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Dana Cornea  
Regulations and Policy Specialist  
Planning, Policy and Coordination  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta  
T2P 0X8

### **Via Electronic Mail**

December 7, 2007

**Re: Canada Gazette, Vol. 141, No. 45- November 10, 2007, Regulations Amending The Onshore Pipeline Regulations, 1999**

Dear Ms. Cornea

Considering that abandonment is one of the urgent issues to be discussed and addressed in the Boards proposed Land Matters Consultation Initiative, we suggest that developing regulatory amendments to fill a void in abandonment and decommissioning regulations a futile exercise. The Boards proposed LMCI process is being developed to address landowner issues and create recommended solutions to the impacts of abandonment and a list of other issues on our properties. I am sure that in search of those solutions, in depth study of abandonment regulations will lead to proposed amendments that will fill this void and address our many other issues. This process will be the first time that landowners have truly been consulted in the development of regulations that impact their future and with funding our participation will be effective and our issues substantiated.

As I have stated in my February 24, 2005 correspondence regarding the *NEB's Draft Regulatory Framework for Oversight of Operations and Maintenance Activities* and again in correspondence dated March 28, 2005 regarding *Draft National Energy Board Damage Prevention Regulations*:

**“CAPLA and its members want to participate fully in the regulatory process, and ask that the NEB consider providing us with financial assistance to consult regulatory and other experts.”**

As you proceed with these amendments please reflect on our concerns about abandonment regulatory change over the last two decades. Seven abandonment pipeline regulations were deleted and replaced with one at Section 55 of the Onshore Pipeline Regulations in 1989 and that was replaced again in 1999, all without landowner input.

I suggest that you review in entirety the following correspondence I have sent to your Board to understand our thoughts and how I am sure this initiative sends the wrong message at this time.

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1. February 24, 2005 Mr. Michel Mantha
  2. March 28, 2005 Ms, Karen Black
  3. March 13, 2007 Mr. Mantha
  4. May 8, 2007 E-Mail Ms. Karla Reesor
  5. May 7, 2007 Ms. Jody Saunders
  6. May 15, 2007 Mr. David Young
  7. May 28, 2007 Hon. Gary Lunn
  8. June 28, 2007 Mr. David Young
  9. July 5, 2007 Mr. David Young
  10. July 16, 2007 Mr. David Young
  11. July 23, 2007 Mr, David Young
  12. August 21, 2007 Ms. Dutil-Berry
  13. August 28, 2007 E-Mail Ms. Haug
  14. September 6, 2007 Ms. Dutil-Berry
  15. September 7, 2007 E-Mail Ms. Dutil-Berry
  16. September 28, 2007 Mr. David MacInnis Copied to Ms. Dutil-Berry
  17. October 6, 2007 Margaret Vance to Ms. Dutil Berry
  18. November 2, 2007 Ms. Dutil Berry
  19. November 2, 2007 Ms, Dutil Berry
  20. CAPLA Intervention Evidence for the Line 9 Tolls Hearing

I also want to refer to our Access to Information Request that was forwarded to you on October 5, 2007

“All submissions received by the National Energy Board as described in their letter to Pipeline Companies and other interested Parties of February 1986, File No. : 1100-10. All correspondence, discussion papers, government reports, house of commons decisions, senate committee decisions and discussions in reference to the loss of 7 regulations pertaining to abandonment as they are described at Appendix II, page 35 of the September 1985 Background Paper on Negative Salvage Value. Also Board decisions and in house discussions of this regulatory change on abandonment since September 1985.”

As you know we still have not received this information. In August of 2007, the Board reported to the Minister (Hon. Gary Lunn) that in the period from April 2006 until March 2007, Access to Information Requests were completed in 30 days. It has now been over sixty days since our official request and more than 4 months since CAPLA made an informal request in a letter dated July 23, 2007. That request reads below:

1. “A record of all regulatory and legislative change since September of 1985 in relation, in particular, to the issues of pipeline abandonment and negative salvage value, and copies of all documentation, correspondence, consultations and/or studies related to changes in regulations and legislation.”



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2. “And all regulatory and legislative change since September of 1985 in relation to pipelines that fall under the NEB Act. Please forward copies of any documentation, correspondence, consultations and/or studies related to these changes.”

It is impossible for us to respond to your amendments in a substantive way without this information. But the movement of this issue to gazette is even more unseemly considering the sequence of events and proposed initiatives over the past year and the fact they have been on the table since 2003. Let’s reflect.

In the Fall of 2006 the Manitoba Pipeline Landowners Association (MPLA) organized 180 pipeline landowners and prepared to intervene in the Southern Lights Hearing process with the help of CAPLA. In the spring of 2007 the Saskatchewan Association of Pipeline Landowners (SAPL) organized 130 landowners and worked in combination with MPLA to jointly intervene in the Southern Lights and the Alberta Clipper pipeline applications. One of their main concerns is pipeline abandonment and liabilities. During this same period the Alberta Surface Rights Federation becomes a member of CAPLA and the Kessler Landowner group intervenes in the Keystone Hearing, concentrating on the issue of abandonment. MPLA/SAPL creates ground breaking evidence with expert witnesses to prove their concerns and eventually negotiate a settlement with Enbridge. That settlement included abandonment and crossing issues on pipelines already in the ground to be attached to easement agreements as addendums. These precedents are attracting landowners to our associations with the SAPL membership now at 250. Albertan landowners just recently formed an association on the Trans Canada pipeline to try and address the same issues. In June CAPLA became aware that Abandonment funding was to be discussed at the Line 9 Tolls hearing and CAPLA and the Ontario Pipeline Landowners (OPLA) intervene. As we prepared for this intervention, we came across the 1985 Background Paper on Negative Salvage Value. The information in this document was very disturbing considering our many years of discussions of abandonment and abandonment funding and the unaddressed views of the Technical and Legal Discussion Papers produced in the 90s. This initiated our request for more information so that we could put together a substantive intervention, but then the hearing was cancelled before that information was provided. The Board alluded that the Negative Salvage Issue would be dealt with through a different process and on October the 5<sup>th</sup>, 2007 announced in a letter dated *3 October 2007, File ADV-PE-LandEng 01*, the **Land Matters Consultation Initiative**. One of the key topics for review in this initiative is:

- **“Pipeline Abandonment- methods, reclamation standards, terminal negative salvage costs, future liability.”**

CAPLA was cautiously optimistic with this initiative and stated this with a letter of support and congratulations, dated November 2, 2007. Then on November 10, 2007 the Board sent their Onshore Pipeline Regulatory amendments concerning decommissioning and abandonment to Gazette. In CAPLA’s view this move by the Board undermines the integrity of LMC initiative and certainly has the potential to undermine landowner’s confidence in the Board.



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On November 23, 2007 the Board distributed a Draft Proposed Approach to the LMCI and invited CAPLA to the National Energy Board Office to discuss this draft proposal. CAPLA felt very well received and there was recognition from the employees we met and from the chairman that we needed to see action, not just words of understanding. I suppose we should be confident that LMCI is moving ahead and will be substantive. But words do not alleviate our skepticism. Actions speak louder than words and the action on the OPR file and the lack of action on the Access to Information File appear to say something different than what we are being told.

I hope that if you continue to move ahead on this file, it is in the interests of the people with pipelines on their land, and that considering the timing of this action, it is a courageous stop gap attempt to protect them from negative consequences, beyond their control, while we all research better solutions. Please realize that the conflicting actions you have initiated, has made it very difficult to express our views in these comments and to maintaining ongoing trust. Hopefully, your conflicting actions are only a result of a significant change of perspective and understanding of landowner issues at the top and the resulting difficulty of translating that to the ongoing processes and challenges of the rest of the office. If this is the case, as you provide our requested information, and continue to work with us to address our many issues in the coming months and years, the integrity and respect you will gain will be well warranted and earned. We remain cautiously optimistic and cautiously understanding.

As I reread this letter for the hundredth time, and try to make it express our view point, I realize that it is conflicted itself. Obviously we are trying to work with you, but you make it very difficult.

Sincerely



Dave Core  
President