

D. J. Ref. No. 90-5-1-1-10099

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Via email: pubcomment-ees.enrd@usdoj.gov

RE: Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and the Oil Pollution Act in the lawsuit entitled *United States v. Enbridge Energy, Limited Partnership, et al.*, D.J. Ref. No. 90-5-1-1-10099, 1:16-cv-00914 ECF No. 1 (Complaint), 1:16-cv-00914 ECF No. 3 (Consent)

Assistant Attorney General, DOJ - ENRD:

These comments are submitted on behalf of the primary authors – Southeast Environmental Task Force, Dunelands Environmental Justice Alliance, Southeast Side Coalition to Ban Petcoke, 350 Indiana, 350Kishwaukee, Break Free Midwest Response Network, and ALERT, a project of Earth Island Institute—as well as all of the supporting signatories.

Southeast Environmental Task Force (SE Task Force) is a Chicago-based 501(c)3 organization dedicated to serving the southeast side of Chicago. SETF formed in 1989 by Marian Byrnes as a coalition of 30 grassroots organizations working to promote sustainable development, environmental restoration and justice, and pollution prevention.

Dunelands Environmental Justice Alliance (DEJA) is an anti-racist, multiracial coalition of grassroots organizations in the Calumet industrial corridor of Northwest Indiana fighting for a healthy environment in communities of color.

Southeast Side Coalition to Ban Petcoke (SSCBP) is a multicultural group of Chicago area residents, families, and community-based environmental and social justice organizations working together to rid the community of petroleum coke, a toxic byproduct of the oil refining process. As one of the largest and oldest industrial regions in the world, we are working together to raise our voices in a fight for a just transition to a cleaner future that benefits our community and the region.

350 Indiana, based in East Chicago, Indiana is diverse group of people creatively bringing awareness and finding solutions to climate change.

350Kishwaukee is a 501(c)3 nonprofit corporation, based in DeKalb, Illinois, and representing citizens from throughout the Great Lakes region seeking to reduce pollution in our land, water, and air.

Break Free Midwest Response Network is a coalition of organizations in the U.S Midwest that are seeking a just transition to a low-carbon future in response to the threats of Climate Change.

ALERT, a project of Earth Island Institute was founded by *Exxon Valdez* oil spill survivor Dr. Riki Ott in 2014 to make healthy people and healthy communities part of our energy future. ALERT works in local communities nationwide, sharing science and skills to empower people impacted by oil and chemical activities to have a meaningful voice in determining what activities occur in their region.

I. OUR STATEMENT & ASKS

A. Overview

Our Commons¹ - our water supply, the land we inhabit, the air we all breathe - is a priceless and irreplaceable resource. Present generations are responsible for maintaining the health and wellbeing of this Commons² for future generations. By the people's consent, this responsibility is entrusted as a duty to all governments – local, state, and federal. Ensuring the viability and health of our public and privately owned land, our community water supply and the air we breathe should be at the highest level of concern for all community leaders - publicly elected leaders and leaders of privately owned corporations who mutually benefit from our Commons. Past and present operations of the Enbridge Corporation jeopardize this goal. It is our firm belief that business-as-usual practices cannot continue without serious and irreparable harm befalling our precious resources of land, water and air. Recognizing historically recurring errors is the first step to our moving forward to protect our Commons from all and any entity that feels they have a right to pollute to make a profit that values profits over people and disavows any responsibility to maintain the health of our mutual Commons.

Among large multinational industrial companies operating in the United States, Enbridge Corporation has one of the worst records of environmental violations. The record shows that Enbridge Corporation and their affiliated companies are risk takers with a repeated pattern of cutting costs to increase profits. The record shows that the costs of this risk behavior are human lives, the environment, and the health and well-being of people living in communities near Enbridge pipelines and related infrastructure. The occasional million dollar civil or criminal penalties and fines have not served to change Enbridge Corporation's cultural risk-prone mindset or deter environmentally risky business decisions. Historically, the spills and leaks endured by our communities at the hand of this careless energy giant are very much a repeat of previous spills and leaks. At what point will this be addressed? We suggest now is the time to start.

This proposed settlement agreement follows the same pattern as previous settlements by requiring more technology and more internal company monitoring and inspections. This is just more of the same fox guarding the same henhouse, and it will produce the same results – more self-reported or unreported pollution discharges into our land, water supplies, and air from daily operations, more oil and chemical spills, further weakening of industry-government vigilance, and declining environmental and social standards. This proposed settlement and its token agreements provide us with no sense of relief or confidence that the operations at the Enbridge Corporation will be any safer. We want and deserve more. Enbridge has consistently shown a shocking lack of responsibility in maintaining pipeline infrastructure under its control and thereby has shown their failure to responsibly ensure the Commons as outlined below:

- a. Beginning July 25, 2010, at least **20,082 barrels** of diluted bitumen, derived from Canadian “tar sands” with a hydrocarbon diluent, which includes benzene, a hazardous air pollutant, was unlawfully discharged into waters near Marshall, Michigan from the oil transmission pipeline known as Line 6B, which eventually reached and polluted Talmadge Creek and the Kalamazoo

¹ *What, Really, is the Commons?*, Terrain.org: A Journal of the Built + Natural Environments
<http://www.terrain.org/articles/27/walljasper.htm>

² *Concept Of Tragedy Of The Commons; Issues And Applications*, By Charles C. Anukwonke,
https://www.researchgate.net/publication/277708953_The_Concept_of_Tragedy_of_the_Commons_Issues_and_Applications

River, Morrow Lake, adjacent wetlands, and adjoining shorelines.³ “The oil impacted over 1,560 acres of stream and river habitat as well as floodplain and upland areas, injuring birds, mammals, reptiles and other wildlife”⁴

- b. On September 9, 2010, Enbridge Line 6A discharged least **6,427 barrels** of Smilely Coleville crude oil into the environment from a 2.25 inch hole in the pipeline in Romeoville, Illinois. Much of the discharged oil entered the sanitary and storm drain systems including a storm water management pond, and the waste water treatment plant. The spill killed and injured various wildlife species.⁵
- c. Enbridge has a history of not responding to landowner concerns and complaints, a history currently demonstrated by landowner concerns about the abandonment of its Line 3. Landowners warn that “as it corrodes, the pipe will eventually become a water conduit that could easily drain a wetland or small lake, or flood a farm field.”⁶ Will Enbridge, or regulators, respond to protect the Commons? Another example documents landowner complaints about a new Enbridge pipeline, Line 61. In 2014, the LaSalle County Farm Bureau documented the failure of Enbridge to respond to landowner concerns about soil and water problems in a survey. The resulting well-documented reports showed, inter alia, that five years after the construction of Line 61, 94% of the landowners had problems and “[o]nly 21% of those problems have been resolved, the other 79% of respondents with problems still have problems.”⁷

B. Asks

In the following comments, we provide proof of the need for each of our requests: for maximum penalties for all violations; for three additional conditions under this settlement; and for a neutral third party fiduciary recipient of funds from penalties and settlement conditions. We summarize our requests below.

Sec. II. Maximum fines must be assessed for all violations listed in the proposed Consent Decree, based on Enbridge’s repeated pattern of reckless, negligent, and/or grossly negligent behavior relating oil spill prevention and response planning, behavior that has been previously undeterred by million dollar fines.

Sec. III. Additional conditions under this settlement:

A. Establishment of two (2) independent citizen groups:

Lake Michigan Regional Citizens’ Advisory Council (RCAC) with key stakeholder groups, modeled after the Prince William Sound RCAC established under the Oil Pollution Act of 1990, and \$10 million annually, inflation-proofed, for program implementation;

Upper Mississippi Regional Citizens’ Advisory Council (RCAC) with key stakeholder groups, modeled after the Prince William Sound RCAC established under the Oil Pollution Act of 1990, and \$10 million annually, inflation-proofed, for program implementation;

³ Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations, NTSB, <http://www.nts.gov/news/press-releases/Pages/PR20120710.aspx>

⁴ Enbridge Must Restore Environment Injured by 2010 Kalamazoo River Oil Spill, U.S. Fish and Wildlife Service, <https://www.fws.gov/midwest/news/785.html>

⁵ See Exhibit #1

⁶ *Line 3 Pipeline Abandonment*, Minnesotans for Pipeline Cleanup. August 2016, <http://pipelinecleanupmn.org/sites/default/files/2016-08/factsheet-MPC-Abandonment-08-2016%20.pdf>

⁷ See Exhibit #2

B. Establishment of two (2) independent municipal-focused committees:

Lake Michigan Area Committee comprised of local, state, and federal agencies, as mandated under the Oil Pollution Act of 1990, and \$10 million annually, inflation-protected, for program implementation;

Upper Mississippi Area Committee comprised of local, state, and federal agencies, as mandated under the Oil Pollution Act of 1990, and \$10 million annually, inflation-protected, for program implementation;

C. Establishment of an **Independent Environmental Monitoring Program** for the Enbridge pipeline infrastructure, modeled after the environmental monitoring program conducted by the Prince William Sound RCAC for the Alyeska tanker terminal;

Sec. IV. A neutral third-party fiduciary recipient such as the National Fish and Wildlife Foundation of all penalties and funds resulting from this Consent Decree and settlement agreement for funding for local and/or regional citizens' advisory projects at the same levels and with the same goals of the organizational structures defined in the conditions set forth in Section III.

C. Spill Data

This section provides support for our Asks. Table 1 summarizes the Enbridge spill history in the US and Canada from 1996 through 2014 of well over 1000 spills and approaching one billion gallons. A partial list of major spills follows Table 1 illustrating a track record of pervasive, systemic environmental and safety issues. The data in Table 1 and the accompanying partial list support our charges of repeated willful, reckless behavior, negligence, and gross negligence on the part of Enbridge.

Enbridge Liquids Spills in Canada and United States			
Year	Number of Spills	Quantity in Barrels	Quantity in US Gallons
1996	49	13,698	575,316
1997	47	19,853	833,826
1998	39	9,830	412,860
1999	54	28,760	1,207,920
2000	48	7,513	315,546
2001	33	25,980	1,091,160
2002	48	14,683	616,686
2003	62	6,410	269,220
2004	69	3,252	136,584
2005	70	9,825	412,650
2006	61	5,663	237,846
2007	65	13,777	578,634
2008	80	2,682	112,644

2009	103	8,441	354,522
2010	91	34,258	1,438,836
2011	58	2,284	95,928
2012	85	10,224	429,408
2013	114	4,298	180,516
2014	100	2,943	123,606
Total	1,276	224,374	9,423,708
Data compiled from Enbridge websites Archived data available on request			

Track Record of Environmental & Safety Issues, Spills for Enbridge

2000: A spill of 1,500 barrels of crude oil Near Innes, Saskatchewan on the Enbridge (Saskatchewan) System. More than 2,000 tons of contaminated soil were removed for off-site disposal.⁸

2000: In Northwest Minnesota 50 barrels of crude oil were released oil on the Lakehead System into wetlands in a remote area.⁸

2000: At the Superior Terminal in the Lakehead System 1,200 barrels were released on company property.⁸

January 17, 2001: In Hardisty, Alberta approximately 23,900 barrels of crude oil were released on land and a nearby slough after a seam failure on the Energy Transportation North pipeline near the Hardisty Terminal.⁸

February 13, 2001: In Satartia, Mississippi approximately 100 barrels of crude oil were released from the Enbridge Pipelines (Midla) Inc.'s Tinsley System.⁸

September 3, 2001: In Fairbanks, Louisiana approximately 7 million cubic feet of natural gas and 428 barrels of an oily mixture were released from the Enbridge Pipelines (Midla) System. Contaminated liquids were removed.⁸

September 29, 2001: In Binbrook, Ontario approximately 598 barrels of crude oil were released from the Energy Transportation North System.⁸

January 18, 2002: In Kerrobert, Saskatchewan approximately 6,133 barrels of crude oil were released from a leaking gasket on the Energy Transportation North pipeline at the Kerrobert Station.⁸

May 8, 2002: In Glenboro, Manitoba approximately 598 barrels of crude oil were released onto agricultural land after a seam failure on the Energy Transportation North pipeline.⁸

July 4, 2002: July 2002: A 34-inch-diameter pipeline owned by its affiliate Enbridge Energy Partners ruptured in a marsh near the town of Cohasset, Minnesota, contaminating five acres of wetland spilling 6,000 barrels of crude oil. In an attempt to keep the oil from contaminating the Mississippi River, the

⁸ These data from Enbridge websites are no longer available on-line. Archived website data is on file with 350Kishwaukee and is available on request.

Minnesota Department of Natural Resources set a controlled burn that lasted for one day and created a smoke plume about 1-mile (1.6 km) high and 5 miles (8.0 km) long.^{8,9}

January 24, 2003: Approximately 4,500 barrels of crude oil spilled from the Lakehead System at the Enbridge Terminal near Superior, Wisconsin. The leak was caused by a failure in a section of terminal pipe during oil delivery from the pipe to a storage tank. About 500 barrels breached the terminal's containment system and flowed off site onto the nearby Nemadji River, a tributary of Lake Superior. The ground and river were frozen at the time, helping to prevent spread of the oil into soils or downstream.^{8,10}

2004: The U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed a fine of \$11,500 against Enbridge Energy for safety violations found during inspections of pipelines in Illinois, Indiana and Michigan. The penalty was later reduced to \$5,000. In a parallel case involving Enbridge Pipelines operations in Minnesota, an initial penalty of \$30,000 was revised to \$25,000.¹¹

February 22, 2004: Approximately 1,635 barrels of crude oil were released when a valve failed on the Athabasca pipeline system. Approximately 735 barrels of free product and contaminated debris were recovered.⁸

February 19, 2004: In Grand Rapids, Michigan, during a maintenance dig on the Lakehead System, crews discovered a slow leak of crude oil, caused by a dent resulting from the pipe lying on a rock. Soil excavations and groundwater monitoring wells revealed contaminated soil and groundwater and the loss of about 1,000 barrels of crude oil.⁸

2005: Liquids Pipelines recorded 70 reportable liquid spills totaling 9,825 barrels from Enbridge pipelines in Canada and the United States.⁸

March 18, 2006: In Willmar, Saskatchewan an estimated 613 barrels of crude oil were released when a pump failed at Enbridge Pipelines (Saskatchewan) Inc.'s Willmar Terminal. According to Enbridge, roughly half the oil was recovered.⁸

December 22, 2006: In Sheridan County, Montana approximately 2,000 barrels of oil were released when a two-inch nipple failed downstream of a pump at a lease site on our North Dakota System in Sheridan County, Montana. The released oil gathered in a low spot in a pasture approximately 150 yards from the pump.⁸

January 1, 2007: An Enbridge pipeline in Clark County that runs from Superior, Wisconsin to near Whitewater, Wisconsin cracked open and spilled 1,250 barrels of crude oil onto farmland and into a drainage ditch.^{8,12}

February 2, 2007: Construction crews struck an Enbridge pipeline, near Exeland in Rusk County, Wisconsin, spilling 3,000 barrels of crude. Some of the oil filled a hole more than 20 feet deep and contaminated the local water table.⁸

⁹ Enbridge - Spills and Violations, http://www.liquisearch.com/enbridge/spills_and_violations

¹⁰ Intercontinental Cry <https://intercontinentalcry.org/occupy-enbridge-taking-a-stand-on-red-lake-sovereign-land/>

¹¹ Enbridge: Corporate Rap Sheet, Corporate Research Project <http://www.corp-research.org/enbridge>

¹² Oil spill tainted water table, The Milwaukee Journal Sentinel, <http://archive.jsonline.com/news/wisconsin/29343664.html>

April 2007: Approximately 6,227 barrels of crude oil spilled in a field downstream of Liquids Pipelines' pumping station at Glenavon, Saskatchewan. The line is a 34-inch, 490,000 barrel-per-day line transporting heavy and medium crude oil from Edmonton, Alberta, to Superior, Wisconsin.⁸

November 28, 2007: A spill occurred on Enbridge Line 3 in Clearbrook, Minnesota resulting in an explosion. "The accident happened when Enbridge attempted to complete a repair of a longitudinal seam leak by installing a new 11-foot section of pipe. One of the couplings used to join the new section of pipe slipped during restart of the line, allowing the release of crude oil that formed a flammable cloud. An open flame heater positioned at the edge of the excavation ignited the cloud resulting in a fire that caused the deaths of two Enbridge employees as well as property damage to the pipeline and construction equipment." The PHMSA later fined the company \$2,405,000 for safety violations connected to the incident.¹³

2008: The Wisconsin Department of Natural Resources charged Enbridge with more than 100 environmental violations relating to the construction of the Line 61 pipeline across much of the state. "Pipeline construction was plagued by problems, including illegal harm to wetlands and streambeds and failure to control erosion next to waterways." "The case was settled for a record \$1.1 million in fines and mandated reclamation work."¹⁴

January 23, 2008: Approximately 629 barrels of crude oil were released when a flange gasket on a Line 4 pump unit at Cromer Terminal failed near Cromer, Manitoba.⁸

February 23, 2008: Approximately 157 barrels of crude oil were released at the Weyburn Truck Terminal facility when a drainage line from a receiving trap to an underground sump tank was mistakenly left open causing the sump tank to overflow onto the facility property near Weyburn, Saskatchewan.⁸

March 29, 2008: Approximately 252 barrels of crude oil were released when a drain line on a meter manifold at Athabasca Terminal failed near Fort McMurray, Alberta.⁸

April 6, 2008: Approximately 550 barrels of crude oil were released from a small corrosion hole in the floor of a storage tank at Enbridge's Eldorado Terminal near Eldorado, Kansas.⁸

April 15, 2008: approximately 260 barrels of crude oil were released when a thermal relief line on Tank 79 at Griffith Terminal was broken by a swing stage during tank painting operations near Griffith, Indiana.⁸

July 6, 2008: Approximately 252 barrels of crude oil were released from Tank 25 at Edmonton Terminal when a nitrogen purge from a third-party feeder pipeline following a delivery caused oil to flow onto the roof near Edmonton, Alberta.⁸

January 3, 2009: A leak occurred near Cheecham, Alberta at Enbridge Athabasca's Cheecham Terminal where approximately 5,749 barrels of oil was released when a three-quarter-inch nipple connected to a vent valve failed on a vertical expansion loop. The leak resulted in oil spraying vertically from the connection, covering a considerable area of the terminal and associated facilities

¹³ See Exhibit #3

¹⁴ [Oil & Water: Pipeline To Triple Flows Under St. Croix Headwaters](http://www.stcroix360.com/2014/10/oil-water-pipeline-to-triple-flows-under-st-croix-headwaters/), St. Croix 360
<http://www.stcroix360.com/2014/10/oil-water-pipeline-to-triple-flows-under-st-croix-headwaters/>

with oil. Most free product was contained on-site, but an oil mist was also blown off-site, contaminating an area of approximately 450 meters by 1,500 meters downwind of the facility.⁸

February 9, 2009: Approximately 704 barrels of oil was released near Kisbey, Saskatchewan from the Liquids Pipelines Saskatchewan system into a field in southeastern Saskatchewan.⁸

June 2, 2009: PHMSA assessed a civil penalty of \$105,000 against Enbridge Pipelines LLC-North Dakota for a January 25, 2007 accident that released 9,030 gallons of crude oil gallons of crude oil 9,030. The accident occurred on January 25, 2007, at the company's Stanley Pump Station¹⁵

January 8, 2010: Approximately 3,748 barrels of synthetic crude oil was released from Line 2B at milepost 774.18, just across the international border downstream from the Gretna (Manitoba) Station near Neche, North Dakota.⁸

February 25, 2010: A release of crude oil occurred at a broken nipple on the drain valve of a booster pump at Enbridge's Edmonton, Alberta, terminal. Approximately 818 barrels of diluent was released into a concrete containment pit.⁸

On April 1, 2010: Just southwest of the town of Virden, Manitoba, 16 barrels of crude oil were released from a 6-inch Enbridge Pipelines (Virden) Inc. pipeline into the creek bed of Bosshill Creek, causing an oily sheen to form in a portion of the creek.⁸

June 22, 2010: A release of crude oil occurred due to an o-ring seal failure at the Line 4 sending trap located at Enbridge's Cactus Lake, Saskatchewan, pump station. Approximately 157 barrels of crude oil was released onsite. The crude oil was found in the area of the sending trap, drainage ditch and on the surface of the storm water pond.⁸

On July 26, 2010: A release of crude oil on Line 6B of Enbridge Energy Partners, L.P.'s (EEP) subsidiary's Lakehead system was reported near Marshall, Michigan.⁸ On 7/10/2012 the National Transportation Safety Board posted the following press release:¹⁶

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.

¹⁵Pipeline and Hazardous Materials Safety Administration, Final Order: CPF No. 3-2007-5022 http://primis.phmsa.dot.gov/Comm/Reports/enforce/documents/320075022/320075022_FinalOrder_06022009_text.pdf

¹⁶ Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations, NTSB, <http://www.nts.gov/news/press-releases/Pages/PR20120710.aspx>

"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.

*"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.

July 29, 2010: A leaking flange was discovered on Line 2 at the North Cass Lake, Minnesota, Station. Released crude oil was collected and approximately 200 cubic meters of impacted soil was removed. While the initial volume estimate of the leak was several barrels of oil, a low water table at the site allowed oil to travel downward and away from detection. Reassessment of the release, through the installation of additional monitoring wells, now estimates that oil was leaking for some time and as much as 1,500 barrels of oil is present on the groundwater table, extending both on and off Enbridge's property.⁸

September 9, 2010: A crude oil release from Line 6A of Enbridge Energy, Limited Partnership's Lakehead System was reported in Romeoville, Illinois.⁸ The National Transportation Safety Board (NTSB) reported that the 34" pipeline "leaked beneath the street pavement [...] releasing about 6,430 barrels of Saskatchewan heavy crude oil", and that the "[d]amages, including the cost of the environmental remediation, totaled about \$46.6 million."¹⁷ "The closest residential areas were about 200 yards from the spill site, which was also within populated and ecologically sensitive areas designated as high consequence areas in Title 49 Code of Federal Regulations (CFR) 195.450."¹⁷

Enbridge reported that the monitoring system showed no indication of a leak during the several hours before discovering the crude oil release. At 9:36 a.m. on September 9, 2010, a passerby reported a water leak near 717 Parkwood Avenue to the Romeoville Public Works Department (PWD). The PWD immediately dispatched an equipment operator to investigate the water leak. At 9:46 a.m., the equipment operator notified the PWD water superintendent that water was discharging from expansion joints and cracks in the pavement from what he believed was a leaking service line. The equipment operator closed a valve on the water service line to Northfield Block Company, a privately owned business near the leak site, stopping the water discharge. Concluding that the leak was not creating a safety hazard, he turned the valve back on to restore water service to the facility—the water flow resumed from cracks in the pavement. He recommended a water leak detection company to a Northfield Block Company representative.

About 11:30 a.m., a technician from Water Services, Inc., the water leak detection company hired by Northfield Block Company, arrived at the scene to locate the source of the leak. In addition to the leaking water, the technician observed oil discharging from beneath the pavement in the vicinity of the reported water leak.

At 12:04 p.m., the Romeoville Fire Department received a report about a gas-like odor at 719 Parkwood Avenue, the location where oil was flowing out of the ground. Firefighters were dispatched to conduct an outdoor gas odor investigation. Upon their arrival at 12:11 p.m., they observed black oil discharging from expansion joints and cracks in a 30 square foot area of an asphalt-and-concrete driveway at the entrance to the Northfield Block Company. They describe a heavy flow of oil running south along the street gutter in a 4-foot wide stream that was about 6 inches deep (see figure 1). The fire department immediately notified Enbridge, and a control center operator initiated the oil pipeline shutdown at 12:29 p.m.

¹⁷ See Exhibit #1

The released oil flowed into a storm water drainage ditch and then to a storm water management pond. Both required subsequent excavation and restoration activities to remove the oil.

Three days later, Enbridge crews excavated the area around the damaged water and crude of pipelines. Investigators observed a 1.5-inch diameter hole on the underside of the oil pipeline directly above the leaking 6-inch diameter water pipe that crossed 5 inches beneath the Enbridge pipeline. The earthen material around the pipes contained large rocks and coarse gravel. The water pipe was severely corroded and had three large holes on top of the pipe facing the oil pipeline.¹⁷

Although Enbridge reported that eight in-line inspections from 2000 to 2008 did not identify problems with the pipe in the area of the damage, “an August 2008 inspection using a magnetic flux leakage (MFL) tool identified a metal object near the area of the damaged pipeline. Records indicated no history of excavation to repair or work on the pipeline at the location of the leak.”¹⁷ The NTSB investigation determined the probable cause of the pipeline leak to be “erosion caused by water jet impingement from a leaking 6-inch diameter water pipe 5 inches below the oil pipeline” but did not determine the cause of the erosion of the waterline.¹⁷ **Enbridge filed suit against the Village of Romeoville** alleging that the Village “negligently failed to prevent the leak of a lateral water service Line”.¹⁸ The Village argued, inter alia, that “according to Enbridge’s experts, the cause of the water leak was stray current corrosion which led to the Water Jet Slurry which led to the impingement or erosion of a hole in the Oil Pipeline”, with the stray current emanating from a corrosion protection system on the Enbridge pipe.¹⁸ **The village filed a motion for summary judgment, and on August 10, 2016 the Court granted the motion.**¹⁹

October 15, 2010: A release of crude oil occurred at a sample port in a meter bank at Enbridge’s Nanticoke, Ontario, terminal. Approximately 124 barrels was released onto industrial property in the area.⁸

May 9, 2011: A leak was discovered on Enbridge’s Norman Wells Pipeline approximately 50 meters south of Wrigley and 150 meters south of Willowlake River in the Northwest Territories. Enbridge estimated the leak volume to be about four barrels. After implementing a full-scale environmental site assessment (ESA) program, which included subsurface analysis and investigation, Enbridge discovered the leak volume and subsurface contamination was greater than originally estimated. The ESA indicated that a large quantity of oil was held below the surface by permafrost, which served as a cap preventing the upward movement of the oil and an initial visual determination of the full extent of the leak volumes. Based on estimates provided by third-party experts on site, Enbridge later reported that it anticipated the leak volume to range from 700 to 1,500 barrels. The subsurface that was affected is about one acre.⁸

December 2011: a Canadian judge fined Enbridge \$875,000 for safety violations linked to a 2003 natural gas pipeline explosion in Toronto that killed seven people.²⁰

March 3, 2012: Two third-party vehicles left the end of a public road (T-intersection) within an industrial area and struck an above ground pig sending trap within an Enbridge fenced facility on Line14/64 near

¹⁸ See Exhibit #4

¹⁹ See Exhibit #5

²⁰ [Enbridge Gas fined in deadly Etobicoke explosion](http://news.nationalpost.com/posted-toronto/enbridge-gas-fined-in-deadly-etobicoke-explosion), National Post
<http://news.nationalpost.com/posted-toronto/enbridge-gas-fined-in-deadly-etobicoke-explosion>

New Lenox, Illinois. A drain line on the bottom of the pig sending trap severed, and a release of crude oil and fire occurred. The collision resulted in two fatalities at the scene; both were occupants of the third-party vehicles. An estimated 1,500 barrels of crude oil were released from the pig sending trap; of that amount, more than 1,200 barrels were estimated to have been consumed during the fire.⁸

June 18, 2012: Approximately 1,446 barrels of crude oil leaked at Enbridge's Elk Point Pump Station on Line 19 (Athabasca Pipeline) near the town of Elk Point, Alberta. Approximately 188 barrels was released on an adjacent landowner's field.⁸

July 27, 2012: EEP reported a release of crude oil from Line 14 on its Lakehead System near Grand Marsh, Wisconsin. The oil was contained in a field. The initial estimate of the volume released was approximately 1,200 barrels. On July 30, 2012, the Pipelines and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order with conditions to return Line 14 to service, and on August 1, 2012, PHMSA issued an amendment to the Corrective Action Order with additional restart conditions. Enbridge submitted the Restart Plan to PHMSA on August 1 and the Lakehead Plan to PHMSA on August 2. The Lakehead Plan describes improvements that to be made in operational areas on the Lakehead System.⁸

Jul 29, 2012: The Grand Marsh spill occurred shortly after the publication of the damning National Transportation Safety Board report blasting Enbridge's handling of the July 2010 Kalamazoo disaster. U.S. Representative Ed Markey responded by saying: "Enbridge is fast becoming to the Midwest what BP was to the Gulf of Mexico." PHMSA told the company not to reopen the pipeline until the agency had approved a plan for corrective action.²¹

February 2, 2013: Approximately 220 barrels of crude oil leaked from an Enbridge gathering line near Storthoaks, Saskatchewan. The surface area of the leak was approximately 335 square yards and the subsurface contamination reached approximately 3,348 square yards. The leak was caused by corrosion damage caused by the failure of the external coating of the pipe's surface.⁸

May 13, 2013: Approximately 2,200 barrels of crude oil spilled from an Enbridge trunk line at the South Terminal in Cushing, Oklahoma. The oil traveled in a ditch to a small containment pond near an Enbridge tank. The oil flowed from the small containment pond into an adjacent creek and then into a large containment pond. This incident involved several animal fatalities and rehabilitations.⁸

June 22, 2013: Ground movement caused a spill on Enbridge Line 37 of approximately 1,300 barrels of oil near Cheecham, Alberta. The spill traveled above ground and into a nearby lake.⁸

August 3, 2013: Approximately 140 barrels of crude oil spilled from the Enbridge Griffith Terminal. The spill impacted approximately 7.33 acres of land.⁸

November 21, 2013: Approximately 101 barrels of crude oil spilled from Enbridge Line NB-07 near Stoughton, Saskatchewan.⁸

²¹ [Enbridge to replace leaky Wisconsin oil pipeline Monday, Reuters, http://www.reuters.com/article/us-enbridge-pipeline-idUSBRE86S0KE20120729](http://www.reuters.com/article/us-enbridge-pipeline-idUSBRE86S0KE20120729)

March 14, 2013: The U.S. Environmental Protection Agency today ordered Enbridge to do additional dredging to clean up oil from the company's July 2010 pipeline spill in Kalamazoo River "above Ceresco Dam, upstream of Battle Creek, and in the Morrow Lake Delta."²²

January 18, 2014: Approximately 113 barrels of crude oil spilled from the Rowatt pump station, south of Regina, Saskatchewan, on Line 67 after a pressure transmitter steel flex hose failed in the station piping. The oil spilled onto the grounds of the pump station and onto nearby farmland. An incident investigation concluded that the support of the pressure transmitter assembly did not sufficiently protect the steel braided hose from excessive stress associated with the high winds in the area.⁸

February 22, 2014: Enbridge Line 9 through Ontario, Canada, has had at least 35 spills but Canada's National Energy Board (NEB), "which regulates pipelines in Canada, has records of seven spills". CTV W5 investigations revealed the false reporting, raising questions about other spill numbers in NEB records.²³

February 25, 2014: Approximately 975 barrels of crude oil spilled from station piping within a manifold inside the Griffith, Indiana Terminal caused by a failed piping connection.⁸

March 21, 2014: Enbridge recovered approximately 200 barrels of oil from a spill at the Maxbass station in Maxbass, North Dakota, caused by a leak in an underground tank line that had been connected to previously removed tank.⁸

April 18, 2014: Approximately 113 barrels of crude oil leaked from a tank mixer at the Enbridge Edmonton Terminal after a seal failed.⁸

December 16, 2014: Enbridge reported a flange or valve failure caused spill of approximately 1,346 barrel oil spill from its Line 4 pipeline at the Regina Terminal in Saskatchewan, Canada.^{24 8}

July 2015: Canada's National Energy Board (NEB), released an audit report that concluding that "the Calgary-based energy giant wasn't addressing threats to public safety from its pipelines and [was] failing to adequately protect whistleblowers."²⁵ Error! Bookmark not defined. But the final report deleted parts the draft version that was privately shared with Enbridge in February 2015 regarding the ability of the company to monitor and repair pipeline cracks caused by corrosion.²⁵ Don Deaver, a pipeline and oil and gas industry expert said after reviewing documents provided by whistleblowers, "They don't even understand their limitations and the NEB has no idea what the issues are."²⁵ Deaver continued **"Whenever there's a lawsuit on a spill or something like that, the agencies allow the companies to hold back the reports until there's a settlement. It could be embarrassing to the regulatory people (to reveal what's in these company reports) because it could show that they (regulators) failed to take action."**²⁵

²² News Releases - Emergency Response, U.S. Environmental Protection Agency, <https://yosemite.epa.gov/opa/admpress.nsf/324e040292e1e51f85257359003f533a/19cdd21822f762cd85257b2e006ecbb9%21opendocument>

²³ Enbridge Line 9: W5 uncovers unreported spills, alarming communities along 830-km pipe. Toronto Star. https://www.thestar.com/news/gta/torontopipeline/2014/02/22/enbridge_line_9_w5_uncovers_unreported_spills_alarming_communities_along_830km_pipe.html

²⁴ Enbridge says no restart time yet for biggest oil export pipeline, Reuters, <http://www.reuters.com/article/enbridge-line4-leak-idUSL1N0U218R20141218>

²⁵ Pipeline watchdog hid evidence of secret Enbridge reports. National Observer, <http://www.nationalobserver.com/2016/05/02/news/heres-how-enbridge-edited-federal-pipeline-audit>

II. REQUEST FOR MAXIMUM FINES

A. Legal Framework

In Complaint, United States of America (Plaintiff), in paragraph B of REQUEST FOR RELIEF, requests the Court in part to “Issue an order pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), requiring Defendants to take all appropriate actions to prevent future discharges of oil to waters of the United States from facilities owned or operated by Defendants within the United States”. This request is consistent with the opinion of The United States District Court for the Eastern District of Louisiana. See In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on Apr. 20, 2010, 841 F. Supp. 2d 988, 1004–05 (E.D. La. 2012) which states that the purpose of the CWA is not just remedial, but also punitive/deterrent:

Legislative history and case law reveal that a Section 311(b)(7) civil penalty has multiple goals, including restitution, but the primary objectives are to punish and deter future pollution. For example, the House Conference Report on OPA (which also amended the CWA) stated, “Civil penalties [under the CWA] should serve primarily as an additional incentive to minimize and eliminate human error and thereby reduce the number and seriousness of oil spills.” H.R.Rep. No. 101–653, Sec. 4301, at 52 (1990) (Conf. Rep.), *reprinted in* 1990 U.S.C.C.A.N. 779, 833. In *Tull v. United States*, the Supreme Court analogized a civil penalty under Section 309(d) of the CWA, 33 U.S.C. § 1319(d)—which is similar in relevant aspects to Section 311(b)(7)—to punitive damages; i.e., those “remedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo.” 481 U.S. 412, 422 & n. 7, 107 S.Ct. 1831, 95 L.Ed.2d 365 (1987) (analyzing whether a claim for CWA penalties implicated the Seventh Amendment). The Court added, “The legislative history of the [CWA] reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties.” *Id.* at 422, 107 S.Ct. 1831; *see also Kelly v. EPA*, 203 F.3d 519, 523 (7th Cir.2000) (citing *Tull*, 481 U.S. at 422–23, 107 S.Ct. 1831) (“Civil penalties under the [CWA] are intended to punish culpable individuals and deter future violations, not just to extract compensation or restore the status quo.”); *Montauk Oil Transp. Corp. v. Tug El Zorro Grande*, 54 F.3d 111, 114 (2d Cir.1995) (stating that a penalty under CWA Section 311(b)(6), which is similar in many respects to Section 311(b)(7), “is not predicated upon the cost of removal, but upon the happening of the discharge. The determinative factor ... is the discharge of oil, not its cleanup,” indicating that the primary purpose is deterrence); *United States v. Atlantic Richfield Co.*, 429 F.Supp. 830, 837 (E.D.Pa.1977) (“[T]he principal goal of [Section 311](b)(6) is to deter spills.... [T]he Congressional purpose here was to impose a standard of conduct higher than that related just to economic efficiency.... [E]ven where defendants are not at fault, the penalty does not act only as punishment but serves the ends of civil regulation.”); *cf. United States v. Coastal States Crude Gathering Co.*, 643 F.2d 1125, 1128 (5th Cir.1981) (“The purpose of [CWA Section 311] is to achieve the result of clean water as well as deter conduct causing spills.” (citation and quotations omitted)); *United States v. Tex–Tow, Inc.*, 589 F.2d 1310, 1315 (7th Cir.1978) (“Tex–Tow’s claim of irrationality is grounded in the assumption that the purpose of the civil penalty [in Section 311(b)(6)] is to Deter spills.... [However,] the civil penalty **also** has certain non-deterrent, economic purposes” (Emphasis added)).

Complaint lists nine companies (Defendants), all “persons”, who “at all times relevant to this action ... owned and/or operated Line 6A and Line 6B” (“EESCI succeeded to certain liabilities of EPI, including liabilities arising from the 2010 oil discharges from Line 6A and Line 6B”), and are

“responsible parties” and “subject to a civil penalty for the violations in this case.” See Complaint paragraphs 6 – 15, 44, and 59.

In cases of multiple permit violations, each violation is to be treated as a “separate and distinct infraction for purposes of penalty calculation.” See United States v. Smithfield Foods, Inc., 191 F.3d 516, 528 (4th Cir. 1999) citing:

Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 78 & n. 28 (3d Cir.1990) (holding that violation calculations should be analyzed “on a parameter by parameter basis” and that each type of effluent limit is “clearly separate” and there is “no reason why [a defendant] should not be penalized separately for violating each limitation”); *Natural Resources Defense Council, Inc. v. Texaco Ref. & Mktg., Inc.*, 800 F.Supp. 1, 21 (D.Del.1992) (finding that “separate exceedances of weight and concentration limits can constitute separate violations”); *Student Pub. Interest Research Group of New Jersey, Inc. v. Monsanto Co.*, No. CIV.A.83–2040, 1988 WL 156691, at *11 (D.N.J. Mar.24, 1988) (concluding that “[e]ach violation of any express limitation in the permit may, of course, be treated as a separate violation for the purposes of assessing a penalty”); *United States v. Amoco Oil Co.*, 580 F.Supp. 1042, 1046 n. 1 (W.D.Mo.1984) (suggesting that the CWA allows for separate penalties for violations of the daily limit of different pollutants).

See also United States v. Smithfield Foods, Inc., 972 F. Supp. 338, 340–41 (E.D. Va. 1997):

In accordance with the clear holding of the Fourth Circuit Court of Appeals in *Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd.*, 791 F.2d 304, 314–15 (4th Cir.1986) (each violation of a monthly average limit shall be treated as a violation for every day in the month in which the violation occurred, rather than as a single violation for that month), *rev'd on other grounds*, 484 U.S. 49, 108 S.Ct. 376, 98 L.Ed.2d 306 (1987), *remanded*, 844 F.2d 170 (4th Cir.), *judgment reinstated*, 688 F.Supp. 1078 (E.D.Va.1988), *aff'd in part. rev'd in part on other grounds, and remanded*, 890 F.2d 690 (4th Cir.1989), this court will count each violation of a monthly average concentration or loading limit as a violation for every day of the month in which the violation occurred.² Furthermore, if multiple violations of the Permit occur on the same day, defendants are liable for a separate day for each violation of the Permit, including the daily maximum, monthly average concentration, and monthly average loading limits for each pollutant. This determination is consistent *341 with Section 309(d) of the Act, which specifically provides for a “civil penalty not to exceed \$25,000 *per day for each violation*” (emphasis added), rather than a statutory maximum of \$25,000 *per day*. The different pollutants, and their daily maximum, monthly average concentration, and monthly average loading limits, are included in the Permit for different reasons. Each limit is a separate, distinct requirement in the Permit which can be violated. Accordingly, where multiple violations of defendants' Permit occur on one day, the maximum penalty on that day may exceed \$25,000

B. Analysis

In the instant case, Plaintiff's stated goal is to “take all appropriate actions to prevent future discharges of oil to waters of the United States from facilities owned or operated by Defendants within the United States” (See Complaint, paragraph B of REQUEST FOR RELIEF). Rather than following legislative and case law calling for punitive/deterrent actions outlined above, Plaintiff includes a bizarre plan in the Consent Decree demanding the construction of new crude oil pipelines ((Consent VII-B), a

plan already publically advertised by Defendants²⁶. Such a plan is antithetical to Plaintiff's own stated goals as set forth by its Environmental Protection Agency in multiple actions, widely available public proclamations, and regulations. (For example, see The Clean Power Plan²⁷). A demand that Defendants construct a new larger pipeline, a plan already in process, is not an "appropriate action" considering Defendants accident history (See Table 1). Plaintiff fails to abide by its own legislative history and case law outlined above calling for punitive/deterrent action. Plaintiff also fails to abide by its own legislative history by calling for civil penalties less than maximum (See subsection C below), and assessing those penalties to Defendants as a group rather than individually. **The authors and signatories to this response believe Plaintiff has the legal right and responsibility to assess the full maximum amount for civil penalties in the instant case to each of the nine companies listed as Defendants.**

C. Justification & Request: Maximum fines

The proposed civil penalty assessed in this Consent Decree is \$1 million for the Romeoville spill and \$61 million for the Marshall, Michigan spill. The full penalty, if assessed, would be more than \$840 million or close to \$1 billion. We will present argument that this penalty is necessary and will fulfill a need for citizen involvement.

The civil penalty as proposed is based on violations of the Clean Water Act but the maximum penalties are not asked for by the Department of Justice and the EPA. Is this due to Enbridge's payment for damages to date to both the State of Michigan and to the reimbursement of removal costs to the Oil Spill Liability Trust Fund and their commitment to pay for future damages as required? And it appears, in response to this spill, Enbridge and the EPA have outlined a new program to follow to prevent future incidents with these specific lines.

In its SEC filing for June 30, 2014 Enbridge Energy Partners, L.P. (one of Defendants) discusses the many lawsuits it was fighting to avoid the cost of spill damages.²⁸ A case in point is the lawsuit naming the Village of Romeoville discussed in the September 9, 2010 incident report in I.C (Spill Data) above and granting of Summary Judgment in favor of the Village. Thus, we ask that the Department of Justice and EPA reconsider their leniency in not charging the maximum fines given the following:

1. Enbridge controls **4,608** (*not 3,000 as noted in the Complaint*) miles of pipeline in the United States alone with the majority of the pipelines in the upper Midwest.²⁹ The corrections cited in Consent Decree that Enbridge proposes to make to their protocols and way of doing business now mostly involves the Lakehead Pipeline System only. And these proposed corrections to how they do business in the Lakehead Pipeline System only came at the expense of an irreparable oil spill.
2. Enbridge also has a history of relying on the observation of non-employees - not their touted monitoring systems - to discover spills and leaks such as the gas company employee and a random 'passerby' who discovered and reported the leaks in the

²⁶ See Exhibit #6

²⁷ The Clean Power Plan, U.S. EPA, <https://www.epa.gov/cleanpowerplan>

²⁸ See pages 21, 22, 73 on Exhibit #7

²⁹ Enbridge Energy, Limited Partnership / Operator Information. Pipeline Safety Stakeholder

Communications

https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_11169.html?nocache=3684#_OuterPanel_tab_3

Kalamazoo³⁰ and Romeoville³¹ disasters. In addition, a news agency in Ontario uncovered **more leaks than reported** in 2014 for Enbridge Line 9, raising the question of whether or not leaks are not reported unless discovered by outside agencies or public observers.³² And in at least one instance, a Canadian government agency worked to reduce public observation of their pipeline.³³

3. Paying maximum fines, in line with United States law calling for punitive/deterrent actions (See II.B above), is now mandatory to encourage Enbridge to reconsider the risks it takes with our Commons - specifically the water supply of over 30 million people. An example of Enbridge's lack of proper concern and sense of responsibility is well illustrated by the fact that Line 5 is still in operation. The Lakehead Pipeline System includes 62-year-old Line 5 that travels thru the Straits of Mackinac between Lake Michigan and Lake Huron. It is now known that portions of Line 5 are corroded.³⁴ Do we wait then for a \$1 billion³⁵ spill to occur before the Department of Justice and the EPA realize that these fines assessed to date mean very little to this energy giant? Enbridge has already downplayed the danger posed by keeping this ancient relic in operation as detailed in research gathered by FLOW.³⁶ Waiting for a technology to be developed at some unknown date in the future as suggested on Page 12 of the Consent Decree is not an acceptable response either given what the loss and damage a spill would do to millions who depend on Lake Michigan for their water supply.

The authors and signatories to this response request maximum penalties be assessed as per Section 311 of the CWA, 33 U.S.C. § 1321 for the Line 6A spill at \$4,300 per barrel and for Line 6B spill at \$1,100 **per each of the nine defendants** as stated on Page 17 in the Complaint:

"...each Defendant is liable for a civil penalty of up to \$4,300 per barrel discharged from Line 6B and a civil penalty of up to \$1,100 per barrel discharged from Line 6A."

Enbridge, has time and time again allowed inadequate maintenance and prevention standards that allow oil leaks and spills into the Midwest region's water and land. Assessing the maximum fine sends a message that has not been sent prior to this occasion (see Table 1) that it is expected by this and/or any oil company that maintenance and prevention of spills and leaks protocols need to be

³⁰ PHMSA Announces Enforcement Action Against Enbridge for 2010 Michigan Oil Spill

<http://phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=0faf7fe7f1a38310VgnVCM1000001ecb7898RCRD&vgnnextchannel=71edbc4377e7310VgnVCM1000001ecb7898RCRD&vgnnextfmt=print>

³¹ NTSB Pipeline Accident Brief

<http://www.nts.gov/investigations/AccidentReports/Reports/PAB1303.pdf>

³² 3.3 Unreported And Inadequate Spills Response, by Louise Lanteigne

<https://piperisks.wordpress.com/2015/07/10/1/>

³³ Waterloo Woman Finds NEB E-Mail Lauding Public's Inability To Question Pipelines, by Mychaylo

Prystupa <http://www.vancouverobserver.com/news/waterloo-woman-finds-neb-e-mail-lauding-public-s-inability-question-pipelines>

³⁴ Recently released Enbridge report shows areas of corrosion along Line 5, by Mark Brush Michigan

Public Radio. <http://michiganradio.org/post/recently-released-enbridge-report-shows-areas-corrosion-along-line-5#stream/0>

³⁵ \$1 billion cleanup cost estimated for a winter Mackinac straits oil spill, by Garret Ellison

http://www.mlive.com/news/index.ssf/2016/05/mackinac_straits_spill_cost.html

³⁶ Enbridge Downplaying the Potential Size of Catastrophic "Line 5" Straits Oil Spill

<http://flowforwater.org/wp-content/uploads/2016/05/FINAL-Line-5-Spill-Scenarios-05-02-16.pdf>

followed to the letter - that failure to proceed with caution and concern for our water and land will be met with maximum monetary fines which may prove to be hazardous to their business' future.

We would like to bring to your attention the National Academy of Science's 2016 study³⁷ that indicates that tar sands-based oil, with its toxic chemical mix, is significantly more difficult to clean up if a spill occurs than a crude oil spill. The time window for addressing such a spill is short -- so when it's not discovered right away, which is typical and almost guaranteed for buried pipelines, which affects the cleanup. In fact, the findings are that unless the tar sands oil is immediately cleaned up, the chances of 100% cleanup are lost.

Requiring Enbridge's to pay for cleanup and to institute more stringent procedures would have been commendable if the price paid by this region for these concessions didn't involve the current and future health of the humans, as well as the flora, fauna in both regions. Oil spilled is not a simple matter of saying 'sorry' and moving on with a better attitude and plan. It is not something the people of these regions will 'just' get over. This spill is not only affecting this generation but will affect generations to come. The penalty should reflect this multi-generational loss.

Enbridge's lack of knowledge or concern is illustrated by their lack of interest, or 'follow-thru' or at least curiosity in determining what other pipelines were in place near theirs preceding the Romeoville spill given the number of JULIE requests received prior to the spill. What does this indicate for the spider web of pipelines throughout this region that crisscross other pipelines in our cities and towns - not to mention our water supplies? This lack of interest, concern indicates a company-wide, endemic attitude that scorns details and the public safety. All the more reason for additional citizen oversight for this infrastructure.

Questions for Plaintiff (United States of America):

1. In negotiating the less than maximum penalty in this Consent Decree, did Plaintiff consult with the Village of Romeoville? If the answer is no, it seems that to fully investigate the question of maximum penalties and to deter future irresponsible action on the part of Defendants, as in the Kalamazoo spill, the Consent Decree must be renegotiated with a full investigation and will all injured parties participating.
2. In negotiating penalty amounts, did Plaintiff consider the history of Enbridge Line 14 spills in Wisconsin and that "following the January 1, 2007 failure, [Enbridge] utilized ultrasonic crack detection technology to assess the Affected Pipeline. Multiple crack anomalies associated with the ER W seam were reported by the inline inspection (ILI) vendor. Based on the ILI results, Respondent made repairs to the Affected Pipeline for a 1.25 x MOP factor of safety. Calculations performed by Respondent in 2008 predicted that Line 14 would not fail for a minimum of 10 years" and that the same Line 14 **failed again five years later for the same reason.**³⁸
3. Did Plaintiff ask why a major spill into the streets of Romeoville was undetected by Enbridge, and discovered by local citizens?
4. Did Plaintiff ask why it took 35 to 40 minutes from the time the Romeoville assistant fire chief notified Enbridge of a major spill to the time firefighters could see the flow noticeably diminish?

³⁷ Committee on the Effects of Diluted Bitumen on the Environment, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response, The National Academies Press 2016 <http://www.nap.edu/read/21834/chapter/2#3>

³⁸ See Exhibit #8

Section 309(g)(2)(B) of the CWA does not set forth a minimum penalty and given the hardship to be endured generationally, only a maximum, a “top down” approach should be applied to determining the amount of the penalty. In other words, the Administrator should begin with regulatory maximum and adjust downward, only if justified, based on the statutory factors indicated in Section 309(g)(3) of CWA, rather than starting at \$0 or some other arbitrary baseline and working up from there. As was explained in *Atlantic States Legal Found., Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128 (11th Cir. 1990), “the district court should first determine the maximum fine ... [I]f it chooses not to impose the maximum, it must reduce the fine in accordance with the factors [i.e., those described in Section 309(g)(3) of CWA]”. See also *United States v. Marine Shale Processors*, 81 F.3d 1329, 1327 (5th Cir. 1996), “courts often begin by calculating the maximum possible penalty, then reducing that penalty only if mitigating circumstances are found to exist”. Public policy dictates that Respondent should bear the burden of justifying any reduction from the maximum, rather than the public justifying an increase from \$0.

As part of this settlement agreement, Enbridge has agreed to install new monitoring equipment, implement an inspection and cleaning schedule for its pipeline infrastructure and inspections to prevent unauthorized discharges. We find this extremely disingenuous of Enbridge, the DOJ and the EPA. All of these things—the “new” monitoring equipment, inspection and cleaning schedules—should have been in place as a condition of operating in the first place or a part of standard operations of a multi-billion dollar international corporation. In fact, we find anything less than this standard a violation of operating procedures and permits. These token offerings are just that, as well as a ploy to seek smaller penalties.

Questions for Plaintiff (United States of America) cont.:

5. In negotiating the less than maximum penalty in this Consent Decree, did Plaintiff know that “Enbridge and TransCanada have each committed \$1.6-million to the ELDER [external detection] project, while Kinder Morgan has committed \$1-million.”?³⁹
6. Before penalizing Enbridge by demanding external leak detection research, did Plaintiff know Enbridge publically posted: “Specifically, central Missouri, where we’ve buried fiber optic cable alongside a 20-mile (32-kilometer) stretch of our newly built Flanagan South pipeline. ‘Essentially, our testing of external leak detection systems is increasing to an even larger scale with this fiber optic pilot project in Missouri’, says Cam Meyn, a supervisor of testing and research in Enbridge’s Leak Detection department.”?⁴⁰
7. Does plaintiff know that true external leak detection technologies (gas/tracer sensing technologies) have existed for years but companies designated as “public utilities” such as Enbridge consider them too expensive?⁴¹ If so, what price does Plaintiff consider too high to assess a foreign company for protecting our irreplaceable Commons?

Plaintiff has a responsibility to protect the Commons for the citizens and residents of the United States. As owners of the Commons, how are we to believe that Enbridge, a private company with understandable self-interest, will act differently as a result of the Consent Decree without a full investigation, with less than maximum penalties, and with gifts of the new construction of replacement Line 3 fast-tracking and calls for external leak detection research -- research that already exists?

³⁹ See Exhibit #9

⁴⁰ See Exhibit #10

⁴¹ See page 4.5 in Exhibit #11

Questions for Plaintiff (United States of America) cont.:

8. In negotiating the less than maximum penalty in this Consent Decree, did Plaintiff know that Enbridge has launched a public relation image campaign to counter its image after the Kalamazoo and Romeoville spills.⁴²
9. Is Plaintiff aware of Enbridge's rebranding ad campaign?⁴³
10. Does Plaintiff consider investing in a public relations blitz an appropriate action for the company Plaintiff has chosen to assess less than maximum penalties?

Given the history of repeated and various violations, outlined in detail in Section I, we request that the maximum penalty of \$86,352,600 be assessed in this case for each defendant in the Line 6B spill, and for a maximum penalty of \$7,069,700 for each defendant in the Line 6A spill. In line with United States law calling for punitive/deterrent actions (See II.B above), we ask that each of the nine defendants listed in the complaint be fined and that this combined amount totaling close to \$840 million be the amount used to create the Regional Citizens' Advisory Councils and Area Committees as outlined in Section III.

III. ADDITIONAL CONDITIONS UNDER THIS SETTLEMENT AGREEMENT

This proposed Consent Decree follows the same pattern as previous settlements by requiring more technology and more internal company monitoring and inspections. This is just more of the same fox guarding the same henhouse, and it will produce the same results – more self-reported or unreported pollution discharges into our water supplies, our farms, our cities and towns from daily operations, more oil and chemical spills into the same, further weakening of industry-government vigilance, and declining environmental and social standards. **The Independent Third Party - to be named by Enbridge - is not acceptable.** This Consent Decree and its token agreements provide us with no sense of relief or confidence that Enbridge's aging and ever-expanding pipeline infrastructure will be any safer. We want and deserve more.

A. Justification for commenters' requests

Previous events set precedent for our following request for four additional conditions under this settlement agreement. The abbreviated track record for Enbridge operations in North America in Table 1 shows a history of systemic problems resulting in large penalties and systemic solutions as part of settlement conditions. Given this abbreviated history of spills and leaks, why should we, the people of the Midwest, consider that these systemic problems will change with this single document?

In light of this and all concerns outlined in Section II, we request three additional conditions under this Consent Decree. Each features independent programs to involve area residents in review and oversight of the Enbridge pipeline infrastructure that potentially affects their lives, health, and wellbeing.

⁴² See new Enbridge website here <http://www.enbridge.com/>. Archived, pre-Kalamazoo websites available on request.

⁴³ [New Enbridge ad campaign shows everything but pipelines](http://www.news1130.com/2014/09/23/new-enbridge-ad-campaign-shows-everything-but-pipelines/), News 1130, <http://www.news1130.com/2014/09/23/new-enbridge-ad-campaign-shows-everything-but-pipelines/>

B. A Lake Michigan Regional Citizens' Advisory Council (RCAC) and Upper Mississippi Regional Citizens' Advisory Council (RCAC)

There are only two places on the planet where oil operations were actually made significantly safer, in terms of prevention and response, and both occurred after an oil spill “accident” – or rather, after a *predictable consequence* of an oil company’s cost-cutting and negligent behavior. These places are in Scotland and Alaska, at the two majority BP-owned tanker terminals in Sullom Voe and Prince William Sound, respectively. The successful solution was the same in both cases: independent, funded regional citizen advisory councils to involve local people in the process of safeguarding oil activities in their backyard.

The Oil Pollution Act of 1990 (OPA 90) specifically calls out the importance of citizen and community engagement when it comes to oversight and monitoring of petroleum facilities. Excerpting from 33 U.S.C. 2732,

(2) Findings The Congress finds that—

(A) ...

(B) many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;

(C) one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;

(D) a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;

(E) ...

(F) ...

(G) the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation;

(H) only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus;

(I) ... and

(J) similar programs should eventually be established in other major crude oil terminals in the United States because the recent oil spills in Texas, Delaware, and Rhode Island indicate that the safe transportation of crude oil is a national problem.

OPA 90 created two pilot programs in Alaska by empowering “two already existing citizens’ councils to help combat the complacency seen as responsible for the 1989 spill and to provide a needed layer of scrutiny to increase public confidence in the safety of Alaska’s oil transportation system. The council role, defined by OPA 90 as purely advisory, was to help correct the problems leading to the oil spill by fostering partnership among the oil industry, government, and local communities in addressing environmental concerns.”⁴⁴

When set up correctly, citizens’ advisory councils work. We incorporate into our comments by reference, Prince William Sound RCAC’s 2012 white paper, “The role of citizen oversight in the safe

⁴⁴ PWSRCAC, 2012, Role of Citizen Oversight. http://www.pwsrcac.org/wp-content/uploads/filebase/resources/citizen_oversight_and_history_of_the_council/Role%20Of%20Citizen%20Oversight%20In%20The%20Safe%20Management%20Of%20Oil%20Transportation%20Operations%20And%20Facilities%20In%20Prince%20William%20Sound%20-%20February%202012.pdf

management of oil transportation operations and facilities in Prince William Sound.” Of special note are the three structural attributes necessary for effective and constructive citizen oversight, including: independence, assured funding, and access.⁴⁵

We also incorporate into our comments by reference, a white paper by professor Rick Steiner, “Citizens’ advisory councils to enhance civil society oversight of resource industries,” published in the United Nations Environment Program’s journal *Perspectives* in June 2013, issue 10.⁴⁶ Net benefits of independent, funded, and informed citizens’ advisory councils include a marked improvement in spill prevention, risk reduction, and environmental and social standards. Steiner writes:

“ ...local civil society stakeholders need to be directly involved in the review and oversight of resource industry operations that potentially affect their lives, including extractive industries such as oil, gas and mining; and renewable industries such as agriculture, forestry, and fisheries. Local citizens have much at stake, and much to offer, in the safe and responsible conduct of resource development in their region. To be effectively engaged, citizen stakeholders need their own organization with sufficient funding, staff, authority, broad representation, and independence. ...”

Under OPA 90, the oil industry was not allowed to have a voting seat on the council. Local governments were, but this proved too unwieldy to be functional in densely populated regions; i.e., basically anywhere else in the nation, except Alaska, that safe transportation of crude oil is a national problem. Further, the voting seats for local government may no longer be necessary or desirable, given that OPA 90 also required a third tier of government in the national organizational and planning structure for oil spill response; specifically, Area Committees, discussed in the next subsection.

Given the marked success of the Prince William Sound RCAC and Congress’ intent of establishing similar programs in areas where the handling and transporting of oil is a national concern, we request, as a condition of this settlement, establishment of a Lake Michigan Regional Citizens’ Advisory Council (RCAC) AND an Upper Mississippi Regional Citizens’ Advisory Council (RCAC) with key stakeholder groups, modeled after the Prince William Sound RCAC established under the OPA 90.

C. A Lake Michigan Area Committee and Upper Mississippi Area Committee

Under the Oil Pollution Act of 1990, Congress established Area Committees comprised of local agencies to address community needs and practical response to man-made disasters, similar to the roles and responsibilities of local governments to natural disasters under SARA (Superfund Amendments and Reauthorization Act) Title III.

Instead of establishing Area Committees throughout the country for technological disasters as per the Congressional mandate through OPA 90—similar to what occurred after passage of SARA Title III with establishment of Local Emergency Planning Committees for natural disasters, EPA left the structure of oil spill response planning essentially unchanged as the responsibility of state and federal agencies—that basically defer to industry for site-specific response plans; i.e., Spill Prevention, Control, and Containment (SPCC) Plans.

⁴⁵ PWSRCAC, 2012, Role of Citizen Oversight.

⁴⁶ Steiner, Rick, 2013, Citizens’ Advisory Councils. http://www.unep.org/civil-society/Portals/24105/documents/perspectives/ENVIRONMENT_PAPERS_DISCUSSION_10.pdf

We find this unacceptable for two primary reasons. First, as recognized by Congress, local governments are in the best possible position to plan for and protect communities and the environment in the event of fires, explosions, spills, chronic pollution, and related incidents that result from infrastructure responsible for moving oil, hazardous and noxious substances through our region. The risks from incidents such as spills and leaks among other things, have the potential to cause significant impacts to health and safety of citizens, first responders and the environment. The risks require the involvement of local governments to minimize the consequences to their communities. However, local governments have not been adequately integrated into this process of risk assessment and response planning for man-made disasters, including all impacts and consequences on local communities and governments, as they have for natural disasters.

Second, local government has a duty to protect public health, safety and wellbeing; industry has a duty to maximize profits for its shareholders. These duties inherently conflict as industry profits often come at the expense of human safety and health and the environment – as shown in Table 1. Therefore, it is critical that local governments are involved in risk assessment and response planning carried out by industry and other tiers of government environment. To do this, local governments need sufficient funding, staff, authority, and independence – essentially the same structural attributes necessary for effective and constructive citizen oversight, as mentioned above.

Given Congress' intent of establishing a third tier in the national oil and chemical disaster response structure specifically to address practical concerns and local knowledge and the EPA's failure to follow the law, we request, as a condition of this settlement, establishment of a Lake Michigan Area Committee and an Upper Mississippi Area Committee comprised of local, state, and federal agencies, as mandated under the Oil Pollution Act of 1990.

D. An independent environmental monitoring program

In lieu of the proposed Independent Third Party as outlined in paragraphs 125 forward in the Consent Decree, we request that each of the proposed Citizen Review Councils vet and hire this entity to act in their jurisdiction, thereby assuring the Department of Justice and the EPA that there are 'eyes on the ground' to ensure that this entity achieve the outcomes proposed in the Consent Decree.

Therefore, we request, as a condition of this settlement, establishment of an independent environmental monitoring program for the Enbridge pipeline infrastructure modeled after the environmental monitoring program conducted by the Prince William Sound RCAC for the Alyeska tanker terminal.

E. An independent environmental review of Line 3 and Line 10

We, the authors and signatories to this response agree to the request for the decommissioning of Original US Line 3 as outlined in section B, page 156 of the Consent Decree. We, the authors and signatories to this response **do not agree** to a New Line 3 and are curious as to why this is included as part of the penalty decree? We request that prior to any approval, construction, or breaking of ground be made on a New Line 3, the newly established Upper Mississippi Regional Citizens Review Board be allowed to review and assess the need for a New Line 3.

And as with Line 3, we also request review and assessment be made by the newly established Lake Michigan Regional Citizens' Review Board for any approval, new construction, or breaking of ground to be made regarding Line 10.

F. Funding for additional conditions

As conditions of this settlement, we request \$20 million annually for a Lake Michigan Area Committee and an Upper Mississippi Area Committee and \$20 million annually for a Lake Michigan RCAC and an Upper Mississippi RCAC. An estimate of annual operating expenses were calculated based on a conversation [Riki Ott had] with the Prince William Sound Regional Citizens' Advisory Committee, with allowances for increased program complexity and management, and modest compensation for board and committee members for meeting participation, in addition to travel expenses. EPA should consider this \$40 million request as the best investment in spill prevention under this—or any other settlement – with Enbridge. Unlike previous settlements and conditions, these conditions have the potential to change business-as-usual practices in the Enbridge pipeline infrastructure.

The startup cost for these four programs is \$40 million. These annual, inflation-proofed, payments of \$40 million to implement these four programs should be considered as costs of doing business, similar to the other long-term programs established as settlement conditions. Further, Enbridge should consider this a small price to pay for the annual privilege to operate in the Upper Midwest of the United States.

IV. REQUEST FOR A NEUTRAL THIRD-PARTY FIDUCIARY RECIPIENT

A. Justification for commenters' request

The Enbridge Corporation and its subsidiaries have had a long time to do things right, yet its overall track record reveals much wrong, with changes or improvements made only after various subsidiary companies are caught violating the law. It can well afford – and it well deserves to pay – substantial penalties for its repeated pattern of neglect and carelessness that harms people and the environment. For these reasons, we do not trust Enbridge to handle or direct any funds from this Consent Decree.⁴⁷

B. Request: Re-directing penalty funds

To do the most possible good, all penalties resulting from this settlement should be directed into the hands of those who have the most to gain by minimizing risk of oil spills and improving air and water quality during daily Facility operations – area residents. To do this, we request that all penalties and fines resulting from this settlement agreement, including all annual payments to support ongoing citizen involvement in improving the safety record of this refinery, should be directed to independent,

⁴⁷ A Supplemental Environmental Project (SEP) is not included as part of this proposed settlement, nor should one be, nor would we want one to be.

third-party fiduciary such as the National Fish and Wildlife Foundation, with a proven track record for receiving and responsibly managing settlement funds and penalties – and for supporting projects in communities directly harmed by the activities that led to the settlement or penalties. Most recently, NFWF was entrusted to receive \$2.4 billion from the BP Deepwater Horizon disaster.

Funds would be used for any and/or all of the following explicit purposes:

a) startup funding to initiate the process of establishing an independent Lake Michigan Regional Citizens' Advisory Council and Upper Mississippi Regional Citizens' Advisory Council with key stakeholder groups;

b) startup funding to initiate the process of establishing an independent Lake Michigan Area Committee and Upper Mississippi Area Committee with key municipal stakeholders;

c) funding to support annual operations of an independent Lake Michigan Area Committee and an independent Lake Michigan Regional Citizens' Advisory Council; or

d) funding for local and/or regional citizens' advisory projects at the same levels and with the same goals of the organizational structures defined in the conditions set forth in (a) through (c) of this subsection.

e) funding design and implementation of an independent, annual environmental monitoring program for the Enbridge pipeline infrastructure modeled after the environmental monitoring program conducted by the Prince William Sound RCAC for the Alyeska tanker terminal with additional duties as outlined for the Independent Third Party as described in the Consent Decree. (*Funded by penalty fees and NOT by Enbridge directly.*)

V. SUMMARY

In summary, we find that Enbridge Corporation has a track record of negligence regarding operations and maintenance of its extensive pipeline infrastructure, willful safety and environmental violations, and an utter managerial disregard – bordering on contempt – for environmental and safety regulations. For these reasons, and as discussed in our comments, we ask for:

1. Maximum penalty of \$86,352,600 in this case for each barrel spilled for Line 6A, and for a maximum penalty of \$7,069,700 per barrel for the Line 6B spill be assessed per each of the nine defendants;

2. Three additional conditions under this settlement including:

a. Establishment of, and \$20 million annually, inflation-proofed, for implementation of, an independent Lake Michigan Regional Citizens' Advisory Council (RCAC), and a Upper Mississippi Regional Citizens' Advisory Council (RCAC) modeled after the Prince William Sound RCAC established under the Oil Pollution Act of 1990;

b. Establishment of, and \$20 million annually, inflation-proofed, for implementation of, an independent Lake Michigan Area Committee and a Upper Mississippi Area Committee, as mandated under the Oil Pollution Act of 1990; and

c. Establishment of an independent environmental monitoring program for the Enbridge pipeline infrastructure, modeled after the environmental monitoring program conducted by the Prince William Sound RCAC for the Alyeska tanker

terminal and performing duties as Independent Third Party as outlined in Consent Decree. (**Funded by penalty fees and NOT by Enbridge directly.**); and

3. A neutral third-party fiduciary recipient – such as the National Fish and Wildlife Foundation – of all penalties and funds resulting from this Consent Decree for Funding for local and/or regional citizens' advisory projects at the same levels and with the same goals of the organizational structures defined in the conditions set forth in Section III.

Thank you for the opportunity to comment.

SIGNATORIES

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Chicagoland Oil By Rail
Circle Pines Center
Conserve Our Rural Ecosystem (CORE)
DuneCATS
Detroit Coalition Against Tar Sands (DCATS)
Earthseed
Elder Climate Action
Elgin Green Groups 350
Energy Action Coalition
First Unitarian Church of Hobart / Faith in Action Committee
FLOW - For Love Of Water
Food & Water Watch
Forest City 350
Fox Valley Citizens for Peace & Justice
Frack Free IL
Heartwood Council
IL Climate Activists
Illinois South Solutions
Immigrant Support And Assistance Center
IOWA 350
MN350
Pilsen Alliance
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Shawnee Forest Sentinels
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Vote-Climate.org
Women's Congress for Future Generations