



BRITISH COLUMBIA CONSTRUCTION ASSOCIATION

Suite 210, 174 Wilson Street Victoria, British Columbia V9A 7N6

Tel. (250) 475-1077 • Fax (250) 475-1078 • Website: <http://www.bccasn.com> • Email: bcca@bccasn.com

PROVINCIAL
VOICE OF:

Northern British Columbia
Construction Association

Southern Interior
Construction Association

Vancouver Island
Construction Association

Vancouver Regional
Construction Association

April 15, 2009

National Energy Board
444 Seventh Avenue S.W.
Calgary, Alberta T2P 0X8

Attention: Claudine Dutil-Berry, Secretary of the Board

Re: Proposed Damage Prevention Regulations and Draft Guidance Notes,
February 2009

Dear Claudine Dutil-Berry,

We are writing in response to the NEB's call for comments on the above noted proposed regulations.

The BC Construction Association represents approximately 2000 corporate members active across the province in all areas of construction, including excavation. We represent general contractors and trade contractors as well as numerous suppliers and service providers for the industry. Our members are both union and non-union contractors. Our organization is also very active in promoting and supporting excavation safety and we are founding members of the BC Common Ground Alliance.

It is our understanding that the reforms being undertaken are not in response to safety issues overall, but appear to be intended to result in a less intrusive regulatory regime on the industry at large. The members of the BC Construction Association are generally supportive of regulatory reform. They are in favour of reducing regulation and red tape and would welcome less government intrusion into business activities. However, such reform must never compromise public and worker safety. When it comes to objective based regulation that effects the construction industry, "proceed with caution" should be the rule of thumb. Public safety must reign paramount over regulation reform.

In reviewing the Proposed Damage Prevention Regulations, the objective based approach being taken has caused us significant concern. Specifically we are uneasy with the regulation requiring NEB regulated pipeline owners and operators to craft individual damage prevention programs. In our opinion this opens the door to having a series of different requirements that must be followed

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by the excavator depending on whose facility is being impacted. In a province where we are struggling to develop a true one-call system, common best practices for excavation, and training for locators, not having clearly identified regulations will, in our opinion, decrease public and worker safety.

While there are a number of large and in some cases international construction companies operating in British Columbia most construction businesses have fewer than 10 employees and a significant number have less than 2. This is an important fact to keep in mind when considering the best approach to regulating the industry.

The construction industry is very complex and multi-layered and it is inundated with regulation from all levels of government. The need for a contractor to understand the laws surrounding his area of expertise is compounded by the fact that the industry is mobile and it is likely that the contractor will be operating in a number of different jurisdictions. The many complexities and multitude of contractual layers that may be found within the industry also create a very heavy burden of liability on participants as well as excessive regulation and red tape.

For the most part the construction industry is entrepreneurial and market-driven. Competition for work can be fierce with profit margins generally being quite slim. Being able to quickly and definitively understand the rules governing their work can be quite significant to their bottom line and it can ensure that worker and public safety remains front and centre in their activities.

It is also worth noting that what works well for a large general contractor will not necessarily be effective for a small trade contractor. As well, it is important to remember that a regulation effecting one of the participants in the construction pyramid may well have unintended consequences for others. Introducing the potential for regulatory uncertainty is never the right approach, especially when it affects public and worker safety.

The public has an expectation that adequate measures are taken to protect people from the harmful consequences that may arise from hazards and Government is expected to be proactive in ensuring that its arrangements for securing the protection of people from risks are adequate. In fact, one of the most fundamental duties of Government is to provide a level of protection for the public.

The regulatory trend across North America is to move towards more objective-based regimes. Such a move is not only acceptable to industry in general, it has been asked for in many instances. The construction industry is no exception to

this. Our members have been pushing for less regulation and more flexibility to conduct their businesses. They feel that government intrudes too frequently into their daily lives. Having said this, it is good to remember that currently the industry operates under prescriptive regulations. It is what we are used to and what we understand. A significant change in philosophy will require significant re-education for participants in the industry. In order for an objective-based system to work, parties need to really understand what will be expected of them. Educating the larger companies that have steady employees may be fairly easy, but expecting the vast majority of small contractors and workers to understand their responsibilities may take considerably longer. In order for objective based regulation to be effective, uncertainty needs to be reduced to a minimum. Specific or prescriptive regulation will still be required to enable the initial change in behaviour and to allow "bad performers" to come up to generally acceptable levels of practice.

Even with a general shift towards objective-based regulation, prescriptive regulations can be useful to secure standardization and ensure fair competition. They also cut down on the amount of inspectorial discretion, which can be problematic for an industry that is mobile and must learn the rules of each jurisdiction it enters. Broadly recognized standards are particularly useful for an industry like construction where contractors move from region to region.

Loosely specified objective-based requirements, by definition, create uncertainty for both regulators and regulated entities with respect to enforcement and compliance issues. Also, those who are accustomed to enforcing relatively straightforward prescriptive standards are frequently uncomfortable with the discretion inherent in loosely specified objective based standards. Whenever discretion is increased, so also is the level of subjectivity. Contractors prefer to know what their responsibilities are and what the consequences will be if the rules are not followed.

Risk of failure of a regulatory system should be an important consideration when deciding how to regulate particularly in areas that pose a danger to life. Prescriptive regulation is generally preferred when there is high risk as it reduces the levels of uncertainty.

The BCCA is very much in favour of reducing the regulatory burden and red tape that runs rampant within our industry. Once again, however, reducing that burden does not always equate to eliminating regulations. Due to the complexity of the industry and the interdependence of the participants it is quite often the case that changing regulation causes unintended consequences, leaving

us with more red tape than before. This would clearly be the case if each owner/operator develops its own set of rules for damage prevention.

The construction industry will be directly impacted by the Proposed Damage Prevention Regulations. As the largest and most inclusive construction organization in the province of BC we feel that we are well positioned to provide you with advice on the general needs and expectations of our industry. The BC Construction Association recommends that the NEB maintain the more prescriptive based regulation currently in place for damage prevention.

We trust that you will take our recommendations into consideration.

Thank-you for your attention.
Vice-President, BCCA

With regards,



Abigail Fulton,