

National Energy
Board



Office national
de l'énergie

File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 0201
20 October 2015

To: All Interested Parties

Dear Sir or Madam:

25-Day Comment Period on Update to the National Energy Board's Damage Prevention Regulatory Framework

Amendments to the NEB's Damage Prevention Regulations

The *Pipeline Safety Act* (Bill C-46) received Royal Assent on 18 June 2015, and the *Pipeline Safety Act* amendments to the *National Energy Board Act* (NEB Act) will be in force within one year of that date. Due to the *Pipeline Safety Act* amendments to the NEB Act, the NEB must update its pipeline Damage Prevention Regulations within one year.

The *Pipeline Safety Act* amends sections 2, 51, 51.1 and 112 of the NEB Act. The principle effect of these changes is to authorize the NEB to make regulations based on a positive requirement approach, rather than an exemption based approach. The update to the NEB's Damage Prevention Regulations resulting from the *Pipeline Safety Act* will also include the NEB's 2014 proposed amendments for incorporating damage prevention best practices and more clearly defining key safety requirements.

An overview of the proposed amendments for the affected regulations is listed below and can also be found on the NEB's website under "Acts and Regulations" (<http://www.neb-one.gc.ca>).

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Update to the National Energy Board's Damage Prevention Regulatory Framework

Amendments for the NEB's Damage Prevention Regulations

Background

In the National Energy Board's (NEB) Damage Prevention Regulatory Framework, the responsibility to prevent pipeline damage is shared between anyone who plans to undertake construction or excavation near a pipeline and the pipeline company. Pipeline companies are required to ensure that people know how to safely conduct activities that involve excavation and construction near pipelines, and people planning these types of activities near pipelines are required to confirm the location of pipelines with the pipeline companies before they start activities near pipelines.

The NEB provides regulatory oversight of both, and must create a damage prevention framework necessary to hold people and companies accountable to carry out these responsibilities. The NEB's compliance verification, enforcement, and stakeholder engagement activities support this framework and are used to promote safety and environmental protection.

The *Pipeline Safety Act* received Royal Assent on 18 June 2015. The *Pipeline Safety Act* amendments to the *National Energy Board Act* will be in force within one year of that date. Due to the *Pipeline Safety Act* amendments to the *National Energy Board Act*, the NEB must update its pipeline damage prevention regulations by June 2016. The regulations affected are the:

- *National Energy Board Pipeline Crossings Regulations, Part I* ([PCR I](#))
- *National Energy Board Pipeline Crossings Regulations, Part II* ([PCR II](#))
- *National Energy Board Administrative Monetary Penalties Regulations* ([AMPs](#))

Updates to the Damage Prevention Regulatory Framework

There are three main areas of the Damage Prevention Regulatory Framework that will be updated:

1. Modernizing the regulatory language. An example of this can be found in PCR I, section 4. In section 4, there is an exemption-based structure where 'Leave of the Board' is not required to undertake certain activities provided a series of specific conditions and

circumstances are met. Writing this section of the regulation in a modern way would require a positive structure. This means that certain activities will be authorized through the regulations. For example, construction of facilities may be authorized if the party wanting to undertake the activity conforms to the measures outlined in the regulations. An example of such a measure would be the need to complete the facility construction within two years after the date of receiving the pipeline company written permission.

2. Amending the regulations to reflect the legislative changes made to the *National Energy Board Act* by the *Pipeline Safety Act*. These include:
 - a. removing the term ‘excavation’ and replacing it with the broader term ‘ground disturbance*’ (legislative definition provided below);
 - b. defining the term ‘prescribed area’ in which unauthorized ground disturbances are prohibited;
 - c. identifying the measures required to be met in order to safely construct a facility on, across, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area; and
 - d. identifying the measures to be met in order to safely cross a pipeline by vehicle or mobile equipment.
3. Amending the regulations to reflect the results from the last public consultation period conducted in September 2014. These include adding:
 - a. a damage prevention program requirement to the *Onshore Pipeline Regulations* for NEB-regulated pipeline companies to develop, operate and maintain within their management system;
 - b. a requirement for third parties to initiate a locate request with their local one-call centre before commencing any ground disturbance (PCR I);
 - c. a requirement for NEB-regulated pipeline companies to be members of one-call centres where they operate a pipeline (PCR II); and
 - d. the intent the NEB’s Exemption Order [*MO-21-2010*](#) (*Low Risk Crossings by Agricultural Vehicles*) into the regulations.

*The phrase ‘excavation within 30 metres of the pipeline using power equipment or explosives’ has been replaced by “ground disturbance” as defined in the *Pipeline Safety Act* (s.2):

“ground disturbance”

“ground disturbance” does not include a ground disturbance caused by

- (a) any activity that is specified in the orders or regulations made under subsection 112(5),
- (b) cultivation to a depth of less than 45 cm below the surface of the ground, or
- (c) any other activity to a depth of less than 30 cm and that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed;

Opportunity to Comment

If you have comments on the proposed updates for the NEB’s pipeline damage prevention regulations please submit them by email, fax, or mail to the address listed below. The deadline is 13 November 2015.

After the close of the comment period, the written comments will be posted on the NEB website. The NEB will consider the comments received by the deadline and update the proposed damage prevention regulations as necessary. The proposed regulations will then be pre-published in the *Canada Gazette*, Part I, for a 30 day comment period. Information concerning the *Canada Gazette*, Part I comment period will be posted on the on the NEB’s [website](#), under the ‘What’s New?’ section at a later date. Interested parties will be able to review the proposed regulations and provide additional comments at that time.

NEB Pipeline *Damage Prevention Regulations*

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