



Canada Energy
Regulator

Régie de l'énergie
du Canada

Onshore Pipeline Regulations Review

What We Heard Report

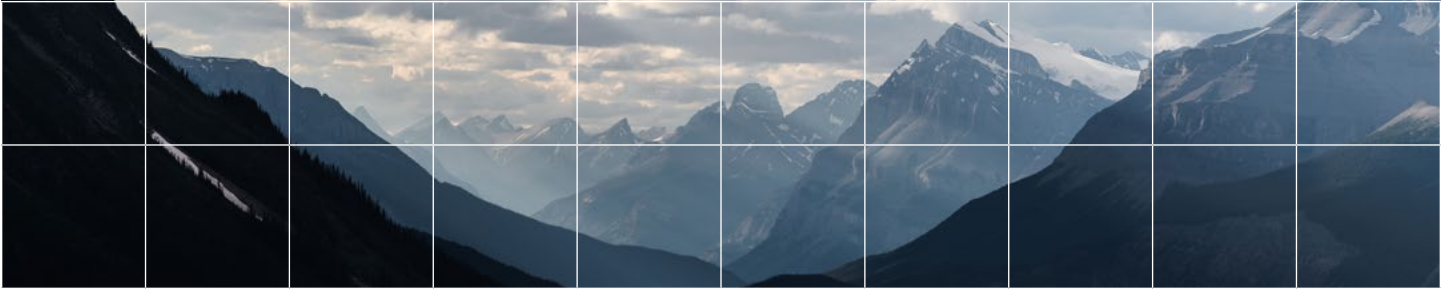


April 2023



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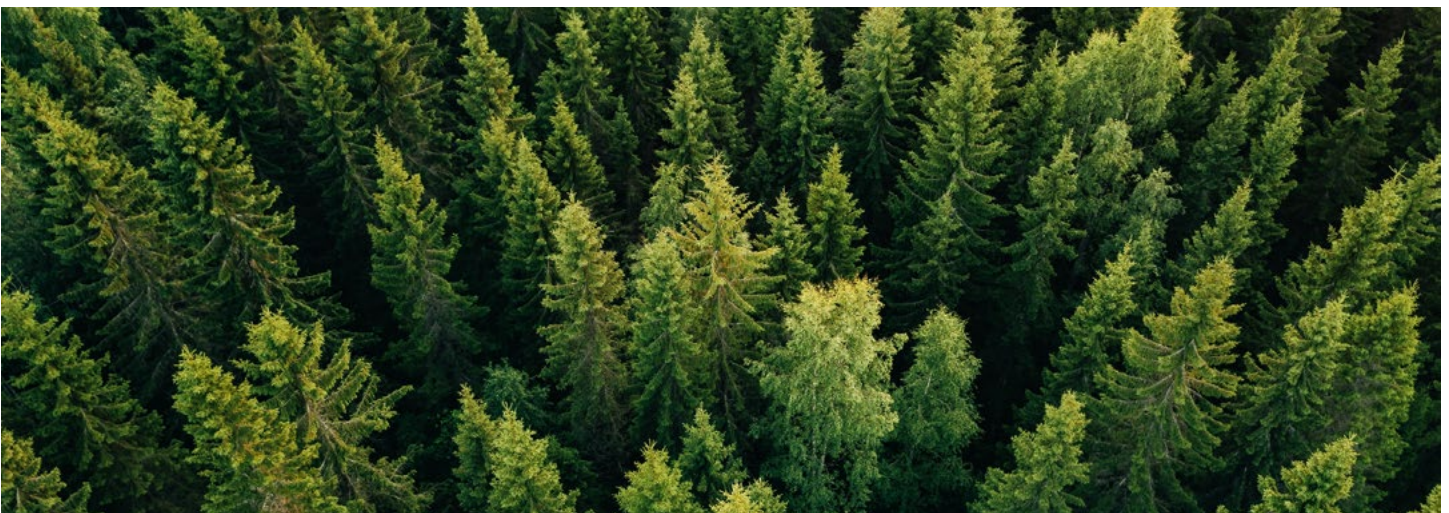
Summary

In January 2022, the Canada Energy Regulator (CER) launched a multi-year process to improve our regulatory framework for onshore pipelines. We used a Discussion Paper to guide our early engagement, framing our questions based on years of prior learning and feedback from Indigenous Peoples, regulated companies, landowners and other stakeholders.

The level of participation that occurred during the first phase of our engagement was unprecedented. We met with over 400 people about how we could improve our oversight as well as how participants would like to be engaged in our future work. We received 97 written submissions in response to the [Discussion Paper](#), all of which are posted on our [CER Dialogue website](#).

We have prepared a report to reflect, at a high level, what we heard. The themes below represent some of the most common issues raised in the first phase of engagement. The report reflects the diversity of perspectives shared so far and will inform future discussions in the review of our regulatory framework for onshore pipelines. The report does not intend to define or limit the scope of the review, and we acknowledge that not every perspective shared with the CER is reflected within.

Some of the input we received was focused on our [Onshore Pipeline Regulations](#) (OPR): the rules that companies must follow to design, construct, operate and abandon pipelines in Canada. Though updates have been made, these rules have not undergone a comprehensive review since they were first made in 1999, and they remain silent with respect to Indigenous Peoples. We also received feedback that goes beyond the OPR to other aspects of the CER's work.



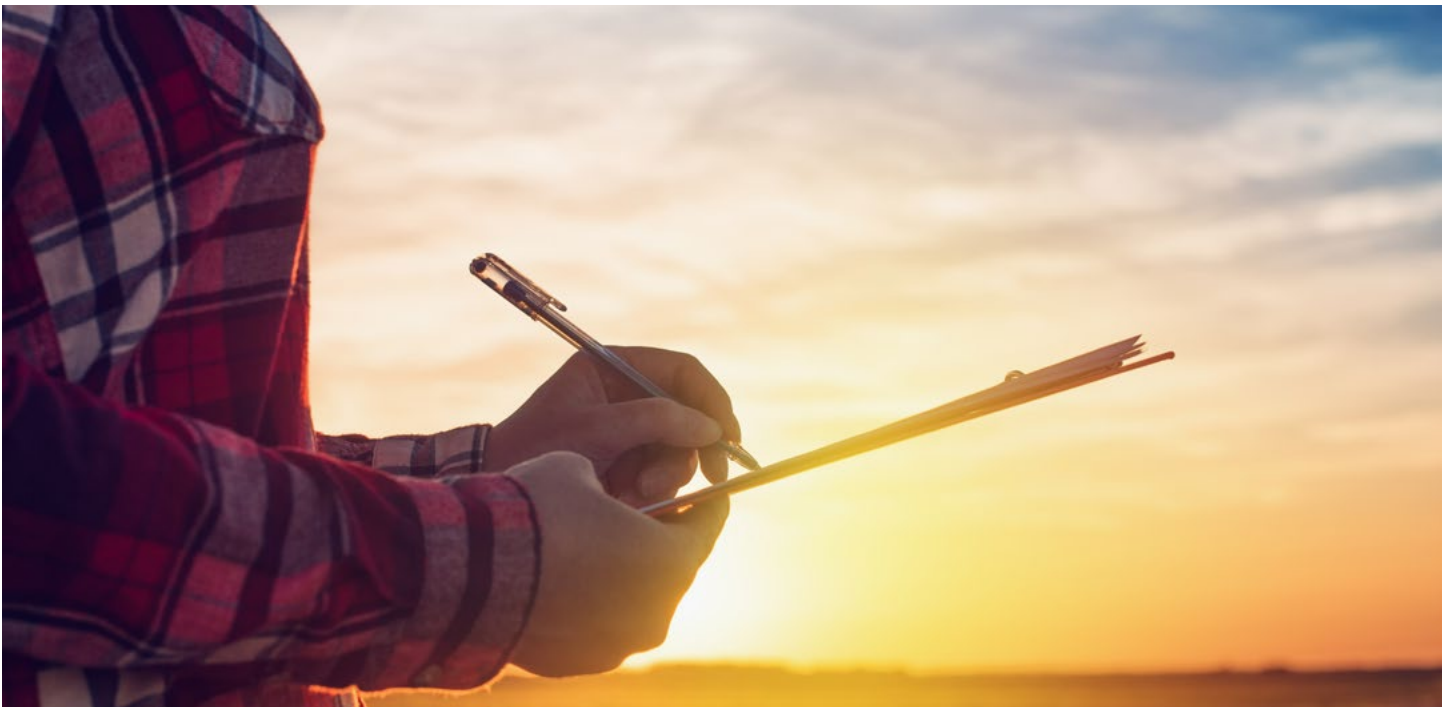
The common themes of feedback we heard were as follows:

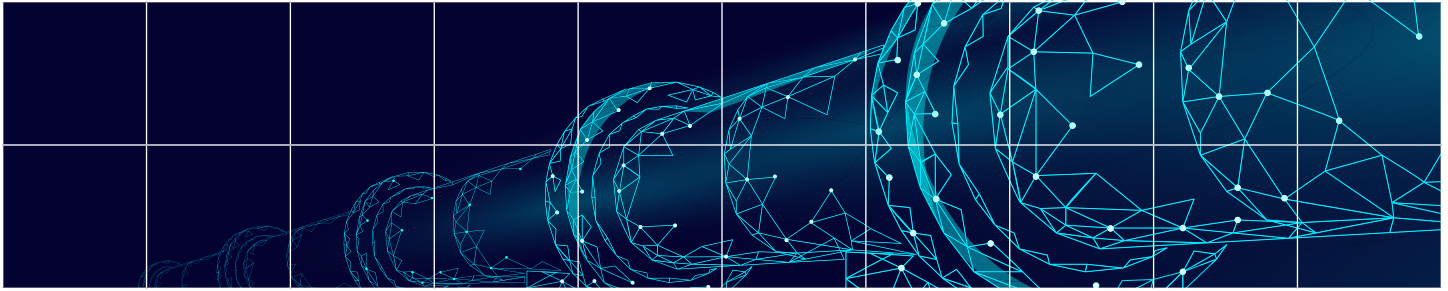
- **Advance Reconciliation and Implement the UN Declaration:** meaningfully advance Reconciliation with Indigenous Peoples through the CER's Regulatory Framework, using the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UN Declaration) as a framework.
- **Increase Indigenous involvement and incorporate Indigenous knowledge in lifecycle oversight:** enhance the involvement of potentially affected Indigenous Peoples and incorporate Indigenous knowledge in all phases of lifecycle oversight.
- **Improve clarity and transparency:** define terms, improve communication, and share information with regulated companies, Indigenous Peoples and interested parties.
- **Enhance competitiveness:** incorporate flexibility and scalability into regulatory requirements without compromising safety, security and environmental protection, and pursue opportunities for jurisdictional alignment.
- **Update guidance and improve how the OPR is implemented:** supplement rules for regulated companies with guidance, improve audit and compliance verification processes, and coordinate updates to relevant filing requirements.

We are carefully reviewing all input received as we prepare for the second phase of engagement, and more broadly, as part of our commitment to the ongoing process of Reconciliation. In the next phase, we will be engaging on specific issues to inform changes to our regulations, guidance, and CER processes. We anticipate starting to workshop regulatory issues and options on a topic by topic basis in mid-2023.

To read the full report, please visit the [CER Dialogue website](#). The CER Dialogue website will also be updated once details on when and how to participate in the next phase of the review are made available. We will be reaching out directly to all individuals who have participated in the review of the OPR to discuss how we can work together to advance the next phase of engagement.

If you have any feedback, questions or comments, please contact us at opr-rpt@cer-rec.gc.ca.





Background

The Onshore Pipeline Regulations

The Canada Energy Regulator (CER) is conducting a review of the [Onshore Pipeline Regulations](#) (OPR), our principal regulation for pipelines we oversee under the [Canadian Energy Regulator Act](#) (CER Act). The OPR provides the rules that companies with authorizations to build and operate pipelines must follow. The CER expects regulated companies to construct, operate, maintain and abandon pipelines in a systematic, explicit, comprehensive and proactive manner that manages risks. The OPR requires that companies establish, implement and maintain management systems and protection programs in order to anticipate, prevent, manage and mitigate conditions that may adversely affect the safety and security of the company's pipelines, employees, the public, as well as property and the environment. A company's management system applies to the company's programs for safety, pipeline integrity, environmental protection, emergency management, damage prevention and security.

The Review of the Onshore Pipeline Regulations

The OPR Review builds on what we have learned from years of implementing the OPR, as well as feedback from regulated companies, Indigenous Peoples, landowners and other stakeholders. The CER is following the requirements of the [Cabinet Directive on Regulation](#) in reviewing the OPR. The review is also guided by the CER's commitment to advancing Reconciliation with Indigenous Peoples, as well as the CER's commitments and obligations respecting the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UN Declaration). Our goal is to deliver regulations that support the highest level of safety, security and environmental protection, advance Reconciliation with Indigenous Peoples, encourage innovation and provide for predictable, timely and inclusive oversight.

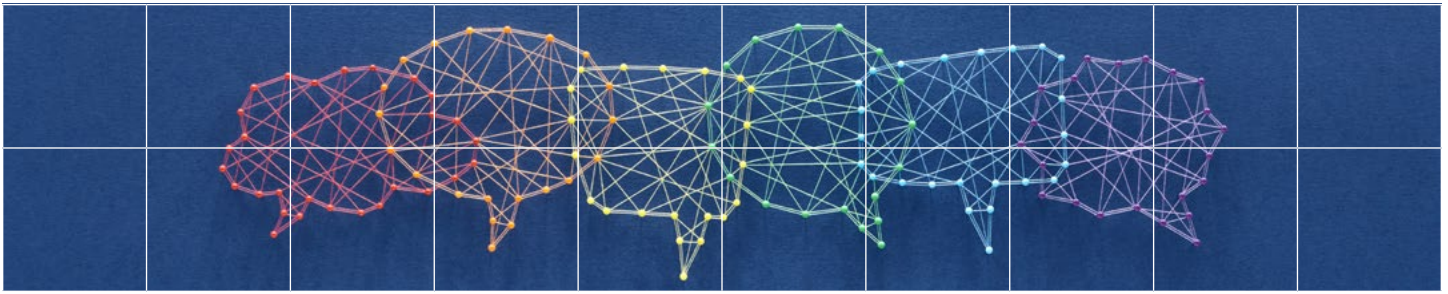
We are reviewing the OPR in phases, with multiple opportunities for engagement. The first phase of engagement began in January 2022. In this phase we held information and engagement sessions and published a [Discussion Paper](#) for input. Through the Discussion Paper, we asked for input on potential issue areas for the OPR, as well as how participants would like to be engaged in future phases.

The Discussion Paper contained 29 questions across six topics, including:

- Lessons learned;
- Reconciliation with Indigenous Peoples;
- Engagement and inclusive participation;
- Global competitiveness;
- Safety and environmental protection; and,
- Implementation.

Through the Discussion Paper, we also invited feedback on any topics not covered by the 29 discussion questions. We will consider all input in the review and update of the OPR. In the next phase of the OPR Review we will look to develop specific regulatory changes. We plan to start phase two engagement in mid to late 2023.





Engagement Process

In the first phase of engagement, we asked Indigenous Peoples, regulated companies, landowner groups, and others with an interest in the OPR how they would like to be engaged and informed during the OPR Review. Notifications were sent via email, and opportunities for engagement and input were posted on the [CER's Consultation and Engagement Activities webpage](#). We hosted ten scheduled virtual engagement sessions during the first phase of engagement. We also connected with Indigenous Nations and communities who expressed interest in participating in the review through our Pacific, Northern, Prairie and Eastern regional offices and were available to address follow-up comments and questions.

Engagement Sessions

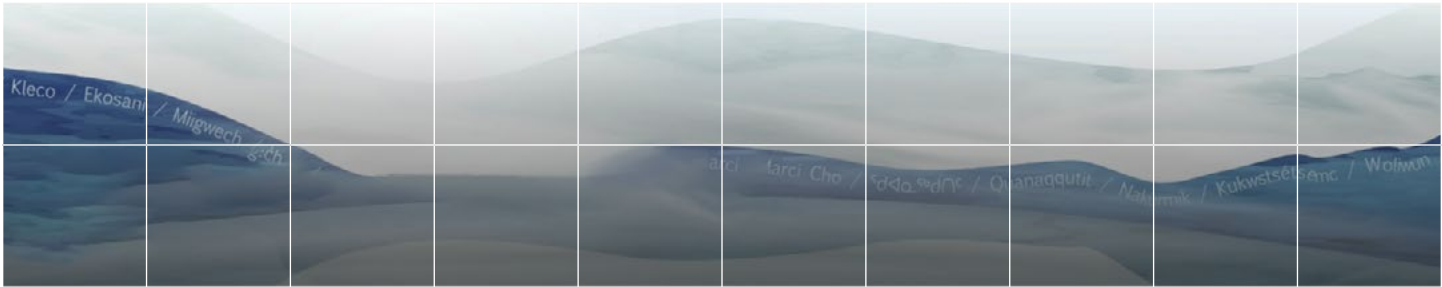
During the scheduled engagement sessions, participants could find out more about the Discussion Paper, and ask questions about the OPR Review before submitting their feedback. In these sessions, we provided an overview of the CER, the OPR Review, and the Discussion Paper. Sessions were offered in English and French, with separate sessions for Indigenous Peoples, as well as for regulated companies and interested parties. On request, we met with more than 23 Indigenous Nations and communities, and other interested parties, to provide an overview of the OPR Review, address questions or feedback they wanted to share directly, and provide information on how to participate.

Funding for Indigenous Peoples

With the help of the Impact Assessment Agency of Canada (IAAC), funding was made available to assist with the participation of Indigenous Peoples in the review of the OPR. Through the IAAC's program, 76 Indigenous Nations and communities signed agreements to receive funding to help them prepare and submit feedback on the Discussion Paper. First Nations, Inuit and Métis groups across Canada expressed interest in the review process. The level of response and involvement was unprecedented for a regulatory review process and the input received will result in better regulation and oversight.

Submissions Received

We received 97 submissions on the Discussion Paper, including from regulated companies, Indigenous Nations and communities, municipalities, provincial and territorial governments, and other interested parties. All submissions received in response to the Discussion Paper can be read on our website. We are carefully reviewing all input from the first phase of engagement, for consideration in the OPR Review and other aspects of the CER's Regulatory Framework.



What We Heard

The purpose of this report is to share a snapshot of what we heard in phase one of engagement on the OPR Review. It is an opportunity for participants to see the diversity of perspectives expressed, to advance transparency for all involved, and for the CER to improve how we communicate with Indigenous Peoples, interested parties, and regulated companies. Direct quotes submitted by participants have been included in the report. We received reports in both French and English. As such, some quotes have been translated from the language in which they were submitted.

The CER recently began offering an Indigenous languages translation service. We encourage Indigenous Nations and communities to please contact us at opr-rpt@cer-rec.gc.ca for further details on available translation services.

The input provided in response to the Discussion Paper was comprehensive and diverse. While most of the input was relevant to the OPR, we also received feedback that relates to the entire oversight and functioning of the CER. Many of the values, concerns, and recommendations that we heard were aligned; however, we also heard different perspectives on common issues. The intent of this report is to reflect at a high level what we heard in phase one of the review, and we acknowledge that this report does not account for every perspective shared with the CER.

We are carefully reviewing and considering all feedback received in the review of the OPR, including advice received through previous CER engagement activities with regulated companies, municipalities and from the Indigenous Advisory Monitoring Committees (IAMCs) for the Enbridge Line 3 Replacement Program (Line 3) and Trans Mountain Pipeline Expansion (TMX). If you have any feedback, questions or comments on this report, please contact us at opr-rpt@cer-rec.gc.ca.



This report explores some of the most common themes that we heard in phase one of engagement for the OPR Review, which includes opportunities to:

- **Advance Reconciliation and implement the UN Declaration:** meaningfully advance Reconciliation with Indigenous Peoples through the CER's Regulatory Framework, using the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as a framework.
- **Increase Indigenous involvement and incorporate Indigenous knowledge in lifecycle oversight:** enhance the involvement of potentially affected Indigenous Peoples and incorporate Indigenous knowledge in all phases of lifecycle oversight.
- **Improve clarity and transparency:** define terms, improve communication, and share information with regulated companies, Indigenous Peoples and interested parties.
- **Enhance competitiveness:** incorporate flexibility and scalability into regulatory requirements without compromising safety, security and environmental protection, and pursue opportunities for jurisdictional alignment.
- **Update guidance and improve how the OPR is implemented:** supplement rules for regulated companies with guidance, improve audit and compliance verification processes, and coordinate updates to relevant filing requirements.

This input is described in detail in the next sections, reflecting key themes of what we heard from respondents.

Advance Reconciliation and Implement the UN Declaration

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 our four interconnected strategic priorities at the CER; we are focused on enhancing relationships; building our cultural competency and humility; and driving meaningful change in our requirements and expectations of regulated industry. We are working toward enhancing the involvement of Indigenous Peoples in how we implement all aspects of our mandate recognizing the unique cultures, knowledge and histories of Indigenous Peoples.

"[...] it is imperative that the OPR be amended to reflect the CER's new mandate and commitment to furthering Reconciliation with Indigenous peoples, and Canada's commitments to the principles of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and its obligations under the United Nations Declaration on the Rights of Indigenous Peoples Act (the "UNDRIP Act"). These require updating the OPR, the CER's Filing Manual as it pertains to the OPR, and any associated guidance documents, to identify how Indigenous peoples will be consulted and engaged through the OPR planning and decision-making processes."

Sucker Creek First Nation

We heard that advancing Reconciliation should be a priority of the OPR Review. We heard that when it comes to the CER's efforts to advance Reconciliation, it is imperative that Indigenous Peoples be involved in shaping the path forward. We heard that regulated companies also have an important role to play in advancing Reconciliation, particularly with respect to engaging potentially affected Indigenous Peoples throughout the entire lifecycle of a pipeline. We heard that any proposed changes to the OPR with the goal of advancing Reconciliation should facilitate the integration of Indigenous perspectives and expertise into the CER's operations and decision-making structures. We heard some industry respondents express that given the various instruments and processes available to the CER, the OPR may not be the most appropriate regulatory instrument to prescribe how companies are to advance Reconciliation. We heard from companies that they should be allowed flexibility to pursue the most meaningful path forward with the Indigenous Nations and communities potentially affected by their operations, and that Indigenous Peoples should direct what Reconciliation should look like.

United Nations Declaration on the Rights of Indigenous Peoples

Perspectives on how Reconciliation can be advanced were diverse; however, implementing the UN Declaration was among the most common themes. Respondents expressed that we need to take a coordinated approach so that not only the OPR, but also the CER's [Filing Manual](#), and relevant guidance documents, reflect our commitments and obligations respecting Reconciliation and the implementation of the UN Declaration.

"The Canadian Association of Petroleum Producers (CAPP) and our members see reconciliation as a priority, and we endorse the principles of UNDRIP as a framework for reconciliation. We continue to support its implementation in a manner that is consistent with the Canadian Constitution and law."

Canadian Association of Petroleum Producers

"TC Energy respectfully submits that Indigenous groups are the appropriate people to identify meaningful paths toward Reconciliation and evaluate the progress and effectiveness of its advancement. As such, the approach to and progress toward Reconciliation can vary across regulated companies, allowing each company to pursue the most meaningful path forward with the different Indigenous groups in the areas where they do business."

TC Energy



Rights and Interests of Indigenous Peoples

The CER must exercise its authorities and perform its duties and functions in a manner that respects the rights of Indigenous Peoples. We heard from Indigenous Nations and communities that the OPR should explicitly direct companies how to consider and address impacts to Indigenous and treaty rights related to their pipeline activities. We heard any impacts to rights need to be specifically acknowledged, and requirements must be in place to ensure they are protected. We also heard that consultation and engagement should be more robust throughout planning and decision-making processes so that potential impacts to rights can be identified and addressed.

As an example, a number of respondents also called for improvements to the manner in which cumulative effects and associated impacts to lands, resources, and Indigenous and treaty rights are assessed, considered and managed. The Government of Canada has stated that it recognizes that cumulative effects is an important issue that requires collaboration and partnerships ([Government of Canada interim message on cumulative effects, August 2022](#)). We heard that it is imperative to collaborate with Indigenous Peoples in developing criteria to appropriately assess adverse impacts to Indigenous and treaty rights.

Cultural Competency Training

A common theme in response to the Discussion Paper was a recommendation for both the CER and regulated companies to mandate cultural competency training for all employees, including our Board of Directors and the contractors/subcontractors of regulated companies. We heard that this training should be completed annually and should not take a pan-Indigenous approach, but rather be tailored to those specific Nations and communities with whom the CER and regulated companies are working. Respondents suggested cultural competency training should be informed or led by Indigenous Peoples and should cover a number of components including a history of Indigenous Peoples and their way of life (nation-specific), governing structures, Indigenous and treaty rights, conflict resolution, and antiracism, among other topics. The goal of cultural competency training should be to build relationships and to develop a culture of understanding and sensitivity within the organization and across the energy industry.

“It is important that the legislation on accommodation and reconciliation be clear and specific for both companies and the CER. The OPR and supporting guidance should clearly state or describe how the work will be conducted or what must be done.”

Kelly Lake Cree Nation

“Project-specific regulatory processes do not adequately consider how a project’s impacts will contribute to already present cumulative effects on lands and resources essential to the exercise of Aboriginal and Treaty rights. Projects are approved and managed in relative silos and cumulative effects continue to grow to such a degree that there has been a significant diminishment in Nation members’ ability to exercise their rights, without proper accommodation being identified.”

Makwa Sahgaiehcan First Nation

“Employees should be required to undergo cultural sensitivity training specific to Indigenous land use and culture prior to working on any land relevant to Indigenous communities. This training should not take a pan-Indigenous approach, and rather should work with relevant Indigenous Nations to develop training specific to their community. Employees should undergo the cultural sensitivity training of any Indigenous Nation which uses the land they are working on. Training programs should be regularly updated, and employees should retake the training periodically.”

Métis Nation Alberta

Increase Indigenous Involvement and Incorporate Indigenous Knowledge in Lifecycle Oversight

Collaboration between Indigenous Peoples, the CER and regulated companies, and enhancing the involvement of Indigenous Peoples in lifecycle oversight, is key to advancing Reconciliation and protecting Indigenous and treaty rights. We heard that Indigenous knowledge, and other information provided by communities has historically been under-represented. Going forward, it must be given appropriate weighting and meaningfully included in decision-making processes.

Many recommendations were provided for enhancing the involvement of affected communities and to incorporate Indigenous knowledge into pipeline oversight. Suggested areas to enhance the involvement of Indigenous Peoples included:

- planning and conducting engagement and communication protocols;
- designing mitigation measures;
- conducting monitoring activities;
- planning and conducting compliance verification activities;
- emergency management planning and response; and
- collaborating on environmental protection planning and remediation efforts.

A number of regulated companies supported Indigenous Peoples being more engaged in pipeline oversight. For example, we heard that Reconciliation can be advanced throughout the lifecycle of a pipeline by building on existing processes such as the IAMCs. We also heard feedback on being cautious to not introduce new provisions in the OPR that would duplicate or conflict with regulatory processes already in place.

“The CER should ensure that the Indigenous Monitoring Program includes representation from the oil and gas producing First Nations. Direct participation of Indigenous peoples would incorporate unique knowledge related to the lands and resources of the Nations’ traditional territories into the development and assessment of projects’ design, effects, and mitigation measures, and result in better oversight.”

Indian Resource Council



The CER Act requires that Indigenous knowledge be considered in certain decisions or processes when provided, alongside other factors in project reviews and regulatory decisions. The Government of Canada recently published an [Indigenous Knowledge Policy Framework](#) to support project reviews and regulatory decisions. The framework will help guide our work during project reviews and regulatory oversight of the construction, operation and abandonment of pipelines.

Many respondents commented on the importance of ensuring that Indigenous knowledge be appropriately considered by both regulated companies and the CER, and that it be integrated into both company planning and CER processes.

Engagement and Communication

The need for meaningful engagement and communication to support the involvement of Indigenous Peoples was a common thread throughout many responses to the Discussion Paper. Industry respondents affirmed their commitment to meaningful engagement and communication with Indigenous Nations and communities throughout all phases of a project's lifecycle. Regulated companies noted that there is room to drive consistency and clarity of requirements for communication and engagement across all programs, while expressing caution to not duplicate existing processes.

We also heard that communication and engagement is a shared responsibility between regulated companies and government, and that coordination is required so as not to overwhelm communities with materials and requests to meet, particularly for communities that interact with multiple regulated companies. A number of respondents expressed that clarity and coordination around company engagement processes and CER consultation processes is an important factor to consider in this regard. We heard engagement and consultation should be conducted with cultural awareness and sensitivity and should be respectful of the unique engagement preferences of communities. Respondents noted that the unique needs, interests, and preferences of individual communities highlights the importance of designing flexibility into any requirements for consultation and engagement.

“The OPR should be amended to require management systems and protection programs that expressly anticipate, prevent, manage and mitigate conditions that may adversely impact Indigenous rights, culture, way of life and territories. These management systems should be informed by and incorporate Indigenous Knowledge and should ensure compliance with Indigenous standards.

Zagimē Anishinabek First Nations

“Trans Mountain has had tremendous success in executing a robust engagement program for a wide variety of stakeholders with differing characteristics and needs, and across a wide variety of construction and operation activities. Trans Mountain is of the view that between the current requirements of the OPR and the guidance provided in the Filing Manual, the appropriate framework is in place. Companies can build on this framework based on experience and best practice, to promote collaborative interaction between stakeholders and pipeline companies. The current framework provides the latitude to structure engagement activities in a manner that is scalable to the size and extent of the activity.”

Trans Mountain Corporation

“There needs to be a clearer connection between engagement, consultation, and decision-making processes. These connections need to be established in planning phases, well before construction, for example in relation to the establishment of a route and to federal and provincial approvals. Ongoing relationships and co-developed protocols should be established to bridge the planning, construction, and monitoring and management phases.”

S'ólh Téméxw Stewardship Alliance

Mitigation Measures

During the application phase of a pipeline project, companies are required to identify and predict the effects of the project, and to develop mitigation measures and monitoring programs to address those effects. The CER's Filing Manual provides guidance for companies to describe how they have done this. We heard that standard mitigation for effects on valued ecosystem components and historical resources have not adequately addressed impacts to traditional resources, sites of significance, and Indigenous and treaty rights.

"We recommend Indigenous and local communities be involved during the risk assessment process to foster a complete and transparent understanding of the risks, to provide input into implications of risk / failure events and to help shape project mitigations and response plans. This approach also contributes toward building reconciliation and establishing true "social license" for projects."

Fort McKay First Nation

Respondents noted the importance of potentially affected communities being involved early in the application stage to identify potential effects and co-develop mitigation measures, particularly for potential effects to traditional resources and sites of significance. We heard that the evaluation of the implementation of mitigation measures should go beyond verifying that companies are applying mitigation measures, to evaluating and reporting on the effectiveness of those measures in achieving their stated objectives.

Monitoring

We heard through submissions from Indigenous Peoples that long-term monitoring systems that test the accuracy of assumptions and the efficacy of mitigation measures could be strengthened. A number of respondents voiced their support for our work to date with IAMCs to develop [Indigenous Monitoring Programs](#). We heard that this approach to involving Indigenous Peoples in pipeline oversight is a positive development in our processes, while permitting regulated companies the operational flexibility required to conduct maintenance activities to ensure the continued environmental protection and safe operation of pipelines. We also heard that collaborative oversight mechanisms are not an alternative to meaningful consultation at the adjudication phase of a project, and that both processes are necessary.

"At the heart of any inclusion in oversight should be the objective of protecting Inherent and Treaty rights. Some opportunities for increased involvement of Nations in oversight activities could include more explicit requirements for involvement of Indigenous nations in works such as environmental protection planning, monitoring, and emergency response. To support increased participation in these types of works, there should be an increase in training provided to Indigenous nations, and formation of IAMC's on a greater number of projects, or overarching IAMC-style programs pertaining to larger pipeline systems regulated under the CER."

O'Chiese First Nation

From those involved in the IAMCs, we heard that without decision-making authorities, the IAMC working group members have limited ability to affect change with respect to monitoring practices. This limits the degree to which Indigenous knowledge can meaningfully be integrated into monitoring practices. Respondents also pointed out that the IAMCs are currently only in place for two pipeline projects (Trans Mountain Expansion and Enbridge Line 3), and that Indigenous monitoring should be expanded to all pipelines we regulate. We heard that Indigenous monitors must have the resources, regulatory tools, and training necessary to effectively administer compliance monitoring. Access to sites and information were other common challenges expressed by those with experience working with the IAMCs.

Compliance Verification

We heard a number of suggestions to improve the transparency, planning and incorporation of Indigenous knowledge into compliance verification activities. We heard that parties are unclear as to how we determine the appropriate factors used to assess the risk of harm to people and the environment and that such assessments should involve potentially impacted communities and be informed by Indigenous knowledge. A number of submissions expressed that Indigenous Nations and communities are best positioned to understand how their rights interact with a project, and whether they are being adversely affected and potentially infringed upon. It was also recommended that we collaborate with impacted Indigenous communities to develop culturally relevant methods to conduct and involve Indigenous Peoples in compliance promotion activities. It was noted that involving Indigenous Peoples in compliance verification and monitoring activities affirms their role as stewards of the land and supports the efficacy of project-specific conditions designed to mitigate impacts to rights.

We heard that we should provide regular compliance updates and that we should communicate the results of monitoring activities to affected Indigenous communities. Many Indigenous Peoples expressed an interest in being involved in determining compliance priorities on projects that have the potential to affect rights and interests, and to offer potentially affected communities the opportunity to collaborate on compliance activities.

“The OPR should require companies to seek and, where possible, complete agreements with potentially-impacted Indigenous Nations or communities that allow for the Nation or community to have oversight and involvement with compliance, monitoring and environmental protection with respect to a regulated pipeline.”

Driftpile Cree Nation

Emergency Management

The OPR requires that companies have an Emergency Management Program in place that anticipates, prevents, manages, and mitigates conditions during an emergency that could affect worker or public safety, the environment, or property. In recent years, we have responded to requests to improve the transparency of these programs. We now require companies to post their emergency procedures manuals and information about their emergency management programs online.

We heard that requirements to involve potentially affected parties, particularly Indigenous Nations and communities, in the development of emergency management programs and plans could be strengthened and enhanced. Respondents noted that incorporating Indigenous knowledge from potentially affected communities is critical in developing comprehensive and effective emergency response plans and procedures, and to ensure the protection of sites of significance for Indigenous Peoples. We also heard that information about, and the location of, cultural sites of significance should be incorporated into a company’s Emergency Management Program; however, this information should be kept confidential and shared at the discretion of each community.

“Indigenous peoples’ unique relationship and their lands and resources, and intimate understanding of the environment provides them with invaluable knowledge that is critical to developing comprehensive and effective Emergency Management Programs to respond to spills and incidents. This includes prioritizing and funding for Indigenous peoples to be trained and hired as first responders and for Indigenous Governments to be fully prepared and engaged as a primary decision maker in the incident response command structure, in the event of a significant accident, malfunction or catastrophic failure. [...]

Section 52 should be amended so that incident reports are issued to potentially impacted Indigenous peoples and that the integration of Indigenous Knowledge and participation into incident responses is prioritized.”

Duncan’s First Nation

We heard that in order to protect traditional resources, we must improve notification protocols, information sharing and opportunities to involve Indigenous Peoples in monitoring following an incident. We heard that the Indigenous communities that disclose sites of significance in confidence must have access to lands to verify sites are being protected in the event of an emergency, or in routine operations.

To better prepare for emergency response activities, we heard it would be useful for regulated companies to have a clearer understanding of the scope of potentially affected communities, so that all parties could be immediately notified. It was suggested that the CER should play a role in connecting regulated companies with the appropriate representatives in each affected community so that information could be shared quickly and efficiently between parties in the event of an incident. We heard from municipalities who stated that they were not aware of how they would be notified in the event of an incident or emergency situation. We also heard that under existing protocols, Indigenous Nations and communities are often unable to understand the scope of the incidents and are therefore unable to determine how Indigenous and treaty rights may be impacted. It was recommended that companies develop a communication plan to systematically notify all potentially affected parties of all ground disturbances, maintenance activities and incidents. We also heard that regulated companies should collaborate with municipalities to develop systems to alert the public of any incidents that may affect them. Further feedback on opportunities to improve how information is shared between the CER, regulated companies and affected communities is provided in the [section on Information Sharing](#).

“Requirements for companies to notify Indigenous nations in the event of an accident or contamination incident are vague and inadequate for a Nation to properly understand the scope of the incident and how they may impact a Nation and their Aboriginal, Inherent and Treaty rights. There is also a lack of explicit requirements for the company to involve a Nation in any way during response or clean up steps following an incident. This can result in tension between companies and Nations, where the company is following what they understand to be the minimum requirements set by a regulator, but the Nation has different interpretations and requirements that they would want a company to follow.”

Beaver Lake Cree Nation

“Clearer lines of communication with Indigenous communities would be beneficial when it comes to emergency management. Companies are required to have Accountable Officers. There would be a benefit to industry if the CER worked with Indigenous communities to determine a point of contact in each community should an emergency occur so companies have an official designated representative with whom to communicate and who is authorized to make decisions on behalf of the Indigenous community. There would also be a benefit in the sharing of consultation area boundaries so companies would know which Indigenous communities should be contacted in the case of an emergency.”

Canadian Natural Resources Limited

“Up-to-date knowledge of risks and a well-functioning and efficient warning system are the basis of any response capacity of civil security organizations. In the event of an incident, the residents of Greater Montréal must be able to count on clear communication between the various stakeholders and levels of government.

The emergency management program in the regulation should include a requirement for pipeline companies to develop a communication plan to systematically notify affected municipalities of all excavations, repairs and spills. As well, pipeline companies are required to produce specific response plans for different risks, taking into consideration soils, groundwater, fauna, flora, and water sports and bathing activities, and paying special attention to vulnerable areas.”

Montreal Metropolitan Community

Environmental Protection and Remediation

Another frequently cited opportunity to enhance the involvement of Indigenous Peoples in lifecycle oversight was through planning and monitoring for environmental protection, remediation and reclamation activities. We heard a desire for Indigenous communities to be involved in developing or implementing environmental monitoring programs, and for information collected through these programs to be shared with affected Indigenous communities.

We heard that Environmental Protection Programs must consider, in addition to biophysical components, potential impacts to Indigenous and treaty rights as they relate to lands and resources. We heard that it is imperative that regulated companies co-develop reclamation plans with affected Indigenous Nations and communities to ensure sites will be restored in a manner that allows for the practice of Indigenous rights consistent with prior use. We heard that cumulative effects on Indigenous rights could be lessened by prioritizing restoration over reclamation and requiring companies to remove abandoned infrastructure from the ground using the least intrusive methods available.

We heard about the need to clarify requirements and improve protocols related to notification upon the discovery of contamination, or the chance discovery of a heritage resource. We heard it was important to be notified when such discoveries are made, that engagement be mandated, and that Indigenous Peoples be afforded the opportunity to participate in planning and conducting clean-up and remediation activities.

Capacity to Participate

Capacity was identified as a significant barrier to the involvement of Indigenous Peoples in the regulatory oversight of pipelines. In order to ensure rights are protected throughout the lifecycle of pipeline activities, we heard that funding should not be ad hoc, and that agreements should be in place from the project application phase onwards. One of the most frequently cited purposes of capacity funding was to enable Indigenous Peoples to engage in dialogue with both the CER and regulated companies. Perspectives varied on the source of funding; however, we heard consistently that Indigenous Peoples should not bear the cost for projects or related activities that will impact Indigenous and treaty rights.

Respondents highlighted the need for training as well as financial resources to facilitate the participation of Indigenous Peoples and incorporation of Indigenous knowledge into activities that affect Indigenous and treaty rights. To support participation and incorporate Indigenous knowledge into oversight activities, a number of respondents identified a need for training in emergency response, surveillance and monitoring, and safety protocols.

“Restoration rather than reclamation is important to reduce cumulative impacts to constitutionally protected Aboriginal and Treaty Rights. Removing pipelines from the ground following abandonment is important to Indigenous people and restoring the land according to our standards, as leaving the pipeline in place restricts and reduces future land use. Additionally, the less intrusive removal methods, such as pulling the pipe out, should be preferred over more intrusive methods, such as digging the pipe out.”

Louis Bull Tribe

“At present, the OPR only requires a company to restore the land to a condition similar to the surrounding environment and consistent with the current natural use. UNDRIP will be ineffectively implemented if the OPR remains thus limited in its vision. The historic development of pipeline infrastructure necessarily means that cumulative effects have occurred and the surrounding environment, at present, and their current natural use, cannot support the full expression of Indigenous rights and culture. We are of the view that reclamation activities require returning the land in a state suitable for its traditional use.”

Indigenous Advisory Monitoring Committee –
Trans Mountain Expansion Project

“The OPR must require early identification of and engagement with all Indigenous Nations that may be affected by a project and ensure their involvement throughout the project’s entire lifespan at all levels. It must also require that any issues relating to, or gaps in, capacity or funding be addressed so that Indigenous Nations are able to participate in shared decision-making in a meaningful way. This includes building capacity so that Indigenous Nations have the ability to address and be involved in every aspect of pipeline oversight.”

Lower Nicola Indian Band

Clarity and Transparency

The CER is committed to fostering trust and confidence through robust communications, transparency, collaboration and inclusive engagement, and by building respectful relationships with Indigenous Peoples. We are working to improve how data and information is shared and made more accessible, and to ensure requirements and processes are clear to regulated companies and potentially affected parties. We heard we should share more of our internally held information and require certain information to be shared by regulated companies with potentially affected parties. We heard there is an opportunity to improve transparency on internal processes, such as how we plan for and conduct compliance activities. We also heard we can improve the clarity of regulatory requirements by defining certain terms, using more accessible language in communications and providing a mechanism for interested parties to seek process guidance or interpretation of regulatory requirements.

Clarity on Compliance Oversight

We heard a desire for greater transparency on how we assess risk, plan and conduct compliance activities. We heard that compliance planning protocols should be risk-based and informed by emerging trends and historical data. We heard from industry that the scope of compliance activities is often unclear, and a lack of advance notice hinders their ability to forecast workloads and leads to inefficiencies in resourcing. We heard it would be useful for regulated companies to have a way to share information with us about their organization and management system structures in advance of compliance activities. It was recommended that we standardize our own protocols to encourage consistency among inspectors, and to clearly define the role, expectations and authorities of Indigenous monitors. We also heard that further guidance on the purpose and expected outcomes of compliance activities would be beneficial.

One suggestion to improve clarity and consistency was to develop an online tool for interested parties to ask questions about our processes, regulatory requirements or guidance documents, and to make our responses and interpretations publicly available. We also heard active engagement and open and transparent dialogue is central to compliance promotion.

Language and Defining Terms

We heard there are opportunities to use more direct and specific language to help readers better understand our regulatory requirements. We heard that commonly used terms should be defined, including: adequate, meaningful, mitigation, inclusion, participation, manuals, procedures, cumulative effects, informed consent and others. We also heard that certain terms that are already defined in the regulations, such as “environment” and “incident” should be revised in consultation with Indigenous Peoples to account for their worldviews.

“First Nations territory describes First Nation peoples' ancestral and contemporary connections to a geographical area. Territories may be defined by kinship ties, occupation, seasonal travel routes, trade networks, management of resources, and cultural and linguistic connections to place. This means it is up to Indigenous peoples to define their territories; it is not up to the government and not Industry.”

File Hills Qu'Appelle Tribal Council

Perspectives were diverse with respect to defining certain terms, such as heritage resources and Indigenous territories. While some respondents suggested we should collaborate with Indigenous Peoples to clearly define the scope of heritage resources, others suggested they should be left open-ended. This would allow Indigenous Peoples to describe their ancestral and contemporary connections to a geographical area and what constitutes a heritage resource according to their community.

We heard that our regulatory instruments and communications are often quite technical, and that guidance documents written in plain language would improve accessibility and enable greater participation. We heard that we should be mindful of who we are trying to reach in communications, and to ensure language is culturally relevant and accessible to the target audience. Respondents suggested one means of ensuring materials are culturally relevant, is to make more information available in Indigenous languages. We recognize the importance of understanding and celebrating Indigenous languages as part of Canada's diverse and rich heritage and culture. In collaboration with the Government of Canada's Translation Bureau, we are now offering Indigenous language translation services in over 45 Indigenous languages. We see this as an important step to support the efforts of Indigenous communities to reclaim, revitalize, maintain and strengthen Indigenous languages.

“[We recommend] the OPR and related summary information be made available in a more accessible format. This includes the use of visual graphics and/ or audio-visual aids available not only in English and French, but in Michif and other Indigenous languages spoken. In addition, having the information provided in a plain language format, ideally in centralized place, such as the Participation Tool-kit that the CER has available.”

Manitoba Metis Federation

Information Sharing

The CER is committed to building the trust and confidence of Canadians through open communication, transparency, collaboration and inclusive engagement. We heard that information about pipeline activities should be provided proactively to those living nearby and experiencing the effects of pipeline activities, rather than upon request. This message was particularly common in relation to information about safety protocols, changes to pipeline use or status, the discovery of contamination, and emergency management preparedness and response. We heard that regulated companies should work with affected Indigenous Nations and communities to determine the information needs of individual communities.

Confidentiality of information was another common area of feedback. A number of Indigenous Nations and communities identified the importance of ensuring culturally sensitive information, such as burial sites, remains confidential. We heard companies must consult with affected communities before reporting on culturally sensitive areas, to ensure information belonging to the community is protected and used only for the protection of community values and priorities. We also heard from regulated companies that the competitiveness and security of infrastructure depends on the confidentiality of certain information provided to the CER, and that care must be taken to avoid the unintended consequences of disclosing this information.

We heard that sharing information is an important factor in fostering continual improvement. It was recommended we coordinate annual information sharing sessions with regulated companies to discuss lessons learned, pointing to the CER's 2021 and 2022 Damage Prevention Workshops as a model for future discussion forums. Industry respondents expressed frequent and timely information sharing about incidents and unauthorized activities would help companies make informed and proactive decisions to continuously improve their programs. We heard that information in a narrative format is often more useful than simply posting data online, which may lead to information being misinterpreted.

We also heard from industry that, given the resourcing required to prepare and share information, we should consider the value and desired result of all reporting requirements. We also heard that administrative burden could be reduced by permitting records, documents and manuals to be submitted electronically.



“Recent workshops on Damage Prevention Programs for Pipelines and Preventing Damage to OH Power Lines were well received and helpful. It would also be helpful for the CER to develop a selection of different scenarios with related interpretations of the regulations to assist the reader in understanding how to apply the regulations. Similar to the comment above, the regulations are at times challenging to interpret given the approach to how they are documented/presented. Examples/scenarios with interpretations of how the standards would apply to the scenario would be useful to understanding how to interpret the regulations.”

Manitoba Hydro

Competitiveness

The CER is committed to enhancing global competitiveness by improving transparency, predictability and efficiency through the regulatory lifecycle, while driving innovation that contributes to the transition to a low carbon economy. We heard a number of ideas to advance competitiveness while ensuring the objectives of the OPR are met. Regulated companies expressed their support for the continued use of performance-based requirements that are flexible and scalable to the unique operations of a company. We also received substantial feedback on opportunities to collaborate with provinces, territories, and other federal departments and agencies to align requirements, avoid duplication of work, and share pertinent information to improve regulatory outcomes.

Performance-based Requirements and Flexibility

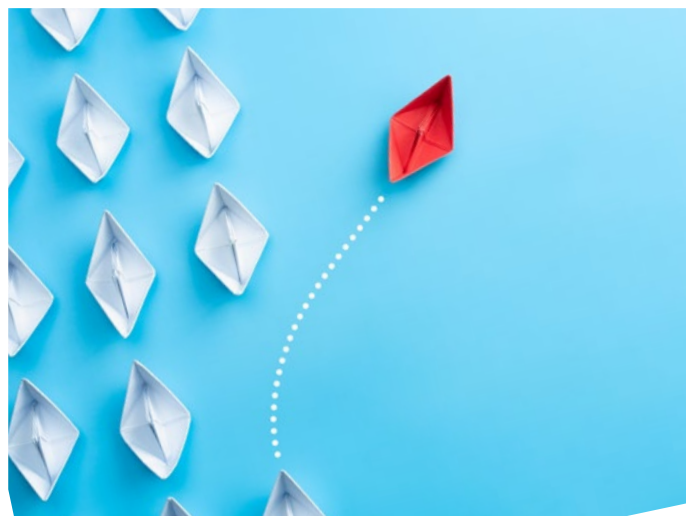
The OPR uses a mix of performance and prescriptive-based requirements to achieve the outcomes of safety, security and environmental protection. Where the requirements are performance-based, a company has the flexibility to customize its management system approach based on its unique operational and business needs. Performance-based requirements provide flexibility in how a company meets regulatory objectives, contributing to the continual improvement of their operations. We heard that industry supports the continued use of performance-based requirements. We also heard that we are well positioned to evaluate the effectiveness of the different approaches taken by regulated companies and have an opportunity to promote and share best practices to advance continual improvement.

We heard that flexibility is particularly important when introducing new requirements in rapidly evolving areas like communication and engagement and gender-based analysis plus (GBA Plus). We heard that prescriptive requirements in these evolving areas would limit the ability of regulated companies to be responsive to the needs and preferences of those affected by pipeline activities and may lead to certain groups or factors being overlooked. Given the time it takes to amend regulations, it was suggested that other tools may be better suited to address these evolving areas. We also heard that the OPR could better support innovation by introducing risk-based criteria and notification processes, rather than having to seek approval before using new technology.

We also heard how our approach to implementing the OPR can support competitiveness. For example, regulated companies noted that flexibility with compliance activities would be appreciated while dealing with external crisis events, such as extreme flooding, forest fires, and cybersecurity events, amongst others.

“The effectiveness of the OPR’s management system requirements in protecting the safety and security of pipelines, employees, the public, as well as protecting property and the environment can be attributed to its performance-based approach, which allows companies the flexibility to design a management system that achieves the required outcomes in a manner that is most appropriate and efficient for their business. This performance-based approach acknowledges the vast differences among the many companies regulated by the OPR, including differences in size, types of facilities, geographical area and commodities transported. Regulated companies, with their depth of specific expertise regarding their unique business, are best suited to determine the most effective way to manage and reduce risk. A performance-based approach promotes accountability by putting the onus on companies to determine and implement the best approaches for their companies to manage risk.”

TC Energy



Jurisdictional Alignment

The CER co-operates with other governments, agencies, and technical standards committees to reduce regulatory overlap, develop, share and implement best practices, and support the improvement of our regulatory framework. While we have jurisdiction over pipelines that cross international or provincial and territorial borders, there are matters where other jurisdictions also have responsibilities. For example, companies must comply with provincial legislation for the reporting and remediation of contamination as well as in the protection of heritage resources. We heard there are a number of opportunities to pursue jurisdictional alignment, collaborate with other departments and agencies, and share information to enhance competitiveness and improve regulatory outcomes.

We heard a need for better coordination in the management and protection of heritage resources between provincial and federal authorities. Filing requirements and guidelines to protect heritage resources, and related engagement expectations, are detailed in the CER's Filing Manual and [Operations and Maintenance Guidelines](#). Regulated companies must meet these requirements, in addition to the requirements of applicable provincial, territorial, and other federal jurisdictions. We heard that the current framework for identifying and protecting heritage resources is insufficient. We heard the framework lacks consistency between jurisdictions and does not reflect the unique cultural priorities of Indigenous communities.

We also heard that adding new requirements related to the management and protection of heritage resources risks creating further jurisdictional confusion, redundancy or conflicting requirements. It was recommended that should we introduce specific language about heritage resources into the OPR, that we consult and coordinate with the applicable provincial, territorial and federal authorities to avoid duplication.

"[...] the CER should coordinate with provincial jurisdictions to better understand provincial requirements relating to heritage resources and sites of significance, and work to apply these requirements to the OPR. This would set a stronger minimum standard for the protection of heritage resources in CER regulated projects."

Stoney Nakoda Nations

"At WLFN [Williams Lake First Nation], we are of the opinion that existing provincial heritage legislation is insufficient to protect cultural heritage and traditional use resources, and therefore have established a nation-wide policy, including guidelines, as to how work should be conducted. By integrating the heritage policies of Indigenous nations into the OPR, and not just provincial heritage regulations, a higher standard of care and protection of heritage resources will occur on pipeline projects."

Williams Lake First Nation

"Heritage Resources are protected by provincial bodies and is not appropriate for the CER to create an additional layer within the OPR creating duplication, jurisdictional issues and conflicts. A recommendation would be to review the Heritage Resources requirements that exists in the CER Filing Manual to avoid duplicative efforts."

Pembina Pipeline Corporation



Update Guidance and Improve Implementation

The review of the OPR is an opportunity to consider how all areas of the regulation are working. This includes consideration of changes to the regulation, how we implement and verify compliance with requirements, as well as how our regulatory framework as a whole supports the objectives of the OPR. We received a substantial amount of input that will directly inform the content and implementation of the regulation. However, we also heard a great deal of feedback that may be better addressed through other regulatory instruments, or processes beyond the scope of the OPR such as the Filing Manual or guidance for the regulation.

Filing Manual

Companies rely heavily on the CER's Filing Manual to understand the information and level of detail required for a filing. There was considerable input in the submissions for the OPR Review, that apply to the Filing Manual. For example, we heard that current requirements to incorporate Indigenous knowledge into project planning and design, and into the assessment of environmental and socio-economic effects should be expanded. We heard the standard practice of using the assessment of biophysical impacts as a proxy for impacts to traditional use and on the exercising of Indigenous and treaty rights can be misleading and inaccurate. On a similar note, we heard that existing requirements to conduct Traditional Knowledge and Land Use studies are too narrow in scope and do not sufficiently address impacts to Indigenous and treaty rights. We heard that companies should be required to procure regional Indigenous-led studies that reflect the unique values and concerns of each potentially impacted community.

The Filing Manual outlines expectations for early engagement during the pre-application phase for non-designated projects (projects that do not trigger a review under the *Impact Assessment Act*). The intent of early engagement is to create opportunities for the applicant to learn about the concerns of potentially affected persons and communities, and to discuss how those concerns can be addressed through project design, construction and operations, and to develop measures to reduce and mitigate the effects a project may have on the rights and interests of persons and communities. We heard that engaging potentially affected parties at the project concept stage is important to ensure communities have sufficient lead time to participate and identify potential concerns and impacts. We also heard a desire to improve the connectivity between the outcomes of early engagement in the Filing Manual, and the design of management systems and protection programs in the OPR.

“To support the dialogue around Rights and Reconciliation, DRFN [Doig River First Nation] is developing a conceptual alternative to the assessment of biophysical, cultural and socio-economic elements relating to the evaluation of impacts from proposed developments to Doig River values, interests, traditional practices, and the exercising of our Rights. Doig River recommends this alternative assessment methodology as a more appropriate mechanism than those prescribed in the CER Filing Manual.”

Doig River First Nation

Other Guidance

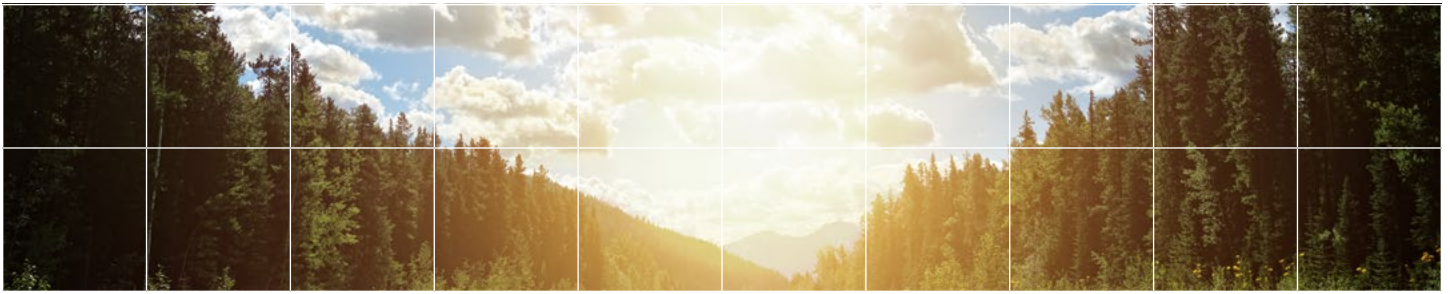
In addition to the Filing Manual, we heard that changes may need to be made to other related guidance documents, such as the [Guidance Notes for the Canadian Energy Regulator Onshore Pipeline Regulations](#), as well as the Operations and Maintenance Guidelines. We heard that clear guidance is imperative to the successful implementation of regulatory requirements, and that in some cases, issuing new guidance or changing existing processes may be an efficient alternative to amending the OPR.

We heard there are opportunities to provide further guidance on a number of areas, including those of shared jurisdiction, such as contaminated sites management and the protection of heritage resources. We heard it would be beneficial to provide direction on how to address overlap between provincial and federal oversight, as well as to resolve conflict between interested parties. We heard that a number of Indigenous Nations and communities would like to be involved in the development of guidance related to these matters, as well as any guidance relating to the protection of Indigenous rights and interests. We also heard that a number of relevant Indigenous-led external guidance documents already exist and could be adopted or considered for use.

We specifically heard there are opportunities to supplement guidance in areas including: management systems, communications and engagement, contractor management, human and organizational factors, and process safety. We heard that it would be useful to issue guidance on the range of approaches and techniques available to pipeline operators to contribute to safety and environmental protection, with practical examples of when to use them. We heard that companies would appreciate if we were to provide practical examples across the lifecycle of a pipeline that illustrate common problems and how they can be addressed by the elements of a management system. We also heard that regulated companies are well positioned to identify issues related to process safety and can record and report these to the CER so that lessons learned can be shared with other companies.

“Supplement existing guidance with practical examples across the pipeline lifecycle illustrating common problems and how they can be addressed by each management system requirement. This could add clarity and help reduce differences in interpretation and application of management system requirements by both companies and the CER.”

Enbridge



What's Next

We would like to reiterate our appreciation to those who participated in the first phase of engagement for the OPR review. The level of participation was unprecedented for a review of one of our regulations and will result in better rules for, and oversight of, pipeline activities.

We will continue to review and consider all input received as we prepare for the next phase of engagement. In the next phase, we will be seeking input on specific issues, including those identified in the first phase of engagement. We anticipate starting to workshop regulatory issues and options on a topic by topic basis in mid 2023. We will be seeking feedback from you on how best to structure and sequence our next phase of engagement and we have secured funding to facilitate the continued participation of Indigenous Peoples in this work.

The CER will be in contact with those that have expressed interest in participating in the review of the OPR to discuss how we can work together to advance the next phase of engagement. Any updates on when and how to participate in phase two of the review, including for future funding opportunities, will also be made available on the [CER Dialogue webpage](#). If you have any feedback, questions or comments on this report, please contact us at opr-rpt@cer-rec.gc.ca.



Appendix A – Submissions for OPR Phase 1 Engagement

The CER received submissions from the following participants in phase one of the engagement on the OPR Review:

Indigenous Nations and communities

Athabasca Landing Métis Community Association

BC Métis Federation

Beaver Lake Cree Nation

Bingwi Neyaashi Anishinaabek First Nation

Bonaparte First Nation

Canupawakpa Dakota First Nation

Chippewas of Kettle and Stony Point First Nation

Cold Lake First Nations

Doig River First Nation

Driftpile Cree Nation

Duncan's First Nation

Elk Valley Métis Nation

Esketemc First Nation

File Hills Qu'Appelle Tribal Council

Fort McKay First Nation

George Gordon First Nation

Grand Conseil de la Nation Waban-Aki

Grand Council Treaty #3

Gwich'in Tribal Council

Huu-ay-aht First Nations

Hwilitsum First Nation

Indigenous Advisory Monitoring Committee – TMX

Indian Resource Council
Kahkewistahaw First Nation
Kapawe'no First Nation
Kebaowek First Nation
Kelly Lake Cree Nation
Kelly Lake First Nation
Kikino Metis Settlement
Kwikwetlem First Nation
Lac Ste. Anne Métis Community Association
Lakeland Métis Community Association
Leq'á:mel First Nation
Lheidli T'enneh First Nation
Louis Bull Tribe
Lower Nicola Indian Band
Makwa Sahgaiehcan First Nation
Manitoba Métis Federation
Métis Nation British Columbia
Métis Nation of Alberta
Métis Nation of Alberta Local 87
Métis Nation of Alberta Local Council Chinook 1880
Métis Nation of Alberta Local 1994 (Mountain Métis Nation Association)
Métis Nation of Alberta Local 845
Métis Nation of Alberta Region 3
Métis Nation of Ontario
Métis Nation Saskatchewan
Métis Nation Saskatchewan - Eastern Region III
Métis Nation Saskatchewan - Western Region IIA
Michel First Nation

Mikisew Cree First Nation
Mississaugas of Scugog Island First Nation
Nakcowinewak Nation of Canada
Nation Huronne-Wendat
Nooaitch Indian Band
Nunavut Impact Review Board
O'Chiese First Nation
Papaschase First Nation #136 Association
Peavine Metis Settlement
Peters First Nation
S'ólh Téméxw Stewardship Alliance
Samson Cree Nation
Saskatchewan First Nations Natural Resource Centre of Excellence
Stoney Nakoda Nations
Sturgeon Lake Cree Nation
Sucker Creek First Nation
Sucker Creek Off Reserve Elders Council
T'Sou-ke Nation
Temagami First Nation
Tseil-Waututh Nation
Union of BC Indian Chiefs
Whitefish Lake First Nation
Williams Lake First Nation
Xatsull First Nation
Zagíme Anishinabek First Nations

Industry Association and Regulated Companies

Canadian Association of Petroleum Producers

Canadian Natural Resources Limited

Enbridge Inc.

Manitoba Hydro

Pembina Pipeline Corporation

Plains Midstream Canada

TC Energy

Trans Mountain Corporation

Trans-Northern Pipelines Inc.

Other Interested Parties

BC Ministry of Energy, Mines and Low Carbon Innovation

Canadian Society for Chemical Engineering – Process Safety Management Division

Centre de sécurité civile de Montréal

Communauté métropolitaine de Montréal

Conservation Ontario

Engineers Canada

Government of Northwest Territories

Land and Water Boards of the Mackenzie Valley

Manuel Marta

Olitech Consulting Inc.

Rick Munroe

Ville de Terrebonne

State of Washington Department of Ecology