

Proposed National Energy Board Administrative Monetary Penalties (AMPs)

CCGA Comments re: NEB Discussion Paper

The following is in response to a general request for comments from the National Energy Board on the Proposed National Energy Board Administrative Monetary Penalties (AMPs) discussion paper.

While the AMPs proposal applies to multiple facets of National Energy Board governance, please note the CCGA has limited its view and comments to excavation and construction near pipelines; more specifically, any activity governed by Section 112 of the National Energy Board Act and / or the *National Energy Board Pipeline Crossing Regulations, Part I and Part II*.

The CCGA wishes to thank the National Energy Board for the opportunity to provide comment on this discussion paper and looks forward to continuing a collaborative dialogue that will assist the Board in reaching its goal of effective damage prevention governance.

1. General overview

The Discussion Paper provides an appropriate level of governance relative to monetary penalties, a widely accepted deterrent to performing ground disturbances without proper authorization, and in general, the CCGA is supportive of it. The CCGA notes for reasons of clarity, however, that some points within the Discussion Paper should be enhanced. The CCGA is also of the opinion the Discussion Paper, under “compliance agreements”, provides an avenue to "creative" penalties. As noted in Section 9 of the [CCGA's Damage Prevention White Paper](#), the CCGA considers creative penalties an essential regulatory enforcement tool that effectively joins public awareness and education with enforcement measures.

2. Detailed review

The CCGA's detailed review and comments are provided according to the NEB's Discussion Paper sections.

Section 1.0 - Overview

- No comment.

Section 2.0 – Background

- No comment.

Section 2.1 - AMPs

- No comment.

Section 2.2 - One Tool in the Toolkit

- CCGA suggests the NEB provide a link to the referenced "compliance toolkit" and include related procedures or description of how and when they are used. The CCGA believes that doing so will enhance the context of the use of AMPs and complement the content of the discussion paper.

Section 3.0 - Proposed AMP Scheme

- No comment.

Section 3.1 - Violations

- Since emphasis appears to be placed on Environment and Safety, the CCGA suggests the discussion paper affirm that third party excavation and construction activities are governed by the recent AMPs amendment to the NEB Act. For the lay person, however, the CCGA strongly suggests the NEB note

the inclusion by expanding the phrase "It also includes rules for working safely near these facilities." with the following:

"It also includes rules governing excavation and construction activities within 30 meters of NEB-regulated pipelines."

Section 3.2 - Penalties

- The CCGA inquires whether there is a maximum cumulative penalty, relative to the number of days a violation remains, that can be imposed on any party. The CCGA notes that under PHMSA, AMPs have a 2 million dollar ceiling (\$200K/day for 10 days). The NEB's discussion paper does not indicate whether there is such a ceiling; and the CCGA's review of the amending language to the NEB Act (Part IX of the Budget Implementation Act – clauses 134 to 154) did not reveal any such provision indicating the maximum number of days a penalty may be carried regardless of the continuance of the violation.
- With respect to the last sentence of Section 3.2, the CCGA also inquires whether a separate report, "ticket", or NEB issued document will be required for each additional day that a violation remains.

Section 3.2.1.1 – Baseline Penalty

- The CCGA is of the view that, in general, this section is vague and therefore requires additional language and description. The CCGA suggests the NEB further articulate the influencing factors that determine the severity of a violation. An elaboration or distinction between the terms "serious" and "very serious" should also be included.

Section 3.2.1.2 - Penalty Adjustment

- The CCGA suggests use of the word "party" instead of person.
- The final sentence of the final paragraph refers to "maximum penalties". The CCGA inquires whether the intent is to refer to a cumulative maximum penalty.

Section 3.2.1.3 - Compliance Agreement

- The CCGA strongly endorses and encourages creative penalties whereby public awareness and education is enhanced following a violation directly benefitting public safety. In this regard, the CCGA is of the opinion that a Compliance Agreement has the capacity to be an avenue to creative penalties.

If the NEB agrees with the CCGA, will such an avenue be articulated as an additional compliance tool in Section 2.2?

If the NEB does not agree with the CCGA, why?

- Fines are to be paid to the Receiver General for Canada. Is there an opportunity or avenue to allocate a percentage of the fine to awareness, education or training - perhaps under Section 3.2.1.3 "Compliance Agreements"?
- If not, please explain.

Section 3.3 - Service of Documents

- The CCGA suggests the Discussion Paper affirm:
 - any violation, related to the discussion paper, does not have to be personally witnessed by a NEB representative, such as an Inspection Officer or Safety Officer, in order for AMPs to be considered as an enforcement option; and
 - the violation notification method(s) that will allow an NEB Inspection Officer / Safety Officer to consider AMPs as an enforcement option.

3. Closing Comments

In closing, the CCGA wishes to thank the NEB for the opportunity to comment on the information provided in the AMPs Discussion Paper. The CCGA also wishes to acknowledge the NEB's recognition of the positive influence penalties have on compliance and the enforcement of regulations. The CCGA looks forward to continuing to work with the NEB to realize effective regulatory governance relative to public safety and the integrity of Canada's critical buried infrastructure.

Sincerely,



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