

# HORST SAUERTEIG

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November 8, 2015

To the National Energy Board (NEB)  
Att.: Ms. Sheri Young, Secretary of the Board  
**Re.: Amendments to NEB's Damage Prevention Regulations**

MAIL ROOM  
SALLE DE COURIER  
2015 NOV 13 P 2:16  
NEB/ONE

Dear Ms. Young,

As requested I offer below comments on Amendments to the NEB Act required by the **Pipeline Safety Act** (the Act. I argue that either the Act has to be amended before it will be incorporated into the NEB Act, or the observations listed below are at the same time incorporated into the NEB Act for its greater clarity.

In Item 16 of the Act section 48 the NEB Act is being amended by adding a new section 48.12 concerning liabilities. Liability limits are set in 48.12(5)(a) at up to one billion dollars for oil pipelines transporting at least 250,000 barrels of oil per day, but the amendment is silent about penalties for equally liable gas pipeline owners.

In Item 35 of the Act the NEB Act is being amended in section 118 to read:  
'118.1 (1) The Board shall decide whether to issue a license for the exportation of oil or gas within six months from the day on which the applicant has, in the Board's opinion, provided a complete application. ...'.

To take as an example the Energy East Pipeline project, 4,600 km long and ending in a controversial Marine Terminal in the Bay of Fundy near Saint John (the Cacouna Terminal in Quebec has been cancelled), and this applies to other similar challenging and publicly debated pipeline projects as well, a 6 months limit to get answers to questions about their application (30,000 pages plus many thousands more of corrections and additions, and more to come), and to question clarity in design and transparency in the solution of negative impacts on various aspects of such a project is not feasible and has to be stricken from the Act. If I remember right, it had been 15 months until the previous Government, to facilitate oil export, and siding with the oil industry on providing the bare minimum on protecting the environment and the safety of the public, cut the time for public and other input into the project to the point where there is simply not enough time, even for fulltime professionals, let alone for concerned citizens, to prepare for questioning in public hearings the proponent's witnesses and get answers under oath.

The Act's Summary item (f) requires that companies that operate (own?) pipelines remain responsible for their abandoned pipelines. I suggest an alternative for pipeline abandonment. Because the pipeline's easement has in many cases been taken from the owner(s) by force of law, and because the reason for this land appropriation no longer exists, it should be returned, if requested, in the same state as it was taken from them, and with no pipe left in the ground. If the previous owner(s) do not receive their land back, the company will probably remove all valuable pipeline components such as pumps, valves, cathodic protection etc. but leave the remaining pipe in the ground, which should not be

permitted because it will eventually, after it has been abandoned for many years, corrode and collapse, causing soil settlement and/or environmental contamination, or the pipe might become exposed, in each case requiring costly corrections, lest it becomes a safety hazard. But, according to NEB 'Regulating Pipeline Abandonment (PDF 6346 KB) of June 2011', Executive Summary, the NEB's compliance role ends with the completion of the abandonment project, which might be many years earlier than when the pipe eventually collapses. At that time the pipeline company, provided it still is in existence at that time, might oblige an affected land owner to go to court in order to have such a safety hazard corrected. For these reasons, the Act should provide for the suggested alternative.

The Act is written to establish greater clarity about consequences when a pipeline is not operated within the law, and this has been achieved, but no difference is being made between a pipeline in a farmer's field and a pipeline shoehorned through an existing community, resulting in safety issues for the residents. Whereas the Act is concerned with the unintended and uncontrolled release of oil, gas or any other commodity from a pipeline, there is no specific and detailed requirement listed for a pipeline company to protect the safety and security of the public, in particular in such communities, against possible acts of sabotage or vandalism. It is the NEB's mandate to ensure safety and security for both the pipeline and the public, and the Act deals adequately with polluters and pollution of the pipeline, including abandonment, the environment and company property, but specifics concerning the safety and security of the public are missing. In order to fulfil the NEB's mandate, I submit, this part of the mandate has to get equal treatment, and with the same attention to detail, because the Act is supposed to strengthen the safety and security of pipelines under the NEB's jurisdiction (second line of the Act) for both the company and the public.

This is done, to a certain extent, in the OPR (SOR/99-284) under the NEB Act in section 6, where a company is required to achieve three basic requirements:

- (a) The safety and security of the public and the company's employees;
- (b) The safety and security of the pipeline; and
- (c) The protection of property and the environment.

The Act should probably refer to these basic OPR-99 requirements in order to make the Pipeline 'Safety' Act in questions of public safety and security more inclusive. The OPR expands in sections 6.1- 6.6 under the heading MANAGEMENT SYSTEM to ascertain that the above (a), (b) and (c) of section 6 are being followed, and it creates in section 6.2 the position of an Accountable Officer, who is responsible for establishing, implementing and maintaining a management system that meets the obligations outlined in the above section 6. But each company will discharge its obligations differently, because the whole section 6- 6.6 lacks a yardstick with which to measure how the above (a), (b) and (c) are being complied with. Such a yardstick could be the NEB's letter to all companies entitled 'Security and Emergency Preparedness Programs' issued on April 24, 2002, which details in 8 elements what the NEB expects these programs to contain and to achieve, and how to achieve them. It covers a lot of the section 6 issues and, I suggest, should be used to ascertain that the above basic requirements are being met by every company. Furthermore, at the end of its first page it says (in 2002!): 'The Board is of the view that effective preparedness and response programs should include considerations of all hazards including the threat of terrorism and criminal activities'.

Whereas my letter is primarily about ‘Amendments to NEB’s Damage Protection Regulations’, these suggested additions to the Act will create a clearer picture of a company’s expected responses to comply with the above basic obligations.

One last comment: in Item 15(2) of the Act the following is added to section 48 of the NEB Act after subsection 2.2, concerning Regulations:

(2.3) .....the Governor in Council may, on the Minister’s recommendations, make regulations... (a) specifying requirements with respect to monitoring pipelines; I have not found a specific NEB definition for ‘monitoring’, but in the Guidance Notes for the NEB OPR-99 Regulations at GOAL (s. 39) it says:

In §4: ‘A monitoring program is aimed at the identification of any issues or potential concerns that may compromise the protection of the pipeline, property, persons and the environment (e.g., pipeline integrity and erosion, security, etc.)’ And in §5 it says: ‘Surveillance is a component of the monitoring program that focuses on the frequency and methods of surveillance of the pipeline’. On its list of what surveillance and monitoring programs should include, the first one is: (a) aerial and terrestrial patrols.

I am concerned that in the addition of (2.3)(a) to section 48 of the NEB Act, ‘monitoring’ has not been expanded upon sufficiently, nor have guidelines for the extent and limit of monitoring been established, as they should be, considering the unease with which a significant part of the public reacts to pipelines and their inherent dangers; and this is not only a NIMBY symptom. We have had in recent history a few spectacular pipeline failures, resulting in massive spills and high costs to the environment and to the public. They were caused either by human- or by high-tech monitoring failures, or by a combination of both. Consequently the question is how monitoring (or surveillance) of a pipeline should be done in order to achieve safety and security for the pipeline, the environment and the public. It seems to me that it cannot be done by high-tech remote control alone, that there has also to be a human element in the form of the above ‘(a) aerial and terrestrial patrols’, by having pump stations manned, by having ‘boots on the ground’ who have to be assisted in their monitoring with all the recently developed tools such as fibre optic cable sensors, drones, etc. in order to patrol in one form or another the Right of Way to detect, report and, if possible, prevent hazards or infractions.

Whereas the NEB Act will be opened for amendments to include the Pipeline Safety Act, it is also an opportunity to define in more detail requirements for the monitoring (or surveillance) of pipelines.

Respectfully,

(H.Sauerteig)

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