



June 30, 2022

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Re: Review of the Onshore Pipeline Regulations (OPR) – KFN feedback on Discussion Paper

Kahkewistahaw First Nation (KFN) Lands and Resources Department Staff have reviewed the Canada Energy Regulator's ("CER") Discussion Paper on the Onshore Pipeline Regulations ("OPR") Review. This letter provides a response to questions raised in that Discussion Paper and outlines KFN recommendations to enhance Indigenous inclusion in the regulatory oversight of pipeline activities.

KFN would like to state that the Supreme Court of Canada has confirmed that Indigenous laws are part of the constitutional fabric of Canada, and that the purpose underlying section 35 of the *Constitution Act, 1982* is the reconciliation of the prior existence of Indigenous societies with assumed Crown sovereignty. While the *Constitution Act, 1867* allocates certain jurisdictions to the federal Crown and provinces, it also leaves space for the operation of Indigenous self-determination. Very few Canadians and proponents know and appreciate this reality! KFN is convinced that the CER, through this OPR Review, both has the opportunity to make this reality known, and – through section 35 obligations as well as obligations associated with the *United Nations Declaration on the Rights of Indigenous Peoples Act* – **is legally obliged to do so!**

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Overview

KFN is very much interested in developing a proposed workplan and budget to support continued engagement on the work between KFN Administration and the CER in the next phase(s) of the OPR Review. This work will help inform the CER on how to better reflect the principles of UNDRIP in the OPR and other impactful legislation.

In putting together its responses to the below noted questions, KFN Administration has included some recommendations which may be better aligned with other phases of pipeline regulation. Any KFN suggestions here which more appropriately fit into another aspect of pipeline regulation should not be discarded and set aside. For future CER engagement, it might be useful to identify the many challenges that First Nation Governments have with pipeline regulation, as opposed to narrowing a review towards the CER's current manner of organizing its regulatory framework. Lets not forget about the inadequacies of the CER Filing Manual as it relates to Indigenous Inherent Rights!!

LESSONS LEARNED

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

- The way the OPR reads now, it stays silent on Indigenous inclusion in any form of collaboration, Indigenous Regulatory Oversight or input!
- The OPR is best positioned to be effectively implemented and to contribute to the advancement of reconciliation with First Nation Governments if it is situated within levels of oversight that take into account safety, environmental interests, and the protection of Indigenous rights.
- It is significant that the *Canadian Energy Regulator Act* ("**CER Act**") contains some early attempts at incorporating elements of UNDRIP. The *CER Act* explicitly contemplates "Indigenous Governing Bodies" and

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“Indigenous Knowledge”. In order to advance reconciliation with First Nations, the CER must continue its efforts at mainstreaming the inclusion of Indigenous peoples and perspectives throughout its regulatory processes. This would mean that Indigenous peoples are not merely consulted when a consultation obligation is triggered, but rather that CER staff, committees, decision-makers, and proponents are constantly alive to the inclusion of Indigenous peoples, rights, and interests in all methods of regulatory oversight. The relationship going forward must be conducted on a government-to-government basis and is a primary area for OPR improvement.

- In addition to the above, KFN is of the view that the OPR and its implementation could be improved by requiring greater involvement of First Nation Governments at later stages of the life-cycle regulation of a Project, particularly during pre-construction as Environmental Protection Plan (“**EPP**”), Environmental Management Plan (“**EMP**”), and Emergency Response Preparedness (“**ERP**”) plans are developed. At present, certain proponents are required to provide these plans to First Nation Governments for feedback and consultation, but this largely occurs if conditions are imposed by the CER, rather than as a matter of course as a regulatory requirement or ‘recommendation’.
- The historic June 29, 2021, B.C. Supreme Court ruling in ***Blueberry River First Nations (Yahey) v. Province of British Columbia*** must also be considered when updating the OPR and associated CER regulations in consideration of the cumulative effects of the energy sector. The decision requires the Province of BC and Blueberry First Nation to work together to develop land management processes in Blueberry Traditional Territory that restore and protect the ability of the land to support Indigenous ways of life, and ensure future development authorizations manage cumulative effects on land and wildlife and their impact on the Nation’s treaty rights. It will be important for the federal government and the CER to work with affected First Nation Government to co-develop an approach for reviewing the energy sector’s activities that balance Indigenous rights, the economy and the environment.

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RECONCILIATION WITH INDIGENOUS PEOPLES

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

- KFN is increasingly frustrated by the Crown's denial of Indigenous legal and governance structures, and the lack of meaningful decision-making roles in Crown-led natural resource exploration and development processes. The Government of Saskatchewan is a prime example of how **NOT** to consult with First Nation Governments on resource and energy related projects including Potash!
- To improve on this issue and further advance reconciliation, the OPR review must include a review of both Indigenous Consensus Decision Points and Dispute Resolution Mechanisms.
- In British Columbia, the Tsilhqot'in National Government, the Stk'emlupsemc te Secwepemc Nation and the Kaska Nation are three more examples confirming First Nation Governments in BC are on their way to establishing new exploration and resource development process positive outcomes. These outcomes are now informing and inspiring First Nations elsewhere in Canada including the KFN to exercise their own inherent rights to jurisdictional authority in their territories.
- The Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls provides direction on advancing reconciliation by challenging systems and actions that have perpetuated harm to Indigenous women, girls, and 2SLGBTQQIA people through four interrelated pathways for action including:
 - Addressing historical, multigenerational, and intergenerational trauma;
 - Combatting social and economic marginalization;
 - Challenging the status quo and institutional lack of will; and,
 - Honouring and respecting the agency and expertise of Indigenous women, girls,
 - and 2SLGBTQQIA people.

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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?

- Provincial regulations differ on the requirements for companies to protect heritage and cultural resources. KFN has seen and experienced firsthand the inadequacy of these regulatory requirements to effectively protect Indigenous interests. The CER must set the highest standard for protecting heritage and cultural resources!
- KFN Heritage and Cultural Resources can be impacted outside of the pipeline right-of-way, particularly in the event of a migrating spill. Emergency response plans need to have cultural / heritage information embedded within so responders know those areas to protect and others know what may have been impacted following an event.
- Many of the concerns regarding the protection of cultural / heritage resources are similar to those relating to traditional land and resource use (“**TLRU**”), and Indigenous sites of significance (“**SIS**”) for Indigenous peoples described in Question 4. KFN is well placed to work with CER to develop new sections of the OPR, guidance documents, and/or other measures to ensure appropriate protection.



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?

- The OPR has sections dedicated to requiring companies to prepare Emergency Management Programs, Integrity Management Programs, Safety and Security Management Programs, Damage Prevention and Environmental Protection Programs. There are no explicit requirements for companies to develop programs to protect against potential impacts to Indigenous Rights and interests (including heritage resources, TLRU, and SIS). KFN is very concerned that this situation continues to perpetuate the errors outlined in the *Clyde River* decision by obscuring those matters of Indigenous interest under other management programs.
- Operational activities (i.e. integrity digs) can impact on cultural / heritage resources and SIS and it is wrong to assume pre-disturbed soils do not contain valuable cultural artifacts in circumstances when excavated materials were placed back in the trench upon construction many years ago. Further, untouched trench walls provide snapshots of history with strong archaeological and cultural value.

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

- KFN recommends CER review the Province of BC's more recent "Guide to Indigenous Knowledge in Environmental Assessments" (April 2020) that provides a good summary of principles KFN would consider when reviewing the OPR.



- While these above noted documents typically focus on Project Assessment methodologies, applying these principles to the OPR are fundamental to ensuring decision-making for pipeline operations activities are conducted appropriately and effectively protects against potential impacts to Indigenous rights and interests.
- It is important to note that Indigenous knowledges include distinct and complex understandings of gender and gender roles/responsibilities. For example, within some Indigenous cultures, women hold distinct roles and responsibilities over cultural transmission and resource protection. Therefore, the potential impact from development may have a different or outsized impact on Indigenous women. These considerations must be accounted for when building space for Indigenous knowledges within the OPRs.

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

All regulated aspects of Canada's energy sector including Saskatchewan, must be reviewed with the lens of enhancing Indigenous regulatory oversight to better reflect the Principles of UNDRIP and respecting Indigenous Peoples rights and interests within their territories. This includes delegation of authorities to Indigenous governing bodies, cultural change within the CER, and enhancing capacities and empowering those overseeing those activities regulated in the OPR.

- For true Indigenous oversight of the energy sector, Canada must act upon authorizing Indigenous governing bodies to exercise powers or perform duties and functions under Section 77(1) of the *Canadian Energy Regulator Act*.
- KFN Leadership has long sought to exercise regulatory authorities on behalf of their membership.

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- The empowerment of KFN specific Indigenous Monitors is crucial to enhancing Indigenous regulatory oversight of pipelines within the KFN Traditional Territory!
- The CER's Inspection Officers and staff need to understand and appreciate the need for increased inclusion of Indigenous oversight. This will require the promotion of sustained workforce cultural change through strong leadership to accompany the necessary changes in the OPR.
- At minimum, the CER must ensure that First Nation Governments are fully represented in Senior Management, Board of Directors, panels and/or other bodies established to enforce pipeline regulation. It would also be useful to see a regulated requirement (and associated funding) for Indigenous Guardians with the jurisdictional authority for enforcement. While it is acknowledged that some provincial and federal governments (**except for Saskatchewan!**) have made strides in recognizing the importance of Indigenous knowledge and monitoring programs, the current ad-hoc and short-term funding models for this are inadequate.
- This updating of the OPR presents an opportunity to regulate permanent financial commitment for KFN participation in the industry.
- The OPR authorizes the Commission to make amendments deemed to be in the public interest. The public interest includes considerations of reconciliation, the honour of the Crown and the duty to consult as well. The CER must undertake a review of all existing CER-regulated pipelines to ensure their compliance with these public interest considerations and make amendments as necessary.



- The OPR currently requires a proponent to appoint an officer as accountable officer to ensure its management system and required programs are complied with. KFN recommend that proponents also appoint an Indigenous Compliance Officer to ensure compliance with laws, protocols, and overall condition compliance. Similarly, the OPR currently requires proponent contractors to be properly advised on all safety and emergency protocol. We recommend that companies require all contractors to adhere to standards that involve the implementation of UNDRIP and be required to demonstrate their ability to do so within their responses to bids or RFPs from proponents.
- Oil and gas infrastructure has existed on First Nations lands since prior to the inception of the NEB. 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 this 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. KFN Administration is of the view that reclamation activities require returning the land in a state suitable for its traditional use.

ENGAGEMENT AND INCLUSIVE PARTICIPATION

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

- Companies will not undertake the systemic changes required to enhance Indigenous inclusion into pipeline activities and oversight so long as the OPR relies on good faith voluntary measures to respond to (and collaborate to resolve) Indigenous concerns.



- Through the delegation of authorities and shared decision-making with Indigenous Governing Bodies such as KFN, companies will be incentivized to improve their collaboration with First Nation Governments as they do with other regulators.
- For decisions affecting Indigenous rights and interests, companies must be held to the standard of enabling **free, prior and informed consent**. Companies must recognize capacity constraints that some First Nations face and be guided to ensure early engagement and sufficient funding are provided to integrate Indigenous perspectives into their planning stages. This includes providing capacity building / training opportunities for potential future workers long before shovels hit the ground.
- In relation to Emergency Response, companies should have pre-established relationships with fully trained Indigenous contractors and those Indigenous representatives who would be expected to participate in an Incident Command Unit for spills at any location along a pipeline route should be known and agreed to by affected First Nations prior to operations. Other opportunities for First Nation Governments to participate in Emergency Response should be identified long before project approval takes place and even before an application is filed.
- Federal and Provincial Regulators also need to collaborate better with First Nation Governments to have a shared understanding of the expectations they have within their territories. The respective regulatory jurisdictions of pipeline oversight can be complicated and confusing and can lead to significant frustrations that impede collaboration.

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

- While the OPR requires companies to file Incident Reports to the CER (Section 52), there is no mention of duties to notify First Nation Governments of activities occurring within their respective territories. This is of great concern to KFN Administration due to OPR silence in this area of concern.
- KFN Leadership and Administration would like to engage with CER to better understand the current expectations and approach to assessing the effectiveness of a regulated company's communications and engagement with affected First Nation Governments (outside of specific Conditions tied to an approved project).
- The CER should not rely on complaints lines, filed grievances, or other reactive measures to identify a First Nation Government's dissatisfaction with a company's engagement. From KFN's experience, these are often un-used or unknown, and provide little assurances concerns would be effectively addressed.
- The affected First Nation Governments themselves can identify the level of engagement they seek from pipeline companies operating within their territories. The CER should engage directly with the affected First Nation Government to capture a qualitative account of a company's engagement plans (i.e. for emergency response) or day-to-day processes (for operational matters) to guide OPR updates on communications and engagement.
- From KFN's experience, communications and engagement failings that have been identified are consistent with many projects and industries. The problems are often associated with a failure to engage on matters of interest to First Nation Governments (not adequately defined or covered under CER's regulatory oversight), wrong contact information or wrong decision-makers engaged, insufficient funding and/or time to review large quantities of overly

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technical materials, culturally ignorant or disrespectful staff unaware of appropriate protocols, etc.

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

- The Supreme Court's *Clyde River Decision*¹ illustrated how consideration of impacts to Indigenous rights and interests can be an afterthought to the assessment of environmental concerns. An infringement on a spiritual site may be a checkmark in a "Trespass" column, a fallen culturally modified tree a "Vegetation" issue. There is no means of knowing how important sites are being affected.
- Clear guidance for incident reporting specific to Indigenous interests (adopting appropriate protocols and confidentiality) must be prepared and adopted by affected and impacted First Nation Governments.
- Increased notification and documentation of a company's operations activities is necessary. Currently, there is no duty for pipeline companies to engage with affected First Nations when integrity digs are conducted. These ground disturbing activities can impact Sites of Indigenous Significance (SIS) and there are no requirements for preliminary baseline assessments, walk-throughs with qualified Indigenous monitors or other mitigating measures for these activities.



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; or**
- b. those people who are impacted by the operational activities addressed in the OPR?**

- There is a need to better understand the impact of policies and initiatives on various groups within First Nations, including women, gender diverse folks, those with disabilities, and 2SLGBTQQA people. In general, the lack of data on these groups has contributed to the policy and regulatory silence responding to their needs.
- To better understand, monitor, and report on the impacts of onshore development on diverse First Nations, First Nation Governments require capacity support to generate community-specific, culturally relevant indicators and establish baseline metrics.
- There must be opportunities for First Nation Governments to work with the CER – including through structures such as the IAMC's – to identify ways in which their data may be used to inform accountability mechanisms established within the new OPRs. The IAMC-Line 3 is an NR Can funded organization that is established within the Traditional Territory of the KFN and KFN is named as one of the Nations in the regulatory consultation records for that table.
- Adequate and meaningful opportunities for the inclusion of diverse Indigenous voices, including those of women, gender-diverse people, 2SLGBTQQA+ people, and disabled people, among others, must be built into the OPR development process, implementation, and accountability.
- Engagement requires capacity support, particularly for groups facing additional barriers and marginalization.

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- A commitment to implementation and accountability requires investments in capacity building within First Nation Governments to participate pre, during, and post construction including in training, monitoring, and the workforce in various capacities. This capacity commitment needs to also be made to First Nation Governments, so that there is the ability to provide long term funding for positions that are predictable.
- In order to ensure the physical, mental, and spiritual safety of Indigenous people participating in these opportunities, ongoing training and learning opportunities related to anti-racism and gender-based violence should be developed. **This must be aimed at no less than a deep culture shift within work cultures towards valuing difference, diversity, and Indigenous ways of knowing, being, and doing.**

GLOBAL COMPETITIVENESS

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

- From what KFN has observed of various energy projects, the disregard towards Indigenous rights and interests in the energy sector has created much uncertainty, legal challenges, and unpredictable outcomes. The Trans Mountain Expansion Project (TMX) is a prime example of failure in the current legislated and policy framework. Empowering those impacted First Nation Governments and enhancing Indigenous inclusion in regulatory oversight will lead to a shared understanding of expectations and a more timely regulatory system.
- Mandating Indigenous monitoring to be required on all activities to allow issues to be identified and addressed prior to an incident will reduce costly delays. This would include improved baseline studies, walk-throughs with Indigenous Monitors, knowledge keepers and elders, etc. KFN would like to explore the possibility of a future Indigenous Monitoring program with the CER and possibly the IAMC-Line 3.

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- Companies should have pre-established emergency response plans that are regularly updated and effectively integrate affected First Nation Governments along with other regulatory agencies and stakeholders.

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

- Through the promotion of Indigenous inclusion into decision-making within the energy sector, new perspectives will lead to innovation and best practices.
- KFN would like to work with the CER to identify opportunities to increase transparency and reporting on incidents affecting Indigenous rights and interests. This awareness will promote comparisons across pipeline operators that will lead to improved regulatory policy and guidance and innovative measures to mitigate against these impacts.

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

- Increased data collection and reporting is required to develop performance metrics for matters associated with protection of Indigenous rights and interests.
- Performance metrics on the protection of Indigenous Sites of Significance would need to be defined by Indigenous rights-holders themselves and may differ region to region across Canada. A comprehensive engagement process would be necessary.



- KFN Leadership and Administration welcomes further discussion on these matters to help inform the updates to the OPR and would welcome a working group table to be developed in focusing on transparency, data collection, and reporting.

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?

- Ensuring First Nation Governments can provide information to CER and/or proponents in a manner that respects their proprietary interests will improve on the confidence on TLU and TEK information sharing on any given project. Capacity for the development of such information must be provided to the impacted First Nation Government.

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

- When there are applications to change the product in the system or change of product flow direction, First Nation Governments need to understand the new risks and impacts associated with the proposed changes to their Nations. Such an assessment would need to consider impacts from Indigenous perspectives and the OPR should enable space for such studies to be conducted (i.e. not just safety and protection of the environment). As for all projects, the affected First Nation Government should have shared decision-making with the CER on the proposed application.
- When a company seeks to permanently end the operation of a pipeline, or part of one, this application must also be reviewed by the affected First Nation Government. It is often the case that a federal regulator's expectations for the degree of restoration of impacted habitats has far lower thresholds than First Nation Governments. As these companies have benefited from past activities on Indigenous lands (**with these First Nations not necessarily realizing any meaningful benefits**),

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decommissioning and restoration must be conducted in a way that satisfies the affected Indigenous communities.

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?

- KFN Leadership and Administration welcomes further discussions on how to improve the CER's "Management System and Protection Program Audit Protocols" to better reflect how management system practitioners can increase their knowledge of using management system to protect against potential impacts to Indigenous rights and interests. As discussed in the **Clyde River ruling**, these matters cannot be embedded in other management systems (i.e. Environment / Safety / etc.).

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?

- A proponent's or government regulator's work culture can profoundly impact Indigenous people – positively or negatively – for those either working within or outside of that organization. Cultural safety should be viewed as a required competency for staff at all levels. Further, cultural safety is addressed when there is not a tokenistic approach to Indigenous participation in the workforce – there needs to be deep and long-term participation in the organization of Indigenous peoples, and specifically of women and 2SLGBTQQIA+ at all levels.

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- Review of management systems from this perspective and by these perspectives in the review of the OPR through focused attention is required.
- A fundamental breakdown occurs between the OPR guidance that is issued to contract holders and contractors. While management systems may be expressed through the OPR and then to the contract holder – there needs to be examination of how to carry management systems on these issues throughout the chain, for all employees and contractors.

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 should set high standards for guidance documents on Indigenous inclusion and protection of Indigenous rights and interests within company safety management programs. Many companies do not know how to update these manuals with Indigenous perspectives and do far less to ensure their contractors have considered these interests effectively.
- These manuals need to take into consideration any vulnerabilities of Indigenous workers potentially affected by the proponent and contractor's activities.



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

- KFN believes that transparency and regional reporting is essential. KFN has heard a few concerns of Indigenous workers subject to racism or sexism in the workplace that are unreported through the CER's regulatory framework as it relates to Enbridge's Line 3 project. These may be deemed 'internal matters' of company's employees that are confidential, but simply reporting out on the frequency of incidents (without confidential information) is a practice that would yield in useful indicators to determine if companies are providing respectful and safe workplaces.
- KFN believes that many complaints are also unreported. While there may be numerous reasons for this, the CER should not solely be reactive to matters that arise on the CER Complaints line (or a company's). Enhanced promotion and support for sharing concerns without retribution is essential.
- Companies/proponents should be required to identify the extent of annual cultural sensitivity training, anti-racism, and gender-based violence training that is conducted (mandatory) in the workplace.
- Strong measures to hold companies to account is also necessary (**i.e. zero tolerance policies**).

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

- KFN believes the hiring and operations of sub-contractors to a project needs to be better monitored, evaluated and enforced. Collaboration and transparency on sub-contractor awarding is one way to get it right with KFN!
- The role of First Nations Governments (including KFN) in advising on the EPP and EMP must be expanded so that compliance is better understood



by First Nation Governments and that instances of non-compliance are dealt with in a manner that respects Indigenous perspectives. Unfortunately, KFN Leadership and Members have direct experience to feeling left-out in the post-CER approval stage as related to matters of condition compliance and enforcement.

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

- KFN is concerned that the CER is not adequately holding companies to account for the identification, preparation, mitigation and prevention of increased risks and uncertainty of extreme events associated with climate change.
- Company management system processes need to be updated to explicitly consider potential impacts to Indigenous rights and interests. These processes should be co-developed and/or audited by the affected Indigenous governing bodies such as KFN!
- KFN would welcome increased discussion with the CER and regulated companies to explore opportunities to improve process management on matters of Indigenous rights and interests.

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

- KFN has heard concerns the CER is too trusting of their regulated companies and reactive to incidents instead of proactively ensuring environmental protections. Increased oversight and decreased leniency towards infractions should promote improved environmental performance amongst regulated companies.
- Ensuring companies are contributing to enhancing the habitats in which they operate is important to increase resiliency of the environment from the impacts of climate change and potential future impacts from spills. Many First

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Nation Governments including KFN where pipelines are located are increasingly vulnerable from the cumulative effects of the pipeline and other projects in the region compounded with the threat of climate change. All parties must be contributing to making the environment more resilient to these impacts. Ensuring companies are supporting on-going stewardship of the lands in which they operate will improve their long-term environmental performance.

- Emergency planning and response measures need to be further developed to ensure environmental protections during a response. Increased expectations for environmental protection at all times (even when there are competing priorities) is crucial.

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?

- The CER should require companies to update their environmental protection plans more often to reflect best industry practices and regulatory expectations.
- Environmental protection plans should be reviewed and updated at an increased frequency to accommodate for the uncertainty and evolving state of the natural environment resulting from climate change induced extreme weather events.
- KFN Leadership and Administration **MUST** be involved in the update of these Plans!



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

- The CER's Remediation Process Guide does not adequately consider the protection of Indigenous rights and interests in managing contamination that occurs on or has migrated into a First Nation Government's traditional territory.
- The Guide only requires First Nation Governments to be 'adequately' engaged (including opportunities to participate in the development and implementation of the Remedial Action Plan (RAP), and/or Risk Management Plan (RMP)) when contamination is on Reserve lands, **not within their Traditional Territories!**
- Ground disturbing activities undertaken to capture contamination can impact Indigenous cultural and archaeological sites of significance. First Nations may express their concerns, but the polluter need only document the concerns heard and addressed, "as appropriate", prior to submitting a Closure Report. There are no assurances measures to protect Indigenous rights and interests that would be taken under the current guidance.
- Similarly, KFN wants to be informed when contaminated materials are being transported through, or disposed within, their Traditional Territory (even if the materials are being sent to a previously permitted facility).

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?

- KFN strongly urges that Indigenous inclusion in Emergency Management Planning, Preparedness and Response must be enhanced.
- While emergency management specialists, company representatives, and regulators across

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Canada have worked over the past few years to develop a standard for emergency preparedness and response for petroleum and natural gas industry systems, KFN is interested in learning how First Nation Governments contributed to this work.

- Companies are required to post their emergency procedures manuals and emergency management programs online. Emergency management specialists, company representatives, and regulators across Canada have worked over the past few years to develop a standard for emergency preparedness and response for petroleum and natural gas industry systems (CSA Z246.2). It is unclear if there were First Nation Government representatives involved in this work.
- There is a need to ensure KFN and all impacted First Nation Governments are effectively engaged during an emergency response. This may be achieved through effective integrated response planning, but this is also required for Federal and Provincial regulators as well. KFN welcomes further discussions to identify opportunities to enhance the expectations for Emergency Management Programs in an all hazards approach context!

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

- KFN would be interested in exploring quality assurance / quality control measures in an Indigenous context. This may pertain to setting minimum standards and qualifications for Indigenous Monitors and Inspectors overseeing pipeline activities on behalf of affected First Nation Governments.
- As Quality Assurance Programs are developed for safety, engineering, pipe-fitting, etc. items within the OPR, ensuring Indigenous knowledge is incorporated should be important and KFN would welcome these discussions as well. Adopting a holistic and long-term Indigenous worldview on the project planning

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and execution should be incorporated to all CER regulated activities.

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?

- KFN Leadership and Administration would welcome discussions associated with the development of Safety Advisories in relation to the strength of steel and would like to learn more about these areas of concern including understanding current leak detection systems. It all boils down to the weakest link that fails!

IMPLEMENTATION

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

- Compliance verification on matters affecting First Nation Governments should be conducted and/or verified by the affected First Nations. The IAMC-Line 3 (which KFN falls under) has played an instrumental role in taking the first steps towards oversight, but regulatory changes are required to enable Indigenous decision-making and Indigenous compliance verification on regulated companies.

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

- KFN Leadership and Administration feel that the OPR Discussion Paper has provided a useful and welcomed opportunity to begin the discussion improving the existing Onshore Pipeline Regulation. The 29 questions presented, provide a foundation to garner feedback in specific areas, **however more time, capacity \$ and meaningful engagement with KFN Leadership and Administration is required!**

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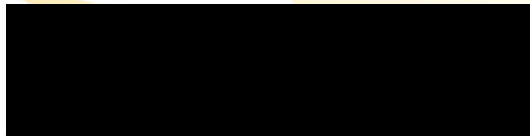
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- KFN wishes to have further substantial funding/capacity to engage with the CER in person and in greater detail to look at co-developing technical guidance documents, policies and protocols to ensure that KFN Treaty and Aboriginal Rights are not infringed upon with future projects within the KFN Traditional Territory.

Thank you in advance for your review and considerations of all of our responses!

Respectfully,



Land Code Manager
Kahkewistahaw First Nation

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