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J. F. LANG
Secretary-Treasurer

March 30, 2009

Ms Claudine Dutil-Berry, Secretary
National Energy Board
444 7th Seventh Ave SW
Calgary Alberta T2P 0X8

Subject: Proposed Damage Prevention Regulations and Draft Guidance Notes – February 2009

At the request of the National Energy Board, Trans-Northern Pipelines Inc. presents feedback to the proposed Damage Prevention Regulations (DPR) and Draft Guidance Notes. Trans-Northern is committed to the belief that effectively executed damage prevention efforts by all involved parties are essential to protecting public safety. Trans-Northern has decided to make an individual submission to the Board because it feels that with a large portion of our system located within densely populated areas, it gives Trans-Northern a unique perspective on damage prevention. Hopefully, this perspective will assist the Board in developing the best possible damage prevention regulations. Trans-Northern is also participating in the preparation of CEPA's response on behalf of the industry.

Trans-Northern submits its feedback in the form of comments of a general nature to the DPR and Guidance Notes, and specific comments to the text of the DPR and Guidance Notes.

Generals Comments

1. Compliance

Trans-Northern is of the opinion that the regulation does not go far enough in outlining compliance requirements for parties undertaking activities within the safety zone. It is the experience of Trans-Northern

that in most incidents where a serious potential to damage a buried pipeline has occurred it was performed by parties who were aware of the existence of the pipeline yet felt no need to 'call before they dig' or follow DPR practices. Many of these parties felt that the education received from both pipeline companies and industry associations, such as CEPA, empowered them to take independent decisions about the need for caution around buried pipelines. This is a cause for concern.

Trans-Northern recognizes the limitations of the current legislative framework when it comes to enforcing the DPR with third parties and encourages the NEB to seek solutions in the longer term, but in the meantime the Board should consider sterner language for violators. Just as the draft DPR identifies accountability for pipeline companies; it should also clearly identify responsibilities for those who may potentially damage a buried pipeline. It is a public safety imperative.

2. Use of "Pipe" Versus "Pipeline"

Trans-Northern believes that the Board should review the DPR and Guidance notes for the appropriate use of the terms "pipe" and "pipeline" as defined by the NEB Act. They seem to be inconsistently applied in the DPR and Guidance Notes. Perhaps the question to be considered is; "Does the Board believe that the DPR effectively applies to all the aspects under the NEB Act definition of pipeline?" To take this position requires considerable interpretation when applying the DPR to property, ground beds, communication systems, tanks, etc. against measurements that radiate from the centerline of buried pipe. Perhaps the Board should consider the DPR as dealing solely with the protection of buried pipe, remove all references to "pipeline" and utilize other regulatory content to deal with the protection of associated facilities. In this way the DPR would more effectively deal with one of the greatest risks to public safety - damage to buried pipe.

3. Ground Disturbance

It is the opinion of Trans-Northern, in the interest of public safety, that every activity, whether ground disturbance or excavation, within the 30 metre safety zone be assessed by the pipeline company. In this manner all activities would require notification to the one-call centre or pipeline company. It is of concern that a person reading Section 7 of the proposed regulation in isolation could assume that notification for a ground disturbance anywhere between 3 and 30 metres from the buried pipe is not required. When considering the possible misinterpretation of "ground disturbance" and the sometimes poor delineation and recognition of working zone requirements, events can transpire to create potential damage to buried pipe. Whether the Board chooses to differentiate the

nature of activities performed within the 30 metre safety zone or not, all of them should be assessed by the pipeline company. As far as content of the DPR is concerned, the identified requirements for excavations and ground disturbances could be amalgamated into one section simplifying the regulatory text.

Lastly, Trans-Northern believes that vehicle crossings are simply ground disturbances, either as a condition of potential compaction or potential rutting under certain soil conditions. Trans-Northern believes that within the framework of this new regulation, it can continue under current agreements with landowners for continued crossing requirements as it has in the past. Nonetheless, Trans-Northern will participate within the NEB requested CEPA mandate to identify possible definitive arrangements for vehicle crossings.

4. Monitoring Changes in Ownership

Trans-Northern most certainly agrees with the principle of maintaining the identification of landowners along the pipeline for the effective communication of damage prevention requirements even though this is often a particularly arduous task. What is unclear is the expectation of the Board with respect to the execution of this requirement. Differences in the application of privacy laws, the timeliness and penetration of land registry databases varies provincially and the frequency of direct landowner contact with pipeline companies varies across geography and pipeline company. As a result, a national perspective of the "best efforts" will be difficult to define.

Ontario provincial regulations protecting the privacy of individuals makes it difficult to maintain a record of the ownership of property. Once acquired Trans-Northern must also protect this information and not disseminate it to third parties. In some cases the landowner is not resident on the property in question. In other cases there may be unregistered interests in a property, pending unregistered land transactions, or holdings by corporate subsidiaries hard to identify. At Trans-Northern efforts are made to determine and record property ownership, and the name of current resident, but in our opinion the address is sufficient for the mailing of damage prevention information. The Board may wish to make this distinction in the Guidance Notes.

5. Goal Oriented Regulation

Within the draft of the DPR and Guidance Notes, we discover again the challenge of creating goal-oriented regulations. Both the NEB and Trans-Northern likely agree that the strategy is a good one, but with this proposal we find ourselves reviewing a document that is a list of activities

and definitions, prescriptive in nature, to be followed. In a subject area where it is likely easy to identify both leading and lagging indicators of performance there is little discussion about the establishment of goals to achieve damage prevention to buried pipelines. Perhaps the Board should again consider what success looks like in damage prevention and set those objectives for pipeline companies in the regulation rather than dictate or suggest activities that, if poorly executed, may not achieve the desired results.

Comments to the Regulatory Text

Page 5, Section 3 – Members of one-call centre, Paragraph 1(b): Where multiple one-call centers exist with overlapping geographical areas, as in Ontario, is the requirement that pipeline companies be members of all available one-call centers? If it is the expectation of the Board that this is a necessary action to maximize public safety, then this requirement should be specifically addressed in this paragraph.

Page 6, Section 4 – Damage prevention program, Paragraph 1(c): The word “any” should be replaced with “a”.

Page 13, Section 7 – Ground disturbances, Paragraph 1: In accordance with the commentary presented in the General Comments section of this submission it is our belief that “3 m” should be replaced with “30 m”. It is our belief that confusion, or misinterpretation on the part of “any person” as to what constitutes a ground disturbance, or what “does not have the potential to damage that pipe or those facilities” could lead to activities within 3 m of the centre line of the buried pipe that could endanger the public.

Page 20, Section 10 – Report to the Board, Paragraph 1: Trans-Northern believes that letting pipeline companies use their individual discretion to “...conclude that the conditions, activities, actions or omissions have caused damage to the pipeline or have jeopardized the safety of the public...” will result in inconsistent reporting to the Board. In this instance the Board may fail to see the entire spectrum of damage prevention issues including near miss reporting or accessibility restrictions.

Page 22, Section 12 – Crossing Utility, Paragraph 1, and Page 23, Section 13 – Construction across, on, along or under pipeline, Paragraph 1: Each of these sections reference “a written agreement” between pipeline companies and third parties. A more precise definition may be advantageous since Trans-Northern believes some ambiguity, particularly when dealing with planners of the work, could exist. Things to consider could include:

- Can a planner bind the owner of the property in perpetuity through such agreements?
- Is the agreement enforceable in the event of a dispute?

- If permits or locate reports become considered as agreements is there a legal obligation for these documents to be registered?
- Is the person actually performing the work legally bound by the agreement?

Page 24, Section 14 – Refusal by pipeline company, Paragraph 1: Trans-Northern believes that “immediately” should be replaced with “forthwith” to reflect the appropriate practicality of notification processes.

Page 26, Section 16 – Excavations within safety zone, Paragraph 1: When excavations within 3 m of the centerline of the buried pipe are assessed by pipeline companies, and are not believed to present potential damage to the pipe or associated facilities, the proposed text still requires the exposure of the buried pipe. Exposure may not be necessary.

Comments to the Guidelines

Definitions

“Backfill” – Remove the reference to the ORCGA Best Practices Manual as the source of the definition. Trans-Northern believes that the NEB should state a definition for the regulation, and not insert linkages to other provincially oriented documents that are subject to change under different authority. Listing the ORCGA as a reference, as on Page ii, should be adequate.

“Facility” – For a large part of the guidance notes, including other definitions, the use of the term “facility” is used to refer to a buried pipe or other utility. In later sections, particularly in **Section 13 – Construction across, on, along or under a pipeline**, the term is used implying the broader definition as identified here. There is some potential for misinterpretation as pipeline companies apply the components identified under the definition of “pipeline” as equivalent, or as references are made to unauthorized structures within the 30 m safety zone. Perhaps the Board should consider defining and using different terms in the regulation for clarity as appropriate.

Locate (verb) – Consider substituting the term used in the definition of a locate request of, “a person proposing to excavate or disturb the ground” in place of “an Excavator” since locates are required for ground disturbances.

Locate (noun) – Similar to the rationale identified for changes in the definition of “backfill” the section, “... (as defined in the Ontario Common Ground alliance Best Practices Version 4.0 - March 2008) should be removed.

Locate ticket – Remove the text, “... that is transmitted to potentially affected members of the one-call centre...”

Marking – Add, “or work areas” to the definition after the word facility to reflect the discussion on Page 18 of the Guidance Notes indicating that “the person proposing to perform the excavation should mark out the location or boundary...”

ORCGA – Remove the text, “... Best Practices...” which is a reference to a document, not the organization.

Right-of-way – Replace “acquired for” with “over” to clarify that it is not necessarily a purchased strip of land.

Section 1

Page 2, Paragraph 2 thru 4:

Trans-Northern believes there is inconsistency of the delineation of activities through these sections. Pursuant to comments made in the general comments section of this submission Trans-Northern believes that all activities, whether ground disturbance or excavation, should require contact to the one-call centre or pipeline company. Further, paragraph 3 describing the definition of requirements for construction with respect to the right-of-way, should be removed as it serves to confuse the requirement for notification. The regulation should be consistently applied from the centerline of the buried pipe.

Page 2, Paragraph 5:

The Board may wish to consider expanding this section to consider mention of other types of land use changes as CSA Plus 663 does not cover land use changes such as woodlot to agricultural, or agricultural to nursery.

Section 2

Page 3, Application, Paragraph 1 thru 3:

As noted in the general comments section of this submission, the definition of “pipeline” versus “pipe” in this section might be best restated with the term “buried pipe”. This includes the text in the “Did You Know?” window which specifically refers to the pipe not the pipeline and related facilities.

The Board may wish to add the following important activities to the identified list on page 4. These include: vibratory compaction, pile-driving, sheet piling, material stock piling, tree harvesting, and sign placement.

Section 3

Page 5, One-Call Centers, Paragraph 2:

Pursuant with the comments made in the Definitions section of this submission, Trans-Northern believes that the reference to the ORCGA should be removed and

the text should simply read, " One-call centers promote the need to "Call Before You Dig" to :"

Page 5, One-Call Centers, Paragraph 3:

The fourth bullet point should end with the word "work" in place of the word "works".

Page 6, One-Call Centers, Paragraph 3:

Pursuant with the comments made in the Definitions section of this submission, Trans-Northern believes that the first two sentences referring to the ORCGA should be removed.

Section 4

Page 6, Section 4- Damage prevention program, item (c)

The Board should consider deleting the word "any" from "any change in ownership", or insert "likely to change use or control" before "of the land on which the pipeline is located," or provide a more restrictive definition of ownership. As noted in Trans-Northern's general comments, there may be unregistered or administrative changes in ownership which are unreasonably difficult to ascertain or which may have little effect on the actual use of the lands.

Page 7, Public Awareness, Paragraph 2:

The sixth bullet point should be expanded to read "ground disturbance and excavation requirements;"

Page 9, Public Awareness, Paragraph 8:

Trans-Northern believes the incorrect reference was noted. It should state "... section 11, page 22 ...".

Page 9, "Did You Know?" window, Paragraph 1:

In the opinion of Trans-Northern the first sentence in this paragraph is the strongest statement to compliance in the entire DPR and Guidance Notes. While Trans-Northern understands some of the Board's current limitations with respect to enforcement of the DPR, it seems inappropriate to place such emphasis on the consequence of tampering with a pipeline sign, while remaining silent on the consequence of failing to "call before you dig" or endangering the public safety through irresponsible action. The Board should consider either revising this statement or placing similar emphasis at other locations in the documentation.

Page 11, Continuing Education and Liaison, Paragraph 3:

Trans-Northern believes that the content of the third bullet might be better incorporated into the 4th paragraph for clarity.

Section 5

Page 12, Qualification and Competency Requirements, Para. 2:

The words "... locators work ..." in the fourth bullet point should be replaced with "... locating equipment works ...".

It is unclear whether the intention of the sixth bullet point is that locators should have training to locate buried pipes or training in recognizing what constitutes a ground disturbance. We suggest that clarification is required. A suggestion might be, "training in the location of underground facilities."

Section 7

Page 15, Protection of Facilities, Paragraph 1:

There seems to be an inconsistency between this paragraph and the first paragraph in the next section titled Pipeline Assessment in that they both reference the assessment of ground disturbances yet state different distances from the centerline of the pipe – one within the safety zone, and one within 3 m. This inconsistency in this section is not clarified by the text in section 1.

Page 15, Records of Pipeline Exposures, Paragraph 1:

The language in the first sentence requires clarification. A suggestion would be, "If the buried pipe has been exposed, the pipeline company ...". Reiterating a comment from the general comments section of this submission, greater clarity could be achieved throughout this section if the perspective of the DPR was restricted to the buried pipe itself rather than the pipe and associated facilities.

Section 8

Page 18, Markings, Paragraph 4:

A clarification to paragraph 4 might be, "Accuracy of buried pipe markings shall be within plus or minus 0.6 m." The placement of this paragraph behind the previous suggests that these marking requirements are for work zone markings versus buried pipe markings. It should either be revised or relocated ahead of the third paragraph. The Board may also wish to consider placing accuracy requirements on work zone marking as discussed in paragraph 3.

Section 13

Page 23, Written Agreements

It should be clarified with whom it is intended the written agreement be made. The "person planning the construction" may not be the applicant, the contractor, the facility owner, or the landowner. If an agreement is meant to endure after construction while the facility is in operation, then the facility owner may be the

only party who can legally commit to those terms, and it may in some cases be necessary to have the landowner join in.

The Board may wish to consider whether the written agreement, once made between the parties, should be filed with the Board and constitute an order of the Board. Such agreements may not be able to be registered against title to the land, and subsequent land or facility owners may not be on notice as to the terms of the agreement. Insisting on registering agreements may complicate the application process beyond the means of some facility owners, while not registering agreements may leave them unenforceable against subsequent owners.

Page 23, Construction within the Right-of-Way, Paragraph 3:

The reference note should be to section 14 instead of 15.

Section 15

Page 26, Guidance Notes, Paragraph 1:

The reference, "... but within 30 metres extending from the edge of the right-of-way, ..." adds confusion as an additional metric and should be removed from the DPR to avoid confusion with the safety zone.

Section 16

Page 27, Assessed Excavations, Paragraph 1:

The words, " may be required to take necessary steps..." should be replaced with, "... may require additional measures ...", so that the excavator is responsible for the entire excavation process including extra precautions.

Section 17

Page 29, One-Call Centers, Paragraph 1:

For consistency this paragraph should quote the distances from the centerline of the buried pipe as appropriate.

Page 29, One-Call Centers, Table 1:

The Board may wish to add Digline as another one-call centre in Ontario.

Section 18

Page 30, Markings, Paragraph 3:

Same comment as per Section 8 above.

Page 31, No response Received for Locates, Paragraph 1:

Replace "should" with "must".

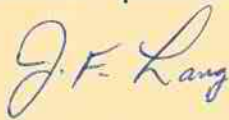
Section 19

Page 32, Guidance Notes, Paragraph 3:

The words, "... by the company ..." should be replaced with , "... from the pipeline company ...".

Same comment as per Section 8 above.

Trans-Northern Pipelines Inc.

A handwritten signature in blue ink that reads "J. F. Lang". The signature is written in a cursive style with a large initial "J" and "L".

James F. Lang
Secretary-Treasurer

JFL/md