



HWLITSUM FIRST NATION

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Via Email: opr-rpt@cer-rec.gc.ca

Government of Canada
Canada Energy Regulator
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T2R 0A8

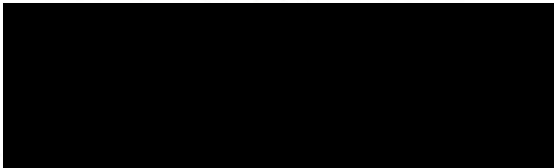
Dear Sirs/Madams:

Re: Hwilitsum First Nation
CER Onshore Pipeline Regulations Review Discussion Paper Response

On behalf of the Hwilitsum First Nation, enclosed is our submission on the review of the Onshore Pipeline Regulations based on the above noted discussion paper.

Kind Regards,

HWLITSUM FIRST NATION



Encl.



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Onshore Pipeline Regulations Review Discussion Paper Response



Table 1. Keywords Used in this Response

#1	“OPR”	Onshore Pipeline Regulations Review
#2	“CER”	Canada Energy Regulator
#3	“We” or “Hwilitsum Nation”	The Hwilitsum First Nation AND/ OR its respective members
#4	“HFN”	The Hwilitsum First Nation
#5	“UNDRIP”	United Nations’ Declaration on the Rights of Indigenous Peoples
#6	“Indigenous Communities”	Indigenous People OR Indigenous OR Urban Indigenous or Reserve Indigenous OR Aboriginal OR Native(s) OR Indigenous Peoples OR First Nations OR Métis OR Inuit OR Inuk
#7	“Environmental Impacts”	Environmental Impacts OR Environmental Harms OR Environmental Injustice
#8	“TEK”	Traditional Ecological Knowledge OR Indigenous Knowledge OR Indigenous Science Evolving knowledge acquired by Indigenous and local Peoples over hundreds or thousands of years through direct contact with the environment (U.S. Fish & Wildlife Service, 2011).
#9	“ICCPR”	International Covenant on Civil and Political Rights
#10	“UDHR”	Universal Declaration of Human Rights
#11	“OCAP”	The First Nations Principles of Ownership, Control, Access, and Possession



Section 1. OPR - Lessons Learned

1. What is working well in relation to the OPR, and its implementation, and what could be improved?

The CER's current approach to compliance verification focuses on inspections and audits of "those things that pose the highest risk of harm to people and the environment" (CER, 2022) which is important. Further, OPR's requirement for regulated companies to establish, implement and maintain management systems and protection programs designed to anticipate, prevent, manage and mitigate conditions that may adversely affect the safety of the company's pipeline, employees, the public as well as property and the environment is also important (CER, 2022). However, this is in reference to the current approach where management systems are simply designed to "manage and reduce risk" (CER, 2022). In relation to this, OPR implemented regulations have at times not adequately held companies accountable where non-compliance occurs. As such, the current "performance-based approach" (CER, 2022) requires more substantial consequences that go beyond motivating companies to "strive to do better than the minimum" (CER 2022). While unanticipated situations may arise, the CER must hold companies accountable who fail to recognize, or do not correctly account for harm done through project activities via the OPR.

The current OPR management system requires a system that is:

- Clear;
- Has good documentation and is understood by all employees, at all levels;
- Applies to all areas of work and includes every regulated activity conducted by the company; and
- Be proactive, able to anticipate issues and adjust course (CER 2022).

The CER's needs to improve the OPR by ensuring that it is in conformity with Canada's commitment to Reconciliation and Canada's commitment to ensure that all its laws have been redrafted and are in compliance with the United Nations Declaration on the Rights of Indigenous



Peoples (UNDRIP). These principles will be the foundation for advancing government-to-government engagement.

As reconciliation is a strategic priority for the CER with a focus on enhancing involvement of Indigenous People in decisions and oversight. As such, the current systems need to be amended to respectfully incorporate Indigenous inclusion. The adaptation of UNDRIP principles will ensure ALL Indigenous Peoples concerns are met. The CER must uphold a higher standard for how government and industry communicate with Indigenous Peoples. One overarching goal the OPR must achieve through its re-implementation is to improve communication with Indigenous Peoples. Respectful, meaningful, transparent two-way dialogue, on a nation to nation, government-to-government basis should be the norm. CER-regulated pipelines are a constant threat to the safety and security of Indigenous Peoples, their territories, and the environment.

The Indigenous Advisory Committee of the CER needs to ensure the inclusion of ALL Indigenous Peoples, under the principles of UNDRIP, who's communities are affected by CER-regulated pipelines.

Section 2. Reconciliation with Indigenous Peoples

2. How can the OPR contribute to the advancement of Reconciliation with Indigenous Peoples?

To advance reconciliation, ALL Indigenous Peoples must be given an equal say when they are affected, or to be affected by developments in their community. Specifically, Canada must work with all Indigenous People, and it is misleading to have the question wording referencing the OPR. The OPR is a set of rules and regulations that deal with pipelines and its Canada who must in developing or drafting such rules and regulations who must ensure that the drafting of these rules and regulations reflect Canada's mandate to implement UNDRIP and Canada's commitment to reconcile its relationship with Indigenous People.



Canada via the OPR cannot successfully contribute in any capacity to reconciliation without Canada ending its current discriminatory practices. At present, the Indigenous monitoring program under the Canada does not allow for participation from the Hwilitsum First Nation, despite claiming to be inclusive. In addition, many Indigenous engagement processes are limited to only bands recognized under the Indian Act. Therefore, Canada must implement a monitoring program wherein all First Nations are treated equally and without discrimination. The two-tiered system created by Canada cannot continue to operate if Canada is serious about changing their legislation to incorporate the principles and bring such legislation in line with UNDRIP and other international conventions.

As such, through the implementation of regulations, Canada must ensure that the OPR legally align and incorporates the principles as outlined in UNDRIP. Therefore, Canada must ensure that any legislation put forth in relation to the OPR as presented by the CER must be drafted in accordance with UNDRIP. Further, Canada must ensure that its laws including the OPR also reflect human rights principles such as the CER-regulated pipelines are managed under the OPR in accordance with human rights legislation that Canada has agreed to comply with such as International Covenant on Civil and Political Rights (ICCPR”), the Universal Declaration of Human Rights (“UDHR”) and the Convention on the Elimination of All of Forms of Racial Discrimination (“CERD”)

On March 23, 1976, Canada became a party to the ICCPR and in particular, Article 26 of the ICCPR states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. As Canada numerous times, Canada will be legally bound to treaties of the United Nations including the ICCPR. As such, all regulations including the OPR must ensure that all First Nations should be treated equally and that discrimination against Indigenous Peoples based on “band status” is prohibited.

To adequately contribute to the advancement of Reconciliation with Indigenous Peoples, such as the Hwilitsum First Nation, Canada via the CER must understand that Indigenous Peoples are not



one entity. Each First Nation possesses unique values, knowledge and perspectives which must be incorporated equally and must be able to participate with Canada in moving forward concerning development of our resources. Canada must acknowledge and address past failures of the Canadian government and subsequent federal departments. Reconciliation is only truly meaningful with:

- (a) Historical awareness of the past;
- (b) Acknowledgement of harms inflicted;
- (c) Reparation of damages;
- (d) Recognition of Indigenous sovereignty and control over territories; and
- (e) Providing legal protection that ensures past harms are not repeated against Indigenous People including Hwilitsum First Nation.

Reconciliation can only be achieved through meaningful engagement, relationship building, participating, and sharing management and control over lands and the resources provided by the lands.

3. How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?

The protection of heritage resources on a pipeline right-of-way during construction, operation and maintenance activities must be of highest priority for the CER and reflected in any amendments to the OPR. Indigenous Peoples, their culture and their way of life are affected and impacted by pipeline construction, and the operations and maintenance of pipelines. Pipelines and the operations and maintenance of such pipelines involves the territory and the right of Indigenous Peoples to make a livelihood from the territory. Canada via the OPR must ensure that protection of Indigenous territories (i.e., Canada refers to as heritage resources) during pipeline activities which includes prioritizing the interests of First Nations whose territories are affected by pipelines built with their territories.



This can only be successfully achieved with a joint understanding that;

- (a) Indigenous Peoples have sovereign governments, with the right to participate in government-to-government relationships;
- (b) Indigenous Peoples are not public and should not be treated as such in relation to the protection of heritage resources.

Canada via the regulations like the OPR are written with strict legal repercussions for companies who fail to meet the minimum statutory requirements for the protection of Recognition of Indigenous sovereignty and control over territories (including “heritage resources”). This would occur in the cases where companies do not identify mitigation approaches, develop and/ or execute heritage resource discovery contingency plans, and follow applicable federal, provincial, or territorial requirements when their activities can impact heritage resources.

In general, in order for the OPR to contribute to the protection of Indigenous territories including “heritage resources”, it must ensure;

- (a) Indigenous title and rights to jurisdiction and governance should take precedence over private interest;
- (b) Indigenous TEK is utilized;
- (c) The accommodation of concerns: Indigenous territories (including “heritage resources”);
 - i. Dialogue regarding specific mitigation measures that could address the affected Nation's concerns about impacts on heritage resources
 - ii. The accommodation of culturally relevant concepts and priorities;
- (d) The implementation of co-management frameworks:
 - i. Government-to-government relationships are fostered
 - ii. The implementation of meaningful consultation
 - iii. Requests for participation are given with adequate time and resources provided to affected Nations to perform assessment and present concerns



4. How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous Peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?

Canada has an obligation to ensure the protection of Indigenous territories and it is critical for Canada via the CER to understand this issue within a larger framework beyond resources, but rights to territory. As previously stated, Indigenous Peoples are not a public and as such, if pipeline construction, operations, or maintenance activities are to take place in our territory, it is necessary for Indigenous Peoples to be adequately consulted and for Canada to have free, prior, and informed consent on pipeline projects. Canada via the OPR must go beyond providing a demonstration of consultation. Overarching concerns must be properly characterized, addressed, and resolved with Indigenous leaders.

Canada via the OPR must ensure that our territories and the use of those territories are developed and maintained in accordance with the Indigenous People who live in the areas where pipelines are constructed and then operated and maintained. For this to occur, well-intentioned relationships must be established that lead to strong, transparent, and trusting co-management structures. The OPR must be explicit in stating how the current regulations will be amended to ensure said co-management structures are honoured.

Section 27 of the IAMC Trans Mountain Expansion and Existing Pipeline discusses how “companies are required to post their emergency procedures manuals and emergency management programs online”, however, this is not the same in regard to pipeline construction, operations, and maintenance activities. (IAMC, 2022). Therefore, amendments must be made in the OPR that obligate transparency from private pipeline entities to disclose plans and procedures related to pipeline construction, operations, and maintenance activities. In addition, new regulations must obligate the private company in question to conduct meetings and uphold a continuous dialogue with Indigenous Peoples of the affected territories.



5. How can the use of Indigenous knowledge be addressed in the OPR?

In recent years, research has demonstrated that TEK can be employed in conjunction with “western” scientific methods and research to produce positive ecological benefits (Noble, 2020). When conducted properly, this integration of knowledge can create more sustainable options for projects in question and better represent potential impacts that may occur. Indigenous knowledge can provide a baseline for understanding environmental conditions in First Nations territories, and it should act as the basis of regulatory processes and decisions (Brown & Yates, 2021). In particular, Indigenous knowledge must be addressed by Canada in the OPR and it is critical that in implementing guidelines in the OPR, as part of the regulatory approval and review of a pipeline, it is critical that the regulations include:

- (a) All Indigenous knowledge is treated with the same respect as western scientific knowledge and that our Indigenous perspectives (knowledge) are based on holistic and interconnectedness with nature;
- (b) Indigenous knowledge is considered equal to western scientific knowledge;
- (c) The OPR has clear regulations on *how* to use TEK and *who* can use TEK.

Furthermore, CER must integrate the utilization of Indigenous knowledge by integrating involvement of Indigenous Peoples in CER’s management of the pipelines or any management frameworks. Utilization of any Indigenous knowledge requires Indigenous involvement. OPR must have rules based on Indigenous Peoples ownership, control, access, and possession (OCAP) principles. Furthermore, the OPR must address Indigenous knowledge in a manner that is culturally aware and that understands the importance of context. Indigenous knowledge should not be taken out of its local context and should not be employed to make conclusions on a larger scale, nor can such information be utilized for any other projects. In other words, Indigenous knowledge and the gathering and utilization of Indigenous knowledge must be based on OCAP principals and the OPR must make include these principals as part of its laws.



A singular individual or a small team of Indigenous consultants is not sufficient, as each nation possesses unique knowledge and relationship to the land. Indigenous knowledge can be integrated into management frameworks. For example, programs to monitor and assess impacts, report leaks, and funding for community-based participatory action research.

However, we note that this does not deal with involvement prior to the approval of pipelines and that most of what is proposed is reactionary and not pro-active as these pipelines are already in existence. Therefore, to employ Indigenous knowledge, involvement of Indigenous People in the management and the management frameworks prior to pipeline spills or disasters must be established otherwise the current management framework of the OPR does not change.

6. How can the OPR address the participation of Indigenous Peoples in pipeline oversight?

The OPR can address the participation of Indigenous Peoples in pipeline oversight through the construction of a robust framework that details clear instructions for *meaningful participation*. For instance, this framework should at minimum ensure;

- (a) Proactive communication, *i.e.*, Open dialogue between communities and government;
- (b) Continuous participation;
- (c) Adequate resources (i.e financial) are made available to participant nations, i.e; Resources for co-management;
- (d) Adequate time is allowed for participant nations to perform assessments and present concerns;
- (e) Equal opportunity for participation in **all affected** Indigenous Peoples, *i.e.*, End discrimination towards Hwilitsum First Nation;
- (f) Accommodation of culturally-relevant concepts and priorities;
- (g) Information regarding management systems is made available to Indigenous communities through a single point of contact for Indigenous Peoples to reach out to.



Section 3. Engagement and Inclusive Participation

7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?

To support collaborative interaction between companies and Indigenous Peoples, the OPR must mandate relationship building beyond the conventional panel-style or open discussion approaches. Meaningful two-way dialogue should be the standard and Canada’s duty to consult should dictate the framework for this type of collaboration. Indigenous Peoples are not a public entity and need to be respected in accordance with Canada’s commitment to Reconciliation and UNDRIP. As such, the CER regulates the OPR which should mandate the framework for collaborative interactions between Indigenous nations and private entities. Canada cannot delegate the responsibility of collaboration to private entities, as it is not the private entities obligation to uphold the duty to consult.

8. How could communication and engagement requirements in the OPR be improved?

Transparent, respectful communication should be a fundamental component of any relationship. The CER via the OPR should mandate policy relating to how industry and government communicate with Indigenous Peoples. A start would be policy to establish a baseline for communication and engagement. Canada’s commitment to reconciliation and UNDRIP are principles that would form the foundation in establishing a baseline for communication and engagement. The baseline would be a way to ensure proactive communication and engagement.

The OPR must ensure compliance with the regulation set forth. They would need to be closely monitored to ensure compliance. A monitoring team that includes Indigenous person or persons who the communities can work with so that their Aboriginal knowledge based on their protocols can be included in any process that the monitoring team is undertaking. Communicating on a government-to-government basis is respectful communication that will lead to more positive engagement. By mandating compliance, creating frameworks that open dialogue with CER staff and Indigenous communities based on this government-to-government approach will help develop



better relationships leading to a more inclusive approach to Indigenous engagement or participation.

In addition, OPR should require a minimum that companies have an engagement program in place to establish a baseline for communication and engagement. Without this requirement, there is no way to ensure proactive communication and engagement beyond expectations that all communication will be based on a reactive approach and not a proactive approach. In addition, communication must be equitable and free from discriminatory notions.

Further, far greater transparency is needed from the CER and private entities to improve communication and engagement requirements in the OPR. For example, in regard to section 6.2, the OPR must clarify how the operation and maintenance (i.e., surveillance, monitoring, etc.) is communicated with Indigenous Peoples (the First Nation communities). As well, in reference to section 6.5, the CER must share all activities carried out as part of management protocol with Indigenous Peoples (the First Nation communities). For example: a yearly session where the CER shares transparently how the CER is managing under its jurisdiction. Furthermore, amendments to regulations should include that the CER is obligated to communicate identified hazards, potential hazards, amendments to regulations, etc. - within the framework of a government-to-government relationship.

9. How could the CER improve transparency through the OPR?

The CER's shortcomings in ensuring transparency have led to challenges for sustainable energy management. As such, the following should be done in order for the CER to improve transparency through the OPR:

- (a) Improve accountability to Indigenous Peoples (First Nation communities);
- (b) Clearly communicate changes to regulatory framework approaches that may affect project activities, i.e., changes that may impact potential risks of a project.



- (c) Make clear any changes in funding and reporting requirements, as well as the reasons for which they occur;
- (d) Provide adequate funding to support programs and services to First Nations who have to be engaged in the process of dealing with CER's management and maintenance of pipelines so that questions, concerns and the needs of the First Nation communities can be addressed in the management framework of CER's work to manage pipelines.; and
- (e) Disclose information on CER's policy changes, funding decisions, internal expenditures including budgets for staffing.

10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:

- (a) those people implementing the OPR;**
- (b) or those people who are impacted by the operational activities addressed in the OPR?**

In consideration of the various groups named in the Preamble of the CER Act, the CER must understand that those individuals impacted by operational activities addressed in the OPR are just that — individuals. While it is important to recognize key identity factors and marginalized people, it is of greater importance to see that individuals' perspectives are equally represented and considered when decision-making occurs. As such, the CER should make public participation more accessible and frequent. As well, the CER should seek input from a variety of individuals from the groups mentioned. With that in mind, the CER must come to understand how identity factors can cause certain groups to be more susceptible to impacts or changes onset by OPR activities. For example, research suggests that Indigenous communities are particularly vulnerable to pipeline leaks (i.e via drinking water, agriculture, traditional cultural practice, etc.), and have limited capacity to mitigate them (Datta & Hurlburt, 2020). Therefore, the CER must aim to provide increased support to vulnerable communities and peoples.



Section 4. Global Competitiveness

11. How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?

Continuous improvement is key for the CER to support predictable and timely regulatory system that contributes to Canada's global competitiveness. Specifically, improvement in the following;

- (a) Create government-to-government relationships with First Nations and the Indigenous people;
- (b) Canada to implement and ensure that all of its laws are in line with UNDRIP and all of the United Nations treaties;
- (c) Improve transparency and communication with affected Indigenous governments and improve communication with private entities, and the general public;
- (d) Ensure Indigenous Peoples are meaningfully engaged and collaborated with during the entire process, from approvals to management and maintenance and decommissioning of pipelines; and
- (e) Continue to carry-out studies that aim to improve safety and security of pipeline management;

In addition, private entities should be held accountable if they do not meet the CER's expectations for event reporting (i.e., in regard to incidents, occurrences, etc.). In general, the CER's goal should not be to speed up the regulatory processes at any cost but by improving and communicating and working with First Nations on a government-to government relationship and improving communication with the public, will ensure a better process in working with one another for economic prosperity together.



12. How can the OPR support innovation, and the development and use of new technologies or best practices?

The OPR can do so by prioritizing Indigenous economic activities and the importance of Indigenous-run businesses. For example:

- (a) Consult Indigenous knowledge holders and integrate TEK into the creation of new innovative approaches.
- (b) Develop natural resource management and economic development strategies that promote employment opportunities in Indigenous communities.
- (c) Focus on new technologies that are successfully compatible with Indigenous conservation efforts and businesses.
- (d) Incorporate local knowledge in the project applications. For example, traditional rights and interests, and the impacts on these, should be well represented in baseline information.

13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?

The CER should consider metrics regarding what companies are doing best to protect the land, the environment, the economics, and Indigenous interests. This could, for example, be:

- (a) Damages inflicted on sites of significance,
- (b) Heritage resources lost;
- (c) Damages or barriers to traditional territory;
- (d) Environmental degradation;
- (e) Species loss or reduction;
- (f) Waterway pollution; and



- (g) Biodiversity concerns; and
- (h) Economic benefits while preserving the environment and the lands.

That said, each nation will rightfully have individual interests and concerns and therefore, it is not appropriate for the Hwilitsum First Nation to make conclusions on this topic. As such, the CER should aim to work with the First Nation (Indigenous Peoples) in a separate process to set expectations on what the CER should define as performance metrics.

14. Are there opportunities within the OPR for data and digital innovation that could be used by the CER and by companies regulated by the CER?

There are several opportunities within the OPR for data and digital innovation that could be used by the CER and companies regulated by the CER. As noted by the BC First Nations Energy and Mining Council, “Indigenous knowledge provides at least a baseline for understanding environmental conditions in First Nations territories, and it should act as the basis of regulatory processes and decisions”.

However, such data and digital innovation must ensure Indigenous principles of ownership, control, access, and possession (OCAP) are used to protect information of the Indigenous Peoples and the First Nations that the CER is working with. That said, the most important opportunity is to re-configure the OPRs current Indigenous Monitoring Program into an inclusive, Indigenous-led monitoring program. Specifically, this can be achieved by first allowing **all First Nations** (Indigenous Peoples) equal opportunity to participate in such a program. Data derived from this program could be employed by the CER and by companies regulated by the CER to improve environmental management.

15. How can the OPR be improved to address changing pipeline use and pipeline status?

Aside from the fact that this section talks about management systems and the fact that the regulations are about management and operations of pipelines, we are not sure why this question



is inserted in the improvement of the OPR when the OPR is not the body that approves pipelines, it's the CER. The OPR regulates the operation of the pipeline.

Further, if any company seeks to change the type of product being carried or the direction of the flow of the product that was initially approved at an earlier date, is it not the CER and not the OPR who is mandated to oversee the process for a company to change the type of product being shipped in its pipeline.

Furthermore, since such changes have the potential to impact pipeline integrity, the CER should be required to go back and seek approval from the Indigenous Peoples who territories such pipelines cross in addition to ensuring that all other affected members of the public have been notified prior to any approval By CER. Any decision to allow a company to change its product in a pipeline should be based on laws and a process that the CER would follow that includes UNDRIP and other United Nations treaties that ensure the free, prior and informed consent of the Indigenous Peoples regarding the use of any pipeline in their territory. This would all be based on the government-to- government relationship that Canada states it wants or has with First Nations.

Section 5. Safety and Environmental Protection

16. What further clarification, in either the OPR (e.g. structure or content), or in guidance, would support company interpretation and implementation of management system requirements?

- (a) How is the OPR going to be re-drafted to reflect all the concerns that First Nations have raised including the development in our territories and that government-to-government relationship that Canada continues to state it has or wants?
- (b) What is process of amending the OPR and what will be the process of inclusive engagement with First Nation and the Indigenous Peoples who are affected by these regulations?
- (c) How is Canada going to implement UNDRIP and other UN treaties into the OPR redrafting exercise?



- (d) How is the drafting of the OPR going to be communicated to First Nations and how are the First Nations going to be engaged in this redrafting exercise?
- (e) How will TEK be implemented throughout the construction, operation, and maintenance of CER-regulated companies?
- (f) How will the OPR address links between TEK, rights, and jurisdictional authority?
- (g) Will the OPR address the full range of TEK and protected rights when making decisions?
- (h) How will Indigenous rights, laws, customs, and perspectives form the basis for decisions that are made about actions or works that affect their lands, territories, and resources?
- (i) How will the OPR guidelines ensure that the use of Indigenous knowledge in regulatory decisions will be used to uphold Indigenous rights?
- (j) How will OCAP be upheld in practice?
- (k) Clarify that all TEK provided by Indigenous Peoples (i.e. via an Indigenous Monitoring Program) can only be used for the purpose provided within that knowledge, and cannot be used or disclosed outside that purpose unless further consent is granted.
- (l) Clarify that the OPR will ensure that regulatory processes uphold Indigenous laws and jurisdictional authority that are intimately tied to TEK.
- (m) Clarify when and where Indigenous knowledge will be sought or not, the OPR should not leave the onus on Indigenous Peoples to know when to provide knowledge, as they are often not informed about regulatory processes.
- (n) Notification of affected Indigenous communities during emergencies.
- (o) The inclusion of Indigenous responders.

17. How should information about human and organizational factors, including how they can be integrated into a company’s management system, for both employees and contractors, be provided in the OPR, and/or described in related guidance?

Indigenous concerns can be better considered by supporting capacity building that facilitates the consideration of Indigenous knowledge and by respecting First Nations law and jurisdictional



authority. Specifically, the OPR should be drafted to ensure that the legislation includes requirements for consultation, cooperation, and consent processes with First Nations. Moreover, the OPR should recognize cultural and intellectual property (i.e. Indigenous knowledge), and their embodiment in the laws and customs of each First Nation. To address Indigenous concerns, the OPR must be a baseline for inclusivity and acknowledge TEK put forth by all Indigenous Peoples, from all Indigenous communities, regardless of status. TEK should be given a priority, rather than simply considered alongside western science. The OPR must include clear guidelines about how to support Indigenous people's own laws and regulatory responses to environmental issues in their territory. Finally, the OPR must take action to achieve co-management structures and knowledge co-existence in pipeline activities.

18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?

The OPR can improve the connection between company safety manuals and the overarching Safety Management Program by examining company safety manuals. For example, in areas where a contractor's safety plans have proven to be more effective than guidelines in the Safety Management Program, amendments should be made. Furthermore, the OPR should set out clear and simple steps to approve these amendments, in order to ensure that future failures are avoided.

19. How can respect and personal workplace safety be assured at CER regulated sites?

Respect and personal workplace safety can never be assured at CER regulated sites, as unexpected actions and outcomes are inevitable. However, the CER should work to improve respect and safety through consistent employee training, ensuring management is setting strong standards, and facilitating a respectful working environment. In the past, the CER has failed to provide sufficient and timely training and safety instructions and equipment to First Nations (Heiltsuk First Nation, 2016). Therefore, it is pertinent that all employees and project members are provided with safety equipment and training in a timely manner. Employees should be made to feel comfortable in their position and should not be asked to perform tasks that they are not comfortable doing, or that are beyond the scope of their position. This will minimize anxiety and improve safety and security.



Furthermore, the CER must increase transparency and regional reporting. Therefore, companies who are failing to meet standards must be adequately held to account.

20. How should the CER be more explicit about requirements for contractor management?

The CER must ensure that the companies are legally responsible for all work conducted regarding the pipelines and the infrastructure that was approved as part of the overall project. THE OPR should include sections that require the companies to ensure that the company is liable for any work conducted within a project regardless of whether such work is done by an employee or a contractor.

Under the OPR, the companies must be held liable and be required to ensure that contractors or employees are qualified to be doing the work and that companies are responsible to ensure that all contractors are not only qualified but are not hired if such contractors are not qualified. Companies should be held vicariously liable for the contractors just like they are for their employees under the OPR.

21. How should the OPR include more explicit requirements for process safety?

The OPR should ensure that pipeline operators and other employees are adequately considering increased safety risks because of climate change. Current and further research is necessary. We can use past examples (i.e. the BC Floods 2021) to help create more robust guidelines for process safety, based on the best available data. As a result, companies will be better equipped to understand and anticipate how climate change may pose risks to process safety.

The OPR must include having the TEK incorporated as a requirement of the company’s process safety plan and ensure that communication with the First Nation’s whose territory the company is in is required communicate with and work with the local Indigenous Peoples.



22. How can the OPR drive further improvement to the environmental performance of regulated companies?

The OPR can drive further improvement to the environmental performance of regulated companies by first ensuring the inclusion of Indigenous Peoples in the creation and implementation of Environmental Protection Plans and Environmental Protection Programs. For example, dedicating financial and other support for the creation and ongoing operation of an Indigenous Emergency Response Centre. This would prioritize the engagement of affected First Nations and by engaging the First Nations who knowledge-keepers can act as our first responders.

In addition, the OPR can improve the environmental performance of regulated companies by reviewing the *Environmental Protection Programs* and pinpointing areas of operation that frequently threaten the environmental performance of their systems. In this way, the OPR can provide companies with a guide on common infrastructure risks to environmental protection, to further improve the environmental performance of these companies. This will aid companies in more accurately and quickly anticipating, preventing, and managing conditions, as they can then learn from past mistakes.

23. How can the connection between the Environmental Protection Plan, specific to an individual pipeline, and the company’s Environmental Protection Program, designed for a company’s pipeline system, be improved?

Ensure that both the Environmental Protection Plan and the Environmental Protection Program are updated immediately to reflect changing conditions and new data. With both plans consistently up to date, there will be fewer gaps in the connection between the two. Furthermore, this connection can be improved through communication with Indigenous Peoples. Indigenous Peoples should be communicated regularly and included in plan updates.



24. How can contaminated site management requirements be further clarified, in the OPR or in guidance?

As per Evaluation Branch (2021), “contaminated site remediation remains a primarily technical exercise, focussing on engineering and environmental matters”. As such, “Project teams are largely staffed by scientific, engineering and other technical experts without consultation and engagement expertise, and without Indigenous background” (Evaluation Branch, 2021). While proactive action is important, simply managing contamination for the protection of the environment and human health disregards further socio-economic impacts. For example,

- (a) The loss of economic opportunity for local communities due to environmental degradation caused by site contamination.
 - i) Eco-tourism
 - ii) Agriculture
 - iii) Fisheries
- (b) Negative impacts on mental health due to environmental degradation caused by site contamination.
- (c) Economic losses associated with damaged property.

Therefore, contaminated site management requirements should include a component that emphasizes the need to remediate the socio-economic impacts that site contamination has on surrounding communities. In addition, the CER should seek to better understand the socio-economic needs of Indigenous Peoples by working directly with First Nations. Contaminated site management requirements should include meaningful consultation and engagement with affected First Nations. This will not only support proactive management but reconciliation and the reduction of future risk. Furthermore, the OPR should clarify that containment management must emphasize locally informed, context-dependent processes, as opposed to a western-science-centred technical one.



25. Are there any matters related to the Emergency Management Program in the OPR that require clarification? If so, what are they? Are there any matters for which further guidance is required?

In many First Nation communities, in the event of an emergencies, the first responders are often the Indigenous Peoples from the community where the emergency has taken place. For example, Heiltsuk (Haílzaqv) Dáduqv́lá Community where the Nathan E. Stewart Spill took place, the Queen of the North sinking where Hartley Bay Indigenous Peoples responded, and the Tofino whale watching shipping incident where the local Indigenous Peoples also responded as first responders.

In relation to the Emergency Management Program in the OPR, there are several things that could be clarified:

- (a) How does the CER intend to improve Indigenous inclusion in Emergency Management Planning, preparedness, and response?
- (b) How will the Emergency Management Program be especially considered regarding:
 - i. Vulnerable populations
 - ii. Remote communities
- (c) What further Indigenous-specific matters will be considered in the Emergency Management Program?

26. How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?

The requirements set out in the OPR need to be explicit, transparent, and simple to follow. An example of how a Quality Assurance Program could be improved and clarified in the OPR, would be to ensure quality of pipeline materials. The acceptable “standards” can be raised, and compliance monitored and reported on a more regular basis. Good records and reporting systems, updated frequently, enable information to be easily communicated and understood. In an ever-evolving environment things change over time, being able to communicate transparent information



in a timely manner can only improve and add to the effectiveness of any Quality Assurance Program. The OPR could have stricter consequences/penalties for non-compliance.

27. How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?

The OPR should incorporate relevant information pertaining to certain welding procedures that are known to weaken the integrity of the weld area. Use of a larger quotient for error when assessing the integrity of the pipe itself. Consideration for a pipe's integrity, after it is welded, is the standard that needs to be adhered to. The OPR should incorporate over and above standards for steel used in pipe-line construction. A regular monitoring program of any welded areas is a good practice.

Section 6. Implementation Objectives

28. What are your recommendations for compliance promotion at the CER?

To improve compliance promotion at the CER, the CER should encourage activities such as compliance meetings and workshops with companies, safety and information advisories, and technical workshops. In addition, the CER should work to provide information in a timelier manner, in order to facilitate better communication between companies and governments. Establishing good communication will promote trust and, in turn, better compliance promotion.

29. How do you want to be engaged by the CER in the development of technical guidance?

The Hwilitsum First Nation's engagement with the CER in the development of technical guidance is limited by lack of knowledge in some of the more advanced technical issues of pipelines. Considering that, technical aspects, pipeline integrity, and welding components are always evolving, keeping up to date with changes is important. Being educated to understand more of the technical issues will help in the development of technical guidance. Even though the fixture of the pipeline itself is complete and operational, technical issues always arise, it is never a one-and-



done. The CER needs to engage to educate the First Nations of some of the technical issues before we can meaningfully comment and participate in the development of technical guidance.



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