

Responding Directly to the TCPL/NOVA Propaganda Machine

Late last year, with the tacit endorsement of the Stelmach government and the Alberta Minister of Energy, NOVA Gas Transmission Limited (NGTL), which is owned by TransCanada Pipelines (TCPL), made application to transfer nearly 25,000 km of its Alberta gas pipeline system out from under the regulatory jurisdiction of Alberta, and into the hands of Ottawa's regulator—the National Energy Board (NEB). On the heels of that application, landowner groups issued a press release explaining how far-reaching the implications would be for farmers and ranchers if the NGTL application were approved. We also sent a letter to 40,000 landowners that provided details on the implications of the transfer. NGTL responded by sending letters to individual farmers that explained point-by-point, its position on the issues we raised in our letter. The NGTL letter has also been posted on the Internet. Below are quotes taken from NGTL's letter, followed by CAEPLA's response. Landowners can judge for themselves who they want to believe.

NGTL Statement

What NGTL said to Landowners About Existing Easement Agreements

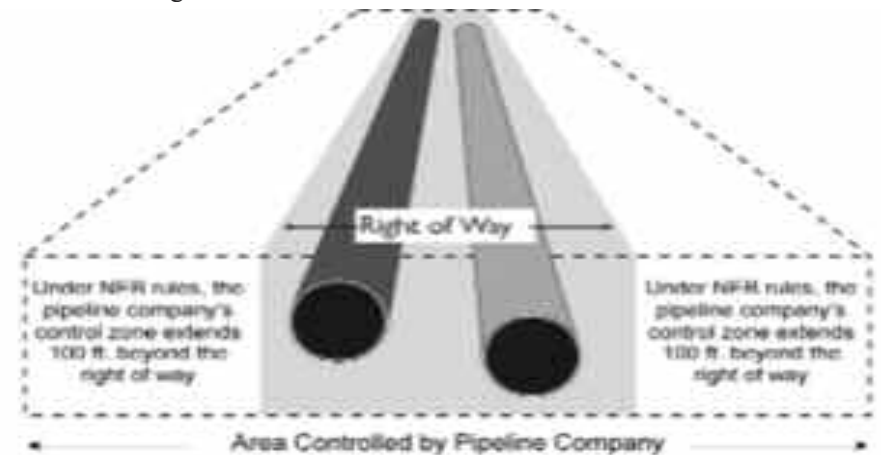
Existing agreements between NGTL (NOVA Gas Transmission Ltd.) and landowners will not be altered as a result of a change in jurisdiction. NGTL is committed to, bound by, and will honour existing landowner agreements.

CAEPLA Response

It doesn't matter what an existing easement agreement might say if what's in the agreement is contrary to the provisions of the *National Energy Board Act*, or its regulations. For example, if an easement agreement establishes a 60-foot easement corridor with a control zone that is defined by provincial regulations, the pipeline company would have control over a corridor that is slightly less than 200 feet wide. The minute regulation of the pipeline is put into the hands of Ottawa's regulator, the width of the area the pipeline company controls, regardless of what it says in the easement agreement, will be 260 feet.

Whereas the Alberta rules establish a control zone for the pipeline company that is measured 30 meters on either side of the pipe, measured from the middle of the pipe. The control zone the pipeline company controls under federal rules, is measured 30 meters from either edge of the actual easement.

Whereas the Alberta rules establish a control zone for the pipeline company that is measured 30 meters (100 ft.) on either side of the pipe, measured from the middle of the pipe. The control zone the pipeline company controls under NEB rules, is measured 30 meters from either edge of the easement. It doesn't matter what it says in the easement agreement.



According to the law, landowners must seek permission from the pipeline company before they do any number of things over the control zone (Section 112). These rules also apply to landowners who do not have a right of way on their property, but whose land borders a right of way, and therefore comes within the jurisdiction of the pipeline company's control zone.

NGTL Statement

What NGTL said to Landowners About Ongoing Annual Payments

If you are receiving annual payments under existing agreements with NGTL, you will continue to receive them. TransCanada is bound by the terms of your NGTL agreement, and contractually bound to the payment terms of the easement contract. A change in jurisdiction does not change this.

CAEPLA Response

This is only half the story. Yes, you as a landowner will continue to receive annual payments if you have already been receiving them. But, and this is a HUGE but, you will not be eligible to receive annual payments on any new pipelines built in or along the existing corridor at a future date.

Because the NEB regulations are different than Alberta regulations, on any new pipes the rules will be different. Arbitration and court decisions under the *National Energy Board Act* have determined that the only annual payment a landowner may

receive under NEB regulated pipelines is the single initial payment divided over a period of years, until it is paid. In other words, in the courts, the NEB Act has already been interpreted to mean that landowners are not allowed annual payments that are ongoing, or perpetual, as is the case with pipelines that are regulated by the province of Alberta. As a result of the NOVA system being transferred from Alberta regulatory control to the control of Ottawa's NEB, on this single issue alone, over the long term, Alberta landowners have suffered a huge potential financial loss.



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NGTL Statement

What NGTL said to Landowners About Crossings Pipelines and Easements

Landowners already have permission to cross the pipeline right-of-way for normal farming operations, without having to notify TransCanada. This will not change under NEB jurisdiction. Existing NGTL right-of-way agreements state that landowners have the right fully to use and enjoy the right-of-way, as long as it does not interfere with the operation or integrity of the pipeline.

Landowners are also protected from liability for pipeline damages, which may result from normal farming operations. This will not change under NEB jurisdiction. For the past 30 years NGTL's right-of-way agreements have protected landowners from liabilities, damages, costs, claims, suits or actions arising from normal farming operations.

In fact, for more than 50 years of NGTL's and TransCanada's operating history extending over 48,000 km, no landowner has been held liable for pipeline damages arising from normal farming operations.

For additional information on crossing restrictions and landowner liability, see the article at the top of page seven.

CAEPLA Response

The terms that define today's *National Energy Board Act* weren't in place 20 and 30 and 40 years ago. As a result, landowner liability as defined by today's NEB Act didn't exist back then. It is crucial to note that pipeline companies don't determine legal liability. The courts, based on existing legislation, determine legal and financial liability. What TransCanada pipelines and Nova Gas might or might not say on this issue is irrelevant if the law says something different. And Section 112 of the *National Energy Board Act* definitely says something different. The Act clearly states:

...no person shall operate a vehicle or mobile equipment across a pipeline unless leave is first obtained from the company or the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.



Letting the “Customer” Take His Lumps by Kevin Avram

Some years ago, when I was first married, I took a job as a car salesman at a dealership in Southern Saskatchewan. I was young. I liked cars. I liked people. I thought if I put the two together it would be a fun way to make a living. The dealership was in a good location. It had a fair-sized used car lot. The new vehicles were Japanese. The sales manager was a guy named Marty Pandor.

I had only been there about a week when Marty called me into his office for a chat. He'd heard that the day before I told a woman that a used car she was looking at on our lot was a car she didn't want to buy. On the outside it was sleek, shiny, and without a flaw, but under the hood it was a wreck that would require some very big repair bills.

Wanting to do the right thing by this woman, and in the process gain a friend and a customer for life (at the time I thought selling cars would turn into a long-term career), I told her the absolute truth about not just the used cars we had, but the new ones that were displayed on the showroom floor. And at the time, I thought the new ones were the best machines that had ever rolled off an assembly line.

Marty had called me aside to discuss what he as a sales manager thought it took to be a successful car salesman. Almost immediately he said, “Kevin, if you don't have a little bit of larceny in you, you are never going to make it in the car business.”

Marty didn't exactly say I should lie to people. His idea was that we shouldn't tell people everything we knew. If telling half the story could get a car sold, then as far as Marty was concerned, letting the customer take his or her lumps was part of the process.

My career as a car salesman ended that day. I quit. And when the end of the month rolled around I wasn't surprised when Marty cheated me out of the commissions I had earned the week before I quit. He had advised me to deliberately and knowingly fudge the truth with customers. Why should I have been surprised when the guy fudged the truth with me? As I recall, Marty ripped me off for \$1,100.

Throughout the months of January and February of this year, as those of us who work with the various landowner groups kept bumping up against the half-truths and incomplete stories being told to landowners by the National Energy Board, the Alberta Energy Minister, and the pipeline industry, on more than a few occasions I thought of Marty.



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The Big Three

The National Energy Board, the Alberta Energy Minister, and TCPL NOVA are the big three who wanted to push through a change that would see almost 25,000 kilometers of natural gas pipelines in Alberta pass from the regulatory jurisdiction of Alberta into the hands of Ottawa.

The change would redefine the rules for landowners. So rather than risk a landowner backlash, or perhaps out of sheer arrogance, the big three decided to press ahead without even telling individual landowners what they were doing.

When landowner groups learned of it, and began to explain to farmers and ranchers what the implications of the change could entail, rather than admit that the car they were trying to sell needed a

whole lot of work under the hood, the big three trotted out incomplete information, and passed off half-stories, as being the whole story.

In the midst of all this there was an Alberta MP, Kevin Sorensen, who acted with integrity. Rather than accept what the big three were throwing at landowners and the media as being the complete story, and ignoring accusations that landowner groups were knowingly exaggerating the impact of the proposed change, Sorensen wrote out a number of questions. Then he submitted them to both the pipeline industry and landowner groups, wanting detailed answers.

The questions Sorensen asked are listed below, and on the following pages. The immediate answer to each question is how the pipeline industry responded. The Canadian Energy Pipeline Association (CEPA) is an industry association with very few members, but the members it does have are the big Canadian pipeline companies. TransCanada Pipelines is a flagship member of CEPA.

Following on the heels of CEPA's answer is our response followed by a response from the Alberta Association of Pipeline Landowners (AAPL). In a couple of instances the answers provided by CAEPLA and AAPL are combined. (Some editing has been carried out in order to fit the size and context of this newsletter.)

At one point in the answers that follow, landowner groups refer to the legal precedent of *Bue v. Alliance Pipeline Ltd.* If any readers wish to review the details of this very important precedent setting court case, simply visit the website of the Federal Court of the Government of Canada at the following Internet address: <http://decisions.fct-cf.gc.ca/en/2006/2006fc713/2006fc713.html>

Sorensen's Questions: Industry and Landowners State Their Case

Crossing Restrictions

Sorensen's Question: Are there changes to crossing restrictions for landowners?

CEPA Answer: Under both the provincial and federal regulation, normal farming practices, to a depth of 30 cm, over the entire pipeline right of way are permitted. (The 30 cm depth restriction is a federal regulation.)

For crossings other than normal farming equipment, (e.g. construction equipment or a drilling rig), it has always been the case that permissions are required. Under federal regulation, a response is required within ten working days (as opposed to twenty one under the provincial regulation.)

It is important to note that the reason permissions are required is to ensure the safety of the landowner, the public, the environment and also the integrity of the pipeline.

CAEPLA Response: There is a vast difference between provincial and federal regulations. Alberta recognizes, in statute, the importance of agriculture and provides farmers with a significant measure of operational flexi-



Although pipeline companies often say that they allow “normal” farm equipment and “normal” farming operations to take place over top of the pipeline, at the request of the federal regulator, they refused to define what normal or “normal weight” might mean.

bility. The NEB Act makes no specific provision for agriculture or agricultural operations. For example, under provincial legislation, the working depth is 45 centimetres (18 inches). Under federal jurisdiction, it is only 30 centimetres, or slightly less than 12 inches.

Provincial jurisdiction specifically exempts landowners from requiring company permission before crossing buried pipelines with vehicles or farm equipment. In contrast, Section 112 of the National Energy Board Act requires that a landowner request permission of the pipeline company for ALL mobile equipment before crossing. There is no exemption for farm equipment. And although pipeline companies often say that they allow “normal” farm equipment and “normal” farming operations to take place over top of the pipeline (even though the NEB Act says otherwise), at the request of the federal regulator, they refused to define what “normal” or “normal weight” might mean. When a pipeline was built in 1951, or in 1961, a “normal” farm tractor or grain truck was very different than what would be considered “normal” today. That pipeline companies refuse to define “normal,” despite the fact that they constantly throw the word around, in our view, speaks volumes about where they want the ultimate liability to rest.

AAPL Response: Absolutely there are changes to crossing restrictions! Alberta Pipeline Regulations Section 66 specifically exempts landowners from requiring company permission to cross pipelines with vehicles or equipment for farming operations. Put that up against Section 112 of the National Energy Board Act, which clearly indicates that every “person” needs company permission to cross:

...no person shall operate a vehicle or mobile equipment across a pipeline unless leave is first obtained from the company or the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.

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Industry & Landowners State Their Case cont'd

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With respect to cultivation practices, a “ground disturbance” under Alberta regulations does not include any cultivation that does not exceed 45 centimetres (18 inches) in depth. Under the NEB Act and regulations, company permission must be obtained for any cultivation that exceeds 30 centimetres (roughly 11.8 inches) in depth.

If any farmer with an NEB-regulated pipeline wants to cultivate below 12 inches within the control zone, regulations require that consent from the pipeline company is obtained, unless that individual gets consent from the Board.

The individual who seeks consent, is required to give three days working notice, and then the pipeline company has up to 10 working days to respond. There is, in this setup then, the possibility of a delay of up to 13 working days, not including weekends.

There's also Section 9 of the Pipeline Crossing Regulations Part I, which provides that a company like TransCanada can prohibit cultivation of any sort for up to three



If a landowner happens to disagree with what TransCanada NOVA is telling him, and doesn't comply, he then becomes subject to the National Energy Board's inspectors. Non-cooperation with NEB inspectors can result, on indictment, in fines of up to \$1 million and put a farmer in jail for five years.

working days on the entire farm, not just on the right of way or control zone. And all of these restrictions commence the moment regulatory jurisdiction is transferred. The restrictions apply to anyone falling within the control zone as defined by the *National Energy Board Act*, whether it's a landowner with a TransCanada right-of-way or a neighbouring landowner who has no TransCanada right-of-way. It's not just the thousands of agricultural landowners who have the Alberta System pipelines that will be affected; it's also their neighbours, to the extent that their land falls within the control zone. (The expanded control zone under the NEB rules, for all practical purposes, essentially widens the easement by about two-thirds of the length of a football field.) And there can be substantial penalties for non-compliance with the control zone restrictions.

If a landowner happens to disagree with what TransCanada NOVA is telling him, and doesn't comply, he then becomes subject to the National Energy Board's inspectors. Non-cooperation with NEB inspectors can result, on indictment, in fines of up to \$1 million and put a farmer in jail for five years.

Liability

Sorensen's Question: Will landowners be held liable for accidental damage to a pipeline?

CEPA Answer: No. Most, (but not all), existing easement agreements protect landowners from liability for pipeline damages which may result from normal farming operations. This will not change.

However, it should be noted that it has never been the practice of CEPA member companies to hold landowners liable for accidental damage to a pipeline and we will not be changing this practice.

CAEPLA Response: It is not true that existing easement agreements protect landowners from liability that may result from normal farming practices. Regulatory liability is based on applicable law. When the NOVA system was regulated by Alberta, the applicable law was the Alberta legislation. Now that the National Energy Board regulates the pipelines, the *National Energy Board Act*, as determined by the courts, is what determines liability. And given the recent decision of the Ontario Court of Appeal in *CAPLA v. Enbridge and TransCanada Pipelines*, landowners don't know whether the words in their easement agreements have any effect in the face of new legislation and regulation.

The National Energy Board Act, at Section 112 (2) states that landowners must ask permission to cross the pipeline with mobile equipment, and unlike the Alberta Act, the federal NEB Act provides not a single exemption for normal farming practices. What it all means is that in a court of law, if a landowner does not have written permission to cross a pipeline, and that pipeline collapses or is otherwise damaged, a legitimate basis for landowner liability exists. That one or more pipeline company representatives in the midst of applying for a jurisdictional transfer has been saying, “trust us on this one,” is hardly reassuring.

Just a few short years ago, the National Energy Board requested that Canadian NEB regulated pipeline companies consult with landowners to come up with a blanket exemption for farm equipment to cross pipelines. The written response by the pipeline companies said they would not fulfill the request, since it is a site specific issue.

When deliberately invited to do so, they refused to define what “normal farming practice” means, despite the fact that they consistently claim that “normal farming practices” are permitted over top of the pipeline.

AAPL Response: This is a situation where the pipeline operators are saying, “regardless of what the Act might say, there is no landowner liability—take our word for it!” Yet if Section 112 of the Act establishes the fact that landowners are obligated to seek permission prior to crossing, how can the operators then construe the situation to declare that there will never be a consequence if and when a landowner might infringe the Act? In its evidence presented at the Calgary hearing, TransCanada said that it permits “normal farming operations” with “normal farm equipment” over its pipelines. Who decides what constitutes “normal?” And is what's normal for one farmer automatically considered normal for another? No. The simple fact is that it is not the pipeline company that determines what is and isn't “permitted” over top of a pipeline, or on the easement. It is determined by applicable law, and by the ensuing regulations. And it is the law, not the pipeline company, that determines who is and who isn't liable in the event of an accident or occurrence of some sort.



For future pipelines constructed by TransCanada adjacent to existing NOVA gas pipelines, Alberta landowners will not be eligible to receive annual payments of the sort established in a recent ruling by Alberta's own Surface Rights Board.

Compensation

Sorensen's Question: Will there be any changes to landowner compensation?

CEPA Answer: No. A pipeline operator is contractually bound to the payment terms of their agreement with the landowner. This obligation remains unchanged, regardless of the jurisdiction of the pipeline.

CAEPLA/AAPL Response: The above statement by CEPA demonstrates why landowners on the

Foothills Pipeline continued to receive ongoing annual payments after regulatory jurisdiction was transferred to the NEB. These annual payments were established under the provisions of the Northern Pipelines Act, and not under the NEB act.

For future pipelines constructed by TransCanada adjacent to existing NOVA gas pipelines, Alberta landowners will not be eligible to receive annual payments of the sort that have been established in a recent ruling by Alberta's own Surface Rights Board. (These are perpetual and ongoing annual payments due to the continued impact of pipeline operations as opposed to an initial agreed upon lump sum amount that is paid to the landowner over a period of years.) Some Alberta government MLAs told landowners that the NEB legislation on this issue is similar to the Alberta legislation. At a casual glance, to an uninformed eye, things may appear that way. However, in this case what certain MLAs think a piece of federal legislation is supposed to mean, and what a federal judge has already determined the legislation to mean, are two different things. Time and again, when it comes to ongoing annual compensation for landowners affected by NEB regulated pipelines, the federal arbitration committee that makes decisions about such things has ruled that Alberta-style annual payments are not available under the federal rules. And the federal courts have backed this assertion, in legal cases such as *Bue v. Alliance Pipelines*.

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Abandonment

Sorensen's Question: Will landowners be liable for abandoned pipelines if the pipeline undergoes a jurisdictional shift?

CEPA Answer: No. Regulatory approval is required regardless of the jurisdiction of the pipeline. As well, abandonment plans are negotiated between the landowner and the pipeline company. It is the intention of CEPA member companies that the burden of abandonment never falls to the landowner.

CAEPLA Response: The industry is absolutely not telling the truth here. Under the Alberta rules landowners have a regulatory remedy with respect of future abandonment costs and liabilities. With respect to abandonment, the Alberta Act only imposes liabilities on the pipeline companies, not on the landowner.

Under existing Ottawa-based rules, the minute a pipeline is declared as abandoned, the NEB no longer has any jurisdiction. A situation is created in which no one has liability but the landowner, who at the point of abandonment becomes the sole owner of the worn out pipes. Only the landowner is responsible for subsequent costs.



Landowners, under the NEB provisions, must pay all their own costs of participating in these increasingly expensive, and at times complex, quasi-judicial hearings. Under Alberta rules, landowners may readily receive funding for reasonable costs, including advance funding to prepare for an upcoming hearing.

AAPL Response: Definitely yes, landowners are responsible and legally liable. Here's why: It's clear that the provisions of the Alberta legislation provides landowners with a regulatory remedy in respect of future abandonment costs. Liabilities are only imposed on provincial licensees.

Whereas under the Alberta rules a company remains re-

sponsible for its pipeline after abandonment, and this obligation may be enforced by the provincial regulator, the NEB loses jurisdiction over a pipeline once it makes an abandonment order in favour of a pipeline company.

In other words, upon abandonment the NEB no longer has any say in the matter, and the landowner thus owns the pipeline that has been abandoned. There are no existing legal or regulatory provisions for landowner non-liability in this matter.

Sorensen's Question: What about costs associated with any legal burden?

CEPA Answer: These disputes are managed on a case by case basis between the individual pipeline company and the landowner(s), however, CEPA's [Canadian Energy Pipeline Association] member companies do not believe that landowners should be held liable for any cost associated with pipeline abandonment.

AAPL Response: Under Alberta regulation, until a pipeline has been removed from the ground, the landowner will always be able to go back to the regulator in the event there is a problem with the pipeline, and recover the cost of having to do so. Under NEB regulation, once the NEB signs off on the abandonment of a pipeline, the NEB loses jurisdiction and the landowner will have no one to turn to regarding his or her costs. The NEB says landowners can always take part in abandonment hearings to decide how abandonment will take place. However, landowners under the NEB provisions must pay all their own costs of participating in these increasingly expensive, and at times complex, quasi-judicial hearings. Under Alberta rules, landowners may readily receive funding for reasonable costs, including advance funding to prepare for an upcoming hearing.

CAEPLA Response: If the NEB approves abandonment of the pipeline in place, it no longer has jurisdiction. The landowner is responsible for the pipeline. With-



The very existence of, or need for, a controlled safety zone demonstrates that the pipelines themselves do not have adequate cover and are not buried deep enough.

out cathodic protection or maintenance, abandoned lines will corrode and collapse. Imagine a large diameter pipeline collapsing when a farmer drives across his field with a fully loaded combine or truck.

Additionally, an abandoned pipeline will act as a water and/or contamination conduit. Perhaps CEPA members may state they do not think landowners should carry liability, but under the NEB Act they are liable. If what the law says is different from what a pipeline company says, inside a courtroom the law will trump the pipeline company every single time.

Control Zone

Sorensen's Question: Is the safety zone wider or different under federal regulation? What does this mean if my neighbour has a pipeline adjacent to my property?

CEPA Answer: It is true that the NEB safety zone (federal regulation) is measured differently than the provincially regulated safety zone. The safety zone is exactly the same size in each case; 30 metres. The NEB measures it from the edge of the pipeline versus the ERCB measuring it from the centre of the pipeline. In each case however, normal farming practices are not affected by the pipeline safety zone. This zone is in effect for the safety of the landowner.

Federal regulations do stipulate that "excavating, drilling, blasting or digging deeper than 30 cm is not allowed without permission of the pipeline company to prevent accidental damage to the pipe."

This differs from the provincial regulation that cultivation can occur to a depth of 45 cm within the control or safety zone. It is important to recognize that this restriction is for the safety of the landowners/farmers. The intention is not to impact normal farming practices.

It is very important, however, for all landowners to "Call Before You Dig" to ensure the integrity of all buried facilities as well as landowner and public safety.



The NEB control zone is so much wider that some farmers who don't even have underground gas pipelines or related surface structures, are going to discover that because of the proximity of their land to a pipeline that's buried at the edge of a neighbour's field, portions of their land will suddenly come within the jurisdiction of the pipeline company.

CAEPLA Response: Contrary to what CEPA has stated above, an NEB regulated control zone is measured from the edge of the easement, not from the edge of the pipe. Under provincial rules it is measured from the centre of the pipe. It means if the pipeline were in a 60-foot corridor, under provincial regulations there would be control zone restrictions on 200 feet of land (30 metres, or roughly 100 feet, on either side of the pipe). Under the NEB rules, landowners will have an additional 60 feet of restrictions. The control zone will be 260 feet wide.

(As a sidebar issue, the very existence of, or need for, a controlled safety zone for pipeline companies demonstrates that the pipelines themselves do not have adequate cover and are not buried deep enough.)

CEPA claims that the control zone does not affect normal farming practices, but then it says there must be depth restrictions in the zone. Under Alberta provincial rules, ripping, which is a common soil conditioning method in some areas of the province, can go to 18 inches (45 centimetres). Under the NEB rules it is restricted to 11.8 inches (30 centimetres), which means that soil ripping becomes unusable, despite the fact that it is an important farming practice.

With respect to the control zone, the NEB Act provides for penalties against individuals and corporations. On a summary conviction offence alone, a landowner could face a fine of up to \$100,000 and one year's imprisonment. Under the Alberta legislation, a landowner would face only a fine of up to \$5,000 with no risk of imprisonment except in default of payment. Additionally, a landowner who is in violation of the NEB Crossing Regulation is subject to inspections. The inspectors are empowered to order landowner compliance, and a violation of such an order constitutes an offence that carries a fine of up to \$1,000,000 and imprisonment of up to five years. The prosecution in such a case is not under the NEB Act, but rather, pursuant to the Criminal Code.

AAPL Response: The control zone is an area the pipeline company controls, and upon which it can restrict a farmer's activities. Under the Ottawa-based rules, the control zone is much wider than it is under existing Alberta law.

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Contrary to what has been stated by CEPA, the federal control zone is not the same size as the provincial control zone. CEPA is right when it says that the provincial control zone is 30 meters on each side of the pipe, measured from the centre of the pipe. However, CEPA is absolutely misrepresenting the truth when it says that the federal control zone is 30 meters from the edge of the pipe. The federally regulated control zone extends 30 meters on either side of the easement. The federal control zone is measured from the edge of the easement, not from the edge of the pipe.

The NEB control zone is so much wider that some farmers who don't even have underground gas pipelines or related surface structures are going to discover that because of the proximity of their land to a pipeline that's buried at the edge of a neighbour's field, portions of their land will suddenly come within the jurisdiction of the pipeline company.

This means the neighbour will not be able to excavate, drill a posthole, or cultivate deeper than 11.8 inches without getting permission from the pipeline company. It also means the neighbour could theoretically find himself, or herself, in a spat with an NEB inspector, and the consequence for violating the order of an NEB inspector could lead to prosecution under the Criminal Code with fines of up to \$1 million plus five years in prison.

Change In Regulation

Sorensen's Question: Is one jurisdiction better than the other? Say provincial better than federal?

CEPA Answer: No. Both provincial and federal regulations are set up to maintain the safety and integrity of the pipeline system. CEPA member companies do not have a choice as to which jurisdiction applies to their respective pipelines. Those decisions are "facts in law" and are determined by the relevant regulatory authority, (e.g. NEB, ERCB, etc.)

To shed light on the attitude of TransCanada NOVA on this issue, it is worth noting that at the November NEB hearing in Calgary, TransCanada's legal representation publicly stated that as far as TCPL was concerned, landowners didn't need to know how the proposed changes would affect them until after the application for a jurisdictional transfer had already been approved.

CAEPLA/AAPL Response: From the perspective of the landowner, provincial jurisdiction is preferred every time. The Alberta legislation has been tried and tested over a period of many decades. Landowner interests are entrenched in law. There is provision for cost recovery if a legal conflict should arise.

Crossing restrictions, loss of annual payment provisions of the kind that now exist in Alberta, and unresolved policies on abandonment costs and liabilities make the possibility of a shift to NEB regulations thoroughly odious to landowners. Add to this the complete absence of cost recovery for landowners at NEB hearings, and it is easy to see how landowners effectively end up being shut out of the process.

Another far-reaching consideration that explains why landowners prefer pipelines to be provincially regulated rather than federally regulated is that overall, provincial governments tend to be more responsive to local needs.

When the federal regulator, the National Energy Board, amends its regulations, existing easement agreements can be affected. This is true because NEB regulations supercede the contents of easement agreements whenever the terms of the agreements are in variance of, or go contrary to, the regulations.

If and when landowners are confronted with such a circumstance, to gain the ear of Ottawa in a way that can effect change would take time, a considerable amount of money, and methodical planning.

To gain the ear of the provincial government, although challenging at times, is far less intimidating than trying to take on deeply entrenched Ottawa interests.

Some landowners may be wondering what the relationship is between the Alberta Association of Pipeline Landowners (AAPL) and CAEPLA — within Alberta, for all practical purposes, AAPL and CAEPLA function as a single unit.

Why You As A Landowner Should Be Thinking About a Depth of Cover Survey

If you are a landowner and have a buried pipeline on your property, you might want to be thinking about what you have to do to get a depth of cover survey carried out. Why? Because the chances are that if you do have a buried pipeline on your land, and if it has been there for any length of time, it may be a whole lot closer to the surface than you can possibly imagine.

The pictures to the right were snapped earlier this year in Saskatchewan. They were taken on a field at Section 25, Township 28, Range 9, west of the 3rd, which is just southwest of the town of Outlook, Saskatchewan.

Under the provisions of the National Energy Board Act, if the farmer who owns this land (or his tenant) crosses the pipeline or farms over it without first obtaining written permission from the pipeline company, and if the pipe should rupture when a semi-trailer loaded with grain or a heavy tractor goes over it, the farmer would be legally and financially liable.

In the event of a rupture, the pipeline company may or may not choose to prosecute the landowner. But the law is clear. Under the terms of Section 112 of the National Energy Board Act, the farmer is responsible.

This section of the Act reads:

...no person shall operate a vehicle or mobile equipment across a pipeline unless leave is first obtained from the company...

The pipeline in the photo was built in the 1950s. The shallow section that is near the surface is about 13 inches deep. (Farther north on boggy land there are pipelines that have risen right to the surface and pushed themselves up into the light of day.)

That pipeline companies should be compelled to bury pipelines deeper than even the standard 24 inches, is without question. The reason crossing restrictions are an issue with landowners, and what it means to farm over top of the pipe is even discussed, is because most pipelines are not buried deep enough in the first place.

The pipeline companies save big money by not going deep, but it puts landowners in the position of having a duty of care imposed on them on an almost daily basis. And as Canada's pipeline networks age, or in some cases push themselves up toward the surface, the condition of these aging pipes will increasingly become a subject of discussion — nothing lasts forever, including steel pipe.



The chances are that if you do have a buried pipeline on your land, and if it has been there for any length of time, it may be a whole lot closer to the surface than you can possibly imagine.



The reason crossing restrictions are an issue, and why what it means to farm over top of the pipe is even talked about, is because most pipelines are not buried deep enough in the first place. By not burying them deeper, pipeline companies save money; but end up imposing a duty of care upon the landowner.