



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO ATTENTION OF

C-14J

May 8, 2020

David H. Coburn
William T. Hassler
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036

Re: *United States v. Enbridge Energy, Limited Partnership, et al.*, Civ. No. 1:16-cv-00914,
Consent Decree, **Demand for Payment of Stipulated Penalties**

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 \$6,772,150 for violations of the Consent Decree. This demand is being made by EPA with the assent of the United States Department of Justice.

As you know, EPA identified several instances in which Enbridge failed to comply in a timely manner with certain requirements of Section VII (Injunctive Measures) of the Consent Decree. By this letter, EPA demands payment of stipulated penalties totaling \$3,697,150 for such violations. The violations, and the amount of the stipulated penalty assessed for each listed violation, are described below (“the Second Set of Stipulated Penalties”).¹

1. \$78,750 for adding three Crack features on Line 4 DR-FW to the Dig List 21 Days after the applicable deadline under the Consent Decree (see Paragraphs 37 and 47 of the Consent Decree). This amount accrued from July 31, 2018, the Dig List deadline, through August 21, 2018, the date the features were added to the Dig List.
2. \$100,800 for recalculating the pressure restrictions for seven features on Line 6A PE-AM eight Days after the applicable deadline under the Consent Decree (see Paragraph 49.c of the Consent Decree). This amount accrued from September 5, 2018, the original Dig List

¹ The First Set of Stipulated Penalties in the amount of \$1,863,000 was collected via the May 2, 2018 Stipulation and Agreement Regarding Assessment and Payment of Stipulated Penalties Relating to Timeliness of Certain In-Line Inspections.

deadline, through September 13, 2018, the date the recalculated pressure restrictions were approved.

3. \$1,701,000 for adding three Corrosion features on Line 6A AM-GT to the Dig List 240 Days after the applicable deadline under the Consent Decree (see Paragraphs 37 and 50 of the Consent Decree). This amount accrued from April 9, 2018, the Dig List deadline, through December 5, 2018, the date the features were added to the Dig List.
4. \$1,011,600 for determining a pressure restriction for one Corrosion feature on Line 6A AM-GT 238 Days after the applicable deadline under the Consent Decree (see Paragraph 52.b of the Consent Decree). This amount accrued from April 11, 2018, two Days after the Dig List deadline, through December 5, 2018, the date the pressure restriction was calculated.
5. \$6,000 for completing the identification of intersecting features on the Line 3 CR-PW segment three Days after the applicable deadline under the Consent Decree (see Paragraph 58 of the Consent Decree). This amount accrued from September 4, 2018, 30 Days after the Initial ILI Report, through September 7, 2018, the date the threat integration was completed.
6. \$799,000 for the failure to establish and maintain 24-hour Alarm capability on the Line 67 FW-PW segment for 173 Days (see Paragraphs 92, 96, and 103 of the Consent Decree). This amount accrued from February 16, 2018, 270 Days after the Effective Date of the Consent Decree, through August 8, 2018, the date the issue was corrected.

In addition, EPA identified numerous instances in which Enbridge failed to comply in a timely manner with Consent Decree provisions relating to certain intersecting or interacting features on Lakehead System pipelines. More specifically, Enbridge failed to complete timely identification and evaluation of thousands of “shallow dent” features on Lakehead System pipelines to determine whether such dents met dig selection criteria specified in Paragraph 58 and Table 5 of the Consent Decree. As a result, Enbridge failed to excavate and repair or mitigate shallow dents with indications of metal loss, cracking, or stress risers, as contemplated by Paragraph 58 of the Consent Decree. Between the date of entry of the Consent Decree and March 30, 2019, Enbridge conducted at least ten different ILIs that triggered a duty to look for intersecting dent/corrosion features. EPA assessed stipulated penalties in the amount of \$3,075,000 for such violations (“the Third Set of Stipulated Penalties”).

Altogether, EPA demands payment from Enbridge of stipulated penalties in the amount of \$6,772,150 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. Therefore, Enbridge shall pay the Second Set of Stipulated Penalties within 30 days of receiving this written demand. However, because the Third Set of Stipulated Penalties have been assessed in conjunction with the proposed Fifth Modification of the Consent Decree, Enbridge shall pay the Third Set of Stipulated Penalties within 30 days of

approval and entry of the proposed Fifth Modification by the Court.

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
Assistant Regional Counsel

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