

NO: R210

COUNCIL DATE: October 23, 2017

REGULAR COUNCIL

TO: Mayor & Council **DATE: October 18, 2017**

FROM: General Manager, Engineering **FILE: 5500-16**
General Manager, Corporate Services

SUBJECT: National Energy Board – Damage Prevention Guidance for Municipal Operations and Maintenance Activities

RECOMMENDATION

It is recommended that Council receive this report as information.

INTENT

The intent of this report is to inform Council of recent initiatives undertaken by staff which have contributed to positive change at the national level for municipalities across Canada regarding municipal operations and activities in proximity to federally regulated pipelines.

BACKGROUND

Through the leadership efforts of the Engineering Department and the Corporate Services Department, a lower mainland working group was established to collaborate with the National Energy Board (the "NEB") and pipeline companies to formulate a guidance document which will enable municipalities to safely and efficiently undertake routine operations and maintenance activities in proximity to federally regulated pipelines. As a result of this initiative, a guidance document has been developed and formally put in place on a national scale for the benefit of all municipalities in Canada.

DISCUSSION

Over the years municipalities across Canada have experienced tremendous frustration in undertaking routine maintenance and operations in proximity to federally regulated pipelines that are located in highways and other public property. Disputes often arose between municipalities and pipeline companies related to the application of Federal Regulations to routine activities such as filling potholes, road milling and patching, planting, ditch cleaning, replacing sign posts, sidewalk panel replacement, curb removal, etc. These disputes regularly led to delays in the performance of these activities having the potential to create unsafe conditions. Recognizing the need to provide clarification, the NEB collaborated with the lower mainland working group and with pipeline companies at meetings hosted by the City of Surrey leading to the development and formal adoption of the guidance document attached as Appendix "I" to this report.

Under the direction of the City Manager and the General Managers of the Engineering Department and of the Corporate Services Department, Surrey staff will continue its leadership role in pursuit of legislative change for the betterment of municipalities across Canada. Towards that end, the City of Surrey has been invited to assist the Federation of Canadian Municipalities in its roundtable discussions with the NEB. Surrey has also been able to garner support for legislative change from municipalities across Canada. The cities of Montréal and Edmonton have, among others, expressly supported the submissions made by Surrey requesting legislative change. Attached collectively as Appendix "II" to this report are a few recent letters submitted to the Federal Minister of Natural Resources Canada in support of Surrey's submissions.

CONCLUSION

It is recommended that Council receive this report as information.

Fraser Smith, P.Eng., MBA
General Manager,
Engineering

Robert Costanzo
General Manager,
Corporate Services

AC:cls

Appendix "I" - Damage Prevention Guidance for Municipal Operations and Maintenance Activities

Appendix "II" - Letters from Various Municipalities

National Energy
BoardOffice national
de l'énergie

Office of the Chair and CEO

Bureau du président et premier dirigeant

OCT 03 2017

Mr. Vincent Lalonde
City Manager
City of Surrey
13450 – 104 Avenue
Surrey, British Columbia
V3T 1V8

Mr. Fraser Smith
General Manager
Engineering
City of Surrey
13450 – 104 Avenue
Surrey, British Columbia
V3T 1V8

Dear Mr. Lalonde and Mr. Smith:

I want to thank you for your efforts in the recent collaboration between the NEB, municipal staff located in Abbotsford, Burnaby, Coquitlam, Langley and Surrey, and representatives of Enbridge Inc. and Kinder Morgan Canada Ltd. to develop new guidance respecting municipal operations and maintenance (O&M) activities.

The new guidance provides clarity and direction for municipalities as to when the regulatory requirements do and do not apply, in relation to routine O&M activities near NEB-regulated pipelines. It also provides NEB-regulated pipeline companies with direction that delineates the differences between reportable activities under previous regulations and the newer *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* and *National Energy Board Pipeline Damage Prevention Regulations – Obligations for Pipeline Companies*.

While the new guidance was developed with the Lower Mainland municipalities and NEB-regulated pipeline companies that operate in your region, the clarification of the regulatory requirements will benefit all Canadian municipalities crossed by NEB-regulated pipelines and all NEB-regulated pipeline companies across Canada.

Our experience working with you to develop this new guidance represents exactly the sort of consensus-based solutions we will seek to achieve through our proposed NEB – Federation of Canadian Municipalities (FCM) – Canadian Energy Pipeline Association Roundtable, however we have much work to do. There remains a further opportunity to critically examine how we can improve the timeliness of decision making and a fair allocation of incremental costs where NEB-regulated pipelines and municipal infrastructure must co-exist in close proximity.

.../2

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We look forward to working with municipalities through the FCM on this important yet complex matter in the coming year, in support of our shared objectives to promote regulatory effectiveness.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Peter Watson', written in a cursive style.

C. Peter Watson, P. Eng., FCAE
Chair and CEO

c.c.: Mr. Anthony Capuccinello, Assistant City Solicitor
Mr. Scott Neuman, SNG LRT Project Director



File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 0301
26 September 2017

To: All Interested Parties

Damage Prevention Guidance for Municipal Operations and Maintenance Activities

The NEB provides guidance to assist interested parties in understanding and complying with its regulatory requirements. For the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* and *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies* (DPRs), a key objective is to ensure that NEB-regulated pipeline companies and those members of the public conducting activities near NEB-regulated pipelines understand and abide by their legal obligations.

Based on concerns expressed by municipalities located in the Lower Mainland of British Columbia about the applicability of the DPRs, the NEB collaborated with municipalities and pipeline companies operating in the region to develop new guidance. This new guidance provides further clarity and direction for all Canadian municipalities to safely and efficiently undertake routine operations and maintenance activities and also provides NEB-regulated pipeline companies with direction.

The new guidance is attached here and can also be found on the NEB website at www.neb-one.gc.ca in the Safety and Environment tab, in the Damage Prevention section. Through ongoing engagement activities, NEB staff will continue to seek input from stakeholders across Canada regarding continual improvement of the NEB's pipeline damage prevention regulatory framework and supporting guidance.

For questions or comments related to the DPRs and the guidance, please call us toll free at 1-800-899-1265 to have a Damage Prevention Operations Inspector return your call, or email us at DPinfo@neb-one.gc.ca.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachment

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Damage Prevention Guidance for Municipal Operations and Maintenance Activities

The following provides guidance for routine municipal operations and maintenance activities potentially resulting in construction, ground disturbance or vehicle crossings within the vicinity of an NEB-regulated pipeline. Each ground disturbance, construction activity or vehicle crossing is unique and this guidance cannot deal with all cases. Its purpose is to help determine whether a municipality must notify the pipeline company for a safety assessment prior to commencing a municipal operations or maintenance activity using the one-call centre, or the pipeline company directly in the Northwest Territories. Where the situation is unclear, or municipal staff are unsure whether the pipeline company is to be notified, always opt for the increased communication and contact the one-call centre at clickbeforeyoudig.com to place a locate request. **Where this guidance conflicts with the *National Energy Board Act (NEB Act)* or *Damage Prevention Regulations – Authorizations (DPR-A)*, and / or *Damage Prevention Regulations – Obligations of Pipeline Companies*, or any Order made under the NEB Act or Regulations, the NEB Act, Regulations or Order shall prevail.**

Ground Disturbance

If the activity is a ground disturbance (as defined in the NEB Act), among other requirements, the Regulations require contacting the one-call centre to request a locate, which triggers the damage prevention process. Ground disturbance is defined as any activity within the prescribed area¹ that involves:

- agricultural cultivation to depths of 45 cm or more, below the surface of the ground; or
- the soil otherwise being disturbed or displaced to a depth of 30 cm or more, or resulting in a reduction of the earth cover over the pipeline.

It may not be possible to determine the original depth of earth cover provided at the time the pipeline was constructed. For guidance purposes, if the activity results in the reduction of the current depth of earth cover over the pipeline, it is a ground disturbance.

Scope Change

If the scope of an activity near a pipeline changes from being less than 30 cm deep to 30 cm deep or greater, work shall stop and the pipeline company must be contacted to perform a safety assessment of the activity.

¹ The prescribed area means a strip of land measured 30 m perpendicularly on each side from the centreline of a pipe.

Controls

Municipal staff should consider putting controls in place in situations where they are required to use stakes or pins, such as marking the 30 cm point on the stake or pin to visually confirm that it is not driven into the ground 30 cm or deeper. An example of where stakes or pins are used is the placement of building forms for concrete sidewalk replacements.

Vehicle Crossings

Prior to driving municipal vehicles across a pipeline in a location that is off of a public highway or road, municipal staff must contact the pipeline company to provide a list of vehicle classes and associated axle weights of the vehicles that are planned to be used to cross the pipeline. The pipeline company will use that information to develop a vehicle management plan for municipal vehicles crossing the pipeline. The vehicle management plan should be reviewed by municipal and pipeline company staff on a regular basis. Where there are frequent crossings, the municipality and the pipeline company could consider long term vehicle pathways.

If soil conditions are such that the vehicle could leave ruts, municipal staff should consider different approaches to accessing the job site. Rutting of 30 cm or greater constitutes a ground disturbance and could impact the personal safety of staff or damage the pipe or its coating. Municipal staff must contact the pipeline company for a safety assessment if these soil conditions exist.

Damage Prevention Guidance for Municipal Operations and Maintenance Activities Table

Activity	Applicable Regulatory Category ¹					Regulatory Guidance	Factors ² (1-6)	Action Required by Municipality	Action Required by Pipeline Company
	Construction DPR-A s.7	Ground Disturbance DPR-A s.10	Ground Disturbance Facility Maintenance DPR-A s.11	Vehicle Crossing DPR-A s.12	Use of Vehicles & Mobile Equipment NEB Act s.11(2)(b)				
Maintenance activities < 30 cm deep, such as: Adjusting valves, valve boxes, manholes Sidewalk panel replacement, curb removal Saw-cut < 30 cm Road-milling and patching < 30 cm (large or small project) Planting < 30 cm Sign posts < 30 cm deep	No	No	No	No	No	Authorized under the NEB Act.	NA	Notify those contracted of their responsibilities under the DPR-A. If ground disturbance will be greater than 30 cm, must contact the one-call centre at least 3 days before the activity.	Acknowledge the one-call centre contact. Expedite the locate and safety assessment if work unexpectedly becomes a ground disturbance.

¹ Regulatory Category Legend:

No – The specific section of the Act or regulations is not triggered by this activity.

Yes – The specific section of the Act or regulations applies to this activity.

Depends – The specific section of the Act or regulations may apply to this activity, depending on the details of the planned work.

² Factors to be considered when conducting operations or maintenance activities in a pipeline right of way:

1. Proximity to pipeline
2. Depth of the activity
3. Equipment used for the activity (axle weight, vibration)
4. Single activity or project (comprising several ground disturbances and determines planning factor and notice required)
5. Ground/soil conditions
6. Physical barrier between the activity and pipeline (house, fence)

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Underground infrastructure maintenance activities and installation > 30 cm deep such as: Streetlight base replacement, replacement and repair of water / sewer infrastructure > 30 cm deep Saw-cut > 30 cm Road-milling and patching > 30 cm	No	Yes	Yes	No	No	Locate and safety assessment from the pipeline company required. (DPR-A s.11)	Cut - 1, 2 Mill – 1,2,3	Contact the one-call centre at least 3 days before the activity.	Respond with a locate and safety assessment within 3 business days. Locate form, safety assessment or clearance required. (DPR-A s.11)
Filling pothole < 30 cm	No	No	No	No	No	Authorized under the NEB Act.	NA	NA	NA

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Vehicle Crossing off public highway or road, non-agriculture (e.g. grass cutting ditches, paths or trails over pipeline)	No	No	No	Yes	No	Safety assessment and written consent from the pipeline company required. (DPR-A s.12)	3 - 6	Provide list of vehicle classes and associated axle weights planned to be used to cross the pipeline. Inform staff that if soil conditions are such that the vehicle could leave ruts to consider different approaches to accessing the job site. Rutting >30 cm constitutes a ground disturbance and could impact the personal safety of staff. Municipal staff must contact the pipeline company if these conditions exist.	Develop and provide a vehicle management plan to determine what vehicle classes, types and weights require authorization. Take-away for the future – Consider long-term vehicle paths to be built to accommodate a vehicle in frequently accessed areas.

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Street tree planting (Hand dug or tree spade) NOTE: Not considered to be infrastructure or the construction of a facility	No	Yes	No	Depends	Depends	Locate, safety assessment and written consent from the pipeline company required; very unlikely that a tree is planted at less than 30cm depth. Tree spade vehicle may be 'crossing' pipeline if it leaves public road.	1-6	Contact the one-call centre at least 3 days before the activity.	Respond with a locate and safety assessment within 3 business days. Locate form, safety assessment or clearance serves as written consent.

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Ditch cleaning (any depth) with mechanical equipment	No	Depends	Depends	Depends	Depends	Locate, safety assessment and written consent from the pipeline company required. May not necessarily result in a ground disturbance, but for safety considerations, a precautionary approach is used.	1 - 6	Contact the one-call centre at least 3 days before the activity.	Respond with a locate and safety assessment within 3 business days. Locate form, safety assessment or clearance serves as written consent.

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Installing new sign post > 30 cm NOTE: Depending on the size of the sign, could be considered as a facility.	Depends	Yes	No	Depends	Depends	Locate, safety assessment and written consent from the pipeline company required. Sign installation vehicle may be 'crossing' pipeline if it leaves public highway or road.	1 – 3, 6	Contact the one-call centre at least 3 days before the activity.	Respond with a locate and safety assessment within 3 business days. Locate form, safety assessment or clearance serves as written consent.

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Re-install or replace existing sign > 30 cm (e.g. sign knocked down)	No	Yes	Depends	Depends	Depends	Locate, safety assessment required and written consent from the pipeline company required; hand-digging will usually be required unless post-hole is perfectly preserved. Sign installation vehicle may be 'crossing' pipeline if it leaves public highway or road.	1 - 6	Contact the one-call centre at least 3 days before the activity.	Respond with a locate and safety assessment within 3 business days. Locate form, safety assessment or clearance serves as written consent.

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Safety-critical sign re-install or replace > 30 cm (e.g. stop sign)	No	Yes	Depends	Depends	Depends	Locate, safety assessment and written consent from the pipeline company required and DPR-A s.3(3) "Emergency" is triggered. Safety assessment and written consent from the pipeline company required; hand-digging will usually be required unless post-hole is perfectly preserved.	1-3,5,6	Call the one-call centre ASAP before activity and place an Emergency locate request. NOTE: Emergency locate requests must be phoned in to the one-call centre. The phone number can be found on the home page of your provincial one-call centre's website which can be accessed through www.clickbeforeyoudig.com	Respond with a locate and safety assessment ASAP. Locate form, safety assessment or clearance serves as written consent.

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Street light wiring - Pulling wire through pre-existing conduit	No	No	No	No	No	Authorized under the NEB Act.	NA	NA	NA
Grading gravel roads / shoulders	No	No	No	No	No	Authorized under the NEB Act.	2,3,6	NA	NA
Culvert / catch basin / sewer cleaning or sediment removal	No	No	No	No	No	Authorized under the NEB Act.	NA	NA	NA

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Le 12 juin 2017

Secrétariat de la modernisation de l'Office national de l'énergie
Ressources naturelles Canada
580, rue Booth
Ottawa (Ontario) K1A 0E4

Mesdames, Messieurs,

Comme exprimé dans la lettre de commentaires de la Communauté métropolitaine de Montréal, nous accueillons favorablement les principales recommandations du panel d'experts sur la modernisation de l'Office national de l'énergie. Tout de même, nous tenons à réitérer notre appui pour que toute réforme tienne compte des recommandations de modifications législatives présentées par la Ville de Surrey et appuyées par d'autres municipalités.

Le respect des principes évoqués dans les *Conditions municipales conjointes* est essentiel pour favoriser la cohabitation de l'infrastructure énergétique et le milieu municipal. Nous espérons que ces principes seront respectés lors de la réforme de l'ONÉ à venir.

Vous remerciant de l'attention que vous porterez à nos commentaires et aux besoins des municipalités canadiennes, nous vous prions d'agréer, Mesdames, Messieurs, nos salutations distinguées.

La directrice,

Peggy Bachman



August 25, 2017

RE: Request for Public Comment on June 2017 Environmental and Regulatory Reviews Paper

We are writing to provide comments on the proposed measures to modernize the NEB and strengthen Canada's environmental and regulatory system.

We reiterate the comments from our previous submissions. Municipalities play an important role in protecting the interests of its citizens. As such, it is important that the considerations identified by the City of Edmonton and other municipalities be seriously considered as part of the modernization process. As such, we ask that the Government revisit its proposed measures to ensure that these considerations are specifically addressed to resolve some of the deficiencies raised by the City of Surrey and other municipalities.

Yours truly,

A handwritten signature in black ink, appearing to read "S P Ho".

Steven P. Ho