



4410-15

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Consent Decree under the Clean Water Act and Oil Pollution Act

On May 7, 2020, the Department of Justice lodged with the United States District Court for the Western District of Michigan a proposed Fifth Modification of Consent Decree in the lawsuit entitled *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914.

On May 23, 2017, the United States District Court for the Western District of Michigan approved and entered a Consent Decree that resolved specified claims asserted by the United States against Enbridge Energy, Limited Partnership and eight affiliated entities (“Enbridge”) under the Clean Water Act and Oil Pollution Act arising from two separate 2010 oil spills resulting from failures of Enbridge oil transmission pipelines near Marshall, Michigan and Romeoville, Illinois. The complaint filed by the United States alleged that Enbridge’s pipelines had unlawfully discharged oil into waters of the United States and sought civil penalties, recovery of removal costs, and injunctive relief. The Consent Decree established various requirements applicable to a network of 14 pipelines that comprise Enbridge’s Lakehead System -- including requirements governing excavation, repair or mitigation, and imposition of interim pressure restrictions for various features, such as dents, corrosion and cracks, that are detected through In-Line Inspections (“ILI”) of such pipelines.

The proposed Fifth Modification of Consent Decree (“Modification”) revises several different provisions of the Consent Decree. A major focus of the proposed Modification is to clarify and revise requirements applicable to one specific type of feature detected on Lakehead System pipelines – dent features that intersect or interact with corrosion features (“dent/corrosion

features”). The Modification clarifies that Enbridge must identify all dent features, regardless of the dent depth, and determine whether detected dent features intersect with corrosion features. The Modification establishes requirements for evaluation of dent/corrosion features applying new analytical techniques that would be used to determine whether such features require excavation, repair or mitigation, or interim pressure restrictions. In addition to requiring use of the new methodologies going forward, the Modification includes requirements for re-examining certain previously collected ILI data to identify shallow dent features that Enbridge had not evaluated in the period prior to March 31, 2019, as well as requirements to apply the new analytical methodologies to any additional dent/corrosion features identified based on the re-examination of old data.

In addition to revisions that support new requirements governing the evaluation of dent/corrosion features, the proposed Modification revises the definition of Established Maximum Operating Pressure (“MOP”) to incorporate revised MOP values for Enbridge’s Line 61. The revised MOP values reflect corrected information on pipe wall thickness obtained during a data quality review of Enbridge’s pipeline information. The proposed Modification also revises and clarifies provisions of the Consent Decree relating to Priority Feature notifications. In the proposed revision of Appendix A, features referred to as “ovalities” would be subject to a separate Priority Feature notification criterion from the criterion applicable to other geometric features. Finally, the proposed Modification would revise Table 4 of the Consent Decree to clarify that a dig selection criterion applicable to dents on portions of Line 61 is intended to apply only to dents with depths greater than a specified depth.

The publication of this notice opens a period for public comment on the proposed Fifth Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Enbridge Energy, Limited Partnership, et al.*, D.J. Ref. No. 90-5-1-1-10099. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the proposed Fifth Modification of Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. The Justice Department will provide a paper copy of the proposed Fifth Modification of Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

In requesting a paper copy, please enclose a check or money order for \$7.50 (25 cents per page reproduction cost) payable to the United States Treasury.

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[FR Doc. 2020-10306 Filed: 5/13/2020 8:45 am; Publication Date: 5/14/2020]