



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

December 9, 2022

Regulatory File No. 2020-00260-WMS

Julie Kloss
Enbridge Energy
11 East Superior Street, Suite 125
Duluth, Minnesota 55802

Dear Ms. Kloss:

This letter concerns your request for Department of the Army authorization to discharge fill material into waters of the United States (WOTUS) pursuant to Section 404 of the Clean Water Act (Section 404) and for work under the White River, a navigable water of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Authorization has been requested for construction of portions of the proposed Line 5 Wisconsin Segment Relocation (L5R) project located in parts of Bayfield, Ashland, and Iron Counties, Wisconsin.

The Corps evaluation of a Section 10 and Section 404 permit application involves multiple analyses, including: (1) evaluating the proposal's environmental effects in accordance with the National Environmental Policy Act (NEPA) (33 CFR part 325, Appendix B), (2) determining whether the proposal is contrary to the public interest (33 CFR § 320.4), and (3) in the case of a Section 404 evaluation, determining whether the proposal complies with the Section 404(b)(1) Guidelines (40 CFR part 230).

We are evaluating reasonable alternatives, and the effects of those alternatives, as required under NEPA. An evaluation of alternatives is also required under the Clean Water Act Section 404(b)(1) Guidelines for projects that include the discharge of dredged or fill material to waters of the United States. Under the Section 404(b)(1) Guidelines, "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." Further, when regulated discharges are proposed in special aquatic sites (including wetlands) and do not require siting in the resource to fulfill the basic project purpose, the guidelines presume that practicable alternatives are available outside these resources and would result in less adverse impact on the aquatic ecosystem. It is the applicant's responsibility to clearly demonstrate rebuttal of both these presumptions.

We have previously provided you with the comments received in response to the public notice, as well as the letters from the Environmental Protection Agency (EPA) initiating the elevation process contained in the Section 404(q) *Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army*. Based on our review of the information provided thus far, issues raised through coordination and meetings with tribes and other agencies, and comments received in response to the Corps' public notice, we have determined that additional information is needed from you to evaluate the potential direct, indirect, and cumulative effects of the proposed project, as well as to evaluate practicable alternatives. We have identified the required information below and acknowledge that additional questions may arise as we evaluate your responses.

1. The location of the proposed horizontal direction drill (HDD) of the White River is remote and access appears to be difficult. Please provide an evaluation of alternative installation methods and locations, which clearly addresses the practicability of the alternative crossing method(s) and locations and provides a comparison of environmental considerations. Describe measures to reduce the potential for an inadvertent release of drilling fluid at this location and describe specific measures that you would employ to respond in the event of an inadvertent release of drilling fluid. We further ask that you address other measures suggested by the public or other agencies and indicate your rationale for including or excluding them.
2. Please provide site-specific inadvertent release response plans for all waterways proposed to be crossed by HDD or direct bore methods of pipeline installation. These plans must discuss measures taken to reduce potential for an inadvertent release and describe specific measures that you would employ to respond in the event of an inadvertent release of drilling fluid.
3. Please provide additional information to allow our agency to better understand the alternatives considered for crossing several specific waterbodies, as well as any potential risks or adverse effects which may occur within these resources. This information should describe how the waterbodies would be monitored, and how you propose to identify the need for and methods to address any remedial activities which may be identified.
 - a. Please provide an evaluation of alternative trenchless installation methods for the following resources when proposed to be crossed by open cut methods: designated trout streams, tributaries to designated perennial trout streams, 303(d) listed waters, Area of Special National Resource Interest (ASNRI) streams, and waters that flow downstream to the Bad River Reservation and are listed as Exceptional and Outstanding Resource Waters (ERWs & ORWs). As part of this evaluation, please include an assessment which describes the practicability of the alternative crossing method(s) and provides a comparison of anticipated environmental effects. Please pay careful attention to the designations for listing these waterbodies and how the proposed construction activities could potentially impair designations for these waters.
 - b. Please provide an updated plan for monitoring construction-related risks that may impair the waterways listed in 2.a. at a minimum. We have received a draft water quality monitoring plan from you and appreciate your proposal to monitor perennial waterways. However, additional information is still required. Please define, and provide the rationale for, proposed baseline monitoring timeframes and post-construction monitoring timeframes. Additional details and rationale about the monitoring distance from the crossings should be included, as well information describing your consideration of monitoring locations at downstream connection points where effects may be aggregated. Many of the waterways along the route include fine grain substrates which may have the potential to affect benthic macroinvertebrate communities when suspended sediment settles out of the water column. Please describe how the monitoring would establish a baseline for parameters of concern, and what deviations measured would be considered outside a normal fluctuation. Lastly, describe what actions would be taken to address monitoring results which suggest a need for remedial action. We strongly recommend additional coordination with our agency prior to submittal of a final document.

4. The Environmental Protection Agency (EPA) has identified the Kakagon-Bad River Sloughs and the Bad River as Aquatic Resources of National Importance (ARNIs). Please describe measures that would be employed to monitor and address potential sedimentation and other water quality impairments to these waters which may result from construction-related activities. We anticipate addressing this comment may expand the minimum number of waters proposed for monitoring in comment 3 above. In addition to addressing the ARNIs identified, please describe how you propose to meet Bad River Band's narrative and numeric water quality standards (WQS) as part of your proposed construction activities.
5. Please provide additional information and analysis on the potential effects of temporary discharges into waterbodies associated with different pipeline installation methods. Describe the analysis used to determine the proposed method of installation for each specific waterbody crossing or groups of waterbody crossings, identify the anticipated effects and risks associated with the proposed waterbody crossing method and how those risks would be managed to reduce adverse effects to the aquatic ecosystem including water quality. Please provide the equivalent information and analysis for each feasible and practicable potential alternative crossing method for each waterbody or groups of waterbodies and compare the anticipated effects of the alternative crossing method to the proposed crossing method.
6. As we have discussed in regular meetings with you, additional information and analysis is needed regarding construction-related risks to aquifers. Please identify where aquifers are located with proximity to Corps regulated activities and describe measures that would be taken to minimize the potential for inadvertent aquifer breaches due to construction activities.
7. Please provide additional information and analysis on potential adverse water quality and hydrological effects of blasting in waterbodies and wetlands. Specifically, provide an evaluation of alternative installation methods in each of these areas, which clearly addresses the practicability of the alternative crossing method(s) and provides a comparison of environmental effects. Describe measures that would be implemented to minimize the risks associated with blasting in waterbodies and wetlands, including how baseline and post-construction monitoring would inform the need for corrective or mitigative measures. The locations of aquatic resources proposed for blasting must be identified on maps and provided along with your analysis.
8. Please provide additional information and analysis regarding the potential for proposed regulated activities to cause degradation by disrupting life stages of aquatic life, fish spawning, and wildlife dependent on these systems. Describe how an evaluation of baseline conditions and post-construction restoration and monitoring at waterbody crossings would inform measures taken to minimize the potential for construction-related effects on the biological characteristics of the aquatic ecosystem, including fish, crustaceans, mollusks, and other aquatic organisms and other wildlife. As appropriate, your response should include a discussion about potential for habitat fragmentation and any potential synergistic effects to species which use riverine and riparian areas.

9. Attachment N of Environmental Impact Report (Revised August 2020 EIR) provides typical stream restoration examples. Please provide additional information that describes which restoration method you propose to utilize for each Corps-regulated waterway crossing. Use site-specific crossing plans for waterways that illustrates the baseline condition of each waterway (bank height, bank width, water depth) to inform how the stream bed and banks would be restored post-construction. Describe whether riprap or other fill material would be permanently discharged below the ordinary high-water mark of waterways for post-construction restoration as such discharges require permit authorization.
10. Our review of wetland functional assessments in the field have revealed that portions of the proposed route are located within high-quality forested wetlands or wetland complexes with apparent groundwater discharge, such as springs and seeps. Please identify all areas where pipeline installation is proposed in these wetland types and hydrogeologic settings and evaluate where adjustments to the route alignment could avoid or minimize construction-related effects to these areas. We are happy to meet with you to discuss any questions about locations we have identified in our review. The evaluation provided to our agency must describe the practicability of realigning, including opportunities for use of non-aquatic areas and other aquatic areas with less adverse impact, considering logistics, technical feasibility, and cost. Where your analysis indicates route adjustments cannot be made to avoid or minimize regulated construction activities in high-quality forested wetlands and/or groundwater discharge wetlands, you must describe actions to minimize potential primary and secondary effects resulting from construction-related activities. Describe how baseline and post-construction vegetation and hydrology monitoring upgradient and downgradient of proposed pipeline crossing would inform the need for corrective action or additional compensatory mitigation.
11. As we have previously discussed with you, quantitative vegetation surveys must be completed in high-quality wetlands. The wetland functional assessments that you completed utilizing the Wisconsin Rapid Assessment Methodology (WSRAM) provides for a qualitative assessment of wetland quality. The quantitative survey information will inform post-construction restoration, monitoring, and compensatory mitigation requirements. We are happy to meet with you to discuss any questions about locations of these resources we have identified in our review.
12. Executive Order 13112, as amended by Executive Order 13751, requires executive departments and agencies to take steps to prevent the introduction and spread of invasive species, and to support efforts to eradicate and control invasive species that are established. Therefore, we require that you provide an Invasive Species Management (INS) Plan that outlines management strategies to minimize the spread of INS identified within the proposed construction workspace and access roads. The INS Plan must outline management strategies that would be implemented prior to construction, during construction, restoration, and post-construction monitoring.
13. In addition to the information requested above regarding route alignment adjustments, we request additional information on the initial alternatives analysis provided in Section 4 of the Supplemental Information in your application, along with Section 3 of the EIR. Please provide the following:
 - a. Address any changes to your analysis of the No Action Alternative since your application.

- b. For system alternatives, address the potential for use of existing pipelines in combination with one another and with other transportation means (truck, rail), for conveyance of all or a portion of the substances transported in the existing Line 5.
 - c. For the route alternatives you provided, explain how the evaluation and comparison of these alternatives supports the search for the least environmentally damaging practicable alternative required by the 404(b)(1) guidelines.
14. We have received comments expressing concern that enforcement of state trespass laws will restrict tribal access to lands used for hunting, fishing, and gathering natural resources. Please describe how pipeline construction activities may impair access to areas where treaty rights are exercised, and how any potential impairment may be mitigated.

Finally, we recommend that you review the correspondence we have previously provided from other agencies, Tribes, and members of the public. There are several common concerns that have been raised but do not fall within Corps authorities. These concerns include, but are not limited, to pipeline operation, oil spills, fossil fuel reliance, effects to uplands, and groundwater. These have been persistent areas of concern and we provide these to you for your consideration.

If you have any questions, please contact me at (651) 290-5882 or william.m.sande@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill M Sande".

Bill Sande
Lead Project Manager

cc:

Melissa Blankenship, US Environmental Protection Agency
Ben Callan, Wisconsin Department of Natural Resources
Naomi Tillison, Mashkiiziibii Natural Resources Department