

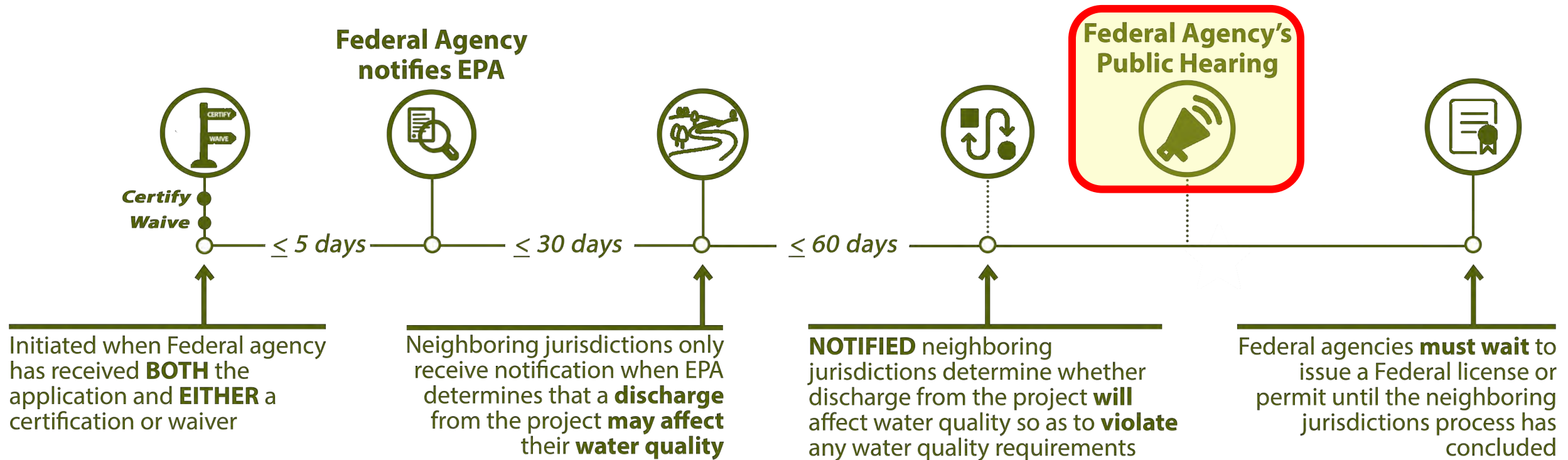
Overview of the EPA's Clean Water Act Section 401(a)(2) Evaluation and Recommendations on Bad River Band of Lake Superior Chippewa's Objection to the Issuance of Enbridge Line 5 Reroute Permit

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Introduction

- In accordance with Section 401(a)(2) of the Clean Water Act, the EPA has submitted to the Corps a document entitled “Clean Water Act Section 401(a)(2) Evaluation and Recommendations with respect to the Bad River Band of Lake Superior Chippewa’s Objection to the Proposed Enbridge Energy Wisconsin Line 5 Relocation Project”
- Today's presentation summarizes the contents of that document
- EPA encourages interested individuals to read that document to understand the full extent of the EPA's evaluation

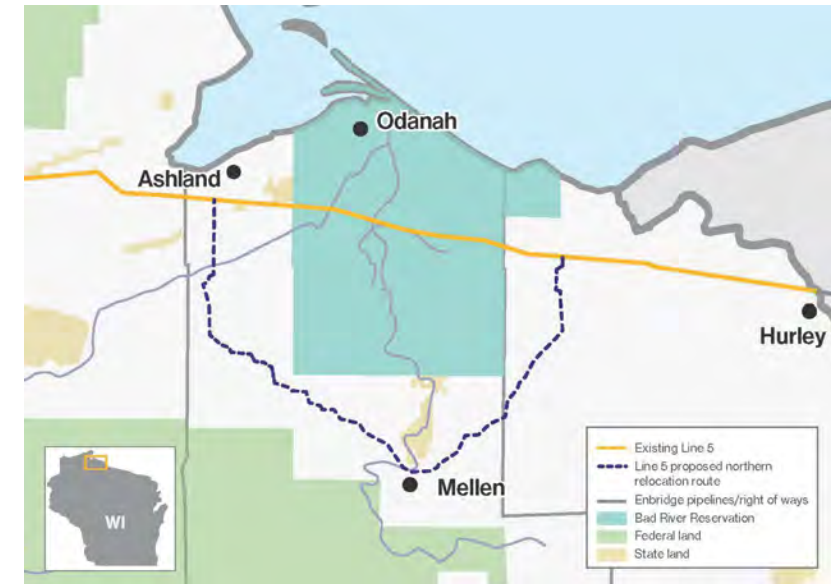
Neighboring Jurisdictions Process



OUTCOME: The Federal licensing or permitting agency determines outcome based upon recommendations of neighboring jurisdiction, EPA, and any additional information presented at a hearing.

Overview: Enbridge Line 5 Reroute

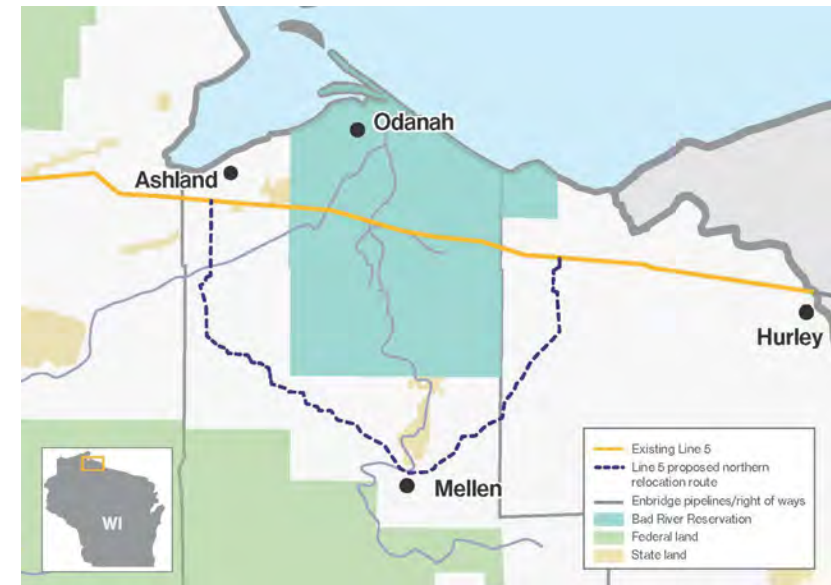
- Proposed 41-mile reroute of the Line 5 Pipeline around the Bad River Reservation resulting from a pending trespass and public nuisance lawsuit by the Bad River Band seeking removal of the pipeline from the Reservation
- Projected impacts include 101.1 acres of temporary impacts to 534 wetlands, 0.2 acres of temporary impacts to waterbodies (rivers, streams, ditches, etc.), including 72 jurisdictional crossings and 0.02 acres of permanent impacts to wetlands



Overview: Enbridge Line 5 Reroute

Proposed discharges to waters of the US:

- **Construction matting placement** to access construction areas
- **Trenching** to install the pipeline
- **Blasting** is conducted where hard rock complicates excavation through conventional digging/trenching.
- **Horizontal Directional Drilling & Direct Drilling** (HDD/DD) to facilitate placement of the pipeline below waterbodies to avoid surface disturbances



Band's Objection: Discharge concerns

- Construction matting

- Increased stormwater discharges, increased discharge rates, increased runoff and sedimentation and thus increased turbidity
- Introduction and transportation of invasive species
- Temporary impacts lasting longer than planned

- Trenching

- Soil destabilization, sediment discharge, and pollutant transport
- Soil compaction and mixing, leading to discharges resulting from altered soil water holding capacity, hydrology, groundwater processes, soil/sediment chemistry, and invertebrate and wetland plant habitat, and possibly release mercury and methylmercury
- Removal of vegetation from watercourses crossed by open trenching will result in impacts that last longer than “temporary” or that those watercourses will never be restored to pre-construction conditions

Band's Objection: Discharge concerns

- **Blasting**

- The effects of blasting residue on water quality and contribution of pollutant loading to waterbodies; specifically nitrates, fuel oil, perchlorate, mercury, RDX, HMX, and PETN
- Substances such as PFAS/PFOS, radionuclides, asbestos, arsenic, sulfur, and nitrates may be discharged through the blasting process
- Alteration of groundwater flow paths, groundwater levels, and groundwater-surface water interactions; including changes in surface water temperatures

- **Horizontal Directional Drilling/Direct Drilling**

- The permanent conversion of wetland due to establishment of a permanent maintenance corridor
- Increase turbidity and impact macroinvertebrate communities and fish spawning beds; including Lake Sturgeon from the inadvertent release of drilling fluids
- The introduction of sources of bioaccumulative chemicals of concern including but not limited to, PFAS and mercury
- Alteration of groundwater flow paths, groundwater levels, and groundwater-surface water interactions

Band's Objection: Key Issues

- The conditions in Wisconsin's permits and 401 certification will not ensure the Band's water quality standards and other water quality requirements will be met for regulated activities discharging to waters located upstream or adjacent to surface waters within the Reservation boundaries
- The Project will:
 - result in noncompliance with the Band's antidegradation provisions, and the criteria (narrative and numeric) derived to protect designated and existing uses or the surface waters within the Reservation boundaries
 - cause or contribute to causing the lowering of water quality below the minimum conditions necessary to support designated and existing uses of the Reservation waters and waters hydrologically connected to these waters

Overview of EPA's Evaluation Process

The EPA's role: The EPA interprets its role in providing evaluations and any recommendations on objections under CWA Section 401(a)(2) as that of an objective and neutral evaluator providing recommendations to the Corps based upon its expert, technical analysis of the objection and other relevant information.

***Clean Water Act Section 401(a)(2):
the EPA “shall at such hearing
submit [its] evaluation and
recommendations with respect to
any such objection”***

Information Considered by EPA

Wisconsin Department of Natural Resources	Corps/EPA	Bad River Band	Enbridge
Wisconsin State Water Quality Standards, promulgated April 26, 2024 ¹¹	Corps of Engineers public notice posting for Enbridge Line 5, dated January 6, 2022, and all subsequent updates ¹²	Band's Water Quality Standards (Appendix B) dated July 6, 2011	Environmental Construction Plan dated October 2024 (Appendix F)
Wisconsin DNR Final Environmental Impact Statement for Enbridge Line 5, dated September 2024 ¹³	EPA CWA 404 comment letter, dated March 6, 2022, responding to the Corps' public notice for Enbridge Line 5 (Appendix E)	Email correspondence with the Corps on EL5 between 2020-2024, where EPA was copied (Appendix B)	CWA section 404 permit application dated February 7, 2020, and subsequent updates ¹⁴
Wisconsin DNR CWA 401 Water Quality Certification for Enbridge Line 5 dated November 14, 2024 (Appendix D)	Corps Draft Environmental Assessment, Clean Water Act Section 404 (b)(1) Guidelines Evaluation, and Public Interest Review dated May 20, 2024 (Appendix C)	Bad River Band Objection Letter and attachments dated February 11, 2025 (Appendix A)	

New Information Received May 6

- New documents and data were provided by the Band on May 6, 2025
- Receipt of the new information four business days before the hearing did not allow sufficient time to conduct a thorough evaluation of the information, particularly:
 - Technical Memorandum dated May 6, 2025: *Evaluation of Impacts of Line 5 Wisconsin Relocation Project on Hydrology and Water Quality at the Bad River Band Reservation*
- The EPA did not have sufficient time before this hearing to analyze, draw conclusions, or form recommendations regarding this new information. Accordingly, the EPA's conclusions are based upon its analysis of the information presented in the previous slide

EPA's Evaluation

Neither the information provided by the Band in support of its Objection Letter nor the information contained in the other documents reviewed by the EPA demonstrate that discharges from the project in any of the four categories (including any pollutants in such discharges) will reach the Band's waters in amounts that would result in a violation of the Band's water quality requirements

Regarding the new information received on May 6 from the Band, the EPA has provided this information to the Corps for its consideration in making a permit decision

EPA's Evaluation

- The Objection cited two modeling efforts by the Band's consultants, however neither the model report nor the details regarding the data and methods were provided
- The Objection asserted certain discharges will alter groundwater flow paths and groundwater-surface water interactions, however the data, studies, modeling or analyses characterizing these complex interactions at this specific site or how discharges would adversely affect the hydrology of aquatic resources on the Reservation were not provided
- The Objection cited general journal articles, scientific studies and case studies, however none of these substantiate the Band's assertions about pollutants in discharges associated with this specific project reaching the Band's waters

EPA's Evaluation

- The materials reviewed by EPA did not provide data, studies, modeling and analyses that:
 - quantify the impacts of distance from any given discharge point to water quality on the Reservation
 - evaluate the likelihood of discharges (including discharges of pollutants) traveling from groundwater to surface waters and then to the Reservation boundary
 - predict quantities of pollutants in Enbridge's discharges or in receiving waters
 - compare predicted changes in pollutants levels due to discharges against background conditions and natural variability
 - evaluate potential influences from other impacts in the landscape on water quantity and quality
 - demonstrate how the impacts from the discharges (including impacts on pollutant amounts) adversely affect water quality in the Band's waters so as to violate water quality requirements
- The only document in the materials EPA reviewed specifically addressing whether pollutants in discharges will reach the Band's waters is a Sediment Discharge Modeling Report prepared by a consultant for Enbridge showing that sediment discharges associated with the project will not have a discernible impact on water quality at the Band's reservation boundary

Wisconsin's 401(a)(1) Certification Conditions

- Any CWA section 404 permit, if issued to Enbridge, must include conditions from Wisconsin's Water Quality Certification, which include conditions addressing all four discharge types
- Many of those conditions minimize the risks that discharges will adversely affect the quality of the Band's waters:
 - Best Management Practices including erosion control measures to reduce sediment transport
 - Inspection and maintenance requirements for BMPs, construction matting and access roads crossing waterways and wetlands
 - Preventative measures to avoid the spread of invasive species
 - Continuous monitoring for signs of inadvertent releases
 - Restoration requirements for all disturbed areas
 - Post construction monitoring; including for hydrology, turbidity, macroinvertebrates, and other water quality parameters of concern including mercury and PFAS
 - Implementation of corrective actions when issues are identified during both construction and restoration

Conclusion

Following the analysis described above, the EPA concludes that neither the Band's Objection Letter nor the other sources of information that EPA reviewed support the Band's determination that discharges from the project will affect the quality of the Band's waters so as to violate the Band's water quality requirements and so the EPA is not offering any recommendations under CWA Section 401(a)(2)

The EPA provided the new information provided by the Band on May 6 to the Corps for its consideration in making a permit decision