

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF:                    ENBRIDGE ENERGY, LIMITED PARTNERSHIP                    STIPULATION AGREEMENT**

**Part 1. PARTIES.** This Stipulation Agreement (“Agreement”) applies to and is binding upon the following parties:

- a. Enbridge Energy, Limited Partnership (“Regulated Party”); and
- b. The Minnesota Pollution Control Agency (“MPCA”), which is authorized to enter into this Agreement under Minn. Stat. chs. 115 and 116.

Unless specified otherwise in this Agreement, where this Agreement identifies actions to be taken by the MPCA, the Commissioner or the Commissioner’s designees shall act on the MPCA’s behalf.

**Part 2. PURPOSE AND SCOPE OF STIPULATION AGREEMENT.** The purpose of this Agreement is to resolve the alleged violations related to construction of the Facility (as defined below) known by MPCA on or before August 4, 2022, including but not limited to those set out in Part 6 of this Agreement (collectively the “Alleged Violations”), by specifying actions the Regulated Party agrees to undertake. By entering into this Agreement, the Regulated Party is settling a disputed matter between itself and the MPCA and does not admit that the Alleged Violations occurred. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement. All citations are to the latest codification of the cited material unless otherwise indicated.

**Part 3. AUTHORITY.** This Agreement is entered under the authority vested in the MPCA by Minn. Stat. chs. 115 and 116.

**Part 4. DEFINITIONS.** Unless otherwise explicitly stated, the definitions in Minn. Stat. chs. 115, 115A, 115B, 115C, 116, 116B and in Minn. R. chs. 7000 to 7151 apply, as appropriate, to the terms used in this Agreement.

**Part 5. BACKGROUND.** The following is the background of this Agreement:

- a. The Regulated Party is a limited partnership registered in Delaware with a corporate address at 5400 Westheimer Court, Houston, Texas, 77056.
- b. The Regulated Party constructed and operates the Line 3 replacement pipeline which transverses the northern part of the state of Minnesota in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, Saint Louis, and Carlton counties, hereafter the “Facility.” The Alleged Violations relate to the Regulated Party’s construction of the Facility.

**Part 5A. CONSTRUCTION STORMWATER (CSW) BACKGROUND.**

a. On October 8, 2021, the MPCA sent the Regulated Party an Alleged Violations Letter/Request for Information (AVL/RFI) by first class mail. The AVL/RFI was also emailed to the Regulated Party.

b. On October 12, 2021, the MPCA sent a revised AVL/RFI to the Regulated Party. A revised AVL/RFI was sent due to an incorrect date in the original letter. The MPCA also granted an extension to the 10 day response time on this date. The Regulated Party was given 20 days to respond to the AVL/RFI.

c. On October 28, 2021, the Regulated Party responded to the AVL/RFI. The response included a cover letter and attachments A, B, and C.

**Part 5B. INDUSTRIAL WASTEWATER (IWW) BACKGROUND.**

a. The Regulated Party was issued National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit No. MN0071366 (Permit) on November 13, 2020. The Permit authorizes the discharge of waters used in buoyancy control and hydrostatic testing of new pipeline. The Permit authorizes 23 surface water discharge locations and 26 upland discharge locations used for infiltration.

b. On October 8, 2021, the MPCA sent the Regulated Party an AVL/RFI by first class mail. The AVL/RFI was also emailed to the Regulated Party.

c. On October 12, 2021, the MPCA sent a revised AVL/RFI to the Regulated Party. A revised AVL/RFI was sent due to an incorrect date in the original letter. The MPCA also granted an extension to the 10 day response time on this date. The Regulated Party was given 20 days to respond to the AVL/RFI.

d. On October 28, 2021, the Regulated Party responded to the AVL/RFI. The response included a cover letter and attachments A, B, and C.

**Part 5C. INADVERTENT RETURNS BACKGROUND.**

a. On November 10, 2021, the MPCA sent the Regulated Party an AVL/RFI via email. The AVL/RFI was also sent via first class mail on November 15, 2021. The Regulated Party responded on November 10, 2021, requesting an extension of the 10-day response deadline; on November 12, 2021, the MPCA granted an extension; the Regulated Party was given 20 days to respond to the AVL/RFI.

b. On November 30, 2021, the Regulated Party responded to the AVL/RFI. The response included a cover letter, and attachments A, B, C, and D.

**Part 5D. ADDITIONAL ALLEGED VIOLATIONS AND NEGOTIATION OF AGREEMENT.** Between December 2021 and the date of this Agreement, the Parties negotiated this Agreement. During the course of the negotiations, the Parties discussed Alleged Violations including but not limited to those specifically identified in Parts 5A-5C which are also intended to be resolved through this Agreement.

**Part 6. ALLEGED VIOLATIONS.** In its Alleged Violations, the MPCA asserts that the Regulated Party has violated the following state statutes, rules, and/or permit conditions with respect to the construction and operation of the Facility:

- Minn. Stat. § 115.061(a);
- Minn. R. 7050.0210, subps. 2, 13;
- Minn. R. 7050.0150, subp. 3;
- Minn. R. 7050.0186, subps. 1b, 4, 6;
- Minn. R. 7001.0030;
- NPDES/SDS General Construction Stormwater Permit (MNR100001) Items 7.2, 9.17, 10.2, 11.4, 11.11(c);
- NPDES/SDS Industrial Wastewater Permit (MN0071366) Items 5.56.116, 5.57.125, 5.53.39, 5.55.77, 5.57.139, 5.57.156, 5.57.157, 5.57.159, 5.57.163.

**Part 7. CIVIL PENALTY.** The Regulated Party agrees to pay \$895,000 to the MPCA as a civil penalty for the Alleged Violations within 30 days of receipt of an invoice from the MPCA. An invoice for the civil penalty will be sent to the Regulated Party upon the Effective Date of the Agreement. Payment of the penalty amount of \$895,000 is to be by check or electronic payment payable to the Minnesota Pollution Control Agency and should not be submitted until an invoice from the MPCA is received. The check must be mailed to MPCA, P.O. Box 64893, St. Paul, Minnesota, 55164-0893; or to make an electronic payment, contact MPCA Fiscal Services at 651-757-2182.

**Part 7A. SUPPLEMENTAL ENVIRONMENTAL PROJECT.**

a. The Regulated Party has proposed and the MPCA accepts the proposal to perform Supplemental Environmental Projects (SEPs) at a cost to the Regulated Party of \$2,625,000. The SEPs may include the specific SEPs listed in Attachment A.

b. The Regulated Party agrees to expend the amount of money necessary to complete the SEPs as described, and agrees that the Regulated Party shall receive no payment or other compensation for the work performed in completion of any SEP. The Regulated Party shall maintain copies of all invoices, contracts, manifests, receipts, and any and all other documentation of the actual costs the Regulated Party incurs in completing the SEPs.

c. The Regulated Party may, as an amendment to this Agreement, propose to MPCA SEPs in addition to or replacing the SEPs listed in Attachment A.

d. The Regulated Party shall complete all SEPs within one year of the Effective Date of this Agreement unless the Regulated Party requests and MPCA grants an extension. Completion of the SEPs means installation of measures identified in Attachment A and does not include full satisfaction of all regulatory or permitting conditions that may be required for any individual SEP. The Regulated Party shall provide to MPCA progress reports on the SEPs by the following dates:

- December 31, 2022
- June 30, 2023
- A final report after completion of all SEPs

e. If the Regulated Party abandons a SEP prior to completion, the Regulated Party shall pay to the MPCA an additional civil penalty in an amount of two-times the SEP amount identified in Attachment A, as may be amended from time to time pursuant to Part 7A(c). The Regulated Party must pay this additional civil penalty within 30 days after notice by the MPCA that the additional civil penalty

is due. Payment of the penalty amount is to be by certified check payable to the Minnesota Pollution Control Agency. The check must be mailed to MPCA, P.O. Box 64893, St. Paul, Minnesota, 55164-0893; or to make an electronic payment, contact MPCA Fiscal Services at 651-757-2182.

**Part 8. REGULATED PARTY REQUIREMENTS.**

**Part 8A. REIMBURSEMENT OF MPCA COSTS.** The Regulated Party shall pay to the MPCA the amount of \$1,500,000 for ongoing costs related to oversight activities associated with the Agreement. An invoice for the agency reimbursement costs will be sent to the Regulated Party upon the Effective Date of the Agreement. Payment of the agency reimbursement amount of \$1,500,000 is to be by check or electronic payment payable to the Minnesota Pollution Control Agency and should not be submitted until an invoice from the MPCA is received. The check must be mailed to MPCA, P.O. Box 64893, St. Paul, Minnesota, 55164-0893; or to make an electronic payment, contact MPCA Fiscal Services at 651-757-2182.

**Part 8B. CSW REQUIREMENTS.** The Regulated Party agrees to the following requirements:

a. Within 20 days of execution of this Agreement, the Regulated Party must submit a plan to identify and monitor specific wetland communities in which Construction Stormwater was discharged as detailed in CSW Violation Part 5A above. These locations should be included within the Special Wetland Communities Vegetation Monitoring Protocol (Rev 2, April 2022) and Section 2.5.2 of the Post-Construction Wetland and Waterbody Monitoring Plan (PCMP). Additionally, the Regulated Party must provide the MPCA a point feature GIS shapefile detailing the locations where field monitoring described within the protocol will occur. Field photos must be recorded and provided to the MPCA as part of the monitoring reporting as described in Section 4.0 of the PCMP.

The Regulated Party must commit to further remedial actions necessary to return these wetlands to preconstruction condition, alleviating any remaining nuisance conditions identified through monitoring, including, but not limited to addressing any invasive plant (IVS) populations expanding or resulting from discharge in accordance with the performance criteria established in Section 3.2 of the PCMP. This plan must be approved by the MPCA before implementing and the plan and its requirements and obligations are part of and enforceable under this agreement upon MPCA's approval.

**... This requirement has been completed.**

b. Immediately put in place protocols to ensure the Minnesota Duty Office will be notified immediately of discharges as required by Minnesota Statutes § 115.061.

**... This requirement has been completed.**

c. Within one (1) business day of execution of this Agreement, begin implementing the requirements of the Permit by selecting, installing, and maintaining best management practices (BMPs) identified in the SWPPP to address the issues identified in the violation listed above. Amend the SWPPP to include any adjustments made to correct the violations.

**... This requirement has been completed.**

d. Within one (1) day of execution of this Agreement, install redundant perimeter controls along the surface waters identified in the violation as identified above.

**... This requirement has been completed.**

e. Immediately upon execution of this Agreement, begin to monitor and visually check all dewatering activities identified in the violation above so that there are no nuisance conditions to waters of the state.

... **This requirement has been completed.**

f. Within one business day of execution of this Agreement, or as soon as conditions allow, perform maintenance activities to repair, replace or enhance the non-functional dewatering BMPs identified in the violation above.

... **This requirement has been completed.**

g. Within one (1) day of execution of this Agreement, begin documenting accurate findings in all inspection and maintenance reports. Specifically, the need for redundant perimeter control when construction activities take place within 50 feet of a surface water.

... **This requirement has been completed.**

**Part 8C. IWW REQUIREMENTS.** The Regulated Party agrees to the following requirements:

a. Immediately put in place protocols to ensure the Minnesota Duty Office will be notified immediately of discharges as required by Minnesota Statutes § 115.061.

... **This requirement has been completed.**

b. Immediately cease discharges resulting in nuisance conditions from hydrotest dewatering activities at the Pine River near MP 1017.4 and the Mississippi near MP 1069.7. Also, identify actions the Regulated Party will take to ensure that future nuisance conditions do not occur at these locations.

...**This requirement has been completed.**

c. Immediately cease the discharge of wastewater beyond the land application infiltration area, which occurred on September 2, 2021. Also, identify the factors leading to the runoff and the actions taken to prevent future runoff events.

...**This requirement has been completed.**

d. Immediately cease the unauthorized discharge of wastewater from the lake tank at WS007/LA307, which occurred on August 25, 2021. Also, confirm the source of the leak and identify the actions taken to prevent future releases from the tank.

...**This requirement has been completed.**

**Part 8D. INADVERTENT RETURNS AND WETLAND REQUIREMENTS.** The Regulated Party agrees to the following requirements:

a. Within 20 days of execution of this Agreement, the Regulated Party must submit a plan to identify and monitor specific wetland communities in which drilling mud was discharged as described in the Alleged Violations letter sent to Enbridge from MPCA on November 10, 2021, including those outside the Facility right-of-way (ROW). These locations should be included within the Special Wetland Communities Vegetation Monitoring Protocol (Rev 2, April 2022) and Section 2.5.2 of the PCMP. Additionally, the Regulated Party must provide the MPCA a point feature GIS shapefile detailing the locations where field monitoring within the protocol will occur and a description of, and schedule for, field monitoring for up to five years to identify any remaining sediment/drilling mud, or any newly

surfaced drilling mud impacts at these wetlands (in addition to the Special Wetland Communities Vegetation Monitoring Protocol), along with remedial plans to address any such impacts at these sites.

**...This requirement has been completed.**

b. Following the execution of this Agreement, the MPCA will provide a list of the wetland areas outside of the Facility ROW into which sediment and/or sediment-laden water discharged during construction of the Facility, as documented in associated Independent Environmental Monitor reports. The Regulated Party will be required to add these wetland areas to the Special Wetland Communities Vegetation Monitoring Protocol (Rev 2, April 2022) and Section 2.5.2 of the PCMP no later than 20 days of receipt of the MPCA list. Additionally, the Regulated Party must provide the MPCA a point feature GIS shapefile detailing the location where field monitoring within the protocol will occur.

c. Following the execution of this Agreement, the Regulated Party must propose a separate Site-Specific Water Quality Monitoring Plan for the area of the Willow River at or near MP 1066.5 into which drilling mud was discharged. The plan must include a proposed specific methodology, and justification for it, to monitor the area, together with areas immediately upstream and downstream, to ascertain whether this drilling mud discharge may have resulted in any long-term detrimental impacts to the river's beneficial uses and applicable water quality standards.

The plan must include an analysis of this reach of the river's pre-construction status, in terms of ability to meet its designated beneficial uses and applicable, relevant water quality standards. It must also include the length of time proposed for monitoring to ensure the drilling mud release has not caused long-term impacts. Further, the plan must identify the remedial action that will be implemented, if monitoring shows it is necessary, to return the river to its pre-construction status.

Please ensure the plan follows MPCA protocols and standard operating procedures for monitoring and data collection, available on the MPCA website at:

<https://www.pca.state.mn.us/water/water-monitoring-standard-operating-procedures>

and at:

<https://www.pca.state.mn.us/water/surface-water-field-data-submittal-review-and-reports>.

d. Within 30 days following the execution of this Agreement, the MPCA will provide the Regulated Party with a written description of specific deficiencies in the Site-Specific Water Quality Monitoring Plan required in Part 8D.c. Regulated Party submitted to MPCA on November 30, 2021, as Attachment C of Regulated Party's response to the MPCA referenced in Part 5C.b. above. Until the requirements in Part 8D.c. are met, within 30 days of receipt of each subsequent revised Site-Specific Water Quality Monitoring Plan submitted by the Regulated Party, MPCA will either confirm in writing that the submission satisfies Part 8D.c. or provide the Regulated Party a written description of specific deficiencies.

e. Within 30 days of execution of this Agreement, the Regulated Party must provide documentation demonstrating that the required compensatory mitigation has been provided pursuant to Attachment D of Regulated Party's response to MPCA referenced in Part 5C.b. above.

**...This requirement has been completed.**

f. Immediately suspend horizontal directional drilling (HDD) activities, contain the inadvertent releases of drilling mud, and notify the Minnesota Duty Officer.

**...This requirement has been completed.**

g. Immediately recover as thoroughly as possible, without further degrading wetlands and the Willow River, all released drilling mud, in accordance with the site-specific HDD Inadvertent Release Response Plans dated November 2020, and incorporated as part of the 401 Water Quality Certification.

**...This requirement has been completed.**

h. Within 10 days of the inadvertent release within the Willow River, update site-specific HDD Inadvertent Release Response Plans to reflect additional commitments for equipment, training, and notifications.

**...This requirement has been completed.**

i. Within 30 days of execution of this Agreement, the Regulated Party must provide documentation demonstrating that all rock and geotechnical fabric discharged by the Regulated Party and remaining in wetland W-1505 near mile posts 1057 through 1058.7 in Aitkin County have been removed.

j. Until the requirements in Part 8D.i. are met, for each submission of documents required in Part 8D.i. from the Regulated Party, within 30 days following the receipt of each submission, the MPCA will either confirm in writing that the submission satisfies Part 8D.i. or provide the Regulated Party a written description of specific deficiencies.

#### **Part 9. PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.**

a. If the Regulated Party fails to make any payment required under Parts 7, 7A or 8A within 30 days after receipt of the above-referenced invoices, the Regulated Party agrees to pay a late payment charge in an amount equal to 10 percent of the unpaid amount. If the Regulated Party fails to make any required payment within 60 days after receipt of an invoice from MPCA, the Regulated Party agrees to pay an additional late charge in an amount equal to 20 percent of the unpaid amount. If the payment, including late charges, is not received by the MPCA within 60 days after the receipt of an invoice from MPCA, the MPCA may immediately exercise any and all administrative and judicial remedies available to it to collect the amount due. The Regulated Party agrees to pay and shall also be indebted to the MPCA for its attorneys' fees and cost incurred by the MPCA in connection with its collection of the amounts owed pursuant to this Agreement.

b. If the Regulated Party fails to comply with requirements of Parts 8B-8D of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of \$5000.00 per requirement for each day of failure.

c. Penalties for failure to comply with requirements of Part 8B-8D of this Agreement shall accrue from the date the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 14 or during dispute resolution under Part 12, unless the MPCA determines that the Regulated Party filed the request or initiated dispute resolution solely for purposes of delay. If the Regulated Party does not pursue dispute resolution under Part 12 for denial of a timely extension request, penalties shall accrue from the date the extension request is denied by the MPCA Case Contact. If the Regulated Party pursues dispute resolution for denial of an extension request and does not file a timely challenge in a court of competent jurisdiction as provided by Part 12, penalties shall accrue from the date of a Commissioner's dispute resolution decision against the Regulated Party until the Regulated Party fulfills the requirement that is the subject of the extension request.

d. The Regulated Party shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due, unless the Regulated Party has challenged the factual basis of a penalty asserted under this Part under the dispute resolution provision of Part 12, in which case the penalty, if still applicable, shall be due within 30 days of final resolution of the dispute under Part 12. The written notice shall specify the provision of the Agreement that the Regulated Party has not fulfilled and indicate the date penalties began to accrue. If the Regulated Party fails to make timely payment, the Regulated Party agrees to pay a late payment charge, in addition to the stipulated penalty, to be assessed as follows: 45 days after receipt of written notice, the Regulated Party shall be obligated to pay a late charge in an amount equal to 10 percent of the unpaid stipulated penalty; 60 days after receipt of written notice, the Regulated Party shall be obligated to pay an additional late charge in an amount equal to 20 percent of the unpaid stipulated penalty.

e. In dispute resolution before the Commissioner under Part 12, the Regulated Party can contest the factual basis for the MPCA's determination that the Regulated Party has not fulfilled a requirement of this Agreement covered by this Part. However, the Regulated Party waives its right to challenge, on legal grounds, the requirement that it pay penalties under this Part.

f. The Regulated Party shall not be liable for payment of penalties for failure to comply with requirements of Part 8B-8D of this Agreement covered by this Part if it has submitted to the MPCA a timely request for an extension of the schedule under Part 14 and the MPCA has granted the request. The MPCA's grant of an extension of schedule waives the payment of penalties covered by this Part only on the requirements for which the MPCA granted an extension of schedule and only for the time period specified by the MPCA in the grant of an extension. An extension of schedule for one requirement of Part 8B-8D does not extend the schedule for any other requirement of Part 8B-8D.

g. Any requirement of this Agreement may be enforced as provided in Minn. Stat. § 115.071. Payment of a stipulated penalty does not relieve the Regulated Party of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

**Part 10. RELEASE OF CLAIMS, COVENANT NOT TO SUE, AND RESERVATION OF REMEDIES.**

a. The MPCA hereby fully and completely releases the Regulated Party (including its affiliates, subsidiaries, successors, agents, and assigns) from liability for any Alleged Violations or related conduct known on or before August 4, 2022, including but not limited to claims identified in Part 6 of this Agreement or under the Water Pollution Control Act, Minnesota Environmental Response and Liability Act, or any statute of common law theory that MPCA could have pleaded in a civil action based on written information in the possession of the MPCA as of August 4, 2022 (hereinafter "Released Conduct"). MPCA further agrees not to exercise any administrative, legal, or equitable remedies against the Regulated Party related to the Alleged Violations and Released Conduct.

b. The MPCA reserves the right to enforce this Agreement or take any action authorized by law if the Regulated Party fails to comply with the terms and conditions of this Agreement. Further, the MPCA reserves the right to seek to enjoin violations of this Agreement and to exercise its emergency powers pursuant to Minn. Stat. § 116.11 in the event conditions or the Regulated Party's conduct warrant such action. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

The MPCA reserves the right to pursue recovery for Natural Resources Damages pursuant to Minn. Stat. § 115.071, Minn. Stat. § 115B.04 or other laws.



c. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

d. The Regulated Party agrees to waive all claims it may have claimed under Minn. Stat. § 15.472 for fees and expenses incurred in responding to the Released Conduct prior to August 4, 2022.

**Part 11. REPEAT VIOLATIONS.** Federal and state environmental programs establish harsher penalties for violations of environmental laws or rules that constitute repeat violations. In a proceeding to resolve future alleged violations by the Regulated Party, if any, occurring after the date of this Agreement, this Agreement shall not be deemed to limit, in any way, either parties' ability to make arguments or assert defenses related to whether the Released Conduct may be considered for purposes of determining penalties for subsequent conduct.

**Part 12. RESOLUTION OF DISPUTES.** The parties to this Agreement shall resolve disputes that arise as to any part of the Agreement as follows:

a. The Regulated Party, acting through its Case Contact (as named in Part 15 below), may initiate dispute resolution by providing to the MPCA's Case Contact a written statement setting forth the matter in dispute, the position of the party, and the information the party is relying upon to support its position.

b. Within 10 days, the parties must meet and confer to determine whether a resolution can be reached. By joint agreement, the parties may waive the need to meet and confer if the meeting is unlikely to resolve the issues raised by the Regulated Party. If the parties do not reach a resolution of the dispute and reduce such resolution to writing in a form agreed upon by the parties within 21 calendar days after the MPCA receives the statement of position from the Regulated Party, the Commissioner shall issue a written decision resolving the dispute. The written decision may address stipulated penalties assessed pursuant to Part 9. The Commissioner's decision shall be a final decision of the MPCA under Minn. Stat. § 115.05 for purposes of judicial review.

c. The Commissioner's decision shall become an integral and enforceable part of this Agreement unless the Regulated Party timely challenges the decision in a court of competent jurisdiction. Failure to timely challenge means the Regulated Party agrees to comply with the MPCA Commissioner's decision on the matter in dispute and to pay any penalties that accrue pursuant to Part 9 for failure to fulfill requirements of this Agreement that are the subject of the dispute resolution. Further, if the Commissioner's decision assesses penalties pursuant to Part 9 of this Agreement, the Regulated Party agrees to and shall pay the amount of penalty determined by the Commissioner within 60 days after receiving the Commissioner's decision.

d. Throughout any dispute resolution, the Regulated Party shall comply with all portions of the Agreement.

e. Nothing in this Part prohibits MPCA from seeking immediate injunctive or equitable relief from a court of competent jurisdiction if it has reason to believe that the Regulated Party is in violation of Part 8 of this Agreement.

**Part 13. VENUE.** Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in Ramsey County District Court.

**Part 14. EXTENSION OF SCHEDULES.** If the Regulated Party wants an extension of a deadline included in any schedule under this Agreement, including schedules established by approved submittals, the

Regulated Party must request the extension in writing at least ten days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than ten days before the deadline.

Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the MPCA Case Contact or the Commissioner.

The MPCA shall grant an extension only for the period of time the MPCA determines is reasonable under the circumstances. The written approval or grant of an extension request shall be considered an enforceable part of the Agreement.

The Regulated Party has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

- a. An act of god; and
- b. Delays caused by the MPCA in reviewing timely submittals required by this Agreement, submitted by the Regulated Party in complete and approvable form, which make it not feasible for the Regulated Party to meet the required schedules.

An “act of god” is defined as an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

If the Regulated Party shows good cause through the occurrence of an “act of god,” such a showing does not excuse the Regulated Party from compliance. An “act of god” constitutes good cause solely for the purpose of demonstrating that the Regulated Party is entitled to an extension of the disputed deadline.

Good cause does not include unanticipated costs; increases in the cost to comply with Agreement requirements, permit conditions, or federal or state rules; or delays in MPCA review of submittals when the submittals are not in complete and approvable form.

The Regulated Party may challenge a decision by the MPCA to deny a request for an extension under this Part.

**Part 15. CASE CONTACT.** The MPCA and the Regulated Party shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement.

The MPCA Construction Stormwater Case Contact is Brian Green. The address, telephone number, and email address for Brian Green is: 7381 Airport View Drive SW, Rochester, MN 55902, 507-206-2610, and brian.green@state.mn.us.

The MPCA Industrial Wastewater Case Contact is Joseph Braun. The address, telephone number, and email address for Joseph Braun is: 714 Lake Avenue, Suite 220, Detroit Lakes, MN 56501, 218-846-8126, and joseph.braun@state.mn.us.

The MPCA 401 Case Contact is Anna Hotz. The address, telephone number, and email address for Anna Hotz is: 520 LaFayette Road North, St. Paul, MN 55155, 651-757-2512, and anna.hotz@state.mn.us.

The Regulated Party's Case Contact is Bobby Hahn. The address, telephone number, and email address of the Regulated Party's Case Contact is: Bobby Hahn, 26 East Superior Street, Suite 313, Duluth, MN 55802, 218-522-4751, and bobby.hahn@enbridge.com.

Either party may change its designated Case Contact by notifying the other party in writing, within five days of the change. To the extent possible, communications between the Regulated Party and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts.

**Part 16. APPLICABLE LAWS AND PERMITS.** This Agreement does not relieve the Regulated Party of the duty to comply with the requirements of all applicable federal, state, and local laws and regulations, including without limitation in the Regulated Party's undertaking actions to comply with this Agreement. Except when the MPCA has specifically authorized a different compliance method in Part 8, the Regulated Party must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Party of its obligation to comply with local governmental requirements.

**Part 17. OTHER CLAIMS.** Nothing herein shall release the Regulated Party from any claims, causes of action or demands in law or equity by any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the release of any pollutant or contaminant from its operations. Neither the Regulated Party nor the MPCA shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

**Part 18. HOLD HARMLESS AGREEMENT.** The Regulated Party agrees to indemnify, save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Regulated Party, its officers, employees, agents, or contractors in implementing the activities conducted pursuant to this Agreement; provided, however, that the Regulated Party shall not indemnify the MPCA or save or hold its employees and agents harmless from any claims or causes of action arising out of the acts or omissions of the MPCA, or its employees and agents.

When the Regulated Party is required to hold the MPCA harmless, the MPCA shall give the Regulated Party notice of any claim or cause of action subject to this Part and the Regulated Party has the right to participate in the defense against any claim or cause of action. No settlement shall be effective against the Regulated Party unless the Regulated Party agrees to the settlement. Nothing herein waives or modifies the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732, et seq., and other applicable law to actions that occur after the Effective Date of this Agreement.

**Part 19. SUCCESSORS, AGENTS AND CONTRACTORS.** This Agreement shall be binding upon the Regulated Party and its successors and assigns and upon the MPCA, its successors and assigns. If the Regulated Party sells or otherwise conveys or assigns any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Party from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment. The

Regulated Party shall ensure that the Regulated Party's agents, contractors and subsidiaries comply with the terms and conditions of this Agreement.

**Part 20. AMENDMENTS.** Except with respect to extensions of schedules granted under Part 14, additional or replacement SEPs or extensions in Part 7A, and approved submittals under Part 8, this Agreement may be amended only by written agreement between the parties.

**Part 21. EFFECTIVE DATE.** This Agreement shall be effective on the date of the signature of the last party.

**Part 22. TERMINATION.** The provisions of this Agreement shall be deemed satisfied and terminated when the Regulated Party receives written notice from the MPCA that the Regulated Party has demonstrated, to the satisfaction of the MPCA, that all terms of the Agreement have been completed. Termination of this Agreement does not release the Regulated Party from any duty to comply with any state statutes, rules or permit conditions, whether or not they are cited in this Agreement. The Regulated Party agrees that it shall retain all records related to this Agreement for three years following its termination. Termination of this Agreement does not release the Parties from Parts 10 (Release of Claims, Covenant Not To Sue And Reservation Of Remedies), 11 (Repeat Violations) and 18 (Hold Harmless Agreement), which terms shall survive the termination of this Agreement.

**BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT**

**ENBRIDGE ENERGY, LIMITED PARTNERSHIP**  
**By: Enbridge Pipeline (Lakehead) L.L.C.**  
**Its: Managing General Partner**

By: Barry P Simonson  
Barry Simonson  
Director of Projects  
Date: October 17, 2022

**STATE OF MINNESOTA**  
**POLLUTION CONTROL AGENCY**

By: Katrina Kessler  
Katrina Kessler  
Commissioner  
Date: October 17, 2022

**Attachment A  
Supplemental Environmental Projects**

<b><u>Project</u></b>	<b>Total Cost</b>	<b>Description</b>	<b>Notes</b>
<b><u>Clear Creek - Nemadji River watershed</u></b>	\$842,451	Clear Creek, a trout stream - extensive culvert alignment, 35 tons of sediment/year, 35 pounds/phosphorus/year reduction. Carlton SWCD	Clear Creek is an important trout stream in the Nemadji Watershed. Currently, fish passage at the CSAH 4 culvert is impossible during all but the highest flows because the stream flows under the culvert, removing access to almost 2 miles of coldwater headwaters. In addition, approximately 35 tons of sediment are eroded into the stream each year due to the poor alignment and placement of the culvert. Clear Creek is impaired for TSS downstream of the structure, along with aquatic macroinvertebrates and fish. The public has told us there were historic fishing opportunities in Clear Creek that have been lost due to undersized structures.
<b><u>Spring Creek - Nemadji River watershed</u></b>	\$80,086	Spring Creek, a trout stream - extensive culvert alignment, 35 tons of sediment/year, 35 pounds/phosphorus/year reduction. Carlton SWCD	Spring Creek and County Road 104: Spring Creek is a high quality brook trout stream in the Nemadji watershed. It is an important cold water tributary to the Blackhoof River, the watershed's best known trout stream. A series of undersized and perched culverts are significantly affecting aquatic organism passage and causing approximately 35 tons of sediment annually. The stream is not currently impaired, but is a stream we wish to protect due to its trout populations.

<b><u>Leech Lake River, Cass County</u></b>	\$200,000	Urban stormwater analysis for the Leech Lake River Comprehensive Watershed Management Plan. The stormwater projects were identified within communities in the watershed, and a cost benefit analysis was done. Two projects ready to move forward in 2023: Longville and Federal Dam.	The Longville and Federal Dam project could be ready to go by mid-summer. These projects came out from a 1W1P project that did stormwater assessments for those 4 cities.
<b><u>Hines Lake (Hubbard County)</u></b>	\$30,000	Stormwater project—sediment entering lake from road and public access erosion	Construction could be completed in 2023 if funding is received.
<b><u>Hellcamp Creek (Hubbard County)</u></b>	\$15,000	Improving road crossing to allow fish (Natural Spawning Native Trout) crossing for spawning; Project is in design.	Could be executed in 2023 if funding is received.
<b><u>Beach Drive by Second Crow Wing Lake (Hubbard County)</u></b>	\$55,000	High amount of runoff that washes out road leading to sediment/nutrients ending up in 2nd Crow Wing Lake. Project has been designed. Awaiting funding. Working with Crow Wing Lake Township	Could be executed in 2023 if funding is received.
<b><u>Newfolden FDR Project-MSTRWD</u></b>	\$800,000	Provide for better movement of flood waters to not impact city of Newfolden, improve bank stability and water quality	
<b><u>Grade Stabilization Structures (410) Project in RLF Twp. Section 14 - CSAH 19 (Contract with Red Lake County)</u></b>	\$46,625	Red Lake River IWIP – Red Lake County SWCD Project List	Joint project with Red Lake County Highway Dept and Red Lake Co SWCD. Replace culvert under CSAH 19, add erosion control measures
<b><u>Voyager's View in Red Lake River Section 15</u></b>	\$17,300	Red Lake River IWIP – Red Lake County SWCD Project List	Streambank and shoreland protection project along 600 feet of eroded streambank on the Red Lake River
<b><u>Grade Stabilization Projects (3) - RLF Twp. Sect 21</u></b>	\$4,300	Red Lake River IWIP – Red Lake County SWCD Project List	Three grade stabilization projects that will reduce runoff velocity and sediment into the Red Lake River

<b><u>Grade Stabilization Structure (410) - Louisville 34</u></b>	\$12,500	Red Lake River IWIP – Red Lake County SWCD Project List	Replace grade stabilization structure that has reached the end of its life new drop structure and riprap
<b><u>Grade Stabilization Project - Gervais Section 8</u></b>	\$11,500	Red Lake River IWIP – Red Lake County SWCD Project List	Replace old drop structure and outlet pipe to stabilize area before it enters the Red Lake River
<b><u>Red Lake County Ditch 62 Outlet Stabilization - River Township Section 32</u></b>	\$17,400	Red Lake River IWIP – Red Lake County SWCD Project List	Replace old ditch outlet pipe with new cement culvert and riprap to protect downstream outlet ditch
<b><u>Grade Stabilization Project - Lake Pleasant Section 15</u></b>	\$9,400	Red Lake River IWIP – Red Lake County SWCD Project List	Replace old drop structure and outlet pipe to stabilize area before it enters the Red Lake River
<b><u>Keene Creek Park Culvert-Okerstrom Road (City of Hermantown)</u></b>	\$70,000	Joint project with MN Trout Unlimited and South St. Louis SWCD	Total funding needed up to \$315,000 but grant funding application also pending.
<b><u>Beltrami County Natural Resource Management Department</u></b>	\$13,570	Add erosion control and safety measures to steep embankment on Mississippi River	Install 30 timbers parallel to river to fix erosion and safety issues on Government Lot 3 of Section 23-T146N-R32W (Frohn Township), that is located on a steep hillside and as a result of lack of vegetation, is depositing sand and sediment into the Mississippi River. The depositing of sand/sediment degrades the fisheries habitat, especially pike and muskies, in that area of the river.

<b><u>Beltrami County</u></b>	\$250,000	Project is located within the Clearwater River, a designated trout stream, near the city of Pinewood in Buzzle Township, Beltrami County. The primary objective will be restoring instream and riparian habitat and removing perched culverts to improve fish and mussel connectivity. Location is within a mile of Line 3.	Total project cost is approximately \$3-4 million. Have secured approximately \$3m but still need to meet matching funds requirement
<b><u>Mississippi Headwaters Board</u></b>	\$150,000	Remove Mercury contamination from Whiskey Creek in Baxter	
<b><u>Total for all projects</u></b>	<b>\$2,625,132</b>		



October 12, 2021

Leo Golden, Vice-President, Major Projects  
Enbridge Energy Limited Partnership  
11 East Superior Street, Suite 125  
Duluth, MN 55802-2198

Barry Simonson, Project Director  
Enbridge Energy Limited Partnership  
11 East Superior Street, Suite 125  
Duluth, MN 55802-2198

Robert Apple, Manager  
Precision Pipeline LLC  
800 Douglas Road, Suite 1200  
Coral Gables, FL 33134

Shaun Kavajecz, Environment Director  
Precision Pipeline LLC  
3314 56th Street  
Eau Claire, WI 54703-6332

RE: Alleged Violations Letter  
Line 3 Replacement Project

Dear Leo Golden, Barry Simonson, Robert Apple, and Shaun Kavajecz:

Based on inspections, self-reports, Duty Officer Reports, and other documentation submitted to the Minnesota Pollution Control Agency (MPCA) from on or before December 3, 2020, to September 20, 2021, the MPCA has identified the following Construction Stormwater and Industrial Wastewater alleged violations. When used in this document, the term "Regulated Party" means Enbridge Energy Limited Partnership and Precision Pipeline LLC as regulated parties for construction stormwater alleged violations, and Enbridge Energy Limited Partnership for industrial wastewater alleged violations.

This letter describes actions you should take to correct the violations.

Please respond within 10 days with facts or circumstances we should consider in determining whether and what level of enforcement action is appropriate.

**Construction Stormwater Alleged Violations:**

**1. Minn. R. 7050.0210, subp. 2. GENERAL STANDARDS FOR WATERS OF THE STATE.**

Subp. 2. Nuisance conditions prohibited. No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum, visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, or other offensive or harmful effects.

On March 16, 2021, MPCA reviewed inspection reports related to Mile Post (MP) 1056.45 that were prepared by the Independent Environmental Monitors (IEMs) and staff of Enbridge Energy Limited Partnership (Regulated Party Owner). While reviewing the reports and photographs, MPCA documented a dewatering incident, at or near MP 1056.45, which resulted in a sediment delta estimated to be approximately 75 by 75 feet and about six to eight inches thick in wetland W-1499.

Leo Golden  
Barry Simonson  
Robert Apple  
Shaun Kavajecz  
Page 2  
October 12, 2021

On March 16, 2021, MPCA received an email from Enbridge Energy Limited Partnership and Precision Pipeline LLC (Regulated Parties) explaining that on March 13, 2021, while dewatering into a surface water (wetland W-502) at or near MP 909.1, the Regulated Parties caused a discharge of sediment into that wetland. MPCA reviewed the IEMs' report of the March 16, 2021, dewatering incident at MP 909.1, and according to the IEMs' report, the IEMs inspected MP 909.1 and observed and documented deposits of sediment and discharges of sediment-laden water in wetland W-502 from the two dewatering structures installed at or near MP 909.1. According to the IEM's reports, discharges to W-502 occurred on March 13, March 15, and March 16, 2021. According to the reports, the deposits and discharges stretched an estimated 30 to 40 feet at a thickness of about three to five inches within the wetland.

On March 25, 2021, MPCA reviewed inspection reports related to MP 1099.5 that were prepared by the IEMs and staff of the Regulated Party Owner. According to the March 18, 2021, and March 20, 2021, reports and photos, the Regulated Parties constructed and operated a dewatering structure at or near MP 1099.5. While reviewing the reports and photos, MPCA documented that on March 18, 2021, and March 20, 2021, sediment-laden water had been discharged from the dewatering structure directly into the adjacent wetland W-1828.0, causing a sediment plume (nuisance conditions) in the wetland.

On June 18, 2021, the Regulated Party Owner sent an initial report to the MPCA identifying an event on Spread 2 on June 17, 2021. In a follow up email to the MPCA on June 24, 2021, the Regulated Party Owner stated that a filter bag within a dewatering structure, located near MP 915, ruptured causing cloudy water to flow in the adjacent wetland W-546. The discharge resulted in nuisance conditions in the wetland.

On July 29, 2021, the Regulated Party Owner sent an event notification email to the MPCA. The event notification stated that a discharge of turbid water occurred near MP 1048. According to the notification, trench water was being discharged through a filter bag and dewatering structure. Overtime, the trench water became more turbid and the dewatering structure and erosion control devices failed to adequately treat the discharge water. As a result, sediment-laden water was released from the structure into wetland W-1415.0, CA163aW, which caused a discolored plume in the wetland (nuisance conditions).

On July 30, 2021, a sediment basin located at or near MP 1049.93 failed, resulting in sediment and sediment-laden water being discharged to an unnamed stream, S-245.0 and the associated wetland, W-1429.0. According to the July 31, 2021, IEM report, a sediment plume covering the entire width of the stream for a span of over 486 linear feet and a sediment delta approximately 170 feet in length and up to 2 inches deep in some locations resulted from the discharge.

On August 26, 2021, MPCA received a Duty Officer report related to a discharge of sediment-laden water at or near MP 940.68, which resulted in a discolored plume of turbid water in wetland 686.0. The discharge was the result of the Regulated Parties' dewatering activities overwhelming the filtering system and causing approximately 500 gallons of turbid water to be discharged to the wetland.

On August 30, 2021, MPCA received a Duty Officer report related to a discharge of sediment-laden water at or near MP 1038.4, which resulted in a discolored plume in wetland 1259.0, CA137aW. A precipitation event caused sediment from the construction site to become mobile and discharge into the wetland.

On August 30, 2021, MPCA received a Duty Officer report related to a discharge of sediment-laden water at or near MP 1048 resulting in discolored plume in wetland 139n25w2-ab, which is located adjacent to Moose River. During a follow up phone call with the Regulated Parties, it was determined that the Regulated Parties were driving through a pool of sediment-laden water in the trail, causing the sediment-laden water to overwhelm the best management practices (BMPs) and discharge into waters of the state.

The Regulated Parties caused nuisance conditions to waters of the state (including excessive suspended solids, material discoloration, and other offensive or harmful effects) by discharging sediment and/or sediment-laden stormwater to the above waters of the state.

## **2. Minn. Stat. § 115.061, DUTY TO NOTIFY; AVOIDING WATER POLLUTION.**

- a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

On March 13, 2021, while dewatering into a surface water (wetland W-502) at or near MP 909.1, the Regulated Parties caused a discharge of sediment into that wetland. On March 16, 2021, MPCA received an email from the Regulated Parties notifying the Agency of the March 13, 2021, discharge to waters of the state. The Regulated Parties failed to immediately notify the agency when the two dewatering structures at or near MP 909.1 began discharging sediment and sediment-laden water into wetland W-502 on March 13, 2021, and to take immediate action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

On August 21, 2021, an inspection was conducted by a representative from Enbridge and an IEM. During the inspection, a minor discharge of sediment and/or sediment-laden water was discovered in wetland 1258, CA135bW at or near MP 1037.9. On August 23, 2021, the Regulated Parties reported the discharge to the Minnesota Duty Officer. The Regulated Parties failed to immediately report the discharge to a water of the state to the Agency.

## **3. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 7.2 BMP Selection and Installation, provides in relevant part:**

Permittees must select, install, and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices.

On March 30, 2021, MPCA reviewed photos the Regulated Parties provided of the construction activities at MP 909.1. Based on the photos, the MPCA determined that the Regulated Parties installed two dewatering structures outside of their temporary workspace and immediately along wetland W-502's delineated and marked boundary. The MPCA also determined that the Regulated Parties had installed

only one row of sediment control practices between the two dewatering structures and wetland W-502. MPCA reviewed the Stormwater Pollution Prevention Plan (SWPPP), and verified that the SWPPP specified that the Regulated Parties' temporary workspace would be within 50 feet of wetland W-502. The SWPPP also specified that the Regulated Parties were required to install redundant (double) rows of sediment control practices along the north side of the temporary workspace (wetland W-502's boundary) before construction activities in that location began. The Regulated Parties failed to install the redundant sediment control practices along wetland W-502's boundary within the area of MP 909.1 as specified in the SWPPP.

On April 12, 2021, the MPCA inspected the dewatering activity at or near MP 1099.5. According to the SWPPP and Environmental Protection Plan (EPP), all dewatering discharges should have been directed to a geotextile filter bag within a straw or hay bale dewatering structure, and the minimum dimensions of the sump of the dewatering structure would have been 10 by 20 feet (200 square feet). However, during the April 12, 2021 inspection, the dewatering structure in use at or near MP 1099.5 was a portable dewatering sled lined with hay bales, which formed a sump with the approximate dimensions of 8 by 17 feet (136 square feet). The geotextile bag installed inside of the dewatering sled was approximately 7.5 by 15 feet. The Regulated Parties failed to install the dewatering structure in accordance with the SWPPP, EPP, and relevant manufacturer specifications and accepted engineering practices.

On July 30, 2021, the Regulated Parties constructed a sediment basin at or near MP 1049.93. After reviewing the SWPPP and EPP, the MPCA determined that the sediment basin, that was installed, was not identified in those documents. The Regulated Parties failed to select and install the BMPs as specified in the SWPPP.

**4. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 9.17  
Sediment Control Practices, provides in relevant part:**

Permittees must preserve a 50 foot natural buffer or, if a buffer is infeasible on the site, provide redundant (double) perimeter sediment controls when a surface water is located within 50 feet of the project's earth disturbances and stormwater flows to the surface water. Permittees must install perimeter sediment controls at least 5 feet apart unless limited by lack of available space. Natural buffers are not required adjacent to road ditches, judicial ditches, county ditches, stormwater conveyance channels, storm drain inlets, and sediment basins. If preserving the buffer is infeasible, permittees must document the reasons in the SWPPP. Sheet piling is a redundant perimeter control if installed in a manner that retains all stormwater.

On March 16, 2021, MPCA reviewed the IEMs' and Regulated Parties' March 4, 2021 inspection reports and photos of a dewatering structure, located at or near MP 1056.45. During the review, the MPCA observed a wetland downgradient and within 50 feet of the dewatering structure without redundant perimeter sediment controls in place. On April 12, 2021, MPCA inspected MP 1056.45 and observed and documented that there were no redundant (double) perimeter sediment control practices between the dewatering structure and the wetland located at or near MP 1056.45.

On April 12, 2021, MPCA inspected MP 1099.5 and observed and documented that there were no redundant (double) perimeter sediment control practices between the disturbed soils in this area and the adjacent wetland.

On March 30, 2021, the Regulated Parties provided MPCA with photos from March 16, 2021, that were taken of the site at or near MP 909.1. Based on the photos, the MPCA determined that the Regulated Parties' two dewatering structures at or near MP 909.1 had both been placed directly adjacent to the marked and delineated boundary of wetland W-502 with no redundant perimeter sediment control practices along the wetland's boundary. On April 20, 2021, MPCA inspected the area of MP 909.1, and MPCA observed and documented that only one row of sediment control practices had been installed along the wetland's boundary sometime after the March 16, 2021 photos.

The Regulated Parties, when it was determined that it was not feasible to preserve a 50 foot natural buffer, disturbed soils within 50 feet of wetland W-502 and wetland W-1828.0 located at or near MP 1056.45 without installing redundant sediment control practices.

**5. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 10.2  
Dewatering and Basin Draining, provides in relevant part:**

Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a temporary or permanent sediment basin on the project site unless infeasible. Permittees may dewater to surface waters if they visually check to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.

On March 16, 2021, MPCA reviewed the IEMs' and Regulated Parties' March 4, 2021 inspection reports and photos of a dewatering structure, located at or near MP 1056.45. While reviewing the reports and photos, MPCA determined that the dewatering structure was discharging directly into a wetland. Furthermore, the reports and photos demonstrated that the Regulated Parties dewatered in a manner that overwhelmed the dewatering structure, and caused the structure to fail, allowing accumulated sediment to leave the dewatering structure and enter the adjacent wetland. The Regulated Parties failed to visually check, during the dewatering activities, to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge.

On March 16, 2021, MPCA received an email from the Regulated Parties explaining that, while dewatering at or near MP 909.1, they caused a sediment release (nuisance condition) in wetland W-502. According to photos and reports provided by the Regulated Parties, on January 21, 2021, the Regulated Parties installed two dewatering structures immediately along wetland W-502's marked and delineated boundary, so the dewatering structures would discharge north into that wetland. MPCA also reviewed reports provided by the IEMs, which demonstrated that the two dewatering structures at or near MP 909.1 were frequently used, and vast amounts of fine sediment accumulated in the bottom of both structures. Furthermore, the IEMs' reports explained that on March 13, 2021, both the IEMs and the

Regulated Parties discovered that the integrity of the dewatering structures at or near MP 909.1 were failing, and fine sediment was discharging from, and accumulating around, the two dewatering structures. The reports continue to explain that on March 13, 2021, both the IEMs and the Regulated Parties discovered deposits of sediment within wetland W-502 along with a continuous flow of sediment-laden water from the construction area located at or near MP 909.1 into W-502. The IEMs' reports also explained that on March 15, 2021, and March 16, 2021, the IEMs again inspected that area of MP 909.1, and they discovered that the Regulated Parties were continuing to use the two failing dewatering structures, which were causing further discharges of sediment into wetland W-502. The Regulated Parties failed to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge to wetland W-502.

On April 12, 2021, the MPCA inspected the dewatering activity at or near MP 1099.5. During the inspection, the Regulated Parties explained that while dewatering was occurring on March 18, 2021, the dewatering structures' hose become detached from the dewatering bag for approximately 45-60 minutes, causing a discharge of sediment-laden water to wetland W-1828.0. The Regulated Parties failed to visually check the dewatering structure to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge.

On June 18, 2021, MPCA received an email from the Regulated Parties explaining that on June 17, 2021, while the Regulated Parties were actively dewatering, their dewatering structure failed and discharged sediment-laden water to wetland W-546 located at or near MP 915, causing nuisance conditions in the wetland. The Regulated Parties failed to visually check the dewatering structure to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge.

On July 29, 2021, the Regulated Party Owner sent an event notification email to the MPCA. According to the event notification, the Regulated Parties were actively dewatering at or near MP 1048. During the course of the day, the trench water became more turbid causing the system to become overwhelmed. At that point, the system was no longer adequately treating the sediment-laden water, which caused a discharge to the adjacent wetland (W-1415.0, CA163aW). The Regulated Parties failed to visually check the dewatering system to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge.

On August 26, 2021, MPCA received a Duty Officer report related to discharge at or near MP 940.68 to wetland W-686.0. The MPCA contacted the Regulated Parties by phone. During the conversation, the Regulated Parties stated that they were actively dewatering at or near MP 940.68 and the amount of sediment in the water overwhelmed the filtering system causing it to fail. At that point, the system was no longer adequately treating the sediment-laden water, causing a discharge of approximately 500 gallons to the adjacent wetland W-686.0. The Regulated Parties failed to visually check the dewatering system to ensure adequate treatment had been obtained and nuisance conditions did not result from the discharge.

**6. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 10.4 Dewatering and Basin Draining, provides in relevant part:**

Permittees must discharge all water from dewatering or basin-draining activities in a manner that does not cause erosion or scour in the immediate vicinity of discharge points or inundation of wetlands in the immediate vicinity of discharge points that causes significant adverse impact to the wetland.

On April 12, 2021, the MPCA inspected the dewatering activity at or near MP 1099.5. During the inspection, the Regulated Parties explained that while dewatering was occurring on March 18, 2021, the dewatering structures' hose become detached from the dewatering bag for approximately 45-60 minutes, which caused the following:

- Erosion in the immediate vicinity of the dewatering structure's discharge point, causing nuisance conditions and significant adverse impacts to wetland W-1828.0.
- Sediment-laden water discharged directly into W-1828.0 causing significant adverse impacts.

**7. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 11.2 Inspections and Maintenance, provides in relevant part:**

Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours.

On April 7, 2021, MPCA requested, in an email, that the Regulated Parties provide copies of the construction site's weekly and rain event inspection and maintenance records. On April 9, 2021, the Regulated Parties made the reports available to the MPCA. MPCA reviewed the reports dated December 4, 2020, through April 7, 2021, and determined that between December 11, 2020, and February 11, 2021, the Regulated Parties missed four routine inspections.

**8. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 11.4 Inspections and Maintenance, provides in relevant part:**

Permittees must inspect all erosion prevention and sediment control BMPs and Pollution Prevention Management Measures to ensure integrity and effectiveness. Permittees must repair, replace or supplement all nonfunctional BMPs with functional BMPs by the end of the next business day after discovery unless another time frame is specified in item 11.5 or 11.6. Permittees may take additional time if field conditions prevent access to the area.

On April 14, 2021, MPCA received copies of the IEMs' inspection reports regarding the dewatering activities at MP 909.1. According to the reports, on March 13, 2021, the IEMs discovered that the two dewatering structures discharging into wetland W-502 at or near MP 909.1 were no longer functioning as designed, and as a result, the Regulated Parties were causing nuisance conditions in the wetland. The reports demonstrated that the IEMs told the Regulated Parties that the dewatering BMPs at or near MP 909.1 needed to be repaired, replaced, or supplemented by the end of the next business day. On

March 15, 2021, the IEMs inspected the area again and discovered that the Regulated Parties had continued to use the non-functional dewatering BMPs, and were causing further nuisance conditions in the wetland. That same day, the IEMs requested that the Regulated Parties cease the use of the non-functional BMPs. On March 16, 2021, the IEMs once again inspected MP 909.1 and discovered that the Regulated Parties were continuing to use the non-functional dewatering BMPs and further nuisance conditions in wetland W-502 were evident. The IEMs again requested that the Regulated Parties cease the use of the non-functional dewatering BMPs, and that same day, the Regulated Parties ceased the use of the non-functioning dewatering BMPs. The Regulated Parties failed to repair, replace, or supplement the nonfunctional dewatering BMPs at or near MP 909.1 by the end of the next business day after discovery on March 13, 2021.

**9. NPDES/SDS General Construction Stormwater Permit (MNR100001). Item 11.11.c Inspections and Maintenance, provides in relevant part:**

Permittees must record all inspections and maintenance activities within 24 hours of being conducted and these records must be retained with the SWPPP. These records must include:

- a. ...
- b. ...
- c. accurate findings of inspections, including the specific location where corrective actions are needed; and
- d. ...
- e. ...
- f. ...
- g. ...

On May 6, 2021, MPCA reviewed the Regulated Parties' inspection and maintenance records of the construction activities occurring between MP 896.1 and 910.4. Upon review, MPCA determined that those inspection and maintenance records did not include accurate findings of inspections for MP 909.1. Specifically, the inspection and maintenance records did not include the finding of missing redundant sediment control practices along the boundaries of wetland W-502 at or near MP 909.1 as required by the SWPPP and the Permit.



## **Industrial Wastewater Alleged Violations:**

### **1. Minn. R. 7050.0210, subp. 2. GENERAL STANDARDS FOR WATERS OF THE STATE.**

Subp. 2. Nuisance conditions prohibited. No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum, visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, or other offensive or harmful effects.

#### **NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.57.125**

Nuisance Conditions Prohibited. The Permittee's discharge shall not cause any nuisance conditions including, but not limited to: floating solids, scum and visible oil film, acutely toxic conditions to aquatic life, or other adverse impact on the receiving water.[Minn. R. 7050.0210, subp. 2]

#### **NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.53.39**

(States in part) No Material Discoloration. The discharge of wastewater (i.e., hydrostatic test water or buoyancy control water) into a surface water shall not cause a material discoloration in the receiving water. Any discharge that results in a discernible change to the existing/ambient color of the receiving water would constitute material discoloration...

#### **NPDES Industrial Wastewater Permit (MN0071366). Item 5.57.163**

##### **Operation and Maintenance:**

The Permittee shall at all times properly operate and maintain the facilities and systems of treatment and control, and the appurtenances related to them which are installed or used by the Permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The Permittee shall install and maintain appropriate backup or auxiliary facilities if they are necessary to achieve compliance with the conditions of the permit and, for all permits other than hazardous waste facility permits, if these backup or auxiliary facilities are technically and economically feasible Minn. R. 7001.0150. subp. 3, item F. [Minn. R. 7001.0150, 3(F)]

On August 25, 2021, the Regulated Party contacted the Minnesota Duty Officer (Report ID 201067) to report a release of turbid water associated with the discharge of mainline hydrostatic test water at the Pine River (SD013; Public Water ID 44) near MP 1017.4. An estimated 5,000-10,000 gallons of turbid water was released while the Regulated Party's crew was replacing filters in the filtration system. A turbidity level of 265 NTU was recorded shortly before the system was shut down and resulted in nuisance conditions to waters of the state from the Regulated Party's discharge.

During an August 26, 2021, onsite MPCA inspection, MPCA observed the Regulated Party's mainline hydrostatic test discharge for station SD017 caused pollution to waters of the state due to excessive sediment being discharged. MPCA documented nuisance conditions, including excessive suspended solids and material discoloration in waters of the state from the Regulated Party's discharge.

**2. Minn. Stat. § 115.061, DUTY TO NOTIFY; AVOIDING WATER POLLUTION.**

(a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

**NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.56.116 states in part:**

The Permittee shall maintain the discharge operation in such a manner so as to avoid and minimize erosion, scouring, sediment transport or other nuisance conditions in the area of the discharge or in the receiving stream. If erosion, souring, sediment transport or other nuisance conditions are observed in the area of the discharge or in the receiving water, the permittee shall comply with Minnesota Statute 115.061 and take corrective action measures...

**NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.57.157**

Discovery of a release. Upon discovery of a release, the Permittee shall:

- a. Take all reasonable steps to immediately end the release.
- b. Notify the Minnesota Department of Public Safety Duty Officer at 1(800)422-0798 or (651)649-5451 (metro area) immediately upon discovery of the release. You may contact the MPCA during business hours at 1(800)657-3864 or (651)296-6300 (metro area).
- c. Recover as rapidly and as thoroughly as possible all substances and materials released or immediately take other action as may be reasonably possible to minimize or abate pollution to waters of the state or potential impacts to human health caused thereby. If the released materials or substances cannot be immediately or completely recovered, the Permittee shall contact the MPCA. If directed by the MPCA, the Permittee shall consult with other local, state or federal agencies (such as the Minnesota Department of Natural Resources and/or the Wetland Conservation Act authority) for implementation of additional clean-up or remediation activities in wetland or other sensitive areas. [Minn. R. 7001.1090]

On August 30, 2021, MPCA documented that the Regulated Party failed to immediately report a discharge of pollution to the Mississippi River (SD017) near MP 1069.7. According to an August 26, 2021, Independent Environmental Monitor (IEM) inspection report, on the morning of August 26, 2021, the Regulated Party’s onsite Environmental Inspector (EI) was informed by the IEM to suspend the discharge because observations in the surface water were “unacceptable” and “not good”. Additionally, while onsite MPCA observed the Regulated Party’s EI’s coordinating with contractors to identify corrective actions because its mainline hydrostatic test discharge for station SD017 was causing nuisance conditions to surface waters due to material discoloration to receiving waters and excessive sediment being discharged. The Regulated Party failed to report the discharge immediately upon discovery, but reported it to the Minnesota Duty Officer four days later (Report ID 201173).

**3. NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.57.139.**

Sample Preservation and Procedure. Sample preservation and test procedures for the analysis of pollutants shall conform to 40 CFR Part 136 and Minn. R. 7041.3200.

**40 CFR pt. 136 Table II: Required Containers, Preservation Techniques, and Holding times**

Table IB-Inorganic Tests		
Parameter	Preservation	Maximum Holding Time
9. Biochemical Oxygen Demand, Carbonaceous	Cool, ≤ 6° C	48 hours

During a review of the contracted lab reports for the Regulated Party’s discharge at SD001 on August 14, 2021, and August 15, 2021, the MPCA identified that the maximum 48 hour holding time for the carbonaceous biochemical oxygen demand (CBOD) analyses were exceeded. The MPCA also identified that the CBOD maximum holding time was exceeded during sampling of the SD001 discharge on August 30, 2021. Details of the exceedances are identified in the following table.

Sample ID	Parameter	Date Collected/Time	Date Received at Lab/Time	Date Analyzed/Time	# of Hours Beyond Maximum Holding Time
D-1A-SD001-01	CBOD	8/14/21, 0830 hours	8/16/21, 0800 hours	8/18/21, 0936 hours	49.1
D-1A-SD001-02	CBOD	8/15/21, 0300 hours	8/16/21, 0800 hours	8/18/21, 1030 hours	31.5
D-1B-SD001-2	CBOD	8/30/2021, 1215 hours	9/01/2021, 1027 hours	9/01/2021, 1248 hours	.55

**4. NPDES/SDS Industrial Wastewater Permit (MN0071366). Item, 5.55.77**

(States in part) ...All of the following limitations apply to the infiltration of industrial wastewater:

- A. No runoff of discharge water from the application site is allowed.

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On September 2, 2021, the Regulated Party reported to the Minnesota Duty Officer (Report ID 201256) and by email to the MPCA that treated hydrostatic test wastewater discharged beyond the land application site at WS007 (LA307), near MP 922.1. The email stated that wastewater traveled beyond a sandbag berm to an upland area approximately 60 by 20 feet and infiltrated to the soil. The Duty Officer Report estimated the release at 1,000 gallons.

**5. NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.57.156**

Unauthorized Releases of Wastewater Prohibited. Except for discharges from outfalls specifically authorized by this permit, overflows, discharges, spills, or other releases of wastewater or materials to the environment, whether intentional or not, are prohibited. However, the MPCA will consider the Permittee's compliance with permit requirements, frequency of release, quantity, type, location, and other relevant factors when determining appropriate action.

On August 25, 2021, the Regulated Party reported to the Minnesota Duty Officer (Report ID 201064) a release of hydrostatic test wastewater to the environment. The report stated that during filling of a lake tank at WS007 (LA307), near MP 922.1, water was seen pooling on the ground adjacent to the tank structure, resulting in an unauthorized release of wastewater. The tank was pumped out to other nearby tanks to allow for inspection. Investigation identified that the liner had a 1/8 inch diameter hole, which was subsequently repaired. The release was estimated at 20 gallons and infiltrated to the soil in an upland area.

**6. NPDES/SDS Industrial Wastewater Permit (MN0071366). Item 5.53.56**

(States in part) The Permittee shall submit a Surface Discharge Closure Report for each surface discharge. This report shall be submitted 30 days after the completion of discharge...

The Regulated Party failed to submit one surface discharge closure report within 30 days, as required. The Regulated Party performed a surface water discharge at monitoring station SD005 that ended on August 12, 2021. MPCA received the surface discharge closure report on September 13, 2021.

**Request for Information**

MPCA needs more information in order to evaluate compliance with regulations, statutes, rules, or permit conditions.

**You must submit the following information within 10 days of the date of this letter:**

1. Submit a Cleaning Run Wastewater Disposal report (Report). At a minimum, the Report shall identify:
  - a. An individual activity (e.g., HDD buoyancy, control, HDD pre-test, mainline hydrostatic test description) inventory, including volume of cleaning run wastewater generated per spread.

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- b. An inventory, including volume of disposal locations for cleaning run wastewater generated. Include copies of hauling logs; and
  - c. If applicable, an explanation for any discrepancies for cleaning run wastewater generated per spread compared to disposal volumes.
2. Submit the following supplemental information related to the August 30, 2021, Enbridge Energy Limited Partnership Line 3 Replacement Project HDD Drilling Mud Disposal Tracking document:
  - a. Submit a volume (in gallons) for each HDD drilling mud disposal location identified in the document.
3. During a review of the Site Closure Report for the SD001 discharge to the Red River of the North from August 25, 2021 to September 1, 2021, MPCA staff identified that TriMedia staff indicated “cloudiness in treated water”. This was indicated on September 1, 2021, from 03:41 to 04:04 hours. Correlated total suspended solids measurements from that time indicate a concentration of 84 mg/L, 119 mg/L, and 100 mg/L. Please provide a description of any other visual observations that occurred during that time and whether nuisance conditions were identified within the receiving water. If nuisance conditions were not identified, please provide clarification to the MPCA regarding the cloudiness that was identified in the treated water.

Responding to this letter does not prevent us from issuing an enforcement action. We reserve the right to pursue any and all remedies available under law as an appropriate response to these violations.

We will contact you to discuss next steps in this process. In the meantime, please contact Brian Green by phone at 507-206-2610 or by email at [brian.green@state.mn.us](mailto:brian.green@state.mn.us) if you have any questions or need assistance related to the Construction Stormwater violations or Joe Braun by phone at 218-846-8126 or by email at [joseph.braun@state.mn.us](mailto:joseph.braun@state.mn.us) if you have questions or need assistance related to the Industrial Wastewater violations.

Sincerely,



*This document has been electronically signed.*

Ryan Anderson  
Manager  
Stormwater Section  
Municipal Division

RA/BG/JB:jls

cc: See next page.

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cc: Bobby Hahn, Enbridge Energy Limited Partnership  
Commissioner Peter Tester, MPCA  
Katrina Kessler, Assistant Commissioner, MPCA  
Michelle Janson, Attorney, MPCA  
Jean Coleman, Attorney, MPCA  
Ryan Anderson, MPCA  
Jeff Udd, MPCA  
Melissa Kuskie, MPCA  
Suzanne Baumann, MPCA  
Tanya Maurice, MPCA  
Brian Green, MPCA  
James Dexter, MPCA  
Brittany Fyock, MPCA  
Matthew King, MPCA  
Joseph Braun, MPCA  
Hailey Gorman, MPCA  
Deb Klooz, MPCA  
Kevin Molloy, MPCA  
Activity ID PEN20210002 @ 245288



**Barry Simonson** tel 218-522-48251  
Director, Line 3 Mainline Execution barry.simonson@enbridge.com  
Major Projects (US)

**Enbridge**  
11 East Superior Street  
Suite 125  
Duluth, MN 55802

October 28, 2021

Ryan Anderson  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
*Via Personal Delivery and Email*

Subject: Enbridge Energy, Limited Partnership  
Line 3 Replacement Project  
Alleged Violations Letter

Dear Mr. Anderson:

On October 8, 2021, the Minnesota Pollution Control Agency (“MPCA”) sent an Alleged Violations Letter (“AVL”) to Enbridge Energy, Limited Partnership (“Enbridge”) and Precision Pipeline LLC (“Precision”) for construction stormwater alleged violations and to Enbridge for industrial wastewater alleged violations related to construction of the Line 3 Replacement Project (“Project”). The AVL requested additional information and invited Enbridge and Precision to provide additional facts or circumstances related to the alleged violations. This letter provides responses on behalf of Enbridge and Precision.

Enbridge and Precision take the protection of the environment seriously and instill in their entire teams, including their contractors and subcontractors, the importance of environmental protection and compliance. When reviewing the alleged construction stormwater and industrial wastewater violations listed in the AVL, Enbridge and Precision believe it is important to note that these limited incidents occurred in the course of a major construction project that spanned 340 miles across northern Minnesota. For context, project construction involved more than 2,935 dewatering days, and approximately 500 miles of perimeter controls were installed and maintained. The AVL points to fewer than 20 separate incidents, several of which were listed multiple times in the AVL under different permit conditions or rules, but which arose from the same event. While each alleged violation is important, they arise from incidents comprising a very small percentage of the work completed on the Project, underscoring Enbridge’s and Precision’s strong commitment to meeting regulatory requirements and protecting environmental resources. The overall program, including planning, agency coordination, training, protocols, inspections, and third-party monitoring, for this Project worked very well.

It is also important to note that there are no ongoing alleged violations. Each incident discussed in the AVL that occurred on the Project was isolated, unintentional, temporary, recorded, and promptly resolved within the required permit timelines and as site conditions allowed. To Enbridge’s knowledge, none of the alleged violations resulted in potential or actual impacts to public health or the environment beyond the temporary impacts that were identified. To prevent repeat occurrences, Enbridge worked to identify potential patterns in field compliance based on environmental inspector (“EI”) and Independent Environmental Monitor (“IEM”) observations. When patterns were identified, Enbridge instituted a construction standdown and required retraining.

Enbridge also took steps over the course of project construction to address uncertainty regarding field interpretations related to nuisance conditions. Minnesota Rules 7050.2010 General Standards for Waters of the State, Subpart 2 states the following:

*No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum, visible oil film, **excessive suspended solids, material discoloration**, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, **aquatic habitat degradation**, excessive growths of aquatic plants, or other offensive or harmful effects.*

This is a qualitative water quality standard and because the Minnesota Administrative Rules do not provide definitions of “*excessive suspended solids*” or “*material discoloration*”, EIs, IEMs and contractor staff had questions regarding the thresholds for these criteria and at what point a discharge should be considered a nuisance condition and the Duty Officer notified. In order to promote a consistent understanding on nuisance conditions, Enbridge held multiple Project-wide training events with EI, IEM and contractor personnel including MPCA staff members, and solicited guidance to EIs and IEMs concerning MPCA’s expectations regarding the conditions that would indicate a nuisance condition. For example, a specific training session for dewatering monitors was developed and Precision provided that training in March 2021. Similarly, Enbridge provided a Project-wide refresher training session in advance of summer construction in May 2021 where dewatering and stormwater BMP maintenance were prominent topics on the agenda.

Although these efforts helped to promote more consistent reporting amongst the EI, IEM and contractor staff, there are examples where Enbridge likely overreported “nuisance conditions”. An example of such a situation is the event at milepost (“MP”) 940.68 on August 26, 2021, as further discussed in Attachment A. In short, despite the subjectivity inherent in this qualitative standard, Enbridge implemented several measures to comply with Minn. R. 7050.2010.

This response includes three attachments. Attachment A includes additional information and facts which demonstrate that certain incidents identified in the AVL were not violations. For the remaining incidents identified in the AVL, Attachment B identifies additional information and facts to provide MPCA with further context regarding the incidents at issue. Finally, Attachment C includes responses to the Information Requests included in the AVL.

As noted above and as further supported by the attachments, Enbridge and Precision take the protection of the environment seriously. While the overall program for this Project worked well, whenever issues arose, they were quickly and effectively addressed by the Enbridge and Precision teams under direct agency oversight, with a focus on meeting permitting requirements and minimizing impacts to the environment.

Please do not hesitate to contact me with any additional questions.

Sincerely,



Barry Simonson  
Director, Line 3 Mainline Execution

Enclosures: Attachment A: Additional Facts and Supporting Files Demonstrating No Violation  
Attachment B: Additional Context Related to AVL  
Attachment C: Response to Requests for Information



cc: Leo Golden, Enbridge  
Christina Brusven, Fredrikson and Byron  
Robert Poteete, Precision Pipeline, LLC

## **Attachment A**

November 10, 2021

Leo Golden, Vice-President, Major Projects  
Barry Simonson, Project Director  
Enbridge Energy Limited Partnership  
11 East Superior Street, Suite 125  
Duluth, MN 55802-2198

RE: Alleged Violations Letter – Line 3 Replacement Project

Dear Leo Golden and Barry Simonson:

Based on self-reports, Independent Environmental Monitor (IEM) reports, Minnesota Duty Officer Reports and other documentation submitted to the Minnesota Pollution Control Agency (MPCA) from June 8, 2021, to September 6, 2021, and follow-up communications MPCA staff have held with the IEMs and Enbridge Energy Limited Partnership (Enbridge), the MPCA has identified the following violations of state water quality standards.

Further, this letter describes actions Enbridge must take to correct the violations and also requests further information.

Please respond to the MPCA within 10 days of receipt of this correspondence with any facts or circumstances that Enbridge wants the MPCA to consider when determining whether and what level of enforcement action is appropriate, which may include a monetary penalty. If the MPCA does not receive a response within the requested time, we will assume the violations listed below are accurate.

### **Alleged Violations**

#### **1. Minn. Stat. 115.061, Duty to Notify; Avoiding Water Pollution**

a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

In a memorandum sent to Enbridge by the MPCA on April 5, 2021, the MPCA provided clarification and guidance to Enbridge regarding the duty to notify. The MPCA noted specifically, "...we underscore the importance of providing immediate notification. The MPCA has historically viewed the notification to the Duty Officer and/or the MPCA hours after discovery of a reportable incident as not complying with the immediate notification requirement."

As reported by Enbridge to the Minnesota Duty Officer (Report # 199709) and via email to the MPCA dated June 25, 2021, at approximately 1:30PM on June 25, 2021, while conducting a horizontal directional drill (HDD) crossing under the Mississippi River in Aitkin County at or near milepost (MP) 1069.7, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite) into a water of the state (wetland w-51n24w27-d, or W-1540). Enbridge reported the discharge to the Minnesota Duty Officer at 3:34PM that day. Enbridge failed to immediately report the discharge to a water of the state to the Agency.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199717) and via email to the MPCA dated June 26, 2021, at approximately 10:30PM on June 25, 2021, while conducting a HDD crossing under the Red River at or near MP 801.8, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite and Power Pac-L additive) into a water of the state (wetland w-160n50w9-a, or W-39.0). Enbridge reported the discharge to the Minnesota Duty Officer at 8:29AM the following day (June 26, 2021). Enbridge failed to immediately report the discharge to a water of the state to the Agency.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199760) and via email to the MPCA dated June 28, 2021, at approximately 1:30PM on June 28, 2021, while conducting a HDD crossing under the Red River in Kittson County at or near MP 801.8, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite and Power Pac-L additive) into a water of the state (wetland w-160n50w9-a, or W-39.0). Enbridge reported the discharge to the Minnesota Duty Officer at 4:28PM that day. Enbridge failed to immediately report the discharge to a water of the state to the Agency.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199916) and via email to the MPCA dated July 6, 2021, at approximately 1:30AM on July 6, 2021, while conducting a HDD crossing under the Willow River in Aitkin County at or near MP 1066.5, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite and Power Pac-L additive) into a water of the state (Willow River). Enbridge reported the discharge to the Minnesota Duty Officer at 7:12AM that day. Enbridge failed to immediately report the discharge to a water of the state to the Agency.

As reported by Enbridge via email to the MPCA dated August 5, 2021, at approximately 1:30AM on August 5, 2021, while conducting a HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold) into a water of the state (wetland w-51n21w22-a or W-1755). Enbridge notified the Agency via email at 5:17AM that day; Enbridge did not notify the Minnesota Duty Officer of the discharge. Enbridge failed to immediately report the discharge to a water of the state to the Agency.

## **2. Minn. R. 7050.0210, General Standards for Waters of the State**

Subp. 2. Nuisance conditions prohibited. No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids,

scum, visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, or other offensive or harmful effects.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199709) and via email to the MPCA dated June 25, 2021, on June 25, 2021, while conducting an HDD crossing under the Mississippi River in Aitkin County at or near MP 1069.7, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n24w27-d, or W-1540). The June 25, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be between 10,000-15,000 gallons. Enbridge's HDD Completion Report for this site, dated July 27, 2021, documents the discharge as covering an area of wetland approximately 85' x 59' to a depth of 5 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #199717) and via email to the MPCA dated June 26, 2021, on June 25, 2021, while conducting an HDD crossing under the Red River in Kittson County at or near MP 801.8, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland w-160n50w9-a, or W-39.0). The June 25, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 75 gallons. Enbridge's HDD Completion Report for this site, dated August 3, 2021, documents the discharge as covering an area of wetland approximately 10'x10', resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199760) and via email to the MPCA dated June 28, 2021, on June 28, 2021, while conducting an HDD crossing under the Red River in Kittson County at or near MP 801.8, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland w-160n50w9-a, or W-39.0). The June 28, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 400 gallons. Enbridge's HDD Completion Report for this site, dated August 3, 2021, documents the discharge as covering four areas of the wetland estimated at 10'x10', 10'x10', 30'x100', and 20'x80' to a depth of less than one inch, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199916) and via email to the MPCA dated July 6, 2021, on July 6, 2021, while conducting an HDD crossing under the Willow River in Aitkin County at or near MP 1066.5, Enbridge discharged drilling mud containing bentonite and the additive Sandmaster into a water of the state (Willow River). The July 6, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the Willow River to be approximately 80 gallons. The 80 gallon discharge caused excessive suspended solids in the Willow River, resulting in nuisance conditions.

As reported by Enbridge to the Minnesota Duty Officer (Report #200155) and via email to the MPCA dated July 15, 2021, on July 15, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w20-a or W-1751). The MPCA reviewed the July 15, 2021, IEM daily

summary report, which documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 15-25 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 12'x18' to a depth of approximately 3 inches, causing pollution and resulting in nuisance conditions within the wetland. As reported by Enbridge to the Minnesota Duty Officer (Report #200195) and via email to the MPCA dated July 17, 2021, on July 17, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w20-a or W-1751). The July 17, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10-15 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 8'x10' to a depth of approximately 3 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200247) and via email to the MPCA dated July 19, 2021, on July 19, 2021, while conducting an HDD crossing under the Red Lake River in Pennington County at or near MP 864.3, Enbridge discharged drilling mud containing bentonite into an upland area from which it flowed into a water of the state (wetland w-153n43w29-j or W-298). Email notification from the IEMs dated July 19, 2021, as well as the July 19, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 500-800 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 30'x30' and Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge covering a depth of approximately 3 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200253) and via email to the MPCA dated July 20, 2021, on July 20, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland CLC5098a1W or W-687). Email notification from the IEMs dated July 20, 2021, documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an area of wetland approximately 10'x6' to a depth of approximately 6 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200272) and via email to the MPCA dated July 20, 2021, on July 20, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland CLC5098a1W or W-687). Email notification from the IEMs dated July 20, 2021 documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 600 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an area of wetland approximately 30'x12' to a depth of approximately 3 inches tapered thin to the outside, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200283) and via email to the MPCA dated July 21, 2021, on July 21, 2021, while conducting an HDD crossing under the Willow River in Aitkin County at or near MP 1066.5, Enbridge discharged drilling mud containing bentonite and the additive Sandmaster into a water of the state (wetland w-51n24w31-a or W-1527). The July 21, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated August 25, 2021, documents the discharge as covering an area of wetland approximately 18'x12' to a depth of approximately 1.5 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200426) and via email to the MPCA dated July 26, 2021, on July 26, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w22-a or W-1755). The July 26, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 20'x3' to a depth of approximately 2 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200555) and via email to the MPCA dated July 30, 2021, on July 30, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland CLC5098a1W or W-687). The July 30, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an L-shaped area of wetland approximately 2'x8' and 2'x3' to a depth of approximately 5 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200584) and via email to the MPCA dated July 31, 2021, on July 31, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The July 31, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 500 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 10'x26' to a depth of approximately 3 inches, resulting in nuisance conditions within the wetland.

As reported by Enbridge via email to the MPCA dated August 5, 2021, on August 5, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The August 5, 2021, email notification from Enbridge and the August 5, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland

to be approximately 900 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 35'x10', resulting in nuisance conditions within the wetland.

As reported by Enbridge to the Minnesota Duty Officer (Report #200662) and via email to the MPCA dated August 5, 2021, on August 5, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The August 5, 2021, email notification from Enbridge and the August 5, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area within the wetland approximately 5'x8' to a depth of approximately 2 inches, resulting in nuisance conditions within the wetland.

**3. Minn. R. 7050.0150, Subp. 3, Determination of Water Quality, Biological and Physical Conditions, and Compliance with Standards; Narrative standards**

Subp. 3. Narrative standards. For all class 2 waters, the aquatic habitat, which includes the waters of the state and stream bed, shall not be degraded in any material manner, there shall be no material increase in undesirable slime growths or aquatic plants, including algae, nor shall there be any significant increase in harmful pesticide or other residues in the waters, sediments, and aquatic flora and fauna; the normal aquatic biota and the use thereof shall not be seriously impaired or endangered, the species composition shall not be altered materially, and the propagation or migration of aquatic biota normally present shall not be prevented or hindered by the discharge of any sewage, industrial waste, or other wastes to the waters.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199709) and via email to the MPCA dated June 25, 2021, on June 25, 2021, while conducting an HDD crossing under the Mississippi River in Aitkin County at or near MP 1069.7, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n24w27-d, or W-1540). The June 25, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be between 10,000-15,000 gallons. Enbridge's HDD Completion Report for this site, dated July 27, 2021, documents the discharge as covering an area of wetland approximately 85' x 59' to a depth of 5 inches. Based on this information, the MPCA determined that the discharge impaired or endangered the normal aquatic biota and use thereof.

As reported by Enbridge to the Minnesota Duty Officer (Report #200247) and via email to the MPCA dated July 19, 2021, on July 19, 2021, while conducting an HDD crossing under the Red Lake River in Pennington County at or near MP 864.3, Enbridge discharged drilling mud containing bentonite into an upland area from which it flowed into a water of the state (wetland w-153n43w29-j or W-298). Email notification from the IEMs dated July 19, 2021, as well as the July 19, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 500-800 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 30'x30'. Based on this information, the MPCA determined that the discharge impaired or endangered the normal aquatic biota and use thereof.



As reported by Enbridge to the Minnesota Duty Officer (Report #200272) and via email to the MPCA dated July 20, 2021, on July 20, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland CLC5098a1W or W-687). Email notification from the IEMs dated July 20, 2021, documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 600 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an area of wetland approximately 30'x12' (to a depth of 3 inches tapered thin to the outside). Based on this information, the MPCA determined that the discharge impaired or endangered the normal aquatic biota and use thereof.

As reported by Enbridge to the Minnesota Duty Officer (Report #200584) and via email to the MPCA dated July 31, 2021, on July 31, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The July 31, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 500 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 10'x26' to a depth of approximately 3 inches. Based on this information, the MPCA determined that the discharge impaired or endangered the normal aquatic biota and use thereof.

As reported by Enbridge via email to the MPCA dated August 5, 2021, on August 5, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The August 5, 2021, email notification from Enbridge and the August 5, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 900 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 35'x10'. Based on this information, the MPCA determined that the discharge impaired or endangered the normal aquatic biota and use thereof.

#### **4. Minn. R. 7050.0186 Wetland Standards and Mitigation**

Subp. 1b. Wetland pollution prohibited. Wetland conditions shall be protected from chemical, physical, biological, or radiological changes to prevent significant adverse impacts to the designated beneficial uses listed in subpart 1. The antidegradation provisions in this chapter are applicable to wetlands.

#### **Minn. R. 7050.0210, General Standards for Waters of the State**

Subp. 13. Pollution prohibited. No sewage, industrial waste, or other wastes shall be discharged from either a point or a nonpoint source into the waters of the state in such quantity or in such manner alone or in combination with other substances as to cause pollution as defined by law...

As reported by Enbridge to the Minnesota Duty Officer (Report # 199709) and via email to the MPCA dated June 25, 2021, on June 25, 2021, while conducting an HDD crossing under the Mississippi River in Aitkin County at or near MP 1069.7, Enbridge discharged drilling mud

containing bentonite into a water of the state (wetland w-51n24w27-d, or W-1540). The June 25, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be between 10,000-15,000 gallons. Enbridge's HDD Completion Report for this site, dated July 27, 2021, documents the discharge as covering an area of wetland approximately 85' x 59' to a depth of 5 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #199717) and via email to the MPCA dated June 26, 2021, on June 25, 2021, while conducting an HDD crossing under the Red River in Kittson County at or near MP 801.8, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland w-160n50w9-a, or W-39.0). The June 25, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 75 gallons. Enbridge's HDD Completion Report for this site, dated August 3, 2021, documents the discharge as covering an area of wetland approximately 10'x10'. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report # 199760) and via email to the MPCA dated June 28, 2021, on June 28, 2021, while conducting an HDD crossing under the Red River in Kittson County at or near MP 801.8, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland w-160n50w9-a, or W-39.0). The June 28, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 400 gallons. Enbridge's HDD Completion Report for this site, dated August 3, 2021, documents the discharge as covering four areas of the wetland estimated at 10'x10', 10'x10', 30'x100', and 20'x80' to a depth of less than one inch. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200155) and via email to the MPCA dated July 15, 2021, on July 15, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w20-a or W-1751). The July 15, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 15-25 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 12'x18' to a depth of approximately 3 inches. Based on this information, the MPCA determined that the discharge resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200195) and via email to the MPCA dated July 17, 2021, on July 17, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w20-a or W-1751). The July 17,

2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10-15 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 8'x10' to a depth of approximately 3 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200247) and via email to the MPCA dated July 19, 2021, on July 19, 2021, while conducting an HDD crossing under the Red Lake River in Pennington County at or near MP 864.3, Enbridge discharged drilling mud containing bentonite into an upland area from which it flowed into a water of the state (wetland w-153n43w29-j or W-298). Email notification from the IEMs dated July 19, 2021, as well as the July 19, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 500-800 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 30'x30'. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200253) and via email to the MPCA dated July 20, 2021, on July 20, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland CLC5098a1W or W-687). Email notification from the IEMs dated July 20, 2021, documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an area of wetland approximately 10'x6' (to a depth of approximately 6 inches). Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200272) and via email to the MPCA dated July 20, 2021, on July 20, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite and the additive Power Pac-L into a water of the state (wetland CLC5098a1W or W-687). Email notification from the IEMs dated July 20, 2021, documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 600 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an area of wetland approximately 30'x12' (to a depth of 3 inches tapered thin to the outside). Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200283) and via email to the MPCA dated July 21, 2021, on July 21, 2021, while conducting an HDD crossing under the Willow River in Aitkin County at or near MP 1066.5, Enbridge discharged drilling mud containing

bentonite and the additive Sandmaster into a water of the state (wetland w-51n24w31-a or W-1527). The July 21, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated August 25, 2021, documents the discharge as covering an area of wetland approximately 18'x12' to a depth of approximately 1.5 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200426) and via email to the MPCA dated July 26, 2021, on July 26, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland w-51n21w22-a or W-1755). The July 26, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 10 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 20'x3' to a depth of approximately 2 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200555) and via email to the MPCA dated July 30, 2021, on July 30, 2021, while conducting an HDD crossing under the Mississippi River in Clearwater County at or near MP 941.0, Enbridge discharged drilling mud containing bentonite into a water of the state (wetland CLC5098a1W or W-687). The July 30, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated September 3, 2021, documents the discharge as covering an L-shaped area of wetland approximately 2'x8' and 2'x3' to a depth of approximately 5 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200584) and via email to the MPCA dated July 31, 2021, on July 31, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The July 31, 2021, IEM daily summary report documents the IEM-estimated volume of drilling mud released into the wetland to be approximately 500 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area of wetland approximately 10'x26' to a depth of approximately 3 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge via email to the MPCA dated August 5, 2021, on August 5, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP

1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The August 5, 2021, email notification from Enbridge and the August 5, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 900 gallons. The IEM daily summary report documents the discharge as covering an area of wetland approximately 35'x10'. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

As reported by Enbridge to the Minnesota Duty Officer (Report #200662) and via email to the MPCA dated August 5, 2021, on August 5, 2021, while conducting an HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discharged drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold into a water of the state (wetland w-51n21w22-a or W-1755). The August 5, 2021, email notification from Enbridge and the August 5, 2021, IEM daily summary report document the IEM-estimated volume of drilling mud released into the wetland to be approximately 50 gallons. Enbridge's HDD Completion Report for this site, dated September 6, 2021, documents the discharge as covering an area within the wetland approximately 5'x8' to a depth of approximately 2 inches. Based on this information, the MPCA determined that the discharge caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.

### **Corrective Action**

#### **Immediately Enbridge must:**

1. Suspend HDD activities, contain the inadvertent releases of drilling mud, and notify the Minnesota Duty Officer.

**This requirement has been completed.**

2. Recover as thoroughly as possible, without further degrading any wetlands and the Willow River, all released drilling mud, in accordance with the site-specific HDD Inadvertent Release Response Plans dated November 2020, and incorporated as part of the 401 Water Quality Certification.

**This requirement has been completed.**

3. Update site-specific HDD Inadvertent Release Response Plans to reflect additional commitments for equipment, training, and notifications.

**This requirement has been completed.**

#### **Within 10 days Enbridge must:**

4. Update the Post Construction Wetland and Waterbody Monitoring Plan as follows and submit to the MPCA for review and approval:

To ensure that all wetlands into which Enbridge discharged drilling mud are identified for special wetland communities vegetation monitoring, Enbridge must add the following to the “other” category in section 2.5.2 Special Wetland Communities Vegetation Monitoring: all wetland areas into which drilling slurry was released, including those outside of the L3 ROW corridor.

As an attachment, Enbridge must propose a separate Site-Specific Water Quality Monitoring Plan for the area of the Willow River at or near MP 1066.5 into which drilling mud was discharged. The plan must include a proposed specific methodology, and justification for it, to meaningfully monitor the area, together with areas immediately upstream and downstream, to ascertain whether this drilling mud discharge may have resulted in any long-term detrimental impacts to the river’s beneficial uses and applicable water quality standards.

The plan must include an analysis of this reach of the river’s pre-construction status, in terms of ability to meet its designated beneficial uses and applicable, relevant water quality standards. It must also include the length of time proposed for monitoring to ensure the drilling mud release has not caused long-term impacts. Further, the plan needs to identify the remedial action that will be implemented, if monitoring shows it is necessary, to return the river to its pre-construction status. Please ensure the plan follows MPCA protocols and standard operating procedures for monitoring and data collection, available on the MPCA website at: <https://www.pca.state.mn.us/water/water-monitoring-standard-operating-procedures> and <https://www.pca.state.mn.us/water/surface-water-field-data-submittal-review-and-reports>.

5. Submit to the MPCA for review and approval a plan for compensatory mitigation for all unauthorized temporary impacts to the wetlands identified in this letter. The plan must be consistent with the framework and mitigation ratios described in tables 3.0-1 and 3.0-2 of the Compensatory Wetland Mitigation Plan dated October 2020, and incorporated into the 401 Water Quality Certification. The plan must also include a multiplier for each unauthorized wetland impact of 2. Upon MPCA approval of the compensatory mitigation plan, Enbridge must provide documentation within 30 days demonstrating that the required compensatory mitigation has been provided.

Responding to this letter does not prevent us from issuing an enforcement action. We reserve the right to pursue any and all remedies available under law as an appropriate response to these violations.

Leo Golden  
Barry Simonson  
Page 13  
November 10, 2021

We will contact you to discuss next steps in this process. In the meantime, please contact Melissa Kuskie of my staff at 651-757-2512 if you have any questions or need assistance.

Sincerely,

A handwritten signature in blue ink that reads "Peter Tester". The signature is written in a cursive, flowing style.

Peter Tester  
Deputy Commissioner

PT/MK:ds

cc: See next page.  
Bobby Hahn, Enbridge Energy Limited Partnership  
Katrina Kessler, Commissioner, MPCA  
Jean Coleman, Attorney, MPCA  
Michelle Janson, Attorney, MPCA  
Melissa Kuskie, MPCA  
Kevin Molloy, MPCA  
Jeff Udd, MPCA  
Ryan Anderson, MPCA  
Suzanne Bauman, MPCA  
Brian Green, MPCA  
Tanya Maurice, MPCA  
James Dexter, MPCA  
Brittany Fyock, MPCA  
Matthew King, MPCA  
Joseph Braun, MPCA  
Hailey Gorman, MPCA  
Deb Klooz, MPCA



**Barry Simonson**  
Director, Line 3 Mainline  
Execution, Major Projects

tel 218-522-4825  
fax 832-232-5460  
barry.simonson@enbridge.com

**Enbridge Energy, Limited  
Partnership**  
26 East Superior Street  
Suite 309  
Duluth, MN 55802

November 30, 2021

Peter Tester  
Deputy Commissioner  
Minnesota Pollution Control Agency  
Lafayette Road North  
St. Paul, MN 55155-4194

Re: November 10, 2021 Alleged Violations Letter – Line 3 Replacement Project.

Dear Mr. Tester:

On November 10, 2021, the Minnesota Pollution Control Agency (“MPCA”) sent an Alleged Violations Letter (“AVL”) to Enbridge Energy, Limited Partnership (“Enbridge”) for alleged violations of state water quality standards related to inadvertent release of drilling fluid during horizontal directional drill (“HDD”) crossings completed during construction of the Line 3 Replacement Project (“Project”). The AVL invited Enbridge to provide additional facts or circumstances related to the alleged violations that Enbridge wants the MPCA to consider when determining whether and what level of enforcement action is appropriate. This letter and its attachments provide Enbridge’s responses. In the body of this letter, Enbridge provides background and context regarding the alleged violations generally and, where applicable, provides site-specific details concerning the specific events identified in the AVL.

### **Introduction**

As discussed in further detail below, the inadvertent release of drilling fluid during HDD crossing is a generally known and common risk associated with the HDD crossing method, a method which is typically understood to be the least degrading method for certain crossings, even with these risks. The releases identified in the AVL were inadvertent and generally limited in both temporal and geographic scope such that no long-term or permanent adverse effects to water quality or aquatic resources have been documented, and none are anticipated. Further, Enbridge prepared for and complied with the MPCA-approved site-specific plans for each HDD crossing; each of these plans was prepared recognizing that inadvertent drilling fluid releases are a known risk of the HDD method, and the plans minimized the effects of any such release.



Enbridge respectfully requests that MPCA take the considerations in this response into account when further analyzing the events identified in the AVL. To the extent that MPCA will continue to view the HDD crossing method as the least degrading alternative for certain crossings for future projects, such consideration will be important to ensuring that the use of HDDs is not unreasonably deterred in the future.

Enbridge takes the protection of the environment seriously and instills in its entire team, including contractors and subcontractors, the importance of environmental protection and compliance. When reviewing the alleged violations of state water quality standards listed in the AVL, it is important to note that these limited events occurred in the course of a major construction project that spanned 340 miles across northern Minnesota. Overall, the program, including planning, agency coordination, training, protocols, inspections, and third-party monitoring, for this Project worked very well.

It is also important to note that there are no ongoing alleged violations. Each event discussed in the AVL that occurred on the Project was isolated, unintentional, temporary, recorded, and promptly resolved. The majority of the events occurred within the approved construction workspace. And, to Enbridge's knowledge, none of the alleged violations resulted in potential or actual impacts to public health or the environment beyond the temporary impacts that were identified.

### **Proactive Minimization Measures for HDDs**

The alleged violations in the AVL are each related to waterbody crossings conducted using the HDD method. As MPCA has previously recognized, the HDD crossings for the Project were selected to "avoid impacts to surface waters" and each crossing was selected because it had "lower probabilities for inadvertent release."<sup>1</sup> Nonetheless, as MPCA has also recognized, the HDD method carries its own set of risks and, as described in Enbridge's Antidegradation Assessment, inadvertent drilling fluid returns are common and anticipated, particularly near the entry and exit points of HDD and as the drill stem is closer to the surface.<sup>2</sup>

Specifically, Section 7.1.1.5 of Enbridge's Antidegradation Assessment describes and discloses the risks associated with an inadvertent return at each HDD location based on geotechnical analysis (see Attachment K of the Antidegradation Assessment). It also stated "[i]nadvertent returns near the exit point of HDDs are common and anticipated as the drill stem approaches the surface."<sup>3</sup> In

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<sup>1</sup> Molloy Rebuttal, at 3.

<sup>2</sup> Antidegradation Assessment, at 24; *see also id.* at 26 ("Inadvertent releases are more common in other areas of the drill alignment, such as near the entry and exit points.").

<sup>3</sup> *Id.*

many instances, the inadvertent release occurred in the area(s) identified as elevated risk in Enbridge's Hydrofracture Report and within the already-disturbed construction workspace.

Understanding these risks, MPCA (as well as Minnesota Department of Natural Resources ("MDNR")) encouraged and/or required the use of HDD at multiple watercourse crossings, after weighing the potential effects of an inadvertent drilling fluid release against the effects of another crossing method. Also, in recognition of the risks of an inadvertent release, MPCA required site-specific drilling fluid response plans for each HDD crossing, which Enbridge prepared and MPCA approved.<sup>4</sup>

Enbridge also completed the HDDs following the applicable conditions, plan requirements, and agency requests which, recognizing that inadvertent releases are a known risk of an HDD, provided specific avoidance, minimization, and mitigation measures. Specifically, Enbridge complied with the following applicable conditions of the Section 401 Certification related to HDDs to reduce the risk of and respond to an inadvertent release: Conditions 9, 13, 15(b), 16, 17, 22, 23, and 34. In addition, Enbridge followed the response and clean-up procedures described in both Section 11.0 of the Environmental Protection Plan and the Site-Specific HDD Inadvertent Release Response Plan. Full-time Independent Environmental Monitors ("IEMs") were also assigned to each HDD, as required by the MPCA in a May 29, 2021 email and, on July 14, 2021, Enbridge committed to additional best management practices ("BMPs") at all HDD locations, including:

- Staging of additional containment and response equipment at each HDD site prior to and throughout the execution of the drill.
- Pre-emptive installation of erosion and sediment control BMPs along the waterbody to prevent any potential inadvertent release flow into the waterbody.
- Placement of one full-time personnel whose only responsibility was to walk the drill path to monitor for inadvertent releases, including regularly checking the exterior of security fencing.
- Additional project trainings with the contractor and inspection staff to review notification requirements at each HDD site, and including the assignment and identification of the responsible parties for inadvertent release monitoring, notification, containment and recovery activities.

In accordance with MPCA and MDNR's July 15, 2021 request, Enbridge also preemptively installed turbidity curtains within waterbodies where conditions allowed to mitigate any potential downstream effects from a potential inadvertent release.

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<sup>4</sup> Antidegradation Determination, at 6.

Enbridge then completed additional mulching and seeding per specifications provided by MPCA and MDNR. This is documented within the HDD Completion Reports, which includes photographs documenting where revegetation is already occurring. In addition, Enbridge has added the surface waters at the location of the inadvertent releases to the Special Wetland Communities Vegetation Monitoring Protocol for post-construction monitoring (Attachment A).

With respect to the releases identified in the AVL, the releases were generally cleaned up within 24 hours. Where work was continuing, Enbridge employed constant containment such that existing conditions were maintained. The MPCA-approved plans for containment and clean-up were implemented immediately, and Enbridge believes that communication lines with MPCA were open, including through the presence of agency IEMs that were on-site full-time during all phases of the HDD crossing.

### **Alleged Violations**

#### **I. Minn. Stat. § 115.061, Duty to Notify; Avoiding Water Pollution.**

Section 1 of the AVL identifies alleged violations related to the timing of Enbridge's notice to MPCA of drilling fluid releases related to HDD crossings. Enbridge disputes that any of these events rises to the level of a violation.

First, in several of the instances identified, Enbridge notified MPCA of the incident at issue within a matter of hours. Enbridge understands that MPCA has indicated that, in the past, the agency has taken the position that "hours" after discovery was not sufficient. However, it is important to consider that it is necessary to identify and gather certain information in order to be able to make the required notification to the Duty Officer with all known information. For example, as explained on the Duty Officer's website,<sup>5</sup> the Duty Officer will request (in relevant part) the following information when a notification is made: land ownership; materials and quantity involved in the incident; incident location;<sup>6</sup> and surface waters impacts, and what has happened and the present situation. As such, there is a reasonable amount of time required for Enbridge to assess the site to provide the information requested by the Duty Officer. Additionally, many of these sites require travel into the site to gather information and, at times, travel back out to areas with communication reception. Given the reasonable time period required to gather and effectively communicate the necessary information, Enbridge's notices were timely, with the exception of the Duty Officer

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<sup>5</sup> <https://dps.mn.gov/divisions/bca/bca-divisions/administrative/Pages/minnesota-duty-officer-program.aspx>.

<sup>6</sup> With respect to the events identified in the AVL, Enbridge notes that the locations generally do not have addresses.

Notification No. 199717 completed on June 26, 2021 for the inadvertent release that occurred at the Red River on June 25, 2021.

Second, Enbridge provides the following correction and clarification in Table 1 below related to the following event identified in Section 1 of the AVL:

**Table 1**

<b>Text from AVL</b>	<b>Enbridge Response</b>
As reported by Enbridge via email to the MPCA dated August 5, 2021, at approximately 1:30AM on August 5, 2021, while conducting a HDD crossing under the East Savanna River in St. Louis County at or near MP 1085.9, Enbridge discovered the discharge of a pollutant (drilling mud containing bentonite and the additives Power Soda Ash, Sandmaster, and EZ Mud Gold) into a water of the state (wetland w-51n21w22-a or W-1755). Enbridge notified the Agency via email at 5:17AM that day; Enbridge did not notify the Minnesota Duty Officer of the discharge. Enbridge failed to immediately report the discharge to a water of the state to the Agency.	This event occurred at the same location as the July 31, 2021 event also listed in the AVL. The containment measures at the July 31, 2021 location had been left in place in case additional material came to the surface; therefore, this additional drilling fluid was completely contained within the previously constructed containment. For that reason, Enbridge did not notify the Duty Officer again.

Given this additional information, Enbridge asserts that its notifications related to the Duty Officer Notification Nos. 199709, 199760, and 199916 were timely, and that there was no duty to notify the Duty Officer for the August 5, 2021 event at the East Savanna River.

**II. Minn. R. 7050.0210, General Standards for Waters of the State.**

Section 2 of the AVL identifies alleged “nuisance conditions” related to HDD drilling fluid releases. In this Section, Enbridge identifies certain factors and analysis which demonstrate generally that no nuisance condition existed at each of the inadvertent releases which occurred in wetlands because the wetlands were dry at the time of the inadvertent release, and therefore, do not meet the definition of causing a nuisance condition because excessive suspended sediments and material discoloration cannot occur unless there are saturated or inundated conditions (conditions which do not exist in dry wetlands). Enbridge describes the additional steps that were taken both before and after HDDs to avoid and minimize inadvertent releases in the Proactive Minimization Measures for HDDs Section above. Enbridge provides specific responses regarding each incident identified in Section 2 of the AVL below and summarized in Table 2 (enclosed). As detailed in Section 2, the facts demonstrate that the events identified in the AVL did not result in nuisance conditions, with the exception of the Willow River inadvertent release that occurred on July 6, 2021.

**1. Mississippi River Milepost (“MP”) 1069.6 – June 25, 2021.**

As discussed in the HDD Completion Report submitted by Enbridge on July 27, 2021, the location of the inadvertent release is consistent with the location described as having an elevated risk in the Hydrofracture Report for the Mississippi River MP 1069.6 included as Attachment K of the Antidegradation Assessment. Further, this inadvertent release was discovered at 1:30PM on June 25, 2021, containment and clean-up were initiated immediately, and cleanup was completed by the end of the day on June 26, 2021.

**2. Mississippi River MP 941.1**

(1) July 20, 2021.

One inadvertent release occurred within the construction workspace adjacent to the construction mat travel lane, and the vegetation was not disturbed. The other inadvertent release occurred just east of the construction workspace and has been revegetated, as documented in the photographs included with the HDD Completion Report. Enbridge immediately initiated containment and clean-up. Both wetlands were dry at the time of the inadvertent releases and both inadvertent releases were cleaned up within hours of discovery.

(2) July 30, 2021.

The inadvertent release occurred within the construction workspace under the construction mat travel lane. The wetland was dry at the time of the inadvertent release. This release was discovered at 5:28PM, containment and clean-up were initiated immediately, and was cleaned up the same day.

**3. Red River MP 801.8 – June 25 and 28, 2021.**

As required by Condition 20 of the Section 401 Certification, Enbridge prepared an additional plan specific to the Red River crossing that provided more specific procedures to reduce the risk of an inadvertent release. This plan submitted to the MPCA in its final form on June 1, 2021 and approved by the MPCA on June 9, 2021, included the following additional measures which were implemented during the execution of the drill:

- measure and document drilling fluid properties every 2 hours;
- maintain processed drilling fluid densities at or below 10.8 pounds/gallon;
- maintain average viscosity between 80 – 100 funnel seconds, and maximum velocity below 120 funnel seconds;
- change out drilling fluid if it exceeds the density or viscosity parameters;
- use a larger diameter bit to reduce annular pressure; and

- attempt reaming the hole in a single pass.

As documented in the HDD Completion Report, the June 25, 2021 inadvertent release occurred within the construction workspace on the edge of the construction lane; therefore, there was very little disturbance where the inadvertent release occurred, and the existing vegetation was left intact, as documented in the photographs included in the report. Containment and clean-up were initiated immediately, and this inadvertent return was cleaned up within a few hours of discovery. Likewise, the June 28, 2021 inadvertent releases also occurred partially within the construction workspace, containment and clean-up were initiated immediately, and drilling fluid was cleaned up by June 29, 2021. The wetland was dry at the time of the inadvertent releases that occurred on both June 25 and 28, 2021.

#### **4. Red Lake River MP 864.3 – July 19, 2021.**

This inadvertent release occurred partially within the construction workspace. The wetland was dry at the time of the inadvertent release. This release was discovered at 7:30PM on July 19, 2021, containment and clean-up were initiated immediately, and cleanup was completed on July 20, 2021.

#### **5. Willow River MP 1066.5.**

##### **(1) July 6, 2021.**

Here, the contractor pre-emptively installed a turbidity curtain downstream of the HDD when it started experiencing slowed drilling fluid returns and as they were searching for a potential inadvertent release. The inadvertent release was very viscous and was contained to the riverbed near the bank; it did not cause a downstream plume. The inadvertent release was discovered at 1:35AM on July 6, 2021, containment was initiated immediately, clean-up was initiated as soon as it was safe to do so following demonstration activity, and clean-up activities were completed on July 7, 2021. Clean-up activities were delayed and access to the site was restricted until approximately 12:10PM on July 7, 2021 due to active demonstrations in this area. The MPCA conducted a site visit on July 8, 2021 and confirmed that the cleanup efforts were sufficient.

Subsequently, Enbridge prepared and complied with a re-start plan for the MPCA, with the final version submitted and approved on July 13, 2021. This plan included the following additional commitments:

- installation of additional (double perimeter) turbidity curtains around the area where the inadvertent release occurred and maintain it throughout the remainder of the drill;
- staging of additional sandbags and containment and response materials on-site in case of another inadvertent release;

- additional on-site monitoring staff to continuously monitor during the execution of the Environmental Inspector (“EI”) and at least one full day after the HDD has been completed; and
- conduct additional Project training with the contractor and inspection staff.

(2) July 21, 2021.

The inadvertent release occurred within the construction workspace under the construction mat travel lane. The location of this inadvertent release is consistent with the location described as having an elevated risk in the Hydrofracture Report for the Willow River (refer to Attachment K of the Section 401 Antidegradation Assessment). The wetland where the inadvertent release occurred was dry at the time. This inadvertent release was discovered at 3:00AM on July 21, 2021, containment and cleanup were initiated immediately, and clean-up was completed the same day.

**6. East Savanna MP 1085.9.**

(1) July 15 and 17, 2021.

The inadvertent releases that occurred on both July 15 and July 17 were located within proximity of the drill entry. The July 15 inadvertent release was located within the construction workspace, and the July 17 inadvertent release occurred under the construction mat travel lane. The wetland was dry at the time that both inadvertent releases occurred. The July 15, 2021 inadvertent release was discovered at 4:30PM, containment and clean-up were initiated immediately, and was cleaned up by 5:55PM that same day. The July 17, 2021 inadvertent release was discovered at 3:03PM on July 17, 2021, containment and clean-up were initiated immediately, and was cleaned up the same day.

(2) July 26, 2021.

The inadvertent release occurred within the construction workspace under the construction mat travel lane; the wetland was dry at the time. This release was discovered at 3:45PM, containment and clean-up were initiated immediately, and was cleaned up the same day.

(3) July 31, 2021.

The inadvertent release occurred within the construction workspace under the construction mat travel lane. This inadvertent release occurred at 8:30PM on July 31, 2021, containment and clean-up were initiated immediately, and was cleaned up and HDD allowed to resume by 3:00AM on August 1, 2021.

(4) August 5, 2021.

One inadvertent release occurred at the same location as the July 31, 2021 inadvertent release. The containment measures had been left in place in case any additional releases occurred; therefore, this additional drilling fluid was completely contained within the previously constructed containment. The other inadvertent release occurred within the construction workspace under the construction mat drill staging area. This wetland was dry at the time of the release. Enbridge has revised the East Savanna River HDD Completion Report to incorporate additional details from this event in the accompanying EI Report (Attachment B).

### **III. Minn. R. 7050.0150, Subp. 3, Determination of Water Quality, Biological and Physical Conditions, and Compliance with Standards; Narrative Standards.**

Section 3 of the AVL identifies events in which MPCA alleges that an HDD drilling fluid release “impaired or endangered the normal aquatic biota and use thereof” and potential violations of Minn. R. 7050.0150, subp. 3, which provides that “the aquatic habitat . . . shall not be seriously impaired or endangered. . . .”

First, most of the inadvertent returns occurred within the permitted workspace where temporary impacts were already anticipated (refer to Section II and Table 2). Second, Enbridge notes that the drilling fluid releases identified in the AVL were promptly cleaned up in accordance with the MPCA-approved plans (refer to Section II and Table 2).<sup>7</sup> Third, Enbridge respectfully submits that there is currently no data to support a conclusion that any incident “seriously impaired or endangered” aquatic biota. Specifically, Minn. R. 7050.0150, subp. 1, provides that MPCA “shall determine an exceedance of water quality standards or an impaired condition based on pollution of the waters of the state from point and nonpoint sources that has resulted in degradation of the physical, chemical, or biological qualities of the water body to the extent that attainable or previously existing beneficial uses are actually or potentially lost.” In making this determination, MPCA considers the factors identified in Minn. R. 7050.0150, subps. 5-7. Subpart 6 applies to “impairment of biological community and aquatic habitat” and is the relevant subpart here. That subpart identifies specific data and factors for MPCA to analyze when considering whether narrative standards are being met. Further, for the purposes of this rule, “seriously impaired” means “that pollution of the waters of the state has resulted in degradation of the physical, chemical, or biological qualities of the water body to the extent that attainable or previously existing beneficial uses are actually or potentially lost.”<sup>8</sup>

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<sup>7</sup> Enbridge notes that it did not conduct HDD activities during the wetland restrictions identified in Section 401 Certification Condition No. 22 to protect aquatic life during sensitive periods.

<sup>8</sup> Minn. R. 7050.0150, subp. 4(B).



As requested by the MPCA on July 29, 2021 and required by the AVL, Enbridge will conduct post-construction monitoring at the wetlands identified in the AVL per the requirements outlined in Section 2.5.2 of the Post-Construction Wetland and Waterbody Monitoring Plan. Further, Enbridge prepared a Special Wetland Communities Vegetation Monitoring Protocol, of which a final version was submitted to MPCA and MDNR on June 1, 2021. This post-construction protocol includes a biological condition gradient model and set of reference points (control areas) for comparison to determine if an impaired condition has, in fact, occurred. Enbridge has revised the Special Wetland Communities Vegetation Monitoring Protocol to include surface waters where inadvertent releases have occurred (Attachment A).

It would be premature for MPCA to make a determination on potential violations until this post-construction monitoring data has been collected, as such data will provide MPCA with the data and analysis required for such a determination under Minn. R. 7050.0150, subp. 6. As such, Enbridge currently disputes the alleged violations identified in Section 3 of the AVL. Enbridge looks forward to coordinating with MPCA regarding the collection of such data and is confident that the data will generally demonstrate that Enbridge's compliance with the relevant construction plans, conditions, and procedures will prove to be protective of waterbodies and aquatic life.

#### **IV. Minn. R. 7050.0186, Wetland Standards and Mitigation; Minn. R. 7050.0210, General Standards for Waters of the State.**

Section 4 of the AVL identifies events in which MPCA alleges that an HDD drilling fluid release “caused pollution and resulted in physical and biological changes causing significant adverse impacts to the designated wetland beneficial uses.” Section 4 identifies events occurring in wetlands (Section A below) and at the Willow River crossing (Section B below). Similar to Enbridge's analysis in Section III above, Enbridge respectfully submits that there is no data at this time that demonstrates that any inadvertent release caused “significant adverse impacts to the designated wetland beneficial uses.” As such, Enbridge currently disputes the alleged violations identified in Section 4 of the AVL.

##### **A. Wetlands.**

Similar to Section III, above, Enbridge respectfully submits that a determination of “significant adverse impacts” is premature at this time. Post-construction monitoring is ongoing in accordance with applicable plans approved by MPCA, and MPCA will receive the results of such monitoring.

As described in Section 5.2 of Enbridge's Antidegradation Assessment, the wetlands crossed by the Project are unlisted and thus have the following classifications:<sup>9</sup>

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<sup>9</sup> Minn. R. 7050.0186.

- Permit the propagation and maintenance of a healthy community of aquatic and terrestrial species indigenous to wetlands, and their habitats. Wetlands also add to the biological diversity of the landscape. These waters shall be suitable for boating and other forms of aquatic recreation for which the wetland may be usable (Class 2D, Minnesota Rules 7050.0221, Subp. 6);
- Permit their use for general industrial purposes, except for food processing, with only a moderate degree of treatment (Class 3D, Minnesota Rules 7050.0223, Subp. 5);
- Permit their use for irrigation and by wildlife and livestock without inhibition or injurious effects and be suitable for erosion control, groundwater recharge, low flow augmentation, storm water retention, and stream sedimentation (Class 4C, Minnesota Rules 7050.0224, Subp. 4);
- Suitable for aesthetic enjoyment of scenery, to avoid any interference with navigation or damaging effects on property (Class 5, Minnesota Rules 7050.0225, Subp. 2); and
- Any additional beneficial uses under other jurisdictions or any standards deemed necessary by the MPCA for the protection of this class, consistent with legal limitations (Class 6, Minnesota Rules 7050.0226, Subp. 2).

Section 7.4.5 of Enbridge’s Antidegradation Assessment provides an overview of the water quality effects potentially associated with an inadvertent release in wetlands. As described therein, the extent and magnitude of any effects vary depending on site specific circumstances. Table 3 below summarizes the potential water quality effects associated with an inadvertent release in wetlands and provides Enbridge’s response regarding any such effects associated with the events identified in the AVL.

**Table 3**

<b>Potential Effects Identified in Section 7.4.5 of Enbridge’s Antidegradation Assessment</b>	<b>Enbridge Response regarding AVL Events</b>
Drilling mud can act as an aquitard limiting groundwater flow in and out of wetland	Enbridge is not aware of this occurring in any situation because the drilling fluid was recovered in a short period of time.
Degradation of soil conditions resulting in reduced wetland plant recruitment and/or survivability	Enbridge is not aware of this occurring; as evidenced by photos included with the HDD completion reports, revegetation has occurred in several areas already. Enbridge will also implement a post-construction monitoring program to evaluate this in the future.

<b>Potential Effects Identified in Section 7.4.5 of Enbridge’s Antidegradation Assessment</b>	<b>Enbridge Response regarding AVL Events</b>
Direct mortality of plants due to smothering	Any direct smothering occurred over a limited area, and drilling fluid was recovered in a short period of time. Further, as evidenced by photos included with the HDD completion reports, revegetation has occurred in several areas already. Enbridge will also implement a post-construction monitoring program to evaluate this in the future.
Elevated total suspended solids (“TSS”), which may result in adverse effects to aquatic invertebrates, fish and their habitat <sup>10</sup>	Enbridge notes that all of the wetlands where an inadvertent release occurred were dry at the time of the event (as identified in Section II(B) in this response). As such, there cannot have been TSS because there would have been no particles suspended in water (because the wetland was dry). If a wetland was inundated, the exceedances of TSS levels associated with an inadvertent release, being temporary in nature and in compliance with the TSS standards, would not permanently preclude attainment of water quality standards and impact existing or beneficial uses.

As stated in Section 7.4.6 of Enbridge’s Antidegradation Assessment, ultimately, the magnitude of the effects to the aquatic environment will be determined by the level of exposure (concentration and time), sensitivity of the organisms (life stage, timing of release), and ability of the waterbody to remove or incorporate the sedimentation (Reid and Anderson, 1998)<sup>11</sup>. The degree of impact will also depend on how well monitoring efforts detect the release and how quickly the released drilling fluid is contained and recovered.

With respect to inadvertent releases in wetlands, the drilling fluid was contained to a highly localized area and was recovered. Table 2 summarizes, for each event, the identified area

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<sup>10</sup> TSS is the “pollutant defined by law” that is being referenced in Minn. R. 7050.0210, Subp. 13. Total suspended soils defined in Minn. R. 7083.0020, Subp. 21 defines total suspended solids as solids that are in suspension in water and that are removable by laboratory filtering, expressed in as mg/l.

<sup>11</sup> Reid, S.M. and P.G. Anderson. 1998. HDD may not be the answer for all sensitive water crossings: Environmental effects of mud release need further study to improve method selection and best practices. Pipe Line & Gas Industry. July 1998.

temporarily impacted within and outside the workspace, the total volume of drilling fluid, details relating to identification and clean up, and condition of the wetland vegetation following clean up.

Although TSS (the pollutant) levels may have been temporarily exceeded, the drilling fluid was removed in a short period of time (generally less than 24 hours). Enbridge has already noted revegetation in these areas and will conduct post-construction monitoring to ensure no long-term effects. Because of these considerations, inadvertent releases which occurred in dry wetlands do not meet the definition of causing a nuisance condition because excessive suspended sediments and material discoloration cannot occur unless there are saturated or inundated conditions (conditions which do not exist in dry wetlands). There is also no evidence to suggest that aquatic habitat degradation has occurred.

Accordingly, based on the data currently available, inadvertent releases that occurred in wetlands have not caused significant adverse impacts (as described in Minn. R. 7050.0186) and therefore is not a violation of that rule. Furthermore, based on the definition of TSS and associated numeric standards, where the inadvertent releases occurred in dry wetlands, the drilling fluid is not a pollutant defined by law, as described in Minn. R. 7050.0210, subp. 13.

Finally, Enbridge notes that, as identified in Section II and Table 2, the majority of the inadvertent releases occurred within the construction workspace (which, as such, was already disturbed). Accordingly, these inadvertent releases are already accounted for in the prior calculation of the Project's mitigation, as identified in the L3R Compensatory Wetland Mitigation Plan dated October 2020 ("L3R Mitigation Plan").

#### **B. Willow River.**

Willow River is classified as a 2Bg water located in the North Nutrient Region with a 15 mg/L TSS numeric standard. The inadvertent release at this location did not exceed numeric standards.<sup>12</sup> However, Enbridge acknowledges that there were suspended solids and material discoloration occurring within the waterbody constituting a "nuisance condition." Nonetheless, the drilling fluid was promptly recovered and did not migrate downstream. As such, Enbridge submits that there is no evidence that there are significant adverse effects at this location under Minn. R. 7050.0186, subp. 1b. Regardless, per the corrective action identified in the AVL, Enbridge has developed a protocol to conduct TSS monitoring in this area, which is submitted as Attachment C. The area will also be monitored under Enbridge's post-construction monitoring effort.

#### **Corrective Actions**

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<sup>12</sup> TSS numeric standard for the North River Nutrient Region is 15 mg/L which may be exceeded for no more than ten percent of the time. This standard applies April 1 through September 30 as defined in Minn. R. 7050.0222, Subp. 3.

The AVL identifies five corrective actions. As noted in the AVL, the first three of these actions have already been completed. Enbridge addresses the remaining corrective actions below.

**I. Update Post-Construction Wetland and Waterbody Monitoring Plan.**

Enbridge has updated the Special Wetland Communities Vegetation Monitoring Protocol to incorporate all wetlands into which an inadvertent release identified in the AVL for Floristic Quality Assessment monitoring. Enbridge has also revised the Plan's maps to include the affected surface waters as survey target areas (Attachment A).

In addition, Enbridge has prepared the Willow River Water Quality Monitoring Plan as requested by the MPCA (Attachment C).

As described above, Enbridge took immediate action at the time of the inadvertent release to reduce the magnitude of the effects and level of exposure to the aquatic environment by immediately discovering, containing, and cleaning up the release within a short duration of time. The Willow River Water Quality Monitoring Plan is designed to confirm that the cleanup of the inadvertent release was effective by sampling for TSS both upstream and downstream of the inadvertent release location; and therefore, establish that potential impacts to the aquatic environment were mitigated.

**II. Plan for compensatory mitigation for all unauthorized temporary impacts to wetlands.**

Enbridge has prepared the attached compensatory mitigation plan and will provide additional compensatory mitigation for those inadvertent releases which occurred within wetlands as required by the MPCA (Attachment D). Enbridge has followed its L3R Mitigation Plan and will provide mitigation using bank credits that Enbridge has purchased within Bank Service Area (BSA) 5 – Mississippi Headwaters. Mitigation credit ratios and multipliers have been applied as outlined in Table 3.0-2 of the L3R Mitigation Plan. Given the temporary nature of the potential impacts, and the lack of any present data indicating permanent impacts, Enbridge's proposal does not include the additional 2.0 unauthorized impact multiplier indicated by the MPCA. Additionally, Enbridge reduced the mitigation to reflect the six inadvertent release locations that occurred within the approved construction workspace where Enbridge has previously provided compensatory mitigation.

**Conclusion**

Enbridge appreciates this opportunity to respond to the AVL and provide additional facts and context concerning the alleged violations identified therein. As noted throughout this response, inadvertent releases are a known and common risk of the HDD crossing method, a method that was approved as the least degrading crossing method for certain crossings, even with this risk. To minimize potential impacts, Enbridge developed site-specific HDD plans approved by the MPCA

and agreed to full-time IEMs to monitor the sites. Many of the inadvertent releases occurred within the approved construction workspace, and mostly in dry wetlands. In every case, containment was deployed immediately, and the sites were generally cleaned up within 24 hours. Moreover, Enbridge agreed to extensive post-construction monitoring at the locations of inadvertent releases to collect data to confirm there were no permanent impacts. As acknowledged in the AVL, there are no ongoing violations. Enbridge respectfully requests that MPCA take all of the considerations in this response into account when further analyzing the events identified in the AVL.

Sincerely,

*Barry P Simonson*

cc:

Katrina Kessler, Commissioner, MPCA  
Melissa Kuskie, MPCA

Enclosures:

Table 2      Horizontal Directional Drill Inadvertent Releases in Surface Waters – Event  
                  Details  
Attachment A Special Wetland Communities Vegetation Monitoring Protocol (November 2021)  
Attachment B Revised East Savanna River HDD Completion Report  
Attachment C Willow River Water Quality Monitoring Plan  
Attachment D Compensatory Mitigation Plan