### **Evan Smith**

My comments on the draft Enbridge Energy Ltd (Clearbrook) - Wastewater Permit are attached. Please take these comments under your consideration and use them to assess this project further. - Evan

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May 16, 2025

Evan Smith 15862 W 2nd St Hayward, WI 54843

Steven Theisen
Permit Manager, Industrial Division
Minnesota Pollution Control Agency (MPCA)
520 Lafayette Road North
St. Paul, MN 55155

# Re: Public Comment on Draft NPDES/SDS Permit for Enbridge Energy (Clearbrook) [Permit MN0056324]

Dear Mr. Theisen,

I write to urge the MPCA to strengthen the draft wastewater permit for Enbridge Energy's Clearbrook facility to address systemic risks demonstrated by Enbridge's history of non-compliance, including unauthorized appropriation of 24.2 million gallons of groundwater in 2021 (violating Minn. Stat. § 103G.271) aquifer breaches, unauthorized groundwater withdrawals, and harm to protected ecosystems during the Line 3 Pipeline Replacement Project. The permit, as currently drafted, fails to incorporate critical safeguards necessary to protect Minnesota's water resources and uphold environmental justice. Below are critical concerns and recommendations informed by recent enforcement actions and legal precedents:

#### I. Groundwater and Aquifer Protection

The permit lacks safeguards against aquifer breaches, despite Enbridge's 2021 Clearbrook violation of confining layers. Minn. Stat. § 103G.271 prohibits unauthorized water appropriation, yet the permit does not require pre-construction aquifer mapping or real-time monitoring. The draft permit's allowance for infiltration of hydrostatic test water risks repeating these violations, particularly in areas with shallow bedrock. The discharge of hydrostatic test water risks violating the Clean Water Act under the *County of Maui v. Hawaii Wildlife Fund* "functional equivalent" test, as infiltrated pollutants directly connect to groundwater (WOTUS).

#### **Recommendations:**

- A. **Require pre-construction hydrogeological surveys** at all infiltration sites, approved by MPCA/DNR, to map aquifers and confining layers (Minn. R. 7050.0250).
- B. **Prohibit discharges within 1 mile of calcareous fens** (e.g., Steenerson/Deep Lake Fens) or trout streams (e.g., LaSalle Creek), per Minn. R. 7050.0180.
- C. Install piezometers with telemetry to detect real-time aquifer pressure changes, with data shared daily with MPCA/Tribes and posted publicly within 24 hours (Minn. Stat. § 13.03).
- D. **Adopt numeric effluent limits** for sediment (TSS), turbidity, and pipeline-related contaminants (e.g., corrosion inhibitors). Failure to include numeric effluent limits repeats the same mistakes of past regulatory oversight. Examples include:
  - o Total Suspended Solids (TSS): 30 mg/L (daily maximum).
  - o Turbidity: 10 NTU (instantaneous maximum).
  - o Corrosion inhibitors (like benzotriazole): 1 µg/L.

#### II. Financial Accountability

The permit lacks financial assurance. The Minnesota DNR's enforcement action required Enbridge to establish a 2.75 million escrow fund for fen restoration and pay 3.32 million in penalties.

#### Recommendations:

- A. **Require Enbridge to post a \$3 million escrow bond** for emergency mitigation of infiltration-related damages.
- B. Impose penalties of \$25,000/day for violations identified, per Minn. Stat. § 116.072, which may be deducted from an escrow bond.

#### III. Tribal Sovereignty and Environmental Justice

The Fond du Lac Band partnered in Line 3 enforcement, yet the permit's vague "coordination" language fails to honor Tribal rights or address environmental justice disparities. This Vague

language is less specific than required of MPCA under state law and federal treaty and trust responsibilities must be amended and improved upon. Furthermore, the implication in the comment invitation that working with the US EPA and/or directly with the Tribal community is ONLY required "where the pipeline enters Tribal areas" must be clarified.

#### Recommendations:

- A. Explicitly reference applicable state laws and enforceable Tribal agreements, including Tribal consent for discharges near Indigenous lands.
- B. With tribes, evaluate the need for written Tribal consent for discharges within 5 miles of reservation boundaries should be discussed, this condition may be supported by 40 CFR 131.8.
- C. Affirm that this decision requires consultation, coordination and/or cooperation with Tribal governments. Minnesota Statutes, Sect. 1065, confirms this expectation and directs consultation, coordination and cooperation between state agencies, such as MPCA, and tribal governments in regulatory oversight, working collaboratively with states and tribes in Minnesota.
- D. Clarify that this action constitutes "matters that have Tribal implications" due to precedent working with Nations such as Fond du Lac and state definition which means rules, legislative proposals, policy statements, or other actions that have substantial direct effects on one or more Minnesota tribal governments.
- E. Allocate permit and any penalty funds to Tribal-led water quality monitoring programs.

#### IV. Independent Monitoring and Transparency

Enbridge's self-reporting failed to detect Line 3 breaches for months. The draft permit replicates this flawed oversight model. More frequent monitoring and oversight conditions may and must be included in the permit.

#### **Recommended Permit Conditions:**

A. **Mandate third-party verification** of discharge events by MPCA or Tribal-approved monitors (funded by Enbridge), per 40 CFR § 122.44(l).

- B. **Publicly post monitoring data** on MPCA's website within 24 hours of collection, per Minn. Stat. § 13.03 (Data Practices Act). This can be achieved through real time monitors of pressure.
- C. Require geotagged photos and soil moisture data in daily logs, publicly posted via MPCA's website.

#### V. Climate Resilience

Recurring breaches at LaSalle Creek (5–20 gallons/minute in 2022) highlight vulnerabilities to extreme weather.

#### **Recommendations:**

- A. **Prohibit discharges during snowmelt or heavy rainfall,** using NOAA real-time alerts (Minn. R. 6115.0710(B)).
- B. **Require climate vulnerability assessments** for all existing and planned infiltration structures.
- C. Replace straw bales with geotextile-wrapped underdrains with at least 5,000 gallon per day capacity to prevent infiltration failures.

#### **VI. Stormwater Best Management Practices**

The DNR's **criminal referral** of Enbridge to Clearwater County Attorney (2021) underscores the need for stringent permit terms.

#### **Recommendations:**

- A. **Reference Minn. Stat. § 103G.141** (unauthorized water appropriation) explicitly in permit conditions.
- B. Clarify that violations may result in criminal prosecution, under Minnesota's Public Trust Doctrine (Caminetti v. United States).

C. Adopt attached BMPs detailed further in letter (e.g., double-row silt fences, sediment basins with oil/water separators).

#### Conclusion

The MPCA must revise this permit to prevent recurring violations and comply with the Clean Water Act. Failure to act risks litigation under Minnesota's Public Trust Doctrine and perpetuates harm to Tribal resources. I urge immediate adoption of these measures and request a written response to these concerns at your earliest convenience or by June 1, 2025.

Thank you for your attention to this important matter.

Respectfully,

Evan Smith 15862 W 2nd St Hayward, WI

#### Attachments:

- 1. Recommended BMPs
- 2. DNR Press Release: Minnesota DNR Orders Enbridge Energy to Pay \$3.32 Million (2021)
- 3. Comprehensive Enforcement Resolution Agreement (Clearbrook/LaSalle Creek, 2022)

May 16, 2025

Evan Smith 15862 W 2nd St Hayward, WI 54843

Steven Theisen Permit Manager, Industrial Division Minnesota Pollution Control Agency (MPCA) 520 Lafayette Road North St. Paul, MN 55155

RE: Attached Recommended Best Management Practices (BMPs) for Enbridge's Stormwater Pollution Prevention Plan (SWPPP)

Dear Mr. Theisen,

To address Enbridge's history of aquifer breaches, sediment discharges, and non-compliance, the following BMPs should be **immediately** added to the Wastewater Discharge Permit and/or the SWPPP to ensure robust environmental protection and regulatory adherence. This structured approach ensures the SWPPP is proactive, enforceable, and responsive to past harm.

#### I. JUSTIFICATION

The proposed wastewater discharge of hydrostatic test water via land infiltration constitutes a major change requiring revision of Enbridge's Stormwater Pollution Prevention Plan (SWPPP) under 40 CFR § 122.26(d)(2)(iv)(B) and Minn. R. 7001.0150. This discharge introduces new pollutant pathways (e.g., sediment, residual hydrocarbons, and corrosion inhibitors) and significantly increases infiltration risks, particularly in light of Enbridge's documented history of aquifer breaches and unauthorized groundwater withdrawals, including the 24.2-million-gallon unauthorized appropriation during Line 3 construction (violating Minn. Stat. § 103G.271). The shift to land application of hydrostatic test water, a departure from prior permit exclusions for trench dewatering and construction stormwater, triggers antidegradation review under Minn. R. 7050.0250–0335, as it risks increased pollutant loading to groundwater and sensitive ecosystems like calcareous fens.

permittees must update their SWPPP within 30 days of any facility modification or operational

change that affects stormwater management, including discharges to infiltration systems or alterations in pollutant exposure risks.

Furthermore, the permit's reliance on straw bale structures and geotextile liners fails to address systemic failures highlighted in the MPCA's 2022 enforcement action, which mandated \$2.75 million in escrow for fen restoration due to Enbridge's non-compliance. The MPCA's 2025 Industrial Stormwater General Permit (Minn. R. 6115.0710(B)) explicitly requires SWPPP updates when discharges threaten impaired waters or public trust resources, as evidenced by sediment discharges into LaSalle Creek, a designated trout stream. Failure to revise the SWPPP would violate NPDES obligations under 40 CFR § 122.44(l) and Minnesota's Public Trust Doctrine, necessitating enforceable updates to BMPs, monitoring protocols, and financial assurances to prevent recurring harm.

The discharge of hydrostatic test water may contain sediment, residual hydrocarbons, or pipeline corrosion inhibitors, introduces new pollutant pathways and infiltration risks, particularly given Enbridge's documented history of aquifer breaches and unauthorized groundwater withdrawals. Minnesota's 2025 Industrial Stormwater General Permit explicitly requires SWPPP revisions for discharges near impaired waters or when new monitoring data (e.g., PFAS levels) exceed benchmarks, as outlined in Minn. R. 6115.0710(B). Furthermore, Minn. Stat. § 103G.271 prohibits unauthorized water appropriation, a statute Enbridge previously violated, necessitating heightened scrutiny of discharge practices to avoid recurring breaches.

Please assure adequate revision of the SWPPP would contriving both the Clean Water Act and Minnesota's Public Trust Doctrine, prioritizing safeguarding groundwater and surface water integrity.

#### II. Erosion and Sediment Control

- Stabilized Construction Exits: Require gravel pads or wheel washes to prevent off-site sediment tracking.
- Silt Fences and Sediment Basins: Install double-row silt fences with biodegradable filter socks downgradient and sediment basins to capture runoff, especially near sensitive waterways (e.g., LaSalle Creek).

- Hydroseeding/Blankets: Apply immediately after trench backfilling to stabilize soil to mitigate sediment discharge into trout streams, addressing past violations at LaSalle Creek (Minn. R. 6115.0710).
- Oil/water separators: Sediment basins must include oil/water separators to capture hydrocarbons.

#### III. Groundwater and Aquifer Protection

- Pre-Construction Hydrogeological Surveys: Map aquifers, confining layers, and calcareous fens within 500 feet of any work areas.
- Sheet Piling Depth Restrictions: Prohibit sheet piling beyond permitted depths (e.g., 10 feet max unless approved by MPCA/DNR in writing).
- Real-Time Groundwater Monitoring: Use piezometers with automated alerts for unauthorized dewatering or pressure changes to mitigate aquifer breaches like the 24.2million-gallon Clearbrook incident (Minn. Stat. § 103G.141). Piezometers must transmit data to MPCA and Tribes in real time via telemetry systems.

#### IV. Tribal Engagement and Cultural Protections

- **Tribal Co-Monitoring**: Partner with Fond du Lac Band or Red Lake Nation for independent water quality monitoring near Tribal lands.
- Cultural Resource Buffers: Establish 250-foot no-disturbance zones around sacred sites
  or burial grounds.
  - *Justification*: Aligns with federal trust responsibilities and addresses environmental justice concerns from Line 3.

#### V. Climate Resilience

- Weather-Triggered Work Stoppages: Halt excavation/discharge during snowmelt or >1- inch rainfall events (using NOAA alerts). Minn. R. 6115.0710(B) (adverse impacts on public waters) further supports NOAA-triggered work stoppages.
- Permeable Infiltration Structures: Use geotextile-wrapped filter bags or geotextile-wrapped underdrains with a minimum 5,000-gallon/day infiltration capacity.to prevent overflow. This BMP is necessary to mitigate risks from extreme weather, as seen in recurring LaSalle Creek breaches.

#### VI. Compliance and Accountability

- Third-Party Inspections: Require MPCA or Tribal-approved inspectors to verify BMP implementation weekly.
- Daily Self-Inspection Logs: Mandate digital reporting to MPCA within 24 hours, including photos of BMP conditions. With justification to address Enbridge's failure to self-report deviations during Line 3 construction.

#### VII. Financial Safeguards

- Escrow Fund for Mitigation: Require a \$500k escrow account for emergency repairs or Tribal-led restoration.
- Penalties for Non-Compliance: For example, an automatic deduction of 10k/day from
  escrow for missed inspections or unapproved deviations. This justification mirrors DNR's
  2.75M escrow mandated from the 2022 enforcement agreement.

#### VIII. Adaptive Management

- Contingency Plans for Aquifer Breaches: Outline immediate response steps (e.g., grouting, pumping to lined holding ponds).
- Post-Construction Monitoring: Extend groundwater monitoring for 2 years post-project, with results shared publicly.

#### Conclusion

The MPCA must adopt these BMPs to comply with Minnesota's Public Trust Doctrine and prevent recurring violations of the Clean Water Act. Failure to act would perpetuate Enbridge's harmful legacy and expose the state to legal liability. I urge immediate incorporation of these measures into Permit MN0056324 and any associated stormwater discharge permits with this proposal.

#### References:

- Minn. R. 6115.0710 (Construction Dewatering Standards)
- Minn. Stat. § 103G.271 (Unauthorized Water Appropriation)
- 2022 DNR-Enbridge Enforcement Agreement (Aquifer Repair Protocols)



# Minnesota Department of Natural Resources Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws

The Minnesota Department of Natural Resources (DNR) has ordered Enbridge Energy to pay \$3.32 million for failure to follow environmental laws. Enbridge breached the confining layer of an artesian aquifer, resulting in an unauthorized groundwater appropriation during the construction of the Line 3 replacement project near Enbridge's Clearbrook Terminal.

DNR's civil enforcement orders require Enbridge to pay mitigation and penalty funds of \$3.32 million. This includes a restoration order requiring \$300,000 in initial mitigation funds to pay for the loss of groundwater resources, \$250,000 for DNR monitoring of calcareous fen wetlands near the area of the aquifer breach and a \$20,000 administrative penalty order (the maximum allowed under state law). The DNR has also ordered Enbridge to place \$2,750,000 in escrow for restoration and mitigation of any damage to the calcareous fen wetlands. DNR will determine what restoration and mitigation is required.

DNR's restoration order also requires Enbridge to implement a restoration plan to stop the unauthorized groundwater flow within 30 days. The order requires the company to conduct additional groundwater and site monitoring and report the results, as well as to develop a Calcareous Fen Management Plan. Additionally, to ensure that violations haven't occurred elsewhere, the DNR is requiring Enbridge to fund a re-inspection of any and all areas along the entire route where construction depths deviated from plans (as they did at the Clearbrook Terminal site).

Separately, the DNR has also referred this matter to the Clearwater County Attorney for criminal prosecution. The DNR has determined that Enbridge Energy violated Minnesota Statute 103G.141, subdivision 1, which makes it a crime to appropriate "waters of the state without previously obtaining a permit from the commissioner."

The criminal referral and civil enforcement orders resulted from an investigation of Line 3 construction activities near Enbridge's Clearbrook Terminal. Should the company violate the DNR's restoration order, it would be subject to additional misdemeanor charges under state law.

"DNR is committed to its role as a regulator on this project and is taking seriously our responsibility to protect and manage natural resources within existing state law," said DNR Commissioner Sarah Strommen. "Enbridge's actions are clear violations of state law and also of public trust. This never should have happened, and we are holding the company fully accountable."

#### **Background**

Enbridge began work at the Clearbrook Terminal site in early 2021 but did not follow the construction plans it had provided to DNR. The DNR relied upon these plans in determining that proposed work at the Clearbrook Terminal could proceed without effecting nearby calcareous fen wetlands. A calcareous fen is a unique type of wetland, with stringent statutory protections, that relies upon upwelling of mineral rich groundwater to thrive. The company's plans called for the use of traditional trench construction methods at a depth of 8-10 feet. The company instead constructed the trench at a depth of approximately 18 feet with sheet piling installed to a depth of 28 feet. This deviation led to a breach of the confining layer of an artesian aquifer, resulting in an uncontrolled flow of groundwater into the trench. Enbridge failed to notify DNR of the groundwater situation at the Clearbrook Terminal.

Independent Environmental Monitors (IEMs), working on behalf of DNR and Minnesota Pollution Control Agency (MPCA), first observed unusual amounts of water in the trench at the construction site in late January 2021. This and subsequent inspections over the next several months focused on managing the water in the trench. Under the Public Utilities Commission's (PUC) route permit, the IEMs' role is to monitor compliance with the terms and conditions of the PUC, DNR, and MPCA permits. They do not monitor construction plans. Therefore, these inspections did not identify that Enbridge's construction activities had deviated from the company's plans, breaching the aquifer's confining layer.

On June 15, 2021, during discussions with the IEMs, the DNR identified that there was a potential breach of the aquifer's confining layer at the Clearbrook Terminal construction site. The DNR immediately commenced an investigation and informed Enbridge that it must suspend construction at the location until DNR had approved a plan to stop the flow of groundwater. Resolving an uncontrolled flow from an artesian aquifer is technically complex and requires good data and a comprehensive plan. The DNR required Enbridge to investigate the groundwater conditions at the site and submit a plan to correct the unauthorized flow conditions. On July 8, Enbridge submitted a Groundwater Investigation Plan that the DNR approved in revised form on July 12. On August 15, using the results of the groundwater investigation, Enbridge submitted a Remedial Action Plan outlining actions needed to stop the groundwater flow conditions. The DNR approved this plan on August 18.

Through September 5, 2021, this violation has resulted in an estimated release of approximately 24.2 million gallons of groundwater from the aquifer. This water has been pumped from the trench, treated to remove sediment and released to a nearby wetland.

## COMPREHENSIVE ENFORCEMENT RESOLUTION AGREEMENT FOR CLEARBROOK AND LASALLE CREEK

This Comprehensive Enforcement Resolution Agreement ("Agreement") for Clearbrook and LaSalle Creek is entered into this 17<sup>th</sup> day of October 2022 ("Effective Date") by and between Enbridge Energy, Limited Partnership ("Enbridge") and the Minnesota Department of Natural Resources ("DNR").

As used herein, "Parties" means DNR and Enbridge and Enbridge's subsidiary, predecessor and successor entities and assigns involved in the uncontrolled groundwater discharges at locations along the Line 3 Pipeline Replacement Project ("Project") near the Clearbrook Terminal and LaSalle Creek. "Party" means either of the Parties.

#### I. PARTIES' JOINT STIPULATED FACTS

- 1. Enbridge and DNR have agreed to resolve all matters related to the uncontrolled groundwater discharges at Clearbrook Terminal and LaSalle Creek as provided in this Agreement.
- 2. The Parties agree that all claims related to Milepost ("MP") 1102.5 will be addressed in a separate Comprehensive Enforcement Resolution Agreement for MP 1102.5 between Enbridge, DNR, and the Fond du Lac Band of Lake Superior Chippewa that will be executed simultaneously with this Agreement.

#### A. Clearbrook Site

- 3. In constructing the Project, Enbridge breached an artesian aquifer and caused uncontrolled groundwater discharges at or near the Enbridge Energy Clearbrook Terminal property ("Clearbrook Site").
- 4. Enbridge caused this uncontrolled groundwater discharge without a water appropriation permit for such appropriation in violation of state law.
- 5. Enbridge's actions, which resulted in the uncontrolled groundwater discharges, were not consistent with the Enbridge's application for a No Effect Concurrence for the Leon 33 calcareous fen (Stenerson Lake and Deep Lake Fens) (collectively "Clearwater Fen" or "Fen"). DNR relied on Enbridge's application when it granted the No Effect Concurrence to Enbridge on November 12, 2020.
- 6. On September 16, 2021, the DNR issued a Restoration and Replacement Order ("Clearbrook Restoration Order") that documented these violations and directed Enbridge to, among other things, undertake the restoration work set forth in the DNR-approved Remedial Action Plan to stop the uncontrolled flow at the Clearbrook Site. The Clearbrook Restoration Order is attached hereto as *Exhibit A* and is made a part hereof.

- 7. On September 16, 2021, DNR issued Administrative Penalty Order No. APO-001 ("APO") to Enbridge that documented violations and directed it to complete all restoration work according to the approved Remedial Action Plan, including stopping the uncontrolled flow at the Clearbrook Site within 30 days after issuance of the APO. The APO is attached hereto as *Exhibit B* and is made a part hereof.
- 8. Since receipt of both the Clearbrook Restoration Order and the APO, Enbridge has actively worked to stop the uncontrolled groundwater flow at the Clearbrook Site and has worked cooperatively with and had regular meetings with DNR staff as Enbridge works to stop said flow.
- 9. Enbridge was not able to repair the aquifer breach by October 15, 2021 (30 days after the issuance of the Clearbrook Restoration Order and APO).
- 10. To address this continued violation and in light of both the complexity of repairing the aquifer breach and Enbridge's ongoing cooperation to date, DNR and Enbridge, on October 13, 2021, entered into Letter Agreement Regarding Comprehensive Enforcement Resolution ("Letter Agreement") that would permit an extension of the 30-day APO time limit to stop the uncontrolled groundwater flow at the Clearbrook Site subject to the terms included therein including the final resolution set forth in this Comprehensive Enforcement Resolution Agreement. The October 13, 2021 Letter Agreement is attached hereto as *Exhibit C* and made a part hereof.
- 11. The Parties entered into discussions under Minn. Stat. § 103G.299, subd. 7 to reach a comprehensive enforcement resolution agreement regarding the timeline for correcting the uncontrolled groundwater flow at Clearbrook, as well as resolution of uncontrolled groundwater flow incidents at LaSalle Creek. The Parties have reached agreement resolving the issues pertaining to the Clearbrook and LaSalle Creek Sites as set forth in this Agreement.
- 12. Enbridge was able to stop the uncontrolled flow at the Clearbrook Site on January 19, 2022. At that point, the aquifer breach had been active for 361 days with a total volume of water discharge estimated to be 72,800,000 gallons. Ongoing monitoring of the Clearbrook Site continues to assess the effectiveness of the repair.
- 13. On September 1, 2022, Enbridge informed DNR that a small groundwater seep had emerged near the Clearbrook Site repair at an estimated rate of ½ gallons per minute. Enbridge submitted a Supplemental Groundwater Investigation Plan (2022 Clearbrook Supplemental Investigation Plan) for DNR review on September 9, 2022. DNR review of the 2022 Clearbrook Supplemental Investigation Plan is ongoing.

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#### B. LaSalle Creek Site

- 14. LaSalle Creek is a designated trout stream located in Hubbard County that was crossed by the Project using open trench construction methods. Although the valley surrounding LaSalle Creek has steep topography, it is surrounded by terraced wetlands fed by spring seeps and, consequently, is largely designated as wetland, particularly on the east side of the creek.
- 15. The LaSalle Creek area was known to have perched wetlands and springs that could be sensitive to construction activity. Consequently, as part of reviewing Enbridge's application for a License to Cross Public Water, DNR required additional hydrogeological evaluation within the area of the LaSalle Creek crossing. This evaluation included additional geological borings and wells to determine subsurface conditions and hydrology.
- 16. On or about August 2, 2021, during Project construction through the river valley's eastern slope, sheet piling was installed to a depth of approximately 27 feet, prior to trench excavation, to minimize the trench width and maintain trench stability. On August 2, 2021, following sheet pile installation (but prior to pipeline installation), an Independent Environmental Monitor ("IEM") noted groundwater upwelling along the sheet piling in several locations near Pipeline Milepost 946.2 ("LaSalle Creek Site"). This was documented in an IEM report of that same date.
- 17. DNR staff learned of the flowing conditions at the LaSalle Creek Site on August 5, 2021, when reviewing a routine IEM report dated August 2, 2021.
- 18. On August 6, 2021, a DNR manager sent an email to a qualified representative of Enbridge and Enbridge's consultant that required Enbridge to take the following immediate actions to investigate and address uncontrolled flow at the LaSalle Creek Site:
  - a. Submit all related IEM reports to DNR.
  - b. Provide a complete description of how water is being managed at the LaSalle Creek Site to DNR.
  - c. Provide GPS locations of uncontrolled flow areas to DNR.
  - d. Hire a qualified contractor experienced with addressing uncontrolled groundwater flow to assess the site and provide plans for stopping the uncontrolled flow. The plans must include a remedial investigation plan, remedial investigation report, corrective action plan, and a corrective action report. The plans must be approved by DNR.
  - e. Provide additional details regarding information that needs to be included in the remedial investigation plan including boring logs, GPS location of borings, description of construction that led to uncontrolled flow, visual depiction of the work that led to uncontrolled flow, estimate of flow rate, and estimate of total water discharged.
- 19. On August 6, 2021, Enbridge notified DNR, by email, of the uncontrolled flow at the LaSalle Creek Site.

- 20. Enbridge submitted a remedial groundwater investigation plan to DNR on August 17, 2021. This plan that was approved by DNR on August 18, 2021.
- 21. Enbridge submitted a Remedial Groundwater Investigation Report and a Corrective Action Plan to stop the uncontrolled flow to DNR on August 27, 2021. DNR approved the Corrective Action Plan on September 3, 2021. Enbridge also submitted the corrective action plan to the Minnesota Pollution Control Agency ("MPCA"), which required some revisions to the plan.
- 22. After discussions and comments on draft revisions, on September 25, 2021, Enbridge submitted to DNR a final Line 3 Replacement LaSalle Creek Corrective Action Plan ("2021 LaSalle Corrective Action Plan"). This plan was approved by MPCA on September 28, 2021 and by DNR on September 29, 2021. The 2021 LaSalle Creek Corrective Action Plan is included as *Exhibit D*, which is attached hereto and made a part hereof.
- 23. On September 12, 2021, the IEM notified DNR that water from the uncontrolled flow was discharging into LaSalle Creek because the dewatering system used to remove water from the location of the breach had failed due to a power interruption. Immediately thereafter additional stormwater measures were implemented to limit the discharge of sediment into LaSalle Creek.
- 24. On December 20, 2021, Enbridge reported that implementation of the 2021 LaSalle Corrective Action Plan had stopped groundwater discharge at the site. Ongoing monitoring of the LaSalle Creek Site continues to assess the effectiveness of the repair.
- 25. On July 11, 2022, Enbridge informed the DNR that groundwater was observed at the surface in the area of the LaSalle Creek Site corrective action at an estimated rate of 5-10 gallons per minute. On July 12, 2022, DNR directed Enbridge to conduct additional investigations, including, but not limited to, measurements of the ongoing groundwater discharge and potential alternatives to address the flow. Enbridge installed a weir at this location that provided a more accurate measurement of groundwater flow at the site. This data indicated a flow at approximately 20 gallons per minute. On August 5, 2022, Enbridge submitted a L3R LaSalle Creek Groundwater Management Area ("GMA") Supplemental Corrective Action Plan ("2022 LaSalle Supplemental Corrective Action Plan") to DNR and MPCA. Both DNR and MPCA have provided written responses and required revisions to the 2022 LaSalle Supplemental Corrective Action Plan. On September 16, 2022, Enbridge submitted a revision to the 2022 Supplemental Corrective Action Plan to DNR and MPCA for review and approval. Final approval from the DNR and MPCA is outstanding.
- 26. Minnesota Statute § 103G.271 requires a water appropriation permit for the appropriation or use of 10,000 or more gallons of water per day or more than one million gallons of water per year. Minn. Stat. § 103G.271, subd. 1 and subd. 4(a).
- 27. "Appropriating" is defined as the "withdrawal, removal or transfer of water from its source regardless of how the water is used." Minn. Stat. § 103G.005, subd. 4. DNR determined that this

uncontrolled flow at the LaSalle Creek Site meets this definition because, by causing the uncontrolled flow, Enbridge is withdrawing or removing water from its source.

- 28. Enbridge estimates that, as a result of the aquifer breach and the resulting uncontrolled flow, it has appropriated 9.8 million gallons of water from August 2, 2021 through December 20, 2021, which exceeds the threshold for which a permit is required. Appropriation of this water without a permit violates Minn. Stat. § 103G.271. DNR determined that the uncontrolled groundwater flow was a waste of water and as such is not a reasonable use of water that could be authorized under an after-the-fact water appropriation permit. This is a violation of Minn. Stat. § 103I.103, pursuant to which the company must prevent waste of water to conserve the groundwater supply of the state.
- 29. Minnesota Rule 6115.0710(B) provides that excess water from construction dewatering must be discharged without adversely affecting the public interest in the receiving waters. Uncontrolled flow from the site has the potential to erode soils, which, in turn, has the potential to adversely affect the public interest in the receiving waters.
- 30. DNR has the authority to issue a restoration order and administrative penalty order with respect to the uncontrolled flow at the LaSalle Creek Site pursuant to Minn. Stat. §§ 103G.2372, 103G.251, and 103G.299.

#### II. AGREEMENT

NOW, THEREFORE, for the good and valuable consideration as provided herein, the Parties stipulate and agree as follows:

- 1. Additional Damages Relating to Clearbrook Site. Enbridge agrees to pay an additional \$165,400 for lost groundwater resources to the Fen beginning on October 16, 2021 and ending on January 19, 2022. Enbridge will pay this sum within 45 days following the Effective Date of this Agreement. Ongoing monitoring will be conducted by Enbridge and DNR as described in the Clearbrook Restoration Order for the Clearbrook Site and the Calcareous Fen Management Plan for the Steenerson and Deep Lake Fens. Enbridge agrees to take additional actions to remediate and/or mitigate as needed in consultation with DNR. Should Enbridge fail to take these actions, DNR may use the escrow fund established under the Clearbrook Restoration Order to undertake the necessary actions. The Parties further agree to meet at least quarterly to discuss the status of restoration at the Clearbrook Site, the scope of work yet to be performed at the site, and the scope of ongoing monitoring activities, including DNR costs incurred to date.
- 2. <u>LaSalle Creek Site Monitoring Plan</u>. Enbridge will submit, for DNR approval, an amended groundwater and surface water monitoring plan for the LaSalle Creek Site ("LaSalle Monitoring Plan") within 30 days following Enbridge's notification that the uncontrolled flow has been stopped. Enbridge must implement the LaSalle Monitoring Plan as approved by DNR. Any subsequent amendments to the LaSalle Monitoring Plan must be approved by DNR prior to

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implementing any proposed amendments. DNR will also conduct independent monitoring. Enbridge must take any necessary additional actions to stop further uncontrolled flow and/or mitigate damage to natural resources as discovered by monitoring or otherwise.

- 3. <u>LaSalle Creek Site Monitoring Costs</u>. Enbridge agrees to pay \$100,000 for DNR's costs to monitor LaSalle Creek for impacts caused by the uncontrolled flow. Enbridge will pay this amount within 45 days following the Effective Date of this Agreement. DNR will use these funds to conduct independent site visits and monitoring and to review monitoring data from Enbridge.
- 4. <u>Penalty Relating to LaSalle Creek Site</u>. Enbridge acknowledges that DNR could issue an administrative penalty order with respect to the LaSalle Creek Site and has not done so. For that reason, Enbridge agrees to pay a penalty amount of \$20,000 for the aquifer breach at LaSalle Creek. Enbridge will pay this sum within 45 days following the Effective Date of this Agreement.
- 5. <u>Mitigation Relating to LaSalle Creek Site</u>. Enbridge also agrees to pay \$200,000 in mitigation for the impacts caused by the aquifer breech at LaSalle Creek Site. Enbridge will pay these sums within 45 days following the Effective Date of this Agreement.
  - 6. Financial Assurance for Mitigation at LaSalle Creek Site.
    - a. Enbridge will provide \$610,000 in financial assurance ("LaSalle Financial Assurance") to DNR to cover the costs of restoration, mitigation, and/or additional monitoring at the LaSalle Creek Site, no later than 45 days following the Effective Date of this Agreement.
    - b. The amount, form, and language of all financial assurance documents must be approved by DNR. Enbridge must provide one-third of the LaSalle Financial Assurance in cash or by irrevocable letter of credit, and Enbridge may provide the other two-thirds of the LaSalle Financial Assurance Amount by cash, irrevocable letter of credit, or surety bond.
    - c. DNR may demand all or part of the LaSalle Financial Assurance if it determines that:
      - Restoration at the LaSalle Creek Site is required under the approved 2022
         LaSalle Supplemental Corrective Action as may be supplemented or amended and/or under the approved LaSalle Monitoring Plan as may be supplemented or amended, and Enbridge has not completed such restoration in a satisfactory manner by the deadline set by DNR; or

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- ii. Mitigation is required for damage to LaSalle Creek, nearby wetlands or other natural resources, and Enbridge has not provided such mitigation in a satisfactory manner by a deadline set in writing by DNR; or
- iii. DNR has exhausted the monitoring fund provided in Paragraph 3 and has incurred additional monitoring costs and Enbridge has not compensated the DNR for said costs as outlined in Paragraph 6(e) below.
- d. DNR may make one or more demands for the LaSalle Financial Assurance. DNR may demand all or part of the LaSalle Financial Assurance to address restoration, mitigation, or monitoring required due to damage caused by uncontrolled flow.
- e. If the LaSalle Financial Assurance has been fully depleted, DNR may make a demand for Enbridge to pay for any additional restoration, mitigation, or monitoring work required under the 2022 LaSalle Supplemental Corrective Action Plan, Implementation Plan, or Monitoring Plan, as supplemented or amended
- f. Rather than DNR accessing funding through the Financial Assurance mechanism, Enbridge may notify DNR that it desires to undertake the necessary actions, as directed by DNR in accordance with the approved 2022 LaSalle Supplemental Corrective Action Plan as may be supplemented or amended, the approved Implementation Plan as may be supplemented or amended, and the approved LaSalle Monitoring Plan as may be supplemented or amended, or pay any additional cost for restoration, mitigation and monitoring that DNR determines is necessary to meet the requirements of the approved 2022 LaSalle Supplemental Corrective Action Plan as may be supplemented or amended, the approved Implementation Plan as may be supplemented or amended, and/or the approved LaSalle Monitoring Plan as may be supplemented and amended. In such instances, DNR may demand all or part of the LaSalle Financial Assurance only if it determines that Enbridge's restoration, mitigation, and/or monitoring has not been satisfactorily completed in a reasonable timeline as set by DNR.
- g. The Parties agree to meet at least quarterly to discuss the status of restoration at the LaSalle Creek Site, the scope of work yet to be performed at the site, and the scope of ongoing monitoring activities, including DNR costs incurred to date.
- h. Release to Enbridge of any unused LaSalle Financial Assurance will follow a written determination by the DNR that Enbridge has satisfactorily met the monitoring and restoration requirements in the approved 2022 LaSalle Supplemental Corrective Action Plan, Implementation Plan, and the LaSalle Monitoring Plan as they may be supplemented or amended, and that Enbridge has met any and all mitigation required by DNR.

#### 7. Final Restoration Order.

- a. Enbridge agrees that it will not file any appeal of, or file any action challenging, or demand any contested case with respect to, the Clearbrook Restoration Order or the APO for the Clearbrook site. Enbridge acknowledges that DNR intends that the Clearbrook Restoration Order, as modified by this Agreement, is the final restoration order related to the Clearbrook Site and that, except as provided under this Agreement, DNR will not issue another Restoration Order or APO for this Site and DNR will not issue another Restoration Order or APO for the Site. Enbridge agrees that, in the event it fails to comply with the terms of the restoration of the Clearbrook Site as set forth in this Agreement, DNR may immediately enforce this Agreement as a final restoration order for the Clearbrook Site in Ramsey County District Court pursuant to Minn. Stat. § 103G.135. Enbridge hereby waives any contested case hearing with respect to the restoration of the Clearbrook Site or the Clearbrook Restoration Order, as modified by this Agreement.
- b. For the purposes of the LaSalle Creek Site, Enbridge acknowledges that DNR intends this Agreement to be the final Restoration Order related to the LaSalle Creek Site and that, except as provided under this Agreement, DNR will not issue a separate Restoration Order or APO for this Site other than this Agreement. Enbridge agrees that, in the event it fails to comply with the terms of the restoration of the LaSalle Creek Site as set forth in this Agreement, DNR may immediately enforce this Agreement as a final restoration order for the LaSalle Creek Site in Ramsey County District Court pursuant to Minn. Stat. § 103G.135. Enbridge hereby waives any contested case hearing with respect to the restoration of the LaSalle Creek Site.
- 8. <u>Final Agreement</u>. The Parties agree that this Agreement is intended to finalize all civil issues between DNR and Enbridge related to the known violations involving uncontrolled groundwater flows at the Clearbrook and LaSalle Creek Sites except as provided elsewhere in this Agreement. Further seeps at the Clearbrook or LaSalle Sites will be addressed as set forth in Paragraph 10 herein. DNR expressly reserves the right to pursue further enforcement if, during monitoring, the DNR discovers additional violations at the Clearbrook or LaSalle Creek Sites requiring enforcement, restoration, or mitigation, provided that DNR did not have information in its possession as of the Effective Date of this Agreement sufficient to identify such further violations.
- 9. Release of Claims. Except as provided elsewhere in this Agreement, DNR fully and completely releases Enbridge (including individual or organizational affiliates, subsidiaries, successors, agents, and assigns) from liability for any conduct known to the DNR on or before the Effective Date of this Agreement related to the Clearbrook and LaSalle Creek Sites that DNR could have pleaded in a civil action based on written information in the possession of the DNR as

of the Effective Date, provided that DNR did not have information sufficient to identify such further violations in their possession as of the Effective Date(hereinafter "Released Conduct"). DNR agrees not to exercise any administrative, legal, or equitable remedies against Enbridge or make any referrals to other agencies related to the Released Conduct. DNR is also unaware of any additional facts that create the basis for criminal liability and therefore will not refer or seek additional criminal charges against Enbridge based on the facts known to it as of the Effective Date of this Agreement.

- 10. Other site(s). This Agreement may be amended to cite violations and assess funds for any monitoring, mitigation, restoration, and any additional financial assurance needed to address additional uncontrolled groundwater flows attributable to construction of the Project are identified following execution of this Agreement. Should Enbridge identify additional uncontrolled flows, Enbridge shall immediately notify DNR of any additional uncontrolled groundwater flows attributable to construction of the Project and will investigate the site(s) in coordination with DNR and other applicable agencies; and, if necessary, implement corrective actions plans and monitoring plans to restore the other identified site(s).
- 11. Other Sites Reservation of Rights. Absent a mutual agreement to amend this Agreement, if additional aquifer breaches are identified, the DNR expressly reserves the right to pursue further enforcement, restoration, or mitigation related to those breaches.
- 12. Reservation of Rights. The Parties agree that DNR retains its applicable statutory and regulatory authority and rights now or hereafter existing to modify or enforce any and all conditions and other provisions set forth in the various permits and approvals issued by DNR for the Project. The Parties agree that, except as set forth in Paragraph II.7, Enbridge retains any applicable rights to challenge any enforcement actions or modifications concerning the permits and approvals issued by DNR for the Project.
- 13. <u>Cooperation</u>. The Parties agree to cooperate fully and to work in good faith to take any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement, including timely submittal of any necessary plans or amendments to plans, reasonable and timely consideration of any submitted materials, and reasonable and timely responses to any requests for information.

#### 14. General Provisions.

- a. This Agreement will be binding on the successors and assigns of the Parties.
- b. This Agreement is entered into in Minnesota and will be governed by and interpreted under the laws of the State of Minnesota without regard to the principles of conflicts of law. Any dispute arising under this agreement shall be litigated in Ramsey County District Court.

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- c. Time is of the essence in the matters subject to this Agreement and the Parties agree to act in good faith and use all reasonable efforts to abide by the terms hereof, subject to Unavoidable Delays. "Unavoidable Delays" means delays beyond the reasonable control of the Party seeking to be excused as a result thereof that are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, acts of any federal, state or local governmental unit (other than the Parties hereto in properly exercising rights under this Agreement), or other similar events or acts, which directly result in delays.
- e. Unless otherwise designated, notices and communications with respect to the terms of this Agreement will be given in writing to the other Party at the following address:

**DNR** 

Attn: Director of Ecological and Water Resources

Minn. Department of Natural Resources

500 Lafayette Road N. St. Paul, MN 55155

cc: <u>Jess.Richards@state.mn.us</u>

Katie.Smith@state.mn.us Randall.Doneen@state.mn.us Sherry.Enzler@state.mn.us

Enbridge:

Attn: Midwest Director of Operations

Enbridge Energy, L.P. 1613-24th Avenue East Superior, WI 54880

cc: charles.drayton@enbridge.com

bobby.hahn@enbridge.com cbrusven@fredlaw.com

- f. This Agreement may be amended only by a writing signed by both Parties hereto.
- 15. Effective Date. This Agreement is effective on October 17, 2022.
- 16. <u>Severability</u>. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal

substance of the actions contemplated in this Agreement is not affected in any material adverse manner to either Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the contemplated transactions are fulfilled to the extent possible.

- 17. <u>Counterparts</u>. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all the Parties, and each counterpart shall be deemed an original instrument as against any Party who has signed it.
- 18. <u>No admissions</u>. The parties agree that nothing in this Agreement constitutes an admission by either party of fault, responsibility, wrongdoing, or liability, nor does it constitute evidence of liability or wrongful conduct beyond that expressly contained within this Agreement. This Agreement is not admissible in any future administrative or judicial proceeding as evidence of fault or liability in any investigation, claim, action, suit, or proceeding, or federal or state court, Office of Administrative Hearings, or arbitration proceeding.
- 19. <u>Data Practices</u>. The Parties acknowledge that DNR must respond to Data Practices Act requests and provide data if said data is not privileged, civil investigative data, or otherwise nonpublic. DNR and its counsel agree not to provide any data that is attorney-client or work-product privileged, civil investigative data, or otherwise nonpublic under the Data Practices Act, including but not limited to Minn. Stat. §§ 13.39, 13.393. If DNR receives a data practices request pertaining to this Agreement the DNR will notify the Parties prior to releasing any public data.

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IN WITNESS WHEREOF, unless otherwise indicated below, the Parties have executed this Agreement as of the date first above written.

Stipulated to:

Enbridge Energy, Limited Partnership By: Enbridge Pipeline (Lakehead) L.L.C.

ITS: MANAGING GENERAL PARTNER

DATED: October 17, 2022

By:

Carry & Simonson

Barry Simonson, Director of Projects

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Stipulated to:

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Bart Navamore

DATED: October 4, 2022

By:

Barb Naramore

Deputy Commissioner
Department of Natural Resources

500 Lafayette Road St. Paul MN 55155

# 6115.0710 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR DEWATERING.

Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water, shall be subject to water appropriation permit requirements, unless otherwise exempted by these parts. The commissioner shall evaluate and make decisions on such application based on applicable provisions of parts 6115.0660 and 6115.0670 and the following additional requirements:

- A. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.
- B. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.
  - C. The proposed dewatering is not prohibited by any existing law.

**Statutory Authority:** *MS s 103G.315; 105.415* 

Published Electronically: June 11, 2008











