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**FAX COVER SHEET**

TO: Proposed NEB Pipeline *Damage Prevention Regulations*  
National Energy Board, Attention: Sheri Young, Secretary

FAX NO. 1-877-288-8803

DATE: October 20, 2014

FROM: John D. Goudy

OUR FILE NO.: 15158

RE: Proposed NEB Pipeline *Damage Prevention Regulations*  
File AD-GA-ActsLeg-Fed-NEBA-RRG-DPR 02 01

COMMENTS: Please see enclosed correspondence in response to the NEB's letter dated  
September 18, 2014.

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By Fax only  Hard copy to follow

If all pages are not received, or any pages are not legible, please call John Goudy at (519) 433-5310, ext. 236.

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VIA FACSIMILE TRANSMISSION

October 20, 2014

**Proposed NEB Pipeline Damage Prevention Regulations**

Sheri Young

Secretary of the Board

National Energy Board

517 Tenth Avenue S.W.

Calgary, AB T2R 0A8

Dear Madam Secretary:

**RE: Manitoba Pipeline Landowners Association (MPLA)  
Comments on Proposed Amendments to Regulations for Pipeline Damage Prevention**

We are the lawyers for the Manitoba Pipeline Landowners Association (MPLA) and are writing in response to the NEB's letter of September 18, 2014 to provide MPLA's comments concerning the proposed amendments to pipeline damage prevention regulations. MPLA is a voluntary association of Enbridge pipeline landowners in Manitoba, most of whom have between 6 and 8 pipelines crossing one or more of their properties (with at least one additional pipeline being proposed at present). MPLA landowners and all NEB-regulated pipeline landowners across Canada are directly affected by Section 112 of the NEB Act and its related regulations. MPLA is taking the lead on behalf of the Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA), of which MPLA is a member association, in responding to the NEB's proposed regulatory amendments. MPLA's comments should be taken as those of pipeline landowners across Canada.

This marks the third time that MPLA has written to the NEB concerning the most recent round of proposed changes to Pipeline Crossing Regulations. CAEPLA also provided comments to the NEB on previously proposed changes to the regulations dating back more than a decade. Unfortunately, the currently proposed amendments demonstrate that the NEB is still not listening to the concerns of pipeline landowners. The amendments do nothing to introduce fairness for agricultural landowners into the regulatory scheme.

As set out in MPLA's comments to the NEB in February, 2013 on the NEB Discussion Paper, Section 112 of the NEB Act leaves landowners carrying an unfair burden in ensuring pipeline safety in Canada.

Restrictions on agricultural operations over and near pipelines are only necessary where companies have failed to ensure that the condition and location of their pipelines are adequate to accommodate agricultural operations. Fairness dictates that pipeline companies, which have obtained land rights by expropriation or by agreement made through the threat of expropriation, should be required to accommodate farming. However, as is apparent in the latest proposed amendments to the regulations, the NEB is continuing to move in the opposite direction – creating regulations that absolve pipeline companies from the duty to build, maintain and operate safe pipelines by restricting agricultural operations and exposing pipeline landowners to regulatory and penal liability.

Once again, MPLA urges the NEB to reverse this course by making amendments to the regulations that restore a landowner's ability to carry out agricultural operations without the constant fear of contravening the NEB Act and regulations and of incurring the penalties that will result. The starting point is to prescribe an exemption for all agricultural activities from the requirements to obtain NEB and/or company permission in Sections 112(1) and 112(2). Then, similar to the proposed Section 10.1 of the proposed *Damage Prevention Regulations, Part 2*, the regulations would also provide that, if a pipeline company determined that agricultural activities could jeopardize the safe and secure operation of a pipeline, the pipeline company would be required to identify affected locations and advise landowners and farmers in writing of those locations and the reasons for the determination. The pipeline company would then have two options for addressing its safety and security concerns:

1. Remove, repair, modify, relocate or replace its pipeline so as to ensure that agricultural activities will not jeopardize the safe and secure operation of the pipeline; or,
2. Provide affected landowners and farmers with clear written direction on any restrictions to be applied to agricultural operations in specified locations and pay the landowners and farmers compensation for any resulting business losses or other related damages or loss.

This proposal is consistent with the principles that should apply to the interaction between pipeline companies and landowners under the NEB Act – that pipeline companies are responsible to build, operate and maintain their pipelines safely, and that landowners are to be compensated for the imposition of pipelines on their properties and on their businesses. MPLA's proposed amendments do not compromise pipeline safety. Instead, they shift the primary safety and security decision-making burden off of the backs of landowners and farmers and onto pipeline companies where it should be. Landowners and farmers should not be placed in the position of having to decide whether a pipeline is safe or not and of having to face regulatory and penal liability if they are wrong.

As MPLA previously stated in its February, 2013 comments, pipeline companies have the resources and expertise to make this work. They can obtain equipment specifications directly from farm equipment manufacturers; they can determine the surface loading and other impacts generated by farming activities; they already possess information (or should possess information) about the location, depth and condition of their pipes. Where site specific locations are identified that will not accommodate the impacts of all farming activities, pipeline companies can determine what work is necessary to accommodate farming or what restrictions may be necessary. And pipeline companies can compensate landowners and farmers for restrictions that are necessitated by the unsafe condition of their pipes.

Without this shift of responsibility to pipeline companies, Section 112 of the NEB Act and the related regulations will continue to work an injustice for landowners and farmers across Canada. How else can one describe a situation where a Canadian farmer faces at a minimum an "administrative monetary penalty" of no less than \$1,000.00 (or \$4,000 for a corporation) for failure to notify a pipeline company

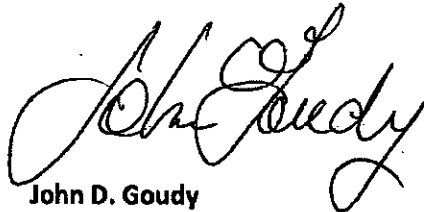
that its pipeline is unsafe? And the farmer has been deprived of any defence of due diligence, has no ability to appeal a decision of the NEB on the matter, and faces public denunciation by the NEB? MPLA and its members are very concerned about the opportunities for abuse by pipelines companies that have been created by the administrative monetary penalty regime. The answer is for the NEB to make the amendments proposed above by MPLA so that pipeline landowners and farmers do not face punishment on account of the failure of pipeline companies to build, operate and maintain safe pipelines.

The NEB should stop covering up for the inadequacies and deficiencies in pipelines on the backs of Canadian landowners and farmers. Safety is in everyone's interest, but it is the pipeline companies that should be responsible for safety. MPLA and pipeline landowners across Canada hope that the NEB will take advantage of this opportunity to enhance pipeline safety while making the pipeline regulatory scheme fairer for landowners and farmers.

Yours truly,

**SCOTT PETRIE LLP**

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John D. Goudy

c.c.: MPLA, Board of Directors