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By Email: damagepreventionregs@neb-one.gc.ca

NATIONAL ENERGY BOARD
517 - Tenth Avenue SW
Calgary, Alberta, T2R 0A8

Attention: Ms. Sheri Young
Secretary of the Board

Re: 25-Day Comment Period on Update to the National Energy Board's Damage Prevention Regulatory Framework Amendments to the NEB's Damage Prevention Regulations (File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 0201)

Dear Ms. Young,

Plains Midstream Canada (PMC) respectfully submits the attached response to the National Energy Board ("NEB" or "the Board") following its October 20, 2015 general request for comments on the Proposed Regulatory Amendments to the NEB's Damage Prevention Regulations.

PMC is an industry leading transportation and midstream provider. We specialize in transportation, storage, processing and marketing solutions for crude oil, natural gas, and natural gas liquids (NGL's). Our success can be attributed to a strong focus on meeting customer needs, operational efficiency and a commitment to environmental responsibility and meeting the highest standards of safety throughout our organization.

PMC wishes to thank the National Energy Board for the opportunity to provide comment and looks forward to continuing a collaborative dialogue that will assist the Board in reaching our mutual goal of effective damage prevention governance.



We trust this meets with your requirements. If you should have any questions with regards to this filing, please contact me on (403) 451-3432 or by email at greg.filipchuk@plainsmidstream.com at your convenience.

Yours truly,
PLAINS MIDSTREAM CANADA, ULC

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a vertical stroke and a small horizontal tick at the top.

Greg Filipchuk
Director – Stakeholder Relations, Emergency Management & Security and Damage Prevention

1. **Modernizing the regulatory language.**

In its correspondence of October 20, 2015, the Board states:

In the Pipeline Crossing Regulations, Part I, section 4, there is an exemption-based structure where 'Leave of the Board' is not required to undertake certain activities provided a series of specific conditions and circumstances are met. Writing this section of the regulation in a modern way would require a positive structure. This means that certain activities will be authorized through the regulations. For example, construction of facilities may be authorized if the party wanting to undertake the activity conforms to the measures outlined in the regulations. An example of such a measure would be the need to complete the facility construction within two years after the date of receiving the pipeline company written permission.

Question: PMC questions the Board's direction to modernize the regulatory language of the DPRs. What are the motivating factors driving the Board to do so?

Feedback provided to the NEB over the past fifteen years of DPR development has consistently underlined the need for regulatory clarity. Additionally, the Canadian Common Ground Alliance's Damage Prevention White Paper's, "Damage Prevention Legislation Elements Required for Canada", first element states:

"Clarity: Regulatory language should be clear and concise in defining the accountabilities, roles and responsibilities of all parties."

The current language of the Pipeline Crossing Regulations, Part I and Part II, is very clear and explicitly defines the roles of the excavator and Pipeline Company. Modernizing the regulatory text in the manner described could lead to regulatory ambiguity.

PMC does not support modernizing the regulatory language of the DPRs.

2. **Amending the regulations to reflect the legislative changes made to the National Energy Board Act by the Pipeline Safety Act.**

These include:

- a) removing the term 'excavation' and replacing it with the broader term 'ground disturbance*' (legislative definition provided below);

PMC prefers the definition for ground disturbance in CSA Z247, published in English in June 2015 with French publication expected November 2015.

CSA Z247 was developed, in part, to offer damage prevention symmetry across regulatory jurisdictions.

As an active participant in the 2.5 year development of the damage prevention standard, PMC urges the NEB to adopt the ground disturbance definition captured in CSA Z247 (below).

Ground disturbance — any work, operation, or activity on or under the existing surface resulting in a disturbance or displacement of the soil or ground cover.

Notes:

- 1) Ground disturbances can include, but are not limited to, the following:
 - a) digging;
 - b) excavation;
 - c) trenching;
 - d) ditching;
 - e) tunneling;
 - f) boring/drilling/pushing;
 - g) augering;
 - h) topsoil stripping;
 - i) land leveling/grading;
 - j) plowing to install underground infrastructure;
 - k) tree planting;
 - l) clearing and stump removal;
 - m) sub soiling;
 - n) blasting/use of explosives;
 - o) quarrying;
 - p) grinding and milling of asphalt/concrete;
 - q) seismic exploration;
 - r) driving fence posts, bars, rods, pins, anchors, or pilings; and
 - s) crossing of buried pipelines or other underground infrastructure by heavy loads off the travelled portion of a public roadway.

- 2) For the purposes of this Standard, the definition of “ground disturbance” does not include agricultural cultivation to a depth less than 450 mm that does not reduce the cover over the underground infrastructure.

b) defining the term ‘prescribed area’ in which unauthorized ground disturbances are prohibited;

PMC is aware that the term “Safety Zone” does not appear in regulatory text; however, the “prescribed area” being offered by the NEB is well-known as the “30 metre safety zone and pipeline right of way”. The federally-regulated pipeline industry and the NEB have promoted awareness of how to live and work near pipelines, the rules to follow when working in the safety zone and right of way; and, the authority of both the pipeline company and the NEB relative to the safety zone and right of way, for decades through countless pamphlets, documents, presentations, and other awareness materials. It is PMC’s view that these awareness efforts have been effective.

Similar to our first response regarding the NEB’s goal to “modernize regulatory language”, PMC questions why the NEB is introducing a new term for this ‘zone’ when instead it could solidify it by simply including the term “Safety Zone” in regulatory text?

PMC does not support introducing the term “prescribed area” to describe the area in which unauthorized ground disturbances are prohibited (ie: “Safety Zone” and right of way).

c) identifying the measures required to be met in order to safely construct a facility on, across, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area; and

Agreed. PMC supports regulatory clarity.

d) identifying the measures to be met in order to safely cross a pipeline by vehicle or mobile equipment.

Agreed. PMC supports regulatory clarity.

3. Amending the regulations to reflect the results from the last public consultation period conducted in September 2014. These include adding:

a) A damage prevention program requirement to the Onshore Pipeline Regulations for NEB-regulated pipeline companies to develop, operate and maintain within their management system;

Agreed.

b) a requirement for third parties to initiate a locate request with their local one-call centre before commencing any ground disturbance (PCR I);

Agreed.

c) a requirement for NEB-regulated pipeline companies to be members of One-Call centres where they operate a pipeline (PCR II); and

Agreed.

d) the intent the NEB's Exemption Order MO-21-2010 (Low Risk Crossings by Agricultural Vehicles) into the regulations.

Agreed.

PMC General Comment:

CSA Z247

Regulatory symmetry is one of the more significant challenges facing effective damage prevention governance in Canada. With the eventual promulgation of the DPRs, the NEB has a unique advantage to overcome this challenge by referencing CSA Z247, Damage prevention for the protection of underground infrastructure, in the DPRs. As an active and engaged participant throughout the development of CSA Z247, PMC urges the NEB to do so.