

National Energy Board Pipeline Damage Prevention Regulations - Authorizations

Interpretation: Definitions		TransCanada Comments
1.	<p><i>Act</i> means the <i>National Energy Board Act</i>. (<i>Loi</i>)</p>	
	<p><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>)</p>	Suggest also including “public road”.
	<p><i>Offshore Area</i> means the submarine areas adjacent to the coast of Canada. (<i>zone extracôtière</i>)</p>	
	<p><i>Overhead Line</i> means a facility that is an above-ground telephone, telegraph, telecommunication or electric power line or any combination of those lines. (<i>ligne aérienne</i>)</p>	
	<p><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>)</p>	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.
	<p><i>Working Day</i> means any day that is not a Saturday or a Sunday or other holiday. (<i>jour ouvrable</i>)</p>	Suggest revising the definition as follows: “means any day that is not a Saturday or a Sunday or statutory holiday.”
General Provisions: Prescribed Area		
2.	<p>For the purposes of subsection 112(1) of the Act, the prescribed area means a strip of land measured 30 m perpendicularly on each side from the centre line of a pipe.</p>	<p>Since the “prescribed area” extends from the centerline of the pipe rather than the right of way, (on account of the definition of “pipeline”, in the NEB Act which includes “real property”) this results in a reduced protected area. As a result, suggest maintain the “prescribed area” as the area that is 30m from the edge of the “pipeline” rather than the “pipe”. Alternatively, extent the “prescribed area” to 40m from the centre of the pipe.</p>

		<p>At minimum suggest a “prescribed area” with respect to blasting as 40m from the centre of the “pipe”.</p> <p>Suggest also including the restrictions with respect to protecting the pipeline from mining operations as set out in Section 81 of the <i>NEB Act</i>.</p>
Locate Request		
3. (1)	<p>Subject to subsection (2), any 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 a prescribed area must make a locate request in the following manner at least three working days before the day on which the construction or activity is to start:</p>	Suggest including definition of “ground disturbance” as defined in the <i>NEB Act</i> as amended by the <i>Pipeline Safety Act</i> .
	a) to a one-call centre if the intended construction or activity is within an area where a one-call centre exists; or	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)
	b) to the pipeline company directly if the intended construction or activity is not within an area where a one-call centre exists.	
Exception		
3. (2)	Any pipeline company that intends to construct a facility across, on, along or under its pipeline or engage in an activity that would cause a ground disturbance within a prescribed area must make a locate request to a one-call centre at least three working days before the day on which the construction or activity is to start if the intended construction or activity is within an area where a one-call centre exists.	Suggest instead using the heading “Pipeline Facilities” as 3(2) is not really an “exception” .
Emergency		
3. (3)	In the case of an unexpected situation that could endanger life or cause substantial property or environmental damage that requires immediate action, the three-day period set out in subsections (1) and (2) does not apply and the locate request must be made as soon as possible	For improved clarity, suggest revising to read as follows: “(3) In the case of an unexpected situation that could endanger life or cause substantial property or

	before the construction or activity starts.	environmental damage that requires immediate action, the three-day period set out in subsections (1) and (2) does not apply <u>but</u> the locate request must be made as soon as possible <u>and</u> before the construction or activity starts.”
--	---	--

One-call Centre

3. (4)	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 3(1)(a).
	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.	

Duty to Inform

4.	Any 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 a prescribed area or operate a vehicle or mobile equipment across a pipeline must, before the construction, activity or operation is to start, inform all persons working on their behalf, including employees, contractors and subcontractors, of their obligations under these Regulations.	
----	---	--

Designation of Temporary Prohibition Area

5.	If a pipeline company, after having received a locate request from a person that intends to engage in an activity that would cause a ground disturbance within a prescribed area, designates an area that is situated in the vicinity of a pipeline and that may extend beyond the prescribed area as a prohibition area, the ground disturbance is prohibited within the area during the period referred to in subsection 112(5.1) of the Act.	
----	---	--

Authorizations Under the Act: Pipeline Company

6.	For the purposes of subsection 112(1) and paragraph 112(2)(a) of the Act and despite sections 7 and 9 to 13 of these Regulations, the construction of a facility — in an area other than an offshore area — across, on, along or under a pipeline, an activity — in an area other than an offshore area — that would cause a ground disturbance within a prescribed area and the operation of a vehicle or mobile equipment across a pipeline is authorized if the	For improved clarity, suggest revising to read as follows: “For the purposes of subsection 112(1) and paragraph 112(2)(a) of the Act and despite sections 7 and 9
----	--	--

	pipeline company that intends to carry out the construction, activity or operation	to 13 of these Regulations, the construction of a facility (i) in an area other than an offshore area across, on, along or under a pipeline, (ii) an activity in an area other than an offshore area that would cause a ground disturbance within a prescribed area, and (iii) the operation of a vehicle or mobile equipment across a pipeline, is authorized if the pipeline company that intends to carry out the construction, activity or operation”.
	a) is authorized to carry out the construction, activity or operation under the Act;	
	b) makes a locate request in accordance with section 3; and	
	c) if another pipeline company receives the locate request, the pipeline company that made the locate request obtains from the other pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> .	
Facility: Authorization-of Construction		
7. (1)	For the purposes of subsection 112(1) of the Act, the construction of a facility — in an area other than an offshore area — across, on, along or under a pipeline, other than the construction of an overhead line referred to in section 9, is authorized if the person that intends to construct the facility	See above comment for section 6.
	a) obtains the pipeline company’s written consent;	
	b) makes a locate request in accordance with section 3; and	
	c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> .	
Suspension		
7. (2)	If the consent is suspended by the Board, or by the pipeline company in accordance with subsection 10(1) of the <i>National Energy Board Pipeline Damage Prevention</i>	

	<i>Regulations – Obligations of Pipeline Companies</i> , the authorization is suspended and the construction must cease for the duration of the suspension of the consent.	
Measures		
7. (3)	Any person that is undertaking the construction of a facility must comply with the following measures:	
	a) ensure that the construction is carried out in accordance with the technical details that are set out in the person’s request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company’s consent;	
	b) ensure that the construction is completed within two years after the day on which the consent was obtained, unless the pipeline company and the person agree on another time period that is set out in the consent;	
	c) comply with the instructions of the pipeline company’s authorized field representative regarding the procedures that are to be followed while carrying out the construction in the vicinity of a pipe and that relate to the pipeline’s safety and security;	
	d) if interference with or alteration of a pipe becomes necessary, obtain the pipeline company’s written consent to interfere with or alter the pipe;	
	e) carry out any construction that involves the interference with or alteration of a pipe under the pipeline company’s supervision; and	
	f) immediately notify the pipeline company of any contact with a pipe or its coating during the construction.	
Obligations-Existing Facilities		
8.	The owner of a facility that is constructed — in an area other than an offshore area — across, on, along or under a pipeline must	See above comment for section 6.
	a) maintain the facility in a state of good repair compatible with the pipeline’s safety and security;	Since “in a state of good repair” is subject to interpretation, suggest instead specifying that it be in a state of good repair “ in accordance with the company’s pipeline specifications and applicable regulatory requirements”.
	b) immediately correct any deterioration in the facility on being so notified in writing by the pipeline company under subsection 9(1) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations</i>	

	<i>of Pipeline Companies;</i>	
	c) notify the pipeline company, in writing, of any proposed abandonment or removal of the facility; and	
	d) remove or alter the facility or part of the facility that could adversely affect the pipeline’s safe and efficient operation or that could jeopardize property and the environment and the safety and security of the public and of the pipeline company’s employees.	
Authorizations for Construction of Overhead Line		
9. (1)	For the purposes of subsection 112(1) of the Act, the construction of an overhead line across a pipeline — in an area other than an offshore area — is authorized if the person that intends to construct the overhead line	See above comment for section 6.
	a) makes a locate request in accordance with section 3;	
	b) confirms with the pipeline company that all of the pipeline company’s pipes in the vicinity of the construction have been marked; and	
	c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> .	
Measures		
9. (2)	Any person that is undertaking the construction of an overhead line across a pipeline must comply with the following measures:	
	a) construct the overhead line in accordance with any applicable provincial and federal law;	Suggest including the requirements from 5(c) of the <i>NEB Pipeline Crossing Regulations, Part I</i> , with respect to installation of an overhead line CSA – C22.3 No. 1-M87, “ <i>Overhead Systems</i> ”
	b) if the pipeline is patrolled by aircraft and if the overhead line poses a risk to the aircraft, install and maintain aerial warning devices; and	
	c) not construct or place any kind of pole, pylon, tower, guy, anchor or supporting structure across, on, along or under the pipeline.	
Activity that Causes a Ground Disturbance: Authorization-Ground Disturbance Activity		
10. (1)	For the purposes of subsection 112(1) of the Act, any activity — in an area other than an offshore area — that would cause a ground disturbance within the prescribed area, other than an activity referred to in section 11, is authorized if the person that intends to engage in the activity	See above comment for section 6.

	a) obtains the pipeline company’s written consent;	
	b) makes a locate request in accordance with section 3; and	
	c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> .	
Suspension		
10. (2)	If the consent is suspended by the Board, or by the pipeline company in accordance with subsection 10(1) of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> , the authorization is suspended and the activity must cease for the duration of the suspension of the consent.	
Measures		
10. (3)	Any person that is engaged in an activity that causes a ground disturbance within the prescribed area must comply with the following measures:	
	a) ensure that the activity is carried out in accordance with the technical details that are set out in the person’s request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company’s consent, including the conditions respecting directional drilling or the use of explosives;	
	b) ensure that the activity is completed within two years after the day on which the consent was obtained, unless the pipeline company and the person agree on another time period that is set out in the consent;	
	c) not undertake mechanical excavation that would cause a ground disturbance within the prescribed area within 3 m of a pipe, unless	
	i. if the excavation runs parallel to the pipe, the pipe has been exposed by hand at sufficient intervals to confirm the pipe’s location or the pipeline company has used a method that would permit it to confirm the pipe’s exact location and has informed the person of that location	The <i>Pipeline Safety Act</i> introduces and provides a definition for the term “ground disturbance”. Suggest replacing “excavate” with “ground disturbance” for consistent terminology throughout the proposed regulation.
	ii. if the excavation crosses the pipe, the pipe has been exposed by hand at the point of crossing or the pipeline company has used a method that would permit it to confirm the pipe’s exact location, has informed the person of that location	

	and has confirmed that the pipe is at least 60 cm deeper than the proposed excavation, and	
	iii. if ground conditions render it impractical to locate the pipe using any of the methods set out in subparagraphs (i) and (ii), the pipeline company directly supervises any excavation;	
	d) comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed during the activity and that relate to the pipeline's safety and security;	
	e) if interference with or alteration of a pipe becomes necessary, obtain the pipeline company's written consent to interfere with or alter the pipe;	
	f) carry out any activity that involves the interference with or alteration of a pipe under the pipeline company's supervision;	
	g) immediately notify the pipeline company of any contact with a pipe or its coating during the activity; and	Suggest specifying that the "company shall be notified of any direct or indirect contact with a pipe..." This clause should require reporting of damage causes by spoil pile, rocks, or soil movement.
	h) unless otherwise agreed on by the pipeline company and the person that is engaged in the activity, notify the pipeline company at least 24 hours before backfilling over a pipe.	
Authorization-Activity Required for Maintenance of Facility		
11.	For the purposes of subsection 112(1) of the Act, any maintenance of an existing facility — in an area other than an offshore area — that causes a ground disturbance within the prescribed area is authorized if the person engaged in the maintenance complies with paragraphs 10(1)(b) and (c) and the measures set out in paragraphs 10(3)(c) to (h).	
Operation of Vehicles or Mobile Equipment Across a Pipeline: Authorization-Operation Across Pipeline		
12.	Subject to section 13 and for the purposes of paragraph 112(2)(a) of the Act, the operation of a vehicle or mobile equipment across a pipeline is authorized if the person that intends to operate the vehicle or mobile equipment across the pipeline obtains the pipeline company's written consent.	Subsection 112(2) of the <i>National Energy Board Act</i> allows operation of a vehicle or mobile equipment across a pipeline without pipeline company's written consent provided it occurs within the travelled portion of a highway or public road. The proposed wording in this section does

		<p>not include a direct reference to this, which may lead to confusion. Accordingly, suggest maintaining language consistent with Section 112(2) of the <i>NEB Act</i>.</p>
<p>Authorization-Agricultural Activity</p>		
<p>13. (1)</p>	<p>For the purposes of paragraph 112(2)(a) of the Act, the operation across the pipeline of a vehicle or mobile equipment that is used to perform an agricultural activity is authorized if the following conditions are met:</p>	<p>The original Agricultural Order MO-21-2010 restricted farming activities to only when "soil conditions are such that they ensure minimal rutting when agricultural vehicles or mobile equipment are driven over the pipeline". This has been removed. Suggest that this wording should be included. Rutting reduces cover over the pipeline and suggests poor soil conditions. There is a potential for greater load transfer to the pipeline in this situation than what typically would be anticipated, potentially leading to integrity concerns. Also, the original wording alerts the farmer to the fact that their agricultural activity might impact the pipeline if soil conditions are poor.</p> <p>Also, large harvesters, large grain transporters (for instance, Super B-trains) that are referenced in Agricultural Order MO 21-2010, Section 1 d) are specifically excluded from the proposed regulation, Section 13 1) a). Suggest that these same type of vehicles be excluded from the proposed regulations due to integrity concerns associated with use</p>

		of large agricultural vehicles over pipelines.
	a) the loaded axle weight and tire pressures of the vehicle or mobile equipment are within the manufacturer’s approved limits and operating guidelines; and	
	b) the point of crossing has not been the subject of a notification under section 7 of the <i>National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> .	
Definitions of “Agricultural Activity”		
13. (2)	In this section, “agricultural activity” means the work of producing crops and raising livestock and includes tillage, plowing, disking, harrowing, pasturing, mushroom growing, nursery and sod operations, but does not include the construction of new buildings or impervious areas or the placement of footings, foundations, pilings or fence posts.	<p>Suggest excluding from “agricultural activity” brushing and clearing activity as these activities involve heavier equipment and deeper ground disturbance.</p> <p>Suggest excluding from “agricultural activity” sod operations and nurseries. These activities have potential to “reduce the total cover over the pipe”.</p> <p>Also suggest removing “fence” from the description of “posts.” Alternatively suggest “...pilings or posts, including fence posts’.</p>
Application for Authorization: File Application with Board		
14. (1)	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 may file an application for authorization with the Board if	
	a) the construction, activity or operation is not authorized under subsection 7(1), 9(1) or 10(1) or section 11 or 12; or	
	b) the person is unable to comply with the applicable measures set out in subsection 7(3), 9(2) or 10(3).	
Service		
14. (2)	If a person files an application under subsection (1), that person must serve a copy of the application on the	

	pipeline company that operates the pipeline in question.	
Transitional Provisions: Construction or Excavation		
15. (1)	Any leave granted by the Board prior to June 19, 2016 to construct a facility across, on, along or under a pipeline or to excavate using power-operated equipment or explosives within 30 m of a pipeline under subsection 112(1) of the Act, as it read immediately prior to that date, expires on the date set out in the leave, but if there is no date set out in the leave it expires two years after the day on which the leave was granted.	The <i>Pipeline Safety Act</i> introduces and provides a definition for the term “ground disturbance”. Suggest replacing “excavate” with “ground disturbance” for consistent terminology throughout the proposed regulation.
Crossing		
15. (2)	Any leave granted by the pipeline company prior to June 19, 2016 to operate a vehicle or mobile equipment across a pipeline under subsection 112(2) of the Act, as it read prior to that date, expires on the date set out in the leave granted by the pipeline company.	
Construction or Installation of Facility		
16.	The construction or installation of a facility in respect of which a person has obtained written permission under paragraph 4(b) of the <i>National Energy Board Pipeline Crossing Regulations, Part I</i> prior to June 19, 2016 is authorized under subsection 112(1) of the Act, as it reads on June 19, 2016, and the measures to be taken in relation to that construction or installation are those set out in paragraphs 4(a) to (m) of those Regulations as they read immediately before the day on which these Regulations come into force.	
Excavation		
17.	An excavation in respect of which a person has obtained the pipeline company’s written permission under paragraph 6(b) of the <i>National Energy Board Pipeline Crossing Regulations, Part I</i> prior to June 19, 2016 is an authorized ground disturbance under subsection 112(1) of the Act, as it reads on June 19, 2016, and the measures to be taken in relation to the excavation are those set out in section 6 of those Regulations as it read immediately before the day on which these Regulations come into force.	
Application Prior to Publication: Statutory Instruments Act		
18.	For the purposes of paragraph 11(2)(a) of the Statutory Instruments Act , these Regulations apply before they are published in the Canada Gazette .	
Repeal		
19.	The National Energy Board Pipeline Crossing Regulations ,	

	Part I (see footnote 1) are repealed.	
Coming into Force		
20.	S.C. 2015, c. 21 These Regulations come into force on the day on which section 34 of the Pipeline Safety Act comes into force, but if they are registered after that day, they come into force on the day on which they are registered.	