

National Energy Board



Office national de l'énergie

# National Energy Board

## Landowner Guide

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June 2016



**What are my rights?**



**How can I get involved?**



**What happens now?**

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# FOREWORD:

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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 and responsibilities?
- 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, Indigenous 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](http://www.neb-one.gc.ca)) has a section called "Participation & Lands" 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.

**how can I get involved?**

**what are my rights?**

**what happens now?**





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# CHAPTER 1:

## INTRODUCTION TO THE NEB

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The National Energy Board (NEB) is an independent federal regulator of several parts of Canada's energy industry. It regulates pipelines, energy development and trade in the public interest with safety as its primary concern.

The NEB is Canada's energy and safety regulator. We oversee safety for the full life cycle of a project - from approval to construction to operation to abandonment. We work with communities, sharing the goal of making energy infrastructure as safe as it can be. We are a team of 7 Board Members, 12 Temporary Members and 460 full-time staff.

### 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 recommendation or decision.

### What type of information does the company have to file?

A company must follow the *National Energy Board Act* (NEB Act), applicable Regulations, 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 recommendation or 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, a member of the public, or an Indigenous group?

It is mandatory for the Board to hold hearings in certain circumstances. A public hearing can be conducted through either a written process or a combination of written and oral submissions. Smaller projects may not require an oral hearing, but those who are directly affected or have relevant information or expertise may still be involved in the written process by submitting letters of comment to the NEB.

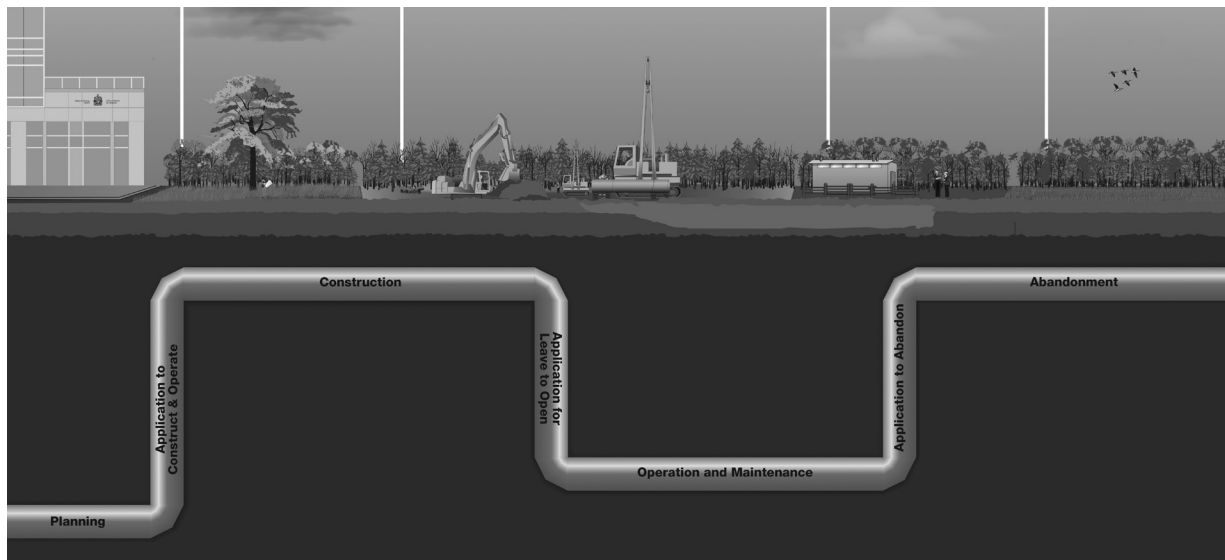
## How early should I get involved?

Some companies may ask for input from parties who may be potentially impacted by a project 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, Indigenous 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 comments from participants 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.

## THE LIFECYCLE OF A PIPELINE



# CHAPTER 2:

## HEARINGS FOR PROJECT APPLICATIONS

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Under the NEB Act, the Board must hold a public hearing for pipeline projects that are more than 40 kilometres in length as well as for abandonment pipeline projects. 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 landowners or participants, which the Board finds is necessary to make its recommendation. Construction and operation of a project cannot begin unless the company has received approval from the Board, met all pre-construction conditions and obtained the necessary approvals from other government departments.

### 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.

### Do you have templates I can follow?

Yes, templates that will assist you in the hearing process can be found on the NEB's website by going to the project page related to the project you are interested in or contacting the Board's Process Advisor for the project.

### 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 page for sections of the Act that pertain to landowners and the public). 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 recommendation.

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### PARTICIPANT FUNDING:

A participant funding program (PFP) 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 hearing process for facilities projects. The participant funding program will be accessible to Aboriginal groups, landowners, and certain not-for-profit organizations. For full program details, please refer to the NEB's website at: [www.neb-one.gc.ca](http://www.neb-one.gc.ca).

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## 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.

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.

## 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 approval 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 project 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.

## 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 infrastructure 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 of 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.

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

National Energy Board Hearing Process Handbook" which can be found on our website under Participation & Lands, Hearing Process and Hearing Process Handbook.

Often the NEB will hold on-line information sessions as well as participation workshops to let people know how they can participate and to answer questions about the process. Information on these on-line sessions, any deadlines for participants and specific information about the process for a certain hearing are found on the Board's website under the name of the project, in a Hearing Order or by contacting the Board's Process Advisor assigned to the project.

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## **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 any time and speak with a Process Advisor who will answer questions with respect to NEB process and how you can become involved.

## **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 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 accept any other form of submission although exceptions may be made in certain cases. Specific information on how to file information is included in the Hearing Order.

## **Will anyone and everyone have access to my information?**

The NEB maintains a public record of all the information filed in an NEB hearing process. Evidence filed for an application from companies, intervenors and commenters 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. Anything filed 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, intervenor), and anyone else who requests to be kept informed are usually directly provided with notice that evidence is filed and can 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 evidence? Evidence is the legal term for the statements, reports, photographs and other materials that participants put together to make their case. (includes IR responses) Evidence must be shared with all participants and the NEB before the hearing. Evidence, and the answers provided on cross-examination (if there is an oral portion with cross examination), form part of the official record on which the decision or recommendation 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.





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### **What is the electronic repository?**

The NEB uses the Regulatory Documents section of its website to organize all of the documents that are submitted during a hearing 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 Participants 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 "REGDOCS".

### **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 respects the terms of your land agreement with the company.

### **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 Indigenous groups?**

Indigenous groups or individuals may have specific concerns about the effect a proposed project may have on their rights and interests in lands. Companies are expected to contact all potentially impacted Indigenous groups that are in the areas of the project. Indigenous groups may participate in the NEB hearing process using the same participation options described above.

More information can be found on the NEB's website by going to "Participation & Lands", "Information of Interest", "Aboriginal People".

### **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 leave to appeal from the Federal Court of 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.

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# CHAPTER 3:

## OTHER PROJECTS

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Besides the pipeline projects that go to a public hearing, the majority of applications received by the NEB do not require a public hearing. Generally, project applications that do not require a public hearing include pipelines that are less than 40 kilometres long; the construction of meter stations; and other small scale projects, often built within company-owned lands. Also, pipelines being deactivated, reactivated, or decommissioned do not require a public hearing process.

Even though a public hearing process may not be required by legislation, the Board may use the hearing process for deciding on applications, if it believes that to do so is in the public interest.

### **Is the required information the same as for hearing projects?**

Regardless of whether there is a hearing or not, the company must consider the requirements of the Filing Manual when preparing its application. The Board carries out a thorough technical assessment of all applications it receives. 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 rights and interests, and the level of public interest.

### **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 that 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 an affected party with a non-objection letter for your signature. Usually this letter will state that there are no outstanding concerns about the project. Signing this letter may also be seen as an indication that there is no intention to participate in the NEB process.

### **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 to the Board for consideration. 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 the Board assesses project applications where a hearing is not required, see National Energy Board Handbook for Facilities Applications on the Board's website by going to "Participation & Lands", "Information of Interest", "Hearing Process Handbook".

### **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.

# CHAPTER 4:

## APPROVAL OF THE DETAILED ROUTE OF A PIPELINE

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For projects that do not require a certificate, the Board most often permits the company to construct the project without further process. 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.

### **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 include:

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- 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 “Participation & Lands” 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 persons whose lands are crossed by the pipeline or others whose lands are affected raise legitimate objections within the 30 days about the specific details of the pipeline route or about the methods or timing of the construction.

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. At any time, the NEB’s Appropriate (or alternative) Dispute Resolution (ADR) services are available and can occur at the same time as a detailed route hearing. Often landowners and companies have been able to resolve issues without needing to participate in a detailed route hearing.

**Who can participate in a detailed route hearing?**

Besides the landowner who opposes the route, anyone with an 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.

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. If you are a landowner whose land is crossed by the pipeline you are directly affected

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

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



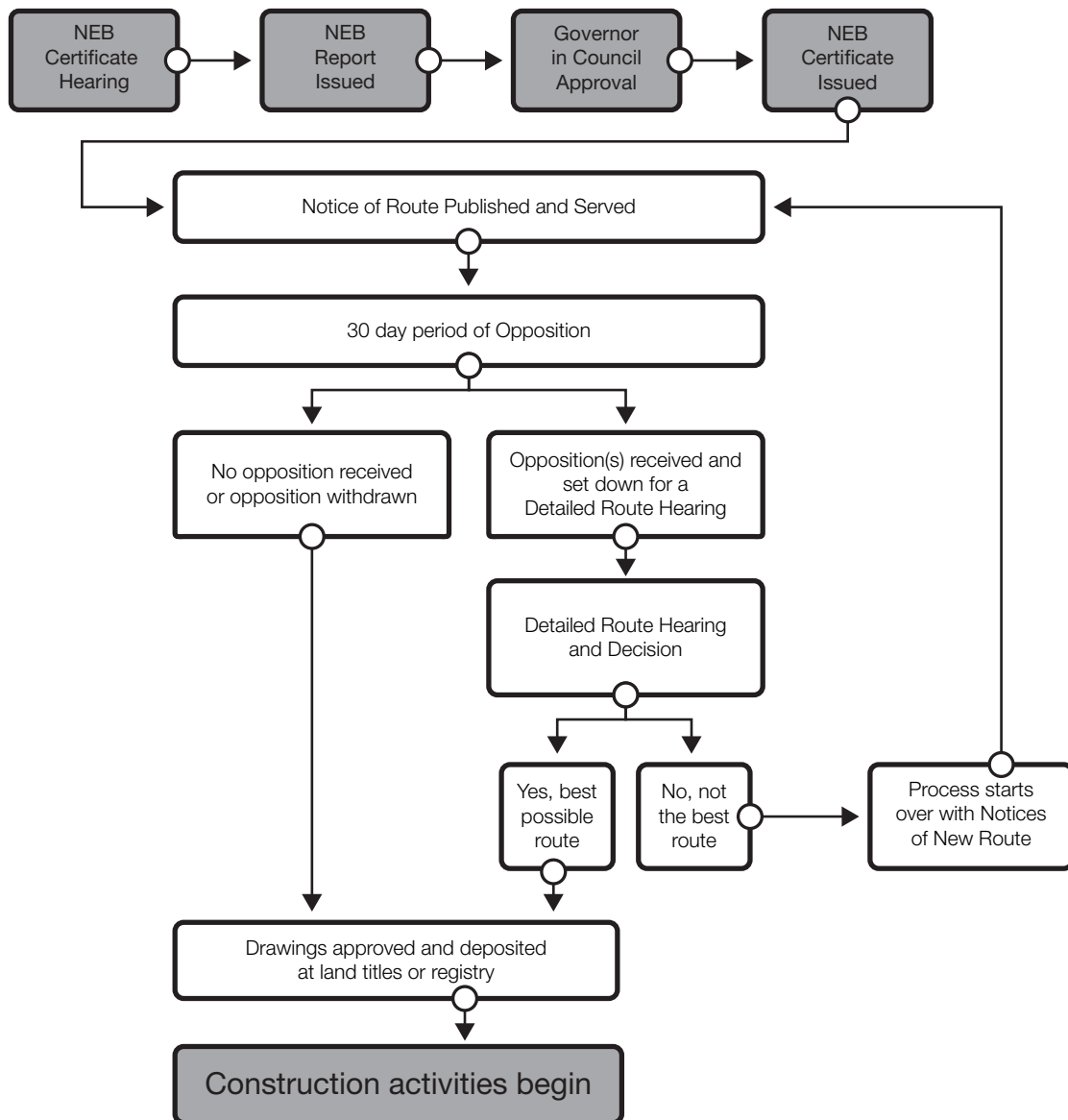
### What if there is no opposition to the route?

The NEB may approve the PPBoRs for those parts of the proposed detailed route that do not have any statements of opposition. The company will then file the approved PPBoR with the appropriate land titles or registry offices 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?

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 and all of the necessary land rights are acquired. Approval could follow a settlement between the landowner and the company or Board decision after a detailed route hearing.

### DETAILED ROUTE APPROVAL PROCESS





## CHAPTER 5:

# DETAILED ROUTE HEARINGS

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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 detailed route hearing is to determine the best possible route. If you are opposed to a proposed project or wish to speak to the decision on whether to approve a project or not, you should plan to participate in the certificate hearing process. Please see Chapter 2 for more information on certificate hearings.

### **Can I settle my issues before the hearing takes place?**

The company and the landowner are encouraged to reach a solution even if the NEB has set a date for a detailed route hearing. The NEB generally encourages parties to consider accessing the NEB's ADR process. (See Chapter 10 for information on ADR). If an agreement is reached, the landowner may withdraw their statement of opposition, and a detailed route hearing will not take place for that segment of the route.

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

A detailed route hearing is open to the public as is the case with other NEB hearing processes. 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 an 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:

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- 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. If the NEB rejects the company's detailed route, the company has four options:

- attempt to reach an agreement with the landowner for a route;
- 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.

**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 Minister of NRCan. 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).

**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 within an approved corridor. 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 the 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.

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## 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, such as evaluations; information on current or future land use; and proposed alternative routes and details of these alternatives.

At the detailed route hearing, you may say 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

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Land Agents or other company representatives may approach you to purchase your lands or obtain rights to 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 is called an option agreement. 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 within a specified 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 specify restrictions on the use of the land. The landowner usually grants the easement to the pipeline company for a negotiated amount of money. This money could be paid, at the option of the landowner, in a lump sum or in periodic or annual payments.

While the company may present a standard easement agreement, the final form and its contents may be amended by negotiation. The company has the right to use the lands to build, operate, and maintain the pipeline once an easement agreement is in effect. The company will then register the agreement with the local land titles or registry office.

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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. However, the parties signing the agreement control the final contents of individually negotiated agreements which may include additional content. The NEB does not regulate any part of the easement agreement content. 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 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. However, it is common to see a company seek to purchase the lands outright if it is proposing to install a compressor station or a pump station.



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### **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 the 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. The Board generally encourages you to consider accessing its ADR services to help you reach a mutually acceptable outcome. 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

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You may not 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 or has occurred 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 Minister of NRCan.

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 NRCan to receive the services of a negotiator, or to have the dispute settled by arbitration. NRCan's Pipeline Arbitration Secretariat (PAS) can settle matters of compensation. For NRCan's complete contact information please see the back cover.



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## 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 NEB, 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 NRCan 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 NEB Act](#) be satisfied that the activities of a pipeline company for which compensation is sought directly relate to:
  - o (i) the acquisition of lands for a pipeline;
  - o (ii) the construction of the pipeline; or
  - o (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 [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.

### 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.

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- 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:
  - o is completely independent of the Minister; and
  - o 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

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A company may apply to the NEB for a right of entry when it is unable to reach an agreement with a landowner for access to lands required for an authorized project.

### **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. Compensation is payable to the owner if a right of entry order is granted.

### **What happens if the company and I are unable to 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 must make payment to the landowner and then it 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 to your property. 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 company's application for a right of entry, 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 a right of entry order being granted by the Board. You may also submit any terms or conditions to be included in the order should the NEB decide to grant the company's right of entry application. 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 "Participation & Lands" and then "Templates for Public Participation".

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### **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.

### **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 compensation from the company before it enters the lands. If you disagree with the amount of compensation offered by the company, you may choose the negotiation or arbitration process. See Chapter 7 for information on arbitration and compensation.



# CHAPTER 9: SAFETY AND DAMAGE PREVENTION

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Under the *National Energy Board Act* (NEB Act), the responsibility to prevent pipeline damage is shared between anyone who plans to conduct an activity near a pipeline and the pipeline company. Pipeline companies are required to ensure that people know how to safely conduct activities near pipelines, and people planning activities near pipelines are required to confirm the location of pipelines and meet all conditions for authorization before they start these activities. The National Energy Board (NEB or Board) provides regulatory oversight for both companies and people planning activities near NEB-regulated pipelines, and must create the conditions necessary to hold persons and companies accountable for carrying out these responsibilities. The NEB's compliance verification, compliance promotion and enforcement activities support this framework and are used to promote safety and environmental protection.

The NEB's *Pipeline Damage Prevention Regulations - Authorizations (DPR - Authorizations)*, and *Pipeline Damage Prevention Regulations - Obligations of Pipeline Companies (DPR - Obligations of Pipeline Companies)* apply to anyone planning construction or a ground disturbance activity near a pipeline, or to cross a pipeline with a vehicle or mobile equipment. Guidance on the regulations is available on the NEB website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)): *Guidance Notes - NEB Regulations for Pipeline Damage Prevention*.

## **What is the purpose of the NEB's regulations for pipeline damage prevention?**

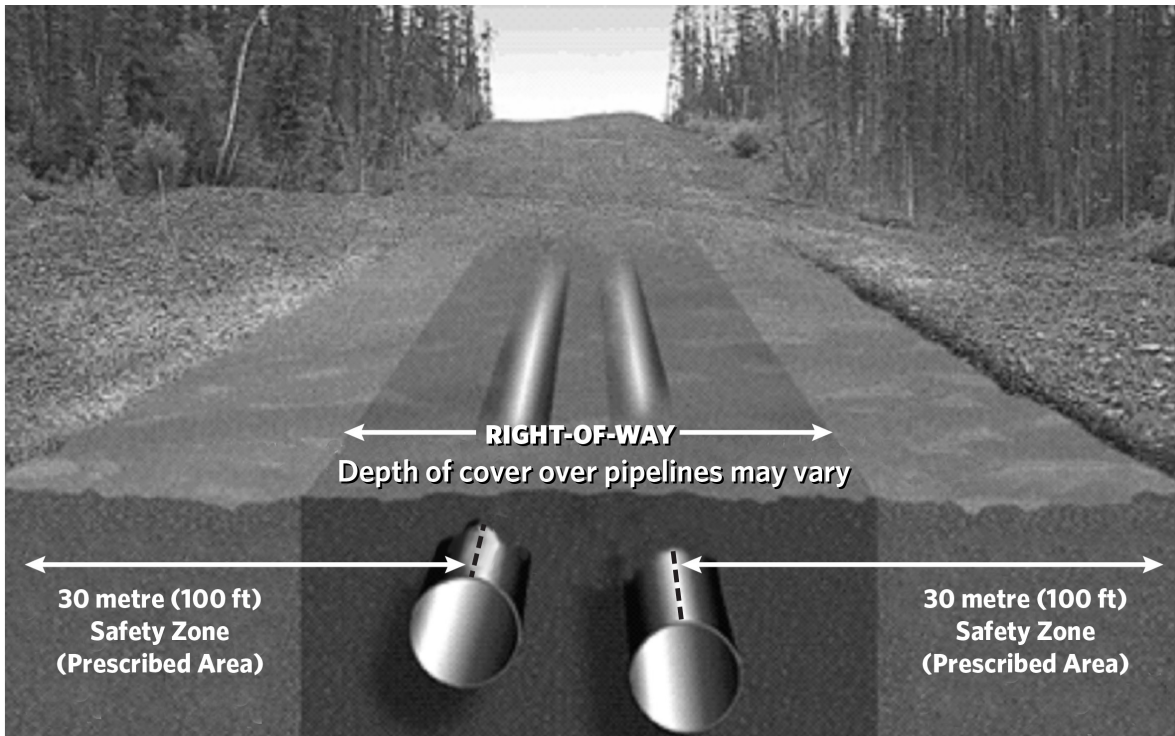
The purpose of the regulations is to ensure safety for all involved. The regulations set up a scheme to ensure that the safety of the pipeline is maintained while allowing activities to occur if they can be conducted safely. The NEB Act prohibits construction of facilities across, on, along or under a pipeline (including the right-of-way), ground disturbance activities within a prescribed area, and crossings of the pipeline (including the right-of-way) using a vehicle or mobile equipment. In order for such activities to be permitted, the requirements outlined in the regulations must be met or the Board must order that the activity can proceed.

The regulations also set the prescribed area (the safety zone) where activities causing ground disturbance cannot occur unless the safety requirements in the regulations are met.

## **What is the prescribed area, or safety zone?**

The *DPR - Authorizations* provides the definition for the prescribed area: it is a strip of land measured 30 m perpendicularly on each side from the centerline of a pipe (see diagram below). This is the safety zone where the safety measures outlined in *DPR - Authorizations* must be met for activities causing a ground disturbance. The key requirements are to obtain the pipeline company's consent to conduct the ground disturbance activity and to make a locate request (click or call before you dig) to locate the pipe.





**A pipeline right-of-way may contain more than one pipeline**

### **What is a ground disturbance?**

A ground disturbance is any activity that may disturb the ground. The NEB Act provides that the following are not a ground disturbance:

- cultivation to a depth of less than 45 cm below the surface of the ground
- activity to a depth of less than 30 cm and that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed

If a proposed activity falls within one of the above-mentioned categories and it does not involve other activities requiring authorization (e.g. vehicle crossing or construction of a facility), it may proceed. However, if the activity involves a ground disturbance that does not fall within one of these categories, and that activity falls within the prescribed area (measured 30 m perpendicularly on each side from the centerline of a pipe), the requirements in the regulations must be met, including the requirement to obtain pipeline company consent.

### **What do I need to do if I'm planning to construct a facility or conduct a ground disturbance activity near a pipeline?**

Under section 112 of the NEB Act, construction of a facility across, on, along or under a pipeline and ground disturbance activities within the prescribed area are prohibited unless authorized through the *DPR - Authorizations* or a Board order. The regulations require that you contact the pipeline company to obtain written consent to conduct any of these activities, and to follow the safety conditions required by the company. The pipeline company has 10 working days to inform a person requesting consent to undertake an activity causing a ground disturbance whether it consents to the activity. Should the pipeline company refuse to provide consent, the company will provide the person making the request with the reasons for its denial. After receiving written consent, you must make a locate request to determine the exact location of the pipeline.





**What happens when I make a locate request?**

When you make a locate request, the one-call centre contacts the pipeline company who will locate the pipeline, and mark it with flags, stakes or paint, or a combination of these. The *DPR - Obligations of Pipeline Companies* requires that the pipeline company locate the pipeline within three working days after the date of the request. This period of time may be extended if both you and the pipeline company agree. See the end of this section for a list of one-call centres across Canada.

**DID YOU KNOW?**

Pipeline signs and marker posts do not indicate the exact location of the pipe within the right of way.

**ALWAYS click, or call, before you dig!**

You can access the nearest one-call centre to make a locate request anywhere in Canada at [www.clickbeforeyoudig.com](http://www.clickbeforeyoudig.com)

**What do I need to do if I want to cross the pipeline?**

Under the NEB Act, crossing a pipeline (which includes the right of way) is prohibited unless authorized through the *DPR - Authorizations* or a Board order. The regulations require that anyone wanting to cross the pipeline with a vehicle or mobile equipment must have pipeline company consent unless the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.

If you are operating a vehicle or mobile equipment for agricultural purposes, the regulations provide that you may cross the pipeline if:

- the loaded axle weight and tire pressures of the vehicle or mobile equipment are within the manufacturer’s approved limits and operating guidelines; and
- the point of crossing has not been identified by the pipeline company as an area where crossings could impact the safety of the pipeline (*DPR - Obligations of Pipeline Companies*).

While crossing a pipeline with a vehicle that is used to perform an agricultural activity is authorized if it meets these requirements, if it is causing a ground disturbance, that activity must also be authorized as outlined in the *DPR - Authorizations*.

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

If you are planning to conduct ground disturbance or construction activities near a pipeline, the pipeline company must inform you within 10 business days whether consent for your project has been granted or refused. If consent has been refused, the pipeline company must inform you why. The pipeline company has three business days to respond to a request to locate its pipeline.

**What if the company won’t give me consent to conduct an activity, or if I can’t meet the required safety measures?**

If you are unable to obtain the consent of the pipeline company or you cannot meet the safety measures outlined in the regulations or by the company, you may file an application with the Board. You can find information in Guide C of the NEB’s Filing Manual about how to make a section 112 application. You can also contact the NEB by telephone at toll free 1-800-899-1265 or by email at [DPinfo@neb-one.gc.ca](mailto:DPinfo@neb-one.gc.ca).





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## **What are my obligations for conducting work near pipeline?**

You must follow the safety measures in the pipeline company's written consent, and the *DPR – Authorizations*. If you are planning to conduct a ground disturbance or construction activity, or to operate a vehicle across a pipeline, you must inform anyone working on your behalf, including employees, contractors and subcontractors, of their obligations under the *DPR – Authorizations*.

If you are renting out your land, you will want to talk to your tenants about the *DPR – Authorizations* as they will also be expected to abide by them.

## **What are the pipeline company's responsibilities?**

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. The pipeline company must comply with the NEB Act and associated regulations in the design, construction, operation and maintenance, and abandonment of pipelines.

Through their damage prevention programs, pipeline companies must assess whether any activities near or across the pipeline are a hazard, and manage and mitigate the hazard. 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 is planning to work near a pipeline. Pipeline companies must also manage vehicle crossings of their pipelines within their damage prevention program. Pipeline companies are required to create and maintain public awareness programs. These programs tell landowners, land users 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.

## **What can happen if the regulations are not followed?**

If the regulations are not followed, critical safety issues may occur, either immediately, or over time. For example, if a person conducting an activity near a pipeline does not make a locate request or contact the pipeline company for details, they may strike the pipe. The pipe may rupture, or the coating on the pipe may be damaged. The coating on a pipe is important because it is the first defense against corrosion. If there is a strike on the pipe, even if you don't notice any damage, the bond between the pipe and the coating can be damaged, which can eventually lead to corrosion. The more times a pipe is struck, the more its integrity and its protection against corrosion are compromised, which can impact the safety of all involved. Damage to the pipe or its coating, regardless of whether there was a release of product or not, must be reported to the NEB.

If the regulations are not followed when conducting an activity that causes a ground disturbance in the prescribed area, constructing a facility near a pipeline, or crossing a pipeline, it is unauthorized, and illegal. The NEB may enforce against unauthorized activities for environmental protection and the safety of all involved.

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

Companies are required by the NEB to have an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect property, the environment or the safety of workers or the public. Companies are required 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. Companies must also have a public awareness program that informs people about how to live and work safely near a pipeline. 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 must also provide a 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 measures or to conduct practice exercises so they are ready to deal with any emergencies.

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## How does my easement agreement apply to what I can do in the right of way?

Many easement 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.

The pipeline company is obligated to provide you with the necessary information and instructions to ensure the safety of all involved. It is important that whoever is doing the work on or near the prescribed area (safety zone), such as a tenant or contractor, understands and follows the company's instructions. See Appendix B for a Safety Checklist.

## What happens if I change the use of the land in the right-of-way?

Landowners wanting to change their land use from the use indicated in the easement agreements for the right-of-way should discuss their proposed 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. Ongoing communication between the landowner and the pipeline company is important to ensure the pipeline is properly protected and people are safe.

## One-Call Centres

National web portal for one-call notification centres in Canada:  
[www.clickbeforeyoudig.com](http://www.clickbeforeyoudig.com)

This portal will also tell you where you have to contact the pipeline companies directly.

Call or click before you dig! Contact your one-call centre.

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## One-Call Centres

The purpose of a One-Call Centre is to provide information that will help to prevent damage to buried facilities, such as pipelines and utility lines. Landowners who are planning to conduct a ground disturbance or construction activity, such as installing fence posts, planting trees, 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 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.

## One-Call Centres in Canada

### British Columbia

[www.bconecall.bc.ca](http://www.bconecall.bc.ca)

BC One Call: 1-800-474-6886

### Alberta

[www.albertaonecall.com](http://www.albertaonecall.com)

Alberta One Call Corporation: 1-800-242-3447

### Saskatchewan

[www.sask1stcall.com](http://www.sask1stcall.com)

Sask First Call: 1-866-828-4888

### Manitoba

[www.clickbeforeyoudigmb.com](http://www.clickbeforeyoudigmb.com)

Click Before You Dig MB: 1-800-940-3447

### Ontario

[www.on1call.com](http://www.on1call.com)

Ontario One Call: 1-800-400-2255

### Québec

[www.info-ex.com](http://www.info-ex.com)

Info-Excavation: 1-800-663-9228

### Atlantic Canada

[www.info-ex.com](http://www.info-ex.com)

Info-Excavation: 1-866-344-5463

1-800-663-9228

Contact the pipeline company directly in the Northwest Territories.

## What are some common misconceptions about pipelines?

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

## MYTHS AND TRUTHS ABOUT SAFETY AND DAMAGE PREVENTION

MYTH	The TRUTH is.....
Markers show the exact path of the pipeline.	<p>Pipelines do not always follow a straight line between pipeline markers. There could be bends in a pipeline at any location. A locate from the pipeline company is the only way to map the route of a pipeline.</p> <p>If your project extends beyond the limits of your first locate, or if the locate expires, you need a new locate to continue working safely.</p>
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.
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 locate from the pipeline company is necessary to know the exact location of a pipeline.
The pipeline is always in the middle of the right of way.	Pipelines can be located anywhere within the allotted right of way. A locate from the pipeline company is required to know where the pipeline is situated within the right of way.
If there is no sign - there is no pipeline.	Not necessarily - the only way to know for sure is to call or click before you dig!



# CHAPTER 10:

## APPROPRIATE DISPUTE RESOLUTION (ADR)

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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 (or Alternative) 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 complaint with the Board.

### What is ADR?

ADR is a collection of processes and techniques that can be used to reach resolution of issues as an addition to a traditional regulatory or litigated approach. ADR aims to be collaborative, respectful and considerate of everyone's point of view. The Board promotes collaborative outcomes through the use of ADR skills and the use of facilitated meetings and mediations.

### When should I consider ADR?

ADR can be chosen at any time during a dispute - and the earlier the better. The Board has neutral ADR specialists who have advanced training in negotiation, facilitation and mediation to assist in evaluating options for resolving 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 work with you and the company to design and plan for a process to assist in reaching a mutually satisfactory outcome on outstanding issues.

### What are some of the benefits of ADR?

- ADR is fast, flexible and supports respectful discussions;
- Mutually acceptable outcomes are practical and can meet specific needs;
- Settlements are decided by the participants and are not imposed by NEB; and
- ADR can complement other regulatory processes and, if outstanding issues remain, 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. ADR is voluntary. You choose whether you would like to use an ADR approach to resolve your dispute.

### Will I have to come to Calgary for ADR?

Not necessarily, when the ADR specialist plans an ADR session with you, a location will usually be agreed to between the parties.

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### **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?**

A Board Member could be directly involved in an ADR process if this is what the parties want. Board Members who have been involved in an ADR process will not be part of a decision making panel if any unresolved issues later go to a more formal Board process.

### **What happens if ADR fails?**

You will still be able to participate in the NEB and NRCan processes which remain 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 a mutually satisfactory 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's ADR Coordinator through our toll free number: 1-800-899-1265.



# CHAPTER 11:

## COMPLIANCE AND LANDOWNER COMPLAINTS

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For the entire life of a project, landowners are welcome to contact the NEB if there are concerns or issues to address or even to make a request for information about a pipeline on your property. 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 monitors 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. 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?

Any time 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.



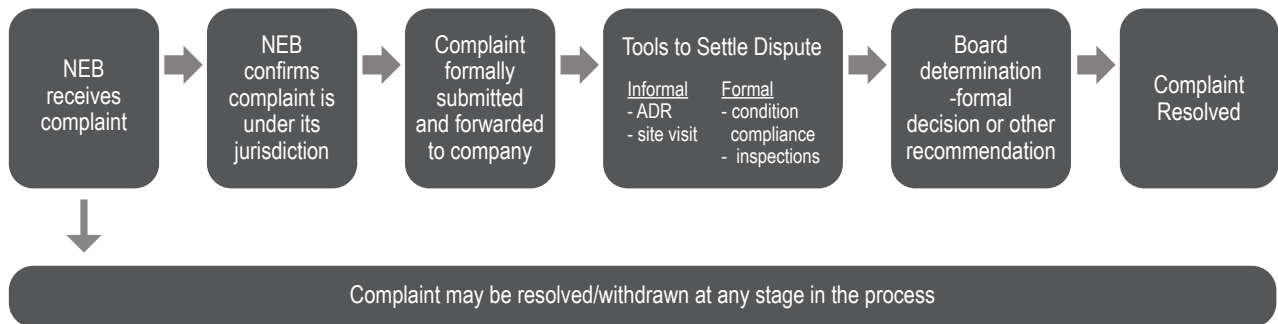
### What types of landowner complaints does the NEB usually deal with?

The NEB receives a variety of complaints with respect to reclamation, crop damage, water drainage, noise, damage caused by construction, concerns with communication by company representatives or other organizations, and so on. Outstanding 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 "Participation & Lands" 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**  
Suite 210  
517 10th Ave SW  
Calgary, Alberta T2R 0A8

**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:** info@neb-one.gc.ca

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

[www.neb-one.gc.ca](http://www.neb-one.gc.ca)  
Click on "Participation & Lands"

# CHAPTER 12:

## ABANDONMENT OF A PIPELINE

When a pipeline is no longer useful, a company must apply to the NEB 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 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.

For more information, see the NEB publication [Regulating Pipeline Abandonment](#).

### Are pipelines always left in place when they are abandoned?

Abandoned pipe may be removed from the ground, or it may be cleaned, treated and left in the ground. There may be sections of the pipeline that are proposed to be removed and other sections to remain in place. Surface facilities may be dismantled or reused for other purposes. 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 in their applications.

### Are landowners consulted about abandonment?

For all applications, and as stated in the Board's Filing Manual companies are expected to discuss the abandonment project and any concerns with landowners and others who may be impacted by it and include that in 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.

### **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 Board's specifications or applicable environmental standards. As set out in RH-2-2008 decision, the Board expects that landowners will not be liable for costs of pipeline abandonment.

The NEB requires companies to set aside money for abandonment work, including the activities to deal with unforeseen events after abandonment is complete. In addition, the company is required to assess its funding collection program over time to provide assurance that the amounts being set aside are appropriate.

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.

The NEB compliance role does not end when the pipeline abandonment project is completed and all NEB-imposed conditions are satisfied. Any part of the pipeline left exposed or in the ground will require perpetual care by the company or its successor, as well as regulatory oversight by the NEB. The NEB will monitor pipeline abandonment projects and abandoned pipelines as long as pipe is in the ground, through a variety of means and, if necessary, takes enforcement action.

### **Can a pipeline ever be used again?**

An application for a new pipeline authorization would have to be made to the NEB.

### **What if I plan to conduct work on an abandoned pipeline?**

If a company or any other person wants to work on (e.g., make contact with, alter or remove) an abandoned pipeline then an application for permission of the Board may be required. The permission may set conditions on how the work is to be conducted (e.g. timing or reclamation requirements). Please contact the NEB for further information.

Please call the pipeline company immediately if you unintentionally contact an abandoned pipeline.

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# APPENDIX A: WHAT SOME SECTIONS OF THE NEB ACT MEAN FOR LANDOWNERS

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<b>Section 21</b>	The Board may review and change a decision it has already made.
<b>Sections 31-33</b>	Sets out the required information for drawings and lands information to be provided for landowners to decide if they oppose the detailed route.
<b>Section 34</b>	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.
<b>Section 35</b>	Provides for the Board to be able to hold a detailed route hearing based on set criteria.
<b>Section 36</b>	Under this section drawings for the detailed route are approved by the Board.
<b>Section 39</b>	Provides for costs of detailed route hearings to be set for reimbursement to landowners.
<b>Section 41-42</b>	Companies can apply to fix errors in drawings or landowner information.
<b>Section 45</b>	Companies can apply under this section for small changes to the route, sometimes after it is approved or even after it is built.
<b>Section 46</b>	A pipeline route be moved by order of the Board for specific reasons.
<b>Section 49-51.4</b>	Sets out the role and powers of an Inspection Officer.
<b>Section 52</b>	Companies can apply under this section for a large project and it lists the basics of what is included in the application.
<b>Section 55.2</b>	Sets out when the Board will allow a person to participate in a hearing to consider an application to construct and operate a pipeline or power line.
<b>Section 58</b>	Companies can apply under this section for a smaller scale project - examples are listed.
<b>Section 58.1-58.4</b>	Information on applying for approval for international power lines.
<b>Section 73</b>	Allows companies to enter a landowner's lands to survey and for various other reasons listed here.
<b>Section 74</b>	Companies must ask the Board if they are going to sell or abandon their pipeline or facilities.
<b>Section 86</b>	Sets out the wording and provisions that should be covered in a land agreement

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**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.

The *National Energy Onshore Pipeline Regulations (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 GROUND DISTURBANCE AND CONSTRUCTION ACTIVITIES NEAR PIPELINES

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1. **Plan your activity.** Identify the precise location of your work, check records for evidence of pipeline easements or other buried facilities.
2. **Go to 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 constructing a facility, conducting activities causing a ground disturbance, or crossings in the vicinity of a pipeline.
4. **Obtain the pipeline company's written consent** for the construction of facilities across, on, along or under a pipeline, conducting activities causing a ground disturbance in the prescribed area, or crossing a pipeline with a vehicle or mobile equipment.
5. **Make a locate request** at least three working days before the day on which the construction or ground disturbance activity is started, by calling the one-call centre, or by calling the pipeline company where there is no one-call centre, to have the pipe located and marked.
6. **Be on site** when the pipeline is located, and **know the meaning of the pipeline markings.**
7. **Review NEB requirements** with all persons working on your behalf, including employees, contractors and subcontractors, to ensure they are aware of their obligations. Keep documents with safety requirements and guidance on site.
8. **Expose the pipe by hand digging or other acceptable excavation techniques accepted by the pipeline company** prior to any mechanical excavation within three metres of the pipe. **Follow the instructions of the pipeline company's authorized field representative.**
9. **Notify the pipeline company** prior to backfilling over the pipe or facilities, where the pipe or facilities have been exposed. **Follow the instructions of the pipeline company's authorized field representative.**
10. **IMMEDIATELY NOTIFY THE PIPELINE COMPANY IF YOU COME INTO CONTACT WITH THE PIPE!**  
A small scratch or dent in the pipe's coating can impact the long term safety of the line and must be assessed by the pipeline company.

Each activity causing a ground disturbance is unique, and this guide cannot deal with all cases. If you need further assistance with respect to the requirements for any construction, ground disturbance, or crossing activity near a federally regulated pipeline, please call us at 1-800-899-1265 and tell the receptionist you are calling about pipeline damage prevention, or email us at [DPinfo@neb-one.gc.ca](mailto:DPinfo@neb-one.gc.ca).

The National Energy Board Act, the Guidance Notes – National Energy Board Regulations for Pipeline Damage Prevention, and other NEB publications are available from the NEB's Library and on the NEB website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)). Please see the back cover for the Board's complete contact information.

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# APPENDIX C: THE STEPS IN CONSTRUCTING A PIPELINE

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Once the company gets route 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.

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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 second floor
- Telephone: 403-292-4800 or 1-800-899-1265
- Fax: 403-292-5576
- E-mail: [publications@neb-one.gc.ca](mailto:publications@neb-one.gc.ca)

**The NEB's Mailing address is:**

**National Energy Board**  
Suite 210, 517 Tenth Avenue SW  
Calgary, Alberta T2R 0A8

**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](mailto:info@neb-one.gc.ca)

**For settling compensation matters, please contact:**

**Natural Resources Canada**  
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](mailto:pas-sap@nrcan.gc.ca) (or [pas-sap@nrcan.gc.ca](mailto:pas-sap@nrcan.gc.ca) in French)  
[www.pas.nrcan.gc.ca](http://www.pas.nrcan.gc.ca) (or [www.sap.nrcan.gc.ca](http://www.sap.nrcan.gc.ca) in French)