Anthony J Danks  
Executive Director  
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Victoria, BC  
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30 June 2016  

Dear Mr. Danks;  

RE: Spill Preparedness and Response in BC: Proposed Amendments to the Environmental Management Act and Proposed Regulations  

On behalf of the Canadian Energy Pipeline Association (CEPA), I would like to thank the British Columbia (B.C.) Ministry of the Environment (Ministry) for the opportunity to provide comments on the third policy intentions paper on spill preparedness, response and recovery entitled Spill Preparedness and Response in BC: Proposed Amendments to the Environmental Management Act and Proposed Regulations (IP3). CEPA’s members are major Canadian transmission pipeline companies that collectively operate approximately 119,000 kilometres of pipeline in Canada, which transport 97 per cent of Canada’s daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the US each year.  

The energy transmission pipeline industry operates in a unique regulatory landscape and is a safe and efficient means of transporting large quantities of crude oil and natural gas over land. CEPA member companies have made a commitment to zero incidents and, if a spill were to occur, they have both the means and the capabilities to respond in an efficient and effective manner to mitigate impacts to the public and the environment. CEPA member companies are regulated by both provincial and federal agencies to ensure that we continue to ensure pipelines are designed, constructed, operated and abandoned is safe, reliable and environmentally responsible manner.  

The central objective of the proposed regime (to confirm industry and government’s ability to respond fast and effectively to spills anywhere in B.C.) is paramount to both industry and government. CEPA and its members are committed to working with the Ministry and other stakeholders to ensure the legislative amendments to the Environmental Management Act and proposed regulations fully meet these objectives in an efficient and effective manner. Of particular importance to CEPA members is ensuring that the implementation of any new regulatory requirements and responsibilities are consistent with the robust federal and provincial regulations that already exist. CEPA member companies appreciate the Ministry seeking to “align as much as possible with the other regulators and agencies – both provincial and federal – that have authority in regulating spill prevention, preparedness, response and recovery” (pg. 6 of the IP3). This is critical in preventing duplication and inconsistency which could lead to confusion and inefficient response/preparedness.  

Detailed input into how the Ministry can best implement an effective and efficient spill response regime in B.C. is provided below. These comments are organized so that they respond to each of the nine key areas of the proposed regulatory regime.  

1. WHO IS A REGULATED PERSON?  
CEPA supports requirements that are based on risk assessment. The risk assessment model must consider the strong track record that the energy transmission pipeline industry has with very low spill
rates and responsible emergency response and remediation efforts in the event of a release. Across Canada, from 2002-2015 there was an average of 3.75 significant failure incidents per year on CEPA member pipelines. Additionally, in 2015, 99.99% of oil and refined products transported via pipelines made it safely to market.

Regulatory consistency, based on harmonized standards and systems, is critical to maintaining high performance across all jurisdictions nationwide. This enables seamless alignment between provincial and federal jurisdictions, sharing of learning and best practices and maximum leverage of resources such as similar training programs and interchangeable personnel and equipment.

The primary agencies that regulate the pipeline industry’s operations in B.C. are the B.C. Oil and Gas Commission (OGC) for intra-provincial pipelines and the National Energy Board (NEB) for interprovincial and international pipelines. Many of the proposed amendments to the *Environmental Management Act* (EMA) and proposed regulations already exist as requirements under other federal or provincial legislation.

**Recommendation:** Where the proposed amendments would result in overlap, equivalency agreements should be pursued to avoid unnecessary duplication and an unnecessary regulatory burden being imposed on regulated companies.

### 2. CONTINGENCY PLANS

The proposed amendments relating to contingency plans could result in overlap with federal and provincial requirements already applied to the energy transmission pipeline industry. Federally regulated pipelines are required to have an Emergency Management Program and to file an emergency procedure manual with the NEB under the *National Energy Board Onshore Pipeline Regulations* (OPR).¹ They are also required to file annual updates to the NEB on their emergency procedure manuals by 1 April of each year.

Pipeline companies regulated by the OGC are required to have response contingency plans under section 6 of the B.C. *Emergency Management Regulation*. Sections 7 and 8 of the same regulation outline specific information that the plans must contain such as site-specific hazards and risks and emergency response roles within the regulated company. In addition, section 11 requires plans, and updates to these plans, to be submitted to the OGC.

**Recommendation:** As indicated in the IP3, CEPA member companies are already subject to regulatory requirements regarding the development and use of contingency plans. To ensure regulatory consistency we encourage the use of equivalency agreements and/or harmonization of requirements to avoid this unnecessary duplication.

### 3. GEOGRAPHIC RESPONSE PLANS

We support the Ministry’s intention to enhance local engagement through Geographic Response Plans that reflect input from local communities, First Nations and other stakeholders, and to collect, store and publish spill data. In fact, the framework for geographic response plans is already in place within the energy transmission pipeline industry with internal geographical plans already a requirement of existing emergency plans. CEPA members are open to sharing existing internal geographical plans as part of a commitment to transparency and cooperation. This cooperation would be an excellent window for

¹ Section 6.5 (1) (t) of the OPR requires regulated companies to “establish and implement a process for developing contingency plans for abnormal events that may occur during construction, operation, maintenance, abandonment or emergency situations”
municipal, provincial and identified stakeholder involvement and communication in order to appropriately identify and catalogue receptors and response challenges within a given geographic plan.

**Recommendation:** The framework for geographic response plans already in place in the energy transmission pipeline industry should be considered when drafting regulations.

4. **AREA RESPONSE PLANS**

CEPA recommends that the proposed Areas Response Plans (ARPs) align with existing provincially established area response planning, such as the BC established Land and Resource Management Plans established by the Ministry of Forests, Lands and Natural Resource Operations. Furthermore, they should be government led, with input from industry and other stakeholders. This will ensure alignment of response throughout the province.

It is our understanding that the development of ARPs will be the responsibility of the Preparedness and Response Organization (PRO). Although CEPA is supportive of collaborative efforts in developing such plans, the Ministry should take steps to ensure that requirements proposed in the IP3 are improving the safety of the environment and human health in an efficient and effective manner.

**Recommendation:** When developing regulations regarding ARPs the Ministry should consider the following:

- How will an ARP be developed if there are multiple PROs in an area?
- A PRO may have operations in areas where the impact of operations does not warrant development of an ARP.

5. **PUBLIC DISCLOSURE OF RESPONSE PLANS**

The public desire for increased access to emergency management information complements the industry’s commitment to enhanced transparency through all phases of pipeline operations. Our members view posting of emergency response plans as a step in the right direction to gain public trust and enhance transparency.

To this end, executives and subject matter experts from our member companies have developed and finalized guiding principles for the public disclosure of emergency response plans. The objective of this initiative is to share the appropriate level of information regarding public safety and security. Information withheld from the general public relates to privacy and security of critical infrastructure. This information is, however, always available to regulators and emergency responders.

The NEB recently issued Order **MO-006-2016** which requires federally regulated companies to publish the “entirety of their emergency procedures manuals applicable to their NEB-regulated facilities on their or their affiliate’s internet site for public viewing (the Published Manuals) by 30 September 2016”. The order allows companies to protect from publication specific aspects of their manuals that relates to privacy and security of critical infrastructure. We urge the Ministry to work closely with the NEB in order to ensure requirements are harmonized and do not create regulatory duplication.

It is worth noting that the NEB regulates for the complete life cycle of a pipeline project. Safety is a matter of primary public interest and has been included in the Board’s mandate since 1959. The Board is responsible for monitoring how companies comply with regulations and commitments concerning the safety of employees, the public, and the environment, as they may be affected by the design, construction, operation, maintenance and abandonment of a pipeline. Each NEB regulated company must have an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. If an incident does occur, the NEB will verify that there is adequate and appropriate
clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to the Board’s satisfaction, a complete clean-up and remediation of any adverse environmental effects.

**Recommendation:** The objective of public disclosure of company response plans should be to share the appropriate level of information regarding public safety and security. Information relating to privacy and security of critical infrastructure must only be shared with regulators and emergency responders.

6. **DRILLS AND EXERCISES**

Both the NEB and the OGC review and audit operators’ emergency responses plans and require companies to conduct regular inspections. For the energy transmission pipeline industry, there is significant overlap between the Ministries regulatory intentions and regulatory requirements, and industries own commitments regarding drills and exercises.

In 2015 alone, CEPA member conducted 386 emergency response exercises. Additionally, the NEB requires companies to complete comprehensive audits to identify issues before incidents occur. The regulator’s compliance verification activities include: conducting safety, security and environmental inspections and audits; investigating incidents; monitoring emergency response procedures; reviewing company programs, manuals and reports (including regularly updated Emergency Response Plans); and developing regulations and guidelines. Additionally, new interprovincial pipelines have NEB Conditions with very specific requirements around exercises and drills.

For provincially regulated pipelines, section 4 of the B.C. *Emergency Management Regulation* requires companies to “conduct training and emergency response exercise programs for all emergency response staff to whom powers and duties are assigned...”. Federally regulated pipelines are required to provide training to employees regarding “procedures for the operation of all emergency equipment that the employee could reasonably be expected to use” as per Section 46 of the OPR. Furthermore, both the NEB and the OGC review and audit operator’s emergency response plans and frequently participate in regulatory mandated exercises to ensure they are comprehensive and effective. These Audit requirements are found in Section 55 of the OPR and section 57 of the B.C. *Oil and Gas Activities Act*.

The Ministry intends to provide a director with the ability to order a regulated person to test their plan at any time through an unannounced drill or exercise. We understand the need for a certain amount of surprise inspections of a very short duration at some field locations; however, this process may not be an efficient or effect means of determining response capabilities. Critical business impacts can be avoided with appropriate warning at the senior level. We encourage the Ministry to reach out to senior company officials to provide awareness and plan drills around sensitive times.

In regards to industry led initiatives, the pipeline industry has a long history of assisting one another in the event of an emergency in order to respond as quickly and effectively as possible. This common practice was formalized with the signing of the Mutual Emergency Assistance Agreement (MEAA) on January 1, 2014. The agreement (signed by all 12 member companies) provides the participating companies a framework, which allows them to call upon each other to help in emergency response situations. Assistance can take many forms, such as personnel, equipment, tools or specialized response advice, depending on the circumstances. In the event of an emergency, all CEPA members follow Incident Command System (ICS) protocols in order to be able to collaborate efficiently and effectively.

In order to ensure the reliability and effectiveness of the MEAA, CEPA conducted a joint emergency management exercise involving its members. The exercise tested the ability of participants to follow the procedure, put a call out for assistance and execute the MEAA in real-time. It also tested the ability of
member companies to work together using the principles of the ICS. The lessons learned from the exercise were used to enhance the ability of our members to effectively collaborate, communicate and respond to a pipeline emergency. It is worth noting that the joint exercise was not mandatory. It was organized by CEPA’s members because they want to have a well-tested plan in place and they want to continuously improve pipeline safety by working together.

Recommendation: Regulatory harmonization and a mechanism for cooperation between federal and provincial regulatory bodies should be incorporated into regulations regarding drills and exercises.

7. PREPAREDNESS AND RESPONSE ORGANIZATION

We see significant value in an industry driven and self-sustaining PRO to enhance coordination and communications between transporters, governments, host communities, and providers of land based oil spill prevention, response and recovery systems. Industry has already taken the first steps towards the establishment of such an organization. In collaboration with the Railway Association of Canada, the Canadian Association of Petroleum Producers, the Canadian Fuels Association and the Chemistry Industry Association of Canada, CEPA has created a framework for an industry driven and multi stakeholder PRO. This was outlined in the attached concept paper “Preparedness and Response Organization Concept for land based spill response in British Columbia” (the Concept Paper) which was sent to the Ministry of Environment of December 23, 2015, as a practical first step in achieving the Ministry’s vision for a PRO in a cost effective manner.

Recommendation: The Ministry should take a measured approach when developing regulations relating to the development of a PRO. This means ensuring that specific requirements and functions of a PRO do not impede or duplicate the response capacities and expertise found within the energy transmission pipeline industry.

8. SPILL REPORTING AND RESPONSE TIMES

Our members have the capital and capacity to respond to any incidents along their pipelines and they are committed to responding quickly and effectively. The amount of industry resources that go into emergency preparedness and response ensures the detailed emergency response plans for each pipeline are coupled with the ability to mobilize and respond at any moment. This is accomplished by having specialized emergency response equipment at strategic locations and by ensuring emergency responders are well trained.

In order for these resources and this expertise to continue to be fully utilized, response procedures must be fit for purpose (and not one size fits all), overseen by appropriate regulatory agencies and led by industry unless the response proves to be inadequate. This is especially true given the wide scope of regulated persons under the Ministry’s proposed regime. It is critical that any regulations regarding response times and required actions take into account the different modes of transportation (e.g. pipeline, rail, truck) and the type of product being transported.

CEPA recognizes that there is a desire for clear standards regarding response times. This is why our industry has come together to develop response time guidelines for CEPA members. These guidelines (see Appendix A) are intended to help companies identify and position people and equipment before an incident occurs, and to implement supporting procedures. They are not intended as a measure of performance during a response, as the safety of the public and employees are always the first priority. We strongly believe that good decisions and safe behaviour are more important than speed. Any new regulatory requirements in this area should also reflect this reality.
In relation to regulations regarding spill reporting, it is critical that no additional regulatory burden is placed on regulated companies. For example, the IP3 proposes that regulated companies must provide an initial report within six hours of discovery. This requirement would add an unnecessary layer of reporting given that companies would also be required to provide an initial spill report “immediately after discovery”. It is unlikely that any additional information would be available to provide a regulator at the six hour mark.

Furthermore, requirements must be consistent with current federal and provincial regulations. These requirements include:

- Section 14 of the Emergency Management Regulation in B.C outlines reporting requirements regarding an evaluation of a company’s response to an emergency.
- Section 12 of the B.C. Pipeline Regulation requires a “pipeline permit holder must maintain records of any spillage and any damage or malfunction likely to cause spillage that could be a risk to public safety or the environment.”
- Section 52 of the OPR states that a “company shall immediately notify the Board of any incident relating to the construction, operation or abandonment of its pipeline and shall submit a preliminary and detailed incident report to the Board as soon as is practicable.”
- The NEB’s Event Reporting Guidelines provide federally regulated companies with greater clarity regarding the NEB’s expectations for event reporting throughout different stages of an incident. For example “significant incidents” (as defined in the Guidelines) must be reported within 3 hours; all other incidents reported within 24 hours; preliminary incident reports filed within 24 hours and detailed incident reports filed within 12 weeks.

Recommendation: Regulations regarding spill reporting and response times should be fit for purpose and incorporate reports already mandated within regulations and not add duplicity in the reporting environment.

9. RECOVERY AND RESTORATION
CEPA members have a demonstrated track record of appropriate restoration of the environment subsequent to a spill without any financial consequence borne by the public. This includes consideration for loss of public use, repair of public and private property and other effects resulting from a spill. This is why we support effective and efficient rules for restoration of the environment following a spill. However, regulations in this area should be objective-based and not overly prescriptive. This is especially important for the energy transmission pipeline industry which operates in a variety of diverse environments for which flexibility in the process for recovery and restoration after a spill is required.

Currently, provincially regulated companies in B.C. are subject to requirements and expectations for Certificate of Restoration applications made to the OGC. Specifically, the Certificate of Restoration Application Manual provides an overview of obligations under the Oil and Gas Activities Act, the Environmental Management Act and the Contaminated Sites Regulation. For federally regulated pipelines, the National Energy Board Act was recently amended as a result of the Pipeline Safety Act coming into force. This requires NEB-regulated companies to hold a minimum level of financial resources, set at $1 billion for companies operating major oil pipelines. A portion of these financial resources must be readily accessible to ensure rapid response to any incident. In addition, the NEB is the lead agency for clean-up and remediation from contamination caused by an incident from any NEB-regulated facility. Federally regulated pipelines must comply with the requirements of the NEB’s Remediation Process Guide which includes reporting, remediation assessment, development of a remedial action plan, and closure of the site.
The Natural Resource Damage Assessment process is intended to apply where the proponent is not required to conduct complete reclamation. This concept would not apply to federally regulated pipelines due to the NEB’s remediation requirements described above.

We encourage the Ministry to work closely with the NEB and the OGC to ensure a harmonized approach that avoids duplication in remediation and restoration requirements is achieved. It is important to ensure the process is clear and efficient and that it does not require multiple levels of approval.

**Recommendation:** The Ministry should ensure the following is included in regulations relating to recovery and restoration:

- Equivalency agreements with provincial and federal regulatory bodies;
- The application of offsets to help produce desired outcomes;
- Recognition of ‘in-kind’ support;
- Recognition of NEB approval of Remedial Action Plans under the NEB’s Remediation Process Guide; and
- Definition of end points including the definition of Net Environmental Benefit Assessment established in other jurisdictions.

**CONCLUSION**

Harmonization across jurisdictional boundaries is important for all parties to ensure that there are clear requirements, resulting in better protection of the environment, human health and safety and ensuring that companies operating in British Columbia remain competitive in the global market. With this in mind, we are encouraged that the Ministry of Environment has committed to providing a consistent regulatory framework that avoids unnecessary duplication of regulatory requirements. This is especially important for the pipeline industry as non-harmonized and duplicative requirements will create uncertainty and inefficiencies. Consistency, based on harmonized standards and systems is critical to strengthening performance across all jurisdictions nationwide.

The regulatory environment which our members operate in, combined with our industries excellent track record, should be taken into account when drafting new regulations regarding land based spills in B.C. We have outlined the areas of particular concern for our industry above and would welcome the opportunity to discuss them in further depth in the near future.

Thank you and we look forward to continuing to work with the Ministry over the coming weeks and months.

Sincerely,

Jim Donihee

COO, Canadian Energy Pipeline Association
APPENDIX A: CEPA RESPONSE TIME GUIDELINE