

Senator
John Marty

Senate
State of Minnesota

January 21, 2022

Commissioner Katrina Kessler, MPCA
Attorney General Keith Ellison
Via Email

Dear Attorney General Ellison and Commissioner Kessler:

I am writing to ask you to pursue legal action to get Enbridge to disclose the amount of drilling fluids that were released into Minnesota soils, surface waters, and groundwater during the drilling for construction of the Line 3 pipeline.

Enbridge released large quantities of drilling fluids on numerous occasions in violation of its 401 Certification under the Clean Water Act. In that certification, the MPCA specifically stated: “This 401 Certification does not authorize Enbridge to discharge drilling mud into waters of the state. Such discharges are considered a violation of applicable statutes (Minn. Stat. Ch. 115) and applicable water quality standards (Minn. R. 7050)...Further, if an inadvertent discharge of drilling mud to waterbodies or wetlands occurs during the Project’s HDD construction activities, Enbridge must immediately cease the HDD crossing activity, report the discharge to the Minnesota Duty Officer...and the MPCA...” MPCA 401 Certification, Condition 16 (Nov. 12, 2020).

Accordingly, for all HDD crossings, upon any inadvertent discharge, Enbridge was required to immediately cease the drilling and notify the MPCA, actions the company failed to take, in clear violation of the permit requirements. Regarding our current request that you take legal action to secure the drilling mud data from Enbridge, Enbridge must provide the MPCA with “the degree to which there were any inadvertent releases of drilling mud to either land or waterbodies” during construction of the crossing. *Id.* at Condition 17. The 401 Certification also requires compliance with the Environmental Protection Plan, which states: “In the event an inadvertent drilling fluid release is observed, Enbridge will assess to determine the amount of fluid being released...” Environmental Protection Plan § 11.3. The section titled “Reporting and Documentation,” provides that Enbridge must record a “[d]escription of the size of the release,” including the “volume” of the release. *Id.* § 11.7.

Because Enbridge still has not provided this data to the MPCA, there is no way that the agency can ever find how many frac-outs occurred beyond the 28 the agency is already aware of, where they are, or the quantity of the contaminants released. Nor can you get

Enbridge to clean up the underground contamination when you are unaware of the scope of the below-surface contamination or even the number of locations where that contamination occurred. With the data from the drilling contractor, the state would know immediately the location and size of the frac-outs, avoiding the current, largely futile investigation based on eyewitness reports of frac-outs that seeped up to the surface.

At the suggestion of the MPCA, I contacted Enbridge, and as you can see from the attached letter from Mr. Bobby Hahn, Enbridge claims “there is no regulatory or permitting requirement to maintain or report the specific data you have requested.” This statement that they have no requirement to “maintain” the data seemingly hints that they might even destroy records of this data.

Unless you order them to provide it, they will escape any consequence for falsely claiming in their Enbridge 401 Water Quality Certification application that there was *low probability* of frac-outs or leakage (Enbridge, in the attached letter, now describes it as “a generally known and common risk,” and we already know that frac-outs reaching the surface occurred at half of the public water crossings), and for failing to promptly report the frac-outs when they occurred. In fact, without this data, *you will never know the extent of the drinking water contamination* nor where it moves in the groundwater aquifers.

However, there are some things that we do know:

- We do know that while drilling under our rivers during the drought Enbridge used 10 times more water than they expected – they said they needed more water use for drilling and buoyance control.
- We know that both drilling and buoyancy control pump water and drilling sludge into and out of the shallow aquifers.
- We know that the drillers used large volumes of bentonite and soda ash and were permitted to use a dozen other additives.
- We know that during the drilling they had dozens of frac-outs including frac-outs in the stream beds and in the wetlands and from drilling depths as deep as 60 feet – leaving a large volume of drilling sludge between the pipe and the surface.
- We know that Enbridge breached artesian aquifers and took no voluntary actions to correct the ruptures.
- We know that Enbridge failed to report these incidents on a timely basis.
- And now we know that Enbridge is unwilling to release the data that would show the locations and extent of the contamination.

That amounts to a cover-up.

The state could get Enbridge’s prompt compliance in providing this needed data, simply by revoking the license to cross public waters, which the DNR gave them for construction and

operation of the pipeline. Halting the operation of the pipeline would get Enbridge to respond immediately.

My letter to Enbridge and their dismissive response are attached. I urge you to ensure that they provide this data from their contractors and that you direct them not to destroy the data so that the agencies are able to enforce the law and protect our waters.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Marty". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Marty".

John Marty

cc: Jeff Broberg, Independent Geologist