

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

UNITED STATES OF AMERICA,

Plaintiff,

V.

**ENBRIDGE ENERGY,
LIMITED PARTNERSHIP, *et al.*,**

Defendants.

Civil Action No.
1:16-cv-00914-GJQ-ESC

Judge Gordon J. Quist

**MOTION OF UNITED STATES
FOR ENTRY OF SEVENTH MODIFICATION
OF CONSENT DECREE**

The United States of America, on behalf of the United States Environmental Protection Agency, moves for this Court to enter as an amended final judgment the proposed Seventh Modification of Consent Decree (“Seventh Modification”). A copy of the proposed Seventh Modification was attached at Exhibit 1 to the Notice of Lodging of Proposed Seventh Modification of Consent Decree. *See*, ECF No. 33-1, PageID.2248-2282.¹ Grounds for this motion are set forth below and discussed in more detail in a supporting memorandum.

1. On May 23, 2017, the Court approved and entered a Consent Decree resolving claims that the United States asserted against Enbridge Energy Limited Partnership and several affiliated entities (“Enbridge”) in this action under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.* ECF No. 14, PageID.1565-1788.

¹ A copy of the Seventh Modification, with corrected signature block information, is attached as Exhibit 1 to the Memorandum in Support of the Motion for Entry of Seventh Modification of Consent Decree.

2. Certain deadlines and other provisions of the Consent Decree have previously been modified in accordance with Section XIX of the Consent Decree, *id.* at PageID.1723-1724. *See* ECF No. 15, PageID.1789-1796; ECF No. 16, PageID.1797-1804; ECF No. 19, PageID.1846-1852; ECF No. 21, PageID.1934-1955; ECF No. 22, PageID.1956-1965; ECF No. 28, PageID.2102-2132; and ECF No. 32, PageID.2215-2242.

3. Section VII of the Consent Decree requires Enbridge to implement extensive requirements intended to improve the ability to prevent, detect, and respond to pipeline failures that could result in discharges of oil to waters of the United States or adjoining shorelines from a group of oil transmission pipelines referred to as Enbridge's "Lakehead System." *See, e.g.*, ECF No.14, at PageID.1592-1692.

4. Among other things, the Consent Decree requires periodic inspections of each Lakehead System pipeline using In-Line Inspection ("ILI") tools that are most appropriate for detecting, characterizing and sizing various types of potentially injurious features, including Crack features, Corrosion features, and Geometric features, that are present or anticipated on the pipeline. *See id.*, at PageID.1598-1599 and 1641.

5. In addition to requiring inspections of Lakehead System pipelines, the Consent Decree includes provisions governing evaluation of potentially injurious features detected on Lakehead System pipelines as well as "dig selection criteria" used to identify features that Enbridge must excavate and repair or mitigate in accordance with timetables specified in the Consent Decree. *See, id.*, at PageID.1599-1641, and ECF No. 28, at PageID.2107-2125. Such features are referred to in the Consent Decree as "Features Requiring Excavation."

6. The Consent Decree also requires Enbridge to limit operating pressures at the locations of certain Features Requiring Excavation pending repair or mitigation of such features.

See, e.g. ECF No. 14 at PageID.1622-1623, 1629-1630, 1632-1633, and 1636, and ECF No 28, at PageID.2122-2123.

7. The Consent Decree also includes requirements governing leak detection systems on Lakehead System pipelines, including some enhanced leak detection requirements applicable to “New Lakehead Pipelines and “Replacement Segments” as defined in the Consent Decree.

8. The Consent Decree also includes numerous general provisions, including requirements for retention of an Independent Third Party to assist with monitoring implementation of the Consent Decree, extensive reporting requirements, and provisions governing termination of the Consent Decree.

9. On October 12, 2022, the United States lodged the proposed Seventh Modification with the Court. ECF No. 33, at PageID.2243-2247.

10. As described in more detail in the accompanying memorandum, the proposed Seventh Modification sets forth mutually agreed revisions to four main areas covered by the Consent Decree. First, although the Consent Decree currently addresses termination of the Consent Decree in its entirety, the proposed Seventh Modification would establish a “Partial Termination” procedure under which specified Consent Decree obligations could be terminated while Enbridge continues to implement other provisions of the Consent Decree. As a related matter, to minimize duplication between reports required to support requests for Partial Termination and generally applicable reporting requirements, the proposed Seventh Modification would narrow the scope of Semi-Annual Reports due following submission of a request for Partial Termination.

11. Second, the proposed Seventh Modification would resolve a disputed issue regarding whether certain pipeline segments on Line 61 and Line 62 qualify as “Replacement Segments” based on work completed in 2017 and 2021, respectively. Under the proposed

Seventh Modification, four segments on Line 61 and three segments on Line 62 are explicitly designated as Replacement Segments within the meaning of the Consent Decree, but the newly-designated Replacement Segments would not be subject to certain instrumentation requirements generally applicable to Replacement Segments. In addition, the proposed Seventh Modification incorporates an agreed deadline for completing required optimization studies on certain newly designated Replacement Segments.

12. Third, the proposed Seventh Modification memorializes deadlines for completing various ILIs on Line 62 following a prolonged period when that pipeline was idle.

13. Finally, the proposed Seventh Modification specifies that Enbridge would not be required to inspect a segment of Line 5 referred to as the Dual Pipelines using an ILI tool designed for the assessment of axially aligned cracks at least until expiration of a period that corresponds to one-half of the estimated Remaining Life of the worst potential axial crack feature that could have survived a 2017 hydrostatic pressure test on the Dual Pipelines. Enbridge does not concede that the Consent Decree requires axial crack ILIs on the Dual Pipelines, and the proposed Seventh Modification would reserve Enbridge's right to contest any such requirement in the future.

14. The proposed Seventh Modification is subject to approval by the Court in accordance with Paragraph 201 of the Consent Decree. ECF No. 14 at PageID.1723-1724.

15. By its terms, the proposed Seventh Modification is subject to public notice and an opportunity for submission of public comments in accordance with 28 C.F.R. § 50.7. ECF No. 33-1 at PageID.2275. The United States reserved the right to withdraw or withhold its consent to the proposed Modification if comments disclose facts or considerations that indicate that the proposed Modification is improper, inappropriate, or inadequate. *Id.*

16. The United States published notice of the proposed Seventh Modification in the Federal Register on October 18, 2022. *See* 87 Fed. Reg. 63,103 (Oct. 18, 2022).

17. The United States received several public comments during the thirty-day comment period, and a couple of comments shortly after the close of the public comment period. The United States has reviewed and considered all public comments submitted, including the comments received shortly after the close of the comment period.

18. Having considered the public comments, the United States does not withdraw its consent to the terms of the proposed Seventh Modification.

19. As discussed in more detail in the memorandum in support of this motion, the proposed Seventh Modification is fair, reasonable, adequate and consistent with the public interest.

WHEREFORE, the United States respectfully requests that the Court grant this motion and sign and enter the proposed Seventh Modification of Consent Decree, a copy of which is attached as Exhibit 1 to the Memorandum in support of this motion, as a final judgment.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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