

The Great Lakes Environmental Law Center

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

440 Burroughs Street, Box 70
Detroit, Michigan 48202
www.glelc.org

August 2, 2010

Patrick Daniel, Chief Executive Officer
Enbridge, Inc.
3000 Fifth Avenue Place 425 - 1st Street S.W.
Calgary, AB T2P 3L8
Canada

Rebecca Humphries, Director
Michigan Department of Natural Resources
and Environment
P.O. Box 30473
Lansing, MI 48909

Susan Hedman, Regional Administrator
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Re: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Dear Mr. Daniel,

This sixty day notice of intent to file a citizen suit against Enbridge, Inc., under Section 505 of the Clean Water Act (CWA), 33 U.S.C. § 1365, for the violations described below is provided on behalf of the Great Lakes Environmental Law Center (GLELC).

Enbridge has violated the CWA with respect to discharges of oil or hazardous substances into the navigable waters of the United States. The United States Environmental Protection Agency has estimated that over ONE MILLION gallons of crude oil have been discharged from Enbridge's pipeline into the Kalamazoo River near Marshall, Michigan. The discharge of oil was first reported on or about Sunday July 25 or Monday July 26, 2010 near the Lakehead pipeline pumping station and the oil has spread several miles downstream in the ensuing days.

Section 311 of the Clean Water Act prohibits discharges of oil or hazardous substances into the navigable waters of the United States (33 U.S.C. §1321(b)). The owner, operator, or

person in charge of any facility from which oil is discharged may be subject to a civil penalty of \$32,500 per day of violation or up to \$1,100ⁱ per barrel of oil (33 U.S.C. §1321(b)(7)(A)).

Based on EPA's estimates of over one million gallons discharged – or approximately 24,000 barrels – civil financial penalties under the Clean Water Act may amount to well over \$26,000,000. In cases in which a violation was the result of gross negligence, the civil penalty may be up to \$4,300ⁱⁱ per barrel of oil (33 U.S.C. §1321(b)(7)(D)).

The GLELC believes that this NOTICE OF INTENT TO SUE sufficiently states ground for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Enbridge, Inc. under section 505(a) of the Clean Water Act for violations, or to amend our complaint to include these allegations in pending litigation.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint, or the amendment of our current pleadings, if discussions are continuing when the notice period ends.

Sincerely,



Nick Schroeck
Executive Director
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Detroit, Michigan 48202
nschroeck@wayne.edu
(313) 820-7797

ⁱ 40 CFR § 19.4

ⁱⁱ *Id.*