

Cameron, Tara D ENV:EX

From: Anderson, Ian <Ian_Anderson@kindermorgan.com>
Sent: Tuesday, March 7, 2017 10:22 AM
To: Mihlar, Fazil ENV:EX
Cc: Zaseybida, Nathan; Rinne, Norm; Cameron, Tara D ENV:EX
Subject: Re: BC Condition 5 Agreement

Nathan is at available at your convenience.

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: Mihlar, Fazil ENV:EX
Sent: Tuesday, March 7, 2017 11:11 AM
To: Anderson, Ian
Cc: Zaseybida, Nathan; Rinne, Norm; Cameron, Tara D ENV:EX
Subject: RE: BC Condition 5 Agreement

[This email message was received from the Internet and came from outside of Kinder Morgan]

Hi Ian: I want to set up a call between our lawyers and yours to get some clarification and work through some of the proposed language changes. Ideally, I would like a 60-90 minute call set up for either Thursday or Friday. I have copied Tara so that she can get in touch with your office and work on the logistics. Thx ... Fazil

From: Anderson, Ian [mailto:Ian_Anderson@kindermorgan.com]
Sent: Monday, March 6, 2017 3:04 PM
To: Mihlar, Fazil ENV:EX
Cc: Zaseybida, Nathan; Rinne, Norm
Subject: BC Condition 5 Agreement

Fazil, here are our clean and redline versions of the agreement. I suggest that once you review we scheduled a meeting to discuss. I also note that this is still undergoing some internal review here at KM.

Ian

Cameron, Tara D ENV:EX

From: Clark, Kristin <Kristin_Clark@kindermorgan.com>
Sent: Tuesday, March 7, 2017 10:26 AM
To: Cameron, Tara D ENV:EX
Subject: BC Condition 5 Agreement - Call Between Lawyers

Hi Tara,

I can coordinate KM's schedules for this call. Please give me a call at your convenience and we can set up a time (403-514-6565).

Thanks!

Kristin Clark | Paralegal
Kinder Morgan Canada | 2700, 300 – 5th Avenue SW | Calgary, AB, T2P 5J2
T: 403.514.6565 | E: kristin_clark@kindermorgan.com

CORE MESSAGING

Last updated: June 2017

Ministry of Environment

FIVE CONDITIONS FOR HEAVY OIL PIPELINES

- In July 2012, our government released a heavy oil policy paper outlining five conditions that must be met for B.C. to consider any heavy oil pipelines.
- While inter-provincial pipelines are up to the federal government to ultimately approve – our five requirements look out for B.C.’s interests and ensure there is a balance between responsible economic development and environmental protection.
- Kinder Morgan has met the five conditions for the Trans-Mountain Expansion Project as follows:
 - Condition 1 – The Trudeau government has approved the project, subject to the 157 conditions recommended by the National Energy Board. The Province has also issued an EA certificate which includes 37 additional legally-binding conditions.
 - Condition 2 – The federal government’s Oceans Protection Plan is a world-leading marine safety system with new spill prevention and response measures. The plan includes upgrades to Coast Guard facilities along B.C.’s coast, two multi-purpose tugs and a 24-7 emergency operations centre in Port Hardy.

- Condition 3 – B.C. has passed legislation which enables a world-leading provincial spill preparedness and response regime. Regulations will be introduced this year and over the coming two years to ensure a world-leading system is up and running by 2019.
- Condition 4 – Kinder Morgan has signed 41 mutual benefit agreements with First Nations worth more than \$350 million and provided \$13 million in capacity funding to assist First Nations in carrying out their due diligence. The Trudeau government has also made substantial progress on consultation and accommodation, including a First Nations monitoring and advisory committee with a \$64 million funding envelope.
- Condition 5 – Kinder Morgan will pay the Province between \$25 million and \$50 million annually for 20 years with revenues dedicated to environmental protection initiatives. Other economic benefits include:
 - 75,110 person-years of employment for B.C. throughout construction and operation.
 - \$3.8 billion in GDP to B.C. in construction and \$15.3 billion (over 20 years) during operation for a total of \$19.1 billion.
 - Estimated \$2.2 billion in provincial tax revenue, including construction and operation benefits.
 - Estimated \$512 million in property taxes to municipalities in B.C. over 20 years of operation.

- The five conditions are:
 - Successful completion of the environmental review process.
 - World-leading marine oil spill response, prevention and recovery systems for B.C.'s coastline and ocean to manage and mitigate the risks and costs of heavy oil pipelines and shipments.
 - World-leading practices for land oil spill prevention, response and recovery systems to manage and mitigate the risks and costs of heavy oil pipelines.
 - Legal requirements regarding Aboriginal and treaty rights are addressed, and First Nations are provided with the opportunities, information and resources necessary to participate in and benefit from a heavy-oil project.
 - British Columbia receives a fair share of the fiscal and economic benefits of a proposed heavy oil project that reflects the level, degree and nature of the risk borne by the province, the environment and taxpayers.

CORE MESSAGING

Last updated: June 2017

Ministry of Environment

MARINE SHIP-SOURCE SPILLS AND TANKER TRAFFIC

- Our government is committed to protecting B.C.'s coast from marine spills and, while this is primarily federal jurisdiction, we must ensure the protection of our coastline.
- Tankers have been delivering and exporting petroleum and refined products in the Lower Mainland for 100 years.
- In the event of a significant spill, the ministry's highly trained response professionals would immediately begin implementing the province's spill response plans.
- The ministry response would be integrated with the Responsible Party and participating federal agencies, local governments, First Nations and other stakeholders. The Canadian Coast Guard is the lead federal agency for ship-source oil spills in marine waters.
- If an oil spill occurs, it's important to know that in all cases, the spiller is responsible for clean-up and monitoring. The role of provincial and federal agencies is to oversee the response and augment or takeover the response as necessary.
- B.C. welcomes the federal government's recently announced Oceans Protection Plan and acknowledges the investment and assets that will be deployed to protect our coast.

- This includes upgrading Coast Guard facilities right up the coast and ensuring B.C. has two rescue tugs – one on the south coast of Vancouver Island and likely one on the north coast – to ensure a world-leading response capacity for current levels of marine traffic.
- We look forward to continuing to work with our federal partners on the details of the plan.
- In spring 2016, B.C. passed legislation to enable the creation of a world-leading provincial spill regime; although the regime is focussed on the land, some of the new requirements may also apply to spills into or affecting the marine environment. Examples may include: spill reporting, restoration, notification, and geographic response plans.
- We will continue working with Transport Canada to ensure B.C. interests are met on the marine safety front and that public safety and protection of the environment remain paramount.

CORE MESSAGING

Last updated: June 2017

Ministry of Environment

PROVINCIAL SPILL REGIME

- In spring 2016, B.C. passed legislation to enable the creation of a world-leading spills regime. The key elements of this legislation will ensure an effective response to any spill of any hazardous substance, from any source.
- New requirements build on policies outlined in the ministry's three intentions papers on spills and take into account approximately four years of engagement with industry, First Nations, local governments and other key stakeholders.
- The legislation passed in spring 2016:
 - Enables the creation of new requirements for spill preparedness, response and recovery.
 - Creates new offences and penalties.
 - Enables the certification of an industry funded and industry led response organization.
 - Increases transparency, participation and accountability.
- Draft regulations are related to:
 - Defining regulated persons
 - Spill contingency plans
 - Drills and exercises
 - Record-keeping for spill preparedness and response
 - Spill reporting
 - Spill cost recovery
 - Recovery of areas affected by the spill

- The Province is also supporting the spills regime through \$2.5 million in funding this fiscal year.
- This includes new ministry staff to help implement the regime, including four new Environmental Emergency Response Officers who started this April, along with new vehicles and spill response equipment.
- As part of the new regime the Province will ensure increased participation by First Nations in spill preparedness and response. This could include: training, a geographic response plan for Coastal First Nations and a First Nations Advisory Council on spills and environmental emergencies.
- The Province has been working with several industry sectors to enable the creation of an industry funded and industry led organization that will improve spill preparedness and coordination in BC. This Preparedness and Coordination Organization (PCO) is still in the process of forming.
- The provincial regime is intended to address all types of spills that cause pollution or threaten public safety regardless of their source, with pipelines being just one area of focus.
- Over the coming years, the Province will introduce additional regulations to ensure B.C.'s spill response regime continues to be world-leading.



Oceans Protection Plan and Federal Marine Conservation Targets

Issue:

- Federal interest in ocean management and marine planning in BC.

Background:

- Since coming into power in 2015, the federal government has demonstrated a renewed interest in oceans. Reflected in the Liberal party platform, Minister mandate letters, and Budgets 2016 and 2017, numerous efforts have been described to better protect Canadian waters. Two such initiatives are the Oceans Protection Plan (OPP) and the federal Marine Conservation Targets.

Oceans Protection Plan

- The OPP will provide \$1.5 billion in funding over five years, aimed at updating and strengthening marine safety and spill prevention and response along Canada's coasts; coastal planning; restoration; monitoring; and science.
- Specific to the west coast are initiatives aimed at increasing First Nations involvement in marine safety, (including search and rescue, environmental response, and incident command), and marine response measures such as increasing towing capacity and adding new lifeboat stations.
- Climate Leadership Deputy Minister Fazil Mihlar and the Ministry of Natural Gas Development's Oil and Strategic Initiatives Division (OSID) have been responsible for collaborating with the Federal Government on the prioritization and implementation of OPP initiatives, where Transport Canada and the Canadian Coast Guard have been the federal co-leads.
- BC has proposed a governance structure for coordination between federal authorities and the Province on implementation of the OPP which is currently under consideration by the Federal Government.
- The federal government has yet to make any announcements on funding allocation to regions or specific projects. However, BC expects the largest share of the \$1.5 billion to be directed to the West Coast, approximately \$580 million.

Marine Conservation Targets

- Canada has committed to protecting 5% of marine and coastal areas by 2017 and 10% by 2020. These percentage goals are referred to as the federal Marine Conservation Targets (MCTs), and Fisheries and Oceans Canada (DFO) is the lead federal agency.
- Protecting at least 10% of Canada's marine and coastal areas is a part of Target 1, the first of 19 2020 Biodiversity Targets for Canada. The other part of Target 1 – protecting at least 17% of terrestrial areas and inland water – is being tackled through the Pathway to Canada Target 1, a separate process led by Environment and Climate Change Canada (see 2020 Biodiversity Goals and Targets for Canada – Target 1 issues note under BC Parks).



- Currently approximately 0.9% of Canada's marine areas are in marine protected areas (MPAs), including federal, provincial, and territorial designations. In BC, approximately 3.7% of Canada's Pacific waters are included within MPAs.
- The MCT timelines are very ambitious, and BC has concerns with recent developments in advancing MPA development at a rapid pace. Provincial stakeholders, particularly from environmental nongovernmental organizations, as well as seafood and commercial fishing sectors, have expressed similar concerns, and the overall lack of clarity from DFO on how they plan to achieve the MCTs and what this will mean for British Columbians.
- BC, led by the Ministry of Forests, Lands and Natural Resource Operations (FLNRO), has already established numerous MPAs and other conservation measures along the Pacific Coast of Canada and is committed to working with Canada and First Nations to assess how these and other areas contribute to the MCTs.
- BC has requested, but Canada has not yet presented an overarching strategy for achieving the MCTs by 2020, nor specific implementation strategies for achieving targets in each bioregion.
- BC continues to have discussions with DFO from staff level to Deputy Minister level regarding the MCTs and OPP, including participation on the Oceans Task Group, a federal-provincial-territorial working group under the Canadian Council of Ministers on Fisheries and Aquaculture. The Province has sent a strong message that we want our interests to be considered in a government-to-government fashion, and want "no surprises."
- BC continues to ask DFO how they expect OPP funding to be allocated to support the MCT work, but these decisions have yet to be shared with the Province.

Decision Required:

- None at this time

FEDERAL OCEANS PROTECTION PLAN

- B.C. welcomes the federal government's Oceans Protection Plan and acknowledges the investment and assets that will be deployed to protect our coast.
- This includes upgrading Coast Guard facilities right up the coast and ensuring B.C. has two rescue tugs to ensure a world-leading response capacity for current levels of marine traffic.
- We also recognize the importance of training and capacity building for First Nations so they can be our first responders.
- The Oceans Protection Plan satisfies condition two of our five conditions - a world-leading marine oil spill response, prevention and recovery system for B.C.'s coastline.
- We look forward to continuing to work with our federal partners on the details of the plan.

Background:

- On Nov.7, 2016, the federal government released their Oceans Protection Plan (OPP) which outlined four priority areas:
 - Creating a world-leading marine safety system that improves responsible shipping and protects Canada's waters, including new preventive and response measures;
 - Restoring and protecting the marine ecosystems and habitats, using new tools and research, as well as taking measures to address abandoned boats and wrecks;
 - Strengthening partnerships and launching co-management practices with Indigenous communities, including building local emergency response capacity; and,
 - Investing in oil spill cleanup research and methods to ensure that decisions taken in emergencies are evidence based.

- As part of the federal plan, B.C. will also see enhanced resources for the Coast Guard along the entire coast including:
 - New rescue stations
 - A dedicated Primary Environmental Response Team near Port Hardy to ensure quicker response times
 - A 24/7 emergency operations centre
 - Increased tug capacity (two tugs for B.C. – one on the south coast of Vancouver Island and one likely on the North Coast)
 - New radar and navigation systems to allow for proactively managing vessel routing.
- The Coast Guard will also form new Indigenous Community Response Teams in B.C., which will offer formal training for search and rescue, environmental response and incident command.
- The OPP will also strengthen the polluter-pay principle by amending the Canadian Ship-source Oil Pollution Fund to ensure adequate industry-funded compensation is available for those affected by oil spills and set tougher requirements on industry to provide quicker action for any spills from a ship. In addition, the federal government has announced, as part of the OPP, to lift the existing limit of the Ship-Source Oil Pollution Fund to ensure that unlimited compensation is available to those affected by a spill.
- The OPP will include over \$1.5 billion in funding over five years, starting in 2017-18.
- B.C. has previously called on the federal government for several years to strengthen regulation, coordination and oversight of the federal marine spill response and preparedness regime.
- B.C. also invested in research and analysis to review response systems in other jurisdictions and shared that with the federal government.

SPILL RESPONSE PROGRESS

- B.C. is building a world-leading provincial spill regime together with partners in industry, First Nations, local communities as well as other federal and provincial agencies.
- In spring 2016, B.C. passed legislation to ensure effective preparedness, response and recovery measures are in place for hazardous substance spills.
- The legislation:
 - Establishes new requirements for spill preparedness, response and recovery.
 - Creates new offences and penalties.
 - Increases transparency, participation and accountability.
- The initial set of regulations will set requirements for:
 - Defining regulated persons
 - Spill contingency plans
 - Drills and exercises
 - Record-keeping for spill preparedness and response
 - Spill reporting
 - Spill cost recovery
 - Recovery of areas affected by the spill
 - Spill reporting
 - Spill cost recovery

- On the marine front, we welcome the measures the federal government has taken in regards to tanker safety and marine spill preparedness and response as part of their Oceans Protection Plan.
- The provincial spill regime will also include requirements that complement the federal marine spill regime.

Background:

- In May 2016, B.C. passed legislation (amendments to the Environmental Management Act) that would establish a world-leading provincial spill regime.
- The amendments:
 - Create a new category of regulated persons
 - Create new spill response and restoration requirements
 - Enable the certification of an industry funded and industry led response organization
 - Enable development of area-based and geographic response plans
 - Increase transparency, participation and accountability through advisory committees and Minister reports to the Legislature
 - Enable oversight to ensure fairness
 - Authorize the collection of hazardous substance information
 - Provide statutory immunity for government
 - Create new offences and penalties – ranging from \$300,00 to \$400,000 and up to 6 months in jail
- The first three regulations will set requirements for:
 - Defining regulated persons - anyone transporting liquid petroleum products of any volume by pipeline and 10,000 litres or more by rail or highway.
 - Spill contingency plans – must be in place for regulated persons one year after regulations come into effect.
 - Drills and exercises – three different types conducted in 3-year cycles.
 - Record-keeping for spill preparedness and response
 - Spill reporting – creates escalating reporting system as info becomes available
 - Spill cost recovery
 - Recovery of areas affected by the spill – MoE Director will have authority to order a spiller to prepare and submit a recovery plan.
- These regulations were the subject of detailed engagement with First Nations, industry, local governments and other stakeholders. Additionally, an intentions paper was released in April 2016 for public consultation on the legislated requirements.
- Over the coming years, the Province will introduce additional regulations to ensure B.C.'s spill response regime continues to be world-leading.
- Some of these regulations could include:
 - Setting response times across the province for spills.

- Requiring risk bringers to share information about hazardous materials being transported.
 - Setting training requirements for those who respond to spills.
 - Detailed requirements for the creation of geographic response plans to protect sensitive areas of the province.
- The Province is in the process of working with several industry sectors to enable the creation of an industry funded and industry led Preparedness and Coordination Organization (PCO). The PCO mandate would be to provide coordination, information management, and communication management for regulated persons.
- In November 2012, the first land-based spills intentions paper was released. This paper was based on reviews done over several years on the increased movement of heavy oil and hazardous materials throughout B.C. The paper was the foundation for: an industry roundtable, industry/key stakeholder meetings with MoE staff and a spills symposium.
- A second, more focussed intentions paper was released for public consultation in April 2014 outlining recommendations developed through this process. Stakeholders consulted on these policy intentions include: First Nations, industry, local governments, business, emergency responders, and the federal government.
- On June 18, 2015 the federal Pipeline Safety Act received Royal Assent – the act complements B.C.’s polices, such as “polluter pays” and a larger role for First Nations and communities.

MARINE

- On Nov.7, 2016, the federal government released their \$1.5 billion Oceans Protection Plan which outlined four priority areas:
 - Creating a world-leading marine safety system that improves responsible shipping and protects Canada’s waters, including new preventive and response measures;
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 - Investing in oil spill cleanup research and methods to ensure that decisions taken in emergencies are evidence based.
- As part of the federal plan, B.C. will also see enhanced resources for the Coast Guard along the entire coast including new rescue stations, increased tug capacity (two tugs for B.C.) and new communications equipment.
- B.C. has previously called on the federal government for several years to strengthen regulation, coordination and oversight of the federal marine spill response and preparedness regime.
- B.C. contracted Nuka Research, an international expert in marine spill response and preparedness, to provide a comprehensive report on B.C.’s current marine spill capabilities.
- Nuka provided a 3 volume report, released in October 2013, which identified 11 key features for a world-leading regime. Nuka completed a follow-up technical report, in October 2015, compiling specific examples of world-leading statutes, regulations, and practices in neighboring jurisdictions. Both reports are available on the MOE website and helped inform the federal government’s plan.

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- The Province is in the process of working with several industry sectors to enable the creation of an industry funded and industry led Preparedness and Coordination Organization (PCO). The PCO mandate would be to provide coordination, information management, and communication management for regulated persons.
- In November 2012, the first land-based spills intentions paper was released. This paper was based on reviews done over several years on the increased movement of heavy oil and hazardous materials throughout B.C. The paper was the foundation for: an industry roundtable, industry/key stakeholder meetings with MoE staff and a spills symposium.
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Development and Implementation of the Land Based Spill Response Regime

Issue:

- High profile spill incidents have resulted in a lack of public trust in the ability of both industry and the government to appropriately prepare for and effectively respond to spills.

Background:

- Some 4,000 hazardous material spills are reported each year in BC. The Ministry of Environment - Environmental Emergency Program oversees the response to such spills to the environment.
- The ministry has identified patterns with respect to those who spill and the effectiveness of spill response. While many spillers are adequately prepared for the risk they bring, some sectors are not as mature in spill response capability.
- As gateway to the Pacific for Canada, increased economic activity has increased the transport and storage of hazardous materials through BC. The potential for those materials to spill into the environment has also increased.
- In 2012, the Government introduced five conditions necessary to be met before BC would support the development of any heavy oil pipeline project. Condition 3 is: World-leading practices for land oil spill prevention, response and recovery system to manage and mitigate the risks and costs of heavy oil pipelines.
- In 2015, the government committed to having a land-based spill regime in place by spring 2017.
- The Spill Response Regime Project is intended to improve spill preparedness and response in BC. It is a multi-year project that includes the following elements:
 - Legislation and Regulations to:
 - ensure those that bring risk are prepared to respond to land based spills (preparedness).
 - collect meaningful information about spills.
 - provide tools to ensure the environment is cleaned up and restored in the event of damage from spills.
 - Information Management and Technology Strategy to develop systems to:
 - collect and enable analysis of spill information.
 - allow quicker and integrated decision-making.
 - coordinate assets and resources.
 - provide rapid, geo-located incident notification to responders and



stakeholders.

- Expansion of the Environmental Emergency Program to improve:
 - oversight of the management of spills to the environment including environmental restoration.
 - proactive provision of information about spills to the public.
 - recovery of government expenditures from spillers (spill cost recovery).
- A mechanism to fund the expanded environmental emergencies program.
- Explore opportunities to support participation by First Nations and communities in spill planning and response.

Status of Legislation and Regulations:

- Amendments to EMA (*Environmental Management Amendment Act*) passed in May 2016 are not in force. These amendments:
 - enable requirements for land based industries to be prepared for spills.
 - enable requirements for spillers to report and clean up spills including environmental restoration.
 - allow government immunity from liability for spill response actions.
 - improve recovery for the cost of a spill.
 - enable a Preparedness and Response Organization (PRO) to receive a certificate from the Minister – see background note.

s.12,s.13



s.13

Key Stakeholders include:

- Canadian Association of Petroleum Producers
- Canadian Energy Pipeline Association
- Canadian Fuels Association
- BC Trucking Association
- Railway Association of Canada
- Responsible Distribution Canada
- Chemical Industry Association of Canada
- First Nations
- Local Governments

s.12,s.13

Page 23

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s.12

Page 24

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s.12;s.13