



VARIANCE OF INSPECTION OFFICER ORDER NO. JJD-001-2023

ORDER TO BE VARIED

As per section 69 (2) of the Canadian Energy Regulator Act (CER Act) [REDACTED], designated as a CER Inspection Officer under subsection 102(1) of the CER Act is varying order JJD-001-2023, and superseding it with this order (VAR-001-JJD-001-2023).

IN THE MATTER OF THE CANADIAN ENERGY REGULATOR ACT,
AN ORDER UNDER SECTIONS 69 (2) and 109

NAME OF COMPANY/PERSON TO WHOM THIS ORDER IS DIRECTED

Trans Mountain Pipeline ULC (Trans Mountain) is a Company conducting work located near Abbotsford, BC.

On or about 25 October 2023 at 13:48 the undersigned Canada Energy Regulator Inspection Officer conducted a compliance verification activity (CV2324-266).

A verbal Order was made on 25 October 2023 at 16:20 by the undersigned Canada Energy Regulator Inspection Officer.

RELEVANT FACTS

I, [REDACTED], designated as a CER Inspection Officer under subsection 102(1) of the Canadian Energy Regulator Act (CER Act), believe the following are the relevant facts relating to the issuance of this Order:

1. The CER IO observed the following environmental non-compliances within Wetland Complex 1 boundary from approximate KP 1114.300 to 1115.100:
 - a. Cleared vegetation and damaged trees off Right of Way (RoW) and outside of temporary workspace at approximately KP 1114.929.
 - b. Damaged and downed amphibian exclusion fencing across multiple locations including dewatering hoses strung overtop and pulling fence into the wetland.
 - c. Approximately 200m of amphibian exclusion fencing strung outside of RoW boundary near surface water discharge point #6.
 - d. Spoil pile stored on edge of RoW at KP 1114.700 is trespassing off RoW into wetland.
 - e. Destroyed matting, downed signage, metal equipment components, food waste and rags scattered within surface water on RoW at approximate KP 1114.700. Potential hydrocarbon sheen was observed on water in this area.
 - f. Watercourse BC-728A1 has no conveyance across the RoW and is missing sediment fence at the base of the spoil pile on the upgradient side of the RoW.

- g. Watercourse BC-728A has a flume installed which is directing water discharge onto the travel lane of the RoW.
 - h. Multiple sections of rig mats are in need of maintenance to address issues including dirt and debris deposits as well as deep mud pressing up through the matting.
2. CER IO notes the following Safety related observations in this section of RoW:
- a. Danger tree noted above path to dewatering discharge point #6.
 - b. Ladders into excavations were observed. Trans Mountain and its contractors have participated in numerous discussions about the expectation for safe access into excavations which consists of stair access rather than ladder access where practicable.
 - c. Generally poor housekeeping throughout the site. Unkempt power cords, hoses, rope and other construction materials posed tripping hazards to workers.
 - d. Barriers and Guardrails:
 - i. Bore bay excavation near KP 1115.100 is filled with water, slopes appear to be unstable and sloughing in, and rope along the leading edge has been used in place of a barrier or guardrail.
 - ii. Safety exclusion zone was painted in orange on the ground along edge of the sheet pile trench, however, contractor trucks were parked and stationary equipment including light towers were staged within this area. In addition, workers were required to enter this area to access dewatering hoses, hydraulic motors, and generators for dewatering.
 - e. Barriers such as rope and T posts or candle sticks may be used to keep workers and others two meters away from the hazard, but if they are located at the fall hazard (as was the case on several areas inspected) they need to meet the criteria for guardrails.
3. CER IO notes multiple non-compliances have been identified by Trans Mountain in its Corrective Action Log (CAL) with overdue deadlines within this section of RoW.

PROVISIONS OF ACT OR REGULATIONS THAT ARE ALLEGED TO BE CONTRAVENED - AND ARE CONTINUING - OR ARE LIKELY TO BE CONTRAVENED

Provisions of the Act and/or Regulations that are alleged to have been contravened:

1. GENERAL DUTY – REASONABLE CARE

Pursuant to section 94 of the CER Act, the holder of a certificate or permit must take all reasonable care to ensure the safety and security of persons, the safety and security of regulated facilities and abandoned facilities and the protection of property and the environment.

2. CERTIFICATE OC-065

Condition 3: Environmental protection: Trans Mountain must implement or cause to be implemented, at a minimum, all of the policies, practices, programs, mitigation measures, recommendations, and procedures for the protection of the environment included or referred to

in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding.

MEASURES TO BE TAKEN

Based on the facts referenced herein, where the Inspection Officer has reasonable grounds to believe that there is or is likely to be a contravention of Parts 2 to 5 or section 335 of the CER Act, or for a purpose referred to in subsection 102(2) CER Act, the Inspection Officer may, by order, direct a person to

- a. stop doing something that is in contravention of Parts 2 to 5 or section 335 or cause it to be stopped;*
- b. take any measure that is necessary in order to comply with Parts 2 to 5 or section 335 or mitigate the effects of non-compliance;*
- c. stop doing something that may cause a hazard to the safety or security of persons, or damage to property or the environment or cause it to be stopped; or*
- d. take any measure that is necessary to prevent or mitigate the hazard to the safety or security of persons or damage to property or the environment.*

Trans Mountain is ORDERED pursuant to subsections 109(1) and 109(2) of the CER Act to:

- Take measures specified below under Specified Measures as per paragraphs (b) and (d) above
- Stop doing something as specified below under Specified Measures as per paragraphs (a) and (c) above
- Suspend work associated with a facility, including a regulated facility, abandoned facility or ground disturbance until the hazardous or detrimental situation has been remedied to the satisfaction of an Inspection Officer or until this order is stayed or rescinded.

SPECIFIED MEASURES

Specified measures:

1. Stop all work between KP 1114.300 to KP 1115.100 except to comply with Specified Measure 2 until the hazardous or detrimental situation has been remedied to the satisfaction of the Inspection Officer.
2. Correct and provide photographic evidence of all deficiencies and non-compliances identified above in addition to items listed in the CAL log for this section of RoW.
3. Conduct an investigation to determine the root cause of the large number of environmental non-compliances and deficiencies on this section of RoW. The scope of the investigation will include but not be limited to contractor oversight, as well as the overdue items listed in the CAL log which have not been corrected in a timely manner to control environmental hazards.



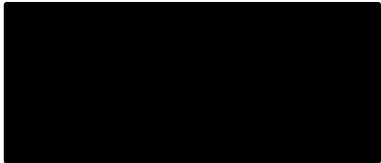
4. Submit to the CER a copy of the investigation report which will include but not be limited to an action plan for the implementation of the corrective and preventive actions identified in item 3.
5. Provide a written and signed report from a geotechnical engineer certifying that all excavations and shoring systems in place between KP 1114.300 to KP 1115.100 meet the legislative requirements and that the excavations are safe for workers to enter.
6. Erect guardrails and/or barriers as applicable with the Regulations and provide photographic evidence of completion. Ensure that barriers are not used in places such as immediately adjacent to excavations over 4 feet in depth where guardrails are required.
7. Assess whether safe access is being provided for workers accessing and egressing from the excavations such as those with straight wall sheet piles. When stairs are cut into a slope, ensure they are constructed to meet the Regulations. Provide the written assessment as well as photographic evidence of completion.
8. Trans Mountain shall provide the monitoring and mitigation measures implemented to ensure it is carrying out contractor oversight activities per the 'Health and Safety Management Plan TMEP' Document # 01-13283-GG-0000-HS-PLN-0001 R5 Appendix A.
9. By 10 November 2023, conduct an analysis of its oversight model, as outlined in 'Health and Safety Management Plan TMEP' Document # 01-13283-GG-0000-HS-PLN-0001 R5, section 7.0: TMEP Roles and Responsibilities and outline what actions are being taken to promote a positive safety culture and TM's commitment to "finishing strong".

EFFECTIVE DATE OF THE ORDER

This Inspection Officer Order takes effect on 28 October 2023 at the time of delivery of this Order to the Company to whom it is directed. Nothing in this Order shall be construed as reducing, increasing, or otherwise affecting what may be required of the Company to whom it is directed to comply with all applicable legislative or legal requirements.

COMPLIANCE WITH THIS INSPECTION OFFICER ORDER IS MANDATORY

Failure to comply with an Inspection Officer Order issued under section 109 of the CER Act is an offence under section 112 of the CER Act.

Inspection Officer	28 October 2023	
	Date	Name
		
	IO Designation Number	Signature
	210-517 10 Ave SW, Calgary AB T2R 0A8	

Please note that:

- 1. In compliance with the CER's Enforcement Policy, this Order will be posted on the CER's website.*
- 2. All submissions to the CER in response to the order are to be provided within the CER Operations Regulatory Compliance Application (ORCA) quoting the associated CVA #, Inspection Officer Order #, and any specific measure with which the submission is associated. The Company is requested to send a copy of any response provided in the OERS to the Inspection Officer via email.*