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## CANADA DELAYS MANDATORY DISCLOSURE OF RESOURCE PAYMENTS TO FIRST NATIONS FOR TWO YEARS: DELAY AND PROVINCIAL SUPPORT FOR SCHEME CLEARS WAY FOR LEGISLATION THIS FALL

Canada's move towards mandatory reporting of resource payments by mining and oil & gas companies to host governments got a big push recently at a meeting of provincial and territorial resource ministers. First, all provinces and territories endorsed the federal government's plan to impose new rules with legislation to be introduced this fall. This is a key development as it removes the risk that such legislation will be challenged as being offside of federal jurisdiction. This was a big concern for Ottawa following its Supreme Court loss in the Securities Act reference case and will strengthen the federal government's resolve to take the lead in legislating in this area.

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In conjunction with securing provincial and territorial support, Canada's Minister of Natural Resources Joe Rickford further cleared the way for the adoption of payment reporting by announcing that payments to Aboriginal groups will be exempted for two years for further consultation. This was the most controversial

aspect of the federal government's intended reporting framework since first announced in June 2013 and reiterated this past March (see here and here for previous bulletins on payment reporting). Aboriginal groups remained steadfast in their opposition to this disclosure and the scheme had little support from the

mining and oil & gas industry, many of whom privately feared reporting these payments could hinder goodwill and their relationships with Aboriginal groups. Minister Rickford's decision now better aligns Canada's reporting framework with similar American rules introduced in the 2010 Dodd-Frank Act and the

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European Union's recently amended Transparency Directive, neither of which cover payments to Aboriginal Groups. More importantly, the delay to aboriginal payment disclosure removes a further possibility of a court challenge to the scheme, which seemed inevitable following the Supreme Court's recent landmark Tsilhqot'in Nation decision (See here for a bulletin on the implications of this ruling for project developers).

With the two main legal impediments to payment reporting in Canada now resolved, Canadian mining and oil & gas companies should fully expect legislation to be adopted by next spring, and payment reporting obligations to apply to their fiscal years ending after June 30, 2015. Companies that will be covered by this scheme – any mining, oil & gas companies publicly trading in Canada or privately held with \$20 million in assets; \$40 million in net turnover; or 250 employees – would be wise to take the following three steps to prepare for this new framework:

#### 1. Assess Internal Capabilities

Fiscal year 2014 will likely be the last year that extractive companies in Canada will not have to report the payments they make to host governments to develop resource projects. This time should be used to assess record-keeping and accounting systems to ensure that these payments are properly tracked and can be reported in a verifiable manner. Natural Resources Canada has previously indicated a \$100,000 threshold will be applied to such payments, which is the same threshold as in

the United States. However, this can be a misleading figure as it represents an aggregate amount; any combination of taxes, permits, fees, licences, etc. that collectively equal or surpass \$100,000 in a fiscal year to develop a mining or oil & gas project will require all payments to be reported (even those less than \$100,000) on a disaggregated basis.

#### 2. Prepare for a Competitive Intelligence Game Changer

While payment reporting may be seen as hassle to many resource companies, it also represents an unprecedented opportunity to see what competitors are paying to develop resource projects, often in the same jurisdiction. This information will undoubtedly impact how future resource contracts are negotiated with host governments, but it could also become an important tool for estimating project costs (and, thus, long-term profitability) and evaluating a management's ability to create value for shareholders. Although we are still a year away from this information becoming widespread and easily accessible, the earlier companies are able to realize the benefit of this competitive intelligence, the better off they will be. (For more on how revenue transparency is a game changer for industry, see here.)

#### 3. Keep an Eye on Longer-Term Payment Obligations to Aboriginal Groups

By pushing off aboriginal payment disclosure until at least 2016 and, crucially, until after the next federal election, it is now uncertain if such

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a scheme will ever be mandated in Canada (though it should be noted that neither federal opposition party has indicated a position on this issue). What is certain is that there is now at least a 24-month window where these payments will remain confidential. However, given that most mining and oil & gas contracts tend to have terms that can stretch into decades, a two-year window may not be a long time in this industry. Therefore, companies should keep in mind the possibility of future reporting when negotiating and entering into joint ventures, impact benefit agreements or related contracts with Aboriginal Groups that give rise to payment obligations. Should Aboriginal counterparties be resistant to payment disclosure,

it may be worth exploring ways to structure a greater portion of payments upfront or at least before disclosure rules could apply in 2016.

### BURNABY TELLS KINDER MORGAN CONSERVATION AREA IS OFF LIMITS

Company says it has legal right to cut trees for geotechnical studies on proposed pipeline route

The City of Burnaby has told Kinder Morgan to stop doing work in the Burnaby Mountain Conservation Area after staff discovered the transmission company's crews with chainsaws and other tree-cutting equipment Tuesday.

However, Kinder Morgan spokeswoman Lizette Parsons Bell said in an interview that they are legally within their rights after being granted a permit under Section 73 of the National Energy Board (NEB) Act to conduct engineering and environmental studies for the proposed pipeline route in Burnaby — and that includes cutting brush, tree limbs and trees deemed necessary for survey work in the Burnaby Mountain area.

She also said crews were conducting cuts as a safety measure for company workers doing geotechnical work and that they will return Wednesday. Work was stopped Tuesday after city workers showed up, she added.

"We were on sight today to continue field work and studies needed to help with the assessment of the proposed pipeline corridor in Burnaby," said Parsons Bell, noting that crews would minimize the impact of cuts. "We're consulting with our legal counsel to consider our next step and are committed to persevering with this authorized and necessary work."

Burnaby Coun. Sav Dhaliwal said in an interview that Kinder Morgan crews were starting to mark trees for removal and that "we've issued a notice to stop work. As a corporate citizen, I hope they respect the stop-work order, gather their equipment and go away."

Burnaby, which opposes the Kinder Morgan Trans Mountain pipeline expansion proposal, said the trees were being marked by survey crews for removal for the pipeline the company wants to construct between

the Alberta oilsands and Burnaby. "This is an area protected by city bylaws and nobody is above the law," said Dhaliwal. "They say they have a right to do that, but we say they don't."

He said Burnaby staff won't get into any physical confrontation with crews if the work continues, but that "we'll monitor them."

Burnaby Mayor Derek Corrigan said the city does not believe Kinder Morgan has a legal right to cut trees in the area.

"We think that (NEB) section doesn't overrule city bylaws. Our staff will be back there (Wednesday) too."

Corrigan said the city "can't let Kinder Morgan cut down trees and do irreparable damage in a conservation area protected by our city's bylaws. These bylaws represent the rights and values of our citizens and local residents."

"We were prepared to allow them to access this conservation land for non-invasive work that could be repaired over time, but absolutely not to do what they arrived this morning to do — to cut down trees to create helicopter landing pads and sites for drilling bore holes on this protected land."

Burnaby's legal counsel Greg McDade said in a statement that Burnaby will seek a court order ruling. "Kinder Morgan has not only damaged the Conservation Area in contravention of the law, they have also attempted to interfere with traffic on public roads and to obstruct park staff in their duties. The actions of the company are

unprecedented, and they appear to believe they can act as if the rule of law doesn't apply to them."

Parsons Bell denied that a helicopter pad was being built. "At no time will a helicopter land in the Burnaby conservation area."

### CONCERN OVER AIR QUALITY IN MONTREAL RELATED TO OIL TRANSPORT

As this city becomes a transport hub for oil from Western Canada,

residents in the east end may soon notice pungent odours and degrading air quality, environmental groups warn.

That's the reality now facing residents of Saint John, N.B., since the Irving refinery in that city began increasing its intake of heavy crudes from Alberta.

A report by Reuters last week showed that Saint John residents have complained about "horrendous" odours of "very rotten eggs," powerful enough to burn their eyes around that city's oil-by-rail port. Complaints

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by residents to Irving have spiked to 21 in the first five months of 2014, compared with four for all of 2013 and one in 2012, according to the report.

Traditionally, oil refineries in Quebec and Eastern Canada have relied on oil shipments by boat from South America, the Middle East, Europe and Africa, but in recent years, it has become cheaper to bring in crude from Western Canada, and rail shipments of oil have skyrocketed in the last year. Montreal is in store for a lot more western Canadian crude to be transported through this city either by rail or by pipeline. More than 100,000 barrels of crude oil now likely travels through Montreal and the region every day by train to reach the Suncor facility in Pointe-aux-Trembles, Valero Energy's Jean-Gaulin refinery in Lévis, near Quebec City, and the Irving Oil refinery in Saint John. Next month, Enbridge will begin bringing in as much as 300,000 barrels of crude per day along its pipeline network that spans from Western Canada to Montreal East. Earlier this year, the company received permission to reverse the last part of its pipeline network (from the Hamilton, Ont., area to Montreal East).

André Belisle, the president of Association québécoise de lutte contre la pollution atmosphérique, said transporting heavy crudes through Montreal either by rail or by pipeline will have a negative impact on the region's air quality.

"If it's heavy crude, it has to be kept warm whether it travels by pipeline or by train," Bélisle said. He said there are chemicals added to heavy crude when its being transported, and those chemicals are vented into the air when the crude is transported, or when it's off-loaded onto trains or ships.

"When you heat up crude, you have to ventilate it every so often, because gases build up," he said.

Steven Guilbeault, the cofounder and senior director of the environmental group Équiterre, said it isn't only Montreal that would be impacted, but also Sorel, where oil shipped by rail is expected to be stored and then off-loaded onto ships.

And things could get worse if Suncor and Valero decide to alter their refineries in order to process heavy crudes. A report by AQLPA last year warned that switching from light crude to heavy crude from the oilsands region would triple the greenhouse gases emitted.

Contacted Tuesday, Sneh Seetal, a spokesperson for Suncor would not say whether the company plans to refine heavy crude from the oilsands region in its Montreal facility. Valero currently brings in light crude from Western Canada that has been processed first before being carted by rail, and has said it has no plans to alter its refinery.

Montreal East Mayor Robert Coutu said reports by the city of

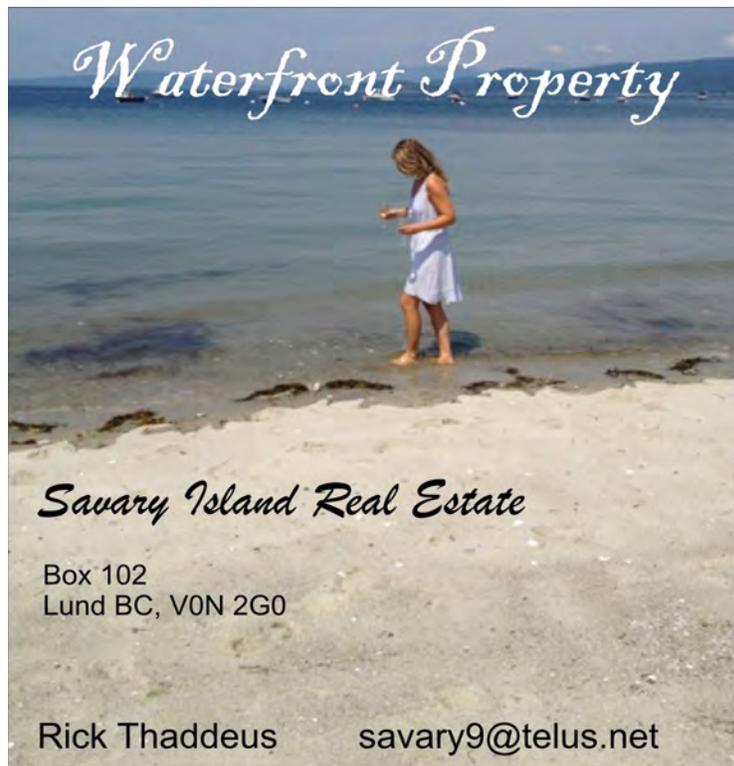
Montreal have showed a gradual improvement in air quality in the east end. He said only part of that can be attributed to the fact that several refineries have shut down in eastern Montreal over the last decade or so.

"That's one of the factors," he said. "But the technology has allowed these companies to reduce their emissions," he said.

However, he admitted that if Suncor

increased its capacity, that would likely have an impact on air quality.

"Let's be honest, if there is more production, more transport by train, truck and ship, (there will probably be more pollution) but not a lot. All measures will be taken to minimize the impact and respect the environment."



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