



The Honourable George Heyman
Minister of Environment and Climate Change Strategy
Parliament Buildings
Victoria, British Columbia, V8V 1X4

April 26, 2018

Dear Minister Heyman:

On behalf of the Canadian Energy Pipeline Association (CEPA), please accept our comments on the *Policy Intentions Paper for Engagement: Phase Two Enhancements to Spill Management in British Columbia*.¹ CEPA members operate 119,000 kilometres of transmission pipelines in Canada. Our members 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 with operations that emphasize safety, pipeline integrity, and social and environmental stewardship.

Safety and the environment are top priorities for the transmission pipeline industry, which is why CEPA and its members have been diligently working with the B.C. Ministry of Environment (Ministry), Indigenous communities and other stakeholders for the last five years. This work further enhances the existing world-leading land-based spill preparedness and response practices in British Columbia.

The transmission pipeline industry operates in a unique regulatory landscape and has proven to be a safe and reliable form of energy transportation. CEPA's members are committed to meeting the highest safety and environmental standards, and their operations are heavily regulated by both provincial and federal agencies, which require members to have detailed contingency plans, complete incident reporting, and follow a robust regulated process for remediation. Examples of such regulatory requirements include:

- All companies operating in B.C. have expectations from all their regulators. The companies operating in B.C. must have an emergency management program (as per the National Energy Board (NEB) Onshore Pipeline Regulations and the B.C. Emergency Management Regulations) that anticipates, prevents, manages and mitigates conditions during an emergency. These plans are made public for increased transparency, as required by the NEB;
- The NEB and B.C. Oil & Gas Commission (BCOGC) utilize many methods for assessing compliance with current regulations including comprehensive emergency response plan review, attendance at company emergency response exercises, conducting compliance meetings and management system audits.

¹ Policy Intentions Paper for Engagement

<https://engage.gov.bc.ca/app/uploads/sites/342/2018/02/Phase-Two-Intentions-Paper-February-28-2018-FINAL.pdf>



- Federal and provincial requirements for training and emergency response exercise programs, including identifying issues before incidents occur. (In 2016 alone, CEPA members held more than 454 emergency response exercises, ranging in complexity from table-top drills to full-scale exercises);
- Federally-regulated pipelines must comply with the NEB's Remediation Process Guide, which includes reporting, remediation assessment, development of a remedial action plan, and closure of the site;
- Federally-regulated pipelines have the requirement to demonstrate that they have financial resources to match at a minimum their level of absolute liability (\$1 billion for pipelines carrying over 250,000 barrels per day).

In addition to the above, CEPA members have developed industry best practices and initiatives that go beyond regulatory requirements. These include:

- Response time guidelines to help companies identify and position people and equipment before an incident occurs;
- CEPA's Mutual Emergency Assistance Agreement (MEAA) which was signed in 2014, allowing CEPA's member companies to support each other in emergency situations with personnel, equipment, tools or expert advice, depending on the circumstances;
- Adoption of the Incident Command System which guides the response with focus on Life Safety, Incident Stabilization and Protection of Property and the Environment.

The robust regulatory systems our companies operate in and our industry's commitment to continuous improvement have led to an exceptional operational record. In the past 5 years, 15,000 spills have been reported to Environmental Emergency Response Officers (EEROs) and during that time CEPA members operating liquid pipelines in B.C. have not had any incidents resulting in a spill.

With the above in mind, CEPA would like to offer specific comments regarding the Ministry's policy intentions, as outlined in its paper for consultation.

Legislative framework

Transmission pipelines are the safest, most efficient and environmentally-responsible way to transport large volumes of oil and natural gas across long distances. In line with one of the long-standing Ministry principles to "avoid unnecessary duplication" the Ministry should review and confirm that unnecessary duplication is not being implemented through the proposition of any new regulations. The pipeline industry is already heavily regulated and well-positioned to respond in an effective and efficient manner in the unlikely event of a spill.

Furthermore, the focus of Phase Two Enhancement to Spill Management in B.C. appears to be introducing preparedness and response concepts that would not be applied uniformly across all carriers of liquid petroleum products. To enhance measures to protect the public and environment, expectations should be unbiased and applied uniformly based on an assessment of risk, mitigation and



preparedness activities; however, it appears the Ministry is generating targeted and potentially biased legislation.

For example, introducing the term “Hi-Volume Regulated Persons,” which is not currently defined in the regulations. Furthermore, it is unclear how many of the current and proposed regulations would apply to provincially (BCOGC) regulated entities.

We strongly encourage the Ministry to work more closely with the BCOGC, NEB, Transport Canada and other relevant agencies to ensure any new regulations do not overlap with current requirements and that they are applied consistently across the province.

Response Times

Planning standards for response milestones is not a new concept for CEPA members; response time guidelines for the industry have been developed and implemented across our membership. These guidelines support oil pipelines in identifying and positioning appropriate equipment and personnel along the length of the pipelines.

Furthermore, current emergency management programs in place across the transmission pipeline industry have multiple standards which support companies' management systems. One document that is foundational to emergency management programs is the Planning Standard which establishes the desired response outcomes, including target response times. The Planning Standard is an internationally accepted document used for response planning to ensure a prompt, safe and effective response to any emergency.

A variety of milestones in which the planning standard applies includes: shutting down operations, internal notifications, initial site assessment, and equipment deployment. The actual response times are reviewed during exercises and after any event requiring activation of the Emergency Response Plan to confirm that a company has adequate resources and equipment to meet the maximum target response times. These response times also guide the placement of spill response equipment and resources.

Aligned with the BC Emergency Management System (BCEMS), CEPA members' number one response goal is responder safety. Punitive measures attached to response times in the event of a spill do not support preparedness and do not meet the spirit of responder safety as the priority. Any regulated response time guidelines should not act as a measure of performance during a response but rather as a target that takes into consideration public and employee safety during transit to the site.

Arriving safely to a spill site with the right equipment and personnel supports a more effective and efficient overall response and is more important than speed.

Geographic Response Plans

The concept of Geographic Response Plans (GRP) is not new and is something CEPA members are leading the transportation industry in. Generally, GRPs set out specific response actions to be taken in



the unlikely event of a spill to minimize impacts to people and the environment. These map-based plans are tailored to a specific geographic area and contain a variety of information, such as step-by-step directions for tactical response actions within the first 72 hours of a response.

Linear GRPs have already been generated for the length of pipelines that transport liquid petroleum products and take into consideration high consequence areas. These GRPs are developed in collaboration with local public safety and first responder agencies, along with input from Indigenous groups to gather local knowledge and identify sensitive areas. This process supplements the already identified environmental, ecological, Indigenous, social and economic values. GRPs, like all emergency response plans, are continually evaluated and updated. This process includes continued engagement of Indigenous people, local stakeholders, landowners and the public to ensure these plans capture additional high consequence areas that require protection from potential spills.

Given that GRPs are already well established in the pipeline industry, CEPA strongly recommends that the Ministry develop a common place to hold (digitally), support and maintain GRPs for public sharing. By collating all work developed thus far by industry, a robust library of strategies and identified high-consequence areas, would be accessible, preventing duplication and enabling the focus to be on areas not yet assessed and still requiring planning. Although CEPA and its members support transparency and public accessibility of GRPs, consideration will need to be given to protecting information regarding 'resources at risk.' Experience indicates that information on some high consequence areas is appropriately made public, while other information may need to be kept confidential.

As the Ministry continues to move forward on the development of policy with respect to GRPs, CEPA encourages the Ministry to acknowledge and leverage the work that has already been completed. As described above, industry geographic response planning efforts have been underway for many years; CEPA and its member companies have been collaboratively engaged with the provincial government, Indigenous communities, and stakeholders on land-based spill response and preparedness.

Other considerations that we would like to bring to your attention include:

- GRPs are useful beyond planning for the transportation of hydrocarbons and help to strengthen overall community emergency plans, as many other hazards introduce risks that could initiate the need for protection of sensitive areas.
- Indigenous communities' involvement in the development of GRPs is critical and CEPA strongly endorses the continuation of that practice.
- The cost of developing GRPs needs to be carefully considered and should be shared among parties as they are not about one particular industry or product, but support response to all hazards.

ADDRESSING LOSS OF PUBLIC USE FROM SPILLS, INCLUDING ECONOMIC, CULTURAL AND RECREATIONAL IMPACTS

CEPA supports a reasonable cost recovery model that incorporates a high level of certainty of process. Direct industry funding to the B.C. Ministry of Environment is neither optimal nor efficient. Thus, careful consideration is necessary before any additional collection of funding is proposed to ensure no



duplication of regulatory oversight. This is especially important in relation to federal requirements under the *Pipeline Safety Act*, which requires companies regulated under the *NEB Act* to have unlimited liability when proven to be at fault or negligent. The *Act* also instituted absolute liability, meaning that companies operating major oil pipelines are liable for all costs and damages up to \$1 billion, regardless of fault.

The *Pipeline Safety Act* also provides the NEB with the authority to order a company to pay others that have incurred costs or expenses in relation to a spill. Additionally, in the event of a spill, a company is liable for the applicable limit of Absolute Liability for costs associated with loss or damages and loss of non-use value of public resources.

To avoid unnecessary duplication with current federal requirements and obligations, and duplicative payments for the same incident, the Ministry should carefully consider the implication of their current policy intentions. Should the Ministry move forward, with the intent to include a process to compensate the public for "losses" as a result of a spill, CEPA looks forward to participating in the technical working group to aid in the identification of appropriate and well-tested quantification tools and methodologies to assess losses, as well as identify an appropriate process to determine compensation.

MAXIMIZING THE MARINE APPLICATION OF MINISTRY ENVIRONMENTAL EMERGENCY REGULATORY POWERS

Transport Canada has jurisdiction under the *Canada Shipping Act* to oversee and regulate all aspects of shipping, including spill prevention, preparedness, response, and recovery. To operate in Canada, all bulk oil carriers, 150 GT and greater, and all other vessels (non-bulk), 400 GT and greater (e.g. ferries, cruise ships, cargo ships), must have an arrangement with certified response organization. Oil handling facilities receiving or shipping oil by marine delivery are also required to maintain similar arrangements. This ensures oil spill response plans, teams and equipment are always available to commercial vessels and oil handling facilities.

To further improve this already robust marine safety response system, the federal government has committed to strengthening the spill compensation mechanisms, through enhancements and modernization of the Ship-Source Oil Pollution Fund (SOPF) through its Oceans Protection Plan (OPP). By further strengthening the polluter-pay principle, the OPP will ensure industry-funded compensation in the case of a marine oil spill, including unlimited amount of compensation available for spill response. The polluter, in a ship-source spill, is liable for all the costs of the response and is required to carry sufficient insurance coverage for this purpose. Furthermore, there is ability within Canada's regime for spills of persistent oil cargo to access additional international funds through the SOPF. This fund would be accessed to fund a response in cases where the polluter cannot be determined. In the unlikely event that the Fund is depleted, a modernized levy on those who ship oil would be applied, ensuring that the compensation continues to be funded by industry. In addition, as part of the federally committed investment of \$1.5 billion towards the OPP, additional research into the fate and behavior of oil spills on water will be conducted and two emergency towing vessels requisitioned for the West Coast.



In addition to the above requirements and government initiatives, industry has taken considerable measures to ensure B.C.'s coastlines are safe, through the funding and maintaining of certified response organizations on both the east and west coasts of Canada. Certified by Transport Canada through the demonstration and evaluation of capability and capacity at exercises and drills, the Western Canada Marine Response Corporation (WCMRC) is prepared to respond to marine oil spills along the 27,000 km of British Columbia's coastline. This industry-funded response organization conducts continuous training and equipment maintenance to ensure ready-state response capability.

Recently the organization has taken numerous steps to further enhance their already world class capabilities. This includes meeting with thousands of coastal British Columbians to map their part of the coast and ensure local sensitivities are protected. Each strategy created is field-tested to ensure it is effective. Additionally, enhancements to WCMRC's response capabilities are also underway for the B.C. south coast, which will result in a significant increase to WCMRC's response capacity with a marked reduction in response times for on-water response.

Canada has a well-functioning, globally aligned, marine safety regime and efforts are well underway to continue to increase preparedness, enhance capacity, and ensure that funding of a ship source spill response is always available, while lying fully with the polluter.

Conclusion

Consistent and harmonized regulations provide for increased awareness, safety and overall effective and efficient preparedness and response. CEPA is encouraged that the Ministry has included a commitment to avoid unnecessary duplication in its policy intentions paper on phase two enhancements to spill management. Given this and the Ministry's intent to "set clear standards for spill preparedness, response and recovery", CEPA strongly recommends that a review of current legislation and regulations is done prior to moving forward with any policy intentions.

Should the government choose to implement additional policies regarding planning standards, GRPs, and compensation for land and/or marine spills, CEPA would welcome the opportunity to participate in technical working groups. In the interim, CEPA would like to offer the following recommendations:

- Any new regulations that are put in place in B.C. should acknowledge that the pipeline industry is already heavily federally and provincially regulated and well-positioned to respond in an effective and efficient manner in the unlikely event of a spill.
- To enhance measures to protect the public and environment, regulatory requirements should be unbiased and uniformly set for all carriers based on an assessment of risk, mitigation and preparedness activities.
- Any regulated response time guidelines should not act as a punitive measure of performance during a response but rather as a target that takes into consideration public and employee safety during transit to the site.
- The Ministry should develop a common place to hold, support and maintain all existing and future GRPs for public sharing.



- The cost of developing GRPs should be shared among parties as they go beyond any one industry or product and support response to all hazards.
- The Ministry should recognize the current requirements with respect to recovering costs borne by the public because of a spill (e.g. the *Pipeline Safety Act*) to avoid unnecessary duplication with current federal requirements and obligations, and duplicative payments for the same incident.
- Any provincial process to compensate the public for “losses” should be developed to be clear and transparent and should not overlap with other laws or processes.
- Partner with the federal government in their efforts to continue to increase preparedness and enhance capacity off the coast of B.C.

CEPA and its members are dedicated to continuous improvement and the shared goal of reaching zero incidents. We are committed to ongoing consultations with the B.C. Ministry of Environment and other stakeholders throughout phase two of this process.

If you have any questions regarding the above comments and recommendations, please contact Kai Horsfield, Manager, Policy and Regulatory at khorsfield@cepa.com or by phone at 403.221.8755.

Yours sincerely,

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