

Ms Sheri Young
Secretary of the Board
National Energy Board
517 Tenth Avenue SW
Calgary, Alberta T2R 08A

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

October 20, 2014

Re: 30 Day Comment Period on Proposed Amendments to Regulations for Pipeline Damage Prevention (File - GA-ActsLeg-Fed-NEBA-RRG-DPR 02 01)

The Canadian Common Ground Alliance (CCGA) respectfully submits the attached response to the National Energy Board following its general request for comments on the Proposed Regulatory Amendments for Pipeline Damage Prevention Regulations.

The CCGA represents the collective voice of its twenty-one member Board of Directors dedicated to working toward damage prevention solutions that will benefit all Canadians. Through our Board, the CCGA reaches roughly 1.3 million Canadians who are stakeholders of the Damage Prevention Process. Through shared responsibility among these stakeholders, the CCGA works to reduce damages to underground infrastructure; ensuring public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices.

The Canadian Common Ground Alliance (CCGA) 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.

Sincerely,



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1.0 INTRODUCTION

The CCGA's comments on the National Energy Board's Proposed Regulatory Amendments for Pipeline Damage Prevention Regulations appear in Section 2.0. The CCGA's closing comments appear in section 3.0.

2.0 COMMENTS ON PROPOSED REGULATORY AMENDMENTS FOR PIPELINE DAMAGE PREVENTION REGULATIONS (DPR)

Rather than review the proposed amendments section by section, the CCGA has focused on those amendments that it feels problematic or require additional consideration by the National Energy Board.

2.1 ONE CALL

The CCGA wishes to acknowledge the NEB for recognizing the valuable role One Call services plays as the primary starting point to initiate the damage prevention process. In fact, the CCGA will highlight the NEB's inclusion of this proposed language with other national regulators governing buried infrastructure in Canada. The CCGA notes, however, that the proposed amendment could prompt some organizations to promote themselves as One Call services when in fact they are not.

To illustrate the CCGA's concern, I draw your attention to [MB1Call](#). While the company provides a valuable locating service, the party requesting the locate is charged a fee for its services whereas a *true* One Call service does not charge a fee to locate buried facilities. That cost is borne by the buried facility owner.

The CCGA is of the view that there should be no impediment to a ground disturber taking appropriate steps to prevent damage to buried infrastructure. Charging a fee for locating services could initiate confusion among the digging community and in some case, negate a request for a locate which could lead to damage.

In light of this, the CCGA proposes the following edit to section 3.1(2) of the DPR, Part I:

CCGA Proposes:

(2) A one-call centre is a non-profit organization governed by a Board of Directors that, within a defined geographical area, receives locate requests and notifies its potentially affected members of any proposed constructions or excavations for the purposes of protecting their facilities from damage and ensuring public safety.

If it is not possible to include the underlined language within the regulatory text, the CCGA suggests the Board consider including it within the DPR Guidance Notes.

2.1 TEMPORARY PROHIBITION ON EXCAVATION

The CCGA is concerned the amending language proposed in Section 9. of the DPR, Part I will cause public confusion. This section appears to state that excavation can begin after three working days, regardless of whether or not the pipeline has been located and marked ("*...in which excavation is not to be performed until the pipeline is located and marked by the pipeline company or the expiry of three working days after the date of the request, whichever occurs first*"). If that is indeed the case, this section does not support the damage prevention process and is contrary to the primary objective of the DPR.

The CCGA requests the Board revise the proposed language in this section to more accurately reflect that excavation is not permitted within the right of way, or within thirty metres of the pipeline, until the pipeline has been located and marked.

CCGA Proposes:

9. Once authorization for excavation or construction within thirty metres of the pipeline has been received, excavation is not permitted within the pipeline right of way, or within thirty metres of the pipeline, until the pipeline has been located and marked.

To ensure the safety of the pipeline company representative locating and marking the pipeline, the pipeline company may designate an area situated in the vicinity of the proposed facility or excavation, which may extend beyond 30 m from the pipeline, as a restricted area in which excavation is not to be performed until the pipeline is located and marked. The restricted area is only applicable when locating and marking is being carried out.

2.2 ENFORCEMENT

The CCGA acknowledges the effectiveness of administrative monetary penalties (AMPs) to mitigate unauthorized activities near federally-regulated pipelines and inclusion of same within the DPR. Browsing the NEB's website, the CCGA notes several AMPs have recently been directed toward the public and regulated industry; however, beyond the proposed regulatory text in *Regulations Amending the Administrative Monetary Penalties*, there is little information provided by the NEB educating the public how the NEB enforces damage prevention governance or of the tools it uses to do so.

In an effort to address this educational gap, the CCGA suggests the Board consider producing a process diagram illustrating the enforcement / escalation tools that in practice include, but may not be limited to; awareness and education, investigation, Inspection Officer recommendations, Inspection Officer Orders, Board Orders and summary convictions. The CCGA also suggests the Board illustrate the contributing factors of an unauthorized activity that would determine when and how those enforcement tools are used.

For additional clarity and consideration by the Board, the CCGA notes the bullet points in section 9 of the CCGA's [Damage Prevention Legislation Elements Required for Canada](#):

Legislation should include:

- *an escalating penalty scale with provisions for meaningful enforcement of non-compliance with damage prevention process;*
- *larger penalties for repeat offenders and violations of increased risk and consequence;*
- *provisions for public awareness and education imposed at every level of enforcement;*
- *the ability for legislation to allow for creative penalties that would increase public awareness and education;*
- *consideration of a graduated Administrative Monetary Penalty System (AMPS);*
- *provisions for regulatory authorities to invoice for attendance at incidents for emergency response and investigative purposes and to bill a party for punitive purposes; and*
- *annual statistics on investigations, enforcement actions, and proposed and collected penalties to be made available by the agency to interested parties.*

Evidence shows that damages to buried infrastructure have decreased where a formal enforcement process is in place.

3.0 CCGA CLOSING COMMENTS:

The CCGA recognizes the long history behind the development of the DPR and congratulates the NEB on securing language that will protect the integrity of Canada's transmission pipeline network while balancing with effective and existing legislation.