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15 June 2018

To: All Oil and Gas Companies under the Jurisdiction of the National Energy Board (Board) and Interested Persons

**Operations and Maintenance Activities on Pipelines under the
*National Energy Board Act***

The purpose of this letter is to inform you of important updates related to *Operations and Maintenance Activities on Pipelines Regulated under the National Energy Board Act: Requirements and Guidance Notes* (O&M Guidelines).

Effective immediately, companies will be required to provide additional information with regards to the acquisition of new land. If new land is required to complete the O&M activities, companies will be required to provide additional information with regards to critical habitat for any endangered or threatened species listed on Schedule 1 of the federal *Species at Risk Act*.

Effective immediately, the Board has refined the information companies will be required to provide when conducting instream work. More information on this can be found in Section 8 of the O&M Guidelines.

The Board reminds companies that prior to filing an O&M Notification, companies should review the O&M Guidelines to ensure all required information is provided, as set-out in [Appendix A](#) of this letter. Companies are reminded they must still fulfill their regulatory obligations to other federal, territorial and provincial agencies for O&M activities. Additional information pertaining to the Board's responsibilities as they relate to fish and fish habitat and navigation for notifications of O&M activities can also be found in the O&M Guidelines.

For further information, please do not hesitate to contact Charlotte Haines, Director, Construction Oversight at 1-800-899-1265.

Yours truly,

Original signed by

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**Operations and Maintenance Activities on
Pipelines Regulated Under the
National Energy Board Act:
Requirements and Guidance Notes**

January 2013

Updated to – May 2018

O&M Guidelines

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1.0 Goal

The goal of the *Operations and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes* (O&M Guidelines) is to provide all parties with greater clarity about how operations and maintenance (O&M) activities on pipelines (including processing plants) under the *National Energy Board Act* (NEB Act) will be regulated, while promoting safety, security, environmental protection, economic efficiency, and respect for the rights of those that may be affected.

2.0 Background

Routine O&M activities are evaluated by the National Energy Board (Board) as part of the original application for the construction and operation of a pipeline¹; therefore, companies are not required to apply for additional approval to undertake most O&M activities. The Board continues to regulate O&M activities and to fulfill its mandate through its inspection and audit programs.

The requirements for O&M activities contained in this document apply to all pipelines regulated under the NEB Act that occur on lands owned by the applicant company or where there is an agreement in place between the company and the landowner(s) that covers the construction, operation and maintenance of a pipeline, including:

- company-owned land;
- land rights held under easement, leased, or licensed land; and
- temporary workspace.

Where permanent new lands are required to carry out O&M activities companies are reminded that they must fulfill the requirements of sections 86 and 87 of the NEB Act.

3.0 Definitions

3.1 *Eligible Activities*

Operations and maintenance activities include:

1. all activities necessary to safely operate an existing pipeline;

¹ "Pipeline" is defined in the NEB Act as "a line that is used or to be used for the transmission of oil, gas, or any other commodity... and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes."

2. maintenance activities, upgrades or repairs to an existing pipeline or part of a pipeline that do not increase the approved maximum operating pressure (MOP), the stress level² or diameter of the pipeline; or
3. physically removing an existing section of pipe up to 5 km in length, and putting a new section of pipe in its place, as long as this replacement does not increase the approved MOP, stress level or diameter of the pipeline.

3.2 Restrictions on Eligible Activities

Where any of the following restrictions exist, the company must apply to the Board in accordance with the NEB Act and the related Regulations and may not carry out the proposed activity until approval from the Board has been obtained. The restrictions apply where:

1. the work includes welding on an in-service pipeline by a pipeline company that has not previously performed in-service welding in accordance with the requirements of CSA Z662-15, Clause 7.17, 'Welding on In-Service Piping', or the equivalent clause in the most recent edition of CSA Z662; or
2. the work involves the construction of an aerial crossing, excluding work on company owned or leased land relating to facilities (e.g., terminal stations, processing plants, compressor/pump stations).

Subject to section 3.3, O&M activities that fall within the types of activities listed in 3.1 above, and to which none of the restrictions in 3.2 apply, do not require an application to the Board under the NEB Act. Companies will be required to notify the Board prior to undertaking the O&M activities. (See Schedule A and Section 4.1).

3.3 Ineligible Activities

O&M activities **do not include**:

1. upgrades that result in increases above previously approved and specified levels to:
 - a) the MOP,
 - b) stress levels,
 - c) the diameter of the pipeline, and/or
 - d) airborne emissions or noise levels³.
2. "looping" (i.e., adding pipe parallel or adjacent to, and interconnected with, an existing pipeline for the general purpose of increasing capacity);
3. construction of a new pipeline; or
4. deactivation (for longer than 12 months), reactivation (where a pipeline has been deactivated for more than 12 months), decommissioning, or abandonment.

² "Stress level" in this context means the percent of the specified minimum yield strength for the design operating stress.

³ This refers to permanent increase in air and noise emissions and not to temporary increases in air and noise emissions during construction.

All of the preceding activities require an application under the NEB Act, the *National Energy Board Onshore Pipeline Regulations (OPR)* or the *National Energy Board Processing Plant Regulations (PPR)* (see Schedule A).

Guidance Notes:

O&M activities do *not* include the addition of a parallel piece of pipe without removal of the existing pipe that has permanently ceased operation. If the company plans to leave an existing section of pipe in place, it must apply to the Board: (i) for an exemption under section 58 of the NEB Act, for the construction and operation of the new section of pipeline; and (ii) to decommission the existing section of pipe under the OPR.

Companies are required to apply to the Board for the installation of any length of pipe that is greater than 5 km.

In general, permissible "upgrades" do *not* include additions of components to a pipeline or processing facility that were not specifically contemplated in the original Certificate or Order. However, the definition of upgrade includes the addition of cathodic protection systems, as these are typically contemplated during the assessment of the original pipeline. Therefore, the addition of a cathodic protection system is considered an O&M activity.

Upgrades include improvements in technology. For example, if a company were proposing to install solar panels as a power source in place of an existing source of fuel oil, the proposed installation would be considered a permissible upgrade under the O&M Guidelines. This is analogous to removing an existing section of pipe and putting a new section in its place, since the function of the installation would not change from what was originally approved.

Upgrades do *not* include adding new connections, including tie-ins or hot taps, and associated piping and metering facilities for the purposes of sale or receipt of oil or gas. These installations still require an exemption Order under section 58 of the NEB Act but may be captured within the section 58 Streamlining Order. Metering or regulating facilities installed for the sole purposes of measurement or monitoring are considered O&M activities.

Companies are encouraged to contact the Board for additional clarification related to specific O&M activities they are planning (see Section 7.0 for contact information).

4.0 Requirements

4.1. Notification to the National Energy Board

Goal:

The Board is provided with sufficient information to make a decision as to whether to inspect O&M activities that could result in safety consequences to landowners or the public, environmental consequences, or a negative impact on normal third-party use of the right-of-way (RoW) or adjacent property.

Requirements:

In any of the following circumstances, the Board requires companies to provide **notification** to the Board of O&M activities at least **21 working days**⁴ prior to starting work:

- there are unresolved 3rd party concerns (i.e., landowners, Aboriginal groups, shippers, federal and provincial departments, or other parties who may be affected by the O&M activities) and these concerns relate specifically to the proposed O&M activity⁵;
- New temporary or permanent land is required that:
 - is within critical habitat for any Endangered or Threatened species listed on Schedule 1 of the federal Species at Risk Act; or
 - is to be acquired in accordance with sections 86 and 87 of the NEB Act;
- exposure of the pipe surface for the purposes of integrity assessments, repairs or removing an existing section of pipe and putting a new section in its place in areas where there are residences, or where there is a school, hospital, prison, or other institution where people routinely congregate in large groups (more than 50 people), within the emergency planning zone or within 200 m of the proposed activity (whichever is greater);
- removing an existing section of pipe and putting a new section in its place where the replacement is greater than 100 m (but less than 5 km) in length;
- pressure testing of line pipe performed by means other than hydrostatic testing⁶; and
- ground disturbance using power-operated equipment within 30 m of a wetland⁷ or a water body⁸, or within 30 m of the substrate of a wetland or water body⁹.

For any of the above-noted circumstances, companies are required to submit the following information when notifying the Board:

- a description of the planned activity or project;
- a rationale for the activity or project;
- the location of the activity (e.g., legal land description, kilometre post);
- where applicable, the location of any residences, or schools, hospitals, prisons, or other institution where people routinely congregate in large groups (more than 50 people), within the emergency planning zone or within 200 m of the proposed activity (whichever is greater);
- timing and duration of the activity (e.g., day, week, month);
- reference to applicable section(s) of relevant company manuals or environmental protection plan;

⁴ "working days" do not include Saturdays, Sundays, or statutory holidays.

⁵ The Board offers Appropriate Dispute Resolution (ADR) services to assist in resolving unresolved concerns. The Board's ADR services include informal discussions, facilitated meetings and mediation.

⁶ As per section 23 of the OPR, the Board may require a company to submit the details of its pressure testing program prior to starting pressure testing.

⁷ Wetland means a swamp, marsh, bog, fen or other land that is covered by shallow water seasonally or permanently, including land where the water table is located at or close to the surface.

⁸ Water body means a river, a lake, a creek, a stream, a canal, a reservoir, an ocean, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond.

⁹ Additional information on requirements relating to fish and fish habitat and navigation can be found in Section 8.0.

- a contact person with the company, with whom the Board could follow-up;
- regarding consultation:

- where there are no unresolved 3rd party concerns related specifically to the O&M activity, a summary or overview of consultation that has been undertaken with potentially affected 3rd parties; or justification why consultation was not carried out; and
- where there are remaining unresolved 3rd party concerns related specifically to the O&M activity, a complete record or table of consultation that has been undertaken with those parties; or justification why consultation was not carried out; and
- where new permanent land is to be acquired for an O&M activity:
 - whether fee simple landowner is in agreement (if private land);
 - confirmation that company will comply with the requirements under sections 86 and 87 of the NEB Act; and
 - the amount of new permanent land to be acquired.

Guidance Notes:

For notification, the Board requires sufficient information to understand the nature and scope of the O&M activities. The information required for notification to the Board should be concise, but it should provide the Board with sufficient detail to determine whether Board follow-up is warranted. With respect to Board inspections of O&M activities, the Board will rely on the information outlined in the company's O&M Manual, its Environmental Protection Program, and information resulting from public consultation activities when verifying compliance of O&M activities.

Companies are required to file notifications using the Online Event Reporting System (OERS) at <https://apps.neb-one.gc.ca/ers>. Further guidance on how to use the OERS can be found on the website at www.neb-one.gc.ca, under Operations and Maintenance Activities.

Section 8.0 outlines the additional information that the Board requires companies to provide with their notification of O&M activities involving ground disturbance using power-operated equipment within 30 m of a wetland or a water body, or within 30 m of a substrate of a wetland or water body, made pursuant to these guidelines. Further details of the requirements can also be found in the OERS user guide.

Secretary
National Energy Board
517 Tenth Avenue SW
Calgary, AB T2R 0A8

To view notifications on the Board's Internet site at www.neb-one.gc.ca, select "View Regulatory Documents" under the "Regulatory Documents" heading. Once in the "Regulatory Documents Index", under the "Facilities" column heading, select the facility's commodity type (e.g., oil, gas). In the next screen, select the company of interest. The notifications will be filed in a sub-folder called "Notifications of Operations and Maintenance Activities" at the top of the page.

4.2. *Unplanned Operations and Maintenance Activities*

Goal:

Companies undertake all O&M activities that are required to safely operate a pipeline and to protect the environment.

Requirement:

For O&M activities that are unplanned (i.e., the company only becomes aware these activities are necessary shortly before starting the work), but which would normally require advance notification (see list of activities requiring notification in Section 4.1), companies are required to notify the Board as soon as they determine the activity must be carried out, following the same notification process outlined in Section 4.1.

Guidance Notes:

Notifying the Board of unplanned O&M activities does not substitute for a company's obligation to report incidents under the OPR, PPR, the *National Energy Board Pipeline Crossing Regulations*, the *Transportation Safety Board Act*, the *Canada Labour Code*, and/or under other relevant legislation. Such reporting is also required.

4.3. *Public Consultation*

Goal:

Companies conduct effective public consultation related to O&M activities.

Requirements:

The Board requires companies to engage parties whose rights or interests may be affected by O&M, prior to undertaking those activities. Companies must document all consultation activities and maintain documentation and must provide this documentation as outlined in Section 4.1, or upon request from the Board.

Guidance Notes:

"Public consultation" refers to the range of activities a company can undertake to share information with members of the public who may be affected by O&M activities, and to identify and resolve issues or concerns related to these activities. Examples of potentially-affected members of the public include landowners, tenants, residents, Aboriginal communities, government agencies, non-governmental organizations, trappers, guides, outfitters, recreational users, other land or resource users (e.g., forestry, mining), and commercial third parties.

The Board recognizes that effective public consultation goes beyond simply informing

potentially-affected members of the public, and includes involving them in decisions or plans that may affect their lives. Companies must carry out public consultation activities that are reasonable for the scope and nature of the planned activity, and must justify the extent of public consultation carried out, particularly if no consultation is undertaken.

Although not an exhaustive list, the following sources provide companies with guidance on effective public consultation, which should be considered when planning O&M activities:

- The Board's *Filing Manual*, Chapter 3
- CSA Z764-96, *A Guide to Public Involvement*
- Canadian Association of Petroleum Producers (CAPP), *Guide for Effective Public Involvement*
- International Association for Public Participation (IAP2) website, www.iap2.org.

The Board expects companies to maintain records of public consultation activities related to O&M activities. At a minimum, the Board expects companies to document and retain the following information related to public consultation activities:

- Who was involved?
- When did public consultation occur and what methods were used?
- What issues were raised?
- How were the issues addressed?
- What issues were not resolved?
- What follow-up was undertaken or is planned to address unresolved issues?

When consultation includes Aboriginal communities, companies should consider establishing a consultation protocol with these communities that takes into consideration their rights, interests, and cultural elements.

4.4. Record Maintenance

Goal:

Companies maintain documentation for O&M activities.

Requirement:

Companies are required to keep a record of all O&M activities undertaken in accordance with the current version of CSA Z662.

Guidance Notes:

Companies are expected to keep a record of all O&M activities that are carried out. Companies are also expected to maintain documentation of the O&M activities for which notification to the Board is required. The information listed for notification purposes in Section 4.1 is the minimum requirement for documentation purposes.

4.5. Other Regulatory Obligations**Goal:**

Companies must fulfill their regulatory obligations to other federal, territorial, and provincial agencies for O&M activities.

Requirements:

Depending on the type and/or location of the O&M activity, companies may have regulatory obligations under other federal, territorial or provincial legislation or under other parts of the NEB Act, the OPR, PPR or other regulations pursuant to the NEB Act.

Guidance Notes:

Companies are reminded of the following:

- Additional approvals under other legislation, such as the federal *Fisheries Act* or the *Migratory Birds Regulations* may be required.
- Companies have obligations under the *Migratory Birds Convention Act* and the *Species at Risk Act*. The Board recommends that companies check with regional offices for federal, territorial and provincial agencies to ensure they are meeting all of their regulatory obligations.
- Companies have obligations under federal, provincial and territorial legislation for identifying and protecting heritage resources. The Board expects companies to ensure they are meeting all of their regulatory obligations.
- Certain activities may require an application or notification under other parts of the NEB Act, the OPR, the PPR, or other regulations pursuant to the NEB Act.

5.0 Other Issues

5.1 Toll Considerations & Commercial Third Parties

Goal:

Companies are aware that a decision pursuant to section 52 or section 58 of the NEB Act does not constitute an approval of the costs associated with O&M activities for inclusion in the cost of service and/or rate base.

Requirements:

None.

Guidance Notes:

Since O&M activities do not require an application under section 58 or section 52 of the NEB Act, companies may wish to consider other methods to communicate certain capital additions to shippers.

6.0 Continual Improvement

The Board encourages parties to submit ideas on improving these requirements, the notification process, or other aspects of the regulation of O&M activities in writing to:

Secretary
National Energy Board
517 Tenth Avenue SW
Calgary, AB T2R 0A8
Facsimile 403-292-5503
Email secretary@neb-one.gc.ca

The Board anticipates it will review feedback received at regular intervals after implementation to determine whether process improvements can be made.

7.0 Contacting the Board

Where a project or activity does not appear to be addressed by these requirements, companies are expected to contact the Board for clarification, prior to undertaking the activity:

The Board's Toll-free Number is 1-800-899-1265.

8.0 Additional Information Requirements for Operations and Maintenance Activity Notifications

8.1 New land is required

New temporary or permanent land is required that:

- **is within critical habitat for any Endangered or Threatened species listed on Schedule 1 of the federal Species at Risk Act; or**
- **is to be acquired in accordance with sections 86 and 87 of the NEB Act.**

New land is required

Note: You must answer the questions below.

1. How much new land (hectares) is needed in total?
2. How much permanent (hectares) will be acquired?
3. Is it private land? **If yes:**
 - a. Is the fee simple landowner in agreement?
 - b. Will the company comply with the requirements under sections 86 and 87 of the NEB Act?

4. Is the land within critical habitat for any endangered or threatened species listed on Schedule 1 of the federal Species at Risk Act? **If no~~w~~, no further information is required.**
 - a. Species at Risk Critical Habitat
 - b. Provide a list of the species at risk that may be affected.
 - c. How much new permanent land (hectares) is needed?
 - d. How much new temporary land (hectares) is needed?
 - e. Have relevant provincial and federal authorities been consulted? Provide details of the consultation.

Detailed Information Requirements when there is Species at Risk Critical Habitat:

It is expected that additional information regarding the following will be provided in one or more documents that have been uploaded on the Documents page such as:

- Site plans
- A description of the activities that will be conducted that are relevant to critical habitat and their potential impacts to species at risk
- All reasonable alternatives to the activity that would reduce the impact on the species that have been considered

- A description of all feasible measures that will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals
- Details of monitoring that is proposed to avoid and lessen any adverse effects

8.2 Fish and Fish Habitat, and Navigation and Navigation Safety

Fish and Fish Habitat

Note: You must answer 1 and 2 below, and if required, 3.

1. *Access* – Will there be ground disturbance using power-operated equipment within 30 m of a wetland or a water body, or within 30 m of the substrate of a wetland or water body, while accessing the site? If yes, proceed to 1(a), (b) and (c), below. **If no, no further access information is required.**
 - a. How many new temporary and/or permanent vehicle crossings will be required when accessing the activity site? Zero is an acceptable answer.
 - b. Will all applicable DFO measures to avoid and mitigate harm to fish and fish habitat¹⁰ be followed? **If no, provide the detailed information listed in 3.**
 - c. Are there species present which are listed on Schedule 1 of the *Species at Risk Act*? **If yes, provide the detailed information listed in 3.**
2. *Activity Site* – Will there ground disturbance using power-operated equipment within 30 m of a wetland or water body, or within 30 m of the substrate of a wetland or water body at the activity site? If yes, proceed to 2(a), (b), (c) and (d) below. **If no, no further activity information is required.**
 - a. Is the wetland or water body fish bearing? **If no, no further activity information is required.**
 - b. Will there be work carried out instream? **If no, no further activity information is required.**
 - c. Will all applicable DFO measures to avoid and mitigate harm to fish and fish habitat be followed? **If no, provide the detailed information listed in 3.**

¹⁰ The DFO measures to avoid and mitigate harm to fish and fish habitat can be found at <http://www.dfo-mpo.gc.ca/pnw-ppe/measures-mesures/measures-mesures-eng.html>

- d. Are there species present which are listed on Schedule 1 of the *Species at Risk Act*? **If yes, provide the detailed information listed in 3.**

3. Detailed Information Requirements when required by 1(b), 1(c), 2(c), or 2(d):

- a. Start and end dates for the in-stream activities;
- b. Start and end dates for the provincial timing window for the wetland or water body;
- c. Details of timing window;
- d. List of fish species likely to be present at work location;
- e. Fish and fish habitat information;
- f. Project planning, including site-specific mitigation and proposed reclamation measures;
- g. Photos upstream, downstream, and the Project Footprint;
- h. Design drawings;
- i. The amount of habitat (m²) that will be permanently altered or destroyed below the 2-year high water mark;
- j. The estimated amount of fish mortality;
- k. The amount of riparian habitat to be cleared (m²);
- l. Discussion on how any residual effects will impact localized commercial, recreational, and/or aboriginal fisheries or fish that support such a fishery;
- m. Discussion on if the proposed works are likely to require authorization under Paragraph 35(2)(b) of the Fisheries Act; and
- n. Discussion on requirements of any Species at Risk Act permits

Navigation and Navigation Safety

- 4. Navigation and Navigation Safety** – Will a navigable water body be crossed while accessing the site or will there be ground disturbance or activity within or across a navigable water body's wetted perimeter? If yes, proceed to 4(a) and (b) below. **If no, no further navigation information is required.**
 - a. Will the activity, including all in-stream restoration and removal of construction debris, be carried out while the navigable water body is frozen or seasonally dry? **If yes, no further navigation information is required.**

- b. Will all activities with the potential to impact navigation and navigation safety meet the criteria of Transport Canada's Minor Works Order¹¹, as amended? **If no, provide the detailed information listed in 5.**

5. Detailed Information Requirements when required by 4(b):

- a. A listing of navigable waterways that may be affected by the activity;
- b. Description of the activities and crossings that may affect navigation;
- c. Description of potential waterway use and any consultation conducted with waterway users and Aboriginal groups regarding navigational use;
- d. Description of project effects on navigation and navigation safety;

¹¹ The Minor Works Order can be found within the following link: <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-04-19/html/notice-avis-eng.php>

Schedule A: Operations and Maintenance Requirements and Guidance Notes in relation to operations and maintenance activities on pipelines regulated under the *National Energy Board Act* (O&M)

