

MEMORANDUM OF UNDERSTANDING

MAIL ROOM
SALLE DE COURIER

2011 SEP -7 A 11: 37

NEB/ONE

BETWEEN: The National Energy Board, hereinafter referred to as the **NEB** and represented by its Chair

AND: The Canadian Transportation Accident Investigation and Safety Board, hereinafter referred to as the **TSB** and represented by its Chair

Whereas, pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act (CTAISB Act)*, the TSB has the responsibility to advance transportation safety; its responsibility being carried out by conducting independent investigations, and if necessary, public inquiries into transportation occurrences to make findings as to their causes and contributing factors and by making recommendations to eliminate or reduce safety deficiencies as evidenced by those investigations;

Whereas, pursuant to subsection 14(3) of the *CTAISB Act*, the NEB is precluded from investigating a transportation occurrence for the purpose of making findings as to its causes and contributing factors if the occurrence is or has been investigated by the TSB or if the TSB has informed the NEB that it intends to do so;

Whereas, pursuant to the *National Energy Board Act (NEB Act)*, the NEB has the primary responsibility to regulate, *inter alia*, the safe design, construction, operation and abandonment of oil and gas pipelines; the responsibility to investigate accidents involving those pipelines; the authority to hold a public inquiry into, and make findings as to, the cause of the accident or factors contributing to it; and the power to make recommendations relating to the prevention of similar accidents, and the responsibility to issue orders related to the design, operation and abandonment of pipelines;

Whereas, pursuant to paragraph 14(4)(a) and subsection 14(5) of the *CTA/ISB Act*, while the TSB is investigating a transportation occurrence, the NEB is able to continue at its discretion with its own activities (for example, taking emergency remedial measures, conducting investigations for regulatory purposes other than making findings as to causes or contributing factors);

Whereas, pursuant to subsection 15(2) of the *CTA/ISB Act*, where conflicting interests arise between the TSB and the NEB in coordinating their activities during the investigation of an occurrence, the requirements and interests of the TSB shall take precedence and be paramount to the extent of the conflict.

Whereas, reportable occurrences are required to be reported to the TSB, pursuant to the *Transportation Safety Board Regulations (TSBR)*;

Whereas, incidents relating to the construction, operation or abandonment of a pipeline are required to be reported to the NEB pursuant to section 52 of the *Onshore Pipeline Regulations, 1999 (OPR)*; and section 46 of the *Processing Plant Regulations (PPR)*.

Whereas, it is desirable that the TSB and the NEB (the Parties) coordinate their activities without compromising their respective independence and with minimal adverse effect on each other's operations;

Therefore, it is desirable for the Parties to enter into a Memorandum of Understanding providing for the coordination of activities with respect to occurrences, including investigation procedures and practices and requirements for reporting occurrences, and providing for conflict resolution procedures.

THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS

In this Memorandum of Understanding, (Memorandum) the following words, unless a contrary intention appears, have the following meanings:

INCIDENT means a pipeline incident as defined in the NEB *OPR* and *PPR*.

OCCURRENCE means a pipeline occurrence as defined in the *CTAISB Act*

PIPELINE means a pipeline as defined in the *CTAISB Act*

1.1.1 GLOSSARY

CTAISB Act refers to the *Canadian Transportation Accident Investigation and Safety Board Act*

NEB Act refers to the *National Energy Board Act*

OPR refers to the *Onshore Pipeline Regulations, 1999*

PPR refers to the *Processing Plan Regulations*

TSBR refers to the *Transportation Safety Board Regulations*

2. APPLICATION

2.1 This Memorandum applies to all occurrences involving oil and gas pipelines regulated under the *NEB Act*.

2.2 For the purposes of this Memorandum, the operation of a pipeline excludes:

- (a) the period before which a pipeline is opened in conformity with a leave to open issued by the NEB pursuant to section 47 of the *NEB Act*, or where the company has been exempted, pursuant to section 58 of the *NEB Act*, from the obligation of obtaining such a leave, the period before the

- date and time of the placement in service;
- (b) the period during which a pipeline is not used by order of the NEB, pursuant to subsection 48(1) of the *NEB Act*;
 - (c) the period after which a pipeline has been deactivated in conformity with an order issued by the NEB pursuant to section 44 of the *OPR* and section 42 of the *PPR*, and before which the pipeline is reactivated in conformity with section 45 of the *OPR* and section 43 of the *PPR*;
 - (d) the period during which a pipeline or a portion thereof is not available for service as a result of maintenance-related activities requiring the removal of the flowing medium in such pipeline or portion thereof; and
 - (e) the period after which a company has either:
 - i) decommissioned the Pipeline, in conformity with an order issued by the NEB pursuant to section 45.1 of the *OPR*; or
 - ii) abandoned the operation of a pipeline, in conformity with an order of the NEB pursuant to paragraph 74(1)(d) of the *NEB Act*.

3. NOTIFICATION OF OCCURRENCES

- 3.1 Acknowledging that companies are required to report occurrences to the TSB pursuant to the *TSBR*, upon the NEB being notified of an occurrence, the NEB will forthwith notify the TSB of the occurrence in accordance with the notification procedures set out in 3.2
- 3.2 The NEB will maintain procedures whereby:
- (a) it will forthwith notify the TSB of:
 - i) any occurrence that is reported to the NEB; and
 - ii) any occurrence that is detected by the NEB through its ongoing field investigations and safety audits;

This notification will include the full particulars of the occurrence and the information required to be reported to the TSB under the *TSBR*.

3.3 Acknowledging that companies are required to report incidents to the NEB pursuant to the *OPR* and the *PPR*, upon being notified of a reportable incident, the TSB will forthwith notify the NEB of the incident in accordance with the notification procedures set out in 3.4.

3.4 The TSB will maintain procedures whereby:

(a) it will forthwith notify the NEB of:

- i) any occurrence or incident that is reported to it, providing the name of the company, the date and time of the occurrence, the number of injuries and fatalities, the TSB occurrence number and the TSB Occurrence Classification, any particulars relating to the involvement of dangerous goods, a brief description of the circumstances, whether the TSB plans to conduct an investigation and the scope of such investigation; and
- ii) any matter requiring urgent action detected during the course of an occurrence investigation or other TSB activities.

3.5 The Parties undertake to advise each other of important safety information related to their respective mandates.

4. EXCHANGE OF OCCURRENCE INFORMATION

4.1 When the TSB conducts an investigation into an occurrence, the NEB may appoint an observer pursuant to s. 23(2) of the *CTAISB Act*.

4.2 Upon being notified that the TSB will conduct an investigation into an occurrence, the NEB will advise the TSB whether it intends to appoint an observer and, if so, will provide the name of that observer.

4.3 Where an observer is not appointed pursuant to subsection 4.2, the

NEB will assign an official as coordinator to be the point of liaison between the NEB and the TSB for the purpose of exchanging information regarding an occurrence.

- 4.4 The observer shall not communicate or permit to be communicated any information obtained from the TSB during the TSB investigation without the express consent of the TSB.
- 4.5 The provision of factual information, including electronic data and services, by the TSB to the NEB will normally be effected through the observer or coordinator, as the case may be.
- 4.6 The TSB will notify the NEB, through the observer or coordinator, of any plans to disassemble and to test products or equipment in order to provide an opportunity for appropriate specialists to attend.
- 4.7 Any information provided by the TSB to the NEB shall not be used by the NEB in any legal, disciplinary or other proceedings.

5. CONCURRENT INVESTIGATIONS

- 5.1 In carrying out their respective duties following an occurrence, the Parties will protect the evidence for each other and, more specifically, before disturbing anything on the occurrence site, discuss the situation among them, ensure that the conditions of the occurrence site and the evidence contained therein are recorded by the best means available (including pictures, notes, and, where applicable, plot plans) and inform each other of what has transpired.
- 5.2 In carrying out their respective duties following an occurrence, the Parties will keep each other informed of any significant progress in their own activities in a manner to be agreed to by the Parties; and the Parties shall provide each other with any relevant information.
- 5.3 In carrying out their respective duties following an occurrence, the Parties will keep each other informed of any decision which they believe may impact on the other's activities, and more specifically of the following:
 - (a) any direction given by the NEB under subsection 48(1) of the *NEB Act* that work be done to a pipeline or that a pipeline not be used or be used only subject to certain conditions;

and

- (b) any prohibition or limitation of access to an occurrence site by the TSB investigator under subsection 19(6) of the *CTAISB Act*.

6. MEDIA RELATIONS

- 6.1 Where an occurrence is being investigated by both Parties, the provision of information to the media will be coordinated between them.
- 6.2 Where an occurrence is being investigated by both Parties, each one will have the authority to release information concerning its jurisdiction, but only the TSB may release information pertaining to the findings as to the causes and contributing factors of the occurrence.

7. REPORTS

- 7.1 As a person with a direct interest in the findings of the TSB, the Chair of the NEB will be provided by the TSB with a copy of the draft report sent to the Minister of Natural Resources pursuant to subsection 24(2) of the *CTAISB Act*.
- 7.2 As a person with a direct interest in the findings of the TSB, the Chair of the NEB will be provided by the TSB with a copy of:
 - (a) reports sent to the Minister of Natural Resources pursuant to subsection 24(5) of the *CTAISB Act*, and
 - (b) any other TSB recommendations, findings, and interim and final reports pertaining to occurrences.

8. CONSULTATION

- 8.1 At least once a year, the appropriate staff of the Parties will discuss their working relationship, investigations in progress and the need to amend this Memorandum.

8.2 The Parties agree to provide each other with assistance, advice and training to the extent that this does not interfere or conflict with the mandate of either the TSB or the NEB as set out in the *CTA/ISB Act* and the *NEB Act* respectively.

9. MEANS OF CONFLICT RESOLUTION

9.1 In the event of a dispute arising from the interpretation or operation of this Memorandum which cannot be resolved at the staff level, it will be referred to the Chief Operating Officer of the TSB and the Chief Operating Officer of the NEB who will use their best efforts to resolve the matter amicably. If such negotiation fails, the Parties intend to refer the matter to the Chair of the TSB and the Chair of the NEB for resolution.

10. AMENDMENTS

10.1 Proposals for changes to this Memorandum may be made at any time by either Party, and appropriate amendments made as may be agreed upon but shall not be deemed valid unless effected in writing.

11. TERMINATION

11.1 Either Party hereto may terminate this Memorandum upon notice of such termination having been given in writing to the other Party at least three months in advance.

12. LEGAL LIABILITY

12.1 This Memorandum indicates the intentions of the Parties hereto but does not create a contractual or legal relationship between them.

IN WITNESS WHEREOF the Parties hereto have executed this Memorandum.

Signed for and on behalf of the

TSB

NEB

Wendy A Tadros.
Chair of the TSB

Gatineau, Québec
City, Province

2011 / 08 / 29
Year Month Day

Signed for and on behalf of the

[Signature]
Chair of the NEB
Calgary, Alberta
City, Province

2011 / 08 / 15
Year Month Day