

WHY THE NORTHEAST TAR SANDS PIPELINE IS COMING

In 2008, Enbridge and Exxon-Mobil owned Portland Pipe Line Corporation (PPLC)¹ hatched a plan to bring tar sands from Alberta, where it is mined, through the Midwest, into Ontario, and then from Montreal to Portland, ME where it could be shipped to refineries and likely exported. The plan was labeled "Trailbreaker" by the oil companies. The proposal occurred largely behind closed doors and was quickly given key important green lights. Most alarmingly, on July 18, 2008, the U.S. State Department which issues Presidential permits for transboundary pipelines sent a letter to pipeline lawyers responding to a letter from these lawyers dated three days earlier.² The letter said that the pipeline company could move forward with the project without a new or amended permit. In other words, tar sands could be brought through New England with virtually no federal oversight.

While the "Trailbreaker" proposal was supposed shelved in 2009 due to the economic downturn,³ it appears clear that it is back despite pipeline company denials that "there is no active project."⁴ A series of events make clear reversal of the pipeline is a reality moving forward. It is important to note that the companies involved in this project are under no obligation to formally announce their overall intents, and appear determined to proceed in a piecemeal fashion. While we believe they need a new Presidential permit for the reversal, they can put many important pieces of the project in place and are indeed already doing that in place before approaching the State Department regarding the need for a Presidential permit. There is also no guarantee the State Department will even require such a permit, or conduct any formal or public process in making its decision regarding a Presidential permit. The evidence below overwhelmingly suggests that the companies' plans to reverse the pipeline for tar sands are in full swing. Efforts to oppose the pipeline and ensure concerns are addressed cannot be delayed.

- Enbridge has announced plans to reverse Line 9. Line 9 is central to the Northeast pipeline project, connecting tar sands lines in the Midwest to Montreal. The reversal of Line 9 brings tar sands to New England's doorstep. Line 9 flows from Sarnia, ON (which sits at the Michigan/Ontario border just south of Lake Huron) to Montreal. In August of 2011, Enbridge (which owns the pipeline) applied for approval from the Canadian National Energy Board (NEB) to partially reverse the pipeline to flow west to

¹ The Trailbreaker project involves the Line 6b and Line 9 pipelines, which are owned by Enbridge, and the Portland Montreal Pipe Line (PMPL), which is directly owned by the Portland Pipe Line Corporation (PPLC) in the U.S. and Montreal Pipe Line Company (MPPL) in Canada. The PPLC is a wholly-owned subsidiary of MPPL, and the MPPL is owned by McColl-Frontenac Petroleum Inc. of Toronto, Imperial Oil Limited of Toronto, and Suncor Energy Inc. of Calgary. McColl-Frontenac is a wholly-owned subsidiary of Imperial Oil. Exxon Mobil has a 69.6% interest in Imperial Oil. Suncor has a 23.8% ownership interest in the PMPL. This leaves Imperial with a 76.2% share in the company and means that the PMPL is 53.26% held by Exxon Mobil. Put simply, 76.2% of the Portland Montreal Pipe Line is owned by Exxon Mobil and its Canadian subsidiary, Imperial Oil. Control of the PMPL is squarely in the hands of international oil company representatives. No formal links exist between Enbridge and the entities associated with the PMPL other than significant business relationships.

² Despite a FOIA request to the State Department, the July 15, 2008 letter from pipeline lawyers to the State Department has not been provided.

³ See Enbridge Inc., "Line 9 Reversal Phase I Project Overview," <http://www.enbridge.com/Line9ReversalProject.aspx> (accessed May 19, 2012).

⁴ E.g., Thatcher Moats, Activists alert on pipeline in state, Montpelier Barre Times-Argus (June 6, 2012).

east. That partial approval was granted in July 2012.⁵ On October 11, 2012, Enbridge filed a pre-application letter with the NEB to fully reverse the pipeline.⁶ In this letter, Enbridge stated for the first time that "heavy crude" could be transported on the line. Heavy crude likely includes tar sands and diluted bitumen. Additionally, the October 11, 2012 announcement that Enbridge would be seeking to expand the capacity of the pipeline by 25 percent to 300,000 barrels per day. Since refining capacity along the pipeline route is limited, this expansion indicates intent to move the pipeline east of Montreal so it can be exported. This would likely mean movement to Portland, Maine with its access to shipping.

- On October of 2011, two months after Enbridge applied for the Line 9 reversal, two representatives of the PPLC, two representatives of the American Petroleum Institute, and a the Canadian Consul General in Boston met with Governor Paul LePage of Maine to discuss "Oil Sands Development."⁷
- Enbridge is actively upgrading and expanding capacity of Lines 6B (responsible for the Kalamazoo spill) and 5 (which flows under the Straights of Mackinaw).⁸ These upgrades are critical to getting tar sands to Sarnia for transport east along Line 9.
- In 2009, PPLC applied for and received an air permit from the State of Maine that is still in effect. That permit is for a reversal and expressly states that "Cold Lake Crude" is to be part of the mix that will flow through the pipeline.⁹ Cold Lake Crude is the same diluted bitumen material that spilled into Kalamazoo in 2010, resulting in the most expensive oil pipeline disaster in U.S. history.
- PPLC kept alive a local permit to allow it make needed upgrades to Pier 2 in South Portland that would allow it to reverse the flow of the pipeline for export. The modifications (including the construction of a new pumping station and towers needed to deal with vapors) were expressly granted permits in August of 2009 in order to reverse

⁵ National Energy Board of Canada, Letter Decision, Enbridge Pipeline Inc. (Enbridge) Line 9 Reversal Phase I Project, Hearing Order OH-005-2011 (July 27, 2012), available at, <https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=834582&objAction=browse>.

⁶ Letter from Chantal Robert, P.Eng., PMP Supervisor, Regulatory Affairs, Enbridge Pipelines, Inc., to Sheri Young, Secretary of the Board, National Energy Board (Oct. 11, 2012), available at, <https://www.neb-one.gc.ca/ll-eng/Livelink.exe?func=ll&objId=873171&objAction=browse>.

⁷ Aho, Patricia. "Re: Participants in the 10/17 Meeting with the Governor." Message to Drew Cobbs and Lynn Boutilier. 10 Oct. 2011. E-mail; Cobbs, Drew. "Participants in the 10/17 Meeting with the Governor." Message to Patricia Aho and Lynn Boutilier. 10 Oct. 2011; E-mail. Cobbs, Drew. "Handouts for the meeting with Governor LePage." Message to Lynn Boutilier and Patricia Aho. 14 Oct. 2011. E-mail. We have submitted a Freedom of Access Act request in Maine to get any notes of the meeting, but emails obtained from the Maine Department of Environmental Protection make clear who was at the meeting and what the topic of the meeting was.

⁸ *E.g.*, NASDAQ, Enbridge Plans \$1B Plus Investment Analyst Blog (May 14, 2012), available at, <http://community.nasdaq.com/News/2012-05/enbridge-plans-1b-plus-investment-analyst-blog.aspx?storyid=141059>.

⁹ State of Maine, Department of Environmental Protection, Portland Pipe Line Corporation, Cumberland County, South Portland, Maine A-197-77-1-A, Departmental Finding of Fact and Order Air Emission License NSR Amendment #1 (Aug. 25, 2009).

the pipeline.¹⁰ An extension to complete the upgrades (again expressly for reversal) was granted in July of 2011. That extension expired on August 25, 2012.¹¹ But private conversations with South Portland officials have indicated that the PPLC has told South Portland it will resubmit the application for re-approval.

- PPLC's immediate parent company, the Montreal Pipe Line Limited, has an application before a local agricultural committee in Quebec that is needed to upgrade a pumping station in Dunham, QC and would allow tar sands to be pumped over Mount Sutton (oil now flows down the mountain but would need to be pumped up for a reversal). MPLL had approval but that was overturned by a Quebec court in Feb of 2012¹². The agricultural board has since informed the company that its original application is now being reconsidered.¹³
- The tar sands industry indicated to the Canadian Parliament in hearings that led to a May 2012 report that it supported bringing tar sands through New England. The report states that:

[W]itnesses supported the idea of reversing Enbridge's Line 9 pipeline between Sarnia and Montréal. The reversal would make crude oil from Canada's western sedimentary basin available to Eastern Canada (and possibly Atlantic Canada), and could potentially allow western crude oil to serve New England, through Portland, Maine.¹⁴

- High Prairie Pipeline, LLC, a carrier of Bakken Crude oil from North Dakota fields (which is light crude) filed complaints with U.S. agencies earlier this year, including Federal Energy Regulatory Commission, that Enbridge is denying it access to its Lakehead pipeline system (which includes Line 5 and 6B that would allow tar sands to come to New England) to keep the Enbridge system open for tar sands.¹⁵ By denying light crude from the Bakken fields to its pipeline system in order to keep room for tar sands indicates Enbridge's real interest is in moving tar sands along its pipeline.

¹⁰ City of South Portland Planning Board Findings of Fact and Decision (Aug. 8, 2009).

¹¹ City of South Portland Planning Board Findings of Fact and Decision (July 26, 2011).

¹² PIPE-LINES MONTRÉAL LTÉE, Appelante, c. STÉPHANE DURAND, CANADA, PROVINCE DE QUÉBEC, DISTRICT DE BEDFORD, LOCALITÉ DE COWANSVILLE, Chambre civile, 455-80-000209-104 (Feb. 16, 2012) *available at*, <http://www.jugements.qc.ca/php/decision.php?liste=59091713&doc=CEF9441A7D2141416A8172B1D726CBBF6991B66E38834137788871037CE9ECBA>.

¹³ Letter from M Serge Carinal, directeur general, Commission de protection du territoire agricole Quebec, to M Karl Delwaide, Fasken Martineau DuMoulin (June 28, 2012).

¹⁴ House of Commons Canada, Current and Future State of Oil and Gas Pipelines and Refining Capacity in Canada: Report of the Standing Committee on Natural Resources (May 2012), *available at*, <http://www.parl.gc.ca/content/hoc/Committee/411/RNNR/Reports/RP5499677/rnnrrp03/rnnrrp03-e.pdf>.

¹⁵ High Prairie Pipeline, LLC Complainant, v. Enbridge Energy, Limited Partnership Respondent, COMPLAINT OF HIGH PRAIRIE PIPELINE, LLC, BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION (5/17/12).