

RICHARD G. NIESS
CIRCUIT COURT, BR 9

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH *

DANE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 2008-CX-24

Complex Forfeiture: 30109

ENBRIDGE ENERGY, Limited
Partnership
A foreign limited partnership
119 North 25th Street East
Superior, WI 54880-5247,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

CIRCUIT COURT
DANE COUNTY WI
08 DEC 23 AM 9:14

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CIVIL SUMMONS

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

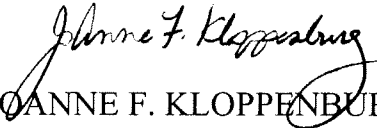
Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court

may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Carlo Esqueda, Clerk of Circuit Court, Dane County Courthouse, 215 South Hamilton Street, Rm. 1000, Madison, Wisconsin 53703, and to JoAnne F. Kloppenburg, Assistant Attorney General, plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 19th day of December, 2008.

J.B. VAN HOLLEN
Attorney General


JOANNE F. KLOPPENBURG
Assistant Attorney General
State Bar #1012239

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9227

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CIVIL COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General JoAnne F. Kloppenburg, brings this complaint against Enbridge Energy, Limited Partnership, at the request of the Wisconsin Department of Natural Resources and pursuant to Wis. Stat. §§ 30.03(2) and 299.95, and alleges as follows:

1. Plaintiff is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted, in Wis. Stat.

chs. 30 and 281, statutes intended to protect public rights in navigable waters and to protect, maintain and improve the quality and management of all waters of the state. Its Department of Natural Resources administers regulations and issues permits and water quality certifications authorized by these statutes.

2. Defendant Enbridge Energy, Limited Partnership, is a foreign limited partnership with its principal foreign office located at 1209 Orange Street, Wilmington, Delaware 19801, its principal Wisconsin office located at 119 North 25th Street East, Superior, Wisconsin 54880-5247, and its registered agent located at CT Corporation System, 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

3. Since January 2007, in the course of constructing two parallel pipelines through 14 counties in Wisconsin, defendant, itself and through its agents, has performed work in and around wetlands and navigable waterways that resulted in violations of its permits and water quality certifications, causing harm to wetlands and navigable waterways and to public interests in the preservation of and protection of quality water resources, in violation of Wis. Stat. chs. 30 and 281.

APPLICABLE STATUTES, RULES AND PERMITS

4. Under Wis. Stat. §§ 281.11-12 and 281.15, the Department of Natural Resources has promulgated rules and standards that protect the public interest in the waters of the state. Wisconsin Stat. § 281.01(18) defines "Waters of the state" as:

all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

The Department promulgated Wis. Admin. Code chs. NR 103 and 299, setting forth water quality standards and requirements of water quality certification, pursuant to Wis. Stat. ch. 281 to protect Wisconsin's wetland and water resources.

5. Under Wis. Stat. § 281.17(10)(b) and 281.36(2)(a), no person may violate a condition imposed by the Department in a water quality certification required by Wis. Admin. Code chs. NR 299 and 103 or Wis. Stat. § 281.36(2).

6. Under Wis. Stat. ch. 30, the Department of Natural Resources has promulgated rules and standards that protect the public interest in navigable waters.

7. Under Wis. Stat. § 30.12, the Department issues permits for the deposit of material and placement of structures on the beds of navigable waters.

8. Under Wis. Stat. § 30.123, the Department issues permits to place bridges or culverts in, on, or over navigable waters, and in Wis. Admin. Code ch. NR 320 the Department has established standards for the placement of bridges and culverts in or over navigable waters.

9. Under Wis. Stat. § 30.19(1g)(c), the Department issues permits for the grading of or removal of topsoil from more than 10,000 square feet on the banks of navigable waters, and in Wis. Admin. Code ch. NR 341 the Department has established standards for grading on the banks of navigable waters.

10. Under Wis. Admin. Code § NR 341.03(4), grading "means the physical disturbance of the land surface by the addition, removal or redistribution of soil."

11. Wisconsin Admin. Code § NR 341.05 requires that grading on the bank of a navigable water follow Best Management Practices/Technical Standards for Erosion and Sediment Control consistent with Wis. Admin. Code § NR 216.46(6), and comply with the construction site performance standards of Wis. Admin. Code § NR 151.11.

12. Under Wis. Stat. § 30.20, the Department issues permits for the removal of material from the beds of navigable waters, and in Wis. Admin. Code ch. NR 345 the Department has established standards for removal of material from the beds of navigable waters.

13. On November 27, 2006, pursuant to Wis. Stat. §§ 30.12, 30.123, 30.19, 30.20, 281.15 and 281.36, and to Wis. Admin. Code chs. NR 103, 216, 299, 320, 341 and 345, the Department of Natural Resources issued defendant Enbridge Energy, Limited Partnership, a permit to place temporary bridges and related structures in or adjacent to navigable waterways, a permit to grade in excess of 10,000 sq. ft. on the banks of navigable waterways, a permit to remove materials from the beds of navigable waterways, and a water quality certification to discharge fill in wetlands, for the purpose of constructing two parallel pipelines along 321 miles between Superior and the Whitewater area, Wisconsin. These permits, IP-2006-N10001 through IP-2006-N11489, are attached as Exhibit A and are referred to as the “permit” in this complaint.

VIOLATIONS

14. A true and correct copy of a map showing the path of the pipeline construction involved in this action and the mile posts along that path is attached as Exhibit B.

15. As required by its permit, independent environmental monitors paid for by defendant Enbridge have since the start of the pipeline project inspected activities regulated by the permit and as a matter of State law. The independent environmental monitors reported directly to the Department of Natural Resources by submission of individual Compliance Status Reports.

16. The violations identified in this complaint are based on the Compliance Status Reports submitted by the independent environmental monitors, and all other information known by the Department of Natural Resources at the time of the filing of this Complaint. The violations are listed in the Violations Table attached to this complaint as Exhibit C.

17. In the paragraphs that follow, "defendant" refers to defendant and its agents and contractors working on the pipeline project.

A. Wetland Violations

18. Between January 15, 2007 and December 15, 2008, defendant undertook activities in wetlands in violation of Wis. Stat. §§ 281.17(10)(b) or 281.36(2)(a), as listed in the Violations Table attached to this Complaint as Exhibit C.

B. Structure/Material on Streambed Violations

19. Between February 22, 2007, and December 15, 2008, defendant undertook activities on streambeds in violation of Wis. Stat. § 30.12, 30.19, 30.20 or 30.123, as listed in the Violations Table attached to this complaint as Exhibit C.

C. Bridge Violations

20. Between January 22, 2007, and December 15, 2008, defendant undertook activities relating to bridges in violation of Wis. Stat. § 30.123, as listed in the Violations Table attached to this complaint as Exhibit C.

D. Land disturbance and erosion control violations near navigable waters and wetlands.

21. Between January 20, 2007, and December 15, 2008, defendant undertook activities relating to land disturbance and erosion control near navigable waters and wetlands in violation of Wis. Stat. § 30.19(1g)(c) and Wis. Admin. Code § NR 341.05 and chs. 103 and 299, as listed in the Violations Table attached to this complaint as Exhibit C.

E. Other violations

22. Between January 27 and December 15, 2007, defendant drove across waterbodies in violation of Wis. Stat. § 30.29, failed to maintain downstream flow in violation of Wis. Stat. § 30.12, failed to properly handle intakes, to provide notification of frac-outs, to handle equipment and refueling, and failed to follow turtle exclusion

fencing protocols in violation of its permit, as listed in the Violations Table attached to this complaint as Exhibit C.

PENALTY PROVISIONS

23. Wisconsin Admin. Code ch. NR 299 was adopted under the authority of Wis. Stat. ch. 281.

24. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce chapter 281 and all rules promulgated and water quality certifications issued under the chapter, and authorizes the circuit court for Dane county to enforce chapter 281 and all rules promulgated and water quality certifications issued under the chapter.

25. Wisconsin Stat. § 281.98(1) provides that any person who violates chapter 281 or any rule promulgated or water quality certification issued under that chapter, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

26. Wisconsin Stat. § 281.98(2) provide that the court may, in addition to imposing penalties, order a defendant to pay the state's reasonable and necessary investigation and prosecution expenses including attorney fees.

27. Wisconsin Stat. §§ 30.03(2) and 30.298 authorize the Wisconsin Attorney General to enforce violations of Wis. Stat. ch. 30 and any permits issued under that chapter, by the imposition of forfeitures.

28. Wisconsin Stat. § 30.298(1) provides for a forfeiture of not more than \$10,000 and not less than \$100 for a first offense under Wis. Stat. §§ 30.123, 30.19 and

30.20, and for a forfeiture of not more than \$10,000 and not less than \$500 for subsequent offenses.

29. Wisconsin Stat. § 30.15(1)(d) and (3) provides for a forfeiture of not more than \$500 and not less than \$10 for each day that a structure or material is on the bed of a navigable water in violation of § 30.12.

RELIEF REQUESTED


The plaintiff asks for judgment against the defendant as follows:

1. Assess against the defendant the forfeitures provided for in Wis. Stat. §§ 30.15(1), 30.298(1) and 281.98(1) for each day of violation, the 26 percent penalty surcharge provided for in Wis. Stat. § 814.77(11), the 10 percent environmental surcharge provided for in Wis. Stat. § 814.77(5), the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2), the \$68 court support services surcharge pursuant to Wis. Stat. § 814.77(1m), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.77(7), and the \$12 justice information system surcharge pursuant to Wis. Stat. § 814.77(8).

2. Assess against the defendant the costs and disbursements of this action, including investigation and prosecution costs and attorney fees under Wis. Stat. § 281.98(2).

Dated this 19th day of December, 2008.

J.B. VAN HOLLEN
Attorney General


JOANNE F. KLOPPENBURG
Assistant Attorney General
State Bar #1012239

Attorneys for Plaintiff State of Wisconsin

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