

National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies

Interpretations: Definitions		TransCanada Comments
1.	The following definitions apply in these Regulations.	
	<i>Authorization</i> means the authorization referred to in subsection 112(1) or paragraph 112(2)(a) of the <i>National Energy Board Act</i> . (<i>autorisation</i>)	
	<i>Facility</i> means any structure, highway, private road, railway, irrigation ditch, drain, drainage system, sewer, dike, telephone line, telegraph line, telecommunication line, line for the transmission of electricity or pipe for the transmission of hydrocarbons or any other substance. (<i>installation</i>)	Suggest also including “public road”.
	<i>Pipe</i> means a pipe that is part of a pipeline and that is used or is to be used for the transmission of hydrocarbons or any other commodity. (<i>conduite</i>)	Suggest including definition of “pipeline” stating that it is as defined in the NEB Act. Suggest also including in associated guidance clarification that “pipeline” includes the Company’s Right of Way.
	<i>Prescribed area</i> has the meaning assigned by section 2 of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> . (<i>zone réglementaire</i>)	Suggest also including reference to temporary prohibition area from section 5 of the proposed <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> .
	<i>Working day</i> means any day that is not a Saturday or a Sunday or other holiday. (<i>jour ouvrable</i>)	Suggest revising the definition as follows: “means any day that is not a Saturday or a Sunday or statutory holiday.”
One-Call Centre: Obligation to be a Member		
2. (1)	If a pipeline company operates a pipeline within a geographical area where a one-call centre exists, the pipeline company must be a member of that centre.	Suggest replace “one-call centre” with “notification centre” to be more inclusive since a locate request could include more than a telephone call, and to align with the <i>Bill Enacting the Underground Infrastructure Safety Enhancement Act</i> (Bill S-233)
One-Call Centre		
2. (2)	A one-call centre is an organization that, for the purposes of protecting the underground infrastructures of its members from damage and ensuring public safety,	See above comment for 2(1).
	a) receives locate requests from within a defined	

	geographical area; and	
	b) notifies its members that may be affected by any proposed construction or any proposed activity that would cause a ground disturbance and that are the subject of a locate request of that construction or activity.	
Consent: Inform Person of Decision		
3. (1)	If a pipeline company receives a request for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) or section 12 of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> , the pipeline company must, within 10 working days after receiving the request, inform the person that made the request whether the consent has been granted or refused and, in the case of a refusal, the reasons for the refusal.	Suggest extending the response period from 10 to 21 days to gain symmetry with provincial regulators and to provide sufficient analysis time for complex requests.
Contents of Consent		
3. (2)	When a person makes a request to the pipeline company for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> that contains the technical and other information that enable the pipeline company to determine whether the construction or activity would impair the pipeline’s safety and security, the pipeline company may grant its consent subject to any conditions necessary for the protection of property and the environment, the safety and security of the public and of the company’s employees or the pipeline’s safety and security.	Section 12 of the proposed <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> (operation of vehicle or mobile equipment across a pipeline) is excluded from this provision, and is outside scope of consents that may be conditioned. In describing “crossing”, the Regulatory Impact Analysis Statement details that anyone planning to cross a pipeline “would require consent”, and “must follow any conditions identified by the company.” Suggest addition of Section 12 and 13 to this subsection.
Amendment of Addition of Conditions		
3. (3)	At any time during the construction of a facility or the activity that causes a ground disturbance, the pipeline company may add conditions or amend the conditions referred to in subsection (2) if it determines that additions or amendments are necessary to ensure the pipeline’s safety and security.	Suggest also providing for the pipeline company’s ability to stop work. Suggest revising the clause to “At any time during the construction of a facility or the activity that

		causes a ground disturbance, the pipeline company may stop the work, add conditions or amend the conditions referred to in subsection (2) if it determines that additions or amendments are necessary to ensure the pipeline’s safety and security.
Obligation to Provide Information: Information-Application for Authorization		
4.	If a person that intends to construct a facility across, on, along or under a pipeline, engage in an activity that would cause a ground disturbance within the prescribed area of a pipeline or operate a vehicle or mobile equipment across a pipeline has made a request to the pipeline company for the information that is necessary to make an application to the Board for authorization, the pipeline company must, within 10 working days after receiving the request, give the person all the information, and provide all reasonable assistance, that is necessary to prepare the application.	
Comments by a Pipeline Company		
5.	If a pipeline company receives a copy of an application for authorization that has been filed with the Board, the pipeline company must, within 10 working days after receiving the copy of the application, send to the Board its comments on the application.	
Obligations Following Request to Locate: Timeline		
6. (1)	Subject to subsection (2), if a pipeline company receives a request to locate its pipes from a person that intends to construct a facility across, on, along or under a pipeline or engage in an activity that would cause a ground disturbance within the prescribed area, the pipeline company must, within three working days after the day on which the request is made, or any longer period agreed to by the pipeline company and that person,	
	a) inform the person, in writing, of safety practices to be followed while working in the vicinity of its pipes and, in case of a ground disturbance, within the prescribed area;	
	b) mark the location of its pipes in the vicinity of the proposed facility or the prescribed area at maximum intervals of 10 m along each pipe using markings that are clearly visible and distinct from any other markings that may be in the vicinity of the proposed facility or the prescribed area; and	
	c) provide information to the person that clearly explains the significance of the markings.	
Markings		
6. (2)	The markings must be consistent with the standards for locating a pipeline that are set out in the pipeline	

	company's damage prevention program.	
Obligations Respecting Certain Locations: Agricultural Activity		
7.	Even if the condition set out in paragraph 13(1)(a) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> is met, when the operation of vehicles or mobile equipment across a pipeline at specific locations for the purposes of performing an agricultural activity could impair the pipeline's safety or security, the pipeline company must identify those locations and notify the following persons in writing of those locations:	
	a) landowners of the specific locations in question; and	
	b) persons engaged in agriculture that raise livestock or grow crops, rent or lease the land or work as service providers or employees at the specific locations in question.	Suggest removing "or work as service providers or employees". It may not be possible for the pipeline company to identify and notify service providers and employees.
Inspections: Inspections and Field Observations		
8.	The pipeline company must	
	a) carry out any inspections that are necessary to ensure the pipeline's continued safety and security during an activity that causes a ground disturbance within the prescribed area;	
	b) inspect all exposed pipe prior to any backfilling over a pipe to ensure that no damage to the pipe has occurred; and	
	c) in respect of any inspection carried out under paragraphs (a) and (b), make field observations relating to	
	i. if a pipe was exposed, the clearance between the pipe and the facility and the condition of the pipe at the time of backfilling over the pipe,	
	ii. the compliance with the measures set out in the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> ,	
	iii. the method used to engage in the activity that caused a ground disturbance, and	
	iv. the occurrence of any unusual events that are related to the construction or activity and that may have had an effect on the pipeline's safety or security.	
Detection of Deterioration		
9. (1)	The pipeline company must make any inspections that are necessary to ensure that any deterioration of a facility that might adversely affect a pipe is detected and must notify the facility's owner, in writing, of any deterioration that is detected.	

Notification		
9. (2)	If an inspection reveals deterioration of a facility that would so impair the safety or security of the pipe as to warrant removal of the facility, the pipeline company must so notify the Board in writing.	
Suspension: Grounds		
10. (1)	The pipeline company may suspend the consent that it granted to construct a facility or to engage in an activity that causes a ground disturbance within the prescribed area if	
	a) the person carrying out the construction of a facility does not comply with the technical details and the conditions referred to in paragraph 7(3)(a) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> or the instructions referred to in paragraph 7(3)(c) of those Regulations;	
	b) the person engaging in an activity that causes the ground disturbance does not comply with the technical details and the conditions referred to in paragraph 10(3)(a) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> or the instructions referred to in paragraph 10(3)(d) of those Regulations; or	
	c) work practices might impair the pipeline’s safety or security.	
Notify Board		
10. (2)	If a pipeline company suspends its consent pursuant to subsection (1), it must immediately notify the Board in writing of the suspension and give its reasons for the suspension.	
Obligation to Report: Report to Board		
11. (1)	The pipeline company must immediately report to the Board	Suggest revising clause to “The pipeline company must enter the contravention into the National Energy Board Online Event Reporting System within 24-hours of discovery”, to align with the ERS Reporting Guideline.
	a) every contravention of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> ;	
	b) all damage to its pipe caused or identified during the construction of a facility across, on, along or under a pipeline, the operation, maintenance or removal of a facility, an activity that caused a ground disturbance within the prescribed area or the operation of vehicles or mobile equipment across the pipeline; and	Suggest revising clause to “The pipeline company must notify the Board of all damage.....within three hours of discovery using the National Energy Board Online Event Reporting System”, to align with the ERS Reporting

		Guideline.
	c) any activity related to the construction of a facility across, on, along or under a pipeline, an activity that caused a ground disturbance within the prescribed area or the operation of vehicles or mobile equipment across a pipeline that the pipeline company considers could impair the safety or security of the pipe.	
Contents of Report		
11. (2)	The report must include the following information:	
	a) details of any contravention or of any damage, including, in the case of damage, the cause and nature of the damage;	
	b) any concerns that the pipeline company may have regarding the pipeline's safety or security as a result of the construction of the facility, the activity that caused a ground disturbance or the operation of vehicles or mobile equipment across the pipeline; and	
	c) any action the pipeline company intends to take or request.	
Records: Facilities and Ground Disturbances		
12. (1)	The pipeline company must keep a record of all construction of facilities across, on, along or under a pipeline and of all activities that cause a ground disturbance within the prescribed area for the life of the pipeline, including its abandonment.	
Contents of Records		
12. (2)	The records must include, for each facility or each activity that causes a ground disturbance, as the case may be,	
	a) the name and address of the person that carries out the construction or engages in an activity that causes a ground disturbance;	
	b) the nature and location of the facility or the activity that causes a ground disturbance;	
	c) the dates of commencement and termination of the construction of the facility or the activity that causes a ground disturbance;	
	d) a description of the proposed facility, submitted with the request for the consent;	
	e) a copy of the pipeline company's written consent;	
	f) in respect of the inspections referred to in paragraphs 8(a) and (b), all findings and observations, including	
	i. the name of the person that conducted the inspection,	
	ii. the date and time of the inspection, and	
	iii. any field observations referred to in paragraph 8(c);	
	g) a statement of whether the person that carried out the construction or the person that engaged in an activity that caused a ground disturbance has	

	<p>complied with the measures set out in the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i>; and</p>	
	<p>h) the details of any abandonment, removal or alteration of the facility.</p>	
Consent-Crossings		
12. (3)	<p>The pipeline company must keep a record that contains a copy of the written consents granted by the pipeline company for the purposes of section 12 of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> for the life of the pipeline or, if there is an expiry date set out in the consent, for a period of 12 months from the day on which the consent expires.</p>	
Locations		
12. (4)	<p>The pipeline company must keep a record of the locations that are identified under section 7.</p>	
Duty to Make Records Available		
13.	<p>Every pipeline company that is required by these Regulations to keep records must make the records, and all other materials necessary to verify the information in those records, available to officers of the Board and other persons authorized by the Board for that purpose and must give the Board and other authorized persons any assistance necessary to inspect the records.</p>	
List		
14.	<p>On the request of the Board, the pipeline company must provide the Board with</p>	
	<p>a) a list of every written consent granted for the purposes of section 12 of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i>;</p>	
	<p>b) a list of every written consent granted by the pipeline company with respect to the construction of a facility or an activity that causes a ground disturbance and the information referred to in paragraphs 12(2)(a) to (c) with respect to the consent; and</p>	
	<p>c) a list of every permission granted by the pipeline company for the purposes of the <i>National Energy Board Pipeline Crossing Regulations, Part I</i> and the information referred to in paragraphs 11(2)(a) to (c) of the <i>National Energy Board Pipeline Crossing Regulations, Part II</i> with respect to the permission.</p>	
Guidelines: Request for Consent		
15.	<p>Every pipeline company must develop and maintain detailed guidelines setting out the technical and other information to be included in the requests for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> and must make those guidelines public</p>	
Damage Prevention Program: Multiple Content		

16.	The damage prevention program that a pipeline company is required to develop, implement and maintain under section 47.2 of the <i>National Energy Board Onshore Pipeline Regulations</i> must include	
	a) an ongoing public awareness program to inform the public	
	i. of the presence of a pipeline,	
	ii. on how to work safely near a pipeline,	
	iii. on how to report an unexpected situation related to a pipeline that could endanger life or cause substantial property or environmental damage that requires immediate action,	
	iv. on how to report any contact with a pipe or its coating, whether or not the pipe was damaged,	
	v. on how to report any damage to a pipe,	
	vi. of the services of a one-call centre if one exists within the relevant geographical area,	
	vii. on the necessity for authorization when constructing a facility across, on, along or under a pipeline, engaging in an activity that causes a ground disturbance within the prescribed area or operating vehicles or mobile equipment across a pipeline,	
	viii. of the information to be provided in a request for the consent to construct a facility across, on, along or under a pipeline, to engage in an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across a pipeline, and	
	ix. on the requirement to make a locate request and how to make a locate request in the relevant geographical area;	
	b) ongoing monitoring of any changes in the use of the land on which a pipeline is located and the land that is adjacent to that land;	Suggest revised wording to, "ongoing monitoring of any changes in the use of the land on which a pipeline is located and the land that is adjacent to the pipeline".
	c) ongoing monitoring of any change in the landowner of the land on which a pipeline is located;	
d) a process to ensure a timely response to locate requests;		
e) standards for locating a pipeline; and		
f) a process for managing requests for the consent to construct a facility across, on, along or under a pipeline, to engage in an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across the pipeline.		
Transitional Provisions: Section 11-Former Regulations		
17.	Section 11 of the <i>National Energy Board Pipeline</i>	

	<i>Crossing Regulations, Part II</i> , as it read immediately before the day on which these Regulations come into force, continues to apply to any person to which that section applied.	
Section 14-Former Regulations		
18.	Section 14 of the <i>National Energy Board Pipeline Crossing Regulations, Part II</i> , as it read immediately before the day on which these Regulations come into force, continues to apply with respect to the permissions referred to in sections 15 and 16 of <i>National Energy Board Pipeline Damage Prevention Regulations – Authorizations</i> .	
Application Prior to Publication: Statutory Instruments Act		
19.	For the purposes of paragraph 11(2)(a) of the <i>Statutory Instruments Act</i> , these Regulations apply before they are published in the <i>Canada Gazette</i> .	
Repeal		
20.	The <i>National Energy Board Pipeline Crossing Regulations, Part II</i> (see footnote 1) are repealed.	
Coming into Force		
21.	S.C. 2015, c. 21 These Regulations come into force on the first day on which both sections 15 and 34 of the <i>Pipeline Safety Act</i> are in force, but if they are registered after that day, they come into force on the day on which they are registered.	