

Federal Trial Court Holds That Agencies Properly Issued Permits For Oil Pipeline Expansion, Including Pipeline in Illinois

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The U.S. District Court for the District of Minnesota recently granted summary judgment for the defendants in *Sierra Club v. Clinton, Case No. 09-cv-02622*, which concerned permits that federal agencies issued to Enbridge Energy for an oil pipeline expansion project, which includes pipeline in Illinois. Here's how the Court described the project:

"This case involves the construction and operation of the [Alberta Clipper] AC and [Southern Lights Diluent] SLD Pipelines in the United States. These pipelines are being constructed by Enbridge as part of a pipeline expansion project. The AC Pipeline is an underground pipeline that extends from Hardisty, Alberta, Canada, to Superior, Wisconsin. The AC Pipeline crosses the U.S.-Canada border near Neche, North Dakota. In the United States, the AC Pipeline consists of approximately 326 miles of a 36-inch diameter pipeline extending from Neche, North Dakota, across Minnesota, to Superior, Wisconsin. At Superior, the AC Pipeline will connect with an existing mainline to Chicago, Illinois. The AC Pipeline will transport heavy crude oil, or bitumen, extracted from tar sands in Canada. The AC Pipeline project will have the capacity to transport approximately 450,000 barrels-per-day ('bpd') of crude oil. The AC Pipeline will be installed primarily within or adjacent to an existing Enbridge pipeline corridor.

"The SLD Pipeline is a 20-inch diameter pipeline extending from Manhattan, Illinois, to Clearbrook, Minnesota. At Clearbrook, it will connect with an existing Enbridge pipeline, Line 13. Enbridge intends to reverse the flow of Line 13 to create a diluent delivery line to transport diluent from Illinois to Canadian oil sands producers. Diluent is a light petroleum liquid used to facilitate the flow of heavy crude oil, which must be diluted in order to be transported through a pipeline. The new segment of the SLD Pipeline that will run from Superior, Wisconsin, to Clearbrook, Minnesota, will also be 'installed primarily within or adjacent to the existing Enbridge pipeline corridor' and will be constructed at the same time as the AC Pipeline."

The Plaintiffs, nonprofit environmental organizations, claimed that the defendants, federal agencies and the heads of those agencies, violated the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act when they issued final Environmental Impact Statements ("EIS") and permits for the new projects. The trial court denied the plaintiffs' motion for summary judgment but granted the defendants' motion for summary judgment, thereby ending the case.

Generally, NEPA requires federal agencies to prepare an EIS for major Federal actions significantly affecting the quality of the human environment. The EIS must contain a "detailed statement" on the environmental impact of the proposed action, any avoidable adverse environmental effects of the proposed action, the resource commitments involved in the

proposed action, and alternatives to the proposed action. However, the standard is deferential to the agencies: "NEPA imposes procedural requirements, not substantive results, on agencies. NEPA does not allow a court to substitute its judgment for that of an agency as to the environmental consequences of the agency's actions. A court's review is to "insure that the agency has taken a 'hard look' at the environmental consequences."

In a detailed forty-one page opinion, the trial court ruled that the defendants did not violate NEPA and indeed did take a "hard look" at the environmental consequences of the new pipeline project.

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