



September 16, 2021

VIA EMAIL TO LEO.GOLDEN@ENBRIDGE.COM ON SEPT. 16, 2021
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED ON SEPT. 17, 2021

Leo Golden
Vice President, Major Projects
Enbridge Energy, LLP
26 East Superior Street
Suite 125
Duluth, Minnesota 55802

RE: Administrative Penalty Order
Line 3 Replacement Project

Dear Mr. Golden:

The Department of Natural Resources (“DNR”) is issuing the enclosed Administrative Penalty Order (APO) to Enbridge Energy, Limited Partnership for violations of Minnesota’s natural resource laws. Please read the APO carefully. You must take action within 30 days after you receive this letter. **You must take corrective action and document your corrective action to the DNR, or you must pay the invoiced amount, however, failure to take the required corrective action may result in the issuance of additional penalties. If DNR determines your corrective action is not sufficient, you must pay the invoiced amount within 20 days of receipt of the non-sufficiency notice from the DNR.**

You have a right to formally dispute this action within 30 days after receiving the APO. Instructions are in the RIGHT TO REVIEW section of the APO.

If you have questions or need assistance, contact me by phone at (651) 259-5119 or by email at ann.pierce@state.mn.us.

Sincerely,

Ann Pierce
Deputy Division Director
Ecological and Water Resources

Enclosure: Administrative Penalty Order

cc: Sherry Enzler, General Counsel
Jill Nguyen, Senior Staff Attorney

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE PENALTY ORDER

Enbridge Energy, Limited Partnership
26 East Superior Street
Suite 125
Duluth, Minnesota 55802

APO-001
Line 3 Replacement Project

This Administrative Penalty Order (APO) is issued by the Department of Natural Resources (DNR) Commissioner pursuant to Minn. Stat. § 103G.299 for the violations listed below. This APO requires Enbridge Energy, Limited Partnership (Enbridge) or (Regulated Party) to take action to correct the violations.

* * * * *

VIOLATIONS

1. 103G.271 APPROPRIATION AND USE OF WATERS.

Subdivision 1. **Permit required.** (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water-use permit from the commissioner.

Subd. 4. Minimum-use exemption and local approval of low-use permits.

(a) Except for local permits under section 103B.211, subdivision 4, a water-use permit is not required for the appropriation and use of less than 10,000 gallons per day and totaling no more than 1,000,000 gallons per year, except as required by the commissioner under section 103G.287, subdivision 4, paragraph (b).

103G.287 GROUNDWATER APPROPRIATIONS.

Subd. 5. **Sustainability standard.** The commissioner may issue water-use permits for appropriation from groundwater only if the commissioner determines that the groundwater use is sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells constructed according to Minnesota Rules, chapter 4725.

Beginning on about January 21, 2021, and continuing through the date of this APO, Enbridge has violated Minn. Stat. § 103G.271 and Minn. Stat. § 103G.287 Subd. 5 by the ongoing appropriation or use of 10,000 or more gallons per day or more than one million gallons per year of waters of the state without a water appropriation permit. By breaching the confining layer of an artesian aquifer, Enbridge caused an uncontrolled release of groundwater (uncontrolled flow) during the construction of the Line 3 Pipeline Replacement Project ("Project") at or near the Clearbrook Terminal, in Clearwater County Minnesota. This uncontrolled flow is not authorized by any of Enbridge's water appropriation permits for the Project and Enbridge failed to notify the DNR that the breach of the aquifer had occurred. The estimated volume of the uncontrolled flow is 24.2 million gallons through September 5, 2021.

The unpermitted appropriation of groundwater is a waste of Minnesota's water resources and threatens to harm or degrade the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) and two public waters, Deep Lake (ID15009000) and Steenerson Lake (ID15008900).

2. 103G.223 CALCAREOUS FENS.

(a) Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary or as provided in paragraph (b). Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(b) The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan.

Beginning on about January 21, 2021, and continuing through the date of this APO, Enbridge has violated Minn. Stat. § 103G.223 by causing reductions in groundwater resources available to the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) (calcareous fens) without an approved calcareous fen management plan. In 2020, Enbridge informed DNR, in its request for a no effect concurrence, that its construction activities were unlikely to negatively impact the nearby calcareous fens because Enbridge intended to excavate about an eight foot deep trench. Instead, when Enbridge constructed the pipeline at or near the Clearbrook Terminal, Enbridge excavated an eighteen foot deep trench and installed sheet piling to a depth of 28 feet. Because Enbridge deviated from its plans, Enbridge breached an artesian aquifer, causing uncontrolled flow of groundwater. The uncontrolled flow affects the same aquifer that upwells into the Leon 33 calcareous fen (Steenerson and Deep Lake Fens) and is located approximately 4,800 feet northwest of the calcareous fens. Enbridge failed to submit a calcareous fen management plan for DNR approval prior conducting an activity that may drain, or otherwise degrade, wholly or partially, a calcareous fen.

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CORRECTIVE ACTION REQUIRED

Pursuant to Minn. Stat. § 103G.299, Subd. 4, the Regulated Party is required to correct all the violations listed in this APO. The Regulated Party must document to the Commissioner, within 30 days after receipt of this APO and in writing that the Regulated Party has taken the corrective actions listed below, unless the Regulated Party seeks review of this APO as described below (Right to Review).

1. Complete all restoration work according to the DNR approved Remedial Action Plan dated August 18, 2021 to stop the uncontrolled flow. If this plan does not succeed in stopping the uncontrolled flow, additional measures will be required to address conditions at the site.
2. Enbridge must contact the DNR Director of Ecological and Water Resources within 24 hours of successfully completing the work to stop the uncontrolled flow.

3. Enbridge shall;
 - a. Provide the DNR with a revised estimate of water loss from March 19, 2021, to the date of this APO. This estimate must be within +/- 10 percent of actual loss.
 - b. Submit to the DNR documentation of the ongoing measurement of discharge rates required under the Remedial Action Plan. These measurements must include the current flow rate and any changes in flow rates. These measurements must continue until the uncontrolled flow is stopped. Documentation of the method of measurement must also be submitted to DNR. These measurements must be within +/- 10 percent of actual flow rates.
 - c. Submit for DNR's approval a plan to continue to monitor groundwater for a 12-month period following cessation of the uncontrolled flow. The plan shall include all pertinent methodological information and a schedule for reporting results to the DNR. The duration of required groundwater monitoring may be extended at the DNR's sole discretion.

Submit for DNR's approval a plan to conduct visual monitoring for break-through groundwater discharges for a 12-month period following cessation of the uncontrolled flow. The plan shall include all pertinent methodological information and a schedule for reporting results to the DNR. The duration of required visual monitoring may be extended at the DNR's sole discretion.
4. Enbridge must submit a draft Calcareous Fen Management Plan (CFMP) for DNR review and approval. This plan must include a description of ongoing monitoring of water levels and the plant communities that will occur to determine if the loss of water has impacted the nearby Leon 33 calcareous fen (Steenerson and Deep Lake Fens). The plan must provide site access for the DNR and/or its contractors to conduct and observe onsite fen monitoring activities. The plan must also provide access for Tribal monitors to observe fen monitoring activities if they choose to participate. The results of monitoring after implementation of the Remedial Action Plan and Calcareous Fen Management Plan may result in additional requirements, restoration and/or mitigation as directed by the DNR.

If the Enbridge has any questions about the corrective actions required, please contact the DNR staff person identified below for assistance.

PENALTY: \$ 20,000.00

The Regulated Party is hereby assessed a penalty of \$20,000.00 for the violations cited above. In determining the amount of the penalty, the Commissioner considered whether Regulated Party gained economic benefit as a result of the violation, whether there is a history of past violations, the number of violations, and the gravity of the violations, including the potential harm caused by the violation, the deviation from compliance, the potential damage to the public interest, the potential damage to natural resources of the state and other factors as justice may require. The DNR determined that these violations represent a severe potential for harm because the ongoing and unpermitted appropriation has caused a reduction in groundwater resources available to calcareous fen, which are rare natural resource, as well as other nearby public waters and because Enbridge failed to report the incident and take timely action to stop the uncontrolled flow.

Pursuant to Minn. Stat. § 103G.299, Subd. 5, if the Regulated Party performs and documents all the corrective action requirements listed above to the satisfaction of the Commissioner, within 30 days after the receipt of the APO the penalty shall be:

FORGIVABLE: \$20,000.00

If the Regulated Party fails to perform and document all of the corrective action requirements listed above to the satisfaction of the Commissioner, within 30 days after receipt of the APO, the \$20,000 penalty plus shall be immediately due and payable in accordance with the requirements of Minn. Stat. § 103G.299, Subd. 5. Interest, at the rate established in section 549.09, begins to accrue on penalties on the 31st day after the order with the penalty was received. Payment shall be made by check payable to the Minnesota Department of Natural Resources within 31 days after receipt of the APO unless the Regulated Party seeks review of this APO. The check should be mailed to the attention of Randall Doneen, Supervisor Conservation Assistance and Regulation, Minnesota Department of Natural Resources, 500 LaFayette Road, St. Paul, MN 55155. Mailed payments will be deemed to have been remitted on the 31st day after receipt of the APO if they are postmarked on the 31st day after receipt of the APO.

RIGHT TO REVIEW

Pursuant to Minn. Stat. § 103G.299, subds. 6 and 7, the Regulated Party has a right to seek review of this APO. The following description is intended only to aid the Regulated Party’s understanding of the review process and does not constitute legal advice. The Commissioner strongly advises the Regulated Party to review the law itself carefully before proceeding. A decision by Enbridge to contest this APO will not be deemed to have stayed or relieved Enbridge of any other obligations or corrective actions issued by the DNR pursuant to Minn. Stat. §§ 103G.2372, 103G.251, and 103G.141.

The Regulated Party has a right to have an expedited hearing before an administrative law judge to contest this APO or the Commissioner’s determination that the Regulated Party’s corrective action was unsatisfactory.

EXPEDITED HEARING (Administrative Law Judge Hearing) - To obtain an expedited hearing, the following steps must be taken in a timely manner:

- the Regulated Party must request review within 30 days after receipt of this APO or within 20 days after receipt of the Commissioner’s determination that the Regulated Party’s corrective action is unsatisfactory. The Regulated Party must ensure that any review request is received by the DNR before 4:30 p.m. on the last day of the 30-day period if the Regulated Party is contesting the issuance of the APO and before 4:30 on the last day of the 20-day period if the Regulated Party is contesting a determination that the corrective action was unsatisfactory. The 30-day period begins the first calendar day after the Regulated Party receives the APO. The 20 day period begins the first calendar day after the Regulated Party receives the corrective action determination. If the appeal period ends on a weekend or holiday, the appeal period is extended to 4:30 p.m. on the next day the DNR is open for business;
- the request must be in writing;
- the request may be sent by U.S. mail;

- the request must identify the APO or the corrective action determination that the Regulated Party wants to contest and must specifically state the reasons why the Regulated Party wants the APO to be reviewed, including any facts upon which the Regulated Party relies;
- the Regulated Party must send or deliver the request to the DNR at the following address: General Counsel, Minnesota Department of Natural Resources, 500 Lafayette Road North, St. Paul, Minnesota 55155.; and
- to ensure expeditious processing of the request, please send or deliver copies of the request to: Randall Doneen, Supervisor Conservation Assistance and Regulation, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota, 55155 and to Oliver Larson, Manager, Natural Resources Division, Attorney General’s Office, Bremer Tower, 445 Minnesota Street, Suite 900, St. Paul, Minnesota, 55101-2127.

The DNR will schedule an expedited hearing at the Office of Administrative Hearings if the above steps are completed in the time frames indicated.

In the case of an expedited hearing, if the Regulated Party’s request is found to be frivolous or filed solely for the purpose of delay, the Regulated Party may be required to pay the cost of the administrative hearing in addition to the administrative penalty.

This APO becomes a final order after 30 days unless the Regulated Party requests a hearing as provided above. If the Regulated Party fails to comply with the APO when it is a final order, the DNR may collect the penalty in any manner provided by law for the collection of a debt.

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES**

September 16, 2021

Date signed

Ann Pierce
Deputy Division Director
Ecological and Water Resources

Address questions and submittals requested above to:

Randall Doneen Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155
651-259-5156
randall.doneen@state.mn.us