



12 July 2005

To: Oil and Gas Pipeline Companies under the National Energy Board's jurisdiction
All Interested Parties

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

Following consultation with external parties, the National Energy Board (the Board) has decided to issue the following direction regarding operations and maintenance activities on pipelines regulated under the *National Energy Board Act* (the NEB Act).

This direction is the result of requests from regulated Companies for clarity on the types of projects that require a section 58 application under the NEB Act. As a result of those requests, the Board initiated a review of operations and maintenance activities, its section 58 Streamlining Order, and statutory requirements.

In consultation with external parties, the Board developed the attached *Operations and Maintenance Requirements and Guidance Notes* to provide the public with greater clarity about how these activities will be regulated by the Board while promoting safety, security, environmental protection, economic efficiency, and respect for the rights of those affected. The result of this initiative is that operations and maintenance activities that were previously applied for under section 58 no longer require an application before they can be carried out. However, the Board will continue to regulate these activities through its inspection and audit programs.

As identified in the attached *Operations and Maintenance Requirements and Guidance Notes*, Companies must notify the Board of certain operations and maintenance activities at least 10 working days before commencing these activities. The requirements for operations and maintenance activities carried out on pipelines regulated under the NEB Act will come into effect on **15 August 2005** and Companies are expected to begin notifying the Board of certain operations and maintenance activities using the Board's e-filing system on that date. Instructions on how to e-file notifications are provided in the attached document.

To support the successful implementation of the *Operations and Maintenance Requirements and Guidance Notes*, a number of other changes are required, including:

- As many of the activities previously in the section 58 Streamlining Order are now defined as operations and maintenance activities, the Streamlining Order has been updated. A new section 58 Streamlining Order has been provided under a separate cover letter.

.../2

- The Board's letter dated 2 December 2002 regarding investigative digs and related pipeline repairs/replacements has been revoked as investigative digs are defined as operations and maintenance activities. Requirements for investigative digs and associated pipeline repairs/replacements are captured in the attached *Operations and Maintenance Requirements and Guidance Notes*.
- The *Onshore Pipeline Regulations* (OPR) and the *National Energy Board Processing Plant Regulations* (PPR) will be amended to include requirements for ongoing public engagement, notification of certain operations and maintenance activities, contaminant sampling and remediation programs, and records maintenance.

The Board has initiated the process of consulting with parties to improve the OPR and will continue consulting with parties throughout 2005. If you would like information on how to become involved in improving the OPR, please contact the Regulatory Development team by telephone at (403) 299-3674 or 1-800-899-1265.

Until such regulations are promulgated, the Board expects all regulated companies to follow the direction set out in the attached *Operations and Maintenance Requirements and Guidance Notes*. The Board intends to review the implementation of these requirements in approximately six months from the date of implementation. If you have any questions about the *Operations and Maintenance Requirements and Guidance Notes*, contact information for the Board has been provided in section 7.0 of the attached document. The Board also encourages parties to submit feedback at any time about the implementation of the *Operations and Maintenance Requirements and Guidance Notes*. Written comments can be sent to:

Mr. Michel L. Mantha, Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8
Facsimile: (403) 292-5503
Email: secretary@neb-one.gc.ca

Yours truly,

A handwritten signature in black ink, appearing to read 'Mantha', with a long horizontal line extending to the right.

Michel L. Mantha
Secretary

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

Requirements and Guidance Notes

7 July 2005

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1.0 Goal

The goal of the *Operations and Maintenance Requirements and Guidance Notes* is to provide all parties with greater clarity about how operations and maintenance activities on pipelines¹ (including processing plants) under the *National Energy Board Act* (the NEB Act) will be regulated, while promoting safety, security, environmental protection, economic efficiency, and respect for the rights of those affected.

2.0 Background

Typical operations and maintenance activities are evaluated by the National Energy Board (the Board) as part of the original application for the construction and operation of a pipeline; therefore, Companies are not required to apply for additional approval to undertake operations and maintenance activities. The Board continues to regulate operations and maintenance activities and to fulfill its mandate through its inspection and audit programs.

The requirements for operations and maintenance activities contained in this document apply to all pipelines regulated under the NEB Act that occur on lands 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 operations and maintenance activities Companies are reminded that they must fulfill the requirements of sections 86 and 87 of the NEB Act.

¹ “Pipeline” is defined in the NEB Act as “a line that is used or to be used for the transmission of oil, gas, alone or with 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.”

3.0 Definitions

Operations and maintenance activities **include**:

1. All activities necessary to safely operate an existing pipeline; and
2. Maintenance activities, upgrades, repairs, or replacements to an existing pipeline or part of a pipeline that do not increase the approved maximum operating pressure (MOP) or diameter of the pipeline.

Operations and maintenance activities do not require an application to the Board under the NEB Act; however Companies will be required to notify the Board prior to undertaking some operations and maintenance activities. (See Figure 1 and section 4.1).

Guidance Notes:

Typical operations and maintenance activities are considered in the original application for approval to construct and operate a pipeline or processing plant (See section 4.1 and Guide A of the Filing Manual). The Board expects that operations and maintenance activities will be undertaken to keep the pipeline working in a safe and environmentally-sound manner provided these activities do not change the approved maximum operating pressure (MOP) or diameter of the pipeline.

In general, “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 operations and maintenance activity.

Upgrades also 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 an upgrade or a replacement, since the function of the installation would not change from what was originally approved.

Upgrades do not include additions of new connections, including a tie-in or hot tap, 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 and are captured on the section 58 Streamlining Order. However, metering or regulating facilities installed for the purposes of measurement or monitoring are considered operations and maintenance activities.

Companies are encouraged to contact the Board for additional clarification related to specific operations and maintenance activities they are planning (see Section 7.0 for contact information).

Operations and maintenance activities **do not include**:

1. Upgrades that result in increases to the MOP, the diameter of the pipeline, and/or permanent increases in airborne emissions or noise levels, above previously approved levels²;
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; and
4. Deactivation (for longer than 12 months), reactivation (where a pipeline has been deactivated for more than 12 months), decommissioning, or abandonment.

The preceding activities require an application under the NEB Act, the *Onshore Pipeline Regulations* (OPR) or the *National Energy Board Processing Plant Regulations* (PPR). (See Figure 1).

Guidance Notes:

See Figure 1 to identify the appropriate application process for the activities that are not considered operations and maintenance. Most of these activities will require an approval under section 52 of the NEB Act or an exemption under section 58; however some may require an approval under the OPR or PPR, or other sections of the NEB Act.

Companies are encouraged to contact the Board if additional clarification is required (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 to inspect operations and maintenance activities that could result in high consequences to landowners, the public or the environment.

Requirements:

In the following circumstances, the Board requires Companies to provide **notification** to the Board of operations and maintenance activities at least **10 working days**³ prior to starting work:

- exposure of the pipe surface for the purpose of integrity assessments, repairs or pipe replacement in areas where there are buildings intended for human occupancy having four or more storeys above ground within 200 metres of the pipe or where the activity takes place within 200 metres of a school, hospital,

² Does not include temporary increases in air emissions and noise emissions during construction.

³ “working days” do not include Saturdays, Sundays, or statutory holidays.

- prison, or other institution where people routinely congregate in large groups (groups of more than 50 people);
- pipe replacements that are greater than 100 m in length;
 - pressure testing of line pipe performed by means other than hydrostatic testing⁴;
 - welding on an in-service pipeline by a Company that has not previously performed in-service welding in accordance with the requirements of clause 10.9 of CSA Z662⁵; and
 - ground disturbance using power-operated equipment within 30 m of a wetland⁶ or a water body⁷, or within 30 m of the substrate of a wetland or water body.

For these activities, 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, kilometer post);
- timing and duration of the activity (e.g., day, week, month);
- reference to section(s) of relevant company manuals or environmental protection plan; and
- a contact person with whom the Board could follow-up.

Guidance Notes:

For notification, the Board requires sufficient information to understand the nature and scope of the operations and maintenance 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 operations and maintenance activities, the Board will rely on the Company's information outlined in its Operations and Maintenance Manual, its Environmental Protection Program, and information resulting from public engagement activities when verifying compliance of operations and maintenance activities.

With respect to the notification requirement for ground disturbance using power-operated equipment within 30 m of a wetland or water body, the Board does not expect Companies to provide notification when driving vehicles on the right-of-way within 30 m of a wetland or water body.

Companies that have the ability to file documents electronically are expected to file notifications through the Board's electronic document repository at www.neb-one.gc.ca.

⁴ Per sections 7 and 23 of the OPR, the Board may require a Company to submit the details of its pressure testing program prior to starting pressure testing.

⁵ Thermit welding (cad welding) does not require notification.

⁶ 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.

⁷ 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.

For more information about filing electronically, please refer to the Filer's Guide to Electronic Submission and the Memorandum of Guidance on Electronic Filing. Both of these documents are available on the Board's Internet site at www.neb-one.gc.ca under the "Submit a Document" heading. Please note that e-mails are not considered electronic filing and will not be accepted.

When documents are filed by hard copy or facsimile, the Board will scan the document into the electronic document repository.

When filing a notification by hard copy, companies should provide 25 copies to the Board. If the company files electronically, one hard copy must be subsequently filed. The hard copy must have attached to it a signed copy of the Electronic Filing Receipt that the system will return to the filer upon receipt of the electronic document. Please file your completed notification with the NEB and address it to:

Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8
Telephone: (403) 292-4800
Facsimile: (403) 292-5503

To view notifications on the Board's Internet site at www.neb-one.gc.ca, first select 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 operations and maintenance activities that are required to safely operate a pipeline and to protect the environment.

Requirement:

For operations and maintenance activities that are unplanned (i.e., the Company is not aware these activities are necessary 10 working days prior to starting 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:

Notification of unplanned operations and maintenance activities does not replace 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 under other relevant legislation.

4.3. *Public Engagement*

Goal:

Companies conduct effective public engagement related to operations and maintenance activities.

Requirements:

The Board requires Companies to engage parties whose rights or interests may be affected prior to undertaking operations and maintenance activities. Companies will document all engagement activities and maintain documentation for audit purposes.

Guidance Notes:

"Public engagement" refers to the range of activities a Company can undertake to share information with members of the public, who may be affected by planned operations and maintenance activities, and to identify and resolve issues or concerns related to these planned 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 engagement goes beyond informing potentially affected members of the public, to involving them in decisions or plans that may affect their lives. Companies must carry out public engagement activities that are reasonable for the scope and nature of the planned activity, and must justify the extent of public engagement carried out, particularly if no engagement is undertaken.

Although not an exhaustive list, the following sources provide Companies with a starting point for guidance on effective public engagement, which could be applied related to operations and maintenance activities:

- National Energy Board *Filing Manual* (2004), Chapter 3
- CSA Z764-96, *A Guide to Public Involvement*
- Canadian Association of Petroleum Producers (CAPP), *Guide for Effective Public Involvement* (1997)
- International Association for Public Participation (IAP2) website, www.iap2.org

At a minimum, Companies will notify landowners and the public of operations and maintenance activities that could affect them prior to undertaking these activities.

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

The Board expects Companies will maintain records of public engagement activities related to operations and maintenance activities for audit purposes. At a minimum, the Board expects the following information related to public engagement activities will be documented and retained:

- Who was involved?
- When did public engagement occur?
- What issues were raised?
- How were the issues addressed?
- What issues were not resolved?
- What follow-up was undertaken to address unresolved issues?

The OPR and the PPR will be amended to include a requirement for Companies to engage members of the public whose rights or interests may be affected by operations and maintenance activities. Eventually, this requirement for public engagement related to operations and maintenance activities may be incorporated into a requirement for a corporate responsibility system, which would provide the overarching framework for public engagement throughout the lifecycle of a facility.

4.4. Record Maintenance

Goal:

Companies maintain documentation for operations and maintenance activities.

Requirement:

Companies are required to keep a record of all operations and maintenance activities undertaken in accordance with CSA Z662-03.

Guidance Notes:

Companies are expected to keep a record of all operations and maintenance activities that are carried out. Companies are also expected to maintain documentation of the operations and maintenance 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 fulfill regulatory obligations to federal, territorial, and provincial agencies for operations and maintenance activities.

Requirements:

Depending on the type and/or location of the operations and maintenance 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. Figure 1 provides additional guidance for other facility filings to the Board.

Guidance Notes:

Since operations and maintenance activities on facilities regulated under the NEB Act do not require a section 58 exemption Order or section 52 Certificate, these activities will not trigger a screening under the *Canadian Environmental Assessment Act* (CEA Act). However, Companies may require approvals under other legislation, such as the federal *Fisheries Act*, the *Navigable Waters Protection Act*, or the *Migratory Birds Regulations* for example, that may also trigger the CEA Act. Companies are also reminded of their 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.

In addition, 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. For example, a deviation of the original right-of-way requires an application under section 45 of 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 operations and maintenance activities for inclusion in the cost of service and/or rate base.

Requirements:

None.

Guidance Notes:

Since operations and maintenance 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 operations and maintenance activities in writing to:

Mr. Michel L. Mantha, Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8
Facsimile: (403) 292-5503
Email: secretary@neb-one.gc.ca

The Board anticipates it will review feedback received at six month 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:

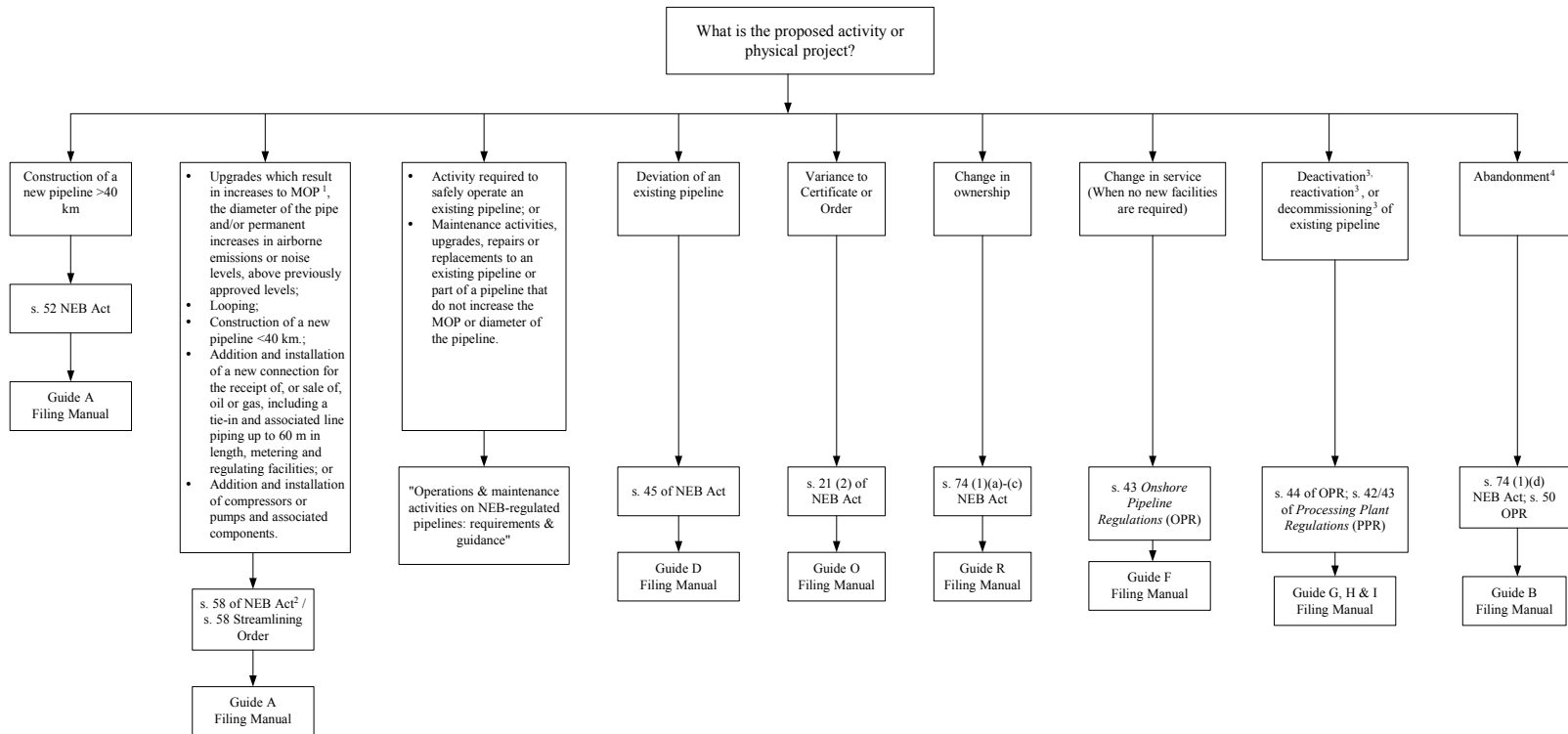
Team Leader, Construction Compliance
(403) 299-2783

Team Leader, Operations Compliance
(403) 299-3194

Construction Compliance (for bilingual service)
(403) 299-2790

NEB Toll-free Number:
1-800-899-1265

Figure 1: NEB-Regulated Facility Filings



¹ MOP = Maximum operating pressure

² If an Order pursuant to s.58 of the NEB Act is granted, a Company is exempted from the requirement of having to obtain a Certificate under s. 52 of the NEB Act. If a s. 58 exemption Order is not granted, a Company will need to apply for a s. 52 Certificate.

³ Definitions for deactivation & reactivation are provided in the OPR & PPR. Proposed definition of decommissioning pending.

⁴ Definition of abandonment provided in OPR & PPR.