

August 2, 2018

Mayor Lois Jackson
The Corporation of Delta
4500 Clarence Taylor Crescent
Delta, BC, V4K 3E2
Sent via email

Dear Mayor Jackson and members of Delta Council,

Thank you for your letter dated May 30, 2018 regarding confirmation of financial responsibilities of a marine oil spill related to the Trans Mountain Expansion Project (TMEP or Project). I would like to assure you that the safety of the public, our employees and the environment is our first priority. We understand your concerns about potential effect to your municipality's shoreline, including the Fraser River from a pipeline spill, or a spill from tankers transiting the Salish Sea.

Trans Mountain has committed to a number of items of spill prevention, preparedness and response, for both land and marine spills. These commitments, are based upon a most thorough and comprehensive review of risks associated with the project. Trans Mountain combines careful planning with regular training, equipment deployments and mock emergency exercises. A key component of Program enhancement has been the development of Geographic Response Plans (GRPs). GRPs enable a timely and more effective response to mitigate potential impacts to the environment by providing pre-identified control points, response tactics and other geographically specific information¹. In addition we have the largest inventory of pipeline inland oil spill response equipment in the province of BC which is strategically located along the pipeline to allow for the fastest and most effective response. Other improvements include significant investments in tug escort and enhancements to the existing marine spill response regime through Western Canada Marine Response Corporation (WCMRC), which will benefit the entire south coast region of BC. WCMRC is the Transport Canada certified Response Organization for the coast of British Columbia, which is entirely funded by industry, including Trans Mountain (www.wcmrc.com).

As noted in a Council Report by your municipality's Director of Corporate Services dated May 2, 2018,² there are a number of conditions that relate to spill response and emergency planning in the National Energy Board (NEB) approval of TMEP and as part of the Environmental Certificate awarded to Trans Mountain by the BC Environmental Assessment Office (BCEAO). Trans Mountain has been working on fulfilling these Conditions by enhancing the Emergency

¹ More information about the location of the Pipeline System, and associated Geographic Response Plan Data Sheets is available on our website: <https://www.transmountain.com/emergency-response-plans> (Accessed July 19, 2018)

² Memorandum from the Director of Corporate Services dated May 2, 2018. Motions on Notice (G.01): May 14, 2018 Regular Meeting of Delta Council: <https://delta.civicweb.net/document/178210> (accessed July 2, 2018)



Management Program, which includes making improvements to existing plans and meeting with potentially affected communities. **Emergency management program conditions include:**

- NEB Condition 90: Consultation on improvements to Trans Mountain's Emergency Management Program
- NEB Condition 117: Reporting on improvements to Trans Mountain's Emergency Management Program
- NEB Condition 119: Emergency Preparedness and Response Exercise and Training Program
- NEB Condition 120: Notification and reporting on emergency response exercises
- NEB Condition 121: Financial Assurances Plan – operations phase
- NEB Condition 124: Implementing improvements to Trans Mountain's Emergency Management Program
- NEB Condition 125: Emergency Response Plans for the Pipeline and for the Edmonton, Sumas and Burnaby Terminals
- NEB Condition 126: Emergency Response Plan for the Westridge Marine Terminal
- NEB Condition 129: Final Terminal Risk Assessments
- NEB Condition 131: Marine Shipping-related Commitments (includes enhancement to WCMRC marine spills response regime)
- NEB Condition 136: Pre-Operational full scale emergency response exercises
- NEB Condition 144: Ongoing implementation of marine shipping-related commitments
- NEB Condition 153: Full-scale emergency response exercises during operations
- BC EAO Condition 33: Geographic Response Plans
- BC EAO Condition 34: Coastal Geographic Response
- BC EAO Condition 35: Fate and Behaviour of Bitumen Reaseach
- BC EAO Condition 36: Emergency Preparedness and Response Exercise and Training Program and Reporting
- BC EAO Condition 37: Pre-Operations Emergency Response Exercises

In reference to the list above, the BCEAO requires continued investment in the research of fate and behavior of bitumen as BCEAO Condition 35.³ Supplemental studies are currently underway to address related questions about the fate and behaviour of dilbit and other crude oil products in both marine and freshwater settings under a range of circumstances and conditions. Research topics include how oil spreads and behaves on water and the evaluation of current inland spill response technologies. For example, We recently completed joint industry research initiative with

³ Conditions of Approval can be found in Schedule B: Trans Mountain Expansion Project Table of Conditions for an Environmental Assessment Certificate: <https://projects.eao.gov.bc.ca/api/document/5892318fb637cc02bea16484/fetch> (Accessed July 12, 2018)



the governments of British Columbia and Alberta, to independently evaluate and review current inland spill response technologies focusing on diluted bitumen.⁴

Trans Mountain has also made many commitments related to emergency management, including spill response, that are tracked and reported publicly as per NEB Condition 6.⁵ This includes Trans Mountain's progress in implementing TERMPOL recommendations.⁶

As part of the Expansion Project we have initiated an extensive consultation program over the last several years and in compliance with NEB Condition 90 for the development of our industry leading EMP. The consultation program maximizes local input and expertise which is the key to developing the industry leading program. Like many municipalities in Metro Vancouver, the municipality of Delta has participated in some of our regular exercises and EMP enhancement worksince that time, including a full-scale exercise at Westridge Marine Terminal in 2015, and a meeting with representatives from the Delta Fire Department, Engineering, Climate Action and Environment and the Emergency Coordinator on January 19, 2017. We welcome your continued participation as we engage with municipalities in Metro Vancouver and across the project corridor.

Liability coverage for oil spills

Should a spill occur along the pipeline or at the Westridge Marine Terminal, regardless of where the oil comes from, Trans Mountain would activate the required response resources and see that the response is undertaken in a diligent manner. **The cost of the response would be allocated based upon the following:**

Oil spills from Trans Mountain Pipeline System

The NEB has oversight for any potential spills resulting from operations of the Trans Mountain pipeline. The concern about potential spills costs and damages was considered by the NEB in their recommendation report to the Federal Cabinet in May 2016.⁷

⁴ *Trans Mountain Supporting Ongoing Canadian Research of Diluted Bitumen Behaviour in Water*, <https://www.transmountain.com/news/2018/trans-mountain-supporting-ongoing-canadian-research-of-diluted-bitumen-behaviour-in-water> (Accessed July 13, 2018)

⁵ Trans Mountain Expansion Project Compliance to Condition 6 - Commitments Tracking Table (NEB Filing ID A92890) <https://apps.neb-one.gc.ca/REGDOCS/Item/View/3579773> (Accessed July 13, 2018)

⁶ TMEP progress on TERMPOL Review Committee Recommendations <https://www.transmountain.com/termopol> (Accessed July 13, 2018)

⁷ Section 13.3 of the National Energy Board Report: Trans Mountain Expansion Project (page 319), May 2016. NEB filing ID A77045 <https://apps.neb-one.gc.ca/REGDOCS/Item/View/2969696> (Accessed July 2, 2018).



The NEB reinforced requirements to ensure Trans Mountain has sufficient financial resources over the course of the Project to address the costs of a major spill with NEB Condition 121.

Under the NEB Condition 121 Trans Mountain is required to have a Financial assurance plan assuring unfettered access to at least \$100 million in the form of ready cash to cover costs, including compensation, to third parties for losses and damages in the near term, while insurance claims are being processed. An additional \$1 billion must also be made available through other financial instruments stipulated by the NEB in the condition.⁸

Marine-based oil spills

Westridge Terminal-source spill: The Westridge Marine Terminal is an oil handling facility as defined in the Canada Shipping Act. Extensive emergency response plans are available for this facility, which are exercised regularly to ensure rapid response by terminal staff and Western Canada Marine Response Corporation (WCMRC). If oil were to be released into the marine environment directly from the Trans Mountain facilities, such as operations at Westridge Marine Terminal, Trans Mountain would be the Responsible Party and Trans Mountain would cover the financial costs of cleaning up such a spill. Tanker loading is planned and handled carefully under close supervision of Trans Mountain operators, the Trans Mountain Loading Master and the vessel officers and staff. Trans Mountain has emergency plans and equipment and spill mitigation measures and whenever a vessel is berthed at the terminal it is fully surrounded by a marine oil spill containment boom.

- **Ship-source spill:** As outlined to you in the May 2, 2018 staff report to Delta Council, in Canada, liability and compensation for ship-source oil spill pollution is governed by the *Canada Shipping Act* and the *Marine Liability Act* and is also based on a polluter pays principle. If oil were released from a vessel, the vessel owner would be the Responsible Party and three different sources of compensation are available to provide up to \$1.36 billion for damages resulting from a single oil spill. This includes the shipowners' liability,⁹ International Oil Pollution Compensation Funds,¹⁰ and Canada's Ship-Source Oil Pollution Fund.¹¹

In a submission to the Province of British Columbia (B.C.) **Ministry of Environment policy intentions paper on activities related to spill management**, Transport Canada confirmed that

⁸ Conditions of Approval can be found in Appendix 3 of the National Energy Board Report: Trans Mountain Expansion Project (page 319), May 2016. NEB filing ID A77045 <https://apps.neb-one.gc.ca/REGDOCS/Item/View/2969696> (Accessed July 2, 2018).

⁹ For information on compensation sources visit: <http://www.tc.gc.ca/eng/marinesafety/oep-ers-regime-funds-1119.htm>

¹⁰ For information on the International Oil Pollution Compensation Funds visit: <http://www.iopcfunds.org/>

¹¹ For information on Ship-Source Oil Pollution Fund visit: <http://sopf.gc.ca/>



Canadian taxpayers are protected from clean up and compensation costs associated with oil spills. The full statement is available at: <http://www.tc.gc.ca/eng/mediaroom/our-response-bc-policy-intentions-paper-activities-spill-management.html>.

As described by Transport Canada in this submission to B.C., any person in Canada, including private corporations or the Crown, may file a claim for losses or expenses caused by oil spills from ships:

Under the Oceans Protection Plan, the Government of Canada is making major improvements to the *Ship-Source Oil Pollution Fund* to ensure unlimited industry funded compensation is made available to those affected by ship-source spills. Specifically, these proposed changes include:

- Removing the limit of liability on the *Ship-Source Oil Pollution Fund* to allow for an unlimited amount of compensation for eligible losses and damage with a guaranteed fund top-up;
- Ensuring the ability to recover from industry through a modernized levy mechanism in the unlikely event that the *Ship-Source Oil Pollution Fund* is depleted;
- Aligning with the international regime to ensure coverage to prevent or minimize economic losses, such as in the fisheries or tourism sectors;
- Providing emergency funding to the federal incident commander and to responders under the direction of the federal incident commander when responding to a significant incident; and
- Instituting a fast-track system for small claims to the *Ship-Source Oil Pollution Fund* in order to reduce administrative burdens and facilitate prompt compensation.

Commitment to Safety

Trans Mountain has been safely loading ships at its Westridge Marine Terminal since 1956 without a single spill from tanker operations. We maintain a Vessel Acceptance Standard, which governs the acceptance or rejection of all vessels calling at the Westridge Marine Terminal. Prior to a cargo transfer involving a vessel berthed at Westridge Marine Terminal, Trans Mountain conducts a vessel acceptance process that includes a pre-screening followed by a physical inspection by the Trans Mountain Loading Master before being allowed to undertake operations at the Westridge Terminal dock. Trans Mountain has the right to deny vessels that do not pass the acceptance process.

If an oil spill occurs in a marine environment, multiple organizations quickly take a coordinated approach to mitigate public and environmental impacts. Although vessels transporting petroleum are responsible for any release on water, we are committed to prevention of oil spills and with working with spill responders and ship owners to minimize any spill on water.



We have regulatory requirements to conduct a full scale exercise every three years at the Westridge Terminal. The next full scale exercise for Westridge Terminal is taking place on September 19, 2018, to which Delta and other local municipalities will be invited to observe.

To read our **Westridge Marine Terminal Emergency Response Plan** visit our website at: [https://transmountain.s3.amazonaws.com/ERP/Westridge Marine Terminal ERP Sept 2016/index.html](https://transmountain.s3.amazonaws.com/ERP/Westridge_Marine_Terminal_ERP_Sept_2016/index.html)

As part of our Application to the National Energy Board, Trans Mountain proposed additional risk controls and safety enhancement, which build on the region's robust safety regime. More information about our marine safety enhancements can be read on our website at: <https://www.transmountain.com/marine-safety>

The Corporation of the Municipality of Delta has participated in our emergency management activities in recent years and we encourage your continued participation. If you have further questions, please contact Lexa Hobenshield at 604-809-9869 or lexa_hobenshield@kindermorgan.com.

Sincerely,

Michael Davies
Vice President, Operations
Kinder Morgan Canada

CC: Ian Anderson, President, Kinder Morgan Canada
The Honourable Carla Qualtrough, Member of Parliament, Delta
The Honourable John Horgan, Premier of British Columbia
Ravi Kahlon, MLA Delta North
Ian Paton, MLA Delta South
Delta Council
Steven Lan, Acting City Manager Corporation of Delta
Sean McGill, Director of Corporate Services Corporation of Delta
Darrell Mussatto, Mayor City of North Vancouver
Karla Graham, City Clerk City of North Vancouver
Metro Vancouver Regional District municipalities
Jonathan Wilkinson, Member of Parliament, North Vancouver