



Canada Energy  
Regulator

Régie de l'énergie  
du Canada



# Onshore Pipeline Regulations and Filing Manuals Review

## Topic Papers



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# Onshore Pipeline Regulations and Filing Manuals Review

## Background Information

### Introduction to the Canada Energy Regulator

The Canada Energy Regulator (CER) regulates energy infrastructure in a way that prevents harm and ensures the safe, reliable, competitive and environmentally sustainable delivery of energy to Canada and the world. We recognize and respect the inherent and constitutionally protected rights of First Nations, Inuit and Métis. We provide energy information and analysis that informs and supports Canada's transition towards a net zero future.

The CER provides oversight for approximately 71,000 km of oil and gas pipelines and 1,500 km of electrical powerlines. We regulate more than 100 companies, whose operations range from infrastructure less than one kilometer in length, to pipelines that stretch across multiple provinces.

### The Review of the Onshore Pipeline Regulations and Filing Manuals

In January 2022, the CER launched a multi-year process to review the [Onshore Pipeline Regulations](#) (OPR), as well as update the Environmental and Socio-economic Assessment (ESA) and Lands sections of the Filing Manuals.

- The OPR is the main regulation the CER uses to oversee pipeline projects under the CER Act. While there may be unique conditions or regulatory requirements that apply to specific projects and their related approvals, all companies **must** follow the OPR to design, build and operate a federally regulated pipeline. The OPR establishes the requirements to achieve safety, security and environmental protection outcomes. For additional details, see the overview of the OPR below. An update to the OPR is long overdue (last substantial update was in 2013 with the addition of [management system requirements](#)). This review offers an opportunity to streamline and consolidate various regulatory requirements and/or practices that currently apply to or are demonstrated by one or more companies, which contributes to increased regulatory framework clarity and transparency. It will also enable regulatory requirements to remain current, reflect wise practices, and incorporate evolving or emerging areas of regulatory practice.
- The [Filing Manual](#) and [Electricity Filing Manual](#) (collectively referred to in this document as the Filing Manuals) outline what a company **should** include in their application to the CER when applying to build a pipeline or powerline project. The Filing Manuals are updated on an ongoing basis to reflect changing requirements, conditions, regulations, industry practices, and feedback received from regulated companies, Indigenous Peoples and other commenters. For example, recent major Filing Manuals updates have included revisions regarding Greenhouse Gas Emission and Climate Change (Guide A); Variances and Project Updates (Guide O); Review, Rescind, or Rehear decisions (Guide N), and Confidential Filing (section 1.5). A key focus of this review is the environmental and socio-economic information that should be included in applications to the CER.

The CER's objective is to deliver regulations and filing guidance that:

- support the highest level of safety, security and environmental protection;
- advance Reconciliation with Indigenous Peoples;
- provide clarity and transparency about regulatory requirements to companies and the public;

- encourage innovation; and
- provide predictable, timely and inclusive oversight of energy projects.

## About the Review Process

This comprehensive review includes several different stages and there will be many opportunities to share your feedback with the CER. The review will address all areas of the OPR, as well as the ESA and Lands sections of the Filing Manuals. The review may also result in changes to other parts of the CER's regulatory framework including regulatory documents and other guidance, such as the Early Engagement Guide, if feedback and suggestions are better suited to these other tools.

Many of the topics in the ESA and Lands sections of the Filing Manuals are related to those in the OPR. The CER decided to combine the review of the OPR and Filing Manuals for several reasons, including respecting the advice of its Indigenous Advisory Committee to conduct joint engagement on these documents to streamline engagement efforts, reduce duplication, and mitigate or minimize the likelihood of consultation fatigue.

The review is also being guided by the CER's commitment to implement the [\*United Nations Declaration on the Rights of Indigenous Peoples Act\*](#) (UN Declaration Act). In June 2023, the CER committed, through the UN Declaration Act [\*Action Plan Measure 34\*](#), to work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to "amend the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manuals applicable to the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure, in a manner that:

- incorporates specific localized knowledge held by Indigenous Peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge
- strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance."<sup>1</sup>

For more information on the UN Declaration and APM 34, see the topic paper on the Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement.

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<sup>1</sup> The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan Measure 34, page 33

# The Three Phases of the OPR/Filing Manuals Review

## The OPR and Filing Manuals Review includes three Phases:

### **Phase One Engagement (2022)**

Early engagement on the OPR took place from January to July 2022. We engaged with regulated industry, Indigenous peoples, landowners and other stakeholders on a [Discussion Paper](#), which included topics and questions that were informed by years of prior learning and feedback. The level of participation in this first phase of engagement was considerable. The CER met with over 400 people about how regulatory oversight could be improved and how participants would like to be engaged in future phases of the review. Following this engagement, the CER published a [What We Heard Report](#). The CER also published the 98 written submissions that were submitted in response to the Discussion Paper on its [CER Dialogue website](#).

The CER carefully reviewed the input received during the Phase One engagement, including feedback from previous engagement activities with regulated companies, municipalities and the Indigenous Advisory and Monitoring Committees (IAMCs) for the Trans Mountain Expansion (TMX) and Enbridge Line 3 Replacement Program (Line 3). The CER is also considering feedback received through recent hearings. The CER is now ready to engage on specific issues to update its regulations, enhance its guidance and improve CER processes.

### **Phase Two Engagement (2024)**

Phase Two engagement will be focused on more specific issues in the OPR and Filing Manuals. This phase of engagement will occur over a period of approximately six months and is structured around issue-specific workshops and topic papers. Each topic paper includes a background of the current regulatory (OPR/Filing Manuals) requirements, a summary of what the CER has heard to date, identifies potential objectives for improvement, proposes options to meet those objectives, and poses discussion questions to help seek your input. The CER will review and consider all feedback received in Phase Two to help draft a Regulatory Proposal, which will summarize the key policy issues that the CER intends to address in the updated OPR. We will also use the information received during this phase of engagement to develop an update to the ESA and Lands sections of the Filing Manuals

### **Phase Three Engagement (2025-26)**

Phase Three will focus on reviewing the Regulatory Proposal and the updated sections of the ESA and Lands sections of the Filing Manuals. Following Phase Three, the CER will begin drafting the updated OPR with the Department of Justice, following the Treasury Board Secretariat's Cabinet Directive on Regulation, and the Commission will consider proposed updates to the Filing Manuals. There will be an opportunity to review and comment on proposed OPR published in Part I of the Canada Gazette before they become official.

## Phase Two Engagement Has Now Been Launched: We Want to Hear From you!

The CER wants to hear your feedback. The topic papers are available on the [CER Dialogue website](#). An overview of the topic papers is provided below.

### Onshore Pipeline Regulations Topic Papers

- A. **Damage Prevention** – This paper proposes options to address issues related to depth of cover in agricultural areas.
- B. **Deactivation and End-of-lifecycle** – This paper proposes definitions associated with end of lifecycle activities, explores alternatives to applications for deactivations and reactivations, and proposes updates to record retention and surveillance and monitoring requirements, amongst others.
- C. **Emergency Management (EM)** – This paper discusses the possible incorporation of Canadian Standards Association Group standard Z246.2, proposes opportunities to consolidate requirements currently in CER letters, Orders and Information Advisories, and identifies options to enhance the involvement of Indigenous peoples in EM, amongst other matters.
- D. **Environmental Protection** – This paper proposes options to: strengthen requirements for reporting and management of contamination; clarify the CER's requirements for reclamation, vegetation management and restoration; enhance the participation of Indigenous Peoples in environmental monitoring; and, help ensure companies avoid gaps in transferring environmental information between the construction and operations phase of a pipeline, amongst other matters.
- E. **Human and Organizational Factors** – This paper describes options to help ensure companies understand and improve workplace systems and strengthen organizational learning.
- F. **Management System and Contractor Management** – This paper proposes improvements to existing management system requirements and identifies options to clarify CER requirements related to the management of contractors providing services and/or products across the pipeline lifecycle.
- G. **Pipeline Integrity** – This paper explores the possibility of expanding the scope of the OPR to apply to emerging commodities such as hydrogen and carbon dioxide, and proposes improvements to the CER's oversight of the use of new technologies, storage facilities, and pipeline materials, amongst other matters.
- H. **Reporting Harm** – This paper seeks to update the definition of an incident and to clarify the CER's expectations for matters relating to near-misses, potential harm to the environment, cyber events and impacts to historic or cultural sites of significance to Indigenous Peoples.
- I. **Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement** – This paper identifies options to prevent and address impacts to the rights and interests of Indigenous Peoples; to manage socio-economic effects; and, to clarify engagement requirements with potentially impacted people and communities over the lifecycle of pipeline infrastructure.
- J. **Safety** – This paper proposes updates to safety management processes; and safety plans for construction, operation and maintenance, and abandonment activities.

### Filing Manuals Topic Papers

- K. **Environmental and Socio-Economic Assessment (ESA)** – This paper proposes a restructuring of the ESA section of the Filing Manuals, including updates to filing requirements related to environmental, health, social or economic aspects of the project that are of highest value to those who may be impacted by the project.

- L. **Lands** – This paper provides an overview of proposed updates to filing guidance on land-related matters, such as infrastructure routing, site selection, land location and land rights, land acquisition processes (including notices and agreements), and land dispute compensation methodology.
- M. **Rights and Interests of Indigenous Peoples** – This paper proposes the creation of a new section, specific to the rights and interests of Indigenous Peoples. This section would include filing requirements related to the integration of the applicant’s assessment and Indigenous-led assessments and studies; as well as guidance for assessing effects on the rights of Indigenous Peoples, and for monitoring and oversight by Indigenous Peoples, amongst other matters.

## How to Participate and Provide Feedback in Phase Two

In-person and virtual issue-specific workshops will be hosted by the CER starting in summer 2024. Funding is available to support the participation of Indigenous Peoples in the review, including funding for communities and Indigenous organizations to work with the CER to design and host workshops in formats that work best for them, and supported by the CER as needed. Please visit the [CER Dialogue website](#) for further details on the CER’s workshop schedule, to read and respond to the topic papers, and for information on how to apply for funding.

The CER’s goals for Phase Two engagement are to:

- test proposed options and objectives for updates to the OPR and Filing Manuals;
- seek feedback on the proposed approaches;
- ensure the CER has sufficient feedback on the proposals and objectives to move to Phase Three engagement, which will involve engaging parties on a draft Regulatory Proposal for the OPR update.

You can also submit your comments in writing. Each topic paper includes questions for your consideration. Please provide written comments, advice, or edits, and use illustrative examples, if possible. You do not have to provide feedback for every question, only those that you have comments to add. Also note, that you are **not** limited to providing feedback on the included questions. If you have additional comments that are not addressed in the topic paper questions, please include that information in your submission. All comments and feedback are welcome and appreciated.

**Please provide written comments by 20 December 2024.**

## What’s Ahead

The CER will review and consider all feedback to help draft a revised version of the OPR (a draft “Regulatory Proposal”), as well as develop an update to the ESA and Lands sections of the Filing Manuals. Feedback on these more advanced proposals will constitute Phase Three of this initiative, anticipated in 2025. Following Phase Three, the CER will begin drafting the updated OPR with the Department of Justice, following the Treasury Board Secretariat’s [Cabinet Directive on Regulation](#), and the Commission will consider proposed updates to the Filing Manuals. There will be an opportunity to review and comment on proposed OPR published in Part I of the Canada Gazette before they become official. published in Part I of the Canada Gazette before they become official.

## Contact Us

If you have any questions about the review of the OPR and Filing Manuals or funding, please contact:

- Don Logan – 403-606-0573, [don.logan@cer-rec.gc.ca](mailto:don.logan@cer-rec.gc.ca);
- Lisa Lebel – 587-432-4663, [lisa.lebel@cer-rec.gc.ca](mailto:lisa.lebel@cer-rec.gc.ca); or,
- email the CER at [opr-rpt@cer-rec.gc.ca](mailto:opr-rpt@cer-rec.gc.ca).

# Appendix:

## Overview of the Onshore Pipeline Regulations

The OPR provides the rules that companies with authorizations to build and operate a pipeline must follow. The OPR applies from the time a company receives an authorization to build a pipeline, through the end-of-life of a project. The OPR uses a mix of performance-based<sup>1</sup> and prescriptive<sup>2</sup> requirements to achieve safety, security and environmental protection outcomes. This approach allows for companies to innovate and implement policies, processes and procedures in a manner that is flexible and scalable to their operations, while ensuring the highest level of safety, security and environmental protection. The regulations are supported by various guidance documents that are intended to clarify requirements for companies, Indigenous Peoples, and the public. These documents also provide clarity for CER staff, including auditors and inspectors, who verify companies are compliant with the regulations.

The OPR requires that companies establish, implement and maintain a management system. Management systems provide a consistent framework for the design, development and implementation of protection programs, as well as for the cyclical planning, implementation, review and adjustment of operational activities. Through its management system, a company identifies hazards and reduces risk, manages its resources, learns from and continually improves its performance. A company's management system applies to the company's protection programs for safety, security, integrity, environmental protection, damage prevention and emergency management. A company's management system must be integrated with its protection programs, and contain processes for:

- identifying hazards and potential hazards;
- evaluating and managing risks;
- training and managing workers;
- communicating;
- managing records and documentation;
- monitoring and evaluating progress, and;
- continually improving performance.

To meet the requirements of the OPR, management systems must be formally established and consistently implemented and maintained.

In addition to management system requirements and protection programs, the OPR requires that companies follow certain Canadian Standards Association (CSA) standards. CSA standards are consensus-based and establish essential requirements and minimum standards for the design, construction, operation, and abandonment of pipeline systems. Draft CSA standards, amendments, and endorsements are available for public review and comment before they are approved by the committee. The comment period is normally 60 days from the date posted.

The OPR also requires that companies submit documents, notify, or apply to the CER when certain activities are undertaken or proposed. Examples of such activities include a change in class location, change of service, increase in maximum operating pressure, when a company plans to decommission, deactivate or reactivate a pipeline, or when an incident occurs, amongst others. The regulation also includes specific requirements for the design, construction, operation and maintenance of a pipeline, including for integrity matters such as methods to examine the joining of a pipeline.

To learn more about the CER's Regulatory Framework, Acts and Regulations, and Guidance, visit the [How we Regulate](#) website.

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<sup>1</sup> Performance based requirements set out a regulatory objective or requirement but enable the regulated party to determine how to achieve the objective

<sup>2</sup> Prescriptive requirements dictate how to achieve the result of the policy objective

## Overview of the Filing Manual ESA and Lands Sections

The CER's Filing Manual and Electricity Filing Manual help applicants and interested parties understand what to include in an application to the CER. While it is ultimately the responsibility of the applicant to follow applicable legislation and regulations, these manuals have been developed to provide guidance about the information the Commission of the CER to see addressed in an application.

When seeking approval for a potential project, companies must submit sufficient information that enables the Commission to make a decision on the application. You can find more about the Filing Manuals [here](#). When assessing an application, the Commission will consider all aspects of the project and will evaluate the information provided, including but not limited to:

- engineering;
- environment and socio-economics;
- the rights and interests of Indigenous Peoples;
- economics and financial matters;
- lands; and
- any public interest that may be affected by the granting or refusing of the application.

For more information about requirements and guidance related to applications, visit the [Submit Applications and Regulatory Documents](#) website.





# Onshore Pipeline Regulations and Filing Manuals Review

## A. OPR – Damage Prevention Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of damage prevention. Any suggestions for improvement regarding this section are welcome, in addition to the questions below.

### Background: Damage Prevention

Pursuant to section 94 of the [Canadian Energy Regulator Act](#) (CER Act), the holder of a certificate or permit must take all reasonable care to ensure the safety and security of persons, the safety and security of regulated facilities and abandoned facilities and the protection of property and the environment.

CER regulations apply to any activity that disturbs the soil near federally regulated pipelines or federally regulated power lines.

### Depth of Cover

Depth of cover is the depth of the soil measured from the top of the pipeline to the ground surface. The depth varies for each pipeline, depending on ground conditions and when the pipeline was first constructed. Depth of cover can change over time with compaction, activities, soil removal, ground settling, wind erosion and flooding, etc. Other pipes and cables may be installed at shallower depths than federally regulated pipelines. The [CER Pipeline Damage Prevention Regulations](#) (DPR) restrict excavation such as digging or auguring 30 cm or deeper in the prescribed area to protect people, the pipe, and the environment.

The OPR further requires pipeline companies to have a management system which must include a damage prevention program that anticipates, prevents, manages and mitigates conditions that may lead to damage to their pipelines. The damage prevention program must contain the minimum requirements of the DPR and is subject to the OPR management system processes such as those for hazard identification and control.

On 13 April 2022, the CER issued [Safety Advisory SA 2022-01 – Depth of Cover in Agricultural Areas](#), a reminder that pipeline companies are required under the OPR to identify and analyze all hazards and potential hazards, including those relating to depth of cover, and to develop and implement a Damage Prevention Program.

Further, Canadian Standards Association (CSA) Standard Z662 *Oil and Gas Pipeline Systems* (CSA Z662) contains requirements for depth of cover at the design and construction phase yet is silent on the requirement to maintain minimum depth of cover for the rest of the lifecycle of the pipeline.

In the first phase of engagement on the OPR Review, the CER heard that the OPR should provide an improved understanding of ground disturbance in relation to agricultural activity. Responsive to this feedback, the CER intends to introduce new requirements to enhance its oversight of depth of cover.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- are clear about what a surveillance and monitoring program should contain and aim to accomplish with respect to depth of cover; and
- are able to make a clear connection between the Damage Prevention Regulations and the OPR around agricultural safety as agricultural activities do not require company consent (within an allowable threshold).

### **Proposed Option**

The CER is considering the following option to meet the objectives outlined above:

- Adding a requirement to section 39 of the OPR that the company's surveillance/monitoring program must include depth of cover monitoring for:
  - the purposes of section 7 of the [Canadian Energy Regulator Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies](#) (DPR-O) (thus ensuring agricultural safety), and
  - monitoring the areas which may be impacted by hazards and potential hazards related to normal and abnormal weather conditions and land use.

### **Discussion Questions**

- A1. Are there industry best practices, standards or provincial requirements that could inform new OPR requirements regarding depth of cover monitoring or maintenance/minimum earth cover?
- A2. What are the benefits and implications (e.g., costs) that regulated companies anticipate from incorporating requirements for depth of cover monitoring into the OPR?
- A3. What are the benefits and implications (e.g., costs) that regulated companies anticipate from incorporating requirements for minimum depth of cover into the OPR?
- A4. For regulated companies, would adding a depth of cover monitoring or maintenance/minimum earth cover requirement in the OPR align with current business practices, or substantially change corporate operations?
- A5. How can the OPR improve the connection between the company surveillance and monitoring program and the DPR-O requirements and overarching Damage Prevention Program to ensure that depth of cover is adequately managed by pipeline companies?
- A6. How can the OPR improve the connection between the definition of ground disturbance (including cultivation) in the CER Act and the overarching Damage Prevention Program to ensure that depth of cover is adequately managed by pipeline companies?
- A7. How should the CER be more explicit about requirements for depth of cover monitoring or maintenance? Explain why.



# Onshore Pipeline Regulations and Filing Manuals Review

## B. OPR - Deactivation and End of Lifecycle Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of end of lifecycle activities. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- the definitions associated with end of lifecycle activities;
- types of submissions for OPR-related end of lifecycle activities;
- record retention; and
- surveillance and monitoring related to end of lifecycle activities.

## Background: End of Lifecycle

### Subtopic 1: Definitions

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement. Based on learnings from implementing the OPR, the CER has identified an opportunity to improve the OPR by adding or clarifying the definitions of *in-service*, *decommission*, *operate* and *lifecycle*. The CER is also seeking to clarify the definitions of restoration and reclamation, please see the Topic Paper on Environmental Protection for more details.

#### **Objective for Improvement**

The objective of the new requirements will be to help companies, Indigenous Peoples, and the public understand what constitutes an end of lifecycle activity. For example, under what circumstances are deactivation, decommissioning, or abandonment appropriate for a pipeline?

#### **Proposed Options**

The CER is considering the following options to meet the objective outlined above:

- Adding definitions for:
  - **In-service** – when the pipeline is actively flowing, including the delivery or transport of oil, gas or other commodity by pipeline, as a whole, to an end point, and
  - **Lifecycle** - refers to the phases and activities involved in building, operating, and retiring energy infrastructure. For a pipeline, these would include design, construction, operation, decommissioning and abandonment (whether abandoned in-place or removed), including reclamation/restoration as well as monitoring of an abandoned pipeline.
- Amending the definitions of:
  - **Decommission** - means to permanently cease active flow of a pipeline or part of one where the pipeline, or part of one, is located in a shared right of way, with other pipelines in active flowing service, and
  - **Operate** - includes repair, maintain, deactivate, and reactivate.

### **Discussion Questions**

B1. Are there any comments on, or further suggestions regarding the new or amended definitions above?

## **Subtopic 2: Decommissioning**

In the first phase of engagement on the OPR Review, the CER heard that:

- the OPR should be more explicit about what is required of companies in relation to impacts to Indigenous Peoples and the environment;
- companies need to provide more information to the CER, including a decommissioning plan focused on the manner in which pipelines can be safely decommissioned; and
- more clarity is required regarding the distinction between decommissioning and abandonment.

In response to this feedback, the CER is interested in hearing your perspectives on how section 45.1 of the OPR could be further improved.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- Have clarity regarding when it is appropriate to decommission a pipeline, and working towards eventual abandonment when feasible;
- Take into account impacts to the rights and interests of Indigenous Peoples when planning and undertaking decommissioning activities; and
- Plan their decommissioning activities in a manner that is safe and restores the environment appropriately, recognizing there are other active pipelines in the right-of-way.

### **Proposed Option**

The CER is considering making changes to section 45.1 of the OPR, in addition to changes to the definition, discussed above.

### **Discussion Questions**

B2. Do you have feedback on how section 45.1 could be improved to address the comments received; for example, what elements should be included in a decommissioning plan?

## **Subtopic 3: Management System**

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement. Based on learnings from implementing the OPR, the CER has identified an opportunity to expand its oversight of management systems to include decommissioned and abandoned pipelines as these are not currently covered by the OPR.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- Maintain appropriate oversight through the implementation of relevant management system processes in relation to their decommissioned and abandoned pipelines.

### **Proposed Options**

The CER is considering the following option to meet the objective outlined above:

- Changes to section 6.5 of the OPR to include decommissioned and abandoned pipelines; that is, incorporating the establishment and implementation of management system processes, as appropriate, to decommissioned and abandoned pipelines.

### **Discussion Questions**

- B3. What is your feedback on requiring companies to establish, implement and maintain a management system for decommissioned and abandoned pipelines?
- B4. What should the scope of the management system be for decommissioned and abandoned pipelines?

## **Subtopic 4: Notification for Deactivation**

In the first phase of engagement on the OPR Review, the CER heard that the OPR should consider alternatives to requiring applications for activities such as deactivations and reactivations, including the submission of notifications for deactivations as opposed to applications, which are currently required pursuant to section 44 of the OPR. In response to this feedback, the CER wishes to obtain feedback in relation to a potential change in this regard.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies can:

- Deactivate their pipelines in an efficient manner. Changing the requirement from an application to a notification proactively informs the CER of plans to manage pipelines which will not be in service for a period of 12 months or more, but which may be needed for future service.

### **Proposed Options**

The CER is considering the following option to meet the objective outlined above:

- Companies would be required to submit notifications rather than applications for deactivations.
- Such notifications must be submitted prior to the end of a twelve (12) month deactivation period and provide reasons for the deactivation.
- For pipelines that will be deactivated for prolonged periods, companies would be required to submit notifications to the CER before the end of every two (2) year deactivation period confirming the status of the deactivated pipeline. This requirement must be fulfilled until an application for change of status (application to reactivate, decommission or abandon the pipeline) is made to the CER.

### **Discussion Questions**

- B5. Are there risks associated with requiring companies to file a notification for deactivation activities instead of filing an application, and if so, how could they be mitigated?
- B6. Are there any concerns with the requirement to provide notifications on status to the CER every two (2) years during which the pipeline is deactivated to confirm that it is still being safely maintained in an operating state?

## **Subtopic 5: Surveillance and Monitoring**

In the first phase of engagement on the OPR Review, the CER heard that the OPR should consider how surveillance and monitoring could be applied to abandonment and how Indigenous Peoples should be involved in the development of indicators in that regard. Section 39 of the OPR requires companies to develop a surveillance and monitoring program to protect the pipeline, the public and the environment; however, this section does not explicitly mention monitoring of decommissioned and abandoned pipelines. In response to this feedback, the CER is seeking comments on whether section 39 is the appropriate place in the OPR to include explicit provisions around the monitoring of abandoned and decommissioned pipelines.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- Effectively monitor decommissioned and abandoned pipelines;
- Involve Indigenous Peoples in the planning of surveillance and monitoring activities for decommissioned or abandoned pipelines.

### **Proposed Options**

The CER is considering the following option to meet the objectives outlined above:

- Expansion of section 39 to include surveillance and monitoring for decommissioned and abandoned pipelines.

### **Discussion Questions**

- B7. Do you have feedback regarding the applicability of section 39 of the OPR (surveillance and monitoring) to include provisions around monitoring of abandoned pipelines?
- B8. Do you have feedback on how Indigenous Peoples can be involved in the monitoring of decommissioned and abandoned pipelines.

## **Subtopic 6: Records Retention**

The CER has identified an opportunity to strengthen requirements relating to records retention for decommissioned and abandoned pipelines. The CER notes that CSA Z662, which is incorporated by reference into the current OPR, is not clear on records retention for pipelines that are decommissioned and abandoned.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- Retain records for decommissioned and abandoned pipelines.

### **Proposed Options**

The CER is considering the following option to meet the objectives outlined above:

- Expanding section 56 to ensure that records relating to decommissioned and abandoned pipelines are maintained.

### **Discussion Questions**

- B9. Do you have feedback on including decommissioned and abandoned pipelines in section 56 of the OPR? For example, what is the appropriate record retention duration for these pipelines?



# Onshore Pipeline Regulations and Filing Manuals Review

## C. OPR – Emergency Management Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of emergency management (EM). Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- CSA Z246.2 (incorporation by reference);
- priorities to be considered within the EM Program;
- consolidation of current regulatory framework requirements within the OPR;
- liaison activities and the continuing education program; and
- the involvement of Indigenous peoples in EM.

### Background: Emergency Management

CER-regulated companies must do everything they can to keep things safe, which includes being ready in case of an emergency. In an emergency, the CER verifies that companies respond in a way that protects people, property, and the environment. The CER requires them to take the action needed to stop spills, manage an incident, and clean up and pay for any damage done.

Companies need processes in place to identify, manage, and mitigate risks. When they apply to the CER for approval to build and operate a project, they must submit information regarding their EM Program.

When developing an emergency management program, it's important that companies:

- **Prepare:** companies must be able to respond to an incident of any size or duration;
- **Cooperate:** companies must speak with everyone who needs to know of an emergency and may be involved in the response. The CER requires them to build relationships with those potentially involved in an emergency response role;
- **Educate:** a continuing education program must be in place for police, fire departments, medical facilities, and other organizations and agencies and the public living nearby; and
- **Train:** develop training and exercise programs for employees who need to respond to an incident.

### Subtopic 1: CSA Z246.2 — Incorporation by Reference

Emergency management specialists, company representatives, and regulators across Canada have worked over the past few years to develop a standard for emergency preparedness and response for petroleum and natural gas industry systems. The CER has been a leader and contributor in the development of this standard – Canadian Standards Association (CSA) Standard Z246.2 *Emergency preparedness and response for petroleum and natural gas industry systems*. CSA Z246.2 allows a standardized approach to be taken across jurisdictions when developing an emergency preparedness and response program.

In the first phase of engagement on the OPR Review, the CER heard that the OPR should clarify whether CSA Z246.2 is a mandatory or discretionary requirement. CSA Z246.2 is not listed in OPR section 4, but is referenced in NEB Order MO-006-2016 and OPR Guidance Notes – Annex A.

In response to feedback received, as well as knowledge gained during the implementation of the OPR, the CER intends to introduce new requirements to enhance its oversight of emergency management.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure:

- that companies are clear about the CER's requirements regarding CSA Z246.2; and
- timely updating of requirements via CSA's regular internal review and publication process, which the CER is invested in through representation on the CSA Technical Committee.

### **Proposed Option**

To meet the objectives outlined above, the CER is considering incorporating CSA Z246.2 into the OPR by reference.

### **Discussion Question**

C1. What is your feedback on incorporating CSA Z246.2 by reference in the OPR?

## **Subtopic 2: Priorities to be Considered within the EM Program**

The OPR states in subsection 32(1): "A company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect property, the environment or the safety of workers or the public."

In the first phase of engagement on the OPR Review, the CER heard extensive comments from Indigenous groups regarding the need to identify and protect sites of Indigenous significance during emergency management activities.

In response to feedback received, as well as knowledge gained during the implementation of the OPR, the CER intends to clarify the priorities to be considered within a company's EM Program. The CER also intends to clarify that the EM Program must consider broader impacts to people (e.g., financial impacts) as well as safety.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- are clear that the CER requires sites of historic and cultural significance, both Indigenous and non-Indigenous, to be considered in a company's EM Program; and
- consider all relevant impacts on people within their EM Program.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- replacing the term "safety of workers or the public" with "people"; and
- including adverse effects on sites of historic and cultural significance in subsection 32(1). For example, the revised provision could be worded as follows:
  - A company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect people, property, sites of historic and cultural significance, or the environment.

## **Discussion Questions**

- C2. What is your feedback on replacing the term “safety of workers or the public” with “people” in subsection 32(1)?
- C3. What is your feedback on including adverse effects on sites of historic and cultural significance in subsection 32(1)?

## **Subtopic 3: Consolidation of current regulatory framework requirements within the OPR**

The CER uses various tools within its regulatory framework to oversee a company’s EM Program. For example, the CER requires submission and publication of Emergency Management Program information through:

- [26 March 2015 letter](#) compelling submission of Emergency Procedures Manuals;
- Board Orders [AO-001-MO-006-2016](#) “Compelling Publication of Emergency Procedures Manuals” and [AO-001-MO-002-2017](#) “Compelling Publication of Emergency Management Program Information on Company websites”; and
- an annual letter requesting submission of a company’s emergency response exercise plans.

Further, the CER provides guidance to companies through the 22 January 2024 [Information Advisory CER IA 2024-001](#) – CER Expectations for Emergency Preparedness and Response for a Potential Fire Incident at Liquid Storage Tank Facilities.

The CER has also published [Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents](#) and intends to publish Best Practices for the Involvement of Indigenous Nations and Communities in Emergency Management.

The notification Best Practices state: “The CER is also conducting a review of the Canadian Energy Regulator Onshore Pipeline Regulations (OPR), including engagement with Indigenous peoples and industry, wherein one or more of the Best Practices discussed in this letter may be incorporated explicitly into the regulatory framework depending on the outcome of that regulatory review.”

In the first phase of engagement on the OPR Review, the CER heard that:

- The CER should bring clarity to its overall regulatory oversight including associated compliance verification activities; this may include a review of requirements referenced in various regulations and guidance documents.
- The OPR should provide clarity on what the CER expects to be contained in an Emergency Procedures Manual and/or an Emergency Response Plan, as well as provide clarity as to which documents must be submitted to the regulator, which documents must be publicly posted, and which documents require public consultation and awareness.
- The CER could reconsider the appropriateness of requiring companies to post Emergency Response Plans (“ERP(s)”), which are prepared for the company and responding agencies, and consider whether there are more suitable mechanisms for sharing a subset of this information with Canadians. Publishing redacted ERPs online does not inform Canadians particularly well about how they are to respond to or identify an emergency situation. The requirement to inform all individuals who may be associated with an emergency response is already addressed through Sections 34 and 35 of the OPR generally, with specific materials created to be easily understood and processed by the public. This information may be more appropriate and useful for public consumption than an ERP or general information describing the Emergency Management Program.

In response to feedback received, as well as knowledge gained during the implementation of the OPR, the CER intends to consolidate current regulatory framework requirements within the OPR.

### **Objective for Improvement**

The objective of new requirements will be to consolidate EM requirements specified outside the OPR into the OPR.

### **Proposed Option**

To meet the objective outlined above, the CER is considering adding to the OPR the requirements contained in the above-noted CER letters, Amending Orders, Best Practices, and Information Advisory.

### **Discussion Questions**

- C4. What is your feedback on this proposal?
- C5. Are there elements of the above-noted documents that should be included in OPR-related guidance rather than in the OPR itself?
- C6. What is your feedback on elements of the Best Practices that could be incorporated into the OPR versus related Guidance?

## **Subtopic 4: Liaison Activities and the Continuing Education Program**

Regarding emergency preparedness and response, the CER has received feedback from Indigenous Peoples, first responders, and others that there is a desire for greater understanding of, and involvement in, a company's emergency management processes.

OPR sections 33-35 contain requirements regarding liaison activities and the continuing education program.

In the first phase of engagement on the OPR Review, the CER heard about the importance of communication and engagement activities with those that could be impacted by, or involved in, an emergency response on a CER-regulated facility. This includes Indigenous Peoples, emergency responders, municipalities, and potentially impacted public.

As a result of its compliance oversight activities, the CER has also recognized the need for clarity in sections 33-35 of the OPR. For example, there is often misunderstanding regarding the parties to be engaged as part of liaison versus continuing education, and what the difference is between these activities.

In response to feedback received, as well as knowledge gained during the implementation of the OPR, the CER intends to clarify requirements regarding a company's liaison activities and the continuing education program.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies are clear about what is required for liaison activities and a continuing education program.

### **Proposed Option**

To meet the objective outlined above, the CER is considering clarifying requirements for "liaison activities" and "continuing education programs" by deleting those terms and replacing them with new Emergency Response Coordination and Emergency Management Information provisions. **Emergency Response Coordination** would focus on company interactions with those that may be involved in a response, and **Emergency Management Information** would focus on those that may be impacted during an emergency.

### **Discussion Question**

- C7. What is your feedback on clarifying the requirements in sections 33-35 of the OPR, regarding liaison activities and the continuing education program?

## Subtopic 5: Involvement of Indigenous Peoples in EM

Regarding emergency preparedness and response, the CER has received feedback from Indigenous Peoples, first responders, and others that there is a desire for greater understanding of, and involvement in, a company's emergency management processes.

In December 2019, the Indigenous Advisory and Monitoring Committee (IAMC) for Line 3 submitted the Line 3 IAMC Summary Report: Issues and Recommendations (L3 IAMC Report) to the CER. The report also included supplementary advice provided by the Manitoba Métis Federation. The report identified specific areas the CER should focus on to improve its processes to be more transparent and more inclusive of Indigenous Peoples. The report also advised how the CER can take concrete steps toward Reconciliation.

In November 2022, the CER published the "[Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-Reportable Incidents](#)". These best practices are a first step towards addressing the L3 IAMC Report and are intended to improve the flow of information from companies to Indigenous Peoples who could be impacted by immediately reportable incidents. The CER also intends to publish Best Practices for the Involvement of Indigenous Nations and Communities in Emergency Management.

In the first phase of engagement on the OPR Review, the CER heard:

- extensive comments from Indigenous Peoples that they have a desire for increased involvement in a company's EM Program;
- there needs to be clearer regulations about who is notified in the case of a spill (groups, public land users, Indigenous Peoples, etc.), regardless of whether the spill is on private land or crown land; and
- there must be proactive planning before an incident occurs that involves consultation, engagement and participation of potentially impacted Indigenous Peoples.

In response to feedback received, as well as knowledge gained during the implementation of the OPR, the CER intends to introduce new requirements to enhance its oversight of the involvement of Indigenous Peoples in EM.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies appropriately involve Indigenous Peoples in their EM Program.

### **Proposed Option**

To meet the objective outlined above, the CER is considering adding a requirement for a plan to involve Indigenous Peoples in the EM Program.

### **Discussion Questions**

- C8. What is your feedback on clarifying the CER's requirements within the OPR regarding the Involvement of Indigenous Peoples in a company's EM Program?





# Onshore Pipeline Regulations and Filing Manuals Review

## D. OPR – Environmental Protection Topic Paper

This paper describes potential amendments to the OPR to improve the CER's environmental oversight. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- the duty to report and manage contamination;
- reclamation, vegetation management and restoration;
- participation in the development of environmental monitoring programs by Indigenous Peoples;
- environmental protection plans for construction, operations and maintenance activities;
- construction to operation transition plans;
- climate resiliency; and
- inclusion of International Standards Organization (ISO) standards related to environment.

### Background: Environmental Protection

The CER holds companies accountable to protect the environment throughout the lifecycle of an energy project. Companies must develop, implement and maintain an Environmental Protection Program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment.

The CER is considering numerous options to meet objectives related to preventing and addressing impacts to the rights and interests of Indigenous Peoples. As stated in the Topic Paper on the Rights and Interests of Indigenous Peoples, Socio-Economic Effects, and Engagement, the CER is considering the addition of a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples and new management system requirements. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples. The proposed management system requirements (OPR, s. 6.5) include:

- a management system requirement for companies to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous knowledge, including protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs; and
- a management system requirement to establish and implement a process to identify Indigenous laws and policies, and where these are made available to the company and are applicable to its protection programs, demonstrate how they are addressed in their protection programs.

A company's management system must be integrated with its protection programs, including for Environmental Protection. The management system processes proposed above would therefore need to be integrated into a company's Environmental Protection Program to help ensure Indigenous knowledge, including protocols and practices, and any relevant Indigenous laws and policies, are reflected in a company's approach to protecting the environment.

## **Subtopic 1: Duty to report and manage contamination**

Through the Environmental Protection Program required by section 48 of the OPR, a company must proactively manage contaminated sites. In October 2020, the CER published an updated [Remediation Process Guide](#) with clear objectives and a process for demonstrating that contamination is being managed in a manner that protects the environment and human health. The Remediation Process Guide specifies what needs to occur upon encountering contamination or suspected contamination. Currently, there is no requirement to report contamination other than when it is caused by a reportable incident, as set out in the regulation.

In response to the discussion paper released during the first phase of engagement on the OPR Review, the CER heard the following with respect to contaminated sites management:

- although managing contaminated sites effectively may be covered under the environmental protection program, the OPR does not provide clear or explicit requirements for doing so; and
- requirements for reporting contamination should be clarified in the OPR along with guidelines and processes for companies to follow.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- report contamination to the CER for the full lifecycle of the pipeline; and
- manage contamination and any potential risks in a manner that is timely and protects human health, property, and the environment.

### **Proposed Options**

To meet the objectives outlined above, the CER is considering adding the following requirements to the OPR:

- if, at any time, a company becomes aware of contamination or potential contamination relating to the lifecycle operation of its pipeline, the company must:
  - as soon as practicable, confirm contamination with analytical testing; and
  - immediately report the details of the contamination to the Regulator;
- if contamination has migrated off the right-of-way or company owned or leased lands, a company must notify the Regulator immediately; and
- throughout the lifecycle of the pipeline, a company must manage contamination and any potential risks in a manner that is timely and protects human health, property, and the environment.

### **Discussion Question**

D1. What is your feedback on the proposed requirements above?

## Subtopic 2: Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration

The CER expects that companies conduct reclamation and manage vegetation throughout the lifecycle of a facility.

For operating pipelines, reclamation, vegetation management and restoration occur in a staged approach.

- Reclamation occurs immediately following activities that disturb the soil and vegetation, such as construction or operation and maintenance activities. Reclamation monitoring following construction is often referred to as post-construction environmental monitoring.
- Throughout operations, vegetation is managed to allow patrolling and monitoring activities that are needed to ensure the safe operation of the pipeline.
- Restoration takes place once the pipeline is no longer operating, upon abandonment. Restoration of sensitive areas, such as watercourses and critical habitat may take place throughout operations.

Currently, section 21 of the OPR states: “After a pipeline is constructed, the right-of-way and temporary work areas of the pipeline shall be restored to a condition similar to the surrounding environment and consistent with the current land use.”

During an industry workshop in October 2023, the CER heard that maintenance, patrolling and damage prevention practices are all necessary activities for safe operation of the pipeline, and should be incorporated into requirements for managing vegetation on pipeline rights-of-way. The need for these activities must be balanced with the requirement to protect the environment by considering best practices for managing vegetation throughout operations.

The CER has also heard that restoring land to current land use may not adequately address the cumulative effects that multiple projects have on the cultural and historical use of the land.

In response to this feedback, the CER wishes to obtain further information in relation to revising section 21 of the OPR.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that:

- the CER’s expectations for reclamation, vegetation management and restoration are clear; and
- companies incorporate environmental protection into the relevant processes and procedures to monitor and patrol the right-of-way.

### **Proposed Options**

To meet the objectives outlined above, the CER is considering building on the requirements in section 21 with further guidance to be developed.

These requirements would incorporate the following concepts:

- After a disturbance, the rights-of-way and temporary work areas (including temporary access) associated with the pipeline must undergo reclamation in a timely manner.
  - Reclamation means the process of re-establishing a site affected by company activities to a productive use that prevents or minimizes any adverse effects on the environment, people, property, sites of cultural and historical significance and use of the land.
  - Reclamation includes the stabilization and contouring of the surface of land, maintenance of soil, management of invasive species and weeds, revegetation, and return of the water regime to a pre-disturbance state.

- During operations, disturbance to vegetation must be minimized except as necessary to enable pipeline surveillance and monitoring, and ready access for maintenance activities and emergency response.
  - Vegetation must be managed in a manner that supports activities required to maintain the safe operation of the infrastructure, but also encourages revegetation in sensitive areas and allows for restoration upon abandonment.
- As part of the abandonment activities, the right-of-way must be restored to a condition similar to the surrounding environment and consistent with pre-disturbance land use, where feasible.
  - These goals must be established in consultation with potentially impacted parties, including landowners and Indigenous Peoples (see subtopic 3 of the Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement paper for further information about the CER's proposal for engagement requirements).

**Discussion Questions**

- D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?
- D3. The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to the surrounding environment and consistent with the pre-disturbance land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?
- D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?

**Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples**

During the hearing process for new projects, Indigenous Peoples have expressed interest in participating in the development of post-construction monitoring programs for new projects. Inclusion of Indigenous Peoples in monitoring programs adds value to the assessment of the effectiveness of mitigation measures identified in the Environmental Protection Plan (EP Plan).

In the first phase of engagement on the OPR Review, the CER heard:

- when Indigenous Peoples are involved in the development of monitoring indicators, they are best positioned to carry out the monitoring activities because these indicators have the potential to hold cultural significance for Indigenous Peoples; and
- that the expertise on the effectiveness of monitoring certain sites, plants used for harvesting and other environmental components is held by Indigenous Peoples.

In response to this feedback, the CER wishes to obtain further information regarding improving section 21 of the OPR.

**Objective for Improvement**

The objective of new requirements will be to help ensure that companies include Indigenous Peoples in the development, implementation, and monitoring of reclamation activities.

**Discussion Questions**

- D5. 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.

- D6. In the context of the CER's expectations of regulated companies, 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.
- D7. Would the proposed processes in Subtopic 1 of the Rights and Interests, Socio-Economic Effects, and Engagement Topic Paper help ensure that Indigenous Peoples are included in the development and implementation of environmental monitoring activities, or are additional requirements or guidance required specific to monitoring?

## **Subtopic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities**

Companies typically submit an EP Plan for constructing a new pipeline. When doing so, the EP Plan should reflect the implementation of a company's Environmental Protection Program. The CER has found that the EP Plans can better describe specifications for reclamation for new projects. For operations and maintenance activities, the CER is proposing that companies develop EP Plans, according to the scale and scope of the activity, that describes the hazards that are identified and risk controls that will be applied during each specific operations and maintenance activity. The EP Plan is a product that needs to be adapted for specific applications and activities. Currently there is no explicit requirement in the OPR for an EP Plan to be developed for specific operations and maintenance work.

In the first phase of engagement on the OPR Review, the CER heard:

- requirements should be developed to ensure that both EP Plans and the Environmental Protection Programs incorporate measures to anticipate, prevent, manage and mitigate impacts to Indigenous and Treaty rights stemming from projects, throughout the full lifecycle; this may also include specific requirements to reduce or eliminate project contributions to cumulative impacts; and
- protection of Indigenous and Treaty rights must be started at the planning and design phase, and new projects must consider this throughout operating, maintenance, and abandonment phases, not just the construction phase.

In addition, the CER heard:

- both industry and Indigenous Peoples seek greater consistency between federal and provincial environmental standards and expectations;
- companies expressed that further guidance or clarification on the contents of an environmental program would be useful; and
- industry views environmental protection as being best managed through an Environmental Protection Program for the lifecycle of the project, with EP Plans useful for specific activities such as construction.

In response to this feedback, the CER wishes to obtain further information regarding a requirement for activity-specific EP Plans for operation and maintenance activities which demonstrate that the environmental hazards and potential hazards have been assessed prior to the activity and any necessary controls have been put in place to manage and mitigate any identified concerns.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies have an environmental protection plan in place for all work and activities, scalable to the scope of the work, including operations and maintenance activities.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- EP Plans will be developed and implemented for:
  - all construction projects; and
  - all operations and maintenance activities;
- EP Plans would only need to be submitted to the CER through a condition requirement or by request; and
- EP Plans would be scalable to the size and scope of the work; for projects that have few or no environment interactions, the EPP could simply state there are no interactions.

### **Discussion Questions**

- D8. What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?
- D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?
- D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, Socio-Economic Effects and Engagement Topic Paper help ensure that EP Plans and the Environmental Protection Programs incorporate measures to prevent and address impacts to the Rights and Interests of Indigenous Peoples?

## **Subtopic 5: Construction to Operations and Sale or Transfer of Assets Transition Plans**

The CER is aware that there are instances when environmental information collected by companies during the application stage is not always transferred to the companies' operations personnel or to the company the asset has been sold to.

In the first phase of engagement on the OPR Review, the CER heard that the OPR should have clear processes for information sharing between individuals designing and implementing the EP Plans (typically for construction projects) and Environmental Protection Programs.

In response to this feedback, the CER wishes to obtain further information regarding the need for new processes applicable to the effective transfer of relevant information.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies avoid gaps in transferring environmental information between the construction and operations phase of the pipeline and upon the sale or transfer of an asset.

### **Proposed Option**

To meet the objective outlined above, the CER is considering adding a requirement to establish and implement a process for the transfer of relevant information between employees and other persons working with or on behalf of the company, from the design and construction stages to the operations stage, and upon sale or transfer of an asset.

### **Discussion Questions**

- D11. What mechanisms are companies currently using to ensure that all the information gathered, commitments made, and input received during the hearing is transferred to operational personnel for the lifecycle of the project?
- D12. If a mechanism already exists, what are the benefits and costs of a requirement stating that a construction to operations transition plan is required?

## Subtopic 6: Climate resiliency

As part of its mandate to protect people, property and the environment, the CER focuses on energy innovation, security, competitiveness, and safe and reliable energy transmission infrastructure that is resilient to the effects of climate change.

In the first phase of engagement on the OPR Review, the CER heard:

- New projects must be built to standards that address the new risks from climate change. The planning of new pipelines must include risk assessments based on increased risk of accident and spills from the impacts of climate change. The risk assessments must examine all aspects of the lifetime of a pipeline including the design, construction, operation or abandonment of a pipeline, and related facilities such as pump stations and storage facilities. The design of new projects must be built to withstand the new climate regime and accident and safety planning must be designed with a climate impact lens. Given these emerging threats, the OPR should also require existing pipeline projects to review their risk from a perspective of climate resilience and be required to adapt operations in response.
- Climate change has disproportionate negative impacts on Indigenous Peoples.

In response to this feedback, the CER wishes to obtain further information regarding a potential new requirement that companies incorporate climate resiliency into their evaluation of risks and risk mitigation throughout the full lifecycle.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies can anticipate, prepare, and respond to the impacts of hazardous events, trends, or disturbances related to climate.

### **Proposed Option**

To meet the objective outlined above, the CER is considering adding a requirement that companies must incorporate climate resiliency into their evaluation of risks and risk mitigation.

### **Discussion Questions**

- D13. While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?
- D14. Are there other options that may achieve the objective in a more effective manner? If so, please explain.

## **Subtopic 7: Incorporation of ISO environmental standards**

During the first phase of engagement on the OPR, the CER received a suggestion to replace the Environmental Protection Program, contained in section 48 of the OPR, with a requirement for an environmental management system as described in ISO 14001:16. The CER notes that sections 6.1 - 6.6 of the OPR (Management System requirements) already apply to the protection programs, of which the Environmental Protection Program is one. Nevertheless, the CER is seeking feedback as to whether there are opportunities to incorporate some or all of the elements from ISO 14001 and related standards into the OPR or associated technical guidance to enhance environmental protection.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that:

- companies are clear about the CER's expectations regarding management systems and the environmental program; and
- gaps that might exist in relation to the management system requirements and environmental protection are addressed.

### **Proposed Option**

The CER is considering incorporating elements, or the entirety of ISO 14001 into the OPR or related guidance.

### **Discussion Questions**

- D15. Should the CER consider incorporating ISO 14001 and related ISO standards by reference into the OPR or any associated technical guidance? Please explain.
- D16. Are there any potential regulatory gaps in relation to the management system requirements contained in sections 6.1 - 6.6 of the OPR and its applicability to the Environmental Protection Program required by section 48? If so, should ISO 14001 be incorporated by reference in whole or in part into the OPR or associated technical guidance to address those gaps? If in part, which standards or parts of those standards should be incorporated?



# Onshore Pipeline Regulations and Filing Manuals Review

## E. OPR – Human and Organizational Factors Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight related to Human and Organizational Factors (HOF). Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to understanding and improving workplace systems and strengthening organizational learning.

### Background: Human and Organizational Factors (HOF)

The discipline of HOF informs how we think about a workplace and applies tools, data, methods, and training to optimize human and organizational performance. With respect to safety and environmental protection, HOF can be applied proactively (e.g., as part of hazard identification and risk management processes) or reactively (e.g., to understand and identify performance influencing factors that have contributed to an event in order to prevent recurrence).

HOF considers the workplace to be a holistic system, that is, a set of interacting or interdependent parts that form a unified whole. The interdependent parts of the workplace system include:

- the people (individual workers and teams) performing the work;
- the equipment and technology being used and the physical environment in which work is being performed; and
- the organization's culture, policies, procedures, training, resourcing, etc., which govern and/or support the performance of work.

Using a proactive approach, HOF provides concepts and methods to support the identification, evaluation, and management of socio-technical hazards (i.e., specific hazards resulting from the relationship between the parts of the workplace system). Once understood, HOF focused controls can be used to mitigate hazards and improve performance outcomes. Examples of where a HOF analysis may be applied to understand and control undetected hazards include, but are not limited to, the following performance influencing factors:

- how the design of a procedure may introduce risk to the work being performed (e.g., poor document control resulting in the use of outdated procedure document(s) or the procedure is too text-heavy, which impairs understanding);
- how the human-machine interface of a tool may become a hazard if not carefully designed for human use and limitations;
- how a person's physical and/or cognitive abilities may impact their work (e.g., fatigue, height, strength, attention to task, memory, etc.);
- how team dynamics (e.g., cultural differences, beliefs and values) and team situational awareness (e.g., shared understanding of a situation or task) may impact the work being performed;
- how insufficient staffing, inadequate competency development, or poor workload management can introduce risk to the work being performed; and

- how a culture that does not support open communication and continual learning and improvement can compromise the performance of the entire workplace system.

## **Integrating HOF within a company's management system supports prevention of harm.**

The CER's [Safety Culture Learning Portal](#) provides additional information, including several one-pagers dedicated to HOF principles, including:

- E1. Systems thinking – Performance is the result of a workplace system where people, workplace, and organizational factors interactively impact outcomes.
- E2. Local rationality – Individuals make decisions and take actions that seem reasonable to them at the time based on their interpretation of information available.
- E3. Performance variability – The way work is completed is often different from how it was originally imagined/planned (e.g., in process or procedure documentation).
- E4. Just culture – Blame fixes nothing – an environment that seeks to understand what went wrong in the system will learn and be able to take actions to continually improve performance.
- E5. Demands and pressures – Internal and external demands frequently change and have a powerful impact on the workplace system and performance.
- E6. Resources and constraints – Available resources and constraints frequently change and have a powerful impact on the workplace system and performance.
- E7. Trade-offs - Trade-offs are often made to reach performance goals, but they require careful evaluation to identify changing and new risks introduced during the process.

In addition to these resources, more information can be found in the Canadian Standard Association Express Document No. 16:22 entitled *Human and organizational factors for optimal pipeline performance*.

## **Workplace System Understanding and Improvement**

In the first phase of engagement on the OPR Review, the CER heard about the need to better define HOF in the OPR. Supplemental web-based guidance materials were identified as being useful to support improved understanding and application of HOF. The CER also heard that there can be inherent western-centric bias when implementing HOF in organizational management systems. Potential cultural bias(es) should be identified and addressed, to develop more requirements and/or guidance that are more inclusive.

In responding to this feedback, the CER intends to introduce new requirements to improve understanding of HOF and management of the workplace system, including consideration of relevant performance-influencing factors. At this time, the CER would also like to explore and better understand the issue of cultural bias in HOF implementation.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies better understand and manage socio-technical hazards that can impact safety and environmental protection outcomes.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- Adding a definition of HOF to the Interpretation section of the OPR.
- Adding clarifying language to section 6.5(1)(c) so that the process for identifying and analyzing all hazards and potential hazards includes consideration of the HOF discipline and relevant performance influencing factors.

- Adding clarifying language so that management system process(es) related to near-miss and incident investigations identify both causal and contributing factors, including those related to HOF and relevant performance influencing factors.

### **Discussion Questions**

- E8. What is your feedback on new requirements related to understanding the workplace system and improving the management of socio-technical hazards?
- E9. What additional guidance is needed to support the incorporation of HOF within management systems (in addition to the existing CSA EXP16:22)? Please be as detailed as possible in terms of the nature and content of required guidance (i.e., specific HOF topics, processes, procedures, or other practical tools that might be useful).
- E10. The CER would like to better understand the concerns related to the possibility of inherent cultural bias within the HOF discipline and its implementation. Please describe and share examples of how the HOF principles and/or performance influencing factors may be impacted by cultural bias(es). Please also describe how Indigenous knowledge could inform the implementation of HOF within pipeline companies.

## **Strengthening Organizational Learning**

In this phase of engagement, the CER would like to obtain feedback on topics that may not have been discussed in the first phase of engagement. For example, based on learnings from implementing the OPR, the CER has identified an opportunity to clarify its expectations regarding organizational learning.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- are aware of the CER's expectation that management system design and implementation must effectively enable organizational learning and continual improvement;
- adjust their management system design and implementation to strengthen organizational learning and continual improvement; and
- develop and implement effective management system processes that enable organizational learning from both internal **and** external events (e.g., near-misses and incidents that occur across the pipeline industry or in other high-hazard industries, as applicable).

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- adding a descriptive clause to OPR section 6.1 that clarifies a company's management system(s) must facilitate learning and continual improvement;
- adding clarifying language to the end of the section 6.5(1)(x) management system provision to explicitly note that the annual management review (of the management system and each program currently referred to in section 55) must facilitate organizational learning and continual improvement as outcomes;
- adding a requirement for dissemination of lessons learned to employees and/or those working for or on behalf of the company as a result of hazard analyses, risk management processes, and near-miss or incident investigations; and
- adding a requirement to establish and implement a process for learning from external events (e.g., experienced by other members of the pipeline industry), including near-misses and incidents to inform the identification of hazards, management of risks and the implementation of controls.

**Discussion Questions**

- E11. What is your feedback on new requirements designed to strengthen organizational learning and continual improvement?
- E12. What guidance would enhance your understanding and use of organizational learning processes?
- E13. Do you have any feedback with regards to how the CER would provide oversight of organizational learning related processes and outcomes?
- E14. Please indicate the benefits and costs that you anticipate would come from incorporating requirements related to HOF (i.e., those related to workplace system understanding and improvement and strengthening of organizational learning) into the OPR.



# Onshore Pipeline Regulations and Filing Manuals Review

## F. OPR – Management System and Contractor Management Topic Paper

This paper describes potential amendments to the OPR and Filing Manuals to improve the CER's oversight of management systems and contractor management. Any suggestions for improvement regarding these topics are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- interactions between the management system and other parts of the OPR, such as definitions and programs, and
- the management of contractors providing services and/or products across the pipeline lifecycle.

### Background: Management Systems

The OPR was amended in 2013 to clarify management system requirements. Since then, the CER has conducted numerous oversight activities and has received feedback as a result of these activities about the management system provisions and their interrelation with other aspects of the OPR. In that regard, the CER would like to obtain additional feedback in relation to the management system and protection program requirements in the OPR.

Together, sections 6.1 through 6.6 of the OPR require that companies have an explicit, comprehensive, and proactive management system designed to prevent harm to people, property, and the environment. Management systems apply to all of the company's activities related to the pipeline, and to all programs specified in section 55 of the OPR: safety management; security management; emergency management; integrity management; damage prevention; and environmental protection. The required elements of a management system are organized within a Plan-Do-Check-Act framework, enabling effective hazard identification, risk management, as well as organizational learning and continual improvement.

Guidance on sections 6.1 through 6.6 is provided in the [Management System Audit Guide](#), and the [Audit Protocol](#).

Contractor management refers to the implementation of controls to ensure that contracted services and provided products support safe, environmentally sound, and culturally sensitive, operations and safety performance goals. Contractor management should address the selection, acquisition, use, and monitoring of such contracted services and products.

## **Subtopic 1: Management System Requirements**

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement or that may require additional exploration. Based on the first phase of engagement on the OPR Review, the CER has identified areas to further explore, as it relates to sections 6.1 through 6.6 of the OPR. These include:

- rewording some provisions within sections 6.1-6.6 to make them easier to read and understand;
- maintaining scalability of requirements;
- where possible, aligning requirements with those of other jurisdictions;
- improving the connectivity between the outcomes of early engagement in the Filing Manual, and the design of management systems and protection programs in the OPR; and
- clarifying how the management system requirements in sections 6.1 through 6.6 relate to the protection programs in section 55.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that:

- the CER's management system provisions are clear;
- regulated companies implement management systems, processes, and procedures that are adequate and effective;
- companies continually improve their management systems throughout the pipeline lifecycle; and
- companies are clear as to the CER's requirements regarding their respective integrated management systems, and that the protection programs mentioned in the OPR are part of, and therefore subject to, their integrated management system.

### **Proposed Options**

The CER is considering the following options to meet the objectives. These options include potential amendments to sections 6.1 through 6.6 of the OPR, including but not limited to:

- rewording and/or restructuring some provisions to improve clarity;
- adding new management system components in areas that are absent; and
- requiring companies to keep an up-to-date list of all the policies, processes and procedures referred to in sections 6.1 through 6.6 and programs referred to in section 55 of the OPR.

### **Discussion Questions**

- F1. Are there industry best practices that could inform management system related requirements in sections 6.1 through 6.6? Please be as specific as possible.
- F2. Are there opportunities to improve alignment of sections 6.1 through 6.6 with applicable management system related requirements from other jurisdictions or technical standards? If yes, please identify the provision(s), explain the issue, and propose a solution.
- F3. Are there any management system components you wish to see added to the OPR? Please explain.
- F4. Are there any management system provisions in the OPR that require clarification? If yes, please explain the issue, identify the provision, and propose a solution.
- F5. What is your feedback on a new potential requirement for companies to establish and maintain an up-to-date list of all the policies, processes and procedures referred to in sections 6.1 through 6.6?
- F6. If establishing and maintaining the list referred to in question #5 is not recommended, what alternatives can companies employ to clearly indicate what processes, procedures, and programs make up their management system?
- F7. Are there any opportunities to improve scalability of management system requirements? If yes, please identify the provision, explain the issue, and propose a solution.
- F8. Are there any other additions, deletions, or other changes to the OPR's management system requirements in section 6.1 that would improve the OPR's ability to prevent harm?
- F9. "Quality assurance program" is used in two contexts in the current OPR, once in relation to the quality assurance program that must be implemented to evaluate the adequacy of the management system in its entirety and specifically for the programs identified in section 55 [see section 6.5(1)(w)] and again in section 15 whereby the company must develop a quality assurance program for the purpose of ensuring that the pipe and components to be used in the pipeline meet the specifications discussed in section 14 of the OPR. Do you find this confusing? If so, what solution would you propose?
- F10. The CER has heard that some companies are unclear about how the programs referenced throughout the OPR align with management systems or are subject to the company's management system. If it is unclear how they align, what would you propose as a solution?
- F11. The CER has also heard that some feel a disconnect exists between the outcomes of early engagement in the Filing Manual and the design of management systems and protection programs in the OPR. If such a disconnect exists, what would you propose as a solution?

## **Subtopic 2: Management of Contractors Providing Services and/or Products Across the Pipeline Lifecycle**

Companies are responsible for all activities related to their CER-issued regulatory authorizations, approvals, or certificates. The OPR requires a company to provide effective oversight of all personnel including contractors and subcontractors and to inform them of all safety and environmental protection requirements and obligations. These obligations apply to all programs described in OPR section 55 (i.e., emergency management, integrity management, safety management, security management, environmental protection management, and damage prevention). Learnings from assessing compliance with the current OPR have identified an opportunity to improve company contractor management (e.g., Inspection Officer Orders have recently been issued based on ineffective contractor oversight).

In the first phase of engagement on the OPR Review, the CER heard about the need to better define “contractor management” (and its components) in the OPR with supporting technical guidance. The CER also heard about the need to define the term “contractor” to clarify that contractor management applies to all sub-contractors. Responsive to this feedback, the CER intends to introduce new requirements to clarify and enhance its oversight of contractor management.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- understand CER contractor management requirements; and
- strengthen company management of contractors providing services and/or products across the pipeline lifecycle.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- adding an explicit requirement for a contractor management process within the OPR management system provisions; and
- developing technical guidance to articulate CER requirements related to contractor management.

### **Discussion Questions**

- F12. What are the elements of an effective contractor management process? For example, one commenter provided the following list in their Phase I engagement submission:
- a. Capability assessment and selection criteria
  - b. Leadership and cultural factors considerations
  - c. Orientation and training requirements
  - d. Boundaries of authority and responsibilities
  - e. Provision of monitoring and oversight
  - f. Contingency planning and incident response
  - g. Monitoring of contractor safety and environmental performance
  - h. Auditing of contractor's management systems
  - i. Contractor evaluation
- F13. Should the list identified in question #1 be considered as a framework for a potential regulatory amendment and/or associated technical guidance? Are there additional elements that should be included?
- F14. What guidance is needed to support contractor management provisions in the OPR? Please be as detailed as possible in terms of the nature and content of required guidance (e.g., specific topics, processes, procedures, or other practical tools that might be useful).
- F15. What is your feedback regarding how the CER verifies compliance with contractor management requirements today and in the future (e.g., potential oversight activities, assessment criteria, performance measures for all programs described in OPR section 55)?





# Onshore Pipeline Regulations and Filing Manuals Review

## G. OPR – Pipeline Integrity Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of Pipeline Integrity. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- certain definitions
- the use of new technologies;
- geohazard assessments;
- storage facilities;
- materials traceability; and,
- the quality assurance program.

### Background: Integrity

Currently, the OPR applies to onshore pipelines intended for the transmission of hydrocarbons. The OPR does not apply to onshore pipelines intended for the transmission of non-hydrocarbon commodities. Further, for clarity, the OPR does not apply to offshore pipelines.

Due to the wide variety of fluids transported on commodity pipelines, the CER and its predecessor the National Energy Board have regulated onshore non-hydrocarbon commodity pipelines on a case-by-case basis. This approach has included being informed by issues in the OPR that are relevant to non-hydrocarbon commodity pipelines and then drawing upon those issues to impose conditions in certificates and orders that authorize such commodity pipelines. With the emergence of other energy sources transmissible by pipeline, the CER is exploring expanding the application of the OPR to onshore pipelines that transmit gaseous non-hydrocarbon commodities such as carbon dioxide and hydrogen.

The CER is also considering codifying requirements for more comprehensive risk assessments relating to pipelines. The CER notes that although the OPR does not contain a provision requiring companies to conduct geohazardous assessments, it is addressed in the Filing Manual. The OPR also contains at least two references to quality assurance programs, which may need additional detail.

### Subtopic 1: Definition of Onshore Pipeline

In the first phase of engagement on the OPR Review, the CER heard that the OPR's performance-based approach acknowledges the vast differences among the many companies regulated by the CER, including differences in the commodities transported. The CER notes that the OPR does not apply to emerging gaseous non-hydrocarbon commodities such as hydrogen and carbon dioxide, but instead are regulated on a case-by-case basis through conditions in certificates and orders. To provide greater regulatory clarity, consistency, efficiency, and certainty, the CER is proposing to amend the definition of onshore pipeline in the OPR to include specific gaseous non-hydrocarbon commodities that are not captured within the current definition.

### **Objective for Improvement**

The objective is to include new requirements in the OPR that apply to CER-regulated onshore pipelines transporting hydrogen and carbon dioxide in a gaseous state instead of imposing authorization-specific conditions that emulate provisions in the OPR that apply to hydrocarbon pipelines.

Other commodity pipelines (such as dense phase carbon dioxide, water, or slurry pipelines that fall within the definition of pipeline pursuant to the *Canadian Energy Regulator Act*) would continue to be regulated on a case-by-case basis pursuant to the applicable provisions of the CER Act and the conditions contained in their specific authorizations.

### **Proposed Option**

The CER is considering amending the definition of onshore pipeline in the OPR to include the transmission of hydrogen and carbon dioxide in a gaseous state.

### **Discussion Question**

G1. Please provide feedback on the proposed change to the definition of onshore pipeline to include hydrogen and carbon dioxide in a gaseous state.

## **Subtopic 2: Use of technologies for which no standard is set out in the OPR**

In the first phase of engagement on the OPR Review, the CER heard that the OPR should introduce risk-based criteria and notification processes, rather than requiring Commission approvals. It was suggested that this approach would better support innovation. In response to this commentary, the CER is requesting feedback on potential changes to sections 5.1 and 6.5 of the OPR related to technology. Section 5.1 of the OPR currently requires submission of designs, specifications, programs, manuals, procedures, measures or plans for which no standard is set out in the OPR to the Commission for approval. Neither subsection 5.1(1) nor 5.1(2) are expected to change, however, the CER is proposing a new subsection.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies proposing to use technologies for which no standard is set out in the OPR implement them in a manner that is safe and protective of people, the environment, sites of historic or cultural importance, and property.

### **Proposed Options**

The CER is considering the following options to meet the objective outlined above:

- adding a new requirement to section 5.1 to include a notification to the CER where a company plans to use a technology for components, processes, or systems:
  - for which no standard is set out in the OPR, and
  - which has not been independently reviewed and publicly released.
- adding a new requirement that companies establish and implement a process for evaluating a technology for which no standard is set out in the OPR, and which has not been independently reviewed and publicly released.

### **Discussion Questions**

G2. What would an appropriate review period be for a notification?

G3. Do you have comments on the proposed approach or suggestions for alternatives?

## **Subtopic 3: Pipeline Design**

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement. Based on learnings from implementing the OPR and Filing Manuals, the CER has identified an opportunity to improve its oversight of pipeline design. To improve oversight of this area, the CER is considering better-defined requirements related to pipeline design. The intent is to specifically include geohazard assessment and risk assessments to determine supplemental design criteria to address other loadings, dynamic effects, and potential future risks.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies appropriately assess, mitigate, and manage risk from pipeline design, through construction and operation and finally, abandonment.

### **Proposed Options**

The CER is considering the following options to meet the objective outlined above:

1. adding a requirement for pipeline design to include supporting risk assessments;
2. adding a requirement for companies to perform geohazards assessments to determine potential risks to the pipeline; and
3. adding a requirement for companies selecting trenchless technology for pipeline installations to notify the CER if the installation occurs under a water body or if the installation is large and occurs over land.

### **Discussion Questions**

- G4. Please provide feedback on the inclusion of these new requirements. Provide feedback on the threshold size of the installation mentioned in option 3.
- G5. Please provide feedback on the impact of these new requirements on safety throughout the lifecycle of the pipeline.

## **Subtopic 4: Storage Facilities**

Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its oversight of storage facilities.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies improve safety for people living, working, or exercising rights near storage facilities.

### **Proposed Options**

The CER is considering the following options to meet the objective outlined above:

- adding a requirement that storage facilities have an alternate source of power for emergency shut-down, emergency lighting for evacuation, and maintaining other essential services;
- adding a requirement that storage facilities are designed and constructed to have a secondary containment system capable of containing ignited spills such that the fire does not expose other tanks or adjoining property to ignition;
- adding a requirement that storage facilities are designed and constructed to have fire detection and fire protection; and
- adding a requirement that companies have the demonstrable capability to safely extinguish a fire at their storage facilities.

### **Discussion Question**

G6. Please provide feedback about these proposed options.

## **Subtopic 5: Quality Assurance Program – Traceability**

Based on learnings from implementing the OPR and Filing Manuals, the CER has identified an opportunity to improve its oversight of material traceability as part of the Quality Assurance Program.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

1. use only materials meeting applicable standards; and
2. maintain appropriate records in regard to materials used on their pipelines.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- adding a requirement that materials to be used in the manufacturing, fabrication, construction, and maintenance of the pipeline and pressure vessels be traceable, where traceability means the ability to trace the history, use and location of a pipeline material and its characteristics, including material properties, inspection, and testing data, through recorded identification data throughout the life of the pipeline;
- adding a requirement that if a company verifies that it has received, installed, or has in service materials that do not meet applicable standards or company specifications, the company must notify the CER;
- adding a requirement that companies must ensure that materials of steel pipe and components to be installed on the pipeline have proven notch toughness properties for fracture resistance, except under conditions where the pipe and components:
  - have inherent notch toughness properties; or
  - are too small to yield meaningful notch toughness results; or
  - operate at such low stress levels that fracture is not considered to be notch toughness dependent; and
- adding a requirement that all information with respect to the quality assurance program be retained for at least two years after abandonment.

### **Discussion Question**

G7. Please provide feedback on the proposed approach.

## Subtopic 6: Definitions connected to operating pressures

Based on learnings from implementing the OPR, the CER has identified an opportunity to improve clarity with respect to the following definitions: Approved Maximum Operating Pressure, Qualified Maximum Operating Pressure, and Amended Maximum Operating Pressure.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies are clear about the CER's expectations regarding maximum operating pressures.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- adding a definition for **Approved Maximum Operating Pressure**: The maximum pressure for a pipeline system, or designated portion thereof, as approved by the Commission in a Leave to Open Order or a different authorization such as an order or certificate;
- adding a definition for **Qualified Maximum Operating Pressure**: The maximum pressure at which a pipeline system is qualified to be operated, not to exceed the design pressure or the approved maximum operating pressure or the amended maximum operating pressure; and
- adding a definition for **Amended Maximum Operating Pressure**: The maximum pressure for a pipeline system, or designated portion thereof, as established by revised design criteria, not to exceed the approved maximum operating pressure.

These will result in two consequential impacts:

- since both the Approved Maximum Operating Pressure and the Amended Maximum Operating Pressure are based on design criteria, if a company wishes to increase either one of these Maximum Operating Pressures (MOPs) it will need to apply for the increase to the CER pursuant to section 43 of the OPR; and
- if a company wishes to reduce the MOP as a corrective measure for a class location change, this reduced MOP is now the Amended MOP, and future increases would be subject to s.43, requiring an application for the increase to the CER.

### **Discussion Question**

G8. What is your feedback on this proposed approach?



# Onshore Pipeline Regulations and Filing Manuals Review

## H. OPR – Reporting Harm Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of Reporting Harm. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- the definition of incident;
- incident near-misses;
- those incidents that have the potential to harm the environment;
- industry-wide learning opportunities from reported incidents; and,
- sites of historic and cultural significance.

### Background: Reporting Harm

The CER is seeking your input on proposed improvements to reporting requirements relating to the definition of incident, incident near-misses, and industry-wide learning opportunities from reported incidents.

The OPR currently defines an incident as follows:

incident means an occurrence that results in:

- a) the death of or serious injury to a person;
- b) a significant adverse effect on the environment;
- c) an unintended fire or explosion;
- d) an unintended or uncontained release of LVP hydrocarbons in excess of 1.5 m<sup>3</sup>;
- e) an unintended or uncontrolled release of gas or HVP hydrocarbons;
- f) the operation of a pipeline beyond its design limits as determined under CSA Z662 or CSA Z276 or any operating limits imposed by the Regulator.

Section 52 of the OPR contains a reporting requirement for regulated companies to immediately notify the CER of any incident relating to the construction, operation, or abandonment of its pipeline, and to submit a preliminary and detailed incident report to the CER as soon as is practicable.

## **Subtopic 1: Definition of Incident — General**

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement. Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its definition of “incident”.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that the OPR definition of “incident” is as clear as possible.

### **Proposed Option**

To meet the objective outlined above, the CER is considering amending the definition of incident.

### **Discussion Questions**

- H1. Describe challenges or limitations that regulated companies have experienced when interpreting or applying the current OPR definition of “incident”.
- H2. Based on industry experience and best practices, describe where improvements to the OPR definition of “incident” can complement areas of overlapping federal, territorial and/or provincial legislation and/or reduce reporting redundancies.
- H3. What instructions or decision-making tools (e.g., risk matrix, checklist, decision tree) are most useful for regulated companies to make a timely assessment of whether an occurrence requires immediate notification to the CER?

## **Subtopic 2: Environmental Effects**

Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its oversight relating to environmental effects.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- clearly understand the CER’s reporting requirements when there is a potential for adverse environmental effects; and
- reporting requirements and associated timelines are commensurate with the consequence of the event on people, property and the environment and the probability of the event escalating.

### **Proposed Option**

To meet the objectives outlined above, the CER is considering a risk matrix or similar decision-making tool located within technical guidance that can assist regulated companies in assessing severity, consequence, likelihood and probability of escalation.

### **Discussion Questions**

- H4. Describe industry best-practices that can improve how the CER approaches incident reporting in relation to adverse environmental effects or the potential for adverse environmental effects.
- H5. Describe occurrences, other than chemical releases, that may have adverse environmental effects for which the CER needs to be immediately notified.
- H6. There are occurrences that may result in an adverse environmental effect and may not be considered an incident as defined in the OPR. Depending on their severity, they could be submitted to the CER as a new notification type with an extended timeline and used to assess company performance or trend analysis. What occurrences do you think the CER needs to be notified of?

### **Subtopic 3: Definition of Incident — Loss of Operational View or Control of a Pipeline**

Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its oversight of security incidents.

#### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies notify the CER of security events, including cyber events, pertaining to loss of operational view or control of their pipelines.

#### **Proposed Options**

To meet the objective outlined above, the CER is considering amending the definition of “incident” to include a requirement to notify the CER of security incidents such as loss of operational view or operational control of a pipeline.

#### **Discussion Questions**

- H7. What do the terms “loss of operational view or operational control of a pipeline” mean to you?
- H8. How should notification and reporting be treated in relation to such events?
- H9. Do you have additional feedback for the CER to consider not covered in questions H7 or H8?

### **Subtopic 4: Definition of Incident — Release of Substance Thresholds**

In this phase of engagement, the CER would like to obtain feedback on additional topics that may not have been discussed in the first phase of engagement. Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its oversight of low-vapour pressure (LVP) hydrocarbon and high-vapour pressure (HVP) hydrocarbon releases.

#### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that:

- release of substance thresholds, where appropriate, are included in regulation and/or technical guidance and used in conjunction with additional risk-informed criteria to help ensure the reporting of releases that may cause harm to people, property or the environment; and
- reporting requirements and associated timelines are commensurate with the consequence of the event on people, property and the environment and the probability of the event escalating.

#### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- lowering the volume threshold for notifying the CER of an LVP release within the definition of incident in the OPR; and
- changes to the reporting threshold specified within the definition of incident in the OPR regarding a gas or HVP hydrocarbon release.

#### **Discussion Questions**

- H10. What criteria are of greatest importance when assessing the potential risk associated with a release of LVP or HVP hydrocarbons? (e.g., product, location including proximity to a site of historic or cultural significance, volume, rate of release).

## **Subtopic 5: Reporting — High-Potential Near Misses**

Based on learnings from implementing the OPR, the CER has identified an opportunity to improve its oversight of high-potential near misses.

### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies notify the CER of high-potential (consequence) incident near misses and learn from them.

### **Proposed Options**

To meet the objective outlined above, the CER is considering a new OPR reporting requirement for companies to notify the CER of any high-potential incident near miss relating to the construction, operation, or abandonment of its pipeline.

### **Discussion Questions**

- H11. Provide examples of events relating to pipeline construction, operation, or abandonment that your company internally classifies as high-potential incident near misses.
- H12. Describe industry best practices that could inform the creation of an OPR definition and description of "high-potential incident near miss".
- H13. What are the benefits and costs for regulated companies if high-potential incident near miss reporting were to become an OPR regulatory reporting requirement?

## **Subtopic 6: Reporting — Information Sharing**

In the first phase of engagement on the OPR Review, the CER heard that industry could benefit from improved and more timely sharing of data-informed trends by the CER. This sharing would support organizational and industry-wide learning and continual improvement. In response to this feedback, the CER is interested in obtaining additional feedback in this regard to build effective implementation processes.

### **Objective for Improvement**

The objective of new processes will be to help ensure that companies can learn from incidents and near misses, to prevent them in the future.

### **Proposed Option**

To meet the objective outlined above, the CER is considering implementing processes to assist companies in their learning and continual improvement in this area.

### **Discussion Questions**

- H14. Please describe what aggregated data sets and/or industry trend types would be most helpful in supporting these performance improvement objectives.
- H15. How might the definition of "incident" in the OPR be refined to support these performance objectives (i.e., organizational and industry-wide learning and continual improvement)?

## **Subtopic 7: Reporting — Sites of Historic and Cultural Significance**

Based on learnings from implementing the OPR the CER has identified an opportunity to improve its oversight relating to sites of historic or cultural significance.

### **Objective for Improvement**

The objective of new requirement is to help ensure that companies are sensitive to, aware of, and protective of historic or cultural sites of significance to Indigenous Peoples.

### **Proposed Option**

To meet the objective outlined above, the CER is considering adding a new reporting requirement in relation to damage to a site of historic or cultural significance, subject to confidentiality agreements signed by companies and Indigenous communities and any applicable provincial or territorial requirements.

### **Discussion Question**

H16. Are you aware of existing best practices in historic or cultural site hazard identification that would clarify definitions and this proposed reporting requirement?





# Onshore Pipeline Regulations and Filing Manuals Review

## I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of impacts to the rights and interests of Indigenous Peoples, socio-economic effects and engagement requirements. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- preventing and addressing impacts to the rights and interests of Indigenous Peoples;
- managing socio-economic effects; and,
- clarifying engagement requirements with potentially impacted people and communities over the lifecycle of pipeline infrastructure.

### Background: Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement

While the CER's [Filing Manual](#) contains detailed guidance relating to socio-economic effects, impacts to the rights and interests of Indigenous Peoples, and engagement requirements, currently, the OPR does not include explicit requirements related to preventing and addressing impacts to the rights and interests of Indigenous Peoples, or the management of socio-economic effects. The OPR does include limited requirements related to communication and engagement.<sup>1</sup> In the absence of certain requirements in the OPR, the CER has used other regulatory instruments, such as project-specific [conditions](#)<sup>2</sup> and guidance<sup>3</sup>, to address project-specific impacts and communicate its expectations to companies in these areas.

Recent conditions, which have been imposed by the Commission on several pipeline projects, were shaped by specific input from Indigenous Peoples and impacted parties, and have directed companies to incorporate the following elements into their respective projects:

- plans for the inclusion of Indigenous Peoples in construction and post-construction monitoring;
- reporting on economic opportunities for Indigenous Peoples (i.e., employment, contracting, procurement, and training);
- the specific consideration of Indigenous knowledge when developing plans for environmental protection and reclamation;
- the inclusion of Indigenous Peoples in emergency response exercises;

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<sup>1</sup> The OPR requires that companies have a management system process for internal and external communication of information related to safety, security, and protection of the environment (ss. 6.5(1)(m)). The OPR also requires that companies develop a continuing education program for first responders and the public on emergency response measures (s.35).

<sup>2</sup> During the application phase of proposed projects, the Commission of the CER evaluates the effects on the rights and interests of Indigenous Peoples, the socio-economic effects, and the engagement activities conducted by the company, and this may result in project-specific conditions.

<sup>3</sup> Information produced by the CER which is intended to provide clarity and guide the actions of those who must comply with our requirements and processes e.g., the CER's Filing Manuals.

- capacity support for Indigenous Peoples to review condition filings;
- the monitoring of positive and adverse socio-economic effects during construction; and,
- reporting on economic opportunities for local and regional individuals and businesses (i.e., employment, contracting, procurement, and training).

The CER's Filing Manual is an example of a guidance document for all applications describing what information should be provided to the CER relating to socio-economic effects, impacts to the rights and interests of Indigenous Peoples, and engagement. Another example of recent guidance in this area is the CER [all company letter](#) regarding industry best practices for notifications to Indigenous Peoples regarding CER-reportable incidents.

The CER intends to be more transparent and consistent in its expectations and approach to regulating these matters over the lifecycle of regulated facilities. This would provide greater predictability and effectiveness, through new regulatory requirements related to preventing and addressing impacts to the rights and interests of Indigenous Peoples, managing socio-economic effects, and engagement requirements with potentially impacted people and communities. This paper is intended to support specific discussions on these matters. Because of their interconnectedness, these areas are referenced in other topic papers, and will also be considered when engaging on other matters within the OPR and Filing Manuals Review, such as emergency management and environmental protection. When considering new requirements in these areas, the CER is balancing the need for clear, transparent requirements that are understood by regulated companies, Indigenous Peoples, and impacted parties, with a recognition that being overly prescriptive in these rapidly evolving areas may not allow companies and communities flexibility to adapt to their specific context and circumstances.

## Management System and Protection Programs under the OPR

The management system and protection programs that are currently required in the OPR<sup>4</sup> are a mix of prescriptive and performance-based requirements.<sup>5</sup> The CER anticipates that the majority of new requirements relating to the rights and interests of Indigenous Peoples, socio-economic effects and engagement will be performance-based requirements, to be responsive to the needs and preferences of those affected by pipeline activities. A performance-based approach will also provide the flexibility that companies need to be respectful of the distinct rights, interests, governance and knowledge systems of Indigenous Peoples.

As described in the [Backgrounder](#) document, management systems provide a consistent framework for the design, development, and implementation of protection programs, as well as for the cyclical planning, implementation, review, and adjustment of operational activities. This is essential for a company to effectively address risks, manage its resources appropriately, and achieve desired outcomes.

The CER is considering the addition of new protection programs to meet regulatory objectives for preventing and addressing impacts to the rights and interests of Indigenous Peoples and the management of socio-economic effects (additional information below under sub-topics 1 and 2). These protection programs would be based on the same expectations the CER has set out for existing protection programs under the OPR. For example, a protection program to prevent and address impacts to the rights and interests of Indigenous Peoples would need to be integrated with a company's management system, which must be explicit, comprehensive, proactive, and applied to all company activities involving the design, construction, operation, or abandonment of a pipeline. The flexibility of protection programs and management system requirements will better allow companies to apply a distinctions-based approach to

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<sup>4</sup> Emergency Management Program (s. 32), Integrity Management Program (s. 40), Safety Management Program (s. 47), Security Management Program (s. 47.1), Damage Prevention Program (s. 47.2), Environmental Protection Program (s. 48).

<sup>5</sup> Prescriptive regulations must be followed exactly as drafted. Performance-based regulations set out a regulatory objective or requirement but enable the regulated party to determine how to achieve the objective. The current requirements are prescriptive in terms of "what" must be included in the management system and related reporting, but performance based in terms of "how" the company demonstrates compliance.

how they prevent and address impacts to the rights and interests of Indigenous Peoples, recognizing and respecting the differences across individual Nations and communities.

## **United Nations Declaration on the Rights of Indigenous Peoples Act and Action Plan Measure 34**

The development of these new regulatory requirements will be guided by the CER's commitment to advancing Reconciliation with Indigenous Peoples and the implementation of the [UN Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#), including the supporting [Action Plan](#), most specifically Action Plan Measure 34 (APM 34).

On 21 June 2021, the UNDA received Royal Assent and came into force. This Act provides a roadmap for the Government of Canada and First Nations, Inuit and Métis to work together to implement the UN Declaration based on lasting Reconciliation, healing and cooperative relations. The CER is committed to advancing Reconciliation with Indigenous Peoples within its mandate and recognizes that the UN Declaration provides a framework for doing so. Reconciliation is one of the CER's four interconnected [strategic priorities](#); the CER is focused on enhancing Indigenous involvement in how the CER discharges its mandate, building renewed relationships with Indigenous partners, improving the cultural competency of the CER and its staff, and driving meaningful change in the CER's requirements and expectations of regulated industry.

Section 5 of the UNDA requires that the Government of Canada, in consultation and cooperation with Indigenous Peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. The Act is supported by the UNDA [Action Plan](#), which guides the implementation of the UN Declaration. The Action Plan was published on 21 June 2023, and includes 181 pieces of work, referred to as Action Plan Measures, that the Government has committed to achieve in consultation and cooperation with Indigenous Peoples. APM 34 was co-developed by the Indigenous Caucus of the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project (IAMC-TMX), Natural Resources Canada (NRCan), and the CER. APM 34 calls for First Nations, Métis and Inuit communities, governments, and organizations to work in consultation and cooperation to:

- i) enhance the participation of Indigenous Peoples in; and
- ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the CER.

APM 34 describes steps that the CER will take to put the UN Declaration into practice within the context of the CER's role in overseeing major energy projects. This initiative seeks to collaboratively develop the means by which Indigenous communities can play an enhanced role in the oversight of major energy projects and matters currently regulated by the CER. One of the four specific elements identified for achieving these objectives includes amending the CER's OPR and Filing Manuals in a manner that:

- i) incorporates specific localized knowledge held by Indigenous Peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge; and
- ii) strengthens measures to prevent and address impacts to rights and interests, including in relation to heritage resources and sites of Indigenous significance.

By continuing to advance this and other elements, the CER aims to strengthen its commitment to Reconciliation with Indigenous Peoples. The early work to advance APM 34 will include creating a shared vision, co-developing governance frameworks and planning next steps in the short- and long-terms. The entirety of APM 34 can be read ([here](#)).

The CER is proposing changes to the OPR and Filing Manuals to address these specific commitments in APM 34. Please see the Filing Manuals discussion paper for the CER's proposed changes to the ESA and Lands sections of the Filing Manuals.

Specific to the OPR, the CER is proposing a number of new regulatory requirements to address the specific commitments made in APM 34 which are discussed below under sub-topic 1 (Preventing and

Addressing Impacts to the Rights and Interests of Indigenous Peoples) and sub-topic 3 (Engaging with Potentially Affected Peoples and Communities).

One element of APM 34 that the CER is seeking specific feedback on relates to any new regulatory requirements and associated compliance for the incorporation of Indigenous laws, policies, practices, and protocols within new and existing management system protection programs. There are several options or approaches that could be possible for satisfying this commitment. These could potentially include:

- including specific program requirements within a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples;
- including a new management system process relating to the incorporation of Indigenous laws, policies, practices, and protocols that would apply to all OPR protection programs; and,
- developing guidance and best practices in a guidance document which accompanies the regulation.

The CER anticipates that this would be an area of regulation with potential complexity, and that there may be a range of views regarding the scope and approach of regulation in this area, as well as questions about verifying compliance to new requirements. The CER is seeking feedback on all of the proposals below, as well as specific feedback in areas relating to APM 34 commitments, in the questions included under each sub-topic below. The CER welcomes any feedback in response to the questions, and also encourages any additional commentary or questions that may not be covered by the included questions.

## **Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples**

In the first phase of engagement on the OPR Review, the CER heard about the importance of meaningfully advancing Reconciliation with Indigenous Peoples through the CER's Regulatory Framework, using the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework. Specific to the OPR, the CER heard that the amended regulation should explicitly direct companies to consider and address impacts to Indigenous and treaty rights related to their pipeline activities. The CER also heard that the involvement of potentially affected Indigenous Peoples and the incorporation of Indigenous knowledge in lifecycle oversight should be increased. The CER heard from companies that they should be allowed flexibility to pursue the most meaningful path forward with the Indigenous Peoples potentially affected by their operations.

Responsive to this feedback, the CER proposes to introduce new requirements to prevent and address impacts to the rights and interests of Indigenous Peoples over the lifecycle of pipeline infrastructure and provide clarity for regulated entities.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- have systematic processes and procedures in place to identify, anticipate, manage and address potential impacts to the rights and interests of Indigenous Peoples across all of its activities involving the design, construction, operation or abandonment of a pipeline;
  - this includes avoiding impacts to heritage resources, traditional land and resource use, and sites of significance for Indigenous Peoples during construction, operation, maintenance activities, and abandonment.
- can appropriately identify, incorporate, and address applicable Indigenous laws, policies, practices and protocols;
- are considering and including Indigenous knowledge in their decision-making relating to their protection programs, and that there are procedures to prevent the unauthorized disclosure of confidential Indigenous knowledge; and,

- have systems in place to ensure those working on behalf of the company are doing so in a culturally safe manner i.e., racism and sexual exploitation is prevented and addressed.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- The addition of a new protection program (e.g., Protection Program to prevent and address impacts to the rights and interests of Indigenous Peoples). A new protection program would be based on the same expectations that the CER has set out for existing protection programs<sup>6</sup> under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples.
- The inclusion of a management system requirement (OPR, s. 6.5) for companies to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous knowledge, including protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs.
- The inclusion of a management system requirement to establish and implement a process to identify Indigenous laws and policies, and where these are made available to the company and are applicable to its protection programs, demonstrate how they are addressed in their protection programs.
- A new requirement to ensure that individuals working for or on behalf of a regulated company receive cultural competency training.
- Additional requirements, where necessary, to ensure that the CER's expectations are clear and regulatory objectives are met. For example:
  - a new reporting requirement in relation to damage to a site of historic or cultural significance, subject to confidentiality agreements signed by companies and Indigenous communities and any applicable provincial or territorial requirements (see Reporting Topic Paper for details);
  - a revision to current OPR requirements to ensure that sites of historic and cultural significance, both Indigenous and non-Indigenous, are considered in a company's Emergency Management Program (see Emergency Management Topic Paper for details);
  - an amendment that requires companies to establish restoration goals in consultation with potentially impacted Indigenous Peoples (see the Environmental Protection Topic Paper for details).

### **Discussion Questions**

11. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?
12. What is your feedback on the following proposed options to meet the regulatory objectives?
  - a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples;
  - a new management system process for the incorporation of Indigenous knowledge;

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<sup>6</sup> Emergency Management Program (s. 32), Integrity Management Program (s. 40), Safety Management Program (s. 47), Security Management Program (s. 47.1), Damage Prevention Program (s. 47.2), Environmental Protection Program (s. 48).

- a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols;
  - cultural competency training requirements for all those working for regulated companies;
  - additional requirements where necessary.
13. Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?
14. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?
15. What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to prevent and address impacts to the rights and interests of Indigenous Peoples?
16. Do you have feedback on how specific localized knowledge, as well as Indigenous laws, policies, practices, protocols, and knowledge could be incorporated into the OPR? Are there other options or proposals that the CER should consider? Are there any particular challenges associated with implementing or verifying compliance to new requirements? How can these be addressed?

## **Sub-topic 2: Managing Socio-Economic Effects**

In the first phase of engagement on the OPR Review, the CER heard that the OPR should incorporate requirements related to the management of socio-economic effects and that companies should regularly report on their efforts to mitigate socio-economic effects over the lifecycle of pipeline infrastructure.

Responsive to this feedback, the CER proposes to introduce new requirements for the effective management of socio-economic effects over the lifecycle of pipeline infrastructure.

### **Objectives for Improvement**

The objective of new requirements will be to help ensure that companies:

- have systematic processes and procedures in place to identify, anticipate, manage and address potential socio-economic impacts across all of its activities involving the design, construction, operation or abandonment of a pipeline;
  - this includes preventing and addressing impacts to human health, human occupancy and resource use, infrastructure and service, navigation and navigation safety.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- The addition of a new protection program (e.g., Protection Program for Socio-Economic Effects). A new protection program would be based on the same expectations that the CER has set out for existing protection programs under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions with adverse impacts.
- The expansion of the existing Environment Protection Program (OPR, s. 48) (e.g., Environment and Socio-Economic Effects Protection Program).

### **Discussion Questions**

17. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?
18. What is your feedback on the following proposed options to meet the regulatory objectives?
  - a new protection program for the management of socio-economic effects;
  - expansion of the existing Environment Protection Program to include the management of socio-economic effects.
19. Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?
110. Are there any potential challenges associated with these proposals? What are they? How can they be addressed?
111. What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to manage socio-economic effects?

### **Sub-topic 3: Engaging with Potentially Affected People and Communities**

In the first phase of engagement on the OPR Review, the CER heard about the need for meaningful engagement and communication, and that the OPR should drive consistency and clarity of requirements. The CER also heard about the need for engagement to be conducted with cultural awareness and sensitivity, and that it should be respectful of the unique engagement preferences of communities. Responsive to this feedback, the CER is considering formalizing additional engagement requirements in the regulation.

### **Objectives for Improvement**

The objective of new requirements will be to:

- drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities<sup>7</sup> 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; and,
- 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.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or management system process.

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<sup>7</sup> Indigenous Nations and communities, persons with an interest in lands affected by the infrastructure (including landowners, land users, nearby residents, owners of third-party infrastructure which is crossed by the pipeline), potentially affected persons (local residents, persons who reside in the emergency planning zone), government authorities (local, regional, provincial, and federal).

### **Discussion Questions**

- I12. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?
- I13. What is your feedback on the following proposed option to meet the regulatory objectives?
  - Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or a management system process.
- I14. Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?
- I15. Are there any potential challenges associated with this proposal? What are they? How can they be addressed?
- I16. What kind of guidance would be helpful to enhance your understanding of CER expectations related to engagement?



# Onshore Pipeline Regulations and Filing Manuals Review

## OPR – J. Safety Topic Paper

This paper describes potential amendments to the OPR to improve the CER's oversight of Safety. Any suggestions for improvement regarding this topic are welcome, and in particular, the CER seeks your comments on proposed improvements related to:

- process safety management; and,
- safety plans for construction, operation and maintenance, and abandonment activities.

### Background: Safety

Process safety focuses on preventing releases of hazardous material or energy that can lead to major accidents such as fires, explosions, and unintended releases. Process safety management is the application of management principles and systems for the identification, understanding, avoidance, and control of process hazards to prevent, mitigate, prepare for, respond to, and recover from process-related incidents.

A company's safety documentation should reflect the company's management system (e.g., policies, processes, etc.) and its safety management program; it should apply to the full lifecycle of the project and be drafted to meet the needs of the intended audience (i.e., company employees and contractors).

### Subtopic 1: Process Safety Management

In the first phase of engagement on the OPR Review, the CER heard that the OPR should provide clearer expectations and/or include explicit requirements for process safety management. The CER also heard that the current level of detail in the OPR (e.g., requirements related to hazard identification, risk management) is sufficient and that process safety management is implicit in the OPR safety management requirements and the Canadian Standards Association (CSA) Standard Z662 entitled *Oil and Gas Pipeline Systems*. It was suggested that existing management system requirements and/or enhanced technical guidance could be leveraged to improve process safety management if required. Responsive to this feedback, the CER intends to clarify its requirements for and oversight of process safety management.

#### **Objective for Improvement**

The objective of new requirements will be to help ensure that companies identify process safety hazards, then evaluate and manage related risks to prevent incidents such as fires, explosions, and unintended loss of containment events.

#### **Proposed Options**

The CER is considering the following options to meet the objective outlined above:

- adding clarification to OPR section 47 requiring a company to have a Safety Management Program that anticipates, prevents, manages, and mitigates potentially dangerous conditions and exposure to those conditions during all activities relating to construction, operation, maintenance, abandonment, and emergency situations; new language would specify that this program must incorporate both operational safety and process safety management;

- adding requirements related to detection and warning systems for hazardous atmospheres;
- adding clarification to OPR section 36(b) to specify that corrective actions must be taken to address equipment and instrument testing results that fall outside of established acceptance criteria; and
- developing technical guidance to articulate CER expectations and industry best practices related to process safety management.

### **Discussion Questions**

- J1. What is your feedback on the proposed approach?
- J2. What guidance is needed to support the incorporation of process safety management within the Safety Management Program? Please be as detailed as possible in terms of the nature and content of required guidance (i.e., specific topics, processes, procedures, or other practical tools that might be useful).

## **Subtopic 2: Safety Plans for Construction, Operations and Maintenance, and Abandonment Activities**

In the first phase of engagement on the OPR Review, the CER heard about the need for clearer guidance on safety documentation (e.g., plans and/or manuals format and content) while still providing some flexibility to reflect the related nature, scope, and scale of the activities being managed (i.e., construction, operations and maintenance, and abandonment). The CER also heard that use of the term “manual” in the OPR may be interpreted to limit the use of digital formats, which would improve information accessibility. It was suggested that a holistic (safety) plan rather than having multiple manuals prepared by operators and contractors would be more effective at preventing harm. Responsive to this feedback, the CER is considering new requirements for the development and implementation of safety plans for construction, operation and maintenance, and abandonment activities.

### **Objectives for Improvement**

The objectives of new requirements will be to help ensure that companies:

- align safety documentation with the management system and Safety Management Program;
- develop robust safety documentation relevant to specific activity types (i.e., construction, operations and maintenance, and abandonment); and
- make safety documentation easier to access, understand, and use.

### **Proposed Options**

The CER is considering the following options to meet the objectives outlined above:

- providing a definition of “construction” in the Interpretation section of the OPR;
- replacing existing OPR requirements for construction and maintenance safety manuals with requirements for safety plans for construction, operations and maintenance, and abandonment activities (as part of the Safety Management Program); these plans would describe the procedures, practices, resources, sequence of key safety-related activities and monitoring measures necessary to manage related hazards and to ensure the safety of the work or activity to be undertaken; and
- developing technical guidance to further articulate CER expectations related to safety plan content across each activity type.

**Discussion Questions**

- J3. What is your feedback on the proposed approach?
- J4. What guidance is needed to support safety plan provisions in the OPR? Please be as detailed as possible in terms of the nature and content of required guidance (i.e., specific topics, processes, procedures, or other practical tools that might be useful).





# Onshore Pipeline Regulations and Filing Manuals Review

## K. Filing Manuals - Environmental and Socio-Economic Assessment Topic Paper

### Introduction

As noted in the [Backgrounder](#), the CER is seeking your feedback on possible changes to the “Environmental and Socio-Economic Assessment” (ESA) section in the Filing Manuals (i.e., section A.2 of the [Filing Manual](#), and chapter 6 of the [Electricity Filing Manual](#)). The CER seeks your comments on the following topics, however any suggestions for improvement with regard to these sections are welcome.

### Subtopic 1: Restructuring the ESA Section

#### **Background**

As described in the [Backgrounder](#), the Commission has been focused on improving the assessment of project effects on the rights and interests of Indigenous Peoples in recent application assessments. The CER has heard that increasing the emphasis, robustness, and detail of its consideration of potential effects on the rights and interests of Indigenous Peoples is a key part of reconciliation.

The ESA section has grown longer and more complex through regular updating, and the CER has heard that it can be difficult to navigate in some cases. For example, general guidance (e.g., the need for incorporation of Indigenous knowledge, the need to provide evidence and rationales, etc.) is spread throughout the section, rather than being consolidated in one place.

Note: this restructuring section is similar to the restructuring section found in “Filing Manual – Rights and Interests of Indigenous Peoples” Topic Paper (see the paper for more details).

#### **Objectives for improvement**

The CER seeks to improve the overall structure and layout of the existing ESA section in the Filing Manuals by:

- seeking more detail about potential effects of proposed projects on the rights and interests of Indigenous Peoples; and
- improving the clarity and readability of the ESA section.

## **Proposed options**

The CER is considering:

- splitting the current ESA section into two sections — an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section (see the Filing Manual – Rights and Interests of Indigenous Peoples Topic Paper for more details); and
- consolidating general or common guidance into an initial sub-section, and specifying that these topics be addressed wherever they are relevant in the ESA and the new section for “Rights and Interests of Indigenous Peoples”. Such topics could include engagement results, Indigenous knowledge, and climate change resilience.

## **Discussion questions:**

- K1. Does the proposed split of the current ESA section improve clarity?
- K2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?
- K3. What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?

## **Subtopic 2: Environmental and Socio-economic Assessment**

The ESA section of the Filing Manuals includes filing guidance related to the assessment of anticipated project effects on environmental and socio-economic valued components. This includes the applicant’s proposed mitigation measures to reduce adverse effects, proposed enhancement measures to improve positive effects, consideration of both project and cumulative effects, and the applicant’s determination of the significance of effects after taking mitigation into account.

As noted in subtopic 1 above, the CER is considering creating a new section focused on “Rights and Interests of Indigenous Peoples” which is further discussed in the Filing Manual – Rights and Interests of Indigenous Peoples Topic Paper.

The CER is seeking your input on this amended ESA section, as follows.

### **2.1 Valued component identification and selection for the ESA**

#### **Background**

The CER’s Filing Manuals rely on a valued component (VC)-based approach to effects assessment. Assessments are focused on those biophysical or socio-economic VCs that may be affected by a project and are of concern or value to the public, including Indigenous Peoples. Examples of VCs could include biophysical elements such as “vegetation” and “fish and fish habitat”, and socio-economic elements such as “human health” and “infrastructure and services”. Currently, applicants must identify VCs for which effects are predicted and explain why and how the VCs were identified. Each VC can have a number of indicators that are used to evaluate a project’s potential effects on that particular VC.

In recent hearings, the Commission has heard that the selection of VCs is a key initial decision that affects much of the applicant’s ESA, and that input on the choice of VCs needs to be carefully considered. The Commission has heard that Indigenous knowledge systems should be brought together with western knowledge systems to better understand project impacts. The Commission has also heard that VCs can be chosen too narrowly, missing overall effects on a vulnerable population or entity. On the other hand, VCs can also be chosen too broadly, missing specific effects on a particular subset of a relatively broad VC (e.g., considering effects on a general wildlife VC may overlook unique effects on a particular species of concern).

### **Objectives for improvement**

The CER wants to clarify the selection of VCs, to help ensure that Indigenous knowledge and engagement informs the selection of VCs and to help ensure that VCs can cover both broad concerns (such as overall community well-being) and narrow concerns (such as effects on a single species).

### **Proposed options**

The CER is considering:

- adding filing guidance to help ensure that applicants incorporate Indigenous knowledge and engagement results in the selection of VCs. Including, demonstration of how the VCs chosen reflect both, what was heard from engagement and include probable project-related effects; and
- adding discussion of narrow versus broad VCs (or single versus multi-variate VCs) and requirements to help ensure that VCs of various breadths are selected to appropriately cover issues of concern.

### **Discussion questions**

- K4. To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?
- K5. What factors should guide the choice of VCs in terms of their breadth?
- K6. Can VCs be 'nested' to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the 'summing' of effects of individual VCs?
- K7. What other improvements or clarifications can be made to the discussion and selection of VCs?

## **2.2 Socio-economic valued components**

### **Background**

The CER Act requires the Commission to consider the health, social, and economic effects of projects. This is accomplished by analyzing, monitoring, and managing the intended and unintended social consequences, both positive and negative, of projects. The CER's Filing Manuals describe the socio-economic VCs that must be considered by the applicant. Currently, applicants identify the VCs for which effects are predicted and provide specific details in the assessment when circumstances and interactions necessitate detailed information.

Given the proposed creation of a new consolidated "Rights and Interests of Indigenous Peoples" section (as explained in the Filing Manual – Rights and Interests of Indigenous Peoples Topic paper), VCs focused on the rights and interests of Indigenous Peoples would be consolidated within the new section, and the remaining socio-economic VCs would stay in the ESA section.

### **Objective for improvement**

The CER wants to clarify its guidance for assessing socio-economic effects, which requires consideration of what stays in the ESA section and what is moved into the proposed "Rights and Interests of Indigenous Peoples" section, and avoiding duplication between the two.

### **Proposed options**

- renaming "Socio-economic Elements" to "Socio-economic Valued Components"; and
- focusing the socio-economic VCs on health, social, and economic effects related to non-Indigenous peoples and communities; such that an applicant would consider the following socio-economic VCs within their application: employment and economy, human health, human occupancy and resource use, infrastructure and services, and navigation and navigation safety.

### **Discussion questions**

- K8. Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?
- K9. How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?
- K10. What VCs should stay in the ESA section versus which should move to the “Rights and Interests of Indigenous Peoples” section?
- K11. What other improvements can be made to the guidance for socio-economic VCs?

## **2.3 Mitigation and enhancement measures**

### **Background**

The Commission considers both adverse and positive effects in its assessment of proposed projects. This means that, in addition to mitigation measures that reduce adverse effects, enhancement measures for positive effects are also relevant. Enhancing positive effects is an opportunity for the benefit of people, communities, and the biophysical environment. For example, there is an opportunity to enhance the positive effects a project, such as employment and economic activity, through targeted training that enables local and regional communities, Indigenous Peoples and businesses to share in these positive effects. Training can also be considered a positive effect by itself.

Various types of offsets have been proposed in recent applications. The Commission has heard much input on offsets, such as the need to follow the mitigation hierarchy before relying on offsets (i.e., preferring avoidance, minimization, and restoration onsite, before considering offsets), and to ensure proper offset principles are followed (e.g., to only rely on offsets where their effectiveness is reasonably reliable, and to ensure that risk factors are accounted for).

In addition, the Commission has heard various concerns about the transparency of mitigation measures to be implemented after a project has been approved. For example, an environmental protection plan (EP Plan) details measures to protect the environment that are to be implemented during and immediately after construction. EP Plans are often imposed as a condition, submitted by companies and available online. In contrast, there is typically no similar plan submitted for site-specific mitigation measures to be implemented during operations, nor for socio-economic protection measures. Likewise, post-construction environmental monitoring and reporting (PCEMR) is often imposed in a condition, but there is no similar regime for monitoring and reporting on the implementation of socio-economic protection measures.

### **Objective for improvement**

The CER wants to clarify guidance related to mitigation and enhancement measures.

### **Proposed options**

The CER is considering modifying the ESA part of the Filing Manual to specify that applicants should:

- describe enhancement measures in addition to mitigation measures;
- demonstrate how the mitigation hierarchy has been followed and justify the offset principles applied if proposing offsets;
- document and monitor socio-economic protection measures equivalent to an EP Plan and PCEMR (see the OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement Topic Paper for details); and
- ensure that site-specific environmental and socio-economic protection measures relevant to the operations phase are maintained and implemented after construction (see the OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement Topic Paper for details).

### **Discussion questions:**

- K12. What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?
- K13. What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?
- K14. What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?
- K15. How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant commitments are maintained and implemented during operations?
- K16. What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?

## **2.4 Cumulative Effects**

### **Background**

Cumulative effects assessment considers the environmental and socio-economic effects of a proposed project in combination with past, present, and reasonably foreseeable future effects of other nearby or otherwise linked projects and activities. Only adverse effects are typically considered. The Filing Manuals specify that applicants conduct cumulative effects assessment and provide an overview of the methodologies used, i.e., how other relevant projects and activities were identified, and how the accumulation of effects was assessed.

Some aspects of cumulative effects assessment have been emphasized in recent Commission hearings, including:

- whether the effects of environmental events and changes that affect a VC (e.g., forest fires and climate change impacts on wildlife habitat) should be included in a cumulative effects assessment for that VC;
- what is the appropriate baseline against which to consider cumulative effects; and
- whether a cumulative effects assessment is required if offsets are to be implemented with the aim of counterbalancing residual adverse Project effects.

### **Objective for improvement**

The CER wants to clarify filing guidance related to specific issues of importance in cumulative effect assessment.

### **Proposed options**

The CER is considering guidance that:

- relevant environmental events (e.g., wildfires) and climate change should be considered in cumulative effects assessments, so that all cumulative effects relevant to the sustainability of particular VCs are assessed;
- applicants justify the baseline used for cumulative effects assessment, considering that a short timeframe may suffice in some cases (e.g., if the designation of a species at risk included consideration of its population decline over past decades, or if current forest fragmentation represents the cumulative effects of past development), whereas it may be necessary to use a longer, historical baseline in other cases necessitating discussion of past activities or past state of the environment; and
- acknowledges that a cumulative effects assessment for a valued component is not needed if an applicant can demonstrate that their proposed offsets will confidently achieve no net loss for that valued component, taking into account risks and uncertainties such as delay, effectiveness and equivalency.

### **Discussion questions**

- K17. To what extent should environmental events and climate change be included in cumulative effects assessments?
- K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?
- K19. What factors are important in choosing the appropriate baseline for cumulative effects assessment?
- K20. To what extent should the use of offsets and the applicant's confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?
- K21. What other improvements can be made to the discussion and guidance for cumulative effects?

## **2.5 Significance**

### **Background**

In its assessment of proposed projects, the Commission broadly considers and balances the significance of positive and negative effects when determining whether a project is in the public interest. The CER Act does not, however, require an explicit determination of significance. In contrast, the *Impact Assessment Act* (IA Act) requires the public interest determination for a designated project to consider “the extent to which” adverse effects are significant (i.e., a sliding scale significance determination). In addition, for any projects that are located on federal lands, the IA Act (section 82) requires a federal decision-maker to determine whether the project is, or is not, likely to cause significant adverse environmental effects (i.e., a binary significance determination, similar to what used to be required under the predecessor legislation, the *Canadian Environmental Assessment Act, 2012*).

The Filing Manuals currently describe the binary approach for determining project effects and cumulative effects. The Commission has evolved its approach to significance in recent hearings, however, by adopting a sliding scale for effects on VCs together with a modified set of criteria and ratings. The Commission is still required to make a binary significance determination if a proposed project crosses federal lands.

### **Objective for improvement**

The CER is considering updating the Filing Manuals to reflect its most recent approach to determining significance.

### **Proposed options**

The CER is considering:

- including a templated framework, similar to the sliding scale and the criteria and ratings from the Commission's recent NEBC Recommendation Report, resulting in a sliding scale significance determination for each VC (see [C26744-1](#) Appendix 7 and “Evaluation of Significance” tables for each VC in Chapters 7 and 8); and
- requiring the applicant to consider whether IA Act section 82 applies with regard to federal lands, and if so, to provide their evaluation of whether the proposed project “is” or “is not” likely to cause significant adverse environmental effects on federal lands.

### **Discussion questions**

- K22. Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?
- K23. What considerations should apply when making the significance determination for federal lands?
- K24. What other improvements can be made to the discussion and guidance for significance?



# Onshore Pipeline Regulations and Filing Manuals Review

## L. Filing Manuals - Lands Topic Paper

### Introduction

As noted in the [Background](#) document, the CER is seeking your feedback on possible changes to the "Lands Information" section in the Filing Manuals (i.e., section A.4 of the [Filing Manual](#), and chapter 8 of the [Electricity Filing Manual](#)). Any suggestions for improvement regarding this section are welcome, and in particular, the CER seeks your comments on the following topics.

### Subtopic 1: Routing and Site Selection Process

#### **Background**

The route and site selection process involves identifying, selecting, and siting of lands for a proposed project, whether it is an easement contiguous to an existing right-of-way, a new right-of-way or other lands (i.e., for above ground facilities). It also includes identifying third party crossings impacted by the route of the project.

Applicants must take into account results of engagement with the rights holders, owners, and users of lands when determining the preferred route, including the location of land rights required for the project.

#### **Objectives for Improvement**

The CER seeks to improve the clarity and specificity of the filing guidance regarding route and site selection, including documentation of the methodology used, and incorporation of input and perspectives from engagement with affected persons.

#### **Proposed Options**

The CER is considering clarifying expectations for applicants to:

- describe and justify the proposed route and site locations, explain the routing criteria and methodology, and describe alternatives considered and why the proposed route and sites were chosen;
- describe the general project setting in sufficient detail to justify the selection of the route and sites;
- describe how the applicant undertook and incorporated feedback from engagement with affected persons, municipal governments and communities, including landowners and Indigenous Peoples regarding the proposed route and sites; and,
- incorporate input and perspectives when siting a project or establishing a proposed route, e.g., input from directly affected Indigenous Peoples who participated in the route selection process to help ensure protection of heritage resources.

#### **Discussion questions**

L1. What criteria or tools are currently used by companies in determining the location of the required lands and the proposed route within the study corridor? Are there additional criteria or tools that should be used? What additional guidance, or expansion of existing guidance should be in the Filing Manual in relation to such criteria and tools?

L2. To what extent should Indigenous knowledge and engagement be explicitly addressed in routing and site selection?

## Subtopic 2: Compensation Methodology

### **Background**

The Commission of the CER can decide on disputes related to compensation payable under Part 6 of the CER Act. This may include:

- the acquisition, lease, or taking of lands;
- lands whose use is restricted by the operation of section 335 of the CER Act<sup>1</sup>; and
- damages caused by the activities of the company which are directly related to: the acquisition or lease of lands for a pipeline or abandoned pipeline; the construction of the pipeline; or the inspection, maintenance or repair of the pipeline or abandoned pipeline.

Landowners and companies are encouraged to work together to resolve compensation disputes related to the issues above. If parties are unable to resolve these disputes, they can be brought to the CER for alternative dispute resolution, or to the Commission for decision.

### **Objectives for Improvement**

The CER's objective for improvement is to gain an understanding of a company's compensation approach, such as its:

- compensation method;
- principles that it uses to structure compensation matters; and
- best practices and approaches.

### **Proposed Option**

The CER is considering clarifying expectations for applicants to explain their compensation methodology and compensable matters.

### **Discussion questions**

- L3. How could Filing Manual guidance better describe the CER's expectations (such as criteria) for companies when they are developing a compensation methodology for land matters?
- L4. When a company has developed a compensation methodology relating to their project, what information should be included in its application?
- L5. How detailed should a company's compensation methodology and approach be? For example, it could be kept at a broad overview level, or it could be made specific to include the use of land evaluations, studies, or analysis that was completed in order to determine the compensation to be offered to owners<sup>2</sup> (as per section 320 of the CER Act).

## Subtopic 3: Location of Lands Required for the Project

### **Background**

A description of the locations, and rationale for using lands necessary for the project, allows the Commission to assess whether the identified lands are appropriate for use. Currently, the Filing Manual specifies that information regarding the location of land includes:

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<sup>1</sup> For more information about section 335 of the CER Act, including the prescribed area, refer to the [damage prevention section](#) of the CER website.

<sup>2</sup> **320** In sections 321 to 334, **owner** means any person who is entitled to compensation under section 314.

- a general description of the location of the lands that are proposed to be used for the project including maps and location coordinates; and
- a description of the nature and relative proportions of land ownership types along the proposed route (i.e., freehold, Federal or Provincial Crown, public lands, or other).

### **Objectives for Improvement**

The CER would like to have a clear and detailed summary of the lands specifically obtained for permanent, temporary and/or crossing uses.

### **Proposed Option**

The CER is considering clarifying expectations for applicants to provide more detailed information on lands specifically obtained for permanent, temporary and/or crossing uses.

### **Discussion questions**

- L6. What specific guidance should be provided, in relation to companies describing the location of lands that support the studies for the Environmental and Socio-economics Assessment while incorporating Traditional Land Use and Traditional Ecological Knowledge?
- L7. What should be included in a description of the lands used by Indigenous Peoples or communities for traditional purposes that are proposed to be used for the project?

## **Subtopic 4: Land Rights**

### **Background**

A company may need to acquire or lease the lands necessary for the construction, operation, and maintenance of its facilities. Land acquisition or lease of lands can be complex and may depend on the type of land ownership<sup>3</sup>, the existing and ongoing uses of the lands, and the type of acquisition (i.e., permanent<sup>4</sup> easement, temporary workspace<sup>5</sup> and access, and third-party crossing<sup>6</sup>).

The description of the land rights required for a project informs the Commission, as well as rights holders, owners and users of lands, of the different types of land rights needed for the project (e.g., easement, statutory right-of-way, temporary workspace, permit or licence, crossing permit, etc.) and the areas where existing land rights allow for the project.

### **Objective for Improvement**

The objective of updated guidance would be for applicants to provide details on the land rights obtained for permanent, temporary or crossing uses.

### **Proposed Option**

The CER is considering clarifying that applicants should describe the land rights required for permanent, temporary or crossing uses.

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<sup>3</sup> The lands being acquired or leased may be Crown lands, or privately owned.

<sup>4</sup> This can include a description of the permanent land rights proposed to be acquired for the project and related facilities; the width of the permanent right-of-way (RoW); the locations and dimensions of any new lands required for all associated facilities (other than the pipeline RoW); and a description of the existing land rights that allow for the project.

<sup>5</sup> Temporary workspace includes lands parallel to an existing and/or proposed RoW, as well as any areas proposed to be used temporarily for construction activities (such as horizontal directional drilling activities, crossings, and storage areas).

<sup>6</sup> Third party crossings include those utilities, such as a *highway, an irrigation ditch, a publicly owned or operated drainage system, sewer or dike, an underground telecommunications line or a line for the transmission of hydrocarbons, electricity or any other substance*. (section 217(6) of the CER Act).

### **Discussion questions**

- L8. What information is appropriate (e.g., typical drawings, estimated duration for each type of temporary workspace) for companies to describe the land rights required (or not required in the case of existing rights), and the type of ownership, for the company to demonstrate that impacted rights holders, owners and users of lands have been identified and consulted in land acquisitions and compensation matters?
- L9. Is it helpful to provide a description of the process to be used if agreements with utility owners cannot be reached?

## **Subtopic 5: Rights Holders, Owners, and Users of Lands**

### **Background**

The land acquisition information in the Filing Manual currently includes a description of the:

- numbers of rights holders, owners, and users of lands, and tenants;
- the number of land acquisition agreements (such as option or easement agreements) to be signed and the number signed at the time of submitting the application;
- the number of section 322(1)<sup>7</sup> notices served; and
- timing of service of remaining notices.

### **Objective for Improvement**

The CER seeks to clarify its guidance for applicants to describe the rights holders, owners and users of lands so that the Commission is informed of the landowners and users directly impacted by the project.

### **Proposed Option**

The CER is considering specifying that applicants should provide a more detailed description of those directly impacted by a project.

### **Discussion questions**

- L10. What might be an accurate way to describe the types of rights holders, owners and users of lands?
- L11. Is this information available to companies at the time companies are preparing their application?

## **Subtopic 6: Land Acquisition Process**

### **Background**

The Filing Manual outlines expectations regarding the information that companies are to provide regarding the process to be used for the acquisition of rights, including:

- a description of the process to be used for acquiring the lands or land rights required for the project;
- the proposed schedule of acquisition activities, including a list of acquisition activities that have already taken place or have commenced; and
- the status of service of notices on all owners (as per section 320 of the CER Act) of lands to be acquired pursuant to section 322(1) of the CER Act.

### **Objective for Improvement**

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<sup>7</sup> Section 322 of the CER Act describes the notice to be served on landowners informing them that lands may be required for a project

The CER's objective for improvement is for applicants to describe the land acquisition process including processes to be used in the event that land acquisition agreements cannot be obtained.

### **Proposed Option**

The CER is considering adding specificity to its guidance regarding details on the overall land acquisition process, including a description of the process to use if applicants are unable to reach agreements on land rights with the right holder, owner and user of lands, and utility owners.

### **Discussion questions**

- L12. What elements of a land acquisition process should be included when companies describe their process?
- L13. Are there standard or best practice elements that are common amongst most companies? If yes, what are they?
- L14. What information could be included when describing the process to be used if companies are unsuccessful in acquiring land rights either before or after an application is submitted to the CER?

## **Subtopic 7: Land Acquisition Notices and Agreements**

### **Background**

In accordance with the CER Act, companies will use notices and land acquisition agreements to acquire the rights necessary for their projects. The CER Act describes specific information that must be included in the notices and agreements (see section 321 and 322). In the Filing Manual, companies are asked to include with their application a sample copy of each form of land acquisition notice and agreement to be used in acquiring land rights.

### **Objectives for Improvement**

The objectives of new guidance are to help ensure:

- the sample agreements(s) provided do not include personal information, land description or any details relating to the amount offered for compensation; and
- companies may also use other forms of agreements for necessary land rights and other purposes.

### **Proposed Option**

- Applicants to provide details on the agreements used for land activities, including providing a copy of the form of agreement used to permit access to lands for Traditional Land Use and Traditional Ecological Knowledge studies.

### **Discussion questions**

- L15. Are there other elements that should be included in any land acquisition notices and land agreements besides what is required by sections 321 and 322 of the CER Act?
- L16. Are there standard or best practice elements that are common amongst companies?





# Onshore Pipeline Regulations and Filing Manuals Review

## M. Filing Manuals - Rights and Interests of Indigenous Peoples Topic Paper

### Introduction

As noted in the [Backgrounder](#) document, the CER is seeking your feedback on possible changes to the “Environmental and Socio-Economic Assessment” (ESA) section in the Filing Manuals (i.e., section A.2 of the [Filing Manual](#), and chapter 6 of the [Electricity Filing Manual](#)). Any suggestions for improvement with regard to these sections are welcome, and in particular, the CER seeks your comments on the following topics.

### Subtopic 1: Restructuring the Filing Manual

#### **Background**

As described in the [Backgrounder](#) document, the Commission has been focused on improving the assessment of project effects on the rights and interests of Indigenous Peoples in recent application assessments. The CER has heard that increasing the emphasis, robustness, and detail of its consideration of potential effects on the rights and interests of Indigenous Peoples is a key part of reconciliation.

The ESA section has grown longer and more complex through regular updating, and the CER has heard that it can be difficult to navigate in some cases. For example, general guidance (e.g., the need for incorporation of Indigenous knowledge, the need to provide evidence and rationales, etc.) is spread throughout the section, rather than being consolidated in one place.

Note: this restructuring section is similar to the restructuring section found in “Filing Manual – Environmental and Socio-economic Assessment” Topic Paper (see paper for more details).

#### **Objectives for improvement**

The CER seeks to improve the overall structure and layout of the existing ESA section in the Filing Manuals by:

- seeking more detail about potential effects of proposed projects on the rights and interests of Indigenous Peoples; and
- improving the clarity and readability of the ESA section.

#### **Proposed options**

The CER is considering:

- splitting the current ESA section into two sections — an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section; and
- consolidating general or common guidance into an initial sub-section, and specifying that these topics be addressed wherever they are relevant in the ESA and the new section for “Rights and Interests of Indigenous Peoples”. Such topics could include engagement results, Indigenous knowledge, and climate change resilience.

### **Discussion questions:**

- M1. Does the proposed split into two sections (i.e., an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section) improve clarity?
- M2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?
- M3. What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?

## **Subtopic 2: Rights and Interests of Indigenous Peoples**

The preamble to the CER Act sets out the broad and underlying purposes of the legislation, which includes Canada’s commitments to Reconciliation and implementation of the UN Declaration. The CER is committed to advancing Reconciliation with Indigenous Peoples and the implementation of the [UN Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#), including the supporting [Action Plan](#), most specifically Action Plan Measure 34 (APM 34). In support of these commitments, the CER has identified Reconciliation as a Strategic Priority,<sup>1</sup> issued a Statement on Reconciliation, and is continuing to find ways to implement the UN Declaration in its work. When Indigenous Peoples are meaningfully involved in the CER’s work, collective perspectives on Indigenous knowledge and world views, and Western knowledge and approaches, can be brought together to help ensure Canada’s federally-regulated projects are safe, the environment is protected and impacts to the rights and interests of Indigenous Peoples are prevented.

The CER has received feedback and recommendations for additional guidance regarding the assessment of potential effects of projects on the rights and interests of Indigenous Peoples, including suggestions for more specific guidance with respect to methodologies, and interest in developing pathways for collaborative and Indigenous-led assessments. The update to the Filing Manuals presents an important opportunity to provide additional filing guidance to proponents regarding the assessment of a project’s potential effects on the rights and interests of Indigenous Peoples. For additional information on proposed measures to prevent and address impacts to the rights and interests of Indigenous Peoples in the OPR, please see the Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper.

### **2.1 Valued components focused on the rights and interests of Indigenous Peoples**

#### **Background**

The CER Act requires the Commission to consider the effects of the project on the rights and interests of Indigenous Peoples. The CER’s Filing Manuals describe the valued components (VCs) to be considered by the applicant. Currently, applicants identify the VCs for which effects are predicted and provide specific details in the assessment when circumstances and interactions necessitate detailed information.

#### **Objective for improvement**

The CER wants to clarify its guidance relating to the rights and interests of Indigenous Peoples, which requires consideration of what stays in the ESA section and what is moved into the proposed “Rights and Interests of Indigenous Peoples” section, and avoiding duplication between the two.

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<sup>1</sup> The CER’s Strategic Priorities provided on the CER website at: [CER – Who we are and what we do - Our Strategic Plan \(cer-rec.gc.ca\)](https://www.cer-rec.gc.ca)

## **Proposed options**

The CER is considering:

- consolidating and expanding a new category of “Valued Components focused on the rights and interests of Indigenous Peoples”;
- focusing the new category of VCs on the rights and interests of Indigenous Peoples such as: employment and economy for Indigenous Peoples, heritage resources (including cultural, historical, archaeological, and paleontological resources), human health of Indigenous Peoples including the accessibility and availability of country foods, social and cultural well-being, and traditional land and resource use including sites of Indigenous significance; and
- modifying the Assessment part of the Filing Manual to specify that applications should describe enhancement measures in addition to mitigation measures.

## **Discussion questions**

- M4. Would having separate sections in the Filing Manual (e.g., one describing VCs focused on the rights and interests of Indigenous Peoples and another describing biophysical and socio-economic VCs) improve clarity?
- M5. How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?
- M6. What VCs should be included in the “Rights and Interests of Indigenous Peoples” section and which should stay in or also be included in the ESA section?
- M7. What is the best way to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples?
- M8. How can information relevant to the rights and interests of Indigenous Peoples best be documented to ensure site-specific information and relevant commitments are maintained and implemented during construction and operations?

## **2.2 Integrating the applicant’s assessment and Indigenous-led assessments and studies**

### **Background**

The CER performs its duties and functions in a manner that is consistent with treaties, section 35 of the *Constitution Act, 1982*, Canada’s *United Nations Declaration on the Rights of Indigenous Peoples Act*, and a commitment to reconciliation with Indigenous Peoples.

In recent years, a lot of work on Indigenous-led assessments and studies has been done across Canada, including:

- independent Indigenous-led assessments (e.g., [Tseil-Waututh – Trans Mountain Pipeline Expansion Project](#), [Squamish Nation – Woodfibre LNG](#), [Stk’emlupsemc Te Secwepemc Nation – KGHM Ajax Mine Project](#)),
- co-developed assessments with an applicant (e.g., Ktunaxa Nation – BC Hydro Revelstoke Unit 6 Project, Keeyask Cree Nations – Manitoba Hydro Keeyask Hydroelectric Project, Nunavik Inuit – Raglan Nickel Mine Sivumut Project, Cheslatta First Nation – Rio Tinto Alcan Ne Too Hydroelectric Project), and
- Indigenous-led studies as part of environmental and socio-economic assessments (e.g., Indigenous knowledge studies, Traditional Land and Resource Use studies).

The CER recognizes the potential benefits associated with Indigenous-led assessments and studies because Indigenous Peoples are best placed to understand how their rights and interests may be affected by a project. The CER also recognizes that the timing of Indigenous-led assessments and studies may not coordinate perfectly with the applicant’s planned timing.

### **Objective for improvement**

The CER wants to be more explicit about how and when applicants are expected to support Indigenous-led assessments and studies where Indigenous communities wish to do so, and how to integrate the results of Indigenous-led assessments and studies into their own assessments.

### **Proposed option**

The CER is considering clarifying expectations for applicants about Indigenous-led assessments and Indigenous-led studies that can form part of an assessment (e.g., Indigenous knowledge studies, Traditional Land and Resource Use studies).

### **Discussion questions**

- M9. What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?
- M10. What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?
- M11. How can Indigenous-led assessments and studies be integrated with the applicant's assessment and still support the objective of "one project, one assessment"?
- M12. When the timing does not match, how can Indigenous-led assessments and studies be integrated with the applicant's assessment and still meet the CER's legislated time limits of 450 days for pipeline and power line certificate applications?

## **2.3 Clarifying the CER's guidance for assessing effects on the rights of Indigenous Peoples**

### **Background**

The *CER Act* requires the Commission to consider "the effects [of the project] on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*" (paragraph 183(2)(e)). The Filing Manuals provide guidance for applicants to follow when assessing project effects on the rights of Indigenous Peoples. This guidance is similar to other approaches in Canada, including the guidance from the Impact Assessment Agency of Canada for the "Assessment of Potential Impacts on the Rights of Indigenous Peoples".

The CER's guidance is described in the Filing Manuals (see the "Rights of Indigenous Peoples" sections in [Table A-3](#) and [Table 6-3 of the Filing Manual and Electricity Filing Manual respectively](#)):

- Describe the Indigenous and Treaty rights of the potentially affected Indigenous Peoples in the project area.
- Describe how Indigenous and Treaty rights are exercised or practiced in the project area.
- Describe the context in which the Indigenous and Treaty rights are exercised or practiced in the project area.
- Describe the project's potential effects on the exercise or practice of Indigenous and Treaty rights in the project area.
- Describe the measures to be implemented by the applicant to avoid, reduce, or eliminate potential adverse effects of the project on the exercise of Indigenous and Treaty rights. Also describe any measures that would enhance or support the exercise or practice of Indigenous and Treaty rights in the project area.
- Where there may be any residual effects, after mitigation measures are implemented and that are related to the project, describe the nature and extent of these, including their contribution to any potential cumulative effects.

When following this guidance, applicants are expected to engage with potentially impacted Indigenous communities as soon as is practicable in the project's development in order to allow adequate time to discuss and understand each community's understandings, practices, and assertions related to their rights. This guidance is meant to allow a flexible and iterative process, which typically requires cooperation between rights-holding Indigenous communities, the applicant, the CER, and other federal departments and agencies. The Commission is responsible for determinations about the severity of potential effects on the rights of Indigenous Peoples; however, the Commission's determinations are informed by information provided by the applicant and Indigenous Peoples.

In recent hearings, the Commission has evolved its approach to determining the severity of effects on the rights of Indigenous Peoples, adopting a sliding scale as a continuum to indicate the degree to which the rights of Indigenous Peoples may be affected by a project. The levels of low, medium, and high provide a relative approximation of the degree of severity. However, the Filing Manuals currently do not describe this approach.

### **Objective for improvement**

The CER wants to modify and clarify its expectations of applicants regarding assessment of the effects of a project on the rights of Indigenous Peoples to support a robust interpretation of Indigenous rights.

### **Proposed options**

The CER is considering:

- consolidating and expanding a new "Rights and Interests of Indigenous Peoples" section; and
- including a templated framework, similar to the sliding scale and the criteria and ratings from the Commission's NEBC Recommendation report, resulting in a severity determination for the effects on the rights of Indigenous Peoples (see [C26744-1](#) "Table 6.1: Determination on the degree of severity of the effects on the rights of Indigenous Peoples" and Appendix 6).

### **Discussion questions**

- M13. What are the opportunities and challenges for Indigenous Peoples with the CER's existing guidance?
- M14. What are the opportunities and challenges for applicants with the CER's existing guidance?
- M15. What additional guidance, if any, should the Filing Manuals provide to applicants to identify the potential effects of the project on the exercise and practice of the rights of Indigenous Peoples?
- M16. Would a framework similar to the severity table used in the Commission's NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?
- M17. Should applicants submit a draft determination of the severity of the project effects on the rights of Indigenous Peoples? This would be similar to the CER's expectations that applicants submit draft determinations of the significance of valued components in the applicants' ESA, which helps inform the Commission's determinations about significance in the Commission's ESA.
- M18. How should applicants integrate their assessment of the potential effects of a project on the rights of Indigenous Peoples with their VC-based assessments? For example, how should applicants demonstrate the overlaps and interconnections between the potential effects of a project on the rights of Indigenous Peoples and VC-based assessments (i.e., the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples)?

## **2.4 Clarifying the CER’s guidance for monitoring and oversight by Indigenous Peoples**

### **Background**

The CER Act requires the Commission to consider “any adverse effects that the decision, order or recommendation may have on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982” (paragraph 56(1)). The Filing Manuals provide guidance for applicants to follow for inspection, monitoring and follow-up plans and programs. When following this guidance, applicants are expected to consider any particular project elements that are of greater concern and evaluate the need for a more in-depth monitoring program for those elements.

In recent hearings, the Commission has required applicants to develop plans for the participation of Indigenous Peoples in construction monitoring, and post-construction and operations monitoring (for example, see [C26744-1](#) “Condition 14” and “Condition 41”).

### **Objective for improvement**

The CER wants to modify and clarify its expectations of applicants regarding monitoring and oversight by Indigenous Peoples during construction and operation to support a robust assessment of a project’s potential effects on the rights and interests of Indigenous Peoples.

### **Proposed options**

The CER is considering clarifying expectations for applicants about monitoring and oversight by Indigenous Peoples that can form part of an assessment (e.g., plans for participation of Indigenous Peoples in construction monitoring, plans for participation of Indigenous Peoples in post-construction and operations monitoring).

### **Discussion questions**

- M19. What are the opportunities and challenges for Indigenous Peoples of being involved in the applicant’s inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?
- M20. What are the opportunities and challenges for applicants of involving Indigenous Peoples in their inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?
- M21. How should applicants involve Indigenous Peoples in monitoring and managing the effects of the project on the rights and interests of Indigenous Peoples during construction and operation?

## **2.5 Clarifying the CER’s guidance for Sites of Indigenous significance**

### **Background**

The CER Act requires the Commission to consider the effects of the project on the rights and interests of Indigenous Peoples. The CER’s Filing Manuals describe the VCs to be considered by the applicant, including heritage resources (i.e., cultural, historic, archaeological, and paleontological resources) and traditional land and resource use.

On recent projects, the CER has received feedback regarding the ability of applicants to properly identify and protect sites of Indigenous significance (e.g., locations that have a special meaning for Indigenous Peoples and archeological sites pertaining to the history of Indigenous Peoples).

### **Objective for improvement**

The CER wants to modify and clarify its expectations of applicants regarding heritage and cultural resources, which could include sites of Indigenous significance during construction and operation to support a robust assessment of a project’s potential effects on the rights and interests of Indigenous Peoples.

### **Proposed options**

The CER is considering clarifying expectations for applicants about sites of Indigenous significance, heritage resources, and traditional land and resource use that can form part of an assessment.

### **Discussion questions**

- M22. How does the concept of “sites of Indigenous significance” compare with heritage resources and traditional land and resource use? Where might there be overlap (including with existing legislative responsibilities by jurisdictions)?
- M23. What are the opportunities and challenges for Indigenous Peoples of integrating the concept of “sites of Indigenous significance” into the applicant’s assessment?
- M24. What are the opportunities and challenges for applicants of integrating the concept of “sites of Indigenous significance” into their assessment?