

WARNING LETTER

VIA E-MAIL TO MR. MIKE DAVIES

July 14, 2021

Mr. Mike Davies
VP Operations
Trans Mountain Pipeline
300 5th Avenue SW
Suite 2700
Calgary, Alberta, T2P 5J2
Canada

CPF 5-2021-040-WL

Dear Mr. Davies:

From February 22 through April 16, 2021, a representative of the Washington State Utilities and Transportation Commission (UTC) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), conducted an Integrated Inspection of the Trans Mountain Pipeline (Puget Sound) LLC, Oil Pipeline in the Northwest Washington area.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. § 195.440 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance

with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

API Recommended Practice (RP) 1162, Public Awareness Programs for Pipeline Operators. (Incorporated by reference in § 195.3)

8.4 MEASURING PROGRAM EFFECTIVENESS

Operators should assess progress on the following measures to assess whether the actions undertaken in implementation of this RP are achieving the intended goals and objectives:

- **Whether the information is reaching the intended stakeholder audiences**
- **If the recipient audiences are understanding the messages delivered**
- **Whether the recipients are motivated to respond appropriately in alignment with the information provided**
- **If the implementation of the Public Awareness Program is impacting bottom-line results (such as reduction in the number of incidents caused by third-party damage).**

8.5 SUMMARY OF BASELINE EVALUATION PROGRAM

Table 8-1—Summary of Baseline Evaluation Program

The results of the evaluation need to be considered and revisions/updates made in the public awareness program plan, implementation, materials, frequency and/or messages accordingly

Evaluation Approaches	Evaluation Techniques	Recommended Frequency
Self Assessment of Implementation	Internal review, <i>or</i> third-party assessment <i>or</i> regulatory inspection	Annually
Pre-Test Effectiveness of Materials	Focus groups (in-house or external participants)	Upon design or major redesign of public awareness materials or messages.

Evaluation of effectiveness of program implementation: • Outreach • Level of knowledge • Changes in behavior • Bottom-line results	1. Survey: Can assess outreach efforts, audience knowledge and changes in behavior • Operator-designed and conducted survey, or • Use of pre-designed survey by third-party or industry association, or • Trade association conducted survey segmented by operator, state or other relevant separation to allow application of results to each operator. 2. Assess notifications and incidents to determine anecdotal changes in behavior. 3. Documented records and industry comparisons of incidents to evaluate bottom-line results.	No more than four years apart. Operator should consider more frequent as a supplement or upon major redesign of program.
Implement changes to the Public Awareness Program as assessment methods above suggest.	Responsible person as designated in written Public Awareness Program	As required by findings of evaluations.

API, RP 1162 Section 8.5 recommends an effectiveness assessment of program effectiveness of “no more than four years apart” unless, according to § 195.440(c) the operator provides justification why the recommended practice is not practicable and not necessary for safety. The last Public Awareness effectiveness review of this pipeline was conducted in 2015. The Trans Mountain procedures do not provide a reason why the effectiveness review interval should exceed four years, so the next review was due in 2019. However, no record of a 2019 review was available during the inspection.

Kinder Morgan sold the pipeline to Trans Mountain in 2018. Also, the pipeline’s Public Awareness Program transitioned from Damage Prevention to Public Affairs in 2020. A Trans Mountain Public Affairs internal audit in 2020 noted that the effectiveness review did not occur in 2019, or there were no records of it occurring in 2019. Subsequently, Trans Mountain scheduled an effectiveness review for fourth quarter of 2020, but it was postponed to the first quarter of 2021 due to COVID-19 and the U.S. elections. Trans Mountain was conducting an effectiveness survey at the time of the inspection (March/April 2021).

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not

exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to correct the items identified in this letter. Failure to do so will result in Trans Mountain Pipeline being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 5-2021-040-WL**. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Sincerely,

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: PHP-60 Compliance Registry
PHP-500 B. Brown (#21-212065)