

# Bill C-38 – What does it mean for property owners along pipelines?

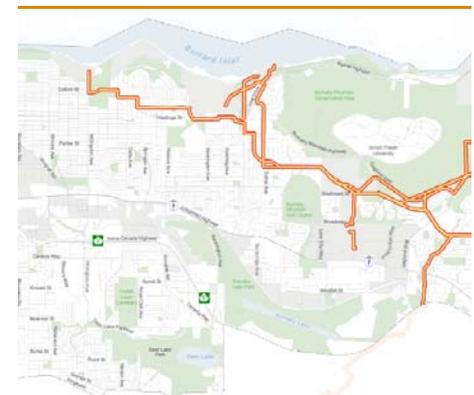
[Home \(/\)](#)

**A**mong its many provisions, it makes significant changes to legislation including the *Canadian Environmental Assessment Act*, the *National Energy Board Act*, and the *Species at Risk Act*.

These changes affect the operation of the National Energy Board (NEB), which has potentially serious implications for property owners along pipelines.

This includes the 2,200 property owners along the Trans Mountain Pipeline, owned by Kinder Morgan, which runs from the Alberta tar sands and passes through Lower Mainland communities including Hope, Chilliwack, Abbotsford, Surrey, Langley, Coquitlam and Burnaby. The original pipeline was completed in 1953.

Kinder Morgan, a Texas-based company, is planning a \$5 billion expansion to twin the Trans Mountain Pipeline.



**Trans Mountain Pipeline - Burnaby**

## **Canadian Environmental Assessment Act**

The new Act, which replaces the previous Act of the same name, establishes a new federal environmental regime. Assessments are conducted in relation to projects, designated by regulations or the federal Minister of the Environment to determine whether they will cause significant adverse environmental effects.

This means environmental assessments are no longer automatically required for projects proposed or regulated by the federal government – including pipeline projects – except where the Minister of Environment designates a project for assessment.

The new legislation downloads responsibilities to provincial governments. For example, for designated projects, the new legislation calls for provincial assessments instead of federal assessments.

## **National Energy Board Act**

Previously if the NEB, an independent quasi-judicial panel, recommended granting a Certificate of Public Convenience and Necessity (CPCN) to allow, for example, a pipeline project to go ahead, the federal Cabinet could overrule the decision. However, if the NEB did not recommend granting a CPCN, Cabinet could not approve it.

Now, under a new process, the NEB must present a report to the federal Cabinet specifying whether it recommends issuing or denying a CPCN. Cabinet – politicians – can direct the NEB to require the proponent of the designated project to collect any information or undertake studies necessary for Cabinet to make decisions.



**Burrard Inlet**

Cabinet will make the decision whether to approve or deny the CPCN and will outline the specific terms and conditions. In turn, the NEB will provide this information to the applicant.

For example, if the NEB denied granting a CPCN for the proposed expansion of Kinder Morgan's Trans Mountain Pipeline, Cabinet could overrule this decision and approve the expansion, even where an environmental assessment identifies significant adverse impacts to habitat and the environment.

The NEB is now exempt from having to abide by species at risk protections and will no longer be required to make sure pipelines and other major infrastructure minimize risk to vital habitat.

The chair of the NEB has new powers to speed up pipeline applications, unilaterally or with the other NEB members. The NEB must limit to 15 months the review of pipeline projects, including any environmental assessment, and the preparation of recommendations. Cabinet will have a

further three months to make its decision.

Previously a range of interested parties could make submissions to the NEB or review panels during consultation periods. Now only those 'directly affected' or with information or expertise will be consulted or permitted to appear at review panel hearings.

This could potentially mean that should it express an interest in doing so, the Real Estate Board of Greater Vancouver might not be permitted to make a submission concerning the property rights of home owners along the proposed expansion of the Trans Mountain Pipeline in the Lower Mainland, as the Board might not be considered as being 'directly affected'.

## What is the National Energy Board?

The NEB is an independent federal agency established in 1959 by the Parliament of Canada. The nine-member NEB is appointed by the Governor in Council for a seven-year renewable term and is accountable to Parliament through the Minister of Natural Resources Canada.



The NEB regulates pipelines, energy development and trade in the Canadian public interest.

### The Board also:

- provides energy advice to the Minister of Natural Resources;
- carries out studies and prepares reports when requested by the Minister;
- holds public inquiries; and
- monitors current and future supplies of Canada's major energy commodities.

The NEB has responsibilities under the *National Energy Board Act* (NEB Act), the *Canada Oil and Gas Operations Act*, the *Canadian Environmental Assessment Act*, the *Northern Pipeline Act*, and certain provisions of the *Canada Petroleum Resources Act*. As a result of the *Canada Transportation Act*, the NEB's jurisdiction includes pipelines that transport commodities other than oil or natural gas.

The NEB deals with about 750 applications annually. For major applications, the NEB holds public hearings where applicants and interested parties can participate. These hearings can be written or oral proceedings and are held at locations across Canada where there is a particular interest in the application and which will be most affected by the NEB's decision.

The NEB operates as a court of record, similar to a civil court. Its powers include the swearing in and examination of witnesses and the taking of evidence.

Tags: [environment](/category/tags/environment) , [Kinder Morgan](/category/tags/kinder-morgan) , [property rights](/category/tags/property-rights) , [Trans Mountain Pipeline](/category/tags/trans-mountain-pipeline)