



P.O. Box 673  
Houghton, MI 49931-0673 USA  
<https://upenvironment.org>

April 9, 2020

Hon. Gretchen Whitmer, Governor  
State of Michigan  
George W. Romney Building  
111 South Capitol Avenue  
Lansing, Michigan 48909

Re: Emergency Time Extension for Review of Line 5 Tunnel Permit Application

Dear Governor Whitmer,

First of all, we want to express our appreciation for your leadership on environmental issues and during the COVID-19 crisis in the State of Michigan.

The Upper Peninsula Environmental Coalition (UPEC) is the longest-serving environmental organization in Michigan's U.P. We recently learned that Enbridge, Inc. will file a number of permit applications as early as this week to construct an oil pipeline tunnel beneath the Straits of Mackinac.

We stand with the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians and many others who are concerned about the potential damage posed by the existing Line 5 as well as the construction and operation of the proposed tunnel beneath the Straits of Mackinac. We also support our members, communities and environmental justice organizations who intend to fully participate during in-person public comment for various permits across the State for the proposed tunnel.

While the citizens of Michigan and our members are observing a State of Emergency and Stay-at-Home Executive Order, we are in no position to review and provide substantive comments on any permit applications submitted by Enbridge regarding the siting and construction of its long-discussed pipeline tunnel underlying the Straits of Mackinac. By filing its applications now, Enbridge may be seeking to use a global pandemic to its advantage by avoiding rigorous review and meaningful public comment.

The Line 5 Pipeline, and its potential impacts have been of great concern to us. I am writing on behalf of UPEC to request an emergency stay of the State's administrative review of any permit applications regarding Enbridge's Line 5 tunnel project in order to allow both State agencies, our organization and others to carefully, thoroughly, and appropriately review Enbridge's massive submission of data and technical reports. We understand that the timeframes and deadlines for permit review are mandated by statute, but we are requesting your intervention in this process. State workers at MPSC and EGLE are likewise working remotely, without easy access to work files and records. The timeframes provided under various permitting provisions of the Michigan Natural Resources and Environmental Protection Act [MCL 324.101, et seq.] are impossible to meet – unless no review of the application's contents and appendices is made. Of course the public has even less access to the application documents, and even less time to meaningfully review, comment and advise as to their contents. The same constraints apply to the permit sought from MPSC under MCL 483.1, et seq.

On the federal side, as you may know, the Trump administration has removed all liability for the “incidental take”, i.e. death and injury of migratory birds under the Migratory Bird Treaty Act. There exists the potential for enormous harm to the environment, including the death and injury of migratory birds, and damage to the food web, water, wetlands and other natural resources from a Line 5 oil spill. The Deepwater Horizon oil spill occurred ten years ago this month. Among other damages the National Oceanic and Atmospheric Administration estimated that 105,400 seabirds were killed. This is likely a minimum estimate. At the time, nobody realized just how many birds died from direct oiling because the majority of them decomposed and sank offshore. In the settlement reached with the federal government, BP and contractors ended up paying \$20.8 billion in penalties and fines, the single largest criminal resolution ever. Eighty percent of the penalties were allocated to ecological and economic recovery efforts in the Gulf.

With the Trump administration’s action to gut this century-old bird protection law, Enbridge would be absolved of any penalties for incidental take of migratory birds from an oil spill from the existing Line 5 or a replacement project. Under this scenario the people of Michigan and other states would be deprived of fines that would otherwise be applied to acquiring and improving bird habitat should a major spill occur.

As you also know, the Environmental Protection Agency, as requested by the American Petroleum Industry, recently suspended enforcement and penalties for violations of the Clean Water Act, if a company can show the violation was a result of the COVID-19 epidemic. In fact, industries are even being absolved of reporting violations such as petroleum spills.

In addition, it would appear from a review of the Corps of Engineers permitting authorities that a federal permit from the Corps would be required for the proposed tunnel, pursuant to Section 10 of the Rivers and Harbors Act of 1899. That Act requires a permit for any activity that may affect the course, condition, location, or capacity of a navigable waterbody. Thus, we urge you to contact the Commander of the Detroit District, Corps of Engineers and request that the Corps suspend any processing of a permit application or pre-application coordination between the Corps and Enbridge as long as the State remains in a State of Emergency due to the COVID-19 pandemic.

For all of the above reasons, UPEC respectfully requests that the time periods for review and comment on the multiple permits and authorizations which Enbridge seeks from the State for its tunnel construction project be extended, and not begin to run for as long as the State remains in a State of Emergency due to the COVID-19 pandemic. Governor Whitmer, we greatly appreciate your attention to this matter of critical importance to the citizens of Michigan.

Sincerely,



Jeffrey K. Towner  
UPEC Board Member  
3 Pine Run  
Negaunee, MI 49866

cc:

Aaron A. Payment, Chairperson, Sault Ste. Marie Tribe of Chippewa Indians  
Bryan Newland, President, Executive Council, Bay Mills Indian Community