

20th April 2009

Ms. Claudine Dutil-Berry
Secretary of the Board
National Energy Board
444 – 7th Ave. SW
Calgary, AB T2P 0X8

**Re: Proposed Damage Prevention Regulations and Draft Guidance Notes,
February 2009 – Feedback from the BC Common Ground Alliance**

Dear Ms. Dutil-Berry:

Thank you for the opportunity to review and provide comment on Proposed *Damage Prevention Regulations and Draft Guidance Notes, February 2009*. The British Columbia Common Ground Alliance (BCCGA) is a non-profit organization established to lead development of consistent practices and coordination of activities to ensure the highest possible standards of public safety, worker safety and damage prevention in connection with underground infrastructure in British Columbia. The BCCGA is affiliated with the Common Ground Alliance in the United States and with other similar partner groups in Quebec, Ontario and Alberta.

In collaboration with the BC pipeline group, a subcommittee of the BCCGA membership, I have the privilege of submitting BC's comments to the National Energy Board (NEB) on behalf of our Alliance.

It is important to point out that BC has a number of members actively working on the Canadian Energy Pipeline Association's (CEPA) submission to the NEB. From a broader perspective, we echo our counterparts across the country and have four additional concerns for your consideration:

1. There is a wide breadth of stakeholder involvement in the process of developing best practices in regards to the prevention of damage to buried facilities. It is a cooperative, collaborate process that relies on each stakeholder understanding their express accountabilities, and fulfilling their role and responsibilities with a clear understanding of the level of diligence required for a successful outcome. It is also an evolutionary process. The bar is constantly being raised as damage prevention best practices continue to be identified, validated and published and compliance expectations are concretely understood.

Notwithstanding its statement of ‘Supporting Principles’, the NEB has not stated a definitive position with respect to and in support of the overall damage prevention process.

2. Damage prevention is a responsibility that requires a very clear understanding among all stakeholders that serve the same public that trusts in the diligence that defines the oil, gas and electric utility industries in Canada – the community of buried facility owners, the digging/excavating community, locators, the one-call centres and regulatory agencies that monitor compliance.

The continued improvement of standards of excavation practice must be encouraged in a targeted and deliberate manner, and those that lose sight of their obligation to the public must be held accountable. Results-based regulation is working well for Canadian underground infrastructure operators. However, given the significant consequences of excavating incidents and the potential for impacting employee and public safety, this may be an area where much more prescriptive regulations may be warranted.

We humbly submit that the proposed damage prevention regulations can be strengthened immensely. The current focus of the document seems to be on pipeline companies and landowners / tenants. Specific and practical references to the digging community that works in and around our collective assets are lacking, yet it is the broader digging community that is mostly responsible for all ground disturbances. Damage prevention regulations should be a formalization of the damage prevention process and as such, have the commitment to diligence by all stakeholders.

3. The damage prevention regulations must present, in a logical sequence, what a ground disturber must do to protect himself, his workers, the public, the environment and the buried facilities when proposing to undertake a ground disturbance near a federally regulated pipeline and what assistance will be received from the pipeline company in order to comply with the regulations. Goal-oriented regulations may be appropriate where there are only two parties to the regulation– the regulator and the regulated entity. As soon as a third party becomes involved (e.g. ground disturber, landowner) the regulations must be prescriptive. The third parties cannot be left to interpret or assume their role and responsibility in the process. A comprehensive, multi-lingual communications strategy that defines responsibilities, illustrates one example of a tool that could effectively serve the broadest cross section of our excavating community.
4. Most concerning, the damage prevention regulations are silent on the issue of enforcement with the exception of a statement under “Supporting Principles” to the effect that compliance will be ensured through inspections and audits. This goal-oriented approach may be appropriate with respect to the regulated pipeline companies that for years have had Damage Prevention teams within their Operating groups - but is meaningless in situations of noncompliance by other

stakeholders that do not have the same level of respect for the integrity of all assets managed by organizations that work collaboratively within the BCCGA.

Enforcement provisions are a key component of good regulations. Where enforcement requires a conviction through the courts, it tends not to happen except in cases of fatalities, injuries or significant property damage. There must be consequences for noncompliance and all parties must be aware of the consequences and the fact that they will be rigorously imposed. The experience in both Virginia and Minnesota, where damages are significantly lower than in any other North American jurisdiction, is attributable to rigorous enforcement of their damage prevention legislation. Enforcement provisions in these jurisdictions should be explored to determine if they can be readily adopted in Canada.

The stakeholders involved in the BCCGA want effective damage prevention regulations. Effective regulations address the needs of the stakeholders. They are fair and reasonable, reflect industry best practice, are consensus-based and have the buy-in of the stakeholders.

On behalf of the BCCGA, and in the interests of worker safety, public safety, protection of the environment and preservation of the integrity of the underground infrastructure that provides goods and services essential to today's society, we sincerely hope you will take these comments into consideration. Should you require additional information regarding our response, please do not hesitate to contact my office at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dave Baspaly', with a long horizontal line extending to the right.

Dave Baspaly
Executive Director
BCCGA