



VARIANCE OF INSPECTION OFFICER ORDER NO. JJD-001-2024

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-001-2024, and superseding it with this order VAR-001-JJD-001-2024.

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

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

On or about 12 March 2024 at 8:00 the undersigned Canada Energy Regulator Inspection Officer conducted a compliance verification activity (CV2324-299).

A verbal Order was made on 12 March 2024 at 10:33 by the undersigned Canada Energy Regulator Inspection Officer.

RELEVANT FACTS

I, [REDACTED], 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 Inspection Officer observed the right-of-way between KP1112.500 and KP1112.850:
 - a. A crew was removing construction debris from mats in preparation for reclamation using a skid-steer and excavator.
 - b. A pair of Red-tailed Hawks have been known to nest in a tree approximately 20m from the right-of-way (RoW) over the last three years and they have been observed in the area over the last two months by the CER IO. The IAMC Indigenous Monitor confirmed a hawk was sitting on the nest using a pair of binoculars. The CER IO noted nesting birds were not identified on the Work Authorization and the crew was unaware of the birds in the area. The restricted activity period for raptors began on Feb 5. The Trans Mountain Lead Environmental Inspector stated:
 - They were unaware of any crews planning to be working at this location and reclamation activities were scheduled to be conducted during drier conditions.
 - A Resource Specialist has not been in the field this year to conduct any bird surveys or to make any recommendations at this location.
 - Environmental Inspectors have been observing the bird activity at this location but did not observe the bird sitting on the nest prior to this inspection.

2. CER IO is aware of similar non-compliances and violations including Inspection Officer Order DLB-001-2021 and AMP-001-2022.

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

1. Stop all work between KP 1112.5 to KP 1112.850 except to comply with Specified Measure 2 until the potentially hazardous or detrimental situation has been remedied to the satisfaction of the Inspection Officer.
2. Correct and provide documented evidence of all rectified non-compliances for this section of RoW including Resource Specialist recommendations.
3. Conduct an internal investigation to determine the root cause of contractors commencing work for Trans Mountain without appropriate authorization or oversight resulting in potential or actual damage to the environment. The scope of the investigation will include but not be limited to:
 1. Contractor oversight, environmental inspection, as well as the work authorization process to control environmental hazards.
 2. A review of the corrective actions found in Inspection Officer Order DLB-001-2021 including the Trans Mountain Final Investigation Report that has been previously submitted for similar non-compliance and violation.
4. Submit to the CER a copy of the internal 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 response confirming how Trans Mountain will oversee the scheduling and coordination of its contractor work crews going forward to ensure there are no gaps in work taking place without qualified and competent inspection oversight in place.
6. Submit to the CER a commitment from the Accountable Officer that the corrective actions developed in response to items 3, 4 and 5 above will be implemented as described.

EFFECTIVE DATE OF THE ORDER

This Inspection Officer Order takes effect immediately on 13 March 2024 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	13 March 2024	
	Date	
	[Redacted]	X [Redacted Signature]
	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.*