



Ms. Sheri Young
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**RE: Update to the NEB's Damage Prevention Regulatory Framework
Submission of Comments – NEB File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 0201**

Dear Ms. Young,

The Canadian Energy Pipeline Association (CEPA) respectfully submits this letter of comment regarding the Update to the National Energy Board's (NEB's) Damage Prevention Regulatory Framework, issued 20 October 2015. CEPA member companies operate 117,000 kilometres of transmission pipelines in Canada. These energy highways transport 97 per cent of Canada's daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the US in a manner that emphasizes safety, pipeline integrity, and social and environmental stewardship.

CEPA is encouraged by the level of consultation that occurred in the development of the *Pipeline Safety Act* and we look forward to continuing to support the NEB and other stakeholders in the development of regulations. CEPA acknowledges that the NEB's efforts to provide further guidance for damage prevention in the pipeline sector are aligned with our industry's commitment to excellence in emergency response, pipeline safety and environmental protection. Our members are dedicated to continuing the development of a safe, socially, and environmentally sustainable energy pipeline industry for all Canadians. Our CEPA Integrity First® program provides a forum for members to act deliberately to improve pipeline integrity, protection of buried infrastructure and effective emergency response through transparency, collaboration, and continuous improvement.

By way of this submission, CEPA is providing comments on each of the individual elements of the updated framework document. While appreciating this opportunity, CEPA would further encourage the NEB to release a full, updated package of proposed regulatory amendments for comment prior to any publication in the Canada Gazette Part I. In particular, CEPA requests that the NEB provide a comprehensive update to the set of proposed regulatory amendments that were previously released for comment on 18 September 2014.

For clarity, CEPA has grouped our recommendations into three broad themes, to be addressed below:

1. Modernizing regulatory language
2. Amending damage prevention regulations to reflect legislative changes made to the *National Energy Board Act* by the *Pipeline Safety Act*
3. Amending the damage prevention regulations to reflect the results from the September 2014 consultation period



1. MODERNIZING REGULATORY LANGUAGE

CEPA supports modernizing the regulatory language provided the revisions do not compromise the intent of the regulations. Anything that further clarifies and simplifies language makes it more accessible and easier to understand.

2. AMENDING THE REGULATIONS TO REFLECT THE LEGISLATIVE CHANGES MADE TO THE NATIONAL ENERGY BOARD ACT BY THE PIPELINE SAFETY ACT

a. Removing the term “excavation” and replacing it with the broader term “ground disturbance”

CEPA supports the replacement of the term “excavation” with the term “ground disturbance”. “Ground disturbance” better reflects the suite of third party activities that may take place in and around pipelines. Further, this change will align language with CSA Standard Z247-15: Damage Prevention for the Protection of Underground Infrastructure.

b. Defining the term “prescribed area” in which unauthorized ground disturbances are prohibited

Currently, Section 112 of the *NEB Act* requires regulated companies to provide a 30-metre safety zone, measured from either side of the pipeline easement. Through the *Pipeline Safety Act*, this 30-metre reference is being replaced by a general reference to a “prescribed area,” to be defined through regulations.

CEPA recognizes the efforts of the NEB to modernize the *NEB Act* by updating the regulatory language in order to provide clarity regarding ground disturbances activities to create clarity. However, we are concerned that including “prescribed area” may create ambiguity, which in turn, could increase risk to the safety of pipelines, people and the environment. To this end, CEPA urges the NEB to specify the same 30-metre zone in its *Damage Prevention Regulations*, again measured from either side of the pipeline easement (and not from the edge or centre of the buried pipe). Furthermore, CEPA recommends that the NEB retain the “safety zone” terminology in its regulations, as it is widely engrained and has a more positive connotation.

Any truncation of the safety zone would reduce safety, and cause confusion among the vast array of stakeholders who have been educated over the course of decades on this subject.

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

CEPA supports regulatory clarity. Any changes should aim to modernize and strengthen the current language. Currently all regulated companies use agreements or permissions in a form of an agreement, supporting the detailed guideline requirements contained within *Pipeline Crossing Regulations Part II* (PCR II) S5.1, the issuance of these agreements have been standard practice for many years.

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

CEPA supports regulatory clarity. Any changes should aim to modernize and strengthen the current language. Currently all regulated companies use agreements or permissions supporting the detailed guidelines contained in the *Pipeline Crossing Regulations Part II* (PCR II) which identify the measures to be met in order to safely cross a pipeline by vehicle or mobile equipment.



3. AMENDING THE REGULATIONS TO REFLECT THE RESULTS FROM THE LAST PUBLIC CONSULTATION PERIOD CONDUCTED IN SEPTEMBER 2014

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

Third-party damage is one of the leading causes of pipeline damage and the only cause of death to members of the public in the past 50 years of transmission pipelines in Canada. This is why CEPA fully supports the inclusion of pipeline crossings and public awareness programs in the management system requirements of the *National Energy Board Onshore Pipeline Regulations*. Damage prevention programs should also include all elements that are contained within the CSA Z247-15 standard. Public awareness is a fundamental element within any damage prevention program and should not be segmented out of a damage prevention program. Currently, NEB regulations separate the two programs, but CEPA member companies recommend that pipeline crossings and public awareness programs be combined.

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

CEPA supports the requirement for all third parties to initiate a locate request with their local one-call centre before commencement of any ground disturbance activity. The NEB should also enforce this requirement and support industry's public awareness activities in this regard.

c. A requirement for NEB-regulated pipeline companies to be members of one-call centres where they operate a pipeline (PCR II)

CEPA supports this recommendation and notes that many CEPA members are members of one-call centres in their respective jurisdiction.

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

CEPA is supportive of the NEB exempting "low risk crossings by agricultural vehicles" and recommends that the NEB word this exemption order carefully to eliminate confusion with stakeholders. Similarly, the membership also agrees that agricultural vehicles need to be quantified.

CONCLUSION

The NEB is in a unique position to provide the needed regulatory leadership with respect to the development and implementation of a robust damage prevention framework. To this end, we strongly encourage the NEB to consider the following recommendations.

- Draft wording of the proposed changes for review and comment should be made available prior to publishing in the Canada Gazette Part I, in order to ensure effected stakeholders are properly consulted. In CEPA's view, this would be best accomplished through the presentation of a comprehensive update to the set of proposed regulatory amendments that the NEB previously released for comment on 18 September 2014.
- We urge the NEB to develop goal-oriented regulations as they apply to the pipeline companies and prescriptive regulatory text specifically directed toward third parties.



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We thank you for this opportunity to provide comments. CEPA and its member companies look forward to continuing our dialogue on regulatory and operational matters as the NEB moves forward with development of the damage prevention regulations.

Yours sincerely,

Brenda Kenny
President & CEO