

April 20, 2009

Ms Claudine Dutil-Berry
Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, Alberta

**Subject: Proposed Damage Prevention Regulations and Draft Guidance Notes -
February 2009**

Dear Ms Dutil-Berry:

As requested by the National Energy Board (NEB) in its letter dated February 9, 2009, the Canadian Energy Pipeline Association (CEPA) respectfully submits its feedback to the NEB on the draft Damage Prevention Regulations (DPR).

CEPA reviewed the draft DPR under the pretext that the new legislation would be designed to enhance public safety and system integrity; improving the protection of buried facilities where existing legislation falls short. As we completed our review, however, CEPA concluded that the DPR does not accomplish this essential and reasonable expectation.

CEPA's feedback, illustrating the primary reasons why it considers the DPR to be taking a significant step backwards, is summarized within the seven key points below. In addition, the attached table includes all sections of the draft DPR and Guidance Notes inclusive of CEPA's comments and suggested edits.

1. *Goal-oriented vs. Prescriptive Regulation*

Generally, CEPA acknowledges and supports the NEB's continued path toward goal-oriented regulation. In the context of the DPR, however, CEPA is of the view that including clear rules governing behaviour and setting expectations vis-à-vis third party activities around pipelines is essential and would not conflict with the over-arching goal-oriented approach to regulating the pipeline industry.

CEPA member companies routinely work alongside the excavating community, (individual contractors, Municipal Works departments, etc.) and from these interactions, CEPA is convinced that these 'ground disturbers' would expect prescriptive rules on which to plan and perform their work in a consistent manner ensuring everyone's safety. The draft DPR are a distinct departure from existing regulations governing pipeline crossings whereby routine compliance measures employed by pipeline companies to ensure system integrity and public safety have been removed from regulatory text and are now included only as Guidance Notes.

CEPA urges the NEB to consider the feedback provided within the attached table relative to those sections where Guidance Notes should appear as regulatory text. In addition, given the range of stakeholders who will receive, review and consult the DPR (subject matter experts to heavy equipment operators), CEPA also recommends that the NEB separate the Regulatory Text from the Guidance Notes into two separate documents. Including the Guidance Notes and Regulatory Text within a single document could lead a stakeholder to associate the entire document as legislation when in fact, it is not.

Proposed solution

CEPA recommends the DPR offer a blended approach between goal-oriented and prescriptive regulation whereby regulatory text specifically directed toward third parties is prescriptive and regulatory text directed toward pipeline owners and operators is goal-oriented.

2. Safety Zone – DPR definition vs. NEB Act

CEPA is concerned with the introduction of a definition for the safety zone within the draft DPR. While CEPA understands the motives for defining the safety zone, the DPR effectively adds an additional layer of confusion to the matter of the safety zone. To illustrate its point, CEPA provides the following:

- Section 1 of the DPR defines the safety zone as “an area extending 30m perpendicular from the center line of the pipe”
- Section 15 of the DPR defines when leave from the Board is not required for excavations outside of the safety zone pursuant to Section 112(1) of the Act
- Section 16 of the DPR defines when leave of the Board is not required for excavations within the safety zone as defined by Section 112(1) of the Act
- The Guidance Notes for Section 15 provide for any “persons undertaking excavation activities outside the safety zone, but within 30m extending from the edge of the ROW, do not need approval from the Board providing these activities do not have the potential to damage the pipeline”.
- Section 112(1) of the Act provides that “subject to subsection (5), no person shall, unless leave is first obtained from the Board, construct a facility across, on, along or under a pipeline or excavate using power-operated equipment or explosives within thirty metres of a pipeline”. The Act defines “pipeline” to include ROW.

The confusion rests with the DPR “safety zone” definition and the interpretation of the meaning of the 30 metre zone implied by the language within Section 112(1) of the NEB Act and the NEB Act’s definition of “pipeline”. Despite the introduction of the DPR definition, subsection 112(1) continues to prevail.

CEPA is concerned with how to communicate simply and clearly these new requirements to stakeholders without implying there is a greater land restriction than what many stakeholders currently believe exists.

Proposed solutions:

CEPA recommends the NEB consider the following options:

- Abandon the DPR 30 metre safety zone definition; and
- Eliminate any reference to NEB authority governing excavations “outside” the 30 metre zone (section 15, DPR and guidance notes)

Essentially the current understanding of the safety zone would continue to prevail

3. Projected Limits

Pursuant to existing legislation, the federally-regulated pipeline industry in Canada maintains the authority to monitor and manage facility installations within the projected limits of a pipeline where there is no right-of-way (ie: where a pipeline crosses a pre-existing road allowance). In this context, the existing regulations are extremely clear:

Section 5 of the NEB Pipeline Crossing Regulations, Part I

*Leave of the Board is not required for the installation of an overhead line across a pipeline if...(e) no poles, pylons, towers, guys, anchors or supporting structures of any kind are constructed or placed on the right-of-way of the pipeline or within its **projected limits**. SOR/93-239, s. 2.*

A similar provision, with equal clarity, is not included in the proposed draft DPR. Based on the proposed DPR, foreign facilities can, upon three days’ notification requesting that the pipeline be located and marked, be placed up to the edge of the pipe providing it has been exposed prior to any ground disturbance within 3 metres under the supervision of a pipeline company representative (section 16 of the draft DPR). In CEPA’s view, the loss of the regulatory provision within section 5 of the NEB Pipeline Crossing Regulations, Part I, the loss of clarity with respect to “projected limits”, and the potential to allow the construction of foreign facilities directly adjacent to a transmission pipeline presents adverse conditions for the safe operation and maintenance of the pipeline and is contrary to reasonable damage prevention practice. In this respect, the DPR take a significant step backwards from existing legislation.

Proposed solution

- Introduce a definition for ‘projected limits’ within the DPR
- Insert existing regulatory language from section 5 of the NEB Pipeline Crossing Regulations, Part I (verbatim) into the DPR’s regulatory text

4. Supervising and directing third party activities in the right-of-way

CEPA is very concerned that its authority to supervise, direct, monitor and suspend third party activities (section 10, section 14.(1), section 15.(1) NEB Pipeline Crossing Regulations, Part II) has been eliminated from Regulatory Text. Those sections within existing regulation provide a pipeline company representative with the clear means and authority to ensure public safety and system integrity (the reason behind damage prevention legislation) and offer clarity to third parties who might otherwise question the authority and actions of a pipeline company representative. Going forward, the absence of clear legislation providing the authority to supervise, direct, monitor and/or suspend third party activities will erode the pipeline company's ability to promote public safety and system integrity. As such, CEPA urges the NEB to incorporate its updated versions of sections 7 and 16 of the draft DPR (attached table) into Regulatory Text.

Proposed solution

- *Ensure clarity of regulatory text relative to the authority of a pipeline company representative to supervise, direct and monitor third party activities within the pipeline right-of-way or its projected limits.*

5. Mobile Equipment Crossings

CEPA has always maintained that regulations must be introduced governing the use of mobile equipment across pipelines. In recent Land Matters Consultation Initiative discussions, the NEB heard from landowners that the Board must proactively address mobile crossings. Despite that, the draft DPR remains virtually silent on the subject of mobile equipment crossings.

In a meeting held with NEB staff on February 23, 2009, the CEPA Damage Prevention Working Group was informed that the NEB could not make regulations governing mobile crossings due to a discrepancy between the French and English versions of s.112.(5)(c) of the NEB Act. CEPA has since commissioned an independent legal review of s.112.(5) of the NEB Act. The opinion rendered by that review, completed by the law firm Fraser Milner Casgrain (FMC), concludes the following:

The French version of s. 112 of the NEB Act cannot be read in isolation in order to determine its correct meaning. A plain reading of the French version of paragraph 112(5)(c) would appear to restrict the NEB's power to make exempting orders or regulations to the leave that the NEB can grant under subs. 112(1) relative to facility construction and excavations using mechanical equipment or explosives.

However, a review of the French version of s. 112 makes plain that the reference in subs. 112(2) to "Sous reserve du paragraphe (5)" is completely superfluous if subs. 112(5) is read only to apply to the leave contemplated in subs. 112(1). In effect, there is an internal contradiction within the French version of s. 112, as well as an external contradiction with the English version of the section.

The primary tool used by the courts in reading bilingual legislation is the shared meaning rule. Under this rule, the meaning that is shared by the French and English versions is strongly presumed to be the meaning intended by the legislature. Although strong, the presumption in favour of the shared meaning is rebuttable. The present case arguably falls more clearly into the "irreconcilable" category rather than of a shared meaning which can be arrived at by way of a resolution of a mere ambiguity or narrowing of scope. The courts are required not to engage in a blinkered search for a shared meaning regardless of the circumstances. Rather, the courts must consider the provision in context, taking into account the legislative purpose, relevant policy concerns, and relevant external evidence. If the shared meaning is inappropriate in light of these other factors, it may be rejected in favour of a more appropriate interpretation. The preferred interpretation may correspond to the English version only, to the French version only, or on rare occasions to neither.

The NEB's preferred narrow interpretation of its order and regulation making power under subs. 112(5) based on the French version of the NEB Act is difficult to square with:

- *the plain language of the English version which does not restrict the scope of the NEB's order and regulation making power to the leave that can be granted by the NEB under subs. 112(1);*
- *the rendering of the qualifier "Sous reserve du paragraphe (5)..." at the start of subs. 112(2) completely superfluous;*
- *the overall scheme of the NEB Act, which would certainly not suggest that Parliament intended for companies to have the absolute power to determine in all circumstances whether vehicles ought to be permitted to cross their pipelines; and*
- *the previous version of s. 112 of both the English and French versions of s. 112, neither of which exhibited the internal inconsistencies of the current French version.*

Proposed solution

It is CEPA's view that since s. 112 was written in English and then translated to French, the discrepancy between the French and English versions of s. 112(5)(c) is likely a clerical error in translation only. In this circumstance, and for the reasons identified by CEPA's independent legal review, there is a strong argument that the English version of s. 112 should be given its plain meaning allowing the NEB to make regulations governing mobile equipment crossings. CEPA equally provides that the NEB consider introducing regulation similar to section 66 of the Alberta Pipeline Regulation.

6. Enforcement

Similar to mobile crossings, CEPA has maintained throughout the DPR process that regulatory enforcement measures are an essential component of effective damage prevention legislation.

CEPA acknowledges and supports the NEB's desire to maintain a cooperative approach to compliance; i.e. working with parties to ensure that safety commitments and requirements are met. Indeed, such outreach and education to specific target audiences is a standard practice among CEPA members. CEPA believes, however, that it is important for the NEB to recognize that in a minority of cases involving repeat offenders, imposition of strict penalties is the only effective means of ensuring that DPR are taken seriously thus protecting the safety of the public.

While CEPA also acknowledges that the NEB does not have the authority under the Act to include provisions for imposing fines in the draft DPR, it remains of the view that NEB Inspection Officers have the authority to impose penalties under s.51.4 of the NEB Act.

CEPA has also explored other options for the NEB to develop regulations with respect to enforcement and proposes that it could be argued that the NEB's regulation making power under s. 48 of the NEB Act, while mainly intended to regulate the activities of pipeline companies and their employees, could be extended to third parties "providing for the protection of property and the environment and the safety and security of the public and the company's employees in the operation of a pipeline" that extends to third parties.

Proposed solution

CEPA invites the NEB to work collaboratively with industry and other stakeholders to identify and implement initiatives towards effective enforcement and consequence.

7. *Audit and Inspection*

CEPA member companies have become increasingly concerned with the potential for NEB audits and inspections to be conducted pursuant to the Guidance Notes or changing Board expectations. CEPA notes that the draft DPR clearly states in section 11 that "the pipeline company shall develop, implement and maintain an audit program for the purposes of verifying compliance with these Regulations". In this context, CEPA is seeking confirmation that NEB audits will be carried out to ensure compliance with the provisions of the Regulatory Text and not for "compliance" with Guidance Notes or other NEB expectations.

Proposed solution

In general terms, and for all goal-oriented legislation, the NEB must clarify the role and authority of Inspection Officers relative to goal-oriented regulation.

In closing, CEPA reviewed the proposed DPR with the following in mind: "*Will the DPR enhance public safety and system integrity more effectively than the current pipeline crossing regulations?*" Given the key points identified in this cover letter, and the numerous edits, comments and opinions provided in the attached table, the answer is "No".

As a final proposed solution to the issues at hand, CEPA wishes to express that damage prevention to buried facilities in general requires a level playing field. It is the NEB's expectation that the pipeline industry will collaborate with all stakeholders to actively create, implement and manage damage prevention organizations across the country and to its credit, the industry is achieving this. In turn, it is industry's expectation that all agencies regulating buried facilities, whether they are provincial or federal, will equally collaborate to create a level damage prevention playing field; developing and implementing common and essential damage prevention regulatory elements for all buried infrastructure in Canada. Until those essential elements are realized, the NEB's damage prevention regulation efforts will remain isolated and inconsistent with other jurisdictions and best practice. The NEB is in a unique position to provide the leadership necessary among regulators of buried facilities in Canada, regardless of jurisdiction, to develop and implement essential elements of damage prevention legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. McCaig', written in a cursive style.

Kim J. McCaig
Chief Operating Officer

Section	Title	Enacting Authority	Proposed Regulatory Text	Comments and Recommendations	Guidance Notes	Comments and Recommendations
NEB cover letter dated 09 Feb 09					<p>The Proposed DPR will apply to NEB regulated pipeline companies and to <u>any person planning or undertaking an activity with the potential to damage pipelines</u> regulated by the Board</p> <p>-----</p> <p>Bullet list following the second paragraph</p>	<p>The use of the underlined phrase calls for a subjective assessment that the person may not be competent to make. If I am planning an activity, I need to know in no uncertain terms whether or not that activity falls under the requirements of the DPR or is exempt. The phrase is too open-ended to be considered a reasonable statement in a regulatory document. In the interests of a cooperative, collaborative approach to damage prevention by all stakeholders definitive limits within which the regulations apply need to be stated.</p> <p>-----</p> <p>The purpose should include defined ground disturbers' roles and obligations.</p> <p>The first bullet ought to include workers.</p>
References page ii						<p>The NEB does not appear to have taken into account the contents of the Enform Industry Recommended Practice #17: Ground Disturbance and Damage Prevention, even though the NEB contributed to this document. The issue at hand is that some of the definitions and practices cited in IRP17 are appreciably different or absent than those cited in the NEB's Proposed Regulations and Guidance Notes. (i.e. Definition: Ground disturbance; Procedure: Conducting Pre-Ground-Disturbance Search and Notification).</p> <p>Delete Ontario Regional Common Ground Alliance Best Practices (ORCGA). ORCGA best practices are regional in nature and may not accurately reflect the existing damage prevention process in Ontario.</p>
Foreword page iii					<p>The NEB is committed to ensuring the continued safe and reliable operation of Canada's pipeline infrastructure that falls under its jurisdiction</p> <p>-----</p> <p>The NEB's Proposed Damage Prevention</p>	<p>The NEB should also be specifically committed to establishing a regulatory regime that will enhance damage prevention. If these are to be DPRs, damage prevention should be mentioned.</p> <p>-----</p> <p>The use of the underlined phrase calls for a</p>

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					<p>Regulations DPR apply to any pipeline company and to any person planning or undertaking an activity that has the potential to damage pipelines regulated by the Board</p>	<p>subjective assessment that the person may not be competent to make. If I am planning an activity, I need to know in no uncertain terms whether or not that activity falls under the requirements of the DPR or is exempt. The phrase is too open-ended to be considered a reasonable statement in a regulatory document. In the interests of a cooperative, collaborative approach to damage prevention by all stakeholders definitive limits within which the regulations apply need to be stated.</p> <p>The intermingling of regulatory text and guidance notes will tend to confuse and many will assume, notwithstanding statements to the contrary, that the guidance notes are part of the regulations. Comprehensive and well drafted regulations should not need guidance notes. Alternatively, they should be separate documents.</p>
Purpose page iv					<p>3. The Board assures compliance to the DPR through inspections and audit.</p> <p>-----</p>	<p>Underlined word should be ensures</p> <p>-----</p> <p>The Supporting Principles seem to address only the pipeline companies and landowners and tenants. There is no reference to ground disturbers, owners of other types of buried facilities or municipal, provincial or federal government departments. The Supporting Principles, as stated are inadequate with respect to improving the damage prevention process. The Board has an opportunity to state its position with respect to the damage prevention process and should do so. The prevention of damage is a responsibility shared among all the stakeholders – the buried facility owners/operators, the digging community, the regulatory agencies, locators and the one-call centre. It is a cooperative, collaborative process that depends on each stakeholder fulfilling its roles and responsibilities with a genuine desire for a successful outcome. There is no reference to ground disturbers (who must work in the</p>

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						vicinity of pipelines) in the Supporting Principles and no indication how situations of non-compliance with the DPR by ground disturbers will be addressed.
Compliance page iv					The DPR reflect the Board's continued advancement in the development and implementation of goal oriented regulations. As such, a key component of the DPR is the ability to assess compliance through audits of pipeline company records, practices, and procedures.	<p>Goal oriented regulations are not appropriate for ground disturbance activities that are predominantly undertaken by third parties. From a damage prevention perspective, that third party needs to know what his specific responsibilities are and what assistance he can expect from both the pipeline company and the NEB. The third party cannot be left to make assumptions</p> <p>The ground disturber is ignored as far as compliance is concerned – very one-sided. The digging community needs to know the consequences of non-compliance. Regulations without enforcement provisions are absolutely useless with respect to achieving its desired intent.</p> <p>Damage prevention is a shared responsibility.</p> <p>There is no reference to enforcement under compliance. Ensuring compliance through inspection and audit will probably work well for the regulatee although a "hammer" would still be appropriate.</p> <p>Minnesota and Virginia have been able to demonstrate a significantly better damage prevention record than any other North American jurisdiction because their regulations are rigorously enforced and the stakeholders know they will be.</p>
Definitions page v						The NEB does not appear to have taken into account the contents of the Enform Industry Recommended Practice #17: Ground Disturbance and Damage Prevention, even though the NEB contributed to this document. The issue at hand is that some of the definitions and practices cited in IRP17

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						<p>are appreciably different or absent than those cited in the NEB's Proposed Regulations and Guidance Notes. (i.e. Definition: Ground disturbance; Procedure: Conducting Pre-Ground-Disturbance Search and Notification).</p> <p>-----</p> <p>Delete reference to ORCGA. Is this term so unique to damage prevention that it needs to be defined?</p> <p>-----</p> <p>Backfill</p> <p>-----</p> <p>Excavation</p> <p>-----</p> <p>Ground disturbance</p> <p>-----</p> <p>Ground disturber</p> <p>-----</p> <p>Locate (verb)</p> <p>-----</p> <p>Locate (noun)</p> <p>-----</p> <p>Need to revisit confirm whether the word "pipeline" (as defined in the Act) or "pipe" is appropriate</p> <p>-----</p> <p>Could include snow removal or crop harvesting. Appropriate definition recommended in several earlier submissions.</p> <p>-----</p> <p>DPR and Guidance Notes should settle on "excavation" or "ground disturbance" rather than introducing confusion by using both.</p> <p>-----</p> <p>A definition may be appropriate.</p> <p>-----</p> <p>Industry acceptable definition provided in several earlier submissions.</p> <p>-----</p> <p>Delete reference to ORCGA – the provision of drawings should never be considered equivalent to a locate. Industry acceptable definition provided in several earlier submissions.</p> <p>-----</p> <p>There is no need to differentiate between the verb and the noun if the word "locating" is used. I recommend "Locating" – the activities</p>

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						involved in the identifying a buried facility, establishing its approximate horizontal alignment and marking that alignment at frequent intervals with appropriate marking materials.
					Locate report	Industry acceptable definition provided in earlier submissions. CEPA recommends "Locate report" – <i>the documentation of the locate provided and the communication between the locator and the ground disturber with respect to the locate provided.</i>
					Locate request	Industry acceptable definition provided in earlier submissions. Uses both "excavate" and "disturb the ground". CEPA recommends "Locate request" – <i>a communication to a one-call centre from any person proposing to disturb the ground that advises the one-call centre of the intent to disturb the ground at a particular location and requests that potentially affected members of the one-call centre be notified of this intent and locate their buried facilities before the ground disturbance begins. In the absence of a one-call centre, the communication shall be directly to the buried facility owner.</i>
					Locate ticket	Incorrect. Industry acceptable definition provided in earlier submissions. CEPA recommends "Locate ticket" – <i>a one-call's uniquely identified record of a locate request that is transmitted to its potentially affected members advising them of a proposed ground disturbance and requesting that they locate their buried facilities at the site of the proposed ground disturbance.</i>
					Marking	Not required. Should be included under "locating".
					ORCGA	Delete reference to ORCGA
					Person	Should use "ground disturber" in place of "excavator"
					Right-of-way	CEPA recommends "right-of-way" – <i>the strip</i>

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						<i>of land within which a pipeline company has acquired the right to construct and operate a pipeline.</i>
1 Interpretation	Definitions	ss.48(2) and 112(5)	<p>Section 1 — Definitions The following definitions apply in these Regulations.</p> <p>"pipe" means a line that is used or is to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province or an offshore area as defined in section 123 of the Act.</p> <hr/> <p>"safety zone" means the area extending 30m perpendicularly from the centre line of a pipe on either side of the pipe.</p> <hr/> <p>"Ground disturbances" is not defined. CEPA recommends the NEB move the definition in the pre-amble into this section of the Regs</p> <hr/> <p>Ongoing concern that the NEB Act s.112(1) refers to a distance of 30 metres from the "pipeline" (which includes the ROW, as defined under the Act) and the Board is now exercising it's right under s.112(5) to create a Regulation that states the safety zone will be measured 30 metres from the centreline of</p>	<p>The definition of "pipe" within these regulations does not align with the definition presented within the Act. We request that it be clarified whether the intent of the change was to narrow the definition to limit the safety zone specifically to the pipe and not any ancillary equipment.</p> <p>"Pipe" and "pipeline" are used interchangeably within the DPR's where it clearly should make reference to the pipe itself.</p> <hr/> <p>"safety zone" means the area extending 30m perpendicularly from the centre line of a pipe on each side of the pipe.</p> <p>The word either represents "either / or" and should be replaced with each side of the pipe as it states in the caption on Figure 1- Safety Zone.</p> <hr/> <p>Persons undertaking construction activities within the right-of-way are required to contact the pipeline company, prior to beginning their work.</p> <hr/> <p>Persons undertaking excavation activities within the safety zone or ground disturbance activities within three metres of the centre line of the pipe are required to contact the one-call centre, where one exists, prior to beginning their work. Where there is no one-</p>	<p>"underground facilities"</p> <hr/> <p>"excavator or ground disturber"</p> <hr/> <p>Underground facilities provide essential services and products to their customers and pose a unique hazard to the excavator or ground disturber. Regardless of the hazards, all underground facilities should be treated with great care and protection.</p> <hr/> <p>The intent of the safety zone is to ensure:</p> <ul style="list-style-type: none"> the protection of pipelines from damage resulting from external interference associated with excavations conducted using power-operated equipment or explosives; and the safety of all persons living or working near the pipeline <hr/> <p>Persons undertaking construction activities within the right-of-way are required to contact the pipeline company, prior to beginning their work.</p> <hr/> <p>Persons undertaking excavation activities within the safety zone or ground disturbance activities within three metres of the centre line of the pipe are required to contact the one-call centre, where one exists, prior to beginning their work. Where there is no one-</p>	<p>CEPA recommends "buried facilities"</p> <hr/> <p>One or the other, not both.</p> <hr/> <p>CEPA recommends "<i>Buried facilities provide goods and services essential to society and pose hazards to a ground disturber. The prevention of damage to buried facilities will have a positive impact on worker safety, public safety, protection of the environment and preservation of the integrity of the underground infrastructure.</i>"</p> <hr/> <p>CEPA recommends revising this language with the following:</p> <p><i>The safety zone can be considered as a "Call Before You Dig" zone ensuring:</i></p> <ul style="list-style-type: none"> <i>the protection of pipelines from damage due to ground disturbances;</i> <i>the safety of workers and the public; and</i> <i>protection of the environment</i> <hr/> <p>CEPA suggests the wording be changed to read; "Persons proposing construction activities within the right-of-way are required to obtain written approval from the pipeline company, prior to beginning their work, pursuant to Sections 12 and 13."</p> <hr/> <p>We would suggest that the wording be changed to read: " Persons proposing to undertake ground disturbance activities within the safety zone are required ..."</p>

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			<p>pipe.</p> <p>CEPA recommends adding a Q. 14 to the FAQs clarifying the issue between the manner in which the safety zone is measured by virtue of the NEB Act and draft DPR</p> <p>-----</p> <p>“one-call centre” means an organization that, within a defined geographical area, coordinates requests for locates and notifies its potentially affected members of any proposed ground disturbances or excavations for the purposes of protecting their facilities from damage and ensuring public safety.</p> <p>-----</p>	<p>CEPA recommends definition proposed in submission of 29 Mar 04 be revised slightly to:</p> <p>“one-call centre” means an organization of owners and operators of buried facilities that, within a specifically defined geographical area, receives information with respect to proposed ground disturbances (locate requests) and notifies its potentially affected members of the proposed ground disturbances (locate tickets) for the purpose of protecting buried facilities from damage.</p> <p>-----</p> <p>Additional definitions required:</p> <ul style="list-style-type: none"> • Hand expose zone • Hand exposure 	<p>call centre, the pipeline company should be contacted directly.</p>	<p>The Guidelines require some additional guidance as to what constitutes changes to land use or new land use developments. CSA 663 is specific to subdivision and urban development. Conversion of forested properties to agricultural land, conversion of cultivated lands to a perennial nursery farm or conversion of industrial lands to Brownfield properties can impact on the need for pipeline company input. None of these land use conversions requires consideration within CSA 663 or municipal approval.</p> <p>-----</p> <p>The list of activities that could possibly cause damage to a pipeline does not include vibratory compaction, an activity which could cause damage to underground structures, but is not considered by most parties to be a ground disturbance. Other suggested additions to this list are:</p> <ul style="list-style-type: none"> • Blasting should also include pile-driving or sheet piling • Land leveling should also include material stockpiling • Driving rods, pins, anchors should also include installing survey monuments. • Pits and mining activities are not cited along with quarrying. • Chemical spills or leaks which could damage pipe coating or damage cathodic protection systems • Signs should be included with fencing. • Tree spade harvesting (perennial nurseries) should be included with deep tillage or sub-soiling.
2	Application	ss.48(2) and 112(5)	<p>These Regulations apply to any person that is planning or undertaking an activity that has the potential to damage a pipeline and to any pipeline company.</p>	<p>This proposed Regulatory Text is far too broad and invites interpretation from all stakeholders. The DPR must be more specific.</p> <p>A “person” reading the DPR must be able to establish whether or not his proposed activity is governed by the DPR . Activities (ground disturbances and moving vehicles and</p>	<p>Application The DPR apply to any person planning or undertaking activities that may potentially damage a pipeline. The term “any person” includes, but is not limited to: a landowner, resident, tenant, excavator, contractor, business, and association. These Regulations also apply to all NEB-regulated pipeline companies and their agents</p>	<p>Application This statement is too vague and open-ended to be considered fair, reasonable or practical. The term “pipeline” is defined in the Act and should not be used interchangeably with the term “pipe” which has a different definition in the DPR.</p>

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				<p>mobile equipment across a pipeline right-of-way) must be subject to exemptions and distances within which certain things must be done must be specified.</p>	<p>Activities Having the Potential to Damage a Pipeline</p> <p>Damage to pipelines most commonly occurs through direct contact with the pipe during excavation activities and/or when an activity changes the pipe's ambient stress levels.</p>	<p>The term "person" is defined in the DPR and does not need further explanation.</p> <p>CEPA recommends:</p> <p><i>"The DPR apply to any person planning or undertaking activities within the safety zone that have the potential to damage a pipe and are not exempt from the DPR and to all NEB-regulated pipeline companies.</i></p> <hr/> <p>Activities having the Potential to Damage a Pipeline</p> <p>Damage to pipelines most commonly occurs through direct contact with the pipe during excavation activities and/or when an activity changes the pipe's ambient stress levels.</p> <p>Comment – "ambient stress level" what does this mean to a layperson? It will not be understood.</p> <p>CEPA is of the opinion that, in addition to ground disturbances and the movement of mobile equipment across pipelines, there are other activities that have the potential to harm pipelines. For example, the placement of large volumes of additional cover over a pipeline (ie: pre-loading; bridge abutments; filling of low-lying areas; etc.) can place unacceptable strain on the pipeline due to surface or transitional loadings.</p> <p>Given that these are "Guidance Notes", CEPA recommends:</p> <p><i>Damage to pipes most commonly occurs either through direct contact during ground disturbance activities or the imposition of surface loads, such as surface improvements (such as increasing depth of cover or vehicle or mobile equipment traffic) that were not anticipated in the design of the pipe.</i></p> <p>Guidance Notes notwithstanding, CEPA</p>

Section	Title	Enacting Authority	Proposed Regulatory Text	Comments and Recommendations	Guidance Notes	Comments and Recommendations
						believes that specific wording should also be placed into the regulatory text to clarify this point.
					<p>Did You Know You should always call the one-call centre (where one exists). Where there is no one-call centre, call individual companies directly to have buried facilities located.</p>	<p>Did You Know You must always contact the one-call centre (where one exists). Where there is no one-call centre, you must contact individual companies directly to have buried facilities located.</p>
3	Members of One Call Centre	48(2)	If a pipeline company has a pipeline within a geographical area where a one-call centre exists, the pipeline company shall be a member of that centre.	<p>In Ontario, there are 400 municipalities and only 100 belong to Ontario One-Call. Most operate their own; belonging to the One-Call centres that geographically apply to the pipeline in question.</p> <p>These are not one-call centres.</p>	<p>One-Call Centres Under the DPR, pipeline companies are required to be a member of a one-call centre where one exists.</p> <p>As stated in the Ontario Regional Common Ground Alliance Best Practices, Version 4.0 (ORCGA), one-call centres promote the need to "Call Before You Dig"...</p> <p>For further information on one-call centres, pipeline companies may refer to the ORCGA. Copies may be obtained by calling toll free 1-866-446-4493 or through their web site at www.orcga.com.</p>	<p>Some areas are serviced by multiple "one-call" systems. The proposed regulatory text requires being a member of each one.</p> <p>CEPA proposes that the NEB mandate membership only in province wide one-call centres.</p> <p>Remove references to ORCGA. There are multiple CGA Regional Partnerships in Canada and Ontario's Best Practices don't speak for all.</p> <p>The roles, responsibilities and activities of a one-call centre are the purview of the Board of Directors of that one-call centre and vary from centre to centre. The listing of what one-call centres typically do may be very misleading.</p>
4	Damage Prevention Program	48(2)	<p>For the purposes of anticipating and preventing damage to its pipeline, every pipeline company shall develop, implement and maintain a damage prevention program that includes provisions for</p> <p>(a) ongoing public awareness of the existence of the pipeline and the responsibilities of the public and the company in relation to that pipeline;</p> <p>(b) ongoing monitoring of the use of the land on which the pipeline is located and the land adjacent to the right-of-way of the pipeline;</p> <p>(c) ongoing monitoring of any change in the ownership of the land on which the pipeline is located; and</p>	<p>(c) "monitoring of any change in ownership of the land on which the pipeline is located".</p> <p>Though this information is necessary when maintenance on the pipeline is performed, the information is not essential during the course of pipeline monitoring or for public awareness purposes. Privacy laws in Ontario and Quebec are very restricted as to what information can be obtained and how. Accordingly, such a regulation would be almost impossible to comply with and onerous to achieve with little benefit to the protection of the public or pipeline integrity. A database of addresses is adequate to ensure continued public awareness. Other comments related to this clause relate to the</p>	<p>Damage prevention programs are intended to reduce the frequency of preventable damage. Although the content of damage prevention programs may vary according to the operations of individual companies, a company's damage prevention program must include elements pertaining to public awareness, monitoring of land use and ownership, and the management of vehicles and mobile equipment across the pipeline.</p> <p>Damage prevention programs and initiatives are closely tied to requirements found within the NEB's <i>Onshore Pipeline Regulations, 1999</i> (OPR). Specifically, sections 32 through 35 of the OPR pertain to emergency</p>	<p>CEPA recommends referencing API 1162 - Public Awareness Program for Pipeline Operators.</p>

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			<p>(d) management of the movement of vehicles and mobile equipment across the pipeline.</p>	<p>timeframes involved. Exactly what does "ongoing" mean? Would annual updating of a database suffice or must changes in ownership immediately follow property transaction? The NEB must provide clarity on these requirements.</p> <p>(d) - the word "management" may be construed as being a little vague. Clarification would be helpful especially if management is intended to mean that a pipeline company should implement criteria for blanket waivers or authorizations.</p> <p>Suggest the Regulations reference the minimum vehicle crossing requirements defined under Alberta Pipeline Regulation s.66.</p> <p>What should be the intent of (d), realistically, is covered in (a). I recommend that (d) be deleted as redundant.</p>	<p>preparedness and response, continuing education and liaison, and section 39 pertains to monitoring and surveillance. These requirements should also form part of a company's damage prevention program.</p> <p>Public Awareness The public awareness component is vital to the continued safe operation of pipelines. An effective component should raise the awareness of the affected public and key stakeholders of the presence of pipelines in their communities...</p> <p><i>(section truncated)</i></p>	<p>Public Awareness Bulleted list</p> <ul style="list-style-type: none"> change "excavation requirements" to "ground disturbance requirements" change "excavators and contractors" to "ground disturbers" I recommend "digging community in place of "ground disturbers" add sub-bullet "landowners, tenants and occupants" above "private contractors" change 'seismic contractors or geophysical contractors' to seismic contractors or geophysical exploration companies <p>Signage Remove the specific references to CSA Z662-07. It should state "CSA Z662 as amended from time to time".</p> <p>Suggest removing the bullet "provide the one-call centre number where applicable" on above ground markers because the numbers are provided in a company's public awareness literature. Most companies only post the emergency contact number to eliminate confusion.</p> <p>Many buried facility owners do include the one-call centre number as an add-on to signage with the label "for locates call ..." and such inclusion should be optional</p> <p>Suggest removing the section discussing "Surveillance and Monitoring" in the Guidance Notes on page 11. It is already a regulatory requirement under Section 39 of the Onshore Pipeline Regulations. If the OPR '99 changes, the DPR guidance notes will also require amending.</p>

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						The statement "It is against the law to tamper with a pipeline sign." seems out of context given the NEB's position on enforcement of non-compliance with the DPR; ie: no enforcement. What prohibits damaging or tampering with a pipeline marker under the proposed DPR?
5	Standards for locates	48(2)	<p>The pipeline company shall develop, implement and maintain standards for locates of pipelines including</p> <p>(a) the required qualifications and competencies for locators;</p> <p>(b) the type and quantity of surface markings to be used;</p> <p>(c) the procedures for establishing the depth of cover over the pipe; and</p> <p>(d) the identification to be given to locators.</p>	<p>Locating contractors perform locates for multiple clients. How are they to comply with section 5(a)?</p> <p>Suggest removing the last bullet of this Regulation - it is typically captured in the employee's training records. If not removed, CEPA is seeking clarification relative to the I.D.</p> <ul style="list-style-type: none"> • Is it a PL Co I.D.? • CAPULC I.D.? • Global Training I.D.? • Or, will this be an element the NEB expects our individual Damage Prevention Programs to specify? <p>(a) It is up to the locating industry, through its industry association, the Canadian Association of Pipeline and Utility Locating Contractors, which currently has some 80 members, to develop and maintain standards for locators and to identify, validate and promote the adoption of locating best practices. Buried facility owners, including pipeline companies should participate in CAPULC to ensure their particular issues are addressed. It is not in the interest of damage prevention to have multiple "standards" for the same function.</p> <p>(b) The type and quantity of locate marks used is the subject of a CAPULC Locating Industry Recognized Practice (LIRP) and will be site-specific and vary depending on the complexity of the underground infrastructure at a particular site, vegetation, terrain, landowner constraints, current and anticipated weather conditions, etc.</p>	<p>Qualification and Competency Requirements</p> <p>Locators must be adequately trained in order to carry out their work. Pipeline companies should develop and maintain training programs and minimum qualification and competency requirements for locators. Additional guidance on training programs for pipeline company employees can be found under section 46 of the OPR. Pipelines companies may also reference the Canadian Association of Pipeline and Utility Locating Contractors at www.capulc.ca for locator technician standards.</p> <p>(section truncated)</p> <p>Surface Markings</p> <p>Companies should identify and mark continuously or at regular intervals the horizontal alignment of their buried facilities using combinations of colour coded surface marks, temporary stakes or flagging. Where possible, markings should indicate the name, initials or logo of the pipeline company that owns or operates the line.</p> <p>The colours used to temporarily mark the</p>	<p>Suggest the Guidance Notes not reference the CAPULC Locate Program as the minimum level of competency rather should reference a recognized locator training and certification program that includes the following elements as a minimum:</p> <ul style="list-style-type: none"> • theory of electromagnetic locating • use of the transmitter • use of the receiver • marking procedures • knowledge of buried facilities • visual observation skills • safe work practices and regulations • locate request procedure, documentation and mapping • federal, provincial and local regulations • customer interaction <p>Suggest removing the statement "Additional guidance on training programs for pipeline company employees can be found under section 46 of the OPR". It doesn't add any value to the Guidance Note.</p> <p>Will the NEB audit to OPR section 46 or to the DPR's or both?</p> <p>Surface Markings</p> <p>Suggest changing the title "Surface Markings" to "Temporary Surface Markings".</p> <p>This section should be restricted to a statement to the effect that locate marks will be provided in accordance with locating industry recognized practices. Inclusion of the APWA Uniform Colour Code is appropriate.</p>

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				<p>Selecting the appropriate type and quantity of locate marks is part of a competent locator's responsibility.</p> <p>(c) A pipeline company may choose to develop internal procedures for establishing the depth of cover over a pipe for their own forces or agents but given the industry practice that locators will not provide a ground disturber with depth of cover, these procedures should not be part of the DPR.</p> <p>(d) The identification to be given to locators is the responsibility of the locator's employer who may or may not be a pipeline company.</p> <p>This section needs to be re-drafted with specific input from the CAPULC.</p> <p>Consider "The pipeline company shall ensure that locators are qualified and competent and that locates are provided in accordance with the Canadian Association of Pipeline and Utility Locating Contractors (CAPULC) Locating Industry Recognized Practices (LIRPs)</p>	<p>horizontal alignment of underground facilities should be consistent with the <i>American Public Works Association Uniform Colour Code</i>:</p> <p>Depth of Cover Pipeline companies should develop, implement and maintain procedures when <i>establishing</i> the depth of cover over the pipe. The depth of cover over the pipe may be established by either probing or daylighting, depending on the proposed activity and the location of the pipe.</p>	<p>Depth of Cover Pipeline companies should develop, implement and maintain procedures when <i>measuring</i> the depth of cover over the pipe. The depth of cover over the pipe may be <i>measured by the pipeline company</i> either by probing, daylighting or by other approved means, depending on the proposed activity and the location of the pipe.</p> <p>Reason for change: The guidance notes should not infer that third parties maintain the authority to daylight pipelines without the consent or direct supervision of the pipeline company.</p> <p>CEPA recommends that all references to depth of cover be deleted from the DPR and the Guidance Notes.</p>
6	Records of locators	48(2) and para. 129(1)(d)	The pipeline company shall create and maintain a record of locators that are qualified to perform locates on behalf of the pipeline company.	None	Training records shall identify persons qualified to locate underground facilities. Documentation of all training must be maintained to ensure that locators have been properly trained.	<p>Many companies use Contract Locators such as Red Alta, First Alert, Midwest, etc to handle some of their locates. It is unreasonable for a pipeline owner to keep records of all the locators working for these companies. We are not in control of who they send out to do the locates. At a minimum the pipeline company should pre-qualify the locator company during the contracting process and request the locator's certification when he comes to site.</p> <p>Is it the intent of the guidance note to imply this requirement is only applicable to the pipeline company's in-house locators?</p>
7	Ground disturbances	48(2) and para. 129(1)(d)	(1) No person shall undertake a ground disturbance, other than one required to comply with paragraph (a), within 3 m of the centre line of a buried pipe unless	<p>CEPA maintains revising the 3 m exposure rule to 5 m in order to align with existing Alberta legislation – a rationale for DPR development stated by the NEB.</p> <ul style="list-style-type: none"> No person shall undertake a ground 	Ground disturbance within three metres of a pipeline must not take place until the pipeline company has been notified...	<p>CEPA requires:</p> <ul style="list-style-type: none"> <i>Ground disturbance activities within the safety zone must not take place until locates have been requested and the pipeline company has provided locates</i>

Section	Title	Enacting Authority	Proposed Regulatory Text	Comments and Recommendations	Guidance Notes	Comments and Recommendations
				<p>disturbance, other than one required to comply with paragraph (a), within five (5) metres of the centre line of a buried pipe unless.....</p> <p>To address ground disturbances from the perspective of damage prevention, the regulations need to identify and address the following:</p> <ul style="list-style-type: none"> • a ground disturber needs to establish the existence of a pipeline in the vicinity of a proposed ground disturbance conducting a search for buried facilities within a specified minimum distance beyond the limits of the proposed ground disturbance; • If the proposed ground disturbance is within the safety zone, locates must be requested and provided before the ground disturbance commences; and • If the proposed ground disturbance is within 5 m of the pipe, the pipe must be hand exposed before mechanical equipment is used within the hand expose zone. <p>The lifespan of locates, the presence on-site of a pipeline company representative during hand exposure and backfill inspection should be addressed in the DPR.</p> <p>This section provides an opportunity for harmonization with provincial regulations (best example is the Alberta Pipeline Regulation)</p> <p>A definition of "associated facilities" would be helpful. Is "pipe and associated facilities" intended to capture the meaning of "pipeline" in the NEB Act; or is "associated facilities" more specific (ie: anode beds, etc.?)</p> <p>Guidance Notes: Ground Disturbance - improper use of the term "pipeline" in the first sentence.</p> <p>Pipeline Exposure - recommend removing</p>	<p>Pipeline Exposure (section truncated)</p> <p>For additional information on the methods of pipeline exposure, persons planning to undertake a ground disturbance should contact the pipeline company directly. A company representative should also be on site during the backfilling.</p>	<p><i>or given the ground disturber clearance in writing to conduct the ground disturbance without locates.</i></p> <ul style="list-style-type: none"> • <i>Ground disturbance activities within the pipeline right-of-way must not take place without the approval of the pipeline company.</i> • <i>Where the pipe is not in a right-of-way, please refer to "proposed solution" in section three of the cover letter</i> • <i>Ground disturbance activities using mechanical excavation equipment within 5 m of the pipe must not take place until the pipe has been hand exposed under the direct supervision of a representative of the pipeline owner.</i> <p>CEPA requires that the text noted above must appear as regulatory text within the DPR and not solely noted as "guidance".</p> <p>Pipeline Exposure</p> <p>Revised wording: For additional information on the methods of pipeline exposure, Persons planning to undertake a ground disturbance must request a locate from their provincial One-Call system and contact the pipeline company directly.</p> <p>A company representative must be on site during all ground disturbances within the right of way.</p> <p>Comment: CEPA requires that these provisions noted above must be included within regulatory text. It is far too critical to remain in guidance.</p>

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			<p>(a) a locate request has been made in accordance with subsection 8(1), the surface markings identify the location of the pipe, not more than 30 days have elapsed after the date of the locate report and the location of the pipe has been determined by exposing it, in the presence of the pipeline company's representative, in a manner that does not have the potential to damage the pipe or associated facilities; or</p> <p>(b) the pipeline company has assessed the effect of the ground disturbance on the pipe and associated facilities and that ground disturbance does not have the potential to damage that pipe or those facilities.</p>	<p>the statement "For additional information on the methods of pipeline exposure, persons planning to undertake a ground disturbance should contact the pipeline company directly"</p> <p>Change the wording within (a)</p> <p>(a) and the location of the pipe has been determined by exposing it, <i>under the direct supervision</i> of the pipeline company's representative, in a manner that does not have the potential to damage the pipe or associated facilities; or</p> <p>A definition of "associated facilities" would be helpful. Is "pipe and associated facilities" intended to capture the meaning of "pipeline" in the NEB Act; or is "associated facilities" more specific (ie: anode beds, etc.?)</p> <p>Pipeline Exposure - recommend removing the statement "For additional information on the methods of pipeline exposure, persons planning to undertake a ground disturbance should contact the pipeline company directly"</p>	<p>Persons undertaking or performing a ground disturbance should abide by the directions of the pipeline company and the terms of any agreements specific to the undertaking.</p> <p>Protection of Facilities</p> <p>The person undertaking the ground disturbance should stop the ground disturbance activities and notify the one-call centre and the facility owners if the markings are removed, altered or are no longer visible.</p> <p>The pipeline company must carry out such inspections as are necessary to ensure the continued safe operation of the pipeline while activities having the potential to damage the pipeline are occurring.</p> <p>Backfill should not include material that could damage facilities.</p>	<p>Persons undertaking or performing a ground disturbance must abide by the directions of the pipeline company and the terms of any agreements specific to the undertaking.</p> <p>Comment: CEPA is of the view that this provision must be included within regulatory text. It is far too critical to remain in guidance.</p> <p>Protection of Facilities</p> <p><i>The person undertaking the ground disturbance must stop the ground disturbance activities and notify the one-call centre and the facility owners if the markings are removed, altered or are no longer visible</i></p> <p><i>The pipeline company must carry out such inspections as are necessary to ensure the continued safe operation of the pipeline while activities having the potential to damage the pipeline are occurring.</i></p> <p>As noted in CEPA's cover letter, <u>these provisions must be included in regulatory text, or the regulatory text must be revised to accurately reflect the provision for pipeline company inspections, monitoring, supervision and authority to direct third party activities within the right of way or within its projected limits.</u></p> <p>Backfill must not include material that could damage facilities. – enter into regulatory text.</p> <p>Backfill that includes material that could damage the pipeline is contrary to damage prevention legislation.</p>

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	Record		(2) The pipeline company shall create and maintain a record of all exposures referred to in paragraph (1)(a) that are made in the presence of the pipeline company's representative.	None		
	Exception		(3) Subsection (1) does not apply with respect to activities referred to in section 112 of the Act.	Exception under section 7(3) needs clarification		
8	Locate request for Ground Disturbance	48(2) and para. 129(1)(d)	(1) The locate request shall be made to the pipeline company, at least three working days before the day on which the ground disturbance is to start, (a) through a one-call centre if the pipe is within an area where the one-call centre coordinates requests for locates; and (b) through the pipeline company directly if a one-call centre does not exist in that area.	None	<p>Locates</p> <hr/> <p>Markings</p> <hr/> <p>Locators</p> <hr/> <p>No Response Received for Locates If the pipeline company fails to respond to the person requesting the locate request for a locate, the person requesting the locate <i>should</i> re-call the one-call centre or the pipeline company directly.</p>	<p>Locates This section should be restricted to a statement to the effect that locates will be provided in accordance with locating industry recognized practices..</p> <hr/> <p>Markings CEPA Recommends referencing published industry practice (ie: Uniform Colour Code) within the guidance notes.</p> <p>Locators Locators are expected to advise the ground disturber of any deviations from the Uniform Colour Code used and any concerns about or limitations on the locates provided. It is not the locator's responsibility to make the ground disturber aware of requirements arising from the DPR.</p> <hr/> <p>No Response Received for Locates Lack of response is best addressed through the one-call centre. One-call centres have a list of specific contacts for each member for this purpose that members are required to keep up-to-date.</p>
	Locates		(2) Within three working days after the day on which the locate request is received, the pipeline company shall, at no cost to the person requesting the locate, (a) determine if the ground disturbance has the potential to damage the pipe or associated facilities; (b) locate the pipe and associated facilities and place surface markings to identify the horizontal alignment of that pipe and those facilities to within plus or minus 0.6 m; and (c) make a locate report that includes (i) a sketch showing the horizontal	<p>(2) It might be appropriate to reference regional response times where they exist (given their variety) and default to a "national" set time period otherwise.</p> <p>(b) A definition of "associated facilities" would be helpful. Is "pipe and associated facilities" intended to capture the meaning of "pipeline" in the NEB Act; or is "associated</p>		

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			alignment of the located pipe and associated facilities and, if possible, showing their approximate position relative to readily identifiable objects, and (ii) sufficient information to enable the person undertaking the ground disturbance to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities.	facilities" more specific. We disagree with this performance measure. Is it to be measured from the centerline of pipe? There is quite a difference between a 4" and 48" pipe. Locators mark the approximate horizontal alignment of the pipeline and there are many factors that can influence the accuracy of a locate and any attempt to regulate accuracy is a recipe for non-compliance. There are sufficient requirements within the DPR's that require the buried facilities to be marked as accurately as possible by a qualified /competent person. For example, the buried facility must be daylighted, prior to a mechanical excavation taking place within 5 metres of the facility.		
	Extending Period		(3) The period prescribed in subsection (2) may be extended by mutual agreement between the person making the locate request and the pipeline company.	None		
	Date of locate report	48(2)	(5) The locator shall date the locate report.	The locate report should be signed by both the locator and the ground disturber.		
9	Investigation	48(2)	When a pipeline company becomes aware of conditions, activities, actions or omissions that might reasonably be expected to cause damage to its pipeline or that might jeopardize the safety of the public or the company's employees in the construction, operation or abandonment of the pipeline, it shall investigate the conditions, activities, actions or omissions and maintain a record of the results of the investigation.	None		
10	Report to the Board	48(2)	The pipeline company shall immediately report to the Board in writing the results of an investigation if it concludes that the	Section 10 contradicts the one-window reporting requirements pursuant to the NEB All Company Letter of August 25, 1999.	Activities or Actions that may Result in Damage to a Pipeline <ul style="list-style-type: none"> • unauthorized ground disturbances 	Activities or Actions that may Result in Damage to a Pipeline <ul style="list-style-type: none"> • unauthorized ground disturbances

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			conditions, activities, actions or omissions have caused damage to the pipeline or have jeopardized the safety of the public or the company's employees in the construction, operation or abandonment of the pipeline.	<p>Pipeline damage is currently immediately reportable to the TSB 24-hour Occurrence Hot Line. It is not clear whether this Section is referring to the TSB or the NEB, because surely the NEB is not expecting Industry to report such occurrences separately to both Regulatory Agencies.</p> <p>Recommendation: <i>The pipeline company shall immediately report to the Transportation Safety Board in writing the results of an investigation if it concludes that the conditions, activities, actions or omissions have caused damage to the pipeline or have jeopardized the safety of the public or the company's employees in the construction, operation or abandonment of the pipeline.</i></p>	within three metres of the pipe	within <i>the pipeline right-of-way</i> .
11	Audit Program	48(2)	The pipeline company shall develop, implement and maintain an audit program for the purposes of verifying compliance with these Regulations.	For reasons of continuity, CEPA recommends moving section 11 to section 3. Section 3 would become section 4, etc.		
12	Crossing Utility	108.(5.1)	Leave of the Board under section 108 of the Act is not necessary to carry a pipeline across a utility other than a navigable waterway or a railway if the terms for the pipeline's construction have been set out in a written agreement between the pipeline company and the owner of the utility.	See Alberta Pipeline Regulation s. 58 - Ground disturbance in absence of pipeline right of way: No person shall undertake a ground disturbance within 5 metres of the centreline of a pipeline where there is no pipeline right of way without the approval of (a) the licensee of the pipeline, or (b) the Board, if approval cannot reasonably be obtained from the licensee.	<p>Utility Crossing Where the Board is the appropriate authority under section 108 of the Act, leave (authorization) of the Board is not required if the pipeline company and the utility owner can agree on the terms associated with a proposed crossing.</p> <p>When a pipeline crosses a utility such as a highway, the right-of-way commonly ceases to exist. The safety zone still applies. However, within the utility crossing area, where there is no right-of-way, the NEB's authority is over the pipeline itself. As such, pipeline companies should ensure that agreements with utility owners provide any necessary protection from facilities placed near the pipeline.</p>	<p>"Utility" is defined in Section 108 of the NEB Act and includes a "highway" but not a "public road".</p> <p>For the purpose of these regulations, CEPA strongly recommends that a provision similar to that found in the Alberta Pipeline Regulations be used.</p> <p>This section is directed at the pipeline company's requirements to cross a utility. CEPA believes the intent of the Damage Prevention Regulation is to protect the pipelines and therefore the wording in this section should be directed at the Utility holders and what requirements they must meet when crossing the pipeline. The Utilities must seek written approval from the pipeline company.</p> <p>Stating: "The safety zone still applies" is appropriate, however, there must be a clear directive for persons to obtain written approval from the pipeline company where there is no right-of-way, as in the case of crossing a highway, road or road allowance.</p>

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						<p>"As such, pipeline companies should ensure that agreements with utility owners provide any necessary protection from facilities placed near the pipeline."</p> <p>This portion of the Guidance Notes appears to be confusing the provisions of section 108 with the Pipeline Crossing Regulations' reference to "projected limits". S.108 governs pipelines crossing utilities. S.112(1), the PCRs and the draft DPR govern foreign utilities encroaching on pipeline rights of way.</p>
13	Construction across, on, along or under pipeline	112(1) and 112(5)	Leave of the Board under subsection 112(1) of the Act is not necessary for the construction of a facility across, on, along or under a pipeline if the terms for the construction have been set out in a written agreement between the pipeline company and the person planning the construction.	General comment - this provision comes across negatively. It may be more effective if re-worded. additionally,	Written Agreements Written agreements between the pipeline company and the person planning the construction should include:	<p>Revised Wording:</p> <p>Written agreements between the pipeline company and the party planning the construction may include terms and conditions designed to ensure public and worker safety and pipeline integrity.</p> <p>CEPA is of the view that <u>provisions for written agreements must be included within regulatory text</u>. It is far too critical to remain in guidance.</p> <p>Additional information re: written agreements</p>
14	Response to a request	112(5)	Leave under Subsection 112(1) of the Act (1) If a request for an agreement referred to in section 13 is made, the pipeline company shall enter or refuse to enter into the agreement within 10 working days after the day on which the request is received.	<p>Should this section not be titled as "Request for Approval"?</p> <p>Although the pipeline company can seek an extension under section 14(3), CEPA is of the view that making a 21 working-day window would reduce the need for negotiations and would align with existing Alberta legislation – a rationale for DPR development stated by the NEB.</p> <p>As such, CEPA offers the following:</p> <p>Leave under Subsection 112(1) of the Act (1) If a request for an agreement referred to in section 13 is made, the pipeline company shall enter or refuse to enter into the</p>		None

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				agreement within 21 working days after the day on which the request is received.		
	Date of receipt of request		(2) The date of the request is the day on which the person making the request gives information to the pipeline company that allows it to adequately evaluate the request.			
	Extending period		(3) The period prescribed in subsection (1) may be extended by mutual agreement between the person making the request and the pipeline company.			
	Refusal by pipeline company		(4) If the pipeline company refuses to enter into the agreement, it shall immediately provide the Board and the person making the request with the reasons for the refusal in writing and shall inform the person of their right to seek leave from the Board for the construction of a facility under subsection 112(1) of the Act.			
15	Excavations outside the safety zone	112(1) and 112(5)	Leave of the Board under subsection 112(1) of the Act is not necessary for excavations outside of the safety zone if the excavations do not have the potential to damage the pipeline.	This provision within the DPR will be extremely confusing to the lay person who is being led to understand that the manner in which the 30 metre zone is measured has changed when in effect, the provisions of subsection 112.1 prevail; ie: the 30 metre zone is measured from the edge of the right of way / "pipeline". CEPA seeks clarity.	Persons undertaking excavation activities outside the safety zone, <i>but within 30 metres extending from the edge of the right-of-way</i> , do not need approval from the Board providing these activities do not have the potential to damage the pipeline.	The guidance notes add to the confusion and a change to the wording is necessary. Suggested wording: <i>"Persons undertaking excavation activities outside the safety zone do not need approval from the Board...."</i>
16	Excavations within Safety Zone	112(1) and 112(5) and paragraph 129(1)(d)	(1) Subject to subsection (2), leave of the Board under subsection 112(1) of the Act is not necessary for <i>excavations</i> within the safety zone if: (a) a locate request has been made in accordance with section 17; (b) the pipeline company and the locator have complied with section 18; (c) the surface markings identify the location of the pipe and associated facilities; (d) not more than 30 days have elapsed after the date of the locate report; and (e) in the case of excavations within 3 m of	Recommend changing " <i>excavations</i> " to " <i>ground disturbance</i> ". CEPA maintains revising the proposed 3 m exposure rule to 5 m to align with existing Alberta legislation – a rationale for DPR development stated by the NEB. (e) in the case of excavations within 5 m of the centre line of a buried pipe, the location		Assessed Ground Disturbances* – Guidance Notes, seems to have missed the need to support pipelines during exposure. *CEPA recommends use of "ground disturbances" in place of "excavations".

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			the centre line of a buried pipe, the location of the pipe has been determined by exposing it in the presence of the pipeline company's representative in a manner that does not have the potential to damage the pipe or associated facilities.	of the pipe has been determined by exposing it in the presence of the pipeline company's representative in a manner that does not have the potential to damage the pipe or associated facilities.		
	Assessed excavations		(2) Leave of the Board under subsection 112(1) of the Act is not necessary for excavations within the safety zone that have been assessed by the pipeline company and do not have the potential to damage the pipe or associated facilities.	CEPA recommends the use of "ground disturbances" in place of "excavations".		CEPA recommends the use of "ground disturbances" in place of "excavations".
	Records of assessed excavations		(3) The pipeline company shall create and maintain a record of the excavations that it has assessed and that do not have the potential to damage to the pipe or associated facilities.	None	<p>Common or Frequent Excavations</p> <hr/> <p>Records of Agreement</p>	<p>None</p> <p>Common or Frequent Excavations</p> <p>CEPA recommends use of "ground disturbances" in place of "excavations".</p> <hr/> <p>Records of Agreement</p> <p>CEPA recommends use of "ground disturbances" in place of "excavations".</p>
17	Locate request for excavations	112(5)	The locate request shall be made to the pipeline company, at least three working days before the day on which the <i>excavation</i> is to start, (a) through a one-call centre if the pipe is within an area where the one-call centre co-ordinates requests for locates; and (b) through the pipeline company directly if a one-call centre does not exist in that area.	For reasons of consistency, CEPA suggests changing the title of this Section to "Locate request for ground disturbances" Note: change all references from an "excavation", "excavator" to "ground disturbance" and "ground disturbances" : Please refer to provincial standards identified in our comments in section 8.		
18	Locates	48(2) and 112(5)	(1) Within three working days after the day on which the locate request is received, the pipeline company shall, at no cost to the person requesting the locate, (a) determine if the excavation has the potential to damage the pipe or associated facilities in the safety zone; (b) locate the pipe and associated facilities and place surface markings to identify the horizontal alignment of that pipe and those facilities to within plus or minus 0.6 m; and (c) make a locate report that includes (i) a sketch showing the horizontal	Section 18 of the DPR is a repeat of section 8(2) and should be removed from the Regulations.		

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			alignment of the located pipe and associated facilities and, if possible, showing their approximate position relative to readily identifiable objects, and (ii) sufficient information to enable the person undertaking the excavation to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities.			
	Extending period		(2) The time period prescribed in subsection (1) may be extended by mutual agreement between the person making the locate request and the pipeline company.	Delete - repeat of section 8(3) and 14(3)		
	Date of locate report		(3) The locator shall date the locate report.	Delete - repeat of section 8(5) Sign-off by locator and ground disturber would be appropriate.		
19	Operation of vehicles or mobile equipment across pipeline	subsection 112(2) of the Act (leave/permission from the pipeline company)	Leave under subsection 112(2) of the Act is not necessary for the operation of a vehicle or mobile equipment across a pipeline if the pipeline company has assessed the operation and if the operation does not have the potential to damage the pipeline.	Section 19 can become Section 18 The regulations must include a definition for "normal farming". CEPA once again provides the following definition for the NEB's consideration: <i>"Typical farming operations" means plowing, cultivation, planting, harvesting, and similar operations routine to most farms, but excludes chisel plowing, sub-soiling, or ripping more than fifteen inches in depth, drain tile excavating, terracing, digging or driving a post in a new location other than replacing a post while repairing a fence in its existing location, and similar operations.</i>	Guidance Notes Prior to moving vehicles or mobile equipment over a pipeline, the pipeline company <i>should</i> : <ul style="list-style-type: none"> • have been contacted directly; • be provided with the opportunity to ensure that the movement will not result in damage to the pipe; and • give its permission to operate a vehicle or mobile equipment across its pipeline. If permission cannot be obtained by the company, the NEB remains a resource and is available to offer services such as ADR.	Guidance Notes Prior to moving vehicles or mobile equipment over a pipeline, the pipeline company <i>must</i> : <ul style="list-style-type: none"> • have been contacted directly; (<i>In order to conduct an assessment, the pipeline company must be contacted</i>) • be provided with the opportunity to ensure that the movement will not result in damage to the pipe; and (<i>In order to ensure the movement will not result in damage to the pipe, the pipeline company must be contacted</i>) • give its permission to operate a vehicle or mobile equipment across its pipeline. (<i>pursuant to s.112.2, leave of the company is required for the use of mobile equipment over pipelines; therefore, industry must be contacted</i>) Mobile crossings are determined through engineering assessments. If the landowner and the pipeline company do not agree with the manner in which the proposed crossing must occur, the ADR process will not facilitate a decision – the engineering assessment cannot be compromised. Please remove any reference to ADR for the

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						regulations.
	General regulatory approach	48(2), 108, 112		<p>Section 48(2) of the Act would appear to give the Board the power to make damage prevention regulations in their broadest sense.</p> <p>Section 108 addresses the construction of pipelines across, on, along or under a utility and is probably not germane to the DPR.</p> <p>Section 112(1) covers construction of facilities across pipelines. Section 112(2) covers operation of vehicles and mobile equipment across a pipeline. Section 112(5)(b)(iii) covers excavations within thirty metres of a pipeline.</p> <p>Section 112(5)(c) allows the Board to make regulations to negate 112(1), 112 (2) and 112(5)(b)(iii).</p> <p>The DPR ought to be able to state "subject to these regulations" leave of the Board is not required to construct a facility across, on, along or under a pipeline or undertake excavations within thirty metres of a pipeline and leave of the pipeline company is not required to operate a vehicle or mobile equipment across a pipeline."</p> <p>That would "clear the decks" and allow the drafting of appropriate DPR.</p>		