

A Guide to the ENVIRONMENTAL REVIEW PROCESS for Oil Pipeline Construction in Wisconsin*

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Under the **Wisconsin Environmental Policy Act** (WEPA) and the **National Environmental Policy Act** (NEPA), state and federal agencies are required to review the impacts of their decisions on the environment. When those decisions involve major projects that significantly impact the quality of the human environment, those agencies must prepare a detailed statement, also known as an **Environmental Impact Statement** (EIS). However, some agency decisions will not have a significant environmental impact and therefore do not require environmental review. These are often referred to as **minor actions**. Other agency decisions qualify under **categorical exclusions**, which have been specifically exempted from environmental review. **Prior compliance actions** also do not require environmental review because they are so similar to prior actions that are covered by existing environmental analysis documents. When environmental impacts are unknown, all federal agencies and some state agencies prepare a preliminary **Environmental Assessment** to determine whether the preparation of an EIS is required.

Purpose of an EIS

An EIS is an informational tool to aid state and federal agencies in decision-making and does not require those agencies to make a particular decision based on environmental impacts. Decisions are based on specific regulatory requirements that are separate from the Environmental Review Process. Agencies may lack the authority to prevent the environmental impacts of a proposed project or may conclude that other values outweigh those impacts.

Federal Decisions Requiring Environmental Review

The authority of federal agencies over oil pipeline construction is limited. As a result, federal environmental review is not always required. The **U.S. Army Corps of Engineers**, which has authority over sections of pipelines that cross federally regulated waters and wetlands, only conducts an environmental review if a project is not eligible for coverage under **general permits**. General permits impose the same requirements on certain types of projects that are similar in nature and have minimal environmental impacts. If **individual permits** are required, the U.S. Army Corps of Engineers typically conducts an environmental review because impacts are either significant or unknown. Other federal requirements, such as consultation requirements under the **Endangered Species Act** or **National Historical Preservation Act**, do not necessarily trigger independent federal environmental review.

State Decisions Requiring Environmental Review

Several state agencies have authority over different aspects of oil pipeline construction, but many of the resulting decisions are considered minor actions and do not require environmental review. For example, the **Public Service Commission's** determination to grant oil pipeline companies the power of **eminent domain** is presumed to be a minor action. **Department of Transportation** permits for the construction of oil pipelines in a highway **right-of-way** typically qualify under a **categorical exclusion**. **Department of Natural Resources** (DNR) regulations contain a list of minor actions that includes the various permits and approvals that DNR has authority over when it comes to oil pipelines. However, DNR may choose to prepare an EIS when a proposed project involves multiple department actions, poses a substantial risk to the public health, may set a precedent for future projects, or may have negative environmental impacts over a large geographic area, on sensitive environmental resources, or that are difficult or expensive to reverse. Although not required to do so, DNR recently chose to prepare an EIS for Enbridge's Sandpiper Pipeline and Line 3 replacement projects in Douglas County. DNR has indicated that it intends to prepare an EIS for Enbridge's proposed reroute of Line 5 in northern Wisconsin.



DNR Environmental Review Flow Chart

DNR decides whether to prepare an EIS

Oil pipeline company submits EIR to DNR

DNR contracts for environmental consultant services

DNR identifies issues through scoping process

DNR consults with other agencies and tribes as necessary

DNR oversees consultant preparation of Draft EIS

Public hearing and comment period on Draft EIS

DNR responds to public comments and issues Final EIS

Joint Environmental Review

State and federal regulations authorize cooperation between agencies to conduct joint environmental reviews when appropriate. When multiple state and federal agencies have authority over different aspects of a project that require environmental review, a lead agency from both the state and federal government is typically designated to oversee the process. Other agencies participate through consultation rather than evaluate projects independently. For oil pipeline construction, DNR is almost always the lead state agency. If federal environmental review is required, the lead agency is typically the U.S. Army Corps of Engineers.

Development of an Environmental Impact Statement

The environmental review process for oil pipeline construction in Wisconsin typically begins with the pipeline company consulting with DNR to determine whether an EIS will be required. If DNR decides to prepare an EIS, pipeline company consultants then prepare an **Environmental Impact Report (EIR)**. The purpose of the EIR is to assist DNR in the development of an EIS by providing information on the proposed project, including the current environmental conditions of the project area and anticipated environmental impacts of the project and identified alternatives. The EIR for the Line 5 Reroute is available at <https://midwestadvocates.org/assets/resources/Line-5-EIR.pdf>.

DNR may then contract with an environmental consultant at the pipeline company's expense to assist in the preparation of the EIS. After that, the **scoping process** begins, which identifies all the issues the EIS will address. This is accomplished through consultation with tribal governments and state and federal agencies that have authority over or expertise on different aspects of the proposed project. DNR typically seeks public input on the scoping process through comment periods and hearings, and may employ other means as well.

At minimum, an EIS must analyze:

- a. The environmental impacts of the proposed project;
- b. Any adverse environmental effects which cannot be avoided should the proposal be implemented;
- c. Alternatives to the proposed project;
- d. The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and
- e. Any irreversible and irretrievable commitments of resources that would be involved in the proposed project should it be implemented.

Wisconsin law also requires state agencies to analyze the benefits and economic impacts of the proposed project.

Once the scoping process concludes, DNR works with the environmental consultant to prepare a **Draft EIS**. DNR then holds a public hearing on the Draft EIS and accepts public comments for at least 30 days. After that, DNR prepares a **Final EIS** that must summarize and respond to the public comments received. The Final EIS may vary from the Draft EIS based on comments received or other available information.

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