe for me.
9. This affidavit is based on my personal knowledge and if called as a witness I would so testify as to the facts.

Dated:

23 June 2017

Susan Alice Topping Gauthier

Susan Alice Topping Gauthier

County of Cheboygan
State of Michigan

On this 23rd day of June, 2017, before me,
the undersigned official, personally appeared SUSAN Alice Topping Gauthier
known to me (or provided ID) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged that
he/she/they executed the same for the purposes therein contained.
I therefore hereby certify to set my hand and official seal.

Cheryl D. Dotski
CHERYL D DOTSKI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CHEBOYGAN
My Commission Expires Oct. 30, 2021
Acting in the County of Cheboygan

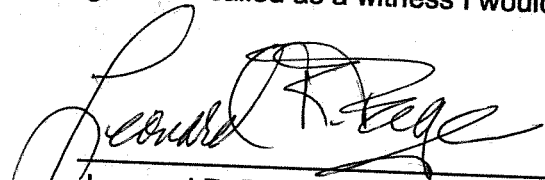
Attachment 4

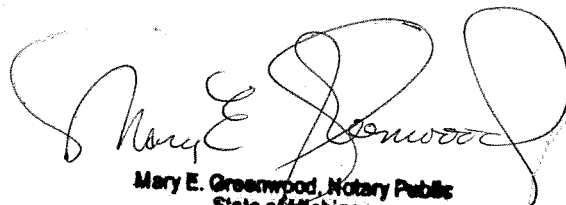
Affidavit of Leonard R. Page

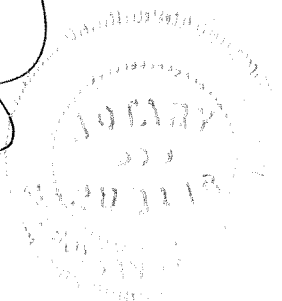
1. I am making this statement on behalf of a group known as the Straits Area Concerned Citizens for Peace, Justice and the Environment (SACCPJE). It is a voluntary, unincorporated group of citizens from Cheboygan County, Michigan. I am a licensed attorney (P-18584) and a member of SACCPJE.
2. Members of SACCPJE attended a presentation on the subject of Enbridge Line 5 given by Dr. Ed Timm at the Cheboygan Public Library on September 24, 2015. At a subsequent meeting, SACCPJE decided to seek community support for a resolution asking Governor Snyder and Attorney General Schuette to reduce product (Natural Gas Liquids Only) and Volume (300,000 barrels a day rather than 540,000) in Line 5 until inspection records were submitted to an independent third party to certify the line as safe. Our resolution was approved unanimously by the City Council of Cheboygan and the Board of Commissioners of County of Cheboygan in 2015.
3. Our group then made presentations at Township Boards, City Councils, County Boards throughout northern Michigan, gathering over 40 resolutions in support of our effort to have a third party certify the safety of line 5. Over 86 community resolutions seeking State action on line 5 have now been submitted to the Governor and Attorney General.
4. SACCPJE has met with our US Senators, Michigan State House and Senate representatives, representatives of the State Attorney General, the Coast Guard and the Federal Pipeline and Hazardous Material Safety Agency to discuss Line 5.
5. SACCPJE has maintained a website, conducted many community meetings (open to the public) to discuss Line 5. SACCPJE has joined the Oil and Water Don't Mix coalition of environmental group working on Line 5..
6. SACCPJE meets almost every week in Cheboygan.
7. SACCPJE has made presentations at almost every meeting of the Governor's Pipeline Safety Advisory Board (PSAB).
8. Attached are presentations made by eight of our members at the June 12, 2017 public meeting of the PSAB in Petoskey Michigan.
9. This affidavit is based on my personal knowledge and if called as a witness I would testify consistent with the above.

Dated

6/23/17


Leonard R. Page


Mary E. Greenwood, Notary Public
State of Michigan
County of Cheboygan
My Commission Expires Nov. 28, 2021
Residing in the County of Cheboygan



Attachment 5

Affidavit of Linda Rogers

Linda Rogers, being duly sworn, state as follows:

1. My name is Linda Rogers I own property on the Straits of Mackinac on Lake Huron; 9250 W. US 23 Hwy, Mackinaw Township, MI. I inherited the property which consists of a two story main house and 4 additional structures from my parents in 2014. Since acquiring the property I have established a cottage rental business that operates under Mackinaw Memories LLC. The property includes over 151 feet of lake frontage with a breathtaking view of Mackinac Island and the Grand Hotel.

2. The current tentative State Equalized Valuation of my property is \$115,400. In 2016, the SEV was \$119,700. I believe the decline in my home value is due to the threat of a Line 5 oil spill. This is especially true since I have made many improvements to the property which should have resulted in an increase in SEV.

3. My family purchased this commercial property in 1970. Their intent was to move up north from the Detroit area but my father could not find employment that he felt would support a family. So, we spent weekends and vacations there trying to run the cottage business as much as we could. When my brother, sister and I were in high school, we would spend summers running the business while mom and dad worked down state. In my adult life I was fortunate to spend summers with my retired parents who occupied the main house on the property while my two children and I stayed in one of the lakefront cottages. Around 1979 my parents sold the property on a land contract (with many tears). In approximately 1981 they got the property back as the purchasers did not make their payment. At that point we all knew it was meant to be ours.

4. My life and business would be directly affected by an oil spill in the straits of Mackinac. My drinking water is from a shallow well and I have a septic system connected to my home. I believe both systems would be damaged by an oil spill. My use and enjoyment of the Great Lakes would also be substantially impacted by an oil spill from Enbridge Line 5 at the straits. An attempted cleanup would necessarily involve workers and equipment on my beach. Such a spill would probably force me to move and make the property unsellable for the foreseeable future. Further, my cottage rental business would be non existent. No one will come rent a cottage on an oil soaked beach.

5. I'm a retired business education teacher, that is why I was fortunate to spend summers on this pristine water. We have Kayaks and a sailboat that would be of no use to us in the event of an oil spill.

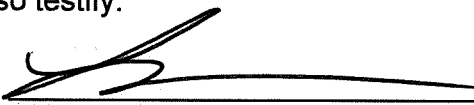
6. Now retired, I work 2 days a week on Mackinac Island. That job would be gone too as tourism on Mackinac Island would also be non existent in the event of a spill.

7. I sit on the board of the Mackinac Area Historic Society, we run an Historic Village called Heritage Village that focuses on the time period of 1880 to 1917. Tourist's donations sustain the Village. We would lose that too with the loss of tourism in the event of a spill.

8. I'm a board member of the Cheboygan County Economic Development Corporation. Our goal is to build economic development in the entire County. That task is already difficult. When all our waterways are polluted due to an oil spill the entire county will suffer.

9. I am a member of the Straits Area Concerned Citizens for Peace, Justice and the Environment and have been active in their program seeking to keep oil out the the Great Lakes. After retiring in 2015 and moving to my main residence at 1805 W. US 23 Hwy., Cheboygan, MI I found out about the imminent danger of Line 5. Since 1970 I knew nothing about the danger lurking in my Mackinaw front yard. Since becoming active with the Straits Area Concerned Citizens my focus has been both the lack of an effective plan to clean up a spill, the inadequate access to appropriate equipment to clean up a spill and the huge damages and losses that would result from a spill. I'm also involved with outreach to let others know the danger exists.

10. This statement is based on my personal knowledge and if called as a witness, I would so testify.

Signed  Date 06.23.2017
Linda J. Rogers

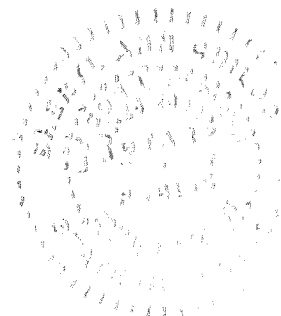
STATE OF MICHIGAN

County of Emmet SUBSCRIBED AND SWORN TO
BEFORE ME, on the 23rd of June, 2017

Signature 
Sheryl Childs

SHERYL ANN CHILDS
NOTARY PUBLIC, STATE OF MI
COUNTY OF EMMET
MY COMMISSION EXPIRES Jan 26, 2022
ACTING IN COUNTY OF

NOTARY PUBLIC
My Commission expires: 1-26-2022



Attachment 6

149

STRAITS OF MACKINAC PIPE LINE EASEMENT
CONSERVATION COMMISSION OF THE STATE OF MICHIGAN
TO
LAKEHEAD PIPE LINE COMPANY, INC.

THIS EASEMENT, executed this twenty-third day of April, A. D. 1953, by the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting under and pursuant to a resolution adopted by the Conservation Commission at its meeting held on February 13, 1953, and by virtue of the authority conferred by Act No. 10, P. A. 1953, hereinafter referred to as Grantor, to Lakehead Pipe Line Company, Inc., a Delaware corporation, of 510 22nd Avenue East, Superior, Wisconsin, hereinafter referred to as Grantee,

W I T N E S S E T H:

WHEREAS, application has been made by Grantee for an easement authorizing it to construct, lay and maintain pipe lines over, through, under and upon certain lake bottom lands belonging to the State of Michigan, and under the jurisdiction of the Department of Conservation, located in the Straits of Mackinac, Michigan, for the purpose of transporting petroleum and other products; and

WHEREAS, the Conservation Commission is of the opinion that the proposed pipe line system will be of benefit to all of the people of the State of Michigan and in furtherance of the public welfare; and

WHEREAS, the Conservation Commission duly considered the application of Grantee and at its meeting held on the 13th day of February, A. D. 1953, approved the conveyance of an easement.

150

NOW, THEREFORE, for and in consideration of the sum of Two Thousand Four Hundred Fifty Dollars (\$2,450.00), the receipt of which is hereby acknowledged, and for and in consideration of the undertakings of Grantee and subject to the terms and conditions set forth herein, Grantor hereby conveys and quit claims, without warranty express or implied, to Grantee an easement to construct, lay, maintain, use and operate two (2) pipe lines, one to be located within each of the two parcels of bottom lands hereinafter described, and each to consist of twenty inch (20") O D pipe, together with anchors and other necessary appurtenances and fixtures, for the purpose of transporting any material or substance which can be conveyed through a pipe line, over, through, under and upon the portion of the bottom lands of the Straits of Mackinac in the State of Michigan, together with the right to enter upon said bottom lands, described as follows:

All bottom lands of the Straits of Mackinac, in the State of Michigan, lying within an area of fifty (50) feet on each side of the following two center lines:

(1) Easterly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South twenty-four degrees, no minutes and thirty-six seconds East (S 24° 00' 36" E) and distant one thousand seven hundred and twelve and eight-tenths feet (1,712.8') from United States Lake Survey Triangulation Station "Green" (United States Lake Survey, Latitude 45° 50' 00", Longitude 84° 44' 58"), said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence, on a bearing of South fourteen degrees thirty-seven minutes and fourteen seconds West (S 14° 37' 14" W) a distance of nineteen thousand one hundred and forty-six and no tenths feet (19,146.0') to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line; and is distant seven hundred and seventy-four and seven tenths feet (774.7') and on a bearing of South thirty-six degrees, eighteen minutes and forty-five seconds West (S 36° 18' 45" W) from United States Lake Survey Triangulation Station "A, Mackinac West Base" (United States

151

Lake Survey, Latitude $45^{\circ} 47' 14''$, Longitude $84^{\circ} 46' 22''$).

(2) Westerly Center Line: Beginning at a point on the northerly shore line of the Straits of Mackinac on a bearing of South forty-nine degrees, twenty-five minutes and forty-seven seconds East ($S 49^{\circ} 25' 47'' E$) and distant two thousand six hundred and thirty-four and nine tenths feet ($2,634.9'$) from United States Triangulation Station "Green" (United States Lake Survey, Latitude $45^{\circ} 50' 00''$, Longitude $84^{\circ} 44' 58''$) said point of beginning being the intersection of the center line of a twenty inch (20") pipe line and the said northerly shore line; thence on a bearing of South fourteen degrees, thirty-seven minutes and fourteen seconds West ($S 14^{\circ} 37' 14'' W$), a distance of nineteen thousand four hundred and sixty-five and no tenths feet ($19,465.0'$) to a point on the southerly shore line of the Straits of Mackinac which point is the intersection of the said center line of the twenty inch (20") pipe line and the said southerly shore line and is distant one thousand no hundred and thirty-six and four tenths feet ($1,036.4'$) on a bearing of South sixty-three degrees, twenty minutes and fifty-four seconds East ($S 63^{\circ} 20' 54'' E$) from United States Lake Survey Triangulation Station "A. Mackinac West Base" (United States Lake Survey, Latitude $45^{\circ} 47' 14''$, Longitude $84^{\circ} 46' 22''$).

TO HAVE AND TO HOLD the said easement unto said Grantee, its successors and assigns, subject to the terms and conditions herein set forth, until terminated as hereinafter provided.

This easement is granted subject to the following terms and conditions:

A. Grantee in its exercise of rights under this easement, including its designing, constructing, testing, operating, maintaining, and, in the event of the termination of this easement, its abandoning of said pipe lines, shall follow the usual, necessary and proper procedures for the type of operation involved, and at all times shall exercise the due care of a reasonably prudent person for the safety and welfare

152

of all persons and of all public and private property, shall comply with all laws of the State of Michigan and of the Federal Government, unless Grantee shall be contesting the same in good faith by appropriate proceedings, and, in addition, Grantee shall comply with the following minimum specifications, conditions and requirements, unless compliance therewith is waived or the specifications or conditions modified in writing by Grantor:

(1) All pipe line laid in water up to fifty (50) feet in depth shall be laid in a ditch with not less than fifteen (15) feet of cover. The cover shall taper off to zero (0) feet at an approximate depth of sixty-five (65) feet. Should it be discovered that the bottom material is hard rock, the ditch may be of lesser depth, but still deep enough to protect the pipe lines against ice and anchor damage.

(2) Minimum testing specifications of the twenty inch (20") OD pipe lines shall be not less than the following:

Shop Test-----	1,700	pounds per square inch gauge
Assembly Test-----	1,500	pounds per square inch gauge
Installation Test---	1,200	pounds per square inch gauge
Operating Pressure-	600	pounds per square inch gauge

(3) All welded joints shall be tested by X-Ray.

153

- (4) The minimum curvature of any section of pipe shall be no less than two thousand and fifty (2,050) feet radius.
- (5) Automatic gas-operated shut-off valves shall be installed and maintained on the north end of each line.
- (6) Automatic check valves shall be installed and maintained on the south end of each line.
- (7) The empty pipe shall have a negative buoyancy of thirty (30) or more pounds per linear foot.
- (8) Cathodic protection shall be installed to prevent deterioration of pipe.
- (9) All pipe shall be protected by asphalt primer coat, by inner wrap and outer wrap composed of glass fiber fabric material and one inch by four inch (1" x 4") slats, prior to installation.
- (10) The maximum span or length of pipe unsupported shall not exceed seventy-five (75) feet.
- (11) The pipe weight shall not be less than one hundred sixty (160) pounds per linear foot.
- (12) The maximum carbon content of the steel, from which the pipe is manufactured, shall not be in excess of .247 per cent.

154

(13) In locations where fill is used, the top of the fill shall be no less than fifty (50) feet wide.

(14) In respect to other specifications, the line shall be constructed in conformance with the detailed plans and specifications heretofore filed by Grantee with Lands Division, Department of Conservation of the State of Michigan.

B. Grantee shall give timely notice to the Grantor in writing:

(1) Of the time and place for the commencement of construction over, through, under or upon the bottom lands covered by this easement, said notice to be given at least five (5) days in advance thereof:

(2) Of compliance with any and all requirements of the United States Coast Guard for marking the location of said pipe lines;

(3) Of the filling of said pipe lines with oil or any other substance being transported commercially;

(4) Of any breaks or leaks discovered by Grantee in said pipe lines, said notice to be given by telephone promptly upon discovery and thereafter confirmed by registered mail;

155

(5) Of the completion of any repairs of said pipe lines, and time of testing thereof, said notice to be given in sufficient time to permit Grantor's authorized representatives to be present at the inspection and testing of the pipe lines after said repairs; and

(6) Of any plan or intention of Grantee to abandon said pipe lines, said notice to be given at least sixty (60) days prior to commencement of abandonment operations.

C. The easement herein conveyed may be terminated by Grantor:

(1) If, after being notified in writing by Grantor of any specified breach of the terms and conditions of this easement, Grantee shall fail to correct said breach within ninety (90) days, or, having commenced remedial action within such ninety (90) day period, such later time as it is reasonably possible for the Grantee to correct said breach by appropriate action and the exercise of due diligence in the correction thereof;
or

154

(2) If Grantee fails to start construction of the pipe lines authorized herein within two years from date of execution of this instrument; or

(3) If Grantee fails for any consecutive three-year period to make substantial use of said pipe lines commercially and also fails to maintain said pipe lines during said period in such condition as to be available to commercial use within thirty (30) days.

D. Construction of the pipe lines contemplated by this instrument shall not be commenced until all necessary authorization and assent of the Corps of Engineers, United States Army, so far as concerns the public rights of navigation, shall have been obtained.

E. In the event of any relocation, replacement, major repair, or abandonment of either of the pipe lines authorized by this easement, Grantee shall obtain Grantor's written approval of procedures, methods and materials to be followed or used prior to commencement thereof.

F. The maximum operating pressure of either of said pipe lines shall not exceed six hundred (600) pounds per square inch gauge.

157

If there is a break or leak or an apparent break or leak in either of said pipe lines, or if Grantor notifies Grantee that it has good and sufficient evidence that there is or may be a break or leak therein, Grantee shall immediately and completely shut down the pipe line involved and said pipe line shall not be placed in operation until Grantee has conducted a shut-in two (2) hour pressure test of six hundred (600) pounds per square inch gauge showing that no substance is escaping from a break or leak in said pipe line.

G. If oil or other substance escapes from a break or leak in the said pipe lines, Grantee shall immediately take all usual, necessary and proper measures to eliminate any oil or other substance which may escape.

H. In the event the easement herein conveyed is terminated with respect to either or both of said pipe lines, or if any part or portion of a pipe line is abandoned, Grantee shall take all of the usual, necessary and proper abandonment procedures as required and approved by Grantor. Said abandonment operations shall be completed to the satisfaction of Grantor within one year after any abandonment of any part or portion of a pipe line; or in event of termination of this easement, within one year thereafter. After the expiration of one year following the termination of this easement, Grantee

158

shall at the option of Grantor quit claim to the State of Michigan all of its right, title and interest in or to any pipe line, appurtenances or fixtures remaining over, through, under or upon the bottom lands covered by this easement. Abandonment procedures as used herein include all operations that may be reasonably necessary to protect life and property from subsequent injury.

I. Grantee shall permit Grantor to inspect at reasonable times and places its records of oil or any other substance being transported in said pipe lines and shall, on request, submit to Grantor inspection reports covering the automatic shut-off and check valves and metering stations used in connection with the Straits of Mackinac crossing.

J. (1) Grantee shall indemnify and hold harmless the State of Michigan from all damage or losses caused to property (including property belonging to or held in trust by the State of Michigan), or persons due to or arising out of the operations or actions of Grantee, its employees, servants and agents hereunder. Grantee shall place in effect prior to the construction of the pipe lines authorized by this easement and shall maintain in full force and effect during the life of this easement, and until Grantor has approved completion of abandonment operations, a Comprehensive Bodily Injury and Property Damage Liability policy, bond or surety, in form and substance acceptable to Grantor in the sum of at least One Million Dollars (\$1,000,000.00), covering the liability herein imposed upon Grantee.

159

(2) Grantee, prior to commencing construction of the pipe lines authorized by this easement, shall provide the State of Michigan with a surety bond in the penal sum of One Hundred Thousand Dollars (\$100,000.00) in form and substance acceptable to Grantor, and surety or sureties approved by Grantor, to well, truly and faithfully perform the terms, conditions and requirements of this easement. Said bond shall be maintained in full force and effect during the life of this easement and until Grantor has approved completion of Grantee's abandonment operations. Said bond shall not be reduced in amount except with the written consent of Grantor.

K. Grantee shall within sixty (60) days thereafter notify Grantor in writing of any assignment of this easement.

L. The terms and conditions of this easement shall be binding upon and inure to the benefit of the respective successors and assigns of Grantor and Grantee.

M. All rights not specifically conveyed herein are reserved to the State of Michigan.

160

N. Grantee shall not improvise, construct or maintain ship-to-shore or ship-to-pipe line loading or unloading facilities over, through, under or upon any of the bottom lands herein described for the purpose of removing material from or injecting material into said pipe lines.

O. Grantor shall have the right at all reasonable times and places to inspect the pipe lines, appurtenances and fixtures authorized by this easement.

P. It shall not be a breach of the terms and conditions of this easement if for operating or maintenance reasons Grantee shall make use of only one of said pipe lines at a time.

Q. Where provision is made herein that Grantee shall obtain the authorization, approval or consent of Grantor, Grantor agrees that it will not unreasonably withhold the same.

IN WITNESS WHEREOF, the State of Michigan by the Conservation Commission, by Wayland Osgood, Deputy Director, acting pursuant to authority specifically conferred upon him, has caused this instrument to be executed this twenty-third day of April, A.D. 1953.

Signed, Sealed and Delivered
in the Presence of:

STATE OF MICHIGAN
BY THE CONSERVATION COMMISSION

/s/ Jane Bower
Jane Bower

By /s/ Wayland Osgood
Wayland Osgood, Deputy Director,
pursuant to resolutions of the
Conservation Commission dated
February 13, 1953 and July 10,
1951

/s/ Elizabeth Soule
Elizabeth Soule

161

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) ss.

On this twenty-third day of April, A.D. 1953, before me, a Notary Public, in and for said county, personally appeared Wayland Osgood, Deputy Director, known by me to be the person who executed the within instrument and who, being duly sworn, deposes and says that he is the duly appointed deputy director of the Conservation Commission and that he executed the within easement under authority specifically conferred upon him by law and by the Conservation Commission at its meetings held on February 13, 1953 and July 10, 1951, and who acknowledged the same to be his free act and deed and the free act and deed of the State of Michigan by the Conservation Commission, in whose behalf he acts.

/s/ C. R. Humphrys
C. R. Humphrys, Notary Public, Ingham County, Michigan
My Commission expires September 20, 1954

Examined and approved 4/23/53
as to legal form and effect:

/s/ R. Glen Dunn
Assistant Attorney General

Enbridge Energy Company, Inc.
Lake Superior Place
21 West Superior Street
Duluth, MN 55802-2067
Tel 218 725 0131
Fax 218 725 0139
www.enbridgepartners.com

Lynne Boyd -
Lois Klender -
Bob Courvoisier -
Dave Yankee -

2316



SEP 17 01

September 2001

Dear Landowner:

On September 5, 2001, Lakehead Pipe Line changed its name to Enbridge Energy Partners. The name change will better align Lakehead within the affiliated Enbridge international group of companies, who owns part of the Lakehead Partnership, and take advantage of the strength and reputation of the Enbridge brand name.

Soon you will begin seeing our new name, Enbridge or Enbridge Energy Partners, on such facilities as our buildings, vehicles, pipeline markers, correspondences, and employee hard hats. We also have a new internet address, which is www.enbridgepartners.com.

Even though our company has a new name, Enbridge Energy Partners, we still have the same reputation for service, safety and excellence. Our commitment to our landowners, tenants and communities along our pipeline route remains the same as it has for over 50 years - to safely, reliably and economically transport and store hydrocarbon liquids to serve the public's energy needs. Our relationship with you will not change with our name change.

Enbridge Energy Partners takes its responsibility for pipeline safety seriously. We have a comprehensive maintenance program, including computerized monitoring, routine inspections, aerial patrols of rights-of-way and education outreach to landowners and excavators.

Being responsible for pipeline safety, however, does not mean working alone. You can help us by being aware of some important information.

- Please be aware of our pipeline(s) located on your property and please coordinate any activity on the pipeline right-of-way with us.
- Dig Safely - Call your state excavation one-call number before you dig; wait the required amount of time; respect the markers; and dig with care.
- Call our 24-hour Emergency Number, 1-800-858-5253, if you suspect a pipeline emergency. This is the same emergency 800 number for the pipeline system noted on items sent to you in the past.

We value the relationships we have with you and are excited to share with you our new name - Enbridge Energy Partners. If you have any questions, please call our Right-of-Way Department at 218-725-0131.

Sincerely,

A handwritten signature in cursive script that reads 'Dan C. Tatcher'.

Dan Tatcher
President

Attachment 7

Enbridge Energy Company, Inc.
Lake Superior Place
21 West Superior Street
Duluth, MN 55802-2067
www.enbridgepartners.com

Grant P. Henningsen
Supervisor, Civil/Mechanical Engineering
Adam J. Erickson
Engineer
Tel 218 725 0548
Fax 218 725 0564
adam.erickson@enbridge-us.com



September 14, 2001

Mr. John Arevalo
Michigan Department of Environmental Quality
Gaylord District
2100 West M-32
Gaylord, MI 49735

Re: Enbridge Energy's Joint Permit Application for Repair Work to be Completed on Crude Oil Transmission Pipelines Located in the Straits of Mackinac.

Dear Mr. Arevalo:

As follow-up to our telephone conversation held yesterday regarding the above referenced project, enclosed is a Joint Permit Application for repair work to be conducted on Enbridge's (formerly Lakehead Pipeline) two 20-inch diameter pipelines. We have been in contact with the U.S. Army Corp of Engineers and they will be issuing a permit for this repair work today. They have assigned case number 880161211 to the project. **These emergency preventative maintenance repairs must be completed as soon as possible. We are scheduled to begin repair work on Sunday morning, September 16, 2001.**

We appreciate your work to expedite the approval process. If you have any questions or comments, please feel free to contact me at (218) 725-0548.

Sincerely,

A handwritten signature in red ink that reads 'Adam Erickson'.

Adam J. Erickson
Engineer

Enclosure: Joint Permit Application
Indications map

c: John Sobojinski – LPL
Grant Henningsen – LPL
Barry Power – LPL

US Army Corps of Engineers (USACE)		Michigan Department of Environmental Quality (MDEQ) DEQ	
AGENCY USE	Previous USACE Permit or File Number	Date Received <div style="border: 1px solid blue; padding: 5px; text-align: center;"> Received LWMD/DEQ SEP 17 2001 GAYLORD </div>	Land and Water Management Division, MDEQ File Number 01-24-0046P
	USACE File Number		Marina Operating Permit Number
			Fee received \$ \$50.00 #833
			AGENCY USE

• Print in black, blue, or red ink and complete all items in Sections 1 through 9 and those items in Sections 10 through 21 that apply to your proposed project.

1 PROJECT LOCATION INFORMATION							
• Refer to your property's legal description for the Township, Range, and Section information, and your property tax bill for your Property Tax Identification Number(s).							
Address LAKE MICHIGAN BETWEEN UPPER & LOWER PENINSULA		Township Name(s) N/A	Township(s) 39N	Range(s) 3W	Section(s) N/A		
City/Village N/A		County(ies) N/A		Property Tax Identification Number(s) N/A			
Name of Waterbody LAKE MICHIGAN		Project Name or Job Number SCN 8122		Subdivision/Plat N/A	Lot Number	Private Claim	
Project types (check all that apply)		<input type="checkbox"/> private	<input type="checkbox"/> public/government	<input checked="" type="checkbox"/> industrial	<input type="checkbox"/> commercial	<input type="checkbox"/> multi-family	
		<input type="checkbox"/> building addition	<input type="checkbox"/> new building or structure	<input type="checkbox"/> building renovation or restoration	<input type="checkbox"/> river restoration	<input type="checkbox"/> single-family	
		<input type="checkbox"/> other (explain)					
The proposed project is on, within, or involves (check all that apply)		<input type="checkbox"/> a legally established County Drain (date established)					
<input type="checkbox"/> a stream		<input type="checkbox"/> a pond (less than 5 acres)		<input checked="" type="checkbox"/> a Great Lake or Section 10 Waters		<input type="checkbox"/> a natural river	
<input type="checkbox"/> a river		<input type="checkbox"/> a channel/canal		<input type="checkbox"/> a designated high risk erosion area		<input type="checkbox"/> a dam	<input type="checkbox"/> a structure removal
<input type="checkbox"/> a ditch or drain		<input type="checkbox"/> an inland lake (more than 5 acres)		<input type="checkbox"/> a designated critical dune area		<input type="checkbox"/> a welland	<input type="checkbox"/> a utility crossing
<input type="checkbox"/> a floodway area		<input type="checkbox"/> a 100-year floodplain		<input type="checkbox"/> a designated environmental area		<input type="checkbox"/> 500 feet of an existing waterbody	
2 DESCRIBE PROPOSED PROJECT AND ASSOCIATED ACTIVITIES, AND THE CONSTRUCTION SEQUENCE AND METHODS							
• Attach separate sheets, as needed, including necessary drawings, sketches, or plans. PROJECT IS TO PROVIDE SUPPORT UNDERNEATH OUR PIPELINES IN SECTIONS WHERE THE PIPELINE SPANS UN-SUPPORTED OVER TOO GREAT A DISTANCE. GROUT BAGS WILL BE PLACED BENEATH THE UNSUPPORTED SECTIONS THEN FILLED WITH GROUT VIA A PUMPING RIG LOCATED ON A BARGE AT THE SURFACE. GROUT HOSES WILL BE CONNECTED BY DIVERS.							
3 APPLICANT, AGENT/CONTRACTOR, AND PROPERTY OWNER INFORMATION							
• The applicant can be either the property owner or the person or company that proposes to undertake the activity.							
• If the applicant is a corporation, both the corporation and it's owner must provide a written document authorizing the agent/contractor to act on their behalf.							
Applicant (individual or corporate name) ENBRIDGE ENERGY LIMITED PARTNERSHIP				Agent/Contractor (firm name and contact person)			
Mailing Address 21 WEST SUPERIOR STREET				Address			
City DULUTH		State MN		Zip Code 55802			
Daytime Telephone Number with Area Code (218) 725-0548				Daytime Telephone Number with Area Code			
Fax (218) 725-0564		E-mail ADAM.ERKSON@USPL.ENBRIDGE.COM		Fax		E-mail	
Is the applicant the sole owner of all property on which this project is to be constructed and all property involved or impacted by this project? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If No, provide a letter signed by the property owner authorizing the agent/contractor to act on his or her behalf or a copy of easements or right-of-ways. If multiple owners, please attach all property owners' names, mailing addresses, and telephone numbers.)							
Property Owner's Name (If different from applicant)				Mailing Address			
Daytime Telephone Number with Area Code				City		State Zip Code	
4 PROPOSED PROJECT PURPOSE, INTENDED USE, AND ALTERNATIVES CONSIDERED (Attach additional sheets if necessary)							
• The purpose must include any new development or expansion of an existing land use.							
• Include a description of alternatives considered to avoid or minimize resource impacts. Include factors such as, but not limited to, alternative construction technologies; alternative project layout and design; alternative locations; local land use regulations and infrastructure; and pertinent environmental and resource issues.							
• For utility crossings, include both alternative routes and alternative construction methods.							
IN ORDER TO MAINTAIN PIPELINE INTEGRITY & SAFETY - THESE MAINTENANCE REPAIRS CAN WAIT NO LONGER. THIS METHOD OF REPAIR IS THE MOST ENVIRONMENTALLY FRIENDLY METHOD WHICH WE ARE AWARE OF.							

5 LOCATING YOUR PROJECT SITE

- Provide the requested information listed below that will help staff in locating your project site.
- Attach a copy of a map, such as a plat, county, or USGS topographic map, clearly showing the site location and include an arrow indicating the north direction.

Is there an access road to the project? No Yes (If Yes, type of road, check all that apply) private public improved unimproved

Name of roads at closest main intersection and

Directions from main intersection

Style of house or other building on site ranch 2-story cape cod bi-level cottage/cabin pole barn none other (describe)

Color Color of adjacent property house and/or buildings

House number Address is visible on house garage mailbox sign other

Street name Fire lane number Lot number

How can your site be identified if there is no visible address?

Provide directions to the project site, with distances from the best and nearest visible landmark and waterbody

IT IS LOCATED BETWEEN THE UPPER & LOWER PENINSULA OF MICHIGAN AT THE MACKINAC STRAITS.

Does project cross boundaries of two or more political jurisdictions? (City/Township, Township/Township, County/County, etc.)

No Yes (If Yes, list jurisdiction names.) UNKNOWN

6 List all other federal, interstate, state, or local agencies authorizations required for the proposed activity, including all approvals or denials received.

Agency	Type approval	Identification number	Date applied	Date approved/denied	If denied, reason for denial
USACE	NATIONWIDE PERMIT	NW03	9-12-01	9-14-01	

7 If a permit is issued, date activity will commence (M/D/Y) 9-15-01 P.E.

Proposed completion date (M/D/Y) 10-15-01

Has any construction activity commenced or been completed in a regulated area? No Yes

If Yes, identify the portion(s) underway or completed on drawings or attach project specifications and give completion date(s) (M/D/Y)

Were the regulated activities conducted under a MDEQ permit?

No Yes

If Yes, list the MDEQ permit number

Are you aware of any unresolved violations of environmental law or litigation involving the property? No Yes (If Yes, please explain)

8 PUBLIC NOTIFICATION (Attach additional sheets if necessary)

- Complete information for all adjacent and impacted property owners and the lake association or established lake board including the contact person's name.
- If you own the adjacent lot, provide the requested information for the first adjacent parcel beyond your property line.

Property Owner's Name N/A Mailing Address City State Zip Code

Name of Established Lake Board or Lake Association and the Contact Person's Name Telephone Number Mailing Address City State Zip Code

9 APPLICANT'S CERTIFICATION READ CAREFULLY BEFORE SIGNING

I am applying for a permit(s) to authorize the activities described herein. I certify that I am familiar with the information contained in this application, that it is true and accurate, and, to the best of my knowledge, is in compliance with the State Coastal Zone Management Program and the National Flood Insurance Program. I understand that there are penalties for submitting false information and that any permit issued pursuant to this application may be revoked if information on this application is untrue. I certify that I have the authority to undertake the activities proposed in this application. By signing this application, I agree to allow representatives of the MDEQ and the USACE to enter upon said property in order to inspect the proposed activity site and the completed project. I understand that I must obtain all other necessary local, county, state, or federal permits and that the granting of other permits by local, county, state, or federal agencies does not release me from the requirements of obtaining the permit requested herein before commencing the activity. I understand that the payment of the application fee does not guarantee the issuance of a permit.

- All applicants must complete all the items in Sections 1 through 9 on pages 1 and 2 of this application.
- Complete those items in Sections 10 through 21 that apply to your project. It is necessary to submit only those pages where you have provided information.
- Please list here the application page numbers being submitted and a brief description of other attachments included with your application.

Property Owner
 Agent/Contractor
 Corporation - Title Enbridge Energy, Limited Partnership Printed Name Adam Erickson Signature Adam Erickson Date 9/14/01

10. PROJECTS IMPACTING WETLANDS OR FLOODPLAINS OR LOCATED ON AN INLAND LAKE OR STREAM OR A GREAT LAKE

- Check boxes A through N that may be applicable to your project and provide the requested information.
- If your project may affect wetlands, also complete Section 12. If your project may impact regulated *floodplains*, also complete Section 13.
- Provide an overall site plan showing existing lakes, streams, wetlands, and other water features; existing *structures*; and the location of all proposed *structures*, land change activities and *soil erosion and sedimentation control measures*. Please review sample drawings for guidance in completing site-specific drawings for your project.
- On a Great Lake use *IGLD 85* surveyed converted from observed still water elevation. On inland waters, *NGVD 29* local datum other Observed water elevation (ft) 584.203, date of observation (M/D/Y)

A. PROJECTS REQUIRING FILL (See All Sample Drawings) GROUT BAGS

- To calculate volume in cubic yards (cu yd), multiply the average length in feet (ft) times the average width (ft) times the average depth (ft) and divide by 27.
- Attach both plan and *cross-section* views to scale showing maximum and average fill dimensions.

(Check all that apply) floodplain fill wetland fill riprap seawall, bulkhead, or revetment bridge or culvert
 boat launch off-shore swim area beach sanding boatwell crib dock other

Fill dimensions (ft) Length 5 width 7 maximum depth 1.5 Fill volume (cu yd) 2 EACH Maximum water depth in fill area (ft) 250

Type of clean fill pea stone sand gravel wood chips other GROUT Will filter fabric be used under proposed fill? No Yes (If Yes, type) GROUT BAG

Source of clean fill on-site, If on-site, show location on site plan commercial other, If other, attach description of location PUMPED FROM BARGE

Fill will extend VARIETY OF feet into the water from the shoreline and upland. 0 feet out of the water. VARIETY OF LOCATIONS UNDER PIPELINE

B. PROJECTS REQUIRING DREDGING OR EXCAVATION (See All Sample Drawings)

- To calculate volume in cubic yards (cu yd), multiply the average length in feet (ft) times the average width (ft) times the average depth (ft) and divide by 27.
- Attach both plan and *cross-section* views to scale showing maximum and average dredge or excavation dimensions.
- The applicant will be notified if sediment sampling will be required.

(Check all that apply) floodplain excavation wetland dredge or draining seawall, bulkhead, or revetment
 navigation boat well boat launch other

Dredge volume (cu yd) Method and equipment for dredging

Has proposed dredge material been tested for contaminants? No Yes (If Yes, attach testing results)

Has this same area been previously dredged? No Yes (If Yes, provide date and permit number, if available) (M/D/Y)
 If Yes, are you proposing to enlarge the previously dredged area No Yes

Is long-term maintenance dredging planned? No Yes (If Yes, when and how much?)

C. PROJECTS REQUIRING RIPRAP (See Sample Drawings 2, 3, 8, 12, 14, 17, 22, and 23. Others may apply)

Riprap waterward of the <input type="checkbox"/> shoreline OR <input type="checkbox"/> ordinary high water mark	Dimensions (ft)	Volume (cu yd)
	length width depth	

Riprap landward of the <input type="checkbox"/> shoreline OR <input type="checkbox"/> ordinary high water mark	Dimensions (ft)	Volume (cu yd)
	length width depth	

Type of riprap field stone angular rock other

Will filter fabric be used under proposed riprap? No Yes (If Yes, type)

D. SHORE PROTECTION PROJECTS (See Sample Drawings 2, 3, and 17)

(check all that apply) riprap seawall/bulkhead revetment

E. DOCK - PIER - MOORING PILINGS (See Sample Drawing 10)

Type open pile filled crib Seasonal structure? No Yes

Proposed structure dimensions (ft) length width Dimensions of nearest adjacent structures (ft) length width

F. BOAT WELL (No Sample Drawing available)

Type of bank stabilization wood steel concrete vinyl riprap other

Boat well dimensions (ft) Length width depth Number of boats

Volume of backfill behind sidewall stabilization (cu yd) Distances of boat well from adjacent property lines (ft)

G. BOAT LAUNCH (No Sample Drawing available)

(check all that apply) new existing public private commercial Type of material concrete wood stone other

Overall boat launch dimensions (ft) Length width depth Boat launch dimensions (ft) below ordinary high water mark length width depth

Distances of launch from both property lines (ft) Number of skid piers Skid pier dimensions (ft) width length

H. BOAT HOIST (No Sample Drawing available)

(Check all that apply) seasonal permanent cradle side lifter other located on seawall dock bottomlands

I. BOARDWALKS AND DECKS IN WETLANDS OR FLOODPLAINS (See Sample Drawings 5 and 6)

(Check all that apply) boardwalk deck wetlands floodplain Boardwalk or deck is on fill piling

Attachment 8

Search this site...

Advanced Search

Home > NEWS & EVENTS > Press Releases > Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations



NTSB Press Release

National Transportation Safety Board Office of Public Affairs

Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations

7/10/2012

WASHINGTON - Pervasive organizational failures by a pipeline operator along with weak federal regulations led to a pipeline rupture and subsequent oil spill in 2010, the National Transportation Safety Board said today.

On Sunday, July 25, 2010, at about 5:58 p.m., a 30 inch-diameter pipeline (Line 6B) owned and operated by Enbridge Incorporated ruptured and spilled crude oil into an ecologically sensitive area near the Kalamazoo River in Marshall, Mich., for 17 hours until a local utility worker discovered the oil and contacted Enbridge to report the rupture.

The NTSB found that the material failure of the pipeline was the result of multiple small corrosion-fatigue cracks that over time grew in size and linked together, creating a gaping breach in the pipe measuring over 80 inches long.

"This investigation identified a complete breakdown of safety at Enbridge. Their employees performed like Keystone Kops and failed to recognize their pipeline had ruptured and continued to pump crude into the environment," said NTSB Chairman Deborah A.P. Hersman. "Despite multiple alarms and a loss of pressure in the pipeline, for more than 17 hours and through three shifts they failed to follow their own shutdown procedures."

Clean up costs are estimated by Enbridge and the EPA at \$800 million and counting, making the Marshall rupture the single most expensive on-shore spill in US history.

Over 840,000 gallons of crude oil - enough to fill 120 tanker trucks - spilled into hundreds of acres of Michigan wetlands, fouling a creek and a river. A Michigan Department of Community Health study concluded that over 300 individuals suffered adverse health effects related to benzene exposure, a toxic component of crude oil.

Line 6B had been scheduled for a routine shutdown at the time of the rupture to accommodate changing delivery schedules. Following the shutdown, operators in the Enbridge control room in Edmonton, Alberta, received multiple alarms indicating a problem with low pressure in the pipeline, which were dismissed as being caused by factors other than a rupture. "Inadequate training of control center personnel" was cited as contributing to the accident.

The investigation found that Enbridge failed to accurately assess the structural integrity of the pipeline, including correctly analyzing cracks that required repair. The NTSB characterized Enbridge's control room operations, leak detection, and environmental response as deficient, and described the event as an "organizational accident."

Following the first alarm, Enbridge controllers restarted Line 6B twice, pumping an additional 683,000 gallons of crude oil, or 81 percent of the total amount spilled, through the ruptured pipeline. The NTSB determined that if Enbridge's own procedures had been followed during the initial phases of the accident, the magnitude of the spill would have been significantly reduced. Further, the NTSB attributed systemic flaws in operational decision-making to a "culture of deviance," which concluded that personnel had developed an operating culture in which not adhering to approved procedures and protocols was normalized.

The NTSB also cited the Pipeline and Hazardous Materials Safety Administration's weak regulations regarding pipeline assessment and repair criteria as well as a cursory review of Enbridge's oil spill response plan as contributing to the magnitude of the accident.

The investigation revealed that the cracks in Line 6B that ultimately ruptured were detected by Enbridge in 2005 but were not repaired. A further examination of records revealed that Enbridge's crack assessment process was inadequate, increasing the risk of a rupture.

Related Press Releases

- October 30, 2015
[NTSB: American Petroleum Institute's New Recommended Practice for Pipeline Safety Management Systems Exceeds NTSB Recommendation](#)
- July 10, 2012
[Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations](#)
- July 03, 2012
[NTSB to Meet on Pipeline Rupture and Oil Spill Accident](#)
- July 27, 2010
[NTSB Launching Team to Investigate Pipeline Accident That Spilled Crude Oil into River in Michigan](#)
- September 15, 2010
[NTSB Chairman Updates Congress on Progress of Investigation into Marshall, Michigan Pipeline Leak](#)
- May 21, 2012
[NTSB Adding Documents to Public Docket on Pipeline Rupture and Spill Accident in Marshall, Michigan](#)

Related Reports

- [Pipeline Accident Report PAR-12-01](#)

Related Events

Related Investigations

- [Crude Oil Pipeline Rupture and Spill](#)

More NTSB Links

- [Investigation Process](#)
- [Data & Stats](#)
- [Accident Reports](#)
- [Most Wanted List](#)

"This accident is a wake-up call to the industry, the regulator, and the public. Enbridge knew for years that this section of the pipeline was vulnerable yet they didn't act on that information," said Chairman Hersman. "Likewise, for the regulator to delegate too much authority to the regulated to assess their own system risks and correct them is tantamount to the fox guarding the hen house. Regulators need regulations and practices with teeth, and the resources to enable them to take corrective action before a spill. Not just after."

As a result of the investigation, the NTSB reiterated one recommendation to PHMSA and issued 19 new safety recommendations to the Department of the Transportation, PHMSA, Enbridge Incorporated, the American Petroleum Institute, the International Association of Fire Chiefs, and the National Emergency Number Association.

[A synopsis of the NTSB report, including the probable cause, findings, and a complete list of the safety recommendations, is available here.](#) The full report will be available on the website in several weeks.

Contact: NTSB Media Relations

490 L'Enfant Plaza, SW
Washington, DC 20594
Peter Knudson
(202) 314-6100
peter.knudson@ntsb.gov

###

The National Transportation Safety Board (NTSB) is an independent federal agency charged with determining the probable cause of transportation accidents, promoting transportation safety, and assisting victims of transportation accidents and their families.

Resources

Press Releases
Speeches/Testimony
Databases
Accident Dockets
Training Center
Safety Recommendations
Strategic Plan, Performance &
Accountability Reports & More
Media Resources

About Us

Organization
Office Locations
Investigative Process
Directions to Conference Center
Board Members
Contact Us
Employment
Web Policies & Notices

NTSB.gov

Site Map
Org Chart
FOIA
No Fear
Privacy Statement
Open.gov

Publications

Accident Reports
Annual Review of Aircraft
Accident Data



Attachment 9

MARKETWIRED
IS NOW PART
OF NASDAQ


[Français](#)
[Media Partners](#)
[About Us](#)
[Blog](#)


[SITE](#)
[NEWS](#)
[PRODUCTS](#)
[SOLUTIONS](#)
[NEWSROOM](#)
[RESOURCES](#)
[CONTACT US](#)
[SIGN IN](#)
[News Room](#)

[Print Friendly](#)

[Share](#)

SOURCE: Enbridge Energy Partners, L.P.



May 16, 2012 17:37 ET

Enbridge Energy Partners Announces Major Expansions of Its Lakehead System

HOUSTON, TX--(Marketwire - May 16, 2012) - Enbridge Energy Partners, L.P. (NYSE: [EEP](#)) ("Enbridge Partners" or "the Partnership") today announced that it is moving forward with further expansions of its crude oil mainline pipeline system. The Lakehead System expansions are designed to increase deliveries to various refinery markets in the Upper Midwest, eastern Canada and, through connecting Enbridge pipelines, the U.S. Gulf Coast.

Border to Flanagan Expansions:

Expansion of the Lakehead System includes: i) increasing capacity on the existing 36-inch diameter Alberta Clipper pipeline (Line 67) from 450,000 barrels per day (bpd) to 570,000 bpd into the Superior, Wisconsin Terminal; ii) expansion of the existing 42-inch diameter Southern Access pipeline (Line 61) between the Superior Terminal and the Flanagan Terminal near Pontiac, Illinois from 400,000 bpd to 560,000 bpd. These projects require only the addition of pumping horsepower and crude oil tanks at existing sites with no pipeline construction, at a cost of approximately \$360 million. Subject to finalization of scope and shipper approval, the expansions will be undertaken on a full cost-of-service basis and are expected to be available for service in mid-2014. Enbridge continues discussions with shippers on scope of the expansions, which could lead to an upward revision to capacity and cost. The Border to Flanagan Expansions will be funded entirely by the Partnership.

Eastern Access Projects:

The Eastern Access Projects includes: i) expansion of the Spearhead North pipeline (Line 62) between Flanagan, Illinois and the Terminal at Griffith, Indiana by adding horsepower to increase capacity from 130,000 bpd to 235,000 bpd; ii) an additional 330,000 barrel tank at Griffith; and iii) replacement of additional sections of the Partnership's Line 6B in Indiana and Michigan. Combined with scheduled replacements of 75-miles of Line 6B previously announced, these further replacements will increase capacity from 240,000 bpd to 500,000 bpd. Portions of the existing 30-inch diameter pipeline will be replaced with 36-inch diameter pipe. These replacement segments are subject to customary regulatory approvals. Including the previously announced 50,000 bpd Line 5 Expansion, the projects will cost approximately \$2.2 billion and will be undertaken on a cost-of-service basis with the toll surcharge absorbing 50 percent of any cost overruns during the Competitive Toll Settlement (CTS) term. These projects are expected to be placed in-service during 2013 and 2014.

The Eastern Access Projects will be funded 60 percent by Enbridge Inc. and 40 percent by the Partnership. Before the end of 2012, the Partnership will have the option to reduce its funding and associated economic interest in the projects by up to 15 percentage points to 25 percent. Additionally, within one year of the in-service date, scheduled for early 2014, the Partnership will also have the option to increase its economic interest held at that time by up to 15 percentage points.

"These liquids mainline expansion projects on the Partnership's Lakehead System complement Enbridge's strategic initiative of expanding access to new markets in North America for growing production from western Canada and the Bakken Formation. Not only are these projects another positive step toward North American energy security, but they will also provide near-term economic benefits for communities, such as construction jobs and increased property tax revenues," said Mark Maki, President of the Partnership.

"The projects will be underpinned by a low-risk, long-term commercial framework that will drive distributable cash flow growth for the Partnership and help us achieve the higher end of our distribution growth target. The Partnership's financing plan through 2014 is not impacted with the addition of these capital projects as a result of the joint funding arrangement that has been agreed to with Enbridge Inc. This arrangement substantially enhances the Partnership's financing flexibility," noted Maki.

Enbridge Inc. also announced today complementary Eastern Access and Mainline expansion projects, which include: construction of a 35-mile pipeline adjacent to Enbridge's Toledo Pipeline (Line 17), originating at Enbridge Partner's Line 6B in Michigan to serve refineries in Michigan and Ohio; a re-reversal of Enbridge's Line 9B from Westover, Ontario to Montreal, Quebec to serve refineries in Quebec; and expansions to add horsepower on existing lines on the Enbridge Mainline system from western Canada to the U.S. border.

A map of Enbridge Inc. and Enbridge Energy Partners' expansion projects announced today is available at www.enbridgeus.com

MANAGEMENT PRESENTATION OF LIQUIDS EXPANSION PROJECTS

Enbridge Partners will present and review the liquids expansion projects in an Internet presentation, commencing at 8:30 a.m. Eastern Time on May 17, 2012. Interested parties may watch the live webcast at the link provided below. A replay will be available shortly afterward. Presentation slides will also be available at the link below.

EEP Events and Presentations: www.enbridgepartners.com/

Alternative Webcast link:

<http://www.media-server.com/m/p/4e58abme>

The audio portion of the presentation will be accessible by telephone at (866) 543-6403 (Passcode: 51639508) and can be replayed until August 17, 2012 by calling (888) 286-8010 (Passcode: 27545300). An audio replay will also be available from either of the website addresses above.

About Enbridge Energy Partners, L.P.

Enbridge Energy Partners, L.P. (www.enbridgepartners.com) owns and operates a diversified portfolio of crude oil and natural gas transportation systems in the United States. Its principal crude oil system is the largest transporter of growing oil production from western Canada. The system's deliveries to refining centers and connected carriers in the United States account for approximately 13 percent of total U.S. oil imports; while deliveries to Ontario, Canada satisfy approximately 70 percent of refinery demand in that region. The Partnership's natural gas gathering, treating, processing and transmission assets, which are principally located onshore in the active U.S. Mid-Continent and Gulf Coast area, deliver approximately 2.5 billion cubic feet of natural gas daily.

Enbridge Energy Management, L.L.C. (www.enbridgemanagement.com) manages the business and affairs of the Partnership and its sole asset is an approximate 14 percent interest in the Partnership. Enbridge Energy Company, Inc., an indirect wholly owned subsidiary of Enbridge Inc. of Calgary, Alberta, (NYSE: ENB) (TSX: ENB) (www.enbridge.com) is the general partner and holds an approximate 23 percent interest in the Partnership.

This news release includes forward-looking statements and projections, which are statements that do not relate strictly to historical or current facts. These statements frequently use the following words, variations thereon or comparable terminology: "anticipate," "believe," "continue," "estimate," "expect," "forecast," "intend," "may," "plan," "position," "projection," "strategy" or "will." Forward-looking statements involve risks, uncertainties and assumptions and are not guarantees of performance. Future actions, conditions or events and future results of operations may differ materially from those expressed in these forward-looking statements. Many of the factors that will determine these results are beyond Enbridge Partners' ability to control or predict. Specific factors that could cause actual results to differ from those in the forward-looking statements include: (1) changes in the demand for or the supply of, forecast data for, and price trends related to crude oil, liquid petroleum, natural gas and NGLs, including the rate of development of the Alberta Oil Sands; (2) Enbridge Partners' ability to successfully complete and finance expansion projects; (3) the effects of competition, in particular, by other pipeline systems; (4) shut-downs or cutbacks at facilities of Enbridge Partners or refineries, petrochemical plants, utilities or other businesses for which Enbridge Partners transports products or to whom Enbridge Partners sells products; (5) hazards and operating risks that may not be covered fully by insurance; (6) changes in or challenges to Enbridge Partners' tariff rates; (7) changes in laws or regulations to which Enbridge Partners is subject, including compliance with environmental and operational safety regulations that may increase costs of system integrity testing and maintenance.

Reference should also be made to Enbridge Partners' filings with the U.S. Securities and Exchange Commission; including its Annual Report on Form 10-K for the most recently completed fiscal year and its subsequently filed Quarterly Reports on Form 10-Q, for additional factors that may affect results. These filings are available to the public over the Internet at the SEC's web site (www.sec.gov) and at the Partnership's web site.

CONTACT INFORMATION

FOR FURTHER INFORMATION PLEASE CONTACT:

Sanjay Lad
Investor Relations
Toll-free: (866) EEP INFO or (866) 337-4636
E-mail: [Email Contact](#)

Lorraine Little
Media
Telephone: (877) 496-8142
E-mail: [Email Contact](#)



[News Room](#)

VIEW RELATED NEWS

About this company..... [Enbridge Energy Partners, L.P.](#)

From this industry..... [Energy and Utilities](#)

From this sub-industry..... [Pipelines](#)

See all [RSS Newsfeeds](#)

About Marketwired

- [Marketwired News](#)
- [Community Builders](#)
- [Privacy](#)
- [Site Map](#)
- [Accessibility](#)

Products

- [Marketwired Resonate](#)
- [Marketwired Influencers](#)
- [News Distribution](#)
- [IR/PR Newsroom \(Impress\)](#)
- [Media Database \(Mediahub\)](#)

Resources

- [Brochures](#)
- [Case Studies](#)
- [E-Books / Tip Sheets](#)
- [Webinars / Videos](#)

Newsroom

- [All News](#)
- [Headlines Only](#)
- [Advanced Search](#)
- [RSS Newsfeeds](#)
- [Hot Off the Wire](#)
- [Personal Beat](#)
- [CASL Compliance](#)

Connect With Us



MARKETWIRED IS NOW PART OF NASDAQ

Copyright ©2016 Nasdaq, Inc. All rights reserved. [Legal](#)

Attachment 10

STATE OF MICHIGAN
COURT OF APPEALS

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

DTE MICHIGAN GATHERING HOLDING
COMPANY, assignee of ENCANA OIL & GAS
(USA), INC.,

Petitioner-Appellee.

UNPUBLISHED
January 13, 2015

No. 315058
Public Service Commission
LC No. 00-017195

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

DTE MICHIGAN GATHERING HOLDING
COMPANY, assignee of ENCANA OIL & GAS
(USA), INC.,

Petitioner-Appellee.

No. 315064
Public Service Commission
LC No. 00-017196

Before: M. J. KELLY, P.J., and CAVANAGH and METER, JJ.

PER CURIAM.

In this dispute over the construction and use of gas pipelines, appellants, John Buggs and Daniel Bonamie, appeal by right the ex parte orders issued by appellee, Michigan Public Service Commission, which gave petitioner, DTE Michigan Gathering Holding Company, as the successor in interest to Encana Oil & Gas (USA), Inc. (Encana Oil),¹ permission to construct, own, and operate two natural gas pipelines: the Garfield 36 Pipeline (Docket No. 315058) and the Beaver Creek 11 Pipeline (Docket No. 315064). For the reasons more fully explained below, we conclude that the Commission's orders were unlawful. Accordingly, we vacate those orders and remand for a new determination of necessity on each application.

I. BASIC FACTS

1. THE GARFIELD 36 PIPELINE

In January 2013, Encana Oil applied for a certificate of public convenience and approval to construct, own, and operate a 1.9 mile long natural gas pipeline under 1929 PA 9 (Act 9), MCL 483.101 *et seq.* Encana Oil referred to the pipeline as the Garfield 36 Pipeline. Encana Oil represented it would use the pipeline to transport gas recovered from a single well with a recoverable reserve of 2 to 3 billion standard cubic feet of gas. However, it also stated that it anticipated drilling additional wells into the Collingwood formation. It stated that the pipeline would be constructed with anticipated easements and permits "adjacent to the well pad access road" on land owned by the Michigan Department of Natural Resources (the Department) and within the county's right of way to the point where it would connect with Michigan Consolidated Gas Company's Saginaw Bay Pipeline. Encana Oil provided a map of the proposed route and engineering specifications which provided that the pipeline would be capable of transporting up to 40 million standard cubic feet of gas per day. Encana Oil further represented that the pipeline was necessary for its business, that the gas would ultimately be available to Michigan consumers, that without the pipeline there would be no public access to gas reserves in that area, and that the pipeline was "the most efficient and cost-effective means to bring these gas reserves to the public."

Encana Oil also filed an environmental impact assessment with its application. Dean Farrier prepared the assessment and stated that he was a consulting biologist. He represented that the proposed pipeline would be constructed entirely on land owned by the Department and along existing corridors such that there would be "minimal impact to the local ecosystems and land use," and that no alternatives reviewed had less impact. He noted that the route crossed some wetlands and that the pipeline would "be directionally drilled under the series of wetlands for 1027 feet" to "minimize the impact to that feature." He represented that the wetland crossing was exempt from the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.* Farrier also indicated that clearing would be limited to "the minimum area required for safe and

¹ During the pendency of this appeal, Encana Oil moved to substitute DTE Holding as the party in interest after it assigned all of its interests in the pipelines to DTE Holding. This Court granted the motion. However, because all proceedings below occurred while Encana Oil was still a party, for ease of reference we shall refer to Encana Oil, rather than its successor, DTE Holding.

efficient construction,” and that to the best of his knowledge there were no threatened or endangered species within the proposed easement or along the proposed route. Finally, he represented that underground pipelines were the safest way to transport petroleum products, and that the potential for release was low and, in any event, unlikely to “significantly harm surrounding plants, wildlife, or soils.” Further, although the possibility of ignition and fire was a danger, the human population density in the vicinity was “extremely low.”

The Commission approved the proposed pipeline project in an ex parte order issued later that same month.

2. BEAVER CREEK 11 PIPELINE

In January 2013, Encana Oil also filed an application for approval and a certificate of public convenience and necessity to construct, own, and operate a 3.1 mile long natural gas pipeline that it referred to as the Beaver Creek 11 Pipeline, which was also to collect gas from the Collingwood formation and connect to Michigan Consolidated Gas Company’s Saginaw Bay Pipeline over land belonging to the Department. The pipeline was to service a single well with 2 to 3 billion standard cubic feet of gas but, again, Encana Oil anticipated that it would add “a significant number of wells” in the future. It also again represented that the pipeline was necessary for its business, that without it the public would not have access to gas reserves in the area, and that it was the most efficient and cost-effective means of delivering the gas.

Farrier prepared an environmental impact assessment for this project as well. Farrier again stated that the route was along existing corridors on the Department’s land except for a small percentage of the route, which was on land owned by the Department of Transportation; however, he acknowledged that the route crossed privately-owned land and that there were five residences within 1/8th of a mile, but that the route was within the county right-of-way. Again, he represented that to the best of his knowledge there were no threatened or endangered species within the proposed easement or route and that “[c]learing, removal of topsoil, and grading will be limited to the minimum area required for safe and efficient construction.” He also said the route “offers the minimal impact to the local ecosystems and land use,” and that “[a]lternatives were reviewed and none appeared to have less impact” As with the other assessment, he asserted that underground pipelines were the safest way to transport petroleum products, that the potential for release was low and unlikely to “significantly harm surrounding plants, wildlife or soils,” and that although the possibility of ignition and fire was a danger, the human population density in the vicinity was “extremely low.”

The Commission approved the project in an ex parte order issued in January 2013.

The parties do not dispute that both pipelines have since been constructed and have begun transporting gas.

3. PROCEEDINGS

In March 2013, Buggs and Bonamie applied for permission to intervene in both of Encana Oil’s applications. Specifically, they asked the Commission to consolidate the proceedings, vacate its previous orders, and hold a hearing to receive additional evidence.

That same month Buggs and Bonamie appealed in this Court and moved to hold the appeals in abeyance pending a decision by the Commission on whether to allow additional evidence. This Court issued an order consolidating the appeals and issued an order staying appellate proceedings and holding the appeals in abeyance until the Commission “disposes of the petition to receive additional evidence and, if additional evidence is received, issues a final order after consideration of the additional evidence.”²

In April 2013, the Commission denied the petitions to intervene by Buggs and Bonamie on the ground that they were not proper intervenors:

Mere interest in a proceeding’s outcome is insufficient to support intervention. The Commission has long held that prospective intervenors must generally satisfy the two-prong test established in *Association of Data Processing Services Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970) This test requires the party in question to show: (1) that it suffered an injury in fact and (2) that the interest allegedly damaged falls within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

. . . Petitioners have failed to satisfy either criterion. Specifically, Petitioners’ allegation that protected wildlife and the environment may be harmed as the result of future drilling does not establish that Petitioners have suffered any concrete or discernible injury in fact. In addition, Petitioners’ allegations that the plans interfere with their or the public’s future use and enjoyment of the area likewise fail to establish that they suffered an injury in fact or that the “damaged interest” falls within the zone of interests Act 9 was designed to protect or regulate.

The Commission later denied Buggs and Bonamie’s motion for reconsideration. In denying reconsideration, the Commission rejected the contention by Buggs and Bonamie that it had an obligation to consider the environmental impact of the proposed pipelines:

[D]espite the Petitioners’ assertion that modern law has “overtaken” Act 9, the Commission is required to apply the law as written. Amendments or additions to the Act must come from the Legislature. The Commission lacks the authority to amend the Act or to expand its reach simply because the Petitioners ask it to. Similarly, contrary to the Petitioners’ argument that the Michigan Environmental Protection Act “imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct,” the Commission lacks statutory authority to enforce that law or other environmental laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.

² See *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered March 25, 2013 (Docket Nos. 315058, 315064); *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered April 3, 2013 (Docket Nos. 315058, 315064).

The Petitioners also argue that the Commission Staff's (Staff) failure to investigate Encana [Oil]'s environmental impact assessment (EIA), as compared to the Staff's independent environmental review in Case No. U-9138, warrants reconsideration and approval of the petition. Having reviewed the matter, we conclude that there was no legal error or other basis to warrant reversal of our initial decision denying the Petitioners intervention.

Although the Petitioners are correct that, in Case No. U-9138, the Staff conducted its own environmental review in order to conclude that construction would not constitute a "major site activity," that case has no bearing on the matter presently before the Commission. Moreover, the Petitioners cite no legal authority to support their assertion that, because the Staff conducted an independent review of an issue in one Act 9 pipeline case, it must do so in each case. The criteria that the Commission is statutorily authorized to consider in an Act 9 pipeline construction application includes the map of the proposed line, the route, the type of construction and the necessity and practicability of the pipeline so that the Commission may determine whether the proposed construction serves the convenience and necessity of the public. MCL 483.109.

Here, the Petitioners have chosen the wrong forum in which to bring their claims. If they want to protect the natural habitats of the Kirtland's warbler or other wildlife from diminution, or protect the environment from forest fragmentation, they need to file a lawsuit in a court with proper jurisdiction to consider the issues. The Commission is unable to grant the Petitioners' motion for reconsideration because they have chosen the wrong forum in which to seek redress.

In August 2013, Encana Oil moved to dismiss the appeal by Buggs and Bonamie for lack of jurisdiction. A majority of this Court denied the motion because Encana Oil failed to establish that the Court of Appeals lacked jurisdiction:

Petitioner's argument that appellants are not parties in interest within the meaning of MCL 462.26 because they were not parties to the . . . [administrative] proceedings must be rejected because, by equating the phrase "party in interest" used in that statutory provision with the term "party," petitioner would improperly render the words "in interest" nugatory or mere surplusage. See, e.g., *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 [NW2d 223] (2013). Rather, by using the broader phrase "party in interest," the Legislature has necessarily allowed persons or entities who are not parties to the relevant [Commission] case to file an appeal of right from the relevant types of [Commission] orders. Further, contrary to petitioner's argument that one needs to be a party to a case to be an aggrieved party under MCR 7.203(A), there are situations where a non-party to a case is an aggrieved party with standing to appeal. See *Abel v Grossman Investments Co*, [302 Mich App 232; 838 NW2d 204 (2013)]. Also, *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286; 715 NW2d 846 (2006), is inapplicable. Contrary to petitioner's discussion of that case, its holding was not based on the Attorney General not being a named party. See *id.*, 296 n 10.

Rather, the Attorney General was manifestly not an aggrieved party in that case because he was not pursuing an appeal based on an interest in the outcome of the particular case but merely to dispute this Court's construction of a statute. See *id.*, 290. Thus, we need not consider whether *Federated Ins Co* has been undermined by *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). However, we note that review of the June 28, 2013 . . . order is not in the scope of the present appeals from January 31, 2013 orders of the [Commission]. Rather, appellants may only challenge the January 31, 2013 [Commission] orders³

We now consider the issues on appeal.

II. THE ORDERS

A. STANDARDS OF REVIEW

Buggs and Bonamie argue that the Commission erred when it issued the orders approving the pipelines without following the requirements stated under Act 9. Specifically, they maintain that, under Michigan's Environmental Protection Act (MEPA), MCL 324.1701 *et seq.*, the Commission had to conduct an environmental review before making its decision concerning the convenience and necessity of the proposed pipelines, which it did not do. Moreover, they argue, Encana Oil's environmental assessments did not provide a sufficient basis for evaluating the environmental impact. Given these defects, Buggs and Bonamie argue that the Commission should have rejected the applications.

Buggs and Bonamie were not parties to the proceedings below and, for that reason, were not able to raise these issues before the Commission before it issued its orders. Thus, this issue was not properly preserved for review. Nevertheless, this Court has the discretion to consider the issue for the first time on appeal. *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 345; 852 NW2d 180 (2014). And, because this claim of error concerns a question of law and all the

³ *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered September 25, 2013 (Docket Nos. 315058 & 315064). Although Buggs and Bonamie have restricted the issues presented on appeal to those involved in the January 2013 order, they have referred to and incorporated pleadings and documents from subsequent proceedings; they refer to affidavits, pleadings, and documents to establish that they live in the area, were not given notice of the applications, and understand that Encana Oil (or DTE Holding) plans to add 500 to 1,700 wells and associated pipelines to the system. Buggs and Bonamie also state their belief that the gas exploration and development activity can have an extreme effect on the landscape, that the habitat of the Kirtland Warbler will be adversely affected, and relate accounts of dead birds. Because these issues were not before the Commission when it issued its orders, we will not consider them in determining whether the Commission erred when it issued those orders. Nonetheless, the Commission's decision on reconsideration of the denial of the motion to intervene is pertinent to understanding the basis of its refusal to allow intervention.

facts necessary for our review have been presented by the parties, and because the failure to consider the claim may result in a miscarriage of justice, we elect to exercise our discretion to consider the issue. See *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014).

In order to prevail, Buggs and Bonamie must demonstrate by clear and convincing evidence that the Commission's orders were unlawful or unreasonable. MCL 462.26(8). An order is unlawful if the Commission failed to follow a statutory requirement or abused its discretion. *In re Application of Consumers Energy Co for Rate Increase*, 291 Mich App 106, 109-110; 804 NW2d 574 (2010). The Commission's orders must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. This Court reviews de novo whether the Commission exceeded the scope of its authority. *In re Application of Consumers Energy Co*, 291 Mich App at 110. This Court also reviews de novo the proper interpretation of statutes. *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 507; 853 NW2d 481 (2014).

B. ANALYSIS

The Commission is a “creature of the Legislature” possessing only the “authority bestowed upon it by statute”; it “possesses no ‘common law’ powers.” *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988). “Thus, a determination of the commission's powers requires an examination of the various statutory enactments pertaining to its authority.” *Id.*

The Legislature vested the Commission with the power to control and regulate “corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use” under Act 9. MCL 483.103. The Commission is further required to “investigate any alleged neglect or violation of the laws of the state by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the same by pipe line or lines for public use” *Id.*

Anyone proposing to pipe or transport natural gas in Michigan must comply with Act 9. MCL 483.101. Moreover, before constructing a pipeline to transport natural gas, the person proposing to construct the line must apply to the Commission for permission to construct the pipeline. MCL 483.109. The application must include “a map or plat of [the] proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections” *Id.* And the Commission must “examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public” before it may approve the construction of the proposed pipeline. MCL 483.109. Thus, although MCL 483.109 does not specifically require the Commission to consider the environmental impact, it plainly permits the Commission to deny permission if after investigating the matter the Commission determines that the new pipeline would not serve the public convenience and necessity.

Since the enactment of Act 9, our Supreme Court has considered whether an agency must consider the environmental impact of a proposed project before granting permission to proceed. In *State Hwy Comm v Vanderkloot*, 392 Mich 159, 167-168; 220 NW2d 416 (1974) (opinion by Williams, J.), landowners opposed the condemnation of land for a highway, arguing in part that it was a swamp area with “increasingly rare or even unique ecological characteristics,” and that the duties of the highway commission conflicted with Const 1963, art 4, § 52, relating to the protection of natural resources. In considering this argument, our Supreme Court held that the Legislature has an affirmative duty to enact legislation to protect the environment, but was not required to fulfill this duty by enactment of a specific provision in the highway condemnation act, MCL 213.361 *et seq.*, or every other piece of relevant legislation; instead, the Court explained, it had fulfilled its duty by enacting the environmental protection act.⁴ *State Hwy Comm*, 392 Mich at 182-183 (opinion by Williams, J.), 194 (opinion by Levin, J.) (conceding that the environmental protection act provides substantive protections as well as procedural protections, but declining to consider the issue on the record before the Court). The Court explained that the Legislature accomplished this goal through two distinct methods: it provided a cause of action for the protection of Michigan’s natural resources, and it provided that subject agencies had certain environmental obligations. *Id.* at 184. The Court determined that the environmental protection act specifically proscribed “pollution, impairment, or destruction” of natural resources “unless it is demonstrated that ‘there is no feasible and prudent alternative to [the polluting, impairing, or destroying entity’s] conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state’s paramount concern for the protection of its natural resources from pollution, impairment or destruction,’” and that “[t]his substantive environmental guideline is applicable to the [highway] Commission’s administrative condemnation determinations.” *Id.* at 185-186 (emphasis removed), citing MCL 691.1203, which has been replaced by MCL 324.1703; see also *Genesco, Inc v Dep’t of Environmental Quality*, 250 Mich App 45, 55-56; 645 NW2d 319 (2002). Thus, although the specific provision of the environmental protection act cited by the court addressed the burden of proof for the cause of action created by that act, a plurality of our Supreme Court held that the act also established a substantive standard prohibiting the impairment of natural resources, which applies to an agency’s determinations. *State Hwy Comm*, 392 Mich at 186, 190 (opinion by Williams, J.). The Court, however, went on to state that the declaration of necessity in the condemnation proceeding would be *prima facie* evidence of necessity and that a person challenging the agency’s determination of necessity would have the burden to prove fraud or abuse of discretion, but that the commission’s failure to reasonably comply with its duties could be a basis for finding fraud or an abuse of discretion. *State Hwy Comm*, 392 Mich at 189-190 (opinion by Williams, J.).

⁴ The original environmental protection act was repealed by 1994 PA 451, and replaced by the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*, Part 17 of which is titled the Michigan Environmental Protection Act. The MEPA set forth in Part 17 is substantially similar to the original act.

Buggs and Bonamie argue the Commission did not perform the requisite Act 9 review because, in determining public necessity, it did not sufficiently consider the environmental effect of the pipelines. As noted above, in rejecting the motion for reconsideration, the Commission stated that it had no obligation to consider the environment impact under MEPA, but instead stated that it was required to look to Act 9 alone:

[C]ontrary to the Petitioners' argument that the Michigan Environmental Protection Act "imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct," the Commission lacks statutory authority to enforce that law or other environmental laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.

The Commission, however, mistakenly characterized the nature of the obligation. Buggs and Bonamie did not ask the Commission to enforce the MEPA or another environmental law. They asked the Commission to comply with its duty to examine and inquire into the necessity and practicability of the pipelines and determine that the pipelines would serve the convenience and necessity of the public. And, under the decision in *State Hwy Comm*, that duty includes an obligation to consider the environmental effect that the proposed pipeline would have. Namely, it had to consider whether the proposed project would impair the environment, whether there was a feasible and prudent alternative to the impairment, and whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185-186 (opinion by Williams, J.).

As required by Act 9 itself, Encana Oil submitted applications, maps of the proposed gas lines, and specifications for the projects as required by the statute. The Commission's orders make it clear that it reviewed these materials. Both applications, when coupled with the assessments, indicated that the pipelines were necessary for access to the gas reserves in the Collingwood formation and that the proposed routes were those causing the least impact. Thus, Encana Oil provided proof of necessity and practicability, and that there was no feasible and prudent alternative. However, although the Commission found in a cursory manner that the pipelines would serve the public convenience and necessity, it did not otherwise expressly speak to necessity, practicability, feasibility, or prudence in its orders. Moreover, it did not address whether any impairment was consistent with "the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction." *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Thus, the Commission failed to follow the substantive requirement of MEPA, a statutory requirement independent of Act 9, and accordingly, its orders were unlawful.

Although MCL 324.1705(2) required a determination that took an environmental element into account, appellants incorrectly suggest that it required the Commission to conduct an independent investigation. There is no language in the statute to suggest that the Commission had any such duty. Moreover, *State Hwy Comm* indicated that the environmental effect of conduct had to be considered in making a determination, but it did not suggest that an agency had an independent duty to investigate. Thus, to the extent that the materials in Encana Oil's applications would allow the Commission to make a determination consistent with Act 9 and

MCL 324.1705(2), the Commission could base its determination on those materials. In this regard, it is noted that the motions to intervene were not before the Commission at the time it made its determinations regarding Encana Oil's applications. Thus, the allegations in those petitions did not have to be considered. However, Farrier indicated that there would be impairments to natural resources in his environmental impact assessments. He indicated that there would be, among other impairments, clearing of vegetation, but that the route would offer minimal impact because it would be along existing corridors. He further indicated that alternatives were reviewed and none appeared to have less impact. The Commission noted that these environmental assessments had been attached to the applications. However, it did not discuss the contents or expressly adopt Farrier's representation that alternatives were reviewed and none appeared to have less impact, i.e., that there was no feasible and prudent alternative to the impairment, and did not address whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Accordingly, it is necessary to remand this case for the Commission to expressly make such a determination.

Buggs and Bonamie argue that Farrier's environmental impact assessments were insufficient to allow the Commission to make the requisite findings required by the MEPA. They claim that the assessments themselves should have caused the Commission to realize that they were inadequate on their face: Farrier analyzed the impact within the proposed easement, but did not include the impact on the environment in the vicinity; Farrier professed not to know of protected or endangered species, but did not certify that there were none; and Farrier claimed to be a biologist, but listed no supporting credentials. They also assert that the assessments were not signed or dated. However, the cover pages bore a date of January 2013 and indicated that they were prepared by Farrier. Buggs and Bonamie cite no authority that speaks to the requisite sufficiency of proofs on which the Commission must base its decision. The assessments described the routes along existing corridors, indicated that to the best of Farrier's knowledge "there were no threatened or endangered species within the proposed easements" or "along the proposed routes," described the clearing that would take place, and represented that the

workspace will be graded as near as possible to pre-construction contours and/or restored in accordance with Kalkaska County Road Commission permit requirements, and natural runoff and drainage patterns will be restored. All existing improvements, such as fences, gates, bar ditches, and beaver deceivers, will be maintained and repaired to as good as or better than pre-construction conditions. Permanent erosion control measures will be installed, and all disturbed workspace will be reseeded.

Although Buggs and Bonamie's claims that the Kirtland Warbler is protected or endangered and that its habitat would be affected are troubling, allegations to this effect were not before the Commission at the time it reviewed the applications. Moreover, allegations that Encana Oil intended to add more pipelines that would create new corridors would seem to be pertinent to future applications for pipeline approval, but not to the lines at issue. While the Commission might have been inclined to seek more information if cognizant of the requirement that it assess whether there were feasible and prudent alternatives and whether the conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's

paramount concern for the protection of its natural resources from pollution, impairment, or destruction, the representations made by Farrier in the Assessments were not inherently suspect such that they could not be deemed substantial evidence on the whole record to support the Commission's findings.

III. CONCLUSION

Although the Commission minimally complied with the requirements for approving the applications under Act 9, it failed to follow the independent statutory requirement imposed under MEPA. Because its orders approving the pipelines were unlawfully issued, we vacate those orders and remand for a new necessity determination in both dockets. In making its new determinations of necessity, the Commission shall specifically address the environmental impact as required under the MEPA and the decision in *State Hwy Comm*, 392 Mich at 184-190 (opinion by Williams, J.).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. We further order that none of the parties may tax their costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter