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Via E-mail: damagepreventionregs@neb-one.gc.ca

Ms. Chantal Briand
Regulatory Approaches
National Energy Board
517-10th Avenue SW
Calgary, AB T2R 0A8

**Re: Westcoast Energy Inc., carrying on business as Spectra Energy Transmission (Westcoast)
Comments on Proposed Regulations for Pipeline Damage Prevention in *Canada Gazette* Part I
National Energy Board File Ad-GA-ActsLeg-Fed-NEBA-RRG-DPR 02 01**

Dear Ms. Briand:

Westcoast writes in response to the March 18, 2016 notification by the National Energy Board (NEB or Board) for comments on the proposed regulations for pipeline damage prevention.

Westcoast and its affiliates in Western Canada operate over 7,200 kilometers of gathering and transmission pipelines and 16 natural gas processing plants, as well as natural gas liquids extraction, fractionation, transportation and storage facilities. Westcoast shares the Board's commitment to public safety, environmental protection, and respecting the rights of those that may be affected by pipeline operations.

Westcoast would be impacted by the proposed regulations that make up the Damage Prevention Regulatory Framework. These regulations include the:

- *National Energy Board Damage Prevention Regulations - Authorizations;*
- *National Energy Board Damage Prevention Regulations – Obligations of Pipeline Companies;*
- *National Energy Board Onshore Pipeline Regulations; and*
- *National Energy Board Administrative Monetary Penalties Regulations.*

Westcoast understands that the NEB is required as a result of the amendments to the *National Energy Board Act* to update its regulations for damage prevention. Westcoast also appreciates the NEB's efforts to clarify the requirements to safely carry out construction, ground disturbance and crossing of pipelines. Westcoast specifically supports the requirements related to one-call centre membership and mandatory one calls, which will enhance public safety. Westcoast does, however, have a number of serious concerns regarding the proposed regulations, summarized below.

1. Westcoast supports the new reference to “ground disturbance”, which better reflects the potential activities that could impair pipeline safety and security. A suggestion, however, to clarify what constitutes ground disturbance, would be to include by way of regulation or guidance reference to the definition of the same term used in CSA Z247-15.
2. The new definition of “pipe” no longer includes “all related appurtenances”. There are several instances in the proposed regulations where Westcoast believes it would be more appropriate to either refer to the broader term “pipeline”, or to retain the reference to “all related appurtenances”, so that ancillary facilities such as cathodic protection or above-ground infrastructure are included. Specifically, the proposed regulations indicate that any person undertaking the construction of a facility or an activity that causes ground disturbance must comply with certain measures, including obtaining the pipeline company’s written consent to interfere with or alter the “pipe” and not undertaking mechanical excavation that would cause a ground disturbance within the prescribed area “within 3 m of a pipe”. Similarly, only contact with “pipe or its coating” is required to be reported to the pipeline company. References to “pipe” are included in other provisions regarding inspections and field observations and reporting to the Board. In the interest of ensuring safety and security of the pipeline, Westcoast would ask the Board to consider whether these references to “pipe” should properly read “pipeline”, or whether, as noted above, the reference to pipe “appurtenances” should be retained to encompass pipe and associated infrastructure.
3. The new definition for “facility” no longer includes the placement of a structure on the pipeline right-of-way, only construction of a structure. This will lead to confusion for the public and landowners as to whether structures that are placed rather than constructed on the site are prohibited. For example, it would appear that under the proposed regulations, trailers, mobile homes, sheds, heavy electrical equipment, hay bale stockpiles, swimming pools, manure, auto-wrecker cars, and similar equipment or structures could be placed over the pipeline, without the requirement to seek authorization of the company. These types of structures could significantly impair the company’s ability to observe activities that could be a threat to the pipeline, identify a potential leak and access the pipeline for assessment and repairs. Westcoast strongly recommends the retention of the prohibition against placement of facilities within the right-of-way. Further guidance for companies and landowners, either in the form of regulation or guidelines, is needed to clarify the types of facilities that require authorization under the regulations
4. The proposed exemption for agricultural activities is problematic for the following reasons:
 - a. Westcoast is concerned that the proposed exemption for agricultural activities will lead to misunderstanding as to what activities can safely take place on the right-of-way without

company consent. The issue is that the definition of “agricultural activity” explicitly includes tillage, nursery and sod operations and other activities which cause ground disturbance. Including these activities in the definition could lead landowners to believe that these activities do not require company authorization provided that the two conditions in section 13(a) and (b) are met. Westcoast respectfully submits that the regulations should be clear that the exemption is limited to the *crossing* by the agricultural vehicle or mobile equipment and not the *operation* of the vehicle or mobile equipment in such a way as to cause ground disturbance.

- b. Westcoast is concerned about the shifting of the onus to pipeline companies to identify specific locations where the operation of mobile equipment or vehicles is *not* permitted. This shift in the onus may ultimately increase the risk of agricultural activities damaging pipelines if a location is not identified. In addition, the requirement to notify all service providers and employees of the specific locations for the purposes of performing an agricultural activity that could impair the pipeline’s safety or security is simply not possible. Pipeline companies have no way of knowing what third party service providers or employees are retained by landowners, lessees, and/or occupants. Westcoast suggests that notification of persons be limited to landowners, known lessees and/or occupants.
- c. At the very least, the exemption should be limited to existing agricultural activities so that landowners wishing to undertake new agricultural activities would be required to notify the pipeline company, who could undertake an assessment of the specific activity and equipment to ensure the pipeline has been designed to safely accommodate the activity or equipment at that location. Westcoast agrees with the Board that damage prevention is a *shared* responsibility between the pipeline company and those conducting activities near a pipeline.

5. The proposed regulations do not define “vehicle or mobile equipment”. This leaves open the question of whether pipeline companies would be required under the proposed regulations to permit crossings by ATVs, snowmobiles and other personal use vehicles such as cars/pick-up trucks. Unlike large agricultural vehicles, which are exempt from the authorization requirements, personal use vehicles pose little threat to buried pipelines and permitting/monitoring their use is not practical or necessary from a safety perspective.

6. The 10 day limit to respond to a request for written consent is not realistic. It is virtually impossible to garner the required information and complete the necessary assessments to determine whether the proposed activity will be safe within that timeframe. Understanding that one of the intentions of the proposed regulations is to achieve increased symmetry with provincial regulations, Westcoast strongly urges the Board to consider a 21 day limit as currently exists within provincial regulations.

In closing, Westcoast would like to thank the Board for the opportunity to comment on the proposed regulations and looks forward to the opportunity to comment on the draft guidance notes the NEB has stated will be prepared in conjunction with the finalization of the regulations.

Yours truly,

Original signed by

Rachel S. Kolber