

401 Water Quality Certification/Enbridge Pipeline Project: Minnesota Pollution Control Agency Denial (Without Prejudice)



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The Minnesota Pollution Control Agency (“MPCA”) issued a September 27th denial without prejudice of Enbridge Energy, Limited Partnership’s (“Enbridge”) request for a Clean Water Act 401 Water Quality Certification.

The certification was for a pipeline replacement project in Minnesota . 404 certification was needed because of the need to obtain a Clean Water Act permit from the U.S. Army Corps of Engineers.

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of a state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

Because a 404 permit needed to be acquired from the United States Army Corps of Engineers, Enbridge was required by Section 401 of the Clean Water Act to apply to the MPCA for a water quality certification.

The September 27th letter from MPCA to Enbridge indicated that the water quality certification could not be issued at this point because the Minnesota Court of Appeals reversed the Minnesota Public Utilities Commission’s finding of adequacy for the Project’s Environmental Impact Statement. The basis for this finding was stated to be a failure to address the issue of how an oil spill from the project would impact Lake Superior and its watershed.

The MPCA states in part:

The MPCA received the 401 request on October 29, 2018. Resolution of the State EIS process will not be possible prior to expiration of the CWA one-year deadline, rendering the MPCA unable to exercise its entire range of 401 Certification authorities prior to expiration. In order to preserve 401 Water Quality Certification Authority, the MPCA must take action to deny the project based on currently available information.

The letter requests additional information, which includes

1. Oil spill response modeling to assess the impacts of a spill (and strategies, as appropriate, to avoid, minimize, and mitigate such impacts) in Lake Superior and the Lake Superior watershed

2. A revised pre- and post-construction monitoring plan for aquatic resources
3. A revised proposal for compensatory wetland mitigation

A copy of the September 27th letter can be downloaded [here](#).