

July 3, 2014

From: Wembley Estates Strata Council (Intervener)
8183 Forest Grove Dr.
Burnaby, BC

To: National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8

ATTN: Sheri Young, Secretary

Dear Ms. Young,

RE: File OF-Fac-Oil-T260-2013-03 02
Hearing Order OH-001-2014
Application for the Trans Mountain Expansion Project
Cover Letter to Motion to Compel Full and Adequate Responses to IRs

Please find our motion below.

Please note that we were particularly impacted by the compressed timeline to analyze Kinder Morgan's response to our information request and we wish to convey that future timelines should consider that citizens are only able to invest a small fraction of their time to pursue this matter.

Sincerely,

Brian Vandegriend
President, Wembley Estates Strata Council
brianv17@gmail.com

**Hearing Order OH-001-2014
Trans Mountain Pipeline ULC
Trans Mountain Expansion Project
NEB File OF-Fac-Oil-T260-2013-03 02
Filed July 3, 2014**

Notice of Motion #1 for Full and Adequate Response to
Wembley Estates Information Request #1

Name of person bringing forward the motion

Brian Vandegriend on behalf of the Wembley Estates Strata Council

Decision or order requested

Wembley Estates requests from the National Energy Board (“NEB”) an order as follows:

- 1) Requiring Trans Mountain to provide full and adequate responses to those portions of Wembley Estates Information Request No. 1, as documented in the table below, by July 31, 2014, or some other fixed date as the NEB deems appropriate;\
- 2) The Hearing Order be amended to provide new and reasonable deadlines for information requests and written intervenor evidence, oral testimony and final hearings, once Trans Mountain has provided the required information.

Statement of Facts

As directed by the Board’s Procedural Direction #3, the table below presents a list of the partial or inadequate responses with explanations as to why the answers are inadequate or erroneous as the case may be, and where they should be corrected and fully addressed.

All of which is respectfully submitted on July 3, 2014.

Brian Vandegriend
President, Wembley Estates Strata Council
8183 Forest Grove Dr.
Burnaby, BC

Hearing Order OH-001-2014
Trans Mountain Pipeline ULC (Trans Mountain)
Application for the Trans Mountain Expansion Project
Procedural Direction No. 3 – Process for hearing motions to compel full and adequate responses to information requests (IRs)
Wembley Estates Information Request (Round 1) to Trans Mountain

IR #	IR Wording	Trans Mountain's response to IR	Intervenor's explanation for claiming IR response to be inadequate
1.2c	c) What other disturbances might the construction of these tanks have on nearby residents?	<p>c) Potential residual effects for residential land users and occupants residing near the Burnaby Terminal or the proposed pipeline corridor may include:</p> <ul style="list-style-type: none"> • Sensory disturbance for Aboriginal and non-Aboriginal local residents and land users (from nuisance air emissions, noise, visual effects) during construction and site-specific maintenance activities. Possible effects may include air emissions (including odours) and noise from construction equipment and vehicles, and dust from vehicles. Also, equipment, areas of land disturbance, and the activity of construction workers will be visible to nearby land and resource users during periods of construction and site-specific maintenance. • Change in land use patterns during construction and site-specific maintenance. Change in use patterns during construction may result from short-term physical disturbance of land, access roads and/or from alteration of traffic patterns, movements and volumes along highways and roads. • Physical disturbance to community use areas during construction. Physical disturbance to community use areas during construction will occur in some places along the proposed pipeline corridor. Community use areas are any area utilized widely by community members for personal, social, formal or informal 	<p>The response provided by Kinder Morgan is evasive as they state that <u>they do not anticipate</u> that any trails, forested areas, parks or playground access points will be utilized for construction purposes (refer to Wemberl Estates_IR_1.2a) yet they state in 1.2c that the construction of the tanks may cause physical disturbance to community use areas during construction such as schools, playgrounds, outdoor recreation sites and other public facilities.</p> <p>It is difficult to know how the construction impacts will affect our strata complex when Kinder Morgan insists on using such vague wording.</p>

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		gatherings. This includes schools, playgrounds, outdoor recreation sites and other public facilities. This residual effect may be experienced by residents from various parts of the community who utilize the assets.	
1.2d	d) Many residents in this complex use Underhill and Forest Grove Drive as additional parking for this complex. With an increase in temporary workers at the Burnaby Terminal during construction, what assurances will Kinder Morgan provide to residents to ensure that they will have street parking available on Underhill and Forest Grove Drive for themselves and other guests of the complex? Will Kinder Morgan be providing parking for workers on their site?	A final decision on the parking scheme will be made during detailed construction planning in 2015.	The answer provided by Trans Mountain defers answering our request until a later date and does not give us the assurance that street parking surrounding our complex will not be utilized.
1.3a	a) Advertisements from Kinder Morgan promise that the pipeline will not impact housing prices for homes along the pipeline. What about for homes that border on the Burnaby Terminal tank farm?	a) The Burnaby Terminal was constructed approximately 30 years prior to Wembley Estates. The proposed expansion of the Terminal will occur within the current footprint, and will not represent a change in land use. Given this, it is reasonable to expect that property prices in Wembley Estates should not be affected by the proposed expansion. However, Trans Mountain appreciates this may be a concern to residents of Wembley Estates and is undertaking research to further investigate this issue.	The answer provided by Trans Mountain defers answering our request until a later date. Understanding how the expansion of the tank farm impacts our potential property values is very important to us and Trans Mountain is providing us with a vague answer based on no research at this point. We would like to know what the nature of the study being conducted is and how soon we will have access to this information. In particular, we would like to see research to how the expanding tank farm will impact property values.
1.3b	b) What studies were conducted by Kinder Morgan to determine to level of impact the expanded tank farm will have on property values for nearby landowners, particularly those in Wembley Estates located at Underhill and Forest Grove Drive?	As a result, Trans Mountain has undertaken specific research to address this perceived concern. The attached (see Amy C IR No. 1.3g-Attachment 1) review of previous research papers and articles, prepared by Dr. Tsur Somerville of the UBC, has been prepared to ascertain what other researchers and experts have found in their investigations of the potential impacts of pipeline development upon private properties.	The response provided by Trans Mountain is incomplete and did not answer part of the question. The research conducted by Dr Tsuer Somerville addresses impact of existing pipelines and does not address tank farms in particular. These two things are not the same as the risks are not on the same scale. In addition, the research paper deals only with existing pipelines, not the construction of a considerably larger

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			tank farm in a residential area.
1.3c	What studies have been undertaken to determine the impact on property value during the construction phase between 2015-2016?	c) Please refer to the response to Wembley Estates IR No. 1.3b.	The response provided by Trans Mountain is insufficient and the study that they referenced in Wembley Estates IR No. 1.3b does not provide the answer to this question.
1.3d	If a resident needs to move during the construction phase, how will Kinder Morgan provide compensation for these residents if they are unable to get market value for their homes?	<ul style="list-style-type: none"> Under Section 97, factors an arbitration committee would consider in a determination of compensation include the market value of the lands taken both for permanent easement and temporary working space, loss of use of the lands by the owner, damages caused by construction and, noise and inconvenience that can reasonably be expected to arise from the construction. Trans Mountain is incorporating these factors in the compensation framework being developed for the Trans Mountain Expansion Project. Additional information respecting Trans Mountain Expansion Project compensation framework for directly affected landowners can be found in responses to NEB IR No. 1.29 and CGLAP IR No. 1.7b. 	<p>Trans Mountain failed to fully answer this question. They have not provided information on the compensation framework nor a clear process for home owners to follow should their property values be impacted.</p> <p>Kinder Morgan's response refers us to information for directly affected landowners in NEB IR No 1.29 which refers to Statutory Right of Way and Easement and in no way addresses our concerns as homeowners who live adjacent to the tank farm nor does it address property value assessment or compensation schedules. The reference to CGLAP IR No. 1.7b refers to agricultural assessments for farmers between Chilliwack and Surrey and once again does not address our specific question related to compensation for decrease in residential property value during construction.</p>
1.3e	How would the impacts of property values be assessed? In particular, how will a baseline property value be established and impacts of the real estate market factored in? Specifically, what process would owners follow to make a claim?	Please refer to the response to Wembley Estates IR No. 1.3d.	<p>Trans Mountain failed to fully answer this question, see our response to 1.3d.</p> <p>Home owners want to know what proof Trans Mountain will accept as baseline property values before the expansion and how impacts of the local real estate market will be factored in to determine if a decline in property value has occurred.</p>

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1.3g	g) Will Kinder Morgan be providing a clear, written procedure for homeowners to file a claim for compensation if housing prices drop due to proximity of the tank farm before, during or after construction? Or will homeowners be forced to go through litigation with Kinder Morgan to recoup costs?	Please refer to the response to Wembley Estates IR No. 1.3d.	Trans Mountain failed to fully answer this question. They have mentioned an arbitration committee, but it is unclear as to who is a part of the committee and how they will seek to provide a fair and equitable process for home owners to go through.
1.6a (part i)	Given that the Burnaby Terminal is located directly uphill from residential complexes and recreation facilities and the upgraded terminal will hold as much as 5.6 million bbl, why has this terminal been excluded from a worst-case spill (part i) or fire analysis?	With respect to spills, refer to the response to City Burnaby IR No. 1.08.05h, which states: " <i>The seismic design of the proposed new storage tanks at Burnaby Terminal, including consideration of sloshing and other effects, will be in accordance with...</i> "	It appears that either Trans Mountain failed to provide the correct reference or they failed to answer the question.
1.6a (part ii)	Given that the Burnaby Terminal is located directly uphill from residential complexes and recreation facilities and the upgraded terminal will hold as much as 5.6 million bbl, why has this terminal been excluded from a worst-case spill or fire analysis?	<p>With respect to fires, a risk assessment for Burnaby Terminal is included in the response to NEB IR No. 1.98a (NEB IR No. 1.98a – Attachment 3). The assessment in Attachment 3 is for worst-case fire scenarios, without consideration of the activation of mitigation measures, such as foam deployment and other fire-fighting or emergency actions. The assessment shows that the risk for the residents of Wembley Estates will be within the Municipal Industrial Accidents Council of Canada (MIACC) acceptability criteria, even without mitigation measures, provided that appropriate design features and maintenance practices are employed to keep the probability and magnitude of releases low.</p> <p>A more general risk assessment for Burnaby Terminal is included in the response to NEB IR No. 1.98a (NEB IR No. 1.98a – Attachment 8). This assessment uses a somewhat different methodology to identify various types of risks, including spills and fires, and associated control measures for the storage tanks and other</p>	<p>This response is inadequate for the following reasons:</p> <p>1) It does not provide commitment that specific "design features" and maintenance practices will be employed, thus making it very difficult to ascertain whether the probability and magnitude of spills/fires will be kept to the utmost minimum.</p> <p>2) The general risk assessment for the Burnaby Terminal (NEB IR No. 1.98a – Attachment 8) lists control measures and their applicability, but it doesn't indicate which control measures have been accepted/approved. Thus, it's unclear what control measures will actually be implemented.</p> <p>3) The general risk assessment for the Burnaby Terminal (NEB IR No. 1.98a – Attachment 8) doesn't factor in the impact or the severity of the risk which is a common practice in project management (PMBOK version 4 section 11.3.2). Risks with a severe</p>

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		<p>elements of the proposed Burnaby Terminal infrastructure.</p> <p>Trans Mountain will use the recommendations in the assessments to inform the refinement of the detailed designs and operational and maintenance procedures and practices. Any refinements will be incorporated into updated risk assessments. The worst case scenarios will also be used to inform the development of emergency response plans and in human health risk assessments.</p> <p>The first part of Section 3.4, Volume 4A of the Facilities Application and all of Section 3.4.3, Volume 4A, describe numerous design features of the proposed new storage tanks and associated infrastructure. Section 5.0 and Section 6.0, Volume 4C of the Facilities Application generally describe some of the comprehensive inspection and maintenance practices that Trans Mountain will employ. Section 7.0, Volume 4C describes operations and control procedures and practices. Section 3.4.3.8.2, Volume 4A and the response to City Burnaby IR No. 1.13.05jj describe the fire-protection system that Trans Mountain proposes to install at Burnaby Terminal to mitigate fire risk. This system exceeds both the legislative requirements and the requirements of the British Columbia Fire Code. Section 10.0, Volume 4C discusses emergency preparedness and response.</p>	<p>consequence must have a high weighting in the risk score and thus be must be accepted for risk mitigation and further planning. We request that risk assessments include the severity given the critical importance of protecting human life.</p>
1.6b	As some of the new tanks will be located directly above our property, for nearby residents, what are the potential health and environmental impacts from a	<p>Refer to the response to Hawes F IR No. 1.5b which states:</p> <p>“Trans Mountain commissioned a risk assessment of</p>	<p>In this attachment, “Burnaby Terminal Portion, Risk Assessment”, Table 12 and 13 present the Hazard Distance (SO2) for a Fully Involved Dike Oil Fire /</p>

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	worst-case spill from the tank farm?	the Burnaby Terminal expansion, which was filed as NEB IR No. 1.98a - Attachment 3 in response to NEB IR No. 1.98a. The risk assessment identified the possible accidents or upset events along with the associated consequences of an oil fire scenario. The risk assessment evaluated the potential impact on the nearby areas of a number of "worst-case" scenarios (i.e., hazards) and the probabilities of their occurrence. The emergency response plan to be developed will be based on the findings of the worse-case scenario. The assessment was conducted without consideration of mitigation measures, such as the effective implementation of Trans Mountain's emergency response plan. According to the findings of the risk assessment, the overall risks posed to the public in the evaluated oil fire cases are deemed to be within the acceptable level of risk criteria as set out by the Major Industrial Accidents Council of Canada.	<p>Tank Top fire. Of grave concern is the 400m / 900m radius where the toxic SO2 levels would exceed IDLH levels. (Immediately Dangerous to Life and Health level) in the event that a worst-case fire breaks out. This radius encompasses nearby residents including Wembley Estates.</p> <p>The response by Kinder Morgan, which indicates that the overall public risk is deemed to be acceptable, appears to be incorrect as it doesn't account for the immediate area where ERPG-3 or IDLH levels could be reached.</p> <p>We request that Kinder Morgan restates their response and includes specifically the risk posed to nearby residents from SO2 clouds produced from a worst-case fire.</p>
1.6d	What specific criteria will be used to determine whether nearby residents must be evacuated to avoid exposure from released pollutants? What is the targeted response time for such an evacuation?	In the event of a pipeline release, Kinder Morgan Canada Inc. (KMC) would immediately shut down the pipeline and allow the pressure to dissipate, thus stopping further release of petroleum. Emergency services would also immediately be contacted and trained KMC technicians would be dispatched to the location to secure the area and commence air monitoring to ensure air quality for those in the immediate vicinity. KMC would consult with the local authority to determine the best course of action to protect the public. A minor release may only require on-going air monitoring. A more substantial release could result in requiring people shelter in place until petroleum vapours dissipate.	<p>In NEB IR No. 1.98a - Attachment 3, "Burnaby Terminal Portion, Risk Assessment", Table 12 and 13 present the Hazard Distance (SO2) for a Fully Involved Dike Oil Fire / Tank Top fire. Of grave concern is the 400m / 900m radius where the toxic SO2 levels would exceed IDLH levels. (Immediately Dangerous to Life and Health level) in the event that a worst-case fire breaks out.</p> <p>Given the above information, Kinder Morgan's response appears to be grossly inadequate and too general in nature. The information request asks for the specific criteria which nearby residents would be evaluated and the targeted response time.</p>

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			Thus, we request that our original question be thoroughly answered.