



**Administrative Monetary Penalty  
Sanction administrative pécuniaire**

**Notice of Violation / Avis d'infraction**

**REFERENCE NUMBER / N° DE RÉFÉRENCE:**

AMP-001-2021

**Information for Pipeline Company/Third Party/Individuals**

**Information pour la société pipelinrière / une tierce partie / un particulier:**

<b>Name / Nom:</b>	Trans-Northern Pipelines Inc.	<b>TOTAL PENALTY AMOUNT / MONTANT TOTAL DES PÉNALITES:</b>
<b>Contact / Contactez:</b>	Jane Keast	
<b>Title / Titre:</b>	President and Chief Executive Officer	<b>Date of Notice / Date de l'avis:</b>
<b>Address / Adresse:</b>	310-45 Vogell Road	March 12, 2021
<b>City / Ville:</b>	Richmond Hill	<b>Regulatory Instrument # / N° de l'instrument réglementaire:</b>
<b>Province / State / Etat:</b>	Ontario, L4B 3P6	
<b>Telephone / Téléphone:</b>	██████████	
<b>Email / Courriel:</b>	██████████	
		OC-3, AO-1-OC-3, AO-2-OC-3

On / Le March 22, 2019 (date violation was detected / date infraction avait été constatée)

**Trans-Northern Pipelines Inc.**

Was observed to be in violation of a CER regulatory requirement. This violation is subject to an administrative monetary penalty, as outlined below.

A commis une infraction aux exigences réglementaire de la RCE, sujet à la sanction administrative pécuniaire ci-dessous.

**Section One – Violation Details / Renseignements sur l'infraction**

<input checked="" type="checkbox"/> <b>Single-day violation / Infraction d'un jour</b>	<b>Date of Violation / Date d'infraction:</b> March 22, 2019
<input type="checkbox"/> <b>Multi-day Violation/ Infraction multi-journée:</b>	(from / du): [Date] (to / au): [Date]
<b>Total Number of Days / Nombre total de jours:</b> 1	<b>Has compliance been achieved? La situation est-elle rétablie?</b> <input type="checkbox"/> Yes / Oui <input checked="" type="checkbox"/> No / Non
	If no, a subsequent NOV may be issued. Si non, un autre avis d'infraction pourrait être envoyé
<b>Location of Violation / Lieu de l'infraction:</b>	Trans-Northern Pipelines Inc.'s Right of Way near Milepost 83.6 – Long Sault, Ontario
<b>Short Form Description of Violation / Description abrégée de l'infraction</b> (Refer to Schedule 1 of the AMP Regulations / Voir l'annexe 1 du Règlement)	
<b>Act or Regulation/Section:</b>	
CER Onshore Pipeline Regulations, Section 48 A company shall develop, implement and maintain an environmental protection program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment. (Type B)	

- Contravention of an Order or decision made under the Act (ss. 2(2) of the AMP Regulations) / Dérogation à une ordonnance ou à une décision rendue sous le régime de la Loi (paragraphe 2(2) de Règlement sur les sanctions administratives pécuniaires)
- Failure to comply with a term or condition of any certificate, licence, permit, leave or exemption granted under the Act (ss. 2(3) of the AMP Regulations) / Manquement à une condition d'un certificat, d'une licence, d'un permis, d'une autorisation ou d'une exemption accordé sous le régime de la Loi (paragraphe 2(3) du Règlement sur les sanctions administratives pécuniaires)

[Click here to enter text.]

## Section Two – Relevant Facts / Faits saillants

*Briefly describe reasonable grounds to believe a violation has occurred / Décrire brièvement les motifs raisonnables de croire qu'une infraction a été commise.*

### **Executive Summary:**

TNPI is the certificate holder of the following Canada Energy Regulator (CER) authorization; Certificate OC-3, as amended, to operate approximately 800 kilometres of pipeline which transports refined products between Montreal and Toronto. The original line was built in 1952.

To explain references to the National Energy Board (NEB) and CER and their staff throughout this document, note that the CER replaced the NEB, its predecessor organization, on 28 August 2019 as the CER Act came into force. On 28 August 2019, the National Energy Board Act was repealed and replaced by the CER Act, and the NEB's mandate was transferred to the CER.

Multiple compliance verification activities and prior enforcement actions (Notices of Non-Compliance and Inspection Officer Orders) over the last several years indicate that TNPI did not have an adequate environmental protection program (EPP). This Notice of Violation (NOV) relates to one such non-compliance detailed below. Other EPP-related non-compliances are detailed in the Appendices, but they do not form a part of the evidentiary basis for this NOV.

Section 48 of the OPR states that: "A company shall develop, implement and maintain an environmental protection program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment."

There have been multiple observations (see Appendices for a selection of examples) of TNPI being out of compliance with section 48 of the OPR related to the EPP, particularly with respect to the management of contaminated sites. The potential hazards associated with confirmed contaminated sites and possible contaminated sites have not been adequately identified, assessed or properly controlled by TNPI in order to anticipate, prevent, manage and mitigate conditions that could adversely affect the environment. To manage and mitigate includes the assessment of contamination (where, how deep, what contaminants), clean-up of the contaminants, and a risk control strategy to ensure people as well as the environment are protected from residual contamination (risk management).

While these observations represent multiple non-compliances of the EPP-related requirements in the OPR, as the AMP Officer designated by the CER's CEO to issue notices of violation, I have discretion about if and when to issue them. I am mindful, in exercising this discretion, of the purpose of the CER Act's administrative monetary penalty scheme, which is to promote compliance, and not to punish. As a result, I am only issuing this specific notice of violation at this time.

Based on the information I have reviewed, in relation to the contaminated site identified as Long Sault, I believe that TNPI was, on 22 March 2019, in violation of section 48 of the OPR.

### **The facts relevant to this violation are as follows:**

In summary, during an NEB inspection in March 2019, TNPI could not demonstrate whether it had prevented the potential exposure of contamination to the adjacent resident's home (air) and yard (soil) at the contaminated site designated Long Sault. The contamination has migrated off of TNPI's right of way, into the back yard of the residence and to within approximately 5 to 10 metres of the home. Identifying, anticipating

and assessing this potential hazard to the residents should have been done as part of TNPI's EPP as required by OPR section 48, to properly ensure safety of the residents and protection of the environment. This contamination was only thoroughly addressed once the IO Order LJP-001-2019 was issued with clear direction to TNPI on what to do.

On 22 March 2019, a field inspection was conducted at TNPI milepost 83.6 in the vicinity of Long Sault, ON, by an IO. Based on the field inspection and environmental site assessment information available through the site's Remediation Process file, and from compliance history and discussions with TNPI, the IOs determined that there were uncertainties associated with the assessment at the site (to understand the potential risk to human health and the environment) conducted by TNPI. CER IOs concluded that additional confirmatory sampling was warranted to determine whether:

- I. Contamination had migrated into the soil-air space beside the house and potentially entered the resident's basement. In other words, uncertainty regarding potential risks to human health resulting from unsafe indoor air quality;
- II. Contamination was in the surface soil where the residents could have potentially been exposed through ingestion of soil, dermal contact or particulate inhalation. In other words, uncertainty regarding potential risks to human health via direct soil contact;
- III. Contamination had migrated in groundwater down the pipeline corridor, under the roadway and to the west. In other words, uncertainties regarding groundwater delineation and potential risks to other downgradient receptors.

On 22 March 2019, TNPI was issued the IO Order to address the NEB's immediate concerns for the safety of the residents living at the adjacent property which TNPI had failed to adequately assess. The IO Order was issued due to a lack of adequate assessment of soil, soil vapour, and groundwater to ensure the safety of the residents and the potential downgradient receptors.

In the IO Order, the IO directed TNPI to do additional confirmatory sampling, provided specific direction about requirements the sampling had to meet, and instructed TNPI that the data had to be obtained at a level of detail and quality such that it could be used in a quantitative human health and ecological risk assessment per guidance provided in Canadian Council of Ministers of the Environment Guidance Manual for Environmental Site Characterization in Support of Environmental and Human Health Risk Assessment (2016).

In addition to the IO Order, on 26 March 2019, the Board issued a Direction Letter to TNPI outlining the deficiencies in the Long Sault Remedial Action Plan (RAP) and Supplemental Filings for Long Sault. In the letter, the NEB noted TNPI's pattern of late or delayed responses or actions, their information gaps in the Environmental Site Assessments and RAPs and their insufficient evidence of landowner engagement. The NEB directed the company to address the specific information gaps set out in the letter in order to ensure residents were protected and to enable the NEB to determine whether TNPI's RAP and other filings were adequate. TNPI was directed to address information gaps by 31 May 2019 and file an updated RAP that met the requirements as laid out in the NEB's Remediation Process Guide by 31 July 2019. TNPI submitted a third version of the RAP, which did not meet the requirements of the Board Direction Letter and was again rejected by the CER (21 February 2020). The fourth version of the RAP was submitted to the CER in June 2020, and is still under active review and information gathering by the CER.

**Conclusion:**

Given the deficiencies in the Long Sault contamination management identified on 22 March 2019, TNPI could not establish that its EPP was developed, implemented and maintained, or that it was successfully managing and mitigating conditions that could adversely affect the environment (adjacent resident's indoor air and soil quality). Based on this, I believe that TNPI was in violation of section 48 of the OPR and hereby issue this Notice of Violation.

**Section Three – Penalty Calculation / Calcul des sanctions**

**A) Baseline Penalty (Gravity Level = 0) / Pénalité de base (côte de gravité = 0)**  
*Refer to AMP Regulations, Subsection 4(1) / Voir le Règlement, paragraphe 4(1))*

Category / Catégorie	Individual / Personne physique	Any Other Person / Autre Personne					
Type A	<input type="checkbox"/> \$1,365	<input type="checkbox"/> \$5,025					
Type B	<input type="checkbox"/> \$10,000	<input checked="" type="checkbox"/> \$40,000					
<b>B) Applicable Gravity Value / Côte de gravité globale applicables</b>		<b>Gravity Level</b>					
<i>(Refer to AMP Regulations, Subsection 4(2) / Voir le Règlement, paragraphe 4(2))</i>		<b>Mitigating / Attenuer</b>		<b>Aggravating / Aggravantes</b>			
		<b>-2</b>	<b>-1</b>	<b>0</b>	<b>+1</b>	<b>+2</b>	<b>+3</b>
<input checked="" type="checkbox"/> Other violations in previous seven (7) years / Autres infractions au cours des sept (7) années précédentes  AMP-001-2020 Failure to contract for services as prescribed s. 29 OPR and AMP-001-2018 Contravention of a Board Order re: Overpressure of the Montreal Feeder System.		--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Any competitive or economic benefit from violation / Avantages concurrentiels ou économiques découlant de l'infraction  NIL		--	--	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Reasonable efforts to mitigate/reverse violation's effect/reverse violation's effect / Efforts raisonnables déployés pour atténuer ou annuler les effets de l'infraction  The company continues to be responsive to specific direction provided by the CER. For example, in a meeting with TNPI in 2020, TNPI agreed to update their Screening Level Risk Assessment in discussion with the CER and did so in a timely manner. On the other hand, the company's third RAP which was submitted in July 2019 failed to meet the specific requirements from the Board Direction Letter and the general requirements from the Remediation Process Guide, and was rejected (21 February 2020). TNPI submitted the fourth version of the RAP on the required due date.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Negligence on part of person who committed violation / Négligence de la part de la personne ayant commis l'infraction  TNPI has not demonstrated due diligence in managing the contamination at Long Sault. The company discovered the contamination in 2005, and notified the CER in 2013. Fourteen years after the discovery, at the time of the violation, and 4 years after submitting the Notice of Contamination (2015) to the CER, the company had still not adequately assessed the extent or level of contamination or the potential exposure of human receptors. The RAP filed by TNPI after the Inspection Officer Order and the Board Direction Letter was considered insufficient and rejected by the CER.		--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Reasonable assistance to the Board with respect to violation / Collaboration raisonnable avec l'Office en ce qui a trait à l'infraction  Since March 2019, TNPI has been timely on responses to CER staff and Board requests. They have provided adequate responses to address compliance issues in the RAP for Long Sault and for their EPP. TNPI has demonstrated a level of assistance relative to what would be expected of a regulated company.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Promptly reported violation to the Board / Infraction signalée sans délai à l'Office  NIL		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Steps taken to prevent reoccurrence of violation / Mesures prises pour prévenir les récidive  The CER recognizes that TNPI has done some work on improving their EPP/ contaminated sites program since the violation event (Long Sault IO Order and field inspection in March 2019). Some changes have been made to the EPP to address gaps. Changes include the hiring of staff, improvements to TNPI's documents,		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--

processes and internal oversight. However, many of these improvements were not initiated by the company, rather they were a result of the insistence of the CER staff and of the CER IO Orders and made over an unreasonable timeline.

<input type="checkbox"/> Violation was primarily reporting/record-keeping failure / Infraction reliée principalement à la production de rapports ou à la tenue des dossiers Not Applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--	--
<input checked="" type="checkbox"/> Any aggravating factors in relation to risk of harm to people or environment / Facteurs aggravants pouvant causer du tort au public ou à l'environnement  There was insufficient delineation and characterization of contamination at the time of the field inspection. TNPI did not have the data required to conclude (and demonstrate to the CER) that the people living in a house which was 5 to 10 metres from the edge of the contamination (within the backyard) were not being exposed via indoor air or soil contact. There was potential for risk to human health. Professionals trained in this field should have recognized the gaps in knowledge and should have proactively pursued those gaps before the CER was required to order them to do so.	--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>C) Total Gravity Value / Côte de gravité globale</b> <i>(adjustments made for gravity values in B) based on mitigating or aggravating factors applied)</i>	<b>0</b>
<b>D) Daily Penalty / Sanctions quotidiennes</b> <i>(baseline penalty adjusted for the final gravity level / Pénalité de base d'après la côte de gravité)</i>	<b>\$ 40,000</b>
<b>E) Number of Days of Violation / Durée de l'infraction</b> (If more than one day, justification must be provided / si plus d'une journée, prière de justifier) [Click here to enter text.]  Notes to explain decision to apply multiple daily penalties, or "Not Applicable" / Notes pour expliquer la décision d'appliquer des pénalités multiples quotidiennes, ou «sans objet».  Not Applicable	<b>1</b>

**Section Four – Total Penalty Amount / Montant total de la pénalité**

<p>Note: The total penalty amount shown is based on the period described in section one above. If compliance has not been achieved, a subsequent Notice of Violation may be issued. Le montant total des pénalités est calculé d'après la période décrite dans la première section. Si la situation n'a pas été rétablie, un autre avis d'infraction pourrait être envoyé.</p>	
<b>Total Penalty Amount / Montant total de la pénalité</b>	<b>\$ 40,000</b>

**Section Five – Due Date / Date limite**

(30 days from receipt of Notice of Violation / 30 jours à compter de la réception de l'Avis d'infraction)

<b>Due Date / Date limite</b>	April 12, 2021
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Keith Landra ( [REDACTED] )

Designated Officer pursuant to ss. 116(2) of the CER Act  
Administrative Monetary Penalties

Fonctionnaire désigné sous l'alinéa 116(2) de la LRCE  
Sanctions administratives pécuniaires

## Notes

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the Notice of Violation was received.

If you do not pay the penalty nor request a review within the prescribed period you are considered to have committed the violation and you are liable for the penalty set out in the Notice of Violation. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the Financial Administration Act.

The information regarding the violation may be posted on the CER website:

- a) 30 days from the date this Notice of Violation was received; or
- b) upon issuing a decision following a Request for Review.

## To Make Payment:

You may remit your fee payment by Electronic Funds Transfer (EFT) or by cheque payable to the order of Receiver General for Canada.

EFT payments can be arranged by contacting the Director of Financial Services, Monday to Friday, from 09:00 to 16:00 Mountain Time:

Telephone: 403-919-4743 / 800 899-1265

Fax: 403-292-5503 / 877-288-8803

**Cheques** should be made out to the Receiver General for Canada and mailed to:

Canada Energy Regulator  
Attention: Finance  
Suite 210, 517 - 10th Avenue SW  
Calgary, Alberta T2R 0A8

Your completed *Payment* form should be enclosed with your payment.

## Notes

Vous disposez de 30 jours après la signification de l'Avis d'infraction pour demander une révision du montant de la pénalité, ou les faits rapportés, ou les deux.

Si les sanctions ne sont pas acquittées et qu'aucune révision n'est demandée, vous êtes considérés comme coupable de l'infraction et vous devez payer les sanctions précisées dans l'Avis d'infraction. Les sanctions sont payables à la date indiquée ci-dessus.

Un défaut de paiement constitue une créance envers l'Etat et peut être recouvré en utilisant tous les recours prévus dans la Loi sur la gestion des finances publiques.

L'information concernant l'infraction pourrait également être affichée sur le site Web de la RCE:

- a) 30 jours après la date de réception de l'Avis:
- b) dès qu'une décision a été rendue à la suite d'une Demande de révision.

## Paiement:

Vous pouvez payer le montant dû par transfert électronique de fonds (TEF) ou par chèque établi à l'ordre du Receveur général du Canada.

Pour se prévaloir du service de transfert électronique, communiquer par téléphone avec le Directeur, Service des finances, du lundi au vendredi, de 9 h à 16 h, heure des Rocheuses :

Téléphone: 403-919-4743 / 800-899-1265

Télec. : 403-292-5503 / 877-288-8803

**Les chèques** doivent être établis à l'ordre du Receveur général du Canada et postés à l'adresse suivante:

Régie de l'énergie du Canada  
Attention: Finance  
Pièce 210, 517 Dixième Avenue S.-0.  
Calgary (Alberta) T2R 0A8

Le formulaire de *paiement* dûment rempli doit accompagner le paiement.