



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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January 26, 2007

Shaun Kavajecz
Enbridge Energy, LP
119 N. 25th Street East
Superior, WI 54880-5247

Subject: NOTICE OF NONCOMPLIANCE
Permittee Name: Enbridge Energy, LP
Site Name: Southern Access Expansion Project
Docket: IP-2006-N10001 through IP-2006-N11489

Dear Mr. Kavajecz:

I am writing in response to recent activities that occurred during construction of Enbridge Energy's Southern Expansion Project. We need a full report from you explaining the details of each incident listed below, the efforts you have taken to address the resulting impacts to the environment, and the efforts you have taken to address your process to prevent such actions in the future.

The Department of Natural Resources (Department) permit for this project includes jurisdiction under Ch. 30.12, 30.123, 30.19, 30.20, 281.36 (Wis. Stats.), and NR 103 and 299 (Wis. Adm. Code). The Department permit for this project requires the permittee to comply with specific plans, sequencing, and erosion control measures in order to prevent impacts to waterways and wetlands.

- 1) Inspection Date: 1-13-07
Report # 1A-DB-002
A bridge was placed over a waterway that had not been previously identified as a waterway. The Department sent an email dated 1-17-2007 outlining several questions. This issue is pending until a response is submitted.
- 2) Inspection Date: 1-16-2007
Report # 1B-JVV-003 NCR, wetland DO-W123
Tree stumps were being removed from the temporary work space which is not in compliance with the application which is approved in the permit. Significant rutting took place which is not in compliance with permit conditions 78 and 82 due to the travel on unstable soils conditions. The stumps were then buried in the wetland, which is not an authorized fill material.
- 3) Inspection Date: 1-17-07
Report # 1A-DB-004, wetland DO-W33
Clearing in a wooded wetland took place beyond the permitted area (permit condition 90).
- 4) Inspection Date: 1-18-07
Report # 1A-DB-005, wetland DO-W60
Clearing in a wetland took place beyond the permitted area (permit condition 78).
- 5) Inspection Date: 1-19-07
Report # 1A-DB-006, previously unidentified wetland between DO-W32 and DO-W33

Clearing took place in this wetland beyond the permitted width for the temporary workspace (permit condition 78). Explain how you plan to deal with previously unidentified wetlands, and insert the plan in to the Environmental Construction Plan (ECP).

6) Inspection Date: 1-20-07

Report # 1A-DB-007, wetland DO-W8, DO-W94 and Nemadji River (DO-S4)

Erosion control devices were not in place prior to grading adjacent to waterways and wetlands, which is not in compliance with the permit (permit conditions 32, 34, 39, 40).

7) Inspection Date: 1-22-07

Report # 1B-JV-007, wetland WA-W17 and WA-S3

Clearing in a wetland took place beyond the permitted area. The WA-S3 waterway bridge was potentially placed below the ordinary high water mark (OHWM). Provide the information as to whether or not that took place. The waterway is permitted to be crossed by a temporary clear span bridge made of mats.

8) Inspection Date: 1-25-07

Report # 1A-DB-009, waterway DO-S5

Stream bank was excavated below the (OHWM) which is not in compliance with the permit (permit condition 47). Structures were placed below the OHWM during the clear span bridge installation, which by definition, is not in compliance with the permit (permit condition 53).

In an effort to address the noncompliance issues listed above, Enbridge sent an email dated January 19, 2007, stating that Enbridge is aware of the noncompliance issues and has temporarily suspended clearing practices in wetlands while implementing corrective measures.

We have set up a meeting with an Environmental Enforcement Specialist in Madison in Room 613, at the DNR Headquarters on February 5, 2007, to discuss this issue. We request that you prepare and present a report detailing the facts of these incidents. The report must include the nature of each incident, the timing details, how and when the site was or will be restored, what you did to address the incident at the site and what you did to address the process breakdowns that resulted in noncompliance. The report shall be submitted to the Department on or before January 31, 2007.

If you have any questions concerning the contents of this letter or the permit, please contact me at (608) 267-2770.

Sincerely,

Thomas M. Boos II
Water Management Specialist
Office of Energy

cc: William Sande- ACOE
Michelle DeBrock-Owens- WDNR (NOR – Spooner)
Tom Hess- Merjent
Amy Smith- WDNR (AD/5)
Dave Edwards- WDNR (LE/5)