



## **Minnesota Department of Natural Resources Orders Enbridge Energy to Pay \$3.32 Million for Failure to Follow Environmental Laws**

The Minnesota Department of Natural Resources (DNR) has ordered Enbridge Energy to pay \$3.32 million for failure to follow environmental laws. Enbridge breached the confining layer of an artesian aquifer, resulting in an unauthorized groundwater appropriation during the construction of the Line 3 replacement project near Enbridge's Clearbrook Terminal.

DNR's civil enforcement orders require Enbridge to pay mitigation and penalty funds of \$3.32 million. This includes a restoration order requiring \$300,000 in initial mitigation funds to pay for the loss of groundwater resources, \$250,000 for DNR monitoring of calcareous fen wetlands near the area of the aquifer breach and a \$20,000 administrative penalty order (the maximum allowed under state law). The DNR has also ordered Enbridge to place \$2,750,000 in escrow for restoration and mitigation of any damage to the calcareous fen wetlands. DNR will determine what restoration and mitigation is required.

DNR's restoration order also requires Enbridge to implement a restoration plan to stop the unauthorized groundwater flow within 30 days. The order requires the company to conduct additional groundwater and site monitoring and report the results, as well as to develop a Calcareous Fen Management Plan. Additionally, to ensure that violations haven't occurred elsewhere, the DNR is requiring Enbridge to fund a re-inspection of any and all areas along the entire route where construction depths deviated from plans (as they did at the Clearbrook Terminal site).

Separately, the DNR has also referred this matter to the Clearwater County Attorney for criminal prosecution. The DNR has determined that Enbridge Energy violated Minnesota Statute 103G.141, subdivision 1, which makes it a crime to appropriate "waters of the state without previously obtaining a permit from the commissioner."

The criminal referral and civil enforcement orders resulted from an investigation of Line 3 construction activities near Enbridge's Clearbrook Terminal. Should the company violate the DNR's restoration order, it would be subject to additional misdemeanor charges under state law.

"DNR is committed to its role as a regulator on this project and is taking seriously our responsibility to protect and manage natural resources within existing state law," said DNR Commissioner Sarah Strommen. "Enbridge's actions are clear violations of state law and also of public trust. This never should have happened, and we are holding the company fully accountable."

## Background

Enbridge began work at the Clearbrook Terminal site in early 2021 but did not follow the construction plans it had provided to DNR. The DNR relied upon these plans in determining that proposed work at the Clearbrook Terminal could proceed without effecting nearby calcareous fen wetlands. A calcareous fen is a unique type of wetland, with stringent statutory protections, that relies upon upwelling of mineral rich groundwater to thrive. The company's plans called for the use of traditional trench construction methods at a depth of 8-10 feet. The company instead constructed the trench at a depth of approximately 18 feet with sheet piling installed to a depth of 28 feet. This deviation led to a breach of the confining layer of an artesian aquifer, resulting in an uncontrolled flow of groundwater into the trench. Enbridge failed to notify DNR of the groundwater situation at the Clearbrook Terminal.

Independent Environmental Monitors (IEMs), working on behalf of DNR and Minnesota Pollution Control Agency (MPCA), first observed unusual amounts of water in the trench at the construction site in late January 2021. This and subsequent inspections over the next several months focused on managing the water in the trench. Under the Public Utilities Commission's (PUC) route permit, the IEMs' role is to monitor compliance with the terms and conditions of the PUC, DNR, and MPCA permits. They do not monitor construction plans. Therefore, these inspections did not identify that Enbridge's construction activities had deviated from the company's plans, breaching the aquifer's confining layer.

On June 15, 2021, during discussions with the IEMs, the DNR identified that there was a potential breach of the aquifer's confining layer at the Clearbrook Terminal construction site. The DNR immediately commenced an investigation and informed Enbridge that it must suspend construction at the location until DNR had approved a plan to stop the flow of groundwater. Resolving an uncontrolled flow from an artesian aquifer is technically complex and requires good data and a comprehensive plan. The DNR required Enbridge to investigate the groundwater conditions at the site and submit a plan to correct the unauthorized flow conditions. On July 8, Enbridge submitted a Groundwater Investigation Plan that the DNR approved in revised form on July 12. On August 15, using the results of the groundwater investigation, Enbridge submitted a Remedial Action Plan outlining actions needed to stop the groundwater flow conditions. The DNR approved this plan on August 18.

Through September 5, 2021, this violation has resulted in an estimated release of approximately 24.2 million gallons of groundwater from the aquifer. This water has been pumped from the trench, treated to remove sediment and released to a nearby wetland.