

ROBERT and HEIDI CAMPBELL	)	
5721 Doschadis Drive	)	
Waterloo, WI 53594	)	
KEITH and TRISHA REOPELLE	)	
579 Fisch Road	)	
Marshall, WI 53559	)	
JAMES and JAN HOLMES	)	
287 Maple Heights Road	)	
Marshall, WI 53559	)	
TIM JENSEN	)	
5673 Doschadis Drive	)	
Waterloo, WI 53594,	)	
	)	COMPLAINT
Plaintiffs,	)	Case No.:
	)	Case Code: 30704
v.	)	
	)	
ENBRIDGE ENERGY COMPANY, INC.	)	
ENBRIDGE ENERGY, LIMITED	)	
PARTNERSHIP, and ENBRIDGE	)	
ENERGY, LIMITED	)	
PARTNERSHIP WISCONSIN	)	
1100 Louisiana Street, Suite 3300	)	
Houston, Texas 77002,	)	
	)	
Defendants.	)	

This is an action for injunctive relief with no monetary damages sought.

---

COMPLAINT FOR INJUNCTION

---

The Plaintiffs, ROBERT and HEIDI CAMPBELL, KEITH and TRISHA REOPELLE, JAMES and JAN HOLMES, and TIM JENSEN, (hereinafter Plaintiffs) by their Attorneys, Patricia K. Hammel, and Thomas R. Burney and as and for their Complaint in the above-captioned action, allege and show to the court, as follows:

## INTRODUCTION

1. This is an action for injunctive relief to enforce the Dane County Zoning Ordinance contained in its Conditional Use Permit No. 2291 issued on April 21, 2015 (“Conditional Use Permit” or “Permit”) to Enbridge Energy Company (“Enbridge”).<sup>1</sup>

2. Owners of real estate affected by the Permit bring this action pursuant to §59.69(11), Wis. Stats., which empowers them, in addition to the County, to seek injunctive relief for violations of the zoning code.

3. The Plaintiffs request the Court to exercise its injunctive powers to enforce and compel compliance with Condition 7 of the Conditional Use Permit. That provision conditions the County’s zoning permit for operation of the Waterloo Pumping Station,<sup>2</sup> which includes Enbridge’s Southern Access Pipeline 61 through Dane County to which it is connected (“the Project”), upon, *inter alia*, the purchase of \$25 million of Environmental Impairment Liability Insurance (“Cleanup Insurance”).

4. Enbridge refuses to purchase the Cleanup Insurance, which is readily available in the commercial insurance market and costs less than \$100,000 in annual premiums.

5. The reason the Zoning Committee required Cleanup Insurance related to the particular type of oil transported in Line 61 through Dan County. Enbridge’s Project is one part of a larger, two phase expansion plan to deploy a series of expanded and new pumping stations in order to increase the capacity of its Alberta Clipper Pipeline No. 67 across North Dakota and Minnesota, to Superior, Wisconsin, where it connects to its Southern Access Pipeline No. 61 down Wisconsin and Illinois, from originally 400,000 barrels per day (bpd) to, in Wisconsin, 1.2 million bpd. These interconnected pipelines and pumping stations transport hazardous bitumen from the Ft. McMurray-Hardisty area in the Alberta tar sands of Canada, through the Midwest to a refinery in Flanagan, Illinois and, from there, along its Flanagan South and Seaway Pipelines, to the Houston-Port Arthur area in Texas for export.

6. Bitumen is corrosive and, because it is too viscous to flow through pipelines, has to first be mixed with a diluent, which is toxic, volatile and explosive; second, heated, which increases the rate

---

<sup>1</sup> Because of the company’s complex and shifting organizational structure, the same relief is also sought against Enbridge’s affiliated limited partnership, Enbridge Energy, Limited Partnership Wisconsin, that functionally is or will be the owner and operator of the Project in Wisconsin, even though it was not named in the permit application.

<sup>2</sup> The facility designated the Waterloo Pump Station by Enbridge is actually located near Marshall, in Medina Township, Dane County, not in either the town or city of Waterloo in Jefferson County.

of corrosion, and, third, accelerated with pumps under high pressure, which increases stress. During oil spills in waterways, the diluent evaporates, creating hazardous conditions, leaving the bitumen to sink, which is extremely difficult and costly to clean up, instead of float, which can be skimmed off. Compounding these concerns intrinsic to pipeline transport of bitumen, Enbridge was responsible for the worst inland oil spill in U.S. history that cost \$2.1 billion to clean up by making a series of inexplicable mistakes that alarmed regulators.

7. The current second phase of the Project in Dane County is the one that is now before the Court. It involves Enbridge's plan to add four 6,000 horse power electric pumps to Line 61 at 5635 Cherry Lane in the Town of Medina in order to increase the capacity of the pipeline from the present 560,000 bpd, following intermediate upgrades, to 1.2 million bpd.

8. Because the location for the pumping station is in an A-1 Exclusive zoned parcel, and the Dane County Ordinances provide that oil pipelines in that zoning classification are a conditional use, the County Zoning Administrator found that a conditional use permit under §10.255(2), Dane County Ordinances, was required before construction of the pumping station could proceed.

9. Between August 2014 and April 2015, the matter was heard by the Dane County Zoning and Land Regulation Committee ("Zoning Committee") to determine whether conditions could be crafted that would enable the Project to comply with each of six standards set forth in §10.255(h), Dane County Ordinances, that must all be met before a conditional use permit can issue.

10. After conducting four public hearings and commissioning an independent expert risk analysis of the Project, the Zoning Committee received testimony documenting facts about the Project that raised unique risks to the County and its citizens, especially those residing near the Project, that violate one or more of the six conditional use standards.

11. Based on the record before it, the Zoning Committee decided that the County ordinances did not allow it to permit the Project unless further assurances were crafted to insure that funds would be available in the future to pay for the cleanup, specifically \$25 million in Environmental Impairment Liability insurance.

## **PARTIES**

12. The Plaintiffs ROBERT and HEIDI CAMPBELL reside at 5721 Doschadis Road, Waterloo, WI 53594, in Medina Township. Their parcel is zoned A1-EX and RH-1 and is 565 feet from the Enbridge Southern Access Pipeline 61 and 722 feet from the pumping station.

13. The Plaintiffs KEITH and TRISHA REOPELLE reside at 579 Fisch Road, Marshall, WI 53559, in York Township. Their parcel is zoned A1-EX and is 687 feet from the Enbridge Southern Access Pipeline 61 and 20,241 feet from the pumping station.

14. The Plaintiffs JAMES and JAN HOLMES reside at 287 Maple Heights Road, Marshall WI 53559, in Medina Township. Their parcel is zoned A-1 EX and is 2,070 feet from to the Enbridge Southern Access Pipeline 61 and 6,430 feet from the pumping station.

15. The Plaintiff TIM JENSEN resides at 5673 Doschadis Drive, Waterloo, WI 53594, in Medina Township. His parcel is zoned RH-1, but is in the process of being rezoned to A-1 EX, and is 1,253 feet from the Enbridge Southern Access Pipeline 61 and 2,355 feet from the Project defined below.

16. A diagram locating each of the Plaintiffs' property and its proximity to the Project is attached as Exhibit A

17. The Defendant ENBRIDGE ENERGY COMPANY is a Canadian interstate liquid pipeline company registered to do business in Wisconsin, with its U.S. offices located at 1100 Louisiana Street, Suite 3300, Houston, Texas 77002.

18. The Defendants ENBRIDGE ENERGY LIMITED PARTNERSHIP and ENBRIDGE ENERGY LIMITED PARTNERSHIP WISCONSIN are subsidiaries or affiliates of Enbridge Energy Company, organized as master limited partnerships, which are also Canadian interstate liquid pipeline companies registered to do business in Wisconsin, with their U.S. offices located at 1100 Louisiana Street, Suite 3300, Houston, Texas 77002. The three Defendants are collectively referred to herein as "Enbridge".

19. On information and belief Enbridge possesses a leasehold interest from Wisconsin Electric Power Company on which it is constructing and intends to operate the pump station ("Property").

#### **FACTUAL ALLEGATIONS**

20. Enbridge owns and operates the Project, consisting of the Waterloo Pumping Station and the Southern Access Pipeline No. 61 to which it is connected.

21. On April 30, 2014, Enbridge applied to the Dane County Planning and Development Department ("Department") for a zoning permit for what it alleged to be a permitted use to construct four new 6,000 horse power (HP) electric pumps in a building 160 feet long × 82 feet wide × 42 feet high ("Waterloo Pump Station"). The new pumps are to increase the capacity of the Southern Access

Pipeline No. 61, to which the pumps are connected, from approximately 560,000 bpd to 1.2 million bpd. The Permit was granted on the same day it was requested as Permit No. DCPZP-2014-00199.

22. The parcel on which the Waterloo Pumping Station is located is 5635 Cherry Lane, Section 14, Town of Medina, Dane County, Wisconsin, Tax Parcel ID: 0812-144-8002-0, which is approximately 1½ miles east of the Village of Marshall and approximately ⅓ mile south of State Highway 19. The parcel is on land that was then and remains now zoned A-1 EX by Dane County, Wisconsin.

23. Pursuant to §59.64, Wis. Stats., Dane County has adopted zoning regulations in Chapter 10, Dane County Ordinances., including the maps showing the zoning classification for each location in the County under §10.03, Dane County Ordinances. The ordinance and map were in effect during the period from April 30, 2014 to April 21, 2015 when the permit that is the subject of this action was considered and issued, remains in full force and effect today, and governs uses to which the property may be put.

24. On June 12, 2014, the Dane County Zoning Administrator, Roger Lane, advised Enbridge that:

“[W]e have determined that the permit for the Enbridge pump house issued on April 30, 2014, was issued prematurely. We have concluded that your proposed use is not a permitted use, and that a conditional use permit is instead required. Please be advised that Zoning Permit No. DCPZP-2014-00199 is hereby revoked.”

25. On August 25, 2014, Enbridge re-filed its application with Dane County's Zoning and Land Regulation Committee ("Zoning Committee") under §10.255(2), Dane County Ordinances, seeking a conditional use permit for the Waterloo Pumping Station. The matter was docketed DCP-CUP-2014-02291.

26. The Zoning Committee was duly created by the Dane County Board, as part of supervising the administration of the zoning laws, to rule on conditional use permits, which includes Enbridge's application for a conditional use permit. §59.694, Wis. Stats.

27. Between August 2014 and April 2015, the Zoning Committee held four public hearings on Enbridge's application for a conditional use permit. Also, the Committee commissioned a risk analysis of the pumping station for the County by Mr. David Dybdahl, which report is a part of the record below, and whose findings, along with the extensive testimony from all the parties, informed the Committee's decision.

28. On April 14, 2015, the Committee voted 5-0 to approve a Conditional Use Permit for the Project under Docket DCP-CUP-2014-02291 with 11 conditions that it concluded were necessary to meet the six standards required for a conditional use permit in §10.255(h), Dane County Ordinances, including Condition No. 7, which stated (with the italicized section that is germane to this action):

*Enbridge shall procure and maintain liability insurance as follows: \$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and \$25,000,000 of Environmental Impairment Liability insurance. Enbridge shall list Dane County as an Additional Insured on the total \$125,000,000 of combined liability insurance. (“Insurance Condition”)*

29. On April 20, 2015, the Town of Medina approved the Enbridge Conditional Use Permit, including the Insurance Condition.

30. On April 21, 2015, the Department issued the Conditional Use Permit for the Project under Docket DCP-CUP-2014-02291 that had been approved by the Zoning Committee on April 14, 2015.

31. Subsequent to Dane County's decision to condition the permit for the Project on Cleanup Insurance, on July 14, 2015, 2015 Wisconsin Act 55, known as the 2015-2016 State Budget, was published and became effective. It included two sections wholly unrelated to the State Budget that related to the Insurance Condition, stating:

“A county may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.” §59.70(25) Wis. Stats.

“As part of its approval process for granting a conditional use permit under this section, a county may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.” §59.69(2)(bs), Wis. Stats.

32. On information and belief, §59.70(25) Wis. Stats., and/or §59.69(2)(b), Wis. Stats., were included in the State Budget in whole or in part at the instance of an employee(s), official(s) or agent(s) of Enbridge or its parent, subsidiaries, affiliates or contractors.

33. Because the statute was not made retroactive, the Insurance Condition in the previously adopted Conditional Use Permit remained in effect, but prospectively the county was unable to enforce the provision.

34. The same injunctive statute that authorizes counties to enforce their zoning ordinances, §59.69(11), Wis. Stats., provides an equivalent right for owners of property in the same zoning district to do so.

35. Plaintiffs are bringing this cause of action on that parallel property owner enforcement authority, which was not affected by the budget rider.

36. On October 19, 2015, Enbridge appealed from the decision of the Zoning Committee to the full Dane County Board ("Board") pursuant to §10.255(2)(j), Dane County Ordinance, requesting the Board to void and remove the Insurance Condition in the Conditional Use Permit. On December 3, 2015, the Dane County Board heard the matter, and, denied Enbridge's appeal of the Zoning Committee's Insurance Condition, and refused to remove the condition, by a vote of 27 to 4.

37. On January 4, 2016, Enbridge petitioned the Dane County Circuit Court for certiorari of the Dane County Board's denial of its appeal of the Zoning Committee conditional use permit for the Project. Enbridge requested the Court to order the removal of the EIL Insurance Condition and other insurance requirements from the Enbridge CUP. The case was docketed 16-CV-0008.

38. On information and belief, Enbridge has not yet purchased, and does not, prior to or after completion of the Project, intend to purchase \$25 million of Cleanup Insurance.

39. The Insurance Condition promotes the public welfare and the public health, safety and welfare.

40. The hazardous material to be transported in the pipeline is subject to *increased risk of oil spills*.

41. Bitumen is similar in its composition and consistency to tar.

42. It is as much as 70 times more viscous than conventional oil.

43. It is substantially more corrosive to the pipes resulting in increased dangers to affected populations.

44. These characteristics make it challenging and expensive to clean up.

45. Bitumen is acidic.

46. Its constituents include sulfur that chemically causes pipe embrittlement, chlorides that lead to stress corrosion, and quartz sand particles that are physically highly abrasive.

47. Bitumen is too viscous to flow through a pipe. Therefore, it must be diluted with toxic, explosive and volatile diluents, combined into a product called dilbit, which is ignitable and a health threat when the diluents volatilize during pipe ruptures.

48. To reduce viscosity in order to increase flow rates, the bitumen is heated from ambient temperatures to approximately 158F, even though every 20 degree increase doubles the rate of corrosion.

49. Industrial pumps are used to increase pressure inside the pipe from low pressures of less

than 600 pounds per square inch (“psi”) to 1,200 pounds psi, approximately the force of a car power washer, which further amplifies all of the other stresses on the pipe.

50. When there is an oil spill in surface waters, the diluents volatilize and the bitumen left behind sinks rather than floating on the surface, which, unlike conventional oil that can largely be skimmed off, is extraordinarily difficult and costly to clean up.

51. High volumes of oil are proposed to be transported resulting in increased risks of a huge spill in the event of a pipe rupture.

52. Line 61 is a 42 inch diameter pipe, which is the largest oil pipeline in the U.S.

53. The pumping station will increase internal pipe pressure to 1,200 pounds per square inch (psi).

54. As a result, a pipe break in Dane County will result in the release of in excess of 2 million gallons of hazardous material per hour until the pipe is closed down.

55. The Enbridge safety record provides a basis in the public welfare or imposing the Insurance Condition.

56. In 2010 Enbridge was responsible for the worst inland oil spill in U.S. history.

57. The spill continued for 17 hours before the pipeline was finally shut down.

58. The spill caused \$1.2 billion in damages.

59. Ten days earlier Enbridge’s Vice-President assured a Congressional committee that “[s]afety and protection of the public and environment are our highest priorities.”

60. There were numerous warnings of a possible oil spill before the Kalamazoo accident that Enbridge failed to respond to. Beginning in 2008, 329 defects were identified but remained unrepaired in the pipeline that later ruptured.

61. Four months before the accident, the Pipeline Safety Hazardous Material Administration cited Enbridge for improper monitoring of corrosion in the pipeline that later ruptured.

62. The risk management expert retained by the Zoning Committee found that the General Liability insurance policy maintained by Enbridge is too uncertain to rely upon to payout for major oil spill cleanups in the future in the event that Enbridge becomes insolvent or incapable of necessary maintenance. He recommended adding an Environmental Impairment Liability insurance policy in amount of \$25 million in order to provide adequate assurances that funds will be available in the future to pay for cleanups.



## CAUSE OF ACTION

63. The Plaintiffs herein incorporate paragraphs 1-61 of the complaint for their Cause of Action

64. The Enbridge CUP expressly provides in Condition No. 7 as follows:

Enbridge shall procure and maintain liability insurance as follows: \$100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and \$25,000,000 of Environmental Impairment Liability insurance. Enbridge shall list Dane County as an Additional Insured on the total \$125,000,000 of combined liability insurance.

65. Enbridge has refused to purchase the \$25 million in Environmental Impairment Liability Insurance that is required by the Enbridge CUP.

66. The Plaintiffs, owners of real estate adjoining the Project in the A-1 EX zoning district, are adversely affected and entitled under §59.69(11), Wis. Stats., to enforce Condition 7, the Insurance Condition contained in the Conditional Use Permit by being awarded injunctive relief.

WHEREFORE, the Plaintiffs respectfully request the following relief from the Court:

a) An order directing that Enbridge may not proceed with any operations at the property related to the Project until it has secured a binding letter of commitment from an insurance carrier satisfying the Condition No. 7 in the Conditional Use Permit.

b) Finding that Enbridge is in violation of Dane County Code § 10.25(5)(a) until it satisfies condition (a) above.

c) Such other and further relief as the court deems just and reasonable.

Respectfully submitted,

Plaintiffs ROBERT and HEIDI CAMPBELL,  
KEITH and TRISHA REOPELLE, JAMES and  
JAN HOLMES, and TIM JENSEN

By: \_\_\_\_\_  
Patricia Hammel, One of their attorneys  
Herrick & Kasdorf LLP  
16 N. Carroll Street #500  
Madison WI 53703  
(608) 257-1369  
State Bar No. 1019166

Thomas R. Burney  
Law Office of Thomas R. Burney  
40 Brink Street  
Crystal Lake, Illinois 60014  
(815) 356-2645  
Illinois State Bar No. 20522

**EXHIBIT A. Plaintiffs' location in relation to pump station and pipeline**

