

The Pipeline Safety Act

The *Pipeline Safety Act* (Bill C-46) came into force on June 19, 2016, strengthening Canada's already strong pipeline safety system based on prevention, preparedness and response, liability and compensation. The *Act* builds on and aligns with work to strengthen the offshore, nuclear, marine and rail sectors.

Highlights of the *Act* include:

- enshrining the “polluter pays” principle into law;
- introducing absolute liability so that pipeline companies will be liable for costs and damages irrespective of fault or negligence — \$1 billion for companies operating major oil pipelines (transporting at least 250,000 barrels per day);
- introducing financial requirements so that pipeline companies are prepared to cover the liability and respond to a potential incident;
- strengthening measures to prevent damage to pipelines;
- providing the National Energy Board (NEB) with the authority to order reimbursement of clean-up costs incurred by municipalities, provinces and Indigenous communities; and
- enabling the NEB to take control of incident response if a company is unable or unwilling (i.e., in exceptional circumstances).

Please see the attached Annex for further details.

The *Act* provides authority for regulations to be made in a number of areas including:

- Damage prevention regulations – amendments to four sets of existing regulations ensure continued clarity of damage prevention requirements around pipelines. The updates include modernizing regulatory language, building in damage prevention best practices and clarifying safety practices. These regulations are now in effect to coincide with the coming into force of the *Act* on June 19, 2016.
- Absolute liability and financial resource requirements regulations – these will support implementation of the ‘no-fault’ absolute liability regime ensuring that NEB-regulated pipelines are adequately prepared to cover response, remediation costs, and liability claims related to a potential incident on their pipelines. These regulations are drafted and have been pre-published in the Canada Gazette (Part I) on October 8 for public comment.
- Regulations related to ‘designation’ of a company by the Government – in the unlikely event that a pipeline operator is unable or unwilling to respond to an incident, the *Act* provides that the NEB has authority to take over. Further, the Government could decide to establish a pipeline claims tribunal to streamline claims for compensation. These two sets of regulations will help give effect to this clause by 1) enabling the NEB to cost recover fully from the company that had the incident or from companies in the same commodity group over time and 2) setting out the administrative details and terms of compensation. These regulations are currently under development.

Annex: Pipeline Safety Act: “From – To” Summary

	Legislative Amendment	“ From ”	“ To ”
Prevention	Clarify the powers of NEB audit and inspection officers	Powers exercised in practice	NEB audit and inspection officer powers strengthened in law
	Update NEB’s damage prevention regime	Needed updating	Modernized and harmonized with provincial regimes
	Create new sentencing provisions	Did not exist	New provisions in NEB Act to sentence offenders
Preparedness and Response	Authorize NEB to take control of incident response and clean-up	Not explicit in Act	NEB can take control of incident response and clean-up in extraordinary circumstances
	Require companies to carry a minimum level of “ready cash”	Financial ability and “ready cash” in event of incident varies	Companies must carry a minimum level of “ready cash” to ensure quick response (to be set out in regulations)
	Authorize NEB to order companies to reimburse for clean-up costs	Recourse for costs and damages through court system	NEB can order companies to reimburse governments or individuals for clean-up costs
Liability and Compensation	Enshrine “polluter Pays” principle in law	Not explicit in Act	Enshrined in law
	Absolute liability for all companies	Companies have unlimited liability when at fault or negligent	Companies also have absolutely liable without proof of fault or negligence to set amount (\$1B for companies operating major oil pipelines, limits for others to be set out in regulations)
	Require companies to carry sufficient amount of financial resources	NEB discretion to set required company financial resources (case-by-case)	Companies must have amount of financial resources that, at a minimum, matches their absolute liability amount (NEB can raise)
	Companies liable for environmental damages	Not explicit in Act	Explicit that federal and provincial governments may sue for environmental damages
	Companies liable for their contractors	Not explicit in Act	Explicit that companies are liable for the actions of their contractors
	Companies remain liable and financially responsible for abandoned pipelines	Not explicit in Act	Explicit that companies remain liable and financially responsible for abandoned pipelines
	Government can create a Pipeline Claims Tribunal	Did not exist	Government can create a Pipeline Claims Tribunal to deal with claims for compensation (in extraordinary circumstances)
	Authorize NEB to recover costs of taking control of response and/or the creation of a Tribunal	Did not exist	NEB able to recover from industry all costs incurred for taking control of response and/or the creation of a Tribunal