

Ms Sheri Young  
Secretary of the Board  
National Energy Board  
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Calgary, Alberta T2R 08A

By Email: damagepreventionregs@neb-one.gc.ca

**November 12, 2015**

**Re: 25-Day Comment Period on Update to the National Energy Board's Damage Prevention Regulatory Framework Amendments to the NEB's Damage Prevention Regulations (File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 0201)**

The Canadian Common Ground Alliance (CCGA) respectfully submits the attached response to the National Energy Board ("NEB" or "the Board") following its October 20, 2015 general request for comments on the Proposed Regulatory Amendments to the NEB's Damage Prevention Regulations.

The CCGA represents the collective voice of its twenty-three member Board of Directors dedicated to working toward damage prevention solutions that will benefit all Canadians. Through our Board, the CCGA reaches roughly 1.3 million Canadian stakeholders of the Damage Prevention Process. Through shared responsibility among these stakeholders, the CCGA works to reduce damages to underground infrastructure; ensuring public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices.

The CCGA wishes to thank the National Energy Board for the opportunity to provide comment and looks forward to continuing a collaborative dialogue that will assist the Board in reaching our mutual goal of effective damage prevention governance.

Sincerely,



Mike Sullivan - Executive Director  
**CANADIAN COMMON GROUND ALLIANCE**  
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1. Modernizing the regulatory language.

In its correspondence of October 20, 2015, the Board states:

In the Pipeline Crossing Regulations, Part I, section 4, there is an exemption-based structure where ‘Leave of the Board’ is not required to undertake certain activities provided a series of specific conditions and circumstances are met. Writing this section of the regulation in a modern way would require a positive structure. This means that certain activities will be authorized through the regulations. For example, construction of facilities may be authorized if the party wanting to undertake the activity conforms to the measures outlined in the regulations. An example of such a measure would be the need to complete the facility construction within two years after the date of receiving the pipeline company written permission.

***Question:** The CCGA questions the Board’s direction to modernize the regulatory language of the DPRs. What are the motivating factors driving the Board to do so?*

*Feedback provided to the NEB over the past fifteen years of DPR development has consistently underlined the need for regulatory clarity. In that context, the CCGA’s Damage Prevention White Paper’s, “Damage Prevention Legislation Elements Required for Canada”, first element states:*

*“**Clarity:** Regulatory language should be clear and concise in defining the accountabilities, roles and responsibilities of all parties.”*

*The current language of the Pipeline Crossing Regulations, Part I and Part II, is very clear and explicitly defines the roles of the excavator and the pipeline company. Modernizing the regulatory text in the manner described could lead to regulatory ambiguity.*

*The CCGA does not support modernizing the regulatory language of the DPRs.*

2. Amending the regulations to reflect the legislative changes made to the National Energy Board Act by the Pipeline Safety Act.

These include:

- a) removing the term ‘excavation’ and replacing it with the broader term ‘ground disturbance\*’ (legislative definition provided below);

*The CCGA prefers the definition for ground disturbance in CSA Z247, published in English in June 2015 and in French November 2015.*

*CSA Z247 was developed, in part, to offer damage prevention symmetry across regulatory jurisdictions. In an effort to achieve that goal, five underground infrastructure regulators - the Technical Standards and Safety Authority – Ontario, the Alberta Energy Regulator, the British Columbia Oil & Gas Commission, Natural Resources Canada and the National Energy Board, were requested and did participate. As an active participant in the 2.5 year development of the*

*damage prevention standard, the CCGA urges the NEB to adopt the ground disturbance definition captured in CSA Z247 (below).*

**Ground disturbance** — *any work, operation, or activity on or under the existing surface resulting in a disturbance or displacement of the soil or ground cover.*

*Notes:*

- 1) Ground disturbances can include, but are not limited to, the following:*
  - a) digging;*
  - b) excavation;*
  - c) trenching;*
  - d) ditching;*
  - e) tunnelling;*
  - f) boring/drilling/pushing;*
  - g) augering;*
  - h) topsoil stripping;*
  - i) land levelling/grading;*
  - j) plowing to install underground infrastructure;*
  - k) tree planting;*
  - l) clearing and stump removal;*
  - m) subsoiling;*
  - n) blasting/use of explosives;*
  - o) quarrying;*
  - p) grinding and milling of asphalt/concrete;*
  - q) seismic exploration;*
  - r) driving fence posts, bars, rods, pins, anchors, or pilings; and*
  - s) crossing of buried pipelines or other underground infrastructure by heavy loads off the travelled portion of a public roadway.*
- 2) For the purposes of this Standard, the definition of “ground disturbance” does not include agricultural cultivation to a depth less than 450 mm that does not reduce the cover over the underground infrastructure.*

- b) defining the term ‘prescribed area’ in which unauthorized ground disturbances are prohibited;

*The CCGA is aware the term “Safety Zone” does not appear in regulatory text; however, the “prescribed area” being offered by the NEB is best-known as the “30 metre safety zone and pipeline right of way”.*

*The federally-regulated pipeline industry and the NEB have promoted awareness of how to live and work near pipelines, the rules to follow when working in the safety zone and right of way; and, the authority of both the pipeline company and the NEB relative to the safety zone and right*

*of way, for decades through countless pamphlets, documents, presentations, and other awareness materials. It is the CCGA's view that these awareness efforts have been effective.*

*Similar to our first response regarding the NEB's goal to "modernize regulatory language", the CCGA questions why the NEB is introducing a new term for this 'zone' when instead it could solidify it by simply including the term "Safety Zone" in regulatory text?*

*The CCGA does not support introducing the term "prescribed area" to describe the area in which unauthorized ground disturbances are prohibited (ie: "Safety Zone" and right of way).*

- c) identifying the measures required to be met in order to safely construct a facility on, across, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area; and

*Agreed. The CCGA supports regulatory clarity.*

- d) identifying the measures to be met in order to safely cross a pipeline by vehicle or mobile equipment.

*Agreed. The CCGA supports regulatory clarity.*

- 3. Amending the regulations to reflect the results from the last public consultation period conducted in September 2014. These include adding:

- a) a damage prevention program requirement to the *Onshore Pipeline Regulations* for NEB-regulated pipeline companies to develop, operate and maintain within their management system;

*Agreed.*

- b) a requirement for third parties to initiate a locate request with their local one-call centre before commencing any ground disturbance (PCR I);

*Agreed.*

- c) a requirement for NEB-regulated pipeline companies to be members of One-Call centres where they operate a pipeline (PCR II); and

*Agreed.*

- d) the intent the NEB's Exemption Order [MO-21-2010](#) (*Low Risk Crossings by Agricultural Vehicles*) into the regulations.

*Agreed.*

## CCGA General Comments:

### 1. Absence of Specific Regulatory Text

The CCGA notes the absence of any specific regulatory text in the Board's October 20, 2015 correspondence and request for comments. Will there be an opportunity to review and comment on final regulatory language prior to completion of the DPRs?

### 2. CSA Z247

Regulatory symmetry is one of the more significant challenges facing effective damage prevention governance in Canada. With the eventual promulgation of the DPRs, the NEB has a unique advantage to overcome this challenge by referencing CSA Z247, *Damage prevention for the protection of underground infrastructure*, in the DPRs. As an active and engaged participant throughout the development of CSA Z247, the CCGA urges the NEB to do so.

In support of this, the Senate Standing Committee on Energy, the Environment and Natural Resources' publication, [\*DIGGING SAFELY - One-Call Notification Systems and the Prevention of Damage to Canada's Buried Infrastructure\*](#), recommends the federal government reference CSA Z247. Among over a dozen witnesses, the NEB's Chair at the time, Gaetan Caron, delivered witness testimony during the Standing Committee's study.

#### [Senate Standing Committee's Recommendations](#), Recommendation 1:

*"That the federal government reference the CSA Z247 standard for protection and prevention of damage to buried infrastructure in relevant federal legislation and encourage provinces and territories to reference the standard in legislation."*

### 3. BILL S-233

Further to the published findings and recommendations of the Standing Senate Committee's report, the CCGA has been working with Senator Grant Mitchell's Legislative Assistant and Parliamentary Counsel since April 2015 to develop damage prevention legislation governing federally-regulated underground infrastructure. The proposed legislation, [BILL S-233](#), reached second reading in June 2015 before expiring in accordance with the commencement of the 2015 federal election process. At that time, the legislation was made public and comments / feedback were requested.

BILL S-233 remains under development. To date, the NEB has not participated in any consultation sessions or provided written feedback to the CCGA or Regional Partner of the Common Ground Alliance in Canada on the proposed legislation. In light of this, the CCGA is curious whether or not BILL S-233 has been contemplated by the Board in the development of the DPRs and whether or not the language in BILL S-233 should be amended to better reflect NEB damage prevention governance.

**Closing Comment:**

The CCGA continues to recognize the long history behind the development of the DPR and congratulates the NEB on securing language that will protect the integrity of Canada's transmission pipeline network while balancing with effective and existing legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

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