



File OF-Fac-Oil-T260-2013-03 03
30 August 2017

Mr. Scott Stoness
Vice-President, Regulatory and Finance
Kinder Morgan Canada Inc. and/or
Trans Mountain Pipeline ULC
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Dear Mr. Stoness:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (Project)
Condition Compliance – Pre-Construction Conditions
Westridge Marine Terminal (Phase 1)
National Energy Board Condition Compliance Letter Report No. 4
(Westridge Marine Terminal Environmental Protection Plan)**

As part of the approval for the Trans Mountain Expansion Project, the National Energy Board (NEB or the Board) imposed 157 conditions on the Project¹. These conditions address the entire lifecycle of the project and can apply during the various stages: before construction, during construction, and before or during operation of the Project. Conditions typically require the company to submit additional detailed information that was not available during the time of the hearing. Conditions also mitigate possible risks identified during the application process.

These conditions cover a wide range of topics, including:

- safety and integrity of the pipeline;
- emergency preparedness and response;
- protection of the environment;
- ongoing consultation with those affected, including Aboriginal communities;
- socio-economic matters;
- commercial support; and
- financial responsibility.

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¹ On 1 December 2016, the National Energy Board (Board) issued Certificates of Public Convenience and Necessity OC-064, AO-003-OC-2, and AO-002-OC-49. On 6 June 2016, the Board issued Orders XO-T260-007-2016, XO-T260-008-2016, XO-T260-009-2016, XO T260-010-2016, and MO-015-2016 in relation to the Project (Orders). Pursuant to subsection 19(1) of the *National Energy Board Act*, the Orders only took effect upon the issuance of the Certificates. The Certificate and Orders authorize the construction and operation of the Project.

Trans Mountain has proposed a phased approach to the construction of the Project and has indicated that the Westridge Marine Terminal would be the first component to commence construction. This letter report addresses Condition 81 – Westridge Marine Terminal Environmental Protection Plan. The Board notes that the majority of the conditions that must be complied with before construction begins at Westridge Marine Terminal (Phase 1) were approved by the Board through National Energy Board Condition Compliance Letter Reports No. 1, No. 2 and No. 3 ([A85310](#), [A85416](#) and [A85703](#)).

In its filing dated 19 May 2017 ([A83747](#)) pursuant to Condition 81, Trans Mountain provided a visual guide to the Project's Environmental Protection Plans (EPPs) and the Project's Management Plans that are part of those EPPs. The Board directed Trans Mountain to refile its Westridge Marine Terminal EPP, with a concordance table of all updates that have resulted from the conditions approved in National Energy Board Condition Compliance Letter Reports No. 1 and No. 2 ([A85310](#) and [A85416](#)).

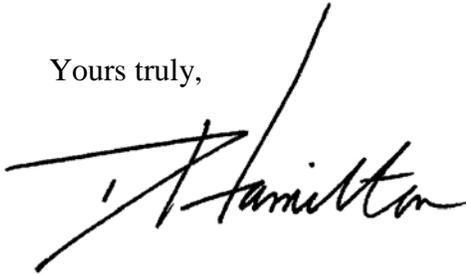
Trans Mountain refiled its EPP for the Westridge Marine Terminal on 17 August 2017. The Board has examined the condition filing, all other related condition filings, and any follow-up information provided by Trans Mountain and others. As set out in Appendix 1 of this report, the Board is of the view that Trans Mountain has fulfilled the requirements of the Environmental Protection Plan for the Westridge Marine Terminal and approves the 17 August 2017 version, subject to the directions provided by the Board in Appendix 2. As a result, the Board is of the view that Trans Mountain has now satisfied all applicable NEB pre-construction conditions for the Westridge Marine Terminal.

All condition filings and related correspondence were assessed with rigor to determine whether Trans Mountain had complied with the condition, and whether the filed information is acceptable within the context of regulatory requirements and standards, best practices, professional judgement and, the goals the condition sought to achieve. In these filings, the Board notes Trans Mountain provided additional detailed mitigation and commitments to address outstanding Project issues. The Board expects Trans Mountain to include and track all additional commitments as part of Condition 6 (Commitments Tracking Table).

The Board also notes that the Trans Mountain has carried out, as required, and continues to carry out public consultation. The Board regards engaging the public as an essential and ongoing activity throughout the Project's entire lifecycle, and in particular during construction. Trans Mountain is reminded to continue its efforts to implement public consultation programs for the public, landowners, governments, Aboriginal groups, and other stakeholders and groups to learn about the Project, and how to provide their views and concerns to the company. In addition, the NEB is looking forward to a collaborative, inclusive Indigenous involvement in the review and monitoring of the environmental, safety and socio-economic issues related to the Project with the Indigenous Advisory and Monitoring Committee (IAMC).

Public safety and the protection of the environment is of paramount importance to the NEB, and will hold Trans Mountain accountable for its performance during the construction and operation of this Project, including full compliance with all regulatory requirements and commitments. The NEB is responsible for verifying and enforcing compliance with the Project requirements, including conditions. It does this through a number of compliance activities, such as: inspections, compliance meetings, management system audits, and reviews of manuals. The NEB will also continue to update its [Interactive Compliance Tracker](#) on a regular basis to ensure the public can be informed on the status of condition compliance.

Yours truly,

A handwritten signature in black ink, appearing to read "D. Hamilton". The signature is stylized with a large, sweeping initial "D" and a long horizontal stroke extending to the left.

David Hamilton
Board Member

Attachment (Appendices 1 and 2)

c.c. Trans Mountain System Expansion Project, IAMC
Email nrcan.tmxcommittee-comitetmx.nrcan@canada.ca

Appendix 1: Condition Compliance for Westridge Marine Terminal

Condition 81: Westridge Marine Terminal Environmental Protection Plan		
Filing(s) made pursuant to this Condition	Views of the Board	Compliance Status
<p>A83747 dated 19 May 2017</p> <p>A84372 dated 13 June 2017</p> <p>A84930 dated 13 July 2017</p> <p>A85143 dated 25 July 2017</p> <p>A85541 dated 17 August 2017</p>	<p>Condition 81 required Trans Mountain to file an updated Westridge Marine Terminal (WMT) Environmental Protection Plan (EPP) that must include environmental procedures, mitigation measures, monitoring plans, policies for environmental training, contingency plans, management plans, facility drawings, consideration of Traditional Lands Use and Traditional Ecological Knowledge, and the consultation undertaken with appropriate governments and Aboriginal groups.</p> <p>The NEB reviewed the initial filing of the WMT EPP and subsequent filings provided by Trans Mountain, including the re-filed WMT EPP, received on 17 August 2017. In the Board’s view, Trans Mountain has provided a comprehensive document that provides sufficient information for each requirement of Condition 81. The Board is satisfied that the proposed mitigation, monitoring, and reclamation measures would effectively mitigate potential impacts from construction activities at the WMT. Additionally, the Board finds the consultation undertaken for the WMT EPP appropriate and has no outstanding concerns.</p> <p>The Board has identified some outstanding concerns regarding the Condition 81 filings, which are considered minor and errors in consistency between interrelated filings. The Board has provided a table (see Appendix 2) that identifies the remaining issues and directs Trans Mountain to address the outstanding issues.</p> <p>The Board notes that the WMT EPP includes numerous Management Plans, some of which are separate conditions of the Project. The Management Plans that are separate conditions of the Project that are included within the WMT EPP have all been approved or deemed compliant by the Board, with respect to the WMT (A85310 and A85416). The Board has verified that the updated Management Plans have been provided in the re-filed WMT EPP, along with commitments made by Trans Mountain in the Information Request process.</p> <p>The NEB is of the view that Trans Mountain has met the requirements of Condition 81 and approves the Westridge Marine Terminal Environmental Protection Plan subject to the inclusion of directions found in Appendix 2.</p>	<p>Approved by the Board with directions as set out in Appendix 2</p>

Appendix 2: Board Directions on the Westridge Marine Terminal (WMT) Environmental Protection Plan (EPP)

Item No	References	Issue	Board Direction
1	<ul style="list-style-type: none"> i) Trans Mountain’s Response to Information Request (IR) No. 34.2 dated 26 July 2017, (A85143-2) ii) Trans Mountain’s Revised WMT EPP Report, Volume 4, Appendix B, Section 1: Contamination Discovery Contingency Plan, dated 17 August 2017, (A85541-4) 	<p>Trans Mountain confirmed that the landowners and aboriginal groups who have known or asserted territory in the area will be notified in the event contamination is discovered during Project activities (reference i). Trans Mountain provided additional wording which it stated would be included in the Contamination Discovery Contingency Plan (CDCP) under Notification Framework, and submitted to the Board prior to construction.</p> <p>Trans Mountain did not include the additional wording in the CDCP as part of the updated WMT EPP (reference ii).</p>	<p>Update the WMT EPP to include the additional wording included in the response to IR No. 34.2.</p>
2	<ul style="list-style-type: none"> i) Trans Mountain’s Response to IR No. 34.4 dated 26 July 2017, (A85143-2) ii) Trans Mountain’s Revised WMT EPP Report, Volume 4, Appendix B, Section 1: Contamination Discovery Contingency Plan, dated 17 August 2017, (A85541-4) 	<p>Trans Mountain confirmed signage would be posted at areas of high or moderate risk and provided additional wording that would be included under Section 1.1 – Pre-Job Planning of the CDCP (reference i).</p> <p>Trans Mountain did not include the additional wording in the CDCP as part of the updated WMT EPP (reference ii).</p>	<p>Update the WMT EPP to include the additional wording included in the response to IR No. 34.4.</p>
3	<ul style="list-style-type: none"> i) Trans Mountain’s Response to IR No. 34.6 dated 26 July 2017, (A85143-2) ii) Trans Mountain’s Revised WMT EPP Report, Volume 4, Appendix B, Section 1: Contamination Discovery Contingency Plan, dated 17 August 2017, (A85541-4) 	<p>In reference i), Trans Mountain confirmed that the National Energy Board’s (NEB) Remediation Process Guide will be followed in the event contamination is discovered during Project construction and stated that the following will be added under “Contamination Management Requirements” of the CDCP: <i>Follow the measures outlined</i></p>	<p>Update the WMT EPP to include the standalone statement provided in the response to IR 34.6 to ensure clear direction that the NEB’s Remediation Process Guide will be followed when contamination is discovered during Project activities.</p>

Item No	References	Issue	Board Direction
		<p><i>in the NEB's Remediation Process Guide.</i></p> <p>In the CDCP (reference ii), Trans Mountain states: "<i>Contaminated material will be disposed of at approved facilities in accordance with provincial and federal regulations and follow the measures outlined in the NEB's Remediation Process Guide</i>".</p> <p>The current wording in the CDCP does not accurately reflect the information provided in the response to IR No. 34.6.</p>	
4	<p>i) Trans Mountain's Revised WMT EPP Report, Volume 6, Section 3.2: Contamination Identification and Assessment Plan, dated 17 August 2017, (A85541-11)</p> <p>ii) Trans Mountain's Responses to IR No. 51 for Condition 46 and 72 (Pipeline EPP), Attachment 1: Revised Contamination Identification and Assessment Plan, dated 11 August 2017 (A85430-3-3)</p>	<p>Trans Mountain included Rev.3 of the Contamination Identification and Assessment Plan (Condition 46) as part of the filing for the updated WMT EPP (reference i).</p> <p>A new version (Rev.4) of the Contamination Identification and Assessment Plan was provided on 11 August 2017 (reference ii).</p>	<p>Ensure the most recent version of the Contamination Identification and Assessment Plan is included in the WMT EPP.</p>
5	<p>i) Trans Mountain's Response to IR 25.10 dated 13 July 2017, (A84930-2)</p> <p>ii) Trans Mountain's Revised WMT EPP Report, Volume 4, dated 17 August 2017, (A85541-4)</p>	<p>Trans Mountain committed to update the WMT EPP with the migratory bird nesting period provided in its response to NEB IR No. 25.10(a) (March 26 to August 17). Reference ii) (PDF pages 82 and 84 of 123), still references the bird nesting period as being March 19 to August 17.</p>	<p>Update the WMT EPP to ensure that <u>all</u> references to the migratory bird nesting period matches Trans Mountain's response to NEB IR No. 25.10(a) (March 26 to August 17).</p>

6	<p>i) Trans Mountain’s Response to IR 25.14 dated 13 July 2017, (A84930-2)</p> <p>ii) Trans Mountain’s Revised WMT EPP Report, Volume 4 dated 17 August 2017, (A85541-4)</p>	<p>In response to Environment and Climate Change Canada (ECCC) concerns, Trans Mountain said that it would consolidate the terms “species at risk”, “listed species”, and “species of concern” into the term “species at risk” in a revised version of the WMT EPP. The revised WMT EPP (Reference ii) still refers to “listed species” and “species of concern” so it is not clear how Trans Mountain has consolidated those terms. The glossary does not include a listing for “species at risk” that provides a consolidated definition.</p>	<p>Update the WMT EPP to consolidate the terms “species at risk”, “listed species” and “species of special concern” as committed to in response to NEB IR No. 25.14.</p>
7	<p>i) Trans Mountain’s Response to IR 25.14 dated 13 July 2017, (A84930-2)</p> <p>Trans Mountain’s Revised WMT EPP Report, Volume 4, dated 17 August 2017, (A85541-4)</p>	<p>In response to ECCC concerns about inclusion of potential effects to wildlife as a result of a marine spill, Trans Mountain said that it would update the WMT EPP to include the following: “‘This assessment will: investigate the effects to the shoreline, sediment, water and wildlife in detail; provide comparisons of concentrations of parameters of concern with applicable guideline concentrations; and provide recommendations for remedial activities, if warranted.”</p> <p>The updated WMT EPP (Reference ii), PDF 59 of 123) does not include reference to the potential effects to wildlife as a result of a marine spill.</p>	<p>Update the WMT EPP to include the additional wording included in the response to IR No. 25.14 related to potential effect to wildlife as a result of a marine spill.</p>

8	<p>i) Trans Mountain's Responses to IR No. 34 for Conditions 72, 78 and 81 (EPPs), Attachment 1, dated 13 July 2017 (A85143-2)</p> <p>ii) Trans Mountain's Revised WMT EPP Report, Volume 10, Compliance Management Plan, dated 17 August 2017 (A85541-10)</p>	<p>In its response to IR No. 34.12 (PDF pg10-12 of 12), Trans Mountain committed to include additional wording to reflect the roles of Trans Mountain's Project Directors, Project Managers and Environmental Manager when taking decisions and to document the rationale behind those decisions around certain environmental measures to be implemented or not, including those decisions around the re-commencement of construction after a work shutdown due to environmental or ground conditions.</p>	<p>Update the WMT EPP to include the additional wording and confirmations included in the response to IR No. 34.12 related to the role and responsibilities of the Project Directors, Project Managers and Environmental Manager on matters relating to environmental change management and work shutdown.</p>
9	<p>i) Trans Mountain's Responses to IR No. 55 for Condition 88 (Organizational Structure), dated 28 August 2017 (A85683)</p> <p>ii) Trans Mountain's Revised WMT EPP Report, Volume 10, Compliance Management Plan, dated 17 August 2017 (A85541-10)</p>	<p>In the Revised WMT EPP, Trans Mountain's organizational chart within its Compliance Management Plan Volume changed and does not reflect the submission made pursuant to Condition 88 on organization structure for the construction phase. It was unclear which role was responsible for the engagement and communications that was committed to be undertaken by Trans Mountain on various socio-economic matters.</p> <p>In its response, Trans Mountain clarified that Stakeholder Engagement and Communications (SE&C) will report to the Vice President, External Relations.</p>	<p>Updated the WMT EPP to include the new organizational chart included in the response to IR No. 55.</p>