United States Department of the Interior

OFFICE OF THE SOLICITOR
Three Parkway Center, Suite 385
Pittsburgh, Pennsylvania 15220

412-937-4000

March 1, 2012

S. Mark Curwin
Enbridge Energy Co.
10201 Jasper Avenue, N.W.
Edmonton, AB T5J 3N7
CANADA

Via FedEx International Air

Re: Notice of Intent to Conduct Restoration Planning for the Enbridge Oil Spill and Invitation to Participate in Natural Resource Damage Assessment

Dear Mr. Curwin:

We are writing on behalf of state, federal and tribal trustees charged with public trust responsibilities for natural resources injured and threatened by the July 26, 2010 oil spill.

On or about July 26, 2010, a 30-inch diameter pipeline owned by Enbridge Energy near Marshall, Michigan ruptured, discharging crude oil into a wetland adjacent to Talmadge Creek (Calhoun County). The oil flowed through Talmadge Creek into the Kalamazoo River, a Lake Michigan tributary. This discharge, along with associated response activities, are adversely affecting and/or threatening natural resources within the jurisdictions of the United States, the State of Michigan, the Nottawaseppi Huron Band of the Potawatomi Tribe, and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Tribe. Accordingly, the designated state, federal and tribal trustees (collectively the Trustees) for these affected and potentially affected resources have begun to undertake a natural resource damage assessment (NRDA) pursuant to section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701, *et seq.*, and applicable state law. Under the OPA, the Trustees are authorized to undertake a NRDA to (1) determine and quantify potential natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) develop and implement a plan for restoration of such injured resources.

Based on information collected during the Preassessment Phase of the NRDA, and in accordance with state regulations and the OPA NRDA regulations at 15 C.F.R. Part 990, Subparts D and E, the Trustees have determined to conduct Restoration Planning. The details of this determination and the Trustees' associated findings are contained in the enclosed Notice of Intent to Conduct Restoration Planning.

The OPA NRDA regulations at 15 C.F.R. § 990.14(c) direct the Trustees to invite the responsible parties (RPs) to participate in the natural resource damage assessment described in the regulations. As your clients have been identified as RPs, the Trustees hereby invite their participation in the NRDA process, and seek to confirm Enbridge's intention to work cooperatively with the Trustees or to decline the invitation. On March 17, 2011, the Trustees provided Enbridge with a draft Memorandum of Agreement that allows for the funding and implementation of cooperative NRDA and restoration-planning activities. Enbridge has not stated its willingness to enter into the proposed cooperative NRDA. Although the Trustees continue to invite Enbridge's participation in the NRDA process, Trustees will proceed with the NRDA process independently, pending agreement with Enbridge on the terms of its cooperative participation.

While the Trustees seek to work cooperatively with the Enbridge RPs, please be advised that, pursuant to 15 C.F.R. § 990.14(c)(4), the nature and extent of RP participation in the NRDA is at the sole discretion of the Trustees and that final authority to make determinations regarding injury and restoration rest solely with the Trustees.

Please respond to this invitation to participate in the assessment, in writing, on your clients' behalf within 30 days of the date of this letter. Your response should be sent to Stephanie Millsap, representing the Lead Administrative Trustee for the assessment. If you fail to do so, the Trustees will assume that your clients have declined this invitation and do not intend to participate in the NRDA. Please mail your response to:

Stephanie Millsap, Ph.D., USFWS
USEPA LLRS
9311 Groh Road
Grosse Ile, MI 48138

Sincerely,

Kelly B. Bakayza

Kelly B. Bakayza, Agency Counsel

Mary Lynn Taylor

Mary Lynn Taylor, Agency Counsel

cc via electronic mail:

Kate Barfield, NOAA, Office of General Counsel
William Brooks, Esquire
Jeffrey L. Jocks, Esquire
Richard Kuhl, Michigan, Office of the Attorney General
Steve Willey, U.S. Department of Justice