

ITEM SUPPLEMENTARY 21
MANAGER'S REPORT NO. 57
COUNCIL MEETING 88/09/12

RE: APPEAL PROCEDURES FOR NATIONAL ENERGY BOARD DECISION REGARDING
TRANS MOUNTAIN PIPE LINE CO. LTD. APPLICATION FOR EXPANSION, PHASE I
BURNABY MOUNTAIN TANK FARM

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Chief Public Health Inspector
be adopted.

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TO: MUNICIPAL MANAGER 1988 SEPTEMBER 08
FROM: CHIEF PUBLIC HEALTH INSPECTOR
SUBJECT: APPEAL PROCEDURES FOR NATIONAL ENERGY BOARD DECISION
REGARDING TRANS MOUNTAIN PIPE LINE CO. LTD. APPLICATION
FOR EXPANSION, PHASE I - BURNABY MOUNTAIN TANK FARM

RECOMMENDATION:

1. THAT this report be received for information purposes.

REPORT

1.0 INTRODUCTION:

As per Council's request for information on the most appropriate grounds
for Council to appeal the National Energy Board's decision regarding
Trans Mountain Pipe Line Company Ltd's application for expansion,
Phase 1 - Burnaby Mountain Tank Farm, we advise as follows.

Environmental Health staff contacted the National Energy Board Law Branch
1988 August 30 to discuss the most appropriate method in which Council
could appeal the National Energy Board's decision of approving the Trans
Mountain Pipe Line Application for expansion, Phase 1.

The method of appeal after the decision of approval is made is described in the National Energy Board Draft Rules of Practice and Procedure pursuant to the National Energy Board Act Chapter N-6, Section 18 and reads as follows.

PART V

APPLICATIONS FOR REVIEW OR REHEARING

APPLICATIONS

41. (1) An application for review of rehearing pursuant to subsection 17(1) of the Act shall be filed in writing with the secretary.

(2) An application pursuant to Subsection (1) shall contain a clear and concise statement of the facts, the nature of the order or decision applied for, and the grounds that the applicant considers sufficient

(a) in the case of an application for review, to raise a doubt as to the correctness of the order or decision including

- (i) any error of law or jurisdiction;
- (ii) changed circumstances that have arisen since the issuance of the order or decision;
- (iii) new facts that have arisen since the issuance of the order or decision; and
- (iv) facts that were not placed in evidence in the original proceedings and that were not discoverable by reasonable diligence;

APPLICATION FOR STAY

46. (1) Concurrently with the filing of an application for review, an applicant may apply to the Board for an order staying the order or decision which is sought to be reviewed pending the outcome of the application for review.

2.0 COMMENTS AND CONCLUSION:

In light of the above avenues for appeal, it is the Environmental Health Division's opinion that there is only one possible ground for appeal. As per National Energy Board Draft Rules of Practice and Procedure, Part V, Section 41.2(a) - iv, there were certain facts that were not placed in evidence in the original proceedings.

These facts relate to Council's concern for the National Energy Board to require Trans Mountain Pipe Line Company Ltd. to prepare and submit a complete environmental impact assessment. The decision of the National Energy Board for the subject concern was that the applicant had met the requirements of Section 49 of the National Energy Board Act, including the applicable paragraphs of Part VI (Environmental Information) of the Schedule to the Rules of Practice and Procedure (quoted in part below) and no further environmental information was necessary.

ENVIRONMENTAL IMPACT ASSESSMENT

- d) An assessment of the probable short and long-term impacts of the proposed project upon the bio-physical environment, and the present land and natural resource use, and an assessment of any major environmental issues requiring individual identification and attention. Such assessment should consider, but not be limited to, the relevant parts of the following:
 - (i) with respect to the physical environment:
 - (F) ambient air quality and noise levels

It is the opinion of the Environmental Health Division that the issue of addressing possible short and long term impacts of the proposed project on ambient air quality as stated in the applicable paragraphs of Part VI of the Schedule to the Rules of Practice and Procedure, may have not been met.

This is of particular importance in light of reviewing Dr. Clyde Hertzman's report on "The Health Significance of Hydrocarbon Exposures in Forest Hills Area" which was received after the Hearings. In his report, Dr. Clyde Hertzman indicates "...that the trends found in the existing data underscore the need to evaluate Benzene exposures in the Forest Hill community more carefully..." Although the report does not indicate whether or not the tank farms might be the point source of periodic excursions in ambient Benzene concentrations, it may be a possible link for Council to appeal. Should Council wish to pursue an appeal of the N.E.B. decision, it would be appropriate to pass a motion directing the Environmental Health Division to work with the Municipal Solicitor to prepare and file the subject appeal.

G.V. Harvie, C.P.H.I.(C)
CHIEF PUBLIC HEALTH INSPECTOR

Per:



K.C. Johnston, C.P.H.I.(C)
ACTING CHIEF PUBLIC HEALTH INSPECTOR

KCJ/g1

cc: Medical Health Officer
Director Administrative &
Community Services
Municipal Solicitor

