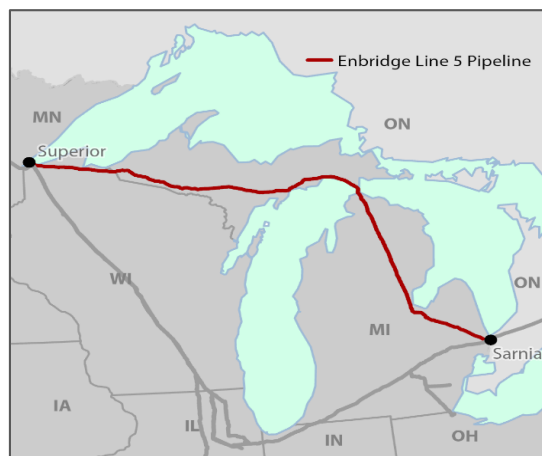


Line 5 Pipeline: Replacement/Tunnel Project

November 9, 2021

The Line 5 Pipeline is a 30-inch, 645-mile pipeline owned by [Enbridge](#) carrying up to 540,000 barrels per day of crude oil and natural gas liquids from Superior, WI, to Sarnia, Ontario (**Figure 1**). A key segment of Line 5 is an underwater crossing at the Straits of Mackinac—between Michigan’s upper and lower peninsulas—where the pipeline runs for approximately four miles across the lakebed. This crossing has been an environmental concern due to the risk it poses of a “worst case” oil spill into the Great Lakes.

Figure 1. Enbridge Line 5 Pipeline



Source: CRS using data from Platts, and Esri Data & Maps 2019.

Under the terms of various state agreements, Enbridge plans to replace this pipeline segment with a new one constructed through a tunnel beneath the lakebed—which requires federal approval. Enbridge continues operating the existing pipeline in the meantime. However, the state of Michigan has ordered Line 5 to shut down. Whether the pipeline should continue operating in its current configuration, and whether the federal government should grant a tunnel permit for a replacement crossing, have been the subject of litigation, federal oversight, and a U.S.-Canada treaty dispute.

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Michigan Easement Challenges

Line 5 was constructed in 1953 as part of a [pipeline system](#) linking oil fields in Alberta, Canada, to refinery markets in the Great Lakes region. (The pipeline currently carries products from both Canadian and domestic sources.) Enbridge's predecessor—Lakehead Pipe Line Company—was granted an [easement](#) at the time of construction by the State of Michigan to cross the Straits of Mackinac. In October 2018, Michigan and Enbridge entered an [agreement](#) whereby Enbridge would construct a tunnel under the straits, replace the existing Line 5 segment with a new pipeline segment through the tunnel, and “permanently deactivate” the old segment. The agreement also provided that the state would be “expressly confirming Enbridge’s rights to operate the [existing pipeline] under the terms of the Easement during the construction of the Straits Tunnel and Line 5 Replacement.” The agreement was followed by a December 11, 2018, [state statute](#) creating the Mackinac Straits Corridor Authority, which [approved](#) tunnel construction on December 19, 2018.

On November 13, 2020, under a new gubernatorial administration, state officials [notified Enbridge](#) that the 1953 easement was being revoked on safety grounds, requiring the Line 5 segment across the straits to cease operating by May 2021. On November 24, 2020, Enbridge [filed a challenge](#) in federal court to the state’s pipeline safety jurisdiction and shutdown order. In March 2021, the court [ordered mediation](#) between the two parties to resolve the dispute, but as of October 2021, that mediation was [reported to be unsuccessful](#). The court has not yet ruled on the case. Absent a federal court order, Enbridge continues to operate the pipeline across the straits.

U.S.-Canada Pipeline Treaty

The Canadian government has ardently supported the continued operation of Line 5. Canada has sought to intervene through [public statements](#) and [court filings](#), citing a 1977 pipeline [treaty](#) with the United States which prohibits a “public authority in the territory of either” from instituting “any measures ... which are intended to, or which would have the effect of, impeding, diverting, redirecting or interfering with in any way the transmission of hydrocarbon in transit.” On October 4, 2021, Canada [announced](#) that it was formally invoking the dispute settlement provision of the treaty regarding Line 5. On November 9, the White House Deputy Press Secretary [stated](#) that “both the U.S. and Canada will engage constructively” in Line 5 negotiations and that shutting down the existing pipeline “is something that we’re not going to do.”

Army Corps Tunnel Permit

In 2020, Enbridge filed a [joint application](#) with the U.S. Army Corps of Engineers (Corps) and the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to build a tunnel below the lakebed for a new Line 5 pipeline crossing. The Corps has statutory authority over the proposed Line 5 tunnel pursuant to Section 404 of the Clean Water Act ([33 U.S.C. §1344](#)), under which the Corps permits activities that may discharge dredge or fill material into waters of the United States, including wetlands. (Although Michigan is one of three states that administer their own [Section 404 permits](#), the Corps retains jurisdiction over certain waters, such as the Straits of Mackinac.) The agency also has authority pursuant to Section 10 of the Rivers and Harbors Act of 1899 ([33 U.S.C. §403](#)), under which the Corps permits structures and work in or affecting navigable waters.

In carrying out its authorities, the Corps must identify and consider the environmental impacts of the agency’s proposed actions (e.g., issuing a tunnel permit) pursuant to the National Environmental Policy Act (NEPA; [42 U.S.C. §§4321 et seq.](#)) among other statutory requirements. On June 23, 2021, the Corps [announced](#) that it would be preparing an Environmental Impact Statement (EIS), to “ensure all potential

impacts and reasonable alternatives associated with this project are thoroughly analyzed and will ultimately support a decision on the permit application.” The Corps [states](#) that its environmental review “is limited to the proposed crossing of the Straits of Mackinac and adjacent wetlands.” However, it is not clear to what extent the Corps’ NEPA review may consider the greenhouse gas (GHG) emissions associated with the fossil fuels passing through pipeline segment, [as called for by some advocates](#). The agency has not set a deadline to complete the EIS.

On January 29, 2021, EGLE [announced](#) that it had approved Enbridge’s application for permits required to build the tunnel. Although EGLE “acknowledged public concerns about the existing oil pipeline and affirmed ... that the current pipeline ... poses an unacceptable risk to the Great Lakes,” the agency concluded that “the proposed tunnel could comply with state environmental laws.” The tunnel project still requires approval from the Michigan Public Service Commission, which [has ruled](#) that it must consider GHG emissions caused by products transported by Line 5. The commission’s review is ongoing.

Author Information

Paul W. Parfomak
Specialist in Energy Policy

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