



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

VIA EMAIL

October 12, 2022

David H. Coburn
William T. Hassler
Steptoe & Johnson LLP
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Re: *United States v. Enbridge Energy, Limited Partnership, et al.*, Civ. No. 1:16-cv-00914,
Consent Decree, **Demand for Payment of Stipulated Penalties (Fifth Set)**¹

Dear David and Bill:

Pursuant to Paragraphs 164.e, 167, and 168 of the Consent Decree in the above-referenced matter, the United States Environmental Protection Agency (“EPA”) hereby demands payment from Enbridge of stipulated penalties in the amount of \$1,141,000 for violations of the Consent Decree. This demand is being made by EPA with the assent of the United States Department of Justice.

Each of the incidents of noncompliance with the Consent Decree is described below, together with the amount of stipulated penalty demanded for the incident.

1. 4,000 for completing the preliminary data quality review for one Crack In-line Inspection (“ILI”) Tool Run on Line 65, GF-CR, two Days late.

Under Paragraph 34.a of the Consent Decree, Enbridge was required to complete the preliminary data quality review relating to this ILI Tool Run within 30 Days after receipt of the Initial ILI Report. Enbridge received the Initial ILI Report for this Tool Run on March 19, 2021, so Enbridge was required to complete the preliminary data quality review relating to this Tool Run by no later than April 19, 2021. However, Enbridge did not complete its preliminary data quality review relating to this Tool Run until April 21,

¹ Details regarding EPA’s prior stipulated penalty demands, as well as Enbridge’s responses to the demands, are available at: <https://www.epa.gov/enbridge-spill-michigan/enbridge-consent-decree-section-xi-stipulated-penalties>.

2021 – two Days after the applicable deadline. EPA is demanding the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the two Days that the preliminary data quality review was late.

2. \$4,000 for identifying one intersecting dent/Crack Feature Requiring Excavation (“FRE”) on Line 65, GF-CR, two Days late.

Under Paragraphs 58.a.(1) and (2) of the Consent Decree, Enbridge was required to identify all Unmitigated Intersecting Features detected based on this Tool Run within 30 Days after receipt of the Initial ILI Report relating to this Tool Run. Enbridge received the Initial ILI Report for this Tool Run on March 19, 2021, so Enbridge was required to complete the identification of all Unmitigated Intersecting Features detected on the basis of this Tool Run by no later than April 19, 2021. However, Enbridge identified one intersecting dent/Crack FRE relating to this Tool Run on April 21, 2021 – two Days after the applicable deadline. EPA is demanding the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the two Days that identification of this FRE was late.

3. \$384,000 for adding one dent FRE on Line 14, AM-MK, to the Dig List 90 Days late.

No later than 180 Days after the ILI tool was removed from Line 14 at the conclusion of the above-referenced ILI, Enbridge was required, pursuant to Paragraph 37 of the Consent Decree, to identify all dents that qualify as FRE and to add such dents to the Dig List. Since the ILI tool was removed from Line 14 at the conclusion of the above-referenced ILI on June 16, 2020, all FREs relating to this ILI were required to be added to the Dig List by no later than December 16, 2021. Based on an initial incorrect feature characterization, Enbridge did not add one dent feature to its Dig List until March 16, 2021 – 90 Days after the applicable deadline. EPA is demanding the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the 90 Days that Enbridge was late in adding this FRE to the Dig List.

4. \$12,000 for failing to perform adequate visual inspections of each of the Line 5 Dual Pipelines in 2016, 2018, and 2020.

Under Paragraph 68.c of the Consent Decree, Enbridge is required to complete periodic visual underwater inspections of each of the Line 5 Dual Pipelines in the Straits of Mackinac (“Straits”) to ensure compliance with specified requirements of the Consent Decree, including a requirement to ensure that portions of each Dual Pipeline located within 65 feet of water or less are continuously covered in a buried trench on the floor of the Straits. Each of the visual underwater inspections performed by Enbridge during 2016, 2018, and 2020 were inadequate to assure compliance with the continuous cover requirement applicable to each Dual Pipeline, because each of those inspections failed to cover all portions of the inspected pipeline located in shallow portions of the Straits. EPA is demanding the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each incomplete visual inspection of the east leg of the Dual

Pipelines in 2016, 2018, and 2020, and a separate penalty for each incomplete visual inspection of the west leg of the Dual Pipelines in 2016, 2018, and 2020.

5. \$8,000 for imposing an incorrect Point Pressure Restriction (“PPR”) for one intersecting dent/Crack FRE on Line 5, IR-NO.

Under Paragraph 59.b of the Consent Decree, within two Days after determining that a dent feature has any indication of cracking, Enbridge is required to limit operating pressure at the location of the feature to not more than 80% of the highest actual operating pressure at the location of the feature over the last 60 days. Based on the above-referenced ILI, Enbridge identified an intersecting dent/Crack FRE on Line 5 on April 9, 2021 and calculated a PPR of 472 pounds per square inch (“psi”) based on the highest actual operating pressure at the location of the feature during the 60-day period prior to April 9, 2021. Although Enbridge confirmed the previous identification of the dent/Crack FRE on April 12, 2021, instead of establishing a PPR of 472 psi based on the 60-day period prior to initial identification of the feature, Enbridge revised the PPR to incorrectly reflect operating pressure increases that occurred subsequent to the initial, correct identification of the dent/Crack FRE. Enbridge established the incorrectly calculated PPR of 490 psi on April 12, 2021, and the PPR remained in effect until April 16, 2021, when Enbridge repaired the dent/Crack FRE. EPA is demanding the penalty amount prescribed in Paragraph 164.e of the Consent Decree for each of the four Days that the incorrectly calculated PPR was in effect.

6. \$729,000 for failing to maintain the 24-hour Alarm re-optimized threshold for Line 2 for 159 Days.

Under Paragraph 103.c of the Consent Decree, Enbridge is required to establish optimized 24-hour Alarm thresholds for each Lakehead System pipeline and thereafter continuously maintain compliance with such optimized alarm thresholds. Pursuant to Paragraph 103.c of the Consent Decree, Enbridge established an optimized 24-hour Alarm threshold of 810 cubic meters (“m3”) for Line 2. Enbridge did not maintain this optimized alarm threshold during the period between April 15, 2021 and September 21, 2021 but instead operated under a higher alarm threshold of 1075 m3. EPA is demanding the penalty amount prescribed in Paragraph 164.e of the Consent Decree for each of the 159 Days that Enbridge failed to maintain the optimized 24-hour Alarm threshold for Line 2.

Altogether, EPA demands payment from Enbridge of stipulated penalties in the amount of \$1,141,000 for the violations of the Consent Decree described above. EPA reserves the right to demand stipulated penalties for other violations of the Consent Decree.

As provided by Paragraph 167 of the Consent Decree, stipulated penalties shall be paid within 30 days of receiving a written demand. Stipulated penalties should be paid in the manner set forth in Paragraph 169 of the Consent Decree. Consistent with Paragraph 169 of the Consent Decree, the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Michigan will

send Enbridge written FedWire EFT instructions upon written confirmation from Enbridge that it intends to pay the amount demanded hereunder.

If you have any questions, please contact me at 312-353-4410.

Sincerely,

**MATTHEW
RUSSO**  Digitally signed by
MATTHEW RUSSO
Date: 2022.10.12
08:53:05 -05'00'

Matthew Russo
Associate Regional Counsel

cc: C. Mymko, Enbridge
D. Purvis, Enbridge
J. Runyan, Steptoe
S. Willey, DOJ
J. Warren, DOJ
C. Garypie, EPA R5/ORC
K. Peaceman, EPA R5/ORC
L. Welles, EPA OECA/OCE/WED