



### Administrative Monetary Penalty Notice of Violations

**REFERENCE NUMBERS**

AMP-001-2025, AMP-002-2025, AMP-003-2025, and AMP-004-2025

**Information for Pipeline Company**

<b>Name:</b> Trans Mountain Pipeline ULC	<b>TOTAL PENALTY AMOUNT:</b> <b>\$ 196,000</b>  (from 4 violations)
<b>Contact:</b> Michael Davies	
<b>Title:</b> President and COO/Accountable Officer	<b>Date of Notice:</b>  November 7, 2025
<b>Address:</b> Suite 2700, 300 - 5th Avenue SW Calgary, AB T2P 5J2	<b>Regulatory Instrument #:</b> OC-065
<b>Telephone:</b>	
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On January 28, 29, 30 and 31, 2024,

#### Trans Mountain Pipeline ULC

was observed to be in violation of a Canada Energy Regulator regulatory requirement. These violations are subject to administrative monetary penalties, as outlined below.

**Section 1 – Details of the Violations**

**These violations were committed or continued from** January 28, 2024 (to) January 31, 2024

**Total Number of Days:** 4

**Location of Violations:** Trans Mountain Expansion Project (**TMEP**) Spread 6, Black Pines to Burnaby BC (4 locations at or near KPs 1087, 1113 and 1116)

<b>Short Form Description of the Violations</b> ( <i>Refer to Schedule 1 of the AMP Regulations</i> )  <b>For AMP-001-2025, AMP-002-2025, AMP-003-2025 and AMP-004-2025</b> Failure to comply with a condition of any certificate, licence, permit, authorization, leave or exemption that is granted under the Canadian Energy Regulator Act (CER Act)
<b>Act or Regulation/Section</b>  <b>For AMP-001-2025, AMP-002-2025, AMP-003-2025 and AMP-004-2025</b> <i>Administrative Monetary Penalties Regulations (Canadian Energy Regulator), ss. 2(3) (AMP Regulations)</i>
<input checked="" type="checkbox"/> Failure to comply with a term or condition of any certificate, licence, permit, leave or exemption that is granted under the Act (ss. 2(3) of the AMP Regulations)  Failure to comply with Certificate OC-065 - <u>Condition 3: Environmental protection</u> - 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.

## Section 2 – Relevant Facts

These facts apply to each of AMP-001-2025, AMP-002-2025, AMP-003-2025 and AMP-004-2025, except as otherwise indicated in the text.

### 1.0 Background and Context for the Notice of Violations

This Notice of Violations (**NOV**) addresses environmental non-compliances<sup>1</sup> observed during a field inspection CV2324-296 in January 2024, on Spread 6 of the Trans Mountain Expansion Project (the **Project**). The field inspection was initiated after a reported flooding-related incident (INC2024-005) and resulted in an Inspection Officer (**IO**) Order (**IOO**) DLB-001-2024 being issued.

This NOV explains how Trans Mountain failed to inspect, monitor and maintain environmental mitigations, at specific locations, during a weather event in January 2024, and did not implement procedures, as required under the Pipeline EPP, for the protection of the environment. The failures occurred during critical periods of elevated risk due to weather events where mitigation measures were overwhelmed and available contingency measures were not implemented. Trans Mountain redeployed all drainage, erosion and sediment control (**DESC**) crews to a single location resulting in insufficient resources to maintain environmental compliance. The absence of monitoring, maintenance and inspection at key sites and failure to follow procedures for the protection of the environment as per their Pipeline Environmental Protection Plan (**Pipeline EPP**) violated Condition 3 of Certificate OC-065.

The events of January 2024 were the second time in three months that IOs discovered multiple environmental non-compliances on Spread 6 of the Project. During an October 2023 field inspection CV2324-266, an IOO JJD-001-2023 was issued for similar environmental non-compliances. In October 2023, not having enough resources – or not using them in a way that maintained environmental compliance – was also an underlying issue, as summarized below:<sup>2</sup>

In October 2023, IOs found multiple environmental and safety non-compliances at a Wetland Complex site. Issues included problems with drainage, erosion and sediment control, soil handling, trespass, watercourse crossing mitigation, garbage and debris, housekeeping, danger tree, excavation access and egress, adherence to safety exclusion zones, and inadequate barriers (guardrails) at excavations. Several other non-compliances to the Pipeline EPP were identified and documented during that field inspection. A review of Trans Mountain's Corrective Action Log (CAL) showed several instances where corrective actions had been identified for deficiencies<sup>3</sup>, but they were overdue. An IOO was issued on 25 Oct 2023 requiring Trans Mountain to address the issues at the wetland complex site. Specified measure three of IOO JJD-001-2023 required Trans Mountain to investigate the root cause of the large number of environmental non-compliances and overdue deficiencies on this section of the right of way (**ROW**) (**Measure 3 Response**).<sup>4</sup>

The Measure 3 Response prepared by Trans Mountain found that in August 2023, there was an increase in Contractor and Trans Mountain resources to advance the project to mechanical completion. Over that same period, timely resolution of environmental deficiencies fell to below 80% resolved on time. Through October, there remained a significant number of overdue deficiencies on the CAL. Prior to the CER's inspection on 20 October 2023, 32 deficiencies were closed out, and Trans Mountain's Lead Environment Inspector (**EI**) advised Trans Mountain Leadership (Project Director, Project Manager, Construction Manager, and Trans Mountain Environment Manager for Lower Mainland) about the lack of attention to deficiency management (number of

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<sup>1</sup> For the purpose of this report, an "environmental non-compliance" is a non-compliance with policies, practices, programs, mitigation measures, recommendations, and procedures for the protection of the environment. While Trans Mountain may internally classify such conditions as "deficiencies," the CER interprets these as indicators of non-compliance when they result in failure to meet regulatory obligations.

<sup>3</sup> Trans Mountain's Environmental Deficiency Risk Management Framework defines three categories of deficiencies – low, moderate, and high – based on the level of environmental risk posed by the non-conformance with Project Environmental Reference Documents. These classifications were used to internally prioritize corrective actions, but they do not determine regulatory compliance, as noted in footnote 1, the CER assesses non-compliance based on whether such conditions result in a failure to meet environmental obligations.

deficiencies, overdue deficiencies, high risk deficiencies) and a larger focus on production. The email noted that there should be an increase in resources to action deficiencies noting there could be a compliance issue, including the possibility of a stop work order by the CER.<sup>5</sup>

The October inspection and follow-up showed that Trans Mountain was identifying, tracking, and aware of environmental deficiencies, but timely action was not taken to resolve those issues. One of the corrective actions arising from the Measure 3 Report was a memo from the Senior Director of Pipeline Execution to all Construction Management and Inspection Personnel. This memo stated the Measure 3 Report stated “there were systemic issues related to implementation and maintenance of environmental mitigation measures; accountability of all levels of supervision and management regarding environmental protection ... TM leadership reiterates its commitment to ensuring that environmental compliance and safety along with the rest of the Big 6 (Safety, Environment, Damage Prevention, Quality, Regulatory & Stakeholder Relationships) are prioritized over cost and schedule and requires the Construction Management Teams commitment to the same.”<sup>6</sup>

Both the January 2024 and October 2023 field inspections showed Trans Mountain Senior Leadership<sup>7</sup> (ie Project Director(s)) were made aware of environmental issues on Spread 6 and failed to prioritize environmental compliance when the Project was advancing rapidly to mechanical completion. On both occasions, CER IOs issued IOOs to have non-compliances corrected.<sup>8</sup>

This NOV outlines Trans Mountain’s repeated failure to prioritize known environmental deficiencies raised by their own Environmental Inspectors. It also underscores a consistent pattern of not allocating sufficient resources, or failing to effectively use available resources, to maintain environmental compliance, between 28-31 January 2024.

## 2.0 Summary of the Violations

The NOV describes violations of Certificate OC-065 – Condition 3 between Sunday January 28 and Wednesday January 31, 2024. The evidence referred to in this report demonstrates that during a flooding event on Spread 6 of the Project between those dates, Trans Mountain did not implement or cause to be implemented, at a minimum, all the mitigation measures defined in its Pipeline EPP for the protection of the environment.

After a forecasted series of potent storms (for coastal British Columbia, an area encompassing Spread 6 of the Project) including an atmospheric river event,<sup>9</sup> coupled with snowmelt, a breached watercourse isolation (BC-713e) was reported to Trans Mountain at 8 am<sup>10</sup> on Sunday January 28<sup>th</sup>. Trans Mountain reported the event at this site, and other locations between KPs 1085 and 1116 to the CER on 11:18 am 29 January 2024 (Monday).<sup>11</sup> Heavy rains fell between Saturday evening (27<sup>th</sup>) and Sunday (28<sup>th</sup>). The rain was forecasted, and information was shared with Trans Mountain Senior Leadership beginning on 25 January 2024<sup>12</sup> including an alert sent by Trans Mountain Emergency Management on 26 January 2024.<sup>13</sup> Rainfall amounts exceeded the initial prediction, and this weather event resulted in multiple impacts across Spread 6 of the Project.

Over the period of Saturday evening (27<sup>th</sup>) and Sunday (28<sup>th</sup>), all **DESC** crews were re-deployed to an area(s) designated as Shoofly (**SF**) 16/16A for water management and to support pumping activities where crews were fixing a weld failure from the previous day.<sup>14</sup> Other areas of Spread 6 were not monitored for periods that ranged from 18.5 - 23 hours, and in

that time period, the mitigation measures that had been left in place (e.g. pumps and DESC measures) were overwhelmed. At some sites, contingency equipment was available, but there were no crews to operate the equipment.

On 30 January 2024 (Tuesday), IOs began a short notice inspection at various locations on Spread 6. While on site, the IOs observed multiple environmental non-compliances related to DESC, water management, and maintenance of isolation and pump around at a watercourse crossing. There were sites where pumping equipment and DESC measures were not monitored or maintained during and after the wet weather event. The mitigation measures that were to be implemented are laid out within Trans Mountain's Pipeline EPP and supporting documents. As a result, IOO DLB-001-2024 was issued, requiring, among other things, Trans Mountain to "immediately respond with all available resources to address environmental deficiencies and non-compliances on Trans Mountain Expansion Project Spread 6 from recent significant rain events".<sup>15</sup>

This NOV establishes the failure of Trans Mountain to adapt to the actual weather event on January 28, despite prior warnings and observed impacts, and manage environmental mitigation according to their Pipeline EPP and associated procedures, including:

- monitoring and ensuring the maintenance of an isolated watercourse crossing;
- maintaining and inspecting temporary DESC measures to ensure functionality; and
- failing to complete the routine monitoring at water management pump-off locations.

The evidence gathered during inspection CV2324-296 resulted in the issuance of an IOO on 31 January 2024. Analysis of the evidence gathered during the inspection and follow-up found Trans Mountain failed to implement mitigation measures and procedures as per their Pipeline EPP for the protection of the environment. Condition 3 of Certificate OC-065 required Trans Mountain to implement the measures and procedures in their Pipeline EPP.

While Trans Mountain was not immediately able to address every non-compliance with the Pipeline EPP or EFG on 31 January 2024, Trans Mountain was responsive to the specific directions from IOs and the IOO and as a result, in these circumstances, as detailed below I have considered this violation as having concluded on the 31<sup>st</sup> of January 2024.

### 3.0 Specifics of the Violations

This section of the NOV establishes, with references to specific evidence, that:

a) Trans Mountain and the Project are regulated by CER under Certificate OC-065 issued under the CER Act.

b) Condition 3 of Certificate OC-065 reads:

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.

c) Failure to comply with a condition of a certificate, such as Condition 3 above, is a designated violation under subsection 2(3) of the AMP Regulations.

d) Trans Mountain failed to implement or cause to be implemented<sup>16</sup> mitigations, measures and procedures for the protection of the environment included in the Project application or otherwise committed to (including those in the Pipeline EPP and EFG), as required by Condition 3 of [Certificate](#) OC-065 (Certificate), between 28 and 31 January 2024.

### 3.1 Key Regulatory Documents

Condition 3 is identified as an overarching condition on Certificate OC-065. Certificate OC-065 was issued on 21 June 2019 to Trans Mountain authorizing construction of the Project. Certificate OC-065 also contained Condition 72, which required Trans Mountain to file a Project-specific Pipeline EPP for approval.<sup>17</sup>

A preliminary version of the Pipeline EPP was included as Volume 6B<sup>18</sup> of the original Project application filed on 16 December 2013. The Summary (Volume 1) of the Project application described the Pipeline EPP (and others) as “the tools used to document and communicate mitigation measures, management plans and contingency plans describes (SIC) in the ESA so they can be effectively implemented during construction and operation of the Project.”<sup>19</sup>

In 2019, Trans Mountain submitted the Environmental Compliance Management Plan (ECMP) to the CER. The Project-specific ECMP provided a framework and tools for environmental compliance. The ECMP included the following:

The TMEP Environmental Protection Program (EPP) was developed from the Project’s baseline assessments and mitigation plans, which were used to inform Federal, Provincial and other stakeholder approvals. These approvals informed the Environmental Reference Documents (ERDs) which formed the basis of the EPP. The ERDs are the primary documents from the Environmental Protection Program that Trans Mountain used to guide field planning and activities to avoid or reduce effects on the environment. The ERDs serve as the principal reference source for Trans Mountain for environmental compliance and form the basis of the environmental compliance requirements for the Project.

The ERDs are comprised of Environmental Plans, relevant regulatory permits, approvals, Conditions and stakeholder commitments for the TMEP. TMEP’s Environmental Plans comprise ten volumes. Volume two of ten is the Pipeline EPP. Trans Mountain will implement the Environmental Plans during all phases of Construction.

The ECMP also included definitions for several types of environmental reporting terms used by Trans Mountain: environmental observation, opportunity for improvement, deficiency (or near miss) and environmental event.<sup>20, 21</sup>

*(Note: While the ECMP includes several internal classifications for environmental conditions, this NOV does not adopt those terms. The NOV relies on the term environmental non-compliance, as defined in footnote 1, to reflect the regulatory interpretation of events that represent a failure to meet environmental obligations.)*

The Pipeline EPP, following the Reconsideration Process in 2018, was updated by Trans Mountain and filed with and approved by the CER via a number of Letter Reports.<sup>22</sup> This updated Pipeline EPP was prepared to provide additional clarity and consolidate mitigation measures for effective implementation during construction. This Pipeline EPP was reviewed as design updates occurred on the Project and updated if necessary.<sup>23</sup> The Pipeline EPP documents the policies, practices, programs, mitigation measures, recommendations, and procedures for the protection of the environment cited in this report. The Pipeline EPP states:

*The Pipeline EPP is applicable to the construction of new buried pipeline segments from Edmonton to Hinton, Hargreaves to Blue River, Blue River to Darfield and Black Pines to Burnaby.<sup>24</sup>*

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<sup>21</sup> ECMP, page 13. (The terms used by Trans Mountain in their internal management and reporting for environmental compliance are not used in this NOV, as defined by the ECMP, instead the NOV relies on the term environmental non-compliance as defined in footnote #1.)

*The purpose of the Pipeline EPP is to communicate Trans Mountain's environmental procedures and mitigation measures to field/construction personnel in a clear and concise format. These environmental procedures and mitigation measures will be implemented, where applicable during construction of the pipeline and associated components to avoid, mitigate or reduce potential adverse environmental effects.*

*Specifically, the Pipeline EPP:*

- *identifies mitigation measures to be implemented during pipeline and associated construction activities;*
- *provides instructions for carrying out construction activities in a manner that will avoid or reduce adverse environmental effects; and*
- *serves as reference information to support decision-making and provides direction to more detailed information (i.e., resource-specific mitigation, management, and contingency plans).*

*This updated Pipeline EPP is intended to be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments, as set out in Trans Mountain's Project Application, its subsequent filings, or as otherwise committed to during the CER proceedings. Trans Mountain confirms its intention to implement all of its commitments pursuant to CER Conditions 2 and 6.<sup>25</sup>*

The EFG – Pump-Off (Pump-Off Guide) outlines the roles and responsibilities of the Project and the General Construction Contractor (GCC) related to Pump-Off or dewatering activities. The Guide is an extension of the ERDs and provides further clarity in the management of pump-off, including but not limited to before, during, and after a pump-off activity of uncontaminated surface water (e.g., from rain, snow melt or runoff) or groundwater (referred to as pump-off water).<sup>26</sup>

Drainage, Erosion and Sediment Control (DESC) Monitoring Risk Management Framework is a supporting document to the EPP and forms part of the ERDs. This document separates the project into three types of areas based on their potential to cause sedimentation or environmental harm off ROW and specifies a defined monitoring frequency for each category. This established a structured method to assess and monitor DESC measures during the Project.<sup>27</sup>

The Environmental Deficiency Risk Management Framework is a matrix to classify and manage environmental conditions during construction activities. It identifies timelines for completion of correction actions for the environmental conditions (deficiencies<sup>28</sup>, events, or observations) identified.<sup>29</sup>

The Trans Mountain Winter Preparedness Plan Spread 6 that outlines seasonal risks, mitigation strategies, and monitoring expectations consistent with the EPP and EFG.<sup>30</sup>

### 3.2 Implementation of the Pipeline EPP is required.

While preparation of the Pipeline EPP was required by Condition 72, Condition 3 requires that it be implemented. That is, the Pipeline EPP must be carried out and put into effect on an ongoing and consistent basis. With respect to what “implement” means, the Commission has said, in the context of a previous AMP review:

[...] the Panel considers it reasonable and appropriate to apply the ordinary and plain meaning of the word. To “implement” means to fulfill, perform, carry out, or put into effect according to or by means of a definite plan or procedure.<sup>11</sup> [...]

[...] the term “implement” requires that management system processes be carried out and put into effect on an ongoing and consistent basis.

**The definition of “implement” does not just apply to management systems in the context of this decision and AMPs. Attaching proper but robust meaning to the definition of “implement” has far-reaching implications for all compliance and enforcement action taken with respect to management systems under the CER Act. The expectations around implementation, and the AMP Officer’s role in ensuring compliance, must be interpreted with this context in mind.<sup>31</sup>**

Based on the views of the Commission as referenced above, I believe that the use of the wording “implement or cause to be implemented” requires Trans Mountain (in order to be in compliance with Condition 3) to fulfill, perform, carry out, or put into effect according to or by means of a definite plan or procedure all of the policies, practices, programs, mitigation measures, recommendations, and procedures for the protection of the environment in the Pipeline EPP or that it committed to.

### 3.3 Evidence of the alleged violations

I acknowledge that the January 2024 weather event was severe, worse than forecasted, and impacted a broader region of British Columbia. However, the Project was not exempt from compliance obligations under Condition 3 due to adverse weather. The Pipeline EPP and associated procedures are designed to anticipate and mitigate environmental risks, including those arising from extreme conditions. The Winter Preparedness Plan demonstrates the Project had some anticipation of the risks associated with winter precipitation on Spread 6. Additionally, severe weather events had occurred previously on the Project, as noted in the DLB-001-2024 Measure 2 Report. The evidence cited will demonstrate Trans Mountain received forecasts and internal alerts indicating elevated risk, including warnings of potent storms and atmospheric river activity and was aware of diminished DESC staff on Sundays. However, during an ongoing weather event, Trans Mountain decided to redeploy DESC crews away from the monitoring, maintenance, and implementation of contingency measures. The failure to implement environmental protection measures during a high-risk period constitutes non-compliance under the CER Act and Condition 3.

The following paragraphs describe evidence of environmental non-compliances and demonstrate Trans Mountain failed to implement the Pipeline EPP as required by Condition 3, at 4 locations at or near KP 1087, KP1113 and KP1116 between 28 and 31 January of 2024.

#### 3.3.1 - Location One: BC-713e and BC-713d at or near KP 1087.59

Trans Mountain failed to monitor and ensure maintenance of an isolated watercourse crossing, where a pump-around method was used to ensure flow was maintained. Pumps and hoses were not monitored to ensure flow was maintained. This was an environmental non-compliance.

**The requirement in the Pipeline EPP reads: *Ensure maintenance of downstream flow conditions (i.e., quantity and quality) at all times when constructing an isolated crossing. If a pump-around method is used to maintain downstream***

*flow, sufficient backup pump(s), power supply(s), and hose(s) capacity must be on-site and ready to take over pumping immediately if operating pumps or hoses fail. Pumps and hoses are to be monitored to ensure flow is maintained at all times until the dam materials are removed and normal flow is restored to the channel.*<sup>32</sup>

The following evidence demonstrates Trans Mountain failed to implement the above requirement as described in the Pipeline EPP:

1. The Trans Mountain Action Tracker provided to the CER in response to Specified Measure 1 of IOO DLB-001-2024 (DLB-001-2024 Measure 1 Response) contained the following observations:
  - a) 28 January 2024, 8am, Trans Mountain was informed that the isolation at watercourse BC713e was overwhelmed, and the isolation was lost, resulting in creek water flowing onto the ROW and a breach at BC713d. The by-pass pumps were not monitored, and in-stream contingency pumps were not engaged between 7pm on Saturday the 27th and 8am on Monday 29 January 2024.<sup>33</sup>
2. IOs observed and documented (from conversation with Trans Mountain representatives) the following:
  - a) 28 January 2024 at 8am, Trans Mountain was aware that the isolated watercourse crossing (BC713e) was overwhelmed, and the isolation was lost.<sup>34</sup>
  - b) On Sunday 28 January 2024, IO notes show that construction was notified<sup>35</sup>, but no one showed up. Two crews were available on Sunday, but resources were elsewhere. Sunday typically has two smaller crews (2 straws and 2 labourers).
  - c) On Monday 29 January 2024, the initial response began. At BC713e, additional pumps to maintain an increased flow were onsite and in position but were not turned on until 3:00pm on 29 January 2024.
  - d) 30 January 2024, the IO noted Erosion and Sediment Control (ESC) measures were well set up at BC-713e. There were five– 6” pumps onsite but no one was there to turn them on.
  - e) 31 January 2024, the IO noted communications were made to the Project Management Team and resources had not been made available despite technical readiness (pump capacity).<sup>36</sup>
3. The Trans Mountain Environmental Incident Investigation Report ordered under specified measure 2 of IOO DLB-001-2024 (DLB-001-2024 Measure 2 Report) contained the following observations:
  - a) 27 January 2024 rainfall begins, DESC crews have been able to keep up with pumping (7pm isolation at BC 713e was operating).<sup>37</sup>
  - b) 27 January 2024 5pm Trans Mountain EI asks Trans Mountain Construction Management Team (CMT) that nightshift DESC crew monitor BC-720e due to predicted heavy rainfall.
  - c) The impact of the loss of isolation at BC-713e resulted in flooding on and off the ROW and turbid water entering the watercourse. (Identified at 8am 28 January 2024)<sup>38</sup>
  - d) There was no pump-off log for BC-713e because there was no mechanism in place to record monitoring of isolations. Isolation usually lasts 3 to 4 days, but at BC-713e it had been in place for several months.

- e) 28 January 2024 (EI report) noted water had breached BC-713e isolation and flooded the ROW and only two out of the five 6" pumps for the bypass were running.<sup>39</sup>

The failure to monitor and maintain the isolated watercourse crossing began at some time after 7pm January 27th. The environmental non-compliance was identified at 8am on the 28th, but no steps were taken to address the loss of isolation until Monday (29th). This environmental non-compliance started at the latest when it was identified on the 28th and continued until the isolation was re-established on the 29<sup>th</sup>, for 2 days, and constituted a violation during that time.

### 3.3.2 Location Two: at or near KP 1112.5-1113.8

Trans Mountain failed to maintain temporary drainage, erosion and sediment control measures and failed to inspect these DESC measures to ensure functionality, and this was an environmental non-compliance.

**The requirement in the Pipeline EPP reads:** *Temporary drainage, erosion and sediment control measures will be implemented and will remain in place and be maintained over the course of construction activities. During construction, the control measures will be inspected to ensure functionality and repairs will be completed as required (i.e., rain event, after pipe installation).*<sup>40</sup>

At this location, Trans Mountain had developed a Site-Specific DESC Plan<sup>41</sup> for KP 1112.9 to KP 1113.7, which outlined the erosion and sediment control measures to be installed, such as diversion berms, sediment traps, coir logs, and sediment fencing. The plan demonstrates that mitigation measures were designed and (based on observations) were implemented. However, the evidence that follows shows that these measures were not monitored or maintained during and after the January 2024 weather event.

The following evidence demonstrates Trans Mountain failed to implement the requirement described in the Pipeline EPP above:

1. The DLB-001-2024 Measure 1 Response, for 28 January 2024, contained the following observations:
  - a) 11:15am, significant uncontrolled water moving down Lightning Rock slope, no crews present on site, drainage system (Big "O") clogged with debris. (KP1112.6).
  - b) 2:27pm, water has scoured a new path, exiting the rock lined drainage, maintenance is required to minimize sediment impact to aquatic receptor BC-727 (KP1112.98).
  - c) 3:19pm, ensure functionality of rock bar drainage at KP 1113.6. Focus on redirecting surface water into low side DESC measures that are in place. Install a new diversion berm using soil, sandbag/poly, or other. Obstruct water from flowing down access/travel lane towards landslide at KP 1116.37.
2. On 31 January 2024, IOs inspected the Project ROW at Spread 6 between KP 1112.960 to KP 1113.650 and observed that mitigation measures were not functional, not inspected and not maintained, as follows:
  - a) a landslide of ~100m of saturated soil from high road location onto lower travel lane at KP1113.360<sup>42</sup>, and saturated soils slumping at multiple locations,

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<sup>42</sup> IOs observed a significant landslide, estimated at approximately 100m, based on visual observation and photos and this was previously described in the IOO and Inspection final report. No contrary measurements or evidence were provided after the IOO was issued or when the inspection report was finalized.

- b) erosion and sediment control measures needed maintenance at KP 1113.650, dewatering pump and sump locations needed maintenance and repair, and poly-sheeting covering exposed soils needed maintenance.<sup>43</sup>,  
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The failure to maintain, inspect for functionality and repair of temporary DESC measures was noted in multiple instances on January 28th. On 31 January when IOs inspected the same area, they noted that DESC mitigation measures were not functional, and not maintained, and no DESC crews were observed.<sup>45</sup>

Based on the above evidence, this environmental non-compliance continued for 4 days from at least 28 January to 31 January 2024 and constituted a violation for that duration. While the violations at this location were not entirely addressed on the 31st, given that:

- An IOO was issued on that day; and
- Trans Mountain appropriately turned its focus on responding to the specified measures of the IOO;

it's reasonable to consider the environmental non-compliances to have been addressed after 4 days (28-31 January), for the purpose of this notice of violations.

### 3.3.3 Location Three: BC-728e, BC-728h, and BC728i1, at or near KP1116

Trans Mountain failed to inspect and ensure the functionality of temporary sediment control structures, at BC-728e, BC-728h, and BC728i1 and failed to complete the routine monitoring at water management pump-off locations, and this was an environmental non-compliance.

**The requirement in the Pipeline EPP reads:** *During construction, temporary sediment control structures (e.g., sediment fences) installed on approach slopes will be inspected to ensure functionality and repairs will be completed as required (i.e., rain event, after pipe installation).*<sup>46</sup>

Additional requirements in the Project Environmental Field Guide: Pump-off at Table 2 read: *Minimum Routine Monitoring Frequency1, based on scenarios: 3 times per day shift and 1 time per night shift [Notes: 1 - Night shift routine monitoring and turbidity reading frequencies may be re-assessed pending site conditions and safety constraints. If night shift routine monitoring and turbidity reading is discontinued, first and last monitoring events shall occur at the start and end of the day shift].*<sup>47</sup>

The following evidence demonstrates Trans Mountain failed to implement the requirements, as described in the Pipeline EPP and Environmental Field Guide above:

1. On 31 January 2024, IOs inspected the Project ROW at Spread 6 near KP 1115.4 and 1116.04, and watercourse crossings BC-728e and BC-728h and observed the following:
  - a) At watercourse crossing BC-728e, sediment laden water was entering the watercourse, and mitigation measures in place were ineffective. The IOs observed water was getting under the poly, sediment fencing was not "keyed in," wattles and sandbags were in place, and pumps were on site, but not turned on. The measures on site were not preventing turbid water from entering BC-728e.<sup>48</sup>
  - b) At watercourse crossing BC-728h, sediment laden water was entering the watercourse. The IOs observed that clean water conveyance across the right of way was lost. Sediment laden water was going across wattle, sandbags, sumps, and a diversion berm before entering the watercourse.<sup>49</sup>
2. The DLB-001-2024 Measure 1 Response, on 28 January 2024, contained the following observations:

- a) 10am, after a 20-hour lapse in pump and ESC maintenance, the ESC and water management systems were overwhelmed causing sediment-laden water to enter watercourses BC-728e, BC-728h, and BC-728i1 (non-fish bearing).
  - b) 12:50pm, pump capacity and monitoring at BC-728i1 was insufficient to maintain conveyance of greywater. Contractor pump-off monitoring form (CPOMF) entries had not been completed in the past 20 hours.
  - c) 1:00pm at BC-728h insufficient pump capacity and monitoring at BC-728h resulted in complete loss of isolated greywater and bypass conveyance, and no CPOMF entries were made in the past 20 hours (KP1116.04).
  - d) 1:17pm surface water overwhelmed ESC measures, bypassing water bar, and is entering BC- 728h after breaching sandbag isolation (KP 1115.9).
  - e) 1:25pm insufficient capacity and monitoring of pumps, no CPOMF entries for the past 20 hours. There was impact to BC- 728e where channel has eroded interim watercourse bank (KP 1115.39).
3. The DLB-001-2024 Measure 2 Report also noted that the impact of flooding at BC 728e, BC728h, and BC-728i1 was that turbid water entered these non-fish-bearing watercourses and flowed downstream to fish bearing watercourses.<sup>50</sup>

The environmental non-compliance was a failure to inspect and ensure the functionality of temporary sediment control structures and failure to complete the routine monitoring at water management pump-off locations. These environmental non-compliances were initially observed and documented by Trans Mountain EI on Sunday the 28th, at a minimum of four locations.

On January 31st IOs observed mitigation measures that failed to prevent sediment laden water from entering the watercourses and the measures on site did not prevent turbid water from entering BC-728e.<sup>51</sup> At BC-728h, the IOs observed sediment laden water was going across wattle, sandbags, sumps and a diversion berm before entering the watercourse.<sup>52</sup> The DLB-001-2024 Measure 1 Response documented similar failures in the functionality of the mitigations measures and identified the failure to monitor pump off locations as required by the EFG.

Based on the evidence reviewed it is reasonable to believe that the environmental non-compliances continued for 4 days from at least 28 January to 31 January 2024. While the environmental non-compliances at this location were not entirely addressed on the 31st, given that:

- An IOO was issued on that day; and
- Trans Mountain appropriately turned its focus on responding to the specified measures of the IOO;

it's reasonable to consider the environmental non-compliances at this location to have been addressed after 4 days (28-31 January), during which time they constituted a violation.

### 3.3.4 Location Four: Spread 6

Trans Mountain failed to respond to an ongoing weather event and did not implement schedule changes to manage required environmental mitigations and this was an environmental non-compliance.

#### The requirement in the Pipeline EPP reads:

*Check weather reports daily to allow for schedule changes and contingency planning.*<sup>53</sup>

*Install additional drainage, erosion, and sediment control measures prior to or during wet conditions and extreme weather events, to ensure the protection of sensitive environments. In advance of an extreme weather event,*

*consult the Flood and Excessive Flow Contingency Plan, the Soil Erosion and Sediment Control Contingency Plan and the Wet/Thawed Soils Contingency Plan (Appendix B) to determine if any further mitigation is required to manage the event.*<sup>54</sup>

The following evidence demonstrates Trans Mountain failed to implement the requirement as described in the Pipeline EPP above:

- 1) The rainfall event was predicted, though the actual accumulation was approximately 4x what was predicted. No adjustments were made by Trans Mountain to enhance or maintain environmental mitigation measures,<sup>55</sup> and all DESC crew resources were redirected to one location (SF 16/16A). Throughout CV2324-296 on the Project ROW, Spread 6, IOs made observations and notes from discussions with Trans Mountain representatives, including:
  - a. Extreme weather began with snowfall and steady rain (10-15mm), leading up to a forecasted (20mm) atmospheric rain.
  - b. First day of rain, saw “no cumulative effect.”
  - c. The rain event on Saturday night [27th to 28th] had 60mm of precipitation in 24 hours, then another 10-15mm on Sunday.<sup>56</sup>
  - d. Night crew did not report anything and Sunday had only a small crew.<sup>57</sup>
  - e. People were working, crews were doing other work vs the lost isolation.<sup>58</sup>
  - f. Trans Mountain representative stated “not sure what happened or why resources were not deployed”<sup>59</sup>
  - g. On Tuesday, at the Inspection opening meeting, an investigation was not being contemplated.<sup>60</sup>
  - h. There were 25 pump-off sites on the spread where pumps were not turned on during the flood.
  - i. On Sunday, SF16a trench was flooded with water and there was only ½ crew on Sunday [28th].<sup>61</sup>
  - j. Backfill and tie-in crews were still working on their respective sites, and non-active sites were not being attended to due to resourcing.<sup>62</sup>
  
- 2) Warnings regarding expected heavy rain were provided on Thursday (25th) and Friday (26th), and the CMT was advised of expected heavy rainfall overnight from 27 January to 28 January 2024. Senior management was aware of the forecasted rain. The DLB-001-2024 Measure 2 Report noted the following:
  - a. Weather
    - i. Trans Mountain EI advised Trans Mountain CMT of expected heavy rainfall overnight (27 to 28) and asked for monitoring of a specific location.<sup>63</sup>
    - ii. Trans Mountain Director of Emergency Management sent an email entitled – Orange Weather Statement and High Stream Flow, including an attached weather warning and stated, “There remains a great deal of uncertainty over the amounts of rainfall that will occur and the locations of the heaviest rainfall.”<sup>64</sup>
    - iii. There was also a discussion between the Sr Director Pipeline Execution and the Trans Mountain Project Director about the rain in the forecast.
    - iv. The Trans Mountain Project Director advised that activities in the area where the final Tie-in and weld repair was happening would not be impacted by the increased rainfall.<sup>65</sup>

v. Table of Rainfall amounts (rainfall amounts are for 24-hour periods)

Date	Predicted Rainfall	Actual - Chilliwack	Actual - Abbotsford
26-Jan-2024	10mm	7.4 mm	11.7
27-Jan-2024	20mm	15.2 mm	31.3 mm
28-Jan-2024	10mm	40.3 mm	40.5 mm
29-Jan-2024	15mm	0.5 mm	1.0 mm

- vi. One week prior to this event, 10cm of snow was forecasted and up to 50cm was received in some areas. This snow was still melting in the mountains which impacted streams.
- vii. Weather events were experienced throughout the project. During the Project timeframe, the lower mainland experienced numerous times when rainfall / snowfall amounts were significantly higher (or lower in some cases) than forecasted.<sup>66</sup>

b. Timeline

Date	Time	DLB-001-2024 Measure 2 Report Notes
25-Jan-2024		Trans Mountain Lead EI sent out an email warning of increased rainfall amounts.
26-Jan-2024		Orange Weather Statement was issued by Trans Mountain Emergency Management and was sent to Project Managers, Project Directors, Sr Project Directors across the Project and Trans Mountain Operations.
27-Jan-2024		Rain fall begins, DESC [Drainage Erosion and Sediment Control] crews able to keep up with pumping
	17:04	EI identifies to CMT <sup>67</sup> heavy rain fall predicted overnight
28-Jan-2024	08:17	EI reports to CMT that isolation is lost at BC-713e
	11:28	EI spoke with the [Trans Mountain] General Inspector regarding lack of DESC monitoring. GCC's [General Construction Contractor] focuses water management at SF16/16a. EI asks crew to be reassigned to complete DESC at sites with higher environmental priority.
	13:21	Senior Management <sup>68</sup> getting involved, Trans Mountain Environment Manager and Trans Mountain Project Manager speaking with Contractor to get more crews and focus on Environmental compliance priorities.
29-Jan-2024	9:00	Trans Mountain Environment Manager scheduled a meeting with the PMT to discuss environmental events. Crews were mobilized to areas identified (by Trans Mountain) as needing immediate corrective actions.

c. Resources, employees, and equipment:

This incident occurred during the Saturday night shift (27 January 2024) and Sunday day shift (28 January 2024).

- i. On the 27th of January 2024, the night shift had 1 DESC Crew with 8 individuals. (Weekend shifts typically had approximately 50% – 60% less crew, as 50% of crew members rotate to take Sunday off.)
- ii. On January 28, the day shift had 3 DESC crews. Each crew had 1 supervisor and 3 laborers, for a total of 12 people to cover all spread activities.
- iii. All the DESC Supervisors were directed by Bannister<sup>69</sup> leadership to deploy their entire DESC Crews to SF 16 and SF 16A to assist with water management at those areas.<sup>70</sup>

- iv. The re-deployment of the crews took place for a portion of the Saturday night shift and the majority of the Sunday day shift.<sup>71</sup>
  - v. It was not common for the entire crew to be re-allocated to other areas; it was not normal protocol and had not happened previously.
  - vi. Due to the size of the crews, it was not possible to split the crews to work at multiple sites. Evidence from interviews supports that all DESC crews were sent to SF 16 for water management and SF 16A to support pumping activities to fix a weld failure from the previous day. The Interviewer/Investigator identified that there were not enough contractor personnel working to assist with the areas that needed support.
  - vii. As a result, there were no DESC Crews monitoring and maintaining water pump off sites, watercourse isolations, and DESC measures.
  - viii. The investigator determined there was a definite lack of contractor personnel to assist at both SF 16, SF 16A, and to monitor and maintain the DESC areas.<sup>72</sup>
  - ix. The lack of contractor personnel meant that equipment was not monitored and maintained, which allowed it to become overwhelmed and ineffective at managing the water volumes present. Most areas had adequate equipment in place though due to lack of contractor personnel the equipment was not monitored or maintained.
  - x. Trans Mountain EI team engaged with the PMT<sup>73</sup> and Construction numerous times to get DESC personnel re-deployed to high-risk work locations.
- d. Decision to prioritize SF16/16A.
- i. The Project Director authorized redeployment of all available crews to SF16/16A to ensure:
    - the site was safe for construction crews to continue to work, and so
    - that it was prepared for a senior leadership site visit.<sup>74</sup>

The environmental non-compliance was a failure to implement schedule changes and resources to manage required environmental mitigations in the presence of an extreme weather event on January 28, 2024.

Trans Mountain failed to adjust scheduling and crew deployment on January 28, 2024 to respond to the actual weather conditions that occurred. Trans Mountain Senior Leadership had advance notice of the impending weather event, sent on January 25th and 26th. This weather had been preceded by a snowfall event in the mountains that was still melting.<sup>75</sup> The Inspection Team and GCC Construction Management reviewed and discussed the impending weather. A review of the DESC crew resourcing was conducted during the Daily Construction Meeting and Trans Mountain assigned crews to the coverage areas. The resourcing was considered adequate at the time of assessment.<sup>76</sup> Weekend DESC crew shifts typically had approximately half of normal resources. On Saturday (27th) the night shift had 1 crew (8 people). Sunday (28th) had 3 crews (12 people).

During the rainfall event, all DESC crews were deployed to SF 16/16A to assist with water management at those areas, leaving other areas without monitoring or maintenance. The re-deployment of the crews took place for a portion of the Saturday night shift (27 January) and for the majority of the Sunday day shift (28 January). Scheduling changes were not made in anticipation of the weather event, or at the time of the weather event (on January 28<sup>th</sup>) and as a result there was a definite lack of contractor personnel to assist at SF 16/16A, and to monitor and maintain the DESC areas. The DLB-001-2024 Measure 2 Report identified “there was a lack of resources identified to manage these issues due to insufficient planning from the Contractor and TM in regard to the weather event as well as coordinating days off for crew members.”<sup>77</sup> The report also noted that “for weather systems that come in off the ocean, it can be hard to predict the amount of precipitation that will fall. During the project timeframe, the lower mainland has experienced numerous times rainfall / snowfall amounts that have been significantly higher (or lower in some cases) than forecast. As such, proper planning and

having contingencies in place is crucial to protect the environmental footprint.”<sup>78</sup> The failure to adapt to the real-time weather conditions contributed to the environmental non-compliances identified.

### 3.4 Was the Violation Committed or Continued on more than one day.

**The CER Act section 122 reads:** A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.<sup>79</sup>

The violations of Condition 3, (based on the environmental non-compliances detailed above), as described in part 3, were committed or continued over a number of days, in each of 4 locations. In each location cited in Section 3.0, it becomes apparent that the violations occurred over more than one day. To summarize:

- At location 1, isolation was likely lost on January 27, observed/known to be lost on January 28, and re-established on January 29, continuing for at least 2 days on 28 and 29 January.
- At locations 2 and 3, the violation started on January 28 and continued at least until the IOO was issued on 31 January, continuing for 4 days.
- At location 4, Trans Mountain failed to respond to the actual weather event on January 28 by implementing schedule changes and managing required mitigations despite having received forecasts and internal alerts.

It is within my discretion to consider the environmental non-compliances at each location, as separate violations of Condition 3 as it relates to the Pipeline EPP and EFG each day and then consider those separate violations as having continued over more than one day. However, I have decided to treat all violations of Condition 3 at any of the four locations as a single violation of Condition 3 on each day as it relates to the Pipeline EPP and EFG, and then to consider that violation as having continued or occurred across 2-4 days as applicable. In making this determination, I have considered:

- a) the specific facts and circumstances outlined above;
- b) the purpose of AMPs – that being, to promote compliance rather than to punish; and
- c) that the facts of all the violations, in all four locations, are closely connected by causes, timing and geography, such as:
  - i. they are in relation to the same weather event,
  - ii. they at the same closely located stretch of Spread 6 of the Project; and
  - iii. are related to the same decisions and prioritization of resources and crews, including the prioritization of the nearby weld repair.

While the violation at Location 1 was addressed as of 29 January, the others were not fully addressed even as of 31 January. In my view, once Trans Mountain began implementing the specified measures as directed by the IOO on 31 January 2024, it's reasonable to consider that they had initiated efforts to address the violations and therefore consider the violations as having been addressed for the purposes of this NOV, in these circumstances. This does not mean that, in any and all circumstances, where an IOO is issued and a company begins to take steps to address the IOO's specified measures, all non-compliances and/or violations should be considered to be addressed.

I also note that AMPs are a tool to promote compliance with the Act, its regulations, and any conditions of authorization issued under it. The AMPs are intended to, by imposing financial penalties for non-compliance, be a deterrent to prevent future violations and encourage adherence to regulatory requirements. The purpose of issuing an AMP is not to punish including by maximizing the penalty amount or otherwise.

As such, I am considering Trans Mountain's responsiveness to the IOO as, for the purposes of this penalty at least, having started to address the violations.

### 3.5 Conclusion

Based on the evidence detailed above, and my rationale in this section, I have reasonable grounds to believe that:

Trans Mountain failed to implement or cause to be implemented mitigations measures and procedures for the protection of the environment included in the Project application, as required by Condition 3 of Certificate OC-065 and that,

the violations were committed or continued for 4 days between 28 and 31 January 2024.

As such, I am issuing this notice of violations.

### Section 4 – Penalty Calculation

Under the CER Act a violation continues or is committed on more than one day, is a separate violation for each day. This penalty calculation assesses each day separately and penalties are based on the specific facts and circumstances described.

**AMP-001-2025 – Day 1 – 28 January 2024** This was the first day of the flooding incident and all DESC crews were assigned to SF16/16a where weld repairs were occurring. At BC-713e the isolation was breached and contingency pumps in place were not turned on. Multiple unmitigated flooding impacts were identified. On this date, environmental non-compliances occurred at Locations 1, 2 ,3 and 4.

**AMP-002-2025 – Day 2 – 29 January 2024** At BC-713e the pumps in place and ready to be utilized were not activated until 3pm, despite the loss of isolation being reported at 8am on the previous day. The event was reported to the CER late and included inaccurate information. Extensive flooding impacts identified; some mitigations begin. Applies to locations: 1, 2 and 3.

**AMP-003-2025 – Day 3 – 30 January 2024** IOs arrive and assess compliance at various sites on Spread 6. Extensive flooding impacts identified; some mitigations begin. Applies to locations: 2 and 3.

**AMP-004-2025 – Day 4 – 31 January 2024** IOO was issued ordering an immediate response. IOs observed multiple environmental non-compliances due to failures to implement the EPP. Violation deemed ended as response to the Order was initiated. Applies to locations: 2 and 3.

<b>A) Baseline Penalty (Gravity Level = 0) (Refer to AMP Regulations, Subsection 4(1))</b>				
<b>Category</b>	<b>Individual</b>		<b>Any Other Person</b>	
<b>Type A</b>	<input type="checkbox"/> \$1,365		<input type="checkbox"/> \$5,025	
<b>Type B</b>	<input type="checkbox"/> \$10,000		<input checked="" type="checkbox"/> \$40,000	
<b>B) Applicable Gravity Value (Refer to AMP Regulations, Subsection 4(2))</b>	<b>Gravity Level</b>			
	<b>AMP-001-2025</b>	<b>AMP-002-2025</b>	<b>AMP-003-2025</b>	<b>AMP-004-2025</b>
	<b>28 January 2024</b>	<b>29 January 2024</b>	<b>30 January 2024</b>	<b>31 January 2024</b>
<b>1 - Other violations in the previous seven years</b>	<b>+1</b>	<b>+1</b>	<b>+1</b>	<b>+1</b>
<p>This factor considers whether the person has committed other violations in the previous seven years. It is not tied to the nature or type of the current violation, but it reflects overall compliance history and informs the AMP Officer's assessment of the gravity of each violation. Each of the 4 violations is assessed independently, and violations committed over the last 7 years is a relevant contextual factor for each. For greater clarity, I am not considering these 4 violations themselves (that is, on Day 2, I am not considering Day 1, and on Day 3 I am not considering Days 1 and 2 and so forth) as until a penalty is paid or the Commission makes a determination, a violation may not be deemed as committed.</p> <p>Trans Mountain has committed 3 violations, all in 2022, all of which were management system related:</p> <ul style="list-style-type: none"> <li>AMP-001-2022: inadequate implementation of processes for verifying employees and other persons are trained and competent and for supervising to ensure work is done in a safe manner; and for coordinating and controlling operational activities of employees and other people so that each is aware of the activities of others and can perform work in a safe manner</li> <li>AMP-003-2022: failure to establish and implement a process for identifying and analyzing all hazards and potential hazards</li> <li>AMP-004-2022: failure to implement processes for verifying employees and other persons are trained and competent and for supervising to ensure work is done in a safe manner</li> </ul> <p>Based on the three violations committed by Trans Mountain in the last seven years, I am applying a gravity value of +1 to each violation, which is consistent with the CER AMP Regulations.</p>				
<b>2 - Any competitive or economic benefit derived from the violation</b>	I did not find this criterion applicable and did not apply it.			
<b>3 - Reasonable efforts to mitigate or reverse the violation's effect</b>	<b>-1</b>	<b>-1</b>	<b>-1</b>	<b>-1</b>
<p>Trans Mountain did take some steps to mitigate the effects of the violation, on January 29 and 30, before the IOO was issued on January 31. According to the DLB-001-2024 Measure 2 Report and Measure 1 Response:</p> <ul style="list-style-type: none"> <li>on January 29, crews were mobilized to high-priority areas, and corrective actions were completed at some locations, including addition of pumps, performing monitoring and removal of floating gas cans;</li> <li>on January 30, additional mitigation measures were implemented, including restoration of isolation at BC713e, installation of pumps and sandbags, and mitigation of some turbid water effects and clean up of a water filled fuel-contaminated spill tray.</li> </ul> <p>However, Trans Mountain failed to make reasonable efforts to mitigate the effects of the violation as demonstrated by:</p> <p>(a) Trans Mountain was informed and aware the isolation at BC-713e was lost on Sunday at 8 am, yet the pumps (that were available and in place) were not turned on until 3pm on Monday.</p>				

(b) On January 31 IOs observed impacts and the continuation of violations: a landslide of saturated soil onto a travel lane of the RoW, saturated soil slumping in multiple locations, dewatering pump and sump locations in need of maintenance and repair, sediment laden water entering a watercourse, and ineffective mitigation measures (water was getting under the poly, sediment fencing not “keyed in”, wattles and sandbags were in place, and pumps were on site, but not turned). This indicates reasonable measures to mitigate the violations’ effects had not been put in place, even if some efforts were made.

(c) Sediment laden water was going across wattle, sandbags, sumps and a diversion berm before entering a watercourse.

(d) On January 31 an IOO was issued that included a direction for Trans Mountain to “immediately respond with all available resources to address environmental deficiencies and non-compliances on Trans Mountain Expansion Project Spread 6 from recent significant rain events.”

While some field based and management or procedural efforts to mitigate or reverse the effect of the violation were taken, they were delayed and reactive. After observing Trans Mountain’s mitigation efforts an IOO was issued by CER IOs. This included: (1) field based measures that were required by IOO (specified measure 1). (2) The management or procedural changes developed due to Trans Mountain being required to do so by the IOO. The DLB-001-2024 Measure 2 Report, which contained the corrective actions was required. (Trans Mountain representative had stated to IOs that no investigation was contemplated.) While corrective actions may have been taken by Trans Mountain without CER intervention, the IOs determined that regulatory intervention was required and ordered the company to immediately respond to all available resources to the flooding related impacts.

Reversal of the effects of the environmental non-compliances was not possible. After receiving the IOO and being directed by it, Trans Mountain did make reasonable efforts to mitigate the violation, however, this was mandated by the IOO at the time, and because of that I am unable to apply a -2 here.

<b>4 - Negligence on the part of the person who committed the violation</b>	<b>+1</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**Overall Comment**

Companies engaging in regulated activities are expected to demonstrate due diligence and apply their documented mitigation measures to prevent and respond to environmental non-compliances, especially where the need for those mitigation measures was predicted and reasonably foreseeable.

**January 28, 2024** **(+1)** **AMP-001-2025**

All DESC work crews were assigned to support the completion of a weld repair at SF16/16A at the expense of the maintenance, monitoring and implementation of existing contingency environmental mitigation measures on the rest of Spread 6; knowing that Sundays had 50% crew capacity. The DLB-001-2024 Measure 2 Report noted that: The Trans Mountain Project Director advised that activities in the area where the final Tie-in and weld repair was happening would not be impacted by the increased rainfall. A Trans Mountain EI recommended to the Trans Mountain GI that crews be pulled away [from the SF16/16A]. At BC-713e, an isolation had been in place for several months and no plan or policy was in place for monitoring this extended isolation, and the isolation and be lost 2x before, once was about a week prior. In my view, a reasonable company would have exercised at least some due diligence to apply its mitigation measures in response to an ongoing weather event, and on Day 1, there was no evidence of any due diligence. At the same time, I am not persuaded this rises to the level of negligence that would justify the application of a +2, the highest possible value for this criterion in the AMP Regulations, and therefore I am applying a +1.

**January 29, 2024** **(0)** **AMP-002-2025**

On Day 2, some due diligence was exercised. DESC crews did engage in some maintenance, monitoring, and implementation of existing and contingency environmental mitigation measures on the rest of Spread 6. The actions taken were identified in the DLB-001-2024 Measure 1 Response, including: (a) pumps to re-establish the isolation at BC-713e were engaged at 3pm, (b) floating gas cans were removed from the row, (c) a big ‘O’ water conveyance was cleaned out to convey water across the ROW and downslope, and (d) pump capacity was increased at BC-728i1. However, not all mitigation measures were in place to prevent or respond to the environmental non-compliances. While I am not satisfied Trans Mountain fully demonstrated due diligence on this day, I am still applying a 0, the lowest level available for this criterion under the AMP Regulations.

<p><b>January 30, 2024</b></p> <p>Some due diligence was exercised – DESC crews did engage in some maintenance, monitoring, and implementation of existing and contingency environmental mitigation measures on the rest of Spread 6. The actions taken were identified in the DLB-001-2024 Measure 1 Response, including: (a) re-establishment of the isolation at BC-713e; (b) turbid impacts to watercourse stopped, (c) sandbag berms installed to keep turbid water from entering watercourse, (d) spill tray with fuel impacted water clean-up, (e) additional sumps and pump capacity added to restore greywater and bypass conveyance. As for Day 2, some due diligence was apparent, even though not all measures were in place, and therefore I have applied a 0.</p>	<p><b>(0)</b></p>			<p><b>AMP-003-2025</b></p>
<p><b>January 31, 2024</b></p> <p>Some due diligence was exercised – DESC crews did engage in some maintenance, monitoring, and implementation of existing and contingency environmental mitigation measures on the rest of Spread 6. The actions taken were identified in the DLB-001-2024 Measure 1 Response, including: (a) submerged trash pump removed; (b) sandbag berm install to prevent turbid water from entering watercourse; (c) repairs to sediment fence; (d) sandbag and poly berm installed for water flow management; (e) turbid impact to Sumas Wetland resolved.</p> <p>However, after inspecting Trans Mountain’s response to the flooding and aftermath CER IOs issued an IOO with measures that included: to “immediately respond with all available resources to address environmental deficiencies and non-compliances on Trans Mountain Expansion Project Spread 6 from recent significant rain events.” At this point, Trans Mountain was 3 days into the response to the flooding event and based on the observations of the IOs, I do not believe full due diligence was exercised in the circumstances. However, based on my overall assessment, I am applying a 0 for Day 4 as well.</p>	<p><b>(0)</b></p>			<p><b>AMP-004-2025</b></p>
<p><b>5 - Reasonable assistance provided to the Regulator with respect to the violation</b></p>	<p><b>0</b></p>	<p><b>0</b></p>	<p><b>0</b></p>	<p><b>0</b></p>
<p>Trans Mountain met the minimum regulatory requirements under the CER Act. Trans Mountain complied with the IOO order issued including:</p> <ul style="list-style-type: none"> <li>(1) as required by the IOO actions were tracked and submitted in DLB-001-2204 Measure 1 Response;</li> <li>(2) as required by the IOO an Investigation was completed and submitted - DLB-001-2024 Measure 2 Report - the first draft of this report was not accepted by the IO and revised report was submitted on 12 April 2024;</li> <li>(3) as required by the OPR, the incident was reported to the CER (reporting timelines were not met);</li> <li>(4) as required by the CER Act, Trans Mountain responded in a timely manner to Information requests;</li> <li>(5) Trans Mountain is required by CertificateOC-65 and the conditions to implement the EPP. Trans Mountain’s actions with respect to reasonable assistance to the Regulator, met the minimum legal requirements outlined by the IOO and contained otherwise in the CER Act and regulations.</li> </ul> <p>As a result, I am not applying a +1 or +2 here. However, all of Trans Mountain’s assistance to the Regulator occurred after and in response to receiving the IOO and was not voluntary or proactive, and as a result I am unable to apply a -1 or -2. Therefore, I am applying a 0 to this criterion.</p>				
<p><b>6 - After becoming aware of the violation, promptly reported the violation to the Regulator</b></p>	<p><b>+1</b></p>	<p><b>N/A</b></p>	<p><b>N/A</b></p>	<p><b>N/A</b></p>
<p><b>January 28, 2024</b></p> <p>This incident was determined to be reportable by the CER. Event Reporting Guidelines (ERG) applicable [as of that date] require reporting of incidents that result in significant adverse effect on the environment within 3 hours of discovery. The incident occurred/began at BC-713e sometime between 7 PM Saturday, January 27 and 8 AM Sunday, January 28, and was identified in the field by 8 am 28 January 2024. The DLB-001-2024 Measure 2 Report also identified the incident as reportable due to the loss of isolation and turbid water entering watercourses. Trans Mountain did not report the incident until 11:18 AM on Monday, January 29<sup>th</sup>, 26 hours after discovery.</p>	<p><b>(+1)</b></p>			<p><b>AMP-001-2025</b></p>

The incident report submitted inaccurately stated the incident occurred or was discovered at 8am on January 29, 2024, which is contradicted by field observations and internal communications. The rationale provided was that Trans Mountain was trying to get a handle on the damages. However, the ERG emphasizes the importance of applying the “when in doubt report” precautionary principle.

Given the delay in reporting, and inaccurate representation of the time of discovery, I am applying a +1 to this criterion. I have not applied this to subsequent days, as the reporting delay is already captured in the assessment for the day the obligation arose.

<b>January 29, 2024</b>	<b>(0)</b>	<b>AMP-002-2025</b>
The violations spanned multiple days, and the reporting delay was already captured in the penalty assessment for AMP-001-2025, the day the obligation arose, and I have determined that this criterion is not applicable to Day 2 and have therefore not applied it.		

<b>January 30, 2024</b>	<b>(0)</b>	<b>AMP-003-2025</b>
The violations spanned multiple days, and the reporting delay was already captured in the penalty assessment for AMP-001-2025, the day the obligation arose, and I have determined that this criterion is not applicable to Day 3 and have therefore not applied it.		

<b>January 31, 2024</b>	<b>(0)</b>	<b>AMP-004-2025</b>
The violations spanned multiple days, and the reporting delay was already captured in the penalty assessment for AMP-001-2025, the day the obligation arose, and I have determined that this criterion is not applicable to Day 4 and have therefore not applied it.		

<b>7 - Steps taken to prevent recurrence of the violation</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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It is apparent from the DLB-001-2024 Measure 1 response that Trans Mountain on January 29 and 30 was taking steps to assess, maintain and repair DESC measures on Spread 6, after the weather event. However, actions taken to mitigate the effects of a violation do not equate to steps taken to prevent recurrence. Trans Mountain’s actions to prevent recurrence were not initiated voluntarily, they were required by the IOO, and included the following specified measures from the IOO:

Measure 2: “...determine the root cause..” and required that the Trans Mountain “investigation will include but not be limited to why contingency measures were not implemented in a timely manner, contractor oversight, resourcing, and assessment of needs as it applies to water management on Spread 6 for the duration of Project construction.”

Measure 3 required “...an action plan for the implementation of the corrective and preventive actions identified in item [measure] 2.”

Measure 4 required Trans Mountain to “Develop and implement a water management resourcing plan for Spread 6. The scope of the plan will include but not be limited to environmental compliance on the RoW for the remainder of the project. The plan will consider but not be limited to resourcing, training and competency as well as capacity to effectively respond to extreme weather events at all times...”

Trans Mountain did take the above steps to prevent recurrence and therefore I am not applying a +1 or +2. However, they were all specifically outlined by and required by the IOO, were not voluntary or proactive, and a recurrence of previously identified issues, so I am also unable to apply a -1 or -2. I am applying a 0 to this criterion.

For additional context, while the DLB-001-2024 Measure 2 Report and corrective actions are acknowledged, they mirror similar steps ordered in October 2023 (IOO JJD-001-2023), to systemic environmental and safety non-compliances at a wetland complex site on Spread 6. I also note that a November 2023 memo from the Trans Mountain Senior Director Pipeline execution to the TMEP – Construction Management Team emphasized: (1) Trans Mountain was required to investigate the root causes and develop corrective actions to address them; (2) the existence of systemic issues related to implementation and maintenance of environmental mitigation measures; and (3) Leadership commitment to prioritizing environmental compliance over cost and schedule.

Despite this commitment, the same types of failures recurred in January 2024. This indicates that prior corrective actions were not effective in preventing recurrence.

8 - For Type B violations, whether the violation was primarily a reporting or record-keeping requirement failure	This was not a primarily reporting or record-keeping failure, and I am not applying this criterion.			
9 - Any other aggravating factors in relation to the risk of harm to people or the environment	<b>+1</b>	<b>0</b>	<b>0</b>	<b>0</b>

The probability of harm resulting from these violations was high, due to the failure to implement the EPP, as required under Condition 3.

While the actual severity of harm experienced was low, the range of potential consequences of non-compliance were significant. The potential consequences identified are supported by the evidence reviewed and drawn from the impacts reported and observed during the inspection and ordered investigation. Specifically, the failure to implement the EPP created a risk of flooding that could have impacted two dairy farms and a section of highway potentially restricting access to nearby homes and businesses and posing a risk to public safety. In addition, saturated soils and erosion along the right-of-way increased the likelihood of landslides, endangering workers in the area. Erosion can also strip topsoil and carry sediment into watercourses, harming aquatic habitats and degrading water quality. Submerged gas cans, generators and trash pumps could have resulted in oil or fuel contamination of flood water and harm to aquatic habitats. Overland flooding may contaminate well water relied upon for agricultural or household use. Trans Mountain’s operational decisions, including the redeployment of DESC crews, the failure to monitor the isolation at BC-713e, lack of inspection and monitoring of pumps and other mitigations contributed to conditions and elevated the risk of flooding, contamination and slope instability. The IOO issued on January 31 further underscores the seriousness of these risks. Specified measure one of the IOO directed Trans Mountain to “immediately respond with all available resources to address environmental deficiencies and non-compliances on Spread 6 resulting from recent significant rain events.”

Given the combination of a high likelihood of harm and a low level of harm experienced, I have applied a score of +1 to this criterion for Sunday January 28, when the highest probability of harm was present and considering the redeployment of DESC crews in the height of the weather event. I have considered, but not applied this criterion for the 29, 30 and 31, as the weather event had ended and the likelihood of the potential consequences identified occurring was diminished.

<b>Date of Violations</b>	28 January 2024	29 January 2024	30 January 2024	31 January 2024
<b>Notice of Violation Number</b>	<b>AMP-001-2025</b>	<b>AMP-002-2025</b>	<b>AMP-003-2025</b>	<b>AMP-004-2025</b>
<b>C) Total Gravity Value</b>	<b>+3</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>D) Daily Penalty Amount</b>	<b>\$ 76,000</b>	<b>\$ 40,000</b>	<b>\$ 40,000</b>	<b>\$ 40,000</b>

**Section 5 – Total Penalty Amount**

Note: The total penalty amount shown is based on the period described in section one above.

**Total Penalty Amount: **\$ 196,000****

**Section 6 – Due Date (30 days from receipt of Notice of Violation)**

**Due Date: December 8, 2025**

Keith Landra

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AMP Officer

Signature

Date

Designated Officer pursuant to ss. 116(2) of the CER Act

**Notes**

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the Notice of Violation was served.

If you do not pay the penalty nor request a review within the prescribed period, you are considered to have committed the violation and you are liable for the penalty set out in the Notice of Violation. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the Financial Administration Act.

The information regarding the violation may be posted on the CER website:

- a) 30 days from the date this Notice of Violation was served; or
- b) upon issuing a decision following a Request for Review.

**To Make Payment:**

You may remit your fee payment by Electronic Funds Transfer (EFT) or by cheque payable to the order of Receiver General for Canada.

EFT payments can be arranged by contacting the Director of Financial Services, Monday to Friday, from 09:00 to 16:00 Mountain Time:

Telephone: 403-919-4743/800 899-1265  
Fax: 403-292-5503/877-288-8803

**Cheques** must be made out to the Receiver General for Canada and mailed to:

Canada Energy Regulator  
Attention: Finance  
210-517 10 Ave SW  
Calgary AB T2R OA8

Your completed *Payment* form must be enclosed with your payment.