

EIS on Proposed Enbridge Line 5 Relocation Project DNR Response to Public Comments

September 2024

Enbridge Energy (Enbridge) has applied to the Wisconsin Department of Natural Resources (DNR) for waterway and wetland crossing permits and for coverage under the state's Storm Water Associated with Land Disturbing Construction Activity General Permit for the company's proposed Line 5 relocation project. In compliance with the Wisconsin Environmental Policy Act (WEPA) and s. NR 150.30 (3), Wis. Adm. Code, the DNR prepared a Draft Environmental Impact Statement (EIS) for the proposed project.

On February 2, 2022, the DNR held a public hearing on its Draft EIS. Over 160 individuals testified during the 10-hour hearing. The DNR received more than 32,000 written comments on the Draft EIS during the 120-day public comment period, which ran from December 16, 2021, to April 15, 2022. Comments were submitted from members of the public throughout Wisconsin and all 50 states and the District of Columbia. Four federal agencies, several Native American tribal governments, three county governments, and several local governments submitted comments. The DNR made a recording of the public hearing and all written public comments available on the DNR website.¹ In compliance with s. NR 150.30(4)(b), Wis. Adm. Code, this document summarizes major themes that the DNR identified in the public comments relative to the Draft EIS and outlines how the DNR responded to those comments, including steps the DNR took to address the comments as well as changes made to the Draft EIS in response.

Reorganization and Expansion of the EIS

The Draft EIS was published in two volumes. Volume 1 included ten chapters (345 pages) and Volume 2 included 15 appendices (340 pages). In response to public comments, the DNR gathered considerably more information, completed additional analyses, and synthesized and integrated the resulting material into a revised Final EIS. Efforts to add clarifications, reduce redundant presentation of information, and provide additional maps and graphics necessitated some reorganization of the document.

The 10 chapters in the Draft EIS included:

1. Project Overview and Regulatory Process
2. Description of the Proposed Project and General Pipeline Practices
3. Project Alternatives
4. Scope of Analysis
5. Current Conditions
6. Effects of Proposed Project and Route Alternatives
7. Risk and Potential Effects of Pipeline Spills
8. Environmental Justice and MMIW
9. Effects of No Action and System Alternatives
10. Other Issues

¹ <https://dnr.wisconsin.gov/topic/EIA/Enbridge.html>

For the Final EIS, Chapters 3 (Project Alternatives) and 4 (Scope of Analysis) from the Draft EIS were combined into a single new chapter (**Chapter 3: EIS Process & Scope of Environmental Impact Analysis**). The DNR's activities for each step of the EIS process were outlined, WEPA requirements for the types of effects analyzed were summarized, and the range of alternatives evaluated was clarified in this new chapter.

Chapters 5 (Current Conditions) and 6 (Effects of Proposed Project and Route Alternatives) from the Draft EIS were also combined into a single new chapter (**Chapter 5: Effects of Pipeline Relocation**). Consolidating these chapters reduced the amount of information that was repeated in multiple places and tied the available information to the DNR's conclusions.

Two new chapters were drafted for the Final EIS. **Chapter 4: Native American Nations, Treaty Rights, Cultural Resources, & Security** combined information regarding Native American tribes and treaties that was scattered throughout the Draft EIS. This information was supplemented with additional research and substantially new narrative in response to public comments and commitments made to tribal leaders during formal government-to-government consultation meetings. The topics of cultural resources and environmental justice were integrated into this chapter as well.

The DNR developed **Chapter 7: Greenhouse Gas Emissions & Climate** to address comments on greenhouse gas emissions and climate change that were received during the public comment period. **Chapter 8: No Action Alternative Analysis** was also expanded to accommodate information of the social cost of greenhouse gases associated with various outcomes of the DNR's No Action alternative.

The Draft EIS included 15 appendices with supplemental materials related to the proposed project. The Final EIS has 34 appendices, some quite extensive. These provide supplemental materials related to the proposed project as well as additional information on the analyses the DNR completed or relied on. The appendices are being made available online with the Final EIS.

Major Comment Themes and DNR Responses

Support for or Opposition to Enbridge's Proposed Project

The public comments received included numerous emails, postcards, and letters expressing support for Enbridge's proposed Line 5 relocation project for various reasons and urging the DNR to issue all necessary permits quickly. Numerous other comments expressed opposition to Enbridge's proposed project and encouraged the DNR to deny the permits for various reasons. The DNR took note of these comments.

Tribes and Treaty Rights

A substantial number of commenters suggested the treatment of Native American tribes and their reserved treaty rights in the Draft EIS was incomplete. Additionally, the impact of the proposed Line 5 pipeline construction or of a potential petroleum spill on the rights of tribal members to hunt, fish, and gather were mentioned in many of the comments. Some examples of these types of comments include:

“Incomplete and inaccurate characterization of treaty rights and other tribal interests in the project area: The dEIS includes discussion of impacts to some tribes but not to others and presents a very incomplete accounting of possible impacts to treaty protected rights and resources.”

“Tribal rights and interests are poorly described in the dEIS... Tribal communities in Wisconsin are diverse and all tribal interests should to be recognized in the dEIS. It is unclear from the dEIS why some tribes were included in discussions of impacts, yet others were omitted... All Indian tribes are different and deserve accurate description and adequate consideration.”

“WDNR may not allow this project to unlawfully diminish tribal treaty rights by destroying treaty resources and cutting off access to important hunting, fishing, and gathering grounds in the ceded territory. The DEIS, however, fails to analyze the burdens this project may impose on the exercise of treaty rights...”

“As outlined throughout this letter, this project will have numerous direct and indirect impacts to treaty resources in the ceded territory. These impacts may unlawfully diminish the Band’s share of harvestable resources... Despite this, the DEIS ignores these impacts entirely. The DEIS must be reissued with more information and analysis about whether this project will infringe – in language or effect – on the Ojibwe tribes’ harvest of treaty-protected resources.”

In response to comments regarding Native American concerns, DNR staff consulted with tribal resource agency staff and reviewed an extensive range of literature regarding tribal and cultural concerns, including careful review of tribal comment letters, public testimony, and consultation discussions. The DNR agreed that these topics could be more comprehensively addressed in a Final EIS. The DNR drafted a new chapter (**Chapter 4: Native American Nations, Treaty Rights, Cultural Resources, & Security**) that consolidated all material, including a description of current conditions and anticipated effects, related to tribal interests.

Consideration of Cultural Resources

A substantial number of commenters suggested the treatment of cultural resources in the Draft EIS was too narrow and likely incomplete. Some examples of these types of comments include:

“The definition of cultural resources that is used in the dEIS as the physical remains of human activity is too narrow. Tribes take the position that natural resources are cultural resources, and this definition would exclude that interpretation. Even a place where traditional cultural activities occur may not produce any physical remains.”

“First, the assessment of the archaeological, cultural, and historic resources that this project may affect is too narrow. Second, the alternatives analysis in the DEIS does not allow the Band or the public to compare the culturally relevant impacts of this project between the alternative routes and the proposed route. Third, the Dirt Divers report has grave methodological flaws, poorly reasoned findings, and should not be relied upon in the DEIS.”

In response to these types of comments, DNR staff consulted with tribal resource agency staff, tribal historical preservation officers, and the Wisconsin Intertribal Repatriation Committee and reviewed an extensive range of literature regarding traditional Ojibwe worldviews and lifeways. A former tribal chairperson explained the Bad River Band of Lake Superior Chippewa’s origin story to DNR staff at the conclusion of a Consultation meeting. DNR staff reviewed a summary of oral history interviews and other cultural resource related materials submitted to the U.S. Army Corps of Engineers (for compliance with Section 106 of the National Historic Preservation Act). The DNR assembled an extensive list of species (“relatives”) of cultural interest. DNR staff developed an expanded discussion of cultural resources, reflecting Ojibwe worldviews, which was reviewed by a Bad River tribal member and former tribal historical preservation officer, and included it in **Chapter 4: Native American Nations, Treaty Rights, Cultural Resources, & Security**.

Risk and Impacts of Oil Spills

Public hearing participants and written comments raised concerns about the likelihood and potential effects of an oil spill. Comments include requests for the DNR to review historic spills (e.g., Kalamazoo River spill in Michigan), develop oil spill transport models that could be applied to Enbridge’s proposed project, estimate the probability of spills, evaluate spill-response plans and capabilities, and more fully disclose potential effects of spills to various resources and public health and safety. Some examples of these types of comments include:

“The dEIS presentation of the movement of oil downstream from a potential oil spill is so unclear and incomplete that it is impossible to tell what analysis was done. While there is mention of a “liquid spill plume model” ... there is no presentation of the information used to make conclusions from that model ... With information about neither the impact event (the spill) nor the receptors (the HCAs) it is impossible to determine potential impact to natural and human resources from a spill.”

“Analysis of the extent of potential spill flow downstream and resources impacted is standard practice. In this dEIS, analysis of spill impacts must be presented in a transparent way.”

“The dEIS glosses over the consequences of a possible and likely oil spill given Enbridge’s poor environmental record. Impacts from an oil spill would quickly contaminate tribal drinking water. A spill would devastate the Bad River hatchery, the largest producer of walleye fingerlings in Lake Superior. In addition, oil would contaminate the Bad River Nation’s supply of food and medicines. Coastal wetlands would likely be destroyed and all of the businesses and people who depend on the fisheries would suffer.”

“Detailed analysis of the impacts of potential oil spills is lacking. You do not address the frequency with which oil pipelines leak and the lasting damage that results from that pollution.”

“The DEIS fails to disclose or analyze the potential environmental impacts of the operation of the pipeline, especially in the context of an oil spill. This is especially important given the condition of the current Line 5, which is operating well past its predicted life, and the extensive history that Enbridge has of oil spills in their operations. The threat of an oil spill is imminent.”

In response to these types of comments, the DNR reviewed oil spill modeling work that was prepared for Enbridge by a third part consultant. The DNR requested, and Enbridge provided, additional analyses. The DNR reviewed and discussed the consultant’s reports with federal and tribal resource agency staff. The DNR obtained data and outputs from the consultant’s spills models, reviewed the materials in consultation with a U.S. Geological Service collaborator, and completed its own GIS-based analyses. DNR staff reviewed historical spills, both in Wisconsin and nationwide. The results of these efforts were integrated into **Chapter 6: Likelihood & Anticipated Effects of Spills** and in various parts of **Chapter 5: Effects of Pipeline Relocation** in the Final EIS.

HDD Inadvertent Releases (Frac Outs) & Aquifer Breaches

Multiple commenters raised concerns about the DNR’s analysis of risks associated with horizontal directional drilling (HDD) techniques proposed by Enbridge for some waterbody crossings. These included comments about aquifer breaches (“frac-outs”) and inadvertent releases of drilling fluids. Enbridge’s installation of the Line 3 pipeline in Minnesota was frequently referenced in the comments with concerns for aquifer breaches. Some examples of these types of comments include:

“The dEIS does not analyze the likelihood of aquifer breaches during pipeline construction. These impacts can have serious and long-lasting environmental impacts. These impacts may be likely given experience from the construction of the Line 3 pipeline in Minnesota which is located in a similar geophysical setting.”

“We have a model for what Enbridge’s impacts will be if the DNR approves this proposed expansion of Line 5 in northern Wisconsin. In 2021, Enbridge installed the “new Line 3,” (now called Line 93) through Northern Minnesota, from the North Dakota border to the Wisconsin border.”

In response to these comments, the DNR asked for, and Enbridge provided, information on all aquifer breaches and inadvertent returns that occurred along Enbridge’s Line 3. DNR staff consulted with staff from the Minnesota DNR to learn more about the circumstances of each frac out and inadvertent release. DNR staff conducted a GIS-based analysis of proposed HDD drilling locations to further assess the risk of inadvertent releases. Findings from these efforts are reported in various parts of **Chapter 5: Effects of Pipeline Relocation** in the Final EIS.

Climate Change and Social Cost of Carbon

Of all the issues that were highlighted, climate change was mentioned the most in comments that opposed Enbridge’s proposed Line 5 relocation. Some comments suggested climate change was not sufficiently treated in the Draft EIS. Some commenters urged the DNR to consider how new fossil fuel infrastructure could lock in its future use and undermine a

current policy focus on renewable energy sources. Many comments mentioned Governor Evers' Task Force on Climate Change, with some highlighting recommendations to "Avoid new pipelines. Oppose new or expanding infrastructure whose primary purpose is transporting fossil fuels through Wisconsin." Some examples of these types of comments include:

"The dEIS information on climate change is flawed. It is the policy of both Federal and State government to reduce carbon emissions to address the ongoing impacts of climate change and prevent those impacts from becoming more severe. The dEIS ignores these policies by assuming that the Line 5 reroute has no contribution to climate change because it is a continuation of existing impact... The oil being transported by Line 5 has a carbon footprint. That existing carbon footprint is exactly the pollutant that Federal and State governments seek to reduce... Comparison of the proposed project to the no-action alternative (that is, no pipeline) requires that the climate effects of the transported oil be calculated."

"Why doesn't the draft EIS (DEIS) address how updating an existing line enables oil to flow and be burned for many more years, ensuring that the climate-enhanced disasters of 2021 (the wildfires, droughts, heatwaves, hurricanes, flooding, and severe weather), will continue and intensify? The DEIS also neglected the additional carbon emissions that would be caused by workers' commuting, the transportation and on-site use of equipment, and the creation of the pipes and materials."

"My own work on climate change impacts and responses in Wisconsin communities, indicate clearly that the Wisconsin DNR urgently needs to update the DEIS to acknowledge the potential severity of the pipeline's impact on climate change, greenhouse gas emissions, and water quality {which is already a dire emergency in many parts of the state}."

"The dEIS assumes that if this pipeline is not built the oil would be carried by some other means and, therefore, the net climate impact of bringing this oil to market is zero. That rationale is akin to claiming a power plant has no net climate impacts because the power would be generated by some other, climate impacting, means anyway."

"Your dEIS does not adequately address these harmful, cumulative climate effects. It must! I urge you to absorb the full extent of the climate crisis by reading the UN IPCC reports, the most recent one released in February, and including the scientific information, therein, in any future dEIS."

In response to these comments, the DNR reviewed the extensive literature on climate change and climate change impacts in Wisconsin and developed life cycle emissions estimates for Enbridge's current Line 5 operation. The DNR incorporated material from national and Wisconsin GHG emissions inventories, the Inter-governmental Panel on Climate Change (IPCC), the 5th National Climate Assessment, the Wisconsin Initiative on Climate Change Impacts (WICCI), and the Great Lakes Indian Fish and Wildlife Commission's climate change work into **Chapter 7: Greenhouse Gas Emissions & Climate. Chapter 8: No Action Alternative Analysis** was also expanded to accommodate information of the social cost of greenhouse gases associated with various outcomes of the DNR's No Action alternative.

Alternatives and No Action Alternative

Some commenters expressed a desire for the DNR to analyze a broader range of alternatives. examples of these types of comments include:

“The alternatives analysis in the DEIS is too narrow and based on an inaccurate baseline. The Bad River Band sent a letter to WDNR in December 2021 with a request that WDNR correct the alternatives analysis in the DEIS before releasing the DEIS for public comment. The Band specifically requested the WDNR correct the DEIS to include only one “no action alternative” and that it must be to decommission the pipeline. However, WDNR published the DEIS without changing the alternatives section ... To the extent the DEIS does analyze a range of alternatives, the analyses are conclusory and not supported in the DEIS. WDNR must correct these severe deficiencies in the DEIS... Surprisingly, there is no acknowledgment in the DEIS that Enbridge is currently operating Line 5 through the Bad River Reservation in trespass... The “No Action Alternative” must reflect this severe legal defect and be limited to decommissioning the current Line 5 pipeline.”

In response to these comments, the DNR clarified, in **Chapter 3: EIS Process & Scope of Environmental Impact Analysis**, the range of alternatives that it evaluated for the Final EIS. It also described the reasons why other alternatives were outside the scope of the EIS. The DNR also clarified the DNR’s No Action alternative (i.e. not issuing the requested permits) and included a discussion of possible outcomes and their associated effects in **Chapter 8: No Action Alternative Analysis**.

Water Resources Descriptions and Baseline Water Quality Data

Some commenters expressed concern about a perceived lack of detail in descriptions of current conditions included in the Draft EIS and a lack of baseline data used in the DNR’s analyses. Some examples of these types of comments include:

“This section provides a general description of the watersheds that may be impacted by the project. However, it is not a description of the potentially impacted rivers and streams. Detailed descriptions of the rivers and streams that are crossed by the proposed pipeline reroute is needed in this section.”

“The DEIS lacks adequate discussion of basic waterway characteristics. This shortcoming defeats the WDNR’s ability—and that of other government entities and the public—to assess impacts. Necessary information includes more baseline information on waters affected, a complete list of water features impacted, water uses and cultural resources, a comparison of impacts of project alternatives, and discussion of watersheds.”

“The DEIS relies on incomplete waterways data. WDNR must gather additional data and review and fully incorporate existing sources. A revised DEIS must incorporate this lacking yet essential waterways data and make the underlying data available for public review.”

“The lack of baseline data collected by the project proponent is exacerbated by the fact that the dEIS fails to demonstrate that the State has independently verified information produced by the applicant, nor does the dEIS use other existing data sources to fully characterize potential impacts.”

In response to these comments, the DNR staff visited field sites to corroborate information provided by Enbridge’s consultants. DNR requested and received additional information from Enbridge, including recent water quality monitoring results. DNR staff assembled existing water quality and fisheries data from a wide range of sources. DNR staff

used the assembled information to model and project potential distributions of various species. DNR staff modeled erosion and sediment. More complete resource descriptions and summaries of baseline data were included in **Chapter 5: Effects of Pipeline Relocation**.

Water Quality, Quantity, and Erosion Impacts

Many comments related to the potential effects of pipeline construction. Of particular concern for many commenters was the potential for large-scale (fluvial) erosion to impact streams and rivers in the project area. Some examples of these types of comments include:

“The DEIS does not evaluate whether pipeline construction, operation, and maintenance will violate water quality criteria and interfere with designated uses.”

“WDNR must also consider the indirect water quality impacts of Enbridge’s plans to maintain a permanent access right-of-way along the pipeline route. Enbridge plans to permanently convert forested wetlands to emergent wetlands in order to maintain access to the pipeline segment for maintenance projects.”

“A revised DEIS needs a greater assessment of the many forms of erosion impacts which would lead to increased sedimentation.”

In response to these comments, the DNR completed additional analyses. DNR staff worked closely with a U.S. Geological Survey collaborator to identify and assess erosion risks. More complete resource descriptions and summaries of baseline data were included in **Chapter 5: Effects of Pipeline Relocation**.

Wetland Impacts

Many comments received focus on potential impacts to wetlands. Some commenters expressed concern about a perceived lack of detail in descriptions of current conditions included in the Draft EIS and a lack of baseline data used in the DNR’s analyses. Some examples of these types of comments include:

“Without a baseline analysis and full, accurate, and supported wetland delineations, WDNR, other governmental entities, and the public are unable to assess the impacts of the proposed projects to wetlands.”

“The DEIS inadequately defines specific environmental impacts to wetlands. The DEIS fails to include impacts to wetlands from blasting, trenching, horizontal directional drilling (“HDD”), access roads, flooding, and disturbance of wetland soils and microtopography.”

“A new DEIS must completely reassess what mitigation the proposed project requires. The insufficient assessment of wetlands and impacts to them create uncertainty as to how many wetland acres must be mitigated for, as well as what wetland quality and function must be compensated. This also calls into question the proper mitigation ratios.”

In response to these comments, the DNR requested additional information from Enbridge, reviewed various consultant work products, and visited field sites to corroborate information provided. More complete resource descriptions, summaries of baseline data, and

additional analyses of anticipated effects were included in **Chapter 5: Effects of Pipeline Relocation**.

Concerns Regarding Fish, Wildlife, and Plants

Effects on plants, wildlife, and fish were a priority concern for many commenters. Comments included concerns for the animals and plants themselves, the impacts on the people who rely on these resources, and the economy that is fueled by them. Several endangered species were listed in various comments as well. Some commenters expressed concern about a perceived lack of detail in descriptions of current conditions included in the Draft EIS and a lack of baseline data used in the DNR's analyses. Some examples of these types of comments include:

“The DEIS is extremely deficient in data and analysis, repeatedly stating specific information about various wildlife species is unknown... These concerns include that no comprehensive assessment of eagle nest sites has been conducted... and that many potentially impacted plant species were left out of the DEIS's threatened and endangered species discussion.”

“For example, the list of potentially impacted species and natural communities is inadequate. That list and the associated discussion is based on old incidental sightings in the State of Wisconsin Natural Heritage Inventory (NHI) database and inadequate surveys conducted by Enbridge along the pipeline work corridor.”

“For example, this project has conducted no surveys for mussels nor have there been any surveys for aquatic insects.”

“In general, there isn't information on the baseline conditions for the potentially affected streams... In addition, existing information on fisheries should be used to adequately characterize fishery resources.”

In response to these comments, DMR staff completed more extensive literature reviews. The DNR requested and Enbridge conducted surveys for bald eagle nests, wood turtle habitat, freshwater mussels, and rare plants. DNR staff assembled available fish and wildlife distribution data and modeled predicted occupancy in area waterways and along Enbridge's proposed relocation route and route alternatives. Lists of species for major taxonomic groups found in the three-county area and Bad River watershed, additional descriptions of natural communities, and more thorough documentation of anticipated effects to species were included in **Chapter 5: Effects of Pipeline Relocation**.

Concerns Regarding Human Health

Over 1,900 comments mentioned concerns about the impacts on human health, including a series of 90 comments that were submitted by healthcare providers. The health concerns ranged greatly and included:

In response to these comments, the DNR included additional information on noise, air quality, and public safety in **Chapter 5: Effects of Pipeline Relocation** and briefly discussed human health implications in **Chapter 6: Likelihood & Anticipated Effects of Spills**.