

Berry, Desmond

From: Berry, Desmond
Sent: Tuesday, October 07, 2014 1:45 PM
To: 'Harmon, Darrel'
Cc: manville.jennifer@epa.gov; 'Burdick, Melanie'
Subject: RE: Re: Enbridge Line 5

Thank you for the follow-up Darrel,

It's a little disconcerting to learn that EPA has such a limited role with regards to pipelines. It appears that the scope and purpose of the permitted activity is broader than the stated purpose of general maintenance for the two existing pipelines together known as Line 5. Our understanding is that the additional supports are being installed because Enbridge intends to increase the capacity of the existing 61-year-old pipeline. Although Enbridge refuses to disclose this information publicly, our understanding is that Enbridge intends to increase the volume and pressure of the product being transmitted. Further, our understanding is that the permitted construction work is being done because Enbridge intends to transmit a different "product" through the pipeline. This combination – transmitting a potentially more corrosive product under greater pressure at higher volume – poses a greater risk than merely continuing the preexisting activity.

We have not reviewed records dating back to 2001, including a 2005 permit (that apparently was not acted upon) and renewed permit applications circa 2010-2011. But this year Enbridge first proposed 22 locations for pipeline support structures and then later requested approval for 34 to 42 locations. The July 24, 2014 MDEQ permit authorizes installation of anchors in 39 identified locations (with up to 3 additional locations) "to the existing Line 5 pipeline for the purpose of increased support and stability to existing pipeline infrastructure."

The "existing pipeline infrastructure" implicitly refers to how Line 5 has been utilized the past six decades. If all that is involved is general maintenance of that preexisting use, we can understand why this might be considered within the purview of a NWP for maintenance. But that does not appear to be the purpose for the permitted construction activities.

Our initial communications with EPA have focused on whether NEPA review is required for NWPs. But rather than focusing on the process for approval of NWPs, isn't the relevant issue whether Enbridge has mischaracterized the purpose of the permitted activities? Is this truly a "minimal impact project"?

It seems clear that Enbridge intends to change its overall use of Line 5. In doing so, this no longer should be considered a "minimal impact project" eligible for a NWP for which a NEPA assessment is not required. Instead, the National Wildlife Federation "Sunken Hazard" document provides substantial justification for the proposition that Enbridge intends to utilize Line 5 in a manner different from how it has been utilized in the past. Thus, our question: is this project really eligible for Nationwide Permit (NWP) for maintenance? And, if not, then shouldn't EPA have a role in protecting the 1836 Treaty-reserved tribal fishing rights (and public trust) in the Straits of Mackinac and surrounding waters of Lakes Huron and Michigan?

Desmond

From: Harmon, Darrel [mailto:Harmon.Darrel@epa.gov]
Sent: Tuesday, October 07, 2014 11:28 AM
To: Berry, Desmond
Subject: FW: Re: Enbridge Line 5

Hi Desmond: I hope this response is helpful to you, glad to see that Melanie was able to get a copy of the permit. The only additional follow-up I can think of is to consider our jurisdictional authority and where we are involved with pipelines. Unfortunately, at the recent Traverse City RTOC meeting, our General Counsel, Robert Kaplan explained that EPA was recently admonished by a court for overstepping our non-existent authority regarding a pipeline. Apparently the only oversight authority we have is when a pipeline is leaking. If you need additional information in that regard, I recommend contacting Barbara Wester in our Office of Regional Counsel. It appears most if not all regulatory authority for pipelines is with US Department of Transportation and the Federal Energy Regulatory Commission.

If I can provide additional information or clarification, do not hesitate to contact me.

thanks.....Darrel

From: Burdick, Melanie
Sent: Monday, October 06, 2014 12:07 PM
To: Desmond.berry@gtbindians.com
Cc: Manville, Jennifer; Swenson, Peter; Harmon, Darrel
Subject: Re: Enbridge Line 5

Hello,

Darrel Harmon informed me that you had inquired about the Enbridge Line 5 Section 10/404 Permit for line maintenance within the Straits of Mackinac. I inquired with MDEQ, and they recently issued a permit for Line 5 Maintenance (see attached public notice and permit). The Corps of engineers issued Nationwide Permits (NWP) for the maintenance in May and June of this year. EPA does not generally review NWP authorizations, and we did not review Corps or State permits for this project.

Feel free to contact me if you have any questions,
Melanie Burdick
Watersheds and Wetlands
U.S. EPA (ww-16j)
77 W. Jackson Blvd
Chicago, Illinois 60604
e-mail: burdick.melanie@epa.gov
phone: 312-886-2255
fax: 312-697-2598