



National Energy
Board

Office national
de l'énergie

Confidential Disclosure (Whistleblower) Procedure Guide

Message from National Energy Board Chief Executive Officer

Among the top priorities for the National Energy Board (NEB) is its obligation to protect the safety of workers, the public, and the environment. The NEB works closely with regulated companies to promote compliance with the requirements established in the *National Energy Board Act* and its regulations. Fostering an environment of regulatory compliance in the workplace is in the best business interests of regulated companies and the Canadian public. Most companies work very hard to achieve and maintain regulatory compliance.

Employees of regulated companies play an important role in this compliance regime. They work on the front lines and have the best view of what happens in the workplace. Employees should inform their employers when the company's business activities appear to conflict with its regulatory and legal obligations. Most of the time the company responds quickly and decisively to fix the problem. Sometimes however, an employee's notification may not result in a remedy. In such cases, employees of regulated companies, and others, may feel that they need to report such information to the regulator.

Whistleblower programs have proven to be a valuable tool for organizations to receive reports of asset misappropriation, workplace misconduct, and other wrongdoings. Such programs are now part of the organizational landscape across a range of business sectors in Canada and around the world. The NEB has received confidential disclosures in the past and we fully anticipate this trend will continue. In order to effectively manage these confidential disclosures, the NEB requires a formalized whistleblower process tailored for its role as Canada's national energy regulator. The Confidential Disclosure (Whistleblower) Procedure will provide the NEB with the reliable mechanism it needs to effectively receive and manage disclosures from concerned Canadians.

The NEB supports employees and others who want to make disclosures alleging acts of non-compliance by regulated companies. The NEB is very cognizant that such disclosures are sensitive and could place an employee or other person at risk of reprisal. The NEB is committed to having procedures that protect and preserve, to the extent possible the confidentiality and anonymity of disclosures and the identity of Tipsters.

The NEB's Confidential Disclosure (Whistleblower) Procedure embodies the organization's values of integrity, regulatory leadership, and accountability. This program provides the NEB with a reliable mechanism to receive and assess disclosures from employees of regulated companies and others while upholding the values of due process and impartial regulatory investigation.

Original signed by:

Dated:
1 April, 2016

A handwritten signature in dark ink, appearing to read "Peter Watson", is written over a horizontal line.

Peter Watson
Chair and CEO

Introduction

The National Energy Board (NEB) is Canada's energy and safety regulator. We take all reports of non-compliance seriously, and will take enforcement action if we discover that our regulatory requirements are not being followed. Examples of non-compliance could include: violations of the *NEB Act* and regulations involving the safety of pipelines and facilities, pipeline integrity, environmental protection, emergency management and security, or damage prevention.

Our Confidential Disclosure (Whistleblower) Procedure is based on internationally-recognized best practices, and formalizes the way we receive, track, and handle confidential disclosures regarding NEB-regulated pipelines and facilities.

The purpose of this guide is to provide the public with:

- information regarding the NEB's Confidential Disclosure Procedure
- guidance regarding how to report alleged non-compliances by NEB-regulated companies
- an overview on how the NEB facilitates, follows-up and closes out all reports of alleged non-compliances

We encourage all members of the public to use this guide when reporting anything they believe is a non-compliance issue.

NEB Reporting Mechanisms

The Confidential Disclosure (Whistleblower) Procedure provides the NEB with a formalized way to receive, track and handle confidential disclosures related to NEB regulated pipelines and facilities.

The NEB has long encouraged the reporting of non-compliances associated with its regulated companies, and are committed to providing a safe, easy and anonymous way for the public to report information. Effective 3 April 2017, we have contracted [ClearView Connects](https://www.clearviewconnects.com) (ClearView), a confidential reporting service that will accept anonymous disclosures on the NEB's behalf. All information reported will be collected, stored, and managed in a secure manner. Information that could reveal the identity of a tipster will be isolated from other NEB databases.

Using this service the public may submit information in the following ways:

1. Online through the secure website at <https://www.clearviewconnects.com>
2. Over the phone 24/7 to a ClearView operator through the NEB's dedicated toll-free number at 1-866-358-1718
3. By mail through the confidential post office box at: P.O. Box 11017, Toronto, Ontario, M1E 1N0

Disclosures that are deemed to be emergencies will be re-directed to the NEB's emergency line.

Blowing the Whistle: Your Role as the Tipster

The NEB defines “tipster” as the person who reports an alleged act of non-compliance. All information can be submitted using [ClearView](#)’s reporting system and tipsters may submit their report in the format of their choosing (as outlined above).

The tipster may wish to provide documents, images, photos or other relevant information to the NEB. The decision to provide such materials rests solely with the tipster. The tipster’s role is complete once they have submitted their report. They will not be required to conduct, review, consider, or otherwise review an investigative step or any other activity. It will then up to the NEB to decide the next course(s) of action.

There is no compensation in exchange for submitting information.

For more guidance on what types of information to include in your disclosure see [Guidance for Tipsters: Reporting Alleged Allegations](#)

Enhancing Confidentiality

We acknowledge that being a tipster can be difficult and stressful. This is why we do our best to ensure the confidentiality of those who report alleged non-compliances. All confidential disclosures are initially received by ClearView Connects. This provides tipsters with a secure and reliable channel to report alleged non-compliances.

Prior to submitting any information, you will be required to make a written declaration indicating that you would either like to remain anonymous or that you are waiving your claim to anonymity. If you choose to remain anonymous, the NEB’s procedure is structured so as to maximize confidentiality and security. To maintain the integrity of this process, we use the following procedures:

1. Only trained NEB staff who are members of the Disclosure Evaluation Committee are permitted to review disclosures.
2. All written disclosures, information regarding the tipster’s identity, correspondence to and from the tipster, and other documents that could reveal the tipster’s identity will be physically and electronically collected, stored, and managed securely. Information that could reveal the identity of a tipster will be isolated from other NEB databases.
3. All physical and digital (electronic) documents are marked as protected documents.

It is important to note, however, that in certain instances the NEB may be required by law to provide information that could identify a tipster. While we do our best to maintain your privacy, absolute confidentiality cannot be guaranteed. You will be advised in advance if there is a lawful release of information that could identify you.

Decisions regarding NEB compliance verification activities, courses of action, and dispositions rest with the NEB alone.

Confidential Disclosure Model: What Happens When a Tip is Submitted

The NEB's model for confidential disclosure has four distinct phases:

- **Receive** – the NEB receives a confidential disclosure from a tipster by way of ClearView. If the tip includes any information that could identify the tipster it is removed before any actions take place. Should the NEB staff receive a tip directly, they will encourage the tipster to make the disclosure to ClearView in order to ensure the proper process channels are followed.
- **Assess** – the NEB will review and assess the disclosure provided and determine a course of action.
- **Action** – the NEB will take action and respond to the disclosure. Examples of action may include compliance verification activities or referring the disclosure to another lawful authority or regulator.
- **Conclude** – all disclosures are then closed out either with or without an enforcement action. Examples for reasons of non-enforcement actions may include: closing the disclosure on grounds of insufficient information, not falling within NEB jurisdiction, not being in the public interest (considerations include timeliness, seriousness of the allegation), or at completion of the CVA.

Guidance for Tipsters: Reporting Alleged Allegations

The NEB assesses all allegations of non-compliances brought forward through our Confidential Disclosure (Whistleblower) Procedure. This guidance is to help ensure the information you provide is complete, so that we may act as quickly as possible. Disclosures should provide specific details such as:

- Specific dates and locations
- The name of the pipeline and/or facility involved
- Where possible, specific violations of the Act or Regulations
- The name of the individual or individuals alleged to have committed or are about to commit an alleged act of non-compliance
- Identities of witnesses present or those who may have knowledge of the alleged act of non-compliance
- Information about whether the alleged act of non-compliance was reported to the company
- Information about how the company responded or failed to respond to an internal report of the alleged act
- Reasons (if any) why the company was not advised of the alleged act of non-compliance
- Other information such as documentation, incident reports, photos, etc. The decision to provide such information rests solely with the tipster.
- Any actual consequences of the alleged act of non-compliance such as injuries, damage to property, damage to the environment etc.
- Reprisals (real and threatened) to the tipster or others
- Whether the disclosure has already been reported the NEB.

Submitting in Writing vs. Verbally

Individuals may report either in written form or verbally – however written is preferred for a number of reasons that benefit both the NEB and the tipster:

- Important information could be omitted, misinterpreted or misunderstood by both parties.
- In the event that a tipster is the subject of a reprisal, the tipster must be able to demonstrate that he or she has actually reported the alleged act of non-compliance. An allegation made in writing is a substantially more definitive record.
- Written communication is often the best way to safeguard anonymity because the tipster can control content and provide fewer personal details.

Assessing the Elements of a Disclosure

The content and accuracy of the disclosure is important so as to efficiently process the allegation. The elements and factors that can affect the assessment of disclosures include:

- **Good Faith.** Disclosures that appear to be frivolous or extortive will not be assessed.
- **Act of Non-Compliance.** Activities reported must meet the NEB's definition of non-compliance.
- **Recentness of the Alleged Act of Non-Compliance.** Acts of non-compliance that are alleged to have occurred months or years ago may be more difficult to verify and prove. The sooner the disclosure, the better.
- **Quality of Disclosure.** Disclosures that are based on second hand information, vague accounts, and generalities are generally more difficult to process.
- **Within NEB Jurisdiction.** Disclosures need to fall within the NEB's jurisdiction. If the matter does not, it may be concluded or referred to the appropriate lawful authority.
- **Public Interest.** The DEC will assess whether it is in the public interest to act on the disclosure.

Follow-Up and Courses of Action

During the Assessment Phase

After conducting a preliminary assessment of the disclosure, the NEB will decide on a course of action. The next steps could include:

- **Requiring Additional Information From the Tipster** - If the NEB decides that it requires additional information or clarification from the tipster before it can reach an informed decision, it will contact the tipster via ClearView Connects. It will be up to the tipster to log-in to the system to check for messages. The tipster is under no obligation to reply to a request for additional information.
- **Alleged Act of Non-Compliance Is Not Within NEB Jurisdiction** - If the alleged act of non-compliance is a matter that is not under our jurisdiction no further actions will be required. The tipster will be notified through the reporting system.
- **No Follow-Up Required** - If it is assessed that the disclosure is not suitable to justify compliance verification activities due to not meeting the requirements then it may be concluded. The tipster will be notified through the reporting system.
- **Specialist Assigned for Compliance Verification Activities** - If the assessment is that the disclosure is suitable for compliance verification activities, it shall be assigned to a specialist. The specialist will be provided with the edited version of the tipster's original disclosure only. After the specialist has completed compliance verification activities and any enforcement activities the Tipster will be notified via the reporting system.

Reprisals

Anyone who brings information forward related to alleged non-compliances will be protected. Section 6.3(1)(a) of the NEB's *Onshore Pipelines Regulations* requires regulated companies to have a policy for the internal reporting (Whistleblower Policy) of hazards, potential hazards, and near misses that includes the conditions under which a person who makes a report will be granted immunity from disciplinary action. The NEB has a mandate to review such policies pursuant to this regulation.

Notwithstanding a breach of this section, the NEB has no authority to compel a regulated company to rehire a person that the regulated company has terminated. In the event that a tipster makes an allegation of a reprisal to the NEB, the matter will be recorded and assessed – with possible actions taken by the NEB.

Glossary of Terms

Act - the *National Energy Board Act*.

Company - a company regulated by the NEB. Companies regulated by the NEB are required to seek authorization or approval for various activities and must comply with the *National Energy Board Act*, the *Canada Oil and Gas Operations Act*, the *Canada Petroleum Act*, and other laws of Canada.

Compensation - a reward, financial payment, consideration, indemnification, offer of employment, actual employment, or any other benefit.

Compliance verification tools - the tools used by the NEB to verify compliance with the Act and Regulations. Compliance verification tools include audits, inspections, compliance meetings, and investigations.

Confidential Disclosure (Whistleblower) Procedure - the NEB's collective operational, administrative, and strategic mechanisms to receive, assess, investigate, and conclude disclosures of alleged acts of non-compliance by regulated companies.

Disclosure - a confidential written report about a company's alleged act of non-compliance involving the Act and Regulations. A disclosure may be made anonymously but it must be received by the NEB in writing.

The Disclosure Evaluation Committee:

- Conducts a preliminary assessment of the disclosure
- Identifies critical issues that may require immediate action.
- If required, requests additional information from the Tipster through ClearView. A request for additional information from the Tipster will remain open for a period of three weeks.
- Determines the seriousness of the alleged act of non-compliance.
- Identifies specific allegations of non-compliance.
- Determines whether there is sufficient information to conduct compliance verification activities.
- Identifies any other matters that should be addressed as a result of the disclosure.
- Determines if an alleged act of non-compliance falls within NEB jurisdiction.

Emergency - an event, or imminent event, outside the scope of normal operations that:

- a) Poses a clear and present significant threat to the health or safety of people, property, or the environment.
- b) Has caused serious injury to any person.
- c) Requires prompt coordination of resources to protect the health or safety of people, property, or the environment to limit actual or imminent harm.

Enforcement tools - the tools used by the NEB to obtain compliance, deter future non-compliance, and prevent harm.

Environment - has the same meaning as described in section 2 of the *Canadian Environmental Assessment Act (2012)*.

Good faith - a reasonable belief that an act of non-compliance actually occurred. A good faith disclosure to the NEB is neither frivolous, extortive, nor is it simply a report of an occupational grievance.

NEB - National Energy Board established by section 3 of the Act.

Non-compliance - a contravention of the Act or a regulation made pursuant to the Act

Personal information - personal information as defined in [section 3 of the Privacy Act](#).

Public Interest: The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time.

Regulation - a regulation created by the Act.

Reprisal - any measure taken or directed against a Tipster because that Tipster has sought advice about making a disclosure, made a disclosure, co-operated in an investigation, declined to participate in an act of non-compliance, or done anything in accordance with the Act. Reprisals include adverse and unwarranted employment action such as:

- a) A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, changes in hours of work or reprimand;
- b) Unwarranted discipline;
- c) Any measure, other than one mentioned in paragraphs (a) and (b), that adversely affects a person's employment or working conditions such as harassment, bullying, shaming, or shunning; and
- d) A threat to take any of the measures mentioned in paragraph (a) to (c).

Specialist - an employee of the NEB skilled, trained, and responsible for conducting inspections and/or investigations.

Tipster - a person who provides the NEB with a confidential disclosure of an alleged act of non-compliance. A Tipster may remain anonymous.