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20 November 2012

To: All Companies under the National Energy Board's Jurisdiction and Other Interested People

Amendment to Regulation of Operations and Maintenance Activities on Pipelines under the *National Energy Board Act*

Background

In 2005, the National Energy Board released its *Operations and Maintenance Activities on Pipelines Regulated under the National Energy Board Act: Requirements and Guidance Notes* (O&M Guidelines) in relation to operations and maintenance activities on pipelines regulated under the *National Energy Board Act* (NEB Act).

In accordance with the O&M Guidelines, the Board evaluates routine O&M activities as part of the original application for the construction and operation of a pipeline. For this reason, companies are not required to apply for additional approval to undertake most O&M activities.

Board Action

The Board has determined that amendments to the O&M Guidelines are required to provide the public and regulated companies with greater clarity on which activities constitute O&M activities under the O&M Guidelines and how these activities will be regulated by the Board. The amendments are included in the attached revised O&M Guidelines, which will be effective on 1 January 2013.

The Board remains committed to promoting safety, security, environmental protection and economic efficiency, and respecting the rights of those that may be affected by the Board's decisions. The Board will continue to regulate O&M activities through the notification requirements of the O&M Guidelines and its inspection and audit programs.

Comments on Draft Amended O&M Guidelines

On 10 January 2012, the Board invited all regulated companies and interested parties to provide comments on draft amendments to the O&M Guidelines. The Board received comments from several parties, including regulated companies, landowners, associations and an Aboriginal group. In finalizing the O&M Guidelines, the Board considered all of the comments received.

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The following Table highlights key changes to the O&M Guidelines from the 2005 version. Changes have been made with the objectives of providing clearer definitions and plain language wording, promoting economic efficiency, and ensuring that the Board's regulatory oversight over safety, security and environmental protection is maintained and the rights of those that may be affected by projects regulated by the Board are respected.

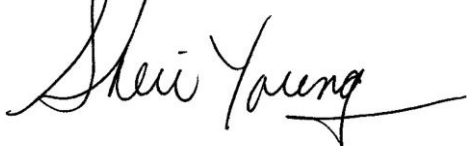
O&M Guidelines 2005	O&M Guidelines 2012
No reference to a pipeline length restriction in the O&M Guidelines.	Only the physical removal and replacement of an existing section of pipe up to 5 km in length can proceed under the O&M Guidelines.
Unresolved 3 rd party concerns relating to the proposed O&M activity did not trigger a notification or application requirement.	Notification to the Board required if there are any unresolved 3 rd party concerns relating specifically to the proposed O&M activity. The notification must include a complete record or table of consultation that has been undertaken with the 3 rd party(ies), or a justification as to why consultation was not carried out.
No reference to aerial crossings in the O&M Guidelines.	Application required where the work involves the construction of an aerial crossing, excluding work on company owned or leased land relating to facilities (e.g., terminal stations, processing plants, compressor/pump stations)
Notification required when activity involves exposure of the pipe surface for the purpose of integrity assessments, repairs or pipe replacement in areas where there are buildings intended for human occupancy having four or more storeys above ground within 200 metres of the pipe or where the activity takes place within 200 metres of a school, hospital, prison, or other institution where people routinely congregate in large groups (groups of more than 50 people).	Notification to the Board required when activity involves exposure of the pipe surface for the purposes of integrity assessments, repairs or removing an existing section of pipe and putting a new section in its place in areas where there are residences, or where there is a school, hospital, prison, or other institution where people routinely congregate in large groups (more than 50 people), within the emergency planning zone or within 200 m of the proposed activity (whichever is greater).
The acquisition of permanent new land did not trigger a notification or application requirement.	Notification to the Board required where new permanent land is to be acquired.
Notification to the Board of specified O&M activities required 10 working days prior to commencement of the O&M activity.	Notification to the Board of specified O&M activities required 21 working days prior to commencement of the O&M activity.

You can also find this letter and attachments on the Board's website:

http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggngmgnb/prtnmntnncctvt/rgltnprtnmntnncppln2012_11_20-eng.html

Home > Acts and Regulations > Rules, Regulations, Guidelines, Guidance Notes and Memoranda of Guidance pursuant to the National Energy Board Act > Operations and Maintenance Activities.

Yours truly,

A handwritten signature in black ink that reads "Sheri Young". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Sheri Young
Secretary of the Board

Attachment

**Operations and Maintenance Activities on
Pipelines Regulated Under the
National Energy Board Act:
Requirements and Guidance Notes
January 2013**

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1.0 Goal

The goal of the *Operations and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes* (O&M Guidelines) is to provide all parties with greater clarity about how operations and maintenance (O&M) activities on pipelines (including processing plants) under the *National Energy Board Act* (NEB Act) will be regulated, while promoting safety, security, environmental protection, economic efficiency, and respect for the rights of those that may be affected.

2.0 Background

Routine O&M activities are evaluated by the National Energy Board (Board) as part of the original application for the construction and operation of a pipeline¹; therefore, companies are not required to apply for additional approval to undertake most O&M activities. The Board continues to regulate O&M activities and to fulfill its mandate through its inspection and audit programs.

The requirements for O&M activities contained in this document apply to all pipelines regulated under the NEB Act that occur on lands owned by the applicant company or where there is an agreement in place between the company and the landowner(s) that covers the construction, operation and maintenance of a pipeline, including:

- company-owned land;
- land rights held under easement, leased, or licensed land; and
- temporary workspace.

Where permanent new lands are required to carry out O&M activities companies are reminded that they must fulfill the requirements of sections 86 and 87 of the NEB Act.

3.0 Definitions

3.1 *Eligible Activities*

Operations and maintenance activities include:

1. all activities necessary to safely operate an existing pipeline;
2. maintenance activities, upgrades or repairs to an existing pipeline or part of a pipeline that do not increase the approved maximum operating pressure (MOP), the stress level² or diameter of the pipeline; or

¹ "Pipeline" is defined in the NEB Act as "a line that is used or to be used for the transmission of oil, gas, or any other commodity... and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes."

² "Stress level" in this context means the percent of the specified minimum yield strength for the design operating stress.

3. physically removing an existing section of pipe up to 5 km in length, and putting a new section of pipe in its place, as long as this replacement does not increase the approved MOP, stress level or diameter of the pipeline.

3.2 Restrictions on Eligible Activities

Where any of the following restrictions exist, the company must apply to the Board in accordance with the NEB Act and the related Regulations and may not carry out the proposed activity until approval from the Board has been obtained. The restrictions apply where:

1. the work includes welding on an in-service pipeline by a pipeline company that has not previously performed in-service welding in accordance with the requirements of CSA Z662-11, Clause 7.17, 'Welding on In-Service Piping', or the equivalent clause in the most recent edition of CSA Z662; or
2. the work involves the construction of an aerial crossing, excluding work on company owned or leased land relating to facilities (e.g., terminal stations, processing plants, compressor/pump stations).

Subject to section 3.3, O&M activities that fall within the types of activities listed in 3.1 above, and to which none of the restrictions in 3.2 apply, do not require an application to the Board under the NEB Act. Companies will be required to notify the Board prior to undertaking the O&M activities. (See Schedule A and Section 4.1).

3.3 Ineligible Activities

O&M activities **do not include**:

1. upgrades that result in increases above previously approved and specified levels to:
 - a) the MOP,
 - b) stress levels,
 - c) the diameter of the pipeline, and/or
 - d) airborne emissions or noise levels³,
2. "looping" (i.e., adding pipe parallel or adjacent to, and interconnected with, an existing pipeline for the general purpose of increasing capacity);
3. construction of a new pipeline; or
4. deactivation (for longer than 12 months), reactivation (where a pipeline has been deactivated for more than 12 months), decommissioning, or abandonment.

All of the preceding activities require an application under the NEB Act, the *Onshore Pipeline Regulations, 1999 (OPR)* or the *National Energy Board Processing Plant Regulations (PPR)* (see Schedule A).

³ This refers to permanent increase in air and noise emissions and not to temporary increases in air and noise emissions during construction.

Guidance Notes:

O&M activities do *not* include the addition of a parallel piece of pipe without removal of the existing pipe that has permanently ceased operation. If the company plans to leave an existing section of pipe in place, it must apply to the Board: (i) for an exemption under section 58 of the NEB Act, for the construction and operation of the new section of pipeline; and (ii) to decommission the existing section of pipe under the OPR.

Companies are required to apply to the Board for the installation of any length of pipe that is greater than 5 km.

In general, permissible "upgrades" do *not* include additions of components to a pipeline or processing facility that were not specifically contemplated in the original Certificate or Order. However, the definition of upgrade includes the addition of cathodic protection systems, as these are typically contemplated during the assessment of the original pipeline. Therefore, the addition of a cathodic protection system is considered an O&M activity.

Upgrades include improvements in technology. For example, if a company were proposing to install solar panels as a power source in place of an existing source of fuel oil, the proposed installation would be considered a permissible upgrade under the O&M Guidelines. This is analogous to removing an existing section of pipe and putting a new section in its place, since the function of the installation would not change from what was originally approved.

Upgrades do *not* include adding new connections, including tie-ins or hot taps, and associated piping and metering facilities for the purposes of sale or receipt of oil or gas. These installations still require an exemption Order under section 58 of the NEB Act but may be captured within the section 58 Streamlining Order. Metering or regulating facilities installed for the sole purposes of measurement or monitoring are considered O&M activities.

Companies are encouraged to contact the Board for additional clarification related to specific O&M activities they are planning (see Section 7.0 for contact information).

4.0 Requirements

4.1. *Notification to the National Energy Board*

Goal:

The Board is provided with sufficient information to make a decision as to whether to inspect O&M activities that could result in safety consequences to landowners or the public, environmental consequences, or a negative impact on normal third-party use of the right-of-way (RoW) or adjacent property.

Requirements:

In any of the following circumstances, the Board requires companies to provide **notification** to the Board of O&M activities at least **21 working days**⁴ prior to starting work:

- there are unresolved 3rd party concerns (i.e., landowners, Aboriginal groups, shippers, federal and provincial departments, or other parties who may be affected by the O&M activities) and these concerns relate specifically to the proposed O&M activity⁵;
- new permanent land must be acquired in accordance with NEB Act sections 86 and 87;
- exposure of the pipe surface for the purposes of integrity assessments, repairs or removing an existing section of pipe and putting a new section in its place in areas where there are residences, or where there is a school, hospital, prison, or other institution where people routinely congregate in large groups (more than 50 people), within the emergency planning zone or within 200 m of the proposed activity (whichever is greater);
- removing an existing section of pipe and putting a new section in its place where the replacement is greater than 100 m (but less than 5 km) in length;
- pressure testing of line pipe performed by means other than hydrostatic testing⁶; and
- ground disturbance using power-operated equipment within 30 m of a wetland⁷ or a water body⁸, or within 30 m of the substrate of a wetland or water body.

For any of the above-noted circumstances, companies are required to submit the following information when notifying the Board:

- a description of the planned activity or project;
- a rationale for the activity or project;
- the location of the activity (e.g., legal land description, kilometre post);
- where applicable, the location of any residences, or schools, hospitals, prisons, or other institution where people routinely congregate in large groups (more than 50 people), within the emergency planning zone or within 200 m of the proposed activity (whichever is greater);
- timing and duration of the activity (e.g., day, week, month);
- reference to applicable section(s) of relevant company manuals or environmental protection plan;
- a contact person with the company, with whom the Board could follow-up;

⁴ "working days" do not include Saturdays, Sundays, or statutory holidays.

⁵ The Board offers Appropriate Dispute Resolution (ADR) services to assist in resolving unresolved concerns. The Board's ADR services include informal discussions, facilitated meetings and mediation.

⁶ As per section 23 of the OPR, the Board may require a company to submit the details of its pressure testing program prior to starting pressure testing.

⁷ Wetland means a swamp, marsh, bog, fen or other land that is covered by shallow water seasonally or permanently, including land where the water table is located at or close to the surface.

⁸ Water body means a river, a lake, a creek, a stream, a canal, a reservoir, an ocean, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond.

- regarding consultation:
 - where there are no unresolved 3rd party concerns related specifically to the O&M activity, a summary or overview of consultation that has been undertaken with potentially affected 3rd parties; or justification why consultation was not carried out; and
 - where there are remaining unresolved 3rd party concerns related specifically to the O&M activity, a complete record or table of consultation that has been undertaken with those parties; or justification why consultation was not carried out; and
- where new permanent land is to be acquired for an O&M activity:
 - whether fee simple landowner is in agreement (if private land);
 - confirmation that company will comply with the requirements under sections 86 and 87 of the NEB Act; and
 - the amount of new permanent land to be acquired.

Guidance Notes:

For notification, the Board requires sufficient information to understand the nature and scope of the O&M activities. The information required for notification to the Board should be concise, but it should provide the Board with sufficient detail to determine whether Board follow-up is warranted. With respect to Board inspections of O&M activities, the Board will rely on the information outlined in the company's O&M Manual, its Environmental Protection Program, and information resulting from public consultation activities when verifying compliance of O&M activities.

Companies that have the ability to file documents electronically are expected to file notifications through the Board's electronic document repository at www.neb-one.gc.ca.

For more information about filing electronically, please refer the Board's Internet site at www.neb-one.gc.ca under the "Regulatory Documents" heading. Please note that e-mails are not considered electronic filing and will not be accepted.

Should documents be filed by hard copy or facsimile only, the Board will scan the document into the electronic document repository.

When filing a notification by hard copy, companies should provide 25 copies to the Board. If the company files electronically, one hard copy must be subsequently filed. The hard copy must have attached to it a signed copy of the Electronic Filing Receipt that the system will return to the filer (via e-mail) upon receipt of the electronic document. Please file your completed notification with the Board and address it to:

Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8

To view notifications on the Board's Internet site at www.neb-one.gc.ca, select "View" under the "Regulatory Documents" heading. Once in the "Regulatory Documents Index", under the "Facilities" column heading, select the facility's commodity type (e.g., oil, gas). In the next screen, select the company of interest. The notifications will be filed in a sub-folder called "Notifications of Operations and Maintenance Activities" at the top of the page.

4.2. *Unplanned Operations and Maintenance Activities*

Goal:

Companies undertake all O&M activities that are required to safely operate a pipeline and to protect the environment.

Requirement:

For O&M activities that are unplanned (i.e., the company only becomes aware these activities are necessary shortly before starting the work), but which would normally require advance notification (see list of activities requiring notification in Section 4.1), companies are required to notify the Board as soon as they determine the activity must be carried out, following the same notification process outlined in Section 4.1.

Guidance Notes:

Notifying the Board of unplanned O&M activities does not substitute for a company's obligation to report incidents under the OPR, PPR, the *National Energy Board Pipeline Crossing Regulations*, the *Transportation Safety Board Act*, the *Canada Labour Code*, and/or under other relevant legislation. Such reporting is also required.

4.3. *Public Consultation*

Goal:

Companies conduct effective public consultation related to O&M activities.

Requirements:

The Board requires companies to engage parties whose rights or interests may be affected by O&M, prior to undertaking those activities. Companies must document all consultation activities and maintain documentation and must provide this documentation as outlined in Section 4.1, or upon request from the Board.

Guidance Notes:

"Public consultation" refers to the range of activities a company can undertake to share information with members of the public who may be affected by O&M activities, and to identify and resolve issues or concerns related to these activities. Examples of potentially-affected members of the public include landowners, tenants, residents, Aboriginal communities, government agencies, non-governmental organizations, trappers, guides, outfitters, recreational users, other land or resource users (e.g., forestry, mining), and commercial third parties.

The Board recognizes that effective public consultation goes beyond simply informing potentially-affected members of the public, and includes involving them in decisions or plans that may affect their lives. Companies must carry out public consultation activities that are reasonable for the scope and nature of the planned activity, and must justify the extent of public consultation carried out, particularly if no consultation is undertaken.

Although not an exhaustive list, the following sources provide companies with guidance on effective public consultation, which should be considered when planning O&M activities:

- The Board's *Filing Manual*, Chapter 3
- CSA Z764-96, *A Guide to Public Involvement*
- Canadian Association of Petroleum Producers (CAPP), *Guide for Effective Public Involvement*
- International Association for Public Participation (IAP2) website, www.iap2.org

The Board expects companies to maintain records of public consultation activities related to O&M activities. At a minimum, the Board expects companies to document and retain the following information related to public consultation activities:

- Who was involved?
- When did public consultation occur and what methods were used?
- What issues were raised?
- How were the issues addressed?
- What issues were not resolved?
- What follow-up was undertaken or is planned to address unresolved issues?

When consultation includes Aboriginal communities, companies should consider establishing a consultation protocol with these communities that takes into consideration their rights, interests, and cultural elements.

4.4. Record Maintenance

Goal:

Companies maintain documentation for O&M activities.

Requirement:

Companies are required to keep a record of all O&M activities undertaken in accordance with the current version of CSA Z662.

Guidance Notes:

Companies are expected to keep a record of all O&M activities that are carried out. Companies are also expected to maintain documentation of the O&M activities for which notification to the Board is required. The information listed for notification purposes in Section 4.1 is the minimum requirement for documentation purposes.

4.5. Other Regulatory Obligations

Goal:

Companies fulfill regulatory obligations to other federal, territorial, and provincial agencies for O&M activities.

Requirements:

Depending on the type and/or location of the O&M activity, companies may have regulatory obligations under other federal, territorial or provincial legislation or under other parts of the NEB Act, the OPR, PPR or other regulations pursuant to the NEB Act.

Guidance Notes:

Companies are reminded of the following:

- Additional approvals under other legislation, such as the federal *Fisheries Act*, the *Navigable Waters Protection Act*, or the *Migratory Birds Regulations* may be required.
- Companies have obligations under the *Migratory Birds Convention Act* and the *Species at Risk Act*. The Board recommends that companies check with regional offices for federal, territorial and provincial agencies to ensure they are meeting all of their regulatory obligations.
- Certain activities may require an application or notification under other parts of the NEB Act, the OPR, the PPR, or other regulations pursuant to the NEB Act.

5.0 Other Issues

5.1 Toll Considerations & Commercial Third Parties

Goal:

Companies are aware that a decision pursuant to section 52 or section 58 of the NEB Act does not constitute an approval of the costs associated with O&M activities for inclusion in the cost of service and/or rate base.

Requirements:

None.

Guidance Notes:

Since O&M activities do not require an application under section 58 or section 52 of the NEB Act, companies may wish to consider other methods to communicate certain capital additions to shippers.

6.0 Continual Improvement

The Board encourages parties to submit ideas on improving these requirements, the notification process, or other aspects of the regulation of O&M activities in writing to:

Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8
Facsimile 403-292-5503
Email secretary@neb-one.gc.ca

The Board anticipates it will review feedback received at regular intervals after implementation to determine whether process improvements can be made.

7.0 Contacting the Board

Where a project or activity does not appear to be addressed by these requirements, companies are expected to contact the Board for clarification, prior to undertaking the activity:

The Board's Toll-free Number is 1-800-899-1265.

Schedule A: Operations and Maintenance Requirements and Guidance Notes in relation to operations and maintenance activities on pipelines regulated under the *National Energy Board Act* (O&M)

