



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Policy Direction on the Enbridge Energy Line 5 Permit Application Environmental Impact Statement (EIS)

1. Purpose: The purpose of this memorandum is to provide policy direction to the U.S. Army Corps of Engineers (Corps or USACE) for its consideration of alternatives and oil spills in the EIS related to Enbridge Energy's pending request for Corps authorization related to the construction of the proposed Line 5 tunnel crossing the Straits of Mackinac.

2. Background: Enbridge Energy is proposing to construct a tunnel under the bed of the Straits of Mackinac in Michigan. This tunnel would house a new 30-inch pipeline for light crude oil and liquid natural gas, replacing the existing, dual submerged pipelines crossing the Straits of Mackinac. The Corps review of the proposed project is limited to the proposed crossing of the Straits of Mackinac and adjacent wetlands under the authorities of Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

3. Analysis of Alternatives: Consistent with the CWA and the National Environmental Policy Act, the Corps is considering a range of alternatives as part of an EIS. Initially, the Corps evaluated a wide range of alternatives, but eliminated ones that did not meet the project's purpose and need, were not reasonable or practicable, or had less environmental impacts than the applicant's preferred alternative. See USACE, Enbridge Line 5 Tunnel Project, Working Preliminary Draft Environmental Impact Statement, Chap. 2. Ver. 9 – Initial Draft at pp. 2-2 – 2-4 (April 8, 2024). We understand that the Corps is currently considering alternatives to carry forward for detailed study in the EIS that include the required no-action alternative, a different location for the tunnel, an open tunnel, and other construction method alternatives. *Id.* at pp. 2-5. The Corps did not carry forward an alternative that looked at using existing pipeline infrastructure other than Line 5 to avoid crossing the Strait because they found it did not meet the project purpose as the existing pipeline routes did not have enough open capacity. *Id.* at pp. 2-17. This alternative seems to be analogous to the alternative that would use railroad lines, which the Corps found met the project purpose even though the current railroad routes did not have enough capacity. *Id.* at pp. 2-6 – 2-7. We believe this possible incongruity between how the existing pipeline infrastructure other than Line 5 and railroad alternatives were analyzed requires additional evaluation. Further, based on their review of a preliminary Draft EIS, the Michigan State Historic Preservation Office and the Bay Mills Indian Community requested that the Corps include the existing

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pipeline infrastructure alternative as one the Corps would fully consider in the EIS. See State of Michigan, State Historic Preservation Office, Letter to Corps, Re: Proposed Enbridge Line 5 Tunnel Project Draft EIS at p. 7 (May 15, 2024); Bay Mills Indian Community Letter to Corps, Re: “Bay Mills’ Comments on the Corps’ April 17, 2024, Preliminary Draft Chapters 1 and 2 and Draft Appendix” at p. 20 (May 17, 2024). The Michigan State Historic Preservation Office and the Bay Mills Indian Community both noted that the existing pipeline infrastructure alternative would meet the project purpose and have less environmental impact than the applicant’s preferred alternative. *Id.* After reviewing the draft alternatives analysis, I direct the Corps, in coordination with the Cooperating Agencies, to perform a more in-depth analysis (to include each screening criteria) of whether to carry forward the existing pipeline infrastructure alternative as one examined in detail in the EIS and report back to the Office of the Assistant Secretary of the Army for Civil Works the results of that analysis within 60-days of the date of this memorandum.

4. Consideration of an Oil Spill: The project’s purpose and need statement includes “the safe transportation of light crude oil, light synthetic crude oil, light sweet crude oil, and natural gas” and the need to “minimiz[e] environmental risks.” Purpose and Need Memorandum at 9 (Jun. 28, 2023). Notwithstanding the “safe transportation” or “minimiz[e] environmental risks” aspects of that statement, the Corps does “not consider the risk of an oil spill to be within the scope of its analysis . . . [and] [t]he adequacy of oil spill response plans or capabilities and the potential impacts of an oil spill are beyond the Corps’ scope of analysis.” Scope of Analysis Memorandum at 8 (Jun. 28, 2023).

In multiple comments, Tribes and cooperating agencies requested that the Corps consider the impact of an oil spill. See e.g. Bay Mills Indian Community, Letter to the Corps, Re: “Bay Mills’ Comments on the Corps’ April 17, 2024 Preliminary Draft Chapters 1 and 2 and Draft Appendix” at 5-6 (May 17, 2024); State of Michigan, State Historic Preservation Office, Letter to the Corps, Re: “ER19-319 Proposed Enbridge Line 5 Tunnel Project, LRE-2010-00463-56-A19, DRAFT EIS Chapters 1, 2, and Appendix” at 2, 4 & 5 (May 15, 2024). The Tribes specifically highlight possible impacts from a spill on treaty rights under the Treaty with the Ottawa, 7 Stat. 491 (Mar. 28, 1936). The Tribes state that they retained rights to fish, hunt, and gather throughout the ceded territory, including the Great Lakes and the Straits of Mackinac, in perpetuity under the Treaty with the Ottawa. See Tribal Nations Letter to Corps, Re: “Treaty Implications of the USACE’s Consideration of Enbridge’s Proposed Great Lakes Tunnel Project Permit Application” (August 2, 2024). After considering these specific comments and our general Tribal trust responsibilities, I have decided, as a matter of policy here, that the Corps will consider any potential risks and impacts of an oil spill on the Tribes’ treaty rights and on overall navigation in the crossing area.

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5. The point of contact for this memorandum is Mr. Milton Boyd, Acting Director of Policy and Legislation², at milton.w.boyd.civ@army.mil or (202) 761-8546.

JAIME A. PINKHAM
Acting Assistant Secretary of the Army
(Civil Works)