



## Administrative Monetary Penalty / Sanction administrative pécuniaire NOTICE OF VIOLATION / AVIS D'INFRACTION

REFERENCE NUMBER / N° DE RÉFÉRENCE:

AMP-001-2020

**Information for Pipeline Company/Third Party/Individuals**

**Information pour la société pipelinère / une tierce partie / un particulier:**

<b>Name / Nom:</b> Trans-Northern Pipelines Inc.	<b>TOTAL PENALTY AMOUNT / MONTANT TOTAL DES PÉNALITES:</b> \$ 40,000.00
<b>Contact / Contactez:</b> W. Alan Sawyer, Jr.	
<b>Title / Titre:</b> President and Chief Executive Officer	<b>Date of Notice / Date de l'avis:</b> June 25, 2020
<b>Address / Adresse:</b> 310 - 45 Vogell Road	
<b>City / Ville:</b> Richmond Hill	<b>Regulatory Instrument # / N° de l'instrument réglementaire:</b> OC-3, AO-1-OC-3, AO-2-OC-3
<b>Province / State / Etat:</b> Ontario	
<b>Telephone / Téléphone:</b> [REDACTED]	
<b>Fax / Télécopieur:</b> [REDACTED]	
<b>Email / Courriel:</b> [REDACTED]	

On / Le August 20, 2018 (date violation was detected / date infraction avait été constatée)

### Trans-Northern Pipelines Inc.

Was observed to be in violation of a CER regulatory requirement. A commis une infraction aux exigences réglementaire de la RCE, This violation is subject to an administrative monetary penalty, as sujet à la sanction administrative pécuniaire ci-dessous. outlined below.

**Section One – Violation Details / Renseignements sur l'infraction**

<input checked="" type="checkbox"/> <b>Single-day violation / Infraction d'un jour</b>		<b>Date of Violation / Date d'infraction:</b>	
<input type="checkbox"/> <b>Multi-day Violation/ Infraction multi-journée:</b>		(from / du):	(to / au):
<b>Total Number of Days / Nombre total de jours:</b> 1	<b>Has compliance been achieved? / La situation est-elle rétablie?</b>	<input checked="" type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non
		If no, a subsequent NOV may be issued. Si non, un autre avis d'infraction pourrait être envoyé	
<b>Location of Violation / Lieu de l'infraction:</b>	NPS16 OA-CUJ Pipeline at MP-365.5-2016, Oakville, Ontario		
<b>Short Form Description of Violation / Description abrégée de l'infraction</b> (Refer to Schedule 1 of the AMP Regulations / Voir l'annexe 1 du Règlement)			
Act or Regulation/Section: NEB Onshore Pipeline Regulations, Section 29 Failure to contract for services as prescribed (Type B)			
<input type="checkbox"/> Contravention of an Order or decision made under the Act (ss. 2(2) of the AMP Regulations) / Dérégation à une ordonnance ou à une décision rendue sous le régime de la Loi (paragraphe 2(2) de Règlement sur les sanctions			

administratives pécuniaires)

- Failure to comply with a term or condition of any certificate, licence, permit, leave or exemption granted under the Act (ss. 2(3) of the AMP Regulations) / Manquement à une condition d'un certificat, d'une licence, d'un permis, d'une autorisation ou d'une exemption accordé sous le régime de la Loi (paragraphe 2(3) du Règlement sur les sanctions administratives pécuniaires)

## Section Two – Relevant Facts / Faits saillants

*Briefly describe reasonable grounds to believe a violation has occurred / Décrire brièvement les motifs raisonnables de croire qu'une infraction a été commise.*

Description of event:

Trans-Northern Pipelines Inc. (TNPI) owns and operates the 10" NPS OA-CUJ pipeline (hereafter referred to as 10" pipeline) pursuant to OC-3 Certificate of Public Convenience and Necessity (Exhibit A) and subsequent amending orders AO-1-OC-3 (Exhibit B) and AO-2-OC-3 (Exhibit C). The 10" NPS pipeline is a 273.1 mm OD by 7.8mm WT pipeline that originates at Montreal, QC, and terminates at Nanticoke, ON. The 10" NPS pipeline was put into service in 1952.

TNPI also owns and operates the 16" NPS OA-CUJ pipeline (hereafter referred to as 16" pipeline) pursuant to OC-3 Certificate of Public Convenience and Necessity (Exhibit A) and subsequent amending orders AO-1-OC-3 (Exhibit B) and AO-2-OC-3 (Exhibit C). The 16" pipeline is a 406 mm OD by 9.52 mm WT pipeline that originates at Oakville and terminates at Clarkson Loop. It was put into service in 2017. Due to pipe availability, TNPI used pipe with a wall thickness of 9.52 mm instead of 8.70 mm. (Exhibit D, NEB letter to TNPI 11 December 2017).

On 20 August 2018, TNPI reported a Damage to Pipe event (DTP2018-002, Exhibit E) involving TNPI and its contractor (the 16" pipe was hit with a backhoe without loss of containment). The contractor hand-exposed the 10" pipeline, but only exposed one end of the 16" pipeline using a hydrovac unit before excavating with the backhoe. The contractor failed to follow TNPI's Excavating and Excavations Greater than 1.2 m procedure (Exhibit F), which is referentially incorporated into TNPI's Construction Safety & Environmental Manual (Exhibit G) developed pursuant to section 31 of the National Energy Board Onshore Pipeline Regulations (OPR). The procedure required him to be aware of the depth of the 16" pipeline (Exhibit F, Checklist #18a, page 12), to ensure that the 16" pipeline was exposed and visible before excavating in the 60 cm zone (Exhibit F, page 7, #10), and to hand expose the 16" pipeline with a shovel within the 30 cm zone (Exhibit F, Checklist #19, page 12).

TNPI violated OPR paragraph 29(1)(c) by failing to take all reasonable steps to ensure that the maintenance activities were conducted in accordance with the section 31 manual. Paragraph 29(1)(c) states:

29 (1) If a company contracts for the provision of services in respect of the maintenance of a pipeline, the company shall

(c) take all reasonable steps to ensure that maintenance activities are conducted in accordance with the manual developed under section 31;

Act: National Energy Board Act\*

Regulation: National Energy Board Onshore Pipeline Regulations\*\*

\*On 28 August 2019, the National Energy Board Act was repealed and replaced by the Canadian Energy Regulator Act, and the National Energy Board's adjudicative work was transferred to the Canada Energy Regulator.

\*\*On 1 April 2020, the Miscellaneous Program made non-substantial amendments to these regulations, including changing the name to the Canadian Energy Regulator Onshore Pipeline Regulations.

Refer to the Evidence Table (Exhibit H) for the elements of the violation and related evidence.

Background:

In August 2018, contractor Robert B. Somerville Co. Ltd. (RBS) was conducting excavation activities on behalf (and in the presence) of TNPI as part of Operations & Maintenance (O&M) activity OM2018-051 (Exhibit I) on TNPI's 10" NPS OA-CLJ (Oakville to Clarkson Loop) at MP366.5. Another TNPI pipeline, the 16" NPS OA-CLJ, is located adjacent and running parallel to the 10" pipeline (Exhibit J, Trans-Northern Pipelines Inc. NPS 10 CUJ-OA Block Valve Oakville Creek – Bronte Creek Dig Site and Temporary Access Road at MP-366.50-2016 Survey Report, page 3). Given the close proximity of the 16" pipeline to the work being done on the 10" pipeline, both the

10" and 16" pipelines needed to be properly exposed in order to undertake the work in a safe manner. Before starting this work, TNPI staff completed numerous documents required pursuant to TNPI's policies, manuals, and procedures during the maintenance of its pipelines, such as the Excavating and Excavations Greater Than 1.2M procedure checklist (Exhibit K, Checklist, pages 9-17) and a Safe Work Permit (Exhibit L).

On 15 August 2018, the 10" pipeline was exposed by hand at each end of the required work area. A 17 m-long section of the 10" pipeline was subsequently exposed to allow for the cut-out of a section of pipe. The 16" pipeline was also exposed at the west end of the work area using a hydrovac unit to a depth of approximately 3.8 m. The hydrovac unit was then full, and could not be used any more. The remainder of the 16" pipeline was not exposed, despite an attempt at manual excavation to a depth of 2.1 m at the east end of the work area.

Rather than wait for the hydrovac unit to return or procure another one, the RBS Supervisor and TNPI representative assumed that the 16" pipeline would remain at a greater depth than the 10" pipeline throughout the area to be excavated, based on the Tie-In Record (Exhibit M) from a 2016 excavation at the same location. They decided not to continue to attempt to hand-expose the 16" pipeline with a shovel at the east end of the excavation. Instead, they proceeded without exposing the 16" pipeline, based on its observed depth at the west end of the work area, availability of historical information, and self-imposed time constraints associated with hydrovac unit availability. (TNPI response to Information Request #1, Exhibit N; TNPI NPS16 - Oakville Creek Line Strike Report, Exhibit O, page 3, and Audio Interview of CK, Exhibit P, at 20:25-24:10 of recording).

On 17 August 2018, the TNPI representative met another TNPI representative on site to hand off responsibilities for the continuation of the work (Audio Interview of CK, Exhibit P, at 38:15-40:54). The first TNPI representative does not recall whether or not he mentioned to the replacement TNPI representative the decision to not expose the 16" pipeline. (Audio Interview of CK, Exhibit P, at 40:54-41:51).

On 20 August 2018, the TNPI representative was overseeing the RBS excavator operator's work at the east end of the dig site where the 16" pipeline had not been exposed. (Audio Interview of DF, Exhibit Q, at 14:55 of interview). The RBS excavator operator started to excavate the area when he contacted the 16" pipeline with the bucket. (Exhibit O, page 3). The TNPI representative immediately stopped the work, and the 16" pipeline operation was shut down (Exhibit O, page 2). The 16" pipeline was contacted at a depth of 1.8 m below grade. The pipeline was active and carrying gasoline at the time of the event. The pipeline was damaged and required repair; there was no loss of containment. According to TNPI's investigation report, "NDE [non-destructive examination] was brought in for assessment. Engineering assessed the NDE and it was a minor scratch. Grinder repair was required and completed as per CSA." (Exhibit O, page 4)

The pipeline is located approximately 35 m from the rail track that services the Lakeshore West branch of the commuter GO Train line (Google Map, Exhibit R). The average daily ridership in 2018 for this branch was approximately 31,900 persons per day. (Ridership Document, Exhibit S). A significant pipeline event could have led to fatalities and injuries, environmental damage, and damage to and delays on this commuter train line.

#### Conclusion:

TNPI, as the pipeline owner and operator, violated paragraph 29(1)(c) of the OPR by failing to take all reasonable steps to ensure that the work was conducted in accordance with TNPI's maintenance safety manual developed under section 31. As a result, RBS failed to expose the 16" pipeline or confirm its depth before excavating, which resulted in a pipeline strike. The violation is proven by the following facts:

1. RBS failed to follow three requirements under TNPI's "Excavating and Excavations Greater than 1.2 m" procedure (Exhibit F) with respect to the 16" pipeline:
  - a. Page 7, #10 states: "The buried structure must be exposed and visible to the TNPI Representative and the operator of the mechanical equipment before excavating in the 60 cm zone."
  - b. Checklist #18a (page 12) states: "Be aware of...depth of...any other lines in area that could be affected..."
  - c. Checklist #19 (page 12) states: "Hand expose with a shovel, after allowing mechanical excavator as close as 30 cm (1') to buried structure. This is to be done all around."
2. There were other steps that TNPI could have taken to ensure that RBS followed these procedures, such as ensuring that RBS was aware of the procedures and stopping work until RBS agreed to follow them. TNPI could have insisted that RBS follow the procedures by, for example:
  - a. procuring a hydrovac truck to expose the 16" pipeline at the east end of the excavation (either the initial hydrovac truck or another unit could have been arranged on 15 August 2018, or again prior to the line strike on 20 August 2018), followed by hand-digging as required; or
  - b. hand-exposing the 16" pipeline using shovels (for safety purposes, shoring or trench boxes could have been used).
3. It would have been reasonable for TNPI to take these steps because:
  - a. A TNPI representative was on site for the duration of the work, and aware in real time of the methods being used;

- b. TNPI's manual does not allow for deviations from the specified procedures;
- c. The TNPI representative would have been aware that the 16" pipeline was not exposed and visible;
- d. Neither the TNPI representative nor RBS was aware of the depth of the 16" pipeline along the length of the work area; and
- e. There were no firm TNPI time constraints to complete the work.

**Section Three – Penalty Calculation / Calcul des sanctions**

<b>A) Baseline Penalty (Gravity Level = 0) / Pénalité de base (côte de gravité = 0)</b> <i>Refer to AMP Regulations, Subsection 4(1) / Voir le Règlement, paragraphe 4(1))</i>											
Category / Catégorie	Individual / Personne physique	Any Other Person / Autre Personne									
Type A	<input type="checkbox"/> \$1,365	<input type="checkbox"/> \$5,025									
Type B	<input type="checkbox"/> \$10,000	<input checked="" type="checkbox"/> \$40,000									
<b>B) Applicable Gravity Value / Côte de gravité globale applicables</b> <i>(Refer to AMP Regulations, Subsection 4(2) / Voir le Règlement, paragraphe 4(2))</i>						Gravity Level					
						Mitigating / Atténuer			Aggravating / Aggravantes		
						-2	-1	0	+1	+2	+3
<input checked="" type="checkbox"/> Other violations in previous seven (7) years / Autres infractions au cours des sept (7) années précédentes AMP-002-2018						--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Any competitive or economic benefit from violation / Avantages concurrentiels ou économiques découlant de l'infraction n/a						--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Reasonable efforts to mitigate/reverse violation's effect/reverse violation's effect / Efforts raisonnables déployés pour atténuer ou annuler les effets de l'infraction n/a						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Negligence on part of person who committed violation / Négligence de la part de la personne ayant commis l'infraction Multiple TNPI employees had the opportunity to ensure this event was avoided. Along with a violation of regulations, the actions of the TNPI staff contravened company policy. The resultant line strike was predictable and avoidable.						--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Reasonable assistance to the Board with respect to violation / Collaboration raisonnable avec l'Office en ce qui a trait à l'infraction All TNPI staff involved in the event were made available for interviews. TNPI's counsel provided ongoing assistance to CER staff.						<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Promptly reported violation to the Board / Infraction signalée sans délai à l'Office The eight-hour period between the incident and TNPI's report to the CER was reasonable in the circumstances. TNPI and RBS focused first on assessing the impact of the pipeline strike and any immediate safety concerns, and TNPI reported the event as soon as possible after ensuring that it did not pose a safety risk.						<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Steps taken to prevent reoccurrence of violation / Mesures prises pour prévenir les récidive TNPI reports that it has updated its relevant policies to remove previously ambiguous wording, and that TNPI senior management provided communication to inform all staff of the event and its causes. One of the TNPI staff involved in the event was also required to provide internal information sessions to operational staff across the country as a "lessons learned" activity.						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/> Violation was primarily reporting/record-keeping failure / Infraction reliée principalement à la production de rapports ou à la tenue des dossiers						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--	--

n/a

Any aggravating factors in relation to risk of harm to people or environment / Facteurs aggravants pouvant causer du tort au public ou à l'environnement

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The location of the event was approximately 35m from the GO Train track, which transports approximately 31.9K riders per day in the Greater Toronto Area.

**C) Total Gravity Value / Côte de gravité globale** **0**

**D) Daily Penalty / Sanctions quotidiennes** **\$ 40,000.00**  
(baseline penalty adjusted for the final gravity level / Pénalité de base d'après la côte de gravité)

**E) Number of Days of Violation / Durée de l'infraction** **1**  
(If more than one day, justification must be provided / si plus d'une journée, prière de justifier)

Notes to explain decision to apply multiple daily penalties, or "Not Applicable" / Notes pour expliquer la décision d'appliquer des pénalités multiples quotidiennes, ou «sans objet».

Not Applicable

#### Section Four – Total Penalty Amount / Montant total de la pénalité

Note: The total penalty amount shown is based on the period described in section one above. If compliance has not been achieved, a subsequent Notice of Violation may be issued.

Le montant total des pénalités est calculé d'après la période décrite dans la première section. Si la situation n'a pas été rétablie, un autre avis d'infraction pourrait être envoyé.

**Total Penalty Amount / Montant total de la pénalité** **\$ 40,000.00**

#### Section Five – Due Date / Date limite

(30 days from receipt of Notice of Violation / 30 jours à compter de la réception de l'Avis d'infraction)

**Due Date / Date limite** **July 27, 2020**

## Notes

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the Notice of Violation was received.

If you do not pay the penalty nor request a review within the prescribed period you are considered to have committed the violation and you are liable for the penalty set out in the Notice of Violation. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the Financial Administration Act.

The information regarding the violation may be posted on the CER website:

- a) 30 days from the date this Notice of Violation was received; or
- b) upon issuing a decision following a Request for Review.

## To Make Payment:

You may remit your fee payment by Electronic Funds Transfer (EFT) or by cheque payable to the order of Receiver General for Canada.

EFT payments can be arranged by contacting the Director of Financial Services, Monday to Friday, from 09:00 to 16:00 Mountain Time:

Telephone: 403-919-4743 / 800 899-1265

Fax: 403-292-5503 / 877-288-8803

**Cheques** should be made out to the "Receiver General for Canada" and mailed to:

Canada Energy Regulator  
Attention: Finance  
Suite 210, 517 - 10th Avenue SW  
Calgary, Alberta T2R OA8

Your completed *Payment* form should be enclosed with your payment.

## Notes

Vous disposez de 30 jours après la signification de l'Avis d'infraction pour demander une révision du montant de la pénalité, ou les faits rapportés, ou les deux.

Si les sanctions ne sont pas acquittées et qu'aucune révision n'est demandée, vous êtes considérés comme coupable de l'infraction et vous devez payer les sanctions précisées dans l'Avis d'infraction. Les sanctions sont payables à la date indiquée ci-dessus.

Un défaut de paiement constitue une créance envers l'Etat et peut être recouvré en utilisant tous les recours prévus dans la Loi sur la gestion des finances publiques.

L'information concernant l'infraction pourrait également être affichée sur le site Web de la RCE:

- a) 30 jours après la date de réception de l'Avis;
- b) dès qu'une décision a été rendue à la suite d'une Demande de révision.

## Paiement:

Vous pouvez payer le montant dû par transfert électronique de fonds (TEF) ou par chèque établi à l'ordre du Receveur général du Canada.

Pour se prévaloir du service de transfert électronique, communiquer par téléphone avec le Directeur, Service des finances, du lundi au vendredi, de 9 h à 16 h, heure des Rocheuses :

Telephone: 403-919-4743 / 800-899-1265

Telec. : 403-292-5503 / 877-288-8803

**Les chèques** doivent être établis à l'ordre du Receveur général du Canada et postés à l'adresse suivante:

Sanction administrative pécuniaire - Révision  
Régie canadienne de l'énergie  
517, Dixième Avenue S.-0., bureau 210  
Calgary (Alberta)  
T2R OA8

Le formulaire de *paiement* dûment rempli doit accompagner le paiement.

Keith Landra

Designated Officer  
Administrative Monetary Penalties

Fonctionnaire désigné  
Sanctions administratives pécuniaires