

February 14, 2024

Amy Keenan
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Sent via email: AKeenan@co.whatcom.wa.us

RE: SEPA2023-00090

Dear Ms. Keenan,

Thank you for the opportunity to comment on the MDNS (Mitigated Determination of Non-Significance) issued for two new meters for the Trans Mountain Pipeline (Puget Sound) spur that services the Phillips 66 and BP Cherry Point refineries.

The undersigned represent four organizations that work on environmental issues in Washington State. The undersigned organizations also opposed Canada's Trans Mountain Pipeline expansion project that will increase pipeline throughput of Canadian tar sands (aka oil sands or diluted bitumen or dilbit) crude oil and oil products by 590,000 barrels per day. Oil produced from tar sands is more carbon-intensive and toxic than oil produced from conventional crude, and spills pose an elevated risk to the environment and public safety.¹ The construction of Canada's Trans Mountain Pipeline expansion project is more than 98% complete,² is expected to be operational by April 2024, and operate at full capacity by the end of this year.³

Our comments on this project reflect our deep concern that the increase in the pipeline's capacity will have consequential impacts here in Washington that are unexamined through the regulatory process. Specifically, we are concerned that Trans Mountain and its U.S. customers may seek to segment capacity increases into a series of separate projects that individually evade careful review but that collectively increase the ability of U.S. refineries to transport, process, and ship crude or refined petroleum projects. While the impacts of the meters at issue here may appear minor, we

¹ 2018. Madelon L. Finkel. *The impact of oil sands on the environment and health.*

<https://doi.org/10.1016/j.coesh.2018.05.002>.

2011. A joint report by Natural Resources Defense Council, National Wildlife Federation, Pipeline Safety Trust, and Sierra Club. Tar Sands Pipelines Safety Risks. <https://www.nrdc.org/sites/default/files/tarsandssafetyrisks.pdf>.

² Trans Mountain. January 12, 2024. *Trans Mountain Receives Decision on Variance Application.*

<https://www.transmountain.com/news/2024/trans-mountain-receives-decision-on-variance-application>.

³ Reuters. January 24, 2024. *Canada's Trans Mountain pipeline expansion to start in April.* By Arathy Somasekhar and Georgina McCartney. <https://www.reuters.com/world/americas/canadas-trans-mountain-pipeline-start-up-second-quarter-2024-01-24/>.

believe that the County must ensure that they are not parts of a larger scheme that would have major impacts.

One reason for our concern is that the impacts of potential spills of the products that are transported through the Trans Mountain Pipeline are very serious. According to the U.S. Coast Guard:

Additionally, the evaporation of volatile components of the diluents in Canadian oil sands products results in potentially toxic and/or flammable VOCs in the atmosphere above the spill. The initial portion of an oil sand product response would emphasize minimizing public and responder hazards from light VOCs that would volatilize in the first several hours/days of the event.⁴

Canadian tar sands products have higher oil spill response and damage costs than spills of other oil products. The cleanup, remediation, and restoration costs for the 2010 tar sands crude oil spill into the Kalamazoo River from the pipeline known as Line 6B was \$1,208,000,000 or \$60,153 per barrel.⁵ According to the Department of Ecology:

It is also expected that the transboundary pipeline between Canada and the United States will significantly increase their capacity and expand their tank farm capability accordingly. Bitumen from Alberta, even once diluted, is uniquely difficult to remove after a spill, because of its properties. Alberta bitumen oils are potentially sinking oils, or some portion may sink after weathering, which renders ineffective conventional techniques to contain and remove oil from the water's surface. Potentially sinking oil poses a risk of contamination to sediments and their ecosystems, which include economically and culturally valuable shellfish and fisheries.⁶

The SEPA checklist states that the project includes “the installation of two new meter trains in order to increase process efficiency, reliability, maintainability.” Even on its own, installation of the meter could impact process efficiency and reliability that could in turn increase the potential throughput of the Trans Mountain Pipeline (Puget Sound) that delivers Alberta tar sands crude and other oil products to Washington State’s northern refineries, including the BP Cherry Point Refinery.

The SEPA checklist states that “[t]he intent of this project is not to increase the hydrocarbon handling capacity of the station.” The County cannot and should not just accept the proponent’s word on this key issue. Notably the promise contradicts BP’s commitment to receive additional Canadian oil products. According to counsel to BP Products North America Inc.:

⁴ May 29, 2014. US Coast Guard. Risk Assessment of Transporting Canadian Oil Sands Report to Congress. Page 18. [https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450819/2686269/C135%2D3%2D9_%2D_2014.05.29.Risk Assessment of Transporting Canadian Oil Sands %2D A4H9Q1.pdf?nodeid=2686391&vernum=-2](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450819/2686269/C135%2D3%2D9_%2D_2014.05.29.Risk%20Assessment%20of%20Transporting%20Canadian%20Oil%20Sands%20A4H9Q1.pdf?nodeid=2686391&vernum=-2).

⁵ UNITED STATES SECURITIES AND EXCHANGE COMMISSION. FORM 10-Q. September 30, 2014, Quarterly Report. Page 19. https://media.mlive.com/grpress/news_impact/other/Enbridge%20FORM%2010-Q.pdf.

⁶ Ecology. 2012. Final Cost-Benefit and Least Burdensome Alternative Analysis Chapter 173-182 WAC Oil Spill Contingency Plan. Page 8.

BP owns and operates the Cherry Point Refinery in Blaine, Washington, which processes approximately 250,000 barrels of crude oil per day. The Cherry Point Refinery is served by the TMPL [Trans Mountain Pipeline] system. BP is a shipper on the TMPL system and *has made significant, long-term commercial and financial commitments to the expanded TMPL system* in the form of an executed Firm Service Agreement (FSA) and an executed Transportation Services Agreement (TSA).⁷

The undersigned are concerned that this application could be a segment of a larger project that requires careful scrutiny. Such segmentation would be a clear violation of SEPA. WAC 197-11-060(3)(b) (“Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.”). It is the County’s obligation to ensure that the proponent does not circumvent careful regulatory review and adequate public engagement around a consequential project to expand throughput of the pipeline in a way that would increase production or transshipment of fossil fuels at the U.S. refineries.

The Trans Mountain Pipeline facility to be modified here operates as a key component of two Fossil Fuel Refineries and is physically integrated into both facilities. If the pipeline station is ever utilized in the process of offloading Fossil Fuels to be loaded onto another mode of shipment without processing through a Fossil Fuel Refinery, then it would therefore be a new component of a Fossil Fuel Transshipment Facility (terms defined under WCC 20.97.160). Thus, any permitted modification of the pipeline station is subject to the provisions of WCC 20.68.154, 22.05.126, 16.08.090 and other applicable statutes. As such, any applications for modification of the pipeline station must account for impacts to Maximum Atmospheric Distillation Capacity and/or Maximum Fossil Fuel Transshipment Capacity, if any, or else verifiably demonstrate the lack of change to capacity resulting from the project. Per WCC 22.05.126, the County is statutorily entitled to require the applicant (and/or the Fossil Fuel Refineries that utilize the Trans Mountain Pipeline to supply their crude oil feedstocks) to submit a supplemental checklist addressing any potential impacts on Maximum Atmospheric Crude Distillation Capacity or Maximum Transshipment Capacity with “confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (23)” and “an attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant and certified by a Notary Public.”

It appears from the SEPA materials that the County never requested Trans Mountain to explain how they calculate the maximum throughput capacity of the pipeline segment that serves Cherry Point, at what percent of that capacity the pipeline currently operates, which physical attributes constrain that capacity, and whether the current configuration of the meter station and downstream pipelines provides any constraint from meeting that maximum throughput capacity. Only through a clear

⁷ June 23, 2023. Letter from Dentons Canada LLP (counsel to BP Products North America Inc.) to Ramona Sladic, Secretary of the Commission – Canada Energy Regulator. <https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90465/92835/552980/4301738/4369664/4369671/4386765/C25098-2 BP Products North America Inc. - 2023-06-23 BP Products North America Inc. Response to CER Process Letter No. 1 - A8R1G4.pdf?nodeid=4386653&vernum=-2>.

understanding of the current and potential pipeline capacities into and out of the meter station, can the County determine whether “the maximum physical limit of a facility’s capacity for off-loading fossil fuels” may be increased as the County Code requires.

For the County to truly understand what “the maximum physical limit of a facility’s capacity for off-loading fossil fuels” is, the County should also request from Trans Mountain a schematic that shows pipeline inputs to the meter station, connections within the meter station, pipeline outputs from the meter station, who operates each, and how oil gets from the meter station to both refineries. The schematic should also show the maximum capacity of each, the current average delivery through each, the physical constraint that determines the maximum capacity for each, and the transfer point where product leaves Trans Mountain’s control to each refinery.

Accordingly, we urge Whatcom County to require the applicant to submit a revised SEPA checklist that addresses any potential increase in pipeline throughput as a result of the Trans Mountain Pipeline expansion project and BP’s “long-term commercial and financial commitments to the expanded TMPL system.” We further urge the County to hold the proponent to a greater degree of precision in its SEPA checklist. For example, in response to question 7, the proponent claims that it has no expansion claims “related” to this project, the application lacks specific information to verify or ensure that is the case. It may be true that there are no expansion plans associated with the meter station, but the County has to ensure that there are no expansion plans with respect to the pipeline or its throughput. Moreover, the County should add mitigating conditions to the MDNS to ensure that it has adequate information to hold the company to its promises in the future. Specifically, the County should require both historical throughput data at the metering stations as well as regular reporting going forward so that the County and the public can ensure that the project was not the proximate cause of or otherwise related to any expansion in fossil fuel throughput or capacity. Such information should be available to the public upon request.

Sincerely,

Lovel Pratt
Marine Protection and Policy Director
Friends of the San Juans

Keith Curl-Dove
Fossil Fuel Campaign Manager
Washington Conservation Action

Eddy Ury
Climate & Energy Policy Manager
RE Sources

Sven Biggs
Canadian Oil and Gas Program Director
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Cc: Mark Personius, Director, Whatcom County Planning & Development Services and SEPA Responsible Official
Tom Buroker, Director, Northwest Regional Office, Department of Ecology