



November 3, 2020

To: Governor Tim Walz, Lt. Governor Flanagan, Charles Sutton
Re: Prep Document for Meeting on Line 3 this Thursday, 4:30 – 5 PM

Via email: Charles.sutton@state.mn.us

Dear Governor Walz and Lt. Governor Flanagan:

We are grateful to have a meeting scheduled with you and your team this Thursday, November 5 to discuss Enbridge's Line 3 expansion application for a Water Quality Certification permit. We know that the 30 minutes will go quickly and is not enough time to present all the facets of this issue that should be evaluated before deciding on this enormously consequential permit.

To facilitate a productive meeting, we have prepared this document that we hope will be shared with the Governor and Lt. Governor as soon as possible this week in advance of the meeting.

Governor Walz has said that decisions on Line 3 should follow the law, maintain good process, and uphold scientific integrity.

This memo aims to summarize important facts as we see them about the project and the permitting process that it has undergone thus far. If your office holds a different perspective or has questions about any of the following statements, we would respectfully ask that you share those with us by 10 am Thursday, so that we may have a chance to appropriately address them before or during our time together.

- I. **This Line 3 expansion will violate treaty rights and inflict harm on Indigenous communities.**
- II. **The MPCA chose not to consider treaty violations and harms on Indigenous communities in its review of the social and economic impacts of this project,** despite Minnesota rules that grant it the authority to do so.
- III. **The extra annual greenhouse gas emissions from this Line 3 expansion project are the equivalent of building 50 new coal plants** and running them 24 hours a day.
- IV. **The MPCA chose not to consider these climate consequences in its review of the social and economic impacts of this project,** despite Minnesota rules that grant it the authority to do so.
- V. **The MPCA has all the legal tools and rationale it needs to deny the water certification permit, should it choose to do so.**

I. This Line 3 expansion will violate treaty rights and inflict harm on Indigenous communities.

- A. The Treaties of 1842, 1854, and 1855, guarantee the Anishinaabeg (Ojibwe) rights to hunt, fish, gather medicinal plants, cultivate and harvest wild rice, and preserve sacred or culturally significant sites in off-reservation treaty territory. These treaties are still living and require adherence.
- B. The Red Lake, White Earth, and Mille Lacs bands strongly oppose this project and are currently in court to stop it, along with Honor the Earth. As Commissioner Matthew Schuerger of the Public Utilities Commission pointed out in his dissenting opinion concerning the project's Certificate of Need, "the project will directly, materially and adversely impact many Indigenous populations." Schuerger also wrote that the Mille Lacs and Fond du Lac Bands have highlighted significant risks to wild rice beds and Big Sandy Lake from the project.
- C. The Line 3 expansion project will make over 200 crossings of water bodies, wetlands and wild rice beds. The MPCA scientists found that pipeline construction will cause "unavoidable" degradation of high quality waters, even if the pipeline never spills any oil.
- D. The state's Environmental Impact Statement acknowledges the connection between large fossil fuel construction projects and harm to Indigenous communities. It states in Chapter 11 "the addition of a temporary, cash rich workforce increases the likelihood that sex trafficking or sexual abuse will occur." While Enbridge has been required to prepare a Human Trafficking Prevention Plan, this permit condition will not stop these abuses and adds to an already serious issue in Minnesota and beyond.

II. The MPCA chose not to consider these treaty violations and harms on Indigenous communities in its review of the social and economic impacts of this project, *despite Minnesota rules and executive orders that grant it the authority and obligation to do so.*

- A. The MPCA chose to review the PUC's analysis of the social and economic factors at play in the Line 3 project,¹ instead of performing an independent analysis of the six factors outlined in Minnesota Administrative Rules.² Nothing in Minnesota law requires the MPCA to use the PUC's analysis of social and economic factors because the PUC performed its analysis first.
- B. The PUC's analysis does not consider treaty rights. The Commission omitted all discussion of treaties from their order, determining that while the Administrative Law Judge (ALJ) report included them, they did not need to.

¹ [Enbridge Line 3 – Preliminary Antidegradation Determination for 401 Certification, p. 9, last paragraph](#)

² [MN Administrative Rules 7050.0265 \(Antidegradation Standards\), Subp.5.](#)

Footnote 18 of their September 2018 order states:

“For example, the ALJ Report included a section discussing the treaties between the federal government and the Native American sovereign nations located in Minnesota. The Commission concludes that this discussion is not necessary to the Commission’s decision, and therefore does not adopt these findings.”³

The PUC had no staff attorney with expertise in treaty rights advising their analysis and opted not to consider the expertise of the lawyers representing White Earth and Red Lake who did. The PUC decided treaty rights were not “necessary” to its decision, despite impacts to Indigenous people and treaty rights being an important part of the Environmental Impact Statement.⁴

- C. The PCA has an obligation to follow the [Governor’s Executive Order 19-24](#) about Tribal Consultation.⁵ The PUC does not have this obligation.

III. The annual greenhouse gas emissions from this Line 3 expansion project are the equivalent of building 50 new coal plants and running them 24 hours a day. (This is over and above the emissions that the existing Line 3 produces already.)

- A. Once operating as intended, the Line 3 expansion will *annually* increase the emissions over the existing Line 3 by 193 million tons CO₂ a year. That is 25% more than the entire amount of greenhouse gas emissions produced by the state of Minnesota in 2016 from every sector combined (154 million tons CO₂).⁶ The projected operational life of the pipeline is between 30-50 years.
- B. While Minnesota’s Clean Cars Initiative aims to reduce the greenhouse gas emissions from Minnesota’s transportation sector, the extra emissions from the Line 3 expansion is the equivalent of adding 38 million gas-powered cars to our roads.⁷
- C. There is nothing the state of Minnesota can do to reduce its greenhouse gas emissions enough – including bringing every sector to zero emissions – to offset the emissions from this Line 3 expansion project.
- D. While the emissions from the Line 3 expansion would not be included in the calculation of Minnesota’s emissions reductions progress, greenhouse gas emission impacts do not consider borders. The point of Minnesota’s statutory GHG reduction goals is to positively impact our global climate crisis trajectory. Emissions from this Line 3 expansion, wherever this fuel is burned, will have consequences on our communities.

³ The PUC’s Sept. 5, 2018 order is the approval of the Certificate of Need and has been “reissued” whenever the PUC has reapproved the Certificate of Need.

⁴ Final Environmental Impact Statement, Chapters 9 and 11.

⁵ From [Governor’s Executive Order 19-24](#), point 6: “Agencies must consider the input gathered from tribal consultation into their decision-making processes, with the goal of achieving mutually beneficial solutions.”

^{6,7} [A Giant Step Backward report.](#)

IV. The MPCA chose not to consider these climate consequences in its review of the social and economic impacts of this project, despite MN rules that grant it the authority to do so.

- A. Again, the MPCA relied on a review of the PUC analysis of economic and social impacts of the expansion project⁸ rather than performing an independent analysis of the six factors the PCA should evaluate according to MN Admin. Rules.⁹
- B. The PUC decided that, because different emissions models have different assumptions about the project's life-cycle carbon emissions, the life-cycle emissions from Line 3 are unknowable, and therefore **the PUC put these climate impacts at ZERO** instead of the \$287 billion of social cost the ALJ had affirmed (based on the Department of Commerce Environmental Impact Statement of 2017). This position by the PUC contradicts previous statements the PUC has made in other cases which acknowledged the social cost of carbon.

The PUC order from Sept. 5 2018 says at p. 28-29, footnote 147:

But the FEIS acknowledged the limitations of the lifecycle greenhouse gas analysis: "Note that there are assumptions and data limitations in the characterization of life-cycle [greenhouse gas] emissions that vary between studies. As a result, the [greenhouse gas] emissions can differ substantially from one study to the next. Since the studies reviewed do not consistently disclose the details of their analysis, and often rely on proprietary models and data, a thorough assessment of the reasons for this variability is not possible." FEIS at 5-466. The Commission therefore does not adopt the ALJ Report at finding 676 and those findings that rely on finding 676.

The ALJ finding 676 is the one that affirms the project would have a social cost of carbon of \$287 billion.

This position by the PUC contradicts previous statements the PUC has made in other cases which acknowledge the social cost of carbon.

V. The MPCA has all the legal tools it needs to deny the Line 3 Water Quality Certification.

There are three clear legal paths for denying this water quality certification application according to Minnesota law.

Path 1: **Denial because the project "endangers human health or the environment and that the danger cannot be removed by a modification of conditions of the permit."**

See [MN Administrative Rules 7001.0140 Final Determination, Subp. 2, \(D\)](#).

⁸ [Enbridge Line 3 – Preliminary Antidegradation Determination for 401 Certification, p. 9, last paragraph](#)

⁹ [MN Administrative Rules 7050.0265 \(Antidegradation Standards\), Subp. 5.](#)

Path 2: **Denial because the project's degradation to Tier 2 high quality waters is "unavoidable."**

Path 3: **Denial based on application of the balancing test** required for finding the project's unavoidable degradation of high quality waters necessary to accommodate important economic and social changes.

See [MN Administrative Rules 7050.0265 \(Antidegradation Standards\), Subp.5](#)

- The PCA Commissioner has the power to do the balancing test – it is actually required by the administrative rules if the PCA wishes to pursue a permit that causes “unavoidable” degradation of high quality waters, which this project does. ([7050.0265, Subpart 5, B.](#))
- That balancing test, which should be independent, includes taking into consideration 6 factors, many of which are relevant here, but especially the 6th: “Other relevant environmental, social, and economic impacts of the proposed activity.” ([7050.0265, Subpart 5, B. \(6\)](#))
- The PCA, instead of doing its own balancing test, relied on a review of the PUC analysis and Enbridge’s own assessment. ([Enbridge Line 3 – Preliminary Antidegradation Determination for 401 Certification, p. 9, last paragraph](#))
- Nothing in Minnesota law compels the PCA to follow the findings of the PUC, regardless of whether that body made its findings first. The DOC, PCA, and PUC all have different roles to play in the evaluation of a project of this magnitude.
- **As previously discussed, the PUC analysis on which the PCA has thus far relied, omitted consideration of treaty rights and climate impacts.**
- Aside from omitting climate impacts and treaty rights as an impact on Indigenous communities, the factors the PCA *did* take into account are currently a matter of debate:

- Future adequacy, reliability and efficiency of energy supplies.

The need or demand for Line 3 oil to maintain the adequacy, reliability and efficiency of energy supplies is the basis of the legal appeal by the Department of Commerce, refiled most recently in August. In 2017 the DOC concluded that the Line 3 proposal does not meet Minnesota’s legal bar to establish need for the project, due in part to Enbridge’s failure to supply an oil demand forecast. Enbridge inappropriately defined demand as oil companies wanting to ship oil through their pipeline if it were built, not a demand by end users for the oil. As PUC Commissioner Matthew Schuerger wrote in his dissent in

May 2020, "the absence of an accurate, reliable, demand forecast is a fatal flaw".

Furthermore, the DOC concluded in 2017 that this oil was in fact not needed for regional oil demand.¹⁰ Demand has only further decreased since then.

Recently, Honor the Earth filed a complaint with the PUC highlighting the fact that Enbridge has increased capacity on multiple other pipelines that run through Northern Minnesota. This kind of capacity shifting was not considered in front of the PUC as an alternative to opening a new corridor for tar sands oil through the proposed Line 3 expansion.

- Removing the risk of accidental release of oil from current Line 3.

[In testimony in 2017](#), the Department of Commerce said that Minnesota would be better off shutting down the existing Line 3 pipeline than building a new one.

Moving the risk of oil spills from one part of Minnesota to a whole new part of Minnesota does not create a safety benefit that weighs in favor of the project. Risk of oil spills are a danger no matter where the pipeline is placed or when the pipeline was built.¹¹ This Line 3 expansion project opens up 150 miles of new corridor along Minnesota's cleanest waterways and wild rice beds for the world's most polluting oil -- notorious for its difficulty to remove: tar sands oil is heavy and sinks to the bottom of the waterway instead of floating on top.

The MPCA has not indicated that they have looked at other options like temporarily increasing flow through existing pipelines, which Enbridge has begun to implement as reference above.

- Potential for positive economic impacts to communities along the project route.

There was no accounting of the negative impacts to communities along the project route.

¹⁰ [In direct testimony](#), Department of Commerce Commissioner Kate O'Connell said "At a high level, in light of the serious risks of the existing Line 3 and the limited benefit that the existing Line 3 provides to Minnesota refineries, Minnesota would be better off if Enbridge proposed to cease operations of the existing Line 3, without any new pipeline being built."

¹¹ Dangerous Pipelines: Enbridge's History of Spills Threatens Minnesota Waters.
<https://www.greenpeace.org/usa/reports/dangerous-pipelines/>

The preceding statement of facts leads us to the following:

Why has the MPCA's draft permit deliberately ignored climate and treaties even as the balancing test they are using to justify the degraded water quality requires them to take those considerations into account?

The MPCA still has time to correct this analysis. The Preliminary Antidegradation Determination for 401 Certification was a draft which received public comments, with the final draft due upon announcement of the PCA's decision (by November 14). The PCA should undergo a new balancing test that takes into consideration climate impacts, impacts on Indigenous communities, and treaty rights among other factors that were previously not considered.

Note: It is important not to confuse the evaluation factors of this balancing test, which is state law, with requirements of the federal rules. Federal 401 rules, both before September 11, 2020 and now, allow the state to deny the project based on water quality impacts. Water quality impacts from Line 3 have already been established by the PCA and are adequate grounds for denial of the 401 water quality certification. Even if the Commissioner chooses to look at the project through the lens of the state balancing test, and finds that on balance, the project does not justify the degraded water quality impacts, the reason the 401 permit will be denied is not because of those factors, but because of the water quality impacts.

As this document is being prepared, Enbridge has construction equipment, out of state workers in hotels, and timber mat and pipeline storage sites across the proposed route. If the 401 certification is granted construction will start immediately after Clean Water Act permits are granted. Advocacy groups and perhaps others will likely file a lawsuit, but this will not stop all that comes along with construction (civil unrest, increased sex trafficking, spread of COVID-19, the cutting of trees, bulldozing of land, dredging and filling of wetlands). While groups may plan to ask the courts to halt construction at both the federal and state level, an injunction to stop construction is unlikely to come swiftly, if at all.

The MPCA has indicated its desire to attach the strongest possible conditions to the permit, if it is issued, in an effort to protect Indigenous communities, wild rice and water quality. It is possible, depending on legal outcomes, that updated federal rules could change the conditions available to states in the future. But this misses the role, obligation and responsibility the MPCA has in this moment. It is beyond the PCA's ability to mitigate the crushing scale of Line 3's carbon emissions or the environmental justice implications of putting a pipeline through Native treaty territory. No mitigation through permit conditions is possible for climate and environmental justice impacts of this magnitude. This is why denial, rather than approval with conditions, represents the path forward that best aligns with the law, processes and data on the record. The only way to avoid the damage is to not build the project.

Enbridge's interests in building this line are financial. It will receive a guaranteed rate of return for its construction costs once the oil starts flowing. In the last 70 years, fossil fuel companies have grown accustomed to getting their way.

But today we have a better understanding of racial injustice, of the facts of climate change, of the health of our wetlands, of the crisis of our ecosystems, of our harm to the people who have lived here beyond our elders' memory.

All of this matters. And none of it is prohibited from the MPCA's consideration.
Minnesota's administrative rules support denial of this permit.

We recognize that you are hearing from many constituencies around this issue.
A false choice is being promoted regarding the decision dynamics around Line 3.

The false choice pits the prospect of good paying jobs against protecting our environment. It says that community investments, good schools and thriving Little Leagues can only exist if Enbridge supports them with tax dollars.

But we know this is not true. We see a beautiful future, one where everyone can prosper. Where a green infrastructure program gets us to our climate goals while creating tens of thousands of new family-supporting and vacation-enabling jobs in every pocket of the state. Where new pipes carry clean water to our communities and well-funded schools. Where our homes are healthy and safe, efficient and warm. Where we can eat the fish we catch with our neighbors and know that we are all in this together. Because we are all in this together.

The approval of Line 3 – which sacrifices our most precious waters and wetlands, tramples over treaty rights, and hamstringing our future action on climate – is not part of the future we need to build.

Harmful patterns need changing.

Minnesota law gives this administration everything it needs to deny this project right now.

Please call us to ask more questions, challenge us with conundrums, or share your thinking.

Respectfully Yours,



Steve Morse
Executive Director

cc: Laura Bishop, MPCA Commissioner
Peter Tester, MPCA Deputy Commissioner
Greta Gauthier, MPCA Asst. Commissioner – Legislative and Intergovernmental Relations
Katrina Kessler, MPCA Asst. Commissioner – Water Policy / Agricultural Liaison
Craig McDonnell, MPCA Asst. Commissioner – Air and Climate Policy
Helen Waqui, MPCA Director of Public Engagement and Tribal Liaison
Melissa Kuskie, MPCA Manager – Certifications, Environmental Review & Rules Section
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