

Onshore Pipeline Regulations

Cold Lake First Nations' Review and Comments

Prepared for
Canadian Energy Regulator

Prepared by



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Lands and Resources Department
June 2022



Disclaimer

CLFN's participation in this process and provision of comments on the Onshore Pipeline Regulations should not be interpreted as an endorsement of the Onshore Pipeline Regulations, or any changes that are made to them. Nor should CLFN's participation and comments be used to reduce, abrogate or derogate from any of CLFN's Indigenous and Treaty Rights or Canada's obligations pursuant to Treaty No. 6 or the United Nations Declaration on the Rights of Indigenous Peoples.

Introduction

Our people are, and have always been, a sovereign *Denesuline* Nation both stewarding and prospering from our homelands, *Denne Ni Nennè*. The Creator gave the gift of *Denne Ni Nennè* to our people and our responsibility, in turn, is to steward those gifts wisely and with care for future generations. Our relationship with *Denne Ni Nennè* is fundamental to who we are as a people and to the well-being of our members.

Denne Ni Nenne has been extensively impacted by oil and gas development, including pipelines. It has been our experience that Crown consultation policies do not foster responsible development or respectful relationships and have failed to protect our rights and way of life. There is growing concern about the extent of industrial development in our territory and its pervasive and lasting impact on our constitutionally protected rights.

CLFN has an extensive history of engagement and consultation with industry proponents, government and various regulatory bodies involved with the review and approval of oil and gas projects and pipelines. For this reason, CLFN has significant practical experience and input to bring to Canada's review of its Onshore Pipeline Regulations (the "OPR").

As such CLFN has prepared comments in relation to the Discussion Guide provided by the Canada Energy Regulator ("CER").

Overarching Comments

The CER requires the proponent to develop necessary mitigation measures and programs and to self-report with respect to whether the proponent has met its obligations in relation to CER conditions pertaining to involvement of indigenous communities in a project. The assumption seems to be that because proponents are required to file reports which are made public, Indigenous communities with issues or concerns about the information reported by the proponent will bring their concerns forward to CER. This is not an effective process for ensuring the commitments made by proponents are fulfilled because in most cases Indigenous communities do not have sufficient capacity (both in terms of human resources and funding) to review and comment on proponent filings in a consistent and ongoing basis. Even if an Indigenous community were able to do so, there is no clear process for the CER to hold proponents accountable to their commitments. It does not appear that the CER has a mechanism for testing the accuracy of annual reporting or the effectiveness of mitigation measures proposed by proponents. A more clearly defined process for

evaluating the effectiveness of mitigation and accommodation measures after project approval would be a great improvement.

The CER's post-approval inspection process is focused on safety and environment (which is important) but does not include any oversight of Indigenous contracting or other socioeconomic impacts of the project. Equally important, the CER's inspection process is focused on determining whether the company has applied the mitigation measures identified in the proponent's environmental protection plan or regulatory requirements, but there is no assessment whether those mitigation measures are effective. One of the key themes CLFN would like the CER to consider is its role in challenging the assumption that "successful" mitigation and reclamation from an environmental perspective means effective mitigation and reclamation has been achieved for the purposes of exercising Treaty and Indigenous Rights.

In CLFN's experience, the "performance-based approach" has not led to companies striving to do better than a minimum requirement. CLFN's uniform experience is that companies will only do that which is required of them in their approvals and within regulatory requirements. If CER focusses its compliance verification with the CER Act and regulations, then those regulations should be strengthened to ensure protection of Indigenous peoples from harm. This threshold is likely different from harm to the environment generally.

Response to Discussion Guide Questions

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

While a performance-based approach is appropriate, there are significant gaps in what the management systems address and in the CER's risk-based verification approach. The current risk-based approach to inspections prioritizes on those things that pose the greatest risk of harm to people and to the environment. As a result, aspects related to indigenous involvement in the project (employment, contracting, participation programs, etc.) lack appropriate oversight. Additionally, matters related to socioeconomic impacts that are disproportionately experienced by Indigenous peoples, in particular women and two-spirited persons, also lack oversight. This includes the effects of non-local workforce on the local community, the experience of indigenous persons employed by the project, among other matters. The scope of the risk-based approach must be expanded to ensure appropriate oversight of mitigation of socioeconomic impacts and impacts to Indigenous communities and their rights. The scope of the management system should not only include

proponent-defined mitigation and regulatory standards, but must also take Indigenous input on the appropriateness of mitigations and what effects may incur even with those mitigations, into account. Additionally, inspections should not only include verifying that a proponent is adhering to their environmental protection plan and other aspects of the management system, but must also consider the input and perspective of the indigenous community and/or persons that are affected.

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

As noted in the Discussion Paper, the Preamble of the CER Act stating Canada's commitment to achieving Reconciliation through relationships based on recognition of rights, respect, cooperation and partnership. Building on this intent, and on related principles such as "*Nothing about us, without us*", it is our view that there must be a mechanism in place to ensure cooperation and partnership with Indigenous peoples in CER decision-making and oversight of projects that fall under the CER's jurisdiction.

The current version of the *OPR* does not include requirements for involvement of Indigenous communities or consultation respecting Communities' Indigenous and Treaty rights and interests. While there are guiding documents¹ developed by the CER that speak to expectations of companies, the CER, and Indigenous communities related to engagement, regulatory participation, and assessment of impacts to rights, this does not negate the need for these requirements to be explicitly laid out within the *OPR*.

Guidance documents are useful tools, but they are not binding, and they do not have same the force and effect as regulations. As such, the *OPR* should contain specific requirements to ensure Indigenous Communities are meaningfully consulted and impacts to rights are considered, throughout the lifecycle of a project. There must also be requirements set to ensure that any impacts to rights resulting from a project directly or cumulatively are adequately accommodated either through elimination measures, or a combination of reduction and control measures.

The CER should work in collaboration with Indigenous communities to develop regulatory standards and requirements that are protective of the exercise of Indigenous rights by Indigenous land users. Currently, CER's regulatory requirements are protective of the environment generally, but there is

¹ For example, the CER's Early Engagement Guide and the CER Filing Manual

little evidence to support the conclusion these regulatory requirements are sufficient to mitigate or avoid impacts to Indigenous and Treaty rights.

The CER should ensure consistent and predictable capacity funding to Indigenous communities to engage in the review of project applications and to engage in construction and post-construction monitoring and engagement throughout the lifecycle of the pipeline. Ideally, this capacity funding would not be solely provided on a project by project basis in an ad hoc manner. Rather, some continuous capacity support would be very helpful in ensuring long term capacity building within Indigenous communities.

The CER should ensure Indigenous communities impacted by the pipeline are provided with consistent and predictable opportunities for contracting and economic opportunities arising from the project throughout the lifecycle of the project. Further, evaluation of the success of these initiatives should be tracked by CER. Evaluation of “success” must consider the perspectives of the indigenous communities who are affected by the project through direct engagement or feedback mechanisms between the CER and the communities, and not be solely based on the independent review of the company’s filings by the CER.

The CER should have a mechanism to ensure proponents are held accountable to fulfill the obligations and commitments made to Indigenous Communities, whether such commitments are captured within the regulatory process or through bi-lateral agreements.

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?

OPR should engage with communities directly to develop standard heritage resource protection standards and regulations under the OPR and should also require proponents to engage with Indigenous communities on Heritage Resources to ensure any assessments take into account Indigenous Knowledge and follow cultural appropriate protocols. In Alberta, proponents can apply for *Historic Resources Act* permits and approvals without directly consulting with any relevant Indigenous Communities, much less involving them in identifying, assessing and mitigating them. Nor are proponents required under the Historical Resources Act to notify indigenous communities of chance finds of many kinds of cultural materials, cultural sites, and historical places and structures. It is therefore very useful for CER to require engagement between proponents and Indigenous communities in respect of heritage resource assessments, mitigation plans, and the development of

chance discovery protocols to ensure consistency with the needs and interests of the relevant Indigenous communities.

Additionally, where there is a gap in any relevant Provincial Act and CER's expectations on Heritage Resources, the CER should fill those gaps with relevant regulations under the OPR. For example, Alberta Culture generally does not recognize or consider "cultural landscapes" as a historical resource; as a result a proponent may obtain Historical Resources Clearance without having considered potential impacts to indigenous cultural landscapes. Furthermore, Alberta Culture typically discounts or ignores Indigenous Knowledge and community perspectives on matters such as potential burial sites, relying instead on archaeologists "expertise" to validate community concerns. This approach does not advance reconciliation. The CER should work with indigenous communities to further develop OPR regulations pertinent to Heritage Resources, in particular to address gaps in current provincial requirements.

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 CER's approach to considering Indigenous and Treaty rights, as evidenced by some of the questions posed in the *OPR* Discussion Paper, remains focused on traditional land and resources use ("TLRU") sites. This is a narrow focus that does not allow for fulsome assessments of impacts to Indigenous and Treaty rights, both directly from a project and cumulatively from all activities occurring.

While there are certainly sites or landscapes that hold great cultural significance to a Nation, connection with lands and resources broadly and the geographical scope of rights cannot be overlooked. Relying primarily on a site-specific approach to TLRU takes a 'prove it or lose it' approach to assessing impacts to rights, whereby if a Nation does not prove that it uses a specific site for a specific purpose that overlaps with a project footprint, no impacts are identified. Any amendments to the *OPR* should include a shift away from this assessment focus and recognize that the full extent of Communities' rights.²

Additionally, the current approach assumes that there will be no long-term impacts to TLRU as a result of pipeline construction – i.e., that impacts will be short-term and irreversible. There is nothing in place to evaluate that assumption. The CER must work with indigenous communities to develop a

² For example, Cold Lake First Nations holds Indigenous and Treaty rights to all unoccupied Crown lands throughout Alberta and Treaty 6 as well as any other lands to which the Nation holds a right of access.

monitoring framework to evaluate and verify assessment assumptions and efficacy and appropriateness of mitigation measures. This cannot be done solely in the context of a proponent – community relationship – it requires an overarching and integrated approach with an explicit feedback mechanism to revising regulations and standards, or accommodation measures, when needed.

Further, more consideration and management of cumulative effects should be incorporated into the CER's oversight. Currently projects are reviewed and subsequently regulated on a project-by-project basis, with little to no consideration to cumulative effects. The *OPR* ought to include requirements and consideration to cumulative activities and their effects. As a regulator, the CER may not have direct control over provincial land use planning and management, but their decisions and the activities they regulate have direct effects on lands and to Indigenous and Treaty rights. As such, the CER needs to be aware of current conditions of lands and take steps to understand the broader context in which they approve or regulate projects.

Finally, the CER has conditioned the development of Aboriginal Participation Plans by proponents to ensure indigenous involvement in environmental monitoring on pipelines as one approach to addressing impacts to traditional land and resource use and sites of significant to indigenous communities. While Aboriginal Participation Plans are welcome and useful for capacity building, where participants who are community members are employed by the pipeline proponent directly there is no direct assurance of oversight and feedback to the community itself. There needs to be a requirement or space for Indigenous oversight, as well as the contracted environmental consultant or participation plan trainees, in relation to areas of key concern for the community.

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

Seeking to consult with Communities and gather input, including Indigenous knowledge, should not be a performative exercise. Information shared by Communities must be considered and treated as equal to any western knowledge or information shared. The *OPR* should include requirements as to how Indigenous knowledge and information pertaining to an Indigenous Community's rights and interests are considered, utilized, and included in any documents or activities pertaining to a pipeline. There must also be requirements that rationale be provided in any instances where information shared by Indigenous communities is excluded from consideration.

Before Indigenous knowledge can be addressed, the inclusion of Indigenous communities in the *OPR* process must first occur. Requirements around consultation and how to consider, handle and include information shared by Indigenous communities should be developed in consultation with Communities. Consultation must be supported through provision of proper capacity, and time.

CER should consider working with indigenous communities to develop overarching ethical standards and guidelines that support the respectful and effective consideration of indigenous knowledge all aspects of pipeline development, monitoring and decommissioning.

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

The CER should be careful to not conflate monitoring and other Indigenous involvement with its duty to consult and accommodate for impacts to rights. The *OPR* Discussion Paper speaks to opportunities for reconciliation through Indigenous involvement in potential programs, such as monitoring programs, but remains relatively quiet on Indigenous and Treaty rights and accommodation for impacts. While monitoring and other activities that involve Indigenous communities can be very positive if done meaningfully, these activities can also sometimes be used by companies and the Crown to deflect away from directly and proportionately addressing impacts (direct and cumulative) to Indigenous and Treaty rights that are identified by Communities in regulatory processes prior to approval.

At present, the CER's approach to oversight of companies is reactionary rather than proactive in nature. Particularly, as it relates to involvement or consultation of Indigenous communities as a project progresses through its lifecycle. This means that there is little intervention or management of how consultation with, or involvement of, Indigenous nation occurs by companies unless a concern is raised by a Nation, or the company seeks CER support.

Setting higher, more well-defined standards, and being more actively involved in monitoring fulfillment of consultation requirements or any other activities that affect Indigenous communities would be a benefit to the CER's oversight of project activities. This shift in how oversight is carried out would create known parameters, reduce extreme variability in approaches, encourage accountability for companies, and reduce confusion for all involved.

The *OPR* Discussion Paper identifies involvement opportunities previously offered on project specific approvals, such as Indigenous Advisory and Monitoring Committees or the Indigenous Monitoring Program that is under development. Indigenous involvement through monitoring and related activities, can be positive if they support ongoing information sharing, involvement of Indigenous communities in oversight, and prevention of additional impacts to rights before they occur. But, for that to occur, it cannot be performative in nature, and it cannot only be done through one-off project programs or company-led initiatives. The *OPR* should include consistent minimum requirements pertaining to ongoing involvement of Indigenous communities both project specific and broadly pertaining to all pipeline activities. Additionally, the *OPR* and other related documents need to be clear

about purpose and influence of activities that seek to include Indigenous communities and gather information from them.

Further, more consideration and management of cumulative effects should be incorporated into the CER's oversight. Currently projects are reviewed and subsequently regulated on a project-by-project basis, with little to no consideration to cumulative effects. The *OPR* ought to include requirements and consideration to cumulative activities and their effects. As a regulator, the CER may not have direct control over provincial land use planning and management, but their decisions and the activities they regulate have direct effects on lands and to Indigenous and Treaty rights. As such, the CER needs to be aware of current conditions of lands and take steps to understand the broader context in which they approve or regulate projects.

It is important that the CER take care to ensure that all Indigenous communities have equal opportunities to speak on behalf of their collectively held rights. It is not appropriate to have one Indigenous person or group involved in oversight and assume that they are speaking for all communities. This is a preference that we see government bodies leaning towards more and more; likely because it is more efficient from their perspective. But it fails to recognize the unique rights and interests of each Community or the fact that the Crown's duty to consult is with each community.

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

- a) Require engagement early on in the project planning process
- b) Require companies to provide consistent, predictable and reasonable capacity funding for the engagement process. This is a common barrier which prevents the meaningful participation of Indigenous communities and others.
- c) Ensuring engagement with all impacted Indigenous communities—including those who may not have reserve lands close to the project, but who exercise their Treaty and Indigenous rights in the vicinity of the project
- d) Ensuring involvement of indigenous businesses and/ or the direct employment of indigenous people as part of the project review and approval process
- e) CER Inspectors go beyond only involving the company (and the company's contractors) in inspections and should connect with "those who live and work near pipelines" to determine if or how the proponent's activities may be affecting them (i.e., as a way of verifying compliance with, and efficacy of, socioeconomic mitigations).
- f) CER should ensure there is explicit requirements for proponents to verify the accuracy of any filings that pertain to the relationship and communications between the proponent and

the community. The CER should include as part of its “inspections” some audits to verify the accuracy of filings – such audits should include the community or communities to whom the filings pertain.

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

- a) Require proponents to engage with Indigenous peoples on the development of their emergency response protocols.
- b) All emergency response protocols should expressly require companies to:
 - notify potentially impacted Indigenous communities about spills or other events
 - Identify if any values of concern to communities have been, or could be, impacted by the emergency/incident;
 - Involve impacted Indigenous communities in emergency response and clean up activities
 - Provide copies of any analytical reports, root cause reports, or other relevant reports concerning the incident to communities;
 - .Involve impacted Indigenous communities in any longer term monitoring that may be needed to provide assurance that the area and traditional resources are safe.
- c) Standards for consultation and engagement should be clearly established in the regulations.
- d) Active oversight by the CER to ensure proponents meet standards.

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

The CER can improve transparency by ensuring ongoing communication with Indigenous communities, including providing periodic updates around how proponents are completing activities, process updates regarding engagement with Indigenous communities, and considerations to impacts to Indigenous and Treaty rights. Once projects are approved, there is often limited requirements for ongoing engagement and communication between the Crown or companies and Indigenous communities - none of which are identified in the *OPR*. A lack of formal requirements for ongoing information sharing leads to a non-transparent regulatory system.

Further, there needs to be more broad communication and information sharing pertaining to collective or overarching regulatory actions or initiatives. This includes details on how standards (such as safety or environmental mitigation standards) were identified, reasons for decisions, broad information considerations, identification of practices etc.

Finally, the CER should develop, and make available to all interested and affected communities, courses about the regulatory system for pipelines, including a pipeline inspection 101. CER should require proponents to pay into a fund that can be used to provide capacity to any community affected by a CER-regulated pipeline, to be eligible for capacity dollars to support the community's staff and members taking training.

10. Gender and other intersecting identify 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?

Indigenous communities are acutely impacted by processes that exist within colonial systems and structures; this includes regulatory processes. Meaningful ways to decolonize systems include accountability loops and increased training. It could also include restructuring systems, addressing colonization, along with providing increased opportunities to Indigenous peoples for employment, including positions of oversight of policies and initiatives aimed at decolonizing structures.

Considerations should also be made to the greater rate of violence Indigenous peoples, particularly women and two-spirited individuals, face at the hands of workers migrating to work camps and work sites. A critical part of decolonizing structures is the recognition of this violence and implementing meaningful changes in policies, processes, and initiatives to ensure the protection of Indigenous women from violence.

The CER should work directly with potentially affected groups (e.g., indigenous women who are employed in work camps; women employed in the pipeline industry; indigenous persons employed in the pipeline industry) to determine the specific issues experienced and how best those could be deal with through the OPR or other mechanisms.

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

Timely and predictable should not be prioritized over the need for meaningful consultation, proper consideration, and accommodation of impacts to Indigenous and Treaty rights. Indigenous communities and requirements for the duty to consult and accommodate are frequently viewed as hinderances to 'predictable' and 'timely' systems. Regulatory systems are currently set up to allow projects to be approved, not to ensure proper consideration to Indigenous communities and their rights and interests. As a result, Indigenous communities have been forced to stand aside as lands and

resources are damaged and disturbed and Indigenous and Treaty rights are significantly diminished without receiving a fraction of the economic benefits and limited accommodation.

One way to move towards better outcomes for Indigenous communities and reduced impacts to Indigenous and Treaty rights is for the CER, in collaboration with Indigenous communities to implement more rigorous standards for construction and reclamation, with a requirement to monitor and study whether those actions result in improved outcomes for the practice of Indigenous and Treaty rights. Often much time is spent trying to persuade proponents to increase their standards above regulatory guidance—if the regulations were improved and focused on ensuring better outcomes to support Indigenous and Treaty rights, then less time would be required in the regulatory process.

Also, consistent, on-going capacity funding being provided to Indigenous communities would help so that they are not required to negotiate for this funding on a project by project basis. There could be opportunities for building capacity within Communities to understand and evaluate pipelines and other types of projects on an ongoing basis. If heavily impacted Indigenous communities developed expertise in understanding these projects, then the consultation could move more smoothly and arrive at better outcomes.

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

Setting higher standards and requirements drives innovation. It is only through pushing companies to meet higher standards, including standards pertaining to environmental protections and Indigenous and Treaty rights, that companies are incentivized to innovate.

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

No comment

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?

It can be difficult for Indigenous communities to easily access the data they require to support consultation activities. This includes data required to support the understanding of direct impacts from a project along with cumulative impacts. The CER should push for innovation and database development to share data with communities freely and ongoing, including geospatial data.

The CER should only retain, reuse, or reference information shared by communities on a specific project or for a specific purpose if they receive express consent from the Indigenous community to do so. To seek consent, the CER must be clear on what purpose they want to use Indigenous information, how it will be used, who the audience will be specifically identifying the purpose of the information, and how it will be used, so that the Indigenous community's consent is informed.

It should be noted that reuse or reference to previously shared data is not a replacement for consultation on a specific project or initiative.

Finding project-specific information and filings is not that easy on the CER website. It would be much easier to have a map-based portal, than to try to figure out filing numbers. Also – having a letter accompany a filing makes more correspondence or separate documents to go through to find what you want. Also – communities are not provided with CER Inspection Reports. These should be filings as well. There should be a web portal with a map where one should be able to “see” any pipelines in an area of interest and by clicking on the pipeline, or facility, find all related information perhaps sorted by “application”, “conditions and condition-related filings” and “CER inspections”. There should not be a log in requirement for such a portal.

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

Transparency is key. The *OPR* should detail information sharing requirements to ensure that Indigenous communities are fully informed of any activities, including changes to use or status. Moreover, requirements for consultation with Indigenous communities anytime a change is being proposed, including changes to both use or status, should also be identified. Any change can present new impacts to Indigenous and Treaty rights, and thus consultation is required. Consultation must include adequate capacity, time, and oversight from the CER to ensure requirements are being met.

Considerations to cumulative effects must also be included when considering and implementing changes to pipelines, including use and status changes, and how these changes interact with other activities occurring on the lands.

16. What further clarification, either in the OPR or in guidance would support company interpretation and implementation of management system requirements?

No comment.

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 contractor be provided in the OPR and/or described in related guidance?

No comment.

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

Standards should be high and explicitly consider safety risks to Nation members exercising their Indigenous and Treaty rights. At present, the Safety Management Program does not properly consider these unique and specific safety risks.

There are also no requirements for notification and involvement of Indigenous communities in emergency response procedures identified in the *OPR*. Secondary safety documents like emergency response plans typically do not include Nation-specific considerations or adequate requirements for notification or involvement of Indigenous communities. Emergencies can have direct impacts to an Indigenous nation's Indigenous and Treaty rights. As such, Communities should be involved in every aspect of emergency management, including being provided with timely information and be included in emergency response or clean up and follow-up monitoring activities.

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

Systems and structures in Canada are fraught with colonialism and systemic racism. This often results in discriminatory work environments for Indigenous peoples. Meaningful ways to decolonize systems include accountability loops, increased bias training, and information sharing on Indigenous peoples and Indigenous and Treaty rights. This also includes making space for individual communities to provide their own perspectives about these issues.

For example, CLFN has had success in recent years in providing a "CLFN 101" presentation/ seminar to industry partners and government in order to provide insight into CLFN's unique history and circumstances.

Additionally, many work places do not have policies that recognize or support the need for indigenous employees to have time off for family and cultural reasons and responsibilities. Often, indigenous employees lose or quit their jobs as a result of trying to fulfill family requirements. For example, bereavement policies are generally too restrictive and do not recognize the extent of relationships and

responsibilities with respect to bereavement in indigenous communities. Furthermore, work place policies are punitive, rather than, supportive – i.e., there needs to be more focus on identification of barriers and helping an individual overcome those barriers. For example, missing work because of lack of childcare. Many (if not most) women and indigenous persons working in the pipeline industry have experienced some form of bullying, harassment or discrimination. Most do not feel comfortable bringing forward these issues because they do not feel safe or supported to do so – there is often a feeling that it is better to stay quiet for fear of being penalized. It also cannot be assumed that just because a business is indigenous-owned that issues of gender and race based violence, harassment or discrimination do not exist.

The CER must require that proponents ensure prime contractor and other contractors have and adhere to policies that are meant to address systemic sexism, racism, and other gender and race-based issues in the workplace. There needs to be liaison workers, perhaps independent of the employer(s), that women and others experiencing bullying, harassment or discrimination can turn to to help address the issue.

The CER should consider developing orientation and training specific to gender and race based issues of safety that, by regulation, all personnel involved with a pipeline project must take. This training should be offered as well to neighboring communities and service providers (e.g., hotels, restaurants, bars).

Additionally, the CER must focus on these matters in their inspections and perhaps provide a hotline for anonymous reporting of issues.

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

It can often be unclear which contractors will be on site and what procedures they follow. This can lead to challenges between priorities and understandings of procedures, which can in turn lead to challenges for Nation members practicing their rights in the project vicinity.

Requirements for contractors must include training on Indigenous and Treaty rights, what these rights include and entail, what constitutionally protected means, and how projects they work on create impacts to rights.

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

No comment.

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

Higher minimum standards must be developed. This includes higher environmental standards around wildlife, vegetation, air, soil, and water as well as explicit standards pertaining to Indigenous and Treaty rights. By setting higher standards, the *OPR* can incentivize innovation.

Requirements to consider impacts cumulatively should also be integrated into the *OPR*. Direct project effects do not account for all impacts to Indigenous and Rights. Direct project effects contribute to collective, large, and widespread damages that create irreparable environmental harm as well as contribute to infringement of Indigenous and Treaty rights.

Workers on the pipeline must feel more comfortable in reporting environmental and safety issues. Anecdotal evidence is clear that not all environmental issues or chance discoveries are reported by regular workers, mainly for fear of being penalized or fear of a job being shut down (and when a job is shut down, the workers lose pay). Workers must have a higher degree of concern for environmental matters, perhaps through better orientation and project-specific orientation, but also protected by the CER. Even anonymous reporting does not help necessarily because it can be obvious to the employer or onsite personnel who likely reported something (for example, if only a few people are in the “know”). A more regular presence of unannounced inspectors and/or monitors is needed and the CER must require the pipeline proponent to encourage reporting of these issues by their contract personnel (perhaps through bonuses or rewards).

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

Consultation with impacted Communities should be explicitly required in developing Environmental Protection Plans and Programs. Currently, there is no involvement of indigenous communities in the development or review of the company’s environmental protection program. There should be identified requirements to involve Indigenous communities in activities to update, implement, and monitor project-specific Environmental Protection Plans, along with companies’ Environmental Project Programs.

Requirements should be developed to ensure that both Environmental Protection Programs and Plans include measures to reduce, control or eliminate impacts to Indigenous and Treaty rights stemming

from projects or larger company activities. This must also include specific requirements to reduce or eliminate cumulative impacts.

Consultation requirements should also be included, to ensure that measures identified are appropriate to impacted Indigenous communities. Consultation requirements should include provisions for adequate capacity, time, and oversight from the CER.

The CER should work directly with communities to develop standards that would inform Environmental Protection Plans and Programs.

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

One concern with the 2020 guidelines is that the guidelines only require the company to notify those whom the company considers to be “potentially affected persons and communities” and permits the company to hold off on notifying persons or communities if the company determines there is “no potential risk to human health or safety”.

It is unclear in the guidelines whether contamination within traditional lands would require companies to notify Indigenous communities and land users and there is no requirement for direct involvement of Indigenous communities in the clean-up and reclamation efforts.

At present, requirements to notify Indigenous communities in instances of accidents or emergency are inadequate. Often, requirements are vague, which results in Indigenous communities not receiving information about the full scope of an incident and how it may impact their Indigenous and Treaty rights. There are also no explicit requirements to involve Indigenous communities in the development of response plans or in the response and clean up processes. This means that often Indigenous communities desire for inclusion in site management and clean-up is not made available, with the proponent instead following their own minimum requirements. Indigenous communities should be engaged in the development of management requirements and involved in site clean-up and execution of response plans. This engagement must include requirements for adequate capacity, time, and CER oversight.

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?

At present the Emergency Management Program does not adequately consider impacts to Indigenous communities ability to practice their Indigenous and Treaty rights. As noted, Indigenous people are often exercising their rights in the vicinity of projects, as members need to travel far from their home communities due to impacts on the land.

This program also does not provide adequate requirements for the notification and involvement of Indigenous communities in emergencies. As stated, prior, Indigenous communities should be actively involved in emergency management planning and in the execution of emergency plans and programs. CLFN has experience in working with industry to find practical ways for the community to be integrated into emergency management planning. Integration of Indigenous communities into emergency management planning is seen as a valuable safety component and it can assist in improving the communication and relationship between industry proponents and the community.

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

No comment

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 areas?

No comment

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

Higher standards must be identified and set and stricter parameters around compliance should be defined. Regulators also need to shift from responding to issues after the fact or once a complaint is received, to a more proactive approach where issues are headed off before they result in greater conflict or larger impacts. For example, greater oversight by the CER over when notifications are sent to Communities and the content of the notification, following an incident or accident would ensure that companies are meeting the needs of Communities and providing fulsome, timely information. Further, greater penalties for non-compliance should be identified and widely communicated.

More involvement of Indigenous communities in oversight and review of compliance is necessary, to better ensure impacts to Indigenous and Treaty rights are understood and to increase confidence in CER. This participation must include adequate capacity, time, and CER oversight.

More needs to be done to inform and encourage pipeline workers about the importance of reporting non-compliance and for rewarding, rather than penalizing, workers that do so.

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

Consultation approaches and required activities will vary based on what topic the CER is seeking input on. At a minimum, CLFN would like to be provided an opportunity to comment on technical guidance documents and to be provided adequate capacity funding to support CLFN's review and comment on technical guidance documents.