

National Energy
Board



Office national
de l'énergie

PIPELINE REGULATION IN CANADA: **A Guide for Landowners and the Public**

(Revised September 2010)



**what are
my rights?**



**how can I get
involved?**



**what
happens
now?**

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After you have heard that a company plans to build a pipeline nearby, you might be unsure how the pipeline may affect you or your community. Questions you may have could include:

- Where will the pipeline be located?
- Will it be safe?
- What kind of pipeline will it be?
- How will the pipeline affect me?
- How do I get involved in the planning process?
- What are my rights?
- Will I be compensated?

The National Energy Board (NEB or Board) has produced this guide to help you get answers to these and other questions. We hope it will help you understand the regulatory process that pipeline projects must go through before they can be built, during construction and operation, and when they are abandoned.

This guide may be helpful for the public, landowners, land occupiers, renters, lease holders, companies, environmental groups, Aboriginal groups, and any other individual or group who wishes to know more about the NEB's process and how to get involved.

The NEB's website (www.neb-one.gc.ca) has a section called "Land Matters" that you may find helpful. Templates and documents to help you participate in our processes are also available. If you have any questions, please call toll free: 1-800-899-1265 and indicate that you have a question about "land matters".

**how can I get
involved?**

**what are
my rights?**

**what
happens
now?**

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CHAPTER 1:

Introduction to the NEB

The National Energy Board (NEB or Board) is an independent federal agency established in 1959 by the Parliament of Canada. The NEB regulates international and interprovincial pipelines, federal energy development, and federal energy trade. The NEB also regulates some aspects of the international electric utility industry. Under this mandate, the NEB carries out the organization's regulatory responsibilities in the Canadian public interest. The NEB reports to Parliament through the Minister of Natural Resources. The Board is made up of several Board Members who come from the private or public sector and have various backgrounds and knowledge.

What does “in the public interest” mean?

The public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that changes as society's values and preferences evolve over time. The Board estimates the overall public good a project may create and its potential negative aspects, weighs its various impacts, and makes a decision.

What type of information does the company have to file?

A company must follow the *National Energy Board Act* (NEB Act) and the *National Energy Board Rules of Practice and Procedure, 1995* (the Rules) when it submits an application.

The NEB's *Filing Manual* provides direction regarding information the NEB would typically expect to see in an application. Applications for a new pipeline facility should include details about:

- the purpose of the proposed project;
- the company's consultation activities and results;
- engineering design of the proposed project;
- an environmental and socio-economic assessment (ESA) of the proposed project;
- economic and financial information; and
- lands information.

The level of detail that the NEB requires in an application to build a pipeline or other facility will depend on the type of project, the complexity or size of the project, its anticipated effects, and the level of public concern. The Board is responsible for weighing these factors before making a decision.

What does the NEB base its assessments on?

Once an application is filed, the NEB begins the assessment of the project and determines the process it will follow. Our duties are set out in the NEB Act.

What are the NEB's goals?

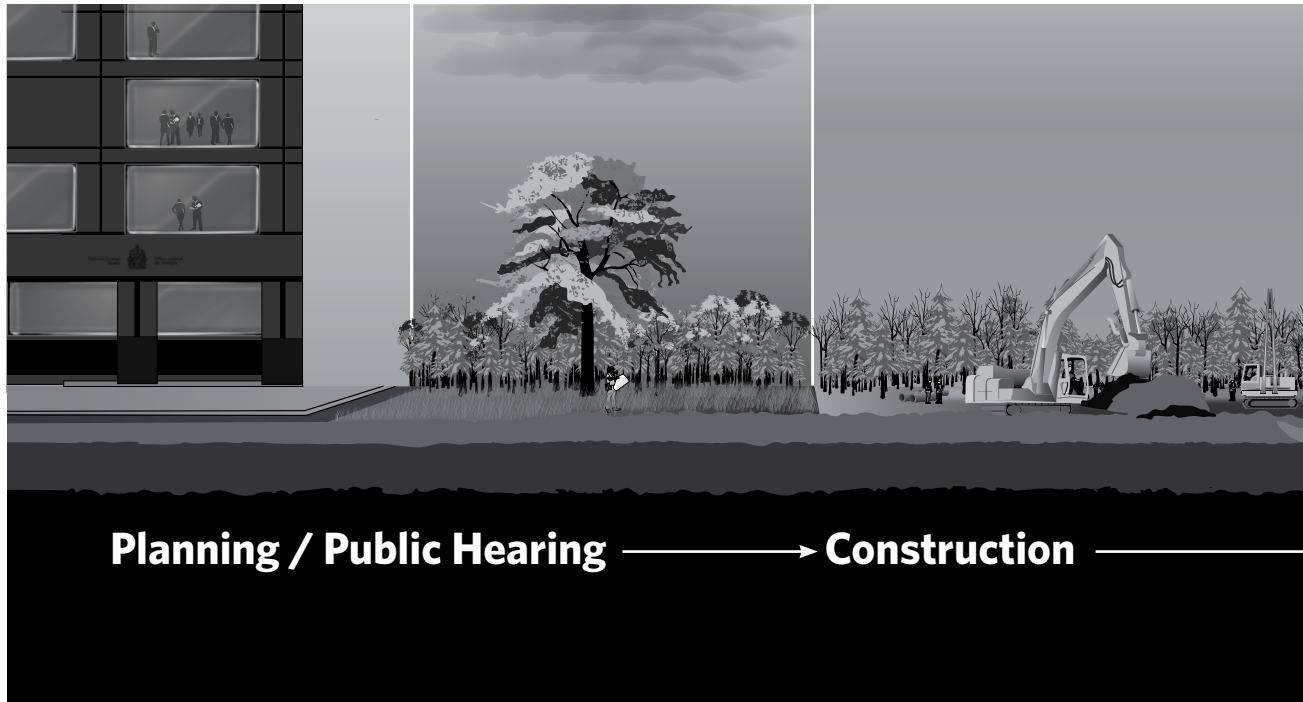
The NEB has identified four goals it hopes to achieve. These are:

- NEB-regulated facilities and activities are safe and secure;
- The environment is protected throughout the lifecycle of NEB-regulated facilities and activities;
- Canadians benefit from efficient energy infrastructure and markets; and
- The rights and interests of those affected by NEB-regulated facilities and activities are respected.

How am I involved as a landowner or member of the public?

It is mandatory for the Board to hold hearings in certain circumstances. A public hearing can be conducted through either a written or oral process. Smaller projects may not always go to an oral hearing, but the public can still be involved in the written process by submitting letters of comment to the NEB. The public is engaged by the NEB through different methods of communication at various stages in its assessment processes, as outlined in this guide.

THE LIFECYCLE OF A PIPELINE



How early should I get involved?

Some companies may ask for input into the planning and design of a project prior to submitting an application to the Board. It is important that landowners and other affected people or groups (which may include tenants, concerned individuals, members of the public, Aboriginal groups, or special interest groups) make their concerns known to the company as early as possible and stay involved in the process. It is a good idea to attend open houses and call information lines or visit websites provided by the company. The NEB will take the public's comments into account when assessing an application.

Will the NEB still be able to help me once a pipeline is approved or built?

The NEB's involvement in a project lasts for the lifecycle of the project. We are involved in the assessment of an application, its construction stages, during the long-term operations stage, and through the abandonment of a project when it is no longer needed. The NEB strives to be responsive to Canadians and holds companies it regulates accountable for their commitments made in relation to a project. The NEB is available to landowners even after a project is built and is in operation, if any issues or concerns arise. For more information on the Landowner Complaint Process, please see Chapter 11.





CHAPTER 2:

Hearings for Project Applications

Under the NEB Act, the Board must hold a public hearing for pipeline projects that are more than 40 kilometres in length. The Board has discretion to hold a public hearing for pipeline projects that are less than 40 kilometres in length. The purpose of a public hearing is to gather and review relevant information, including information from the public, which the Board finds is necessary to make a decision. Construction and operation of a project cannot begin unless the company has obtained the necessary approvals from the NEB.

How can I participate in a hearing?

Depending on the process chosen by the NEB for a project's assessment, there are typically three ways that individuals or groups may participate in a hearing:

1) Filing a letter of comment - a signed, written statement about the writer's views regarding an application which may include information to support these views and a description of how the writer is connected to or affected by the project. A letter of comment must be filed before the hearing, as the company and all other parties may refer to it or comment on it during the hearing.

2) Asking to make an oral statement - similar to a letter of comment, but is presented in-person (orally) at a public hearing. Anyone wishing to provide an oral statement must advise the NEB of their intentions in advance of the public hearing.

3) Applying for intervenor status - this is the most involved level of participation. Intervenors may file written evidence, directly receive all documents filed by the company and other intervenors, comment on evidence and ask questions of all parties involved, and make a final argument.

Intervenors may include companies, consumer and trade associations, various industry associations, governments, interest groups, landowners, tenants, Aboriginal groups, or any member of the public.

Do I have to write anything down if I want to participate in a hearing?

Hearings may be oral or written. Both types of hearings allow the opportunity for the public to participate. If the hearing process is an oral one, at some stages you may still need to file certain documents in hard copy or supply information in written form. If you are only making an oral statement at a hearing you will only have to write to the Board requesting to make an oral statement. If the hearing process is a written one, you will have to submit all of your comments and information in writing. If you are an intervenor, you should be prepared to answer questions about your evidence in writing before the hearing.

In your application for intervenor status, you must explain why you would like to participate in the hearing and list the specific issues you intend to address at the hearing. The NEB may or may not grant intervenor status to everyone who applies.

When preparing for an oral hearing, writing down information supporting your position may sometimes make it easier to present your views. When it comes time to make an oral presentation you may refer to your written notes and read them out loud.

Do you have templates I can follow?

Yes, templates can be found on the NEB's website by going to "Land Matters" and then "Templates for Public Participation".

I hear people refer to a project as a "section 52". What is that?

Section 52 is a provision in the NEB Act (see Appendix A: Sections of the NEB Act and What They Mean for Landowners). It is also referred to as a certificate hearing. Anyone wanting to construct and operate a pipeline which is more than 40 kilometres long must obtain a certificate by applying for approval under section 52. Under this provision, the Board must decide whether a project is in the public interest. The public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that change as society's values and preferences evolve over time. The Board assesses the overall public good a project may create and its potential negative aspects, weighs its various impacts, and makes a decision.

What lands information is looked at during a certificate hearing?

The lands information reviewed during a certificate hearing will include:

- general route or corridor location information;
- the location and total area of the lands that will be required for the project, whether on a permanent or temporary basis;
- the methods the company will use to acquire these lands, including how it will notify landowners and other affected people or groups and sample documents the company will use to buy the lands rights it requires; and
- any other information the Board may decide is relevant, such as methods and timing of construction.

What procedure is followed to determine the exact route of an approved pipeline?

After a pipeline is approved and the certificate has been issued, the exact route must then be decided. This process is known as the detailed route approvals process and may sometimes include a detailed route hearing. For information on the detailed route approvals process and detailed route hearings, please see Chapters 4 and 5.

When should I express my concerns about the route of the pipeline?

Landowners are strongly encouraged to express concerns to the company as soon as they are provided with project information so that more time can be devoted to address these issues at the company's planning stage. If a landowner has concerns about the project itself or the general pipeline location, these concerns must be made known at the certificate hearing - not at a detailed route hearing.

Participant Funding:

A participant funding program has been established by the NEB to provide some financial assistance in support of timely and meaningful involvement of the public in the NEB's oral hearing process for facilities projects. The participant funding program will be accessible to Aboriginal groups, landowners, and certain non-industry not-for-profit organizations. For full program details, please refer to the NEB's website at: www.neb-one.gc.ca.

What can affect a company's proposed route?

When a company works on its pipeline plan and design, it needs to make decisions about how and where to build the pipeline. Things such as natural land features, environmentally sensitive areas, soil type, and the location of houses, roads or other facilities will have an influence on the route of the pipeline.

Does the company have the right to survey my lands or enter my lands for field studies without my consent?

The NEB Act allows a pipeline company to enter lands to survey the proposed location of a pipeline or to conduct field studies, examinations and other work that is necessary to determine the location for a pipeline. For example, if the company knows that there are sensitive land features in the area where it wants to build its pipeline, it may decide to conduct field studies to see what it could do to protect the land features, or if it should avoid the area altogether. If the company causes any damage to the property as a result of a survey, field study or examination, the company is required to compensate the landowner. For more information on compensation, please see Chapter 7.

The NEB encourages landowners and pipeline companies to communicate openly and cooperate with respect to reasonable access to land for surveying. If required, the company may ask the NEB to grant an order outlining the terms of access for surveying.

Where can I find complete information on how to participate in a certificate hearing?

For detailed information on the hearing process, please refer to the NEB publication *The Public Hearing Process: Your Guide to Understanding NEB Hearings* which can also be found on our website under "Land Matters" and then "Public Hearing Process".

Often the NEB will hold public information sessions before an oral hearing to let people know how they can participate and to answer questions about the process. The NEB will strive to accommodate requests made for public information sessions in your community. Information on requesting an information session, any deadlines for participants and specific information about the process for a certain hearing are found in a Hearing Order.

Is there anyone at the NEB who can help me understand Board process and the steps I need to take to become involved?

You can contact the NEB at anytime and speak with a staff member who will answer questions with respect to NEB process and how you can become involved. Please call us toll free at 1-800-899-1265 or see the back cover for the Board's full contact information.

What is a Hearing Order?

A Hearing Order provides information on the process the Board will use to conduct the hearing, how parties can participate, and the schedule of the upcoming hearing. The Hearing Order (or another document called a Procedural Update) will usually include details about the date(s), location(s), and time(s) of the hearing, and may also include an initial list of participants and issues that will be discussed. A Hearing Order can be viewed on the NEB website, and a public notice with the Hearing Order information will usually be published in local newspapers. Companies may also use additional forms of media such as radio or television to advertise hearings.

How do I send my information to the NEB?

Providing written information to the NEB can be done by electronic filing (also known as “efiling”) through the NEB website or by faxing or mailing a hard copy. The NEB does not usually accept any other form of submission although exceptions may be made in certain cases. All of the contact information requested on any template should be provided so the NEB has a way to contact you with details about the hearing or to ask for more information.

Will anyone and everyone have access to my information?

The NEB maintains a public record of the information collected and steps taken in an NEB hearing process. Evidence filed for an application from companies and intervenors is made available to the public on the NEB website under “Regulatory Documents”. The oral portion of the hearings is also broadcast live on the NEB website, and transcripts from each day of the hearing are available online.

When a landowner or other interested party submits a document to the Board, it is placed in the electronic repository located on the Board’s website. Landowners and members of the public should be aware that anything they file is a public document and forms an official legal record of the NEB’s proceedings.

If you are an intervenor, all of your evidence (documentation in support of your position) that will be presented at an NEB hearing must be filed in advance of the hearing. Participants to the hearing (the company, intervenors, and anyone else who requests to be kept informed) are usually directly provided with a copy of evidence that is filed but it can also usually be accessed on the NEB’s website.

There are some circumstances where certain information may be kept confidential but this requires permission from the Board. Please call the NEB at 1-800-899-1265 for more information.

What is the electronic repository?

The NEB uses the Regulatory Documents section of its website to organize all of the documents that are submitted regarding a project. This includes the application, any letters the Board will send out regarding process, all of the questions that are asked and the answers provided, anything received from the public regarding the application, and any documents that are provided as exhibits for the hearing. The repository site for the project will continue to be available even after a project is approved or rejected. Sometimes large files or drawings may only exist in hard copy but a reference to them will be found online in the electronic repository. You might also hear the electronic repository called “LiveLink”.

What is evidence?

Evidence is the legal term for the statements, reports, photographs and other materials that participants put together to make their case.

Evidence must be shared with all participants and the NEB before the hearing. Evidence, and the answers provided on cross-examination, form part of the official record on which the decision is made. At the hearing, you do not restate the content of your evidence but you will be called upon to adopt it under oath. Then, you may be questioned about it by other participants.

Can I still participate in an NEB process for a project even though I have signed a land agreement with the company?

Signing a land acquisition agreement does not exclude a person from participating in an NEB process. However, you may wish to assess whether your participation in an NEB process may be a breach of your land agreement.

Do I need a lawyer to participate in NEB hearings?

You do not need to hire a lawyer to participate in an NEB hearing or any other NEB process. Some people may be more comfortable having a person speak on their behalf, and a request may be made to the Board for this person to be anyone you designate, but it does not have to be a lawyer.

Is the process different for Aboriginal groups?

Aboriginal groups or individuals may have specific concerns about the effect a project may have on their rights and interests in lands affected by a proposed project. This is usually referred to as impact on traditional land use or traditional way of life. Companies are expected to notify and invite all Aboriginal groups that are in the immediate vicinity of the project as well as those who have traditional territory in the area of the project. Aboriginal groups may participate in the NEB hearing process using the same participation options described earlier in this chapter. Ceremonies and song are sometimes used during oral statements.

More information can be found on the NEB's website by going to "Land Matters" and then "Aboriginal Groups".

What if I disagree with the Board's decision?

Decisions of the Board are final unless the Board is asked to review and/or vary its decisions under section 21 of the NEB Act and section 44 of the Rules. The Board considers any request for a variance and will communicate its decision to all of the parties who were involved in the initial process. Parties who may not agree with the decision can seek a court appeal pursuant to section 22 of the NEB Act.

A copy of the NEB Act or the Rules can be found on the Board's website or you may request that a copy be mailed to you by contacting the NEB Library. For the Board's full contact information please see the back cover.



CHAPTER 3: Other Projects

Besides the pipeline projects that go to a public hearing, the NEB also receives applications for many other projects. Section 58 is the section of the NEB Act which allows companies to apply for other projects such as applications for new above ground facilities or pipelines less than 40 kilometres in length. The NEB also receives applications under other sections of the NEB Act for projects such as: the sale of a pipeline or facility to another company; approvals for companies to stop using pipelines for a period of time (decommissioning); and changes to the route of pipelines after they are approved or built.

Is the application process and required information the same as for hearing projects?

Depending on what the company is requesting approval for, a company will apply under various sections of the NEB Act (see Appendix A: Sections of the NEB Act and What They Mean for Landowners). As listed in Chapter 1, the NEB considers all relevant information prior to making its decision. The amount of information the NEB expects companies to provide is relative to the type of project and the potential impact on people, the environment, land use, Aboriginal concerns, and the level of public interest.

Information filed in a hearing is retained as a record of the proceeding and is publicly available throughout and after the hearing, subject to certain circumstances where parties may seek the Board's permission to protect certain information. See Chapter 2 for more information.

Does the company still need to consult with landowners and the public on these projects?

The NEB *Filing Manual* states that the NEB expects companies will start a consultation program as soon as possible in the planning phase of a project. The program will provide relevant and timely information which is accessible by the public and continues throughout all phases of a project. An individual may receive formal project information in person, read about the project in the newspaper, or find out about it at an open house in their community.

Sometimes the company will provide you with a non-objection letter for your signature. Usually this letter will state that you do not have any outstanding concerns about the project. Signing this letter may also be seen as an indication that you do not intend to participate in the NEB process.

Electricity:

Applications for International Power Lines (IPLs) follow a different process for certain phases. More information can be found on the Board's website by selecting "Land Matters."

Changes to the Route:

Changes to a route after a certificate approval include modifications or variations that are within the right-of-way, within the approved corridor, or sometimes beyond the area approved by the large project certificate.

Changes to the route can be made for a variety of reasons, such as to avoid rare plant and animal species not previously identified, to avoid obstacles on private lands, to accommodate landowner requests, or because of the type of soil or geography in the area of construction.

Will there still be a public NEB process?

Projects which do not go through a hearing can still involve the public. Individuals or groups may still submit a letter of comment or otherwise make statements on other project applications. Sometimes projects under this category generate a lot of interest from the public and a public hearing (oral or written) may be held.

For further details on how you might participate in a hearing, please refer to the information on the public hearing process found in Chapter 2 and on the Board's website by going to "Land Matters" and then "Public Hearing Process."



CHAPTER 4:

Approval of the Detailed Route of a Pipeline

For projects that do not require a certificate, the company may go ahead and construct the project once it has received NEB approval. For projects that do require a certificate, the company cannot construct the project until it has applied for and received NEB approval of the detailed or exact route.

What is a PPBoR?

If a certificate is issued, the company is required to file its Plan, Profile, and Book of Reference (PPBoRs) with the NEB. A plan and profile is a drawing of the pipeline as seen from above (aerial view) and from the side (profile view) showing the exact proposed location of the pipeline. The book of reference identifies the lands, provides the names of the landowners and land occupants, and shows the dimensions (length, width and total area) of the right-of-way required for the pipeline.

How can I learn about the company's application for the detailed route?

Once the company files the PPBoRs with the NEB, these documents are available to the public.

The company must publish a notice in local newspapers and give written notice to all landowners who have an interest in the lands along the pipeline route. The newspaper notice usually includes a map and a list of the lands crossed by the pipeline. It will explain how objections to the detailed route can be filed with the Board.

Landowners who have an interest in the lands which will be crossed by the pipeline route will be provided with a notice in person. This notice will show where the detailed route proposes to cross the landowner's property and will provide information on how the landowner can oppose the proposed route.

Who can oppose the detailed route of a pipeline?

You can oppose the detailed route if you are a landowner who has been served with a notice about the detailed route of the pipeline. You can also oppose the detailed route if you are a person who anticipates that your lands may be adversely affected by the proposed detailed route of the pipeline.

You can oppose the detailed route (exact location) of the pipeline or the methods or timing of the construction of the pipeline.

If you are concerned about the project itself, no matter where the route is, you should participate earlier in the process. Early participation in the process could mean during consultations with the company before or during the project planning phases and at the certificate hearing.

The detailed route approval process takes into consideration issues related to the exact location and construction of the route - it does not reassess the Board's decision to approve the project.

Some landowner and public concerns about routing might be better addressed during the certificate hearing than at the detailed route stage.

What is meant by “methods and timing of construction”?

Methods of construction describes such things as how the company plans to clear the pipeline right-of-way, remove and store the top soil, install the pipeline, and reclaim the lands. Timing of construction could refer to the time of year when the company plans to build the pipeline, and/or the length of time the construction is expected to last.

How do I oppose the detailed route and how much time do I have to file my opposition?

If you want to oppose the detailed route you must send a letter to the NEB. The statement of opposition must state:

- your interest in the lands that will be crossed by the proposed route, or in other lands that you believe will be adversely affected; and
- your reasons for opposing the proposed detailed route; the route location, the methods of construction, or the timing of construction of the pipeline.

The NEB Act sets out how much time you have to send your written objection. A person whose lands are crossed by the pipeline has 30 days from the date they receive notice of the detailed route. A person who thinks their lands may be adversely affected by the detailed route of the pipeline has 30 days from the last day the advertisements appeared in a local newspaper.

These timelines are fixed in the NEB Act so it is important for landowners to file their statements with the Board before the 30-day period expires.

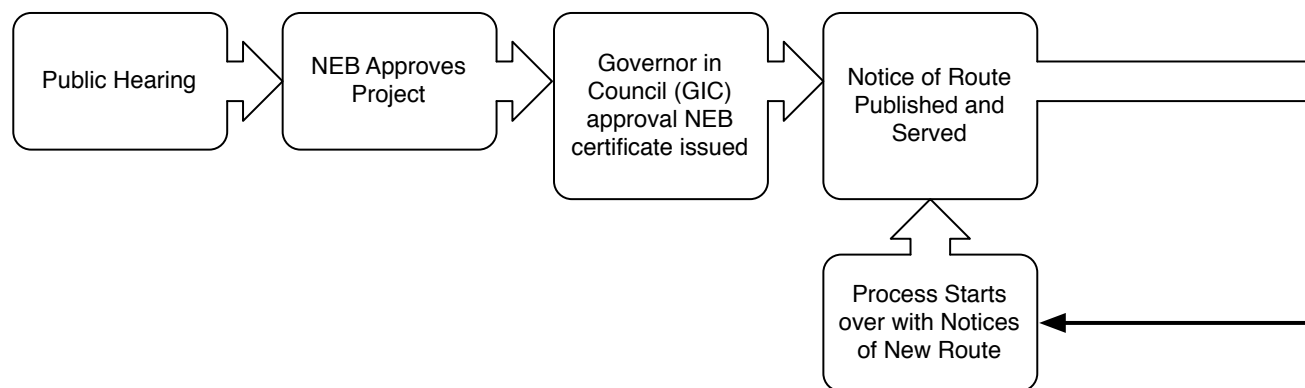
Do you have templates I can follow?

Yes, templates can all be found on the NEB’s website by going to “Land Matters” and then “Templates for Public Participation”.

What happens after I send in my opposition to the detailed route?

The NEB must conduct a detailed route hearing if, within the applicable 30-day period, persons whose lands are crossed by the pipeline or others whose lands are affected raise legitimate objections about the specific details of the pipeline route or about the methods or timing of the construction.

DETAILED ROUTE APPROVAL PROCESS



If an objection is withdrawn, the NEB does not have to hold a detailed route hearing. The NEB can also reject any objections that deal with issues outside of its jurisdiction (such as compensation), or that are found to be frivolous, or not made in good faith.

For more information about compensation, see Chapter 7.

Can I participate in someone else's detailed route hearing?

Anyone with a legitimate interest may apply to the NEB to participate in the detailed route hearing. You must follow the requirements for filing an intervention as described in the *National Energy Board Rules of Practice and Procedure, 1995*. The NEB will decide whether you will be allowed to participate as an intervenor.

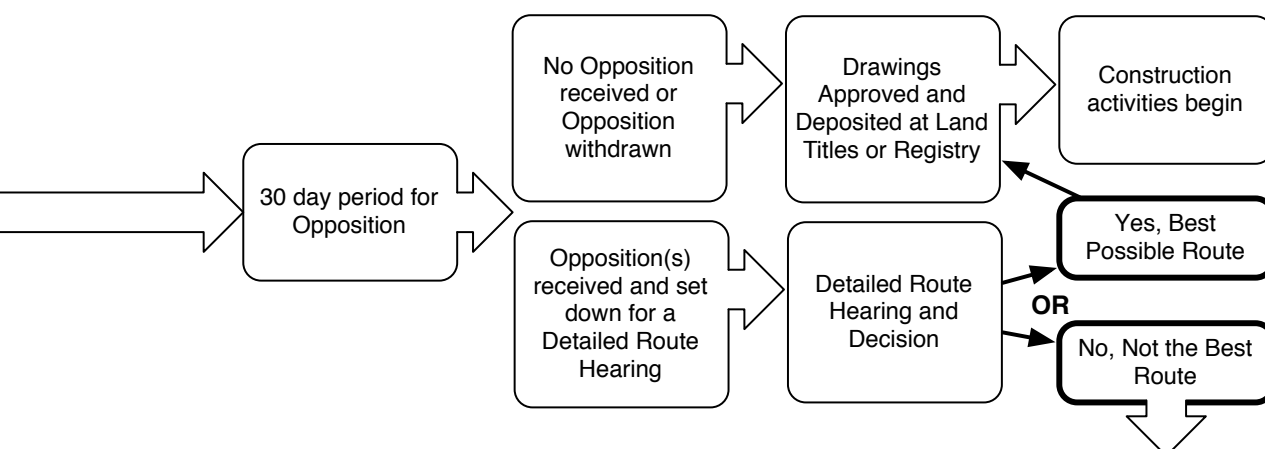
See Chapter 5 for information on detailed route hearings.

What if there is no opposition to the route?

The NEB may approve the PPBoRs for those parts of the proposed detailed route that do not have any statements of opposition. The company files the approved PPBoR with the appropriate provincial government offices (usually land titles or registry) in whatever province they relate to, and the company can then begin construction along these approved segments of the detailed route.

Can the Board approve the route in segments rather than in whole?

Yes, the Board can approve a route in segments. The Board will not approve parts of the route that are subject to any statements of opposition and may also withhold approval on parts of the route that are near to the areas where there are statements of opposition. Work on the pipeline in any non-approved section cannot proceed until the Board approves that section of the route. Approval could follow a settlement between the landowner and the company or Board decision after a detailed route hearing. Decisions on partial approval of a route are made by the Board on a case-by-case basis.





CHAPTER 5:

Detailed Route Hearings

As mentioned in Chapter 4, if the NEB receives a letter of opposition within the 30-day period and finds it meets the criteria set out in the NEB Act, a detailed route hearing will be held in the area where the lands are located.

Can I still be involved in the detailed route process if I have signed a land agreement?

Most people will not sign a land agreement if they oppose the detailed route, but if you have signed one, you are not necessarily excluded from being involved in the detailed route approval process. See Chapter 2 for more information.

How will I find out about a detailed route hearing?

The NEB prepares a notice of hearing or Hearing Order (Hearing Orders are also mentioned in Chapter 2) and requires the company to notify everyone whose written opposition was found to be legitimate. The company is also required to publish the Hearing Order in newspapers in the area where the lands subject to the statement of opposition are located. This allows for anyone else who is potentially affected or interested to be informed about the hearing.

Can I attend and present my views of why I do not think the project or the pipeline route should be approved at all?

No, the purpose of the detail route hearing is to determine the best possible route. Participants should not attend with the plan to argue that the project should not be approved, as that decision has already been made. Anyone wishing to argue against a project's approval should participate in the certificate hearing. Please see Chapter 2 for more information on certificate hearings.

Can I try to settle my issues before the hearing takes place?

The company and the opposing landowner are encouraged to attempt to work out a solution even if the NEB has set a date for a detailed route hearing. This may involve accessing the NEB's Appropriate Dispute Resolution (ADR) process. (See Chapter 10 for information on ADR). If a solution is reached, the landowner may withdraw their statement of opposition, and a detailed route hearing will not take place for that opposition.

Can anyone else attend or be involved in my detailed route hearing?

A detailed route hearing is open to the public. Anyone may attend and observe the hearing. In addition to the landowners whose lands would be crossed by the pipeline and those people whose lands may be adversely affected, anyone with a justifiable interest may apply to the NEB to participate in the detailed route hearing. This is similar to applying to be an intervenor in hearings for other projects. The NEB will decide whether an applicant has sufficient interest in the detailed route hearing to be allowed to participate. For more information on being an intervenor, please see Chapter 2.

What does the NEB decide after the detailed route hearing takes place?

After receiving all of the evidence presented in the detailed route hearing, the Board considers the evidence presented and decides whether the company has proposed the best possible detailed route for the pipeline and the most appropriate methods and timing for building the pipeline. The NEB may make one of three decisions on the disputed detailed route segment:

- to accept the company's proposed detailed route, with or without conditions;
- to reject all or part of the company's proposed detailed route; or
- to require more information from the participants before making a decision.

If the Board rejects the company's proposed route, does the Board then decide where the route should go?

No, the Board does not select a pipeline route or tell the company where the route should be moved. The Board typically provides guidance on how the parties may proceed to identify and present an alternate route for the Board to consider.

What happens after the Board makes a detailed route decision that I do not agree with? Can I appeal the decision?

The NEB must send a copy of the decision to each participant of the detailed route hearing and to the federal Minister of Natural Resources.

Landowners, tenants, or others who wish to dispute the Board's detailed route hearing decision have two options:

- they can request that the Board review the decision; or
- they may apply to the Federal Court of Appeal for permission to appeal the decision (only on a question of law or jurisdiction).

If the NEB rejects the company's detailed route, the company has three options:

- seek a review of the decision;
- request permission to appeal the decision to the Federal Court of Appeal; or
- reapply with a new location for the rejected segment of detailed route - one that it believes will satisfy the NEB's concerns.

If legitimate oppositions about the new detailed route are received by the NEB, then another detailed route hearing would be required.

When will a detailed route hearing take place? How long does it take?

The timing of a detailed route hearing is affected by various factors such as how many statements of opposition are received and where all of the parties are geographically located. Scheduling of detailed route hearings may also take into account landowners' scheduling, especially if the landowners are involved in seasonal agricultural operations.

The oral part of the hearing may not take very long to complete, but there may be questions to answer in advance of the detailed route hearing. It may also take time to put together information on alternative routes. The entire process may be completed within a few months, or it may take a lot longer depending on the specific situation.

Do I need a lawyer to participate in a detailed route hearing?

You do not need to hire a lawyer to participate in an NEB hearing or any other NEB process. Some people may be more comfortable having a person speak on their behalf, and a request may be made to the Board for this person to be anyone you designate, but it does not have to be a lawyer. You should be prepared to answer questions about your evidence at a hearing or through questioning in writing before the hearing.

How should I prepare for a detailed route hearing?

You should prepare for a detailed route hearing as you would for any other type of hearing (see Chapter 2). Usually the same general procedures are followed as in a hearing for a large project application.

What information should I provide during the detailed route hearing process?

Landowners should provide as much detailed information as possible in support of their opposition during the detailed route hearing. Evidence may include: reports, information or testimony from a professional; sworn statements; registered farming plans; architectural plans for development; maps and photos; specific details on the impacts to the land; information on current or future land use; and proposed alternative routes and details of these alternatives.

At the detailed route hearing, you may point out what you believe to be issues with the company's proposed detailed route and with the construction methods and timing. You are not required to propose an alternate route (or routes), but you may decide to do so. If you do propose an alternate route, you should provide the reasons why you believe that route is equal to, or better than the company's proposed route. Landowners may also be asked questions by the company, the NEB, or by the other landowners involved as intervenors.

What costs am I entitled to receive for participating in the detailed route hearing?

After the detailed route hearing, you may submit a claim to the company for the reasonable costs of participating in the detailed route hearing. Along with your claim, you must provide receipts showing:

- the amount of the actual costs;
- to whom they are owed; and
- the reasons those costs were incurred.

Examples of reasonable costs may include legal fees, professional consultants' fees, or costs for attending the hearing. If you and the company do not agree on the amount of the costs that you claim, you can ask the NEB to determine the amount.

Can I bring up compensation as an issue for the Board to decide?

The Board has no authority to decide on compensation amounts. For more information on settling compensation please see Chapter 7.



CHAPTER 6:

Land Agreements

Land agents or other company representatives may approach you to purchase your lands or obtain them through a land acquisition agreement that allows the company to locate its pipeline or workspace on your lands. This chapter discusses land agreements. For information on compensation please see Chapter 7.

What is a right-of-way?

A pipeline right-of-way (ROW) is the strip of land in which the pipeline will be located. The width of the right-of-way may vary depending on factors such as pipeline diameter and the slope of the land, but it will typically range from 12-30 metres (approximately 40-100 feet) for the entire length of the pipeline.

What is a land acquisition agreement?

A land acquisition agreement gives a pipeline company the right to use the land to construct, operate, and maintain the pipeline.

Can the company and I agree on a land acquisition agreement before a project is approved?

Yes, these agreements may be negotiated with landowners before a project has received NEB approval.

What is an option agreement?

Because the company plans the general route before it files its application with the NEB, the company may begin to negotiate with a landowner at any time even though the landowner may not be affected when the final route is determined. This means that the company may first want to negotiate an option agreement with you. This agreement gives the company the assurance that it can obtain the land rights it needs if the project goes ahead. When you sign an option agreement, you are promising the company that you will sign a land agreement at a later time.

Usually, an option agreement is in effect for a specific period of time. If the specified period of time passes without the company exercising the option, the option agreement will no longer be valid. However, if the option is exercised within the time specified, the terms of the option agreement will come into effect. This means that the company is granted a right-of-way agreement automatically, according to the terms you and the company agreed to in the option agreement.

The option agreement is a legal contract. It contains certain required sections or clauses that cover various rights, but you can also negotiate other terms to meet your particular needs. Before you sign this agreement, it is important to read and understand all of the terms and conditions carefully, or have a lawyer review it for you.

What is an easement agreement?

An easement agreement is a written agreement between the pipeline company and the landowner. Usually an easement agreement allows the company to construct and operate the pipeline while the landowner still owns the lands. An easement agreement sets out the rights and obligations of both the company and the landowner in regard to the use of the lands for the location of the pipeline and will often specify restrictions on the use of the land. The landowner usually sells the easement to the pipeline company for a negotiated amount of money. This money could be paid in a lump sum or in periodic payments.

While the company may present a standard easement agreement, the final form and its contents may be negotiated. However, the form of the easement agreement would be finalized already if an option agreement is already in place. The company has the right to use the lands to build, operate, and maintain the pipeline once it decides to exercise the option agreement and an easement agreement is in effect. The company will then register the agreement with the local land titles or registry office.

An easement agreement may be known by other names such as a Statutory Right-of-Way Agreement, Pipeline Right-of-Way Agreement, or Utility Right-of-Way Agreement.

How long will the agreement last?

An easement agreement will usually contain a clause about how long it lasts. The pipeline company usually keeps its right to the right-of-way indefinitely unless it abandons the pipeline and releases (ends) its easement rights. Until the company removes the easement from the land title or deed, or it is removed by an order of the court, the land remains subject to the easement agreement. The pipeline company, the landowner that signed the easement agreement, and all future owners of that property (whether they buy the property or inherit it) must abide by the terms of the easement agreement.

Who controls the content of land acquisition agreements?

Land acquisition agreements must comply with section 86 of the NEB Act, but it is the parties signing the agreement who control the final contents of individually negotiated agreements. Land acquisition agreements can be enforced by the provincial court in the province where the lands are located.

What does section 86 of the NEB Act say?

The NEB Act (section 86) sets out the required subject areas to be included in an offer for lands and the eventual agreement. These clauses include:

- compensation for all damages suffered as a result of the operations of the company;
- review of compensation every five years for annual or periodic payments;
- protection from all liabilities, claims or suits caused by the company's operations, but not from liabilities, damages, claims or suits filed as a result of the gross negligence or willful misconduct of the landowner; and
- restriction of land use by the company to the line of pipe for which the land is specifically required, unless the landowner agrees to further use.

What must the company do before starting to negotiate for land rights?

Before the company signs an option or easement agreement with you, it must first deliver a section 87 notice to you that must describe:

- what land is needed for the part of the pipeline that will cross your property;
- how the company plans to compensate you for the land it needs;
- a statement of the value of the required land;
- the NEB's process for consideration of the detailed route of the pipeline; and
- a description of the options of negotiation or arbitration that are available if you and the company cannot agree on compensation.

Can the company buy the land outright from me instead of seeking an easement?

Yes, some companies will do this and it may form part of the negotiations. It is more common to see a company seek an easement agreement for a pipeline right-of-way than to purchase the land.

What if I want a lawyer to review the agreement?

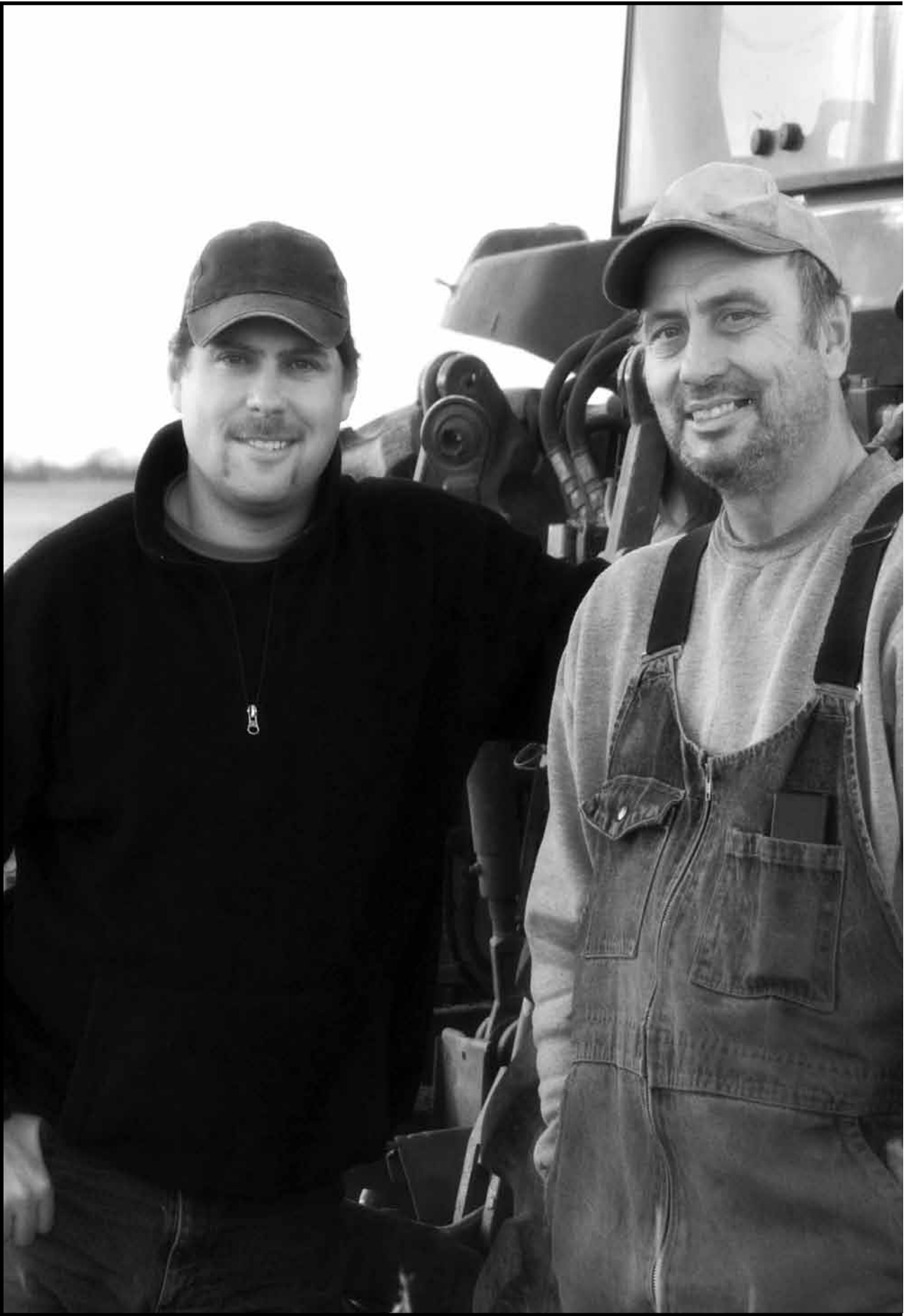
It is your choice if you wish to have a lawyer or anyone else review your documents. You may negotiate with the company to receive reasonable costs for having the agreement reviewed by your lawyer. However, there is no legal right under the NEB Act that entitles you to have these costs covered.

I don't have a copy of my land agreement. Where can I get one?

If you do not have a copy of your existing land agreement, you may ask the company for a copy or you may request a copy for a fee through your provincial government office which handles land and property records.

What if I don't sign a land agreement with the company?

It is a personal choice to sign a land agreement. Negotiating about the contents of the agreement may help to address your concerns. Negotiations should always be done respectfully and in good faith to ensure fairness. Ultimately, you may choose not to sign an agreement. If you choose not to sign an agreement because you cannot agree on mutually acceptable terms, the company may apply to the NEB for a right of entry order as described in Chapter 8.



CHAPTER 7:

Compensation for Land Use

You may not be able to agree with the company on how much you should be paid to compensate you for the use of your land or for damage that may occur because of the construction or maintenance of the pipeline. **The NEB does not have jurisdiction over compensation matters.** The information in this chapter may help you to understand how compensation matters may be addressed.

How is the amount of compensation negotiated?

The amount of compensation paid for an easement is negotiated between the company and the landowner. Most companies retain qualified appraisers to determine the market value of the land. This provides a basis for determining the compensation to be paid for the use of the land. Compensation may also be available for, but not limited to:

- the use of any temporary work space;
- any inconvenience or nuisance caused by the construction of the pipeline;
- loss of use of the land; and
- compensation for all damages suffered as a result of the operations of the company.

What if I disagree with the company about the amount of compensation offered for the use of my land or for damages?

The NEB does not have the authority to determine compensation for the use of land or for damage that results from the construction of the pipeline. Compensation claims for land use or for damage resulting from construction are handled by the federal Minister of Natural Resources.

When a landowner and a pipeline company cannot agree on compensation for lands that the company has acquired or damaged, either party may apply to the Minister of Natural Resources to receive the services of a negotiator, or to have the dispute settled by arbitration. The NEB often refers parties to the Natural Resources Canada (NRCan) Pipeline Arbitration Secretariat (PAS) to settle matters of compensation. For NRCan's complete contact information please see the back cover.

Addressing compensation disputes through NRCan

The information in this box is reproduced from NRCan's website.

I have a pipeline crossing my land. Am I entitled to any compensation?

- Compensation is a private matter between a pipeline company and a landowner.
- However, for pipelines that are federally-regulated, i.e. by the National Energy Board, when a landowner and a pipeline company cannot agree on compensation for lands that the company plans to acquire, has acquired or has damaged, either party may apply to the Minister of Natural Resources Canada (Minister) to receive the services of a negotiator, or to have the dispute settled by arbitration.
- To have a negotiator or an arbitration committee appointed, the Minister must, pursuant to subsection 84(a) of the *National Energy Board Act* (NEB Act) be satisfied that the activities of a pipeline company for which compensation is sought directly relate to:
 - (i) the acquisition of lands for a pipeline;
 - (ii) the construction of the pipeline; or
 - (iii) the inspection, maintenance or repair of the pipeline.

How do I apply for the services of a negotiator or an arbitrator?

In either case, your application, on which more details are provided below, should be submitted to:

The Minister of Natural Resources Canada
580 Booth Street
Ottawa, Ontario
K1A 0E4

What information should I include with my application?

Negotiator

- Negotiation proceedings are covered in sections 88 and 89 of the *National Energy Board Act* (NEB Act). To receive the services of a negotiator, a landowner or the pipeline company must serve a notice of negotiation (subsection 88(1) of the NEB Act) on the other party and on the Minister of Natural Resources Canada.
- For a negotiator to be appointed, your application must include a clear and concise statement of the relevant facts and details regarding the proposed compensation.

Arbitration Committee

- To serve a notice of arbitration on the Minister, a landowner should refer to subsection 90(1) as well as subsections 75, 84 and 85 of the *National Energy Board Act*, and to subsection 4(2) of the *Pipeline Arbitration Committee Rules, 1986* that specifically set out the information that must be included.

Addressing compensation disputes through NRCan (continued)

The information in this box is reproduced from NRCan's website.

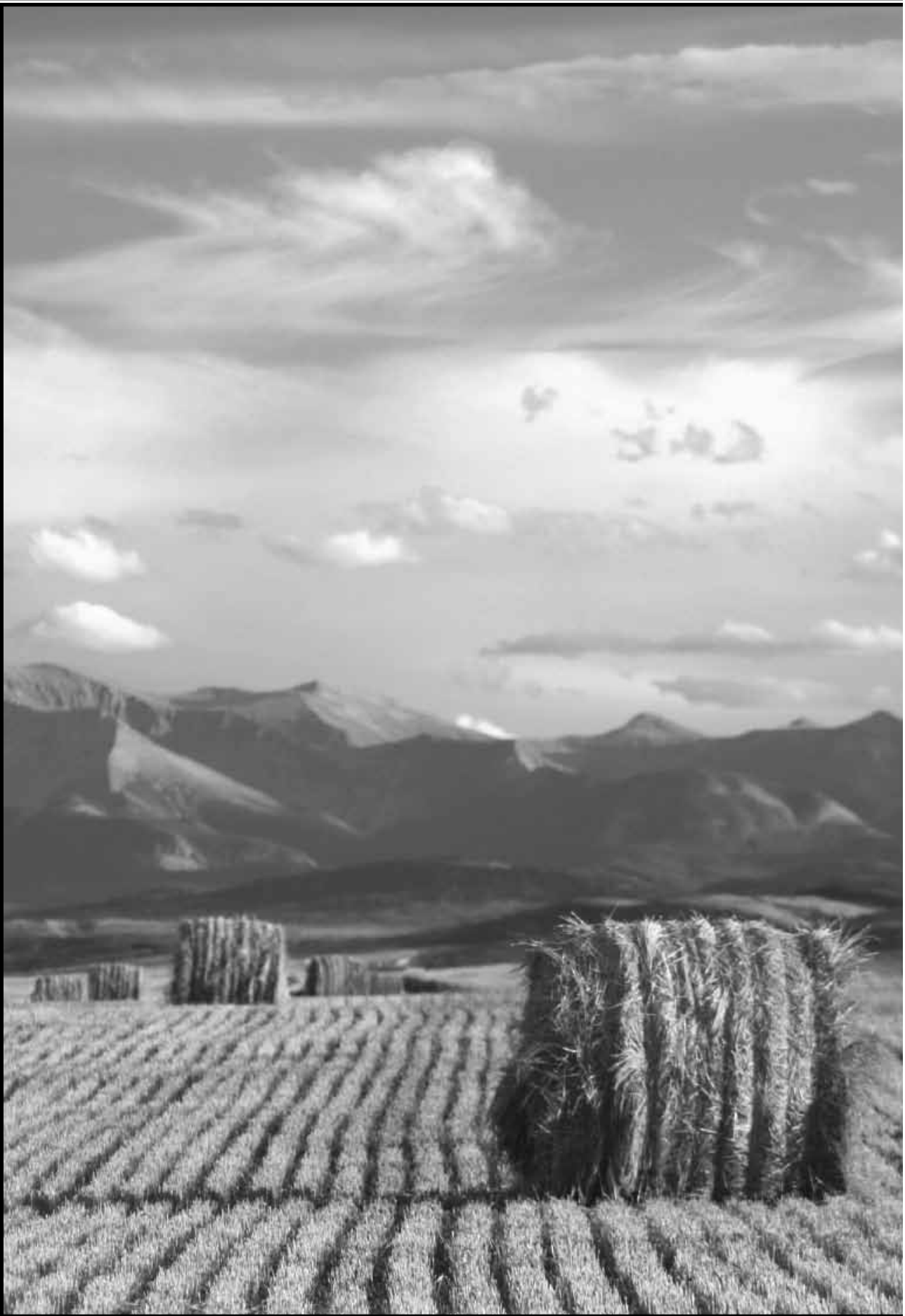
What is the difference between the negotiation option and having an arbitration committee appointed?

Negotiation

- The Minister appoints a negotiator to help the parties reach an agreement.
- The negotiator has 60 days after the start of negotiations to report to the Minister as to the success or failure of the process.
- It is an informal process during which the negotiator does not favour either party and does not decide on the amount of compensation.
- If there is agreement, details are not necessarily included in the negotiator's report to the Minister. However, if they are, they are protected under the *Privacy Act* and would not be released by Natural Resources Canada without the consent of both parties.
- If the negotiations are unsuccessful, either party may apply to the Minister to have the matter settled by binding arbitration.
- The negotiation process is carried out "without prejudice" to any subsequent arbitration proceeding. Whatever happens during negotiations cannot be used against a party during arbitration. In other words, the willingness to make or accept offers during negotiations cannot bind any party for the purpose of the arbitration proceedings.

Arbitration

- An arbitration committee consists of at least three members appointed by the Minister and, once appointed:
 - is completely independent of the Minister; and
 - has its own powers to conduct the arbitration proceedings as it sees fit.
- Unlike negotiations, arbitration hearings are relatively formal. A transcript of what is said is kept. The committee may review evidence and hear from witnesses.
- A committee's decision is binding and enforceable in a court of law.
- Parties may ask a committee to review a decision. Subsection 46 (1) of the *Pipeline Arbitration Committee Procedure Rules, 1986* provides more information about what shall be included in your review application.
- It is your right to appeal an arbitration committee's decision to the Federal Court on questions of law or jurisdiction. An appeal must be filed within 30 days of the decision.
- Evidence gathered at hearings and the committee's decision are protected under the *Privacy Act*. You are free to release information, but Natural Resources Canada will only do so with the written permission of both parties.



CHAPTER 8:

Right of Entry

A company may apply for a right of entry when a landowner refuses to permit a company to enter his or her lands for pipeline-related purposes. Most times the only remaining issue to settle is compensation and the parties do not appear to be able to reach a settlement on their own. In this case the company asks the Board to consider granting an order to allow the company to be able to enter the lands without the landowner's consent.

What is a right of entry order?

This is an order which grants the company an immediate right to enter the lands to which the order applies.

What happens if the company and I do not reach an agreement?

If the company and you do not finalize a land agreement, the company may apply in writing to the NEB asking for a right of entry (ROE) order that would allow the company to have an immediate right to enter the lands. If the NEB grants the right of entry order, the company has to register, record or file that order at the local land titles or registry office. The company then has the right to enter the lands for the purposes stated in the order, such as construction of a new pipeline or facility or to repair an existing pipeline.

How do I know if the company is going to apply for right of entry and what rights do I have?

The company must provide written notice to you if it plans to apply to the NEB for the right of entry. The company must prove to the NEB that it served you with a notice no less than 30 days and no more than 60 days from the date that it will apply to the NEB. This notice must tell you:

- the date when the company plans to apply to the NEB;
- the date when the company wishes to enter the lands;
- the NEB's address, so that you can send the NEB any written objection you may wish to make about the application for right of entry; and
- your right to an advance compensation payment if the order is issued.

What happens when I receive the application for right of entry and how do I object to it?

The company must serve you with a copy of the right of entry application on the same day that it applies to the Board. If you choose to object to the right of entry order, the Board must receive your written objection within 10 days after you have received the company's application. Your letter should give detailed reasons why you object to the right of entry order being issued. The company has up to seven days to reply to your written objection. The company must file any response it makes to your objection with the Board and provide you with a copy.

Do you have templates I can follow?

Yes, templates can be found on the NEB's website by going to "Land Matters" and then "Templates for Public Participation".

How does the NEB decide whether to grant a right of entry order?

The NEB will consider the NEB Act and Rules, the company's application, your written objection, and the company's response to your objection before deciding whether to grant the company's request for the order. Your response should provide well-supported reasons and information for the Board to consider if you do not agree that a right of entry should be granted. If you do not file an objection to the right of entry, this may be interpreted as your acceptance of the right of entry order.

What if I disagree with the amount of compensation being offered (but I do not disagree with the granting of a right of entry order)?

If the NEB decides to grant the right of entry order, you would be entitled to receive some compensation from the company before it enters the lands. If you disagree with the amount of compensation offered by the company, either you or the company may choose the negotiation or arbitration process. See Chapter 7 for information on arbitration and compensation.



CHAPTER 9:

Safety and Damage Prevention

The Canadian Standards Association (CSA) is a non-profit, independent organization that develops standards for quality, safety, and performance for many familiar activities and products, including pipelines. The NEB *Onshore Pipeline Regulations, 1999* require that pipelines be designed, constructed, operated, and abandoned in accordance with the CSA Standard Z662, “Oil and Gas Pipeline Systems.” CSA standard Z662 gives a detailed description of the technical requirements for pipeline systems. It describes how they must be designed, built, tested, and operated (See Appendix C: The Steps in Constructing a Pipeline).

How does the NEB address pipeline safety?

Pipelines are one of the safest methods to transport natural gas, oil and other commodities. Because they are usually buried, pipelines can be at risk for damage from mechanical excavation or construction projects taking place nearby. The NEB’s *Pipeline Crossing Regulations* outline the regulatory requirements for anyone who is planning to work or excavate or build on or near federally regulated pipeline rights of way. Activities within the right-of-way are governed by the NEB Act, the *Pipeline Crossing Regulations*, and agreements negotiated between the landowner and the pipeline company. Compliance with these regulations and agreements will reduce the possibility of accidental damage and see projects proceed safely.

Pipeline companies regularly patrol and inspect the right-of-way, looking for signs of any damage, leaks, or unauthorized activity that could pose a hazard to people, property, or the pipeline. Companies also place signs in the area to alert anyone who wants to work around the pipeline. Under the NEB regulations, pipeline companies are required to create and maintain public awareness programs about safety and emergency preparedness. These programs tell landowners and other people about the presence of the pipeline and how to work safely near it, as well as how the company will deal with emergencies if they occur.

How does the company decide how thick the pipe wall needs to be?

The thickness of the pipe wall depends on many things. The company considers the amount of pressure that will be used to move the contents through the pipeline. The size of the pipe (the diameter) will also be considered, and so will the strength of the steel used in the pipe. The wall thickness will be calculated on the basis of these technical considerations with additional safety factors added. One such safety factor is based on the number of people living or working within the area of the proposed pipeline. When pipe passes through an area with a high population density, there is increased risk of damage to the pipe by third parties. This increased risk is addressed by using thicker-walled pipe or a higher grade of steel. All pipe used in NEB-regulated pipelines must meet the standards set by the Canadian Standards Association.

How are pipelines protected from corrosion?

Several different protective coatings may be used on the outside of steel pipes to protect them from corrosion. The most common coating used today on large-diameter pipelines is epoxy, a paint-like substance that seals the steel surface from air or moisture. Smaller pipelines may be coated with polyethylene, a type of plastic. An external coating is the first line of defence against corrosion.

The second method of preventing corrosion is cathodic protection. Special metals protect the pipe by forcing the corrosion which would normally occur on the pipe to occur on metal that is separate from the pipe (called an anode). The anode is designed to divert the corrosion from the pipe steel to itself. The anode is replaced from time to time, allowing the pipe steel to remain free of corrosion.

What am I responsible for if I live or work near a pipeline?

Working safely around pipelines is in everyone's best interest. The company is responsible for the safety and security of the pipeline, the protection of the environment, and the safety of the people who live and work in the area around the pipeline. Landowners and persons working around the pipeline also have responsibilities.

For your own safety and the safety and the security of the pipeline, you will need to contact the company to get written approval for certain activities on the right-of-way and in the safety zone. These activities include, but are not limited to:

- Operating vehicles or mobile equipment over the right-of-way where a roadway does not exist;
- Reducing the depth of soil covering the pipeline;
- Ploughing deeper than 30 cm (1 foot);
- Ground leveling;
- Installing drainage systems;
- Augering;
- Fencing / Landscaping; and
- Ditch digging/clearing.

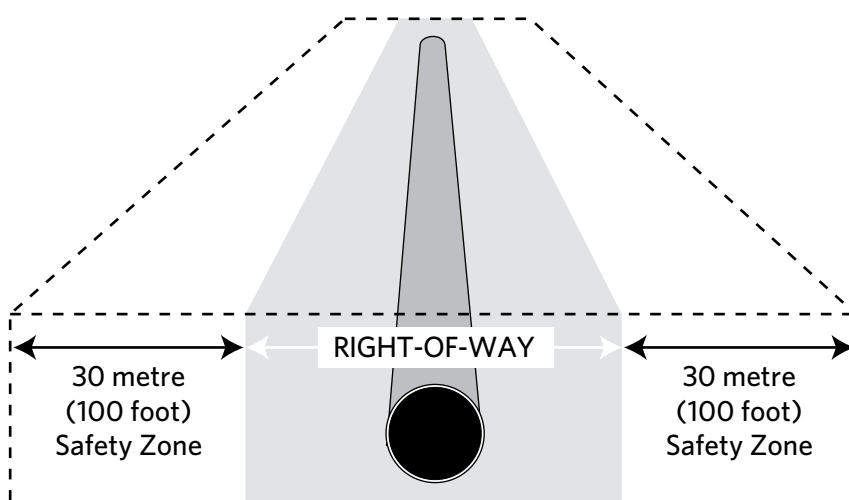
If you are renting out your land, you will want to talk to your tenants about the regulations and agreements, as they will also be expected to abide by them.

Do companies have programs for dealing with emergencies that may occur on the pipeline?

Companies are required by the NEB to have an emergency procedures manual and a continuing education program for the police, fire departments, medical facilities, other appropriate organizations and agencies, and the people who live adjacent to the pipelines. The programs inform people of the location of the pipeline, potential emergency situations involving the pipeline, and the safety procedures that should be followed in case of an emergency. Companies also provide detailed plan of how they will deal with clean-ups if they are required. The NEB assesses these plans and may ask the company to implement additional planned measures or to conduct practice exercises to deal with any emergencies.

What is the safety zone? Can the company restrict what I do with my land in this safety zone?

The safety zone extends 30 metres (100 feet) on either side of the right-of-way. To keep everyone safe, excavation using mechanical equipment or explosives within this zone requires approval from the pipeline company. However, the existence of the safety zone does not mean development of the land cannot occur within the safety zone.



What else can the company do near the safety zone?

When a pipeline company receives a request to locate its pipes, the company may designate a restricted area. This restricted area is situated in the vicinity of the proposed pipe locating activity and may extend beyond the 30 metre (100 foot) safety zone. No excavation may be performed in this area until the pipes are located and marked by the pipeline company or until the expiry of three working days after the date of the request, whichever occurs first. This period of time may be extended if both you and the pipeline company agree.

What if I want to dig or undertake construction activities on or near the right-of-way?

You will need to get the company's permission if you want to cultivate deeper than 30 centimetres on any part of the right-of-way. Activities such as ripping and deep tillage can disturb soil conditions below the surface which could damage the pipeline, its coating material, or result in the instability of the soil around the pipeline.

If you or someone you have contracted to do work for you wish to do any excavation or construction, use machinery or explosives, or cross the right-of-way with vehicles or mobile equipment outside of a traveled roadway, you must obtain the approval of the pipeline company.

Once the pipeline is in the ground, can I still continue my farming operations?

While most farming activities can continue over a pipeline right-of-way, the use of some types of machinery may be restricted. For safety reasons, the company needs to calculate the effects of loads transmitted over the pipeline. Depending on the type of soil or even the pipeline's location, vehicle and mobile equipment traffic over the pipeline may lead to rutting or soil compaction, and reduction in the depth of soil covering the pipeline. Heavy machinery, such as logging trucks which cross over the pipeline, can damage the pipe or its coating immediately or over time. Even damage that may not seem serious at the time can develop into safety concerns.

Often, farming activities can take place over a pipeline right-of-way because farm equipment does not usually cause significant rutting or soil compaction over the pipeline. However, the NEB Act requires that people contact the company and obtain this leave (agreement) prior to moving any vehicles or mobile equipment across the right-of-way. Companies can and do provide a blanket approval for most agricultural machinery.

Landowners wanting to operate vineyards or grow specialty crops such as Christmas trees or soft fruit should discuss their operations with the pipeline company to determine if permission is needed. Some specialty crops interfere with access to the pipeline system for emergency response and maintenance purposes.

Will there be any additional restrictions on my lands written in my land agreement?

Many right-of-way agreements include a clause stating that the landowner must not do certain activities, without prior consent from the company. This may include: excavate; drill; and install or erect pits, wells, pipelines, foundations, pavements, buildings or other structures, across, on, along or under the right-of-way. Crossing or Access Agreements may also include clauses around the use of the land and what type of activity or equipment can be used. If you rent or lease your land, you should communicate with your tenant regarding any agreements in place with the company.

What do I have to do before I dig or construct?

Call Before You Dig

Unauthorized construction, installation of a facility (such as a building or other infrastructure) or excavation over or near a pipeline is illegal.

You must call and obtain written approval from the pipeline company before mechanically excavating or constructing within the right-of-way or mechanically excavating within 30 metres (100 feet) of the right-of-way. Call the pipeline company or a one-call centre if there is one in your area.

The pipeline company is obligated to provide you with the necessary information and instructions to ensure the safety of your project. It is important that whoever is doing the work on or near the right-of-way, such as a tenant or contractor, understands and follows the company's instructions. See Appendix B: Safety Checklist for Construction and Excavation Near Pipelines.

How much time does the company have to reply to me?

The pipeline company has three business days to respond to a request to locate its pipeline.

The pipeline company must inform you within 10 business days whether permission for your project has been granted or refused. If permission has been refused, the pipeline company must inform you why.

What if the company won't let me do what I want?

If you are unable to reach an agreement with the pipeline company for approval, there are provisions in the NEB Act which allow you, in some cases, to apply to the Board for permission. For more information you may contact the NEB at toll free 1-800-899-1265.

Pipeline signs and marker posts do not indicate the exact location of a pipeline or right-of-way, but they do provide the phone number. ALWAYS call before you dig!

Provincial One Call Centres:

British Columbia

BC One Call: 1-800-474-6886
www.bconecall.bc.ca

Alberta

Alberta One Call Corporation: 1-800-242-3447 www.alberta1call.com

Saskatchewan

Sask First Call: 1-866-828-4888
www.sask1stcall.com

Manitoba

Manitoba Hydro Call Before You Dig: 1-888-MBHYDRO
(gas and electrical lines)
www.callb4udig.mb.ca

Ontario

Ontario One Call: 1-800-400-2255
www.on1call.com

Québec

Info-Excavation: 1-800-663-9228
www.info-ex.com

Eastern Provinces

Maritimes & Northeast Pipeline

1-888-444-6677 (outside of Saint John, NB)

Saint John Dig Line

1-866-344-5463 (in Saint John, NB)

ONE CALL CENTRES

The purpose of a One Call Centre is to provide information that will help to prevent damage to buried facilities, like pipelines and utility lines. Landowners who are planning to excavate for fence posts, planting trees, and installing pools and decks should call before undertaking these or any similar types of activities.

The customer service representatives at the call centre will take the necessary information regarding your excavation plans and will notify those companies with underground facilities in your area. *There is no charge for this service.* The companies will determine if they have buried facilities at your excavation site and, if necessary, will locate and mark their facilities before you dig.

What are some common misconceptions about pipelines?

A better understanding about pipelines and where they are buried can go a long way to ensuring your safety when living and working around them. Here are some common misconceptions about pipelines and the facts that make **calling before you dig** an important step.

MYTHS AND TRUTHS ABOUT SAFETY AND DAMAGE PREVENTION

MYTH	The TRUTH is.....
Pipelines are buried so deeply underground that no project could possibly endanger them.	Typically pipelines are buried between one and three metres below the surface. The depth of cover over a pipeline can vary for many reasons.
Company pipeline markers show the exact location of the pipeline.	Company markers are there to indicate the presence of a pipeline in the area. A professional locate is necessary to know the exact location of a pipeline.
Markers show the exact path of the pipeline.	Pipelines do not always follow a straight line between pipeline markers. There could be bends in a pipeline at any location. A locate is the only way to map the route of a pipeline. If your project extends beyond the limits of your first locate, you need a new locate to continue working safely.
There are always equal amounts of cover across a pipeline.	Ground cover across a pipeline can be uneven due to erosion, terrain, or other factors.
The pipeline sits in the middle of the right-of-way.	Pipelines may be located anywhere within the allotted right-of-way. A professional locate is required to know where the pipeline is situated.
If there is no sign – there is no pipeline.	Not necessarily, the only way to know for sure is to call before you dig!

CHAPTER 10:

Appropriate Dispute Resolution (ADR)

The Board realizes that many issues are resolved through direct discussions between landowners and company representatives and never come to the Board's attention. The Board also recognizes that disagreements do happen occasionally, and may even escalate into disputes.

Can the NEB help me settle a dispute with a company?

The Board encourages open and respectful discussion between parties affected by NEB regulated projects and facilities. Through its Appropriate Dispute Resolution (ADR) services, the Board can help parties work through disputes and find practical solutions to issues of disagreement without having to file a formal application.

What is Appropriate Dispute Resolution (ADR)?

ADR is a collection of processes and techniques designed to help people deal with disputes. Negotiation, facilitation, mediation and referral are some of the options to consider. ADR aims to be collaborative, respectful and considerate of everyone's point of view.

When should I consider ADR?

ADR can be chosen at any time during a dispute but the earlier the better. The Board has neutral ADR specialists who will discuss your situation. ADR can be used to settle issues before a hearing, settle disagreements about property access, land reclamation or restoration, and reparation for crop loss and crossings concerns. The NEB ADR specialists cannot determine the amounts of compensation to be paid, but they can help you to talk about your concerns.

What are some of the benefits of ADR?

- ADR is voluntary. You choose the most suitable way to resolve your dispute;
- ADR is fast, flexible and supports respectful discussions;
- solutions are practical and can meet specific needs;
- settlements are decided by the participants and are not imposed by NEB ADR specialists; and
- ADR can complement other regulatory processes and, if there is no agreement, parties may continue to proceed through more formal regulatory processes.

Who can use ADR services? Do I have to use ADR?

Anyone directly involved in a dispute of NEB-regulated facilities is encouraged to use the Board's ADR services, but ADR is not mandatory.

Will I have to come to Calgary for ADR?

Not necessarily, when the ADR specialist contacts the parties a location will usually be negotiated between the two parties.

Is the process private or is it open to the public too?

Everything that happens in ADR is private unless all parties agree that the information can be shared outside of the ADR participants. Nothing that is discussed in ADR goes on the official record for any NEB proceedings. Some parties may have their lawyer attend ADR sessions, but having a lawyer is not mandatory.

Will an NEB Board Member get involved in my ADR process?

Upon agreement by all parties involved in a dispute, the Board will appoint a Board Member, where it considers that it is appropriate to do so, to assist the parties in reaching a voluntary resolution to the matter in dispute. A Board Member who has facilitated or otherwise assisted the parties in any dispute resolution process will not sit on a decision-making panel if that issue remains unresolved and later goes to a more formal Board process such as a detailed route hearing.

What happens if ADR fails?

You will still be able to participate in the NEB and NRCan processes which are available to help address your issues.

Does ADR force a decision on me?

ADR is a voluntary process. No decision will be imposed on participating parties. If there is a final resolution of issues it must be based on an agreement reached by the parties.

Where can I get more information?

The NEB publication *Appropriate Dispute Resolution Guidelines* can be obtained from the NEB's library and is also found on the NEB's website. For the Board's full contact information, please see the back cover. You may also ask questions or request ADR by contacting the Board through our toll free number: 1-800-899-1265.



CHAPTER 11:

Compliance and Landowner Complaints

For the entire life of a project, landowners are welcome to contact the NEB if they have concerns or issues to address or even to make a request for information. Landowners may choose to contact the NEB by telephone, e-mail, fax or mail. Full contact information of the NEB can be found on the back cover.

How does the NEB monitor the construction and operation of a pipeline?

The NEB can monitor the construction and operation of the pipeline in several ways. One way is through field inspections carried out by NEB Inspection Officers and specialized staff who monitor the company's activities to make sure it is meeting the conditions that the NEB has set. Inspections may happen on a set schedule or occur as a result of a complaint or issue. Environmental inspections may be done to ensure the proper reclamation techniques have been applied and the land has been restored to its original state. Sometimes this occurs in response to a formal request from the landowner. The NEB's Landowner Complaint Process can be used once a project is in the construction or operation phase.

What happens if an inspector finds a problem?

If an Inspection Officer finds that a condition is not being followed or there is a situation that needs to be addressed for safety or environmental reasons, he or she may try to resolve the problem in one of three ways:

- address the issue by talking with the company;
- request an Assurance of Voluntary Compliance (AVC) - an AVC is a written commitment from the company to the Inspection Officer that the company will correct the non-compliance problem within a given period of time; or
- issue an order to the company or any person(s) involved with the pipeline either to stop work or take specific actions.

What other activities are possible after the pipeline is constructed?

Anytime after a pipeline is built, the company may decide to make additions or modifications to the pipeline. For example, the company may want to build an additional pipeline in the same right-of-way, add more pumps or compressors along the route, or put an additional right-of-way beside the first. The company may also want to sell the pipeline to another company. All of these activities require NEB approval. The company may also be required to negotiate with the landowners for any additional land rights it may need for the project. For more information on Other Projects, please see Chapter 3.

What is the Landowner Complaint Process?

A formal complaint from a landowner must be received by the NEB in writing and the company will be contacted for follow-up. Generally, complaints are dealt with on a case-by-case basis. The NEB facilitates discussion on ways to resolve the issue or may order an inspection if it is related to compliance with a condition of approval. If parties fail to come to an agreement, the NEB can be asked to intervene by way of a written request to resolve the problem. It is possible that further processes may occur to settle landowner complaint disputes.

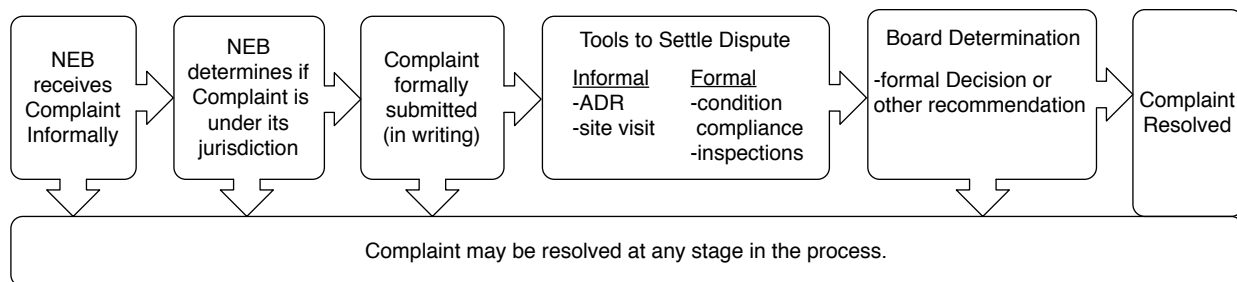
What types of landowner complaints does the NEB usually deal with?

The NEB receives a variety of complaints with respect to reclamation, crop damage, water drainage, noise, damage caused by construction, concerns with representatives from the company or other organizations, and so on. Compensation issues will be referred to the NRCan process (see Chapter 7).

Do you have templates I can follow?

Yes, templates can be found on the NEB's website by going to "Land Matters" and then "Templates for Public Participation".

LANDOWNER COMPLAINT PROCESS



How do I contact the NEB to make a Landowner Complaint?

To initiate a Landowner Complaint or for Land Matters questions, please contact the Board:

Mailing address:

National Energy Board
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8
Telephone: 403 292-4800 or
Toll Free: 1-800-899-1265
Fax: 403 292-5503
Toll Free Fax: 1-877-288-8803
TTY: 1-877-288-8803
E-mail: landsinfo@neb-one.gc.ca

A lot of information can be found on the NEB's website at:

www.neb-one.gc.ca
Click on "Land Matters"

You can also access our online contact form by going to "Land Matters" and then selecting "Contact the NEB".

CHAPTER 12:

Abandonment of a Pipeline

When a pipeline is no longer useful, a company may apply to abandon it. Once a pipeline is abandoned, it cannot be used to carry oil and gas products or any commodity again. In some cases, pipelines may be deactivated or taken out of service for periods of time before they are abandoned. An application for the abandonment of a federally-regulated pipeline requires a written or oral public hearing.

What are the steps involved to abandon a pipeline?

- The company will develop an abandonment plan with input from the landowner, environmental or other technical experts, and any other stakeholders;
- The company applies to the Board for permission to abandon the pipeline;
- The Board may request further information; and
- Once the application is complete, a public hearing is held to decide whether the abandonment would be in the public interest and whether the procedures proposed would provide for adequate safety and protection of the environment.

Are pipelines always left in place when they are abandoned?

Abandoned pipelines can be removed completely or partially or they can be abandoned in place, meaning that the pipeline is left in the ground. The choice between removing or abandoning in place depends on the current and future uses of the land and the impacts each option will have on the surrounding environment. The NEB expects companies to fully consider all options.

Are landowners consulted about abandonment?

The NEB expects companies to engage landowners to provide input into the plan for abandonment.

If you are a landowner, an occupant, the owner of facilities crossed by the pipeline, or any other person or group who may be affected, the company should be in touch with you as early as possible to ensure that your concerns are dealt with at the planning stage of abandonment. Some landowners choose to include clauses in their land agreements which talk about what will happen if the company decides to abandon the pipeline. Despite having a land agreement or contract in place, a company will still have to apply to the NEB for approval of the abandonment.

What is in an abandonment plan?

The procedures are different for each abandonment depending on the location of the pipeline and the future proposed uses for the land. The company's abandonment plan usually addresses key issues that relate to public safety, environmental protection, and future land use. These include:

- land use management;
- ground settling;
- soil and groundwater contamination;
- pipe cleanliness;
- water crossings;
- soil erosion;
- utility and pipeline crossings;
- creation of water conduits, where water travels through the pipeline; and
- related pipeline equipment, e.g. risers, valves, piping, etc.

The Board has formed a committee, which includes landowner representation, to look at the physical aspects of pipeline abandonment. For more information and updates on the committee's discussions, please check the Board's website or call 1-800-899-1265.

Will I have to pay out of my own pocket to take the pipe out?

Landowners should not remove pipelines or facilities. All costs associated with the abandonment will be paid by the company, including clean up of the surrounding area until it is reclaimed to the acceptable environmental standards.

Following the NEB's hearings on the financial aspects of pipeline abandonment (RH-2-2008), the Board confirmed that:

- It is in the public interest that all pipelines regulated by the NEB be abandoned safely and effectively;
- Pipeline companies are ultimately responsible for the full costs of constructing, operating and abandoning their pipelines, and the Board will hold the regulated company responsible for these costs; and
- Landowners will not be liable for costs of pipeline abandonment.

What if the Board approves the abandonment?

If the Board decides to allow the abandonment, the company must complete the steps it committed to take during the hearing and any additional measures that the NEB requires the company to take (for example, testing of soil or reclamation of the right-of-way). Once the NEB is satisfied that all commitments have been met, and the risks to public safety and the environment are eliminated or reduced to an acceptable level as determined in the hearing, the NEB's abandonment order takes effect and the pipeline is considered to be abandoned. At that point, the pipeline is no longer under the jurisdiction of the NEB, but falls under provincial authority.

Can a pipeline be un-abandoned?

No, an application for a new pipeline authorization would have to be made to the NEB.

APPENDIX A:

Sections of the *NEB Act* and What They Mean for Landowners

Section 21	The Board may review and change a decision it has already made.
Sections 31-33	Sets out the required information for drawings and lands information to be provided for landowners to decide if they oppose the detailed route.
Section 34	Sets out the required information for notices to be given to landowners and printed in newspapers about the detailed route, and also what is required to oppose a route.
Section 35	Provides for the Board to be able to hold a detailed route hearing based on set criteria.
Section 36	Under this section drawings for the detailed route are approved by the Board.
Section 39	Provides for costs of detailed route hearings to be set for reimbursement to landowners.
Section 41-42	Companies can apply to fix errors in drawings or landowner information.
Section 45	Companies can apply under this section for small changes to the route, sometimes after it is approved or even after it is built.
Section 46	A pipeline route be moved by order of the Board for specific reasons.
Section 49-51.4	Sets out the role and powers of an Inspection Officer.
Section 52	Companies can apply under this section for a large project and it lists the basics of what is included in the application.
Section 58	Companies can apply under this section for a smaller scale project – examples are listed.
Section 58.1-58.4	Information on applying for approval for international power lines.
Section 73	Allows companies to enter a landowner's lands to survey and for various other reasons listed here.
Section 74	Companies must ask the Board if they are going to sell or abandon their pipeline or facilities.
Section 86	Sets out the wording and provisions that should be covered in a land agreement
Section 87	Sets out what should be included in a notice to an owner of lands – the mandatory information about land acquisition and the Board
Sections 75, 84, 85, 88-103	NRCan provisions on negotiation and arbitration process for compensation determination.
Section 104	Sets out the requirements for a Right of Entry application.
Section 112	Sets out the rules for crossing pipelines and the 30 metre safety zone.

Onshore Pipeline Regulations, 1999 (OPR) have information on the safe and continued operation of pipelines as well as abandonment. *NEB Rules of Practice and Procedure, 1995* (often referred to as the Rules) have information on legal requirements, the hearing process, service of documents, the right of entry process, and more.

APPENDIX B:

Safety Checklist for Construction and Excavation Near Pipelines

1. **Plan your activity.** Identify the precise location of your work; check records for evidence of pipeline easements or other buried facilities.
2. **Visit the site** and look for pipeline warning signs or pipeline marker posts.
3. **Contact the pipeline company** and obtain a copy of the pipeline company's guidelines for ground disturbances.
4. **Obtain** the pipeline company's written approval for the crossing.
5. **Make a locate request** (by calling the one call centre where a one call centre exists or by calling the pipeline company where there is no one call centre) to have the pipeline located.
6. **Be on site** when the pipe is located and know the meaning of the pipeline markers.
7. **Give three working days** notice to the pipeline company prior to the commencement of the approved activity unless otherwise agreed on by the pipeline company and the applicant.
8. **Hand expose the pipe** prior to any ground disturbance within three metres of the pipe.
9. **Notify the pipeline company** one working day before backfilling over the pipe.
10. **IMMEDIATELY NOTIFY THE PIPELINE COMPANY IF YOU COME IN CONTACT WITH THE PIPE.**
11. **ALWAYS** follow the instructions of a pipeline company representative.

Each excavation or construction activity is unique, and this guide cannot deal with all cases. If you need further assistance with any excavation or construction activity near a federally regulated pipeline, please call us at 1-800-899-1265 and tell the receptionist you are calling about pipeline crossing information.

The *National Energy Board Act*; the *National Energy Board Pipeline Crossing Regulations, Parts I and II*; *Excavation and Construction Near Pipelines* and other NEB publications are available from the NEB's Library and on the NEB website. Please see the back cover for the Board's complete contact information.



APPENDIX C:

The Steps in Constructing a Pipeline

Once the company gets approval from the NEB and the land rights have been obtained, pipeline construction generally follows these steps:

1. The pipeline location is surveyed (often further studies are done as conditions of pre-construction).
2. Fences are opened along the right-of-way and work space area and may be removed temporarily.
3. Trees are cleared from the right-of-way and work area.
4. The layers of topsoil and subsoil are stripped off and each is stored separately.
5. The ground is graded to provide a smooth and safe work surface.
6. The pipe sections are laid out in order ("stringing" of the pipe).
7. The pipe sections are welded together.
8. The welds are checked using x-ray and/or ultrasonic tests.
9. The trench for the pipe is dug.
10. The pipe is coated with a protective layer.
11. The pipe is lowered into the trench.
12. The trench is backfilled with subsoil to bury the pipe.
13. The topsoil is replaced.
14. The pipe is pressure tested to ensure it can operate safely.
15. The work site is cleaned up (e.g. fences repaired).
16. The pipeline is put into operation with the permission/approval of the NEB.
17. The land is reclaimed.





Thank you for taking the time to learn about the NEB's regulatory process for pipeline projects. We hope this guide has answered many of your questions.

Publications may be ordered by:

- Mailing a request to NEB Library at the mailing address below
- Visiting the NEB Library located on the ground floor
- Telephone: 403-299-3562 or 1-800-899-1265
- Fax: 403-292-5576
- E-mail: publications@neb-one.gc.ca

The NEB's Mailing address is:

National Energy Board
444 Seventh Avenue SW
Calgary, Alberta T2P 0X8
Telephone: 403 292-4800 or
Toll Free: 1-800-899-1265
Fax: 403 292-5503
Toll Free Fax: 1-877-288-8803
TTY: 1-877-288-8803
E-mail: landsinfo@neb-one.gc.ca

For general information about the NEB and the energy sector:

- Mail: General Inquiries at the above address
- Telephone: 403-292-4800 or 1-800-899-1265
- Fax: 403-292-5503
- E-mail: info@neb-one.gc.ca or for lands specific information: landsinfo@neb-one.gc.ca

For settling compensation matters, please contact:

Natural Resources Canada (NRCan)
Pipeline Arbitration Secretariat
580 Booth Street, 17th Floor
Ottawa, Ontario K1A 0E4
Phone: 613 947-5664
Fax: 613 995-1913
E-mail: pas-sap@nrcan.gc.ca (or pas-sap@nrcan.gc.ca in French)
www.pas.nrcan.gc.ca (or www.sap.nrcan.gc.ca in French)

