



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

Headquarters
101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-5231

March 16, 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: 1-27-07
Report # 1B-JV-011
Tracks from a vehicle were documented below OHWM of a waterway which requires prior authorization from the WDNR and is not in compliance with permit conditions # 10 and 16.
- 2) Inspection Date: 2-17-2007
Report # 1B-JV-023
No resource monitor was present at the cultural site during trenching, which is not in compliance with permit conditions # 10 and 16.
- 3) Inspection Date: 2-20-07
Report # 1A-DB-030, DO-W13
Topsoil was not segregated from the subsoil which is not in compliance with permit conditions # 10 and 16.
- 4) Inspection Date: 3-05-07
Report # 1A-DB-039, DO-W79
Dewatering process was not adequate, thus sediment laden water was documented in the wetland which is not in compliance with permit conditions # 10, 26 and 27.
- 5) Inspection Date: 3-05-07
Report # 1A-DB-039, DO-S10
Dewatering process was not adequate, thus sediment laden water was documented entering the waterway which is not in compliance with permit conditions # 10, 26 and 27.

- 6) Inspection Date: 3-09-07
Report # 1B-JV-044, DO-W86, 88, 89
Erosion control devices were not properly implemented to prevent soil laden runoff from entering the wetlands which is not in compliance with permit conditions # 31, 32, 39, 40.
- 7) Inspection Date: 3-09-07
Report # 1B-JV-036, WA-W10
Topsoil was not properly segregated from the subsoil which is not in compliance with permit conditions # 10 and 16.
- 8) Inspection Date: 3-11-07
Report # 1A-DB-046, Bluff Creek
Soil was deposited below the OHWM which is not in compliance with permit conditions # 16 and 61.
- 9) Inspection Date: 3-12-07
Report # 1A-DB-047, DO-W25
Excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 10) Inspection Date: 3-12-07
Report # 1A-DB-047, DO-W79, 81-89
Erosion control devices were not properly implemented to prevent soil laden runoff from entering the wetlands which is not in compliance with permit conditions# 31, 32, 39, 40. Also, excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 11) Inspection Date: 3-12-07
Report #2-JV-016, TA-W16
Erosion control devices were not properly implemented to prevent soil laden runoff from entering the wetlands which is not in compliance with permit conditions # 31, 32, 39, 40.
- 12) Inspection Date: 3-12-07
Report #2-JV-016, RU-W27
Erosion control devices were not properly implemented to prevent soil laden runoff from entering the wetlands which is not in compliance with permit conditions # 31, 32, 39, 40. Also, excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 13) Inspection Date: 3-13-07
Report # 1A-DB-048, DO-W25, 26
Excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 14) Inspection Date: 3-13-07
Report # 1A-DB-048, DO-W24
Excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 15) Inspection Date: 3-13-07
Report # 1A-DB-048, DO-W22
Excessive rutting documented in wetland which is not in compliance with permit condition #82.
- 16) Inspection Date: 3-13-07
Report # 1B-JV-039, WA-W17
Erosion control devices were not properly implemented to prevent soil laden runoff from entering the wetlands which is not in compliance with permit conditions # 31, 32, 39, 40.
- 17) Inspection Date: 3-14-07
Report # 1B-JV-040
Upland soils bladed into wetland which is not in compliance with permit conditions # 10, 16, 78.
- 18) Several other reports indicate upland soil was placed in the wetland for storage which is not in compliance with permit condition # 37.

Since the previous Notice of Noncompliance, dated January 26, 2007, Enbridge and WDNR have implemented a noncompliance tracking table to address the noncompliance reports and state the action

taken and how it will be resolved in the future. In an effort to address some of the noncompliance issues listed above, Enbridge called the WDNR on March 14, 2007, stating that Enbridge is aware of the noncompliance issues and has temporarily suspended activity in areas identified in the reports. You shall document which areas activities have been suspended and to what extent.

Because many of these non-compliance issues have been discussed during the recurring teleconferences between the Department, Merjent, and Enbridge, it appears that the breakdown of communication is occurring with the project's contractors. In order to facilitate the resolution of these issues, we have set up an enforcement meeting for Enbridge and their contractors with an Environmental Enforcement Specialist in Madison. The meeting will be held in Room 613 of the DNR Headquarters (GEF II), at 1:00 p.m. on March 26, 2007, to discuss these issues.

We request that you prepare and present a report detailing the facts of these incidents (the report may be a compilation of the tracking table mentioned above). 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 March 21, 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 – Rhinelander)
Tom Hess- Merjent
Amy Smith- WDNR (AD/5)
Dave Edwards- WDNR (LE/5)