

## NEGOTIATED AGREEMENT

Between

Enbridge Energy, Limited Partnership

And

Wisconsin Department of Natural Resources

This Negotiated Agreement (“Agreement”) is entered into between the Wisconsin Department of Natural Resources (“WDNR”) and Enbridge Energy, Limited Partnership (“Enbridge”) pursuant to Wis. Stat. § 292.11(7)(d) for the purposes of establishing a facility-wide environmental repair program site for Enbridge’s Superior Terminal facility, 2800 East 21<sup>st</sup> Street, Superior, Wisconsin (“Superior Terminal Facility”) (Attachment A), and for documenting the procedure and process by which discharges covered under this Agreement are investigated, reported, addressed and, if applicable, incorporated into the facility-wide environmental repair program site (“Facility-Wide ERP Site”) in furtherance of the requirements of Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754 and the exercise of WDNR’s discretion under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754.

The Agreement represents the process negotiated and agreed to by WDNR and Enbridge to address new discharges or newly discovered historical discharges of petroleum products for which Enbridge is responsible under Wis. Stat. § 292.11(2) & (3) that originate on Enbridge-owned property at the Superior Terminal Facility and are confined to the boundaries of the Superior Terminal Facility (“Agreement Discharges”). This Agreement does not cover discharges to the air, sediment or surface water.

WHEREAS, On July 17, 2014 Enbridge submitted to the WDNR a Site Investigation and Response Action Plan, Enbridge Energy Superior Terminal (Facility-Wide) (“SI/RAP”) (Attachment B) containing site investigation information and a site conceptual model for soil and groundwater applicable to the Superior Terminal Facility that serves as the technical basis for this Agreement.

WHEREAS, WDNR conditionally approved the SI/RAP in a letter to Enbridge, dated September 19, 2014 (“Conditional Approval”) (Attachment C).

WHEREAS, On August 15, 2017 Enbridge submitted to the WDNR an Addendum to the SI/RAP (Attachment D) containing documentation of additional site investigation activities and providing clarification to several assumptions and requests as outlined in the SI/RAP and WDNR letter dated September 19, 2014.

WHEREAS, WDNR conditionally approved the SI/RAP and Addendum in a letter to Enbridge, dated February 21, 2018 (“Conditional Approval”) (Attachment E).

WHEREAS, WDNR and Enbridge agree that the SI/RAP and Addendum and WDNR Conditional Approvals outline the process and procedure applicable to Agreement Discharges and WDNR agrees that these processes and procedures meet the requirements of Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754.

WHEREAS, WDNR and Enbridge acknowledge that each party enters into this Agreement on a voluntary basis.

FOR AND IN CONSIDERATION of the terms and conditions set forth below, WDNR and Enbridge hereby agree that the terms set forth in the above WHEREAS clauses shall be deemed substantive provisions of this Agreement and further agree as follows:

## I. SITE DESCRIPTION AND LOCATION

Site Name: Enbridge Energy – Superior Term Facility Wide; BRRTS Activity No. 02-16-560657

Site Location: 2800 East 21<sup>st</sup> Street, Superior, Douglas County, Wisconsin

Site History and Physical Conditions: The Enbridge terminal facility occupies approximately 560 acres between Stinson Avenue and the Nemadji River. Enbridge (formerly known as Lakehead Pipeline) operated the facility since 1950. Multiple pipelines and more than 40 aboveground storage tanks (ASTs) currently occupy the site.

Multiple petroleum discharges have historically occurred at the facility. This agreement sets out a process for investigation and remedial action of historical and new releases.

Known Substance(s) of Concern: Petroleum compounds.

## II. PROCESS

The process for investigation, notification, evaluating risk with respect to contaminant pathways, selection and implementation of remedial actions, determining the adequacy of immediate and interim actions and no further action/Continuing Obligations applicable to Agreement Discharges are subject to the requirements in Wis. Stats. 292 and chs. NR 700 – 754, and are more specifically described in the SI/RAP and Addendum, the Conditional Approval (“Process for Addressing Agreement Discharge”). The definitions in Wis. Stats. ch. 292 and Wis. Admin. Code chs. NR 700 – 754 shall apply to this Agreement.

The Process for Addressing Agreement Discharge includes:

- 1) Notifying WDNR of new discharges and newly discovered historical discharges according to Wis. Admin Code ch. NR 706;
- 2) Determining the extent of impacts under Wis. Admin. Code ch. NR 708 and ch. NR 716 and the adequacy of Enbridge’s immediate or interim actions conducted under the Agreement;
- 3) Evaluating, selecting and performing Wis. Admin. Code ch. NR 708 immediate or interim actions adequate to address the direct contact soil and soil to groundwater



contaminant pathways in the context of industrial land use standards under Wis. Admin. Code chs. NR 700-754;

- 4) Establishing a Facility-Wide ERP Site under Wis. Admin. Code chs. NR 700-NR 754 and a procedure for evaluating whether individual discharges should be incorporated into the Facility-Wide ERP Site;
- 5) Using existing hydrogeology at the Superior Terminal as a facility-wide, WDNR-approved interim action to address the soil to groundwater contaminant pathway for protection of groundwater in accordance with Wis. Admin. Code chs. NR 700-754 for Agreement Discharges. Groundwater monitoring of the Superior Terminal monitoring well network will serve to verify the effectiveness of this hydrogeologic performance standard in accordance with Wis. Admin. Code chs. NR 700-754 and to document the extent of Agreement Discharges to groundwater pursuant to Wis. Admin. Code ch. NR 708 and ch. NR 716;
- 6) Designating the Superior Terminal Facility land use as industrial for determining the extent of soil impacts under Wis. Admin. Code chs. NR 708 and NR 716 based upon the Wis. Admin. Code ch. NR 720 industrial land use standards applicable to the direct contact soil contaminant pathway and for purposes of calculating the specific residual contaminant levels to determine the adequacy of interim actions to address the direct contact soil and soil to groundwater contaminant pathways under Wis. Admin. Code chs. NR 700-754;
- 7) Developing an efficient process consistent with Wis. Admin. Code chs. NR 700-754 for streamlining the WDNR review and approval of the adequacy of Wis. Admin. Code ch. NR 708 immediate or interim actions conducted under this Agreement, and;
- 8) Providing effective public information documenting residual contamination and continuing obligations associated with Wis. Admin. Code ch. NR 708 immediate and interim actions conducted under this Agreement in accordance with Wis. Stat. §§ 292.12(3), 292.31(1) and 292.57 for discharges included in the Facility-Wide ERP Site through efficient use of the Bureau for Remediation and Redevelopment Tracking System (BRRTS) and a single Continuing Obligation package associated with the Facility-Wide ERP site.

### III. FACILITY-WIDE ERP SITE

A. The WDNR will be responsible for the following, in accordance with the SI/RAP and Addendum, WDNR Conditional Approval and this Agreement:

- 1) Creating a Facility-Wide ERP Site for the Superior Terminal Facility to encompass currently open and future Agreement Discharges that meet the criteria set forth in the SI/RAP and Addendum WDNR Conditional Approval and this Agreement.
- 2) Determining whether a specific Agreement Discharge will be incorporated into the Facility-Wide ERP Site or issued an individual ERP site number and evaluating the

adequacy of actions taken under Wisc. Admin Code chs. NR700-754 and maintaining tracking information in the BRRTS database of those actions.

- 3) Maintaining and tracking information in the BRRTS database including Continuing Obligations to document residual contamination and continuing obligations associated with the discharges incorporated into the Facility-Wide ERP site.
- 4) Maintaining one Continuing Obligation package within BRRTS associated with the Facility-Wide ERP site. The WDNR will add information prepared by Enbridge to the Continuing Obligations package to document those discharges associated with the Facility-Wide ERP Site.

B. Enbridge will be responsible for the following, in accordance with the SI/RAP and Addendum, WDNR Conditional Approval and this Agreement:

- 1) Following the Process for Addressing Agreement Discharges for reporting and notifying WDNR, which will satisfy the requirements of Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code ch. NR 706.
- 2) Following the Process for Addressing Agreement Discharges for conducting appropriate investigation and Wis. Admin. Code ch. NR 708 immediate or interim actions, which will satisfy the requirements of Wis. Admin. Code chs. NR 700-754.
- 3) Submitting an initial Continuing Obligation package for discharges to be incorporated into the Facility-Wide ERP site for inclusion on the WDNR's Continuing Obligation database.
- 4) Providing documentation to the WDNR to update the BRRTS Continuing Obligation package with respect to additional discharges incorporated into the Facility-Wide ERP site.
- 5) Assuming responsibility for additional investigation and remedial actions on areas of the Superior Terminal Facility where response actions contemplated under this Agreement and state law are not possible due to structural impediments at the time of the discharge, but are necessary at such a time when the area becomes accessible.
- 6) Monitor the effectiveness of the existing hydrogeology as a response action to ensure that the hydrogeologic performance standard remains protective of human health and the environment and to maintain compliance with Wis. Admin. Code chs. NR 700-NR 754.
- 7) Notify the WDNR if land use at the Superior Terminal Facility is proposed to be changed from industrial to non-industrial or if the Superior Terminal Facility ceases operation. An investigation and remedial action of Agreement Discharges may be required to meet applicable soil cleanup standards at that time.



- 8) Notify the WDNR if there is a removal of an impracticable structural impediment to investigation and remediation of soil contamination from Agreement Discharges at the Superior Terminal Facility and investigate the degree and extent of contamination associated with the structural impediment. If contamination is found at that time, the contamination shall be properly remediated in accordance with applicable statutes and rules.

#### IV. PAYMENT OF FEES

Enbridge has paid to WDNR all appropriate fees associated with the preparation and execution of this Agreement, as well as applicable fees for approval of the SI/RAP and Addendum. Enbridge will pay a one-time fee for opening and maintaining the Continuing Obligation database listing for soil and groundwater associated with the Facility-Wide ERP Site and the appropriate database fee for modification of the database each time the Continuing Obligation database listing requires updating when a future discharge is incorporated into the Facility-Wide ERP Site. No other fees will be owed to WDNR for Agreement Discharges, including any fees associated with any WDNR approval or determination associated with a specific discharge unless Enbridge specifically requests WDNR review and written approval of an action taken under Wis. Admin Code chs. 700-754.

Enbridge shall obtain any necessary permits or approvals that may be required for the Response Actions and shall pay to the Department review fees for all Response Actions performed under this Agreement, in compliance with Wis. Stat. §292.55 and Wis. Admin. Code ch. NR 749.

Payment shall be made by check payable to the Department of Natural Resources and submitted to the Remediation and Redevelopment Program office responsible for review and approval of the document(s).

#### V. SCHEDULE OF RESPONSE ACTIONS

Pursuant to Wis. Stat. § 292.11(7)(d), Enbridge will report releases according to the requirements of Wis. Admin. Code § NR 706.05 and comply with other applicable timeframes established in Wis. Admin. Code NR 700 – NR 754.

#### VI. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH SCHEDULE OF RESPONSE ACTIONS

Pursuant to Wis. Admin. Code § NR 728.07(2), which requires that this Agreement include a provision for stipulated penalties if the response action is not completed in accordance with the Agreement schedule, penalties will follow the provisions of Wis. Stats. §292.99.

#### VII. DISPUTE RESOLUTION

- A. Any dispute regarding this Agreement shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

- B. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then Enbridge shall have thirty (30) days after the conclusion of the informal negotiation period to invoke the formal dispute resolution procedures of this section by serving on the Department a written Statement of Position on the matter in dispute, including but not limited to any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Enbridge.
- C. Within thirty (30) days after receipt of Statement of Position, the Department will serve on Enbridge its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and all supporting documentation relied upon by the Department. Within twenty (20) days after receipt of the Department's Statement of Position, Enbridge may submit a Reply.
- D. Following receipt of Enbridge's Statement of Position, the Secretary of the Department will issue a final decision under Wis. Stat. § 227.47. Enbridge shall have, and retain, all remedies provided under law to appeal or contest any such decision by the Secretary of the Department.
- E. The invocation of formal dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of Enbridge under this Agreement, not directly in dispute, unless the Department agrees otherwise.

#### VIII. VIOLATIONS

Pursuant to Wis. Stat. § 292.11(7)(e), the Department may refer violations of this Negotiated Agreement to the Wisconsin Department of Justice for enforcement under Wis. Stat. § 299.95

#### IX. EFFECTIVE DATE

This Agreement shall be executed by Enbridge prior to being executed by WDNR. The effective date of the Agreement shall be the date on which WDNR executes the Agreement.

#### X. CHOICE OF LAW

The laws of the State of Wisconsin shall govern the interpretation and performance of this Negotiated Agreement.

#### XI. VENUE

The venue for any judicial action arising from this Agreement shall be state or federal court of competent jurisdiction located in Dane County, Wisconsin.

#### XII. SUBSEQUENT AMENDMENT

This Agreement may be amended by mutual agreement of WDNR and Enbridge. Such amendments will be based upon periodic review by WDNR and Enbridge to assess the implementation of the processes set forth in this Agreement. Any amendment to this Agreement



shall be in writing, signed by WDNR and Enbridge and shall have an effective date being the date such amendment is signed by WDNR.

### XIII. TERMINATION OF THE AGREEMENT

Either party can terminate this agreement 60 days after providing written notice to the other party.

At the time of termination of this Agreement, Enbridge shall evaluate whether the Agreement Discharges that have been incorporated into the Facility-Wide ERP Site meet closure requirements under Wis. Admin. Code chs. NR 700-754 and any other applicable Wis. Stats. or Wis. Admin. Code applicable at the time of termination and submit a Wis. Admin. Code ch. NR 726 closure request to the WDNR for the Facility Wide ERP site that meets Wis. Stats. ch. 292 and Wis. Admin. Code chs. NR 700 - 754.

The WDNR shall evaluate the closure request and, if upon the WDNR's review, the information and documentation demonstrates compliance with applicable closure requirements in Wis. Stat. § 292 and Wis. Admin. Code chs. NR 700-754 any other applicable Wis. Stats. or Wis. Admin. Code applicable at the time of termination, the WDNR will issue a comprehensive case closure letter to address all Agreement Discharges incorporated into the Facility-Wide ERP Site.

If a comprehensive case closure letter cannot be issued, individual Agreement Discharges, including the current facility-wide site will be re-packaged for individual case closure evaluation. The WDNR will open an individual ERP site for Agreement Discharges removed from the facility-wide site which do not meet the requirements for case closure or will require additional investigation and remediation. The WDNR will then issue individual case closure letters to those Agreement Discharges, separately from the facility-wide site once they are demonstrated to meet applicable closure requirements.

### XIV. AUTHORITY OF STATE OF WISCONSIN

Nothing in this Agreement shall be deemed to limit any authority of the State of Wisconsin under applicable law to (i) take all appropriate action to protect human health and the environment or to prevent, abate, respond to or minimize an actual or threatened discharge of hazardous substances on, at or from the Superior Terminal Facility or (ii) direct or order such action or seek an order from the court to protect human health and the environmental or to prevent, abate, respond to or minimize an actual or threatened discharge of hazardous substances on, at or from the Superior Terminal Facility.

### XV. ACCESS TO INFORMATION

Enbridge shall provide to WDNR, upon request, copies of any records relating to the investigation or response to an Agreement Discharge, including, but not limited to, records consisting of sampling, analysis, chain of custody records, manifests or final reports, for purposes of evaluating the implementation of this Agreement.

NOW, THEREFORE, IN WITNESS WHEREOF, the parties by their signatures shall cause this Agreement to be executed on the date specified.

Signed for and on behalf of:

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

By: *Enbridge Pipelines (Lakehead) L.L.C.*

Its: *General Partner*

By: 

*Lisa D. Wilson*

Date: *08/22/2018*

Its: *Assistant Corporate Secretary*

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By: 

*Secretary Daniel L. Meyer*

Effective Date: *10/2/18*

*Approved:  
CWS*