

**Final Oral Arguments Presented to the  
National Energy Board of Canada**

**On the matter of:  
Enbridge Line 9B Reversal and  
Line 9 Capacity Expansion Project  
(NEB Hearing Order OH-002-2013)**

**By:  
The Great Lakes and St. Lawrence Cities Initiative**



**October 17<sup>th</sup>, 2013**



Madam Chair, members of the Board,

I want first to thank you all for giving the Great Lakes and St. Lawrence Cities Initiative the opportunity to present its final oral arguments. My name is Nicola Crawhall, Deputy Director and I am accompanied by my colleague, Mr. Philippe Chenard, Policy and Program Manager.

The Great Lakes and St. Lawrence Cities Initiative is a binational coalition of 109 mayors, representing over sixteen million people in cities across Quebec, Ontario and the eight US Great Lakes states. The Cities Initiative works actively to advance the protection, restoration and promotion of the Great Lakes and St. Lawrence River basin.

The rapid increase in volume of oil and gas being transported from Western producing regions across the Great Lakes and St. Lawrence basin towards Eastern refineries and markets has become an issue of great interest to municipalities in recent years. It raises many questions and concerns for local communities and their residents.



The Cities Initiative recognizes that some Local governments will reap the economic benefits that come with refining and distributing oil and gas being transported from the West.

At the same time, it is absolutely essential that as the volume and nature of the conveyed oil changes, so too must the sophistication of safety measures and oversight. The Kalamazoo spill and the Lac Mégantic tragedy are two recent examples of a failure of both oversight and safety measures over the long-range transportation of oil product. They illustrate all too graphically that both safety measures and oversight must be strengthened before any further expansion of the transportation of oil or gas product is approved by the National Energy Board, including the proposal before this hearing.

These concerns are supported by the investigation of the rupture of Enbridge's line 6B in Marshall Michigan on July 25, 2010. In its final report, the US National Transportation Safety Board finds deficiencies in Enbridge's planning and operations at every level- from the technology used to assess cracks in the pipeline, the knowledge, experience and training of Enbridge's control centre staff, the lack of planning to identify and involve additional emergency response resources, to the adequacy of equipment used on site to contain the spill. The NTSB (NTSB, Exhibit C59-10-2, p.116) refers to a (quote)

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“culture of deviance” (end of quote), where not adhering to formal procedures became the norm. Given this assessment, municipalities have felt the need to become much more informed and involved in this Line 9 proposal.

Seven of our members, including the City of Hamilton, the Region of Halton, the City of Mississauga, the City of Toronto, the Town of Ajax, the City of Kingston and the City of Montréal are also providing input into this current NEB review process.

Concerns are increased by the fact that Line 9 runs within 7 kilometers from Lake Ontario as it passes through the Greater Toronto Area. In Toronto alone, it crosses six of its major tributaries, the Credit River, Duffins’ Creek, the Don River, the Highland Creek, the Humber River and the Rouge River, each of them discharging close to the City of Toronto's water treatment intakes. The pipeline also crosses or runs adjacent to two 400 series highways, some of the busiest in North America.

In our comments to you today, we will focus on the direct interest and related responsibilities of municipalities with respect to Enbridge’s Line 9 proposal.

Municipalities are both responsible for First Response in the case of a spill or other emergency, and provide safe drinking water to millions of residents and businesses in



the Great Lakes and St. Lawrence region. For this reason, it is in our direct interest to ensure that the NEB fulfills its duty to ensure that the intraprovincial transportation of oil and gas is done in a way that

- 1) Guarantees the physical integrity and ongoing maintenance of Line 9;
- 2) guarantees the safety of the residents and businesses along the pipeline route;
- 3) guarantees the safety of drinking water drawn from surface and groundwater within the Great Lakes and St. Lawrence basin;
- 4) guarantees a high standard of preparedness, training and equipment availability in the event of a spill, and an efficient and rapid response to spills if they occur, in direct coordination with municipal First Responders, and
- 5) guarantees complete remediation and full financial compensation to municipalities and those affected on the ground in the event of a spill.

In reviewing the documents provided by Enbridge in advance of this hearing, and the answers the Company provided to our questions to date, the Cities Initiative found that there is still a great deal of uncertainty and vagueness about all of the above issues.



We would respectfully request that the NEB ensure that these issues are addressed to the highest standard by Enbridge before any approval is issued. I will now ask Mr. Chenard to elaborate on these issues.

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Thank you.

Madam Chair, members of the Board, Good morning (afternoon).

I intend to focus on seven issues presented in our written evidence. In each case, I will present a review of facts before submitting recommendations to the Board. These issues were identified in discussions with our member cities, including some who are not participating in the present hearings.

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### **1. Regulation Exemption Request**

In its November 2012 application to the NEB (Exhibit B1-2, p.19), the Company has requested an exemption pursuant to section 58 of the *NEB Act* which states that the NEB may make an order exempting extensions to pipelines from the provisions of



section 47. This section specifies that (quote) “No pipeline and no section of a pipeline shall be opened for the transmission of hydrocarbons or any other commodity by a company until leave to do so has been obtained from the Board” (end quote).

The Cities Initiative asks that the NEB reject this specific request and order the company to submit an application for authorization in service before starting to operate the pipeline with a reversed flow. This concern has also been raised to the NEB by the City of Montreal (Exhibit no. D43-2, Letter of Comment, p.16, section 6) and the Regional Municipality of Vaudreuil-Soulanges (Exhibit C44-2-1, p.15).

## **2. Monitoring and Prevention Actions of the Company**

To ensure that engineering, safety and environmental requirements are met, Articles 53 and 55 of NEB Onshore Pipeline Regulations calls for pipeline inspections as well as management and protection program audits to be conducted by the Company, in compliance with NEB standards and regulations, but without additional oversight.

There are concerns over the monitoring and maintenance capacity of the Company. As an example, in its report on the Kalamazoo spill, the US National Transportation Safety Board (NTSB, Exhibit C59-10-2, p.33) found that Enbridge knew about the roughly

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15,000 defects in Line 6B some five years before the spill and excavated to inspect just 900 of them, obviously not including the corrosion and cracking that was under way on 6B near the Kalamazoo River.

Enbridge has declined our request (Exhibit B18-30, p. 7, Question no.9) to share the results of its 2012 inspection and data analysis of Line 9 to concerned parties and the general public, and its review by an independent monitoring agency and/or a recognized expert from industry or academia.

The Cities Initiative calls on the NEB either to conduct an independent review process of both management and protection programs, either by internal resources, a mandated third-party organization or other independent authorities and make the results public. Such a recommendation has also been requested by the City of Kingston (Exhibit D37-2, p.2, section 12).



### **3. Potential Environmental Impacts on Water Resources**

The protection of water resources is a prime focus of the Cities Initiative's members concerns. It is essential to know the potential impact on surface and groundwater quality of transporting oil through pipelines. It is important to ensure that no industrial activity affects the ability of municipalities to ensure a constant supply of safe drinking water.

In Enbridge's Application (Exhibit B1-2, p.49), the impact on water quality and quantity is mentioned in Section 5 of the Environmental and Socio-Economic Impact Assessment (ESEIA). However, only groundwater wells located within a given range of the Project sites are considered. Notably, no evaluation of risk to major surface waterways, including Lake Ontario, the St. Lawrence or their major tributaries had been conducted at the time our information request was made. In our view, this is an enormous and unacceptable omission.

In reply to Cities Initiative requests, Enbridge confirmed that it had not conducted a risk assessment study at that time (Exhibit B18-30, p. 12, Question no.22), nor did it possess any information from an independent agency, peer-reviewed academic research or government agency, which would assess the risk of a significant spill of heavy crude oil,

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reaching major water ways located in close proximity to the pipeline, and ultimately the risk to public water intakes.

Enbridge states (Response to Ontario Ministry of Energy IR 2, Exhibit B35-38, p.11, section 2.7) that (quote) “Although it is unlikely that a release would reach Lake Ontario, in conducting the High Consequence Area analysis, Enbridge has conservatively assumed that, in the event of a release, a product released into a waterbody that drains into the Great Lakes will reach the Great Lakes; and [that] a product that has been assessed to have the potential to reach the Great Lakes by overland transport will do so. Given the assumption that the product would reach Lake Ontario, there was no need to assess the time required to for it to do so” (end quote).

The Cities Initiative, as a condition to an order of approval by the NEB, request that the Company conduct a comprehensive risk assessment study on the possibility of a significant spill reaching major water ways located in close proximity to the pipeline, including response time depending on the location and size of a spill or other incident. Subsequent to the results, we request that Enbridge consult with local and regional water protection staff and relevant departments responsible for the supply of drinkable water to identify possible threats and how to optimize response plans accordingly.

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We request that the NEB not to assign the necessary approvals for project on the basis of simple commitments, but actual demonstration of the company's willingness to share the information requested by local authorities and active participation with emergency responders.

We bring to the Board's attention that similar requests for protection of local freshwater sources and required action by Enbridge have been made by a number of our member cities, notably the City of Montréal (Exhibit no. D43-2, p.10, section 2.5.2), the City of Kingston (Exhibit D37-2, p.2, section 6), the City of Toronto (Exhibit C40-7-2, p.10-18, sections 38 to 78) and the Regional Municipality of Durham (Exhibit D41-3, p.2).

#### **4. Emergency Preparedness, Response Capacity and Clean-up Operations**

A major pipeline failure can set off a complex chain of events that often involve many separate, compounded hazards. To help minimize the impact of pipeline emergencies, municipalities, as first responders need to establish a close and open relationship with pipeline operators in their jurisdictions. Regrettably, Enbridge's communication and coordination with municipalities and First Responders to date has not been wholly satisfactory.

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While Enbridge did detail some of the company's emergency preparedness and response capacity – for example response equipment located at staffed locations (identified in Exhibit B22-23, Ontario Ministry of Energy IR 1.45.a, in Exhibit B18-12, Attachement 1 to Mississauga of the New Credit IR 1, Question 17), and its Enbridge Emergency Response Plan (Exhibit B22-19, response to Ontario Ministry of Energy IR 1.44.b.v), a lack of information still persist in many communities along Line 9.

In their Letters of Comments, Written Evidence and oral presentations to the Board, several municipalities, such as the Regional Municipality of Vaudreuil-Soulanges (Exhibit C44-2-1, p.9), the Town of Ajax (Exhibit D42-2, p.3, section 4) and the Regional Municipality of Durham (Exhibit D41-3, p. 3), have underlined that while Enbridge has visited their respective communities within the last year, the information obtained was deemed insufficient and incomplete to assure any proper preparation of local emergency response should a major spill or any other significant incident occur. For example, participating municipalities in this review process such as the City of Mississauga and the City of Toronto both raised the concern that Enbridge has but limited knowledge of their stormwater systems, nor know where it should contain a spill to prevent it from entering their municipal stormwater systems.



When asked to detail how and with which parties an Emergency Response Plan would roll out in the event of a spill, Enbridge response was to submit a heavily redacted version of its *Emergency Response Book* (Exhibit B22-19, Attachment 1 to Ontario Ministry of Energy, IR2, Exhibit 22-19, section 1.44.b.v), citing safety, security and proprietary issues.

Also, when questioned by the Cities Initiative about its response capacity along the longer stretches of the pipeline between shut off valves (Exhibit B18-30, p.11, Question no.19), Enbridge simply replied: (quote) “response capabilities are strong across the entire pipeline system” (end quote), without providing any additional detail or explanation.

The Cities Initiative recommends that the NEB evaluate Enbridge’s integration with local emergency services in the prevention, preparation and response to a major spill or other event as well as evaluate its intervention plan and instructions. In addition, the NEB should request that Enbridge deliver, on an annual basis, emergency response training and detailed information sessions regarding Line 9 to conservation authorities, regional and local municipal staff, and emergency services personnel for all communities



located on the path of Line 9. The Town of Ajax (Exhibit D42-2, letter of comment, p.3, section 4), the City of Mississauga (Exhibit C45-9-2, written evidence, p. 13-15, sections 60 to 75), and the City of Toronto (Exhibit C40-7-2, written evidence, p.4-7, section 15 to 28) all offer detailed information on what such sessions should include.

The Cities Initiative also asks the NEB to conduct a full review of the original and unedited version of Enbridge's *Emergency Response Book* in order to assure, for the entire length of Line 9B, a rapid and effective response in sensitive areas like water crossings, wildlife reserves, and communities, as well as adequate support provided to local first responders in the first hours of an incident. More detail must also be given by the Company regarding which factors would warrant contracted emergency responders in addition to or in place of Enbridge personnel and resources.

The Cities Initiative recommends that additional stop or isolation valves be installed by Enbridge on pipeline 9B near each major waterway crossing, a request echoed by the Town of Ajax (Exhibit D42-2, p.2), the City of Kingston, (Exhibit D37-2, p.2) the Regional Municipality of Durham (Exhibit D41-3, p.2), the City of Mississauga (Exhibit C45-9-2, p.3, section 7.iv and 7.v, p.10, sections 35 to 40, and p.11, sections 44 to 49) and the City of Toronto

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The Cities Initiative also reiterates the demand made by several of our member cities in the GTA, notably the Regional Municipality of Durham (Exhibit D41-3, p.2), the City of Mississauga (Exhibit C45-9-2, p.3, section 7vi to 7viii), and the Town of Ajax (Exhibit D42-2, p.2) for Enbridge to establish an additional intervention team, either by the company or through a third-party. This requirement is essential to achieve an adequate response time in all of the GTA. At the present time, it appears that the intervention teams location may be unable, given the uncertainties of weather, traffic conditions and time of day to respect Enbridge benchmark of reaching any incident location within four hours. A four hours response time in the most populated region of Canada is simply unacceptable. We therefore welcome the recent announcement by Enbridge of a planned pipeline maintenance work crew in Mississauga and ask the NEB to assure proper follow-up on this commitment.



## 5. Clean-up Operations

According to the American Federal Environmental Protection Agency (USEPA), the clean-up of dilbit poses special risks. Its characteristics create challenges for cleanup efforts in rivers, wetlands and other water-related environments. In the case of conventional oil spills, the usual primary line of defense against oil spills such as booms, skimmers, and sorbent materials contain and recover oil floating on the water surface. However, unlike conventional crude oils, a high percentage of dilbit is composed of raw bitumen that is heavier than water. Following a release, the heavier fractions will sink into the water, as indicated in a recent report by Jeff Short, a chemist who worked for the National Oceanographic and Atmospheric Administration (NOAA).

In these cases, the cleanup of a dilbit spill may require significantly more dredging than a conventional oil spill.. Removing this substance from river sediment and shores may require more aggressive cleanup operations than of conventional oil spills In the event of a major spill in a surface waterway, uncertainties therefore remain about the environmental challenges, necessary equipment and greater costs associated with dilbit clean-up, a fact disputed by Enbridge despite the empirical evidence given by the Kalamazoo River clean-up... However, the detailed plan of any future clean-up operation resulting from a spill in similar conditions is not presented in Enbridge's application.

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This issue of the uncertainties of the effect of a spill of diluted bitumen into water resources has also been raised by the City of Mississauga (Exhibit C45-9-2, p.11, section 50).

When asked by the Cities Initiative about the eventuality of a crude oil release on a major drinking source (Exhibit B35-26, Response to the GLSLCI, p.14, FIR no.13), Enbridge's reply was that (quote) "they would work with the impacted municipality, as soon as possible, to establish an alternative source of drinking water until such time that it was identified that the original water source was safe to extract from" (end quote) without providing any further detail.

The Cities Initiative recommends that an independent study, overseen by the NEB, be conducted to determine if and how the specifics of a dilbit clean-up may differ from a conventional oil spill, and how this may impact the environmental impact, and affect preparedness and response to dilbit spills.

In addition, the Cities Initiative asks the NEB that any Enbridge protocol or evaluation system based on the criteria enumerated by the Company and used to trigger an



intervention be made public, or, if such a protocol or evaluation does not exist; to have one produced and distributed to concerned municipalities and other stakeholders.

## **6. Creation of a Spill Contingency (or Liability) Fund**

Recent incidents in North America have shown that in the event of a major disaster, costs of clean-up and restoration tend to exceed initial estimates. In its Application (Exhibit B1-2, p.19), Enbridge says that (quote) “it has developed general, and will develop Project-specific programs to ensure that the recommended mitigation measures and commitments made in the Environmental and Socio-Economic Impact Assessment (ESEIA) are implemented throughout the construction and operations phases of the Project” (end quote).

The Company stated that while it possesses adequate resources to satisfy its obligations in the event of a spill, it was supportive of the concept of a national fund to address clean-up and related costs associated with an oil spill, and that it would participate in the development of such a fund with industry, governments and others stakeholders, if such a process was to be instituted (Exhibit B35-26; Response to GLSLCI, p. 15, FIR no.14). This is particularly important in cases where a spill is caused by the actions of a



third party, Enbridge has indicated that it may then not be financially liable (Exhibit C40-7-2, City of Toronto Written Evidence, p.8, section 31).

As for an estimate of possible clean-up costs, Enbridge’s US affiliate, Enbridge Energy Partners, declared last March in a regulatory filing to the U.S. Securities and Exchange Commission that the cleanup tab for the 2010 rupture and spill could reach nearly \$1 G, \$175 M above an earlier estimate of \$820 M, after it was ordered back to the site by the US EPA to conduct additional containment and recovery of submerged oil. But when asked about its coverage if any major incident should occur, Enbridge stated that (quote) “the availability of insurance coverage is subject to variability from year to year based upon loss events and insurance market conditions” (end quote) (Exhibit B35-26; Response to GLSLCI, p. 21, FIR no.16).

In order to cover for any eventual costs of a spill or any other negative externality, one U.S and one Canadian model, both related to the energy sector, offer relevant examples.

First, created in 1990 under the U.S. *Oil Pollution Act*, the Oil Spill Liability Trust Fund details how the owner or operator of a facility from which oil is discharged is liable for

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the costs associated with the containment or cleanup of the spill and any resulting damages. The primary source of revenue for the fund was a five cent- per- barrel fee on imported and domestic oil, whose collection ceased the last day 1994 because of a "sunset" provision in the law. Other revenue sources for the fund include interests from capital, cost recovery from the parties responsible for the spills, and any fines or civil penalties collected by the U.S. EPA.

The Fund can provide up to \$1 G for expenditures of removal actions, carry out natural resource damage assessments and restorations, pay claims for uncompensated removal costs and conduct research and development.

Second, a system exists in Canada to cover spills caused by shipping activities. The *Ship-source Oil Pollution Fund* (SOPF) which can be used to pay claims arising from spills of both persistent and non-persistent oil from all types of vessels, but no provision currently exist for land, pipeline-related spills.

While the NEB has indicated in its *NEB RH-2-2008 Decision* that abandonment costs remain the ultimate responsibility of individual pipeline companies, the Cities Initiative recommends that given the high costs potentially incurred by ruptures and spill, and in



order to provide financial assistance to the various levels of government for costs related to emergency response, clean-ups and other required action, the NEB should create a comprehensive Oil Spill Contingency (or Liability) Trust Fund, financed for example by a fee on each barrel of oil conveyed. This fund would be managed by the NEB or another independent or governmental agency or department. The Cities Initiative shares the opinion that regular and constant funding is necessary to assure adequate coverage of future clean-up activities and abandonment costs.

In addition, the Cities Initiative recommends that the NEB reviews at least on annual basis Enbridge's insurance limit to confirm adequacy and appropriateness of available coverage limits to satisfy obligations and liabilities that may arise from any major spill at an amount minimally equivalent to the total clean-up costs of the 2010 Kalamazoo rupture and spill.

We notify the Board that these two last recommendations have also been made by our member cities, notably the City of Montréal (Exhibit no. D43-2, p.16, section 5.2), the City of Mississauga (Exhibit C45-9-2, p.16, sections 79 to 84) and the City of Toronto (Exhibit C40-7-2, p. 8-9, section 29).



## **7. Economic Rationale of the Project**

. The uncertainty regarding the ultimate location of the Montréal Terminal of Line 9 has been underlined by the City of Montréal (Exhibit no. D43-2, p.15, section 4.3) which has a direct interest in the economic benefits of the Enbridge project

In its Application (Exhibit B1-2, p.19, p.18), Enbridge states that (quote) “The purpose of the Project is to respond to requests from eastern Canadian refineries to have access to the growing and less expensive supplies of crude oil production from western Canada and the U.S. Bakken region” (end quote).

However, when asked about the final destination and expected markets of the Project and guarantees relative to the location of Line 9B’s terminal (Exhibit B35-26; Response to GLSLCI, p. 4, FIR no.4), the Company repeated the description of the Project and answered that (quote) “Any plans or considerations to transport crude beyond the Montreal Terminal are outside the scope of the Project” (end quote) before indicating in the Cities Initiative Follow-up information request (Exhibit B35-26; Response to GLSLCI, p. 5, FIR no.4), that while it (quote) “cannot provide any guarantee with respect to the Enbridge Montreal Terminal, Enbridge and the shippers have signed 10-year contracts for the Project” (end quote).

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If potential economic benefits of the reversal of Line 9, as presented during the hearings by several intervenors, including Valero, Suncor and Enbridge, are to be considered as relevant and valid arguments, the Cities Initiative recommends that the NEB asks Enbridge for full transparency relative to any Line 9 extension planned or considered in the foreseeable future, whether it be a proprietary or a third-party pipeline conveying the oil towards further terminal points on the Eastern seaboard. We suggest that any authorization given by the NEB be limited to time frames equivalent to Enbridge's written assurance of maintaining Montreal as the line terminal for at least the 10 next years, assurances to be renewed accordingly.

Finally, the Cities Initiative asks the NEB to consider, in its evaluation of the Project, the fact that the energy-related industries (notably transport and refining companies) and federal and provincial governments (through taxation and royalties) will receive the major part of economic benefits, while consumers and local governments (municipalities, regional counties, etc.) advantages will be comparatively modest, if present at all. This point is of particular importance when considering possible negative externalities on the latter groups, including the consequences of any spill or similar event. These justify our previous request for a contingency (or liability) fund.



With this, I conclude the presentation of our issues and will now return the floor to Ms. Crawhall.

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An unfortunate incident such as a major spill or explosion along Line 9 would have serious consequences and result in significant costs for the major cities and smaller towns located along its route, as well as the surrounding ecosystem and sources of drinking water for the majority of the population of Canada.

This major pipeline goes through the most densely populated region in Canada. It also runs along the northern boundary of the largest freshwater system in the world, the Great Lakes and St. Lawrence, crosses many of their significant tributaries, near many environmentally sensitive agricultural and residential areas; private drinking water wells and municipal water supply intakes.

While it is true that Line 9 has been in operation for almost four decades without any serious incident, the new conditions of operation requested by Enbridge – increased capacity and potentially change the type of product being transported – do warrant



stringent regulatory scrutiny and the highest standards of spills prevention, preparedness and response, in close collaboration with First Responders.

Madam Chair, members of the Board, we respectfully request that you seriously consider the recommendations that have been submitted to you by the Cities Initiative.

I thank you very much again for your time and attention, and Mr. Chenard and I will gladly answer any questions you may have.