

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 37<sup>TH</sup> CIRCUIT  
CALHOUN COUNTY

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY and  
BILL SCHUETTE, Attorney General  
for the State of Michigan,

File No. \_\_\_\_\_-CE

Hon. \_\_\_\_\_

Plaintiffs,

v

ENBRIDGE ENERGY PARTNERS,  
L.P.; ENBRIDGE ENERGY, Limited  
Partnership; ENBRIDGE  
PIPELINES (Lakehead) L.L.C;  
ENBRIDGE ENERGY  
MANAGEMENT, L.L.C.;  
ENBRIDGE ENERGY COMPANY,  
INC.; and ENBRIDGE EMPLOYEE  
SERVICES, INC.;

Defendants.

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**CONSENT JUDGMENT**

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## CONSENT JUDGMENT

The Plaintiffs are the Michigan Department of Environmental Quality (MDEQ), and Bill Schuette, Attorney General for the State of Michigan.

The Defendants are Enbridge Energy Partners, L.P; Enbridge Energy, Limited Partnership; Enbridge Pipelines (Lakehead) L.L.C.; Enbridge Energy Management, L.L.C.; Enbridge Energy Company, Inc.; and Enbridge Employee Services, Inc. (collectively, Enbridge).

This Consent Judgment (Judgment) is intended to resolve all remaining issues, except as specified herein, between the State of Michigan and Enbridge arising out of the release of oil from Enbridge's Lakehead System Line 6B pipeline on July 25 and July 26, 2010 near Marshall, Michigan in the vicinity of Mile Post 608 (42.243308 N, 84.972428 W). The oil was released below ground and into the waters and adjoining shorelines and floodplains of Talmadge Creek and the Kalamazoo River. The Spill Area includes the Facility created by the Enbridge Line 6B Marshall Release and also both private and public properties that have been disturbed, destroyed, dredged, excavated, or otherwise altered or damaged as a result of the release or Response Activities taken to address the release, including but not limited to vegetation, surface waters, soils, sediments, groundwater, wetlands, floodplains, and overbank areas. (The Spill Area is generally depicted on the map at Exhibit A). Enbridge has performed work to respond to the Line 6B release under the supervision of the U.S. Environmental Protection Agency

(U.S. EPA) and MDEQ. To date, Enbridge has incurred various cleanup costs and expenses in removing oil and oil-contaminated materials from affected public and private properties, including its own property, through the use of sheen management, overbank excavations, submerged oil removal in the form of dredging and agitation, and containment techniques.

The entry of this Judgment by Enbridge is for settlement purposes only and is neither an admission or denial of liability with respect to any issue dealt with in this Judgment nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Judgment finds, that the activities set forth herein are necessary to protect public health, safety, welfare, and the environment; and to compensate the public for certain resource losses associated with the release and response.

Enbridge and the State each agree not to contest the authority or jurisdiction of the Court to enter this Judgment or any terms or conditions set forth herein.

NOW, THEREFORE, before the taking of any testimony, and without this Judgment constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

## **I. JURISDICTION**

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.1701, MCL 324.3109; MCL 324.30112; MCL 324.30316; and MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have with respect to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Judgment are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve issues arising under this Judgment, including those that may be necessary for its construction, execution, or implementation, subject to Section XXI (Dispute Resolution).

## **II. PARTIES BOUND**

2.1 Enbridge Energy Partners, L.P; Enbridge Energy, Limited Partnership; Enbridge Pipelines (Lakehead) L.L.C.; Enbridge Energy Management, L.L.C.; Enbridge Energy Company, Inc.; and Enbridge Employee Services, Inc. (collectively, Enbridge), are jointly and severally

liable for the performance of all activities specified in this Judgment and for any penalties that may arise from violations of this Judgment.

2.2 Notwithstanding the terms of any contract that Enbridge may enter with respect to the performance of activities pursuant to this Judgment, Enbridge is responsible for compliance with the terms of this Judgment and shall ensure that Enbridge's contractors, subcontractors, laboratories, and consultants perform all activities required under the terms of this Judgment in conformance with the terms and conditions of this Judgment.

2.3 This Judgment shall apply to and be binding upon Enbridge and the State and their successors.

2.4 The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent.

### **III. STATEMENT OF PURPOSE**

3.1 The Parties have determined that entry of this Judgment will:

(a) Expedite the performance of Response Activities required by this Judgment to address the hazardous substances released from Enbridge Line 6B on July 25 and 26, 2010 in the vicinity of Enbridge pipeline Mile Post 608 near Marshall, Michigan (the Enbridge Line 6B Marshall Release);

(b) Assure that all state-regulated waters, including but not limited to wetlands, channels, and shorelines that are or were impacted by the Enbridge Line 6B Marshall Release or by activities addressing the release, are restored, consistent with this Judgment;

(c) As provided in this Judgment, mitigate certain losses associated with the Enbridge Line 6B Marshall Release and related activities to resources regulated under Parts 31, 301 and 303 of the NREPA;

(d) Provide monitoring to assure compliance with this Judgment;

(e) Acknowledge reimbursement of the State's past Response Activity Costs and past Costs of Surveillance and Enforcement, and require Enbridge to reimburse the State's future Response Activity Costs and future Costs of Surveillance and Enforcement consistent with this Judgment;

(f) Supersede the Administrative Order and Partial Settlement Agreement entered by the State of Michigan, Enbridge Energy Partners, L.P., and Enbridge Energy, Limited Partnership on November 1, 2010, and reports and plans submitted under that Order except as provided in this Judgment; and

(g) Serve the public interest and minimize litigation.

#### **IV. DEFINITIONS**

4.1 “Costs of Surveillance and Enforcement” means all reasonable costs other than Response Activity Costs as defined herein incurred by the State after the Effective Date of this Judgment that are recoverable under the NREPA, and which arise from or are related to the Enbridge Line 6B Marshall Release.

4.2 “Effective Date” means the date that the Court enters this Judgment.

4.3 “Enbridge” means the defendants in this action, specifically: Enbridge Energy Partners, L.P; Enbridge Energy, Limited Partnership; Enbridge Pipelines (Lakehead) L.L.C.; Enbridge Energy Management, L.L.C.; Enbridge Energy Company, Inc.; Enbridge Employee Services, Inc.; and their successors.

4.4 “Enbridge Line 6B” or “Line 6B” means the Lakehead System Pipeline that runs 293 miles between Griffith, Indiana, and Sarnia, Ontario, Canada.

4.5 “Enbridge Line 6B Marshall Release” means the release of hazardous substances from Enbridge Line 6B on July 25 and 26, 2010 in the vicinity of Mile Post 608 (42.243308 N, 84.972428 W) near Marshall, Michigan.

4.6 “Facility” means any area, place or property where a hazardous substance from the Enbridge Line 6B Marshall Release in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential

use has been released, deposited, disposed of, or otherwise comes to be located, as set forth at MCL 324.20101(1)(s). “Facility” does not include any area, place, or property where the conditions of MCL 324.20101(1)(s) (i)-(vi) have been satisfied.

4.7 “Judgment” means this Consent Judgment and any attachment(s) hereto, including any modifications made pursuant to Section XXVII (Modifications) of this Judgment, and any reports, plans, specifications and schedules required by the Consent Judgment which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Judgment.

4.8 “MDEQ” means the Michigan Department of Environmental Quality, its predecessor and successor entities, and those authorized persons or entities acting on its behalf.

4.9 “MDNR” means the Michigan Department of Natural Resources, its predecessor and successor entities, and those persons or entities acting on its behalf.

4.10 “Mitigation” means the improvement or restoration of existing resources or the creation of new resources to offset certain resource losses resulting from the Enbridge Line 6B Marshall Release and associated activities, including but not limited to Response Activities.

4.11 “No Further Action Report” (NFA Report) means a report under MCL 324.20114d detailing the satisfactory completion of remedial actions

and including a postclosure plan and a postclosure agreement, if appropriate.

4.12 “Part 31” means Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*, and the Part 31 Administrative Rules.

4.13 “Part 301” means Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 *et seq.*, and the Part 301 Administrative Rules.

4.14 “Part 303” means Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 *et seq.*, and the Part 303 Administrative Rules.

4.15 “Part 201” means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, and the Part 201 Administrative Rules.

4.16 “Party” means either Enbridge or the State. “Parties” means Enbridge and the State.

4.17 “Release” as set forth at MCL 324.20101(1)(pp) includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, except as provided at MCL 324.20101(1)(pp) (i)–(vii). For the purposes of this Consent Judgment, “release” also means a discharge of a substance that is or may become injurious as prohibited by Section 3109(1) of Part 31, MCL 324.3109(1).

4.18 “Remedial Action” includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be

necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment, as set forth at MCL 324.20101(1)(qq).

4.19 “Response Activity” as set forth at MCL 324.20101(1)(vv) means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response Activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any response activity.

4.20 “Response Activity Costs” as set forth at MCL 324.20101(1)(ww) means all costs incurred in taking or conducting a Response Activity, including enforcement costs as defined at MCL 324.20101(n).

4.21 “RRD” means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

4.22 “Source Area” means that portion of the Spill Area as generally depicted on the map at Exhibit A (Spill Area Map).

4.23 “Spill Area” means the Facility created by the Enbridge Line 6B Marshall Release and also private and public properties that have been disturbed, destroyed, dredged, excavated, or otherwise altered or damaged as a result of the release or Response Activities taken to address the release,

including but not limited to vegetation, surface waters, soils, sediments, groundwater, wetlands, floodplains, and overbank areas. (The Spill Area is generally depicted on the map at Exhibit A.)

4.24 “State” or “State of Michigan” means the Michigan Department of Attorney General (MDAG), the MDEQ, and the MDNR, and any authorized representatives acting on their behalf.

4.25 “Submissions” means all plans, reports, schedules, and other submissions that Enbridge is required to provide to the State or the MDEQ pursuant to this Judgment. “Submissions” does not include the notifications set forth in Section XIV (*Force Majeure*).

4.26 “U.S. EPA” means the United States Environmental Protection Agency.

4.27 “WRD” means the Water Resources Division of the MDEQ and its successor entities.

4.28 Unless otherwise stated herein, all other terms used in this Judgment, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301, or in the Parts of the NREPA that are relevant to this Judgment, shall have the same meaning in this Judgment as in the NREPA. Unless otherwise specified in this Judgment, “day” means a calendar day.

## **V. COMPLIANCE WITH STATE AND FEDERAL LAWS AND HEALTH AND SAFETY PLANS**

5.1 All actions required to be taken pursuant to this Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations, including, but not limited to, Parts 17, 31, 201, 301, and 303, and laws relating to occupational safety and health. The Michigan Department of Community Health and the Michigan Department of Natural Resources may also be called upon to review the performance of activities required under this Judgment.

5.2 This Judgment does not relieve Enbridge's obligations to obtain and maintain compliance with applicable permits.

### **5.3 Health and Safety Plan (HASP)**

The Parties agree that work performed by Enbridge pursuant to this Judgment shall be in accordance with the HASP submitted to MDEQ on April 30, 2013, and any documents that supersede or amend that document. The HASP is not subject to the MDEQ's approval under Section XVII (Submissions and Approvals) of this Judgment.

## **VI. RESIDUAL OIL MONITORING AND MAINTENANCE**

6.1 Enbridge shall implement the MDEQ-approved **Kalamazoo River Residual Oil Monitoring and Maintenance Work Plan**, as approved on July 3, 2014. A copy of this work plan is attached as Exhibit B. In accordance with the approved plan, Enbridge shall: monitor and respond

to observed oil sheen with weekly reporting of activities; perform annual poling events; monitor and maintain identified “sediment traps”; and no later than December 31 of each year through 2016, summarize the activities conducted under the approved Work Plan in an annual report.

## **VII. PERFORMANCE OF PART 201 RESPONSE ACTIVITIES**

### **7.1 Performance Objectives**

Enbridge shall perform all necessary Response Activities at the Facility to comply with the requirements of Part 201, including the Response Activities required to meet the performance objectives outlined in this Judgment.

(a) To the extent that Enbridge is the owner or operator of part or all of the Facility, Enbridge shall undertake all Response Activities necessary to achieve and maintain compliance with Section 20107a of the NREPA, MCL 324.20107a.

(b) Enbridge shall conduct remedial investigations (RIs) that achieve the performance objective of evaluating the Facility conditions, in order to select appropriate Remedial Action that adequately addresses those conditions by identifying the source or sources of contamination related to the Enbridge Line 6B Marshall Release and defining the nature and extent of contamination for which Enbridge is liable.

(c) Enbridge shall evaluate the information collected in the RIs to supplement the Conceptual Site Model - 2013 (CSM) consistent with the ASTM standard Guide for Developing Conceptual Site Models for Contaminated Sites, E1689-95 (Reapproved 2008). Enbridge shall use the CSM to determine necessary Response Activities to achieve the performance objectives of Paragraph 7.1.

(d) Enbridge shall select and implement Response Activities at the Facility in order to achieve the performance objectives of Paragraph 7.1 through performance of Response Activities that are consistent with the provisions of Part 201 and necessary and appropriate to protect the public health, safety, or welfare, or the environment, and designed to achieve the performance objectives in Section 7.1(e).

(e) Enbridge shall submit to the MDEQ for approval NFA Reports addressing contamination at the Facility.

(i) The performance objectives of this subparagraph are to obtain MDEQ approval for NFA Reports for the following pathways, risks, and conditions:

- (A) all groundwater pathways;
- (B) all soil pathways, excluding soil erosion;
- (C) surface water chemistry consistent with Rule 57 of Part 31; and
- (D) wetland and in-channel sediments for

human health and terrestrial fauna effects.

(ii) All NFA Reports shall comply with the requirements of MCL 324.20114d(2)-(7) for each portion of the Facility, and shall document that completed Remedial Actions do the following:

(A) Satisfy and maintain compliance with the cleanup criteria as established under Section 20120a or Section 20120b of the NREPA, and comply with all applicable requirements of Sections 20118, 20120a, 20120d, and 20120e of the NREPA, and the Part 201 Rules.

(B) Assure the ongoing effectiveness and integrity of the remedial action.

(C) Allow for the continued use of the Facility consistent with local zoning pursuant to Section 20120a(6) of the NREPA, MCL 324.20120a(6).

## 7.2 Conceptual Site Model

Enbridge shall provide supplements to the CSM semiannually in accordance with the Schedule Management provisions of Paragraph 7.4 of this Judgment.

## 7.3 Remedial Investigation (RI) of Overbank Areas

(a) Enbridge shall implement the work required in the Work Plans and Response Activity Plans previously approved by MDEQ and listed in Exhibit C (**Listing of Approved/Enforceable Work Plans Under Part 201**).

(b) Enbridge shall submit to the MDEQ RI Reports for Overbank Areas for review and comment in accordance with the **RI Report Submission Schedule** approved by MDEQ on October 23, 2014 and attached at Exhibit D. The RI Report Submission Schedule provides the RI Report due dates for each Reach or area that must be addressed at the Facility. The Reaches are generally depicted and described on the figures in Exhibit E, **Part 201 Reaches**, which was approved by MDEQ on October 23, 2014. The RI Reports shall provide for the following:

- (i) A description of the Response Activities performed;
- (ii) Comparison of data with relevant pathways, risks and conditions;
- (iii) Presentation of data in tables and with maps; and
- (iv) Conclusions and recommendations.

(c) If additional evaluation is necessary to achieve the performance objectives of Paragraph 7.1, Enbridge shall implement those Response Activities.

(d) All evaluation necessary to achieve the performance objectives of Paragraph 7.1 shall be completed for each NFA Report prior to submittal of each NFA Report.

#### 7.4 Schedule Management

(a) The **RI Report Submission Schedule** is attached at Exhibit D. All of the Submissions attached as Exhibits to the Judgment

under this Section VII (Exhibits C, D, E, F, and G) are enforceable under this Judgment but may be modified as provided in Paragraph 27.1 (Modifications). MDEQ shall not unreasonably withhold its approval of a requested modification to these Submissions.

(b) Annual Planning Meeting

(i) Commencing in 2015 and continuing until NFA Reports have been approved for the entire Facility, Enbridge shall annually schedule and conduct a minimum of one (1) planning meeting with the MDEQ. The 2015 meeting will occur within 30 days of the Effective Date of this Agreement. The annual meeting shall occur in January each subsequent year.

(ii) The Parties shall discuss the progress that has been made and prospective plans for the upcoming 52 weeks.

(iii) The Project Managers for Enbridge and MDEQ, or their designees, shall attend the Annual Planning Meeting.

(c) Annual Schedule

(i) Within 30 days of the Annual Planning Meeting, Enbridge shall submit to the MDEQ an annual schedule of projected Response Activities for all 52 weeks of the next year (Annual Schedule), including semiannual supplements to the Conceptual Site Model.

(ii) The Annual Schedule shall be in the form of a Gantt Chart in weekly increments. Notwithstanding any other provision of

this section, Enbridge may submit RI Reports or NFA Reports earlier than the date specified in the Annual Schedule.

(iii) The Annual Schedule shall include any MDEQ-approved modifications to the RI Report Submission Schedule (Exhibit D) that affect the 52 weeks covered in that Annual Schedule.

(iv) The Annual Schedule shall include due dates for the submittal of any NFA Reports Enbridge intends to submit to MDEQ during the 52 weeks covered in that Annual Schedule. This subparagraph 7.4(c)(iv) only applies to Annual Schedules submitted after MDEQ has approved NFA Reports for both Reach 1 and Reach 5, as depicted in Exhibit E (**Part 201 Reaches**).

(d) RI Report and NFA Report due dates in an Annual Schedule can only be modified as provided in Paragraph 27.1 (Modifications), and are enforceable under this Judgment.

(e) In addition to the annual schedule, Enbridge shall submit weekly work orders in accordance with Paragraphs 16.4 and 16.5 of this Judgment.

(f) All NFA Reports for the Facility must be submitted to the MDEQ no later than five (5) years from the later of the following two dates: the day the NFA Report for Reach 1 is approved by MDEQ, or the day the NFA Report for Reach 5 is approved by MDEQ. The due date for submittal of

all NFA Reports for the Facility under this subparagraph 7.4(f) is enforceable under this Judgment.

#### 7.5 Progress Reports

(a) Enbridge shall provide the MDEQ RRD Project Manager identified in Paragraph 16.1(a) with written progress reports regarding Response Activities required under Section VII (Performance of Part 201 Response Activities) of this Judgment. The first progress report shall be submitted to the MDEQ within thirty (30) days following the Effective Date. Thereafter, progress reports shall be submitted monthly. All progress reports are subject to review and comment by MDEQ.

(b) Progress Reports shall include, as appropriate for the specified reporting period, the information and analysis as set forth in the **“Section VII Monthly Progress Report Format and Contents”** Submission approved by MDEQ on October 23, 2014 and attached as Exhibit F.

#### 7.6 NFA Reports

(a) Enbridge shall develop and submit for MDEQ review and approval NFA Reports for each NFA Report Segment of the Facility as set forth in the **NFA Report Segment Boundaries Table**, which was approved by MDEQ on October 24, 2013 and is attached as Exhibit G.

(b) All NFA Reports must detail Enbridge’s achievement of the performance objectives of Paragraph 7.1. Each NFA Report submitted to

fulfill the performance objectives of this Judgment shall cover pathways, risks and conditions in each NFA Report Segment of the Facility, as set forth in the Submission required in Paragraph 7.6(a).

(c) Enbridge submitted the NFA Report to MDEQ for Reach 5 in March 2014. MDEQ responded to the Reach 5 NFA Report in a letter to Enbridge dated August 22, 2014. Enbridge shall resubmit the Reach 5 NFA Report by February 20, 2016. Enbridge shall submit the NFA Report for Segment 1, which shall include Reach 1, no later than 365 days after the Effective Date.

#### 7.7 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a Response Activity work plan is necessary to meet and maintain the applicable performance objectives specified in Paragraph 7.1, to comply with Part 201, the MDEQ may require that Enbridge incorporate such a modification into the relevant Response Activity work plans previously approved by MDEQ and incorporated into this Judgment. If extensive modifications are necessary, the MDEQ may require Enbridge to develop and submit a new Response Activity work plan. Enbridge may request that the MDEQ consider a modification to a Response Activity work plan by submitting such request for modification along with the proposed change in the Response Activity work plan and the justification for that change to the MDEQ for review and approval. Any Response Activity work plan

modifications or any new work plans under this subparagraph shall be developed in accordance with the applicable requirements of this section and shall be submitted to the MDEQ for review in accordance with the procedures set forth in Section XVII (Submissions and Approvals). If Enbridge disagrees with a proposed modification of a work plan, it shall be entitled to invoke the dispute resolution provisions of Section XXI of this Agreement. Enbridge shall not be required to implement any work plan modification that is the subject of dispute resolution pending the outcome of that dispute resolution.

(b) Subject to the provisions of subparagraph 7.7(a) above, Enbridge shall perform the Response Activities specified in a modified Response Activity work plan or a new Response Activity work plan as provided in subparagraph 7.7(a) in accordance with the Schedule Management provisions in Paragraph 7.4 of this Judgment.

#### 7.8 Public Notice and Public Meeting Requirements under MCL 324.20120d of the NREPA.

Pursuant to Part 201, public notice may be required. Upon the MDEQ's request, Enbridge shall cooperate with MDEQ to prepare portions of the draft responsiveness summary document and the final responsiveness summary document.

#### 7.9 The MDEQ's Performance of Response Activities

If Enbridge ceases to perform the Response Activities required by this Judgment, is not performing Response Activities in accordance with this

Judgment, or is performing Response Activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to Enbridge, take over the performance of those Response Activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing Response Activities that the MDEQ determines are necessary pursuant to Section XIII (Emergency Response) of this Judgment.

If the MDEQ finds it necessary to take over the performance of Response Activities that Enbridge is obligated to perform under this Judgment, Enbridge agrees to reimburse the State for its costs to perform these Response Activities as provided at MCL 324.20126a, including any accrued interest.

Costs lawfully incurred by the State to perform Response Activities pursuant to this paragraph shall be considered to be “Response Activity Costs.” Enbridge shall reimburse such lawfully incurred costs and any accrued interest to the State in accordance with Paragraphs 18.2 through 18.5 of Section XVIII (Reimbursement of Costs) of this Judgment, subject to Section XXI (Dispute Resolution) of this Judgment.

## **VIII. WETLAND RESTORATION AND MONITORING**

8.1 Enbridge submitted, and MDEQ reviewed and approved, two separate work plans for monitoring, restoration, and invasive species control within state-regulated wetlands affected by the Enbridge Line 6B Marshall Release and associated Response Activities: (1) the **Work Plan for Monitoring, Restoration, and Invasive Species Control in Wetlands along Talmadge Creek and the Source Area**, approved on January 29, 2014, amended on September 12, 2014, and appended as Exhibit H; and (2) the **Work Plan for Monitoring, Restoration, and Invasive Species Control in Wetlands along the Kalamazoo River**, approved on July 2, 2014 and appended as Exhibit I. Enbridge shall implement each of the approved work plans referenced in this paragraph in accordance with the schedules approved in each plan.

8.2 In addition to the reporting requirements set forth in Exhibits H and I of this Judgment, in the event that MDEQ or Enbridge determines that Response Activities undertaken pursuant to this Judgment require permit(s) authorizing disturbance of either: (1) previously unaffected wetland areas; or (2) affected wetland areas identified in Exhibit H or Exhibit I, then Enbridge shall reinitiate activities consistent with the approved Work Plans required under Paragraph 8.1 of this Judgment for the affected wetland areas as a condition of the associated permit(s) and this Judgment.

## IX. CHANNEL AND SHORELINE MONITORING AND RESTORATION

9.1 Remedial Investigation (RI) of In-Channel and Wetland Impacts Affecting Aquatic Life.

(a) Enbridge shall implement the **Work Plan for Evaluating the Potential Chronic Effects of Line 6B Residual Oil**, as approved by the MDEQ on June 13, 2013.

(b) A corresponding **Potential Chronic Effects of Line 6B Residual Oil Report of Findings** setting forth the data, analysis, and conclusions from the evaluation conducted pursuant to the Work Plan referred to in this paragraph was submitted for MDEQ review and approval on April 25, 2014. On September 19, 2014, MDEQ requested that Enbridge collect additional data. Enbridge submitted the In-Channel Remedial Investigation Work Plan for the Kalamazoo River on November 13, 2014 and MDEQ approved that Work Plan on December 9, 2014. Results of the **In-Channel Remedial Investigation Work Plan** will be presented to the MDEQ not later than October 30, 2015 as an addendum to the Report of Findings.

(c) Enbridge shall submit a **Work Plan for Additional Remedial Investigation of Potential In-Channel and Wetland Impacts Affecting Aquatic Life** to the MDEQ for review and approval not later than 60 days following receipt of a written request from the MDEQ requiring Work Plan development as a result of the review of the Report of Findings required

by Paragraph 9.1(b), above in the event that the Report of Findings reveals a need for additional work.

(i) The objective of the Work Plan for Additional Remedial Investigation of Potential In-Channel and Wetland Impacts Affecting Aquatic Life shall be to characterize the nature and extent of contamination attributable to the Enbridge Line 6B Marshall Release and remaining within the creek and river channels (defined as the bed and banks), and to evaluate impacts to designated uses per Rule 100, 2006 AACS, R 323.1100 associated with residual contamination from the Enbridge Line 6B Marshall Release within Talmadge Creek and Kalamazoo River sediments, including overbank wetlands and their sediments.

(ii) An approvable Work Plan for Additional Remedial Investigation of Potential In-Channel and Wetland Impacts Affecting Aquatic Life shall include a schedule for submittal of an RI Report characterizing conditions within the in-channel and overbank wetland areas denoted by the approved Work Plan for Additional Remedial Investigation of Potential In-Channel and Wetland Impacts Affecting Aquatic Life, presenting scientifically valid conclusions, and recommending additional Response Activity, if any, with a schedule for implementation.

(iii) Following approval of the Work Plan for Additional Remedial Investigation of Potential In-Channel and Wetland Impacts Affecting Aquatic Life, Enbridge shall implement the approved Work Plan in

accordance with the schedules set forth in the approved Work Plan.

9.2 On July 29, 2014, Enbridge submitted, for MDEQ review and approval, a work plan for evaluating the functional restoration of Talmadge Creek (**Work Plan for the Evaluation of Habitat Functions in Portions of Talmadge Creek Affected by the Line 6B Release (TC Channel Habitat Evaluation Plan)**). On January 14, 2015, Enbridge resubmitted a revised TC Channel Habitat Evaluation Plan to MDEQ for review and approval based on comments received from the MDEQ on September 5, 2014. The TC Channel Habitat Evaluation Plan shall be based on surveys of appropriate reference reaches, corresponding surveys of the Talmadge Creek reach affected by Response Activities, and other appropriate data related to pre-release conditions in Talmadge Creek. Surveys must include quantitative documentation of: channel stability; the appropriateness of in-stream habitat; and effects of culverts and other structures on stream functionality. The TC Channel Habitat Evaluation Plan shall include a schedule for preparation and submittal of a **TC Channel Habitat Report** for MDEQ review and approval.

9.3 An approvable **TC Channel Habitat Report** shall compare functional conditions within the affected Talmadge Creek reach to the reference reach(es), evaluate notable differences, summarize Enbridge's conclusions, and describe any additional habitat work necessary within Talmadge Creek to restore stream habitat diversity as nearly as reasonably

possible to pre-release conditions that are appropriate within the existing, reconstructed banks in order to address functional elements that may be lacking as a consequence of activities associated with the Enbridge Line 6B Marshall Release. The TC Channel Habitat Report shall also provide a schedule for implementation of any such additional restoration activities and shall identify monitoring of sufficient time and scope to determine if the actions implemented have restored the functional conditions supporting habitat diversity of Talmadge Creek and withstand the expected range of flow conditions. Following approval of the TC Channel Habitat Report, Enbridge shall implement all identified restoration work and monitoring described therein, in accordance with the approved schedules in that Report.

9.4 Enbridge submitted, and MDEQ reviewed and approved, a **Work Plan for Assessing Aquatic Vegetation**, approved on August 20, 2013, and appended as Exhibit J. Enbridge also collected data for 2013 in accordance with the approved Plan. Enbridge shall replicate aquatic plant inventory activities described in the Work Plan for Assessing Aquatic Vegetation in 2015. The 2015 field survey shall commence within 30 days of July 15, 2015 and conclude within 30 days of August 9, 2015. Enbridge shall prepare and submit a 2015 **Aquatic Vegetation Assessment Summary Report** for MDEQ review and approval not later than March 1, 2016 for data collected in 2015. An approvable Aquatic Vegetation Report shall detail the findings from the year's survey work and shall also recommend any necessary

aquatic vegetation restoration activities, including potential aquatic invasive species control, with an implementation schedule. Following approval of the **2015 Aquatic Vegetation Assessment Summary Report**, Enbridge shall implement all necessary vegetation restoration activities described therein, in accordance with the approved schedules in that Report.

9.5 Enbridge submitted, and MDEQ reviewed and approved, the **Kalamazoo River Bank Erosion Assessment and Action Plan**, dated March 21, 2011 (appended as Exhibit K). Enbridge shall continue erosion monitoring in accordance with the Kalamazoo River Bank Erosion Assessment and Action Plan for one additional monitoring trip scheduled in the spring of 2015 and Enbridge shall implement any erosion-related corrective actions required under that Plan as identified during the monitoring trips, and associated reports approved by MDEQ. Monitoring obligations under the Kalamazoo River Bank Erosion Assessment and Action Plan shall end after the spring 2015 monitoring trip.

9.6 Enbridge submitted, and MDEQ reviewed and approved, a **Work Plan for Assessing Large Woody Debris (LWD)**, approved June 14, 2013, with modifications approved August 20, 2013, inventorying the quantity and distribution of large woody debris in the Spill Area, appended as Exhibit L.

(a) Enbridge shall prepare and submit a **“Large Woody Debris Supplemental Assessment Work Plan”** for MDEQ review and

approval not later than May 1, 2015. An approvable **Large Woody Debris Supplemental Assessment Work Plan** shall set forth the data, analysis, and conclusions from the assessments conducted pursuant to the **Work Plan for Assessing Large Woody Debris** along with:

(i) A map and listing of areas under consideration for LWD augmentation (Focus Areas), including a rationale for consideration of these areas for LWD augmentation activities;

(ii) Descriptions of field survey techniques that will be used to evaluate and design structural enhancement within identified Focus Areas, and;

(iii) A schedule for completion of field survey activities in the Focus Areas.

(b) Enbridge shall submit a revised **Large Woody Debris Replacement Work Plan** for MDEQ review and approval no later than December 31, 2015, incorporating the data, analysis and conclusions from the **Large Woody Debris Supplemental Assessment Work Plan**. The **Large Woody Debris Replacement Work Plan** shall address LWD removed as a result of Response Activities, including removals of LWD associated with U.S. EPA-ordered activities conducted in 2013 or 2014 that were not included as part of the **Work Plan for Assessing Large Woody Debris** at Exhibit L.

(i) The **Large Woody Debris Replacement Work Plan** shall include recommended numbers and locations of structural

replacements appropriate for restoration of functions and habitat values of LWD in identified Focus Areas using natural channel design principles; detailed design drawings and other schematics depicting LWD structure proposed for installation; and a schedule for implementation of field work.

(ii) Following approval of the **Large Woody Debris Replacement Work Plan**, Enbridge shall implement all restoration activities described in the approved Work Plan in accordance with the provisions and schedules in the approved Work Plan.

9.7 Enbridge agrees to provide \$50,000.00 to fund additional fish contaminant monitoring to be conducted by MDEQ and the Michigan Department of Community Health (MDCH) in 2016 in accordance with the existing Memoranda of Understanding and associated policy. Enbridge agrees to make payment within 30 days of the Effective Date of this Judgment by check made payable to the State of Michigan in accordance with Paragraph 18.4 of this Judgment.

9.8 Enbridge shall develop a **Corrective Action Plan (CAP)** or **Corrective Action Plans (CAPs)**, which may recommend additional monitoring, to mitigate for resource losses in the event monitoring reveals the need for fish consumption advisories associated with the Enbridge Line 6B Marshall Release and MDCH issues a corresponding advisory. The CAP or CAPs shall be submitted to the MDEQ within 60 days of Enbridge's receipt of notice, from MDEQ, of MDCH's issuance of a fish consumption advisory

associated with the Enbridge Line 6B Marshall Release or, if dispute resolution has been triggered, within 60 days following any determination at the conclusion of dispute resolution that a CAP or CAPs needs to be submitted. Once approved by MDEQ, Enbridge shall implement the CAP or CAPs in accordance with schedules contained within the approved CAP or CAPS.

9.9 Enbridge shall provide \$25,000.00 to fund additional monitoring in 2015 to evaluate Fish Status and Trends and the health of benthic macroinvertebrate communities within Talmadge Creek and the Kalamazoo River. Enbridge agrees to make payment within 30 days of the Effective Date of this Judgment by check made payable to the State of Michigan in accordance with Paragraph 18.4 of this Judgment. Monitoring of Fish Status and Trends and benthic invertebrates will be conducted by MDNR and MDEQ staff consistent with previous efforts in 2010, 2011, 2012, 2013, and 2014 with reports generated by agency staff corresponding to each year and provided to Enbridge upon completion. A **Final Report of Findings** will be prepared by MDNR and MDEQ evaluating results across all six years of monitoring and also provided to Enbridge.

9.10 Enbridge shall develop and implement a CAP or CAPs, which may recommend additional monitoring, upon a determination by MDNR or MDEQ in the **Final Report of Findings** that one or more adverse outcomes with respect to fish and benthic invertebrates has occurred or is ongoing and

is attributable to the Enbridge Line 6B Marshall Release. The CAP or CAPs shall be submitted to MDEQ within 60 days of Enbridge's receipt of the **Final Report of Findings** containing such a determination and implemented upon MDEQ approval or, if dispute resolution has been invoked relative to the **Final Report of Findings**, within 60 days following any determination at the conclusion of dispute resolution that a CAP or CAPs needs to be submitted. The MDNR and/or MDEQ agree to promptly inform Enbridge of any suspected adverse conditions identified prior to the **Final Report of Findings** so that they may be addressed in a timely manner. Enbridge agrees to reimburse the MDEQ and/or MDNR for any reasonable costs incurred by MDEQ or MDNR relative to the determination of the need for a CAP or CAPs based on the monitoring of Fish Status and Trends and benthic invertebrates.

#### **X. AFTER-THE-FACT PERMITTING OF PERMANENT STRUCTURES**

10.1 Within 60 days of a request from MDEQ, Enbridge shall submit after-the-fact permit applications to MDEQ for activities relating to previously unauthorized new or replacement culverts regulated by Parts 31, 301, or 303 of the NREPA and installed or upgraded by Enbridge on Talmadge Creek or the Kalamazoo River between July 25, 2010 and April 1, 2011.

## **XI. ACCESS**

11.1 To the extent the Spill Area and any associated properties are owned, controlled by, or available to Enbridge, Enbridge shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to access the Spill Area and associated properties at any time Enbridge employees, contractors or subcontractors are present at the property. Upon presentation of proper credentials to an Enbridge representative at the property and upon making a reasonable effort to contact the person in charge of the Spill Area, MDEQ staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to access the Spill Area and associated properties for the purpose of conducting any activity for which access is required for the implementation of this Judgment. If MDEQ requires access to the Spill Area and any associated properties when Enbridge employees, contractors or subcontractors will not be present at the property, MDEQ will provide Enbridge a 36-hour prior notice. Within 24 hours, Enbridge shall notify the MDEQ whether Enbridge has access to the property, and if so, any conditions that may apply. Nothing in this provision limits MDEQ's authority to rely upon its statutory access authority as an alternative to the process set forth in this provision, at MDEQ's discretion.

11.2 To the extent that the Spill Area, or any other property where the work to be performed by Enbridge under this Judgment, is owned or controlled by persons other than Enbridge, Enbridge shall follow the process

set forth below to obtain access as necessary to accomplish the purposes of this Judgment.

(a) Enbridge shall make a verbal or written request to the property owner or authorized person for access necessary to implement activities required under this Consent Judgment and shall document the contact;

(b) If Enbridge does not obtain access following the request for access in Paragraph 11.2(a), then Enbridge shall offer reasonable compensation for access, to the extent not already offered, in a written communication by certified mail, with copy to MDEQ, no later than twenty-one (21) days after the request under Paragraph 11.2(a) is communicated to the property owner from whom access is sought;

(c) If Enbridge does not obtain access after completing, at a minimum, the actions required in subparagraphs 11.2(a) and 11.2(b), Enbridge shall provide MDEQ copies of all written communications with the property owner or authorized representative not previously provided to MDEQ, and shall request that MDEQ communicate with the property owner to discuss the State's interests. MDEQ shall send a written communication to the property owner or authorized representative by certified mail requesting a meeting with the property owner and setting forth the purpose and need for access and identifying the property owner's responsibility to cooperate under applicable laws, with a copy to Enbridge;

(d) For access necessary for implementation of activities required under Sections VI, VIII, IX, X, or Paragraph 19.1 of this Judgment, the following process shall apply if Enbridge does not obtain access after MDEQ sends the written request under subparagraph 11.2(c):

(i) the Enbridge Project Manager shall confer with the MDEQ WRD Chief within 14 days of a denial from the property owner or, in the case that no response is received from a property owner, no sooner than twenty-one (21) days after MDEQ's certified mail communication is sent and no later than thirty (30) days after the MDEQ certified mail communication under subparagraph 11.2(c) is sent. At the conference, the MDEQ WRD Division Chief and the Enbridge Project Manager shall seek consensus on whether Enbridge has established that securing access to fully perform required activities under this Judgment is either infeasible or impracticable, and if so, shall seek consensus on alternative proposals to satisfy Sections VI, VIII, IX, X, or Paragraph 19.1 of this Judgment that are affected by the finding of infeasibility or impracticability.

(A) If the MDEQ WRD Division Chief and the Enbridge Project Manager reach a determination of infeasibility or impracticability, they shall evaluate alternative means of addressing the requirements of this Judgment, which may include but are not limited to modifications to approved plans, modification or removal of polygons from monitoring requirements, or an alternative proposal with the goal of

compensating the State for resource losses associated with Enbridge's inability to secure access and fully perform required activities.

(B) Consensus decisions reached by the MDEQ WRD Division Chief and the Enbridge Project Manager in the conference required in subsection 11.2(d)(i) shall be documented in writing.

(C) Alternative proposals shall be developed into a "**Plan for Additional Compensation**," with specific reference to the events giving rise to the need for additional compensation and become enforceable in the same manner as other compensation detailed within Section XIX (Other Remedies under the NREPA) of this Judgment. Upon MDEQ approval, Enbridge shall implement the approved Plan for Additional Compensation in accordance with the terms and schedules set forth in that Plan.

(e) For access necessary for implementation of activities required under Section VII (Performance of Part 201 Response Activities) of this Judgment, the following process shall apply if Enbridge does not obtain access after MDEQ sends the written request under subparagraph 11.2(c):

(i) Enbridge shall initiate legal proceedings pursuant to Section 20135a of the NREPA, MCL 324.20135a, within 30 days of receipt of the denial or, in the event that there is no response from the landowner, within forty (40) days after MDEQ sends the written communication under subparagraph 11.2(c).

(A) If access sought under subparagraph 11.2(e)(i) is granted, Enbridge shall proceed with the Response Activities required under this Judgment;

(B) If the Court does not grant access to sufficiently implement the activities required under the Consent Judgment, the RRD Division Chief (or his or her delegate) and the Enbridge Project Manager shall evaluate alternative means of compliance, including but not limited to modifications to approved plans.

11.3 Any lease, purchase, contract, or other agreement entered into by Enbridge that transfers to another person a right of control over the Spill Area or a portion of the Spill Area shall contain a provision preserving for the MDEQ or any other person undertaking the Response Activities, and their authorized representatives, the access provided under this section and Section XV (Record Retention/Access to Information) of this Judgment.

11.4 Any person granted access to the Spill Area pursuant to this Judgment shall comply with all applicable health and safety laws and regulations.

11.5 Enbridge may, at any time, submit modifications to work plans previously approved by the MDEQ to provide alternative means of compliance with Response Activities required under Section VII (Performance of Part 201 Response Activities) of the Consent Judgment if access is denied or a property owner is nonresponsive.

## **XII. SAMPLING AND ANALYSIS**

12.1 Quality Assurance Project Plan (QAPP) and Sampling and Analysis Plan (SAP).

The Parties Agree that the QAPP dated August 19, 2011 and the SAP dated August 30, 2011, and any documents that supersede or amend those documents shall apply to the work plans required under this Judgment, to the extent they are applicable. Enbridge may utilize other methods demonstrated by Defendant to be appropriate as approved by the MDEQ.

12.2 All sampling and analysis conducted pursuant to this Judgment shall be in accordance with the QAPP and the SAP unless otherwise specified in an MDEQ-approved work plan that is a component of this Judgment.

12.3 Enbridge and MDEQ shall each provide the other with the results of all environmental sampling, and other analytical data generated in the performance or monitoring of any requirement under this Judgment, the NREPA, or other relevant authorities. Data will be provided in applicable reports and documents.

12.4 For the purpose of quality assurance monitoring, upon written notice from MDEQ, Enbridge shall authorize any laboratory used by Enbridge in implementing this Judgment to (1) discuss Enbridge data, laboratory practices, and procedures used to produce the data, with the MDEQ and its authorized representatives, and (2) allow MDEQ and its authorized representatives to observe laboratory methodology.

### **XIII. EMERGENCY RESPONSE**

13.1 If during the course of Enbridge performing activities pursuant to this Judgment, Enbridge becomes aware of a release or threat of release of a hazardous substance at or from the Spill Area, or exacerbation of existing contamination at the Spill Area, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, Enbridge shall in all cases covered by this Paragraph 13.1 immediately notify a MDEQ Project Manager. In the event both MDEQ Project Managers are unavailable, Enbridge shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In cases where Enbridge is responsible for the release or threat of release of a hazardous substance at or from the Spill Area, or where Enbridge is responsible for exacerbation of existing contamination at the Spill Area, Enbridge shall also immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation. In such an event, any actions taken by Enbridge shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP referenced in Paragraph 5.3 of this Judgment. Nothing in this paragraph relieves Enbridge of any notice or reporting obligations Enbridge may have under federal law.

13.2 Within ten (10) days of notifying the MDEQ of a release or threatened release or exacerbation for which Enbridge is responsible, Enbridge shall submit a written report setting forth a description of the

release, threatened release or exacerbation that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation and to prevent recurrence of such an act or event. Regardless of whether Enbridge notifies the MDEQ under this section, if a release, threat of release, or exacerbation at the Spill Area poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, the MDEQ may: (a) require Enbridge to stop activities at the Spill Area for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require Enbridge to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This section is not subject to the dispute resolution procedures set forth in Section XXI (Dispute Resolution) of this Judgment, except that any penalty assessed by MDEQ for any alleged violation of this section is subject to dispute resolution as set forth in Section XXI.

#### **XIV. FORCE MAJEURE**

14.1 Enbridge shall perform the requirements of this Judgment within the time frames established herein, unless performance is prevented or delayed by events that constitute a “*Force Majeure*.” Any delay in performance attributable to a *Force Majeure* shall not be deemed a violation of this Judgment in accordance with this section.

14.2 For the purposes of this Judgment, a “*Force Majeure*” event is defined as any event arising from causes beyond the control of and without the fault of Enbridge, of any person controlled by Enbridge, or of Enbridge’s contractors, that delays or prevents the performance of any obligation under this Judgment provided that Enbridge exercises “best efforts to fulfill the obligation.” The requirement that Enbridge exercises “best efforts to fulfill the obligation” includes Enbridge using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, to minimize any delays in the performance of any obligation under this Judgment to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of Enbridge that delay the performance of an obligation under this Judgment. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license that could have been obtained with reasonable diligence.

14.3 Enbridge shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Judgment. Verbal notice shall be followed by written notice within ten (10) days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by Enbridge to prevent or minimize the delay, and the timetable by which those measures shall be implemented.

14.4 Failure of Enbridge to comply with the notice requirements of Paragraph 14.3, above, shall render Section XIV of this Judgment void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 14.3 of this Judgment.

14.5 If the parties agree that the delay or anticipated delay was beyond the control of Enbridge, this may be so stipulated and the parties to this Judgment may agree upon an appropriate modification of this Judgment in accordance with the requirements of Section XXVII (Modifications) of this Judgment. If the parties to this Judgment are unable to reach such agreement, the dispute shall be resolved in accordance with Section XXI (Dispute Resolution) of this Judgment. The burden of proving that any delay was beyond the control of Enbridge, and that all the requirements of this section have been met by Enbridge, is on Enbridge.

14.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Enbridge qualifies for an extension of any other compliance date unless (i) the other compliance date or dates are identified in the notice required in Paragraph 14.3 of this Judgment as linked directly to the extended compliance date; or (ii) Enbridge provides proof that attainment of the latter compliance date or dates is made infeasible based on the same *Force Majeure* event.

#### **XV. RECORD RETENTION/ACCESS TO INFORMATION**

15.1 Enbridge shall preserve and retain, for a period of ten (10) years after completion of operation and maintenance and long-term monitoring at the Spill Area, records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances, and the storage, generation, disposal, treatment, and handling of hazardous substances at the Spill Area; and any other records that are maintained or generated pursuant to any requirement of this Judgment, including records that are maintained or generated by representatives, consultants, or contractors of Enbridge. The records subject to this preservation and retention requirement include records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, and other correspondence, documents, information or data prepared, acquired or relied upon to demonstrate compliance with this Judgment. Enbridge shall obtain

the MDEQ's written permission prior to the destruction of any documents covered by this paragraph. Enbridge's request shall be accompanied by a copy of this Judgment and sent to the address listed in Section XVI (Project Managers and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ. Enbridge and MDEQ may, by written agreement, exclude additional specific or general categories of data, documents, or Electronically Stored Information from the requirements of this paragraph.

15.2 Upon request, Enbridge shall provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of Response Activities or other requirements of this Judgment, including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to Response Activities. Upon MDEQ request, Enbridge shall also identify with reasonable particularity Enbridge employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of Response Activities or other requirements of this Judgment.

15.3 If Enbridge submits documents or information to the MDEQ that Enbridge believes are entitled to protection as provided for in Section

20117(10) of the NREPA, MCL 324.20117(10), Enbridge may designate the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the MDEQ may provide the information to the public without further notice to Enbridge. Information described in Section 20117(11)(a)-(h) of the NREPA, MCL 324.20117(11)(a)-(h), shall not be claimed as confidential or privileged by Enbridge. Information or data generated under this Judgment shall not be subject to Section 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

## **XVI. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES**

16.1 Each Party shall designate one or more Project Managers. Whenever notices, plans, reports, progress reports, information on the collection and analysis of samples, sampling data, Response Activity Plan Submissions, approvals, or disapprovals, or other technical Submissions are required to be forwarded by one Party to the other Party under this Judgment, or whenever other communications between the Parties is needed, such communications shall be directed to the Project Managers at the addresses listed below. Notices and Submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager(s), the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

(a) As to the MDEQ:

Michelle DeLong  
Project Manager and Enbridge Response Unit Chief  
WRD  
13444 Preston Drive  
Marshall, MI 49068  
delongm1@michigan.gov  
269-491-9403 (mobile)

Mark DuCharme  
Project Manager  
RRD  
7953 Adobe Road  
Kalamazoo, MI 49009  
DuCharmeM@michigan.gov  
517-420-3392 (mobile)

(b) As to the MDAG:

Polly A. Synk, Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
525 West Ottawa Street  
Lansing, MI 48933  
synkp@michigan.gov  
Phone: 517-373-7540  
Fax: 517-373-1610

(c) As to Enbridge:

David Bareham, Manager Environment Marshall  
Enbridge Energy  
333 S. Kalamazoo Avenue  
Marshall, MI 49068  
Phone: 269.781.1942  
David.Bareham@enbridge.com

16.2 Enbridge's Project Manager shall have primary responsibility for overseeing the performance of the activities at the Spill Area and other

requirements specified in this Judgment for Enbridge.

16.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Judgment.

16.4 Enbridge, or its consultants or subcontractors, shall provide the MDEQ a weekly work order for field activities no later than the Friday before the week covered in the weekly work order. The work order shall include, at a minimum:

- (a) a list of field work to be conducted during the subject week;
- (b) the start and end dates;
- (c) field work start and stop times;
- (d) the work area(s);
- (e) corresponding activities in the work area(s); and
- (f) task leader for each activity.

16.5 Enbridge shall provide the MDEQ Project Managers with a minimum of 24 hours prior notice of any changes to the weekly work order or any changes to scheduled sampling events. Enbridge shall afford the MDEQ Project Managers, or their authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where notice within 24 hours is not possible prior to changes to activities under the weekly work orders or to scheduled sampling, Enbridge,

or its consultants or subcontractors, shall provide notice of the change as soon as possible to the MDEQ Project Managers in writing via e-mail, indicating what caused the delay, and notice of any rescheduled activities.

## **XVII. SUBMISSIONS AND APPROVALS**

17.1 All Submissions required by this Judgment shall comply with the requirements of this Judgment and shall be delivered to the MDEQ in accordance with the requirements of this Judgment. All Submissions delivered to the MDEQ pursuant to this Judgment shall include a reference to the “Enbridge Line 6B Marshall Release” and the Court Case No. assigned to the case. All Submissions related to Section VII (Performance of Part 201 Response Activities), with the exception of NFA Reports, delivered to the MDEQ for approval shall also be marked “Draft” and shall include, in a prominent location in the document, the following disclaimer: “Disclaimer: This document is a DRAFT document that has not received approval from the Michigan Department of Environmental Quality (MDEQ). This document was prepared pursuant to a court Consent Judgment. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ.”

17.2 After receipt of any Submission relating to activities that is required to be submitted for approval pursuant to this Judgment, the MDEQ will in writing:

- (a) approve the Submission; or

(b) disapprove the Submission and notify Enbridge of the deficiencies in the Submission. Upon receipt of a notice of approval from the MDEQ, Enbridge shall proceed to take the actions and perform the activities required by the Submission, as approved, and shall submit a new cover page marked “Approved.”

17.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 17.2(b), Enbridge shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. In the event that Enbridge seeks a modification to an existing MDEQ-approved work plan, Submission or schedule, and MDEQ issues a notice of disapproval to such proposed modification, Enbridge must continue to perform its obligations under the existing MDEQ-approved work plan, Submission or schedule until such time that a modification is approved under the terms of this Judgment. The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 17.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise Enbridge in writing and may demand stipulated penalties in accordance with Paragraph 20.3 of this Judgment. MDEQ’s assessment of stipulated penalties related to Submissions is subject to the Dispute Resolution procedures in Section XXI, including Paragraph 21.8, which states that Enbridge shall not be assessed stipulated penalties for disputes that are resolved in Enbridge’s favor.

17.4 Notwithstanding the provisions of Paragraph 17.3, if any initial Submission contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by Enbridge to deliver an acceptable Submission that complies with the appropriate law and this Judgment, the MDEQ will notify Enbridge of such and will deem Enbridge to be in violation of this Judgment. Stipulated penalties, as set forth in Section XX (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to the MDEQ. MDEQ's assessment of stipulated penalties related to Submissions is subject to the Dispute Resolution procedures in Section XXI, including Paragraph 21.8, which states that Enbridge shall not be assessed stipulated penalties for disputes that are resolved in Enbridge's favor.

17.5 Except for approved NFA Reports, upon approval by the MDEQ, Submissions and attachments to Submissions required by this Judgment shall be considered part of this Judgment and are enforceable pursuant to the terms of this Judgment. If there is a conflict between the requirements of this Judgment and any Submission or an attachment to a Submission, the requirements of this Judgment shall prevail.

17.6 The reports, work plans and Response Activity Plans listed in Exhibit C (**Listing of Approved/Enforceable Work Plans**) are also deemed incorporated into and enforceable under this Judgment. If there is a

conflict between the requirements of this Judgment and any MDEQ-approved work plan, report or Response Activity Plan, the requirements of this Judgment shall prevail.

17.7 The provisions of Section 20114d(10) of the NREPA, MCL 324.20114d(10), do not apply to NFA Reports submitted pursuant to this Judgment. The provisions of Section 20114d(9) of the NREPA, MCL 324.20114d(9), do apply to NFA Reports submitted pursuant to this Judgment, except for any NFA Reports that are: (1) submitted by Enbridge within 150 days from the date a pending NFA Report was submitted to MDEQ that is not subject to public participation under Section 20120d; or (2) submitted by Enbridge within 180 days from the date a pending NFA Report was submitted to MDEQ that is subject to public participation requirements under Section 20120d. Section 20114d(11) of the NREPA, MCL 324.20114d(11), applies to all NFA Reports submitted under this Judgment.

17.8 An approval of a Submission shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in any Submission or warrants that the Submission comports with law.

17.9 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Enbridge shall not be construed as relieving Enbridge of its obligation to obtain any formal approval required under this Judgment.

## **XVIII. REIMBURSEMENT OF COSTS**

18.1 Subsequent to the Enbridge Line 6B Marshall Release, state agencies sought reimbursement of various costs incurred by such agencies as a result of the Enbridge Line 6B Marshall Release, including expenses related to emergency response, natural resource damage assessment, and Response Activities. Through March 31, 2014, Enbridge has reimbursed the MDAG, MDEQ and MDNR for \$10,399,622.05.

18.2 Enbridge shall reimburse the State for all Future Response Activity Costs and Future Costs of Surveillance and Enforcement incurred by the State. Following the Effective Date of this Judgment, the MDEQ will periodically provide Enbridge with an invoice for Response Activity Costs and Costs of Surveillance and Enforcement. An invoice will include a summary report that identifies all Future Response Activity Costs and Future Costs of Surveillance and Enforcement, the nature of those costs, and the dates through which those costs were incurred by the State. Except as provided by Section XXI (Dispute Resolution) of this Judgment, Enbridge shall reimburse the MDEQ for such costs within ninety (90) days of Enbridge's receipt of an invoice from the MDEQ unless an alternate time frame is agreed upon in writing by the MDEQ Division Chiefs and the Enbridge Project Manager.

18.3 All invoices from MDEQ for costs shall include a full and complete accounting of all MDEQ invoices submitted hereunder, including time and travel reports for State staff and all supporting documentation for

contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ will mail a hard copy of invoices and all supporting documentation to the following address:

Enbridge Energy  
ATTN: Accounts Payable  
1100 Louisiana Street  
Suite 3300  
Houston TX 77002

The MDEQ will also email invoices and all supporting documentation to *marshallacct@enbridge.com*. Enbridge will perform an invoice reconciliation analysis to determine if the invoice issued by the MDEQ to Enbridge should be approved for payment. The specific objectives will be to determine if the nature and amount of costs are recoverable under this Judgment and lawfully incurred, all costs are supported with supporting documentation, the cost detail is clerically accurate and free of errors, and all costs are related to the Enbridge Line 6B Marshall Release. If any questions arise based on the invoice reconciliation analysis, Enbridge will contact MDEQ personnel for further clarification. If the questions cannot be resolved within the 90-day time period, Enbridge will issue payment in full with the understanding that if any corrections need to be made to the invoice, the amount is credited on the subsequent MDEQ invoice.

18.4 All payments made pursuant to this Judgment shall be by check payable to the State of Michigan. All payments shall bear on the face of the check the identification number C0139192, and reference the paragraph(s) of

this Judgment under which the payment is made, as well as any identification number contained in an invoice sent under Paragraph 18.2 of this Judgment. All payments shall be submitted to the following address:

Accounting Services Center  
Cashier's Office for the DEQ  
P.O. Box 30657  
Lansing, MI 48909-8157

18.5 If Enbridge fails to make full payment to the MDEQ for future Response Activity Costs and future Costs of Surveillance and Enforcement as specified in Paragraph 18.2 of this Judgment, interest, at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3), for Response Activity Costs, and at the rate specified in MCL 600.6013(8) for Costs of Surveillance and Enforcement, shall accrue. Interest shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Enbridge makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by Enbridge to an MDEQ demand for reimbursement of Response Activity Costs, Enbridge shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a).

#### **XIX. OTHER REMEDIES UNDER THE NREPA**

19.1 Enbridge shall restore the Kalamazoo River from approximately Mile Post 3.25 through Mile Post 5.80 (the "affected reach") by its removal of the dam at Ceresco and subsequent river restoration through natural channel

design activities agreed upon by Enbridge and the State in the Agreement in Principle dated July 18, 2013, and as further specified by the MDEQ under Permit Files 13-13-0016-P, 13-13-0028-P, and 13-13-0044-P. Enbridge has completed all necessary construction activities, and shall continue to monitor the affected reach as required within Permit File 13-13-0044-P, and within the **Ceresco Dam Removal Kalamazoo River Restoration Post-Construction Monitoring Work Plan**, as approved by the MDEQ on March 31, 2015.

## 19.2 Wetland Compensation

(a) Enbridge agrees to provide the State with not less than 300 acres of restored, created, or banked wetland, consistent with State of Michigan wetland mitigation rules, for the purpose of compensating the State for certain wetland resource losses attributable to the Enbridge Line 6B Marshall Release.

(b) 19.29 of the total 300 acres shall be considered as wetland mitigation associated with permits issued to Enbridge in furtherance of Response Activities.

(c) Enbridge shall submit a **Wetland Compensation Plan** to MDEQ for review and approval, not later than eight (8) months after the Effective Date. An approvable plan shall contain the following components:

(i) An appendix titled, "Wetland Mitigation Plan" detailing the required 19.29 acres to be preserved, restored, created, or

banked and maintained as wetland in perpetuity consistent with Administrative Rule 281.925, Mich Admin Code, R 281.925, and existing permits;

(ii) Proposed locations and wetland type for the remainder of the acreage as set forth in Paragraph 19.2(a) to be maintained as wetland in perpetuity consistent with Administrative Rule 281.925, Mich Admin Code, R 281.925.

(iii) A detailed schedule for implementation, with proposed completion dates for any necessary construction activities.

(iv) Plans to monitor restored or created areas for a period not less than 5 years unless otherwise agreed to by the MDEQ, in writing.

(d) Enbridge shall submit proposed amendments to the approved Wetland Compensation Plan in accordance with Section XXVII of this Judgment in the event additional compensation, including mitigation for permitted impacts, becomes necessary as an outcome of obligations set forth in Section VIII (Wetland Restoration and Monitoring) or Paragraph 11.2(d) of this Judgment.

19.3 Enbridge has implemented five projects that enhance public recreational access to the Kalamazoo River to abate the injurious conditions attributable to the Enbridge Line 6B Marshall Release and to compensate for the occupation of the stream bed and channel of the stream during Response

Activities. These projects improve or enhance recreational opportunities along the Kalamazoo River and include:

- (a) a project at Saylor's Landing with facilities providing increased opportunities for recreational boating;
- (b) facilities for river access at Ceresco;
- (c) improvements to Historic Bridge Park, including improved accessibility to dock facilities along the river;
- (d) new shore-based fishing and canoe access at Angler's Bend; and
- (e) a new park and river access site at Paddler's Grove.

These projects are further described within Exhibit M.

19.4 To assure the long-term sustainability of the projects identified in Paragraph 19.3 of this Judgment, Enbridge has established an irrevocable endowment in the amount of \$2,500,000.00 to be managed by a private consulting firm for the exclusive purpose of providing necessary funds for perpetual maintenance of the projects identified in Paragraph 19.3 of this Judgment, and for no other purpose other than the establishment and maintenance of the projects specified in Paragraph 19.3 of this Judgment.

19.5 Enbridge shall pay the State \$5,000,000 as mitigation for impacts to the banks, bottomlands, and flow of Talmadge Creek and the Kalamazoo River related to the Enbridge Line 6B Marshall Release and Response Activities addressing the release, for the purpose of enhancing the

Kalamazoo River watershed and restoring streamflows in the Kalamazoo River. This mitigation payment shall be made within thirty (30) days of the effective date of this Judgment, payable to the State of Michigan by check in accordance with the procedures set forth in Paragraph 18.4 of this Judgment.

**XX. STIPULATED PENALTIES**

20.1 Enbridge shall be liable for stipulated penalties in the amounts set forth in Paragraphs 20.2, 20.3, and 20.4 of this Judgment for failure to comply with the requirements of this Judgment as set forth herein, unless excused under Section XIV (*Force Majeure*) of this Judgment.

20.2 Except as provided in Paragraphs 20.3, 20.4 and Section XIV (*Force Majeure*), the following stipulated penalties shall accrue per violation per day for any failure to comply with a due date or deadline set forth in this Judgment or any attachment or schedule incorporated into and made enforceable under this Judgment, including but not limited to payment due dates, Submission and notification due dates, and performance or completion due dates:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 1000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 1500	31 <sup>st</sup> day and beyond

Penalties under Paragraph 20.2 shall begin to accrue on the day after

an activity, payment, Submission or other requirement under this Judgment was due, and shall continue to accrue until correction of the violation.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Judgment.

20.3 In the event that MDEQ disapproves a Submission under Section XVII (Submissions and Approvals) of this Judgment, and upon Enbridge's resubmittal of the subject Submission, the Submission is not approved by the MDEQ, then a stipulated penalty of \$10,000.00 shall be paid by Enbridge, accruing on the day that MDEQ provides its written notice of disapproval of a revised Submission under Paragraph 17.3 of this Judgment. Additional daily stipulated penalties shall accrue in accordance with Paragraph 20.4 of this Judgment until the date that an approvable Submission is received by MDEQ. MDEQ's disapproval of a Submission under Paragraph 17.3 is subject to the Dispute Resolution procedures in Section XXI of this Judgment, and MDEQ's assessment of stipulated penalties is subject to the Dispute Resolution procedures in Section XXI, including subparagraph 21.8, which states that Enbridge shall not be assessed stipulated penalties for disputes that are resolved in Enbridge's favor.

20.4 Except as provided in Paragraphs 20.2, 20.3 and Section XIV (*Force Majeure*), the following stipulated penalties shall accrue per violation per day for any other violation of this Judgment.

Penalty Per Violation Per Day    Period of Noncompliance

\$ 500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 1000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 1500	31 <sup>st</sup> day and beyond

Penalties under Paragraph 20.4 shall begin to accrue on the day after MDEQ notifies Enbridge that performance of an activity was due or the day after MDEQ notifies Enbridge that a violation other than a failure to comply with a due date or deadlines has occurred. Penalties under this Paragraph 20.4 shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Judgment.

20.5 Except as provided in Section XXI (Dispute Resolution) of this Judgment, Enbridge shall pay stipulated penalties owed to the State no later than thirty (30) days after Enbridge's receipt of a written demand from the State. The State's written demand for stipulated penalties shall identify the applicable paragraph(s) or provision(s) of this Judgment upon which the penalties are based. Payment shall be made in the manner set forth in Paragraph 18.4 of Section XVIII (Reimbursement of Costs) of this Judgment. Interest, at the rate provided for in Section 20126a(3) of the NREPA, MCL 324.20126a(3), shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon

which Enbridge makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Judgment. MDEQ's assessment of stipulated penalties is subject to the Dispute Resolution procedures in Section XXI, including subparagraph 21.8, which states that Enbridge shall not be assessed stipulated penalties for disputes that are resolved in Enbridge's favor.

20.6 The payment of stipulated penalties shall not alter in any way Enbridge's obligation to perform the activities required by this Judgment.

20.7 If Enbridge fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Enbridge violates this Judgment. For any failure or refusal of Enbridge to comply with the requirements of this Judgment, the State also reserves the right to pursue any other remedies to which it is entitled under this Judgment or any applicable law including, but not limited to, seeking civil fines, injunctive relief, the specific performance of Response Activities, reimbursement of costs, and sanctions for contempt of court.

20.8 Notwithstanding any other provision of this section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Judgment.

## **XXI. DISPUTE RESOLUTION**

21.1 Except as otherwise expressly provided for in this Judgment under Section 13.2, the dispute resolution procedures of this section shall be the exclusive mechanism for the Parties to resolve disputes arising under or with respect to this Judgment. However, the procedures set forth in this section shall not apply to any actions or proceedings to enforce any of Enbridge's obligations that have not been disputed in accordance with this section.

(a) The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Enbridge under this Judgment, not directly in dispute, unless MDEQ or the Court agrees otherwise.

(b) To the extent that Enbridge has invoked dispute resolution pursuant to the procedures of this Section XXI, obligations with respect to the matters expressly identified in the Notice of Dispute under Section 21.3 shall be stayed pending the completion of dispute resolution procedures described in this Section, including any judicial review.

(c) The Notice of Dispute submitted under Section 21.3 shall clearly identify the issues in dispute and the actions, if any, that are stayed under Paragraph 21.1(b) of this Judgment pending completion of the dispute resolution process under this Section. MDEQ may request further clarification from Enbridge regarding the scope of the actions identified in the Notice of Dispute that Enbridge seeks to stay under Paragraph 21.1(b). In

the event of a disagreement regarding the scope of the obligations stayed under Paragraph 21.1(b) by the dispute as described in the Notice of Dispute, MDEQ may require Enbridge to add the issue of the scope of obligations properly stayed to the Notice of Dispute in question.

(d) MDEQ's failure, if any, to meet a deadline imposed by this Section XXI for issuance of any form of decision shall have no bearing on the continued effectiveness of any stay of Enbridge's obligations under Paragraph 21.1(b).

21.2 The State shall maintain an administrative record of any disputes initiated pursuant to this section. The administrative record shall include the information Enbridge provides to the State under Paragraphs 21.3 through 21.5 of this Judgment and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 21.3 through 21.5 of this Judgment.

21.3 A dispute shall be considered to have arisen on the date that a Party to this Judgment receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event Enbridge objects to any MDEQ notice of disapproval or other MDEQ finding concerning the requirements of this Judgment that is subject to dispute under this Section, Enbridge shall

submit the Notice of Dispute within twenty-one (21) days of receipt of the MDEQ's notice of disapproval or decision. Any dispute that arises under this Judgment with respect to the MDEQ's disapproval or other MDEQ finding concerning requirements of this Judgment shall in the first instance be the subject of informal negotiations between the Project Manager representing the MDEQ and Enbridge. The period of informal negotiations shall not exceed twenty-one (21) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty-one (21) days or within the agreed-upon time period, the MDEQ Project Managers will thereafter provide the MDEQ's Statement of Position, in writing, to Enbridge within twenty-one (21) days. In the absence of initiation of formal dispute resolution by Enbridge under Paragraph 21.4 of this Judgment, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

21.4 If Enbridge and the MDEQ cannot informally resolve a dispute under Paragraph 21.3 of this Judgment, Enbridge may initiate formal dispute resolution by submitting a written Request for Review to the RRD or WRD Division Chief, or both, as appropriate based on the subject matter of the dispute, with a copy to the MDEQ Project Managers, requesting a review of the disputed issues. This Request for Review must be submitted within twenty-one (21) days of Enbridge's receipt of the Statement of Position issued

by the MDEQ pursuant to Paragraph 21.3 of this Judgment. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within ten (10) days of the Division Chief's or Chiefs' receipt of Enbridge's Request for Review, the-appropriate Division Chief(s) will schedule an in-person conference to allow the Parties to orally present the dispute to the Division Chief(s) including the presentation of any information by the Parties and/or their consultants in support of the Party's position. The oral presentation shall be recorded and copies of the recording shall be available to the State and to Enbridge. The MDEQ Director, or the Director's designee, may be present at the oral presentation. Within twenty (20) days of the in-person conference, the Division Chief(s) will provide the MDEQ's Statement of Decision, in writing, to Enbridge, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the Division Chief's or Chiefs' review of the Request for Review may be extended by written agreement between the Parties. In the absence of initiation of procedures set forth in Paragraph 21.5 of this Judgment by Enbridge, the MDEQ's Statement of Decision shall be binding on the Parties.

21.5 The MDEQ's Statement of Decision pursuant to Paragraph 21.4, shall control unless, within twenty-one (21) days after Enbridge's receipt of the MDEQ's Statement of Decision, Enbridge files a Request for Director Review with the MDEQ Director or Deputy Director, with a copy to the RRD or WRD Division Chief, or both, and the MDEQ Project Managers, requesting a review of the disputed issues. The Request for Director Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The Director or Deputy Director shall take into account the oral presentation made before the Division Chief(s), and within forty (40) days of MDEQ's receipt of the Request for Director Review, the Director or Deputy Director will provide the MDEQ's Final Decision, in writing, to Enbridge, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the Director's or Deputy Director's review of the Request for Director Review may be extended by written agreement between the Parties. In the absence of initiation of procedures set forth in Paragraph 21.6 of this Judgment by Enbridge, the MDEQ's Final Decision shall be binding on the Parties.

21.6 The MDEQ's Final Decision pursuant to Paragraph 21.5, shall control unless, within thirty (30) days after Enbridge's receipt of the MDEQ's Final Decision, Enbridge files with this Court a motion for resolution of the dispute, which sets forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Judgment. Within thirty (30) days of Enbridge's filing of a motion asking the Court to resolve a dispute, the State shall file with the Court the administrative record that is maintained pursuant to Paragraph 21.2 of this Judgment.

21.7 Any judicial review of the MDEQ's Final Decision shall be limited to the administrative record. However, the Court shall have discretion to supplement the record, consider legal arguments and render its own findings of fact and conclusions of law. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the Response Activities that are subject of this Judgment, Enbridge shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, including existence of a *Force Majeure* event, Enbridge shall bear the burden of persuasion on factual issues.

21.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Enbridge's

failure or refusal to comply with any term or condition of this Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Enbridge does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Enbridge shall pay stipulated penalties as set forth in Paragraphs 20.2-20.4 of Section XX (Stipulated Penalties) of this Judgment. Enbridge shall not be assessed stipulated penalties for disputes that are resolved in Enbridge's favor.

21.9 Notwithstanding the provisions of this section and in accordance with Section XVIII (Reimbursement of Costs) and Section XX (Stipulated Penalties) of this Judgment, Enbridge shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

## **XXII. INDEMNIFICATION AND INSURANCE**

22.1 The State of Michigan does not assume any liability by entering into this Judgment. This Judgment shall not be construed to be an indemnity by the State for the benefit of Enbridge or any other person.

22.2 Enbridge shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of Enbridge, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Judgment.

22.3 Enbridge shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Enbridge and any person for the performance of Response Activities at the Spill Area, including any claims on account of construction delays.

22.4 The State shall provide Enbridge notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 22.2 or 22.3 of this Judgment.

22.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of Enbridge for the performance of activities required by this Judgment. Neither Enbridge nor any contractor shall be considered an agent of the State.

22.6 Except as provided in MCL 324.20128, Enbridge waives all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between Enbridge and any other person for the performance of

Response Activities at the Spill Area, including any claims on account of construction delays.

22.7 Prior to commencing any Response Activities pursuant to this Judgment and for the duration of this Judgment, Enbridge shall secure and maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000.00), combined single limit, which names the MDEQ, the MDAG and the State of Michigan as additional insured parties. If Enbridge demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Enbridge needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Enbridge, and prior to commencement of Response Activities pursuant to this Judgment, Enbridge shall provide the MDEQ Project Managers and the MDAG with certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the "Enbridge Line 6B Marshall Release," the Court Case No. assigned to the case, and the Remediation and Redevelopment and Water Resources Divisions.

**XXIII. COVENANTS NOT TO SUE BY THE STATE**

23.1 In consideration of the actions that will be performed and the payments that will be made by Enbridge under the terms of this Judgment, and except as specifically provided for in this section and Section XXIV (Reservation of Rights by the State) of this Judgment, the State of Michigan hereby covenants not to sue or to take further administrative action against Enbridge for:

(a) Response Activities that Enbridge performs in compliance with the requirements of this Judgment and MDEQ-approved work plans under this Judgment.

(b) Recovery of Past Response Activity Costs and Past Costs of Surveillance and Enforcement associated with the Spill Area that Enbridge has paid as set forth in Paragraph 18.1 of Section XVIII (Reimbursement of Costs) of this Judgment.

(c) Recovery of Future Response Activity Costs and Future Costs of Surveillance and Enforcement associated with the Spill Area that Enbridge has paid as set forth in Paragraph 18.2 of Section XVIII (Reimbursement of Costs) of this Judgment.

(d) Except as provided in Paragraph 24.1(j) of Section XXIV (Reservation of Rights by the State), civil fines associated with the Enbridge Line 6B Marshall Release on July 25 and 26, 2010, under MCL 324.3115(2), 324.3115(3), 324.3115(4), 324.30112, and 30316.

(e) Violations of Parts 31, 301, and 303 arising from or related to the release of injurious substances from the Enbridge Line 6B Marshall Release, or from Response Activities addressing the release.

(f) Mitigation for impacts to resources regulated under Part 301.

(g) Compensation for losses of recreational opportunities that Enbridge has undertaken and paid as set forth in Paragraphs 19.3 and 19.4 of Section XIX (Other Remedies under the NREPA) of this Judgment.

(h) Mitigation for impacts to wetlands resources regulated under Part 303;

(i) Except as provided in Paragraph 24.1 of Section XXIV (Reservation of Rights by the State), civil fines associated with violations of Part 201 associated with the Enbridge Line 6B Marshall Release under MCL 324.20137.

(j) Claims under Part 17 (Michigan Environmental Protection Act) of the NREPA, MCL 324.1701 *et seq.*

23.2 The covenants not to sue shall take effect under this Judgment as follows:

(a) With respect to Enbridge's liability for Response Activities performed to address the release of hazardous substances at the Facility for the following pathways, risks and conditions:

(i) all groundwater pathways;

- (ii) all soil pathways, excluding soil erosion;
- (iii) surface water chemistry consistent with Rule 57 of

Part 31; and

- (iv) wetlands and in-channel sediments for human health and terrestrial fauna effects.

These covenants shall take effect on the Effective Date of this Judgment, conditioned upon the satisfactory performance by Enbridge of the obligations under Section VII (Performance of Part 201 Response Activities) of this Judgment.

(b) With respect to Enbridge's liability for Past Response Activity Costs and Past Costs of Surveillance and Enforcement that Enbridge has previously paid as set forth in Paragraph 18.1 of this Judgment, the covenants not to sue shall take effect on the Effective Date of this Judgment.

(c) With respect to Enbridge's liability for Future Response Activity Costs and Future Costs of Surveillance and Enforcement, the covenants not to sue shall take effect on the Effective Date of this Judgment, conditioned on the MDEQ's timely receipt of payments for those costs, including any applicable interest that has accrued pursuant to Paragraph 18.5 of this Judgment, as appropriate.

(d) With respect to Enbridge's liability for civil fines other than liability for fines as reserved in Paragraph 24.1(j) of this Judgment, the covenant not to sue shall take effect on the Effective Date of this Judgment;

(e) With respect to Enbridge's liability for (1) violations of Part 201 for soil erosion, aquatic chronic toxicity, fish contaminants, surface water aesthetics, and fish and benthic macroinvertebrate health; and (2) violations of Part 31, the covenant not to sue shall take effect on the Effective Date of this Judgment, conditioned on Enbridge's satisfactory completion of the required monitoring and restoration work required under Sections VI, VIII, IX and X of this Consent Judgment, except as reserved in Paragraph 24.1(k) of this Judgment.

(f) With respect to Enbridge's liability for impacts to resources regulated under Part 301, the covenant not to sue shall take effect on the Effective Date of this Judgment, conditioned on Enbridge's satisfactory completion of activities and payments required by Sections VI, IX, and X, and Paragraphs 19.1 and 19.5 of this Judgment, except as reserved in Paragraph 24.1(k) of this Judgment.

(g) With respect to Enbridge's liability for impacts to resources regulated under Part 303, the covenant not to sue shall take effect on the Effective Date of this Judgment, conditioned on Enbridge's satisfactory completion of activities required by Sections VIII and X, and Paragraph 19.2 of this Judgment.

(h) With respect to Enbridge's liability for compensation for recreational use losses, the covenant not to sue shall take effect on the Effective Date of this Judgment, conditioned on Enbridge's completion of the

requirements of Paragraphs 19.3 and 19.4 of this Judgment.

(i) With respect to claims under Part 17 (Michigan Environmental Protection Act) of the NREPA, the covenant not to sue shall take effect on the Effective date of this Judgment.

23.3 The covenants not to sue extend only to Enbridge and do not extend to any other person.

23.4 Nothing in this Consent Judgment or in the November 1, 2010 Administrative Order and Partial Settlement Agreement constitutes an assessment of civil penalties against Enbridge for release or discharge from Line 6B under: (i) any applicable provisions of State law, including MCL 324.3115, 324.30112, 30316, or any implementing regulations; or (ii) the Clean Water Act, 33 USC 1251 *et seq.*, or its implementing regulations.

Nothing in this Consent Judgment or in the November 1, 2010 Administrative Order and Partial Settlement Agreement shall be construed to preclude, preempt, bar, or limit, under Section 309(g)(6) of the Clean Water Act, 33 USC 1319(g)(6), any right of the United States to obtain relief, including civil penalties, under any provision of the Clean Water Act, 33 USC 1251 *et seq.*, its implementing regulations, or under any other federal laws, based on the discharge or release of oil from Line 6B. This Consent Judgment is a judicial order and is not an order issued by the State under provisions of the NREPA, MCL 324.101 *et seq.* In any subsequent action or proceeding by the United States seeking relief, including penalties, against

Enbridge under the Clean Water Act, 33 USC 1251 *et seq.*, or its implementing regulations, based on discharge or release from Line 6B, Enbridge shall not assert, may not maintain, and expressly waives any defense or claim based on a contention that Section 309(6)(g) of the Clean Water Act, 33 USC 1319(g)(6), precludes, preempts, bars, or limits any right of the United States to initiate or maintain any action to obtain such relief.

#### **XXIV. RESERVATION OF RIGHTS BY THE STATE**

24.1 The covenants not to sue apply only to those matters specified in Paragraph 23.1 of Section XXIII (Covenants Not to Sue by the State) of this Judgment. The State expressly reserves, and this Judgment is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Enbridge with respect to the following:

(a) The performance of Response Activities that are determined by MDEQ to be necessary to comply with Part 201, but that cannot be required pursuant to Paragraph 7.7 (Modification of a Response Activity Work Plan). Nothing in this reservation supersedes the dispute resolution provisions set forth in Section XXI (Dispute Resolution) of this Judgment. The State's rights to enforce Enbridge's obligations to achieve and maintain the performance objectives specified in Paragraph 7.1 of Section VII (Performance of Part 201 Response Activities) of this Judgment are reserved in Paragraph 24.3.

(b) Response Activity Costs and Costs of Surveillance and Enforcement that Enbridge has not paid.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Spill Area and that are not attributable to the Spill Area.

(d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Spill Area.

(e) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment. The State's claims for natural resource damages will be addressed in a separate consent decree or other legal instrument that resolves those claims, and nothing in this Consent Judgment shall be construed to resolve, satisfy, or compensate for Enbridge's liability for obligations to assess or compensate for injuries to natural resources under Michigan or federal law.

(f) Criminal acts.

(g) Any matters for which the State is owed indemnification under Section XXII (Indemnification and Insurance) of this Judgment, provided that the notification procedures for indemnification set forth in Section XXII of this Judgment are followed.

(h) The release or threatened release of hazardous substances that occur during or after the performance of Response Activities required by

this Judgment or any other violations of state or federal law for which Enbridge has not received a covenant not to sue.

(i) The performance of Response Activities in compliance with Part 201 that violate other state or federal laws.

(j) Civil fines under MCL 324.3115(1)(a), which provide a maximum of \$25,000 per day for each day of violation of Part 31, Water Quality, of the NREPA, for two days of unpermitted releases of Line 6B injurious substances on July 25 and 26, 2010, into waters of the State of Michigan.

(k) Additional corrective action under Section VI (Residual Oil Monitoring and Maintenance) of this Judgment in the event that sheen attributable to the Enbridge Line 6B Marshall Release violates Rule 50, ACS R 323.1050, pertaining to physical characteristics, after the completion of tasks required under the **Kalamazoo River Residual Oil Monitoring and Maintenance Work Plan** as set forth in Paragraph 6.1 of this Judgment.

(l) Compliance with the terms of any Postclosure Agreement that is part of an approved NFA Report required under this Judgment.

(m) The introduction of invasive species of concern, as set forth in the April 23, 2014, MDEQ Aquatic Invasive Species “Watch List,” as a consequence of the Enbridge Line 6B Marshall Release.

(n) The MDAG, on behalf of the MDEQ, may take civil enforcement action against Enbridge to seek the assessment of civil penalties

or damages pursuant to Section 20137(1) of the NREPA, MCL 324.20137(1), or other statutory and equitable authorities for violations that occur after the effective date of this Judgment.

24.2 The State reserves the right to take action against Enbridge if it discovers at any time that any material information provided by Enbridge prior to or after entry of this Judgment was false or misleading.

24.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Judgment. This provision is not intended to create any new legal rights not already provided under Michigan law.

24.4 In addition to, and not as a limitation of any other provision of this Judgment, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any Response Activities that the MDEQ determines are necessary.

24.5 In addition to, and not as a limitation of any provision of this Judgment, the MDEQ and the MDAG retain all of their information-gathering, inspection, access and enforcement authorities and rights under Part 201 and any other applicable statute or regulation.

24.6 Subject to the understanding that Enbridge is not in this Judgment waiving any statute of limitations defense it may have, failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Judgment in a timely manner shall not:

(a) Provide or be construed to provide a defense for Enbridge's noncompliance with any such term, condition, or requirement of this Judgment.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of the Judgment, or to seek any other remedy provided by law.

24.7 This Judgment does not constitute a warranty or representation of any kind by the MDEQ that the Response Activities performed by Enbridge in accordance with the MDEQ-approved Response Activity Plans required by this Judgment will result in the achievement of the performance objectives stated in Paragraph 7.1 of Section VII (Performance of Part 201 Response Activities) of this Judgment or the remedial criteria established by law, or that those Response Activities will assure protection of public health, safety, or welfare, or the environment.

24.8 Except as provided in Paragraph 23.1(a) of Section XXIII (Covenants Not to Sue by the State), nothing in this Judgment shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, MCL 324.20132(8), to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Spill Area.

24.9 Except as expressly provided otherwise in this Judgment, the foregoing reservations of rights by MDEQ do not preclude Enbridge from raising any and all defenses in law or equity to any action brought pursuant to the provisions in this Section.

**XXV. COVENANT NOT TO SUE BY THE DEFENDANT**

25.1 Enbridge hereby covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA, MCL 324.20119(5), or any other provision of law.

25.2 After the Effective Date of this Judgment, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of Response Activity Costs or Costs of Surveillance and Enforcement, natural resource damages, or other appropriate relief relating to the Spill Area not addressed and resolved in this Judgment, Enbridge agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the

enforceability of the covenants not to sue set forth in Section XXIII (Covenants Not to Sue by the State) of this Judgment and provided further that nothing herein shall preclude Enbridge from asserting defenses predicated on the fact that any claim that is brought by the State as provided in this paragraph was addressed and resolved in this Judgment.

#### **XXVI. CONTRIBUTION**

Pursuant to Section 20129(5) of the NREPA, MCL 324.20129(5), and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC 9613(f)(2); and to the extent provided in Section XXIII (Covenants Not to Sue by the State) of this Judgment, Enbridge shall not be liable for claims for contribution for the matters set forth in Paragraph 23.1 of Section XXIII (Covenants Not to Sue by the State) of this Judgment, to the extent allowable by law. The parties agree that entry of this Judgment constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Enbridge has, as of the Effective Date, resolved its liability to the MDEQ for the matters set forth in Paragraph 23.1 of this Judgment. Entry of this Judgment does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, MCL 324.20126, or Sections 9607 and 9613 of the CERCLA, 42 USC 9607, 9613. Pursuant to Section 20129(9) of the NREPA, MCL 324.20129(9), any action by Enbridge for contribution from any person that is not a Party to this

Judgment shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable state or federal law.

## **XXVII. MODIFICATIONS**

27.1 The Parties may only modify this Judgment according to the terms of this section. The modification of any work plan, Submission (including but not limited to Exhibit E (Part 201 Reaches) and Exhibit G (NFA Report Segment Boundaries Table)), or schedule required by this Judgment may be made only upon written approval from the MDEQ Project Managers.

27.2 Modification of any other provision of this Judgment shall be made only by written agreement between Enbridge's Project Manager, the RRD and WRD Chiefs, or their authorized representatives, and the designated representative of the MDAG, and shall be entered with the Court.

## **XXVIII. TERMINATION OF CERTAIN PROVISIONS**

Upon MDEQ approval of an NFA Report, all obligations under Section VII (Performance of Part 201 Response Activities) are terminated for the area covered by the NFA Report. Some approved NFA Reports may include monitoring, operation and maintenance, or oversight necessary to assure the effectiveness and integrity of remedial action; these requirements will be encompassed in a Postclosure Agreement between the Parties in accordance

with MCL 324.20114d. Any Response Activities required in the Postclosure Agreement necessary to maintain the performance objectives specified in Paragraph 7.1 of Section VII (Performance of Part 201 Response Activities) of this Judgment are separate and distinct from this Judgment and are enforceable under the Postclosure Agreement, not under this Judgment.

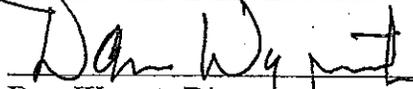
Upon MDEQ receipt of all payments required to be made under this Judgment and MDEQ's approval of all reports and Submissions required to be submitted by Enbridge pursuant to this Judgment, all obligations under this Judgment are terminated, with the exception of the following surviving provisions: Section XV (Record Retention/Access to Information); Section XXIII (Covenants Not to Sue by the State); Section XXIV (Reservation of Rights by the State); Section XXV (Covenant Not to Sue by the Defendant); and Section XXVI (Contribution).

#### **XXIX. SEPARATE DOCUMENTS**

The Parties may execute this Judgment for submittal to the Court in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IT IS SO AGREED BY:

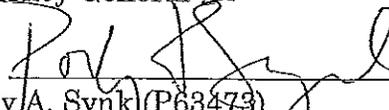
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Dan Wyant, Director  
Michigan Department of Environmental Quality

Dated 5.12.15

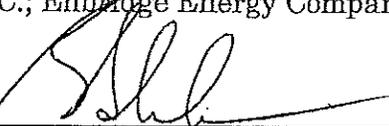
BILL SCHUETTE

Attorney General

By:   
\_\_\_\_\_  
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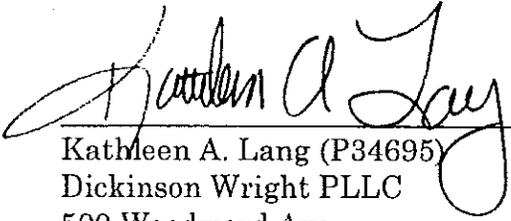
Dated May 12, 2015

Enbridge Energy Partners, L.P.; Enbridge Energy, Limited Partnership;  
Enbridge Pipelines (Lakehead) L.L.C.; Enbridge Energy Management,  
L.L.C.; Enbridge Energy Company, Inc.; and Enbridge Employee Services,  
Inc.

By:   
\_\_\_\_\_  
Bradly F. Shamla  
7701 France Ave. S., Suite 600  
Edina, MN 55435  
(952) 607-3430

*ECV*  
Dated 5-12-2015

(Signatures continued on following page)

  
\_\_\_\_\_

Kathleen A. Lang (P34695)  
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(313) 223-3771

Dated 5/11/15

David H. Coburn  
William T. Hassler  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, D.C. 20036  
(202) 429-8063  
(202) 429-6469

Attorneys for Defendants.

This Judgment is final and closes the case.

IT IS SO ORDERED AND ADJUDGED THIS \_\_\_\_\_ day of \_\_\_\_\_,  
2015.

\_\_\_\_\_  
Honorable