

National Energy  
Board



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**UNION OF BRITISH COLUMBIA INDIAN CHIEFS**

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**Regulations for pipeline damage prevention**

Thank you for your letter of 13 April 2016 regarding the National Energy Board's (NEB or Board) regulations for pipeline damage prevention. We appreciate your comments, and we took them into account in the development of the updated damage prevention regulations and related guidance. Your comments will also be considered as we work to continually improve our damage prevention framework.

Below is an update on the regulations as well as information addressing the comments in your letter.

Update on regulations for pipeline damage prevention

The *Pipeline Safety Act* amends the damage prevention provisions in the *National Energy Board Act* (NEB Act); these amendments come into force on 19 June 2016. As a result, the NEB regulations for pipeline damage prevention must be updated by then.

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The following regulations, attached to this letter, are in force on 19 June 2016:

1. *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*, SOR/2016-124
  - a. Replace the *National Energy Board Pipeline Crossing Regulations, Part I*, SOR/88-528
2. *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*, SOR/2016-133
  - a. Replace the *National Energy Board Pipeline Crossing Regulations, Part II*, SOR/88-529
3. *Regulations Amending the National Energy Board Onshore Pipeline Regulations*, SOR/2016-134
4. *Regulations Amending Administrative Monetary Penalties Regulations (National Energy Board)*, SOR/2016-135

Preventing damage to pipelines is a shared responsibility. The purpose of the regulations is to ensure safety for all involved. Pipeline companies are required to ensure that people know how to safely conduct activities near pipelines, and people planning activities near pipelines are required to call or click before they dig. This first contact initiates key communication processes that will identify the location of pipelines and provide information on how to work safely around them. The NEB provides regulatory oversight of both, and must create the conditions necessary to hold people accountable for carrying out these responsibilities.

The regulations and guidance for pipeline damage prevention can be accessed on the NEB's website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)). On the NEB's home page, please go to: About Us / Acts and Regulations / Regulations, Guidance Notes and Related Documents under the *National Energy Board Act / National Energy Board Pipeline Damage Prevention Regulations – Authorizations* and *National Energy Board Pipeline Damage Prevention Regulations – Obligations for Pipeline Companies*.

#### Damage prevention regulatory framework

The *National Energy Board Pipeline Crossing Regulations, Part I and Part II*, which have been in place since 1988, have provided the regulatory scheme for pipeline damage prevention for many years. The requirements in these regulations are largely maintained in the updated regulations.

The purpose of the regulations for pipeline damage prevention is to ensure safety for all involved. The regulations do not prohibit certain activities outright; instead, the regulations set

up a scheme to ensure that safety is maintained, allowing activities that can be conducted safely to occur.

The regulations and related guidance provide details as to the obligations of those planning construction, ground disturbance activities or crossings in the area of an NEB-regulated pipeline as well as the obligations of pipeline companies. The basic safety steps in the damage prevention framework continue to be: planning the construction or ground disturbance activity and including time for approvals; making a locate request and contacting the pipeline company; being on site when the pipeline is located and understanding the locate marks; following the pipeline company's safety measures and the instructions of the on-site pipeline company representative.

If planning to cross a pipeline with a vehicle or other mobile equipment, the general requirement remains that pipeline company consent be obtained.

As was the case in the previous regulations, anyone planning an activity near a pipeline or a vehicle or mobile equipment crossing can apply to the Board if they cannot meet the measures set out in the regulations or obtain the pipeline company's consent.

#### Crossing a pipeline

Your letter expresses concern about accessing traditional harvesting areas.

Pipeline companies are required to manage vehicle crossings on the pipeline. A company's Damage Prevention Program should identify vehicles that pose a hazard and those that do not pose a hazard to the pipeline.

It is not expected that the introduction of the updated regulations will have an impact on the pipeline companies' evaluation of crossings. Further, the updated regulations contain transitional provisions that allow for any permission previously granted by the pipeline company to cross a pipeline to continue until the expiry date outlined in the permission.

If there are concerns about safety related to crossing pipelines, or regarding how the pipeline company is managing vehicle or mobile equipment access to areas near or across the pipeline, we would encourage you to contact the pipeline company to discuss these issues. If there are outstanding concerns, please contact the Board.

Regarding the agricultural crossings provisions, these are requirements from the NEB's *Exemption Order Respecting Crossings by Agricultural Vehicles or Mobile Equipment* (Order MO-21-2010) that have now been incorporated into the regulations. The order was based on specific examples of ongoing concerns related to agricultural crossings that were submitted to

the Board. The order included, and now the regulations contain, responsibilities for both those conducting agricultural activities and pipeline companies. This order is revoked on 19 June 2016, at the coming into force of the regulations.

### Ground disturbance

The *Pipeline Safety Act* amendments to the NEB Act provide for greater alignment between federal and provincial provisions for pipeline damage prevention. A key piece in this alignment is provisions for activities causing ground disturbance. The ground disturbance provision includes exceptions for activities in the following categories:

- cultivation to a depth of less than 45 cm below the surface of the ground
- activity to a depth of less than 30 cm and that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed

If a proposed activity falls within one of the above-mentioned categories and it does not involve other activities specifically requiring authorization (e.g. vehicle crossing or construction of a facility), it may proceed, as it is not prohibited under the NEB Act. However, if the activity involves a ground disturbance that does not fall within one of these categories, and if that activity falls within 30 m of the centreline of the pipe, authorization is required. If a person proposing the activity meets the requirements outlined in the *National Energy Board Damage Prevention Regulations – Authorizations*, including obtaining pipeline company consent, the activity is authorized. However, if those requirements cannot be met, an application can be made to the Board and the Board will review the application with consideration for the safety of all involved.

Should traditional harvesting activities near pipelines involve ground disturbance activities that require such authorization, the specific circumstances and impacts of the activities would need to be understood. Then the details of the situation can be reviewed with all parties involved, and an appropriate approach developed for the ongoing safety of people and the protection of the environment.

### Ongoing communication on pipeline damage prevention

The NEB is committed to continual improvement and would like to ensure that the lines of communication between the NEB and the Union of British Columbia Indian Chiefs remain open. Should you have questions or would like to provide feedback on the NEB's regulations or guidance for pipeline damage prevention, please write or contact the NEB at any time.

For damage prevention matters, please contact Shannon Neufeld, Technical Leader, Damage Prevention at 403-299-2778, toll free at 1-800-899-1265, or via email:

[shannon.neufeld@neb-one.gc.ca](mailto:shannon.neufeld@neb-one.gc.ca). You can also submit questions by email to [DPinfo@neb-one.gc.ca](mailto:DPinfo@neb-one.gc.ca).

Please let us know if you would like to follow up on your 13 April 2016 letter, or to discuss any other matters related to pipeline damage prevention, and we will work to set up a time to meet.

Yours truly,

*Original signed by*

Sheri Young  
Secretary of the Board

Attachments