



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

ORDER TO BE VARIED

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

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

TRANS MOUNTAIN PIPELINE ULC (TRANS MOUNTAIN) IS THE COMPANY TO WHOM THIS ORDER IS DIRECTED

Trans Mountain is a Company conducting work located near Westridge Marine Terminal, Burnaby, British Columbia.

On or about 21 November 2023 at 8:00 the undersigned Canada Energy Regulator Inspection Officer conducted a compliance verification activity (CV2324-102) of/at Westridge Marine Terminal.

A verbal Order was made on 22 November 2023 at 17:15 by the undersigned Canada Energy Regulator Inspection Officer directing Trans Mountain to take specified measures as outlined below.

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

RELEVANT FACTS

1. 15 November 2023, during a meeting between the CER and Trans Mountain in response to an incident, the CER were told that Type 2 (lateral impact) headwear were not required at the Burnaby Terminal and the Westridge Marine Terminal for either project or operations activities.
2. The KLTP Lower Mainland Project Specific Safety Plan section 6.22.2 states "All workers must wear a CSA-approved hard hat."
3. The Trans Mountain Health and Safety Management Plan section 26.2.2 states "Hard hats Compliant with CSA Z94.1-05 and ANSI Z.89.1". Section 40.3.1 states a "DOT, Snell, CSA, or ANSI approved helmet with face shield and/or impact resistant goggles."

4. 21 November 2023, during a CER inspection, the CER inspection officers were told by Trans Mountain representatives that headwear were only required to be CSA approved, no specific Type was deemed to be required. On 22 November 2023, Trans Mountain representatives told the CER that Type 1 Class E was the minimum type and class required.
5. 21 November 2023, the CER observed workers operating a Utility Terrain Vehicle (UTV) at the Westridge Marine Terminal while wearing safety headwear with no chin straps. When questioned, the CER were told that a variance was issued for the Lower Mainland that allowed operators to wear Type 1 headwear while driving UTVs at the Terminal. The variance date 3/9/2021 does not address the use of headwear while operating UTVs. The CER further reviewed the Trans Mountain Utility Terrain Vehicle Standard which states in section 4.2 that workers may wear a “hard hat” in place of a helmet while operating a UTV within a Trans Mountain facility.
6. British Columbia Occupational Health and Safety Regulations Section 16.41(2) states “A UTV must be used in accordance with the manufacturer’s instructions.”
7. Trans Mountain and KLTP were unable to demonstrate that any proactive actions with respect to safety headwear have been taken to date to identify the hazards and evaluate risks associated with work tasks or activities, assess the risks, and implement controls for the risk. The CER were told that a hazard assessment, as required per CSA Z94.1, had not been done.
8. Trans Mountain failed to incorporate legal requirements as demonstrated by the safety headwear observed during the inspection.
 - a. Occupational Health and Safety Regulations Section 12 Protective Headwear.
 - b. Occupational Health and Safety Code Alberta Regulation 191/2021 Sections 234(1) and 234(2) Protective Headwear
9. The Trans Mountain Health and Safety Manual Section 5 – Safe Work Practices (s.2.5.3) states “A CSA/ANSI-approved hard hat must be worn at TM work sites, facilities, and terminals (e.g., pump rooms/buildings, ROWs during construction or maintenance activities, emergency response activities, manifolds, dock areas, and tank farms).”

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. Onshore Pipeline Regulations 6.5(1)(g) establish and implement a process for identifying, and monitoring compliance with, all legal requirements that are applicable to the company in matters of safety, security and protection of the environment.

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. A qualified person is to conduct a hazard assessment of jobs or tasks and of the work environment to determine the appropriate safety headwear to be worn by workers across the Trans Mountain Expansion Project and Trans Mountain Operation locations in Alberta and British Columbia.
 - a. Trans Mountain shall meet the legal requirements as indicated in CSA Z94.1
 - b. Trans Mountain shall provide the assessment to the Inspection Officer for review and acceptance as soon as feasible, on or before 8 December 2023.
2. Demonstrate how Trans Mountain is meeting the manufacturers recommendations with respect to the use of safety headwear on UTVs in the Trans Mountain facilities
3. Describe how Trans Mountain identifies and monitors compliance to its legal requirements and how it is integrated into the safety plan.
4. Conduct a root cause analyses of the oversight gap at the corporate level with respect to Personal Protective Equipment as outlined in the Trans Mountain Health and Safety Management Plan and General Construction Contractor Project Specific Safety Plans. Provide the report to the CER for review and approval no later than 8 December 2023.

EFFECTIVE DATE OF THE ORDER

This Inspection Officer Order takes effect on 29 November 2023 at the time of delivery of this Order to the person/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 person/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	29 November 2023	[REDACTED]
	Date	Name
	[REDACTED]	[REDACTED]
	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.*