



Context and Key Considerations

In its advice to the CER, the Committee recommended that changes to the OPR and FM would be required to improve CER's oversight of Emergency Management

- Improved notification and communication with Indigenous Nations.
- Increased Indigenous involvement in emergency response.

In response to these recommendations, the CER is considering:

- Amending the OPR to be clear that the CER requires sites of historic and cultural significance to be considered in a company's EM Program.
- Create a new requirement for companies to involve Indigenous people in their EM program.
- Provide clarity on how companies should communicate and engage with Indigenous peoples by consolidating the *Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management* and *Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-Reportable Incidents* into the OPR and/or guidance.

Scenario

A pipeline operated by a company leaks 700 barrels of crude oil near a highly valued sacred site shared by multiple First Nations. The spill threatens the ecosystem and cultural integrity of the area. The company notifies the closest community about the spill and agrees to let them deploy monitors to oversee cleanup efforts.

Other First Nations, who also hold the site as culturally significant, are angered that they were not notified of the spill and as a result, specific sites of cultural significance only known to them, were impacted by the incident that could have otherwise been avoided. They send letters to the pipeline regulator demanding explanations and policy changes to ensure:

- All impacted Nations are notified in future incidents, not only those Nations in closest proximity to the incident.
- Indigenous communities are invited to participate in emergency responses.
- Companies are required to have Emergency Management programs in place are effective at protecting sites of Indigenous significance for all Nations impacted by the project.

Discussion Questions

- How can the company identify which Nations to notify about potential impacts to heritage resources during an emergency? How can it ensure these Nations are included in the emergency management planning process?
- How should Nations be involved in spill response efforts?
- What opportunities and challenges do Indigenous communities face in participating in the company's emergency management program?
- What resources or capacity support do Nations need to effectively engage in emergency response activities?



Scenario

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Indigenous Engagement



Topic Papers



Context and Key Considerations

In its advice to the CER, the Line 3 IAMC emphasized the important role the CER plays in setting clear expectations and high standards for proponents when engaging with Indigenous Nations. The committee recommends that the CER enhance its guidance for meaningful engagement throughout the lifecycle of the project, including ensuring that communities have time and resources to participate, and that the CER verify company's claims about the adequacy of engagement.

In response, the CER is considering formalizing additional Indigenous engagement requirements in the regulation. The objective of new requirements will be to:

- drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities across the lifecycle.
- help ensure appropriate information about a company's activities is provided to impacted communities.
- help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights and interests may be impacted, and how they can be addressed.
- allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous Peoples, potentially affected people and communities.

Scenario

A company received CER approval for a 75 km pipeline project crossing the traditional territory of 18 First Nations. The original owner conducted strong early

engagement, addressing most concerns prior to the CER application, with approval requiring ongoing engagement with impacted Nations.

After the project was sold, the new owner's engagement practices shifted, prompting Nations to raise concerns with the CER about inadequate communication. The new company cited compliance through information bulletins, but the Nations argued this fell short of meaningful engagement. Recognizing the lack of clear engagement standards, the CER committed to exploring mechanisms, such as mandatory Indigenous engagement programs, to ensure consistent and meaningful practices across the industry.

Discussion Questions

- What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?
- Do you have any feedback on how the CER might verify and enforce a company's compliance with these potential new engagement requirements, and what relevant evidence should be provided?
- When Indigenous Nations lead engagements, what would that process look like, and what elements would it include?



Context and Key Considerations

Métis representatives on the Committee have advised the CER about distinct intersections between Métis Rights and Interests and the lifecycle of CER-regulated infrastructure. They highlighted that current government and industry consultation models may jeopardize the Métis right to self-governance. Additionally, perceptions of environmental performance, particularly regarding contamination, directly affect traditional harvesters. For Métis harvesters and the Nation to trust that the environment is being properly managed by all levels of government and industry, the oversight system must be strengthened, as current weaknesses in the chain of oversight undermine the effectiveness of the regulatory process.

The CER is considering new requirements for companies to:

- Implement systematic processes to identify, manage, and address potential impacts on Indigenous rights and interests, including heritage resources, traditional land use, and significant sites during all stages of pipeline activities.
- Incorporate applicable Indigenous laws, policies, practices, and protocols.
- Integrate Indigenous knowledge into decision-making and protect confidential knowledge from unauthorized disclosure.
- Ensure culturally safe work environments by preventing and addressing racism and sexual exploitation.

Scenario

Years ago, a Métis resource harvesting site was impacted by a pipeline leak, and it was believed that contamination still persisted. Due to climate change, development, and other factors, Métis harvesters faced increasing challenges accessing suitable harvesting sites. As a result, they raised concerns with their government about the

ongoing impact of the contamination on prime harvesting areas. In response, the Métis Nation met with the responsible company, which claimed to have completed remediation to appropriate standards over a year prior and had informed the nearby Métis local organization. However, the Métis Nation, representing many citizens affected by the contamination, was neither notified nor involved during or after the remediation process. This lack of engagement undermined the Nation's established engagement and communication protocols for industry activities on their land, which are intended to protect harvesting rights.

To ensure the site was fully restored and culturally appropriate, the Métis Nation deployed its own technicians and knowledge keepers, who verified the restoration and promptly informed harvesters. The Métis Nation then raised concerns with the CER, pointing out that the company's failure to communicate and engage with the community during the remediation process led harvesters to avoid the area, fearing ongoing contamination. The Métis Nation called for companies to implement management systems that recognize and integrate Métis Nation laws, policies, practices, and protocols, including communication and monitoring procedures, to uphold Métis rights.

Discussion Questions

- What is your feedback on the following proposed options to meet the regulatory objectives?
 - requiring companies to have a new management system process for the incorporation of Indigenous knowledge into their programs (i.e environmental protection program)
 - requiring companies to have a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols; and
 - requiring cultural competency training for all those working for regulated companies.
- What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.
- How could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.



Context and Key Considerations

The Committee has advised the CER to enhance guidance for proponents on Heritage Resource Discovery Contingency Plans, addressing Indigenous Nations' concerns about meaningful participation in heritage planning and ensuring ceremonies and site protection. The Committee stressed that all historic sites hold sacred significance for many Nations but are often not treated with the same respect as Western religious sites. Heritage resources reflect Indigenous land use—histories that colonialism has tried to erase—and require ceremonies rooted in spiritual traditions before, during, and after construction. Recommendations include notifying all affected Nations of discoveries, involving Elders and Knowledge Keepers, granting Indigenous monitors authority, and funding Nations to engage their experts. Where established best practices exceed provincial requirements, the Committee has recommended that proponents be required to adopt best practices.

In response to this feedback, the CER is analysing its expectations of applicants regarding heritage and cultural resources, which could include sites of Indigenous significance during construction and operation to support an assessment of a project's potential effects on the rights and interests of Indigenous Peoples.

Scenario

During a CER inspection, Indigenous monitors and Nation representatives, including an Elder, joined CER officers to address the Nations' concerns about the impact of construction on a site of cultural significance. The Elder observed a significant artifact laying at the top of a soil pile, which was later dismissed by the company archaeologist. The Nation was not allowed to handle artifacts directly and relied solely on the company's processes. Construction resumed before all artifacts were collected, resulting in the loss of the item that was deemed significant by the Elder.

The Nation raised several issues including limited access to artifacts and insufficient monitoring authority. They also pointed out inconsistent communication and unclear protocols for involving Nations. Furthermore, cultural insensitivity and the dismissive treatment of Indigenous knowledge were identified as concerns. The Nation recommended empowering Indigenous monitors to participate in artifact management and emphasized the importance of integrating of Indigenous Knowledge Keepers into heritage planning.

Discussion Questions

- How could the approach to determining the significance of archaeological or paleontological discoveries be improved or made more effective?
- In what ways should Elders and traditional knowledge keepers be actively involved in developing companies' heritage resources contingency plans?
- How can companies take a distinctions-based approach to incorporating Elders, traditional knowledge keepers, and their ceremonial practices into heritage resources contingency plans?
- What steps should be taken to ensure that Elders, traditional knowledge keepers, and/or archaeologists could conduct pre-construction site tours along the ROW to identify heritage resources that may have been overlooked in conventional scientific studies?
- What training requirements should be implemented for companies and their contractors to enhance their ability to protect heritage resources?
- How does the concept of "sites of Indigenous significance" differ from or align with the current terminology of heritage resources and traditional land and resource use?



Context and Key Considerations

The CER carries out its duties in alignment with treaties, Section 35 of the Constitution Act, 1982, Canada's United Nations Declaration on the Rights of Indigenous Peoples Act, and its commitment to reconciliation with Indigenous Peoples.

Recent work on Indigenous-led assessments across Canada includes:

- **Independent assessments** (e.g., Tsleil-Waututh – Trans Mountain Pipeline Expansion, Squamish Nation – Woodfibre LNG, Stk'emlupsemc Te Secwepemc Nation – KGHM Ajax Mine),
- **Co-developed assessments** with applicants (e.g., Ktunaxa Nation – BC Hydro Revelstoke, Keeyask Cree Nations – Manitoba Hydro Keeyask, Nunavik Inuit – Raglan Nickel Mine, Cheslatta First Nation – Rio Tinto Alcan Ne Too), and
- **Indigenous-led studies** as part of environmental assessments (e.g., Indigenous knowledge and Traditional Land Use studies).

The CER recognizes the value of Indigenous-led assessments, as Indigenous Peoples are best positioned to understand impacts on their rights and interests. However, the timing of these assessments may not always align with applicants' project schedules.

The CER aims to clarify how and when applicants should support Indigenous-led assessments and studies, and how to integrate their results into project assessments. This includes setting clearer expectations for studies like Indigenous knowledge and Traditional Land Use.

Scenario

Project Overview:

A company plans to construct a 300-kilometer pipeline crossing the traditional territories of three Indigenous communities. Each community has expressed

concerns about potential impacts on culturally significant sites, traditional land use, and local ecosystems.

Indigenous-Led Assessments:

- Community A has initiated an independent Indigenous-led assessment to examine potential impacts on sacred sites and traditional harvesting areas. However, they require additional funding and resources to complete the study within a feasible timeline.
- Community B prefers to co-develop an assessment with the company and has already established a collaborative framework. They aim to focus on minimizing disruptions to local water sources.
- Community C proposes conducting a Traditional Land Use study as part of the environmental assessment but indicates that their timelines may not align with the company's project schedule.

Regulatory Challenges:

Government of Canada is required to issue a decision on the project within 450 days of receiving a complete application. However, delays in integrating Indigenous-led studies could risk missing this deadline. The CER must determine how to balance the need for comprehensive Indigenous-led input with legislative timelines.

Discussion Questions

- What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous communities (e.g., timing, funding, scope, and integration)?
- How can the CER support fulsome integration of Indigenous-led assessments with the companies' information to meet regulatory processes and requirements?
- What funding mechanisms should be considered to support Indigenous-led environmental assessments? Who is best placed to support a funding mechanism? How could it potentially integrate with regulation, the CER and/or proponents?
- How can Indigenous-led assessments and studies be aligned with the applicant's assessment while supporting the goal of "one project, one assessment"?
- If the timing doesn't align, how can Indigenous-led assessments and studies still be integrated into the applicant's assessment and meet the CER's 450-day legislated time limit for pipeline and power line applications?

