

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
DETERMINATION ON
WISCONSIN ENVIRONMENTAL POLICY ACT (WEPA) COMPLIANCE
For
Proposed Enbridge Line 5 Relocation Project
September 2024**

INTRODUCTION

The Wisconsin Environmental Policy Act (WEPA), s. 1.11, Wis. Stat., requires state agencies to consider and disclose the environmental effects of agency actions on the quality of the human environment. Chapter NR 150, Wis. Adm. Code, outlines policy and procedures for implementing WEPA for the Wisconsin Department of Natural Resources (DNR). The DNR used the environmental impact statement (EIS) process under s. NR 150.30, Wis. Adm. Code, to analyze the environmental effects of the Enbridge Energy (Enbridge) proposed pipeline relocation, and alternatives to that proposal. At the conclusion of the EIS process, s. NR 150.35(1m), Wis. Adm. Code, requires a final written determination regarding WEPA compliance.

Enbridge owns and operates a liquid petroleum pipeline system that spans more than 17,000 miles across Canada and the United States. Enbridge's Line 5 pipeline runs from Superior, Wisconsin to the upper peninsula of Michigan, across the Straits of Mackinac, into the lower peninsula of Michigan, and terminates in Canada. Line 5 crosses through approximately 12 miles of the Bad River (Mashkiiziibii) Reservation of the Bad River Band of Lake Superior Chippewa.

Enbridge proposes to replace approximately 20 miles of existing Line 5 pipeline in Ashland and Iron counties, including the approximately 12 miles of pipeline that crosses the Bad River Reservation, with approximately 41 miles of new pipeline relocated around the Bad River Reservation to the south. Enbridge would decommission the 12 miles of existing pipeline within the Bad River Reservation plus another approximately 8 miles of pipeline outside the Bad River Reservation. The proposed relocation segment would begin near the intersection of State Highway 137 and State Highway 112 in Ashland County and extend to approximately the intersection of U.S. Highway 2 and State Highway 169 in Iron County.

Construction of the proposed pipeline relocation would include the use of a 120-foot-wide construction right-of-way which would allow for temporary storage of topsoil and subsoil, with a 50-foot-wide permanent right-of-way remaining after construction is complete. Installation of the proposed pipeline would include approximately 35.1 miles of pipe installation via trenched construction and approximately 6 miles of trenchless construction, completed by horizontal directional drilling and direct bore installation. Construction of Enbridge's proposed relocated pipeline would cross a total of 186 waterways and approximately 612 acres of wetlands that were delineated along the proposed project's survey corridor.

Enbridge's proposed project would require permits and approvals from federal, tribal, state, and local authorities. Enbridge has applied to the DNR for the following state permits: waterway permits under ch. 30, Wis. Stat.; wetland permits under s. 281.36, Wis. Stat.; water quality certification under chs. NR 103 and NR 299, Wis. Adm. Code; storm water permit under ch. 283, Wis. Stat.; and hydrostatic test water appropriation and discharge permit under ch. 283, Wis. Stat.

The DNR makes the following findings of fact and conclusions of law, pursuant to s. NR 150.35, Wis. Adm. Code.

FINDINGS OF FACT

1. Section 1.11(2)(c), Wis. Stat., requires a state agency prepare an EIS for major actions that significantly affect the quality of the human environment. The DNR followed the procedures and requirements for preparing an EIS that are set forth in s. NR 150.30, Wis. Adm. Code.

Notification

2. In 2019, Enbridge initiated discussions with the DNR to understand the state permitting process for the proposed project. During these discussions and before any permit applications were filed, the DNR notified Enbridge that the DNR would prepare an EIS for the proposed Line 5 pipeline relocation before any permitting decisions would be made.
3. In February 2020, Enbridge submitted to the DNR its initial application materials for waterways permits and wetland permits under ch. 30, Wis. Stat. and s. 281.36, Wis. Stat.
4. In September 2020, Enbridge submitted to the DNR its initial application materials for coverage under the Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Associated with Land Disturbing Construction Activity General Permit, per ch. 283, Wis. Stat.
5. In September 2020, the DNR notified Enbridge that storm water general permit coverage would not be conveyed within 14 working days, in order to allow for the EIS process to be completed before permitting decisions were made.

Issue Identification and Scoping

6. On June 8, 2020, the DNR issued a public notice announcing a public hearing and public comment period on the proposed scope of the EIS. The public notice included a draft outline of the EIS.
7. The public notice was provided by a class 1 notice, as defined by ch. 985, Wis. Stat., and was published in the Ashland Daily Press, the Glidden Enterprise, and the Mellen Weekly Record on June 17, 2020, and in the Iron County Miner on June 18, 2020.
8. On July 1, 2020, the DNR held a public hearing on the proposed scope of the EIS and on Enbridge's applications for waterway and wetland permits.
9. From June 8, 2020 to July 11, 2020, the DNR accepted written public comments on the proposed scope and received more than 2,100 written comments.

10. The DNR considered the comments received during the public scoping process when determining the scope of the EIS.

Information Gathering and Analysis for Draft EIS

11. Beginning in 2019 and continuing through 2022, the DNR communicated and coordinated with the Public Service Commission of Wisconsin regarding Enbridge’s proposed project.

12. In August 2020, Enbridge provided the DNR with a Revised Environmental Impact Report.

13. Between November 2020 and August 2021, the DNR held five joint technical meetings with staff from the Bad River, Red Cliff, and Lac du Flambeau Bands of Lake Superior Chippewa, and the Great Lakes Indian Fish & Wildlife Commission (GLIFWC), on topics to be included in the Draft EIS.

14. DNR made four formal Information Requests to Enbridge to provide additional information necessary for the EIS analysis:

DNR Information Request Sent to Enbridge	Enbridge Information Response Received by DNR
November 3, 2020	December 11, 2020
February 1, 2021	March 2, 2021; June 11, 2021; June 18, 2021; August 19, 2021; November 5, 2021
September 1, 2021	September 16, 2021; November 5, 2021
October 29, 2021	November 5, 2021

15. In August 2020, the DNR contracted with TRC Environmental Corporation to assist the DNR with preparing a Draft EIS.

16. From March to May 2021, the DNR communicated and met with Iron County regarding the proposed project.

17. In May 2021, the DNR communicated with Ashland County regarding the proposed project.

18. In August and September of 2021, the DNR met with the Wisconsin Department of Agriculture, Trade, and Consumer Protection to receive input on sections of the EIS addressing agricultural resources.

19. In November 2021, the DNR communicated with the Wisconsin Department of Administration’s Wisconsin Coastal Management Program for purposes of coordinating federal consistency between the state and the U.S. Army Corps of Engineers (USACE). The DNR’s conversations and coordination with the Wisconsin Coastal Management Program continued as necessary through 2024.

20. The DNR reviewed and relied upon materials submitted as part of the permit applications when preparing the Draft EIS.

Public Review

21. On November 18, 2021, the DNR shared an advance copy of the Draft EIS with tribal governments, federal agencies, and GLIFWC. The Bad River Band and Red Cliff Band tribal governments and GLIFWC submitted preliminary comments on December 10, 2021.
22. On December 16, 2021, the DNR posted the Draft EIS on its web page and initiated a public comment period.
23. The public notice was provided by a class 1 notice, as defined by ch. 985, Wis. Stat., and was published in the Wisconsin State Journal on January 16, 2022.
24. During the 120-day public comment period from December 16, 2021 to April 15, 2022, the DNR received more than 32,000 written comments, including from four federal agencies, nine Tribes and GLIFWC, the Government of Canada, one state legislator, eleven municipalities and the Wisconsin Counties Association, Enbridge, environmental organizations, labor unions, and thousands of members of the public.
25. On February 2, 2022, the DNR held a public hearing on the Draft EIS. Over 160 individuals testified during the ten-hour hearing.
26. On May 25, 2022, the DNR met with the U.S. Environmental Protection Agency (EPA) to discuss EPA's comments on the Draft EIS and discuss approaches for addressing the comments.
27. On June 8, 2022, the DNR met with EPA and the USACE to further discuss the Draft EIS.
28. In October 2022, the DNR resumed regular technical meetings with staff from tribal natural resources agencies and GLIFWC to share information and discuss approaches for addressing tribal comments. Multiple technical meetings with tribal resource agency staff took place between October 2022 and April 2024.
29. Starting in June 2020, the DNR has maintained a webpage dedicated to the Enbridge EIS process. The webpage has been updated periodically to add materials and documents as they have been received. It includes a feature allowing members of the public to subscribe to receive email alerts about the Enbridge EIS process and webpage updates. The following is a non-exclusive list of the materials, documents, and information available on the webpage:
 - The public scoping process, including the public notice, the draft outline of the EIS, a video recording of the July 1, 2020 public hearing on scoping, and all written comments received (over 2,100 comments);
 - The Draft EIS and all appendices;
 - Tribal government and GLIFWC preliminary comments received on the Draft EIS;
 - The video recording of the February 2, 2022 public hearing on the Draft EIS, and all written comments received during the December 16, 2021 to April 15, 2022 public comment period (over 32,000 comments);

- All formal Information Requests to Enbridge, and corresponding Enbridge responses;
- Documents and reports on Enbridge’s environmental plans and commitments, including the spills analysis report;
- Links to the wetlands, waterways, and storm water permit applications and materials;
- Summaries of the major actions and steps taken by the DNR, Enbridge, and other entities throughout the WEPA process;
- Information about and links to other involved federal, tribal, state and local regulatory entities.

30. The DNR considered all public comments and stakeholder input when revising the Draft EIS. The DNR prepared the DNR Response to Public Comments that summarizes the public comments received during the draft EIS phase and the DNR’s response to comments.

Additional Analysis and Information Gathering for Final EIS

31. Enbridge contracted with RPS Group and DNV GL USA, Inc., to conduct a spills analysis. These consultants modeled the risk and potential effects of oil spills from the proposed and alternative routes, as well as inadvertent releases of horizontal directional drilling fluids (frac-outs) and sediment discharged during pipeline construction at stream crossings.

32. In July 2022, Enbridge and its consultants met with the DNR, USACE, and the federal Pipeline and Hazardous Material Safety Administration (PHMSA) to present Enbridge’s general approach to their spills analysis.

33. In September 2022, Enbridge submitted a Draft Water Quality Monitoring Plan for the proposed relocation project to the DNR and USACE.

34. In December 2022, Enbridge met with DNR, USACE, PHMSA, and EPA to present the analytical methods and preliminary findings of the spills analysis.

35. Between January and March 2023, Enbridge and its consultants held three meetings with tribal agencies, GLIFWC, the DNR, and federal agencies to present their spills analysis work.

36. In May 2023, the DNR entered into a Collaborative Agreement with the United State Geological Survey (USGS) to provide technical expertise for evaluating erosion, sediment dispersion, and oil spills modeling work.

37. USGS advised on the effects of spills on the water resources within the Bad River Watershed, including reviewing and evaluating spills modeling reports and assembling information necessary to evaluate the environmental effects of the proposed relocation project.

38. In July 2023, Enbridge submitted an update to its Environmental Justice Commitment Plan that included an Environmental Justice Assessment report and a summary of Enbridge’s community outreach.
39. Between June and November 2023, DNR staff visited numerous sites along Enbridge’s proposed relocation route and surrounding area, including the Bad River Reservation, to corroborate information submitted by Enbridge, develop a better understanding of proposed construction activities, view potentially impacted resources, and collect environmental information and photographs of the area. Staff from the Bad River Band’s Mashkiiziibii Natural Resources Department accompanied DNR staff on several of these visits.
40. On February 2, 2024, Enbridge submitted a revised Water Quality Monitoring Plan.
41. Between February and July 2024, Enbridge submitted additional information including site-specific erosion and sediment control plans and maps, details on proposed temporary clear span bridges, site-specific drawings showing proposed bank stabilization methods/channel remediation, a Wetland and Waterbody Restoration and Post Construction Monitoring Plan, and an Invasive and Noxious Species Management Plan.
42. Between October 2022 and January 2024, the DNR and USACE made eight additional formal Information Requests to Enbridge for the agencies’ respective environmental impact analyses. These requests were coordinated to avoid duplication:

Information Request Sent to Enbridge	Enbridge Information Response Received by DNR
October 31, 2022 (DNR)	November 30, 2022
December 9, 2022 (USACE)	January 19, 2023; July 13, 2023; December 22, 2023; January 22, 2024; February 15, 2024
March 10, 2023 (DNR)	June 5, 2023
August 15, 2023 (DNR)	October 16, 2023
October 13, 2023 (DNR)	November 22, 2023; February 2, 2024
October 20, 2023 (DNR)	February 1, 2024
November 21, 2023 (DNR)	December 27, 2023; February 9, 2024
January 29, 2024 (DNR)	February 9, 2024; multiple responses through August 2024

43. In 2023 and 2024, the DNR requested information regarding natural and cultural resources from the Bad River Band and GLIFWC. The DNR also relied on reports and information from the GLIFWC website and publicly available documents.
44. In November 2023, the DNR obtained the services of a member of the Bad River Band, who is also a former Tribal Historic Preservation Officer, to review materials the DNR compiled and drafted related to cultural resources and Ojibwe worldviews.

45. From March to May of 2024, the DNR communicated with Tribal Historic Preservation Officers regarding tribal cultural resources.
46. Since the beginning of the WEPA process in 2020 and ongoing through the development of the Final EIS, the DNR has had continuous, ongoing, and frequent communication and meetings with Enbridge and its consultants regarding the proposed project.
47. Since the beginning of the WEPA process in 2020 and ongoing through the development of the Final EIS, the DNR has had continuous, ongoing, and frequent communication and meetings with local, state, and national environmental advocacy organizations regarding the proposed project.

Final EIS

48. In conducting the EIS analysis, the DNR reviewed and relied upon materials submitted as part of the EIS process and as part of the permit applications.
49. The DNR considered all public comments and information compiled when preparing this EIS. The DNR has included in its Final EIS the DNR Response to Public Comments that summarizes the public comments received and the DNR's response to comments.
50. On September 6, 2024, the DNR announced the availability of the Final EIS. The EIS and the Response to Public Comments are available on the DNR's website, in compliance with s. NR 150.50, Wis. Adm. Code.

CONCLUSIONS OF LAW

1. The Department of Natural Resources, pursuant to s. 1.11, Wis. Stat., and ch. NR 150, Wis. Adm. Code, has the responsibility to comply with WEPA and the authority to determine its compliance with that Act.
2. The DNR's procedures and process summarized in the Findings of Fact and the Final EIS for the Proposed Enbridge Line 5 Relocation Project satisfied the DNR's obligations under WEPA and ch. NR 150, Wis. Adm. Code.

Dated at Madison, Wisconsin, this the 6th day of September 2024.

STATE OF WISCONSIN

Department of Natural Resources

For the Secretary

By:



Dreux J. Watermolen

Bureau of Environmental Analysis and Sustainability