



FRIENDS OF ECOLOGICAL RESERVES
BOX 8477, VICTORIA, B.C. V8W 3S1
CANADA

National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8
ATTN: Sheri Young, Secretary

Dear Ms. Young,

RE: Notice of Motion by the Province of British Columbia submitted December 5, 2014 OH -001-2014 Trans Mountain Pipeline ULC ("Trans Mountain") Trans Mountain Expansion Project (the "Project") File Number OF-Fac-Oil-T260-2013-03 02

As an Intervenor in the above mentioned application, the Board of Friends of Ecological Reserve's (Board of FER) provides the following comments in support for BC's Motion submitted by the Province of British Columbia on December 5, 2014.

Please be advised that the Board of FER supports the order sought in the Province of British Columbia's Notice of Motion dated December 5, 2014:

- a. An order that, by a fixed date, Trans Mountain file the information, identified herein, that was redacted from the Emergency Management Program documents filed on October 17, 2014;
- b. An order that Trans Mountain file the Oil Spill Response Plan of Western Canada Marine Response Corporation, by a fixed date;
- c. An order that, by a fixed date, Trans Mountain file responses to the outstanding items in Information Request No. 1 of the Province of British Columbia, as committed to in its response to the Notice of Motion of the Province of British Columbia dated July 4, 2014;
- e. Such other relief as the Board may consider appropriate in the circumstances.

The Board of FER supports the BC Government Order of Motion for the following reasons:

There are 17 Ecological Reserves along the tanker route with significant ecological values that are potentially impacted by an oil spill. Ecological Reserves (ERs) are managed by BC Parks and have the highest protection in the BC Parks System. For the BC government in general and in the case of ERs in particular we believe it is in the public interest to understand the state of preparedness and the role that KM together with the subsidiary company Western Canada Marine Response Corporation (WCMRC) intend to perform and what their emergency spill plan(s) looks like. We believe that organizations like FER and the ER wardens should be consulted on emergency planning with regard to oil spills and ERs. Silence or a lack of disclosure implies a lack of preparedness to respond in a timely and effective manner. As has been experienced in the past in BC, the public care deeply about their local environment. Whether First Nations or local residents, we share a common future and it is part of our west coast identity as well as how many draw their livelihood.

When the Nestucca oil spill occurred in Gray's Harbour Washington it was the residents of Tofino and Ucluelet together with other volunteers who did the oil removal from Long Beach. The Board of FER believes when there is an oil spill along the tanker route it will be the residents of Mayne Island, Galiano Island, Pender Island, Saltspring Island, Saanich Peninsula, Victoria, Metchosin, Sooke, Port Renfrew, Ucluelet and Tofino and the many First Nations whose traditional lands border the tanker route who will suffer the impacts and who will desperately want to restore the marine ecosystems to a semblance of their former productivity. It is uncertain for example that the three days provided in the WCMRC handbook for response to a spill at Race Rocks is adequate and should be accepted. (Source <http://wcmrc.com/wp-content/uploads/2013/06/WCMRC-Information-Handbook-2012.pdf>) Without disclosure of the emergency spill plan the knowledge of how to augment a recovery is not possible.

FER does not accept the statements that “*emergency management plans are proprietary and of a sensitive nature and due to security concerns are not publicly available nor will they be made available.*” Nor can we accept the approach advocated by Trans Mountain (TM) that TM can dictate who is allowed to see the level of preparedness and even then only if those allowed by TM sign confidentiality agreements.

There is also a serious disconnect between what WCMRC professes to be as a Corporation and as stated in their 2012 handbook (link above).

We (Western Canada Marine Response Corporation) value:

- 1. Open and honest communication that fosters a climate of trust.*
- 2. Integrity in all our business practices*
- 3. Being a steward of the environment*
- 4. Success through competency, creativity and teamwork*
- 5. Celebrating individual and team successes.*

To have these good values announced as the corporate culture does mean a great deal with regard to social license. There is a serious level of duplicity by TM when they seek to deny access through the NEB process to emergency plans on how a spill may be managed. To keep this from the government of BC who represent the citizens shows these as hollow pledges to the public and undermines public trust including that of Board of FER.

On the December 11th TM made their intentions known with regard to information when they asked NEB to dismiss the BC motion seeking disclosure. The BC government in our opinion is correctly following a course of due diligence with regard to understanding risk and liabilities for all British Columbians. We trust that the NEB will be able to support the BC government's request and force disclosure. We believe this is needed so all intervenors as well the general public understand what level of preparedness now exists, what will happen when there is an oil spill. This can only occur if there is a thorough review of adequacy in an open and transparent manner within the NEB process.

In the filing of Dec. 11 by Trans Mountain [B296-1 - Response to Province of British Columbia Notice of Motion dated December 5, 2014 - A4F9H5](#) we see the following: “*Numerous other intervenors, as well as the Board (NEB), submitted IRs regarding various aspects of Trans Mountain's existing and future emergency management and emergency response plans for the land and marine aspects of the*

Project. In Intervenor IR round 1 Trans Mountain responded to over 1000 IR's regarding this issue.”

The Board of FER was one of those Intervenors who did indeed submit IR's in round one on that subject. See Trans Mountain Response to Board of Friends of Ecological Reserves Round 1 Intervenor IR Motion (<https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/Open/2487006>)

For instance we submitted the following IRs and two examples are repeated below with TM answers to illustrate why we support for the BC government motion.

The Board FERs Information Request (#14) sought information on emergency planning and the TM role. Our IR stated “What does KM plan for euthanizing and disposal of oiled marine animals? Removal of contaminated birds from Ecological Reserves may be needed. We are concerned that if they remain in the marine ecosystem they will continue to pass their toxicity through the food web. These contaminated animals will need to be removed and we are unsure of training and resources for this. We are concerned with public safety around possible contact with toxic contaminated wildlife”.

Trans Mountain replied “*The Responsible Party (RP) will work through the Incident Command System (ICS) to manage an oil spill; this includes procurement of wildlife rehabilitation organizations through the Logistics Section and demobilization of those resources through the Demobilization Unit. Within the ICS, wildlife rehabilitation efforts are organized under the Wildlife Branch Director; those activities are permitted and supervised by the resource trustee agencies. It is common practice worldwide to remove oiled wildlife mortalities from the environment*”.

When Trans Mountain was challenged on the adequacy of this answer TM responded with the boiler plate answer we understand was used for many other the intervenor’s as well: “*The requested information has been provided and Trans Mountain’s response is full and adequate. The response provides the Board with all necessary information pertaining to this matter. There is no further response required and supplementing the original response will not serve any purpose. Trans Mountain notes that if the Intervenor disagrees with the information contained in the response, it may contest the information through evidence or final argument.*”

Our second example of the TM response to emergency planning is from IR (#15). We asked, “What are the plans for public education to avoid hazard to human health? We are concerned that information regarding chemical make-up of products transported at sea is not known to the public and that there will be insufficient time and resources on hand to address a worst case toxic spill.”

“Information about the products that are shipped on Trans Mountain Pipeline is publicly available and can be found as per the response to City Burnaby IR No.1.25.05b. Section 5.7 of Volume 8 discusses a hypothetical oil spill scenario in the marine environment. Included in this section is an analysis and summary of effects on marine shoreline habitats, marine birds, marine fish and marine mammals. Please refer to Section 8.8.2 of Volume 5B of the Application for a summary of the anticipated human health effects assessment resulting from spills at Burnaby or Westridge Terminals. A detailed Human Health Risk Assessment (HHRA) will be completed and submitted to the NEB on June 16, 2014 to corroborate these conclusions and inform mitigation and emergency response plans. Also refer to Section 6.3.2 of Volume 7 which highlights the HHRA completed for past incidents of oil spills.”

This response effectively said to us that it was someone else’s responsibility and not theirs. When TM was challenged on the inadequacy of this answer, they responded with the same generic boiler-plate

answer often used for many of the Intervenors.

The requested information has been provided and Trans Mountain's response is full and adequate. The response provides the Board with all necessary information pertaining to this matter. There is no further response required and supplementing the original response will not serve any purpose. Trans Mountain notes that if the Intervenor disagrees with the information contained in the response, it may contest the information through evidence or final argument."

We have interpreted the responses to our questions on what will TM do about emergency oil spills to mean that there will be no TM resources made available and in the case of toxic wildlife that the Ministry of Environment will need to deal with this problem under the Wildlife Act. We do not support this cost if transferred to BC. Similarly on public safety and education TM is prepared to do nothing so it will transfer costs to emergency responders and local governments.

The Board of Friends of Ecological Reserves sought and received Intervenors standing. We understood this would be a transparent and open process. We have used volunteer time without financial compensation, to ensure that there would be minimal risk of oil spills contaminating the 17 Marine Ecological Reserves of Southern Vancouver Island and an emergency and restoration plan in place prior to project approval was publically transparent and understood. We look to the NEB to provide openness and transparency and to making a ruling to support the government motion and make spill plan available to all concerned intervenors.

In the months of the past year, we have witnessed refusals by Trans Mountain to provide information in a transparent manner but to rather obscure or withhold information. Intervenors like Robyn Allen are to be commended in trying to ensure public accountability of TM and challenge the NEB to be even handed and fulfill its mandate. We are perplexed by the continual efforts to withhold information from BC citizens through non-cooperation with the Province of British Columbia who are on paper a supposed partner.

The BC government has the ability to require an independent Environmental Assessment should it be unable to obtain the information through the NEB process so they can assess whether this project is in the BC's public interest. The Board of FER believes that BC government is concerned about its role and the role of Kinder Morgan/Trans Mountain in oil spill response and the extent to which it will be required to pick up oil spill liability. It seems reasonable for the Province of BC to conduct its own Environmental Assessment if the NEB process is incapable of supporting a call for this information from the proponent. This information is needed to assess the liability and risk and the question of whether or not the public interest of BC citizens is being served by this project.

In conclusion:

The Board of the Friends of Ecological Reserves fully supports the Province of British Columbia's Notice of Motion and requests an order that :

1. Requires Trans Mountain to file on or before January 12, 2015, the information that was redacted from the Emergency Management program documents filed on October 17, 2014.
2. Trans Mountain file, on or before January 12, 2015, the Oil Spill Response Plan of WCMRC and any other outstanding WCMRC information:

3. The Deadline for round 2 Information Requests shall be extended by at least three weeks .We must have a reasonable opportunity to review and consider Trans Mountains EMP documents, WCMRC's oil spill response plan, as well as the other information requested in order to develop information requests relating to these documents.
4. Such relief as the Board deems appropriate in these circumstances

Respectfully yours and on behalf of the Board of the Friends of Ecological Reserves.



Mike Fenger
RP Forester
President
Friends of Ecological Reserves



Garry Fletcher
Board member

Cc: Marilyn Lambert (Board member)