



Ontario Sewer and Watermain Construction Association

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BUREAU DE COURIER

APR 21 P 2: 10

NEB/ONE

April 20, 2009

Via email and fax
damageprevention@neb-one.gc.ca
403-292-5503

Ms. Claudine Dutil-Berry
Secretary of the Board
NATIONAL ENERGY BOARD
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8

Dear Ms. Dutil-Berry


Re: Draft Damage Prevention Regulations

Further to the publication by the National Energy Board of the proposed *Damage Prevention Regulations in February 2009*, the Ontario Sewer and Watermain Construction Association (**OSWCA**) is pleased to provide the attached submission containing its comments and recommendations.

OSWCA shares the concerns of the NEB and other stakeholders for a safe working environment for all workers working on or near NEB regulated pipelines and related works.

Please forward any questions regarding the submission to the undersigned.

Sincerely yours,


Frank J. E. Zechner
Executive Director

Attachment



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1. Definition of term “Pipe”

Section 1 of the proposed Damage Prevention Regulations (“DPR”) provides the following definition of the term “pipe”.

“pipe” means a line that is used or is to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province of an offshore area as defined in section 123 of the Act.

The proposed definition of the term “pipe” and the definition of the term “pipeline” in section 1 of the Act both focus on the term ‘line’. The following is suggested as a more appropriate definition of the term “pipe” to allow it to be distinguished from the broader definition of “pipeline”.

“The physical containment structure, made out of metal, plastic or other materials, through which oil, gas or any other commodity is transmitted from one province or offshore area as defined in section 123 of the Act to any other province or provinces or offshore area.”

2. Consistent Use of the Terms “Pipe” and “Pipeline”

The OSWCA believes that the purpose of defining the term “pipe” is to facilitate a focused damage prevention system as the broader definition of “pipeline” is used to identify overall NEB regulatory jurisdiction as well as rate making powers. Consequently the OSWCA questions whether the term ‘pipeline’ should be replaced with the term ‘pipe’ in sections 2, 4, 4(a), 5, 9, 10, 15, and 19 of the DPR.

3. Definition of term “Safety Zone”

Section 1 of the proposed Damage Prevention Regulations (“DPR”) provides the following definition of the term “safety zone”.

“safety zone” means the area extending 30 m perpendicularly from the centre line of a pipe on either side of the pipe.

The OSWCA supports the definition and use of the term “safety zone” to assist in determining which activities require notice to or consent from the pipeline company. The definition and the guidance notes should clearly state that the



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safety zone is independent of the ownership of the lands situated within 30 metres of the centre line of a pipe.

4. Definition of “One-Call Centre”

The proposed definition does not distinguish between a “One Call” centre representing most, if not multiple utilities, and the branch or office of a specific utility such as a local electrical power distribution company. The following is suggested to address this concern.

“One-call centre” means an operating organization that, within a defined geographical area, offers to all utilities in the geographic region including pipeline companies, services to receive locate requests for multiple utilities through a single interface, and generate a reasonably detailed and prompt notification to its potentially affected members of any proposed excavation or other form of ground disturbance for the purposes of protecting the member’s facilities from damage or interruption and ensuring public and worker safety.

5. Damage Prevention Programs

The OSWCA commends the NEB’s proposal to require every pipeline company to develop, implement and maintain a damage prevention program. OSWCA members are concerned that they would face an array of different requirements from different pipeline companies, particularly as they related to excavation requirements, types of pipeline markers used and information and measures required to be provided by excavators working in proximity to a pipe. While we have no specific changes in mind to the regulatory text, we would encourage the NEB to use a relevant industry organization, such as the Canadian Energy Pipeline Association to develop a reasonable and common set of guidelines that would apply to all pipeline companies.

6. Ground Disturbances

The OSWCA notes that section 7 of the proposed DPR prohibits a ground disturbance within 3 metres of the centre line of a buried pipe, however one often does not know whether or not they are within 3 metres of a buried pipe unless the pipeline company has responded to a locate request.



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The OSWCA is concerned about the requirement that no person shall undertake a ground disturbance within a prescribed distance of the centre line of a buried pipe unless the location of the pipe has been determined by exposing it in the presence of the pipeline company's representative. The OSWCA believes that the term "ground disturbance" should be defined in the DPR, so that it is clear what activities trigger the expensive task of exposing a large and deep section of buried pipe.

The OSWCA has been advised that at least one other stakeholder favors a 5 metre threshold instead of the NEB's proposed 3 metre threshold for notices of ground disturbances to the respective pipeline company pursuant to subsection 7(1) of the DPR. Subject to a clear and narrow definition of the term ground disturbance that is focused on excavation and major sonic shock activities near a pipe, the OSWCA consents to such request to extend the ground disturbance threshold to within 5 m of the center line of the pipe.

The OSWCA is also concerned about unnecessary rigidity in terms of the expiry of a locate report as mandated by paragraph 7(1)(a). That proposed paragraph of the DPR states:

"a locate request has been made in accordance with subsection 9(1), the surface markings identify the location of the pipe, not more than 30 days have elapsed after the date of the locate report and the location of the pipe has been determined by exposing it, in the presence of the pipeline company's representative, ..."

Where an excavator is working near a pipe and that work continues for more than a 30 day period, it should not be necessary to have the pipe re-exposed every 30 days. There should be a mechanism similar to subsection 8(3) under which the pipeline company and the excavator can agree to extend the expiry date of a locate report and not require re-exposure of a buried pipe every 30 days during a continuous construction project.



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7. Locate Requests

The OSWCA believes that the proposed wording of subsection 8(4) of the DPR should be amended to require the pipeline company to make a positive written response to every locate request, either that there is no pipe in the proposed area, or that there is pipe in the area, the location of the pipe and the statement that the pipeline company has concluded that the proposed ground disturbance does not have the potential to damage the pipe.

The OSWCA is also concerned about consequences and costs to its members where a pipeline company fails to respond to a locate request within the prescribed time of 3 working days. Absent extreme weather or other extraordinary conditions, the proposed DPR should confirm that an excavator may make a civil claim for direct expenses and costs for a lack of a locate response by the pipeline company within the prescribed time. The DPR should also confirm that an excavator has a right to civil damages where the pipeline fails to provide an accurate locate response,

The OSWCA further notes that section 8 of the DPR requires a locate request in advance of a proposed ground disturbance and section 17 requires a locate request in advance of a proposed excavation. The OSWCA is of the view that an excavation is a form of ground disturbance and there should only be a single section for ground disturbances together with a clear and focused definition of what is and what is not a 'ground disturbance'.

With respect to locate responses, the OSWCA also notes that section 8 addresses both the making of a request for a locate and the response by a pipeline company to such locate request. With respect to section 18 prescribing the response by a pipeline to a locate request made under section 17 of the DPR, the OSWCA suggests that section 18 also be combined into a single section dealing with locates for ground disturbances.



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8. Crossing Utilities

There are two distinct classes of activities, one where an NEB pipe crosses an existing utility, and one where a new or reconstructed utility crosses an existing NEB pipe. The OSWCA submits that the onus should be on the owner of the newer works being constructed to ensure that there is an appropriate written agreement between the owner of the pipe and the owner of the utility.