



**XAT'SÜLL T'MICW  
RESOURCES LLP**

**Head Office**

3405 Mountain House Rd  
Williams Lake, B.C.  
V2G 5L5

June 13, 2022

Canada Energy Regulator

**VIA ELECTRONIC EMAIL:** [opr-rpt@cer-rec.gc.ca](mailto:opr-rpt@cer-rec.gc.ca)

**Re: Onshore Pipeline Regulations Discussion Paper – Xat'süll First Nation Responses**

---

Please find attached Xat'süll First Nation's responses to the Onshore Pipeline Regulations ("OPR") Review – Discussion Paper questions.

Xat'süll First Nation looks forward to reading the "What We Heard" report and continuing to collaborate with the Canada Energy Regulator on the review of the OPR.

Sincerely,

XAT'SÜLL T'MICW RESOURCES LLP



Researcher & Project Coordinator



# Appendix A

## OPR Discussion Paper – Xatśūll First Nation Responses

Discussion Paper Question	Xatśūll First Nation Response
<b>Lessons Learned</b>	
1. What's working well in relation to the OPR, and its implementation, and what could be improved?	<ul style="list-style-type: none"> <li>Xatśūll First Nation has experienced a lack and/or sporadic communication from the CER. When there is communication, in the past it was been difficult to be heard. For example, the proponent gets to decide who is hired to do the archaeological work rather than Xatśūll First Nation in the past.</li> </ul>
<b>Reconciliation with Indigenous Peoples</b>	
2. How can the OPR contribute to the advancement of Reconciliation with Indigenous Peoples?	<ul style="list-style-type: none"> <li>Conduct cultural awareness training for government employees and proponents.</li> <li>Ensure the proponent has a clear understanding of territory boundaries and overlapping territories so the right nations are being engaged.</li> <li>Ensure respect for the rights, laws, policies and practices of Indigenous Peoples.</li> </ul>
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?	<ul style="list-style-type: none"> <li>That all contracts associated with the protection of heritage resources on a pipeline ROW be first offered to First Nations. If local First Nations do not have the capacity to complete the work, First Nations should be given first selection of an appropriate external contractor to conduct the work required</li> <li>That the OPR come into compliance with UNDRIP, which assert the right of First Nations to manage, maintain, and exert stewardship over their own cultural heritage and natural resources</li> </ul>
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?	<ul style="list-style-type: none"> <li>Xatśūll First Nation recommends that the CER require companies to move the planned position of the pipeline when traditional land and resource use, and sites of significance for Indigenous Peoples cannot be moved.</li> </ul>

Discussion Paper Question	Xat'sull First Nation Response
<p>5. How can the use of Indigenous knowledge be addressed in the OPR?</p>	<ul style="list-style-type: none"> <li>• The CER must ensure that the companies regulated under the OPR meaningful consult with Indigenous Peoples early and often during project design, planning, construction, and post-construction in order to access Indigenous Knowledge.</li> <li>• Once Nations share Indigenous Knowledge with companies, they must respect that the knowledge is confidential and be transparent about how it is used and Knowledge Holders must have a say on how it is used.</li> <li>• CER must understand and emphasize to companies that Indigenous Knowledge must be heard and put into action. IK should have a direct influence on project design, planning, operation and reclamation stages.</li> </ul>
<p>6. How can the OPR address the participation of Indigenous peoples in pipeline oversight?</p>	<ul style="list-style-type: none"> <li>• Indigenous community involvement in all OPR-regulated activities within their traditional territories is mandatory, as per UNDRIP, which assert the right of First Nations to manage, maintain, and exert stewardship over their own cultural heritage and natural resources.</li> <li>• Indigenous cultural and environmental monitors must be utilized throughout the lifecycle of OPR-regulated projects.</li> <li>• Capacity building and training opportunities for Indigenous community members in management and supervisory roles within the project lifecycle.</li> <li>• That a mandatory First Nations consultation and engagement plan be developed and implemented by the companies, and that a meaningful mandatory feedback mechanism for post-inspection information transfer to First Nations be implemented</li> <li>• Indigenous Peoples should be included in inspection processes.</li> </ul>
<b>Engagement and Inclusive Participation</b>	
<p>7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?</p>	<ul style="list-style-type: none"> <li>• Consultation processes and programs should be made in collaboration with each community.</li> <li>• Consultation should be frequent, proactive, meaningful, and transparent.</li> </ul>
<p>8. How could communication and engagement requirements in the OPR be improved?</p>	<ul style="list-style-type: none"> <li>• When possible, the CER should emphasize the importance of in-person and community-wide meetings. The companies must be ready to adjust consultation mediums to best suit each community (social media, pamphlets, one-on-one meetings, community meetings, etc.) <ul style="list-style-type: none"> <li>○ It is important to establish communication best practices before meaningful consultation and engagement can begin.</li> </ul> </li> <li>• A communications protocol/program should be established through a collaborative effort with the company and each community.</li> </ul>

Discussion Paper Question	Xat'sùll First Nation Response
<p>9. How could the CER improve transparency through the OPR?</p>	<ul style="list-style-type: none"> <li>• The CER must ensure that companies follow through with commitments of transparency. Transparency can be achieved through consistent and frequent information sharing and meetings with the companies and CER more broadly.</li> <li>• When possible, the CER and companies should provide advanced notice and reminders of upcoming inspections, reports, and any project updates.</li> </ul>
<p>10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:</p> <ol style="list-style-type: none"> <li>a. those people implementing the OPR; or</li> <li>b. those people who are impacted by the operational activities addressed in the OPR?</li> </ol>	<ul style="list-style-type: none"> <li>• The CER should seek up-to-date demographic data throughout the lifecycle of the OPR-regulated projects.</li> <li>• The CER and OPR-regulated companies must be willing to work with communities in an open and clear manner. This can be done by collaborating with communities to ensure information is accessible for all members. <ul style="list-style-type: none"> <li>○ For example: if there is an in-person meeting the following considerations could be considered: <ul style="list-style-type: none"> <li>▪ Accessible parking, entryways and doors;</li> <li>▪ Childcare during the meeting;</li> <li>▪ Mediums for community members to express their opinions safely.</li> </ul> </li> </ul> </li> </ul>
<b>Global Competitiveness</b>	
<p>11. How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?</p>	<ul style="list-style-type: none"> <li>• The CER must make clear all consultative and environmental requirements at the very beginning of the OPR process, including requiring companies to submit more detailed workplans.</li> </ul>
<p>12. How can the OPR support innovation, and the development and use of new technologies or best practices?</p>	<ul style="list-style-type: none"> <li>• The CER should place more emphasis on proposed projects that use new and more sustainable technologies.</li> <li>• CER should incentivize existing projects to upgrade to new and more sustainable technologies when possible.</li> </ul>
<p>13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?</p>	<ul style="list-style-type: none"> <li>• CER should select an ESG reporting framework, such as SASB, GRI, TCFD, and Equitable Origin, to improve transparency.</li> </ul>

Discussion Paper Question	Xat'sull First Nation Response
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?	<ul style="list-style-type: none"> <li>No Response</li> </ul>
15. How can the OPR be improved to address changing pipeline use and pipeline status?	<ul style="list-style-type: none"> <li>The CER should seek open, clear and transparent communication with Indigenous communities to share the most knowledge as possible.</li> </ul>
<b>Safety and Environmental Protection</b>	
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?	<ul style="list-style-type: none"> <li>Management systems should be designed to identify and accommodate cumulative effects to the rights and title of Indigenous Peoples.</li> <li>Management systems should enable Indigenous Peoples decision-making authority on traditional territories and treaty lands.</li> </ul>
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?	<ul style="list-style-type: none"> <li>No Response</li> </ul>
18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?	<ul style="list-style-type: none"> <li>An efficient tool used elsewhere is the Field Level Risk Assessment ("FLRA"). Each employee and contractor receives a an FLRA and identifies all possible hazards they can identify before they begin working in an area.</li> </ul>
19. How can respect and personal workplace safety be assured at CER regulated sites?	<ul style="list-style-type: none"> <li>Employees and contractors must be required to complete cultural awareness training. Training curriculum should be developed collaboratively with each Indigenous community.</li> <li>Employees and contractors should be given access to a safe process to report safety concerns and any discriminatory actions.</li> </ul>
20. How should the CER be more explicit about requirements for contractor management?	<ul style="list-style-type: none"> <li>Ensure contractors are held to the same code of conduct as company employees and required to take cultural awareness training.</li> </ul>

Discussion Paper Question	Xat'sull First Nation Response
21. How should the OPR include more explicit requirements for process safety?	<ul style="list-style-type: none"> <li>The CER should require safety audits on a more frequent basis, as well as impromptu safety inspections.</li> </ul>
22. How can the OPR drive further improvement to the environmental performance of regulated companies?	<ul style="list-style-type: none"> <li>It is vital that environmental protection exceeds the minimum environmental standards. Companies should not merely meet the bare minimum of environmental protection measures.</li> <li>CER should emphasize to OPR-regulated companies the importance of including Indigenous Knowledge into environmental protection measures and to develop environmental protection measures with each nation effected by the project.</li> </ul>
23. How can Environmental Protection Plans and Environmental Protection Programs be improved?	<ul style="list-style-type: none"> <li>It is recommended that clear processes for information sharing between individuals designing and implementing the Environmental Protection Plans and Environmental Protection Programs.</li> <li>Indigenous communities should be given access to both Plan and Program for approval.</li> </ul>
24. How can contaminated site management requirements be further clarified?	<ul style="list-style-type: none"> <li>Increased communication to Indigenous communities once a contaminated site is identified.</li> </ul>
25. Are there any matters related to the Emergency Management Program that require clarification?	<ul style="list-style-type: none"> <li>It is recommended that Emergency Management Programs require more detailed plans, listing step-by-step plans for safety systems, spill management and emergency response plans.</li> </ul>
<b>Implementation Objectives</b>	
28. What are your recommendations for compliance promotion at the CER?	No Response
29. How do you want to be engaged by the CER in the development of technical guidance?	<ul style="list-style-type: none"> <li>Engagement should occur consistently, often, directly and meaningfully.</li> </ul>