

# Enbridge Line 3 Antidegradation Review – Final Determination for 401 Certification

## Antidegradation procedures overview

The purpose of an antidegradation review is to achieve and maintain the highest possible quality in surface water of the state (Minn. R. 7050.0250) and in waters of the Lake Superior basin (Minn. R. 7052.0300). Antidegradation standards and requirements that apply statewide are found in Minn. R. ppt. 7050.0250 to 7050.0335; and additional requirements for the Lake Superior Basin in Minn. R. pt. 7052.0300 to 7052.0380. Minn. R. 7050.0265 requires an antidegradation review for any project that requests an individual Clean Water Act Section 401 Water Quality Certification (401 Certification), such as the Enbridge Energy Limited Partnership (Enbridge) Line 3 Replacement Project (Project) 401 Certification request.

The antidegradation procedures applicable to individual 401 Certifications (Minn. R. 7050.0285) require applicants to submit the same information required for individual National Pollutant Discharge Elimination System (NPDES) permits (Minn. R. 7050.0280, subp. 2) plus additional information addressing compensatory mitigation for physical alteration of surface waters. Because of the overlap in antidegradation requirements that apply to the individual 401 Certification and individual NPDES wastewater permit, the information and analyses provided by the applicant to the Minnesota Pollution Control Agency (MPCA or Agency) for the individual NPDES wastewater permit antidegradation assessment and the review and antidegradation determination for that permit also support the 401 Certification antidegradation review and final determination.

The antidegradation standards for the Lake Superior Basin apply if the proposed discharge contains a new or expanded discharge of bioaccumulative substances of immediate concern (BSIC) to an outstanding resource value water (ORVW) or an outstanding international resource value water (OIRW).<sup>1</sup> Because the Project activities that are specifically addressed by the 401 Certification are not expected to result in a discharge of BSICs in the Lake Superior basin, the 401 Certification antidegradation review did not include the procedures in Minn. R. pt. 7052.0300 to 7052.0330.

Antidegradation specifies three “tiers” of water quality protection:

- Tier 1 requires existing uses and the water quality necessary to support those uses to be maintained and protected – this protection is assured when all applicable water quality standards are met;

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<sup>1</sup> ORVWs and OIRWs are identified in Minn. R. 7050.0335 and Minn. R. 7052.0300.

- Tier 2 protects existing high water quality, which is water quality that is better than that required by water quality standards to support propagation of fish, shellfish, and wildlife and recreation in and on the water; and
- Tier 3 requires the maintenance and protection of water quality necessary to preserve specific water resources of outstanding value.

The antidegradation procedures ensure that tier 1 protection applies to all waters; and that the tier 2 and tier 3 levels of protection are addressed where applicable.

The MPCA is required to provide an antidegradation determination as to whether the application satisfies antidegradation standards (Minn. R. 7050.0285). This document is the MPCA's final antidegradation determination for the 401 Certification.

## **Summary of antidegradation determination**

The MPCA reviewed the initial antidegradation assessment and all updates to the antidegradation assessment submitted by Enbridge<sup>2</sup> (Antidegradation Assessment) and concludes that the Antidegradation Assessment satisfies applicable antidegradation requirements of Minn. R. 7050.0250 to 7050.0335. The Antidegradation Assessment and other relevant documents provided the MPCA with the necessary information to conduct an antidegradation review. This final 401 Certification Antidegradation Determination concurs with and incorporates by reference the Final NPDES Antidegradation Determination for the Project for the components addressed by Minn. R. 7050.0280, subp 2. This final 401 Certification antidegradation determination also addresses those components for Project activities not conducted under the NPDES permit, as well as additional requirements specific to 401 Certifications identified in Minn. R. 7050.0285, which include physical alteration and other direct impacts to surface waters, indirect impacts to surface waters, and associated compensatory mitigation requirements.

For the purposes of satisfying antidegradation requirements, the MPCA considered all physically altered surface waters to be of high quality within the meaning of Minnesota Rules chapter 7050. This ensured that the antidegradation review provided both "tier 1" and "tier 2" protection. "Tier 2" protection prohibits the lowering of high water quality unless lower water quality resulting from the proposed activity is necessary to accommodate important economic or social changes in the geographic area in which degradation of existing high water quality is anticipated. "Tier 3" protection requires the exceptional characteristics of outstanding resource waters be maintained. The 401 Certification antidegradation review evaluated "tier 3" protection for two restricted ORVWs crossed by the project, the Gully 30 fen and the Mississippi River (which is crossed at two locations).

The MPCA's review demonstrates that: existing uses and the level of water quality necessary to protect such uses will be maintained and protected; degradation of high water quality is unavoidable, will be prudently and feasibly minimized, and is necessary to accommodate important economic or social changes in the geographic area of the project; and the exceptional characteristics of outstanding resource value waters are maintained and protected.

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<sup>2</sup> <https://www.pca.state.mn.us/sites/default/files/Line-3-Replacement-Project-Revised-Antidegradation-Assessment-Nov-2020.pdf>

## Project description

Enbridge proposes to cross Waters of the United States and discharge dredged and fill material into Minnesota wetlands and streams for the purpose of constructing a new 36-inch-diameter underground oil pipeline and associated facilities. The proposed activities will occur within Enbridge's designated route approved by the Minnesota Public Utilities Commission (PUC) on May 1, 2020. The PUC is Minnesota unit of government with decision authority over oil and gas pipeline route decisions (Minn. Stat. ch. 216G). The route extends from the Red River of the North near Mattson, Minnesota, to the Minnesota/Wisconsin border near Wrenshall, Minnesota. The new pipeline will replace Enbridge's existing, 34-inch-diameter pipeline built in the 1960s, which is corroding and operating at 51% capacity due to safety issues. The new pipeline will transport crude oil from Alberta, Canada to Superior, Wisconsin. The proposed Project crosses portions of the following Minnesota counties: Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, St. Louis and Carlton.

The Antidegradation Assessment includes tables of waterbodies that will be crossed by the Project. See Antidegradation Assessment [Attachment C, Receiving Waterbodies Tables](#), and [Attachment D, Wetland Impact Tables](#). These tables document information about the surface waters, such as location, known impairments, designated use classification, wetland type, and proposed crossing methodology.

## Antidegradation review

The remainder of this document describes the MPCA's analysis and demonstrates compliance with each subpart of applicable antidegradation regulations. The rule language of each subpart is followed by the MPCA's analysis for each requirement.

### **Antidegradation standards apply to new 401 certifications**

*Minn. R. 7050.0265, subp. 1 – Scope. This part applies to activities regulated by the following control documents:*

*D. section 401 certifications for new, reissued, or modified individual federal licenses and permits...*

Enbridge has applied for a new individual Section 404 permit from the United States Army Corps of Engineers (USACE), which triggered the need for a 401 Certification. Thus, the antidegradation standards of Minn. R. part 7050.0265 apply.

**Existing uses will be maintained and protected and attainment of water quality standards will not be permanently precluded**

*Minn. R. 7050.0265, subp. 2 – Protecting existing uses. The commissioner shall approve a proposed activity only when existing uses and the level of water quality necessary to protect existing uses are maintained and protected.*

*Minn. R. 7050.0265, subp. 4 - Protecting beneficial uses. The commissioner shall not approve a proposed activity that would permanently preclude attainment of water quality standards.*

Minnesota rules require protection of existing uses and maintenance of the level of water quality necessary to protect those uses (Minn. R. 7050.0265 subp. 2). Minnesota rules also prohibit a proposed activity that would permanently preclude attainment of water quality standards (Minn. R. 7050.0265, subp. 4).

*Potential water quality effects from non-physical alterations.* To evaluate whether existing uses for waters whose quality is impacted by non-physical alteration discharges or degradation comply with these rule parts, the Agency considered information provided in the [Antidegradation Assessment](#) and associated attachments and other reliable information. The MPCA considered the level of existing water quality impacted by proposed Project activities (see Antidegradation Assessment [Attachment G Anticipated Water Quality](#)). The MPCA required assessment of the following parameters of concern: total suspended solids (TSS), parameters associated with river eutrophication (phosphorus, chlorophyll-a, and biochemical oxygen demand (BOD<sub>5</sub>)), dissolved oxygen (DO), mercury, and parameters for which waters in the area are listed as impaired. The parameters in this review are associated with Class 2 uses (aquatic life and recreation); mercury is associated with both Class 1 (domestic consumption) and Class 2. The potential water quality effects of each of these parameters associated with the Project are described in Section 7.4.1.1 of the [Antidegradation Assessment](#).

The MPCA's evaluation determined that existing uses and the level of water quality necessary to support them are expected to be maintained and protected with respect to the parameters of concern. Project activities may contribute to a temporary increase in TSS, which will be prudently and feasibly minimized as described in the discussion under Minn. R. 7050.0265, subp. 5(A) below, at levels which would not be expected to prevent the maintenance of existing uses or prevent attainment of water quality standards. Project activity would not result in increased loading of other parameters; however, the resuspension of sediment can create temporary water quality effects associated with these parameters to the extent they are present in the sediment prior to Project activities. These resuspension effects will also be temporary, limited to the duration of in-stream construction, and are not anticipated to result in long-term effects to streambed composition or benthic invertebrate and fish communities.

Existing uses will be maintained and protected through the use of best management practices (BMPs); these BMPs are described and required in a number of documents (which are incorporated by condition of the 401 Certification), as described in Sections 7.1.2 and 7.2.2 of the [Antidegradation Assessment](#). The use of these techniques will minimize impacts associated with discharges from non-physical alterations such that any impacts will be temporary, and limited to the duration of in-water construction. Conditions established in the 401 Certification will also result in the minimization of impacts. Therefore, the Project is not anticipated to result in long-term discharge or degradation of water quality.

Finally, the NPDES Antidegradation Determination addresses existing uses for waters associated with that permit. As stated above, this final 401 Certification Antidegradation Determination incorporates the findings of the NPDES Antidegradation Determination. Therefore, the Agency evaluation has determined that the Project, as proposed and as conditioned by the final 401 Certification, can ensure protection and maintenance of existing and beneficial uses in waterbodies impacted by non-physical alteration discharges or degradation.

*Physical alterations.* Compensatory mitigation addressing physical alterations to surface waters (see below under Minn. R. 7050.0265, subp. 3) will provide for preservation of existing uses and the level of water quality necessary to protect such existing uses for surface waters impacted or lost via physical alteration.

### **Compensatory mitigation allowed for physical alterations**

*Minn. R. 7050.0265, subp. 3 – Compensatory mitigation.*

*A. The commissioner shall allow compensatory mitigation as a means to preserve an existing use when there is a physical alteration to a surface water only when all of the following conditions are met:*

The Project activity is proposed to result in some physical alteration to surface waters (i.e., streams and wetlands). Enbridge has proposed compensatory mitigation as a means to preserve existing uses for both streams and wetlands. Mitigation for permanent fill, permanent conversion, and temporary physical impacts to wetlands will be provided in accordance with the [Compensatory Wetland Mitigation plan](#), dated October 2020. Mitigation for the project's functional loss to streams resulting from impacts to streambeds from open trench crossing methods and permanent impacts to riparian buffers will be provided in the form of a monetary payment to the MPCA that will be used to fund stream restoration within watershed(s) impacted by the project. The methodology for assessing stream mitigation requirements is described in the 401 Water Quality Certification.

*(1) Prudent and feasible alternatives are not available to avoid or minimize adverse impacts to the surface water,*

Enbridge's 401 Antidegradation Assessment describes prudent and feasible alternatives considered to avoid and minimize adverse impacts to surface waters; additional detail on the alternatives analysis is provided in the 401 Certification application and associated attachments, references and supplements.<sup>3</sup> On May 1, 2020, the Minnesota Public Utilities Commission (PUC) reissued the Certificate of Need and Route Permit for the Project. The PUC is the Minnesota unit of government with decision authority over oil and gas pipeline need and route decisions (Minn. Stat. ch. 216G). The Certificate of Need established the need for the Project. Consideration of need for the Project is not within the authority of the MPCA. Because the need is established in the PUC proceeding, the MPCA does not require a no-build alternative to be considered among the prudent and feasible alternatives to avoid adverse impacts. Because the route is established in the PUC Route Permit proceeding, consideration of alternatives to the route decision are not within the authority of the MPCA. Therefore, alternatives to avoid or

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<sup>3</sup> <https://www.pca.state.mn.us/regulations/401-certification-enbridge-line-3>

minimize adverse impacts to surface water in this final Antidegradation Determination are alternatives that are available within the route right-of-way approved by the PUC.

Within the approved route, strategies for minimization of adverse impacts to surface water generally include selection of pipeline installation crossing methods and incorporation of best management practices (BMPs) throughout project construction.

Pipeline installation crossing methods vary in terms of potential impacts (primarily temporary increases in TSS) to surface waters. Different methods are more or less suitable for different waterbody characteristics. Section 7 of the [Antidegradation Assessment](#) describes the selection of pipeline installation crossing methods. The MPCA has reviewed Enbridge's crossing method justification (Antidegradation Assessment [Attachment G](#)) and has worked with the Minnesota Department of Natural Resources (MDNR) (MDNR is the state agency with authority to issue a Utility Crossing License for Public Water) to ensure that crossing methods selected prudently and feasibly minimize adverse impacts to surface waters. The agencies also worked together to ensure that sensitive waters crossed by the project would require additional measures to minimize degradation through a crossing-by-crossing analysis described in Antidegradation Assessment [Attachment O](#). One crossing method – Horizontal Directional Drilling (HDD) – is intended to avoid impacts to surface waters by tunneling under a surface water. HDD can carry the risk of an inadvertent release of drilling mud/additives (often termed a “frac out”). In addition to selecting waterbodies for HDD crossing with lower probabilities for inadvertent release, Enbridge will use engineering controls to minimize releases. The Agency has also required site-specific response plans for waterbodies crossed with this method (Antidegradation Assessment [Attachment M](#)), and has reviewed and approved specific drilling mud additives for use.

BMPs are an important tool for limiting adverse impacts (typically increased loading of TSS) to surface water resulting from construction activities. Enbridge employs a number of BMPs during construction activities; these BMPs are described and required in a number of documents (which are incorporated by condition of the 401 Certification), as described in Sections 7.1.2 and 7.2.2 of the [Antidegradation Assessment](#).

Additional conditions of the 401 Certification further serve to minimize adverse impacts to surface waters. These conditions include: prohibitions on the length of open trench allowed on any one Project spread; requirements that sand bags used for trench breakers and pillows be free of contaminants; and seasonal prohibitions on certain types of construction activities.

The steps above (described in greater detail in the project 401 Certification request, Antidegradation Assessment, and associated attachments references and supplements) ensure that the proposed project will avoid and minimize adverse surface water impacts to the extent prudent and feasible, in accordance with Minn. R. pt. 7050.0265, subp. 3(A)(1).

*(2) The mitigation is sufficient in quality and quantity to ensure replacement of the lost surface water,*

*(3) The mitigation is accomplished by*

*(a) Restoring a previously impacted surface water of the same type, or other type if required by statute; or*

*(b) When restoring is not a prudent or feasible alternative, establishing or enhancing a surface water of the same type, or other type if required by statute;*

**Wetland mitigation.** In October 2018, Enbridge submitted a request for 401 Certification. The 2018 request included a draft compensatory mitigation plan. MPCA reviewed the draft compensatory mitigation plan and concluded it did not adequately compensate for the Project's wetland impacts because the ratios proposed were insufficient to adequately offset the lost or impacted existing uses of affected wetlands. As a result, insufficient mitigation was one basis for the Agency's denial of the 2018 401 Certification request. In November 2019, Enbridge submitted a new request for 401 Certification. The MPCA, MDNR, and USACE have collaboratively developed compensatory mitigation ratios that should apply to this Project and other linear projects through an Interagency Compensatory Wetland Mitigation Guidance (Interagency Guidance). The Interagency Guidance includes categories of "special" wetlands and differentiated baseline compensatory mitigation ratios for normal (non-special) and special wetlands, be they shallow-open water, aquatic bed, or unconsolidated plant communities, emergent, scrub-shrub, or forested communities. The Interagency Guidance also provides mitigation ratio multipliers for replacement out of Bank Service Area (BSA) and for replacement out of kind. The Interagency Guidance provides ratios such that mitigation is sufficient in quality and quantity to ensure replacement of the lost surface water. In November 2019, Enbridge submitted a new request for 401 Certification. This new request contained a compensatory mitigation proposal that complies with the Interagency Guidance, as described in the Project's [Compensatory Wetland Mitigation Plan, originally dated February 2020, and finalized in October 2020](#) (Antidegradation Assessment Attachment P). The quantity of wetland credits required by the Interagency Guidance and proposed by Enbridge in its October 2020 L3R Compensatory Wetland Mitigation Plan is sufficient to replace the loss of existing uses in the impacted wetlands. The wetland mitigation meets the requirements of Minn. R. part 7050.0265, subparts 3 A. (2) and (3).

**Stream mitigation.** The MPCA has also determined that mitigation will be required for functional losses to streams resulting from both streambed impacts due to open trench crossing methods as well as permanent impacts to riparian buffers. The streams impacted by the Project are not permanently "lost," but Project activities will result in impacts and certain functional losses or reductions. The 401 Certification requires that Enbridge use the Minnesota Stream Quantification Tool (MNSQT) and Debit Calculator to assess the Project's stream mitigation requirement. The MNSQT and Debit Calculator were developed cooperatively by the U.S. Environmental Protection Agency, USACE, MDNR, MPCA, and the Minnesota Board of Water and Soil Resources to inform stream mitigation decisions. These tools calculate the functional loss to streams and derive a "debit" identifying the linear footage of stream restoration activity needed to compensate for project impacts. The 401 Certification also requires that Enbridge provide a monetary amount to the MPCA for use in a stream restoration project or projects within one or more watershed(s) impacted by the Project to address this linear footage "debit." This monetary amount is based on an estimated average cost for stream restoration of \$400/linear foot. The stream mitigation meets the requirements of Minn. R. pt.7050.0265, subp. 3 A. (2) and (3).

**Aquatic resources monitoring.** In addition, Enbridge will be required by the 401 Certification to monitor aquatic resources affected by the Project within the construction workspace and along improved access roads and haul routes. This monitoring will be conducted in accordance with [Attachment N](#) to the Antidegradation Assessment, the Post-Construction Wetland and Waterbody Monitoring Plan (November 2020), which outlines requirements for pre-construction baseline data, restoration of temporarily impacted areas, post-construction monitoring procedures, and performance standards. Where performance standards are not met, additional monitoring and/or corrective actions, and in some cases additional mitigation, will be determined by the MPCA, MDNR, and USACE. The requirements of the Post-Construction Wetland and Waterbody Monitoring Plan will ensure maintenance of beneficial uses as set forth in the 401 Certification.

*(4) The mitigation occurs within the same watershed, to the extent prudent and feasible; and*

**Wetland mitigation.** The Interagency Guidance considers Bank Service Area of impact and mitigating credits and requires additional mitigation when credits will be purchased in a different BSA from the area of impact. Enbridge's Compensatory Wetland Mitigation Plan identifies wetland impacts by BSA, and identifies by BSA what credits are available and have been secured. The Plan also incorporates the increased mitigation ratio where credits have been purchased in a BSA different from the area of impact. The mitigation meets the requirements of Minn. R. pt. 7050.0265, subp. 3 A. (4).

**Stream mitigation.** Funds provided by Enbridge will be used to conduct stream restoration in watershed(s) impacted by the Project. Because the Project's impacts to streams occur over a large geographic distance but include relatively small impacts at each individual stream crossing, it would be infeasible to conduct restoration work in *each* watershed impacted by the project. The MNSQT and Debit Calculator-produced linear footage of restoration needed for mitigation would result in very small/less-impactful restoration projects if divided up across many watersheds, and therefore would not be prudent or feasible. Restoration work will occur in one or more watersheds impacted by the project. The mitigation meets the requirements of Minn. R. pt.7050.0265, subp. 3 A. (4).

*(5) The mitigation is completed before or concurrent with the actual physical alteration, to the extent prudent and feasible.*

**Wetland mitigation.** Enbridge has already secured purchase of wetland bank credits in accordance with the Interagency Guidance and their proposed Compensatory Wetland Mitigation Plan. Because the compensatory mitigation will be completed before or concurrent with the actual physical alteration of wetlands, it meets the requirements of Minn. R. pt. 7050.0265, subpart 5.

**Stream mitigation.** Enbridge will provide monetary funds as mitigation for stream impacts upon issuance of a final 401 Certification. The Agency will ensure funds are used to timely conduct stream restoration or enhancement activity, relying upon the One Watershed One Plan program administered by the Minnesota Board of Water and Soil Resources (BWSR) and providing funding to those watersheds crossed by the project who have completed the One Watershed One Plan process and are ready to begin implementation of watershed restoration and protection strategies. By relying upon already-completed watershed planning strategies, the approach will ensure that mitigation activities are completed as close in time as possible to the actual physical alterations associated with the Project's stream impacts. Banks for stream mitigation do not currently exist in Minnesota as they do for wetlands mitigation. As a result, stream mitigation activities typically do not occur before (and often not fully concurrent with) actual physical alterations to these waterbodies. Because mitigation cannot feasibly be

conducted prior to the actual physical alteration but will be conducted as close in time to the alterations as feasible, the mitigation meets the requirements of Minn. R. pt. 7050.0265, subp. 5.

### **High quality waters will be protected**

*Minn. R. 7050.0265 subp. 5 – Protecting surface waters of high quality.*

*A. The commissioner shall not approve a proposed activity when the commissioner makes a finding that prudent and feasible prevention, treatment, or loading offset alternatives exist that would avoid degradation of existing high water quality. When the commissioner finds that prudent and feasible prevention, treatment, or loading offset alternatives are not available to avoid degradation, a proposed activity shall be approved only when the commissioner makes a finding that degradation will be prudently and feasibly minimized.*

For the purposes of satisfying antidegradation requirements, the MPCA considered all physically altered surface waters to be of high quality within the meaning of Minnesota Rules chapter 7050. As discussed under Minn. R. 7050.0265, subp. 3 A. (1) above, the Agency has concluded no prudent and feasible alternatives exist to avoid degradation. Also, as discussed under Minn. R. 7050.0265, subp. 3 A. (1) above, the Agency has concluded the degradation will be prudently and feasibly minimized through the choice of pipeline crossing methods, use of BMPs, and compliance with 401 Certification conditions.

*B. The commissioner shall approve a proposed activity only when the commissioner makes a finding that lower water quality resulting from the proposed activity is necessary to accommodate important economic or social changes in the geographic area in which degradation of existing high water quality is anticipated. The commissioner shall consider the following factors in determining the importance of economic or social changes:*

- (1) Economic gains or losses attributable to the proposed activity, such as changes in the number and types of jobs, median household income, productivity, property values, and recreational, tourism, and other commercial opportunities;*
- (2) Contribution to social services;*
- (3) Prevention or remediation of environmental or public health threats;*
- (4) Trade-offs between environmental media; and*
- (5) The value of the water resource, including:*

  - (a) The extent to which the resources adversely impacted by the proposed activity are unique or rare within the locality, state, or nation;*
  - (b) benefits associated with high water quality for uses such as ecosystem services and high water quality preservation for future generations to meet their own needs; and*
  - (c) Factors, such as aesthetics, that cannot be reasonably quantified; and*

- (6) Other relevant environmental, social, and economic impacts of the proposed activity.*

[Attachment A](#) of the Antidegradation Assessment presents evidence supporting important economic or social changes related to the Project. While much of the evidence presented in Attachment A, and documents referenced within it, were prepared as part of the PUC's review, the MPCA independently reviewed the information for applicability to Minn. R. 7050.0265 subp. 5 B. In summary, the important economic or social changes related to the Project include: the future adequacy, reliability, and efficiency of energy supplies; removing the risk of accidental release of oil from the existing Line 3; and the potential for positive economic impacts to communities along the Project route. Additionally, because

the project water quality impacts to wetlands and streams are either avoided, temporary and limited, or will be mitigated, the impacts to water quality will be minimized. The MPCA considered the evidence presented and the commissioner finds that the water quality impacts resulting from the proposed activity are necessary to accommodate important economic or social changes.

*C. A proposed activity that would result in degradation of existing high water quality shall be approved only if the commissioner determines that issuance of the control document will achieve compliance with all applicable state and federal surface water pollution control statutes and rules administered by the commissioner.*

The 401 Certification, individual NPDES, general construction stormwater NPDES permit, and other permits (including the CWA 404 permit) for the Project will ensure compliance with state and federal surface water pollution control statutes and regulations. The Agency has reviewed the documentation regarding the expected effects of the Project and anticipates that water quality standards will be met.

*D. The commissioner shall provide an opportunity for intergovernmental coordination and public participation before allowing degradation of existing high water quality.*

The Section 401 process involves collaboration with the MDNR, USACE, and (to a lesser extent), Minnesota Department of Commerce, Minnesota Department of Agriculture, and the State Historic Preservation Office. The MPCA has discussed with each of these agencies issues related to the Project.

The MPCA conducted intergovernmental consultation regarding the Project with Minnesota Tribal Nations in 2019 and early 2020, and provided them early notice of the draft 401 Certification and additional consultation and coordination opportunities.

The MPCA has hosted multiple meetings regarding the Project upon request by interested stakeholders and has provided project updates to its Environmental Justice Advisory Group. Additionally, the MPCA has shared GovDelivery listserv messages and regularly updated its webpages as new project information became available. On March 2, 2020, the MPCA issued public notice of its draft 401 water quality certification and preliminary antidegradation determination. The public comment period was scheduled to end on April 3, 2020, but was extended to April 10, 2020, due to the COVID-10 pandemic. The MPCA also conducted three “telephone town hall” meetings on April 2, 7, and 9, 2020, that provided the opportunity for the public to provide oral comment on the project; the telephone town halls replaced three in-person meetings that had been canceled due to the COVID-19 pandemic. Over 10,000 individuals provided written or oral comment on the draft 401 water quality certification.

The MPCA received multiple petitions for contested case hearing for the draft 401 water quality certification, and upon review, granted one petition submitted by Friends of the Headwaters, et. al., on June 3, 2020 (<https://www.pca.state.mn.us/sites/default/files/Enbridge-Line-3-CCH-order.pdf>). The issues on which the agency granted contested case hearing were:

1. Does Enbridge’s proposed use of trench methods for stream crossings have temporary or permanent impacts on water quality parameters of concern?
2. Have Enbridge and the MPCA identified the least degrading crossing method that is prudent and feasible for each stream crossing?

3. Have Enbridge and the MPCA undercounted the full acreage of the Project's wetland impacts due to flaws in wetland delineation and survey methodologies related to the seasonality of delineation activities?
4. Have Enbridge and the MPCA undercounted the full acreage of wetlands that are physically altered by trenching?
5. Have Enbridge and the MPCA incorrectly determined that the impacts to wetlands that are physically altered by trenching are temporary?

The contested case hearing took place on August 24, 2020, with witnesses from the MPCA, Friends of the Headwaters et. al, and Enbridge providing testimony. The public was able to observe the hearing proceedings by telephone. On October 16, 2020, Administrative Law Judge James E. LaFave provided Findings of Fact, Conclusions of Law, and Recommendation (<https://www.pca.state.mn.us/sites/default/files/OAH-60-2200-36909-FinalRec-401.pdf>) on the hearing issues, finding that on all five issues, the joint petitioners failed to prove that the facts considered by MPCA forming the basis for the MPCA's decision were erroneous. The Judge concluded that MPCA complied with applicable procedural requirements of rule and law.

The MPCA has reviewed available information and determined that the degradation of water quality will accommodate important economic or social changes in the geographic area in which the degradation is anticipated. The MPCA has determined that the proposed activity will achieve compliance with all applicable state and federal surface water pollution control statutes and rules administered by the commissioner, and has provided significant opportunity for intergovernmental coordination and public participation. In summary, the MPCA has determined that the Project meets the requirements of Minn. R. pt. 7050.0265, subp. 5, for high quality surface waters.

#### **Protection of restricted outstanding resource value waters**

*Minn. R. 7050.0265, subp. 6 – Protecting restricted outstanding resource value waters.*

*The commissioner shall restrict a proposed activity in order to preserve the existing water quality as necessary to maintain and protect the exceptional characteristics for which the restricted outstanding resource value waters identified under part 7050.0335, subp.s 1 and 2, were designated.*

The Project proposes to cross two restricted ORVWs: the Mississippi River (at two locations), and the Gully 30 calcareous fen. The Mississippi River is designated as a restricted ORVW in Minn. R. 7050.0335, subp. 1(B). The Gully 30 fen is an unlisted restricted ORVW (Minn. R. 7050.0335, subp. 2). Section 8.4 of the [Antidegradation Assessment](#) describes methods that will be used to maintain and protect the exceptional characteristics for which these waters were designated. Both Mississippi River crossings will be conducted using the HDD technique for which no increase in loading is anticipated; Enbridge has developed ORVW-specific response plans for inadvertent releases of drilling fluids for both sites to avoid or quickly mitigate any potential effects from such inadvertent releases. The Gully 30 crossing requires approval by MDNR of a fen management plan under Minn. Stat. 103G.223. These measures will protect the exceptional characteristics for which the restricted ORVWs were designated. Therefore, the project will comply with the antidegradation standards in Minn. R. pt. 7050.0265, subp. 6.

#### **Protection of prohibited outstanding resource value waters**

*Minn. R. 7050.0265, subp. 7 – Protecting prohibited outstanding resource value waters.*

The commissioner shall prohibit a proposed activity that results in a net increase in loading or other causes of degradation to prohibited outstanding resource value waters identified under part 7050.0335, subp. 3 and 4.

There are no prohibited ORVWs downstream of proposed Project activities. Therefore, the Project activities will not result in a net increase in loading or other cause of degradation to prohibited ORVWs.

**Protection against impairments associated with thermal discharges**

Minn. R. 7050.0265, subp. 8 – Protecting against impairments associated with thermal discharges. When there is potential for water quality impairment associated with thermal discharges, the commissioner’s allowance for existing water quality degradation shall be consistent with section 316 of the Clean Water Act, United States Code, 7 title 33, section 1326. When a variance is granted under section 316(a) of the Clean Water Act, United States Code, title 33, section 1326, antidegradation standards under this part still apply.

The proposed Project activities pose no potential for water quality impairment associated with thermal discharges.

**Conclusion**

Based upon the MPCA’s review of the information provided in the [Antidegradation Assessment](#), correspondence with Enbridge, and other reliable information available to the commissioner concerning the proposed activity, the commissioner has made a final determination that the proposed Project activities, as certified, satisfy the standards in Minn. R. 7050.0265 and Minn. R. 7050.0285, and comply with all applicable federal and state surface water pollution control statutes and rules administered by the Agency.