



canadian | association
energy | canadienne
pipeline | de pipelines
association | d'énergie

Suite 200 505 3rd St SW
Calgary, Alberta T2P 3E6

P (403) 221 8777
F (403) 221 8760
aboutpipelines.com

Chantal Briand
Regulatory Approaches
National Energy Board
517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8
Toll-free telephone: 1-800-899-1265
Fax: 403-299-5503
Toll-free fax: 1-877-288-8803
Email: damagepreventionregs@neb-one.gc.ca

18 April 2016

Re: 30 Day Comment Period for Proposed Regulations for Pipeline Damage Prevention in Canada Gazette, Part I - 19 March to 18 April 2016.

Dear Ms. Briand,

The Canadian Energy Pipeline Association (CEPA) respectfully submits this letter of comment regarding the Proposed Regulations for Pipeline Damage Prevention as published in Canada Gazette, Part I issued 19 March 2016.

CEPA represents companies that operate 119,000 kilometres of transmission pipeline in Canada. Together, we transport 97 per cent of Canada's daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the US in a manner that emphasizes safety, pipeline integrity, and social and environmental stewardship.

CEPA believes in strong damage prevention regulation and that all its members are held to the highest standard. The safety and integrity of transmission pipelines are critical to the oil and gas industry, and our members work diligently to ensure their pipeline systems are safe and reliable. CEPA acknowledges and supports the National Energy Board's (NEB) continuing efforts to provide further guidance for damage prevention in the pipeline sector.

CEPA has participated extensively in the development of regulations and industry standards for the prevention of damage to underground infrastructure. As a result, we offer the following comments for consideration, as they reflect the industry's perception of how these overarching regulations affect how we develop, advance and affect our damage prevention programs. These comments are presented in detail in Appendix "A" of this letter. The NEB is also in a unique position to provide the needed regulatory leadership with respect to the development and implementation of a robust policy for damage prevention and the protection of buried infrastructure. While we appreciate the opportunity to comment on the proposed regulations, CEPA believes that consultation on this matter must be wholesome and thorough; as such CEPA requests for the opportunity to participate in the development and review of the Guidance Notes to allow all interested parties an opportunity to contribute in a meaningful way.

In addition to providing the opportunity to review and comment on the Guidance Notes, we strongly encourage the NEB to consider the following recommendations as it seeks to finalize the Regulations for Pipeline Damage Prevention:

1. Regulatory harmonization is critical, and this is of even greater importance in the current economic climate. CEPA supports CAN-CSA Z247, which was developed, in part, to offer damage prevention harmonization across regulatory jurisdictions, and we strongly urge the



NEB to incorporate and reference this standard in the text of the Damage Prevention Regulations. We also encourage the NEB to engage with other regulators towards a more harmonized regulatory approach while ensuring the highest regulatory standards for damage prevention is achieved.

2. Clarify elements of regulations as it relates to definitions specifically as to what constitutes ground disturbance, and give consideration and emphasis to differentiate between **pipeline** and **pipe**.
3. Amend or retain section(s) or language within the regulations to better reflect the focus on safety, more specifically, to retain the historical 30-meter boundary measured from either side of the pipeline easement so as to eliminate any significant reduction of the width of land strip which permissions/consent must be sought and safety controls exercised.

CEPA continues to support the development of a strong regulatory framework for damage prevention, and we thank you for meeting with us and the opportunity to provide comments. CEPA and its member companies look forward to continuing our dialogue on regulatory and operational matters as the NEB moves forward with finalizing the damage prevention regulations.

Yours sincerely,

Chris Bloomer
President & CEO



APPENDIX A

KEY ISSUE

Addition Regulatory symmetry is a significant challenge facing effective damage prevention governance in Canada. Inconsistencies created by these differences increase operational compliance cost and complexities that may increase operational risks. This was raised during the initial consultation on the proposed amendments, and we strongly encourage the NEB to continue to adopt a harmonized approach for damage prevention. With the implementation of the DPR, the NEB has a unique advantage to overcome this challenge by referencing CAN-CSA Z247, *Damage prevention for the protection of underground infrastructure* within the regulations.

CLARITY IN DEFINITIONS

Addition Reference is made to the definition of a **pipeline** within the definition of **pipe**. The definition of **pipeline** as defined in the NEB Act should be included within these regulations.

Addition CEPA requests a definition of **ground disturbance** is added to the DPR. Currently there is no definition defining what a ground disturbance is. CEPA requests the definition that was drafted in CSA Z247-15 be included in the regulations.

REQUEST FOR AMENDMENTS

NATIONAL ENERGY BOARD PIPELINE DAMAGE PREVENTION REGULATIONS – AUTHORIZATIONS

Change Section 2
CEPA recognizes the efforts of the NEB to modernize by updating the regulatory language in order to provide clarity regarding ground disturbances activities. Whereas section 112 of the *National Energy Board Act* has historically provided for a 30-metre “safety zone” measured from either side of the pipeline easement, the current proposal would instead employ a “prescribed area” measured 30 metres from either side of the centerline of the pipe.

CEPA notes that this proposal would significantly reduce the width of land strip in which permissions/consent would have to be sought and appropriate controls exercised. More specifically, the width of the land strip would effectively be reduced or narrowed by the width of the right-of-way or easement (which could range up to 20 metres or more). Consistent with its prior submissions, CEPA would implore the Board to retain the same areal boundaries that have historically applied. We believe that any narrowing of the land strip would negatively affect safety and lead to confusion among the vast array of stakeholders who have been educated over the course of decades on this subject. Furthermore, CEPA would urge the Board to retain the “safety zone” terminology in its regulations, as it is widely engrained and carries the right positive connotation.

Specifically, CEPA would recommend that Section 2 of the proposed *NEB Pipeline Damage Prevention Regulations – Authorizations* be modified as follows:



For the purposes of subsection 112(1) of the Act, the prescribed area means a strip of land measured 30 m perpendicularly on each side from the centerline of the pipe consisting of the pipeline easement as well as a safety zone measured 30 m perpendicularly on each side of the pipeline easement.

CEPA submits that the advantages of retaining the historical boundaries out-weigh any advantages of adopting a more narrow land strip measured from the centerline of the pipe. In this connection, CEPA notes that the associated commentary in the Regulatory Impact Analysis Statement is silent on the implied reduction of the controlled area and corresponding risks.

Change Section 3(1)

With consideration and operational reliance on current technology, CEPA recommends the NEB use the term **notification center** as opposed to **one-call center**.

Change Section 13 (2)

CEPA requests removal of the reference to **sod operations, mushroom growing and nurseries** in this section as these terms can create confusion among landowners. The act of driving the equipment over pipelines during this activity is not at issue, however, the actual removal of sod by definition contradicts Section 7.1 (1) "that disturbs less than 20cm of the ground below the initial grade and does not reduce the total cover over the pipe."

NATIONAL ENERGY BOARD PIPELINE DAMAGE PREVENTION REGULATIONS – OBLIGATIONS OF PIPELINE COMPANIES

Change Section 3 (2)

The proposed regulations require a pipeline company to inform the person making a request of a decision within 10 days. As 10 days is a concern for receiving all the required information and for completing necessary studies, CEPA requests that the timeframe is extended to 21 days, in part, to gain symmetry with provincial regulators, and that the longer timeframe is realistic and accommodates the realities of the type of communication often required to meet the needs of both parties.

Change Section 7(b)

CEPA requests the wording "Service providers or employees" be changed to "landowner".

Change Section 9(1)

This section is subjective; CEPA requests that the word **inspection** be replaced with **notify**. Remove "make any inspections that are necessary" in the clause. The intent being that the facility owner would be notified of the observed deterioration rather than complete an inspection.

Change Section 16(b)

Section 16 addresses the minimum content of a damage prevention program. In this context, paragraph 16(b) specifies that the damage prevention program include "ongoing monitoring of any changes in the use of the land on which a pipeline is located and the land that is adjacent to that land".

This provision could be interpreted as solely pertaining to the immediate narrow land area where the pipeline has been buried and the land in close proximity (such as within the prescribed area). CEPA recognizes that other monitoring obligations exist under the NEB Onshore Pipeline Regulations and the CAN-CSA Z662-15 standard, such as in relation to



the monitoring of any developments within 200 meters of the pipeline that may lead to class location changes and the monitoring of populations and structures within emergency planning zones. However, such obligations have separate focuses and are outside the scope of the subject draft regulation.

For clarity, CEPA suggests the following wording:

The damage prevention program that a pipeline company is required to develop, implement and maintain under section 47.2 of the National Energy Board Onshore Pipeline Regulations must include ... (b) ongoing monitoring of any changes in the use of the land on which a pipeline is located and land that is adjacent to that land and in close proximity to the pipeline right-of-way, including within the prescribed area.