



Administrative Monetary Penalty / Sanction administrative pécuniaire
NOTICE OF VIOLATION / AVIS D'INFRACTION

REFERENCE NUMBER / N° DE REFERENCE: AMP-011-2015

Information for Pipeline Company / Third Party / Individual:

Information pour la société pipelinère / une tierce partie / un particulier :

Name / Nom :	Melcor Developments Ltd.	TOTAL PENALTY AMOUNT / MONTANT TOTAL DES PÉNALITÉS:
Contact / Contactez:	Brian Baker	
Title / Titre:	President and CEO	\$28,000
Address / Adresse:		Date of Notice / Date de l'Avis:
	900, 10310 Jasper Avenue T5J1Y8	29 July 2015
		Regulatory Instrument # / N° de l'instrument réglementaire:
City / Ville:	Edmonton	n/a
Province / State / État	Alberta	
Telephone / Téléphone:	██████████	
Fax / Télécopieur:	██████████	
E-mail / Courriel:	██████████████████	

On / Le 31 March 2015

Melcor Developments Ltd.

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

a commis une infraction aux exigences réglementaires de l'ONÉ, sujet à la sanction administrative pécuniaire ci-dessous.

1. VIOLATION DETAILS / RENSEIGNEMENTS SUR L'INFRACTION

Date of Violation / Date d'infraction :		Has compliance been achieved? / La situation est-elle rétablie? <input checked="" type="radio"/> Yes / Oui <input type="radio"/> No / Non If no, a subsequent NoV may be issued. Si non, un autre avis d'infraction pourrait être envoyé.
(from / du): 31 March 2015	(to / au): 31 March 2015	
Total Number of Days / Nombre total de jours: 1		

Location of Violation / Lieu de l'infraction:

e.g. Facility/plant/head office or nearest geographical point or lat/long / ie: usine/siege central/lieu géographique Rosenthal Blvd and 224 Street, Edmonton, Alberta

Short Form Description of Violation / Description abrégée de l'infraction (Refer to Schedule 1 of the AMP Regulations) / (Voir l'annexe 1 du Règlement)	Provision and Short-form Description / Disposition et Sommaire
---	---

<i>NEB Act / Loi sur l'ONÉ</i>	
112(1) Construction of a facility or excavation without leave (Type B) / Construction d'une installation ou excavation sans autorisation (Type B)	

<input type="checkbox"/>	<i>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) du Règlement sur les sanctions administratives pécuniaires)</i>
--------------------------	--

<input type="checkbox"/>	<i>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)</i>
--------------------------	---

2. 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

1. Subsection 112(1) of the National Energy Board Act (NEB Act) states that "Subject to subsection (5), no person shall, unless leave is first obtained from the Board... excavate using power operated equipment... within thirty metres of a pipeline." The National Energy Board Pipeline Crossing Regulations Part I section 6 provides that such leave "...is not required for an excavation, other than an excavation referred to in section 7, if (b) the excavator obtains written permission from the pipeline company prior to the excavation and accepts any conditions set out in the permission." Section 138 of the NEB Act states: "In any proceedings under this Act against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee, or agent or mandatary, of the person, whether or not the employee, agent or mandatary is identified or proceeded against in accordance with this Act."

2. Melcor Developments Ltd. (Melcor) is a real estate development and property management company based in Edmonton, Alberta with developments across Western Canada and the United States. Melcor is currently developing a large, residential community called Rosenthal in Edmonton located in the vicinity of Rosenthal Boulevard and 217 to 224 Streets NW (the Facility). This development is located near the TransMountain Pipeline (TMPL) which is owned and operated by Kinder Morgan Canada (KMC).

3. Melcor states it employs the services of IBI Group (IBI) as prime consultant and Ketek Group Inc., including its Safety Services Division (collectively "Ketek") as prime contractor for construction of the Facility. As agents of Melcor, both IBI and Ketek procure the services of sub-contractors including Economy Landscape, Jatec Electric Ltd. (Jatec) and McCaw Environmental Protection Alberta Ltd. (McCaw

Environmental), all of whom are also and thereby agents of Melcor.

4. On 14 October 2014, KMC reported an unauthorized ground disturbance by Melcor sub contractor Economy Landscape, whose operator conducted an excavation within the 30 meter safety zone of TMPL using an auger digger. KMC advised the National Energy Board (NEB or the Board) in its report that it discovered the unauthorized ground disturbance occurred on 27 September 2014. KMC also reported that despite having placed an Alberta One-Call request, and set up appointments in order for KMC to issue relevant permits, Economy Landscape completed its excavation activity before KMC's arrival on site and without receiving written permission to do so. KMC held an on-site discussion with Economy Landscape to remind them of requirements for ground disturbances within 30 metres of NEB-regulated facilities.

5. On 17 October 2014, the NEB issued a letter to Economy Landscape noting an unauthorized ground disturbance had occurred and reminding it of requirements for working near NEB-regulated pipelines.

6. On 19 December 2014, KMC reported a second unauthorized excavation within the 30 metre safety zone of the TMPL to the Board. KMC discovered that Jatec, a Melcor sub-contractor, used a backhoe to conduct excavations on 15 December 2014. KMC confirmed this sub-contractor did not have an Alberta One-Call authorization or written permission from KMC to conduct the activity at that location. As a result, work was stopped, a valid Alberta One-Call was requested, and KMC issued a permit for the excavation work. KMC held an on-site safety meeting with Jatec regarding the incident.

7. On 22 December 2014, KMC sent a letter to Melcor along with Winterburn Developments Inc., IBI, Ketek and Jatec, describing the unauthorized excavations which had taken place. KMC reminded Melcor and its sub-contractors of the dangers of unauthorized ground disturbances and requirements for working near federally regulated pipelines. In this letter, KMC reminded Melcor and its sub-contractors that the NEB has the discretion to investigate this matter further and that unauthorized excavations and ground disturbances could result in regulatory action.

8. On 9 January 2015, the NEB issued a letter to Melcor, IBI, Ketek and Jatec, noting that a second unauthorized ground disturbance by a Melcor sub-contractor had occurred within the safety zone of the TMPL. The NEB noted this event was a repeat unauthorized activity near the TMPL and its right-of-way (RoW) and therefore met the NEB's criteria for a high-risk unauthorized activity as per section 4 of the NEB's Excavation and Construction Near Pipelines guidance document. The letter also reminded Melcor that such events could be considered for further enforcement action including an Administrative Monetary Penalty (AMP). The NEB reminded Melcor, its contractors and subcontractors of requirements for working near NEB-regulated pipelines. The Board required all parties to submit in writing, the events that led to the unauthorized activity and the steps to be taken going forward to prevent further unauthorized activities around federally regulated pipelines. The NEB further required Melcor and IBI Group to provide a number of items in writing to the NEB by 30 January 2015 including their:

- Safety process and Safety procedure which ensures that work is done in compliance with the Regulations when excavating and/or constructing near a federally regulated pipeline;
 - What is(are) the accountable position(s) that is(are) responsible for ensuring this process and procedure is kept current?;
 - Where are the documents located?; and
 - How will this be communicated within your organization?
- Documentation of employee training and work instructions on this safety procedure; and
- Job safety analysis and Job hazard analysis records for the work performed at Rosenthal Blvd. and 224 Street, Edmonton AB.

9. On 13, 16 and 29 January 2015, the NEB received responses to its 9 January 2015 letter from Ketek, Jatec and IBI respectively. Along with additional e-mail correspondence which clarified some items, these letters were responsive to the Board's requests.

10. On 22 January 2015, the Board received Melcor's letter in response to the NEB's 9 January 2015 letter. In it, Melcor indicated that it (on behalf of Winterburn Developments Inc.) employed IBI Group as Prime Consultant and Ketek Group Inc. as Prime Contractor and relied on them to enforce NEB requirements. Melcor's letter suggests that Ketek's response to the Board's letter of 9 January 2015 should be considered as submitted on Melcor's behalf.

11. On 9, 10 and 15 April, the NEB placed phone calls to Melcor requesting responses which remained outstanding to the requests contained in the Board's 9 January 2015 letter.

12. On 6 April 2015, KMC reported a third unauthorized excavation by Melcor subcontractor McCaw Environmental. KMC reported that McCaw Environmental was operating a skid steer on the RoW and conducted a 1 metre excavation within the 30 metre safety zone, as confirmed in IBI's 29 April 2015 letter. The unauthorized excavation was discovered to have occurred on 31 March 2015. KMC confirmed McCaw Environmental did not have an Alberta One-Call authorization or written permission from KMC to conduct the excavation activities within the 30 meter safety zone. Work was stopped, and McCaw Environmental was asked to notify Alberta One-Call before proceeding

further. Alberta One-Call authorization was obtained. KMC remained on-site to ensure its requests were followed and contacted the development companies to inform them of what had occurred.

13. On 9 April 2015, Melcor responded to an e-mail sent out by IBI Group, reminding sub-contractors to follow safety policies and procedures set out for them, including those set by the NEB. The e-mail also reminded sub-contractors of the serious repercussions that could take place if a pipeline strike were to occur.

14. On 15 April, the NEB sent a letter to Melcor, IBI, and McCaw Environmental noting that a third unauthorized ground disturbance by a Melcor sub-contractor had occurred within the safety zone of the TMPL. The NEB noted this event was a repeat unauthorized activity near the TMPL and its right-of-way (RoW) and therefore met the NEB's criteria for a high-risk unauthorized activity as per section 4 of the NEB's Excavation and Construction Near Pipelines guidance document. The letter also reminded Melcor that such events could be considered for further enforcement action including an Administrative Monetary Penalty (AMP). In this letter, the NEB required Melcor to provide in writing, by 30 April 2015:

- The events that led to this unauthorized activity and the steps Melcor will take going forward to prevent future unauthorized activities by contractors and sub-contractors acting on your behalf;
- Melcor policy with respect to contractor and sub-contractor oversight;
- How is Melcor ensuring that safety policies and procedures are communicated to the employees of the contractors and sub-contractors conducting work on your behalf; and
- Who, within Melcor, is accountable for ensuring contractor and sub-contractor oversight?

15. On 30 April 2015, Melcor provided a partial response to the NEB's 15 April 2015 letter. In its response, Melcor provided information on the event that led to the 31 March 2015 unauthorized activity and the detailed steps Melcor would take going forward to prevent future unauthorized activities by contractors and sub-contractors acting on its behalf.

16. On 4 May 2015, the NEB e-mailed Melcor in response to the company's 30 April 2015 letter. In this e-mail, the NEB acknowledged Melcor's response but noted that certain information requested pertaining to contractor and sub-contractor oversight, accountability for that oversight, the communication of safety policies and procedures remained outstanding. The Board also requested Melcor's new ground disturbance procedure to which Melcor referred in its 30 April 2015 letter.

17. On 3 June 2015, Melcor responded that Ketek was retained as its prime contractor to take on all contractor oversight. Melcor indicated that Ketek is responsible for reviewing all safety programs of contractors on site and that, as a part of the Prime Contractor Safety Program, all contractors must sign-off to indicate they will endeavor to ensure all employees comply with the Ketek Safety Program. The email included, as an attachment, Ketek's ground disturbance procedure.

3. PENALTY CALCULATION / CALCUL DES SANCTIONS

(a) BASELINE PENALTY (Gravity Value = 0) / PÉNALITÉ DE BASE (côte de gravité = 0)

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

[Refer to [AMP Regulations](#), Subsection 4(1) / Voir le [Règlement](#), paragraphe 4(1)]

(b) APPLICABLE GRAVITY VALUE / COTE DE GRAVITE GLOBALE APPLICABLES

[Refer to [AMP Regulations](#), Subsection 4(2) / Voir le [Règlement](#), paragraphe 4(2)]

	Mitigating / Atténuer		Aggravating / Aggravantes			
	-2	-1	0	+1	+2	+3
<input type="checkbox"/> Other violations in previous seven (7) years / Autres infractions au cours des sept (7) années précédentes	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a						

<input type="checkbox"/>	Any competitive or economic benefit from violation / Avantages concurrentiels ou économiques découlant de l'infraction	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a							
<input type="checkbox"/>	Reasonable efforts to mitigate / reverse violation's effect / Efforts raisonnables déployés pour atténuer ou annuler les effets de l'infraction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a							
<input type="checkbox"/>	Negligence on part of person who committed violation / Négligence de la part de la personne ayant commis l'infraction	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a							
<input type="checkbox"/>	Reasonable assistance to Board with respect to violation / Collaboration raisonnable avec l'Office en ce qui a trait à l'infraction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a							
<input type="checkbox"/>	Promptly reported violation to Board / Infraction signalée sans délai à l'Office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
n/a							
<input checked="" type="checkbox"/>	Steps taken to prevent reoccurrence of violation / Mesures prises pour prévenir les récidives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
In its response to the NEB's 15 April 2015 letter, Melcor provided information on the event that led to the 31 March 2015 unauthorized activity and the steps Melcor would take going forward to prevent future unauthorized activities by contractors and sub-contractors acting on its behalf.							
<input type="checkbox"/>	Violation was primarily reporting / record-keeping failure / Infraction reliée principalement à la production de rapports ou à la tenue des dossiers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--	--	--
n/a							
<input 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	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n/a							
(c) TOTAL GRAVITY VALUE / COTE DE GRAVITÉ GLOBALE							-1
(d) DAILY PENALTY / SANCTIONS QUOTIDIENNES (The baseline penalty, adjusted for the final gravity level) (Pénalité de base d'après la côte de gravité)							\$ 28,000
(e) NUMBER OF DAYS OF VIOLATION / DURÉE DE L'INFRACTION (If more than one day, then the justification must be provided.) (Si plus d'une journée, prière de justifier.)							1
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»							
n/a							
4. TOTAL PENALTY AMOUNT / MONTANT TOTAL DE LA PÉNALITÉ							\$ 28,000

Note: The total penalty amount shown is based on the period described in Step 1 above. If compliance has not been achieved, a subsequent Notice of Violation may be issued.
Le montant total de la pénalité est calculé d'après la période décrite à l'étape 1 ci-dessus. Si la situation n'a pas été rétablie, un autre avis d'infraction pourrait être envoyé.

5. DUE DATE (30 days from receipt of Notice of Violation)

DATE LIMITE (30 jours à compter de la réception de l'Avis d'infraction)

27 August 2015

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 NEB 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:

National Energy Board
Attention: Finance
Centre 10, 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 l'ONE:

- 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 :

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

Office national de l'énergie
Service des finances
Centre 10, 517 – 10e Avenue S.-O.
Calgary (Alberta)
T2R 0A8

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

To Request a Review

Pursuant to the NEB Act, Section 144, you may file a request for a review of this Notice of Violation by the Board.

The date of filing is the date on which the document is received, as indicated by the date on an e-mail submission or the stamped on the document by a NEB employee.

If you elect to make a request for a review, complete and submit the attached *Request for Review* form to:

Administrative Monetary Penalty - Reviews
National Energy Board
Centre 10, 517 – 10th Avenue SW
Calgary, Alberta
T2R 0A8

For more information on reviews, please see the Administrative Monetary Penalties Process Guide available on the NEB's [website](#).

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Demander de révision

En vertu de l'article 144 de la Loi sur l'ONE, vous pouvez présenter à l'Office une *Demande de révision* de cet Avis l'infraction.

La date du dépôt correspond à la date de réception du document, qui apparaît sur l'envoi électronique ou le timbre apposé sur le document par un employé de l'ONE.

Si vous voulez demander une révision, veuillez remplir et soumettre le formulaire de Demande de révision à l'adresse suivante :

Sanction administrative pécuniaire - Révision
Office national de l'énergie
Centre 10, 517 – 10e Avenue S.-O.
Calgary (Alberta)
T2R 0A8

Pour de plus amples informations sur le processus de révision, prière de consulter le Guide sur le processus relatif aux sanctions administratives pécuniaires sur le [site Web](#).

Pour toute question à ce sujet, veuillez communiquer avec la personne soussignée.

Sincères salutations,

Robert Steedman

Designated Officer
Administrative Monetary Penalties

Fonctionnaire désigné
Sanctions administratives pécuniaires

403-299-3178