

Who pays?

For oil tanker spills in Canadian waters?

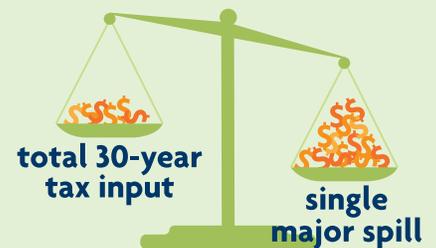
Why the Northern Gateway Project puts Canadian taxpayers at risk

If Enbridge's Northern Gateway pipeline is approved, Canadian taxpayers could be on the hook for billions of dollars to cover the cleanup and compensation costs in the event of a catastrophic oil tanker spill. The maximum amount of money available to deal with a worst-case scenario oil tanker spill in Canadian waters is approximately \$1.33B CAD. These funds may fall drastically short of what is needed to adequately clean up and pay compensation in the event of a spill, given that the price tag from the 1989 *Exxon Valdez* spill in Alaska was at least \$3.5B USD. This price does not include losses from passive-use industries such as sport fishing and tourism, which were estimated at another \$2.8B USD.

Oil tankers servicing the Northern Gateway pipeline could easily cause a spill like the *Exxon Valdez* disaster on Canada's Pacific North Coast. Communities in Alaska are still dealing with the environmental, social and economic repercussions of this spill more than 20 years after it happened. Exxon was responsible for the majority of cleanup and compensation costs due to the U.S. oil spill funding framework of the time. In Canada today however, the federal government (i.e. taxpayers) would be responsible for upwards of 67 percent of the bill. A spill equivalent in size to the *Exxon Valdez* could cost Canadians over \$2B USD in cleanup and compensation alone, plus countless and long-lasting social and ecological damages.

Who is liable for an oil tanker spill?

In Canadian waters, the tanker owner is responsible for pollution damages from oil spills. The owner of the oil, pipeline or terminal is not liable for the spill and does not have to pay for the cleanup, compensation or natural resource damages, nor does the company which charters the tanker. Although Enbridge claims "extended responsibility" for the Northern Gateway Pipelines project, they are in no way legally responsible for any of the costs associated with an oil tanker spill since they will not own the ships carrying the oil.



Tax Revenue Gained vs. Lost

Enbridge estimates that total local, provincial and federal tax revenues over the 30 year lifespan of the project will be approximately \$2.6B. This includes an estimated \$36M per year to be paid by Northern Gateway in local property taxes.¹ This is likely not enough to cover the cost of even one major spill. It could never account for the cultural, social and environmental losses borne by the people of the coast for years to come.



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This fact sheet is based on a report titled *Financial Vulnerability Assessment: Who Would Pay for Oil Tanker Spills Associated with the Northern Gateway Pipeline* written by the Environmental Law Centre at the University of Victoria.

Who pays?

Canada's Compensation Regime – A Four Tiered Approach

In Canada, liability and compensation for oil pollution damage is governed by the Marine Liability Act. Through various provisions, several international conventions are incorporated into

Canadian domestic law. These treaties limit (i.e. cap) the liability of ship owners and set the amounts available for clean up, compensation and natural resource damages. There are four tiers of funding.



Tier 1 - Civil Liability Convention and Protection & Indemnity Insurance

Imposes strict liability on the ship owner ("Responsible Party") for oil pollution damage and is calculated according to ship tonnage. Ship owners are liable for a maximum of approximately \$150M CAD, paid by the ship's

insurer, usually a Protection & Indemnity Club. Once this limit is reached, the ship owner can legally designate the government as the new Responsible Party in charge of response.



Tier 2 - International Oil Pollution Compensation Fund, 1992

Provides a maximum of approximately \$339M CAD², (inclusive of the Tier 1 compensation) accessible after Tier 1 funds

are exhausted or in instances where the ship owner is legally exempt from liability.³



Tier 3 - International Oil Pollution Compensation Supplementary Fund

Provides a maximum of approximately \$1.25B CAD (inclusive of compensation from Tier 1 and 2). These funds only become available once Tier 2 funding is exhausted. It is worth noting that Tier 2 and 3 funding only cover costs associated with spills from tankers

carrying persistent oils as cargo in bulk. Crude oil is considered a persistent oil, but condensate (used to thin oil sands bitumen) is not. Of the 220 supertankers expected to service Enbridge's Kitimat Terminal each year, 71 will be carrying condensate.⁴



Tier 4 - Canada's Ship Source Oil Pollution Fund

Provides a maximum of about \$400M CAD (exclusive of compensation from Tiers 1-3) when funding from the other tiers is exhausted.

Initial claims can also be made to this fund, but the fund's administrator must attempt to recover all costs from the Responsible Party.

1 Enbridge Northern Gateway project website: <http://northerngateway.ca/economic-opportunity>.

2 The value is based on the tonnage of the ship and measured in Special Drawing Rights (SDR) as defined by the International Monetary Fund. Value of SDR on June 10, 2014 was approximately \$1.67 CAN. The maximum funding available is 203,000,000 SDR.

3 A ship owner may be able to avoid responsibility entirely if he can prove the damage was beyond his control, as articulated in Article III, (paragraphs 2 and 3) of the Civil Liability Convention.

4 Enbridge Northern Gateway Pipelines Regulatory Application: Volume 8C: Risk Assessment and Management of Spills – Marine Transportation.