

**Frequently Asked Questions Pertaining to the Draft
National Energy Board Damage Prevention Regulations**

The National Energy Board (the NEB or the Board) plans to replace the existing *National Energy Board Pipeline Crossing Regulations, Part I* (SOR/88-528) and the *National Energy Board Pipeline Crossing Regulations, Part II* (SOR/88-529) (collectively referred to as the Pipeline Crossing Regulations) with the draft *National Energy Board Damage Prevention Regulations* (the DPR or Regulations). The DPR have been developed through extensive consultation with all stakeholders over the past 3 years and contain significant changes from the Pipeline Crossing Regulations.

Throughout the consultation period, similar questions on a number of issues have arisen on various occasions. The purpose of this document is to address those questions.

Question 1

Why change how the safety zone is measured?

Response

The Pipeline Crossing Regulations do not define the term “safety zone”. As such, the “safety zone” is understood by pipeline companies to be an area measured 30 metres from either side of the pipeline. This understanding stems from the *National Energy Board Act* (the Act) definition of pipeline which includes the right of way. The “safety zone” as it is currently understood extends across the right of way and extends 30 metres beyond the edge of the right of way.

In the survey entitled *National Energy Board Damage Prevention Survey Results* published 31 January 2003, 74% of respondents indicated they do not know where the edge of the right of way is from existing markings. Further discussions with stakeholders at open houses around the country indicate that people do not associate the word “pipeline” with the right of way and instead associate this term with the pipe itself. This commonly held understanding is consistent with provincial regulations such as Alberta Regulation 122/87 the *Pipeline Regulation*.

The intent of the safety zone is to ensure the pipeline is protected from accidental damage resulting from external interference associated with excavations conducted using power operated equipment or explosives as well as to ensure the safety of all persons living or working near the pipeline. This is accomplished by requiring persons undertaking these activities to contact the pipeline company prior to beginning their work. Notification depends on the awareness of the proponent that they are working near a pipeline.

It is the pipe which poses the risk to excavators. Where the right of way boundary lies is of little importance to the safety of persons. For this reason, the proposed Regulations are designed to measure the safety zone from the centreline of a buried pipe.

In Alberta, the measurement of the controlled area (similar to the safety zone) is taken as 30 metres from the edge of the pipe. Comments received from Alberta are that they would consider a change to be consistent with the proposed NEB approach.

Question 2

Why is the definition of ground disturbance so limited?

Response

Regulations can not re-define or supersede requirements contained within the Act. Subsection 112(1) of the Act clearly limits the authority over ground disturbances within 30 metres of the right of way to excavations conducted through the use of power operated equipment or explosives. The NEB has no authority to expand the term ground disturbance to include activities other than power operated equipment or explosives.

112. (1) Subject to subsection (5), no person shall, unless leave is first obtained from the Board, construct a facility across, on, along or under a pipeline or excavate using power-operated equipment or explosives within thirty metres of a pipeline.

Question 3

Given the response to Question 2, how can the NEB change how the safety zone is measured?

Response

As previously stated, the term safety zone is not defined within the Act. This allows the NEB to define the term. Subsection 112(5) provides the Board with the authority to establish regulations setting out circumstances where leave under section 112 is not required. Subsection 7.1 of the DPR establishes that leave is not required under subsection 112(1) for ground disturbances within the safety zone under most circumstances provided a locate request has been made by the person undertaking the ground disturbance (the proponent). The exception to this is found in subsection 7.2 which requires that approval of the pipeline company be obtained where a pipeline is not within a right of way and when ground disturbances are planned within the safety zone.

- 7.1 Subject to subsection 7.2, leave of the Board under subsection 112(1) of the Act is not required for ground disturbances within the safety zone provided a locate request has been made as set out in section 11 and the pipeline company has responded to the locate request as set out in section 13.*
- 7.2 Where a pipeline is not within a right of way, leave of the Board under subsection 112(1) of the Act is required for ground disturbances within the safety zone unless the pipeline company has provided written approval for the work.*

Section 6 of the DPR further states that leave of the Board is not required outside of the safety zone.

- 6. Leave of the Board pursuant to subsection 112(1) of the Act is not required for ground disturbances outside of the safety zone.*

Without section 6, the requirements for leave under the Act would apply to the area within 30 metres from the right of way but not within the safety zone.

The net effect is that where a right of way exists, no ground disturbance may take place within 30 metres of a pipe unless the pipeline company has been contacted and the necessary steps to ensure the continued safe

operation of the pipeline and to ensure the safety of persons have been taken by all parties. Where no right of way exists, approval of the pipeline company is a requirement for ground disturbances within the safety zone.

Question 4

Why don't the draft Regulations define or create projected limits?

Response

The term projected limits occurs with section 5 of the Pipeline Crossing Regulations (Part I). The term is generally understood by pipeline companies to apply to a theoretical extension of the limits of the right of way across land where no right of way exists (e.g. a road, highway or railway crossing). Projected limits provide the pipeline company with a means to limit the construction or installation of facilities immediately adjacent to their pipe.

The Act gives the Board authority over pipelines. Where the right of way ceases to exist, that authority is limited to the pipe itself. The safety zone still applies.

As previously stated, the Board has no authority to make Regulations which would supersede the powers given with the Act. As such, there appears to be no authority to enact any provisions pertaining to projected limits.

To provide some protection for pipeline companies in situations where no right of way exists, subsection 7.2 of the Regulations requires that the written approval of the pipeline company be obtained for ground disturbances within the safety zone. In addition, within the draft guidance notes, companies are encouraged to negotiate all necessary protection for their pipelines when they are obtaining crossing agreements.

Question 5

What happened to the requirement to develop detailed crossing guidelines and submit them to the Board for approval?

Response

The Board respects the rights of companies to manage their rights of way. This does not preclude the ability of pipeline companies to develop detailed crossing guidelines. Under the proposed Regulations, pipeline companies will still be expected to develop detailed guidelines for crossings which they would communicate with persons seeking a crossing approval (the proponent).

If the pipeline company and the proponent can not reach an agreement, the proponent may seek approval from the Board under subsection 112(1) of the Act. Company guidelines would typically be reviewed as part of the ensuing investigation.

The DPR will eliminate the requirement for Board submission and Board approval of detailed crossing guidelines.

Question 6

What happened to the idea of placing controls on activities beyond the safety zone?

Response

Written and verbal discussion on this point was unanimous in the opinion that the Board should not extend any controls beyond the safety zone. While the ability to place certain restrictions on activities beyond the safety zone exists within the Act (see subsection 112(5.1)), this concept has been removed from the proposed Regulations. The removal of this ability within the Regulations does not remove the ability provided within the Act.

- (5.1) *Without limiting the generality of paragraph (5)(c), orders or regulations made under that paragraph may provide for the prohibiting of excavations in an area situated in the vicinity of a pipeline, which area may extend beyond thirty metres of the pipeline, during the period that starts when a request is made to a pipeline company to locate its pipeline and ends*
- (a) *at the end of the third working day after the day on which the request is made; or*
- (b) *at any later time that is agreed to between the pipeline company and the person making the request.*

Question 7

Why won't the NEB exempt agricultural operations from the requirements for vehicle crossings over pipelines?

Response

The assessment of pipeline stress levels requires a comprehensive knowledge of ground conditions, design factors and operating characteristics. As such, pipeline companies are the logical authority for making these assessments.

Through the consultation efforts undertaken in the development of the DPR, it became clear that few stakeholders were aware of the existing requirements of subsection 112(2) of the Act whereby persons moving vehicles or mobile equipment across a pipeline outside of a traveled roadway require the permission of the pipeline company.

- (2) *Subject to subsection (5), no person shall operate a vehicle or mobile equipment across a pipeline unless leave is first obtained from the company or the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.*

As they became aware of this requirement, it became evident that allowances were necessary for certain low risk activities. Section 10 of the proposed Regulations has been developed to clarify that companies may provide a blanket leave for crossings of certain types of equipment.

- 10.(1) *Permission of the pipeline company must be obtained prior to operating vehicles or mobile equipment above the pipeline outside of the traveled portion of a highway or public road.*
- 10.(2) *The form and content of the permission required by subsection 10(1) shall be determined by the pipeline company.*

10.(3) *Permission may be granted for single occurrences or may provide approval for repetitive events.*

Question 8

There is no definition of excavation. Does this mean everything that could be considered an excavation requires notification of one-call or the pipeline company?

Response

No. Subsection 11(2) of the Regulations allows companies to exempt specific excavation activities from the requirements for notification. These exemptions would commonly be for ground disturbances less than a predefined limit set by the company.

Subsection 11(3) provides that companies may communicate these exemptions as they deem appropriate.