



File NEBA-RRG-DPR 01
14 August 2010

To: All Interested Stakeholders

**Proposed *Damage Prevention Regulations* published in the *Canada Gazette*, Part I,
30 day Comment Period**

The Proposed *Damage Prevention Regulations* (Proposed *DPR*) under the *National Energy Board Act* were published in the *Canada Gazette*, Part I on 14 August 2010.

The Proposed *DPR* would replace the *National Energy Board Pipeline Crossing Regulations, Part I* and the *National Energy Board Pipeline Crossing Regulations, Part II* that currently exist under the *National Energy Board Act*.

The Proposed *DPR* and the Regulatory Impact Analysis Statement are available on the [Canada Gazette](#) website.

- Under 'Recent Publications', click on "[Part I Notices and Proposed Regulations](#)"
- Look under 'Part I, August 14, 2010, Vol. 144 No. 33'
- The Proposed *DPR* and RIAS are on pages 2242-2254.

There is a 30 day comment period. Interested persons may make representations with respect to the Proposed *DPR* to the National Energy Board by Monday 13 September 2010.

All representations must cite the *Canada Gazette*, Part I, the date of publication (14 August 2010) and be addressed to:

Anne-Marie Erickson
Secretary of the Board
National Energy Board
444 Seventh Avenue S.W.
Calgary, AB T2P 0X8
Fax: 403-292-5503

Comments must be provided in writing and may be submitted by mail or fax.

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The National Energy Board extends its appreciation to all the parties that have provided comments in the development and review of the Proposed *DPR*. In addition to a copy of the Proposed *DPR* and the Regulatory Impact Analysis Statement, as they appear in *Canada Gazette*, Part I, a Summary of Stakeholder Submissions on the Proposed *Damage Prevention Regulations, February 2009*, for the 9 February to 20 April 2009 Comment Period and the Board's response is also attached.

Yours truly,

A handwritten signature in cursive script that reads "AnneMarie Erickson".

Anne-Marie Erickson
Secretary of the Board

Attachments

- 1) Proposed *Damage Prevention Regulations, Canada Gazette*. Part I
- 2) Summary of Stakeholder Submissions on the Proposed *Damage Prevention Regulations, February 2009*, for the 9 February to 20 April 2009 Comment Period

National Energy
Board



Office national
de l'énergie

Summary of Stakeholder Submissions on the
Proposed Damage Prevention Regulations, February 2009
For the 9 February to 20 April 2009 Comment Period

Canada

Executive Summary of stakeholder submissions on the *Proposed Damage Prevention Regulations, February 2009* for the 9 February to 20 April 2009 comment period.

The National Energy Board (the Board) initiated a review of the *National Energy Board Pipeline Crossing Regulations*, Parts I and II. A draft of the *Damage Prevention Regulations* was submitted for consultations in 2005. Between 2005 and 2009, significant changes to the draft regulations were made to address stakeholder comments and advice from a legal examination. Draft guidance notes were also developed. The Board decided to seek feedback on the revised draft regulations and guidance notes in 2009 (*Proposed Damage Prevention Regulations and Draft Guidance Notes, February 2009*).¹

The following provides a summary of key comments from stakeholders and the Board responses following the *Proposed Damage Prevention Regulations, February 2009* (Proposed DPR) comment period which took place between 9 February to 20 April 2009. Comments that were received regarding the associated *Draft Guidance Notes, February 2009* will be addressed when the guidance notes are revised, after promulgation of the Proposed DPR.

In an effort to reduce duplication of information, responses to comments that were very similar to comments posted through previous Frequently Asked Questions (FAQ) postings are referenced but not repeated in the table. The 2005² and 2009³ FAQ documents are available on the NEB Website.

The Board is committed to: promoting the safe and reliable operation of Canada's pipeline infrastructure; and respecting the rights and interests of those affected by NEB-regulated facilities and activities. The Board considers that its engagement of stakeholders to discern issues and concerns is an essential component of the regulatory development process and sincerely appreciates all the comments provided to date. The following information provides the Board's response to these comments.

The Board acknowledges that the resolution of some issues would require amendments to the *National Energy Board Act*. The Board will also continue to refine its own processes to ensure that it can effectively achieve the objectives of the Proposed DPR.

In conjunction with the Act and regulations, the Board employs a suite of compliance tools that are used separately or in combination with each other to evaluate a company's performance. The Board actively and regularly seeks feedback through information

¹ <http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/dmgprvntnrgltn/prpsddmgprvntnrgltn2009-eng.pdf>

² Frequently Asked Questions (FAQ) 2005: <http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/dmgprvntnrgltn/dmgprvntnrgltn2005-eng.pdf>

³ Frequently Asked Questions (FAQ) 2009: <http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/dmgprvntnrgltn/prpsddmgprvntnrgltn2009-eng.html>

forums and workshops. The Board works with stakeholders to continually update associated documents and tools, such as the guidance notes, and remain current with industry best practices and public interest.

The Board reiterates its commitment made during the Land Matters Consultation Initiative to work with stakeholders towards the development of best practices concerning the crossing of pipelines by vehicles and mobile equipment⁴. Furthermore, as the federal government champion on pipeline Damage Prevention, the Board will continue its involvement with the Canadian Common Ground Alliance in the development of best practices for damage prevention of pipelines.

The Board thanks all stakeholders who provided comments on the Proposed DPR. The Board appreciates the continued involvement of interested stakeholders in this project.

⁴ The Board launched its Land Matter Consultation Initiative (LMCI) in October 2007, and consultations across Canada were initiated. The summary of issues raised and proposed actions are included in the LMCI Final Report of May 2009. The Board has incorporated the requirement for companies to have a program to manage the movement of vehicles and mobile equipment across the pipeline (Action 1.2 in Appendix 1, Final Report). https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90463/501473/501488/501127/557968/A1J9S2_-_Final_Report_Land_Matter_Consultation_Initiative_Stream_1_2_and_4.pdf?nodeid=557969&vernum=0

Nomenclature

The following abbreviations are used in the Table:

Guidance Notes for the OPR-99	<i>Guidance Notes for the Onshore Pipeline Regulations, 1999</i>
MOU	Memorandum of Understanding
NEB or the Board	National Energy Board
NEB Act	<i>National Energy Board Act</i>
OPR-99	<i>Onshore Pipeline Regulations, 1999</i>
Proposed DPR	2009 Proposed <i>Damage Prevention Regulations</i>
Draft DPR Guidance Notes	2009 Proposed <i>Damage Prevention Regulations</i> and Draft Guidance Notes
PCRs, Part II	<i>National Energy Board Pipeline Crossing Regulations, Part II</i>
TSB	Transportation Safety Board of Canada
TSB Regulations	<i>Transportation Safety Board Regulations</i> made under the <i>Transportation Safety Act</i>
2005 FAQ	Frequently Asked Questions Pertaining to the Draft National Energy Board Damage Prevention Regulations, February 2005
2009 FAQ	Frequently Asked Questions Pertaining to the Draft National Energy Board Damage Prevention Regulations, February 2009
CSA Z662	Canadian Standards Association, Oil and Gas Pipeline Systems

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
<p>Section 1 - Definition of “safety zone.”</p> <p><i>“safety zone” means the area extending 30 m perpendicularly from the centre line of a pipe on either side of the pipe.</i></p> <p>Measurement of the 30 metre “safety zone” should remain from the edge of the right of way until the NEB Act can be amended to measure the safety zone in a consistent manner. Differences between the NEB Act and the Proposed DPR would confuse stakeholders.</p>	<p>The Proposed DPR is designed to measure the safety zone from the centre line of the pipe.</p> <p>Section 112(1) of the <i>National Energy Board Act</i> (the NEB Act), provides that <i>no person shall, unless leave is first obtained from the Board, ... excavate using power-operated equipment or explosives within thirty metres of a pipeline.</i> This area is sometimes referred to as a <i>safety zone</i>. The words “within 30 metres of a pipeline” in s. 112 of the NEB Act are interpreted by the Board as within 30 metres from the edge of the right of way. In the survey entitled the National Energy Board Damage Prevention Survey Results published 31 January 2003, 74% of respondents indicated that they do not know where the edge of the right of way is from existing markings. Further discussions with stakeholders indicated that people did not associate the word ‘pipeline’ with the right of way and instead associated this term with the pipe itself.</p> <p>While it is recognized that amendments to the NEB Act are not within the scope of this project at this time, the Board sees value in defining “safety zone” in the Proposed DPR.</p> <p>The proposed definition would address known challenges with the terms ‘pipeline’, ‘pipe’ and ‘right of way’ and provide that the safety zone is measured from the centre line of the pipe instead of from the edge of the right of way.</p> <p>For additional information regarding the definition of “safety zone”, please see Question 1 of the Frequently Asked Questions Pertaining to the Draft National Energy Board</p>

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
	Damage Prevention Regulations, February 2005 (2005 FAQs).
<p>Section 1 - Definition of “pipe.”</p> <p><i>“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 or an offshore area as defined in section 123 of the Act.</i></p> <p>The meaning of pipe as used within the DPR is different than pipeline in the NEB Act and the two terms have been used interchangeably in the Proposed DPR.</p>	<p>The terms ‘pipe’ and ‘pipeline’ have not been used interchangeably. The term ‘pipe’, as defined in the Proposed DPR, refers to line pipe, whereas the term ‘pipeline’ as defined in the NEB Act includes associated facilities such as, pumps, compressors, and tanks. The Board interprets the definition of pipeline in the NEB Act as including the entire right of way. Both terms are used in the Proposed DPR intentionally to distinguish between the pipe and broader pipeline definition, which includes pipe, associated facilities and the right of way.</p>
<p>Add a definition for a “competent worker.”</p>	<p>The Proposed DPR requires that the pipeline company develop, implement and maintain standards for locates of pipelines, including the required qualifications and competencies for locators (Paragraph 5(a)).</p>
<p>Add a definition for “ground disturbance.”</p>	<p>See Question 11 of the 2009 FAQs. (2009 FAQs)</p>
<p>Section 2 - Application</p> <p><i>These Regulations apply to any person that is planning or undertaking an activity that has the potential to damage a pipeline and to any pipeline company.</i></p> <p>This section is too broad and invites interpretation from stakeholders. A stakeholder must be able to establish</p>	<p>The Proposed DPR applies to anything a person may do that could have the potential to damage the pipeline.</p> <p>Section 2 says to whom the Proposed DPR apply. Other provisions of the Proposed DPR establish the requirements with respect to the activities. The “activity” in proximity to a pipeline is the key consideration for determining whether a stakeholder’s actions are consistent with the purpose of the</p>

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
whether their activity is governed by the Proposed DPR.	provisions in the Proposed DPR.
<p data-bbox="239 386 751 415">Section 3 - <i>Members of one-call centre</i></p> <p data-bbox="239 448 999 552"><i>If a pipeline company has a pipeline within a geographical area where a one-call centre exists, the pipeline company shall be a member of that centre.</i></p> <p data-bbox="239 584 978 688">Concerns were raised regarding situations where multiple one-call services exist in a region. It was also noted that municipal services are not one-call centres.</p> <p data-bbox="239 721 1003 824">An example in Ontario was documented to show a situation where a cable company has established a competing one-call centre.</p> <p data-bbox="239 857 978 925">A suggestion was made to change the requirement to be a member of a province-wide one-call centre.</p>	<p data-bbox="1041 386 1839 454">Membership in one-call centres was a key consideration in the decision to develop the Proposed DPR.</p> <p data-bbox="1041 487 1822 698">There is no restriction on the number of one-call centres that can be established within a geographic area. This provision does not require that pipeline companies belong to multiple one-call centres in a region. If the Proposed DPR becomes law, the impact of multiple one-call centres would need to be addressed.</p>
<p data-bbox="239 961 768 990">Section 4 - <i>Damage prevention program</i></p> <p data-bbox="239 1023 1008 1162"><i>For the purposes of anticipating and preventing damage to its pipeline, every pipeline company shall develop, implement and maintain a damage prevention program that includes provisions for</i></p> <p data-bbox="289 1195 978 1299"><i>(a) ongoing public awareness of the existence of the pipeline and the responsibilities of the public and the company in relation to that pipeline;</i></p> <p data-bbox="289 1331 999 1364"><i>(b) ongoing monitoring of the use of the land on which</i></p>	<p data-bbox="1041 961 1848 1282">Companies are expected to maintain current information as the easement agreements - which comprise the overwhelming majority of land acquisition instruments - are a contract between the company and the landowner. This information is also needed for other company programs, including emergency management. Monitoring changes in land ownership is important as there is a potential risk that new owners may not be aware of the safety issues related to activities they may undertake on or near the pipeline.</p> <p data-bbox="1041 1315 1848 1380">Companies must comply with privacy legislation which applies to the private sector. Monitoring changes in land ownership</p>

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
<p><i>the pipeline is located and the land adjacent to the right-of-way of the pipeline;</i></p> <p>(c) <i>ongoing monitoring of any change in the ownership of the land on which the pipeline is located; and</i></p> <p>(d) <i>management of the movement of vehicles and mobile equipment across the pipeline.</i></p> <p>There is a concern with the requirement for ongoing monitoring of land ownership changes on which pipelines are located, the frequency of updating this information and how this relates to privacy legislation.</p> <p>Companies should be mandated to provide annual updates to local communities on pipeline-related matters, including maintenance, replacement and inspection activities.</p> <p>Pipelines in densely populated areas should receive a higher level of monitoring; public and local jurisdiction communications; and inspections.</p>	<p>may involve gathering and retaining information which is considered "personal information" under federal and possibly provincial legislation. Companies will have to protect the information as required by law.</p> <p>The Proposed DPR requires a damage prevention program which includes provision for the ongoing public awareness of the existence of the pipeline. The Draft Guidance Notes indicate that the frequency of consultation should be sufficient to ensure that the audience is aware of the presence of the pipeline and the content of the damage prevention programs.</p> <p>With respect to requirements beyond those set out in the Proposed DPR, the NEB utilizes a suite of integrated regulatory programs for optimum effectiveness to address emergency management, pipeline integrity, government safety inspectors, and public awareness and liaison with the community.</p>
<p>Section 5 - Standards for locates</p> <p><i>The pipeline company shall develop, implement and maintain standards for locates of pipelines including</i></p> <p>(a) <i>the required qualifications and competencies for locators;</i></p>	<p>Pipeline locating is an evolving industry without existing standards or minimum industry requirements. The pipeline company is responsible for locating its pipeline, which includes buried pipes, and ensuring the safety of the public, its employees and the safe operation of the pipeline. Accordingly, it is appropriate and necessary for a pipeline company to develop, implement and maintain standards to determine that</p>

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<p>(b) <i>the type and quantity of surface markings to be used;</i></p> <p>(c) <i>the procedures for establishing the depth of cover over the pipe; and</i></p> <p>(d) <i>the identification to be given to locators.</i></p> <p>The development of pipeline locate standards by pipeline companies is a concern. This could result in inconsistencies between companies. Furthermore, the locating industry should set the standards for locates.</p> <p>Regarding standards for locates:</p> <ul style="list-style-type: none"> • The depth of cover should not be part of the standard as it is not typically measured by the locators; and • It should be the locators that are responsible for identification. 	<p>the services it undertakes in house or it contracts for, are adequate.</p> <p>With respect to the procedures for establishing the depth of cover over the pipe: Pipeline locators do not typically determine the depth of the pipeline. However, the standards are not limited to the work that locators are contracted to perform; they also apply to work conducted by the pipeline company. Accordingly, it is appropriate to include this provision as part of the company standards for locates.</p> <p>With respect to the identification to be used by pipeline locators, locators act on behalf of the pipeline company. Consequently, the pipeline company should address what identification a person should expect to see in order to confirm that the locator is trained on the pipeline company's requirements and is an authorized agent of the pipeline company.</p>
<p>Section 6 - <i>Records of locators</i></p> <p><i>The pipeline company shall create and maintain a record of locators that are qualified to perform locates on behalf of the pipeline company.</i></p> <p>It is unreasonable for a pipeline company to keep records of individuals working for the companies that it contracts to conduct pipelines locates.</p>	<p>Locators will need to be specifically trained to conduct locates. To ensure the safety of the persons planning a ground disturbance or an excavation, and that of the pipeline, training based on the company's requirements is essential for the locators to be able to set out the provisions in the locate report. Training based on pipeline company specific requirements needs to be addressed; for example, the length of time that a locate report is valid, how to assess whether a locate is required, and whether the pipeline needs to be exposed. Since</p>

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	specific training is required, the only way for the pipeline company to verify that this has occurred is to retain a record of those individuals that are qualified to act as agents on its behalf when performing a locate.
<p>Section 7 - Ground disturbances</p> <p><i>(1) No person shall undertake a ground disturbance, other than one required to comply with paragraph (a), within 3 m of the centre line of a buried pipe unless</i></p> <p>...</p> <p>Reference to 3 metres should be changed to 5 metres to be consistent with s. 58 of the <i>Alberta Pipeline Regulation</i>.</p> <p>The requirement should be set at 5 metres rather than 3 metres for exposing the pipe.</p>	<p>The reference to 5 metres in s. 58 of the <i>Alberta Pipeline Regulation</i> is specific to ground disturbance in locations without a right of way, thereby aimed at reducing the risk of incidence due to limitations identifying right of way boundaries.</p> <p>The Board has considered the requirement for exposing the pipe and is satisfied that 3 metres is adequate to ensure safety. Increasing the distance from 3 metres to 5 metres creates additional work with respect to exposing the pipe. Thus, the 3 metres distance as indicated in section 7 remains.</p>
<p>Section 7 - Ground disturbances</p> <p>(1) ...</p> <p><i>(a) a locate request has been made in accordance with subsection 8(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, in a manner that does not have the</i></p>	<p>Under the Proposed DPR, a locate request or an assessment by the pipeline company is required before the following can take place:</p> <ul style="list-style-type: none"> • ground disturbance within 3 metres from the centre line of a buried pipe; • excavation using power-operated equipment or explosives within the safety zone. <p>It is up to the company to determine the means by which it</p>

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<p><i>potential to damage the pipe or associated facilities; or</i></p> <p><i>(b) the pipeline company has assessed the effect of the ground disturbance on the pipe and associated facilities and that ground disturbance does not have the potential to damage that pipe or those facilities.</i></p> <p>...</p> <p>Exception</p> <p><i>(3) Subsection (1) does not apply with respect to activities referred to in section 112 of the Act.</i></p> <p>Ground disturbance activities within the safety zone must not take place until pipe locates have been requested and the pipeline company has provided locates, or given the ground disturber clearance in writing to conduct the ground disturbance without locates.</p> <p>Ground disturbance activities within the pipeline right of way must not take place without the approval of the pipeline company.</p>	<p>communicates the outcome of an assessment for ground disturbance or excavation.</p>
<p>Section 8 — Locate request for ground disturbances</p> <p><i>(1) The locate request shall be made to the pipeline company, at least three working days before the day on</i></p>	<p>Sections 8 and 17 are similar provisions respecting locate requests, but are not redundant. The term “ground disturbance” in s. 8 is not interchangeable with the term “excavation” in s. 17.</p>

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<p><i>which the ground disturbance is to start,</i></p> <p><i>(a) through a one-call centre if the pipe is within an area where the one-call centre coordinates requests for locates; and</i></p> <p><i>(b) through the pipeline company directly if a one-call centre does not exist in that area.</i></p> <p>Locates</p> <p><i>(2) Within three working days after the day on which the locate request is received, the pipeline company shall, at no cost to the person requesting the locate,</i></p> <p><i>(a) determine if the ground disturbance has the potential to damage the pipe or associated facilities;</i></p> <p><i>(b) locate the pipe and associated facilities and place surface markings to identify the horizontal alignment of that pipe and those facilities to within plus or minus 0.6 m; and</i></p> <p><i>(c) make a locate report that includes</i></p> <p><i>(i) a sketch showing the horizontal alignment of the located pipe and associated facilities and, if possible, showing their approximate position relative to readily identifiable objects, and</i></p> <p><i>(ii) sufficient information to enable the person</i></p>	<p>Ground disturbance is a concept created by the Proposed DPR and is intended to capture activities not described in s. 112 of the NEB Act.</p> <p>Excavations with power-operated equipment or explosives are s. 112 activities.</p> <p>Please see Question 11 in the 2009 FAQ for additional information on ground disturbance. (2009 FAQs)</p>

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<p><i>undertaking the ground disturbance to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities.</i></p> <p>...</p> <p><i>Exception</i></p> <p><i>(4) The pipeline company is not required to undertake the activities prescribed in subsection (2) if the ground disturbance does not have the potential to damage the pipe and associated facilities.</i></p> <p><i>Date of locate report</i></p> <p><i>(5) The locator shall date the locate report.</i></p> <p>Sections 7 and 8 of the Proposed DPR duplicate s. 16 through 18.</p> <p>Use of the term “excavation” should be replaced with “ground disturbance” in s.16 to 18 of the Proposed DPR.</p> <p>If activities other than excavation with power-operated equipment or explosives cannot be included, then do not use the term “ground disturbance”.</p> <p>Replace 3 metres with 30 metres to avoid confusion as to what constitutes a ground disturbance and which activities</p>	

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
have the potential to damage the pipe.	
<p>Section 8- Locate request for ground disturbances</p> <p><i>(1) The locate request shall be made to the pipeline company, at least three working days before the day on which the ground disturbance is to start,</i></p> <p>...</p> <p>Extending period</p> <p><i>(3) The period prescribed in subsection (2) may be extended by mutual agreement between the person making the locate request and the pipeline company.</i></p> <p>The requirements for the Ontario Technical Standards and Safety Authority for a locate response are 4 or 5 days vs. the proposed 3 days in the Proposed DPR, and these should be made consistent. Additional time may also be required during peak periods which would require a flexible response time.</p> <p>Additional time should be allowed to respond to a locate request to accommodate the information being coordinated by a one-call centre.</p>	<p>An increase in response time could be perceived by persons planning ground disturbance (or excavations using power-operated equipment or explosives within the safety zone) as an additional burden and cost. No change is recommended based on:</p> <ul style="list-style-type: none"> ○ the absence of any information that routing a request through the one-call centre would result in the need for a longer response time; and ○ the 3 day response time is consistent with the best practice set out in Enform’s Ground Disturbance and Damage Prevention, An Industry Recommended Practice IRP 17 which also recommends company membership in one-call centres. <p>Note that the 3-day response may be extended by mutual agreement (ss. 8(3) and 18(2)).</p>
<p>Section 10 - Report to Board</p> <p><i>The pipeline company shall immediately report to the Board</i></p>	<p>The reporting requirement set out in the Proposed DPR is consistent with the regulatory provisions of the OPR-99 which provides what the company shall report to the Board. The one</p>

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<p><i>in writing the results of an investigation if it concludes that the conditions, activities, actions or omissions have caused damage to the pipeline or have jeopardized the safety of the public or the company's employees in the construction, operation or abandonment of the pipeline.</i></p> <p>The reference to the Board should be replaced with the Transportation Safety Board of Canada (TSB) to be consistent with the one-window report provision under the OPR-99.</p> <p>There could be inconsistencies in reporting based on the discretion of companies to conclude which activities have caused damage to the pipeline.</p>	<p>window reporting within the OPR-99 is based on a MOU between the Board and TSB.</p> <p>The Board would support the one window reporting where appropriate.</p>
<p>Section 11 - Audit program</p> <p><i>The pipeline company shall develop, implement and maintain an audit program for the purposes of verifying compliance with these Regulations.</i></p> <p>Confirm that the NEB audits will be carried out for compliance with the regulatory text and not to the guidance notes or other NEB expectations.</p>	<p>The Board audits will be carried out with the requirements in the Proposed DPR. The Board is currently working with stakeholders with respect to their concerns around audits.</p>
<p><i>Leave Under Section 108 of the Act</i></p> <p>Section 12 - Crossing utility</p> <p><i>Leave of the Board under section 108 of the Act is not necessary to carry a pipeline across a utility other than a</i></p>	<p>The “written agreements” in the Proposed DPR concerns activities under s. 108 and 112 of the NEB Act. Any company or stakeholders wanting an agreement to serve some other purpose should make a separate agreement.</p> <p>Provisions in both the Proposed DPR and the existing PCRs,</p>

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
<p><i>navigable waterway or a railway if the terms for the pipeline’s construction have been set out in a written agreement between the pipeline company and the owner of the utility.</i></p> <p><i>Leave Under Subsection 112(1) of the Act</i></p> <p>Section 13 - Construction across, on, along or under pipeline</p> <p><i>Leave of the Board under subsection 112(1) of the Act is not necessary for the construction of a facility across, on, along or under a pipeline if the terms for the construction have been set out in a written agreement between the pipeline company and the person planning the construction.</i></p> <p>Sections 12 and 13. What is the legal status and nature of the "written agreement" in s. 12 and s. 13 of the Proposed DPR? Can the planner bind the property owner in perpetuity? Is the agreement enforceable in the event of a dispute? If permits or locate reports are considered agreements, is there a legal obligation for them to be registered?</p> <p>Specific provisions to be contained in written agreements must be included in the regulatory text, not guidance.</p> <p>Companies have lost the power to restrict construction within ‘projected limits’. Insert s. 5 of the <i>National Energy Board Pipeline Crossing Regulations, Part I</i> (PCRs, Part I)</p>	<p>for which the enabling authority is s. 112 of the NEB Act, state that “leave of the Board is not required if ...” certain things are done. In other words, the provisions in the Proposed DPR are not an end in themselves which must be complied with; they are circumstances under which leave of the Board is not required. If parties do not reach an agreement, then leave of the Board would be required.</p> <p>Not prescribing terms and conditions of the written agreements is consistent with the goal oriented approach of the Proposed DPR.</p> <p>Projected limits were addressed in Question 4 of the NEB’s 2005 FAQs. (2005 FAQs)</p>

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<p>which addresses projected limits into the Proposed DPR, or alternatively, keep the existing PCRs Part I and II.</p>	
<p>Section 14 - Response to request</p> <p><i>(1) If a request for an agreement referred to in section 13 is made, the pipeline company shall enter or refuse to enter into the agreement within 10 working days after the day on which the request is received.</i></p> <p>Date of receipt of request</p> <p><i>(2) The date of the request is the day on which the person making the request gives information to the pipeline company that allows it to adequately evaluate the request.</i></p> <p>Extending period</p> <p><i>(3) The period prescribed in subsection (1) may be extended by mutual agreement between the person making the request and the pipeline company.</i></p> <p>Refusal by pipeline company</p> <p><i>(4) If the pipeline company refuses to enter into the agreement, it shall immediately provide the Board and the person making the request with the reasons for the refusal in writing and shall inform the person of their right to seek leave from the Board for the construction of a facility under subsection 112(1) of the Act.</i></p>	<p>Over the duration of this project, this was the first comment of this nature requesting that the response to a request turnaround time should be increased from 10 to 21 days. The Board is not aware of any issues resulting from the current 10 day service standard.</p> <p>Moreover, the 10 day standard is in the current PCRs, Part II. Section 6 of the PCRs, Part II requires that where a pipeline company receives a request for permission pursuant to par. 4(b) and 6(b) of the PCRs, Part I, the pipeline company shall, within ten working days after receiving the request, inform the facility owner or excavator whether permission has been granted.</p>

Proposed DPR Section and Stakeholder Comments and Suggestions	Response
<p>The response to a request for a written agreement should be extended from 10 to 21 days to be consistent with Alberta legislation.</p>	
<p><i>Leave Under Subsection 112(1) of the Act</i></p> <p>Section 15 - Excavations outside safety zone</p> <p><i>Leave of the Board under subsection 112(1) of the Act is not necessary for excavations outside of the safety zone if the excavations do not have the potential to damage the pipeline.</i></p> <p>This provision is confusing for lay persons who are being led to believe that the manner in which the 30m safety zone is measured has changed, when in effect, the provisions of ss. 112(1) prevail.</p> <p>This provision imposes the burden on the person planning the excavation to determine that the excavation does not have the potential to damage the pipeline. To remedy this concern, the text in the Proposed DPR following the word “safety zone” should be deleted or to replace the words “within 30 metres of a pipeline” in ss. 112(1) of the NEB Act with the definition of the safety zone in the Proposed DPR.</p>	<p>The words “within 30 metres of a pipeline” in s. 112 of the NEB Act are interpreted by the Board as 30 metres from the edge of the right of way.</p> <p>In defining the “safety zone” in the Proposed DPR as 30 metres from the centre line of the pipe there is still an area outside of the safety zone that is within 30 metres of the edge of the right of way) under s. 112 of the NEB Act.</p> <p>Section 15 applies to excavations using power-operated equipment or explosives in the area of land which is outside of the safety zone but within the 30 metres from the edge of the right of way. This area can be illustrated easily in a diagram.</p> <p>If the text following the word “safety zone” in s. 15 of the Proposed DPR were deleted, the remaining text would not constitute an adequate condition. Therefore leave of the Board would be required. If the excavations have the potential to damage the pipeline, or parties are unsure, it would be appropriate to contact the one-call centre or the pipeline company.</p>
<p>Section 16 - Excavations within safety zone</p>	<p>See the discussion for s. 7 and s. 8.</p>

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<p><i>(1) Subject to subsection (2), leave of the Board under subsection 112(1) of the Act is not necessary for excavations within the safety zone if</i></p> <ul style="list-style-type: none"> <i>(a) a locate request has been made in accordance with section 17;</i> <i>(b) the pipeline company and the locator have complied with section 18;</i> <i>(c) the surface markings identify the location of the pipe and associated facilities;</i> <i>(d) not more than 30 days have elapsed after the date of the locate report; and</i> <i>(e) in the case of excavations within 3 m of the centre line of a buried pipe, the location of the pipe has been determined by exposing it in the presence of the pipeline company's representative in a manner that does not have the potential to damage the pipe or associated facilities.</i> <p>Assessed excavations</p> <p><i>(2) Leave of the Board under subsection 112(1) of the Act is not necessary for excavations within the safety zone that have been assessed by the pipeline company and do not have the potential to damage the pipe or associated facilities.</i></p>	

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<p>Change all occurrences of the term “excavation” to “ground disturbance”. Change the 3 metres exposure requirement to 5 metres.</p>	
<p>Paragraph 16(1)(e)</p> <p>Exposing of the pipe may not be practical in all situations.</p>	<p>Paragraph 16(1)(e) applies to excavations within 3m of the centre line of a buried pipe using power-operated equipment or explosives within the safety zone. Exposing the pipe in the presence of a company representative under paragraph 16(1)(e) is not required in all circumstances if the pipeline company has assessed the excavation and determined that the excavation does not have the potential to damage the pipeline or associated facilities.</p> <p>Where a company does a locate report, it must include sufficient information to enable the person undertaking the excavation to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities (subparagraph 18(1)c)ii)). The locate report may include specific requirements where exposing the pipe is not practical.</p>
<p>Section 18 - Locates</p> <p><i>(1) Within three working days after the day on which the locate request is received, the pipeline company shall, at no cost to the person requesting the locate,</i></p> <p><i>(a) determine if the excavation has the potential to damage the pipe or associated facilities in the safety zone;</i></p>	<p>Section 18 of the Proposed DPR provides the minimum requirements of a locate report.</p> <p>The form of the locate report is at the discretion of the pipeline company.</p> <p>This would also apply for locates to ground disturbance under s. 7 of the Proposed DPR.</p>

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<p><i>(b) locate the pipe and associated facilities and place surface markings to identify the horizontal alignment of that pipe and those facilities to within plus or minus 0.6 m; and</i></p> <p><i>(c) make a locate report that includes</i></p> <p><i>(i) a sketch showing the horizontal alignment of the located pipe and associated facilities and, if possible, showing their approximate position relative to readily identifiable objects, and</i></p> <p><i>(ii) sufficient information to enable the person undertaking the excavation to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities.</i></p> <p><i>Extending period</i></p> <p><i>(2) The time period prescribed in subsection (1) may be extended by mutual agreement between the person making the locate request and the pipeline company.</i></p> <p><i>Date of locate report</i></p> <p><i>(3) The locator shall date the locate report.</i></p> <p>There needs to be a sign off by the person planning the ground disturbance.</p>	

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<p>Section 19 - Operation of vehicles or mobile equipment across pipeline</p> <p><i>Leave under subsection 112(2) of the Act is not necessary for the operation of a vehicle or mobile equipment across a pipeline if the pipeline company has assessed the operation and if the operation does not have the potential to damage the pipeline.</i></p> <p>Leave of the Board should be provided for operating vehicles and mobile equipment falling within the category of “normal farming practice”.</p>	<p>See Questions 9, 20, 21 and 22 of the 2009 FAQs. (2009 FAQs)</p>
<p>Enforcement: There are concerns that the Proposed DPR do not address enforcement. At minimum, the guidance notes should set out what the Board will do for enforcement.</p>	<p>The Board has initiated a project to review its existing enforcement tools and processes, and to consider the need for additional enforcement measures. Results of this review will be made public when completed and public consultations will be considered if changes to the existing enforcement framework are contemplated.</p>
<p>Authority to supervise, direct, monitor and suspend third party activities: (s. 10, s. 14.(1), s. 15.(1) of the <i>National Energy Board Pipeline Crossing Regulations</i>, Part II) (PCRs, Part II) has been eliminated. These sections provide a pipeline company representative with the clear means and authority to ensure public safety and system integrity and offer clarity to third parties who might otherwise question the authority and actions of a pipeline</p>	<p>The current PCRs Part II enable the pipeline company to suspend its permission in which case the pipeline company must immediately notify the Board of the suspension.</p> <p>Written agreements and locate reports may include circumstances under which the agreements /reports terminate. In the absence of a written agreement /report, leave of the Board is required.</p>

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<p>company representative. Going forward, the absence of clear legislation providing the authority to supervise, direct, monitor and/or suspend third party activities will erode the pipeline company's ability to promote public safety and system integrity. As such, the NEB should incorporate updated versions of s. 7 and s. 16 of the draft DPR (suggested text was provided with this comment) into Regulatory Text.</p>	<p>Subparagraph 18(1)(c) of the Proposed DPR requires companies to include sufficient information in the locate report to enable the person undertaking the excavation to understand the actions and duties necessary for the prevention of damage to the pipe or associated facilities. Furthermore, paragraphs 7(a) and 16(1)(e) provide circumstances where the presence of a pipeline company representative is required.</p>
<p>Prescriptive rules: Ground disturbers would expect the following prescriptive rules on which to perform and plan their work in a consistent manner:</p> <ul style="list-style-type: none"> • Excavations within the safety zone and the right of way must not take place without the approval of the pipeline company. • Excavation within 5 metres of the pipeline must not take place until the pipe has been exposed under the direct supervision of the pipeline owner. • Persons planning to undertake excavations must request a locate from the provincial one-call system and contact the pipeline directly • A company representative must be on site during all excavation within the right of way. • Persons must abide by the directions of the pipeline company and any terms and conditions of any agreements 	<p>The Proposed DPR sets the terms under which the responsibilities of persons planning or undertaking an activity that has the potential to damage a pipeline. These responsibilities include:</p> <ul style="list-style-type: none"> • to call the one-call centre where one exists or the pipeline company; and • to obtain a locate report for ground disturbance or excavation using power-operated equipment or explosives within the safety zone; or • to have a written agreement for construction of facility on, along, or under a pipeline. <p>The Proposed DPR specifically set out when the pipeline companies' representative shall be on site.</p> <p>The pipeline company is in the best position to identify the appropriate provisions to include in written agreements and</p>

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<p>to the undertaking.</p> <ul style="list-style-type: none"> • The person undertaking the excavation must stop and notify the one-call centre and the facility owner if the markings are removed, altered or no longer visible. • The pipeline company must carry out such inspections as are necessary to ensure the continued safe operation of the pipeline. • Provisions for written agreements must be included within the regulatory text. 	<p>locate reports.</p>
<p>The Regulatory Text and guidance notes should be separated so parties don't confuse the guidance and regulatory text.</p>	<p>The Regulatory Text and the guidance notes were incorporated into a single document for ease of reference during the 2009 NEB Comment period for stakeholders. The regulatory text is well delineated within the 2009 Proposed DPR and Draft Guidance notes to avoid confusion.</p> <p>At such time as the Proposed DPR is published in <i>Canada Gazette</i>, Part I, the regulatory text would be available separately.</p>
<p>It is the industry's expectation that agencies regulating buried facilities, whether they are federal or provincial, will equally collaborate to create a level damage prevention playing field for all buried infrastructure in Canada and until that is achieved the NEB's damage prevention regulation efforts will remain isolated and inconsistent with other</p>	<p>Harmonizing federal and provincial requirements, while a goal being worked to, is a long term goal. It is important to address important issues as best as possible along the way to achieving harmonization.</p>

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jurisdictions and best practices.	
Companies should be required to maintain current and complete records/drawings of all their facilities that accurately reflect the location of the pipelines. Pipeline rights of way in densely populated areas should be resurveyed.	Pursuant to Clause 10.3.1.1.(b) of CSA Z662-07, companies are required to “prepare and maintain appropriate maps and drawings”. This requirement is mandatory as CSA Z662 is incorporated by reference in the OPR-99. The premise of the Proposed DPR and one-call services maintains that maps and drawings on their own are insufficient to ensure safe work in the vicinity of a buried infrastructure. For this reason, the Proposed DPR requires additional safeguards such as the use of one-call centers and pipe locates.
A company should be required to follow a set of standards to assess the condition of its pipelines and to develop best management strategies for the replacement of aging assets.	In promoting safety and security, environmental protection and efficient energy infrastructure and markets in the Canadian public interest, the NEB utilizes a suite of integrated regulatory programs for optimum effectiveness. In addition to the Proposed DPR, the regulatory requirements for programs addressing pipeline safety, integrity, protection of the environment and emergency management are set out in the OPR-99.
Companies should undertake regular emergency readiness exercises, and joint exercises with local authorities should be considered.	See above comment. Pipeline companies are required to conduct emergency response exercises as part of standard emergency response in OPR-99. As part of the Board’s compliance oversight program companies’ emergency response plans are reviewed, and the Board’s personnel participate in field exercises with the companies, other regulatory parties, and local authorities.

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<p>There should be full time supervision by government safety inspectors of construction near pipelines.</p>	<p>The NEB employs a risk based lifecycle approach to ensure that all phases of a project, from planning to abandonment are regulated for safety, security and environmental protection. The degree of regulatory oversight is directly linked to a company's performance and risk to the public, company employees and the environment. The NEB employs a suite of compliance tools, including construction inspections, that are used separately or in combination with each other to evaluate a company's performance with respect to their construction and operation activities.</p>