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**SENT VIA EMAIL**

Captain Gordon Houston  
Chair, Tanker Safety Expert Panel  
Tanker Safety Panel Secretariat  
330 Sparks Street, Place de Ville Tower C (AAM)  
Ottawa, ON K1A 0N5

Dear Captain Houston:

Thank you for the opportunity to provide written comments to the Tanker Safety Expert Panel (Panel) tasked with undertaking a strategic review of Canada's Marine Oil Spill Preparedness and Response Regime on behalf of the Minister of Transport, Infrastructure and Communities.

For the most part, Canada's current oil spill preparedness and response regime meets today's needs. From a risk based perspective, the current response standard would cover the significant majority of potential spill scenarios from tankers, barges, and large commercial vessels. However, it is our opinion that the existing regime does not live up to the world-class standards that Northern Gateway has outlined in this submission or what is being expected by the public.

Through the Northern Gateway project's federal review process and our own consultation with First Nations, communities and stakeholders, which began in 2002, we continually hear that nothing short of world-class marine prevention and response will be acceptable. This is consistent with Northern Gateway's decision to ensure that the commitment to world-class marine prevention and response was built into our Project.

To assist the Panel in its review, below are the key areas Northern Gateway believes Canada's marine oil spill preparedness and response regime could be improved to meet world-class standards. Also attached are our specific comments related to the "Lines of Inquiry" provided by Panel.

## Key Areas of Improvement

### *Public education on the current regime*

The public perception is that the Canadian Coast Guard is responsible for responding to industry spills in British Columbia and that it does not have the capacity (staff or equipment) to respond effectively. In our opinion, an educational outreach program developed by Government in partnership with Industry and stakeholder groups (e.g., Regional Advisory Groups) is required to address this perception. This program would focus on three key areas:

1. Ensuring the public is made aware that government certified response organizations are in place and have the capacity (staff and resources) to respond to spills. These organizations, such as the Western Canada Marine Response Corporation in BC, are funded by industry, not taxpayers.
2. Communicating the role of governments: Transport Canada's role in the certification of the industry funded response organizations, the Canadian Coast Guard, Provincial and local government's role in Unified Command, and their role in an Incident Command System (ICS) to clearly demonstrate to the public that systems are already in place to respond to an event.
3. Educating the public on the effectiveness of the current regime given oil has been shipped off the B.C. Coast (from the ports of Vancouver, Prince Rupert and Kitimat) since the 1930's with an excellent safety record.

### *Compensation funds*

Northern Gateway is confident that the tiered international and national design to ship-source oil pollution compensation is in fact world class. Having a national fund provides Canada with a system which ensures that Canada's highly valued coastlines are protected.

One of the concerns of stakeholders in regards to the Northern Gateway Project (NGP) is that the combined funds (tanker insurance, national fund and international funds) may not be sufficient to cover a major tanker incident and therefore, the public would be obligated to pay for the clean-up costs. Northern Gateway supports the federal government's review of the current liability fund to ensure it aligns with Canadians' interests and the potential costs associated with spill cleanup costs.

### *Training*

In Northern Gateway's opinion, the federal and provincial government could play a key role in participation in regulated training exercises. Successful response requires all parties (governments -- federal, provincial and local, industry, response organizations, etc.) to understand and be practiced in their roles in the event of an incident. Clear expectations for continual training exercises should be established for both industry and government to ensure response skills remain top of mind. Parties such as First Nations in British Columbia must also have a clearly identified role in training exercises. The US National Preparedness for Response Exercise Program (Prep) Guidelines are a good example for setting both industry and government standards.

### *Prevention and pre-planning*

The current oil spill response regime focuses on response. Northern Gateway believes that, in addition to this focus on response, significant focus should be given to preventative measures and pre-planning as the best outcome is never having an oil spill to respond to. In our opinion, governments (federal and provincial) are in the best position to lead this discussion. We also strongly believe that this discussion should occur with potentially affected First Nations and through the established Regional Advisory Councils as expectations around prevention and pre-planning will likely vary across regions given the diversity of Canada's coastlines.

In regards to the Northern Gateway Project, pre-planning has been a major focus and the project has committed to substantial pre-planning activities such as preparation of sensitivity atlases, operational atlases, geographic response plans, harvesting studies, marine environmental monitoring programs and community response plans that go above and beyond what is required by regulations. In our opinion, Government also has a key role to play in ensuring coordination of this information.

### *Response should be based on net environmental benefit*

A world class marine response regime needs to be based on net environmental benefits, which means having in place a system that allows the use of alternate response approaches or at a minimum defining an expedited approval process for the use of alternate responses (e.g., dispersants and spill treatment agents). Oil spills are complicated events and the key to a successful response is responding quickly with of the most appropriate response. The federal government should take a leading role with other governments and stakeholders to identify the response options and other available assets that can be utilized, if appropriate, in the event of a spill.

### *Response planning standards verses performance standards*

Northern Gateway strongly agrees with the definition used in the Response Organizations Standards (T\_12401). These standards are intended to be used in the planning process in preparation for a response to an oil spill incident. Each response plan will be unique, taking into account the weather and geographic features specific to that region. Since the response to an incident will be influenced by environmental and other factors, the standards should not be used as a yardstick against which to measure the appropriateness of the response, but rather to ensure that a suitable response infrastructure is in place that can be deployed quickly in the event of a spill, regardless of size and conditions.


Lastly, we are of the opinion that it would be beneficial to have clear guidelines around the methodology to be used by response organizations and oil handling facilities for calculating equipment performance to meet the response planning standards. There are a number of approaches that can be used, and having clear guidelines in place to ensure openness, transparency and timeliness is critical to assessing performance.

### *Public education on the behavior of diluted bitumen*

Northern Gateway commissioned independent studies by recognized experts on the fate and effects of diluted bitumen behavior when spilled in the marine environment. The weathering processes are well understood and existing response techniques for recovery of heavy oils are well practiced. These questions attracted considerable attention from stakeholders and media, during the NGP regulatory process. We believe the federal government, with support from the provincial governments, is best positioned to clarify the record on this - specifically that diluted bitumen has been and can continue to be transported safely by vessels and pipelines and further, that in the unlikely event of a spill, can be cleaned up effectively. Northern Gateway is looking forward to working with federal and provincial regulators to further improve the state of knowledge on diluted bitumen.

Again, thank you for the opportunity to provide written comments. Northern Gateway strongly supports this review by federal authorities into plans and procedures to ensure continued protection of Canada's highly valued coastlines. We share this commitment which is demonstrated by the great lengths to incorporate into our Northern Gateway Project plans marine enhancements that would heighten safety for all marine traffic on BC's north coast, not just that traffic related to our project.

Sincerely,



for

John Carruthers  
President, Enbridge Northern Gateway Pipelines

Review of Canada's Marine Oil Spill Preparedness and Response Regime  
Lines of Inquiry  
(Phase 1: Current Regime south of  
60°)

**General**

**1. Does the current oil spill preparedness and response regime meet today's needs? What about future needs? What elements of the current regime could be improved to make it world class?**

- Successful response requires all parties (e.g., various levels of government, industry, and response organizations) to understand and be practiced in their potential roles in the event of an incident. There may be a need to increase the number of experienced and trained personnel within government agencies in order to effectively fulfill management roles in the event of a large spill.
- Northern Gateway is proposing a world-class marine prevention, preparedness and response program and is interested in working with other parties to ensure all systems meet that objective.
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- The existing system is focused on response readiness whereas a greater focus should be placed on preventive measures and pre-planning.

**2. Does Canada's current regime, which is based upon a public-private response model in which industry-funded Response Organizations take the lead in preparing for and responding to an oil spill, continue to make sense for Canada? What changes, if any, would improve the model to world class status?**

- For the most part, Canada's current oil spill preparedness and response regime meets today's needs. From a risk based perspective the current response standard would cover most potential spill scenarios from tankers, barges, and large commercial vessels. However, it is our opinion that the existing regime does not live up to the world-class standards that Northern Gateway has outlined or what is being expected by the public for major infrastructure projects.
- Northern Gateway has proposed to have an area-specific response organization with a capacity that exceeds the existing regulations. Northern Gateway believes an industry funded model is a fair and efficient system.
- Industry-funded OSRO's can take a leading role in preparing to meet regulatory requirements and in terms of having appropriate equipment and response resources (i.e. operations personnel to deploy the equipment) at appropriate locations to address the actual risks.
- Canada's adoption of a Unified Command structure means that a response is led by the Responsible Party (RP) Incident Commander (IC), with government agencies (federal, provincial, local).

**3. In terms of oil spill preparedness and response, are the current roles and responsibilities for government and industry clear? Are they appropriate? What changes would you suggest to improve roles and responsibilities under the current regime?**

- Industry's role, in terms of funding response organizations and being a responsible party in the event of an incident, is clear.
- The response roles of the Canadian Coast Guard (CCG) and Transport Canada are clear but further information on the specific unified command structure that the CCG plans to implement would ensure that ICS is adopted consistently in Canada's marine areas and timely executed.
- Responsibility with regard to scientific research and regional pre-planning is less clear and should be clarified.
- By nature, spills are complicated events. Regulations that normally help to protect the environment can potentially hinder an effective response effort. Clear definition of roles and policies, such as those related to alternative response approaches (e.g., dispersants and spill treatment agents) would help ensure the most effective response could be timely implemented in the event of an incident.

**4. What future trends or emerging developments (for example, new petroleum products, new response techniques or increased vessel traffic) should be taken into account to enhance the current regime to world class status?**

- The existing regime allows for a risk-based decision to be made on the level of response capacity in a given area through the establishment of designated ports, Primary Areas of Response and Enhanced Response Areas.
- Diluted Bitumen is often regarded as a "new petroleum product," whereas in reality this product has been produced and transported in large volumes by pipelines and by vessels in Canadian waters for many years. In this context, the existing OSRO's have had in place for many years the appropriate types of response equipment to deal with potential spills of this product.
- An enhancement of the current regime would be to ensure that a timely decision regarding the use of existing technologies, such as dispersants, can be made in a timely manner that doesn't delay implementation in circumstances where their use could effectively protect sensitive coastal resources at risk. For example, the use of controlled burning and chemical dispersants has been studied in great depth for the past 40 years and the advantages and limitations of this technology are well known and understood. As the "window of opportunity" to use these proven tools may be limited, it is incumbent upon the Federal government to have in place a decision-making process that does not delay its implementation in circumstances where their use could effectively protect sensitive coastal resources at risk.

**5. There are currently six Regional Advisory Councils (RAC) and one National Advisory Council (NAC) which provide advice and feedback to the Government of Canada on the current regime. What could be done to improve this feedback mechanism? Are the roles and responsibilities of the RAC and the NAC clear? Is this structure a best**

practice?

- The roles and responsibilities of the RACs and the NAC are clearly defined on Transport Canada's website and in our opinion, reflect best practices.
- In regards to improving the feedback mechanism, RACs should take on a larger role, particularly in regards to oil spill response training and , education during times of transition (i.e., implementation of new regulations). RACs should not be duplicated on a project by project basis, but rather be made up of a broad range of stakeholders (e.g., municipalities, environmental groups, Aboriginal interests, and academia) for areas of interest to ensure consistent dialogue/processes. The current member structure does not include a number of the mentioned parties.

**6. Canada's current regime is standardized across the country, with all ports, ship-owners, oil handling facilities and Response Organizations operating under the same legislation, regulations and guidelines. Is this an appropriate model for Canada? What improvements could be made to the current model?**

- Ship-source oil pollution is regulated federally, therefore it remains appropriate to have an overarching Canada-wide regime.
- The standardized, tiered response capacity requirements may require evaluation for appropriateness at the regional level. Regional, risk-based approaches (e.g., similar to Det Norske Veritas' Marine Shipping Quantitative Risk Analysis, undertaken on behalf of Northern Gateway) may be more appropriate for assigning tiered response requirements at the regional level or for specific terminal activities.

**7. Does the current preparedness and response regime clearly define how it interacts and links with Canada's liability and compensation regime? What changes, if any, would improve the current framework to world-class status?**

- Throughout Northern Gateway's regulatory process it has become apparent that there are many misconceptions held by the general public and interested parties about the liability and claims process, particularly over where the funds come from and the type of claims covered. The federal government should undertake an education and outreach program informing communities and interested parties the robustness Canada's liability and compensation regime.
- The Regional Advisory Councils with adequate representation should also take on a larger role in disseminating information in regards to marine shipping, such as Canada's liability and compensation regimes.

**8. Canada currently has two regimes for marine oil pollution: one for ship-source oil pollution and one for oil pollution from oil exploration activities and offshore platforms. What are the benefits to having two separate regimes? What are the risks to having two separate regimes?**

- Through the Northern Gateway regulatory process, the two regimes initially resulted in some stakeholder confusion. As a result, additional education on why two regimes are required is required as the regimes correspond to two

very different types of oil pollution scenarios. One regime that addresses ship-sourced oil pollution which represents a known maximum volume and unknown location along a shipping route and the other regime that addresses oil exploration activities and offshore platforms which represents an unknown volume discharge, at a known single point source.

- As the regimes reflect different risks and participants, it would be appropriate to keep them separate.

## Preparedness

### 1. Are the preparedness requirements for ports, ship-owners, oil handling facilities and Response Organizations adequate? What changes, if any, would improve the system to make it world-class?

- The process to determine the adequacy of and identify potential changes to the existing preparedness regulations would require an evaluation of the rationale behind each of the requirements of the *Response Organizations and Oil Handling Facilities Regulations*, a gap analysis of the regulations content, and a regional risk assessment to evaluate whether the requirements are commensurate with the risk.
- This is the process that was undertaken by the Northern Gateway Project where a specific risk assessment was completed and which informed the planning standards put forward by the project. Based on this risk assessment and a review of other international best practices, preparedness and planning items may include such items as education, sensitivity atlases, operational atlases, geographic response plans, harvesting studies, marine environmental effects monitoring programs, and community response plans. All of these preparedness tools would be developed in consultation with local communities and the appropriate government authorities.

### 2. Does research and development play a strong enough role in the current regime? Who should be responsible for funding and conducting research and development related to the oil spills?

- Northern Gateway has committed to leading (i.e., providing funding and oversight) or jointly leading with government and other industry participants, the establishment of the Scientific Advisory Committee to undertake research into various aspects of emergency preparedness and response.
- Research and development will benefit Canadians through enhancements and continuous improvement to Canada's response regime.
- Environment Canada (EC), in part supported by industry funding, has been a world-leader in oil spill research and development for decades and is regarded by many in the profession as having contributed more to the development of technical and scientific advances in the field of oil spill research than any other jurisdiction. The focus of research orientated government groups best serves the Canadian public by working closely with industry. This allows for research funding to go further and provides a collaborative environment to work towards solutions rather than criticizing unknowns. It must be noted that this type of research should also be focused on practical solutions, not purely academic



interests.

- The federal government should ensure continued capacity be allocated to EC to maintain this position as the world-leader in oil spill research and development.

**3. Is there a need for a greater degree of coordination between government departments, between different levels of government (federal, provincial, municipal and international) and between government and the industry in respect to training, exercises and research and development? What could be done to make the coordination of these activities more effective? What steps should be taken?**

- Successful response requires all parties (governments – federal, provincial and municipal, First Nations, industry, response organizations, etc.) to understand and be practiced in their roles in the event of an incident. In our opinion the federal and provincial government should play a key role in education and participation in training exercises. Clear expectations for regular training exercises should be available for both industry and government to ensure response skills remain well practiced; and that First Nations have a clear role in training exercises. The US National Preparedness for Response Exercise Program (Prep) Guidelines is a good example for setting both industry and government standards.
- As noted in question 3. The focus of research orientated government groups best serves the Canadian public by working closely with industry. This allows for research funding to go further and provides a collaborative environment to work towards solutions rather than criticizing unknowns. It must be noted that this type of research should also be focused on practical solutions and not purely academic interests. An example of this is the Scientific Advisory Committee that will be implemented if the Northern Gateway Project moves forward.

**4. How should risk information related to the potential for an oil spill and its possible impacts be used to inform the elements of the regime? What other information should be taken into consideration when government and industry formulate their preparedness and response plans?**

- As was the case for the Northern Gateway Project Review, the regime should assess risk information related to the potential for an oil spill and its possible impacts on a regional basis to evaluate whether the requirements are commensurate with the risk. In the case of the Northern Gateway Project specific risk assessments were completed which informed the planning standards put forward by the project.
- Regional risk assessments should be used to help inform planning processes such as Geographic Response Plans (GRPs) which should be coordinated by government with First Nation, industry and stakeholder input through a suitably represented RAC.

**5. What other preparedness requirements should be incorporated into the regime?**

- As identified in preparedness question #3, responding to an event, particularly in an ICS environment, is not the time for training and defining roles.
- Some common practices that would be of benefit include:
  - joint testing of equipment effectiveness,
  - common formats for tools that are useful to all marine users, such as geographic response plans

- mapping products that aid in response, have been ground-truthed and are updated with significant First Nation cultural sites and biologically sensitive areas
- agreement on places of refuge,
- selection of salvage companies
- Fishermen's training programs,
- clear approval processes for all response options.

## Response

### 1. What could be done to make the response to oil spills more effective and efficient?

- Northern Gateway has emphasized the importance of training and exercising response resources for an effective and efficient response (preparedness question #3) as well as the use of dispersants (general question #4)
- Northern Gateway would like to see a consistent approach to ICS across all government parties.

### 2. Is there adequate oversight of the Response Organizations under the current regulatory framework? Are the current Response Organizations Standards adequate? What, if any, changes should be made? Is the certification process for Response Organizations adequate and is there sufficient expertise present during this process?

- Northern Gateway is not aware of any specific issues regarding oversight and adequacy or certification with the existing Response Organizations south of 60°.
- The adequacy of the Response Organizations capability is underpinned by mutual aid agreements both within and from outside Canada. A remaining issue in this cascading approach to supplement Canadian response resources is the ability for non-Canadian response equipment and personnel to enter Canada in a timely and efficient manner.

### 3. Is the current regulated response capacity of 10,000 tonnes sufficient or should it be increased? What could be done to improve on this current model for regulated response capacity?

- Increasing the regulated response capacity of 10,000 tonnes may be appropriate for select regions to ensure that a major response can be mounted in a short timeframe. Response capacity should be commensurate with risk assessments.
- Northern Gateway has committed to having the first of a major response capacity on site within the marine channels within 6 to 12 hours. The overall recovery capacity of 36,000 m<sup>3</sup> corresponds to the worst case credible spill volume for a Very Large Crude Carrier (VLCC) grounding or collision incident (as determined by DNV's Marine Shipping Quantitative Risk Analysis). Such a capacity may not necessarily be commensurate with risk in other areas.
- In the event of spills which exceed the existing local response capacity a tiered system is the best practice.

### 4. What could be done to increase the capacity to respond to spills of unconventional oil products (e.g. diluted bitumen)?

- Northern Gateway does not agree with the opinion that diluted bitumen is an unconventional product and has demonstrated this by commissioning independent studies by recognized experts on the behaviour of diluted bitumen when spilled in a marine environment. Through these studies, tank testing was performed which found diluted bitumen to behave similarly to that of light to medium intermediate fuel oil (IFO) shortly following a spill and similar to a heavy IFO when weathered (i.e., Bunker C). Bunker C is commonly carried on marine vessels and has been transported off of BC's coastline since the 1930s. As such, capacity currently exists, through the existing Response Organizations, to respond to spills of heavy IFOs. Despite this experience, Northern Gateway recognizes that additional work may further inform response planning and has committed to a research effort that will yield more advanced information. Validation by a respected independent expert would be beneficial.

**5. What role should the Canadian Coast Guard take during the response to an oil spill?**

- The role of the Canadian Coast Guard in response to an oil spill should be that of a Federal Incident Commander to enable a Unified Command (UC). The Canadian Coast Guard should also ensure trained and experienced staff at all management levels to fill functions within the Spill Management Team (SMT) so that the Unified Command concept is vertically integrated throughout the management team.

**6. What improvements could be made to better integrate government and non-government stakeholders into the overall management of a response?**

- The use of an integrated UC and SMT concept, training of Aboriginal and local representatives within the ICS structure and better defined responsibilities of a community liaison.

**7. Is there a role for other parties to play in the response to an oil spill, particularly in more remote areas of the country? What factors would need to be considered if there is an increased role for them?**

- Industry-funded tier 1 response capacities and associated community training may be appropriate considerations for remote communities.
- Expanding the coverage of vessels of opportunity linked to ROs may also be considered.

**8. The current response regime is based around mechanical recovery. Are there alternate response techniques that should be considered in addition to mechanical recovery for spill response? What are the pros and cons of these alternative mechanisms? How could these additional methods be included into the current regime?**

- In our opinion, a world class marine response regime should be based on net environmental benefits, which means having in place a system that allows the use of alternate response approaches or at a minimum defining an expedited approval process for the use of alternate responses (e.g., dispersants and spill treatment agents). Oil spills are complicated events and key to a timely and successful response is responding quickly with of the most appropriate response. The federal government should take a leading role with other governments and stakeholders to enable a host of response options that can be planned for and utilized if appropriate in the event of a spill.

- If a clear process is established to enable the use of dispersants, efficiencies could be gained through a centralized system that could be deployed to respond to any event off of BC's coast.

## **Liability, Compensation and Funding**

### **1. How should a world-class oil spill preparedness and response regime be funded?**

- Response is accepted throughout the world as being funded by the polluter.
- Prevention is typically paid for by industry as well through user fees (e.g., Pilots and Port State Inspections).
- To fully evaluate how other preparedness initiatives should be funded or make comparisons to other jurisdictions, it is important to consider the full funding system. In Canada royalties are collected on oil and gas and other operations are taxed. It is then up to the government to determine how these general revenues are spent.

### **2. Is the current fee structure fair, reasonable and transparent, and does it meet the current regime's requirements?**

- Yes. Industry pays to fund response organizations.
- The Ship-source Oil Pollution Fund (SOPF) is supplemental to the International Oil Pollution Fund (IOPF).
- The SOPF's Administrator report provides transparency for the fee structure. The fund has not collected levies from industry since 1976.
- The amount of the SOPF should be reviewed periodically, with respect to both marine safety performance and clean up and remediation costs.

### **3. Canada's liability and compensation regime provides coverage for the costs associated with responding to an oil spill from a ship. Are there specific costs where the coverage for responding to an oil spill is potentially not adequate? Are there current limitations on the coverage that may impact a response to a spill?**

- Northern Gateway is confident that the tiered tanker insurance, international and national design to ship-source oil pollution compensation is in fact world class. Having a national fund provides Canada a system by which to ensure that coverage is appropriate to Canadian needs.
- One of the concerns that Northern Gateway has heard is that the combined funds may not be sufficient to cover a major tanker incident. In the proceedings of the Northern Gateway project review process, several groups have claimed that the public through the Canadian Government would be on the hook for costs of a major spill. Northern Gateway notes that funds are seldom accessed for tanker spills, that the current fund limit has not been exceeded and that the likelihood of an event exceeding the tiered compensation limits is very small. Even given the low probability of this type of event it would be useful for the public of Canada to better knowledge of the current compensation regime and have additional knowledge around what the plans would be to recover funds if a spill exceeded the compensation limits.
- Northern Gateway is of the opinion that the SOPF capacity should be reviewed periodically and if the SOPF is determined to be inadequate as a result of past or future

spill risks, the mechanism to build or replenish funds to cover clean-up and compensation costs would presumably be through the reinstatement of levies.

**4. There exist several models for funding the preparedness costs to an oil spill as well as providing access to emergency funds during an ongoing response. Would the dedication of a set amount of emergency funds similar to what is in place in the United States be an improvement to the capability to effectively manage a large spill? What improvements should be made?**

- Please refer to question 1 regarding funding preparedness activities.
- Canada has the SOPF for which no levy has been collected from industry since 1976.
- A review of the 2010 - 2011 SOPF Administrator's Annual Report indicates that most claims submitted to the SOPF are from the Canadian Coast Guard for clean-up of recreational or fishing vessels spills.
- The emergency fund component of the US Oil Spill Liability Trust Fund (OSLTF) is available to Federal On-scene Coordinators to respond to spill and for federal trustees to initiate natural resource damage assessments. Since the Canadian system is focused on cleaning up the spill rather than natural resource damage assessments such a fund is less applicable.

**5. Could the Ship-Source Oil Pollution Fund be used more effectively for the purposes of preparedness and response?**

- The SOPF was established to enable the effective payment of claims resulting from an oil spill. Should governmental response preparedness require additional funding, a separate model should be considered keeping in mind the comments in question 1 of this section.