



## INSPECTION OFFICER ORDER NO. MJS – 001 – 2024

### IN THE MATTER OF THE CANADIAN ENERGY REGULATOR ACT, AN ORDER UNDER SECTION 109

Algoma Orchards (Algoma) owns land and operates an apple orchard near Bowmanville, Ontario. A federally regulated pipeline owned and operated by Trans-Northern Pipelines Incorporated (TNPI) runs through sections of this property. Between 31 May 2024 and 11 December 2024, TNPI reported three alleged unauthorized activities by Algoma to the Canada Energy Regulator (CER). The activities occurred at 2924 Concession Road 3, in Bowmanville, ON (the site) in proximity to federally regulated facilities owned by TNPI and in contravention of the Damage Prevention Regulations (DPRs). The undersigned CER Inspection Officer assessed each of these reports and found that Algoma and its contractors have demonstrated a pattern of unsafe work practices in proximity to TNPI. Specifically, the CER IO reviewed files DPR2024-132, CV2425-313, DPR2024-337 and DPR2024-357 and determined that additional measures are required to ensure the safety of people and the environment.

Based on the above, the CER Inspection Officer is issuing this Order on 20 December 2024 at 2:00 PM to Algoma.

#### RELEVANT FACTS

The following are the relevant facts relating to relating to the issuance of this Order:

1. Following the report of a third alleged contravention of the DPRs reported by TNPI related to Algoma, the undersigned CER Inspection Officer conducted an assessment of the alleged contraventions involving Algoma. Each event was reported to have occurred on property owned by Algoma Orchards at 2924 Concession Road 3, in Bowmanville Ontario (the site) in proximity to federally regulated facilities owned by TNPI. Each event is summarized below.
2. (DPR2024-132) On 31 May 2024, TNPI reported an unauthorized activity to the CER. The report involved an alleged vehicle crossing, ground disturbance, and the construction of a facility. According to the company's report, TNPI ground patrol noted that approximately 400 apple trees and 26 steel anchors had been planted at a depth of 48 inches within the prescribed area of TNPI. Follow-up with Algoma confirmed that the trees had been planted between 7–9 May 2024, and the anchors were installed on 22–23 May 2024. The site representative for Algoma, stated that the work was completed without making a "one-call" notification to request locates, or obtain TNPI's written authorization for ground disturbance, or vehicle crossings over the pipeline. TNPI reported that it followed up by going to the site and locating and marking the pipeline with flags for reference only. TNPI also states that it reiterated the requirements for the 30-meter prescribed area. TNPI implemented additional spot checks to monitor the area.
3. (DPR2024-337) On 20 November 2024, TNPI reported a second alleged unauthorized activity to the CER. According to the report, TNPI ground patrol observed signs of the removal of a wire fence and its supporting T-bars. TNPI noted that the T-bars had been installed to a depth of approximately 45 cm and protruded 3 feet above grade. TNPI also confirmed that this work was completed within its right-of-way and the 30-meter prescribed area without a locate request or TNPI's written consent.

While following up on the 20 November report, TNPI noted that Algoma had installed fifty-four 4x4 cedar posts within TNPI's "restricted zone" that was designated to limit the third-party activity in the prescribed area. Although Algoma had received a locate on 29 July 2024 and authorization from TNPI for the posts, TNPI had stipulated that the installation of cedar posts was authorized only if the posts were installed while a TNPI representative was onsite. As the work was done by a contractor for Algoma without a TNPI inspector onsite, it was done in contravention of the TNPI authorization.

4. (DPR2024-357) On 11 December 2024, TNPI reported an alleged unauthorized activity to the CER involving an alleged unauthorized construction of a facility and vehicle crossing. During scheduled inspection, TNPI ground patrol observed that Algoma and its contractors had commenced the permitted work before the TNPI inspector's arrival, contrary to the conditions outlined in TNPI's written authorization issued on 26 November 2024. The written consent also granted approval for vehicle crossings over the pipeline for certain vehicles, the addition of topsoil to low-lying areas of the property, and tree planting. However, the conditions specified that a TNPI representative must be on-site during the work and that no stockpiling was permitted within the 20-meter restricted area.  
Additionally, TNPI discovered that the rock trucks exceeded the weight authorized by the permit, and there was unauthorized stockpiling of topsoil over the pipeline. Furthermore, the spreading of topsoil within the right-of-way began before the TNPI inspector arrived on site, which violated a condition of the consent.
5. CER staff have engaged with Algoma in May, June, September and December 2024 to address the above unauthorized activity reports. This engagement included written correspondence, an information request, phone calls and virtual meetings. During these activities, the CER has made Algoma aware of its obligations pursuant to the DPR-A including the requirements to inform those working on its behalf of the CER's regulatory requirements. Algoma confirmed that it does not have a safe digging procedure available. Algoma has also confirmed the facts as set out in this Order for each of the unauthorized activity reports.

The following provisions of the Act and/or Regulations that are alleged to have been contravened:

#### **Duty to Inform**

1. *Canadian Energy Regulator Pipeline Damage Prevention Regulation – Authorizations (DPR-A)*

4. Any person that intends to construct a facility across, on, along or under a pipeline, engage in an activity that would cause a ground disturbance within a prescribed area or operate a vehicle or mobile equipment across a pipeline must, before the construction, activity or operation is to start, inform all persons working on their behalf, including employees, contractors and subcontractors, of their obligations under these Regulations.

#### **Authorization – of construction**

2. *Canadian Energy Regulator Pipeline Damage Prevention Regulation – Authorizations (DPR-A)*

**7 (1)** For the purposes of subsection 335(1) of the Act, the construction of a facility — in an area other than an offshore area — across, on, along or under a pipeline, other than the construction

of an overhead line referred to in section 9, is authorized if the person that intends to construct the facility

- (a) obtains the pipeline company's written consent;
- (b) makes a locate request in accordance with section 3; and
- (c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the [Canadian Energy Regulator Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies](#).

**(3)** Any person that is undertaking the construction of a facility must comply with the following measures:

- **(a)** ensure that the construction is carried out in accordance with the technical details that are set out in the person's request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company's consent;
- **(c)** comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed while carrying out the construction in the vicinity of a pipe and that relate to the pipeline's safety and security;

#### **Authorization – ground disturbance activity**

##### **3. Canadian Energy Regulator Pipeline Damage Prevention Regulation – Authorizations (DPR-A)**

**10 (1)** For the purposes of subsection 335(1) of the Act, any activity — in an area other than an offshore area — that would cause a ground disturbance within the prescribed area, other than an activity referred to in section 11, is authorized if the person that intends to engage in the activity

- (a) obtains the pipeline company's written consent.
- (b) makes a locate request in accordance with section 3; and
- (c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the Canadian Energy Regulator Pipeline Damage Prevention Regulations Obligations of Pipeline Companies (DPR-O)

**(3)** Any person that is engaged in an activity that causes a ground disturbance within the prescribed area must comply with the following measures:

(a) ensure that the activity is carried out in accordance with the technical details that are set out in the person's request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company's consent, including the conditions respecting directional drilling or the use of explosives;

(d) comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed during the activity and that relate to the pipeline's safety and security;

#### **MEASURES TO BE TAKEN**

*Where the Inspection Officer has reasonable grounds to believe that there is or is likely to be a contravention of Parts 2 to 5 or section 335 of the CER Act, or for a purpose referred to in subsection 102(2) CER Act, the Inspection Officer may, by Order, direct a person to*

- a. *stop doing something that is in contravention of Parts 2 to 5 or section 335 or cause it to be stopped;*
- b. *take any measure that is necessary in order to comply with Parts 2 to 5 or section 335 or mitigate the effects of non-compliance;*
- c. *stop doing something that may cause a hazard to the safety or security of persons, or damage to property or the environment or cause it to be stopped; or*
- d. *take any measure that is necessary to prevent or mitigate the hazard to the safety or security of persons or damage to property or the environment.*

The CER Inspection Officer has concluded that, given Algoma's status as an active business that regularly employs contractors to work near federally regulated infrastructure, and considering the nature of the violations outlined in this Order, additional measures from Algoma are required to prevent harm to people and the environment.

Algoma is ORDERED pursuant to subsections 109(1) and 109(2) of the CER Act to:

- Take measures specified below under Specified Measures as per paragraphs (b) and (d) above
- Stop doing something as specified below under Specified Measures as per paragraphs (a) and (c) above
- Suspend work associated with a facility, including a regulated facility, abandoned facility or ground disturbance, until the hazardous or detrimental situation has been remedied to the satisfaction of an Inspection Officer or until this order is stayed or rescinded.

## **SPECIFIED MEASURES**

1. Algoma shall develop and implement a written safety procedure that incorporates the CER regulatory requirements to prevent hazards to the safety of people, property and the environment while working in proximity to federally regulated pipelines. The written safety procedure must provide for the following, at a minimum:

- a) When Algoma or its contractors intend to construct a facility across, on, along or under a pipeline or engage in an activity that would cause a ground disturbance within a prescribed area, Algoma or its contractors must:
  - a. to a one-call centre if the intended construction or activity is within an area where a one-call centre exists; or
  - b. to the pipeline company directly if the intended construction or activity is not within an area where a one-call centre exists.
- b) Obtain the pipeline company's written consent before commencing work as per s.10(1)(a) of the DPR-A, where required ;
- c) Obtain the required permission for the operation of a vehicle or mobile equipment across a federally regulated pipeline from the pipeline company.

- d) Ensure that all persons performing the activity understand and comply with the conditions and instructions set out in the permissions obtained from the pipeline company.
- e) Obtain written safety information from the company including an explanation of locate markings as per s.10(1)(c) of the DPR-A;

2.Ensure Algoma employees and contractors understand and comply with the conditions set out in the consent, including when a company inspector is required on-site and

- a. ensure that no work is performed until the company representative is on-site, when required by the conditions of the pipeline company’s consent.

3.Algoma must submit a written description to the CER detailing how it will ensure the full and successful implementation of the procedure in its operations. This description must include the timeline and method for communicating and training staff and contractors on this procedure.

4.Algoma must provide the above written safety procedure and written implementation plan to the CER on or before 31 January 2025.

**EFFECTIVE DATE OF THE ORDER**

This Inspection Officer Order takes effect immediately on 20 December 2024 at the time of delivery of this Order to the Company to whom it is directed. Nothing in this Order shall be construed as reducing, increasing, or otherwise affecting what may be required of the Company to whom it is directed to comply with all applicable legislative or legal requirements.

**COMPLIANCE WITH THIS INSPECTION OFFICER ORDER IS MANDATORY**

Failure to comply with an Inspection Officer Order issued under section 109 of the CER Act is an offence under section 112 of the CER Act that reads, in part (1) Every person who contravenes subsection 103(4) or fails to comply with an order under section 109 is guilty of an offence and is liable

- (a) on conviction on indictment, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than five years or to both; or
- (b) on summary conviction, to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year or to both.

<b>Inspection Officer</b>	20 December 2024	
	<b>Date</b>	
	<b>IO Designation Number</b>	<b>Signature</b>
	210-517 10 Ave SW, Calgary AB T2R 0A8	

*Please note that:*

1. *In compliance with the CER’s Enforcement Policy, this Order will be posted on the CER’s website.*

2. *All submissions to the CER in response to the Order are to be provided within the CER Operations Regulatory Compliance Application (ORCA) quoting the associated CVA #, Inspection Officer Order #, and any specific measure with which the submission is associated. In addition, the Company is requested to send a copy of any response provided in the ORCA to the Inspection Officer via email.*