
Sheri Young
Secretary of the Board
National Energy Board
444 - 7th Avenue SW
Calgary, AB T2P 0X8

March 28, 2013

Re: **Enbridge Line 9B Reversal & Line 9 Capacity Expansion Project – Issues Report**

Please be advised that the following resolution was passed by the General Government Committee at its meeting held March 21, 2013 and endorsed by Ajax Town Council at its Meeting held on March 25, 2013:

Motion as Amended

Moved by: J. Dies

1. That the Report entitled "Enbridge Line 9B Reversal Project & Line 9 Capacity Expansion Project – Issues Report" be received for information.
2. That staff's Letter to the National Energy Board containing comments on the List of Issues in Hearing Order OH-002-2013 and a request that the National Energy Board hold an Information Session in Ajax, as provided in Attachment 1, be endorsed.
3. That staff be authorized to submit, to the National Energy Board, an Application to Participate in Hearing OH-002-2013 through a Letter of Comment.
4. That this Report be circulated to the National Energy Board, Enbridge, Durham Region, City of Pickering, Town of Whitby, City of Oshawa, Municipality of Clarington, Environmental Defense, DurhamCLEAR, **the Toronto and Region Conservation Authority, Ganaraska Region Conservation Authority, all Members of Parliament representing the lakeshore municipalities in Durham, the leaders of the major federal political parties, the Central Lake Ontario Conservation Authority, the Town of Ajax Environmental Advisory Committee, and the Cities of Mississauga, Kingston, Hamilton, Burlington, and Toronto.**

A copy of the staff report that prompted this action has been enclosed. If you require any additional information please do not hesitate to contact Stev Andis, Senior Policy Planner, at 905-619-2529 ext 3257 or stev.andis@ajax.ca

Sincerely



Nicole Welsbury
Manager of Legislative Services/Deputy Clerk

Copy: P. Allore, Director of Planning & Development Services
S. Andis, Senior Policy Planner
Enbridge Pipelines Inc
Region of Durham
City of Pickering
Town of Whitby
The Corporation of the City of Oshawa
Municipality of Clarington
Sabrina Bowman, Environmental Defense
Durham CLEAR
Toronto and Region Conservation Authority
Ganaraska Region Conservation Authority
Central Lake Ontario Conservation Authority
Ajax Environmental Advisory Committee
Members of Parliament for the Lakeshore Municipalities of Durham
City of Toronto
City of Mississauga
City of Kingston
City of Hamilton
City of Burlington

TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Paul Allore, MCIP, RPP
Director of Planning and Development Services

PREPARED BY: Stev Andis, MCIP, RPP
Senior Policy Planner

SUBJECT: Enbridge Line 9B Reversal & Line 9 Capacity Expansion
Project – Issues Report

WARDS: All

DATE OF MEETING: March 21, 2013

REFERENCE: Community Action Plan, Strategic Objective: Leader in
Environmental Sustainability

RECOMMENDATIONS:

1. That the Report entitled “Enbridge Line 9B Reversal Project & Line 9 Capacity Expansion Project – Issues Report” be received for information.
2. That staff’s Letter to the National Energy Board containing comments on the List of Issues in Hearing Order OH-002-2013 and a request that the National Energy Board hold an Information Session in Ajax, as provided in Attachment 1, be endorsed.
3. That staff be authorized to submit, to the National Energy Board, an Application to Participate in Hearing OH-002-2013 through a Letter of Comment.
4. That this Report be circulated to the National Energy Board, Enbridge, Durham Region, City of Pickering, Town of Whitby, City of Oshawa, Municipality of Clarington, Environmental Defense, and DurhamCLEAR.

BACKGROUND

1.1 History of Enbridge Line 9

Enbridge Line 9 is an approximately 830 km long, 30-inch diameter crude oil pipeline between Sarnia and Montreal. The National Energy Board (NEB) authorized the construction and operation of Line 9 approximately 40 years ago and it was placed into service in 1976 carrying crude oil in an eastwardly direction (Sarnia to Montreal). In 1999, as a result of more affordable offshore oil from areas such as the North Sea, West Africa and the Middle East, the NEB approved the reversal of flow for Line 9 to a westwardly direction (Montreal to Sarnia). Line 9 runs through Ajax and is a portion of a larger network of Enbridge pipelines that connect to the oil sands in Fort McMurray, Alberta (see Figure 1).

Enbridge has determined that market conditions justify another reversal of Line 9 so that Alberta oil can once again flow in an eastwardly direction. Applications by Enbridge to the NEB to facilitate this reversal are outlined in Sections 1.2 and 1.3. The NEB is the approval authority for oil pipeline applications.

Figure 1: Enbridge Line from Fort McMurray, Alberta to Montreal, Quebec

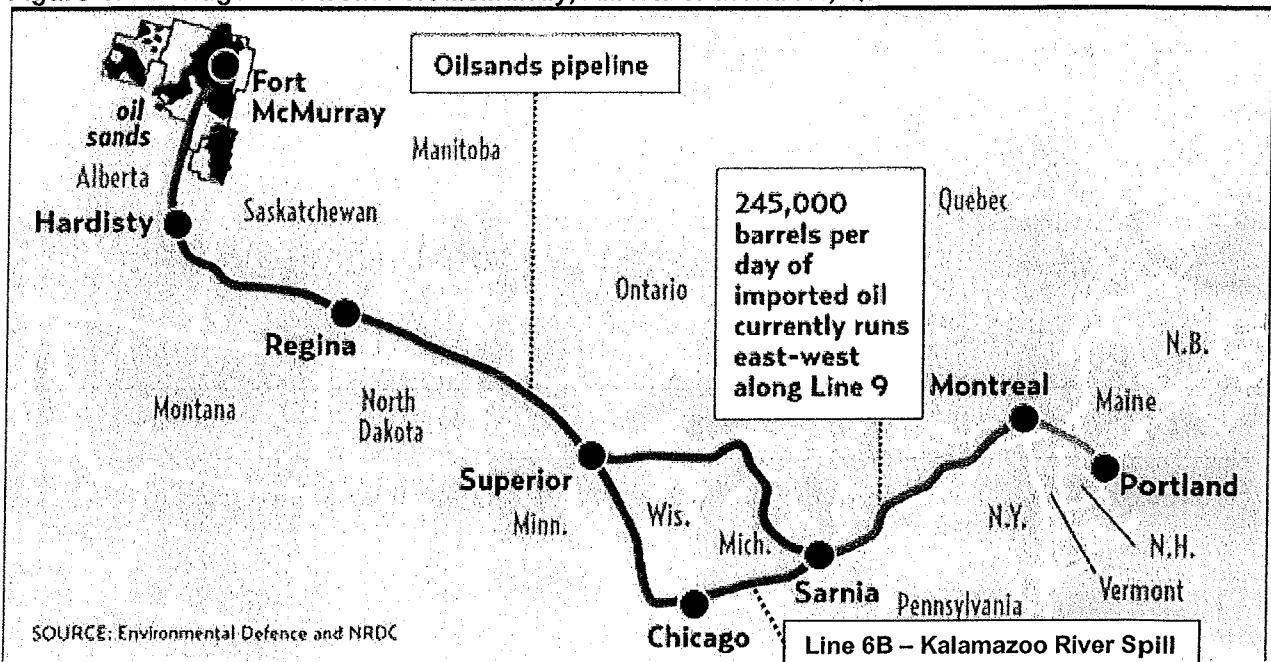


Image retrieved from Montreal Gazette – December 20, 2012 issue
<http://www.montrealgazette.com/business/story.html?id=7722123>

1.2 Phase 1: NEB Approval of Enbridge Line 9 Reversal from Sarnia to North Westover (Line 9A)

On August 8, 2011, Enbridge applied to the NEB to reverse the flow of an approximately 194 km long segment of Line 9 (Line 9A) between Sarnia and North Westover (near Hamilton) to an eastwardly direction (see Figure 2). The NEB approved the application on July 27, 2012¹. This NEB approval, in conjunction with a potential approval for the remainder of Line 9 from North Westover to Montreal, will permit the transport of crude oil from Fort McMurray, Alberta to markets in eastern Canada. The NEB's Order approving the reversal of flow in Line 9A will expire on July 27, 2013 unless construction has commenced by that date.

1.3 Phase 2: Enbridge Application to the NEB for Line 9B Reversal and Line 9 Capacity Expansion

On November 29, 2012, Enbridge filed an application with the NEB requesting to:

- a) Reverse the flow of a 639 km segment of Line 9 from North Westover, Ontario to Montreal, Quebec - this segment is known as Line 9B.
- b) Increase the capacity of the entire Line 9 (from Sarnia to Montreal) from 240,000 bpd (barrels per day) to 300,000 bpd through the introduction of a drag reducing agent (drag

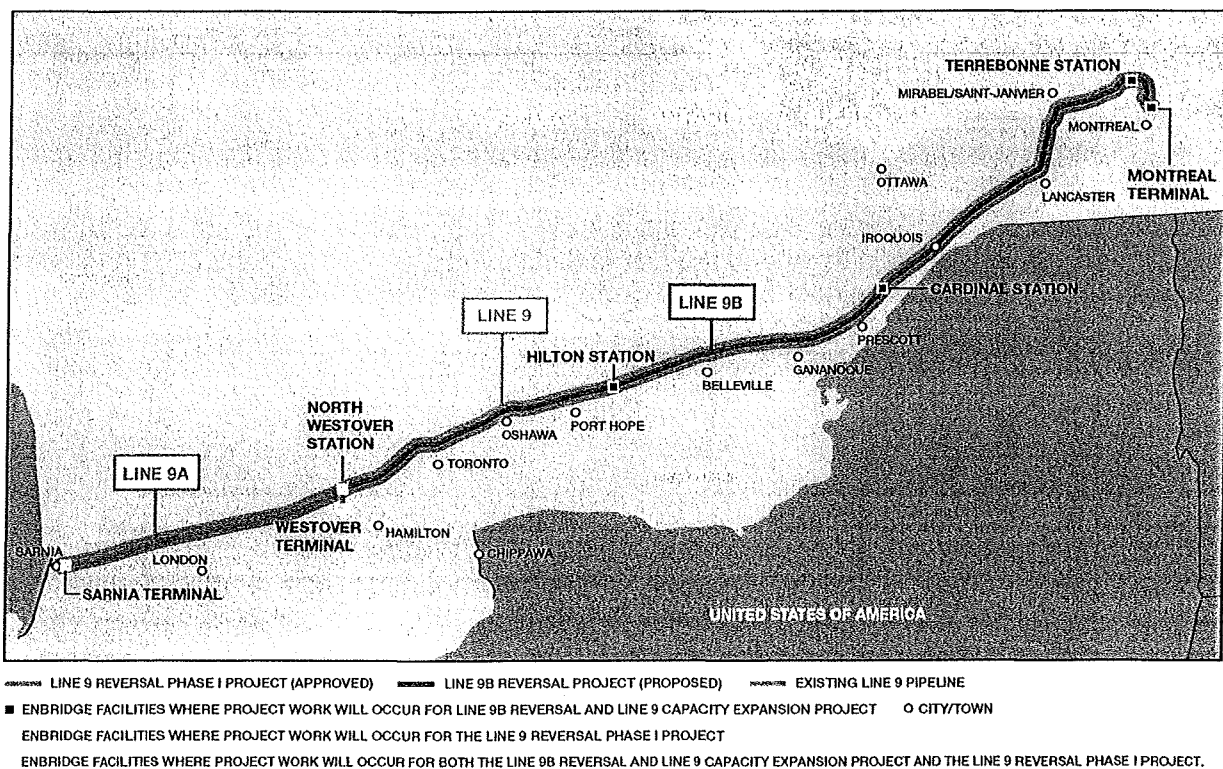
¹ More information on the Enbridge application and NEB approval for Phase 1: Line 9 (Line 9A) can be accessed from the NEB website - <http://www.neb-one.gc.ca/clf-nsi/rthnb/nwsrls/2012/nwsrls13-eng.html>

reducing agent is an additive used to increase pipeline capacity and allow oil to flow more efficiently).

- c) Revise the Line 9 Rules and Regulation Tariff to allow for the transportation of heavy crude oil, which may contain diluted bitumen (bitumen is the key component of tar sands and because of its thickness, bitumen is mixed with a chemical dilutant before transported in a pipeline - the dilutant-bitumen combination is known as dilbit).

The NEB Act allows the NEB discretion to determine whether a public hearing process will be conducted and to establish the terms and timelines for the process. On February 19, 2013, the NEB released a Procedural Order (Hearing Order OH-002-2013)² that provides a List of Issues and outlines the process for the review and hearing of Enbridge's application, including the requirements for applying to be a participant in the hearing.

Figure 2: Enbridge Pipeline 9 from Sarnia, Ontario to Montreal Quebec



DECEMBER 2012

Image retrieved from Enbridge website (<http://www.enbridge.com/Line9ReversalProject.aspx>)

Figure 2 illustrates Enbridge Line 9 in green, the NEB approval for the reversal of Line 9 from Sarnia to North Westover (Line 9A) in blue, and the pending Enbridge application to the NEB for the reversal of Line 9B in red.

1.3.1 List of Issues

The NEB's List of Issues from the Procedural Order are as follows:

² More information on Enbridge's application and the Hearing Order can be accessed from the NEB website - <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/nbrdgin9brvrsl/nbrdgin9brvrsl-eng.html>

1. The need for the proposed Project.
2. The potential commercial impacts of the proposed Project.
3. The appropriateness of the tolling methodology.
4. The potential environmental and socio-economic effects of the proposed Project, including the potential effects of malfunctions or accidents that may occur, and any cumulative environmental effects that are likely to result from the proposed Project.
5. The engineering design and integrity of the proposed Project.
6. The safety, security, and contingency planning associated with the construction and operation of the proposed Project, including emergency response planning and third-party damage prevention.
7. Consultation with Aboriginal groups and the potential impacts of the proposed Project on Aboriginal interests.
8. Consultation with affected landowners and the potential impacts of the proposed Project on affected landowners and land use.
9. The terms and conditions, related to the above issues, to be included in any approval the Board may issue for the proposed Project.

The Procedural Order states that the NEB will not consider the environmental and socio-economic effects associated with upstream activities, the development of the oil sands, or the downstream use of the oil transported by the pipeline. Suggestions on amendments to the List of Issues must include a clear explanation of the relevance of the suggestion to the hearing.

The NEB will be considering suggestions received and release a revised List of Issues if warranted. All suggestions to amend the List of Issues must be filed with the NEB and copied to Enbridge in a prescribed manner **by 12:00 noon Calgary time on March 21, 2013**.

1.3.2 Participating in the NEB Hearing

Any person, organization, or government interested in participating in the hearing must submit an Application to Participate. The Application to Participate has not yet been made available by the NEB, but must demonstrate that interest in the proceeding, or the information or expertise to contribute, be relevant to the final List of Issues. The NEB reviews applications and grants the right to participate in the hearing.

The Application to Participate must specify whether Intervenor status is being requested or whether a Letter of Comment will be submitted:

- a) If granted Intervenor status, there is a right to:
 - o provide written evidence;
 - o make Information Requests of Enbridge and other Intervenors (Intervenors are obligated to respond to Information Request asked of them);
 - o provide final oral argument; and/or,
 - o other methods of participation as the NEB considers appropriate.
- b) If granted the right to submit a Letter of Comment, views on the Project can be provided in writing.

The NEB will provide the Application to Participate after they have determined if any revisions to the List of Issues is warranted. The deadline to submit an Application to Participate, once made available, is **12:00 noon Calgary time on April 11, 2013**.

After reviewing the Applications to Participate, the NEB will issue a List of Parties (Intervenors and persons who can submit a Letter of Comment):

- a) Those granted the right to be an Intervenor must take the following actions within the prescribed timelines:
- Circulate their Application to Participate to all other Intervenors and Enbridge immediately after the NEB issues the List of Parties.
 - Submit written evidence **by 12:00 noon Calgary time on July 9, 2013**.
 - Make Information Requests to other Intervenors or Enbridge on their evidence by 12:00 noon Calgary time on July 16, 2013.
 - Respond to Information Request by other Intervenors or Enbridge by 12:00 noon Calgary time on July 30, 2013.
 - Submit written final argument by 12:00 noon Calgary time on August 20, 2013.
 - Make final oral argument (to be conducted the week of 26-30 August 2013 - details such as location, timing, and order of presentations will be issued closer to this date).
- b) Those granted the right to submit a Letter of Comment, must file their submission by **12:00 noon Calgary time on July 9, 2013**. Form letters and petitions will not be considered.

The NEB Procedural Order requires all participants (Intervenors and Letters of Comment) to keep their submissions relevant to the List of Issues. The NEB expects to issue a decision on the hearing by March 19, 2014.

1.3.3 Information Sessions

The NEB held information sessions on February 19th in Hamilton, February 20th in Toronto, and February 21st in Montreal. The NEB may hold additional information sessions through the hearing process, if there is sufficient interest. The NEB specifies that such information sessions are intended to assist people to better understand and participate in the hearing process but are not a forum for discussing the merits or substance of the application. The deadline for requesting an information session in April from the NEB is **12:00 noon Calgary time on March 21, 2013**.

On March 19, 2013, to ensure the deadline would be met, staff submitted a letter to the NEB requesting an information session be held in Ajax during the month of April (see Attachment 1).

2.0 DISCUSSION

Line 9 runs through 115 communities, including Ajax, Toronto, Sarnia, Hamilton, London, Kingston and Montreal. It crosses dozens of major rivers draining into Lake Ontario and the St. Lawrence River. A 2010 rupture in Enbridge's Line 6B, summarized in Section 2.1, illustrates the environmental and health effects that an oil spill containing dilbit can have.

2.1 Enbridge Line 6B - Kalamazoo River Spill

In July 2010, a spill occurred from a ruptured seam approximately five feet in length along Enbridge Line 6B (placed into service in the late 1960s) near Marshall, Michigan (see Figure 1 on page 2). The rupture and release occurred in a wetland where the pipeline was buried approximately 5 feet (1.5 m) below the ground surface³. Approximately 19,500 barrels of oil (approximately 3 million litres) were released into a creek, which made its way into Lake Morrow and then to the Kalamazoo River – a main tributary discharging into Lake Michigan. Heavy

³ National Transportation Safety Board, July 10, 2012. Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010 - <http://www.nts.gov/investigations/summary/PAR1201.html>

rains caused the existing dams to be overtopped and carried oil 48 kms downstream on the Kalamazoo River before the spill was contained⁴.

The pipeline was carrying bitumen, a heavy crude oil from the Alberta oils sands. Bitumen is thick and cannot flow through pipelines unless mixed with natural gas liquids or other light volatile petroleum products that can contain benzene, toluene and xylene (dilutents). The diluted bitumen combination is known as dilbit, a heavy crude oil that at high pressures can be pumped through pipelines. When the dilbit was released from the ruptured pipeline, chemicals from the dilutents were released into the air and the bitumen sank to the bottom of the riverbed. Households had to be evacuated due to noxious benzene fumes and hundreds of people were treated for fume related illnesses (headaches, nausea, dizziness, coughing and fatigue)⁵. Most of the contaminated stretch of river remained closed to the public until June 2012.

Cleaning up the bitumen in the river posed unique challenges because it sank to the bottom and traditional techniques such as skimming were ineffective. The new task of cleaning up submerged oil proved to be much more difficult and expensive. Two years after the spill, the National Transportation Safety Board (NTSB) released a report of Enbridge's poor response to the incident, citing organizational failures, lack of attention to safety procedures, and weak federal regulations⁶.

As of December 31, 2012, clean-up for the spill cost Enbridge US\$820 million⁷. In October 2012, after Enbridge had concluded its clean-up efforts, the US Environmental Protection Agency ordered Enbridge back to the site to clean up remaining pools of bitumen⁸. The EPA points to the increased accumulation of submerged bitumen as evidence that it is mobile, warranting its continued removal to prevent downstream migration⁹.

2.2 Enbridge Line 9 Location in Ajax

Line 9 runs through the Town's Rural Area and Greenbelt designation (see Figure 3). The pipeline crosses through environmentally protected features, near several rural residential properties, through agricultural lands and a golf course, and within 1km of existing and planned residential communities within the Town's Urban Area Boundary. From the Town's western boundary to Millers Creek, Line 9 runs parallel to the north side of the CP Rail Line and then follows the south side of the hydro corridor to Lake Ridge Road. In Ajax, the pipeline crosses under the Duffins, Millers, Carruthers and Lynde Creeks.

The pipeline is at a depth of 0.6 metres (2 feet) except at road, water, and rail crossings, where it is deeper (as of the publishing of this Report, Enbridge had yet to provide clarification as to how much deeper the pipeline is at these crossings). Shutoff valves for the pipeline within and near Ajax are at Tapscott Road (Scarborough), Church Street (Ajax), and Solina Road (Clarington).

⁴ US Environmental Protection agency website - <http://www.epa.gov/enbridgespill/>

⁵ US Department of Commerce, April 2011, NWS Central Region Service Assessment: Enbridge Oil Spill - Marshall, MI (2010) - <http://www.crh.noaa.gov/images/crh/assessments/EnbridgeOilSpillRegionalServiceAssessment.pdf>

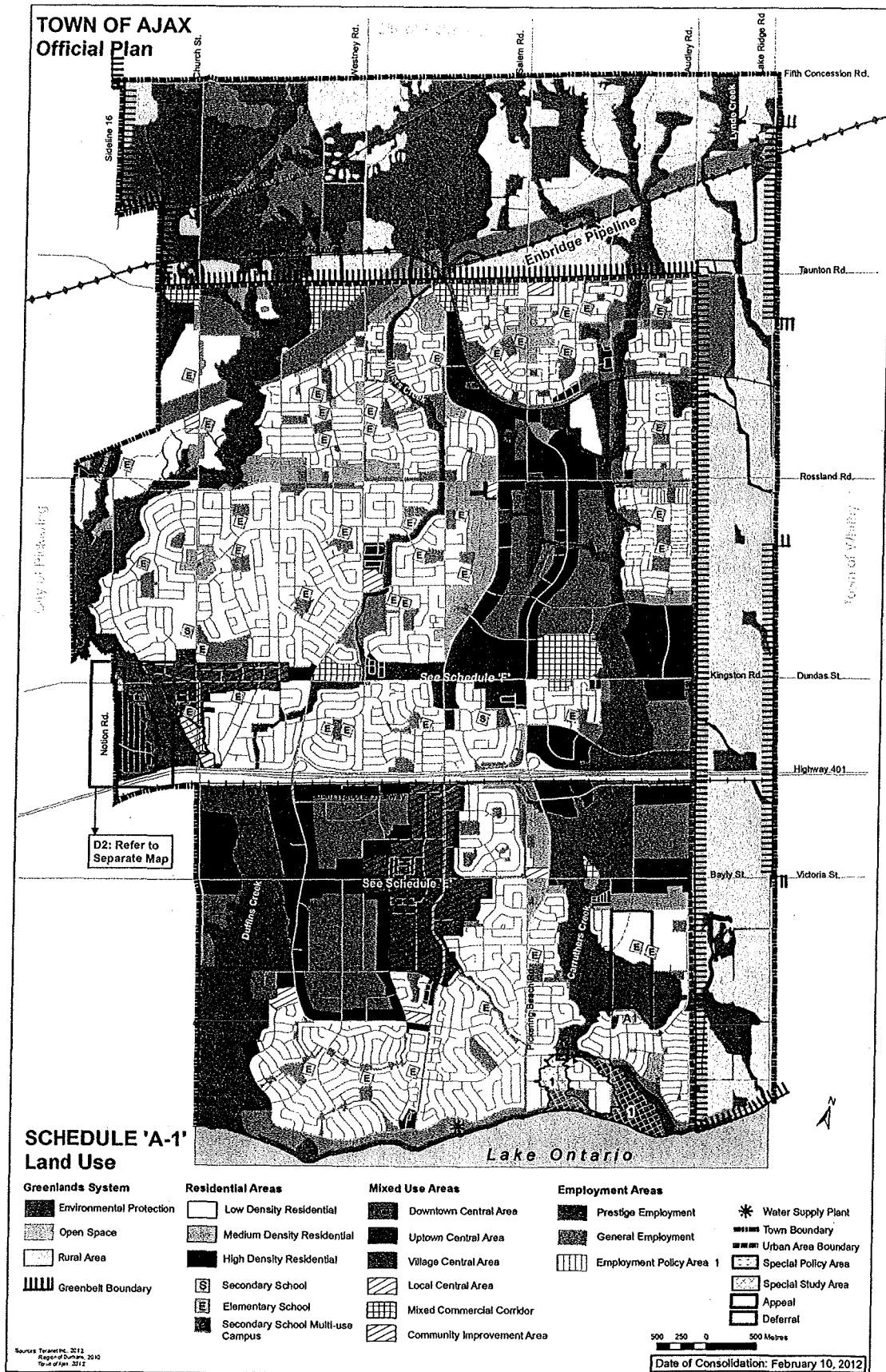
⁶ The report can be accessed on the NTSB website - <http://www.nts.gov/investigations/summary/PAR1201.html>

⁷ Enbridge Inc. Management Discussion and Analysis Fourth Quarter Financial Statements, December 31, 2012

⁸ More information can be access from the U.S. Environmental Protection Agency website - <http://www.epa.gov/enbridgespill/index.html>

⁹ Bloomberg News - <http://www.bloomberg.com/news/2012-10-12/epa-worries-dilbit-pipeline-spill-still-threatens-kalamazoo-river-.html>

Figure 3: Official Plan Schedule 'A-1' Land Use Illustrating Location of Enbridge Line 9 in Ajax



2.3 Town of Ajax Concerns Related to Enbridge's Application

2.3.1 Environmental and Drinking Water Impacts of Diluted Bitumen (Dilbit)

The Kalamazoo River spill raises strong concerns with Enbridge's proposal to transport dilbit in Line 9. Should there be a rupture in the pipeline near a watercourse, heavy bitumen would sink to the bottom, and the volatile compounds used as dilutents would disperse into the air, generating harmful air pollutants. A pipeline rupture in or adjacent to Ajax could result in both acute and more long-term risks, including potential:

- contamination along the creek channels and banks;
- contamination of Provincially Significant Wetlands at the mouths of the Duffins and Carruthers Creeks;
- contamination along Ajax's waterfront and beaches;
- negative impacts to nearshore water quality for an extended period of time;
- contamination of Ajax's primary source of drinking water – Lake Ontario; and
- evacuation and possible relocation of nearby residents.

If such an event were to be exacerbated by heavy rains (as was the case with the Kalamazoo River spill) a topping of river banks would also carry contaminants to adjacent residential development and negatively impact adjacent terrestrial environments.

The Kalamazoo River spill was the costliest pipeline spill in US history. The spill went undetected for 17 hours and the spill traveled up to 48 kms before it was contained. The distance from Enbridge's Line 9 to the Ajax waterfront, measured by the meandering shape of each creek, only ranges between 17 and 13.5 kms.

The CTC (Credit Valley, Toronto and Region, Central Lake Ontario) Source Protection Committee developed a Source Protection Plan (SPP) to protect drinking water supplies from potential future threats. Modeling of potential drinking water threats examined the effect a break in the Trans-Northern Oil Pipeline, which runs north of Enbridge Line 9 (see Figure 3), would have on Lake Ontario water supply plant intakes. However, the modeling only examined benzene; it did not examine bitumen or any other chemical component in crude oil. The modeling identified that benzene from a break in the Trans-Northern Oil Pipeline as it crosses Highland Creek, Rouge River, Petticoat Creek, Duffins Creek, Carruthers Creek, Lynde Creek and Oshawa Creek would be a drinking water threat to the Ajax Water Supply Plant intake. The CTC SPP is currently before the Minister of the Environment for approval.

It is anticipated that Toronto and Region Conservation Authority (TRCA) staff will be presenting a report on Enbridge's Line 9B application to the TRCA Board at their March 22, 2013 meeting.

2.3.2 Risk Management and Emergency Response

Reducing transmission pipeline risks and enhancing safety is best achieved through proper pipeline operation and maintenance by pipeline operators. A report released by the National Transportation Safety Board (NTSB) in July 2012¹⁰, states that the pipeline rupture in Enbridge's Line 6B (Kalamazoo River spill) and prolonged release were made possible by pervasive organizational failures that included the following:

¹⁰ National Transportation Safety Board, July 10, 2012. Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010 - <http://www.nts.gov/investigations/summary/PAR1201.html>

- Deficient integrity management procedures, which allowed well-documented crack defects in corroded areas to propagate until the pipeline failed.
- Inadequate training of control center personnel, which allowed the rupture to remain undetected for 17 hours and through two startups of the pipeline.
- Insufficient public awareness and education, which allowed the release to continue for nearly 14 hours after the first notification of an odour to local emergency response agencies.

The NTSB report also states that weak US federal government regulations for assessing and repairing crack indications, as well as ineffective US federal government oversight of pipeline integrity management programs contributed to the accident.

Ajax Fire Department staff have indicated they were trained to be aware of potential oil pipeline spills, but were not trained to respond to spills.

2.3.3 Pipeline Integrity

The NTSB report also identified the pipeline rupture in Enbridge's Line 6B as being caused by corrosion fatigue cracks that grew and joined together, as well as corrosion defects, producing a substantial crude oil release. Line 9 is currently close to the same age as Line 6B was when it ruptured.

Concerns have been raised over whether the transportation of dilbit poses a greater risk to pipeline corrosion.

A June 2012 report by the National Resource Defense Council (NRDC)¹¹ called 'Going in Reverse: the Tar Sands Threat to Central Canada and New England' states that dilbit has organic acid concentrations up to 20 times higher than conventional crude oil, and contains 10 times more sulfur. As dilbit is pumped through pipelines its temperature increases which amplifies its corrosive qualities.¹² Conversely, recent tests by Natural Resources Canada on the comparative corrosion of different grades of crude oil suggest that even though dilbit tends to be more acidic, they did not see any correlation between acidity and corrosion rate under pipeline operating conditions and therefore conclude that dilbit does not have increased corrosion potential compared to conventional crudes.

In light of these differing views, questions are raised regarding potential knowledge gaps about how the transportation of dilbit affects pipelines. Further analysis on this issue is being undertaken by the Transportation Research Board of the National Academies which has established a Dilbit Committee¹³ to analyze whether transportation of dilbit through pipelines has an increased likelihood of corrosion in comparison to other crude oils. The work of this committee is expected to conclude in 2013.

2.3.4 Pollution Liability Insurance

Through presentations to Councils and staff at the Cities of Kingston and Burlington, Enbridge representatives stated that costs associated with clean-up activities related to a spill through a

¹¹ The NRDC is a US environmental action group. It has 1.3 million members including more than 350 lawyers, scientists and other professionals.

¹² The report can be accessed on the NRDC website - <http://www.nrdc.org/energy/going-in-reverse.asp>

¹³ Information on the Dilbit Committee and its work can be accessed on the Transportation Research Board website - <http://www.trb.org/PolicyStudies/DilbitCommittee.aspx>

fault of Enbridge are wholly Enbridge's responsibility. If a spill is caused by a party other than Enbridge, Enbridge indicated that they would take all necessary steps to contain and clean-up a spill first and then seek financial compensation from the responsible parties after the fact.

The Natural Resources Canada website confirms that, if the pipeline operator is at fault, the pipeline company is completely liable for all costs to clean up a pipeline spill, and that there is no limit on the amount a company may be required to pay to clean up a spill. In addition to being financially responsible for clean-up, the company may also be fined or subjected to other enforcement actions such as Board Orders and Directives, or prosecution¹⁴.

Enbridge maintains a comprehensive insurance program for its subsidiaries and affiliates. This insurance policy is renewed in May of each year. The insurance program includes commercial liability insurance coverage and coverage for environmental incidents (pollution liability). The insurance program would cover multiple insurable incidents within the same insurance period. Enbridge's current comprehensive insurance program which is effective through to April 30, 2013 is US\$660 million, including sudden and accidental pollution liability¹⁵.

Enbridge's insurance coverage during the Kalamazoo River spill was US\$650 million, given that Enbridge's clean-up costs of US\$820 million (to date) far exceed the insurance coverage, staff are concerned that Enbridge may not have adequate insurance to cover a potential spill of dilbit from Line 9. Additionally, as of the publishing of this report, staff were unable to learn what would happen if Enbridge was unable to recover all the clean-up costs they would incur as a result of a spill caused by a third party. The Town would like to ensure that if Enbridge was unable to cover all costs for emergency response and clean-ups that protection is provided for taxpayers.

2.4 Town of Ajax Suggestions on the List of Issues

On March 19, 2013, to ensure the NEB deadline would be met, staff submitted a letter to the NEB outlining suggestions for amendments to the List of Issues as outlined below (see Attachment 1).

Most of the Town's concerns outlined in Section 2.3 of this Report seem to be addressed in items 4-6, 8 and 9 in the List of Issues, which have been repeated below for convenience

4. The potential environmental and socio-economic effects of the proposed Project, including the potential effects of malfunctions or accidents that may occur, and any cumulative environmental effects that are likely to result from the proposed Project.
5. The engineering design and integrity of the proposed Project.
6. The safety, security, and contingency planning associated with the construction and operation of the proposed Project, including emergency response planning and third-party damage prevention.
8. Consultation with affected landowners and the potential impacts of the proposed Project on affected landowners and land use.
9. The terms and conditions, related to the above issues, to be included in any approval the Board may issue for the proposed Project.

¹⁴ NRCan Frequently Asked Questions Concerning Federally-Regulated Petroleum Pipelines in Canada - <http://www.nrcan.gc.ca/energy/node/2248>

¹⁵ Enbridge Inc. Management Discussion and Analysis Fourth Quarter Financial Statements, December 31, 2012

Environmental Impacts of Diluted Bitumen (Dilbit)

Issues 4 and 8 appear to be sufficiently broad enough to address most of the Town's concerns regarding the environmental impacts of diluted bitumen; however, the Town requests the NEB revise or clarify Issue 4 to specifically address the potential impact a release of diluted bitumen would have on Lake Ontario drinking water supply plant intakes.

Risk Management and Emergency Response

Issues 6 and 9 address the Town's concerns related to reducing transmission pipeline risks and enhancing safety. However, the Town requests the NEB consider the findings and recommendations in the National Transportation Safety Board's Accident Report on the Kalamazoo River spill during the hearing and, if Project approval is granted, that appropriate conditions are imposed on the Project to address any deficiencies in risk management and emergency response.

Pipeline Integrity

Issues 5 and 9 may address the Town's concerns regarding the impact transporting dilbit would have on pipeline corrosion and hence pipeline integrity. However, the Town suggests the NEB revise or clarify Issue 5 to specifically address the effect transporting dilbit would have on corrosion within the pipeline, and to consider the findings of the Dilbit Committee (Transportation Research Board of the National Academies). The Town also suggests, if Project approval is granted, that appropriate conditions are imposed on the Project to address pipeline integrity related to the transportation of dilbit.

Pollution Liability Insurance

It is not clear whether Issues 4 or 6 would sufficiently address matters related to pollution liability insurance. As such, the Town requests that the List of Issues be revised or clarified to include an assessment of Enbridge's comprehensive insurance plan and federal financial assurances¹⁶ that may relate to pipeline spills to ensure there will be adequate financial protection for taxpayers from costs associated with emergency response (including potential household evacuation and relocations) and spill clean-ups, especially given the Project's proposal of transporting dilbit.

2.5 Participating in the National Energy Board Review Process/Hearing

As mentioned in Section 1.3.2 of this Report, if the Town wishes to participate in the hearing for Enbridge's application to the NEB there are 2 options: participate as an Intervenor, or submit a Letter of Comment.

Intervenor. Being an Intervenor requires a commitment to the hearing process and a commitment of time. Intervenor must file written evidence and have the opportunity to ask questions in writing of each other. This is followed by the oral portion of the hearing in which Intervenor may present evidence, question other witnesses, and give final arguments. Intervenor can also be cross-examined on any evidence they present. Intervenor should also plan to attend as much of the hearing as possible, especially at the opening of the hearing to register their appearance with the NEB.

¹⁶ Financial assurance is a mechanism the federal government uses to help shield tax payers from the costs of environmental protection, clean-up, and reclamation for a range of projects, including the transport of oil.

In addition to staff time, there would be additional costs associated with being an Intervenor, including retaining consultants (legal and/or pipeline engineering experts), preparing evidence, preparing for cross-examination, making copies and sending documents to other parties. Dependent on the location of the hearing, there may also be travel and accommodation costs (a location for the hearing has not been set yet). The NEB has a Participant Funding Program to support public participation in oral hearings; however, municipalities are not eligible to receive this funding. Other municipalities that staff consulted with have estimated the cost of participating as an Intervenor to be between \$100,000 and \$200,000.

Letter of Comment: A Letter of Comment can be prepared by staff without the need for external consultants. It should be noted that a Letter of Comment is not considered sworn evidence and not subject to questioning. As a result, a Letter of Comment cannot be expected to have the same weight as sworn evidence in a hearing, although the weight of the letter depends on a number of factors, including the content. Determination of weight is at the NEB's discretion.

As such, it is recommended that Council authorize staff to submit an Application to Participate requesting Letter of Comment status to the NEB.

2.6 Appeals of National Energy Board Decision on Enbridge Application to Reverse Pipeline 9B

Decisions by the NEB can be appealed to the Federal Court of Appeals after a leave to appeal is obtained from that Court. An application for leave to appeal must be made within 30 days after the release of the decision. However, NEB decisions can only be appealed if there is an error of law or jurisdiction; new facts have arisen; and, facts that were not placed in evidence and were not discoverable by reasonable diligence.

There is also the option for the NEB to review or alter its decisions. Parties involved in the hearing can ask for a review but only if specific requirements are met. If the NEB decides to hold a review, the NEB may hold another public hearing or ask for further input from people interested in the project.

3.0 FINANCIAL IMPLICATIONS

There are no financial implications associated with the endorsement of this Report.

4.0 COMMUNICATION ISSUES

All comments on the List of Issues must be filed with the NEB and copied to Enbridge by 12:00 noon Calgary time on March 21, 2013 and the deadline for requesting an information session in April from the NEB is 12:00 noon Calgary time on March 21, 2013. As such, staff submitted a letter the NEB on March 19, 2013 (see Attachment 1).

5.0 CONCLUSION

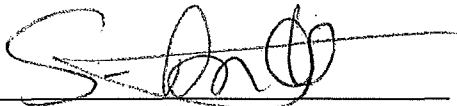
The hearing for Enbridge's application to the NEB to reverse the flow of Line 9B, increase barrel per day capacity for the entire Line 9, and allow for the transportation of heavy crude oil which may contain dilbit will be a fast-paced process, as established by the timelines in the NEB Procedural Order. Given that Line 9 runs through Ajax and that it could be transporting dilbit,

staff recommend that a Letter of Comment be submitted to the National Energy Board to ensure the Town's concerns are expressed.

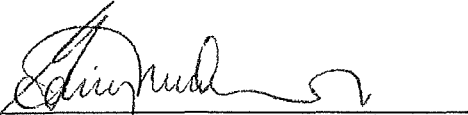
Staff will prepare a report for General Government Committee in the Fall (exact date to be determined) with an update on the NEB's Granting of Participant Status to the Town and the Town's Participation (Letter of Comment) in the hearing.

ATTACHMENTS:

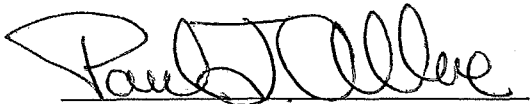
ATT-1: Town of Ajax Letter to the National Energy Board - Suggestions on Amendments to the List of Issues and Request for NEB to Hold an Information Session in Ajax



Stev Andis, MCIP, RPP
Senior Policy Planner



Gary Muller, MCIP, RPP
Manager of Planning



Paul Allore, MCIP, RPP
Director of Planning and Development Services

ATT-1:

Town of Ajax Letter to the National Energy Board - Suggestions on Amendments to the List of Issues and Request for NEB to Hold an Information Session in Ajax



Planning &
Development Services

Tel: 905-683-4550
Fax: 905-683-0360

TOWN OF AJAX
65 Harwood Avenue South
Ajax ON L1S 2H9
www.ajax.ca

March 19, 2013

Sheri Young
Secretary of the Board
National Energy Board
444 - 7th Avenue SW
Calgary, AB T2P 0X8

**Re: Town of Ajax Suggestions on National Energy Board Hearing Order OH-002-2013
List of Issues and Request of the National Energy Board to Hold an Information
Session in Ajax**

**Enbridge Pipelines Inc. Application for the Line 9B Reversal and Line 9 Capacity
Expansion Project**

Hearing Order OH-002-2013 / File OF-Fac-Oil-E101-2012-10 01

Submitted via facsimile to: 403-292-5503

Dear Ms. Young,

This letter is being submitted on behalf of the Town of Ajax regarding Hearing Order OH-002-2013 for Enbridge Pipelines Inc. Line 9B Reversal and Line 9 Capacity Expansion Project Application.

The purpose of this letter is twofold: 1) to request an Information Session in Ajax, and 2) to provide suggestions on the List of Issues.

A staff report to the Town's General Government Committee, as attached, regarding these matters will be presented on March 21, 2013.

To meet the Procedural Order's timelines, Town staff are submitting this letter in advance and will provide the National Energy Board and Enbridge with a Resolution once the Report is ratified by Town of Ajax Council at a subsequent meeting on March 25, 2013.

- 1) The Town formally requests that the National Energy Board hold an Information Session in Ajax during the month of April, 2013.

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- 2) With regard to the List of Issues in Hearing Order OH-002-2013, the Town has interest in Issues 4-6, 8 and 9.

Given the cause of the rupture in Enbridge's Line 6B near Marshall Michigan, the delayed emergency response, as well as the environmental and financial impacts that resulted from that accident, the Town has concerns, as detailed in the attached staff report, with Enbridge's proposal to transport diluted bitumen (dilbit) in Line 9. Specifically, the Town has an interest in ensuring the following is addressed in the List of Issues and examined in the review of Enbridge's application for Line 9:

- the impact a potential dilbit spill would have on drinking water supply plant intakes ;
- risk management and emergency response plans and procedures are sufficient to address a potential dilbit spill;
- the impact on pipeline integrity of transporting dilbit; and
- the matter of sufficient pollution liability insurance and federal financial assurance, if applicable, to address a potential dilbit spill.

Issues 4 and 8 appear to be sufficiently broad enough to address most of the Town's concerns regarding the environmental impacts of dilbit. However, ***the Town requests the NEB revise or clarify Issue 4 to specifically address the potential impact a release of dilbit would have on Lake Ontario drinking water supply plant intakes.*** The spill from Enbridge's Line 6B travelled approximately 48 kms before it was contained. Enbridge's Line 9 crosses 4 creeks in Ajax and is only located 13.5 to 17 kms from Lake Ontario. The Town is concerned a potential rupture in Line 9 could result in dilbit reaching the Ajax waterfront and ultimately becoming a threat to the Ajax Water Supply Plant intake which is located approximately 2 kms from the Lake Ontario shoreline.

Issues 6 and 9 address the Town's concerns related to reducing transmission pipeline risks and enhancing safety. However, ***the Town requests the NEB consider the findings and recommendations in the National Transportation Safety Board's (NTSB) Accident Report on the Kalamazoo River spill during the hearing and, if Project approval is granted, that appropriate conditions are imposed on the Project to address any deficiencies in Enbridge Plans or Procedures related to risk management and emergency response.*** The NTSB report cited deficient integrity management procedures, inadequate training of control centre personnel, insufficient public awareness and education; as well as weak US government regulations contributed to Line 6B's rupture and release of dilbit. The Town would like to ensure that Enbridge's plans and procedures, especially related to river crossing management and emergency response, are sufficient to address a potential dilbit spill.

Issues 5 and 9 may address the Town's concerns regarding the impact transporting dilbit would have on pipeline corrosion and hence pipeline integrity. However, ***the Town suggests the NEB revise or clarify Issue 5 to specifically address the effect transporting dilbit would have on corrosion within the pipeline, and to consider the findings of the Dilbit Committee (Transportation Research Board of the National Academies).*** The Town also suggests, ***if Project approval is granted, that appropriate conditions are imposed on the Project to address pipeline integrity related to the transportation of dilbit.*** There are differing findings related to the effect dilbit has on pipeline corrosion (e.g. National Resource Defense Council and Natural Resources Canada); this raises questions regarding potential knowledge gaps about how the transportation of dilbit affects pipeline integrity. Line 9 is currently the same age as Line 6B

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when it ruptured (Kalamazoo River spill). The Town wants to ensure that concerns over whether the transportation of dilbit poses a greater risk to pipeline integrity are comprehensively addressed.

It is not clear whether Issues 4 or 6 would sufficiently address matters related to pollution liability insurance and taxpayer protection. As such, ***the Town requests that the List of Issues be revised or clarified to include an assessment of Enbridge's comprehensive insurance program and federal financial assurances that may relate to pipeline spills to ensure there will be adequate financial protection for taxpayers from costs associated with emergency response (including potential household evacuation and relocations) and spill clean-ups, especially given the Project's proposal of transporting dilbit.*** The Natural Resources Canada website confirms that, if the pipeline operator is at fault, the pipeline company is completely liable for all clean-up costs and that there is no limit on the amount a company may be required to pay. Enbridge maintains a comprehensive insurance program that includes coverage for environmental incidents (pollution liability); however, Enbridge's current comprehensive insurance program which is effective through to April 30, 2013 is US\$660 million. Enbridge's clean-up costs for the Kalamazoo River spill (Line 6B) are US\$820 million to date, which far exceeds this insurance coverage. The Town would like to ensure that if Enbridge's insurance is not sufficient enough to cover a spill and/or Enbridge was unable to recover all the clean-up costs they would incur as a result of a spill cause by a third party, that protection is provided for taxpayers.

If you have any questions or require further clarification, please contact Ms. Stev Andis, Senior Policy Planner at 905.619.2529 ext. 3257 or stev.andis@ajax.ca.

Regards,



Paul Allore, MCIP, RPP
Director, Planning and Development Services
905.619.2529 ext. 3220
paul.allore@ajax.ca

cc

Ms. Chantal Robert
Supervisor Regulator Affairs
Enbridge Pipelines Inc.
425 – 1st Street S.W.
Calgary, AB T2P 3L8
Facsimile 403-767-3863

Ms. Margery Fowke
Senior Regulatory Counsel
Enbridge Pipelines Inc.
425 – 1st Street S.W.
Calgary, AB T2P 3L8
Facsimile 403-767-3863

Mr. Doug Crowther
Legal Counsel
Fraser Milner Casgrain LLP
15th Floor, Bankers Court
850 – 2nd Street S.W.
Calgary, AB T2P 0R8
Facsimile 403-268-3100

Attch: Town of Ajax Report to General Government Coomittee – March 21, 2013 – Enbridge Line 9B Reversal & Line 9 Capacity Expansion Project – Issues Report

