

Minnesota House of Representatives



Minnesota State Senate

Commissioner Laura Bishop
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Via email: laura.bishop@state.mn.us

July 29, 2020

Dear Ms. Bishop,

We write as members of the House and Senate Climate Action caucuses to request that the Minnesota Pollution Control Agency (PCA) deny issuance of the agency's 401 Water Quality Certification for the proposed Enbridge Line 3 Pipeline expansion.

The water quality certification would directly counteract many of the initiatives and goals the PCA has adopted. Denying this certification is not only possible, it is the only acceptable outcome for this project.

- I. **The construction and operation of the Line 3 expansion will unacceptably degrade Minnesota's waters and wetlands.**
 1. **This Line 3 expansion cannot meet Minnesota's water quality standards.**

Nearly half of the proposed 340-mile pipeline route through Minnesota will be along a new corridor. The pipeline will make 227 crossings of our state's most pristine waters and wild rice beds, and impact over 11,000 acres of wetlands. Tar sands oil is unique in comparison to other forms of crude. It sinks in water, making it virtually impossible to entirely remove once leaked. But even if the pipeline never leaks, the very construction and operation of the pipeline will unacceptably degrade Minnesota's best waters.

The *Preliminary Anti-Degradation Determination for 401 Certification* prepared by the PCA finds that degradation of Minnesota's high quality waters is "unavoidable", will create "physical alteration to surface waters," and will create "functional loss to streams...resulting from open trench crossing methods and permanent impacts to riparian buffers".

These water quality impacts alone are sufficient to deny issuance of the 401 Water Quality Certification Enbridge has requested.

2. The PCA has provided no balancing of environmental damage against social or economic purposes.

The PCA should not issue a permit by relying on a rule that allows for environmental degradation.

According to the Anti-degradation rules:

The commissioner shall approve a proposed activity only when the commissioner makes a finding that lower water quality resulting from the proposed activity is necessary to accommodate important economic or social changes in the geographic area in which degradation of existing high water quality is anticipated (Minnesota Rules 7050.0265 Subpart 5 paragraph B)

This requires that the PCA itself must make an independent determination that the water degradation resulting from the project is necessary for the public good. This analysis was not performed as part of the Public Utilities Commission Certificate of Need or Route Approval decisions.

Yet, the PCA has adopted the PUC's findings and conclusions regarding important economic and social changes rather than offering an analysis of its own. This turns the key question of *whether* the project should be permitted into *how* it should be permitted and abdicates the PCA's responsibility. We argue that Line 3 itself is in fact contrary to the public good, and the necessary economic and social change we need is the building of the sustainable green economy, not a 50-year commitment to the dirtiest fossil fuels on the planet.

3. The draft permit does not take into account PCA's own projections for increasingly frequent extreme weather events.

The MPCA properly recognizes the scientific and data driven reality of climate change in the state. As such the agency has studied the effects of climate change and outlined mitigation and adaptation strategies. The MPCA's statement concerning the likelihood of the increasing frequency of extreme precipitation events is particularly important in the context of the 401 permit.

The agency concludes on its website that, "rainfalls usually accompanied by heavy storms can cause flash flooding and sudden and intense floods can cause significant property damage." The agency further states, "Northern Minnesota is experiencing warming trends more quickly than the rest of the state, and notes that "changes in tree cover are accompanied by changes in the understory and soil."

It is deeply concerning that in the discussion of the 401 water quality certification the MPCA does not acknowledge its own observations and data on climate change in preparation of the draft permit. There is no mention of the impacts of the how likely flash floods and extreme weather events in the Mississippi and Lake Superior watersheds in the coming years could impact the frequency and severity of possible oil spills along the pipeline corridor.

II. The Line 3 expansion project is inconsistent with the PCA's environmental justice goals and policies.

This expansion will cross and despoil treaty lands, put waters and people at risk, and violate treaty rights.

The treaties of 1842, 1854, and 1855, guarantee the Anishinaabeg (Ojibwe) rights to hunt, fish, gather medicinal plants, cultivate and harvest wild rice, and preserve sacred or culturally significant sites. These treaties are still living and require adherence.

The Red Lake, White Earth, and Mille Lacs bands strongly oppose this project, along with Honor the Earth. As Commissioner Matthew Schuerger of the Public Utilities Commission pointed out, "the tribes hold usufructuary hunting, fishing and gathering rights and the project will directly, materially and adversely impact many Indigenous populations." Schuerger also wrote that the Mille Lacs and Fond du Lac Bands have highlighted significant risks to wild rice beds and Big Sandy Lake from the project.

The PCA's draft permit does not mention these risks, nor does it acknowledge treaty rights violations inherent in issuing the permit. Tribes of Minnesota should not be made to sacrifice the health of critical water resources and lands for the sake of an unnecessary tar sands pipeline.

III. Permit approval would negate all PCA climate change goals and policies.

All progress on greenhouse gas emission reductions will be irretrievably reversed.

Approval of the Line 3 expansion will annually add more greenhouse gas emissions to the atmosphere than our total yearly state emissions from every sector combined (based on 2016 data from the PCA). Minnesota cannot make a positive contribution to the planet's fight against the climate crisis if it also enables this pipeline to move forward. The emissions from this Line 3 expansion will negate and reverse every other initiative the PCA could reasonably undertake to address climate and protect our state.

For instance, the PCA's Clean Cars Initiative aims to reduce pollution from cars, but permitting Line 3 is the equivalent of adding 38 million vehicles to MN roads.

In order to meet greenhouse gas emissions reduction goals adopted on a bi-partisan basis by the MN legislature in 2007 (which we must note the state is significantly behind in achieving), the PCA is currently undertaking initiatives to facilitate our state's transition to less polluting vehicles.

We strongly support the state's Clean Cars initiative and believe adoption of those rules would be a significant step in reducing greenhouse gas emissions from the transportation sector. But approving Line 3 is the equivalent of adding 38 million fossil-fuel powered cars to our roads -- and having them drive around for the next 30 - 50 years! The extra emissions from this Line 3 expansion will be five times greater than our state's current transportation emissions. Efforts to electrify our transportation sector in order to reduce greenhouse gas emissions are near meaningless if Minnesota also enables the emissions from the expanded Line 3.

The PCA permitting practice should account for the harm from greenhouse gas emissions as the climate consequences of permitting this pipeline are devastating.

Each of these reasons alone -- water quality degradation, environmental justice harms, climate consequences -- are sufficient in themselves to deny Enbridge's request for a water permit. Regardless of any case for need, they make approval of this water crossing permit clearly unacceptable.

IV. MN Dept. of Commerce in 2017 found that Enbridge has not established the need for this project as required under state law.

In 2017 the Department of Commerce concluded that the Line 3 proposal does not meet Minnesota's legal bar to establish need for the project, due in part to Enbridge's failure to supply an oil demand forecast. Enbridge inappropriately defined demand as oil companies wanting to ship oil through their pipeline if it were built, not a demand by end users for the oil. As PUC Commissioner Schuerger wrote in his dissent in May 2020, "the absence of an accurate, reliable, demand forecast is a fatal flaw".

Furthermore, the Department of Commerce concluded this oil was in fact *not* needed for regional oil demand. Since 2017, oil demand has only been declining, and with COVID-19 the demand has dropped precipitously.

Minnesota should not choose to bear so many risks for a project that we simply do not need.

It is crucial to understand that the Department of Commerce, the executive branch agency charged with determining need, concluded that the Line 3 expansion was, in fact, not needed.

V. The PCA has the authority and responsibility to deny this application for a water quality certification.

The PCA has the authority to deny this permit.

Since the Line 3 expansion project will fill and or excavate protected wetlands, Enbridge has applied for a permit from the US Army Corps of Engineers under the federal Clean Water Act, Section 404 -- the section of the act which governs the placement of dredged material in wetlands. This 404 permit requires Enbridge to also request a water quality certification from the state, under the Clean Water Act, Section 401. Minnesota's state entity charged with reviewing the project impacts is the Pollution Control Agency. If the review concludes that water quality will be protected, issuance of the water quality certification may be granted. But as highlighted on page 1 of this letter, the PCA did not conclude that water quality would be protected. The PCA concluded that degradation of Minnesota's high-quality waters is "unavoidable," will create "physical alteration to surface waters," and will create "functional loss to streams... and permanent impacts to riparian buffers" across over 150 miles of Minnesota's most pristine lands and waters.

While timing is dictated by federal statute, the outcome is not.

From the PCA's website:

To accommodate a contested case hearing, the MPCA received approval by the U.S. Army Corps of Engineers to extend its deadline for the 401 certification from August 15 to November 14, 2020. The MPCA is required by the Clean Water Act to make a final decision regarding the 401 certification by November 14, 2020, which is one year after Enbridge submitted its application.

The decision to issue the water quality certification rests squarely with your agency.

Though the Trump administration has made attempts to roll back states' authority in the 401 certification process, the Clean Water Act still requires the PCA to exercise its judgment in protection of water resources. Proactively ceding this authority is not supported by law or even recent rule changes. In addition, multiple legal challenges are underway against these rule rollbacks, positioning the PCA well to follow its best practices and the advice of its scientists to deny the 401 certification and avoid degradation of Minnesota waters.

As policy makers confronting the climate crisis, we have joined public and private sector partners to take action to address the urgent need to reverse growing levels of greenhouse gas emissions. We want those actions to matter.

We request the PCA utilize its authority and deny Enbridge's application for a 401 Water Certification Permit for the Line 3 project.

Thank you for your consideration.

Sincerely,



Frank Hornstein – 61A
State Representative



Kaohly Her – 64A
State Representative



Hodan Hassan – 62A
State Representative



Rick Hansen – 52A
State Representative



Alice Hausman – 66A
State Representative



Lyndon Carlson – 45A
State Representative



Dave Pinto – 64B
State Representative



Aisha Gomez – 62B
State Representative



Mohamud Noor – 60B
State Representative



Hunter Cantrell – 56A
State Representative



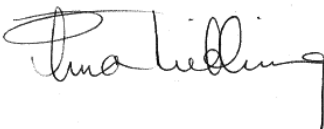
Todd Lippert – 20B
State Representative



Kelly Morrison – 33B
State Representative



Fue Lee – 59A
State Representative



Tina Liebling – 26A
State Representative



Jim Davnie – 63A
State Representative

Mike Freiberg – 45B
State Representative

Jean Wagenius – 63B
State Representative

Mary Kunesh-Podein – 41B
State Representative

Jamie Becker-Finn – 42B
State Representative

Connie Bernardy – 41A
State Representative

Patty Acomb – 44B
State Representative

Sandra Masin – 51A
State Representative

Jamie Long – 61B
State Representative

Raymond Dehn – 59B
State Representative

Sydney Jordan – 60A
State Representative

Carlos Mariani – 65B
State Representative

Sandra Pappas – SD 65
State Senator

Chris Eaton – SD 40
State Senator

D. Scott Dibble – SD 61
State Senator

Bobby Joe Champion – SD 59
State Senator

Patricia Torres Ray – SD 63
State Senator

Fong Hawj – SD 67
State Senator

John Marty – SD 66
State Senator

Carolyn Laine – SD 41
State Senator

CC: Charles Sutton, Policy Advisory, Office of Governor Tim Walz and Lt. Governor Peggy Flanagan
Greta Gauthier, Assistant Commissioner for Legislative and Intergovernmental Affairs, MPCA