



April 18, 2016

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Regulatory Approaches  
National Energy Board  
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Ms. Briand:

Please find below some comments from the Canadian Federation of Agriculture (CFA) regarding the proposed regulations for Pipeline Damage Prevention as published in *Canada Gazette Part I*, on March 19, 2016.

The CFA welcomes the introduction of the Pipeline Damage Prevention Regulations (DPRs) as part of the implementation of the *Pipeline Safety Act*. The CFA represents over 200,000 farmers and farm families. As landowners and land managers that are also stewards of the land, farmers have a very keen concern for the prevention of damage to pipelines and other infrastructure that crosses or could impact their property, livelihoods and safety. Overall, these proposed regulations strike a good balance between the safety needs and requirements for pipeline companies and the need for continuing economic activities adjacent to the pipelines itself.

One of the main concerns from agricultural producers has always been the ability to continue regular farming practices and to cross over the pipeline to reach adjacent fields that may not necessarily be accessible otherwise. Therefore, the CFA welcomes the decision to exempt cultivation to a depth of less than 45 cm below the surface of the ground as not being considered “ground disturbance” and any other activity to a depth of less than 30 cm that does not result in a reduction of the earth cover of the pipeline. This approach will offer consistency to agricultural producers who must be able to productively use the land adjacent and over top of a pipeline. While the regulations set out that the National Energy Board (NEB) may still make orders and/or regulations setting out conditions to be met in order for ground disturbance activities within the prescribed order, this may or may not be burdensome to producers depending on how it is implemented.

The CFA calls upon the NEB to allow flexibility and in consultation with landowners and producers to specify increased depths of disturbance for agricultural activities depending on specific circumstances. This may be especially necessary for the cultivation of specific commodities and for the ongoing maintenance and management of the land. Furthermore, the

CFA welcomes the option to file an application directly to the NEB for additional activities that would not meet the exemption. It is recommended that there will be a mechanism in place at the NEB to arbitrate a circumstance when a pipeline company does not provide consent for an activity requested by the landowner yet the landowner sees sufficient need to undertake that activity.

The ultimate responsibility for the safety of pipeline infrastructure during the construction, operation and maintenance of active and abandoned pipelines must be held by the infrastructure owner and not the landowner or land user. Landowners should not be held liable or criminally responsible for any damage to pipelines resulting from regular farming practices or for damage to construction or maintenance equipment when it is on a landowner's property. One of the key areas of concern for many agricultural producers with pipelines on their property has been the ability to cross the pipeline with agricultural equipment and the onerous nature of having to ask the pipeline company for leave to do so at every instance. Therefore, incorporating the intent of NEB Exemption Order MO-21-2010 is absolutely critical into the DPR. The CFA would like to see that a written consent - when required by a pipeline company - would cover all crossings with known agricultural equipment. Having to technically request permission to cross every time is impractical, especially when equipment and conditions do not change between crossings. Furthermore, agricultural production relies on very tight seasonal timelines for food, fuel and fibre production.

If you have any questions regarding this submission, please contact Drew Black, Director of Environment and Science Policy at: or 613-236-3633 ext. 2328.