

# **An Insurance and Risk Management Report on the Proposed Enbridge Pumping Station**

Prepared for  
**The Dane County Zoning and Land Regulation Committee**

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Executive Summary.....	3
Background .....	3
Purpose .....	3
Summary of Research Findings and Conclusions.....	4
Recommendations.....	5
Overview of Risk Management Considerations.....	6
Liability insurance as a risk management tool.....	6
Determining the risk - Maximum Probable Loss.....	6
The available monetary resources to pay for a spill event.....	7
Future risk factors .....	8
Summary and analysis of the current Enbridge general liability insurance program.....	10
How the current Enbridge General Liability insurance policy treats pipeline spills .....	12
Sudden and Accidental Pollution Insurance? .....	13
The Time Element Pollution Exception .....	14
The three Levels of Pollution Exclusions in the Enbridge Liability Insurance Policies .....	14
Differences between General Liability Insurance and genuine Pollution Insurance.....	15
Analysis of Enbridge Indemnification and Insurance Proposal to Dane County.....	16
Review of insurance coverage litigation involving the Enbridge Line 6B spill .....	18
The inherent danger in relying on exceptions to pollution exclusions to pay for pollution losses .....	18
The Enbridge general liability insurance policy is missing essential coverages to clearly insure an oil spill event.....	19
The availability of government-backed oil spill funds .....	21
Insurance Recommendations and Conclusions .....	23
A long term view on insurance is needed.....	23
Recommended types and amounts of liability insurance.....	23
Three risk management objectives in these recommendations .....	24
Appendix A: Recommended Liability Insurance Specifications .....	25
Appendix B: Federal sources of oil spill clean-up cost and victim compensation funding .....	27
Appendix C: Relevant Enbridge Financial Facts .....	29

## Executive Summary

### **Background**

This risk management overview was prepared for the Dane County Zoning and Land Regulation Committee to assist in its review of Conditional Use Permit (CUP) application #2291 by Enbridge Energy Partners to upgrade a pumping station on its existing petroleum pipe line (Line 61) between Marshall and Waterloo, WI. Approximately 12 miles of Line 61 currently transects Dane County and carries tar sands oil from Canada to refineries south of Wisconsin.

I have extensive experience in environmental risk management and insurance. I hold bachelors and masters degrees in risk management and insurance from the University of Wisconsin Madison where I have been a guest lecturer on environmental risk management and insurance topics for 34 consecutive years. My work has included advising and providing technical information to the US Department of Defense, the US Environmental Protection Agency and Department of Energy on environmental insurance issues, successfully placing insurance programs on many of the world's toughest environmental risks, including insuring the remediation of Chernobyl for the World Bank in London, and serving as the managing Director of the Global Environmental Practice Group of one of the world's largest insurance brokerage firms. I have been published in numerous journals and textbooks, including the chapter on environmental insurance in the Chartered Property and Casualty Underwriter (CPCU) 4, *Commercial Liability, Risk Management and Insurance* textbook, and also authored and edited the chapter "Environmental Loss Control" in the *Associate in Risk Management (ARM)* textbook.

### **Purpose**

The objective of this risk management overview is to provide The Dane County Zoning and Land Regulation Committee with information on the risk bearing capacity of Enbridge Energy Partners to address the clean-up and other potential damages resulting from an oil spill at the proposed pumping station upgrade on Line 61. Of specific concern to the County Zoning and Land Regulation Committee are these goals.

Dane County seeks assurances that:

- Enbridge, or other reliable sources, have money available to ensure the timely remediation and restoration of the environment in the event of a spill.
- Money will be available to affected citizens of Dane county to pay for the damages they may incur as a result of an oil spill at the pumping station.
- There will be no unfunded potential liability or expenses to the county for granting a Conditional Use Permit or as a result of a spill from the pumping station.

As specified in the scope of services agreement, this report includes the following: an evaluation of Enbridge's existing insurance program, including a review of issues associated with Commercial General Liability insurance policies and a determination of the suitability of such policies to cover costs associated with a spill event; an analysis of Enbridge's offer of indemnity and insurance to Dane County; a summary comparing Enbridge's current liability insurance policy with the policy forms being litigated over the 2010 spill on line 6B in Michigan; a summary of government sponsored oil spill funds; and, recommendations on the appropriate types and amounts of insurance necessary to cover the costs of response, clean up, and environmental remediation associated with a catastrophic spill event.

### ***Summary of Research Findings and Conclusions***

Upon review of a summary of the Enbridge liability insurance program, the Enbridge 2014 financial statements and government sponsored oil spill response programs, I find and conclude that:

- Enbridge is strictly liable under US environmental laws to pay to clean up an oil spill at one of their lines;
- Between the General Liability insurance coverage that Enbridge purchases with its modified Pollution Exclusion, the current liquid assets of Enbridge including profits and the funds available in government sponsored oil spill clean-up funds, there are sufficient liquid assets and other financial resources available in 2015 to fund the remediation of a Maximum Probable Loss (MPL) spill from line 61 in Dane County;
- Enbridge has proven in the past to pay for oil spill clean ups in a responsible manner through a combination of partially recoverable General Liability insurance proceeds and profits from ongoing operations;
- The very healthy financial picture of Enbridge today is not necessarily predictive of the future ability of Enbridge to meet the financial obligations associated with an oil spill over the duration of the Conditional Use Permit;
- Enbridge Energy Partners is only partially insured in both “Limits of Liability” and the scope of the insurance coverage for a known potential magnitude oil spill arising from one of their pipe lines;
- The \$700 million of General Liability insurance coverage that Enbridge currently purchases is less than the known loss cost of the \$1.2 billion Enbridge oil spill in 2010 on Line 6B in Michigan;
- Enbridge purchases a General Liability insurance policy which contains a pollution exclusion and defined exceptions to the pollution exclusion for spills which meet certain time element requirements;
- There is ongoing insurance coverage litigation associated with the Enbridge Line 6B spill in 2010 that highlights the insurance coverage ambiguity inherent in a General Liability insurance policy containing a Pollution Exclusion exceptions to the exclusion instead of genuine Pollution insurance or more accurately Environmental Impairment Insurance;
- Controversy over these missing coverages in the General Liability insurance policies currently purchased by Enbridge lie at the core of the Line 6B insurance coverage litigation involving \$103 in unrecovered insurance proceeds for the Line 6 B spill;
- Subject to the Pollution Exclusion, the Enbridge General Liability insurance policies insure “Property Damages” and do not include specific insurance coverages for clean-up costs, restoration costs and natural resources damages normally associated with an oil spill;
- Enbridge does not currently purchase Environmental Impairment Liability (EIL) insurance on Line 61. In contrast to the General Liability insurance policies which only apply to liability arising from “Property Damage”, EIL insurance policies contain specific insurance coverage for “Clean-up Costs”, “Restoration Costs” and “Natural Resources Damages” associated with an oil spill.

Because the proposed conditional use is of unlimited duration, risk factors which may be encountered decades into the future need to be incorporated into the permitting process today. The county may not be able to add changes to the permit related to risk management issues in the future.

These future risk factors could include;

- The potential (likely) down turn in the use of fossil fuels over time;

- Reduced cash flow and profitability for Enbridge as a result of a general down turn in the throughput of crude oil in pipelines;
- A general down turn in their business would lead to the reduced ability of Enbridge to maintain robust safety and loss control protocols and to upgrade their pipelines over time;
- Over time, the aging pipe line systems would become more prone to spills, and;
- In the above scenario, Enbridge may not have the liquid assets that they have today to pay for a significant spill at the same time they are more likely to have a spill due to aging infrastructure.

### ***Recommendations***

In consideration of my research findings and conclusions, and based upon my 30 plus years of experience in the insurance and risk management profession I recommend;

- That Enbridge agree to indemnify and hold harmless Dane County for pollution losses Per the terms as outlined in Enbridge’s proposal titled “CONDITIONAL USE PERMIT (“CUP”) CONDITIONS”;
- That Enbridge procures and maintains liability insurance, including Environmental Impairment Liability insurance, making Dane County an Additional Insured to a level equal to 10% of the Line 6 B loss costs, \$125 000,000;
- As part of this overall liability insurance requirement, Enbridge should purchase \$25,000,000 of EIL insurance on the proposed pumping station in Dane County
- Technical insurance specifications for General Liability Insurance and Environmental Impairment Liability insurance appear in Appendix A.

There are compelling reasons for requiring Enbridge to obtain environmental insurance as a condition of permit approval. These reasons include;

- Accessing through the insurance underwriting process, an independent and objective evaluation of the environmental risks associated with the Enbridge pumping station in Dane County;
- Back stopping the insurance coverage problems which can arise when a General Liability insurance policy containing a “Pollution” exclusion is relied upon to insure pollution losses from an oil spill. This problem is evidenced by the fact that Enbridge is currently involved in litigation over \$103,000,000 in unrecovered General Liability insurance from the 2010 spill on Line 6B. Some lawsuits over the meaning and effect of pollution exclusions in General Liability insurance policies can take 20 years or more to resolve in the courts. Genuine Environmental Impairment Liability insurance is much more reliable than General Liability insurance to pay for pollution losses.

With the exception of the recommended EIL insurance, I believe these insurance recommendations are identical to those previously proffered by Enbridge. The recommendations will not create an undue burden on Enbridge, as the total amount of required insurance on the pumping station would be set at approximately 1/10 the cost of the 2010 Enbridge spill on Line 6B in Michigan which to date has cost \$1.2 Billion.

## **Overview of Risk Management Considerations**

### ***Liability insurance as a risk management tool***

Insurance is the de facto risk governance mechanism used by parties to gauge the risks of certain endeavors in commerce. A common example of this concept in practice is a banker requiring a borrower to maintain fire insurance on a building the banker is lending money on. By requiring fire insurance on the building the banker does not need to evaluate the relative riskiness of the building being damaged by the fire, the insurance underwriter has already made that determination in the insurance premium charged to insure the building.

If the risk of a fire on the building is low, the insurance premium will be low in relative terms. If the risk is high, the insurance premium for fire insurance will be high. If the risk of fire is so high that it makes the building uninsurable in the informed perspective of the insurance underwriter, the banker will not make the loan. By simply requiring fire insurance the banker accesses the knowledge base of the insurance industry on the relative risk of fires specifically on the building the loan will be made on. As an added benefit, if there is a fire, there will be insurance coverage to pay for the loss. The lender does not need to know anything about fire hazards to manage the fire risk on the building. A simple go or no go on the lending decision relative to the risk that the building will have a fire can be based on the ability of the borrower to obtain fire insurance. Requiring insurance on the building is all the lender has to do to harness the collective wisdom of thousands of fire risk management practitioners in the insurance industry.

In a similar fashion to the banker accessing the insurance industry's vast expertise in fire risks simply by requiring fire insurance on the buildings they lend on, Dane County can harness the knowledge of the insurance underwriting community on the spill risks of pipelines simply by requiring a relatively small amount of EIL insurance on the pumping station.

I am recommending that minimum amounts of liability insurance be maintained by Enbridge over the life of the CUP. Insurance has been utilized in commerce for more than 400 years. Insurance is the one financial mechanism that can be counted on to endure for decades into the future. Insurance is a dynamic financial tool that is able to adapt to new information on risks over time. Simply by requiring insurance be maintained on the pumping station the global knowledge base in the insurance industry on the relevant risks of tar sands oil pumping stations will be accessed by the stakeholders in the pumping station on an annual basis.

### ***Determining the risk - Maximum Probable Loss***

It is not the scope of this report to determine the likely costs associated with an oil spill from Line 61 in Dane County, nor am I qualified to make such a determination. However, to accomplish the goals of this report an objective measure of the potential costs resulting from a spill from Line 61 in the county must be made. As a benchmark for a Maximum Probable Loss scenario I used the \$1.2 Billion dollar cost already incurred by Enbridge for a spill in 2010 from their Line 6B in Michigan. The spill into a feeder creek at a time of high water ultimately impacted the Kalamazoo River. \$1.2 billion is a reasonable Maximum Probable Loss bench mark because the Line 6B spill event actually happened in recent history and it occurred on an Enbridge pipe line in a state with an environment very similar to Wisconsin's. The Enbridge Line 6B spill was the most expensive land based oil spill on record.

Due to the geography of the pumping station in Dane county I have conservatively assumed that the expected loss potential for a spill at the proposed Dane county pumping station will be far less than the \$1.2 billion Maximum Probable Loss scenario in today's dollars. In fact the costs associated with on land pipe line spills are likely to be a small fraction of \$1.2 billion dollars.

Line 61 with increased pumping capacity will have more oil flowing through it than line 6B did. However, Dane county has considerably less risk than other counties along Line 61 because of the relative distance of the Pumping station to population centers or waterways that have a significant flow rate and the addition of a retaining pit at the pumping station designed to capture 1 hour of pipe line flow as a safety measure. It should be noted that safety measures on pipelines do not always operate as intended. The spill on the Enbridge line 6B lasted 17 hours due to human error in spite of the detection and shut off technologies on the 6B line which were designed to kick in within 5 minutes in the event of a spill. Safety measures at the Dane County pumping station cannot eliminate all risk.

My recommended insurance requirements for the CUP at a total of \$125,000,000 in limits of liability are only 10% of the Maximum Probable Loss. This is a very conservative estimate designed to make the recommended insurance coverage on the pump station procurable and affordable for Enbridge, while creating a long term risk management and financial backstop for the county which is unrelated to the future profitability of Enbridge. If the Dane County pumping station was closer to a flowing waterway the suggested limits of liability would be much higher based on the empirical evidence regarding the costs to clean up the Kalamazoo River in Michigan after the Enbridge line 6B spill.

Dane County does not have preplanned financial resources in the form of environmental insurance or other loss reserves to independently respond to a spill event from the pipeline or to defend the county from potential liability in the event the county is vicariously liable for its potential a role in a spill event. However, the way the environmental protection laws have been drafted, the County and local government do not presently have a material statutory role in the remediation process of a pipeline spill. Under the current environmental laws and regulations, oil spill clean-up efforts would be led by the State of Wisconsin with oversight from the Federal government. Government officials in WI also enjoy governmental immunity to relatively low amounts when the damages caused by a pipeline spill are considered.

#### ***The available monetary resources to pay for a spill event***

To evaluate the risk bearing capacity of Enbridge Energy Partners (EEP) I looked at their available cash flow from ongoing operations (projected \$960 million in 2015, see Appendix C), their insurance coverage (\$700 million of General Liability insurance with a pollution exclusion and a time element pollution release coverage give back), and potential access to government sponsored petroleum spill response programs (\$1 billion per spill plus an inconsequential amount from the State of Wisconsin Spill Fund). These items comprise the liquid assets available for Enbridge today to address the costs associated with a spill from Line 61.

I did not consider the overall net worth of Enbridge in the resources availability evaluation for two reasons. First, these assets are not needed today, and secondly, the valuations of companies change a great deal with the passage of time. The salvage value of buried steel pipes in the face of a general oil pipeline industry wide decline in future decades is highly speculative.

In total there are over \$2 Billion dollars in short term funds available today to respond to a spill from Line 61. This amount far exceeds the expected cost of spill in Dane county.

However, this ability to pay for an oil spill through these resources could deteriorate over the life of the proposed conditional use. Profits and access to insurance vary year to year. Spill funds are subject to politics and may not endure over time. For example, the state of Wisconsin is in the process of dismantling its government-sponsored spill program for fertilizer spills in the state. Over a longer time horizon, even federal funds from oil spills may be dismantled. Although access to insurance is not guaranteed over time, insurance does and should play a role in the overall risk management strategy of the stakeholders. The inability to procure insurance is, in itself, a risk management tool. Access to insurance operates as the canary in the coal mine to provide early warning of unusually risky and therefore uninsurable endeavors in commerce to stakeholders in those endeavors.

### ***Future risk factors***

A reduction in demand for fossil fuels to address the threat of climate change would change the fundamental business of Enbridge. The core business of Enbridge is essentially to transport fossil fuels through pipelines to processing facilities and markets.

The precipitous decline of the coal industry in the US is a prime example that illustrates this point. Despite the fact that coal has remained unchanged for centuries and powered the industrial revolution for over 100 years, the coal industry has seen over 70% of its valuation evaporate in just 5 years, driven to a great extent over environmental concerns.

All fossil fuel based companies will be subject to the same economic pressures over time if society moves to reduce the green house foot print of energy sources. This trend is already under way as evidenced by the coal industry. Ultimately, that means burning less fossil fuels, which would logically negatively impact the business of crude oil pipeline companies and their future profits.

These factors could adversely change the overall risk picture of a Pumping Station on Line 61 over the course of time;

- A reduction in the amount of oil products shipped through Enbridge pipelines would reduce cash flow and impair the firm's ability to pay for uninsured spill expenses out of profits;
- Reduced profitability would limit the firm's ability to maintain robust safety levels that Enbridge prides its self upon today;
- A reduction in the amount of crude oil which is taxed to fund the Federal oil spill response program would reduce the funding levels for these fail safe contingency plans to pay for oil spill clean ups;
- Changes in the global insurance market place and/or the claims experience of Enbridge in particular could impair the firm's ability to purchase liability insurance to pay for the costs associated with a spill in the future;
- The current and renewal GL insurance policies purchased by Enbridge have the same wording that one of their former insurance companies in the 2010 policy year is using to deny a

\$103,000,000 claim made by Enbridge for pollution clean-up costs arising from Line 6B spill in 2010. This insurance coverage dispute is currently being litigated. Lawsuits involving Pollution Exclusions can take decades to resolve. An adverse judgment in this case pertaining to how General Liability insurance policies respond to pollution losses could significantly impair the usefulness of the Enbridge General Liability insurance for future spill events.

- A judge in Alberta, London or New York ruling in insurance coverage litigation over contamination events and pollution exclusions, in a case totally unrelated to Enbridge or even to pipelines specifically, could significantly reduce the insurance available to Enbridge simply by establishing case law precedence that certain environmental damages are not insured by GL policies.

All of these risk factors have the ability to dramatically alter the ability of Enbridge to pay for an oil spill over the extended duration of the proposed conditional use.

As a partial hedge to these changing factors I recommend that the Conditional Use Permit contain insurance requirements for General Liability Insurance and Environmental Impairment Insurance on the pumping station.

## **Summary and analysis of the current Enbridge general liability insurance program**

In lieu of sending over 40+ insurance policies which make up the Enbridge General Liability insurance program, Enbridge sent their senior insurance manager Selina Lim, accompanied by Aaron Madsen of Enbridge and attorney Jeffery Vercauteren of Wythe, Hirschboeck Dudek, S.C. to the American Risk Management Resources Network, LLC offices in Middleton for a meeting with me on March 18<sup>th</sup>. Ms. Lim came prepared with a summary of their insurance program which included descriptions and references to the items I had requested for the insurance review. We discussed the summarized parameters of the Enbridge General Liability insurance program from her prepared documents.

Enbridge declined to provide the actual insurance policies (42 of them in total) to me for review, claiming that the documents contain trade secrets. Nonetheless, I found their summary of their insurance program to be credible.

I did not read any of the actual liability insurance policies. This amount of detail was not necessary to evaluate the insurance coverage parameters of concern in the Enbridge liability insurance program for a number of reasons, including;

1. Enbridge has a professional insurance manager with more than 12 years of experience and Enbridge utilizes the largest insurance brokerage firm in the world to negotiate their insurance policies. Competent insurance practitioners would purchase insurance exactly as described in the summary documents. In fact, it would be very difficult for Enbridge to do otherwise due to constraints in the insurance market place.
2. The Enbridge General Liability insurance coverage is of the type most commonly used on large companies involved in the oil and gas business. The primary insurance policy is written by a Mutual Insurance company where the policy holders actually own the insurance company. The primary insurance company has a reputation for being liberal with claims payments- a fact that may have created a claims payment problem on a past loss for Enbridge, which is further discussed below. There were no unusual restrictive terms revealed by the insurance manager relative to the pumping station in Dane County, nor would I expect there to be any.
3. The \$700,000,000 limits of insurance purchased by Enbridge was confirmed by a certificate of insurance prepared by their insurance broker and is also mentioned in the financial documents from 2014 filed with the SEC.
4. The current insurance policies will expire on May 1<sup>st</sup> and new insurance policies will be purchased. Where the current insurance policies are a gauge on what insurance Enbridge may have in the future, there are no guarantees that Enbridge will be able to maintain these high levels of insurance in the future. (The recommended insurance levels anticipate this contingency.)
5. It was represented in the March 18<sup>th</sup> 2015 meeting that Enbridge would renew their insurance on May 1<sup>st</sup>. It served little purpose to closely review insurance policies that would expire in a few weeks. This highlights the importance of taking a long term view when considering the placement of any insurance conditions on the CUP application.

6. The current Enbridge insurance coverage is largely irrelevant in any decision making of Dane County regarding a long term Conditional Use Permit. Almost all insurance policies only insure for 1 year and must be renewed annually. The insurance market place changes over time and can be subject to considerable variation year to year. Knowing what the insurance coverage is today is not necessarily predictive of what it will be even 2 years from today.

The base General Liability insurance policy that Enbridge purchases follows the usual and customary liability insurance coverage purchased by large companies in the energy sector. The lead insurance company in the Enbridge liability insurance program is AEGIS. AEGIS is a mutual insurance company which is owned by its policy holders. AEGIS is the largest insurer in the energy sector. The other 41 insurance companies “follow form” to the AEGIS base insurance policy language. In essence these “excess” carriers provide their limits of insurance capacity in “Layers” with each layer of insurance mirroring the insurance coverage provided by the primary insurance policy.

In this common structure of building claims paying capacity, the terms of the coverage in the excess layers are determined by the AEGIS primary insurance policy. Therefore, by knowing what the primary insurance policy says, we know what the coverage provided by the Excess insurance policies is as well. This rule holds true as long as no additional exclusions are added to any of the Excess insurance policies in the tower. It was represented by the Enbridge insurance manager that all layers of coverage in their insurance program follow the base AEGIS policy form. This advice is credible because it follows the usual custom and practice in the insurance business.

The current Enbridge primary General Liability policy insures for liability claims arising from;

- a. Bodily Injury,
- b. Property Damage defined as physical injury to tangible property,
- c. Personal injury including libel and slander,
- d. In addition to these coverages for claims, the policy insures Defense Costs.

The key coverages in the General liability insurance policy that would come into play in the event of a spill from a pipe line are claims for Bodily Injury, Property Damage and the costs incurred to Defend those claims.

The Enbridge GL policy, like virtually all General Liability insurance policies sold over the past 40 years, has a pollution exclusion. Introduced into the insurance business in 1970, pollution exclusions are the most litigated words in the history of the insurance. Over the past forty years, the legal profession has sent a lot of kids to college by arguing which part of a pollution exclusion, if any, should apply to a loss involving the contamination of things ranging from sandwiches to Superfund hazardous waste sites.

Insurance coverage litigation over the meaning and intent of a pollution exclusion can take decades to sort out in the courts once a claim is denied by the insurance company and the insured sues for coverage under the insurance policy. One prime example of litigation over a pollution exclusion in General Liability insurance policies involved the City of Edgerton, Wisconsin and a Superfund hazardous waste site. The insurance coverage litigation over the meaning and effect of pollution exclusions in the General Liability insurance policies purchased by the city spanned decades in Wisconsin courts. In that case, one of the troublesome clauses was the use of the term “Sudden and Accidental” as an exception to the pollution exclusions in various policy years.

Over decades, teams of lawyers working in hundreds of similar insurance coverage litigation cases were unable to decisively conclude that a sudden pollution even must mean a quick pollution event. To eliminate ambiguity surrounding the term, in 1986 the word “sudden” was dropped from common use as part of the standard exception to Pollution exclusions, in Commercial General Liability insurance policies.

“Sudden and accidental pollution liability” is what Enbridge shows for insurance coverage in their financial statements today. However, the pollution exclusion exemption in the Enbridge policy is not limited to sudden or quick events. A Property Damage or Bodily Injury claim arising from a pollution event that begins and is discovered within 30 days and is reported to the insurance company within 90 days is not excluded by the Pollution Exclusion in the primary Enbridge General Liability insurance policy. Hence the words “sudden and accidental” carry no weight in the current pollution exclusion. A more accurate term to describe the limited coverage for pollution events within the current General liability insurance policy is “Time Element Pollution” coverage.

The “sudden and accidental pollution liability coverage” that Enbridge has today on the General Liability insurance policy is different than the General Liability insurance policies the City of Edgerton had in place during the time the Superfund site was slowly leaching hazardous waste into the ground. However, the reliability of covering a pollution loss through a pollution exclusion is no less complex as evidenced by the \$103,000,000 in unrecoverable General Liability insurance as a result of the Enbridge Line 6B spill.

Taking all of this history into account, it is my professional opinion that the county should avoid being completely dependent upon a General Liability Insurance policy containing a Pollution Exclusion as a financial back stop for an oil spill.

#### ***How the current Enbridge General Liability insurance policy treats pipeline spills***

In the event of a pipe line spill of tar sands oil or other petroleum product, the pollution exclusion on the Enbridge General Liability policy will come into play. The pollution exclusion may not operate to eliminate the insurance coverage for an oil spill, but the exclusion will be one of the determining factors under consideration by the insurance company in their decision to pay a claim or not.

As evidenced by the insurance coverage litigation on the Line 6B spill, insurance companies are not always in harmony on how pollution exclusions should operate. Even insurance companies participating in the same insurance placement can be in disagreement over pollution exclusions.

The pollution exclusion in the Enbridge General Liability insurance applies to all claims arising from the emission, discharge, release, or escape of “Pollutants”. In essence a “Pollution exclusion” eliminates the coverage in the insurance policy for Bodily Injury and Property Damage liability claims if the proximate cause of the loss is the release or escape of “Pollutants”. The damages caused by an oil spill will definitely fall within multiple parameters of a pollution exclusion.

“Pollutants” is a defined word in the insurance policy which essentially boils down to “contaminates”. If a material can contaminate something it can be a pollutant in an insurance policy. In Wisconsin for example, in the Landshire foods case which went to court over the effect of a pollution exclusion,

sandwiches contaminated with bacteria have been denied insurance coverage at the appellate court level because bacteria contamination was deemed by the court to be a “pollutant”.

Although the Enbridge insurance policy is purchased in Canada and Wisconsin laws would not apply to any insurance coverage disputes, if sandwiches can be a “Pollutant” in an insurance policy, tar sand oils in a wetland or on farm field would certainly fall under the definition of an excluded “pollutant” in the event of a pipe line spill.

### ***Sudden and Accidental Pollution Insurance?***

As Highlighted in Appendix C, why does Enbridge represent that they have sudden and accidental pollution liability insurance when their only liability insurance on Line 61 is a General Liability insurance policy which contains a pollution exclusion? The topic itself confuses most people. The bulk of the answer can be attributed to marketing hype originating from the sellers of general liability insurance policies using insurance slang dating back to the 1970’s. General Liability insurance policies have not used the terms “sudden and accidental” to define an exception to the pollution exclusion since the 1980’s.

Enbridge is not alone in its use of the term sudden and accidental pollution liability coverage, it is commonly used in the oil and gas business to describe a GL policy with an exception to the pollution exclusion for contamination events happening within certain time frames. There is an exception to the pollution exclusion in the Enbridge General Liability insurance policy for pollution losses that happen in certain time frames. By excluding the exclusion for a certain set of circumstances, a double negative creates positive insurance coverage for contamination events that fit the parameters of the exception to the exclusion.

Technically, General Liability insurance policy with remnant coverage under a pollution exclusion and Pollution Insurance should not be confused; genuine pollution insurance, which is more accurately referred to as Environmental Impairment insurance, has specified coverages that are not specifically provided in General liability insurance policies. Another distinguishing factor in genuine pollution insurance is that the coverage only applies to losses caused by pollution events.

There was a point in time where the statement “we have sudden and accident pollution coverage” on a General Liability policy made more sense than it does today. From 1970 through 1986, General Liability insurance policies had exceptions to the pollution exclusion for sudden and accidental releases of “Pollutants”. In those years, pollution exclusions commonly said that the pollution exclusion in the General Liability policy would not apply if the dispersal, release or escape of pollutants that caused the insured damages was sudden and accidental. The words sudden and accidental were actually incorporated into the insurance industry standard pollution exclusion in those years. The problem was “sudden” was an undefined term in the GL policy and insurance companies were stuck with paying for claims at Superfund Hazardous waste sites where the actual pollution went on for decades.

To clarify the intent of pollution exclusions the words sudden and accidental were eliminated from common use in pollution exclusions in 1986. Today when there is an exception to a pollution exclusion in a General Liability insurance policy, the exception to the exclusion for certain types of pollution events is defined parameters measured in hours or days. Because the coverage give back in the pollution exclusion is driven by specified times, the more accurate way to describe the coverage is “Time Element” pollution coverage.

The Enbridge General Liability insurance policy contains Time Element pollution coverage in the General liability insurance policy. The remnant coverage for a pollution event after the exclusion is not just limited to sudden or quick pollution-- a leak could continue for up to 30 days, and the Pollution exclusion in the General Liability insurance policy would not apply to a loss for Bodily injury or Property Damages.

### ***The Time Element Pollution Exception***

The Enbridge General Liability insurance policy contains an exception to the pollution exclusion if the pollution event meets certain "Time Element" parameters.

The Pollution Exclusion in the Enbridge General Liability insurance policy will not apply only if;

1. The pollution release begins and is discovered within 30 days and
2. Enbridge reports the loss to the insurance company within 90 days of discovery.

An obvious gap in Enbridge insurance coverage is if a leak is not detected until the 31<sup>st</sup> day, in which case the Pollution exclusion on the GL policy would come into play and Enbridge would not have insurance assets to pay for a spill. In contrast a good quality EIL policy does not limit the duration of a contamination event in order for the damages arising from pollution taking place during the coverage period of the policy to be insured losses.

### ***The three Levels of Pollution Exclusions in the Enbridge Liability Insurance Policies***

There are three exceptions to the remnant Time Element pollution coverage on the Enbridge General Liability insurance policy, the most significant of these exceptions is there is no coverage for Property Damage to the properties owned or leased by Enbridge. In effect how this works is there are 3 negatives in a row in relation to pollution loss involving the pumping station and right of way on the Enbridge GL policy. The Pollution Exclusion, The Time Element Exception to the Pollution Exclusion and then an exception to the Time Element exception that would reapply the pollution exclusion to any Property Damage to the right of way properties that may be affected by a spill. This example illustrates how nebulous insurance coverage can be when exceptions to exclusions are relied upon for insurance coverage on a pollution event as opposed to purchasing genuine EIL insurance which is designed for this purpose.

The Enbridge GL policy is written on an indemnity basis, meaning the insurance companies agree to reimburse Enbridge for losses after Enbridge has paid for them. This is common practice.

The Enbridge liability insurance protection survives the bankruptcy of the insured which is a good feature for Dane county looking decades into the future to formulate a risk management plan.

### ***Differences between General Liability Insurance and genuine Pollution Insurance***

For unknown reasons, the terminology Sudden and Accidental Pollution Liability is still used to describe the remnant liability insurance created by the time element exception to the Pollution Exclusion in the General Liability insurance policies commonly purchased by oil and gas companies. Describing an insurance policy that only addresses coverage for pollution events as an exception to a far reaching pollution exclusion is really not "Pollution Insurance". There are fundamental insurance coverage differences between genuine Pollution Insurance and General Liability insurance which contains an exception to a pollution exclusion. An insurance policy that only addresses coverage for pollution events within the exclusion section of the policy is not genuine pollution Insurance.

A more technically accurate term for "pollution insurance" is Environmental Impairment Liability insurance (EIL) which is sometimes sold under the title Pollution Legal Liability insurance. The sole purpose of EIL insurance is to fill insurance coverage gaps created by the ever present pollution exclusions in property and liability insurance policies. Environmental Impairment Liability insurance has been continuously available in the North America since 1980. The current insurance market capacity for genuine environmental insurance on a pumping station exceeds \$100,000,000. That amount of insurance capacity has been available on a newly constructed pipeline pumping station for more than 30 years.

Enbridge does not purchase separate Environmental Impairment Liability insurance. An EIL policy covers Bodily Injury, Property Damages and Defense Costs. The definitions of these terms in EIL policies mirror the definitions commonly used in GL policies. However, the major difference is where a GL policy says there is no coverage for claims arising from pollution, an EIL policy *only* insures claims arising from the release or escape pollution either quickly or over time.

An EIL policy designed specifically to cover claims arising from pollutants provides broader coverage for environmental losses than a GL policy does. A good quality EIL insurance specifically insures Cleanup Costs, Emergency Response Costs, Restoration Costs and Natural Resources Damages within the insuring obligations of the policy. GL policies do not reference these important elements of coverage which will always come into play as a source of damages in a pipeline spill.

## **Analysis of Enbridge Indemnification and Insurance Proposal to Dane County**

Enbridge has offered to indemnify Dane County for any loss the county incurs as a result of the pumping station. Enbridge has also offered to include Dane County as an Additional Insured on the first \$100,000,000 of General Liability insurance maintained by Enbridge. Being indemnified by Enbridge is good for Dane County because the indemnity is first dollar protection and makes Dane county eligible to be an Additional Insured on the Enbridge General Liability insurance policy.

Being an “Additional Insured” on the Enbridge General Liability policy is a benefit for Dane County. By being named as an “Additional Insured” the Enbridge liability insurance would defend Dane County in the event Enbridge caused damages to a third party and the third party sued Dane County for the county’s contributory role in the Enbridge created loss event.

Being added as an Additional Insured under the Enbridge GL policy should not be confused with being added as a Named Insured to an insurance policy. An Additional Insured cannot make a direct claim for clean-up expenses associated with an oil spill under the General Liability policy. The Additional Insured could make a claim against the Named Insured in which case the named insured may have coverage subject, however, to the effects of the pollution exclusion. But, anyone can make a claim against the Named insured - you do not need to be an Additional Insured to do that.

The main advantage to the county of being an Additional Insured on the Enbridge GL policy is access to Defense Cost insurance coverage and in the event Dane County is held liable for their contributory negligence in a covered GL claim for Enbridge, the Enbridge liability insurance would indemnify Dane County for its stake in that loss. A key point to keep in mind is the breadth of the insurance coverage for the Additional Insured is no broader than the coverage for the named insured with a few possible exceptions unrelated to a pollution loss.

The benefit of the county being an Additional Insured under the Enbridge General Liability insurance assumes that there is no “insured versus insured” exclusion on the Enbridge General Liability insurance policy. If the Enbridge General liability insurance policy contained an “insured vs insured exclusion and the county became an “insured” by being named as an “Additional Insured” if the county made a claim against Enbridge for some reason, the Enbridge insurance policies would not apply to the county claim because one insured is claiming damages from another insured.

The need to avoid an “insured versus insured” exclusion in the Enbridge liability insurance is anticipated in the recommended insurance requirements in Appendix C.

Being an Additional Insured on the Enbridge General Liability insurance policy does not;

- Enable the County to make a direct claims for pollution clean-up under the Enbridge insurance policy;
- Correct for the inherent risk management deficiencies in relying on a General Liability policy to pay for pollution claims as previously discussed.

In reality, Dane County has a very small loss exposure in its zoning role on the pumping station. The county enjoys statutory immunity from liability as a public entity in Wisconsin and is not involved with

the operations of the proposed Enbridge pumping station. It is hard to imagine a scenario where Dane County would ever become part of a claim made against Enbridge. But if it ever did happen, being indemnified by Enbridge and being named as an additional insured on the Enbridge insurance policy would be a good thing.

## **Review of insurance coverage litigation involving the Enbridge Line 6B spill**

Because the matter is in active litigation, Enbridge could not provide the requested details on the \$103,000,000 insurance coverage case.

However, I discussed the matter in broad terms with the insurance manager of Enbridge in our face to face meeting. In essence there are two central issues in the Line 6B insurance coverage litigation that relate to Dane County prospectively:

1. The insurance policy language that is in dispute over \$103,000,000 in unpaid claims under the Enbridge General Liability insurance policy is unchanged today from the insurance policy language in effect during the 2010 policy year.
2. The insurance company is disputing whether the costs from the Line 6B spill is covered "Property Damage" in a General Liability insurance policy.

One common point of contention in insurance coverage litigation involving pollution claims under General Liability insurance policies over the past 30 years is whether a clean-up order from the government constitutes a claim for "Property Damage" under the definition that term in the GL policy.

Because General Liability insurance policies only insure Property Damages, these insurance policies are inherently deficient in their coverage for government ordered Clean-up costs, Natural Resource Damages and Restoration Costs. This is the major motivation behind my recommendation that the Line 61 pumping station be insured under an environmental insurance policy. A genuine EIL policy specifically insures Clean-Up Costs, Natural Resources Damages and Restoration Costs in addition to Bodily Injury and Property Damage Liability.

Of particular significance in this matter, the insurance companies below and above this \$103,000,000 layer paid the Line 6B claim which illustrates how unreliable exceptions to pollution exclusions can be to fund pollution losses.

In our meeting it was revealed that the insurance company that they are in insurance coverage litigation over regarding the Line 6B spill is no longer a participant in the Enbridge insurance program. This was to be expected.

Considering these represented facts there was no reason to evaluate the insurance coverage in effect in 2010 versus the coverage in effect today. I was told that the insurance policy language is essentially unchanged from 2010 to today. Which means the same arguments presented by the insurance company that is refusing to pay Enbridge's claim for \$103 million could potentially be presented by another insurance company in the future too deny a claim arising from a pipeline spill.

### ***The inherent danger in relying on exceptions to pollution exclusions to pay for pollution losses***

The coverage provided by the Enbridge General Liability insurance for pollution damages could change overnight as determined by legal matters completely outside of the control of Enbridge or their insurance companies.

For example on December 30, 2014 the Wisconsin Supreme court determined that manure and nitrates in ground water as a result of farming operations were excluded by the Pollution Exclusion in General Liability insurance policies. Prior to this decision, the precedent case law in WI was that manure was a “product” and there for not excluded as a “pollutant” under the Pollution exclusion in General Liability insurance policies commonly sold to farms. As a result of that Wisconsin Supreme Court decision on the insurance purchased by one farm, on December 31<sup>st</sup> 41,000 farms in Wisconsin were left clearly uninsured under the General Liability insurance policies for contamination claims arising from manure spreading operations.

In previous decades under various exceptions to Pollution Exclusions in the liability insurance policies sold to farms, many farmers and their insurance agents believed they had “sudden and accidental” pollution insurance as part of their General Liability insurance policy. The belief survived even though the reference to sudden and accidental pollution events was removed from the General Liability insurance policies sold to farms in 1986. In clearing up the confusion over the effects of the Pollution Exclusion, one Wisconsin Supreme Court Justice commented in the December 30<sup>th</sup> ruling that a common exception to the Pollution Exclusion for certain defined contamination events on the farmers GL policy was “useless” insurance, much to the surprise of the 41,000 farmers and their insurance agents.

Although Wisconsin case law on pollution exclusions should not have a bearing on an insurance policy purchased in Canada, the current Enbridge insurance coverage litigation over \$103,000,000 of GL insurance containing a pollution exclusion on the Line 6B spill in 2010 and the proper operation of a Pollution Exclusion in that policy parallels the Wisconsin farm situation. Even if Enbridge prevails in the collection of the \$103,000,000 in liability insurance, another litigated insurance coverage case in Canada, New York or London could eliminate the GL coverage for a pollution event for Enbridge and everyone else in that legal jurisdiction who buys insurance dependent upon an exception to a pollution exclusions containing the same language.

The insurance coverage litigation over \$103,000,000 of General liability insurance providing Time Element Pollution coverage for only Property Damage illustrates the need for back up Environmental Impairment Liability insurance on the Line 61 environmental loss exposures in Dane County.

***The Enbridge general liability insurance policy is missing essential coverages to clearly insure an oil spill event***

The track record of the Enbridge General Liability insurance program is that on Line 6 B, all of the insurance companies with the exception of just one company, paid for the costs of clean up to the maximum limits of liability on the insurance policies they sold to Enbridge. However, for the reasons stated above, this could change over time with the development of insurance coverage case law which could be adverse to Enbridge.

The Enbridge General Liability insurance coverage with its Pollution Exclusion and the exceptions to the exclusion if a spill is discovered within 30 days from the start of the spill is missing separately defined coverage parts for:

- Clean-up Costs
- Natural Resource Damages
- Emergency Response Costs
- Restoration Costs

- Coverage for spills longer than 30 days

All of these insurance coverage elements are provided in a good quality Environmental Impairment Liability insurance policy. Which is why I recommend the purchase of EIL coverage on the pumping station and, optionally, the pipe line in Dane County.

## The availability of government-backed oil spill funds

There are actually two sources of Government funded spill response programs for oil spills;

1. The Wisconsin Spills Law which accesses general purpose revenues from the state of Wisconsin with an annual allocation of \$3.5 million per year, funds are accessed by the WI DNR and;
2. The Oil Pollution Act with a current balance exceeding over \$4 billion in the Oil Spill Liability Trust Fund and taxes of more than \$300,000,000 annually. Funds for clean-up costs and other damages are accessed by the Federal Government or the State.

There is no apparent government source of funds for a county to respond to a spill event. However, environmental laws do not create a obligation for counties to respond to pollution events the county did not cause.

Considering the magnitude of the Enbridge Maximum Probable Loss potential, by far the more significant and therefore relevant of these two funds is the Federal Oil Spill Liability Trust fund.

After the crude oil spill in Alaska involving the Exxon Valdez, The Oil Pollution Act of 1990 was passed and a federally sponsored fund was created for federal and state trustees to respond to the clean-up costs and victim compensation arising from future oil spills, including spills from pipe lines. The Oil Pollution Act does not anticipate a role for local governments in spill response.

The Oil Spill Liability Trust Fund (OSLTF) will pay for costs incurred from tar sands oil spills arising from pipelines. The spill must only threaten a waterway to be eligible for the fund. Threatening a water way will be a certainty on any spill from Line 61 in Dane County.

In essence, the idea of the spill fund is to assure that the federal or state authorities (not the county) have the resources necessary to pay for an oil spill.

Recoverable cost from the Oil Spill Liability Trust Fund include:

- Removal Costs
- Real or Personal Damages
- Loss of Profits and/or Income
- Loss of subsistence
- Lost government revenue
- Increase public services
- Up to \$500 million in Natural resource damages compensation.

The trust fund does not distinguish between a sudden or gradual spill events.

The funds also survive the bankruptcy of a responsible party who causes a spill.

The Oil Spill Liability Trust Fund is financed by taxes on certain types of unrefined oils, plus fines and penalties imposed by the government on parties responsible for spills. In something peculiar to the definition of the oil that is taxed, tar sands oil is not paying into the fund through taxes.

The trust fund received a recent major influx of money, over \$3 billion, from the fines assessed against BP in the Deep Water Horizon oil spill in the Gulf of Mexico.

Payments from the fund are subject to a limit of \$1 Billion per incident. "Incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.

The \$4 billion dollar fund in 2015 back-stops the responsible party's ability to fund an oil spill clean-up either through cash or insurance recoveries. The parties responsible for the spill must fully reimburse the Oil Spill Liability Trust Fund for any fund monies utilized by the responders to a spill. The funds are still available to responders in the event of the bankruptcy of the responsible party.

Because of the \$1 billion cap per incident there would need to be four un-reimbursable spills of at least a billion dollars each before the current funding would be exhausted. A more probable scenario over time would be the political elimination of the fund all together.

The largest on land oil spill in history was the 2010 Enbridge Line 6B spill in Michigan, which has cost Enbridge \$1.2 billion to date without the effects of any potential future fines or penalties resulting from the spill. The \$4 billion fund subject to its \$1billion dollar per incident cap in the short term and foreseeable future has sufficient funding to address all of the costs associated with a spill at a pump station in Dane county even if Enbridge has no cash or insurance available to reimburse the fund.

However, there is no way to reliably predict the status of future funding of the Oil Spill Liability Trust Fund over the term of a conditional use permit.

For More information on the Oil Pollution Act, tar sand oil, taxes and the Oil Spill Liability Trust Fund see Appendix B.

## Insurance Recommendations and Conclusions

### ***A long term view on insurance is needed***

The current Enbridge Liability insurance program is not very relevant to the actual risk involved with the construction and operation of a pumping station in Dane County decades into the future. Any risk management strategies used by the county to address potential environmental impacts under the Conditional Use Permit need to anticipate changes in a number of variables, including the future economic viability of a pipe line carrying tar sands oil and changes in the insurance market place taking place over that time horizon. Insurance has been around for over 400 years, it is a good bet that insurance will exist as a financial product for the entire period the CUP is in place. Therefore insurance requirements as a condition for the CUP are highly recommended.

Specified insurances as part of a Conditional Use Permit create numerous risk management advantages to Dane County.

- Insurance can adapt to new information on risk over time.
- The limits of insurance can be adapted to future loss costs due to the effects of inflation.
- Insurance underwriters provide an objective 3<sup>rd</sup> party evaluation of a risk.
- Insurance underwriters have access to an extremely efficient global knowledge sharing network of hazards.
- By accessing one specialized insurance underwriter the collective best practices of multiple companies in the same business, in this case pipe lines, can be utilized for advance loss control.
- By requiring insurance for a particular activity there is no need for the stakeholders in the activity to have expertise in risk evaluation or risk management. The private insurance industry will efficiently take all risk factors into account when offering to insure the activity. By simply requiring robust insurance, the stakeholders access the collective risk management knowledge of thousands of people working in the insurance business in North America alone. A firm like Enbridge would access the global insurance market place. In which case all of the knowledge and experience held by the people that work with insuring pipe lines on a global scale would be brought to bear on a pumping station in Dane County.

### ***Recommended types and amounts of liability insurance***

I recommend that Enbridge procure and maintain the following liability insurance policies over the course of the permit duration:

- \$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and;
- Environmental Impairment Liability insurance with a \$25,000,000 limit

At a limit of \$700 million the Enbridge General Liability insurance program, which insures more than 15,000 miles of pipe lines, does not have enough limits to pay for a known magnitude \$1.2 Billion loss exposure. Purchasing insurance equal to 100% of the known loss exposure is common practice in insurance. However, it is very possible that Enbridge is already purchasing all of the General Liability insurance capacity available in the world for their operations. Therefore, I do not recommend the purchase of higher GL limits for the operation of the Line 61 Pumping Station.

I conservatively set the liability insurance recommendations at 1/10 the cost of a previous Enbridge spill on Line 6B in Michigan. Being 90% under a known loss event, with many factors being the same between the Enbridge pipe lines in MI and WI, is a very modest level of insurance to ask for.

To supplement the General Liability insurance coverage maintained by Enbridge, I recommend that Enbridge purchase an Environmental Impairment Liability insurance policy on the pumping station in Dane County with a limit of liability of \$25,000,000 per loss. If more than one location is insured under this policy, the policy must have an annual Aggregate Limit of Liability of \$50,000,000. The Annual Aggregate provision would come into effect if more than one loss is reported under the policy over the policy term. However, the most that would be paid by the policy for a single loss is \$25,000,000.

This EIL insurance policy should provide Excess coverage and “Difference In Conditions Coverage” (DIC) for environmental damages over the primary General Liability insurance currently maintained by Enbridge. DIC coverage fills in coverage gaps that the General Liability policy may have for pollution losses.

It would be acceptable if this EIL insurance covered all of line 61 in Dane County. Although the existing pipe line is not part of the permit application, expanding the insurance coverage to include the existing pipeline in Dane County should have no effect on the premium charged for the EIL insurance policy on the pumping station, and the additional insured locations would benefit both Enbridge and Dane County.

***Three risk management objectives in these recommendations***

There are three risk management objectives in my recommendation that Enbridge maintain a small amount of environmental insurance on the pumping station in Dane County:

1. Back stop the primary Enbridge insurance program with broader insuring obligations than a General Liability insurance policy which only addresses Property Damage and then only if certain Time Elements are met to get around the Total Pollution exclusion in that insurance policy;
2. Access the independent risk evaluation capability of an environmental insurance underwriter over the life of the proposed conditional use;
3. Create a relatively small genuine environmental insurance to backstop potentially unrecoverable General Liability Insurance, the potential inability of Enbridge to pay for a spill clean-up out of profits in the future, or deficiencies in government sponsored oil spill funds.

The recommended \$125,000,000 of liability insurance, which includes \$25,000,000 of genuine environmental impairment insurance, is readily available in the insurance market place today, and will be available in the foreseeable future. In the event of an oil spill at the pumping station, the county, the state, the federal government and affected third parties could all make claims against Enbridge. The liability insurance policies do survive as an asset in the event Enbridge is bankrupt, so in that sense, the policies could have some value to the county as an asset of last resort to recover damages that Enbridge has caused.

A detailed insurance specification for General Liability and Environmental Insurance on the Line 61 pump station is shown in Appendix A.

## **Appendix A: Recommended Liability Insurance Specifications**

### **General Liability Insurance**

Commercial General Liability Insurance or the equivalent

Insuring the operations and completed operations of the line 61 pumping station in Dane county.

Coverage shall be provided for Bodily Injury Liability, Property Damage Liability and Defense costs.

The pollution exclusion in this policy shall not apply to the escape or release of pollutants or contaminates that begin and are discovered in no less than 14 days and are reported to the insurer within no less than 30 days.

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

Coverage shall be extended to Dane County as an Additional Insured.

This insurance shall be Primary and Non-contributory to any insurance Dane County may have available.

Any rights of subrogation against Dane County shall be waived.

The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an Additional Insured

The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County

Minimum Limit of Liability \$100,000,000

### **Environmental Insurance Specification**

Environmental Impairment Liability Insurance, Site Pollution Liability Insurance or the equivalent

Insured Location: The pumping Station on Line 61 in Dane County (optionally the policy may insure the pipe line in Dane County)

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII.

Coverages To Be Included:

- On and off site Clean-up expenses
- Damages to Natural Resources
- Emergency response cost to at least \$1,000,000
- Bodily Injury Liability
- Property Damage Liability
- Contractual liability naming Dane County as an Additional Insured
- This policy must be Primary and Noncontributory to any insurance Dane County may have access to.
- The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an additional insured.
- This coverage can be excess over other collectable insurance and the deductible or self-insured retention amounts of the underlying insurances
- This policy shall provide difference in conditions coverage excess of the deductible or self-insured retentions in the primary General Liability insurance program.

- This insurance does not need to drop down below the Self Insured Retention amounts on the coverages provided by the Enbridge master insurance program.
- The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County.

**Limits of liability**

\$25,000,000 per loss and in \$25,000,000 Annual Aggregate for all losses over the course of the policy term.

The pumping station and the pipe line located in Dane County will be considered a single location for the purpose of determining the aggregate limit of liability required.

If said insurance policy insures more than Dane County properties the policy shall have an Annual Aggregate Limit of \$50,000,000.

**Self-Insured Retention**

The maximum self-insured retention on this policy shall be the underlying insurance including the Self Insured retention in the Enbridge Master General Liability insurance program or \$1,000,000.

**Evidence Of Insurance**

Upon request by Dane County, Enbridge shall furnish a certificate of insurance to the county which accurately reflects that the procured insurances fulfill these insurance requirements.

## **Appendix B: Federal sources of oil spill clean-up cost and victim compensation funding**

This reference material is derived from <http://www.fas.org/sgp/crs/misc/R43128.pdf>  
And has been edited for ease of reference in this report.

### **Oil Sands and the Oil Spill Liability Trust Fund: The Definition of “Oil” and Related Issues for Congress**

**Jonathan L. Ramseur**

Specialist in Environmental Policy

January 22, 2015

“The Oil Spill Liability Trust Fund (OSLTF) provides an immediate source of federal funding to respond to oil spills in a timely manner. Monies from the OSLTF can be used to respond to a wide variety of oil types, including oil sands-derived crude oils.

However, the OSLTF arguably plays a backup role in terms of response funding during many oil spills. The responsible party for an oil spill often provides the primary source of response (i.e., cleanup) funding, and the federal government may recover costs or damages paid from the OSLTF. This was the case with the Enbridge leak in Line 6 B no federal dollars were used Thus, the financial impact to the trust fund could be minimal if the majority of its payments are reimbursed by the responsible parties. Nonetheless, the liability of responsible parties may be limited under certain conditions. In those situations, the OSLTF could effectively pay—up to a per-incident cap of \$1 billion.”

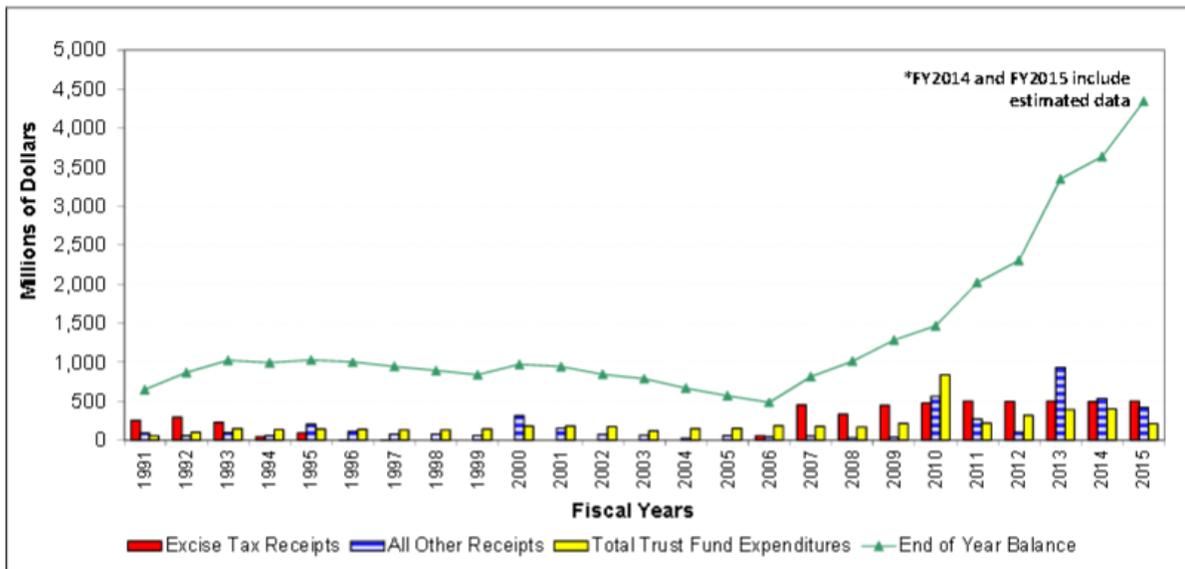
### **Uses of the Fund**

“Pursuant to OPA Section 1012, the trust fund may be used for several specific purposes:

- payment of removal costs, including monitoring removal actions, **by federal authorities or state officials;**
- payment of the costs incurred by the federal and state trustees of natural resources for assessing the injuries to natural resources caused by an oil spill, and developing and implementing the plans to restore or replace the injured natural resources;
- payment of parties’ claims for uncompensated removal costs, and for uncompensated damages.”

## The Oil Spill Liability Trust Fund

**Figure 2. Oil Spill Liability Trust Fund**  
Receipts, Expenditures, and End-of-Year Balances



**Source:** Prepared by CRS; data from annual Office of Management and Budget, Budget of the United States Government, Appendices.

**Notes:** The initial gap between the end-of-year balance (line) and the receipts-expenditures columns is due to the FY1991 starting balance of \$358 million. The relative increases in “other receipts” in 1995 and 2000 are due to transfers from the Trans-Alaska pipeline fund of \$119 million and \$182 million, respectively. The increases in expenditures and “other receipts” between 2010 and 2013 are related to the 2010 *Deepwater Horizon* oil spill.

As **Figure 2** indicates, the “other receipts” category has contributed a substantial portion of revenues in recent years, the vast majority stemming from the 2010 *Deepwater Horizon* oil spill. Other receipts include earned interest on the unexpended trust fund balance, fees from fines and penalties, and cost recovery from responsible parties. The trust fund is likely to receive additional revenues related to that incident, particularly from anticipated Clean Water Act civil penalties on BP.

## Appendix C: Relevant Enbridge Financial Facts

SEC Filings - Form 10-Q

Enbridge Energy Partners LP filed this form on 5/2/2014

### Excerpts taken from the Enbridge 2014 annual report

The Partnership expects adjusted EBITDA for 2015 to increase approximately 12 percent, to between \$1.68 billion and \$1.78 billion, and expects distributable cash flow for 2015 to increase approximately 15 percent, to be between \$900 million to \$960 million

Page 23 - Legal and Regulatory Proceedings

A majority of the costs incurred for the crude oil release for Line 6B are covered by the insurance policy that expired on April 30, 2011, which had an aggregate limit of \$650.0 million for pollution liability. Including our remediation spending through March 31, 2014, we have exceeded the limits of coverage under this insurance policy. As of March 31, 2014, we have recorded total insurance recoveries of \$547.0 million for the Line 6B crude oil release, out of the \$650.0 million aggregate limit. We expect to record receivables for additional amounts we claim for recovery pursuant to our insurance policies during the period that we deem realization of the claim for recovery to be probable.

In March 2013, we and Enbridge filed a lawsuit against the insurers of our remaining \$145.0 million coverage, as one particular insurer is disputing our recovery eligibility for costs related to our claim on the Line 6B crude oil release and the other remaining insurers assert that their payment is predicated on the outcome of our recovery with that insurer. We received a partial recovery payment of \$42.0 million from the other remaining insurers.

Of the remaining \$103.0 million coverage limit, \$85.0 million is the subject matter of the lawsuit Enbridge filed in March 2013 against one particular insurer who is disputing our recovery eligibility for costs related to our claim on the Line 6B oil release. The recovery of the remaining \$18.0 million is awaiting resolution of this lawsuit. While we believe those costs are eligible for recovery, there can be no assurance that we will prevail in our lawsuit.

We are pursuing recovery of the costs associated with the Line 6A crude oil release from third parties; however, there can be no assurance that any such recovery will be obtained. Additionally, fines and penalties would not be covered under our existing insurance policy.

Enbridge will renew its comprehensive property and liability insurance programs which will be effective May 1, 2014 through April 30, 2015 having a liability aggregate limit of \$700.0 million, including sudden and accidental pollution liability. The deductible applicable to oil pollution events will increase to \$30 million per event, from the current \$10 million. In the unlikely event that multiple insurable incidents occur which exceed coverage limits within the same insurance period, the total insurance coverage will be allocated among the Enbridge entities on an equitable basis based on an insurance allocation agreement the Partnership has entered into with Enbridge, Midcoast Energy Partners, and other Enbridge subsidiaries.

## **Environmental**

### *Lakehead Line 6B Crude Oil Release*

During 2014, our cash flows were affected by the approximate \$141.4 million we paid for environmental remediation, restoration and cleanup activities resulting from the crude oil release that occurred in 2010 on Line 6B of our Lakehead system.

In March 2013, we and Enbridge filed a lawsuit against the insurers of our remaining \$145.0 million coverage, as one particular insurer is disputing our recovery eligibility for costs related to our claim on the Line 6B crude oil release and the other remaining insurers assert that their payment is predicated on the outcome of our recovery with that insurer. We received a partial recovery payment of \$42.0 million from the other remaining insurers during the third quarter 2013 and have since amended our lawsuit, such that it now includes only one carrier. While we believe that our claims for the remaining \$103.0 million are covered under the policy, there can be no assurance that we will prevail in this lawsuit.