



File No.: 9700-A000-4  
24 January 1995

**To: PIPELINE COMPANIES UNDER THE BOARD'S JURISDICTION AND INTERESTED PERSONS**

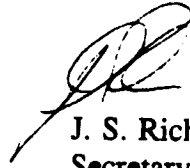
**Re: Memorandum of Understanding between the NEB and TSB**

Attached for your information is a copy of the Memorandum of Understanding (MOU) between the National Energy Board (NEB) and the Transportation Safety Board (TSB), which came into effect on 11 October 1994. The objective of the MOU is to facilitate the exchange of information and the coordination of activities between the two Boards during their respective investigations into pipeline incidents. The following points should be noted:

1. Companies are still required to report incidents to both Boards. Incidents should continue to be reported to the NEB pursuant to the requirements of the *Onshore Pipeline Regulations*, and to the TSB pursuant to the *Transportation Safety Board Regulations*.
2. For those incidents where the TSB investigates, the NEB may not investigate for the purpose of determining cause and contributing factors. The NEB may still investigate for other purposes; e.g. taking emergency remedial measures, investigating possible violations of NEB or Canada Labour Code regulations.
3. Whereas the NEB's *Onshore Pipeline Regulations* require companies to report incidents relating to the construction, operation, maintenance or abandonment of a pipeline, the *TSB Regulations* define reportable commodity pipeline accident or incident as those that result directly from the operation of a commodity pipeline. Accordingly, the scope of application of the MOU is restricted to operational incidents. Section 2.2 outlines those periods that are excluded from the term "Operation".

Should you have any questions or comments regarding the MOU, please contact Mr. Jake Abes at 403-299-2777.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. S. Richardson', written over a horizontal line.

J. S. Richardson  
Secretary

cc. : Mr. K. Johnson  
Transportation Safety Board

Attachments

## MEMORANDUM OF UNDERSTANDING

**BETWEEN:** The National Energy Board, hereinafter referred to as the NEB and represented by its Chairman

**AND:** The Canadian Transportation Accident Investigation and Safety Board, hereinafter referred to as the TSB and represented by its Chairperson

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Whereas, pursuant to the Canadian Transportation Accident Investigation and Safety Board Act (CTAISB Act), the TSB has the responsibility to advance transportation safety; its responsibility being carried out by conducting independent investigations, and if necessary, public inquiries into transportation occurrences to make findings as to their causes and contributing factors and by making recommendations to eliminate or reduce safety deficiencies as evidenced by those investigations;

Whereas, pursuant to the National Energy Board Act (NEB Act), the NEB has the primary responsibility to regulate, *inter alia*, the safe design, construction, operation and abandonment of oil and gas pipelines; the responsibility to investigate accidents involving those pipelines; the authority to hold a public inquiry into, and make findings as to, the cause of the accident or factors contributing to it; and the power to make recommendations relating to the prevention of similar accidents, and the responsibility to issue orders related to the design, operation and abandonment of pipelines;

Whereas, pursuant to subsection 14 (3) of the CTAISB Act, the NEB is precluded from investigating a transportation occurrence for the purpose of making findings as to its causes and contributing factors if the occurrence is or has been investigated by the TSB or if the TSB has informed the NEB that it intends to do so;

Whereas, pursuant to paragraph 14(4)(a) and subsections 14(5) and 15(3) of the CTAISB Act, while the TSB is investigating a transportation occurrence, the NEB is able to continue at its discretion with its own activities (for example, taking emergency remedial measures, conducting investigations for regulatory purposes other than making findings as to causes or contributing factors);

Whereas, reportable commodity pipeline occurrences are required to be reported to the TSB, pursuant to the Canadian Transportation Accident Investigation and Safety Board Regulations (TSB Regulations);

Whereas, incidents relating to the construction, operation or abandonment of a pipeline are required to be reported to the NEB pursuant to sections 60 to 62 of the Onshore Pipeline Regulations; and

Whereas, it is desirable that the TSB and the NEB (the Participants) coordinate their activities without compromising their respective independence and with minimal adverse effect on each other's operations;

Therefore, it is desirable for the Participants to enter into an Memorandum of Understanding providing for the coordination of activities with respect to pipeline occurrences, including investigation procedures and practices and requirements for reporting occurrences, and providing for conflict resolution procedures.

**THE PARTICIPANTS HERETO MUTUALLY AGREE AS FOLLOWS:**

**1. DEFINITIONS**

In this Memorandum of Understanding, (Memorandum) the following words, unless a contrary intention appears, have the following meanings:

**INSPECTION OFFICER** means a person designated as an Inspection Officer pursuant to the NEB Act.

**OCCURRENCE** means any reportable commodity pipeline accident or reportable commodity pipeline incident as those terms are defined in the TSB Regulations.

**PIPELINE** means a commodity pipeline as defined in the CTAISB Act that is used for the transportation of oil or gas as those terms are defined in the NEB Act.

**SAFETY OFFICER** means a person designated as a Safety Officer pursuant to the Canada Labour Code, Part II.

**SCHEDULE** means the Schedule attached to and forming part of this Memorandum.

## **2. APPLICATION**

- 2.1 This Memorandum applies to all occurrences involving oil and gas pipelines regulated under the NEB Act.
- 2.2 For the purposes of this Memorandum, Operation excludes:
- (a) the period before which a pipeline is opened in conformity with a leave to open issued by the NEB pursuant to section 47 of the NEB Act or, where the company has been exempted, pursuant to section 58 of the NEB Act, from the obligation of obtaining such a leave, the period before the date and time of the placement in service;
  - (b) the period during which a pipeline is not used by order of the NEB, pursuant to subsection 48 (1) of the NEB Act;
  - (c) the period after which a pipeline has been deactivated in conformity with an order issued by the NEB pursuant to section 53 of the Onshore Pipeline Regulations and before which the pipeline is reactivated in conformity with section 54 thereof;
  - (d) the period during which a pipeline or a portion thereof is not available for service as a result of maintenance-related activities requiring the removal of the flowing medium in such pipeline or portion thereof; and
  - (e) the period after which a company has abandoned the operation of a pipeline, in conformity with an order of the NEB pursuant to Paragraph 74 (1)(d) of the NEB Act.

## **3. NOTIFICATION OF OCCURRENCES**

- 3.1 Acknowledging that companies are required to report occurrences to the TSB pursuant to the TSB Regulations, upon the NEB being notified of an occurrence, the NEB will forthwith notify the TSB of the occurrence in accordance with the notification procedures set out in the Schedule.

- 3.2 Acknowledging that companies are required to report pipeline incidents to the NEB pursuant to the Onshore Pipeline Regulations, upon being notified of a reportable incident, the TSB will forthwith notify the NEB of the incident in accordance with the notification procedures set out in the Schedule.
- 3.3 Upon being notified that the TSB does not intend to investigate an occurrence, the NEB will request the TSB to conduct the investigation if, in its opinion, a TSB investigation is warranted.

#### **4. EXCHANGE OF OCCURRENCE INFORMATION**

- 4.1 When the TSB conducts an investigation into an occurrence, the NEB may appoint an observer.
- 4.2 Upon being notified that the TSB will conduct an investigation into an occurrence, the NEB will advise the TSB whether it intends to appoint an observer and, if so, will provide the name of that observer.
- 4.3 Where an observer is not appointed pursuant to subsection 4.2, the NEB will assign an official as coordinator to be the point of liaison between the NEB and the TSB for the purpose of exchanging information regarding an occurrence as per the procedure set out in the Schedule.
- 4.4 Subject to subsection 4.7, the observer shall be entitled to review witness statements but shall not be entitled to make copies of such.
- 4.5 The observer having access to witness statements shall conform to the restrictions and conditions provided for in section 30 of the CTAISB Act.
- 4.6 The observer shall also have access to the whole or any part of any recording of voice telecommunications between a main control room and any point on a commodity pipeline system.
- 4.7 Where an observer is an Inspection Officer responsible to enforce the NEB Act and its related regulations or a Safety Officer, responsible to enforce Part II of the Canada Labour Code and its related regulations, that observer will not be entitled to examine witness statements; this does not however, preclude that Inspection Officer from seeking his own interviews with witnesses for the above-mentioned purposes.

- 4.8 The provision of factual information, including electronic data and services, by the TSB to the NEB will normally be effected through the observer or coordinator, as the case may be.
- 4.9 The TSB will notify the NEB, through the observer or coordinator, of any plans to disassemble and to test products or equipment in order to provide an opportunity for appropriate specialists to attend.
- 4.10 The Participants will, in accordance with the procedure set out in the Schedule, establish regular communications by making available to one another information relevant to the investigation of occurrences.

## **5. CONCURRENT INVESTIGATIONS**

- 5.1 In carrying out their respective duties following an occurrence, the Participants will, in accordance with subsection 15 (1) of the CTAISB Act and section 9 of the TSB Regulations, protect the evidence for each other and, more specifically, before disturbing anything on the occurrence site, discuss the situation among them, ensure that the conditions of the occurrence site and the evidence contained therein are recorded by the best means available (including pictures, notes, and, where applicable, plot plans) and inform each other of what has transpired .
- 5.2 In carrying out their respective duties following an occurrence, the Participants will keep each other informed of any significant progress in their own activities in a manner to be agreed to by the Participants; and the Participants shall provide each other with any relevant information as set out in the Schedule.
- 5.3 In carrying out their respective duties following an occurrence, the Participants will keep each other informed of any decision which they believe may impact on the other's activities, and more specifically of the following:
  - (a) any direction given by the NEB under subsection 48 (1) of the NEB Act that work be done to a pipeline or that a pipeline not be used or be used only subject to certain conditions; and
  - (b) any prohibition or limitation of access to an occurrence site by the TSB investigator under subsection 19 (6) of the CTAISB Act.

## **6. MEDIA RELATIONS**

- 6.1 Where an occurrence is being investigated by both Participants, the provision of information to the media will be coordinated between them.
- 6.2 Where an occurrence is being investigated by both Participants, each one will have the authority to release information concerning its jurisdiction, but only the TSB may release information pertaining to the findings as to the causes and contributing factors of the occurrence.

## **7. REPORTS**

- 7.1 As a person with a direct interest in the findings of the TSB, the Chairman of the NEB will be provided by the TSB with five (5) copies of the draft reports sent to the Minister of Natural Resources pursuant to subsection 24(2) of the CTAISB Act.
- 7.2 As a person with a direct interest in the findings of the TSB, the Chairman of the NEB (c/o the Secretary of the NEB) will be provided by the TSB with twenty (20) copies, each in French and in English, of:
  - (a) reports sent to the Minister of Natural Resources pursuant to subsection 24(5) of the CTAISB Act; and
  - (b) any other TSB recommendations, findings, and interim and final reports pertaining to commodity pipeline occurrences.

## **8. CONSULTATION**

- 8.1 At least once a year, the appropriate staff of the Participants will meet to discuss their working relationship, investigations in progress and the need to amend this Memorandum or its Schedule.
- 8.2 In the course of their discussions, the Participants will work towards defining and determining maintenance-related incidents which need not be reported to the TSB.
- 8.3 In the course of their discussions, the Participants will work towards developing media relations procedures and the exchange of general information regarding the CTAISB Act, TSB Regulations and organizational structure.



- 8.4 In the course of their discussions, the Participants will consider developing a mutually accessible occurrence/incident database and will share that database information on at least an annual basis.

## **9. MEANS OF CONFLICT RESOLUTION**

- 9.1 Issues arising out of this Memorandum which cannot be resolved at the staff level will be referred to the Chairperson of the TSB and the Chairman of the NEB for resolution.

## **10. AMENDMENTS**

- 10.1 Proposals for changes to this Memorandum may be made at any time by either Participant and appropriate amendments made as may be agreed upon but shall not be deemed valid unless effected in writing.

## **11. SCHEDULE**

- 11.1 Subject to subsection 11.2, the Schedule attached hereto is incorporated to, and is an integral part of, this Memorandum.
- 11.2 The Schedule will be signed by the Chairperson of the TSB and the Chairman of the NEB or their respective delegates and may be amended at any time subject to their agreement and under their authority.

## **12. TERMINATION**

- 12.1 Either Participant hereto may terminate this Memorandum upon notice of such termination having been given in writing to the other Participant at least three months in advance.

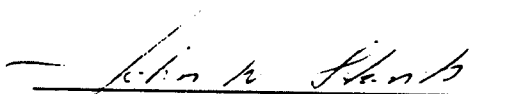
**13. LEGAL LIABILITY**

13.1 This Memorandum indicates the intentions of the Participants hereto but does not create a contractual or legal relationship between them.

**IN WITNESS WHEREOF** the Participants hereto have executed this Memorandum.

Signed for and on behalf of the TSB

Signed for and on behalf of the NEB

  
\_\_\_\_\_  
Chairperson of the TSB

  
\_\_\_\_\_  
Chairman of the NEB

Hull, Quebec  
\_\_\_\_\_  
City, Province

Calgary, Alberta  
\_\_\_\_\_  
City, Province

1994 / 09 / 22  
Year Month Day

94 / 10 / 11  
Year Month Day

## MEMORANDUM OF UNDERSTANDING

**BETWEEN:** The National Energy Board hereinafter referred to as the **NEB** and represented by its Chairman

**AND:** The Canadian Transportation Accident Investigation and Safety Board, hereinafter referred to as the **TSB** and represented by its Chairperson

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### SCHEDULE

#### **1. PROCEDURES FOR THE NOTIFICATION OF OCCURRENCES**

1.1 The NEB will maintain procedures whereby:

- (a) it will forthwith notify the TSB at (819) 997-7887 of:
  - (i) any occurrence that is reported to the NEB; and
  - (ii) any occurrence that is detected by the NEB through its ongoing field investigations and safety audits.

Where possible, this notification will include the full particulars of the occurrence and the information required to be reported to the TSB pursuant to the *TSB Regulations*; and

- (b) it will provide the TSB (c/o the Chief, Pipeline Investigations) with a notification by FAX at (819) 953-7876 of all occurrences referred to in (a).

- 1.2 The TSB will maintain procedures whereby:
- (a) it will forthwith notify the Manager of Accident Investigations Division for the NEB at (403) 299-2777 or (403) 870-1673 of:
    - (i) any occurrence that is reported to it, providing the name of the company, the date and time of the occurrence, the number of injuries and fatalities, the TSB occurrence number and the TSB Occurrence Classification, any particulars relating to the involvement of dangerous goods, a brief description of the circumstances, whether the TSB plans to conduct an investigation and the scope of such investigation; and
    - (ii) any matter requiring urgent action detected during the course of an occurrence investigation or other TSB activities; and
  - (b) it will provide the Manager of Accident Investigations Division for the NEB, by FAX at (403) 292-5503, with a written notification of all occurrences reported to it with the TSB Occurrence Classification clearly indicated therein.

1.3 The Participants undertake to advise each other of important safety information related to their respective mandates.

## 2. COORDINATOR FOR THE NEB

2.1 For the purposes of section 4.3 of the Memorandum, the Coordinator for the NEB will be, unless the TSB is otherwise advised, the Manager of Accident Investigations Division.

## 3. CONCURRENT INVESTIGATIONS

3.1 The NEB and the TSB will make available, on request and in a timely manner, the information related to an occurrence under investigation, contained in their respective general files, libraries, reporting systems and databases. Access will be structured to conform to the requirements of the *Privacy Act*, the *Access to Information Act*, the *CTAISB Act* and the *NEB Act*.

3.2 Routine correspondence will be sent by the TSB officials directly to the concerned NEB officials with copies to the Secretary of the NEB.

**IN WITNESS WHEREOF** the Participants hereto have executed this Schedule.

Signed for and on behalf of the TSB

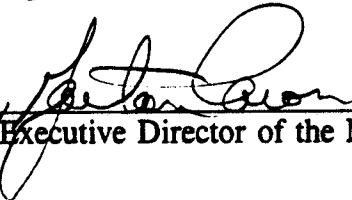
  
\_\_\_\_\_  
Executive Director of the TSB

Hull, Quebec

\_\_\_\_\_  
City, Province

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Year Month Day

Signed for and on behalf of the NEB

  
\_\_\_\_\_  
Executive Director of the NEB

Calgary, Alberta

\_\_\_\_\_  
City, Province

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