

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENBRIDGE ENERGY, LIMITED

PARTNERSHIP,

ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,

ENBRIDGE ENERGY PARTNERS, L.P.,

ENBRIDGE ENERGY MANAGEMENT, L.L.C.,

ENBRIDGE ENERGY COMPANY, INC. ,

ENBRIDGE EMPLOYEE SERVICES, INC.,

ENBRIDGE OPERATIONAL SERVICES, INC.,

ENBRIDGE PIPELINES INC., and

ENBRIDGE EMPLOYEE SERVICES CANADA

INC.,

Defendants.

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Civil Action No. 1:16-cv-914

Judge Robert J. Jonker

SEVENTH MODIFICATION OF CONSENT DECREE

General Background

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Coast Guard, filed a complaint in this matter on July 20, 2016, asserting claims against Enbridge Energy, Limited Partnership and several affiliated entities (hereinafter collectively referred to as “Enbridge”) under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*, arising from two 2010 oil transmission pipeline failures that resulted in discharges of oil into waters of the United States.

WHEREAS, on May 23, 2017, this Court approved and entered a Consent Decree resolving claims that the United States asserted against Enbridge in this action.

WHEREAS, the Consent Decree establishes numerous requirements applicable to fourteen separate oil transmission pipelines in the United States owned and operated by Enbridge known as the “Lakehead System.”

Background Regarding Potential Partial Termination of Consent Decree

WHEREAS, Section XX of the Consent Decree establishes criteria and procedures for termination of the Consent Decree after the Consent Decree has been in effect for at least four years, but that Section does not address termination of some obligations under the Consent Decree while other obligations of the Consent Decree remain in effect.

WHEREAS, more than four years have elapsed since the Effective Date of the Consent Decree, and substantial information is available to evaluate the adequacy of Enbridge’s implementation of many Consent Decree requirements over a sustained period.

WHEREAS, the Parties agree that it is practicable to establish procedures for allowing termination of certain obligations under the Consent Decree, while providing for continued implementation of other Consent Decree obligations (“Partial Termination”).

WHEREAS, the Parties also agree that allowing Partial Termination of the Consent Decree on appropriate conditions could result in more effective allocation of oversight resources and be beneficial to both Parties.

Suspension and Resumption of Operations on Line 62

WHEREAS, Section VII.D of the Consent Decree includes, *inter alia*, provisions pertaining to an In-Line Inspection (“ILI”) Based Spill Prevention Program, including provisions governing the timing of ILIs.

WHEREAS, on or about April 4, 2017, Enbridge suspended operation of Line 62 for transmission of oil.

WHEREAS, after suspending operation of Line 62 in April of 2017, Enbridge took various steps to maintain the idle pipeline, including removing oil from the line, filling the line with inert gas at pressures substantially below the Maximum Operating Pressures (“MOPs”) established for normal pipeline operations, and implementing certain measures intended to inhibit corrosion within the idled pipeline.

WHEREAS, Line 62 remained idle between April 4, 2017, and December 20, 2021, when Enbridge recommenced operation of Line 62 for transmission of light crude oil.

WHEREAS, Enbridge represents that it continuously operated and maintained the Line 62 cathodic protection system, both during the period Line 62 was idle and since restarting the line.

WHEREAS, Enbridge had performed various ILIs on Line 62 prior to suspending operation of that pipeline in April of 2017, including an ILI completed on June 13, 2013 to evaluate Crack features, and an ILI completed on January 15, 2014 to evaluate Geometric features, and an ILI completed on March 12, 2014 to evaluate Corrosion features.

WHEREAS, the Parties agreed that provisions of the Consent Decree governing the timing and frequency of ILIs are not intended to require ILIs on idle pipelines that have been purged of oil and filled with inert gas at pressures below normal pipeline operating pressures. As a result, Enbridge was not required to, and did not, perform any ILIs on Line 62 during the interval between the ILIs referred to above and the time Enbridge recommenced operation of Line 62.

WHEREAS, provisions of the Consent Decree governing the frequency and timing of ILIs do not explicitly address how to account for time periods when ILIs were not required on idle pipelines.

WHEREAS, the Parties wish to clarify application of requirements governing the timing of ILIs required on Line 62 now that Enbridge has resumed operation of that line.

Background Regarding the Line 62 Reversal Project

WHEREAS, Section VII.G of the Consent Decree establishes various requirements applicable to any pipeline Replacement Segments established by Enbridge on Lakehead System Pipelines after the Effective Date of the Consent Decree.

WHEREAS, under the Consent Decree “Replacement Segment” includes any modification of a Lakehead System Pipeline after the Effective Date of the Consent Decree for the purpose of adding a pump station to the pipeline.

WHEREAS, at the time Enbridge suspended operation of Line 62 in April of 2017, that pipeline was configured to pump oil from its Flanagan, Illinois pump station northward to its Griffith/Hartsdale Terminal in Indiana.

WHEREAS, during the period when Line 62 was idle, Enbridge implemented a project to reverse the direction of flow on Line 62. Among other things, the pipeline reversal project included (1) removal of pumps from its Flanagan, Illinois station, (2) relocation of such Flanagan pumps to a new pump station constructed at the Griffith-Hartsdale terminal, (3) bypassing mainline pumps at the existing Kankakee and Reddick pump stations and placing these pump stations in preservation status, (4) installation of new flowmeters at locations in the Kankakee and Reddick pump stations; (5) work on mainline valves at three locations on Line 62, and (6) replacement of a limited section of pipe with a volume less than 45,000 cubic meters.

WHEREAS, Enbridge initiated construction activities relating to the Line 62 reversal project in October of 2020, and Enbridge substantially completed construction activities relating to the Line 62 reversal project on or about November 30, 2021.

WHEREAS, as reconfigured by the Line 62 reversal project, Line 62 consists of three separate Material Balance System (“MBS”) segments, each of which has a volumetric capacity less than 45,000 cubic meters.

WHEREAS, the United States contends the Line 62 reversal project created “Replacement Segments” within the meaning of Subparagraph 84.b of the Consent Decree, and that Enbridge is required to comply with requirements of the Consent Decree that are applicable to Replacement Segments, including certain requirements relating to leak detection sensitivities.

WHEREAS, Enbridge denies that modifications undertaken as part of the Line 62 reversal project create any Replacement Segments on Line 62 within the meaning of the Consent Decree, and Enbridge denies that any segments of Line 62 are required to comply with Consent Decree requirements governing Replacement Segments.

WHEREAS, the Independent Third Party (“ITP”) reviewed information regarding the Line 62 reversal project and the instrumentation currently in place on Line 62, and the ITP concluded all segments of Line 62 include all of the instrumentation contemplated for Replacement Segments under Paragraphs 85 and 87 of the Consent Decree.

WHEREAS, subject to public notice and comment, and approval by the Court, the Parties wish to resolve disputed issues concerning alleged Replacement Segments on Line 62 based on commitments set forth below in this Seventh Modification of Consent Decree.

Background Regarding the Line 61 Expansion Project

WHEREAS, Line 61 had four pump stations in 2009, when Enbridge commenced operation of that pipeline.

WHEREAS, in 2012 Enbridge announced a decision to expand capacity of the pipeline by expanding and modifying existing pump stations and by adding 12 additional pump stations to Line 61. The 2012 expansion project did not address modification of pipeline instrumentation in areas outside the pump stations.

WHEREAS, as part of the Line 61 expansion project, Enbridge completed construction of five pump stations and Enbridge placed those five pump stations in service in 2015, while construction work continued on an additional seven pump stations.

WHEREAS, although Enbridge did not place the seven additional pump stations in service until October 2021, Enbridge completed construction activities on the remaining seven Line 61 pump stations at various times between September of 2016 through October 31, 2017.

WHEREAS, the United States contends that Enbridge did not complete pipeline modifications needed to add the Waterloo and DeKalb pump stations to Line 61 until after the Effective Date of the Consent Decree, and that the addition of these two pump stations to Line 61 created four Replacement Segments within the meaning of the Consent Decree on Line 61 – including two segments with a volumetric capacity greater than 45,000 cubic meters.

WHEREAS, the ITP reviewed information regarding the instrumentation currently in place on the alleged Line 61 Replacement Segments, and the ITP concluded that those segments of Line 61 do not include all of the instrumentation contemplated for Replacement Segments under Paragraphs 85 and 87 of the Consent Decree.

WHEREAS, Enbridge does not agree that it completed modifications of Line 61 for the purpose of adding the Waterloo and DeKalb pump stations after the Effective Date of the Consent Decree, and it does not agree that any segments of Line 61 are subject to Consent Decree requirements applicable to Replacement Segments, including requirements relating to instrumentation on Replacement Segments and requirements relating to leak detection sensitivities on Replacement Segments.

WHEREAS, Enbridge contends that existing instrumentation on Line 61 is sufficient to enable the alleged Line 61 Replacement Segments to meet leak detection sensitivity requirements under Subparagraph 89.b of the Consent Decree.

WHEREAS, the Independent Third Party used API 1149 to evaluate leak detection sensitivities that Enbridge is able to achieve on the alleged Line 61 Replacement Segments with existing Line 61 instrumentation.

WHEREAS, the ITP agrees the existing instrumentation on Line 61 is sufficient to provide reasonable assurance that Enbridge's leak detection system will meet the sensitivities required under Subparagraph 89.b of the Consent Decree for alleged Replacement Segments on Line 61.

WHEREAS, subject to public notice and comment, and approval by the Court, the Parties wish to resolve disputed issues relating to Replacement Segments of Line 61 on the basis of commitments set forth below in this Seventh Modification of Consent Decree.

Provisions Relating to Certain ILIs on the Dual Pipelines

WHEREAS, the Parties have differing interpretations of whether the Consent Decree currently provides for periodic re-evaluations of the Dual Pipelines to detect, characterize and size any axially-aligned Crack features on the Dual Pipelines.

WHEREAS, Paragraph 71 of the Consent Decree established a December 31, 2017 deadline for Enbridge either to evaluate each of the Dual Pipelines with an ILI tool that is most appropriate for detecting and sizing axially aligned Crack features or to conduct a hydrostatic pressure test of each of the Dual Pipelines.

WHEREAS, as authorized by Subparagraph 71.b of the Consent Decree, Enbridge elected to perform a hydrostatic pressure test of each of the Dual Pipelines in lieu of performing an ILI of the Dual Pipelines using an ILI tool that is most appropriate for detecting and sizing axially-aligned Crack features on the Dual Pipelines as provided in Subparagraph 71.a of the Consent Decree.

WHEREAS, Enbridge completed hydrostatic pressure tests on each of the Dual Pipelines on or before June 16, 2017.

WHEREAS, the 2017 hydrostatic pressure tests subjected each of the Dual Pipelines to a peak pressure of 2.0 times the Established MOP applicable to the Dual Pipelines – a pressure that significantly exceeded the minimum pressure requirement specified in Subparagraph 25.b.(1) of the Consent Decree.

WHEREAS, Enbridge retained Kiefner and Associates, Inc. (“Kiefner”) to review the hydrostatic pressure test plan used for Enbridge’s 2017 hydrostatic pressure tests of the Dual Pipelines and to calculate the remaining fatigue life of potential axial flaws that would have just survived hydrostatic pressure tests conducted pursuant to the plan (“worst surviving potential axial feature”).

WHEREAS, Kiefner’s report relating to Enbridge’s 2017 hydrostatic pressure test plan for the Dual Pipelines (“Kiefner Report”) concluded that a “significantly conservative” estimate of the remaining fatigue life of the worst surviving potential axial feature on the Dual Pipelines

and associated piping described in Section 3.4 of the approved Line 5 Straits of Mackinac Hydrostatic Pressure Test Plan was at least 40.9 years.

WHEREAS, based on its review of the Kiefner Report and other relevant information relating to the Dual Pipelines, the ITP concurs that the methodology applied in the Kiefner Report provides a reasonable estimate of the remaining fatigue life of the worst surviving potential axial feature on the Dual Pipelines.

WHEREAS, the Dual Pipelines were constructed with heavy walls that are approximately .812 inches thick.

WHEREAS, given the thickness of the seamless pipe used in the Dual Pipelines, the Parties recognize that currently available ILI tools used to evaluate axially-aligned Crack features could result in identifying Crack features as Features Requiring Excavation even though such features would not pose a risk to the integrity of the Dual Pipelines

WHEREAS, under the Consent Decree, certain Crack features identified as Features Requiring Excavation are automatically subject to interim operating pressure restrictions, including, in the case of certain features, a requirement to reduce operating pressures to not more than 80 percent of the recent high operating pressure at the location of the features.

WHEREAS, Established MOP values applicable to the Dual Pipelines limit operating pressure in the Dual Pipelines to approximately 25 percent of the Specified Minimum Yield Strength (“SMYS”) of the pipe -- well below regulatory criteria that would allow MOP values to be established at a level as high as 72 percent of SMYS.

WHEREAS, Enbridge typically operates the Dual Pipelines at actual pressures well below the Established MOP.

WHEREAS, in light of the low operating pressures normally maintained on the Dual Pipelines, any requirement to reduce operating pressure on the Dual Pipelines in response to ILI identification of axially-aligned Crack features could impair operation of Line 5, even though there is reason to conclude that no axially-aligned Crack feature potentially present on the Dual Pipelines will pose any threat to pipeline integrity for decades after the 2017 hydrostatic pressure tests.

WHEREAS, notwithstanding differing interpretations of Consent Decree provisions, the Parties agree that at the current time requiring ILIs to evaluate potential axial cracks on the Dual Pipelines will not materially reduce risks or enhance pipeline safety on the Dual Pipelines.

NOW THEREFORE, before taking any further testimony, without further adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Subparagraph 28.b of the Consent Decree is modified to read as follows:

28. * * *

b. Except as provided in this Subparagraph and in Paragraph 70, Enbridge shall schedule and complete all ILI Tool Runs required under this Consent Decree in accordance with the re-inspection interval requirements in Paragraphs 65 and 66, below. Notwithstanding any other provision of this Consent Decree, following the December 2021 restart of Line 62, Enbridge shall complete ILI Tool Runs on Line 62 in accordance with the following schedule:

- Crack features ILI Tool Run no later than March 12, 2022

- Corrosion features ILI Tool Run no later than September 26, 2022
- Geometry features ILI Tool Run no later than September 26, 2022.

2. Paragraph 71 Subparagraph of the Consent Decree is modified to add a new Subparagraph 71.c, which provides as follows:

71. *Investigation and Repair of Axially Aligned Features.* * * *

* * *

c. Notwithstanding any other provision of the Consent Decree, Enbridge shall not be required to inspect either of the Dual Pipelines and associated piping described in Section 3.4 of the approved Line 5 Straits of Mackinac Hydrostatic Pressure Test Plan using an ILI tool that is the most appropriate for detecting, characterizing or sizing axially-aligned Crack features during the period from June 10, 2017 until expiration of one half of the estimated remaining fatigue life of the worst surviving potential axial feature on the Dual Pipelines and associated piping, as estimated by the Kiefner Report. Nothing in the Consent Decree shall be construed as an admission by Enbridge that the Consent Decree establishes any requirement to conduct any ILI to assess any axially-aligned Crack features on the Dual Pipelines, and Enbridge reserves the right to contend that it is not subject to any requirement to assess axially-aligned Crack features on the Dual Pipelines following expiration of one-half the remaining fatigue life of the worst surviving potential axial feature on the Dual Pipelines and associated piping, as estimated by the Kiefner Report.

3. Subparagraphs 84.a and 84.b of the Consent Decree are modified to read as follows:

84. * * *

a. The term “New Lakehead Pipeline” shall mean Line 93, the pipeline that replaced Original U.S. Line 3, and any other new pipeline that: (1) replaces another Lakehead System Pipeline and (2) is placed in service prior to Partial Termination of the Consent Decree in accordance with Paragraph 204, below.

b. The term “Replacement Segment” shall mean any modification of a Lakehead System Pipeline completed during the period between the Effective Date and Partial Termination of the Consent Decree in accordance with Paragraph 204, below, for the purpose of (1) adding one (or more) pump stations to the pipeline or (2) replacing a section of the pipeline with a volume capacity greater than 45,000 cubic meters (“m³”). Notwithstanding any other provision of the Consent Decree, the term “Replacement Segment” shall be deemed to include, without limitation, each of the pipeline segments listed below.

1) On Line 61:

- the segment from the flowmeter in the Portage pump station to the flowmeter in the Waterloo pump station,
- the segment from the flowmeter in the Waterloo pump station to the flowmeter in the Delavan pump station,
- the segment from the flowmeter in the Belvidere pump station to the flowmeter in the Dekalb pump station, and
- the segment from the flowmeter in the Dekalb pump station to the flowmeter in the Ottawa pump station;

2) On Line 62:

- the segment from the flowmeter at Griffith-Hartsdale pump station to the flowmeter installed in the Kankakee pump station,
- the segment from the flowmeter installed in the Kankakee pump station to the flowmeter installed in the Reddick pump station, and

- the segment from flowmeter in the Reddick pump station to flowmeter at the Flannigan terminal.

4. Subparagraphs 87.a and 87.b of the Consent Decree are modified to read as follows:

87. * * *

a. *Pressure Transducer/transmitter:* Except as provided below in this Subparagraph 87.a, Enbridge shall install a pressure transducer/transmitter at all of the following locations:

- (1) each location where oil enters the pipeline;
- (2) each location where oil leaves the pipeline for delivery purposes or for transfer to another pipeline;
- (3) each location where a Column Separation would be expected to occur based on Enbridge's hydraulic studies of the pipeline;
- (4) each segment of pipeline between adjacent flowmeters, and
- (5) each segment of pipeline between two remotely-controlled valves where oil may be “shut in” during a shutdown of the pipeline (“Valve Segment”).

In the case of the Replacement Segments identified in Subparagraph 84.b.(1) and (2), above, Enbridge shall maintain the existing pressure transducers/transmitters specified in Attachment A, and is not required to install additional pressure transducers/transmitters in such Replacement Segments.

b. *Temperature transducer/transmitters:* Except as provided below in this Subparagraph 87.b, Enbridge shall install a skin-based temperature transducer/transmitter at all of the following locations:

(1) each location where Enbridge shall install a flowmeter in accordance with Paragraph 85, and

(2) each Valve Segment.

In the case of the Replacement Segments identified in Subparagraph 84.b.(1) and (2), above, Enbridge shall maintain the existing temperature transducers/transmitters specified on Attachment A, and is not required to install additional temperature transducers/transmitters in such Replacement Segments.

5. Subparagraph 91.b of the Consent Decree is amended to read as follows:

b. Enbridge shall conduct a study to optimize alarm thresholds established in accordance with Subparagraph 91.a for each New Lakehead Pipeline, including Line 93, and each Replacement Segment. Enbridge shall complete each such study within one year of Initial Linefill of the relevant New Lakehead Pipeline or Replacement Segment, except that in the case of Replacement Segments identified in Subparagraphs 84.b.(1) and (2), Enbridge may complete such study at any time prior to March 31, 2023. Based upon the results of the relevant optimization study, Enbridge shall set an alarm threshold that optimizes the trade-off between the competing goals of reducing the number of false alarms and improving the sensitivity of the MBS Leak Detection System in detecting leaks and ruptures. In no event shall Enbridge adjust an alarm threshold so that it is less sensitive to leaks and ruptures than the minimum alarm thresholds set forth in the table in the preceding Subparagraph.

6. Subparagraphs 127.d and 127.e of the Consent Decree are modified to read as follows:

127. * * *

d. The Independent Third Party will not provide commercial, business or voluntary services to Enbridge, excluding services provided in its capacity as Independent Third Party, for the life of the Consent Decree and for a period of at least three years following Final Termination of the Consent Decree; and

e. Enbridge will not provide future employment to any of the Independent Third Party's personnel who conducted or otherwise participated in verification services under this Consent Decree for a period of at least three (3) years following Final Termination of the Consent Decree.

7. Paragraph 143 of the Consent Decree is amended to read as follows:

143. Defendants shall prepare and submit to EPA, on a semi-annual basis, a report documenting Enbridge's compliance with the Consent Decree ("Semi-Annual Report"). Enbridge may submit each Semi-Annual Report electronically, without providing a separate written copy of such report. The first Semi-Annual Report, which shall be submitted by Enbridge no later than 240 Days after the Effective Date, shall document activities over the first six months after the Effective Date. Enbridge shall submit the second report, documenting compliance over the next six months, no later than six months after its first report is due. Enbridge shall thereafter continue to submit the Semi-Annual Reports on a rolling six-month basis until Final Termination of the Consent Decree under Section XX (Termination).

a. Semi-Annual Reports that become due following submission of a request for Partial Termination and Partial Termination Report in accordance with Paragraph 204 of the Consent Decree shall only be required to address Consent Decree obligations that are not subject

to Partial Termination under Paragraph 204(a), below, except as otherwise provided in Subparagraphs 143.b and 143.c, below.

b. If Enbridge submits a request for Partial Termination prior to the judicial action on the proposed Seventh Modification, and the Court subsequently disapproves the proposed Seventh Modification, Enbridge shall, no later than 45 Days after the Court's decision, supplement any previously submitted Semi-Annual Report to assure that such report addresses all requirements of the Consent Decree.

c. In any case where Enbridge receives a notification of disapproval, in whole or in part, of a Request for Partial Termination under Subparagraph 204.d.(2), below, Enbridge shall thereafter include in each subsequent Semi-Annual Report information on implementation and compliance with all obligations for which Partial Termination was disapproved; provided, however, that in any case where a Semi-Annual Report is due less than 45 days after a notification of disapproval under Subparagraph 204.d, below, the United States may allow Enbridge to include the information required under this Subparagraph 204.c in a Supplemental Semi-Annual Report submitted within 30 days of such notification of disapproval. If Enbridge invokes Dispute Resolution under Section XIII of this Consent Decree to contest disapproval, in whole or in part, of a request for Partial Termination, and a final order in the Dispute Resolution proceeding determines that Enbridge satisfied requirements for termination of one or more of the obligations for which Partial Termination was disapproved, nothing in Paragraph 143.a.(1) shall be construed to require Semi-Annual Reports to continue addressing such obligations.

8. Section XX of the Consent Decree is replaced in its entirety and modified to read as follows:

XX. TERMINATION

203. No sooner than four years after the Effective Date of the Consent Decree, Enbridge may serve upon the United States a written request for either Partial Termination or Final Termination of Defendant's obligations under the Consent Decree, provided that any such request meets all applicable requirements set forth below in Section XX of the Consent Decree.

204. Partial Termination. Subject to Paragraph 203, once Enbridge has (a) implemented its obligations under the requirements of this Consent Decree, other than requirements identified in Subparagraph 204.a of the Consent Decree, below, and (b) maintained substantial compliance with all such obligations for at least the last 12 continuous months, Enbridge may submit a request for Partial Termination, together with a Partial Termination Report that includes all of the information specified in Subparagraph 204.b of this Consent Decree. Enbridge may only submit one request for Partial Termination under the Consent Decree.

a. Obligations Not Subject to Partial Termination. The following obligations shall not be subject to Partial Termination:

(1) any obligations initially established pursuant to the Sixth Modification of Consent Decree;

(2) the obligation to complete final clean-out and decommissioning of Original U.S. Line 3 in accordance with the requirements of Subparagraph 22.b of the Consent Decree;

(3) All obligations under Section VII.G.(III) - (V) of the Consent Decree with respect to Line 93;

(4) all obligations under the Consent Decree with respect to Line 62;

(5) all obligations under Paragraphs 68 and 73 of the Consent Decree;

(6) the following obligations with respect to Line 61:

(A) all obligations under Paragraph 90 of the Consent Decree with respect to the Portage to Waterloo Replacement Segment and the Belvidere to Dekalb Replacement Segment, each of which has a capacity greater than 45,000 m³,

(B) all obligations under Paragraph 91 of the Consent Decree, including the obligation to maintain compliance with optimized 24 hour alarm thresholds as provided in Subparagraph 103.d of the Consent Decree, with respect to the following Replacement Segments: Portage to Waterloo, Waterloo to Delavan, Belvidere to Dekalb, and Dekalb to Ottawa; and

(C) all obligations under Subpart VII.G.V with respect to Line 61; and

(7) any obligations under the Consent Decree with respect to circumferential Crack features, except for the obligation set forth in Subparagraph 70.a of the Consent Decree (which Enbridge completed in 2017).

b. Partial Termination Report. The Partial Termination Report shall include the following information with respect to the obligations that are subject to partial termination:

(1) documentation that Enbridge has paid all civil penalties required under Section V of this Consent Decree, together with any interest due thereon;

(2) documentation that Enbridge has paid all stipulated penalties demanded by the United States pursuant to Paragraph 167 of the Consent Decree, together with any interest due thereon, except to the extent that such penalties have been successfully contested by Enbridge;

(3) documentation that Enbridge has paid all recoverable removal costs and damages (other than natural resource damages) that the United States has incurred and paid with respect to the Line 6B Discharges;

(4) documentation, which may incorporate by reference prior Semi-Annual Reports, that Enbridge has implemented all obligations that are subject to partial termination under Subparagraph 204.a of the Consent Decree and maintained substantial compliance with such obligations for at least the last 12 continuous months. For purposes of this Subparagraph 204.b.(4), documentation of Enbridge's implementation of ongoing requirements shall include documentation that all such obligations are current and up-to-date as of the date of submission of the request for Partial Termination and Partial Termination Report, and the Partial Termination Report must include a certification that that such obligations will continue to be implemented in compliance with the Consent Decree until partial termination is effective;

(5) a summary of all instances during the 12-month period prior to submission of the request for Partial Termination and Partial Termination Report (including instances that occurred subsequent to the last Semi-Annual Report submitted pursuant to Paragraph 143 of the Consent Decree) in which Enbridge did not fully comply with any obligation (including any schedules, set forth pursuant to or established pursuant to this Consent Decree) that is subject to partial termination under

Subparagraph 204.a of the Consent Decree, and a description of any resolution of each such non-compliance, including any payment of stipulated penalties;

(6) a certification that there are no unresolved assertions of Force Majeure under Section XII or Dispute Resolution proceedings under Section XIII, relating to any obligations that are subject to partial termination under Subparagraph 204.a of the Consent Decree.

c. Following submission of a request for Partial Termination and Partial Termination Report, Enbridge remains responsible for implementation of all obligations set forth in the Consent Decree until Partial Termination is approved in accordance with Subparagraph 204.d or e, below. If Enbridge becomes aware of any instance following submission of the Partial Termination Report in which Enbridge did not implement or fully comply with one or more obligations subject to Partial Termination, Enbridge shall notify the United States in writing within 7 Days and provide a written description of the circumstances. Until the United States reaches a decision under Subparagraph 204.d, below, with respect to the request for Partial Termination, Enbridge shall submit a Supplemental Partial Termination Report every 90 days following submission of the request for Partial Termination, unless the United States agrees to extend the time for submission of a particular Supplemental Partial Termination Report. Each Supplemental Partial Termination Report shall update the information described in Subparagraphs 204.b.(4) and (5) with respect to the time period that extends until 45 days prior to submission of such report; provided, however, that if, following submission of any Supplemental Partial Termination Report, Enbridge becomes aware of any previously unreported instance in which Enbridge did not implement or fully comply with one or more obligations subject to Partial Termination, Enbridge shall notify the United States in writing within 7 Days

and provide a written description of the circumstances. Notwithstanding any other provisions of Subsection VII.J of this Consent Decree, the Independent Third Party's evaluation of the request for Partial Termination and Partial Termination Report shall be based upon, and limited to, evaluation of Enbridge's implementation of, and compliance with, relevant provisions of the Consent Decree during the period prior to the date of submission of the Partial Termination Report; provided, however, that in the event Enbridge is required to submit a Supplemental Partial Termination Report in accordance with Subparagraph 204.b, the Independent Third Party's evaluation of the request for Partial Termination shall also include evaluation of Enbridge's implementation of, and compliance with, relevant provisions of the Consent Decree during the time period covered by such Supplemental Partial Termination Report. Nothing in this Subparagraph 204.c shall be construed to limit the temporal scope of the Independent Third Party's Task 3 compliance evaluations with respect to Consent Decree obligations that are excluded from Partial Termination under Subparagraph 204.a above; nor shall anything in this Subparagraph be construed to limit the temporal scope of the Independent Third Party's Task 3 compliance evaluations with respect to any obligation for which Partial Termination is denied in accordance with Subparagraph 204.d.(2).

d. Following receipt by the United States of a request for Partial Termination and Partial Termination Report, the Parties shall confer informally concerning such request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for partial termination of obligations under this Consent Decree.

(1) If the United States agrees that the request for Partial Termination and Partial Termination Report satisfy the criteria and requirements set forth in Paragraph 204, above, the Parties shall file a joint stipulation terminating all obligations that are

subject to partial termination. The Parties agree, and the Court hereby orders, that the partial termination shall take effect upon the filing of the joint stipulation, without the need for further action by the Court.

(2) If the United States determines that Enbridge did not fully implement and maintain 12 continuous months of substantial compliance with one or more obligations that are subject to partial termination, the United States may, in its sole discretion elect either to (a) disapprove the request for Partial Termination entirely, or (b) disapprove the request for Partial Termination in part and approve partial termination of specified obligations that Enbridge fully implemented and substantially complied with for a continuous 12 month period.

e. Disputes Regarding Partial Termination. Enbridge may invoke Dispute Resolution under Section XIII of the Consent Decree to contest (1) any disapproval of a request for Partial Termination, (2) any determination that the Partial Termination Report submitted by Enbridge does not contain all information required under Subparagraph 204.b, above, or (3) any determination that Enbridge did not fully implement and substantially comply with one or more obligations subject to partial termination.

f. The Parties agree that, notwithstanding partial termination, the following provisions of the Consent Decree will remain in effect to the extent that such provisions are relevant to implementation, monitoring or enforcement of obligations that are not terminated: Section III (Applicability), Section IV (Definitions), Section VII.J (Independent Third Party Consent Decree and Compliance Verification), VIII (Review and Approval of Documents), IX (Reporting Requirements), X (Information Collection and Retention), XI (Stipulated

Penalties), XII (Force Majeure), XIII (Dispute Resolution), XV (Costs), XVI (Notices), XVIII (Retention of Jurisdiction), and XIX (Modification).

205. Final Termination. Subject to Paragraph 203, Enbridge may submit a request for Final Termination of its remaining obligations under the Consent Decree once it has (a) fully implemented all requirements of this Consent Decree, and (b) maintained substantial compliance with all obligations under this Consent Decree, other than obligations previously terminated in accordance with Paragraph 204, above, for at least the last 12 continuous months. For purposes of the preceding sentence, Enbridge shall be deemed to have fully implemented any continuing obligations under Subpart VII.D of the Consent Decree if, as of the date of the request for Final Termination, Enbridge is current and up to date with respect to all such obligations.

Notwithstanding any other provisions of this Paragraph 205, Enbridge shall be deemed to have fully implemented its obligations under Subpart VII.D of this Consent Decree with respect to Line 62 only after it has: (1) completed all ILI tool runs referred to in Subparagraph 28.(b), (2) completed data quality review relating to all such ILI tool runs, (3) completed all evaluations and analyses required to determine whether features detected as a result of such ILI tool runs qualify as Features Requiring Excavation; (4) added all Features Requiring Excavation identified based on such ILI tool runs to the Dig List, and (5) imposed all pressure restrictions applicable to Features Requiring Excavation on Line 62. Any request for Final Termination shall include a Final Termination Report that includes all of the information described below in Subparagraph 205.a of this Consent Decree.

a. Final Termination Report. The Final Termination Report shall include the following information:

(1) documentation that Enbridge has paid all civil penalties required under Section V of this Consent Decree, together with any interest due thereon, unless Enbridge previously provided such documentation in a Partial Termination Report;

(2) documentation that Enbridge has paid all stipulated penalties demanded by the United States pursuant to Paragraph 167 of the Consent Decree with respect to obligations that have not previously been terminated in accordance with Paragraph 204, together with any interest due thereon, except to the extent that such penalties have been successfully contested by Enbridge;

(3) documentation that Enbridge has paid all recoverable removal costs and damages (other than natural resource damages) that the United States has incurred and paid with respect to the Line 6B Discharges, unless Enbridge previously provided such documentation in a Partial Termination Report;

(4) documentation, which may incorporate by reference prior Semi-Annual Reports and Supplemental Semi-Annual Reports, that Enbridge has implemented all obligations that have not previously been terminated in accordance with Paragraph 204 of this Consent Decree and maintained substantial compliance with such obligations for at least the last 12 continuous months. With regard to implementation of obligations that relate to ongoing requirements, the Final Termination Report must document that Enbridge's implementation of all such obligations is current and up-to-date as of the date of submission of the request for Final Termination, and the Final Termination Report must include a certification that such obligations will continue to be implemented in compliance with the Consent Decree until Final Termination is effective;

(5) a summary of all instances during the 12-month period prior to submission of the request for Final Termination and Final Termination Report (including instances that occurred subsequent to the last Semi-Annual Report submitted pursuant to Paragraph 143 of the Consent Decree) in which Enbridge did not fully comply with any obligation (including any schedules set forth pursuant to or established pursuant to this Consent Decree) not previously terminated in accordance with Paragraph 204 of the Consent Decree, and a description of any resolution of each such non-compliance, including any payment of stipulated penalties;

(6) a certification that there are no unresolved assertions of Force Majeure under Section XII or Dispute Resolution proceedings under Section XIII, relating to any obligations that are subject to Final Termination.

b. Following submission of a request for Final Termination and Final Termination Report, Enbridge remains responsible for implementation of all obligations set forth in the Consent Decree until Final Termination is approved in accordance with Subparagraph 205.c, below. If Enbridge becomes aware of any instance following submission of the Final Termination Report in which Enbridge did not implement or fully comply with one or more obligations subject to Final Termination, Enbridge shall notify the United States in writing within 7 Days and provide a written description of the circumstances. Until the United States reaches a decision under Subparagraph 205.c, below, with respect to the request for Final Termination, Enbridge shall submit Supplemental Final Termination Reports every 90 Days that update the information described in Subparagraphs 205.b(4) and (5) with respect to the period following submission of the Final Termination Report. Notwithstanding any other provisions of Subsection VII.J of this Consent Decree, the Independent Third Party's evaluation of the request

for Final Termination and Final Termination Report shall be based upon, and limited to, evaluation of Enbridge's implementation of, and compliance with, relevant provisions of the Consent Decree during the period prior to the date of submission of the Final Termination Report; provided, however, that in the event Enbridge is required to submit a Supplemental Final Termination Report in accordance with Subparagraph 205.a, the Independent Third Party's evaluation of the request for Final Termination shall also include consideration of Enbridge's implementation of, and compliance with, relevant provisions of the Consent Decree during the period prior to the date of submission of the Supplemental Final Termination Report. Nothing in this Subparagraph 205.b shall be construed to limit the temporal scope of the Independent Third Party's Task 3 compliance evaluations in the event that a request for Final Termination is denied.

c. Following receipt by the United States of Defendants' request for Final Termination and Final Termination Report, the Parties shall confer informally concerning such request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for final termination of obligations under this Consent Decree.

(1) If the United States agrees that Defendants' obligations under the Decree may be terminated, the Parties shall file a joint stipulation terminating all remaining obligations under the Consent Decree, except as provided in Paragraph 206 of the Consent Decree. The Parties agree, and the Court hereby orders, that the final termination shall take effect upon the filing of the joint stipulation, without the need for further action by the Court.

(2) If the United States does not agree that Defendants' remaining obligations under the Decree may be terminated, Enbridge may invoke Dispute

Resolution under Section XIII. However, Enbridge shall not seek Dispute Resolution of any dispute regarding termination until: (i) 120 Days after service of their request for Final Termination; or (ii) 30 days after the United States informs Enbridge that the United States will not approve the Final Termination as presented (whichever date is earlier).

206. Notwithstanding the Partial Termination and/or Final Termination of Defendants' obligations under other provisions of the Consent Decree, the restrictions and conditions applicable to any resumption of operation of Original US Line 3 or Original Line 6B to transport oil, gas, diluent or any hazardous substance shall remain in effect and enforceable until 10 years after the Effective Date or until Defendant has satisfied the requirements for Final Termination specified above, whichever is later.

9. Public Comment. This Seventh Modification of Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw from or withhold its consent if the comments regarding this Seventh Modification of Consent Decree disclose facts or considerations indicating that the Seventh Modification of Consent Decree is inappropriate, improper, or inadequate. Enbridge consents to the entry of this Seventh Modification of Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Seventh Modification of Consent Decree by the Court or challenge any provision of the Seventh Modification of Consent Decree, unless the United States has notified Enbridge in writing that it no longer supports entry of the Seventh Modification of Consent Decree.

10. Effective date. The effective date of this Seventh Modification of Consent Decree shall be the date upon which the Seventh Modification of Consent Decree is entered by the Court following notice and comment in accordance with Paragraph 9 of this Seventh Modification of Consent Decree or a motion to enter the Seventh Modification of Consent Decree is granted, whichever occurs first, as recorded in the Court's docket.

THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914 (W.D. MI).

FOR PLAINTIFF UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

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THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914 (W.D. MI).

FOR PLAINTIFF UNITED STATES OF AMERICA (CONTINUED):

ROBERT
KAPLAN

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Date: 2



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ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency, Region 5
Chicago, Illinois

THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914 (W.D. MI).

FOR PLAINTIFF UNITED STATES OF AMERICA (CONTINUED):

DIANA SAENZ Digitally signed by DIANA SAENZ
Date: 2022.09.27 15:01:33 -04'00'

DIANA J. SAENZ
Acting Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTY enters into and agrees to be bound by this Seventh Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914 (W.D. MI).

FOR DEFENDANTS:

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,
ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,
ENBRIDGE ENERGY PARTNERS, L.P.,
ENBRIDGE ENERGY MANAGEMENT, L.L.C.,
ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE EMPLOYEE SERVICES, INC.

A handwritten signature in blue ink, appearing to read "Michael P. Kobayashi".

MICHAEL KOBAYASHI, Vice President, U.S. Operations

THE UNDERSIGNED PARTY enters into and agrees to be bound by this Seventh Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914 (W.D. MI).

FOR DEFENDANTS:

ENBRIDGE OPERATIONAL SERVICES, INC.,
ENBRIDGE PIPELINES INC., and
ENBRIDGE EMPLOYEE SERVICES CANADA INC.

A handwritten signature in black ink, appearing to read 'Colin Gruending', is written over a horizontal line.

COLIN GRUENDING, President, Liquids Pipelines

THIS SEVENTH MODIFICATION OF CONSENT DECREE IS HEREBY
APPROVED AND ENTERED on June 12, 2023.

/s/ Robert J Jonker

ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE